

The Journal of Rotterdam Islamic and Social Sciences

Vol. 7, No. 1, 2016



IUR PRESS

Journal of Rotterdam Islamic and Social Sciences (JRISS)

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**The Journal of Rotterdam Islamic
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Front Cover:

Piri Reis Map (1513)

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Published in 2016

ISSN 1877 6671

Printing and Binding:

Imak Offset

+ 90 212 656 49 97 Istanbul Turkey



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Islamic Banking and Shari'ah Scholars in Nigeria

Kareem Muritala Kewuyemi¹

Abstract

Compliance with *Shari'ah* rules is compulsory for all Islamic banks; and such compliance is monitored by *Shari'ah* scholars. Therefore, this article examines and gauges the level of understanding of Nigerian *Shari'ah* scholars (the custodians of *Shari'ah* rules in the country) and their perceptions of the Islamic banking and its rules particularly interest (*ribā*). The survey method involving the use of purposive sampling was adopted to administer 1,040 copies of a questionnaire sent to Nigerian *Shari'ah* scholars, though some key people were also interviewed. The questionnaire, which contains 19 items, was designed to elicit information from them on issues such as their understanding of *ribā*, its uses in the Qur'an, Islamic banking products, collateral security and promotion (*promos*). Our findings revealed that there were more respondents (917) who considered usury to be forbidden than those who considered (871) interest to be forbidden. A large number of *Shari'ah* scholars (93.6%) confused interest with usury which suggests that both interest and usury refer to *ribā*. Some believed that *ribā* (48.6%) only refers to usury, while most of the respondents (74.1%) opined that all forms of interest are prohibited. About 73.7%, 86.3%, and 27.6% of the respondents believed *rahn* (collateral security), innovating interest-free financial products and patronising conventional banks respectively were allowed. The *Shari'ah* scholars surveyed (64.7%) believed that conventional financial products can be made *Shari'ah*-compliant, banks can operate successively without interest (89%), and they (70.3%) were of the views that promotions done by the conventional banks are against the teachings of Islam considering the source of the funds used in their promotions which contains the accrued interest income and lack of fairness in the distributions of the promotions. Seminars, workshops, and conferences can be organized for the scholars with a view to training them in the areas of Islamic banking and finance. Collaboration can be established between the Nigerian *Shari'ah* scholars and the *Shari'ah* scholars from the Middle East so that the former can benefit from the wealth of experience of the latter in the areas of Islamic banking and finance.

Keywords: Islamic banking, *Shari'ah* scholars, *ribā* (interest/usury), Nigeria, collateral

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1.1 Introduction

The roles which *Sharī'ah* scholars are expected to play as regards the operation of Islamic banks are key to the success of the banks. They are the ones to determine the compatibility and non-compliance of Islamic banking products with *Sharī'ah* dictates. The hallmark between Islamic banking and the conventional ones is the matter of interest. *Sharī'ah* scholars have a leading and exclusive position in the way Islamic banks are governed. They are to certify permissible Islamic banking products and verify that transactions comply with issued *Sharī'ah* rules. They also have to issue reports that all the activities of Islamic banks are *Sharī'ah*-compliant. This is to give the Muslims the confidence that they invest their funds in accordance with the dictates of Islam. They are also expected to educate members on how non-*Sharī'ah* compliant earnings should be disposed of. It is expected that they use *ijtihād* to issue their own interpretation of *Sharī'ah* law in relation to the operation of Islamic bank. *Ijtihād* is the ability to interpret the Divine Text by inferring new rulings in order to relate it to changing conditions (Kareem, 2011: 36-38). The product of *ijtihād* is called *fatwa*. This act makes *Sharī'ah* relevant for all times and eras. It is an endeavor of a qualified jurist to ascertain *Sharī'ah* rulings on a legal issue through utmost intellectual exertion. The issue of *ijtihād* that is expected of *Sharī'ah* scholars is evident in the *Hadith* of the Prophet when he sent Muadh b. Jabal to Yemen:

Muadh Ibn Jabal on the eve of his departure to Yemen where he was being sent by the Holy Prophet as their Judge and Governor was asked by the Holy Prophet on the basis of what he (Muadh) would judge upon being confronted with a problem. Muadh replied that he would judge on the basis of the contents of the Qur'ān. The Prophet asked him again: Assuming that you did not find it in the Qur'ān, on what basis would you adjudicate? Muadh said he would judge on the basis of the Sunnah of the Prophet. The Prophet further asked him "Assuming you do not find it in both the Qur'ān and the Sunnah of the Prophet, on what basis would you adjudicate? Muadh replied that he would use his own individual judgement. And Prophet Muhammad (PBUH) was very happy to hear this statement (Doi, 1984: 71)

The Prophet is also reported to have said: "When a judge exercises *ijtihād* and gives a right judgement, he will have two rewards, but if he errs in his judgement, he will still have earned one reward" (Bukhari and Muslim). The person who endeavours to understand deep meanings of the Qur'an and the *Hadith* with a view to finding out the exact instruction from Allah and issuing decisions on that basis is called a *Sharī'ah* scholar, a *mujtahad*. It is a continuous process of development since the divine revelation and the Sunnah stopped after the death of the Prophet.

For a person to be recognised as a *mujtahad*, he must be completent in Arabic

language because this gives him a correct understanding of the Qur'an and the Sunnah (because the two sources are in Arabic). A *Shari'ah* scholar who is expected to shoulder the burden of giving direction to Islamic banks must be righteous, honest, pious, and religious. These qualities will make people trust his judgement. They should have the razor-sharp analytical mind that the job demands. *Shari'ah* scholars who are to assess the Islamic banking product must be practising Muslims, male or female, and must be emotionally stable. The issue of calculation and distribution of *zakat* is to be handled by both the operator and the *Shari'ah* scholars. They make sure that *zakat* is paid fully on all items subject to *zakat* owned by Islamic banks. This article examines and gauges the level of understanding Nigerian *Shari'ah* scholars (the custodians of *Shari'ah* rules in the country) have and their perceptions of the Islamic banking and its rules, particularly interest (*ribā*). To achieve these objectives, some research questions were posed to *Shari'ah* scholars:

1. What is the meaning of *ribā*?
2. Can a Muslim patronise interest-based financial institutions?
3. Can financial institutions innovate products without interest?
4. Is a conventional cooperative society allowed?
5. Is collateral security allowed in Islam?
6. Can conventional financial products be made *Shari'ah*-compliant?
7. Is promotion (promos) used by banks allowed?

1.2 A Brief Review of the Literature

Various studies related to the objectives of the study have been reviewed. Egboro (2001), Isa (2012), and Yekini (2012) have examined interest banking in Nigeria particularly in relation to the two main religions, Islam and Christianity. In their articles, they concluded that the CBN should introduce comprehensive guidelines that would accommodate all forms of interest-free banking in Nigeria. Their research area, however, did not look at the key actors, i.e., *Shari'ah* scholars, in the operation of Islamic banking. This is the gap this study filled. Saeed (1996) investigated the prohibition of interest and its contemporary interpretation while Yekini (2012), Sanusi (2011), Byson (2015), Audu, and Mikail (2014), and Muazzan and Sauda (1996) conducted research on the roles of Islamic banking, its challenges and prospects. They concluded that Islamic banking provides a cheap source of funds and is suitable for mobilizing funds for entrepreneurship and economic development in the real estate sector in the Nigerian economy. They identified some of the challenges of Islamic banking which include a poor supervisory

framework, lack of innovation in financial products and inadequate manpower. The concern of Ajagbe and Brimah (2013) was on the evolution of Islamic banking and its development in Nigeria. The article paid no attention to the level of understanding *Shari'ah* scholars need regarding the operation of Islamic banking in Nigeria. Umar (2011) and Usman (2003) discussed the legal and regulatory issues of Islamic banking in Nigeria. He paid no attention to the level of understanding Nigerian *Shari'ah* scholars who are to oversee the operations of the bank in relation to compliance with *Shari'ah* dictates. The roles of Islamic banking was extolled by Sanusi (2011) in the area of economic development. The most important area, i.e., *Shari'ah* scholars, was left undiscussed. The workability of the bank was the focus of Obiyo (2008), Fakhrul-Ahsan (1998), Kandi (2011), Okonwo (2012), Onwughalu (2011), Solagbade (2011), and Oriloye (2011). They feared that it might not work in Nigeria, considering the secularity of the country and the political crises that have engulfed the country. Manpower, religion, and moral hazard have been identified as important factors that could have a significant influence on Islamic banking (Adebayo, 2000; Bawa, 1993; Bashar, 1993).

1.3 *Shari'ah*, Muslims, and Non-Muslims

Shari'ah referred originally to a course leading to where water is obtained in the desert (Hans Weir, 1974: 466). Technically, it is the divine law laid down in the Qur'an, the Sunnah, and other Islamic sources. It should be taken as a total way of life by every Muslim, who should use it as his guide in his spiritual and mundane affairs. *Shari'ah* covers not only all aspects of the life of every Muslim but also gives guidelines on how he can live his life here in this world to attain eternal bliss in the hereafter. It is a total way of life in the sense that it covers *Ibadah* (worship), *al-ahwal al-shakhsyyah*, (sovereignty), *siyar* (international law), *ahlaq* (morality), *uqubat* (Islamic criminal law), and *aladab* (ethics) and a host of others. The benefits of *Shari'ah* are too obvious to be mentioned: it takes care of both the young and the old, guarantees security of life and property, grants babies their rights with respect to breastfeeding (Q2:233), total care and kindness. Social problems such as rape, prostitution, fornication, adultery (Q17:32; Q24:30-31) and corruption (Q 2:11; Q2:64; Q2: 188) will be eliminated or at least reduced to the bare minimum level in a society where *Shari'ah* is used. People's privacy (Q24:58-59), equality before the law, and faithfulness to one's spouse will be the order of the day in a society where *Shari'ah* operates.

A robust economy is expected in a society that gives a chance to the *Shari'ah*. This is because it blocks all the barriers to economic growth and development. *Shari'ah* frowns at interest (*riba*) in all its forms (Q 2:275-279), considering

someone who deals in it as challenging Allah. The harsh tone with which it is prohibited can help it reduce tension in a global economy that has been facing many problems. The resulting effects of the problems are abject poverty, lack of infrastructure such as roads, a functional water supply, an effective power supply, education and health care. The havoc interest is causing in the Nigerian economy is seen in the level of poverty in the nation. Many who took out bank loans could not pay them back, and the loans had to be written off as bad debts. Many banks had to merge with others. Many were taken over completely by another because they could not operate successfully while others were closed down (Hassan and Dridi, 2010; Kareem, 2012: 111). In fact, an attempt to save the populace from the shock of the collapse of banks in Nigeria, the Nigerian government had to pump 1360 billion naira into the Nigerian financial system, particularly the banking sector. The proceeds of taxes were used to save the situations (Kareem, 2012: 111). The money that would have been used to provide effective and efficient educational system, power supply, healthcare and a host of other infrastructural facilities was diverted to stabilize the Nigerian financial system particularly the banking sector.

As stated earlier, the benefits of *Shari'ah* are enormous. Considering these benefits, Muslims have been agitating for the practice of *Shari'ah* in Nigeria. This is because it looks after the interest of Muslims without having any negative impact on non-Muslims in the country. It is noted that the Nigerian Constitution and the Banks and Other Financial Institutions Act 1991 allow it. Freedom of religion is contained in section 38(1) of 1999 Nigerian Constitution. The practice of its legal, economic, spiritual and social aspects is guaranteed by this provision.

Non-Muslims in the country would not be negatively affected. They would also benefit from its use. Muslims want to follow *Shari'ah* because that is Allah's injunction as stated in Q 45:18: "We have made *Shari'ah* for you (as a law), so follow it and not the fancies of those who have no knowledge." Some of the other verses which enjoin Muslims to use *Shari'ah* are Q5:47, Q5:48 and Q5:50. It is not a question as to whether Muslims like it or not – they must follow its dictates. Non-Muslims, such as Christians, Jews, and pagans, have nothing to be afraid of because it is not made for them. The Qur'an says: "Why should they come to thee for legal decision when they have their own Taorah which contains the laws of God? Even if thou apply it to them, they would still turn away (from you). For they are not really men of faith" (Q5:46; Q5:60).

1.4 The Introduction of *Shari'ah* in Nigeria

When the imperialists and the colonisers came to the country, they found *Shari'ah* firmly established, particularly in the north (Kareem, 2011: 155). It took

care of the affairs of Muslims spiritually, politically, socially and economically. *Shari'ah* was instituted in Nigeria in 1085 CE by Kanem-Borno. Shaykh Muhammad al-Maghili contributed to the establishment of *Shari'ah* through his writings. Between 1486 and 1527, during the reign of King Hajj Muhammad Askia of Songhai, Shaykh al-Maghili wrote his treatise titled *Ajiwabah* (Answers to Questions for the King) to serve as a guide for him in conducting state affairs. The amir of Kano, Muhammad Rumfa (1463-1499) received instruction on how to govern from al-Maghili (Akintola, 2001; Abdullah, 1998). The latter wrote his "Obligations of Amirs" for him. In addition to the roles played by the scholars such as al-Maghili, Islam came to North Africa through traders. The traders of North African origin played a significant role in the spread of Islam. Around the 14th century, the northern part of Nigeria had established *Shari'ah* based on the account of Ibn Battuta as contained in the writings of Akintola (2001) and Abdullah (1998). The British who came to Nigeria in the last quarter of the 19th century found *Shari'ah* firmly established in the north. The *shaykh* of Borno, Umar Ibn Muhammad al-Amin al-Kanem, signed a treaty with the British dated 7 Shawwal, 1267 A.H. (5 August, 1851). Part of the treaty reads thus: "We shall set down the stipulations and answer them according to the principles of the *Shari'ah*" (Quadr, 2000: 8-9; Akintola, 2001; Abdullah, 1998). They were warned not to bring either the Bible or alcohol to Hausaland. This attempt by Shaykh Borno was corroborated by the jihad of Shaykh Uthman ibn Fudi. His Jihad opposed syncretism and Nigerian society was cleansed of it (Akintola, 2001 and Abdullah, 1998). There were many accounts regarding the introduction of Islam to the southern states of Nigeria. One account said the religion was introduced to the area during the time of King Mansa Musa of Mali (died 1337 CE). Adam al-Iloriyy held that Muslim missionaries built the first mosque in 1550 AD during the time of Alaa'in Ajiboye. A *Shari'ah* court was established by Oba Momodu Lamuye in Iwo, (now in Osun State). The Oba ruled his people between 1880 and 1906. There was an Alkali court in Ikirun. The court, which was established by Oba Oyewole, the Akirun of Ikirun, was presided over by a *mallam* (Islamic teacher) from Ilorin (Quadr, 2000: 12-13). The role of Oba Abibu Lagunju of Ede in the establishment of the *Shari'ah* court is worth mentioning. Alkali Siddiq was appointed to be the judge in that court. With the help of the jihadists from the North, Oba Momodu I of Agbede (1881-1910) introduced Islam to the eastern part of Nigeria (Quadr, 2000: 12-13; Abdul-Wahab, 2006; Abdullah 1998). From all indications, it could be said that Islam is not new in Nigeria but had been present there before the coming of the British, the colonisers. When the latter came they destroyed the well-established Islamic judicial system. In some areas, it is confined to Islamic family law. In an attempt to revert to their way of life, Nigeria Muslims started making the effort to

reintroduce *Shari'ah* to the area in full. The effort began on 28 July, 1894 (Akintola 2001). In that year, the Lagos Muslims wrote a petition protesting the colonial ruler for preventing the institution of Islamic law. They wanted to be judged according to *Shari'ah* in that area. In 1938 and 1948, a group of Islamic scholars and the Muslim congress of Nigeria demanded the Governor-General institute *Shari'ah* law. A commission headed by the former Chief Justice of Nigeria, Mr Justice Brooke was established by the Nigerian government to look into national issues. The commission received a memorandum from the Muslim congress calling for the introduction of a *Shari'ah* court. The request reads: "We, therefore, pray this commission to grant our request for a separate Muslim court. The condition of our courts is even worse in the case of the law of inheritance. Our Native Authority civil court that grants letters of administration does not know any Muslim law governing this matter..." (Anderson, 1978: 223). Muslims continued demanding the introduction of *Shari'ah* during the period of General Gowon (1960-1975) as the head of state. In 1975, the Constitution Drafting Committee established by General Murtala Muhammad (1975/1976) included *Shari'ah* in its proposal as a result of the demand for it by the Nigerian Muslims. There was a provision in the proposal to establish a Federal *Shari'ah* Court of Appeal and a *Shari'ah* Court of Appeal in each state of the federation for any state that wanted it. Murtala approved the Federal *Shari'ah* Court of Appeal and a Federal Court of Appeal. After Murtala's assassination, his successor Obasanjo established the Federal Court of Appeal and dropped the former. In 1979, concerted efforts were made by Alhaji Ismail Babatunde and Alhaji M.K.O. Abiola (representatives of the southern Nigerians) and representatives of the northern part of the country regarding the introduction of *Shari'ah* in Nigeria. All their demands to the federal and state governments could not yield any result. A ban was issued in 1989 against any discussion on the introduction of *Shari'ah*. The issue of *Shari'ah* is an issue that cannot be carpeted over but keeps returning. Ahmad Sanni Yarima used the agitations of Muslims in 1999 for his campaign promises and won the election on 27 October, 1999, in his state, Zamfara (Quadr, 2000: 24). Many states, like Gombe, Kano, and Kebbi declared their intention to join Zamfara in introducing *Shari'ah* for Muslims only. The Muslim clamouring for *Shari'ah* also surfaced during the constitutional conference during the time of General Sanni Abacha. During the time of General Abdul Salami as the head of state, the same demand for *Shari'ah* was made. Muslims have been demanding its introduction. No regime would be set up without receiving a request to introduce *Shari'ah*.

1.4.1 Methodology

The research used the survey method, and the major instrument used for gathering data was the questionnaire, accompanied by interviews with some key people. A 19-item questionnaire was designed to elicit information from the Nigerian *Shari'ah* scholars regarding their understanding of our key word: *ribā* and its uses in the Qur'an. The first six items sought to find answers to questions on the real meaning of *ribā*. The next five items sought answers to questions on what should be the attitude of Muslims towards interest-based financial systems. The final items sought answers to the permissibility or otherwise of cooperative conventional societies, the barter system, the adaptability of conventional products, the use of collateral security and promotion (promos). Most of our respondents were Muslims. However, some non-Muslim scholars in *Shari'ah* were also among our respondents. We chose this instrument because it is the most suitable for reaching a large number of respondents. In fact, the cost of conducting a survey questionnaire is lower than any other form such as interviews and phone interviews. An immense amount of information is also gathered via this method.

Likert-types scales, also called summated rating scales, and this instrument is used in this study. This is because it is one of the three methods that can measure objectively to some extent the subjective and abstract concepts that are usually embedded in the feelings, understanding, and perceptions of people (Nnamd 2004: 58) regarding Islamic banking and its rules. Using this method, the researcher was able to analyse the results and make deductions and draw conclusions. Our respondents were asked to rate their understanding of interest and Islamic banking. Using a Likert scale of 5 points, the degree of agreements by the respondents to each of the items in the questionnaire was measured. We calibrated the scale into strongly agree (SA), agree (A), strongly disagree (SD) and disagree (D) with the value of 4, 3, 2 and 1 respectively. It should be stated that the intrinsic value of the numbers was not considered.

1.4.2 Population

The population studied comprised both Muslim and non-Muslim *Shari'ah* scholars in major cities in Nigeria: Lagos, Ibadan, Aba, Kaduna, and Kano. The *Shari'ah* scholars were mostly Muslims who had at least rudimentary knowledge of the religion of Islam.

1.4.3 Administration of the Instruments

The researcher employed some research assistants to administer the questionnaire in major cities in Nigeria: Ibadan, Lagos, Aba, Uyo, Kano, and Kaduna. We chose these places because they gave a good representation of other areas we could not cover. Out of 1,040 copies of a questionnaire distributed to *Shari'ah* scholars, only 1,011 copies were successfully completed and returned. Therefore, the response rate was 97.21%.

$$\frac{1,011 \times 100}{1,040} = 97.21\%$$

1.4.4 Analysis of General Data and Discussion of Findings

The data obtained from the questionnaire were analysed here to provide answers to the research questions itemised earlier. The findings of the research vis-à-vis the research questions are here presented and discussed.

1.4.5 *Shari'ah* Scholars

We sought demographic data because we believed that they could influence the responses of our respondents. From the table below, we can see that we had more male respondents than females. While 963 (95.3%) of the *Shari'ah* scholars were male, 48 (4.7%) of them were female. This could be explained by the attitude of some parents and females to Western education in general and Islamic education in particular. There are many Islamic male scholars in Nigeria whereas the Islamic female scholars are very few indeed. In addition, many females cannot exercise enough patience to acquire Islamic education. A safe deduction is that the percentage of females gave a good representation of Islamic female scholars we have. It is recommended that efforts to educate this marginalised section of our society should be doubled. The Prophet also encouraged people to educate them in one of his sayings, stating that "He who educates a female has educated the whole world. He who educates a male, he has educated a person." Our results also showed that a larger number (986) of our respondents were Muslims. This might be due to their attachment to the religion of Islam.

Table 1: Respondents' Demographic Profiles

		Frequency	Percent	Cumulative Percent
Gender	Male	963	95.3	95.3
	Female	48	4.7	100.0

	Total	1011	100.0	
Religion	Islam	986	97.5	97.5
	Christianity	25	2.5	100.0
	Total	1011	100.0	
Education	No formal education	-	-	-
	Primary	74	7.3	7.3
	Secondary	118	11.7	19.0
	NCE/OND	682	67.5	86.4
	BA/BSc/HND	137	13.6	100
	Total	1011	100	

1.5 Interpretations of Ribā

The first research question is: What is the meaning of *ribā*? Items 1-6 of the questionnaire provided answers to this question. An attempt to differentiate between interest and usury led some scholars to see only the latter as prohibited and that simple interest is allowed. However, all forms of interest, simple and compound are prohibited, based on our analysis in chapter 3. Our survey shows that a large number of *Shari'ah* scholars – 725 (71.7) – believed that both interest and usury are forbidden in Islam. This suggests that both interest and usury refer to *ribā*. The table shows that 216 (21.4%) thought otherwise. They felt that *ribā* did not mean interest and usury. A follow-up question to find out whether our respondents distinguished between interest and usury was posed. Our findings revealed that the respondents (917) who considered usury to be forbidden were more than those who considered (871) interest to be forbidden. Our deduction is that virtually all *Shari'ah* scholars believed in the prohibition of usury. However, they differed to some extent regarding their stand on interest.

To test their knowledge of the Qur'an, another follow-up question was posed as regards Q3:130-132. About half (48%) of our respondents believed that the verses prohibit only simple interest. This is understandable because they might not be aware of how simple interest could lead to compound interest (usury). However, their stand was clear when confronted with other verses (Q2:275-279) were posed to them. Most respondents (74.1%) opined that all forms of interest are prohibited.

Table 2: The Interpretation of Ribā

Description	Frequency	Percent	Valid Percent	Cumulative Percent
Ribā covers both interest and usury				
SA	725	71.7	71.7	71.7
A	216	21.4	21.4	93.1
D	70	6.9	6.9	100.0

Total	1011	100.0	100.0	
Interest is forbidden in Islam	871	86.2	86.2	86.2
SA	119	11.8	11.8	97.9
A	21	2.1	2.1	100.0
SD	1011	100.0	100.0	
Total				
Usury is forbidden in Islam	917	90.7	90.7	90.7
SA	917	90.7	90.7	97.6
A	70	6.9	6.9	100.0
D	24	2.4	2.4	
Total	1011	100.0	100.0	
Simple and compound interests are prohibited in Islam				
SA	656	64.9	64.9	64.9
A	162	16.0	16.0	80.9
SD	25	2.5	2.5	83.4
D	168	16.6	16.6	100.0
Total	1011	100.0	100.0	
Q3:130-132 prohibits only simple interest				
SA	190	18.8	18.8	18.8
A	301	29.8	29.8	48.6
SD	425	42.0	42.0	90.6
D	95	9.4	9.4	100.0
Total	1011	100.0	100.0	
Q2:275-281 prohibits all forms of interest				
SA	606	59.9	59.9	59.9
A	143	14.1	14.1	74.1
SD	72	7.1	7.1	81.2
D	190	18.8	18.8	100.0
Total	1011	100.0	100.0	

1.5.1 The Feasibility of Banks Operating without Interest

While many financial experts believe that banks cannot operate successfully without interest, a large number of *Shari'ah* scholars (89%) held that banks can operate successfully without interest

Table 3: The Feasibility of Banks Operating without Interest

Description	Frequency	Percent	Valid Percent	Cumulative Percent
Banks can operate without inter-				

est	784	77.5	77.5	77.5
SA	116	11.5	11.5	89.0
A	66	6.5	6.5	95.5
SD	45	4.5	4.5	100.0
D	1011	100.0	100.0	
Total				

1.6 Keeping Money in Interest-Based Banks and Receiving Interest

The second research question was: Can a Muslim patronise interest-based financial institutions? Items 7-10 of the questionnaire provided answers to this question. Muslims all over the world face the problems they are confronted with by unwanted interest money generated in their name through channels they do not control. Interest is credited to their account by the conventional banks, particularly savings accounts, time deposit accounts, etc. The *Shari'ah* scholars were asked what the attitude of a Muslim should be in such a situation. About 28%, 17%, and 24% of our respondents felt that keeping money in an interest-based bank, receiving interest on savings, and taking out a car loan or mortgage with interest were allowed respectively. However, about 72%, 83.4%, and 66% of our respondents among the *Shari'ah* experts held that keeping money in interest-based banks, receiving interest on savings, and obtaining a car loan or mortgage on interest respectively were against *Shari'ah*. A large number of our respondents believed Muslims should not deal with interest-based financial institutions and, if their accounts are credited with interest, that interest should be returned to the payer or sender. However, some of them believed that Muslims can keep their money in interest-based financial system. This is understandable because there are very few fully-fledged interest-free financial institutions in Nigeria. They keep their money in the interest-based financial institutions as a matter of necessity. Some believed that if one keeps one's money in them as a matter of necessity, interest paid on one's deposits should not be collected and be given back to the payer. Muslims should not invest or deposit his money in interest-based financial institutions out of his own free will. However, if he does so for any reason, he should surrender the interest to its payer. Some of the respondents were of this opinion. Some other *Shari'ah* scholars hold that the amount of interest can be taken with a clear intention that he will not and must not use the amount for his personal benefits. The researcher shares the view of the latter scholars. He should donate the interest as *sadaqah* to the poor. However, this should not be regarded as the normal *sadaqah* a Muslim donates from his lawful earnings or income with the intention to being rewarded for this on the Day of Judgement. He should not expect any

reward for it. The intention is to dispose of unclean and unlawful money and to relieve oneself of the burden of an ill-gotten gains. When a Muslim receives interest from his deposits, the interest is unclean and should be donated to the poor. However, the poor who receive it as *sadaqah* can use it for their personal benefit. Those who are entitled to receive *zakat* or *sadaqah* can be given this type of money but without expecting any reward, as stated earlier.

If the interest is returned to the payer, i.e., the financial institutions, they will not return it to sources they acquired it from. The financial institutions may use it for their own benefit; they may distribute it as bonus to their employees as incentives to them, or they may give it to charity homes, non-Islamic organisations etc. The non-Islamic religious organisations may use it to engage in missionary work against Islam because they have got enough funds to sponsor their evangelists by paying them good salaries, buying them luxurious and big cars, building gigantic churches and synagogues, to mention but a few. Muslims who are weak in the faith can be wooed into their religions through those funds. They may earmark fantastic salaries and gifts for new converts. The researcher does not share the view that interest should be returned to the institution for the reasons given above. Interest cannot be used to build toilets for a mosque, nor can it be used to take care of the expenses of Muslim associations.

Table 4: Patronage of Interest-Based Financial Institutions

Description	Frequency	Percent	Valid Percent	Cumulative Percent
Muslims can keep money in interest-based banks	67	6.6	6.6	6.6
SA	212	21.0	21.0	27.6
A	287	28.4	28.4	56.0
SD	445	44.0	44.0	100.0
D	1011	100.0	100.0	
Total				
A Muslim can take interest on his savings	139	13.7	13.7	13.7
SA	142	14.0	14.0	27.8
A	467	46.2	46.2	74.0
SD	263	26.0	26.0	100.0
D	1011	100.0	100.0	
Total				
A Muslim is allowed to take housing or car loan of 3% interest				
SA	72	7.1	7.1	7.1
A	96	9.5	9.5	16.6
SD	623	61.6	61.6	78.2
D	220	21.8	21.8	100.0
Total	1011	100.0	100.0	

One can take loan with interest if one is pushed to the wall				
SA	182	18.0	18.0	18.0
A	163	16.1	16.1	34.1
SD	354	35.0	35.0	69.1
D	312	30.9	30.9	100.0
Total	1011	100.0	100.0	

1.7 Innovation of new products

The third research question was: Can financial institutions introduce products without interest? Items 11-12 of the questionnaire provided answers to this question. The Qur'an supplies the broad principles regarding many issues such as *salāt*, *zakāt*, fasting, the economy, politics, and social affairs, to mention but a few. Their details are found in the Hadith, *Ijmā* (consensus of Islamic scholars), *qiyās* (analogical reasoning) and other supplementary sources. New products and services that are interest-free can be introduced inasmuch as they do not contravene *Shari'ah*. The majority of *Shari'ah* scholars (89%) supported the view that new products can be introduced. They believed in the possibility, viability, and profitability of banks without interest. Their assertion might be due to their belief in God. In addition, interest-free banks have been recording astonishing success in Asian countries and Middle East. All these points might inform their decision.

Table 5: Innovation of Products

Description	Frequency	Percent	Valid Percent	Cumulative Percent
Financial institutions can introduce products without interest				
SA	690	68.2	68.2	68.2
A	182	18.0	18.0	86.3
SD	69	6.8	6.8	93.1
D	70	6.9	6.9	100.0
Total	1011	100.0	100.0	
Banks can operate without interest				
SA	784	77.5	77.5	77.5
A	116	11.5	11.5	89.0
SD	66	6.5	6.5	95.5
D	45	4.5	4.5	100.0
Total	1011	100.0	100.0	

1.8 Cooperation

The fourth research question was: Is a conventional cooperative society allowed? Items 13-14 of the questionnaire provided answers to this question. Cooperation is very important in Islam. This is emphasized imperatively in the Qur'an (Q5.2) and the Hadith. Nobody is self-sufficient in this world. There is always the need to cooperate with one another in one thing or the other. However, the cooperation should not be based on wrongdoing but on piety and righteousness. Our respondents (59.9%) believed that a cooperative society is allowed in Islam. However, some respondents (23.7%) did not support loans on interest given by the cooperative society.

Cooperation can be in the form of partners in business, sharing profit and loss. People can assist one another by entering into partnership. The assistance may also be in the form of social insurance (*takāful*) based on the Qur'anic injunction (Q5:2). Our respondents (74.3%) believe cooperation can come in the form of social insurance (*takāful*) when one of the partners incurs a loss: he can be helped through a donation (*tabarru*). However, some respondents among the *Shari'ah* scholars (23.7%) consider it un-Islamic.

Table 6: Cooperation with Islamic Banks

Description	Frequency	Percent	Valid Percent	Cumulative Percent
A cooperative society is permitted in Islam	444	43.9	43.9	43.9
SA	162	16.0	16.0	59.9
A	237	23.4	23.4	83.4
SD	168	16.6	16.6	100.0
D	1011	100.0	100.0	
Total				
Loans given by cooperative society with interest are allowed	119	11.8	11.8	11.8
SA	121	12.0	12.0	23.7
A	702	69.4	69.4	93.2
SD	69	6.8	6.8	100.0
D	1011	100.0	100.0	
Total				

1.9 *Rahn* (Collateral security)

The fifth research question was: Is collateral security allowed in Islam? Item 17 of the questionnaire provided answers to this question. *Rahn* (collateral security) is used in three places in the *Qur'an*: Q2:283 (If you are on a journey and can-

not find a person to write (your debt), then apledge in hand "shall suffice"); Q52:21 ("Every person (or soul) is a pledge for that which he has earned"); and Q74:38). Directly or by implication, *rahn* refers to the use of collateral security to give assurance that a seller or a lender can recoup his money by selling the underlying asset used as security in the event of defaulting by the buyer or the borrower.

It is reported in the Sahih Bukhari, under *Kitābu fir-Rahn* (vol. 3, p. 2068) as narrated by Qatadah, that the Prophet mortgaged his armour to a Jew in Madinah and took barley from him for his family. Aisha, may Allah be pleased with her, is reported in another Hadith to have said that the Prophet bought some foodstuffs on credit from a Jew for a limited period and mortgaged his armour for it" (Khan, 414-16)

Therefore, collateral security is allowed in Islam. However, it is neither compulsory nor against *Shari'ah*. Our result shows that our respondents (73.7%) believed collateral security is allowed in Islam to show the readiness of borrowers to pay back loans without interest. In case they cannot pay back the loan, the bank can sell the security to recoup their funds.

Table 7: *Rahn* (Collateral Security)

Description	Frequency	Percent	Valid Percent	Cumulative Percent
Collateral security is allowed in Islam	488	48.3	48.3	48.3
SA	257	25.4	25.4	73.7
A	48	4.7	4.7	78.4
SD	218	21.6	21.6	100.0
D	1011	100.0	100.0	
Total				

1.10 Making Conventional Financial Products *Shari'ah* Compliant

The sixth research question was: Can conventional financial products be made *Shari'ah*-compliant? Item 16 of the questionnaire provided answers to this research question. The *Shari'ah* scholars surveyed (64.7%) believed that conventional financial products can be made *Shari'ah*-compliant. This is done by making use of the Islamic financial products alternatives to the conventional ones. Cooperation is one of the ways by which conventional financial products can be made *Shari'ah*-compliant. This can be in the form of partners in business, sharing profit and loss. People can assist one another by entering into partnership. The assistance may also be in the form of social insurance (*takāful*) based on the Qur'anic

injunction (Q5:2). Our respondents (74.3%) believe cooperation can come in the form of social insurance (*takāful*) when one of the partners incurs a loss, he can be helped through donation (*tabarru'*). However some respondents (23.7%) consider it un-Islamic.

Table 8: Making Conventional Financial Products *Sharī'ah* Compliant

Description	Frequency	Percent	Valid Percent	Cumulative Percent
Conventional financial products can be made Sharī'ah-compliant				
SA	356	35.2	35.2	35.2
A	298	29.5	29.5	64.7
SD	116	11.5	11.5	76.2
D	241	23.8	23.8	100.0
Total	1011	100.0	100.0	
Islam allows insurance in the form of takāful (Islamic insurance)				
SA	285	28.2	28.8	28.8
A	231	22.8	23.3	52.1
SD	184	18.2	18.6	70.7
D	290	28.7	29.3	100.0
Total	990	97.9	100.0	
Total Missing System	21	2.1		
Total	1011	100.0		

1.11 Promotion

The seventh research question was: Are banks allowed to use promotions (promos)? Item 19 of the questionnaire provided answers to this research question. The issue of promotion is viewed differently in Islam. Some banks and organisations encourage people to deposit their funds with them through promotions. They give gifts to anybody whose account number is randomly chosen as a winning number in their lotteries. *Sharī'ah* scholars (70.3%) held that it is against the teachings of Islam to consider the source of the funds used in their promotions, which is the accrued interest income. They also believe that it is not fairly done: it should be distributed on a pro-rata basis to all the depositors if injustice is to be avoided.

Table 9: Promotions Used by Conventional Banks Are Allowed

Description	Frequency	Percent	Valid Percent	Cumulative Percent
Promotions used by banks				

is allowed	117	11.6	11.6	11.6
SA	186	18.4	18.4	30.0
A	401	39.7	39.7	69.6
SD	307	30.4	30.4	100.0
D	1011	100.0	100.0	
Total				

1.12 Personal Interviews with Specialists and their Responses

1.12.1 Introduction

The objective of the interview was to find out if the responses of the interviewees can throw more light on the key functions of *Shari'ah* scholars and emerging issues such as promotions. We are pleased to state that the explanations given by them are very satisfactory. As part of the empirical study, the interviews were carried out on the people identified by the researcher, namely Shaykh Ishaq Uthman (an erudite Islamic scholar and Chief Magistrate in the Oyo State judiciary), Mr Jolaad Misbaudeen (a chartered account with many years of experience in the finance industry and also an Islamic scholar), and Professor Surajudeen Bankole (Professor of International Trade, International Finance and Islamic Economic System and Islamic Banking and Finance and Coordinator, Trade Policy Research and Training Programme, Department of Economics, University of Ibadan, Ibadan University of Ibadan). They were selected objectively based on their expertise and exposure to *Shari'ah*-compliant products and conventional financial products. They are very knowledgeable in both areas. The researcher had to report their responses because he believed their responses will make people and other scholars properly understand the Islamic rules on the issues raised. Their responses were synthesized and reported.

How can a conventional bank change all the items in its balance sheet to conform with *Shari'ah*?

The responses were as follows first, what is a balance sheet? What are the items one can find in it? It is only after answering these questions that we can decide how all non-*Shari'ah*-compatible items can be transformed into *Shari'ah*-compliant products. According to the Nigerian accounting standards SAS 2 part 3, "The balance sheet show the assets, liabilities and proprietors' interest at a point in time". As regards banks and non-banking financial institutions, the disclosures in their balance sheet should include but are not limited to the following: cash, short-term funds, funds due from other banks, bills discounted, investment, loans and advances, advances under finance lease, other assets, and fixed assets.

Of all these assets, cash, due from other banks, investments (if they do not contain interest), other assets (provided they do not contain interest) and fixed assets are *Sharī'ah*-complaint. Others are against the prohibition of *ribā* as defined in the Qur'an. Short-term funds, bills discounted, advances under finance leases can be made *Sharī'ah*-complaint by making use of any Islamic financial products such as *wakālah* treasury certificates, *mushārakah* treasury certificates, *mudārabah*, *ijārah*, and *mushārakah*. All these Islamic financial products are capable of performing the roles of the non-*Sharī'ah*-compatible assets of banks and non-banking financial institutions in a far better way in an Islamic economy than the conventional financial system.

Concerning their liabilities, items such as deposits and current accounts due to other banks, taxation payable, dividend payable, other liabilities, long-term loans, and shareholders' funds are found in their balance sheets. Long-term loans, other liabilities, deposits, and funds due to other banks are not *Sharī'ah*-complaint because they pay interest on them. The Islamic financial products such as *mudārabah*, *ijārah* and *mushārakah* can be made to replace them. (Shaykh Ishaq Uthman, Prof. Surajudeen Bnakole, Jolaade M.)

2. There are some practices that are similar to *ribā* if they are critically examined. However, some scholars do not see anything wrong in them as regards their Islamicity. Buy-back on mark-up is one of them. What is your understanding and position regarding this practice?

The responses were as follows. Buy-back is a way of returning what Islam has come to eliminate, i.e., interest. Interest is embedded in the issue of buy-back on mark-up. In buy-back on mark-up, the banks neither buy nor possess. They do not deliver any goods. They sign documents of purchase, sale, and transfer. *Bay'ul inah* is one of the ways by which the injunction on *ribā* can be violated. What then is *Bay'ul inah*? *Bay'ul inah* is when a person sells some commodities on credit for a certain price and then buys it back at a price less than the sale price on prompt payment. He might not even see it before buying it in cash and selling it on credit. It may happen between two people or a person and a bank. This is unlawful in Islam. The interest which is paid on the maturity date is unlawful. The other way by which *Bay'ul inah* can come into play is to sell a commodity to another person or a bank on credit and buy the commodity from the person or the bank for less than the amount.

Bay'ul inah is prohibited because it allows *ribā* to enter through the back door. This is because interest is paid once and for all. The amount is fixed, certain and paid on the due date. Given these features, it is not profit, for only interest can have these features (Shaykh Ishaq Uthman, Prof. Surajudeen Bankole, Jolaade M.)

3. Is indexation allowed in Islam?

The responses were as follows. There is a relationship between inflation and indexation. Indexation is to make a debtor pay an additional amount equal to the increase in the rate of inflation during the period of borrowing while Inflation is a persistent and appreciable rise in the general level or average of prices. Inflation, therefore, causes the value of money to fall. This puts a lender at a loss while a borrower is at an advantage because he pays less than the value of what he got. The proponents of *ribā* say the debtor should compensate the lender for the loss he has suffered to the extent of the amount that will make him buy the same, say, piece of land he would have bought with his money, say, 5 years ago by way of indexation.

Therefore, the proponents of indexation suggest that the lender should be compensated through indexation. Other points raised by the proponents are justice and fairness as the reason for using indexation to restore lenders to their original position. Quoting Qur'anic verses (Q2:279, Q16: 90, Q5:8 etc) to support indexation, they believe one should not be unjust to lenders by paying him less than the amount lent out. He should be given what could perform the same function, i.e., what his original money could do. However, if indexation is accepted, it means that the lender would be entitled to an assured positive return on loans, which is *ribā*, a prohibited act in Islam. In addition, indexation is not known until the maturity date. Therefore, it cannot be fixed at the beginning of the contract and this makes it null and void. Debtors do not cause the issue of inflation, which reduces the value of the money lent out. The forces of demand and supply cause it. If lenders keep their money without lending it, the same erosion of value would happen to it. So, debtors should not be asked to bear the loss not caused by them. That is another injustice because, in Islam the person who has committed an offence should bear the brunt. (Q12: 71-79). Using indexation as a substitute for the interest rate as suggested by proponents would be a mismatch and an unrealistic alternative because the inflation rate is not static. It changes from time to time. (Shaykh Ishaq Uthman, Prof. Surajudeen Bakole, Jolaade M.)

4. Does Islam allow *rahn* (collateral security)?

The responses were as follows. *Ar-Rahn* is allowed in Islam based on the Qur'anic injunction and the Hadith though it is not compulsory. It is the security that is used or employed for satisfaction of a claim in respect of a debt. It is one of the ways by which a seller is assured of getting his money as and when due. If a lender does not trust a borrower or a buyer or doubts his ability to repay the loan or to pay for the commodity, he may request a *rahn* (security) that he can sell and recoup his money if the borrower or the purchaser is unable to pay.

Rahn is mentioned in three places in the Qur'an: Q2:283, Q52:21 and Q74:38. Directly or by implication, this use refers to the use of collateral security to give assurance that a seller or a lender can recoup his money by selling the underlying asset used as security in the event of defaulting by the buyer or the borrower respectively. *Rahn* is also found in the practice of the Prophet as contained in Hadith. The Prophet bought some foodstuffs on credit from a Jew for a limited period and mortgaged his armour for it. The pledge is considered to be *amānah* (a trust), which should be returned to the owner after the settlement of his debts. (Shaykh Ishaq Uthman, Prof. Surajudeen Bankole, Jolaade M.)

5. Is the practice of interest-free banks possible in Nigeria?

The responses were as follows. It is definitely possible. There is one now called Jaiz Bank. It has branches in some states in the northern part of Nigeria; one branch is situated in Ibadan. Lotus practises interest-free investments. Habib bank had a window before 2006 for Soludo consolidation. Stanbic IBTC has interest-free savings accounts (Shaykh Ishaq Uthman, Prof. Surajudeen Bankole, Jolaade M.)

6. What is your understanding of the use of *ad'āfan mudā'afah* (doubled and multiplied) in Q3:130 as regards simple interest and compound interest?

The responses were as follows. *Ad'āfan mudā'afah* (doubled and multiplied) in the verse in question means a continual increment which could lead to the original loan being doubled. Allah uses "doubled" in the verse under consideration to mean the increment and not to the original amount of loan. This is because *ribā* means an increase. The increase continues until the original loan is doubled and, at times, four or more times the original loan as a result of the accumulated interest.

O you who believe! Have taqwa of Allah and give up what remains from *Ribā*, if you are really believers (Q2:278).

And if you do not do it, then take a notice of war from Allah and His Messenger but if you repent, you shall have your capital sums. Deal not unjustly, and you shall not be dealt with unjustly (Q2:279).

Any addition to the capital in a transaction is *ribā*. The creditors are only entitled to their capital sum. Therefore, both forms of interest are prohibited based on the Qur'anic verses quoted. (Shaykh Ishaq Uthman, Prof. Surajudeen Bankole, Jolaade M.)

1.13 Recommendations

Nigerian *Shari'ah* scholars should liaise with the Fiqh Academy of the organia-

tion of Islamic states under the patronage of the organisation of Islamic conference.

Seminars, workshops and conferences can be organised for the scholars with a view to training them in the area of Islamic banking and finance.

Collaboration can be established between the Nigerian *Shari'ah* scholars and the *Shari'ah* scholars from the Middle East so that the former can benefit from the wealth of experience of the latter in the area of Islamic banking and finance.

It is recommended that efforts should be doubled to educate females in our society, particularly in the area of Islamic law. The Prophet also encouraged people in one of his sayings to educate them. He said: "He who educates a female has educated the whole world. He who educates a male, he has educated a person"

1.14 Conclusion

Islamic banking is no more a dream. It has come into existence, although in a very low key. Some conventional banks have been offering Islamic banking products through their Islamic windows. The role of competent and qualified *Shari'ah* scholars is mostly needed now as regards certifying innovated products issued by both the only fully-fledged Islamic banking institution, Jaiz bank, and the conventional banks that are operating Islamic banking windows. The analysis showed that some *Shari'ah* scholars could not differentiate between simple and compound interests. An unscrupulous manager may use their ignorance in this area to lure them into accepting a moderate rate of interest when, in actual fact, the Qur'an prohibits all forms of interest. The success of Islamic banking hinges on the competence of both the operators and the *Shari'ah* scholars. The two are closely related to the extent that one should not be found wanting in the discharge of his duties. A *Shari'ah* scholar who is expected to shoulder the burden of giving direction to Islamic banks must be righteous, honest, pious, and religious. These qualities will make people trust his judgement. They should have the razor-sharp analytical mind that the job demands. *Shari'ah* scholars who are to give their judgements on the Islamic banking products must be practising Muslims, male or female, and must be emotionally stable. They must be competent in the Arabic language. Otherwise, they would have to rely on the translations of other scholars which may not be correct. It is important to be well versed in the language in order to be able to draw accurate conclusions from Islamic sources.

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APPENDIX

DEPARTMENT OF ARABIC AND ISLAMIC STUDIES UNIVERSITY OF IBADAN QUESTIONNAIRE ON ISLAMIC BANKING AND *SHARĪ'AH* SCHOLARS IN NIGERIA

Dear Respondents,

This questionnaire is designed to collect pieces of information on the interpretation of *ribā* (interest/usury), to examine and gauge the level of understanding of Nigerian *Sharī'ah* scholars (the custodians of *Sharī'ah* rules in the country). All the information gathered will be treated with utmost confidentiality.

I thank you for filling out this form. Please respond on time.

Section A

Sex: Male () Female ()

Religion: Islam () Christianity () Judaism () Others ()

Education: No formal education () Pry Sch.Cert. ()SSCE () OND/NCE ()
BA/BSc/HND () Postgrad ()

Section B

The response anchor follows this arrangement:

strongly agree (SA), agree (A), strongly disagree (SD) and disagree (D)

		SA	A	SD	D
1.	<i>Ribā</i> covers both interest and usury				
2.	Interest is forbidden in Islam				
3.	Usury is forbidden in Islam				
4.	Simple and compound interests are prohibited in Islam				
5.	Q3:130-132 prohibit only simple interest				
6.	Q2:275-281 prohibit all forms of interest				
7.	Can a Muslim keep his money in an interest-based bank?				
8.	Can a Muslim receive interest on his savings?				

9.	Can a Muslim take out a mortgage or car loan at 3 percent interest?				
10.	If a person is desperate, can he take out a loan with interest?				
11.	Can banks operate without interest?				
12.	Can financial institutions innovate products without interest?				
13.	Is a cooperative society allowed in Islam?				
14.	Is a loan given by a cooperative society with interest allowed?				
15.	Is barter allowed in Islam?				
16.	Can conventional financial products be made <i>Shar'iah</i> -compliant?				
17.	Is collateral security allowed in Islam?				
18.	Does Islam allow insurance in form of <i>takaful</i> ?				
19.	Are banks allowed to use promotion (promos)?				