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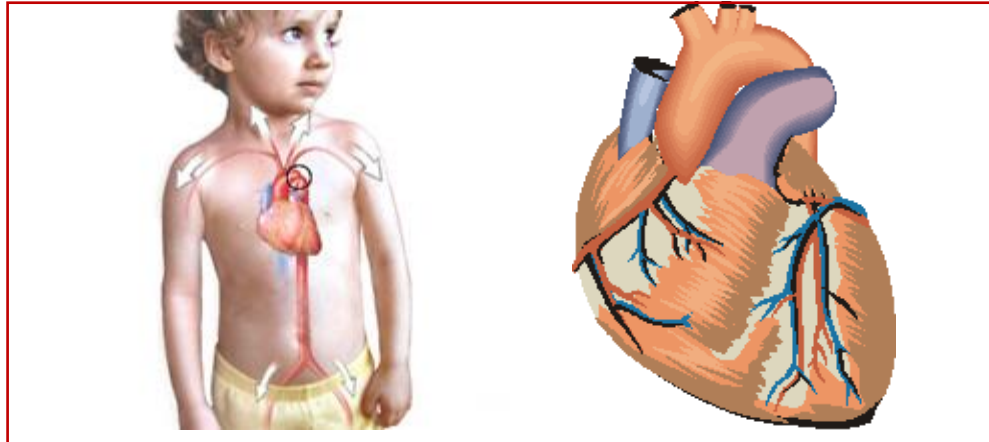
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## Penalties for Congenital Disease Children: Takaful Insurance Perspective

*Dr. Omaima Eltahir Babikir Mohamed and Noraishah Mostafa*



Nik Wan Nik Hamzah (Wan) was looking down from the balcony of his unit at Jalan Ampang. It was raining heavily, and Wan reminisced about that day six months ago when he and his lovely wife Nur Sheila dreamt about their unborn child and their plans for their child's education. Sheila studied at Oxford University, and naturally, she hoped to send their child to her alma mater.

“Darling, when are we going to Takaful Ikhlas to pay the contribution for Alzafir Mohammed, our beloved three-month old child?” Sheila asked her husband, Wan.

“Later!” replied Wan with a slight tension in his voice.

“You’ve been saying later since last month! Why?” Sheila retorted.

That evening, Wan took his wife to a Seafood Restaurant in Kuala Lumpur to brief her about the negative response from Takaful Ikhlas to cover their child, who is suffering from a Congenital Heart Disease (CHD). Sheila said that they always had to face the problem of limited product variety from takaful, as two years ago although they were under the family takaful coverage plan, the insurance company did not provide coverage when she needed to do **fertility treatments**.

“You know darling, since the 1980s, 15 states in the USA have passed laws to cover fertility treatment, although we are in a Muslim country and even though Islam encourages us to form families and to have many children as our beloved Prophet (s.a.w) said:

*“Marry and beget children for I will be proud of you before the nations on the day of Resurrection”,*” said Sheila.

“Yes Dear. You are right but bear in mind that this kind of coverage is very expensive as the procedure, corresponding costs, and follow-up costs will total up to hundreds of thousands of ringgit and many of the takaful companies are still in their initial stages and have small capital compared to insurance giants in the USA which have been around for over a hundred years! Regardless, Allah (s.w.t) found a path for us by **the hibah** provided by your late father Haji Ismail four years ago to get your fertility treatment and now we have our first child,” said Wan.

Sheila talked to Wan before they left the restaurant. “I have been told that some takaful operators currently provide protection coverage for participants who commit suicide”.

“I am wondering whether this is just an emulation of what has been practiced by the conventional insurers or is there any evidence in Islamic law to support this practice?” Sheila asked curiously.

Wan, the CEO of Albarakah Group which is in the oil and gas industry, faces a dilemma as to whether to go ahead with his job in Malaysia, or to listen to his wife’s advice to move to the United States as American passport holders. If there was one thing that worried Wan it was the fear of his inability to have the cost of the procedure for his new-born baby which might reach to one million ringgit. He started to think about the huge inheritance left by his late aunt Hajah Maimonah who owned two resorts in Port Dickson and Kuantan, and many other assets. However, the only issue is that **the legacy has been at court since 2009**, due to the fact that when she wrote her **will** she had not appointed any trustee, thus the heirs are in conflict till now.

## **1. Background**

Takaful Ikhlas Sdn. Bhd. was incorporated on 18 September 2002 and is a wholly-owned subsidiary of MNRB Holdings Berhad. Takaful Ikhlas establishes a strong presence in the provision of Islamic financial protection services based on the Takaful System, which stresses on a spirit of cooperation and joint responsibility among participants, and all business operations and management are in accordance with Shariah principles. The Company has an Authorised Capital of RM500 million and a Paid-up Capital of RM295 million.

Takaful Ikhlas' objective is to be the preferred provider of Islamic financial protection services. Currently, more than 1.8 million individuals and corporations have placed their trust in the Company and have become its participants. Takaful Ikhlas' commitment and adherence to cherished values, coupled with the application of appropriate technology in conducting business have earned the Company a sound reputation for its ethical approach and service delivery.

The Company offers individuals and commercial enterprises a comprehensive range of Family, Group and General Takaful Plans and Riders, with more being planned in the near future. The distribution/service channels comprise highly knowledgeable and well-trained people. These channels comprise more than 6,000 agency personnel, brokers, financial institutions, motor franchise-holders, co-operatives and Islamic bodies.

Within two years of its establishment, the Company has established an extensive agency network. The Company has 12 branches located in Selangor, Sungai Petani, Kota Bharu, Johor Bahru, Kuching, Kota Kinabalu, Melaka, Kuantan, Ipoh, Terengganu, Putrajaya and Seremban.

## **2. Innovative Products and Quality Services**

Takaful Ikhlas aims to provide comprehensive Family and general Takaful protection, putting strong emphasis on product innovation coupled with differentiating features to ensure market acceptance.

Takaful Ikhlas Family protection products focus on savings or investment-linked plans and mortgage protection plans. The general protection offerings feature innovative plans to cover properties such as vehicles, buildings and other assets. These plans are underwritten to cater to various categories of customers, from middle to lower-income groups including the rural markets, as part of a social responsibility.

To enhance efficiency and professionalism when dealing with customers and to add value for stakeholders, services are supported by *state-of-the-art technology*, designed to ensure accuracy and timeliness of information.

The occurrence of serious illnesses and threatening diseases is on the rise, and hospital bills are becoming more and more costly. A simple surgery can cost a few thousand. This can put anyone who is unprepared in serious debt. To avoid these debts, people need to have insurance/Takaful and concentrate on health recovery.

## **3. Ikhlas Medic Assist Takaful**

Takaful Ikhlas offers five Medical plans which consist of hospitalization and surgical coverage as listed below:

Maximum Limits for each plan:

Plan A	RM 400,000 Lifetime Limit
Plan B	RM 300,000 Lifetime Limit

Plan C	RM 210,000 Lifetime Limit
Plan D	RM 150,000 Lifetime Limit
Plan E	RM 90,000 Lifetime Limit

### **3.1. Exclusions**

The plan does not cover pre-existing illnesses and/or disabilities and other exclusions contained in the Certificate. Medical treatment received by the participants outside Malaysia will not be covered if the participants reside or travel outside Malaysia for more than ninety (90) consecutive days prior to treatment overseas.

## **4. Insurance Coverage and Heart Diseases in the USA**

In America, heart disease is a chronic illness that can lead to life-threatening conditions such as stroke and cardiac arrest. According to statistics compiled by the Centre for Disease Control and Prevention, it is the leading cause of death among adults. Perhaps ironically, this expensive and life threatening illness can make it difficult to get affordable health insurance.

The insurance industry, including health insurance, is based on risk. Virginia-based insurance executive Courtney Rogers<sup>1</sup> reports that insurance companies hire mathematicians to analyse illness and mortality statistics. These actuaries predict how likely a given person is to get ill, and how much they are likely to cost the company when they do. The greater this risk, the higher the rates. If a person presents too great a risk, the company may deny the claim altogether.

### **4.1. Heart Disease Medical Costs**

Heart disease treatment represents the single greatest healthcare cost in America today, reports health news website "For a Healthy America". These costs come from frequent testing, doctor

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<sup>1</sup> <http://www.livestrong.com/article/240601-health-insurance-with-heart-disease/>

visits, medication, surgery, physical therapy and emergency medical procedures due to heart attack and stroke. Insurance companies understand these numbers, and rate heart disease as a high-risk illness. Thus, heart diseases not only affect people's health but also have an impact on their financial assets.

According to Morgan Griffin<sup>2</sup>, in 2010, the cost of cardiovascular disease in the U.S. was about USD 444 billion. That included costs for treatment such as ambulance fees, diagnostic tests, hospital charges and possible surgery.

Health and life insurance provide the foundation to help people to protect family finances and achieve life goals. Understanding insurance billing and coverage can be problematic for parents with children who have CHD.

Most significant congenital heart conditions require lifelong monitoring and treatment by a cardiologist. That is why it is important to obtain and maintain adequate healthcare coverage with a policy that lets patients see physicians with special knowledge of CHD.

#### **4.2. Insurance for Adults with Congenital Heart Diseases (CHD)**

Young adults with many congenital heart conditions can usually buy life insurance without difficulty, but the cost may be higher. Term life insurance, especially if bought through a group such as an employer, is often affordable and requires less medical information to enrol. Insurance companies vary a lot in how they consider adults with congenital heart disease when offering life insurance. Even if application for health insurance was denied for someone when he was a child, he can reapply as a teenager or adult. Many insurance companies will consider applications from youths or adults once the severity of their heart condition is known with greater certainty.

Generally, adults with CHD can get coverage through their employer's group health insurance. Most large companies offer group health plans at reasonable rates, despite the heart condition.

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<sup>2</sup> <http://www.webmd.com/healthy-aging/features/heart-disease-medical-costs>

In case group coverage is not possible, adults may need to get insurance through a "high-risk" pool. Undoubtedly, this can be expensive but it is still possible. Unfortunately, for children, it is not attainable even if they can pay a higher contribution.

Employees who have health insurance through their employer should be very careful when changing jobs or policies. As they might not be eligible for coverage under a new insurance plan or policy based on specific exclusions, or there may be waiting periods before they can receive full benefits.

## **5. Moral filter and Islamic values**

Moral filter and Islamic values are the essential values through which a person can become spiritually complete. It provides a sense of security when Muslims decide upon choosing the available permissible tools to gain any financial benefits, and having this internal filter will help them to always make the right decision. Allah (SWT) has clearly verified all of the non-permissible actions to be avoided. Even if consuming or utilizing such action(s) can somehow give some benefits, conventional insurance has been declared by the majority of Muslim jurists as impermissible.

Wan opted to struggle for his child's health without involving his family in conventional insurance. He thought of gathering his relatives, heirs of Hajah Maimonah's wealth, in his house to have a family dinner. He planned to explain to them the importance of unity and how it can help each member of the family by agreeing to distribute the wealth in accordance with the Faraid system and appointing Amanah Raya to be the executor, based on their professionalism in faraid distribution. Wan informed Sheila of his plan to not be involved in insurance coverage in the US, but instead convince his family members to utilize the legacy of their late aunt, Hajah Maimonah.

Wan took his mobile phone and started to call all the heirs who are entitled to Hajah Maimonah's legacy, inviting them for dinner at his house on Friday to explain to them about his child's critical situation. He was hoping to gain their sympathy to resolve the issue in court before the



end of the year, when his child would undergo the procedure. Wan insist that Azard Umer the nephew of Hajah Maimonah to be in the meeting since he was assigned by her to receive the takaful benefits in case of her death before maturation. Nur Sheila watched her husband while he was talking to their relatives. She was anxious about whether or not his plan will work to solve their child's problem.

## **QUESTIONS**

1. What are the core issues in this case?
2. Explain some of the conflicting decisions that Wan and his wife has to make.
3. Discuss the differences between insurance coverage between Malaysia and USA that was mentioned in the case study. From your experience, suggest additional differences that you know.
4. In your own words, explain the following terms :
  - a) Infertility
  - b) Suicide
  - c) Risk adverse
  - d) Hibah

## **POSSIBLE ANSWERS**

1. The core issues are the conflicting decisions that underwriters have to address when selecting cases to offer coverage under Takaful insurance for congenital heart disease. This kind of disease is inborn and cannot be controlled. The main issue is whether Takaful should cover this disease or reject these cases due to high risk of high medical cost. There must be some possible methods that Takaful companies can consider to cover some of the claims related to this disease to lessen the claimant's burden.
2. The conflicting decisions are:
  - a. To purchase conventional insurance that covers congenital heart disease or Takaful insurance that adheres to the Islamic Shariah law but do not cover this disease.
  - b. To migrate to USA or stay in Malaysia
  - c. For his wife to go through fertility treatment at their own expense or claim through Takaful insurance.

- d. To inform the Takaful Company of their child's disease of congenital heart problems or do not.

3.

<b>USA conventional insurance</b>	<b>Malaysia Takaful insurance</b>
Covers congenital heart disease	Not covering
Covers investment with interest	Not covering because interest is considered as Riba
Covers manufacturing of liquor	Not covering because liquor is considered as not permissible (Haram) to consume.

4. In your own words, explain the following terms :

a) Infertility

Infertility is fundamentally the inability to conceive offspring.

b) Suicide

Suicide is the act or an instance of intentionally killing oneself.

c) Risk adverse

Risk adverse is used in insurance to explain the concept that individual's demand for insurance is positively correlated with the individual's risk of loss.

d) Hibah

Hibah is a contract (akad) that entails granting ownership of a property to someone else during his lifetime without any reprisal (iwad).

## CASELETTE 1

### Consented Difference

*Noraishah Mostafa*

Insurance customers always face the crossroad between purchasing conventional insurance product or participating in Takaful products. Most of the coverages are similar but in this particular situation, the infertility coverages are different. The family involved was aware of the differences but they consented (redha) these differences in order to receive greater goodness from Allah.

The term **infertility** is fundamentally the inability to conceive offspring. Infertility also refers to the state of a woman who is unable to carry a pregnancy to nine months. There are many biological causes of infertility, including some that medical intervention can treat. According to Makar RS (2002), infertility has increased by 4 percent since the 1980s, mostly from problems with the ability to reproduce due to an increase in age. Maheshwari (2008), stated that about 40 percent of the issues involved with infertility are due to the man, another 40 percent due to the woman, and 20 percent result from complications with both partners (Hudson, 1987).

“Why is it we are always facing problems to find Takaful coverage that cover infertility problem in Malaysia?” Sheila complained to her husband.

“Yes, I know. Even a company such as Takaful Ikhlas is not covering this musibah<sup>3</sup>. There are many fertility treatments available in Malaysia but all are excluded from insurance.” Wan said sadly.

“Maybe we should move to America or United Kingdom. At least, over there this kind of treatment is covered by the insurance even though it is covered under conventional insurance, not the Islamic way”, Sheila comparing the products.

“Now we have to choose between conventional and Takaful insurance. Another dilemma?”, Wan shaking his head, confused as ever.

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<sup>3</sup> Disaster, Loss with the potential of harming human life, property or the environment

“Ya Allah. Please show us the way to decide this.” Sheila put up both of her hands praying.

Both husband and wife agreed together that the best decision will be if they pray hard to Allah that they believe will show them the right path to happiness. Pray for Allah to bless this loving couple.

Sheila and Wan did some research and made comparisons between conventional and Takaful (Islamic insurance). Both types of insurance have its benefits and drawbacks. It was certainly a dilemma to choose. At last they made a decision that will most benefit their future child.

“Dear, how do you feel about going through the fertility treatment in Malaysia instead of overseas?” Wan asked his wife.

“But the insurance will not cover this kind of treatment,” Sheila sounded worried.

“I can afford to pay. I want the child to be conceived, delivered and brought up in Malaysia.” Wan said proudly.

“Born a Malaysian and always be Malaysian.” Sheila understood her husband very well.

“That’s right. If Allah consents it then we will have our prayers.” Wan confirmed his belief.

“I support your decision,” Sheila responded as an obedient wife.

Sheila went through the fertility treatments that cost RM50,000 at Subang Medical Centre (SMC). The couple chose in-vitro fertilization (IVF), artificial insemination and fertility drugs. She had to visit SMC twice a week for the treatments. Even though it was expensive and stressful, she and her husband did not give up.

On 20<sup>th</sup> March 2013, Sheila found out that she was pregnant. The couple was overjoyed and thankful to Allah. They understood that to gain something in life they had to work hard and be committed.

## Tasks:

- Describe the differences in fertility coverage between conventional insurance and Takaful.
- Provide the possible factors of infertility on the male or female.
- Why do you think Takaful insurance do not cover infertility?
- Explain EIGHT (8) fertility treatments in terms of successful rate and cost.

## Suggested Answer

### Differences in fertility coverage between conventional insurance and Takaful are:

In fertility coverage, the conventional insurance would cover up to the sum assured. On the other hand, Takaful do not cover fertility coverage but some Takaful products cover hospitalization costs (daily room and board only).

### The possible causes of infertility on the male or female are:

1. DNA damage
  - DNA damage reduces fertility in female ovocytes, as caused by smoking, other xenobiotic DNA damaging agents (such as radiation or chemotherapy) or accumulation of the oxidative DNA damage 8-hydroxy-deoxyguanosine.
  - DNA damage reduces fertility in male sperm, as caused by oxidative DNA damage, smoking, other xenobiotic DNA damaging agents (such as drugs or chemotherapy) or other DNA damaging agents including reactive oxygen species, fever or high testicular temperature.
2. Genetic factors
  - A Robertsonian translocation in either partner may cause recurrent spontaneous abortions or complete infertility.
3. General factors
  - Diabetes mellitus, thyroid disorders, adrenal disease
4. Hypothalamic-pituitary factors

- Hyperprolactinemia
- Hypopituitarism
- The presence of anti-thyroid antibodies is associated with an increased risk of unexplained subfertility with an odds ratio of 1.5 and 95% confidence interval of 1.1–2.0.

5. Environmental factors

- Toxins such as glues, volatile organic solvents or silicones, physical agents, chemical dusts, and pesticides. Tobacco smokers are 60% more likely to be infertile than non-smokers.

Takaful insurance do not cover infertility because the treatment is:

1. Too expensive
2. Low successful rate

Below are the eight fertility treatments:

<b>No.</b>	<b>Treatment</b>	<b>Description</b>	<b>Success rates</b>	<b>Costs (US\$)</b>
1.	In Vitro Fertilization (IVF)	Multistep process (called a cycle) in which your eggs are extracted and fertilized with sperm in a lab. Once embryos develop, one or two are implanted in your uterus and the rest are stored.	Varies by age. Forty-one percent of women (under age 35); 32 percent (ages 35 to 37), and 23 percent (ages 38 to 40) become pregnant.	\$8,000, on average, per cycle, not including medications.
2.	Fertility drugs	Injected or taken in pill form, the drugs release hormones that induce ovulation to boost egg production and make the	40 to 45 percent of women who take the pills and ovulate get pregnant; as many as 50 percent of women who	Vary widely (for example, from \$60 to \$6,000 per cycle), depending on whether the

		uterus more receptive to embryo implantation.	ovulate as a result of the shots get pregnant.	drug is a pill or injectable and whether blood tests and ultrasounds are included.
<b>No.</b>	<b>Treatment</b>	<b>Description</b>	<b>Success rates</b>	<b>Costs (US\$)</b>
3.	Artificial Insemination	Specially prepared ("washed") sperm is inserted directly into the uterus through a thin, flexible catheter during IUI, the most commonly fertility method. If you choose this method, your doctor might recommend that you take fertility drugs as well, to increase the chances of fertilization.	Depends on a woman's age and the quality of the man's sperm; in general there's a 15 to 20 percent chance of conception per cycle, with a 60 to 70 percent chance of pregnancy after 6 cycles.	On average, \$865.
4.	Donor Sperm	Sperm from a man other than the intended father is used during IUI or IVF.	An estimated 15 percent of women who try this method get pregnant after one cycle, with up to 80 percent achieving pregnancy after 6 cycles.	\$300 to \$400, generally. Factors that may affect the cost include whether you want a donor consultation and photo match, need storage for

				the sperm, and want washed sperm.
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<b>No.</b>	<b>Treatment</b>	<b>Description</b>	<b>Success rates</b>	<b>Costs (US\$)</b>
5.	Intracytoplasmic Sperm Injection	An embryologist selects a healthy-looking, single sperm from the male's semen and injects it directly into the egg with a microscopic needle. Once an embryo develops it's transferred into the uterus through IVF.	About 35 percent of those undergoing ICIS with IVF will become pregnant.	\$1,000 to \$2,000 per cycle, excluding the cost of IVF.
6.	Donor Eggs	Eggs are obtained from the ovaries of another woman (usually younger) and fertilized by sperm from the recipient's partner. Resulting embryos are then transferred into the recipient's uterus.	55 percent of women using fresh donor eggs will give birth; the number drops to 34 percent for frozen eggs.	\$15,000 to \$30,000, which includes IVF and compensation for the donor.



No.	Treatment	Description	Success rates	Costs (US\$)
7.	Reproductive Surgery	Surgery--sometimes requiring a hospital stay, sometimes done on an outpatient basis--is used to correct anatomical abnormalities, remove scarring and clear blockages in either the man or the woman.	Depends largely on the condition and its severity, and on one's age. In one study, women who were treated laparoscopically for endometriosis, for example, had about double the pregnancy rate of those who were not treated with laparoscopic surgery.	Depends on the surgery, the surgeon, and what's involved. Laparoscopic surgery for endometriosis can cost anywhere from \$1,700 to \$5,000.
8.	Gamete Intrafallopian Transfer (GIFT)	Eggs from the woman are collected, mixed with sperm from the man in a petri dish, and then placed directly inside the fallopian tubes, where fertilization can occur.	About 25 to 30 percent of GIFT cycles will result in pregnancy; younger, healthier women have a higher success rate.	\$15,000 to \$20,000

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## CASELETTE 2

### Nomination and Hibah in Malaysian Takaful

*Dr. Omaima Eltahir Babikir Mohamed*

“Sheila, what do you think about Azrad Umar? Is he just a mere executor or is he a sole beneficiary?” Wan asked nervously.

“Darling, be patient. We will find out soon during the family dinner gathering on Friday,” Sheila replied calmly, trying to hide her fear from Wan.

The term **Hibah** is a gift of asset made voluntarily by a donor during his/her lifetime to a beneficiary without expecting any returns from the donee. Hibah is a contract of granting the physical form of owned property from one party to another party without reprisal<sup>4</sup>.

#### Nomination

Nomination is the process of appointing a person or persons to receive the takaful benefits as conferred on the takaful participant through a certificate in the event of the death of the participant.

#### Family Takaful

Family Takaful is a *Shariah*-compliant form of life insurance with long term financial objectives. Family Takaful gives protection to the beneficiaries of the participant financially if any calamity or death happens in the future. A significant part of the family Takaful plan is the distribution of Takaful benefits in the event of the participant’s death. Therefore, the participant is required to name a person as a nominee to receive Takaful benefits (Abdullah et al, 2010).

The concept of Hibah is practiced in the family Takaful products offered by some of the Takaful operators in Malaysia. Takaful Ikhlas is the first to provide in its family Takaful plan a form for Hibah. The participant can give away the Takaful benefits as a form of Hibah in the event of the

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<sup>4</sup> <http://www.arb.com.my/en/index.asp?fuseaction=Content.View&ID=341>

death of the participant. The takaful operator gives freedom to the participant to make Hibah as Takaful benefits are the right of the participant.

### **Status of Nominee**

The National Council of Muslim Religious Affairs in Malaysia released a Fatwa in 1973 stating that<sup>5</sup>: “Nominees act as an executor according to the Muslim Law of Inheritance/ Faraid. The Takaful Act 1984 does not provide any express rule on nomination, as Section 65(1) states that the operator may make payment to a proper claimant such sum of the solidarity moneys as may be prescribed without the production of any probate or letters of administration and the operator shall be discharged from all liability in respect of the sum paid. Moreover, Insurance Act 1996, which applies to the Muslim participant, provides that the nominee in a policy will be treated as a mere executor and not as a sole beneficiary. Bank Negara Malaysia leaves the status of the nominees up to the Takaful operators, and the majority of the takaful operators in Malaysia prefer to follow the view that the nominee is simply an executor.”

Hajah Maimonah nominated her lovely nephew Azrad Umar to receive the takaful benefits in the event of her death before the plan matures. Hibah in Islamic concept is a gift that can be given during the lifetime of an individual. While in family Takaful, the Takaful benefits are given as a gift if the policy holder dies before the maturity of the plan.

Nur Shiela was watching her husband with sympathy, after all the phone calls he made to the heirs of Hajah Maimonah.

“Sheila, I am puzzled as to how I can convince Azrad to compromise to solve the conflict between the legal heirs and himself!!” Wan Said anxiously.

“Darling, do not worry. Let’s pray for Allah to soften Azrad’s heart. Remember, Allah knows our good intention to help our baby, and we do not want to perform any impermissible action,” Sheila said serenely.

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<sup>5</sup> <http://www.e-fatwa.gov.my/fatwa-kebangsaan/muzakarah?page=27>

“Now let’s us focus on the dishes that we will serve to our family members for dinner. I have to go back to work tomorrow as my maternity leave ends today.”

## QUESTIONS

What are the issues of using hibah by Takaful operators according to the characteristics of al-hibah? What do you think is the best alternative for hibah to be used by Takaful operators?

## POSSIBLE ANSWERS

### Hibah characteristics

- An akad (contract) of granting property ownership to a specific party.
- The property that can be given as hibah is a physical asset and not debt or benefits/interests.
- A Hibah contract is made without imposing any reprisal (iwad).
- A Hibah contract is in effect during the lifetime of the hibah provider.
- It is made voluntarily without coercion.

The contract is made with no intention to receive rewards or honour a particular person.

### Issues in Hibah

- Against the nature of Hibah.
- No ruling on Hibah in the Takaful Act 1984
- Jeopardize legal heirs rights not according to Fara'id

<b>Against the nature of Hibah</b>	<b>No ruling on Hibah in the Takaful Act 1984</b>	<b>Jeopardize legal heirs rights not according to Fara'id</b>
Hibah can be given during the lifetime of an individual.	There is no ruling mentioned in the Takaful Act 1984 regarding the application of hibah in Takaful. This leads	As hibah cannot be implemented after death, some Jurists believe it is a tactic to avoid the Islamic Law of Inheritance and therefore

	to many problems with regard to practicing hibah.	it contradicts the Quran.
In family Takaful, the Takaful benefits are given as a gift if the policy holder dies before maturity.		When a participant dies, the money in the Participant's Account is considered as part of his estate. According to Muslim Jurists, any property that was owned by the deceased during his lifetime must be distributed according to the Islamic law of Inheritance (Fara'id) if there was no proper will written before death.
<p><b>Conditions of hibah:</b></p> <ul style="list-style-type: none"> <li>• The distribution of estate must not surpass one-third of the estate</li> <li>• The distribution of estate after the death is considered as wassiyah and not as hibah.</li> </ul>		

### Alternatives

Alternatives to overcome the issues related to hibah:

**Absolute Assignment:** The policy holder will not recall the hibah after maturity, and the ownership of policy will be transferred to the donee.

**Proposed Beneficiary:** The nominee is to be treated as an executor/wasi for the asset in case of premature death.

The table below shows the implementation of Hibah in Family Takaful by the Takaful operators:

**Table 1: Implementation of Hibah in Family Takaful**

Name of Takaful Operator	Hibah
Syarikat Takaful Malaysia Berhad MAA Takaful Berhad.	No requirement on the proposed recipients provided
HSBC Amanah Takaful (Malaysia) Berhad Takaful Ikhlas Sdn. Berhad.	The proposed Hibah recipients should be the legal spouse, parent, sibling and/or children only
Hong Leong Tokio Marine Takaful Etiqa Takaful Berhad Prudential BSN Takaful Berhad	Hibah letter is not provided  This means hibah is not practiced in these companies

Source: Nomination and Hibah Issues in Malaysian Takaful Industry Syed Ahmed Salman and Sheila NU: <http://irep.iium.edu.my/>

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9. Takaful Act 1984

### CASELETTE 3

#### Risk Adverse Selection

*Noraishah Mostafa*

Over the years, Takaful Ikhlas has established an effective risk management when choosing risk exposure for its insurance coverage. Some of their prominent customers are those parents who are concerned about coverage for their child with congenital heart problems. Cases such as these will go through Takaful underwriters who will perform adverse selection. The decision to select or not basically will be based on certain issues such as the health condition, age and gender of the child to participate in takaful.

“Should we disclose to Takaful Ikhlas that Alzafir has a congenital heart problem?” asked Sheila to her husband.

“Don’t you think we should?” said Wan, returning the question to his beloved wife.

“I am afraid they will not cover the medical cost relating to this disease if we tell them,” Sheila remarked.

“Yes, that is possible but it is the right thing to do. I don’t think Allah wants us to lie about the disease,” Wan said, trying to explain to his wife.

“We are not lying, dear. We just do not disclose it and hope the insurance company does not find out about the disease,” said Sheila.

“Not disclosing the information is the same as lying. Furthermore, if the insurance finds out later we will be accused of lying. The consequences are the same,” Wan warned.

“Alright, I see your point. We will disclose the truth and hope that Allah will guide us in some other way when we need the money to pay for the medical costs for our son.” Sheila hoped and prayed hard.

The term **adverse selection** was originally used in insurance to explain a situation whereby an individual's demand for insurance (the tendency to buy insurance and the quantity purchased) is positively correlated with the individual's risk of loss (higher risks buy more insurance). As a result, the insurer is unable to allow for this correlation in the price of insurance due to private information known only to the individual, or because of regulations or social norms which prevent the insurer from using certain categories of known information to set prices (for

example, the insurer may be prohibited from using such information as gender, ethnic origin, genetic test results, or pre-existing medical conditions.)

The adverse nature of this phenomenon can be illustrated by the link between smoking status and mortality. Non-smokers, on average, are more likely to live longer, while smokers, on average, are more likely to die younger. If insurers do not vary prices for life insurance according to smoking status, life insurance will be a better buy for smokers than for non-smokers. So smokers may be more likely to buy insurance, or may tend to buy larger amounts, than non-smokers, thereby raising the average mortality of the combined policyholder group above that of the general population. From the insurer's viewpoint, the higher mortality of the group which selects to buy insurance is adverse. The insurer raises the price of insurance accordingly, and, as a consequence, non-smokers may be less likely to buy insurance (or may buy smaller amounts) than they would buy at a lower price reflective of their lower risk. The reduction in insurance purchases by non-smokers is also adverse from the insurer's viewpoint, and perhaps also from a public policy viewpoint.

On 1<sup>st</sup> March 2014, Alzafir was admitted to Subang Jaya Medical Centre (SJMC) when the baby had trouble with his heart. The doctor confirmed that he needed a heart surgery as soon as possible.

“He is just three months old. How can this happen?” Sheila said sadly to the doctor.

“He was born with a congenital heart disease. A surgery needs to be done as soon as possible,” the doctor advised the parents.

“How are we going to afford this?” Sheila asked her husband.

“Don’t worry, dear. I will find a way to get the money.” Wan assured his wife.

“But we have spent a lot of money for the fertility treatments. Takaful Ikhlas has already informed us that they will not cover this kind of surgery.” Sheila looked at her husband worriedly.



“Don’t worry. We will manage. I can pay first using my credit card,” Wan explained.

## **QUESTIONS**

1. Discuss THREE (3) general examples on how adverse selection works.
2. Provide adverse selection issues mainly for congenital children.

## **POSSIBLE ANSWERS**

Adverse selection occurs when the participant deliberately hides certain pertinent information from the takaful operator. The information may be of critical nature as these help in ascertaining the risk profile of the participants and accordingly help in determining the correct premiums. However, non-disclosure of the information which impacts the life of the participants can lead to faulty determination of premiums and may lead to losses for the insurance company as the insurer will find it difficult to do a prudent asset liability management owing to payment of more claims compared to the receipt of premiums.

### Example 1

Insurance companies grant life insurance coverage to applicants on the basis of factors such as age, health condition, and occupation. Policyholders are granted levels of coverage in return for a periodic (usually annual) cost called a premium. In order to compensate the company for the increased exposure from higher-risk policyholders, premiums rise commensurately with the risks associated with an applicant's age, health condition, and lifestyle.

In *adverse selection*, life insurance applicants successfully hinder a company's evaluation system in order to obtain higher coverage at lower premiums. This is accomplished by withholding or providing false information so that the applicant is characterized as being a significantly lower risk than in reality. For instance, if an applicant, in an attempt to pay a lower premium, manages to report that he works in a one-story office when, in truth, he is a large-scale construction worker, the insurance company would be making an adverse selection by approving his application.

## Example 2

Adverse selection refers to an event in which one party knows relevant information about a situation that the other party does not. This leads to poor decisions or choices. One example would be a person looking to hire someone to perform yard work on multiple rental properties, but he decides to pay well below the current market price for yard work. The contracted employee only sees what he is paid and figures that the contracting person only wants basic, minimum yard care even though the contractor was thinking that he would get meticulous yard work.

## Example 3

Another example is buying a used car. The seller, knowing that the car has a defective engine, puts it up for sale. If he can keep the condition of the car secret from the buyer until after the sale he may be able to get a very good price for a very poor car. The buyer only finds out that he has purchased a defective car after he owns it.

## Congenital children adverse selection issues are:

### 1. High contribution (premium)

In Takaful, the premium that a person pays to cover insurance is called contribution. Instead, the contribution amount is calculated based on the average price one needs to pay for normal conditions. For a congenital child, the medical cost for operations will be high and this may lead to a higher contribution.

### 2. High amount of claim on medical expenses

According to Morgan Griffin<sup>6</sup>, in 2010, the cost of cardiovascular disease in the U.S. was about USD 444 billion. That included costs for treatment such as ambulance fees, diagnostic tests, hospital charges and possible surgery.

### 3. Medical information

Adverse selection is typically likely to occur for **experience goods** which are goods where buyers cannot easily determine the quality of goods without purchasing them. The buyer thus

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<sup>6</sup> <http://www.webmd.com/healthy-aging/features/heart-disease-medical-costs>

faces a huge uncertainty in the possible value the good may have for the buyer. In contrast, insurance is the reverse situation. The agent or broker may have too little medical information about the person being offered insurance. The child may have congenital diseases.

#### 4. Moral hazard

Adverse selection is often confused with moral hazard, which is another type of market failure due to asymmetric information. Asymmetric information happens when a party has access to some information about the transaction that the other party does *not*. Moral hazard occurs in situations where insuring against a risk makes the takaful participant more risk-prone, thus negating the benefit provided by the insurance. The difference between adverse selection and moral hazard is that moral hazard usually applies to changes in behavior as a *result* of the transaction (such as an insurance contract) rather than information possessed by one party *prior* to the transaction.

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## CASELETTE 4

### Suicide and Takaful Death Claim

*Dr. Omaila Eltahir Babikir Mohamed*

Suicide is defined as the act or an instance of intentionally killing oneself. According to the World Health Organization (WHO)<sup>7</sup> suicide is the act of deliberately killing oneself. The main reasons for suicide include mental disorder due to mental illnesses, such as depression personality disorder, or schizophrenia or/and some physical illnesses, such as neurological disorders, cancer, and HIV infection. Some of the possible factors that influence suicide are low tolerance, interpersonal conflicts between family members and peers.

After work one Monday evening, while Sheila was still at the office, she searched the Internet for information about the illnesses that are excluded from insurance/takaful coverage. Consequently, she found that some life insurance policies have clauses of compensation for suicide cases. Sheila shared this information with her husband, Wan.

“What a coincidence, I had a discussion on Tuesday, after a tiring badminton session with few friends of mine and surprisingly, many of us were not aware that suicide is covered by takaful operators as well by insurance,” Wan said.

“I was told that some takaful operators currently provide protection coverage for takaful participants who commit suicide,” Sheila added.

“Are you sure about this?” Wan replied, astonished.

“Yes, I am. But I am wondering if this is just an emulation of what has been practiced by the conventional insurers or is there any evidence in Islamic law to support this practice?” Sheila asked.

*“Suicide is one of those things that no one likes to talk, or even think about”.* (Sentell, 2008)

According to the Health Minister of Malaysia, Liow Tiong Lai (2012), one thousand one hundred and fifty six (1156) cases of suicide were reported during the period 2007-2010, and the

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<sup>7</sup> <http://www.who.int/topics/suicide/en/>

majority was aged between 24 and 44. Sentell (2008) explains that life insurers are reluctant to provide coverage for the death of the participant due to suicide as they do not have the ability to predict who will commit suicide thereby making the underwriting process very difficult.

Most life insurance and takaful contracts exclude coverage of death by suicide, sane or insane, occurring within one or two years after the issuance of the policy. The consequence of the exclusion is the next of kin have no right to claim for any compensation on the sum covered upon the death of the participant due to the malpractices in the past to deceive the insurance company.

“Committing suicide is considered a major sin in Islam”

Surah al-Baqarah (2:195) & al-An`am (6: 151)

Committing suicide is considered a major sin in Islam as it is proven in many verses and hadith, yet takaful operators compensate the bereaved families based on Maqasid al-Shariah and the takaful concept.

“My dear Sheila, remember that the concept of *takaful* itself is mainly geared towards assisting those who have suffered hardship. This is the case where families may have lost the sole breadwinners. Doesn't it make sense to help them when they lose their breadwinner?” Wan said patiently.

“Yeah, dear if this is the case, you are right. Sometimes we cannot visualize things unless we put ourselves in other people's shoes,” said Sheila.

## QUESTIONS

- In your opinion, do you think paying death claims by takaful operators in Malaysia is a sound idea?
- Why do you think Takaful operators in Malaysia compensate the bereaved families when participants commit suicide?
- State some suicide clauses in insurance/takaful products provided by any five companies/operators in Malaysia.

## POSSIBLE ANSWERS

- To avoid penalizing the beneficiaries of the deceased by not allowing them to claim the stipulated benefits in the certificates; to consider the welfare of the beneficiaries who are left behind by those who committed suicide especially if he/she is the main breadwinner of the family.
- To implement the concept of takaful; in principle, the Takaful system is based on mutual co-operation, responsibility, assurance, protection and assistance between groups of participants. In other words, it is the provision of shared contributions to help the less fortunate members.

Suicide clauses included in the Product Disclosure Sheet (PDS) for selected life insurance/family *takaful* products offered by various insurance companies and *takaful* operators in Malaysia are presented in the table as below:

**Table 1: Extracts of suicide clauses in insurance/takaful products**

Insurance/Takaful Company	Suicide Clause
Manulife Malaysia	<p>A suicide clause is a condition incorporated in the policy to prevent claims from suicides, whether sane or insane, within a fixed period of time from the policy's issue date. In cases like this, the insurer will refund the premiums paid.</p> <p>The fixed period, as mentioned above, ranges from one to two years, depending on the insurer and the type of product purchased. The purpose of this clause is to discourage people with suicidal intentions from buying a policy with the intention of benefiting their families after their planned death.</p>
RHB Personal Insurance	<p>The usual exclusions like pre-existing illness, specified illnesses, hospitalization caused by war, effects of alcohol, self-inflicted injury, suicide or attempted suicide, mental disorder, complications of pregnancy or childbirth, use of non-prescribed drugs and HIV related illnesses. Please refer to policy document for full details.</p>
MAA Takaful	<p>Death from suicide within one (1) year from the commencement date or date of increase in the Sum Covered, whether the Person Covered is sane or insane, shall limit the Takaful Operator s liability to the PIA value on the date of the death.</p>
CIMB AVIVA Takaful	<p>No benefit shall be payable in the death, total permanent disability or injury sustained directly or indirectly wholly or partly caused by suicide or attempted suicide.</p>
Takaful Malaysia	<p>The coverage of Takaful my Invest is subject to certain exclusions and limitations, which is death due to suicide while sane or insane within one (1)</p>

Berhad	year from the commencement date.
Prudential BSN Takaful	PruBSNUMmah does not cover the following situations. If any of these happen, the benefits offered under the plan will not be payable to you. If the loss of life occurs as a result of suicide within one year from the start date of coverage; if the loss of life occurs as a result of suicide during Hajj or Umrah for the double Takaful benefit; and if total and permanent disability occurs due to attempted suicide or self-inflicted injury.
Takaful Ikhlas	If the certificate owner or the participant whether sane or insane commits suicide this certificate shall become void. The takaful benefit payable upon death is limited to the participant's share, calculated on the first NAV valuation date following the receipt of the notification of the participant s death by the wakeel.
EtiqaTakaful	Exclusion of the policy is suicide or attempted suicide, provoked homicide or assault.
AIA AFG Takaful	Death caused by suicide within 1 year from the issue date or commencement date, whichever is later.  We will not pay any claim, however, we will refund the contribution paid.

Source: Rahman et al. (2012) Insurability and Suicide: Shariah Issues In Underwriting

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