A SHARIAH APPRAISAL OF UNITED KINGDOM'S STRICT PRODUCT LIABILITY REGIME

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Abstract

This article argues that the traditional principles of contract law and negligence have limitations which prevent some persons injured by defective products from relying on them as a means of redress. This research paper analyses the application of strict product liability in England through enactment of the Consumer Protection Act, 1987. The background and need for the application of strict product liability in England is highlighted in this regard. It has also looked into the application of strict product liability in Islamic law. Moreover, in order to check the status of English product liability law in the perspective of Shariah, all the key notions of English strict product liability regime that are contained in the Consumer Protection Act, 1987, have been analyzed in the light of Islamic law. The paper poses important questions such as: what is meant by the notion of strict product liability under English law? Which particular act was enacted through which the EU Directive on product liability was adopted in England? What is meant by 'product' in CPA and Islamic law? What does defect mean and what are its various kinds under CPA? How Islamic law deals with the notion of defect and its various kinds? Who are the potential defendants under the CPA, 1987 and what is the case in Islamic law? How to establish the link between the harm caused and defective product in English law and Islamic law? What is the time limitation under CPA, 1987 for product liability cases and what is the case in Islamic law? These and many other important questions have been tackled. Moreover, the article has attempted to test compatibility of the English product liability regime with the injunctions of Islamic law and the feasibility of the adoption of the same in Islamic jurisdictions has also been checked.

Key Words: *Contract, Privity, Torts, Negligence, Strict Liability, Product Liability, Consumer Protection etc.*

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1. Introduction

In United Kingdom before the introduction of Consumer Protection Act, 1987 product liability can be seen to be deficient, mainly due to the *privity* requirement in contract law and fault requirement in the law of tort.[1] The victims of defective products can never rely on contractual rights unless they bought them, because there is lack of '*horizontal privity'* as they were not a party to the contract under which the goods were supplied. This would exclude the recipients of gifts, possibly members of a group who did not pay for goods consumed and by-standers. The *'vertical privity'* restricts the possible defendants to the final seller.[2] On the other side, in the tort of negligence in cases related to product liability, the major problem is that the liability is fault-based. The burden of proving the negligence is on the claimant and he has to prove that the defendant owed him a duty of care. The defendant breached that duty by failing to meet the required standard of care and causing damage. In such cases the standard of 'care' is that of a reasonably competent person and must be exercised at all stages of production process.[3] If the standard of care is breached it will render the product "defective". J.A. Jolowicz remarks in this context:

"I think that in this matter of the civil remedies of the consumer public opinion, or perhaps better, public belief as to the law and the law itself, have got rather far apart. I think also that the main reason for this is the law's insistence on privity of contract and on non-contractual liability only for fault. There are signs in other areas of the law that privity of contract is beginning to yield to the pressures of modern society, for example in the case of Hedley Byrne & Co.Ltd v. Heller & Partners Ltd., and it is time that in the consumer field also we should prepare ourselves to sacrifice that and other some of the other sacred cows of the law. Popular belief about the law is often wrong and I am far from agreeing that the law should always be so simple that everyone can understand it. But in a field which touches every one as loosely as does consumer law, there is something to be said for a re-examination of the law in the light of what it is popularly, if erroneously, supposed to be".[4]

In this scenario, in England public concern at the problem experienced by *thalidomide* claimants in trying to recover damages under the existing laws of contract and tort led to renewed pressure for

their reform.[5] The *Thalidomide* disaster provoked widespread discussion of product liability and the matter was referred to the English and Scottish Law Commissions in 1971 and the Pearson Royal Commission on Civil Liability and Compensation for Personal injury. All three recommended that producers should be strictly liable for personal injury or death caused by their defective products.

Simultaneously the common market was seeking to harmonize the product liability laws of member states. It was deemed an important area for harmony, since differing legal liability in member states affects the price to be charged for a product and distorts competition. The commission to the Council of Ministers of the European Communities embarked upon the task in 1972. It submitted a draft Directive in 1976 and a revised draft in 1979.[6]

Hence, in Europe, one of the most significant milestone achieved in the history of consumer protection law on 25 July 1985 with the promulgation of the Council Directive on the Approximation of the Laws, Regulations, and Administrative Provisions of the Member States concerning Liability for Defective Products' (hereafter the Directive).[7] The Green Paper on liability for defective products makes clear that the goal of the Directive was to provide a balanced approach giving, on the one hand, a protection to victims but avoiding, on the other hand, a crushing liability, e.g. by requiring the victim to prove the defective nature of the product and by providing limitations in time.[8] The Directive intended to address dangerous products after they are sold and used, in addition to providing redress to an injured consumer. [9]

The purpose of the Directive was to: introduce the notion of strict product liability i.e. liability without fault on the part of the manufacturer in favour of the consumer; establish joint and several liability of all operators in the production chain in favour of the injured party, so as to provide a financial guarantee for compensation of the damage; place the burden of proof on the injured party insofar as the damage, the defect and the causal relationship between the two are concerned; provide for exoneration of the producer when the producer proves the existence of certain facts explicitly set out in the Directive; set liability limitations in terms of time, by virtue of uniform deadlines; set the illegality of clauses limiting or excluding liability towards the injured party; set a limit for financial liability; and provide for a regular

review of its content in the light of the effects on injured parties and producers.[10]

The Consumer Protection Act, 1987 was promulgated in UK to incorporate the EU Directive on Product Liability, 1985 (85/374/EEC). It was applied to damages caused by products which were put into circulation by the producer after 1 March 1988. Section 1(1) states: "Part I of the Act shall have effect for the purpose of making such provision as is necessary in order to comply with the product liability Directive and shall be construed accordingly".[11]

2. Consumer Protection Act, 1987: An Overview

The principal statutory provisions are contained within Part I of the Consumer Protection Act 1987(CPA). Part I of the Consumer Protection Act, 1987 implements the Directive. The Act has five parts in all: Part I sets out the circumstances in which, under its operation, a consumer can make a claim for damages caused by a defective product; Part II contains the consumer safety legislation; Part III deals with misleading price indications; Part IV details the methods of enforcing the legislation in Part II and III; and Part V consists of miscellaneous provisions concerning, for example, the definition of certain terms. In addition there are five schedules of which the first, the most important, sets out the time limits for starting court action under the Act. Part I of the Act, 1987 implements the Directive and it is a domestic adaptation of the EU Directive on product liability, 1985. Liability in the Act is strict but not absolute as there are a number of defences available under the legislation. The Act covers the establishment of liability in respect of damages caused by a defect in a product.[12] There are two heads of loss mentioned in the law that are personal injury, death and damage to private property over 275 pounds.[13]

Section 5 (2) has expressly ruled out the recovery for damage to product itself (so Murphy-type economic loss not covered) and 'complex structure' type economic loss, so long as part X , causing damage to the product Y (into which X is incorporated) so long as Y was already incorporated when Y was supplied. According to the Act, there are four classes of persons who can be held liable under the Act: Producers[14] that comprises manufacturers, abstractors, and persons who are in neither class (i) nor (ii) but who give an agricultural product an essential characterization by means of an industrial process; brand-namers[15] who hold themselves out as the producer; EC Importers[16] in

case where they import from non-EC producer, the former would be liable for damage caused to UK Citizen; 'Silent' Suppliers[17] which covers the situation where the supplier (S) supplies to a buyer (B) and then (B) asks for the identity of the person against whom the action would normally be brought. Section 3 of the Act governs the definition of defect. Defect is defined in terms of the safety of the product being below the standard of safety which one is generally entitled to expect.[18] There are various defenses for the defendant to show that he falls within one of the statutory defenses. These are compliance with rule of law[19], product never supplied to another[20], non-business supply,[21] defect occurring after the time of supply[22], development risks[23], installation defect in a subsequent product[24] and contributory negligence[25].

3. Case Law on Product Liability under the Consumer Protection Act, 1987

The Consumer Protection Act, 1987 was first mentioned in AB v South West water services Ltd[26] albeit in a secondary manner. There then followed a series of unsuccessful attempts to invoke strict liability in Worsley v Tambrands Ltd[27] (tampons), Richardson v LRC Products Ltd[28] and Foster v Biosii[29] (breast implants) where the judgments showed little appetite for making out strict liability as being distinct from negligence. There followed a pro-claimant Court of Appeal decision in Abouzaid v Mothercare (UK) Ltd[30] (pushchair liner) and of the High Court in A v National Blood Authority[31] (infected blood). Post that landmark case the claimants were in Bogle v McDonalds Restaurants Ltd[32] (hot coffee) and in the Court of appeal in Pollard v Tesco Stores Ltd[33] (child resistant closure on dishwasher powder) and Piper v JRI (Manufacturing) Ltd[34] (replacement hip), but successful in Palmer v Palmer[35] ('Klunk Klip' seat belt device).[36]

The basic elements on which the UK's strict product liability regime is based has been analysed in the light of Islamic as follows.

4. Shariah Appraisal of the Key Notions of Strict Product Liability in UK

Strict Product Liability in CPA, 1987 and Islamic Law

i. The European Directive: Strict or Fault-Based?

The CPA 1987 places strict liability for defective products on a range of possible defendants. The discussion so far indicates that the modern law of product liability in United Kingdom is based on the rule of strict liability. As it is discussed earlier that the existing English product liability regime is based on EU Directive on Product Liability (85/374

EEC) that is based on the notion of strict product liability. The Directive envisages imposing liability on importers and suppliers even when they have used all reasonable care; the liability to which those parties are exposed is clearly strict. Similarly, the Directive also imposes on producers when the defect was due to the activities of a party further upstream in the process such as an out of house designer or a component part producer. Similarly, it is expected that U.K. judges will continue to impose covert strict liability for manufacturing errors.[37]

ii. Strict Liability in Cases of Defective Products under Islamic Law

The Islamic law of contract and that of tort have offered adequate protection to the interests of consumers against defective products. Here, it is pertinent to address the issue that whether or not Islamic law approves strict liability in torts cases. Further can such liability be extended to the cases of defective products? In this regard in the primary source of *Shariah, the Holy* Qur'an a number of verses propounds the strict liability of a tort-feasor in committing wrong. Some of these are given below:

"The blame is only against those who oppress men and wrong-doing and insolently transgress beyond bounds through the land, defying right and justice: for such there will be a penalty grievous." [38]

"If any one does a righteous deed, it ensures to the benefit of his own soul; if he does evil, it works against (his own soul). In the end will ye (all) be brought back to your Lord."[39]

"O our Lord! truly Thou dost know what we conceal and what we reveal: for nothing whatever is hidden from Allah, whether on earth or in heaven." [40]

"Not your desires, nor those of the People of the Book (can prevail): whoever works evil, will be requited accordingly. Nor will he find, besides God, any protector or helper."[41]

"Say: "Shall I seek for (my) Cherisher other than God, when He is the Cherisher of all things (that exist)? Every soul draws the need of its acts on none but itself: no bearer of burdens can bear of burdens can bear

the burden of another. Your goal in the end is towards God: He will tell you the truth of the things wherein ye disputed." [42]

While explaining the above verse, Sayyid Abu`l-A`laMaududi (d.1400/1979) writes: "Every person is responsible for whatever he does, and no one is responsible for the deeds of others".[43] So, a man cannot deny his liability after his intention is established. All these verses mean that a person will not be liable except for his own torts and wrongs. He cannot be accountable for the torts or mistakes of other people.[44] The traditions of the Prophet (PBUH) further elaborated the above principle. There are number of traditions regarding the matter, following are some of them: *"You will not do him wrong and he will do you wrong",*[45] "*Indeed, your son does not commit any offence against you, nor do you commit any offence against him*";[46] and the Holy Prophet (pbuh) said: "No person should be apprehended for an offence committed by his father or brother".[47] Similarly, it has been mentioned in the last sermon (Khutba Hijat ul Widah) of the Holy Prophet (PBUH) is as under:

"Beware; no one committing a crime is responsible for it but himself. Neither the child is responsible for the crime of his father, nor is the father responsible for the crime of his child."[48]

All the above traditions denote that in a tort action for what is committed by a person, he who acts is liable for what he has done, not another.

There are various Islamic legal maxims that can be related with the rule of strict liability. These maxims are:

"Injury is to be removed".[49]

"Injury should be avoided as much as possible".[50]

"Private injury should be borne to avoid public injury".[51]

"Repelling evil is preferable to acquisition of interests".[52]

"A major harm has to be removed with a lesser harm".[53]

The above maxims denote that anyone causes any harm (i.e. intentionally or negligently) to another should strictly be liable for that. These maxims are incorporated in Al-Majallah.

Muslim *Fuqaha* has also applied the rule of strict liability in their manuals. Some examples are given below:

1. "If a person drowns people by opening up a river dam, or spreads fire, or destroys a building and causes loss of life, he is liable for his action".[54]

2. "If any person destroys property of another, whether intentionally or unintentionally, and whether in his own possession or in the hands of some person to whom it has been entrusted, he is liable for the loss".[55]
3. "If a person slips and falls upon and destroys any property belonging to another, he is bound to make good the loss."[56]
1. "If a person destroys the property of any other person under the mistaken belief that it is his own, he is liable for the loss".[57]

In the above cases the defendant is held strictly liable for accidental harm, independently of the existence of either wrongful intention or negligence.

The fuqaha have also followed the rule of strict liability in a number of cases e.g. "If a person, in the exercise of his right, does an act which involves risk to another person or property of others, he will be held liable for the damage if damage occurs. He should be held liable to ensure safety of those other persons. For instance, if a person carries timber along a public road and a piece of timber falls on a passerby and causes damage to the person and property, the carrier (*hamil*) will be held responsible (*damin*) for the damage caused."[58]

The contemporary Muslim jurists termed strict liability as '*al-masuliya al-taqsiriya*'.[59] This clearly shows that the rule of strict liability appears in Islam and is not alien to Islamic law of tort. In English law and Islamic law both liability is established on the principle of "fault". In both the defendant is liable because he has acted intentionally or negligently causing harm to the plaintiff's interest. Hence, the concept of strict liability is compatible to Islamic law. However, the English law is in a developed form today and the rule of strict liability is extended to many new situations including strict product liability as in English law this rule has been practiced and applied intensively and thoroughly over a long period of time. Muslim jurists should consider the legal developments that have taken place in modern times.

It is also pertinent to mention here that according to M. Musleh-ud-Din, civil liability in Islam is neither *"fault liability*" nor "*strict liability"*, but may be described as *"damage liability*". Thus general principle of liability in Islam is "no liability without damage" which repudiates the idea of both "strict liability" and "fault liability" and

steers clear of the confusion to which law of torts is subjected.[60] In this case, establishing the liability will be comparatively easy.

In the context of product liability, it is pertinent to mention that Muslim jurists (*Fuqaha)* held craftsmen *(Ajir Mushtarak)* strictly liable for destruction or harm to the products in their possession.[61] Ijara (hire) has been legalised by Islamic law due to the need of the general body of consumers to acquire goods and services and if the contract of lease is not legalized people will fall in trouble (*mashakka*). There are two types of *Ijara* contract; *Ijarat al-askhas* (hire of employees) and *Ijarat al-Ashya* (hire of things).[62] Then *Ijara al-ashkas* (services of persons) is further classified into two *ajir mushatarak* (one who renders his services to everyone like tailor, shoemaker and the like) and *ajir khas* (one who renders services to specific person).[63]

As a general rule a trustee is not liable for the loss of trust property if the loss occurs without any fault and negligence on the part of trustee. But in case of craftsmen and tradesmen, such as tailors, goldsmiths, shoemakers etc. the Muslim jurists ruled that are lost or destroyed in their custody they would be liable to compensate. Thus, if a tailor received a piece of cloth from his customer and while in his custody some loss occurred to it, the tailor will be held liable to compensate the loss was a result of some calamity and act of nature.[64]

The reason for this ruling is that adopting the rule of non-liability for paying compensation by craftsmen whose trustworthiness is taken for granted may make them negligent about the goods in their custody with the result that the owners have to suffer great loss. They may abuse the trust and misuse the facility. Now through this new ruling the burden of proof was shifted to the craftsmen, who had to show of negligence.

Hence, the craftsmen (*ajir mushtarak)*, according to the dominant view in *fiqh,* were held accountable for the loss of goods in his possession if they are destroyed by his fault or transgression, the craftsmen were held liable for paying compensation.[65]

This ruling has been given by the jurists (*fuqaha)* on the grounds of public interest so that trustees and tradesmen exercise greater care in safeguarding people's properties.[66]

It is reported that Hazrat Ali (R.A.) held craftsmen liable for the loss occurred to the property in their custody.[67] This ruling, *inter alia*, highly ensures protection of consumers' interests against harms etc.

This illustration shows that the Islamic law recognizes the application of strict liability in cases of negligence by craftsman in order to safeguard interests of the consumers. The same rule has to be applied in cases of product liability.

b. The Notion of Product in CPA, 1987 and Islamic Law

i. The Notion of Product in CPA, 1987

The term 'Product' indicates an item which has been manufactured and then sold, perhaps through an intermediary, to the consumer. In market transactions, a product is anything that might satisfy a want and offered to the market. It is also called merchandise. According to manufacturing, products are bought as raw materials and sold as finished products. In project management, products are the formal definition of the project deliverables that make up or contribute to delivering the objectives of the project.[68] Under the general English law of negligence no definition of product exists. Under the new rules, however, 'product' is a central concept-if no 'product' is involved then the new regime of strict liability will not be attracted. What should be the boundary between products and other things? The Winterbottom v Wright, though it was not a case of product liability, may be considered as the starting point to examine the evolution of product liability in United Kingdom. In this case the plaintiff, a coachman, was injured due to the failure of the defendant to maintain the coach. The defendant was a contractor in charge of maintaining coaches for the stagecoach company. The court held that the liability would not attach to the defendant as there was no *privity* of contract between the parties. [69] Mr. Winterbottom's case was an impediment from which English law did not recover until *Donoghue v. Stevenson* in 1932, having spent more than a century with an apparent dichotomy between 'dangerous chattels' and other goods. General negligence principles have been applied to what could be called product liability cases.[70]

As the English regime of product liability is based on EU Directive on Product Liability, it is, therefore, important to know the meaning of the word "product" in the Directive. According to the EU Directive; a "product" means physical property and goods, as opposed to land or rights in or to real property.[71] According to this definition, the following are to be products: any goods which can include substances, growing crops and things comprised in land by virtue of being attached to it and any ship, aircraft or vehicle; electricity-defects do not include

a power cut; products comprised in other products as component raw material or likewise. This means that buildings themselves will not be included whereas the materials used to make up those buildings will be. In the original Directive, primary agricultural products and game was excluded (article 2). This modification was only made when consumers had been alarmed by outbreak of mad cow disease.[72]

The Consumer Protection Act, 1987 has defined "Product" in as: "any goods or electricity and (subject to subsection (3) below) includes a product which is comprised in another product, whether by virtue of being a component part or raw material or otherwise".[73] "Goods" is further defined as including: "substances, growing crops and things comprised in land by virtue of being attached to it and any ship, aircraft or vehicle".[74]

The criteria must be met for an article to constitute a product. It must be movable. Cars and ovens are products.[75] "Product" obviously includes standard consumer goods such as lawnmowers and televisions. It also includes components, such as brakes in a car. It includes raw materials incorporated into goods. It includes ships, hovercrafts, aero-planes, gliders, trains and other vehicles. It includes gas, water and electricity. It includes waste when supplied as a product in its own right, but not where it is merely an unwanted incident of the production process, e.g. effluent from a factory. Land and buildings are not products, because they are immovable. However, s.45 of the Consumer Protection Act, 1987 clearly covers such items as bricks, wood and cement, even though they become part of a house. Hence, building materials are products but not the building itself; the effect is that the Act applies to building material producers but not normally to the work of building and civil engineering contracts. If your house falls down due to defective bricks, you may sue under Part I of the Act. If it falls down due to defective design or assembly, you must rely on the existing laws of contract and tort (including the Defective Premises Act 1972). [76]

Now the question may arise that liability should also be imposed for nuclear accidents? Nuclear accidents are excluded from the Act. In this regard A.14 of Directive states: This Directive shall not apply to injury or damage arising from nuclear accidents and covered by international conventions ratified by the Member states.[77] In the UK the relevant conventions are mainly implemented by the Nuclear Installations Act 1965. In this context, s.6 (8) provides states: 'Nothing in this Part shall prejudice the operation of section 12 of the Nuclear Installations Act

1965 (rights to compensation for certain breaches of duties confined to rights under that Act)'.[78] The most contentious exception concerns agricultural produce which has amended as mentioned earlier. Agricultural produce is outside Part I, but industrially processed agricultural produce is within it. A fisherman is not liable for selling sickly fish, but a food manufacturer would be liable for producing defective fish fingers. If contaminated wheat eventually forms part of defective biscuits, it is the biscuit manufacturer rather than the wheat grower who will be liable under Part I. The industrial manufacturers then have to exercise their rights of contribution and indemnity against the producers of the primary foodstuff. If a consumer is directly injured by primary agricultural produce, such as rotten tomatoes, Part I does not apply at all and he must rely on the existing law. The major consequences of the breadth of meaning ascribed to the term "product" is that, despite the statute's short title of the Consumer Protection Act, 1987, Part I`s scheme of strict liability will have a wider application than to consumer goods. As noticed earlier, major disasters stemming from for examples chemicals or aircraft could well be litigated under the Act. The extension of the term "goods" to include movables which have been incorporated into immoveable is of some interest. This clearly covers moveable items such as windows, frames, pipes, and central heating systems which have been so incorporated. In this way the Act implements A.2 of the Directive.

Many difficult propositions are likely to arise in relation to the scope of product. In this regard, the first one is to determine the boundaries the term product covered by the Act.

Another important point which has caused some anxiety is the position of those who produce printed textbooks, manuscripts and the like. In their Explanatory and Consultative Note the "Special problems arise with those industries dealing with products concerned with information, such as books, records, tapes and computer software. It has been suggested, for example, that it would be absurd for printers and bookbinders to be held strictly liable for faithfully reproducing errors in the material provided to them, which-by giving bad instructions or defective warnings-indirectly causes injury. It does not appear that the Directive is intended to extend liability in such situations. On the other hand, it is important that liability is extended to the manufacturer of a machine which contains defective software and is thereby becoming unsafe, and to the producer of an article

accompanied by inadequate instructions or warnings, the article thereby become a hazard to the consumer. The line between those cases may however not be easy to draw, particularly in the field of new technology where distinction between software and hardware is becoming increasingly blurred."[79]

In modern context the most debated question that arises is whether or not computer technology can be categorized as a product. There is no doubt that hardware is covered by the Directive and no doubt providing a modicum of comfort to those working in close proximity to 'killer robots'. The difficulty arises in relation to the question of software. The arguments against software being classified as a product are essentially threefold. Firstly, software is not moveable, therefore is not a product. Secondly, software is information as opposed to a product, although some other obiter comments on the question of the status of software suggest that information forms an integral part of a product. Thirdly, software development is a service, and consequently the legislation does not apply.[80] On the contrary, it can be argued that software should be treated like electricity, which itself is specifically covered by the Directive in article 2 and the Act in section 1 (2), and that software is essentially compiled from energy that is material in the scientific sense. Ultimately it could be argued that placing an over legalistic definition on the word "product" ignores the reality that we now live in an information society where for social and economic purposes information is treated as a product and that the law should also recognize this.

Furthermore, following the St Albans[81] case it could be argued that the trend is now firmly towards categorizing software as a product and indeed the European Commission has expressed the view that software should in fact be categorized as a product.[82] The new bill on consumer rights protection introduced in the British Parliament in 2013 has covered, inter alia, the digital-content.

ii. The Notion of Product in Islamic Law

Islamic law has not given any specific definition of the term 'product'; instead, it uses the term '*mabi*' means subject matter to indicate all sold 'valuable' things.[83] The subject matter *mabi* must be valuable, evaluated or able to be evaluated, exist at the time of concluding the agreement or be going to exist in the future and be legal in order to be recognized by Islamic law.[84] Otherwise, there are not any other

conditions. For this reason, a product may be non-material, immovable, and so on in Islamic law. For example, agriculture products and cattle are products within the meaning of Islamic law. For instance:

The Prophet Muhammad (PBUH) happened to pass by a heap of eatables (corn). He thrust his hand into that heap, and his fingers were moistened. He said to the seller of the heap: What is this? These have been drenched by rainfall.' He (Holy Prophet) remarked: Why did not you place this drenched part of the heap over other eatables, so that people could see it? He who deceives is not my follower.[85]

In another case:

The Muslim scholars Ibn il-Asqa Wathilh said: 'I bought a camel from a seller and when leaving the place of contract Oqba ibn Nafi followed me and said: The camel seems fat and healthy; did you buy it for meat or travel? I said: For travel (hajj). He said: Its toe has a hole, and it is not appropriate for your travel. Are you looking to rescind the agreement? The seller asked Oqba. Oqba responded: I heard Prophet Muhammad (pbuh) say that the contracting parties have the choice.[86]

Islamic *Shariah* has specific stance towards some products and does not allow its consumption e.g. drinking substandard. Hence overall, the English regime of product liability on the notion of product is compatible with Islamic law. As in Islamic law and English law both the term is very wide and covers almost all products including animals. It is pertinent to discuss here the issue that whether someone can be held liable for giving a wrongful advice. Islamic *Shariah* has held a person liable for giving a wrongful advice. Advice is a matter of trust in Islam.[87] Whosoever gives a wrong piece of advice to a person as a mufti is said to have committed a sin. Concept of engagement of an agent or a counsel is recognized by Islam. Hence advice can be considered as a product under Islamic law like that of English law and liability may be attributed to the person giving wrong piece of advice.

c. The Notion of Defect in CPA, 1987 and Islamic Law

i. The Notion of Defect in CPA, 1987

In order to establish liability under Consumer Protection Act proof of defect is essential. The plaintiff has to prove that the product is defective.[88] According to S.3 (1) of CPA, 1987, a defect exists where the safety of the product is not such as persons generally are entitled to expect. The test is based on consumer expectations i.e. what they expect generally. It is subject to a reasonable test.[89] In S. 3(2) of CPA, 1987 states certain factors to be taken into account in assessing

consumer expectations of a product`s safety. These are: the manner in which, and purposes for which, the product has been marketed, it's get up, the use of any mark in relation to the product and any instructions for, or warnings with respect to, doing or refraining from doing anything with or in relation to the product; reasonably expected use; and the time that the product was supplied by its producer to another.

However, there is no defect if:

(a) The product is perfectly safe;
(b) The product is as safe as persons generally are entitled to expect, in view of its nature and presentation;
(c) The damage only arose through the disregard of instructions or warnings;
(d) The damage only arose because the product was put to an unexpected use;
(e) The damage was solely caused by fair wear and tear;
(f) Knowledge that the product could be made safer only became available after its producer supplied it.[90]

In addition to factors to guide the analysis of whether there is a defect, there is also the question of what standard of defect is required for the product to be unsafe and for liability to attach.

This differs from case to case. There is not much case law developed so far that's why the notion of defect and standards to determine the defectiveness of something need to be refined. The three kinds of defect pointed out from the case law on negligence i.e. manufacturing, design and marketing are appropriate and expected to be adopted in future litigation.[91]

The 'manufacturing defect' is covered by the CPA, 1987. This is the defect in a product because it fails to conform to design specification as was in the case of 'A v National Blood authority'. The case has made a clear distinction between standards and non-standard products. Burton J held that the infected products were non-standard, unsafe and, in the absence of warnings to the public about the risk of infection, were not what the public was legitimately entitled to expect and were therefore defective. The fact that infection was unavoidable (due to the lack of screening tests available at the relevant time) was irrelevant to the analysis of defect. In 'Bogle and Others v McDonald's Restaurants Ltd'[92] the court held that 'consumers expectations of coffee were that it should be served hot and therefore the product (coffee in a

Styrofoam cup with lid) was not defective merely because it could scald when spilled'.

When the design itself is defective that is called design defects. These kinds of defects are more complex as there is no 'standard' product against which to compare the allegedly 'non-standard' product. All products involve inherent risk and the benefits of the product must be weighed against its potential benefits. A product will be considered to have design defect when its risks are much more as compare to its benefits and if such risks could have been avoided by an alternative design. To meet the regulatory standards may indicate that there is no design defect, although this cannot be guaranteed. Where the design permits the risk to arise and there is no warning to the user, the product's safety will fail the consumer expectations test as was the case in 'Iman Abouzaid v Mothercare (UK) Ltd'.[93]

S.3 (2) (a) of the Consumer Protection Act contains the failure to warn/manufacturing defect. Failure to issue adequate and proper warnings of associated risks or instructions to avoid their materialization, the product will be considered a defective one. In Worsley v Tambrands Ltd, the plaintiff filed a suit against the defendant, a tampon manufacturer, claiming compensation for personal injuries suffered as result of toxic shock syndrome after inserting a regular tampon, a type she had used since she age 15. The plaintiff contended that the warnings on the packet were defective. The court held that the box gave unambiguous instructions to read the detailed leaflet inside, and the leaflet was true and accurate. The claim failed. [94]

ii. The Notion of Defect in Islamic Law

Under Islamic law it is the right of the consumer that the product supplied to him should be free from any defect. It has been considered the seller's duty to disclose all the defects of a product.[95] The consumer has been given an implied warranty against latent defects in the products purchased.[96] The option of defect *(khiyar al-ayb*) is considered the most important one in this regard. It is a right given to a consumer in a sale to rescind the contract if he discovers that the object acquired has in it some defect diminishing its value.[97] This well established rule of Islamic law protects society from the problems arising from purchasing defective products. It is an implied warranty imposed by the law itself and the parties do not have to stipulate it. Hence, it is a necessary condition of the contract. The products are

liable to be rejected if undeclared defects are discovered. Islamic law protects consumers both before and after conclusion of the sale and purchase agreement by giving them the right of inspection and the right of option. The Islamic doctrine of *khiyar al ayb* allows the buyer the right of inspection of the goods (to ensure its quality etc.) and also the right of option (whether to continue with the contract or otherwise) both before and after the contract of sale and purchase is concluded. The option of defect (*khiyar al-ayb*) is based on the following verse:
"O ye who believe! Eat not each other's property by wrongful means..."[98]

The Holy Prophet (pbuh) in many places said:
"A Muslim is the brother of a fellow-Muslim. It is not lawful for a Muslim to sell his fellow-Muslim a deficient item, unless he shows him this defect;[99] it is not lawful for a person to sell a commodity in which he knows that there is a defect, unless he makes it known;[100] the seller and the buyer have the right to retain or return goods as long as they have not parted or till they part; if both the parties spoke the truth and described the defects and qualities (of the goods), then they would be blessed in their transaction, and if they told lies or hid something, then the blessings of their transaction would be lost."[101]

The Islamic law of options highly protects rights of the consumers in contracts and commercial transaction. The purpose of option is to give chance to a consumer who suffered some loss in transaction to revoke contract within stipulated time. This doctrine not only safeguards the purchaser from the implications of the sale of defective products before the agreement is being concluded, but it also guarantees similar protection after the conclusion of the sale and purchase agreement. The consumer then has the right, under this Islamic doctrine, to exercise his right of option (of either continuing with the contract of sale or not) upon the discovery takes place before or after the conclusion of the said agreement. The consumer has the implied right to inspect the goods prior to an agreement and confirm whether the goods to be purchased are free from unknown defects. After the delivery of the goods by the seller, if the consumer discovers any defect in the goods which existed while it was in the hands of the seller, the consumer has the right of option to reject the item purchased or to take it at the agreed price. If the seller put an exemption clause of

no responsibility for any defect in the goods while the defects were known to him or concealed by him purposely, the exemption clause in the situation has no effect and, thus, the consumer is not bound by the exemption clause and has the right of option to reject the goods or to take them.

The liability arising from defective products is covered under Islamic law of tort i.e. *Fiqh al Dhaman*. If the seller sells anything defective that cause harm to any one, he can be held liable for that under the general principles of Islamic law. A famous principle of Islamic law "*al-kharaj bil-Dhaman*" i.e. every profit has a corresponding liability.[102]

d. The Notion of Producer in CPA, 1987 and Islamic Law

i. The Notion of Producer in CPA, 1987

The nucleus of Part I of the Consumer Protection Act is s.2 (1), it states:

"Where any damage is caused wholly or partly by a defect in a product, every person to whom subsection (2) below applies shall be liable for the damage."[103]

Those primarily liable under the Consumer Protection Act, 1987 are: (1) the producer of the product; (2) any person putting his name on the product or using a distinguishing mark, or who has held himself out to be the producer of the product ('own brander'); (3) or any person who has imported the product into the EU/European Economic Area in the course of any business to supply it to another ('first importer') (section 2(1) and (2) CPA). 'Producer' is in turn defined as: (1) the person who manufactured it; (2) if not manufactured, the person who won or abstracted it; and (3) if essential characteristics of the product are attributable to an industrial or other process having been carried out, the person carrying out that process (section 1(2)). Suppliers of the product (to the person who suffered damage or to the producer in which the product is comprised) may also be liable (in the form of subsidiary liability) if: (1) the person who suffered the damage requests the supplier to identify the producer; (2) within a reasonable period after the damage occurs; and (3) the supplier fails within a reasonable time to comply or identify the person who supplied the product to him (section 2(3) CPA). The rationale behind this provision is to protect the claimant from producers who conceal themselves behind a chain of

suppliers. The supplier can avoid liability by informing the consumer of the identity of the producer/importer. Where two or more persons are liable for the same damage then they are jointly and severally liable (section 2(5) CPA).

ii. The Notion of Producer in Islamic Law

Islam encourages all types of lawful commercial and business activities such as agriculture, manufacture, business, trade, and all the works and labour within the limits of *Shariah* that produce any goods or services for the benefit of community is considered as worship.

Islam has emphasized on more and more production so human needs be fulfilled but it gives a comprehensive code for consumption. Islamic commercial law stress a lot on the fulfilment of human needs along with achieving a great spiritual satisfaction therefore it gives a balance system for earning and consumption of goods and services to stabilize the worldly life and life here after. The Prophet (pbuh) endorsed the importance of legitimate ways of earning in the following words: *"Asked 'what form of gain is the best? [The Prophet] said, 'A man's work with his hands, and every legitimate sale".*[104]

Shariah has encouraged the production of all beneficial things and condemned the production of harmful things to humanity. Thus many Muslim scholars are of the view that production of tobacco is not allowed and smoking is prohibited. Similarly the cultivation of opium is not allowed as it harms the society. For Muslims consumption of alcohol is not allowed either. The point here is that in *Shariah* the producer is not defined in any specific words. Thus *Shariah* has not focused on the definition of producer rather it has focused on the product that is produced that whether it is good for consumption or not. All those things harmful to human life, intellect, family and wealth are declared prohibited both its production and consumption. Here it is pertinent to mention that who is liable under Islamic law? As we have mentioned the principle of Islamic law that states: *"Every profit has a corresponding liability*".[105] It covers all the stakeholders i.e. producer, manufacturer, retailers and suppliers etc. to be liable for any shortcoming on their part. Thus the notion of liability in Islamic law is wider and it covers all those who extract benefit from the product and it is in conformity with English product liability regime.

Though there is a debate among the Muslim scholars about the acknowledgment of corporate personality. Here producers and manufacturers include both natural as well as legal persons as the basic

purpose of this thesis is to assess the liability of the manufacturers for producing defective products and their responsibility to compensate the victims of such products.

Anything that is explicitly prohibited by the Qur'an and the Sunnah, such things are not considered *mal* (property) in *Shariah*. The contract in which the subject-matter is something that is not considered mal by *Shariah* the Consumers should not become party in such a contract. Thus it is forbidden for the Muslim consumers to acquire or transfer through contract anything that the *Shariah* has declared haram like wine, swine flesh, bristles of swine, *Najis* things, (that are considered filthy under the law and have no legal value), like Carrion, blood; *Mutanajjas* things (that have been affected by filth), like something dirty falling into the milk; Bone of dead animals and their hair and skin; Pork (Pig), beasts, and some other animals whose meat is not permitted. Anything that contains part of the *Haram* animal is also *Haram* e.g. lard, jello gelatin, animal shortening, blood of any animal or bird, Meat of dead animals or birds, Meat of animals or birds that has been sacrificed in the name of other than Allah, Alcohol and (intoxicating) drugs. Sale of human blood today for the purpose of transfusion and donation and the sale of human eye can be covered by the principle of necessity. Since adultery, obscenity and immorality are prohibited by the *Shariah,* any contract or transactions that entails these evils or promotes them in any way is also forbidden. In Islamic law, a Muslim producer would be held strictly liable when he produces prohibited (*haram*) products.[106]

e. Proof of defect and causation under CPA, 1987 and Islamic Law

i. *Proof of defect and causation under CPA, 1987*

The liability for compensation is imposed in all those particular situations is nothing more than the resulting harm or injury. The test is whether or not there is injury being in fact caused to or actually suffered by the victim. The matter is being looked at objectively from the side of the victim not from the side of the injury-causing party if a person`s conduct actually results in injury to another. This corresponds to Article 6.1(b) of the EU Directive and S. 3 (1) of CPA, 1987 of United Kingdom.

The claimant has to prove the causation link between the defect in the product and the damage he suffered. In Foster v Biosil,[107] a claimant sought compensation for injury caused by a ruptured breast implant.

Her lawyers argued that the fact that the device had ruptured proved that the product was defective. The courts disagreed, holding that a claimant had to indicate a specific defect and identify how it had occurred, e.g. what is a design or a manufacturing fault.

ii. Proof of defect and causation in Islamic Law

Under traditional Islamic law to prove that injury was caused by the manufacturer and not by somebody else in the chain of distribution, the injured consumer has to prove that the injury is attributable to a defect in the manufacture or construction of the product and not just that it was caused by it.[108] In the Mejjalla it has been stated that the evidence is for him who affirms; the oath for him who denies.[109] This provision is based on the famous hadith of the Holy Prophet (pbuh): "the evidence is for him who affirms; the oath for him who denies."[110]

The Muslim jurists have settled the issue of proof of defect and causation in cases of material handed over to artisans and craftsmen. The original rule of deposit (wadiah) required this material being a deposit would not be compensated by the craftsman in case it was destroyed, and the burden of proving tort (ta'addi) or negligence would be upon the customer, the owner of the property.[111]

However, in cases of public interest that are to be preferred over the private interest, Islamic law has shifted the burden of proof to the craftsmen as they were misusing the facility. They had to show the absence of negligence. The Hanafis based this change on *istihsan.*[112] This rule demonstrates that how Islamic law provides security to the general body of consumers in transactions and contracts and gives preferences to their interest over the interest of the individuals, that is, the craftsman. The same can be applied in cases of defective products and the burden of proving the defect to be shifted to the manufacturer to show the absence of negligence on their part.

f. The Notion of 'Damage' in CPA,1987 and Islamic Law

i. The Notion of 'Damage' in CPA,1987

Meaning of the "*damage*" is wide and covers death, personal injury that includes any disease and any other impairment of a person's physical or mental condition, nervous shock[113] and the loss of or any damage to property including land.[114] The following types of property damage are excluded:

a) Pure economic loss: it means the damage to the product itself or another product of which the defective component was a part;[115]

b) Non-consumer products: it is the damage to property not ordinarily intended for private use;[116]
c) Damage to property of £275 or less.[117]

Any loss or damage to property is to be regarded as having occurred at the earliest time at which a person with an interest in the property had knowledge about the loss or damage to the same.[118] According to S.5 (7)(b) "knowledge" includes which a person might reasonably have been expected to acquire from facts observable or ascertainable by him; or from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek. However, section 5(7) is clear in that a person is not taken to have knowledge of a fact ascertainable by him only with the help of expert advice unless he has failed to take all reasonable steps to obtain, and where appropriate to act on, that advice.[119]

ii. The Notion of 'Damage' in Islamic Law

The product liability suits are a combination of contractual and tort liability. Contractual liability arises in case of breaching an obligation arising from a contract while the tort liability arises in case the breach is related to the public duty imposed by law on every one not to cause damage to others. This situation is similar between Islamic and English laws. The Islamic equivalent for damages is *Daman*. It is defined as the responsibility to pay a financial compensation as a result of an injury inflicted on others. [120] It includes injuries to human life and body and economic loss. The Islamic law approach is not different from that of English law contained in CPA, 1987 and that is strict liability. Both give the right of indemnification to the person who sustained loss. Thus, in both Islamic and English law the basis for liability is the violation of a civil right. In Islamic law it is termed as (*darar*) i.e. damage. The wrong doer has to pay the damages. Islamic law also adheres to privacy of contract requirements as it is known in English law. A contract subject to the rules of inheritance can give rise to rights and obligations only as between the contracting parties. For the manufacturer to be liable, a contract of sale must exist between the parties. In the case of harm suffered by a purchaser of a product, the seller`s liability would be based on the contract.

Contractual liability for compensation in Islamic law is well known as *dhaman-al-uqud*. The contract liability is applied only to damage or loss of the property that is the subject matter of the contract and does

not extend to consequential personal injury or damage to the other property of the consumer. In this regard *Majallah* states:
"A defect of long standing is a fault which existed while the thing sold was in the possession of the vendor; any defect which occurs in the thing sold after sale and before delivery, while in the possession of the vendor, is considered a defect of long standing and justifies rejection".[121]

Damage is one of the basic elements of contractual liability in Islamic law. In order to satisfy this element the consumer is only required to prove the link between the product and the manufacturer i.e. that the product is produced by a particular manufacturer. If this link is established that is enough proof for the liability of the manufacturer.[122] In case there is no contractual relationship between a manufacturer and the consumer of a defective product, the manufacturer's liability to the consumer would be based on tort. This liability gives rise to an obligation to provide similar thing, the intention being to make good the damage. This liability has a religious basis in Islamic law. The Holy Prophet (PBUH) said that whoever engages in medical treating of another without being recognized as knowledgeable in medicine shall be liable to compensate for any harm he may cause.[123] He is also reported to have said that if someone breaks something belonging to another he shall take it and give the owner its equal.[124]

Islamic law stress on compensation (*tawid*) in cases of damage caused to any person or property. This is a well-established maxim of fiqh that harm has to be removed and that is possible through compensation.[125] *Majalleh* states that there shall be no damage and no counter damage.[126] It further states: "*injury must be removed*".[127] It is the direct consequence of the prohibition on causing damage.

g. Financial Limit to Liability under CPA, 1987 and Islamic Law

i. Financial Limit to Liability under CPA, 1987

The producer's potential liability is unrestricted; the UK Government chose not to provide for the financial limit to a producer's total liability. However, a limit of sorts is provided by the requirement in section 5(3) that the damaged property used by the victim was intended for private use, occupation or 'consumption'. Section 5(4) provides a lower financial limit of £275, below which the courts will not award damages. This figure does not include the liability for any interest which may have accrued.[128] Section 5(5) provides that the loss and damage shall be

assessed 'at the earliest time at which a person with an interest in the property had knowledge of the material facts about the loss and damage' if necessary with the help of expert advice, if it was reasonable to expect the acquisition of such knowledge.[129]

ii. Financial Limit to Liability in Islamic Law

As we know that so far Islamic law has not been applied in any case of defective products manufactured through modern production process, however, as it has been analyzed that Islamic law has adopted the strict liability in the service industry i.e. *ajir mushtarak* on the basis of public interest. Hence, Islamic law, keeping in view the larger interest and utility of the consumers, can adopt the notion of strict product liability. As far as financial limit to liability is concerned the ruler are fully authorized to legislate upon such issues and it is up to their discretion to describe a threshold of financial limit keeping in view the larger interest of the whole community. However, Islamic law strictly condemns the giving and taking of interest.

h. Defences to the Defendants under CPA, 1987 and Islamic Law

i. Defences to the Manufacturer/Producer under CPA, 1987

Under the CPA, 1987 several defences have been given to the defendants in cases of product liability. These are as follows:

a) Where the product is defective because of a standard imposed by statute/EC law;

b) Where the defendant did not at any time supply the product e.g. where the defective product was stolen;

c) Where the supplier was not acting as a business supplier is the gist of this defence;

d) The defect occurred after the time of supply;

e) Development Risks: this defence centres on defects that scientific knowledge at the time of production would not have enabled one to detect.[130] The state of scientific and technical knowledge at the time of supply was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in his products while they were under his control.[131]

f) Installation defects in a 'Subsequent' Product: this kind of defence can be invoked when the product in question amounts to a fault in a complex/subsequent product, and it does so either because of the

design of the subsequent product or because the producer of the second product had dictated certain features in the first product.[132]

The defect constituted a defect in a product ('subsequent product') in which the product in question had been comprised and was wholly attributable to the design of the subsequent product or to compliance by the producer of the product in question with instructions given by the producer of the subsequent product (the 'component supplier's defence').

g) Contributory negligence is only a partial defence that reduces the defendant's liability in accordance with the principles in the Law Reform (Contributory Negligence) Act 1945.[133]

Development risks defence is one that was not discoverable when the product was supplied. There was a tension between the development risks defence as articulated in section 4(1)(e) CPA and that in Article 7(e) Directive and the Commission has alleged (unsuccessfully) that the UK had failed properly to implement the development risks defence and brought infringement proceedings under Article 169. The CPA was meant to implement the terms of the EC Directive. The European Commission was concerned that the terminology of section 4(1)(e) of the CPA (the development risks defence) deviated from the wording of the defence under Article 7 of the Directive, creating what could be called a subjective test, as it focused on the conduct and abilities of the reasonable manufacturer. Article 7 (1)(e) was worded differently and required an objective assessment of the state of scientific and technical knowledge at the time the product was put into circulation. It said that the defence would apply when:

[t]he state of scientific and technical at the time when the producer put the product into circulation was not such as to enable the existence of the defect to be discovered.[134]

In EC v UK, the European Court of Justice said that the relevant test was to ask whether the information (that would make the product defective) was accessible to the producer of the product concerned at the relevant time.

The Commission argued that section 4(1)(e) CPA called for a subjective assessment in that the phrase "…might be expected to have discovered the defect" placed an emphasis on the conduct of a

reasonable producer, having regard to the standard precautions in use in the industry in question.[135]

According to S.1(1) of the Consumer Protection Act, 1987 the provisions are to be construed in conformity with the EU Directive on product liability. About the development risk defence in A v National Blood Authority, the court held that such defence can only be invoked when the producer can show that there was no objectively accessible scientific or technical knowledge existing anywhere in the world which would have helped in discovering the existence defect.

ii. Defences to the Manufacturer/Producer under Islamic Law

According to Monzer Kahf the liability in tort can only be avoided in case of: force majeure or act of God; act of a third party; the act of the victim itself.[136] However there are five exceptions to this rule (a) when the direct action is founded on the cause, (b) when the indirect injurer misleads or forces the direct injurer, (c) when there is an ill intention on the part of the direct injurer but not on the part of the indirect injurer, (d) when the indirect action is most effective in creating injury, and (e) when it is impossible to make direct injurer liable for the injury.[137]

i. Limitation Period under CPA, 1987 and Islamic Law

i. Limitation Period under CPA, 1987

The right to bring an action under the CPA 1987 is lost 10 years from the date that the defendant supplied the product. [138]The claimant must begin proceedings within three years of becoming aware of the defect, the damage or the identity of the defendant, or if the damage is latent, the date of knowledge of the plaintiff, provided that it is within the 10-year limit (s11A(4) Limitation Act 1980). In the case of personal injuries there is a discretion vested in the court to override the three-year limitation period (s33 Limitation Act 1980).

The liability will expire after a certain period. An injured person has three years to seek compensation from the date on which they first become aware of the damage, the defect and the identity of the producer.[139] In addition, the producer`s liability expires after "long-stop" period of ten years from the date on which the product was put into circulation.[140] The basic limitation period may be extended by the courts.[141] In Horne-Roberts v SmithKline Beecham[142], a claimant,

seeking compensation for injury alleged to have been caused by the MMR (measles, mumps, rubella) vaccination, brought an action against Merck, based on an error in identifying the batch number for the relevant product. After proceedings had commenced, the claimant realized the error and attempted to sue the correct manufacturer, SmithKline Beecham. However, this was after the ten year long-stop period. The English courts were obliged to consider whether or not to allow substitution of the defendant. The court held that the claimant should be given a 'reasonable length of time' to commence proceedings and exercised its discretion to allow the defendant to be substituted after the ten year period had expired.[143]

ii. Limitation Period under Islamic Law

Muslim scholars have difference of opinions regarding the limitation period for claim. One group of Muslim scholars is of the view that there is no limitation period in Islamic Law. The rejection of such a notion is based on a well established principle in Islamic law that rights cannot be abolished even if it is remote in the past.[144]

Hence if the injured party does not file a suit to claim compensation for the damage, caused by the other party, for a period of fifteen years, his right becomes imperfect in the eyes of law. However, morally he will remain liable for all the damages one causes to another. This rule is subject to exception i.e. when the plaintiff was a minor, insane, or abroad in the period collapsed then he can bring the suit when such causes are removed.[145]

Similarly, keeping in view public interest a reasonable time should be specified for bringing suits. The *Hanafi* School permit a claim to be barred if a certain period of time has passed. The Ottoman Civil Code that is based on *Hanafi* school has provided for statutes of limitations in the following articles states: "a debt, or property deposited for safe-keeping, or real property held in absolute ownership, or inheritance, or actions not relating to the fundamental constitution of a property dedicated to pious purposes leased for a single or double rent, or to pious foundations with the revenue of a pious foundation, or actions not relating to the public, shall not be heard after the expiration of a period of fifteen years since action was last taken in connection therewith."[146]

In the same sequence, Article 1661 states that "actions brought by a trustee of a pious foundation ... may be heard up to a period of thirty- six years. In any event these actions shall not be heard after the thirty-six years has elapsed."[147]

The above discussion denotes that the general view in Islamic law is that the claims should not be barred after a certain period of time has passed but keeping in view public interest a reasonable time should be specified for bringing suits. The time limitation in the product liability cases in English law is reasonable and much more flexible. The English regime of product liability on the time limitation appears to be in conformity with Islamic law although it restricts the freedom of the plaintiff by not allowing him to claim after a basic limitation period of 3 years from the accrual of the cause of action[148] or from the date the plaintiff had knowledge of the damage[149] and the "long stop" period of ten years from the date at which the product was last supplied by the producer, apparent producer or importer.[150] According to S.33 of the Limitation Act the basic limitation period may be extended by the courts but the long-stop period may not be extended.[151]

j. Application of Strict Product Liability regime in Muslim Jurisdictions

It is pertinent to answer here the question that whether or not Islamic law recognize the adoption of English product liability regime in Islamic jurisdictions. As far as the application of English product liability regime in Islamic jurisdictions is concerned Islamic *Shariah* does not restrict the freedom of Muslim community to pursue their way through experimentation, trial and error and scientific study and research. Provided such practices do not violate any fundamental norm of Islamic *Shariah.* With regard to taking benefit from the natural resources within the ambit of Islam is the duty enjoined by it on all the Muslims. Islamic law is of the view of general rule of permissibility in everything including trade and business.[152]

In this context S.M. Yusuf writes:

"In regard to the resources of nature Islam only warned man that certain items are devoid of utility value, being harmful to his physical and moral welfare. This is just like the manufacturer's warning super inscribed on the labels of dangerous medicines. Such items are like wine, pork and carcass. These particular items are divested of economic value for the Muslims. The non-Muslims remain free to look upon, and deal in, them like any other commodity. With these few exceptions, the vast inexhaustible resources of the entire world are free as a gift from the Creator to mankind as a whole. The conception of a free gift of the resources of Nature from the Creator to the bests of creation in basic to

the economic system of Islam. In view of its far-reaching moral import we may as well call it the corner-stone of economics justice." [153]

S.M. Yusuf further writes:
On the exploitation and utilization of the resources of nature Islam sets no limits. At the same time the development of economy, the sophistication of the means production, the growth of quantity and improvement of quality of all kinds of products are recognized to belong to the domain of science and technology and not of religion. Hence Islam only gives the green signal and technology, which, however, is left to the initiative and enterprise of man.[154]

Most importantly Qur'an says:
"Say: Who hath forbidden the beautiful (gifts) of God, which He hath produced for His servants, and the things, clean and pure, (which He hath provided) for sustenance? Say: They are, in the life of this world, for those who believe, (and) pure ly for them on the
Day of Judgment. Thus do We explain the signs in detail for those who understand."[155]

"O ye who believe! Eat of the good things that We have provided for you, and be grateful to Allah, if it is Him ye worship."[156]

"O ye who believe! Make not unlawful the good things which Allah hath made lawful for you, but commit no excess: for Allah loveth not those given to excess. Eat of the things which Allah hath provided for you, lawful and good, but fear Allah, in whom ye believe". [157]

In this context it is pertinent to mention that the Holy Prophet (PBUH) failed to see any point in fecundation i.e. grafting part of the male upon the female date tree. So the people of Madina gave up the practice. As the yield declined because of non-fertilization, the Prophet (PBUH) deposed revelation. I am but a human being. When I command you in regard to something of your religion, adhere strictly to it. But when I direct you about something in exercise of my own opinion, then I am just a human being. "You know best the matters concerning the affairs of this world of yours.''[158]
Moreover, there is no objection on the development of human life and adoptions of any good thing rather highly appreciate the adoption of such rules as they are furthering the goal of Islamic *Shariah.* The Holy

Prophet (pbuh) approved many practices of the other nations and declared valid. All the practices, not violating injunction of *Shariah,* of pre-Islamic era were adopted by the Holy Prophet (PBUH) as it is Imam Sarakhsi has stated:

"The contract and dealings practiced before Islam are valid practices for us also in the absence of any text disapproving them. The Holy Prophet was sent as Prophet and he saw the people practicing Ijarah and he disapproved that practice.[159]

Hence, Islamic law has always allowed the adoption of rules of other nations that helps in adaptation to the requirements of a particular age. It may also be considered as a part of the *Masalih Mursalah* i.e. delegated benefits and the community itself may decide about its application in Islamic jurisdictions. This is a well-established rule of Islamic law that the dispositions of a Muslim ruler towards his subjects are contingent on public interest (*maslaha*).[160]

Society is an ever-changing and ever-developing phenomenon so is the structure of legal rules. With the passage of time, many of disapproved things became valid and limited has become unlimited. Therefore, it is necessary to produce corresponding legal orders to justify the changed circumstances.[161] The Muslim jurists have formulated the rule: "it is undeniable that rules of law vary with change in time".[162] It is based on the presumption that the laws are designed to fulfil needs of a particular situation occurs due to changes in time and needs of people. On the basis of changed circumstances changes in the structure of existing law is required to meet the pressure of such changes.[163]

In case of product liability and its transposition in Muslim Jurisdiction as it has been discussed earlier that it is a well-known maxim of Islamic law that there are well established principles of Islamic law such as '*al-kharj bi al-daman'* i.e. every profit has a corresponding liability, *al-darar yuzal'* i.e. 'harm has to be removed and to avoid the public injury a private injury may be suffered. Moreover, Muslim jurists have recognised the notion of '*al-masuliya al-taqsiriya'* i.e. strict liability in certain cases to avoid harm.

Moreover, Muslim jurists also acknowledge the right of state to interfere in the economic activity of the people if such interference is required and motivated by the public interest.[164] It is worthy to note that a public interest as opposed to private interest is acknowledged in

Islamic Jurisprudence only when it fulfils certain conditions: it should be genuine and real interest i.e. *maslahah* as opposed to a plausible interest i.e. there must be a reasonable probability that the benefits of enacting a *hukm* in the pursuance of *maslahah* outweighs the harm that might emerge from it.[165] The *maslahah* must be general (*kulliyyah*) in that it secures benefit or prevents harm to the people as whole and not to a particular person or group of person; and the *maslahah* is not in conflict with a principle or value which is upheld by the text (*nass)* or consensus (*ijma).*[166] The Muslim jurists have laid down certain rules wherein public interest as opposed to private interest, has been taken care of. Hence, keeping in view all the previous discussion and that it has become a dire need to adopt strict product liability in the modern era of science and technology when many products are production mystery, and that it has been proved that Islamic law has no objection on its application in Muslim jurisdiction, thus it is highly recommended that a strict product liability regime based on traditional Islamic law must be adopted in Muslim countries. In case that is not possible, Muslim jurists can also take benefit from the UK's strict product liability regime in order to save larger interests of the consumers.

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[1] Royce-Lewis, Christine A., *Product liability and consumer safety: a practical guide to the Consumer Protection Act* (ICSA Publishing Limited, London 1988), p. 3. Cf. Simon Deakin, Angus Johnston, and Basil Markesinis, Markesinis and Deakin's Tort Law (5th edn, Clarendon Press, Oxford 2003), p. 603. Geraint G. Howells writes in this context: "The United Kingdom's product liability law can be seen to be deficient, mainly due to the privity requirement in contract law and the fault requirement in tort law. The thalidomide disaster provoked widespread discussion of product liability and the matter was referred to the English and Scotish Law Commissions in 1971 and the Pearson Royal Commission on Civil Liability and Compensation for Personal Injury. All three recommended that producers should be strictly liable for personal injury or death caused by their defective products" (Geraint Howells*, Product Liability: A Global Problem).*

[2] Geraint G. Howells, *The Law of Product Liability*, 2nd Edition, LexisNexis Butterworths, p.265.

[3] Overview of UK: Product Liability Law available at: http://www.biicl.org/files/1123_overview_uk.pdf, last accessed on 15.08.2013.

[4] J.A. Jolowicz, *The Protection of the Consumer and Purchaser of Goods under English Law,* The Modern Law Review, Vol.32, No.1, January 1969.

[5] In early 1960s, the drug *thalidomide* affected about 10,000 birth defects and caused thousands of fatal deaths worldwide. The affected babies typically suffered from

failure of the limbs to develop. These unfortunate children were cruelly referred to as '*flipper babies*.' Thalidomide had been prescribed to pregnant women to help reduce morning sickness, but tragically, it turned out to be toxic to developing foetuses (The Tragedy of Thalidomide and the Failure of Animal Testing available at: http://www.prijatelji-zivotinja.hr/index.en.php?id=582, last accessed on 14.08.2013).

[6] Rodney Nelson, Jones & Peter Stewart, *Product Liability: The New Law under The Consumer Protection Act, 1987*, p. 33-34.

[7] Helen Delaney and Rene van de Zande, A Guide to the EU Directive Concerning Liability for Defective Products (Product Liability Directive), U.S. Department of Commerce, National Institute of Standards and Technology, available at: http://gsi.nist.gov/global/docs/EUGuide_ProductLiability.pdf, last accessed on 13.08.2013.

[8] Michael G. Faure. "Product Liability and Product Safety in Europe: Harmonization or Differentitation", Kyklos, 11/2000.

[9] See chapter 4 of the thesis for a detailed discourse on EU Directive on Product Liability, 1985.

[10] Helen Delaney and Rene van de Zande, A Guide to the EU Directive Concerning Liability for Defective Products (Product Liability Directive), U.S. Department of Commerce, National Institute of Standards and Technology, available at: http://gsi.nist.gov/global/docs/EUGuide_ProductLiability.pdf ; also Muhammad Fayyad, *The Transposition of the European Union Directive 85/374 /EEC on Product Liability into Palestine and Jordan: Is it Adaptable to Islamic Law?* Global Journal of Comparative Law 7 (2012) 794-224.

[11] Sec.1 (1), Consumer Protection Act, 1987.

[12] Sec. 2 (1), Consumer Protection Act, 1987.

[13] Sec. 5(1) & S.5(4), Consumer Protection Act, 1987.

[14] Sec.1(2) & 2(2)(a), Consumer Protection Act, 1987.

[15] Sec. 2(2)(b), Consumer Protection Act, 1987.

[16] Sec. 2(2)(c), Consumer Protection Act, 1987.

[17] Sec. 2(3), Consumer Protection Act, 1987.

[18] Sec. 3(1), Consumer Protection Act, 1987.

[19] Sec. 4(1)(a), Consumer Protection Act, 1987.

[20] Sec. 4(1)(b), Consumer Protection Act, 1987.

[21] Sec. 4(1)(c), Consumer Protection Act, 1987.

[22] Sec. 4(1)(d), Consumer Protection Act, 1987.

[23] Sec. 4(1)(e), Consumer Protection Act, 1987.

[24] Sect. 4(1)(f), Consumer Protection Act, 1987.

[25] Sec. 6(4), Consumer Protection Act, 1987.

[26] AB v South West water services Ltd [1993] 1 All ER 609.

[27] Worsley v Tambrands Ltd [2000] PIQR P95.

[28] Richardson v LRC Products Ltd [2000] Lloyd's Rep Med 280.

[29] Foster v Biosii (2001) 59 BMLR 178.

[30] Abouzaid v Mothercare (UK) Ltd [2000] All ER (D) 2436; Williamson, S.. "Strict Liability for Medical Products: Prospects for Success", Medical Law International, 2002.

[31] A v National Blood Authority [2001] 3 All ER 289.

[32] Bogle v McDonalds Restaurants Ltd [2002] EWHC 490.

[33] Pollard v Tesco Stores Ltd [2006] EWCA 393, [2006] All ER (D) 186 (Apr).
[34] Piper v JRI (Manufacturing) Ltd [2006] EWCA Civ 1344, (2006) 92 BMLR 141.
[35] Palmer v Palmer [2006] EWHC 1284 (QB), [2006] All ER (D) 86 (Jun).
[36] Geraint G. Howells, *The Law of Product Liability*, 2nd Edition, LexisNexis Butterworths, p.277.
[37] Jane Stapleton, *Product Liability in United Kingdom: Myths of Reforms,* Texas International Law Journal, Vol. 34:4; http://dev.oldsquaredns.net/pdf_articles/3100126.pdf accessed on 12-09-2014.
[38] Qur'an, 42:42.
[39] Quran, 45:15.
[40] Qur'an, 14:38.
[41] Qur'an, 4:123.
[42] Qur'an, 6:164.
[43]Maududi, Sayyid Abul A`la, *Towards Understanding the Qur`an,* (Leicester: The Islamic Foundation, 1408/1988), 2:299.
[44] Abdul Basir Bin Mohamed, *Strict Liability in the Islamic Law of Tort,* Islamic Studies, IRI, International Islamic University, Islamabad, vol.39, No.3 (Autumn 2000), pp. 445-462, available on http://www.jstor.org/stable/23076062 accessed on 23/08/2013.
[45] Abu `Abd Allah Muhammad b. Yazid Ibn Majah, *Sunan Ibn Majah* (Cairo: Isa al-BabiHalabiwaShrukah, n.d.), vol.2, p.890.
[46] Abu `Abd Allah Muhammad b. Yazid Ibn Majah, *Sunan Ibn Majah* (Cairo: Isa al-BabiHalabiwaShrukah, n.d.), vol.2, p.890.
[47] *Al-Nasai (d.303 A.H.), Sunan,* Maktab al-Matbuat al-Islamiya, Halb, 1986, vol.7, p.127; Abdul Qadir Awdah, Al-tashri al-jinai al-Islami muqarinan bil Qanun al-Wad'I, Mussaisah Al-risalah, Beirut, 1993, vol.1, p.395. It means that in a tort action for what is committed by a person, he who acts is liable for what he has done, not another.
[48] Al-tirmidhi, Sunan, tradition no.2159, vol.4, p.31; Ibn Majah, Sunan, tradition no.2669, vol.2, p.890.
[49]Majallah, article: 20. This principle is applied throughout the code and it means that grave (*fahish*) injury, however it may be caused, must be removed e.g. when a mill is made adjacent to a dwelling-house. The house is weakened by turning of the mill wheel, or it becomes impossible for the owner of such a house to dwell in it by reason of the great quantity of smoke or bad smell from that mill. These acts amount to injury which must be removed (Majallah article: 1200).
[50]Majallah, Art. 31.
[51]Majallah, Art. 27.
[52]Majallah, Art. 30.
[53] Abu Dawood, *Sunan, abwab al-ijara,* tradition no.3508, vol.3, p.284.
[54] Ibn Hazm (d.456 A.H.), *Al-muhalla,* Dar al-Fikr, Beirut, vol.11, p.219.
[55]Majallah, Art. 912.
[56] Majallah, Art.913.
[57]Majallah, Art. 914. Similarly Majallah states in Art.916: "Every person has a right of way on the public highway, subject to the safety of others. That is to say, provided no harm is caused to others in circumstances which can be avoided e.g. if a porter drops the load he is carrying on the public highway and destroys the property of another, the porter must make good the loss. If sparks fly from a blacksmith's shop while he is

working iron and set fire to the clothes of a passer-by in the public highway, the blacksmith must make good the loss".

[58] Al-marghinani, Al-hidaya, vol.4, p.194; Tabyin al-haqaiq, kanz al-daqaiq, vol.5, p.146; Ibn Abidin, Hashiyya Rad al-muhtar.

[59] Al-zuhaili, *Nazariat al-daman*, p.251.

[60] M.Musleh-ud-Din, *The Concept of Civil Liability in Islam and the Law of Torts*, p.351-53.

[61]Ibn Qudamah (d.620 A.H.), *Al-Mughni*, vol.5, p.391.

[62] Al-marghinani, Al-hidaya, vol.3, p.242.

[63] Some professions are strictly prohibited in Shariah (Qur`an: 5:4) such as astrologers and if the *Muhtasib* finds anyone indulging in these practices must expel him and punish him(Ibn Al Ukhuwwa, op.cit., pp.67-68). The prophet said: "*He who goes to a diviner and believes his word misbelieves that which had been revealed through Muhammad* (Al Baihiki, *Al Sunan Al Kubraa,* Kitabul Kasamah, Baab al Takfeer, Hadith no. 16494). Similarly, prostitution, gambling and other unlawful services should be stopped by the authorities.

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[65] Al-sarakhsi, Al-mabsut, vol.15, p.82.

[66] Al-Marghinani, *Al-Hidaya,* vol.3, p.242.

[67] Ibn Qudama, Al-mughni, vol.5, p.390.

[68] Michael G. Faure, "Product *Liability and Product Safety in Europe: Harmonization or Differentiation?"* (2000) 53 Kyklos: International Review for Social Sciences 470; also quoted by M. Fayyad's in his article on the *Transposition of the European Directive 85/374/EEC on Product Liability into Palestine and Jordan: Is it Adaptable to Islamic law?* Global Law Journal, 2012.

[69] Winterbottom v. Wright (1842) 10 M. & W. 109.

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[71] Art.2, EU Directive on Product Liability 85/374 (EEC).

[72] Hans-W. Micklitz, N. Reich and P. Rott, *Understanding EU Consumer Law* (Oxford: Intersentia Publications, 2009) 246.

[73] s.1 (2), CPA, 1987.

[74] s.45, CPA, 1987.

[75] Rodney Nelson, Jones & Peter Stewart, Product liability: The New Law under the Consumer Protection Act, 1987, p.36.

[76] Sec. 45, Consumer Protection Act, 1987.

[77] Art.14, EU Directive on Product Liability, 1985.

[78] Sec. 6 (8), Consumer Protection Act, 1987.

[79] Alister M. Clark, *Product Liability*, Sweet & Maxwell Publishers, p.53.

[80] *Maurice Jamieson, Liability for Defective Software*, available at: http://www.journalonline.co.uk/magazine/46-5/1000702.aspx, last accessed on 13.08.2013.

[81] St Albans City and DC v International Computers Ltd [1995] FSR 686; [1996] 4 All ER 481.

[82] http://www.journalonline.co.uk/Magazine/46-5/1000702.aspx#.UgEfsPL97Co last visited on 06-08-2013.
[83] M.Fayyad, *'Misleading Advertising Practices in Consumer Transactions:* Can Arab Lawmakers Gain Advantage from European Insight? (2012) 26(3) Arab Law Quarterly Journal 287.
[84] Al-Kasani, Badai al- Sanai, vol.5, p.192. See chapter 3 of the thesis for a detailed discussion on the conditions of a product in Islamic law.
[85] Muslim ibn Hajjaj, *Sahih, Kitab ul-iman,* tradition no. 102, vol.1, p.99.
[86] Ahmad Ibn Hanbal (d.241 A.H.), Musnad, tradition no. 16013Muassisah Al-Risalah, 2001, vol.25, p.394.
[87] There are many traditions of the Holy Prophet (pbuh) in this regard. See Ahmad Ibn Hanbal, Musnad, tradition no.22360, vol.37, p.43; Ibn Majah, Sunan, tradition no.3746, vol.2, p.1233; Abu Daud, Sunan, tradition no.5128, vol.4, p.333.
[88] Foster v Biosil (2000) 59 BMLR 178.
[89] Richardson v LRC Products Ltd [2000] Lloyd's Rep Med 280.
[90] Rodney Nelson, Jones and Peter Stewart, *Product Liability: The New Law under the Consumer Protection Act, 1987,* Fourmat Publishing, London, 1988, p.61.
[91] Overview of UK: Product Liability Law, available at: http://www.biicl.org/files/1123_overview_uk.pdf, last accessed on 15.08.2013.
[92] Bogle and Others v McDonald's Restaurants Ltd [2002] All ER (D) 436 (Mar).
[93] Iman Abouzaid v Mothercare (UK) Ltd [2000] All ER (D) 2436.
[94] Worsley v Tambrands Ltd [2000] PIQR P95.
[95] See chapter 5 of the thesis for a detailed discourse on the subject of implied warranties under Islamic law of contract.
[96] Majjallah, Art. 336.
[97] Al-Marghinani, Al-Hidaya, vol.3, p.36; Al-Qawanin al-Fiqhiyyah, vol.1, p.176; Al-Muharrar fi al-Fiqh ala mazhab Ahmad ibn Hanbal, vol.1, p.324.
[98] Qur'an; 4:29.
[99] Al-Bukhari, *Sahih, Kitab al Buyu,* tradition no. 2082, vol.3, p.59.
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[101] Ibid.
[102] Ibn Qudama, Al-mughni, vol.3, p.489; Shah Waliullah Al-dihlawi, Hujjat-ullah al-baligha, Dar al-jeel, Beirut, Lebanon, vol.2, p.174; Al-maqdisi, Zia al din, Al-sunan wa al-ahkam anil-mustafa alaihi al-salam, Dar Majid A'siri, Saudi Arabia, 2005, vol.4, p.389.
[103] S.2 (1), Consumer Protection Act, 1987.
[104] Ahmad ibn Hanbal, *Musnad*, tradition no. 17265, vol.28, p. 502; Ibn Abi Sheba, Musanaf, tradition no.23083, vol.4, p.554; Al-baihaqi, Al-sunan al-kubra, tradition no.10397, vol.4, p.432.
[105] Ibn Qudama, Al-mughni, vol.3, p.489; Shah Waliullah Al-dihlawi, Hujjat-ullah al-baligha, Dar al-jeel, Beirut, Lebanon, vol.2, p.174; Al-maqdisi, Zia al din, Al-sunan wa al-ahkam anil-mustafa alaihi al-salam, Dar Majid A'siri, Saudi Arabia, 2005, vol.4, p.389.
[106] See chapter 3 of the thesis for a detail discussion on requirements of Shariah in a product.
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[108] Monzer Kahf, "*Economics of Liabilities: An Islamic View"* (2000) 8(2) Journal of Economics and Management 85.

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[110] Al-tirmidhi, Sunan, tradition no.1341, vol.3, p.19; Al-baihaqi, Marifat al-sunan wa al-asar, tradition no. 20248, vol. 14, p.349; Al-dar Qutni, Sunan, tradition no. 4311, vol.5, p.4311; Abu Yusuf, Al-asar, tradition no.738, vol.1, p.161.

[111] Nyazee, Islamic Jurisprudence, International Institute of Islamic Thought, IRI, p.211.

[112] Ibid.

[113] Sec. 45(1), Consumer Protection Act, 1987.

[114] Sec.5(1), Consumer Protection Act, 1987.

[115] Sec.5(2), Consumer Protection Act, 1987.

[116] Sec.5(3), Consumer Protection Act, 1987.

[117] Sec.5 (4), Consumer Protection Act, 1987.

[118] Sec.5 (5), Consumer Protection Act, 1987.

[119] S. 5(7), Consumer Protection Act, 1987.

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[121] Majallah, Articles: 39-40.

[122] Monzer Kahf, "*Economics of Liabilities: An Islamic View"* (2000) 8(2) Journal of Economics and Management 85.

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[124] Al-baihaqi, Al-sunan al-kubra, tradition no.11521, vol.6, p.159.

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[131] Sect. 4 (1), Consumer Protection Act, 1987.

[132] Ibid.

[133] Ibid.

[134] Art.7 (1) (e), EU Directive on Product Liability, 1985.

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[136] Monzer Khaf, "*Economics of Liabilities: An Islamic View"* (2000) 8(2) Journal of Economics and Management 92.

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[141] Sec.33, Limitation Act, 1980.
[142] Horne-Roberts v SmithKline Beecham [2002]1 WLR 1662.
[143] Anne Ware and Grant Castle, *Product Liability for Medical Devices,* available on http://www.cov.com/files/Publication/7a4b6264-9174-4c14-9a25-b0e75e099c03/Presentation/PublicationAttachment/94aacf8f-dec8-46a2-a879-bc89ae81fb82/oid61432.pdf, last visited on 28-08-2013.
[144] Ibn Abidin, Rad al-muhtar, vol.5, p.420.
[145] Al-mausua' al-fiqhiya al-kuatiyya, vol.28, p.271; Al-Zuhaili, Al-fiqh al-Islami wa adillatuhu, vol.4, p.3269.
[146] Majalla. Art.1660.
[147] Majalla, Art.1661,.
[148] Sec.11A(4), Limitation Act, 1980.
[149] Sec.14 (3), Limitation Act, 1980.
[150] Sec.11 A (3), Limitation Act, 1980.
[151] Sec.33 (1A) (a), Limitation Act, 1980.
[152] Ibn Nujaim, (d.970 A.H.), Al-Ashbah wa al-Nazair, Dar al-Kutub al-Elmiyah, Beirut, Lebonan, 1999, p.56. The principle { الْأَصْلُ فِي الْأَشْيَاءِ الْإِبَاحَةُ حَتَّى يَدُلَّ الدَّلِيلُ عَلَى عَدَمِ الْإِبَاحَةِ} is based on a number of verses of the Holy Qur'an and traditions of the Holy Prophet (pbuh). See chapter 4 for further details about the principle.
[153] SM Yusuf, *Economic Justice in Islam,* p.4.
[154] Ibid. p.4.
[155] Qur'an: 7:32.
[156] Qur'an: 2:172.
[157] Qur'an: 5: 90-91.
[158] Al-Muslim, Sahih, tradition no.2363, vol.4, p.1836.
[159] Al-Sarkhasi, *Al-Mabsut,* vol. 15, p.74.
[160] Ibn Nuujaim, *Al-ashbah wa al-nazair*, vol.1, p.93.
[161] Ibn Qayyim, *I'lam al-Mawaqqien,* Vol.1, p.355, (Ibn Qayyim, Abd Allah Muhammad bin Abi Bakr, *Ilam al-Mawwaqqien an rabbi l alamien,* ed. Muhayy al-Din, 4 vol. Misr: Matba'ah al-Sa'adah, 1955).
[162] Al-burnu, Al-wajiz fi Idah al-qawaid al-fiqhiya al-kubra, p.310.
[163] *The Mejjala,* Art.43.
[164] Al-Mubarak, '*Nizam al-Islam al-Iqtisadi: Mabadi wa Quwaid Amma'*, Dar al-Fikr, Beirut, 1972, p.106.
[165] See chapter 3 of the thesis for a detailed discourse on *Maslaha* and its relevance with consumer protection.
[166] Kamali, *Principles of Islamic Jurisprudence*, pp. 346-347.