SELECTED ISSUES ON ENGLISH LAW OF NOMINEES AND ASSIGNEES OF LIFE INSURANCE POLICY: A COMPARISON WITH SHARIAH

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ABSTRACT

This is a doctrinal and comparative research between nominees and assignees of life insurance policy and family takaful. The study aims to compare between life insurance under the English law and family takaful of the Shariah specifically on nominees and assignees to see similarities and dissimilarities between them. Some of the findings under the English law reveal that a person who has no insurable interest may benefit from an insurance based on trust and assignment. Also, insurable interest is only required at the time the policy is taken out and the names of those interested must be inserted while taking out the policy. Moreover, the assignee is entitled to enforce the policy as against the company, provided of course that some formalities have been duly complied with. And under the Policies of Assurance Act 1867, it is necessary to give notice to the insurer that the policy has been assigned. On the other hand, under family takaful, the preferred view by the researchers is that one's insurable interest over a policy is determined based on the principles of al-Milkiyah (ownership), al-mirath (inheritance), al-Wasiyah (bequest) and debt and that policy benefits cannot be assigned as a gift (al-hibah).Again, where benefits are used as collateral, the assignor should bear the cost to be spent in the interest of the subject matter on the basis that he is the owner; and this should include payment of the premiums of the life policy as under Shariah, the jurists are unanimous that the cost of collateral is on the assignor..

Keywords:. Insurance, Takaful, Nominee, Assignee, hibah

INTRODUCTION

This part looks into nominees and assignees under life insurance under the English law and the position of Shariah on the various issues discussed.

The English law on nominees and assignees cannot be wholly applied for nominees and assignees under the Shariah. The reason is, based on the preferable view, nominees and assignees are governed by the Islamic law of inheritance *(al-mirath)*, bequest *(al-wasiyyah)* and debt *(al-dayn)*. Therefore, nomination or assignment in a life policy involving a Muslim policyholder is

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merely a formality, but the proceeds obtained from the policy is counted as part of the policyholder's estate after his death.

The discussion will cover three main topics, which are: Policies in Trust; Insurable Interest; and Assignment of Policies. Firstly, there will be a discussion on Policies in Trust and Title to Policy Document. Under Insurable Interest, there will be two sub topics namely: Timing of interest; and Naming those Interested. As for discussion on Assignment of Policies, it covers Position of Assignee; Position of Assignor; Consideration; Receipt for Notice of Assignment; Assignment before Notice; and Successive Assignments.

2.0 Policies in Trust

Where a life insurance policy is effected in favour of someone who does not have an insurable interest in the life of the assured, in order to get benefit out of it, the policy may be written in trust. This means the person who has interest in the policy (normally the assured life) may state that the policy is held in trust for the benefit of the beneficiary.

In some cases the intention to create a trust is obvious, either because the proposal form includes a section declaring a trust or because the word trust is expressly used in a document declaring the intentions of the settlor. Unfortunately, matters are not always so well conducted, especially where the creation of the trust occurs after the policy has been created. The history of the law of trusts contains many cases where courts have had to consider whether a particular form of words is suitable to create a trust. Ultimately, all these cases must be considered based on their individual circumstances (Barclays Bank Ltd v Webb [1941] Ch 255), which makes it undesirable to rely too closely on the facts of any of them. However, a general point that may be taken out from them is that courts have usually been very hesitant to consider that a trust has been created when there are no clear words to that effect. Hence, where the policy is clear that the moneys were to be payable to the assured's godson (Re Sinclair's Life Policy [1938] Ch 799), and the policy moneys were to be paid to the assured's son or his executors (Hudson v Foster [1938] 3 All E.R. 357) as well as where the proposer completed the proposal form in his own name "for my daughter" (Tibbetts v Englebach [1924] 2 Ch 348) it was held that there was inadequate evidence to prove the existence of a trust. Conversely, phrases such as "on behalf of and for the benefit of" (Barclays Bank Ltd v Webb supra; Meneer v Foster [1966] 1 W.L.R. 222) were held to create effective trusts.

Here, It must be remembered that based on section 53 of the Law of Property Act 1925, any disposition or creation of an equitable interest has to be in writing. Though this rule has no application to implied, constructive or resulting trusts, this will not exempt the creation of a trust of an insurance policy from the requirement of writing, since such trusts will always be express trusts. Another consequence is that the declaration of trust may attract stamp duty. In most cases, though, this will be of limited practical significance, since the kind of policy which is transferred

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into trust is usually an endowment policy, which will have very little value (if any) at the time of the transfer if the transferor follows the usual pattern of assigning the policy more or less as soon as it has come into force. Since stamp duty is charged ad valorem according to the value of the property transferred, a transfer of a newly executed life policy will attract only the nominal 50 pence stamp duty.

The transfer into trust of a policy which has very recently been created may raise the question whether the original assured was ever the intended beneficiary. This is important because of the need to name the beneficiary in the policy (Life Assurance Act 1774 section 2) and because of the requirement of insurable interest to create a valid life policy (Life Assurance Act 1774 section 1). In practice, however, the trust device is commonly used in situations where it is obvious that the beneficiary under the trust was always the intended beneficiary and where that person clearly has no insurable interest. The most common example is where parents insure their own lives and the policy is written in trust for their children. It is common to find that the proposal form for the policy actually invites the proposers to consider writing the policy in trust. Although this practice appears to fully contravene the intention behind the 1774 Act, it is generally accepted at the present day and may be viewed as further evidence that the 1774 Act is in need of reform.

According to Shariah, distribution of trust policy proceeds is decided in accordance with the principles of ownership (*al-Milkiyah*), inheritance (*al-mirath*[1]), bequest (*al-Wasiyah*[2]) as well as debt (Abubakar et al. 2014). This means that the benefits from an insurance policy is regarded the property of the policy holder, and he would continue to have full ownership of the policy benefits so long he is alive, however if he is dead, the benefits would be distributed and shared to the persons who are entitled by following the established Islamic principles of *al-Mirath* (Islamic Law of Inheritance) (Billah 1997), which even many non-Muslim scholars respected. For example, Professor Almaric Rumsey mentioned that “The Muslim law of inheritance comprises beyond question the most refined and elaborate system of rules for the devolution of property that is known to the civilized world (Rumsey, 1880)”. Thus, according to Shariah, where a person is nominated in life policy, he is considered merely a trustee (Billah 2007). Regarding the issue of trust, Allah (May He be exalted) mentioned in a verse in the Holy Quran “And those who faithfully observe their trusts and covenants (Al-Qur’an, Surah al-Muminun, 23:8).” The word (trusts) mentioned in this verse includes all undertakings which a person has taken or for example a property placed under his care based on trust. Therefore, the fact that trusts may be in

[1]*Al-mirath* refers to the Islamic law of Inheritance (Faraid) which has been ordered by Allah (swt) which is compatible to human nature.

[2]*Al-wasiyyah* means “all instructions uttered by a person in relation to duties to be performed after his death. According to some scholars, Wasiyyah refers to the instructions one orders for donation of money after his death as well as the instructions made to his relatives to carry out righteous behaviors. The instructions may be related to money left as gift or grants (*Waqf*) for particular causes or personal decisions taken by the deceased to execute matters after his death such as funeral and burial arrangements, taking care of his children, marriage of his children, etc.

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various forms, the word is used in plural, so as to include all types of trusts which may relate to the rights of Allah or to the rights of human beings (http://islamicstudies.info/maarif). By following this approach, the Maqasid al-Shari'ah (purpose of Shari'ah) would be protected and preserved (Zahid 2009).

2.1 Title to Policy Document

The ownership of the policy document should be carefully distinguished from entitlement to benefit under the policy. In Rummens v Hare (1876 1 Ex D 169) P had purported to assign a policy to D by mere delivery. After his death his widow sued to discontinuethe policy document. It was held that the action must fail. Although the assignment of the policy was obviously ineffective, title to the document itself could pass by mere delivery and this is what happened here. Similarly, a solicitor may claim for unpaid costs over a policy document in his possession even though he has no claim to the proceeds of the policy.

Under Shariah, there is no need to distinguish between ownership of the policy and entitlement to benefit as this is determined based on *al-mirath* (inheritance)*al-wasiyya* (bequest) and debt.

3.0 Insurable Interest

The English law requires that for a person to be a beneficiary in a life insurance policy, he must have has an insurable interest (Section 18 of the Gaming Act 1845 (UK). Basically, the history of insurable interest in life insurance goes back to 1774 where the concept was established by statute (Atmeh 2011). According to this concept, a person taking out insurance has to prove that he has interest in the continuous existing of the subject matter or he will suffer if the subject matter is lost. Although, an insurable interest may not be defined precisely, but it is an interest that occurs based on the relationship of the party purchasing the insurance with other party, such as creditor, marriage, blood ties etc. (Liss v. Liss, 937 So. 2d 760, 764 (Fla. 4th Dist. Ct. App. 2006).

Below is a discussion onsome issues related to insurable interest:

3.1 Timing of Interest

The Life Assurance Act 1774 is silent as to when interest is required. It is only implied in the wording of section 1 that the interest requirement is applicable at the time of taking out the policy, since that section clearly prohibits the creating of policies without interest. It might be thought that the requirement has to apply also when the life assured dies, as the lapsing of interest in the life of another denies the insured of any legitimate reason to keep the policy on

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foot, and this might even turn it in effect into a gaming policy. In Dalby v India & London Life Assurance Co (1854) 15 CB 365) the plaintiff was the major insurer relating to a policy on the life of the Duke of Cambridge, and he had reinsured the risk with the defendant. Undoubtedly, at the time of effecting both the primary policy and the policy of reinsurance, all parties had the needed insurable interests. The primary policy was permitted to lapse by non-payment of the premiums, so as to deprive the plaintiff of any interest in the risk, however the plaintiff retained the policy of reinsurance. After the Duke's death the reinsurers declined to pay proceeds on this policy, claiming lack of interest, and the plaintiff took this action to court. It was held that the plaintiff could recover proceeds on the policy. The requirement of an insurable interest is applicable only at the time of taking out the policy. This decision seems to contradict a major part of the purpose of the 1774 Act, and it has been heavily criticised, however, despite the criticism it remains law until today.

On the Shariah perspective, an insurable interest over a policy is determined by relying on the principles of *al-Milkiyah* (ownership), *al-mirath* (inheritance), *al-Wasiyah* (bequest) as well as *al-dayn* (debt) (Billah 1997). Therefore, based on *al-Milkiyah* (ownership), the participant in a takaful scheme has an insurable interest at the time of joining the takaful scheme until his death since he is the owner of the policy. Regarding *al-mirath* (inheritance), the legal heirs mentioned in the Holy Qur'an (father, mother, wife, husband, daughter, uterine brother, uterine sister, full sister, consanguine sister) as well as the three other heirs added by juristic method of analogy (maternal grandmother, paternal grandfather and agnatic granddaughter) are known as "ashab al-furud". When they have the entitlement to inherit, they receive fixed shares, while the remaining estate is inherited by residuaries (http://www.islam101.com/sociology/inheritance**).**

As for *al-Wasiyyah* (bequest), the jurists are unanimous that if the testator *(al-musi)* specifies a particular time for the possession of the subject matter, for example he says: the possession is to take effect at the beginning of a particular month, the Will *(al-wasiyyah)* starts at that time; as the condition of a testator *(al-musi)* is accepted as long as it is in line with the purpose of the Shari'ah. However, if the testator *(al-musi)* does not specify the time upon which the Will *(al-wasiyyah)* takes effect, if the beneficiary *(al-musalahu)* accepts it after the death of the testator *(al-musi)*, the possession is immediately established to him (Zuhaily 1985). Hence, based on the above, where a policyholder specifies when Will *(al-wasiyyah)* of the policy benefits takes effect, the insurable interest starts at that time or else it starts when the beneficiary *(al-musalahu)* accepts after the death of the testator (policyholder).

Regarding debt *(al-dayn),* the Shariah allows a creditor right to claim the return back of his money from the debtor. Abu Musa (ra) narrated a hadith which was narrated by Abu Hurayrah (ra) where the Prophet (saw) said: if anyone goes bankrupt and a man finds his own property intact with him, he is more entitled to it than anyone else (Billah 2007). In another hadith also narrated by Abu Musa (ra) from the Prophet (saw) where he said: verily the greatest of sins to Allah (s.w.t) with which a man shall meet him after the great sins which Allah (s.w.t) prohibited is his debt outstanding at death but leaving nothing for its settlement (Billah 2007). In another hadith narrated by ‘Abd Allah bin Amr bin al-As (ra), the Prophet (saw) said: every sin of a martyr shall be forgiven except debt (Billah 2007). Therefore, where the debtor policyholder/participant passes away before settling his debt, the creditor shall have an insurable interest in the life of the debtor. Thus, the debt has to settle from the policy/takaful benefits even if the legal heirs get nothing from it (Abubakar et al., 2015).

3.2 Naming those Interested

Section 2 of the Life Assurance Act 1774 provides:

It shall not be lawful to make any policy or policies on the life or lives of any person or persons, or other event or events, without inserting in such policy or policies the person or persons name or names interested therein, or for whose use, benefit, or on whose account such policy is so made or underwrote.

Section 2 has given rise to certain difficulties. It was for a time uncertain whether group policies, i.e. policies which insured the lives of the members for the time being of a group whose membership changed from time to time, could be valid in the light of section 2. The point was resolved beyond doubt by section 50 of the Insurance Companies Amendment Act 1973, which provides that section 2 shall not invalidate a policy so long as the description of the group of persons intended to benefit is stated with sufficient particularity to make it possible to ascertain at any time the identity of those individuals who are entitle to benefit. Section 2 was apparently enacted as an anti-avoidance device in the wake of section 1, to prevent life of another policies being apparently written as own life policies or as life of another policies for someone who had no insurable interest but whose identity was concealed. It may be questioned whether the section serves much useful purpose at the present day.

In other cases, however, policies may be invalidated for failure to comply with section 2. This is particularly the case with life of another policies, where an accidental omission to indicate the name of the insured can have this effect. Perhaps the most difficult situation arises where it is said that a policy taken out by one person (whether on an own life or life of another basis) is really intended to benefit someone else. In many such cases the use of the trust device, may alleviate this problem, but there are occasional cases where this is not done and where it appears that the premiums are to be paid by someone other than the insured. This is likely to give rise to a presumption that the policy was really intended for the benefit of that person, and unless this presumption can be rebutted, it must follow that the policy fails for want of interest.

An important and difficult case in this area is Shilling v Accidental Death (1857) 2 H & N 42 157 ER 18. This was a policy on a father's life expressed as an own life policy. There was evidence that the son was going to pay the premiums in return for father's promise to bequeath him the proceeds of the policy. The insurers pleaded that there was a breach of section 2 because the policy was really made for the son's benefit. The court held that this intention, if established, would give the insurers a good defence. However, it is important to understand the nature of the proceedings which were reported here. The insurers had demurred to the plaintiff's declaration, and the plaintiff had joined issue on the demurrer. Under the procedural rules in force the result of this hearing had to be determined on the assumption that the defendants' version of the facts was the correct one, though it would still be open to the plaintiff at the substantive trial to prove that the policy was not really made for the son's benefit. Indeed, the judges expressed the view that the plaintiff would most probably succeed on this ground. Consequently, the case emphasises the simple and obvious point that it is always essential to identify accurately for whose benefit the policy is actually made.

Under Shariah, the insurable interest is established based on *al-mirath* (inheritance), bequest (*al-wasiyyah*), and debt *(al-dayn)*(Abubakar et al. 2015). The Holy Qur'an and hadith mention those who have an insurable interest in one's property based on *al-mirath* (inheritance), and therefore, there is no need to specify those who have interest in the life policy as that is clearly known. However, where those who have an insurable interest are established based on Will *(al-wasiyyah)*, it is a requirement that the beneficiary *(al-musalahu)* must be known: this means that he cannot be unidentified; this kind of situation would prevent giving the subject matter *(al-musabihi)* as this will make the bequest*(al-wasiyyah)* unbeneficial. For example, if a testator makes a Will *(al-wasiyyah)* of one-third of his wealth to the Muslims, it is void according to Abu Hanifah as the beneficiary *(al-musalahu)* is unknown, and in this case it is not possible to deliver the subject matter *(al-musabihi)* to him. Or the testator *(al-musi)* says: I make the Will *(al-wasiyyah)* of one-third of my wealth to one of these two men, it is not valid according to Abu Hanifah and Shafi'i and other schools of law because the beneficiary *(al-musalahu)* cannot be identified (Zuhaily 1985). Therefore, where the policyholder makes Will *(al-wasiyyah)* of the policy benefits, the beneficiary *(al-musalahu)* of the benefits must be specifically identified.

4.0 Assignment of Policies

Where there is no appropriate insurable interest, the situation may be solved if the policy is effected by someone who has an interest and hereafter assigning it to the intended beneficiary. Notwithstanding, it is possible to assign life policies, but this method is rather more difficult, as the policy may in certain cases be considered in reality to be always belonging to the assignee which is accordingly void for lacking an insurable interest (Shilling v Accidental Death Insurance Co (1857) 2 H & N 42; 157 E.R. 18). However, it may be argued here that the policy is void as it contravenes section 2 of the 1774 Act since it failed to clearly mention the name of the person who is to benefit from the policy. The argument may likely be brought up even in a situation where the person lack an insurable interest in the life, since the requirement provided by section 2 is additional to the requirement of interest. The said argument may be responded to depending on whether the policy was really intended to benefit the third party. If so, the argument may be held in principle to be correct, and thus the policy should be considered as contravening section 2. But, cases of this kind have to be prudently differentiated from cases where the policy was actually intended for the benefit of the original policyholder, who afterward may choose to assign the policy. However, this distinction is not always easy to make, as this depends on the intention of the policyholder at the time of taking out the policy, which may not be always easy to determine. At times there may be extrinsic evidence of intention, e.g. letters written by the policyholder at or about the relevant time, however, often, the only evidence will be that of the policyholder himself, who evidently has the obvious right to declare that he originally planned the policy for himself. Thus, it is advised that, except in a clear case, the court ought to be slow before concluding that the policy is void on this ground.

Under Shariah, the preferable view is that policy benefits cannot be assigned as a gift *(al-hibah)*. The reason is that the jurists *(fuqaha)* unanimously agree that a gift *(al-hibah)* which is destined to be effective in the future is not permissible (Muda 2008). The reason is that the item of the gift *(al-hibah)* in the policy will come into existence after the death of the policyholder, while the policyholder creates the gift *(al-hibah)* at the time he names the nominee under the policy. Here it is assumed as if the policyholder is stating to the nominee: I am giving you the benefits of this policy that will come into existence after my passing away as a gift *(al-hibah)*. This is purely clear that the participant makes a gift of something that he does not possess at the time of creating the gift and this type of gift carries a kind of uncertainty (Abubakar et al. 2013).

4.1 Position of Assignee

The assignee is eligible to enforce the policy as against the company, provided of course that the required formalities have been duly complied with. An action brought on the policy should be brought in the name of the assignee whether the assignee becomes responsible for the payment of the premiums depends on the arrangement between assignor and assignee, though such an arrangement is of course effective only between those two parties, since the burden of the contract cannot be transferred from assignor to assignee without the consent of the insurance company, a process which would require a novation (Policies of Assurance Act 1867 s1).

Thus, the assignment of the policy does not affect the rule that the policy is likely to lapse if premiums are not paid. It may of course be that the premiums are no longer being paid by the person beneficially entitled to the policy, but this is not a matter with which the insurer need be concerned - any remedy of the assignee in the case of lapse for non-payment would have to lie against the assignor.

Under Shari'ah issues of this nature follow the principles of:"the origin of everything is lawful unless an authority proves one unlawful" (Suyuti 1983) and "Muslims are bound by their

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conditions except the one which prohibits the permitted one or permits the prohibited one…" (Jad al-Haq1995). However, in all situations distribution of the policy benefit shall be based on Shariah principles as mentioned above.

4.2 Position of Assignor

Under the Section 48 of the Policies of Assurance Act 1867, it is necessary to give notice to the insurer that the policy has been assigned. Until this is done the insurer is not bound to deal with the assignee. Where due notice has been given, the insurer should deal only with the assignee in relation to payments of claims under the policy. Until such notice is given, the insurer should normally insist on dealing with the original policyholder.

As mentioned above, under Shariah "the origin of everything is lawful unless an authority proves one unlawful" (Suyuti 1983) and "Muslims are bound by their conditions except the one which prohibits the permitted one or permits the prohibited one…" (Jad al-Haq1995), thus, the parties may agree that it is necessary, upon assignment of the policy to give notice to the insurer that the policy has been assigned, and that the insurer will only be bound to deal with the assignee after that.

4.3Consideration

Some writers have discussed at length the question whether consideration is necessary to support an assignment. Although the question is of some interest in relation to assignments generally, it is of little relevance in the context of life assurance. First, it is clear that assignments made under statute do not have to be supported by consideration, since the relevant statutory provisions list exhaustively the requirements of a valid assignment and do not mention consideration (Law of Property Act 1925 (LPA) s136 (1)). This deals with the vast majority of assignments of life policies. As to equitable assignments it should be noted that the obligor has in any event no interest in the presence or absence of consideration, and must pay the assignee once he has notice of the assignment. The question is relevant only between assignor and assignee, and then only if the assignor is called upon to take some further step such as turning the equitable assignment into a statutory one and refuses to do so. In such a case the balance of authority[3] suggests that he will not be compelled to make good the assignment.

Under Shariah, the subject matter of the assignment and the loan are two pillars of the pillars of collateral and are considered as consideration in the contract (Zuhaily 1985). However, there is no consideration needed when distributing the policy benefits based on Shariah principles mentioned above.

[3] Milroy v Lord (1862) 4 D F & J 264 is the leading authority.

4.4Receipt for Notice of Assignment

Section 6 of the Policies of Assurance Act 1867 requires the insurer, upon request of the person giving notice of the assignment, to issue a receipt for that notice. A receipt signed by the Manager, Secretary, Treasurer or other principal officer of the insurer is conclusive evidence against the insurer of the notice having been received by the insurer.

Under Shariah, this should also be based on the principles "the origin of everything is lawful unless an authority proves one unlawful" (Suyuti, 1983) and "Muslims are bound by their conditions except the one which prohibits the permitted one or permits the prohibited one…"(Jad al-Haq1995). Thus, the parties may agree that the insurer is required to issue a receipt upon request of the person giving notice of the assignment, and that a receipt signed by the Manager, Secretary, Treasurer or other principal officer of the insurer is conclusive evidence against the insurer of the notice having been received by the insurer.

4.5Assignment before Notice

Section 3 of the Policies of Assurance Act 1867 makes a payment by the insurer before receiving a proper notice of assignment valid against the assignee in the same way as if the 1867 Act had not been passed. In such a case the assignee cannot claim the money from the insurer, but must seek redress from the assignor.

Under Shariah, the parties may agree as well that a payment by the insurer before receiving a proper notice of assignment is valid against the assignee, and in this case the assignee cannot still claim the money from the insurer, but must seek redress from the assignor, as "the origin of everything is lawful unless an authority proves one unlawful" (Suyuti 1983) and "Muslims are bound by their conditions except the one which prohibits the permitted one or permits the prohibited one…" (Jad al-Haq1995).

4.6Successive Assignments

Problems may arise where the insurer receives notice of a number of assignments of the same interest. Where all assignments are of the same type (i.e. all statutory or all equitable) the first notice will prevail. The insurer can properly pay to the first assignee, and it cannot be properly paid to the second assignee. Where one assignment is equitable and the other statutory, the position depends on the order in which they come. If the first assignment is statutory, evidence of a subsequent equitable assignment should not be accepted. The only proper course is to pay to the holder under the statutory assignment. Where the first assignment was equitable, the position is more difficult. Although on the face of it the statutory assignment is valid, it must be

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remembered that this is so only if the assignee is a person who has a good equitable title (Policies of Assurance Act 1867 s 4) and this will depend on that person having no constructive notice of the earlier equitable assignment. The insurer here is in a difficult position, for it is not possible to know who is entitled to the money without investigating the state of mind and knowledge of the second assignee at the date of the assignment. Thus, it is suggested that this is a case for making a payment of the money into court under the Insurance Companies (Payments into Court) Act 1896, and leaving the two assignees to dispute title to the money between themselves.

Regarding the position under Shariah for example where the distribution is based on debt *(al-dayn)*, where the assignee is more than one, they are considered to have equal right in forcing the assignor to settle the loan. If the assignor settles loan of one of the assignees, then the subject matter of the assignment will now move to the other assignee who has not been settled, until the assignor settles the loan; as originally the subject matter is assigned to the two assignees. And if the subject matter of the assignment can be divided, then each one of the assignees is to keep half of it as collateral. However, if the subject matter cannot be divided, the two assignees may agree between them to be keeping the subject matter for a particular period of time; that is if one keeps the subject matter for sometimes, it will then be moved to the other one (Zuhaily 1985). Hence, where policy benefits are assigned to secure loan, and there is more than one assignee it seems from the above, the most appropriate solution is to agree that each assignee is to be paid half of the policy benefits or any portion agreed between the assignees and assignor by the insurer. This is because, once the whole policy benefits are paid to only one assignee the insurer will be discharged and no more benefits will remain with the insurer, unlike where the subject matter of the assignment will still remain after settling the loan of one of the assignees.

5.0 Conclusion

According to the English law, a person who has no insurable interest may well benefit from an insurance policy based on trust policy and assignment. Similarly, an insurable interest is only necessary at the time the policy is created and the names of those interested have to be stated at the time of taking out the policy. Furthermore, the assignee has the right to enforce the policy against the company, on condition that some formalities are duly followed. In addition, under the Policies of Assurance Act 1867, if the policy has been assigned, it is required to give notice to the insurer informing him that the policy has been assigned.

Conversely, under takaful, the preferred view by the researchers is that trust policies, assignments and insurable interest over a life policy are established based on the principles of *al-Milkiyah* (ownership), *al-mirath* (inheritance), *al-Wasiyyah* (bequest) and debt *(al-dayn)*and that policy benefits cannot be assigned as a gift *(al-hibah)*.

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