BANKING ETHICS AND UNFAIR CONTRACT TERMS: EVIDENCE FROM CONVENTIONAL AND ISLAMIC BANKS IN MALAYSIA

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ABSTRACT

The ethical peril of unfair contract terms is evident from the abuse of banks' dominant position relative to bank consumers in dictating contractual terms and conditions, and asymmetrical information that causes significant imbalance of rights and obligations of bank consumers as the weaker contracting parties, placing them at a detriment. This study examines the tenets and underlying concepts of banking ethics in conventional and Islamic banks in protecting bank consumers from unfair terms in consumer contracts. This is a qualitative-based research using content analysis approach in analyzing the basics and differences between conventional and Islamic banking ethics to counter unfair terms. It is found that while Islamic banking ethics are characteristically underpinned in religion and Shariah principles, some other ethical values do bear resemblance to the ethical ideals promoted by the conventional bank. Also, good governance of the banking sector requires incorporation of ethical banking practices to complement the demands of consumer protection law towards effective protection against unfair terms. This study is of important interest to Malaysian financial regulators, bankers and bank consumers alike since the upholding of proper banking ethics would contribute to positive relationship between banks and bank consumers while advancing sustainable development of Malaysian banking industry.

Keywords: *Banking Ethics; Conventional Bank; Islamic Bank; Malaysia; Unfair Contract Terms.*

INTRODUCTION

The ethical peril of unfair contract terms is evident from the disparity between the parties allowing businesses with greater economic power to use standard forms contracts to impose terms that are disadvantageous to the weaker party, thus, existence of unfair terms becomes a norm (Saleh & Yeon, 2018). Today, standard form contracts which commonly consist of standard terms and conditions are popularly found in such business documents like catalogues, quotation forms, purchase orders, notices and agreements (Macaulay, 2018). Under the Malaysian Consumer Law, "unfair contract terms" is defined in Part IIIA, section 24A(c) of Consumer Protection Act 1999 (amendment in 2010) (CPA) as "a term in a consumer contract which, with regard to all the circumstances, causes a significant imbalance in the rights and obligations of the parties arising under the contract to the detriment of the consumer." Standard form contract in section 24A (b) CPA means a consumer contract drawn up for purposes related to particular industry irrespective whether such contracts differs from the commonly used contracts in that industry. To be specific, under consumer protection law for financial consumers in Malaysia, section 123 of Islamic Financial Services Act (IFSA) 2013 for Islamic financial service industry and section 121 of Financial Services Act (FSA) 2013 for conventional financial service industry, recognizes a financial consumer (which includes bank consumer) as one "who uses, has used or may be intending to use any financial service or product for (a) personal, domestic or household purpose; (b) in connection with a small business as may be specified by the Central Bank of Malaysia, also known as Bank Negara Malaysia (BNM)."

The insertion of unfair terms in banking contract is highly objectionable from an ethical point of view for being economically unfair to bank consumers when they are not compensated for the risks being placed on them (Gordley & Jiang, 2019). It is ethically objectionable from a contractual point of view, as in sanctity and freedom of contract (Ge, 2019), as it is an arbitrary exercise of power by the banker and bank consumer is not in the position to bargain and disagree on the said matter (McGaughey, 2018). According to Fejős (2018), the parties are not on equal footing in coming to the agreement since the bank consumer as the weaker contracting party has no power to negotiate the contract terms. Unethical practices in terms of imposing unfair terms in consumer contracts which are resorted to in limiting or avoiding liability under banking businesses may work in the immediate and short term to reduce the risk for any losses payable by banks. However, such practices undermine the confidence bank consumers may have in the integrity of the banks, and would inevitably bring about adverse effects on the reputation and performance of banks in the medium and long term (Chowdhury et al., 2019).

There are a substantial number of literature written on business ethics. However, very few papers are written on the meaning of banking ethics and the influence of conventional and Islamic banking ethics in avoiding unfair contractual terms and conditions (UCT). To fill in such gap in the literature on banking ethics from conventional and Islamic perspective, this study investigates the meaning of both respective banking ethics. The aim of this study is to examine the tenets and underlying concepts of banking ethics in the conventional and Islamic banks and the extent to which these banking ethics protect bank consumers from unfair terms in consumer contracts. In addition, it explores conceptual approaches to define banking ethics beginning from the general definition of ethics from available literature on conventional and Islamic banking, along with other available code of ethics in Malaysia. This study aims to shed light on general ethical guidelines in banking business of conventional and Islamic banks in avoiding unfair terms in consumer contracts.

The structure of the paper is as follows. While this section is on the introduction, subsequent section provides the review of literature to have a clear understanding of the ethical peril of UCT and the importance of banking ethics in both conventional and Islamic banks. Next section discusses the methodology of the study while the subsequent section discusses on findings of this study such as the foundation, definition, and the development of interpreting banking ethics in conventional and Islamic banking. In doing so, this study will cover the topic on the unique tenets of banking ethics of both banking systems. The last section concludes the paper by reviewing the classification, similarities and differences of banking ethics of both banks and providing some suggestions on self-regulation of ethical banking conduct according to the common banking ethics that all bankers are meant to uphold, specific to avoid UCT that may detriment bank consumers.

LITERATURE REVIEW

There is a general consensus among lawyers, judges, and legal academicians on the complete elimination of bargaining in consumer contracts due to widespread use of standard form contracts by business firms in their dealing with customers (Johnston, 2005). However, it has become common for businesses to abuse the standard consumer contracts by including unfair boilerplate terms and conditions that allocate bargaining power unfairly to the drafting party (Willett, 2016), resulting in economic and ethical irrationalities about fairness in contracts (Gilani, 2015). Banks do have ethical responsibility to bank consumers and stakeholders with ethics having an important role to play since their record and perception of ethics affect their reputation in ensuring long term sustainability or failure in the banking industry (Cowton, 2002).

Despite so much importance for sustainability of banking industry, the literature suggests that ethical concerns in banking sector principally focus on the need for ethics in banking conduct, also known as banking ethics. Banking ethics is designed to determine the standards of behaviour to create ethical banker or to dictate a dignified conduct for banking institutions and bank employees in preventing scandals that would cause disruption to banking sector (Fetiniuc & Luchian, 2014). At the international level, the International Monetary Fund (2014) has made a call for ethics to be a centrepiece way of running the banking system by bankers "complying with the spirit of the regulation and think less transactional about their work but giving more emphasis to their obligations to their customers."

Banking ethics has become increasingly important since the purpose of banking activities is to create values for bank consumers whereby an ethical environment in the banking sector provides the support in maximising long-term value (Musa, 2015). Many studies have been conducted focusing on the scope of conventional and Islamic banking ethics. Hall and Martin (2019) popularly discussed aspects pertaining to banking ethics in conventional banking focuses on banking scandals by bankers who "were graduates of best business programs but failed to convey ethics, social responsibility and good moral habits" in banking practices. Countless banking scandals in the interest-based conventional banks demonstrate that bankers are lack of ethos, while virtue and clearly defined social purpose with the society are absent in banking institutions (Borg & Hooker, 2019).

Considering the socially oriented Maqasid al-Shariah, Islamic business ethics becomes an integral component of Islamic banking (Oladapo et al., 2019) since it is anchored on fairness, moderation, just and benevolent as well as respecting the rights of contracting parties and avoiding exploitation, nepotism or other deceptive acts, and all the while mankind need to adhere to their roles as vicegerent or steward of Allah on earth (Beekun & Badawi, 2005). Indeed, since the foundation of Islamic banking business philosophy is closely tied to religion, thus IBs are considered to have ideal ethical identity consistent with Shariah principles such as promoting “al-adl and al-ihsan” (justice and welfare) to the public while seeking barakah (God’s blessings) in achieving worldly and hereafter well-being, which is commonly communicated in their annual reports (Haniffa & Hudaib, 2007).

In essence, banking ethics should foster the ethics of justice and ethics of care which compliments each other in understanding the other contracting party’s perspective and not just by performing what is required in banking business (Miller et al., 2019). Also, banking ethics hold great importance as “a culture of honesty and accountability that induces bankers to do the right thing in protecting the interests of its customers and shareholders even if nobody is watching” (Lagarde, 2014). All the above studies were conducted for justifying the importance of banking ethics that aspire to be comprehensive need for both conventional and Islamic banking system in avoiding behaviour that depletes trust of bank consumers and destabilize the global economy. However, the unethical practice of disparity of bargaining power of banks and abusing such dominant position is perceived arbitrary and unfair to the extent of causing detriments to bank consumers regarding UCT was not studied in an extensive manner. Thus, this gap is what this study intends to fulfil in the literature.

RESEARCH METHODOLOGY

This is a qualitative-based research using content analysis approach. Data for this study were collected from the review of literature such as academic journals, archival records, websites and books in understanding and analysing the concepts, definitions, characteristics, basics and differences between the conventional and Islamic banking ethics in avoiding unfair terms in consumer contracts.

RESULT AND DISCUSSION

The activities of banking business is all about managing rewards and exposure to real risks with ethical considerations forming a fundamental influence of their risk-taking activities (Green, 1989). According to Green (1989), this means that the bankers’ role of stewardship is based on trust, trusted by bank customers to look after their monies and having a duty to lend such money responsibly whereby the welfare of the borrowing customers in good and bad times becomes its major concern in its business proposition. Thus, honesty and fair dealings are explicitly important in banking business (Amin, 2018). This section will discuss the general meaning of banking ethics and its scope in the conventional and Islamic banks, respectively.

Defining Banking Ethics in Conventional and Islamic Banking

The precise definition of banking ethics is difficult to define especially more so for Islamic banking since it has to include the ethical standards of Shariah and those that apply to conventional banks as well. However, previous studies on ethics primarily acted as a guideline to determine the general scope of ethics as exemplified in Table 1 below.

Table 1 Various Definitions of Ethics

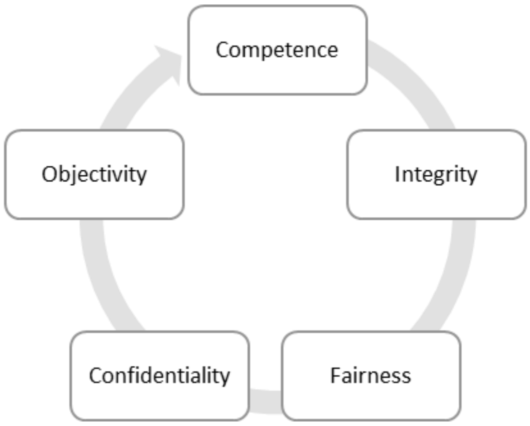
Authors	Definition of ethics
Hazard (1994-1995)	"Norms shared by a group on a basis of mutual and usually reciprocal recognition".
Erhard et al. (2009)	"The agreed on standards of what is desirable and undesirable; of right and wrong conduct; of what is considered by that group as good and bad behaviour of a person, subgroup, or entity that is a member of the group, and may include defined bases for discipline, including exclusion".
Schwartz and Carroll (2003)	Ethics is measured by examining the ends or consequences of actions performed which will be ethical "when it promotes good of society or more specifically, when the action is intended to produce the greatest net benefit (or lowest net cost) to society when compared to all of the other alternative".
Sabahuddin (2014)	Ethics is a set of moral principles distinguishing right from wrong with the objectives of evaluating human practices in line with moral standards and providing advice on moral behaviour in any situation in making well-founded judgements or recommendations.
Ismail and Zali (2014)	Islam accepts ethics as good value that enhances company's performance since ethics is guided by Shariah rules.
Amin (2018)	Ethics in Islam emanates from *akhlaq* (good character) with values of moderate, harmonious and fairness in doing is guided by the divine code of conduct with a comprehensive "application of Prophet Muhammad's (pbuh) traits and the prescription of ethical practices enunciated by the al-Quran to current financial transactions".

Based on the above studies, it can be summed up that ethics are standards of values and morals embraced by individuals or organisations in determining what is 'ethical or unethical behaviour' whereby in the context of organisation there must exist provisions that outline policies in protecting employees and bank customers from unfair treatment. In this context, 'ethical behaviour' is defined as a "good or expected type of conducts", while 'unethical behaviour' is simply referred to as "unacceptable behaviour" such that any behaviour devoid of good characters is considered a bad behaviour or an illegal act that may be subject to punishment by law and that in the professional world there is absolutely no room for any form of unethical behaviour or failure of ethical leadership in any circumstances (Collins, 2009).

As for banking ethics, although there is no single definition of banking ethics but generally speaking, banking ethics is concerned with the discipline of making specific judgements of the good from bad, right from wrong, as well as fair and unfair in banking business. For Islamic banking, the ethos of Islamic banking ethics is at the heart of Islamic banking emphasising on distinctive ethical behaviour and moral accountability (Elnahass et al., 2018), based on value-based ethical system for banking business (Khan et al., 2019) and defined by Shariah as guided by the holy Quran and Sunnah of the Prophet Muhammad (pbuh) (Ali et al., 2018). Fetiniuc and Luchian (2014) further defined banking ethics as a branch of ethics that prescribe the set of ethical standards, rules and principles within the banking business, examines moral or ethical practices arising in the banking sector, as well as engaging special duties or obligations that bank employees should adopt, which should be followed in the banking activities of banks and employees of the banks.

It should be noted that ethics is different from that of banking ethics. According to the report of the Banks Association of Turkey (2014), while ethics is a system of criteria that measures and examine the “values, norms and rules underlying the individual and social relations on such moral grounds as right and wrong or good and bad”, banking ethics on the other hand “regulates the relationships of banks with each other or with their customers, shareholders and employees to assure sustainability in existing reputation, reliability of banking profession in the public, to enhance and maintain such reputation, to protect and maintain stability, consistency and confidence in banking sector”.

Diagram 1 FSPB Code of Ethics (CoE)



Another common way of defining banking ethics is by a written code of ethics, which explicitly lines out ethical and unethical behaviour and therefore identifying the consequences of unethical practices (Abuznaid, 2009). Islamic code of ethics is also one of the management tools of control that guide people. According to Amin (2018), a good culture of banking ethics must include Islamic values like “*falah* (well-being), honesty, self-purity, modesty, integrity, kindness, equity minimising wealth disparity and fair dealing inter alia, must be included in the code of conduct” to promote healthy banking environment to curb the risk of inclusion of unfair terms in consumers contracts.

In January 2016, the Financial Services Professional Board (FSPB) has officially published the Code of Ethics (CoE) (refer Diagram 1) for the Financial Services Industry in Malaysia, which sets out the core ethical principles that are applicable to institutions across the industry including banking, capital markets, insurance and Islamic finance. FSPB is an industry-led initiative, which was launched by Bank Negara Malaysia and the Securities Commission in Kuala Lumpur in September 2014. The FSPB CoE aims to raise the bar of professionalism and ethics across the financial services industry in restoring, maintaining and enhancing public trust in the sector. Organisations and individuals across the financial services industry are to uphold and abide by the following ethical principles in achieving of a high standard of professionalism and ethics across the industry. Principle 1: Competence requires all related parties to develop and maintain the relevant knowledge, skills and behaviour in ensuring all business activities are conducted professionally and proficiently with due diligence, training, expertise and practical experience. Principle 2: Integrity demands honesty and transparent in all business dealings by being accountable, trustworthy and to avoid any act that would damage the reputation or discredit the industry. Principle 3: Fairness means to act responsibly by embracing fairness, transparency, respectful and consider the impact of decisions or actions to all stakeholders. Principle 4: Confidentiality requires protection of confidential and sensitive information of customers or organisations from unauthorized persons, unless consent is given or disclosure is required by law or regulation. Principle 4: Objectivity requires avoidance of conflict of interest, bias, undue influence of other people that overrides business or professional judgement. The FSPB CoE aims to promote a strong culture of professionalism that projects a resilient, enhance reputation and public interest in the FSI. The CoE contributes towards public oversight of financial service industry (FSI), complements and does not replace any relevant laws and regulations, which is to be adopted voluntarily by Malaysian FSI.

The FSFB CoE sets out the core ethical principles that FSI should adhere as guidance in their decision-making and conduct. To ensure a holistic reform, conventional and Islamic banks have step up their ethical banking standards and professional conducts in being "transparent, accountable and professional". Banks normally have a set of code of ethics and conduct in guiding them to implement ethical behaviour in doing banking business. A code of ethics and conduct are a set of principles and values designed and employed by banks as a guide to their organisational structure, banking activities, policies and decisions which are significant to their reputation, productivity and business bottom line (Ibrahim, 2015). It is created as a tool in communicating the banks' philosophy to stakeholders towards promoting ethical behaviour in banking sector and ensuring higher standards of behaviour (Ismail & Zali, 2014). For example, Maybank's code of ethics and conducts required directors and employees to uphold highest integrity and core values to discharge their duties in dealing with stakeholders and AmBank Group Code of Ethics comprising of six principles: "compliant with law, responsible, ethical, accurate, trustworthy, and equitable guides employees to conduct banking business honestly and with integrity".

Banking Ethics in Conventional Banks

From conventional perspective, the word ethics originates from the Greek word "ethos" which means "character or custom". Traditionally, banks were seen as financial institutions which focuses only on financial matters leading to economists and policy makers believing that ethics should take a back seat in guiding and shaping the banking transactions (Jaseem, 2015). Unfortunately, the disillusionment with profit maximisation at all costs by the conventional banking has resulted in some unethical behaviour which subsequently has attracted growing interest in ethical good conduct in banking or banking ethics in gaining back the trust while restoring integrity in banking institutions and banks' employees (Mathkur, 2019).

The conventional banking industry was rocked by serious scandals and controversy due to unfair treatment to bank consumers which go against "fair treatment principles and international best practices" of multilateral organisations like Organisation for Economic Co-operation and Development (OECD) and the World Bank. In 2017, the big four Australian banks were ordered by the Australian Securities and Investment Commission (ASICS) and Australian Small Business and Family Enterprise Ombudsman (ASBFEO), to abolish unfair contract terms of small business (SME) by making improvements to their loan contracts in ensuring they satisfy unfair contract terms law. In the 2018 World Bank Annual Report, the South Africans bank were rapped for "making banking products too complicated, making it difficult for customers to compare products, charging unfair bank fees, and not disclosing appropriately the terms and conditions". Also, the Irish Law Society Gazette 2018 has warned that attempts by Irish banks to reserve absolute discretion to themselves to vary interest rates in consumer loans in their price variation clauses as unfair terms, which might be the next banking scandal like the recent infamous "tracker mortgage scandal" that rocked Irish banks (to date banks have paid €580 million in redress and compensation to loan lenders for charging them the wrong interest rate for mortgage or wrongly denying their entitled tracker mortgage rate). These banking controversies have outraged citizens and given the scale, scope, and economic impact of such matter so far, it becomes obvious that banking ethics is much needed.

The demand for banking ethics is obvious proof of man's failure in following a value-free banking system void of balanced rules regarding contractual terms and conditions, fair practices in ensuring bank consumers are treated fairly and offered banking products or services that are appropriate for them. Due to the importance of banking ethics in and the dynamic impact of banking sector to the world's economy, there is a need for the banking sector to become ethical in managing trust of stakeholders in banking operations. The basic tenets of business ethics in banking or banking ethics in conventional banking to counter UCT include (Bozovic, 2007; Koslowski, 1995):

Table 2 Principles of Banking Ethics to Counter UCT

Principles	Remarks
Mutual Trust	Important to successful banking operation since the relationship of banker and bank consumer relied on mutual trust.
Mutual benefit and interest	This requires banks and bank consumers feel important and not cheated.
Good Intentions	No intention by banks or bank consumers to cheat or treat one another in an immoral banking conduct such as theft, fraud or other undesired or immoral banking activities.
Business Compromise and Tolerance	Harmonising the conflict of interests between banks and bank consumers.
Improving Business behaviour	Banks to take responsibility on their mistakes and respond in due manner quickly to avoid further detriment to bank consumers.
Demonopolisation of one's own behaviour	To ensure that banks' monopolistic behaviour in the market is not tainted with unethical or immoral conduct.
Avoid Conflict of Business Interests and Interests of Consumers	Banks to avoid any conflict of interests between them and bank consumers.
Justice in Proper Conduct and Fairness in Exchange	To promote justice and fairness in banking business, banks need to practice ethical proper conduct in dictating contractual terms.

The impact of the aforementioned banking scandals has tarnished the reputation of the conventional banks involved and consequently have wide-ranging repercussions to the economy and well-being of bank consumers. Clearly, the lack of transparency, disclosure, insufficient accountability and irresponsible banking conduct by banking institutions has led to the desire for banking ethics in avoiding common usage of unfair contractual terms and conditions.

Banking Ethics in Islamic Banks

Islamic banking derives its "key strengths from its inherent underlying principles and goals of social justice that are key features of its embedded governance, including the prohibition against unethical or unlawful conduct" (Aziz, 2015). It is also a part of the broader concept of ethical foundation of Islamic economics which aims to introduce a system of values as well as Islamic ethics into the economic sphere (Djojosugito, 2008). Due to this foundation of ethics-based operation, the governance dimensions for Islamic banks includes transparency, accountability and ethics which are significantly related with ethics being highly perceived as the key dimension in governance for the Islamic banking sector (Oladapo et al., 2019). The issue of ethics is more crucial in Islamic banks because they should strictly operate their banking business in accordance to Shariah (Islamic law) which is guided by the holy Quran and Sunnah (practices, traditions, and sayings of Prophet Muhammad) whereby its practical application is based on Islamic economics (Hassan & Mollah, 2018). Islamic banks usually described themselves as providers of ethical financial services since they do not extend financing to any project which conflict with Islamic moral value system and harmful to societal well-being such as a brewery factory, a casino, a night club or any other activity that Islam prohibits (Wajdi & Irwani, 2007). Furthermore, Islamic religious preference of avoiding any unethical marketing practices such as injustice and harmful products, also guides their banking business especially in the creation of innovative financing products and services (Amin et al., 2014).

Defining Islamic banking ethics presents a unique difficulty since its ethical norms and standards are drawn both from Shariah principles as well as the conventional banking. Thus, an accurate definition needs to consider both influences. Ahmed (2011) defined Islamic banking ethics as "the system of laws and regulations of right and wrong behaviour that are enforceable by the state". Ismail and Zali (2014) translate banking ethics as "good behaviour by not involving in haram activities like *riba* (interest), *maysir* (gambling), *gharar* (uncertainty) as well as having good character like forgiveness, good relation among people and care for the environment, and generosity in doing banking business like being transparent and full disclosure of relevant information, with the end result of achieving *Maqasid al-Shariah*". In addition, banking ethics in Islam also reflects the *maslahah* (individual and societal well-being) which implies that Islamic banks would be ethical when they enhance the benefit of the society (Noor & Nor, 2018).

In Islam, highest emphasis is placed on ethical values in all spheres of human life. Islamic moral principle and ethical codes can be derived from Quranic verses and the numerous teachings or Sunnah of the Prophet (peace be upon him). For example, the holy Quran says (3:110): "You are the best of nation that has been raised up for mankind; you enjoin right conduct, forbid evil and believe in Allah." Similarly, the Prophet (pbuh) also says: "I have been sent for the purpose of perfecting good morals." (Ibn Hambal: 8595). Islam requires its believers to follow certain moral and ethical principles in all aspects of private and public life. As for business dealings which include banking business, Islam has prescribed its own unique value-based ethical system which prescribes specific guidelines for governing business ethics such as: (i) general rules of business conduct, (ii) identifying ethically desirable business types like education, recycle or social-environment friendly business, and (iii) specifying the undesirable transaction modes like pornography, gambling or harmful to environment. Although Islam allows complete freedom to business enterprise, however it prohibits harmful or exploitative practices such as imposing unfair contract terms and conditions to other traders or consumers in the market as well as placing restrain in eliminating injustice or checking malpractices and unlawful business operations.

Islam as a way of life is all encompassing which means that banking ethics cannot be separated from ethics because it refers to moral principles or code of conduct that guides the banking environment (Muhammad et al., 2008). According to Haniffa and Hudaib (2007), Islamic banks are expected to maintain ethical behaviour as their corporate social responsibility through promotion of *al-'adl wal ihsan* (justice and benevolent) to stakeholders while seeking God's pleasure and *barakah* (blessing). Nor (2012) defines ethical behaviour as a moral value prescribed by religion which concerns with "doing what is right and acceptable by the society" such as "truthfulness, honesty, justice and fairness". Indeed, the principles of Islamic banking ethics which is based from the *Maqasid al-Shariah* (objectives of Shariah) promotes human harmony, strong spirit of brotherhood, establishing socio-economic justice and being moderate in engaging business treatment with other traders or bank customers (Noor & Nor, 2018). Above all, Islamic banking is characterised by certain tenets of Islamic banking ethics (Ahmad, 2009; Azmi, 2005; Hasanuzzaman, 2003) in avoiding unfair terms in consumer contracts as follows:

Table 3 Components of Islamic Banking Ethics to avoid Unfair Contract Terms

Component of Banking Ethics	Remarks
Freedom of Economic Pursuit: Trade on Mutual Consent/ Consideration	A legally valid banking transaction necessitates mutual consent between parties and not based on coercion. Islam forbids exploitation via unfair contracts on banking services and products. Unfair contracts terms can be altered and renegotiated by mutual consent.
Truthfulness and Honesty in Banking Transactions	Islam propagates honesty in banking business such that (as said by the Prophet (pbuh)) that: "The truthful merchant is rewarded in the Hereafter with prophets, holy warriors, martyrs and pious people." (*Tirmidhi*, No: 1130). Honesty in dealing would negate unfair contractual terms.
Trustworthiness in Banking Transactions	It is a moral virtue on all bankers to work with sincerity and purity of intention not to withhold material information or other dubious tactics in selling banks' products and services.
Generosity and Leniency in Banking Transactions	Banks as creditors should be generous and easy in demanding money due from bank consumers while the latter should repay debt on time with due thanks and politeness.
Honouring and fulfilling Banking Obligations	Islam places great importance in fulfilment of contract, duties and obligations. To safeguard the interests of both contracting parties, terms and conditions of the contract should clearly specify the quality, quantity and price of the banking products and services in question.
Equity/Fair Treatment of Bank Consumers	To obviate bitterness between banks and bank consumers, Islam promotes the brotherhood spirit and love between them in balancing the rights and obligations of both contracting parties.
Applying *Ihsan* (benevolence) and *ÑAdl* (justice)	The doctrine of *ihsan* which means benevolence or proficiency in dealing with others requires banks to make ethical decisions and behave according to fairness and justice in dealing with bank consumers. While ***Ñadl***

	eliminates injustice, exploitation and achieve balance of contractual rights and obligations, *ihsan* decorates banking sector with kindness, generosity and mutual cooperation.
Disapproved Practices: Contract of *al-gharar* (uncertainty, risks)	In Islamic terminology, a sale involving risks where bank consumers do not know or even excessive that unfairly disadvantaged them is prohibited.
Not to Arbitrarily Fixing the Prices	Injustice to bank consumers include bank imposing unfairly high prices which may be considered excessive (unfair).
Avoid Exploitation of Bank Consumer's Ignorance of Market Conditions	Banks are required to provide adequate disclosure of material information to contract in avoiding the problem of asymmetrical information that is unfair to bank consumers.
Consciousness of Allah and His Prescribed Priorities	Banking activities must be compatible with Islamic ethics in avoiding unfair contractual terms and conditions as prescribed by the Qur'an which stresses that every action and transaction must be subservient to *Maqasid al-Shariah* towards protecting bank consumers from unfairness.
Service Motive	Banking activities should be consumer based as not to take advantage of bank consumers by including unfair contractual terms and conditions which is incompatible with the teachings of Qur'an.

Indeed, Islam is not only a religion but a universal way of life for mankind and civilisation. The moral and ethical principles of Islam are founded on divine revelation which leads to the value system in banking that Islam visualizes. This fact implies that the ethical banking principles of Islam which underpins Islamic banking helps in mobilising the existing banking services and products and employing them in the best way for sustainability of Islamic banking and welfare of bank consumers. For this reason, Islamic banking ethics emphasised on moral discipline, trust, honesty, benevolence and mutual consideration in the relationship with all stakeholders of the Islamic banks in avoiding unfair contractual terms.

RESULTS AND DISCUSSIONS

A comparative analysis of banking ethics under conventional and Islamic banking that offers protection from unfair contractual terms can be seen in the following Table 4.

Table 4 Banking Ethics of Conventional and Islamic Banking

Banking Ethics	Conventional Banking	Islamic Banking
Application of free market mechanism	√	√ (support with qualification that the Creator is the real and absolute owner of universe and mankind)
Mutual Trust	√	√
Justice in Conduct and Fair Treatment of Bank Consumers	√	√ (Apply *Ihsan* and *'Adl*)
Avoid Conflict of Business Interest with Interest of Consumers	√	√
Truthfulness and Honesty in Banking Transactions	√	√ (Contract of *al-Gharar* is prohibited)
Avoid Exploitation of Bank Consumers	√	√

Ethics is rooted in religion	X	√ (Consciousness of God and Observance of Shariah)

The analysis of the data in Table 4 provides a number of insights. First, the form of banking ethics used in adopting consumer protection measures against unfair contract terms is quite similar in ideals and practices promoted by both conventional and Islamic banks. Some other ethical values of Islamic banks that bear resemblance to the ethical ideals and practices promoted by the conventional bank to counter unfair contractual terms and conditions include: application of free market mechanism, mutual trust, justice and fairness in banking business, avoiding conflict of interest, being truthful and honest in banking conduct, and avoiding exploitation or harm to bank consumers. However, although both banking systems visualizes a free market mechanism but for Islamic banking this concept of freedom is acceptable only with qualifications since Islam does not support the unbridled freedom concept claimed by conventional banking. For Islamic banking, the Creator is the real and absolute Owner of universe and mankind with mankind being created as God's viceroy on earth and their actions are restricted within limits stated by God and laid down by God's Messengers.

Second, it is found that while Islamic banking ethics are characteristically underpinned in religion and Shariah principles, the conventional banks are not based on religious principles. Islamic banking is guided by Islamic economics which operate based on *fiqh-u–muamalat* (Islamic business law) for their banking transactions, and at the same time they also follow Malaysian financial laws and regulations of Bank Negara Malaysia as the Central Bank of Malaysia. Islamic banking completely prohibits interest and considers profits from indebtedness as unethical, thus they work on profit and risk sharing in ensuring fair investment, fair wealth creation and treatment of bank consumers (Muda et al., 2013). In comparison, with the aim of earning maximum profit, the conventional banks operate and functions on capitalist principles by lending money with pre-determined rate of interest on bank consumers and they bear all risks to pay back the loan with compounded interest (Yanikkaya et al., 2018). In summary, Islamic banking is an ethical banking system which is guided by Islamic principles having different objectives, procedural and operational characteristics in contrast to conventional banking which is an unethical banking system due to the nature of capitalism which is based on man-made laws, profit-oriented through making money through interest (Hussein, 2016) and funding unethical projects like "rain forest removal, speculation on global food prices and manufacturing of cluster bombs" (Sheriff, 2014).

Third, good governance of the banking sector requires incorporation of ethical banking practices to complement the demands of consumer protection law towards effective protection against unfair contract terms. Good governance of the banking industry requires the incorporation of ethical practices which incorporates fairness to complement the demands of consumer protection law. The concept of *'adl* (justice) in Islam is a divine virtue that laid emphasis on both contracting parties to act justly, fair dealing, equilibrium, balance, impartiality between rights and obligations to do justice to one another at every stage of the contract uninfluenced by the injustice or exploitation of UCT. The impact of applying justice to banking activities are very significant in avoiding detriments of bank consumers from UCT while determining fair banking conduct and enforcing a balanced rights and obligations of both contracting parties. If bank consumers face detriments from UCT, it is only a matter of time before they turn elsewhere for a more reliable and cheaper solutions like resorting to crowdfunding (Noor et al., 2019). Another divine virtue of Islamic banking ethics is the concept of *ihsan* which decorates the banker-customer relationship with benevolence, mutual cooperation, affection, proficiency, magnanimous or fineness in persuading the banks to avoid exploitation by inserting UCT in banking contracts.

Fourth, integrity, affinity and responsibility are closely intertwined, as are consumer protection law and ethics. According to Cowton (2002), 'integrity' of banking industry is important in generating the trust necessary for any banking system to sustain and flourish; 'responsibility' highlights banks' need in considering the outcome of their lending policies to the stakeholders; while 'affinity' refers to a set of relatively novel ways in bringing together depositors and borrowers in banking system. Lewis and Soureli (2006) also established that integrity plays a crucial role in banking business since banks have the responsibility in managing the funds of depositors and subsequently lending them to other debtors. This indicates that ethical conduct of doing banking business is significant in maintaining customers' trust in banks' integrity to the extent that such trust and customer satisfaction would enhance customers' loyalty to the banks (Hoq et al., 2010). In addition, fairness and compensation law provides a resolution when ethics cannot. In such context, Paulet (2011) opined that banking ethics may also be seen as a "necessary compliment to legislations and regulations" with government and BNM as financial regulator to give more importance to transparency and allowing BNM as the central bank to force banking institutions to have their own code of ethics. Banking sector as an intermediary between the depositor and creditor must realise the importance of banking ethics since such ethical behaviour of banks and bank employees promotes banking and that their business and reputation depend on it (Fetiniuc & Luchian, 2014).

The overall study suggests that the conventional and Islamic banking ethics are similar and that ethical conduct as well as banks' reputation starts with the individual. Other findings suggest that for Islamic banking, religion plays a major influence through the concepts of tawhid or accountability to God. Also, there is significant association between both banking ethics in avoiding of unfair contractual terms. Moreover, it was observed that compliance to Shariah does not guarantee ethicality in protection of bank consumers from UCT especially since the focus is on Shariah compliant as opposed to Shariah base.

This study calls for a banking environment that promotes four shared values of integrity, virtue, values and responsibility in taking ethics seriously in internal governance of banks. The idea of prioritising banking ethics requires bankers to adopt 'values-based behaviour' that promotes individual integrity such as not abusing their dominant position in drafting fair and balance contractual terms and conditions that are not detrimental to bank consumers in attracting and retaining them in the competitive banking environment. Bankers are expected to adopt a culture of personal responsibility and self-governance in doing the right conduct as of no one is watching by dictating fair terms and conditions in consumer agreements, as well as ensuring the relationships with bank consumers are fair, just, balance and honest. Both conventional and Islamic banks should strictly follow their internal code of ethics and professionalism to sustain in the competitive financial market. Immense bank consumer awareness is needed to be aware of any UCT in banking contract to protect and avoid detriments to their rights. Also, BNM should regulate conventional and Islamic banking systems to take an oath to behave ethically, and with integrity. This oath could be short containing commitments of personal work principles but rife with platitudes of values-based behaviour in building trust and encouraging ethical conduct. Finally, it is imperative to establish a new Islamic new key performance indicator for Islamic banks to be known as iKPI that upholds objectives of Shariah (*Maqasid al- Shariah*) in evaluating the performance of employees of Islamic banks via the abovementioned shared values and a similar KPI for the conventional banks.

CONCLUSION AND RECOMMENDATIONS

In conclusion, it is important for banks to avoid unfair contractual terms and conditions in a responsible and ethical manner that highlights sustainable banking since a bank's record and the perception of its banking ethics affect its reputation and in ensuring their long term sustainability or failure. Banks should oblige affirmatively in treating bank consumers fairly with such concept being embedded in their corporate conduct and practices. By embracing values-based conduct and exercise ethical restraint, banks would regain trust and good name even within the expectation of gaining profit. Self-regulation of strong culture of banking ethics is necessary as a pre-condition for better behaviour and trust in delivering fair values to bank consumers while ensuring proper functioning for banks to stay ahead of developments. Focusing on banking ethics is the best way forward for financial regulation in Malaysia since ethical behaviour of bankers is a major component of financial stability.

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