

**Islamic Business Law:  
Theory and Practice  
LAW-LW.12236.001  
FH 330, Mondays, 4:00 – 5:50**

*Course Outline*

The last forty years has witnessed the rise of a new niche in the global financial economy Islamic finance. From humble beginnings in the sixties as an experiment in cooperative finance, it now exceeds 1 trillion USD in assets under management. Islamic finance is now well-established in centers of international finance such as London, Dubai, and Kuala Lumpur, and this sector is reasonably expected to continue growing at a double-digit rate for the foreseeable future.

This course will provide an overview of the theoretical doctrines that give rise to Islamic finance and an introduction to its contemporary practice in various market contexts. We will begin with the religious impulse that gives rise to Islamic finance, including, different Islamic critiques of conventional finance and why Islamic finance is claimed to be a superior model. We will then turn to classical Islamic commercial law, and study the two principle classical doctrines of Islamic commercial law that seem to mandate the creation of alternative financing models, *ribā* (often translated, incorrectly, to “usury”) and *gharar* (often translated, incorrectly, as “speculation”). We will also cover the basic building blocks of Islamic commercial law, studying rules governing sales, leases, loans, pledges and other fundamental commercial law relationships as well as Islamic rules governing business organizations such as general and limited partnerships.

After completing an overview of historical doctrines, we will turn to how these doctrines were modernized to produce a “modern” Islamic commercial law, something that enabled the rise of contemporary Islamic finance. We will consider a broad range of Islamic financial contracts across various markets, including, consumer banking and finance, Islamic deposit taking banks, Islamic corporate finance (e.g., *sukuk*, sometimes called “Islamic bonds”) and Islamic derivatives. We will then consider the legal structure undergirding Islamic finance and use it as an example of the advantages/disadvantages of public ordering versus private ordering. The course will conclude with different critiques of Islamic finance.

At the end of the class, students should be able to understand Islamic finance both as a series of ethical commitments and a system of financial intermediation that in many ways is similar to conventional finance. In addition to obtaining a solid and perhaps useful education in

fundamental concepts of Islamic commercial law and their modern transformations and applications, the course will also provide students with an excellent introduction to wider issues related to banking and finance generally.

Note: There will not be class on September 16. Instead, a makeup will take place on September 20.

### Reading

There are three required books for this course:

Frank Vogel and Samuel Hayes, *Islamic Law and Finance: Religion, Risk and Return* (1998)

Mahmoud El-Gamal, *Islamic Finance: Law, Economics and Practice* (2008) (available in electronic format in the NYU library)

Mohammad Hashim Kamali, *Islamic Commercial Law: an Analysis of Futures and Options* (2000)

Readings outside of these three books are largely available electronically by clicking on the links provided in the syllabus. Readings lacking a hyperlink can be found in the course supplement. I have indicated readings included in the syllabus using (Supplement).

### Grading

Students will write three 1,500 word papers which are due October 2, November 4 and December 10. The first paper involves a comparison between a classical doctrine of Islamic commercial law with its common law counterpart. The second paper should take up an issue arising out of modern Islamic commercial law and the various financial contracts used in contemporary Islamic finance. The third paper will discuss the regulation of the Islamic financial sector.

The three papers will constitute 80% of the student's overall mark (each paper 26.7%). The remaining 20% will be determined by class participation.

## Reading List

### Part I – Classical Islamic Commercial Law

#### 1. Meeting 1 – **Introduction to Islamic Law** – September 9

Baber Johansen, Bernard G. Weiss, Harald Motzki "[Islamic Law: Overview](#)" *The Oxford International Encyclopedia of Legal History*. Oxford University Press, 2009.

Baber Johansen, Bernard G. Weiss, Harald Motzki "[Islamic Law: Sources and Methodology of the Law](#)" *The Oxford International Encyclopedia of Legal History*. Oxford University Press, 2009.

Baber Johansen, Bernard G. Weiss, Harald Motzki "[Islamic Law: Legal and Ethical Qualifications](#)" *The Oxford International Encyclopedia of Legal History*. Oxford University Press, 2009.

Baber Johansen, Bernard G. Weiss, Harald Motzki "[Islamic Law: Transmission and Authenticity of the Reports from the Prophet](#)" *The Oxford International Encyclopedia of Legal History*. Oxford University Press, 2009.

Rudolph Peters "Individual Effort of Legal Reasoning (Ijtihad)" *The Oxford International Encyclopedia of Legal History*. Oxford University Press, 2009.

Christian Miller "[Legal Norms in Islamic Law, Production of](#)" *The Oxford International Encyclopedia of Legal History*. Oxford University Press, 2009.

Baber Johansen, Bernard G. Weiss, Harald Motzki "[Islamic Law: Spheres of the Law in the Fiqh](#)" *The Oxford International Encyclopedia of Legal History*. Oxford University Press, 2009.

Aron Zysow "[Rights In Islamic Law](#)" *The Oxford International Encyclopedia of Legal History*. Oxford University Press, 2009.

"The Qur'ān and Sunnah on Contract and Commerce," Chapter 3, Vogel and Hayes, pp. 53-69.

*Selections from the Quran* (Supplement).

*Selections from the Sunnah* (Supplement)

2. Meeting 2 – **Introduction to Classical Islamic Commercial Law: the Prohibitions** – September 20, 2:00 p.m. - 03:50 p.m., No class Sep. 16

“Islamic Laws of Usury, Risk and Property,” Chapter 4, Vogel and Hayes, pp. 71-95.

“Two Major Prohibitions: *Riba* and *Gharar*,” Chapter 3, *Islamic Finance: Law, Economics and Practice*, Mahmoud El-Gamal, pp. 46-63.

*The Distinguished Jurist’s Primer*, Ibn Rushd, pp. 158-65; 171-5. (Supplement)

*The Distinguished Jurist’s Primer*, Ibn Rushd, pp. 179-98. (Supplement)

*The Distinguished Jurist’s Primer*, Ibn Rushd, pp. 198-202. (Supplement)

3. Meeting 3 – **Introduction to Classical Islamic Commercial Law: Contracts** – September 23

“Islamic Law of Contract,” Chapter 5, Hayes and Vogel, pp. 97-105.

*The Distinguished Jurist’s Primer*, Ibn Rushd, pp. 203-7; pp. 230-1; pp. 240-63. (Supplement)

*The Distinguished Jurist’s Primer*, Ibn Rushd, pp. 264-81. (Supplement)

*The Distinguished Jurist’s Primer*, Ibn Rushd, pp. 282-3. (Supplement)

4. Meeting 4 – **Introduction to Classical Islamic Commercial Law: Gratuitous Contracts and Business Organizations** – September 30

“Islamic Law of Contract,” Chapter 5, Hayes and Vogel, pp. 105-28.

“*Qard* (loan of fungible commodities),” Chapter 2, *Unlawful Gain and Legitimate Profit in Islamic Law*, Nabil Saleh, pp. 35-48. (Supplement)

*The Distinguished Jurist's Primer*, Ibn Rushd, pp. 397-404. (*hiba* – gift) (Supplement)

*The Distinguished Jurist's Primer*, Ibn Rushd, pp. 379-82. (*'āriyya* – loan of a tangible thing) (Supplement)

*The Distinguished Jurist's Primer*, Ibn Rushd, pp. 375-8. (*wadī'a* – bailment) (Supplement)

*The Distinguished Jurist's Primer*, Ibn Rushd, pp. 355-9. (*ḍamān/kafāla* – guarantee) (Supplement)

*The Distinguished Jurist's Primer*, Ibn Rushd, pp. 360-2. (*ḥawāla* – credit payment mechanisms) (Supplement)

*The Distinguished Jurist's Primer*, Ibn Rushd, pp. 363-7. (*wakāla* – agency) (Supplement)

*The Distinguished Jurist's Primer*, Ibn Rushd, pp. 301-6. (*sharika* – partnership) (Supplement)

*The Distinguished Jurist's Primer*, Ibn Rushd, pp. 284-92. (*muḍārāba/qirāḍ* – limited partnership) (Supplement)

*The Distinguished Jurist's Primer*, Ibn Rushd, pp. 325-33. (*rahn* – pledge) (Supplement)

## Part II – *Modern Islamic Commercial Law*

### 5. Meeting 5 – *Modern Islamic Commercial Law* – October 2 (*Paper no. 1 due*)

“Islamic Finance as the Application of Islamic Law: Modern Reinterpretations,” Chapter 2, Vogel and Hayes, pp. 44-52.

“The Law of Islamic Financial Institutions and Instruments,” Chapter 6, Hayes and Vogel, pp. 150-65.

“Part Two: Futures Trading and Conventional Sales: a Discourse in *Fiqh*,” *Islamic Commercial Law: an Analysis of Futures and Options*, Mohammad Hashim Kamali, pp. 62-178.

6. Meeting 6 – *The Theory of Islamic Finance* – October 7

“The Law of Islamic Financial Institutions and Instruments,” Chapter 6, Vogel and Hayes, pp. 129-50 and 165-78.

Zafar Iqbal, “[Contemplating an Islamic Theory of Justice: Situating Tradition Amidst Modernity](#),” 10,1 *Review of Islamic Economics* (2006), pp. 91-121.

“[Islam, Economics and Finance](#),” Chapter 2, *Islamic Finance in the Global Economy*, Ibrahim Warde, pp. 32-54. (Available in electronic format)

7. Meeting 7 – *The Political Economy of Islamic Finance* – October 14

“[Global Politics, Islamic Finance, and Islamist Politics Before and 11 September 2001](#),” Ibrahim Warde, in *The Politics of Islamic Finance*, edited by Clement Henry and Rodney Wilson (Edinburgh: Edinburgh University Press, 2004) (available in electronic format).

“[Capital Flight Through Islamic Managed Funds](#),” Rodney Wilson, in *The Politics of Islamic Finance*, edited by Clement Henry and Rodney Wilson (Edinburgh: Edinburgh University Press, 2004) (available in electronic format).

8. Meeting 8 – *The Practice of Islamic Finance* (Part I) – Oct. 21

“Islamic Financial Instruments: a Primer,” Chapter 7, Vogel and Hayes, pp. 181-200.

“Sales-Based Islamic Finance,” Chapter 4, El-Gamal, pp. 67-74.

“Derivative-Like Sales: *Salam*, *Istiṣnāʿ* and *ʿUrbūn*,” Chapter 5, El-Gamal, pp. 81-96.

9. Meeting 9 – *The Practice of Islamic Finance* (Part II) – Oct. 28

“Leasing, Securitization and *Ṣukūk*,” Chapter 6, El-Gamal pp. 97-116.

“Partnerships and Equity Investment,” Chapter 7, El-Gamal, pp. 117-34.

“Islamic Financial Institutions,” Chapter 8, El-Gamal, pp. 135-61.

Part III – *Regulation of Islamic Finance*

10. Meeting 10 – *Islamic Financial Contracts* – Nov. 4 (*Paper no. 2 due*)

Ahamad Kameel Mydin Meera and Dzuljastri Abdul Razak, "[Islamic Home Financing Through Musharakah Mutanaqisah and al-Bay' bithamin Ajil Contracts: A Comparative Analysis](#)," 9,2 *Review of Islamic Economics* (2005), pp. 5-30.

Dubai Ports Authority Convertible Sukuk Offering Prospectus (selections) (Supplement)

Deutsch Bank White Paper – Proposal for an Islamic Total Return Swap (Supplement)

11. Meeting 11 – *Islamic Financial Contracts and Bankruptcy* – Nov. 11 (guest lecturer, Isam Salah, partner King & Spalding)

East Cameron Gas Sukuk: The Dawn of a New Frontier (Supplement)

Hawkama Note on East Cameron Partners, LP (Supplement)

12. Meeting 12 – *Regulating Islamic Finance* – Nov. 18

*The Shari'a Committee*

[http://www.sabb.com/1/2/sabb-en/about-us/profile/sahariah\\_advisory\\_commitee](http://www.sabb.com/1/2/sabb-en/about-us/profile/sahariah_advisory_commitee)

[The Small World of Islamic Finance, Murat Ünal, January 19, 2011.](#)

[Guidelines on the Governance of Sharia Committee for the Islamic Financial Institutions, Central Bank of Malaysia.](#)

*Judicial Interpretation of Islamic Financial Contracts in a Muslim-Majority Setting*

*Arab Malaysian Finance v. Taman Ihsan* [Malaya High Court, Kuala Lumpur, Commercial Division, 2008] (Supplement)

*Arab Malaysian Merchant Bank v. Silver Concept* [2008] (Supplement)

<http://islamicfinanceasia.blogspot.ca/2009/04/malaysias-court-of-appeal-reverses-high.html>

*Judicial Interpretation of Islamic Financial Contracts in a Non-Muslim Setting*

Killian Balz, "[A Murābaha Transaction in an English Court,](#)" 11,1 *Islamic Law & Soc.* 117-134 (2004).

13. Meeting 13 – Nov. 25

*Islamic Financial Self-Regulatory Organizations*

Accounting and Auditing Organization for Islamic Financial Institutions ("AAOIFI")  
[Statement on Sukūk](#)

Islamic Financial Standards Board ("IFSB").

*Public Regulation of Islamic Financial Institutions* (Muslim-majority states)

Mansur A. Noboi, "[Prudential Regulation of Islamic Banks: An Analysis of Capital Adequacy Standards,](#)" 8,15 *Review of Islamic Economics* (2004), pp. 55-73.

[IFSB Statement No. 1 "Guiding Principles of Risk Management for Institutions \(Other Than Insurance Institutions\) Offering Only Islamic Financial Services"](#).

*Public Regulation of Islamic Financial Institutions and Islamic Finance Products*

Michael Ainley et al., "[Islamic Finance in the UK: Regulation and Challenges,](#)" (Nov. 2007), pp. 1-33.

United States Office of the Comptroller of the Currency ("OCC")

[OCC Interpretive Letter, no. 806, Dec. 1997 \(Declining Partnership-Lease Home Ownership Plan\)](#)

[OCC Interpretive Letter, no. 867, Nov. 1999 \(Murābaha Home Ownership Plan\)](#)

14. Meeting 14 – Dec. 2

“Governance and Regulatory Solutions in Mutuality,” Chapter 9, and “Beyond Shari’a Arbitrage,” Chapter 10, El-Gamal, pp. 162-189.

[“The Murābaha Syndrome in Islamic Finance: Laws, Institutions and Politics,”](#) Tarik M. Yousef, in *The Politics of Islamic Finance*, edited by Clement Henry and Rodney Wilson (Edinburgh: Edinburgh University Press, 2004) (available in electronic format).

[“How ‘Islamic’ is Islamic Banking?,”](#) Feisal Khan, 76,3 *Journal of Economic Behavior and Organization* (2010), pp. 805-20.

December 10 (*Paper no. 3 due*)