

Islamic Finance and Transactions in Contemporary Practice

UC Berkeley School of Law

Law 252 sec. 1 (Two Units)

Course Control Number (Non-1Ls): 49786

Syllabus: Spring, 2013

Meeting Time: Wednesday 3:35 p.m. – 5:25 p.m.

Meeting Location: 145

Instructors: Arshad A. Ahmed, Esq.
and Abrar. A. Hussain, Esq.

I. TOPIC AND OBJECTIVES

This two-unit course will offer an opportunity to consider the growing intersection between Islamic (or Shari‘ah-compliant) finance and transactions, and American legal perspectives. Issues to be discussed in detail include ribā-interest equivalence, form and substance in contemporary Islamic banking, adjudication of Shari‘ah-related transactions in contemporary Anglo-American tribunals and whether or not Shari‘ah-related investing constitutes social capitalism. There will be ample discussion of legal and economic thought, as well as the place of ethics and virtue within traditional and modern manifestations of finance. Also discussed will be the origins of contemporary venture capital and private equity arising out of the Islamic mercantile tradition.

Discussions of Shari‘ah will focus almost exclusively on Sunni perspectives, as they dominate the contemporary practice of Islamic banking and finance.

No prior knowledge of Islam, Shari‘ah, or finance is assumed.

II. METHODOLOGY

The course will be conducted in the form of lecture and discussion. Please attend each session prepared to participate in informed and critical discussion of the topic and assigned readings.

We may also resort to exercises and other small group activities, where appropriate, such as in the event of case studies. We may have one or more guest speakers.

III. TEXT

Reading assignments are indicated below on a week-by-week basis. The primary texts for the course will be (a) M. A. **El-Gamal**, *Islamic Finance: Law, Economics, and Practice* (2008), and (b) Mufti Md. Taqi **Usmani**, *An Introduction to Islamic Finance*

(1998) [available online at <<http://islamicfinancenews.files.wordpress.com/2009/09/an20introduction20to20islamic20finance.pdf>>].

IV. COURSE REQUIREMENTS AND EVALUATION

There are two requirements for this course:

1. Attendance at and informed participation in each class meeting (constituting 40% of your grade). Absences must be cleared with the instructors *in advance* in order not to count against you. Note that there will be no mid-term examination.
2. Completion of the final take-away examination, which will be available for check-out at or after commencement of the final exam period on April 29, 2013, to be returned to the examination administrator no later than 24 hours following check-out. This examination will require you to answer three out of five essay questions, with an overall limit of nine double-spaced typed pages of text (on standard 8.5 x 11 paper, with no less than 10 font, no greater than 12 font, and one-inch margins all the way around) (and constituting 60% of your grade).

This course should not be taken if you expect to have any difficulty meeting the above-described requirements.

Students may approach the instructors regarding one's desire to prepare an independent study paper. Any such student requests to submit a paper will be considered on an individual-by-individual basis. As good research tends to be predicated on *a priori* knowledge of the specific question being looked into, any proposal will need to be predicated on the student being able to describe the specific topic intended to be examined and one's timetable for providing written work product, including specific milestones set out for submitting an outline and sections of the paper.

[syllabus continued on next page]

V. CLASS SCHEDULE AND READINGS

Modifications to the following reading list and/or schedule may be made, as necessary or advisable, to accommodate the instructors' travel schedules, to accommodate guest speakers and for other reasons. Be tuned in to check regularly for amendments and updates hereto.

Unless otherwise indicated, all readings specified for a class meeting are mandatory and required prior to class. Certain readings may be posted electronically where possible.

Week 1 - Wednesday, January 9, 2012 (3:35 p.m. to 5:25 p.m.)

Topic(s): Introduction to the class. Overview of Shari'ah, Islamic thought and practice, the place of Shari'ah within the Islamic religion, and Shari'ah-oriented transactions.

Reading(s): Arshad A. Ahmed, co-authored with Umar F. Moghul, *Contractual Forms in Islamic Finance Law and Islamic Investment Company of the Gulf (Bahamas) Ltd. v. Symphony Gems N.V. & Others: A First Impression of Islamic Finance*, 27 Fordham International Law Journal 150-154, 156-165 (December 2003)
Seyyed Hossein Nasr, *The Heart of Islam* 113-156 (2004)

Week 2 - Wednesday, January 16, 2013

Topic(s): Introduction to the contemporary practice of Islamic finance and transactions.

Reading(s): Usmani, *An Introduction to Islamic Finance* 9-16
El-Gamal, *Islamic Finance* 7-17

Week 3 - Wednesday, January 23, 2013

Topic(s): Mudārabah and Mushāarakah.

Reading(s): Usmani, *An Introduction to Islamic Finance* 17-30, 31-36
Pierre-Yves Mathonet and Thomas Meyer, *J Curve Exposure* 16-19 [Box 2.2] (2007)

Week 4 - Wednesday, January 30, 2013

Topic(s): Modes of Financing. Introduction to ribā.

Reading(s): Usmani, *An Introduction to Islamic Finance* 37-64

Week 5 - Wednesday, February 6, 2013

Topic(s): Ribā. Is ribā equivalent to interest?

Reading(s): El-Gamal, *Islamic Finance* 46-63
M. Omar Farooq, *Qard Hasan, Wadi'ah/Amānah and Bank Deposits: Applications and Misapplications of Some Concepts in Islamic Banking* (2008)

Week 6 - Wednesday, February 13, 2013

Topic(s): Murābahah.

Reading(s): Usmani, *An Introduction to Islamic Finance* 65-108

Week 7 - Wednesday, February 20, 2013

Topic(s): Ijārah.

Reading(s): Usmani, *An Introduction to Islamic Finance* 109-127

Week 8 - Wednesday, February 27, 2013

Topic(s): Shari'ah-related home financing in the U.S. Regulatory effects on, and dispensations in favor of, Islamic banking. Case studies of (w) OCC interpretive letters 806 (1997) and 867 (1999) in favor of Bank of Kuwait, (x) Bank of England ruling re: stamp duty, (y) Murray v. Paulson (2008), and (z) Awad v. Ziriax (Nov. 29, 2010)

Reading(s): Rulings to be provided.

Week 9 - Wednesday, March 6, 2013

Topic(s): Adjudication of early Shari‘ah-related transactional disputes in Western, non-Shari‘ah tribunals. Case studies of (x) Islamic Investment Company of the Gulf (Bahamas) Ltd. v. Symphony Gems N.V. & Others (QBD Comm Ct, 13 February 2002), (y) Beximco Pharmaceuticals Ltd & Ors v Shamil Bank of Bahrain EC (EWCA Civ 19, 28 January 2004) and (z) Murray v. Geithner (E. D. Mich., Jan. 14, 2011)

Reading(s): Cases to be provided.

Week 10 - Wednesday, March 13, 2013

Topic(s): Screens, purification and the advent of the Dow Jones Islamic Index. Applications thereof, e.g., in “Islamic mutual funds.” Shari‘ah supervisory boards.

Reading(s): El-Gamal, *Islamic Finance* 117-129, 133-134
Natalie Schoon, *Islamic Asset Management: An Asset Class on its Own?* 151-168

Week 11 - Wednesday, March 20, 2013

Topic(s): Sukūk (“Islamic bonds”).

Reading(s): El-Gamal, *Islamic Finance* 97-116
Andreas A. Jobst, *The Economics of Islamic Finance and Securitization*, IMF Working Paper (August 2007)
Alternative Finance Investment Bonds bill (S2792-2011) and Memorandum in Support thereof [both available online at <<http://open.nysenate.gov/legislation/api/1.0/html/bill/S2792-2011>>]

Week 12 - Wednesday, April 3, 2013

Topic(s): Consumer fraud concerns and the rise of halal food statutes. The question of transparency in Shari‘ah-related transactions.

Reading(s): New Jersey Halal Food Consumer Protection Act (N.J. Stat. § 56:8-98 (2003))
Tennessee bill 1028 (known as the “Material Support to Designated Entities Act of 2011”)

Week 13 - Wednesday, April 10, 2013

Topic(s): Institutional forms: banks, investment funds, takāful and *waqfs*. The question of Islamic finance as constituting ethical or socially responsible finance.

Reading(s): M. Kabir Hassan and Michael Mahlknecht, *Islamic Capital Markets: Products and Strategies* 185-199 (“*The Evolution of Takaful Products*”)
El-Gamal, *Islamic Finance* 135-156
Timur Kuran, *The Absence of the Corporation in Islamic Law: Origins and Persistence*, 53 Am. J. Comp. L. 785 (2005)

Week 14 - Wednesday, April 17, 2013

Topic(s): Summary and Final Remarks.

Reading(s): El-Gamal, *Islamic Finance* 26-45
William C. Chittick, *Can the Islamic Intellectual Heritage Be Recovered?* (October 1998)

END OF COURSE

FINAL EXAM TO FOLLOW