

**Essential Islamic theological tools and a basic methodology  
for research in Islamic Finance, Islamic Insurance<sup>1</sup> and  
Economics**

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**Monday, 12 May 2003**

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In the name of **Allah**, the Most Beneficent, Most Merciful

**The essential theological tools and methodology for research in Islamic  
Finance and Economics**

Research could only truly be regarded to provide an honest set of information that possibly entails noteworthy discoveries, results and conclusions within the area of such research if it has truly aimed to establish and analyze the subject matter in meticulous detail through the adoption of various research standards and criteria in accordance to the field of research.

Understanding Islamic juridical material is thus the basis of research for conclusively confirming the validity of Islamic Financing Formats, its contracts and its methodology.

The research on Islamic Financial contracts therefore can only be appropriately conducted by an unbiased scholar who has the following skills:-

1. A working knowledge of Arabic, its grammar and linguistic implications.

Arabic is a strict necessity since it is Islam's legal language. Its characteristics and linguistic implications provide a unique identity and shades of meaning that are essential for the correct understanding and interpretation of the Qur'an and the *ahadith*. Its nature of being Islam's legal language stems from the fact that the Qur'an has been revealed in the Arabic language and Muhammed (S.A.W.), Islam's last prophet and messenger, was a native Arab whose traditions, statements, acts and tacit approvals have been recorded in Arabic with meticulous care. Preservation of the exact wording of all his verbal utterances and exact descriptions of all his acts form the fundamental pool of Islamic legal code. Therefore, the best understanding of all primary Islamic matter would only be achieved through an ability to comprehend the primary texts of Islamic Law that are all in Arabic. In fact, the vast collections of secondary sources are also in Arabic.

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<sup>1</sup> Tahmean wa Takaaful

2. A vast study of the **Sharia'h** through primary Arabic sources, which comprises of the following:

a. Principles of **Tafsier**.

The Qur'an covers many aspects of life and morally related issues besides rules that purely pertain to the forms of worship and prayer. It also includes rules and principles, the details of which could be categorized to be the rudimentary blocks, which form the fundamental framework of a "legal System", that inherently allowed for extension within the perimeters of all of its verses. The source of this Qur'anic system is diverse from other systems due to its Divine origins. The latter is not only a mere religious teaching but forms part of the belief and blood of every Muslim who is religiously obligated to execute its code and regulations. Considering it as a divine revelation is accepted as a fact by all Muslims. It is a blasphemy for Muslims to reject the authority of Qur'anic rules. Violation thereof without conscious rejection of its law would not eliminate the attribute of being Muslim from the transgressor. Such violation would be regarded as the perpetration of sin and could be pardoned by manners prescribed in Islamic teachings.

Some of the Qur'anic regulations are of a nature that has allowed the birth of divergent opinions due to linguistic implications. Yet, in other cases, this linguistic allowance is restricted due to interpretations and rules given in authentic ahadith. The validity of the verse and the obligation it prescribes or proscribes is not questioned. The issue debated in some Islamic punishments for criminal offences is whether such an obligation is globally applicable or whether it is only incumbent to execute in an Islamic state. Other Qur'anic regulations seemed to have left room for further interpretation, thus giving way to disparity and, in some cases, allowing certain possibilities or a few diverse interpretations. The reasons for this are many and varied in nature. Some factors relate to linguistic issues and others to the revelational sequence of the Qur'anic verses. The existence of a wide selection of authentic prophetic traditions, which were sometimes mutually contradictory, also added to this divergence.

Later as the development of Islamic juridical schools gained ground, the methodologies formulated by each school for interpreting the Qur'anic verses, also governed the manner in which some of the verses were interpreted.

It is pertinent to mention that *wahy* (divine revelation) is the most authoritative source of legislation, but is governed in many instances by the ahadith. It is also subject to varying levels of interpretation in certain areas and this factor is, thus, also critical to understanding as to why there would necessarily be differences in legal opinion although, strictly speaking, only one of the legal arguments would be a valid representation of divine intent. Since such juridical certainly is beyond the realm of human intelligence in certain instances, it is best to accept diversity within reasonable inferential frameworks in such cases and to allow the legal ramifications of such interpretations to be validly represented in instances and matters relating to those who subscribe to such alternatives.

- b. A study of a few major and recognized commentaries on the **Qur'an**.
- c. Principles of **Hadith**.

These principles provide a classification to the ahadith on the basis of the integrity, honesty and narrational quality of the narrators. Other formats pertaining to the number of narrators who narrated a hadith, the differences between their narrators, generation gaps between narrators as well as conflicting implications which have manifested within authentic traditions, etc. form vital elements of knowledge that are required to give credence to the hadith and then, secondly, allow the ahaadith to be utilized for further juridical inference.

Historical sources, for example, do not necessarily constitute factual material and the standards applied by Islamic Historians to record historical material cannot be compared to those that were applied to record the authentic categories of **Ahaadith**. Therefore, the latter categories have a higher weight in the deduction of Islamic rulings than historical material even if such material has been compiled by those who have also compiled works related to the authentic categories of **Ahaadith**, e.g. Imam Bukhari has compiled the most authentic work on *Hadith*. His work, the *Al-Jaami'us-Sahieh* stands as the most authoritative in the field. However, his other works on history do not enjoy the same status since the criteria he applied in these works do not match the standards of those he applied in his famed work on the **Ahaadith**, titled as "*Al-Jaami'us-Sahieh*."

- d. The vast corpus of **Hadith**.

There are many of works of hadith. The famous works among the general public are: Sahih Bukhari, Sahih Muslim, Sunan Abu Daud, Sunan Nasaai, Jamih Tirmizi, Ibn Majah, Muwatta Imam Malik.

Other works have been compiled by Tabrani, Hakim and many other scholars.

Readings of commentaries written upon the works of hadith is also highly essential. Many commentaries are available on the works of hadith, especially upon the Bukhari and Muslim. Some of these extend to 20 volumes.

- 3. Understanding the *Usul-al-fiqh* (Principles of Islamic jurisprudence) as applied by the diverse schools of Islamic Law. It is necessary to also have the grasp of *Ijtihad* to understand the legal methodology applied in the creation and formulation of these principles as well as judiciously evaluate the validity of the arguments behind such principles as well as judiciously be enabled to prefer one form of reason above another in every sector of the Islamic Law on the basis of cogent proof that is established and verified by the authentic primary sources of Islamic Law.

Any scholar who is fairly well-versed in Arabic but not trained in the methodology applied in the development of the various Islamic Legal Schools or who has even understood the latter, but fails to have the analytical ability to evaluate an opinion from any school on the basis of diverse criteria applied by

each of the schools, various Islamic Jurists within or beyond each such school and by other standards that could be formulated, would also, in Islamic terms, fail to scholastically evaluate the subject matter of any of its regulations.

The implications of not having these skills therefore Islamically denies an individual, who believes in Allah, to embark upon interpreting Islamic Legal Codes. Since, in such a case, he would base his opinions on pure ignorance and consider himself above Allah's divine authority, and as such, would work against the dictates of **Imaan** in **Allah's** unity.

Thus, to quote statements and views of scholars without evaluating their arguments and conclusions and to subsequently use such information as a premise to base arguments, is therefore also incorrect.

It is not intended to deter any scholar, proficient or fairly well versed, in the above sciences from embarking to elucidate his opinions or conclusions in the field of such material that is related to the contractual elements of Islamic Finance. Rather, it is a cautionary note for such a scholar as well. Personal experience and that of other renowned scholars does confirm that many great scholars have erred, some of whom, have retracted their earlier opinions in favour of newly formulated views as a result of changes in circumstances or availability of further, or more relative, facts.

We, in order to accept a particular opinion, therefore also have to consider the circumstances that led to a particular decision as well as whether the interpretations presented are actually those which are proven by supportive evidence from sound sources of Islamic Law. The latter is also, in particular areas, subject to scrutiny due to various principles and issues related to the Islamic Juridical System.

The scholar researching the subject of "Islamic Financing Formats" is, like others in similarly highly demanding Islamic fields, not free to speculate or theoretically extend hypothesis and arguments that conflict with the Divine teachings of Islam. It is upon this philosophical base of religious allegiance and understanding that the Muslims conclude to accept Islamic teachings, which reflect to be their objective that would solely ensure the success of their material and spiritual lives.

It is because of the diversity in the analytical methodology applied to infer Islamic Rulings that many diverse and contrary conclusions were derived. This does not imply that any subsequent scholastic criteria, based on sound inferential evidence, cannot be applied to refute a given opinion; prefer one opinion upon another; or allow diverse opinions for all and sundry or for particular classes or groups of Muslims. It is the conclusion of the arguments upon the above arguments that stand as the "crux of the matter" in this field, otherwise we would have resolved all conflict by allowing specific rulings for specific schools of Islamic Jurisprudence.

It has further become necessary to rationally resolve this dispute and diversity of rulings since we as Muslims live in multi-cultural societies where we not only have to solve differences between the contractual formats applied by the diverse

Islamic Legal Schools, but also have to integrate our lives within the Interest-based Economic Systems that conflict with our religious allegiance.

A similarity may be given through comparing the legal implications that are resultant due to a legal practitioner's conforming to the general sense of statutes and rules of law as compared to that when he restricts his conclusions within the confines of the precise implications of the given wordings that are utilized to define the exact rulings of law. Differences between local secular legal systems and other international systems also indicate towards the need for uniform procedures to cohesively amalgamate and integrate rulings when conflicts occur between the various legal frameworks.

4. A knowledge and reading of the secondary sources of Islamic Law that are classified as works of **Fiqh**. These works have been compiled by scholars of the diverse *Mazaahib* and are essential in grasping the extent and scope of diversity within the segments of Islamic Law. The need for reasoning the basis of legal discourse and procedure is essential to appreciate and understand the rulings as products of inferential techniques.
5. Reading the large collection of *Fatawa* on Islamic Banking that have been compiled by the various Religious Supervisory Boards of Islamic Banks. The *Fatawa* of Al-Baraka Bank were on the net. A collection of some other *Fatawa* were translated by Yusuf Talal de'Lorenzo from USA. Another set of Arabic *Fatawa* were available on CD Rom from the Harf Product range in Egypt. The Harf products are market internationally. Independent *Fatawa* collections of Islamic Banks are also necessary. The research and training department of Islamic Development Bank in Saudi Arabia has published a very large amount of literature on Islamic Economics and Finance. The Islamic Foundation in England has published numerous works in the Field of Islamic Economics. These sources of information as well as various other Internet sources are available for the serious scholar.
6. A knowledge of the latest commercial contracts and legal rules of the country concerned as well as some details on International differences to allow modifications in thinking so that appropriate measures can be adopted to prevent conflict of laws when the need arises to implement Shari'ah within the secular and diverse civil legal codes. The understanding of current financial markets, banking institutions, economics, monetary economics, accounting and its policies and international banking operations is vital in grasping the areas of focus for the Islamic accountant and economist who also has to grant consideration to the demands of secular law and resolve legal conflicts.
7. Reading a variety of textbooks utilized by the economics, accounting and commercial law students at Universities. These works form the structural basis to understand the concepts, principles, theories and frameworks that create the building blocks of the 21 century financial tower. Case law on commercial contracts is also vital to study.

8. Religiously Supervisory Boards in Islamic Banks are, very unfortunately, relegated a negligible position and, sometimes, misused as marketing tools rather than the pivot and axis upon which the bank rotates.
9. Islamic Insurance companies have been developed in the Middle East and are also operation in South-East Asia.

Conventional insurance formats have been prohibited by Islamic Jurists because such companies invested in Islamically prohibited avenues as well. Thus, premiums from Muslim clients and policy holders in such companies would assist in the economic development of areas prohibited by Islam.

Islamic insurance companies, on the contrary, ought to invest purely in areas allowed by Islam. Returns of the company are therefore Halaal and through clauses in the policies, shareholders of the company as well as the policy holders, who contract with the company, allow the deduction of particular percentages from the profits and, if necessary, from the capital premiums to serve claims made on the company.

Muslims in Non-Islamic states and who have a minority status within their population groups suffer a major economic disadvantage in regard to conventional insurance benefits if they conform to religious teachings in this regard. There is thus a great need for them to establish Islamically acceptable forms of insurance contracts for the diverse financial, commercial, social-welfare and pension schemes, medical and other sectors of their lives.

10. Review of contractual documentation to ensure that contracts and monetary instruments allowed by Islam are not subject to other non-Islamic forms of contracts that render the purchase or sale of such instruments to be invalid due to external contracts that are applied upon the primary instruments.

### **The Use of translations**

Translations of the **Qur'an** and many other important works on **Ahaadith**, do of course exist. These are however secondary sources and supportive material. Though often correct, such material is unsuitable for deriving legal rulings since these are, in some cases, incorrect or interpretative of a particular legal school, or express the translator's and commentator's personally deduced opinion that could well be erroneous. This is often the case when the writer was religiously or otherwise inclined to certain factions or groupings of religious thought. Translators often differ in their translation styles and language and it is therefore best to compare as many translations of a text as possible in the absence of having many or few diverse interpretations of a given Arabic text, especially when these are not Arabic commentaries of such texts. Each translator's interpretation of Arabic-Islamic Legal texts is also subjected to the impressions of personal levels of Islamic scholarship and familiarity to particular branches of learning.

Any scholar of Islamic Juridical Sciences would therefore agree that embarking to critically and scholastically interpret Islamic regulations without an understanding of Arabic would be futile.

## **A BRIEF INTRODUCTION INTO THE HISTORICAL PERSPECTIVE OF ISLAMIC FINANCE**

The prophet, Muhammed (S.A.W.) was born in a Meccan society that lived by its own rules. These developed through time and perhaps gained significance as customary rules within certain areas and particular periods. Islamic History does prove that the Arabs of the Prophetic Period engaged into trade.

The prophet himself accompanied his uncle on trade journeys during his youth. He likewise, in later life, also took to trading on behalf of a prosperous and wealthy lady who later married him due to his honesty and excellent character.

It was after his attaining of prophethood, at the age of forty, till his demise at the age of sixty three in Medina that the Divine injunctions were revealed. These included those that were economically and financially related and were further elucidated through his teachings. These then altered the transactional modes that were conducted by the Arabian Traders of the period, especially those who became Muslims since they were obligated to execute all the Prophet's (S.A.W.) teachings. All the latter are considered as part of the Islamic Faith.

The discussion on how and when the Historical matter and the Islamic Legal Code was classified, why it has an authoritative status in Islamic Law and that which relates to Muhammed (S.A.W.)'s being a prophet and the theological arguments forwarded thereupon, is extremely extensive and admits to be placed within volumes external to the subject of this work. Fortunately, much material has already being compiled in this regard.

It is however sufficient to say, that for the purposes of acknowledging Islamic Law, we as Muslims, through evidence substantiated within our religious material, accept Islamic Law as binding to our conscience and consider allegiance to it, due to its Divine nature, as a requisite of faith in Allah's unity and upon such a premise, conclude to accept its teachings as the principles upon which we ought to act.