

Islamic Commercial Law

Contemporariness, Normativeness and Competence

By

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– Allowing diversity of opinions: Whenever scholars are in the process of studying matters related to Fiqh al Mu'amalaat, it is natural to find several opinions regarding one specific matter, stemming from several different schools of thought. Accepting the fact that there is a diversity of opinions and leaving certain matters open is a demonstration of providing ease and avoiding hardship.⁷¹

3.4 The Distinctive Precepts of Islamic Contract Law: The Prohibition of Riba, Gharar, Maysir

3.4.1 The Precept of the Prohibition of Riba

"No two people in their sane minds would differ that Riba is one of the greatest sins prohibited by divine legislations". Their prohibition is as clear as the prohibition of alcohol, and both are banned practices since they were some of the most widespread violations that took place.⁷²

3.4.1.1 Definition of the Highly Debatable Term

This is the first and most widely known and quoted element in literature covering Islamic Finance and commercial transactions in general; it is this precept that lies at the root of the debates regarding the previously discussed principle of Freedom of Contract. Riba is not one that is only specific to Islamic Law, it had also been mentioned in the Torah, specifically under "*Ribbit Ketzuzah*" and "*agar nattar*", which refers to rented money, as well as "*Sechar hamtana*" as a reward for waiting.⁷³

The definition of the term Riba linguistically stems from the verb "*yarbu*", being "*increase*", "*excess*" or "*growth*". As for its legal definition, it can be defined as "*the increase of money but for no specific return for something else, and in case where exchange of money for money takes place*";⁷⁴ or "*an increase in capital for no legitimate return*".⁷⁵

⁷¹ See Qaradawi, Youssef. *Al Qawa'id al Hakima li Fiqh al Mu'amalaat (Governing Rules of Fiqh al Mu'amalaat)*. Dar el Shorouk. 2010. Pp. 107–109.

⁷² See Ibid. P. 89.

⁷³ *The Oxford Handbook of Judaism and Economics*. New York: Oxford University Press, 2010. P. 481.

⁷⁴ See Ashour Abdel Gawad Abdel Hamid. *Al Badeel Al Islami Lelfawaed Almasrafia Alrebaweya (The Islamic alternative to Riba Financial (Banking) Interests)*. Dar Al Nahda Al Arabia 1990. Pp. 4–5.

⁷⁵ See Mohamed Sayed Tantawy. *Moamalal Al Bonouk wa Ahkameha Al Shareya. (Banking Transactions and their legal rulings)*. Fifth Edition, 1991. P. 89.