



How Islamic is "Islamic finance"



Outline

- Economic frameworks — Islam and capitalism
- Fundamental *Shari'* prohibitions in business
- Brief history and development of 'Islamic' finance
- Three 'Islamic' finance products
- The Muslim frame of mind

Islamic economic framework — facilitating *Ma'rifah*

Khalifah

- **Basic needs of those who cannot meet them are attended to** — the Prophet, صلى الله عليه وسلم said, “There is no right for the son of A`dam except in these things: a **house** in which he lives, a **garment** to cover his nakedness, a piece of **bread** and **water** (al-Tirmidhi)
- **Utilities and resources are made public** — “the Muslims/people are partners/are not prevented in three, water, pastures and fire”, “the Messenger of Allah صلى الله عليه وسلم asked Abyad bin Hammal to give back what he was allotted of the salt reserve” (Ahmed, Ibn Majah).
- **Healthcare is made free of cost** — the Messenger of Allah assigned a doctor to the benefit of the population in Medinah and other indications to ensure the welfare of the population.

'Small businesses'

Partnership of individuals

Murabahah, Mudarabah, Musahrakah

**Agencies, brokering,
commissioning,
employment, leasing**

Wakalah, Samsara, Dalala, Ijarah

Sale of public goods

Kharaj, Zakat, Jizya

Confiscation of illicit wealth

'Free'-market principles

Land appropriation,

prevention of monopolies/'hoarding'
non-price fixing, **redistributing supply,**
ensuring wages, eliminating *riba*,
enforcing full risk-taking on investors

Households

Muslim and
Dhimmi

Rest of the world

Economic ties or not (Dawah-driven)

Capitalism — exists as part of modernity

Corporatised commerce

Impersonal companies

'Renting' of the medium of exchange itself, financial economy
Selling of goods and services of almost any kind are not restricted

'Small' government

- Exists primarily to **facilitate the 'free-market'**
- Utilities, resources, healthcare are increasingly **privatised**
- **Income is taxed**

Revolving-
door of
business
and politics

Households

- **Discriminated based on wealth**
- **Large proportion busy 'making ends-meet'**

Rest of the world

Ideally **serve corporatised commerce**

Fundamental prohibitions in business

- (1) *Prohibited* increase — **interest**, and certain contract-date/settlement-date delays.
- (2) Conditioning the performance of one contract upon the performance of a first contract or **'two-in-one' contracts/agreements**.
- (3) Selling that which you **do not own** or **do not possess control** over
(with certain exceptions)

Some of the evidences:

- The Messenger of Allah ﷺ **cursed the one who accepts riba, the one who gives it, the one who records it and the two witnesses** to it saying, **'They are all the same'** (Muslim).
- The Messenger of Allah ﷺ **prohibited two contracts in one** (Ahmad, Ibn Hibban).
- The Messenger of Allah ﷺ said **"Illicit are a loan and a sale, or two stipulations in a sale, or sale of what you do not have"** (Abu Dawud, Tirmidhi).

Institutionalised modern 'Islamic' finance

- 1st generation
1970's, 1980's

***Riba* disguised as 'sales'**

- Islamic Development Bank 1975
- **Dubai Islamic Bank 1975**
- Bangladesh, Malaysia 1983, Iran, Sudan, Pakistan 80's

- 2nd/3rd
generation
1990's...

'Two-in-one' contracts/agreements

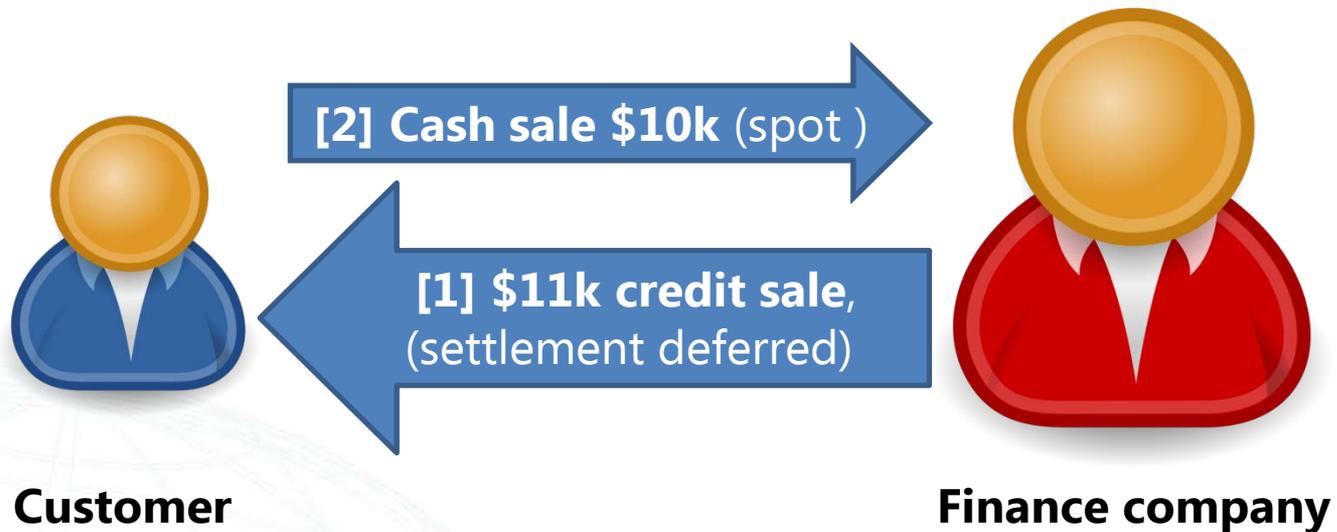
- Accounting and Auditing Organisation for Islamic Financial Institutions (**AAOIFI**) 1991 (KSA, Kuwait, Malaysia)
- By 1995, 144 'Islamic' finance institutions

- 3rd generation
2000's...

'Gifting' and 'promising' adjustments

- **AAOIFI**, *the (talfiqi) 'madhhab'*, nearly 100 standards covering accounting, auditing, ethics and governance
- 45 countries, central banks, regulatory authorities...

1st gen — *Riba* disguised as 'sales'



2nd/3rd gen — 'Two-in-one' contracts/agreements

"Chose a property in the market you like, **we will then buy it from the seller, on condition that you buy it off us**"

Murabahah

Cost plus mark-up, *then* sell

DRY MILK, WHEAT, COCONUT FLOUR
FOOD STARCH, GELATIN, WAL
CALCIUM SULFATE, CARAGEENAN

Musharakah

Jointly-own, *then* lease & sell

Recall that the Messenger of Allah ﷺ **prohibited two contracts in one** (Ahmad, Ibn Hibban, Al Muwatta).

Issues

1. Pinning one contract on the other, **'two-in-one' contracts**
2. Contracting over **something they do not possess control over**,
 - Other prohibited or doubtful measures: conventional **insurance**,
 - written form **indicating interest charges**,
 - corporate structure of financier being an artificial entity...

3rd gen — 'Two-in-one' contracts/agreements *adjusted*

The old — “chose a property in the market you like, **we will then buy it from the seller, on condition that you buy it off us**”

Ijarah muntahiah bi al-tamleek
“Lease ending in ownership”

The *adjusted* — “(1) chose a property in the market you like, **a financier will buy it on your promising to (2) lease it off them.** Once you finish the lease term the (3) financier will gift (sell) it to you (and we will be getting a commission)”

Issues

1. Pinning one contract on the other, **'two-in-one' contracts.** Substance over the form, 'loop-holing' the Shara'?
2. Contracting over **something they do not possess control over,**
 - Other prohibited or doubtful measures: conventional **insurance,**
 - written form **indicating interest charges,**
 - corporate structure of financier being an artificial entity...

To summarise...

- A \$2 trillion industry with **ends to meet**
—The industry comes *before* the Shara'
- Perpetuates (safeguards?) **capitalism**
—cosy with **conventional finance**, does not serve to alleviate the Muslims' conditions
- A giant **distraction** for Muslims **from work for real economic change**
—scholars, professionals, consumer, students, du'aat...

What do you do in the 'mean-time'?

The economic system doesn't exist.

But is accommodation our **goal** or property ownership the **goal**? Consumption v contentment?

The social system doesn't exist.

Take marriage as an example. The current socio-economic system is not conducive to (Islamic) marriage.

— Companionship, intimacy, procreation? **Cherish *haya* and *nikah*?**

...What about even other basic necessities, such as (halal) food

Halal food is difficult. Poultry, beef...

— Go vegetarian or vegan? **Be resolute on *halal* and *tayyib*?**

...Or ritual worship — as examples of how we make-do.

Worshipping is not usually facilitated, and hindered in almost every setting.

— Pray *qadaa* when you get home? Or **ever steadfast on *timeliness* and *tranquillity*?**

Work to change yourself AND the systems.

“Allah will not change **all what is in any nation**, until they **all collectively make a change** occur in **all what is in themselves**.” (Ar-Ra'ad:11)

“Allah informed in this Ayah that he does not change what is in a Qawm until change takes place from them, **whether it be from them, or from their supervisor (of their affairs - leaders), or from he who is (appointed) from them...** So the meaning of this Ayah is **not that it was only revealed for individual punishment** and to address nothing but progress from a sin. Instead, **it has been revealed for the correction of others sins too...**”

—*Imam al Qurtubi in his Tafsir 'Jami'u li Akhmaa il-Qur'an':*