Foreword

The Islamic finance industry is often unfamiliar to many lawyers, bankers, and businesspersons. But its influence and growth are hard to deny, with assets estimated by some to be anywhere from US $882 billion to US $1 trillion and an annual growth rate of approximately 14 or 15 percent. As the author notes, Islamic finance is a long-term industry with great potential: it is “a strong and viable alternative in the marketplace and should not be underestimated.” Its activities are thought to affect twenty percent of the world’s population.

In a world of financial crises and fiscal uncertainty, many individual and institutional investors are turning to instruments of Islamic finance in hope of finding safe, stable, and secure investments. Some investors see the asset-based financing principles of Islamic finance as a desirable alternative to volatile investments. Indeed, Investment and business opportunities throughout the Middle East may encompass Islamic financing principles. France, the United Kingdom, and other European governments and financial institutions have begun adjusting their banking laws and practices to accommodate shariah-compliant transactions. Other countries around the world may follow their lead as more is learned about those aspects of Islamic finance that can increase stability in financial markets. And individual investors interested in stable financial investments will increasingly notice finance tools that may be labeled as Shariah-compliant.

Dena H. Elkhateb, the author of this book, is a U.S.-trained lawyer now working in the United Arab Emirates. At the time of the publication of this book, she is a Co-Chair of the Islamic Finance Committee of the American Bar Association Section of International Law. She has previously authored articles to introduce basic principles of Islamic finance to audiences unfamiliar with terms such as fiqh, sukuk, and murabaha. In this book, she expands that previous work and provides readers with a useful introduction and reference guide to Islamic finance and Islamic finance contracts.

Part I of this book introduces Islamic finance and some basic principles of Islamic law. This section explains Shariah and its fundamental sources:

3. Id. at [5].
4. Elkhateb & Gaunaud, supra note 1, at ___.
5. Id. at ___.
the Holy Qu’ran, the Sunnah of the Prophet, the consensus statements on points of law known as the Ijama, and the legal reasoning by analogy known as Qiyas. She also explains the historical struggle for understanding by judges and scholars known as Ijtihad, reliance on previous interpretations known as Taqlid, and considerations of public welfare known as Maslaha or Mursalah. This introduction also briefly explains the different schools of Islamic thought as well as an important cautionary note: there is no universal regulating body for Islamic finance and that around the world investors may find varying enforcement and practices of Islamic finance.

Part II of this book reviews the basic elements of Islamic contracts as well as the different types of contracts in Shariah law, such as the wa’d (unilateral promise), muwa’ad’ah (bilateral promise), and aqad (contract). Because Shariah law prohibits an individual from entering into two simultaneous contracts regarding the same object, the distinctions may be quite important.6 This part of the book explains fundamental principles such as fairness, freedom of contract, and avoiding illegal subject matter in contracting. Of particular interest to many readers will be the extended discussion of Riba, a complex word that has been the source of much controversy because it is thought to prohibit the payment of interest,7 and the regulation of Gharar, the “uncertainty or speculative practice in a contract.”8 This part also discusses the important contract principles of good faith, honesty, and fair dealing.9

Part III examine different types of Islamic finance structures, such as Murabaha, the controversial Tawarruq transactions, the finance and leasing agreements known as Ijara, the profit-loss sharing agreements known as Musharaka or Mutanaqisa, and the often short-term principal-agent contracts known as Mudarabah.

If any of these terms are unfamiliar to you, this book will be a welcome resource. Its explanations and illustrations will assist your understanding of Islamic finance and provide you with a basis for additional research for specific issues that may arise. As the field of Islamic finance continues to expand, so too must our appreciation of the issues it raises in a wide variety of transactions across the globe.

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6. Elkhatib, supra note 2, at [14].
7. Id. at [17-19].
8. Id. at [19-21].
9. Id. at [22-23].