

Charles University in Prague
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Abstract of the dissertation

The title of the dissertation:

**Sharia Law, particularly Islamic banking, in relations with
international elements**

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Islamic finance, sharia, mudaraba, musharaka, murabaha, ijara, sharia compliant, international law, choice of law, contract, riba, gharar, maisir.

The dissertation, *Sharia law, particularly Islamic Banking in the relations with international elements*, considers an actual topic and branch of islamic law. Neither islam nor islamic law is a legal system applicable at any particular territory. However, legislation of the countries with majority of muslim population, is based, more or less, on islamic law. Whereas due to migration and globalization, islamic law unavoidably interferes in international law. The legal regulation of international private law under the terms stipulated by the law leads to the use of foreign law. One can thus meet the legislation based on islamic law, including in the field of contract law. In commercial contracts, where the one side is from countries where islamic law is a source of legislation, may be the choice of law (in accordance with article 3 of Rome I), which form's the basis of islamic law. A judgement delivered by a British Appelate Court in 2004 in a suit for *Shamil Bank of Bahrain versus Beximco Pharmaceutical Ltd.*, which dealt with the issue and possible valid choice of law and possible conflict of British law and islamic sharia in the contract for the provision of financial service, detailed in the third chapter of the dissertation, in British law regarded as a precedent, inter alia, an impulse to international legal public to focus on the question of admissibility of choice in contracts concluded in the islamic financial relations and to promote education in the islamic financial law. The practice shows that the emerging global economy, trade and services, including financial ones, also require knowledge of principles of islamic finance. In many western countries there are increasingly popular field of study at universities, islamic finance. There are also many world renowned law firms offering services in the fields of islamic banking and financial services to its clients.

The aim is to contribute mainly to the knowledge of the principles of islamic law in the area of financial services and banking transactions, as there is a distinct lack of literature on the topic in the czech language. The knowledge of islamic finance for the provision

of financial services and banking transactions can be very beneficially for czech businessmen, foreign trade companies, tax consultants and lawyers.

The work has been divided into four chapters, each of which has been further divided into subsections. The while processing method has been used especially in the analysis and comparison.

The first chapter deals generally with islamic law, defines the terms and resources, clarifying standards of islamic law, including practical examples, history of the development of islamic law, explaining the difference between sharia and fiqh, describes the schools of islamic jurisprudence, the role of traditions, rigidity or possible flexibility in islamic law.

The second chapter focuses on the islamic financial services in terms of theoretical principles, clarifies the terms under which islamic finance products work, explains islamic financial services and banking transactions and the concept and principles of islamic insurance. Based on practical examples, explains the difference between different types of islamic products, used in current practice.

The third chapter is devoted to islamic banking practice in today's world, their practical implementation, both in islamic countries as well as non islamic, especially european. It deals with islamic financial institutions, provides an example of the swedish JAK bank, which is not an islamic bank, but works on similar principles, such as offering interest-free financial products. It describes the international islamic finance institutions and practices in countries where the most widespread provision of islamic financial services, both islamic countries (especially Malaysia, Gulf and Middle East countries, Pakistan) and non islamic countries (United Kingdom, Luxembourg, Switzerland, France, Germany) which have become or are becoming centers for the provision of islamic financial services.

The last chapter identifies the differences between islamic and conventional financial services, dealing with their efficiency, a possible alternative role of islamic banking

transactions, especially in times of economic crisis. The comparative study undertaken by the International Monetary Fund, quoted in the fourth chapter, that islamic financial institutions compared with those of conventional are more resistant, stable and flexible to overcome the global economic crisis. The stability of invested funds in addition to promising emerging halal industry in all areas, including the provision of services is the reason why the islamic financial services and banking business are developing to a large extent, in countries with muslim minority population.

Following the faith is definitely not the only reason why to develop islamic finance. The possibility of inflow of foreign capital and investment from muslim countries that have a certain potential, gripping the global market is one of the reasons for expanding halal, sharia compliant products and services and motivation for many entrepreneurs to develop islamic trade and services. The halal industry today include not only food, but also pharmaceutical products, clothing, leder processing and natural products, various kind of services such as tourism and of course financial services. The fact that this area attracts businessmen, bankers, lawyers and financial experts from non muslim countries, suggests that the islamic financial law and business is about more than the following the faith only. The last chapter outlines the theoretical assumptions as possible for the operation of a similar version of financial services in the Czech republic from the legal point of view.

The dissertation was developed based on both theoretical and practical findings with regard to today's practice of islamic financial institutions, using knowledge from professional conferences, seminars and internships.

The Annex includes the practical example of islamic financial contracts based on mudaraba, murabaha and ijara, provided by Asian Finance Bank Berhad in Malaysia.