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Published in:
International Journal of Law and Management

DOI:
[10.1108/IJLMA-06-2024-0206](https://doi.org/10.1108/IJLMA-06-2024-0206)

Publication date:
2024

Licence:
Other

Document Version
Peer reviewed version

[Link to publication in Discovery Research Portal](#)

Citation for published version (APA):
Alkhan, A. M., & Hassan, M. K. (2024). From revelation to modern Islamic finance: Islamic commercial law in the UAE as a case study. *International Journal of Law and Management*. Advance online publication. <https://doi.org/10.1108/IJLMA-06-2024-0206>

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From Revelation to Modern Islamic Finance: Islamic Commercial Law in the UAE as a Case Study

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Abstract

Purpose – The purpose of this paper is to analyse the Islamic finance segment within the Updated Commercial Transactions Law in the UAE, and opine whether the new alterations will have a significant impact on the Islamic financial industry in the UAE.

Design/Methodology/Approach – This research utilises a qualitative methodology, and the UAE as a case study. A single/embedded case study design is adopted, in order to analyse several chapters within the Updated Commercial Transactions Law in the UAE (multiple units of analysis).

Findings – The study revealed that the introduction and incorporation of *fiqhī* and Islamic financial principles within the Updated Commercial Transactions law in the UAE was done so in its rudimentary form, indicating that its purpose was to enhance the UAE's position as a leading global Islamic financial hub - as opposed to the sole purpose of its usage during disputes between counterparties.

Research Limitations – This research is limited to the UAE as a case study, and thus does not provide a comparative analysis with other GCC countries. A separate study would be required for a comparative analysis.

Originality/Value – Given that the Updated Commercial Transactions Law in the UAE is relatively new, limited research papers have analysed this segment of the updated law in particular. This research, thus, contributes to knowledge by paving the way for future research pertaining to the same matter.

Key Words: Islamic Commercial Law; *Fiqh*; Islamic Law; Islamic Finance

Paper Type – Case Study

Introduction

The Sharī'ah, commonly referred to as Islamic law, has underlying tools that are utilised in order to deduce such laws. The science of understanding such tools is known as *uṣūl al-fiqh*, commonly referred to as the fundamentals of Islamic jurisprudence or Islamic legal theory. This science, *uṣūl al-fiqh*, was established by classical accomplished scholars in order to codify the existing Islamic law that came about during the revelatory period. Amongst those scholars are the eponymous founders of the various schools of Islamic law, such as the Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbalī schools, which represent *sunnī* schools of jurisprudence.

Moving onto our modern times, the Islamic financial industry has significantly grown since its establishment around fifty years ago, which is a financial system that depends on Islamic law. Still, however, relative to its conventional counterparts that has a history of over

six-hundred years, the Islamic financial industry can yet be seen being in its embryological stage. The sudden emergence of Islamic finance, furthermore, only meant that the establishment of the Islamic financial industry could operate under existing laws, which were mainly designed for the conventional financial industry. As such, Islamic finance has come a long way while operating under existing legal frameworks, and has contributed or acted as a reason for a variety of changes in jurisdictional legislations to accommodate the Islamic financial industry. This research aims to draw out a succinct sketch of Islamic law during its beginnings, illustrating how such a law inevitably led to the creation of modern Islamic financial law, by utilising the UAE as a case study.

Following this introduction, section 2 draws out a succinct sketch of Islamic legal origins, gradually demonstrating how Islamic law inevitably led to contemporary legislative alterations to accommodate the modern Islamic financial industry. Section 3 is the research methodology section, which explains the utilisation of a qualitative methodology and the UAE as a case study. Section 4 empirically analyses legislative changes in the UAE to accommodate the local Islamic financial industry. Section 5 is the conclusion.

Review of Literature

From Revelation to Modern Islamic Finance

The pre-Prophetic era of Arabia had its ethical-legal concepts largely based on the tribal structure of Arab societies (Ansari, 1992). As such, due to the lack of a state or public institution entrusted with administering judicial practices, and with the mutual consent of disputing parties, disputes were generally referred to an entrusted individual, such as a *hakam* (arbitrator). While a *kāhin* (soothsayer) was usually selected for this task due to his ‘supernatural powers’, an arbitrator was different than a *qādī* (official judge), since he was chosen by the parties themselves, not a public functionary, had the ability to decline/accept the mission, and who’s ruling was not subject to mandatory enforcement (Tyan, 1960). The respected monotheistic faiths, namely Judaism and Christianity, existed in other Arab geographical areas, such as Yemen. *Yathrib* (later named Medina), represents another example of Judaism’s existence in the Arab world. The vast majority of Arabs during that time, however, were polytheists. The post-Prophetic era, starting with the period of revelation, brought about radical legal change in Arabia (Ansari, 1992).

The Meccan period, it is true, largely consisted of non-legal verses, dealing with issues such as belief in the Oneness of God, resurrection, eschatology, and so forth. The Medinan period, however, started to include verses pertaining to various legal matters. This was a start of a radical change the Qur’an was about to bring to the Arab, and later wider Muslim, world. A number of interesting arguments are put forth by scholars in this regard. First, it is commonly mentioned that the Qur’an contains no more than approximately five-hundred legal verses (see, for instance: Hallaq, 2009; Al-Ghazālī, 1992; Al-Rāzī, 1979), being exiguous relative to the more than six-thousand verses in existence. In fact, in the “strict sense of the term”, Coulson (1964) argued that the Qur’an contains no more than approximately eighty legal verses. Goiten (1960), however, brought forth an interesting argument. Goiten (1960) argued that since legal verses are relatively longer than other verses in the Qur’an, Goiten (1960) argued (with statistical calculation) that the larger part of the Qur’an contains legal verses. Additionally, through a variety of discussions, Al-Matroudi (2015) demonstrated how the non-legal verses in the Qur’an (i.e., Meccan verses) ultimately supports the legal framework of the Qur’an. Lastly, following a thorough study, Hallaq (2009) stated that ‘[t]here is in fact a much stronger body of evidence which suggests that the Qur’an was an incontrovertible and foundational source of the Shari’a already in the first half of the Meccan period’ (Hallaq, 2009, p.272).

Hallaq (2009) further went on to elaborate that the Qur'an from the very start was serving as a blueprint for later legal elaborations. Based on the aforementioned discussions, it is reasonable to suggest that Islamic law came about during the early stages of revelation.

Moving on, however, following the death of the Prophet, Islamic legal thought underwent imperative stages, most notably during the third/ninth to fifth/eleventh centuries (Melchert, 1997). This was mainly due to the fact that the absence of the Prophet as an ultimate decision maker meant that Islamic law, or Islamic legal theory in particular, needed to be codified (Baderin, 2021). In fact, a look into the historiography of *fiqhī* jurisprudential schools indicate that some five-hundred schools of law are said to have disappeared during or around the third/ninth century (Mez, 1937; Makdisi, 1979). Even then, they were still not diluted into the four known major schools (Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbalī). This illustrates the prolific exerted effort and scholarship pertaining to the codification of Islamic law during an era that necessitated the formal articulation of Islamic legal theory. Inevitably, however, with regards to the main *sunnī* schools of jurisprudence, Islamic law was boiled down into the Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbalī schools of jurisprudence, which still exists until our modern era. The concept of legal pluralism, thus, still exists until our modern era.

Needless to say, Islamic law differed according to the point of context in Islamic history, such as the post-Prophetic caliphate, Umayyad, Abbasid, and Ottoman periods (Hallaq, 2013). During each era, however, while transactions in accordance with Islamic law obviously took place, the modern Islamic financial industry was inexistent. It was only during the post-Ottoman period (i.e., our current times with existing modern states), when the modern Islamic financial industry was established in 1962-3 in Egypt and subsequently in 1975 in the United Arab Emirates. As the Islamic financial industry did not exist before then, it is only normal that modern Islamic financial institutions started to operate under existing laws, which were initially designed for conventional financial markets, as opposed to a legal system particularly designed for the modern Islamic financial industry.

Given that the first ever Islamic bank established (that exists until our present day) was in the UAE, it is reasonable to look into the UAE as a case study, particularly because alterations have been made to its various laws since the establishment of its first Islamic bank back in 1975. Prior to doing so, however, it is necessary to define key concepts within Islamic law, particularly *fiqh* (Islamic jurisprudence), since all laws pertaining to Islamic financial transactions are ultimately derived from *fiqhī* sources.

Fiqh (Islamic Jurisprudence)

Fiqh generally refers to attaining knowledge of Sharī'ah rulings derived from particular evidences, or a collection of practical Sharī'ah rulings derived from its detailed evidence (Al-Subkī, 2011). The latter (practical Sharī'ah rulings), includes actions engaged by humans, such as transactions. *Fiqh al-mu'āmilāt* (Islamic jurisprudence of transactions), thus, entails Islamic jurisprudential rulings particularly pertaining to transactions. It is this segment of *fiqh* that plays an integral role into the development of the modern Islamic financial industry.

To derive *fiqhī* rulings, however, one needs to first be equipped with its fundamentals. That is, one needs to have knowledge of the accepted methods and tools that could be utilised in order to deduce Islamic legal rulings. The fundamentals of Islamic jurisprudence, sometimes referred to as Islamic legal theory or *uṣūl al-fiqh* in Arabic, differs according to each jurisprudential schools of thought. When it comes to the major *sunnī* schools of law, however, it is common knowledge that the Qur'an, *sunna*, *ijmā'*, and *qiyās* represent the agreed-upon quintessential sources of Islamic law. Differences exist with regards to tertiary sources, however. *Istihsān* (juristic preference), for instance, is an accepted legal tool to be utilised by all *sunnī* schools of law (in form or another, and regardless of its chronolectal significance),

except for the Shāfi‘ī school of law. *‘Amal ahlu al-medina* (the ruling practice of Al-Medina) as an *uṣūlī* tool exclusive to the Mālikī school of law, for instance, represent another example (Al-Walātī, 2006). In short, with each school of law having different sets of legal methodologies to extract Islamic legal rulings, could also lead to different interpretations of Islamic law, even whilst they may all be considered as valid.

Due to the geopolitical history, modern Muslim states generally have a school of thought, or *madhhab*, that they follow. The Kingdom of Saudi Arabia, for instance, generally speaking, adheres to the Ḥanbalī school of law. The State of Malaysia, on the other hand, generally adheres to the Shāfi‘ī school of law. The United Arab Emirates, generally speaking, follows the Mālikī school of law. Given that this study solely utilises the UAE as case study, it would be interesting to see whether the Mālikī school of law was solely followed, as opposed to other *sunnī* jurisprudential schools.

Prior to looking into the UAE’s Islamic finance legislative framework, however, it may be imperative to have a generic look into how other Muslim nations treat Islamic finance from a legislative perspective. Thus, in the following section, we discuss the legal treatment of Islamic finance in various Muslim nations.

Islamic Commercial Law in Muslim Nations

Generally speaking, the global Islamic financial industry operates under existing laws, as opposed to laws that were specifically tailored to accommodate Islamic financial transactions (Wilson, 2012). In 2012, the late Rodney Wilson mentioned a few exceptions to this general practice: Iran, Malaysia, and Indonesia (Wilson, 2012). As for Iran, this is due to Iran having a usury-free banking law, and is thus considered to accommodate Islamic financial transactions (Wilson, 2012). As for Malaysia, this is due to the creation of specific laws to govern Islamic financial transactions. Additionally, Malaysia further created specific laws to govern Islamic insurance transactions (Wilson, 2012). Similar to Malaysia, Indonesia also created specific laws to govern Islamic financial transactions (Wilson, 2012). These three exceptions were mentioned by Wilson (2012) when discussing the concept of Islamic finance operating under existing laws, as opposed to specific laws designed for the Islamic financial industry.

To further elucidate, Muslim countries generally have different types of courts within one jurisdiction. This includes civil courts, criminal courts, commercial courts, Islamic courts, and so forth. Legal disputes pertaining to Islamic financial transactions, are not dealt with in the Islamic courts (Wilson, 2012). Rather, they are dealt with in the national courts (i.e., under civil/commercial law). Islamic courts, on the other hand, are usually “confined to family matters such as divorce and inheritance” (Wilson, 2012, p.5). Intriguingly, El-Gamal (2006) even argued that Islamic finance seemed to have thrived in Muslim nations that officially adopted civil laws. Additionally, given that the discussion up until this point includes transactions within a one jurisdiction, we note that English Common Law governs most cross-border Islamic financial transactions (Wilson, 2012). Given all the preceding information, how can we consider Islamic finance to operate according to Islamic principles, if no law has been induced into legislative frameworks to accommodate the Islamic financial industry?

This is where a concept injected by Ercanbrack (2019) into the empirical arena becomes imperative. Ercanbrack (2019) explains that Islamic financial law is a highly fragmented global legal order, a result of interactions between various legal systems, in addition to standards, rules, and legal ideas injected into contemporary financial markets (Ercanbrack, 2019). Additionally, this is an expounded concept of global Islamic financial law that was initially introduced by Foster (2007).

Now, multiple imperative issues arise in the above discussion. The first, is that when Wilson (2012) discussed Iran, Malaysia, and Indonesia being exceptions to the general rule of

Islamic finance operating under existing laws – as opposed to laws specifically designed for Islamic financial transactions – the UAE was not included as an exception due to Wilson’s (2012) research being published around twelve years ago. Likewise, when Ercanbrack (2019) discussed the issue of Islamic financial law being a highly fragmented legal order, this research was also published prior to legislative changes taking place in the UAE. While Ercanbrack’s (2019) conceptualization of Islamic financial law may still be valid, we note that Ercanbrack’s (2019) research focused on the disjuncture and necessity of reform in the UAE law. Since then, however, we have witnessed changes in the UAE’s legal system pertaining to Islamic finance. This further provided us with a justification to choose the UAE as a case study for this research. In the following section, thus, we look into the concept of Islamic commercial law in the UAE, paving the way for our empirical enquiry.

Islamic Commercial Law in the UAE

For approximately thirty years, it was the Federal Decree Law No. 18 of 1993 pertaining to commercial transactions law (known as CTL) that played an integral role in regulating commercial dealings between counterparties within the UAE (Heller, 2023). This was replaced by an updated CTL, Federal Decree Law No. 50 of 2022, came into effect on 2 January 2023 to enhance the UAE’s business environment. While much of the previous provisions have been retained, there were five key alterations or updates that is envisaged to influence the financial section, one of them being legislation pertaining to Islamic finance (UAE Commercial Transactions Law, 2022).

The UAE has continued to exert effort into enhancing its position as a global leader in Islamic finance. As such, a new Part 6 in the updated CTL specifically deals with transactions and contracts where Islamic financial institutions are one of the parties. Heller also clarifies that since Article 468(2) of the new CTL defines an Islamic financial institution as any institution who claims to adhere to Shari‘ah principles in its articles of associations, this means that Islamic windows and subsidiaries are included within the updated CTL.

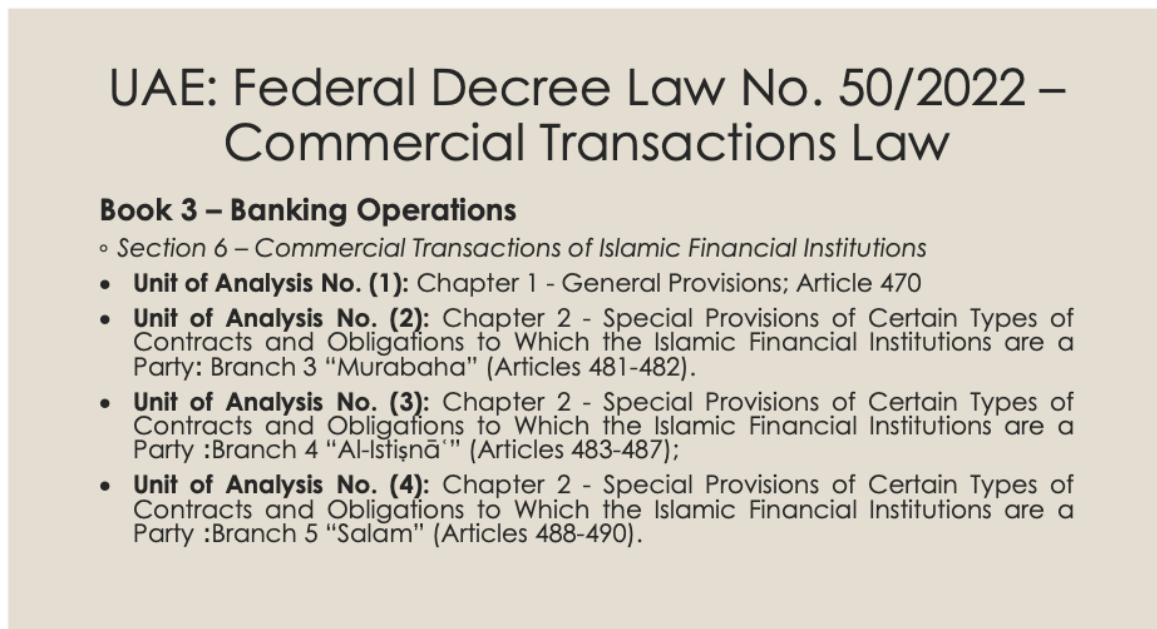
Within the context of this research, a look into the updated CTL reveals particular significance within Section 6 of Book 3, as it deals with commercial transactions of Islamic financial institutions (UAE Commercial Transactions Law, 2022). The updated CTL indicates that its imperativeness and effect on future Islamic financial transactions in the UAE does indeed add weight to the UAE positioning itself as a global Islamic financial leader, with a robust ecosystem that accommodates the Islamic financial industry. Given that the updated CTL introduced relatively new laws pertaining to Islamic finance, limited research has been conducted into analysing the Islamic finance segment of the updated CTL. Thus, this research aims to gain a glimpse into the Islamic finance segment of the updated CTL and analyse the same. This may also provide a starting point for future research pertaining to the UAE’s CTL pertaining to commercial transaction of Islamic financial institutions.

Research Methodology

Practices and techniques utilized to gather and interpret information could generally be referred to as a methodology (Bryman, 2008). The means of collecting such data to answer research questions, on the other hand, is referred to as a research methodology (Munro, 2006). A research methodology is the philosophy that guides this research (Dawson, 2002), inevitably leading to the selection of tools to gather data (i.e., research methods) for this research (Gray et al., 2007). As we aim to utilize the UAE (i.e., one country) as a case study, we note that a qualitative methodology includes a holistic approach leading to discovery (Creswell, 1994). Also, Gray (2009) clarifies that a qualitative methodology is an effective methodology when it

comes to analysis. As such, following the previous explanations and elucidations, we note that this research utilizes a qualitative methodology.

One of the ways of delving into a qualitative enquiry is by engaging in a case study (Denzin & Lincoln, 2005). Thus, this research utilizes the UAE updated CTL as a case study. Due to the purpose of the research focusing on the Islamic finance aspect in the UAE updated CTL, we first conducted a review on the UAE updated CTL as a whole, and found that Section 6 of Book 3 deals with “Commercial Transactions of Islamic Financial Institutions”, the segment of the law in which this study aims to focus on. Rather than selecting one unit of analysis in Section 6 of Book 3 “Commercial Transactions of Islamic Financial Institutions”, however, selecting multiple units of analysis may provide a more comprehensive analysis in terms of interpreting the data. Thus, by selecting the one jurisdiction (UAE) as case study, and multiple units of analysis within Section 6 of Book 3 “Commercial Transactions of Islamic Financial Institutions”, we note that this type of case study is referred to as a single/embedded case study (Yin, 2003). The below diagram illustrates the units of analysis utilised for the case study:



Author’s Diagram

One of the main data analysis tools in a qualitative enquiry is a qualitative content analysis (Titscher et. al, 2000). In a qualitative content analysis, the role of researchers in constructing the meaning of analysed texts is emphasized upon (Bryman, 2004). Categories further emerge through a qualitative content analysis (Bryman, 2004), and our categories, thus, simply pertained to the units of analysis displayed in the above diagram (General Provisions – Murabaha – Al-Istiṣnā – Salam). The empirical enquiry, thus, analyses the abovementioned Articles as a case study, within the same chronological order set out in the updated Commercial Transactions Law.

Empirical Enquiry

As explained in the research methodology section, all Chapters/Articles within this empirical enquiry falls under the UAE’s Federal Decree Law No. 50/2022 – Commercial Transactions Law – Book 3: Banking Operations – Section 6: Commercial Transactions of Islamic Financial

Institutions. The following sections thus analyses Chapters/Articles within this segment of the UAE's Federal Decree Law No. 50/2022.

- *Chapter 1 - General Provisions; Article 470*

Prior into conducting an analysis of Article 470, it is first imperative to display the Article itself:

Article 470:

The Shariah criteria and controls issued or adopted by the Higher Sharia Authority provided in the Federal Decree-Law No. 14 /2018 shall be the reference in the interpretation and construction of the provisions set out in this Section, in consistency with the provisions hereof.

The reason for the significance of displaying the above Article (470) prior to analysing legislation pertaining to various types of Islamic financial products (displayed in the following sections), is due to the fact that the UAE established a Higher Sharī'ah Authority (HSA) in 2018, which consists of Sharī'ah jurisconsults who serve as Sharī'ah Board members of the Central Bank of the UAE. While it is evident that the HSA have been playing an integral role into the development of the UAE's Islamic financial industry, it was nevertheless seen as imperative to display that the role of the HSA is not merely limited to a regulatory capacity, but rather the ecosystem in the UAE enables the HSA to act as the reference in the interpretation and constructing of the Articles set out in Section 6 "Commercial Transactions of Islamic Financial Institutions". This thus annihilates any confusion that may be a result of misunderstanding the laws set out in this segment (Section 6) of the UAE's Commercial Transactions Law.

- *Chapter 2 - Special Provisions of Certain Types of Contracts and Obligations to Which the Islamic Financial Institutions are a Party: Branch 3 "Murabaha" (Articles 481-482).*

A look into the Murābahah segment of the Commercial Transactions Law of the UAE reveals that the law solely includes Articles in its rudimentary form. To illustrate this matter further, we display the whole section pertaining to Murābahah (Articles 481-482), which solely consists of two Articles:

Article 481:

Murabaha is a contract whereby the seller sells an asset to the purchaser, having been owned and possessed by the seller in fact or constructively, based on a request of finance by the purchaser. Sale shall be made at cost in addition to a fixed amount of profit specified in the contract, and their total shall be the price of murabaha sale.

Article 482:

1. The price of murabaha sale, after conclusion of the contract, shall be specified. The price shall not be changed or associated with an indicator or alike.
2. Agreement may be made on the payment of price of murabaha sale in installments of specified amount and payment term, or in one payment within a specific term.

It is self-explanatory that the above Articles merely present legislation pertaining to Murābahah in its minimal form. Article 481 simply provided a definition of Murābahah, while Article 482 legislated the minimum conditions for a Murābahah contract to be valid. The AAOIFI Shari‘ah Standard on Murābahah (Shari‘ah Standard No. 8), for instance, consists of around thirty-seven pages, with much elucidation pertaining to the controls of a Murābahah. It may be reasonable to conclude, thus, that the introduction of Murābahah into the Federal Decree Law No. 50/2022 pertaining to Commercial Transactions Law was not intended replace AAOIFI Shari‘ah Standards in any shape or form. On the contrary, due to its extreme rudimentary nature, the law seems to be hardly able to even compliment AAOIFI Shari‘ah Standard No. 8 pertaining to Murābahah in terms of necessary details underpinning such a transaction.

It is reasonable to conclude that the incorporation of Murābahah within the updated Commercial Transactions Law of the UAE was to officially introduce Murābahah into legislation. Despite its minimal nature, this does represent a significant development, as the legal infrastructure of financial transactions was usually based on conventional legal/financial systems. Thus, the introduction of this law does represent a shift on how the UAE views Islamic financial transactions.

- *Chapter 2 - Special Provisions of Certain Types of Contracts and Obligations to Which the Islamic Financial Institutions are a Party: Branch 4 “Al-Istiṣnā’” (Articles 483-487)*

The segment of the updated Commercial Transactions Law of the UAE pertaining to *istiṣnā’* (translated as Toll Manufacturing) seems to reveal a similar conclusion to the previous section pertaining to Murābahah. While the *Istiṣnā’* segment includes five articles (as opposed to two in the case of Murābahah), this is only because *Istiṣnā’* is generally more complex by nature. Again, this significantly differs than AAOIFI Shari‘ah Standard No. 11 pertaining to *Istiṣnā’*, which consists of around twenty-nine pages. To avoid analysing this segment of the law without displaying an extract, we display a sample of the *Istiṣnā’* segment in the updated Commercial Transactions Law of the UAE:

Article 483:

Toll manufacturing is a contract whereby the seller sells a described item to the purchaser to be manufactured against a fixed total price defined in the contract. The contract shall define the required class, type, quantity and descriptions of the sold item and determine a term for future delivery.

Article 484:

In the bank toll manufacturing contract, the seller shall provide work and manufacturing materials together. The seller may manufacture the sold item by itself or assign the same to a third party under a contract independent from the toll manufacturing contract.

It becomes immediately evident that the *Istiṣnā’* segment of the law followed the same suit of Murābahah. Succinct definitions (i.e., Article 483), with basic conditions displayed in its rudimentary form (i.e., Article 484). Articles 485-487 simply continued with basic conditions placed upon *Istiṣnā’* contracts.

Given that the analysis in this section reveals a similar finding to the previous section, it may be imperative to raise the question of why the UAE decided to officially adopt Islamic financial transactions within its law, as opposed to simply obliging the adherence to AAOIFI Shari‘ah Standards? This will be analysed once all units of analysis have been analysed.

- *Chapter 2 - Special Provisions of Certain Types of Contracts and Obligations to Which the Islamic Financial Institutions are a Party: Branch 5 “Salam” (Articles 488-490)*

A look into the *Salam* segment of the UAE’s updated Commercial Transactions Law immediately reveals a similar finding to that of *Murābahah* and *Istiṣnā’*. Thus, we have no reason to believe that other segments of the Commercial Transactions Law pertaining to Islamic financial transactions would significantly differ. This may also be true since it is expected that legislation involves a systematic consistent approach in articulating its commercial law.

To elucidate, we first display an extract of the *Salam* segment within the updated Commercial Transactions Law:

Article 488:

Forward sale is a contract whereby the seller sells a property of deferred delivery to the purchaser, which manufacture is not stipulated to be against a spot price.

Article 489:

1. It shall be stipulated that the price in the forward sale contract is of specified amount and type and fixed in the contract, and its receipt is not deferred for a period of more than (3) three days.
2. Debts shall not be the price in the forward sale contract.

It is thus evident that Article 488 merely defines *Salam* (translated as forward sale), while Article 489 displays conditions of a *Salam* contract in its rudimentary form. Article 490, furthermore, simply followed suit by mentioning certain basic conditions when engaging in a *Salam* contract.

Discussion

The empirical section revealed that the introduction of Islamic commercial law, or *fiqhī* principles, within the updated Commercial Transactions Law was solely done in a rudimentary form. It was thus questioned why the UAE placed introduced this segment of the law as a significant update, as opposed to solely mandating the adoption of AAOIFI Shari’ah Standards, for example. Following deliberation, one reason may be the UAE’s strategy to enhance its position as a global Islamic financial hub. The advancement of its laws by officially incorporating Islamic financial transactions may lead to a more robust Islamic financial ecosystem. This argument may be strengthened since Heller mentioned:

In the UAE Ministry of Economy’s media briefing introducing the Updated CTL, it was noted that one objective of the legislation was to further enhance the country’s position as a market leader in Islamic finance (Heller 2023).

The analysis up to this point does indicate that the above statement seems to be true. Given that the units of analysis empirically analysed all revealed that the introduction of Islamic commercial law within its legislation was solely done in its rudimentary form, we find it reasonable to conclude that the major change conducted in this regard was the introduction of such a law, rather than the detailed aspects of the law itself.

Still, however, we find an imperative alteration taking place in Islamic legal history. This is because, while the Shari‘ah plays an underpinning role in the Islamic financial industry, it is commonly argued that the Shari‘ah (particularly its commercial jurisprudential rulings, or *fiqh al-mu‘āmilāt*) has not been practiced in a consistent manner by any jurisdictional legal system since the fall of the Ottoman empire (see, for instance: Ercanbrack, 2019). On a macro-level, thus, the official introduction of these basic concepts of *fiqh al-mu‘āmilāt* within the UAE’s updated Commercial Transactions Law does seem to be an imperative turning point in Islamic legal history.

Additionally, to dissect the new laws pertaining to Islamic financial transactions with respect to its sources, poses a challenge due to the lack of references to particular schools of Islamic legal thought. An Arabic reader familiar with *fiqhī* literature would find that it was as if the updated Commercial Transactions Law included within it new laws (pertaining to Islamic transactions) that were directly taken from classical *fiqhī* literature. Additionally, vaguely speaking, it seems that the new updated law did not adhere to a specific Islamic jurisprudential school of thought, but does have a Mālikī blueprint underpinning it. This is also imperative as it indicates that the creation of a legal framework in line with Islamic principles does not necessarily need to adhere to a particular school of thought, but can incorporate a variety of *fiqhī* rulings from diverse jurisprudential schools of thought within one law.

Moreover, it is imperative to note a key distinguishing point between the updated Commercial Transactions Law and AAOIFI Shari‘ah standards. As evidenced in the empirical section, the updated Commercial Transactions Law includes rudimentary principles pertaining to Islamic finance. Conversely, AAOIFI Shari‘ah standards include an incomparable and robust/detailed elements pertaining to each type of Islamic financial product. However, with effect from 1 September 2018, the UAE required all fully-fledged Islamic banks, Islamic windows, and finance companies offering Shari‘ah compliant services, to adhere to AAOIFI Shari‘ah standards (AAOIFI, 2018). Thus, although indirectly, the UAE has already incorporated AAOIFI Shari‘ah standards into its Islamic financial legal framework.

Although the above further raises the question as why the UAE officially incorporated Islamic financial principles within its updated Commercial Transactions Law (enforceable from 2023), if it had already mandated Islamic financial institutions to adopt AAOIFI Shari‘ah standards (enforceable from 2018) - it simultaneously strengthens the argument in this research that the incorporation of Islamic financial principles in the UAE’s updated CTL was solely done so to enhance the country’s position as a global Islamic financial hub. To further strengthen this argument, the UAE needed not to replicate AAOIFI Shari‘ah standards within its updated CTL, as the same standard were already enforceable. Rather, the implication of the updated CTL lays within Islamic financial principles being officially incorporated as “law”, rather than solely mandating the adoption of external (AAOIFI) Shari‘ah standards. In conjunction with one another, both mandating AAOIFI and the updated CTL does indicate that the UAE has certainly enhanced its position in terms of its Islamic financial legal framework.

Lastly, given that the updated CTL only came into effect in 2023, it was not feasible at the time of this research to analyse real-life implications. Thus, as witnessed in the conclusion section, this was considered a limitation that may be researched about in the years to come. All in all, however, it would be beneficial to see how the updated CTL would impact the local Islamic financial industry from a legal perspective.

Conclusion

In 2022, the UAE updated its Commercial Transactions Law (Federal Decree Law No. 50 of 2022), which was enforced on 2 January 2023. Amongst the key changes to the law was the introduction of Islamic commercial principles for transactions dealt by Islamic financial

institutions. This research analysed key segments of the updated Commercial Transactions Law pertaining to Islamic financial institutions. The key findings indicated that the official introduction of Islamic commercial principles within the law of the UAE was not intended as a detailed reference for arbitration purposes, but rather as a strategic move to enhance the UAE's position as a leading global Islamic financial hub. The official introduction of *fiqhī* principles (*fiqh al-mu'āmilāt*) within the UAE's law, however, does indicate an imperative turning point in Islamic legal history. Lastly, we mention certain limitations upon this research. First, it is difficult to generalize on a single case study. More research needs to be conducted for verification or comparative purposes. Second, while this research analysed the UAE's updated CTL, this new law only came into effect on 2 January 2023. Therefore, we were unable to analyse its apparent or common effects on the local Islamic financial industry. Thus, for future research and with the passing of time, we recommend research to be conducted by specifically analysing how the updated CTL had an impact on the local Islamic financial industry. It would be beneficial if this was also done with real-life examples. Our findings are presented keeping in mind the limitations upon this research.

References

- AAOIFI (2018) AAOIFI Welcomes UAE's Adoption of its Standards. [Online] Available from: <https://aaoifi.com/announcement/aaoifi-welcomes-uaes-adoption-of-its-standards/?lang=en#:~:text=According%20to%20a%20recent%20pronouncement,effect%20from%201%20September%202018>. [Accessed 15 July 2024].
- Abdel Haleem, M. (2005) *The Qur'an: English translation with parallel Arabic text*. Oxford: Oxford University Press.
- Al-Ghazālī, M. (1992) *Al-Muṣtaṣfā min 'ilm al-Uṣūl*. Beirut: Dār al-Kutub al-'ilmiyya.
- Al-Matroudi, A. (2015) The Relationship Between Legal and Non-legal Verses in the Qur'an: An Analytical Study of Three Themes of the Qur'an. *International Journal for the Semiotics of Law – Revue Internationale de Sémiotique Juridique*, 26, pp. 261-283.
- Al-Rāzī F. (1979) *Kitāb al-Maḥṣūl lil Rāzī*. Riyādh: Imam University.
- Al-Subkī, T. (2011), *Jam' al-Jawāmi' fi 'ilm uṣūl al-fiqh*. Beirut: Dār Ibn Ḥazm.
- Al-Walātī, M. (2006) *Īṣāl al-Sālik ilā Uṣūl Madhhab al-Imām Mālik*. Beirut: Dār Ibn Ḥazm.
- Ansari, A. (1992) The Contribution of the Qur'an and the Prophet to the Development of Islamic Fiqh, *Journal of Islamic Studies*, 3(2), pp. 141-171.
- Baderin, M. (2021) *Islamic Law: A very short introduction*. Oxford: Oxford University Press.
- Bryman, A. (2004). *Social research methods*. New York: Oxford University Press.
- Bryman, A. (2008). *Social Research Methods*. Oxford University Press.
- Coulson, N. (1964) *A History of Islamic Law*. Edinburgh: Edinburgh University Press.
- Creswell, J. W. (1994). *Research Design: Qualitative and Quantitative Approaches*. California: Thousand Oak, Sage Publication.
- Dawson, C. (2002) *Practical Research Methods: A User-friendly Guide to Mastering Research Techniques and Projects*. UK: How to Books.
- Denzin, N. and Lincoln, Y. (2005) *The Sage Handbook of Qualitative Research*. London: Sage Publications.
- El-Gamal, M. (2006) *Islamic Finance: Law, Economics and Practice*. New York: Cambridge University Press.
- Ercanbrack, J. (2019) Islamic Financial Law and the Law of the United Arab Emirates: Disjuncture and the Necessity for Reform, *Arab Law Quarterly* 33 (2), pp. 152-178.
- Ercanbrack, J. (2019) The Standardization of Islamic Financial Law: Lawmaking in Modern Financial Markets, *The American Journal of Comparative Law*, 67 (4), pp. 825-860.

- Foster, N. (2007) Islamic finance law as an emergent legal system, *Arab Law Quarterly*, 21(2), pp. 170-188.
- Goiten, S.D. (1960) The Birth-Hour of Muslim Law? *The Muslim World*, 50 (1), pp. 23-29.
- Gray, S. P, John, B.W, David, A. K and John, R. D (2007). *The Research Imagination: An Introduction to Quantitative and Qualitative Method*. Cambridge: Cambridge University Press.
- Gray, D. (2009) *Doing Research in the Real World*. London: Sage Publications.
- Hallaq, W. (2009) Groundwork of the Moral Law: A New Look at the Qur'an and the Genesis of Shari'a. *Islamic Law and Society*, 16(3/4), pp. 239-279.
- Hallaq, W. (2013) *A History of Islamic Legal Theories: An Introduction to Sunni Uṣūl al-Fiqh*. Cambridge: Cambridge University Press.
- Heller, A. (2023) Five Key Updates to the UAE Commercial Transactions Law and Implications for Financing Transactions [Online], Available from: <https://www.akingump.com/en/insights/alerts/five-key-updates-to-the-uae-commercial-transactions-law-and-implications-for-financing-transactions> [Accessed 22 June 2024].
- Makdisi, G. (1979) The Significance of the Sunni Schools of Law in Islamic Religious History, *International Journal of Middle East Studies*, 10(1), pp. 1-8.
- Melchert, C. (1997) *The Formation of the Sunni Schools of Law, 9th-10th Centuries C.E.* Leiden: Brill.
- Mez, A. (1937) *The Renaissance of Islam*. London: Luzac.
- Munro, B. (2006) *Encyclopedia of Nursing Research*. New York: Springer Publishing Company.
- Titscher, Meyer, Wodak, and Vetter (2000). *Methods of text and discourse analysis*. London: Sage.
- Tyan, E. (1960) *Histoire de l'organisation judiciaire en pays d'Islam*. Leiden: Brill
- UAE Commercial Transactions Law (2022) Federal Decree No. 50/2022. UAE: Ministry of Justice [Online], Available at: https://www.moec.gov.ae/documents/20121/0/DecreeLaw_50_2022_pdf.pdf/d34d9209-b407-6e73-9acb-3b01522e94e6?t=1673496808487 [Accessed 22 June 2024].
- Wilson, R. (2012) *Legal, Regulatory and Governance Issues in Islamic Finance*. Edinburgh: Edinburgh University Press.
- Yin, R.K. (2003) *Case study research: Design and methods*. California: Sage.