PART I  FUNDAMENTALS  

1  Introduction  
1.1 Economic Scenario in the Neoclassical Framework  
1.2 Conventional Debt: A Recipe for Exploitation  
1.3 Growth per se May not Lead to Socio-economic Justice  
1.4 Social Welfare Activities of the States  
1.5 The Main Culprit  
1.6 The Need of the Hour  
1.7 Economics and Religion  
1.8 Islamic Principles Can Make the Difference  
1.9 Regulating Trade and Business  
1.10 Islamic Finance Passing Significant Milestones  
1.11 Could it Work to Achieve the Objectives?  
1.12 About this Book  

2  Distinguishing Features of the Islamic Economic System  
2.1 Introduction  
2.2 Islamic Sharī`ah and its Objectives  
2.2.1 Sources of Sharī`ah Tenets  
2.2.2 Objectives (Maqāṣid) of Sharī`ah  
2.3 Why Study Islamic Economics?  
2.3.1 The Role of Islamic Economists  
2.4 Islamic Economics: What should it be?  
2.4.1 Islamic Economics Defined  
2.5 Paraphernalia of Islamic Economics  
2.5.1 Ownership of Resources and Property Rights  
2.5.2 Islamic Welfare Approach
PART II  CONTRACTUAL BASES IN ISLAMIC FINANCE  

5  Islamic Law of Contracts and Business Transactions  

5.1  Introduction  

5.2  Mad (Wealth), Usufruct and Ownership  
   5.2.1  Defining Various Related Terms  

5.3  General Framework of Contracts  

5.4  Elements of a Contract  
   5.4.1  Offer and Acceptance: Form of the Contract  
   5.4.2  Elements of the Subject Matter  

5.5  Broad Rules for the Validity of Mu‘āmalāt  
   5.5.1  Free Mutual Consent  
   5.5.2  Prohibition of Gharar  
   5.5.3  Avoiding Riba  
   5.5.4  Avoiding Qiμr and Maisir (Games of Chance)  
   5.5.5  Prohibition of Two Mutually Contingent Contracts  
   5.5.6  Conformity of Contracts with the Maqasid of Sharī‘ah  
   5.5.7  Profits with Liability  
   5.5.8  Permissibility as a General Rule  

5.6  W‘adah (Promise) and Related Matters  
   5.6.1  Token Money (Hamish Jiddiyah) and ‘Arbūn  

5.7  Types of Contracts  
   5.7.1  Valid Contracts  
   5.7.2  Voidable (Fāsid) Contracts  
   5.7.3  Void (Batil) Contracts  

5.8  Commutative and Noncommutative Contracts  
   5.8.1  Uqood-e-Mu‘awadha (Commutative Contracts)  
   5.8.2  Uqood Ghair Mu‘awadha (Tabarru‘) or Gratuitous Contracts  
   5.8.3  Legal Status of Commutative and Noncommutative Contracts  

5.9  Conditional or Contingent Contracts  

5.10  Summary  

6  Trading in Islamic Commercial Law  

6.1  Introduction  

6.2  Bai‘ – Exchange of Values  

6.3  Legality of Trading  
   6.3.1  Trade (Profit) versus Interest: Permissibility versus Prohibition  

6.4  Types of Bai‘  

6.5  Requirements of a Valid Sale Contract  
   6.5.1  The Object of the Sale Contract  
   6.5.2  Prices and the Profit Margin  
   6.5.3  Cash and Credit Prices  

6.6  Riba Involvement in Sales  

6.7  Gharar – A Cause of Prohibition of Sales  

6.8  Conditional Sales and “Two Bargains in One Sale”  

6.9  Bai‘ al‘Arbūn (Downpayment Sale)  

6.10  Bai‘ al Dayn (Sale of Debt)
8.8 Islamic Financial Markets and Instruments 199
  8.8.1 Islamic Funds 201
  8.8.2 Principles Relating to Stocks 203
  8.8.3 Investment Sukuk as Islamic Market Instruments 204
  8.8.4 Trading in Financial Instruments 205
  8.8.5 Inter-bank Funds Market 205
  8.8.6 Islamic Forward Markets 206
  8.8.7 Foreign Exchange Market in the Islamic Framework 209
  8.8.8 Derivatives and Islamic Finance 209
8.9 Summary and Conclusion 211

9 Murabaha and Musawamah 213
  9.1 Introduction 213
  9.2 Conditions of Valid Bai‘ 214
  9.3 Murabaha – a Bai‘ al Amānah 215
  9.4 Bai‘ Murabaha in Classical Literature 215
  9.5 The Need for Murabaha 216
  9.6 Specific Conditions of Murabaha 217
    9.6.1 Bai‘ Murabaha and Credit Sale (Murabaha–Mu‘ajjal) 219
  9.7 Possible Structures of Murabaha 220
    9.7.1 Direct Trading by Bank Management 221
    9.7.2 Bank Purchases Through a Third Party/Agent 221
    9.7.3 Murabaha Through the Client as Agent 222
  9.8 Murabaha to Purchase Orderer (MPO) 222
    9.8.1 MPO – A Bunch of Contracts 224
    9.8.2 Promise to Purchase in Murabaha 224
    9.8.3 MPO – The Customer as the Bank’s Agent to Buy and Related Matters 225
  9.9 Issues in Murabaha 229
    9.9.1 Avoiding Buy-back 230
    9.9.2 Khīyar (Option to Rescind the Sale) in Murabaha 230
    9.9.3 Time of Executing Murabaha 231
    9.9.4 Defaults by the Clients 231
    9.9.5 Rebates on Early Payment 232
    9.9.6 Rollover in Murabaha 232
    9.9.7 Murabaha Through Shares 233
    9.9.8 Commodity Murabaha 233
  9.10 Precautions in Murabaha Operations 233
  9.11 Musawamah (Bargaining on Price) 234
    9.11.1 Musawamah as a Mode of Financing 238
  9.12 Summary 238

10 Forward Sales: Salam and Istisna‘a 241
  10.1 Introduction 241
  10.2 Bai‘ Salam/Salaf 241
  10.3 Benefits of Salam and the Economic Role of Bai‘ Salam 242
  10.4 Features of a Valid Salam Contract 243
10.4.1 Subject Matter of Salam 244
10.4.2 Payment of Price: Salam Capital 246
10.4.3 Period and Place of Delivery 247
10.4.4 Khiyar (Option) in Salam 248
10.4.5 Amending or Revoking the Salam Contract 248
10.4.6 Penalty for Nonperformance 249
10.5 Security, Pledge and Liability of the Sureties 249
10.6 Disposing of the Goods Purchased on Salam 250
10.6.1 Alternatives for Marketing Salam Goods 251
10.7 Salam – Post Execution Scenarios 252
10.7.1 Supply of Goods as Per Contract 252
10.7.2 Failure in Supply of Goods 253
10.7.3 Supply of Inferior Goods 253
10.8 Salam-Based Securitization – Salam Certificates/Sukuk 254
10.9 Summary of Salam Rules 255
10.10 Salam as a Financing Technique by Banks 257
10.10.1 Risks in Salam and their Management 258
10.11 Istisna’a (Order to Manufacture) 263
10.11.1 Definition and Concept 263
10.11.2 Subject Matter of Istisna’a 264
10.11.3 Price in Istisna’a 265
10.11.4 Penalty Clause: Delay in Fulfilling the Obligations 266
10.11.5 The Binding Nature of an Istisna’a Contract 266
10.11.6 Guarantees 267
10.11.7 Parallel Contract – Subcontracting 267
10.11.8 Istisna’a and Agency Contract 268
10.11.9 Post Execution Scenario 268
10.11.10 The Potential of Istisna’a 269
10.11.11 Risk Management in Istisna’a 269

11 Ijarah – Leasing 279
11.1 Introduction 279
11.2 Essentials of Ijarah Contracts 280
11.2.1 Ijarah and Bai’ Compared 280
11.3 General Juristic Rules of Ijarah 281
11.3.1 Execution of an Ijarah Contract 282
11.3.2 Determination of Rent 283
11.3.3 Sub-lease by the Lessee 284
11.3.4 Security/Guarantee in Ijarah 285
11.3.5 Liabilities of the Parties 285
11.3.6 Termination/Amendment of the Contract and Implications 286
11.3.7 Failure in Payment of Due Rent 287
11.4 Modern Use of Ijarah 287
11.4.1 Financial Lease or Hire-Purchase 288
11.4.2 Security or Financing Lease 288
11.4.3 Operating Lease 289
11.4.4 Appraisal of Conventional Leases from the Shari‘ah Angle 289
13.3.1 Use of Tawarruq for Liquidity Management 351
13.4 Ju‘alah 351
13.4.1 Parties to Ju‘alah 351
13.4.2 Subject Matter of Ju‘alah and Reward 352
13.4.3 Execution of a Ju‘alah Contract 353
13.4.4 Parallel Ju‘alah Contracts 353
13.4.5 Practical Process in Ju‘alah by Islamic Banks 353
13.4.6 Some Islamic Financial Products Based on Ju‘alah 354
13.5 Bai‘ al Istijrar (Supply Contract) 355

14 Application of the System: Financing Principles and Practices 357
14.1 Introduction 357
14.2 Product Development 358
14.2.1 Procedure for Product Development 358
14.3 The Nature of Financial Services/Business 358
14.3.1 Management of Deposit Pools and Investments 359
14.3.2 Selection of the Mode for Financing 360
14.3.3 Tenor of Financing 362
14.3.4 Sharī‘ah Compliance and Internal Sharī‘ah Controls 363
14.3.5 Operational Controls 367
14.4 Prospects and Issues in Specific Areas of Financing 369
14.4.1 Working Capital Finance 369
14.4.2 Trade Financing by Islamic Banks 370
14.4.3 Project Financing 373
14.4.4 Liquidity Management 374
14.4.5 Forward Contracts and Foreign Exchange Dealings 375
14.4.6 Refinancing by the Central Banks 377
14.4.7 Cards: Debit, Charge, Credit and ATM 379
14.5 Islamic Banks’ Relationship with Conventional Banks 384
14.6 Fee-based Islamic Banking Services 384
14.6.1 Underwriting 384
14.6.2 Letters of Guarantee (L/G) 384
14.6.3 Letters of Credit (L/C) 385
14.7 Summary and Conclusion 386

Appendix: The Major Functions of a Sharī‘ah Supervisory Board In the Light of the AAOIFI’s Sharī‘ah Standard 387

15 Sukuk and Securitization: Vital Issues in Islamic Capital Markets 389
15.1 Introduction 389
15.2 The Capital Market in an Islamic Framework 390
15.3 Securitization and Sukuk 391
15.3.1 Parties to Sukuk Issue/Securitization 393
15.3.2 Special Purpose Vehicle (SPV) 394
15.3.3 Risk, Contract and Cash Flow Analysis 395
15.3.4 Sharī‘ah Bases of Sukuk Issue 396
15.3.5 Categories of Sukuk 398
15.3.6 Tradability of Sukuk 407
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>15.3.7</td>
<td>Issues in Terms and Structures of Sukuk</td>
<td>409</td>
</tr>
<tr>
<td>15.3.8</td>
<td>Potential of Sukuk in Fund Management and Developing the Islamic Capital Market</td>
<td>411</td>
</tr>
<tr>
<td>15.4</td>
<td>Summary and Conclusion</td>
<td>412</td>
</tr>
</tbody>
</table>

### 16 Takaful: An Alternative to Conventional Insurance

#### 16.1 Introduction
16.2 The Need for Takaful Cover
16.2.1 Why Conventional Insurance is Prohibited
16.3 The Shari’ah Basis of Takaful
16.3.1 Main Objective of the Takaful System
16.4 How the Takaful System Works
16.4.1 Models of Takaful
16.4.2 Issues in the Mudarabah Model
16.4.3 Issues in Wakalah and Wakalah–Mudarabah Models
16.5 Takaful and Conventional Insurance Compared
16.6 Status and Potential of the Takaful Industry
16.7 Takaful Challenges

Appendix: Fatawa (Juristic Opinions) on Different Aspects of Insurance

### 17 An Appraisal of Common Criticism of Islamic Banking and Finance

#### 17.1 Introduction
17.2 The Common Myths and Objections
17.3 Appraisal of Conceptual Criticism
17.3.1 The Connotation of the Word Riba
17.3.2 Rent on Money Capital
17.3.3 Inflation and Interest
17.3.4 Time Value of Money and Islamic Banking
17.3.5 Charging Interest from Rich Debtors
17.3.6 Different Shari’ah Interpretations
17.3.7 Islamic Banks Using Debt-creating Modes
17.3.8 Islamic Financial Institutions – Banks or Trade Houses?
17.3.9 Islamic Banks to Act as Social Welfare Institutions?
17.4 Appraisal of Criticism on Islamic Banking Practice
17.4.1 Divergence between Theory and Practice
17.4.2 IFIs using Interest Income as Seed/Base Capital
17.4.3 Difference between Islamic and Conventional Banking
17.4.4 Imposing Penalties on Defaulters
17.4.5 Availability of Cash for Overhead Expenses and Deficit Financing
17.4.6 Socio-economic Impact of the Present Islamic Banking System

17.5 Conclusion
# 18 The Way Forward

18.1 Introduction 457

18.2 Agenda for the Policymakers 457
   18.2.1 Muslim States and Islamic Finance 459

18.3 Potential, Issues and Challenges for Islamic Banking 461
   18.3.1 Promising Potential 463
   18.3.2 Issues in Islamic Finance 465
   18.3.3 The Challenges 474

18.4 Conclusion 479

## Acronyms

481

## Glossary

485

## Bibliography English Sources

497

## Arabic/Urdu Sources

503

## Suggested Further Readings

505

## Index

509