



THE BOOK OF SALE

Being The Second Chapter of Majallah Ahkām al-‘Adliyah

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مَجَلَّةُ الْأَحْكَامِ الْعَدْلِيَّةِ

English Translation with Contemporary Commentary

Dr. Yousuf Azim Siddiqi
Dr. Rusni Hasan
Dr. Aznan Hasan

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Garden of Knowledge and Virtue

IIUM Institute of Islamic Banking and Finance



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Dr. Aznan Hasan is an Associate Professor in Shariah at Institute of Islamic Banking and Finance (IIBF), IIUM. He is the Founding President, Association of Shariah Advisors in Islamic Finance (ASAS). He is also the Deputy Chairman, Shariah Advisory Council, Securities Commission and Deputy Chairman, Shariah Advisory Committee, Employee Provident Fund (EPF). He is also a member, Shariah Advisory Council, AAOIFI, Bahrain and Higher Shariah Authority, Central Bank of UAE. He also serves as a member of Board of Directors, Maybank Islamic Berhad. Before that, he served as Independent Non-Executive Director, Hong Leong MISG Takaful Berhad (2016-2019). He was a member, Shariah Advisory Council of Bank Negara Malaysia for two terms (2006-2008, 2010-2013). Prior to joining SAC of Bank Negara Malaysia, he was the Chairman, Shariah Advisory Board, ACR Retakaful MEA, Bahrain and SEA, Malaysia, where he was instrumental in the setting up of ACR Retakaful model from a Shariah point of view. Currently, he is the Chairman, Shariah Committee, Maybank Islamic Berhad, Bank Pembangunan Malaysia Berhad, Etiqa General Takaful and Etiqa Family Takaful. He also serves as the Chairman, Shariah Advisory Board, FNB Bank (South Africa), a member, Shariah Advisory Council, HSBC Amanah (Dubai), Standard Chartered (Global-DIFC-Dubai), Shariah Advisory Board, ABSA Islamic Bank (South Africa), Yasaar Limited (London), Khalij Islamic (UK) Limited (London), Bank Nizwa (Oman) and Amanah Raya Asset Management, as well as other financial institutions and corporate bodies located locally and internationally. He also serves as Shariah consultant to Maybank Investment Bank. He is a registered Shariah Advisor for the Islamic Unit Trust Schemes and Islamic securities (Sukuk), Securities Commission of Malaysia. He is also a member, Shariah Supervisory Board, Waqaf Foundation, a corporate entity formed by the Government to oversee the application of Waqaf in Malaysia. He is also invited by several Zakat Centres in Malaysia to give advice on zakat matters in Malaysia. Dr Aznan has conducted and published more than 50 researches and presented more than 100 presentations. Dr Aznan Hasan received his first Degree in Shariah from the University of al-Azhar (1994). He then successfully completed his Master degree in Shariah from Cairo University with distinction (*mumtaz*) (1998) and his thesis was recommended for publication. He then obtained his PhD. from the University of Wales, Lampeter, United Kingdom (2003).

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Abbreviations

AAOIFI	Accounting & Auditing Organization for Islamic Financial Institutions
AIB	Al Inma Bank (Saudi Arabia)
CBOS	Central Bank of Sudan
DIB	Dubai Islamic Bank (UAE)
IBF	Islamic banking and finance
IFAI	Islamic Fiqh Academy India (New Delhi)
JOIB	Jordan Islamic Bank
KFH	Kuwait Finance House (Kuwait)
LAME	Legal Advice Middle East (UAE)
NCB	National Commercial Bank (Saudi Arabia)
QIB	Qatar Islamic Bank

Transliteration

Q q	ق	Z z	ز	A a	أ
K k	ك	S s	س	B b	ب
L l	ل	Sh sh	ش	T t	ت
M m	م	Ṣ ṣ	ص	Th th	ث
N n	ن	Ḍ ḍ	ض	J j	ج
W w	و	Ṭ ṭ	ط	H ḥ	ح
H h	هـ	Ẓ ẓ	ظ	Kh kh	خ
’	ء	‘ ‘	ع	D d	د
Y y	ي	Gh gh	غ	Dh dh	ذ
Al- al-	ال	F f	ف	R r	ر

Aw aw	أَوْ	Ā ā	آئي	Ā ā	أَ
Ay ay	أَيَّ	Ū ū	أُو	Ā ā	أَيَّ

i	ِ	u	ُ	a	َ
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un	ُنْ	in	ِنْ	an	َنْ
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Foreword

Over the centuries and ages and across many civilizations, educational institutions have played an instrumental role in imparting knowledge to young generations, who will then pave the way for the future scholarly endeavour and consequently, shape the human civilisation. Islamic banking and finance is no exception to this scholarly trend. Institutions offering courses and degrees in Islamic banking and finance are established in different parts of the world to equip future professionals, policymakers and academicians with the most relevant knowledge. More than a decade ago, the International Islamic University Malaysia (IIUM) established a fully dedicated institute, namely the Institute of Islamic Banking and Finance (II/BF), to impart knowledge on Islamic banking and finance. The II/BF has since strive to maintain high standards of education through convergence of theory with practical applications. The high academic excellence and quality have been proven with the alumni of the II/BF hold important positions and were able not only to perform but excel in their respective segments of the Islamic banking and finance industry.

The faculty members of the II/BF continue to publish productively in academic peer-reviewed journals and collectively, the II/BF remained the top contributor in the advancements of knowledge in the area of Islamic banking and finance. The faculty also remains active in organizing and participating in conferences and seminars at the local and global levels. Apart from these regular tasks, the II/BF has remained active in producing manuscripts and publishing quality books, effectively playing its role as a point of reference not only for the local community, but for the global audience as well.

Over the past few years, the II/BF faculty members have published several books, of which three are highly acclaimed titles which were well-received by the industry as well as by the academia. This

includes *Money – the Real Economy from an Islamic Perspective and Islamic Finance and International Shipping* by Associate Professor Dr Adam Abdullah, and *Islamic Financial System: Theory and Practice* by Professor Dr Salina Kassim.

In order to continue our tradition of promoting advances in knowledge in the area of Islamic banking and finance and to support the endeavour of bridging the gap between the theory and practice, the IIBF has engaged in a translation project of the Book of Sale, being the second chapter of *Majallah Ahkām al-‘Adliyyah*. The project required high skills of translation and understanding of the contemporary resolutions issued by the Shari’ah Boards of Islamic banks and Fiqh academies. Despite the fact that the project was planned during Covid-19 times, I am pleased to share that it was completed during these tough times. I am sure the present book would be beneficial to the practitioners, students, researchers as well as legal experts.

I would like to extend my word of appreciation to EXIM Bank (Malaysia) for being the sponsor of the project. Also, to the translation committee which managed to complete the tasks within the stipulated deadline.

Professor Dr Salina Kassim
Dean
IIUM Institute of Islamic Banking and Finance

Kuala Lumpur, Malaysia
July, 2021

Foreword

For many decades now the Muslim Ummah has been working towards restructuring the many aspects of their lives in ensuring that they are in harmony with the requirements of Shari'ah and the realities of the day.

In some areas, more research and analysis are still needed to harmonize them to the Shari'ah principles due to the many intricacies present in the world of finance. The codification of Islamic businesses law is no exceptions.

This book entitled, **The Book of Sale**, is an attempt to present one of the earliest efforts of codification, known as *Majallah Ahkām al-ʿAdliyyah*, for application in various Islamic Banking products.

Majallah was of great importance to all legal systems in the Muslim countries due to its seniority and being world's first official effort to codify Islamic rulings related to commercial transactions. We need to ensure the law of commerce and trade from an Islamic perspective is well-understood to students as well as scholars.

Majallah was released officially in Turkish and then translated to various languages used by the Muslims. However, there was a vacuum of professional English translation as well as reflective of modern application by Islamic financial institutions.

As the preferred Financier and Advisor for Global Business in the country, EXIM Bank is proud to be associated with this book, which we believe would be beneficial to the many Islamic financial institutions, as well as those who are keen in seeking further knowledge and understanding on the subject matter.

Our sincere appreciation goes to IIUM for presenting us this opportunity and privilege to work together towards the successful

publication of the book. We trust the development of this Islamic Finance book will contribute towards the development of Islamic finance for the *maslahah 'ammah*.

Happy Reading

EXIM Bank of Malaysia Bhd.

Preface

Islamic jurisprudence and its law trace their origins back to the life of the Prophet Muhammad (PBUH) with the start of Holy Revelation (*wahī*) from the cave of Ḥirā' on the outskirts of Makkah. The start was from the Holy Commanad of *iqrā'* which literally means *read*. Hundreds of rulings, principles, maxims were laid down during the life of Prophet Muhammad's Makkah and then Madinah life. The following era of the Four Caliphs ensured to keep a strong connection with these set of rulings by crafting an meticulous system which addressed various aspects of life, and not just creed or spiritual messages.

Trade and commerce were never neglected in the Holy Revelation and Prophet Muhammad (PBUH)'s verbal and practical life. In the coming decades and centuries, scholars and jurists focused on various types of commercial contracts which eventually helped Muslims to create memorable civilizations.

Centuries-long great achievements made by Muslim scholarship, market regulators and traders' practices were point of discussion and deliberation not only by Muslims, rather by non-Muslim knowledge seekers who were eager to explore and benefit from centuries of marvellous efforts.

Despite its oceanic coverage, but Islamic jurisprudence remained difficult to be grasped by amateur readers which limited its reach. On the other hand, with start of industrial revolution and followed by slow movements towards globalization and interstate trade practices, the need for codification was immensely felt in different parts of Europe. In the mid 19th Centaury, the Ottoman Empire felt the need for commercial codification, followed by family law codification. Some projects were commissioned but failed to complete the designated task. Eventually, Majallah committee was commissioned to overlook the task of codifying rulings related to trade and commerce. After years of endeavours efforts, Majallah committee succeeded to bring books on Islamic rulings related to almost all the aspects of trade and commerce. Since the law book was meant to be used by judges and lawmakers

so some sections were even dedicated to legal proceedings as well. Majallah was enacted as a law across various territories and remained effective even after the fall of the Ottoman Empire one century back.

It could be said that Majallah was first of its kind of a state-level effort made to codify rulings of Islamic jurisprudence. Jurists, scholars and law experts remained till date interested to serve the reference with short notes or long commentaries. Unfortunately, most of these works were in Arabic, with little effort being made to cater English speaking readers. Further, there were few English translations of Majallah besides the shortcomings in selecting right terminologies which affected the quality of available translations.

During Covid-19 times, the translation committee at IIUM Institute of Islamic Banking and Finance (Malaysia) decided to commence a project of translating Majallah in serial releases. It was aimed to select the most appropriate translation based on legal writings besides adding a modern flare of banking practices. The committee felt that by achieving this, students and grooming scholars will be able to connect the classical writings with contemporary practices of banking and finance. To start the series, we initiated with the Book of Sale (*Kitāb al-Buyūʿ*), and hopefully followed by other books as time and resources permit.

We pray to Allah that this small gesture of serving Islamic jurisprudence will be accepted in this world and hereafter, Āmeen.

Yousuf Azim Siddiqi
Rusni Hassan
Aznan Hasan

IIUM Institute of Islamic Banking & Finance
July 2021