SOME ASPECTS OF ISLAMIC LAW

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ISLAMIC LAW

Islamic law is not an independent brand of knowledge or learning like other legal systems. It forms part of the religion of Islam itself and is based upon revelation and is thus regarded by its followers as immutable and eternal.

Any philosophy of law as something derived from the will of a sovereign people is wholly alien to Islam as is any notion of a distinction between natural law and positivist law found in western jurisprudence.

To a Muslim the law is God-given and all Muslims receive it and are subject to it.

A consequence of this is that Islamic law heavily emphasises the obligations and duties of those subject to it rather than focussing upon rights.

The five pillars of Islam represent the basic principles of the Islamic faith.

These are;

1. A belief in God and belief that Mohammed is the messenger of God. Associated with this is a belief in the angels, the prophets and God's revelations in the Quran which to a Muslim represent a complete guidance to human kind.

2. Prayer: Muslims are required to pray five times a day – at dawn, midday, midway through the afternoon, after sunset and at night. The prescribed prayers are generally recited in Arabic.

3. Fasting: This is prescribed in the month of Ramadan which is the ninth month of the Islamic calendar. Adult Muslims who are in good health may neither eat nor drink during daylight hours.

4. *Zakat*: Each year a Muslim should give a defined proportion (2.5%) of his or her wealth accumulated over a year to the poor and needy by way of acompulsory charity tax.

5. The Hajj or Pilgrimage to Mecca. This is required to be undertaken by every Muslim who can afford it once in a lifetime.

Muslim law or the *Shariah* (the way to follow) has four sources. These are

1. the Quran
2. The *Sunnah*. The s*unnah* is made up of the collected traditions or hadith (the acts and statement of Mohammed).
3. The Ijma which states the general consensus of Muslim scholars.
4. The Qiyas which is the term used to describe juristic reasoning and writings and teachings based upon this.

The science of Muslim law or jurisprudence is known as the Fikh. The Quran and the *sunnah* are the fundamental sources of Islamic Law since the rules of the *Shariah* are based upon them. However they now are primarily regarded as simply historical sources. The vast bulk of Islamic law is based upon the Ijma.

Orthodox Muslims are known as Sunni. There are some four Sunni rites or schools which take their names from their founders. These are:

1. Shafii rite. The followers of this rite are primarily to be found n Indonesia and Malaysia and in some parts of East Africa.

2. The Hanafi rite whose adherents are found in Pakistan and Turkey, Afghanistan, Syria and parts of the former Soviet Union as well as in Jordan and in the Muslim population of India.

3. Maliki rite. This is the rite of the Muslims of North and West Africa.

4. Hanbali rite which is the dominant rite in Saudi Arabia.

The Shafii and Hanafi rites have by far the greatest number of adherents.

As well as the orthodox schools there are unorthodox rites. The principal of these of course it the Shiite which predominates in Iran and in Iraq but which has adherents in other parts of the Muslim world.

One of the most problematic features of Islamic law is that because it is proclaimed to be and is accepted as being eternal and immutable because of its revealed nature, no formal or accepted mechanism exists which would permit the law to be altered and thus evolve and develop in the light of changing circumstances.

Of course, the reality is that Islamic law has had to evolve and develop to survive but it is the basis upon which such evolution and development is to be regarded as occurring which has given rise to such difficulty.

There are two relevant periods in the history of Islam in this regard.

For the first four centuries after the Hijra (Mohammed's flight to Medina) Muslim law developed through various teachings and interpretations of divine law and attempts to specify in some detail the contents of Islamic law. The result of this was increasing division and dissension amongst the Muslim community. Indeed Islamic law is primarily based upon doctrine that began to develop after the establishment of the Abbasid caliphate (750 A.D) and continued to develop over some three centuries or more. The divisions which occurred as a result led to what is known as the Taqlid. This is one of the most significant events in the history of Islamic law and has had profound consequences.

Because of the dissensions which had arisen and the fear of schism the development of divine law was proclaimed to be complete and it was the duty of Muslims thereafter to observe the Taqlid. The personal interpretation of sources was forbidden. Literally, the door of knowledge was said to be closed. The consensus of scholars on

which this was based is claimed by Islamic jurists to have occurred in the fourth century of the Hijra (622 A.D.). Not all of the Islamic world accepts this. The Shiites whilst accept immutability of Islamic Law do not theoretically accept the Taqlid.

The result is that the same works have been used to teach Muslim law since that time with very little being added over the centuries that have passed since.

The closing of the door of knowledge some four or five centuries after the Hijra and the absence of any formal or any accepted mechanism for altering Islamic law has led to widespread criticism of Islamic law as being medieval and outdated.

In "Major Legal Systems in the World" by Brierley and David the authors summarise the dilemma to which the *Taklid* has given rise:

> "Since its development was arrested in the tenth century, the *fikh* as a body of law is manifestly incapable of adapting to modern societies. It does not anticipate certain institutions seemingly necessary in these societies. While many of its rules were probably quite adequate in their own time, today they seemed outmoded and sometimes even shocking. The inability of the *fikh* to adapt to modern ideas and conditions has thus created a problem, particularly in those countries with a Muslim majority which have abandoned their passive attitude and have looked since the last century to western nations as a model, attracted not only by their material prosperity but by their political ideas and moral concepts as well. Can Muslim countries modernise themselves without rejecting tradition? And what role can the *fikh* continue to play in these new societies?"

Nonetheless adaptations have had to be made and some means have been found to enable this to occur. It is the absence of any formally accepted mechanism and the rejection of any further development of doctrine flowing from the *Taklid* which however has limited the capacity of the *Shariah* to keep pace with the modern world.

As Brierley points, a variety of means have been able to be pressed into service to enable Islamic law to evolve. One of these has been custom. Islamic societies like other societies, live according to custom which is not part of Islamic law itself but

exists side by side with it. Islamic law has been syncretic and has absorbed customs in many instances while in other instances it has rested somewhat uneasily with it. One will therefore see differences in Islamic law as it applies from country to country because of the impact of custom upon the lives of the Muslims of those communities. Custom has allowed changes to take place.

Islamic law divides all of a persons actions into five categories:

1. obligatory
2. recommended
3. indifferent
4. blameworthy
5. forbidden

Whilst custom cannot affect behaviour which is forbidden or which law makes obligatory it can influence other forms of conduct.

Islam is a highly formalist religion with greater emphasis, being placed upon the form than the substance. This has enabled change to occur through legal stratagems and fictions. Brierley gives some instance. Contracts which are dependent on uncertain contingencies such as insurance contracts are forbidden. However, according to Islamic law only the person who collects the premium itself commits a sin. It is possible therefore to take out insurance with an insurance company or with a non-Muslim. As we will see whilst loans bearing interest (riba) are forbidden by Muslim law, Islamic societies have developed a number of banking practices which enable this prohibition to be evaded.

Similarly the use of contract to offset the harshest and less acceptable aspects of Islamic law is permitted.

Whilst according to Islamic law rulers are themselves bound by Islamic law in the same way as any other person and cannot legislate since all lawmaking power has a divine source, Islamic societies do recognize regulatory measures taken by authorities provided the continued theoretical admission of the superiority and ultimate authority of Islamic law is acknowledged.

There are many instances of rulers in Islamic nations simply ignoring some of the strictures of Islamic law and enacting legislation which is difficult to reconcile with it.

It is important to bear in mind that when one speaks of the Islamic world; one is speaking of some 1.2 billion people living in an area spanning much of the globe from Mauritania in the east to Indonesia in the west.

The form which Islamic law takes in those countries varies greatly.

There are only a few countries in which the *Shariah* is the law of the land where all or virtually all aspects of the laws of those countries are purely Islamic.

Into this category falls Saudi Arabia, Afghanistan, Sudan, parts of Nigeria and Pakistan with some qualifications from time to time in some of those. There are other nations in this category.

There are many countries in which there are Islamic majorities as well as many in which there are substantial Islamic minorities. In those countries the Islamic law tends to be limited to the status personnel. That is, Islamic law applies to the more personal aspects of the lives of the Muslim community such as marriage, divorce, succession, and custody of children, charities, adoption and the like.

In a country like India which has a pluralist legal system Islamic law is together with Hindu law, the law which governs the personal aspects of the lives of the members of those religions.

In some of the countries where there are substantial Islamic majorities, there is from time to time agitation to introduce *Shariah* law so that all persons living within the community whether Muslims or not would be subject to Islamic law.

There have been a number of countries in which some of the more objectionable features of Islamic law relating to subjects such as marriage have been abolished by legislation which applies to all persons living within the territory. For example,

Indonesia has enacted legislation which outlaws polygamy and sets minimum ages for marriage.

In some countries, Islamic law is administered in the ordinary courts of the land whilst in other countries, it is administered in *Shariah* Courts, funded by the State. In Iran all of the laws are administered in Islamic Courts presided over by Qadi or Islamic Judges.

ISLAMIC LAW IN THE TWENTIETH CENTURY

What has happened in the 20th century in the Islamic world so far as Islamic Law is concerned might be summarised as follows:-

Until about halfway through the 20th century the Muslim world had been, for a lengthy period, ruled directly or indirectly by European colonial powers. In addition some areas had been ruled by the Ottoman Empire which came to an end early in the 20th century.

The only country in the world which at the end of the colonial era had a wholly Islamic legal system was Saudi Arabia which had never been a colony but whose rulers had exercised their powers subject to the broad overlordship of the Ottomans until the fall of that empire.

Western laws had been introduced in all of the Islamic nations which had been colonies of the British (in India and Malaya), the Dutch (in Indonesia) and the French and Italians (in North and East Africa). Other parts of the Middle East had not been colonized but had been at least indirectly under European control. This included Iraq from the time that it ceased to be part of the Ottoman Empire and Iran which had been ruled during the twentieth century by regimes supported and largely kept in place by western powers.

Islamic laws had substantially been supplanted by laws recognisably western and modernist in their character.

There was a general acceptance that Islamic law was disappearing with the advance of such westernisation and modernism. Islamic communities were economically backward and the future of Islamic civilisation was to say the least, questionable.

In addition many of the leaders of the new nationalist and independence movements which were emerging were western educated and secular. Their connections to Islam were superficial and tenuous.

Nonetheless at the grass roots level and largely outside of the gaze of the western world, Islamic movements developed and were supported by the publications of important Islamic teachers.

In many countries there were movements – in some cases with low levels of support and in others with much greater levels of support – towards the re-Islamisation of the cultures and legal systems of the Islamic world.

Undoubtedly the most significant development in this regard was to be in Iran in 1979. The Shah's regime was swept away and the Ayatollah Khomeini came to power and the country was declared an Islamic State. The State Courts were substituted by Islamic Courts and the whole legal and economic systems of the nation were brought into line with the *Shariah* law as Islamic in character.

Similar developments occurred however in Pakistan, Libya and the Sudan which have become wholly *Shariah* States. In Nigeria a number of the States of the Federation have adopted the *Shariah* as their legal system. There have been attempts made also in parts of Malaysia to establish *Shariah* law. Two states sought to introduce Islamic Criminal law but the opposition of the federal government has prevented this. There has also been strong agitation by forces in Aceh for a separate state leased upon *Shariah* principles.

Not all of these States can be regarded as having adopted the *Shariah* law to the same extent but broadly it might be said that they constitute the group of nations which can be regarded as most identifiably Islamic in their legal systems.

With these general remarks I now turn to have a look at some specific aspects of Islamic law. It will be possible to select only a couple and to deal with these briefly given the constraints of time. I have chosen criminal law, and commercial and banking law.

The treatment of these two subjects is substantially based upon Chapters 11 and 14 of Hussain's "*Islam - Its Law and Society*" 2nd Edition Federation Press 2003.

ISLAMIC CRIMINAL LAW

This area of the law has been selected because it is the area which has tended to receive the greatest publicity almost all of it adverse.

In Islamic law crimes are classified into three categories:

(a) *Hudud*

(b) *Qisas*

(c) *Ta'azir*

The first of these categories (*hudud* crimes) are those which are specifically mentioned in the Quran as transgressions. There are some five of these and they are a somewhat curious collection not having any identifiable connection or common character.

The crimes which fall into this category are:

(a) Theft (*al-sariqa*)

(b) Highway robbery (*al-hirabah*)

(c) The consumption of alcohol (*al-sharb*)

(d) Unlawful sexual intercourse (*zina*)

(e) False accusation of unchastity (*al-qazf*)

Some of the Islamic schools also include Murder and Apostasy amongst the *hudud* crimes.

Although *hudud* offences are punishable by what many see as barbaric punishment, they are subject to conditions of proof which are extremely strict to the point of being impossible in some instances.

The *Quran* prescribes the punishment for these offences.

In the case of theft, the prescribed punishment is a cutting off of the hand. However to establish such an offence it is necessary to prove:

(a) That the thief is an adult.

(b) That he is sane.

(c) That he must have a criminal intent.

(d) That he was not have forced to commit the crime by hunger or emergency.

(e) That he was not under duress.

(f) That the property stolen is less than a prescribed amount.

(g) That he must know the property is owned by someone and is not a commodity which is common or state property.

(h) It was taken from a place where it was held in custody.

(i) It is of value.

Wine and pork which are forbidden by Islamic law are considered to have no value in this context.

Proof of guilt must be furnished by the evidence of two reliable male witnesses or by a voluntary confession made twice before the Court. If the thief repents before the sentence is executed the penalty is avoided.

Highway Robbery (*Al-hirabah)*

This is the offence of robbery with violence. Some dispute exists as to whether it must be committed on the highway or whether a hold up in an urban area is also included. Different schools have different views about this. The penalty varies according to whether the robber has killed or injured the victim or simply robbed or threatened to rob. The prescribed penalties can be summarised as follows:

(a) In the case of a killing by the robber who has been apprehended, the penalty is death.

(b) Where the robber has killed and got away with the stolen property – crucifixion.

(c) Where there has been robbery with violence but the robber does not kill the victim – cutting off of the hand and foot on opposite sides.

(d) Where the robber frightens the victim but does not kill or get away with the stolen property – the penalty is exile.

Similar strict conditions of proof are required to those required for theft.

Drinking of alcohol (*Al-sharb)*

The penalty for drinking alcohol is either 40 or 80 lashes, depending on which school of law is applicable in the community. There must be evidence from two just witnesses to prove the offence and the offender must be an adult, sane and not forced to drink by duress.

Unlawful sexual intercourse. (*Zina)*

It is in this area and in the case of the following *hudud* offence (False accusation of unchastity) that much of the adverse publicity relating to Islamic criminal law arises.

Zina includes Rape, Adultery and Fornication between unmarried persons. In some but not all schools, Sodomy is included.

Islamic law on this subject derives partly from the *Quran* and partly from the authority of *hudith*. Generally it is accepted by the Islamic jurists that the proper punishment for married adulterers is stoning to death and for the unmarried 100 lashes.

In this area proof of z*ina* is so stringent as to be virtually impossible. The offence must be proved by the evidence of four trustworthy male Muslims, each present at the same time and who must have seen the act of penetration itself. The only other way in which *zina* may be proved is by confession but this too is subject to very stringent conditions. The confession must be voluntarily made on four separate occasions

before a Court and the person confessing must be aware both of the nature of the offence and the prescribed punishment.

It is said by Jamila Hussain in *"Islam - Its Law and Society"*, that according to the Saudis, a conviction for *zina* is obtained only once about every hundred years in that country which is the country which has most strictly applied *Shariah* law over a long period.

Serious problems arise in the case of pregnancy. There is a controversy whether the pregnancy of an unmarried woman should be taken in itself as a confession of *zina*. Most jurists argue that pregnancy should be regarded as providing circumstantial evidence only since an exception should be allowed for rape or sexual intercourse under the mistaken but genuine belief of marriage to the man concerned. However some jurists contend that an unexplained pregnancy is to be treated as a confession of *zina* unless there was an immediate demonstration of lack of consent at the time by raising an alarm or laying a complaint.

The *Shariah* law in this area has given rise to cases which have been widely publicised in the western world. In the *Safia Bibi* case in Pakistan a young housemaid almost blind alleged that she had been raped by her employer as a result of which she gave birth to an illegitimate child. Her father laid a complaint of rape against the employer which complaint was dismissed for want of the necessary evidence, something which will not have been surprising, given what is necessary. However the Court took her pregnancy as evidence of her culpability and convicted her of *zina*, sentencing her to imprisonment, whipping and a fine. Ultimately following a great outcry and much international publicity, the Federal *Shariah* Court set aside her conviction.

Many of you will be aware of a more recent case in Nigeria where a woman gave birth more than nine months after she had been divorced. She was sentenced to death by stoning which was postponed until she had weaned her daughter for which the law provides. Again following an outcry this conviction was quashed on appeal.

False accusation of unchastity (*Al-Qazf)*

If a person makes such an allegation and cannot prove it (providing the necessary four witnesses referred to earlier) the accuser will be punished with 80 lashes.

Apostasy (*Al-Riddah)*

Apostasy which is the rejection of Islam in favour of another religion or atheism is according to some schools a crime liable to *hudud* punishment and there is again a difference whether it should be punishable by death. In the case of the author Salman Rushdie a *fatwa* or religious order was issued by a the Ayatollah Khomeini condemning him to death because of the publication of his book, *The Satanic Verses*.

Qisas

The second category of offences is *Qisas*. Authority for this is found in the Koran.

Essentially it provides for a legal right to inflict the same hurt upon the wrongdoer as the wrongdoer has perpetrated on the victim. In summary the effect of *Qisas* is that whilst giving the strict legal right to inflict the same hurt upon the wrongdoer by the victim or the victim's heirs in the case of death there is a strong recommendation that the victim or his heirs accept instead compensation or *diyat* from the wrongdoer. A table of maims exists which nominates the appropriate compensation for various types of injury.

If the wrongdoer does not have the funds to pay compensation then his relatives are expected to contribute.

Hussain suggests the support for these measures in relation to these types of crimes in the Quran is to be understood in the context of the blood feuds which the Arabs of the time pursued with great enthusiasm sometimes over generations.

A case which carried with it a great deal of publicity involved the murder of an Australian nurse in Saudi Arabia. Two British nurses were accused of the murder and were placed on trial. The brother of the deceased was given the responsibility under Saudi law whether to demand the death penalty or to accept financial compensation and allow the nurses to go free. He ultimately took that the latter course and accepted

what is described as *diyat* which is the word for such compensation and donated the monies to build a children's ward at a hospital in Adelaide.

Ta’azir

The final category of crimes is *Ta'azir*. This includes all crimes which are not included in the first two categories. Their nature and punishment is determined by the ruler of the community or the State and individual punishments are awarded at the discretion of the Judge. It is open to convict a person charged with a *hudud* offence but in respect of which the strict evidentiary requirements cannot be satisfied of a *ta'azir* offence for which the same stringent requirements are not necessary. The Court may convict such a person of a "*ta'Azir*" offence and impose whatever punishment it or the State pursuant to appropriate laws deems appropriate.

Criminal responsibility does not attach to children up to the age of puberty or the insane.

Many Islamic writers see the area of the criminal law as holding Islamic law generally up to ridicule and criticism whilst others point to punishments or disadvantages of various forms for adultery until well into the 20th century in parts of the western world and barbaric treatment for serious offences such as treason and other offences in England and other parts of the western world at least until the end of the 18th century (for treason disembowelling, beheading and quartering for a male, or being burnt alive in the case of a female).

ISLAMIC COMMERCIAL BANKING LAW

The law dealing with trade and commerce has an ancient tradition in Islamic law with some verses in the Quran directed towards it. Banking law on the other hand is of very recent origin.

Property rights are enshrined in Islamic law but only upon the basis that all natural resources are to be used for the benefit of humankind and those in whom ownership is vested enjoy such rights of ownership whilst they follow the tenants of the *Shariah*.

There is much emphasis upon fairness and honesty in business dealings and a prohibition against the exploitation of others. Monopolies and price fixing are prohibited.

Riba, which means unlawful gain, is prohibited by Islamic law. This has a specific area of application in relation to the payment of interest. Not surprisingly this has created difficulty in relation to the establishment of an Islamic banking system as we shall soon see. In addition uncertainty (*Gharar*) is forbidden. This has long been interpreted as prohibiting insurance contracts because this involves an unknown risk. Some means have been adopted to circumvent this prohibition such as the development of co-operative insurance in some countries. However the prohibition on *gharar* is wider than a prohibition on insurance and applies to many types of transactions such as speculative investments (including the trading of futures) and where a seller is not in a position to hand over goods to a buyer or the subject matter of the transaction is not in existence or its characteristics are not known or there is an uncertain future date of performance.

Islamic law permits and encourages profit sharing enterprises in the nature of various forms of partnership for which there are quite detailed rules.

Similarly Islamic law provides for the elements of a valid contract and these include (as at common law) offer and acceptance, consideration, capacity, legality. It also provides for circumstances in which a contract might be terminated.

As we have seen one of the five pillars of Islam requires a Muslim to pay *zakat* which is the giving of alms for the poor and needy. This is generally regarded as a form of taxation. It is assessed at 2.5% of the total of the assets of the payer after deducting his or her liabilities. It is to be paid annually and is to be paid by both natural and corporate persons. In non-Muslim countries its payment is a matter of religious obligation rather than pursuant to State compulsion but in Muslim countries it is compulsory and collected by the State authorities and can be offset in certain countries against the amount of income tax where income tax is levied by the State. It is generally accepted that since *zakat* is limited to alms for the poor and needy, Islamic states may impose other forms of taxation to raise revenue for administration,

defence and public purposes. However, the forms of taxation which might be imposed in accordance with Islamic law are somewhat contentious, particularly in those countries which have sought to bring their economic systems into line with Islamic law.

In Islamic countries certain other forms of taxation such as taxes on agricultural produce and agricultural land is imposable and a form of taxation can be imposed on non-Muslims living in an Islamic state, since they are not obliged to pay *zakat*.

The first Islamic bank was set up in Egypt in 1963. Since then it has been followed by other banks in Egypt, the Philippines, Dubai, Kuwait, Bahrain (all in the 1970s) and Kuwait as well as in more recent times in Europe and the United States and many other countries including former parts of the Soviet Union and Asia.

An Islamic banking system has to be conducted within certain strictures imposed by the *Shariah* and which necessarily limits greatly the scope for banking operations. If required considerable ingenuity to establish a banking system consistent with those prohibitions. These are summarised by Hussain:

(a) The giving and taking of interest is prohibited in all transactions.

(b) Business and trade activities are undertaken on the basis of *halal*. That is the activities for which banks should provide banking services must be those which are legal under Islamic law. This will exclude a brewery, piggery, casino or similar *haram* prohibited enterprise.

(c) Transactions should not offend the principle of *gharar* (uncertain or speculative).

(d) Making money from money is prohibited by Islamic law. Money has no value in itself. It is not acceptable that money should be hoarded or left in a bank without productive investment.

(e) Financial transactions should always be in line with Islamic principles of discouraging hoarding and encouraging social justice. To this end, Islamic banks have religious committees to advise them on the propriety of their activities under the *Shariah. Zakat* is to be paid by the bank in the same way as any individual does.

Some examples of the financing structures which Islamic banks have adopted can be given (again taken from Hussain):

(a) *Mudarabah* - In this transaction one party contributes capital while the other provides work and management skill. The bank provides the capital to a customer for a business venture and in return receives a specified percentage of the venture's profits for a pre-determined period of time which covers repayment of the principal of the loan plus a profit for the bank. If there is a loss, the loss is shared by the bank but the bank is not liable for losses beyond the amount of the money loaned, whilst the other party can lose only his or her time and effort.

(b) *Musharakah* - This is a transaction in the nature of a partnership usually for a short period of time although it can be for an indefinite period. It is in the nature of a joint venture and is to carry out a specific project. The bank participates in the equity of the undertaking and receives an annual share of the profit. Over time the bank's equity gradually reduces to nothing at which point the partnership ceases.

(c) *Murabahah* - Under this transaction commodities are purchased by the bank and sold to the customer at cost plus an agreed profit. This is a substitute for the usual banking practice of lending monies to a customer at interest to enable the customer to purchase the commodities. There has been some criticism of this as the bank is able to finance the buyer without taking any risk itself and it can be construed as little more than a device or a thin veneer to circumvent the prohibition of interest.

(d) *Bay Al-salam* - Under this transaction a seller who needs working capital before he can perform his obligations under a contract has the price paid in full by the bank in advance for goods or items to be delivered at a future time with the seller to pay the bank an agreed price.

(e) *Ijara* - This is a form of direct lease financing where the bank purchases an asset, leases it to a customer for a period and receives an agreed charge or rent for it.

(f) Similar to the above is *Bai Al-Takjiri*. This is similar to hire purchase finance where the lease ends with ownership. The bank and the customer agree that the customer will purchase the asset at an agreed price with all lease rentals previously paid forming part of the price.

(g) *Istisna* - This is often used to finance the construction of a house. The bank contracts with a customer who wishes to purchase a house and enters into a parallel contract with a builder to construct it. The builder is paid a definite price on completion and the owner can commence payment of instalments before the house is completed or upon completion.

This is an area in which Islamic law has shown a capacity to adapt and modernise. It has been possible to do this by avoiding – in some cases in a rather formalistic and artificial way – the prohibitions of the *Shariah* law. Islamic banking has proved to be profitable and has been adopted in all Islamic states. The last Islamic state to establish an Islamic bank was Saudi Arabia which is generally regarded as the country with the greatest degree of conformity to the *Shariah* in all aspects of its life. The bank which the government allowed to operate became one of the most profitable of all Islamic banks.

In addition to the above transaction, I should add it is possible for persons to hold accounts with the banks. The account holder will usually obtain an amount which represents part of the profit of the bank at the end of each year. Similarly trade finance methods have been adopted which do not conflict with the prohibition on *riba*.