

Financial Engineering in Islamic Banks

Dr. Nazeeh Hammaad

Abstract

The present study discusses the concept of financial engineering; a financial term which generally means the design, development and implementation of financial mechanisms and tools and the formulation of innovative solutions of financing and exchange problems. From an Islamic perspective, the study defines the term as “an innovative design of exchange and financing that involves creation of solutions that affect change in the structure of contracts to attain a hidden or implicit goal.

Financial engineering is resorted to in cases of manipulation of the *Sharee’ah* provisions and objectives to attain unlawful goals through lawful actions.

From an Islamic perspective, financial engineering can be divided into two sections:

- a. Concerning form, it is divided into two parts:
 - Part One: Simple like *bay’ al-enah*
 - Part Two: Complex like leasing ending with acquisition
- b. Concerning content and ruling, it is also divided into two parts:
 - Part One: Prohibited
 - Part Two: Lawful

The author concludes that financial engineering is a justified and acceptable action from the juristic point of view unless the means and goals violate a *Sharee’ah* rule or objective or result in a pure or likely corruption.



The man or the woman proposing themselves to each other with the purpose of marriage. The woman may do so, if necessary and her guardian may do so on her behalf.

Accepting the proposal for a woman is in the hands of her guardian and there is no objection for a woman of legal capacity to betroth for herself.

The paper discusses the rules of proposing by the woman and the man for the purpose of marriage through modern communication means including the urgent need for such proposals.

The author explains the differences among modern scholars on the issue of creating electronic marriage sites in two opinions: 1) it is permissible to create these sites, enter them and use them under certain conditions. This is the opinion considered as preponderant by the author; 2) it is not permissible.

Concealed Testimony in Islamic Jurisprudence

Ahmad bin Saalih Aal-Abdus-Salaam

Abstract

The present paper elaborates the concept of concealed testimony. The author defines testimony as informing about the right of a third party against a third party beginning with the phrase "I certify". He then defines the concealed testimony as the testimony delivered by the witness in concealment from the person testified against. The author states that testimony is lawful according to the provisions of the Holy Qur'an, the Prophet's *Sunnah*, consensus of scholars and intellectual reasoning.

The paper discusses the types of testimonies, the conditions the witness should meet including Islam, puberty, freedom, sanity, justice, speech, no strong accusation and vision.

The paper also discusses the ruling on accepting the concealed testimony and the differences among scholars on it in seven opinions ranging from accepting it to rejecting it.

The author concludes that the concealed testimony may be accepted under certain conditions and rules.



Mediation in Marriage Contracts

Dr. Muhammad bin Sa'd Ad-Dosaree

Abstract

The present paper discusses the following topics:

Preliminary Marriage Requirements: selection of the spouse, betrothal, seeing the betrothed woman and the relation of mediation in marriage contracts with these preliminary requirements.

The concept of mediation in marriage contracts is defined as a contract that requires bringing the two sides of the contract closer to each other for the purpose of marriage with or without a defined compensation for the mediator.

The relationship between the concept of mediation in the marriage contract and brokerage and similar terms.

The mediation in the marriage contract is a lease if undertaken for pay and a power of attorney if unpaid; therefore, it is ruled as described according to the unanimous opinion of scholars.

The types of mediation in mar-

riage contracts and permissibility of these types to be undertaken by both men and women alike.

The qualities of the mediator like Islam, justice, honesty, sanity, puberty, kind treatment, patience, education and expertise.

Mediation may be paid for under the conditions of valid lease.

Electronic marriage sites may receive registration and membership fees and the mediator may receive double fees from both parties of the marriage contract.

The mediator may describe the would-be husband and would-be wife for each other provided that no exaggeration is exercised.

Some of the modern ways of mediation in marriage contracts including marriage committees and institutions, and electronic marriage sites.

The paper discusses the issue of looking for a suitable husband or wife through mediators as follows:



Importance of Endowments and Effect of Directing Spending Ways

Abdullah bin Sulaimaan Al-Mukhlif

Abstract

The author discusses the following topics:

- The importance of endowment, how Islam encourages it and legitimacy.
- The importance of applying the conditions stipulated by the endowment founder with regard to ways of spending.
- The effect of diverse ways of spending endowment revenues in military, scientific, clinical, health, social and service facilities and the effect of endowments in catering for social needs.
- Thirty four ways of spending of endowment revenues applied by Muslims including *jihad*, prisoners of war, medicine, post and the public.
- Fifty ways of spending of endowment revenues have been collected by the author including objective media, holy city sanctification programmes, education of girls and boys and helping the youth to get married.
- The paper sheds light on some of the *Sharee'ah* objectives of endowment including social solidarity and economic development.
- The paper discusses some ways of encouraging people to endow including direct individual encouragement by judges and preachers.
- The paper provides a proposed model of a public philanthropic endowment.



Smelling for Detecting Intoxication – Reality and Effect

Dr. Khaalid bin Abdul Aziz Al-Jurayid

Abstract

The present paper discuss the following topics:

- Definition of smelling for detecting intoxication and related terms (wine, smell, tasting and effect).
- The differences among jurists as to the definition of wine in two opinions as follows:
 - First Opinion: The majority of jurists who state that the word “wine” is anything that causes intoxication, whether of small or big quantity, made of grapes, dates or the like.
 - Second Opinion: The Hanafites who contend that the wine is the intoxicating substance made of grape juice after fermenting.
- The paper discusses the differences among jurists as to the effect of smelling to proof punishment for intoxication in three opinions as follows:
 - The majority of jurists believe that no intoxication punishment may be applied based on smelling.
 - The Maalikites and Ahmad argue that intoxication punishment may be applied based on smelling.
 - The companions of the Prophet applied the intoxication punishment based on smelling if another presumption is met like the person being notorious for drinking and addiction.

The author considers the third opinion as the preponderant one.



Rules of Objection through Appeal

Shaakir bin Ali Ash-Shihree

Abstract

- The present study discusses the following points:
- Definition of Objection through Appeal: It is a legally specified method to which the convicted person resorts to request reconsideration of the judgment with the object of correcting or revoking it for countless reasons.
- Legitimacy of Objection through Appeal: Legitimate.
- The Saudi legislator adopts the principle of litigation in degrees and that objection through appeal is a second degree of litigation.
- Parts of Methods of Objection to Judgments:
- Part One: Ordinary like objection and appeal, and
- Part Two: Extraordinary like cassation and reconsideration.
- Conditions of Objection through Appeal:
- The appealing person should have legal capacity and interest as well as rejecting the objectionable first instance judgment.
- The person appealed against should have legal capacity and interest.
- The objectionable judgment should be a judicial judgment resolving the litigation issued by a court of first instance and objected to prior to the end of the legal period of objection.
- The paper discusses the effects of determining the period of objection and the effects of depositing the objection statement with the court of appeal.



Discretionary Confiscation of Property

Sabaah H. Ilyas Filimban

Abstract

- The present study discusses the following points:
- Definition of Discretionary and Confiscation:
- Legitimacy of discretionary punishments, proofs, conditions and types depending on cause.
- Concept of Confiscation of Property: Taking the property of the punished person for the treasury.
- Opinions of scholars on discretionary confiscation of property, their proofs and discussion of proofs.
- The preponderant opinion is that it is permissible to confiscate the property of someone as a discretionary punishment.
- The reality of Sharee'ah governance purports that the public should observe order and avoid corruption even if no rules for the same are revealed by Allah.
- It is permissible to take the property of a Muslim by force under several rulings of Islam.
- Punishments should be imposed by pertinent authorities according to interest and violations for which financial penalties are applied should also be determined by the same authorities.

