

See discussions, stats, and author profiles for this publication at: <https://www.researchgate.net/publication/228121858>

# The Applicability of the Islamic Mortgage Contract Under English Law

Article in *SSRN Electronic Journal* · November 2009

DOI: 10.2139/ssrn.1548869

---

CITATION

1

READS

2,262

1 author:



Nehad Khanfar

4 PUBLICATIONS 1 CITATION

SEE PROFILE

Some of the authors of this publication are also working on these related projects:



The Role of Distance Education in Bridging the Gap in the Islamic Finance Qualifications Market [View project](#)

# The Applicability of the Islamic Mortgage Contract under English Law

**Nehad A A Khanfar**

PhD student in Contract Law,  
Dundee Business School,  
University of Abertay Dundee,  
Bell Street,  
Dundee.  
DD 1 1HG,

E-mail: [n203165@abertay.ac.uk](mailto:n203165@abertay.ac.uk), [nakhanfar@yahoo.com](mailto:nakhanfar@yahoo.com)

Copyright © Nehad A A Khanfar 2009.  
First published in the Web Journal of Current Legal Issues.

## Summary

The Islamic financial market is one of the fastest growing markets, not only in the Muslim world, but also in the European countries, and particularly in England (Wilson 2007, p 10). This article will critically analyse one of the best known Islamic financial contracts: the Islamic mortgage contract. It will look at its background and origin, how it came to existence, and whether it is originally an Islamic concept. In addition, this article will discuss what the *Qur'an* says about this contract, and the main terms and conditions that apply to it. This article will then critically examine the applicability of this contract in England under English law, focusing on the differences between the Islamic mortgage contract and the conventional English mortgage contract. Finally, this article will adopt a new analogical method based on the *Qura'nic* perspective to judge the applicability and the acceptability of the *Qur'an* verses within the English legal rules.

---

## Contents

[Introduction](#)

[English Law and \*Shari'a\* \(Islamic Law\)](#)

[The \*Qur'anic\* Rules Related to Mortgage Contract](#)

[Prohibition of \*Riba\* \(interest\)](#)

[Background of the Islamic Mortgage in England](#)

[Uniform Terminology is the Key to Applicability](#)

[The Contribution of the Government towards Legal Applicability](#)

[Conclusion, Comparison and Recommendations](#)

[Bibliography](#)

## Introduction

Today, an increasing number of countries, banks, and people deal with Islamic financial contracts. This is because of the fast growth that the Islamic finance sector achieves every year. The growth expectations in this sector, among leading banks dealing with the Islamic financial products, are very high for the coming years, being between 15-40 per cent (Alam 2004, p 4). Despite the encouraging fact that banks and financial institutions in England are prepared to offer Islamic finance products including mortgages government departments, and the Muslim community itself, has a serious lack of information about the Islamic mortgage contract in general and its legal and financial structure in particular (Dar 2004, p 15).

The British government has been aware of the need to pass relevant regulations to make Islamic mortgage products applicable under the UK legal system; this was reflected officially for the first time in April, 2003 as part of the government budget which, opened the door for many banks to adopt the modes of Islamic mortgages for their clients (Dar 2004, p 15).

Today, many banks in the UK offer Islamic finance products including mortgages. There is some confusion, regarding which bank or financial institution was the first to offer this service. Some references state that it started in London by the Al Baraka Bank in 1988, and then expanded to the whole of Europe (Wilson 2007, p 10); other references point to the United Bank of Kuwait in 1996 (Ismail 2008, p 10). Yet another reference refers to the HSBC as being the first bank to offer the Islamic mortgage in the UK in 2003 (FBD 2006, p 1). Information regarding which was the first bank that adopted Islamic mortgage is confusing; furthermore the definitions, and terminology that relate to the Islamic banking seem to be unclear. They need to be revised and corrected, and then brought together within a uniform frame. This article will discuss this issue below.

## English Law and *Shari'a* (Islamic Law)

The mortgage contract is dealt with differently under the Islamic financial system in comparison to the English one. The Islamic mortgage financier, usually a bank or a financial institution, buys the house on behalf of the client and resells it again for the client according to different models that will be discussed in detail in this paper. It is never acceptable for an Islamic financial institution to lend the money to the borrower while charging interest (Lloyds 2006, p 2). This, however, does not mean that lending is prohibited by the *Shari'a*; in fact it is fully acceptable but has to follow the *Qur'an's* rules (*Qur'an, Sura Al-Baqara* 2:282).

A contract in Islamic law is an agreement between the parties and the main

elements are similar to those in English contract law (Venardos 2006, p 50). The *Shari'ah* has most of the modern concepts of contract law such as freedom of contract. This is reflected in the various rules that govern the contracts and the contractual relations between people (Powers 2006, p 100), as well as in the rules regarding documentation which are demanded in some contracts such as debt contracts (*Qur'an* 2:282). For many contracts the written form is demanded if the contract is to be enforced or the contract needs to be documented by an official (*Katebuladl*). The oral form of contract, in turn, often needs to be supported by witnesses (Shippey 2002, p 122). The same applies to the subject-matter of the contract, the prices, the contracting parties, the quantity, quality, payment methods, periods of performance and so on, which should be written explicitly (Powers 2006, p 100). The *Qur'an*

considers a contract to be of very high importance since it sees it as a metaphor for building a strong relationship with God. There is strong evidence that contractual relations in Islam are very important and demand respect (Capaldi 2005, p 204).

The Islamic contract has two basic elements: the first one is the offer, or *Ijab* in Arabic; the second one is the acceptance, or *Qubul*. Under the Islamic contract it might consist of money, goods or services (Venardos 2006, p 50). Here it should be added that the contract might become null and void when one of the partners has died without the fulfilment of the contract (Kuran 2004, p 78). It is useful to remember that “In *Shari’ah* law there are established rules expressed in maxim (the contract is the law of the contracting parties)” (Sheikh 2003, p 314).

One may ask if it is possible to use the Islamic mortgage contract in the English legal system since they have different roots and different backgrounds. Technically it is possible; however, the lack of understanding of the underlying principles among the regulatory bodies and Muslims themselves may hamper the implementation of this contract. In this article, it will be argued that English courts can deal easily with points of dispute that may occur when Islamic contracts are used. Some problems may arise but these can be dealt with as they happen.

“It has been held that if the parties entered to the contract according to the Islamic principles (*Shari’ah* Law) and it has been agreed that the contract will be governed by the English law principles with clear formulation that the contract fulfilment then if it can be shown that appropriate steps have been taken to ensure fulfilment with *Shari’ah* principles, for example by obtaining a supervisory board certificate of compliance with *Shari’ah* law, the court will not look into how that certification was given and will confine itself to principles of English law. This decision removes, provisionally, a potential area of doubt as to enforceability of Islamic finance structures. The decision was upheld on appeal.” (Russell 2004, p 13).

## **The *Qur’anic* Rules Related to Mortgage Contract**

Is the Islamic mortgage contract different from other Islamic contracts? Are there special conditions for this contract that are derived from the holy *Qur’an*?

First of all, the Islamic mortgage contract is derive from the elements of general Islamic contracts as the *Qur’an* does not mention the mortgage contract explicitly. The *Qur’an*, in its verses, contains many rules and principles concerning contracts in general, and these are applied to construct a mortgage contract based on Islamic principles. The *Qur’an* refers to sale as a general concept of trading operations but does not mention that the sale is dominated by any specific form of contract (*Qur’an. Sura: Al-Baqarah, 2:254,275,282; Ibrahim; 14:31; Al-Jumu’ah, 62:9; An-Nour, 24:37*).

The *Qur’an* keeps the door open for any kind of contract as long as the terms of a contract do not contradict basic *Qur’anic* rules, especially the one about interest (*Riba*), which is strictly prohibited according to the *Qur’an*. Based on the *Qur’anic* analogy, the Islamic contract has the same general elements as the English contract, such as offer, acceptance, the complete satisfaction and consent between the parties (the meeting of minds) and the extreme importance of mutual fulfilment, that has been emphasised within *Qura’an* in many verses (*Qur’an Sura: Al-Rum, 30:39; An-Nisa’a, 4: 29, 161; Al-Imran. 3:130; Al-Baqarah, 2: 275-81; Al-Ma’idah, 5:1*). Although the *Qur’an* never mentions the mortgage it can come under

the classification of the sale or as part of trade operations which implicitly include buying and selling (*Qur'an Sura: An-Nisa'a*, 4:29; *At-Tawbah*, 9:24, *An-Nour*, 24:37; *Al-Jumu'ah*, 62:11). The Islamic mortgage contract can also be governed by the arrangements for leasing contracts in the *Qur'an* and because of the strong connection between the leasing and Islamic mortgage it could come together under the mode of the *Ijara wa Iqtina'a* (leasing to own) which will be discussed later in this article. The *Qur'an* clearly permits this kind of arrangement, the only question arising is with regard to the form this contract will take (*Qur'an Sura: Al-Qasas*, 28:26,28).

## **Prohibition of *Riba* (interest)**

Prohibition of *Riba* plays a vital role in all Islamic contracts, including mortgages. Therefore this concept needs to be further analysed. In Arabic *Riba* means an amount that is charged to the borrower on the loan without 'an equivalent counter value or recompense in return to the other party. It covers interest both on commercial and consumer loans.' (Serlah 2002, p 6). God (*Allah*) prohibited *Riba* in the *Qur'an* in many verses (*Ayat*) (*Qur'an Sura: Al-Rum*, 30:39; *An-Nisa'a*, 4:161; *Al-Imran*, 3:130; *Albaqarah*, 2: 275-80).

The reason for the prohibition of *Riba* arises from the way of loans are handled. When banks lend money to people they choose their clients from those who have the greatest ability to pay the money back with interest. A lot of people who have creative business plans and ideas do not have the proper warranty to get the loans. When the creative business ideas are not given a chance for realisation, this will affect the growth of the economy negatively (Usmani 2005, p 7). One of the crucial points of the prohibition of *Riba* is that it excludes any sharing of losses and profits between the financier and the clients (Afzal 2008, 61) which means that the bank will not run the risk that the borrower has to bear. Forbidding *Riba* encourages people to exchange the money for goods, which makes deals fairer (Alhabshi 1994, p 3) because *Riba* is a way of getting income without the input of real labour (Afzal 2008, p 61). From an Islamic perspective it is obvious that this way of making a profit does not contribute to supporting productivity in the economy. This situation would be different if the banks participated in real investments by providing the money they usually supply, and sharing both the losses and the profits with the borrowers.

To avoid *Riba* (interest) in a mortgage contract the property should be owned by the bank or the financial institution. In practice this means that a financial institution would buy a property at a certain price (exactly like any other buyer or trader). When the bank becomes a complete owner of this property, it would then be resold at a higher price to any client who would like to buy this specific property. This prospective buyer shows his or her interest by submitting a documented or written promise to the bank assuring that he will re-purchase the property. There is no interest at all because the price is not changeable. Whatever happens after the sale agreement nothing will justify any increase of the cost of the house. There is no room for any speculation to take place in the light of any possible monthly interest rate change. Everything completely relies on the agreed price in the contract, whether payment will be after five years or twenty. The bank deal with properties as an original owner and sell the houses directly to the clients based on instalments or some other mode of the Islamic mortgage. The *Qur'anic* teachings give guidance for methods of commercial dealings or transactions by allowing the people to offer their products at two different prices: one price for the cash payments, and a higher one for deferred payments, the latest being subject to one condition, that the buyer cannot be charged any money by the seller in cases of arrears as this will be counted as interest, which is prohibited in the *Qur'an* (Dwaikat 2008).

## Background of the Islamic Mortgage in England

The needs of Muslims (Matthews et al, p 5) for a *Qu'ran*-compliant home- financing products in the UK encouraged some influential Muslim groups in the UK to raise this issue with government departments (FBD 2006, p 9). These Muslims, including some Muslim organisations, realised that there is a high level of demand in this field that needed to be met. This issue started to be raised during the 1990s. Later on the government formed a working team within the structures of the Bank of England to investigate the legal regulations (Aslam 2006, p 2) relating to financial institutions and whether they contained any obstacles for Islamic financial products (Ainley et al 2007, p 8). The result of the work of this team (CLM 2007, p 38) is now a part of the Finance Act 2003 (Paracha 2003, p 12). Many of the legislative changes submitted by the government in the 2000s helped to overcome any obstacles and improved the position of Islamic finance, especially in respect of the mortgage (Ainley et al 2007, p 8).

The Finance Act of 2003 which brought a very notable change in British legal/finance legislation. The importance of this Act lies in the relief which has been introduced to abolish the double fees of Stamp Duty Land Tax connected to Islamic mortgages arrangements (Paracha 2003, p 12) because 'previously stamp duty would have been charged on the purchase of the property by the bank and then again on the purchase by the customer' (FBD 2006, p 9).

Encouragement and enthusiasm for Islamic financial products can be seen in the speech by Sir Howard Davies, when he was Chairman of the FSA (Financial Services Authority). During a conference on Islamic Banking and Finance in Bahrain in September 2003 Sir Howard Davies said:

'there is no objection in principle to the idea of an Islamic bank in the UK, provided Islamic banks met the FSA's regulatory requirements, the UK had a clear economic interest in trying to ensure that the conditions for a flourishing Islamic market are in place in London good for Muslim consumers, good for innovation and diversity in our markets and good for London as an international financial centre.' (Ainley et al 2007, p 9).

Remarkably, the British government has put a lot of effort into putting the City of London on the international financial map as one of the most attractive centres of Islamic Finance throughout the world (Alam 2004 p 2). One of the most important and influential steps was to discharge the parties of the Islamic mortgage contract from double stamp duty (Dar 2004, p 1), which will be explained later in the article (HMRC 2006 and FBD 2006, p 9). However, despite all the efforts detailed above, Islamic mortgages are still not popular throughout the Muslim community in the UK. This is because of inadequate knowledge of Islamic finance among Muslims in the UK. Many Muslims are not sure about the Islamic credentials of Islamic financial services (50 percent), or do not understand what the Islamic finance is about (17 percent), and only around 11 percent expressed their satisfaction with regard to the Islamic products that are offered in the UK. Logically, it would be expected that knowledge about Islamic finance, including mortgages, would be at an even lower level among the non-Muslims (Dar 2004, p 15).

In the Islamic legal system, and in Islamic contract law, everything is derived from the *Qur'an* and its basic foundations. If something is not mentioned explicitly in the *Qur'an* the analogy method is applied to arrive at a final judgement from the *Qur'anic* verses. However, when there is a verse within the *Qur'an*, ruling on any issue, it is not allowed to produce any other rules which are against the *Qur'an* (El-Gamal 2000, p 34). There is a famous Islamic maxim saying “no discretion with the text” (*La Ijtihad Fi Mawridinnas*). Despite the *Qur'an* being the major source of Islamic teachings, there are a lot of disputes surrounding the complexities of the Islamic contract. In general, Muslims can decide to work according to well known and well recognised traditions, customs and habits (commercial, social, legal, financial, ethical, and so on) under the very strict condition which is that the practice of such traditions or habits should not go against the *Qur'an* teachings. (Dwaikat 2008).

## Uniform Terminology is the Key to Applicability

One of the consultation papers submitted to the British government stated that:

“Complex contractual issues: The contractual arrangements and product information for these products is complex, which gives rise to a risk that consumers do not have a clear and sufficient understanding of the risks inherent in these products, which could lead to poor consumer choices and so potential detriment.” (FSA 2006, p 20).

Controversy about Islamic financial practices can arise when the translation is made from Arabic to English, and again when existing English financial terminology is used to describe the Islamic contract. To give some examples, British government departments uses the same words for two different concepts: *Ijara* (FSA 2006, p 3) (leasing to rent) and *Ijara wa Iqtina'a* (HM Treasury 2007, p 9) (lease to own). In fact, this has been repeated in many formal papers dealing with Islamic mortgage regulations in the UK. The authors applied another interpretation of the *Ijara*, explaining it as a sale and lease arrangement (HM Treasury 2004, p 21). Some banks offers the Islamic mortgage product and promotes it as *Ijara* (UNB), when it should be *Ijara wa Iqtina'a*. Another example is the Defining Home Reversions that explained the *Ijara* as *Ijara wa Iqtina'a* (CD 2004, p 1). One of the FSA papers states that both *Ijara* and *Musharaka Mutanaqisa* (Diminishing Partnership) are used regularly as an Islamic mortgage mode in the UK (Ainley et al 2007, p 20). It would be more useful to use the *Ijara* and the *Musharaka Mutanaqisa* as the applicable modes of the Islamic mortgage. The *Ijara*- based contract is used to pay the rent of the bank's share in the house and the *Musharaka Mutanaqisa*- based contract covers the arrangements of the repayments of the bank's share in the house, this is quite similar to the *Ijara wa Iqtina'a* mode. This could bring *Ijara wa Iqtina'a* and *Musharaka Mutanaqisa* together to make them a uniform terminology mode for the Islamic mortgage.

The confusion has been also extended to the Regulation of Financial Services (Land Transactions Act 2005). The explanatory notes state that ‘A typical *Murabaha* contract is an arrangement whereby a scheme provider buys a house and then sells it to a customer at a higher price to be repaid over time.’ It is correct up to this point, but it is incorrect when it follows this with: ‘The house is registered at the customer's name and a charge given over it in favour of the scheme provider.’ The correct arrangement is to keep the property title in the name of the bank until the customer repays all the instalments. And once again, there is another misunderstanding when it states that: ‘A typical *Ijara* contract is an arrangement whereby a scheme provider buys a property and rents it to the customer over a term.’ This is correct but the misconception starts when it continues: ‘The customer also pays an original

purchase price over the same term and acquires ownership at the end of that term.’ The accurate term in this case would fit with the *Ijarah wa Iqtina’a* which is (lease to own), not *Ijara* which the explanatory notes refers to. This is very serious misunderstanding and it could lead to the wrong application of the contract terms. Furthermore, this confusion could hamper adoption of the proper Islamic mortgage models, or at least make them difficult to understand. However, it should be pointed out that the UK Budget 2007: Regulatory Impact Assessment refers to the *Ijara wa Iqtina’a* as comparable to a hire purchase agreement (Balls 2007, p 2).

To avoid confusion and to make a useful contribution in connection to the Islamic mortgage, there are three main types of Islamic compliant product that the Islamic mortgage is based on: *Ijara*, *Murabaha*, and *Musharaka wa Iqtina*.

“*Ijara*: leases and hire; sale of usufruct” (Serlah 2002, p 13), means the right to benefit (in Arabic ‘*manfa’ah*’) by using the assets or equipment (Serlah 2002, p 13). The literal Arabic definition of the term *Ijarah* means giving something in rent. However the implied meaning of *Ijara* in the Arabic context is the right of usage and enjoying the advantages and getting the profits of assets and properties that are owned by a financial institution. *Ijarah* contracts are comparable to the English term ‘leasing’ (Abdelhamid 2005, p 55). It means also, lease financing (NCBI 2005, p 36) and operating lease; the main concept of this contract refers to leasing lands, equipment, buildings or other facilities to the customers in exchange for an agreed rent. It is a leasing agreement when the financial institution (mostly a bank) provides specific productive equipment or assets for the customers, and then the customers lease it back for a specific period. Under this kind of contract, the customers avoid spending the initial capital. In some situations, the customers will be able to own the equipment at the end of the contract (Hassan 2005, p 4-5). The basic structure of this contract is built on leasing of an asset based on special agreement between the clients and the financial institution. This asset must be leased for a certain time with the possibility that the customers can acquire ownership. Furthermore, the assets should be secured and have a long productivity life with advanced agreement on the lease payments to keep the project away from speculation (Segrado 2005, p 10). According to the rules of this contract, the financial institution (lessor) keeps all the ownership rights and responsibilities of the assets or the properties that go with ownership rules. It is used traditionally by financial institutions in many Islamic, Arabic and other countries around the world to provide funding for the purchases required for the customers’ projects (NCBI 2006, p 36). It is important to mention that this type of contract is a very popular Islamic financial product which is adopted by the banks that deal with the Islamic funding system for long term assets (Obaidullah 2002, p 12).

The *Ijara wa Iqtina’a* concept within the Islamic mortgage as ‘lease to own’ mode. The *Ijara wa Iqtina’a* is a mode in which the financial institution buys the house and the customer repays the money back in monthly instalments according to an agreed period in advance. During this arrangement, the client pays an agreed rent to the financial institution for occupying the house (Wilson 2007, p 10). Some of the writers refer to this mode as Lease-Purchase.

“*Murabaha*: cost-plus sales (Jackson 2004, P 26), similar to a buyer’s credit” (UNCTAD 2006, p 12). This is a contract between the customer and the financial institution that entitles the institution to purchase the goods and sell them again to the customer on deferred instalments without the need to have an interest-bearing loan (Hassan 2005, p 4-5). Here, it could be said that when the banks undertake the transactions according to *Murabaha*



contracts, they actually play the role of traders (Akhtar 2005, p 26). The process of this contract starts when the customer requests a tangible asset from a supplier, the financial institution sells it, and then the customer pays the money to the institution on a deferred sale basis with a mark- up reflecting the institution's profit, which is called a cost-profit (Segrado 2005, p 10). It means that this contract is a sale transaction. A specified profit margin goes to the institution by special agreement whereby the institution funds the purchasing operation for the benefit of the customer, but in an indirect way, through buying the goods then selling them again to the customer, who should return the money within an agreed time limit, in instalments or in a lump sum. Any risk connected to the goods bought by the institution should remain its responsibility until they are delivered to the customer. This method of financing used to be one of the most important tools used extensively by Islamic banks for funding commodity trade by acquisition of long-term assets (Obaidullah 2002, p 12). In other words, the financial institution (bank) gives the client a commodity loan, the value of which will be returned to the bank at a cost to the bank plus a mark up (Gaber 2007, p 6). There are some conditions for a correct *Murabaha* contract:

A- The bank (the seller) keeps the ownership rights of the commodity from the time of negotiation until the end of the contract.

B- The bank should give the client the exact cost of the commodity, and define the sum of profit in advance. That must be added together and quoted to the client as a final price (Abdelhamid 2005, p 37).

C- The contract with all its transactions must be free from usury (*Riba*).

D- Any defect in the goods to be sold must be disclosed by the bank (the seller) (Gaber 2007, p 6).

*Murabaha* is one of the best known forms of Islamic finance; it is also applicable to financing commercial transactions which require liquid short- term instruments, and it can also be used for long-term investments (Lovells 2004, online). "It is estimated that 70 to 80 percent of total Islamic financing is afforded by this arrangement" (Tariq 2004, p 17). In a *Murabaha* model contract, the client is certain about all the details of the contract, the original price and the mark-up that should be paid back to the bank, in addition to the clarity of the deferred instalments, without any future changes. This means the client is not concerned about many other details, especially in connection with a fluctuating rate of interest influenced by very changeable market prices. The client can pay all the money back at any point without any kind of restriction or redemption fee being charged. He can pay higher instalments than the instalments agreed on, but of course not lower. This point is a very important difference between the Islamic and conventional mortgage. In fact, since the *Qur'an* does not say anything about the terms and conditions of the contract except for good faith, the fulfilment of the contract and the undertakings, the parties can make any kind of conditions to ensure a safe and secure way of fulfilling the contract. But of course, as mentioned above, the conditions of the contract should not be in contradiction with *Qur'anic* rules such as the matter of payment of interest, which could arise at any time during the life of the contract.

*Musharaka Mutaniqisa* means "diminishing partnership". Under this contract the parties agree in advance that one of them will own the shared asset gradually by paying the value of the other party's shares until the complete cost of transferring the title to the buyer is paid (NCBI 2003, p 360). In the case of the mortgage contract, the bank and the customer agree to

enter into a partnership to share the same property but under two contracts: *Ijara* contract and *Musharaka* with a period defined in advance. Here the client pays two kinds of instalments, one as a rent for the bank's share, the other to increase the client's share in the ownership, which diminishes the share of the bank until the client owns all the property at the end of the defined period (OICU-IOSCO 2004, p 11).

It would be very helpful if all the interested parties and specialists could agree on a uniform terminology as a main step forward to assess the applicability of the Islamic mortgage in this country. The simplification of a uniform terminology will help to enhance the acceptability of the contract (Bhambra 2007, p 7).

## **The Contribution of the Government towards Legal Applicability**

The Islamic mortgage has been fortunate in getting legal obstacles removed so that they are applicable under English law. This has been intended to facilitate the needs of Muslim consumers so that they can have an Islamic mortgage with equal safeguards to those available under existing FSA mortgage regulation (Memorandum 2006, p 3). The British government confirmed its positive standpoint by releasing the necessary regulations which allowed the Islamic mortgagees to be treated in the same way as the mortgagees of conventional mortgage modes (Solé 2007, p 17). Based on that, the Islamic mode of mortgage has become more available and more widely accessible (Russell 2004, p 13).

It is obvious that the British government has realised the significance of the growth of Islamic types of finance in the UK, especially the mortgage. Some writers consider that the cancellation of double stamp duty has supported the promotion of the Islamic market mortgage expansion (Alam 2004, p 2). Besides that the government also permitted the Islamic mode of *Ijara wa'Iqtina* to be used for asset finance (HM Treasury 2007, p 9), as well as the *Murabaha*; the latter became included in the definition of a regulated mortgage and is now covered by FSA mortgage regulation. This also happened with the mode of the *Masharkah Mutaniqisah* when the government included this mode as part of the concept of alternative finance arrangements instead of standard loans within the Finance Act 2006 (HM Treasury 2007, p 9).

## **Conclusion, Comparison and Recommendations**

1. The concept of the Islamic contract is not much different from the concept of English contract and its structure in general terms. The main difference between them relates to the subject matter of the contract. That is, the subject matter of the Islamic contract should not deal with harmful items such as interest, drugs, alcohol, pork, pornography, gambling and so on.
2. The crucial point of difference between the Islamic and the conventional English mortgage contract is prohibition of *Riba* (interest), which is not acceptable in Islamic contracts, including mortgage, under any circumstances.
3. The *Qur'an* does not mention mortgage directly, but the mortgage contract has its roots in the *Qur'an* within the general theory of the contract.

4. One of the notable differences between the English conventional mortgage contract and the Islamic mortgage contract is that the client under the Islamic mortgage contract can repay the entire sum to the bank at any time before the end of the agreed period without any penalty. This is not allowed under the conventional mortgage.
5. Islamic mortgage in England could be improved and made more applicable if the interested financial institutions and government departments presented more accurate and uniform information and database materials. This would make it available for people, especially those within the Muslim community who would be the main clients in the Islamic mortgage market. It could also be argued that if the Islamic mortgages were managed more competitively they could attract more and more clients from non-Muslim communities. Here it is useful to mention the Malaysian case of Islamic finance products which attracted 40 per cent of *non-Muslims* according to the HSBC Bank (Green 2004, p 2).
6. The Islamic mortgage could be developed from existing practice in Islamic finance by a new combination of *Ijara wa Iqtina'a* and *Musharaka Mutanaqisa*.
7. The financial institutions in England and abroad need to agree on consistent terminologies in regard to Islamic financial contracts in general, and the Islamic mortgage contract in particular. This will facilitate better understanding of the Islamic mortgage contract.
8. One of the highly recommended steps in England towards the applicability of the Islamic finance products in general, and the Islamic mortgage in particular, is to encourage more specialists from legal and financial backgrounds to gain more experience – academic and practical-in meeting developments in this field.
9. It would be very useful to form a uniform body or committee in England to supervise and improve the legal and financial developments with regard to the Islamic mortgage especially from government financial departments.

## Bibliography

Abdelhamid, M (2005) *Islamic Banking* (Ottawa: Carleton University).

Abdelhamid, M (2005) *Islamic Banking* (Ottawa: Carleton University).

Afzal, M (2008) Debate over Interest: Islamic Perspective Journal of Economic and Social Research. Available at: <<http://www.fatih.edu.tr/~jesr/jesr.afzal.pdf>>. (accessed 18 March 2008).

Ainley, M Mashayekhi, A Hicks, R Rahman, A Ravalia, A (2007) *Islamic Finance in the UK: Regulation and Challenges* Financial Services Authority.

Akhtar, C (2005) *Islamic Economic System, Issues in Islamic Banking* The Pakistan Accountant.

Alam, N (2004) *Islamic Finance - Issues and Opportunities. Client Briefing Note* EIRIS 4.

Alhabshi, S (1994) *Development of Capital Market Under Islamic Principles* (Kuala Lumpur: Conference on Managing & Implementing Interest-Free Banking/Islamic Financial System. Centre for Management Technology).

Aslam, Z (2006) London – Key Centre for Islamic Finance' *Hardman & Co.* Available at: <[www.hardmanandco.com](http://www.hardmanandco.com)> (accessed 13 April 2008).

Balls, E (2007) *Budget 2007: Regulatory Impact Assessment. Alternative Finance Products HM Treasury.*

Bhambra, H (2007) *Infrastructure for Change for the Islamic Financial*

*Explanatory Memorandum to the Financial Services And Markets Act 2000* (2006).

J Solé, 'Introducing Islamic Banks into. Conventional Banking Systems. Monetary and Capital Markets Department' (2007) *IMF Working Paper.*

JG Russell, *Jeffrey Green Russell's Guide To Islamic Home Finance* (London, 2004).

MR Dwaikat, *The Sale, the Interest, the Pledge in the Holy Qur'an, and the People Life* (Nablu, Rabbaniyeen School, 2008). [muhd\\_rajeh@yahoo.com](mailto:muhd_rajeh@yahoo.com)

R Wilson, *Islamic Finance in Europe* (Robert Schuman Centre for Advanced Studies, Florence, 2007).

HA Dar, 'Demand for Islamic Financial Services in the UK: Chasing a Mirage?' *Reasearchpapers* (2004)  
<<http://www.lboro.ac.uk/departments/ec/Reasearchpapers/2004/TSIJ.pdf>> (accessed 10 March 2008)

S G Ismail, 'Chief Executive. Islamic Finance Explained'. 1<sup>st</sup> Ethical Ltd.  
[www.1stethical.com](http://www.1stethical.com) (accessed 7 March 2008).

Lloyds TSB, *Lloyds TSB Launches Islamic Banking Across Britain* press\_releases, 2006, 2  
[http://www.investorrelations.lloydstsb.com/media/pdf\\_irmc/mc/press\\_releases/2006/June/6306\\_islamic.pdf](http://www.investorrelations.lloydstsb.com/media/pdf_irmc/mc/press_releases/2006/June/6306_islamic.pdf). (accessed 14 March 2008).

AM Venardos, 'Islamic Banking & Finance in South-East Asia: Its Development and Future' (2006) *Asia- Pacific Business Series. World Scientific.*

PR Powers, 'Intent in Islamic Law: motive and meaning in medieval Sunni' (2006) *Fiqh Brill Academic.*

KC Shippey, *A Short Course in International Contracts: Drafting the International Sales Contract* (World Trade Press, 2002).

N Capaldi, *Business and Religion: A Clash of Civilizations* (M & M Scrivener Press, 2005).

T Kuran, 'Why the Middle East is Economically Underdeveloped: Historical Mechanisms of Institutional Stagnation' (2004) *Journal of Economic Perspectiv.*

FRA Sheikh, *The Legal Regime of Foreign Private Investment in Sudan and Saudi Arabia* (Cambridge University Press, 2003).

A Serlah, 'Special Report for Client Sofraslan' (2002) *Loon Gandree Grecht Sanwalte*.

*Glossary of Islamic Banking Terminology*

[https://www.ubl.com.pk/ameen/pdf/Glossary\\_Islamic\\_Banking.pdf](https://www.ubl.com.pk/ameen/pdf/Glossary_Islamic_Banking.pdf). P6. 2007, (accessed 15 March 2008).

MT Usmani, *1st Ethical's Guide to. Why Islam has prohibited Interest & Islamic Alternatives for Financing* (2005).

R Matthews, I Tlemsani, A Siddiqui, *Islamic Finance. Centre for International Business Policy* (Kingston Business School).

Council of Mortgage Lenders (CML), *Annual Report 2006* (2007).

M Paracha, 'Islamic Mortgage Boom' (2003) *Journal of the Association of Muslim Lawyers*.

'Islamic Finance: Basic principles and Structures. A focus on Project Finance' (2006) *Freshfields Bruckhaus Deringer*.

M El-Gamal, *A Basic Guide to Contemporary Islamic Banking and Finance* (Rice University, 2000).

Financial Services Authority, *Consultation Paper. Regulation of Home, Reversion and Home Purchase Plans* (2006) Consultation Proposals.

*Home Reversions*. Consultation Document (2004).

Land Transactions Act 2005

MK Hassan, I Soumaré, *Financial Guarantee as innovation tool in Islamic project finance* (2005).

C Segrado, 'Islamic microfinance and socially responsible investments. Case study' (Torino, University of Torino, 2005).

S Jackson, *Basics of Islamic Law, the Sources of Islamic Law* (Ann Arbor, University of Michigan, 2004).

UNCTAD, (2006) *Islamic Finance and Structured Finance Techniques: Where The Twain Can Meet*.

A Gaber, 'Risk Management: Islamic Financial Policies, Case study of Farmers' Commercial Bank. Paving the Way Forward for Rural Finance' (2007) *An International Conference on Best Practices* 6 <[http://www.basis.wisc.edu/live/rfc/cs\\_06a.pdf](http://www.basis.wisc.edu/live/rfc/cs_06a.pdf)> (accessed 4 April 2008).

Lovells, *Islamic finance, Shariah, Sukuk and securitisation* (2004)  
<<http://www.yasaar.org/pubs/20177%20Islamic%20finance%20client%20note1.pdf>>  
(accessed 10 March 2008).

OICU-IOSCO, *Islamic Capital Market, Fact Finding Report* (2004).

Islamic Finance: Basic principles and Structures. A focus on Project Finance' (2006)  
*Freshfields Bruckhaus Deringer*