



COMPARATIVE  
ISLAMIC LAW REPORT

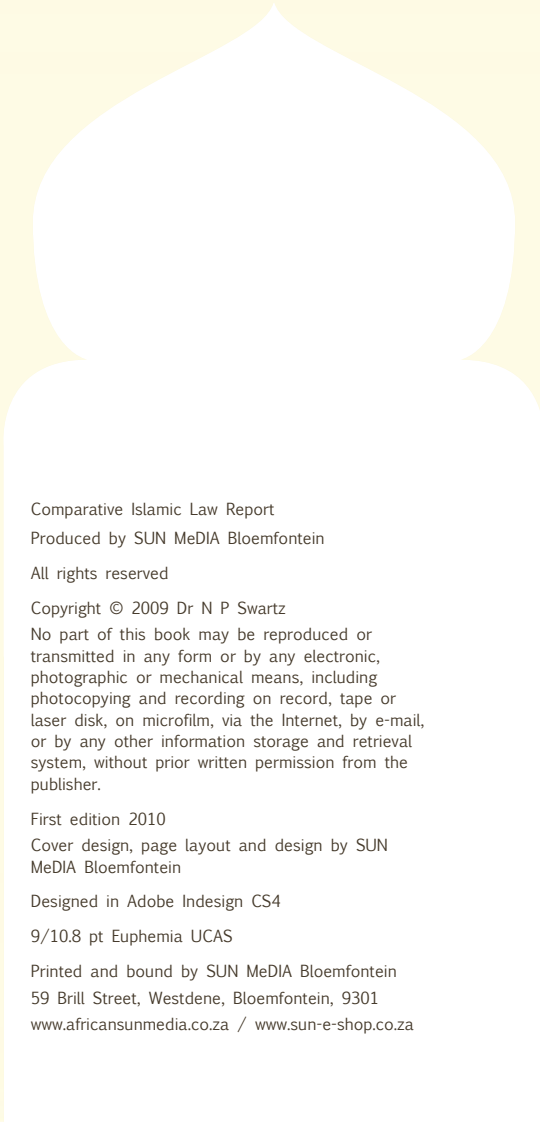
Dr N P Swartz





# COMPARATIVE ISLAMIC LAW REPORT

Dr N P Swartz



Comparative Islamic Law Report  
Produced by SUN MeDIA Bloemfontein

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# ISLAM AS AN ANTITHESIS TO CAPITALISM

An Islamic economic system could achieve a greater degree of economic justice than the existing capitalist system. An Islamic system, would be free, on the one hand, of the exploitation and severe inequalities that characterize capitalism. For a society to achieve economic justice, it must conform to the general principles of equality and fairness. On the basis of these principles, a society would not be considered properly Islamic if it allowed (as in the case of capitalism) some of its members to live in luxury, while others are subjected to an impoverished existence. The individual is to make charitable donations to those in need. The proceeds of the redistribution scheme known as zakat (wealth tax), is used to aid disadvantaged members of society, such as the poor, the handicapped, the unemployed and orphans. Zakat seems to be a powerful instrument for bringing an economy in line with the principles of equality and fairness. The principles of equality and fairness, serve as offsets to justice.

Under capitalism, if a loan is not paid on time, a penalty is levied to the extent that the borrower could end up paying double the principal. The rule *caveat emptor*, which sided with the lender, dictated that the amount of money would be assumed to be paid back on a due date with a very exorbitant compounded interest. If there was a delay in the payment, a penalty could easily be equivalent to the principal. Such severe and grossly exaggerated charges proved to be a clear case of exploitation and usury.

The hoarding of wealth under a capitalist system will stop the circulation of money and creates therefore imbalances in its distribution. The practicing of hoarding wealth and its investment in usurious bank accounts, lie at the root of capitalism. Islam disproves of hoarding of surplus wealth. The capitalist believes that spending impoverishes him, while Islam inculcates the belief that spending promotes individual and social prosperity. The Islam doctrine

presents an antithesis to capitalism. It believes that the hoarding of wealth and lending on interest concentrates in the hands of a few individuals. The result is that the purchasing power of the masses declines daily, and that industry, trade and agriculture will fall into a state of depression. The national economy will reach a breaking point and finally all avenues of productive investment of hoarded wealth are closed to the capitalist themselves. The observation that usury acts as a mechanism by which the rich get richer and the poor poorer, is common to capitalism. Islam rejects capitalism on the basis that it contradicts the Principle of Distributive Equity. It is argued from an Islamic perspective, that interest plays a crucial role in bringing about the crisis of capitalism.

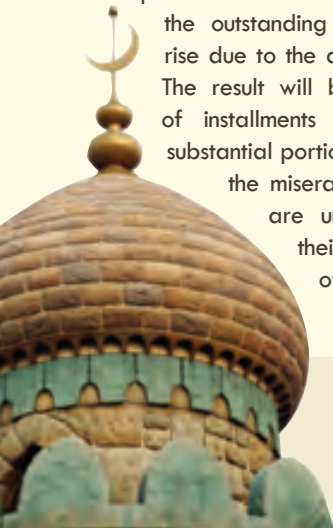
The rule of Islam is simple: If you advance a loan, you are entitled to receive your capital only and nothing more. If you wish to secure profit, you should enter into a partnership and become a shareholder.

## THE DILEMMA OF CAPITALISM: AN EXAMPLE

According to Islam principles, a financial transaction should not lead to the exploitation of any party to the transaction. The Islamic model does not deny the self-interest and private gains of the individuals. They are rather regulated for the betterment of the collectivity. The Shari'ah provides a network of ethical and moral rules of behaviour for all participants in the market and requires that these norms and rules be adhered to by all.

Islam condemns particularly the injustice of a lender being guaranteed of a positive return without assuming the share of risk with the borrower. Interest charges render the full adjustment of loans almost impossible and the poor person continues taking one loan after the other to get out of the vicious circle without any success. Although, he has already paid much more than the original amount, the outstanding amount continues to rise due to the application of interest. The result will be that the payment of installments of loans, reduce a substantial portion of their income and the miserable persons (debtors) are unable to meet even their basic needs and that of their families.

This will be leading to poor health, sub-standard living conditions and no education. This sad state of affairs is highlighted by the British media in the case of David Taylor, who was a leukemia patient. He had taken a loan from a major western bank. The bank overdraft was growing at a frightening rate due to the bank's high interest rate. The poor and sick man was worried that the longer he lived, the more of his life assurance money would be grabbed by the bank, leaving nothing or little for his family. Every additional day of his life meant less money for his wife and children. He was therefore not interested to prolong his life. This explains the misery caused by charging interest on personal consumption loans. This ethical principle of Islam, evokes respect from Muslim and non-Muslim.









## STABILITY OF ISLAMIC BANKING AND FINANCE

The perception is also inculcated that Islamic finance is more stable and secure, compared with conventional products. This makes Islamic banking superior to conventional banking. This stability emanates from the prohibition of interest. The western practice of paying depositors a fixed rate of return, prevents banks from instantaneously adjusting to potential asset shocks. This in turn, can lead to bank failures. Under an Islamic banking system, the value of a bank's liabilities (for its investment account) will fluctuate with the value of its assets.

The elimination of interest, in the Islamic system tends to enhance stability. The Islamic system redistributes the consequences of uncertainty over all parties to a business. Debt-financing of the conventional system,

in contrast, relieves the financier from uncertainty by shifting it on the real investor (equity holder) who then alone bears the entire risk of the enterprise. Islamic or interest-free financing, by spreading the same risk over more heads, would promote stability.

From the standpoint of financial stability, it appears that the Islamic interest-free system does have merit and deserves more serious attention from academics and policymakers alike, especially in view of recent crisis and rampant bank failures in contemporary economics. On the strength of its stability, Islamic banking is in fact less risky in terms of external shocks, liquidity risks and insolvency risks than conventional banks. These characteristics made Islam banks less vulnerable to risk than conventional banks.

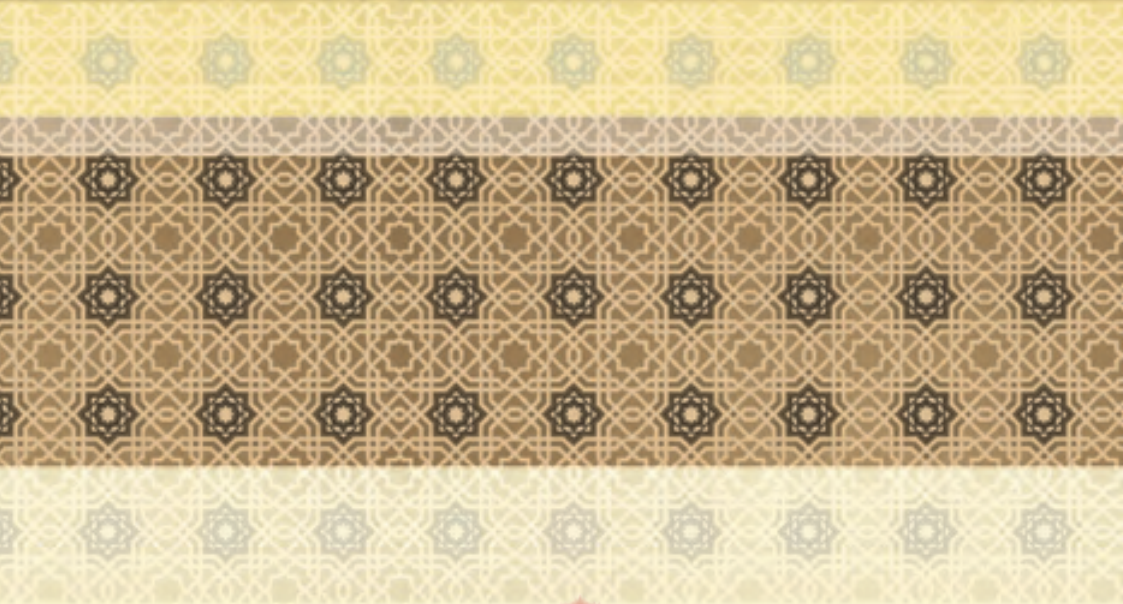




Due to its conservative characteristic, Islamic banks have limited access to liquidity, so that it enable investors stable and competitive returns. On these grounds, investors are given a greater incentive to exercise tight oversight over bank management, since they share risks.

The greatest problem in the capitalist economy is that of crisis brought on mostly by interest. The crumbling of the US mortgage and the upheaval of the financial markets in Europe and Asia has generated interest among non-Muslim investors to use Islamic banking. Islamic banking is

seen by investors as more conservative, less risky and therefore a safer haven in volatile times. The global credit crisis has given Islamic banking a chance to show its steel. Its conservative values may be highly appraised in the future by investors.



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