#### Contents

List of Illustrations			page x
Pref	Preface Glossary and Transliteration		
Glos			
I	Introduction		1
		Finance without Interest?	2
	1.1	Distinguishing Features of Islamic Finance	7
		Prohibition-Driven Finance	8
		Jurists, Shari'a Boards, and Innovation	11
		Lawyers and Regulatory Arbitrage	13
	1.2	Islamic Transactions Law as Common Law	15
		Precedents, Analogies, and Nominate Contracts	17
		Tradeoff between Efficiency and Legitimacy	20
	1.3	Limits and Dangers of Shariʿa Arbitrage	21
		Risk of Mispricing	22
		Legal and Regulatory Risks	23
2	Juris	prudence and Arbitrage	26
	2.1	Islamic Law and Jurisprudence	27
		The Canon: Qur'an, Tradition, and Consensus	27
		Juristic Inference (Ijtihad) and Benefit Analysis	28
	2.2	From Classical to Contemporary Jurisprudence	30
		Jurisprudence, Revival, and Codification	31
		Institution of Fatwa and Islamic Finance	32
	2.3	Arbitraging Classical Jurisprudence	35
		Shariʻa-Arbitraging Classical Property Law	36
		Arbitraging Classical Contract Conditions	42
		Arbitrage, Ruses, and Islamic Finance	44

viii		Contents	
3	Two	Major Prohibitions: <i>Riba</i> and <i>Gharar</i>	46
	3.1	The Prohibition of <i>Riba</i>	49
		Canonical Texts on <i>Riba</i>	49
		Economic Substance of the Prohibition of Riba	52
	3.2	The Prohibition of Gharar	58
		Definition of Gharar	59
		Economic Substance of Prohibition	60
		Insurance and Derivatives	61
	3.3	Bundled vs. Unbundled Credit and Risk	62
4	Sale-	Based Islamic Finance	64
	4.1	Basic Rules for Sales	65
		Trust Sales: Murabaha, Tawliya, Wadiʻa	67
		Currency Exchange (Sarf)	68
	4.2	Same-Item Sale-Repurchase ( <i>'Ina</i> )	70
		Same-Item Trading in 'Ina and Tawarruq	70
		Custody Sale (Bay' Al-'uhda) and Sukuk Al-ijara	73
	4.3	Cost of Funds: Interest-Rate Benchmarks	74
		Opportunity Cost for Conventional Fund Providers	75
		Viability of Islamic Benchmark Alternatives	77
5	Derivative-Like Sales: Salam, Istisna', and 'Urbun		81
	5.1	Prepaid Forward Sale ( <i>Salam</i> )	81
		Parallel <i>Salam</i>	83
		Conventional and Synthesized Forwards	86
	5.2	Commission to Manufacture (Istisna')	90
	5.3	Down-Payment Sale ( <i>'Urbun</i> )	91
		<i>Urbun</i> as Call Option	92
6	Leas	ing, Securitization, and <i>Sukuk</i>	97
	6.1	General Lease Conditions	97
		Flexible-Rate Financing	100
		Subleasing, Repairs, and Insurance Costs	100
	6.2	Asset-Backed Securities	102
		Leasing and Securitization	102
		Receivable Securitization and Sale of Debt	104
		Bundling Asset-Based and Debt-Based Securities: A Paradox	106
	6.3	Asset-Backed Leasing Bonds (Sukuk)	107
		Credit-Rating Issues	108
		Reward Pledges and Gifts Revisited	110
	6.4	Usufruct Sukuk	113
	6.5	Sukuk Al-Salam	114

		Contents	1X
7	Partnerships and Equity Investment		
	7.1	Classical Types of Partnership	117
		Silent Partnership: Theoretical Workhorse of Islamic Finance	120
		Valid and Defective Silent Partnerships	122
	7.2	Common-Stock Ownership	123
		"Islamic Screens" and Their Shortcomings	125
		Cleansing Returns	133
		Positive Screens and the Islamic Brand Name	134
8	Islam	ic Financial Institutions	135
	8.1	Banking and Islamic Banking	137
		Theoretical Structure: Two-Tier Silent Partnership	138
		Deposits vs. Loans: Trust and Guaranty	144
	8.2	Insurance and <i>Takaful</i>	147
	8.3	Two Sides of the Two Debates	151
		Shari'a Arbitrage vs. Islamic Prudential Regulation	152
	8.4	Generic Agency Characterization of Financial Institutions	153
9	Gover	nance and Regulatory Solutions in Mutuality	162
	9.1	Rent-Seeking Shari'a Arbitrage and Absence of Mutuality	163
		Potential for Mutuality in Islamic Banking	166
		Need for Mutuality in Takaful	170
	9.2	A Call for Mutuality in Banking and Insurance	171
		Mutuality in Banking	172
		Mutuality in Insurance	173
10	Beyor	1d Shari'a Arbitrage	175
	10.1	Shari'a Arbitrage and Criminal Finance	176
	10.2	Shari'a Arbitrage at the Limit	177
		Benchmarking ad Absurdum	178
		Hedge-Fund Instruments – Shari'a-Arbitrage Style	180
	10.3	Self-Destructiveness of Shari'a Arbitrage	181
		Declining Shari'a-Arbitrage Profit Margins	182
		Dilution of the "Islamic" Brand Name	183
	10.4	Toward a New Islamic Finance Identity	184
		Macroeconomic Substance: Privatization Sukuk	185
		Mosque-Based Network of Financial Mutuals	186
		Positive Screens, Ethical Investment	188
Conc	lusion		190
Notes			193
Biblio	graphy		213
Index			219

### List of Illustrations

1.1	Home Mortgage Transaction	3
1.2	Juristic Characterization of Mortgage Loan	4
1.3	Murabaha Alternative for Home Finance	5
1.4	Tabreed Sukuk Structure	7
1.5	Prisoners' Dilemma	10
5.1	Forward Synthesized from Salam and Credit Sales	87
5.2	Al-Ahli Secured Fund Returns	94
5.3	Al-Rajhi Aman 1 Fund Returns	95
6.1	Structure of Qatar Global <i>Sukuk</i>	108
6.2	Structure of BMA Sukuk Al-Salam	115