

SCIENCE
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SCIENCEPROBLEMS.UZ

**IJTIMOIIY-GUMANITAR FANLARNING
DOLZARB MUAMMOLARI**

№ 5/5 (5) – 2025

**АКТУАЛЬНЫЕ ПРОБЛЕМЫ СОЦИАЛЬНО-
ГУМАНИТАРНЫХ НАУК**

ACTUAL PROBLEMS OF HUMANITIES AND SOCIAL SCIENCES

TOSHKENT-2025

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Isanova Feruza Tulqinovna

TAHRIR HAY'ATI:

07.00.00- TARIX FANLARI:

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19.00.00- PSIXOLOGIYA FANLARI:

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Hayitov Oybek Eshboyevich – Jismoniy tarbiya va sport bo'yicha mutaxassislarni qayta tayyorlash va malakasini oshirish instituti, psixologiya fanlari doktori, professor

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22.00.00- SOTSILOGIYA FANLARI:

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Seitov Azamat Po'latovich – sotsiologiya fanlari doktori, professor, O'zbekiston milliy universiteti;

Sodiqova Shohida Marxaboyevna – sotsiologiya fanlari doktori, professor, O'zbekiston xalqaro islom akademiyasi.

23.00.00- SIYOSIY FANLAR

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OAK Ro'yxati

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METHODS OF RESOLVING DISPUTES ARISING FROM ISLAMIC FINANCE SERVICES. INTERNATIONAL EXPERIENCE

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Abstract. In this article, courts and arbitrations are discussed as forms of conflict resolution between contracting parties in the implementation of Islamic finance services. As the scope of activities of Islamic financial services and Islamic banks expands, arbitration courts are becoming more and more important in resolving disputes arising from such relations not only in Muslim countries, but also in countries where the majority of the population is not Muslim. This article discusses the role of arbitration courts in resolving disputes arising from Islamic finance services.

Keywords: arbitration courts, local courts, sukuk, musharak, mubarak, plaintiff, defendant, instance courts, appellate courts.

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Annotatsiya. Ushbu maqolada islom moliyasi xizmatlarini amalga oshirishda shartoma tomonlari o'rtasida kelib chiquvchi mojarolarni hal etish shakllari sifatida sudlar va arbitrajlar muhokama qilinadi. Islom moliyasi xizmatlari va islom banklari faoliyat ko'lamini kengaytgan sayin nafaqat musulmon davlatlarida, balki aholisining asosiy qismi musulmon bo'lmagan davlatlarda ham bu kabi munosabatlardan kelib chiqadigan nizolarni hal etishda arbitraj sudlari tobora muhim ahamiyat kasb etmoqda. Ushbu maqolada arbitraj sudlarining islom moliyasi xizmatlaridan kelib chiqadigan munosatlarni hal etishda arbitraj sudlarining o'zini haqida so'z yuritiladi.

Kalit so'zlar: arbitraj sudlari, mahalliy sudlar, sukuk, mushoraka, muzoraba, da'vogar, javobgar, instansiya sudlari, appelyatsiya sudlari.

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Introduction.

Islamic finance has gained widespread popularity on a global scale in the last few years. The reason for this is, of course, that Islamic finance is said to be more reliable than the conventional financial and banking system and its practices.

According to the 2017 Islamic Finance Development Report by the global news agency ICD/Thomson Reuters, the total value of Islamic finance assets reached US\$2.2 trillion in 2016 and is expected to reach US\$4.4 trillion in 2021. Faith-based Islamic finance, which is part of ethical finance, offers financial intermediation through innovative products based on or in line with Islamic law, and the unprecedented growth observed in the past few years has led to an

improvement in the product offering. The range of innovative tools offered by the Islamic finance industry has contributed significantly to its globalization and expansion beyond the Muslim world.

The development of Islamic finance not only in countries with a predominantly Muslim population, but also in non-Muslim countries, and the fact that the parties to contracts concluded within the framework of Islamic finance are tied to several countries, has led to an increase in the number of disputes related to transactions in accordance with Sharia. In order to effectively resolve such disputes, it is no longer a big news that disputes related to financial and property rights in Islamic law can be resolved through arbitration courts (Arbitration).

Arbitration is a non-judicial decision-making process for the parties to resolve a dispute by arbitration or a software program, with the aim of providing each party with an effective decision-making process in the courts.

The values of arbitration, which are primarily aimed at the effective resolution of disputes, are enshrined in Islamic law. The inclusion of arbitration in the Islamic dispute resolution mechanism demonstrates the advantages of arbitration as an alternative means of dispute resolution. The article examines some of the arguments that support the idea that arbitration courts play an important role in resolving disputes arising from Islamic financial transactions.

When we talk about arbitration courts, the principle of party autonomy of arbitration courts is one of the foundations that give arbitration courts an advantage. Through the principle of party autonomy, the parties are given the right to choose alternative forms of dispute resolution. In arbitration courts, the principle of party autonomy is manifested through the arbitration agreement and is an important foundation of any arbitration courts. Through the arbitration agreement, the parties are given the choice of which law to consider when resolving disputes arising from the contract.

In addition, arbitration courts allow parties to select their own judges and to have expertise in handling disputes arising from Islamic financial services. Such expertise is essential to achieving efficient and fair outcomes in arbitration courts.

This article presents some of the current experiences and insights from the Anglo-Saxon legal system in resolving disputes in the Islamic finance sector. At the same time, it also discusses the reasonable conclusions that domestic courts have failed to adequately resolve the issues arising from such relationships. It also discusses how arbitration, as an alternative form of dispute resolution, can help provide Sharia-compliant solutions, and why traditional methods of resolving disputes through the courts have failed.

If we look at international experience, we see that domestic and international jurisdictions lack sufficient experience in resolving disputes arising from conventional banking and Islamic finance services. For example, in the Malaysian civil courts, these courts operate separately from the Sharia courts, and even the judges themselves lack sufficient knowledge in applying Sharia norms.

Islamic financial institutions (IFIs) are subject to the national legislation of the countries in which these services are provided. At the same time, it is very important to ensure that the Sharia compliance of Islamic financial institutions is not violated under different legal systems. Primary law or regulatory law refers to the law or legal system that can be relied upon to resolve disputes between parties and interpret financial transactions. In Islamic financial

services, primary law is required to ensure the Sharia compliance of Islamic financial transactions. In theory, Islamic law serves the purpose of ensuring the Sharia compliance of Islamic financial services. Applying legislation that is not based on Islamic principles to Islamic financial services can undermine the concept of Sharia compliance.

The application of Islamic law as the main law for Islamic finance is a somewhat difficult task in practice. We can cite three factors as examples:

1. The operation of Islamic financial services in jurisdictions not based on Islamic law;
2. The opposing positions of the parties on fundamental law;
3. Whether or not Sharia norms are considered a recognized source for resolving disputes on fundamental law.

In Islamic finance, such situations are interpreted as a conflict between two legal systems. In such cases, it raises a number of questions about whether Islamic law, national law or a mixed legal system is applicable, as well as the current state of the law. At the same time, it also raises questions about whether it is possible to resort to Islamic law when such problems arise between two legal systems and when disputes arise regarding Islamic financial transactions.

Furthermore, such cases raise questions about whether Islamic law can be an option for resolving disputes in the legal systems of countries where Islamic financial institutions operate. This question is equally important for Islamic and non-Muslim countries, since the status of Islamic law as sovereign law in the Islamic world has not yet been fully systematized and integrated.

Disputes related to Islamic financial services can be resolved outside national or local courts or in national or local courts. The first is the resolution of disputes outside the courts, which is considered directly in arbitration courts, while the second is considered in local courts. Since one of the countries in Europe where Islamic finance has developed is Great Britain, we should dwell on the experience of resolving disputes arising from Islamic financial services in this country.

At the same time, two other factors led us to choose the UK:

- English law is the most commonly chosen law for international Islamic financial transactions;
- Its widespread influence on other legal systems and countries.

The choice of Islamic law as the main law in arbitration tribunals is considered legitimate under English law. The first reason for this is that the nature and characteristics of arbitration tribunals as an alternative dispute resolution mechanism facilitate the choice of Islamic law. This is based on four main characteristics of arbitration tribunals:

- is an alternative to local courts;
- is a separate area for dispute resolution, independently chosen by the parties to the contract in resolving disputes;
- arbitration courts issue final and binding decisions on the rights and obligations of the parties.

Secondly, it is worth noting that in the UK legislation there is the English Arbitration Courts Act 1996, according to which arbitral tribunals consider Islamic law as an alternative law that can be applied in practice. Article 46 of this Act (Rules applicable to the substance of the dispute) in paragraph "a" contains the following provisions: "if the substance of the dispute

is chosen, in accordance with the law chosen by the parties to the contract, or” in paragraph “b” contains the following provisions: “if the parties have agreed, in accordance with other considerations between the parties or determined by the court”, according to which arbitral tribunals may, based on these provisions, consider disputes in accordance with the rules of Islamic law, if agreed between the parties.

As a basis and practical experience for this situation, we can cite the dispute between Sayyid Muhammad Mousavi and “R.E.International” LLC. This court case concerned disputes arising from a number of contracts concluded between the plaintiff and the defendants between 1987 and 2002 for the purchase, development and possession of 4.1 acres of land annexed to the Wembley Stadium in the South West area of Wembley, London, on a negotiated basis. After the parties entered into a contract, disputes arose over their rights. The parties entered into an arbitration agreement in 2003 to resolve the dispute on the basis of Islamic law. The plaintiff and the other defendants were members of the Shia community and had jointly invested in the land. Their agreement was to be governed by Shia Sharia law. The court refused to apply Islamic law because it was not the law of the land, which required common law. With the entry into force of the Law on Contracts in 1990, the parties could only choose the law of the country. For this reason, the court, relying on this law, refused to apply the Islamic law chosen by the claimant and the defendant. However, after the adoption of the Law on Arbitration in 1996, Article 46(b) of the Law allowed the parties to choose a law other than the law of the country. In 2004, the arbitration court ruled in favor of the claimant. The defendants appealed this decision. However, the court found the decision to be binding.

The dispute arising in this case raised the question of whether Islamic law could be the primary law of arbitration under the English Arbitration Act 1996. It also called for careful consideration of the question of whether Islamic law could be used to resolve disputes in the course of litigation.

After the UK joined the European Economic Community in 1973, as a member of the Community, English courts were also obliged to apply EU law. Their decisions were also subject to the decisions of the European courts. In 1990, the Contracts Act was passed in England. Under this Act, the Rome Convention of 1980, which applies to contractual obligations, was adopted. On the other hand, the Rome Convention was replaced by Council Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I Regulation).

According to Article 3 of the Law, disputes arising from a contract shall be resolved in accordance with the law mutually chosen by the parties. If the parties have not chosen the law governing the dispute, the law most closely related to the content of the contract shall be chosen. At the same time, it shall ensure that the choice of the parties does not prejudice the application of mandatory provisions of foreign law, especially if the foreign State has a strong connection with the contract.

Under English law, Islamic law is considered a foreign law. Before a court can apply Islamic law, it must be shown that it has aspects that are different from English law. If this is not done, the general principle of English law is that an English court will conclude that the content of the foreign law is the same as English law and will therefore apply English law. Since the courts are not trained in Islamic law, the content of Islamic law must be proven by a person who is an expert in this field. In family law, English courts apply Islamic law. There are several cases that support this view. However, in contract law, resolving such cases is much more

complicated than in family law. There are some cases in which it is necessary to assess the attitude of English courts to the application of Islamic law to Islamic finance and contracts.

In this case, it is appropriate to consider the following court case. A dispute arose between Abdel Hadi Abdullah Al Qahtani & Sons Beverage Industry Company and Andrew Antliff, according to which the court was called to determine a number of disputes arising from the actions of the defendant in the course of working with the plaintiff. In particular, the court had to determine when the contract between the parties came into force, the issues of bribery, theft and breach of trust in connection with the recruitment. The defendant was a citizen of the United Kingdom and worked for the plaintiff in Saudi Arabia. During the consideration of the case, the court agreed to the application of Islamic law, since Islamic law is also applied in Saudi Arabia. Dr Mujahid M Al-Sawwaf and Ian Yedge were called as experts to give their opinions on the Sharia position on the issues before the court. It was difficult for the court to separate Sharia from Saudi law. Unlike other Muslim countries, Saudi Arabia does not have a civil procedure code or a separate code for commercial law. However, the court found that the Majallah, which is used in Saudi Arabia, is a form of codification of Sharia rules, consisting of several volumes. However, the court did not base its decision on the Majallah, but on Sharia rules derived by the experts from a number of Islamic texts. In addition to Abdel Hadi Abdallah Al Qahtani & Sons Beverage Industry Company, other cases that came before it have seen English courts refuse to apply Islamic law, even when the parties to a contract have expressly agreed to it.

Conclusion.

There are some contradictions in the development of Islamic finance that are compatible with modern finance, while harmonizing the traditional principles of Islamic law. Many Islamic banks and financial institutions have a Sharia Advisory Board, which is responsible for monitoring the compliance of Islamic finance products and services with Sharia. However, it is still a problem to ensure that contracts are actually executed or performed in accordance with the Sharia Board's certification.

When choosing a law, it is generally expected that Islamic financial contracts will be governed by Islamic law. However, such contracts can create conflicts when the parties are in different countries, or when disputes are heard in non-Islamic local courts. This can also lead to conflicts over which other laws should be recognized as the primary law by Islamic law. This is because the contract will be linked to countries that do not apply Islamic law.

The choice of the governing law and the resolution of disputes are an important part of the litigation process for a traditional cross-border financial transaction. The parties must consider the legal consequences of choosing a particular jurisdiction, such as the applicability of such governing law in the jurisdiction in which the parties choose to litigate, the enforcement of disputes and foreign laws, as well as decisions in the local jurisdiction.

When parties use an Islamic financial framework, another layer of governing law or principle is mentioned in the financial document, which further complicates the existing problems. It seems very easy for parties to insert a clause indicating that the underlying law is subject to Sharia principles without thinking about the legal consequences for the financial documents. In an environment where there is no judiciary that upholds and enforces Islamic principles in Islamic financial documents, the provision of a fundamental law that refers to Sharia principles seems inappropriate and has a passive effect.

A best practice increasingly adopted by legal practitioners in Islamic cross-border financing documents is to include a statement that the parties are satisfied that the agreement is in accordance with Sharia and a clause whereby the parties agree not to challenge the performance of the agreement. The main law clause provides for a choice of law only, without reference to Sharia. In addition, parties involved in cross-border Islamic finance transactions are increasingly choosing arbitration as a method of dispute resolution to take advantage of the flexibility it offers and the opportunity to involve Sharia and financial experts as arbitrators.

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