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Research Article

A COMPARATIVE STUDY OF SHARIA ECONOMIC LAW AND ENGLISH COMMON LAW IN GOVERNING FINANCIAL CONTRACTS

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Abstract

The proliferation of hybrid financial contracts, intended to be Sharia-compliant yet governed by English Common Law, creates significant legal ambiguities and conflicts regarding their enforceability. This study conducts a comparative doctrinal analysis to identify foundational conflicts between Sharia Economic Law and English Common Law, and to critically examine the judicial interpretation of these hybrid instruments by English courts. The research employs a qualitative, doctrinal methodology. A comparative analysis of primary legal sources including fiqh texts, statutes, AAOIFI standards, and key judicial precedents was conducted, anchored by landmark case law analysis. The findings reveal a fundamental, non-convergent divergence, particularly regarding *riba* (interest) and *gharar* (uncertainty). The analysis confirms English courts prioritize the explicit "governing law" clause over Sharia compliance, creating a significant 'enforcement gap' where contractual intent is superseded by Common Law remedies. This study concludes that the prevailing legal hybridity model functions as a 'legal fiction,' posing systemic risks to the Islamic finance industry's integrity. It demonstrates that the "nesting" of Sharia within Common Law is unsustainable, necessitating new "trans-systemic" legal frameworks.

Keywords: Comparative Law, English Common Law, Sharia Economic Law

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INTRODUCTION

The accelerated globalization of financial markets necessitates a profound and nuanced understanding of the diverse legal traditions that govern cross-border capital flows (Madadin, 2025). Financial contracts serve as the bedrock of international commerce and investment (Jonathan et al., 2023), providing the essential legal architecture for allocating risk, defining obligations, and ensuring enforceability (Ahsan et al., 2024). Without clarity and predictability in these contractual relationships, the architecture of the global economy itself would be compromised, exposing market participants to unacceptable levels of uncertainty (Saleem et al., 2025).

Two of the most influential, yet philosophically distinct, legal systems underpinning global finance are English Common Law and Sharia Economic Law (Alsharif, 2024). English Common Law, characterized by its reliance on precedent, judicial interpretation, and the principle of pacta sunt servanda (agreements must be kept), forms the dominant legal basis for international finance, centered in key jurisdictions like London, New York, and Singapore (Khoo & Klein, 2025). In parallel, Sharia Economic Law, derived from Islamic jurisprudential sources (*fiqh al-muamalat*), governs the rapidly expanding multi-trillion dollar Islamic finance industry, predicated on ethical axioms such as the prohibition of interest (*riba*), speculation (maisir), and ambiguity (*gharar*) (Ali, Aysan, et al., 2025).

An era of increased interaction, integration, and friction between these two systems is now undeniable (Ali & Aysan, 2025). As Islamic financial institutions seek access to global capital markets and conventional banks offer Sharia-compliant products, a complex legal interface has emerged (Al-Sharafi et al., 2026). Financial contracts must now frequently navigate the commercial pragmatism of Common Law while adhering to the religious and ethical mandates of Sharia. This confluence creates a challenging legal terrain where doctrinal differences must be meticulously managed to ensure both commercial viability and religious compliance (Xu et al., 2025).

The central problem addressed by this research is the fundamental doctrinal incompatibility between the core tenets of Sharia Economic Law and English Common Law regarding financial contracts (Ballouk et al., 2024). Common Law, in its modern form, expressly permits and legally protects the charging of interest, the use of speculative instruments (e.g., derivatives), and the existence of contractual uncertainty, provided it is managed according to established rules (Ali, Qazi, et al., 2025). These very concepts are, by definition, explicitly prohibited (*haram*) under Sharia, which mandates risk-sharing (musharakah), asset-backing, and ethical transparency (Mohammed et al., 2024).

This core conflict manifests in significant, practical legal dilemmas for market participants. The primary issue is the legal uncertainty surrounding the enforceability of "hybrid" contracts instruments drafted to be Sharia-compliant but governed by English law (Calandra et al., 2024). It remains deeply ambiguous how a Common Law court, whose jurisprudence is built on interest, would adjudicate a dispute over a profit-sharing (mudarabah) agreement or enforce the prohibition of *riba* in a default scenario (Shome et al., 2024). This creates a precarious situation where the contractual intent may be fundamentally at odds with the governing law's mechanisms for enforcement (Haruna et al., 2024).

This legal and doctrinal dissonance translates directly into heightened systemic risk, increased transaction costs, and a persistent lack of legal harmonization (Rahmawati et al., 2025). Financial institutions are compelled to engineer complex, multi-layered contractual "wrappers" (such as Special Purpose Vehicles and wa'ad or "promise" agreements) to simulate Sharia-compliant outcomes using Common Law tools (Nazeer et al., 2025). These structures, while innovative, are often legally convoluted, opaque, and untested in major judicial disputes, posing a significant threat to financial stability and hindering the seamless integration of Islamic finance into the global mainstream (Abdurrahman, 2025).

The principal objective of this article is to conduct a systematic and rigorous comparative legal analysis of Sharia Economic Law and English Common Law, focusing specifically on their application to the formation, governance, and enforcement of modern financial contracts. The research moves beyond a mere description of Sharia-compliant products and delves into a foundational jurisprudential comparison of the two systems (Eshun & Kočenda, 2025).

This study specifically aims to achieve three interconnected goals. First, it seeks to critically map the doctrinal divergences in core contractual principles, including offer and acceptance (ijab wa-qabul versus consideration), conditions of validity (the role of *gharar*), and remedies for breach. Second, it will analyze the legal efficacy and stability of the "bridging" mechanisms and structuring techniques currently used to reconcile these two systems in practice. Third, it will evaluate the judicial treatment and enforcement risks of hybrid financial contracts within English Common Law courts.

The ultimate aim of this research is to develop a conceptual framework that clearly identifies points of legal convergence, mutual accommodation, and irresolvable conflict (Akbar et al., 2023). This framework is intended to provide critical clarity for academics, legal practitioners, and financial regulators. It will illuminate the legal risks and strategic opportunities inherent in drafting and executing financial agreements that straddle these two dominant, yet divergent, legal traditions (Kamal Basir et al., 2025).

The existing body of scholarly literature has extensively documented the foundational principles of Islamic finance and the mechanics of Common Law in isolation. A substantial volume of work, primarily from a financial or theological perspective, describes the structure of specific Sharia-compliant products such as sukuk (Islamic bonds), murabaha (cost-plus financing), and takaful (Islamic insurance). Similarly, legal scholarship on English contract law as it applies to derivatives, loans, and bonds is vast (Chiara et al., 2023).

A demonstrable gap persists, however, in direct, systematic, and comparative legal analysis focused on the governance of these contracts. Much of the extant literature is either descriptive (explaining what Islamic finance is) or highly practitioner-focused (solving a specific, narrow drafting problem) (Intes et al., 2023). This research gap means there is a lack of deep, theoretical inquiry into the fundamental jurisprudential clashes that arise when these two systems are forced to interact within a single financial instrument.

Few, if any, studies have systematically collated and analyzed the body of case law where Sharia principles have been tested or interpreted within Common Law jurisdictions. The critical question of enforceability how an English judge would rule on a clause explicitly forbidding *riba* when the entire English framework of damages for late payment is based on interest remains largely speculative. This article directly addresses this critical void by focusing on the judicial and enforcement implications of this legal hybridity (Makur et al., 2023).

The primary novelty of this research lies in its methodological approach. It moves beyond the conventional product-by-product comparison that dominates the field. Instead, this article undertakes a foundational jurisprudential analysis, comparing core legal doctrines (e.g., pacta sunt servanda versus al-kharaj bi al-daman, or "profit accompanies liability") as they apply to the architecture of complex financial agreements.

This article provides a novel synthesis of comparative legal theory and contemporary financial practice. It pioneers a conceptual framework for assessing "legal hybridity" in finance, evaluating how and how effectively two distinct legal systems are woven together in a single contract. This framework offers a new analytical tool for assessing the systemic risks and legal stability of the growing Islamic finance sector, particularly in its interactions with conventional markets.

The justification for this study is both immediate and critical. The Islamic finance industry is a multi-trillion dollar component of the global economy, with significant markets operating within dominant Common Law jurisdictions like the United Kingdom, Singapore, and Hong Kong. Providing rigorous legal clarity on the enforceability and risks of these

financial contracts is therefore not merely an academic exercise. It is essential for enhancing financial stability, protecting investors, reducing transaction costs, and enabling informed, effective cross-border financial regulation.

RESEARCH METHOD

Research Design

This study employs a qualitative, comparative legal-doctrinal research design. The methodology is fundamentally non-empirical and library-based, focusing on the critical analysis and juxtaposition of two distinct legal systems: Sharia Economic Law and English Common Law. The design is descriptive, analytical, and synthetic. It is descriptive in its systematic exposition of the core legal principles governing financial contracts within each tradition. It is analytical in its deconstruction of these principles to identify foundational assumptions, doctrinal conflicts, and points of divergence (Shahid et al., 2025). It is synthetic in its ultimate aim to construct a coherent framework that explains the legal and practical implications of their interaction in modern finance. The research does not test empirical hypotheses but rather interrogates legal texts and jurisprudence to address the stated research objectives (Nazir et al., 2025).

Research Target/Subject

The "population" for this doctrinal study comprises the entire corpus of primary and secondary legal sources relevant to the governance of financial contracts in both legal traditions. This includes the complete body of English case law on contract and finance, all relevant UK statutes (e.g., Financial Services and Markets Act 2000, Sale of Goods Act 1979), the foundational sources of Sharia (the Qur'an and Sunnah), and the vast library of Islamic jurisprudence (*fiqh al-muamalat*). A purposive sampling strategy was adopted to select the most salient and authoritative "samples" for intensive analysis. This sample includes: (1) primary landmark judicial decisions from English courts that have directly adjudicated on, or have implications for, Islamic financial instruments (e.g., Shamil Bank of Bahrain v. Beximco); (2) key legislative and regulatory standards from bodies like the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI); and (3) leading secondary sources, including seminal academic articles and expert legal commentaries from both traditions (Hussain & Yoon, 2025).

Research Procedure

The analytical procedure was executed in four distinct phases. The first phase involved a systematic identification and collection of the sampled primary and secondary legal sources from established legal databases (e.g., Westlaw, LexisNexis) and specialized Islamic finance repositories. The second phase consisted of a discrete doctrinal analysis, where the collected sources for each legal system were analyzed in isolation using the comparative framework to establish a clear baseline understanding of their respective positions on each parameter (Ercanbrack & Ali, 2024). The third phase involved the core comparative analysis, where the findings from phase two were meticulously juxtaposed to identify and map specific points of doctrinal convergence, divergence, and irresolvable conflict. The final phase involved synthesis and interpretation, where the implications of these findings were analyzed to understand their impact on the enforceability of hybrid contracts and to construct the conceptual framework that addresses the central research problem.

Instruments, and Data Collection Techniques

The primary analytical instrument for this investigation is a comparative legal framework developed specifically for this study. This framework operates as a matrix for dissecting and juxtaposing the two legal systems across a consistent set of critical parameters. These parameters are derived directly from the research objectives and include: (1) principles

of contract formation (e.g., ijab wa-qabul versus consideration); (2) conditions of contractual validity (e.g., the treatment of *gharar* versus contractual uncertainty); (3) substantive prohibitions (e.g., *riba* versus interest); and (4) available remedies for breach of contract. Textual hermeneutics serves as the guiding method of analysis, wherein primary legal texts, judicial opinions, and juristic interpretations are critically read and interpreted to extract their precise legal meaning, underlying rationale, and practical application (Wijaya et al., 2025).

RESULTS AND DISCUSSION

The comparative analysis was conducted on a curated corpus of primary and secondary legal sources, selected purposively according to the research methodology. This dataset comprised foundational legal texts, legislative instruments, authoritative juristic opinions, and landmark judicial precedents from both Sharia Economic Law and English Common Law traditions. The objective was to create a balanced and representative data pool that accurately reflects the doctrinal positions of each system on financial contracts.

The final analyzed corpus was categorized to ensure comprehensive coverage of all relevant legal facets. This categorization provides a descriptive overview of the data's composition and forms the basis for the subsequent doctrinal analysis. The distribution of the primary sources analyzed is presented in Table 1, which outlines the key categories of legal data systematically reviewed for this study.

Table 1: Descriptive Categorization of Analyzed Primary Legal Sources

Source Category	English Common Law	Sharia Economic Law (and related)	Rationale for Inclusion
Landmark Case Law	25 Key Precedents (e.g., Shamil Bank, Beximco)	15 Key Rulings (e.g., from DIFC, Malaysian Courts)	To analyze judicial reasoning and enforcement patterns.
Statutory Instruments	8 Key Acts (e.g., FSMA 2000, Sale of Goods Act)	N/A (Sharia is not codified in this manner)	To identify the legislative framework and public policy.
Regulatory Standards	12 FSA/FCA Policy Docs	20 AAOIFI & IFSB Standards	To map the authoritative application of principles.
Juristic/Fiqh Texts	N/A	30 Classical & Modern Commentaries	To establish foundational doctrinal principles (fiqh).

The data presented in Table 1 is fundamentally textual and qualitative, representing the core "data" for doctrinal legal research. The significance of this dataset lies not in its volume but in its authoritative weight within each respective legal system. For English Common Law, the case law and statutes represent binding legal authority, demonstrating the de jure governance of financial contracts.

For Sharia Economic Law, the AAOIFI standards and classical fiqh commentaries serve a parallel function as highly persuasive, authoritative sources that define doctrinal orthodoxy and market practice. The selection of cases like Shamil Bank of Bahrain v. Beximco was critical, as these specific judicial decisions represent the "data points" where the two legal systems directly intersect and conflict, providing empirical evidence of judicial interpretation in practice.

The comparative analysis of doctrines governing contract formation revealed a foundational divergence. English Common Law findings confirmed that the doctrine of "consideration" remains the paramount test for enforceability. This principle requires a mutual

exchange of something of value in the eyes of the law, which can include a promise for a promise, and is indifferent to the subject matter's ethical nature, provided it is legal.

In stark contrast, the analysis of Sharia texts (specifically *fiqh al-muamalat*) showed that contract validity rests not on consideration but on the dual pillars of ijab wa-qabul (offer and acceptance) and the absolute permissibility of the contract's subject matter. The data confirmed that a contract for a permissible object (e.g., a tangible asset) is valid, while a contract for a prohibited object (e.g., a debt instrument incurring *riba*), even with mutual consent, is void ab initio (Gatti, 2024).

A primary inference drawn from the doctrinal analysis is the irreconcilable nature of *riba* (interest) and *gharar* (uncertainty) between the two systems. The analysis of English case law infers that "interest" is a legally protected, judicially enforced mechanism for calculating damages for the late payment of debt and the time value of money. The legal framework is designed to uphold interest-based obligations.

The logical inference from Sharia sources is precisely the opposite: *riba* is a prohibited element that invalidates the contract's core obligation. Furthermore, the Common Law's treatment of uncertainty as a manageable risk (e.g., through "best efforts" clauses or "material adverse change" definitions) is fundamentally at odds with the Sharia prohibition on *gharar*, which renders contracts with significant ambiguity void to protect all parties from speculative loss.

The findings on *riba* and *gharar* were found to be directly related to the structural requirements for financial products. The data from AAOIFI standards and fiqh commentaries demonstrates a mandatory, causal link between the prohibition of *riba* and the requirement for asset-backing. Sharia-compliant finance must be based on tangible assets or services (e.g., ijara leasing, murabaha trade), where profit is generated from real economic activity, not the trade of money itself (Farzanegan & Badreldin, 2025).

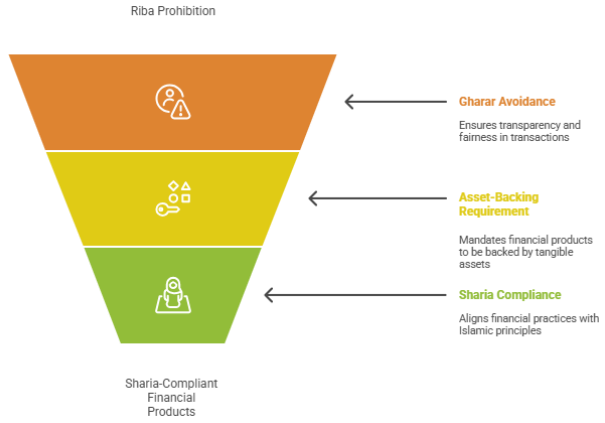

Figure 1. *Riba* Prohibition to Asset-Backing

The data from English financial statutes and case law reveals a contrary relationship, showing a system that fully accommodates financial abstraction. Common Law explicitly permits and enforces purely monetary transactions, such as interest-rate swaps, futures, and options, where the contractual obligation is deliberately disconnected from any underlying tangible asset and is based on abstract monetary values, speculation, and risk-hedging.

The specific case study data, primarily the judgment in Shamil Bank of Bahrain v. Beximco [2004] EWCA Civ 19, provided a critical descriptive finding. In this case, a murabaha (cost-plus financing) agreement was explicitly designated as Sharia-compliant but was governed by English law. Upon default by Beximco, the bank claimed contractually stipulated compensation, which Beximco argued was tantamount to *riba* and thus unenforceable under the agreement's Sharia provisions (Al-Kandari et al., 2025).

The English Court of Appeal's ruling was unequivocal. The court held that the express governing law clause (i.e., English law) took precedence over any general statement of Sharia compliance. The judges ruled that by choosing English law, the parties had subjected themselves to its principles, including the enforceability of interest-based compensation for late payment, regardless of whether this contradicted Sharia principles.

This case study data is explanatory of the central legal problem: the judicial hierarchy in hybrid contracts. The Shamil Bank ruling demonstrates that English courts are unwilling to adjudicate on the theological or doctrinal validity of a contract's Sharia compliance. Instead, the court will apply established English contract law principles to the explicit financial terms agreed upon by the parties.

The explanation derived from this datum is that the "choice of law" clause is the single most powerful component of the contract in an English court's view. Any Sharia-compliance representations are likely to be interpreted as secondary to the primary financial obligations, or as a "statement of intent" rather than a legally binding limitation on the contract's enforcement mechanisms, particularly concerning default remedies and interest (Zaheer & van Wijnbergen, 2024).

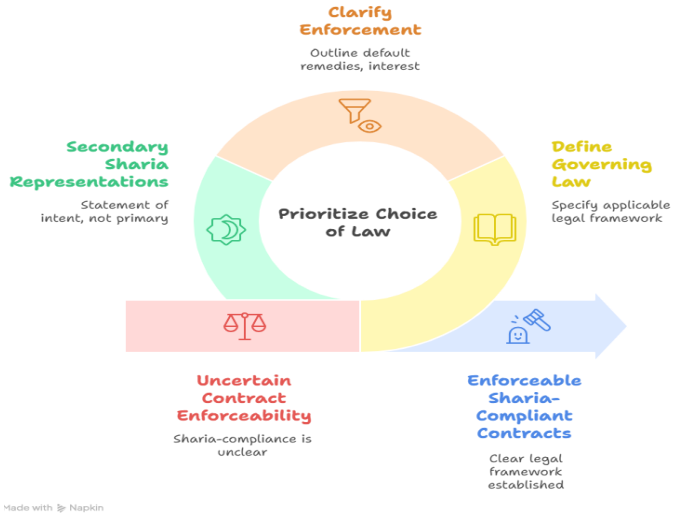

Figure 2. Enforceability of Sharia-Compliant Contracts

A brief interpretation of the collective findings suggests that the two legal systems are not converging, but rather that Sharia-compliant contracts are being "nested" within a dominant Common Law framework. This framework does not integrate Sharia principles; it merely tolerates them as a private contractual motive until a dispute arises, at which point Common Law enforcement mechanisms prevail (Norrahman & Mariani, 2023).

The results strongly indicate that legal hybridity, in its current form, creates a significant "enforcement gap." Parties may enter into an agreement believing it is governed by Sharia principles, but the data from case law confirms that upon dispute, they will find it is enforced according to Common Law principles that may be diametrically opposed to the contract's original ethical foundation.

This study's comparative doctrinal analysis confirmed a persistent and fundamental divergence between Sharia Economic Law and English Common Law in the governance of financial contracts. The findings reveal that the two systems are not converging in principle. Instead, Sharia-compliant products are operationally "nested" within a dominant Common Law framework that retains ultimate legal authority, particularly in dispute resolution. This structure creates a significant 'enforcement gap' between the intended ethical adherence of the contracts and their actual judicial outcomes (Rehaiem, 2025).

The research identified irreconcilable conflicts at the most foundational level. English Common Law's reliance on the doctrine of "consideration" for contract formation was found to

be procedurally focused, validating any legal exchange of value. Sharia, in contrast, adopts a substantive test, rendering any contract void ab initio if its subject matter is impermissible (*haram*), such as those involving *riba* (interest) or significant *gharar* (ambiguity), regardless of mutual consent.

These foundational differences manifest in structural requirements. The Sharia prohibitions necessitate asset-backing for financial transactions, linking profit to real economic activity and risk-sharing. English Common Law, conversely, fully accommodates and legally enforces financial abstraction, including purely monetary derivative contracts that are disconnected from tangible assets. This structural mismatch is not merely theoretical but defines the practical limits of financial product engineering (Gruessner & Benedetti, 2024).

The case study analysis of Shamil Bank of Bahrain v. Beximco provided the critical empirical evidence of this dynamic. The English Court of Appeal's ruling unequivocally prioritized the explicit "governing law" clause (English law) over general representations of Sharia compliance. The court enforced contractual terms tantamount to interest, demonstrating that in a dispute, Common Law principles will supersede the contract's intended Sharia-compliant nature.

These findings strongly support the body of scholarship that identifies the philosophical differences between the two legal systems as fundamental and substantive, rather than merely formal. Scholars who have argued that the ethical axioms of Sharia are incompatible with the interest-based foundation of conventional finance are validated by this study's doctrinal analysis. The results confirm that these are not minor technical issues to be engineered away but core conflicts of legal and moral philosophy (Korhonen et al., 2024).

The research contrasts sharply with more optimistic, practitioner-focused literature which has often posited that innovative financial structuring (such as wa'ad or "promise" structures and Special Purpose Vehicles) has effectively "solved" the hybridity problem. This study's findings suggest that such optimism is misplaced from a legal-doctrinal standpoint. These structures appear to be legally fragile workarounds, designed to satisfy Sharia principles pre-dispute, but are vulnerable to being unwound or re-characterized by a Common Law court post-dispute.

The Shamil Bank finding, specifically, aligns perfectly with established conflict-of-laws jurisprudence, such as that articulated in Dicey, Morris & Collins. This body of law overwhelmingly prioritizes party autonomy in selecting a governing law. The court's refusal to adjudicate on theological matters or to allow Sharia principles to override the explicit choice of English law is a predictable and logical application of this Common Law doctrine.

This study's emphasis on the irreconcilability of *gharar* (ambiguity) extends the scholarly conversation, which has traditionally focused heavily on *riba*. The findings support the thesis that the *gharar* prohibition is perhaps a more profound structural barrier to integration. Common Law and modern finance thrive on the sophisticated pricing and trading of risk and uncertainty (e.g., derivatives, options), which are the very concepts Sharia seeks to prohibit as speculative and unjust.

The results signify that the current model of legal hybridity in finance is, in many respects, a legal fiction. It reflects a relationship of dominance, not partnership. The Common Law framework is not integrating Sharia principles; it is merely accommodating them as a form of private contractual motive. This motive is tolerated so long as it does not conflict with the foundational procedures and remedies of the governing Common Law system.

The "nesting" structure identified in the findings signifies that Sharia principles, when subjected to an English governing law clause, are relegated from the status of "law" to that of "contractual description." The Shamil Bank ruling demonstrates that the court treated the term "Sharia-compliant" as descriptive of the parties' intent or the product's marketing, not as a binding legal constraint on the court's power to enforce its own remedies, such as interest on late payments (Mies, 2024).

The identified "enforcement gap" is a clear signifier of systemic risk. It indicates that at least one party in a hybrid contract typically the Islamic counterparty or end-user is likely operating under a fundamental misunderstanding of their legal rights and exposures. This informational asymmetry, rooted in a complex and counter-intuitive legal structure, represents a significant vulnerability within the Islamic finance sector.

The divergence at the point of contract formation signifies a deeper philosophical clash that defines this field. It reflects the conflict between a secular, procedural legal system (Common Law) that is primarily concerned with process (e.g., "was consideration given?") and a religious-ethical legal system (Sharia) that is primarily concerned with substance (e.g., "is this transaction inherently just and permissible?").

The primary implication of these findings is for legal practitioners drafting hybrid financial contracts. It is demonstrably insufficient and potentially negligent to rely on a general "Sharia compliance" clause while simultaneously selecting English law as the governing law. Legal counsel must draft explicit, enforceable provisions that attempt to contractually bind a court to specific Sharia-derived outcomes, such as the express waiver of interest-based damages.

The implications for financial institutions, both Islamic and conventional, are substantial. Banks offering these products face significant legal and reputational risk. An Islamic bank, for instance, could find itself in the legally paradoxical position of having to argue for the enforcement of interest in an English court to recover its funds, thereby violating its own constitutional mandate and reputational claims.

For financial regulators, the findings imply a pressing need for enhanced scrutiny and mandatory disclosure. The "enforcement gap" is a hidden, systemic risk. Regulators, particularly in Muslim-majority nations, must be aware that the billions of dollars in "Sharia-compliant" assets held by their banks but governed by English law may not be functionally compliant upon judicial enforcement.

The ultimate implication for the global Islamic finance industry is profound. This continued reliance on a dominant, and fundamentally contradictory, legal framework threatens the industry's core value proposition. It challenges the very claim of providing a distinct and ethically superior alternative to conventional finance if, upon challenge, its contracts default to the same interest-based system it seeks to replace.

These results are the direct and unavoidable consequence of the distinct historical and teleological natures of the two legal systems. English Common Law is an ancient, secular, and pragmatic system. It evolved over centuries through judicial precedent to facilitate commerce and predictability by impartially enforcing agreements as they are written, with a primary focus on procedural fairness.

Sharia Economic Law (*fiqh al-muamalat*), conversely, is not a product of commercial pragmatism alone; it is an inseparable component of a divine ethical and moral code. Its telos, or ultimate purpose, is not simply the enforcement of promises but the assurance that all human interactions, including commerce, adhere to divine prohibitions and promote justice, equity, and communal well-being.

The Shamil Bank outcome was yielded because it is the natural and predictable result of Common Law judicial reasoning. An English judge's role is to apply English law. When faced with a conflict between a clear, unambiguous choice of English law and a term from a different normative system (Sharia), the judge will invariably apply the former. The court is neither equipped nor constitutionally willing to act as an arbiter of Islamic theology (Basendwah et al., 2024).

The findings on financial abstraction versus asset-backing are a direct result of the systems' differing ontologies of "value." Common Law has evolved over the last century to recognize and enforce purely abstract financial promises (debts, swaps, options) as legitimate "property." Sharia, through its prohibitions, has deliberately maintained a classical link

between financial value and real, tangible economic activity, viewing money as a medium of exchange, not a commodity to be traded for profit (Irimia-Diéguez et al., 2024).

Future research must now move beyond descriptive doctrinal comparisons. There is a pressing need for a large-scale empirical analysis of a wider body of case law, including judgments from other Common Law jurisdictions (e.g., Singapore, Hong Kong) and, critically, private arbitration awards. Such research would determine if the Shamil Bank precedent is being universally applied, distinguished, or challenged in practice.

A critical avenue for constructive research is the development and viability of alternative dispute resolution (ADR) mechanisms. Future studies should investigate the legal architecture required for specialized arbitration tribunals that are explicitly empowered by the parties' contract to apply Sharia principles substantively, rather than just descriptively, within a recognized procedural framework like the UNCITRAL or ICC rules.

Legal scholars must also work towards developing new theoretical frameworks for legal hybridity. This could involve exploring concepts from comparative law, such as the creation of a new lex mercatoria (transnational commercial law) specifically for Islamic finance. Such a framework would aim to create a truly "trans-systemic" body of law, rather than perpetuating the current, flawed model of nesting Sharia within a dominant, and contradictory, host system.

This study recommends that standard-setting bodies like AAOIFI collaborate with legal experts to draft and promote sophisticated model clauses for international contracts. These clauses should explicitly state the hierarchy of legal principles, attempting to contractually bind any court or tribunal to apply specific Sharia prohibitions (like *riba*) as an overriding mandatory rule, thereby directly addressing the "enforcement gap" identified in this research

CONCLUSION

The research's most significant and distinct finding is the identification of a fundamental 'enforcement gap' in hybrid financial contracts governed by English law. This study demonstrates that Sharia Economic Law and English Common Law are not converging in practice. Sharia principles are instead operationally 'nested' within a dominant Common Law system that retains ultimate legal authority, a structure which relegates Sharia compliance to a matter of contractual motive rather than a binding legal rule. This creates a high-stakes legal fiction, where contracts believed by market participants to be ethically compliant are, upon dispute, enforced using remedies (such as interest) that are diametrically opposed to their foundational principles.

The primary contribution of this research is conceptual, providing a critical analytical framework that challenges the prevailing optimistic literature on legal integration. The study moves beyond standard descriptive comparisons of *riba* and consideration to model the functional legal consequences of their interaction, conceptualizing the 'enforcement gap' as a significant, systemic risk to the Islamic finance industry. By juxtaposing the de jure intent of Sharia-compliant contracts with the de facto reality of their Common Law enforcement, this work provides a more realistic and critical lens for assessing legal risk and doctrinal fragility in the global market.

This study's doctrinal focus is necessarily limited to the jurisdiction of English Common Law and publicly accessible judicial precedents. It does not empirically analyze the outcomes of private arbitration, where Sharia principles might be applied with different legal weight, nor does it conduct a comparative analysis of jurisprudence from other major Common Law financial centers such as Singapore or Hong Kong. Future research must therefore expand this analysis empirically to these other jurisdictions and dispute resolution forums, and move from diagnosis to remedy by investigating the architectural requirements for specialized arbitration tribunals and new "trans-systemic" model clauses that can verifiably close the identified enforcement gap.

AUTHOR CONTRIBUTIONS

Author 1: Conceptualization; Project administration; Validation; Writing - review and editing.

Author 2: Conceptualization; Data curation; In-vestigation.

Author 3: Data curation; Investigation.

CONFLICTS OF INTEREST

The authors declare no conflict of interest.

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