

Course Code / Course Name	<b>LBA 3013</b> <b>ISLAMIC BANKING AND TAKAFUL</b>	
Status / Level	MAJOR / DEGREE	
Credit Hours	3 CREDIT HOURS LECTURES: 2 HOURS X 14 sessions TUTORIALS : 1 HOUR X 14 sessions	
Methodology	LECTURES AND TUTORIALS / DISCUSSIONS	
Evaluation	<u>Coursework</u> [a] Assignment/Article Review      15% [b] Presentation/ Participation      10% [c] Mid semester examination      15%  Final Examination	      40%      60%
Lecturers	Zulkifli bin Hasan LL.B (Hons) (IIUM), LL.B (Bachelor of Shariah) (IIUM), Master of Comparative Laws (IIUM) Advocate and Solicitor (Malaya), Syarie Counsel	
Objectives	The main objectives of this course are: - <ol style="list-style-type: none"> <li>1) To understand the principles of Islamic banking and takaful conceptually and theoretically.</li> <li>2) To expose the students with the basic principles underlying all the products available in Islamic banking, takaful and securities.</li> <li>3) To understand the legal documentation and its effect to law as applied in the civil courts.</li> <li>4) To equip the students with the necessary training in the area of Islamic commercial law so as to qualify them to practice in that area.</li> </ol>	
Learning Outcome (Long Term Expectation)	1) An understanding of the basic principles of Islamic banking and takaful conceptually and theoretically.	

	<ol style="list-style-type: none"> <li>2) The students will be able to develop the existing and new Islamic banking and takaful products.</li> <li>3) The students will be able to provide views in the aspect of syariah as well as civil.</li> <li>4) The students will have professional skills of writing to prepare legal documentation and to give opinion.</li> <li>5) To contribute to the development of Islamic Banking and takaful in Malaysia and worldwide.</li> </ol>
<p>Course Outcome (Short Term Expectation)</p>	<ol style="list-style-type: none"> <li>1) An understanding of the basic principles of Islamic banking and takaful conceptually and theoretically.</li> <li>2) An ability to identify and analyze the products available in Islamic banking and takaful.</li> <li>3) An ability to critically examine and provide solution of the products and their underlying contracts in line with the syariah principles.</li> <li>4) An ability to prepare and draft legal documentation and to provide opinion writing.</li> </ol>
<p>Course Synopsis</p>	<p>Islamic law of banking, takaful and securities which are section of Islamic commercial law has developed significantly in the recent decades. It covers almost every aspect of commercial transactions from banking, finance, capital market and insurance. This course will enable the students to understand the position of Islamic banking, takaful and securities in Malaysia as well as other countries.</p> <p>Since the coverage of this course is relatively wide, the course will only examine a few selected but leading and contemporary issues. The main statutory legislations involved will be Banking and Financial Institutions Act 1989, Islamic Banking Act 1983, Takaful Act 1984 and Insurance Act 1996.</p> <p>This course is conceptually divided into two sections, namely Islamic banking and Islamic Insurance.</p> <p>Part one will discuss on Islamic banking and it includes banking history, overview of modern financial management, relevant banking legislation, important features of Islamic banking legislation, the concepts and modus operandi of Islamic banking and finance as currently practiced by financial institutions. This</p>

	<p>will include the sectors of deposit, banking services, finance and investment. Principles of Islamic law of contract as well as transactions will be highlighted to relate the products to Islamic law principles. Aspects of legal documentation will also be examined to relate the shariah principles to civil law principles and vice versa. Also cases which have been decided by the civil courts pertaining to Islamic banking products will be critically examined.</p> <p>Part two discusses on the introduction of Islamic insurance. The same line of discussion will apply to the practice of takaful even though the volume of the practice and its problem are not as many as in the banking sector. Occasionally an attempt is made to consult the law and the practices of other muslim countries as far as Islamic banking and takaful operations are concerned.</p>
<p>Required Readings</p> <p><i>(References will be updated from time to time)</i></p>	<p>Ahmad Ibrahim, “<i>Legal Framework of Islamic Banking</i>”, IKIM Law Journal, Vol.1 (1): 1997</p> <p>Mohamed Ismail bin Mohamed Shariff, “ <i>Salient Features of Islamic Banking Act 1983 and Banking and Financial Institutions Act 1989</i>”, working paper presented during Seminar on Syariah and Legal Aspects of Islamic Banking Practice, BIMB Institute of Research and Training, Kuala Lumpur, 1996.</p> <p>Mohd Ma’sum Billah. <i>Sources of Law Affecting Takaful</i>. IJOIFS. Vol. 2.</p> <p><i>Mohammad Nejatullah Siddiqi</i> . 2004. Riba, Bank Interest and the Rational of its Prohibition. IRTI.</p> <p>Nik Nozrul Thani, Mohamed Ridza and Megat Hizaini. 2003. <i>Law and Practice of Islamic Banking and Finance</i>. Kuala Lumpur: Thomson.</p> <p>Nik Nozrul Thani. 2001. <i>Legal Aspects of the Malaysian Financial System</i>. Kuala Lumpur: Sweet and Maxwell.</p> <p>Lee Mei Pheng. 2003. <i>Banking Law</i>. Kuala Lumpur: Malayan Law Journal.</p> <p>Nik Ramlah Nik Mahmoo, Islamic system of Mutual Insurance in Malaysia, Arab Quarterly.</p> <p>Norhashimah Mohd Yasin, <i>Financing Aspects of Al-Bay’ Bithaman Ajil (BBA) contracts</i>, (1997) 3 CLJ Supp. at P.V.</p> <p>Norhashimah Mohd Yasin, <i>Financing Aspects of Al-Bay’</i></p>

	<p><i>Bithaman Ajil (BBA) contracts</i>, (1997) 3 CLJ Supp. at P.V</p> <p>Sudin Haron. 1996. <i>Prinsip dan Operasi Perbankan Islam</i>, Berita Publishing Sdn Bhd.: Kuala Lumpur.</p> <p>Zulkifli Hasan, <i>The Roles and Responsibilities of the Syariah Advisory Council in the Islamic Financial Institutions</i>. (Journal Shariah). 2006. Academy of Islamic Studies, Malaya University.</p> <p>Zulkifli Hasan, <i>The Legal Thought Of Madhhab Syafi'i in the Implementation of Islamic Banking in Malaysia</i>. Jurnal Undang-undang IKIM. Julai 2006. IKIM.</p> <p>Zulkifli Hasan. <i>Shariah Governance in the Islamic Financial Institutions in Malaysia</i>. Journal of Management and Muamalah. Vol.1. 2006. Kolej Universiti Islam Antarabangsa Selangor.</p> <p>Zulkifli Hasan. <i>The Effectiveness of The Legal Framework Of The Islamic Banking System In Malaysia</i>. National Seminar In Islamic Banking and Finance 2006. 29-30 August 2006 organised by Faculty of Economy and Muamalat, KUIM.</p>
<p>Recommended Readings</p> <p><i>(References will be updated from time to time)</i></p>	<p>Mohd Ma'sum Billah. 2007. Applied Islamic and Modern Insurance. Sweet and Maxwell.</p> <p>Mohd Ma'sum Billah. 2007. Applied Islamic Law of Trade and Finance. Sweet and Maxwell.</p> <p><i>Siddiq Al Dareer</i> . 1997. Al Gharar in Contracts and Its Effect on Contemporary Transactions. IRTI.</p> <p><i>Habib Ahmed, Mohammad Umar Chapra</i> . 2002. Corporate Governance in Islamic Financial Institution. IRTI.</p> <p>Saleh Kamel. 1998. Development of Islamic Banking Activity: Problems and Prospects. IRTI.</p> <p><i>Ausaf Ahmad</i> . 1993. Instruments of Regulation and Control of Islamic Banks by the Central Banks. IRTI.</p> <p><i>Mahmoud Ahmad Mahdi</i> . 1995. Islamic Banking Modes for House Building Financing. IRTI.</p> <p><i>Munawar Iqbal, Mabid Ali Al Jarhi</i>. 2001. Islamic Banking: Answers to Some Frequently Asked Questions. IRTI.</p> <p><i>Salman Syed Ali</i> . 2005. Islamic Capital Market Products - Developments &amp; Challenges. IRTI.</p> <p>Fahim Khan. 1995. Islamic Financial Institutions. IRTI.</p>

Hasan al-Amin. 2000. Legal Status (Hukm) of Contemporary Banking Transactions with Interest. IRTI.

*Tariqullah Khan, Mohammad Umar Chapra* . 2000. Regulations and Supervision of Islamic Banks. IRTI.

*Islamic Fiqh Academy* . 2000. Resolutions and Recommendations of the Council of the Islamic Fiqh Academy 1985-2000. IRTI.

Ahmad Hidayat Buang. 1998. “*Muamalah Islam di Mahkamah-mahkamah Malaysia*”, Akademi Pengajian Islam, Universiti Malaya: Kuala Lumpur,.

Ahmad Ibrahim and Ahilemah Jones, 1995. 2<sup>nd</sup> Ed, *The Malaysian Legal System*, Dewan Bahasa dan Pustaka: Kuala Lumpur,.

Ahmad Ibrahim, *The Principles of An Islamic Constitution and The Constitution of Malaysia: A Comparative Analysis*, (1989) 1 (2) IIU Law Journal 1.

Ahmad Al-Khusary, *Al-Siyasah Al-Iqtisadiyyah wa Al-Nusm Al-Maliyah fi Al-Fiqh Al-Islami*, Maktabah Al-kuliyat Al-Azhariyah: Cairo.

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Fuad Omar and Mohammed Abdel-Haq, 1996. *Islamic Banking Theory, Practice and Challenge*, Oxford University Press: Karachi.

*Halal Malaysia, Islamic Capital Market and Financial Services*, YADIM: Kuala Lumpur, 2003.

*Islamic Banking Practice From The Practitioner’s Perspective*, Bank Islam Malaysia Berhad: Kuala Lumpur. 1994.

Jaafar Husin, 1990. “*Islamic Financial System in the 1990s*”, in *Malaysian Law News*, June 1990.

Mohd Awal, 1989. *Banking System: Legal Impediments Towards*

*Its Islamisation in Malaysia*, in Jurnal Perundangan 1 (1) ABIM: Petaling Jaya.

Mohd Daud Bakar, “ *Cabaran dan Halangan Terhadap Pelaksanaan Muamalat di Malaysia*”, working paper presented at Dewan Agama dan Falsafah, Dewan Bahasa dan Pustaka, Kuala Lumpur, 2001.

Muhammad Hashim Kamali, 1998. *The Principles of Islamic Jurisprudence*, 2<sup>nd</sup> Ed. Kuala Lumpur: Ilmiah Publishers Sdn Bhd..

Mohamed Ismail Mohamed Shariff, *Isu –isu Rangka Kawalselia dan Perundangan Dalam Pasaran Modal Islam*, Muzakarah Pasaran Modal Islam, Suruhanjaya Sekuriti Kuala Lumpur, 6th September 2005, p.19

Muzakarah Pakar “*Memantapkan Sistem Kewangan Islam: Ke Arah Mencapai 20% Pasaran Kewangan Negara Menjelang 2010*”. 22-23 September 2005/18-19 Syaaban 1426h at Pusat Dagangan Dunia Putra, Kuala Lumpur.

n.a. 2004. “*Al Rajhi, Qatar-led group get Islamic banking licenses*”. *New Straits Times*. 15 October. p. B1

Norhashimah Yasin, *Legal Constraints in Applying Islamic Banking and Finance in Malaysia*. Seminar on Islamic Banking.Law Students’ Society International Islamic University Malaysia.30<sup>th</sup> August 2002.

Nor Muhamed Yacop, 1996. *Teori, Amalan dan Prospek Sistem Kewangan Islam di Malaysia*, Utusan Publication and Distributors:Kuala Lumpur.

Pang J, 1996. *Banking in Malaysia*, Longman:Kuala Lumpur.

*Penentuan Hukum produk Perbankan Islam: Pengalaman Bank Negara Malaysia*, Muzakarah ahli-Ahli Majlis Penasihat Syariah Institusi Kewangan di Malaysia, Bahagian Penyelidikan JAKIM, Hotel Pan Pacific, 4-5 Mac 2004.

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*Concepts & Applications*”, Pelanduk: Petaling Jaya.  
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Wahbah Zuhaili, 2002. *Fiqh Islami Wa Adillatuhu*, Vol. IV, Dewan Bahasa dan Pustaka: Kuala Lumpur.

Zulkifli Hasan. *A Syariah Perspective on the Letter of Offer as Practiced by the Islamic Financial Institutions: A Comparative Study with the Malaysian Law of Contract*. Malaysian Journal of Shariah and Law (2006), Volume 1. Islamic University College of Malaysia.

Zulkifli Hasan. ‘**Uqud In Financial Services For Entrepreneurship.**’**Islamic Financial Services**” Kolej Universiti Islam Malaysia. 2006.

Zulkifli Hasan. *Harmonisation of Shariah and Common Law in The Implementation Of Islamic Banking In Malaysia*. International Seminar On Shariah and Common Law 2006 organised by Faculty of Syariah and Law, KUIM held on 20-21 September 2006.

Zulkifli Hasan, 2005, “*The Roles and Responsibilities of the Syariah Advisory Council in the Islamic Financial Institutions*”, Seminar Ekonomi dan Kewangan Islam, Universiti Utara Malaysia, Institut Latihan Keselamatan Sosial KWSP

Zulkifli Hasan, 2005, *Perlaksanaan Perbankan Islam Di Di Malaysia: Ke Arah Harmonisasi Undang-Undang Syariah Dan Sivil*, Seminar Rekonstruksi Ekonomi Islam, Universiti Islam Sharif Hidayatullah Jakarta, Indonesia dan Fakulti Ekonomi dan Muamalat, KUIM, Pandan Indah, KUIM, 9 Februari 2005.

#### Cases

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*Commissioner for Religious Affairs, Trengganu & Ors v. Tengku Mariam* [1969] 1 MLJ 110.

*Mohamed Habibullah v. Faridah* [1992]2 MLJ 793

*Bank Islam v. Adnan Omar* [1994] 3 CLJ 735; [1994]3 AMR 44

*Dato’ Nik Mahmud Bin Daud v. Bank Islam Malaysia Berhad* [1996]4 MLJ 295 (HC); [1998]3 MLJ 393 (CA)

*Affin Bank Berhad vs Zulkifli Abdullah* (2006) 1 CLJ 447.

WEEK	TOPIC	REFERENCES
<b>Week 1</b>	<p>Overview of Modern financial management of banking, capital market, insurance, securities.</p> <p>History of Islamic banking. The establishment of Islamic banks worldwide both in the muslim and non-muslim countries.</p>	<p>Reference:-</p> <p>Nik Nozrul Thani, Mohamed Ridza and Megat Hizaini. 2003. <i>Law and Practice of Islamic Banking and Finance</i>. Kuala Lumpur: Thomson.</p> <p>Sudin Haron, Prinsip dan Operasi Perbankan Islam.</p>
<b>Week 2</b>	<p>Different approach of Islamic banking system in the world.</p> <p>Salient features of Islamic banking</p>	<p>Mohamad Ariff. <i>Islamic Banking in South East Asia</i>.</p> <p>Mohd Daud Bakar, <i>Contracts In Islamic Commercial Law and Their Application in Modern Islamic financial System</i>.</p>
<b>Week 3</b>	<p>Theory of the classifications of transactions in Islamic commercial law</p> <p>Islamic sources of fund- Overview of Islamic banking accounts and instruments.</p> <p>Saving account, current account and general investment account.</p>	<p>Zulkifli Hasan ‘Uqud In Financial Services For Enterpreneurship.’Islamic Financial Services” Kolej Universiti Islam Malaysia. 2006.</p> <p>Mohd Daud Bakar, <i>Contracts In Islamic Commercial Law and Their Application in Modern Islamic financial System</i>.</p>



<p><b><u>Week 4</u></b></p>	<p>The Role of Central Bank of Malaysia in both conventional and Islamic bank.</p> <p>Shariah Supervisory Board- role and responsibility.</p>	<p><u>The Central Bank of Malaysia Act 2003.</u></p> <p>Zulkifli Hasan. <i>Shariah Governance in the Islamic Financial Institutions in Malaysia.</i> Journal of Management and Muamalah. Vol.1. 2006. Kolej Universiti Islam Antarabangsa Selangor.</p> <p>Zulkifli Hasan, <i>The Legal Thought Of Madhhab Syafi'i in the Implementation of Islamic Banking in Malaysia.</i> Jurnal Undang-undang IKIM. Julai 2006. IKIM.</p>
<p><b><u>Week 5</u></b></p>	<p>An overview of the jurisdiction of the courts in cases pertaining to Islamic banking and finance.</p> <p>Salient features of various statutes governing Islamic banking and finance.</p>	<p>Banking and Financial Institutions Act 1989 Islamic Banking Act 1983, Pakistan Banking law and Modaraba Ordinance 1980. Law of Usury Free Banking Iran 1983.</p>
<p><b><u>Week 6</u></b></p>	<p>An overview of Islamic Banking Act 1983.</p> <p>An overview of Banking and Financial Institutions Act 1989.</p>	<p>Mohamed Ismail Mohamad Sharif, Salient features of Islamic banking Act 1983.</p> <p>Zulkifli Hasan. <i>The Effectiveness of The Legal Framework Of The Islamic Banking System In Malaysia.</i> National Seminar In Islamic Banking and Finance 2006. 29-30 August 2006 organised by Faculty of Economy and Muamalat, KUIM.</p>

<p><b><u>Week 7</u></b></p>	<p>The basis of the introduction of Islamic banking system.</p> <p>The Prohibition of Usury, Gharar and Khatar in Islamic Commercial law.</p>	<p>Mohd Daud Bakar, Riba and Islamic banking.</p> <p>Vogel and Samuel Hayes, Islamic law and finance.</p> <p>Nejatullah Siddiqi. <i>Banking Without Interest.</i></p>
<p><b><u>Week 8</u></b></p>	<p>Critical analysis of BBA House financing, Bay Inah, Bay Al-Dayn and Ijarah financing facility.</p> <p>Legal Issues of Islamic banking and its prospects.</p>	<p>Reference:-</p> <p>Norhashimah Mohd Yasin, Financing Aspects of BBA Contracts, [1997] CLJ Supp. P.i.</p> <p>Norhashimah Mohd Yasin, Financing Aspects of BBA Contracts, [1997] CLJ Supp. P.i.</p> <p>Robert Fugard, Legal Issues of Islamic finance, New Horizon, August 1997.</p>

<p><b>Week 9</b></p>	<p>Non Performing debts in Islamic banking.</p> <p>Default payment and compensation in Islamic banking.</p> <p><b>Bank Security</b></p> <p>(a) <b>Goods As Security</b></p> <p>Pledge of goods Transfer of possession Pledgees power of sale Mortgage of shares Letter of lien</p> <p>(b) <b>Guarantees</b></p> <p>Nature of guarantee Strict compliance with the terms of guarantee Consideration Presumption of influence</p> <p>(c) <b>Letter of Credit</b></p> <p>Nature of letter of credit Types of credit Negotiable and transferable letter of credit.</p>	<p>Mohd Daud Bakar, Issues of compensation of late payment, Late delivery and penalty in Islamic banking.</p> <p>Lee Mei Pheng. 2003. <i>Banking Law</i>. Kuala Lumpur: Malayan Law Journal.</p>
<p><b><u>Week 10</u></b></p>	<p>Islamic Insurance- An overview</p> <p>Sources of law affecting takaful</p> <p>The origin and reason d’etre of insurance in western society-</p> <p>Mutual insurance- Principle of blood money in Islamic criminal law.</p>	<p>Ahmad Hidayat Buang, Takaful: Akad Insuran and Mudharabah” Journal Syariah. Vol 4 No.1 1996.</p> <p>Mohd Daud Bakar, <i>Shariah Issues in the operation of takaful business</i>.</p> <p>Mohd Ma’sum Billah. <i>Sources of Law Affecting Takaful</i>. IJOIFS. Vol. 2.</p>

<b><u>Week 11</u></b>	The Legal Framework of Islamic Insurance in Malaysia.	Nik Ramlah Nik Mahmoo, Islamic system of Mutual Insurance in Malaysia, Arab Quarterly.
<b><u>Week 12</u></b>	Critical reading of the Takaful Act 1984 vis a vis Insurance Act 1996.	Mohd Daud Bakar. Konsep dan Operasi Takaful: Kajian Perbandingan Antara Akta Takaful 1984 dan Akta Insurans 1996.
<b><u>Week 13</u></b>	Types of Takaful Family Solidarity Business General Takaful Business	Nik Nozrul Thani, Mohamed Ridza and Megat Hizaini. 2003. <i>Law and Practice of Islamic Banking and Finance</i> . Kuala Lumpur: Thomson.
<b><u>Week 13</u></b>	Analysis on the issues of modern Islamic insurance contract- insurable interest, the subject matter and the claim.  Islamic principles of spreading risk.  Legal Capacity to Contract of Takaful	Mohd Daud Bakar, Challenge and prospect of takaful business, IKIM Journal, Vol 7 No. 1, 1999.  Mohd Ma'sum Billah. <i>Legal Capacity To Contract of Takaful: An Islamic Jurisprudential Consideration</i> . IJOIFS. Vol. 3.
<b><u>Week 14</u></b>	Islamic law on the insurance system of both general and life insurance.  Modus operandi and policies  Disagreement amongst the Muslims jurist.	Mohd Ma'sum Billah. <i>Takaful Premium: A Suggested Regulatory Framework</i> . IJOIFS. Vol. 3.