

2012

## Is the Middle East Moving Toward Islamism after the Arab Spring? The Case Study of the Egyptian Commercial and Financial Laws

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### Recommended Citation

Radwa S. Elsaman & Ahmed Eldakak, *Is the Middle East Moving Toward Islamism after the Arab Spring? The Case Study of the Egyptian Commercial and Financial Laws*, 12 Rich. J. Global L. & Bus. 1 (2012).

Available at: <http://scholarship.richmond.edu/global/vol12/iss1/2>

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**IS THE MIDDLE EAST MOVING TOWARD ISLAMISM  
AFTER THE ARAB SPRING? THE CASE STUDY  
OF THE EGYPTIAN COMMERCIAL AND  
FINANCIAL LAWS**

*RADWA S. ELSAMAN<sup>1</sup> and AHMED ELDAKAK<sup>2</sup>*

ABSTRACT

The first parliamentary elections that followed the Egyptian Revolution witnessed an unprecedented success for Islamists as they secured an overwhelming majority of seats in parliament, suggesting that they may intend to amend many laws to bring parliament into compliance with Islamic Shari'a. This article addresses legal challenges that will face the new majority if they decide to Islamize laws and regulations related to business and finance. Particularly, the article discusses Islamic money theory, trade, banking systems, consumer protection, insurance, competition, and tax systems. The article analyzes Egyptian business and finance laws to examine whether they comply with Islamic law. It then proceeds to explain the alternative Islamic principles that may replace several current rules. The article concludes that while some changes are foreseeable, there can be no expectation of radical change in the near future. Although the authors come to this conclusion, they analyze the legal issues without judging, supporting, or opposing the imposition of Islamic law.

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## INTRODUCTION

Although secularism stands as a solid wall against the imposition of religious principles in national laws and regulations, the situation is different when it comes to Islamic societies.<sup>3</sup> This is because Islam as a religion regulates all aspects of life including spiritual, economic, political, social, and commercial activities.<sup>4</sup> These divergent approaches may soon be displayed in Egypt; while its population is the largest in the region, with more than eighty million people, it also boasts the largest non-Muslim minority with about eight to twelve million Christians.<sup>5</sup> Since Islamic law affects many aspects of its followers' lives, a question arises with respect to the *Shari'a* rules' impact on financial and commercial issues that affect all.<sup>6</sup> This is especially important when it comes to huge financial and commercial practices such

<sup>3</sup> Islam is the religion of Muslims with principles provided by their holy book, the *Qur'an*. God, *Allah*, dictated The *Qur'an* word for word to his Prophet *Muhammad*, the prophet of Islam. *Glossary of Islamic Legal Terms*, 1 J. ISLAMIC L. 89, 90, 99 (1996); MASHOOD A. BADERIN, INTERNATIONAL HUMAN RIGHTS AND ISLAMIC LAW 34 (2003). The word *Sharie'a* refers to the Islamic laws. *Id.* at 246. The sources of Islamic law include the *Qur'an* as the main source, which is not only considered as a spiritual book, but also a legal code. *See generally* Cherif Bassiouni & Gamal M. Badr, *The Shari'ah: Sources, Interpretation, and Rule-Making*, 1 UCLA J. ISLAMIC & NEAR E. L. 135, 135, 138, 148-49 (2002) (defining the sources of the *Sharie'a* and its methods of interpretation). The *Sunna* is the second source of the *Sharie'a*, which refers to the Prophet *Muhammad's* oral statements, actions, or consensus in action by others. BADERIN, *supra* at 246. The *Sunna*, as a source of Islamic law, has to be in conformity with the *Qur'an* otherwise it cannot be considered as a source of the law. In cases where the *Qur'an* and the *Sunna* are silent regarding certain issues, the supplementary sources of the *Sharie'a* apply. These sources include *Ijma'* and *Qiyas*. *Ijma'* means the agreement on a particular issue that is not provided by the *Qur'an* or the *Sunna* or that requires further interpretation. *Qiyas* means analogical reasoning that aims to govern a new situation with an old rule as long as this new situation is similar to that governed by the old rule. *See generally* Irshad Abdal-Haqq, *Islamic Law: An Overview of Its Origin and Elements*, 7 J. ISLAMIC L. & CULTURE 27 (2002) (defining *Shari'a* and discussing the methodologies of the Islamic jurisprudence); Bernard K. Freamon, *Slavery, Freedom, and the Doctrine of Consensus in Islamic Jurisprudence*, 11 HARV. HUM. RTS. J. 1 (1998) (introducing the definition of Islam and the various sources of its rules).

<sup>4</sup> J. Michael Taylor, *Islamic Banking: The Feasibility of Establishing an Islamic Bank in the United States*, 40 AM. BUS. L.J. 385, 387 (2003) (quoting IMTIAZ PERVEZ, ISLAMIC BANKING AND FINANCE, reprinted in INFORMATION SOURCES ON ISLAMIC BANKING AND ECONOMICS 1980-1990 8-9 (S. Nazim Ali & Naseem N. Ali eds. 1994)).

<sup>5</sup> Dwight Bashir, *Religious Freedom Under Assault in the Middle East: An Imperative for the U.S. and International Community to Hold Governments to Account*, 45 J. MARSHALL L. REV. xxiii (2011).

<sup>6</sup> *See* Taylor, *supra* note 4, at 387.

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as banking systems, trade transactions, consumer protection, prohibition of monopoly, taxation mechanisms, governmental interference in private sector activities, and insurance, particularly for a country like Egypt, which is deemed the center of the Arab Middle East.

The January Revolution makes imposition of *Shari'a* as a source of legislation seem more likely than in the past, as Muslim groups advocate for a more integral role for Islamic law in Egypt's legal system. This possibility seems even more likely after the Islamists<sup>7</sup> won an overwhelming majority of seats in a parliamentary election runoff, bringing them closer to dominating the first elected body after the Revolution.<sup>8</sup>

This Article addresses the legal challenges that may face the new Islamic government if they seek to impose *Shari'a*. The Article does not provide recommendations, but instead raises some unanswered questions that may arise if Muslim groups, wielding their new

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<sup>7</sup> The most common Muslim groups in Egypt are the Muslim Brotherhood (known as the "*Al-Ikhwan Al-Muslimeen*") and the *Salafi's* group. Currently, the Muslim Brotherhood is the most powerful political force in Egypt. It was established in 1928. The Brotherhood, a group that virtually invented the Islamist movement eight decades ago, is a middle-class missionary institution at its core, led not by religious scholars but by doctors, lawyers, and professionals. It has long sought to move Egypt toward a more orthodox Islamic society from the bottom up, one person and family at a time. Its vast following and disciplined organization, built during its decades in opposition, have given it preeminence among civilian groups since the Revolution that toppled former President Hosni Mubarak's regime in February 2011, even though the uprising was set off primarily by young people and liberal activists. The Muslim Brotherhood's Freedom and Justice Party was the clear winner in the first round of parliamentary voting held in late November, and appeared poised to create a dominant coalition with a more conservative Islamicist party. *Topics: Muslim Brotherhood (Egypt)*, N.Y. TIMES, Sept. 14, 2012, available at [http://topics.nytimes.com/top/reference/timestopics/organizations/m/muslim\\_brotherhood\\_egypt/index.html?inline=nyt-org](http://topics.nytimes.com/top/reference/timestopics/organizations/m/muslim_brotherhood_egypt/index.html?inline=nyt-org). In contrast, the *Salafis* are political newcomers, directed by religious leaders. Ten months after the uprising that overthrew President Mubarak, the *Salafis'* new brand of religious populism propelled Al Nour and its allies to claim more than a quarter of the vote in the first round of parliamentary elections, surprising even the most seasoned Egyptian analysts and Western diplomats. David D. Kirkpatrick, *In Egypt, a Conservative Appeal Transcends Religion*, N.Y. TIMES, Dec. 10, 2011, available at <http://www.nytimes.com/2011/12/11/world/middleeast/salafis-in-egypt-have-more-than-just-religious-appeal.html?pagewanted=all>. Recently, the Brotherhood's party denied that there was any "alleged alliance" to form "an Islamist government" with Al Nour, a party formed by ultraconservative Islamists known as *Salafis*. David D. Kirkpatrick, *Muslim Brotherhood Denies Islamist Alliance*, N.Y. TIMES, Dec. 2, 2011, at A10.

<sup>8</sup> See Kirkpatrick, *In Egypt, a Conservative Appeal Transcends Religion*, *supra* note 7.

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authority, push for such a move. In particular, the Article explains legal difficulties that may arise in terms of financial and business laws.

Accordingly, Part I of this Article explains the effect of *Shari'a* on legislation in Muslim countries. Part II offers an overview of the Egyptian Revolution, particularly the political, economic, and social circumstances leading to the uprising. Part III provides a genealogy of debated issues that may arise when thinking about the imposition of rules based on *Shari'a* in commercial and financial laws and regulations. Finally, Part IV concludes that radical or fundamental changes in laws are unforeseeable, at least in the short run.

## SHARI'A AS A SOURCE OF LEGISLATION

The degree of adopting *Shari'a* as a source of legislation is not the same in all Muslim countries. Arguably, Muslim countries, according to their reaction toward adopting *Shari'a* as a source of their legislation, are divided into three main categories.<sup>9</sup> One category includes countries, such as Lebanon and Turkey, that do not provide for *Shari'a* as the main source of their national laws.<sup>10</sup> Thus, the Turkish Constitution provides that "[t]he Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Ataturk, and based on the fundamental tenets set forth in the Preamble."<sup>11</sup>

Some other countries, such as Algeria, Yemen, and Jordan, consider *Shari'a* to be a vital, but not exclusive, source of their national laws.<sup>12</sup> For instance, the Yemeni Constitution provides that Yemen is an Arab Muslim and independent country; that Islam is the religion of the country and Arabic is its official language; that *Shari'a* is the main source of legislation; and that inheritances must be granted in accordance with *Shari'a*.<sup>13</sup>

<sup>9</sup> NISRINE ABIAD, SHARIA, MUSLIM STATES AND INTERNATIONAL HUMAN RIGHTS TREATY OBLIGATIONS: A COMPARATIVE STUDY 34-35 (2008) (Islamic Law Countries are countries where the majority of the population is Muslim, and where the state is one of fifty-seven member states in The Islamic Conference, an inter-governmental organization that represents the collective voice of the Muslim world.).

<sup>10</sup> *Id.* at 35-36.

<sup>11</sup> TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION] 1982 (Turk.); see also Republic of Turkey Ministry of Foreign Affairs, *Constitution of the Republic of Turkey*, [http://www.constitution.org/cons/turkey/turk\\_cons.htm](http://www.constitution.org/cons/turkey/turk_cons.htm).

<sup>12</sup> See ABIAD, *supra* note 9, at 37.

<sup>13</sup> TRANSLITERATED TITLE OF YEMENI CONSTITUTION OF THE REPUBLIC OF YEMEN [CONSTITUTION] May 16, 1991, as amended Sept. 29, 1994, Feb. 10, 2001, arts. 1-3, 23; see also *Constitution of Yemen* [Yemen], Feb. 10, 2001, available at <http://www.unhcr.org/refworld/docid/3fc4cie94.html>; Republic of Yemen Supreme Commission

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Finally, some countries, such as Iran, Bahrain, and Saudi Arabia recognize *Shari'a* as the main and exclusive source of their national laws.<sup>14</sup> For example, the Bahraini Constitution provides that “[t]he Kingdom of Bahrain is a fully sovereign, independent Islamic Arab State whose population is part of the Arab nation and whose territory is part of the great Arab homeland.”<sup>15</sup> In addition, the Basic Law of 1992 of Saudi Arabia states: “[t]he Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; God’s Book and the Sunnah of His Prophet, God’s prayers and peace be upon him, are its constitution, Arabic is its language and Riyadh is its capital.”<sup>16</sup> Similarly, the Qatari Constitution provides that “Qatar is an independent sovereign Arab State. Its religion is Islam and *Shari'a* law shall be a main source of its legislations. Its political system is democratic. The Arabic Language shall be its official language. The people of Qatar are a part of the Arab nation.”<sup>17</sup>

It is claimed that Egypt falls under the second category explained above. Thus, the Egyptian Supreme Constitutional Court held:

The principles of Islamic *Shari'a* are the major source of legislation. This imposes a limitation curtailing both the legislative and executive power, through which they are obliged that whatever laws or decrees they enact, no provision contained in them may contradict the provisions of Islamic law which are definite in terms of their immutability and their meaning. . . whatever legislative enactment contravenes them must be declared null and void.<sup>18</sup>

Also, the Egyptian Constitution declares Islam as the religion of the State and the main source of the law.<sup>19</sup> Written legislation, court deci-

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for Elections and Referendum, *The Constitution of the Republic of Yemen*, available at <http://www.scer.org.ye/> (last visited Nov. 7, 2012).

<sup>14</sup> See ABIAD, *supra* note 9, at 39.

<sup>15</sup> BAHRAIN [Constitution] Feb. 14, 2002, no. 17, art. 1; see also Department of Legal Affairs, *Bahrain Kingdom Constitution*, [http://www.servat.unibe.ch/icl/ba00000\\_.html](http://www.servat.unibe.ch/icl/ba00000_.html) (last visited Nov. 7, 2012).

<sup>16</sup> SAUDI ARABIA [Constitution] Mar. 1992, art. 1; see also SAUDI ARABIA CONSTITUTION, [http://www.servat.unibe.ch/icl/sa00000\\_.html](http://www.servat.unibe.ch/icl/sa00000_.html) (last visited Nov. 7, 2012).

<sup>17</sup> ARTICLES OF THE DRAFT CONSTITUTION OF QATAR [Constitution], Apr. 29, 2003, art. 1; see also CONSTITUTION OF QATAR, [http://www.servat.unibe.ch/icl/qa00000\\_.html](http://www.servat.unibe.ch/icl/qa00000_.html) (last visited Nov. 7, 2012).

<sup>18</sup> Radwa S. Elsaman & Ahmed A. Elshorbagy, *Doing Business in Egypt After the January Revolution: Capital Market and Investment Laws*, 11 RICH. J. GLOBAL L. & BUS. 43, 48 (2011).

<sup>19</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, Sept. 11, 1971, as amended May 22, 1980, May 25, 2005, Mar. 26, 2007, Mar. 20, 2011, available at <http://www.egypt.gov.eg/english/laws/Constitution/default.aspx> (last visited Nov. 7,

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sions, and jurisprudential explanations all reflect that *Shari'a* is the main source of legislation in Egypt; however, in reality *Shari'a* does not serve this function except in a few areas such as family law.<sup>20</sup> The Egyptian legal system is more accurately described as a "combination of Islamic (*Shari'a*) law and the Napoleonic Code."<sup>21</sup> In fact, Egypt was the first Arab Middle Eastern country that voluntarily adopted Western style codes in the late nineteenth century.<sup>22</sup>

## BACKGROUND ON THE JANUARY REVOLUTION

The Egyptian Revolution, beginning on January 25, 2011, called for democracy, justice, the protection of human dignity, the equal application of the rule of law to all citizens, and a change of the governing regime.<sup>23</sup> Many reasons have been cited to explain the eruption of this Revolution. Although Egypt has witnessed remarkable economic growth in the last decade, most Egyptians did not feel the effect of this growth. The corruption of public officials and businessmen, who were frequently motivated by politics, led to the concentration of most investment tools in the hands of the elite.<sup>24</sup> This elite monopoly led to an unfair distribution of wealth, contributing to the anger that caused the January Revolution.<sup>25</sup>

Additionally, the denial of human rights and restrictions on public freedoms, such as freedom of speech and participation in public life, played a role in starting the January Revolution. For instance, abuse by police went unchecked for more than two and a half decades while the incumbent regime remained in power.<sup>26</sup> Police suppressed

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2012) (repealed 2011 and replaced by the Temporary Constitutional Declaration of the Arab Republic of Egypt, *Al-Jarida Al-Rasmiyya*, Mar. 30, 2011 (Egypt)).

<sup>20</sup> See *The Origins of Islamic Law*, CONST. RIGHTS FOUNDATION, <http://www.crf-usa.org/america-responds-to-terrorism/the-origins-of-islamic-law.html> (last visited Nov. 7, 2012).

<sup>21</sup> Mohamed S. E. Abdel Wahab, *Update: An Overview of the Egyptian Legal System and Legal Research*, GLOBALLEX, Oct. 2012, <http://www.nyulawglobal.org/Globalex/Egypt1.htm>.

<sup>22</sup> SAMIR SALEH, *COMMERCIAL ARBITRATION IN THE ARAB MIDDLE EAST: SHARI'A, SYRIA, LEBANON AND EGYPT* 335 (2d ed. 2006).

<sup>23</sup> See generally Ahmed Eldakak, *Approaching Rule of Law in Post-Revolution Egypt* (2012) (unpublished manuscript), available at [http://works.bepress.com/ahmed\\_eldakak/1](http://works.bepress.com/ahmed_eldakak/1).

<sup>24</sup> See Matthew Partridge, *How the Economic Policies of a Corrupt Elite Caused the Arab Spring*, NEW STATESMAN, June 7, 2011, <http://www.newstatesman.com/blogs/the-staggers/2011/06/economic-arab-egypt-region>.

<sup>25</sup> Elsaman & Alshorbagy, *supra* note 18, at 43.

<sup>26</sup> See generally Heba Morayef, *Work on Him Until He Confesses: Impunity for Torture in Egypt*, HUM. RTS. WATCH, Jan. 30, 2011, <http://www.hrw.org/reports/2011/01/30/work-him-until-he-confesses-0>.

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social freedoms, practiced torture, constructed detention camps, committed security abuse, and destroyed institutions in a clear violation of the basic human rights of Egyptian nationals.<sup>27</sup>

The fact that President Mubarak had been in power for thirty years also fueled the sentiments that led to the revolution. The Egyptian Constitution was amended in a way that gave him the power to monopolize the country and his son, Gamal Mubarak, was groomed to follow him.<sup>28</sup> It may be further noted that the scandalous rigging of all the elected councils during the past decade also encouraged the Revolution, particularly the rigging of the parliamentary elections, which was done in the most blatant and unsophisticated way, reflecting the arrogance of the ruling clique and its contempt of the people.<sup>29</sup>

In the first parliamentary elections after the Revolution, Islamist candidates were overwhelmingly successful and dominated the new parliament.<sup>30</sup> This raises the question of whether or not the Egyp-

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<sup>27</sup> See *Egypt: Pledge Serious Human Rights Reform*, HUM. RTS. WATCH, Feb. 16, 2010, <http://www.hrw.org/news/2010/02/16/egypt-pledge-serious-human-rights-reform>; *Egypt: Government Renews State of Emergency*, HUM. RTS. WATCH, May 11, 2010, <http://www.hrw.org/news/2010/05/11/egypt-government-renews-state-emergency>. These harms also emphasize the state of emergency Egypt had been in for 30 years. In fact, both Egyptian and international human rights organizations have reported that such abuses occurred in Egypt, not to mention similar reports by foreign governments and the United Nations. In fact, one of the occasions that led to the Revolution was the “accidental” murder of a young man, Khalid Sa’id, by the police on June 7, 2010. He was beaten to death by police forces in an internet café in Alexandria. This led some Egyptian youth to establish a Facebook group named “We are all Khalid Sa’id,” which soon gathered 100,000 members. They formed discussion groups and moved from demanding justice for their friend to protesting emergency law, repression, corruption, and unemployment. In short, they decided to take their destiny in their own hands and to go for real change. See Anver M. Emon et al., *We Are All Khaled Said*, 3 MIDDLE E. L. & GOVERNANCE, no. 1-2, 2011, reprinted in BOS. REV., [http://www.bostonreview.net/BR36.6/khaled\\_said\\_facebook\\_egypt\\_revolution.php](http://www.bostonreview.net/BR36.6/khaled_said_facebook_egypt_revolution.php).

<sup>28</sup> See generally Jason Brownlee, *The Heir Apparency of Gamal Mubarak*, ARAB STUD. J. 36 (2008); Daniel Sobelman, *Gamal Mubarak, President of Egypt?*, 8 MIDDLE E. Q. 31 (2001), available at <http://www.meforum.org/27/gamal-mubarak-president-of-egypt>. The real challenge started when Nobel-prize winning Dr. Mohammad El-Barad’ei returned to Egypt and challenged Mubarak’s leadership of the country and asked to amend the constitutional articles that were drafted so as to give Mubarak the ability to monopolize the country. See Jeremy M. Sharp, *Egypt: The January 25 Revolution and Implications for U.S. Foreign Policy*, CONG. RESEARCH SERV. 4, 9, 18 (2011), available at <http://fpc.state.gov/documents/organization/157112.pdf>.

<sup>29</sup> See Sharp, *supra* note 28, at 2, 16.

<sup>30</sup> *Egypt’s Islamist Parties Win Elections to Parliament*, BBC NEWS, Jan. 21, 2012, <http://www.bbc.co.uk/news/world-middle-east-16665748>.



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tian Revolution was an Islamic revolution or at least called for an Islamic government. Regardless of the answer, one cannot deny that Islamic ideas were clear during the Revolution. Abou El Fadl cites examples that illustrate the effect of religion on the Revolution, such as the fact that protestors used to gather every Friday to perform prayers together before starting their political activity.<sup>31</sup> They also used to label every Friday with a different inspiring name such as “the Friday of wrath,” “the Friday of departure,” and “the Friday of victory.”<sup>32</sup>

Additionally, Friday sermons played a vital role in inspiring and motivating protestors to survive the Revolution.<sup>33</sup> Martyrs killed during the Revolution are called *Shohada*, from the word *Shihada*, an Islamic principle that refers to martyrs who are killed because of engaging in a battle against despotism, injustice, and corruption.<sup>34</sup> One can also see the effect of religion on slogans sung by protestors such as “*Allahu Akbar*” (God is greater), “*silmiiyya, silmiyya*” (peacefully, peacefully), and “*alshahid habib Allah*” (martyrs are the closest or the most beloved to God).<sup>35</sup>

The Egyptian Revolution, however, was not led or engineered by Islamists to bring about an Islamic state modeled after Iran or Saudi Arabia.<sup>36</sup> The reason behind the mixed nature of the Revolution that ties it strongly to Islam is the fact that Islam has a great influence on its followers’ everyday behavior.<sup>37</sup> Thus, “separation of church and state in many western societies has led to the view that religion is essentially a private matter, whereas the Islamic ethical system allows no such separation. As a result, Islam influences the decision making of its followers in every situation, including those that arise in business relationships.”<sup>38</sup>

## FINANCIAL AND COMMERCIAL LAW CHALLENGES

One of the greatest factors that contributed to the January Revolution was the country’s economic decline. Forty-four percent of all Egyptians used to be categorized as “extremely poor to near poor,”

<sup>31</sup> Khaled Abou El Fadl, *The Language of the Age: Shari’a and Natural Justice in the Egyptian Revolution*, 52 HARV. INT’L L.J. 311, 312 (2011).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 313.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 312.

<sup>37</sup> See generally Gillian Rice, *Islamic Ethics and the Implications for Business*, 18 J. BUS. ETHICS 345, 346-47 (1999).

<sup>38</sup> Radwa S. Elsaman, *Corporate Social Responsibility in Islamic Law: Labor and Employment*, 2 YONSEI L.J. 64, 71 (2011); see also Gillian Rice, *Islamic Ethics and the Implications for Business*, *supra* note 37.

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more than 10 percent were unemployed — almost 90 percent of whom were between the ages of 15 and 24 — and inflation was almost 12 percent.<sup>39</sup> Since the Revolution took place, however, political instability further harmed the economy.<sup>40</sup> Foreign capital disappeared and more than 300 Egyptian businessmen remained on a government watch list, many of whom have fled the country.<sup>41</sup> The GDP decreased four times and the reserves declined from \$36 billion at the beginning of 2011 to \$22 billion by October of the same year.<sup>42</sup> Tourism revenue declined 35 percent, and the stock market declined more than 40 percent.<sup>43</sup> This suggests that the Egyptian transitional government failed to support the Egyptian economy during the transition period,<sup>44</sup> and that the new government will be facing a worst-case scenario of economic decline. This means the Egyptian economy's coming era requires careful attention, yet many challenges may arise depending on the direction Islamists adopt when imposing *Shari'a* rules. These potential roadblocks will be further explored below.

(A) *Monetary Theory*

The Islamic financial theory of moderation is somewhat of a midpoint between "Liberalism," which adopts the concept of absolute possession and disposal of money, and "Totalitarianism," which eliminates human beings' natural ability to possess and invest.<sup>45</sup> The core of the moderation theory is the idea of *Khilafa*.<sup>46</sup> This idea provides that a human being is a successor of Allah, and accordingly, his life is

<sup>39</sup> Ben W. Heineman, Jr., *Why Egypt's Economy Matters*, THE ATLANTIC, Dec. 12, 2011, <http://www.theatlantic.com/international/archive/2011/12/why-egypts-economy-matters/249718/>.

<sup>40</sup> The continuing unrest is due to contradictions among different demands: majority interests vs. minority rights; secular vs. religious; military vs. civilian; Christians vs. Muslims; Muslim Brotherhood vs. Salafists; poor and unemployed vs. elites; old vs. young. *See id.*

<sup>41</sup> David Schenker, *Egypt and the Arab Fall*, L.A. TIMES, June 1, 2011, <http://articles.latimes.com/2011/jun/01/opinion/la-oe-schenker-egypt-20110601>.

<sup>42</sup> Heineman, *supra* note 39.

<sup>43</sup> *Id.*

<sup>44</sup> IBRAHIM SAIF, CHALLENGES OF EGYPT'S ECONOMIC TRANSITION 2 (2011), available at [http://carnegieendowment.org/files/egypt\\_econ\\_transition.pdf](http://carnegieendowment.org/files/egypt_econ_transition.pdf).

<sup>45</sup> Muhammad Mostafa Emarah, *Money Theory in Islam*, Oct. 13, 2008, available at <http://www.dr-emara.com/Articles/50.pdf> (author translation from Arabic to English).

<sup>46</sup> *Glossary of Islamic Legal Terms*, *supra* note 3, at 96 (*Khilafah* is an Arabic word meaning "succession").

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“a test of the worth of men in the eyes of Allah.”<sup>47</sup> In other words, the ownership of money reverts first to Allah and people are appointed as successors/trustees to use this money through nominal ownership.<sup>48</sup> God attributed money to himself to underline its importance and assigned owners of money as successors/trustees who are responsible for maintaining, increasing, and spending money according to directions and instructions set by Allah.<sup>49</sup>

So, where money is owned by Allah, all people are worshipers of Allah, and the life they live is dictated by Allah, money shall be generated to be used for and maintained by all people, and its benefits should be in the favor of all people.<sup>50</sup> Therefore, money is from and to the entire Islamic nation as one body.<sup>51</sup> Thus, the welfare of society could be achieved if governments had a more enabling role, through the re-distribution of wealth, to create a more suitable climate for serving both private and social goals.<sup>52</sup>

The legal challenge that may arise here is related to the degree of governmental interference, used as a tool of the people’s collective will, because the government’s role in the operation of monetary and investment activities must reflect the fair and just management of money owned by *Allah*.

*(B) Prohibited trades*

*Shari’a* has a unique concept of property and trade, called *mal*,<sup>53</sup> which affects trade in general. *Mal* refers to objects that can be owned and traded among people.<sup>54</sup> An object has economic value only if it is useful for people,<sup>55</sup> and the perspective of Islamic law informs

<sup>47</sup> See generally Geoffrey Williams & John Zinkin, *Islam and CSR: A Study of the Compatibility Between the Tenets of Islam and the UN Global Compact*, 91 J. Bus. ETHICS 519, 521, 523 (2009).

<sup>48</sup> See generally Emarah, *supra* note 45.

<sup>49</sup> The QUR’AN provides “Believe in Allah and His Messenger, and spend (in charity) out of the (substance) whereof He has made you heirs. For, those of you who believe and spend (in charity), for them is a great reward.” QUR’AN: THE HOLY QUR’AN ENGLISH TRANSLATION OF THE MEANINGS AND COMMENTARY 1688-89 (Presidency of Islamic Researchers et al. eds., 1994) (quoting the meaning of the *Qur’an* 57:7). It also provides: “[G]ive them something yourselves out of the means which Allah has given to you.” *Id.* at 24:33.

<sup>50</sup> See generally Emarah, *supra* note 45; “He who hath created for you all things that are on earth.” THE QUR’AN, *supra* note 49, at 2:29.

<sup>51</sup> See generally Emarah, *supra* note 45.

<sup>52</sup> M. UMER CHAPRA, ISLAM AND THE ECONOMIC CHALLENGE 348-49 (1992).

<sup>53</sup> *Glossary of Islamic Legal Terms*, *supra* note 3, at 97.

<sup>54</sup> FATHI AL-DURAINI, HAQQ, AL-IBTIKAR FI AL-FIQH AL-ISLAMI AL-MUQARAN [THE RIGHT TO PATENT IN THE COMPARATIVE ISLAMIC JURISPRUDENCE] 23-39 (1984).

<sup>55</sup> *Id.*

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this finding. Accordingly, some objects that otherwise can be subject to property rights and traded in comparative societies will be forbidden under Islamic law. This means that trade in Islamic law societies is not about achieving profits; rather, Islamic law societies aim to promote the social welfare of the whole society.<sup>56</sup>

Accordingly, trade in certain types of items, such as tobacco and alcohol, is prohibited under *Shari'a* law.<sup>57</sup> This is because from the Islamic viewpoint alcoholic drinks are not useful to people, due to their intoxicating effect.<sup>58</sup> As a result, *Shari'a* law forbids drinking and trading in alcoholic drinks as they do not qualify as *mal*. However, it is imperative to note that the prohibition does not affect all such products; where items are traded for other purposes, such as alcohol used for scientific research, *Shari'a* is not so restrictive.<sup>59</sup> In short, the purpose and use of an item is just as important as its ingredients.

Moreover, although narcotic drugs are not explicitly mentioned in the Qur'an, trade in narcotic drugs is forbidden by virtue of analogy, which is another source of rules derived from Islamic law.<sup>60</sup> Like alcohol, narcotic drugs are not useful and do not qualify as *mal* except for scientific research or where used for medical purposes.<sup>61</sup> One should therefore expect a fierce war against the illegal drug trade in Egypt, where the trade is absolutely outlawed but exists on a large scale due to the substantial failure of police to enforce the law, particularly in the period following the revolution.<sup>62</sup>

Tobacco trading is another complicated issue. It does not qualify as *mal* in Islam because it negatively affects a person's health, and as a general rule, anything that negatively affects a person's health is forbidden.<sup>63</sup> Therefore, the tobacco industry and trade is prohibited under Islamic law. Yet, this conflicts with the situation in Egypt,

<sup>56</sup> See Williams & Zinkin, *supra* note 47, at 523; see also Taylor, *supra* note 4, at 388.

<sup>57</sup> Williams & Zinkin, *supra* note 47, at 523.

<sup>58</sup> Bassiouni & Badr, *supra* note 3, at 156.

<sup>59</sup> Letter from Hussein A. Gezairy, Reg'l Dir., World Health Org. (July 17, 2001), available at <http://www.mcb.org.uk/downloads/whoporcineadvice.pdf>.

<sup>60</sup> Bassiouni & Badr, *supra* note 3, at 155.

<sup>61</sup> Letter from Gezairy, *supra* note 59.

<sup>62</sup> Farida Helmy, *Drug Central*, BUS. TODAY EGYPT, Sept. 11, 2011, <http://business.todayegypt.com/news/display/article/artId:186/drug-central/secId:5>.

<sup>63</sup> The Islamic Jurisprudence derives evidence from the Qur'an and the Sunnah to that effect. The Qur'an provides: "Those who follow the Messenger, the unlettered prophet, whom they find written in what they have of the Torah and the Gospel, who enjoins upon them what is right and forbids them what is wrong and makes lawful for them the good things and prohibits for them the evil and relieves them of their burden and the shackles which were upon them. So they who have believed in him, honored him, supported him and followed the light which was sent

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which is home to millions of smokers, and where the tobacco industry is quite successful.<sup>64</sup> As a result, it is not expected that tobacco will be banned since most smokers are addicted to the substance, but it is reasonable to expect restrictions on smoking, particularly in public places. This presents a question as to the effect of the prohibition of trade in these various goods and services on the Egyptian economy. It also raises a challenge to investment and trade ties between Egypt and the rest of the world, particularly those countries that do not prohibit these items. For instance, the application of Islamic law in Egypt may result in the prohibition of the alcohol industry – and businesses offering such products may be forced to look for an alternative. Nevertheless, according to some Islamic scholars, the prohibition of these businesses aims to protect life and health by avoiding its harmful effects on society.<sup>65</sup>

(C) *Banking System*

Another challenge arises with respect to Egypt's banking system. In Islam, usury, called *riba*, is strictly prohibited. *Riba* literally means "increase" and refers to the principal and the premium the borrower pays the lender as a condition for the loan or for an extension in its maturity.<sup>66</sup> *Shari'a* law prohibits this because it creates profit without work and the lender and borrower do not equally share in the risk of the loan, which is not for the moral, social, and economic well-being of society.<sup>67</sup> In this context, the Qur'an provides:

That they took usury, though they were forbidden; and that they devoured men's wealth wrongfully; We have prepared for those among them who reject faith a grievous chastisement.<sup>68</sup>

But Allah hath permitted trade and forbidden usury. Those who after receiving admonition from their Lord,

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down with him - it is those who will be the successful." THE QURAN, *supra* note 49, at 7:157.

<sup>64</sup> HEBA NASSAR, THE ECONOMICS OF TOBACCO IN EGYPT: A NEW ANALYSIS OF DEMAND 17-18 (2003), available at <http://siteresources.worldbank.org/HEALTHNUTRITIONANDPOPULATION/Resources/281627-1095698140167/Nassar-TheEconomics-whole.pdf>.

<sup>65</sup> Williams & Zinkin, *supra* note 47, at 523; see also Taylor, *supra* note 4, at 388.

<sup>66</sup> Taylor, *supra* note 4, at 399. The Islamic alternative method to *Riba* is the *Qrde Hasan* (benevolent financing), which means that the lender provides the borrower the loan free of charge as if he is providing financial assistance. In return the borrower is committed to repay the loan, provide a collateral if required, and sometimes pay some small administrative charges. See *id.*

<sup>67</sup> See *id.* at 391.

<sup>68</sup> THE QURAN, *supra* note 49, at 4:161.

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desist, shall be pardoned for the past; their case is for Allah (to judge); but those who repeat (the offense) are Companions of the fire: they will abide therein (forever).<sup>69</sup>

The prohibition of the *riba* led Islamic banking institutions to use supervisory boards that provide religious guidance for the banks' activities.<sup>70</sup> This allowed Islamic banks to develop new tools that are claimed to be in conformity with *Shari'a* rules: *Murabaha*, *Ba'i Bithaman Ajil*, *Istisna*, *Ijara*, *Musharaka*, *Mudaraba*, and *Qarde Hasan*.

The *Murabaha* is an installment sale agreement by which the bank works as an intermediary, buying goods and then selling them to the customer at the acquisition cost (in addition to some profits paid in installments).<sup>71</sup> Hence, the bank owns the goods before the ownership is transferred to the customer.<sup>72</sup> In *Ba'i Bithaman Ajil* ("deferred payment financing"), the bank, at the request of its customer, buys certain assets and then resells them to the customer on a deferred payment schedule.<sup>73</sup>

*Istisna* is similar to the *Ba'i Bithaman Ajil*, except the bank pays a contractor to complete certain work for the customer's benefit.<sup>74</sup> Moreover, the *Ijara*, a tool that is often used for property, is a rent-to-own agreement encompassing a leasing arrangement whereby the bank buys the goods and then leases them to customers.<sup>75</sup> The *Musharaka* is a kind of partnership agreement that allows the bank to provide its customers with required capital on the condition that the bank shares the customers' profits and losses.<sup>76</sup> Customers also usually contribute small shares of capital, effort, and know-how. Although similar to the *Musharaka*, in *Mudaraba*, the bank provides the entire amount of capital while customers only provide know-how.<sup>77</sup> Finally, the *Qarde Hasan* allows banks to provide interest-free loans in return for an unconditional commitment to pay the bank back after providing collateral.<sup>78</sup>

<sup>69</sup> *Id.* at 2:275.

<sup>70</sup> Taylor, *supra* note 4, at 394.

<sup>71</sup> Roberta Mann, *Is Sharif's Castle Deductible?: Islam and the Tax Treatment of Mortgage Debt*, 17 WM. & MARY BILL RTS. J. 1139, 1148 (2009).

<sup>72</sup> Taylor, *supra* note 4, at 395.

<sup>73</sup> *Id.* at 396.

<sup>74</sup> *See id.*

<sup>75</sup> Mann, *supra* note 71, at 1149.

<sup>76</sup> *See id.* at 1150.

<sup>77</sup> Taylor, *supra* note 4, at 398.

<sup>78</sup> *Id.* at 399.

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The question that arises here is related to the status of the treatment of the non-Islamic banks established in Egypt and the possibility of turning or establishing new Islamic banks that would deal under the banking rules imposed by *Shari'a* law. Another question addresses the effect of the establishment of this kind of bank on the cycle of economics and investment, and particularly foreign investment, in Egypt.

*(D) Consumer Protection*

Many principles of Islamic law discussed above, such as the prohibition against *riba*, aim at protecting consumers.<sup>79</sup> Similarly, Islamic insurance policies can be seen as protecting policyholders from wasting their money, which is transferred to the insurance companies that in turn achieve large profits.<sup>80</sup> Hence, protecting consumers is an ultimate goal of Islamic law.

In addition to the above-mentioned principles, in the Islamic contract of sale, the seller is required to reveal any defects he is aware of in the product; otherwise, the contract is void.<sup>81</sup> Therefore, even if the seller put an exemption clause in the contract to avoid liability for any defect in the product sold, such clause is not applicable if the buyer proves that the seller was aware of the defect and did not disclose it at the time of contracting.<sup>82</sup> Moreover, the buyer has the right to inspect the good to ensure its quality, a concept called *khiyar al-ayb*.<sup>83</sup> Additionally, the concept of *gharar* prohibits, as a general rule, those transactions whose subject matter is not available at the time of contracting in order to further protect consumers.<sup>84</sup>

Similarly, a transaction that involves *significant* uncertainty and risk is not permitted.<sup>85</sup> For instance, gambling and other games of chance are prohibited.<sup>86</sup> This is because in Islam, one must acquire

<sup>79</sup> See *supra* pt. III(c).

<sup>80</sup> See *supra* pt. III(e).

<sup>81</sup> Muhammad Akbar Khan, *Consumer Protection and the Islamic Law of Contract*, 2 ISLAMABAD L. REV., no. 2, 2011 at 11, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1961912](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1961912).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Haider Ala Hamoudi, *The Muezzin's Call and the Dow Jones Bell: On the Necessity of Realism in the Study of Islamic Law*, 56 AM. J. COMP. L. 423, 441 (2008).

<sup>86</sup> The Qur'an provides: "They ask you about wine and gambling. Say, 'In them is great sin and [yet, some] benefit for people. But their sin is greater than their benefit.' And they ask you what they should spend. Say, 'The excess [beyond needs].' Thus Allah makes clear to you the verses [of revelation] that you might give thought." THE QURAN, *supra* note 49, at 2:219. Another verse of the Qur'an provides: "O you who have believed, indeed, intoxicants, gambling, [sacrificing on

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wealth by working and benefiting society.<sup>87</sup> Gambling does not qualify as work because it is a game of chance – a lucky person may acquire massive wealth, while an unlucky person may lose all his wealth. Accordingly, gambling redistributes wealth on the basis of pure chance, not work.

Gambling also involves social dangers since it can be addictive. A gambler who achieves a big profit on one occasion may be tempted to play repeatedly to earn money without expending much effort. Similarly, a gambler who loses money may feel compelled to do so again to recoup his losses. Regardless of the reason for doing so, the more gamblers play, the more they lose. The real winners are those lucky people in whose hands the wealth concentrates. Furthermore, for many people, incentives to gamble may exceed incentives to work and through work, benefit society.

With these concerns in mind, Egypt has long allowed gambling in casinos that limit access to foreigners.<sup>88</sup> Given the profits from these venues, the liberal regimes that formerly ruled Egypt thought that prohibiting gambling could negatively affect tourism. The rise of Islamists, however, casts doubts on the future of such foreigner-only casinos in Egypt.

In the same context, in the last few years Egypt has witnessed an increasing number of game shows that will likely be an issue under Islamic law. The game shows usually induce television spectators to send a text message or call a phone number to answer a question. The questions are usually very easy so that more people can know the answer and participate. Organizers of such shows will randomly choose one person who made the right answer to get a monetary reward. The source of this reward is the revenue from text messages and phone calls from other spectators. The remaining revenue becomes the profit of the show organizers. Therefore, such shows may be regarded under Islamic law as a prohibited game of chance.<sup>89</sup>

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stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful. Satan only wants to cause between you animosity and hatred through intoxicants and gambling and to avert you from the remembrance of Allah and from prayer. So will you not desist?" *Id.* at 5:90-91.

<sup>87</sup> *Work and Wealth*, ISLAMRELIGION.COM, [www.islamreligion.com/articles/295/](http://www.islamreligion.com/articles/295/) (last modified Nov. 1, 2009).

<sup>88</sup> Law No. 1 of 1973 (Hotels and Touristic Establishments), *Al-Jarida Al-Rasmiyya*, 1 Mar. 1973, art. 1 (Egypt).

<sup>89</sup> FRANZ ROSENTHAL, *GAMBLING IN ISLAM* 32 (1975) (illustrating that a lottery depends on two things: (1) haphazard drawing which designates the winner, and (2) participants who contribute to a share of the prize).



*(E) Insurance*

Islamic law prohibits conventional insurance because it is conceptually similar to gambling and thus contradicts the concept of *gharar*.<sup>90</sup> This is because the insured pays a cash premium, while the insurer undertakes to pay a certain amount of money upon the occurrence of a given future contingency.<sup>91</sup> If the future contingency does not occur, the insured gets nothing in exchange for the cash premiums paid as these are owned by the insurer. Thus, conventional insurance violates the *gharar* rule because it involves significant uncertainty as to whether or not the insured will get a return for the cash premium payments.<sup>92</sup>

The Islamic version of insurance is "Takaful insurance."<sup>93</sup> Unlike conventional insurance, in this system an individual acts as an insurer and an insured at the same time.<sup>94</sup> To put it in another way, the policyholders are partners in the insurance company.<sup>95</sup> The company's administration operates the insurance process but is not the exclusive owner of the company.<sup>96</sup> In return, the administration gets compensation for operating the company depending on the business model employed.<sup>97</sup>

The administration operates the company through a traditional agency contract, know as a *wakalah*.<sup>98</sup> Additionally, a profit-sharing arrangement can be organized through a *mudharabah* contract.<sup>99</sup> In such situations, one party, called *rab al-mal*, the owners of the insurance company, provides the capital while the other experienced party, the *mudarib*, the company's administrative team, oper-

<sup>90</sup> Hania Masud, *Takaful: An Innovative Approach to Insurance and Islamic Finance*, 32 U. PA. J. INT'L L. 1133, 1141 (2011).

<sup>91</sup> See Oliver Agha, *Tabarru in Takaful: Helpful Innovation or Unnecessary Complication?*, 9 UCLA J. ISLAMIC & NEAR E. L. 101, 103 (2010).

<sup>92</sup> See FRANK E. VOGEL & SAMUEL L. HAYES, III, *ISLAMIC LAW AND FINANCE: RELIGION, RISK AND RETURN* 150 (1998).

<sup>93</sup> Ali Adnan Ibrahim, *The Rise of Customary Businesses in International Financial Markets: An Introduction to Islamic Finance and the Challenges of International Integration*, 23 AM. U. INT'L L. REV. 661, 715-16 (2008).

<sup>94</sup> Saleh bin-Abdullah bin-Humaid, *al-Ta'min al-t'awni al-islami* [The Islamic Takaful Insurance] 15, available at [www.kantakji.com/fiqh/Files/Insurance/15202.doc](http://www.kantakji.com/fiqh/Files/Insurance/15202.doc); see also Masud, *supra* note 90, at 1143 ("the insurance company does not act like an insurer in the conventional sense").

<sup>95</sup> Bin-Humaid, *supra* note 92, at 17; see also Masud, *supra* note 90, at 1143 (noting that the insurance company manages the business aspect of insurance institutions).

<sup>96</sup> Bin-Humaid, *supra* note 92, at 17.

<sup>97</sup> Masud, *supra* note 90, at 1144.

<sup>98</sup> See *id.*

<sup>99</sup> *Id.*

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ates the capital.<sup>100</sup> The parties share the profit according to a pre-determined formula.<sup>101</sup> However, they do not share liability as the *mudarib*'s liability is limited to losses resulting from negligence.<sup>102</sup> Obviously, the administration shall invest the funds of the company in non-usurious projects.<sup>103</sup>

The philosophy of Islamic insurance is based on brotherhood and solidarity among people.<sup>104</sup> Hence, one of its critical features is that a company should not aim to obtain profits for the operators of the insurance process.<sup>105</sup> Yet such profit may nevertheless occur as a secondary result when the cash premiums are invested through the agency or the profit sharing arrangements stated above.<sup>106</sup> Another important feature is that the ownership of the funds remains with the policyholders.<sup>107</sup> This feature in particular negates the suspicion of gambling. Accordingly, if the company is disassembled, each insured party gets a proportionate percentage to his or her original investment.<sup>108</sup>

Additionally, life insurance is troublesome because it may be regarded as contradicting Islamic *Shari'a*. First, one cannot insure against death because "life and death are in the hands of God."<sup>109</sup> Second, life insurance violates the Islamic inheritance rules because the policyholder can nominate a beneficiary who might not otherwise inherit at all.<sup>110</sup>

The Egyptian insurance industry adopts the conventional version, rather than the Islamic version, of insurance.<sup>111</sup> The rise of Islamists after the Revolution suggests that this trend may change and

<sup>100</sup> Oliver Agha, *Islamic Finance: Principle Before Profit*, 2 BERKELEY J. MID. E. & ISLAMIC L. 125, 131 (2009) [hereinafter *Principle Before Profit*].

<sup>101</sup> *Id.* at 132; see also NABIL A. SALEH, UNLAWFUL GAIN AND LEGITIMATE PROFIT IN ISLAMIC LAW: RIBA, GHARAR AND ISLAMIC BANKING 103 (1986) ("The division of profits between the two parties must necessarily be on a proportional basis and cannot be a lump sum or a guaranteed return.").

<sup>102</sup> *Principle Before Profit*, *supra* note 100.

<sup>103</sup> See Ibrahim, *supra* note 93, at 716.

<sup>104</sup> VOGEL & HAYES, *supra* note 92, at 151 (noting that Islamic insurance should be regarded "as a charitable collective enterprise by which Muslims pool resources to aid each other in the event of casualty or loss"); see also Masud, *supra* note 90 ("Islamic insurance is a cooperative model of insurance.").

<sup>105</sup> Masud, *supra* note 90, at 1143 ("the insurance pool is more akin to a charitable institution as opposed to a profit-earning institution").

<sup>106</sup> Bin-Humaid, *supra* note 94, at 16.

<sup>107</sup> *Id.* at 10.

<sup>108</sup> *Id.*

<sup>109</sup> Masud, *supra* note 90, at 1144; see SALEH, *supra* note 101, at 106.

<sup>110</sup> See Masud, *supra* note 90, at 1144.

<sup>111</sup> Law No. 47 of 1972 (Civil Code), *Al-Jarida Al-Rasmiyya*, 29 July 1948, §§ 747-771 (Egypt).

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Egypt may follow the experiments of countries that adopt Takaful insurance, like Malaysia.<sup>112</sup> It is unclear how the transformation process will happen, and what will be the fate of the current insurance companies.

*(F) Competition Laws*

Islamic jurisprudence emphasizes that “the basic purpose of legislation in Islam is to secure the welfare of the people by promoting their benefit or by protecting them against harm.”<sup>113</sup> Accordingly, the laws of Islam encourage fair trade.<sup>114</sup> The harms of monopoly are obvious. Monopolies misallocate resources and redistribute income in favor of a few individuals.<sup>115</sup> This causes a reduction in the society’s aggregate welfare, which contradicts the goals of Islam.<sup>116</sup> Therefore, Islam forbids monopolies.<sup>117</sup>

Fighting monopolies, Islam forbids a merchant from hoarding products when supply does not satisfy demand.<sup>118</sup> Hoarding means “withholding supplies of essential goods and services with a view to raising prices.”<sup>119</sup> Under Islamic law, the state may force a merchant hoarding such a product to sell the hoarded product at the market

<sup>112</sup> Masud, *supra* note 90, at 1147 (noting that Takaful insurance was introduced in Malaysia after conventional insurance was declared to be contrary to Islamic *Shari’a*; at present, Malaysia has the largest Islamic insurance market.).

<sup>113</sup> MOHAMMAD HASHIM KAMALI, *PRINCIPLES OF ISLAMIC JURISPRUDENCE* 268 (1991).

<sup>114</sup> Amir H. Khoury, *Ancient and Islamic Sources of Intellectual Property Protection in the Middle East: A Focus on Trademarks*, 43 *IDEA* 151, 175 (2003).

<sup>115</sup> Arnold C. Harberger, *Monopoly and Resource Allocation*, 44 *AM. ECON. REV.* 77, 77 (1954).

<sup>116</sup> Michael Brewer, *Planning Disaster: Price Gouging Statutes and the Shortages They Create*, 72 *BROOK. L. REV.* 1101, 1105 (2007).

<sup>117</sup> Prophet Muhammad was reported to say “[t]hose who bring grain to a city to sell at a cheap rate are blessed, and they who keep it back in order to sell at a high rate are cursed” and “[w]hoever monopoliseth is a sinner.” THOMAS PATRICK HUGHES, *DICTIONARY OF ISLAM: BEING A CYCLOPEDIA OF THE DOCTRINES, RITES, CEREMONIES, AND CUSTOMS, TOGETHER WITH THE TECHNICAL AND THEOLOGICAL TERMS OF THE MUHAMMADAN RELIGION* 197 (1885).

<sup>118</sup> Brewer, *supra* note 116; *see also* SAMÍRAH SAYYID SULAYMÁN BAYYŪMÍ, *AL-IHŪTIKĀR WA-ĀTHĀRUH FĪ AL-SHARĪ’AH AL-ISLĀMĪYAH [MONOPOLY AND ITS EFFECTS IN THE ISLAMIC SHARĪ’A]* 106 (1989) (noting that hoarding products is permissible as long as it does not harm the public; in other words, if the product is available in the market and the public has sufficient access to it, a merchant may hoard the amount he has with a view to selling it when prices go up because this will not harm the public).

<sup>119</sup> Brewer, *supra* note 116.

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price.<sup>120</sup> Additionally, should such a merchant fail to comply, the state may expropriate and sell the product itself.<sup>121</sup>

Moreover, Islamic ethics constitute the foundation for unfair competition rules. Islam forbids any unjust or unscrupulous business practices.<sup>122</sup> Dumping, for instance, is illegal under Islamic law.<sup>123</sup> A dumper uses predatory pricing in order to knock competitors out of competition.<sup>124</sup> By eliminating competition, dumping can constitute a first step toward establishing a monopoly.<sup>125</sup>

Furthermore, free-riding through misappropriating trademarks is considered deceptive conduct and is not allowed under *Shari'a* law.<sup>126</sup> Besides the fact that misappropriation constitutes a fraudulent means to induce consumers to buy the product, it also hurts the competitor who owns the trademark.<sup>127</sup> Additionally, because trademarks constitute nontangible property, misappropriation shall be regarded as an attack on the private property of the trademark owner.<sup>128</sup>

Egypt enacted the Law on the Protection of Competition and the Prevention of Monopolistic Practices in 2005.<sup>129</sup> The former regime did not seem serious about protecting competition, however, which was evident from suspicious monopolistic practices in the steel industry — led by a senior official of the then-ruling National Democratic

<sup>120</sup> BAYYŪMĪ, *supra* note 118, at 70-72.

<sup>121</sup> *Id.* at 73-74. Under Islamic law, expropriation is permitted for two purposes: (1) executing a court decision against a debtor, or (2) for public interest. Richard E. Vaughan, *Defining Terms in the Intellectual Property Protection Debate: Are the North and South Arguing past Each Other When We Say "Property"? A Lockean, Confucian, and Islamic Comparison*, 2 ILSA J. INT'L & COMP. L. 307, 356 (1996).

<sup>122</sup> See Ida Medieha Azmi et al., *Distinctive Signs and Early Markets: Europe, Africa and Islam*, in PERSPECTIVES ON INTELLECTUAL PROPERTY: THE PREHISTORY AND DEVELOPMENT OF INTELLECTUAL PROPERTY SYSTEMS 154 (Alison Firth ed., 1997).

<sup>123</sup> HUSSIEN HUSSIEN SHEHATA, NAZRAT AL-IQTISAD AL-ISLAMI ILA MUSHKILAT AL-IGHRAQ [DUMPING FROM THE PRESPECTIVE OF ISLAMIC ECONOMY] 9, available at <http://www.darelmashora.com/download.ashx?docid=981> (last visited Mar. 27, 2012).

<sup>124</sup> *Id.* at 2-3.

<sup>125</sup> *Id.*

<sup>126</sup> See Azmi et al., *supra* note 122.

<sup>127</sup> See *id.*

<sup>128</sup> The Qur'an provides: "Devour not the properties of one another unlawfully, but let there be lawful trade by mutual consent." THE QURAN, *supra* note 49, at 4:29. Another verse states: "And do not eat up your property among yourselves for vanities, nor use it as bait for the judges, with intent that ye may eat up wrongfully and knowingly a little of (other) people's property." *Id.* at 2:188.

<sup>129</sup> Law No. 3 of 2005 (Protection of Competition and the Prohibition of Monopolistic Practices Law), *Al-Jarida Al-Rasmiyya*, 15 Feb. 2005 (Egypt).

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Party.<sup>130</sup> Nonetheless, as one scholar notes, the main purpose of enacting that law was compliance with Egypt's obligations toward its trade agreement with European countries.<sup>131</sup>

While Islamic principles regulating competition are very basic and general, Egyptian competition laws provide additional details on these issues in light of these general principles.<sup>132</sup> Accordingly, no apparent conflict between Islamic competition law and Egyptian law exists. Hence, the challenge to the new parliament should be to promote competition laws and to provide efficient enforcement mechanisms. Unlike the former regime, the Islamists appear to have a sincere desire to fight monopolies to comply with Islamic teachings.<sup>133</sup> The former regime denied the legal enforcement of many rules that were not applied on the ground. For example, misappropriation of trademarks is illegal but its enforcement is very relaxed.<sup>134</sup> The rise of Islamists may have a direct impact on eliminating misappropriation of trademarks. Therefore, the promotion of antitrust and unfair competition laws is expected, and enforcing intellectual property rights should be promoted.

*(G) Tax*

Islam has a very special obligatory charity system called *zakah* which, to a certain extent, is similar to the modern tax system.<sup>135</sup> *Zakah* is a wealth tax focused on compulsory charitable giving for specially designated groups in society.<sup>136</sup> The idea of *zakah* illustrates how Islam distributes income and wealth in society to guarantee security for members and to maintain business activity along just and ethical lines.<sup>137</sup> Williams and Zinkin argue that the system of *zakah* applies to both Muslims and non-Muslims who are in need, as Islam allows the latter to share in the wealth of Muslims.<sup>138</sup> In their argu-

<sup>130</sup> See MAHER M. DABBAH, COMPETITION LAW AND POLICY IN THE MIDDLE EAST 252-54 (2007); *Egyptian Steel Magnate Ahmed Ezz Convicted*, BBC NEWS, Oct. 4, 2012, <http://www.bbc.co.uk/news/world-middle-east-19830922>.

<sup>131</sup> See DABBAH, *supra* note 130.

<sup>132</sup> See Law No. 3 of 2005 (Protection of Competition and the Prohibition of Monopolistic Practices Law), *Al-Jarida Al-Rasmiyya*, 15 Feb. 2005 (Egypt).

<sup>133</sup> See DABBAH, *supra* note 130, at 255.

<sup>134</sup> See Khoury, *supra* note 114, at 195-96.

<sup>135</sup> *Glossary of Islamic Legal Terms*, *supra* note 3, at 103 (*Zakah* is an Arabic word that refers to the obligatory charity based upon a percentage of annual surplus wealth); see also Williams & Zinkin, *supra* note 47, at 526.

<sup>136</sup> See generally Emarah, *supra* note 45.

<sup>137</sup> Williams & Zinkin, *supra* note 47, at 526.

<sup>138</sup> *Id.*

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ment Williams and Zinkin refer to the Prophet saying: "The Head of State is the Guardian of him who has nobody to support him."<sup>139</sup>

A question arises as to whether the newly elected parliament intends to replace the current Egyptian tax law with the system of *zakah*. If they do not, there is the further issue of whether they are going to impose a *zakah* system in addition to the tax imposed by law so that Egyptians pay double the standard tax, or whether the payment of *zakah* will be optional. Another challenge is related to the administration of the *zakah* funds, which may sometimes be unfairly distributed because of the corrupt authorities responsible for the distribution and management of the money collected under *zakah*.<sup>140</sup>

## CONCLUSION

The rise of Islamists in the Egyptian parliament suggests that Egypt may incorporate more rules based on the Islamic *Shari'a* in its legal system. This article followed a purely analytical methodology to spot potential issues and transformations in the Egyptian business and finance laws and regulations, which may affect the ways of doing business in Egypt after the Revolution. The article does not aim to judge, support, or oppose the application of Islamic law in Egypt after the Revolution. It is imperative to note that Islamic law is man-made law, based on divine rules in the Qur'an and the Sunnah, which forms *Shari'ah* law.

Generally, radical or fundamental changes in laws are unforeseeable, at least in the short run. Thus, one cannot expect the closure of usury banks and conventional insurance companies because this would contradict the public interest, a source of rules for Islamic law.<sup>141</sup> However, non-Islamic businesses should expect fierce competition from newly emerging businesses that follow Islamic teachings. In the field of insurance, for instance, consumers are likely to prefer Islamic insurance companies' model because it better serves consumer interests because consumers own the cash premium they pay under that model. This may not be the case for the Islamic banks because the usury banks may be more profitable.

Some industries, like alcohol and tobacco, may be banned or restricted in light of the application of *Shari'a* rules, but this restriction would be challenging to apply in the short run since it would affect

<sup>139</sup> *Id.*

<sup>140</sup> Some scholars argue that sometimes the collected *Zakah* is not properly distributed to the poor, giving examples from Malaysia and Sudan where no more than between 11 and 15 percent of the collected money for *Zakah* is distributed to people in need. HANS VISSER, *ISLAMIC FINANCE PRINCIPLES AND PRACTICE* 30 (Edward Elgar Publishing Ltd., 2009).

<sup>141</sup> Bassiouni & Badr, *supra* note 3, at 147.

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the cycle of trade. In the short run, the focus is thus expected to be on fighting monopolies in different areas of trade to promote competition and the welfare of society. This is in line with the overwhelming trend of protecting consumers, which is among the most important issues that the parliament is expected to address in order to satisfy a public that displaced the former regime largely for economic reasons. Finally, Islam recognizes the taxation system but it is unclear whether a change is likely in the tax law.

