

# REPORTED CASE LAW ON ISLAMIC BANKING & FINANCE

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# REPORTED CASES ON ISLAMIC BANKING

Case Name	Date of Judgment	Name of Judge/s	Islamic Principle	Application for	Judgment
Bank Islam Malaysia Berhad v. Adnan bin Omar	18 <sup>th</sup> July 1994 (High Court, Shah Alam)	Dato' Ranita Hussein, JC	BBA	OFS	OFS granted - Balance selling price
Dato' Haji Nik Mahmud bin Daud v. Bank Islam Malaysia Berhad	27 <sup>th</sup> Sept 1995 (High Court, Kota Bharu)	Dato' Hj Idris bin Yusoff, J	BBA	- an order that the PPA, PSA & Charges be declared null and void on the ground that there was contravention of ss. 7 & 12 of the Kelantan Malay Reservations Enactment 1930.	The motion was dismissed with costs. - The execution of the PPA had not transgressed the provisions of ss 7 & 12 of the MRE since there was no dealing or attempt to deal in the lands contrary to the provisions thereof.
Dato' Haji Nik Mahmud bin Daud v. Bank Islam Malaysia Berhad	25 <sup>th</sup> Feb 1997 (Court of Appeal)	NH Chan, Siti Norma Yaakub & Abdul Malek Ahmad, JJCA	BBA	Appeal – Whether purchase & resale of land for profit by bank contravened the MRE 1930 (Kelantan).	The appeal was dismissed with costs.
Bank Kerjasama Rakyat Malaysia Bhd v. Emcee Corporation Sdn Bhd	29 <sup>th</sup> Jan 2003 (Court of Appeal)	Abdul Hamid Mohamad, Richard Malanjum, Arifin Zakaria JCA	BBA	OFS	OFS granted - Not stated in the Judgment

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Tahan Steel Corporation Sdn Bhd v. Bank Islam Malaysia Berhad	23 <sup>rd</sup> Feb 2004 (High Court, KL)	Abdul Malik Ishak, J	Al – Istisna'	Injunction – to restrain Defendant from enforcing security documents in tandem with Al-Istisna' Facility Agreement.	The application was dismissed -The injunction against the Defendant would impede Islamic corporate financing. - The facts show that the Plaintiff was already in breach of the facility agreements by being in default of the third quarterly payment.
Bank Islam Malaysia Berhad v. Pasaraya Peladang Sdn Bhd	7 <sup>th</sup> April 2004 (High Court, Alor Setar)	Zainal Adzam, PK	BBA	OFS	OFS granted - Balance selling price as per Form 16D
Arab-Malaysian Merchant Bank Bhd v. Silver Concept Sdn Bhd	30 <sup>th</sup> June 2005 (High Court, Shah Alam)	Suriyadi Halim Omar, J	BBA	OFS	OFS granted - Not stated in the Judgment but most probably balance selling price as per Form 16D
Affin Bank Bhd v. Zulkifli Abdullah	29 <sup>th</sup> Dec 2005 (High Court, KL)	Abdul Wahab Patail, J	BBA	OFS	OFS granted - Purchase price + earned profit @ OFS + penalty – amount paid and daily profit.

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Malayan Banking Bhd v. Marilyn Ho Siok Lin	8 <sup>th</sup> June 2006 (High Court, Kuching)	David Wong Dak Wah, JC	BBA	OFS	OFS granted - Amount of advance + earned profit @ OFS - amount paid AND daily profit.
Malayan Banking Bhd v. Ya'kup Oje & Anor	30 <sup>th</sup> Aug 2007 (High Court, Kuching)	Hamid Sultan Abu Backer, JC	BBA	OFS	OFS granted - Amount of advance + earned profit @ OFS - amount paid AND daily profit.
Bank Kerjasama Rakyat Malaysia Bhd v. PSC Naval Dockyard Sdn Bhd	14 <sup>th</sup> Dec 2007 (High Court, KL)	Rohana Yusuf, J	Bay Al-Inah	Summary judgment pursuant to O.14 RHC 1980.	The order for summary judgment granted.
Arab-Malaysian Merchant Bank Bhd v. Silver Concept Sdn Bhd	18 <sup>th</sup> July 2008 (High Court, KL)	Abdul Wahab Patail, J	BBA	- Plaintiff claimed a sum of RM185,536,908-64 being the unpaid sale price.	The claim was allowed with costs.
Arab-Malaysian Finance Bhd v. Taman Ihsan Jaya Sdn Bhd & Ors (Koperasi Seri Kota Bukit Cheraka Bhd, Third party)	18 <sup>th</sup> July 2008 (High Court, KL)	Datuk Abdul Wahab Patail, J	BBA	OFS	OFS granted - Balance purchase price upon the sum due as purchase price on the date of settlement

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Sea Oil Mill (1979) Sdn Bhd & Anor v. Bank Kerjasama Rakyat Malaysia Berhad	28 <sup>th</sup> August 2008 (Court of Appeal)	James Foong, Zaleha Zahari & KN Segara, JJCA	Bay Al-Inah	Appeal against the judgment of the judge in Chambers in allowing the Respondent's O.14 application with costs and entered judgment in the sum of RM30,983,718-53 against the Appellant.	Allowing the appeal - The case was not a simple and obvious case for summary judgment under O.14. There were serious issues of fact and law to be determined.
Majlis Amanah Rakyat v. Bass bin Lai	10 <sup>th</sup> Feb 2009 (High Court, Sibu)	Hamid Sultan Abu Backer, JC	Bay Al-Inah	OFS	OFS granted - Purchase Price of RM21,000-00 as claimed by the Plaintiff
Light Style Sdn Bhd v. KFH Ijarah House (Malaysia) Sdn Bhd	6 <sup>th</sup> March 2009 (High Court, KL)	Rohana Yusuf, J	Murabaha	The Plaintiff seeks an injunctive relief against a winding up petition presented against it, on 2 main grounds: there is a multiplicity of proceedings (the same Murabaha Sale Agreements were being pursued under 2 existing civil suits), and the debt was disputed by the Plaintiff.	The injunctive relief application was dismissed. - The subject of application, though based on similar Murabaha Sale Agreements, did not relate to the same agreements as in 2 civil suits.

# OBSERVATIONS

1. Most cases reported were in relation to Bai' Bithaman Ajil transactions.
2. BBA being the premier Islamic customer financing in Malaysia has the lion's share of the market. The applications to court by the Islamic banks were for Order For Sale as the chargees of the lands/properties.
3. Other Islamic transactions which have been argued in courts are Bai Al-'Inah, Al-Murabahah and Al-Istisna'.
4. None of the cases reported was in respect of Sukuk, the financing under the capital market.

# OBSERVATIONS

5. Despite the strong language used by some judges, the court still upheld the contractual nature of the transactions although in some cases OFS were granted but for a reduced sum. The court recognized the transactions were, in principle, Islamic in nature.
6. However, none of the matters or issues were referred to the National Syariah Advisory Council established by the BNM being the highest Shariah authority on Islamic banking and takaful in Malaysia..

*THANK YOU*