

RIBA

RIBBIT

USURY

*Avoiding usury in Jewish and Christian contracts*

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Comparative Islamic law of contracts

BENER LAW OFFICE

# RIBA

## Avoiding usury in Jewish and Christian Contracts

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### Riba - Ribbit – Usury – Avoiding usury in Jewish and Christian contracts



Interest free lending of money. This probably is the most eye-catching feature of Islamic finance that outsiders – almost fascinated – tend to focus on. But Islamic finance is not at all “about interests only”.

Insiders know that riba – nowadays mostly translated into usury and usually perceived to be interests - only is one of many interlinked rules that govern the way to make sound business in line with Qur'an. It is part of a comprehensive set of ethical rules that functions together as a whole. In fact, one cannot talk meaningful about riba / interest without having access to that broader picture of the Shariah.

The Western world only very recently endorsed that money has a life on its' own. That it can grow out of its' mere existence. Actually, it is not – as is claimed – the Islamic world that is trying to avoid with synthetic constructions the lending of money against interest; it is the Western world that has accepted the synthetic award of life to money.

In the never ending struggle with the European “commercial revolution”, the Christian world fiercely opposed to interests till the 16<sup>th</sup> century CE. The underlying Scholastic reasoning did bear vast similarity to the Islamic concepts. The Scholastic school of thought indeed was influenced by the Islamic Averroes and Avicenna (on their turn - besides the teachings of Al Qur'an - going back to the scriptures of Aristotle). A neo-Scholastic revival in the second half of the 19<sup>th</sup> Century in the end was pushed back by the French Revolution and its' “victory of reason” . Contemporary Orthodox Jewish communities still today practice an “interest free” life.

This study gives an introduction in the different contracts and mechanisms that were used to avoid usury. Two thousands of years of contracts, used by Christian and Jewish populations, have been summarized in big lines only with respect to their salient features.

For the outsider it may be an interesting exposé. For the Islamic insider it will be a revelation and a challenge to his knowledge of the Shariah with respect to contracts and riba.

Paul WOUTERS  
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Wouters is amongst others Member of the Advisory Board of Islamic Finance News (Malaysia) and publishes worldwide opinions and articles on the subject of Islamic finance and contracts. Besides reaching the conventional banking world, his introductions to Islamic finance have spread over the GCC, South East Asia and Turkey. He is counsel to Bener Law Office (Istanbul-Turkey). Paul Wouters can be reached at [paul.wouters@bener.com.tr](mailto:paul.wouters@bener.com.tr)

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# RIBA

## Avoiding usury in Jewish and Christian Contracts

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### I. General Introduction

For more than 4,000 years, usury has been harshly condemned, partly tolerated, prohibited again, scorned and vilified. This happened amongst others in Hinduism, Buddhism and more specifically in Islam, Judaism and Christianity.

Lots of times and in different cultures it has been understood to refer to the practice of charging interest in excess of the principle amount of a pure monetary loan, although it even so has been interpreted as excessive interest above the legal or social acceptable rate.

In Western world - that contrary to Muslim world was subject to a division between political and religious powers - its' violation often was not regarded as a criminal offense, but rather as a transgression that could be quashed wholly or partially by civil courts.

However, usury also was regarded to be a sin against charity or a sin against (distributive) justice. It could range from a mortal sin against Natural Law to a sin directly against God Himself. By consequence, from time to time debtors tried to escape their contractual interest obligations by seeking relief thereof at religious courts or - for the Roman Catholic - even through direct Papal intervention. Papal decision or excommunication eventually could lead to hell for the perpetrators. Mostly only the lenders were targeted. Though usurious borrowing was shameful, it was often assumed that the borrowers only had succumbed because of necessity.

Then again the civil authorities that used or allowed the use of interest were subjected to the wrath of the Church. Usury therefor often was a tool in the struggle for power between the "earthly" and "heavenly" rulers. Whereby the Roman Catholic clergy more than once found themselves on the interest lending side when they were full of cash...

Only since the Napoleonic Civil Code vindicated the free use of interests by confirming and codifying the victory of reason (*acquis* of the French Revolution and atheism) over religious or ethical obstacles, the Western world appears to have fully succumbed to an interest-based economy that is galloping ever since - with bubbles and bursts - out of control.

Inadvertently, Napoleon was at the very source of the global (but US originated) deregulation movement that ended in the US subprime mortgage crisis 2007-2008 and subsequent global credit crunch.

Nowadays most religious authorities restrict their comments to mere theological spheres, Islam and Orthodox Judaism excluded.

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The Jewish and Christian world shunned interests from within their own cultural / religious environment. This gave result to different types of contracts.

We will have a look at some Western European practices in ancient to medieval times when the use of interests was prohibited or at least considered to be problematic by the Roman Catholic Church. Since the use of interests still today meets opposition from the Orthodox Jewish community, it is also worthwhile to see how they cope with the issue.

**The Napoleonic Civil Code marked the official endorsement of the use of interests in modern Western world. In the European so-called commercial revolution, it was the victory of reason over ethical constraints.**

**Inadvertently, it was the offset to contemporary deregulation and the present US subprime mortgage crisis that resulted in the subsequent credit crunch.**

It must be stressed that the contracts hereunder did not intend to comply with the Shariah, but with their own religious / ethical or legal standards. The

contracts - or the clauses contained therein - were not static, but tended to vary from time to time and from place to place. Usually, they only tried to stay out of pure financial interest additions while other surrounding ethical rules (speculation, fairness ..) most often are interpreted differently from the Islamic doctrine. The solutions at hand therefor often do not comply wholly or partly with the Shariah.

Both for the Jewish and the Christian contracts, the principles set forth are extremely simplified and opinions amongst historians and scholars may differ. The contracts and their variations have been used over big geographical spreads and often during extremely long periods. Differences may appear as moreover they were not really regulated and court records usually are too meager to compare reality with the official doctrines and paperwork.

### II. Usury and Islam - basic remarks

RIBA (arabic) is haram (forbidden) for any Muslim. In the contemporary Western world, it most commonly is translated to usury. And usury is perceived to be (excessive) interest on the lending of money. But riba is much more than usury alone and the concept