

THE UNCHANGING FOUNDATION OF ISLAMIC FINANCE: A *MAQASID AL-SHARIAH* PERSPECTIVE

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Conventional banking has demonstrated a remarkable capacity for institutional learning. Each major financial crisis, from the savings and loan collapse of the 1980s, to the Asian financial crisis of 1997, to the Global Financial Crisis of 2008 and 2009, has prompted policymakers and financial institutions to collectively undertake reform.

In its aftermath, the financial institution has responded with stronger prudential standards and more refined risk management practices. Conventional banking adapts, rebuilds and strengthens itself in response to failure, and The Basel Accords is the testament of this evolution.

In recent years, the financial world has turned its attention to the concept of ethical finance. Ethical finance is a framework within sustainable finance that demands banking institutions to do something beyond economic profitability. It further asks how financial activity affects society, governance, environment, and future generations. The language used is varied – green finance, social banking, sustainable development finance; however, the underlying principle is consistent: to align the financial institution's conduct with a broader set of human values. In many aspects, this places ethical finance in the same conversation with Islamic finance.

Nevertheless, Islamic finance operates from a different premise altogether. It does not adapt its ethical characteristics in response to any crisis as the core principle itself is never designed to be adaptable in the very first place. It is fixed, and this article explores why those foundations are fixed and what framework they are anchored to.

Two Systems, One Goal: Where Conventional And Islamic Finance Part Ways

Both conventional and Islamic finance shared the same purpose: to act as a financial intermediary, mobilising capital from those who hold it to those who need it and facilitating productive economic activity in the process. Both are subject to regulatory scrutiny and have developed sophisticated products, documentation frameworks, and risk management methodologies over decades of practice. Neither is inferior to the other and in jurisdictions such as Malaysia, these 2 systems operate side by side.

What sets them apart is not their purpose, but rather the source and permanence of their ethical constraints.

For conventional finance, ethical standards are subject to revision. The ESG (Environmental, Social and Governance) framework is now widely used by many parties, including financial institutions, to assess its financial products and corporate behaviors. Yet, ESG as a formalised concept only took place in the mid-2000s. For example, the first green bond was issued by the European Investment Bank in 2007, and green finance gained meaningful traction only in 2015, following the Paris Agreement. Each of these developments reflects a commendable effort to align financial activity with evolving human values. But they also demonstrate that – what conventional finance considers ethical is continuously renegotiated; it can be through regulatory reform, market practice, investor preference and public pressure. What the market considers responsible or ethical today may be regarded as misdirection, a decade from now.

By contrast, Islamic finance outlines its ethical constraint from a jurisprudential framework that precedes modern financial markets. The prohibition on interest/usury (*riba*), the prohibition on uncertainty (*gharar*), and the prohibition on speculation (*maysir*) are some of the structural features derived from the primary sources of Islamic law/Shariah, namely *Quran* and *Sunnah*.

Crucially, Islamic finance does not face the same contingency as its counterpart. For example, the prohibition on interest/usury (*riba*) has not been relaxed in response to low-interest rate environments, and the prohibition on uncertainty (*gharar*) has not been suspended to cater for derivative markets. *Shariah* Committee or Supervisory Board is also not empowered to revise these to suit prevailing market conditions. This raises the main question: what is the source of these constraints, and what is the framework used?

The answer lies in what Islamic jurisprudence called it as *Maqasid Al-Shariah*.

Maqasid Al-Shariah: The Objectives Of Islamic Law

The concept of *Maqasid Al-Shariah* translates literally as the Objectives of Islamic Law. Its primary purpose is the realisation of benefit to people, in their worldly affairs and beyond, together with the prevention of harm, corruption and injustice. This concept was developed by Imam Al-Syatibi, one of the leading legal theorists of his time, where its underlying spirit is deeply rooted in the Quranic verse: “And we have sent You (O Muhammad) not but as a mercy for the alamin (mankind, jinns and all that exists)” (Al-Anbiya’, 21:107).

This purposive dimension also has received formal regulatory recognition in Malaysia. In November 2023, the Securities Commission Malaysia (SC) issued the *Maqasid Al-Shariah* Guidance for the Islamic Capital Market – a framework designed to complement existing Shariah requirements. As the SC Chairman stated at its launch, the Guidance reflects the concept of *halal* and *tayyib*, products and services should be permissible and at the same time, beneficial, sustainable and good for society. The Guidance is structured around six (6) aspirations: Humanity, Justice and Benevolence, Clarity and Transparency, Flexibility and Innovation, Fiduciary

and Accountability, and Accessibility and Inclusivity. Each aspiration maps directly onto the *Maqasid Al-Shariah*. Furthermore on 9 March 2026, the SC had launched the Malaysia's Capital Market Masterplan 2026-2030 which placed *Maqasid Al-Shariah* principles as the anchoring governance for the Islamic Capital Market.

To fully appreciate what that mapping entails, it is necessary to understand the classical structure of *Maqasid Al-Shariah*. Islamic jurisprudence organises the *Maqasid Al-Shariah* into three (3) categories of priority. The first and most critical is the essentials (*daruriyyat*), those interests whose neglect would lead to fundamental disorder in human affairs. The second is the complementary (*hajiyyat*), interests that while not essential to survival, remove hardship and facilitate ordinary human life. The third is the embellishments (*tahsiniyyat*), matters of refinement that enhance the quality of life beyond what is merely comfortable. For the purpose of this article, the focus is on the first category: the five (5) essential values that the *Maqasid Al-Shariah* is designed, above else, to protect.

The Five Essential Values Of *Maqasid Al-Shariah* In The Context Of Islamic Finance

The five essentials represent those interests without which neither the individual nor society can function. Their neglect does not merely cause inconvenience; it produces fundamental harm to the fabric of human life.

1. Protection of Faith

The preservation of faith is the most important thing that leads people to embrace the presence of Allah SWT in every human undertaking, acts or omissions. In the context of Islamic finance, it reflects the principle that financial activity must not be divorced from moral ethics, transactions that exploit, deceive or cause systemic harm are inconsistent with this objective. It gives rise to the institutional requirement of independent *Shariah* supervisory committee, whose mandate is purposive, rather than merely procedural.

2. Protection of Life

The preservation of life extends beyond physical survival. In financial terms, this translates to the obligation that the system must not create conditions that endanger livelihoods. *Takaful* is a direct expression of this objective, as it is organised around mutual contributions, where participants collectively pool risk, and any surplus is redistributed rather than being retained as a profit. Not only that, contemporary scholars have also extended this protection to encompass the natural environment as the preservation of life cannot be meaningfully achieved in an ecosystem that is degraded, polluted or depleted.

Key products: General *Takaful* for property and liability coverage, Family *Takaful* for life and critical illness protection, Medical *Takaful* structured under *Wakalah* or *Mudarabah* model, ensuring that surplus contributions are returned to participants, Green *Sukuk*, *Shariah*-compliant bonds whose proceeds are directed towards renewable energy projects, sustainable infrastructure and environmental conservation initiatives.

3. Protection of Intellect

The preservation of intellect requires that financial activity supports the capacity of individuals and communities to learn and develop. *Waqf* endowments towards educational institutions is a classic example of this objective.

Key products: *Waqf* (endowment) directed to educational and social infrastructure, Education *Sukuk*, *Shariah*-compliant bonds whose proceeds fund learning institutions.

4. Protection of Lineage

The preservation of lineage and family encompasses the legal and financial arrangements that support intergenerational continuity and social cohesion. Islamic finance products in this sphere are designed to ensure that wealth passes between generations in a structured, equitable and *Shariah*-compliant manner, avoiding the concentration or dissipation of family assets.

Key products: *Hibah* (inter vivos gift) structures for estate planning and wealth transfer, Family *Takaful* providing protection for dependants, *Amanah* (trust) arrangements for the structured management of family assets across generations.

5. Protection of Wealth

The preservation of wealth is perhaps the most directly relevant to the daily practice of Islamic finance. It requires financial activity to facilitate fair, productive, and equitable circulation of wealth. Instruments like *Murabahah*, *Musharakah* and *Mudarabah* are designed to ensure that financing activities are grounded in real economic activities. Returns from these instruments are earned through legitimate efforts and risk sharing, without any usury/interest (*riba*), excessive uncertainty (*gharar*) and speculation (*maysir*).

Key products: *Murabahah* (cost-plus financing) for asset acquisition, *Musharakah* (partnership financing) for equity-based ventures, *Mudarabah* (profit-sharing arrangements) where the financier provides capital and the entrepreneur provides effort, *Ijarah* (leasing) for asset-based financing.

The Structural Advantage Of Islamic Finance

Islamic finance, grounded in faith – operates at a precisely deeper level and thus, its ethical constraints are demonstrated as embedded within the system. To illustrate, due to the prohibition on usury/interest (*riba*), it removes the mechanism of interest altogether and replaces it with arrangements grounded in real economic activity. Further, the prohibition on excessive uncertainty (*gharar*) in Islamic finance can be seen when it disqualifies instruments whose value is fundamentally speculative and detached from identifiable underlying assets. The requirement that returns be earned through trade, partnership, or the use of real assets is also a pertinent condition of validity, not just a mere guideline.

This structural characteristic produces a form of certainty that ethical finance has

yet to achieve. It is also worth noting that a client entering a transaction based on Islamic finance knows in advance, that the ethical parameters of that transaction will not be diluted for whatever reasons. Moreover and notably, the Islamic principle of *waqf* – is a product of Islamic finance which conventional finance has not yet managed to replicate. This product is a built-in mechanism for ensuring circulation of wealth in society, unlike social-impact related finance offered by conventional or ethical finance which will only exist when there is a demand for it.

None of this is to suggest that conventional or ethical finance has failed, nor that its ongoing evolution lacks value. In fact, the refinement of ESG practices has brought about meaningful accountability, channeled substantial capital toward environmental and social priorities, and reshaped how financial institutions present their commitments to the public. These developments matter. Yet, despite this progress, a growing number of observers within the sustainable finance space are beginning to question whether the ESG framework possesses the structural robustness needed to truly fulfil its long-term promises.

Conclusion

The narrative surrounding Islamic finance has, for too long, been framed primarily in terms of prohibition: what it forbids and which conventional structures it cannot replicate. This framing misses the salient point, when in fact, Islamic finance is actually defined by what it seeks to achieve.

For the general public, Islamic finance should not be approached as a niche or faith-exclusive offering. It is a mature and globally operating financial system, one that has surpassed USD5 trillion in global assets as of 2024.¹⁴ *Maqasid Al-Shariah* itself is universal in its scope, transcending barriers of religion, geography, and background. Its fundamental proposition is that law and finance ought to serve human wellbeing in a principled, consistent, and accountable manner.

The *Maqasid Al-Shariah* framework is laid-out and adaptable. Diverse range of products and services have been structured based on this. Islamic finance in many jurisdictions has reached maturity. What remains is for clients, be it the financial institutions or the borrower to decide, whether financial products grounded in fixed principle are something that they are prepared to engage with, understand and value.

¹⁴ Standard Chartered, "Global Islamic Finance Assets to Surpass USD 7.5 Trillion by 2028", 19 May 2025, https://www.sc.com/en/uploads/sites/66/content/docs/SCB_Islamic-banking-for-Financial-Institutions