

OBJECTIVE SYSTEM IN ISLAMIC COMMERCIAL LAW: A CRITICAL EXAMINATION

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ABSTRACT

Trade has always been the face of human history and united the world of different traditions, including Western and Islamic law, leading to the development of commercial laws and associated systems. The subjective, objective, and mixed/modern systems have developed worldwide in Western and Western-influenced commercial law, whereby the class of merchants, the commercial transaction, and the mixture are the determining elements, respectively. On the other hand, the morals and ethics of the parties involved in a commercial transaction and the resulting common good are central to Islamic commercial law. Therefore, it is not sound to narrowly categorize Islamic commercial law into one of the three commercial law systems common in Western and Western-influenced commercial law. However, since Islamic commercial law applies to all parties involved in business transactions regardless of their status as merchants, it has similarities with the objective system of commercial law.

Accordingly, this article undertakes a comparative analysis of Islamic commercial law and the objective system by assessing the latter's applicability in commercial law and analyzing the main features of Islamic commercial law. The article concludes that while Islamic commercial law shares similarities with the objective system in that both focus primarily on the nature of the transaction rather than the identity of the parties, it has the unique characteristic of combining law and morality. Accordingly, this article undertakes a comparative analysis of Islamic commercial law and the objective system by assessing the latter's applicability in commercial law and analyzing the main features of Islamic commercial law. Furthermore, considering the evolving nature of global trade, the study evaluates how these findings could inform modern legislative reforms and legal education in mixed jurisdictions. The article concludes that while Islamic commercial law shares similarities with the objective system in that both focus primarily on the nature of the transaction rather than the identity of the parties, it has the unique characteristic of combining law and morality. Consequently, this paper makes an important contribution to the existing literature by not only identifying the place of Islamic commercial law but also highlighting its potential role in addressing the ethical gaps in contemporary commercial law systems.

Keywords: *commercial law, commercial codes, Islamic commercial law, systems, transactions*

INTRODUCTION

Commerce and law are the building blocks of social life, and they are rapidly evolving fields that are interdependent. In this context, it can be said that commercial law is contingent upon the development of commerce (Serdaroğlu 2020, 25). However, in the digital era, the definitions of commerce and the merchant are undergoing a transformation driven by Artificial Intelligence and Fintech, necessitating a re-evaluation of traditional legal systems. Commerce, as a developed economic activity, requires a legal framework, a monetary system, and mutual trust, and it grows in direct proportion to these factors (Genç 2003, 211 vd.; Serdaroğlu 2020, 25). Resolving disputes arising from commercial relationships is of paramount importance for maintaining social order and legal certainty, which are among the primary objectives of law. The

establishment of commercial law, which is designed to regulate commercial activities and to address the unique rights and obligations of merchants, is a relatively recent development compared to other areas of law.

Throughout history, most countries have codified laws to regulate commercial transactions and the people who engage in them. Among the countries with codified laws, countries such as France (*Code de Commerce*), Germany (*Handelsgesetzbuch*) and Austria (*Unternehmensgesetzbuch*) have special codes for commercial laws that are separate from other laws. The United States also has a well-known commercial code, the Uniform Commercial Code that governs all commercial transactions across the republic. (“Uniform Commercial Code,” n.d.) In some other countries, however, such as Italy, commercial law is integrated into the civil code. Today, the codification of commercial law in continental Europe, in particular the German and French Commercial Codes, has developed and influenced the systems of commercial codification used in the rest of the world - the subjective and objective systems respectively. The objective system, which focuses on the transaction rather than the merchant’s status, has gained global relevance. In this context, it is possible to say that the influence of the objective system extends far beyond France, shaping the commercial laws of numerous mixed jurisdictions worldwide.

The principles of Islamic commercial law are deeply rooted in the system’s overarching principle of the unity of law and morality. These rules are established to prohibit unjust gains, enhance the quality of buying and selling transactions, protect the parties involved in commercial dealings, and ensure that rights holders can effectively claim their due. Regardless of the entity involved or the nature of the transaction, Islamic law imposes a uniform set of legal principles and rules on all commercial activities.

Understanding contemporary hybrid legal environments requires contrasting the “moral-legal” system of Islamic commercial law with the “legally neutral” objective system. As a result, this article compares these two systems and expands the conversation to include new advancements in automation and sustainability. The study aims to contribute to existing Islamic Law literature by not only identifying the structural compatibility between these systems but also exploring how their synthesis can inform modern legislative reforms.

Structurally, the article initially discusses commercial code systems depending on their fields of application. Because of its theoretical closeness to Islamic commercial law, it mainly concentrates on the objective system, offering details on its definition, evolution over time, geographic reach, and practical implementation within the framework of the French Commercial Code. Subsequently, the paper explores the place of these systems within

Islamic Commercial Law, analyzing the application of the objective system therein. Finally, it examines the “moral synthesis” of Islamic law as a necessary complement to the objective system’s “formal rationality” in the modern day. In preparing this article, the French Commercial Code was consulted to examine the origin and characteristics of the objective system, alongside various academic sources used to determine its place Islamic commercial law.

RESEARCH METHODOLOGY

The article follows a doctrinal research methodology to investigate the place of commercial law systems, in particular the objective system, in Islamic commercial law. In doing so, both primary and secondary sources have been utilized. Various academic articles and books as well as legislations have been evaluated to examine the complementarity of the systems applied in Western commercial law with Islamic commercial law.

Among the primary sources, the French Commercial Code (Code de Commerce) and the Uniform Commercial Code were analyzed to assess the existing aspects of objective and subjective systems in the existing laws. As secondary sources, various Islamic law articles and books as well as law review articles and books on legal issues were used. These sources have been used to analyze the place given to commercial law systems in the existing literature and to understand the meeting point of applicable systems in both western and westernized commercial laws and Islamic commercial law.

SYSTEMS OF COMMERCIAL CODES

Codes provide overarching principles and rules to guide legal interpretation and practice in a given area, and create a coherent legal framework through tighter integration of complexly woven rules that refer to and complement each other (Goode 1988, 139). The main purposes of codification is to simplify the law, to make it more accessible and easier to identify as the rules are assembled in one place (Goode 1988, 137). In this regard, commercial codes aim to harmonize normative overlaps in the world of commercial life concerning merchants, consumers, business transactions, the institutions, the state, and the public.

Depending on their preferences, the states pursue different approaches both in the codification process and ultimately in the codes with regard to the defining factor: either the merchant class or the commercial transaction. In the historical process, no uniformity has been achieved on

the principal element determining the subject and scope of commercial codes (Kayıhan and Yasan 2015, 3). The concretization of this classification emerged with two main approaches to the definition of commercial law, one by the German and Austrian traditions (the subjective approach) and the other by the Napoleonic French Code (the objective approach) (Heidemann 2016, 668–69). In today's context, commercial codes are the center stages of the merchant, the commercial transaction, or the commercial enterprise (and sometimes a combination of these three), aligning with the subjective system, the objective system or the modern (mixed) system, respectively (Bozkurt 2021, 2).

During the feudal era, the class-based society in imperial Germany and Prussia led to the development of a commercial law system that catered specifically to the needs of the merchant class (Flume 2014, 45). This system of codifying a commercial law primarily focusing on the merchant class is known as the subjective system. The French Revolution marked a significant shift in this approach, challenging the privileged status granted to “qualified persons” based on their economic class. As a result, the *Code de Commerce* came into force during the Napoleonic French period as a law regulating commercial transactions regardless of the class of the person and whether one is a merchant or not (Flume 2014, 53). This system is known as the objective system—a commercial code governing commercial transactions regardless of the class or profession of the parties. After analysing the advantages and disadvantages of these two systems and taking into account the requirements of the new era, the modern or mixed system of codification emerged as the third system. The modern/mixed system brings together the subjective and objective systems and is centered on commercial enterprises.

In essence, the major systems of commercial code are the subjective system, which applies specifically to merchants; the objective system, which focuses on commercial transactions, and the modern system as the law of commercial enterprises (Arkan 2021, 27). The last approach is sometimes referred to as the mixed approach, as it incorporates features of both the subjective and objective approaches, as well as commercial enterprises. These systems have therefore emerged in different periods and have influenced the world of commerce and law in different countries (Kayıhan and Yasan 2015, 3). By separating the mixed system and the modern system, it is also sometimes mentioned that there are four different systems reflecting the changing needs of commerce and legal practice (Bahtiyar 2016, 8). Today, different countries apply one of these three systems depending on their social, economic and political contexts. Due to the close similarity with the approach of Islamic commercial law, this study aims to provide information on the objective system.

Definition of the Objective System

In the objective system, the primary focus of commercial code is not a class of persons with certain qualifications, but transactions with certain qualities and characteristics, regardless of who the parties are (Dinç 2018, 182). The system promotes consistency and fairness in commercial transactions by applying a standardized set of rules and regulations regardless of the parties involved. It recognizes those who conduct commercial transactions under certain conditions as merchants; thus, commercial provisions apply to almost all commercial transactions, and litigations relating to commercial transactions are considered commercial litigations (Dinç 2018, 182). Thus, with the objective system, commercial law is a branch of law that applies to commercial transactions and can be applied not only by merchants but also by everyone, thus ensuring the victory of commerce over feudal property (Kayar 2015, 33).

In the objective system of commercial code, the legislators first define the commercial transaction in order to determine the scope of application of commercial code and disregard the qualifications of the persons performing the commercial transaction. In this way, the French Commercial Code of 1807 adopted this system, which helps to promote fairness and consistency in commercial transactions by applying a standardized set of rules and regulations to all parties involved, regardless of their qualifications (Bozkurt 2021, 52). The legislators define the commercial enterprise and regulate the commercial code institutions according to the concept of commercial transactions. According to this system, in order to determine the subject matter of commercial code, the “merchant” title of the person who performs the commercial transaction is not important. What is sought here is whether the person performs a commercial transaction or not. Thus, in the objective system, commercial code is not the law of the merchant class, but the law of everyone who performs commercial transactions. (Ayhan et al. 2016, 3).

Historical Background of the Objective System

The objective commercial code system has been practiced in various countries around the world since its emergence in France in the early 1800s. In this regard, it is feasible to argue that the objective system’s impact went well beyond France. The Code de Commerce had an impact on many countries’ commercial laws after the Napoleonic Wars, including Belgium, Spain, and several Latin American nations (Flume 2014, 55). Furthermore, its impact is evident in mixed jurisdictions such as Turkey, where the commercial code, although influenced by Swiss-German tradition, adopts an objective

approach in defining commercial transactions (Bahtiyar 2024, 48). Therefore, the objective system has become a global phenomenon, shaping the legal framework of commerce in diverse geographies regardless of their distinct legal traditions.

With the advent of the French Revolution, an objective system was created with the principles of equality, justice, freedom and the abolition of all privileges (Kayihan and Yasan 2015, 35). At that time, commercial code ceased to be a privileged profession of the merchant class, and thus the system in question was formed as a fruit of the revolution that abolished the feudal class. The objective system of commercial code surfaced after the French Revolution, considering that commercial code applies not only to merchants but to all persons engaged in commercial transactions (Bozkurt 2021, 3).

The objective commercial code system has been practiced in various countries around the world since its emergence in France in the early 1800s. The 1807 French Commercial Code formalized the post-revolutionary change in the meaning and practice of commercial code to include everyone engaged in commercial activities, recognizing that commercial code is no longer the law of a particular class of people, but rather the law of commercial transactions (Kayar 2015, 33). Thus, the concept of merchant as defining factor of commercial code is rejected and a group of transactions is considered commercial, regardless of who performs them (Arkan 2021, 4). The 1807 Napoleonic French Commercial Code (*Code de Commerce*) established an objective system of defining merchant law that reflected the republican and revolutionary spirit of the period (Bahtiyar 2016, 9). In doing so, instead of placing the feudal status of the merchant at the center of the definition of a commercial act, the approach focuses on the contract (e.g. sales contracts, lease agreements, etc.), the purpose of the contract, and aspects of the merchant (Heidemann 2016, 668).

In contrast, the subjective system, rooted in German and Austrian traditional monarchical commercial codifications, primarily focuses on the identity of the merchant as the defining element of commercial law (Heidemann 2016, 668). The scope of the commercial code is defined in the subjective system according to the professional affiliation of the trader. As a result, the law was applied only to habitual-professional traders, predominantly bankers/traders (Heidemann 2016, 668). Consequently, primary producers, agricultural businesses and the liberal professions were among the professions that were excluded from the commercial characterisation of the Commercial Code in Germany around 1900. The exclusion occurred even if those professionals were engaged in activities of a commercial nature (Kozolchyk 1979, 3–4). Thus, due to their historical origins, the subjective and objective classical

dichotomies contained in commercial codes are commonly referred to as the German way and the French way, respectively.

The codification of commercial codes reflects a society's preference for creating rules at a general level rather than ubiquitous parts of the law. The development of these systems also shows that a country's commercial code is influenced by its economic model (Kozolchyk 1979, 3–4). The subjective system developed by the monarchy, the culture of codifying commercial code mechanized the division of people into different categories according to their social, economic, cultural and political backgrounds (Bozkurt 2021, 52). In this context, the merchant class was seen by feudal society at the time as a class in need of some degree of protection and privilege, and thus enjoyed freedoms and liberties that other members of society did not. As a result, the revolutionary spirit of the Napoleonic laws of the period preferred to break away from the merchant-identity-centered system of feudal societies and thus the objective system was born.

Years after the Napoleonic era, the debate on whether a commercial code should follow a subjective or objective system continued. In 1857, during the drafting of the Prussian commercial code, a subjective approach was used to determine who qualified as merchants and which private law rules would apply to them (Heidemann 2016, 668). This approach was heavily criticized by leading jurists of the time who argued that commercial code should be the law of commercial transactions (the objective system) and not the law of merchants.

Despite the nobility of the objective system's original purpose, which is to prevent preferential treatment of the merchant class in commercial codes, in this era of market-oriented economics, modern theory and the codification practice seems to favor the subjective approach (Flume 2014, 59). In this context, the U.S. Uniform Commercial Code, one of the most widely acclaimed commercial codes today, tends towards the subjective theory, as it identifies rules that apply only to dealings between merchants and others that are restricted to dealings involving consumers (Schmitthoff 1979, 55).

Objective System under *Code de Commerce*

Napoleonic France was the first country to depart from the subjective criterion by adopting the objective system of the French Commercial Code of 1807, which governs commerce by determining whether the parties have entered into an act of commerce (Goode 1988, 141). By having an objective commercial code, French legislators of the time sought to prevent the granting

of privileged status to a particular group, since privilege is contrary to the principle of equality before the law that the revolution advocated. As a result, the *Code de Commerce* applied to commercial transactions carried out by both merchants and non-merchants (Kozolchik 1979, 3).

The French Commercial Code in force begins by defining “commercial acts” by indicating a list of seventeen acts (Kozolchik 1979, 4). In addition, it defines traders as “persons who perform commercial acts and make it their usual occupation”. Here, commercial acts are comprehensively listed without requiring a specific threshold of intensity and frequency to be met by the person performing the commercial acts. The French Commercial Code applies objective rules that allow legal consequences to be attached to the commercial acts, regardless of the identity of the person concerned. According to the French Commercial Code, the status of a person is not among the determining factors for the application of the law, but rather the nature of the commercial activities (Code De Commerce - Légifrance, n.d., under L.110-1 & L.110-2). French law has implemented the objective system in this way, providing the legal framework for commercial transactions (Flume 2014, 74).

THE SIGNIFICANCE OF COMMERCE WITHIN THE FRAMEWORK OF ISLAMIC LAW

The legal norms governing commercial activities in Islamic law are not independent of general moral values. Indeed, upon examining the fundamental principles and rules of commercial law, it becomes evident that each norm, in addition to being a legal rule, also embodies moral, financial, and economic values and principles (Kaya 2019, 688). In this context, Islamic principles of law and ethics were reinforced with other values, principles and rules that regulate social life, and an integration between them was ensured.

Most of the transactions in the bazaars and markets, which were the places of trade in the pre-Islamic period, involved fraud and uncertainty. It is known that the understanding that dominated the places of trade in this period did not attach importance to the principles of trust and safety. Pre-Islamic societies were marked by the prevalence of usurious transactions, as well as deceitful practices that undermined free will. In contrast, the principles governing commercial transactions in Islamic societies were meticulously outlined in the Quran and Sunnah (Bardakoğlu, n.d.). These regulations were initially implemented through the Prophet Muhammad’s personal involvement in commercial transactions, emphasizing the lawful aspects of trade and admonishing his companions to avoid the negative aspects of the markets.

With the revelation of the verses and the Prophet's regulations, the places of commercial transactions such as bazaars and markets were revived according to these principles, and these places became places where halal earnings and transactions were carried out in the manner prescribed by religion (*Hadislerle İslam* 2015, 112).

Commerce is an indispensable element of society and is one of the most prominent issues where personal interests come to the fore. Islamic civilization is a civilization of ethics and one of the foundations of this civilization is the ethics in commercial life. Since trade is indispensable in human life, it is accepted that the dominance of moral rules in this phenomenon will contribute positively to the peace and stability of society (Çalışkan 2018, 35) and for this reason, the emphasis on morality in Islam is mostly related to trade (Erturhan 2010, 213, 219). Since commerce is one of the areas where the unity of law and morality is most prominent, (Çalışkan 2018, 35) the principles of commercial morality and law were given priority in the formation of the Islamic legal system (Döndüren 2014, 26–27). As a result, the terms 'commerce' and 'morality' have become virtually synonymous, (Erturhan 2010, 219), with morality emerging as the most valued aspect of commercial activities (Köse 2020, 73). Indeed, every Quranic verse or hadith that addresses a commercial relationship also delves into its moral dimensions (Erturhan 2010, 219).

While verses revealed during the Meccan period primarily emphasize the creedal and moral aspects of commerce, those revealed in Medina delve more into the legal provisions of commerce (Güneş 2019, 63; Feyizli 2020, 61-62,81). However, the otherworldly dimension of commerce is addressed in both periods (Güneş 2019, 64), with the primary aim of resolving potential economic and commercial disputes through moral means (Ayengin 2003, 648, 659). Accordingly, if the rules of social order are ranked through the phenomenon of commerce in Islam, it can be seen that the rules of religion form a basis for compliance with the rules determined in commercial relations with otherworldly rewards or punishments, commercial ethics are formed with the life of the social mentality that develops in this direction, and the law rules it by subjecting it to material sanctions (Köse 2011, 42–43).

Since the qualities of the merchant in Islamic ethics are clearly and in detail stated in the sources and great importance is attached to the phenomenon of ethics, it is stated that the merchant is the measure of the morality of the society, that the moral development of the society as well as its economic development is closely linked to its personality and character, and that the moral characteristics of the merchant will be reflected in the society (Ersoy 1969, 304). In addition to the fact that culture and civilization are transferred

along with the transfer of trade goods through the mediation of merchants, according to this view, merchants are personally and indirectly involved in every relationship between the people and the state, good and evil.(Ersoy 1969, 304)

The place of morality-based commercial law rules in Islamic law and the principle that the principles and rules form a unity is evident. These rules are derived from the general principles of Islamic contract theory and cover commercial ethics, legal transactions and relations (Atalay 2023, 86–105). They can be examined under the following headings: freedom of contract, facilitation and removal of difficulties, mutual consent, adherence to contracts, record-keeping and testifying, rightful earnings, parties, goods, and time in commerce, and customary commercial practices (Atalay 2023, 86–105). In this regard, the basic rules of Islamic commercial law emphasize the foundation of commercial ethics and commercial law in the principle of rightful earnings. Consequently, it can be divided into those concerning the parties to a transaction and those concerning the subject matter of the transaction.

The basic rules regarding the parties to trade are the prohibition of buying goods outside the market (talaqqi al-rukban), the prohibition of the sale of goods by intermediaries, and the rules arising from the relationship between the commercial subject and the state, namely taxation and price fixing (narh/tes'ir). On the other hand, fundamental rules concerning the subject matter of a transaction include the prohibition of unfair competition, the prohibition of artificially increasing prices, the prohibition of reselling goods, the prohibition of hoarding, the prohibition of monopolies, and the prohibition of deceptive advertising. Within the framework of Islamic law, each of these rules embodies moral and legal principles. These principles include the prevention of injustice in purchase and sale of goods, the guarantee of consent-based commercial transactions, equity-based protection of private property, and the avoidance of capital concentration. They also promote fair competition, price stability, efficient consumer access and the creation of a free market economy (Atalay 2023, 170).

AN OVERVIEW OF ISLAMIC COMMERCIAL LAW

Islamic law does not treat commercial law as an independent branch with its own specific rules. Rather, the principles of commercial law are typically incorporated within the broader framework of legal transactions (Cin and Akgündüz 1996, 315; Bakar 2008, 47; Rohe 2015, 132). Islamic jurists have subjected the law of transactions to the public/private law dichotomy

found in contemporary legal systems, classifying Islamic contract law—and consequently, commercial law—under the purview of private law. The section on transactions, which is traditionally divided into various types of contracts in classical fiqh texts, generally encompasses the law of obligations and, more specifically, the rules governing commercial transactions from religious, moral, and legal perspectives. It includes fundamental limitations and prohibitions on commercial transactions, as well as sanctions for their violation (Kallek 2012, 134). Specific commercial provisions have been accommodated within the broader framework of Islamic law of obligations, subject to the condition that they do not contravene its general principles (Akgündüz 2012, 942).

Within the framework of the law of transactions, Islamic commercial law, as an extension of Islamic law of obligations, has been studied under the headings of *kesb* (lawful earning), *iktisab* (acquisition through effort), and *kitab al-buyu'* (the book of transactions). Issues related to commercial transactions and life are given within the framework of Islamic economics/economics, Islamic consumer law, labor law or Islamic ethics (Saleem 2013, 1). In this context, it is seen that Islamic commercial law is integrated with other fields of law, especially the law of obligations, and has a great connection with the fields of economics and ethics.

The Qur'an and the Prophet's hadiths, which are the main sources of Islamic law and economic system, set out the religious, moral and legal rules of commercial transactions, prohibited transactions that would lead to unfair gains, improved buying and selling transactions, and established an economic system where the rightful owner could get his right (Döndüren 2021, 135; Saleem 2013, 1). Islamic contract theory, or in other words, Islamic theory of contracts, forms the bedrock of this system. The theory constitutes the vast area of Islamic law and includes elements of contracts, their formation, validity, binding conditions, cancellation and other related issues.

Within the framework of Islamic contract theory, the most common type of contract, forming the core of commercial law, is the bay' (sale) contract, which involves buying and selling transactions. Beyond this, there are named contracts such as *ijarah* (lease), *istisna'* (construction contract), *salam* (forward sale), *sarf* (currency exchange), *kafalah* (guaranty), *wakalah* (agency), *hawalah* (transfer), *rahn* (pledge), and various forms of partnership. Apart from these, there are also anonymous contracts that are in accordance with the general nature of Islamic law. As mentioned above, the principles regarding the regulation of these named or unnamed contracts constitute the subject matter of the law of obligations, as well as the field of commercial law.

The absence of a commercial law that is entirely independent of the general principles of Islamic law of obligations has not prevented the establishment of specific regulations tailored to merchants and in accordance with Islamic legal principles. Customary practices and the regulatory authority of the head of state have also played a role in the development of commercial law (Cin and Akgündüz 1996, 315). Commercial customs and traditions have been given importance and regulations have been made about those who are engaged in trade. At this point, it is possible to say that Islamic law has been influential in providing modern commercial law with ethical principles such as fulfilling the requirements of the contract, acting in good faith, and various types of companies, as well as in the formation of some concepts of international commercial law that are still in use today (Weeramantny 1988, 1-2).

Islamic commercial law is an economic system that considers sales transactions as lawful or unlawful based on the shariah. In Islamic law, any transaction is permissible/mubah except those prohibited or that contain elements prohibited by Islamic law. By so doing, in this context it qualifies and regulates commercial exchanges as integrally fair and ethical by adopting commercial practices that meet the criteria of traditional ones not in contradiction with Shari'ah and on an incentive-driven basis with an emphasis on innovation and creativity. It strongly emphasizes the consequences of transactions for the contracting parties and for society in general. Islamic commercial law encourages innovation and creativity, enabling individuals to adopt new Sharia-compliant products in commercial transactions (Saleem 2013, 1). The focal point of Islamic commercial law is the prohibition of specific practices deemed harmful to any of the parties, the business itself, or the Muslim community, such as usury, uncertainty in contracts, gambling and games of chance, fraud, bribery, and the misuse of commercial goods. These are also through deceiving and cheating, it is illegal to take anything that does not belong to anyone even their property and the transaction with haram, like this way. Nevertheless, one point of which he should take note is the fact that any transaction which is not explicitly prohibited or contains prohibitable elements is halal. This involves cheating by manipulating the scales and measures, stealing, and transactions of the haram. Still, all costs other than a transaction not in accordance with the Sharia laws or contain prohibited elements are allowed (Saleem 2013, 1).

In the regulations of Islamic law regarding trade, the rules of law are supported by the principles of ethics to a great extent, thus ensuring that trade is realized within the framework of the principles of equity, safety, labor and justice in terms of every element of trade. The fact that the rules of religion, ethics and law in Islamic law cover each other affects the degree of the connection

between commercial ethics and law. In addition, the interconnection between legal validity and moral validity in Islamic law and the existence of the dual sanction mechanism of worldly and ethereal can also be added to the issues affecting the said bond in Islamic law (Atalay 2023, 172).

COMPARATIVE ANALYSIS: ISLAMIC COMMERCIAL LAW AND THE OBJECTIVE SYSTEM

The principles of Islamic law, particularly Islamic commercial law, dictate that everyone should behave in the same way during and after any transaction. This uniformity of treatment is what differentiates Islamic commercial law from the approaches adopted by Western legal regimes (Aziz 2022, 2). In this context, the same can be said of the Mecelle because it is a consolidation of fiqh on muamalat (or transactions) where fiqh is applied in a real-world setting (Naeem 2022, 598).

It is possible to say that the concepts and historical development of the field of commerce and commercial law in Islamic and Turkish law have common features at most points; commercial law, courts and related institutions follow each other, and it is possible to say that there is a common denominator in terms of the content of the subjects. As for the distinction of commercial subjects from each other, the sources of Islamic law do not provide detailed information on this issue; as a result of our reading and research, we have come to the conclusion that the determination and characterization of “merchant”, “artisan” and “person who makes a normal sale without commercial intent” is a customary interpretation. An example of the first point of distinction in customary interpretation can be given as follows; it is seen that the foreign trade factor is an effective factor in the distinction between tradesmen and merchants at the historical level. According to this distinction, a tradesman was engaged in domestic trade on a smaller scale, while a merchant was involved in larger-scale trade. A second distinction is that a merchant, as a party to a sales contract, aims to profit from the exchange, i.e., has a commercial purpose, whether acting directly or through an agent. In contrast, a tradesman, in addition to sales contracts, also focuses on contracts for work, and the remuneration received is for the craftsmanship involved. The artisan aspect is more dominant in tradesmen than the commercial purpose (Atalay 2023, 82).

According to the Islamic theory of contracts, and the Quranic verse (5:1) that mandates the fulfillment of contracts which forms the basis of Islamic commercial law, all subjects involved in commercial activities, including merchants, tradesmen, artisans, and even occasional sellers or buyers, are obligated to adhere to the principles of Islamic law, and consequently, the

rules and principles of commercial morality. In this context, for all individuals engaged in buying and selling, including merchants, tradesmen, artisans, and anyone else who, even incidentally, assumes the role of a seller, or is commonly perceived as such, the general principles of Islamic law of obligations and commercial law, as well as the principles of commercial morality, apply to the contracts they enter into (Atalay 2023, 82).

Unlike Western or Western-style commercial systems, Islamic commercial law places less emphasis on the distinction between transactions and institutions (Foster 2006, 4). Even in the mixed system, commercial law serves to treat the class of merchants separately from the others under commercial law. For example, in this regard, the Turkish Commercial Code presumes that the obligations of merchants are of a commercial nature (6102 SAYILI TÜRK TİCARET KANUNU [TTK] [TURKISH COMMERCIAL CODE], n.d., under 19.1). Islamic law characterizes both commercial and non-commercial law based on their qualitative attributes, namely morality, religious rules, and commercial contracts (Aziz 2022, 2).

On the other hand, Western commercial laws draw a distinction between merchants or commercial enterprises and they apply different rules to them; but Islamic law does not make any such formalistic differentiation between commercial transactions and non-commercial transactions. Rather, the same standards of morality work everywhere from home to worksite. Islamic commercial law in theory is grounded on the same principles to all bodies of transactions--that it is, Islam applies identical rules to everyone without distinction as opposed to profession (Foster 2006, 5). These Islamic moral principles are indeed universal, applicable just as much in the arena of commercial as well as non-commercial activity. Nonetheless, Islamic commercial law and the objective system have a common in that both laws apply the same rules on people who are in similar dealings i.e. these are those who engage in commercial transactions.

Similarities: The Focus on the Transaction

It is possible to say that the concepts and historical development of the field of commerce and commercial law in Islamic and Western law have common features at most points. In the objective system, the primary focus is not on the class of persons but on transactions with certain qualities. Similarly, Islamic commercial law places less emphasis on the distinction between merchants and non-merchants. Accordingly, both systems disregard the pre-existing status of the parties in society and instead focus on the nature of the action.

As noted in recent scholarship, Islamic commercial law applies identical rules to everyone without distinction as opposed to profession, aligning with the objective system's principle of equality (Bahtiyar 2024, 52)

Fundamental Differences: Legal Neutrality vs. Moral Synthesis

On the other hand, a critical examination reveals a fundamental philosophical divergence between the two systems. The objective system is characterized by "legal neutrality," where the law functions as a neutral framework for transactions, regardless of their moral purpose, as long as they are not explicitly illegal. However, Islamic commercial law is characterized by a unique synthesis of law and morality.

In this context, while the objective system may validate a transaction based purely on its form (e.g., a speculative derivative contract), Islamic law evaluates the transaction based on its substance and moral outcome. As a result, it is incorrect to directly compare the legitimacy of Islamic law with that of the objective system. As Aldohni (Aldohni 2022, 415) argues, validity in Islamic commercial law is inextricably linked to moral sanctity; a transaction that is legally sound in form but morally prohibited (haram) in substance is considered void. Consequently, the objective system provides the "form" of the transaction, whereas Islamic law dictates the "substance" through ethical filters.

PRACTICAL IMPLICATIONS FOR MODERN LEGISLATIVE REFORMS

The findings of this comparative analysis have significant implications for modern legislative reforms, legal education, and policy applications. In jurisdictions where Islamic and Western commercial principles coexist, such as Malaysia, it is important to harmonize the "objective" nature of commercial codes with the "moral" imperatives of Islamic law.

First, when it comes to legislative reforms, legislators can take advantage of the effectiveness of the objective system while incorporating Islamic ethical principles to tackle contemporary issues like sustainability. Saiti (Saiti et al. 2025, 45) suggest that the Islamic prohibition of harm (darar) aligns with modern ESG (Environmental, Social, and Governance) criteria. Therefore, it is possible to say that integrating Islamic moral principles into the objective commercial framework can enhance market stability.

Secondly, regarding legal education, the curriculum should move beyond narrowly categorizing systems. Future legal practitioners must be trained to understand both the formal requirements of the objective system and the substantive ethical requirements of Islamic law. Consequently, this dual understanding is essential for drafting contracts that are both legally valid under the commercial code and religiously permissible under Islamic principles (Ercanbrack 2024, 315).

CONCLUSION

Islamic commercial law is a distinct legal framework that is distinguished by its regulations intended to prevent unfair profits, safeguard the parties engaged in business dealings, and demonstrate the crucial relationship between morality and the law. A framework that applies to all transactions is provided by the transactions section and the theory of contracts in Islamic commercial law. Islamic commercial law applies the same commercial law rules to all parties involved in commercial transactions, without making any distinctions. Islamic commercial law ignores the parties' prior social standing because the theory of contracts is applicable to all transactions. Rather, it concentrates on their behaviors and actions, which are fundamentally structurally similar to the objective system.

Whether the actor is an artist, a farmer, or a merchant, commercial law is applicable in the objective system whenever a specified transaction takes place. As a result, both Islamic commercial law and the objective system ignore the parties' social standing in favor of concentrating on their behavior and actions during business dealings. In conclusion, the nature of the transaction takes precedence over the merchant's feudal status in these two systems. Islamic law unifies morality and law to prevent systemic risks like harm (*darar*) and injustice, in contrast to the objective system's purely legalistic and neutral nature.

As a result, the paper comes to the conclusion that, of all the legal frameworks currently in use, the objective system is the most formally compatible with Islamic commercial law; however, in order to address current issues, it needs the ethical substance of the latter. The study also comes to the conclusion that Islamic law, which is based on the unity of morality and law, is distinct from the other three commercial legal systems that distinguish between merchant and commercial transactions. In the end, this study indicates that these conclusions have significant ramifications for mixed jurisdictions in the future. Policymakers and legal educators should strive for a synthesis where

the efficiency of the objective system is guided by the moral principles of Islamic law rather than seeing these systems as antagonistic forces, especially in developing fields like sustainable. In the end, this study indicates that these results have significant ramifications for mixed jurisdictions going forward. Policymakers and legal educators should strive for a synthesis where the efficiency of the objective system is guided by the moral principles of Islamic law, rather than seeing these systems as opposing forces. This is especially important in emerging fields like sustainable finance and digital trade ethics (Saiti et al. 2025, 45).

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