# TRENDS OF DECIDED CASES

Selected reported judgments show an evolution in legal issues—not a proven rise in litigation or Shariah failures.

| | SUPPORTING CASES OR RESEARCH | CRITICAL IMPLICATION |
|---|---|---|
| 1. EARLIER LITIGATION CONCENTRATED HEAVILY ON BBA FINANCING | 63 decided cases from 1987–2018 found that 36 cases, (mostly) involved BBA. | • The earlier case law reflects the products used at the time.<br>• It should not automatically be treated as representative of today's financing structures. |
| 2. APPELLATE COURTS HAVE STRENGTHENED CONTRACTUAL CERTAINTY | BIMB v Lim Kok Hoe & Anor and Other Appeals [2009] 6 MLJ 839, Court of Appeal, rejected equating BBA profit with conventional interest and reversed the challenged High Court approach. | • A general assertion that Islamic financing resembles conventional lending is insufficient.<br>• Challenges require attention to the particular contract, applicable law and supporting evidence. |
| 3. SHARIAH QUESTIONS INCREASINGLY FOLLOW AN INSTITUTIONAL ROUTE THROUGH SAC | Mohd Alias Ibrahim v RHB Bank [2011] 4 CLJ 654; Tan Sri Abdul Khalid Ibrahim v Bank Islam [2013] 4 CLJ 794; and JRI Resources v Kuwait Finance House [2019] 5 CLJ 569 developed and affirmed the statutory framework. | • The central question has become how Shariah issues should be identified and referred, while courts retain responsibility for resolving the dispute through the applicable law and facts. |
| 4. COURTS DISTINGUISH REGULATORY NON-COMPLIANCE FROM AUTOMATIC CONTRACTUAL INVALIDITY | Nuro Dagangan Sdn Bhd v Bank Kerjasama Rakyat Malaysia Bhd [2025] 7 MLJ 1 – the court relied on section 281 IFSA 2013 when rejecting the proposition that non-compliance alone necessarily invalidates the financing. | • A breach and its contractual consequences require separate analysis.<br>• Section 281 is qualified: it does not establish that every defective transaction is enforceable or eliminate other grounds of challenge and regulatory liability. |
| 5. RECOVERY PROCEEDINGS REMAIN AN IMPORTANT SETTING FOR SHARIAH ARGUMENTS | RHB Islamic Bank Bhd v WL Petroleum Sdn Bhd & Ors (2025) – the bank sought summary judgment following default under financing facilities supported by personal guarantees. | • Shariah issues often arise alongside ordinary litigation questions: whether a genuine triable issue exists, what documents prove the debt, and whether guarantees can be enforced.<br>• One judgment does not establish their frequency across the industry. |

SOURCES: AHMAD PAUZI ET AL. (2019); TALIB ET AL. (2023); LIM KOK HOE (2009); JRI (2019); GOLDEN BASE (2021); NURO (2025).

# FROM CONTRACT VALIDITY TO PROOF OF EXECUTION

Selected reported judgments show an evolution in legal issues—not a proven rise in litigation or Shariah failures.

## EVIDENCE SNAPSHOT

**57%**

**36 of 63 analysed cases involved BBA**

1987–2018 selected case sample

## SELECTED BIMB CASES

**16/49** Financing defaults

**8/49** Shariah / contract clarity

*Study samples; not industry-wide rates.*

## LANDMARK JUDGMENTS

**2009** — **Lim Kok Hoe | Court of Appeal**
BBA profit was not simply equivalent to conventional interest; the sale structure matters.

**2019** — **JRI Resources | Federal Court**
SAC ascertains applicable Shariah principles; courts determine the facts and liability (5–4).

**2021** — **Golden Base | Court of Appeal**
Unsupported Murabahah Shariah allegations did not defeat summary judgment.

**2024/25** — **Nuro Dagangan | High Court**
IFSA s.281: statutory contravention alone does not automatically void a contract.

**INSIGHT** **Enforceability does not itself prove that every transaction step was Shariah-compliant.**

# CROSS-BORDER DISPUTES EXPOSE DIFFERENT LEGAL FAULT LINES

Selected English judgments involving international parties illustrate the importance of applicable law and drafting.

01 ENGLAND · 2004

## Beximco v Shamil Bank

**SHARIAH INCORPORATION**

A general Shariah reference did not identify enforceable contractual rules with sufficient precision.

**Specify the standards and terms.**

02 ENGLAND · 2009

## Investment Dar v Blom

**CORPORATE CAPACITY**

Kuwaiti corporate capacity remained a triable issue despite the contract's English governing law.

**Check the law of incorporation.**

03 ENGLAND · 2017

## Dana Gas sukuk dispute

**SPLIT GOVERNING LAWS**

The English-law undertaking was upheld; underlying UAE-law invalidity was assumed, not decided.

**Analyse the full instrument suite.**

**COMPARATIVE REGULATORY MODELS**

**Malaysia · Statutory SAC**

**UAE · Higher Shariah Authority**

**Indonesia · Religious Courts**

Sources: Beximco [2004] EWCA Civ 19; Investment Dar [2009] EWHC 3545 (Ch); Dana Gas [2017] EWHC 2928 (Comm).

# CONTRACTUAL CERTAINTY MUST MEET SHARIAH ACCOUNTABILITY

The next frontier is proving correct execution—and addressing a proven failure without conflating separate legal duties.

## IFSA s.28

**Continuous Shariah compliance**

Notification, cessation and rectification duties apply when triggered.

## IFSA s.281

**No automatic contractual invalidity**

An Act breach alone does not void a contract; liabilities remain.

### WHAT INSTITUTIONS MUST DEMONSTRATE

01 **Correct asset, contract and execution sequencing**

02 **Traceable Shariah decisions and transaction records**

03 **Timely escalation and section 28 response when triggered**

04 **Evidence-based rectification and customer impact assessment**

### THREE KEY QUESTIONS

01 Was non-compliance merely alleged or actually established?

02 Which records prove what occurred in the transaction?

03 **If recovery is enforceable, what remedy addresses a proven failure?**

**THE CORE PRINCIPLE** **An enforceable contract does not, by itself, prove compliant execution.**

Sources: IFSA 2013 ss.28 & 281; CBMA 2009 ss.56–57; BNM Shariah Governance Policy Document 2019; selected cases.

# PERSOALAN UTAMA  DAN AUTORITI PENENTUAN

Bezakan autoriti menentukan hukum dengan autoriti memutuskan pertikaian

| PERSOALAN | | ASPEK PENENTUAN |
|---|---|---|
| Apakah hukum atau syarat Syariah yang terpakai? | → | Penentuan hukum |
| Adakah aset dibeli dan akad dilaksanakan sebagaimana didakwa? | → | Pembuktian fakta |
| Adakah sesuatu pihak melanggar obligasinya? | → | Penentuan pelanggaran |
| Apakah bayaran atau pampasan yang boleh dituntut? | → | Penentuan remedi |

# KEY TAKE-AWAYS

## INTERAKSI UNDANG-UNDANG SIVIL DAN SYARIAH

- Kesan mengikat melalui statut Malaysia vs kesan melalui persetujuan kontrak
- Malaysia menawarkan mekanisme institusi i.e. finality of SAC decision
- Tetapi kebolehgunaannya di luar negara perlu dibuktikan - apakah asas undang-undang untuk mahkamah asing menerima penentuan badan Syariah pilihan pihak-pihak sebagai muktamad?

## SYARIAH PERLU MENJADI ASAS SEPANJANG HAYAT TRANSAKSI

- Kewajipan memelihara pematuhan wajar dinyatakan bagi kedua-dua pihak.
- keperluan Syariah perlu diterjemahkan kepada obligasi kontrak yang jelas, mekanisme penentuan yang berautoriti dan remedi yang boleh dilaksanakan.

## KLAUSA TIDAK MENCABAR ATAS ALASAN SYARIAH MEMERLUKAN IMBANGAN

- Cadangan menghalang penghutang daripada mencabar kontrak atas alasan ketidakpatuhan Syariah mempunyai tujuan komersial yang dapat difahami
- Namun, perlu dibezakan antara cabaran oportunistik dengan aduan berasas tentang ketidakpatuhan sebenar.
- Pengakuan awal bahawa kontrak patuh Syariah perlu disertai mekanisme untuk menyiasat pelanggaran yang ditemui kemudian.