Colon on Choice of Law and Islamic Finance

Julio Colon has posted Choice of Law and Islamic Finance on SSRN.

> *The past decade has seen the rapid growth of Islamic finance on both international and domestic levels. Accompanying that growth is a rise in the number of disputes that implicate Islamic law. This remains true even when the primary law of the contract is that of a common law or civil law country. If judges and lawmakers do not understand the reasoning of Islamic finance professionals in incorporating Shariah law, the result could be precedents and codes that hamper the growth of a multi-trillion dollar industry. This note compares the reasoning of the English court in Shamil Bank v. Beximco Pharmaceuticals to the practice of forums specializing in Islamic finance dispute resolution. The note then addresses other perceived difficulties in applying Islamic law in common law and civil law courts. The practice of Islamic finance alternative dispute resolution (ADR) forums shows a consistent reliance on the use of national laws coupled with Shariah. Also, there are cases showing that U.S. courts and European arbitrators are willing to use Islamic law. Research indicates that the decision in Shamil Bank v. Beximco Pharmaceuticals was not consistent with the intentions of the parties or the commercial goals of Islamic finance. Finally, this note concludes that it is not unreasonable for a Western court to judge a case if the dispute arises out of an Islamic finance agreement.*

The Paper is forthcoming in the *Texas International Law Journal*.