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The long-awaited ruling of the Constitutional Court of Egypt on interest has been issued in a test case brought before that Court by the Rector of the Azhar University. His Eminence the Appellant challenged the constitutionality of Article 226 of the new Egyptian Civil Code for being contrary to the absolute interdiction of interest in the Shari'a. The lower court, by application of that Article, had ordered the Azhar University to pay the principal of a claim amounting to 592 Egyptian pounds plus interest at the rate of 4 per cent up till the date of payment.

However small the amount of money involved in the case, the decision of the Supreme Court of Egypt constitutes a landmark in the ideological controversy going on between liberal and fundamentalist Muslims. The latter deny the validity of all secular legislation adopted by the Ottoman Empire, Egypt, Lebanon, Syria, Libya and Iraq during the last 100 years. The interdiction of interest in Islamic law has been a subject of controversy since the beginning of Islam some 1,400 years ago. Is the Qur'anic prohibition absolute? Does it cover all forms of interest, or does it distinguish between moderate interest and usury? The clash of opinions started shortly after the death of the Prophet, and will continue after the decision of the Supreme Court of Egypt. That decision reserved the question of the legitimacy or illegitimacy of interest and based its findings on a matter of dates. Its ruling rests on the principle of non-retro-activity of laws expressed in Article 2 of the Napoleonic Code and implicit in the new Egyptian Civil Code: "La loi ne dispose que pour l'avenir" (Law provides only for the future). Before the Supreme Court, counsel for the Plaintiff argued that Article 2 of the Egyptian Constitution was amended on 22 May 1980 to read in part as follows: "The principles of the Shari'a are the main source of legislation in the Arab Republic of Egypt . . .". While they differed among themselves in some particulars, the Shari'a jurists were practically unanimous in condemning interest in whatever form and at whatever rate. To quote Al-Moghni by the classical Hanbali jurist Ibn Kodama (Vol. IV of the Beirut edition) at page 122: "Riba (interest) is prohibited by the Book (the Qur'än), the Sunna (the Tradition of the Prophet) and the consensus of the Muslim community."

According to the Plaintiff, the amended text of the Constitution implicitly repealed Article 226 of the Egyptian Civil Code and replaced it by the ruling of the Shari'a on the prohibition of interest. That article of the new Code provides as follows:

If the object of the obligation is a sum of money of a known quantity, and if the debtor is late in

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The Egyptian Civil Code, promulgated by Law No. 131, 1948, became effective from 15 October 1949.
repaying it, then the debtor is obligated to pay the creditor interest at the rate of 4 per cent in civil matters and of 5 per cent in commercial matters by way of compensation for the delay.

Counsel for the Plaintiff argued that this text is contrary to the absolute prohibition of interest.

On the other hand, the Supreme Court reasoned that, since Article 226 was not explicitly abrogated, and since it was in effect as the law of the land at the time of the constitutional amendment of 22 May 1980, it remained in force and was not affected by that amendment. Consequently, whatever the opinion on the total or partial prohibition of interest may be, Article 226 and (by implication) the rest of the new Egyptian Civil Code, still stand, since they cannot be attacked on the ground of infringement of the amended Article 2 of the Constitution. In other words, the amendment does not have a retro-active effect. Furthermore, the Supreme Court argues, the Constitution as amended does not automatically make the Shari'a the law of the land in substitution for the new Egyptian Civil Code and other secular legislation. It merely makes it the main source of future legislative enactments. It is not addressed to the ordinary citizen; its implementation rests with the legislative branch of the government, i.e., the People’s Assembly. Thus, the responsibility for implementing Article 2 of the Constitution as amended is shifted from the judicial to the legislative authority.

However, while the decision of the Supreme Court recognises the authority of the People’s Assembly to enact laws which would make the secular legislation more in harmony with the Shari’a as the main source of legislation, it warns against precipitate action in such a delicate matter. What it prescribes is revision and gradual reform, rather than total and precipitate replacement of the current secular legislation by the Shari’a at the stroke of a pen. While it considers that a revision and a purification of the present system of law to make it more in harmony with the Shari’a is desirable, the Supreme Court recognises the merits of the secular legislation and the necessity of change of law in the Shari’a according to the requirements of time and place. The Supreme Court quotes from the Preparatory Works which preceded the adoption of the amendment of Article 2 of the Constitution, the following significant phrase which deprecates “the change from the present legal system of Egypt which goes back to more than one hundred years and its replacement by a complete system of Islamic law.”

The Supreme Court of Egypt did not add or subtract from the centuries-old arguments on both sides of the substantive law question of interest. Nevertheless, it would not be fair to ignore the great impact of the decision although it is based on a mere legal technicality.

First, it has saved, not merely Article 226, but the entire new Egyptian Code of Professor Sanhouri of which the Article in question is a part. That work has served as a model for the civil codes of Syria, Libya, Kuwait and Iraq.

Second, it has stabilised the secular legislation which was in effect before the constitutional amendment of Article 2 by holding that that Article has no retrospective effect, and that it applies to future and not to past legislation. However,