

REDISTRIBUTIVE PEDAGOGY: A CASE STUDY IN ISLAMIC FINANCE EDUCATION AND STUDENT-CENTERED LEARNING

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INTRODUCTION

The contemporary Islamic finance market has passed through initial developmental stages evidencing its possibility as well as its viability. Before the industry can evidence the next stage, durability, and certainly before it can offer solutions to conventional finance, a number of additional steps must be taken, including regulatory and accounting improvements and a taxation equivalence.¹ This article, however, is focused on another such step, the challenge of Islamic finance education: developing faculty who educate legal practitioners and preparing legal practitioners themselves.²

Islamic finance transactions and products, more often than not, must operate and succeed within a regulatory environment and cultural context dominated by a conventional³ paradigm.⁴ This is certainly so in the U.S., which is not normally considered among the larger markets for Islamic finance, but, as we will show below, has been among the most innovative for this market. Far from a threat to the U.S., Islamic finance has been accommodated

¹ By taxation equivalence we refer to a tax treatment of Islamic structures that is equivalent to their conventional functional analogues. *See generally* Khalil Jarrar, *Taxing Islamic Finance Instruments Under International Law* (March 2012) (unpublished LL.M thesis, Thomas Jefferson School of Law) (on file with Thomas Jefferson School of Law, San Diego).

² Responses to this challenge appear to largely, if not entirely, focus on syllabus and curriculum as well as instructor qualification standards and accreditation, rather than instructional design and learning theory. This is probably so given the early stages of education (particularly professional education) in contemporary Islamic finance practice. *See generally* Ethica Institute of Islamic Finance, *Fiqh or Fiction*, ISLAMIC BUS. & FIN., Mar. 2011, at 18, <http://www.ethicainstitute.com/webinar/Ethica-Fiqh-or-Fiction.pdf> [hereinafter *Fiqh or Fiction*]. *See, e.g.*, M. Ishaq Bhatti, *Human Capital Need in Islamic Finance Education: A Case of Australia*, 2 INT'L J. LEARNING & DEV. 146, 148, 150–51 (2012). The idea of providing some degree of education to Muslim jurists in the expertise of those with whom they closely work, such as investment banking and accounting, has not yet begun to receive significant attention.

³ The term conventional is often used in contemporary Islamic finance to refer to what is not Islamic. In some contexts, the term appears accurately used but can create the assumption that the conventional is in every instance contrary to Islamic norms, which is untrue (at the very least as an assumption). As such, the use of two terms certainly oversimplifies many matters. *See, e.g.*, *Conventional Financing vs. Islamic Finance*, INT'L FIN. MAG. (July 22, 2013), <http://www.internationalfinancemagazine.com/article/Conventional-Financing-Vs-Islamic-Finance.html>.

⁴ *See* Bashar H. Malkawi, *Shari'ah Board in the Governance Structure of Islamic Financial Institutions*, 61 AM. J. COMP. L. 539, 566 (2013).

into the U.S. regulatory framework, has learned from its various institutions and professionals, and may be able to offer to it suggested improvements in finance and law.

The challenge of working within a conventional framework, whether in the U.S. or in Muslim majority nations,⁵ presents an additional troublesome component: Islamic finance practitioners approaching their work from a conventional perspective—whether that be of economics, finance and investment, or law. Indeed, the starting point in the development of an Islamic financial structure is often a conventional design, the economics of which are desired, or, as industry lawyers are well aware, an inappropriate (conventional) written instrument. This is a (non-jurisdiction specific) challenge to the substantive authenticity of Islamic finance, but also reflective of the reality that Islamic finance operates in contexts in which it is very much a stranger.⁶

For the methodological approach in Islamic financial design to shift, practitioners, as well as thinkers, must be educated differently so that they begin to conceptualize in terms permitted, if not encouraged, by Islam.⁷ This shift in approach will likely result from changes in the substance of education, which includes aspects of epistemology, the subjects considered, and the educational method. This article presents a different approach to education, exploring the nexus of technology, theory, and transformation in the design and implementation of a novel online course in Islamic finance and investment law offered at a U.S. law school. What distinguishes this analysis of the methodological shift is that it begins with pedagogy⁸ itself and

⁵ Most Muslim majority nations would be said to employ some aspects of Islamic law along with other laws and methods. See Mohammed Fadel, *Islamic Law and American Law: Between Concordance and Dissonance*, 57 N.Y.L. SCH. L. REV. 231, 232 (2012/2013) (noting that some non-Muslim majority countries such as India and Israel employ components of Islamic law within their legal systems).

⁶ See AAMIR REHMAN, GULF CAPITAL AND ISLAMIC FINANCE: THE RISE OF THE NEW GLOBAL PLAYERS, 115–21 (2010) (discussing challenges of authenticity).

⁷ See *infra* Part VII(A).

⁸ We are aware that there is a scholarship in education that distinguishes pedagogy, teaching and learning concerning children, from andragogy, teaching and learning concerning adults, however, we have chosen to use the term “pedagogy.” Because most faculty, both within and outside of a collegiate school of education, use the term to refer to designed instruction for either children or adults, we rationalized that introducing new jargon, while factually more precise, was unnecessary given the familiarity with and use of “pedagogy” as mainstream. See, e.g., Brian L. Delahaye et al., *The Relationship Between Andragogical and Pedagogical Orientations and the Implications for Adult*

instructor approach. As discussed below in detail, pedagogy is itself undergoing a shift in the United States and elsewhere,⁹ evolving from faculty-centered, student-passive learning to student-centered active learning. It is this shift that can assist in the preparation of legal, and perhaps other, practitioners of Islamic finance.

Many studies of education continue to compare online with face-to-face learning.¹⁰ For the most part, these have shown that online learning can be as good as face-to-face,¹¹ although research results continue to be uneven.¹² While it may be true that technology has indeed significantly increased access, convenience, and capability comparatively to traditional physical classrooms, the tentative conclusion that face-to-face and online modules are equally 'good' is no surprise if one considers that the core design

Learning, 44 ADULT EDUC. Q. 187 (1994).

⁹ A few references that point to the consideration of student-centered or active learning in countries outside of the United States include: an examination of the concept, Geraldine O'Neill & Tim McMahon, *Student-Centered Learning: What Does It Mean for Students and Lecturers?*, in EMERGING ISSUES IN THE PRACTICE OF UNIVERSITY LEARNING AND TEACHING 27 (Geraldine O'Neill et al., eds. 2005); developments, Marie-Luce Paris & Larry Donnelly, *Legal Education in Ireland: A Paradigm Shift to the Practical?*, 11 GERMAN L.J. 1067, 1067–69 (2010) (noting Ireland's evolving shift to student-centered learning in legal education); designing for it, Nitzza Davidovitch, *Learning-Centered Teaching and Backward Course Design—From Transferring Knowledge to Teaching Skills*, 9 J. INT'L EDUC. RES. 329, 331 (2013); assessing for it, GRAHAM GIBBS, ASSESSING STUDENT CENTRED COURSES 1 (1995) (noting the United Kingdom's evolving shift to student-centered learning); the students' perspective, Susan J. Lea et al., *Higher Education Students' Attitudes to Student-Centred Learning: Beyond 'Educational Bulimia'?*, 28 STUD. HIGHER EDUC. 321 (2003); the subject of an experiment, Kirsti Lonka & Kirsi Ahola, *Activating Instruction: How to Foster Study and Thinking Skills in Higher Education*, X EUROPEAN J. PSYCHOL. EDUC. 351 (1995); as a priority in an effort to harmonize higher education across transnational borders, see, e.g., Welcome to the EHEA Official Website!, EHEA, <http://www.ehea.info/> (last visited Mar. 24, 2014); introduction, EHEA, <http://www.ehea.info/article-details.aspx?ArticleId=11> (last visited Mar. 24, 2014) (noting the transnational priorities of student-centered learning under a governing union).

¹⁰ See, e.g., Mickey Shachar & Yoram Neumann, *Twenty Years of Research on the Academic Performance Differences Between Traditional and Distance Learning: Summative Meta-Analysis and Trend Examination*, 6 MERLOT J. ONLINE LEARNING & TEACHING 318 (2010).

¹¹ William G. Bowen et al., *Interactive Learning Online at Public Universities: Evidence from Randomized Trials* (May 22, 2012), <http://www.sr.ithaka.org/research-publications/interactive-learning-online-public-universities-evidence-randomized-trials>.

¹² BARBARA MEANS ET AL., U.S. DEP'T OF EDUC., EVALUATION OF EVIDENCE-BASED PRACTICES IN ONLINE LEARNING: A META-ANALYSIS AND REVIEW OF ONLINE LEARNING STUDIES xviii (2010).

of online courses remains nearly identical with face-to-face.¹³ The latter have simply been digitized for the online medium.

Yet, the status quo of designed instruction is increasingly challenged. Although online learning, Massive Open Online Courses (MOOC's)¹⁴, and for-profits have been subjected to significant criticism for being sub-par, the crux of the criticism is always underscored as of pedagogy and design.¹⁵ Response to the criticism is resulting in a shift from faculty-centered teaching to student-centered learning.¹⁶ In the subject course discussed below, design began with an instructor mentoring process itself immersed in this learner-centered approach. Employing this approach to develop faculty succeeds in preparing instructors to teach in a traditional physical classroom or, with some minor adjustments, in an online setting. The effect in this instance was to imbue and transform the instructor and his approach with both conceptual and technical skills.¹⁷

The law school course, which is the case study presented here, stands among a number of Islamic financial innovations in the U.S. Prior innovations brought together U.S. federal and state laws with Islamic legal-ethical business norms as well as varying business practices and communities, demonstrating their concordance and ability to work together productively. Far from posing any harm to the U.S. legal framework and financial markets, Islamic finance should be treated equally and accommodated without imposing any fundamental regulatory changes. Towards this end we aim to examine how pedagogy relates to learning and developing in learners the desired knowledge, ethics, and practical skill set.¹⁸ Using a course in

¹³ Scott D. Johnson et. al., *Comparative Analysis of Learner Satisfaction and Learning Outcomes in Online and Face-to-Face Learning Environments*, 11 J. INTERACTIVE LEARNING RES. 29, 40-41 (2000).

¹⁴ Kirk Carapezza, *Queen Rania Visits Cambridge, Gives Online Courses a Boost in Middle East*, WGBHNEWS.ORG (Dec. 10, 2013, 8:11 AM), <http://wgbhnews.org/post/queen-rania-visits-cambridge-gives-online-courses-boost-middle-east>.

¹⁵ See Beth Rubin, *The Real Trouble with Online Higher Ed.*, THE HUFFINGTON POST, (Feb. 4, 2013 12:45 PM), http://www.huffingtonpost.com/beth-rubin/online-classes-higher-education_b_2616446.html.

¹⁶ Clayton M. Christensen, *Online Learning for Student-Centered Innovation*, DESERET NEWS (Mar. 8, 2011, 12:00 AM), <http://www.deseretnews.com/article/print/700116326/Online-learning-for-student-centered-innovation.html>.

¹⁷ See *infra* Part IX.

¹⁸ See Bhatti, *supra* note 2, at 146, 148 (providing case study in education in Islamic finance at LaTrobe University in Melbourne, Australia, which does not

Islamic transactional law developed at the University of Connecticut School of Law as a case study, we demonstrate that developing faculty and educating Islamic legal practitioners with a learner-centric approach will deeply solidify a trajectory of measurable growth and quality for the Islamic financial industry, noticeably more so than a typical survey class.

I. ISLAMIC FINANCE: A BRIEF INTRODUCTION

It may be helpful to understand Islamic finance as a form of socially responsible investing (SRI), as the two share a number of similarities.¹⁹ Both, for example, are initiatives driven by private sector conscience and place limits upon the profit motive in an effort to achieve a good.²⁰ Despite these similarities, joint initiatives between the two seem almost nonexistent, and the two appear to have not yet properly opened channels for

delve in detail into the subject of instructional design or learning theory).

¹⁹ One cannot properly understand Islamic finance without first grasping, at least at a basic level, Islamic law and jurisprudence. The *Shari'ah* frequently, but incompletely, translated as "Islamic law" constitutes the interaction of beliefs, values, and legal guidelines designed to maintain a proper balance between the spiritual and temporal components of existence in this world and the Hereafter. The primary sources of the *Shari'ah* are the *Qur'an*, the *Sunnah*, and the rules contained therein. For Muslims, the *Qur'an* is "the book containing the speech of God revealed to the Prophet Muhammad," peace be upon him. MOHAMMAD HASHIM KAMALI, PRINCIPLES OF ISLAMIC JURISPRUDENCE 16 (3rd ed. 2003). The word *Sunnah* "in its juristic usage . . . refers to the normative practice set up by the Prophet of Islam as a model; his sayings, doings, and tacit approvals which were later established as legally binding precedents in addition to the law established by the *Qur'an*." MICHAEL MUMISA, ISLAMIC LAW: THEORY & INTERPRETATION 56 (2002). Detailed practical laws are derived by the application of methods of reasoning and rules of interpretation applied to the texts of the *Shari'ah*. The result of this interpretive process is known as *fiqh*, a term the author has chosen to translate as "Islamic law." On Islamic jurisprudence generally, see ARON ZYZOW, THE ECONOMY OF CERTAINTY: AN INTRODUCTION TO THE TYPOLOGY OF ISLAMIC LEGAL THEORY xxiii (2012). Securing benefit and preventing harm in this life and in connection with the Hereafter are the most important considerations (*maslahah*) of Islamic law. In order for any rule of Islamic law to be valid and applicable, it must not, among other things, violate the ultimate intent and purpose of the *Shari'ah*. KAMALI, *supra* note 19, at 251.

²⁰ Dana Brakman Reiser & Steven A. Dean, *Hunting Stag with Fly Paper: A Hybrid Financial Instrument for Social Enterprise*, 54 B.C. L. Rev. 1495, 1500-01 (noting, "[s]ocial enterprise appears to be a growing trend. Efforts to blend business and philanthropy are widely reported in the media. Conferences, blogs, trade associations, and consultancies dedicated to the subject continue to spring up. Top business schools are even creating programs devoted specifically to the study of social enterprise."). See also Usman Hayat, *Islamic Finance and Socially Responsible Investing*, CFA INSTIT. MAG., Mar./Apr. 2013, at 8.

communication.²¹ Like SRI, Islamic finance sets forth criteria to determine what is an ethical target for capital.²² Industries such as pornography and gambling are thereby prohibited under Islamic law.²³ Unlike SRI, however, Islamic financial law also sets forth procedural principles governing how capital is provided.²⁴ By these principles, interest in a loan transaction is prohibited as *riba*, perhaps the most conspicuous principle of Islamic finance.²⁵

While a complete introduction to the principles and practice²⁶ of Islamic finance is beyond the purview of this article, it is relevant to our purposes to discuss another feature of contemporary Islamic finance that distinguishes it from SRI. Contemporary Islamic finance utilizes Muslim legal scholars in a critical compliance-like function, determining for the sponsoring institution what is ethical or “Islamic.”²⁷ These jurists are

²¹ Hayat, *supra* note 20, at 8. See, e.g., THOMAS A. MEYERS & ELHAM HASSANZADEH, INT’L INST. FOR SUSTAINABLE DEV., THE INTERCONNECTIONS BETWEEN ISLAMIC FINANCE AND SUSTAINABLE FINANCE 1 (July 2013) (as an early example of communication between the two).

²² To date, Islamic finance employs negative screens, filtering out what it deems objectionable, whereas SRI includes negative, as well as positive screens. The latter seeks out investments that not only avoid the harmful, but that seek or demonstrate positive impact. See, e.g., Irfan Ahmed, Incorporating Socially Responsible Investing in Islamic Equity Investments (Aug. 6, 2009) (unpublished thesis, Cass Business School, London) (on file with the author); Salma Sairally, *Evaluating the ‘Social Responsibility’ of Islamic Finance: Learning From the Experiences of Socially Responsible Funds*, in ADVANCES IN ISLAMIC ECONOMICS & FINANCE: VOLUME 1 293, 294 (Munawar Iqbal, et al. eds., 2007).

²³ Umar F. Moghul, *Introduction to Islamic Finance*, COMMUNITIES & BANKING 11, 10 (2006).

²⁴ See ZAMIR IQBAL & ABBAS MIRAKHOR, AN INTRODUCTION TO ISLAMIC FINANCE: THEORY AND PRACTICE 53 (2007).

²⁵ Umar F. Moghul, *No Pain, No Gain: The State of the Industry in Light of an American Islamic Private Equity Transaction*, 7 CHI. J. INT’L L. 469, 480 (2007) (explaining, “[p]erhaps the most well-known principle of Islamic finance is its prohibition of *riba*, which in its most common contemporary understanding, is said to include interest on a loan. One reason advanced for this is that the *Shari’ah* countenances lending money as a charitable activity and not as a profit-making venture. The prohibition of *riba* also applies to trading that involves certain other commodities, such as certain foodstuffs, gold, and silver. When these commodities are traded, the trades must be made in equal measure and without deferment. As can be expected, *riba* presents many other complexities and subtleties for financial transactions.”).

²⁶ Estimates of the size of the Islamic finance industry vary from around \$1.3 trillion assets under management. See DINARSTANDARD & THOMSON REUTERS, STATE OF THE GLOBAL ISLAMIC ECONOMY: 2013 REPORT (2013).

²⁷ Bashar H. Malkawi, *Shari’ah Board in the Governance Structure of Islamic Financial Institutions*, 61 AM. J. COMP. L. 539, 545, 548 (2013) (“[T]he integrity

employed²⁸ by the sponsor financial institution to review product or transaction legalities and documentation on behalf of the Islamic financial institution.²⁹ They provide guidance and feedback, often in very detailed form by, for example, revising a contract clause and ultimately rendering an opinion, or *fatwa*,³⁰ assessing the subject matter in light of Islam's ethical-legal norms.³¹ Trained and educated in Islamic law and perhaps related disciplines as well, these jurists work closely with lawyers, bankers, accountants, and others generally not educated in Islamic disciplines.³²

II. AMERICAN ISLAMIC FINANCE

Although its theoretical roots are in Islamic legal norms developed several centuries earlier, the history of contemporary Islamic finance is quite brief; its history in the U.S. is even shorter.³³ Yet, the various social factors that have driven its

of [Islamic Financial Institutions] greatly depends on the status of *Shari'ah* compliance, its impact of products, professional competence, and behavior towards, and observance of, *Shari'ah* norms. The *Shari'ah* board thus plays a fundamental role in ensuring and enhancing the credibility of [Islamic Financial Institutions].”).

²⁸ The *Shari'ah* advisory function is often done in-house; that is to say, as an employee(s) of the financial institution. At times, third-party firms provide this function on a consultancy type basis. *See id.* at 552–54.

²⁹ *See id.* at 539.

³⁰ A *fatwa* is perhaps generally best understood as a non-binding advisory opinion. Muhammad Khalid Masud et al., *Muftis, Fatwas, and Islamic Legal Interpretation*, in *ISLAMIC LEGAL INTERPRETATION: MUFTIS AND THEIR FATWAS* (Muhammad Khalid Masud et al., eds., 1996). It is generally understood that an Islamic financial institution obtaining a *fatwa* for a product is bound by that *fatwa* as a matter of self-governance though it is not clear if that is absolutely the case, particularly if the one issuing the *fatwa* is an employee of the institution. It may very well be that an institution could seek out another *fatwa* reaching a different but desirable conclusion or that a stakeholder could seek to have the *fatwa* reviewed by a higher body if the jurisdiction in question has such a structure. BERNARD WEISS, *THE SPIRIT OF ISLAMIC LAW* 129 (1998).

³¹ Islam generally assesses actions into five legal-moral categories. Actions may be required or prohibited, recommended or disapproved, and finally, permitted. Islamic law divides law into two broad categories: (i) relating to actions between humans and God, and (ii) between and among humans. In the latter category, the presumption is that an act is permitted unless there is proof to the contrary. For an overview of these categories, *see* WEISS, *supra* note 30, at 18–19, 33.

³² As Mr. Moghul's legal practice has progressed over time he has begun to witness persons with formal education in Islamic law as well as another field, such as law.

³³ Shirley Chiu & Robin Newberger, *Islamic Finance: Meeting Financial*

establishment in the U.S. appear to be quite similar to those in Muslim nations despite the very different contexts.³⁴ Responding to their faith first and foremost, and then recognizing the significant market potential, American Muslims over the past three decades have addressed their own demand for Islamic products.³⁵ They have done so generally without relying on foreign institutional capital or involvement.³⁶ These efforts have largely been pointed towards home³⁷ and automobile financing, and then to investment vehicles³⁸ and banking.³⁹ “With the

Needs with Faith Based Products, PROFITWISE NEWS & VIEWS, Feb. 2006 at 8. See also Kathleen Caulderwood, *Could Shariah-Compliant Banking Change the Finance World this Year*, INT’L BUS. TIMES (Feb. 7, 2014, 4:26 PM), <http://www.ibtimes.com/could-shariah-compliant-banking-change-finance-world-year-1554059>; Umar F. Moghul, *Muslim Momentum: Successful Drivers for Islamic Finance in the U.S.*, BUS. ISLAMICA, June 2008, at 35 (hereinafter *Successful Drivers*).

³⁴ Chiu, *supra* note 33, at 13.

³⁵ *Id.* at 8.

³⁶ *Id.* at 8–9.

³⁷ *Id.* at 9–11 (The article lists Guidance Financial Group and University Islamic Financial Corporation, a subsidiary of University Bank as Islamic finance providers). Some of the legal structures employed for home financing are more complex in conventional finance than in many Muslim majority nations. Home financing products in Muslim countries often include *murabahah*. See Mohammed Aly Sergie, *The Rise of Islamic Finance*, COUNCIL ON FOREIGN REL. (Jan. 20, 2014), http://www.cfr.org/economics/rise-islamic-finance/p32305?cid=rss-fullfeed-the_rise_of_islamic_finance-013014; Salah El-Sheikh, *The Moral Economy of Classical Islam: A FiqhiConomic Model*, 98 THE MUSLIM WORLD 116, 130 (2008) (“[O]nly a minor part of [Islamic banks’] lending activity is [profit and sharing] based. The reason hinges essentially on the classical jurists’ problem of *gharar*, the information and agency problems which modern economists call principal-agent problems, moral hazard, and adverse selection, among others.”). See also *infra* section III.

³⁸ Chiu, *supra* note 33, at 9 (“U.S. financial institutions that offer Islamic finance products typically offer *Murabaha*, *Ijara*, and *Musharaka* financing for purchasing homes, cars, and small businesses.”). See, e.g., David K. Randall, *Islamic Fund Star*, FORBES, (Jan. 21, 2010, 1:40 pm), <http://www.forbes.com/forbes/2010/0208/investing-mutual-funds-amana-trust-islamic-profit-principle.html>. See also Victoria Lynn Zyp, *Islamic Finance in the United States: Product Development and Regulatory Adoption* 1, 9–11 (April 21, 2009) (unpublished Masters of Arts in Arab Studies thesis, Georgetown University) (on file with the author).

³⁹ Michigan-based University Islamic Financial Corporation currently lays claim to having the first wholly-devoted unit to Islamic banking, offering home financing and deposit products and is expanding its operations. But, it is not licensed as a bank as it is a subsidiary of a licensed entity. UIF, *About Us*, MYUIF.COM, <http://www.myuif.com/about-us/> (last visited Feb. 20, 2014). Chicago-based Devon Bank also offers mortgage and business financing as well as lines of credit on an Islamic basis. Zyp, *supra* note 38, at 36. See also *id.* at 18 (stating that “[i]n order for the [deposit] product to qualify as a deposit under banking regulations and to carry FDIC protection, the principal deposited by the

passage of time and the maturation of this demographic, these efforts have increased and gained not only in momentum but in capability and sophistication as well.”⁴⁰ The subject of establishing an Islamic bank within the U.S. has been discussed among practitioners and regulators for some time but without a resulting independent wholly Islamic bank as of yet.⁴¹ Islamic insurance, it should also be mentioned, first appeared in the U.S. during the 1990s and then disappeared for quite some time until the fairly recent availability of a residential property product.⁴²

If the American Muslim-originated market of Islamic finance is termed the retail side of American Islamic finance, then we may understand its other segment as its wholesale component. “[T]he bulk of Islamic financial activity [in the U.S.] comes from . . . foreign institutions transacting for [their own account] and [that of] their non-U.S. investors.”⁴³ These institutions are usually investment banks, private and some public investment companies, family offices, and, on rare occasion, sovereign entities.⁴⁴ They structure investment opportunities in real estate projects⁴⁵ and also make a variety of private equity investments

customer cannot be at risk; so the product shares in bank profits but not in losses The FDIC has approved this product for protection, because it is again a ‘functional equivalent’ to deposits already allowed under their regulation. John Stevens, FDIC chief counsel for the Chicago regional office, explained that banks are allowed to set their rate of return on deposits wherever the bank chooses; if it sets that rate of return based on profits from a certain portfolio, that is the prerogative of the bank.”)

⁴⁰ Successful Drivers, *supra* note 33, at 35.

⁴¹ Chiu, *supra* note 33, at 8–9; Successful Drivers, *supra* note 33, at 36. Significant efforts were made in the early 1990s towards an Islamic bank that met with quite a bit of success at the state and federal regulatory levels in gaining governmental acquiescence. See Successful Drivers, *supra* note 33, at 35.

⁴² See, e.g., ZAYAN TAKAFUL, *Your Partner in Shari’ah Complaint Insurance Products*, ZAYANTAKAFUL, <http://www.zayantakaful.com/products.php> (last visited Feb. 20, 2014) (presenting a home property product to the U.S. market).

⁴³ Moghul, *supra* note 23, at 13.

⁴⁴ See generally Samir Srairi, *Ownership Structure and Risk-Taking Behavior in Conventional and Islamic Banks: Evidence for MENA Countries*, 13 BORSA ISTANBUL R. 115, 116, 119 (2013).

⁴⁵ See generally Michael J.T. McMillen, *Sequelae of the Dow Jones Fatwa and Evolution in Islamic Finance: The Real Estate Investment Example*, NEW HORIZON-INST. OF ISLAMIC BANKING & INS., May 31, 2013. Such investments, in Mr. Moghul’s experience, are largely in commercial real property. Typical examples include student housing, multifamily complexes, medical office complexes, and warehouse distribution facilities. These typically present far fewer concerns from an Islamic perspective than commercial properties in which there may be problematic tenants, such as a (conventional) mortgage company or bank.

in various sectors including healthcare, energy, and retail businesses as single, one-off transactions, or arranged as collective investment vehicles.⁴⁶ In our experience and observation, such transactions often involve partnering with a capable U.S.-based party to provide on-the-ground expertise and access and often involve obtaining financing from U.S.-based lenders.⁴⁷

U.S. courts have adjudicated disputes within Islamic financing transactions in light of U.S. laws. These judgments (and other judgments from non-Muslim majority jurisdictions⁴⁸) have aided the nascent industry tremendously in understanding how transactions will likely be examined by the legal context in which they take place. Accordingly, they are precedents with an international impact. For American Muslims, a number of foreclosure proceedings have arisen in the recent credit crisis in which courts have generally treated the Islamic residential mortgages as their functional analogues: conventional secured mortgage financings.⁴⁹ Another example is *In Re East Cameron Partners*, which represents one of the first instances of an Islamic finance instrument in bankruptcy (and the first *sukuk*⁵⁰ issued

⁴⁶ ABDI SHAYESTEH, ISLAMIC BANKS IN THE UNITED STATES: BREAKING THROUGH THE BARRIERS 1, 4 (2009); Sergie, *supra* note 37.

⁴⁷ Overlap between the retail and wholesale segments is rare. See, e.g., Joanna Slater & Kate Haywood, *GE Capital Enters Sukuk Market*, WALL ST. J., Nov. 20, 2009, <http://online.wsj.com/news/articles/SB10001424052748704204204574545530119764754>. See *supra* note 39; *infra* note 60 and accompanying text (discussing the home financing product of United Bank of Kuwait in various states in the U.S.). HSBC also offered an Islamic home finance product in the State of New York for a brief period of time. See Tariq Al-Rifai, *Creating Financial Solutions for American Muslims: HBSC's Experience in the United States*, CENTER FOR MIDDLE EASTERN STUDIES, HARV. UNIV. (2000).

⁴⁸ See, e.g., *Shamil Bank of Bahrain EC v. Beximco Pharmaceuticals Ltd.*, [2004] EWCA (Civ) 19, [1, 3, 27, 55], [2004] 1 W.L.R. 1784 (Eng.); *Islamic Investment Company of the Gulf (Bahamas) Ltd. v. Symphony Gems N.V. & Ors*, [2001] Folio 1226, Q.B. (Comm. Ct.)(Eng.). See generally Kilian Balz, *Islamic Finance for European Muslims: The Diversity Management of Shari'ah-Compliant Transactions*, 7 CHI. J. INT'L L. 551 (2007); Kilian Balz, *Islamic Financing Transaction in European Courts*, in ISLAMIC FINANCE: CURRENT LEGAL AND REGULATORY ISSUES 61, 75 (for a discussion of Islamic finance in Europe).

⁴⁹ Keith Varian & Jennifer Rockwell, *Islamic Financing and Foreclosure*, 34 REAL EST. ISSUES 31, 31, 36–37 (2009).

⁵⁰ Often translated, or referred to, as 'Islamic bonds', *sukuk* are better understood as participation certificates creating a participation in a business or asset securitization. The former are based upon the credit of a business entity and the latter on a designated asset. See Michael J.T. McMillen, *Sukuk and the Islamic Capital Markets*, in CONTEMPORARY ISLAMIC FINANCE: INNOVATIONS, APPLICATIONS, AND BEST PRACTICES 165, 165–66 (Karen Hunt-Ahmed ed., 2013),

from the U.S.).⁵¹ While not deciding matters of Islamic finance per se, other judgments have important implications for Islamic finance globally—and Islam in America.⁵²

There are, in addition, a number of regulatory successes in the U.S. accommodating Islamic finance within the existing regulatory framework.⁵³ These include the New York State Banking Department's approval of Islamic residential mortgage financing structures, the Board of Governors of the Federal Reserve's decision to allow U.S. financial institutions to engage in Islamic transactions in certain countries, and New York Department of Taxation and Finance issuing a ruling eliminating the additional tax that might otherwise result from a home

for a primer on this subject. See also *Definition of Sukuk (Islamic bonds)*, *Financial Times Lexicon*, [http://lexicon.ft.com/Term?term=sukuk-\(Islamic-bonds\)](http://lexicon.ft.com/Term?term=sukuk-(Islamic-bonds)) (last visited Mar. 29, 2014).

⁵¹ This transaction involved the securitization of certain oil-related royalties. In the course of the proceedings, the originator, which had filed for bankruptcy, argued that the *sukuk* transaction was, in fact, a secured loan in disguised form, while investors or *sukuk* buyers argued for their interest in the assets themselves given the true sale and Islamic structure. "Resolution of this issue was crucial from both a U.S. bankruptcy law and a *Shari'ah* perspective. For bankruptcy purposes, if the transaction was deemed a true sale, the *sukuk* certificate holders would have the sole proprietary rights to the underlying royalty interests, like owners. However, if the transaction was deemed a secured loan, then the *sukuk* certificate holders would only have contractual rights to the assets, putting them in the same position as Western bondholders, and they would have to take their place in line with the other creditors." Matthew Graham, Comment, *Islamic Finance and the United States Bankruptcy Courts: The Future of Sukuk Certificate Holders' Rights and the Importance of Considering Shari'ah Precepts in the Bankruptcy Process*, 20 TUL. J. INT'L & COMP. L. 327, 338, 340. The court ruled in favor of the *sukuk* holder. In re E. Cameron Partners, L.P., No. 08-51207, 2008 Bankr. LEXIS 3918 (Bankr. W.D. La. Dec. 12, 2008).

⁵² In the case of Kevin J. Murray v. Henry M. Paulson Jr. in the United States District Court for the Eastern District, the petitioner challenged the validity of the government's bailout to American International Group (AIG) on the grounds of violating the Establishment Clause of the First Amendment to the United States Constitution given AIG's involvement in the contemporary Islamic finance industry. According to the lawsuit, the government's aid to AIG was supportive of religious indoctrination through the funding and promotion of Islamic finance and destruction of Western civilization and the United States. Complaint at 2, 9, 15-16, Murray v. Paulson, No. 2:08-cv-15147 (E.D. Mich. Dec. 15, 2008). Ultimately, a court ruled in favor of the federal government. See Zulkifli Hasan & Mehmet Asutay, *An Analysis of the Courts' Decisions on Islamic Finance Disputes*, 3 ISRA INT'L J. ISLAMIC FIN. 41, 59-61, (2011) for a discussion of this and other cases.

⁵³ See, e.g., *Regulating Islamic Finance in the USA*, in GLOBAL ISLAMIC FIN. REP. 191 (Humayon Dar & Mufti Talha Ahmad Azami eds., 2011).

financing structure.⁵⁴ U.S. laws have also been used in Islamic transactions, such as *sukuk* issuances relying on Rule 144A, adopted in the U.S. in 1990,⁵⁵ as well as the Islamic derivatives contract launched by the International Swaps and Derivatives Association (ISDA) with Bahrain-based International Islamic Financial Market (focusing on profit ratio and currency swaps).⁵⁶ We discuss below in detail three other instances of innovation and accomplishment to further augment our contention regarding the importance of the U.S. to Islamic finance.

III.OCC ISLAMIC FINANCE ADVISORY

The Office of the Comptroller of the Currency (OCC) has put forth two advisory letters informing how banks may lawfully enter into Islamic transactions without running afoul of bank regulations.⁵⁷ Both letters came in reply to inquiries by United Bank of Kuwait in 1997 and 1999 pertaining to proposed *murabahah*-⁵⁸ and *ijarah*-⁵⁹ based mortgage financings of homes.⁶⁰ In addition to enabling home financing for Islamic citizens residing in the U.S., the OCC provided the legal basis to potentially support other asset financing, including acquisition and refinancing of commercial property, leveraged buyouts, and

⁵⁴ *Id.* at 194.

⁵⁵ Private Resales of Securities to Institutions, 17 C.F.R. § 230.144A (2013); Bryant Edwards, et al., *Sukuk: A Year in Review*, ASIAN-MENA COUNSEL, 2013, at 34.

⁵⁶ See News Release, Int'l Swaps and Derivatives Ass'n, Inc., IIFM and ISDA Launch Mubadalatul Arbaah (MA) Profit Rate Swap (PRS) Product Standard (Mar. 27, 2012), available at <http://www2.isda.org/news/iifm-and-isda-launch-mubadalatul-arbaah-ma-profit-rate-swap-prs-product-standard>.

⁵⁷ Interpretive Letter #806 from Jonathan H. Rushdoony, Dist. Counsel, Comptroller of the Currency, to Steven T. Thomas, General Manager, United Bank of Kuwait (Dec. 1997), <http://www.occ.gov/static/interpretations-and-precedents/dec97/int806.pdf>; Interpretive Letter #867 from Johnathan H. Rushdoony, Dist. Counsel, Comptroller of the Currency (Nov. 1999), <http://www.occ.gov/static/interpretations-and-precedents/nov99/int867.pdf> (regarding *murabaha*).

⁵⁸ See generally MUHAMMAD AYUB, UNDERSTANDING ISLAMIC FINANCE 213–40 (2007) (for further discussion of the contemporary mechanism of *murabaha* or cost plus mark-up sale).

⁵⁹ See generally *id.* at 279–305 (for further discussion of the contemporary mechanism of *ijarah* or lease-based financing).

⁶⁰ See Zyp, *supra* note 38, at 10 (Mr. Thomas of the United Bank of Kuwait, which applied for guidance from the OCC, stated, “[t]he pioneering regulatory interpretations obtained by the United Bank of Kuwait have begun to open both the door to scalable funding for Islamic finance in America, the development of securitization, including participation by government sponsored entities.”).

working capital facilities.⁶¹ For our purposes, details of the legal arguments employed by the OCC are not relevant. What is germane is that these letters are significant developments for Islamic finance that took place in the U.S. which have allowed Islamic laws to operate within the U.S. market, so long as certain conditions that subject Islamic law to prevailing banking regulations and other related laws are met.

IV.A LANDMARK *FATWA*

Another one of the most important developments for contemporary Islamic finance also comes from the United States—the issuance of a *fatwa* by the Dow Jones Islamic Market Indexes' *Shari'ah* board (the “DJIM *Fatwa*”). Issued in 1998, the DJIM *Fatwa* addressed the question of whether an Islamic investor may make non-controlling investments in the publicly traded equity of an entity that is engaged in unacceptable business activity under Islamic norms.⁶² The *fatwa* opines that non-controlling public equity investing under the *Shari'ah* is permitted on a conditional basis.⁶³ The DJIM *Fatwa* constructed limited allowances otherwise impermissible under Islamic law⁶⁴ and requires that income generated from such ventures must be donated to charity.⁶⁵ Reaching this conclusion led to the establishment of Islamic indices by others such as FTSE, MSCI, and Standard & Poor's (S&P).⁶⁶ These allowances have been

⁶¹ *Id.* at 29–31.

⁶² Michael McMillen, *Islamic Capital Markets: A Selective Introduction*, WHO'S WHO LEGAL (July 2013), <http://whoswholegal.com/news/features/article/30640/islamic-capital-markets-selective-introduction>.

⁶³ *Id.* (“[This] *fatwa* may be the most influential *fatwa* issued in the history of modern Islamic finance and is one of seven critical factors enabling the growth of modern Islamic finance”).

⁶⁴ This is not to say that the DJIM *Fatwa* innovated the jurisprudential arguments employed therein. The DJIM *Fatwa* allowances include (i) certain non-impermissible business activities so long as they are not “core”; (ii) the receipt and, or payment of *riba* so long as certain specified ratios relating to debt to market capitalization, cash and marketable securities to market capitalization, and accounts receivable to market capitalization, do not exceed thirty-three percent. McMillen, *supra* note 62; S & P DOW JONES INDICES, GUIDE TO THE DOW JONES ISLAMIC MARKET™ INDICES 5 (2012).

⁶⁵ McMillen, *supra* note 62. See also Sina Ali Muscati, *Late Payment in Islamic Finance*, 6 UCLA J. ISLAMIC & NEAR E. L. 47, 58 (2007).

⁶⁶ DOW JONES INDEXES, METHODOLOGY MAP: ISLAMIC INDEXES (2011), http://www.djindexes.com/mdsidx/downloads/analytics_and_research/Methodology_Map_Islamic_Indexes.pdf.

applied in other sectors, such as real estate and private equity,⁶⁷ and have resulted in an expansion of the industry's breadth and activity.⁶⁸ For purposes of this article, we are interested in this *fatwa* because it demonstrates the flexibility and practicality of Islamic law and ethics in accommodating market realities rather than imposing itself upon its adherents or others.

V.A NEW YORK *SUKUK*?

State Senator Kevin Parker proposed legislation in the New York State Senate which would allow for the creation of an investment vehicle termed an Alternative Finance Investment Bond ("AFIB"), which is defined similarly to an Islamic *sukuk* instrument.⁶⁹ "[T]he proposed legislation calls for the AFIB to be 'regulated in a manner consistent with traditional bonds and other debt instruments.'⁷⁰ Per the proposed legislation, an AFIB agreement is to specify that "the amount of the additional payments does not exceed an amount which would be a reasonable commercial return on a loan of the capital."⁷¹ Although in this instance it appears we find a proposed new law specific to Islamic finance, this is actually a case of accommodating Islamic finance by requiring that it meet the existing regulatory understandings and requirements of a conventional bond.

⁶⁷ See Zyp, *supra* note 38, at 52 (providing examples of the types of investments that have been made). Mr. Moghul has represented Islamic private equity investors where aspects of the DJIM *Fatwa* were employed as an argument as to why private businesses with some impermissible non-core activity or *de minimus* engagement in interest-bearing (*ribawi*) transactions should be allowed.

⁶⁸ See Zyp, *supra* note 38, at 52, 55 (this is so by expanding the universe of possible targets, whether in business or in real estate assets).

⁶⁹ "The senator's proposed legislation defines an AFIB as a certificate of equal value representing undivided shares of ownership of tangible assets, usufructs and services or (in the ownership of) the assets of particular projects or special investment activity." Umar Moghul, *A New York Sukuk?*, DOW JONES ISLAMIC MARKET INDEXES NEWSLETTER (Dow Jones), at 1 [hereinafter NEWSLETTER] (quoting Sen. Kevin Parker, Legislative Bill Drafting Commission 08345-02-1, Section 2(1) (on file with the author)). In comparison, AAOIFI defines *sukuk* as certificates of equal value representing an ownership interest in defined assets, usufruct, or services or as equity in a project or investment activity. See MUHAMMAD AL-BASHIR & MUHAMMAD AL-AMINE, GLOBAL SUKUK AND ISLAMIC SECURITIZATION MARKET 111-112 (2012) (discussing the AAOIFI Standard on investment *sukuk* and the types thereof).

⁷⁰ NEWSLETTER, *supra* note 69, at 1.

⁷¹ *Id.*

VI. ENLIGHTENMENT OR INDOCTRINATION?

“Islamophobia,” which persists in certain—and sometimes influential—quarters of American society,⁷² would certainly present a vigorous challenge to any perceived attempt at establishing or integrating the Islamic finance within the U.S. framework,⁷³ and ignore the influence of Islam upon Western laws.⁷⁴ Various laws have been suggested in a number of states.⁷⁵ Interestingly, Islamic finance typically employs business entities and contractually selects local state laws to govern underlying contractual agreements.⁷⁶

As an industry in the U.S., Islamic finance has a

⁷² See generally WAJAHAT ALI, ET AL., *CTR. FOR AM. PROGRESS, FEAR, INC.: THE ROOTS OF THE ISLAMOPHOBIA NETWORK IN AMERICA* (2011).

⁷³ See Graham, *supra* note 51, at 337 (“The United States and many European countries have experienced a backlash against all things *Shari’ah* related in the wake of the September 11 terrorist attacks and the ongoing wars in Iraq and Afghanistan. In the United States, this backlash has manifested itself in claims that *Shari’ah* is incompatible with the United States Constitution and in calls from high-ranking politicians for federal laws to prevent *Shari’ah* from being recognized in any U.S. court.”).

⁷⁴ See John A. Makdisi, *The Islamic Origins of the Common Law*, 77 N.C. L. REV. 1635, 1639–1640 (1999); Monica Gaudiosi, Comment, *The Influence of the Islamic Law of Waqf on the Development of the Trust in England: The Case of Merton College*, 136 U. PA. L. REV. 1231, 1255–1256 (1988). There are significant studies on the parallels and exchange between and among these legal systems beyond the scope of this article.

⁷⁵ Some two dozen states have some form of anti-*Shari’ah* measure under consideration. See Yaser Ali, Comment, *Shariah and Citizenship—How Islamophobia is Creating a Second-Class Citizenry in America*, 100 CALIF. L. REV. 1027, 1064 (2012). See also Muhammad Elsayed, Note & Comment, *Contracting Into Religious Law: Anti-Sharia Enactments and the Establishment and Free Exercise Clauses*, 20 GEO. MASON L. REV. 937, 937 n.7 (2013) (citing H.R.B. 2379, 49th Leg., 2d Reg. Sess. (Ariz. 2010); S.J. Res. 1387, 118th Sess. (S.C. 2010); H.R.J. Res. 1004, 2011 Leg., 86th Sess. (S.D. 2011); H.R.J. Res. 57, 82d Leg., Reg. Sess. (Tex. 2011); H.R.J. Res. 0008, 61st Leg., Gen. Sess. (Wyo. 2011)). Elsayed warns: “However, one cannot lump all anti-Sharia enactments into one pile. There are constitutionally significant differences in the wording of the various bills and constitutional amendments. One can broadly characterize these enactments into three categories: (1) enactments that explicitly target Sharia law; (2) blanket prohibitions on the consideration of any foreign, cultural, or religious laws; and (3) enactments that forbid courts from considering the legal precepts of any system that does not provide the same protections guaranteed by the U.S. Constitution and the constitutions of the respective states.” *Id.* at 943.

⁷⁶ Wholesale Islamic financing transactions in the U.S., in Mr. Moghul’s experience, usually select the laws of the State of New York, and even if they do not, they would select the laws of another U.S. state. Home financing transactions, in Mr. Moghul’s experience, would typically employ the state in which the mortgaged property is physically located.

straightforward practical objective: conducting business transactions profitably and responsibly, as defined by Islamic norms, while diligently complying with all applicable U.S. laws.⁷⁷ The objective has not been to create legal or regulatory policy shifts. In light of the credit crisis, many from within and outside of the industry have suggested that Islam's ethical-financial norms be considered as instructive insofar as they prohibit debt, encourage risk-sharing rather than risk-shifting, and encourage the use of equity and asset proximity.⁷⁸

VII. THE NEXT INNOVATION: SHIFTING PEDAGOGY

A. Introduction

As we have mentioned above, the design of Islamic financial structures generally begins with a conventional paradigm in mind. Sometimes a conventional product—or more accurately its economics and functional utility—is sought by the Islamic investor. Hence, it is with such a financial structure that the process of design begins. Goals, products, and evaluation metrics are identified within a conventional paradigm and mostly by persons largely, if not purely, trained in conventional subjects.⁷⁹

Several years ago, contemporary Islamic finance began to understand the importance of formally training its practitioners by introducing brief training courses designed to speedily prepare

⁷⁷ ISAM SALAH, LEGAL ISSUES ARISING IN ISLAMIC FINANCE TRANSACTIONS IN THE UNITED STATES 57–58, 61 (2009). See Successful Drivers, *supra* note 33, at 36 (“Within this credit crisis, some institutions have come to appreciate the discipline of many Islamic investors with respect to the utilization of debt.”).

⁷⁸ See HOSSEIN ASKARI ET AL., THE STABILITY OF ISLAMIC FINANCE 80 (2010). See also, Todd Schmid, Note, *The Real Shariah Risk: Why the United States Cannot Afford to Miss the Islamic Finance Moment*, 2013 U. ILL. L. REV. 1293, 1296 (2013); Frank Kane, *Islamic Finance Holds Lessons for Advanced Economies, According to Nouriel Roubini*, THE NATIONAL, <http://www.the-national.ae/business/industry-insights/economics/islamic-finance-holds-lessons-for-advanced-economies-according-to-nouriel-roubini#ixzz2nhP3jLQR> (last updated Dec. 3, 2013).

⁷⁹ See Michael Bennett & Zamir Iqbal, *How Socially Responsible Investing Can Help Bridge the Gap Between Islamic and Conventional Financial Markets*, WORLD BANK TREASURY (Wash. D.C.); ETHICA INSTITUTE OF ISLAMIC FINANCE, *Why Islamic Finance Training Needs to Conform to AAOIFI Standards*, in GLOBAL ISLAMIC FINANCE EDUCATION 41, 41 (2013) (“Instead, what we need in order to rebuild Islamic finance is a strong foundation of capable, trained individuals competent enough to innovate products away from debt-based, fiat-based, cosmetically-enhanced conventional products for the rich and upper middle class to equity-based, asset-based, genuine products for all.”).

practitioners for employment. More demanding courses have since arisen, awarding certificates and, in some cases, undergraduate and graduate diplomas.⁸⁰ Other courses, such as the subject of this article, are part of another degree program. Some of these courses, particularly the certificate-based programs, utilize the online medium to reach students.⁸¹

With regard to substantive material, the basis of Islamic finance is, first and foremost, religious.⁸² As such, it is critical that the religious perspectives of Islam and its moral ethics⁸³ be understood so that practitioners may more fully understand Islamic finance.⁸⁴ Substantive topics for consideration in the education of Islamic finance should thus include some degree of study of Islam and its moral ethics so that, among other things, its limits on the profit motive are appreciated and the approach to whether a transaction or structure is advisable are properly aligned with the purposes of Islam and Islamic law.⁸⁵ Because the ethical principles of Islamic finance are derived and

⁸⁰ For a list of these programs, the completeness of which we do not know, see *Islamic Finance Qualifications*, YURZIK, <https://www.yurizk.com/> (last visited Feb. 23, 2014).

⁸¹ See, e.g., Ethica's Certified Islamic Finance Executive™ (CIFE™), ETHICA INSTITUTE, <https://www.ethicainstitute.com/index.aspx> (last visited Feb. 24, 2014). Recently, Ethica Institute has called for the use of and reliance on AAOIFI standards in producing Islamic finance education. But again, pedagogy is not publicly discussed.

⁸² See *Fiqh or Fiction*, *supra* note 2, at 18.

⁸³ See Ruzita Mohd. Amin et al., *The Effectiveness of an Integrated Curriculum: The Case of the International Islamic University Malaysia*, 8th INTERNATIONAL CONFERENCE ON ISLAMIC ECONOMICS AND FINANCE 3 (discussing the importance of personal development).

⁸⁴ See *id.* at 5. See, e.g., *Misconceptions*, INCEIF, <http://www.inceif.org/Islamic-finance/misconceptions/> (last visited Mar. 31, 2014) (Contemporary Islamic finance involves persons of many different faiths as well as ethnicities and nationalities. Indeed, major advances in the industry have been pioneered by persons of faiths other than Islam.).

⁸⁵ While beyond the purview of this article, one may certainly question whether the problem of methodological approach is not only one of formal education but also one of morality. As legal counsel, for instance, we have not infrequently been requested to instruct on how to acquire an asset impermissible under Islamic ethical-legal norms, partake in product of questionable Islamic validity, or structure (questionable) leverage. Why does a person for that matter intend or knowingly attempt to do what they believe to be impermissible? See, e.g., Mohamed Aslam Haneef & Ruzita Mohd. Amin, *Teaching Islamic Economics in Malaysian Universities: Lessons from the Department of Economics*, <http://i-epistemology.net/attachments/201-TEACHING%20ISLAMIC%20ECONOMICS%20IN%20MALAYSIAN%20UNIVERSITIES.pdf> (last visited Mar. 31, 2014) (discussing spiritual and religious education within the university curriculum).

understood (within Islam at least) as law, some study of Islamic jurisprudence, therefore, will help practitioners understand how the law is developed and applied, offer a deeper comprehension of its purpose, rationale, and causes—and demonstrate possibilities for its adaptability and growth.⁸⁶ There is a potentially expanded role for the Islamic ethical-legal specialists and advisors as instructors as well.

In addition to the substance of what is taught, Islamic finance education should involve expertise in instructional design and learning theory so as to incorporate how learning takes place. Educators of Islamic finance should monitor developments in educational methods and technologies to ensure that practitioners learn in the most successful of ways. To date, learning theory and instructional design, the focus of this article, appears not to receive significant public attention within the industry as the focus remains on the curriculum and the qualifications of the instructors. It is to the subject of pedagogy that we now turn.

B. Evolving Pedagogy

Although technology continues to embellish the structural model and mode of education, the traditional methodology of course design remains dominant—passive learning. Broadly speaking, passive learning is a methodology frequently associated with professors simply lecturing to students.⁸⁷ Yet, this technologically affirmed traditional methodology is increasingly challenged through the shift to a new pedagogical paradigm: a student-centered active learning model.⁸⁸ Comparatively, the

⁸⁶ See, e.g., *id.* at 2–4 (Presumably practitioners would have less education in this subject than those focused on academic matters and less than those who train to become scholars.).

⁸⁷ Leigh Goessl, *Problems with Passive Learning in College*, EDUC. SPACE 360 (June 30, 2008), <http://www.educationspace360.com/index.php/problems-with-passive-learning-in-college-22374>.

⁸⁸ MARY E. HUBA & JANN E. FREED, LEARNER-CENTERED ASSESSMENT ON COLLEGE CAMPUSES: SHIFTING THE FOCUS FROM TEACHING TO LEARNING 35–36 (2000) (Generally speaking, learner-centered or active learning concerns a methodology of design and instruction that is contrary to the traditional passive lecture with its associated summative assessment, the exam. For those who prefer a separate citation, consider the following: “students in learner-centered environments learn course material in a way that promotes deep understanding” and “the active involvement of the learners helps them make sense of the course material and develop a deeper understanding than they would if they passively listened to a lecture.”).

student-centered active learning courses are designed with students actively constructing their knowledge, with many more assessment points, which employ transparent rubrics,⁸⁹ enabling the provision of more frequent feedback. A signature difference for active learning is that the conclusion of such a course usually provides students with an artifact that is a manifestation of their learning and contributes to a portfolio professing mastery.⁹⁰ Although active learning does not supplant passive learning as much as it builds on it⁹¹ by requiring students to participate at a higher level,⁹² it is held as a superior model because it focuses on internalizing rather than memorizing⁹³ and resolves a number of problems associated with passive learning.⁹⁴

Legal education has also engaged the discourse of this pedagogical shift as it has explored technology. As early as Spring 2001, Michal Hunter Schwartz provided a thorough critical analysis of shifting learning theories and instructional design and how these conceptual and applied pursuits might reform law teaching.⁹⁵ Others, more recently, have explained the

⁸⁹ “At its most basic, a rubric is a scoring tool that lays out the specific expectations for an assignment. Rubrics divide an assignment into its component parts and provide a detailed description of what constitutes acceptable or unacceptable levels of performance for each of those parts.” DANIELLE D. STEVENS & ANTONIA J. LEVI, INTRODUCTION TO RUBRICS: AN ASSESSMENT TOOL TO SAVE GRADING TIME, CONVEY EFFECTIVE FEEDBACK, AND PROMOTE STUDENT LEARNING 3 (2005).

⁹⁰ Laurence Habib & Line Wittek, *The Portfolio as Artifact and Actor*, 14 MIND, CULTURE, & ACTIVITY 266, 268 (2007).

⁹¹ “Passive learning refers to what happens for students when they listen to a lecture or read a book: they receive information and ideas. This is an important part of learning, but by itself, it is very limited and limiting. When teachers see their job as being primarily to cover the material, this results in students’ spending many hours of class time listening to ‘teacher talk.’ Although it is true that intellectually mature students can and will do their own reflection and make connections, this is an optional activity, not one the teacher has built into the learning experience. To get beyond ‘teacher talk’ and add more power to the learning experience, we need to incorporate more active modes of learning into the design of the course experience.” DEE L. FINK, CREATING SIGNIFICANT LEARNING EXPERIENCES: AN INTEGRATED APPROACH TO DESIGNING COLLEGE COURSES 104–105 (2003).

⁹² See generally JOHN TAGG, THE LEARNING PARADIGM COLLEGE (2003) (This entire tome is dedicated to this issue.).

⁹³ We appreciate the significance and importance of memorization in education generally and with respect to traditional Islamic education particularly. Internalization and critical thinking coupled with memorization is, we contend a superior route than any one of them alone. See Goessl, *supra* note 87.

⁹⁴ *Id.*

⁹⁵ See Michael Hunter Schwartz, *Teaching Law by Design: How Learning*

need and urgency to adhere to this shift to a new pedagogical paradigm.⁹⁶ David Thomson, on his blog “Law School 2.0” posted,

The stark reality is that all of us in higher education are struggling with this uncontrovertible fact: The educational system we have today was designed at a time when information was scarce. Information is no longer scarce. This means that the one-to-many model breaks down in the new order. If anyone can get the information that used to be held by the few, then the few (the professors) have to retool and offer something different and better than (mostly) information transfer and summative assessment.⁹⁷

The key to change, then, as Thomson points out, lies with developing faculty. The importance of this shift in pedagogy is not lost on Islamic legal education. Consider, for example, the following comments of Muhammad Khalid Masud:

The lecture method supports the presentation of Islamic law in a dogmatic manner and does not help to relate it to actual social and legal contexts. Critical studies of the teaching methods have generally concluded that due to these teaching methods, Islamic legal education has failed to produce judges and lawyers who can apply Islamic law to contemporary issues. Islamic legal education must respond to the contemporary challenges to legal education and participate in the ongoing debates on the nature and future of law.⁹⁸

While it is true, higher education’s fascination with technology and the integration of it within the curriculum has occupied the spotlight, the paradigm shift to active student-centered learning continues to thrive, even if quietly.⁹⁹ This is equally so for legal

Theory and Instructional Design can Inform and Reform Law Teaching, 38 SAN DIEGO L. REV. 347, 356–59 (2001).

⁹⁶ See Gerald F. Hess, *Improving Teaching and Learning in Law School: Faculty Development Research, Principles, and Programs*, 12 WIDENER L. REV. 443, 445 (2006) (Hess underscores, under the heading “New and Refined Teaching Skills,” “Fruitful areas for exploration include active learning methods . . .”). See also William H. Byrnes, *A Review of the Development of an Internet Delivered LL.M. Program in the United States*, J. INFO. L. TECH. (2001), at 8–9, 12, 14, 16, available at http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2001_3/byrnes (In Byrnes section 3, “Part 2: The Pedagogy for the Internet Delivered Program,” he succinctly explains leveraging online technology with the emerging paradigm shift for legal study.).

⁹⁷ David Thomson, *Of MOOCs and Legal Education*, LAW SCHOOL 2.0 (Sept. 16, 2012 3:44 PM), <http://www.lawschool2.org/lis2/2012/09/>.

⁹⁸ Muhammad Khalid Masud, *Teaching of Islamic Law and Shari’ah: A Critical Evaluation of the Present and Prospects for the Future*, 44 ISLAMIC STUDIES, 165, 170–71 (2005). See also ABDULLAH SAHIN, *NEW DIRECTIONS IN ISLAMIC EDUCATION: PEDAGOGY AND IDENTITY FORMATION* (2014).

⁹⁹ See Goessl, *supra* note 87.

education.¹⁰⁰ Puzzling then, is the seeming contradiction of using the traditional passive pedagogy rather than an active-student centered methodology to develop faculty.

C. Migrating Online

Technology has been an impetus of change in education for some time. But since the appearance of the worldwide web, wireless fidelity (wi-fi), and cellular technology, the upheaval has been, and continues to be, global in effect.¹⁰¹ While legal education is often not considered to be at the forefront of integrating these technologies into the curriculum, its efforts reveal a repeated pattern of keeping step with the rest of higher education.¹⁰²

Prior to the appearance of the Internet, any technological enhancement for learning at a distance was in the form of a closed television circuit connecting several classrooms at different locations. This technological enhancement provided traditional synchronous face-to-face university and college courses to be broadcast to locations other than the single classroom where the faculty was physically located.¹⁰³ The American Bar Association has approved the use of such technology, including, “[i]nternet, open broadcast, closed circuit, cable, microwave, or satellite transmission” to be offered in law schools for distant learning.¹⁰⁴

As the Internet debuted and its web interface evolved in the 1990s, educating at a distance was afforded the opportunity for a new type of learning model—an online model.¹⁰⁵ The rise of the technology that supported this new online model deconstructed the structural restrictions of time and space. All participants,

¹⁰⁰ Paul L. Caron & Rafael Gely, *Taking Back the Law School Classroom: Using Technology to Foster Active Student Learning*, 54 J. LEGAL EDUC. 551, 551 (2004).

¹⁰¹ JANNA QUITNEY ANDERSON ET AL., PEW RESEARCH CENTER, THE FUTURE IMPACT OF THE INTERNET ON HIGHER EDUCATION 2, 18 (2012).

¹⁰² Kenneth J. Hirsh & Wayne Miller, *Law School Education in the 21st Century: Adding Information Technology Instruction to The Curriculum*, 12 WM. & MARY BILL RTS. J. 873, 873–74 (2004).

¹⁰³ *History of Online/Distance Public Education in America*, ADULTLEARN.COM, <http://www.adultlearn.com/history-education.html#cont> (last visited Feb. 25, 2014).

¹⁰⁴ ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2013–2014 § 3 (2013).

¹⁰⁵ *How Has Online Education Evolved?*, DEGREEDIRECTORY.ORG, http://degreedirectory.org/articles/How_Has_Online_Education_Evolved.html (last visited Apr. 2, 2014).

faculty and students, did not have to attend class at the same time but instead could interact as well as access and exchange a variety of digital materials asynchronously.¹⁰⁶ This model has evolved into several permutations with courses that are completely online, and hybrid courses that are partly online and partly in a physical classroom.¹⁰⁷ However, while online learning continues to evolve, it has not supplanted synchronous distance learning. Rather, online learning exists in addition to this earlier model.¹⁰⁸

Without a doubt, the burgeoning associated web technology that has made online learning possible, and distinctly different from distance learning, is the learning management system (LMS).¹⁰⁹ This technology exists as a compartmentalized virtual space where students enrolled in a particular course can log in, access materials, read and contribute to threaded discussions, take quizzes, complete course evaluations, submit homework and other projects, access their grades, as well as, engage in or perform an increasing number of other activities.¹¹⁰ While few learning management systems existed a dozen years ago, for example WebCT (now BlackBoard¹¹¹), there are now many more competing models such as Sakai,¹¹² Moodle,¹¹³ and Canvas.¹¹⁴ As with distance education, legal education has followed suit. Westlaw, the publisher of many of the legal profession's

¹⁰⁶ Stefan Hrastinkski, *Asynchronous & Synchronous E-Learning*, 4 *EDUCAUSE Q.* 51, 51–52 (2008).

¹⁰⁷ Devon Haynie, *U.S. News Releases 2014 Best Online Programs Rankings*, *U.S. NEWS* (Jan. 8, 2014), <http://www.usnews.com/education/online-education/articles/2014/01/08/us-news-releases-2014-best-online-programs-rankings>; ELAINE ALLEN & JEFF SEAMAN, BABSON SURVEY RESEARCH GROUP, *GOING THE DISTANCE: ONLINE EDUCATION IN THE UNITED STATES*, 2011 7 (2011). *See, e.g., Best Online Programs*, *U.S. NEWS*, <http://www.usnews.com/education/online-education> (last visited Apr. 2, 2014).

¹⁰⁸ WORKING GROUP FOR DISTANCE LEARNING IN LEGAL EDUC., *DISTANCE LEARNING IN LEGAL EDUCATION: A SUMMARY OF DELIVERY MODELS, REGULATORY ISSUES, AND RECOMMENDED PRACTICES* 13 (2011–2012); Hrastinkski, *supra* note 106, at 51–52.

¹⁰⁹ Michael Palmer, *Department: The Next Big Thing in Continuing Legal Education*, 39 *VER. B.J. & L. DIG.* 31, 32 (2013).

¹¹⁰ *Id.*

¹¹¹ Doug Lederman, *Blackboard, WebCT to Merge*, *INSIDE HIGHER ED* (Oct. 13, 2005), <http://www.insidehighered.com/news/2005/10/13/merger>.

¹¹² *Sakai*, SAKAI PROJECT, <https://sakaiproject.org/> (last visited Mar. 3, 2014).

¹¹³ *About Moodle*, MOODLE, https://docs.moodle.org/26/en/About_Moodle (last visited Apr. 2, 2014).

¹¹⁴ *Canvas Studio*, CANVAS BY INSTRUCTURE, <http://product.instructure.com> (last visited Apr. 2, 2014).

materials, has developed its own LMS known as TWEN, which performs identically to other LMSs but has the unique benefit of automatically creating hyperlinks to items in its vast archive whenever a faculty member types in a resource title.¹¹⁵

Still, while the development of the LMS has been pivotal to initiating online learning, higher education in general has explored other originally divergent forms of technology that are now embraced as a collective convergence. Among these, in addition to the LMS, are the remote location of lectures,¹¹⁶ mobile technology,¹¹⁷ social media networking,¹¹⁸ and the more recent

¹¹⁵ See generally ADMINISTRATORS GUIDE TO TWEN, THOMSON REUTERS WESTLAW™ 1, 66 (2013). Interestingly, “Thomson Reuters partnered with the Islamic Financial Standards Board to launch an Islamic Financial Centre on the Westlaw Business Global Legal Platform . . .” Graham, *supra* note 51, at 328.

¹¹⁶ YouTube has dedicated a section to education. Andrew Lavalley, *YouTube EDU Launches*, WSJ (Mar. 26, 2009, 6:54 PM), <http://blogs.wsj.com/digits/2009/03/26/youtube-edu-launches/>. This section includes a “University” category that provides lectures and courses. The “University” category includes a subcategory of “Law.” *Education*, YouTube, <http://www.youtube.com/channel/UC3yA8nDwraeOfnYfBWun83g>, (last visited Mar. 3, 2014). The law category has further subdivisions of specific areas of law, such as “Intellectual Property.” *Intellectual Property*, YouTube, <http://www.youtube.com/channel/UCwfdj8K6m4t2VKXnxA13kGw>, (last visited Mar. 3, 2014).

¹¹⁷ Mobility, that is associated with Apple’s iPod where one can play music after being downloaded from iTunes, can now apply to a range of ‘podcasts’ that can be played on an array of interactive multi-purpose devices, e.g. smartphones, laptops, and tablets, that may or may not be an apple product. iPod +iTunes Timeline, APPLE, <http://www.apple.com/pr/products/ipodhistory/> (last visited Apr. 2, 2014); Stephanie Watson, *How Podcasting Works*, HOWSTUFFWORKS, <http://www.computer.howstuffworks.com/internet/basics/podcasting2.htm>. An expansion of iTunes, a “dedicated section of Apple’s iTunes Store that features educational audio and video files from universities, museums and public media organizations” that “allows a visitor to search, download and play educational content in the same way that they can manipulate songs, podcasts, television shows and movies.” *iTunes U*, WHATIS.COM, <http://whatis.techtarget.com/definition/iTunes-U> (last visited Mar. 3, 2014). The Open Culture website reveals a list of “Podcasts from Top American Law Schools” from 2007. Dan Colman, *Podcasts from Top American Law Schools*, OPENCULTURE (Mar. 19, 2007), http://www.openculture.com/2007/03/podcasts_from_t.html. A list also covering legal topics can be found on iTunes Preview. *Podcasts—Law Express*, APPLE, <https://itunes.apple.com/us/podcast/podcasts-law-express/id291364682> (last visited Mar. 4, 2014).

¹¹⁸ Social media networks are websites that exist as virtual communities or networks where people can interact and exchange personal information, photos, ideas, etc., with everyone who is part of the network. *Digital Communications*, TUFTS UNIV., <http://webcomm.tufts.edu/social-media-overview13/> (last visited Apr. 2, 2014). Facebook is now the dominant player in social media. Cooper Smith, *The Planets 24 Largest Social Media Sites, and Where Their Next Wave of Growth Will Come From*, BUS. INSIDER (Nov. 29, 2013, 3:20 PM), <http://www.businessinsider.com/a-global-social-media-census-2013-10>. Several uses of

arrival of MOOCs.¹¹⁹ In each case, as with the LMS, legal education has also woven the use of these technologies into its curriculum.¹²⁰

Collectively, these technologies, and the convergence of numerous permutations thereof, have provided some incredible innovations for higher education, increasing access, availability,

this form of technology for education include: faculty posting content to their account for students to access, assigning “students to read or view social media as part of course assignments, and . . . assign[ing] students to comment on or post to social media sites.” MIKE MORAN, JEFF SEAMAN, & HESTERTINTI-KANE, PEARSON LEARNING SOLUTIONS & BABSON SURVEY RESEARCH GROUP, TEACHING, LEARNING, AND SHARING: HOW TODAY’S HIGHER EDUCATION FACULTY USE SOCIAL MEDIA 12 (2011). While I could not find a specific instance of integrating social media into the course design for any law course, this technology has at least reached the attention of those involved in legal education. One example is the effort to bring this technology into the legal curriculum in the form of a course dedicated to “Social Media and the Law,” the subject being social media. John G. Browning, *Facing Up to Facebook in the Classroom*, 43 SYLLABUS (2012), available at http://www.americanbar.org/publications/syllabus_home/volunt_43_2011-2012/spring_2012/facing_up_to_facebookintheclassroom.html.

¹¹⁹ Certainly the newest development of the use of the web for education has been the creation of the Massive Open Online Course (MOOC) movement. Thomson, *supra* note 97 (“Massive” refers to a large number of enrollees. “Open” refers to the fact that these courses are typically offered to anyone in the world. Online indicates that they are fully online courses, with no face-to-face contact). These online offerings are mostly self-study courses that possess lecture materials to watch, resource materials to read, an interactive discussion board where posts are voted up or down, and some assignments to submit that are peer graded. Among the many issues surrounding MOOCs that draws concern is the little interaction with a faculty member. But what is probably the most significant issue, as with all online courses, is the issue of test taking, where cheating can be a problem. *Id.* For the moment, the response has also been technological in the form of remote proctoring. Anne Eisenberg, *Keeping an Eye on Online Test-Takers*, N.Y. TIMES, Mar. 2, 2013, http://www.nytimes.com/2013/03/03/technology/new-technologies-aim-to-foil-online-course-cheating.html_r=0. A few of the more noted companies that provide MOOCs are Coursera, that has “Stanford roots,” Udacity, also with Stanford roots, and edX, a joint partnership between Harvard and MIT. *The Big Three, at a Glance*, N.Y. TIMES, Nov. 2, 2012, <http://www.nytimes.com/2012/11/04/education/edlife/the-big-three-mooc-providers.html>. As with earlier technologies, the pattern of legal education exploring the potential of MOOCs repeats itself. A search of Coursera’s course catalog reveals such offerings as: Introduction to Environmental Law and Policy through the University of North Carolina—Chapel Hill, and Law and the Entrepreneur through Northwestern University. *Courses*, COURSERA, <https://www.coursera.org/courses?orderby=upcoming&search=Introduction%20to%20Environmental%20Law%20and%20Policy> (last visited Apr. 2, 2014); *Courses*, COURSERA, <http://www.coursera.org/courses?orderby=upcoming&search=Law&theentrepreneur> (last visited Apr. 2, 2014).

¹²⁰ Karen Sloan, *Schools Experiment with Massive Open Online Legal Courses*, N.Y.L.J. (ONLINE), (Sept. 13, 2013).

convenience, and affordability. These innovations have not been lost on law schools that have explored the integration of these technologies into their curriculums.¹²¹ That is to say, those courses that come to exist online, embellished with some technologies, and sometimes funneled through other technologies, are often pre-existing courses that adhere to a traditional passive learning methodology and have only been ‘shoveled’ into a digitized existence.¹²² Yet, in parallel to the inertia of the technological innovation trajectory is a less-hyped, but growing, pedagogical paradigm shift which challenges the utilization of technology for efficiency and the missed opportunity for effectiveness.

D. Instructor Development

Ultimately, having successful courses rests in the faculty’s hands. But many faculty members are not made familiar with how people learn—especially if their discipline is outside of education.¹²³ True, there are efforts to train faculty to execute designs that adhere to the pedagogical shift to student-centered learning, but such efforts are mired in the traditional passive methodology and, therefore, contradictory to what faculty are expected to execute when designing a course.¹²⁴ The result is that faculty in general, law faculty in particular, and Islamic finance and law faculty specifically, are at risk for not meeting the challenge. This article provides a solution for developing faculty in Islamic finance to design and deliver active student-centered learning courses; the focus here is online only, because this course was delivered as such, but certainly the pedagogy is applicable, and should be successful, in person.

While there is a movement to develop faculty, and increase their awareness and facility with a spectrum of technologies and issues including student-centered learning, the model remains quite traditional.¹²⁵ One small effort to develop faculty using the same methodology the faculty are expected to apply is a mentoring process termed, the Resource Enriched Learning

¹²¹ *Id.*

¹²² Davidovitch, *supra* note 9, at 330.

¹²³ *See generally*, Schwartz, *supra* note 95, at 365–83 (exploring the learning theories of behavioral theory, cognitivism, and constructivism).

¹²⁴ *See* O’Neill & McMahon, *supra* note 9, at 27, 29.

¹²⁵ Davidovitch, *supra* note 9, at 330.

Model (RELM).¹²⁶

Within the larger arena of teaching and learning are a number of concepts that are the subject of pure scholarly theoretical and experimental research in education that have been percolating through trade and professional journals, conferences, associations, and list serves.¹²⁷ First is technology: Whether it is the migration of courses into an online mode (e.g., a learning management system (LMS)), or bringing 'clickers' into a face-to-face classroom, technology receives the lion's share of attention.¹²⁸ Another concept is student-centered learning, the idea that students actively construct their knowledge versus being passively lectured to by faculty.¹²⁹ A third important concept is multiple learning styles, an effort hinging on the extrapolation that different students have different styles of learning.¹³⁰ Truly, this area is still in a state of flux, since there are a variety of competing models that attempt to discern students' learning styles.¹³¹ Fourthly, the concept of information literacy stemming from library and information studies and following earlier efforts at bibliographic instruction is also important.¹³² Lastly, concerns about measuring what students are learning in student-centered course designs, are increasingly permeating larger constituencies concerned with accountability, such as governing boards,

¹²⁶ David Lavoie & Andrew J. Rosman, *Using Active Student-Centered Learning-Based Instructional Design to Develop Faculty and Improve Course Design, Delivery, and Evaluation*, 22 ISSUES ACCT. EDUC. 105 (2007) ("RELM is a faculty development model that uses an active student-centered learning approach to teach faculty, who are students in the process, how to design courses that will promote active student-centered learning.").

¹²⁷ See, e.g., *What is AECT?*, ASS'N FOR EDUC. COMM. & TECH. (AECT), http://aect.site-ym.com/?page=about_landing (last visited on Mar. 18, 2014); *MERLOT History*, MERLOT, http://info.merlot.org/merlothelp/index.htm#who_we_are.htm (last visited Mar. 18, 2014); *Mission and Goals*, U.S. DISTANCE LEARNING ASS'N (USDLA), <http://www.usdla.org/SearchResults.asp?Cat=1814> (last visited on Mar. 18, 2014).

¹²⁸ See MEANS ET AL., *supra* note 12, at 9.

¹²⁹ See HUBA & FREED, *supra* note 88, at 36.

¹³⁰ Richard E. Snow et al., *Individual Differences in Affective and Conative Functions*, in HANDBOOK OF EDUCATIONAL PSYCHOLOGY 243, 281 (David C. Berliner & Robert C. Calfee eds., 1996).

¹³¹ FRANK COFFIELD ET AL., LEARNING & SKILLS RESEARCH CENTRE, LEARNING STYLES AND PEDAGOGY IN POST-16 LEARNING: A SYSTEMATIC AND CRITICAL REVIEW 8–9 (2004).

¹³² AM. LIBRARY ASS'N, INFORMATION LITERACY COMPETENCY STANDARDS FOR HIGHER EDUCATION 2–3 (2000); Philip Doty, *Bibliographic Instruction: The Digital Divide and Resistance of Users to Technologies*, UNIV. OF TEX. AT AUSTIN, https://www.ischool.utexas.edu/~138613dw/website_spring_03/readings/BiblioInstruction.html (last updated Jan. 7, 2003).

accreditation agencies, and the governmental agencies involved in education.¹³³

As these issues have entered into the larger discourse of teaching and learning, they have increased the expectations placed on faculty. It is expected now that faculty will: employ technology in a more relevant rather than a random manner; to student-centered learning, faculty will become a guide on the side as opposed to a sage on the stage; to multiple learning styles, faculty will increase inclusion and reduce marginalization; concerning information literacy, faculty will initiate a trajectory of life-long learning; and with assessment, faculty will develop clear and transparent rubrics.¹³⁴

In general, the likelihood of faculty outside of education, and library and information studies, being familiar with the complexities of forming and integrating such a response is unlikely. Aware of this improbability, many institutions of higher education have attempted to address this gap.¹³⁵ However, the traditional model utilized to inform faculty about such concepts is limited in effect. Typically, to expedite faculty's consideration and application of these concepts, a pedagogy that consists of a variety of seminars, summer institutes, workshops, and retreats is employed.¹³⁶ In turn, the results of this methodology do not meet expectations; technology exists for technology's sake or supports "shovelware" where an existing course is simply "shoveled" into an online mode.¹³⁷ Student-centered learning exists as a token activity.¹³⁸ Multiple learning styles exist as an exercise in labeling; that is, any one of the plethora of multiple learning models is selected, and its mere terms are simply

¹³³ See, e.g., Symposium, *Transforming Education to Student-Centric Learning*, iNACOL BLENDED & ONLINE LEARNING (2013) (demonstrating the general trend in education and permeation into other constituencies, such as K-12 education, concerned with student-centered learning and measuring its results).

¹³⁴ See COFFIELD, ET AL., *supra* note 131, at 1.

¹³⁵ See, e.g., Hess, *supra* note 96, at 443-44.

¹³⁶ *Id.* at 443, 451.

¹³⁷ Compare Gary Morrison & Gary Anglin, *An Instructional Design Approach for Effective Shovelware: Modifying Materials for Distance Education*, 7 Q. R. DISTANCE EDUC. 63, 64 (2006) (explaining that web courses consist of shovelware), with ANNIQUE BOELRYK, ET AL., CTR. FOR TEACHING & LEARNING, PROCESS FOR SELECTING AND IMPLEMENTING DEVEL. OF COURSES USING DISTRIBUTED LEARNING TECHNOLOGIES 4 (2001) (arguing that a course should not consist of shovelware).

¹³⁸ See, e.g., Robert B. Barr & John Tagg, *From Teaching to Learning—A New Paradigm for Undergraduate Education*, 27:6 CHANGE 12, 14 (Nov.-Dec. 1995).

applied to existing pieces of the course.¹³⁹ Information literacy is achieved through simply creating a link in the course to the library.¹⁴⁰ And, lastly, the creation of a list of vague bullet points is considered an assessment rubric.¹⁴¹ Simply, RELM is a model that mentors faculty through an instructional design process to teach faculty active learning designs that is itself student-centered as a process.¹⁴² The objective is to create faculty who are their own instructional designer and who may begin to address more conceptual issues related to design. Using their course as a vehicle to provide such a learning experience, the residual benefit is that the mentored faculties, in addition to possessing such instructional design skills, have a course that is in line with the pedagogical shift.¹⁴³ In its most broad and general sense, the process consists of:

1. “[T]eas[ing] out the course’s learning objectives”¹⁴⁴ This is the key and drives everything that follows.
2. Selecting, and sometimes inventing, activities to realize those objectives. Here, activities can be designed to begin to satisfy: active learning, multiple learning styles, and information literacy.¹⁴⁵
3. Dovetailing traditional and technological resources, service points and supplemental instruction, with each activity module where they are relevant, in as many formats as possible. This step can also address: multiple learning styles and information literacy as well as technology.¹⁴⁶
4. Develop rubrics to assess students’ level of achievement of those activities connected to the objectives. Holistic or analytical rubrics can be developed for many student-centered activities.¹⁴⁷
5. Subsequent to storyboarding the process, we gather everything to then make it available through a face-to-face, blended/hybrid or

¹³⁹ See, e.g., Salvador Lopez & Hilde Patron, Multiple Intelligences in Online, Hybrid, and Traditional Business Statistics Courses (unpublished, U. of W. Georgia) (on file with author).

¹⁴⁰ See AM. LIBRARY ASS’N, *supra* note 132, at 5.

¹⁴¹ Heidi Goodrich Andrade, *Teaching with Rubrics: The Good, the Bad, and the Ugly*, 53 C. TEACHING 27, 27 (2005).

¹⁴² David R. Lavoie, *A Resource-Enriched Learning Model*, EDUCAUSE Q. (Nov. 2, 2001), at 67–68; David Lavoie, et al., *Information Literacy by Design*, in TEACHING INFORMATION LITERACY ONLINE 133, 140 (Thomas Mackey & Trudi Jacobson, eds. 2011) [hereinafter *Information Literacy*].

¹⁴³ Lavoie, *supra* note 142, at 68.

¹⁴⁴ *Id.* at 67.

¹⁴⁵ *Id.* at 67–68.

¹⁴⁶ *Id.*

¹⁴⁷ *Information Literacy*, *supra* note 142, at 142.

purely online mode.¹⁴⁸ This is the flexibility of the model; with minor changes it can be used for any format.

Certainly, now that we have active learner-centered designed courses, the traditional summative course evaluation focused exclusively on faculty is less valid. Instead, we require a complementary model to evaluate effectiveness. Here we use three surveys per course per semester.¹⁴⁹ The initial survey done the first week collects mostly demographic data, e.g., if the student is employed and how so, preference of course mode, level of expertise with particular software, etc.¹⁵⁰ The second or formative survey, completed around one third of the way through the course, collects information on how the course is proceeding.¹⁵¹ The final or summative survey collects data in terms of the course fulfilling its objectives.¹⁵² Collectively, these surveys can be used as a diagnostic, along with the faculty's own notes and conclusions, for the next iteration of the course.¹⁵³

VIII. THE BENEFITS

As with any model, the ultimate question becomes: what are the benefits of its application? In the case of RELM, this process provides exponential benefits. For the faculty, it maximizes a professor's vision of content.¹⁵⁴ As a result of the process, faculty have a better grasp of the course, are able to engage in the pedagogical discourses involving the responsible use of technology, multiple learning styles, active/student-centered learning, information literacy, and assessment.¹⁵⁵ Thereby the faculty is more able to coherently update courses. Ultimately, the faculty and the learning objectives for the content drive these issues, rather than the other way around. What is more, they are able to transfer skills learned to other courses.¹⁵⁶ Of course, the process benefits students since it maximizes their efficacy of learning. As a result, the course provides clearly articulated

¹⁴⁸ *Id.*

¹⁴⁹ Andrew Rosman & David Lavoie, *Using Active Student-Centered Learning-Based Instructional Design to Develop Faculty and Improve Course Design, Delivery, and Evaluation*, 22 ISSUES ACCT. EDUC. 105, 112 (2007).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 111.

¹⁵⁵ Rosman, *supra* note 149, at 111.

¹⁵⁶ *Id.* at 112.

objectives from the outset (a destination, if you will), well designed and relevant means to realize those objectives (informing of the route), and skills that are transferable to other courses as well as to life-long learning.¹⁵⁷

There are also benefits for instructional technology units, librarians, the help desk, and others, as all the parts come together to “succeed in meeting their separate but overlapping goals.”¹⁵⁸ The process makes each course a collaborative forum among faculty and other constituencies with a vested interest. It pools the unique goals of each and links the success of each to the success of the others.¹⁵⁹ “The process results in a technology and information literacy infrastructure that is cooperative and emergent, from the inside out, rather than imposed from the top down.”¹⁶⁰

Yet institutions benefit as well, as it maximizes expectations of accountability. Specifically, as a result of the process, institutions can fulfill the expectations placed on them by professional and governmental accreditation agencies, as well as other education and governing boards. For example, the Association to Advance Collegiate Schools of Business (AACSB), which accredits schools of business, has incorporated accountability language in its learning standards for outcomes that are evidence of compliance as follows: “In 2003, AACSB standards were changed to reflect the maturity of the ‘outcomes assessment’ movement and need for improved accountability measures. The 2003 standards place emphasis on direct assessments of student learning.”¹⁶¹ It has further included such language in its consideration of quality issues in distance learning: “The choice of assessment methodologies is an important decision in instructional design, which fundamentally affects student behavior and achievement of learning outcomes.”¹⁶² Furthermore, to “[s]upplement content specialists with people who have specific expertise in learning design to

¹⁵⁷ *Id.* at 111–12.

¹⁵⁸ Lavoie, *supra* note 142, at 67.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ AACSB INT’L ACCREDITATION COORDINATING COMM. & AACSB INT’L ACCREDITATION QUALITY COMM., AACSB ASSURANCE OF LEARNING STANDARDS: AN INTERPRETATION 3 (rev. 2013).

¹⁶² ASSOC. TO ADVANCE COLLEGIATE SCHS. OF BUSINESS. (AACSB) INT’L, QUALITY ISSUES IN DISTANCE LEARNING 11 (rev. 2007).

create appropriate learning experiences.”¹⁶³ Another example is regional accreditation agencies, like the New England Association of Schools and Colleges (NEASC), or the Middle States equivalent, Middle States Commission on Higher Education (MSCHE), which accredit colleges.¹⁶⁴ Both have incorporated accountability language in their standards for accreditation. NEASC states, “Responsibilities of teaching faculty include instruction and the systemic understanding of effective teaching/learning processes and outcomes in courses and programs for which they share responsibility.”¹⁶⁵ Similarly, in its standards for accreditation, MSCHE includes:

1. Developing clearly articulated written statements of expected learning outcomes;
2. Designing learning experiences that provide explicit opportunities for students to achieve those learning outcomes
3. Implementing appropriate measures of student achievement of key learning outcomes¹⁶⁶

The influence of the United States Department of Education, which regulates these accreditation agencies, is clear in their draft “Guide to the Accrediting Agency Recognition Process.”¹⁶⁷ The Department of Education requires accreditation agencies, when making an accreditation decision, to determine whether “[t]here is evidence of the agency’s evaluation of the success of programs and institutions in meeting their objectives within the context of the institution’s mission. Examples of evidence include . . . student portfolios demonstrating achievement of objectives/competencies.”¹⁶⁸ Separate but parallel to the accreditation compliance are governing boards, which are increasing their expectation of accountability. In its 2010 report on how boards oversee educational quality, the Association of Governing Boards (AGB) share that “[w]hile respecting the responsibility of faculty and academic administrators, boards can and should be the lever that institutions need to improve their

¹⁶³ *Id.* at 10.

¹⁶⁴ NEW ENGLAND ASSOC. OF SCHS. & COLLEGES (NEASC) STANDARDS FOR ACCREDITATION, PREAMBLE (2011) [hereinafter NEASC]; MIDDLE STATES COMMISSION ON HIGHER EDUC. (MSCHE), CHARACTERISTICS OF EXCELLENCE IN HIGHER EDUC. iv (2011) [hereinafter MSCHE].

¹⁶⁵ NEASC, *supra* note 164, at 54.

¹⁶⁶ MSCHE, *supra* note 164, at 40.

¹⁶⁷ U.S. DEP’T. OF EDUC., GUIDE TO THE ACCREDITING AGENCY RECOGNITION PROCESS 2 (2010).

¹⁶⁸ *Id.* at 36.

assessment of student learning . . . ”¹⁶⁹

Over the period of a decade, RELM has been used to develop the University of Connecticut’s Master’s of Science in Accounting (MSA).¹⁷⁰ Recognition of the MSA’s quality has included a Bronze award in 2007 by the United States Distance Learning Association (USDLA), and the 2013 U.S. News & World Report ranking, which recently placed the University of Connecticut’s MSA as number eight in online graduate business programs.¹⁷¹

The question now becomes whether we need a new discourse, one dedicated to exploring a model of faculty development that engages faculty in an instructional design and evaluation process applied to their own courses as a vehicle to enable them to address issues of relevant use of technology, active student-centered learning, multiple learning styles, information literacy and transparent assessment. No doubt, such a discourse would be one where courses instructionally designed and evaluated with faculty will be compared with courses that have not been so designed nor evaluated. Potentially, since mode (online, physical classroom, or a combination thereof) is secondary under these circumstances, the age-old argument of distance (or the newer argument of online) versus face-to-face could become subordinate to this new discourse. Ideally, the benefits of doing this correctly the first time provide exponential benefits for students, staff, faculty, the institution, boards of trustees, accreditation agencies, and federal efforts to improve education. Realistically, until the benefits are seen to outweigh the cost, or the pressure for accountability increases, little effort will be made to pursue this process. Ultimately, the first institutions that implement this process will have grasped an opportunity that propels them ahead of their peers. One example is employing this model to develop an online course for Islamic Finance and Investment Law.

¹⁶⁹ ASSOC. OF GOVERNING BODS. OF UNIVS. & COLLS. (AGB), HOW BOARDS OVERSEE EDUCATIONAL QUALITY: A REPORT ON A SURVEY ON BOARDS AND THE ASSESSMENT OF STUDENT LEARNING 11 (2010).

¹⁷⁰ Rosman, *supra* note 149, at 105.

¹⁷¹ Press Release, United States Distance Learning Association, USDLA 2007 Awards Presented for Excellence in Distance Learning for Individuals, Organizations and Companies Honoring their Outstanding Achievements (May 9, 2007); *About the Rankings*, UCONN SCH. OF BUS., <http://www.business.uconn.edu/cms/p819> (last visited Apr. 15, 2014); Kelsey Sheehy, *2013 Best Online MBA Programs*, U.S. NEWS & WORLD REPORT (Jan. 14, 2013), <http://www.usnews.com/education/online-education/slideshows/2013-best-online-mba-programs/4>.

IX. CASE STUDY: INTRODUCTION¹⁷²

For a number of recent years, this same RELM mentoring process has been employed with a few of the faculty at the University of Connecticut's School of Law, specifically for the LL.M. in Insurance program. Among those faculty and their respective courses has been Umar Moghul who has taught an Islamic Finance and Investment course. In 2011, the School of Law requested Mr. Moghul and Dr. Lavoie meet to consider working together through RELM. Both have subsequently worked through the first iteration of the process to establish Mr. Moghul's course. Mr. Moghul has since taught the designed course online twice. His own experience through the faculty development process, providing the course, his subsequent conclusions, and his itinerary for future iterations is provided as a unique case in leveraging the nexus of technology and pedagogy.

It should be noted that the second semester final survey also posed additional questions relating to whether students preferred to read online or in hardcopy format and whether they found their reading online to be less careful than in hardcopy.¹⁷³ No student said his or her reading of threaded discussions was done in hardcopy. Of the required readings, some preferred reading online while others preferred reading in hardcopy. Another student said it depended on the importance of the text. Of those preferring hardcopy reading, they did so because it was easier to highlight within a reading and take notes. Of the students that preferred to read in hardcopy, only one said it was easier to focus and one admitted that reading online often resulted in scanning

¹⁷² The authors worked together to create a course in Islamic Finance and Investment using the RELM techniques discussed above. The course will be used as a case study in this section.

¹⁷³ NICHOLAS CARR, *THE SHALLOWS: WHAT THE INTERNET IS DOING TO OUR BRAINS* 90, 122, 126 (2010) ("When the Net absorbs a medium, it re-creates that medium in its own image. It not only dissolves the medium's physical form; it injects the medium's content with hyperlinks, breaks up the content into searchable chunks, and surrounds the content with the content of all other media it has absorbed. All these changes in the form of the content also change the way we use, experience, and even understand the content . . . the need to evaluate the links and make related navigational choices, while also processing a multiplicity of fleeting sensory stimuli, requires constant mental coordination and decision making, distracting the brain from the work of interpreting text or other information . . . and hence weakens [the reader's] ability to comprehend and retain what they're reading.").

of the text rather than careful study.

A. *Course Prerequisites*

Course prerequisites were not imposed on students interested in registering for this course. Students were encouraged to have a background in Islamic law as well as business and finance generally. It is not common for law schools in the U.S. to offer an introductory course in Islamic law.¹⁷⁴ As such, requiring a background—even a single course—in Islamic law, would likely severely limit the possible pool of students. Only one student in the first semester felt at a loss *vis-a-vis* their understanding of Islamic law, while several suggested requiring finance or business related pre-requisites. A higher percentage of students in the second semester than in the first had a background in Islamic law already, and less mentioned business related prerequisites. Based on student feedback, and having taught this course once, the instructor elected in the second semester to strongly recommend prerequisites relating to business and finance so as to improve the depth of discussion, as detailed below.

It was expected that the course description¹⁷⁵ would primarily attract students with an interest in business and finance. In actuality, the results show only two students out of twelve with a business finance background in the first semester and three out of seven the next. Most were primarily interested in questions of policy, economics, and or prevailing international and domestic

¹⁷⁴ See, e.g., *Courses*, ALBANY LAW SCH., <http://www.albanylaw.edu/academics/pages/courses.aspx> (last visited Apr. 3, 2014); *Course Listing, Second and Third Year*, SYRACUSE UNIV. COLL. OF LAW, <https://www.law.syr.edu/academics/course-descriptions/course-list.aspx?cat=40> (last visited Mar. 3, 2014); *Harvard Law School Course Catalog: 2013-2014 Academic Year*, HARVARD LAW SCH. (Mar. 2, 2014 2:03 PM), <http://www.law.harvard.edu/academics/curriculum/catalog/>.

¹⁷⁵ The course description reads as follows: “This course introduces the subject of Islamic law as it pertains to financing, investment, and other business transactions in contemporary contexts. We will begin with an overview of Islamic law and jurisprudence, contract law and the nominate contracts as well as derivatives and insurance. Students will be able to structure and design certain types of transactions along Islamic lines highlighting significant Islamic legal issues when reviewing contractual documentation. Prior knowledge of Islamic law as well as finance will be helpful but is not required.” This will likely be updated not only to reflect prerequisites but to focus on the fact that the course is aimed at budding finance and corporate legal practitioners.

(U.S.) politics.¹⁷⁶ Moreover, most expressed a desire to discover an alternative economic and financial paradigm in light of the prevailing global financial crisis.

B. Student Leveling

The assumption that students' knowledge of business and finance would be deficient proved to be the case when the instructor asked each student, at the outset, to introduce him or herself, their background, and their reasons for taking this course. This was further evidenced when the instructor posed basic questions of finance (for example, What is equity? What is securitization?). The instructor thus undertook to educate the class regarding business and finance at the beginning, and to 'level', or make similar, the student's knowledge from time to time as much as practicable in this regard. In surveys, students indicated that they appreciated the leveling and encouraged more of it. Some suggested a simplification of the readings and exercises.¹⁷⁷

C. Course Objectives

Course design begins under this learner-centered approach with setting out objectives for students; this is the pivotal step in the faculty mentoring process.¹⁷⁸ This is a determination of what students, after taking this course, should be able to not only comprehend and express, but also to do. Through a process of drafting and revising, the course objectives and operational

¹⁷⁶ This is a consistent rationale among those of the instructor's students who take his course in Islamic law.

¹⁷⁷ Schwartz, *supra* note 95, at 390 ("[I]n deciding which text to select, law professors make their selections based on factors such as the professor's past experiences with the text, the reputation of the text among their colleagues, the theoretical orientation of the text, and other factors that fail to account for their students particular characteristics. They place little, if any, emphasis on the degree of difficulty of the text. While it is undoubtedly true that professors consider their students' strengths and weaknesses in planning their lectures, the consideration is neither systematic nor complete.").

¹⁷⁸ *Id.* at 352 ("Law teachers, however, usually fail to identify for their students (and sometimes, even for themselves) which goals they are teaching at any given moment. This approach requires the students not only to sort out the insightful student comments from the comments lacking insight, but also to figure out, from the professor's comments and questions, both the professor's instructional goals and the relationships between those goals and the instruction presented.").

definitions of learning outcomes for those objectives are solidified.¹⁷⁹ Subsequently, the act of delineating the activities that help shape the trajectory and flow of learning to achieve those objectives is greatly facilitated.

It is because of this focus on objectives, the instructor contends, that this approach will be superior in training Islamic finance legal practitioners. Having objectives known, and then achieved, will better prepare faculty to educate, and better prepare legal practitioners with the requisite theoretical framework and practical skills than utilizing a survey of topics or other similar approaches. But, while the learner-centered approach is a critical improvement, in itself it is not sufficient. Therefore, objectives were set forth early in the faculty-mentoring program and revised from time to time. A subsequent corollary to the statement of objectives is how the students will best achieve such objectives; answering this latter question helps shape the trajectory and flow of learning. Each course module, each session, and each activity and assessment exercise is designed after parsing out the operational definition into individual objectives and intended outcomes.

This was an entirely new exercise for the instructor, who had previously used the survey approach and was unaware of this shift in educational paradigms. Further, teaching this course was made more challenging because this was the first time the instructor taught a course online. Often, when an instructor prepares a syllabus s/he thinks about what s/he would do, what s/he would teach, and perhaps that would be dictated in large part by preferred reading materials. In preparing a syllabus for a course in Islamic law jurisprudence, which the instructor has taught each of the last several years, he has always laid out the topics that he would like to teach (for example, crime and

¹⁷⁹ *Id.* at 392 (“[Instructional] designers expend a great deal of effort in obtaining as clear a description and as thorough an analysis as possible of the learning task[s].’ According to Smith and Reagan, this step involves 5 sub-steps: (1) writing all the learning goals; (2) determining for each learning goal the types of learning involved in that goal; (3) conducting an analysis of the mental steps involved in achieving that goal (performing an “information-processing analysis”); (4) determining the prerequisite skills and knowledge underlying each step identified in the information-processing analysis (performing a “prerequisite analysis”) and identifying, for each identified prerequisite, the type of learning involved; and (5) writing learning objectives for the learning goal for each step and for each of the prerequisites.”) (footnotes omitted) (quoting PATRICIA L. SMITH & TILLMAN J. REAGAN, *INSTRUCTIONAL DESIGN* 63 (2d. ed. 1999)).

punishment or women's rights) and then sought to identify reading resources. This so-called survey approach is more concerned with coverage than with developing application. Any objective in designing and teaching is from the faculty point of reference: in this case, to dispel myths about Islamic law and hope the students would come away with a respect for the legal system because of what was taught. The challenge now was to focus not on what would be taught, but on what students would learn and how. The instructor had never really consciously asked himself the question of objectives from the student or learner point of view. Undergoing the process of learning how others learn in the context of course development might best be described as an exercise in challenging oneself—what are one's goals and objectives, how does one consider those whom he or she teaches, what are one's unstated or unconscious assumptions, and how willing is one to set aside past approaches and efforts to build, with much more work, a more dynamic, engaging, and educational course.

Student surveys generally encouraged the use of objectives and concurred that they were easy to understand. What is particularly promising for future deliveries of the course is that the students overwhelmingly stated that the outcomes were achieved. This is a rare outcome the first time a course is offered. Furthermore, student survey feedback revealed only a slight majority preferring this course be taught face-to-face, but as to whether students felt they would learn more online or face-to-face, responses were about equal. Students actually seemed to prefer a combination of online and face-to-face—a suggestion being considered for the next time the course is taught, but made difficult by the various geographic locations of the instructor and students.

The course schedule divided the semester-long course into five sessions of uneven length, spread across a total of fourteen weeks. Topics included Islam and Islamic law, contract law, *riba*, *gharar*, and *maysir*, certain basic nominate contracts, *sukuk* and bankruptcy, derivatives, insurance and reinsurance, Islamic economic theories, and contemporary practices and challenges. The course schedule also sets forth both required and recommended readings and media, and contains links to the various exercise activities, which can be downloaded and submitted electronically, as well directly from the course website and Westlaw's TWEN function.

D. Starting With The Basics

As this course is a single semester in duration, a proper introduction to Islamic law and jurisprudence as well as the religion of Islam was difficult. But, as mentioned earlier, this is critical to move the industry forward. A few of the students had taken the instructor's Islamic law course, and others had relevant background therein independently. But to introduce students, most of whom had little familiarity with these subjects, the instructor utilized pre-recorded videos of himself teaching Islam's basics and the general framework of the Islamic legal system, hoping this would be a more personal and efficient manner of learning. In retrospect, it may have been worthwhile to teach this first component of the course via a live video where student feedback and interaction regarding novel and sensitive subjects would be possible in a more familiar format. Indeed, a few of the student surveys suggested the use of either more live or pre-recorded video lectures. The instructor is considering the integration of additional face-to-face communication for the next offering of the course. It should be noted that prior to the semester beginning (of the first course offering) the professor and students met in person to discuss the course structure and objectives, the technology, and answer any student's questions or concerns. During the second offering, the instructor and students made multiple unsuccessful attempts to arrange an in-person class.

E. Assessment Points

Law schools in the United States are well known for using a single assessment point at the end of the semester, determining the student's grade; many do add a mid-semester assessment point as well.¹⁸⁰ It is also not uncommon for grades in seminar courses to be based on a single assessment point (an exam or paper), plus class participation performance.¹⁸¹ The shift in the

¹⁸⁰ *Id.* at 408 ("Law school examinations, by and large, are not reliable. The infrequency of testing, only midterms and finals, makes it extremely likely that some students deemed competent are not and some students deemed incompetent actually are competent.").

¹⁸¹ *Id.* at 352 ("In fact, law professors devote considerable classroom time to critiquing students' case reading and case evaluation skills even though, ironically (or, perhaps, perversely), law professors seldom test case reading skills explicitly.").

educational paradigm within law schools is strongly encouraging multiple assessment points, enabling both the instructor as well as the student to better understand how well the students have understood the subject matter and the extent to which they are progressing towards the course objectives.¹⁸²

Utilizing multiple assessments represented another departure from the instructor's usual teaching style. Previously, in his Islamic law classes, the instructor utilized a single assessment point, namely a research paper coupled with classroom discussion performance. The latter is not always indicative of learning as the intelligent, articulate, or simply verbose, may participate well. It is also possible to participate productively without having read the course material itself, as instructors are well aware. This course utilized multiple assessment points, and, as will be explained below, discussion and participation played a very significant role in course design and grading. The learner-centric faculty development process demanded that the instructor consider how students might learn, apply what they have learned, and how that effort would fit into the instructor's intent and objectives for student learning and success when designing the exercises. Islamic finance training is often concerned with providing practical skills—at times to the detriment of considering theory and thereby producing poorer quality practitioners. Having exercises in structuring transactions, revising contracts, and working with *Shari'ah* advisor concerns—as was done in this course—helps tremendously in building practical skills. The exercises required in this course took into account prevailing conventional regulations and market customs as well as ethical dilemmas of the sort faced by practitioners of Islamic finance.

An assessment point in the form of a quiz was used early on to assess each student's understanding of the basics of Islam and Islamic law and jurisprudence. This is important as the instructor did not want students to further themselves in, or even begin the study of, the subject of Islamic finance and investment without being properly grounded as most legal practitioners (and others) in this field are not. In both offerings of the course,

¹⁸² *Id.* at 408 (“Many law professors regard checklists and other rating guides as superficial and reductionistic and therefore instead, apply a “gestalt” approach to grading examinations, in which they decide upon a grade based on their overall sense of how the student performed. Finally, law professors never even attempt to assess test-retested reliability.”).

students performed very well, and following grading (of a quiz or larger activity), there was a discussion of the questions, including those posed in the assignment as well as those points students raised specifically.

A few course modules later, students were again assessed in the form of a more lengthy quiz delving more deeply into Islamic financial law. Topics here included purchase undertakings, derivatives, and Islamic constitutional text interpretation. Both quizzes asked simple questions of knowledge by requiring students to formulate rather than merely select an answer.¹⁸³ Both quizzes, moreover, presented fact patterns requiring an analytical application of law by the students—as well as some degree of judgment. The second quiz also included questions created and submitted to the instructor by the students along with one right and one wrong answer.

The required readings and media, discussion, and prior assessment points led up to the first activity completed in teams.¹⁸⁴ This activity consisted of the structuring of an Islamic residential mortgage product framed as if the student team is legal counsel responding to client instructions, as communicated by the student's senior partner (the instructor). Students were provided with a basic fact pattern, some relevant regulatory limitations, and client and market business concerns and expectations. In light of the foregoing, and based on what they had learned to date (plus any independent research they wished to undertake), students were asked (i) to design a structure using either *ijarah*¹⁸⁵ or *musharakah*¹⁸⁶ as the basis thereof, (ii) to advise the client on the impact of relevant prevalent market practices and realities on the proposed Islamic mortgage product, and (iii) how a U.S court might treat the suggested structure in a foreclosure proceeding.

¹⁸³ Students were asked to answer and apply the varying scholarly interpretations of the *hadith* text cited in the collections of Tirmidhi and Abu Dawud: "Sell Not What Is Not With You," in light of present day derivatives and other transactions. See MOHAMMAD HASHIM KAMALI, ISLAMIC COMMERCIAL LAW: AN ANALYSIS OF FUTURES AND OPTIONS, 110 (2000).

¹⁸⁴ Legal practitioners structuring such products and transactions often work within law firms or in-house legal departments as teams given the myriad and complexity of legal issues. Accordingly, the instructor felt it was important to learn to work with other legal thinkers.

¹⁸⁵ For an overview of *ijarah*, or leasing transactions, see AYUB, *supra* note 58, at 279–306.

¹⁸⁶ For an overview of *musharakah*, or partnership-based financing mechanisms, see AYUB, *supra* note 58, at 307–346.

In the next activity, students were assessed, again as legal counsel, representing a foreign (i.e., non-U.S) Islamic investment bank with a leveraged buy-out transaction. Certain problems, as the exercise presents, have arisen during the course of such transaction. Students are required to design a legal structure to overcome this challenge. Students are also asked to identify the nature of the appropriate legal instruments to implement their suggested financing structure and, in doing so, to anticipate the client's *Shari'ah* advisor's concerns. This exercise was also done in teams, but in the first course offering different teams were used in this second exercise than in the first. Discussion with the teams was encouraged to take place online within the threaded discussion format, where the instructor monitored and engaged with the students as they sought to solve problems.

Finally, the required readings and media, discussions, and previous assessment points culminated in a final exercise. While cumulative in what it measured, the final exercise was not weighted as a typical summative final exam. This exercise, completed on an individual basis, consisted of revising contractual documents in a leveraged buyout transaction.¹⁸⁷ It is framed from the point of view of a *Shari'ah* scholar as a client, which the student, as a lawyer, represents. The *Shari'ah* scholar, as is often the case in the transaction process, raises certain questions and expresses certain objections relating to, among other things, an escrow agreement and troublesome provisions in articles of incorporation. The instructor chose this particular contract drafting exercise because he felt that law schools typically do not provide adequate instruction and education in contract review and drafting. Students in both semesters seemed to have difficulty with contract drafting, but they may not have (yet) taken the courses that prepare them for contractual language. Accordingly, the instructor will look to incorporate contract review and drafting earlier in the course.

Student feedback, it must be noted, generally supported multiple assessment points and they were enthusiastic about the uniqueness and practical knowledge and training gained thereby. Some even expressed a desire for more such exercises. Lastly, it

¹⁸⁷ Drafting of contracts and other instruments is typically done individually and one's colleagues then typically review and revise, sometimes individually and sometimes as a team. See, e.g., Gerald Lebovits, *The Legal Writer: Prove Proof it with Revision* ~~Re-vision~~ *Re-vision—Part II*, 81 N.Y. ST. B.A. J. (Oct. 2009), at 50–52, 64.

should be noted that in the first semester one student preferred quiz formats only and one encouraged less group activities, but the course will likely continue to provide a mix of activities to be as inclusive as possible and to speak to the different ways in which learning takes place.

F. Threaded Discussions

Threaded discussions replace physical classroom dialogue among students and the instructor; they take place online in a text format and serve as an assessment point. Generating and guiding class discussions and debate, and rendering the subject relevant, whether online or in a physical classroom, is, in the instructor's view, the most challenging aspect of teaching. In this regard, attempting design solutions, such as asking students to serve as threaded discussion moderators (a student suggestion) and requiring them to create their own quiz questions, imposes a helpful structure for expected participation.

The course schedule specifies when a particular threaded discussion begins and ends; these points typically mark the start and end of a course module. Discussion could take place at any time or any day during this period as the course was asynchronous. There was, therefore, no particular time that either the faculty or the students were required to be present online. For some this provides flexibility, while others expressed a level of anxiety that they must check the course website more often than they would attend an in-person class. It must be noted that students are expected to not write casually and are graded on the quality, precision, and depth of their comments.

At the outset of the first course offering, the instructor sought to be online at the beginning of each threaded discussion to pose questions to initiate discussion. He quickly learned to ask questions that were multi-layered and that would require the expression of an opinion or position with a demonstration of underlying knowledge. He also quickly learned (the first semester the course was taught) that posing questions at the very beginning of a module did not add much value. Students typically utilized the first third of the threaded discussion time period to complete the required readings (possibly in light of the already stated questions thereby limiting their workload and learning), and then enter the discussion. The instructor also came to learn, based largely but not entirely on student feedback

during the semester, not to pose all of the questions for a particular threaded discussion at one time. When that was done, one or two students able to complete the required readings more quickly than the others, would reply first, and often times their answers did not generate further discussion, perhaps due to the simplicity of the question or due to their lack of knowledge of the subject matter. This required that additional questions of a follow-up nature be crafted or that the questions be staged across the module. In each semester as the course progressed, the students clearly became more comfortable; discussions were more easily generated by them without the faculty's regular presence. The instructor also integrated the presence of outside guest subject matter experts to share deeper expertise (e.g., Islamic economics) and additional viewpoints. As the course proceeded, the instructor incorporated more items of contemporary interest and relevance (e.g. the LIBOR manipulation investigation) into the required subject matter.

Threaded discussions that took up subjects of morality, ethics, and/or policy tended to generate more interesting and passionate discussions than did those that were limited to the technicalities of Islamic finance and investment law. Students debated questions of authenticity and legitimacy as they considered—sometimes disappointment palpable through the digital medium—actual products in light of the ethics and theory learned at the outset. That is to say, the rationale, purpose, and consequences of the application of such principles were of greater interest than the minutiae relating to their application. The latter is where legal practitioners in Islamic finance thrive and where present Islamic financial-legal analyses (within the industry at least) find satisfaction (with reservation in some cases).

Students responded strongly to the threaded discussions. Several liked it, offering that it encouraged and supported deeper consideration of the subject matter. One student of the first semester, on the other hand, expressed outright hatred of the format, while others suggested a few refinements relating to the use of technology and supervision of discussions. Another couple of students felt that the asynchronous nature of the discussions forced considerably more work than the physical setting and favored some students simply because of scheduling.

G. Evaluations and Grading

The learner-centric model of education is coupled with the presentation of clear and detailed grading metrics or rubrics to students.¹⁸⁸ Developing rubrics for each assessment point, as well as the threaded discussions, forces the instructor to continue to consider and integrate student learning into the course design.¹⁸⁹ Furthermore, by detailing why a particular score is earned, a predictable and more transparent grading mechanism is created. Students have a better sense of what will be expected of them and of their performance.¹⁹⁰

¹⁸⁸ See DANIELLE D. STEVENS & ANTONIA LEVI, INTRODUCTION TO RUBRICS: AN ASSESSMENT TOOL TO SAVE GRADING TIME, CONVEY EFFECTIVE FEEDBACK, AND PROMOTE STUDENT LEARNING 3–10 (2005) (providing a general background on the components and usefulness of rubrics); Schwartz, *supra* note 95, at 416 (“Feedback should be informational in nature; that is, students should be told if their analysis is reasonable or unreasonable and why, told about any patterns in their errors, and given information about errors in their approach to the practice items.”).

¹⁸⁹ Schwartz, *supra* note 95, at 408 (“Many law professors regard checklists and other rating guides as superficial and reductionistic and therefore instead, apply a “gestalt” approach to grading examinations, in which they decide upon a grade based on their overall sense of how the student performed.”).

¹⁹⁰ One rubric employed both semesters of the course reads as follows in pertinent part: Grading of Product Submission will depend on: Clarity of language; Organization; Mastery of the legal principles and concepts; Grammar, spelling and mechanics; Sophistication of ideas and argument; Highlights and resolves relevant legal and business issues as well as addresses client parameters; Highlights areas of potential concern for client whether legal, business or otherwise. Grading of Threaded Discussion: 24–30 Points—Significant postings and interaction between team members; 15–23 Points—Considerable postings and interactions between team members; 7–14 Points—Moderate postings and interactions between team members; 0–6 Points—Little to no discussion between team members. Total Grade: 60–75 Points—demonstrates complete understanding of the task and relevant principles and concepts; final product is complete, theoretically viable and practical or nearly so; presents and addresses concerns of client and *vis-a-vis* about compatibility of product with Islamic law; requirements of the task are included or near complete; 45–59 Points—demonstrates considerable understanding of the task and relevant principles and concepts; all requirements of the task are included, but the final product is lacking in its theoretical or practical viability in some manner; 30–44 Points—demonstrates a fairly incomplete understanding of the task and relevant principles and concepts. Most requirements of the task are included, but the final product is lacking in its theoretical or practical viability in some material manner; 18–29 Points—demonstrates poor or vague understanding of the task and the relevant principles and concepts. Many requirements of the task are excluded, and the final product is lacking theoretically and practically in a generally material manner; 0–17 Points—demonstrates little to no understanding of the relevant principles and concepts and client parameters. Many of the requirements of the task are missing, or the

CONCLUSIONS

Ultimately, technology, with its promise of innovation, has drawn the largest degree of attention in higher education. As unique as one would think legal education is comparatively, the discipline continues to explore this same trajectory. Likewise, on a less well-known charge, is the need to heed the paradigm shift from teacher-centered passive learning to student-centered active learning. Here too, higher education has made some inroads and legal education has brought the concept into its shared dialogue.

However, technology has overshadowed and stunted the increased pursuit of this newer pedagogy. Understandably, it is more efficient to buy technology and quickly implement it than to pursue effective faculty development and course design. However, technology, in and of itself, is not a solution; it is just being sold as one. In reality, developing faculty unable to consider technology contextually within a learner-centered paradigm just exponentially perpetuates passive learning. Further, the unquestioned pursuit of instructional technology and the singular focus on substantive curriculum development before instructional design has underscored the contradiction of using the traditional model of faculty development to train faculty for the newer active learning paradigm.

One solution is a faculty-mentoring process that is itself student-centered to properly develop the faculty and align the training model with what is expected. It is possible that Umar Moghul's course is exemplary of such an effort. Mentoring an Islamic law professor through an instructional design process that is itself immersed in an active student-centered learning model has prepared him and his course to adhere to the paradigm shift, deliver a higher quality course online or in any other mode, and respond to the accountability movement. We expect that this, in turn, will help prepare better Islamic finance and banking law faculty and legal practitioners who can push the contemporary Islamic finance market further toward the *Shari'ah's* underlying purposes.