

OPALESQUE

# ISLAMIC FINANCE

## INTELLIGENCE



## Damiir Opalesque

### Featured Structure

Shari'a Polemics of Sukuk Trading  
By Jhordy Kashoogie

### Lex Islamicus

Financial Criminology v Financial  
Victimology in Islamic Practice  
By Hakimah Yaacob

### Industry Snapshot

E.P.L. in Islamic Finance - Education  
By Daud Vicary

The fifteenth edition of OIFI is here and you might notice our front cover is slightly different. Since inception we have avoided profiling any specific individual or personality, in part to differentiate OIFI with so many other finance publications and because our focus has always been poignant and relevant content (not to mention the fact that such portraits are cheesy too). This edition explores, among other things, the conscience of the industry as we ask ourselves: What is Islamic finance? What is the message being conveyed? Who can be part of this industry? How do we communicate the message more effectively? The front cover illustrates this puzzle (and hints to the answers).

Our Editorial tackles the approach we take not only to define Islamic finance but, increasingly, on how we communicate it to others. On the other end our Featured Resource is a short compilation of materials concerning Islamic Economics, an often distant topic to Islamic finance but one that is undergoing a similar revival and evolution.

The Featured Structure segment has Jhordy Kashoogie analyzing the debate behind the permissibility of trading sukuk, and this is further complemented by the Discussion Board which brings along feedback from practitioners on the same subject. Lex Islamicus welcomes back Hakimah Yacoob as she discusses financial criminology and financial victimology from the perspective of Islamic finance.

The Industry Snapshot introduces a recurring series of articles on EPL in Islamic finance (Education, Perception and Liquidity), which has been developed by Deloitte's Daud Vicary. Lastly the Opinion Column examines the growing concerns regarding career development and deployment of human capital in the industry, with Mohammed Khnifer highlighting some of the main obstacles faced by today's would-be Islamic bankers.

We encourage feedback from our readers and welcome comments & suggestions to make OIFI better. In addition, please remember that you can visit our historical archive ([see reference link](#)) for access to our ever-growing databank of Opalesque Islamic Finance Briefing as well as all of the back issues of Opalesque Islamic Finance Intelligence.

Best Regards,  
Bernardo  
Editor, Opalesque Islamic Finance Intelligence

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Photography by: Kelly Lemon, Robert Seabrook

# Islamic Finance Incommunicado

By Bernardo Vizcaino, CAIA

It seems that Islamic finance is getting a makeover. Recently there have been various (some light-hearted) attempts to dissect Islamic finance: from comparing Islamic finance to every-day items, tongue-in-cheek forecasting of industry developments, clever use of soccer metaphors, to berating the much-hyped self-congratulation that we periodically witness in conferences and industry events. This kind of commentary, taken as a whole, hints to a desire to revisit the message of Islamic finance and how this is communicated.

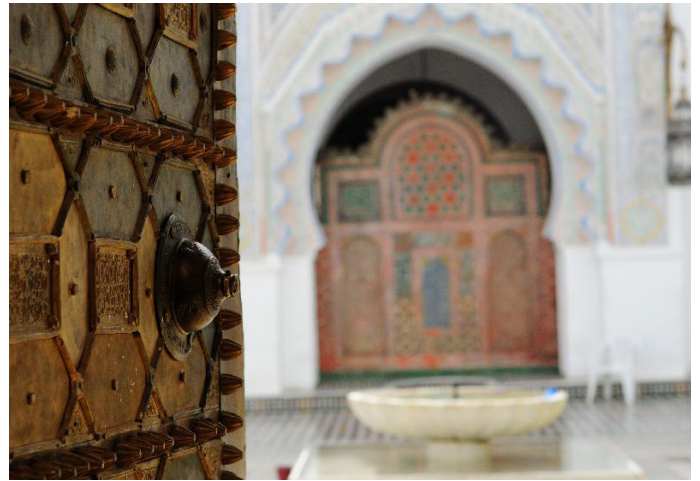
One of our contributors recently inquired about who had coined the term Islamic finance, and this led to discussions surrounding the first forays into Islamic Economics and looking further back to the early days of Muslim commerce. Almost simultaneously I had been asked to provide feedback to one of the above-mentioned questionnaires, one of them asking us to identify what everyday items best resembled Islamic finance. The latter was an intriguing exercise since it was effectively reaching out to our subconscious perception of the industry.

These were intriguing queries, looking at the origins of Islamic finance (exactly where it came from) and the characteristics we ascribe to this industry (metaphorically speaking that is). Overall, these and many other approaches carry a common denominator, they are all trying to make the topic more accessible to the masses.

## Perhaps...

Perhaps the definition of Islamic finance is too eccentric for a lay person, in other words it doesn't make sense except to those who are already familiar with Islamic finance in the first place. Furthermore, it appears that there is no standard definition of Islamic finance (some are even circular - making reference to Islamic banking... what good is that!) and all of them lack simplicity (often degenerating into multi-paragraphed expositions).

Naturally, the core of Islamic finance is Shariah, but once again it does not lend itself for easy assimilation by newcomers. Then again, there have been many qualities ascribed to Islamic finance: borrowing from ethical and sustainable finance, focusing on the interest-free and participatory nature of its products, to the socially responsible and community engagement role of its member banks. All of these terms are valid, but there is yet to be a definition that is all encompassing.



## Perhaps...

Perhaps the message is not being communicated effectively, not reaching or catering to the right audience (specifically those weird people outside of the industry which we will refer to from now on as "consumers"). Yes consumers are the ultimate audience, and as we see discussions gravitate around the definition it is equally important to observe how such definitions are being delivered.

Even a cursory survey of industry portals yields very few definitions of Islamic finance or Islamic banking, presumably because they are such obvious terms that they don't require an introduction. However, communicating what is Islamic finance could use novel tools and some lateral-thinking. Sometimes metaphor, symbolism, and even parody can help illustrate the inner-workings of the industry.

## Perhaps...

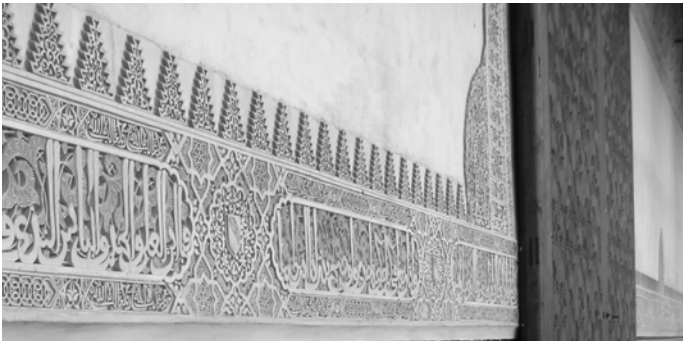
Perhaps it matters little what we consider to be the 'correct' definition of Islamic finance. Notice my attempt to avoid offering a definition (attribute this to laziness if you will). It might be that what needs to be redefined is the focus of the industry. The most important concern is not a few sentences or a nominal description, but rather to engage more people and broaden the appeal of Islamic finance - beyond the limited walls of a few service providers. Definitions are useful, but they are of little use if the industry keeps talking to itself.

Your feedback and comments are very important to us, please feel free to contact the author [via email](#).

# Islamic Economics

 **Blogger™** [As Featured in the Islamic Finance Resources Blog](#)

*The field of Islamic Economics could be considered as the older sibling of Islamic Finance. Due to its theoretical nature it is often focused on the abstract, but that is not to say that it lacks vibrancy, color, or relevance. In fact there are various forces that are shaping this field from within and we present here a short list of papers that will be introductory to some but also highlight some of the current trends in Islamic Economics:*



[Role of Islamic Banks in Economic Development](#)

[Research In Islamic Economics: The Missing Fard 'Ayn Component](#)

[An Approach to Islamic Economics](#)

[Islamic Economics: A Survey of the Literature](#)

[Islamic Finance and Economics as Reflected in Research and Publications](#)

[Obstacles to Islamic Economics Research](#)

[Towards Developing a Successful Islamic Financial System](#)

# Shari'a Polemics of Sukuk Trading

By Jhordy Kashoogie

*Jhordy Kashoogie, graduated from International Islamic University Malaysia (IIUM) with a B. Econs.(Hons) in Islamic Economics and Finance qualification, he recently completed his postgraduate study, MSc Islamic Finance, at Durham University, United Kingdom. He has studied various aspects of Islamic finance and co-authored the paper "Debt versus Equity Financing in the Light of Maqasid al-Shari'ah" (see reference link).*

In Shari'a, *sukuk* have to represent the ownership of assets or services that belong to *sukuk* holders, and therefore *sukuk* have to be traded against the value of its underlying assets or services. However, that is not happening in actual practises of *sukuk* trading as there is a grey area for what constitutes *sukuk* to be tradable in the market. Therefore, in this opportunity, the *sukuk* trading is examined in light of Shari'a and the regulatory framework. Interviews with scholars (Prof. Tariqullah Khan and Bilal Khan), and advisers in leading Islamic banks (Abdulkhaliq Elshayyal and Nayyar Azam Saifi) are conducted in order to incorporate their insights regarding issues of *sukuk* trading practises, and also suggestions for the future of *sukuk*.

## Shari'a and Regulations Framework of Sukuk Trading

From Shari'a perspective, Al-Jarhi and Abozaid (2010) impose rules and conditions (ahkam) related to the tradability of the *sukuk* in primary and secondary markets. To begin with, *sukuk* must be issued against some tangible assets and not against cash or debts. Therefore, the tradability of *sukuk* at the time of issuance (primary market) as well as in the secondary market must follow these rules:

1. If *sukuk* are issued against specific assets ('ayn) or services, then this issuance implies the sale of these assets to the *sukuk* holders in return for cash money based on current values of assets or services, and therefore the *sukuk* becomes tradable.
2. If *sukuk* are issued against described assets or services to be manufactured or constructed in the future (mausuf fii zimmah), then this issuance implies the sale of these assets to the *sukuk* holders in return for cash money, and these *sukuk* are not tradable until the deliverability of assets or services.
3. If *sukuk* are not issued against assets or services, but for the purpose of utilising the proceeds to acquire some assets, then *sukuk* do not become tradable until the stage at which those assets or services are purchased. This is because the *sukuk* up to that point represent liquid proceeds, i.e. cash money, and money cannot be sold against money unless the Shari'a rules of sarf are observed.
4. If there is any mixture between 'ayn and dayn, then 'ayn must dominate dayn in *sukuk* issuance.

Condition no. 1 stresses the importance of asset ownership in which asset ownership must be fully transferred to the *sukuk* holders, so under that condition they can trade in secondary markets with asset ownership as an object of sale (mauqud alaihi). Even if the *sukuk* holders wish to sell immediately after the *sukuk* have been traded to them in the primary market, complete transfer of asset ownership to the *sukuk* holders from the *sukuk* issuer has to be fulfilled. This condition is governed in accordance to AAOIFI Shari'a standards No. 17 on investment *sukuk*, clause 5/2/4 as follows:

## Featured Structure

*It is permissible, immediately upon issue and up to the date of maturity, but after passing ownership of the assets to the holders of the sukuk, to trade in sukuk that represent ownership of existing leased assets or assets to be leased on promise.*

Condition no. 2 is in line with AAOIFI Shari'a standards No. 17 on investment sukuk, clause 5/2/1 that govern what constitutes sukuk to be tradable in the secondary market, as follows:

*It is permissible, after closing subscription, allotment of sukuk and commencement of activity, to trade in and redeem investment sukuk that represent common ownership of tangible assets, usufructs or services.*

As for condition no. 3, the condition is straightforward and yet there has been no specific regulation framework so far to be put by regulators. Condition no. 4, however, is still contentious because there has been a trend that sukuk issuance comprises a mixture of ayn and dayn assets, the so-called sukuk istishmar, in which the former is tradable in the market whilst the latter is not. Sukuk that include both cash and debt have to follow the laws of cash and debt in which the sukuk should be traded at par; any debt trading (bay al-dayn) either above or below the par value, it is tantamount to riba al-bay. Therefore, since the dayn is not tradable in the market, there are dissenting opinions among regulators and different practises across jurisdictions regarding the extent to which dayn can dominate the 'ayn in order for sukuk istishmar to be tradable in the market.

According to OIC Fiqh Academy resolution no. 30 (4/5), if the majority of the underlying asset is dayn then the sukuk are not tradable in the market, whilst if the majority of the underlying asset is 'ayn, then the sukuk are tradable in the market. Nevertheless, a fatwa from AAOIFI stipulates that sukuk which have 30% 'ayn asset composition is tradable in the market so long as the dayn and cash do not exceed 70%. At worst, Dubai financial markets allow sukuk that have 10% 'ayn asset composition to be traded in the market. Both AAOIFI's fatwa and the Dubai financial market practices have given rise to controversial views with regard to allowing dayn-dominant sukuk istishmar to be traded in the market. AAOIFI claims that the fatwa is derived from a Hanafi point of view, whereby as long as there is no intention for hiyal, there is nothing wrong from shari'a perspective.

However, in Malaysia, the selling of debt (bay al-dayn), which indicates no limit for level of debt, is allowed by the Shari'ah Advisory Council (SAC) of the Securities Commission (SC), which allows bay al-dayn based on the premise of Ibn Al-Qaym that bay al-dayn is permissible because there was no evidence from Qur'an and Sunnah that disallows bay al-dayn. By contrast, Gulf countries disallow bay al-dayn, as the debt money represents cash and when cash is traded with cash over premium or discount, it is tantamount to riba (Mohammad et al, 2009).

### Actual Practises of Sukuk Trading

In the actual practises of sukuk trading, there are deviations from Shari'a and regulation framework found in trading sukuk in secondary market because it involves contentious issues, such as asset ownership and bay al-dayn. While for the primary market, there are no deviations since the rules are clear and straightforward, not involving contentious issues.

This deviation problem is actually rooted from the current sukuk structure, which is asset-based sukuk. Shari'a rules no. 1, 2, and 3 of sukuk trading are violated in asset-based sukuk because asset-based sukuk are traded against pecuniary assets in the form of cash, not asset ownership, since the sukuk holders do not have recourse to the underlying assets but rather just the capital guarantee. Therefore, in those cases, sukuk trading is akin to debt trading (bay al-dayn) with the return or loss generated from the debt trading, which is tantamount to riba al-fadl and riba al-nasi'ah. Furthermore, it involves gharar, as there is an uncertainty with any debt traded in the market.

Based on the interviews, this problem happens because there is still an unwillingness of key players to adhere to the prevalent standards since they have preferred practice and practicability of sukuk issuance. The key players inherently still prefer asset-based sukuk instead of asset-backed sukuk because they are averse to market risk more than to credit risk, as Prof. Tariqullah said. So the way they structure sukuk is focusing more on credit risk of the issuer, which characterises asset-based sukuk. However, even if asset-backed sukuk are preferred for sukuk issuance, this structure still hinges problems, as it will be costly or incurring big losses in the event of significant drop of the assets' value, as noted by Abdulkhaliq in the interview. It is important also to note that the full transfer legal ownership is difficult to be realised at certain jurisdictions where the underlying assets still pose regulatory problems such as legal and taxes issues.

# Featured Structure

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## The Way Forward

For the way forward, all the interviewees agree that there is a need for unison standards or convergence across jurisdictions with regard to sukuk practises—including sukuk structure and sukuk trading. In order to reach the convergence of sukuk practises, closer engagement between key players, regulators, and scholars are urgently needed. Abdulkhaliq adds that regulators need to tackle regulatory issues such as taxation issues, governance, product development, in order to make the current practises become more efficient. Furthermore, the transition to asset-backed structure should be facilitated as this structure represents genuine Shari'a financing, and the sukuk can be traded against values of underlying assets. Hence, the originators, rating bodies, arrangers, and regulators should sit together to discuss on how to manage the market risks, different proxies for sukuk rating, and so on for giving incentives to key players and investors to have asset-backed sukuk in the market. On another aspect, Shari'a advisors along with Shari'a compliance team, who are the gatekeepers in the industry, shall monitor and review the sukuk throughout its life tenure to ensure that the sukuk trading is Shari'a compliant at all stages. The current role of just issuing fatwa of its compliance should be abolished, as Nayar said in the interview.

## References:

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- Mohammad, Shamsiah, Mohd Fadhly Md Yusoff, and Abdul Aziz Al Qassar (2009). "Ground Rules for Sukuk Issuance" in Sukuk: Islamic Capital Market Series. Malaysia: Sweet & Maxwell Asia.

Your feedback and comments are very important to us, please feel free to contact the author [via email](#).

## Discussion Board

The AAOIFI framework indicates that sukuk can be traded only if the issuer transfers real ownership to the sukuk holders. However in practice there is no real transfer of ownership taking place. Consequently, sukuk are traded based on capital guarantee rather than market value of underlying assets. Why do you think there is a deviation between actual practices and AAOIFI rules to trade sukuk?

*It is not accurate to say that there are no real transfers in practice. The issue is between transfer of legal rights and beneficial rights. The former constitutes the transfer of the asset outright to the SPV and thus giving the investors the right on recourse by way of the assets. The latter does not as the beneficial rights ends as soon as the contract ends. Meaning that when the lease contract, say defaults, the beneficial rights end, thus giving the investors without recourse on the tangible asset. Actually this is not a Shariah issue. The whole exercise must be looked at upon the distinction whether it is a credit issue or otherwise.*

**Wan A R Kamil**

Director, First International Consulting Group

Former Islamic Capital Market Consultant for the Securities Commission Malaysia

*In our 2001 survey of perceptions of market participants in Islamic financial industry (Risk Management: An analysis of issues in Islamic financial industry) we got a surprising but revealing response. The major Islamic banks in our survey reported that, with respect to Islamic financial contract, for them the banking book market risk is more serious than the credit risk. Surprising – because, banking book market risk is never understood to be more important as market risk is a trading book phenomenon. Surprising –also, because market risk is never seen more serious as compared to credit risk. But in Islamic finance it is! That means the participants of the industry – including originators, issues, rating agencies, arrangers and investors are averse to market risk more than to credit risk. So naturally, the issues should be based on credit risk and not market risk. I am sure this is the main reason that explains the phenomenon. Add to it the actual size of interest rate derivatives in the market – 75% of all derivatives and 400 trillion US\$ – interest rate swaps to manage interest rate risk or rate of return risk euphemistically, which are not available if issues are to be issued based on market risk (asset-backed).*

**Professor Tariqullah Khan**

Professor of Islamic Finance

Qatar Foundation

*AAOIFI recognises two different types of ownership; legal ownership and constructive ownership. It is important to bear in mind the concept of constructive or beneficial ownership when looking at jurisdictions where transfer of legal title is difficult to perfect or where the asset in question attracts taxes or other burdens when looking to transfer it. Rather than there being a deviation from the AAOIFI guidelines, local differences have dictated a growth in the sukuk market along certain terms. For example, historically, as the majority of the early sukuk issued in the GCC were property based, local GCC laws on foreign ownership of property were reflected in the sukuk assets and thus were always going to remain a cause for concern for foreign certificate holders.*

**Abdulkhaliq Elshayyal**

Legal Adviser & Shariah Compliance Officer

Bank of London and The Middle East

*The simple and short answer is the practicability and preferred practice of key players. It is pointless having AAOIFI rules which are not adhered to.*

**Bilal Khan**

Law Lecturer and Executive Director

Islamic Finance Education Council

*Yes, I believe that the Sukuks are not being traded in compliance to the Shariah Guidelines, and there is of course a deviation between actual practices and AAOIFI rules.*

**Nayyar Azam Saifi**

Manager Shari'ah Audit, Compliance & Advisory

United Bank Limited

## Discussion Board

In order for sukuk to be tradable in the market, there is a certain level of debt (dayn) set by regulators in sukuk's asset composition (AAOIFI's Fatwa: 70%, OIC Fiqh Academy Resolution: <50%, Dubai financial market: 10%). Why do you think there is a difference among regulators regarding this matter? What do you think should be an appropriate framework for composition of debt?

*This is a matter of Shariah interpretation. The hadith "thuluth kathir" or one third is a lot, has been used to set the limit. It differs from time to time and within the same jurisdiction and by the same body as well. Such as the IDB case.*

**Wan A R Kamil**

Director, First International Consulting Group

Former Islamic Capital Market Consultant for the Securities Commission Malaysia

*For this matter you have to look at various qualifiers. They talk about different matters no one. Those numbers that you mentioned are for investing in stocks and shares and not for Sukuk as debt instruments. For Sukuk as debt instruments – there is Malaysia and outside Malaysia. Outside Malaysia ALL will fix a benchmark of 51 non-debts for making any Sukuk tradable. In Malaysia this condition is not required meaning that even 100% debt is tradable.*

**Professor Tariqullah Khan**

Professor of Islamic Finance

Qatar Foundation

*The devil is in the detail as they say. This can only be cleared up if we were to interview the prominent scholars for the basis of their rulings in different forums. Having said that, the varying positions appeal to different people with different perspectives.*

**Bilal Khan**

Law Lecturer and Executive Director

Islamic Finance Education Council

*This difference derives from varying applications of ijtiḥād by shariah scholars. As with most modern issues arising out of financial transactions, different scholars apply different degrees of reasoning and there are a number of opinions which represent different views. It is important to bear in mind however that these institutions are not regulators, contrary to what you mention.*

**Abdulkhaliq Elshayyal**

Legal Adviser & Shariah Compliance Officer

Bank of London and The Middle East

*The difference among regulators is not a matter of any concern as it is due to the market conditions and practices of the market. However, ideally there should be a single practice round the globe the best should be 33% of debt.*

**Nayyar Azam Saifi**

Manager Shari'ah Audit, Compliance & Advisory

United Bank Limited

# Financial Criminology v Financial Victimology in Islamic Practice

By Hakimah Yaacob

*Hakimah Yaacob is an Associate Researcher at the Islamic Banking Unit, International Shari'ah Research Academy (ISRA) for Islamic Finance. She holds a Bachelor of Laws (Hons), Bachelor of Syariah (Hons), a Master in Comparative Laws, from International Islamic University Malaysia and a diploma from Tokiwa International Institute, Japan. Previous positions held include Head of Law Reform & International Treaties, SUHAKAM, legal practitioner, as well as being the Drafter of International Standard Organisation 26000 on social responsibility. She has published many articles on alternative dispute resolution (ADR) in Islamic finance including arbitration, mediation and hybrid ADR.*

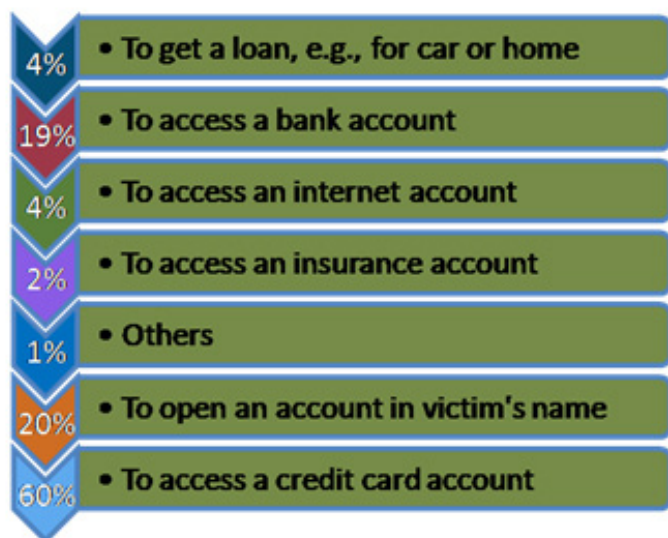
Laws that directly addressed commercial behaviour were an important part of many ancient legal codes. The Code of Hammurabi dictated the death penalty for many crimes, including theft and fraudulent sale of drink. Law 265 states "if a herdsman, to whose care cattle or sheep have been entrusted, be guilty of fraud and make false returns of the natural increase, or sell them for money, then shall he be convicted and pay the owner ten times the loss". The Twelve Tables of the Roman Republic stated: "If a patron shall defraud his client, he must be solemnly forfeited (killed)". Art 13:3 of Malacca Canon Law punished the offender of selling royal command by committing fraud with scalping the head or splitting the tongue. With the passage of time the study of criminal behaviour has become a science called criminology or offenderology. Only in the 1940's did the world begin to include the victim as a subject for study. This widening of scope resulted from the realization that punishment by itself is not sufficient to deter crime. Since the victim is the other party in any crime, the need was felt to include victims in its study. The aim of this article is to discuss both criminology and victimology from the perspective of Islamic finance.

The term "criminology" derives from Latin word "crimen", which means "crime", and the Greek word "logos", which means "science". Criminology is an independent and autonomous social science that studies crime, forms of criminal behavior, the causes of crime, the definition of criminality, and the societal reaction to criminal activity. Criminology is closer to psychology because it studies the minds and behaviors of criminals as opposed to their criminal actions. Criminologists study a multitude of issues related to crime and the law. Crime is a social phenomenon that is defined by the law, for laws regulate social behavior in a modern society.

The word "victimology" is derived from two words: "victima", the Latin word for victim, and "logos" from the Greek language. Logos is a word with various meanings and is often translated into English as "word" but can also mean thought, notion, speech, reason, proportion, principle, standard, or logic. It has varied uses in the fields of philosophy, analytical psychology, rhetoric and religion. However, logos in the term "victimology" denotes the abstract and conceptual understanding of the victim. The "-ology" suffix in the word "victimology" means "the study of". Thus victimology literally means "the theoretical (abstract) study of the victim". Ideally, it should discuss the central issues of victims.

Criminology would not be complete without victimology. The reason a criminal commits a crime must be linked to the reason for the existence of a victim. This is due to the fact that crime (in particular financial crime) will result in victimisation of an individual. An offender is motivated to commit a crime when there is an opportunity to do so, a suitable target (victim), and lack of a capable guardian and a place manager (Lawrence Cohen & Marcus Felson). Financial crime can be broadly categorised into documentation fraud (security fraud, hedge fund fraud), electronic fraud (phishing, emails, sms and telephone, personal fraud (identity theft, ATM, credit card, debit card) and money laundering (Sirat, S). Types of fraud involving cards can be categorised into counterfeit (duplicating legitimate cards which are then use fraudulently), stolen or lost card (unauthorized usage of stolen or lost card), card not present (unauthorized usage of card information for activities over the internet, phone or mail) and identity theft (obtaining personal info of another person for the

purpose of assuming that person's identity to engage in fraudulent activities). The stolen identity will be used for the following purposes;



Source: Federal Trade Commission, quoted from Sirat, S.

These are only limited examples of fraud cases. Victims of financial fraud may be found in many sectors: banking, state and national government, investors, traders and others. The Seventh United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34 defines "victims" as "persons who, individually or collectively, have suffered harm, including physical injury and mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member states, including those laws proscribing criminal abuse of power". The Declaration goes on to state: "The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability."

In essence, victims can be divided into five categories:

- i. Primary victims are directly affected by an offence (investor).
- ii. Secondary victims are people that have some relationship with the primary victim and are emotionally and/or financially dependent on them (e.g. a child, parent or spouse).
- iii. Tertiary victims are persons whose lifestyles have been inconvenienced by excessive fear and those persons (e.g., consumers and taxpayers) who have to bear the cost to society of crime. In this sense, society itself is a victim of crime.
- iv. Witnesses might also be affected by crime, yet they are rarely considered victims.
- v. Entities (e.g. bank, GLC, incorporation, state) can also be victims.

Enron's case has become a symbol of corruption, greed, and corporate misconduct in the twenty-first century. Victims from the case include investors, banks, states, etc. A valuable lesson, however, has emerged from the ruins of Enron's legacy: without government regulation, a company with greedy executives at the helm will always seek to maximize profit, and will sometimes resort to unethical business practices (such as insider trading and accounting fraud) to maintain artificially high stock prices. The charges against Enron executives included bank fraud, securities fraud, wire fraud, money laundering, conspiracy, and insider trading. What lessons can be gleaned from Enron's sudden collapse and the unethical business practices committed by the insiders? Financial criminals are opportunists who will strike when there is an opportunity and commercial gain to them. The risk of fraud is the same in a conventional or an Islamic financial institution. Fraud awareness and risk management is a key in avoiding financial frauds (Sirat, S).

Surah al-Mutaffifin (83:1-33) condemns all types of fraud. "Woe to those who deal in fraud. Those who when they have to receive by measure from men, exact full measure. But when they have to give by measure of weight to men, give less than due. Do they not think that they will be called to account? On a mighty day, a day when all mankind will stand before the Lord of the world? Nay! Surely the record of the wicked is preserved in Sijjin...". Fraud in this verse not only covers giving short measure or short weight but also fraud in commercial dealing. It prohibits any type of tadbis (swindling) and giving less than what is due from you, whether you expect or wish to receive full consideration. There is no fixed Shari'ah penalty (hadd) for fraud; rather, it falls under ta'zir, a discretionary punishment determined by a judge or the authority. It may be anything from a social boycott up until the death sentence.

As long as no oppression, deceit, hoarding or cheating is involved, every Muslim is encouraged to do trade and business. Allah's Messenger (peace be upon him) said, "If the two parties speak the truth and make [all matters] clear, their transaction shall be blessed, but if they conceal and tell a lie, the blessing of their transaction shall be obliterated" [Al-Bukhari, Ch. 34, hadith 19].

Financial losses to the state or victims (corporation, institution or individual) from financial deals are known as *darar mali*. *Darar mali* covers financial expenses in terms of financial and property loss. It also covers damages suffered as a result of crime. Neither financial costs nor economic costs of crime are easy to define or measure. For example, the economic costs of crime prevention can include security hardware, environmental design and various lifestyle measures. Estimates from the security industry, therefore, must underestimate total prevention costs; yet, by its very nature, the extent of the underestimation is indeterminate. Long-term and indirect costs of crime are often particularly difficult to define. For example, serious victimisation which causes severe emotional stress can in turn affect employability and, therefore, career earnings. These types of costs can be seen to have economic "multiplier effects" in which the victims' families, relatives, business associates and even whole communities also suffer losses.

Apart from *darar mali*, financial crime involves *darar ma'nawi*, damage or injury caused to a person's reputation ('ird) or dignity (*sharaf*) by subjecting him to slander and ridicule, defamation, insult and abuse, causing the victim emotional pain or stress and apprehension, which will ultimately affect his body even though there are no apparent physical marks.[1] The injury is more abstract in nature. It involves trauma and mental injury, and is more similar to psychological disturbance. It is submitted that compensation for *darar ma'nawi* should be decided by an expert. This is due to the fact that many costs and bills need to be borne by the victim in order to get through the trauma and psychological blow caused by the crime. This type of crime may also come as a result of appalling treatment, discrimination, rude manner and even a beating which does not leave any visible permanent marks on the victim's body.

Due to the absence of physical marks apparent to the human eye, it is termed as moral or nonphysical damage, as distinct from physical injury or loss. Some jurists allow the coverage of injuries even as to pain and suffering. This is based on the maxim "*la darara wa la dirar*" ([There should be] no infliction of harm and no reciprocation of harm). Some jurists like al-Balqini argue that the amount of compensation will be decided by the judge to show that the wrongful act can never be free from any legal consequences.

*Darar mustaqbal* covers the future loss of the victims. It can be interpreted as losing income or losing the breadwinner in the family as a result of crime. The crime may also incapacitate the victim and cause them to lose their job. In the case of financial fraud victims, the future loss may cover the future possibility of losing job, savings, identity risk, education, disruption, etc.

The Shari'ah has given rights to victims of crime. Trade in all forms must be clean and honest. If one carries it out according to the guidance of the Qur'an and Sunnah, one will see Allah's blessings even though one may not be able to amass fabulous wealth. Indeed nine parts of ten of recommended livelihood lies in trade and commerce. It is hoped that in dealing with financial fraud, legislation and law enforcement ignore its victims. Alternatively, we may begin to look at restorative justice being applied to both criminals and victims, rather than punitive justice, which merely considers the criminal.

### Footnotes

[1] Muqaddam al-Said 1985, *al-Ta'widan-dharar al-ma'nawi fi al-msu'liyyah al-madaniyyah*, dirasah muqaranah, Bayrūt, Dār al-Hadathat, p 76.

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Your feedback and comments are very important to us, please feel free to contact the author [via email](#).

# E.P.L. in Islamic Finance - Education

By Daud Vicary

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*The following article was first published in the Islamic Business section of Business Point (see [reference link](#)) and is reprinted here with permission. It is built on the concept of E.P.L. for the Islamic Finance Industry: E standing for Education, P for Perception and L for Liquidity.*



As highlighted earlier I want to take a look at the impact of EPL on the development of Islamic Finance. *E* is for **Education**, *P* is for **Perception** and *L* is for **Liquidity**. My plan is to share with you some comments on each of these topics over the next couple of months. So here goes on Education.

From my perspective, as an Islamic Finance Practitioner and observer for the last 20 years, Education in Islamic Finance can be broken down into three key areas:-

- Academic
- Industry training
- General Public Awareness

Let's take a look at each of these areas in turn.

From an academic perspective there are now a number of courses in Islamic Finance being run at universities and business schools around the globe. This is a reflection, in part, that the Islamic Finance business is expanding and that there is a need to produce expertise in areas ranging from Sharia'a to product development. The structure and content of these courses vary from the very academic to the less academic with some industry content. All in all I would say that this is still a "work in progress" and there is still much to do and learn

# Industry Snapshot

about providing the right structure and ammunition for young students who decide on embarking on such courses to get them ready for business and to be valuable to the ongoing development of the industry. This is, of course, a challenge throughout for academia, either getting students ready for the real world or preparing them for a lifetime of research. Both routes are relevant, but for Islamic Finance we have yet to get the balance right.

The cry from the industry and from regulators and indeed commentators is “*feed us with more people to fuel the growth of the industry*”. I think we need to temper the quantity with quality, because from where I sit, I am yet to be convinced that we are turning out enough people of real quality who are prepared and capable of taking the industry to the next level. As I said earlier, it is still a work in progress.

OK. Now it's time to take a look at industry training. I think this topic can be broken down into two broad areas.

The first is specific industry training, either for practitioners who want to build a broad area of skills in Islamic Finance and dedicate their lives to the industry OR develop specific skills, in depth, around key areas such as Shari's, Risk management etc.

The second area is the provision of training for those people who have a passing interest and want to learn more in order to understand the benefits that Islamic Finance can bring and capitalize on its opportunities.

These two broad areas need, in my opinion, different approaches. Not only in terms of content, but also, in terms of delivery method. Almost a case of “speaking to the listening of the student.”

I am afraid that there is a need for greater quality control throughout in this area. I have seen some awful examples of people jumping on the bandwagon in order to make a quick buck and try to deliver “quality” training. I have also seen the complete opposite, with relevant, well crafted, well thought through and well delivered content.

There is probably a need for more certification and the development of recognized industry standards. This will take time and in the meantime I am afraid that there will continue to be a good deal of muddling through. The only advice I can give is check with people you know and trust and ask for their feedback.

The final area I would like to address is raising general public awareness. Here I am NOT thinking about Islamic Finance training courses for everyone, but rather [raising awareness through Financial Literacy training, on the salient points and value proposition of Islamic Finance](#).

Still the most frequently asked question I get is “do I have to be a Muslim to participate in Islamic Finance”. The answer is patently NO, but the number of people who ask it would indicate that this still not clear. I would also venture the thought that the general public at large does not have that much idea about conventional finance, let alone the Islamic variety. Here is a major opportunity to embark on financial literacy programs at schools and community centres so that everyone has the opportunity to understand the basics and make some more informed choices in areas that will impact on their day to day lives. In some way this type of education, which includes observations on Islamic Finance, will start helping to dispel some of the myths regarding Islam and Islamic Finance. That, however, is another story and one which I shall cover in my next article on [PERCEPTION](#).

There is much to do and not a moment to lose.

Your feedback and comments are very important to us, please feel free to contact the author [via email](#).

# Voices of the Unheard - Salvaging the Next Generation of Islamic Bankers

By Mohammed Khnifer

*Mohammed Khnifer is regarded as part of a second generation of Islamic banking practitioners who have a solid academic background in Islamic finance. He is a holder of an MSc. in Investment Banking & Islamic Finance from Reading University and is a Chartered Islamic Finance Professional (CIFP) from INCEIF. He is one of the most prolific and well-known journalist specializing in Islamic Finance today. For the past six years he has been in charge of the editorial content for the Islamic Banking section of Al Eqtisadiah (Kingdom of Saudi Arabia). By 2011, he is expected to earn his MBA in Islamic Banking & Finance after he won the Silver Scholarship Award from Bangor University. He has authored various papers and articles on Islamic finance (see [reference link](#)).*

*Haseeb Muhammad was supposedly destined to become a so-called Islamic banker. Instead, he is now working for an international hotel chain! This is the untold, and unfortunate, story of how the Islamic Finance industry is about to lose its second generation of bankers who we never tried to connect with. These are the desperate voices of the unheard.*

“I was forced to earn my livelihood in a complete contrary industry to my relevant degree”, said the holder of MSc, Islamic Banking & Finance. “Is this the treatment we expect to have for those who have chosen ethical Banking as their career“, he added while feeling some regret of taking this costly degree. “Isn’t that just a waste of talent”, he wonders.

Unfortunately, many of these graduates, who are not lucky enough to hold a nationality of a country that really does cater to the development of its Islamic Finance human capital, might follow Haseeb’s path if the stakeholders of Islamic Finance (IF) do not interfere and save them from this grim reality.

## High Caliber

Islamic finance courses have become cash cows to other institutions who jumped to the bandwagon. But we are not talking here about online degrees which might be questionable in terms of quality of the training and education. Instead, we are talking about the cream of the crop. Those savvy graduates who have graduated from the Top Business School in Europe that offer a blend of conventional and Islamic type of financing degree.

For instance, Henley Business School is in the forefront of IF education in the UK – with the first collaborative degree, the first programme to educate students alongside professionals in another country, and a roster of internationally acknowledged specialists and practitioners in the field. ICMA Financial Studies Center at Henley boast of its MSc in Investment Banking & Islamic Finance degree. Unlike the other



degrees, this one has as academic portfolio constitutes of almost 65% mainstream finance & 35% exposure to specialized area of finance, resulting in unique technical skill that proves useful in structuring corporate & debt products.

The MSc is taught jointly with INCEIF (International Centre for Education in Islamic Finance). At the end of third term, the students become Chartered Islamic Finance Professional (CIFP). Indeed, the second generation of Islamic bankers is in the making and for a handful of them, the aggregated global professional qualifications they have are hardly seen in the practitioners of the Islamic Banking of today. The first generation of Islamic bankers is the group who crossed the trading floor from conventional to Islamic banking to take up employment and were provided with either bespoke training or learned their Shariah compliance on the job, as David Williams, the Chief-in-Editor, of Islamic Banking & Finance magazine highlights in his editorial about the upcoming wave of the second generation of Islamic Bankers.

According to a research paper by INCEIF, in the next decade, the Islamic finance industry need to produce 50,000 graduates. However, a cursory review of the possible number of graduates produced by various institutions of higher learning does not exceed 1,000 per year.

### Brave New World

In a perfect world, these IF graduates should have higher starting salary due to the technicality of their field. This is what the industry would regard as a premium for talented staff. **“Even though there is a propaganda of shortage of islamic bankers, none can be seen in the recruitment process”**, said Aatef Baig who has recently graduated from ICMA. “Our students are finding that searching for jobs in IF has never been harder at a time when demand for IF services has never been stronger”, wonders John Board, Dean of Henley Business School.

### Grim Reality

“As a Business School, we train people for active professional involvement and rapid career progression. Thus, the apparent paucity of employment prospects is puzzling – times may be tough for banks, but their apparent unwillingness to develop this sector and to make the HR investment necessary to ensure its long term viability will surely damage the IF industry in the UK”, he added. “While HR policies are the preserve of the firms implementing them, the apparent lack of opportunity for well qualified specialist masters students is a matter for some concern – especially in the UK which has often claimed its wish to be a significant participant in the global market for IF products and services”.

Aatef, who aspires to join an Islamic private equity firm, concurs that this grim reality could possibly “demotivate young students that think of undertaking the islamic finance specialized courses.”

“the urge of true ethical banking is now fading away”, said Haseeb who now labeled himself as “Depressed & Demoralized Islamic Banking practitioner.” “What good is my IF education especially [now] that I am unable to implement it in reality”, he elaborated after moving to the hospitality industry.” “I have knocked for any opportunity at almost all the Islamic Banks of UAE for past six months but none even bothered to call back , instead jobs are just being distributed to people who are well connected”, he elaborated. Professor Board thinks that it is likely that the IF industry has turned its back on these graduates. He concurs that this treatment may demolish the 2nd layer of IF bankers.

The Islamic finance industry is losing slowly its human intellectual capital. Once they graduate, they see many closed doors in front of them. Recruitment agencies do not come near them as they are not considered their main profitable resources. The deep pockets lie in filling the job opening for the senior level. Where shall these talents go?

Malaysia is a prime destination as it exports its own IF talents worldwide. However, banks operated in Malaysia are unable to hire nor train these foreign Muslim students as they come under an employment law where each bank has a quota for hiring foreigners. If you ask any of these IF graduates, they would say they are willing to take a haircut on their salary as long as they are learning from the BEST.

### Trees die standing up

Our sector is supposedly to be reshaped from top to bottom by graduates from Far Eastern, Middle Eastern and Western universities. However, the talents of our future leaders are being killed slowly, painfully and silently. These are the voices of the unheard!

Your feedback and comments are very important to us, please feel free to contact the author [via email](#).

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