LEGAL EDUCATION IN 'ISLAMIC LAW' FOR LEGAL PRACTICE IN ENGLAND AND WALES: AN 'ISLAMIC LAW' FRAMEWORK FOR LEGAL PROFESSIONALS

SAIRAH AL- QASIM

A thesis submitted in partial fulfilment of the requirements of Nottingham Trent University for the degree of Doctor of Legal Practice

February 2019

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Abstract

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A thesis submitted in partial fulfilment of the requirements of Nottingham Trent University for the degree of Doctor of Legal Practice.

The aim of this study is to identify the extent to which there is a need for knowledge of 'Islamic Law' as part of legal education for legal professionals, in particular solicitors and barristers, in England and Wales. It has, through a critical literature review and two small scale research projects, examined the meaning of 'Islamic Law' in the context of legal practice, explored how 'Islamic Law' is currently integrated into legal education in England and Wales and, examined how it can be provided as part of legal education to enable students who then become legal professionals to practise it competently. The study therefore explores the background and context of Muslims in Britain, the nuances of 'Islamic Law' in legal practice, as well as the current status of legal education and its future in regard to 'Islamic Law', in England and Wales.

The results of the literature review and empirical work in this study indicate that there is a pressing need for knowledge and skills in 'Islamic Law', required for legal practice that is not currently being met by legal education. Although some limited higher education provision in 'Islamic Law' was located on the basis of the data obtained for this thesis, this provision is inadequate to enable legal professionals to practise 'Islamic Law' competently, and consequently, is unable to address 'Islamic Law's' increasing significance in England and Wales. This thesis, therefore, culminates in the proposal of the first ever 'Islamic Law' framework, to the researcher's knowledge, that is tailored specifically for legal practice in England and Wales. It is uniquely drafted, with reference to the competencies of solicitors and barristers, as part of legal education for legal professionals in this jurisdiction, in order to bridge the gap.

Dedication

بسم الله الرحمن الرحيم

الحمد لله رب العالمين والصلاة والسلام على أشرف لأنبياء و المرسلين سيدنا محمد وعلى آله وصحبه أجمعين

To my mother.

Acknowledgements

لاَ يَشْكُرُ اللَّهُ مَنْ لاَ يَشْكُرُ النَّاسَ

'He who does not thank the people is not thankful to God'.[1]

The acknowledgements expressed in these few sentences cannot truly exhibit the extent to which those mentioned deserve recognition and appreciation for contributing to this thesis.

Firstly, I would like to thank Nottingham Trent University and my superb supervisory team, Professor Jane Ching, Pamela Henderson and Associate Professor Graham Ferris. Their belief in the importance of this study, guidance, patience, astute comments and encouragement enabled me to navigate through this doctoral journey. It is due to them, and their commendable expertise and professionalism that this thesis has been completed. Secondly, I would like to thank Dar Al-Hekma University for their support, cooperation and motivation. A particular note of thanks to my hundreds of law students, whose enquiring minds and creative thinking continually provided me with much optimism and humour. Next, this thesis would not be what it is, without the respondents. I am utterly grateful to each and every respondent whose admirable expertise, experience and generosity not only inspired me, but enabled me to refine this thesis as much as possible for its purpose. Your instrumental contributions made this thesis finally come to fruition.

Last but certainly not least, I must thank those that gave me the time, support and prayers to spend hours and hours tapping away incessantly on this keyboard. Without them, I would not have been able to overcome each and every hurdle. My mother, I thank her for her continued wisdom, prayers, and encouragement. My sisters, Shaibah and Shamaila, for always being there when I needed, in particular the latter, for continuing to look after my children over numerous summers, with endless grace and perseverance, and even good humour, enabling me to edge closer to completion. A special thank you goes to my husband Umar, whose support and belief enabled me to embark on this journey, travel to numerous workshops and conferences and without whom this discernibly would not have been possible. Finally, my three children Hanaan, Al-Zahraa', and Abdullah, thank you for your patience, thank you for your continuing laughter and love. May it always remain.

[1] Sunnah.com, 'Book of General Behavior (Kitab Al-Adab) - Sunan Abi Dawud 2811 - Sayings and Teachings (Hadith) of Prophet Muhammad (صلى الله عليه و سلم) (Peace Be upon Him)' (*Sunnah.com*) <https://sunnah.com/abudawud/43> accessed 18 January 2019.

Table of Contents

Glossary 9

Abbreviations 14

1. Introduction 16

2. Background and Context 19

2.1 Muslims in Britain 20

2.2 Existing recognition of Islam and 'Islamic Law' in the UK 23

2.3 'Islamic Law' Issues in Legal Practice 27

2.4 Education of Solicitors and Barristers in England and Wales 30

2.5 Current Offerings in 'Islamic Law' Education in England and Wales 32

2.6 Current Issues in Legal Education 40

3 Literature Review 44

3.1 The meaning of 'Islamic Law' 44

3.1.1 Fiqh and Shari'ah 45

3.1.2 The Islamic Schools of Thought 50

3.1.3 Teaching of 'Islamic Law' 51

3.1.4 Similarities and Differences between English law and 'Islamic Law' 54

3.2 Pluralism 58

3.3 Educational Theory 66

4. Methodology and Methods 74

4.1 Methodology 74

4.2 Methods 77

4.2.1 Sampling 77

4.2.2 Analysing Existing Documents and Data 79

4.3.3 Questionnaire 80

4.2.4 Interviewing 82

4.3 Ethical Considerations 87

5 Analysis and Findings 90

5.1 What is the meaning of 'Islamic Law' in the context of legal practice? 90

5.2 Is there a need for knowledge of 'Islamic Law' by legal professionals in England and Wales for the purposes of legal practice? 96

5.3 How is 'Islamic Law' currently integrated into legal education in England and Wales? 100

5.4 How can 'Islamic Law' be provided as part of legal education to enable students who then become legal professionals to competently engage in legal practice of it? 105

6. The 'Islamic Law' Framework 115

6.1 At which level should 'Islamic Law' offered and to whom? 115

6.2 What should be taught in an 'Islamic Law' for legal practice module? 124

6.3 How should 'Islamic Law' be taught in legal education in order to cater to legal practice, and by whom? 125

6.4 The 'Islamic Law' Course Specification 127

7. Conclusion 131

7.1 To what extent is there a need for knowledge of 'Islamic Law' to be provided as part of legal education for legal professionals in England and Wales? 134

7.2 Contribution to Knowledge and Practice 135

7.3 Recommendations for Policy, Practice and Future Research 137

8. Appendices 139

9. Table of Cases 152

10. Table of Legislation 153

11. Bibliography 154

List of Figures, Tables and Appendices

Figure 1- Thesis Concepts 18
Figure 2- Miller's Pyramid 67

Table 1- Table of comparison of different stages of legal education 119
Table 2- 'Islamic Law' Course Specification 130

Appendix 1- Ethical Approval 140
Appendix 2- Questionnaire Information Sheet 141
Appendix 3- Questionnaire Consent Form 142
Appendix 4- Copy of Questionnaire 143
Appendix 5- Interview Information Sheet 144
Appendix 6- Interview Consent Form 145
Appendix 7- Interview Guide 146
Appendix 8- Current 'Islamic Law' Offerings in the United Kingdom 147
Appendix 9- Email about the 'Islamic Law in Practice' Course 148
Appendix 10- Table of Themes 149
Appendix 11- Outline of Topics for an 'Islamic Law' Module Cross-matched with Thesis Themes 150
Appendix 12- The 'Islamic Law' Course Specification 151

Glossary

Continuing Professional Development (CPD): This is an umbrella term used in this study to denote all types of continuing professional development for solicitors and barristers, including 'continuing competence'[2] as defined by the Solicitors Regulation Authority.

Fiqh (الفقة): 'Conceptually, the human attempt to understand divine law (Shari'ah). Whereas shariah is immutable and infallible, fiqh is fallible and changeable'.[3] It can be separated into Usul Al-Fiqh) (أصول) or the roots/philosophy and the methods of legal interpretation and analysis, and Furu Al-Fiqh (فروع) or the branches.[4]

Ibadat (العبادات): Ibadat are acts of ritual worship such as prayer or fasting. 'Islamic Law' divides all legal acts into either ibadat (عبادات) or mu'amalat (معاملات). The distinction is important because the principle in all matters involving ibadat is that they are not susceptible to innovations or change. In mu'amalat, however, there is considerably more room to develop and change the law to facilitate human interaction and promote justice. There is disagreement among Muslim jurists on whether certain legal acts, such as marriage or divorce, fall under the category of mu'amalat or ibadat'.[5]

Islam: A monotheistic Abrahamic religion, whose adherents believe the Qur'an to be the word of God (Allah). With about 1.8 billion followers or 24% of the global population, Islam is the second-largest religion by number of adherents and according to many sources.[6]

'Islamic Law': The meaning of 'Islamic Law' is contentious and it is not a 'uniform body of regulatory norms'[7] as the phrase may suggest. It is often used interchangeably with the words Fiqh and Shari'ah or is used to mean both. For the purposes of this study 'Islamic Law' will be used to refer to the broad legal tradition encompassing Fiqh and Shari'ah that is used by

[2] Solicitors Regulation Authority (SRA), '"Continuing Competence"' (*The Solicitors Regulation Authority (SRA)*) <http://www.sra.org.uk/sra/news/press/sra-board-announces-new-approach-to-ensure-solicitors-remain-competent.page> accessed 18 January 2019.
[3] Oxford Reference, 'Fiqh (Oxford Reference)' <http://www.oxfordreference.com/view/10.1093/acref/9780195125580.001.0001/acref-9780195125580-e-659> accessed 18 January 2019.
[4] John L Esposito, 'Islamic Law' in John L Esposito (ed), *The Oxford Dictionary of Islam* (Oxford University Press 2003).
[5] Oxford Reference, 'Muamalat (Oxford Reference)' <http://www.oxfordreference.com/view/10.1093/acref/9780195125580.001.0001/acref-9780195125580-e-1564> accessed 18 January 2019.
[6] Conrad Hackett and David McClendon, 'Christians Remain World's Largest Religious Group, but They Are Declining in Europe' (*Pew Research Center*, 5 April 2017) <http://www.pewresearch.org/fact-tank/2017/04/05/christians-remain-worlds-largest-religious-group-but-they-are-declining-in-europe/> accessed 22 August 2018.
[7] Shaheen Sardar Ali, 'Approaches to Learning and Teaching Islamic Law' <https://www.heacademy.ac.uk/node/2820> accessed 11 April 2015.

Muslims to regulate their daily lives. The meaning of 'Islamic Law' for legal practice is discussed in this study.

Law School: Universities or educational institutes which teach Law alongside other subjects, and/or legal institutes which teach only Law, at undergraduate or postgraduate level. This includes providers of academic and/or vocational legal education.

Lawyer: 'One trained and licensed to prepare, manage, and either prosecute or defend a court action as an agent for another and who also gives advice on legal matters that may or may not require court action'.[8]

Legal Education: This term describes education in law, globally, at undergraduate level and postgraduate level. It can be separated in England and Wales into academic legal education and vocational legal education. Academic legal education includes but is not restricted to courses such as a Bachelor of Laws degree (LL.B) or a Bachelor of Arts (B.A) in law at undergraduate level. At postgraduate level this includes but is not restricted to courses such as a Master of Laws (LL.M) or a Graduate Diploma in Law (GDL). Vocational legal education, more specifically for the professions includes but is not restricted to the Legal Practice Course (LPC) for solicitors[9] and the Bar Professional Training Course (BPTC)[10] for barristers. It can also include Continuing Professional Development (CPD).

Legal Professional: A barrister (also known as counsel), law teacher, legal academic, legal executive or solicitor who follows a 'vocation that is based on expertise in the law and in its applications'.[11] The Legal Services Act 2007[12] also includes within the definition of 'lawyer' other types of professionals, such as notaries, patent attorneys and many more.

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[8] Encyclopedia Britannica, 'Lawyer' (*Encyclopedia Britannica*) <http://global.britannica.com/EBchecked/topic/333070/lawyer> accessed 18 January 2019.29/06/2019 18:37:00

[9] The LPC will be replaced with the Solicitor's Qualifying Examination (SQE) in 2020.
Solicitors Regulation Authority, 'Consultation - A New Route to Qualification: The Solicitor's Qualifying Examination (SQE)' <http://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page> accessed 18 January 2019.

[10] Previously known as the Bar Vocational Course (BVC) until 2011.

[11] Encyclopedia Britannica, 'Legal Profession' (*Encyclopedia Britannica*) <http://global.britannica.com/EBchecked/topic/334873/legal-profession> accessed 18 January 2019.

[12] Although the Legal Services Act 2007 includes within the definition of 'lawyer' other types of professionals, such as notaries, patent attorneys and many more, for the purposes of this study they have not been included for reasons of pragmatism. It is anticipated firstly, those excluded from the definition will not have had extensive experience of 'Islamic Law' in legal practice as is the focus of this study, mainly due to the nature of their education, training and practice differing from solicitors and barristers. Secondly, it would be extremely difficult to investigate every different type of lawyer within the constraints that exist. Therefore, the study has to be made practicable as possible by defining the key individuals under investigation.
United Kingdom Government, 'Legal Services Act 2007' <http://www.legislation.gov.uk/ukpga/2007/29/contents> accessed 18 January 2019.

For the purposes of this study, and for reasons of pragmatism, the term 'legal professional' in this study will refer mainly to solicitors and barristers. It is anticipated firstly, that those excluded from the definition will not have had extensive experience of 'Islamic Law' in legal practice as is the focus of this study, mainly due to the nature of their education, training and practice differing from solicitors and barristers. Secondly, it would be extremely difficult to investigate every different type of legal professional within the constraints that exist. Therefore, the study has to be made practicable as possible by defining the key individuals under investigation.

Madhhab (مذهب): Within 'Islamic Law', differences exist in opinion on some issues due to the differing opinion of one school of Islamic thought from another or one madhhab from another. Rulings in 'Islamic Law' involve interpreting the primary sources of 'Islamic law', these being the Qur'an and the Sunnah. Interpretations can differ depending on the place, time and person making the interpretation and this impacts on law making. In the second century of Islam such interpretations or schools of thoughts developed, with four main schools of thought or Madhahib (plural) in Sunni Islam named after their founders.[13]

Muslim: A person who follows or professes the religion of Islam.

Mu'amalat (المعاملات): 'Dealings. Refers to commercial and civil acts or dealings under Islamic law. Islamic law divides all legal acts into either ibadat (عبادات) or mu'amalat. Ibadat are acts of ritual worship such as prayer or fasting, and mu'amalat are acts involving interaction and exchange among people such as sales and sureties. The distinction is important because the principle in all matters involving ibadat is that they are not susceptible to innovations or change. In mu'amalat, however, there is considerably more room to develop and change the law to facilitate human interaction and promote justice. There is disagreement among Muslim jurists on whether certain legal acts, such as marriage or divorce, fall under the category of mu'amalat or ibadat[14]

Mufti: 'Jurist capable of giving, upon request, an authoritative although nonbinding opinion (fatwa) on a point of Islamic law. These opinions are generally based on precedent and

[13] The term madhahib refers to a group of jurists and legists who are loyal to a distinct, integral and, most importantly, collective legal doctrine attributed to an eponym, a master-jurist, so to speak, from whom the school is known to have acquired particular, distinctive characteristics. Thus, after the formation of the schools, jurists began to be characterized as Hanafite, Malikite, Shafite or Hanbalite, as determined by their doctrinal (not personal) loyalty to one school or another. Wael B. Hallaq, *Shari'a : Theory, Practice, Transformations (Cambridge 2009)* 62.
[14] Oxford Reference, 'Muamalat (Oxford Reference)' (n 5).

compiled in legal reference manuals. In some contexts, muftis are appointed by the state and serve on advisory councils'.[15]

Qadi: 'A Muslim judge appointed by a ruler or government because of his knowledge of Muslim law'.[16]

Qur'an (القرآن): The holy book of the religion of Islam and one of the two main components that form the Shari'ah. It consists of chapters, each chapter known as surah (سورة) (pl. suwar (سور)) and verses, each verse known as an ayah (آية) (pl. ayat(آيات)). Any reference is in numerical form as (surah:ayah) for example (33:4) would mean chapter/surah number 33, verse/ayah number 4.

Shari'ah (الشريعة): This is 'Revealed Law' derived from the revelation of the *Qur'an* and the revelation of the Sunnah.[17] It is the theological tenets and practical rulings that have been legislated by Allah for Muslims.[18]

Shi'i Islam: 'Shi'i Muslims, the followers or party of Ali, believe that Muhammad 's religious leadership, spiritual authority, and divine guidance were passed on to his descendants, beginning with his son-in-law and cousin, Ali ibn Abi Talib, his daughter, Fatimah , and their sons, Hasan and Husayn . The defining event of Shi'ism was the martyrdom of Husayn, his male family members, and many companions at Karbala (Iraq) in 681 by the Umayyads, granting an element of passion and pathos to Shi'ism. There are three main branches of Shi'is today: the Zaydis, the Ismailis (Seveners), and the Ithna Asharis (Twelvers or Imamis)'.[19]

Siyasah (سياسة) : Siyasa is a public or state law and is composed of numerous decree-laws or regulations and, contrary to Fiqh, is based on the principle of al- maslaha al'amma (المصلحة العامة), public welfare or utility.[20] It can include in the sense of statecraft, the management of affairs of state and, eventually, that of politics and political policy.[21]

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[15] John L Esposito, 'Mufti', *in John L Esposito (ed), The Oxford Dictionary of Islam* (Oxford University Press 2003).
[16] Oxford Reference, 'Qadi (Oxford Reference)'
<http://www.oxfordreference.com/view/10.1093/oi/authority.20110803100356792> accessed 18 January 2019.
[17] (٤) وَمَا يَنطِقُ عَنِ ٱلۡهَوَىٰٓ (٣) إِنۡ هُوَ إِلَّا وَحۡيٞ يُوحَىٰ) 'Nor does he say (aught) of (his own) Desire. (3) It is no less than inspiration sent down to him: (4) .Surah An Najm (53:3-4).
Quran Explorer, *The Holy Qur'an* <http://www.quranexplorer.com/quran/> accessed 18 January 2019.
[18] (ما شرعه الله لعباده من العقائد و الاحكام) 'What Allah has legislated for His slaves by way of theological tenets and practical rulings.'
Ibrahim Muṣṭafa and 'Abd al-Salam Muḥammad Harun, Al-Mu'jam Al-wasiṭ -The Intermediary Dictionary (Shirka Musāhama Miṣriyya 1970).
[19] Oxford Reference, 'Shii Islam (Oxford Reference)'
<http://www.oxfordislamicstudies.com/article/opr/t125/e2189?_hi=2&_pos=3> accessed 18 January 2019.
[20] Frank Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia* (BRILL 2000) 175.
[21] CE Bosworth, IR Netton and FE Vogel, 'Siyāsa' [2012] Encyclopaedia of Islam, Second Edition
<http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/siyasa-COM_1096> accessed 18 January 2019.

Students: Students studying law as part of undergraduate or postgraduate academic or vocational courses.

Sunnah (السنة): 'The Prophet Muhammad's as a model conduct that has been established [22] ﷺ for others to follow. This conduct may be expressed in the Prophet's own practices, his utterances or his tacit approval of events or pronouncements made in his presence; with the passage of time it became, after the Qur'an, the second source of Islamic law'.[23]

Sunni Islam: 'The Sunnis are the largest branch of the Muslim community, at least 85 percent of the world's Muslims. The name is derived from the Sunnah, the exemplary behaviour of the Prophet Muhammad. All Muslims are guided by the Sunnah, but Sunnis stress it, as well as consensus (ijma; the full name of Sunnis, is Ahl al-Sunnah wa'l-Ijma, people of the Sunnah and consensus). The other branch of Islam, the Shi'is, are guided as well by the wisdom of Muhammad's descendants, but through his son-in-law Ali'.[24]

[22] 'May Allah honour him and grant him peace' is used as a mark of respect and veneration after the naming of the Prophet. It is mentioned specifically in the Qur'an. It is used by Muslims and can be used by non-Muslims alike as mark of respect. In other texts it has been translated to 'Peace Be Upon Him' or abbreviated to '(pbuh)'.
((٥٦) إِنَّ ٱللَّهَ وَمَلَٰٓئِكَتَهُۥ يُصَلُّونَ عَلَى ٱلنَّبِيِّۚ يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُواْ صَلُّواْ عَلَيْهِ وَسَلِّمُواْ تَسْلِيمًا) 'Allah sends His Salat (Graces, Honours, Blessings, Mercy) on the Prophet (Muhammad SAW) and also His angels (ask Allah to bless and forgive him). O you who believe! Send your Salat on (ask Allah to bless) him (Muhammad SAW), and (you should) greet (salute) him with the Islamic way of greeting (salutation i.e. As¬Salamu 'Alaikum). (56)'. Surah Al-Ahzab(33:56). Translated by Dr Muhsin Khan.
Quran Explorer (n 17).
[23] It is noted that there are other definitions of 'Sunnah' depending upon on the intention for its use. A generic definition has been used for the purposes of this study.
Wael B Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge University Press 2004) 209.
[24] Oxford Reference, 'Sunni Islam - Oxford Reference'
<http://www.oxfordreference.com/view/10.1093/acref/9780195125580.001.0001/acref-9780195125580-e-2280> accessed 18 January 2019.

Abbreviations

ADR: Alternative Dispute Resolution

BPTC: Bar Professional Training Course

BSB: Bar Standards Board

CILEx: Chartered Institute of Legal Executives

CPD: Continuing Professional Development

EU: European Union

HEA: Higher Education Academy

ISNP: Islamic Studies Network Project

LETR: Legal Education and Training Review

LSA: Legal Services Act 2007

LSET: Legal Services Education and Training

LPC: Legal Practice Course

MILLI: 'Muslim, Islam and the Law, a Legal Industry'[25]

QLD: Qualifying Law Degree

SQE: Solicitors Qualification Examination

SRA: Solicitors Regulation Authority

UK: United Kingdom

UKCLE: United Kingdom Centre for Legal Education

USA: United States of America

[25] Ralph Grillo, *Muslim Families, Politics and the Law* (Routledge 2015) 7–11.

Note:

In this Document, the voices of individual respondents in the study are given in italics, in double quotation marks.

A note on Terminology, Translation and Transliteration:

English transliteration of Arabic terminology has been done from Modern Standard Arabic (MSA) pronunciation. Therefore, for example, Qur'an has been used instead of Koran, and Muslim instead of Moslem. Diacritical markings have not been used for all Arabic words for the purposes of simplicity, with the exception of the following due to their frequent occurrence in this thesis: (1) the Arabic letter *ayn* (ع) as (') before the appearance of the letter; (2) the Arabic letter *hamza* (ء) as (') after the appearance of the letter; (3) the terminal Arabic letter *ta marbuta* (ة) as (h) and; (4) an apostrophe (') in the word Qur'an to represent the glottal stop. For example, the word (شريعة) has been transliterated as Shari'ah.[26] Any translations of the Holy Qur'an are by Abdullah Yusuf Ali, unless otherwise specified.[27] This translation was chosen due to the translator being a qualified lawyer, its ease of comprehension and, its abundant use in comparison with other translations.

[26] The transliteration system follows that of the Encyclopaedia of Islam.
EJ Donzel and others (eds), '*Encyclopaedia of Islam Transliteration System*' (2008)
http://faculty.washington.edu/heer/anonftp/translit/ei.gif accessed 12 May 2016.
[27] Abdallah El-Khatib, 'Abdullah Yusuf Ali: A Study of His Life and Translation' (2009) 11 Journal of Qur'anic Studies 198.

1. Introduction

'The only stable state is the one in which all men are equal before the law.'[28]

Aristotle

This thesis presents the culmination of the findings of the four interdependent Documents previously submitted for the Doctor of Legal Practice: Documents 1 to 4.[29] At the commencement of the Professional Doctorate, Document 1 set out the research proposal and the plan designed to meet the research aims with a brief literature review. Document 2 then set out a detailed literature review of the study and developed the theoretical approach to be followed. Documents 3 and 4 were two interconnected small-scale investigations, conducted using an online questionnaire[30] for the former, and elite interviews[31] for the latter. The overarching research question to be answered for this study, stemming from the research aims, is: 'To what extent is there a need for knowledge of 'Islamic Law' to be provided as part of legal education for legal professionals in England and Wales?'

Four main research aims were set out in Document 1 for the study as a whole:

1) To investigate the extent to which there is a need for knowledge of 'Islamic Law' in legal practice in England and Wales. Data relating to this aim was collected for Document 3.
2) To investigate what provision is currently made for 'Islamic Law' as part of legal education in England and Wales and to evaluate whether this meets the needs of legal practice and if any shortfall impacts on the legal services provided. Data on this was collected in Document 3 and the issue was investigated further in Document 4.
3) To investigate what type of provision needs to be made for 'Islamic Law' as part of legal education in England and Wales to meet the needs of legal practice, in order to provide the standard of legal services required. Data relating to this was collected in Document 4.

[28] Encyclopedia Britannica, 'Aristotle | Biography, Contributions, & Facts' (*Encyclopedia Britannica*) <https://www.britannica.com/biography/Aristotle> accessed 18 January 2019.
[29] Each of these unpublished Documents are available by contacting the researcher through email. Although the Documents are featured by name throughout the thesis for contextualisation, they will remain unreferenced in the text.
[30] AN Oppenheim, *Questionnaire Design, Interviewing, and Attitude Measurement* ([2nd ed], Continuum 1992).
[31] Joel D Aberbach and Bert A Rockman, 'Conducting and Coding Elite Interviews' (2002) 35 PS: Political Science & Politics 673; Kenneth Goldstein, 'Getting in the Door: Sampling and Completing Elite Interviews' (2002) 35 PS: Political Science &; Politics 669.

4) To produce a curriculum for legal education which meets the needs of legal practice to allow legal professionals to practise 'Islamic Law' competently in England and Wales. This final aim will be addressed in this Document.[32]

These aims, and the overall research question were divided into four sub-questions for the purposes of investigation, which were all informed by the literature review in Document 2:

1) Is there a need for knowledge of 'Islamic Law' by legal professionals in England and Wales for the purposes of legal practice? This was investigated in Documents 2 and 3.
2) What is the meaning of 'Islamic Law' in the context of legal practice? This was investigated in Documents 3 and 4.
3) How is 'Islamic Law' currently integrated into legal education in England and Wales? This was investigated in Document 4 and is continued in this Document.
4) How can 'Islamic Law' be provided as part of legal education to enable students who then become legal professionals to competently engage in legal practice of it? This was investigated in Document 4 and is continued in this Document.

The aim of this Document is to investigate further research sub questions three and four above to produce a framework for 'Islamic Law' for legal education which allows legal professionals to engage competently in its practice, in England and Wales. It is envisaged this will bridge the current gap between legal education and legal practice, to ensure that those legal professionals who practise in the area have sufficient skills, education and knowledge, to do so as competently as they do other areas of law practised by domestic lawyers. Although the aim was to produce a framework for legal education which meets the needs of legal practice, the investigation was restricted to pre-qualification education. It is at this stage where the largest pool of students who then may become future legal professionals are exposed to key areas that may be utilised in preparation for legal practice.

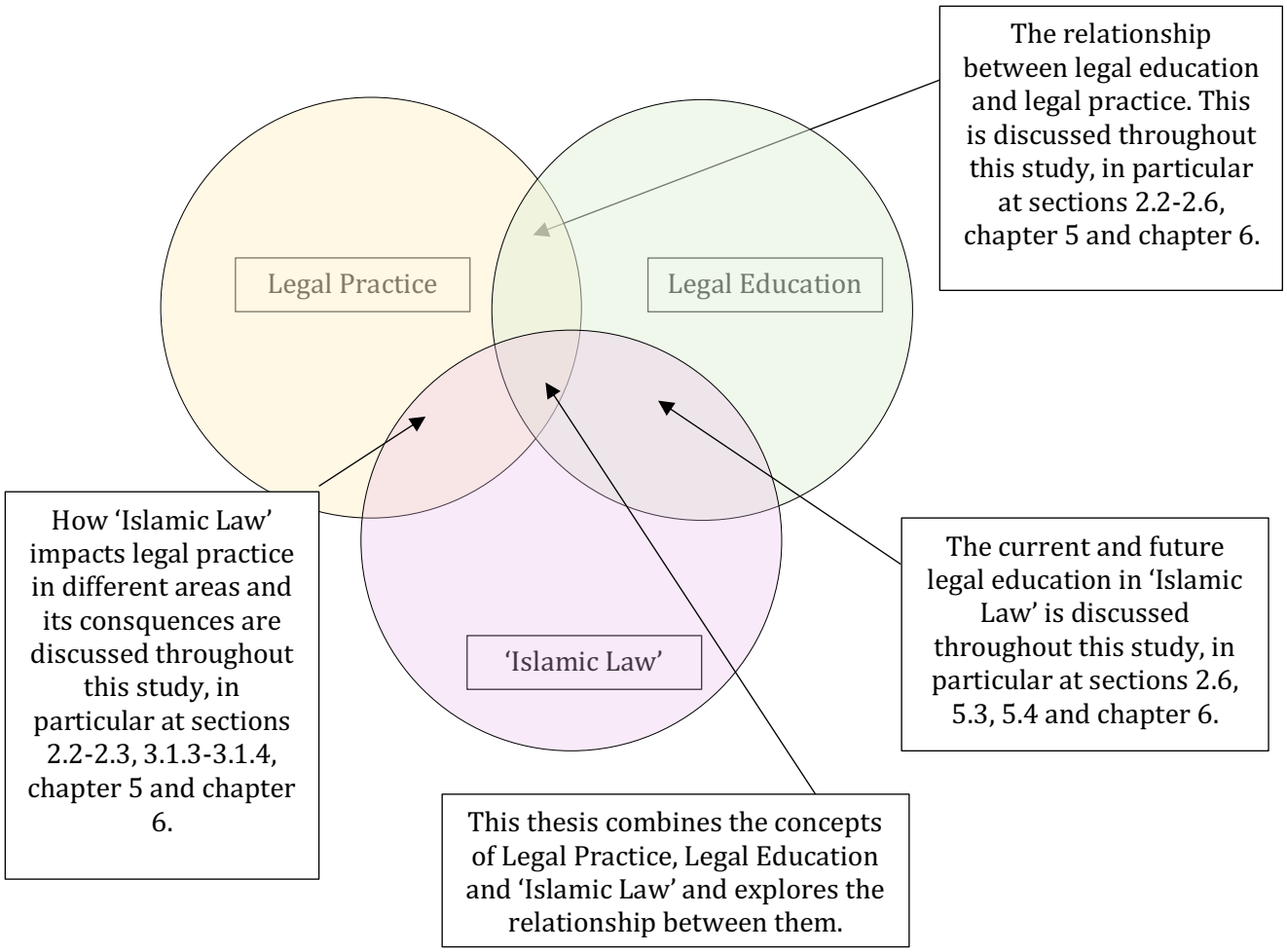
This Document consists of seven chapters. This first chapter introduces the study, the research questions and aims of the study as a whole. Chapter 2 sets out the background and context of the study by exploring issues of 'Islamic Law' in legal practice, Muslims in Britain and current issues in legal education. Chapter 3 then critically reviews the literature surrounding the study, including the educational theory to support the study and the framework produced. Chapter 4 sets out the methodology and methods used. Chapter 5 analyses the findings in relation to each

[32] Although 'curriculum' was referred to in Document 1, this has now been referred to as 'framework', in the remainder of this Document, as this broader term encompasses the range of findings and the outcome of the study.

of the research questions above and chapter 6, on the basis of the findings, proposes an 'Islamic Law' framework specific for legal practice. The final chapter discusses the contribution to knowledge and practice of this study, as well as the current and future implications for policy and practice.

The conceptual framework of the overall study, explains 'the main things to be studied – the key factors, concepts or variables - and the presumed relationships among them'[33]. The framework for this study was not static however, and continually evolved, requiring review as the investigation progressed.[34] The setting out of the framework did not limit the researcher, as she remained open to new or unexpected occurrences in the collection of data.[35] The main concepts in the study can be illustrated by the diagram and are evidenced throughout this thesis.

Figure 1- Thesis Concepts



[33] Matthew Miles and Michael Huberman, *Qualitative Data Analysis : An Expanded Sourcebook* (2nd ed., Sage 1994) 18.
[34] Egon G. Guba and Yvonna S Lincoln, *Fourth Generation Evaluation* (SAGE 1989).
[35] Miles and Huberman (n 33).

2. Background and Context

> 'Education is not preparation for life; education is life itself'.[36]
>
> John Dewey

'Islamic Law', the first of the thesis concepts, is one of the oldest continuing legal traditions[37] and is currently applied, fully or partially, in over fifty countries. Its significant impact on legal practice in England and Wales is, it will be argued below, undeniable, meaning that 'nowhere in Europe or North America is the legal system closer to "recognizing" Islamic judgments than in England'.[38] However, despite this 'much more work needs to be done in non-Muslim states to address the need for minority groups to exercise their fundamental rights'[39] and even the term 'Islamic Law' is controversial, with differing definitions and meanings, as discussed below.

Legal education, the second key thesis concept, is a cornerstone of an effective and robust legal system. One of its purposes is to equip 'those entering the profession with the knowledge, skills, integrity and sense of independence which will enable them to play their proper role in maintaining the rule of law'.[40] Although the term 'legal education' is broad and has a number of purposes, as discussed at section 2.6, for the context of this study, legal education that affects the legal profession for the purposes of legal practice, the third thesis concept, referred to in the 'Legal Education and Training Review' (LETR)[41] as 'Legal Services Education and Training' (LSET),[42] will form the focus. Although a range of legal professions are recognised by the Legal Services Act 2007(LSA),[43] this study concentrates on the qualification structures for solicitors and barristers, whose regulation is overseen by the Legal Services Board (LSB).[44] These

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[36] John Dewey, *Education and Democracy* (New York: Macmillan 1916) 239.
[37] The civil law system which historians date back as far as 450BC when the Lex Duodecim Tabularum was enacted in Rome, is acknowledged to be an older legal system than that of 'Islamic Law' originating in approximately the seventh century. Nonetheless, 'Islamic Law' is a continuing legal tradition that pre dates many other later legal traditions.
Wael B Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge University Press 2004); John Henry Merryman and Rogelio Pérez-Perdomo, *The Civil Law Tradition* (3rd ed., Stanford University Press 2007).
[38] John Bowen, 'How Could English Courts Recognize Shariah?' (2010) 7 University of St. Thomas Law Journal 411, 411.
[39] Jeremy Kleidosty, 'From Medina to Runnymede: Comparing the Foundational Legacies of the Constitution of Medina and the Magna Carta' (*New Middle Eastern Studies*, 16 November 2011) 14. <http://www.brismes.ac.uk/nmes/archives/654> accessed 18 January 2019.
[40] Lord David Neuberger, 'The 2012 Lord Upjohn Lecture – Reforming Legal Education' <https://www.supremecourt.uk/docs/lord-neuberger-121115-speech.pdf> accessed 18 January 2019.
[41] Julian Webb and others, 'Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales. The Final Report of the Legal Education and Training Review(LETR) Independent Research Team' 118. <http://letr.org.uk/the-report/index.html> accessed 20 June 2015.
[42]Webb and others (n 41) 10.
[43] United Kingdom Government (n 12).
[44] Legal Services Board, 'FAQs - Legal Services Board' <https://www.legalservicesboard.org.uk/can_we_help/faqs/index.htm> accessed 26 December 2018.

together form the largest proportion of the professions.[45] Furthermore, it is solicitors and barristers who both rely on similar pre-qualification components such as the undergraduate law degree or the Graduate Diploma in Law (GDL) (see section 2.5 below), and therefore, concentrating on both of these professions together provides an opportunity for 'Islamic Law' to reach the largest number of intending legal professionals.

The initial literature review demonstrated an important and outstanding need for knowledge in 'Islamic Law' to meet client needs, and the needs of global practice. Despite the presence of 'Islamic Law' in legal practice and a concern for its consequences (see 2.2 and 2.3 below), legal professionals practising in this area are largely operating in limbo, without any formal legal education in the area (see 2.5 below). If legal practice in England and Wales now has large 'Islamic Law' elements (see 2.2 below), then it is essentially up to law schools to acknowledge and provide for this.[46] But, not only are law schools, and other forms of formal legal education, not providing this, there is a 'challenge to develop high quality teaching and learning resources in a range of Islamic law modules'.[47] These challenges clearly need to be addressed, and can be seen to be part of a wider shortage of knowledge in the whole area, as there is still 'an unmet need for a degree in Islamic Law in "Western" institutions of higher education, as distinct from an Islamic Studies degree'.[48]

This chapter discusses the background and context of these issues, and why a compelling solution needs to be found, to enable legal professionals to engage competently in the practice of 'Islamic Law' in England and Wales.

2.1 Muslims in Britain

The significance of this study is apparent, first of all, by considering the statistics. According to the 2011 United Kingdom (UK) Census, there were 2.79 million Muslims in

[45] Solicitors Regulation Authority, 'Regulated Population Statistics' <http://www.sra.org.uk/sra/how-we-work/reports/data/population_solicitors.page> accessed 18 January 2019; Statista, 'Barristers & Judges 2011-2017 | UK Statistic' (*Statista*) <https://www.statista.com/statistics/319217/number-of-barristers-and-judges-in-the-uk/> accessed18 January 2019; Bar Standards Board, 'Practising Barrister Statistics' (*The Bar Standards Board*) <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics/> accessed 18 January 2019.
[46] One of the main reasons given by students on Qualifying Law Degrees (QLD) for choosing to study a QLD was their desire to subsequently enter the legal profession and practise law.
[47] Ali (n 7) 31.
[48] Ali (n 7) 31.

the UK, an increase from 1.55 million in 2001.[49] Of these, the overwhelming majority of 2.71 million (97%) were in England and Wales,[50] from a total population in England and Wales in 2011 of 56.1 million.[51] Of those in the UK, 48% were born in the UK[52] and 73.3% of them identified solely as British despite being ethnically diverse, for example, by having Asian, Arab, African or other origins.[53] By 2014, there were over 3.0 million Muslims in England and Wales alone.[54] A YouGov[55] poll conducted in 2014[56] found that 63% of British Muslims polled were proud of being British. Therefore, it is now the case that 'Muslims are part of the social fabric of Britain's plural society and are to be found from Land's End to Stornoway. Muslim communities play a significant part in the increasing diversity of Britain'.[57] Consequently, it is a legitimate expectation that Britain will accommodate them, and their multiple identities.[58]

The identities of these British Muslims are multiple because, as well as the British identity, religion has also been shown to be very important to Muslims. In the 2010 Ethnic Minority British Election Study (EMBES),[59] just over half of the sample (51%)[60] stated that religion was extremely important, and 43% stated it to be very important, totalling 94% who hold religion as being a significant part of their lives. Not a single Muslim respondent said it was not important at all, clearly linking religion to the identity

[49] Office for National Statistics (ONS), '2011 Census' (*Office for National Statistics*) <https://www.ons.gov.uk/census/2011census> accessed 18 January 2019.
[50] Office for National Statistics (ONS), '2011 Census: KS209EW Religion, Local Authorities in England and Wales' (*Office for National Statistics*) <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/articles/religioninenglandandwales2011/2012-12-11> accessed 18 January 2019.
[51] Office for National Statistics (ONS), 'Population of England and Wales 2011' (*www.gov.uk*) <https://www.ethnicity-facts-figures.service.gov.uk/british-population/national-and-regional-populations/population-of-england-and-wales/latest> accessed 18 January 2019.
[52] Office for National Statistics, 'Published Ad Hoc Data and Analysis: Census- Census 2001. ONS Table S1502 & Census 2011. ONS Table DC2207EW.' (*Office for National Statistics*, 4 September 2013) <http://webarchive.nationalarchives.gov.uk/20160107232605/http://www.ons.gov.uk/ons/about-ons/business-transparency/freedom-of-information/what-can-i-request/published-ad-hoc-data/census/index.html> accessed 18 January 2019.
[53] Office for National Statistics (ONS) (n 48).
[54] Office for National Statistics (ONS), 'Employment and Labour Market' (*Office for National Statistics*) <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/adhocs/005254annualpopulationsurveydataforenglandwalesandselectedlocalauthoritiesshowingtotalpopulationandthosewhoreportedtheirreligionasmuslimfortheperiods2011to2014> accessed 18 January 2019.
[55] You Gov, YouGov, 'YouGov | What the World Thinks -' (*YouGov: What the world thinks*) <https://yougov.co.uk/> accessed 18 January 2019.
[56] You Gov, YouGov, 'YouGov Poll on Eve of Ramadan Shows Muslims' Commitment to "British Values" as Islamic Relief Announces New Government Funding' (*Islamic Relief UK*, 26 June 2014) <https://www.islamic-relief.org.uk/yougov-poll-ramadan-muslims-british-values-islamic-relief-government-funding/> accessed 18 January 2019.
[57] Muslim Council of Britain, 'British Muslims in Numbers- A Demographic, Socio-Economic and Health Profile of Muslims in Britain Drawing on the 2011 Census' (2015) 26 <http://www.mcb.org.uk/wp-content/uploads/2015/02/MCBCensusReport_2015.pdf> accessed 18 January 2019.
[58] Ralph Grillo and others (eds), *Legal Practice and Cultural Diversity* (Ashgate Publishing Ltd 2009).
[59] UK Data Service, UK Data Service, 'Discover - British Election Study Ethnic Minority Survey, 2010' <https://discover.ukdataservice.ac.uk/catalogue/?sn=6970> accessed 18 January 2019.
[60] Sample size of 2700 respondents.
Nicholas Howat, Oliver Norden and Emily Pickering, '2010 British Election Study Technical Report' <http://bes2009-10.org/BEStechreportaug2611.pdf> accessed 18 January 2019.

of Muslims. Just over half of the respondents (53%) also stated they were regularly religiously active, and only 4% stated they did not do any religious activities at all on their own.[61] Most Muslims surveyed (83%) and, indeed, most Britons regardless of religion (66%), agreed that 'it is possible to fully belong to Britain and maintain a separate cultural or religious identity'.[62]

These statistics are important for this study, as it is the importance of religion and religious practice originating from 'Islamic Law' that leads to British Muslim clients, and other clients, needing legal advice on the area. Such a need leads to a need for legal education in 'Islamic Law'. These statistics also demonstrate the increasing number of Muslims in the UK, who as well as identifying as British, identify as Muslim. They hold out both their national and religious identity as compatible, not wanting to give up one identity for the other, leading to the law of the state and 'Islamic Law' existing alongside one another. Although the British Muslim identity is not fixed and homogenous[63] with 'multiple and shifting identities within these bounded communities',[64] certain commonalities exist, and 'the development and emergence of a Muslim identity must be understood as part of wider social, political and economic developments in Britain',[65] in this case by solicitors and barristers for the purposes of legal practice. Such is the influence of 'Islamic Law' in England and Wales, there exists what is known as 'MILLI'[66] (Muslim, Islam and the Law, a Legal Industry). This movement, which is very prominent in areas such as Family Law[67] exists globally and 'consists of a multiplicity of organizations, groups and individuals who … share a concern with legal aspects of the Muslim presence and how Islam relates to the law'[68] shows the increasing importance of this movement as a result of the increasing importance of Muslims in Britain.

[61] UK Data Service, UK Data Service (n 59).
[62] Ipsos MORI, 'A Review of Survey Research on Muslims in Britain' (2018) 57 <https://www.ipsos.com/sites/default/files/ct/publication/documents/2018-03/a-review-of-survey-research-on-muslims-in-great-britain-ipsos-mori_0.pdf> accessed 18 January 2019.
[63] Tariq Modood, 'Muslims, Race and Equality in Britain: Some Post-Rushdie Affair Reflections' (1990) 4 Third Text 127.
[64] Samia Bano, 'Islamic Family Arbitration, Justice and Human Rights in Britain' [2007] 1 Law, Social Justice & Global Development, 4.
[65] Bano, 'Islamic Family Arbitration, Justice and Human Rights in Britain' (n 64) 5.
[66] Grillo (n 25) 7–11.
[67] Grillo and others (n 58); Bowen (n 38); Samia Bano, *Muslim Women and Shari'ah Councils: Transcending the Boundaries of Community and Law* (Palgrave Macmillan 2012); Rubya Mehdi, *Interpreting Divorce Law in Islam* (Jorgen S Nielsen and Werner Menski eds, DJOFPublishing 2012); Maaike Voorhoeve, *Family Law in Islam: Divorce, Marriage and Women in the Muslim World* (IBTauris 2012); John R Bowen, *On British Islam: Religion, Law, and Everyday Practice in Sharia Councils* (Princeton University Press 2016).
[68] 'In Britain it includes lawyers (barristers, solicitors, judges), some of them Muslims qualified in the English legal system; academics and expert witnesses; websites; Imams and Shari'a councils, and their critics; a plethora of NGOs; teachers, social workers; and last but not least the police, security and immigration services. Many of these groups and individuals are not *in* the law, but their concerns are certainly *about* the law'.
Grillo (n 25) 8.

'Islamic Law' therefore operates in legal practice in a sphere that is impacted by increasing numbers of British Muslims, with sustained high levels of religious activity and the strong identification of religion with identity, even for those who are less engaged in religious activities. They together form the British Muslim population for the purpose of this study. Whilst adhering to state law due to their national identity, British Muslims' religious practice is, as discussed further below, rarely recognised or accommodated. Yilmaz argues that 'Muslims do not only wish to be regulated by the principles of Islamic law when they are living in a non-Muslim state; they also seek to formalise such an arrangement within the state's own legal system'[69] and wish for recognition of their multiple identities. Menski states that a consequence of the lack of recognition and accommodation is that 'all ethnic minorities in Britain marry twice, divorce twice and do many other things several times in order to satisfy the demands of concurrent legal systems' developing what he terms as 'Angrezi Sharia',[70] a combination of 'Islamic Law' and English law.

2.2 Existing recognition of Islam and 'Islamic Law' in the UK

Although 'Islamic Law' has affected the legal, political and economic world,[71] in England and Wales it has also entered the court room, where the courts are increasingly having to address elements of 'Islamic Law';[72] where it is relevant to domestic legal practice in Family Law as well as in other areas, in addition to private international law situations where 'Islamic Law' is dealt with as a 'foreign' law of another state. There have also been British law firms opening up offices in the Middle East,[73] as well as training in areas of 'Islamic Law' for judges by academic institutions.[74]

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[69] Ihsan Yilmaz, 'The Challenge of Post-Modern Legality and Muslim Legal Pluralism in England' (2002) 28 Journal of Ethnic & Migration Studies 343, 343.

[70] David Pearl and Werner Menski, *Muslim Family Law* (3rd Revised edition edition, Sweet & Maxwell 1998) 75.

[71] Mashood A Baderin (ed), *International Law and Islamic Law* (Ashgate Publishing Limited 2008).

[72] *Shamil Bank of Bahrain v Beximco Pharmaceuticals Ltd and others* [2004] EWCA Civ 19; [2004] 1 W.L.R. 1784; [2004] 4 All E.R. 1072; [2004] 2 All E.R. (Comm) 312; [2004] 2 Lloyd's Rep. 1; [2004] 1 WLUK 565; [2004] 1 C.L.C. 216; (2004) 101(8) L.S.G. 29; Times, February 3, 2004; *R (on the application of Begum (Shabina)) v Denbigh High School Governors* [2006] UKHL 15; [2007] 1 A.C. 100; [2006] 2 W.L.R. 719; [2006] 2 All E.R. 487; [2006] 3 WLUK 567; [2006] 1 F.C.R. 613; [2006] H.R.L.R. 21; [2006] U.K.H.R.R. 708; 23 B.H.R.C. 276; [2006] E.L.R. 273; (2006) 103(14) L.S.G. 29; (2006) 156 N.L.J. 552; Times, March 23, 2006; Independent, March 24, 2006*; Azmi v Kirklees Metropolitan Borough Council* [2007] 3 WLUK 818; [2007] I.C.R. 1154; [2007] I.R.L.R. 484; [2007] E.L.R. 339; Times, April 17, 2007*; Uddin v Choudhury & Ors* 1205 [2009] EWCA Civ 1205; David Pearl, 'The 1995 Noel Coulson Memorial Lecture: The Application of Islamic Law in the English Courts' (1997) 12 Arab Law Quarterly 211; Bowen (n 32).

[73] Great Britain Parliament House of Commons Business, Innovation and Skills Committee, Exporting out of Recession: Third Report of Session 2009-10. Oral and Written Evidence <https://publications.parliament.uk/pa/cm200910/cmselect/cmbis/266/266i.pdf> accessed 18 January 2019, 110.

[74] SOAS, SOAS University of London, 'Matthew Wilkinson Trains over 100 Senior UK Judges on Islamic Values with English Common Law | SOAS, University of London' <https://www.soas.ac.uk/news/newsitem106302.html> accessed 18 January 2019.

To some extent, recognition of 'Islamic Law' has already occurred in England and Wales in a range of areas. One area of recognition and even positive embracement of 'Islamic Law' is that of Islamic Finance, where there are an increasing number of high value Islamic Finance transactions taking place in a market estimated to be worth $US1.3 trillion globally.[75] The UK government has begun offering guidance as to how Islamic Finance operates[76] and the UK is now the premier hub for Islamic Finance outside the Muslim world, with reported assets of US$19 billion.[77] Indeed, amendments have been made to some English laws specifically to facilitate the development of Islamic Finance products that can integrate smoothly into the existing infrastructure, without detriment. For example, English law was amended by the Finance Act 2007[78] to facilitate the development of Islamic mortgages, which work on the basis not of a single transfer of title (from vendor to purchaser) but of two transfers from vendor to Islamic bank, and, at the end of the mortgage, from Islamic bank to purchaser.[79] Islamic Finance is, therefore, an area where 'English law already incorporates aspects of Islamic law into state law'[80]. The benefits of Islamic Finance to the British economy, and its importance to high value clients and elite law firms, (as at 2016, there were 30 in London alone that offered Islamic Finance services)[81] are clear. In light of this and the increase in 'Islamic Law' in general Commercial Law across England and Wales[82] it is not surprising that it has, as described at section 2.5 below, found its way into legal education.

There has also been some recognition of the needs of Muslim citizens in Family Law and Inheritance Law. The Law Society of England and Wales has, for example, issued guidance on Islamic Wills, this supports the increasing need for knowledge of 'Islamic

[75] Nicholas Foster, 'Islamic Finance Law as an Emergent Legal System' (2007) 21 Arab Law Quarterly 170; Financial Services Authority, 'Islamic Finance in the UK; Regulation and Challenges' (*The Financial Services Authority*) <http://www.fsa.gov.uk/pubs/other/islamic_finance.pdf> accessed 18 January 2019; Shah M Nizami, 'Islamic Finance: The United Kingdom's Drive to Become the Global Islamic Finance Hub and the United States' Irrational Indifference to Islamic Finance' (2011) 34 Suffolk Transnational Law Review 219; Rodney Wilson, 'Challenges and Opportunities for Islamic Banking and Finance in the West: The United Kingdom Experience' (1999) 41 Thunderbird International Business Review 421; United Kingdom Government, 'Guide to Islamic Finance in the UK - Publications - GOV.UK' <https://www.gov.uk/government/publications/guide-to-islamic-finance-in-the-uk> accessed 18 January 2019 3.

[76] HM Land Registry, 'HM Land Registry. Practice Guide 69: Islamic Financing' (*GOV.UK*) <https://www.gov.uk/government/publications/islamic-financing/practice-guide-69-islamic-financing> accessed 18 January 2019.

[77] Government (n 75).

[78] Finance Act 2007.

[79] Finance Act 2003, ss72, 73. The provisions were extended by the Finance Act 2005 c5 to equity sharing arrangements and to profit sharing arrangements by the Finance Act 2006, ss 95-8
Ian Edge, 'Islamic Finance, Alternative Dispute Resolution and Family Law: Developments towards Legal Pluralism?' in Robin Griffith-Jones (ed), *Islam and English Law* (2013) 120.

[80] Edge (n 79) 119.

[81] Statista, 'Islamic Finance Law Services in London 2009-2016 | Statistic' (*Statista*) <https://www.statista.com/statistics/324363/uk-islamic-finance-law-firms-advice-services-london/> accessed 18 January 2019.

[82] Nicholas Foster, 'Encounters between Legal Systems: Recent Cases Concerning Islamic Commercial Law in Secular Courts' (2006) Amicus Curiae 2; Tony Cole, 'Book Review: Shari'a Law in Commercial and Banking Arbitration' (2011) 12 Journal of Banking Regulation 192.

Law' by legal practitioners, as a result of a client need. Although this guidance was later withdrawn, it was , due to misconceptions about 'Islamic Law' that exist, as discussed at section 2.3, chapter 3 and chapter 5, as opposed to lack of need for knowledge in the area.[83] Issues of Inheritance and Wills link closely with the increasing number of cases in English courts regarding Family Law with 'Islamic Law' elements. This is mainly as a result of Islamic marriages in the UK and elsewhere, where there is one or more British citizen involved, and therefore the parties wish for both the laws of England and Wales, and 'Islamic Law', to be accommodated. This is not a very recent or transitory phenomenon. As far back as the 1970s, it was stated that, 'English courts may soon be finding themselves delving into the intricacies of the Moslem laws of inheritance'.[84]

'Islamic Law' has also influenced alternative dispute resolution (ADR), which is being actively promoted by the UK government, for example by including in the Civil Procedure Rules 1998 (the CPR) a number of measures designed to encourage ADR,[85] and pledging to use ADR in all suitable cases involving government departments.[86] Islamic Arbitration for matrimonial affairs is well-established, through what are known as 'Shari'ah Councils'.[87] These ADR mechanisms have been described as 'internal regulatory frameworks'[88] and 'operate as unofficial legal bodies specialising in providing advice and assistance on Muslim Family Law matters'.[89] They are often attached to mosques, with

[83] The guidance was provided by The Law Society as a result of a request from its members to provide guidance on the drafting of Islamic Wills , especially to non-Muslim practitioners, reflecting the religious diversity in England and Wales. The guidance was subsequently withdrawn as a result of criticism that 'Islamic Law' was influencing and overriding English law, with The Law Society stating that "Clients in England and Wales can legally choose to bequeath their assets according to sharia rules, providing the will is signed in accordance with the requirements set out in the Wills Act 1837".
Antonia Molloy, 'Islamic Law to Be Enshrined in British Law as Solicitors Get Guidelines on "Sharia Compliant" Wills' (*The Independent*) <http://www.independent.co.uk/news/uk/home-news/islamic-law-to-be-enshrined-in-british-law-as-solicitors-get-guidelines-on-sharia-compliant-wills-9210682.html> accessed 8 June 2015; The Gazette, 'The Law Society Provides Guidance on Sharia Wills | The Gazette' <https://www.thegazette.co.uk/all-notices/content/160> accessed 25 June 2019; Owen Bowcott, 'Law Society Withdraws Guidance on Sharia Wills' *The Guardian* (24 November 2014) <https://www.theguardian.com/law/2014/nov/24/law-society-withdraws-guidance-sharia-wills> accessed 25 June 2019.
[84] David Pearl, '"I Divorce You. I Divorce You. I Divorce You."' (1971) 29 The Cambridge Law Journal 40 44.
[85] Ministry of Justice, 'Practice Direction – Pre-Action Conduct And Protocols - Civil Procedure Rules' (*Ministry of Justice*) <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_pre-action_conduct> accessed 18 January 2019.
[86] Civil Justice Council, 'ADR and Civil Justice CJC ADR Working Group Interim Report' (Courts and Tribunals Judiciary 2017) <https://www.judiciary.uk/wp-content/uploads/2017/10/interim-report-future-role-of-adr-in-civil-justice-20171017.pdf> accessed 18 January 2019.
[87] Farrah Ahmed and Senwung Luk, 'How Religious Arbitration Could Enhance Personal Autonomy' (2012) 1 Oxford Journal of Law and Religion 424; Lee Ann Bambach, 'The Enforceability Of Arbitration Decisions Made By Muslim Religious Tribunals: Examining The Beth Din Precedent' (2009) 25 Journal of Law and Religion 379; Samia Bano, 'Islamic Family Arbitration, Justice and Human Rights in Britain' [2007] Law, Social Justice & Global Development 1; Jessie Brechin, 'A Study of the Use of Sharia Law in Religious Arbitration in the United Kingdom and the Concerns That This Raises for Human Rights' (2013) 15 Ecclesiastical Law Journal 293; Charles P Trumbull, 'Islamic Arbitration: A New Path for Interpreting Islamic Legal Contracts' (2006) 59 Vanderbilt law review 609; The Muslim Arbitration Tribunal(MAT), 'The Muslim Arbitration Tribunal(MAT)' <http://www.matribunal.com/arbitration-act.php> accessed 18 January 2019.
[88] Pearl and Menski (n 70) 396.
[89] Bano, 'Islamic Family Arbitration, Justice and Human Rights in Britain' (n 64) 10.

their numbers estimated to be between 30 and 85 in the UK.[90] However, the lack of official integration or recognition of 'Islamic Law' into domestic law has had a disproportionately high impact upon women, who make up the largest proportion of users of this service, in order to obtain religious dissolutions of marriage.[91]

'Islamic Law' has also made an impact in Human Rights.[92] Since October 2000, when the European Convention on Human Rights (ECHR)[93] was incorporated into English law under the Human Rights Act 1998,[94] the right to manifest one's religion or beliefs in Article 9, and under Article 2(1) the right to protection of life, mean that those following 'Islamic Law' in regard to their religious practices are now able to enforce their Convention rights in the English courts. For example, in *R (on the application of Begum) v Headteacher and Governors of Denbigh High School*[95] a domestic court ruled upon whether a schoolgirl's exclusion from school because of her religious dress engaged Article 9. The case involved not only expert witnesses being used, but the assumption that there was a single agreed definition of 'Islamic Law' and the question whether this incorporated religious dress or not.[96] Both the use of expert witnesses and the question of the meaning of 'Islamic Law' are explored later in this thesis.

Overall, these examples illustrate the impact of 'Islamic Law' in England and Wales in a range of practice areas. This is to such an extent that it has resulted in 'Islamic Law' and English law working alongside one another: in contractual negotiation, in statute, in government and professional guidance and in ADR. The right to live in accordance with 'Islamic Law' is, also recognised as a human right.[97] This means that 'on the one hand, UK legislation remains the official legal frame; on the other hand, one cannot deny that Sharia Law has entered the UK as unofficial law and now asks for official recognition'.[98]

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[90] Mona Siddiqui and others, 'Report on the Independent Review into the Application of Sharia Law in England and Wales'
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/678478/6.4152_HO_CPFG_Report_into_Sharia_Law_in_the_UK_WEB.pdf> accessed 18 January 2019.
[91] Siddiqui and others (n 90).
[92] Mashood Baderin, *International Human Rights and Islamic Law* (Oxford University Press 2005).
[93] European Convention on Human Rights 1953.
[94] Human Rights Act 1998.
[95] *R (on the application of Begum (Shabina) v Denbigh High School Governors Judgment* (n 72).
[96] 'The Lords differed on the precise points of ECHR law, three holding that there had been no interference with the freedom to manifest one's religion while two found that the decision of the school, while constituting an interference, was justified … however, it is interesting that both the Court of Appeal and the house of Lords felt it necessary to decide whether wearing of a jilbab was required by Islamic law. Cumulatively, the courts consulted sources of Islamic tradition, heard several expert opinions and took into account some academic authority on the issue before the Lords finally decided that such a form of dress was not required and that the school had made adequate concessions to the Muslim sensibilities'.
Lisbet Christoffersen and Jrgen S Nielsen, *Sharia as Discourse: Legal Traditions and the Encounter with Europe* (Ashgate Publishing Limited 2010) 139.
[97] Mashood Baderin, 'Religion and Human Rights: Towards a Better Understanding' (2010) 3 IKIM Journal of Islam and the Contemporary World 75.
[98] Pearl and Menski (n 70) 75.

More recently in 2016, the government launched an inquiry into the increasing use of 'Shari'ah Councils',[99] which closed in 2017 due to the dissolution of parliament. They also recently released a report in 2018 from an independent review into the application of 'Sharia Law in England and Wales'[100] which made a number of recommendations specifically focused on 'Shari'ah Councils' and their continued operation, as well as in regard to the registration of all Islamic marriages. Therefore, despite not having full official recognition[101], 'Islamic Law' is clearly affecting the landscape of England and Wales.

2.3 'Islamic Law' Issues in Legal Practice

However, there is a still a great deal to be done in regard to 'Islamic Law' in legal practice, for a number of reasons. Firstly, Muslims are still referred to in one statute central to Family Law as those of 'other prescribed religious usages'[102] without their specific needs being acknowledged. Lack of clear acknowledgment by the law itself of 'Islamic Law', despite the number of cases in legal practice, has resulted in a similar lack of acknowledgement for a need for knowledge in the area, and therefore a weakening of legal practice in the area.

Indeed, it is not just a lack of acknowledgement that presents a problem, but a lack of agreement as to what is meant by 'Islamic Law'. The expression 'Islamic Law' is used in this study in speech marks, not out any discourtesy, but simply to indicate that it does not have a single agreed meaning. How 'Islamic Law' may be defined and how it may be presented in theory, for example in a degree module on Islamic Studies, is not the same as how it exists in legal practice,[103] where the area is nuanced and multi-faceted and requires utilisation by legal professionals in a pragmatic way for clients. There is a distinction between 'Islamic Law' for legal purposes and 'Islamic Law' for Islamic Studies, with the former being catered for sparsely.[104] Yet this distinction is not always made or understood and is discussed further at section 3.1 below.

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[99] United Kingdom Parliament Home Affairs Committee, 'Sharia Councils Inquiry' (*UK Parliament*) <https://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2015/inquiry6/> accessed 18 January 2019.
[100] Siddiqui and others (n 90).
[101] Found conclusively from the investigations in Document 3 and 4.
[102] Section 10A Matrimonial Causes Act 1973.
[103] Haider Ala Hamoudi, 'The Muezzin's Call and the Dow Jones Bell: On the Necessity of Realism in the Study of Islamic Law' (2008) 56 The American Journal of Comparative Law 423; Shaheen Sardar Ali, 'Teaching and Learning Islamic Law in a Globalized World: Some Reflections and Perspectives' (2011) 61 Journal of Legal Education 206, 212.
[104] Ali (n 103).

This lack of understanding of 'Islamic Law' was demonstrated by the response generated when the then Archbishop of Canterbury advocated for a 'degree of accommodation [that] the law of the land can and should give to minority communities with their own strongly entrenched legal and moral codes'[105] and when the then Lord Chief Justice of England and Wales stated that it is 'not very radical to advocate embracing Sharia Law in the context of family disputes, for example, and our system already goes a long way towards [this].'[106] Their vigorous denunciation in the British media fuelled a negative response from some members of the public.[107] Negative responses due to misconceptions of 'Islamic Law' were recurring themes in the data obtained for this study. There are considerable misunderstandings and preconceived ideas as to what 'Islamic Law' or 'Shari'ah', as it is often written, is, across England and Wales and more so amongst the non-Muslim population.[108] Furthermore, there is a lack of understanding about the lives of Muslims in Britain who follow 'Islamic Law'.[109] From the perspective of academia, this can be attributed to the fact that 'for centuries, orientalists motivated by cultural, racial, and religious prejudices endeavoured to politically portray Islamic law to non-Muslims in a manner that serves their agenda. Oppressive regimes surrounded themselves with "pay for opinion" scholars'.[110] The result has been that legal education in 'Islamic Law' has also been hindered.

[105] Rowan Williams, Rowan Williams, 'Archbishop's Lecture - Civil and Religious Law in England: A Religious Perspective' <http://rowanwilliams.archbishopofcanterbury.org/articles.php/1137/archbishops-lecture-civil-and-religious-law-in-england-a-religious-perspective> accessed 18 January 2019.
[106] Lord Phillips of Worth Matravers, Nicholas Phillips, 'Equality before the Law – Speech by Lord Phillips of Worth Matravers' (*Current Awareness*, 4 July 2008) <https://innertemplelibrary.wordpress.com/2008/07/04/equality-before-the-law-speech-by-lord-phillips-of-worth-matravers/> accessed 5 March 2016.
[107] Jonathan Petre, 'Archbishop Williams Sparks Sharia Law Row' (7 February 2008) <http://www.telegraph.co.uk/news/uknews/1577928/Archbishop-Williams-sparks-Sharia-law-row.html> accessed 18 January 2019; Christopher Hope, 'Sharia Will "inevitably" Become Part of British Law, Says Barrister' (4 July 2008) <http://www.telegraph.co.uk/news/uknews/2247947/Sharia-will-inevitably-become-part-of-British-law-says-barrister.html> accessed 18 January 2019; Martin Beckford, 'Archbishop of Canterbury: Society Is Coming Round to My Views on Sharia' (15 February 2009) <http://www.telegraph.co.uk/news/religion/4631128/Archbishop-of-Canterbury-Society-is-coming-round-to-my-views-on-sharia.html> accessed 18 January 2019; Afua Hirsch, 'Fears over Non-Muslim's Use of Islamic Law to Resolve Disputes' (*the Guardian*, 14 March 2010) <http://www.theguardian.com/uk/2010/mar/14/non-muslims-sharia-law-uk> accessed 19 January 2019.
[108] Tariq Ramadan, *Western Muslims and the Future of Islam* (1 edition, Oxford University Press 2005) 31.
[109] Shaheen Sardar Ali and others, 'Draft Manual- Islamic Law and the Musllim Diaspora; A Teaching Manual (With Particular Focus on the United Kingdom)' <http://www.islamicstudiesnetwork.ac.uk/assets/documents/islamicstudies/draft_manual_on_islamic_law_and_muslim_diaspora_for_website.pdf> accessed 8 June 2015.
[110] Hisham M Ramadan, 'Toward Honest and Principled Islamic Law Scholarship' (2006) 2006 Michigan State Law Review 1573, 1573.

A particular issue lies within the legal community itself, relating to the use of expert witnesses, often inappropriately, in cases before the court.[111] In *Denbigh*,[112] for example, the courts heard different opinions from a number of expert witnesses on the topic of Islamic dress requirements and, in *Uddin v Choudhury & Ors,*[113] on the requirements and formalities of an Islamic marriage, which carries with it many ambiguities depending on the background of the Muslims involved. These ambiguities and the lack of a single response on the issues may not always be clear to legal professionals.

Clearly, there are cases where 'Islamic Law' is part of the domestic law of a foreign state, such as the Kingdom of Saudi Arabia, and the law of the Kingdom of Saudi Arabia is appropriately treated as foreign law by a domestic court, relying on expert witnesses as to the relevant provisions. It is treated as a question of fact,[114] and there are certain expectations of the expert witness.[115]

However, and more importantly for the purposes of this study, where the client need requires matters of 'Islamic Law' to be considered in an entirely domestic case, it is still treated as 'foreign', with the use of unverifiable expert witnesses, and the matters are still treated as 'issues of fact … subject to the vicissitudes of tactical retreats and other manoeuvres which accompany any adversarial process.'[116] A lack of education in the field, and sometimes a lack of cultural awareness leads, it is argued, to overreliance on such experts. This allows domestic lawyers to abdicate responsibility for 'Islamic Law' issues because they have contracted them out to the expert and reinforces the status of 'Islamic Law' as 'other'. With 'Islamic Law' in legal practice increasing in importance, as discussed at chapter 3 and demonstrated by section 2.1, the situation is becoming untenable. As a result:

> Judges are increasingly likely to have to decide themselves whether a particular issue complies with or is required by Islamic law. In so doing, one can almost see them, from an Islamic viewpoint, as acting like qadis,

[111] David Pearl, 'The 1995 Noel Coulson Memorial Lecture: The Application of Islamic Law in the English Courts' (1997) 12 Arab Law Quarterly 211; Foster, 'Encounters between Legal Systems' (n 82); Katherine Spencer, 'Mahr as Contract: Internal Pluralism and External Perspectives' (Social Science Research Network 2011) SSRN Scholarly Paper ID 1898527 <http://papers.ssrn.com/abstract=1898527> accessed 11 January 2016.
[112] *R (on the application of Begum (Shabina) v Denbigh High School Governors Judgment* (n 72).
[113] *Uddin v Choudhury & Ors* (n 72).
[114] *Concha v Murrietta* [1889] 40 Ch. D. 543; [1889] 2 WLUK 45.
[115] *MCC Proceeds Inc v Bishopsgate Investments Trust plc (No. 4)* [[1998] 11 WLUK 68; [1999] C.L.C. 417; Times, December 7, 1998; Ministry Of Justice, 'Part 35 - Experts And Assessors - Civil Procedure Rules' <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part35> accessed 10 January 2019.
[116] Pearl (n 111) 218.

> and consulting experts who can be seen as performing the role of mufti.[117]

This is despite the judges having had little or no training or education in 'Islamic Law', like the legal professionals representing the parties before them. As a result, judges who lack knowledge in the area are left with the final decision,[118] meaning there are:

> dangers inherent in domestic courts adjudicating on the private religious ordering of families who subscribe to religious and cultural norms wholly unfamiliar to these domestic judges. The result is an over-reliance on the testimony of the expert witness which, when misunderstood, misapplied or downright erroneous can have dismaying consequences for fair and accurate dispute settlement.[119]

Therefore, 'some regulation is warranted by, for example, the establishment of a roll of experts certified by one or more entities.'[120] This is to ensure that those practising in the area are verified and have sufficient knowledge and skills to meet the needs of clients in a competent manner. In addition, the authorities should ensure the judiciary are trained and competent to adjudicate on the issues before them adequately.[121] Issues in regard to expert witness in 'Islamic Law' and the detrimental consequences of over-reliance on them, are discussed further at chapter 5.

2.4 Education of Solicitors and Barristers in England and Wales

To answer the final research question about how all or any of these aspects of 'Islamic Law' are, or could be, included in professional legal education, it is necessary to outline how LSET is currently configured. In accordance with the focus of this study, the qualification structures for the largest professions when their numbers are aggregated (solicitors and barristers) are explored below.[122]

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[117] Christoffersen and Nielsen (n 96) 137.
[118] Pearl and Menski (n 69); Roger Ballard, 'Ethnic Diversity and the Delivery of Justice: The Challenge of Plurality' in Prakash Shah and Werner F Menski (eds), *Migration, diasporas and legal systems in Europe* (Routledge-Cavendish 2006).
[119] Spencer (n 111) 12.
[120] Hdeel Abdelhady, 'Islamic Law in Secular Courts (Again)' (2010) 27 GPSolo 36, 37.
[121] Pearl (n 72).
[122] Legal Services Board (n 44).

As at 2007, 8% of all solicitors in law firms in England and Wales were Muslim. No data was available on the number of Muslim barristers. However, 'Islamic Law' has consequences for Muslim and non-Muslim solicitors and barristers, and not only in terms of legal knowledge and skills. Indeed, there is a distinct skill specific to 'Islamic Law' in 'developing coherent arguments from varying source materials, understanding the plurality of views and opinions, analysing legal norms, and sifting and extrapolating the legal from the moral, ethical and religious injunctions'.[123] Cultural awareness is also important, in ensuring appropriate professional conduct with Muslim clients, colleagues, opponents, judges and arbitrators. These issues need to be considered when examining what, where and how 'Islamic Law' should be included in the qualification processes.

Currently, to qualify as a solicitor, the most common route is a Qualifying Law Degree (QLD),[124] or a non-law degree with a one-year GDL, in both cases followed by the LPC and a period of recognised training, normally of two years. After completing these stages, an individual may apply to the Solicitors Regulation Authority (SRA)[125] to be admitted to the roll.[126] There is also a longer non-graduate route through the Chartered Institute of Legal Executives (CILEx)[127] and, through apprenticeships.[128] From September 2020, this is set to change, with the LPC being replaced by the Solicitors Qualification Examination (SQE)[129] where candidates will undertake two examinations, as well as a period of qualifying work experience and an assessment of character and fitness, in order to be admitted to the roll. Admission includes meeting the standards of the 'Statement of Solicitor Competence'[130] . Candidates will need a degree or equivalent qualification, but this could be in any subject. Consequently, any conclusion about the place of 'Islamic Law' in a solicitor's legal education must take into the account that the QLD, GDL and LPC will change fundamentally in the future. If, for example, it was concluded that 'Islamic Law' was required to be taught on the LPC, which nearly all solicitors currently undertake, this would have to be revised in light of those changes. The other options are to include it as

[123] Ali (n 103) 207.
[124] Melissa Hardee, Melissa Hardee, 'Career Expectations of Students on Qualifying Law Degrees in England and Wales' <https://www.heacademy.ac.uk/resources/detail/disciplines/law/Hardee_InterimReport_2014FINAL> accessed 15 June 2015.
[125] Solicitors Regulation Authority, 'SRA Handbook - Code of Conduct - SRA Code of Conduct 2011 | Solicitors Regulation Authority' <http://www.sra.org.uk/solicitors/handbook/code/content.page> accessed 18 January 2019.
[126] Law Society of England and Wales, 'Becoming a Solicitor' (*The Law Society of England and Wales*) <http://www.lawsociety.org.uk/law-careers/becoming-a-solicitor/> accessed 18 January 2019.
[127] Chartered Institute of Legal Executives (CILEx), 'The Chartered Institute of Legal Executives (CILEx)' (*The Chartered Institute of Legal Executives (CILEx)*) <http://www.cilex.org.uk> accessed 18 January 2019.
[128] Law Society of England and Wales, 'Apprenticeships' (*The Law Society of England and Wales*) <http://www.lawsociety.org.uk/law-careers/becoming-a-solicitor/qualifying-as-a-solicitor/apprenticeships/> accessed 9 July 2018.
[129] Solicitors Regulation Authority, 'A New Route to Qualification: The Solicitor's Qualifying Examination (SQE)' <https://www.sra.org.uk/home/hot-topics/Solicitors-Qualifying-Examination.page> accessed 18 January 2019.
[130] Solicitors Regulation Authority, 'Statement of Solicitor Competence' <http://www.sra.org.uk/solicitors/competence-statement.page> accessed 18 January 2019.

part of a law degree and GDL, or as part of the SQE, or as CPD. These variables and their implications are examined further below at section 2.6 and at chapter 6.

To qualify as a barrister,[131] the most common route is a QLD or GDL. This is followed by the Bar Course Aptitude Test (BCAT) and then the one-year BPTC. The student is then called to the bar by one of the Inns of Court. This is followed by a twelve month pupillage and confirmation they have met the minimum standards for the Bar Standards Board's (BSB) Professional Statement for Barristers[132] before they begin to practise. From January 2019, this process will be updated through the Future Bar Training (FBT) programme to make the process more flexible and accessible, especially in regard to the vocational element, and with an increased focus on work-based learning.[133] Nevertheless, a vocational course will be retained, and this is significant if the conclusion is that coverage of 'Islamic Law' for legal practice should be included at that stage.

2.5 Current Offerings in 'Islamic Law' Education in England and Wales

As demonstrated in sections 2.1-2.3, there has been a range of responses to 'Islamic Law', from the welcoming of Islamic Finance to the abdication of responsibility to expert witnesses. If, as indicated above in the context of expert witnesses, this is linked to a shortfall in education, it then becomes important to identify the shortfall, which links to the second research question in this study. To establish the current offerings of 'Islamic Law' in pre-qualification LSET for intending solicitors and barristers in England and Wales, law school websites were searched online[134] for any taught courses/modules entitled 'Islamic Law' or courses/modules containing elements of the subject. This approach can, of course, only identify examples of discrete courses. The extent to which, for example, it has become the norm for modules on Family Law or Human Rights to consider aspects of 'Islamic Law' could not be identified. Given the prominence of some of the 'Islamic Law' cases cited earlier, such as *Denbigh*, however, it is difficult to see how certain subjects can be taught effectively without some reference to 'Islamic Law'. This is further discussed in chapters 5 and 6.

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[131] Bar Standards Board, 'Qualifying as a Barrister' (*The Bar Standards Board*) <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/> accessed 18 January 2019.
[132] Bar Standards Board, 'The Professional Statement' (*The Bar Standards Board*) <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/becoming-a-barrister/professional-statement/> accessed 18 January 2019.
[133] Bar Standards Board, 'Qualifying as a Barrister- Future Requirements' (*The Bar Standards Board*) <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-requirements/> accessed 18 January 2019.
[134] Accessed on 20 June 2018.

Firstly, the researcher examined a start list of 'Islamic Law' modules, founded between 2006-2011 through a joint project named the 'The Islamic Studies Network Project' (ISNP) funded by the Higher Education Funding Council for England (HEFCE), 'following the [UK] government's designation of Islamic Studies as a strategically important subject'[135]. The ISNP split the project into Islamic Studies and 'Islamic Law'. [136] The 'Islamic Law' part of the project was undertaken by the UK Centre for Legal Education (UKCLE),[137] the Higher Education Academy (HEA),[138] the Commonwealth Legal Education Association (CLEA)[139] and the University of Warwick.[140] Two sub-projects were formed: the 'Islamic Law Special Interest Group'[141] project and the 'Developing an Islamic Law curriculum and resources'[142] project. The former group looked briefly at how 'Islamic Law' was being taught in higher education and the latter researched and designed curricula for 'Islamic Law' with specific modules being designed, as well as a glossary of terms[143] and bibliography. [144]

Secondly, a search was conducted for all the current 'Islamic Law' courses offered in the UK.[145] The names of the law school, the names of the module, course, level, credits, and brief description as taken from the provider website, were then listed in a spreadsheet to produce a comprehensive list of current offerings.[146] The search included modules on all undergraduate and postgraduate programmes in England and Wales, as well as on the Legal Practice Course (LPC), Bar Professional Training Course (BPTC) and any CILEx[147]

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[135] UKCLE, 'The Islamic Studies Network Project' (*UKCLE*) <http://ials.sas.ac.uk/ukcle/78.158.56.101/archive/law/projects/current-projects/islamicstudies/index.html> accessed 24 August 2018.
[136] Ali (n 103).
[137] Institute of Advanced Legal Studies, 'UKCLE: UK Centre for Legal Education Website Archive' (*UKCLE*) <https://ials.sas.ac.uk/library/archives/ials-archives-collections/ukcle-uk-centre-legal-education-website-archive> accessed 9 July 2018.
[138] Higher Education Academy, 'Higher Education Academy' (*Higher Education Academy for England & Wales*) <https://www.heacademy.ac.uk> accessed 6 June 2018.
[139] Commonwealth Legal Education Association, 'The Commonwealth Legal Education Association' (*The Commonwealth Legal Education Association*) <http://www.clea-web.com/> accessed 18 January 2019.
[140] University of Warwick, 'Social Sciences- School of Law' (*University of Warwick*) <https://warwick.ac.uk/fac/soc/law/> accessed 18 January 2019.
[141] UKCLE, 'Islamic Law Special Interest Group' (*UKCLE*) <http://ials.sas.ac.uk/ukcle/78.158.56.101/archive/law/projects/current-projects/islamicstudies/sig/index.html#presentations> accessed 24 August 2018.
[142] UKCLE, 'Developing an Islamic Law Curriculum' (*UKCLE*) <http://ials.sas.ac.uk/ukcle/78.158.56.101/archive/law/projects/current-projects/ali/index.html> accessed 24 August 2018.
[143] UKCLE, '"Islamic Law" Glossary' (*UKCLE*) <http://ials.sas.ac.uk/ukcle/78.158.56.101/archive/law/resources/teaching-and-learning-strategies/glossary/index.html> accessed 24 August 2018.
[144] UKCLE, '"Islamic Law" Bibliography' (*UKCLE*) <http://ials.sas.ac.uk/ukcle/78.158.56.101/archive/law/resources/teaching-and-learning-strategies/islamic-law-bibliography/content.1.html> accessed 24 August 2018.
[145] Accessed on 20 June 2018.
[146] See Appendix 8
[147] Chartered Institute of Legal Executives (CILEx) (n 127).

and Continuing Professional Development (CPD) courses. Research only and doctoral level modules/courses were excluded from the search, as such courses are tailored to an individual's research interest and neither are stipulated as part of the route to qualification as a solicitor or barrister (described at section 2.4 below).

Results of the first stage analysis

From the first stage, it was found that many of the modules listed in the ISNP/HEFCE draft manuals and reports[148] were mainly focused on culture, history and theology, such as that on 'Sources of Islamic Law' and so did not have a legal practice focus. This default position is confirmed by the fact that as at 2009, only 3% of Islamic modules were offered from a Law department.[149] A number of the modules also looked at 'Islamic Law' as 'foreign' and not domestic, for example the manual on 'Islamic Criminal Justice' or 'Islamic International Law'. The majority of the modules listed were now no longer offered by their original provider or another provider.[150] A review of the existing manuals and reports detailed that there was an identifiable gap in the teaching of 'Islamic Law' from a legal perspective and the reports attempted to bridge this gap. Between 2008 and 2011, three new modules[151] for 'Islamic Law' were developed in the ISNP:

> to enable law students to become familiar with and trained in Islamic law in a way that meets the expectations of a university legal education and the professional legal community without losing the cultural and philosophical elements that underpin Islamic law.[152]

Significantly for this project, consultation was carried out with academics, solicitors and barristers in the ISNP to ascertain what knowledge and skills were required by graduates in legal practice. Although the modules were successful in teaching students the

[148] 1 Introduction to Islamic Criminal Justice. 2 Sources of Islamic Law, 3 Approaches to Learning and Teaching Islamic Law. 4 Introduction to Islamic International Law. 5 Islamic Law of Obligatory Alms (Zakat): A Teaching and Learning Manual. 6 Introduction to Islamic Family Law 7 Islamic Law and Human Rights: Comparative Perspectives. 8 Islamic Law and the Muslim Diaspora. 9 Islamic law in the Law School: Implementing a New Pedagogy: Final Report.

[149] Higher Education Funding Council for, 'Islamic Studies Provision in the UK' (*Higher Education Funding Council for England*) 17. <http://www.hefce.ac.uk/pubs/rereports/Year/2010/islamicstudies/Title,92256,en.html> accessed 18 January 2019.

[150] UKCLE, 'Developing an Islamic Law Curriculum: Resources' (*UKCLE*, 2011) <http://ials.sas.ac.uk/ukcle/78.158.56.101/archive/law/resources/teaching-and-learning-strategies/islamiclaw/index.html> accessed 24 August 2018.

[151] University of Exeter, 'Islamic Finance and Banking Law (LAWM619)' <http://socialsciences.exeter.ac.uk/law/modules/LAWM619/description/> accessed 18 January 2019; ' Islamic Law and Human Rights (LAWM664)' <http://socialsciences.exeter.ac.uk/law/modules/LAWM664/description/> accessed 18 January 2019; 'Islamic Law and Society (LAW3132)' <http://socialsciences.exeter.ac.uk/law/modules/LAW3132/description/> accessed 18 January 2019.

[152] Anicee Van Engeland, '"Final Report" Islamic Law in the Law School: Implementing a New Pedagogy' 1. <http://www.islamicstudiesnetwork.ac.uk/islamicstudiesnetwork/projects/display?id=/projects/alldetails/islamicstudies/Jan_2011_Anicee_van_Engeland> accessed 8 June 2015.

knowledge for legal practice, due to the leader of the project moving to a new university, the modules were no longer taught after 2012. The challenge of human resources where 'once that person has either retired, moved jobs or for any other reason, [is] not there to offer the course, Islamic law teaching is not an option that requires replacement teaching' had been noted in other reports[153] and in the literature review and data collected as part of this thesis, both discussed below. By the academic year 2017/18, unfortunately only one of these modules was still offered.[154]

The ISNP reports[155] identified that when 'Islamic Law' was taught, it was from non-Law departments such as Theology, and coverage focused on religion and theory. Teaching was therefore informed by the perspective of those departments, rather than the perspective of a law department, drawing upon primary and secondary sources as well as the legislative and judicial practices of Islamic states. Such teaching thus blurred the lines between teaching 'Islamic Law' and Islam, with a recommendation from the ISNP to separate the two.[156] A focus was required on minimising teaching of 'Islamic Law' from a 'western knowledge system, both in substance and procedure, as our reference point when teaching Islamic law',[157] to avoid English law being seen as the correct standard form and 'Islamic Law' as 'other'. This is a theme identified in the literature review and that emerged additionally in the data collected, discussed below at section 5.3.

The 2010 report on 'Islamic Family Law'[158] provided a framework to encourage academics to teach the subject, in order to examine 'the application of Islamic Family Law in diasporic communities using the United Kingdom'[159] as an example, as well as other areas of 'Islamic Law'. This was important as:

> It equips the student with the skill of comparative analysis. For prospective 21st century practitioners a working knowledge of the legal norms of the Muslim population is useful in contextualising their

[153] Ali (n 7) 31.
[154] University of Exeter, 'Islamic Law and Society (LAW3132)' (n 125).
[155] 1 Introduction to Islamic Criminal Justice. 2 Sources of Islamic Law, 3 Approaches to Learning and Teaching Islamic Law. 4 Introduction to Islamic International Law. 5 Islamic Law of Obligatory Alms (Zakat): A Teaching and Learning Manual. 6 Introduction to Islamic Family Law 7 Islamic Law and Human Rights: Comparative Perspectives. 8 Islamic Law and the Muslim Diaspora. 9 Islamic law in the Law School: Implementing a New Pedagogy: Final Report.
[156] Ali (n 103) 214.
[157] Ali (n 103) 219.
[158] Higher Education Academy, 'Introduction to Islamic Family Law' <https://www.heacademy.ac.uk/knowledge-hub/introduction-islamic-family-law> accessed 21 June 2018.
[159] Higher Education Academy, 'Introduction to Islamic Family Law' (n 158) 4.

> engagement with any area of law, be it family, immigration, contract, finance or crime.[160]

Although it supports a need for legal education for the purposes of legal practice, the comparative approach, which may treat 'Islamic Law' as 'other', is not suited to areas where 'Islamic Law' is present in a domestic context. Moreover, little data is available about whether the framework has been utilised by universities in the design of their modules to date. Although two postgraduate Master's modules on 'Islamic Family Law' are currently offered, or to be offered in the academic year 2018/19, in England and Wales[161] there is no data to demonstrate whether they were designed based on the ISNP and its findings.

A 2011 report entitled 'Comparative Sharia Law: The development of teaching materials in the area of Sharia compliant financial instruments and intellectual property',[162] which was part of the ISNP, but conducted separately from the other reports, involved the creation of materials and a module based around 'Sharia financial instruments, Sharia intellectual property and Faith based arbitration' at the University of Bradford.[163] The module was created[164] due to student interest and demand resulting from press coverage, the significant Muslim population in the local area, and the international reach of the university.[165] However, there is no data available to show whether the module was ever offered beyond its host institution and, indeed, it is no longer offered there.[166]

Similarly, although as part of the ISNP, the 2011 'Islamic Law of Obligatory Alms (Zakat)'[167] a postgraduate module was designed to introduce students to Islamic taxation, and offers a comprehensive framework to teach the topic, there is no data available about whether the module has ever been delivered. Again, for the 'Islamic Law

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[160] Higher Education Academy, 'Introduction to Islamic Family Law' (n 158) 3.
[161] The Islamic College, 'MIN 415 – Islamic Family Law | The Islamic College' <https://www.islamic-college.ac.uk/courses/min-415-islamic-family-law/> accessed 21 June 2018.
[162] Mark Van Hoorebeek, 'Comparative Sharia Law: The Development of Teaching Materials in the Area of Sharia Compliant Financial Instruments and Intellectual Property' <https://www.heacademy.ac.uk/knowledge-hub/comparative-sharia-law-development-teaching-materials-area-sharia-compliant-financial> accessed 21 June 2018.
[163] Van Hoorebeek (n 162) 5.
[164] Van Hoorebeek (n 162) 3.
[165] University of Bradford, 'University of Bradford- Law Department' (*University of Bradford*) <https://www.bradford.ac.uk/courses/ug/law-llb/> accessed 18 January 2019
[166] University of Bradford (n 165).
[167] Higher Education Academy, 'Islamic Law of Obligatory Alms (Zakat): A Teaching and Learning Manual' <https://www.heacademy.ac.uk/knowledge-hub/islamic-law-obligatory-alms-zakat-teaching-and-learning-manual> accessed 21 June 2018.

and Human Rights: Comparative Perspectives' module[168] designed in 2009, no data is available to show if and when it has been delivered. Overall, although great efforts were made in these projects to further the cause of 'Islamic Law' education with a LSET focus, they themselves have not proved sustainable. The question for the second stage was whether they had been replaced.

Results of the second stage analysis

From the second stage search, a total of thirty-six modules containing 'Islamic Law' were found, of which two (both related to Islamic Finance) would no longer be offered in the next academic year 2018/19 and one was being offered for the first time. It was not clear from the law school websites if all of the remainder were being offered in the current academic year, the next academic year of 2018/19, or how often the module(s) were offered. However, the content of these modules was still explored, for the purposes of ascertaining the nature of any legal education offering in 'Islamic Law' which links to the second research question in this study.

Given the significance, and value, of Islamic Finance to legal practice in the City in particular (outlined at section 2.2), it is not surprising that there was a comparatively strong offering in this respect. Nine modules were related to Islamic Finance or Islamic Commercial Law. Four of the modules were from one provider, BPP,[169] which caters in particular to City firms. However, of these four, three were postgraduate, offered as part of the LPC or a Master's programme, and one was a CPD course that was no longer offered. Three of these four offerings had no descriptions available, again indicating that the modules may not be regularly offered or might be available only to participants from particular City firms. These were also the only modules to be offered at the vocational level, discussed at section 2.5.

The thirty-six modules referring to 'Islamic Law' originated in Islamic Studies, Finance, International Studies and Diplomacy, Theology and Law departments, with the majority being offered by the latter. This is in contrast to the stage one statistics which looked only at 'Islamic Studies' modules offered by Law departments.[170] Eight of these modules in

[168] Higher Education Academy, 'Islamic Law and Human Rights: Comparative Perspectives' <https://www.heacademy.ac.uk/knowledge-hub/islamic-law-and-human-rights-comparative-perspectives> accessed 21 June 2018.
[169] BPP, 'Islamic Finance' <http://www.bpp.com/postgraduate-course-details/d/postgraduate/LLMIslamicFin/9935> accessed 17 June 2015.
[170] Higher Education Funding Council for (n 149).

areas of 'Islamic Law' were offered by two Islamic educational institutions.[171] However, although both were affiliated with mainstream universities, they would not normally be responsible for LSET. The courses were also found to be more theologically orientated.

The thirty-six modules found were mainly theoretical, with only three specifically mentioning in their descriptions or title that they were looking at 'Islamic Law' in legal practice in England and Wales and not teaching 'Islamic Law' from an Islamic Studies or a 'foreign' law perspective. Of these three, one was at an undergraduate course offered as a general introduction to 'Islamic Law'. The second was at Master's level offered as a general introduction to 'Islamic Law' as opposed to either Islamic studies or legal practice. The third module focused on Family Law at Master's' level and would be offered for the first time in 2018/19 by a Law department. All three were offered by different providers. The undergraduate module, although it was named 'Islamic Law in Practice', was offered through an Islamic Studies department by a course leader who was not of a law background. The course was theology-based, rather than focused towards legal practice.[172] Moreover, it had undergone a name change to enable it to be offered as an optional module on a wider variety of undergraduate programmes including non-law degrees, which was further evidence that its content would not be directed towards intending legal practitioners.[173]

Ultimately, therefore, only one module from the whole thirty-six was both offered from a Law department and found to be geared towards legal practice, but this was at the postgraduate level and covered only a limited range of topics affecting legal practice of

[171] The Islamic College, 'The Islamic College' (*The Islamic College*) <https://www.islamic-college.ac.uk/> accessed 24 August 2018; Markfield Institute of Higher Education, 'Markfield Institute of HIgher Education' (*Markfield Institute of Higher Education*) <https://www.mihe.ac.uk/course/ma-islamic-banking-finance-and-management> accessed 18 January 2019.
[172] University of Leeds, 'LLLC1431 Islamic Law in Practice' (*University of Leeds*) <https://leedsforlife.leeds.ac.uk/Broadening/Module/LLLC1431> accessed 18 January 2019.
[173] See Appendix 9.

'Islamic Law'.[174] This module was offered by a course leader at the University of Warwick who had led the ISNP.[175]

Overall, therefore, there is no undergraduate module currently offered in England and Wales that explicitly teaches 'Islamic Law' for the purposes of LSET. There is one academic module that does this to an extent, but it does not contain key areas required for legal practice as identified by the data collected in this study (discussed further below at chapter 5) and is offered only at postgraduate level. The other postgraduate academic module, focusing on legal practice of 'Islamic Law', only covers Family Law. Such modules would not serve those who are entering into legal practice, as a postgraduate degree is not required for solicitors or barristers (see 2.4 below). Although as mentioned above, there was an Islamic Finance offering by one law school at the postgraduate vocational level, which would assist those going into practice, it only covered this topic and was offered only on the LPC, not the BPTC. Despite the draft reports and manuals discussed in stage one, no further modules are offered.

This demonstrates a clear gap between legal practice of 'Islamic Law', which is increasing, and legal education in the subject for legal practice, which is scarcely available, if at all. From the perspective of legal practice and legal education, '… including Islamic law in the list of law school offerings would present an opportunity to engage first hand with the Islamic legal tradition'.[176] Although any need for knowledge in the area may be satisfied pervasively in another subject, there is little evidence available of this occurring, and as a pervasive topic it would be difficult to give due attention to the complexities of 'Islamic Law'. Research on the area was last extensively carried out over seven years ago as part of the ISNP. In a period where legal education and legal practice have changed greatly in other areas, as discussed at section 2.6 below, it is now required for the same degree of change to be reflected in the subject of 'Islamic Law'.

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[174] Outline of topics; Historical introduction to Islamic Law: an overview of the early development of Islamic Law and the emergence of the various schools of juristic thought in law;An overview of sources of Islamic law focusing on the Quran, Hadith, Ijma, Qiyas and Ijtihad;Husband and Wife: the institution of marriage in Islam, its contractual nature, requisites of a valid marriage, dower (mahr) as an essential component of the marriage contract, various methods of dissolution of marriage including Talaq, Khul and Mubarat;Parents and Children: Custody (Hizanat), guardianship (Wilayat), adoption and the concept of Kifalaat; Property: An analysis of the concept of property rights in Islamic law using examples of gift (Hiba), inheritance and succession (virasat), dower (mahr);Law Reform in the Muslim World: Examples of law reform from jurisdictions in South Asia including The Child Marriages Restraint Act, 1929, The Dissolution of Muslim Marriages Act, 1939 (of Pakistan and India), The Muslim Family Laws Ordinance, 1961 (Pakistan) and the Moroccan Family Code 2004; and Application of Islamic Law in diasporic communities. University of Warwick, 'LA9E0- Introduction to Islamic Law- Postgraduate' (*University of Warwick*) <https://warwick.ac.uk/fac/soc/law/current/pg/modules/LA9E0> accessed 18 January 2019.
[175] University of Warwick, 'Professor Shaheen Sardar Ali' (*University of Warwick*) <https://warwick.ac.uk/fac/soc/law/people?id=082def9c2211cd8139633005965cf386> accessed 18 January 2019.
[176] Ali (n 103) 230.

2.6 Current Issues in Legal Education

In order to ascertain how LSET in 'Islamic Law' can better meet the needs of solicitors and barristers, it is vital to look not only at the background of 'Islamic Law' within the jurisdiction and the qualification processes, but also at other pertinent issues within legal education, which may in turn affect teaching and learning of the subject.

Legal education as a whole, including LSET, is shaped by social, economic and political forces and it is within these spheres that the system of legal education has the most influence.[177] Those in legal practice have an interest in the content of legal education. They depend on the legal education system to provide the profession with skilled and knowledgeable practitioners.[178] The true purposes of legal education, however, are subject to debate. The purpose of the law degree can be vocational education in order to train and skill lawyers of the future. Alternatively, the degree can be seen as part of an academic liberal education, that is, as a tool for personal development, creating personal autonomy, self-awareness and critically engaged individuals,[179] taught by universities as a subject to meet these aims.[180] Which of these it is depends on whether the academic or practice view of education is taken.[181] The vocational stage (in jurisdictions where there is one) demands the practice approach. However, there is much greater debate at undergraduate degree level. In some jurisdictions, such as the United States of America (USA), the law degree is only available at postgraduate level, and is the primary means of preparing legal professionals, so a practice approach is legitimate. The undergraduate law degree in England & Wales, however, being neither a mandatory component of the qualification framework nor confined to students who want to become lawyers, the question of a practice-based approach to 'Islamic Law' is more complicated. The introduction of the SQE and abolition of the LPC in its current form may have the effect of pushing more practice-related topics into SQE-ready undergraduate law degrees. As

[177] Avrom Sherr and David Sugarman, 'Theory in Legal Education' (2000) 7 International Journal of the Legal Profession 165, 166.
[178] James Gray and Mick Woodley, 'The Relationship between Academic Legal Education and the Legal Profession: The Review of Legal Education in England and Wales and the Teaching Hospital Model' (2005) 2 European Journal of Legal Education 1; Roland Fletcher, 'Legal Education and Proposed Regulation of the Legal Profession in England and Wales: A Transformation or a Tragedy?' (2016) 50 Law Teacher 371; Avrom Sherr, Richard Moorhead and Hilary Sommerlad, *Legal Education at the Crossroads: Education and the Legal Profession* (Routledge 2018).
[179] Anthony Bradney, 'How to Live: Aristocratic Values, the Liberal University Law School and the Modern Lawyer'(2011) 2 Web JCLI; Tracey Varnava and Roger Burridge, 'Revising Legal Education' in Roger Burridge and others (eds), *Effective Learning and Teaching in Law* (Routledge 2002) 13.
[180] Roger Burridge and Julian Webb, 'The Values of Common Law Legal Education: Rethinking Rules, Resposibilities, Relationships and Roles in the Law School' (2007) 10 Legal Ethics 72, 74; Sherr, Moorhead and Sommerlad (n 163).
[181] Noel Jackling, 'Academic and Practical Legal Education: Where Next' (1986) 4 Journal of Professional Legal Education 1, 1.

a result, a SQE-ready undergraduate law degree may include more vocational elements than a current undergraduate law degree. However, as universities will still offer the undergraduate law degrees for all students, regardless of whether they enter practice or not, the introduction of the SQE itself therefore, will not resolve the debate around the purpose of the undergraduate law degree.

LSET, which includes the LPC and BPTC, takes the view that law students should be adequately prepared for legal practice.[182] A legal professional has, therefore, a role to play in supporting fundamental societal objectives, such as the public good, equal access to justice and social justice.[183] The skills required for this role include 'intellectual and critical skills as well as legal knowledge'.[184] It is the starting hypothesis of this thesis, supported by the discussion in 2.1 and 2.2, that these fundamental societal objectives cannot be achieved without a basic knowledge of, and skills in, 'Islamic Law', to ensure that a proportion of the community is not disadvantaged and that the rule of law is upheld. Practice-orientated approaches, such as through the LPC, BPTC and subsequent training, represent an opportunity for the teaching and learning of 'Islamic Law' to move from the traditional theoretical foundations to focusing and aiming for practice, thereby making legal professionals more competent to practise in the area.[185]

The LETR,[186] briefly mentioned earlier at the outset of chapter 2, creates further pertinent issues for legal education in 'Islamic Law'. It was undertaken to ensure that England and Wales had a system of LSET that was fit for the future, and one that advances the regulatory objectives of the LSB[187] in the interests of society, consumers and justice. It also raised important questions about legal education, its relationship with legal practice and the requirements of the legal profession. Although 'Islamic Law' is not specifically referenced, its impact on legal practice have been demonstrated at section 2.2 and 2.3. Therefore, the needs-led approach for competence of legal professionals recommended in the LETR[188] and equally in the interests of society, clients and justice demands knowledge and skills in 'Islamic Law' within the legal professions to make them fit for the future. There has also been an increased emphasis, including in the LETR, on

[182] Anthony Bradney, 'English University Law Schools, the Age of Austerity and Human Flourishing' (2011) 18 International Journal of the Legal Profession 59; Bradney (n 178); J William Twining, 'LETR: The Role of Academics in Legal Education and Training: 10 Theses 1' (2014) 48 The Law Teacher 94; Fletcher (n 177).
[183] David B Wilkins, 'Professional Ethics for Lawyers and Law Schools: Interdisciplinary Education and the Law School's Ethical Obligation to Study and Teach about Profession' (2001) 12 Legal Education Review 47, 47.
[184] Webb and others (n 41) 241.
[185] Nickolas J James, 'More than Merely Work-Ready: Vocationalism versus Professionalism in Legal Education' (2017) 40 University of New South Wales Law Journal 186, 201.
[186] Ching and others (n 182).
[187] United Kingdom Government (n 12).
[188] Ching and others (n 182).

issues of employability and skills generally,[189] student fees and the challenges of online and distance learning providers,[190] affecting the context of legal education and shaping and forming the content of future legal education,[191] and consequently the teaching and learning of 'Islamic Law'. Additionally, 'whilst the LETR report notes the many purposes of the qualifying law degree, the undergraduate law degree is recognised as having value in preparation for practice in terms of the development of "intellectual and critical skills'" as well as legal knowledge'.[192] The strengths and weaknesses of placing 'Islamic Law' at this level and in different levels of legal education are discussed in detail at chapter 6.

Recent changes in legal education, such as the introduction of the SQE, and reports by users of legal services requiring a more consumer orientated approach,[193] may lead to a need for a more vocational approach[194] to legal education, despite the fact that not all those who undertake the undergraduate degree will enter the legal profession.[195] Market forces now mean it is expected that all graduates in England and Wales, regardless of their chosen profession, have sector specific experience and competencies as well as generic skills making them suitable for the job market, and this also applies to law graduates.[196] Consumers of legal services expect legal professionals to know what they are doing in a particular practice area, and to be able to do it effectively.[197] This combines the 'academic' and 'practice' view, and means that, given the influence of 'Islamic Law' in England and Wales as explained at section 2.1-2.3, the sector specific competencies should be read in a way to include 'Islamic Law', and that understanding of 'Islamic Law' for legal practice is in line with a more vocational approach to legal education.

Regardless of the view taken, the influence of 'Islamic Law' is such in legal practice, that a reference to it is required in key areas of legal education, such as Family Law, and Human Rights. Legal professionals should gain at least basic knowledge of the area as part of their legal education. Following the ideal of liberal education, where legal

[189] Alperhan Babacan and Hurriyet Babacan, 'A Transformative Approach to Work Integrated Learning in Legal Education' (2015) 57 Education & Training 170.
[190] Fiona Cowney and Anthony Bradney, *Transformative Visions of Legal Education* (Wiley-Blackwell 1999).
[191] Jessica Guth and Chris Ashford, 'The Legal Education and Training Review: Regulating Socio-Legal and Liberal Legal Education?' (2014) 48 The Law Teacher 5, 5.
[192] Peter Smith, 'The Legal Education - Legal Practice Relationship: A Critical Evaluation' (Sheffield Hallam University 2015) 74 <http://shura.shu.ac.uk/10826/> accessed 8 January 2016.
[193] Legal Services Consumer Panel, 'Legal Services Consumer Panel (LSCP)' <http://www.legalservicesconsumerpanel.org.uk/index.html> accessed 18 January 2019.
[194] Ron Dearing, 'Report of the National Committee of Inquiry into Higher Education' (1997) <http://www.educationengland.org.uk/documents/dearing1997/dearing1997.html> accessed 18 January 2019; John Hodgson and Neil Peck, 'How Vocational Do Law Schools Want To Be-A Brief Comparison of England and the USA' (2010) 19 Nottingham LJ 45.
[195] Cowney and Bradney (n 190) 59.; Bradney (n 182) 61.
[196] Skills for Justice UK, 'Skills for Justice UK' (*Skills for Justice UK*) <https://www.sfjuk.com/> accessed 18 January 2019.
[197] Webb and others (n 41).

education is pursued for its own sake,[198] 'Islamic Law' also needs to be included in legal education to engage individuals in what is now part of British society, with an increasing Muslim population. Given this and the SRA's 'Statement of Solicitor Competence'[199] and the BSB's 'Professional Statement'[200] as discussed below at chapter 5, legal education in 'Islamic Law' is vital to uphold the standards expected by solicitors and barristers. Introduction of the subject, with a legal practice focus, would enable students to be knowledgeable future practitioners.

Overall, although the LETR review of legal education did not consider 'Islamic Law' specifically, it can be argued to have done so implicitly in recommending that professional legal education should equip students for modern legal practice, because modern legal practice now includes 'Islamic Law'. The omission of specific consideration of 'Islamic Law' by the LETR review is now remedied by the subject of this thesis. The increasing influence of 'Islamic Law' is such that, whether a liberal education view or vocational education view is taken, competence and cultural awareness in this area is expected by clients and needs to be addressed by legal education. Consequently, although this study takes place in a time of flux, it is particularly timely, as there is an opportunity for its conclusions to influence future practice by regulators and providers, at a time when there is an increasing importance of Muslims in Britain. The next chapter critically analyses the literature surrounding the key elements of this study.

[198] Varnava and Burridge (n 179) 5.
[199] Solicitors Regulation Authority, 'Statement of Solicitor Competence' (n 130).
[200] Bar Standards Board, 'The Professional Statement' (n 172).

3 Literature Review

'People know what they do; frequently they know why they do what they do; but what they don't know is what what they do does'.[201]

Michel Foucault

Building on the context of law, legal practice and legal education set out in the previous chapter, this chapter considers the academic and professional literature on the definitions of key concepts that underpin the main elements of the conceptual framework for the study.

3.1 The meaning of 'Islamic Law'

As indicated above in chapter 2, the meaning of 'Islamic Law' is contentious and it is not monolithic or a 'uniform body of regulatory norms'[202] as the phrase may suggest. This Document, therefore, develops the variations in understanding that also contribute to the prejudice and uninformed reliance on expert witnesses discussed previously. In order to address the research questions, it was therefore necessary to develop a new practice-specific concept of 'Islamic Law', that reflects the depth of knowledge required by legal practitioners in England and Wales to advise on different practice areas influenced by 'Islamic Law'. A number of categories of meanings need to be taken into account to establish this concept, drawn from both the literature within this chapter and the data collected as discussed at chapter 5.

The term 'Islamic Law' was used in the previous section as a generic term potentially covering a spectrum from deep theoretical, historical and theological knowledge at one end, through implementing Islamic requirements in Commercial Law and Family Law, to cultural awareness at the other. Respondents to the empirical investigation could have used the term in any of these ways. Consequently, it is important to interrogate the various possible meanings of the term.[203]

[201] Hubert L Dreyfus and Paul Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics* (University Press Chicago 1983) 187.
[202] Ali (n 7) 3.
[203] Anver M Emon and Rumee Ahmed (eds), *The Oxford Handbook of Islamic Law* (Oxford University Press 2018).

'Islamic Law' is a phrase without an Arabic equivalent, despite the origins of Islam lying in the Arabic language. Indeed, prior to the nineteenth century, such a phrase was unheard of by Muslims, with Orientalists being amongst the primary users of the phrase.[204] Moreover, what may be termed 'Islamic Law' for an Islamic Studies programme or theologian, may be different from 'Islamic Law' for a Law programme or lawyer: 'For the question, "What is Islamic law?" we should substitute the question, "What do people do when referring to Islamic law?" that being how do references to 'Islamic Law' denote actions and behaviours'.[205] This practice focused approach, with a nuanced meaning for the term, was investigated as part of this study, as discussed below at chapter 5. In order to understand such nuances, it is important to begin with one of the most significant distinctions within the concept of 'Islamic Law', that of Fiqh and Shari'ah.

3.1.1 Fiqh and Shari'ah

Traditionally, 'Islamic Law' is defined as divine revelation in the Qur'an and Sunnah and is often used interchangeably with the words Fiqh and Shari'ah, or is used to mean both.[206] The discussion below outlines only the terms and their usage that are relevant to legal education and legal practice in order to define 'Islamic Law'. Both terms have warranted extensive texts on their meanings and origins, and the discussion below is by no means exhaustive.

The term 'Islamic Law' as used by respondents, mainly referred to the broad legal tradition that is used by Muslims to regulate their daily lives.[207] The 'term "Islamic law" generally is used in reference to the entire system of law and jurisprudence associated with the religion of Islam, including (1) the primary sources of law (Shari'ah) and (2) the subordinate sources of law and the methodology used to deduce and apply the law (Islamic jurisprudence) called Fiqh in Arabic'.[208]

What is Shari'ah?

[204] Haifaa Khalafallah, 'The Elusive "Islamic Law": Rethinking the Focus of Modern Scholarship"' (2001) 12 Islam and Christian–Muslim Relations 143, 144.
[205] Emon and Ahmed (n 203).
[206] Mathias Rohe, *Islamic Law in Past and Present* (BRILL 2015) 10.
[207] Christoffersen and Nielsen (n 96) 7-9.
[208] Irshad Abdal-Haqq, 'Islamic Law - An Overview of Its Origin and Elements' (2002) 1 Journal of Islamic Law 1, 5.

As one of the oldest systems in the world, the sources of 'Islamic Law' are (i) The Qur'an (Holy book of Islam), (ii) The Sunnah (Traditions of the Prophet Muhammad ﷺ), (iii) Ijma' (Consensus) and, (iv) Qiyas (Analogy).[209] Shari'ah is defined as 'divine revelation' originating from the Qur'an and the Sunnah, and is considered textually immutable, whilst Fiqh, discussed below, is seen as being the human understanding and interpretation of that 'divine revelation' and can change according to time and circumstance.[210] Shari'ah, or more accurately Al-Shari'ah, literally means pathway or pathway to be followed,[211] and historically also means pathway to water, that being the pathway to the source of life.[212] Its purpose is that it 'controls, rules and regulates all public and private behaviour … and is viewed by the Muslim world as a vehicle to solve all problems- civil, criminal and international'.[213] It is also the 'the generally normative system of Islam as historically understood and developed by Muslim jurists especially in the first three centuries of Islam - the eight to tenth centuries CE.'.[214] It is an 'Islamic legal system with its own sources, methods, principles and procedures, separate from other legal systems such as the common law and civil law'[215] deriving from two primary sources, the Qur'an and the Sunnah, both being sourced from divine revelation.[216] It covers the moral, social, legal and spiritual aspects of a Muslim's life.

Shari'ah can also be defined as 'what Allah has legislated for His slaves by way of theological tenets and practical rulings'[217] or 'what Allah has legislated for His slaves from the Deen'.[218] The Holy Qur'an supports this, stating 'Then We put thee on the (right) Way of Religion: so follow thou that (Way), and follow not the desires of those who know not (18)'.[219] 'Way' is the literal translation of the word Shari'ah used in the Arabic text. Technically, it connotes the law prescribed for the followers of a prophet, in this case,

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[209] Mashood Baderin, 'Understanding Islamic Law in Theory and Practice' (2009) 9 Legal Information Management 186, 186.
[210] Rudolph Peters, 'From Jurists' Law to Statute Law to What Happens When the Shari'a Is Codified' in Mashood A Baderin (ed), *Islamic Law in Practice: Volume III* (Routledge 2014) 3.
[211] Baderin, 'Understanding Islamic Law in Theory and Practice' (n 209) 187.
[212] M Houtsma, *E. J. Brill's First Encyclopaedia of Islam, 1913-1936* (BRILL 1993).
[213] Abdullah Saad Alarefi, 'Overview of Islamic Law' (2009) 9 International Criminal Law Review 707, 208.
[214] Abdullahi Ahmed An-Na'im, 'Shari'a and Islamic Family Law: Transition and Transformation' (2006) 23 Ahfad Journal 2, 4.
[215] Baderin, 'Understanding Islamic Law in Theory and Practice' (n 223) 187.
[216] ((٤) وَمَا يَنطِقُ عَنِ ٱلْهَوَىٰٓ (٣) إِنْ هُوَ إِلَّا وَحْىٌ يُوحَىٰ) 'Nor does he say (aught) of (his own) Desire. (3) It is no less than inspiration sent down to him: (4)'. Surah An Najm (53:3-4).
Quran Explorer (n 17).
[217] 'ما شرعه الله لعباده من العقائد و الاحكام'
Ibrāhīm Muṣṭafá and 'Abd al-Salām Muḥammad Hārūn, *Al-Mu'jam Al-Wasīṭ* (Shirka musāhama miṣriyya 1970).
[218] 'ما شرع الله لعباده من الدين'
Ismā'īl ibn Ḥammād Jawharī and Muḥammad ibn Abī Bakr Rāzī, 'Mukhtār Al-Sihah', *Tāj al-lughah wa-ṣihāḥ al-Arabīyah.* (Wentworth Press 2016) 178.
[219] ((١٨) ثُمَّ جَعَلْنَـٰكَ عَلَىٰ شَرِيعَةٍ مِّنَ ٱلْأَمْرِ فَٱتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَآءَ ٱلَّذِينَ لَا يَعْلَمُونَ)
Surah Al-Jathiya (45:18)
Quran Explorer (n 17).

the Holy Prophet Muhammad (ﷺ). Muslims must follow it and must not be influenced by their opponents who follow their desires, instead of Allah's commands. It is also stated in the Holy Qur'an: 'He (Allah) has ordained for you (Shara'a) the same religion (Islamic Monotheism) which He ordained for Nuh (Noah) and that which We have revealed to you'.[220] Overall the objective and purpose of Shari'ah (Maqasid Al-Shari'ah) is for it to be applied and interpreted with the prevention of harm and promotion of welfare (Maslaha) at the forefront.[221]

Considering Shari'ah in the Western World

Common perceptions of Shari'ah are that it is wider than English law or other state law, due to its comprehensive scope, extending from doctrinal matters of belief, to religious, ethical and social norms, as well as legal principles and rules. This can be contrasted with the fact that other state laws and English law have mechanisms of enforcement already tied into their legal systems, whereas enforcement of Shari'ah requires the 'intervention of legislative, judicial, and administrative organs of the state'.[222] As discussed at section 2.3, there are number of misconceptions about Shar'iah in the Western world, and numerous debates concerning whether 'Islamic Law' can actually be referred to as 'Law' in the Western legal sense[223] as discussed below at section 3.1.3.

Furthermore, the practice of the system, originally developed from divine rules into an autonomous legal system, has become fragmented in the Western world, having 'to accommodate the dominant Western legal system'[224] and almost creating a Western form of Shari'ah. Shari'ah has been suggested in the West to include, firstly religious rules, for example relating prayer, fasting, dress code (Ibadat), secondly, contractual rules in regard to family relations and financial transactions (Mu'amalat) and, thirdly, interactions within the Muslim community and with non- Muslims.[225] The term 'Islamic Law' is utilised at times instead of Shari'ah, but the use of the word law implies, it may

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220 (شَرَعَ لَكُم مِّنَ ٱلدِّينِ مَا وَصَّىٰ بِهِۦ نُوحًا وَٱلَّذِىٓ أَوۡحَيۡنَآ إِلَيۡكَ وَمَا وَصَّيۡنَا بِهِۦٓ إِبۡرَٰهِيمَ وَمُوسَىٰ وَعِيسَىٰٓۖ أَنۡ أَقِيمُواْ ٱلدِّينَ وَلَا تَتَفَرَّقُواْ فِيهِۚ كَبُرَ عَلَى ٱلۡمُشۡرِكِينَ مَا تَدۡعُوهُمۡ إِلَيۡهِۚ ٱللَّهُ يَجۡتَبِىٓ إِلَيۡهِ مَن يَشَآءُ وَيَهۡدِىٓ إِلَيۡهِ مَن يُنِيبُ (١٣))
Surah Ash-Shura (42:13) .Translated by Dr Muhsin Khan.
Quran Explorer (n 17).

221 Muhammad Khalid Masud, *Shatibi's Philosophy of Islamic Law* (Kitab Bhavan 1995) 151.

222 Abdullahi Ahmed An-Na'im, "'Shari`a in the Secular State: A Paradox of Separation and Conflation"' in Peri Bearman, Wolfhart Heinrichs and Bernard G Weiss (eds), *Law Applied : Contextualizing the Islamic Shari'a* (IB Tauris 2008) 323.

223 Mashood Baderin (ed), *Islamic Legal Theory* (Ashgate Publishing Limited 2014); Mathias Rohe, 'Islamic Law in Western Europe', *The Oxford Handbook of Islamic Law* (OUP 2015); Maurits S Berger, 'Understanding Sharia in the West' 6 Journal of Law, Religion and State 236.

224 Maurits S Berger (ed), *Applying Shari'a in the West : Facts, Fears and the Future of Islamic Rules on Family Relations in the West* (Leiden University Press 2013) 7.

225 Maurits S Berger (n 223) 247.

be argued, state approval or regulation, which is not the case in England and Wales.[226] Although, in this case, it comprises rules and regulations similar to other laws applicable to individuals, the difference in England and Wales is that it is not, with some narrow exceptions such as those for Islamic Finance, a set of rules and regulations approved by the state, despite still applying to some of its population. Alternatively, the phrase 'Muslim legal norms'[227] has also been used to describe the guiding principles for Muslims in the West, although this may not go far enough to describe the comprehensive overarching religious rules by which Muslims define their lives.[228] The phrase 'rules of Islam' has also been proposed as an attempt to define the unique position of the lives of Muslims in the Western world.[229] A further definition exists of 'the notion of Sharia in the West [is] as (a) a set of Islam-motivated rules (b) practised by Muslim social-legal entities (individuals, communities, organizations) in the West, whereby (c) these Muslims are both the defining and the enforcing agency of these rules'.[230]

What is Fiqh?

Fiqh or jurisprudence, on the other hand, is argued to be the process of deducing and applying the principles of Shari'ah to real cases and situations.[231] It covers the legal and juridical aspects of a Muslim's life. Originating in the Arabic language and appearing in the Holy Qur'an in six different variations in over twenty verses,[232] it corresponds to comprehension, intelligence or the true understanding of what is intended.[233] The term Fiqh is also used to refer to the collective body of laws deduced from Shari'ah through the use of Fiqh methodology.[234] While the principles and injunctions of the Shari'ah are infallible and are not subject to amendment, Fiqh-based standards may change according

[226] Abdullahi Ahmed An-Na'im, 'Religious Norms and Family Law: Is It Legal or Normative Pluralism?' (2011) 25 Emory University School of Law 786.
[227] Maleiha Malik, 'Muslim Legal Norms and the Integration of European Muslims' (2009) Working Paper <http://cadmus.eui.eu//handle/1814/11653> accessed 18 January 2019.
[228] William Twining, 'Normative and Legal Pluralism: A Global Perspective' (2010) 20 Duke Journal of Comparative & International Law 473, 473.
[229] Maurits S Berger (n 223) 249.
[230] Maurits S Berger (n 223) 253.
[231] Houtsma (n 212) 101.
[232] An example of one of the six variations includes ' يَفْقَهُواْ ' (yafqahu) meaning 'they understand'. It was used by the Prophet Moses in his speech to Allah (God) to cure his speech impediments so they, the people he was sent to, would understand his words.
قَالَ رَبِّ ٱشْرَحْ لِى صَدْرِى (٢٥) وَيَسِّرْ لِىٓ أَمْرِى (٢٦) وَٱحْلُلْ عُقْدَةً مِّن لِّسَانِى (٢٧) يَفْقَهُواْ قَوْلِى (٢٨)
'O my Lord! Open for me my chest (grant me self-confidence, contentment, and boldness) (25) And ease my task for me; (26)And loose the knot (the defect) from my tongue, (i.e. remove the incorrectness from my speech) [That occurred as a result of a brand of fire which Musa (Moses) put in his mouth when he was an infant](27) That they understand my speech(28)'
Surah Ta-Ha(20:25-28). Translated by Dr Muhsin Khan.
Quran Explorer (n 17).
[233] Said Ramadan, *Islamic Law, Its Scope and Equity* (Muslim Youth Movement of Malaysia 1970) 84.
[234] Anver Emon, 'Chapter 2- Fiqh', *Oxford Handbook on Islamic Law* (Oxford University Press 2018).

to the circumstances.[235] It can be separated into Usul Al-Fiqh, or the roots/philosophy and the methods of legal interpretation and analysis, and Furu Al-Fiqh or the branches. Usul Al-Fiqh 'explores the four sources of the law—the Quran, hadith, consensus (Ijma), and analogical reasoning (Qiyas)—to provide structures for interpreting revelation'[236] and Furu Al-Fiqh uses 'both legal manuals and collections of cases, discusses rules for rituals (Ibadat) and social relations (Mu'amalat)'.[237]

Fiqh is seen as Shari'ah in practice and covers all areas of law. Given this, with reference to legal practice, the knowledge required by legal professionals is knowledge of not Shari'ah alone, but its practical application, that being the knowledge of Fiqh. This, as shown at section 2.5, has lacked in coverage in current offerings. Although Fiqh is certainly under the umbrella of 'Islamic Law', it is argued that:

> designating it as part of Shari'ah per se, certainly blurs the line between the infallibility of revealed knowledge (Qur'an) and its demonstration by the Sunnah, and fallible attempts by man to infer, deduce and apply the principles of revealed knowledge.[238]

Even in regard to Fiqh, others[239] have advocated the use of the term Muslim jurisprudence, as opposed to Islamic jurisprudence, because an incorrect legal conclusion resulting from Fiqh should not be classified as 'Islamic'. Others denote it 'Qur'anic jurisprudence' due to its origins.[240] Acknowledging the religious character of Fiqh, it has been stated 'the term [Islamic law] must indeed be used with the proviso that Islamic law is part of a system of religious duties, blended with non-legal elements'.[241] Nevertheless, it has also been argued that it is possible to work on the assumption that Fiqh and law are equivalent or nearly so.[242] For the purposes of this thesis, this is vital in supporting the compatibility of 'Islamic Law' and English Law and legal education in one alongside the other or at times, one as part of the other, as in the example of Islamic Finance at section 2.3.

Relevance of Fiqh and Shari'ah for Legal Practice

[235] Abdal-Haqq (n 208) 10.
[236] Esposito (n 4).
[237] Esposito (n 4).
[238] Abdal-Haqq (n 208) 11.
[239] Ramadan, *Islamic Law, Its Scope and Equity* (n 233).
[240] Alarefi (n 213).
[241] Joseph Schacht, *An Introduction to Islamic Law* (Clarendon Press 1964) 200-201.
[242] Schacht (n 241).

Whether 'Islamic Law' includes either or both Fiqh and Shari'ah, the legal principles of jurisprudence operate to provide a consistency between the theory and practice of law. From the perspective of 'Islamic Law', it is these principles of Islamic jurisprudence or Fiqh that ensure accurate interpretation of the law. Given that this study focuses on 'Islamic Law' in legal practice, principles of jurisprudence may need to be treated as such.[243] However, unlike English law:

> the study of Sharia should not be approached in the expectation of finding a comprehensive or systematic code or codes that present definitive answers to precise legal issues of the day. But the inaccessibility of such legal formulations does not mean that such principles do not exist, or are necessarily inappropriate for modern application.[244]

Even once the meanings of Shari'ah and Fiqh have been deduced, the meaning of 'Islamic Law' for legal practice may still not be clear. A judge, for example, may refer to 'Islamic Law' meaning Islamic rules of jurisprudence, but the very Muslims he is adjudicating for may have entered into marriages and divorces based on their cultural knowledge or customs of a particular country and its version of Islam. Their meaning of 'Islamic Law', therefore, may be different. This was an important consideration in the empirical investigation as shown at section 5.1. Such diversity in meaning, with each law having its own source of authority, can also lead to confusion.[245] Therefore, for the purposes of legal education, it is vital that those in practice understand the terms Fiqh and Shari'ah and their basic differences, in order to fully comprehend the term 'Islamic Law'.

3.1.2 The Islamic Schools of Thought

A further element that can affect the meaning of 'Islamic Law' arises from the different schools of Islamic thought. Even within 'Islamic Law', as indicated in the previous paragraph, differences exist in opinion on some issues between one school of Islamic

[243] What modern scholars have affirmed is that it is necessary to differentiate between the Shariʿah and Fiqh. As for the Shariʿah, it is the order (نظم) that Allah has legislated for His slaves, whether it be in the scope of ʿaqida (or Imān) or worship (Ibadah/Ibadat) or transactions (Muʿamalat) or morals and manners (Akhlaq). Some have defined Islam as ʿaqidah and shariʿah, thereby restricting the Shariʿah to practical rulings (Al-aḥkam), and this is only a modern categorisation. Transactions (al-Muʿamalat) comprise the relationship between a person and his fellow man and his connection to life.
Dr Wahbah Mustafa Al- Zuhayli, *Encyclopedia of Islamic Jurisprudence* (Dar al-Fikr 2007).
[244] An-Na'im, '"Shari`a in the Secular State: A Paradox of Separation and Conflation"' (n 222) 321.
[245] Bowen (n 38) 422.

thought and another or one Madhhab and another. Rulings in 'Islamic Law' involve interpreting the Qur'an and the Sunnah. Interpretations can differ depending on the place, time and person making the interpretation and this impacts on how 'Islamic Law' impacts different Muslims. In the second century of Islam such interpretations or schools of thoughts developed, with four main agreed Sunni Islam schools of thought or Madhahib (plural) named after their founders.[246] There has also been development of schools of thought within Shi'i Islam.[247]

Each of the schools still has influence over particular territorial jurisdictions, and therefore given the diversity of origin of the Muslims in England and Wales, their school of thought will differ and ultimately, they may arrive at different conclusions about the same issue.[248] This can therefore mean expert witnesses can provide different viewpoints on the same issue of 'Islamic Law'. It is therefore important for legal professionals to be able to identify that such a situation exists, as it impacts on the formation and application of 'Islamic Law', and at least be able to understand why rulings on 'Islamic Law' may differ on the same issue.[249] For example:

> There is no single set of rules and procedures to which judges can refer as comprising "Islamic shariah"… For a civil judge to just have a look at what shariah law says is a perilous course as long as there is no agreed-upon general set of rules and procedures for all shariah councils in England.[250]

3.1.3 Teaching of 'Islamic Law'

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[246] Hallaq (n 13) 62.
[247] 'Shi'i Islam (Oxford Reference)' (n 18).
[248] 'For instance, the Hanafi is the dominant school in Turkey, Afghanistan, Central Asia and India; Maliki in West and North Africa; Shafi'i in Egypt, East Africa and South East Asia; and Hanbali in Syria, Palestine and Saudi Arabia'.
Ali and others (n 109) 11–12.
[249] An example is useful here 'For instance, while the Qur'an and Hadith have both required the payment of mahr in a marriage contract, none gave specific amount to be paid. Thus the jurists used analogy on the basis of available provisions to make rulings thereon. For instance, Hanafi and Maliki jurists developed a minimum mahr considering the minimum value of stolen goods which attract amputation of the hand as punishment. Hanafi fixed 10 dirhams and Maliki fixed 3 dirhams while Shafi'i and Shi'a Schools fixed no minimum). Similarly, on whether or not the consent of a guardian is required in the marriage of an adult Muslim woman, the schools have varying legal rulings, there being no specific provision in the primary sources. While Hanafi accepts as valid the marriage of an adult woman without the consent of her guardian, Maliki and Shafi'i schools dispense with the guardian's consent only in case of a thayyiba (non-virgin woman). On inheritance law, though the field is one of the few areas covered at length by the Qur'an, the schools have still formed rules on certain connected matters. For instance, the Shi'a school is known for its liberal stand on inheritance to women and grandchildren in the absence of their father. In short, the relevance of the Madhhabs cannot be over emphasised.'
Ali and others (n 108); Pearl and Menski (n 69) 179-180.
[250] 'Although one can easily find Islamic authorities who will say that their version of shariah has precisely this status. Although code books of Islamic law do exist—even the British wrote them in India—these books are only some among many artifacts and interpretations of law and morality that inform Islamic judges and scholars'.
Bowen (n 38) 434.

The teaching of 'Islamic Law' poses difficulties as 'it is for want of better words that 'Islamic Law' is used to describe the legal system based on Islam as a religion. It is inadequate to describe the system as such particularly when 'law' is viewed through the lens of the conventional 'black-letter' law',[251] as is the tradition in English law.

When it has been taught as Shari'ah, it has been often been assumed to consist of 'solely divine and unchangeable rules.'[252] Such an approach may be more suitable for those who study Shari'ah from the perspective of theology, religious studies or Islamic Studies, an approach that, as shown at section 2.5, is common in England and Wales.[253] Teaching this way may be due to a number of factors, including firstly, a lack of genuine understanding or experience of 'Islamic Law' in the real world; and secondly a perception in some academic institutions that their role is to focus upon theory or history, those being 'academic' rather than practical application, that being 'vocational', as discussed at section 2.6. The result, however, is that students emerge from their studies with a lack of understanding, and misconceptions, around what 'Islamic Law' really means in day to day life. Consequently, courses of the kind described at section 2.5, focusing upon theory, theology or history, may simply serve to widen the gap between theory and legal practice. Such a gap 'is not just a question of mere language: it is frozen into, and embodied by, societal divisions of labour and institutions'.[254] This, as found by the data at section 5.3, can be attributed to the lack of scholarship or qualified faculty in the area.[255]

This, amongst other factors, has led to a lack of understanding surrounding the term 'Islamic Law', and the misconceptions that exist for students, academics and the public[256] mean that there has been a severing of 'Islamic legal concepts from both their origins and their operational frameworks'[257] in teaching the subject. The literature discussed in this

[251] Ali and others (n 109) 10.
[252] Ali (n 103). 211.
[253] Ali (n 103). 211.
[254] Jeanne Maree Allen, 'How Front-End Loading Contributes to Creating and Sustaining the Theory-Practice Gap in Higher Education Programs' (2011) 12 Asia Pacific Education Review 289.
[255] Peri Bearman, 'Century of Milestones of Non-Muslim Islamic Law Scholarship, A' (2003) 31 International Journal of Legal Information 370.
[256] 'For centuries, orientalists motivated by cultural, racial, and religious prejudices endeavoured to politically portray Islamic Law to non-Muslims in a manner that serves their agenda. The scholarly sphere, in a number of Muslim states, was not more contented. Oppressive regimes surrounded themselves with "pay for opinion" scholars who did not hesitate to glorify the ruler and justify his actions and policies no matter how horrific or inconsistent with Islamic Law'
Ramadan, 'Toward Honest and Principled Islamic Law Scholarship' (n 110).
[257] 'Western scholarship, which arrived aboard the ship of European imperialism, was intrigued by the pervasive ideas of legality that the Muslim multitude seemed to cherish and therefore initiated a study of its history. Although they were the first to call for the integration of history into the study of the Muslim legal world, orientalists chose current popular legends, fashionable texts and prevailing conditions (in the nineteenth and early twentieth centuries) as their permanent points of departure. Having severed Islamic legal concepts from both their origins and their operational frameworks'

chapter above, suggests that what teaching there has been of the subject has been a limited offering and this is strongly reinforced by the results of the investigation at section 2.5.[258] A reason for this was 'the existence of significant challenges, both conceptual and methodological, for Islamic law teaching in Muslim and non-Muslim jurisdictions'.[259] This has therefore led to lack of teaching of 'Islamic Law' and differing understandings of the meaning of 'Islamic Law' even when it has been taught.

One of the difficulties in understanding the term has been equated to the background of 'Islamic Law' originating in the Arabic language. It has been suggested that to aid understanding of the subject, and to get a better overview of the term 'Islamic Law' itself, courses should include some elements of the Arabic language, from which the subject originates.[260] Even for native speakers of the Arabic language, some level of education in the language is required due to differences between colloquial Arabic language from different regions, Modern Standard Arabic as well as classical Arabic language.[261] This was also a theme that was evident from the data collection discussed below at chapter 5. The multi-faceted meaning of the term and its Arabic origins have also been stated to pose difficulties in teaching the subject, especially to a western non- Muslim audience. It has been identified that even when treated as 'other':

> Teaching the law of another value-system/culture, such as 'Islamic Law' poses additional challenges, including: lack of familiarity with underlying values and culture; boundaries and structure; variety of aims; variety of teachers; variety of audiences and diversity within audiences; language; similarities and differences (comparative law); and resources.[262]

The nuanced meaning of the term is such that it is often equated with Islamic Studies as seen at section 2.5. Therefore, in many institutions having a doctorate in Islamic Studies

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Khalafallah (n 204) 143.

[258] Section 2.5 examined the current offerings of 'Islamic Law' in pre-qualification LSET for intending solicitors and barristers in England and Wales. Law school websites were searched online for any taught courses/modules entitled 'Islamic Law' or courses/modules containing elements of the subject. 'Islamic Law' course outlines and course specifications were examined where available online. Teaching within the classroom of these courses/modules was not observed.

[259] Ali (n 103) 206.

[260] John Strawson, 'Open Space Session: Curriculum for Islamic Law' (*UKCLE*) <http://ials.sas.ac.uk/ukcle/78.158.56.101/archive/law/files/downloads/875/2513.9783bd34.OpenspacesessionreportonCurriculumforislamiclawJStrawson.pdf> accessed 24 August 2018.

[261] Clive Holes, *Modern Arabic: Structures, Functions, and Varieties* (Georgetown University Press 2004) 5.

[262] Nicholas Foster, 'The Dangers of Kryptonite: Living with Imperfection in the Teaching of Islamic Law' (*UKCLE*, 2010) <https://www.google.com/search?client=safari&rls=en&q=The+dangers+of+kryptonite:+Living+with+imperfection+in+the+teaching+of+Islamic+law&ie=UTF-8&oe=UTF-8> accessed 24 August 2018.

was the prerequisite for becoming a teacher of the subject, as opposed to knowledge of Muslim legal systems, a foreign law degree from a Muslim country or even a postgraduate law degree.[263]

Overall, the meaning of the term 'Islamic Law' can be seen to have affected, if, how and when the subject is taught, and this also has consequences for how the subject is integrated into legal education, as discussed at section 2.5 and chapter 6.

3.1.4 Similarities and Differences between English law and 'Islamic Law'

The discussion in 3.1.3 may lead to the question whether 'Islamic Law' can be effectively taught to a western non-Muslim audience or whether it is simply too complex, nuanced and context-specific. To respond to this, and in order to understand the term 'Islamic Law', both generally and specifically for the purposes of LSET, it is important to understand the similarities and differences between it and English law.

The differences are not as wide as perhaps envisaged by the general public due misunderstandings or varied understandings of the concept,[264] or as seen in the case of *Shamil Bank of Bahrain v Beximco Pharmaceuticals Ltd and others*, by the courts.[265] Here, a choice of law clause referred to Shari'ah, but despite dual expert evidence on Islamic banking rules, the matter was decided solely on the basis of English law, due to 'Islamic Law's' alleged 'controversy and difficulty arising [...] from the need to translate into propositions of modern law texts which centuries ago were set out as religious and moral codes'.[266] The meaning of 'Islamic Law' was misunderstood by being deemed too imprecise and incompatible to apply to a case before the English courts.[267] In this case, it was said that the 'aim of Islamic law to absolute validity and the consequent conflict between it and any secular legislation (in the full meaning of' the term) was removed from the purely legal and constitutional to a theological and metaphysical plane'[268] with 'Islamic Law' not being understood correctly and therefore the courts not meeting the intentions of the parties.

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[263] Haider Ala Hamoudi, 'Why Study Islamic Law in Law School?' (*Developing an Islamic Law Curriculum (UKCLE Project) at UKCLE*) <http://78.158.56.101/archive/law/projects/current-projects/ali/index.html> accessed 18 June 2015.
[264] Ramadan, *Western Muslims and the Future of Islam* (n 108) 31.
[265] *Shamil Bank of Bahrain v Beximco Pharmaceuticals Ltd and others* (n 72).
[266] *Shamil Bank of Bahrain v Beximco Pharmaceuticals Ltd and others* (n 72) [55] (Potter LJ).
[267] Foster, 'Encounters between Legal Systems' (n 82); Christoffersen and Nielsen (n 96) 41.
[268] *Shamil Bank of Bahrain v Beximco Pharmaceuticals Ltd and others* [2004] EWCA Civ 19 [55] (Potter LJ).

In fact, the two systems have many similarities. Fundamental concepts such as *pacta sunt servanda* are common to both English law and 'Islamic Law'. In the Holy Qur'an it says similarly 'O you who believe! Fulfil (all) obligations'[269] and 'break not oaths after ye have confirmed them'.[270] 'Islamic Law', in line with contemporary Western legal thought, must serve the rights of the individual, the sanctity of contracts and private property, limiting the actions of states in these matters, in a similar way to that of English law.[271] Without this, the rule of law and social justice, particularly for Muslim clients or those clients affected by 'Islamic Law' in England and Wales, becomes eroded.[272]

There are many other commonalities between 'Islamic Law' and common law,[273] and indeed much of English law has been said to originate in the principles of 'Islamic Law'.[274] As the older, more established system, the 'Islamic legal system was far superior to the primitive legal system of England before the birth of the common law. It was natural for the more primitive system to look to the more sophisticated one as it developed'.[275] Not only are there parallels with common law, as it was derived from a single system with conceptual and structural similarities, but also 'Muslim thinkers have found considerable common ground with the basic notions of civil law … the notions of objectivity, rule of law, and impartial enforcement of the law by a competent court are also ingrained in the Shari'ah'.[276] These factors are key to demonstrating the compatibility of 'Islamic Law' and English law alongside one another in legal practice in order to meet client needs. Given that one originates from the other, accommodation of 'Islamic Law' is not as difficult as it may be envisaged, as a result of the misconceptions that exist and lack of understanding in the area. Therefore, it may be even less difficult to include it as part of legal education, alongside more traditional subjects which bear similarities to 'Islamic Law' where understanding of one subject would complement the understanding of the other. This is further discussed in chapters 5 and 6.

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[269] (يَـٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوٓاْ أَوۡفُواْ بِٱلۡعُقُودِۚ أُحِلَّتۡ لَكُم بَهِيمَةُ ٱلۡأَنۡعَٰمِ إِلَّا مَا يُتۡلَىٰ عَلَيۡكُمۡ غَيۡرَ مُحِلِّي ٱلصَّيۡدِ وَأَنتُمۡ حُرُمٌۗ إِنَّ ٱللَّهَ يَحۡكُمُ مَا يُرِيدُ(١)) Surah Al-Maidah (5:1) *Quran Explorer (n 17).*

[270] (وَأَوۡفُواْ بِعَهۡدِ ٱللَّهِ إِذَا عَٰهَدتُّمۡ وَلَا تَنقُضُواْ ٱلۡأَيۡمَٰنَ بَعۡدَ تَوۡكِيدِهَا وَقَدۡ جَعَلۡتُمُ ٱللَّهَ عَلَيۡكُمۡ كَفِيلًاۚ إِنَّ ٱللَّهَ يَعۡلَمُ مَا تَفۡعَلُونَ (٩١)) Surah An-Nahl (16:91) *Quran Explorer (n 17).*

[271] Schacht (n 241) 138.

[272] Rohe (n 223).

[273] Ann Van Wynen Thomas, 'Note on the Origin of Uses and Trusts-Waqfs' (1949) 3 Sw. LJ 162; Abraham L Udovitch, *Partnership and Profit in Medieval Islam* (Princeton University Press 1970); George Makdisi, 'The Scholastic Method in Medieval Education: An Inquiry into Its Origins in Law and Theology' (1974) 49 Speculum 640; George Makdisi, 'Interaction between Islam and the West' (1976) 44 Revue Des Etudes Islamiques 287, 289; George Makdisi, 'The Guilds of Law in Medieval Legal History: An Inquiry into the Origins of the Inns of Court' (1985) 34 Clev. St. L. Rev. 3.

[274] Henry Cattan, 'The Law of Waqf' in Majid Khadduri, Herbert J Liebesny and Robert H Jackson (eds), *Law in the Middle East: Origin and Development of Islamic Law* (The William Byrd Press, Inc 1955); Gamal Moursi Badr, 'Islamic Law: Its Relation to Other Legal Systems' (1978) 26 The American Journal of Comparative Law 187, 195; John A. Makdisi, 'The Islamic Origins Of The Common Law' (1999) 77 North Carolina Law Review 1635; Udovitch (n 273).

[275] John A. Makdisi (n 274) 1731.29/06/2019 18:37:00

[276] Mohammad Hashim Kamali, 'Shariah And Civil Law: Towards A Methodology Of Harmonization' (2007) 14 Islamic Law & Society 391, 394.

Despite this alignment with the common law, the meaning of 'Islamic Law' is still not well defined or understood,[277] especially in regard to legal practice, as there is a:

> difficulty in appreciating the high jurisprudential quality of the "lawyer's law" aspects of Shari'a [that] may be due to assumptions about the nature of law as a social and political institution… the challenge is to understand the role of Sharia on its own terms, rather than "law" in the American or European sense of the term.[278]

Similarly, in another area of legal practice, that of Family Law for example, despite the number of cases with reference to 'Islamic Law':

> We are none the wiser therefore of how Islamic law on divorce works and still further away from discussing openly how it should work in contemporary Britain. At the same time, Parliament and the courts are also showing their awareness of the ground shifting underneath them if they don't take some kind of action.[279]

This clearly recognises that some action is needed, to recognise 'Islamic Law' in a way that is relevant to practice. It is argued that such action should begin with LSET, as it is solicitors and barristers who are mainly involved with 'Islamic Law' in practice and they are the informants to the courts about the subject and its practices. There have been criticisms of this, however. Weber for example, argued that studying religious law in comparison to studying Roman law, the foundation of most Western legal systems, was not rational, as it was grounded in revelation and allowed non legal considerations to be taken into account in its decision making.[280] 'Islamic Law' was, therefore, argued by Weber to be irrational, substantively and procedurally, because it was based on rigid and fixed legal texts and therefore viewed as inferior.[281] These criticisms originate from Snouck Hurgronje[282] who asserted that 'Islamic Law' or Fiqh was unworkable in practice

[277] Peri Bearman and Rudolph Peters (eds), *The Ashgate Research Companion to Islamic Law* (1 edition, Routledge 2014).
[278] An-Na'im, '"Shari`a in the Secular State: A Paradox of Separation and Conflation"' (n 222).
[279] Christoffersen and Nielsen (n 96).
[280] Toby E Huff and Wolfgang Schluchter, *Max Weber and Islam* (Transaction Publishers 1999).
[281] Patricia Crone, *Meccan Trade and the Rise of Islam* (Princeton University Press 1987).
[282] Christiaan Snouck Hurgronje and Th Nöldeke, *Orientalism and Islam: the letters of C. Snouck Hurgronje to Th. Nöldeke : from the Tübingen University Library* (Documentatiebureau Islam-Christendom, Faculteit der Godgeleerdheid, Rijksuniversiteit 1985).

and therefore only a theoretical construct.[283] This assertion, when 'Islamic Law' is applied successfully throughout a number of countries in the world, is not substantiated and is a misunderstanding of 'Islamic Law' following a very narrow definition, by assuming that the day to day practice of 'Islamic Law' may be based on fixed legal texts. Furthermore, as indicated above, it is the system upon which much of English law originates, and the unworkability argued, may be more due to lack of understanding and knowledge in the area. When it is seen as purely religious, theoretical or historical, rather than as a practical, working legal system, this again leads to an important need for legal education in the area. Additionally, in support of this, it has been stated that:

> Any form of "recognizing shariah" in English civil law would require lawyers, judges, and Islamic scholars to take cognizance of Islamic legal traditions, social practices in countries of origin, and current procedures in England's shariah councils — for reasons that themselves derive from English contract law.[284]

Overall, therefore, in order to find the meaning of 'Islamic Law' for legal practice, it is not appropriate to look only at doctrine or, only at the historical perspective, but additionally the practical and social context of the term. It is also important to consider the core paradigm of 'Islamic Law' and then develop the ''Islamic Law' for legal practice' meaning or understanding from this. 'Islamic Law' from the literature originates from the Qur'an and Sunnah, and in essence typically includes elements of FIqh and Shari'ah. It is a broad legal tradition used by Muslims to regulate their daily lives, and encompasses all legal acts including those of worship (Ibadat) and those involving commercial and civil acts (Mu'amalat). Within 'Islamic Law' there are a number of different schools of thought, which give rise to different interpretations of 'Islamic Law'.

The concept of ''Islamic Law' in legal practice' develops from this, and has to be placed outside its doctrinal stronghold of merely being a set of beliefs and needs to be studied through the lens of laws that can be enforced, in order to gain a thorough understanding of the subject.[285] Furthermore 'the term [Islamic law] must be used with the proviso that Islamic law is part of a system of religious duties, blended with non-legal elements'.[286]

[283] Baber Johansen, *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh* (BRILL 1999) 48.
[284] Bowen (n 38) 414.
[285] Mashood Baderin (ed), *Issues in Islamic Law* (Ashgate Publishing Limited 2014).
[286] Schacht (n 241) 200–201.

The meaning, though, is not too dissimilar from common law[287] with which, as discussed above, it has a 'remarkable kinship'[288] in function and structure. For legal education, therefore, the name of the course is imperative:

> Do we describe it as 'Shari'a law', 'Muslim' law, 'Islamic' law or 'Muhammadan' law (recalling the colonial description)? Each of these course titles has implications for scholarship on the subject as well as content, pedagogy and delivery of the curriculum because the title also delineates its ideological underpinnings.[289]

To form a working meaning of ''Islamic Law' for legal practice', it is suggested that an element of harmonisation[290] is required, due to the nuances that exist. That is selection of the relevant parts of the Shari'ah and civil law and piecing them together with a view to harmonizing them into coherent and unified formulas, utilising the Islamic principle of Ibahah, where all things are permissible unless prescribed otherwise.[291] It is for that reason that this thesis proposes a synthesis of the nuances to provide a practice-related understanding of the concept. In a jurisdiction where 'Islamic Law' is in effect an additional legal system that works alongside the existing legal system, this needs to be considered when constructing the meaning of 'Islamic Law' specifically for the purposes of legal practice.[292] The term to be used more suitably may be 'Islamic Practitioner's Law' or 'Islamic Legal Practice Law' as the term 'Islamic Law' itself does not in itself hold the meaning required for the purposes of this study or for legal education where the meaning is vital to be understood for those in legal practice.[293] The meaning for the purposes of this study is derived alongside this literature review from the data collected as discussed at section 5.1 and chapter 6.

3.2 Pluralism

As indicated at 2.1, Muslims are a growing proportion of the population of England and Wales. Given their minority population status, some of the common practices of Muslim life under 'Islamic Law', such as marriage and divorce, are not explicitly recognised in the

[287] John A. Makdisi (n 274) 1710.
[288] John A. Makdisi (n 274) 1731.
[289] Ali (n 103) 211.
[290] Kamali (n 276) 391.
[291] Mohammed Hashim Kamali, 'The Right to Personal Safety and the Principle of Legality in the Sharī'ah' (2000) 39 Islamic Studies 249, 263.
[292] Bowen (n 38).
[293] Foster, 'The Dangers of Kryptonite: Living with Imperfection in the Teaching of Islamic Law' (n 262).

legal framework within the jurisdiction (other examples appear at section 2.3). This can result in duplication, for example, dual marriage ceremonies,[294] and gaps, for example the misunderstanding by some Muslim women about divorce rights and inheritance.[295] Consequently, pluralism – legal and cultural – is a key concept for this study.[296] The two systems of English law and 'Islamic Law' although are in existence simultaneously, the former is a territorial based national law, and the latter is non-territorial based. Therefore, the two systems as discussed below, may not be in direct conflict, and may be capable of alignment and co-existence.

Legal Pluralism

Legal pluralism is defined as the 'existence of multiple sources of law (both state and non-state) within the same geographical area.'[297] In this case, English law and 'Islamic Law' exist alongside one another to a greater or lesser extent. Although some areas of 'Islamic Law' may not be categorised as law under English law, they are nonetheless part of the rules and regulations applicable to Muslims. Rules and regulations, as part of religion, have been recognised by the United Nations Universal Declaration of Human Rights (UDHR)[298] and ECHR Article 9 as discussed at section 2.2. Such rules and regulations from religion are applicable to those in England and Wales who practise any religion, although this does not automatically mean that national law recognises these religious regulations. The former chairman of the Bar Council Stephen Hockman QC has supported this more widely by recognising this right which leads to the recognition of 'Islamic Law' stating:

> It is vital and inevitable that sharia will become part of British law in some shape or form. Given the world situation and our own substantial Muslim population it is vital that we now look at ways to integrate Muslim culture into our own traditions … Otherwise we will find that there is a significant section of our society which is

[294] Pearl and Menski (n 69); Samia Bano, 'Muslim Family Justice and Human Rights: The Experience of British Muslim Women' (2007) 2 Journal of Comparative Law 38; Andrea. Buchler, *Islamic Law in Europe? Legal Pluralism and Its Limits in European Family Laws* (Ashgate Publishing Limited 2011).
[295] Lucy Carroll, 'Muslim Women and "Islamic Divorce" in England' (1997) 17 Journal of Muslim Minority Affairs 97; Sonia Nûrîn Shah-Kazemi, *Untying the Knot: Muslim Women, Divorce and the Shariah* (Nuffield Foundation 2001); Kate McCann, 'Sharia Marriage Should Be Recognised in British Law, Review Commissioned by Theresa May Concludes' *The Telegraph* (1 February 2018) <https://www.telegraph.co.uk/politics/2018/02/01/sharia-councils-should-not-banned-could-forced-underground-review/> accessed 8 April 2018; Aina Khan, 'Home |' (*Register Our Marriage Campaign*) <https://www.registerourmarriage.org> accessed 18 January 2019.
[296] Prakash Shah, *Legal Pluralism in Conflict: Coping with Cultural Diversity in Law* (Psychology Press 2005).
[297] Sally Engle Merry, 'Legal Pluralism' (1988) 22 Law & Society Review 869.
[298] Article 18
United Nations, 'Universal Declaration of Human Rights' (6 October 2015) <http://www.un.org/en/universal-declaration-human-rights/> accessed 12 January 2019.

> increasingly alienated, with very dangerous results … There should be a standing committee comprising of parliamentarians, lawyers and religious leaders to consider how this could be achieved and what specific legal changes might be framed.[299]

The result is that 'the UK…[is]…proceeding towards a sort of cooperative overlapping between the two legal systems and cultures, despite initially considered as incompatible'.[300] There is a dual existence of official laws and religious laws interacting.[301] In some cases, such as Islamic Finance as discussed in 2.2, this is recognisable legal pluralism[302] in others it is cultural pluralism,[303] where Muslims attempt to maintain their identities and values, as discussed at section 2.1, and this creates a mixed legal or hybrid environment.[304] The existing legal pluralism can be divided into three main strands which the researcher labels as follows:

a) The first is that of 'faulty pluralism', where the 'Islamic Law' and English law system operate in parallel, but the English legal system is superior, requiring Muslims to duplicate activities to satisfy both systems. An example of this is in the case of succession, where 'Islamic Law' requirements and English law requirements differ.
b) Secondly, there is a strand that can be described as 'actual pluralism', where the two systems are parallel and recognised and have equal weight. This has occurred most recently with the acknowledgement of an Islamic marriage being capable of annulment by a secular court discussed below [305] and is discussed in the ADR examples at section 2.2.

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[299] Hope (n 107).
[300] Letizia Riccardi, 'Women at a Crossroads between UK Legislation and Sharia Law' (2014) 3 GSTF Journal of Law and Social Sciences (JLSS) 86.
[301] Samia Bano, 'In Pursuit of Religious and Legal Diversity: A Response to the Archbishop of Canterbury and the "Sharia Debate" in Britain' (2008) 10 Ecclesiastical Law Journal 283; Twining (n 228); An-Na'im, 'Religious Norms and Family Law' (n 226); Andrea. Buchler (n 294).
[302] John Griffiths, 'What Is Legal Pluralism?' (1986) 18 The Journal of Legal Pluralism and Unofficial Law 1; Merry (n 297).
[303] Sebastian Poulter, *Cultural Pluralism and Its Limits: A Legal Perspective* (1990) <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.461.4054&rep=rep1&type=pdf > accessed 18 January 2019; Tariq Modood and others, 'British Muslims and Multiculturalism', *Multiculturalism, Muslims and Citizenship: A European Approach* (Routledge 2006); Jocelyne Cesari, 'A Cultural Conundrum: The Integration of Islamic Law in Europe' (2010) 31 Harvard International Review 12; Richard J Bernstein, 'Cultural Pluralism' (2015) 41 Philosophy & Social Criticism 347.
[304] Pearl and Menski (n 70); Prakash Shah and Werner F Menski (eds), *Migration, Diasporas and Legal Systems in Europe* (Routledge-Cavendish 2006) <http://eprints.soas.ac.uk/9499/> accessed 22 June 2018; Werner Menski, 'Flying Kites in a Global Sky: New Models of Jurisprudence' (2011) 7 Socio-Legal Review 1.
[305] This case, although it recognised in England and Wales an Islamic marriage, that had taken place outside England and Wales, without any civil marriage taking place within the jurisdiction, does not mean all Islamic marriages conducted outside of England and Wales will now be recognised within England and Wales. In this rare case, there were numerous discussions of a civil marriage taking place between the couple, a long cohabitation, and the accepted recognition of the Islamic marriage in the United Arab Emirates by the groom, who then in England and Wales wished to declare the same marriage as a non-marriage.

c) Lastly, there is a stance that is 'beyond pluralism', where the English legal system has absorbed 'Islamic Law' for the benefit of all, for example with the example of the Finance Act[306] discussed above at section 2.2-2.3.

The existence of cases of 'actual pluralism' and 'beyond pluralism' means that 'Islamic Law' must in these cases be covered as part of LSET, and cannot be avoided.

Cultural Pluralism

Cultural pluralism, as conceptualised by Kallen,[307] rooted in the pragmatism of Dewey[308] and James,[309] is present in England and Wales, through British Muslims maintaining their Islamic values, culture and identity as described at section 2.1.[310] Kallen affirmed the positive values of ethnic differences and that of a multi-ethnic society that maintains its identity whilst contributing to wider society.[311] This was consistent with James who argued against absolute monism[312] and discussed the insufficiency of idealism,[313] with pluralism as the positive alternative.[314] Similarly, Dewey emphasised the necessity of cultural diversity and interaction for a healthy deliberative democracy.[315] Although there are criticisms of this view that state it supports cultural separatism and suppresses individuality by prioritising ethnicity over other identities,[316] the demographic statistics of England and Wales set out at section 2.1 demonstrate that dual identities are being maintained by Muslims in England and Wales, with both being of importance to the

Akhter v Khan [2018] EWFC 54; [2018] 7 WLUK 745; [2018] W.T.L.R. 729; Kate McCann, 'British Court Recognises Sharia Law in Landmark Divorce Case' *The Telegraph* (1 August 2018) <https://www.telegraph.co.uk/news/2018/08/01/british-court-recognises-sharia-law-landmark-divorce-case/> accessed 18 January 2019.

[306] Finance Act 2007.

[307] Horace Meyer Kallen, *Cultural Pluralism and the American Idea: An Essay in Social Philosophy* (University of Pennsylvania Press 1956).

[308] John Dewey, *Democracy and Education: An Introduction to the Philosophy of Education* (New York: Macmillan 1997).

[309] William James, *A Pluralistic Universe* (Harvard University Press 1977).

[310] Modood, 'Muslims, Race and Equality in Britain' (n 63); Tariq Modood, 'British Muslims and the Politics of Multiculturalism' in Tariq Modood, Anna Triandafyllidou and Ricard Zapata-Barrero (eds), *Multiculturalism, Muslims and Citizenship* (Routledge 2006) 37.; Bano, 'Islamic Family Arbitration, Justice and Human Rights in Britain' (n 64).

[311] Dewey, *Democracy and Education* (n 308).

[312] Developed by Baruch Spinoza (1632-1677) is the belief in 'one thing' or 'one reality' that all reality can be reduced down to, and that any differences in reality are different version or modes of this one reality.
Don Garrett, *The Cambridge Companion to Spinoza* (Cambridge University Press 1996).

[313] 'Idealism, in philosophy, any view that stresses the central role of the ideal or the spiritual in the interpretation of experience. It may hold that the world or reality exists essentially as spirit or consciousness, that abstractions and laws are more fundamental in reality than sensory things, or, at least, that whatever exists is known in dimensions that are chiefly mental—through and as ideas'.
Encyclopedia Britannica, 'Idealism | Philosophy' (*Encyclopedia Britannica*) <https://www.britannica.com/topic/idealism> accessed 18 January 2019.

[314] James (n 309).

[315] Melvin L Rogers, 'Dewey, Pluralism, and Democracy: A Response to Robert Talisse' (2009) 45 Transactions of the Charles S. Peirce Society: A Quarterly Journal in American Philosophy 75.

[316] John Cowles Professor of Sociology Orlando Patterson and Orlando Patterson, *Ethnic Chauvinism: The Reactionary Impulse* (Stein and Day 1977); Poulter (n 303); Arthur Meier Schlesinger, *The Disuniting of America: Reflections on a Multicultural Society* (WW Norton 1998); Werner Sollors, *Neither Black Nor White Yet Both: Thematic Explorations of Interracial Literature* (Harvard University Press 1999); David A Hollinger, *Postethnic America: Beyond Multiculturalism* (Hachette UK 2006).

individual. This cultural diversity can also be extended to whole population in England and Wales, for example those who may practise other religions or no religion at all.

This cultural pluralism and 'the development and emergence of a Muslim identity must be understood as part of wider social, political and economic developments in Britain.'[317] Its existence has brought to the forefront issues of legal pluralism and recognition of Muslims by the state. For example, in the case of a religious marriage, cultural pluralism is accommodated because the individuals can marry according to purely Islamic procedures if they wish to, and they are not forbidden to do so as recognised by the ECHR at Article 9. However, although legal pluralism exists, as the religious marriage can take place, it is not acknowledged as the religious marriage is not recognised as a marriage for the purposes of the domestic, secular divorce laws[318] with the noted exception recently in the case of *Akhter v Khan*.[319]

Therefore, the practising of faith fits within both legal and cultural pluralism, between 'faulty pluralism' and 'actual pluralism'. Similarly, case-law described at section 2.1-2.2,[320] has also demonstrated this, and illustrated the conflicts between Islamic religious practice and state law, demonstrating issues of cultural pluralism interacting with the laws of the jurisdiction. Over a number of years, the courts have produced contradictory results,[321] where judicial interpretation of rules governing the existence or non-existence of marriage has been inconsistent[322] and at times an Islamic marriage has been recognised to an extent by an English court, at other times it has not been recognised at all. Most recently for example, in *Akhter v Khan*[323] in July 2018, the English courts held that a couple who had only undertaken an Islamic marriage in England and Wales, with no civil registration,[324] came under section 11 of the Matrimonial Causes Act 1973, with their marriage being declared voidable and the wife entitled to a decree of nullity.

[317] Bano, 'In Pursuit of Religious and Legal Diversity' (n 301) 5.
[318] Harriet Sherwood, 'Most Women in UK Who Have Islamic Wedding Miss out on Legal Rights' (*the Guardian*, 20 November 2017) <http://www.theguardian.com/world/2017/nov/20/women-uk-islamic-wedding-legal-rights-civil-ceremony-marriage> accessed 18 January 2019; McCann (n 294).
[319] *Akhter v Khan* (n 305).
[320] *R (on the application of Begum (Shabina) v Denbigh High School Governors Judgment* (n 72); *Uddin v Choudhury & Ors* (n 72); *Azmi v Kirklees Metropolitan Borough Council* (n 72).
[321] The key cases of *Chief Adjudication Officer v Bath* [1999] 10 WLUK 747; [2000] 1 F.L.R. 8; [2000] 1 F.C.R. 419; [2001] W.T.L.R. 55; [2000] Fam. Law 91; Times, October 28, 1999; Independent, November 9, 1999 , *AM v AM* [2006] EWHC 421 (Fam); [2006] 2 WLUK 166; [2006] 2 F.L.R. 572; [2006] Fam. Law 443 , *Ghandi v Patel* [2001] 7 WLUK 791; [2002] 1 F.L.R. 603; [2002] Fam. Law 262; Daily Telegraph, September 18, 2001 and *Sheikh v Sheikh* [2005] 2 WLUK 255; 2005 Fam. L.R. 7; 2005 G.W.D. 11-183.
Anne Barlow and Rebecca Probert, 'Regulating Marriage and Cohabitation: Changing Family Values and Policies in Europe and North America—An Introductory Critique' (2004) 26 Law & Policy 1; Rebecca Probert, *The Changing Legal Regulation of Cohabitation: From Fornicators to Family, 1600-2010* (Cambridge University Press 2012).
[322] Rebecca Probert, 'When Are We Married? Void, Non-Existent and Presumed Marriages' (2006) 22 Legal Studies 398.
[323] *Akhter v Khan* (n 305).
[324] *Akhter v Khan* (n 305).

Equally, this status quo exists in the more high-status field of Islamic Finance. Here, cultural and legal pluralism coincide, with Muslims, for example, wanting to obtain an Islamic mortgage and the government promoting Islamic Finance in the City,[325] therefore an example of 'beyond pluralism'. This is arguably because there is a clearly financial motive for doing so, as well as a more flexible legal structure, in this case contract law, whereas discussed at section 3.1, there are many similarities between English law and 'Islamic Law'.

Hybrid Legal and Cultural Environment

As a result of the legal and cultural pluralism discussed, British Muslims can, as seen at section 2.1, be seen to exist in a semi-autonomous social field where they are often 'othered' because of their identity.[326] Where their social and legal needs are not being fully catered for, this is a form of discrimination from the human rights perspective.[327] This semi-autonomous social field or hybrid environment:

> can generate rules and customs and symbols internally, but that ... is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded. The semi-autonomous social field has rule-making capacities, and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance.[328]

This demonstrates that different legal orders are in existence in England and Wales, where Muslims follow English law, but conduct themselves in accordance with 'Islamic Law' alongside this, whether this be in a marriage, a financial transaction or inheritance matters. It demonstrates a 'condition in which a population observes more than one body of law'.[329] The fact of cultural pluralism leads, it is argued, to a need for more substantial legal pluralism that is accepted within the legal system in England and Wales. It means that different rules are applied to different people and in different circumstances despite

[325] Government (n 75).
[326] Sune Qvotrup Jensen, 'Othering, Identity Formation and Agency' (2011) 2 Qualitative Studies 63.
[327] Bruce M Burnett, 'How Does Othering Constitute Cultural Discrimination?' in Bruce M Burnett, Daphne A Meadmore and Gordon W Tait (eds), *New questions for contemporary teachers : taking a socio-cultural approach to education* (Pearson Education 2004).
[328] Sally Falk Moore, 'Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study' (1973) 7 Law & Society Review 719, 720.
[329] Gordon R Woodman, 'The Idea of Legal Pluralism' [1999] Legal pluralism in the Arab world 3, 157.

a shared national identity, and the 'unofficial laws find ways to survive in an alien milieu whether the official law recognises the reality or not'.[330]

The existence of multiple identities in British society,[331] both ethnic and non-ethnic, has impacted on the English legal system in the increasing number of cases[332] dealt with by legal professionals involving 'Islamic Law' as discussed at section 2.2, but at times to the detriment of British Muslims due to legal professionals not having knowledge or experience in the area. This, in addition to the non-recognition of multiple legal traditions in one jurisdiction, [333] and the continued use of the yardstick of a reasonable man in English law, where cultural and religious identity is not taken into account, means that British society fails to adequately recognise the cultural and behavioural code of Muslim litigants, or other litigants with subsidiary identities, by treating them as part of one homogenous society. This in turn affects the delivery of justice in English Law because individuals are judged to an objective standard which does not take into account religious beliefs which would affect their behaviour in certain areas.[334] Any fears of 'Islamic Law' and its presence in England and Wales need to be set aside.[335] Acceptance and understanding of pluralism in Britain is vital not only for legal practice but for LSET[336] in order for the needs of clients to be competently met. Currently, any legitimate discussion of 'Islamic Law' and Muslims can be seen as 'blasphemy against the secular legal consensus or, more specifically, anti-Islamic public orthodoxy'.[337]

Nonetheless, it is imperative that such pluralism continues to allow England and Wales to thrive and to enable Muslims to continue in their multiple identities without being disadvantaged. This is particularly the case for Muslim women, as mainstream legal institutions can actually disadvantage Muslim women, because British judges and lawyers are typically untrained in Islamic law or are unaware of Muslim religio-cultural traditions. For example, Muslim women are often not aware of their rights to obtain a divorce under 'Islamic Law', or even that their religious marriage may not be valid under English law, therefore meaning they cannot resort to it, as a means to obtain a remedy or

[330] Yilmaz (n 69) 343.
[331] Paul Schiff Berman, 'Global Legal Pluralism' (2006) 80 Southern California Law Review 1155.
[332] Siddiqui and others (n 90).
[333] Merry (n 297) 869.
[334] Ballard (n 118) 29.
[335] Ramadan, *Western Muslims and the Future of Islam* (n 108); Petre (n 107); Hirsch (n 107); Berger (n 224); Robin Griffith-Jones (ed), *Islam and English Law: Rights, Responsibilities and the Place of Shari'a* (Cambridge University Press 2013).
[336] Abd al-Fattah El-Awaisi and Malory Nye, 'Time for Change: Report on the Future of the Study of Islam and Muslims in Universities and Colleges in Multiculturalism Britain' (2006) <http://www.almipress.com/book.php?id=18> accessed 18 January 2019.
[337] Christoffersen and Nielsen (n 96) 137.

financial relief. The result is Muslims' 'erosion'[338] where the Muslim identity is being gradually diminished by Western principles due to lack of awareness of rights under 'Islamic Law' and lack of knowledge of legal professionals in the area. Supporting these multiple identities, however, can maintain political stability by not forcing British citizens to choose between their religious and cultural identities and their national identity.[339]

Overall, it is vital that:

> the future of multi-ethnic Britain must lie in recognising, supporting, and helping to advance the many different ways in which citizens with distinct politics, linguistic heritage, and social priorities (along with different ethnicities and religions) can interact with each other in their different capacities, including as citizens.[340]

A level of tolerance does exist, therefore a level of cultural pluralism exists, where Muslims can act according to their religious principles, and even regard them as binding. However, this parallel operation still privileges the secular law, in the case of marriage for example, where a Muslim would have to marry twice, as there is 'faulty pluralism' in these cases. These circumstances demonstrate an urgent need to understand 'Islamic Law' in legal practice, as both systems of English law and 'Islamic Law' exist concurrently in one jurisdiction, albeit unofficially, with legal education only available in one of those systems. This, in addition to the large number of practice areas into which 'Islamic Law' has infiltrated as discussed at chapter 2, can be translated into an increased significance in legal education in the subject and therefore an increased importance for LSET. Islamic Law' can be studied alongside English law using a comparative approach, or at the very least education could explicitly recognise the existence of two legal systems alongside one another, with a need to understand both.[341] Although, if studied from a comparative perspective, one system may be seen as ' foreign' when in fact it applies to domestic clients, it would still go some way to increase understanding of the area, with further work still to be done.[342] A separate module for 'Islamic Law' in legal practice, where its

[338] Modood, 'British Muslims and the Politics of Multiculturalism' (n 310) 41.
[339] Kallen (n 307); Yilmaz (n 69); Prakash Shah, *Legal Pluralism in Conflict: Coping with Cultural Diversity in Law* (Psychology Press 2005); Hope (n 107).
[340] Amartya Kumar Sen, Identity and Violence: The Illusion of Destiny (Penguin 2007) 65.
[341] Brian Z Tamanaha, 'Understanding Legal Pluralism: Past to Present, Local to Global' (2008) 30 Sydney Law Review 375.
[342] James R Moore, 'Shattering Stereotypes: A Lesson Plan for Improving Student Attitudes and Behavior toward Minority Groups' (2006) 97 The Social Studies 35.

domestic importance is acknowledged, or where the subject is taught pervasively as part of more traditional subjects, may lead to better understanding of the subject for practice and is discussed further at chapters 5 and 6. This would also assist acknowledgement of the need for 'actual pluralism', where both systems are still separate but equally weighted and accepted. The increased acceptance of the existence of cultural pluralism may lead to this advancement and recognition of legal pluralism in England and Wales.[343]

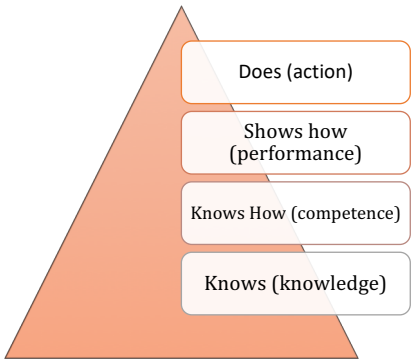
3.3 Educational Theory

The discussion of the different definitions of 'Islamic Law' (at section 3.1) and the review of where it is formally taught (at section 2.5 and 3.1.3), provide partial answers as to how its influence in England and Wales requires recognition in legal education. A further question, however, is around how 'Islamic Law' should be taught, and how, if this is different, it should be learned. This section, therefore, considers a range of possible pedagogical approaches including those in the courses discussed at section 2.5. From these courses, 'Islamic Law' teaching to date in England and Wales, has largely been shown to be theoretical, often based on culture, history and theology and with an Islamic Studies focus as discussed below at section 3.1.3. If courses concerning 'Islamic Law' continue to be largely theoretical and are not tailored to practice, the employability of future legal professionals comes into question.[344] The need for lawyers to be competent in legal practice has been as discussed above, has also been emphasised in the LETR.[345] Furthermore, the competency statements of solicitors and barristers[346] define the outputs of LSET, what lawyers ought to be able to do, rather than merely confine the roles to knowledge. It is therefore vital that the output of education enables solicitors and barristers, to have not only knowledge but the competencies for professional practice.

[343] Tariq Modood, 'Tolerance, Pluralism and Social Cohesion: Responding to the Challenges of the 21st Century in Europe (ACCEPT PLURALISM)' (Robert Schuman Centre for Advanced Studies) <https://www.coe.int/t/dg4/cultureheritage/mars/source/resources/references/others/38%20-%20Multiculturalisme%20and%20Integration%20-%20Modood%202011.pdf> accessed 24 August 2018.
[344] Dearing (n 194).
[345] William M Sullivan and others, 'Educating Lawyers: Preparation for the Profession of Law' (2007) <https://www.issuelab.org/resource/educating-lawyers-preparation-for-the-profession-of-law.html> accessed 18 January 2019; Ching and others (n 183).
[346] Solicitors Regulation Authority, 'Statement of Solicitor Competence' (n 130); Bar Standards Board, 'The Professional Statement' (n 132).

An approach, strongly linked to professional practice is that of Miller's 'pyramid of competence'[347] which distinguishes between knowledge at the lower levels and action in the higher levels, in educational settings and the workplace, can be used as a guide for the purposes of this study to assess the effectiveness of legal education for the purposes of legal practice. Although it refers to medical practice, the same theory can be transferred to legal practice because it also requires the transfer of knowledge from the classroom to practice.[348] The purpose of this discussion is to see first of all where conventional teaching approaches to 'Islamic Law' (where it has often been treated as Islamic Studies) fit and what changes might need to be made to design a course that is more relevant to practice.

Figure 2- Miller's Pyramid



At the lowest level of the pyramid, the individual must have knowledge at the levels of 'knows' and 'knows how' from the classroom which is transferred though various stages to action to the highest level of the pyramid, where the individual 'does', that being applying the knowledge in legal practice.

'Knows' and 'Knows How'[349]

At the lower levels of Miller's pyramid, the 'knows' and 'knows how' levels, knowing the facts of and 'Islamic Law' case and the law, and knowing how to apply them, are affected

[347] GE Miller, 'The Assessment of Clinical Skills/Competence/Performance' (1990) 65 Academic Medicine: Journal of the Association of American Medical Colleges S63.
[348] Solicitors Regulation Authority, 'SQE Draft Assessment Specification - Solicitors Regulation Authority' 5 <https://www.sra.org.uk/documents/SRA/news/sqe-draft-assessment-specification.pdf> accessed 18 January 2019.
[349] 'Knows how' in Miller's pyramid although equals competence, this differs from the competence expected by solicitors and barristers by the SRA 'Statement of Solicitor Competence' and BSB 'Professional statement' as briefly mentioned at section 2.6 above, and as discsussed at chapter 5 below. This is instead at the level of 'does'.

by the pedagogical method used. For law, this can involve 'analytical reasoning characteristic of legal thinking'.[350] The approach, whether theoretical or practical, due to the context of 'Islamic Law', in teaching law, informs the course, its learning outcomes, the materials available and the audience,[351] with the majority of 'Islamic Law' courses as discussed at section 2.5, offered by university law schools being only theoretical as opposed to practice focused. Theory as discussed at section 3.1.1 and section 5.3-5.4 below, or a level of didactic teaching, is important to underpin the practical elements but only theory is not appropriate for a subject geared towards legal practice. The learning outcomes[352] for any course come from the basis of the pedagogical methods and materials selected to meet the outcomes 'like our theories of law and lawyering, our theory of learning must be more than platitudinous and anecdotal; it must be systematic, conceptual, and rigorous'.[353]

To meet the levels of 'knows' and 'knows how', which can be seen as understanding and application involves a systematic approach to teaching.[354] 'One model, known as constructive alignment,[355] means that the instructor bases the learning outcomes of the course upon skills, knowledge, performance and tasks that the student should be expected to achieve, and summative assessment assesses these areas.[356] Learning outcomes of an appropriate 'Islamic Law' course should also be related to the competence statements set out for solicitors and barristers.[357] A law student should be able to apply the law to a specific set of client facts combining theory with practice, and 'must understand those facts, and their relationships to each other, to the clients, and to the context in which they arise'[358] to meet the needs of a client. If, in the case of 'Islamic Law', for example, the 'law' or its context is not understood, as it has not been studied, or not understood even after study, this cannot be done. Accordingly, for any teaching and learning of 'Islamic Law' going from 'knows' to 'knows how' that is towards a level of

[350] Lee S Shulman, 'Signature Pedagogies in the Professions' (2005) 134 Daedalus 52, 55.
[351] James Eagar, 'The Right Tool for the Job: The Effective Use of Pedagogical Methods in Legal Education Comment' (1996) 32 Gonzaga Law Review 389, 415.
[352] Joanna Allan, 'Learning Outcomes in Higher Education' (1996) 21 Studies in Higher Education 93.
[353] Jay Feinman and Marc Feldman, 'Pedagogy and Politics' (1984) 73 Georgetown Law Journal 875, 895.
[354] "[The] first step in any systematic approach to teaching: to define what students are supposed to learn.... Too often we teach by indirection and expect our students to learn by imitation.... [Teachers need] to be more explicit about the substantive content and skills we attempt to teach. At the general level, this entails specifying a set of learning objectives for the curriculum as a whole.... At the level of the individual course, we must be more specific about the particular doctrines, principles, and skills to be taught and about the level of learning mastery we seek to achieve for each of the elements."
Feinman and Feldman (n 353) 898.
[355] John Biggs, 'Enhancing Teaching through Constructive Alignment' (1996) 32 Higher Education 347.
[356] Andrew J Pirie, 'Objectives In Legal Education: The Case for Systematic Instructional Design' (1987) 37 Journal of Legal Education 576; Eagar (n 351) 397.
[357] Solicitors Regulation Authority, 'Statement of Solicitor Competence' (n 130); Bar Standards Board, 'The Professional Statement' (n 132).
[358] Alan M Lerner and Erin Talati, 'Teaching Law and Educating Lawyers: Closing the Gap through Multidisciplinary Experimental Learning' (2006) 9 International Journal of Clinical Legal Education 96, 111.

application of knowledge, is vital, as it involves preparing law students for their possible future legal practice.[359]

The understanding and then practical application of knowledge in 'knows how'[360] may also be assisted by using problem questions and the use of concept maps[361] made *by*, as opposed to *for*, the law learner to organise and structure the knowledge as well as to show the relationships between the concepts. Such concept maps would also facilitate further legal understanding, and where law fits into practice[362] as 'the process of making a concept map not only serves to record existing knowledge but also to facilitate assimilation of new knowledge'.[363]

'Shows How' and 'Does'

A further method of introducing more practical aspects, in order to prepare students for legal practice of 'Islamic Law', and to move further up the scale of Miller's pyramid to 'shows how', which is the last stage before leaving the classroom for professional practice at the LPC, or BPTC level may be through clinical legal education[364] and simulations. Clinical legal education would allow the students to put into practice some of the knowledge they have acquired and see how it fits within the community in which they may practise.[365] It would also provide them with professional ethics and etiquette skills particular to 'Islamic Law', and a form of cultural awareness, such as meeting clients who share the same Muslim faith, but who have different cultural beliefs.

Interdisciplinary study is also vital for 'shows how', as in legal practice often academic disciplines are crossed. Not only is legal knowledge required, but so, for example, may be history or economics,[366] given the large cross section of practice areas such as Islamic Finance or Islamic Family Law. Therefore, using such techniques will enable students, to understand problems that may be multi-faceted and are not present in their restricted

[359] John Dewey, *My Pedagogic Creed* (Facsimile Publisher 2013).
[360] Miller (n 347).
[361] David P Ausubel, *The Psychology of Meaningful Verbal Learning* (Grune & Stratton 1963).
[362] Gayani Samarawickrema and Jennifer O'Reilly, 'Using Concept Maps to Improve the Quality of Learning Law at a Distance', *Quality Education At A Distance* (Springer, Boston, MA 2003); Joseph D Novak, *Learning, Creating, and Using Knowledge: Concept Maps as Facilitative Tools in Schools and Corporations* (Routledge 2010) 20.; Brian Moon and others, *Applied Concept Mapping: Capturing, Analyzing, and Organizing Knowledge* (CRC Press 2011).
[363] Heather Ann Forest, 'Jurisprudence Meets Epistemology: Facilitating Legal Understanding and Meaningful Learning in Legal Education with Concept Maps' (2008) 18 Legal Education Review 73, 75.
[364] Anthony G Amsterdam, 'Clinical Legal Education—A 21st Century Perspective' (1984) 34 Journal of Legal Education 612; Susan Brooks and Robert Madden, 'Clinical Theory Workshop: Epistemology and Ethics in Relationship-Centered Legal Education and Practice' (2011) 56 New York Law School law review 331.
[365] Jackling (n 181).
[366] Rand J Spiro and And Others, *Cognitive Flexibility Theory: Advanced Knowledge Acquisition in Ill-Structured Domains. Technical Report No. 441* (1988) <https://eric.ed.gov/?id=ED302821> accessed 18 January 2019.

subject divisions as taught.[367] An effective lawyer must be able to adjust their approach in the dynamically changing legal environment affected by economic forces[368] as well as the decisions of large law firms,[369] therefore 'educating lawyers who understand, embrace, and most importantly can adapt to the change'[370] through clinical legal education and interdisciplinary endeavours may assist lawyers to serve the public interest, in the case of 'Islamic Law'. The stage of transference of theory to practice may also be facilitated by legal competitions which are simulations of legal practice, such as those involving interviewing or advocacy, which are active and mandatory components of the LPC and BPTC.[371]

To achieve the levels of 'shows how', although the case method[372] where students are placed in the role of a decision maker to see how they would resolve an issue, often used in the USA, dependent on the instructor to impart theory has been extensively utilised in some jurisdictions, in academic legal education,[373] it may not be solely suitable for a module that requires practical application, and development and understanding of the nuances of a complex subject and not analysis of legal theory alone.[374] Consequently, in the context of 'Islamic Law', the approaches used on the LPC and BPTC on the other hand which are designed to transfer theory to practice would be more suitable to be used. Any disjunction between legal education and the legal profession means[375] that, although theory should be focused upon, it should not be at the expense of doctrine,[376] as this is the actual belief system that underpins 'Islamic Law', as discussed at section 3.1, and a practical outlook. Such an approach needs to be integrated in 'practical scholarship'[377] 'to show how theory resolves normative problems left open by the authoritative legal texts'.[378] This active, as opposed to passive, approach is advocated if law is being understood for the purposes of learning and applying it[379] 'by encouraging the activity,

[367] Jackling (n 181) 78.
[368] Jerome M Organ, 'Legal Education and the Legal Profession: Convergence or Divergence Symposium Article' (2011) 38 Ohio Northern University Law Review 885, 908.
[369] Daniel Thies, 'Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market' (2010) 59 Journal of Legal Education 598, 607.
[370] Lerner and Talati (n 358) 127.
[371] Madeleine Fraser and others, 'Transition from Legal Education to Practice: Extra-Curricular Competitions Offer the Missing Link' (2013) 23 Legal Education Review 131.
[372] JC Smith, 'The Case Method of Teaching Law' (1967) 1 The Law Teacher 17.
[373] Pierre R Loiseaux, 'Newcomer and the Case Method, The' (1954) 7 Journal of Legal Education 244; Arthur D Austin, 'Is the Casebook Method Obsolete' (1965) 6 William and Mary Law Review 157.
[374] Alan Watson, 'Legal Education Reform: Modest Suggestions' (2001) 51 Journal of Legal Education 91.
[375] Gray and Woodley (n 178).
[376] Charles A Letteri, 'Teaching Students How to Learn' (1985) 24 Theory Into Practice 112.
[377] Harry T Edwards, 'The Growing Disjunction between Legal Education and the Legal Profession' (1992) 91 Michigan Law Review 34, 57.
[378] Edwards (n 377) 33.; Sherr and Sugarman (n 177); Sullivan and others (n 345); Brooks and Madden (n 364).
[379] Jack M Balkin, 'Understanding Legal Understanding: The Legal Subject and the Problem of Legal Coherence' [1993] Yale Law Journal 105, 105.

dynamism and reciprocity'[380] that legal understanding demands by being able to 'not only recite the law, but to understand its purpose and apply it to continuing evolving circumstances'.[381] Without this approach, 'law students are ill-equipped for a career of participating in law's coherence and development if they are taught the law in such a way as to suggest that they themselves have no impact upon that coherence and development'[382] and have difficulty in adapting to new situations in their professional lives.[383] Hence, a focus on constructivist approaches such as experiential learning[384] and problem based learning[385] as used in some form already on the LPC and BPTC would enable any law student studying 'Islamic Law', to reflect on their own perceptions of the law and put it into the legal practice context and demonstrate the 'shows how' and where possible 'does' when working in practice in a legal clinic and then during a training contract or pupillage. These practical legal skills currently undertaken on the LPC and BPTC are now required even more at the undergraduate degree level in light of the SQE, discussed earlier.[386]

Experiential learning, where students apply their knowledge for action would achieve the 'shows how', enables students to reflect on their 'Islamic Law' knowledge and place it into legal practice, as well as make connections between it and English law, which is vital for any legal professional practising in the area, providing knowledge and legal skills as well as skills specific to 'Islamic Law' as mentioned at section 2.4, as opposed to only knowledge. Additionally, it would allow law students to develop 'genuine insights into the working environment even if they do not wish to practise 'Islamic Law' similar to other foundation subjects, in order to understand the complex roles, and interrelationships of the institutions, policies and legal regimes operating in the field'.[387] The competencies required by solicitors and barristers discussed earlier, would also be better met with such teaching strategies, similar to the approaches on the current LPC and BPTC but with greater emphasis.[388] Dewey notably observed that 'all genuine education comes about through experience [but] ... not all experiences are genuinely or

[380] Forest (n 363) 74.
[381] Forest (n 363) 87.
[382] Forest (n 363) 91.
[383] David Boud, *Problem-Based Learning in Education for the Professions* (Higher Education Research and Development Society of Australasia 1985) 5.
[384] David A Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (FT Press 1984); Steven M Virgil, 'The Role of Experiential Learning on a Law Student's Sense of Professional Identity Revisiting Langdell: Legal Education Reform and the Lawyer's Craft' (2016) 51 Wake Forest Law Review 325.
[385] Boud (n 383).
[386] Dawn Jones, 'Legal Skills and the SQE: Confronting the Challenge Head On' (2018) 53 The Law Teacher 35.
[387] Andrew Mitchell and others, 'Education in the Field: A Case Study of Experiential Learning in International Law' (2011) 21 Legal Education Review 69, 70.
[388] Solicitors Regulation Authority, 'Statement of Solicitor Competence' (n 190); Bar Standards Board, 'The Professional Statement' (n 172).

equally educative'.[389] This could also be applied to the case of 'Islamic Law' in legal practice.

A subject such as 'Islamic Law', that is geared towards preparing students for legal practice not just offering a theoretical or historical approach, may be well suited to be taught through the simulation method,[390] and through using case studies, at both the academic and vocational level in England and Wales, in order to prepare the students for the skills they would need in practising in this area similar to current approaches on the LPC and BPTC.[391] If this approach is followed at the undergraduate level also, this would capture the complexity of the subject and enable students, who may not be destined for legal practice, to engage with it more effectively in a similar way to other foundational subjects taught to all students regardless of their future destination. The training contract or pupillage would also assist reaching the 'does' level of being in professional practice.

Overall, a legal curriculum is a multifaceted and complex subject,[392] but it is the centre of legal education and is not merely what should be taught, but how, encompassing action and purpose.[393] Subjects taught as options or electives, although aiding specialisation and producing legal professionals with a broader knowledge base,[394] are not seen to create more competent legal professionals, but instead aid a wider breadth of law permeating the legal community.[395] It is argued that, in a similar way to the continuing position of European Union(EU) Law as a core subject in the LLB curriculum despite the UK exiting the EU,[396] there is 'the case for law degrees more suited to the UK's aspiration to forge a place in an uncertain world'.[397] Such an approach would mean an increased offering of subjects from other jurisdictions, as well as from the common themes and principles impacting British society such as 'Islamic Law', discussed earlier.

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[389] John Dewey, *Experience and Education* (Collier Books 1938) 13.
[390] Edward Phillips, 'Law Games – Role Play And Simulation In Teaching Legal Application And Practical Skills: A Case Study' (2013) 3 Compass: Journal of Learning and Teaching 5; Ben Waters, '"A Part to Play": The Value of Role-Play Simulation in Undergraduate Legal Education' (2016) 50 The Law Teacher 172.
[391] Babacan and Babacan (n 189).
[392] David M Moss, 'The Hidden Curriculum of Legal Education: Toward a Holistic Model for Reform Symposium' (2013) 2013 Journal of Dispute Resolution 19, 23.
[393] Wesley Null, *Curriculum: From Theory to Practice* (Rowman & Littlefield 2016).
[394] Jackling (n 181) 75.
[395] William R Trail and William D Underwood, 'The Decline of Professional Legal Training and a Proposal for Its Revitalization in Professional Law Schools Essay' (1996) 48 Baylor Law Review 201; Dearing (n 195); Richard Johnstone, Sumitra Vignaendra and Australian Universities Teaching Committee, 'Learning Outcomes and Curriculum Development in Law a Report Commissioned by the Australian Universities Teaching Committee (AUTC)' (2003) <https://trove.nla.gov.au/work/10560347> accessed 18 January 2019.
[396] United Kingdom Government, 'Exiting the European Union' (*GOV.UK*) <https://www.gov.uk/guidance/exiting-the-european-union> accessed 18 January 2019.
[397] Cherry James and John Koo, 'The EU Law "Core" Module: Surviving the Perfect Storm of Brexit and the SQE' (2018) 52 The Law Teacher 68, 83.

If such an offering takes place, without explicit or implicit assumptions about which stage it is offered at, in consideration of Miller's pyramid above, the 'knows' and 'knows how', the traditional approach in an undergraduate law degree or a GDL, would be that 'Islamic Law' is seen only as theory, knowledge and understanding, with discussions being limited to a theoretical context. The 'knows how' which is more suited to 'Islamic Law' due to its practical nature would only come about by contextualising the area, and placing it in the real world. The 'shows how' in this case, would be possible through, as discussed, clinical legal education and experiential learning. Such approaches may be taken on some undergraduate law programmes and GDLs, and are more likely to be found on the LPC or BPTC. Due to the nature of 'Islamic Law' and its wide influence on a range of practice areas in England and Wales, this level of Miller's pyramid is vital to achieve. The ISNP courses mentioned above at section 2.5, although they may have achieved the 'knows' and partially the 'knows how' level, did not go beyond this to full achieve 'shows how', meaning a gap still exists for education of 'Islamic Law'. The 'does', the last level on the pyramid would be difficult to show until the student is in practice, but is closely linked to the previous level and again is vital.

Therefore, any teaching or learning of the subject, needs not only to include the academic context but also the vocational context, which would not be usually part of all undergraduate law degrees or a GDL. The increase of knowledge and skills in 'Islamic Law' would need to be facilitated through other approaches, which do not fall under the remit of this study, such as cultural awareness training. Allen has argued that legal professionals talk about a gap between theory and practice and it 'is not just a question of mere language: it is frozen into, and embodied by, societal divisions of labor and institutions'[398] and this is certainly true for 'Islamic Law'. Some of the approaches above although are already used in the LPC or BPTC, if adopted into the undergraduate law degree, for 'Islamic Law', it would mean a substantial change from the current status quo from current practices on the degree programme. Further discussion of the content of an 'Islamic Law' course, its level and teaching approach emerged from the data discussed at chapter 6 and, with the literature discussed here, informs the course design set out at section 6.4

[398] Allen (n 254).

4. Methodology and Methods

'Knowledge and action are twins whose mother is high motivation'.[399]

Ibn Al-Jawzi

A qualitative investigation was conducted in order to answer the research questions. It firstly 'recognizes the explicit involvement of the researcher, who is therefore viewed not as an intermediary, but as an instrument of research'.[400] Secondly, it was also deemed most suitable to provide legitimate and reliable knowledge of the phenomenon under study by attempting to 'understand the world from the subjects' points of view and to unfold the meaning of their lived world'[401] first-hand. The section below further details the reasoning behind the methodology of this study.

4.1 Methodology

Methodology is the reason why particular methods were used[402] and is influenced by ontological and epistemological stances, as these govern choice and use of methods as part of the investigation.[403] Epistemology[404] is concerned with providing 'a philosophical grounding for deciding what kinds of knowledge are possible and how we can ensure they are both adequate and legitimate'.[405] It refers to how knowledge is acquired, internalized, and applied to situations.[406] Ontology, the doctrine of being,[407] is key to determining the nature of reality that gave rise to questions under investigation. Ontologically, the study examined 'What is Islamic Law?' to an individual in relation to legal practice in England and Wales, a non-Islamic jurisdiction and, 'What is Islamic Law in Legal Education?' in England and Wales. As indicated in chapters 2 and 3, whether 'Islamic Law' in legal practice is the same as in Islamic Studies and whether what is provided for Islamic Studies purposes is sufficient for legal education for legal practice for example, will all be informed by perceptions by the individuals of their environments.

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[399] Encyclopedia Britannica, 'Ibn Al-Jawzi | Muslim Educator' (*Encyclopedia Britannica*) <https://www.britannica.com/biography/Ibn-al-Jawzi> accessed 18 January 2019.
[400] Denise Medico and Marie Santiago-Delefosse, 'From Reflexivity to Resonances: Accounting for Interpretation Phenomena in Qualitative Research' (2014) 11 Qualitative Research in Psychology 350.
[401] Steinar Kvale, 'Dominance through Interviews and Dialogues' (2006) 12 Qualitative Inquiry 480, 481.
[402] Alan Bryman, 'Of Methods and Methodology' (2008) 3 Qualitative Research in Organizations and Management: An International Journal 159.
[403] Peter Clough, *A Student's Guide to Methodology : Justifying Enquiry* (SAGE 2002).
[404] Yvonna S Lincoln and Egon G Guba, *Naturalistic Inquiry* (SAGE 1985).
[405] Mary Maynard, Researching Women's Lives From A Feminist Perspective (Routledge 2013) 10.
[406] Barbara K Hofer and Paul R Pintrich, 'The Development of Epistemological Theories: Beliefs About Knowledge and Knowing and Their Relation to Learning' (1997) 67 Review of Educational Research 88.
[407] Martin Heiddeger, *Ontology: The Hermeneutics of Facticity* (Indiana University Press 1999) 1.

The researcher is concerned with the lived experience of the individuals who have experience of 'Islamic Law' in England and Wales. Some individuals, depending on their understanding of 'Islamic Law', may find there is a wide gap between 'Islamic Law' in legal education and 'Islamic Law' in legal practice. Others may, in accordance with their academic and professional experience, find the gap to be narrower.

This study, therefore, employed a qualitative, interpretative hermeneutic phenomenological approach which, in the wide sense, includes ontology[408] because it was key to elicit as far as possible the full range of individual perceptions and multiple realities of a range of people. In this case, the perception was of 'Islamic Law' in England and Wales and the knowledge of it required for the purposes of legal practice, in legal education. Keen advocates that 'phenomenology cannot be reduced to a "cookbook" set of instructions. It is more an approach, an attitude, an investigative posture with a certain set of goals'.[409] Hermeneutic phenomenology was used, as shown in chapter 5, because it is orientated towards a lived experience and requires the researcher to interpret the texts of life (hermeneutics) and mediate between them to gain a meaning and understanding of the experiences.[410] This approach is consistent with Husserl's call to 'return to the things themselves'[411] in order to find patterns and relationships of meanings.[412] Interpretivism was also utilised in investigation and in the analysis stage, as it aims to understand phenomena from the perspective of those who have experience in an area. In this case the phenomenon of 'Islamic Law' from the perspective of solicitors and barristers who have experience in the area. It allowed the researcher to 'understand an experience as it is understood by those who are having it'.[413]

A further approach used in the data collection and analysis was that of 'intersubjective constructionism'[414] where 'what is accepted or rejected as reality, is done so not merely by different persons, or individuals from different groups, but exists between subjects and individual subjectivities'.[415] This approach is consistent with the hermeneutic phenomenology and was taken as it assisted in finding the meaning of 'Islamic Law' in legal practice and how it is represented in legal education not only from the respondents

[408] Alan Bryman, *Social Research Methods* (Fifth edition, Oxford University Press 2015) 379.
[409] Ernest Keen, *A Primer in Phenomenological Psychology* (University Press of America 1975) 41.
[410] Lincoln and Guba (n 404).
[411] Edmund Husserl, Paul Ricur and Pol Vandevelde, *Key to Husserl's Ideas I* (Marquette University Press 1996).
[412] John Creswell, *Research Design : Qualitative, Quantitative, and Mixed Methods Approaches* (SAGE 2003) 15.
[413] Marlene Zichi Cohen, David L Kahn and Richard H Steeves, *Hermeneutic Phenomenological Research : A Practical Guide for Nurse Researchers* (SAGE 2000) 3.
[414] Yvonna S Lincoln and Egon G Guba, *The Constructivist Credo* (Left Coast Press, Inc 2013) 83.
[415] Ian Rory Owen, 'Social Constructionism and the Theory, Practice and Research of Psychotherapy: A Phenomenological Psychology Manifesto' (1995) 46 Boletin de Psicologia 161.

in the phenomenon, but also by then comparing the respondents to explore why they had a certain viewpoint.[416] For example, why one respondent, given their experience, may not think 'Islamic Law' knowledge is required in legal education, in comparison to another respondent with the opposing view, due to their experience, as shown at section 5.2 below. This approach is consistent with the model of phenomenology discussed above, where the experience and views of the respondent who is aware of the phenomenon are obtained to understand its inner workings.

The above approaches were essential for the success of this study. For example, when finding the meaning of 'Islamic Law', detailed discussions were required to examine the different meanings. This was done by investigating the perspectives of a range of legal professionals who are familiar with the phenomenon under study both in academic life and in practice.[417] This approach was also advantageous 'to obtain a broader and more richly nuanced picture of the themes focused upon'.[418] Without such an approach, the real needs of legal practice and legal education in the area of 'Islamic Law' would have been difficult to investigate, and any solutions would have lacked authenticity and credibility.

In purely descriptive phenomenology,[419] it is normally the case that the researcher attempts to 'bracket' their own assumptions and prejudices to ensure that the 'subjective character of the experiences is not prejudiced',[420] (although 'bracketing' is only ever possible to a certain extent[421]) to generate accurate, credible and trustworthy findings. Reflexivity[422] therefore, on the part of the researcher, is essential to ensure the investigation has a 'minimum of bias' and that information from the questionnaire or interviews is not gathered selectively to meet the researcher's presuppositions.[423] In the data collection stage of the enquiry, the researcher sought to bracket[424], by reducing the influence of her own knowledge and pre-suppositions as much as possible to ensure that she could truly enter the world of the participant as a whole, to gauge an overall

[416] Roni Berger, 'Now I See It, Now I Don't: Researcher's Position and Reflexivity in Qualitative Research' (2015) 15 Qualitative Research 219.
[417] Heiddeger (n 407); Maurice Merleau-Ponty, Donald Landes and Taylor Carman, *Phenomenology of Perception* (1 edition, Routledge 2013); Hans-Georg Gadamer, *Truth and Method* (Sheed and Ward 1975).
[418] Steinar Kvale, 'The Qualitative Research Interview' (1983) 14 Journal of Phenomenological Psychology 171, 189.
[419] Gina M Reiners, 'Understanding the Differences between Husserl's (Descriptive) and Heidegger's (Interpretive) Phenomenological Research' (2012) 1 Journal of Nursing Care 1, 1.
[420] Michael Crotty, *The Foundations of Social Research: Meaning and Perspective in the Research Process* (SAGE 1998), 83.
[421] Lea Tufford and Peter Newman, *Bracketing in Qualitative Research*, (2010) 11 Qualitative Social Work 80.
[422] Berger (n 416) 219.
[423] Liz Atkins and Susan Wallace, *Qualitative Research in Education* (SAGE 2012).
[424] Marilyn Lichtman, *Understanding and Evaluating Qualitative Educational Research* (SAGE 2013) 87.

understanding.[425] This was done by making the questions in the questionnaire as open and non-leading as possible, and by taking a neutral stance at the beginning of the interviews, directing the interviews in a formal manner, even when the researcher knew the respondent personally. The researcher was conscious of her own presence in the process and avoided placing herself in the place of an expert by talking as little as possible about herself in the interview even when asked, as the researcher was at the start of one interview, where the researcher responded by stating such information could be discussed after the formal interview.[426] Despite a degree of expertise being useful to achieve 'symmetry of the interview relationship'[427] and legitimising the interview or questionnaire especially for elite-respondents,[428] this expertise had to be balanced by the researcher by putting aside her personal experiences as much as possible in order to travel through the world of the respondent allowing the unexpected to occur.[429] In the interpretative stage of analysis, however, bracketing was not appropriate because the researcher's knowledge, background and experience in the area were required to interpret and understand the data thoroughly. Nonetheless, the researcher was aware of this, and attempted to use her knowledge and experience only for interpretation, not to pre-suppose or pre-conclude any findings.

4.2 Methods

The term 'methods' describes specific procedures or techniques used to identify, select, and analyse information applied to understanding the research problem within the context of the overarching methodological framing, thereby allowing the reader to critically evaluate a study's overall validity and reliability.[430] As indicated in chapter 1, investigation of the subsidiary research questions for the study was divided between an online questionnaire[431] and a series of elite interviews.[432]

4.2.1 Sampling

[425] Richard H Hycner, 'Some Guidelines for the Phenomenological Analysis of Interview Data' (1985) 8 Human Studies 279, 279.
[426] Joseph Ponterotto, 'Qualitative Research Methods: The Fifth Force in Psychology' (2002) 30 The Counseling Psychologist 394.
[427] Steinar Kvale, *Doing Interviews* (SAGE 2007) 51.
[428] Harriet Zuckerman, 'Interviewing an Ultra-Elite' (1972) 36 Public Opinion Quarterly 159.
[429] Kathy Charmaz, 'Premises, Principles, and Practices in Qualitative Research: Revisiting the Foundations' (2004) 14 Qualitative Health Research 976.
[430] John W Creswell, *Educational Research: Planning, Conducting, and Evaluating Quantitative and Qualitative Research* (Merrill 2008).
[431] See Appendix 2, 3 and 4.
[432] See Appendix 5, 6 and 7.

The sample frame comprised legal professionals who were studying, practising or teaching in England and Wales (including academics), and who had come across 'Islamic Law' as part of their work or practice in any context. Purposive non-probability sampling[433] was most suitable for this type of investigation[434] as it required excluding some individual and certain sectors of legal professionals and specifically including others on the basis that they were involved with 'Islamic Law' in England and Wales at a senior level.

There were seven respondents in each investigation, each of whom was 'information rich'[435] and able to provide a high level of information about the phenomenon both from their own experience and that of colleagues and others in the field. Many of them were heads of Law departments and practice areas in magic circle City firms. Those in academia had designed 'Islamic Law' curricula around the world and also had qualifications in legal practice such as being a solicitor or barrister. Qualitative phenomenological studies by their very nature require investigation into a small number of respondents to find patterns of meanings,[436] rather than a large-scale investigation with statistical analysis reducing experiences to narrow meanings.[437] The questionnaire was targeted at those with a specific professional background and knowledge/experience. The interviews were elite,[438] where there was a 'desire to maximize response validity.'[439] The pool of possible elite respondents although limited, was suitable as it was sufficient to generate 'thick descriptions' and for the data collection to be saturated. The extensive knowledge, experience and background of the respondents resulted in the data collected being of high quality and rich, justifying the size of the sample of solicitors, barristers and academics.

To gain access, websites as well as gatekeepers[440] known to the researcher were used to identify potential respondents who met the selection criteria for the questionnaire and the interviews. Snowballing, a technique which is 'participant driven'[441]was also used

[433] William Gemmell Cochran, *Sampling Techniques* (3rd ed., Wiley 1977) 9.
[434] Charles Teddlie and Fen Yu, 'Mixed Methods Sampling: A Typology with Examples' (2008) 1 Journal of Mixed Methods Research 77 77.
[435] Michael Quinn Patton, *Qualitative Evaluation and Research Methods* (SAGE 1990) 169.
[436] Creswell (n 412) 15.
[437] Creswell (n 412) 8.
[438] Zuckerman (n 428); William S Harvey, 'Strategies for Conducting Elite Interviews' (2011) 11 Qualitative Research 431.
[439] Aberbach and Rockman (n 31) 675.
[440] Paul Lavrakas (ed), 'Gatekeeper', *Encyclopedia of Survey Research Methods* (SAGE 2008).
[441] Douglas Heckathorn, 'Respondent-Driven Sampling: A New Approach to the Study of Hidden Populations' (1997) 44 Social Problems 174.

for the questionnaire, as the researcher utilised personal or 'reputational contacts'[442] in order to successfully meet other credible, powerful and wiling respondents.[443] Gatekeepers and snowballing were not used for the interviews, as the respondents had already been identified, although a number of respondents did recommend others for interview. After research into their background, experience of 'Islamic Law' either in academia or legal practice or both, and being at the forefront of their respective fields, which were the selection criteria, the researcher contacted these potential respondents through email, giving a brief background about the researcher and nature of the interview.

4.2.2 Analysing Existing Documents and Data

Existing data and documents were a valuable source of information throughout the investigation and helped form some of the basis for interrogation as part of the questionnaire and interviews, as well as informing the background analysis at section 2.5. Langlois and Seignobos state that 'documents are the traces which have been left by the thoughts and actions of men of former times'[444] and it is only through such documents that we can ascertain what already exists in regard to the phenomenon.[445] For evidence found through existing documents to be credible, it must be authentic in its origin, credible and free from distortion, representative or typical and with a clear comprehensible meaning.[446] Consequently, the search strategy was confined to publicly available, non-technical material.

Data and documents available through public records online, law firm websites, university websites and publications were used to design the questionnaire and interviews as well as to inform chapters 2 and 3 of this thesis. Public records[447] such as the Census 2011[448] and the British and Irish Legal Information Institute[449] databases were used to obtain information in regard to the breadth of legal practice affected by

[442] Karen Farquharson, 'A Different Kind of Snowball: Identifying Key Policymakers' (2005) 8 International Journal of Social Research Methodology 345.
[443] Chaim Noy, 'Sampling Knowledge: The Hermeneutics of Snowball Sampling in Qualitative Research' (2008) 11 International Journal of Social Research Methodology 327.
[444] Charles Victor Langlois, Charles Seignobos and George Godfrey Berry, Introduction to the Study of History (London, Duckworth; New York, H Holt & Co 1912).
[445] Creswell (n 430) 231.
[446] John Scott, A Matter of Record: Documentary Sources in Social Research (Polity 1990) 7.
[447] Searchsystems.net United Kingdom Public Records, 'United Kingdom Public Records' <http://publicrecords.searchsystems.net/Other_Nations/Europe_Free_Public_Records/United_Kingdom_Public_Records/> accessed 29 May 2017.
[448] Office for National Statistics (ONS) (n 48).
[449] BAILII, BAILII, 'British and Irish Legal Information Institute' <http://www.bailii.org> accessed 18 January 2019.

'Islamic Law', the needs of British Muslims in England and Wales and the legal needs of those working with them.

4.3.3 Questionnaire

Questionnaires[450] are regarded by Oppenheim as 'essentially a measurement tool',[451] as they allow the respondents to share their experiences in a reliable and valid form. This can then be used to actively investigate the phenomenon, to meet the aims of the study and to gather 'information necessary for action.'[452] The researcher acknowledged that there were risks in the questionnaire, in, for example, its design, the style of questions (especially if they were viewed as leading), the responses[453] and whether enough data would be elicited and in the interpretation of data, so as to draw accurate conclusions from it.[454] Merleau-Ponty is right to argue that[455] total reduction of risk and bias is an impossibility. Kvale, using the term 'phenomenological reduction' instead of 'bracketing', as discussed at section 4.1 states that 'phenomenological reduction does not involve an absence of presuppositions, but a consciousness of one's own presuppositions'.[456] The fact that the questionnaire was administered online with minimal personal contact between the researcher and the respondents also assisted in the mitigation of power differentials.

In this study, it was vital to design the questionnaire so that it was applicable to all types of legal professionals included in the sample. A copy of the final questionnaire appears in Appendix 4. The online questionnaire[457] started with simple factual background questions about the respondent to allow them to become comfortable to express themselves freely, and where possible, they were assisted with different options for their responses, to minimise the amount they would have to write and speed up the completion of the survey. Tables were also used for responses, as an efficient way of collecting a large sample of data at once, which was not burdensome on the respondent. The questionnaire included a range of closed questions as well as open-ended

[450] See Appendices 2, 3 and 4.
[451] AN Oppenheim, *Questionnaire Design, Interviewing, and Attitude Measurement* ([2nd ed]., Continuum 1992) 10.
[452] Oppenheim (n 30) 12.
[453] Pere J Ferrando, Urbano Lorenzo-Seva and Eliseo Chico, 'A General Factor-Analytic Procedure for Assessing Response Bias in Questionnaire Measures' (2009) 16 Structural Equation Modeling: A Multidisciplinary Journal 364.
[454] Sudman Seymour and Norman Bradbury, *Asking Questions: [A Practical Guide to Questionnaire Design]* (Jossey-Bass 1982) 281.
[455] Merleau-Ponty, Landes and Carman (n 417).
[456] Kvale, 'The Qualitative Research Interview' (n 418) 185.
[457] See Appendices 2, 3 and 4.

questions[458] useful for exploration of some of the issues as they enabled respondents to answer as much as possible in their own terms about the phenomenon without restraint.[459] The questions were designed to follow on from one another in a logical sequence and an expandable space was given to allow the respondent to express themselves as broadly as they wished.

There are limitations in using only an online questionnaire informed by material collected from university and law firm websites. For example, although information was available as to where 'Islamic Law' was offered in higher education and where it was practised in some law firms, there was no way of checking if the data was still accurate.[460] Data may also lack depth or detail that would be found if utilising interview methods even though such a method would be costlier and time consuming.[461] Interview methods were, therefore, used in the second stage of investigation to mitigate this. A further limitation of carrying out data collection using a questionnaire is that if a respondent is unsure of the meaning of any question or the type of response required, the researcher is not able to directly assist. This was mitigated to an extent as interviews, as discussed below, followed the questionnaire, with some of the same respondents, who were then able to develop their responses further.

Following ethical approval, as discussed at section 4.3, the questionnaire was piloted to overcome limitations, and to ensure questions were clear and precise. The questionnaire was self-administered electronically as an online web-based questionnaire hosted by an online questionnaire company.[462] Data collected from the questionnaire was mainly text based and recurrent themes and ideas were grouped together. Thematic analysis[463] was used to identify and describe the data and to report patterns. The themes were reviewed in an organised manner in order to generate clear definitions and names for each theme prior to producing a report of analysis of the data. The results of this thematic analysis appear in chapter 5.

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[458] Louis Cohen, Lawrence Manion and Keith Morrison, *Research Methods in Education* (7th ed., Routledge 2011) 392.
[459] Kenneth D Bailey, *Methods of Social Research* (Simon and Schuster 1994) 120.
[460] For example, questions asking such as 'Have you come across any of the following areas/substantive topics in your practice as a Lawyer?' and 'Have you taught or researched any of these topics? If yes, please indicate on which course you have taught the topic or in which context you have researched the topic', were formed from the information gathered online. The options for response given were formulated as a result of the most common areas listed on law firm and university websites.
[461] Oppenheim (n 30).
[462] Bristol Online Survey Tool, 'Bristol Online Survey Tool' (*Bristol Online Survey Tool*) <https://www.onlinesurveys.ac.uk> accessed 18 January 2019.
[463] Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 Qualitative Research in Psychology 77 79.

4.2.4 Interviewing

An interview is an 'interchange of views between two or more people on a topic of mutual interest, with the centrality of human interaction for knowledge production'.[464] The goal of an elite interview is '(1) gathering information from a sample of officials in order to make generalisable claims about all such officials' characteristics or decisions; (2) discovering a particular piece of information or getting hold of a particular document; (3) informing or guiding work that uses other sources of data'.[465]

It has not been possible to trace any other empirical investigations into the meaning of 'Islamic Law' for legal practice and legal education that can be used as benchmarks for comparison of this investigation to support the plausibility of the findings. However, its subjectivity is as a result of its interpretive nature, and it is the interpretive nature that makes the findings directly from the respondents credible.

Kvale's Seven Stage Process

The right structure or design of interview is key to eliciting useful and valuable information. Therefore, Kvale's seven stage process[466] of thematising, designing, interviewing, transcribing, analysing, verifying and reporting was used.

Thematising and Designing

For the first stage of thematising, an interview guide[467] was created that started with more general and open questions, such as the academic background and qualifications of the interviewee, before progressing to more specific questions which built upon the literature review initially conducted and the themes identified from the results of the questionnaire. Questions, for example on whether there was an issue of reconciling secular law and 'Islamic Law' and the use of expert witnesses, were as result of this. As the exploration is that of multiple realities, these open–ended questions were to avoid leading the interviewee into a certain response or belief held by the researcher and allowing all respondents to freely discuss their response.[468] Additionally, given the

[464] Kvale Steinar, *Interviews: An Introduction to Qualitative Research Interviewing* (SAGE 1996) 14.
[465] 'Officials' were not repondents in this study, the term is being used for extrapolation.
Kenneth Goldstein, 'Getting in the Door: Sampling and Completing Elite Interviews' (2002) 35 PS: Political Science & Politics 669, 669.
[466] Kvale, *Doing Interviews* (n 427) 35.
[467] See Appendix 7.
[468] Marilyn Lichtman, *Qualitative Research in Education: A User's Guide* (SAGE 2012) 10.

nature of the sample, 'elites especially – but other highly educated people as well – do not like being put in the straightjacket of close-ended questions. They prefer to articulate their views, explaining why they think what they think'.[469] It was, therefore, theme-orientated as opposed to person-orientated.[470]

The interview guide approach[471] was advantageous as it allowed the researcher to collect the same general areas of information from each interview, but was more directed than an open conversational approach as it allowed freedom and adaptability to get as much information as possible from the interviewee.[472] A semi-structured interview of this kind was most suitable as it is 'neither a free conversation nor a highly structured questionnaire'.[473] It was also suitable for a phenomenographical investigation as it allowed the respondents to detail their experiences about the phenomenon under study, which could then be interpreted to find meanings.[474] The questions were designed and ordered using the funnel technique,[475] going from the general, for example the background of the individual, to the more specific, such as their view on the definition of 'Islamic Law'. Additional clarifying questions were also asked at each stage to elicit more detail. For example, when a respondent stated they undertook a Master's level programme in 'Islamic Law' the researcher sought more detail about the institution and department of study, course outline or specification, and purpose of programme in order to gain an increased understanding of precisely what this example of legal education involved.

Prior to the interviews being conducted, consent forms and information sheets[476] were sent to the respondents. When conducting interviews 'by providing access to what is inside a person's head [it] makes it possible to measure what a person knows, what a person likes or dislikes and what a person thinks'.[477] This is similar to the legal idea that 'the state of a man's mind is as much a fact as the state of his digestion'[478] that being that

[469] Aberbach and Rockman (n 31) 674.
[470] Steinar Kvale and Svend Brinkmann, *InterViews: Learning the Craft of Qualitative Research Interviewing* (SAGE 2009) 174.
[471] Jerry Wellington, *Educational Research: Contemporary Issues and Practical Approaches* (Bloomsbury Publishing 2000) 76.
[472] Carter McNamara, 'General Guidelines for Conducting Interviews' (1999) <https://fye.uconn.edu/wp.../Handout-Tips-for-Conducting-Research-Interviews.docx/> accessed 18 January 2019.
[473] Kvale and Brinkmann (n 470) 174.
[474] Merleau-Ponty, Landes and Carman (n 417).
[475] Kvale, *Doing Interviews* (n 427).
[476] See Appendices 5 and 6.
[477] Bruce W Tuckman, *Conducting Educational Research* (2nd ed., Harcourt Brace Jovanovich 1978).
[478] *Edgington v Fitzmaurice* [1885] 29 Ch. D. 459; [1885] 3 WLUK 27 (Cotton LJ).

a person's opinion can be proven from their experiences and education. So as to mitigate risk, pilot interviews were conducted.

Interviewing

Seven hour-long interviews were conducted, all via online audio or video calling on 'Skype' using the researcher's laptop. This had the advantage of being quicker than travelling to each respondent, and cheaper, safer, more flexible in terms of time, enabling access to a diverse range of respondents in different global locations and reducing the effects of the researcher on the respondent. These benefits were balanced with the issue that, often in telephone interviews, the motivation of the participant is lower than in a personal interview.

The conduct of the interview was of the utmost importance. Rapport was essential during the interview[479] and the researcher ensured as much as possible through an active listening approach[480] that the phenomenon of 'Islamic Law' in legal practice was the focus of each interview, as opposed to the will of the researcher or the interviewee.[481] For acquiring the fullest, most accurate disclosure, 'trust is the foundation … In an effective interview, both researcher and respondent feel good, rewarded and satisfied by the process and the outcomes'[482] and this was aimed for from the initial contact with the interviewee through email to after the interview by the researcher trying to be as clear and candid as possible about the study and its purpose. The researcher for example, gave respondents who asked, an outline of what had been done so far, the research questions and background as to how the study had been conducted so far, to enable them to able contribute as fully as possible. Challenges were faced when at times the respondents were multi-tasking and therefore not giving their fullest attention to the researcher.[483]

Transcribing

The next stage was transcription, which is a process of 'construction' as opposed to writing down everything said[484] into a meaningful story.[485] As Hammersley puts it, 'we

[479] Colin Dyer, Beginning Research in Psychology: A Practical Guide to Research Methods and Statistics (Wiley 1995) 62.
[480] Natasha Mauthner and Andrea Doucet, 'Reflections on a Voice-Centred Relational Method: Analysing maternal and domestic voices', in Rosalind Edwards and Jane Ribbens (eds), *Feminist Dilemmas in Qualitative Research: Public Knowledge and Private Lives* (SAGE 1998) 127.
[481] Gadamer (n 417).
[482] Corrine Glesne and Alan Peshkin, *Becoming Qualitative Researchers: An Introduction* (Longman 1992) 87.
[483] Roger W Shuy, 'In-Person versus Telephone Interviewing' in Holstein J and Gubrium J *Inside Interviewing: New Lenses, New Concerns* (SAGE 2003), 179–182.
[484] Elliot G Mishler, 'Representing Discourse: The Rhetoric of Transcription' (1991) 1 Journal of Narrative and Life History 255.
[485] Carolyn Ellis, *Final Negotiations: A Story of Love, and Chronic Illness* (Temple University Press 1995) 303.

have to interpret the words and in doing so should draw on our experience';[486] whilst simultaneously representing the interviewee's views as closely as possible'.[487] This is often referred to as a 'crisis of representation'.[488] The researcher utilised 'Transcribe.com'[489] transcription services, due to their terms of confidentiality, experience and accuracy. Bracketing, as discussed at section 4.1, was required as transcribing is not without risks. A transcript can become an opaque screen between the researcher and the original interview; words may lose meaning from the original context and be interpreted and reinterpreted in many ways outside the meaning intended by the respondent, therefore the audio recordings were used to mitigate this by checking the audio for the meaning of any unclear responses from the transcripts.[490] Specific instructions were also given to transcriber as that they should record pauses, and that errors of grammar should be left untouched.

Analysing

Thematic analysis[491] of the data was conducted. The data was processed using NVivo,[492] because it facilitated the analysis of the interview transcripts in an efficient and organised manner within the time constraints imposed. To reduce the subjectivity of analysing the interview data, and to reduce any unintended distortion of the analysis of data, a first reading of the interview transcripts was carried out to ascertain 'an overall sense of feel for the data' prior to the reading for accuracy referred to above.[493] Coding was then carried out, as the transcripts were entered into NVivo, each having been given an identifying number, and were then manually coded. Coding was initially undertaken by reference to the list of start codes formed from the themes[494] as a result of the questionnaire data.

[486] Martyn Hammersley, 'Transcription of Speech' in Sara Delamont (ed), *Handbook of qualitative research in education* (Edward Elgar 2012) 442.
[487] Lincoln and Guba (n 414).
[488] Norman K Denzin and Yvonna S Lincoln, *Handbook of Qualitative Research* (SAGE 1994) 582.
[489] Transcribe.com, Transcribe.com, 'Transcription Services | Transcribe.Com' <https://www.transcribe.com/> accessed 18 January 2019.
[490] Mishler (n 484); Martyn Hammersley, 'Reproducing or Constructing? Some Questions about Transcription in Social Research' (2010) 10 Qualitative Research 553.
[491] Braun and Clarke (n 463).
[492] QSR International Pty Ltd, 'NVivo: The #1 Software For Qualitative Data Analysis' <http://www.qsrinternational.com/nvivo/nvivo-products> accessed 18 January 2019.
[493] Jerry Wellington, *Educational Research: Contemporary Issues and Practical Approaches* (Bloomsbury Publishing 2015) 135.
[494] See Appendix 10

Although this was not a pure grounded theory[495] project, Strauss and Corbin's[496] guidelines in analysing interview data were closely followed by the researcher, noting patterns and themes, making metaphors to bring data to life. For example, the word 'translation' was used by many respondents to mean the understanding and mediating between 'Islamic Law' and English law and finding the best fit for the client under English law, but that also met their 'Islamic Law' values (see section 5.1). The researcher was also alert to new codes emerging from the data from the interviews.[497]

Giorgi[498] and Van Kaam's[499] open approaches to the analysis of material of phenomenological studies such as this was followed for example by reading each individual transcript and finding themes, before comparing against other transcripts and linking together any recurring themes or ideas. The interpretivist and phenomenological approaches discussed at section 4.1 mean that any analysis has to be done looking at the context of the respondent and their experiences which may have shaped their viewpoint, for example, looking at their professional experience and education. An example of this appears in the discussion at section 5.1 of the meaning of 'Islamic Law'. Therefore, from the data obtained from the interviews, the similarities and differences between responses from the respondents and the data obtained from the questionnaire had to be compared. An example of this is at section 5.3. This was essential for the researcher to understand the true meaning, value and context of 'Islamic Law' in legal practice and to propose a framework for future provision of 'Islamic Law' in legal education.

Verifying

To ensure accuracy and usefulness of data, verification and validation must be done at all stages of data collection.[500] Verification is the process of checking data is correct, and validation is that it meets the meaning intended by the interviewee. Without this, the investigation will not be ethically defensible and hold little credibility. If it is not possible to do this with a respondent after the event, an assumption has to be made as to the meaning, in light of the other responses given by that respondent. If this cannot be done, the data cannot be utilised fully. In this case, this was done as minimally as possible, and

[495] Anselm L Strauss and Juliet M Corbin, *Basics of Qualitative Research : Techniques and Procedures for Developing Grounded Theory* (2nd ed., SAGE 1998); Cathy Urquhart, *Grounded Theory for Qualitative Research: A Practical Guide* (SAGE 2012).
[496] Strauss and Corbin (n 495).
[497] See Appendix 10.
[498] Amedeo Giorgi, 'An Application of Phenomenological Method in Psychology' (1975) 2 Duquesne Studies in Phenomenological Psychology 82.
[499] Adrian L Van Kaam, 'Phenomenal Analysis: Exemplified by a Study of the Experience of "Really Feeling Understood."' (1959) 15 Journal of Individual Psychology 66.
[500] Steinar (n 464) 237.

the original transcript and audio interview was referred to, to understand the full context around any response. To alleviate any concerns about misinterpretation of data at the analysis stage, when data was coded, the original interview transcript was also checked to see where the data had come from to ensure it was being coded correctly. For example, specific coding was used to differentiate between academic and practice-based respondents to help understand the background to their responses. Additionally, the transcript was checked to ensure the wider context of the data was being correctly interpreted by checking where the data had appeared in the discussion. The researcher also read the transcripts multiple times over a course of time, and checked that the audio matched the transcript and context, to ensure the meaning was appropriate to the context. As McCormack says, 'Looking through the multiple lenses of active listening, narrative processes, language, context, and moments provides this multiplicity of perspectives'[501] and this makes the investigation as reliable as possible.

Reporting

The final stage was reporting the data obtained. The results of the analysis stage are reported in chapter 5.

4.3 Ethical Considerations

'Ethics should be at the forefront of every researcher's agenda',[502] therefore ethical approval was obtained on 21 October 2016 from the Professional Doctorate Research Ethics Committee, following Nottingham Trent University's[503] Research Ethics Policy and Code of Practice for Research and adopting the research ethics guidelines of the British Educational Research Association (BERA).[504] These advise the researcher to consider ethics at every stage of research such as this. Ethical considerations in regard to the rights and values of the subjects involved as well as the researcher themselves are key to producing research that is credible, honest, reliable and as unbiased as possible. Consideration of ethics and reflexivity was, therefore, given throughout, from the outset of the study and pervasively whilst completing each section of the study. As Brinkmann

[501] Coralie Mccormack, 'From Interview Transcript to Interpretive Story: Part 1—Viewing the Transcript through Multiple Lenses' (2000) 12 Field Methods 282, 295.
[502] Sharlene Nagy Hesse-Biber, *The Practice of Qualitative Research* (SAGE 2006).
[503] Nottingham Trent University, 'Nottingham Trent University- Research Integrity' (Nottingham Trent University Website) <https://www.ntu.ac.uk/research/research_at_ntu/research_integrity/index.html> accessed 15 June 2016.
[504] British Education Research Association, 'Ethical Guidelines for Educational Research 2011 | BERA' 4 <https://www.bera.ac.uk/researchers-resources/publications/ethical-guidelines-for-educational-research-2011> accessed 18 January 2019.

and Kvale suggest, 'with the close personal interaction of qualitative interviews, and the potentially powerful knowledge produced, ethics becomes as important as methodology in interview research'[505] and this was therefore woven throughout the investigation.

From the practical perspective, the investigation was conducted with an 'ethic of respect for the participant'.[506] This required the researcher, an insider to the phenomenon, to act with integrity and honesty towards the respondents and portray an accurate reflection of their views without imposing her assumptions onto the respondent or into the analysis of responses. As 'no research is free of the biases, assumptions, and personality of the researcher and we cannot separate self from those activities in which we are intimately involved' ethics remained at the forefront with bracketing to aid this.[507] Bias from the perspective of the respondent is largely unavoidable[508] and requires close management to minimise errors. This minimisation of errors, was done as much as possible throughout the investigations, by the researcher asking follow up questions on any areas where errors may have potentially appeared and by examining the reasoning for responses by examining the respondent's educational and professional background. Social desirability bias existed where 'respondents like to appear to be other than they are … because respondents want to manage the impression that they are giving of themselves in terms of social responsibility, or … because they believe themselves to be other than they are.'[509] This was a consideration as the respondents shared in the questionnaire and interview their personal and professional experiences as well as their reflections on 'Islamic Law' in legal practice. This was overcome by comparing respondent's answers to certain questions to get an overall view, rather than just an individual view, and to explore the similarities and differences in responses.

The online questionnaire included an information sheet[510] and consent form[511] on its first two pages. The information sheet outlined the purpose and background of the research, the need for the questionnaire and the consequences of participating in it. It also outlined the responses to commonly asked questions such as how the information provided would be used, whether the respondents would be identified and the option to

[505] Svend Brinkmann and Steinar Kvale, 'Confront The Ethics of Qualitative Research' (2005) 18 Journal of Constructivist Psychology 157, 157.
[506] British Education Research Association (n 504) 5.
[507] Wendy Sword, 'Accounting for Presence of Self: Reflections on Doing Qualitative Research' (1999) 9 Qualitative health research 270.277.
[508] Oppenheim (n 30) 90.
[509] Ian Brace, *Questionnaire Design: How to Plan, Structure and Write Survey Material for Effective Market Research* (2nd ed., Kogan Page 2008) 195.
[510] See Appendix 2.
[511] See Appendix 3.

withdraw participation at any time. The consent form outlined confirmation and understanding of the information sheet with a reminder that participation would be anonymous and voluntary. Respondents were asked at the end of the questionnaire if they would permit the researcher to contact them for further information in a follow up interview and if so, to provide an email address and telephone number. This was optional for those who wished to assist, and names were not asked for in order to retain a level of anonymity. Informed consent, namely 'the procedures in which individuals choose whether to participate in an investigation after being informed of the facts that would likely influence their decisions',[512] was at the forefront of the investigation, and all consent forms were requested to be returned to the researcher prior to the start of the interview. All respondents who agreed to participate after the initial email sent back a completed consent form.

Whilst the questionnaire and interview questions were not private in nature, the researcher was aware that any questions 'will always be an intrusion into the life of the respondent'.[513] Therefore, privacy, which can be affected by the sensitivity of the information given, the setting observed, and the dissemination of information as well as confidentiality and anonymity[514] were at the forefront of the researcher's approach. Confidentiality meant that the researcher kept the data securely and did not release it to anyone else except for the purposes set out in the consent forms. Confidentiality also had to be balanced with reporting of the data and the analysis, and this was achieved by anonymising the names of any institutions, projects or key identifiers, which would lead to respondents being identified.

The analysis and findings of the empirical investigation which was underpinned by these ethical considerations, is considered below in chapter 5.

[512] Edward Diener and Rick Crandall, *Ethics in Social and Behavioral Research* (University of Chicago Press 1978) 57. 57.
[513] Cohen, Manion and Morrison (n 458) 377.
[514] Diener and Crandall (n 512).

5 Analysis and Findings

'Knowing reality means constructing systems of transformations that correspond, more or less adequately, to reality'.[515]

Jean Piaget

The analysis of the findings from the initial literature review[516] to date, are set out below, under the heading of the four research sub-questions investigated in this study as detailed in chapter 1. Although the sub-question at 5.2 was investigated prior to the sub-question at 5.1, it has been examined first below due its underlying importance to the whole study. The themes that emerged in the analysis stage are indicated by subheadings in italics in this chapter. A full list of themes appear in Appendix 10.

5.1 What is the meaning of 'Islamic Law' in the context of legal practice?

The literature, as identified at section 3.1, has consistently shown the meaning of 'Islamic Law' to be nuanced, although with certain commonalities, such as being divine law and originating from the Qur'an and Sunnah. Fiqh and Shari'ah have been treated as being within the definition of 'Islamic Law', or as terms to use instead of 'Islamic Law'. As indicated at section 2.5, the tendency in common law legal education has been to treat the term either as a historical, cultural or theological topic outside the "law" curriculum altogether. Alternatively, it has been treated as a theoretical or comparative law topic or in the context of the human right of freedom to practise one's religion, with the exception of Islamic Finance modules. However, when exploring the term with respondents, with the aim of establishing a clear definition or meaning for the purposes of legal practice, they placed a clear emphasis on the need to view 'Islamic Law' from a non-Western perspective, and from the perspective of what people do when referring to it. Similarities were also found between English law and 'Islamic Law', both within the literature at section 3.1.4 and within the findings below, where the themes are shown in the same sequence of generic to more specific, as at section 3.1.

'Islamic Law' is difficult to define leading to misconceptions

Many respondents in the questionnaire and interviews stated that a definition of the term was difficult to state, as the term was "*controversial", and "as Orientalist and … misleading".* This is consistent with the literature, as reviewed in chapter 3. It was also said that "*it's a lot of different*

[515] Jean Piaget, *Genetic Epistemology* (Norton & Norton 1970) 15.
[516] Document 2.

things to a lot of different people". It was defined as a way of life, law and ethics, being divine from the Qur'an and Sunnah or as *"pure law, or the classical, which is the Quran and the Sunnah*". It was also defined as rules issued by Islamic governments or "*the formal processes adopted by certain Muslim-majority countries*", and as not one body, but a vast area, requiring the understanding of different concepts and opinions, which can lead to misconceptions. This links to the theme of 'Islamic Law' as foreign law (see section 2.2-2.5). Even those who agreed misconceptions existed, at times referred to 'Shari'ah law' and 'Islamic Law' as one and the same.

An element of translation involved in moving between 'Islamic Law' and English law was said to have caused these misconceptions. 'Islamic Law' was seen to be mis-defined or carelessly defined by some, leading to misconceptions about it and misunderstandings in the public about it, whether Muslim or non-Muslim. As one respondent stated: "*It is just a different legal system, one that finds it difficult to deliver a final view, a single final view on any issue, because of the way it's built up, especially in an age when, you know, the authority of the scholars is not as organized as it once was in the madhhab*". The background of respondents was found to affect the meaning of 'Islamic Law'. For example, knowledge gained from an 'Islamic Law' course as part of a religious studies programme would differ from knowledge gained on a training course for Islamic Finance. This supports the notion that, if the majority of 'Islamic Law' courses are theologically or historically based, as found at section 2.5, then the need for the meaning or understanding of ''Islamic Law' for legal practice' becomes more compelling because it has an impact on the definition of 'Islamic Law' itself.

'Islamic Law' as divine law from the Qur'an and Sunnah

Consistent with the data at section 3.1, this theme emerged in the data obtained from the questionnaire as well as from the interviews. For example, when asked for a definition of 'Islamic Law', respondents stated "*it is a legal pathway from birth to death which keeps the believer within the parameters of the mercy of God and away from the anger of God"; "I understand the word Islamic law as an approximation of the concept of fiqh. I understand fiqh as Muslims' attempt to live according to the Sharia in their day-to-day lives";* and *"Islamic law is the body of principles stemming from the Qur'an and narrations of Prophet Muhammad and his companions and/or family".* Despite this being the most common meaning, further meanings were also found in the data obtained.

'Islamic Law' as foreign law

The term was seen as 'foreign law' by some respondents, who treated 'Islamic Law' as applicable to Muslim countries, and as 'other'. One stated "*It is a set of laws used in some other countries which have a Muslim majority population so would be relevant in the UK only as a choice of law clause in a contract".* This response demonstrates a lack of awareness and understanding, highlighted earlier at section 2.3, of the significance of 'Islamic Law' within England and Wales. This respondent chose this answer from a multiple choice set of responses but, later in their responses discussed how 'Islamic Law' was relevant to England and Wales due to the increasing Muslim population, and how there was an increasing client need in the area from a domestic level. This particular individual has not practised in England and Wales recently and this could also be a reason for their first response. This links to the discussion at section 2.2, where at times 'Islamic Law' is legitimately treated as a 'foreign' law in conflict of laws cases.

'Islamic Law' as practice

Another respondent stated 'Islamic Law' was also a set of rules that applied to personal conduct: "*It applies to Muslim ritual practice, such as prayer and the paying of zakat, their interactions with one another"* not just as a regulation of a state. 'Islamic Law' was also shown to be a hybrid of subject matters "*Islamic law is the body of principles stemming from the Qur'an and narrations of Prophet Muhammad and his companions and/or family. They are not strictly legal and are a mixture of ethical and spiritual injunctions pertaining to this life and the hereafter".* This theme aligned with the findings in the literature review that 'Islamic Law' applied to the day to day life of a Muslim and their conduct, as well as to legal practice.

'Islamic Law' has varied meanings in legal practice

The interviews built on the definition of 'Islamic Law' in legal practice and further demonstrated that the meaning of the term in that context is varied. It incorporates a range of concepts, with both cultural and religious elements, due to the demographics of England and Wales and the extensive client needs in the area. The themes emerging from the literature review (at section 2.3) and the questionnaire,[517] were also present in the data from the interviews. The areas of legal practice from the interviews involving 'Islamic Law', which again help define the area, included, *"construction and engineering", "public international law", "Islamic law of succession", "ethnic minorities and the law", "faith based schooling "halal food", "sexual issues", "arbitration", "immigration", "corporate law", "where Islamic law is relevant to*

[517] See Appendix 10.

English practice", and *"inheritance issues with foreign clients".* 'Islamic Law' was seen to impact different areas of law in different ways, and what it means and how it is defined differed depending on the different legal, business or personal contexts. For example, in the area of Family Law, custom or cultural pluralism was seen to be more prevalent than in an area such as Islamic Finance, where 'Islamic Law' was more of a positivist law.

'Islamic Law' is a historical term and derivative of Fiqh and Shari'ah

'Islamic Law' was also viewed as a term developed historically, and identified as being a derivative of Fiqh or legal theory with its applicability dependent upon the situation and legal framework of the country in which it is being applied. A respondent stated *"I understand the word Islamic law as an approximation of the concept of fiqh. I understand fiqh as Muslims' attempt to live according to the Sharia in their day-to-day lives. As a result, fiqh is fallible and changes according to time, place, and context".* There was additional consensus that the meaning of 'Islamic Law' for legal practice should also include Fiqh or legal theory. For example, "*Why is fiqh little studied? It is applied today only in a handful of countries. But its relevance to understanding all aspects of Islamic law throughout its history -- even in the favoured fields just mentioned -- is far-reaching*". This theme emerged as a result of many of the respondents stating that 'Islamic Law' could not be studied alone without its background being studied, otherwise it led to misconceptions and incorrect interpretations of 'Islamic Law'. The meaning of 'Islamic Law' was also developed through areas of legal practice by legal professionals, and the incidents they had dealt with in regard to this phenomenon, as discussed earlier. From the interviews, 'Islamic Law' was seen as incorporating Shari'ah and Fiqh, but the two needed to be differentiated:

> *You have to distinguish immediately between sharia and fiqh…the sharia being, you know, an ideal, revelation, that a divine law laid down in revelation…through ijtihad you end up with fiqh, which is a bunch of hukm that come from the scholars…the fiqh is what we find in the books of Islamic law, the jurisprudence of Islamic law*.

'Islamic Law' as a Western Model

Due to the issue of 'Islamic Law' originating in the Arabic language, the theme from the literature and questionnaire, that there was a Western model of 'Islamic Law' which may not be how the Muslim world defines 'Islamic Law', also emerged in the interviews. One respondent succinctly put it that "*through our teaching we are creating a Western Islamic law*

… whether we want it or not because of the translation constraint we are actually creating a form of Western Islamic law".

'Islamic Law' as a way of life, a positivist law, leading to cultural and legal pluralism

Although the meaning of 'Islamic Law' from the questionnaire and interviews varied between respondents, certain commonalities present in the literature were also present in the responses. One was that it is a positivist law, but more authoritative than man-made law, recognising therefore the cultural pluralism already present. One respondent stated:

> *It is not a man-made law. It is a revelation from Allah. It is guided principles as set out by Prophet Muhammad PBUH. It is relevant anywhere in the world. It is imposed on Muslim. It protects the rights of non-Muslim. It governs our daily life as a means to achieve al-Falah (success) as our ultimate vision.*

It was, therefore, also largely agreed that 'Islamic Law' was applicable to, and could not be separated from, Muslims in their daily lives anywhere in the world including England and Wales. This was also shown at section 2.1, thereby demonstrating the presence of cultural pluralism discussed at section 3.2, and in this case the resulting emergence of legal pluralism as discussed at section 3.2. It was also shown as intersecting with national law for individuals, for example in the case of marriage contracts or inheritance issues, and intersecting with national law generally. Respondents stated this:

> *means that some Muslims would wish to have marriage contracts, wills, divorce and so on conducted in accordance with the norms of fiqh, which will likely vary on the basis of the legal school they follow (Hanafi, Maliki etc.) or the norms followed in a majority Muslim country they emigrated from (Pakistan, Bangladesh etc.).*

This links to 'Islamic Law' being seen as a foreign law as discussed earlier in this section and at sections 2.2-2.5.

'Islamic Law' was also seen as a positivist law in its nature. One respondent summed this recurring theme up by stating, *"the basic problem is that Islamic law is a textualist enterprise. Non-textual factors like custom, the subject of the law and an experiential understanding of the law are not fully accounted".* This linked again to the increasing need to recognise legal pluralism within the jurisdiction, as previously discussed. Another respondent stated that a

level of pluralism existed where they had *"never faced any difficulty. There is always a solution to integrate Shariah principles in an English law transaction. Have been difficulties in other jurisdictions; these are often civil law systems."* This demonstrates the existence of 'actual pluralism' and even 'beyond pluralism'.

Overall, in consideration of the above, it is difficult to prescribe what 'Islamic Law' is as a whole. The respondents, many of whom are experts in the field, were shown to be reluctant or unable to give a clear definition or meaning. This therefore has an implication for the teaching of 'Islamic Law' for legal practice, meaning there may not be one set model that fits all circumstances and that a new model may need to be defined or articulated, as found at the end of this section. One respondent posed a solution:

> *Islamic law in a broad and rather rough sense, but it's something I always advise students and others to be very careful about and to be very aware of the minefield of problems that it is, that are associated with its use. I use the term, I use different terms in different contexts, and to different audiences to — less well-informed audiences*.

Respondents with experience in the area incorporated within 'Islamic Law' origins from the Qur'an and Sunnah and concepts of Shari'ah, Fiqh with a separation of Usul Al-Fiqh and Furu' Al-Fiqh, Siyasa and others. A respondent stated:

> *You need to comprehend the-the writings of the scholars throughout the ages on siyasa sharia…a third component [in addition to the Qur'an and Sunnah] … Now, if you have a grasp of those three, you might be able to talk about the English term "Islamic law" in any kind of meaningful way*.

Despite the difficulties in settling on a definitive concept due to the features of 'Islamic Law', certain commonalities, discussed briefly above, did appear in the data when seeking a meaning that could be used in legal practice (by contrast with an academic or theological perspective).

For the purposes of legal professionals practising in England and Wales ''Islamic Law' for legal practice' can be understood to be a non monolithic term with a range of meanings, the sources of which, although they originate in the Arabic language, are terms for which there is no true equivalent in the Arabic language. It is a positivist non-man-made divine law,

originating from the Qur'an and Sunnah. It can be divided into acts of worship/personal transactions (Ibadat) or legal transactions/exchanges (Mu'amalat). It encompasses Fiqh (Islamic Jurisprudence) and Shari'ah (revealed law and practical rulings) and applies to the day to day life and practice of a Muslim. It is applicable to Muslims living in England and Wales in a domestic context as a result. It can also be defined as a law of a Muslim country or as a 'foreign' law in legal practice. It carries within it multiple schools of thought, therefore a ruling under 'Islamic Law' for one individual in England and Wales may not be the same as for another. The meaning of the term can differ in accordance with the area of legal practice with which it interacts, and the circumstances. For legal professionals therefore, it is important to be able to mediate between, or reconcile, those different meanings as well as between 'Islamic Law' and domestic secular law in order to take practical steps to address the needs of clients.

The consequences of this are that the teaching of 'Islamic Law' should incorporate as many direct sources of 'Islamic Law' as possible. This is to avoid the translation constraint where viable.[518] It would also mean that in order for true understanding of the subject to be gained, which can then be utilised for legal practice, the subject is not treated from a perspective where the Western model of law is seen as correct or paramount. A true understanding of the subject would also require understanding of the background and context of 'Islamic Law' and the level of legal and cultural pluralism that exists as stated in the literature and by respondents in the questionnaire and interviews.

5.2 Is there a need for knowledge of 'Islamic Law' by legal professionals in England and Wales for the purposes of legal practice?

This research sub-question was investigated mainly by the questionnaire. A number of themes emerged that were impacted by the different understandings of what 'Islamic Law' is. The need for knowledge of 'Islamic Law' was seen to arise from a client need in 'Islamic Law' in a wide breadth of legal practice areas. This need for knowledge was currently seen to be only partially met, if at all. The lack of basic understanding of Islamic principles in some areas by legal professionals, as indicated by the data, did not allow them to make decisions due to lack of knowledge in the area, or to give advice without reliance on experts in order to meet the needs

[518] Knowledge of 'Islamic Law' may be required by Muslim and non-Muslim practitioners in England and Wales. As the sources of 'Islamic Law' originate in the Arabic language, and due to the complexity of the subject, the use of classical Fiqh interpretations is also suggested to provide credible, reliable and efficient access to the subject area, as opposed to each individual practitioner always having to interpret original sources, when they may not always possess the skills and knowledge to do so. This would also provide some elements of uniformity in responses to 'Islamic Law' issues.

of clients, leading to misunderstandings and incorrect interpretations of 'Islamic Law' as well as misconceptions in wider society.

Increasing influence of 'Islamic Law'

The need for knowledge in the area was also a result of the increasing influence and explicit recognition of 'Islamic Law' in England and Wales, as indicated at section 2.2 and 2.3, in areas such as Family Law, Inheritance and Wills, and Human Rights ('actual pluralism',) as well as the absorption of 'Islamic Law' concepts into English law, in areas such as Islamic Finance ('beyond pluralism'). A state of 'faulty pluralism' was also found in areas such as divorce, where Muslim clients requiring an Islamic divorce may have to go both to a 'Shari'ah Council'[519] and to an English court for dissolution of any civil marriage. The interaction was to such an extent that there is support for the idea that 'Sharia Law has come to represent a feasible option to European legal systems'[520] as found in the literature and in the discussion at section 2.3.

Wide ranging needs of clients in 'Islamic Law'

The data from the questionnaire identified the needs of British Muslims to be wide ranging. There was a particular client need for Muslim women, in areas such as Family Law and Inheritance, where, as in the divorce example above, 'Islamic Law' and English law may not provide the same remedy, with many Muslim women being unaware of their rights under both. Respondents referred, in particular, to 'Islamic Law' issues arising in other countries as well as in Islamic Contract Law, Islamic Commercial Law, Islamic Finance, Islamic Wills and Probate, Islamic Family Law, Human Rights, Islamic Jurisprudence, Islamic Arbitration and Islamic Personal Status. Client needs in 'Islamic Law' were identified to have affected students, lawyers, and academics in regard to the types of advice they are asked to provide as experts, clients and judges.

Need to reconcile 'Islamic Law' and English Law

A theme that emerged as a result of the need for knowledge in 'Islamic Law', was a need to reconcile secular law with it. This could be termed as 'faulty pluralism'. This was in addition to the need to balance orthodox views with the views of a client, in addition to attempting to make 'Islamic Law' compatible with English Law. For example, respondents stated that "*superficial and textualist*" responses were not sufficient to meet the needs of the client,[521] and that there

[519] Bowen (n 67).
[520] Riccardi (n 300) 86.
[521] This links to later responses received that students need to be aware of the basic principles of Islamic jurisprudence and legal theory, as far as they are relevant to Islamic legal practice in England and Wales. They would need to not only know basic principles but, know how the texts or their interpretations may apply to practice to meet the needs of the client. In depth expertise in Islamic jurisprudence and legal theory would not be expected.

was a need to remove "*assumptions stem from many students' lack of religious literacy and growing up in a non-religious society"* in order to reconcile English law and 'Islamic Law'. A respondent went further to say:

> *I think students, and the public more broadly, have deeply entrenched assumptions about Islamic law: that it is fixed, authoritarian, and draconian, and always has been…This assumption can be deconstructed through teaching them about the vibrancy and history of fiqh as it has changed over time - but it depends upon students' own ability to learn and willingness to question their own assumptions.*

Need for expertise in 'Islamic Law' gives rise to need for knowledge in 'Islamic Law'

Respondents who worked in academia, acknowledged having to act as expert witnesses (see section 2.3), consultants and authors on 'Islamic Law'. The meeting of client needs, by acting in these roles, was identified as being partial or none by almost all respondents, demonstrating a need for legal education for solicitors and barristers who may undertake some of these roles. For example, respondents stated that the need for knowledge in the area was not being met "*by those claiming expertise in Islamic law, whether as lawyers or academics*" and that much had been done through unstructured, informal *"experiential learning"* without any formal legal education. The autodidacts discussed the lack of structure and the difficulty in establishing a frame of reference when studying without institutional support. Guided experiential learning that is carefully designed and constructively aligned by way of simulation in the classroom has been identified at section 3.3 of the literature, as key for teaching and learning of 'Islamic Law' for legal practice. The lack of this had led to misunderstandings in the area. This learning through experience, and reliance on opinions by experts who may not have sufficient knowledge in the area (but claim to), was not accurately managed to ensure standardisation and was done on an ad hoc basis without any set benchmarks for verification.

This lack of expertise in the area meant, at the academic level teaching was either not available or lacking in quality if it was, resultantly students often did not know the basics behind a transaction, such as in Islamic Commercial Law or were unable to identify the difference between Fiqh and Shari'ah as discussed at section 3.1.1. A respondent commented *"I explained the distinction between fiqh and Sharia. Students were surprised inasmuch as they were not aware of this distinction."* Additionally, another respondent stated *"students need to learn the principles of Islamic jurisprudence and how it's relevant to Islamic finance"* not just, for example, learn what Islamic Finance is, but its background and practice. The majority of respondents

identified that they had faced problems or issues in 'Islamic Law' and that increased training in the area would have been beneficial. This again links back to weaknesses in current legal education of the area. For example, in the area of Islamic Finance, as it continues to grow, transnational lawyers will inevitably come into contact with the principles guiding Islamic banking and finance',[522] but may not have knowledge in the area.[523] One respondent stated, *"Much needs to be done for there to be a minimum level of understanding of a system of law that is relevant to the lives of so many Muslims in this country".*

Need for training in 'Islamic Law' arising from a need for knowledge in 'Islamic Law'

The issue of a training need in 'Islamic Law' was identified at both undergraduate and postgraduate levels, as a result of an overall need for knowledge in the area. The legal needs of those working in the area was also identified to be ongoing, involving comparative law, where 'Islamic Law' would be treated as 'foreign' and the basics in the practice areas earlier identified in the literature review and above, affecting both Muslims and non-Muslims, for example in the area of Family Law. Consistently with the findings at section 2.5, none of the respondents identified any 'Islamic Law' modules taught at any level specifically for legal practice, yet acknowledged the many problems and issues they had faced in the area might have been resolved more successfully if they had had increased training in the area. The majority of respondents to the questionnaire responded that increased legal education in the area would have benefited them. It would have helped them to reconcile secular law with 'Islamic Law' and remove misconceptions. As one respondent stated, "*legal professionals need a basic working knowledge of the principles of Islamic practice, belief law and how to distinguish between the legitimate and spurious religious claims of Muslim defendants*" and increased legal education in area would have assisted with this.

Overall, there was much support for the need for knowledge in 'Islamic Law' for legal practice in England and Wales. The need was mainly seen to arise from the increasing presence of British Muslims who wish to have legal matters in which they are involved in dealt with in accordance with 'Islamic Law' principles, which thereby requires the legal pluralism discussed at sections 2.1 and 3.2. Legal pluralism was also seen to arise as a result with some degree of 'actual pluralism' in areas such as Family law. The respondents were engaged in a number of different roles across a range of legal practice areas, showing the breath of 'Islamic Law' in legal practice, as discussed at section 2.3, thereby again showing a wide-ranging need for knowledge

[522] Barbara Seniawski, 'Riba Today: Social Equity, the Economy, and Doing Business under Islamic Law' (2001) 39 Columbia Journal of Transnational Law 701, 721.
[523] Michael Zhou, 'Giving Moral Advice in Sharia-Compliant Finance' (2014) 27 Georgetown Journal of Legal Ethics 1021.

in the area. Although some respondents were able to utilise domestic law in England and Wales to create transactions that were compliant with 'Islamic Law' as discussed at section 2.2, ('beyond pluralism'), others found they were having to reconcile 'Islamic Law' and English law, which at some points were contradictory('faulty pluralism'). It was determined that as discussed at section 2.2, knowledge of 'Islamic Law' was required in any event when treating it as a foreign law, or in cross border law transactions.

It can be concluded that the need for knowledge of 'Islamic Law' identified by respondents was such that any religious literacy of those who are Muslims or brought up in England and Wales was not enough to serve the needs of clients in legal practice. Respondents felt that the lack of suitable formal education was addressed in three ways, none of them ideal. First, as discussed above, by informal experiential learning in the workplace. Second, by informal unregulated courses which, respondents felt, often led to further misconceptions and pejorative assumptions. Third by over reliance on expert witnesses (see sections 2.3, 2.5 and chapter 3). Therefore, there was a consensus that there was still some way to go towards bridging the large gap within legal education of 'Islamic Law' for legal practice. This was consistent with literature found earlier on these issues and with the discussion below on how to match legal needs to legal practice.

5.3 How is 'Islamic Law' currently integrated into legal education in England and Wales?

Having identified three ways in which the lack of educational provision was supplemented, respondents also discussed the lack of provision itself. Section 2.5 and chapter 3 demonstrated that the norm in higher education is for 'Islamic Law' to be taught as optional masters level modules; offered by Islamic Studies departments rather than law schools and at the theoretical, 'knows' and 'knows how' level. Such courses also vary in the meaning they attribute to 'Islamic Law', both between universities and even between different departments in the same university. The discussion below analyses the views and experiences of respondents on this topic.

Experience and self-study as the fall-back position

The data from the questionnaire and interviews confirms that there was a lack of training and legal education in 'Islamic Law' to meet the needs of legal practice. Where respondents had obtained any expertise, this had been through their own endeavours through experiential learning either in the workplace or through informal unregulated private study. Although one questionnaire respondent felt that the training contract/pupillage model (see section 2.4)

meant that formal training was not required, the majority of interviewees disagreed and, as shown in the conclusion of 5.2, informal experiential learning in the workplaces was seen as a poor alternative to more structured learning. Some respondents had instead designed their own 'Islamic Law' modules due to being in academia and practice, in order to bridge the gap as the offerings, if any, were "*paltry [and] inadequate".*

Formal offerings theoretical, out of date and weak in scope, quality and criticality

One way in which offerings were inadequate was that current teaching of 'Islamic Law' was found to be too theoretical, as suggested at sections 2.5 and 3.1.1, often taught as an Islamic Studies or from a cultural, historical or theological perspective, and at the 'knows' or 'knows how' level. This "*struggle to engage with the reality*" meant that, even where the subject had been offered, the content required for legal practice was not being studied.

Problems with the teaching of the subject, as noted by respondents, included that many were using out of date syllabi, with varied qualities of academic writing in the subject, which had no set benchmarks in terms of knowledge of 'Islamic Law', no critical evaluation, nor had it been reviewed for accuracy or fitness for purpose. One respondent commented that a colleague was still using "*case law from the 50s in Pakistan*" and that "*many still work with the syllabus that is locked at the beginning of their career*". The breadth of areas encompassing 'Islamic Law' in some way resulted in many areas being hardly covered at all in any part of formal legal education, for example, in Inheritance and Family Law.

However, respondents also raised the new point that there was a lack of jurisprudential focus, meaning education in 'Islamic Law' has been unable to evolve. A respondent commented that "*There is little focus (outside countries where Islamic law applies) on the substance of Islamic law (i.e., fiqh).*" Teaching was also stated by interviewees to lack a practice-related approach. For example, one respondent stated: *"The sort of structure of the legal system that delivers Islamic outcomes…people are entirely ignorant of it. They study Islamic law without being aware of it at al l… that is, sort of, I used to say, it's like studying the software without any knowledge whatsoever of what hardware is going to run it."* This suggests that people may be learning about laws but not learning about the formal processes around those laws, in terms of their context as well as their implementation and enforceability.

Teaching Islamic law as if it was a Western law and comparison with Western law

The issue of legal and cultural pluralism (section 3.2) was raised by respondents, initially in the questionnaire but in more depth in interviews. The comment that "*most subjects are just*

taught as though your English law is being applied by secular Western nonreligious people" was consistent with section 3.1.3. Respondents went beyond this, however, by suggesting that students should be taught about the topic of pluralism itself. Where this involved recognition of cultural pluralism by teaching cultural awareness, it is clearly not confined to law courses. Respondents gave examples of different kinds of legal pluralism, for example, respondents discussed the areas of marriage and divorce, where religious law gives one answer and secular law gives another, a type of 'faulty pluralism' as English law was superior yet 'Islamic Law' existed, leading to 'actual pluralism' in any case where an Islamic marriage is recognised under English law, but where often only secular law was addressed, which could be better addressed in law courses.[524]

A further issue about current teaching of the subject, was that when it was taught, it was said by respondents and through the literature, to require demystifying and should not involve the subject being taught as *"other".* For example, it was suggested that:

> *We convey from the start the religious foundation of the law, that we don't leave out the legal system, and then, even on the other issues, the contemporary issues, we keep alert to the actual Islamic rules, not, you know, not-not — to stay within the, keep the perspective of Islamic law in all those issues, the genuine Islamic law and debates about that genuine Islamic law today, but keep it within that issue, keep it within that perspective.*

This teaching, where the Western perspective was seen as correct and superior, and 'Islamic Law' as other, was also found in the literature at section 3.1 and discussed above in regard to the meaning of 'Islamic Law' at section 5.2.

Reliance on expert witnesses as a fall-back position

These problems with the teaching and learning of the subject had, therefore, led to a lack of knowledge in the area by legal professionals. This lack of knowledge had in turn meant there was an over reliance on expert witnesses (as indicated at section 2.3). The questionnaire data showed that over half the respondents had acted as expert witnesses, confirming the suggestion in the literature that Western courts[525] are not equipped to interpret 'Islamic Law' in the cases before them. They have been relying on expert witnesses to do so, who at times

[524] Cambridge Family Law Practice, 'Jewish Divorce and the English Courts' (*Cambridge Family Law Practice*) <http://www.cflp.co.uk/jewish-divorce-and-the-english-courts/> accessed 18 January 2019.
[525] Peter W Beauchamp, 'Misinterpreted Justice: Problems with the Use of Islamic Legal Experts in US Trial Courts' (2010) 55 NYL Sch. L. Rev. 1097.

offer contradictory views, as discussed earlier above in this chapter, at section 2.3 and in chapter 3, or views not meeting the needs or intention of the parties.[526] To date, there is currently only one expert showing on the UK register of expert witnesses in the area of 'Islamic Law'.[527] This lack of external standards of experts, and erroneous decisions, as confirmed at section 2.3, means neither side has enough knowledge or legal education in the area to meet the needs of the client, with one respondent stating "*some of the experts, so-called experts that I have confronted are appallingly bad at Islamic law, including in the U.K.*", a further consequence being "*... some inaccurate academic literature is repeated ... and it becomes quite difficult to convince people that that is actually wrong, even if it's a very simple mistake*". This issue of poor knowledge and disagreement can also be stated to contribute to the view that 'Islamic Law' is 'other' and difficult or incompatible with English law. This lack of expertise can be said to have led to weaknesses in the current practice in the area, as shown by the interview data.

Lack of overall appropriate expertise in 'Islamic Law'

Lack of scholarship academically in the area and lack of knowledge overall not just as an expert witness, as noted at section 3.1 was attributed by respondents to the gap in legal education of 'Islamic Law' for legal practice. The lack of appropriate legal education in the area means that not only are solicitors and barristers not equipped for practice, but that academics who teach the courses may not be appropriately qualified either. One respondent stated:

> *it's the rare person... I once listed, I think, four or five things that — basic general areas of knowledge one ought to have to be, hold oneself out in the West as any kind of an expert on Islamic law, and it's quite a long list. Very few people accomplish it... that kind of a practical experience on the ground in a Muslim country, talking about these things — that's where most don't, that's what most don't have. But to combine all of these things together, you find non-lawyers who are experts, so-called experts on Islamic law. You find people who know nothing about Islam claiming to know about Islamic law. You find people who've never been in the Muslim world during a period of time claiming to know about Islam...etc, and so — or people who have no interest in Islam as a religion whatsoever who claim to be experts on Islamic law.*

[526] Bowen (n 38).
[527] UK Register of Expert Witnesses, 'List of Every Expert Witness Claiming Expertise in Islamic Law; List of Every Expert Witness Claiming Expertise in Sharia Law.' <https://www.jspubs.com/expert-witness/si/i/islamic-law/> accessed 11 July 2018.

Respondents stated that teaching was dependent on availability of instructors, who even when they were available, often did not have a law background or a practice orientated approach that is required for 'Islamic Law'. This again reflects the findings at sections 2.5, where, even when a module was offered, none were mandatory, and most were at the postgraduate academic level, except one which was at the postgraduate vocational level. This, therefore, left a gap. Further, if an instructor was no longer available, the module ceased to be offered, despite any demand there might be. In agreement with the literature at section 3.1, teaching was said by respondents to be currently 'interpreted by secular lawyers with secular legal training',[528] therefore leading to ad hoc interpretation and misunderstandings in some areas.[529]

The relevance of the Arabic language

This lack of legal education in the area was partly attributed by the data to language issues, as discussed at section 3.1.3. Many experts in the area were unable to translate key sources of 'Islamic Law' from Arabic to English. This issue, arising from the data in regard to legal education, was said to lead to misconceptions in the area, both academically and in areas of public interest, which again would not be corrected due to the lack of legal education overall. For example, one respondent stated that, for legal professionals in the area, "*You know, you need the study of Arabic, of course. You need the study of Islam, and you need the study of Western law. You need the study of, the Fiqh in one form at least, which is a vast subject".* However, another stated that, despite this:

> *There's people teaching Islamic law, and they're experts in Islamic law, and they can't speak Arabic, and I find that really, really annoying … the Arabic is jarring in my ear … somebody is teaching Islamic law and they can't speak Arabic and they've been forward as an expert in Islamic law. What that means, if you can't speak Arabic, you can't read anything directly from its source. You're reading, all the time, interpretation, and, you know, that's a big reason why I think academics of Islamic law in Western universities are just not taken seriously by lay Muslim*s.

Conclusion: 'Islamic Law is currently poorly integrated into legal education

Overall, although one respondent stated the subject was a "*specialist endeavour to study*", 'Islamic Law' in legal education was shown to strongly require improvement to meet the needs

[528] Haider Ala Hamoudi, 'Dream Palaces of Law: Western Constructions of the Muslim Legal World' (Social Science Research Network 2009) SSRN Scholarly Paper ID 2289997 811. <http://papers.ssrn.com/abstract=2289997> accessed 5 April 2015. 811.

[529] Frank E Vogel and Samuel L Hayes, Islamic Law and Finance: Religion, Risk, and Return (BRILL 1998) 132.

of legal practice, in the way it was taught, the topics covered, how it was offered, its frequency and by whom. Although the literature touches on some of these issues briefly, it does not demonstrate how severe the problem is nor its consequences. The general lack of realisation of the importance of the subject by those in education and practice, as well as the public, as found in the literature and data, was again attributed to lack of knowledge. As a respondent said:

> *I find that people will regard it as interesting a-at best, but don't necessarily realize the importance .... it's extremely important for as a-a-a toolbox for them to do, to do the jobs that they'll be doing later on ... and I think that's probably the same with comparative law. I come back — Islamic law, rather. It comes back to, a lack of knowledge, which perpetuates a lack of knowledge.*

Additionally, the implications of cultural pluralism examined above and at section 3.2 lead to a desire for legal pluralism, by recognition of the difference being embedded in the positivist law. Such is the importance of this pluralism (or lack of it) that pluralism now needs to be incorporated into LSET about 'Islamic Law', as it is an issue at the forefront of legal practice involving Muslim clients, and without knowledge of it solicitors and barristers cannot practise competently.

5.4 How can 'Islamic Law' be provided as part of legal education to enable students who then become legal professionals to competently engage in legal practice of it?

The importance of 'Islamic Law' in a domestic context is a pervasive theme in this thesis. Although the focus of this thesis is on practice-related education of 'Islamic Law' which includes as demonstrated by the literature, knowledge of Islamic Legal Theory, Islamic Substantive Law and 'Islamic Law' in practice, the significance of the topic is such that some writers have identified an 'unmet need' for the topic to be part of the academic curriculum in any event, to the extent that 'inclusion … as a compulsory part of a qualifying law degree seems overdue'[530]. This need for education was reinforced by one respondent who saw the UK as particularly ready to take that step:

> *I think we need to understand the U.K. perspective, where you have really a strong and multicultural society, that is struggling to, you know, to succeed…*

[530] Mark Van Hoorebeek and Chris Gale, 'Sharia Law and the Qur'an: Providing Islamic Jurisprudential Modules' (2008) 1 Education, Business and Society: Contemporary Middle Eastern Issues 138, 142.

> *When you go to U.K., it's a vibrant issue. It's being approached in, with good will and genuine interest. So, there I think there is much more prominence to Islam, Islamic law, Shari'ah, Muslims. There are cities of England that are, have substantial populations of Muslims… I can see a greater need in the U.K. for education on this. I know people are far more interested in everything I do in the U.K.*

At which level such a subject should be offered, what should be taught and how, is discussed below at 6.1. The data from the interviews, as discussed in this section, was used to determine this.

A practice-focused approach is needed

The interviews found that the future of legal education in 'Islamic Law' required greater emphasis on legal practice, with modernised teaching approaches such as simulations (as discussed at section 3.3),[531] with specific emphasis on how 'Islamic Law' operates in England and Wales and "*how much of Islamic law interacts with English law in practice"*. Although teaching of theory was stated still to be required, to provide a basis, topics geared towards legal practice were emphasised, therefore on the level of 'shows how' and towards 'does' on Miller's pyramid. One respondent acknowledged that, as described in 2.5 and 3.1.4:

> *Islamic law is often taught in a sort of philosophical way, with an emphasis on Usul al-fiqh in law schools or historically, or the focus on, perhaps, women's issues or Human Rights. These are the interests of their, of the professors, none of whom really, are really engaged in practical Islamic law*.

Another respondent suggested practical teaching, that would match the level of 'knows how' and 'shows how' on Miller's pyramid (as discussed at section 3.3) by putting:

> *contracts in front of the students and work on it, you know, or divorce law divorced court decisions. Elements that are pragmatic where you see Islamic law being decided upon… in that regard to succession law is actually very good as well. Because succession law is about mathematics. So, you can very well create case study for the students*.

[531] Waters (n 390).

A comprehensive approach was also advocated "*if you're going to be looking at Islamic law in terms of educating, students and practitioners, you know, you've got to get the whole thing, and, also, in terms of practising in-house legal client etiquette and so on".*

Content should be relevant and current, fostering cultural awareness

Using real life examples and relevant scenarios to demonstrate and reflect the modern world and the current practice of 'Islamic Law' in England and Wales were also emphasised by the respondents consistently with the literature at section 3.3, advocating the 'shows how' and 'does' levels on Miller's pyramid. One respondent stated the importance of a multi-faith approach in legal practice "*I'm not aware that legal training or education provides sufficient knowledge about all faiths*" and another stated the need to understand even the differences within the Islamic faith, linking to cultural awareness where *"far more detail about the different scholars and the different schools of thought"* was said to be required (consistently with section 3.1.2) as well as information on the different Muslim sects.

The reading material also required improvement for teaching such a course in the future:

> *The most important thing, is that, is choosing the right readings. We have been using the same readings over and over again. Because they're the classics. Well, I would be suggesting is don't be afraid of shaking things out and going towards readings that are perhaps less well known, but that might be more relevant… I'm teaching Islamic law in the West, you shouldn't forget it. So, I'm teaching it in English.*

A knowledge of how to apply 'Islamic Law' in a relevant manner was also stated to be required in the future:

> *They usually ask me questions that the solicitor is not necessarily aware of how it relates to Islamic law he's got a very vague knowledge… not all of them are going deal with Islamic law per se, like you might have like a third of them dealing with Islamic law. And a third of them dealing with the culture*.

This links to the level of 'shows how' of Miller's pyramid as discussed at section 3.3.

Islamic law should not be taught as "other"

Conceptions in education and in practice that allow practitioners to treat 'Islamic Law' as 'foreign' law and to delegate their responsibilities to questionable 'experts' were shown to be flawed, as discussed above at section 2.3 and in the literature review at section 3.1.3. For example, in areas such as Family Law, issues were applicable very much to domestic clients and could not be "*othered*" or treated as a "*special case*" and, therefore, required practitioners to have a basic knowledge in 'Islamic Law' to at least be able to identify the right expert. This was an area that required improvement in future LSET. One respondent found that this had to be explained to students, who were not aware of the subject's domestic significance. The respondent stated:

> Y*ou know, almost a quarter of the population of [City X] is-Muslim, that means there's a good chance one in four of your clients, family-law clients, are going to be Muslim … There's probably going to be Islamic issues that are going on there and for you to be, you know a good solicitor, to be able to advise them and to be able to understand why people are making the choices that they're making and what they want out of the, you know, the disputes that have arisen, you've got to have some understanding of the Islamic law*.

Another stated that, for the future, teaching in the area *"is really important when you're teaching Islamic law in a Western context, that you teach it from a perspective that its grounded within, not exceptionalising Muslims, that they are — they might be doing some things different, but they are doing the same things with a different framework".* This would be a method that recognises cultural and legal pluralism.

This existence of 'Islamic Law' and English law alongside one another was a key theme found in the data, This is despite the fact that this pluralism was not fully recognised or accommodated in legal education, leaving a gap in legal practice to meet the needs of clients. One respondent stated that what was needed in future legal education of 'Islamic Law' was not "*so much to reconcile Islamic law and secular law, but to reconcile how these different legal systems would look at the issues …apply it to the case, and then try and produce a solution which would adhere closest to what the parties wanted*". This solution provides an extension to what was found in the literature in regard to how to teach 'Islamic Law' in order to resolve the understanding of the issue of English law and 'Islamic Law' alongside each other.

Courses should be sustainable

Section 2.5 demonstrated that sustainability of courses is highly dependent on small numbers of staff and that courses can fold when a single staff member leaves. Respondents' emphasis on sustainability included recommendations for less dependency on the instructor by the institution and by students. As a response to the criticisms of existing syllabi as theoretical, out of date and weak in scope, quality and criticality, updating of syllabi, reading materials, case law used, and technology to assist sustainability were also suggested, with changes in content of courses as well as their instruction. This agrees with the findings at section 5.2. One respondent advocated *"we need to introduce new technology in the classroom when we teach Islamic law. There's no reason why, why we shouldn't do it … there are plenty of ways of doing it"*. The data also showed there was a need for signposting of the existence of 'Islamic Law' in England and Wales at an early stage in legal education, given the country's demographics.

Deliver from a law faculty

The ideal approach, emphasised by contrast to the current position (see section 2.5), was the subject being taught from a Law department, with those who have qualifications as a solicitor or barrister, and experience in both English law and the study of Islam. This would mean complexities of the subject would be managed, with knowledge of legal practice of English law and knowledge of 'Islamic Law' as opposed to an Islamic Studies background only. Teaching would be conducted in a way that is familiar to law students, and it would be focused upon meeting the needs of students who may or may not go into legal practice, but would at least have access to the practice perspective. A respondent suggested this dual specialisation was ideal for legal practice:

> *We have a legal approach. We are all lawyers, or nearly all of us. Nearly all of us, are legally qualified in some way or other, whether that's, with a law degree, or law degrees plus practice. That distinguishes us quite markedly from colleagues in other institutions in the U.K. and elsewhere who tend to be, grounded in Islamic studies*.

The need to increase the teaching provision and funding in the area was also discussed, in order to allow 'Islamic Law' courses to run, due their importance, rather than close, due to lack of resources.

Provide guidance for learning in the workplace

Although experiential learning in the workplace was discussed as important, as discussed earlier, guidance within this, with the support of increased legal education in terms of courses

and hours, was also suggested. Currently, any workplace learning post-qualification, after the training contract or pupillage, does not follow any guidelines or requirements, nor is it regulated for its accuracy in regard to knowledge of any 'Islamic Law' acquired.[532]

The Islamic Schools of Thought- take a pluralist approach within 'Islamic Law' itself

The presence and understanding of cultural and *"legal pluralism and having multiple legal systems operating at the same time*" was noted as paramount for the future teaching of 'Islamic Law' in order for students to understand the interactions between 'Islamic Law' and English law. One respondent acknowledged "*it's really, really complex, and there's, huge, amounts of pluralism and diversity within Islam that's not always represented in the teaching*". Even adapting the terminology in the subject was viewed as important. For example, as shown at 3.1 and 5.1, the term 'Islamic Law' means different things to different people, as do other terms within the subject, as one respondent emphasised "*I use the term, I use different terms in different contexts, uh, and to different audiences to — less well-informed audiences*" to remove misconceptions and provide clarifications.

It was also stated that students required 'Islamic Law' knowledge of the background, theory, context and underlying principles that are common to the majority of Muslims, despite the differences of opinion, and those laws which are being effectively accepted into English law, ('beyond pluralism'). A respondent demonstrated the need for such knowledge, when stating "*it can be a bit confusing in terms of, what has been the Islamic belief or position on a particular point, and that's why you need, an expert on Islamic law to make those distinctions*". This foundation of this level of expertise therefore needs to be made in legal education by examining the different schools of Islamic thought (see section 3.1.2).

The relevance of the Arabic language

The theme of the relevance of the Arabic language appeared in the literature at 3.11 and also emerged from the data at 5.3. Basic Arabic terminology was stated to be required in future teaching, to address the issues identified at section 2.2-2.3. This was emphasised by a respondent who stated:

> *You know, you need the study of Arabic, of course. You need the study of Islam, and you need the study of Western law. You need the study of, the Fiqh in one*

[532] Other areas of 'law' have quality marks issued by the Law Society, unlike 'Islamic Law'.
Law Society of England and Wales, 'Law Society Quality Marks' <https://www.lawsociety.org.uk/for-the-public/using-a-solicitor/accredited-specialists/> accessed 15 January 2019.

> *form at least, which is a vast subject. You perhaps should choose a field and delve into that…and then you need, um, actual on-the-ground experience, I would say, in a modern, certainly in a law school. You need on-ground experience in the Islamic country applying Islamic law, which, of course, is a very rare thing to find.*

Avoid diluting coverage of English law

Content of future legal education in 'Islamic Law' was suggested to require a basis in English law, and include the basics of what 'Islamic Law' is with topics covered by taking a legal pluralism approach as well as covering each topic independently. It was emphasised that *"you definitely need a very sound foundation in English law, you can't skimp on that in any way, and one mustn't allow other courses to impinge on that, to have any deleterious effect on that"*. There was also stated to be a need for the lawyer to be able to understand the English law perspective, and then also provide a solution, which met the needs of the client under 'Islamic Law'. In order to embed such a perspective, therefore, both English law and 'Islamic Law' would need to be taught in parallel and from the moment that the student first encounters each key English law topic, that is, from the start of the undergraduate law degree.

Cover an appropriate range of practice topics that 'Islamic Law' influences

The range of areas suggested in the literature review, and from the experience of the respondents to the questionnaire and interviews, included Islamic Finance, Family Law, Commercial Law, Corporate, Human Rights, and Inheritance. The breadth of legal practice areas affected by 'Islamic Law' as previously discussed means that the topic should be covered as much as possible when these practice areas are taught.

Teach both pervasively and as stand-alone modules at undergraduate level

In regard to placement of 'Islamic Law' in the future, respondents largely agreed that it was necessary at the undergraduate level both as a standalone module and pervasively as part of other modules due to the extensive client needs and breadth of practice areas the subject covers, as this is where students are taught the foundations of many key subjects, of which this was one. Pervasive approaches were favoured by most, for example, one respondent stated *"I think if you divided it up, so people are, you know, fully, they're able to get the grasp of the elements that, which are involved in that particular area of practice"* and for example in cases of 'beyond pluralism' it would be inevitable as:

> *If you were teaching a finance subject and there's a growth area of Islamic finance going on, then I think that needs to be taught, not as a separate subject of Islamic finance but within your finance subject, because it's part of the, it's the normal part of what British society are doing, and Muslims are part of British society*.

Respondents also favoured the standalone approach by stating "*Ideally, one would have a solid grounding in Islamic law at an undergraduate level"* as otherwise *" …. you're not giving a true reflection of what is going on".*

The standalone approach was said to require support from the pervasive approach as *"Islamic law is a very big module here, that's lots of different subjects within it, so it depends on what you teach there. I don't, I don't see why it can't be introduced, little bits of it, like I'm saying on the different modules".* All respondents agreed that the size of the subject was vast. Making a mandatory standalone module part of law undergraduate academic programmes or postgraduate vocational programmes was not seen as viable by any of the respondents due to the nature of the subject, the uptake by students and the lack of scholarship discussed at section 3.1.3 and as found at section 5.3. The amount of law to be studied was also discussed as causing difficulties in the 'Islamic Law' provision, for example: "*we're getting more, and more law — more law is coming more and more into our lives, and so we need to know more and more law…so it's very hard to squeeze things in".*

Make the topic available as part of the LPC

However, there were some suggestions for the subject to be included as part of the LPC. Here, clearly, it is more straightforward to allow the subject to be taught in a way that is practice-focused or at the level of 'shows how' and towards 'does' on Miller's pyramid:

> *I think at the LPC level, I think you should be incorporating something else for the education, and I think it would be better met, and I think there's more likely, there's a greater likelihood of it being adopted if it, if-if Islamic law were to be amongst other faiths and it, and it becomes a mandatory section within their LPC training depending on which subjects or options you've chosen to do … mandatory within the LPC depending on which route you choose and, optional course undergrad.*

Although the BPTC was not expressly mentioned, it can be assumed that a similar argument could be used given the vocational, practice focused nature of that course.

Developing a distinct approach

It was also suggested that specific modules with a specialised approach and methodology adapted to teaching 'Islamic Law' in a non-Muslim jurisdiction were required.[533] This would mean that teaching of the subject would require a different approach from other more traditional law subjects.

An approach which was very much guided by the instructor who would have knowledge in the area to inform the student of credible and uncredible literature was also advocated

> "*I think, of legal education, if one isn't following a-a good course with a good guide, because the literature, if one is reading it unguided and unassisted, can be misleading, especially some of the more populist literature, some of which is just plain wrong, inflammatory, prejudiced, and of very low quality*".

If uncredible or unverified literature is followed due to the lack of knowledge in the area, this can lead to further misconceptions, and those misconceptions becoming entrenched as the same texts may be used in courts or by legal professionals, who do not have a system to be able to check if the text is in fact a valid representation of 'Islamic Law'. This can therefore lead to Muslim clients not being granted their rights due to lack of recognition of the rights.

The vast breadth of legal practice areas 'Islamic Law' influenced, and the subject itself, meant that, as one respondent stated

> *"Muslims often describe Islamic law as an ocean. It is a fair analogy…. I cope with it by defining my problems relatively narrowly, exploring case-studies rather than attempting comprehensive coverage, and focusing on comparative law problems, rather than offering books claiming to cover Islamic law itself in any comprehensive fashion. The more I study it the more I appreciate its depth and breadth."*

Another stated *"No one should claim comprehensive ability to treat with Islamic law in its vastness".*

[533] Hoorebeek and Gale (n 530) 138-139.

Teach as comparative law

The possibility of taking a comparative law approach has already appeared in a number of places in the thesis. The suggestion was also made in the data, where a respondent suggested the way "*that Islamic law could become part of the mandatory or the required courses at a law school would be as a module in, a comparative law module*". The comparative law approach suggested was, however, more sophisticated than treating Islamic Law as 'other', but is used to demonstrate its overall importance in domestic law, and using landmark cases to demonstrate current issues. This aim was emphasised by one respondent:

> *I offered courses on Islamic law at [US Law School] -- to advance comparative understanding as between western laws and Islamic law. This can have many purposes both within legal practice and outside it, even apart from the specific application of Islamic law.*

Another stated *"I realized that we were weak on the comparative aspect and I was working along constitutional law. So, I basically started working on different Muslim countries to bring in that knowledge.*"

Conclusion: there are clear indicators in the data about how 'Islamic Law' can be provided in legal education

Overall, given the literature discussed and the findings, there are a number of suggestions as to how legal education of 'Islamic Law' can better meet the needs of legal practice. In summary, these are, firstly that an increased provision is required. Such a provision should take a practice-focused approach, with content that is relevant and current across a range of practice areas, and where 'Islamic Law' is not taught as "*other*".

The findings have provided an insight not only into what should be taught, but how, by whom and where. The consequences of these findings and of the literature are further examined at chapter 6 where an 'Islamic Law' framework for legal practice has been suggested that is in accordance with them.

6. The 'Islamic Law' Framework

'Education is the passport to the future, for tomorrow belongs to those who prepare for it today'.[534]

Malcolm X

Based upon the literature and the findings discussed above, there is a clear unmet need for knowledge of 'Islamic Law' by legal professionals for the purpose of their practice. This chapter, therefore, answers the final part of the fourth research question: 'How can 'Islamic Law' be provided as part of legal education to enable students who then become legal professionals to competently engage in its practice?'. It does this by drawing on the previous chapters to propose an 'Islamic Law' framework for LSET. Given the complexity of the topic, not least the challenges in defining 'Islamic Law', this is a formidable task.

6.1 At which level should 'Islamic Law' offered and to whom?

As this study has been aimed at preparing students who then become solicitors or barristers, the target audience is, therefore, students undertaking one of the qualification routes. Knowledge of 'Islamic Law' is key as part of the inherent competencies of both solicitors and barristers although it is not specifically mentioned in their competence statements as discussed below. The overall aim of legal education in 'Islamic Law' is to allow solicitors and barristers to be able to better practise in the area, that being reaching the level of 'does' in Miller's pyramid. This links to what both professions should be able to do at the point of qualification.

The SRA's 'Statement of Solicitor Competence'[535], which sets out what a solicitor should be able to do at the point of qualification, states at sections A, B and C, that a solicitor should display firstly, ethics, professionalism and judgement. Secondly, they should be able to undertake technical legal practice and thirdly, be able to work effectively with others. Given the demographics of England and Wales, and the wide influence of 'Islamic Law' in different practice areas, without knowledge of 'Islamic Law', a solicitor cannot for example under A2 'Maintain the level of competence and legal knowledge needed to practise effectively, taking into account changes in their role and/or practice context and developments in the law', or

[534] Encyclopedia Britannica, 'Malcolm X | Biography, Nation of Islam, Assassination, & Facts' (*Encyclopedia Britannica*) <https://www.britannica.com/biography/Malcolm-X> accessed 18 January 2019.
[535] Solicitors Regulation Authority, 'Statement of Solicitor Competence' (n 130).

under A3 'Work within the limits of their competence and the supervision which they need'. In consideration of the literature review at chapter 2 and the findings at section 5.2, there has been shown to be to be an additional risk of continuing lack of knowledge in the area. This has been where those supervising may also lack sufficient training and understanding in 'Islamic Law' due to a lack of overall expertise in the area, meaning those being supervised are also following a similarly misinformed path. This demonstrates that although learning in the workplace may be useful, it does not necessarily happen and if it does, there lack of regulation of the quality of supervision itself, thereby not meeting the standards that the statement of competence sets out.

Similarly, under A4, a solicitor must be able 'To draw on a sufficient detailed knowledge and understanding of their field(s) of work and role in order to practise effectively'. Under A5 they must be able to 'Apply understanding, critical thinking and analysis to solve problems' but where the 'Islamic Law' background with all its nuances is not understood for example, the different schools of thought, the different meanings of the term itself, these competencies cannot be fully achieved. Lack of knowledge in 'Islamic Law' would also mean a lack of ability under part B to undertake technical legal practice for solicitors who encounter 'Islamic Law'. From the cultural awareness perspective, lack of knowledge would also mean that solicitors would not necessarily under A1 be culturally aware by 'Respecting diversity and acting fairly and inclusively' and/or under part C work with others effectively.

The BSB's 'Professional Statement'[536] which provides the threshold and competencies of qualified barristers states in competency 1 'Barristers' distinctive characteristics' that they should have sufficient 'legal knowledge skills and attributes', which includes, amongst other areas, the possession of '…knowledge and understanding of the law and procedure relevant to their area(s) of practice'. Under this competency, they are also expected to have 'practical knowledge skills and attributes' and maintain 'professional standards' which amongst other areas includes to 'only accept work which they believe they are competent to undertake'. Again, without legal education in 'Islamic Law', barristers cannot be expected to display the legal knowledge and skills, as well as practical knowledge and skills required, or be deemed competent to undertake legal work in the area. Similarly, to the legal knowledge competencies, certain cultural awareness competencies are also not met easily without legal education of 'Islamic Law', although cultural awareness can be taught outside of law. Under competency 2, barristers are to display certain 'personal values and standards', which includes respecting

[536] Bar Standards Board, 'The Professional Statement' (n 172).

diversity and a level of cultural awareness, and under competency 3, they are to have the ability to work with others, including to act in the best interests of their client. Given the influence of 'Islamic Law' in legal practice, these competencies cannot be fully met without legal education in the subject including an element of cultural awareness, specifically for legal practice.

In order to consider at which level 'Islamic Law should be offered and to whom, the table below details the strengths and weaknesses of placing 'Islamic Law' at different stages of legal education experienced by solicitors and barristers.

Stage	Strengths	Weaknesses
QLD	• Approximately 50% of new solicitors[537] and 70% of new barristers[538] have a QLD. • Space within the course to include 'Islamic Law' pervasively (for example, in existing modules on Family Law, Human Rights and Finance) as well as in standalone modules.	• Only approximately 30%[539] of QLD graduates join one of the legal professions. • As an 'academic' stage coverage may be more theoretical than is required for legal practice. That is, it is at 'knows' and 'knows how'. • Students may have forgotten what they have learned by the time they reach practice
GDL	• GDL students have presumably made a decision to join a legal profession.	• Limited space for additional subjects. • Lack of space on the GDL means a standalone option may not be possible but pervasive offerings would be more easily integrated.

[537] J Ching, 'Multiplicity and Mutability in Professional Legal Education in England and Wales', *Jahrbuch der Rechtsdidaktik 2017* (Berliner Wissenschafts-Verlag 2018) 12.
[538] Bar Standards Board, 'Bar Standards Board: BPTC Key Statistics 2018- An Analysis of Students over Three Academic Years' (2018) 23 <https://www.barstandardsboard.org.uk/media/1932232/bptc_key_statistics_report_2018.pdf> accessed 18 January 2019.
[539] Law Society of England and Wales, 'Becoming a Solicitor- Entry Trends' (*The Law Society of England and Wales*) <https://www.lawsociety.org.uk/law-careers/becoming-a-solicitor/entry-trends/> accessed 18 January 2019; Bar Standards Board, 'Bar Standards Board: BPTC Key Statistics 2018- An Analysis of Students over Three Academic Years' (n 527).

Stage	Strengths	Weaknesses
		• As an 'academic' stage coverage may be more theoretical than is required for legal practice. That is, it is at 'knows' and 'knows how'.
LPC	• Virtually all new solicitors pass through the LPC. • Course is aligned to legal practice. That is, it is designed at the level of 'shows how'. • Space within the course to include 'Islamic Law' pervasively as well as in standalone modules	• Course will cease to be mandatory from the year 2020. • Replacement courses will have to address the SQE which does not explicitly include 'Islamic Law' amongst its topics, although, as indicated above, it may do so pervasively. Meeting the requirements of the SQE is essential to assess statement of solicitor competence.
BPTC	• Virtually all new barristers pass through the BPTC. • Course is aligned to legal practice. That is, it is designed at the level of 'shows how'. • Space within the course to include 'Islamic Law' pervasively as well as in standalone modules.	• Changes to the BPTC mean although there will be vocational 'qualifying sessions' for all four routes, there may not be room for an 'Islamic Law' course.[540]
Pupillage/period recognised training/work experience	• Real world experience with 'Islamic Law' issues, Muslim clients and colleagues, amongst other areas. That is, at the level of 'does'.	• No specific requirements that 'Islamic Law' be covered, therefore no guarantee of it arising. • 'Islamic Law' not explicitly mentioned in competence

[540] Bar Standards Board, 'BSB Agrees Further Key Elements for the Future of Bar Training' <https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/bsb-agrees-further-key-elements-for-the-future-of-bar-training/> accessed 15 January 2019.

Stage	Strengths	Weaknesses
		statements defining competence at point of qualification, although to achieve the levels of competence required, knowledge of 'Islamic Law' is, as set out above, arguably required. • Introducing the subject here for the first time without the academic background risks lack of understanding of the area, and difficulty in removing misconceptions.
CPD	• Can focus on 'Islamic Law' as it impacts in practice, for example Islamic Finance or Family Law. • Enables those already qualified to obtain knowledge and skills in 'Islamic Law'. • Could be delivered at 'shows how' level, with quality marks in the area being offered.	• No specific requirement to cover 'Islamic Law'. • Introducing the subject here for the first time without the academic background risks lack of understanding of the area, and difficulty in removing misconceptions. • Could be delivered as 'knows' or 'knows how' only.

Table 1- Table of comparison of different stages of legal education

From the above table, despite suggestions in the findings at chapter 5 that 'Islamic Law' could be offered at the vocational level of the LPC, recent changes in legal education explored earlier at section 2.6, mean that there will be different ways in which students prepare for the SQE rather than a single course. Additionally, the changes expected to the BPTC may mean that,

depending on the route taken, there may not be a space for an 'Islamic Law' course.[541] Covering the knowledge required in the area in the training contract/pupillage for the first time is also not advisable, although the legal practice based skills required may be able to be covered in this way, a foundation is needed at the academic legal education level in 'Islamic Law' due to the nature and complexity of the subject. If the topic is encountered for the first time in the training contract/pupillage, even if the training contract/pupillage is designed to enable students to achieve the competences which, as explained above, can be read so as to include 'Islamic Law', the less structured workplace environment, the complexities of the subject and the general lack of knowledge demonstrated by practitioners' reliance on expert witnesses increase the risk that what is learned is incomplete or ill informed. This links to the earlier discussion regarding a lack of scholarship in 'Islamic Law' at section 3.1.3 and 5.3 and overuse of expert witnesses at section 2.3 and 5.3.

The SQE could be a stage to test knowledge of the subject to ensure that the competencies discussed above involving 'Islamic Law' are covered by trainee solicitors. But this would require the subject being covered as part of the preparatory courses for the SQE which begin in the year 2020. Currently the subject is not explicitly mentioned in the SQE plan.[542] Additionally, any questions as part of the SQE would also have to be valid, appropriate and accurately marked, but this may be difficult given the findings of this thesis about a lack of reliable resources. The SQE will not, of course, apply to barristers. As the BPTC is very much skills based, it could be a viable alternative to offer 'Islamic Law', as certainly, subjects in the BPTC could pervasively cover areas of 'Islamic Law' from the practical perspective to enhance understanding in the area.

But covering the subject for the first time on the SQE or BPTC is not ideal as an academic foundation to do justice to the subject is required, that being the levels of 'knows' and 'knows how'. The correct place to achieve this is the QLD or GDL. But a practical approach (shows how) is still needed as discussed in section 3.3, and this has as a result of the Ormrod settlement of 1971,[543] been allocated traditionally to the LPC/BPTC. As a result of the new SQE stage which will measure output or 'shows how' as an examination rather than a prescribed course on the LPC, the preparation or 'knows', 'knows how' and 'shows how' must be done prior to the SQE. Therefore, the SQE preparation courses could cover 'Islamic Law' similar to the way the LPC has for some City firms in regard to Islamic Finance, or the topics would have to be covered

[541] Bar Standards Board, 'BSB Agrees Further Key Elements for the Future of Bar Training' (n 540).
[542] Solicitors Regulation Authority, 'SQE Draft Assessment Specification - Solicitors Regulation Authority' (n 348).
[543] Roger Fray Greenwood Ormrod, *Report of the Committee on Legal Education* (HM Stationery Office 1971).

even prior to this, on the QLD or GDL. For barristers, a vocational course/stage at the 'shows how' level will still exist, despite the changes to the BPTC, therefore 'Islamic Law' could be placed here also but again the prior academic or 'knows' and 'knows how' preparation would be required in preparation for this. The stage prior to this again is the QLD or GDL. Given its complexities and nuances, 'Islamic Law' would not feasible to be given as part of purely vocational offerings.

This therefore leaves, the QLD, GDL, as well as CPD as stages at which to offer legal education in 'Islamic Law' which are all discussed below. As the Benchmark statement for law[544] which defines what is expected from a graduate in the subject states that areas covered are impacted and shaped by 'the ethical, social, political, environmental, and economic norms of that (or those) jurisdiction(s) and these may also be reflected in the curriculum', it is at least arguable that this is an invitation to include the Islamic Law that has, as indicated at 2.1, become a social norm. The statement is more accommodating than the professional competence statements discussed above, again bringing the need for knowledge of 'Islamic Law' to the forefront.

A standalone module?

An offering as a separate module in the relevant subjects in the QLD and GDL would benefit the largest proportion of students who become solicitors and barristers. It would mean that the subject is being offered at the same level for solicitors and barristers despite any changes in their vocational legal education. It would also mean an academic introduction to the subject, which is required due to the complexity and non-English law background of the subject, and it would help remove a perpetuation of misconceptions, which if entrenched at the undergraduate stage would be difficult to overcome in later legal education for example at the SQE or BPTC stage. Furthermore, covering the subject on the QLD or GDL alongside other traditional subjects, would help increase overall knowledge in the area, bring about attitudinal changes in regard to 'Islamic Law' and correct misunderstandings, as discussed in chapters 3 and 5. Additionally, the subject is of such increasing importance in England and Wales, as discussed at chapter 2, all law students regardless of career aspirations should be able to develop their knowledge of the subject.

However, including an 'Islamic Law' module as a mandatory requirement on the GDL would be difficult given the number of subjects already taken, and this could then create a demand on

[544] Quality Assurance Agency, 'Subject Benchmark Statement- Law' (*The Quality Assurance Agency for Higher Education (QAA)*) <http://www.qaa.ac.uk/en/Publications/Documents/Subject-benchmark-statement-law.pdf> accessed 15 June 2015.

the QLD and GDL to also then cover other faiths such as Judaism, and other topics. It is therefore proposed that law schools should at least routinely offer 'Islamic Law', as an optional standalone module. The challenge, however, of placing it at this stage is that practice related education (shows how) has been the province of the LPC and BPTC, undertaken only by those QLD/GDL graduates who wish to become solicitors and barristers. Many universities might be willing to provide an academic module on the topic, but fewer have the resources or willingness to provide a vocational module. The fact that the SQE may drive some universities to develop 'SQE-ready' QLDs that are more practice-related, however, may generate changes in the market.[545]

Pervasive treatment in other subjects

Given the challenges of providing a standalone module – especially in the GDL - and the fact that, realistically, such a module could not be mandatory, the need to cover the topic pervasively, identified in the data, is significant. Indeed, given the demographics of the country explained at section 2.1, the literature at section 3.1 and the findings at chapter 5 , it is argued, now highly inappropriate to teach a subject such as Family Law, even at the academic stage, without covering elements of 'Islamic Law'. Therefore, as well as the standalone module, offering the subject pervasively at both the academic and vocational levels of legal education, ensures that students at each stage are able to gain knowledge in the area alongside other traditional subjects. This would also help better meet the solicitor and barrister competence statements in regard to 'Islamic Law'. Additionally, as discussed at section 3.1.4, the common law in its early development drew heavily on 'Islamic Law' therefore given the commonality between the systems, study of 'Islamic Law' may aid understanding of the common law and how it operates in society, again supporting the notion of teaching it pervasively.[546]

When should 'Islamic Law' be offered?

Given the complexities of the subject discussed in chapters 3 and 5, the need to have a firm understanding in English law prior to studying the subject as discussed at section 5.4, as well as the skills to be able to apply the knowledge, it is advised that the subject is not offered in the

[545] Goldsmiths University of London, 'LLB (Hons) Law' (*Goldsmiths, University of London*) <https://www.gold.ac.uk/ug/llb-law/> accessed 25 January 2019; LawCareers.Net, 'Nottingham Law School Prepares Students for SQE with New Law Pathway Degree' (*LawCareers.Net*) <https://www.lawcareers.net/Information/News/Nottingham-Law-School-prepares-students-for-SQE-with-new-law-pathway-degree-120> accessed 25 January 2019.

[546] As discussed at section 3.1.3 and at section 5.3, there is an overall lack of scholarship and shortage of academics who specialise in the area of 'Islamic Law' for legal practice and are similarly qualified in English law. In the short term, where the subject is taught pervasively as part of another module, the 'Islamic Law' section could be taught by an individual who has an expertise in the area but is not necessarily from a law background, with the rest of the module taught by an individual qualified in English law, who can put the 'Islamic Law' into the context of legal practice in England and Wales. In the long term, there would need to be training of academics who are able to provide expertise in both areas in order to provide students with an overall cohesive understanding of the relevance of 'Islamic Law' in England and Wales and its application in English legal practice.

first year of the QLD. Although some respondents did state the subject should be studied in parallel form the outset. In the later years, the student will be closer to entering practice (if at all) as well as having a firmer understanding of English law, to understand how 'Islamic Law' interacts with it, which in itself is a challenging and complex subject. However, this ideal is not possible with the one-year GDL in which all the core components need to be taught, and few optional modules if any are offered., Therefore the only option here is to offer it pervasively from the outset of the GDL. Additionally, for the purposes of the QLD, in some circumstances, despite preference for the subject to be taught in the later years, there may for example, still be a need to cover the subject pervasively as part of another subject that is taught in the first year, with a standalone module offered in later years to supplement this.

This approach of teaching the subject pervasively and as standalone module deals with the criticisms that only a minority of law graduates become solicitors and barristers, in two ways. First, as argued above, some subjects can no longer be taught effectively without a pervasive consideration of 'Islamic Law', whatever the destination of those who study those subjects. Although 'Islamic Law' discussed as part of this study is practice based, it incorporates theory-based elements therefore it would remain aligned with any subject that is taught from a theoretical academic perspective. Second, the standalone modules are proposed as routinely available as options in the same way that options in Commercial Law or Medical Law are widely available. If such modules have a practice focus or at least practice elements – and this will be a challenge for some law schools if they do not have suitable staff, or if this is the only practice-based module available – then they will be taken only by those students who already have an interest in practice.

Fall-back position

Solicitors and barristers who transfer in from other professions such as CILEx, those who are CILEx qualified, those from other UK jurisdictions or from overseas, also need the opportunity to cover the subject. The subject could also be offered as a core CPD component. This would also aid those already in practice who did not have the opportunity to take the subject in their previous legal education, or as an update for those who did. Making the topic available only through CPD is not advisable, given the findings of this study and the structure of CPD courses, as it may mean that this is too late for those who require knowledge in the area as it is post-qualification and optional to choose it, with no guarantee of a course being offered, or it being offered in the depth required.

Overall, given the influence of 'Islamic Law' on legal practice in England and Wales, the subject cannot be avoided, and must be covered pervasively in other subjects through the QLD, GDL, LPC/BPTC or vocational stages for solicitors and barristers and even CPD. But as result of the literature review at chapter 3 and findings at chapter 5, the subject would not able to be covered with the knowledge necessary in the area for legal practice, without it also being offered as a standalone optional module at the undergraduate academic level or GDL.

6.2 What should be taught in an 'Islamic Law' for legal practice module?

Drawing upon chapters 3 and 5, a list of themes and topics have been compiled that can be utilised to teach 'Islamic Law 'in order to cater for legal practice. The teaching must be firstly reflective of how 'Islamic Law' is specifically practised in England and Wales, as part of domestic law, not as 'other'. Although inevitably comparisons would be required with English law, the comparisons would need to be utilised to aid understanding of the 'Islamic Law' concepts as opposed to treating one system as domestic and the other as 'foreign', or one system as superior and the other as inferior or incorrect where Muslims are exceptionalised. This would require transforming attitudes[547] with cultural awareness and multiculturalism being woven throughout as well as introduction of concepts where one legal system is not seen as superior. Cultural awareness[548] although it is important, and must be addressed in all forms of professional education, is outside the scope of this thesis and not the focus of the design, but has been included in outline due to its significance.

Both the literature review in at section 3.1 and the findings at chapter 5.1, demonstrated the nuanced meaning of the term 'Islamic Law' and how, for the purposes of legal practice the understanding of the term is different from the same term in Islamic Studies. Therefore, the naming of any module regarding the subject is of vital importance to reflect the specialised content. It is suggested the module could be named 'Islamic Practitioner's Law', 'Islamic Legal Practice', ''Islamic Law' for Legal Practice', ''Islamic Law' in Practice', ''Islamic Law' and Practice' or 'Islamic Legal Practice in England and Wales' or other similar names to reflect the nature of the subject. For the purposes of a standalone module, the outline of topics therefore to be covered in order to adequately prepare students for legal practice, taken from the discussions at section 2.5 and chapters 3 and 5, can be found at Appendix 11.

[547] Webb and others (n 41).
[548] LM Barna, 'Stumbling Blocks in Intercultural Communication' in LA Samovar and RE Porter, *Intercultural communication: A reader* (7th ed., Wadsworth Publishing Company 1994).

For the purposes of teaching the subject pervasively, selected topics from one to six should be covered briefly to give a background, with the subject matter then being focused on more specifically. The topics merely provide an outline of areas to be studied, to give a basic foundation in the subject. They can be expanded upon or minimised in accordance with the requirements of a programme, and by no means would mean successful study of these topics would lead to the student being an expert in 'Islamic Law'. It would, however, go some way to bridge the gap that currently exists between legal education and legal practice, depending on how practically the subject is taught. It would also allow legal professionals to provide a better-informed service for 'MILLI'[549] (see section 2.1.)

6.3 How should 'Islamic Law' be taught in legal education in order to cater to legal practice, and by whom?

Teaching of 'Islamic Law' specifically for legal practice in a non-Muslim jurisdiction, on a QLD or GDL to all types of students, requires the particular individualities of the area to be understood, explained and adapted with future clients in mind.

The teaching of the subject would require theory to be taught as a background, but specifically how to apply the theory in a practical context to reach the upper stages of Miller's pyramid discussed at section 3.3. As shown in chapter 3, in order to do this although traditional didactical teaching, for example through lectures would be required through the initial stages of the module (knows), with supporting seminars, in addition case studies and concept maps would need to be used to explain the context of the subject, and how it fits into British society (knows how). The subject would have both academic and practical elements for students to gain not only knowledge but practice-based skills, for 'Islamic Law' as discussed at section 2.4, unlike many other traditional subjects at the academic level. Experiential learning as discussed at section 3.3 and section 5.4 would be required, for example through simulations (shows how), research on the area through field work (knows how), and if available clinical/practical work experience (does) as part of a research project on the area to reinforce the transfer of theory to practice and apply skills and knowledge to the area. Although, given that this is only one module, time may not permit both experience and a research project, but it would provide guidance for learning in the workplace by researching issues related to practice in accordance with the findings discussed above at section 5.4.

[549] Grillo (n 25) 7–11.

Regular reviews and updating of the syllabi and reading materials as well as use of technology were advocated by respondents as a necessary part of the sustainability of the modules.

Assessment of the subject through the case studies with common scenarios where 'Islamic Law' would be applied to facts (knows how) and the practice based research project (knows how), in order to meet the learning outcomes was discussed by the respondents, as ideal to assess student knowledge and skills for practice (shows how). [550] Assessment would need to be formative,[551] in order to monitor student learning and provide continuous feedback in order for students to identify their strengths and weaknesses, and instructors to recognise where students may need further assistance to understand key areas of 'Islamic Law'. It would be a new area for nearly all students in regard to it not being grounded in English law with its own terminology, hence this approach would be required to ensure learning outcomes were being met.

Summative assessment[552] would also be required to evaluate overall student learning against a set benchmark to ensure students who have taken the course have a minimum level of knowledge (knows, possibly knows how) in key areas of 'Islamic Law'. This summative assessment may take the form of a synoptic assessment[553] that requires the student to demonstrate their practical knowledge of 'Islamic Law' (knows how) by for example, applying what they have learnt to a problem with various elements of 'Islamic Law' in Family Law and Islamic Finance, in which the different schools of Islamic thought had a significant role in the outcome, with it being partially assessed by student performance in a legal clinic or simulation (shows how).

Although respondents felt that knowledge of Arabic was key, it is not realistic, in a single module, to equip students with a full understanding of the language. Pragmatically, therefore, a glossary of key terms would also need to be supplied to students, given that many of the terms for the subject originate in Arabic and some have more than one meaning. This would aid understanding of the subject and reduce complexities at this introductory level, and would provide a solution to the concerns of the respondents that many misconceptions occur in teaching of the subject due to lack of understanding of key Arabic terminology. This could also

[550] Grillo (n 25) 7–11.
[551] Wynne Harlen and Mary James, 'Assessment and Learning: Differences and Relationships between Formative and Summative Assessment' (1997) 4 Assessment in Education: Principles, Policy & Practice 365.
[552] The Quality Assurance Agency for Higher Education (n 551).
[553] The Quality Assurance Agency for Higher Education (n 551).

be used in legal practice as a reference point for the area, in accordance with the theme of providing guidance for learning in the workplace at section 5.4.

In accordance with section 3.1.3 and section 5.4, teaching of the subject should be from a Law department, from whose who are qualified to practise English law, therefore either solicitors or barristers or equivalent legal professionals. The teachers should also have knowledge of 'Islamic Law', basic Arabic language, an understanding of how the subject fits in legal practice in England and Wales and academic experience in order to be able to guide students closely through the subject. It would also be preferable if the subject was taught by an individual who had legal or academic experience in an Islamic country, in order to be able to provide expertise in the subject. It is, however acknowledged that the literature and the findings show a lack of scholarship in the area. This means that all or some of these preferences for teaching may not be able to be met until Law departments build up their expertise in terms of both qualified individuals to teach the subject as well as source materials in this area.

6.4 The 'Islamic Law' Course Specification[554]

In consideration of the discussions and analysis above, a draft course specification for a proposed 'Islamic Law' for legal practice standalone module is set out below. This aims to bridge the gap between legal education and legal practice in the area, and provide introductory knowledge and skills to students in 'Islamic Law', in order to enable them to competently practise in the area, and meet the needs of clients. Both knowledge and practice-based skills in the context of 'Islamic Law' are important in accordance to the findings at chapter 5, and in order to not only achieve the lower levels of Miller's pyramid but the upper level of 'shows how' where possible, as discussed at section 3.3 and section 6.3. This specification only serves to provide an entry or minimum level introduction to the subject, that is needed but is currently not available, and would need to be built upon extensively by further study or guided learning in the workplace to obtain true expertise in the area. This module is aligned with the Benchmark statement for law.[555]

Module Name	''Islamic Law' and Practice' (alternative names; Islamic Practitioner's Law', 'Islamic Legal Practice', ''Islamic Law' for Legal Practice', ''Islamic Law' in Practice', or ''Islamic Legal Practice in England and Wales')

[554] See Appendix 12 for the complete 'Islamic Law' Course Specification'
[555] Quality Assurance Agency (n 544).

Credits	20- 30 credits (full module dependent on the law school) Framework for Higher Education Qualifications in England Wales and Northern Ireland (FHEQ) Level 6[556] (If taught with a reduced number of credits each topic should still be outlined)
Module Description	'Islamic Law' is the oldest continuing legal tradition that is applied, fully or partially in over fifty countries. There is an increasing interest in the area both nationally and internationally by Muslims and non-Muslims alike. In England and Wales, there have been an increasing number of cases involving 'Islamic Law' coming before the courts and it has had a significant impact on a range of legal practice areas. Knowledge and skills in this area are in increasing demand that is not currently met. This module presents an introductory overview of 'Islamic Law', its role in legal practice and its interaction with English law. It is uniquely offered from a legal perspective as opposed to a theological perspective and gives students the opportunity to gain knowledge and skills to familiarise themselves with not only the theory, but also practice in the area specifically in England and Wales. The module is based primarily on English language scholarship and English translations of the primary sources. It engages with both classical and contemporary scholarship in the area. No prior knowledge of 'Islamic Law' or Arabic is required.
Aims and Learning Outcomes	By the end of this module you should be able to: 1. Understand and critically reflect on the Muslim diaspora in England and Wales and their needs in regard to 'Islamic Law'. 2. Understand and evaluate the theoretical discourse regarding 'Islamic Law', in particular the background, the jurisprudential thought and main sources of 'Islamic Law'. 3. Present a context-based analysis of uses of the term 'Islamic Law' and its non-monolithic nature. 4. Evaluate and compare different Islamic state practices.

[556] Quality Assurance Agency (n 544).

	5. Critically analyse and reflect on the interaction between 'Islamic Law and English law and the pluralistic nature of British society in regard to 'Islamic Law'. 6. Analyse and recognise application in England and Wales of 'Islamic Law' and demonstrate problem solving skills in solving practice-based problems in relevant areas of 'Islamic Law', applying theoretical knowledge to do so . 7. Conduct effective independent research in the field of 'Islamic Law' in legal practice 8. Present effective written and oral arguments on key issues in 'Islamic Law' in legal practice.
Teaching Methods	This framework is designed to be flexible and provides a brief overview of the module. It is proposed to be taught as a full module delivered over two terms or more and although all topics are mandatory, selection of key areas within each topic is possible if taught in a shorter time. This module is to be taught from the Law department of an academic institution by instructors who have a background and preferably qualified to practise English law. This is to distinguish it from an Islamic Studies module and to enable law students to make critical interactions between English law and 'Islamic Law'. The mode of instruction are lectures, with seminars recommended for each topic to allow development of student understanding and discussion. Use of case studies, simulations, concept mapping, experiential learning methods are mandatory, as well as the use of technology, in order to place the knowledge into context and the relevant practice skills to be developed. As the primary sources of 'Islamic Law' are in the Arabic language, basic familiarisation with key terminology will be required, which can be obtained through the glossary listed in the materials and text section. Students are required to bring the glossary to each class and to be assisted by the instructor in understanding the terms as they are used in class. This

	will enable students to become more comfortable with the subject and allow a deeper understanding.
Outline of Topics	1. Background of Muslims in the United Kingdom 2. Historical Overview of 'Islamic Law' and Jurisprudential Thought 3. Sources of 'Islamic Law' 4. Contextualising 'Islamic Law' 5. Islamic State Practices 6. Pluralism and the Engagement of English law with 'Islamic Law' 7. Islamic Family Law 8. Islamic Finance 9. Islamic Dispute Resolution Mechanisms 10. Islamic Inheritance, Wills and Alms 11. Islamic Human Rights (see Appendix 12 for further details)
Assessment Methods	Formative and summative written/oral assessments assessing learning outcomes 1-7 including supervised project assessing practical application of knowledge and skills from learning outcomes 1-7. Assessments may also take place in a clinical setting.
Materials and Texts	(see Appendix 12)

Table 2- 'Islamic Law' Course Specification

7. Conclusion

(خِتَـٰمُهُۥ مِسْكٌ ۚ وَفِى ذَٰلِكَ فَلْيَتَنَافَسِ ٱلْمُتَنَـٰفِسُونَ (٢٦))

'The seal thereof will be musk: and for this let those aspire, who have aspirations: (26)'[557]

The significance of 'Islamic Law' in England and Wales and specifically in legal practice, led to this investigation, to ascertain to what extent legal professionals need education in 'Islamic Law' for legal practice. The study has investigated the meaning of 'Islamic Law' and proposed a solution to bridge the gap in knowledge and skills in LSET in 'Islamic Law'.

Chapter 1 introduced the study, its aims, structure and research questions. Chapter 2 then set out the background and context of the project. This chapter demonstrated the increase in British citizens with a strong Muslim identity, and the background and context of the study exploring the increasing number of Muslims in Britain at section 2.1. Sections 2.2 and 2. 3 also set out the extent to which, as a result of the increasing recognition of the British Muslim presence, 'Islamic Law' has been recognised in certain areas of legal practice such as Family Law, Islamic Finance, and although conceptually differently, in the area of Human Rights.

What 'Islamic Law' means in legal practice and its effects on legal professionals was then examined, with the conclusion that the increasing influence in England and Wales, had left legal professionals ill prepared for the area in practice was examined at sections 2.3-2.5. Current offerings in UK institutions in 'Islamic Law' were then investigated at section 2.5, with only one module from thirty-six purporting to teach 'Islamic Law' for legal practice from a Law department, but this was still missing out key topics and only available at the postgraduate level, which is not mandatory for those following the current qualification processes for a solicitor or barrister. As the majority of lawyers who practise in fields where 'Islamic Law' may impact are solicitors and barristers, these formed the focus of the whole study.

Chapter 3 reviewed the literature to explore the different meanings of 'Islamic Law', its origin as and the effect therefore on its teaching. Both cultural and legal pluralism were considered in the context of 'Islamic Law' working alongside English law, its consequences and its outcome for legal education. Educational theory was then examined to assess the different techniques that could be utilised to teach the subject in a non-Muslim jurisdiction and to ensure relevance

[557] Surah Al-Mutaffifin (83:26)
Quran Explorer (n 17).

for legal practice by achieving the upper levels of Miller's pyramid so enabling students to put knowledge into action in the workplace. The meaning of 'Islamic Law' in the literature was found to be a concept that was not monolithic with different meanings in different contexts, although the meanings bore certain similarities. The existence of Muslims in England and Wales who wished to follow only 'Islamic Law' but English law, resulted in the finding of cultural pluralism leading to legal pluralism, with the spectrum of pluralism ranging from 'faulty pluralism' to 'actual pluralism' to 'beyond pluralism'.

The research questions were investigated through the two main data collection methods, an online questionnaire and interviews, set out in chapter 4, using a hermeneutic phenomenological approach and thematic interpretative analysis.

The analysis in chapter 5 found there to be an unmet need for knowledge of 'Islamic Law' by legal professionals in England and Wales that was required to be bridged by legal education. The meaning of 'Islamic Law' was found to be multi-faceted with different meanings for different respondents and different practice areas, but with certain commonalities. How 'Islamic Law' was currently integrated into legal education (if at all), was found to be unsatisfactory. There were detailed suggestions as to how it could be better provided as part of legal education to enable students who become legal professionals to competently engage in it.

Chapter 6 detailed the 'Islamic Law' framework and the changes in the qualification process for solicitor and the competencies of both profession were assessed to conclude at section 6.1, that without knowledge of 'Islamic Law' being provided by academic legal education, their respective competencies could not be confidently met. The 'Islamic Law' framework is a unique framework, that for the first time to the researcher's knowledge provides a solution to the phenomenon under study, was then proposed at chapter 6. This was created as a result of the literature and analysis of the data collection to meet the need for knowledge and skills in 'Islamic Law' by legal professionals for legal practice in England and Wales.

The interaction of English law and 'Islamic Law' in England and Wales arises from client needs in the area, which have led to not only an increased impact of 'Islamic Law' in English legal practice but variations in recognition, accommodation, ('actual pluralism') and, at times assimilation of 'Islamic Law' ('beyond pluralism'). This has been with the support of the UK government, who in areas such as Islamic Finance are keen to take advantage of the global

economy. Those practising in the area, whether for the purposes of domestic practice or international practice, prior to this study did not have formal practice-oriented legal education in the area. What was available was little beyond optional modules at undergraduate and graduate level, that were largely cultural, theoretical and historical, with an Islamic Studies focus, as opposed to 'Islamic Law' for English legal practice perspective. For many, any knowledge and skills in 'Islamic law' were only developed by self-motivation and self-study privately or learning in the workplace, with little formal guidance or standardisation or taken from expert witnesses.

This study explores in detail the meaning of ''Islamic Law' for legal practice' and attempts to articulate a practice-based understanding of 'Islamic Law' that can inform legal education. This study also identifies a greater need for an academic exploration of 'Islamic Law' as well as an academic community concerned with 'Islamic Law'. The findings provide additional reasons to teach 'Islamic Law' at an academic level. The study demonstrates that there is now a case for students studying Law in England and Wales to study 'Islamic Law', due to the growing Muslim community, as well as the internationalisation of legal practice. Muslims in England and Wales are British citizens with concurrent British and Islamic identities. They not only require advice on English law, but on 'Islamic Law' to reconcile their religious identity with their national identity. They are not only British, but hold their faith as a key element of their identity, meaning that for those advising them, legal knowledge and skills in the area are long overdue to meet client needs and uphold the rule of law. But this increasing presence of 'Islamic Law' in legal practice has not been reflected by an increase in LSET in the area. This has led to misconceptions, erroneous decisions, and confusion, even where expert witnesses have been involved, as those asking for the advice, and those making decisions upon it, are often not sufficiently educated in the area. Therefore, there is a clear need for solicitors and barristers to understand and be able to advise on basic areas of 'Islamic Law'. Even successful autodidacts in the field of 'Islamic Law' have recognised the need for a more structured educational response. A major problem perceived by the respondents of this study has been the perception of 'Islamic Law' as monolithic and unchanging by many commentators, and the assumption that it resembles national law, and is therefore a competitor with common law. Given the extensive breadth of practice areas 'Islamic Law' now impacts, this is no longer a specialism, but represents a generic need for knowledge and practice-based skills, in order for all solicitors and barristers to be able, as a minimum, to be sign posted in the right direction by being able identify basic 'Islamic Law' legal issues and relevant experts as a result of legal education. An increased provision of education in the area would also mean solicitors and barristers can

provide legal advice with some relevant background as with other areas of practice, as well as provide equal access to justice to all.

The need for knowledge of 'Islamic Law' in legal practice, as discussed in the literature review and analysed at chapter 5, is directly sourced from a client need. Such need generates a need for lawyers to have knowledge of the topic and this generates a need for education to provide that knowledge.Consequently, it is possible to develop a hypothesis that the impact of 'Islamic Law' and of the Muslim community in the UK is now such that relevant aspects of 'Islamic Law' should be embedded in the curriculum, just as EU law, for example is (at present). This would enable students interested in legal practice at the undergraduate academic level to study areas designed to address the needs of Muslim clients explicitly.[558] Without educational provisions being made for areas of law that are present in legal practice, some of the purposes of legal education, and whether lawyers have the 'intellectual and critical skills'[559] as well as legal knowledge for practice, comes into question.

7.1 To what extent is there a need for knowledge of 'Islamic Law' to be provided as part of legal education for legal professionals in England and Wales?

It can be concluded in answer to the overarching research question, that there is a compelling unmet need for knowledge of 'Islamic Law' to be provided as part of LSET in England and Wales. There is a wide gap between legal education and legal practice of the subject, leaving those who practise in the area to operate in a manner that is not compliant with the SRA's Statement of Solicitor Competence[560] or the BSB's Professional Statement.[561] Without this subject now being mandatorily taught pervasively in the relevant subject areas in the GDL, and being included as an optional module as well as pervasively in the undergraduate law degrees in England and Wales, erroneous and ill-informed decisions can be made with unverifiable expertise by those practising in the area and an over reliance on expert witnesses, as discussed above in chapters 3 and 5, undermining the English legal system.

In order to benefit the majority of legal professionals who are likely to encounter issues of Islamic Law in practice (that is, solicitors and barristers), it was concluded at chapter 6 that it

[558] One such provision is already made in Islamic Banking and Finance as an optional module in postgraduate academic legal education as part of a Master's programme in Law.
Quran Explorer (n 17).
[559] Webb and others (n 41).
[560] Solicitors Regulation Authority, 'Statement of Solicitor Competence' (n 130).
[561] Bar Standards Board, 'The Professional Statement' (n 132).

should be routinely available in three ways: firstly, pervasively at all levels of LSET or in the QLD and GDL for those two professions in relevant topics such as Family Law where it is argued that it is no longer possible to cover the topic effectively without recognition of the impact on British Muslim. Secondly, as an optional second or third year module of a QLD, but with a consciously practice-related focus, and thirdly, as a fall-back position or as an update, as CPD.

7.2 Contribution to Knowledge and Practice

This study, to the best of the researcher's knowledge, has uniquely tied together legal education and knowledge of 'Islamic Law' to legal practice of 'Islamic Law' in England and Wales. This has resulted in the study and design of the first ever 'Islamic Law and Practice' module specifically for legal practice in England and Wales, drafted with reference to the competencies of solicitors and barristers. The study is also unique in considering a range of educational approaches and options for 'Islamic Law' in legal education. It has focused specifically in targeting legal practice, from the perspective of a legal practitioner that has experience in English law, and rejecting the notion the subject can be taught sufficiently from an Islamic Studies perspective. This is in contrast to other existing modules in 'Islamic Law', none of which from the whole jurisdiction was found to be aimed at legal practice, nor as part of the qualification process of solicitors and barristers, apart from one optional vocational module at one provider for Islamic Finance only. This study emphasises knowledge and, practice-based skills in the context of 'Islamic Law' and provides an overview of a range of legal practice areas as well as into the background of 'Islamic Law' and the background of Muslims in the UK.

The contribution to knowledge provided is, for the first time, an understanding of the needs of solicitors and barristers in England and Wales who practise 'Islamic Law', to serve the needs of clients who require services in the area. The contribution to knowledge has also consisted of an understanding for the first time, of the scope of 'Islamic Law' in legal practice, its challenges and the gaps between it and LSET. In the context of legal education, it has been found that the meaning of 'Islamic Law' is multi-faceted. One definition or a traditional definition that has been previously mentioned in the glossary of this study and discussed earlier, can no longer be used to cover a multitude of areas, which mean different things to different people. This study under the banner of 'Islamic Law' for legal practice, brings together history, culture, pluralism, education and practice, to enable for the first time the legal needs of British Muslims and clients involved with 'Islamic Law' to be truly met. This study offers legal education a method of providing a basic knowledge of 'Islamic Law' to future solicitors and barristers, and

to decrease misunderstandings of the area for all law graduates whether they go into legal practice or not. This is key to hold together the modern multicultural society of England and Wales.[562]

The contribution to practice follows on from this in making a recommendation for a new 'Islamic Law' module for legal practice as well as introduction of areas of 'Islamic Law' pervasively in other subjects to address the gaps in knowledge. These unique insights have been possible through data collection from those at the forefront of the field in academia and in practice. Many of the respondents were heads of Law departments, and had designed 'Islamic Law' curricula around the world, others had practised in well-established law firms or were practising in magic circle City firms. This study provides legal practice, for the first time, with the opportunity to have practitioners who have basic competence in the area, who have studied the subject at least on a similar level with other core subjects. If offered on an undergraduate Law programme or GDL, given its practice orientation, it would be an advantage in comparison to all the other subjects which are not practice related for those who wish to go into practice as well as to remove misconceptions for those who do not. It would enable students and then legal professionals to be able to identify key topics and issues within the subject, and, for example, identify and verify expert witnesses without complete reliance on them. It also offers an increased opportunity for legal professionals to take advantage of the internationalisation of legal practice, for example by taking on clients with 'Islamic Law' issues who may be based abroad, but need local advice, bringing economic benefits. This study additionally gathers in one place, the foundations of 'Islamic Law' in legal practice for those who practise it and may become part of MILLI discussed at section 6.2. The creation of this original module grounded in legal practice in England and Wales, would mean having legal professionals who have studied English law and 'Islamic Law' for legal practice alongside one another to enable them to better respond 'to the challenge of confronting other legal principles and getting to grips with the interaction between Islamic and English law'[563] with knowledge of the local jurisdiction as well as Islamic Law' and how it is practised in selected Muslim countries.

This study has completed the preparatory stage of an original bespoke module in 'Islamic Law' for legal practice. By consulting, from a hermeneutical phenomenological perspective,

[562] James A Banks, *Educating Citizens in a Multicultural Society. Multicultural Education Series* (Teachers College Press, 1234 Amsterdam Avenue, New York, NY 10027 (paperback: ISBN-0-8077-3631-7; clothbound: ISBN-0-8077-3632-5) 1997); Tariq Modood and others, 'British Muslims and Multiculturalism', *Multiculturalism, Muslims and Citizenship: A European Approach* (Routledge 2006); Ralph Grillo and others (eds), *Legal Practice and Cultural Diversity* (Ashgate Publishing Ltd 2009).
[563] Grillo (n 25) 10.

experienced elite practitioners at the forefront of the field, not only has support been garnered for this module, but the requirements of what this module should contain have been defined. Their experience of teaching and practice has shaped this module, in order to bridge, in the best manner, an acknowledged gap that will continue to widen unless this solution is adopted.

7.3 Recommendations for Policy, Practice and Future Research

This original module, although it goes a long way to fill an existing gap, only provides a brief outline. A full draft manual is needed with a bespoke glossary of Arabic terms, to enhance teaching and learning in this area, and to provide guidance in order to meet the aims of the module. Further development of the module would also assist where 'Islamic Law' is required to be incorporated pervasively in traditional and existing law modules, or as short courses or CPD, in this case, further development of topics one to six of the module specification. For example, developing an 'Islamic Family Law' component to be slotted into an existing Family Law module in the relevant topic areas, and an 'Islamic Human Rights' component to be slotted into an existing Human Rights module within the relevant topic areas. Further research is also required on the specific areas of legal practice that are particularly influenced by 'Islamic Law', for example Family Law, Finance and Commercial Law, and Human Rights to define more precisely the areas that are of particular relevance or importance to British Muslims or legal practice in England and Wales. This would also grant better coverage to each area of legal practice in which 'Islamic Law' plays a role, and would provide a solution to increase knowledge in the area, if the module was only offered as an optional module. This would also help provide continuous practice updates as part of CPD in the area for solicitors and barristers.

Further research is also required into the interaction of English law and 'Islamic Law' in the different practice areas and the effect on clients, and legal professionals of this interaction. Recommendations then need to be made as to how to assist key stakeholders in this area, and for accommodation and recognition of 'Islamic Law' for example in regard to the legal pluralism in existence, to move from 'faulty pluralism' to 'actual pluralism'. This is in order for action to be taken as 'parliament and the courts are also showing their awareness of the ground shifting underneath them'[564] and, for the rule of law to be upheld. This could be done in a similar

[564] Grillo (n 25) 10.

manner to recent investigations into of 'Shari'ah Councils'[565] and into the application of 'Sharia Law in England and Wales'[566]discussed at section 2.1.

To increase competence in 'Islamic Law' and to assist the courts and clients in the short term, an independent inquiry or consultation is required in order to regulate expert witnesses in the area of 'Islamic Law', by the LSB,[567] SRA, BSB, and the UK parliament jointly. Setting up minimum qualifications, experience and a list of verified experts in different areas of 'Islamic Law' would help minimise some of the previous erroneous and contradictory decisions discussed and would also assist legal professionals who do not have experience in the area, to find competent experts in the area. The SRA and BSB should also assess whether the need for knowledge and skills is now such that explicit recognition is needed in the competence statements of both solicitors and barristers. Furthermore, the Law Society as with to other areas of law where they have developed quality marks,[568] could develop one for 'Islamic Law' in order to increase standards in the area. This study may also be further developed in the future by investigating other types of legal professionals, for example legal executives(CILEx), licensed conveyancers, intellectual property attorneys and so forth, who may not have the same common foundation of the QLD or GDL, but still may encounter Muslim clients. The CILEx curriculum, in the area of Family Law, does, for example require as part of mandatory learning outcome, knowledge of divorce or dissolution of religious marriages.[569]

Finally, 'Islamic Law' in legal practice in England and Wales, is an area that is continually evolving and therefore client needs in the area regularly require to be surveyed and updates provided to legal professionals, as they are in other areas of legal practice. Although this study goes some way towards forming a closer link between legal education and legal practice in 'Islamic Law', the pace of development in the area, increasing influence and complexity of the subject itself, means there is much more to be done, to truly bridge the gap.

[565] United Kingdom Parliament Home Affairs Committee (n 99).
[566] Siddiqui and others (n 90).
[567] Legal Services Board (n 44).
[568] Law Society of England and Wales, 'Law Society Quality Marks' (n 532).
[569] Chartered Institute of Legal Executives, 'Family Law- CILEx' <https://www.cilex.org.uk/~/media/pdf_documents/main_cilex/education/study_pdfs/unit_spec_2019/level_6/l6u7_2019_final.pdf?la=en> accessed 17 January 2019.

8. Appendices

Appendix 1- Ethical Approval

NTU DOCTORAL SCHOOL

NOTTINGHAM TRENT UNIVERSITY

Dawn James
Doctoral School Administrator
Nottingham Trent University
Doctoral School
50 Shakespeare Street,
Nottingham, UK,
NG1 4FQ
Tel : +0115 84 88154
Email: ntuprofdadmin@ntu.ac.uk
Our ref: N0612041

10 July 2018

Dear Sairah

Re: : Professional Doctorate Ethical Approval Confirmation

Thank you for submitting an ethical approval application.

I am pleased to confirm that your ethics application has been approved.

Student's Name	AL-QASIM, Sairah
Supervisor's Name	Prof Jane Ching/Pamela Henderson/Graham Ferris
NTU ID	N0612041
Course	Professional Doctorate – DLegal Prac
Committee	Professional Doctorate Research Ethics Committee (PDREC)
Date Approved by Committee	10 July 2018

Should you have any queries please do not hesitate to contact me either by telephone on +44 (0) 115 848 8154 or email ntuprofdadmin@ntu.ac.uk.

Dawn James
Doctoral School Administrator

Dear Sairah

Re: : Professional Doctorate Ethical Approval Confirmation

Thank you for submitting an ethical approval application.

I am pleased to confirm that your ethics application has been approved.

Student's Name	**Sairah Al Qasim**
Supervisor's Name	**Jane Ching, Pamela Henderson, Graham Ferris**
NTU ID	**N0612041**
Course	**DLegal Practice**
Date of PDREC meeting	**28 November 2016**
Date Notification sent to student	**21 October 2016**

Should you have any queries please do not hesitate to contact me either by telephone on +44 (0) 115 848 8154 or email ntuprofdadmin@ntu.ac.uk.

Kind regards

Appendix 2- Questionnaire Information Sheet

Survey Information sheet

Project title To what extent is there is need for knowledge of 'Islamic Law' to be provided as part of legal education for legal professionals in England and Wales?

Researcher's name Sairah Al-Qasim (Professional Doctorate Student, Nottingham Law School, Nottingham Trent University)

Supervisor's name Jane Ching (Professor of Professional Legal Education, Nottingham Law School, Nottingham Trent University)

What is this research project about?

The aim of this project is to identify the extent there is a need for knowledge of 'Islamic Law' as part of legal education for legal professionals in England and Wales. It will determine if 'Islamic Law' needs to be included as part of legal education and, if so, how. The meaning of 'Islamic Law' in the context of legal practice will be established and existing curricula teaching 'Islamic Law' in law schools in England and Wales will be analysed. The purpose is to explore how legal education can meet the needs of legal professionals in regard to 'Islamic Law' as a result of its presence in England and Wales as part of legal practice.

Why have I been invited?

You are being invited to participate in the first stage of data collection of this research project, to investigate if there is a need for knowledge of 'Islamic Law' by legal professionals in England and Wales. As a legal professional in this jurisdiction you have been selected to help the researcher obtain information as to how as to how 'Islamic Law' and the needs of Muslim clients currently impacts on legal practice work.

Do I <u>have</u> to take part?

No. If you do not, then you will not hear from the researcher again unless you indicate to the researcher you are able to assist at later stage of the project. If you agree to take part but change your mind, before starting the questionnaire, or at any stage during the completion, you can withdraw, without any adverse consequences (in particular your employer, your university or any other third party will not know that you have withdrawn). Because there are time constraints on the study, it will not be possible to withdraw your information or ask for any part of it not to be used once the questionnaire has been submitted to the researcher.

Can I recommend other individuals to the researcher who may have an interest in this project and may be willing to take part?

Yes, certainly. The researcher aims to collect data as widely as possible to ensure accuracy and credibility of this project. Should you be able to recommend another suitable participant, please tick the relevant box on the survey and ensure you have obtained their consent before separately emailing their contact details to the researcher on the address provided. You are not obliged to explain anything about the research to another participant nor send them any links to the project. For privacy and confidentiality, neither yours nor the recommended individual's participation or non-participation will be discussed with either of you at any stage.

What will happen to me if I take part?

You will be asked to respond to a questionnaire about your experiences with 'Islamic Law' as a legal professional. This questionnaire should take no longer than 30-45 minutes. You may agree to a follow up interview to find out more about your experience. You should consider, in deciding what to tell the researcher, whether any of that information might accidentally identify you, your employer or any related third party (e.g. a particular work practice which the researcher will not know is unique to your firm).

What are the possible advantages and disadvantages of taking part?

The benefits of taking part are that you will be able to contribute to the shaping of future legal education in the England and Wales. Your input may assist others in your profession as well as your clients to ultimately ensure the best legal services are being provided. Participating in the research is not anticipated to cause you any disadvantage or discomfort.

Your employer or any other third party will not be told whether or not you have taken part. Taking part will not, therefore, affect your standing in any way. You will not receive any payment for your participation.

What will happen to the information I provide?

Your contact details will be kept securely by the researcher, under password and all contact details and, e.g., emails and other correspondence will be deleted after the project. Copies of hard copy consent forms will, however, be printed out

and held in a locked cabinet by the researcher until the completion of the doctoral project, following which they will be destroyed..

Anonymous summaries will be created in the course of analysis of the group of questionnaires as a whole to assist in collating the finding of the research. These will be deleted after the completion project unless you give consent to the researcher for its use in other publications, and/or in an open access format.

The information you provide will be analysed and used as part of the write-up of this research project. The write- up may include anonymised quotations from the questionnaire. If you give consent to the researcher for its use in other publications, and/or in an open access format, it may also be used there but will still be anonymised. Although researcher will take precautions will ensure that no-one will be able to trace any quotations back to you or your employer caution should be exercised by you during the course of the survey, whether any of that information might accidentally identify you, your employer or a third party (e.g. a particular work practice which the researcher will not know is unique to your firm). The researcher cannot be held responsible for such disclosure.

What is the next stage?

If you wish to take part, please complete the consent form below and start the survey.

Updates of the progress of this research will be place on Nottingham Law School's Centre of Legal Education webpage http://www.nlscle.org.uk.

What if there is a problem?

We hope this is unlikely. However, if you do have any concerns or wish to complain, please contact the researcher via email on sairah.al-qasim2015@myntu.ac.uk or the lead supervisor for this project on 0115 8484157 or at jane.ching@ntu.ac.uk

Thank you.

Appendix 3- Questionnaire Consent Form

Survey Consent Form

Project title To what extent is there is need for knowledge of 'Islamic Law' to be provided as part of legal education for legal professionals in England and Wales?

Researcher's name Sairah Al-Qasim (Professional Doctorate Student, Nottingham Law School, Nottingham Trent University)

Supervisor's name Jane Ching (Professor of Professional Legal Education, Nottingham Law School, Nottingham Trent University)

About the project As part of a Professional Doctorate project, the researcher interested in finding out more the way in which 'Islamic Law' and the needs of Muslim clients impact on legal practice, so as to draw conclusions about the extent to which there is a need for knowledge of 'Islamic Law' to be provided as part of legal education for legal professionals in England and Wales.

About the survey This survey is **anonymous** and should take no more than **30 minutes** to complete. You may withdraw from the survey at any point prior to pressing the "submit" button at the end. Pressing the submit button will be taken as your consent to providing your information to the researcher and (if necessary) as confirmation that you are over 18.

The information you provide will be analysed and used in the creation of publications and reports. These may include anonymised quotations from the survey.

You will be asked, at the end of the survey, whether you are willing to participate in a follow up interview. If you are willing to do so, you may be contacted by the researcher to arrange a telephone interview. Any contact details you provide will be kept securely and deleted at the end of the project.

The results of the survey and any contact details you provide will be kept securely and confidentially by the researcher until the end of the project.

Please tick below if applicable

	√
I have read and understood the information sheet for this project which I may keep for my records and agree to take part.	☐
I have had the opportunity to ask any questions I may have.	☐
I understand that my information will be held and processed for the purposes of this research project and possible reports and publications arising from it.	☐
I understand that data will be held confidentially and that I will not be identified in any publications or reports without my prior consent.	☐
I understand that my participation is voluntary and that I am free to withdraw at any time until the conclusion of the interview without giving any reason and without being penalised or disadvantaged in any way.	☐
I understand that the researcher is a solicitor and is obliged to report serious misconduct to the SRA.	☐
I understand who to contact if I have any concerns or complaints.	☐

Name of Participant	**Date**	**Signature**

Researcher	**Date**	**Signature**

Contact details

Should you require any further information about this consent form or the attached information sheet please contact:

Researcher: sairah.al-qasim2015@myntu.ac.uk

Supervisor: jane.ching@ntu.ac.uk

Upon completion please return this form to the researcher on the email address above.

Appendix 4- Copy of Questionnaire

Survey on 'Islamic Law' for Legal Professionals

Survey Information

Survey Information

Project title To what extent is there is need for knowledge of ‘Islamic Law’ to be provided as part of legal education for legal professionals in England and Wales?

Researcher’s name Sairah Al-Qasim (Professional Doctorate Student, Nottingham Law School, Nottingham Trent University)

Supervisor’s name Jane Ching (Professor of Professional Legal Education, Nottingham Law School, Nottingham Trent University)

What is this research project about?

The aim of this project is to identify the extent there is a need for knowledge of ‘Islamic Law’ as part of legal education for legal professionals in England and Wales. It will determine if ‘Islamic Law’ needs to be included as part of legal education and, if so, how. The meaning of ‘Islamic Law’ in the context of legal practice will be established and existing curricula teaching ‘Islamic Law’ in law schools in England and Wales will be analysed. The purpose is to explore how legal education can meet the needs of legal professionals in regard to ‘Islamic Law’ as a result of its presence in England and Wales as part of legal practice.

Why have I been invited?

You are being invited to participate in the first stage of data collection of this research project, to investigate if there is a need for knowledge of ‘Islamic Law’ by legal professionals in England and Wales. As a legal professional in this jurisdiction you have been selected to help the researcher obtain information as to how as to how ‘Islamic Law' and the needs of Muslim clients currently impacts on legal practice work.

Do I have to take part?

No. If you do not, then you will not hear from the researcher again unless you indicate to the researcher you are able to assist at later stage of the project. If you agree to take part but change your mind, before starting the survey, or at any stage during the completion, you can withdraw, by clicking the ‘cancel’ button, without any adverse consequences (in particular your employer, your university or any other third party will not know that you have withdrawn). Because there are time constraints on the study, it will not be possible to withdraw your information or ask for any part of it not to be used once the survey has been submitted upon completion of the final page.

Can I recommend other individuals to the researcher who may have an interest in this project and may be willing to take part?

Yes, certainly. The researcher aims to collect data as widely as possible to ensure accuracy and credibility of this project. Should you be able to recommend another suitable participant, please tick the relevant box on the survey and ensure you have obtained their consent before separately emailing their contact details to the researcher on the address provided. You are not obliged to explain anything about the research to another participant nor send them any links to the project. For privacy and confidentiality, neither yours nor the recommended individual’s participation or non-participation will be discussed with either of you at any stage.

What will happen to me if I take part?

You will be asked to respond to a survey about your experiences with ‘Islamic Law’ as a legal professional. This survey should take no longer than 30-45 minutes. You may agree to a follow up interview to find out more about your experience. Any contact details you provide will be kept securely and deleted at the end of the project. You should consider, in deciding what to tell the researcher, whether any of that information might accidentally identify you, your employer or any related third party (e.g. a particular work practice which the researcher will not know is unique to your firm).

What are the possible advantages and disadvantages of taking part?

The benefits of taking part are that you will be able to contribute to the shaping of future legal education in the England and Wales. Your input may assist others in your profession as well as your clients to ultimately ensure the best legal services are being provided. Participating in the research is not anticipated to cause you any disadvantage or discomfort.

Your employer or any other third party will not be told whether or not you have taken part. Taking part will not, therefore, affect your standing in any way. You will not receive any payment for your participation.

What will happen to the information I provide?

Your contact details will be kept securely by the researcher, under password and all contact details and, e.g., emails and other correspondence will be deleted after the project. Copies of hard copy consent forms will, however, be printed out and held in a locked cabinet by the researcher until the completion of the doctoral project, following which they will be destroyed.

Anonymous summaries will be created in the course of analysis of the group of surveys as a whole to assist in collating the finding of the research. These will be deleted after the completion project unless you give consent to the researcher for its use in other publications, and/or in an open access format.

The information you provide will be analysed and used as part of the write-up of this research project. The write- up may include anonymised quotations from the survey. If you give consent to the researcher for its use in other publications, and/or in an open access format, it may also be used there but will still be anonymised. Although researcher will take precautions will ensure that no-one will be able to trace any quotations back to you or your employer caution should be exercised by you during the course of the survey, whether any of that information might accidentally identify you, your employer or a third party (e.g. a particular work practice which the researcher will not know is unique to your firm). The researcher cannot be held responsible for such disclosure.

What is the next stage?

If you wish to take part, please complete the consent form on the next page and click submit to start the survey.

What if there is a problem?

We hope this is unlikely. However, if you do have any concerns or wish to complain, please contact the researcher via email on sairah.al-qasim2015@myntu.ac.uk or the lead supervisor for this project on 0115 8484157 or at jane.ching@ntu.ac.uk

Thank you.

Consent Form

Please choose Agree or Disagree below as applicable. Please note clicking 'Agree' will be taken as you consent to providing your information to the researcher and (if necessary) as confirmation you are over 18.

I have read and understood the information sheet for this project which I may keep for my records and agree to take part. I have had the opportunity to ask any questions I may have. I understand that my information will be held and processed for the purposes of this research project and possible reports and publications arising from it. I understand that data will be held confidentially and that I will not be identified in any publications or reports without my prior consent. I understand that my participation is voluntary and that I am free to withdraw at any time by clicking the 'cancel' button including on each page of the survey without giving any reason, and without being penalised or disadvantaged in any way. I understand once I click 'submit' on the final page of the survey, withdrawal is no longer possible. I understand that the researcher is a solicitor and is obliged to report serious misconduct to the SRA. I understand who to contact if I have any concerns or complaints. ✱ *Required*

Personal Information

Date of Birth

Dates need to be in the format 'DD/MM/YYYY', for example 27/03/1980.
Please make sure the date is between 01/01/1920 and 01/01/2002.

(dd/mm/yyyy)

Sex ✱ *Required*

- Male
- Female
- Other

What is your first or native language? ✱ *Required*

- Arabic
- Bengali (including Sylheti and Chatgaya)
- Chinese languages
- English
- French
- Gujrati
- Panjabi
- Polish
- Portuguese
- Spanish
- Urdu
- Welsh
- Other

If you selected Other, please specify:

What is your highest educational qualification? ✱ *Required*

- Bachelor's Degree
- Graduate Diploma in Law/CPE
- CILEx qualifications
- Postgraduate Certificate
- Postgraduate Diploma
- LPC/BPTC
- Master's Degree
- PhD/Doctorate
- Other

If you selected Other, please specify:

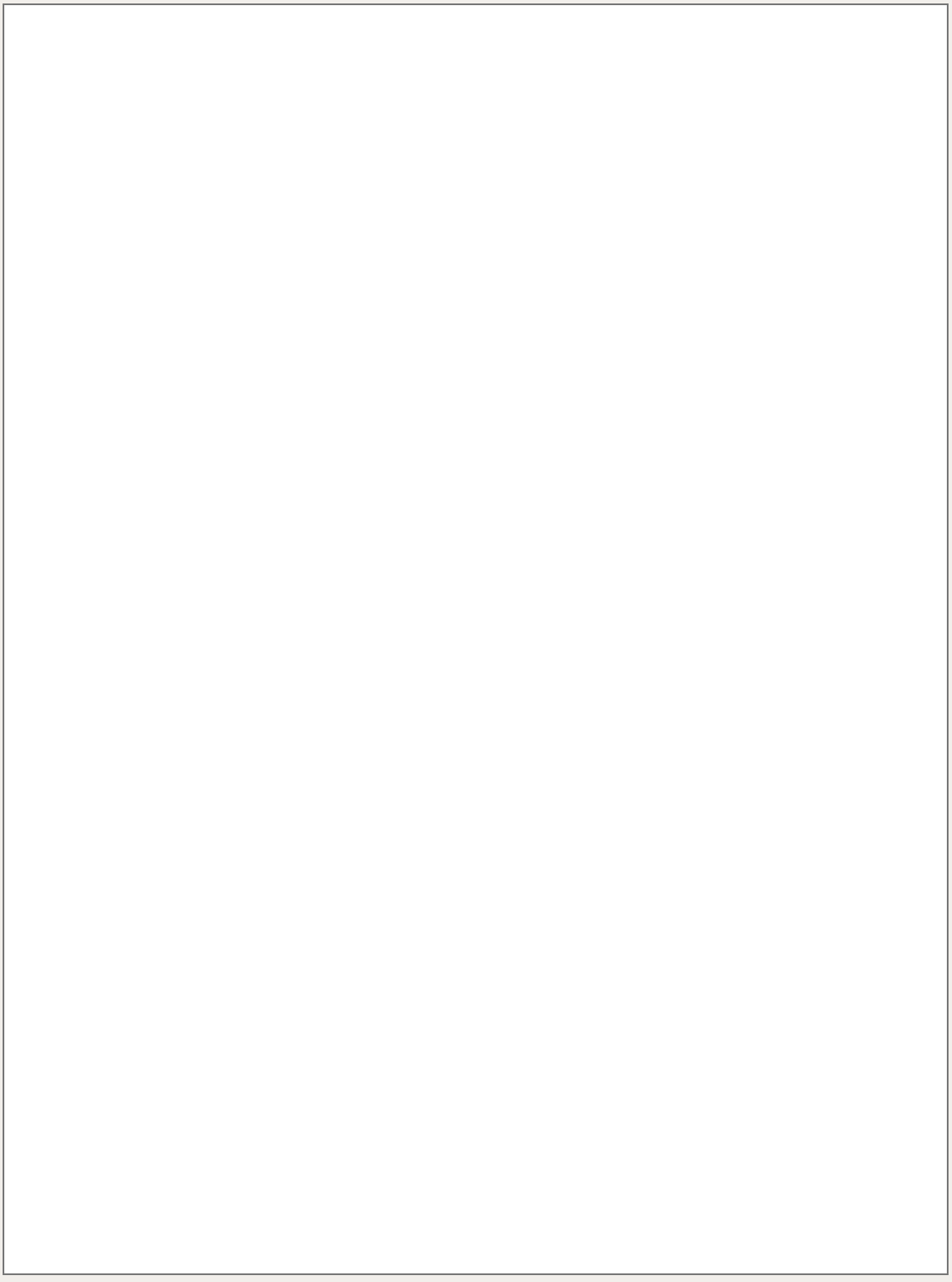
What is 'Islamic Law'?

This survey is about how Muslims and 'Islamic Law' are dealt with in legal practice and legal education. The concept 'Islamic Law' may, however, have different meanings to different people. Which of these statements (if any) come closest to your own understanding of the concept 'Islamic Law' as it might manifest itself in legal practice? ✱ *Required*

Please select exactly 1 answer(s).

- ☐ It is a set of religious principles which a client might wish to have in the background but is too vague to be a 'law'.
- ☐ It is a set of cultural practices which are significant mostly in how clients are treated.
- ☐ It is a set of laws used in some other countries which have a Muslim majority population so would be relevant in the UK only as a choice of law clause in a contract.
- ☐ It is a subsidiary of the law of England and Wales, reflected in recognition of Islamic marriages and wills, the results of Islamic arbitrations etc.
- ☐ Other

If you selected Other, please specify:



Your Professional Experience

In order to obtain a picture of your own experience it is helpful to obtain some details about your legal professional background. Please complete this table, starting with your current position and working backwards including any voluntary positions in the legal sector only, where relevant.

More info

	From	To	Job Title	If you selected Other, please specify:	Name of Organisation
1	(dd/mm/yyyy)	(dd/mm/yyyy)	Please select		
2	(dd/mm/yyyy)	(dd/mm/yyyy)	Please select		
3	(dd/mm/yyyy)	(dd/mm/yyyy)	Please select		
4	(dd/mm/yyyy)	(dd/mm/yyyy)	Please select		
5	(dd/mm/yyyy)	(dd/mm/yyyy)	Please select		
6	(dd/mm/yyyy)	(dd/mm/yyyy)	Please select		
7	(dd/mm/yyyy)	(dd/mm/yyyy)	Please select		
8	(dd/mm/yyyy)	(dd/mm/yyyy)	Please select		
9	(dd/mm/yyyy)	(dd/mm/yyyy)	Please select		
10	(dd/mm/yyyy)	(dd/mm/yyyy)	Please select		

'Islamic Law' Training and Experience

Are you able to provide any further information on any specific training/education in ‘Islamic Law’ you have had?

- Yes
- No
- I have never received any 'Islamic Law' training

Your 'Islamic Law' training/education

Please provide further information in regard to your 'Islamic Law' training/ education below. Include any training/education of relevance prior to, or outside employment, starting with the most recent.

	Name of education/training/qualification	From	To	Topic(s) covered	Lev
1		(dd/mm/yyyy)	(dd/mm/yyyy)		Please select
2		(dd/mm/yyyy)	(dd/mm/yyyy)		Please select
3		(dd/mm/yyyy)	(dd/mm/yyyy)		Please select
4		(dd/mm/yyyy)	(dd/mm/yyyy)		Please select
5		(dd/mm/yyyy)	(dd/mm/yyyy)		Please select
6		(dd/mm/yyyy)	(dd/mm/yyyy)		Please select
7		(dd/mm/yyyy)	(dd/mm/yyyy)		Please select
8		(dd/mm/yyyy)	(dd/mm/yyyy)		Please select
9		(dd/mm/yyyy)	(dd/mm/yyyy)		Please select
10		(dd/mm/yyyy)	(dd/mm/yyyy)		Please select

Frequency of dealing with 'Islamic Law' as a Lawyer

How often do you currently deal with ‘Islamic Law’ as part of your professional practice as a Lawyer?

'Islamic Law' Experience as a Lawyer

Have you come across any of the following areas/substantive topics in your practice as a Lawyer?

- ☐ Islamic Wills and Probate
- ☐ Islamic Finance
- ☐ Islamic Contracts
- ☐ Islamic Family Law
- ☐ Islamic Arbitration
- ☐ Islamic Commercial Law
- ☐ Islamic Law issues arising in another country
- ☐ Other

If you selected Other, please specify:

Please explain what the typical client needs are in any areas you have identified, how 'Islamic Law' as you have defined it manifests itself, and who would normally deal with these issues.

	Islamic Wills and Probate	Islamic Finance	Islamic Contracts	
Typical client needs				

How 'Islamic Law' manifests itself				
Normally dealt with by:				

Please provide a brief description of one recent incident or matter, that involved one of these areas of law or 'Islamic Law' as you have defined it, in more detail. ✱ *Required*

Who did the area of law or 'Islamic Law' as you have defined it principally affect and how?

	Who ✱ *Required*		
	Yes	No	How?
Clients	◉	○	
Colleagues	◉	○	
Opponents	◉	○	
Other (please explain)	◉	○	

From your professional experience are the legal needs of those working with or conducting business with Muslims met?

- ○ Yes
- ○ No

If Yes, please explain how they are met. If No, please explain how they are not met and how this could be improved.

Frequency of dealing with 'Islamic Law' as an Academic

How often do you deal with 'Islamic Law' in your professional practice as an Academic?

'Islamic Law' Experience as an Academic

Have you taught or researched any of these topics? If yes, please indicate on which course you have taught the topic or in which context you have researched the topic.

	Taught			Researched *Required*		
	Yes	No	If you have taught the topic, please indicate how 'Islamic Law' as you have defined it, manifests in the topic.	Yes	No	If you have researched the topic, please indicate how 'Islamic Law' as you have defined it was part of this research and how it was initiated.
Islamic Wills and Probate	○	○		○	○	
Islamic Finance	○	○		○	○	
Islamic Contracts	○	○		○	○	
Islamic Family Law	○	○		○	○	
Islamic Arbitration	○	○		○	○	
Islamic Commercial Law	○	○		○	○	
Islamic Law issues arising in another country	○	○		○	○	

Please describe one recent incident or teaching session that involved an area 'Islamic Law' as you have defined it in more detail.

	Who did it affect?		How did the area of 'Islamic Law' as you have defined it principally affect that person or those people and why?
	Yes	No	
Students	○	○	
Colleagues	○	○	
Research participants	○	○	
Others	○	○	

From your professional experience as an Academic, are the legal needs of those teaching, working with, or conducting business with Muslims met?

- Yes
- No
- Partially
- Other

If No,please explain why and areas of improvement

If yes, please explain why.

If partially, please explain why with areas for improvement

'Islamic Law' and Your General Experience

Do you feel you have the required knowledge to deal with all the aspects of ‘Islamic Law’ as you have defined it that you come across as part of your academic or legal practice?

Please give reasoning for your answer.

What, if any, problems or issues have you faced, when dealing with ‘Islamic Law’ as you have defined it? Please give one explain of a problem or issue and how you did or did not overcome it.

Whether or not you have already had any training in 'Islamic Law', would it have benefitted you to have had some/additional training in the topic?

- Yes
- No

If no, why not?

If yes, at which level (choose all that apply and say why).

	Yes/No		If Yes, please explain why.
	Yes	No	
Bachelor's Degree	○	○	
Graduate Diploma in Law/CPE	○	○	

CILEx qualifications	○	○	
Postgraduate Certificate	○	○	
Postgraduate Diploma	○	○	
LPC/BPTC	○	○	
Masters' Degree	○	○	
PhD/Doctorate	○	○	
CPD Course	○	○	
Other	○	○	

Is there anything else that you would like to say about 'Islamic Law' and the needs of Muslims in legal education and legal practice in England and Wales? ✱ *Required*

- ○ Yes
- ○ No

If Yes, please detail here.

If you would be prepared to allow the researcher to contact you for a follow up interview, please provide your email address and telephone contact details

After completing this survey, if you are aware of any other individual/organisation that may be able to assist with the survey, please kindly include their name and email address below.

Thank You.

Thank you for participating in this survey.

Key for selection options

1 - I have read and understood the information sheet for this project which I may keep for my records and agree to take part. I have had the opportunity to ask any questions I may have. I understand that my information will be held and processed for the purposes of this research project and possible reports and publications arising from it. I understand that data will be held confidentially and that I will not be identified in any publications or reports without my prior consent. I understand that my participation is voluntary and that I am free to withdraw at any time by clicking the 'cancel' button including on each page of the survey without giving any reason, and without being penalised or disadvantaged in any way. I understand once I click 'submit' on the final page of the survey, withdrawal is no longer possible. I understand that the researcher is a solicitor and is obliged to report serious misconduct to the SRA. I understand who to contact if I have any concerns or complaints.

- Agree
- Disagree

7.1.c - Job Title

- Solicitor
- Barrister
- Legal Executive
- Judge
- University Lecturer
- Other

7.2.c - Job Title

- Solicitor
- Barrister
- Legal Executive
- Judge
- University Lecturer
- Other

7.3.c - Job Title

- Solicitor
- Barrister
- Legal Executive
- Judge
- University Lecturer
- Other

7.4.c - Job Title

- Solicitor
- Barrister
- Legal Executive
- Judge
- University Lecturer
- Other

7.5.c - Job Title

- Solicitor
- Barrister
- Legal Executive
- Judge
- University Lecturer
- Other

7.6.c - Job Title

- Solicitor

Barrister
Legal Executive
Judge
University Lecturer
Other

7.7.c - Job Title

Solicitor
Barrister
Legal Executive
Judge
University Lecturer
Other

7.8.c - Job Title

Solicitor
Barrister
Legal Executive
Judge
University Lecturer
Other

7.9.c - Job Title

Solicitor
Barrister
Legal Executive
Judge
University Lecturer
Other

7.10.c - Job Title

Solicitor
Barrister
Legal Executive
Judge
University Lecturer
Other

9.1.e - Level

Bachelors
Masters
Postgraduate Diploma/Certificate
Single standalone course
CPD level course
Other

9.2.e - Level

Bachelors
Masters
Postgraduate Diploma/Certificate
Single standalone course
CPD level course
Other

9.3.e - Level

Bachelors
Masters
Postgraduate Diploma/Certificate
Single standalone course
CPD level course
Other

9.4.e - Level

Bachelors
Masters
Postgraduate Diploma/Certificate
Single standalone course
CPD level course
Other

9.5.e - Level

Bachelors
Masters
Postgraduate Diploma/Certificate
Single standalone course
CPD level course
Other

9.6.e - Level

Bachelors
Masters
Postgraduate Diploma/Certificate
Single standalone course
CPD level course
Other

9.7.e - Level

Bachelors
Masters
Postgraduate Diploma/Certificate
Single standalone course
CPD level course
Other

9.8.e - Level

Bachelors
Masters
Postgraduate Diploma/Certificate
Single standalone course
CPD level course
Other

9.9.e - Level

Bachelors
Masters
Postgraduate Diploma/Certificate
Single standalone course
CPD level course
Other

9.10.e - Level

Bachelors
Masters
Postgraduate Diploma/Certificate
Single standalone course
CPD level course
Other

10 - How often do you currently deal with 'Islamic Law' as part of your professional practice as a Lawyer?

Daily
Once a week
Once a month
Twice a month

Once a year
Less frequently
Never
I am an Academic

15 - How often do you deal with 'Islamic Law' in your professional practice as an Academic?

Daily
Once a week
Once a month
Twice a month
Once a year
Less frequently
Never
I am not an Academic

19 - Do you feel you have the required knowledge to deal with all the aspects of 'Islamic Law' as you have defined it that you come across as part of your academic or legal practice?

Yes
No

Appendix 5- Interview Information Sheet

Interview Information sheet

Project title To what extent is there is need for knowledge of 'Islamic Law' to be provided as part of legal education for legal professionals in England and Wales?

Researcher's name Sairah Al-Qasim (Professional Doctorate Student, Nottingham Law School, Nottingham Trent University)

Supervisor's name Jane Ching (Professor of Professional Legal Education, Nottingham Law School, Nottingham Trent University)

What is this research project about?

The aim of this project is to identify the extent there is a need for knowledge of 'Islamic Law' as part of legal education for legal professionals in England and Wales. It will determine if 'Islamic Law' needs to be included as part of legal education and, if so, how. The meaning of 'Islamic Law' in the context of legal practice will be established and existing curricula teaching 'Islamic Law' in law schools in England and Wales will be analysed. The purpose is to explore how legal education can meet the needs of legal professionals in regard to 'Islamic Law' as a result of its presence in England and Wales as part of legal practice.

Why have I been invited?

You are being invited to participate in the second stage of data collection of this research project, to investigate what is the meaning of 'Islamic Law' in the context of legal practice in England and Wales and how 'Islamic Law' is currently integrated into legal education in England and Wales (if it is). As a legal professional in this jurisdiction you have been selected to help the researcher obtain information as to how 'Islamic Law' and the needs of Muslim clients currently impacts on legal practice work .

Do I <u>have</u> to take part?

No. You will be contacted by me using the telephone/email details you provided in your response to the survey and asked if you still wish to participate. If you do not, or a suitable appointment cannot be made, then you will not hear from me again. If you change your mind before the interview appointment, or at any stage during the interview, you can withdraw without any adverse consequences (in particular your employer or any other third party will not know that you have withdrawn). Because there are time constraints on the study, it will not be possible to withdraw your information or ask for any part of it not to be used once the interview has taken place.

What will happen to me if I take part?

You will be asked to take part in an interview about aspects of your work and your experience of 'Islamic Law' within it by a researcher who is also a solicitor and academic. This interview should take no longer than 45-60 minutes and will normally be by telephone, Skype or other similar electronic calling method. You will be asked for permission for the interview to be audio-recorded, as this will help me in making sure complete details of the information you provided have been noted.

So that you are not placed in difficulty by being overheard, interviews may take place in the evenings or at weekends if this is more convenient for you. I may be able to provide you with some information about likely topics in advance. If you feel uncomfortable with any individual questions, you do not need to answer them. You should also consider, in deciding what to tell me, whether any of that information might accidentally identify you, your employer or a third party (e.g. a particular work practice which I will not know is unique to your firm).

Can I recommend other individuals to the researcher who may have an interest in this project and may be willing to take part?

Yes, certainly. I aim to collect data as widely as possible to ensure accuracy and credibility of this project. Should you be able to recommend another suitable participant, please ensure you have obtained their consent before passing on their contact details to the researcher. You are not obliged to explain anything about the research to another participant and for privacy and confidentiality, neither yours nor the recommended individual's participation or non-participation will be discussed with either of you at any stage.

What are the possible advantages and disadvantages of taking part?

The benefits of taking part are that you will be able to contribute to the shaping of future legal education in England and Wales. Your input may assist others in your profession as well as your clients to ultimately ensure the best legal services are being provided. Participating in the research is not anticipated to cause you any disadvantage or discomfort.

Your employer or any other third party will not be told whether or not you have taken part. Taking part will not, therefore, affect your standing in any way. You will not receive any payment for your participation.

The researcher is a solicitor and bound by Outcome 10(4) of the Solicitors Code of Conduct 2011 to "report to the *<u>SRA</u>* promptly, serious misconduct by any person or *<u>firm</u>* authorised by the *<u>SRA</u>*, or any *<u>employee</u>*, *<u>manager</u>* or *<u>owner</u>* of any such

firm (taking into account, where necessary, your duty of confidentiality to your *client*)". You should take this into account when deciding whether to participate and, if you do, what information you reveal.

What will happen to the information I provide?

Your contact details will be kept securely by the researcher, under password and all contact details and, e.g., emails and other correspondence will be deleted after the project. Copies of hard copy consent forms will, however, be printed out and held in a locked cabinet by the researcher until the completion of the doctoral project, following which they will be destroyed.

The audio recordings will be transferred from the researcher's audio device to her PC where they will be held, under password, until the completion of the project. The audio recordings will also be transcribed and anonymised. Summaries will be created in the course of analysis of the group of interviews as a whole from the anonymised transcriptions.

The audio recording and transcripts will be deleted after the project ends unless you have given consent to the researcher for their use in other publications, and/or in an open access format. Audio recordings (these cannot be fully anonymised) or transcripts will not be passed on to any third party at the conclusion of the project but will be deleted on completion of the analysis. It will not be possible to provide you with a duplicate of the audio recording. Any information that identifies you or your employer, or that gives any clues to your identity, will be removed. Although researcher will take precautions will ensure that no-one will be able to trace your transcript back to you or your employer caution should be exercised by you during the course of the interview, whether any of that information might accidentally identify you, your employer or a third party (e.g. a particular work practice which the researcher will not know is unique to your firm). The researcher cannot be held responsible for such disclosure.

The information you provide will be will be analysed and used as part of the write-up of this research project. The write-up may include anonymised quotations from the interview. If you give consent to the researcher for its use in other publications, and/or in an open access format, it may also be used there but will still be anonymised.

How will you protect my confidentiality and anonymity.

The audio recordings and transcripts will be handled only by me in line with data protection principles and the NTU Research Code of Practice. Hard copies of research notes will be kept in locked filing cabinets, and electronic files will be kept on a password protected computer which are not accessible to any other third party.

Once the project ends audio recordings and transcripts of your interview will be destroyed and the relevant files erased from my computers.

You will not be named or otherwise identified in any publication arising from this project unless your role forms part of a narrative that is already in the public domain (for example, if you were the named author of a published document or gave evidence to a public inquiry relevant to the study). No unpublished opinions or information will be attributed to you, either by name or position.

I will exercise all possible care to ensure that you, your employer or any connected third party cannot be identified by the way I write up the findings.

What is the next stage?

If you wish to take part, please complete the attached consent form and return this to the researcher on sairah.al-qasim2015@myntu.ac.uk . The researcher will the contact you upon receipt and arrange with you an appointment time for interview.

Updates of the progress of this research will be place on Nottingham Law School's Centre of Legal Education webpage http://www.nlscle.org.uk.

What if there is a problem?

We hope this is unlikely. However, if you do have any concerns or wish to complain, please contact the researcher via email on sairah.al-qasim2015@myntu.ac.uk or the lead supervisor for this project on 0115 8484157 or at jane.ching@ntu.ac.uk

Thank you.

Appendix 6- Interview Consent Form

Interview Consent Form

Project title To what extent is there is need for knowledge of 'Islamic Law' to be provided as part of legal education for legal professionals in England and Wales?

Researcher's name Sairah Al-Qasim (Professional Doctorate Student, Nottingham Law School, Nottingham Trent University)

Supervisor's name Jane Ching (Professor of Professional Legal Education, Nottingham Law School, Nottingham Trent University)

I have read and understood the information sheet for this project which I may keep for my records and agree to take part.	☐
I have had the opportunity to ask any questions I may have.	☐
I understand that my information will be audio recorded, held and processed for the purposes of this research project and possible reports and publications arising from it.	☐
I understand that data will be held confidentially and that I will not be identified in any publications or reports without my prior consent.	☐
I understand that my participation is voluntary and that I am free to withdraw at any time until the conclusion of the interview without giving any reason and without being penalised or disadvantaged in any way.	☐
I understand that the researcher is a solicitor and is obliged to report serious misconduct to the SRA.	☐
I consent to the researcher to use the anonymised information collected, for use in publications, and/or in an open access format.	☐
I understand who to contact if I have any concerns or complaints.	☐

Name of Participant	**Date**	**Signature**
Researcher	**Date**	**Signature**

Contact details

Should you require any further information about this consent form or the attached information sheet please contact:

Researcher: sairah.al-qasim2015@myntu.ac.uk

Supervisor: jane.ching@ntu.ac.uk

Upon completion please return this form to the researcher on the email address above.

Appendix 7- Interview Guide

Interview Guide

Project title To what extent is there is need for knowledge of 'Islamic Law' to be provided as part of legal education for legal professionals in England and Wales?

Researcher's name Sairah Al-Qasim (Professional Doctorate Student, Nottingham Law School, Nottingham Trent University)

Supervisor's name Jane Ching (Professor of Professional Legal Education, Nottingham Law School, Nottingham Trent University)

Thank you for agreeing to be interviewed for the second stage of data collection of this research project, to investigate what is the meaning of 'Islamic Law' in the context of legal practice in England and Wales and how 'Islamic Law' is currently integrated into legal education in England and Wales.

1. Can you please confirm that you have read and understood the 'Interview Information Sheet' and completed and returned the 'Interview Consent Form'?
2. (Please could you briefly detail your educational and professional background.)
3. (Do you have any specific academic qualifications or have you had any specific training in 'Islamic Law'? If so when and where.)
4. How would you define 'Islamic Law from your experience?
5. (Have you experienced 'Islamic Law' as part of your professional background? If so, where and in what context.)
6. Have you faced issues of having to reconcile 'Islamic Law' and secular law? How did you deal with this?
7. Have you acted as an expert on 'Islamic Law' or used an 'Islamic Law' expert? Tell me about it.
8. From your professional experience, did you feel your education or training in 'Islamic Law' was sufficient to meet your professional needs? Please explain.
9. In your experience does current education in 'Islamic Law' meet the needs of legal practice? If yes, how? If not, what issues have you faced/ problems have been caused.
10. Please tell me what you think of the current provision for legal education in 'Islamic Law' for those who intend to practise as lawyers.
    -Does this need to improve?
    -What areas of 'Islamic Law' need to be included as part of legal education that are not currently included and why?
    -Does 'Islamic Law' need to be included as subject to be studied either as a standalone or as part of an other subject to meet the needs of legal practice? Why?
    -Should 'Islamic Law' be included as an optional or mandatory course as part of an undergraduate or postgraduate degree programme? Please explain your reasoning.
11. Is there anything else you would like to add in regard to the meaning of 'Islamic Law' in legal practice in England and Wales or about how 'Islamic Law' is currently integrated into legal education?

Should you have any queries please refer to the 'Interview Information Sheet' or contact the Researcher directly.

(Note: Questions in brackets will only asked for those interviewees who did not provide this information in the questionnaire as part of Document 3.)

Appendix 8- Current 'Islamic Law' Offerings in the United Kingdom

Islamic Law' modules offered in the United Kingdom by Higher Education Providers- 20 June 2018

	Provider	Module	Name of Course	Level	Academic/Vocational	Compulsory / Optional	Credits	Description	Link	Notes
1	BPP	Islamic Business Law	LL.M. in Law	Postgraduate- Master's/LPC	Academic/Vocational	Optional	30	None Available	https://www.bpp.com/courses/law/llm-master-of-laws	
2	BPP	Islamic Finance Law	LL.M. in Law	Postgraduate- Master's/LPC	Academic/Vocational	Optional	30	None Available	https://www.bpp.com/courses/law/llm-master-of-laws	
3	BPP	Advanced Islamic Finance and Business Law	LL.M. in Law	Postgraduate- Master's/LPC	Academic/Vocational	Optional	30	None Available	https://www.bpp.com/courses/law/llm-master-of-laws	

4	BPP	Introduction to Islamic Banking & Finance	Professional Development	Postgraduate	Vocational	Optional	Unknown	**Course level** Introductory **Delegates** This course is a must for those who work in the credit or loans administration team, with daily responsibility for active loan portfolios, either at the clerical or managerial level. It is also suitable for those who work in a global lending operations division generally and who wish to understand what credit or loan administration involves. No prior knowledge is assumed. Overview This two-day course provides a basic understanding of Islamic Banking and Finance. The course gives an overview of the main contracts used in Islamic finance and example of context in which these contracts would be used. Topics covered in this course include: The basis of Islamic finance Sources of Islamic commercial law Islamic finance regulators and their role Shariah boards and their role Introduction to most commonly used Islamic contracts and their applications Mudaraba Musharaka Murabaha Arbun Ijara Salam Istisn'a Overview of Islamic banking, Takaful, and capital markets products Islamic banking Deposits and investment accounts Islamic banking products and services Islamic insurance - Takaful An overview of Takaful products and services Takaful underwriting, deficits, surpluses and Retakaful Capital markets Overview of Islamic capital markets Islamic asset and fund management Sukuk markets Course no longer available,	http://www.bppprofessionaldevelopment.com/productdetails.aspx?product=25411&sitting=DEFAULT&location=UK&elqaid=669&elqat=2&elqTrackId=80bce13dc441491da39a0062cfda7684	No longer available
5	City University	Introduction to Islamic Law LU3072	LL.B in Law and Graduate LL.B.	Undergraduate- Bachelors	Academic	Optional	Unknown	None Available	https://city.rl.talis.com/lists/B11961CA-A4C3-EDCA-76B0-BB4A9C2D0A44.html	A reading list was available. The list did not indicate any focus on legal practice..

6	Durham University	Islamic Law and Financial Transactions ECON47215	MSc in Islamic Finance	Postgraduate- Master's	Academic	Compulsory	15	**Aims** To provide students with an advanced understanding of key concepts of Islamic law related to commercial and financial transactions. To enable students to critically evaluate the process of law making in Islam. To provide students with an advanced understanding of the principles and implications of Islamic law for financial transactions. To critically examine the application of Islamic contracts in Islamic financial institutions and different legal jurisdictions. **Content** Introduction to Islamic Law: Brief history of Islamic law. Difference between Shari'ah and Fiqh. General Principles of Islamic law related to transactions. Methodology of Islamic Law (Usul-al Fiqh): Primary Sources of Islamic law (Quran and Sunnah). The process of obtaining legal rules from Shariah through ijtihad using other sources and methods including the following: Ijma (consensus), al-qiyas (analogy). Riba and Gharar: Definition and types of riba (riba al-fadl and riba al nasiah). Definition and types of gharar (Gharar in the essence of contract and the object of the contract). Implications of riba and gharar for contemporary financial transactions. Types of Traditional Nominate Contracts: Contracts of exchange—sale contracts (Bai), hire contract (ijarah), work done for reward (jual). Accessory contracts—agency (wakala), partnerships (sharika), assignment (hawala), pledge or mortgage (rahn). Gratuitous contracts—loan (qard), deposit (wadia), gift (hiba), guarantee and personal security (daman or kafala). Application of Islamic contracts in Contemporary Financial Transactions: Approaches to develop financial products from traditional contracts. Examples of major instruments used in Islamic finance. Shari'ah Governance: Functions of Shari'ah Supervisory Board in Islamic finance. Role of Shari'ah Supervisory Board in the pre- and post-product development stage. Critical issues in Shari'ah supervision. Issues Related to Application of Islamic Law in Financial Transactions: Islamic Banking Law/Statutes. Standardization of Shari'ah Rules. Dispute Settlement/Conflict Resolution Institutions. Application of Islamic contracts in common and civil law jurisdictions. **Learning Outcomes** **Subject-specific Knowledge:** An advanced knowledge of the nature and scope of Islamic Law and its application in financial transactions. Advanced understanding of the application of Islamic contracts in contemporary financial transactions. An advanced knowledge of the issues	https://www.dur.ac.uk/resources/faculty.handbook/degrees/frameworks/n3k809.pdf	

								related to implementing Islamic contracts consistent with the objectives of the Islamic Law (Maqasid al-Shari'ah). An advanced understanding of organizational and legal issues related to applying Islamic law during contemporary times. **Subject-specific Skills:** The ability to evaluate the principles of Islamic law and its applications in financial transactions. The ability to explain convincingly the rationale for the prohibition of riba and gharar and its implications for Islamic finance. The ability to critically review the contracts used in Islamic banking and finance. An advanced ability to analyse the role of Shari'ah boards in product development and compliance at Islamic financial institutions. The intellectual capacity to ascertain the problems of implementation of Islamic financial transactions. **Key Skills:** Independent learning within a defined framework of study at an advanced level. Independent thought in analyzing and critiquing existing scholarship on the subject area and in evaluating its contribution. The ability to work to a deadline and complete written work within word limits. The ability to seek out and use relevant data sources, including electronic and bibliographic sources.		

7	Islamic College validated by Middlesex University	Sources of Islamic knowledge ML 401	MA in Islamic Law	Postgraduate- Master's	Academic	Compulsory	20	This module presents an in-depth study to the two fundamental sources of Islam. It aims to analyse the overall structure, content and style of the Qur'an and Hadīth according to classical and modern approaches and their function in Muslim religious and cultural life. It provides the theoretical framework to critically analyse Islamic exegetical traditions, tracing their development and demonstrating the variety of ways in which Muslims have approached and understood the Qur'an and Hadīth.The first part of the course examines the earliest forms of Qur'anic scholarship including the compilation of the Qur'an and its integrity, the significance of the role of reciters (qurra'). Further, different exegetical schools, classical and moderns, developed by Muslims will be critically examined providing an opportunity for the students to analyse the features of the different exegetical schools in Qur'anic hermeneutics, and to compare and contrast passages from a number of classical tafsir texts. Furthermore, The concept of revelation, wahy, and the theological dispute about the temporality or eternity, hudūth or qidam, of the Qur'an will be discussed and its impact on the interpretation of the Qur'an in terms of contextuality or universality of its teachings will be critically analysed The second part of this course focuses on the study of the formation and the development of Hadīth literature in the first three centuries of Islam both in Sunni and Shi'i traditions. The main compilers and their political and theological tendencies and the impact of all these on their compilations will be discussed and the reasons behind overwhelming acceptance of some of the compilations at the expense of others will be examined. Students examine selected texts from the canonical collection of traditions together with commentaries, which scrutinize traditions from theological, legal and linguistic perspectives. This also includes a critical assessment of the Muslim and Western scholarship in the study of traditions.	http://www.islamic-college.ac.uk/courses/ml-401-sources-of-islamic-knowledge-ma/	

8	Islamic College validated by Middlesex University	Methods and Perspectives in Islamic Law ML 403	MA in Islamic Law	Postgraduate- Master's	Academic	Compulsory	20	The current module is devised to familiarise students with the most important methodological approaches and schools in the field of Cultural Sciences in general and in Islamic Law in particular. Since each competent researcher in Islamic Law ought to have a good grasp of a number of 'methods' for collecting, analysing and interpreting data and information, critically assessing available evidence, rival views and contesting theories, and providing satisfactory explanations for the phenomena under investigation, a selection of most relevant research methods is also introduced. In view of the fact that successful researchers should be able to present the results of their findings in effective ways, various techniques of writing and presenting research essays and projects on themes related to Islam will be introduced. The overall aim of the Module however, is to familiarise students with the ability of critical thinking and to equip them with the required skill and competence for discerning and exploring genuine 'problems' in the area of Islamic Law and developing their intellectual potentials for producing novel solutions for the detected problems. This ability in its apex is technically termed ijtihad. Researching and analysing Islamic resources for legal purposes · The spirit versus letter in Islamic law · Different approaches to ijtihad and its scope · How can Islamic law face exigencies of modern life · Critical Rationalism: A Sound Epistemological Framework for Studying Islamic Law · Situational Analysis/ Situational Logic: A Suitable Methodology and Method for Mujtahids and Researchers in Islamic Law · Hermeneutics: Hans-Georg Gadamer and Paul Ricoeur and the relativistic implications of the approach · Thomas Kuhn's paradigm and the historical phases of Islamic Law · Using internet and appropriate software for research in Islamic Law · Literature review with regard to major resources in various Islamic fields · Essay writing skills for academic purposes · Presentation of a research report	http://www.islamic-college.ac.uk/courses/ml-401-sources-of-islamic-knowledge-ma/	

9	Islamic College validated by Middlesex University	Islamic Family Law ML 415	MA in Islamic Law	Postgraduate- Master's	Academic	Compulsory	20	This module presents an in-depth study of the Islamic family law in contemporary contexts. In Islamic family law general principles of Shari'a govern such matters as marriage, divorce, maintenance, paternity and custody of children and the module contains study of major issues of family law in Islam. Moreover it will cover the extent to which Shari'a law in this respect is applied in Muslim communities everywhere. The law of marriage and its different types of marriage, also covering respective duties, condition of marriage and defects, terms of marriage, duration of marriage and dowry (mehr/mahr), The law of divorce and its different forms of divorce, also covering the disbanding of the contract, death of a partner and the waiting period. Guardianship, (walāyah), The Custody of children (kefālah) Maintenance (nafaqah), Polygamy, (taa'dod al azwaj) Marriage related Inheritance laws, (werāthah) Bequest (waşiyyah) Family planning Islam and gender, and the rights of the women With the aim of providing an overview of the topics as well as focusing on specific issues, each session above will address the relevant Islamic legal framework and particular contemporary issues of special importance but will only touch on comparative aspect leaving the bulk of this work to the module of Comparative Law and legal systems.	http://www.islamic-college.ac.uk/courses/ml-401-sources-of-islamic-knowledge-ma/	

10	Islamic College validated by Middlesex University	Islamic Commercial Law ML 412	MA in Islamic Law	Postgraduate- Master's	Academic	Optional	15	This module presents an in-depth study the Islamic commercial law in contemporary contexts. Islamic commercial law, known as fiqh mua'malāt constitutes an important branch of law dealing with issues of business and contracts. In business law, which also covers corporate law, it is the body of law that governs business and commercial transactions. It includes within its compass such titles as principal and agent; carriage by land and sea; merchant shipping; guarantee; marine, fire, life, and accident insurance; bills of exchange and partnership. It can also be understood to regulate corporate contract, hiring practices and the manufacture and sales consumer goods. A contract being a legally enforceable agreement between two or more parties with mutual obligations and in Shari'a law, it is a complex legal discipline in both its jurisprudential foundation and its practical function, covering a variety of dealings and transactions to meet the needs of the society. This first part of the module seeks to introduce students to the Shari'ah h law understanding of Contracts within fiqh mua'malāt. The module will examine the following core issues: · The requirements of a contract · The classification of a contract such as (Oqoud Tamlyk, Moshārekat, Niyābat, Tabaei, Tabraei) · The mechanism of contract formation and disqualification · Conditions of the parties · Proxies and Guardians · Risk taking and Gharār/Qarār · Dayn and Remittance With the aim of providing an overview of the topic as well as focusing on specific issues, each session above will address the relevant Islamic legal framework and particular contemporary issues of special importance but will only touch on comparative aspect leaving the bulk of this work to the module of Comparative Law and legal systems. The second part of the module aims at providing a specialised knowledge in one of the areas of the Islamic commercial law. Students will join a discussion group on an agreed theme that meet on at least four occasions and which will address a specialised area listed below. The second part of the module will enable students to engage in research and complete a project in one of the following areas: · Islamic banking · Insurance and assurance · Rent and Mortgages · Zakāt and other forms of taxation in Islam	http://www.islamic-college.ac.uk/courses/ml-401-sources-of-islamic-knowledge-ma/	

11	Islamic College validated by Middlesex University	Islamic Jurisprudence ML 413	MA in Islamic Law	Postgraduate- Master's	Academic	Optional	15	For those new to Islamic Law modules, this module is aimed delve deep into the concepts of Uṣūl al-fiqh and would discuss how differences of opinion about jurisprudential concepts would affect the judgement of jurists in their final decision to issue a fatwa. It intends to cover major chapters including hermeneutical principles, sources of the law, and the principles used to issue a ruling in the absence of such sources. · Introduction to Islamic jurisprudence · Hermeneutical principles discussed in Uṣūl al-fiqh · Sources of law in Islamic Shari'ah · Qur'an & the Sunnah · Consensus of Opinion (Ijmā') · Intellectual Reasoning or Dalil al Aql (Definitive, Speculation analogy and Juristic preference) · Methods of Deduction in the absence of sources (Presumption of Continuity, Principles of Precaution, Non-obligation and their types and utility) · Modern reflections on the sources of Shari'ah law · Conflict of Evidence · Developing Islamic models of law in Muslim countrie	http://www.islamic-college.ac.uk/courses/ml-401-sources-of-islamic-knowledge-ma/	
12	Islamic College validated by Middlesex University	Human Rights and Islam ML 419	MA in Islamic Law	Postgraduate- Master's	Academic	Optional	15	Those with an interest in Islamic law and governance on the one hand as well as human rights laws on the other will find this module ideal as it critically assesses the compatibility of Islamic teaching and law with internationally accepted standards of human rights. This course will provide a theoretical and conceptual discourse to build a comparative study of human rights in Islamic Law and the secular communities, in particular the West. It also examines the practice of human rights in Muslim Counties based on new definitions of good governance and human security with regard to barriers, interpretations and other influential elements. The first part of this module seeks to examine and explores the following theoretical issues: • The Islamic approach (Monotheistic) to human rights according to different interpretations of Islam • The Western approach (Humanism) to human rights • Comparative studies of human rights between Islam and the West • Basic Human Rights such as: The Right to life, Individuals and Women's rights, Human Dignity, The Right to a basic standard of life such as freedom and security, Children's rights The second part of the module aims at focusing on human rights in practice considering political issues such Human security and good governance. Each session will address the contemporary issues of special importance. Students are expected to join the discussion sessions on agreed themes. The topics covered in the second	http://www.islamic-college.ac.uk/courses/ml-401-sources-of-islamic-knowledge-ma/	

								part of the module include: • Politics and human rights, • Islamic States and citizen's rights • Basic human rights; ethics and morality, • Human rights at times of war and peace,		
13	Islamic College validated by Middlesex University	Comparative Legal Systems ML 420	MA in Islamic Law	Postgraduate- Master's	Academic	Optional	15	Comparative Law and legal systems is unique among the modules offered because it is based on the method of study rather than the body of rules. For this reason, it can be described as an intellectual activity with Islamic law as its object and comparison as its process. Its underlying methodology involves the use of comparative analysis and as such the module is useful to students of Islamic family law, Islamic Commercial Law and Human rights and Islam complimented by the module of Islamic Jurisprudence. It is aimed to delve deep into the five major Islamic schools and discuss how differences of opinion about jurisprudential concepts would affect the judgement of jurists in their final decision. Focusing on comparing and contrasting Muslim legal systems and evaluating the wide range of legal issues that arise from the multiple sources of Islamic Law, the module aims to guide the students towards an understanding of the role of Shari'a Law in Muslim and Non-Muslim States. The first part of this module seeks to introduce the key concepts in exploring the comparative approach: Comparative methods of legal theories Three families of Law: Civil, Common and Religious Defining Law and illustrating its function and development Characteristics of the legal basis Sections and branches of law Practicing law and principles governing it The second part of the module aims at focusing on three applications of Comparative law: Islamic financial and banking law Islamic insurance (Takaful)	http://www.islamic-college.ac.uk/courses/ml-401-sources-of-islamic-knowledge-ma/	

								The distribution of ownership Taxation systems The Legislative process Maternity and guardianship		
14	Markfield Institute of Higher Education	Islamic Law	MA in Islamic Studies/ MA in Islamic Banking, Finance and Management	Postgraduate- Master's	Academic	Unknown	30	None Available	https://www.mihe.ac.uk/course/ma-islamic-banking-finance-and-management	
15	Queen Mary's University	Elements of Islamic Law QLLM164	LL.M in Law	Postgraduate- Master's	Academic	Optional	22.5	Islamic law constitutes the expression of Allah's command for Muslim society and permeates every aspect of it. It is applied to all ranges of legal areas from criminal to commercial to family law. Islamic law is gaining increased momentum and it has resulted in various jurisdictions having to adopt special regimes for the regulation of certain sectors, or adapting their existing ones (eg for financial services). Drawing upon a very well established legal tradition, this module will introduce students to the essential doctrines and procedures of Islamic law. Students will explore the development of Islamic law from its origins to the modern period. In addition to secondary works on Islamic law readings will include translations of a variety of Islamic legal texts. In the first part of the module, students with be provided with an overview of Islamic history and Islamic law, its origins and its continuous developments within modern society. It will then move forward to cover the main sources (al-masadir) and guiding principles (al-usul) of Islamic law. More specifically, Qur'ān (scripture); Sunna (tradition); Ijmā (consensus); Qiyās	http://www.law.qmul.ac.uk/postgraduate/courses/modules/llm/items/qllm164-elements-of-islamic-law-sem-1.html	

								(analogical reasoning) will be covered. Also, given that Islamic law is based upon the legal tradition of different schools, the genesis and development of the latter will be investigated (Madhahib), together with a thorough analysis of the institutions of Islamic law (ie Courts and Judges (Qādis)). The second part of the module will be focused on specific legal sectors such as commercial law, criminal law and family law. Special attention will be given to Islamic banking, finance and commerce. In recent years in fact, these areas have grown remarkably and Islamic institutions have become big players and alternative source of funding for many financial and non financial institutions. However, despite the special nature of Islamic finance, banking and commerce, these service providers may still pose certain risk to financial markets which will be duly investigated.		
16	School of Oriental and African Studies (SOAS) London	Human Rights and Islamic Law 15PLAC150	LL.M/ MA in Islamic Law	Postgraduate-Master's	Academic	Optional	30	This module critically explores the different theoretical perspectives of the relationship between Human Rights and Islamic law and examines the practices of some relevant Muslim-majority States in that regard. We will examine relevant theoretical and conceptual issues relating to the nature of both human rights and Islamic law respectively. This will include a critical analysis of the theoretical foundations of human rights, its sources, contents and implementation, in relation to the nature, sources and methods of Islamic law, and its role, application and influence in Muslim-majority States. We will then identify the areas of common grounds and conceptual differences between the two systems. Over the module, we will also critically analyse, in relation to Islamic law, substantive human rights issues such as: • right to freedom of thought, conscience and religion; • right to freedom of opinion and expression; • minority rights; • women's rights; • children's rights; • prohibition of torture, cruel, inhuman and degrading treatments and punishments; • right to fair trial; • human rights implementation; • case studies of selected Muslim-majority States. We round up with exploring possible mechanisms for the effective implementation of international human rights law, particularly in Muslim-majority States that apply Islamic law. Objectives and learning outcomes of the module By the end of this module, students should be familiar with a range of English-language scholarship on the subject of	https://www.soas.ac.uk/law/programmes/ma/maisllaw/ https://www.soas.ac.uk/law/programmes/llm/llmislamiclaw/file80737.pdf	

								human rights and Islamic law, have a clear understanding of the debates surrounding the relationship between human rights and Islamic law, and, consequently, should be able to: • Critically analyse the relationship between human rights and Islamic law, and evaluate the human rights policies and practices of modern Muslim States within that analysis; • carry out independent research on the subject; • undertake meaningful written and oral analysis and debate on how to realise human rights within the Islamic ethos of Muslim-majority States.		
17	School of Oriental and African Studies (SOAS) London	Islamic Law 15PLAC121	LL.M/ MA in Islamic Law	Postgraduate-Master's	Academic	Optional	30	This module presents, from a comparative perspective, an overview of Islamic law in its historical and evolutional perspective. Islamic legal theory is covered comprehensively in term one. This includes a critical analysis of the legal history, jurisprudential development, the schools of Islamic law, classical and modern theories, evolution of the law up to the present, and its contemporary applications. The module engages with both classical and contemporary scholarship and current critical theoretical debates ongoing in the field. Islamic criminal law and judicial procedure are also covered as aspects of Islamic substantive law in term one. In term two, Islamic family law is comprehensively covered with principal focus on the law of marriage, dissolution of marriages, guardianship and child custody. These are examined in light of classical rules and recent family law reforms in the Muslim world. Current applicable family laws of selected Muslim-majority states will be examined within the context of the classical rules. Judicial decisions from UK courts in relation to Islamic law, as well as from courts in different parts of the Muslim world will also be examined. The module is based principally on contemporary English-language scholarship and no prior knowledge of Arabic language is required or presumed. Objectives and learning outcomes of the module By the end of this module, students should	https://www.soas.ac.uk/law/programmes/ma/maislllaw/ https://www.soas.ac.uk/law/programmes/llm/llmislamiclaw/file80737.pdf	

								be familiar with a range of English-language scholarship on Islamic law generally, and have a clear understanding of Islamic legal theory and Islamic family law, and consequently should be able to: reflect critically on topical issues raised in contemporary debates about Islamic law; appreciate the scope of reform and application of Islamic family law in modern times; Carry out independent research in the field of Islamic law; Undertake both written and oral analysis and debate on key issues in Islamic law.		
18	School of Oriental and African Studies (SOAS) London	Critical Jurisprudence in Islamic Law and Society 15PLAD176	LL.M/ MA in Islamic Law	Postgraduate-Master's	Academic	Optional	30	None Available	https://www.soas.ac.uk/law/programmes/ma/maisllaw/ https://www.soas.ac.uk/law/programmes/llm/llmislamiclaw/file80737.pdf	
19	School of Oriental and African Studies (SOAS) London	Law of Islamic Finance 15PLAC159	LL.M/ MA in Islamic Law	Postgraduate-Master's	Academic	Optional	30	None Available	https://www.soas.ac.uk/law/programmes/ma/maisllaw/ https://www.soas.ac.uk/law/programmes/llm/llmislamiclaw/file80737.pdf	
20	School of Oriental and African Studies (SOAS) London	Islamic Law 155200037	LLB in Law	Undergraduate- Bachelors	Academic	Optional	30	This module presents, from a comparative perspective, an overview of Islamic law in its historical and evolutional perspective. Islamic legal theory is covered comprehensively in term one. This includes a critical analysis of the legal history, jurisprudential development, the schools of Islamic law, classical and modern theories, evolution of the law up to the present, and its contemporary applications. The module engages with both classical and contemporary scholarship and current critical theoretical debates ongoing in the field. Islamic criminal law and judicial procedure are also covered as aspects of Islamic substantive law in term one. In term two, Islamic family law is comprehensively covered with principal focus on the law of marriage, dissolution of marriages, guardianship and child custody. These are examined in light of classical rules and recent family law reforms in the Muslim world. Current applicable family laws of selected Muslim-majority states	https://www.soas.ac.uk/courseunits/155200037.html	

								will be examined within the context of the classical rules. Judicial decisions from UK courts in relation to Islamic law, as well as from courts in different parts of the Muslim world will also be examined. The module is based principally on contemporary English-language scholarship and no prior knowledge of Arabic language is required or presumed. Objectives and learning outcomes of the module By the end of this module, students should be familiar with a range of English-language scholarship on Islamic law generally, and have a clear understanding of Islamic legal theory and Islamic family law, and consequently should be able to: reflect critically on topical issues raised in contemporary debates about Islamic law; appreciate the scope of reform and application of Islamic family law in modern times; Carry out independent research in the field of Islamic law; Undertake both written and oral analysis and debate on key issues in Islamic law.		
21	St. Mary's University	Introduction to Sharia Law	LL.B in Law and Graduate LL.B.	Undergraduate- Bachelors	Academic	Optional	Unknown	The aim of this module is to examine the fundamental principles of Islamic Law and to provide students with a detailed understanding of the fundamental doctrines of the Sharia. There will be an emphasis on aspects of Contract Law and specific attention will be given to contracts in futuro', riba' and types of sales. In addition to this, students will look at aspects of Criminal Law and aspects of Family Law.	https://www.stmarys.ac.uk/undergraduate/law	
22	University of Aberdeen	Islamic Law and Ethics (2017-2018) DR305B	Undergraduate- open module for all majors	Undergraduate- Bachelors	Academic	Optional	30	The course will look at the textual sources and historical development of the Shari'a with particular emphasis on its underlying principles. The course will focus on the specific topic of family law: marriage, divorce, custody and guardianship of children and succession as an area of great importance to the majority of Muslims. It will examine in detail the position of women in Islamic law and society. It will go on to examine the application of Islamic Family Law in modern contexts – Codified and uncodified laws and legal systems in Muslim countries and the application of Shari'a amongst Muslim Communities in non-Muslim countries – with specific reference to the UK	https://www.abdn.ac.uk/registry/courses/undergraduate/2017-2018/divinity_and_religious_studies/dr305b	
23	University of Birmingham	Islamic Family Law (2018-2019)	LL.M in Law	Postgraduate- Master's	Academic	Optional	Unknown	There is a general world-wide interest in the lived experiences of Muslims living in Western societies. This interest is reflected in the extensive socio-legal academic research addressing Muslims and the relationship between Islam and Western societies. This module will examine Islamic Family Law as practised by Muslims living in non-Muslim jurisdictions, primarily in England and Wales. The aim of this module is to understand and explore the tensions that exist when Muslims organise their private family	https://www.birmingham.ac.uk/schools/law/courses/llm/modules/LLM-islamic-family-law.aspx	To be offered for the first time in 2018-2019

								relationships within an Islamic framework whilst also being subject to English law. There will be some opportunities for comparative work in examining the experiences of Muslims in other Western jurisdictions.		
24	University of Bolton	Islamic Business Transaction Law	MBA in Islamic Finance	Postgraduate- Master's	Academic	Unknown	Unknown	None Available	https://courses.bolton.ac.uk/course/BAM066-P-UOB-MX/2018-19/#course-details	
25	University of Edinburgh	Islamic Law: From Prayer to Politics THET10062	Interdisciplinary-School of Divinity	Undergraduate- Bachelors	Academic	Optional	20	This course offers students an introduction to classical Islamic Law - its theories, methods, modes of argumentation and sources. After building this foundational knowledge, the course critically examines the place and purpose of Islamic Law today with reference to issues such as debates on the nation-state, human rights, gender, liberal democracy and religious minorities. The course is intentionally interdisciplinary and aims to attract students from both within the School of Divinity, but also from the School of Law, the School of Social and Political Science, and from the Islamic and Middle Eastern Studies Department. - Academic Description: This course offers students an introduction to classical Islamic Law - its theories, methods, modes of argumentation and sources - as well as critical examination of the place and purpose of Islamic Law today. The course will examine the debates in and around Islamic jurisprudence with reference to issues such as constitutional law, human rights, gender, liberal democracy and religious minorities. **- Course Outline:** This course will begin by introducing students to the development of classical Islamic Law - its sources, methods, and modes of argumentation. We will examine the place of the Qur'an and other scriptural sources of Islamic Law, the various uses of analogy, consensus, and legal reasoning in the formation of legal-ethical thinking, and the development of distinct schools of Law (both Sunni and Shi'a). After building this foundational knowledge, the second half of the course critically examines key issues in the colonial and modern period such as Islamic Law's place in Muslim majority nation-states, proposal for reform in Islamic ethics and law, and debates in Islamic jurisprudence on human rights, gender, liberal democracy, constitutional law and religious minorities. Students will be introduced to both Islamic legal texts and various theoretical frameworks for interpreting Shari'a.	http://www.drps.ed.ac.uk/17-18/dpt/cxthet10062.htm	

								- Student Learning Experience: The course involves one two-hour seminar per week, which will consist of a combination of lectures and discussion based on readings prepared in advance. Each student will be required to give a short presentation at one seminar during the semester on an issue related to the theme or text for the day. Through participation in discussions, as well as through the written work and the examination included in the assessment schedule, students will demonstrate their achievement of the intended learning outcomes.		
26	University of Essex	Introduction To Islamic Law LW359-5-SP-CO	LL.B. in Law	Undergraduate- Bachelors	Academic	Optional	15	Islamic law (Shariah) refers to the set of legal rules that governs Muslim society and regulates different aspect of it. Due to the significance of Islamic Law, Muslim majority countries have adopted particular systems of regulation for specific sectors such as the financial sector or administration of justice. This module aims to provide you with the knowledge of Islamic Law. The teaching team comprises academic members of staff who are recognised Islamic Law experts. Teaching and learning on this module consists of interactive lectures, group work and presentations. It also requires your regular reading. The teaching comprises a weekly two-hours lecture. The module convenor is Dr. Sahar Maranlou who can be contacted via email on s.maranlou@essex.ac.uk. Office hours will be announced at the start of the academic year. If you have a query in relation to a specific part of the module, you should contact the relevant tutor in the first instance. **Teaching and Assessment** LW359 offers a foundational knowledge of Islamic Law. This is an inter-disciplinary module with focus on socio- legal aspects of Islamic Law in the contemporary world. The first part of the module provides an overview of the history of Islamic law, its nature and its continuous developments with the requirements of modern society. It then addresses the main sources, methods and principles of Islamic law. The second part of the module focuses on particular	https://www1.essex.ac.uk/modules/default.aspx?coursecode=LW359&level=5&period=SP	

								legal sectors such as Islamic family law, Islamic financial law, introduction to human rights from Islamic Law and application of Islamic Law in Diaspora. The module aims to familiarise you with basics of Islam law in different areas ranging from Islamic family law, Islamic justice and criminal law, Islamic finance and human rights from Islamic Perspective. The students will learn about the Islamic law in different fields with focus on theoretical thoughts and contemporary examples of different countries. The module is suggested to students who would like to learn about basic concepts of Islamic law and their applications in the contemporary world. By the end of the module, you will have gained: 1- A critical understanding of key concepts and approaches of Islamic law; 2- A clear understanding of the fundamental challenges of Islamic law in the contemporary world. 3- An ability to analyse and evaluate differing opinions on legal and ethical argument. 4- Various skills in critical thinking, leading a group presentation, debating and writing a critical informed essay.		

27	University of Exeter	Islamic Law and Society LAW3132/ARA2312	LL.B. in Law/ BA Islamic Studies (both offered from the Institute of Arab and Islamic Studies)	Undergraduate- Bachelors	Academic	Optional	15	**Module aims** The aim of this module is to provide you with the chance to study, in depth, the major aspects of the Islamic legal tradition. We also aim to set the study of Islamic law in the context of its importance in political, family and social life. The module aims to examine a wide range of different types of Shari'a regulations including the position of women, human rights, criminal law and marriage and divorce. We aim to provide students with a foundational knowledge of the main genres of Islamic legal writing, including legal theory, fatwas, substantive and positive law, constitutions, case reports and other legal instruments. We also aim to provide students with the opportunity to acquire and develop skills in textual analysis, particularly of Islamic legal texts, and to present the analysis of those texts orally. **ILO: Module-specific skills** 1. discuss critically the extraordinary diversity and polyphony of the Muslim tradition; 2. refine your understanding of the dangers of broad generalisation and of an essentialist approach to social and cultural phenomena; **ILO: Discipline-specific skills** 3. develop your critical skills by working on translations of primary sources (Islamic texts); 4. engage with and relate to different cultural/religious contexts; **ILO: Personal and key skills** 5. work independently and as part of a group, including participation in oral discussion; 6. organise data effectively and to a deadline. **Syllabus plan** Whilst the module's precise content will vary, it is anticipated that it will cover the following topics in the order indicated: A discussion of the nature of the Shari'a from the beginning of the Islamic era to the present day; Aspects of family law and marriage; Divorce (talaq, khula and judicial divorce); Custody and guardianship of children; Succession on death and wills; Islamic Law in the UK; Commercial law; Criminal law.	http://socialsciences.exeter.ac.uk/law/modules/law2132/description/	
28	University of Hull	Introduction to Islamic law	LL.B. in Law	Undergraduate- Bachelors	Academic	Optional	Unknown	None Available	https://www.hull.ac.uk/study/ug/2018/law-llb.aspx	

29	University of Leeds	Islamic Law: Theory and Practice ARAB2280	BA in Islamic Studies	Undergraduate- Bachelors	Academic	Compulsory	20	The module will introduce students to Islamic legal theory in its differing historical and geographical contexts. It will introduce students to: The power relations that have historically facilitated and/or curtailed the development of legal theory; the dynamics involved in issuing a fatwa; the key theories which seek to explain why Muslim states ceased to apply Islamic law and also the recent re-emphasis upon the need to develop legal theory for the modern world. This module will also provide an opportunity to contrast theory and practical application through case studies covering a range of concerns. **Objectives** The module introduces students to: - Islamic legal theory and interpretation in its differing historical and geographical contexts. - The power relations which have historically facilitated and/or curtailed the development of legal theory - The classical theories which are experiencing a revival through Islamic reformism **Syllabus** The Qur'an and Sunna as sources of law - The early jurists - The Hanafi School - al-Shafi'i, hadith and the development of Usul al-fiqh - Ijma' - Qiyas - The Madhhabs, taqlid and "closing of the gates of ijtihad" - Maqasid theory - Islamic law in the Ottoman empire. The Tanzimat reforms - Rupture and Revival - - Case studies including slavery, sexual ethics, alcohol and Islamic banking **Learning Outcomes** - A critical understanding of the dominant trajectories which Islamic law has taken. - Informed insight into the tools at the disposal of the jurist. - A clearer understanding of modern Islamic reformism through a familiarisation with earlier historical precedents	https://leedsforlife.leeds.ac.uk/Broadening/Module/ARAB2280	Also available as an optional 'Dicovery Module' on all programmes.

30	University of Leeds	Islamic Law in Practice LLLC1431	LL.B. in Law	Undergraduate- Bachelors	Academic	Optional	20	The module will introduce students to Islamic legal theory and Interpretation in the context of its increasing importance in family and social life. It shall look at the impact of Islamic law on Muslim communities in the United Kingdom focussing on areas such as marriage, divorce and inheritance issues through current case studies. The module shall also explore the challenges facing Muslims when applying dual legal systems in their everyday lives. The module will also critically consider the nature and development of Islamic Law (Shari'a) from the medieval to the modern age. In addition, it will take a look at the impact of Sharia finance on the global banking and financial sectors in the modern age. Objectives This module will provide students with opportunities to develop understanding of: - Islamic legal theory and interpretation in the context of its increasing importance in family and social life; - The application of Islamic Family Law in diasporic communities using the United Kingdom as a case study; - The use of Sharia in Islamic finance and financial transactions. **Syllabus** This module will focus on: 1. The difference between Islamic Law (Shari'ah) and Islamic Jurisprudence (fiqh). 2. A study of the key components of the Islamic Law (Shari'ah). 3. The principles of Islamic Law (Shari'ah) and Islamic Jurisprudence (Fiqh). 4. A study of Islamic legal rulings. 5. The historical development of Islamic Law (Shari'ah) and Islamic Jurisprudence (Fiqh). 6. The schools of thought (Madhhabs) and their Imams. 7. Family Law and the Rights of Women. This part of the course will also discuss the institution of marriage, divorce and inheritance in Islam and how they affect Muslim women in Islamic societies. 8. Practical study of the application of Islamic legal rulings in their various schools of thought (Madhab). 9. Type of Law in Islam: Acts of Worship: Criminal, Personal and Transactional. 10. Islamic Finance: The Global Impact of Sharia finance in the West. This part of the course shall analyse the concept of Riba (Interest) in Islam as well as looking at the evolution of the Shariah Islamic Finance Industry. **Learning Outcomes** By the end of the module, students will have developed knowledge of:	https://leedsforlife.leeds.ac.uk/Broadening/Module/LLLC1431	Also available as an optional 'Dicovery Module' on all programmes.

								1. The principal sources of Islamic law; 2. The differences in interpretation and appreciation of evidence established by each School of Law; 3. The world of Islamic finance and its global impact.		

31	University of London	Introduction to Islamic law LA3028	LL.B in Law and Graduate LL.B.	Undergraduate- Bachelors and Posgraduate- Graduate Diploma	Academic	Optional	Unknown	The module offers an overview of Islamic law covering its religious historical and contemporary dimensions. The module addresses first the religious and historical foundations of Islamic law before going on to address its application in contemporary jurisdictions. **Topics covered** Part I Introduction: Understanding Islamic law; Islamic law in the modern age and its role in international law; Its importance as part of the legal system in modern states; Meaning of Shar'iah. Origins and History: Pre-Islamic Arabia; Arab tribal law; The life of Muhammed; The Al-Rāshidūn caliphs; The Ummayyads and the Abbāsids. The Ahl al-ra'y and the Ahl al-hadīth. The role of Al-Shāfi'ī. Sources, methods and principles of Islamic law: The Qur'an as a law text; The Sunnah of the Prophet; Hadīth material and authentication; The controversy of authentication; Ijmā', Qiyās, Istihsān, Maslahah, Darūrah, Istishāb, Ijtihād. Schools of Islamic Jurisprudence:The Sunnī and Shī'ī. The Sunnī Schools: Hanafī, Mālikī, Hanbalī, Shāfi'ī. The Shī'ī schools: Ithnā Asharī, Ismā'ilī, Zaydī. Part II Penal law: Hadd offences; Ta'zir offences; Qisās offences; Pakistan's Huddood Ordinances. Civil law:Contracts and tort; Freedom of Contract, Murābahah, Pre-emption; Gifts; Tortious actions and liability. Family law.Marriage contract; Rights and duties; Guardianship; Maintenance; Stipulations; Dissolution of marriage; Legitimacy; Child custody. Succession:Intestate and Testate Rules, Qur'anic heirs, Agnates; Death sickness; Waqfs. Courts and procedure:The Qādī's court; General rules of procedure and evidence. **Learning outcomes** If you complete the course successfully, you should be able to: Know the outline of the history of Islamic law and its role in the contemporary world; Understand the origins, sources and methods of Islamic law; Comprehend basic issues in Islamic legal theory and Islamic substantive law; Appreciate basic features of the administration of Islamic justice including: the role and function of Islamic courts, judges, evidence and proof. Analyse the operation of Islamic law in relation to matters concerning crime, contract, tort, family and succession. Evaluate basic questions on Islamic law and produce reasoned and evidenced	https://london.ac.uk/courses/introduction-islamic-law-la3028	

								responses; Employ accurate legal terminology relevant to this area of law.		

32	University of London	Islamic Law in a Global Context GDM260	MA in Muslim Minorities in a Global Context	Postgraduate- Master's	Academic	Optional	Unknown	**Topics covered** The Islamic Law in a Global Context option gives students an opportunity to critically analyse the juridicial views of scholars as well as the legal practices of ordinary Muslims within Muslim societies of the contemporary world. This module enables students to make comparisons, through case law, between countries with Muslim minority communities and those in which the majority population are Muslim. Its major aim is to expose students to different visions of law in Islam, its processes or procedures and its roles or functions in Muslim communities. It will allow students to examine critically what is meant by 'Islamic' as opposed to 'Muslim law', the process of law-making, authority and agency in Islam, how such processes are determined and by whom and how the principles of the Qur 'an and Sunna in contemporary times have been translated into socially workable rules. The course looks at a variety of selected legal issues involving property disputes, marriage and divorce, Islamic criminal justice, Islamic finance, Islamic philanthropy and women's rights. In relation to the latter, readings will focus on the role of social movements and other factors in bringing about change towards gender mainstreaming of Shari 'a. **Learning outcomes** Some knowledge of what it means to be Muslim in a Muslim majority country will enable students better to understand the challenges faced by Muslim minority communities living within non-Islamic jurisdictions.	https://london.ac.uk/muslim-minorities-global-context-structure#elective-modules-1931	
33	University of Sussex	Principles of Islamic Law M3121	LL.B. in Law	Undergraduate- Bachelors	Academic	Optional	15	Islamic law is based on the Quran, the practice of the Prophet Muhammad, and the writings of Muslim scholars and jurists making it one of the oldest and most significant systems of law in the contemporary age. Understanding Islamic law is crucial not only for Muslims, but for non-Muslims who work with Muslims in legal contexts, as well as for anyone wanting to understand the role of Islam in the world today. This module will provide a critical overview of the history and practice of Islamic law. We will examine the basic cocepts of Islamic law, its classification, and the development of the classical schools of jurisprudence. We will then consider the place of Islamic Law in the modern state and government. Placing Islamic law in the present context, this module will investigate the purposes, methodologies, and processes of Islamic jurisprudence.	http://www.sussex.ac.uk/modules/2018/M3121-principles-of-islamic-law	

34	University of Warwick	An Introduction to Islamic Law LA354	LL.B. /BA in Law	Undergraduate- Bachelors	Academic	Optional	15	Islamic law has evoked a lot of interest, both academically as well as in the present global political arena. In Britain in particular, an increasing number of British Muslims are engaging with the law and both Muslim and non-Muslim alike are eager for information and knowledge on Islamic law. This module introduces students to Islamic law through theory and practice and seeks to address the growing demand from students to acquire knowledge and expertise in this area of law. The module aims to familiarise students with the application of religious law in Muslim jurisdictions as part of the law of the state. By adopting a comparative and contextual approach to law, the module aims to develop skills of students in this area. There are clear thematic linkages between topics addressed in other Law modules: Family Law, Child Law, Law and the Intact Family, and Gender and the Law, such as the institution of marriage, divorce, custody and guardianship of children, and the position of women within family law. **Outline of Topics** Historical introduction to Islamic Law: an overview of the early development of Islamic Law and the emergence of the various schools of juristic thought in law. An overview of sources of Islamic law focusing on the Quran, Hadith, Ijma, Qiyas and Ijtihad. Husband and Wife: the institution of marriage in Islam, its contractual nature, requisites of a valid marriage, dower (mahr) as an essential component of the marriage contract, various methods of dissolution of marriage including Talaq, Khul and Mubarat. Parents and Children: Custody (Hizanat), guardianship (Wilayat), adoption and the concept of Kifalaat. Property: An analysis of the concept of property rights in Islamic law using examples of gift (Hiba), inheritance and succession (virasat), dower (mahr). Law Reform in the Muslim World: Examples of law reform from jurisdictions in South Asia including The Child Marriages Restraint Act, 1929, The Dissolution of Muslim Marriages Act, 1939 (of Pakistan and India), The Muslim Family Laws Ordinance, 1961 (Pakistan) and the Moroccan Family Code 2004. Application of Islamic Law in diasporic communities	https://warwick.ac.uk/fac/soc/law/current/undergraduate/materials/LA354	

35	University of Warwick	An Introduction to Islamic Law LA9E0	LL.M. in Law	Postgraduate- Masters	Academic	Optional	20	In recent years, Islamic law has evoked a lot of interest, both academically as well as in the present global political arena. In non-Muslim jurisdictions of Europe, North America (the US and Canada) and Australia, an increasing number of Muslims are engaging with the law and both Muslim and non-Muslim alike, are eager for information and knowledge on Islamic law. Within the Commonwealth, within Law Schools as well as other departments in Universities globally, considerable interest in Islamic law is evident from essays, research projects and conference and workshops themes undertaken at undergraduate, postgraduate and doctoral levels. The volume of court cases in Europe and the US involving an Islamic law element is on the rise as is the need for legal and other professionals to assist the court. Departments of Social Services, Immigration and Nationality, Education, Health and Employment in various 'western' countries seek advice on Islamic law matters including marriage, divorce, maintenance of a wife and/or children, custody and guardianship, adoption and inheritance. The corporate world including some leading banks and financial institutions have introduced 'Islamic' mortgages and other financial services to attract Muslim clientele. **Few institutions in the UK offer Islamic law courses (as opposed to Islamic Studies). This module contributes to filling this gap by introducing students to Islamic law through theory and practice in the area. It presents an overview of Islamic law in its historical and contemporary aspects in the Muslim world from a comparative perspective.** The module aims to familiarise students with the application of religious law in Muslim jurisdictions as part of the law of the state. It will be delivered in the Warwick Law School "law in context" methodology and address the demands of a growing number of UK students both Muslim and non-Muslim to acquire knowledge and expertise in Islamic law. No prior knowledge of Islamic law or Arabic is required. **Module Aims** Specifically the module aims for students to: 1. Understand and engage in the theoretical discourse regarding Islamic law. In particular, an understanding of the development of the principal sources of Islamic law in the area of family and property rights and its incorporation in state legislation. 2. Engage and present critical legislative and context-based analysis of issues relating to legal reform in jurisdictions in the Muslim world and to identify principles of Islamic law in legislation of various Muslim countries	https://warwick.ac.uk/fac/soc/law/current/pg/modules/LA9E0	

								covered in the module. 3. To enable students to analyse recognition and application of Islamic law in the Muslim diaspora by individuals, society, state and non-governmental institutions. 4. The module will rely on English language scholarship and English translations of the primary sources of Islamic law i.e., the Quran and Hadith. Since the course is a half module, a selection of topics will be covered. **Outline of Topics** 1. Historical Overview and Sources of Islamic law: In weeks 1 and 2, we will focus on an overview of the early development of Islamic law and emergence of the various schools of juristic thought in this legal tradition. A number of concepts will be explored to set the discussion of Islamic law in it historical and ideological context. We will look at some of the main sources of Islamic law i.e., the Quran, Hadith, Ijma, Qiyas and Ijtihad. 2. Husband and Wife (I): This part of the course will discuss the institution of marriage in Islam, its contractual nature, requisites of a valid marriage, dower (mahr) as an essential component of the marriage contract. 3. Husband and Wife (II): This session will explore the concept of dissolution of marriage in the Islamic legal tradition including Talaq, Khul and Mubarat. 4. Parents and Children: Subjects covered in this section will include custody (Hizanat), guardianship (Wilayat), adoption, concept of Kafalah as well as contemporary issues in Islamic law arising from scientific developments including human milk banks, surrogacy, DNA and gestation period (determining legitimacy of a child) 5. Law Reform in the Muslim World - From Theory to Practice: This part of the module uses examples of law reform from South-Asian jurisdictions including the Child Marriages Restraint Act 1929, the Dissolution of Muslim Marriages Act 1939 (India and Pakistan), the Muslim Family Laws ordinance 1961 (Pakistan) and the Moroccan Family Code 2004. 6. English case law in the area of custody of (Muslim) minor children: This session will be dedicated to providing an overview of the 'Muslim diaspora' and recognition and application of Islamic Family law in 'non-Muslim' jurisdictions with particular emphasis on Britain. Sharia Councils and Muslim Arbitration Tribunals. 7. Dispute resolution and Muslim Family law in Britain: This lecture reviews selected case law and trends of the English courts in cases where Islamic law is involved.		

36	University of Warwick	Techniques of Islamic Finance and Banking - Comparative Perspectives LA9F2	LL.B. /BA in Law	Postgraduate- Masters	Academic	Optional	20	This module aims to provide students with knowledge and understanding of the various techniques of Islamic Finance and Banking from a comparative perspective. It is designed to introduce students to a range of concepts, techniques and methodology of law-making from classical and contemporary perspectives within the Islamic legal traditions as well as issues and debates on the subject. Since Islamic Finance and Banking is the fastest growing segment of Islamic law globally with 'western' financial institutions opening 'Islamic Finance windows' across the western hemisphere, it is the aim of this module to develop expertise of postgraduate students in this important and developing field of law. The module adopts a contextual and comparative approach. **Module Aims** Demonstrate substantial knowledge and understanding of the primary, secondary and subsidiary sources of the Islamic legal tradition and a comprehensive understanding of the main principles of Islamic finance and banking system Develop an acute understanding of the complex processes of law-making in the Islamic legal tradition; in particular the use and application of various sources of law by the main schools of juristic thought; analyse problems and concepts; identify relevant evidence; analyse and synthesise evidence; Evaluate conflicting arguments; understand logic of explanations; draw policy conclusions from theoretical and empirical analysis Identify and use inter-disciplinary materials, including primary and secondary sources of Islamic law on finance and banking and empirical research findings of country case studies as well as Islamic financial institutions studied. Demonstrate ability to critically engage, understand and critique the sources and techniques of Islamic finance and banking system **Outline of Topics** Session 1: Placing Islamic finance and banking in its international and contextual settings focusing on sources of Islamic law and Islamic finance like the Quran, Hadith, Ijma, Qiyas and Ijtihad. Session 2: Main juristic techniques of Islamic finance: Maqasid al-Shari'a, Maslaha, Siyasa Shari'a. Issues of modern day fatawa in the context of Islamic finance Session 3: Three basics of Islamic finance:	https://warwick.ac.uk/services/aro/dar/quality/modules/postgraduate/la/la9f2/	No longer offered in 2018/19

								ban on Riba, Gharrar and Maysir in light of differing interpretations of the main Sunni schools of juristic thought. Session 4: Basics of Islamic contract and commercial law; modern day Islamic financial instruments including Mudaraba, Musharaka, Murabaha, Ijara, Sukkuk, Session 5: History and the evolution of the modern day Islamic financial industry starting from the 1960's to date including the development of the standard setting bodies (IFSB and AAOIFI) and a brief discussion of the work undertaken by these bodies. Session 6: Case-law from different jurisdictions including Pakistan, Egypt, Malaysia, UK and USA. Students will be assigned country case studies, either individually or in groups to be presented in class. Session 7: Regulation and governance of modern day Islamic financial institutions. These include the roles of Shari'a supervisory boards, issues pertaining to investment account holders, different governance mechanisms, issues pertaining to Islamic window operations, comingling of funds in IFI's, issues pertaining to different regulatory aspects of IFI's. Session 8: This session focuses on a critical appraisal of Islamic finance and banking drawing upon the topics covered and making connection between different strands of the subjects.		

Appendix 9- Email about the 'Islamic Law in Practice' Course

LLLC1431 is Islamic Law in Practice Module
University of Leeds
https://leedsforlife.leeds.ac.uk/Broadening/Module/LLLC1431

The questions are as follows:

How many years has each module been running, how often is it offered?

LLLC 1431 Introduction to Islamic Law has been running on the CertHE Arabic Middle Eastern Studies programme for 20 years now.

Which department is responsible for running each of the modules?

The Lifelong Learning Centre (LLLC) runs the module.

What programmes are both modules offered on?

The module is currently part of the Certificate in Higher Education Arabic Islamic and Middle Eastern Studies (level 1). This module is also available as a 'Discovery module' and therefore open to all undergraduates across the university.

(d) What is the background/reasoning for offering these modules? I am particularly interested in (1) as it is new as far as I am aware.

LLLC 1431 module was designed and offered to students to give them a comprehensive foundation and firm grounding in subjects that are connected to Islamic Studies. By the end of level 1, the modules studied give students the knowledge connected to the history, theology, law, culture and society of the Middle East in order to further their studies at level 2 and 3 of their respective chosen degree. Many of our students also choose ARAB 2280 in level 2 or 3 to further their interest and to acquire advanced knowledge on Islamic law.

(e) Do any of the modules seek to prepare students for legal practice?

No

(d) Are the instructors offering these modules from a Law background?

No

(e) Are there any plans for any further 'Islamic Law' modules related to legal?

Practice?

No

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Arabic, Islamic and Middle Eastern Studies at the University of Leeds has been ranked **first** by subject in the Russell Group Universities in the 2015-2016 **National Student Survey** (NSS)

Unity, Prophecy and Eschatology in the Abrahamic Traditions, (2017) Noor Publications, Dusseldorf.

Author of *Medieval and Modern Concepts of Creation in the Abrahamic Faiths*, (2011) Lincom Europa Munchen

Science and Religion at the Crossroads:Conflict and Conciliation. In Journal of Inter-Disciplinary Research on Religion and Science, vol.1, issue, 9, 2011

Re: Questionnaire responses

Al-Qasim, Sairah 2014 (PGR)
Mon 25/06, 11:15
Abdul-Bashid Shaikh <A.B.Shaikh@leeds.ac.uk>; Al-Qasim, Sairah 2014 (PGR)

Reply

Inbox

Dear Dr Shaikh

Thank you for sending the responses across so quickly. I wanted to clarify as to the name of the module, which is where my initial interest arose.

On the website it states LLLC1431 is Islamic Law in Practice, and this is the replacement of the previous LLLC1356 Principles of Islamic Law.

Given that the codes are the same, is the Islamic Law in Practice and Intro. to Islamic Law you've mentioned, the same module? If so, was there a reason for the name change?

My research is in regard to 'Islamic Law' in legal practice for legal professionals, hence my questions in this regard, as I am looking at what modules currently exist in England and Wales geared towards practice in any sense.

Many thanks for your time and efforts on this. It is hugely appreciated.

Kind regards

Sairah Narmah-Alqasim

Dear Sairah

The module code has changed but the content remains the same. LLLC 1356 module which was 20 credits was replaced by LLLC 1431 that is now a 10 credit module. The changes were made as level one undergraduates tend to prefer to study 10 credit modules rather than 20 for their optional or discovery modules.

Best wishes

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Appendix 10- Table of Themes

Appendix 10- Table of Themes

Summary of Themes (in order of consideration in thesis)	**Literature Review**	**Questionnaire**	**Interviews**
Increasing influence of 'Islamic Law' in England and Wales	/	/	/
The meaning of 'Islamic Law'	/	/	/
Islamic Law' is difficult to define leading misconceptions	/	/	/
'Islamic Law' as divine law from the Qur'an and Sunnah	/	/	/
'Islamic Law' as 'foreign' law	/	/	/
'Islamic Law' as a way of life, leading to cultural and legal pluralism	/	/	/
'Islamic Law' a historical term and derivative of Fiqh and Shar'iah	/	/	/
'Islamic Law' has varied meanings in legal practice	/	/	/
Fiqh and Shari'ah- differences between Fiqh and Shari'ah	/	/	/
Considering Shari'ah in the Western World	/	/	/
Relevance of Fiqh and Shari'ah for Legal Practice	/	/	/
The Islamic Schools of Thought	/	/	/
Teaching of 'Islamic Law'	/	/	/
Formal offerings theoretical and out of date	/	/	/
Relevance of the Arabic language	/	/	/
Similarities and Differences Between English law and 'Islamic Law'	/	/	/
Pluralism – Legal and Cultural Pluralism	/	/	/
'Islamic Law' as a positivist law leading to cultural and legal pluralism	/	/	/
Hybrid legal and cultural environment	/	/	/
The meaning of 'Islamic Law' in the context of legal practice		/	/
'Islamic Law' as practice		/	/
Islamic Law' as a Western Model		/	/
Wide ranging needs of clients in 'Islamic Law'		/	/
Need to reconcile 'Islamic Law' and English Law		/	/
Need for expertise in 'Islamic Law' gives rise to need for knowledge in 'Islamic Law'		/	/
Need for training in 'Islamic Law' arising from a need for knowledge in 'Islamic Law'		/	/
Experience and self-study as the fallback position		/	/
Formal offerings theoretical, out of date and weak in scope, quality and criticality Lack of jurisprudential focus which is required for 'Islamic Law'		/	/ /
Teaching 'Islamic Law' as if it was a Western law and comparison with Western Law		/	/

Reliance on expert witnesses as a fall back position		/	/
Lack of overall appropriate expertise in 'Islamic Law'		/	/
'Islamic Law' is poorly integrated into legal education		/	/
A practice-focused approach is needed		/	/
Content should be relevant and current, fostering cultural awareness			/
Islamic law should not be taught as 'other'		/	/
Course content should be sustainable			/
Deliver from a law faculty		/	/
Provide guidance for learning in the workplace			/
The Islamic Schools of Thought- take a pluralist approach within 'Islamic Law' itself			/
Avoid diluting coverage of English law			/
Covering an appropriate range of practice topics that 'Islamic Law' influences			/
Teach both pervasively and standalone modules at undergraduate level		/	/
Make the topic available as part of the LPC			/
Develop a distinct approach			/
Teaching 'Islamic Law' as comparative law			/
'Islamic Law' can be provided in legal education		/	/

Appendix 11- Outline of Topics for an 'Islamic Law' Module Cross-matched with Thesis Themes

Appendix 11- Outline of Topics for an 'Islamic Law' Module Cross-matched with Thesis Themes

	Outline of Topics	Brief Description	Themes from Literature (chapter 3) and Findings (chapter 5) from which the topic derives
1	Background of Muslims in the United Kingdom	• Overview of Muslim presence in the United Kingdom, their history, immigration, cultural and religious practices and identity.	• Considering Shari'ah in the Western World and 'Islamic Law' as a Western Model • The meaning of 'Islamic Law' in the context of legal practice • 'Islamic Law' as practice • 'Islamic Law' as a way of life, leading to cultural and legal pluralism • Increasing influence of 'Islamic Law' in England and Wales • Wide ranging needs of clients in 'Islamic Law' • Need for expertise in 'Islamic Law' gives rise to need for knowledge in 'Islamic Law' • Need for training in 'Islamic Law' arising from a need for knowledge in 'Islamic Law' • A practice-focused approach is needed. • Content should be relevant and current, fostering cultural awareness. • 'Islamic Law' should not be taught as other • Course content should be sustainable • Course should provide guidance for learning in the workplace • Avoid diluting coverage of English law • Covering an appropriate range of practice topics that 'Islamic Law' influences • Course content should be relevant, current, fostering cultural and religious awareness • Developing a distinct approach

	Outline of Topics	Brief Description	Themes from Literature (chapter 3) and Findings (chapter 5) from which the topic derives
2	Historical Overview of 'Islamic Law' and Jurisprudential Thought	• Origins and background of Islam and 'Islamic Law' and separation of 'Islamic Law' as Ibadat (acts of worship) and as Mu'amalat (commercial or civil acts). • Overview of the Madhahib (schools of thought) with the four main Sunni schools of thought and two main Shi'i schools of thought. • Discussion of jurisprudential thought and Fiqh with an overview of	• The meaning of 'Islamic Law' • Differences between Fiqh and Shari'ah • Relevance of Fiqh and Shari'ah for Legal Practice • The Islamic Schools of Thought • Similarities and Differences Between English law and 'Islamic Law' • Considering Shari'ah in the Western World and 'Islamic Law' as a Western Model • 'Islamic Law' as a positivist law leading to cultural and legal pluralism • The meaning of 'Islamic Law' in the context of legal practice • 'Islamic Law' as divine law from the Qur'an and Sunnah • 'Islamic Law' as practice • 'Islamic Law' as a way of life, leading to cultural and legal pluralism • 'Islamic Law' as a positivist law leading to cultural and legal pluralism • 'Islamic Law' a historical term and derivative of Fiqh and Shari'ah • 'Islamic Law' has varied meanings in legal practice • Need for expertise in 'Islamic Law' gives rise to need for knowledge in 'Islamic Law' • Need for training in 'Islamic Law' arising from a need for knowledge in 'Islamic Law' • Formal offerings theoretical, out of date and weak in scope, quality and criticality • Lack of appropriate expertise in 'Islamic Law' • The relevance of the Arabic language • A practice-focused approach is needed

	Outline of Topics	Brief Description	Themes from Literature (chapter 3) and Findings (chapter 5) from which the topic derives
		Usul Al-Fiqh the (roots/philosophy) and Furu Al-Fiqh (branches).	• Content should be relevant and current, fostering cultural awareness • Islamic law should not be taught as other • Course content should be sustainable • Provide guidance for learning in the workplace • Course content should be relevant, current, fostering cultural and religious awareness • Developing a distinct approach
3	Sources of 'Islamic Law'	• Introduction to the main primary sources of 'Islamic Law', the Qur'an and Sunnah, and secondary sources such as Ijma' (consensus of juristic opinion), Qiyas (analogical deduction), Istihsan (public interest) and Urf (custom).	• The meaning of 'Islamic Law' • Differences between Fiqh and Shari'ah • Relevance of Fiqh and Shari'ah for Legal Practice • Similarities and Differences Between English law and 'Islamic Law' • Considering Shari'ah in the Western World and 'Islamic Law' as a Western Model • 'Islamic Law' as a positivist law leading to cultural and legal pluralism • The meaning of 'Islamic Law' in the context of legal practice • 'Islamic Law' as divine law from the Qur'an and Sunnah • 'Islamic Law' as practice • 'Islamic Law' as a way of life, leading to cultural and legal pluralism • 'Islamic Law' as a positivist law leading to cultural and legal pluralism • 'Islamic Law' a historical term and derivative of Fiqh and Shari'ah • 'Islamic Law' has varied meanings in legal practice

	Outline of Topics	Brief Description	Themes from Literature (chapter 3) and Findings (chapter 5) from which the topic derives
		• Discussion of the relevance of Ijtihad (striving to deduce legal rules).	• Need for expertise in 'Islamic Law' gives rise to need for knowledge in 'Islamic Law' • Need for training in 'Islamic Law' arising from a need for knowledge in 'Islamic Law' • Formal offerings theoretical, out of date and weak in scope, quality and criticality • Lack of appropriate expertise in 'Islamic Law' • Teaching Islamic 'Law' by comparison with Western law • The relevance of the Arabic language • A practice-focused approach is needed • Content should be relevant and current, fostering cultural awareness • 'Islamic Law' should not be taught as other • Course content should be sustainable • Provide guidance for learning in the workplace • Covering an appropriate range of practice topics that 'Islamic Law' influences • Course content should be relevant, current, fostering cultural and religious awareness • Developing a distinct approach
4	Contextualising 'Islamic Law'	• Origins, uses and meanings of terms such as 'Islamic Law', 'Shari'ah', 'Fiqh', 'Islamic legal	• The meaning of 'Islamic Law' • Differences between Fiqh and Shari'ah • Relevance of Fiqh and Shari'ah for Legal Practice • Similarities and Differences Between English law and 'Islamic Law' • Considering Shari'ah in the Western World and 'Islamic Law' as a Western Model

	Outline of Topics	Brief Description	Themes from Literature (chapter 3) and Findings (chapter 5) from which the topic derives
		traditions' to describe the legal system based on Islam as a religion. • Discussion of an absence of a monolithic 'Islamic Law' and 'Islamic Law' as a Western Model.	• 'Islamic Law' as a positivist law leading to cultural and legal pluralism • Hybrid legal and cultural environment • The meaning of 'Islamic Law' in the context of legal practice • 'Islamic Law' as divine law from the Qur'an and Sunnah • 'Islamic Law' as foreign law • 'Islamic Law' as practice' • 'Islamic Law' as a way of life, leading to cultural and legal pluralism • 'Islamic Law' as a positivist law leading to cultural and legal pluralism • 'Islamic Law' a historical term and derivative of Fiqh and Shari'ah • 'Islamic Law' has varied meanings in legal practice • Need for expertise in 'Islamic Law' gives rise to need for knowledge in 'Islamic Law' • Need for training in 'Islamic Law' arising from a need for knowledge in 'Islamic Law' • Experience and self-study as the fall-back position • Formal offerings theoretical, out of date and weak in scope, quality and criticality • Lack of appropriate expertise in 'Islamic Law' • Teaching Islamic 'Law' by comparison with Western law • The relevance of the Arabic language • A practice-focused approach is needed • Content should be relevant and current, fostering cultural awareness • 'Islamic Law' should not be taught as other

	Outline of Topics	Brief Description	Themes from Literature (chapter 3) and Findings (chapter 5) from which the topic derives
			• Course content should be sustainable • Deliver from a law faculty • Provide guidance for learning in the workplace • Avoid diluting coverage of English law • Covering an appropriate range of practice topics that 'Islamic Law' influences • Course content should be relevant, current, fostering cultural and religious awareness • Developing a distinct approach
5	Islamic State Practices	• Overview of different Islamic state practices and introduction to Siyasa. • Case studies taken from a range of different Islamic states such as Iran, Morocco, Pakistan and Saudi Arabia, with discussion of	• The meaning of 'Islamic Law' • Considering Shari'ah in the Western World and 'Islamic Law' as a Western Model • 'Islamic Law' as a positivist law leading to cultural and legal pluralism • The meaning of 'Islamic Law' in the context of legal practice • 'Islamic Law' as foreign law • 'Islamic Law' as practice' • 'Islamic Law' as a way of life, leading to cultural and legal pluralism • 'Islamic Law' has varied meanings in legal practice • Increasing influence of 'Islamic Law' in England and Wales • Wide ranging needs of clients in 'Islamic Law' • Need for expertise in 'Islamic Law' gives rise to need for knowledge in 'Islamic Law' • Need for training in 'Islamic Law' arising from a need for knowledge in 'Islamic Law'

	Outline of Topics	Brief Description	Themes from Literature (chapter 3) and Findings (chapter 5) from which the topic derives
		different Islamic culture in these regions.	• Experience and self-study as the fall-back position • Formal offerings theoretical, out of date and weak in scope, quality and criticality • Lack of appropriate expertise in 'Islamic Law' • Teaching Islamic 'Law' by comparison with Western law • A practice-focused approach is needed • Content should be relevant and current, fostering cultural awareness • 'Islamic Law' should not be taught as other • Course content should be sustainable • Provide guidance for learning in the workplace • Covering an appropriate range of practice topics that 'Islamic Law' influences • Course content should be relevant, current, fostering cultural and religious awareness • Developing a distinct approach • Teaching 'Islamic Law' as comparative law
6	Pluralism and the Engagement of English law with 'Islamic Law'	• Introduction to pluralism and discussion of the concepts of cultural and legal pluralism in England and Wales.	• The meaning of 'Islamic Law' • Similarities and Differences Between English law and 'Islamic Law' • Considering Shari'ah in the Western World and 'Islamic Law' as a Western Model • 'Islamic Law' as a positivist law leading to cultural and legal pluralism • Hybrid legal and cultural environment • The meaning of 'Islamic Law' in the context of legal practice • 'Islamic Law' as practice'

	Outline of Topics	Brief Description	Themes from Literature (chapter 3) and Findings (chapter 5) from which the topic derives
		• Discussion of issues of reconciliation of secular law and 'Islamic Law' and the hybrid legal and cultural environment. • Analysis of key cases involving application of 'Islamic Law' in England and Wales, and the interaction of 'Islamic Law' and English law.	• 'Islamic Law' as a way of life, leading to cultural and legal pluralism • 'Islamic Law' has varied meanings in legal practice • Increasing influence of 'Islamic Law' in England and Wales • Wide ranging needs of clients in 'Islamic Law' • Need to reconcile 'Islamic Law' and English Law • Need for expertise in 'Islamic Law' gives rise to need for knowledge in 'Islamic Law' • Need for training in 'Islamic Law' arising from a need for knowledge in 'Islamic Law' • Formal offerings theoretical, out of date and weak in scope, quality and criticality • Lack of appropriate expertise in 'Islamic Law' • Teaching Islamic 'Law' by comparison with Western law • A practice-focused approach is needed • Content should be relevant and current, fostering cultural awareness • 'Islamic Law' should not be taught as other • Course content should be sustainable • Deliver from a law faculty • Provide guidance for learning in the workplace • Avoid diluting coverage of English law • Covering an appropriate range of practice topics that 'Islamic Law' influences • Course content should be relevant, current, fostering cultural and religious awareness • Developing a distinct approach

	Outline of Topics	Brief Description	Themes from Literature (chapter 3) and Findings (chapter 5) from which the topic derives
7	Islamic Family Law	• Introduction to Islamic Family Law. • Discussion of marriage, dissolution of marriage, property and children and guardianship. Application of Islamic Family Law in England and Wales.	• The meaning of 'Islamic Law' • Similarities and Differences Between English law and 'Islamic Law' • Considering Shari'ah in the Western World and 'Islamic Law' as a Western Model • 'Islamic Law' as a positivist law leading to cultural and legal pluralism • Hybrid legal and cultural environment • The meaning of 'Islamic Law' in the context of legal practice • 'Islamic Law' as practice' • 'Islamic Law' as a way of life, leading to cultural and legal pluralism • 'Islamic Law' as a positivist law leading to cultural and legal pluralism • 'Islamic Law' has varied meanings in legal practice • Increasing influence of 'Islamic Law' in England and Wales • Wide ranging needs of clients in 'Islamic Law' • Need to reconcile 'Islamic Law' and English Law • Need for expertise in 'Islamic Law' gives rise to need for knowledge in 'Islamic Law' • Need for training in 'Islamic Law' arising from a need for knowledge in 'Islamic Law' • Formal offerings theoretical, out of date and weak in scope, quality and criticality • Lack of appropriate expertise in 'Islamic Law' • Teaching Islamic 'Law' by comparison with Western law • A practice-focused approach is needed

	Outline of Topics	Brief Description	Themes from Literature (chapter 3) and Findings (chapter 5) from which the topic derives
			• Content should be relevant and current, fostering cultural awareness • 'Islamic Law' should not be taught as other • Course content should be sustainable • Deliver from a law faculty • Provide guidance for learning in the workplace • Avoid diluting coverage of English law • Covering an appropriate range of practice topics that 'Islamic Law' influences • Course content should be relevant, current, fostering cultural and religious awareness • Developing a distinct approach
8	Islamic Finance	• Introduction to Islamic Finance. History of the development of Islamic finance in the UK and the standard setting bodies. • Overview of the main concepts	• The meaning of 'Islamic Law' • Similarities and Differences Between English law and 'Islamic Law' • Considering Shari'ah in the Western World and 'Islamic Law' as a Western Model • 'Islamic Law' as a positivist law leading to cultural and legal pluralism • Hybrid legal and cultural environment • The meaning of 'Islamic Law' in the context of legal practice • 'Islamic Law' as practice' • 'Islamic Law' as a way of life, leading to cultural and legal pluralism • 'Islamic Law' as a positivist law leading to cultural and legal pluralism • 'Islamic Law' has varied meanings in legal practice

	Outline of Topics	Brief Description	Themes from Literature (chapter 3) and Findings (chapter 5) from which the topic derives
		including, Gharrar (uncertainty), Maysir (speculation) and Riba (interest). • Overview of the main financial instruments and Islamic Commercial Law, Ijara, Sukuk, Mudarabha, Murabaha and Musharakha.	• Increasing influence of 'Islamic Law' in England and Wales • Wide ranging needs of clients in 'Islamic Law' • Need to reconcile 'Islamic Law' and English Law • Need for expertise in 'Islamic Law' gives rise to need for knowledge in 'Islamic Law' • Need for training in 'Islamic Law' arising from a need for knowledge in 'Islamic Law' • Formal offerings theoretical, out of date and weak in scope, quality and criticality • Lack of appropriate expertise in 'Islamic Law' • Teaching Islamic 'Law' by comparison with Western law • A practice-focused approach is needed • Content should be relevant and current, fostering cultural awareness • 'Islamic Law' should not be taught as other • Course content should be sustainable • Deliver from a law faculty • Provide guidance for learning in the workplace • Avoid diluting coverage of English law • Covering an appropriate range of practice topics that 'Islamic Law' influences • Course content should be relevant, current, fostering cultural and religious awareness • Developing a distinct approach

	Outline of Topics	Brief Description	Themes from Literature (chapter 3) and Findings (chapter 5) from which the topic derives
9	Islamic Dispute Resolution Mechanisms	• Overview of Islamic dispute resolution. • Introduction to Shari'ah councils in the United Kingdom, their origins and operation.	• The meaning of 'Islamic Law' • Similarities and Differences Between English law and 'Islamic Law' • Considering Shari'ah in the Western World and 'Islamic Law' as a Western Model • 'Islamic Law' as a positivist law leading to cultural and legal pluralism • Hybrid legal and cultural environment • The meaning of 'Islamic Law' in the context of legal practice • 'Islamic Law' as practice' • 'Islamic Law' as a way of life, leading to cultural and legal pluralism • 'Islamic Law' as a positivist law leading to cultural and legal pluralism • 'Islamic Law' has varied meanings in legal practice • Increasing influence of 'Islamic Law' in England and Wales • Wide ranging needs of clients in 'Islamic Law' • Need to reconcile 'Islamic Law' and English Law • Need for expertise in 'Islamic Law' gives rise to need for knowledge in 'Islamic Law' • Need for training in 'Islamic Law' arising from a need for knowledge in 'Islamic Law' • Formal offerings theoretical, out of date and weak in scope, quality and criticality • Lack of appropriate expertise in 'Islamic Law' • Teaching Islamic 'Law' by comparison with Western law • A practice-focused approach is needed • Content should be relevant and current, fostering cultural awareness

	Outline of Topics	Brief Description	Themes from Literature (chapter 3) and Findings (chapter 5) from which the topic derives
			• 'Islamic Law' should not be taught as other • Course content should be sustainable • Deliver from a law faculty • Provide guidance for learning in the workplace • Avoid diluting coverage of English law • Covering an appropriate range of practice topics that 'Islamic Law' influences • Course content should be relevant, current, fostering cultural and religious awareness • Developing a distinct approach •
10	Islamic Inheritance, Wills and Alms	• Overview of Islamic Inheritance and Wills. • Introduction to Zakat (Alms) and its operation in the different schools of thought.	• The meaning of 'Islamic Law' • Similarities and Differences Between English law and 'Islamic Law' • Considering Shari'ah in the Western World and 'Islamic Law' as a Western Model • 'Islamic Law' as a positivist law leading to cultural and legal pluralism • Hybrid legal and cultural environment • The meaning of 'Islamic Law' in the context of legal practice • 'Islamic Law' as practice' • 'Islamic Law' as a way of life, leading to cultural and legal pluralism • 'Islamic Law' as a positivist law leading to cultural and legal pluralism • 'Islamic Law' has varied meanings in legal practice • Increasing influence of 'Islamic Law' in England and Wales

	Outline of Topics	Brief Description	Themes from Literature (chapter 3) and Findings (chapter 5) from which the topic derives
			• Wide ranging needs of clients in 'Islamic Law' • Need to reconcile 'Islamic Law' and English Law • Need for expertise in 'Islamic Law' gives rise to need for knowledge in 'Islamic Law' • Need for training in 'Islamic Law' arising from a need for knowledge in 'Islamic Law' • Formal offerings theoretical, out of date and weak in scope, quality and criticality • Lack of appropriate expertise in 'Islamic Law' • Teaching Islamic 'Law' by comparison with Western law • A practice-focused approach is needed • Content should be relevant and current, fostering cultural awareness • 'Islamic Law' should not be taught as other • Course content should be sustainable • Deliver from a law faculty • Provide guidance for learning in the workplace • Avoid diluting coverage of English law • Covering an appropriate range of practice topics that 'Islamic Law' influences • Course content should be relevant, current, fostering cultural and religious awareness • Developing a distinct approach

	Outline of Topics	Brief Description	Themes from Literature (chapter 3) and Findings (chapter 5) from which the topic derives
11	Islamic Human Rights	• Introduction to Human Rights in Islam. • Overview of the rights of women and children in 'Islamic Law'.	• The meaning of 'Islamic Law' • Similarities and Differences Between English law and 'Islamic Law' • Considering Shari'ah in the Western World and 'Islamic Law' as a Western Model • 'Islamic Law' as a positivist law leading to cultural and legal pluralism • Hybrid legal and cultural environment • The meaning of 'Islamic Law' in the context of legal practice • 'Islamic Law' as practice' • 'Islamic Law' as a way of life, leading to cultural and legal pluralism • 'Islamic Law' as a positivist law leading to cultural and legal pluralism • 'Islamic Law' has varied meanings in legal practice • Increasing influence of 'Islamic Law' in England and Wales • Wide ranging needs of clients in 'Islamic Law' • Need to reconcile 'Islamic Law' and English Law • Need for expertise in 'Islamic Law' gives rise to need for knowledge in 'Islamic Law' • Need for training in 'Islamic Law' arising from a need for knowledge in 'Islamic Law' • Formal offerings theoretical, out of date and weak in scope, quality and criticality • Lack of appropriate expertise in 'Islamic Law' • Teaching Islamic 'Law' by comparison with Western law • A practice-focused approach is needed • Content should be relevant and current, fostering cultural awareness

	Outline of Topics	Brief Description	Themes from Literature (chapter 3) and Findings (chapter 5) from which the topic derives
			• 'Islamic Law' should not be taught as other • Course content should be sustainable • Deliver from a law faculty • Provide guidance for learning in the workplace • Avoid diluting coverage of English law • Covering an appropriate range of practice topics that 'Islamic Law' influences • Course content should be relevant, current, fostering cultural and religious awareness • Developing a distinct approach

Appendix 12- The 'Islamic Law' Course Specification

Appendix 12- The 'Islamic Law' Course Specification

Module Name	''Islamic Law' and Practice' (alternative names; Islamic Practitioner's Law', 'Islamic Legal Practice', ''Islamic Law' for Legal Practice', ''Islamic Law' in Practice', or ''Islamic Legal Practice in England and Wales')
Credits	20- 30 credits (full module dependent on the law school) Framework for Higher Education Qualifications in England Wales and Northern Ireland (FHEQ) Level 6[1] (If taught with a reduced number of credits each topic should still be outlined)
Module Description	'Islamic Law' is the oldest continuing legal tradition that is applied, fully or partially in over fifty countries. There is an increasing interest in the area both nationally and internationally by Muslims and non-Muslims alike. In England and Wales, there have been an increasing number of cases involving 'Islamic Law' coming before the courts and it has had a significant impact on a range of legal practice areas. Knowledge and skills in this area are in increasing demand that is not currently met. This module presents an introductory overview of 'Islamic Law', its role in legal practice and its interaction with English law. It is uniquely offered from a legal perspective as opposed to a theological perspective and gives students the opportunity to gain knowledge and skills to familiarise themselves with not only the theory, but the practice in the area specifically in England and Wales. The module is based primarily on English language scholarship and English translations of the primary sources. It engages with both classical and contemporary scholarship in the area. No prior knowledge of 'Islamic Law' or Arabic is required.
Aims and Learning Outcomes	By the end of this module you should be able to: 1. Understand and critically reflect on the Muslim diaspora in England and Wales and their needs in regard to 'Islamic Law'.

[1] Quality Assurance Agency (n 539).

	2. Understand and evaluate the theoretical discourse regarding 'Islamic Law', in particular the background, the jurisprudential thought and main sources of 'Islamic Law'. 3. Present a context-based analysis of uses of the term 'Islamic Law' and its non-monolithic nature. 4. Evaluate and compare different Islamic state practices. 5. Critically analyse and reflect on the interaction between 'Islamic Law and English law and the pluralistic nature of British society in regard to 'Islamic Law'. 6. Analyse and recognise application in England and Wales of 'Islamic Law' and demonstrate problem solving skills in solving practice-based problems in relevant areas of 'Islamic Law', applying theoretical knowledge to do so . 7. Conduct effective independent research in the field of 'Islamic Law' in legal practice 8. Present effective written and oral arguments on key issues in 'Islamic Law' in legal practice.
Teaching Methods	This framework is designed to be flexible and provides a brief overview of the module. It is proposed to be taught as a full module delivered over two terms or more and although all topics are mandatory, selection of key areas within each topic is possible if taught in a shorter time. This module is to be taught from the Law department of an academic institution by instructors who have a background and preferably qualified to practise English law. This is to distinguish it from an Islamic studies module and to enable law students to make critical interactions between English law and 'Islamic Law'. The mode of instruction are lectures, with seminars recommended for each topic to allow development of student understanding and discussion. Use of case studies, simulations, concept mapping, experiential learning methods are mandatory, as well as the use of technology, in order to place the knowledge into context and the relevant practice skills to be developed.

	As the primary sources of 'Islamic Law' are in the Arabic language, basic familiarisation with key terminology will be required, which can be obtained through the glossary listed in the materials and text section. Students are required to bring the glossary to each class and to be assisted by the instructor in understanding the terms as they are used in class. This will enable students to become more comfortable with the subject and allow a deeper understanding.
Outline of Topics	1. Background of Muslims in the United Kingdom 2. Historical Overview of 'Islamic Law' and Jurisprudential Thought 3. Sources of 'Islamic Law' 4. Contextualising 'Islamic Law' 5. Islamic State Practices 6. Pluralism and the Engagement of English law with 'Islamic Law' 7. Islamic Family Law 8. Islamic Finance 9. Islamic Dispute Resolution Mechanisms 10. Islamic Inheritance, Wills and Alms 11. Islamic Human Rights
Assessment Methods	Formative and summative written/oral assessments assessing learning outcomes 1-7 including supervised project assessing practical application of knowledge and skills from learning outcomes 1-7. Assessments may also take place in a clinical setting.
Materials and Texts	**Glossary:** http://ials.sas.ac.uk/ukcle/78.158.56.101/archive/law/resources/teaching-and-learning-strategies/glossary/index.html **Texts:** 1. Background of Muslims in the United Kingdom Ahdar RJ and Aroney N, *Shari'a in the West* (Oxford University Press 2010)

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