

NELC 238

Introduction to Islamic Law

University of Pennsylvania
Department of Near Eastern Languages and Civilizations
Fall 2015 – TR 1:30-3:00

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Description:

Islamic law, the sacred law of Islam grounded in the Qur'an, the practice of the Prophet Muḥammad, and the writings of Muslim scholars and jurists, stretches back nearly 1500 years. In this course, we will explore various aspects of Islamic law as seen through the eyes of one of the great minds of the Middle Ages, Ibn Rushd (known to the West as Averroës, d. 1196). Based on readings from Ibn Rushd's handbook of Islamic law, *The Distinguished Jurist's Primer* (*Bidāyat al-mujtahid*), and other texts, this course will examine Islamic legal doctrine relating to criminal and penal law, ritual purity, dietary rules, family law, commercial law, and the law of war. Additional readings will deal with the role of the Qur'an in early Islamic law, institutions, legal theory, gender, Muslim feminism and the law, and some contemporary Muslim responses to the Islamic legal tradition.

Students will learn the main outlines of the history of Islamic law, its major concepts, and selected areas of legal doctrine. Comparative analyses of legal doctrines will also serve to introduce students to some general legal concepts.

No previous background in Arabic or Islamic studies is required for this course.

Course Requirements:

This course is run in a seminar format. This means that it is vital and imperative that students read carefully, and complete, all assigned texts on time, as well as participate fully and vigorously in class discussion. Class preparedness will count significantly towards final grades; absences will count against final grades. Students will be expected to outline or respond in writing to a number of the readings, or produce short response papers (at the instructor's direction), and may also be required make occasional short in-class presentations related to the readings. In addition, students will write an approximately 10-page paper analyzing a *fatwā* (formal legal opinion by a Muslim jurist) and take a final exam.

Grading:

Grades will be based on a combination of class participation (including attendance and preparation), assignments (quality and timeliness of submission), the research paper (timeliness of submission and thoughtfulness of analysis), and the final exam (accuracy, thoughtfulness of answers, demonstration of engagement with the material).

Required Texts:

There are three required texts for this class. The texts, available from the Penn Book Center (34th and Sansom), are Jamal Elias, *Islam, Religions of the World* (Saddle River: Prentice Hall, 1999); Knut S. Vikør, *Between God and the Sultan* (Oxford: Oxford University Press, 2005); and Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009). Additional readings are available on the course Canvas site.

**NELC 238 – Introduction to Islamic Law
Syllabus – Fall 2015**

August

R 27 0. **Administration; Some Ways of Thinking about and Studying Law and Legal Systems**

September

T 1 1. **Islam; Islamic Civilization to 1500; Islamic Law**

- * J. Elias, *Islam* (Saddle River: Prentice Hall, 1999)
- * Hallaq, Introduction, 1-4
- * Vikør, Preface, v-vii
- * Vikør, ch. 1, Introduction, 1-19

R 3 2. **Overview of the History of Islamic Law; Islamic Legal Concepts**

- * Hallaq, ch. 1, Who's who in the Shari'a? 7-13
- * Vikør, ch. 2, From Practice to Method, 20-30
- * Hallaq, ch. 2, The Law: how is it found? 14-30

T 8 * Vikør, ch. 3, The Koran and *Sunna* as Sources, 31-52
* Vikør, ch. 4, Elaborating the Sources: *Qiyās* and *Ijtihād*, 53-72
* Vikør, ch. 5, Getting Social Sanction: *Ijmā'* and Authorization, 73-88
* Hallaq, ch. 5, Shari'a society (first half), 57-64

R 10 • Ibn Khaldūn, *The Muqaddima*, 3 vols., tr. F. Rosenthal (Princeton: Princeton University Press), III:3-34
• Ibn Rushd, *The Distinguished Jurist's Primer*, 2 vols., tr. I.A.K. Nyazee (Reading: Garnet Press, 1994),
vol. i, 375-6 (on pilgrimage)

3. **Substantive Law**

a. **Torts**

- P. Keeton, et al., *Tort and Accident Law: Cases and Materials* (St. Paul: West, 1983), 1-24

T 15 * Vikør, excerpt from ch. 14, Criminal Law, 287-290
• Ibn Rushd, ii, 478-521

R 17 b. **Crimes**

- J. Kaplan, R. Weisberg, *Criminal Law: Cases and Materials* (Boston: Little, Brown and Company, 1986), 3-54
- Ibn Rushd, ii, 521-552

T 22 • M.S. al-Awa, *Punishment in Islamic Law* (Indianapolis: American Trust Publications, 1982), ch. 1, "The Fixed Punishments (*Al-Hudud*)," 1-42
* Vikør, the rest of ch. 14, 280-298

R 24 c. **Family Law**

- Ibn Naqīb al-Miṣrī, *Reliance of the Traveller*, tr. N.H.M. Keller (Evanston: Sunna Books, rev. ed. 1994), 506-577

T 29 • A. Wadud, *Qur'an and Woman* (Oxford: Oxford University Press, 1999), 62-93
* Vikør, ch. 15, Family Law, 299-325

October

R 1 Film: "Divorce Iranian Style"

T 6 **d. Ritual Purity**

- M. Douglas, *Purity and Danger* (New York: Praeger, 1966), 7-28
- Ibn Rushd, i, 1-50

R 8 NO CLASS (Fall Break)

T 13 • Ibn Rushd, i, 67-75
• K. Reinhart, "Impurity/No Danger," *History of Religions* 30 (1990), 1-24

R 15 **e. Dietary Rules**

- Douglas, 29-57
- Ibn Rushd, i, 563-578

T 20 **f. Jihad**

- R. Peters, *Jihad in Classical and Modern Islam* (Princeton: Markus Wiener, 1996), 1-54.

R 22 • Anon., *The Sea of Precious Virtues*, tr. J. Meisami (Salt Lake City: University of Utah Press, 1991), 13-35

T 27 **g. Commercial Transactions**

- Ibn Rushd, ii, 198-202 (prohibited transactions)
- Ibn Rushd, ii, 260-263 (the *'arīyah* sale)
- Ibn Rushd, ii, 397-404 (gifts)
- * Vikør, Chapter, 16, Economy, Taxes and Property, 326-344

R 29 **4. Selected Discrete Topics and Problems**

a. The Qur'an and Early Islamic Law

- P. Crone, "Two Legal Problems Bearing on the Early History of the Qur'an," *JSAI* 18 (1994), 1-37

November

T 3 **b. Public Institutions**

* Vikør, Ch. 8, The Court and the Law: *Muftīs* and Legal Development, 140-167

* Vikør, Ch. 9, The Court and its Judge: the Role of the *Qādī*, 168-184

* Vikør, Ch. 10, The Court and the State, 185-205

(You should begin the readings for Tuesday, Nov. 10 after this class!)

R 5 Film: "Justice at Agadez"

T 10 • al-Māwardī, *The Ordinances of Government*, tr. W. Wahba (Reading: Garnet Press, 1996), 3-22

• *Islam and Revolution: Writings and Declarations of Imam Khomeini*, tr. H. Algar (Berkeley: Mizan Press, 1981), 27-60

* Hallaq, ch. 6, Pre-modern governance: The Circle of Justice, 72-82

* Hallaq, ch. 9, State, ulama, and Islamists, 140-162

* Vikør, ch. 13, Implementing the Sharī'a, 254-279

- R 12 **c. Private Institutions: Education**
* Hallaq, ch. 3, The legal schools, 31-37
* Vikør, ch. 6, The Four Schools of Law, 89-113
* Vikør, ch. 7, Law Beyond the Four Schools, 114-139
- T 17 • M. Chamberlain, “Production of Knowledge ... in Medieval Damascus,” in *Madarasa: La Transmission du Savoir ...*, eds. N. Grandin, M. Garborieau (Paris: Editions Arguments, 1997), 28-62
* Hallaq, ch. 4, Jurists, legal education, and politics, 38-56
- R 19 **d. Legal Theory and Hermeneutics**
• al-Shāfi‘ī, *The Epistle on Legal Theory* (New York: NYU Press, 2013), 15-19, 81-87, 155-161, 349-351
• al-Juwaynī, al-Waraqāt (“The Pages on Legal Theory”)
• Y. Dutton, tr., “The Introduction to Ibn Rushd’s *Bidāyat al-Mujtahid*,” *ILS* 1:2 (1994), 188-205
- T (R!) 24 **e. Gender**
* Hallaq, ch. 5, Shari‘a society (second half), 64-71
• P. Sanders, “Gendering the Ungendered Body: Hermaphrodites in Medieval Islamic Law,” in: N. Keddie, B. Baron eds., *Women in Middle Eastern History: Shifting Boundaries in Sex and Gender* (New Haven: Yale University Press, 1991), 74-95.
• J. Skovgaard-Petersen, *Defining Islam for the Egyptian State* (Leiden: E.J. Brill., 1997), 319-334
- R 28 NO CLASS (Thanksgiving)

December

- T 1 **f. Modernity**
* Vikør, ch. 11, Law and Courts in the Ottoman Empire, 206-221
* Hallaq, ch. 7, Colonizing the Muslim world and its Shari‘a, 85-114
* Hallaq, ch. 8, The law in the age of nation-states, 115-139
* Vikør, ch. 12, Islamic Law in the Modern Period, 222-253
- R 3 **5. Talking about and Conceptualizing Islamic Law**
* Hallaq, ch. 10, Shari‘a then and now: concluding notes, 163-170
* Vikør, Conclusion, 345-347
• F. Rahman, *Islam*, 2d. ed. (Chicago: University of Chicago Press, 1979), 68-84, 100-116
• M. Arkoun, *Rethinking Islam: Common Questions, Uncommon Answers*, tr. R.D. Lee (Boulder: Westview Press, 1994), 106-120
- T 8 Exam Review
W 9 - R 10 Reading Days
F 11 - F 18 Final examinations

Select Bibliography: Some Other Introductions to Islamic Law

- N.J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964)
A.A.A. Fyzee, *Outlines of Muhammadan Law* (Calcutta: Oxford University Press, 1949)
W. Hallaq, *Shari‘a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009)
M. Izzi Dien, *Islamic Law: From Historical Foundations to Contemporary Practice* (Edinburgh: Edinburgh University Press, 2004)
J. Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964)
S. Zubaida, *Law and Power in the Islamic World* (London: I.B. Tauris, 2003)