

# ISLAMIC LAW

LAW 627-001 • Fall 2021

## **CLASS INFORMATION**

Time: Tu/Th 12:15-1:45 PM  
Location: Gambrell Hall 1B

## **OFFICE HOURS**

Tu/Th 3:30-5:00 pm, Friday 9:00-10:00 am, or by appointment.

## **INSTRUCTOR INFORMATION**

Professor Shlomo Pill  
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## **COURSE DESCRIPTION**

Islamic law is an important feature in the private and communal lives of hundreds of millions of observant Muslims across the world, and a relevant concern for legal and political systems in many countries with majority or minority Muslim populations. Since the advent of Islam in the 7th century, observant Muslims have sought to live their lives in accordance with the Shari'a, God's will for the Muslim community, and have developed a complex, nuanced, and diverse body of legal rules, principles, and teachings that are understood to embody the divine will. In this course, students will achieve a foundational understanding of this important field by exploring the historical development, conceptual framework, substantive doctrines, and some contemporary issues of Islamic law. To the uninitiated, Islamic law is often mistakenly thought to be a set of clear-cut, often extreme rules. This course aims to correct some of those impressions by highlighting the complexity, diversity, nuance, and uncertainty of Islamic law and legal decision making. This course will focus especially on understanding central role that human interpretation and analysis has played and continues to play in the formulation of Islamic legal doctrine on the basis of the primary sources of Islamic revelation. In doing so, students will also gain valuable comparative perspectives that can be brought to bear on their studies and understandings of American law.

## **CANVAS**

The course will make use of the online educational platform Canvas. Course readings will be accessible through Canvas, and students will be expected to upload assignments to Canvas. I may occasionally use Canvas to communicate with students through the announcements feature. If you are not familiar with Canvas, you can find more information and instructions at <http://it.emory.edu/canvas/index.html>. Students are automatically enrolled in Canvas, and you can access the Canvas page at <http://canvas.emory.edu>. All written assignments should be submitted through Canvas in .docx, .doc, .rtf, or .txt file format.

I use Canvas for grading; assignments are graded on a number basis, with the final course grade being converted to a letter grade.

## **COURSE REQUIREMENTS**

### Readings

Please complete assigned readings in advance of each class.

The following books are required for this course:

- Khaled Abou El Fadl, ed., *Routledge Handbook of Islamic Law* (2019 (available in full online through the Emory Law Library).
- Knut S. Vikor, *Between God and the Sultan* (2005).
- Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority, and Women* (2001).
- Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (2005).
- Assorted articles are included in the syllabus with full citations. Please access these yourself using an online database.
- Additional readings and book excerpts. These will be made available to you in hard copy at least one class prior to the day they are assigned. Readings will also be uploaded to the Library Course Reserves, which can be accessed through the Canvas site for the course.

Reading assignments for class days later in the semester may change depending on how the course develops. I will inform students of any changes well in advance of the class period.

### Class Attendance and Participation

**Attendance Policy:** As required by law school policy, regular attendance is mandatory. I will be taking attendance every day. Each student is permitted up to three unexcused absences during the semester. Additional unexcused absences will result in a five-point per-absence deduction from your class participation grade. Habitual tardiness will also negatively affect the class participation portion of your grade.

Students who believe they may miss more than 25% of classes in any one semester due to health concerns must apply to the Office of Academic Engagement for an administrative waiver of attendance. The Assistant Dean for Academic Engagement and Student Support will evaluate the basis for the absences - including the total number of absences in relation to the learning objectives for the course - to determine if an administrative waiver will apply and may request supporting documentation from the student. Absent an administrative waiver, a student who misses more than 25% of their classes may be subject to any of the following sanctions: reduction in final grade, denial of permission to complete coursework or sit for the exam, or receipt of a grade of F (failing).

Students are responsible for completing any work they have missed due to absences for any reason, including assignments, quizzes, tests, and exams.

**Authority to Remove Students from the Classroom:** I have a responsibility to protect the health of all students and maintain decorum in the classroom. Accordingly, I have and will exercise my authority to ask someone to leave the classroom should they engage in conduct that is inappropriate for the class.

**Participation Policy:** Class participation is an integral part of learning in this course. To meet the learning outcomes, students must be prepared for class by having read and analyzed the assigned readings. Classroom conversations are an important opportunity for students to present ideas; summarize authors' arguments; and synthesize ideas gleaned from the readings, fellow students, and the instructor. Our collective learning depends on all students contributing by answering questions, asking questions, and participating in discussion.

Students are also expected to be respectful of one another and the instructor. Some of the topics discussed in the course will generate strong differences of opinion, so students should be prepared to express their opinions in a respectful manner that is generous to the views and opinions of their classmates, as well as the authors under discussion.

Class attendance and participation will be assigned a letter grade and will be worth 25% of your final grade. Class participation will be graded based on preparation (having read and analyzed the assigned readings before class); contribution (providing thoughtful contributions to class and small group discussion that are grounded in the readings); and interaction (thoughtfully reflecting on the contributions of classmates and the instructor without dominating class discussion).

### Response Papers

Each student will complete three response papers on assigned topics during the semester. Response paper topics and due dates can be found on the Assignments page on CANVAS. Papers should be double-spaced in a conventional 12 pt. font and between 1,000-1,250 words in length (excluding footnotes). These papers are designed to reflect your familiarity with and thinking about the themes and materials of this course in connection to the question prompts. Your responses should refer to and analyze assigned readings and quote appropriate passages to support your ideas, but I do not expect outside research or extensive citations. Response papers must reflect your own work and conform to the standards of the Emory Law School Honor Code. Papers must be submitted through CANVAS before the listed due date; papers will suffer a 10-point grade reduction for each day a paper is late. Each response paper will be worth 10% of your final grade for the course.

### Final Exam

The final project for this course will consist of several research question prompts that you will receive before the last class. You will be asked to select *one* of the prompts and to write a short, researched, and properly footnoted response to the prompt drawing on ideas and materials we have studied in class, as well as any outside materials you choose to use. Papers should be between 5,000-6,000 words in length *exclusive of footnotes*; use standard Bluebook citation formats for references; and must reflect your own work and conform to the standards of the Emory Law School Honor Code. Papers must be submitted through the course CANVAS page before 9:00 AM on Monday, December 6, 2021. Final exam papers will be worth 45% of your final grade for the course.

## **CALCULATION OF GRADES**

- Class Participation 25%
- Response Papers 30%
- Final Exam Paper 45%

## **MANDATORY JD MEAN**

Consistent with Law School grading policy, if there are more than 10 JD students registered for this class, final grades for all JD students will conform to a mean of ~3.30. Non-JD students (including LLMS, SJDs, JMs, and students from other divisions) will be excluded from the calculation of the JD mean. For information on law school grading policies see "Grading" in the Student Handbook:

[http://law.emory.edu/includes/documents/sections/academics/EmoryLaw\\_StudentHandbook\\_18-19\\_180507\\_Approved.pdf](http://law.emory.edu/includes/documents/sections/academics/EmoryLaw_StudentHandbook_18-19_180507_Approved.pdf).

## **ACCESSIBLY AND ACCOMODATIONS**

As the instructor of this course, I endeavor to provide an inclusive learning environment. I want every student to succeed. The Department of Accessibility Services (DAS) works with students who have disabilities to provide reasonable accommodations. It is your responsibility to request accommodations. In order to receive consideration for reasonable accommodations, you must register with the DAS at <http://accessibility.emory.edu/students/>. Accommodations cannot be retroactively applied so you need to contact DAS as early as possible and contact me as early as possible in the semester to discuss the plan for implementation of your accommodations.

For additional information about accessibility and accommodations, please contact the Department of Accessibility Services at (404) 727-9877 or [accessibility@emory.edu](mailto:accessibility@emory.edu).

### **INCLUSIVE LANGUAGE**

In order to create a learning and discussion environment in which all participants feel welcome and able to participate, the use of inclusive language will be expected in the classroom. The use of the neutral universal (e.g., humanity) is encouraged and the masculine universal (e.g., mankind) is discouraged. Gendered pronouns (he/she) can be replaced with proper nouns (the author, Prof. X, the plaintiff, etc.) or alternated. Recognizing that not all people identify with gendered pronouns, students will be given the opportunity to identify their preferred pronouns to the instructor and to the class. Our goal is an empathetic classroom that recognizes and encourages the diversity of experience that everyone brings to the table. Thus, in addition to inclusive language around gender, class discussion should use language that is respectful of diversity in all its forms.

### **SCHEDULE OF CLASSES**

#### *Introduction*

##### 8/17 – Introduction to Islam

- Carl W. Ernst, *Rethinking Islam in the Contemporary World* 38-69 (2004).

##### 8/19 – What is Islamic Law? Is it “law”?

- H.L.A. Hart, “The Concept of Law” pp. 1-17, 79-99.
- Khaled Abou El Fadl, *What Type of Law is Islamic Law* 11, in Khaled Abou El Fadl, ed., *Routledge Handbook of Islamic Law* (2019).

#### *Foundational History and Concepts*

##### 8/24 – The Formative Period

- Wael B. Hallaq, *The Origins and Evolution of Islamic Law* 29-78 (2005).

##### 8/26 – Revelation vs. Reason

- Wael B. Hallaq, *The Origins and Evolution of Islamic Law* 79-121 (2005).
- Noel J. Coulson, *Conflicts and Tensions in Islamic Jurisprudence* 3-19 (1969).

##### 8/31 – The Advent of Islamic Jurisprudence: Islamic Law as an Intellectual System

- Wael B. Hallaq, *The Origins and Evolution of Islamic Law* 122-151 (2005).
- Joseph E. Lowery, *Early Islamic Legal Theory: The Risāla of Muḥammad ibn Idrīs al-Shāfiʿī* 1-22 (2007) (*available online through the Emory Library*).

##### 9/2 – Material Sources of Islamic Law: Qur’an and Hadith

- Knut S. Vikor, *Between God and the Sultan* 20-52 (2005).

- Amr Osman, *The Qur'an and Hadith as Sources of Islamic Law* 127, in Khaled Abou El Fadl, ed., Routledge Handbook of Islamic Law (2019).

9/7 – No Class

*Islamic Jurisprudence: Sources, Methods, Principles*

9/9 – Rational Sources of Islamic Law: Consensus and Reason

- Knut S. Vikor, *Between God and the Sultan* 53-88 (2005).

9/14 – Problems of Authority and Authenticity

- Khaled Abou el Fadl, *Speaking in God's Name: Islamic Law, Authority, and Women* 96-140 (2001).

9/16 – No Class

9/21 – No Class

9/23 – Canons and Principles of Islamic Legal Decision Making

- Intisar A. Rabb, *Interpreting Islamic Law through Legal Canons* 221, in Khaled Abou El Fadl, ed., Routledge Handbook of Islamic Law (2019).

9/28 – No Class

9/30 – Ijtihad vs. Taqlid: Legal Independence and Precedent

- Sherman A. Jackson, *Ijtihad and Taqlid* 255, in Khaled Abou El Fadl, ed., Routledge Handbook of Islamic Law (2019).

10/5 – Purposive Jurisprudence

- Felicitas Opwis, *Maqa-sid al-Shariah* 195, in Khaled Abou El Fadl, ed., Routledge Handbook of Islamic Law (2019).

10/7 – Jurisprudential “Safety Valves”

- Michael Mumisa, *Islamic Law: Theory and Interpretation* 123-140 (2002).
- Mohammad Hashim Kamali, “Equity and Fairness in Islam” pp. 11-23 (2005).
- Ayman Shabana, *The Place of Custom in Islamic Law* 286, in Khaled Abou El Fadl, ed., Routledge Handbook of Islamic Law (2019).

10/12 – The Four Schools

- Labeeb Ahmed Bsoul, *The Emergence of the Major schools of Islamic Law/Madhabs* 141, in Khaled Abou El Fadl, ed., Routledge Handbook of Islamic Law (2019).
- Imran Ahsan Khan Nyazee, transl., *The Distinguished Jurist's Primer* (Muhammad ibn Ahmad Ibn Rushd's *Bidayat al-Mujtahid*), vol. I, pp. 571-577 (1994).

10/14 – Pluralism vs. Unity

- Mohammad Hashim Kamali, *The Scope of Diversity and Ikhtilaf in the Shari'ah*, 37 *Islamic Studies* 315 (1998).

- Ahmed Fekry Ibrahim, *Legal Pluralism in Sunni Islamic Law* 208, in Khaled Abou El Fadl, ed., *Routledge Handbook of Islamic Law* (2019).

#### 10/19 – Discovering Law vs. Creating Law

- Anver Emon, *To Most Likely Know the Law: Objectivity, Authority, and Interpretation in Islamic Law*, 4 *Hebraic Political Studies* 415, 431-439 (2009).
- Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority, and Women* 18-23, 147-150 (2001).
- Muhammad Idris al-Shafi'i, "The Epistle on Legal Theory [al-Risala]" pp. 339-349, 365-367.

#### 10/21 – Who Decides?

- Delfina Serrano Ruano, *Qadis and Muftis* 156, in Khaled Abou El Fadl, ed., *Routledge Handbook of Islamic Law* (2019).
- Mahmoud Munes Tomeh, *Persuasion and Authority in Islamic Law*, 3 *Berkeley J. of Middle Eastern & Islamic L.* 141 (2010).

#### 10/26 – Bringing It All Together: Case Study on Female-Led Congregational Prayer

- Ibn Rushd, "The Distinguished Jurist's Primer" pp. 161.
- Nevin Reda, *The Islamic Argument or Female-Led Congregational Prayer*
- "A Collection of Fatwas on the Issue of Women Leading Prayers" (2005).
- Khaled Abou el Fadl, *Fatwa by Dr. Abou El Fadl: On Women Leading Prayer*.

### *Islamic Law, Religion, and State*

#### 10/28 – Islamic Law and the State in Classical Islamic Thought

- Knut S. Vikor, *Between God and the Sultan* 185-205 (2005).
- Ovamir Anjum, *Islamic Law and the State in Pre-Modern Sunni Thought* 357, in Khaled Abou El Fadl, ed., *Routledge Handbook of Islamic Law* (2019).

#### 11/2 – Law and State in the Modern Muslim World

- Knut S. Vikor, *Between God and the Sultan* 206-253 (2005).

#### 11/4 – Islam and Democracy I

- Khaled Abou el Fadl, *Islam and the Challenge of Democratic Commitment*, 27 *Ford. Int'l L.J.* 4 (2003).

#### 11/9 – Islam and Democracy II

- Anver M. Emon, *On Democracy as a Shar'i Moral Presumption: Response to Khaled Abou El Fadl*, 27 *Ford. Int'l L. Rev.* 72 (2003).
- Erik G. Jensen, *Confronting Misconception and Acknowledging Imperfections: A Response to Khaled Abou El Fadl's Islam and Democracy*", 27 *Ford. Int'l L. Rev.* 81 (2003).

#### 11/11 – Islamic Constitutionalism

- Abdullahi A. An-Na'im *Complementary, Not Competing, Claims of Law and Religion: An Islamic Perspective*, 39 *Pepp. L. Rev. Iss.* 1231 (2013).

- Mohammad H. Fadel *Seeking an Islamic Reflective Equilibrium: A Response to Abdullahi A. An-Na'im's Complementary, Not Competing, Claims of Law and Religion: An Islamic Perspective*, 39 Pepp. L. Rev. 1257 (2013).

*Islamic Law in the Non-Muslim World*

11/16 – Islamic Law for Muslim Minorities

- Tauseef Ahmad Parray, *The Legal Methodology of “Fiqh al-Aqalliyat” and its Critics: An Analytical Study*, 32 Journal of Muslim Minority Affairs 88 (2012).

11/18 – Tensions and Opportunities

- Andrew F. March, *Are Secularism and Neutrality Attractive to Religious Minorities - Islamic Discussions of Western Secularism in the Jurisprudence of Muslim Minorities (Fiqh Al-Aqalliyat) Discourse*, 30 Cardozo L. Rev. 2821 (2009).
- Rabea Benhalim, *The Case for American Muslim Arbitration*, 2019 Wisconsin Law Review 531, 531-539, 565-589 (2019).