

# ISLAMIC LAW: THEORY & PRACTICE

## *Syllabus*

**Professor Adnan Zulfiqar**

RUTGERS LAW SCHOOL | Fall 2021

Wednesday, 1:05am to 3:45pm

Office Hours: By appointment

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### Course Description

This course aims to provide a broad introduction to Islamic law in both theory and practice. Islamic law consists of positive law and legal theory that is built upon Islam’s foundational sources, the Qur’an and Prophetic tradition. “*Shari’a*” is the technical term used for these sources collectively, but in common parlance the term includes both the sources and the law derived from them. Islamic law continues to be relevant to both the personal practice of Muslims and public laws in numerous countries. This class will focus almost exclusively on the latter with the aim of giving students a sense of how Islamic law operates in the public domain and expanding their conception of “law”—in the sense of enforceable rights and obligations— in order to facilitate comparative aspects of the subject matter.

The course will be divided into three main sections. The first will be **FOUNDATIONAL**, providing a historical and conceptual background on Islamic law, looking primarily at its origins, theoretical foundations, judicial structure and interaction with the state. The objective in this section will be to provide students with the building blocks to properly appreciate the material in the next section. The second section, focuses on **SUBSTANTIVE LAW**. It will examine a number of areas of law: criminal, commercial, labor, property, warfare and family. Some of these areas are where Muslim states inject *Shari’a* provisions into their own legal systems. They also provide ample material for students to engage in comparative thinking with regard to their own law school curriculum. Students will first gain a theoretical understanding of how Islamic legal literature discusses these areas of law and will then examine case law from Muslim countries to see how these ideas are put into practice. The final section of the course will look at **NEW FRONTIERS**. These classes expand on the previous section by focusing on what modern developments have meant for Islamic law, in particular the unique places where it now appears. We will look at the role of colonialism, the challenges of modernity, efforts at reform, the emergence of militancy, human rights, criminal codification and how American courts deal with Islamic law. Students will analyze the legal, social and political considerations surrounding this discourse and its implications for Islamic law moving forward.

Course materials will consist of selected readings from classical and contemporary Islamic legal treatises, secondary literature, news articles and case law. The class is structured to make it accessible to law students whether or not they have a background in Islamic law. The class will be lecture-based with a strong class participation component. No pre-requisite is required to take this course.

## Learning Outcomes

Throughout the semester, students will engage in understanding Islamic law through a mix of readings in history, theory and case method. The goal will be for students to not only learn about a major body of law in the global context, but to engage in comparative analysis with the legal education they have already gained in American law generally. They will develop new skills in appreciating different forms of legal interpretation, the role of history and precedent, as well as the unique challenges of blurred lines between religion and state. As with all classes in law school, one of the primary goals will be for students to see topics from multiple vantage points, gaining the ability to be equally adept at arguing from different positions. In addition, students will be encouraged to cultivate their own opinions on the numerous policy matters and theoretical questions that arise in Islamic law.

Reading with a critical eye will be essential to success in this class. Students will spend time understanding opinions across the spectrum of conservative to progressive, reading everyone from traditionalists to reformers. By the end of the semester, among other things, students will be able to understand the basic doctrinal elements of Islamic law, as well as have gained substantive knowledge in specific areas of the law.

## Course Materials

### Required:

- A reading packet consisting of materials derived from a number of sources: journal articles, treatises, case law, etc. This will be provided via Canvas.
- Wael Hallaq, *An Introduction to Islamic Law* (2009)

## Class Preparation

Students are expected to prepare a minimum of 2 hours outside of class for each hour (calculated on a 50-minute basis) of in-class time. The requirement of 2 hours of out-of-class work per week per credit hour represents a minimum standard. If necessary to complete assignments, students are expected to spend whatever additional time is needed to complete the assigned work.

## Attendance & Grading

Policies on attendance, lateness and grading will be guided by what is contained in the Student Handbook.

**Attendance** in every class is mandatory and students are expected to be on time. Excessive absences (3 or more), tardiness, or lack of will result in exclusion from the final exam. Please review the Student Handbook for further guidance.

Specifically, Rule 25 states that “students are prohibited from sitting for the final exam or otherwise receiving a passing grade in any course for which that student has attended fewer than 80% of the scheduled class sessions. Specifically, a student missing 20% or more of the total scheduled class hours in a course, whether due to excused or unexcused absences, is presumed to not be attending regularly, subject to the discretion of the Dean. In the event that a student is deemed to not be attending regularly, the Dean shall determine whether the student receives a “W” or an “F” in the course. Furthermore, when a student has unexcused absences that exceed the number of credit hours for the course (e.g., three absences in a three- semester hour class), a professor may choose to lower the student’s grade by no more than 1/3 of a grade.” I reserve the right to issue appropriate sanctions for students who fail to follow this attendance policy.

**Grading:** Students will be assessed based on participation (20%) and a writing assignment (80%). The writing assignment will be a 24-page final research paper.

## Electronics

*Laptops* and *tablets* will **only** be permitted for reviewing the reading materials and notetaking. **You are strongly encouraged to take class notes by hand.**

*Phone* use is **not** permitted in class for any reason. I reserve the right to alter the policy on electronics during the semester if deemed necessary.

## Requests for Accommodations

The Office of Student Affairs serves students with special needs. If you have a learning, physical, or other disability, please contact Associate Dean Louis Thompson (louis.thompson@rutgers.edu) as early in the semester as possible so that you can apply for approval for special accommodations from the University Office of Disability Services.

## Assignments

[subject to change]

### I. FOUNDATIONS

#### Class 1: **Islam 101 and Historical Context**

- Caesar Farah, *Islam: Beliefs and Observances* (2003), Chapter 7: The Fundamentals of Islam – Obligations, pp. 126-150.
- Seyyed Hossein Nasr, *The Heart of Islam*, Chapter 1, pp. 3-45.
- **Optional:** Adam Silverstein, *Islamic History: A Very Short Introduction*, “Chapter 1: The Story” pp. 9-48

#### Class 2: **Introduction to Islamic Law, Legal Interpretation and Jurists**

- Wael Hallaq, *Introduction to Islamic Law*, Introduction, Chapter 1 and Chapter 2 [38]
- Joseph Lowry, “What is Islamic Law? How Should We Study It?,” *Islamic Law Blog*, December 31, 2020, <https://islamiclaw.blog/2020/12/31/what-is-islamic-law-how-should-we-study-it/>
- Intisar Rabb, [Stages of Islamic Law] in “Reasonable Doubt in Islamic Law,” pp. 62-68
- Khaled Abou El Fadl, “The Nature of Law and Morality,” in *The Great Theft*, pp. 142-150.
- Moojan Momen, “Shi’i Jurisprudence,” in *An Introduction to Shi’i Islam*, pp. 184-189
- David Vishanoff, “Is Islamic Law Conservative,” on Harvard’s Islamic Law Blog (<https://islamiclaw.blog/2019/11/14/is-islamic-legal-theory-conservative/>)

#### Class 3: **Approaches to Law and Legal Education**

- Wael Hallaq, *Introduction to Islamic Law* (2009), **Chapter 3 and 4**
- Jakob Skovgaard-Peterson, “A Typology of Fatwas,” *Die Welts des Islams*, (2015)
- Intisar Rabb, “Appendix: The Rise of Legal Maxims,” in *Doubt in Islamic Law*
- Marion Katz, “Law in Action, in the Peripheral Vision of the Sources,” on Harvard’s Islamic Law Blog (<https://islamiclaw.blog/2019/12/17/law-in-action-in-the-peripheral-vision-of-the-sources/>).
- George Makdisi, Madrasa and University in the Middle Ages, *Studia Islamica*, no. 32 (1970)
- Ebrahim Moosa, Inside Madrasa: A Personal History, *Boston Review* (2007)
- Robert Gleave, “How to Train a Mulla: Seminaries in Shi’ite Islam,” *British Academy Review*, no. 19 (Jan. 2012).
- Mirjam Kunkler, “Issue Brief: Women as Religious Authorities: What a Forgotten History Means for the Modern Middle East,” Rice Baker Institute for Public Policy, (October 2, 2018)

#### Class 4: **The State and Courts**

- Wael Hallaq, *Introduction to Islamic Law*, Chapter 5 and Chapter 6.
- Sherman Jackson, “Legal Pluralism between Islam and the Nation-State,” *Fordham International Law Journal* (2006), pp. 158-176

- Clark Lombardi, “Chapter 3: When was a Ruler’s Law Legitimate? The Classical Theory of Siyasa Shari’yya,” in *State Law as Islamic Law in Modern Egypt* (2006), pp. 47-58
- Wael Hallaq, “Courts of justice, suits and evidence,” in *Sharia: Theory, Practice Transformation* (2009), pp. 342-353

## II. SUBSTANTIVE LAW

### Class 5: **Criminal Law**

- Wael Hallaq, Chapter on “Offenses,” *Sharia: Theory, Practice, Transformations* (2009), pp. 308-323.
- Ibn Rushd, “Chapter 56: Book of Jinayat (Offenses) – Book of Qisas (Retaliation),” *The Distinguished Jurist’s Primer (Bidayat al-Mujtahid)*, vol. 2, pp. 478-490.
- Intisar Rabb, "Early Debates on Approaches to Islamic Criminal Law," in "Reasonable Doubt in Islamic Law," *Yale J. of Int'l L.* (2015)
- Rudolph Peters, “Chapter 5 – Islamic Criminal Law Today” in *Crime and Punishment in Islamic Law*, pp. 142-174
- Paul H. Robinson, “Codifying a Sharia-Based Criminal Law in Developing Muslim Countries” (2019)

### Class 6: **Family Law**

- Wael Hallaq, “Chapter 8: Family Law and Succession,” in *Sharia: Theory, Practice Transformation* (2009), pp. 271-289
- Amira El-Azhary Sonbol, “A History of Marriage Contracts in Egypt,” in *The Islamic Marriage Contract: Case Studies in Islamic Family Law* (eds. Asifa Quraishi and Frank E. Vogel, 2008)
- Asifa Quraishi-Landes, "Rumors of the Sharia Threat Are Greatly Exaggerated: What American Judges Really Do with Islamic Family Law in Their Courtrooms." *New York Law School Review* (2012/13) pp. 254-257
- Danish Raza , “What the Criminalization of Instant Divorce Means for India’s Muslims,” *The Atlantic*, August 4, 2019
- Joseph Croitoru, “Islamic family law reform – a question of interpretation,” *Qantara*, 2019.
- Case Brief: Akhter v. Khan, 2018 (U.K.) <https://beta.shariasource.com/documents/3367>

### Class 7: **Labor, Property and Commercial Law**

- Karen Pfeifer, "Islam and Labor Law: Some Precepts and Examples," Chapter 5 in Sohrab Behdad and Farhad Nomani, eds, *Islam and Every Day Life: Public Policy Dilemmas* (2006): 113-140
- Wael Hallaq, “Chapter 9: Property & Ownership,” in *Sharia: Theory, Practice Transformation* (2009), pp. 296-307
- Mahmoud El-Gamal, “Chapter 1 and 2,” *A Basic Guide to Contemporary Islamic Banking & Finance*, pp. 1-17
- Abdullah Saeed, “Sharia and Finance,” *The Ashgate Research Companion to Islamic Law* (2014), pp. 249-259

### Class 8: **Warfare**

- Mustansir Mir, “Jihad in Islam,” in *The Jihad and Its Times* (Hadia Dajani-Shakeel and Ronald A. Messier eds., 1991), pp. 113-124
- Michael Bonner, “Chapter 1: Introduction,” *Jihad in Islamic History: Doctrines and Practices* (2006) 23-40.
- Rudolph Peters, “Ibn Taymiyya on Jihad,” in *Jihad in Classical and Modern Islam: A Reader* (1996) pp. 43-54.
- Ahmed Al-Dawoody, Chapter 4: Islamic International Humanitarian Law, *The Islamic Law of War: Justifications and Regulations* (2011) 107-146

### III. NEW FRONTIERS

### Class 9: **Colonialism**

- Tamara Sonn, “Chapter 4: Colonialism and Reform,” in *Islam: A Brief History* (2010), 113-130.
- Wael Hallaq, *Introduction to Islamic Law* (2009), **Chapter 7**
- Junaid Quadri, “Colonial Modernity and Islamic Tradition,” in *Transformations of Tradition: Islamic Law in Colonial Modernity* (2021)
- Sohaira Siddiqui, “Rethinking Dichotomies: Beyond Continuity and Rupture in Islamic Law in the Colonial Period,” *Islamic Law Blog*, January 4, 2021, <https://islamiclaw.blog/2021/01/04/rethinking-dichotomies-beyond-continuity-and-rupture-in-islamic-law-in-the-colonial-period/>

### Class 10: **Modernity and Reform**

- Wael Hallaq, *Introduction to Islamic Law*, **Chapter 9**
- Humeira Iqtidar, “Redefining ‘tradition’ in political thought,” *European Journal of Political Theory*, vol. 15 (2016)
- Sherman Jackson, “Islamic Reform Between Islamic Law and the Nation State,” *Oxford Handbook of Islam and Politics*, (eds. John Esposito and Emad El-Din Shahin, 2013)
- Ayman Shabana – Sharia Custom and Modern Reform - <https://islamiclaw.blog/2021/06/04/shari%ca%bfa-custom-and-modern-legal-reform/>

### Class 11: **Militancy**

- Sayyid Qutb, *Milestones* 43-62 (American Trust Publications, 1990)(1964). [Jihad in the Cause of Allah]
- Osama bin Laden, “Declaration of Jihad against Americans” (1996)
- ISIS, “Islam is a Religion of the Sword,” *Dabiq* 7
- Shaykh Ali Goma, A Fatwa on Jihad, in *War and Peace in Islam* 153-164 (2013).
- Transcripts of 4 audio statements from the Islamic State [Brookings Middle East Report]
- Abdullah b. Bayyah, *This is not the Path to Paradise: Response to ISIS* (Sept. 14, 2014).

- Ayatullah Ali al-Sistani, “Advice and Guidance to Fighters on the Battlefield.”
- Darryl Li, “A Jihadism Anti-Primer,” *Middle East Report* 276 (Fall 2015)

#### Class 12: **Constitutions**

- Hossein Modarressi, “The Legal Basis for the Validity of the Majority Opinion in Islamic Legislation,” *Under Siege: Islam and Democracy* (ed. Richard Bulliet, 1993)
- Intisar Rabb, “We the Jurists’: Islamic Constitutionalism in Iraq,” *U. Pa. J. Const. L.* 527 (2008).
- Asifa Quraishi-Landes, “Islamic Constitutionalism: Not Secular, Not Theocratic, Not Impossible,” *Rutgers Journal of Law and Religion* (2015).
- Zubair Abbasi, “Islamic Constitutionalism in Pakistan: Is it Theocratic?” *Islamic Law Blog* (August 13, 2020) [https://islamiclaw.blog/2020/08/13/islamic-constitutionalism-in-pakistan-is-it-theocratic/#\\_ftn3](https://islamiclaw.blog/2020/08/13/islamic-constitutionalism-in-pakistan-is-it-theocratic/#_ftn3)
- **Constitutions in the Muslim World (skim)**
  - Algeria Constitution (2020)  
[https://www.constituteproject.org/constitution/Algeria\\_2020.pdf?lang=en](https://www.constituteproject.org/constitution/Algeria_2020.pdf?lang=en)
  - Egyptian Constitution (2014)  
[https://www.constituteproject.org/constitution/Egypt\\_2014.pdf](https://www.constituteproject.org/constitution/Egypt_2014.pdf)
  - Tunisia Constitution (2014)  
[https://www.constituteproject.org/constitution/Tunisia\\_2014.pdf?lang=en](https://www.constituteproject.org/constitution/Tunisia_2014.pdf?lang=en)
  - Morocco Constitution (2011)  
[https://www.constituteproject.org/constitution/Morocco\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Morocco_2011.pdf?lang=en)
  - Iraq Constitution (2005)  
[https://www.constituteproject.org/constitution/Iraq\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en)
  - Afghanistan Constitution (2004)  
[https://www.constituteproject.org/constitution/Afghanistan\\_2004.pdf?lang=en](https://www.constituteproject.org/constitution/Afghanistan_2004.pdf?lang=en)
  - Saudi Arabia Constitution (1992)  
[https://www.constituteproject.org/constitution/Saudi\\_Arabia\\_2013.pdf?lang=en](https://www.constituteproject.org/constitution/Saudi_Arabia_2013.pdf?lang=en)
  - Iran Constitution (1979)  
[https://www.constituteproject.org/constitution/Iran\\_1989.pdf?lang=en](https://www.constituteproject.org/constitution/Iran_1989.pdf?lang=en)
  - Pakistan Constitution (1973)  
[https://www.constituteproject.org/constitution/Pakistan\\_2018.pdf?lang=en](https://www.constituteproject.org/constitution/Pakistan_2018.pdf?lang=en)
  - Malaysia Constitution (1957)  
[https://www.constituteproject.org/constitution/Malaysia\\_2007.pdf?lang=en](https://www.constituteproject.org/constitution/Malaysia_2007.pdf?lang=en)

#### Class 13: **Human Rights**

- Joseph Lowry, “Rights,” *The Princeton Encyclopedia of Islamic Political Thought* (ed. Gerhard Bowering, et. al., 2012).
- Abul A’la Mawdudi, *Islam and Human Rights* (1976)
- Abdullahi An-Naim, “Islamic Law, International Relations and Human Rights: Challenge and Response,” *20 Cornell Int’l Law Journal* (1987).

- Rudd Peters, “Islamic law and human rights: A contribution to an ongoing debate,” 10 *Islam and Christian-Muslim Relations* (1999).
- Ann Elizabeth Mayer, “The Reformulation of Islamic Thought on Gender Rights and Roles,” *Islam and Human Rights in Practice: Perspectives across the Ummah* (eds., Shahram Akbarzadeh & Benjamin MacQueen, 2008)
- Ziba Mir-Hosseini, "Muslim Women's Quest for Equality: Between Islamic Law and Feminism," *Critical Inquiry*, vol. 32, no. 4 (Summer 2006).

#### Class 14: **The Future**

- Wael Hallaq, Introduction to Islamic Law, **Chapter 10**
- Haider A. Hamoudi, “Islamic Law from the Internal Point of View,” *Islamic Law Blog*, February 3, 2021, <https://islamiclaw.blog/2021/02/03/islamic-law-from-the-internal-point-of-view/>
- Khaled Abou El Fadl, “Chapter 9: Cultivating Human Rights: Islamic law and the Humanist Imperative,” *Law and Tradition in Classical Islamic Thought* (eds. Michael Cook, et. al., 2013)
- Cairo Declaration on Human Rights (August 5, 1990): <http://hrlibrary.umn.edu/instree/cairodeclaration.html>