

ISLAMIC LAW COURSE SYLLABUS FALL 2012

ISLAMIC LAW

INDIANA UNIVERSITY ROBERT H. MCKINNEY SCHOOL OF LAW

Syllabus and Reading Assignments

Fall 2012

Meeting: InLow Hall, Room: 379

Professor: Mohamed ‘Arafa, SJD

Fridays: 5.30 pm.: 7.30 pm.

Cell Phone: (317) 640-9733

Office Hours: Fridays before and after class

Email: marafa@iupui.edu

and by appointment

Faculty Assistant: Faith A. Long, Room: 325, email

falong@iupui.edu , Phone: (317) 274-1913

I. Course Description and Objectives

Like other legal systems, Islamic (“*Sharie‘a*”) law has its own distinctive processes of identifying and developing legal norms. The role of jurists in framing rules of law is unusual in Islamic law, however, in large part because it is both a religion and a means toward establishing a legal and social order in civil and criminal matters. Islam is both a religion and a social order, and these two types of rules are of a divine origin. As such, it comprises rules concerning devotional obligations as well as rules that create a comprehensive and integrated guide to all aspects of political, economic, national, and even international affairs. Although Iran may be the only country that currently has a legal system with a comprehensive primacy of Islamic law, with Pakistan being the nearest other country, Islamic law has a great influence on the legal and political systems of many countries with mixed Islamic and civil law systems, in particular in the Middle East and in South Asia. Islamic law is, therefore, studied throughout the world and increasingly seen as a fundamental component for the study of law in comparative context.

Islam is very much a “law-oriented” religion; it sets the framework for permissible economic, social and political systems, and formulates the principles and rules upon which laws and regulations can be established. In effect, it provides a wealth of prescriptions and guidelines governing legal relationships as well as inspiration for spiritual relationships.

This course will provide an introduction to the field of Islamic law. This term refers to a huge and diverse corpus of legal materials, spanning centuries and wide swaths of the globe, and our

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encounter with it will necessarily be selective. During the first part of this course, the sources of Islamic law, the formation of Islamic jurisprudence, and the history of the development of Islamic law and legal institutions will be examined. In the second part of the course, we will sample several substantive areas: constitutional law; banking law and insurance; property law; contract law; business law; criminal law; family law, and international law. These areas will include a study of various cases where Islamic law has been debated in American courts. The course will also focus on human rights in the Islamic legal tradition and in the contemporary Islamic world, especially in countries of the Middle East. Concepts of human rights, women's rights, and minority rights in Islam will be analyzed in light of international human rights standards. The majority of the course will focus on *Sunni* (sometimes called "orthodox") Islamic law, although we will also address *Shii'a* Islamic law to a lesser extent.

By the end of the course, students should be familiar with a range of English-language scholarship on Islamic law and legal history, and should be able to understand the basic principles of Islamic law; the influence of Islamic law in Muslim countries; the main differences between Islamic law and Western legal systems in key areas of interest; be able to discuss contemporary issues relating to Islamic law; recognize the essential techniques of interpreting the classical concepts and terminology of this law; reflect critically on the issues raised in contemporary debates about Islamic law ("*Sharie'a*"); carry out independent research in the field of Islamic law; and undertake both written and oral analysis and debate on key issues in Islamic law.

II. Course Assessment and Grading Policy

Seventy percent (70%) of the students' final grades will be determined by their performance on an open book final examination. Final exam format will be discussed in class. Twenty percent (20%) will be based on a presentation along with a short brief or memorandum of any topic in Islamic law scheduled in class, and ten percent (10%) will be based on attendance of and effective participation and discussion in class.

III. Text Book and Course Materials

No prior knowledge or previous familiarity with Islam or Islamic law is assumed or necessary, and there are no course prerequisites. The primary text for the course will be some manuscripts from *Raj Bhala*, which can be found in UNDERSTANDING ISLAMIC LAW (*SHARI'A*) (LexisNexis, 2011). There will be additional handouts, books, and law review articles (or parts thereof) that will either be assigned or recommended for additional reading.

V. Class Schedule and Reading Assignments

Note: substitutions and/or additions to the reading list are, likely, and some schedule adjustments may be necessary to accommodate some guest speakers and for other reasons. All "required" or "suggested" readings other than those from the *Bhala* text will be posted to the class web site "ONCOURSE" or distributed in class. Unless otherwise indicated, all readings

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listed for a class meeting are required. Please consult the syllabus regularly to ascertain the reading requirements.

Week One: Introduction to the Class: Administrative Matters (overview of the syllabus, discussion of reading materials, and assessment of the course)

Overview of Islamic Law: Basic Concepts—Islam and Islamic law

Origin of Islam; historical development, and the general characteristics of Islam as a divine law. Discuss Islamic Constitutional Law, the principle of non-separation of state and religion in the Islamic legal system (“the Establishment Clause”); the relationship between Islamic *Sharie’a* and the constitutional provisions (“the Supremacy Clause”); the independence of the judicial authority and the relationship between the executive and the legislative branches of government: does Islamic law recognize the theory of separation of powers?

- *Raj Bhala, Introduction: Ten Threshold Issues*
- *Sayyid Abul A’la Maududi, Islamic Law and Constitution (1992), translated and edited by Khurshid Ahmad, Chapter 6: First Principles of the Islamic State, p.202-252 and Chapter 7: Fundamentals of Islamic Constitution, p.253-271*

Week Two: Part One: The General Theory of Islamic Law (“Sharie’a)

Classical Sources of Islamic Jurisprudence (“*Uṣūl al-Fiqh*”)

- *Raj Bhala, Fundamental Sources: Holy Qur’an, and Sunnah, Chapter 12, p.285-312*
- *Raj Bhala, Secondary Sources: Ijm’a and Qiyyas, Chapter 13, p.313-330*
- *Raj Bhala, Controversial Additional Resources, Chapter 14, p.313-349*
- **Suggested Reading Materials:**
 - *M. Cherif Bassiouni & Gamal M. Badr, The Shari’ah: Sources, Interpretation, and Rule-Making, 1 UCLA J. ISLAMIC & NEAR E.L. 135 (2002)*
 - *Irshad ‘Abdal-Haqq, Islamic Law: An Overview of its Origin and Elements, 7 J. ISLAMIC L. & CULTURE 27 (2002)*
 - *Khizr Muazzam Khan, Juristic Classification of Islamic Law, 6 HOUS. J. INT’L L. 23 (1983-1984)*

Week Three: Interpretation in Islamic Law

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Interpretation of Islamic text; Islamic schools of law or jurisprudence (*Hanafi*, *Maliki*, *Shaif'i*, and the *Hanbali* schools); Theory of *Ijtihad* (“Individual Reasoning”) and *Fatwa*

- *Raj Bhala, Four Sunnite Schools of Islamic Law*, Chapter 16, p.387-407
- *Bernard Weiss, Interpretation in Islamic Law: The Theory of Ijtihad*, 26 AM. J. COMP. L. 199 (1978)
- *Nazeem M.I. Goolam, Ijtihad and Its Significance for Islamic Legal Interpretation*, MICH. ST. L. REV. 1443 (2006)

Week Four: Part Two: Substantial Areas of Islamic Law

Islamic Commercial and Contract Law

The role of custom and practice; importance of honesty and fair dealing; broad definition of “contract”; freedom of contract within religious boundaries; contract formation; prohibited and voidable contracts; advanced types of contracts; frustration of contracts; economic hardship; termination of contract; performance, liability, remedies for non-fulfillment

- *Raj Bhala, Contract Law: General Principles and Contract Formation*, Chapter 21, p. 525-548
- *Raj Bhala, Contract Law: Types of Contracts*, Chapter 22, p.549-576
- *Raj Bhala, Contract Law: Performance, Terms, and Remedies*, Chapter 23, p.577-594

Week Five: Islamic Finance, Banking Law, and Insurance

The Islamic economic order; *Riba* (“unlawful advantage by way of excess or deferment”); *Gharar* (“the sale of probable items whose existence or features are not certain, the risky nature of which makes the transition akin to gambling”); the financial system based on Islamic ethics (*Musharaka*, *Murabaha*, *Ijara*, *Qard hasan*, *Mudaraba*); the prospects for success of an Islamic banking system

- *Raj Bhala, Banking Law: Risk (“al-gharar”)*, Chapter 26, p.653-666
- *Raj Bhala, Banking Law: Interest (“al-riba”)*, Chapter 27, p.667-701
- *Raj Bhala, Banking Law: Legal Devices (“hiyal”) and the Prohibition on Interest (“al-riba”)*, Chapter 28, p.703-734

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Week Six: Islamic Finance, Banking Law, and Insurance (Continued)

Insurance: is it a valid contract under Islamic Commercial Law?

- *Raj Bhala, Finance (“tamweel”): Insurance (“takaful”) and Money Transfers (“al-hawalah”)*, Chapter 31, p.801-825
- *Barbara L. Seniwski, Riba Today: Social Equality, the Economy and Doing Business Under Islamic Law*, 39 COLUM. J. TRANSNAT’L L. 701 (2001)
- *Bilal Khan & Emir Aly Crowne-Mohammed, The Value of Islamic Banking in the Current Financial Crisis*, 29 REV. BANKING & FIN. L. 441 (2010)

Week Seven: Islamic Property Law

God and wealth; freedom and right to private ownership; property v. ownership; public property v. private property; protecting and restricting private ownership (Préemption: “*al-shuf’ah*”, Servitude: “*al-artifaq*”, Expropriation: “*al-musadarah*”, Nationalization: “*al-ta’ mim*”, and taxation)

- *Raj Bhala, Property Law: Ownership and Property*, Chapter 18, p.433-456
- *Raj Bhala, Property Law: Public Property, Private Property, and Possession*, Chapter 19, p.457-487
- *Raj Bhala, Property Law: Protecting and Restricting Private Ownership*, Chapter 20, p. 489-523

Week Eight: Islamic Criminal Law and Criminal Procedure (“Theory of Crimes and Punishments”)

Basic Islamic principles of justice in enforcing states’ criminal laws [legality, individual criminal responsibility, and non-retroactivity of criminal laws] principles; categories of criminal acts (*Qesas* and *Diyya*, *Hudud*, and *Ta’azir* crimes); fundamental basics of criminal responsibility (justification grounds and impunity causes); punishment in Islamic penal scheme

- *M. Cherif Bassiouni, The Islamic Criminal Justice Systems (1982), Personal Security under Islamic Theories of Incrimination and Penology*, p.56-66
- *Bassiouni, Hudud, Qesas, and Ta’ air Crimes*, p.196-225
- *Bassiouni, Criminal Responsibility in Islamic Law*, p.172-193
- *Bassiouni, Punishment in Islamic Criminal Law*, p.228-236

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Week Nine: Islamic Criminal Law and Criminal Procedure (Continued)

The presumption of innocence principle; the investigation and primary-questioning stage: The Indictment (guarantees of the accused regarding searches and seizures, interrogation, and pre-trial preventive detention); rights of the accused during criminal trial (adoption of legal evidence, trial before a competent, fair and impartial trial, right to counsel his/her own defense, right to speak or remain silent, and indemnity of an erroneous conviction); general rules of criminal evidence in Islamic law and its modes; Mubarak trial as a recent example

- *Bassiouni, The Right to Individual Security in Islamic Criminal Procedure*, p.65-85
- *Bassiouni, The Rights of the Accused under Islamic Criminal Procedure*, p.92-107
- *Bassiouni, General Principles of Criminal Evidence in Islamic Jurisprudence*, p.110-122

Week Ten: Islamic Family Law

Marriage; dowry agreements; polygamy; problems of reforming the personal status law in contemporary Middle Eastern legal systems; judicial and non-judicial divorce; parental rights and the issue of adoption; child custody rules in Islamic law: are they applicable in American courts?

- *Raj Bhala, Marriage and Divorce*, Chapter 33, p.860-888
- *Raj Bhala, Polygamy and Mixed Marriages*, Chapter 34, p.890-910
- *Raj Bhala, Rights of Wife*, Chapter 35, p.915-938
- *Raj Bhala, Rearing Children*, Chapter 38, p.991-1000

Week Eleven: Islamic Family Law (Continued)

Key features of using scale of five qualifications (“*al-ahkam al-khamsa*”); form and elements of will; origin, types, and conditions of charitable trusts; euthanasia (“mercy killing”); basics of inheritance law (classes of heirs); ‘*awl* and *radd* (“increase and return”); shares of heirs

- *Raj Bhala, Wills (“wasaya”), Charitable Trusts (“waqfs”), and Euthanasia (“al-qatal al-rahim”)*, Chapter 41, p.1091-1122
- *Raj Bhala, Law of Succession*, Chapter 42, p.1127-1160

Week Twelve: Islamic Human Rights Law: Women and Minority Rights

Women as equals in Islam; personal status laws in contemporary Islamic codes; the *Qur’anic* view of gender relations; maintenance; the right to education; right to employment;

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religious dissidents under Islamic law; religious discrimination and the rights of non-Muslims; the rights of Christian Copts in Egypt

- *Raj Bhala, Women and Work, Chapter 37, p.965-988*
- *Ann Elizabeth Mayer, Islam and Human Rights: Tradition and Politics (1999), Chapter 8: Freedom of Religion in Islamic Human Rights Schemes*
- *'Isha Khan, Islamic Human Rights: Islamic Law and International Human Rights Standards, 5 APPEAL: REV. CURRENT L. & L. REFORM 74 (1999)*

Week Thirteen: Islamic International Law: The Law of War and Terrorism

Siyar and the classic Islamic law of nations; modern sources of international law, particularly treaties, customary international law, and the general principles of law recognized by civilized nations; international humanitarian law and Islamic law of war; *ius ad bellum*, *Jihad*, and the concept of just war theory

- *Raj Bhala, Law of War, Chapter 48, p.1309-1337*
- *Raj Bhala, Jihad ("Struggle"), Chapter 39, p.1340-1357*
- *Raj Bhala, Terrorism, Chapter 50, p.1360-1364, the rest of the chapter is optional to read.*

Please note: one or two cancellations and make-up classes may be required during the semester, and students will be notified in advance. The last session (may be with a special an extra hour): no readings; conclusions; rap-up; review of the course; questions and answers, and discuss the final exam and the materials that will be covered. **Good Luck and I hope you enjoy the new course added to the law school's curriculum!!**

- **Suggested Reading Materials for Overall Course: (Books on Islam, Muslims, Islamic Law, and the West)**

- (1) Noel J. Coulson, *A History of Islamic Law*, (1964)
- (2) Noah Feldman, *The Fall and Rise of the Islamic State*, (2010)
- (3) Tariq Ramadan, *Western Muslims and the Future of Islam*, (2003)
- (4) Joseph Schacht, *Introduction to Islamic Law*, (1964)
- (5) Wael B. Hallaq, *Introduction to Islamic Law*, (2009)
- (6) Robert Gleave, & Eugenia Kermeli (eds), *Islamic Law – Theory and Practice*, (2001)

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- (7) Wael B. Hallaq, *A History of Islamic Legal Theories*, (1997)
- (8) Mohammad Hashim Kamali, *Shari'ah Law – An Introduction*, (2008)
- (9) Matthew Lippman, McConville Sean, & Yerushalmi Mordechai, *Islamic Criminal Law and Procedure: An Introduction*, (1988)
- (10) Bernard G. Weiss, *The Spirit of Islamic Law*, (2006)
- (11) Khaled Abou El-Fadl, *Islam and the Challenge of Democracy*, (2004)
- (12) Michael Bonner, *Jihad in Islamic History: Doctrines and Practice*, (2008)
- (13) Jocelyn Cesari, *Muslims in the West after 9/11: Religion, Politics, and Law*, (2010)
- (14) David Cook, *Understanding Jihad*, (2009)
- (15) Caroline Cox & Jon Marks, *West, Islam & Islamism: Is Ideological Islam Compatible With Liberal Democracy?* (2006)
- (16) Nonie Darwish, *Cruel and Usual Punishment: The Terrifying Global Implications of Islamic Law*, (2009)
- (17) John L. Esposito, *The Future of Islam*, (2010)
- (18) Noah Feldman, *The Fall and Rise of the Islamic State*, (2010)
- (19) Arshad Khan, *Islam, Muslims, and America: Understanding the Basis of Their Conflict*, (2003)
- (20) Tariq Ramadan, *Islam, the West, and the Challenges of Modernity*, (2009)
- (21) Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation*, (2008)
- (22) Malise Ruthven, *A Fury for God: The Islamist Attack on America*, (2004)
- (23) Robert Spencer, *The Myth of Islamic Tolerance: How Islamic Law Treats Non-Muslims*, (2005)
- (24) Robert Spencer, *Religion of Peace? Why Christianity Is and Islam Isn't?* (2007)
- (25) Brian Whitaker, *What's Really Wrong with the Middle East*, (2010)
- (26) Beverly Milton-Edwards, *Islamic Fundamentalism since 1945*, (2005)
- (27) Juan Cole, *Engaging the Muslim World*, (2010)
- (28) Johan L. Esposito, *What Everyone Needs to Know about Islam*, (2002)
- (29) Ali L. Allawi, *The Crisis of Islamic Civilization*, (2010)

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- (30) Mohammed Ayoob, *The Many Faces of Political Islam: Religion and Politics in the Muslim World*, (2007)
- (31) Mohamed S. El-‘Awa, *Punishment in Islamic Law—A Comparative Study*, (2000)
- (32) Khaled Abou El-Fadl, *The Great Theft: Wrestling Islam from the Extremists*, (2005)
- (33) Michael Bonner, *Jihad in Islamic History: Doctrines and Practice*, (2008)
- (34) Richard Bonney, *False Prophets: The “Clash of Civilizations” and the Global War on Terror*, (2008)
- (35) Peri Bearman, Rudolph Peters & Frank E. Vogel, *The Islamic School of Law: Evolution, Devolution, and Progress*, (2005)
- (36) Ignaz Goldziher, *Introduction to Islamic Theology and Law*, (1981)
- (37) Ahmad Hasan, *Principles of Islamic Jurisprudence*, (1993)
- (38) Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, (2003)
- (39) Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, (2000)
- (40) Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics*, (2006)
- (41) Michael Mumisa, *Islamic Law: Theory and Interpretation*, (2002)
- (42) Jan Michael Otto, *Sharia and National Law: Comparing the Legal Systems of Twelve Islamic Countries*, (2010)
- (43) Jocelyn Cesari, *When Islam and Democracy Meet: Muslims in Europe and in the United States*, (2006)
- (44) John J. Donohue and John L. Esposito, *Islam in Transition: Muslim Perspectives*, (2006)
- (45) John L. Esposito, *What Everyone Needs to Know about Islam?* (2002)
- (46) Graham E. Fuller, *A World Without Islam*, (2010)
- (47) William Federer, *What Every American Needs to Know About the Qur’an: A History of Islam and the United States*, (2007)
- (48) Ross Johnson, *Communicating With the World of Islam*, (2008)
- (49) Abdul Fesal Rauf, *What’s Right with Islam: A New Vision for Muslims and the West*, (2005)
- (50) Abdulaziz Sachedina, *The Islamic Roots of Democratic Pluralism*, (2007)

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