

SEMINAR: ISLAMIC LAW & JURISPRUDENCE
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OFFICE HOURS BY APPOINTMENT.

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Welcome to Islamic Law and Jurisprudence. The purpose of this syllabus is to lay out important information regarding the purposes, methods, and assessments for the course. Please read it carefully.

I. Course Objectives, or Why Teach Islamic Law in U.S. Law School?

Each of you no doubt has their own reasons to be taking this course. I set forth below the two reasons that I consider it so important to teach in a U.S. law school.

First, in today's hyperconnected world, it has become fundamentally important to understand legal systems across the globe, because they are directly relevant to law practice in the United States. Even the most domestically practicing American lawyers may find themselves face to face with questions of foreign or religious law, including Islamic law, which they must address. If a Muslim couple married in Johnstown, Pennsylvania references the payment of a "*mahr*" as part of their marriage, an attorney representing either party in a subsequent divorce would have to know precisely what this means in order to engage in effective representation. Similarly, a lawyer representing a person seeking asylum from a particular Islamic country on the grounds that he has converted from Islam to Christianity must know precisely what the penalty for apostasy is in that country, and how it might or might not relate to a particular understanding of Islamic law. Obviously, to the extent that a US trained lawyer is actually engaged with foreign legal systems directly—for example, as a law and development specialist, or as a legal adviser in a department of the federal government—then the need to know Islamic law only compounds in importance.

Second, when you engage in the study of Islamic law, you develop comparative law skills. This fosters a greater understanding of the U.S. legal system with which you are already familiar. It is all the easier to see the biases, presuppositions, and ideological preferences of American legal institutions when contrasting them to their counterparts in other parts of the world. Put simply, by building comprehension of the other, we learn more about ourselves.

Limiting the Islamic Law Universe

In light of the purposes described above, and given constraints of space and time, there are several limiting points that deserve mention.

The first limitation concerns the discipline under examination. Islam is a religion, and not merely a legal system. Accordingly, there are any number of aspects to the

religion—theological, philosophical, mystical, and otherwise—which are integral parts of Islam. These are beyond our purview. Our subject is Islamic *law*, not Islam as a whole.

The second limitation relates to subject matter. The course only concerns material that has the potential to be adjudicated. We spend virtually no time considering rules of religious ritual, such as how and when to pray, to fast, to pay alms to the poor, and to make the pilgrimage to Mecca. From the standpoint of the observant Muslim, this choice would be odd. To such a person, these rules are the very pith and pit of Islamic law, and that which they think of first when they consider their own Islamic legal obligations.

That said, this material does not serve to meet the objectives of this course, outlined above. An American lawyer or law student does not glean insights into the US legal system from studying scholastic debates between learned Islamic scholars on the proper timing and methods of prayer. Similarly, a lawyer will not learn much of anything from such material on how to represent an actual Muslim client with a real world problem within the US legal system, or the legal system of any other state for that matter. Thus, we are focusing on a small subset of issues, and specifically those which afford the most congenial comparison to rules with which you are already familiar in a US context.

The third limitation is temporal. We will focus on the activities of *modern* courts, by which I mean courts deciding cases within the last century or so. Accordingly, subjects that would have been important in medieval times (for example, rules respecting slavery) do not fall within the purview of this course, because they are not the subject of modern litigation. The intent is not to minimize the importance of the historical material, but instead to avoid creating another dimension of complexity that would be difficult to tackle in the limited time we have. After all, it would be anachronistic and silly to compare the rules of 12th century Abbasid jurists on slavery to any respectable legal opinion in 21st century America. The proper axis of comparison would probably be Roman law, though an argument could be made for antebellum U.S. law. In either case, the matter would involve a deep dive into historical material in two different systems, which would be no simple task.

The fourth limitation, perhaps the most unfortunate, is that our approach, which focuses largely on legal institutions, privileges more conventional interpretations of Islamic law over the more heterodox or progressive. In the Islamic world, as in the United States, legal institutions, very much including courts, are more resistant to change than other institutions, and they evolve more slowly than society as a whole. As a result, viewed solely from the prism of the law, social change seems more muted, and intellectual ferment over a rich and diverse tradition more limited, than it might seem from looking at other institutions with a stake in legal outcomes. Hence, for example, the NAACP was actively promoting racial justice issues long before the Supreme Court decided *Brown v. Board of Education*.

This does not render courts and other legal institutions impervious to change, of course. To the contrary, the Islamic legal tradition is always subject to some level of contestation in these forums. Where a court in the Sudan might sentence someone to death for supposed apostasy, a court in the Kurdistan region of Iraq might suggest that Islamic law does not criminalize a change of religion. It is very much the intention of the course to

engage in such areas of controversy and ferment. Excluded, however, are the more “radical”, critical voices who have called for a more comprehensive reappraisal of certain aspects of Islamic law, from Fatima Mernissi’s writings respecting women’s rights to Abdullahi an-Naim’s suggestion that there is nothing inherently “legal” about Islamic law.

To be clear, such work is worthy of far more consideration than it has received. The ideas arising from it are influential among important segments of Muslim society, inspire civic organizations and human rights groups around the world, and help to dispel the common caricature of Muslims as uniform, retrograde, intolerant, misogynistic, and impervious to change. Still, much of this thought has not yet made a significant enough dent in the law of Muslim nations to merit study in a class such as ours.

II. Methods of, and Required Materials for, the Course

In learning Islamic law in the way described above, we will rely upon two methods with which you are already familiar. The first is the case method, for which we will use the following casebook:

Hamoudi and Cammack, *Islamic Law in Modern Courts* (Aspen 2018).

My experience has been that reliance on a casebook alone is daunting to law students unfamiliar with Islamic law. Students have a hard enough time digesting American contract law through cases. Islamic law is all the harder to internalize and comprehend, endeavor as we did in the casebook to include sufficient annotation, exposition, and commentary to render the material accessible. To address the gap, I am also assigning chapters of the following secondary source:

Haider Ala Hamoudi, *Islamic Law in a Nutshell* (West 2020).

As with nutshells in other areas of law, this source will offer a synthesis of the relevant case law in a way that will, I hope, render the individual cases contained in the casebook more digestible and comprehensible.

All assignments and materials other than the required textbooks will be distributed via Canvas, so please familiarize yourself with that platform to the extent you have not already.

III. Assessments

A. Reflective Papers (25 percent of grade)

In previous years, this class met for two hours a week to discuss the assigned materials. Each week, I will assign short, weekly reflective papers that I will ask each of you to complete and post for the remainder of the class to see and reflect upon **on the Friday prior to each class**. The papers do not need to be longer than two pages double spaced, and they need to relate to the assigned reading for the week. I will provide prompts to help stimulate your thinking. I am not looking for outside research, or even some deep,

context specific understanding of a given case or concept. Instead, the goal is to cause you to reflect on the material you have read, and to relate it to your own understandings of law in your own experience. In turn, I ask each of you to spend a few minutes reading the reflective papers of your classmates, so you each have some sense of your collective perspectives to and reactions on the material assigned.

The first reflective paper will be graded pass/fail (1 for pass, and zero for fail). Each reflective paper after that will be graded on a 0 to 2 scale. I expect most will receive a score of one. I will give a two to particularly well considered papers, and a zero to those that seemed rushed and do not reflect a careful *attempt* to read and consider the assigned material.

B. Research Paper

Other than the reflective paper, your grade will be determined by the research paper due on the last day of the exam period. The paper must be completed in three separate phases.

Phase 1, for 5% of the grade, is a thesis statement, along with a two to three page introduction that will let me know how you intend to develop that thesis. A thesis statement tells me what new idea you intend to introduce in your paper, on the basis of the research you have conducted. It helps to show me early on that you are not writing a book report, but instead creating original work. This assignment is due at **5 pm Friday February 25, and is to be submitted via Canvas.**

Phase 2 is the submission of a rough draft, which is worth 10% of your final grade. I expect your basic structure and argument to be formed in this draft, subject to comment from me. I do not expect your citations to be complete in substance or perfect in style. This is due **at 5 p.m. Friday, March 25 via Canvas.**

Phase 3 is the final paper, worth 60% of your grade. The paper must be fully footnoted and with all sources conforming to Blue Book form for law review articles. **The final paper is due at 5 p.m. Thursday, May 5 via Canvas.**

For the avoidance of any doubt, while you are free to collaborate and discuss your papers with anyone you wish, the work you submit must be entirely your own. If someone else writes your paper, or parts of it, or you plagiarize from any source at all, you will fail the course.

I look forward to working with all of you.

H.A.H.