

**Course Outline: Winter 2022**

**TH 9505B**

**Islamic Law & Legal Theory**

**Instructor:** Ingrid Mattson, PhD

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 Department of Theology, Room A227

 519-438-7224, ext. 269

 \*Note that email is the preferred method of communication.

**Date & Time:** Wednesdays, 6:00 – 8:30 pm Room: W104/Remote

**Prerequisites:**  At least one course in Islamic History and one course in Islamic Ethics or Qur’an. If you are unsure if you fulfill the prerequisite, contact the instructor.

**Description:** This course will provide a critical overview of the history, practice and principles of Islamic law. We begin by examining the origins of Islamic law and the development of the classical schools of jurisprudence. Next we will discuss the nature of pre-modern legal institutions, especially the courts and legal education. In following classes, we will explore the substance of classical Islamic law, especially in the areas of family, finance and international relations and then the impact of colonialism and modernity on Islamic legal discourses and institutions. Finally, we discuss the way in which Islamic law is observed in contemporary Muslim communities.

**Learning Outcomes**

* To understand the terminology and technical language of Islamic legal theory at an introductory level.
* To be able to describe how the Qur’an, the Prophet Muhammad, other exemplary figures, custom, reason, and other sources and influences are engaged by Muslims to construct law.
* To be able to identify the major legal schools, the reasons for their development and key features of their identity and methodology.
* To be able to describe the emergence of Islamic legal institutions, including personnel, and their manifestations in different historical periods and places.
* To be able to describe the way executive and judicial authority intersect.
* To be able to conduct academic research on topics in Islamic law and legal theory.

**Grading**

1. Forum Discussion Questions – 30%
2. Participation in Class– 20%
3. Book report: 20%
4. Final paper: 30%

**Required Text:**

Wael B. Hallaq, *Sharīʽa: Theory, Practice, Transformations* (Cambridge University Press, 2009).

**Forum:** Each week I will post a list of discussion questions based on next week’s readings. Here are the rules for the forum:

* You must respond to a Forum question for ten weeks.
* Each week you will be assigned one question which you must answer. Your answer should be between 200 – 400 words.
* The questions will be posted on Thursdays; they must be answered by Tuesday at noon.
* If you are absent in any week and cannot respond to a question, that is permitted as long as you respond a total of ten weeks. If you can, simply type “absent” as the response to the posting or let the professor know.
* You are permitted to collaborate with another student to answer the questions, as long as you indicate that in your response.
* You must also engage in a meaningful way with one other student’s post each week.
* M.A. students are strongly encouraged to read the “further readings” and may be asked to report on them from time to time.

**Participation in Class:** You must be present for a minimum of 10 classes

* For each class, you have the opportunity to earn 2 points. You will get 1 point if you appear in class; 2 points if you ask a meaningful question, make a meaningful comment, or respond to the professor’s question.

**Book Report**

Each student is required to submit **one 2000-word book report.** Books must be chosen from the list provided and approved by the instructor; and only one student will be permitted to review any book. You will give a brief (15-minute) oral presentation of your book to the class. A good book report should address at least the following aspects of the book: 1) bibliographic aspects (i.e., who is the author, his or her relevant credentials, etc. 2) originality or importance of the book relative to other published studies 3) accuracy of the facts 4) quality of the publication 5) reception of the work.

**Final papers**

Papers should be about 15-20 pages (no big margins, large fonts or triple spacing to fill the paper). Paper topics must be approved in advance by the instructor. The student is expected to use not only monographs, but a number of peer-reviewed academic articles and/or chapters as sources for the paper. You must search through JSTOR or the *Index Islamicus* for specialized studies relevant to your topic.

For Arabic, Persian, Turkish and other Middle Eastern languages, you must use the most commonly used current academic transliteration system established by IJMES and described in detail here: <http://ijmes.chass.ncsu.edu/IJMES_Translation_and_Transliteration_Guide.htm>.

Here are some examples of the kinds of topics a research paper might cover:

1. Focus on the development of Islamic Law in a specific country during a particular period (e.g., India under British occupation, contemporary Malaysia, post-colonial Nigeria, democratic Tunisia, etc.).
2. Focus on a particular topic in ritual law and the differences of opinion among schools regarding that subject (e.g., the ritual slaughter of animals).
3. Research a topic in the history of Islamic legal education. For example, the changing role of Al-Azhar University in the Muslim world.
4. Choose a particular area of law, for example, the law of torts, and make a comparative study between Islamic law and another legal system (i.e., Common Law).
5. Focus on a prominent historical or contemporary Islamic legal scholar, critically presenting his or her theories and their impact on society.

**Students must inform themselves about the definition of plagiarism and the sanction that will be applied to those who plagiarize, including by copying text from internet sites. Papers will be reviewed by the plagiarism service Turnitin.**

**Here’s what your grade represents:**

A+ 90 - 100% Excellent; good analysis, insights and use of sources.

A 80 - 89% Very good; well-written and documented, good insights.

B 70 - 79% Decent; needs more documentation and analysis; some errors.

C 60 - 69% A good start, but off topic, poorly documented, or has significant errors.

D 50 - 59% A passing paper; ask me how you can improve for next time.

F < 50% Failing paper; let’s talk and find out what needs to be done.

**SCHEDULE**

**\*subject to change\***

**January 12: Introduction**

* Introduction to class
* Lecture: The Pre-Islamic Context

**January 19: The Formative Period**

* Hallaq, Chapter One

**January 26: Legal Theory**

* Hallaq, Chapter Two
* Excerpt from *The Muwatta*
* Further reading: Adam Sabra, excerpt (pp. 102 -111) from “Ibn Ḥazm’s Literalism: A Critique of Islamic Legal Theory,” chapter in *Ibn Ḥazm of Cordoba*, edited by Adang, Camilla, Maribel Fierro, and Sabine Schmidtke, (Leiden, The Netherlands: Brill, 19 Dec. 2012), 97 – 160.

**February 2: Legal Education and the Politics of Law; Law and Society**

* Hallaq, Chapter Three
* Hallaq, Chapter Four
* Further Reading: Excerpts from George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981)

**February 9: The Circle of Justice and Later Dynasties; Family Law and Succession**

* Hallaq, Chapter Five
* Hallaq, Chapter Eight
* Further reading: Ingrid Mattson, “Women, Gender and Family Law: Early Period 7th-Late 18th Centuries, *Encyclopedia of Women in Islamic Cultures* (Leiden: Brill, 2005).

**February 16: The Legal Pillars of Religion; Property and Ownership; Animals**

* Hallaq, Chapter Six
* Hallaq, Chapter Nine
* Read excerpt “The Book of *Ṣayd* (Hunting),” from Muhammad ibn Ahmed Ibn Rushd, *Bidayat al-Mujtahid*
* Further reading: Alan Mikhail, “Early Modern Human and Animal,” Chapter One of *The Animal in Ottoman Egypt*
* Further reading: Hussein Hassan, “Contracts in Islamic Law: the Principles of Commutative Justice and Liberality,” *Journal of Islamic Studies* 13:3 (2002): 257-297.

**February 24: Reading Week -** No classes

**March 2: Book reports – due and presented**

**March 9: Offenses and the Rule of Law**

* Hallaq, Chapter 10 – Offenses
* Kamali, Chapter 9 – Sharīʿah and the Principle of Legality
* Further reading: Irene Schneider, “Imprisonment in Pre-Classical and Classical Islamic Law,” *Islamic Law and Society* 2/2 (1995): 157-173.
* Further reading: Sadiq Reza, “Torture and Islamic Law,” in *Chicago Journal of International Law,* Vol. 8, No. 1 (Summer 2007): 21-41.

**March 16: Courts of Justice, Suits and Evidence**

* Hallaq, Chapter 12
* Excerpt from *Adab al-Qadi*
* Watch: Documentary film, “The Judge”
* Watch: Excerpt from documentary film, “Divorce, Iranian Style”

**March 23: Modernity**

* Hallaq, Chapters 15 & 16
* Further reading: Muneer Fareed, “Against Ijtihād,” in *The Muslim World,* Vol. 91 (Fall 2001): 355 - 370.
* Further reading: Aharon Layish, "Islamic Law in the Modern World: Nationalization, Islamization, Reinstatement, Islamic Law and Society 21, 3: 276-307.

**March 30: Constitutionality, Human Rights and Theory**

* Asifa Quraishi-Landes, “Legislating Morality and Other Illusions about Islamic Government,” chapter in,*Locating the Sharīʿa*, Ed. Sohaira Siddiqui (Leiden, The Netherlands: Brill, 04 Feb. 2018), 176-204.
* Mohammad Fadel, “Muslim Reformists, Female Citizenship and the Public Accommodation of Islam in Liberal Democracy,” in *Politics and Religion,* 5 (2012), 2-35.
* Further reading: Hallaq, Chapter 17
* Further reading: Mohammad Hashim Kamali, “Punishment in Islamic Law: A Critique of the Hudud Bill of Kelantan, Malaysia,” in *Arab Law Quarterly,* Vol. 13 (1998): 203-234.

**April 6: Self-Governance and the Sacred Law in Contemporary Muslim Communities**

* Mohammad Fadel, “Reinterpreting the Guardian’s Role in the Islamic Contract of Marriage: the Case of the Maliki School,” *Journal of Islamic Law* 3/1 (1998): 1-26.
* Zainab Alwani and Celene Ayat Lizzio, “Religion, Gender, and Family Law: Critical Perspectives on Integration for European Muslims,” chapter in *Applying Sharia in the West: Facts, Fears and the Future of Islamic Rules On Family Relations in the West*. Edited by Marits S. Berger (Leiden: Leiden University Press, 2013), 227 - 240.
* Further reading: Peter W. Beauchamp, “Misinterpreted Justice: Problems with the Use of Islamic Legal Experts in U.S. Trial Courts,” *New York Law School Review* vol. 55 (2010/11): 1097-1119. <http://www.nyls.edu/user_files/1/3/4/17/49/1156/Law%20Review%2055.4_07Beauchamp.pdf>
* Further reading: Taha Jabir Alwani, *Towards a Fiqh for Minorities: Some Basic Reflections.* New revised edition. Translated by Ashur A. Shamis. London & Washington: International Institute of Islamic Thought, 2003.

**April 13: Take-Home exam due**

**RESEARCH GUIDE**

**Transliteration**

For Arabic, Persian, Turkish and other Middle Eastern languages, you must use the most commonly used current academic transliteration system established by IJMES and described in detail here: <http://ijmes.chass.ncsu.edu/IJMES_Translation_and_Transliteration_Guide.htm>.

**Digital Indexes**

* JSTOR
* Index Islamicus

**Important Journals**

* *Islamic Law and Society*
* *Journal of Islamic Law and Culture*
* *UCLA Journal of Islamic and Near Eastern Law*
* *Islamic Law and Law of the Muslim World ejournal*
* *Berkeley Journal of Middle Eastern and Islamic Law*
* *Arab Law Quarterly*
* [*Majallat al-sharīʻah wa-al-dirāsāt al-Islāmīyah*](http://id.lib.harvard.edu/alma/990082269720203941/catalog) *(Journal of Shari`a and Islamic Studies)*
* *The Muslim World Journal*
* *International Journal of Middle East Studies*
* *Der Islam*
* *Journal of Oriental Studies*

**Encyclopedias**

* Encyclopedia of Islam
* Encyclopedia of Women in Islamic Cultures
* Encyclopaedia of Islamic law and jurisprudence, ed. by Muhammad Moinuddin Khan
* Encyclopedia Islamica (Trans. of Persian Dāʾirat al-Maʿārif-i Buzurg-i Islāmī)
* Oxford Islamic Studies Online
* [Encyclopedia of Islamic law: a compendium of the views of the major schools](http://id.lib.harvard.edu/alma/99153693809403941/catalog)

**Useful Websites**

* **Harvard University SHARIAsource** Digital Islamic Law Collection : [Airtable - SHARIAsource Digital Islamic Law Collection](https://airtable.com/shr6UEa4wLpP1IWCI/tblgrSvCSViY2oF8j/viw8YNZONumKRTJPk)
* Kuwait Ministry of Awqaf and Religious Affairs, *Al-Mawsu`at al-Fiqhiyyah:* [FPmfkmfk : Free Download, Borrow, and Streaming : Internet Archive](https://archive.org/details/FPmfkmfk/mfk16/mode/2up?view=theater)
* Islamic Medical and Scientific Ethics Project at Georgetown: <https://guides.library.georgetown.edu/imse>

**Additional Statements:**

**Course delivery with respect to the COVID-19 pandemic**

Although the intent is for this course to be delivered in-person, the changing COVID-19 landscape may necessitate some or all of the course to be delivered online, either synchronously (i.e., at the times indicated in the timetable) or asynchronously (e.g., posted on OWL for students to view at their convenience).  The grading scheme will not change.  Any assessments affected will be conducted online as determined by the course instructor.

1. **Statement on Use of Electronic Devices during Tests and Exams**

It is not appropriate to use technology (such as, but not limited, to laptops, PDAs, cell phones) in the classroom for non-classroom activities. Such activity is disruptive and is distracting to other students and to the instructor and can inhibit learning. Students are expected to respect the classroom environment and to refrain from inappropriate use of technology and other electronic devices in class.

1. **Statement on Academic Offences:** Scholastic offences are taken seriously and students are directed to read the appropriate policy, specifically, the definition of what constitutes a Scholastic Offence, at the following web site: http://www.westerncalendar.uwo.ca/2014/pg113.html.
2. **Plagiarism-detecting Software/Computer Marking:**
3. All required papers may be subject to submission for textual similarity review to the

commercial plagiarism detection software under license to the University for the detection

of plagiarism. All papers submitted for such checking will be included as source documents

in the reference database for the purpose of detecting plagiarism of papers subsequently

submitted to the system. Use of the service is subject to the licensing agreement, currently

between The University of Western Ontario and Turnitin.com ( http://www.turnitin.com ).

1. **Support Services:**
* Huron’s Faculty of Theology, Office of the Dean: <http://www.huronuc.on.ca> > Theology
* Faculty of Theology office: srice@uwo.ca, 519-438-7224, ext. 289
* Bachelor’s Academic Advising at Huron: https://huronuc.ca/index.php/academic-advising
* Huron’s Writing Skills Centre: [http://www.huronuc.on.ca/student\_life/writing\_services](https://huronuc.ca/index.php/library/writing-services)
* Mental Health@Western: <http://www.uwo.ca/uwocom/mentalhealth/> Students who are in emotional/mental distress should refer to this website for a complete list of options about how to obtain help.
* Student Accessibility Services

Western is committed to achieving barrier-free accessibility for all its members, including graduate students. As part of this commitment, Western provides a variety of services devoted to promoting, advocating, and accommodating persons with disabilities in their respective graduate program.

* Students with disabilities (for example, chronic illnesses, mental health conditions, mobility impairments) are encouraged to register with Student Accessibility Services, a confidential service designed to support graduate and undergraduate students through their academic program. With the appropriate documentation, the student will work with both SAS and their faculty (normally their Dean and/or Course instructor) to ensure that appropriate academic accommodations to program requirements are arranged.
* Services provided by Western University Student Council: http://westernusc.ca/your-services/
1. **Academic Accommodation for Absences:**

*New pilot policy, as of September 1, 2019 (*[*complete details here*](https://www.uwo.ca/univsec/pdf/academic_policies/appeals/Academic_Consideration_for_absences.pdf)*)
Student Medical Certificate can be found here, if required:
 https://www.uwo.ca/univsec/pdf/academic\_policies/appeals/medicalform.pdf*

Students who experience an extenuating circumstance (illness, injury, or other extenuating circumstance) sufficiently significant to temporarily render them unable to meet academic requirements may submit a request for academic consideration through the following routes:

1. **Submitting a Self-Reported Absence form** provided that the conditions for submission are Met (see below);
2. **For medical absences, submitting a Student Medical Certificate (SMC)**, signed by a licensed medical or mental health practitioner in order to be eligible for Academic Consideration (for instance, when a Self-Report is not possible: any assignment worth more than 30%, final exams, or December mid-terms during exam schedule); or
3. **For non-medical absences**, submitting appropriate documentation (e.g., obituary, police report, accident report, court order, etc.) to Academic Counselling in their Faculty of registration in order to be eligible for academic consideration. Students are encouraged to contact their Academic Counselling unit to clarify what documentation is appropriate.

Any documentation required must be submitted by the student directly to your Faculty’s Dean’s office (or academic counselor), and not to the instructor. For students of the Faculty of Theology, all such documentation must be submitted to room A227. It will be the Dean`s office that will determine if accommodation is warranted.

**Further Details about Requests for Academic Consideration Self-Reported Absence Form**

The full Policy on Academic Consideration for student absences is available at:

<https://www.uwo.ca/univsec/pdf/academic_policies/appeals/Academic_Consideration_for_absences.pdf> .

Students who experience an unexpected illness or injury or an extenuating circumstance (48

hours or less) that is sufficiently severe to temporarily render them unable to meet academic requirements (e.g., attending lectures or labs, writing tests or midterm exams, completing and submitting assignments, participating in presentations) should self-declare using the online Self-

Reported Absence portal. This option should be used in situations where the student expects to resume academic responsibilities within 48 hours or less.

The following conditions are in place for self-reporting of medical or extenuating circumstances:

1. students will be allowed a maximum of two self-reported absences between September and April and one self-reported absence between May and August
2. any absences in excess of the number designated in clause a above, regardless of duration, will require students to present a Student Medical Certificate (SMC), signed by a licensed medical or mental health practitioner, detailing the duration and severity of illness, or appropriate documentation supporting extenuating circumstances to the Academic Counselling unit in their Faculty of registration no later than two business days after the date specified for resuming responsibilities.
3. The duration of the excused absence will be for a maximum of 48 hours from the time the Self-Reported Absence form is completed through the online portal, or from 8:30 am the following morning if the form is submitted after 4:30 pm;
4. The duration of the excused absence will terminate prior to the end of the 48-hour period should the student undertake significant academic responsibilities (write a test, submit a paper) during that time;
5. The duration of an excused absence will terminate at 8:30 am on the day following the last day of classes each semester regardless of how many days of absence have elapsed;
6. Self-reported absences will not be allowed for scheduled final examinations; for midterm examinations scheduled during the December examination period; or for final lab examinations scheduled during the final week of term;
7. Self-reporting may not be used for assessments (e.g. midterm exams, tests, reports, presentations, or essays) worth more than 30% of any given course.
8. students must be in touch with their instructors no later than 24 hours after the end of the period covered by the Self-Reported Absence form, to clarify how they will be expected to fulfil the academic expectations they may have missed during the absence