

SYLLABUS: SPRING 2016

ISLAMIC LAW & JURISPRUDENCE 685:457:01 & 790:457:01 (This course has been certified in the Core goals “WCD” requirement)¹

Time: Tuesdays 10:55 am to 1:55 pm

Location: Ruth Adams Building Room 204

Contact Information: Atiya Aftab

Office Hours: By arrangement.

aaftab@rci.rutgers.edu

Course Outline:

This course will be a general overview of Islamic law and jurisprudence. We will introduce the student to the history, sources and methodology of Islamic law and jurisprudence. We will learn the principles and the sources of Islamic law, namely the Quran and the Sunnah. We will also learn about the secondary sources of Islamic law. The course will use a combination of historical and doctrinal perspectives to understand and analyze the development of Islamic Jurisprudence and the law that was created from this legal system. The second half of the course will be an application of Islamic jurisprudence in the context of family law, human rights and comparative interpretative methodologies. This part of the course will touch on the challenges of the Islamic legal system with modernity and will we relate this system with some contemporary topics. A central focus of this course is to help students develop their ability to analyze a fact pattern in the style commonly used in a law school or bar examination question, employing the traditional legal format of IRAC – identify the Issue/s, understand and apply the Rule, Analyze the issues in relation to the rule/s and draw Conclusion/s.

Reading Requirements:

The readings for this course are available on Sakai <https://sakai.rutgers.edu/portal> and there are also two texts that are available at Rutgers University Barnes and Noble -- that must be purchased: (1) M.H. Kamali, *Principles of Islamic Jurisprudence* (Islamic Texts Society, 2005, ISBN 9780946621828; and (2) M. H. Kamali, *Freedom of Expression in Islam* (Islamic Texts Society, 1997), ISBN 9780946621606. It is also recommended that the following book be purchased: M.A.S. Abdel Haleem, translator, *The Qur'an*, (Oxford University Press, 2008, ISBN 9780199535958).

**** Updates to syllabus, discussion questions and announcements will be posted on Sakai and sent to your email addresses registered with Rutgers University. You are expected to check this regularly.**

Course Requirements:

1. **Class Attendance** – This course requires the full commitment of the student. Attendance is mandatory and only one unexcused absence per semester is allowed. More than one unexcused absence will affect one’s class participation grade (see below). If you anticipate missing a class, please use the University absence reporting website <https://sims.rutgers.edu/ssra/> to indicate the date and reason for your absence. An email is automatically sent to me.
2. **Make ups/Missed exam** – If you know that you will be unable to take the final exam, contact

¹ Students with questions about the Core goals are encouraged to refer to the Core course lists at sasundergrad.rutgers.edu/core (<http://sasundergrad.rutgers.edu/academics/requirements>). Core codes also appear in Degree Navigator and the Schedule of Classes.

me immediately and the final exam make up shall be scheduled with the Department of Political Science Administrative Assistant. If you miss class the day that the mid-term paper is due, you will not receive credit for the assignment unless a dean's excuse is provided in a timely period. In the interim you will receive a temporary failing grade for any missed assignment or exam until the work is completed.

3. **Class participation**—This is very important for understanding the complex themes and concepts in this course. Class discussion and the exchange of ideas are critical to the learning process. Students should complete the reading assignments before class. Students shall be called on from time to time to provide a synopsis and their analysis of the reading. Students should be prepared to engage in the class discussion by keeping up with the reading assignments, attending class and taking notes on the class lectures. If a class is missed it is the student's responsibility to get notes from a classmate. My lecture notes will not be provided.

4. **Course Evaluation** -- The final course evaluation is based on a mid-term paper (part 1 and part 2) worth 50% of the overall grade, attendance, class participation and reflections shall account for 20% of the overall grade and the final examination will be administered in our class room on ___ May __ 2016 from _____ and will account for 30% of the overall grade. Please see <http://scheduling.rutgers.edu/springfinals.shtml> for the most up to date information.

5. **Academic Integrity** – Violations of Rutgers University's Academic Integrity Code will not be tolerated nor will ignorance of the policy be tolerated. The Academic Integrity Code is available for your review and understanding at <http://academicintegrity.rutgers.edu/integrity.shtml>.

6. **Electronic Devices:** During class please make certain that all cellular telephones/smartphones are either turned off or silenced. You may bring your laptop/notebook/tablet for note taking and reference to the readings; however, if I find that you are distracted by this device you may be asked to sit in the front row.

7. **Recording of Lectures:** New Jersey law specifically prohibits recording persons without their consent except under certain limited circumstances, none of which are applicable to the classroom. (NJSA 2A:156A-3, "Interception, disclosure, use of wire, electronic, oral communication; violation"). Violation of the law is classified as a crime of the third degree, and carries with it a penalty of 3-5 years in prison and up to \$15,000 in fines. Furthermore, anyone who aids or contributes to the commission or concealment of a crime or assists others in avoiding apprehension for the crime, even if they were not present when the crime was committed, is also potentially liable as an accessory to the crime. Students seeking to record a lecture must first obtain my written permission.

Course Readings:

(Note: Readings beset by "***" are not mandatory. All other readings are mandatory)

PART I

HISTORY AND SOURCES OF ISLAMIC JURISPRUDENCE

Lecture 1

A. Introduction -- the background, overview and setting for the study of Islamic law

Huston Smith, Islam: A Concise Introduction (Harper Collins, 2001), vii-75

PBS Film Documentary: Islam: An Empire of Faith (2001), Part 1

***E.W. Said, Orientalism (Vintage, 1979), 1-31

***E.W. Said, Covering Islam (Pantheon, 1981), ix-32

Lecture 2

A. Introduction -- the background, overview and setting for the study of Islamic law (con't)

A. Quraishi, Interpreting the Qur'an and the Constitution: Similarities in the Use of Text, Tradition, and Reason in Islamic and American Jurisprudence *Cardozo Law Rev.* Vol. 28:1 (2006)

PBS Film Documentary: Islam: An Empire of Faith (2001), Part 2

Lecture 3

B. Usul al-fiqh – Introduction

M.H. Kamali, Principles of Islamic Jurisprudence (Islamic Texts Society, 2005), 1-15

J. Schacht, Introduction to Islamic Law (Oxford, 1964), 10-15

N. Coulson, History of Islamic Law (Edinburgh University Press, 1964), 9-20

W. B. Hallaq, A History of Islamic Legal Theories (Cambridge, 2002), 1-35

Lecture 4

C. Usul al-fiqh-Primary Sources of Islamic Law (Qur'an and Sunnah)

A. Qur'an

M.H. Kamali, Principles of Islamic Jurisprudence, 16-57

Lecture 5

B. Sunnah

W. B. Hallaq, Sharia (Cambridge, 2009), 27-55

UPF Film, Muhammad: Legacy of a Prophet (2001)

Lecture 6

B. Sunnah (con't)

M.H. Kamali, Principles of Islamic Jurisprudence, 58-116

Lecture 7 - MID-TERM EXAMINATION PART 1 DUE AT 10:55 am

D. Ijtihad (Legal Reasoning)

M.H. Kamali, Principles of Islamic Jurisprudence, 468-499

J. Schacht, Introduction to Islamic Law, 69-75

W. Hallaq, Was the Gate of Ijtihad Closed?, Int. J. of Middle East Stud., 16 (1984), 3-41

Lecture 8

E. Usul Al-fiqh: Secondary Sources

(i) Ijma' (Consensus of Opinion)

(ii) Qiyas (Analogical Deduction)

(iii) Istihsan, Maslahah, Urf, Istishab & Sadd ad Dharai

M.H. Kamali, Principles of Islamic Jurisprudence, 228-312, 323-409

Lecture 9

F. Development of the Schools of Law

M.H. Kamali, Principles of Islamic Jurisprudence, 410-454

N. Coulson, History of Islamic Law, 36-52

W. B. Hallaq, Sharia (Cambridge, 2009), 55-71

G. Makdisi, The Significance of the Sunni Schools, Int. J. of Middle East Stud., 10 (1979), 1-8

M. B. al-Sadr, The Principles of Islamic Jurisprudence According to Shi 'i Law, (Islamic Publication International, 2005)

PART II

ISLAMIC JURISPRUDENCE VIS-A-VIS FAMILY LAW AND FUNDAMENTAL RIGHTS

Lecture 10 – MID-TERM EXAMINATION PART 2 DUE AT 10:55 am

A. Islamic Family Law

(i) Marriage; (ii) Divorce; (iii) Custody; (iv) Women's Rights

John L. Esposito with Natana J. Delong-Bas, Women in Muslim Family Law (Syracuse, 2001), 12-46

Lecture 11

B. Women's Human Rights, Interpretive Methodologies and the Issue

Khaled Abou El Fadl, Speaking in God's Name: Islamic Law, Authority and Women (One World 2003), 170-200

Lecture 12

B. Women's Human Rights, Interpretive Methodologies (con't) and the Issue with Innovation

Khaled Abou El Fadl, Speaking in God's Name: Islamic Law, Authority and Women (One World 2003), 202-270

Umar Faruq Abd-Allah, "Innovation and Creativity in Islam" (2006), 1-14

ISLAM AND FUNDAMENTAL RIGHTS

Lecture 13

A. Understanding Fundamental Rights in Islam—Freedom of Expression

M. H. Kamali, Freedom of Expression in Islam (Islamic Texts Society, 1997), 16-24; 26-107

Lecture 14

B. Understanding Fundamental Rights in Islam (con't) —Slavery

(GUEST LECTURER) B.F. Freamon, Slavery Freedom and the Doctrine of Consensus in Islamic Jurisprudence, Harv. Hum. Rights J. Spring (1998)

FINAL EXAMINATION