

## SYLLABUS: SPRING 2019

ISLAMIC LAW & JURISPRUDENCE 685:457:01 & 790:457:01

<https://sakai.rutgers.edu/portal>

(This course has been certified in the Core goals “WCD” requirement)<sup>1</sup>

Time: Tuesdays 10:55 am to 1:55 pm    Location: Hickman Hall Room 202

<http://sis.rutgers.edu/soc/>

Contact Information: Atiya Aftab

[atiya.aftab@rutgers.edu](mailto:atiya.aftab@rutgers.edu)

Office Hours: HCK 404 or at the

Center for Islamic Life, CAC, by arrangement

### 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 is one text that is available at Rutgers University Barnes and Noble -- that must be purchased: M.H. Kamali, *Principles of Islamic Jurisprudence* (Islamic Texts Society, 2005, ISBN 9780946621828;). 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. In addition, you can email me directly.

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<sup>1</sup> 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/core) (<http://sasundergrad.rutgers.edu/academics/requirements>). Core codes also appear in Degree Navigator and the Schedule of Classes.

2. **Make ups/Missed exam** – All assignments are due in class. If you miss class the day that any paper is due you will not receive credit for the assignment unless a dean’s excuse is provided in a timely period. Your final paper will be due on the date of the final exam, Wednesday, May 15, 2019.

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 two reflections and class attendance that shall account for 10% of your grade; two papers that are due in class that each account for 30% of your grade; and the final paper that due in class on Wednesday, May 15, 2019 from at 10 am (or earlier by arrangement) and will account for 30% of the overall grade. Please see <http://finalexams.rutgers.edu> 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. Violations include: cheating, fabrication, plagiarism, denying others access to information or material, and facilitating violations of academic integrity. 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.

8. **Student-Wellness Services:**

**Just In Case Web App** <http://codu.co/cee05e> Access helpful mental health information and resources for yourself or a friend in a mental health crisis on your smartphone or tablet and easily contact CAPS or RUPD.

**Counseling, ADAP & Psychiatric Services (CAPS)**

(848) 932-7884 / 17 Senior Street, New Brunswick, NJ 08901/ [www.rhscaps.rutgers.edu/](http://www.rhscaps.rutgers.edu/)

CAPS is a University mental health support service that includes counseling, alcohol and other drug assistance, and psychiatric services staffed by a team of professional within Rutgers Health services to support students’ efforts to succeed at Rutgers University. CAPS offers a variety of services that include: individual therapy, group therapy and workshops, crisis intervention, referral to specialists in the community and consultation and collaboration with campus partners.

**Violence Prevention & Victim Assistance (VPVA)**

(848) 932-1181 / 3 Bartlett Street, New Brunswick, NJ 08901 / [www.vpva.rutgers.edu/](http://www.vpva.rutgers.edu/)

The Office for Violence Prevention and Victim Assistance provides confidential crisis intervention, counseling and advocacy for victims of sexual and relationship violence and stalking to students, staff and faculty. To reach staff during office hours when the university is open or to reach an advocate after hours, call 848-932-1181.

#### Disability Services

(848) 445-6800 / Lucy Stone Hall, Suite A145, Livingston Campus, 54 Joyce Kilmer Avenue, Piscataway, NJ 08854 / <https://ods.rutgers.edu/>

Rutgers University welcomes students with disabilities into all of the University's educational programs. In order to receive consideration for reasonable accommodations, a student with a disability must contact the appropriate disability services office at the campus where you are officially enrolled, participate in an intake interview, and provide documentation: <https://ods.rutgers.edu/students/documentation-guidelines>. If the documentation supports your request for reasonable accommodations, your campus's disability services office will provide you with a Letter of Accommodations. Please share this letter with your instructors and discuss the accommodations with them as early in your courses as possible. To begin this process, please complete the Registration form on the ODS web site at: <https://ods.rutgers.edu/students/registration-form>.

#### Scarlet Listeners

(732) 247-5555 / <http://www.scarletlisteners.com/>

Free and confidential peer counseling and referral hotline, providing a comforting and supportive safe space.

#### Course Readings:

(Note: Readings beset by “\*\*\*” are not mandatory. All other readings are mandatory)

## **PART I**

### **HISTORY AND SOURCES OF ISLAMIC JURISPRUDENCE**

#### **Lecture 1 (1/22)**

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

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

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

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

Reflection #1: PBS Film Documentary: Islam: An Empire of Faith (2001), Part 1 and 2. Due next class.

#### **Lecture 2 (1/29)**

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)

**Lecture 3 (2/5)**

B. Usul al-fiqh - Introduction

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

**Lecture 4 (2/12)**

B. Usul al-fiqh - Introduction (con't)

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

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

**Lecture 5 (2/19)**

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

Reflection #2: UPF Film, Muhammad Legacy of a Prophet (2002). Reflection due next class.

**Lecture 6 (2/26)**

B. Sunnah

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

—————PAPER #1 Due March 12, 2019—————

**Lecture 7 (3/5)**

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 (3/12)**

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

Spring Break - no class March 19, 2018

**Lecture 9 (3/26)**

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)

—————PAPER #2 Due April 9, 2019—————

**PART II**

**ISLAMIC JURISPRUDENCE VIS-A-VIS FAMILY LAW**

**Lecture 10 (4/2)**

A. Islamic Family Law

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

Abed Awad, "Marriage: Legal Foundations," Oxford Encyclopedia of Islam and Women (Oxford University Press, 2013), 625-629

Abed Awad, "Divorce: Legal Foundations," Oxford Encyclopedia of Islam and Women (Oxford University Press, 2013), 219-224

**Lecture 11 (4/9)**

B. Women's Human Rights, Interpretive Methodologies

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

**Lecture 12 (4/16)**

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

**ISLAMIC JURISPRUDENCE VIS-A-VIS FUNDAMENTAL RIGHTS**

**Lecture 13 (4/23)**

A. Understanding Fundamental Rights in Islam - Objectives of the Shariah

M.H. Kamali, *Shariah, An Introduction* (Oneworld Publications, 2010), 123-139

**Lecture 14 (4/30)**

B. Understanding Fundamental Rights in Islam (con't)—Freedom of Expression

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

—————**FINAL PAPER Due May 15, 2018**—————