Course Description:

Unlike the American legal system, which is secular, the Islamic legal system is of a religious nature. Islam is both a religion and a social order. As such, it comprises rules concerning devotional obligations as well as rules regulating civil and commercial relations. According to Islamic beliefs, these two types of rules are of a divine origin. The origins of Islamic law, its sources, and various schools of Islamic jurisprudence will be discussed as an introduction to the course.

The course will explore several substantive areas of Islamic law, including: constitutional law; banking law and insurance; international law; crimes and punishments; marriage, divorce, and child custody; and succession and wills. These areas will be examined through 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.

Class discussions will focus on particular exercises. Students are encouraged to participate in class discussions by preparing for each of these exercises. Students may choose a take-home examination or write a research paper in lieu of the examination. Final grades will be based on class participation (40%) and the final exam/paper (60%).

Suggested Reading Materials for Overall Course:


1. Introduction (Sep 6)

Basic Concepts:
Overview of syllabus; discussion of reading materials; the general characteristics of Islam as a divine law; the place of the Islamic legal system in the legal family - a comparative analysis.
2. Nature and Sources of Islamic Law (Sep 13)

Basic Concepts:
Primary and secondary sources of law (Quran, Sunnah, Consensus and Analogy); the process of system-building in Islamic law.

Assigned Materials:

3. Interpretation of the Islamic Text (Sep 20)

Basic Concepts
The theory of interpretation; Islamic jurisprudence; Islamic schools of law (Hanafi, Maliki, Shafi’i and the Hanbali schools).

Assigned Materials:

Project 1:
Prepare an analysis of a fatwa issued by an Islamic scholar on the Islamic view of a contemporary social, political, or economic issue examining its sources and reasoning.
4. Islamic Constitutional Law (Sep 27)

**Basic Concepts:**
The principle of non-separation of state and religion in the Islamic legal system (the establishment clause); the relationship between Islamic Shari’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?

**Assigned Materials:**

**Project 2:**
Present a memorandum on comparative constitutionalism explaining the influence of Islamic law on a constitution of your choice.

5. Islamic Law in American Courts: Rights of Muslim Inmates to Religious Freedom (Oct 4)

**Basic Concepts:**
The bill of rights in Islamic law; rights of Muslim prison inmates and the constitutional freedom of religion.


Project 3:
Submit a summary of one of the cases mentioned above explaining the facts of the case and the balancing test adopted by the court in reaching its conclusions.

6. Islamic Theory of Crimes and Punishment (Oct 11)

Basic Concepts:
Categories of criminal acts (Hudud offenses, Quesas crimes, and Taazir); classification of Hudud offenses (theft, adultery and fornication, defamation, highway robbery, use of alcohol, apostasy and rebellion); Al-Quesas (death penalty); the conditions of implementation; honor killings; mercy killing and the right to die; destruction of the unborn child; trafficking in persons, especially women and children.

Assigned Materials:
• Mohamed Y. Mattar, Combating Trafficking in Persons in Accordance with the Principles of Islamic Law, UNODC (2009).

Project 4:
Present a list of recommendations on how the general principles of the Islamic religion may be used to combat the crime of human trafficking.

7. Islamic Banking and Insurance (Oct 18)

Basic Concepts:
Freedom of contract; formation of contract; frustration of contracts; economic hardship; termination of contract; the Islamic economic order; Riba (unlawful advantage by way of excess or deferment); the financial system based on Islamic ethics (Musharaka, Murabaha, Ijara, Qard hasan, Mudaraba); the prospects for success of an Islamic Banking system; insurance: is it a valid contract under Islamic Law?

Assigned Materials:
• Appendix 1—Federal Law No. 6-1985 on Islamic Banks, Financial Institutions and Investment Companies; Appendix 2—Dubai Islamic Bank Promises to Purchase Contract.
• Chafic Nehme, Credit Cards and Islamic Law, Middle East Executive Reports (July 1995).

Project 5:
Choose an example of an Islamic bank and write a description of the forms of Islamic banking used by this bank.


Basic Concepts:
Marriage; dowry agreements; polygamy; problems of reforming the personal status law in contemporary Middle Eastern legal systems.

Assigned Materials:
• Text of The United Arab Draft Law for Personal Status.

Project 6:
Explain the concepts of early marriage, arranged marriage, and temporary marriage in light of the various schools of Islamic jurisprudence.

9. Islamic Family Law: Divorce and Child Custody (Nov 1)

Basic Concepts:
Judicial and non-judicial divorce; parental rights and the issue of adoption; community property; child custody rules in Islamic law: are they applicable in American courts?

Assigned Materials:
• In the Mattar of Sonia Ramadan and Samer Ramadan, 891 A.2d 1186 (2006).

Project 7:
Write a brief on the reasons given by American judges on American courts refusing the recognition of Islamic child custody rules.

10. Islamic Law and Human Rights: Women’s Rights (Nov 8)

Basic Concepts:
Women as Equals in Islam; personal status laws in contemporary Islamic Codes; the Quranic view of gender relations; marital consent and the right of women to contract her own marriage; dowry; marriage; polygamy; the right of the wife to initiate divorce; maintenance; the right to education; right to employment; right to inheritance.

Assigned Materials:

Project 8:
Write a memorandum on the extent of compliance of Islamic family law with international family law.

11. Islamic Law and Human Rights: International Human Rights (Nov 15)

Basic Concepts:
International Human Rights Standards; the concept of Human Rights in Islamic Law; relativism v. universalism; is international human rights law compatible with Islamic law?; the right to political asylum on the basis of fear of persecution; conversion from Islam to Christianity.

Assigned Materials:
• Bandari v. INS, 227 F. 3d 1160 (2000).
• Fisher v. INS, 79 F. 3d 955 (1996).
• Abedini v. INS, 971 F. 2d 188 (1992).
• Bastaniour v. INS, 980 F. 2d 1129 (1992).

**Project 9:**
Write a memo explaining arguments that may be made by a Muslim filing a law suit asking for political asylum in the United States.

12. **Islamic Law and Human Rights: Minority Rights (Nov 29)**

**Basic Concepts:**
Religious dissidents under Islamic law; religious discrimination and the rights of non-Muslims; foreign workers in Saudi Arabia: does the American law apply?; the rights of Coptics in Egypt; Jihad and the concept of just war.

**Assigned Materials:**
- Abrams v. Baylor College of Medicine, 805 F. 2d 588 (1986).

**Project 10:**
Discuss the meaning of Jihad as interpreted by contemporary Muslim movements today.

13. **Review (Dec. 6)**