COMPARATIVE MIDDLE EASTERN LAW

This seminar explores modern legal structures - legislative and judicial - of the Middle East. It introduces students to the process by which traditional Islamic law was transformed into state law in the 19th and 20th centuries CE, by investigating debates on codification, legal modernity and legal borrowing. With the emergence of the modern nation-states across the Muslim World, many countries accorded constitutional status to Islamic law as "a source" or "the source" of law and some states purport to base their entire systems on particular versions of Islamic law. The formation of the modern legal regimes in the Middle East was a hybrid product of Islamic and western legal traditions, which raises questions about legal authority, legality, and the creation of modern legal and judicial institutions. The course aims to encourage comparative legal analysis to assess generalizations about law typically formulated with respect to Western legal traditions. The course discusses cases and codes from Egypt, Israel, Turkey, Iran, and Saudi Arabia. The topics covered in this course are constitutional law, judicial review, administrative law, obligations, commercial law, family law, human rights and criminal law.

REQUIRED TEXTS

Mallat, Chibli. Introduction to Middle Eastern Law (Oxford University Press, 2009)


SUPPLEMENTAL READINGS: To be placed on the course website

RECOMMENDED READINGS:


SCHEDULE OF CLASSES

WEEK ONE: The Nature of Islamic Law


**WEEK TWO:** History of Middle Eastern Law

Mallat, ‘Middle Eastern Law’ (with Mara Revkin), Annual Review of Law and Social Science, 9, 2013, 405-33.

Mallat, IMEL, Introduction (1-11); Formation of MEL (15-60)

**WEEK THREE:** History of Middle Eastern Law

Courts, Judges, case-law (61-86)

Qadi Literature; Fatwa and Muftis (86-96)


Masud, Messick & Powers eds, *Islamic Legal Interpretation: Muftis and Their Fatwas*, Harvard University Press, 1996 (Choose one chapter.)

**WEEK FOUR:** History of Middle Eastern Law

Formularies, deeds, and contracts; Ijtihad and schools; Coda (97-126)


**WEEK FIVE:** Islamic and Comparative Law

Max Rheinstein, Comparative Law: Its Functions, Methods and Usages, 22 ARK. L. REV. 415 (1968)


WEEK SIX: Comparative Jurisprudence


WEEK SEVEN: Legal Borrowing


WEEK EIGHT: Transmutation of the Shari‘a into State law


Primary Sources:

Code: Sanhuri Code (Egypt) [Excerpts]
Cases: An-Na`im, Islamic Family Law [Excerpts]
Contracts: Zulficar, 256-59 [Excerpts]

WEEK NINE: Public Law

MEL, Constitutional Law, Ch. 3, 4 (129-180)


WEEK TEN: Public Law

MEL, Constitutional Review, Ch. 5 (181-210)
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**WEEK ELEVEN: Public Law**

MEL, Judicial Review, Ch. 6 (211-235)


**WEEK TWELVE: Private Law**

Introduction + Civil Law, Ch.7, Ch.8 (239-299)

Civil Codes in English Majalla (Ottoman), Arts 1-100: General Principles; Arts 101-403: Book of Sales


**WEEK THIRTEEN: Private Law**

Commercial Law, Ch. 9 (300 – 354)

Hallaq, Shari’a, 239-70 (Contracts and obligations)


Muhammad Nejatullah Siddiqi, Partnership and Profit-Sharing in Islamic Law (Leicester, UK: Islamic Foundation, 1985)

Cases, contemporary: Egypt, Supreme Constitutional Court, ‘decision on riba’, Arab Law Quarterly, 1985 [26]

*Pakistan, Mahmood-ur-Rahman Faisal v. Secretary, Ministry of Law, PLD 1992 FSC 1, also published as a separate book, Federal Shariat Court judgment on interest (riba), Lahore 1992, including the decision *(1-188) (Appendices at 1-159).[27]
*Pakistan, United Bank Limited vs. Farooq Brothers and Others, PLD 2002 SC 800.[28]

**WEEK FOURTEEN: Private Law**

Family Law (355-402)


Egypt, Supreme Constitutional Court, SCC 5:2, 15 May 1993, 260-90; SCC 6, 26 March 1994, 231-56. (in Arabic, excerpts in English to be provided) [31, 32]

**Iran, Malaysia & Northern Nigeria**

[Excerpts from: “Interim and Final Reports of the Committee Set Up to Advise the Sokoto State Government on the Establishment of Shari’a” – submitted to His Excellency, Alhaji Attahiru Dalhatu Bafarawa (Garkuwan Sokoto), Governor of Sokoto State, October13, 1999 and December 16, 1999]


Case from Hamid R. Kusha, The Sacred Law of Islam: A Case Study of Women’s Treatment in the Islamic Republic of Iran’s Criminal Justice System (Burlington, VT: Ashgate, 2002) [Iran]

**Secondary Sources**


WEEK FIFTEEN

