Introduction to Islamic Law

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Sources of Law

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Introduction to Islamic Law – Islam and Origins of Islamic Law

Islam (The Bare Essentials)

• 2nd most popular faith in the world, over a thousand million adherents
• Muslims believe that Islam has always existed (given to Adam)
• The word Islam means submission to God (s*l*m)

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The Revelation

Mecca (Makkah), 610 AD
Muhammad, archangel Gabriel (Jibril)
The Scripture of Qur’an (’Uthman Khalif)

History of Islam (The Bare Essentials)

632 – 661 The four Khilafah – Khutafa an-Rashidun (Mecca) Expansion (Syria, Egypt, Persia, Byzantine Empire)
661 – 750 Banu ‘Umayyya (Damascus) Consolidation, hereditary government
750 – 1258 The Abbasids (Baghdad) ‘The Golden Age’, Art & Science, decline Full development of Islamic Law

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Methodological problems when studying Islam and Islamic Law:

• Religious Law, ambiguity, variant angles of perception
• Muslim perception – word of God, divine origin
• Western academic approach – Schacht – unique phenomenon, unlike any other standard text-based legal system
• contesting the divine origin in part or its entirety
• each methodology has its own strength and prejudices

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Islam (The Bare Essentials)

• multifaceted character, orthopraxis
• unity of Faith, Law and Culture
• Islamic Law – crucial and inseparable part of Islam

The Prophecy – Adam, Abraham (Ibrahim), Moses (Musa), Jesus (Isa)
Ahl al-Kitab – The People of the Book, Christian and Jews
Muhammad – the last Prophet of God
The Holy Qur’an

Universalism of Islam – revelation to the whole mankind, geopolitical aspects, International Law
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Islamic Law – shariah

Shariah – the secure path (esp. to the water source)

Fiqh – science about Law, jurisprudence

‘Usul al-Fiqh – ‘the methodologies of Jurisprudence’,

sources of Law

• The Holy Qur’an
• Sunnah
• Qiyas – analogy
• Ijma’ – consensus

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The Holy Qur’an

The Revelation

Mecca (Makkah), 610 AD

Muhammad, archangel Gabriel (Jibril)

The Scripture of Qur’an (‘Uthman Khalif)

- surah
- ayah

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Al-Fatiha

1. In the name of God, Most Gracious, Most Merciful.
2. Praise be to God, the Cherisher and Sustainer of the world;
3. Most Gracious, Most Merciful;
5. Thee do we worship, and Thine aid we seek.
6. Show us the straight way,
7. The way of those on whom Thou hast bestowed Thy Grace, those whose (portion) is not wrath, and who go not astray.

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The number of direct & concrete normative verses in Qur’an is small.
Need for different, yet Islamic sources.

The Revelation to mankind – finished and complete Law of God.

Sunnah

Way or custom, The way of the prophet, commonly known as the Prophet’s traditions. The deeds, sayings and approvals of Muhammad during the years of his ministry. Muslims are recommended to follow Sunnah in every aspect of human life.

Hadith

Tradition relating to the sayings and doings of Muhammad. Hadith collections are important tools for determining the Sunnah by all traditional schools of jurisprudence.
Example of Hadith

Yahya related to me from Malik from Abu'r-Rijal Muhammad ibn Abd ar-Rahman ibn Haritha from his mother, Amra bint Abd ar-Rahman that the Messenger of Allah, may Allah bless him and grant him peace,

(Isnad)
said, "If palm trees are sold after they have been pollinated, the fruit belongs to the seller unless the buyer makes a stipulation about its inclusion."

(Matn)

Structure of Hadith

Istars (citations, backing of validity, legitimating part)

Matn (the saying or doing itself, normative part)

Istars

An isnad is in the form "A said that B said that C wrote (in a lost work) that D read (in a work known to exist but also lost) that E said that Muhammad had said...", where A, B, C, D, E were known figures with known histories.

The focus was to determine if in fact these individuals could have met, under what circumstances or social pressures, if translation were involved, if lost records are involved were they actually likely to have been lost, etc. and therefore to come to conclusions about the validity.

Validity of Hadith

Political interests, falsification

I'm al-hadith, I'm ash-shahihiyat – science of biography

Canonization of Sunnah

The scholars categorized literally millions of hadith as authentic, agreeable, weak, narrated by a weak source, missing a transmitter, provably false, etc. There are six well-known collections of authentic hadith, each named after its compiler.

Sahih Muslim

Sahih Bukhari

Additional sources

• 'urf – local customs (Jewish, Roman, Persian, Tribal Laws)
• qiyas - analogy
• jima – consensus of authorities
• jihah – independent interpretation of the legal sources
• taqdid – imitation (Return to the Source)
• istislah – the optimal solution for community, public interest
• istislah - preference for particular judgements over others
• etc.

Main Division of Norms in Islamic Law

• 'ibadat – duties towards God
• mu'amalat – rights and duties between human beings

'Ibadat

The Five Pillars of Islam

• shahadah – The profession of faith in God
• salat – prayer
• zakat – the paying of alms
• sawm – fasting
• haj – the pilgrimage