

Course syllabus: Islamic Criminal Law

PART ONE	FEATURES OF ISLAMIC LAW : SOURCES, METHODOLOGY AND INSTITUTIONS
Seminar One 9 October 10-12	<p>Introduction</p> <p>Overview: current applications of Shariah criminal law in Muslim majority countries – the spectrum: Saudi Arabia, Malaysia and Turkey Contemporary rationales and its significance today. Codification, colonial regimes and post-colonial resurgence of Shariah</p> <p>The Religious Foundations. Shariah Criminal law – divine foundations: revelations and the example of the Prophet. Distinctive features of Islamic criminal law. Islamic theory of criminality and criminal responsibility.</p> <p>Classifications of all actions and conduct: Halal v Haram – permissible and forbidden acts. Haram declarations extending the reach of criminal conduct.</p> <p>Discussion Issue: Perceptions of Islamic criminal law. How do Western media portray Islamic criminal law? VIDEO in class: <i>Islam in Australia: the Power of Prejudice</i> Media Watch How do media in Muslim nations portray Islamic criminal law? Media coverage of Brunei’s enactment of its <i>Syariah Penal Law Code</i> in 2014.</p>
Seminar Two 9 October 2-4	<p>Usul al-Fiqh - Islamic jurisprudence</p> <p>The role and contribution of Islamic jurists to the corpus of Islamic criminal law: <i>Ijtihad, Ijma, Qiyas, Istihsan, Urf, Istishab</i>. Role for legislation and regulations [<i>siyasa shar’iyya</i>]</p> <p>Case study: The crime of drinking alcohol - the interplay of primary and secondary sources of law. Application: Fatwa on the permissibility of forensic post-mortems Identifying the sources and juristic methods employed by the Mufti in his fatwa.</p>
Seminar Three 10 October 10-1	<p>Institutions in criminal law & procedure</p> <p>The ruler/government Courts, judges, jurists & religious scholars Religious police and legal representatives. The mosque</p> <p>Discussion Issue: Comparative analysis of criminal court proceedings in a Shariah and civil law court. VIDEO: Inside a Shariah Court in Nigeria. Partisan Films.</p> <p>Impact of the schools of law (<i>madhab</i>) on variations in criminal law Shia [Zaydis (Fivers), Ismailis (Sevensers), Ashariyyah (Twelvers)] Sunni [Hanafi, Shafi’i, Maliki, Hanbali]</p>

PART TWO	SUBSTANTIVE LAW: THE PUNISHMENT CLASSIFICATION
Seminar Four 16 October 10-12	<p>Hudud offences – crimes against God’s limits with punishment the right of God.</p> <p>Theft, drinking alcohol, <i>zina</i> [adultery], <i>qazaf</i> [false accusations of adultery], and highway robbery.</p> <p>Case study: Theft in Zamfara Province, Nigeria.</p> <p>Discussion: Must <i>hudud</i> punishments be taken literally, or can new punishments be approved if they realise the punitive objectives in the Quran and Sunnah?</p>
Seminar Five 16 October 2-4	<p>Qisas and Diyat offences – the scheme for homicide and all offences ag the person: retaliation, blood money and atonement.</p> <p>Application: Murder trial for the death of Yvonne Gilford in Saudi Arabia.</p> <p>Discussion: Empowering victims and their families in punishment or compensation</p>
Seminar Six 17 October 10-1	<p>Ta’zir offences –discretionary not fixed punishments. Informed by Islamic principles against sinful acts, ones which undermine Islam, or threaten public order.</p> <p>Law of evidence.</p> <p>Onus and standard of proof. Types of evidence, including <i>shahadah</i> evidence for <i>hudud</i> offences. Number of witness required Role of Oaths Confessional evidence</p> <p>Application: Evidence of women in the criminal trial procedure. <i>Syariah Courts Evidence Order 2001</i> (Brunei Darussalam)</p> <p>Discussion: The case for reform or retention of gender and religious differentials in criminal evidentiary laws.</p> <p>Application: Offences against indecent behaviour and failure to wear appropriate dress. Basis for the laws criminalising indecent clothing & imposing Chador –Iran; Burqa – Afghanistan and Abaya and Niqaab in Saudi Arabia.</p> <p>Case study: Rape laws in Pakistan.</p>
PART THREE	CRIMINAL LAW AS PROTECTOR OF MORALS AND FAITH
Seminar Seven 23 October 10-12	<p>Morality offences – Beyond <i>zina</i> (adultery) to <i>liwat</i> (homosexuality), <i>khalwat</i> (in the company of a person of the other sex) and cross-dressing.</p> <p>Honour Crimes – Pakistan, Bangladesh and the Middle-East and exported</p> <p>Case study: Anti-Pornography Laws in Indonesia</p>

<p>Seminar Eight</p> <p>23 October</p> <p>2-4</p>	<p>Regime of Syariah punishments & Human Rights</p> <p>Conceptions of human rights and their relationship with the rights of God. Capital and corporeal punishment - do such traditional Islamic punishments violate international law?</p> <p>Discussion: Is it possible to have a reinterpretation of Islamic criminal law which is compatible with human rights principles and also justified under Islamic legal traditions?</p> <p>Case study: Slavery</p> <p>Case study: Stoning for <i>Zina</i>.</p> <p><i>Syariah Penal Code Order</i> (2013) Brunei Darussalam & ICJ letter.</p> <p>Discussion: Scholar Tariq Ramadan calls for a moratorium on capital punishment. Mufti Bin Juned calls for its implementation for the 'good of mankind'. Should Western nations countenance or oppose the re-introduction of the death penalty in Muslim majority nations?</p>
<p>Seminar Nine</p> <p>24 October</p> <p>10-1</p>	<p>Offences against Islam: Apostasy, doctrines contrary to Islam, propagation of other religions and blasphemy.</p> <p>Case studies: Apostasy laws- Malaysia: <i>Lina Joy v Majlis Agama Islam Wilayah Persekutuan</i> [2007] 3 CLJ 557 (Federal Court) and Constitution of Malaysia, Articles 3 & 11.</p> <p>Hisbah motions - Egypt: Trials of Nasr Abu Zayd & Nawal al-Saadawi</p> <p>Blasphemy - Indonesia: Jakarta Governor Ahok's trial</p>
<p>PART FOUR</p>	<p>ISLAMIC CRIMINAL LAW IN CONTEMPORARY CONTEXTS</p>
<p>Seminar Ten</p> <p>30 October</p> <p>10-12</p>	<p>Consequences of the laws of blasphemy on freedom of speech and religion in secular nations.</p> <p>Case studies: Salman Rushdie, Danish Cartoons, Charlie Hebdo.</p> <p>Discussion: Freedom of speech, communication & press versus the religious imperative not to depict, insult or defame a revered person</p> <p>The Cultural defence The extent to which, in a secular European nation – Austria, a Muslim accused's background and Islamic identification should be considered as a mitigating factor in a criminal trial where acts were committed in the belief it was either acceptable, even required.</p>

<p>Seminar Eleven</p> <p>30 October</p> <p>2-4</p>	<p>EUROPE & THE WEST:</p> <p>Principles of Islamic criminal law in European/Western contexts: conflict or harmony?</p> <p>Points of tension.</p> <p>Imported Practices: Underage and forced marriages, honour killings, female genital mutilation & polygamy.</p> <p>Honour crimes – legislative responses and western trials</p> <p>Case study: Murder or Honour Killing? The case of Banaz Mahmod, United Kingdom</p> <p>Burqa bans in secular {European} nations - individual freedom v national cultural values.</p> <p>Case studies: Criminal trials – requirements for removal of burqas and niqaabs. Rulings on the permissibility of Muslims participation in secular court proceedings.</p> <p>Discussion issues: What degree of accommodation should western law “give to minority communities with their own strongly entrenched legal and moral codes?” What legal recognition, if any, should Austria’s legal system give to aspects of Islamic criminal law? Arguments for and against.</p>
<p>Seminar Twelve</p> <p>31 October</p> <p>10-1</p>	<p>MUSLIM NATIONS:</p> <p>Diversity within Muslim nations on the role, if any, for Islamic criminal law and criminal laws protecting Islam & its tenets and Islamic morality. Students present:</p> <ul style="list-style-type: none"> Afghanistan Indonesia Iran Pakistan Qatar Malaysia Sudan Tunisia
	<p>Reflections, themes and the future</p>