

Central Questions in Islamic Law

ISLA 383 (2994), Winter 2024, 3 credits

Prerequisite: ISLA 200 or permission of instructor.

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| Sessions: | Wed. & Fri. 16:05-17:25, in Sherbrooke 680, Room 355 |
| Prof.: | Dr. Walter Edward Young email: walter.young@mcgill.ca |
| Office Hours: | Wed. 14:30-15:45, Morrice Hall, Room 328 Fri. 14:30-15:45, Morrice Hall, Room 313 |

ISLA 383 is an integrative view of Islamic law in the past and present, including landmarks in Islamic legal history (e.g., sources of law; early formation; intellectual make-up; the workings of court; legal change; legal effects of colonialism; modernity and legal reform) and a structured definition of what it was/is.

This course will approach Islamic legal studies as several distinct bodies of discourse and practice, namely, (1) premodern Islamic substantive law, legal theory, and historical practice; (2) modern “*sharīʿa*-inspired” legal frameworks and practices; and (3) modern and postmodern, doctrinal legal-Orientalist and non-doctrinal legal-Islamicist academic discussions. The course will unfold in two stages, roughly divided between premodern topics (including Islamic legal origins, evolution, literature, theory, dialectic, education, court practice, substantive rulings, etc.) and modern topics (including Islamic law and gender, modernity, colonization, nation-states, reform, human rights, etc.) Throughout this exploration, students will develop their skills in critical reading and argumentation while acquiring a sense of the remarkable plurality of both premodern and modern Islamic legal traditions and practices, a firm grounding in significant legal-historical developments, and a basic familiarity with relevant and paradigmatic controversies.

Requirements. Students are required:

- (1) **to ATTEND ALL CLASSES, to BE PUNCTUAL, and to ACTIVELY PARTICIPATE in group assignments and activities.** This is not a correspondence course; students must come to class. There will be regular and engaging class activities, and participation is an integral component of the final grade.
- (2) **to READ THE REQUIRED READINGS for each session.** Students must take reading notes which identify key themes, paradigms, and particulars for each required reading; and they will be called upon to share these notes in class.
- (3) **to PRESENT ASSIGNED READINGS for three group-teach activities.** Three times in the course, **for units 06, 14, and 16**, students will each be assigned one of several readings, and each will present their reading—in exactly six minutes—to their group while the others take notes. Group-teach readings and groups will be assigned at least one week in advance.
- (4) **to WRITE A RESEARCH ESSAY PROPOSAL AND OUTLINE (ca. 500-750 words) on a relevant topic, due 13 Feb, 10:00 pm, via email attachment.** NB: approval of topic and approach must be obtained prior to this date (via emails / office hours meetings).
- (5) **to WRITE THE PROPOSED RESEARCH ESSAY, due 12 Apr, 10:00 pm, via email attachment.** The essay will have a minimum of 5,000 and maximum of 7,000 words and will employ the Chicago notes & bibliography style (word count includes footnotes but not bibliography).
- (6) **to WRITE A TAKE-HOME MIDTERM (due 24 Feb, 10:00 pm, via email attachment) and TAKE-HOME FINAL EXAM (due 21 Apr, 10:00 pm, via email attachment).** Each of these will require the identification and elaboration of four out of six concepts, institutions, discourses, etc. (in concise statements, minimum 200 words each).

Required Textbooks (available from the Paragraphe Bookstore):

- Wael Hallaq, *Sharī'a: theory, practice, transformations* (Cambridge, 2009)
- Knut Vikør, *Between God and the Sultan: A History of Islamic Law* (Oxford, 2005)

All required readings (textbooks and all others listed below) will be available online or on reserve via the McGill Islamic Studies Library, and/or uploaded to MyCourses.

Grading System:

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| 10% | Participation in class activities and discussions |
| 10% | Group-teaching presentations |
| 10% | Research Proposal and Outline |
| 20% | Take-Home Midterm Exam |
| 25% | Take-Home Final Exam |
| 25% | Research Essay |

Course Schedule:

| Unit | Date | Topic and Required Readings Due |
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| 01 | 05 Jan (F) | Course Overview and Logistics • [no reading due] |
| 02 | 10 Jan (W) | Conceptual Frameworks for Islamic Legal Studies • [no reading due] |
| 03 | 12 Jan (F) | Prefatory Discussions: the State of Islamic Legal Studies and the “Nature” of Sharī'a Required Readings: • Hallaq, <i>Sharī'a</i> , pp. 1-23 (“Introduction”) • Vikør, <i>Between God and the Sultan</i> , pp. 1-19 (“1. Introduction: Does Islamic Law Exist?”) |
| 16 January: Add/Drop Deadline | | |
| 04 | 17 Jan (W) | Origins and Early Evolution of Islamic Law Required Readings: • Hallaq, <i>Sharī'a</i> , pp. 27-31 (section 1 of “The Formative Period”) • Schacht, “Foreign Elements in Ancient Islamic Law,” <i>Journal of Comparative Legislation and International Law</i> 32, 3/4 (1950), pp. 9-17. • Young, “Origins of Islamic Law,” <i>Oxford Encyclopedia of Islam and Law</i> |
| 05 | 19 Jan (F) | Formative Legal History Required Readings: • Hallaq, <i>Sharī'a</i> , pp. 31-71 (sections 2-7 of “The Formative Period”) • Vikør, <i>Between God and the Sultan</i> , pp. 20-30 (“2. From Practice to Method”); pp. 89-113 (“6. The Four Schools of Law”); pp. 114-129 (“7. Law Beyond the Four Schools”) |
| 06 | 24 Jan (W) | Later Legal History, the Madhhabs, and the Genres of Legal Literature Required Readings: • Vikør, <i>Between God and the Sultan</i> , pp. 136-137 (part of “Law Beyond the Four Schools” [Shī'i law under Safavids and later]) |

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| | | <ul style="list-style-type: none"> • Johansen, “Islamic Law,” (3. Genres of Legal Literature), <i>The Oxford International Encyclopedia of Legal History</i> • Vikør, <i>Between God and the Sultan</i>, pp. 161-167 (genres part of “8. The Court and the Law: the Muftīs and Legal Development”) <p>First Group-Teach Readings (each student will have been pre-assigned one of four readings, which they will summarize for their group in this class)</p> <p>Reading A.</p> <ul style="list-style-type: none"> • Schacht and Heffening, “Ḥanafīyya,” EI2; • Turkī, “Zāhiriyya,” EI2 <p>Reading B.</p> <ul style="list-style-type: none"> • Cottart, “Mālikiyya,” EI2 <p>Reading C.</p> <ul style="list-style-type: none"> • Chaumont, “Shāfi‘iyya,” EI2 <p>Reading D.</p> <ul style="list-style-type: none"> • Laoust, “Ḥanābila,” EI2 |
| 07 | 26 Jan (F) | <p>Legal Theory I: History</p> <p>Required Readings:</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharī‘a</i>, pp. 72-78 (section 1 of “2. Legal Theory: epistemology, language and legal reasoning”) • Hallaq, <i>Sharī‘a</i>, pp. 113-124 (“2.9 Twelver Shī‘ite Legal Theory”) • Vikør, <i>Between God and the Sultan</i>, pp. 129-135 (part of “Law Beyond the Four Schools”) |
| 08 | 31 Jan (W) | <p>Legal Theory II: Epistemology, Scriptural Hermeneutics, and Consensus</p> <p>Required Readings:</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharī‘a</i>, pp. 78-100 (sections 2-6 of “2. Legal Theory: epistemology, language and legal reasoning”) • Vikør, <i>Between God and the Sultan</i>, pp. 31-52, 73-88 (“3. The Koran and Sunna as Sources,” and “5. Getting Social Sanction: Ijmā‘ and Authorization”) |
| 09 | 02 Feb (F) | <p>Legal Theory III: Legal Reasoning, Qiyās, and Ijtihād</p> <p>Required Readings:</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharī‘a</i>, pp. 100-113 (sections 7-8 of “2. Legal Theory: epistemology, language and legal reasoning”) • Vikør, <i>Between God and the Sultan</i>, pp. 53-72 (“4. Elaborating the Sources: Qiyās and Ijtihād”) |
| 10 | 07 Feb (W) | <p>Juridical Dialectic: Theories and Practices</p> <p>Required Readings:</p> <ul style="list-style-type: none"> • Young, “Dialectic in the Religious Sciences,” EI3 |
| 11 | 09 Feb (F) | <p>Legal Change and Legal Education</p> <p>Required Readings:</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharī‘a</i>, pp. 125-58 (“3. Legal Education and the Politics of Law”) • Hallaq, <i>Sharī‘a</i>, pp. 176-183 (“4.4 The jurisconsult (muftī) and the author-jurist (muṣannif): society and legal change”) |

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| | | <ul style="list-style-type: none"> • Vikør, <i>Between God and the Sultan</i>, pp. 140-161 (main part of “8. The Court and the Law: the Muftīs and Legal Development”) |
| <p>Tuesday 13 February, 10:00 pm: research proposal due (via email attachment: “last name, first name res prop.pdf”)</p> | | |
| 12 | 14 Feb (W) | <p>The Qāḍī, the Muftī, and the Courts</p> <p>Required Readings:</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharīʿa</i>, pp. 159-76 (“4. Law and Society” [4.1 “Introduction”, 4.2 “Mediation and Arbitration”, 4.3 “The Qāḍī and his Court”]) • Vikør, <i>Between God and the Sultan</i>, pp. 168-84 (“9. The Court and its Judge: The Role of the Qāḍī”) |
| 13 | 16 Feb (F) | <p>The Courts, the Premodern Islamic Polity, and the Circle of Justice</p> <p>Required Readings:</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharīʿa</i>, pp. 197-221 (“5. The Circle of Justice and later dynasties”) • Vikør, <i>Between God and the Sultan</i>, pp. 185-205 (“10. The Court and the State”) <p>NB: take-home midterm will be handed out and posted on MyCourses on this day.</p> |
| 14 | 21 Feb (W) | <p>Topics in Substantive Law I</p> <p>Required Readings:</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharīʿa</i>, pp. 551-555 (“Appendix A: Contents of substantive legal works”) • Vikør, <i>Between God and the Sultan</i>, pp. 137-139 (part of “Law Beyond the Four Schools”) <p>Second Group-Teach Readings (each student will have been pre-assigned one of five readings, which they will summarize for their group in this class)</p> <p>Reading A.</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharīʿa</i>, pp. 225-238 (“6. The legal pillars of religion”) <p>Reading B.</p> <ul style="list-style-type: none"> • Vikør, <i>Between God and the Sultan</i>, pp. 326-328, 332-344 (most of “16. Economy, taxes, and property”) • Hallaq, <i>Sharīʿa</i>, pp. 142-146 (<i>waqf</i> treated in “Legal Education and the Politics of Law”) <p>Reading C.</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharīʿa</i>, pp. 239-256 (sections 1-4 of “7. Contracts and other obligations”) <p>Reading D.</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharīʿa</i>, pp. 256-270 (sections 5-14 of “7. Contracts and other obligations”) <p>Reading E.</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharīʿa</i>, pp. 296-307 (“9. Property and ownership”) |
| 15 | 23 Feb (F) | <p>Historical Legal Systems and the Practice of Islamic Law</p> <p>Required Readings:</p> <ul style="list-style-type: none"> • Vikør, <i>Between God and the Sultan</i>, pp. 206-221 (“11. Law and Courts in the Ottoman Empire”) • Coulson, <i>Conflicts and Tensions in Islamic Jurisprudence</i>, pp. 58-76 (“Idealism and Realism”) |
| <p>Saturday 24 February, 10:00 pm: take-home midterm due (via email attachment: “last name, first name midterm.pdf”)</p> | | |

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| 16 | 28 Feb (W) | <p>Topics in Substantive Law II</p> <p>Required Readings:</p> <ul style="list-style-type: none"> • Vikør, <i>Between God and the Sultan</i>, pp. 280-321 (“14. Criminal Law” and part of “15. Family Law”) <p>Third Group-Teach Readings (each student will have been pre-assigned one of five readings, which they will summarize for their group in this class)</p> <p>Reading A.</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharīʿa</i>, pp. 271-283 (sections 1-2 of “8. Family law and succession”) <p>Reading B.</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharīʿa</i>, pp. 283-295 (sections 3-6 of “8. Family law and succession”) <p>Reading C.</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharīʿa</i>, pp. 308-323 (“10. Offenses”) <p>Reading D.</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharīʿa</i>, pp. 324-341 (“11. Jihād”) <p>Reading E.</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharīʿa</i>, pp. 342-353 (“12. Courts of justice, suits and evidence”) |
| 17 | 01 Mar (F) | <p>Women and Islamic Law</p> <p>Required Readings:</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharīʿa</i>, pp. 184-196 (4.5 “Women, society and legal practice”) • Mir-Hosseini, “Islamic law and the question of gender equality,” <i>Routledge Handbook of Islamic Law</i> |
| 04-08 March: Reading Break | | |
| 18 | 13 Mar (W) | <p>Modernity and Islamic Law: Prefatory Discussions</p> <p>Required Readings:</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharīʿa</i>, pp. 357-370 (“13. The conceptual framework: an introduction”) • Vikør, <i>Between God and the Sultan</i>, pp. 222-229 (part of “12. Islamic Law in the Modern Period”) |
| 19 | 15 Mar (F) | <p>Sharīʿa and Colonization I</p> <p>Required Readings:</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharīʿa</i>, pp. 371-395 (“14. The jural colonization of India and Southeast Asia”) • Hallaq, <i>Sharīʿa</i>, pp. 432-442 (sections 6-7 of “15. Hegemonic modernity: the Middle East and North Africa during the nineteenth and early twentieth centuries”) • Vikør, <i>Between God and the Sultan</i>, pp. 242-248 (parts of “12. Islamic Law in the Modern Period”) |
| 20 | 20 Mar (W) | <p>Sharīʿa and Colonization II</p> <p>Required Readings:</p> <ul style="list-style-type: none"> • Hallaq, <i>Sharīʿa</i>, pp. 396-432 (sections 1-5 of “15. Hegemonic modernity: the Middle East and North Africa during the nineteenth and early twentieth centuries”) • Vikør, <i>Between God and the Sultan</i>, pp. 229-239 (parts of “12. Islamic Law in the Modern Period”) |
| 21 | 22 Mar (F) | <p>Sharīʿa in Muslim-Majority Nation-States</p> <p>NB: THIS CLASS WILL NOT BE IN-PERSON. FORMAT TBD.</p> <p>Required Readings:</p> |

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| | | <ul style="list-style-type: none"> • Hallaq, <i>Sharī'a</i>, pp. 443-499 (“16. Modernizing the law in the age of nation states”) • Vikør, <i>Between God and the Sultan</i>, pp. 239-242, 248-279 (parts of “12. Islamic Law in the Modern Period” and “13. Implementing the Sharī'a”) |
| 22 | 27 Mar (W) | Sharī'a in Muslim-Minority Nation-States Required Readings: <ul style="list-style-type: none"> • Rohe, “Sharia and the Muslim Diaspora,” <i>Ashgate Research Companion to Islamic Law</i> |
| 29 March: Good Friday (no class) | | |
| 23 | 03 Apr (W) | Topics in modern legal change I: legal theory and the politics of reform Required Readings: <ul style="list-style-type: none"> • Hallaq, <i>Sharī'a</i>, pp. 500-550 (“17. In search of a legal methodology” and “18. Repercussions: concluding notes”) |
| 24 | 05 Apr (F) | Topics in modern legal change II: political and institutional transformations Required Readings: <ul style="list-style-type: none"> • March, “Modern Islamic constitutional theory,” <i>Routledge Handbook of Islamic Law</i> • Vikør, <i>Between God and the Sultan</i>, pp. 328-332 (“Islamic banking” in “16. Economy, taxes, and property”) |
| 25 | 10 Apr (W) | Topics in modern legal change III: transformative dynamics in the domains of family law and human rights Required Readings: <ul style="list-style-type: none"> • Vikør, <i>Between God and the Sultan</i>, pp. 321-325 (“modern adaptations” in “15. Family Law”) • Dunn, “Islamic Law and Human Rights,” <i>Oxford Handbook of Islamic Law</i> |
| 26 | 12 Apr (F) | Topics in modern legal change IV: transformative dynamics in the domain of medical ethics Required Readings: <ul style="list-style-type: none"> • Shabana, “Islamic law and bioethics,” <i>Routledge Handbook of Islamic Law</i> • Krawietz, “Sharia and Medical Ethics,” <i>Ashgate Research Companion to Islamic Law</i> <p>NB: take-home final exam will be handed out and posted on MyCourses on this day.</p> |
| Friday 12 April, 10:00 pm: research essay due (via email attachment: “last name, first name res essay.pdf”) | | |
| 15-30 April: Exam Period | | |
| Sunday 21 April, 10:00 pm: final exam due (via email attachment: “last name, first name final exam.pdf”) | | |

McGill Policy Statements

Indigenous Peoples' Land Acknowledgment:

“McGill University is on land which has long served as a site of meeting and exchange amongst Indigenous peoples, including the Haudenosaunee and Anishinabeg nations. We acknowledge and thank the diverse Indigenous people whose footsteps have marked this territory on which peoples of the world now gather.”

« L'Université McGill est sur un emplacement qui a longtemps servi de lieu de rencontre et d'échange entre les peuples autochtones, y compris les nations Haudenosaunee et Anishinabeg. Nous reconnaissons et remercions les divers peuples autochtones dont les pas ont marqué ce territoire sur lequel les peuples du monde entier se réunissent maintenant. »

Language of Submission:

“In accord with McGill University's Charter of Students' Rights, students in this course have the right to submit in English or in French any written work that is to be graded. This does not apply to courses in which acquiring proficiency in a language is one of the objectives.”

« Conformément à la Charte des droits de l'étudiant de l'Université McGill, chaque étudiant a le droit de soumettre en français ou en anglais tout travail écrit devant être noté (sauf dans le cas des cours dont l'un des objets est la maîtrise d'une langue). »

Academic Integrity:

“McGill University values academic integrity. Therefore, all students must understand the meaning and consequences of cheating, plagiarism and other academic offences under the Code of Student Conduct and Disciplinary Procedures (see www.mcgill.ca/students/srr/honest/ for more information).”

« L'université McGill attache une haute importance à l'honnêteté académique. Il incombe par conséquent à tous les étudiants de comprendre ce que l'on entend par tricherie, plagiat et autres infractions académiques, ainsi que les conséquences que peuvent avoir de telles actions, selon le Code de conduite de l'étudiant et des procédures disciplinaires (pour de plus amples renseignements, veuillez consulter le site www.mcgill.ca/students/srr/honest/). »

Respect:

The University is committed to maintaining teaching and learning spaces that are respectful and inclusive for all. To this end, offensive, violent, or harmful language arising in course contexts may be cause for disciplinary action.

Inclusive learning environment:

“As the instructor of this course, I endeavor to provide an inclusive learning environment. However, if you experience barriers to learning in this course, do not hesitate to discuss them with me and/or Student Accessibility and Achievement (<https://www.mcgill.ca/access-achieve/>).”

Extraordinary circumstances:

“In the event of extraordinary circumstances beyond the University's control, the content and/or evaluation scheme in this course is subject to change.”