

COUNCIL ON ISLAMIC EDUCATION

Lessons for *Frontline: Muslims*

The Principles and Practice of Islamic Law

Prepared by: Susan Douglass, Principal Researcher and Editor
and Nadia Pervez, Curriculum Specialist

Overview:

The purpose of this lesson is to familiarize students with the basic outlines of Islamic law, to explain its religious and historical importance in Muslim societies, and to describe the elements of the Shari'ah system of reaching a decision and the role of the Muslim jurist in the process and outcome.

Objectives:

The student will:

- identify Islamic law as a religious and historical system of determining right action for Muslims
- identify the primary sources of Islamic law as the Qur'an and Sunnah
- describe several major principles involved in reaching an Islamic legal decision
- define terms related to Islamic law, such as Shari'ah, fiqh, ijtihad, and fatwa
- explain the qualifications of a Muslim jurist in terms of his or her authority, personal and social responsibility, and the branches of knowledge they are required to master
- explain the appearance and significance of the major schools of law in Muslim society

Procedure:

1. As a pre-lesson activity, ask students what they know about religious and other legal systems in various faiths and countries. Students may mention Roman law, Justinian law, Napoleonic Law, English Common Law, as well as Canon Law and Jewish law. Ask them what they know about Islamic law, especially any terminology that they may have heard, such as Shari'ah, fatwa, or mufti. Ask who they think makes Islamic law, and what authority those persons have. The purpose of this pre-lesson activity is to find out what background knowledge, prejudices, or impressions they bring to the study of this complex subject. It might be useful to ask if anyone has a relative in the law or studying law, and what impressions they have about the difficulty of the subject.
2. Read **Handout 1a: What Is Islamic Law and How Does It Work?** Have students answer the questions at the end of the reading, then discuss them as a class.
3. Use **Handout 1b: Terminology of Islamic Law** to review the vocabulary discussed in the reading, matching the phrases with their meanings and placing them in the correct categories.
4. Distribute **Handout 1c: How Does a Muslim Jurist Reach an Opinion?** and follow the directions on the handout. The purpose of the chart is to reinforce the information on Islamic law in terms of the sources, the jurist, the process and the product, and to identify these parts.

Sources:

Irshad Abdal Haqq. "Islamic Law: An Overview of Its Origin and Elements," *The Journal of Islamic Law and Culture*, 7:1 (Spring/Summer 2002), pp. 27-82.

Khalid Blankinship, "Politics, Law and the Military" in Douglass, S.L. ed., *Rise and Spread of Islam: 622-1500 CE*. Farmington, MA: Gale, 2002.

N. J. Coulson. *A History of Islamic Law*. Edinburgh: Edinburgh University Press, 1964.

Vincent Cornell, "Religion and Philosophy," in Douglass, S.L. ed., *Rise and Spread of Islam: 622-1500 CE*. Farmington, MA: Gale, 2002.

Handout 1a: What is Islamic Law and How Does It Work?

Shari’ah, or Islamic law, is the “centerpiece and backbone of the religion of Islam.”¹ It is based on the Qur’an, which Muslims believe is the revealed book of God given to Muhammad over 23 years, ending in 632 CE, and the Sunnah, or example of the Prophet Muhammad, whom Muslims believe was divinely guided. The Hadith, which are sayings of Muhammad and provide information about the Sunnah, were recorded in the two centuries after Muhammad’s death in authenticated hadith collections. Islamic law prescribes Muslim behavior in every aspect of life from private matters between the individual and God to relationships with others from the family or the widest community. The Shari’ah contains categories and subjects of Islamic law called the branches of *fiqh* (literally, “understanding”). They include Islamic worship, Family relations, Inheritance, Commerce, Property law, Civil (tort) law, Criminal law, Administration, Taxation, Constitution, International Relations, War and Ethics, and other categories.

What are a Muslim jurist’s qualifications and authority? Muslim jurists have been known by different titles. *Fuqaha* are the class of Muslim scholars who dealt in theoretical Islamic law, or *fiqh*. As for practicing or implementing the law, a judge (*qadi*) serves in a court, while a *mufti* gives legal responses (*fatwa*) to people’s questions.

The basis for respecting a judgment in Islamic law is the jurist’s ability to carefully apply knowledge to theory and practice. In order to be qualified to interpret the sources of law, a jurist had to master many branches of knowledge. A Muslim jurist had to know the Qur’an and the hadith, and how to interpret these sources. This required a thorough knowledge of the Arabic language and its grammar. Other disciplines such as logic, history and general knowledge as well as specialized areas like commerce or international relations might be important in deciding specific cases. Knowing the history of the law and the schools of law, their differences and legal precedents (decisions of other jurists in the past) are just a few of the many areas that a jurist had to know about.

Muslim jurists were scholars with specialized professional training, but their authority was very limited. There is no clergy or priesthood in Islam, and no central authority hands out final judgments. The source of a Muslim jurist’s authority comes only from their recognized knowledge—not from the government, not from a central religious authority, and certainly not from a claim to divine right. Any Muslim consulting a jurist on some matter is responsible for following his or her own conscience in deciding on a course of action based on the jurist’s advice. The jurist is also responsible to his own conscience and bears a large responsibility because people respect his knowledge. Of course, a Muslim judge appointed to a position in an official court of law does bear the authority of office. Such a judge makes legally binding decisions, which might be appealed to higher courts. Such judges’ rulings, however, are not the foundation of Islamic law, but only its application to specific cases.

¹ Blankinship, “Politics, Law and the Military” in Douglass, S.L. ed., *Rise and Spread of Islam: 622-1500 CE* (Farmington, MA: Gale, 2002), p. 209.

How does a jurist reach a decision? An Islamic legal decision is called a *hukm*, or ruling, such as a judge would make. A jurist's response to a question from an individual or group is called a *fatwa* (legal opinion). In order to reach a decision, the jurist goes through a careful process of reasoning. The decision places a given course of action on a spectrum ranging from forbidden to obligatory, as shown in the chart below.

Figure 1: Spectrum for judging actions in Islamic law

JUDGMENT	forbidden	discouraged	permitted	encouraged	obligatory
EXAMPLE	murder	wasting resources	surfing the internet	giving charity	praying five times daily

Sources of law. A branch of religious knowledge called *fiqh*, or understanding, is the theoretical foundation of Shari'ah. *Usul al-fiqh*, or sources of law, define the principles and methods on which it is based. The recognized primary sources of Islamic law are the Qur'an and Sunnah. In matters that were not clearly spelled out in these sources, Muslim jurists developed other methods of finding a solution to a question. The first is *ijma'* or unanimous consensus among jurists, and the second is *qiyas*, or decision by analogy.

Unanimous consensus means that after making public a judgment about a matter of law, jurists found general agreement with it, and no jurist made sound legal arguments against the ruling. Unanimous consensus belonged mainly to the time when jurists and knowledgeable people were known to one another in the growing Muslim territories. The principle of *ijma'* is being debated today. It might apply to longstanding agreement of scholars over time, or take on new importance with the possibilities offered by mass communication.

Analogy means using logic and reasoning to apply a known law to a new situation not covered in the original law. As an example of analogy, Islam forbids Muslims to drink wine. Jurists have applied this prohibition by making an analogy to other intoxicating beverages like whiskey and beer, as well as drugs such as opium. They stated that the Islamic sources gave as the reason for prohibiting wine that it intoxicates. Thus, other intoxicating substances were also prohibited by analogy.

If the answer cannot be found by making an analogy from a known case, then other categories can be applied to select an acceptable solution or judgment. *Istihsan* means deciding in favor of the public interest in a matter that is not otherwise prohibited. A common example of this is found in many cultures, when the right to use private property as the owner wishes are modified by the need to protect the natural environment.

Another source is *'urf*, or custom. Jurists placed a value on preserving what is familiar to people in a certain place, based on established tradition. For example, people in different geographic areas had long-standing customs about sharing irrigation water (some shared based on amount of time allowed to irrigate, while others shared based on amount of water). Arab jurists tried to respect these systems in their judgments rather than imposing the system that was customary in another place and time. Respect for custom became an important source of diversity in the application of Islamic law over time and across geographic space, respecting ways that people did things according to their traditions as long as they did not violate Islamic principles or standards.

Principles and methods. This system of logical application of the law based on the sources required the jurist to exercise individual reasoning, called *ijtihad*. Individual reasoning or effort is the basis of the process of analogy, but it is required to reach any judgment in Islamic law. Two important principles guided jurists' use of evidence in making *ijtihad*. One is called *istihab*, meaning continuity. It means that "a situation or thing known to exist continues to exist until its opposite is proven." The most famous example of this is the principle of Islamic law that a person is innocent until proven guilty.² Another principle is called *ibahah*, meaning that anything is permitted if it is not expressly prohibited. This is quite different from assuming the reverse, as only a few prohibitions are actually mentioned in the Qur'an. Another principle of evidence called *bayina* is that a plaintiff or accuser bears the burden of proof. If one person accused another of owing money, for example, it was up to the plaintiff to prove the debt, instead of the defendant having to prove that he or she did not owe any money. An I.O.U. would be evidence, and a cancelled check or witness statement by the defendant would prove the debt was paid. Such principles are common to many modern systems of law.

Major schools of Islamic law, or *madhhabs*, had formed among Muslim communities by about 1100 CE. These schools came about as Islam spread into new lands, facing new cultures and languages, new problems, and challenging questions that had not appeared during the time of Muhammad. The Qur'an contains all of the principles of Islamic law, but few legal injunctions, or commands. Prophet Muhammad clarified and exemplified these principles and guidelines, and set precedents for their practice. After his death, his companions continued according to his precedent, and consulted closely on new issues. A century later, all of the original companions had died. There was a need to develop systematic methods and processes to reach judgments, and to disseminate this knowledge to others. Over about three hundred years, the classical schools of law developed out of the work of a few pioneers and their followers. They developed the disciplines for study, the theories, principles and methods. They also built up a huge number of decisions and discussions on specific issues. The *madhhabs*, or "ways of going" differ mainly in their approaches to handling the sources of law. They were named after the pioneering jurists of early Muslim history: the Hanafi (after Abu Hanifa, 702-767 CE), the Maliki (after Malik ibn Anas, 717-801 CE), the Shafii (after Muhammad Idris al-Shafi, 769-820 CE), and the Hanbali (after Ahmed ibn Hanbal 778-855 CE), and the Jaafari or Imami (after Abu Jafar Muhammad al-Baqir and Jafar Sadiq, 702-765 CE). Over the centuries, these schools came to dominate in certain Muslim regions.³ These schools all agree on the sources of Islamic law, but they differ in the way they apply principles of reaching decisions.

² Irshad Abdal-Haqq, "Islamic Law: An Overview of Its Origin and Elements," *Journal of Islamic Law and Culture* (7:1), p. 58.

³ Abdal Haqq., pp. 67-72.

Questions for Study and Discussion

1. Why are the Qur'an and Sunnah considered by Muslims to be the primary sources of Islamic law?
2. Define the terms *fiqh*, *ijtihad*, and *qiyas*, and explain their roles in the system of Islamic law.
3. What are the possibilities for judging an action or behavior according to the Shari'ah? Is the decision just black and white, and if not, what are the shades of gray?
4. What was the importance of considering the role of custom and public interest in reaching a decision according to the Muslim jurists? What was its historical importance for Muslims?
5. Compare the principles of *istihab* (continuity) and *ibahah* (assumption of permission) to principles and concepts in U.S. Constitutional law. (Research may be helpful if you are not familiar with civics and government)
6. What are the fields of knowledge required for a qualified Muslim jurist. How might you divide these fields of knowledge into several categories?
7. What was the source of a Muslim jurist's authority in making a decision? What were the limits on a jurist's authority, and what responsibilities did jurists carry in Muslim society?

Handout 1b: Terminology of Islamic Law

Using the reading in Handout 1a, match the following list of definitions with their meanings. Then, place the terms in categories on the chart at the bottom of the page by putting the correct numbers from the word list in the boxes under each category.

<ol style="list-style-type: none"> 1. Qur'an = 2. Sunnah = 3. Shari'ah = 4. fiqh = 5. ijtihad = 6. tafsir = 7. usul al fiqh = 8. ijma' = 9. qiyas = 10. istihsan = 11. 'urf = 12. fatwa = 13. taqlid = 14. istihab = 15. ibahah = 16. bayinah = 17. 'alim (pl. ulama') = 18. mufti = faqih (pl. fuqaha) = 19. qadi = 20. isnad = h 21. ra'y = 	<ol style="list-style-type: none"> a. analogy b. anything is permitted if it is not expressly prohibited c. a Muslim scholar, "one who knows" d. chain of people who reported a hadith e. burden of proof is on the plaintiff or accuser, not the defendant f. custom or habit g. example of Prophet Muhammad h. explanation of Qur'an, or exegesis i. person who is qualified to make a fatwa j. private opinion or judgment k. holy book of Islam, which Muslims believe is the revealed book of God l. imitation or following precedents of the schools of law m. Islamic legal decision or solution to a problem n. <i>path to be followed</i>, or Islamic law o. judge in a court p. principle of evidence in which a situation or thing known to exist continues to exist until its opposite is proven q. process of independent reasoning, meaning "to exert oneself" (from the same word root as <i>jihad</i>) r. public interest s. scholar qualified in Islamic legal theory t. sources of Islamic law u. unanimous consensus or agreement v. <i>understanding</i>, or Muslim jurisprudence
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Put the numbers of the terms above into boxes under the correct category they belong to in this chart:

sources of knowledge in Islam	terms for a Muslim jurist	sources & methods in Islamic law	principles of Islamic law

KEY: Terminology of Islamic Law

Sources of Knowledge in Islam

Qur'an = the holy book of Islam, which Muslims believe is the revealed book of God
Sunnah, or example of Prophet Muhammad

Shari'ah = Islamic law, meaning "the path to be followed"

fiqh = Islamic or Muslim jurisprudence, from the root meaning "understanding"

Terms for a Muslim Jurist

`alim (pl. ulama') = a Muslim scholar, "one who knows"

mufti = person who is qualified to make a fatwa

faqih (pl. fuqaha) = scholar qualified in Islamic legal theory

qadi = judge in a court

Sources and Methods in Islamic law

ijtihad = the process of independent reasoning, meaning "to exert oneself" (from the same word root as *jihad*)

tafsir = explanation of Qur'an, or exegesis

usul al fiqh = sources of Islamic law

ijma' = unanimous consensus or agreement

qiyas = analogy

istihsan = public interest

`urf = custom or habit

fatwa = an Islamic legal decision or solution to a problem

isnad = chain of people who reported a hadith

ra'y = private opinion or judgement

Some Principles of Islamic Jurisprudence

istihab = a principle of evidence in which a situation or thing known to exist continues to exist until its opposite is proven, such as "innocent until proven guilty"

ibahah = anything is permitted if it is not expressly prohibited

bayinah = the burden of proof is on the accuser or the plaintiff, not the defendant

Handout 1c: How Does a Muslim Jurist Reach an Opinion?

The chart shows the process of reaching a decision in Islamic law. The idea that all activities can be subjected to the guidance of Shari’ah is based on two beliefs:

1. Commandments or laws are given by God for man and creation to follow. Knowledge of God’s commands is the body of ethical and legal knowledge
2. God’s commandments are rational, based on purposes and values such as natural laws and human ethical and spiritual being.

The person making the decision begins with the source of Islamic knowledge, the proof (or evidence), and goes through the steps of the process to reach the product of the effort (decision), which might be applied in a court or undertaken by a person in their life.

Using highlighter pens, color each of the following steps on the flow chart in a different color: (1) the source of knowledge for the decision, (2) the evidence or proof, (3) the judge or person deciding, (4) the process for deciding, and (5) the product (decision).

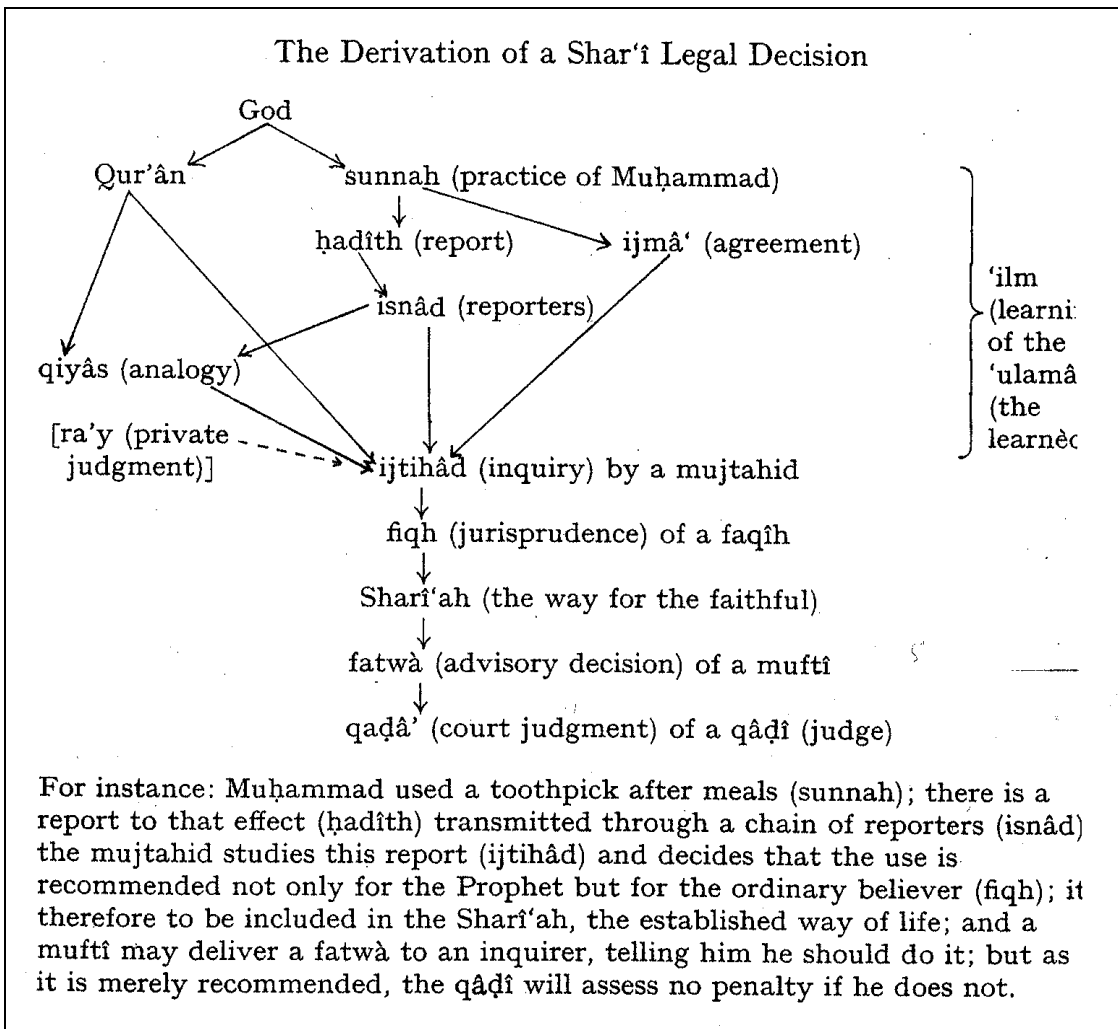


Chart reproduced by permission from Marshall G. S. Hodgson, *The Venture of Islam: History and Conscience in a World Civilization*, Volume 1 (Chicago: Chicago University Press, 1974), p. 338.