



**NATIONAL OPEN UNIVERSITY OF NIGERIA**

SCHOOL OF LAW

COURSE CODE: LAW 414

COURSE TITLE: THE ISLAMIC LAW IN NIGERIA 11

**COURSE CODE:** LAW 414

**COURSE TITLE:** The Islamic Law in Nigeria II

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# COURSE GUIDE

## INTRODUCTION

### THE ISLAMIC LAW IN NIGERIA II

This course is very wide and elaborate that cannot be covered within the time frame allotted for it. It is for this reason the course have been deliberately compressed (without sacrificing the meat in the pie) in order to ensure you are able to cover it within the time allotted to it.

You will find some useful self-assessment exercises and questions, and tutor-marked assignment/questions in the Course Material. It is advisable that you should attempt them as strictly as possible under real examination conditions. One may caution that many students who fail examination on Islamic law do so because they did not looked at it from the point of view of a legal system but rather a religion imposed especially on non-Muslims.

Also, there are the other students who viewed it as a religious knowledge that has been part of them and therefore do not bother or give it the concentration it deserves. Also, the students generally answer Islamic law questions out of “Context”.

You will also realize that Islamic law is one course in which you will hardly find a book of reference that covers all that you need to cover for the course. You will find your self-making reference to as many books as possible so as to effectively cover and do justice to the course. It will interest you to see that a whole book covers just a unit of the course e.g. Qadhi, A.A.V (1999); *An Introduction to the Sciences of the Qur'an*; Al-Hidaayah Publishing and Distribution, Birmingham, U.K; or Azami, M.M (1997); *Studies in Hadith Methodology and Literature*; American Trust Publications, Indianapolis, Indiana e.t.c.

### **What You Will Learn In This Course**

This course is about the Islamic legal system. It is a 400 level course for students who are registered for Bachelor of Law Degree program. It is a useful study to any one who does not intend to complete the degree course but wants to learn about Islamic jurisprudence. This course is particularly concerned with Islamic law as a component of Nigeria Legal System. It is a second semester paper, namely: LAW 414. It is a 4-credit unit course implying a minimum study of four hours per week for the duration of the semester.

In the course, LAW 414, we shall discuss the custom and usages of pre-Islamic Arabia as forming an integral part of the history of the Islamic Legal System, *usul al-fiqh*, *shari'ah* or Islamic law, Sources, Nature and Characteristics of Islamic law, the stages through which Islamic law passes through and persons who administer and enforce Islamic Law. Attempts have been made to define each legal or technical term we come across. You should familiarize yourself with the terms, as you are likely to come across them frequently as the course progresses. It may be baffling that because of the dynamic nature of 'Islamic law', there are different or divergent views of jurists on diverse issues that come within the purview of *Ijtihad*.

Classes of Islamic Law are legion and few will be discussed in some detail. This will give you an added advantage of a better understanding of the functions of Islamic Law in the society, its prospects and dynamic nature.

### **Importance of Quranic Verses And Traditions (Sunnah or Hadith).**

This study guide, like any textbook on any aspect of Islamic Law, makes references to verses of the Holy Qur'an and Traditions of the Holy Prophet Muhammad (p.b.u.h).

It is an added advantage to be able to learn and quote the correct chapters and verses of the Holy Qur'an, Traditions or Hadiths of the Holy Prophet Muhammad (p.b.u.h.). Please note, that it is dangerous to give wrong chapters, verses or traditions. If you are sure of their correctness and exactness cite them. If you are not, it may suffice to give their gist. In that event, you may indicate the chapter, verse or tradition by saying that in a given chapter, verse or tradition and proceed to give its gist. It is also dangerous to refer to a verse of the Holy Qur'an as a Tradition, or a Tradition as a verse of the Holy Qur'an. Do not invent the Chapters, Verses, Traditions, but feel free to make illustrations of the point(s) as you wish.

### **Course Aims**

This Course aims at providing you with the basic knowledge and understanding of "Islamic law" or "Shariah" in relation to the Nigerian Legal System. The approach is to give a bird-eye view of the Islamic Legal System, followed by detailed study of each of its components beginning with "Usul", "Fiqh", "Usul al-Fiqh". You will learn in the Course, among other things, some definitions of legal or technical terms, Chapters and Verses of the Holy Qur'an, Sunnah, Hadith or Traditions of the Holy Prophet Muhammad (p.b.u.h), nature and characteristic features of Islamic Law among other things. In essence, the aims of the course include:

- Definition or description of "Shari'ah"
- Scope, nature and extent of Islamic Legal System.
- Development of Islamic Legal System since the time of Holy Prophet Muhammad (p.b.u.h).
- Sources of Islamic Law and its Classifications
- Emergence and Development of Schools of Jurisprudence or Law.
- Collection and Compilation of the Holy Qur'an on two different occasions.
- Collation and Compilation of Hadith.

- Role and Importance of Ijtihad
- Evolution and Development of Fiqh.

### **Course Objectives**

At the Completion of the Course, you should be able

- (i) To understand the nature and origin of Shari'ah.
- (ii) To appreciate the corroborative nature of the sources of Islamic Law.
- (iii) To understand the order of priority of the sources of Islamic Law.
- (iv) To appreciate the resultant effects of the two Compilations of the Holy Qur'an.
- (v) To identify the genuine Hadith from false or forged ones as a result of the Collation.
- (vi) To appreciate the differences among the schools of Jurisprudence or the Scholars as a result of the leverage in the exercise of Ijtihad.
- (vii) To appreciate the interdependence of all the sources (excepting the Holy Qur'an and Sunnah) to the exercise of Ijtihad.
- (viii) To point to the fact that Islamic Law through Ijtihad can adapt to modernity or change.
- (ix) To appreciate the numerous contributions of Scholars to the rich jurisprudence of Islamic Law.

### **Study Units**

There are twenty-eight study units in this course, as follows:

#### **Module I**

- Unit 1: Historical Background
- Unit 2: Introduction to Islamic Jurisprudence
- Unit 3: The Sources of Islamic Law
- Unit 4: The Nature and Characteristic Features of Islamic Law

#### **Module II**

- Unit 1: The Holy Qur'an

Unit 2: Sunnah — Traditions of the Holy Prophet (p.b.u.h)

Unit 3: Ijma — Consensus of opinion

Unit 4: Qiyas — Analogical Deductions

### **Module III**

Unit 1: Istihsan — Juristic Equity/Preference

Unit 2: Istislah or Maslahah Mursalah — Considerations of Public Interests or Extended Analogy

Unit 3: Istishab — Presumption of Continuity

Unit 4: Urf and Adat — Customs and Usages.

### **Module IV**

Unit 1: Sadd al-Dhara'i — Blocking the means (leading to an expected evil)

Unit 2: Qawl al-Sahabi – The Legal Opinion (Fatwa) of a Companion

Unit 3: Shar'i Man Qablana — The Laws of Previous Nations

Unit 4: The Concept of the Islamic State

### **Module V**

Unit 1: The Developmental Stages of Islamic Legal System

Unit 2: The Period of the Prophet Muhammad (p.b.u.h.)

Unit 3: The period of the 1<sup>st</sup> and 2<sup>nd</sup> Caliphs — Abubakar Abdallah and Umar Ibn al-Khattab

Unit 4: The Period of the 3<sup>rd</sup> and 4<sup>th</sup> Caliphs— Uthman Ibn Affan and Ali Ibn Abi Talib.

### **Module VI**

Unit 1: The Period of the Umayyad Caliphate

Unit 2: The Period of the Abbasid Caliphate

Unit 3: The Hadith Collection

Unit 4: The Four Sunni Schools of Thought or Jurisprudence.

### **Module VII**

Unit 1: Ijtihad — Mental Exertion or Legal Reasoning and Discretion

- Unit 2: Taqlid — Blind Following of the opinion of another without questioning the dalil (evidence) on which reliance is placed
- Unit 3: Re-opening the gate of Ijtihad and the exercise of Neo-Ijthad
- Unit 4: Contemporary works of Scholars like Ibn Taymiyyah, Ibn Qayyim etc.

### **Course Marking Scheme**

The following table lays out how the actual course marking is done.

Assessments	30% of Course Marks
Final Examination	70% of overall Course Marks
Total	100% of Course Marks.

It is instructive to learn to question, rather than taking things for granted; to speak or write and backed by textual authorities rather than speculating or merely applying common sense to essentially legal issues.

In Conclusion, we hope you will enjoy this course. Wish you good luck.