

## Chapter 1 : The history of an Islamic school of law : the early spread of Hanafism in SearchWorks catalog

*A history of the early Islamic law of property: reconstructing the legal development, 7th-9th centuries. [Hiroyuki Yanagihashi] -- "The present volume is dedicated to an analysis of positive solutions adopted by Muslim jurists active in the first centuries of Islam regarding civil liability, certain kinds of sale and the.*

In addition, Muslim citizens must adhere to Islamic law - Shariah. If a Muslim citizen commits a religious violation, he is judged according to Islamic law. A non-Muslim citizen is judged in religious issues by the laws of his own faith. Invoking Divine Principles and Human Reason Islam is a complete package " a complete message and way of life. Inevitably aspects of Islam examined separately, without a wide-ranging grasp of its totality, will be taken in a fragmented context, in which case aspects may take on the appearance of extremism. However, when viewed from a comprehensive perspective by any fair person, Islam will be found sensible in all its aspects and practices. Could it be otherwise for a faith that powers one of the greatest living civilizations " one whose dynamism and creativity supplied a foundation for countless aspects of modern society? Shariah is the Islamic Law " the disciplines and principles that govern the behavior of a Muslim individual towards his or herself, family, neighbors, community, city, nation and the Muslim polity as a whole, the Ummah. Similarly Shariah governs the interactions between communities, groups and social and economic organizations. Shariah establishes the criteria by which all social actions are classified, categorized and administered within the overall governance of the state. Shariah first establishes the patterns believers should follow in worshipping Allah: As Christopher Houston asserts: Whether this lack of institutional and conceptual closure ironically encourages modern Islamist states Saudi Arabia? The Shariah is never closed, for it is based not on a core of concepts, but rather on an ensemble of precepts which is at times general, at times precise, and which expands to include the totality of human acts through induction, analogy, extension, commentary, and interpretation. As such it covers the three essential needs of human life: These three aspects of the faith are known individually as: The first aspect, Islam, deals primarily with the physical aspects of the faith, such as its obligations, prohibitions and recommended actions. This is the part of the faith governed by Shariah " Islamic law. This aspect cannot however be implemented by itself, but must complement the other two. When the Prophet s taught Islam to his followers, he taught them all these three aspects at once, in a natural and holistic approach. Show mercy to those on earth, and the One above the heaven will show mercy to you. When society is informed by spiritual values, the purpose of Shariah, to bring out mercy to mankind, will be natural manifestation of those values. Without such values, essential in removing the psychological illnesses and the societal ailments which afflict people in difficult physical situations, man becomes nothing more than a political animal and law becomes a means and an end, in-and-of itself. Thus they see that the only approach to handling crime is to punish the perpetrator with a physical punishment. The adaptation of law according to time and circumstance is necessitated by changes in society, and the influx of various cultures and material conditions. Islam first came to one people with one lifestyle. As the religion spread and the borders of Muslim lands expanded, all of the different civilizations, each with their own codes of law, traditions and cultures, had to be incorporated into the Islamic polity. The primary sources of Islamic law are twofold: This dual identity of Islamic law is reflected in its two Arabic designations, Shariah and fiqh. Shariah bears a stronger affinity with revelation, whereas fiqh is mainly the product of human reason. The divine Shariah thus indicates the path to righteousness; reason discovers the Shariah and relates its general directives to the quest for finding solutions to particular or unprecedented issues. Amplifying on this he says: The rules of fiqh are thus concerned with the manifest aspects of individual conduct. The practicalities of conduct are evaluated on a scale of five values: Shariah "stands for the normative order that Muslims have developed as an Islamic way of life. A single person cannot carry out every aspect of Shariah by himself, but needs other individuals that act as well, and from whose combined actions the society benefits as a whole. It is impossible for a person to reach perfection, but Islamic Shariah shows that one can reach perfection. By bringing all the people together. The society as a whole produces perfection which the individual by himself or herself cannot do. Through individuals striving for perfection and their interactions with each other under the Shariah, the

entire society is refined. This principle may be most clearly exemplified in the pilgrimage. A form of worship mandated for each individual, for whoever can afford it at least once in life, it nevertheless engages the entirety of society to accomplish it and it cannot be performed except as a community holding a global perspective. People gather in one place from around the world to fulfill this Divine command at the individual level, and altogether are successful at a single moment in affecting global changes. Among these philosophical principles were justice, the existence of good and evil, and the relationship between human beings and the environment and his interactions with it, the most important of these being the freedom of choice. The leadership of Muslim scholars has shown the differences in their views: The precedents of the leading Sahaba Companions of the Prophet indicate, on the other hand, that they saw the Shariah not only as a set of rules but also as a system of values, where the specific rules were the tangible manifestations of those overriding values. As humanity expanded through the earth and inhabited all its areas, it resulted in the formation of different nations and cultures. We can categorize the approach of nations into two: Those who observe the highest level are divided into three categories: Shariah law aimed to protect five basic human interests: He also found that these basic interests were universally recognized among all other nations. He developed a model of Islamic law consisting of three concentric circles. The innermost circle deals with the essential laws concerning the five basic interests. The lessons of the classical age, to sum up, are: Such societies take only parts from the whole. Because of this, the society both progresses and suffers at the same time due to the imbalance in its observation of Shariah. Such was often the case in Islamic history, where Islamic Law was implemented at some levels of society and not others. Often the ruler was exempt from provisions of law by royal fiat or explicit decree. The legal history of medieval Islam is replete with examples of conflict between royal public law and the Shariah. The same is true of modern constitutionalism in the Middle East. Clashes between the jurisdiction of the state laws and the Shariah surfaced in a basic form in the constitutional debates in Iran in 1908, and since then in Pakistan and elsewhere. The adaptation of law according to time and circumstance was necessitated by changes in society, and the influx of various cultures and material conditions. This was not achieved overnight and took great foresight on the part of Muslim jurists. This is most elegantly displayed in the development of the law. The second revealed source of Shariah is the Sunnah, or practices, injunctions and recommendations of the Prophet s as well as actions of others he approved or did not rebuff. These had been developed by experts who examined the revelation and precedents as established by the Prophet and the early Muslim generations, and formed them into law. As scholars, they are able to look at the entire package of Islam and issue a ruling on the question at hand. These two groups must work together like two parties in which both seek the best understanding by applying their utmost efforts. The Center of Rulings and the mufti build the information model while the judge applies it to a particular case. A ruling by a mufti is not given force of law it is only a response to an issue and it is up to individuals to follow the ruling or not. It is essential to understand that no one can issue a ruling without qualification, and no one can issue a judgment without qualification. Since rulings have a tremendous impact on the life of society and ruling on the individual, it is essential that those issuing them have excellent moral character, and most importantly that they are qualified. Tell me what Allah has sent down for you of sustenance, then you make a part of it unlawful and a part lawful. Has Allah commanded you, or do you forge a lie against Allah? Otherwise one should remain silent for then one would be lying against Allah and against the religion. He must know the entire corpus of the Hadith of the Prophet s , both those which are authentic and those which are false. He must know the Arabic language of the time of the Prophet s with its grammar and eloquence as well as know the poetry of the Arabs. Additionally he must know the culture of the various peoples who live in each different nation of the community. If a person has all such attributes combined in himself, he may speak on what is permitted halal and what is forbidden haram. I was able to meet with one hundred and twenty of the Companions of the Prophet s. Every one of these companions was asked about specific Shariah issues, seeking a verdict, but they avoided rendering a decision instead pointing to another companion to issue the answer. They were afraid to give an answer that would be incorrect for which they would be responsible before Allah. Classical Shariah manuals are often divided into four parts: The scholars explain that the welfare of humans is based on the fulfillment of necessities, needs, and comforts. Necessities Necessities are matters

that worldly and religious life depend upon. Their omission leads to unbearable hardship in this life, or punishment in the next. There are five necessities: These ensure individual and social welfare in this life and the hereafter. The Shariah protects these necessities in two ways: To ensure the establishment of religion, Allah Most High has made belief and worship obligatory. To ensure its preservation, the rulings relating to the obligation of learning and conveying the religion were legislated. To ensure the preservation of human life, Allah Most high legislated for marriage, healthy eating and living, and forbid the taking of life and laid down punishments for doing so. Allah has permitted that sound intellect and knowledge be promoted, and forbidden that which corrupts or weakens it, such as alcohol and drugs. He has also imposed preventative punishments in order that people stay away from them, because a sound intellect is the basis of the moral responsibility that humans were given. Punitive laws were put in place in order to ensure the preservation of lineage and the continuation of human life. Allah has made it obligatory to support oneself and those one is responsible for, and placed laws to regulate the commerce and transactions between people, in order to ensure fair dealing, economic justice, and to prevent oppression and dispute. Needs and comforts are things people seek in order to ensure a good life, and avoid hardship, even though they are not essential. The mufti must not think that being quick to respond is due to his own ingenuity, rather he must take painstaking care and be tranquil as he approaches the problem, in order not to make the slightest error, for the lives of people are in the balance in such decisions. Similarly, he must await changes in circumstances, for conditions and situations might change and evidences might emerge that were not known at the outset of the issue before him.

**Chapter 2 : Women under the Law in Islamic Spain, sâ€™ - Armstrong Undergraduate Journal of History**

*A History of the Early Islamic Law of Property Reconstructing the Legal Development, 7th-9th Centuries Series: Studies in Islamic Law and Society, Volume:*

We speak here about what Islam teaches, and that is that standard according to which Muslims are to be judged. As such, my basis and source is the Quran--the words of Allah, and the sayings of the Prophet, his deeds and his confirmation. Islamic laws are derived from these sources. To facilitate our discussion we can discuss the position of women from a spiritual, economic, social, and political standpoint. From the spiritual aspect, there are seven points to remember: According to the Quran, men and women have the same spirit, there is no superiority in the spiritual sense between men and women. When God created him" or her in this sense. The Quran indicates again that one of the most honored positions of human, is that God created the human, and as I referred to Surah 17 earlier, it means both sexes, as His trustee and representative on earth. There are many references in the Quran that reaffirm this. Nowhere in the Quran do we find any trace of any notion of blaming Eve for the first mistake or for eating from the forbidden tree. Nowhere, even though the Quran speaks about Adam, Eve, and the forbidden tree, but in a totally different spirit. The story is narrated in 7: Nowhere in the Quran does it say woman is to be blamed for the fall of man. Furthermore, when the Quran speaks about the suffering of women during the period of pregnancy and childbirth, nowhere does it connect it with the concept of original sin, because there is no concept of original sin in Islam. The suffering is presented not as a reason to remind woman of the fall of man, but as a reason to adore and love woman or the mother. In the Quran, especially I must caution you that there are some mistaken translations, but if you go to the original Arabic, there is no question of gender being involved. In terms of moral, spiritual duties, acts of worship, the requirements of men and women are the same, except in some cases when women have certain concessions because of their feminine nature, or their health or the health of their babies. The Quran explicitly, in more than one verse, 3: In the area of economic rights, we have to remember that in Europe until the 19th century, women did not have the right to own their own property. When they were married, either it would transfer to the husband or she would not be able to dispense of it without permission of her husband. Thirdly, when it comes to financial security, Islamic law is more tilted in many respects towards women. These are seven examples: During the period of engagement, a woman is to be on the receiving side of gifts. He is supposed to pay for a marital gift. The Quran called it a gift, and it is exclusively the right of the woman. If the woman happened to own any property prior to marriage, she retains that property after marriage. It remains under her control. Also, in most Muslim countries, the woman keeps her own last name, and her own identity. The full maintenance and support of a married woman is the entire responsibility of her husband, even though she might be richer than he is. In return for these listed securities, it is clear why the Islamic laws pertaining to inheritance give men a higher share. From the social standpoint, as a daughter we find that credit goes to Islam for stopping the barbaric practice of pre-Islamic Arabs of female infanticide. These ignorant people used to bury female daughters alive. The Quran forbade the practice, making it a crime. Surah 81 Additionally, the Quran condemned the chauvinistic attitudes of some people who used to greet the birth of a boy with gladness, but sadness in the case of a girl. The duty, not the right, the duty of education, as the Prophet said, is a duty on every Muslim, male and female. As far as treatment of daughters is concerned, Prophet Muhammad peace and blessings be upon him said, "Anyone who has two daughters, and did not bury them, did not insult them and brought them up properly, he and I will be like this," holding his two fingers close together. Another version adds, "And also did not favor his sons over daughters. A companion was sitting with him. He kissed his son and put him on his lap. Then his daughter came, and he just sat her by his side. The Prophet told the man, "You did not do Justice," meaning he should have treated the daughter equally, kissed her and put her in his lap also. From the marital standpoint, the Quran clearly indicates in Surahs Verily in that are signs for those who reflect. Secondly, the approval and consent of the girl to marriage is a prerequisite for the validity of marriage in Islam. She has the right to say yes or no. They might not be identical duties, but the totality of rights and responsibilities are balanced. The same Surah speaks about divorce, about consultation between

husband and wife, even in the case of divorce. Some of these measures are done privately between husband and wife. Some of them might appear harsh, but there are qualifications to restrict excessive or abusive use of these measures. These measures are considered an attempt to save a marriage rather than break a family apart. If the situation does not improve, even with the limitation and prevention of excesses, the next step is a family council. One arbiter from his family and one from her family should sit together with the couple and try to resolve the problems. If a divorce becomes necessary, there are many detailed procedures in Islamic law that really knock down the common notion that divorce in Islam is very easy and that it is the sole right of man. It is not the sole right of man alone and neither is it true that all you have to say is: Islam also has laws regarding custody of children. I was very surprised to see newspapers making the false claim that in all cases custody goes to the father. Custody involves the interest of the child, and laws often favor the mother of young children. Polygamy has become so mythical in the minds of many people that they assume being Muslim means having four wives. This is a false notion, of course. A very renowned anthropologist, Edward Westermarck, in his two-volume work, "History of Human Marriage," notes that there has been polygamy in virtually every culture and religion, including Judaism and Christianity. But the point here is not to say, "Why blame Islam? The question, "How could any man have two wives? Let me give you one current-day example. In the savage attack on Afghanistan, genocide was committed on the Afghani people. It is estimated that Now, with a great shortage of men, what will happen to their widows, their orphans and their daughters of marriageable age? Is it better to leave them in a camp, with a handout? It is obvious that monogamy is the norm for Muslims. The only verse in the Quran that speaks about polygamy, speaks about limiting not instituting polygamy. The verse was revealed after the Battle of Uhud in which many Muslims were martyred, leaving behind wives and children in need of support. This verse shows the spirit and reason of the revelation. The Quran placed obedience to parents immediately after worship of God. In a very succinct statement, Prophet Muhammad peace and blessings be upon him said, "Paradise is at the feet of mothers. Prophet Muhammad peace and blessings be upon him echoed what the Quran said, "I command you to be kind to women. This forces everyone to respect the woman for what she is as a human being, as an intellectual and a spiritual being, rather than being diverted to her sexuality. Finally, a few words about political involvement. The verse quoted earlier, Surah 9: How could they ordain the good and forbid the evil without women being active in the affairs of their society? And that was given in his capacity not only as a Prophet, but as a head of state, as he was already the head of state in Medina. That was the spirit in the early days of Islam. In the most authentic collection of Hadith, Hadith Bukhari, a section is devoted to the participation of women, not only in public affairs, but in the battlefield, too, and not only as logistical support. Women carried arms, and when there was great danger to the Muslims, they volunteered to participate even in the battlefield. The problems presented here are not the problems of Islam. They are problems of a lack of commitment, lack of application, or misapplication of Islamic teachings by Muslims themselves. The topics I have tried to cover here represent and exemplify the big gap that exists between the true teachings of Islam as derived from its original sources and its projected image in the West and the way some Muslims behave in the disregard of those noble teachings. But in fairness, we should not blame the media alone. Western culture, in writings about other religions, in particular Islam, have distorted images. From books, novels, even in the academic circle, and sermons from the pulpit in places of worship, these kinds of prejudices are perpetuated. There are fair and honorable people in the media who are receptive to correction of inaccuracies, and who present the facts, when the facts become manifest, as we have seen in the coverage of the barbaric and cruel treatment of the Palestinians in the Occupied Territories. What I would suggest to the media is instead of depending on the distorted information about Islam, they should keep in touch with educated Muslims, and remember, the U. Only through correct representation and open communication with Muslims in America can the media give a fair analysis of current events, given the background of those conflicts, and provide a great service to society.

**Chapter 3 : A History of the Early Islamic Law of Property : Hiroyuki Yanagihashi :**

*In an analysis that is often insightful, and never overly cautious, the author attempts to tie together various strands of Islamic legal doctrine from those relating to pledges (ruhá«n) to usurpation (ghaá'£b) in order to understand the development of various doctrines that, at first glance, do not appear to be related.*

Quranic principles[ edit ] According to the Quran, marriage is intended to be unbounded in time, as indicated by its characterization as a "firm bond" and by the rules governing divorce. In this system, women were particularly vulnerable. The Quran limited the number of repudiations to three, after which the man cannot take his wife back unless she first marries another man. Do not hold them back out of malice, to be vindictive. Whoso does this does himself injustice". Legal context[ edit ] Classical Islamic law is derived from the scriptural sources of Islam Quran and hadith using various methodologies developed by different legal schools. Upon talaq, the wife is entitled to the full payment of mahr if it had not already been paid. The husband is obligated to financially support her until the end of the waiting period or the delivery of her child, if she is pregnant. In addition, she has a right to child support and any past due maintenance, which Islamic law requires to be paid regularly in the course of marriage. The waiting period is intended to give the couple an opportunity for reconciliation, and also a means to ensure that the wife is not pregnant. Resumption of sexual relations automatically retracts the repudiation. The wife retains all her rights during the waiting period. The divorce becomes final when the waiting period expires. This is called a "minor" divorce al-baynuna al-sughra and the couple can remarry. If the husband repudiates his wife for the third time, it triggers a "major" divorce al-baynuna al-kubra , after which the couple cannot remarry without an intervening consummated marriage to another man. Making the third pronouncement irrevocable prevents the husband from using repeated declarations and revocations of divorce as a means of pressuring his wife into making financial concessions in order to "purchase her freedom". Because of this, and the financial obligations incurred, talaq could be a very costly and in many cases financially ruinous enterprise for the husband. This led to repudiation without good reason being considered socially improper. Talaq al-sunnah is further subdivided into talaq al-ahsan, which is the least disapproved form of talaq, and talaq al-hasan. The ahsan talaq involves a single revocable pronouncement of divorce and sexual abstinence during the waiting period. Tafwid The husband can delegate the right of repudiation to his wife. Commonly, the contract gave the wife the right to "repudiate herself" if the husband married a second wife. It is justified on the authority of verse 2: If the woman gives back that with which she sets herself free. These are the bounds set by God; do not transgress them. Women employed a number of strategies to force a settlement from their husbands. Some neglected their marital and household duties, making family life impossible for the husband. Others demanded immediate payment of the deferred mahr, knowing that the husband had no means to comply and would be jailed if he failed to do so. Either spouse can petition a qadi court to obtain judicial divorce, but they must have compelling grounds for dissolving the marriage. The court starts the process by appointing an arbitrator from each of their families in order to seek a mediated reconciliation. If this effort fails, the court adjudicates the dispute by apportioning fault for the breakdown of the marriage with the associated financial consequences. Different legal schools recognized different subsets of these grounds for divorce. The most serious problem was abandonment, which was not recognized as grounds for judicial divorce. To address this, in some cases a man setting out for travel would leave his wife a letter authorizing talaq if he did not return within a specified period of time. In other cases, Hanafi judges invited a Maliki or Hanbali colleague to pronounce divorce, or the woman herself took the initiative to seek out a judge from one of these schools. The same approach was used to effect a divorce in cases of failure to provide maintenance. In the Ottoman Balkans a woman could file for divorce on the grounds that her husband was "not a good Muslim". Seventeenth-century sources indicate that non-Muslim women throughout the Ottoman Empire used this method to obtain a divorce. If he fulfils his oath, the marriage is dissolved; if he breaks it, the marriage continues. The husband is able to break the oath and resume the marriage. Breaking either oath requires expiation by means of feeding the poor or fasting. The wife is given an opportunity to take an oath denying infidelity, and if she does so and the husband persists in his

accusation, the marriage is dissolved by a judge and the couple can never remarry. This oath can serve as a protection for the wife or as a threat by the husband, depending on the specified act. It was used to issue various threats to the wife as well as to make promises. In Ottoman Egypt marriage contracts commonly included stipulations of conditional talaq which were not otherwise recognized by the prevailing Hanafi school as grounds for judicial divorce, such as non-payment of maintenance or marrying a second wife. The wife obtains custody of the children until their majority whose definition varies according to legal school, while the father retains guardianship. A divorced woman could keep custody of the children unless she remarried and her husband claimed custody, in which case it generally passed to one of her female relatives. Under the Mamluks, women could waive the right to child support in order to obtain extended custody. Upon receipt, it becomes her sole property with complete freedom of use and disposal. The marriage contract is not valid without the mahr. The amount of the mahr generally depended on the socio-economic status of the bride. The payment of a portion of the mahr was commonly deferred and served as a deterrent to the exercise of the right of unilateral divorce by the husband, although classical jurists disagreed about the permissibility and manner of deferring payment of the mahr. If the husband asks for a divorce and intercourse has occurred, he pays full mahr; if the husband asks for a divorce and the intercourse has not occurred, the husband pays half the dower; if the wife asks for a divorce and intercourse has occurred, the husband pays half the mahr; and if the wife asks for a divorce and is still an intercourse has not occurred, then no mahr is required to be paid by the husband. Several scholars have argued that because these laws are more extensively specified in the Quran and hadith than others, it has been difficult for believers to accept deviating from these rules. The laws underwent codification by legislative bodies and were also displaced from their original context into modern legal systems, which generally followed Western practices in court procedure and legal education. It also warned that those who divorce for reasons not prescribed under Shariat will be socially boycotted in addition to calling for boycott of those who use triple talaq recklessly and without justification. According to Al-Sakhawi, as many as three out of ten marriages in 15th century Cairo ended in divorce.

**Chapter 4 : Islamic Sharia Law | Islamic Law and legal Systems | About Islam**

*Studies in Islamic Law and Society, a History of the Early Islamic Law of Property: Reconstructing the Legal Development, 7th-9th Centuries (No. 20) Hardcover - April 27,*

The issue is whether the principles of Islamic law can be constructed in a way to provide support for such protection. This paper assesses the extent to which Islamic law and its sophisticated tools have an impact on the protection of intellectual property. It also sets out hurdles that have the potential to circumscribe such protection. Then it moves on to consider the effect of secondary sources. The concluding section briefly considers some tensions between the Western and the Islamic view on intellectual property and the role of economics within Islamic law and society. Islamic law , legal science , intellectual property Published as: The Prague Yearbook of Comparative Law The evolution of the recognition of intellectual property rights Intellectual property is an ancient concept. Protection for original authorship in pre-Islamic societies was recognized for poets, who were compensated for the publication and distribution of their work [1]. Fine poetry was deeply regarded in the Arab world and authors enjoyed an enhanced social standing and respect. Lesser poets who plagiarized their work in an attempt to free-ride on their reputation were harshly condemned and cast from cultural society [2]. This shows that copyright protection was a recognized concept dating back to pre-Islamic civilizations. With the advent of the Islamic rule some of the rights pertaining to authorship were further advanced [3]. The state started to commission scholars to write about topics of interest and bought these works back from them once ready; the author would forfeit his rights in the work in exchange for compensation. Although pre-Islamic recognition of intellectual property rights was subsequently strengthened by the Islamic rule this recognition was never explicitly formulated but remained an accepted social norm [4]. What these intellectual property rights have in common is that they grant limited exclusive rights in exchange for the commercialization of an original creation that benefits society and they allow the owner to stop any unauthorized use by a third party. However the current laws do not seem to bite, they are enforced laxly and the ongoing infringing activities contribute to conspicuous losses of revenue for major companies relying on such rights [5]. Piracy rages in the Middle East [6] and one major problem seems to be the belief that copying is permissible; many Muslims do think that the concept of intellectual property associated with technological development stems from the West and not from their religious sources and are therefore reluctant to accept it. Lenient intellectual property protection slows down economic development. It is important to distinguish this transcendental concept of law with the formulation of legal rules; what jurists have formulated through their reason is not divine law but legal jurisprudence, fiqh. It is crucial to understand the pyramidal hierarchy among the sources and the interplay between textual and non-textual legal concepts. It is a written document and it has divine origins; it was revealed by God to the Prophet Mohammed over a period of 22 years and it contains the holy teachings that a true Muslim is to follow. It is divided in Meccan and Medinese verses, according to where the Prophet Mohammed was at the point in time of the revelation. About verses contain legal provisions [10] which are specific in matters that are eternal and general in matters that change [11]. Scholars have classified these actions as obligatory, recommended, neutral, reprehensible and forbidden [12]. It refers to a collection of recorded sayings that illustrate the established practice and tradition in which the Prophet lived, the Hadith [13]. The Sunna refers to the way the Prophet lived as a guideline for behaviour, whereas the Hadith comprises the actual textual narratives about his life. The importance of the Hadith and Sunna lies in their large size and great detail of legally relevant material. If this is not possible because both these sources are silent further scope of interpretation is given through Ijma. Ijma is the third source of Islamic law and it refers to the unanimous agreement or consensus of the legal scholars of the Muslim community on a point of law that occurred at a certain point in time and ought apply in the future. The validity of this type of agreement derives from the readings of many Hadith: Qiyas The fourth source, Qiyas, can be used to extend what is covered by the sources outlined above by strict analogical reasoning. The effective cause, also called "illa" is the rationale of a legal proposition and in order to apply it must be common to both cases [16]. In short, a new scenario can potentially be covered when it resembles a situation expressly regulated by

the textual sources discussed above. This means that the components of Islamic law can not be analysed as individual self-standing concepts because this would result in a more complex and fragmented analytical framework. It is necessary to understand that these four sources work in tandem and that any legal ruling or conclusion should make sense of these sources as read together. The sources provide the raw material [19], what glues them together is the concept of *ijtihad*, the human struggle for understanding but often simply translated as "effort". The revelation must be processed by human intellect before it can become a cohesive legal system for society. This concept is employed by scholars and judges in order to interpret the sources and also to resolve problems that are not directly covered by the sources. These schools have become concentrated in different geographical locations, the Hanbalis becoming predominant in the Arabian peninsula, the Malikis in North and West Africa, the Hanafis in what we call the Middle East today and the Shafi school being a major influence in the East reaching out to Malaysia and Indonesia [22]. Although external influences affected the idiosyncratic evolution of each school and this led to significant diversity throughout the Islamic world [23] the most important cohesive factor has always been the need to make law workable [24]. The phenomenon of *talfiq* coupled together with a more radical extension of *ijtihad* proved important in this respect. *Talfiq* is a principle according to which a judge belonging to one school is authorized to choose an interpretation from a different school of jurisprudence if it seems to fit the circumstances of a case in a better way. *Talfiq* allows a systematic comparison of all classical schools of laws and to reach a synthesis that combines their best features [25]. Although this patching process is not universally accepted by all scholars it has the potential to uncover the underlying flexibility within the Islamic legal system; it demonstrates the wide latitude of thinkers to reason appropriately in view of fact-specific contexts. Personal rights can be gained through effort. Many Hadith emphasize the importance of Muslim people to exert themselves in order to make a living out of their efforts. For example the Prophet has reported to have said: This type of exertion encompasses mental and physical efforts. As a consequence it can be assumed that individuals spending time and effort by using their intellectual creativity to develop new ideas and inventions that contribute to the state of the art should be legitimately entitled to benefit from those creations. This implies that copyright associated with the original creation of an author, the efforts invested in promoting a trademark and new and useful industrial inventions can be recognized as personal rights gained through effort. Private property and ownership are such important concepts that the Prophet himself acknowledged them in his Farewell Sermon: True ownership of title to property can occur by affirmative appropriation. Usefulness, improvement and optimal exploitation seem to be the crucial criteria. This has a bearing on intellectual property rights because works of authorship, inventions and the use of trademarks are meant to be useful forms of protection. They do provide benefits to society in the form of original creations, technological inventions and guaranty of source. These materialize with the creation of books, music, medicines and software all marketed through quality brands indicating a reliable source of origin. Given that intangibles can be as useful as tangibles both types of property deserve protection. Islamic law accepts the division of title in ownership, possessory interests and use among others. Ownership of property is conceptually divided from the right to use property in the same way that physicality of an object is distinct from its intellectual value. This concept bears strongly on intellectual property rights, for instance in situations where the owner of an intellectually protected facility wants to retain ownership rights but allow a third party to exploit it economically. This will usually occur through a licensing agreement, which lies at the core of a productive use of intellectual property and involves the authorizing of others to exploit a creation in exchange for some kind of consideration. To be legitimate an agreement must be fair, and if a private interest conflicts with a wider public interest the latter one should be given precedence. The economic rationale is clear, the community as a whole will suffer from the non-exploitation of potentially valuable property. Intellectual property has a case under this heading because it allows a limited monopoly to come into existence only if creations are commercially valuable to society as a whole. To be commercially valuable such rights have to be used. When monopoly rights expire the previously protected intellectual property will enter the public domain. A further re-elaboration will lead to the commercialization of new inventions which in turn will qualify for intellectual property protection if the level of originality and novelty are complied with and this will overall stimulate innovation. The roots of such protection lie in the necessity

of passing on trustworthy information: This presupposes that information is not being distorted but preserved in its original form. Or have they any portion in the heavens? Bring me a scripture before this Scripture , or some vestige of knowledge in support of what ye say if you are truthful" [38] and the Hadith: The recognition of the moral rights of attribution and integrity are an integral part of intellectual property rights [40]. Besides being tradable commodities original creations can be interpreted as being an extension of the authors personhood [41] and it is this peculiar relationship of a master with its work that justifies the additional layer of protection granted by moral rights. The definition of moral rights entails that copyrightable works have inalienable qualities because they are connected to their authors by an intimate and unique bond [42]. This requires that the names of inventors are mentioned in patent specifications, it recognizes the exclusive right of a trademark owner to place his trademark on his goods and that the goods deriving from such creations are marketed in the contemplated manner. In addition many Hadith encourage Muslims to stay in places where trade practices are fair and to leave places where the measures are not respected. What amounts to unjust enrichment and illegal appropriations is to be held on trust for the legitimate owner and damages are recoverable. This can be read to justify remedies in case of infringement of intellectual property rights [47]. This means that the owner of infringed intellectual property rights is entitled to compensation for any resulting damage caused by the unauthorized appropriation. In some circumstances specific performance might be a better remedy; if the infringing goods are available they shall either be destroyed or returned to the legitimate owner. The duty to observe contractual obligations and therefore to use property within the scope of the rights granted is unquestionable. Individual Contracts Islamic thought promotes exchanges when the parties voluntarily agree on how it is going to be performed and the subject matter is sufficiently certain. An exchange may imply a loss or a profit for either party, but this is accepted as long as the prerogatives of the contract are known at the time of entering it. It seems that holders of intellectual property rights are therefore entitled to freely contract them out. The laws of contract give owners the freedom to dispose of their own property as they wish, they can assign intellectual property rights straightaway or retain an interest and allow third parties to use such right in a certain manner. These broad notions of contract law best illustrate the flexibility of Islamic law to meet commercial realities [51]. International treaties In the same way that individuals are bound by the contracts they decide to enter into one can argue that also the state is bound to honour the contracts to which it is a party, for instance when it becomes a signatory to an international treaty. Fulfil their treaty to them till their term. Allah loveth those who keep their duty" [53]. The Berne Convention is an international agreement on copyright principles, specifically concerned with the protection of literary and artistic works [55] and the Paris Convention is a major international treaty designed to help the people of one country to obtain protection in other signatory countries for patents, trademarks and industrial designs [56]. Also the accession to the TRIPS [57] , an agreement that sets down minimum standards for many forms of intellectual property regulation when used in trade [58] , was a strong call for attention to intellectual property issues. In order to comply with international obligations under these treaties national legislation concerning the substantive protection of intellectual property rights was enacted. Proper adherence would include the adoption of measures for the effective enforcement of legal provisions. Fairness and Honest Dealings Commercial ethics have a longstanding history and are highly valued under Islamic law. The society of the Prophet himself was based on trade and commerce and the need to be able to deal honestly with business partners was a prerequisite to any workable transaction. Fair competition was promoted in order to guarantee consumers the benefits of better products and lower prices. The Prophet is said to have visited markets in order to inspect the business practices adopted by his community. When the community grew a commercial institution called the Muhtasib was given the role of "commanding the good and forbidding the evil" [59] when supervising market practices [60]. Its main functions were enforcing justice and fairness in the market place so as to enhance consumer interest.

*A History of the Early Islamic Law of Property: Reconstructing the Legal Development, 7th-9th Centuries \* BY HIROYUKI YANAGIHASHI.*

It also deals with the relationship between nations in both war and peace. Most jurists divide the study of Islamic Law into two broad categories: Devotional Law and Transaction Law. This division is built upon the fact that the injunctions dealt with by each of these two categories have quite different and distinct primary objectives. Devotional Law deals with the injunctions that have as their primary objective attaining nearness to Allah, showing Him gratitude, and seeking eternal reward in the Hereafter. This includes prayer, fasting, Hajj, jihad, zakah, and the fulfillment of covenants. Transaction Law, on the other hand, deals with realizing worldly benefits and regulating human activity, both on the individual and societal level. This covers many branches of law, including Commercial Law and Personal Law. Devotional Law also differs from Transaction Law in that Devotional Law is generally beyond the scope of human reason. There is no way for man to understand the ultimate objectives behind the injunctions except that they constitute the worship of Allah. As for Transaction Law, its injunctions are generally understandable, and human reason is often able to ascertain the intent behind them. Because of this, people who lived in times when there was no divine guidance were still able to use their faculties of reason to develop legislation. When Islam came, it reaffirmed more than a few of these laws that they used to govern themselves with. Scholars of Islamic Law do not take the distinction between these different branches of law very far in contrast to scholars of secular law because, in their view, such distinctions do not yield any real benefit. In Islamic Law, there are no procedural differences for establishing different kinds of legal rights. There is practically one judicial procedure for all. The judge passes judgment in every case brought before the court, without any distinction being made between property matters for instance and anything else. In spite of this, we find that Islamic Law comprehends all branches of modern Law, general and specific. It investigates matters of International Law when dealing with issues relating to war, its methods, purposes, and results, and when dealing with issues pertaining to the relationship between the Islamic state and others. All the books of Islamic Law, irrespective of the school of thought they were written for, give these issues a thorough treatment. Some jurists also prepared specialized works on this subject, most notably the works of Muhammad b. The Islamic jurists, in works that range from concise to comprehensive, have investigated all four forms of modern Law that deal with internal affairs Constitutional Law, Administrative Law, Commercial Law, and Criminal Law. There are chapters in the Islamic Law books devoted to Criminal Law. This same topic, in more general terms, is dealt with when discussing the injunctions relating to the state treasury, its sources of revenue, the types of wealth it deals with, and how that wealth is to be allocated. Constitutional Law defines the form that government is to take, the relationship between the various political authorities within it, and the distribution of special powers between them. Administrative Law constitutes a body of statutes that regulates the activities of executive authority in performing its duties and assuring that such activities are carried out in a harmonious way. The books of Islamic Law do not refer to these branches of Law by these terms. The subsidiary branches of Law have also been dealt with. Civil Law is dealt with as a branch of Transaction Law, whether dealing with individuals or property. Thereafter, they made custom the deciding factor in business practices. The reason for this is the simplicity of the business environment at that time. Commerce was not as diversified and complex as it is today. We can see how fiqh Islamic Law covers every domain of human activity, whether it be on the level of the individual, the society, or the international arena. As for those issues that Islamic Law does not cover in particular, it deals with them in broad terms, making it possible for the particulars of the law to be ascertained in light of general, flexible principles. Distinctive Characteristics of Islamic Law Anyone who follows Islamic Law or studies it carefully will find that it is distinguished by certain characteristics and unique qualities that are not shared by any other legal system. These characteristics have allowed it to enjoy stability, growth, and relevance for over fourteen centuries. It shall remain so until Allah repossesses the Earth and everyone upon it. The reason for this is that the Sharia has a permanent and

global character, because it is the final, divinely revealed Sharia for the whole world, and because the religion of Islam is the last in the line of divinely revealed religions. It is, thus, necessary for the Sharia to have certain unique qualities that afford it the continuity and stability it needs to deal with the ever-changing requirements of human life over vast stretches of time and space. Before discussing the most important of these distinguishing features, we wish to point out that Islamic Law is much broader in scope and much more complete than any man-made code of law. There is nothing strange about this, because Islamic Law derives its principles and tenets from the Book of Allah that was sent down by the Most Wise, the Most Praiseworthy Creator, a Book that cannot be approached by falsehood from any angle. Islamic Law, with its distinctive features, is unprecedented in the history of Law. Islamic Law is the broadest, most comprehensive system of legislation in the world. It was applied, through various schools of thought, from one end of the Muslim World to the other. It also had a great impact on other nations and cultures. Many nations of the world borrowed their own legal systems from Islamic Law by way of contact with Islamic Spain, Sicily, Turkestan, Bukhara, and the Balkans. Some of the unique characteristics of Islamic Law are the following: Nobility of purpose Every system of law has an objective behind it that it seeks to fulfill. The principles that it follows are established with the sole aim of realizing this objective. This objective varies from culture to culture. It also varies due to the changing aims and objectives of those in power who have legislative authority. For this reason, changes and amendments are commonplace, as nations employ law as a means of directing their citizenry to certain objectives. Likewise, the state employs law as a means of achieving certain limited goals where the political authority has no other means at its disposal to bring them to realization. In short, law becomes the obedient donkey of the state, bearing its burdens and following its directions. Islamic Law, on the other hand, is not shaped by society. Quite the contrary, society is shaped by it. This is because man did not create it, but in fact, recreates himself in conformity to it. Islamic Law is not limited to regulating the interrelationships between individuals in society. It, first and foremost, regulates the relationship between the individual and the Creator by legislating different forms of worship like prayer, fasting, zakh, and Hajj. Moreover, it defines the rights and obligations each individual has with respect to others, so that the potential harm any individual might cause for others is effectively negated. Islamic Law is divine revelation All the injunctions of Islamic Law are revelation from Allah, so the one who is legislating for mankind is their Creator who knows best what will be of benefit to his creation in both this world and the next. He knows the psychological makeup of the human being, what will be in harmony with it, and what will clash with it. Does the One who created not know, and he is the Gentle, the All-Aware Man-made law, on the other hand, is the product of the human intellect that has limited powers and is subject to deficiency and error. This is the reason that the intellect can never truly comprehend the human soul and what is in harmony with the nature that Allah has placed within it. Therefore, the legislations that come from human effort may not always be suitable for human nature. Applying the injunctions of Islamic Law constitutes obedience to Allah Following the injunctions of Islamic Law is a way of worshipping Allah and earning His reward. Likewise, disobeying the Law amounts to disobedience of Allah and is a way of deserving of His wrath. Some forms of transgression have prescribed punishments that are supposed to be carried out in this world. Others hold the threat of punishment in the Hereafter. It is, thus, possible for us to say that the individual Muslim is always acting as an overseer policing himself out of fear of Allah. It is on this basis the character of the individual and society is built. As for man-made laws, the impetus to obey them is the fear of reprisal from the political authority, not the hope of attaining blessings and rewards from Allah. Likewise, disobedience to such laws does not instill a feeling of wrongdoing as long as it goes unnoticed by the authorities. Thus, there is nothing to discourage the use of deception to assert a legal claim against someone else, because whatever the judge rules will be deemed permissible or forbidden, in the most absolute sense, on the basis of his judgment. Islamic Law holds the distinction of being comprehensive and general in its scope It comes to regulate three different factors: Devotional Law deals with the first of these through its legislation of different forms of worship, like prayer and fasting. The relationship between the individual and himself is handled by injunctions like those dealing with dietary laws, those regulating personal dress, and everything else that is legislated for the purpose of protecting the individual, his mind, and his body. The relationship between the individual and others is regulated by Transaction Law and the prescription of

punishments to be carried out in this world by the political authorities. It covers such things as marriage, buying and selling, leasing, retribution, fixed punishments, discretionary punishments, legal verdicts, and testimony. The regulation of all three of these concerns assures that Islamic Law deals with every aspect of human life. In Islamic Law, this is expressed in terms of the five necessities: All Islamic legislation can be referred back to the preservation of one or more of these five necessities. If we compare Islamic Law in this respect to any of the man-made legal systems, we will find that the latter only deal with the relationship between the individual and others. Ethics is likewise a fundamental principle. From the time that he is in the womb until the time that he is born, then throughout his infancy, adolescence, adulthood, and old age, and even up to his death and beyond, Islamic Law protects and safeguards the rights of the human being. It assures these rights, even when the individual is unable to assert them for himself, like when he is in the womb, or is in his infancy, or is beset by senility, or after death. It, likewise, protects the rights of the rational adult without any discrimination. Islamic Law is also concerned with the future of the human being, not only in this worldly life, but also in the eternal life to come, by enjoining acts of worship that must be carried out by every believer in this faith. Man-made laws are not even concerned with this worldly life except in a limited framework, so there is no reason to discuss them with reference to what is before or after this life. Stability and permanence in principles and flexibility in application Islamic Law rests upon a set of stable, unchanging principles derived from the Quran and Sunnah. The texts of the Quran and Sunnah have been most carefully and accurately recorded and preserved. Most of these texts contain general injunctions for legislation without going into the precise details relating to application. This affords the jurist broad powers of discretion that allow him to take ever-changing circumstances into consideration. The Islamic political system is a good example. The religious texts give a general outline of how it is supposed to be, which includes such things as justice between the citizenry, obedience to political authority, consultation between Muslims, and cooperation in righteous conduct. At the same time, the texts leave the application of this general outline to practical circumstances that require a measure of flexibility. The important thing is that the outlined objectives of Islamic government are realized, not the manner in which they are carried out or the different forms that this might take, so long as the injunctions imposed by the sacred texts and the principles of the Sharia are not violated. In carrying out the objectives of the Sharia, there is a great degree of flexibility and a tremendous capacity for development. There is nothing to prevent the appearance of new injunctions that were previously unknown, in response to changing requirements.

**Chapter 6 : A Muslim Woman's Right to Property**

*The present volume is dedicated to an analysis of positive solutions adopted by Muslim jurists active in the first centuries of Islam regarding civil liability, certain kinds of sale and the prohibition of riba.*

Hardcover This book aims to trace the spread of the Hanafi School of law from its inception in the middle of the second Islamic century until the end of the third century. It is not concerned with the formation of the school which continued beyond the third century rather it concentrates on its spread whether directly by Hanafi scholars or indirectly by non-Hanafis. This division allows for a deeper study and details the hindrances faced from each unique environment at the time. Prior to the study of the spread of Hanafism, the opening chapter discusses the biographical sources. How do you determine if a person was Hanafi? From this work the author splits Hanafis in to the following categories: The author also touches upon the biographical works of Muhammad b. Unlike other areas, where Hanafism spread, in Kufa it was the local legal tradition where it had its roots. This chapter explores how Hanafism eventually dominated Kufa and the obstacles it had to overcome in achieving this position from dogmatic beliefs to political inclinations. The Hanafis faced a new challenge in penetrating an area that had its own tradition. There are conflicting reports about the reception of Zufar b. The issue Hanafis faced here was that their prevalence would diminish the prestige of Basran scholarship which was seen as a rival school and this would only acknowledge the superiority of the Kufan School which was reason enough to shun the Hanafis. However there was also a materialist aspect. The Iraqi chapter continues this process by examining the spread of Hanafism in Baghdad. The city was split in to an Eastern side and a Western side. The sections on Anbar and Wasit are shorter than the previous cities but nonetheless just as interesting. The third chapter moves on to West Iran the author states in the preface that Eastern Iran is not covered as the works of Wilfred Madelung fill this gap and begins with Ahwaz, the capital of the province of Khuzistan. It is said that Zufar b. The Hanafis posed very little threat to this school. The author gives reasons as to why this was the case, discussing the political situation at a state level as well as the education and political situation at a local level i. The sixth chapter explores Egypt which did not produce a school of its own but came under the influence of other schools. The Hanafis would not gain recognition as foreigners thus during this period many Hanafis immigrated to Egypt with their families and established study circles which helped spread the school. The interesting feature of Egypt is the scholar Asad b. Qayrawan is the primary sector for discussion in this chapter. It appears that in Qayrawan scholars combined the legal methods of the Hanafi and Maliki schools. These four are seen as semi-Hanafis rather than pure Hanafis. It is interesting that during this period, theological groups were cemented in their boundaries and well defined whilst legal schools were still taking shape hence scholars were known by their theological views. This resulted in many contests of demonstrating intellectual superiority. Both belonged to the orthodox theological school but their debates escalated to skirmishes between the schools even though the two scholars themselves were on good terms with each other, after all they shared the same theological views. This is explored further through the lens of tribal rule of the Aghlabids who supported both Hanafis and Malikis. The author ends the work with a conclusion stating the spread of Hanafism is more complex than simple geographic dispersion. The minha is an example of the strength gained through centralisation of the legal apparatus. The conclusion is followed by extensive notes and references and a bibliography. The only criticism I have of this work is very little and that is that it is frustrating that the notes are included at the end of the book and spilt by chapter. An excellent resource and enjoyable enlightening read. One person found this helpful.

**Chapter 7 : Progress and Poverty, Chapter 29**

*Vikāra* at 20 quoting Joseph Schacht, *Pre-Islamic background and early development of jurisprudence, Law in the Middle East, Oxford* explains that early Muslim society to a large extent continued the practices of the pre-Islamic period.

Countries with majority Muslim populations have adopted diverse legal systems. Those that were once English colonies e. With the death of the Prophet Muhammad in , communication of the divine will to human beings ceased so that the terms of the divine revelation were henceforth fixed and immutable. In Islamic jurisprudence it is not society that molds and fashions the law but the law that precedes and controls society. Such a philosophy of law clearly poses fundamental problems of principle for social advancement in contemporary Islam. This is now the central issue in Islamic law. No more than 80 verses deal with strictly legal matters; while these verses cover a wide variety of topics and introduce many novel rules, their general effect is simply to modify the existing Arabian customary law in certain important particulars. But the foundation of the Umayyad dynasty in , governing from its centre of Damascus a vast military empire , produced a legal development of much broader dimensions. Development of different schools of law A reaction to this situation arose in the early 8th century when pious scholars, grouped together in loose, studious fraternities, began to debate whether or not Umayyad legal practice was properly implementing the religious ethic of Islam. The general view of Western orientalists, however, is that a considerable part of the Sunnah represents the views of later jurists fictitiously ascribed to the Prophet to give the doctrine a greater authority. It is the latter category of duties alone, constituting law in the Western sense, that is described here. But this type of offense is regarded as a civil injury rather than a crime in the technical sense, since it is not the state but only the victim or his family who have the right to prosecute and to opt for compensation or blood money *diyāh* in place of retaliation. There is an irrebuttable presumption of law 1 that boys below the age of 12 and girls below the age of 9 have not attained puberty, and 2 that puberty has been attained by the age of 15 for both sexes. These basic principles are then applied to the various specific transactions of, for example, pledge, deposit, guarantee, agency, assignment, land tenancy, partnership, and *waqf* foundations. And since this doctrine was coupled with the general prohibition on gambling transactions, Islamic law does not, in general, permit any kind of speculative transaction the results of which, in terms of the material benefits accruing to the parties, cannot be precisely forecast. Family law A patriarchal outlook is the basis of the traditional Islamic law of family relationships. Fathers have the right to contract their daughters, whether minor or adult, in compulsory marriage. Only when a woman has been married before is her consent to her marriage necessary; but even then the father, or other marriage guardian, must conclude the contract on her behalf. Husbands have the right of polygamy and may be validly married at the same time to a maximum of four wives. Upon marriage a husband is obliged to pay to his wife her dower, the amount of which may be fixed by agreement or by custom; and during the marriage he is bound to maintain and support her provided she is obedient to him, not only in domestic matters but also in her general social activities and conduct. But it is in the traditional law of divorce that the scales are most heavily weighted against the wife. The legal position of children within the family group, as regards their guardianship, maintenance, and rights of succession, depends upon their legitimacy, and a child is legitimate only if it is conceived during the lawful wedlock of its parents. In Sunni law no legal relationship exists between a father and his illegitimate child; but there is a legal tie, for all purposes, between a mother and her illegitimate child. Guardianship of the person e. But the females among these relatives only take half the share of the male relative of the same class, degree, and blood tie, and none of them excludes from inheritance any male agnate, however remote. No other female or non-agnatic relative has any right of inheritance in the presence of a male agnate. Any relative of class one excludes any relative of class two, who in turn excludes any relative of class three. Within each class the nearer in degree excludes the more remote, and the full blood excludes the half blood. While, therefore, a male relative normally takes double the share of the corresponding female relative, females and nonagnates are much more favourably treated than they are in Sunni law. Under both systems, however, bequests that infringe these rules are not necessarily void and ineffective; the testator has acted beyond his powers, but the bequest

may be ratified by his legal heirs. Further protection is afforded to the rights of the legal heirs by the doctrine of death sickness. Any gifts made by a dying person in contemplation of his death are subject to precisely the same limitations as bequests, and, if they exceed these limits, will be effective only with the consent of the legal heirs. There was no hierarchy of courts and no organized system of appeals. This was not necessarily the party who brought the suit, but was the party whose contention was contrary to the initial legal presumption attaching to the case. In the case of an alleged criminal offense, for example, the presumption is the innocence of the accused, and in a suit for debt the presumption is that the alleged debtor is free from debt. Hence the burden of proof would rest upon the prosecution in the first case and upon the claiming creditor in the second. This burden of proof might, of course, shift between the parties several times in the course of the same suit, as, for example, where an alleged debtor pleads a counterclaim against the creditor. The standard of proof required, whether on an initial, intermediate or final issue, was a rigid one and basically the same in both criminal and civil cases. Failing a confession or admission by the defendant, the plaintiff or prosecutor was required to produce two witnesses to testify orally to their direct knowledge of the truth of his contention. Written evidence and circumstantial evidence, even of the most compelling kind, were normally inadmissible. In certain cases, however, the testimony of women was acceptable two women being required in place of one man, and in most claims of property the plaintiff could satisfy the burden of proof by one witness and his own solemn oath as to the truth of his claim. If the plaintiff or prosecutor produced the required degree of proof, judgment would be given in his favour. If he failed to produce any substantial evidence at all, judgment would be given for the defendant. Properly sworn this oath would secure judgment in his favour; but if he refused it, judgment would be given for the plaintiff, provided, in some cases, that the latter himself would swear an oath. In sum, the traditional system of procedure was largely self-operating. Page 1 of 2.

**Chapter 8 : Divorce in Islam - Wikipedia**

*The Classic Sharia and Early Islamic Society Laws can tell us much about a culture. They can inform us about the society's government, economy, geography, family relations, religious beliefs, technology, and much more.*

Like Judaic law, which influenced western legal systems, Islamic law originated as an important part of the religion. Sharia, an Arabic word meaning "the right path," refers to traditional Islamic law. The Sharia comes from the Koran, the sacred book of Islam, which Muslims consider the actual word of God. Since the Sharia originated with Allah, Muslims consider it sacred. Between the seventh century when Muhammad died and the 10th century, many Islamic legal scholars attempted to interpret the Sharia and to adapt it to the expanding Muslim Empire. From that time, the Sharia has continued to be reinterpreted and adapted to changing circumstances and new issues. In the modern era, the influences of Western colonialism generated efforts to codify it. Development of the Sharia Before Islam, the nomadic tribes inhabiting the Arabian peninsula worshiped idols. These tribes frequently fought with one another. Each tribe had its own customs governing marriage, hospitality, and revenge. Crimes against persons were answered with personal retribution or were sometimes resolved by an arbitrator. Muhammad introduced a new religion into this chaotic Arab world. Islam affirmed only one true God. The Koran sets down basic standards of human conduct, but does not provide a detailed law code. Only a few verses deal with legal matters. During his lifetime, Muhammad helped clarify the law by interpreting provisions in the Koran and acting as a judge in legal cases. Thus, Islamic law, the Sharia, became an integral part of the Muslim religion. These political-religious rulers, called caliphs, continued to develop Islamic law with their own pronouncements and decisions. As a result, elements of Jewish, Greek, Roman, Persian, and Christian church law also influenced the development of the Sharia. Islamic law grew along with the expanding Muslim Empire. The Umayyad dynasty caliphs, who took control of the empire in , extended Islam into India, Northwest Africa, and Spain. The Umayyads appointed Islamic judges, kadis, to decide cases involving Muslims. Non-Muslims kept their own legal system. Knowledgeable about the Koran and the teachings of Muhammad, kadis decided cases in all areas of the law. Following a period of revolts and civil war, the Umayyads were overthrown in and replaced by the Abbasid dynasty. During the year rule of the Abbasids, the Sharia reached its full development. Under their absolute rule, the Abbasids transferred substantial areas of criminal law from the kadis to the government. The kadis continued to handle cases involving religious, family, property, and commercial law. The Abbasids encouraged legal scholars to debate the Sharia vigorously. One group held that only the divinely inspired Koran and teachings of the Prophet Muhammad should make up the Sharia. A rival group, however, argued that the Sharia should also include the reasoned opinions of qualified legal scholars. Different legal systems began to develop in different provinces. In an attempt to reconcile the rival groups, a brilliant legal scholar named Shafii systematized and developed what were called the "roots of the law. If the answer were not clear there, the judge should refer to the authentic sayings and decisions of Muhammad. If the answer continued to elude the judge, he should then look to the consensus of Muslim legal scholars on the matter. Still failing to find a solution, the judge could form his own answer by analogy from "the precedent nearest in resemblance and most appropriate" to the case at hand. He constantly criticized what he called "people of reason" and "people of tradition. By around the year , the classic Sharia had taken shape. Islamic specialists in the law assembled handbooks for judges to use in making their decisions. The classic Sharia was not a code of laws, but a body of religious and legal scholarship that continued to develop for the next 1, years. The following sections illustrate some basic features of Islamic law as it was traditionally applied. Family Law Cases involving violations of some religious duties, lawsuits over property and business disputes, and family law all came before the kadis. Most of these cases would be considered civil law matters in Western courts today. Family law always made up an important part of the Sharia. Below are some features of family law in the classic Sharia that would guide the kadi in making his decisions. Usually, an individual became an adult at puberty. A man could marry up to four wives at once. A wife could refuse to accompany her husband on journeys. The support of an abandoned infant was a public responsibility. A wife had the right to food, clothing, housing,

and a marriage gift from her husband. When the owner of a female slave acknowledged her child as his own, the child became free. In an inheritance, a brother took twice the amount as his sister. The brother also had financial responsibility for his sister. A husband could dissolve a marriage by repudiating his wife three times. A wife could return her dowry to her husband for a divorce. She could also get a decree from a kadi ending the marriage if her husband mistreated, deserted, or failed to support her. After a divorce, the mother usually had the right of custody of her young children.

**Criminal Law** The classic Sharia identified the most serious crimes as those mentioned in the Koran. These were considered sins against Allah and carried mandatory punishments. Some of these crimes and punishments were: Officials of the caliph carried out the penalties for these crimes. Crimes against the person included murder and bodily injury. In these cases, the victim or his male next of kin had the "right of retaliation" where this was possible. This meant, for example, that the male next of kin of a murder victim could execute the murderer after his trial usually by cutting off his head with a sword. If someone lost the sight of an eye in an attack, he could retaliate by putting a red-hot needle into the eye of his attacker who had been found guilty by the law. But a rule of exactitude required that a retaliator must give the same amount of damage he received. If, even by accident, he injured the person too much, he had broken the law and was subject to punishment. The rule of exactitude discouraged retaliation. Usually, the injured person or his kinsman would agree to accept money or something of value "blood money" instead of retaliating. In a third category of less serious offenses such as gambling and bribery, the judge used his discretion in deciding on a penalty. Punishments would often require the criminal to pay a reparation to the victim, receive a certain number of lashes, or be locked up.

**Criminal Procedure** The victim of a criminal act or his kinsman "the avenger of the blood" was personally responsible for presenting a claim against the accused criminal before the court. The case then went on much like a private lawsuit. No government prosecutor participated although certain officials brought some cases to court. The classic Sharia provided for due process of law. This included notice of the claim made by the injured person, the right to remain silent, and a presumption of innocence in a fair and public trial before an impartial judge. There were no juries. Both parties in the case had the right to have a lawyer present, but the individual bringing the claim and the defendant usually presented their own cases. At trial, the judge questioned the defendant about the claim made against him. If the defendant denied the claim, the judge then asked the accuser, who had the burden of proof, to present his evidence. Evidence almost always took the form of the direct testimony of two male witnesses of good character four in adultery cases. Circumstantial evidence and documents were usually inadmissible. Female witnesses were not allowed except in cases where they held special knowledge, such as childbirth. In such cases, two female witnesses were needed for every male witness. After the accuser finished with his witnesses, the defendant could present his own. If the accuser could not produce witnesses, he could demand that the defendant take an oath before Allah that he was innocent. If the defendant swore he was innocent, the judge dismissed the case. If he refused to take the oath, the accuser won. The defendant could also confess to a crime, but this could only be done orally in open court. In all criminal cases, the evidence had to be "conclusive" before a judge could reach a guilty verdict. An appellate system allowed persons to appeal verdicts to higher government officials and to the ruler himself.

**Islamic Law Today** In the 19th century, many Muslim countries came under the control or influence of Western colonial powers. As a result, Western-style laws, courts, and punishments began to appear within the Sharia. Some countries like Turkey totally abandoned the Sharia and adopted new law codes based on European systems. Most Muslim countries put the government in charge of prosecuting and punishing criminal acts. Modern legislation along with Muslim legal scholars who are attempting to relate the will of Allah to the 20th century have reopened the door to interpreting the Sharia. This has happened even in highly traditional Saudi Arabia, where Islam began. Since , some countries with fundamentalist Islamic regimes like Iran have attempted to reverse the trend of westernization and return to the classic Sharia. But most Muslim legal scholars today believe that the Sharia can be adapted to modern conditions without abandoning the spirit of Islamic law or its religious foundations.

**Chapter 9 : Sharia - Simple English Wikipedia, the free encyclopedia**

*This is a sub-article of Islamic economics and Muslim world.. Between the 9th and 14th centuries, the Muslim world developed many advanced concepts, techniques and use in production, investment, finance, economic development, taxation, property use such as Hawala, an early informal value transfer system, Islamic trusts known as waqf, systems of contract relied upon by merchants, a widely.*

From the Umayyad conquest of Iberia in the 7th through the completion of the Reconquista in 1492, Islamic culture and political thought permeated the peninsula. Under the Muslim kingdoms, Islamic law was the dominant legal system, and though it formally held exclusive jurisdiction over Muslims, the implementation of Islamic law on a majority Christian populace impacted every member of society. Under Islamic law, the most privileged members of society were devout Muslim males. Other groups in society—such as Jews, Christians, slaves, and women—had fewer rights and privileges under the eyes of the law to varying degrees. The rights of women in particular were contingent on their place within society on several levels including religious, economic and marital status. However, it should be noted that the law in practice was more favorable towards women than it was on the books and women of different religious and social groups experienced different treatments under the law system. In reality, Muslim women in Al-Andalus were able to assert themselves in multiple areas, including marriage and family law, inheritance and property rights, as well as education, religious spaces and employment. Islamic law in Al-Andalus, therefore, was essentially no better or worse for women than contemporary law codes, and it simply operated differently in its granting and withholding of rights and privileges. The purpose of this paper will be to highlight the key differences and similarities in such law codes, and analyze their impact on women from both dominant and oppressed classes. Though Islamic law is a vast subject area, it can be summarized for our purposes as the legal system derived from the Muslim holy texts, the Quran and Hadiths, interpreted by Islamic scholars and judges and used as the primary law code in areas under Muslim rule. Islamic law, for the purposes of this research, pertains only to variations of such law codes implemented from the death of Muhammad up until the medieval era. Developments in Islamic law and jurisdiction from the modern era to contemporary times lay outside the parameters of this article. Among these were protections against violence and theft, the right to own and inherit property, to buy and sell goods, and to seek employment and take part in commercial enterprise. Under traditional Islamic law, for example, men are permitted to beat their wives, women are limited in their rights to inheritance, and, in the case of divorce, the desires of men overrule those of women. The laws on the books in Muslim Spain, therefore, were not particularly kind to women, despite the fact that certain legal privileges and rights were in theory guaranteed. Those rights that were guaranteed, however, provide a valuable insight into the legal status of women in this era. Under the law, women were seen as adults with legal capacity, albeit one that was minimized in comparison to their male counterparts. Marriage, for example, is one area where women, both Muslim and non-Muslim, were able to assert themselves under Islamic law. Polygyny is permitted according to traditional Islamic law, but in Al-Andalus the practice was not common. Additionally, there is evidence that interfaith marriage between Muslims and Christians occurred and was tolerated in Al-Andalus, despite the fact that such couplings are generally discouraged albeit not forbidden in the Quran. By marrying into a Muslim household, a Christian woman could gain new rights and privileges she would otherwise be denied. Women also had property rights and could seek inheritance through the law. Maliki inheritance law is complex, but provides inheritance for women, and expands the groups of women permitted inheritance from those specified in the Quran. Muslim women were allowed to own land, and had control over who had permission to cultivate it—including their husbands. Even though Islamic law was generally restrictive towards women, it can be seen that through both cultural and practical allowances, women were given various opportunities through the legal system. Both similarities to and differences from this type of practice can be seen in contemporary legal systems, such as the Roman and Gothic laws that governed the Christian kingdoms of Spain, both before and after the Muslim conquests in Iberia. Christians were governed by a mix of Roman and Gothic laws, both with heavy influence from the Roman Catholic Church. Spain was

governed for many years by the Roman Empire, and after its fall the Germanic Visigoths seized political control, bringing their own laws and customs. Under Roman law, however, divorce was permissible, and women could initiate divorce proceedings. Germanic laws had a great many differences from Roman laws, and the legal rights of women were no exception. Under the Visigothic Code, divorce was allowed only in the case of adultery, as opposed to the many reasons allowed in Roman law. In general, sexual relationships outside marriage were heavily discouraged under Germanic law, just as they are in Islam. Both law codes that governed Christian kingdoms during the Islamic age in Spain, therefore, provided varying degrees of restriction and opportunity for women. The opportunities afforded to women depended more on their status in society as part of dominant or minority social groups. Christian women were afforded more rights in Christian society, just as Muslim women were afforded more rights in Muslim societies. Christian rule was especially restrictive towards Muslim women, as they faced limitations both from Christian and Muslim law. That being said, Muslim women were assured certain rights through the law, and were treated as legal adults. Through the Islamic legal practices in Al-Andalus, Muslim women were able to assert themselves in the areas of marriage, inheritance, property rights, and employment. Additionally, Christian women were able to gain greater status under the eyes of the law through interfaith marriage to Muslim men. Of course, women in Islamic Spain were by no means treated equal to men, and many laws were restrictive and oppressive for women. But, through a number of mechanisms Muslim women and to a lesser extent, non-Muslim women were able to obtain greater privileges in public life through the law. Therefore, it cannot be said that any particular law code was better or worse for the women it governed. Roman law favored privileges for women who were free citizens. Germanic law was most favorable to Christian women who were known to be virtuous and chaste. Status in society, accordingly, was the primary determining factor of which rights women would or would not be allowed to have. Each law system present in medieval Spain was patriarchal and generally gave men a higher status under the law. Depending on their status in society, however, certain women were superior to certain men. Free Roman women, for example, had more rights than male slaves. Likewise, Muslim women in Al-Andalus had greater rights and privileges than Christian men. The status of women under the law in medieval Spain was generally not optimal; perhaps with the rare exception of some royalty, no women were treated with anything resembling full rights and legal autonomy. However, when occupying a space in the dominant sector of society, women were afforded more rights and privileges than others. Islamic law in Al-Andalus was, therefore, not necessarily better or worse for the women it governed than its contemporaries; rather, it operated in a similar manner to other legal traditions by guaranteeing rights to women in some ways and denying them in others. He plans to go on to graduate school to pursue a PhD degree in History with a focus on religious, social and political movements within Latin America and the Caribbean. Recommended citation Dawson, Daniel.