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ISLAMIC LAW ASSOCIATION - ILA



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# ISLAMIC LAW MAGAZINE

Islamic law magazine is a magazine publishes by the Islamic Law Association at Indiana University Robert H. McKinney School of Law. The effort made in this magazine is a form of cooperation by Muslims students, professors, and faculties who have expertise in Islamic law and its branches. Islamic law magazine designed for law student who are interested in expanding the knowledge about Islamic law. The magazine contains short articles that cover various subjects in Islamic law. All rights of short articles are reserved for authors and it represents author's opinion, but not the Islamic Law Association.



Indiana University-Robert H. McKinney School of Law



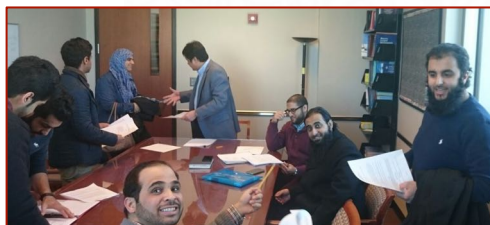


**Perfecto "Boyet" Caparas**

Graduate Studies Program Manager,  
Islamic Law Association Advisor

**How did the Islamic Law Association begin? Who were the driving forces behind its formation?**

It was January 13, 2015, Tuesday, when Doctor of Juridical Science and Master of Laws students first convened to form what we now know as the Islamic Law Association. They decided to share with the rest of the community the meaning and practice of Islamic Law (*Sharey'ah*) as ILA's core mission.



First discussion meeting of the ILA - S.J.D. & LL.M. Colloquium

On January 29, 2015, they elected their officers: Alhadi Altower; Mohammed Almushaigeh; Abdullah Balbaid; and Rakan Alharbi (board members); Omar Alsunaid (president); Rakan Alharbi (vice president); Osamah Bin Mahmoud (secretary); Alhadi Altower (treasurer); Bashar Almofadda (public relations officer); and Siraj Bargawi and Saleh JarAllah (Student Bar Association representatives).

# ILA STORY

By Perfecto "Boyet" Caparas



Osama Bin Mahmoud serving food – ILA's 1<sup>st</sup> Celebration

Through their own dynamic actions, ILA officers and members have reached out to McKinney's legal community. Per its "policy of *Musawah* (equality), inclusion and diversity," ILA welcomed all students from the JD, LLM, SJD, and MJ programs as well as students from the rest of the community as members.

With the ILA as their powerful tool, they bonded together and collectively served their fellow students, faculty, staff, and the rest of our legal community. The ILA teamed up with McKinney's Graduate Studies and International Affairs, Diversity Committee and several student organizations in celebrating Diversity Week in February 2015, particularly during the Lunar New Year kickoff party, the International Food Festival,



Rakan Alharby during his presentation at Islamic Coffee Hour event

and the ILA founding celebration. The ILA also mounted a series of Islamic Coffee Hour events to share and discuss with fellow students, faculty and staff various fields and aspects of Islamic Law. Omar Alsunaid and Alhadi Altower also shared their own perspectives during the Faith in the Law panel discussion held at McKinney on April 14, 2015. They also organized a LexisNexis certification seminar.

ILA collaborated with the Graduate Studies and International Affairs in organizing and promoting the International Student Speaker Series with Rakan Alharbi, Bashar Almofadda, and Abdulrahman Alwashali as lecturers who discussed Doing Business, Legal System and Human Rights in Saudi Arabia on April 16, 2015.



Bashar Almofadda during his lecture at International Student Speaker

ILA also planned on carrying out major events in Fall 2015, including a conference on September 24, 2015.

Through the ILA, our international students have felt and experienced for themselves the power of forming their own group and charting their own history together with the rest of the students and community.





Left: The ILA's President Mr. Alsunaid & Dean Bravo  
ILA 1<sup>st</sup> Celebration Event



Left: Abdulrahman Alwashli, Bashar Almofadda, Prof. Frank Sullivan, Dean Bravo, Prof. Frank Emmert and Rakan Alharbi - International Speaker Series Event



## Karen Bravo

Professor of Law, Dean's Fellow, Associate Dean for Graduate Studies and International Affairs

"The Islamic Law Association has a wonderful addition to student life at the law school. The members and leadership have made a priority to reach out to their fellow students, other members of the law school community, and the broader community, and are helping to facilitate intercultural understanding"

## SOURCES OF ISLAMIC LEGAL SYSTEM - OVERVIEW

By Rakan Alharbi

The sources of Islamic law signify one of the vital topics that can elaborate the characteristics of Islamic law and how it is articulated. Generally speaking, the sources of Islamic law are divided into two categories, which are the primary sources and the secondary sources. The primary sources are the celestial law that controlled the most primary principles for the formation of Islamic law.

The secondary sources depend on human reckoning and on public and private interests; Muslim scholars to construe the divine law have used these sources. In the following, all of the primary and secondary sources under Islamic law and the methods of interpretation of the sources of Islamic law are discussed.

### A-Primary Sources of Islamic Law:

**1- Quran:** The Quran can be clarified as the words of God that were revealed to the Prophet Mohammad throughout the period of his twenty-three year prophet hood. The Quran is the most imperative guide for Muslims.

Certainly, due to the fact that the contents of the Quran did not originate in dreams or anything of that kind, the revelation was the only medium for the origination of the contents of the Quran.

According to An-Na'im, "The key to understanding the role of the Quran in the formulation of *Shari'a* is the appreciation that the Quran primarily sought to establish certain basic standard of behavior for the Muslim community rather than to express those standards as rights and obligations."<sup>1</sup> There is no explicit chapter in the Quran that addresses a particular legal issue. Instead, the Quran consist of chapters that give some legal issues, because the Quran is not arranged by topic.

Quranic context have been frequently discussed a variety of subjects including the faith of Muslims, morals, ideals, regulations, for the historical stories of earlier nations. Accordingly, the Quran is not mostly a code or a book of law.

From this viewpoint, the Quran only highlights the basic principles, which were later formulated as rights or obligations.

In addition, one of the features of the Quran is that some of the Quranic texts leave room for interpretation by being silent or sometimes indistinct.<sup>2</sup> The text of Quran is in general complete and dialectical and therefore it needs to be construed. As a result, the words of Quran cannot be challenged, but it can challenge in the interpretation of Quran. There are some doctrines and concepts regarding the basic understanding of Quran, such as the rule of Naskh.<sup>3</sup>

**2- Sunna:** Sunna, known as *Hadith*, is the second primary source and refers to the performance of acts and words of the Prophet Mohammed. Sunna can be explained as the acts and words of the Prophet Mohammed. Sunna is a heavenly law in conformity of the Quranic context. The discussion about the validity of Sunna goes into two elements, which are the text of *Hadith*, itself or the chain of transmission.

(Continued)



In general, *Sunna* is classified into three categories, which are the words of the Prophet, the acts of the Prophet, and the Prophet's implicit consent.<sup>4</sup> Conventionally, *Sunna* usually discusses and reports the topics that were not addressed or detailed in profundity within the Quranic context. *Sunna* has passed from one generation to the next since the death of the Prophet Mohammed, which led to changes in *Hadith* that affect the soundness of *Hadith*.

Thus, Muslim scholars formed a rank for the degree of *Hadith*, and the rank is a system that ranks certain aspects of *Hadith* as being more realistic than others according to the chain of *transmissions*. *Sunna* became an independent study that has evaluation.<sup>5</sup>

#### B-Secondary Sources of Islamic Law:

**1-Ijma:** *Ijma* is one of the secondary sources of Islamic law. Additionally, *Ijma* can be defined as the consensus of opinion of qualified Muslim scholars on particular issues in matters where the provisions of the *Quran* and the text of *Sunna* did not express explicit direction, or the meaning of a particular verse is unclear.<sup>6</sup> In this sense, *Ijma* excludes the agreement of lawyers or the harmony of unqualified Muslim scholars, and *Ijma* does not depend on revelation.

In general, some scholars divided *Ijma* into two general categories, which are historical agreement and existing consensus.<sup>7</sup> Even though *Ijma* confers the nation the ability to create or adopt new legislation based on the basic principles of the *Quran* and *Sunna*, it is very hard at the same time to achieve *Ijma* in the Islamic world because of the innumerable explanations of religious texts.

**2-Qiyas:** Because there is a need to use rationale and human reasoning in any previously unconsidered legal situations, Muslim jurists recognized *Qiyas* as one of the secondary sources. *Qiyas* can be considered as applying a known injunction from the provisions of the *Quran* to a new circumstance when the pattern and the new situation share the same effects and causes.<sup>8</sup>

In other words, *Qiyas* involves taking an established ruling from Islamic law and implementing it to a new case by virtue of

the fact that the new cases share the same indispensable reason why the original ruling was applied. Since the provisions of divine law do not control every rule for the lives of Muslims, it is necessary to apply human way of thinking and the ability to structure the legal rules based on the divine law when considering any new situation.

In examining the importance of *Qiyas* as a source of law, it is obvious that *Qiyas* is the most practical method for deducing new legislation and regulations under Islamic law.<sup>9</sup> Additionally, *Qiyas* is the main ground for discord among the four schools of thought.<sup>10</sup> Moreover, *Qiyas* continues to be a great source for the development of Islamic law.

**3-Istihsan:** Moving to another secondary source, it is one of the sources of legislation under the Islamic legal system. The term *Istihsan* refers to the procedure of selecting a suitable way out over another solution based on the community interest, because the selected solution is suitable.<sup>11</sup>

Additionally, while *Istihsan* was translated as the public interest, some scholars sometimes translated it as juristic preference.<sup>12</sup> The conception of *Istihsan* draws attention to the suppleness of Islamic law, which provides likelihood for Muslim juristic and religious scholars to read between the lines the law in the absence of a definite law on the issue.<sup>13</sup>

Theoretically, the source of *Istihsan* is obviously associated to personal or group interests which can lead to argument between groups with opposing interests. However, the four schools of thought are very different in the usage of *Istihsan* as a source of law, and *Istihsan* may be referred to in some schools as *Masaleh Marsala*.<sup>14</sup>

**4-Istihab:** *Istihab* is also one of the most considerable secondary sources of law. *Istihab* can be defined as the presumption of continuity, which means that the continuing of judgment in matters where things or situations exist and are presumed to continue to exist until the contrary is proven.<sup>15</sup> Thus, the concept of *Istihab* is only applied in the absence of evidences.

An example is the presumption that an accused person is not guilty until the

evidence proves the contrary. In the end, *Istihab* is the law of presumption, and it is more associated to rules than to interpretation. This seems to be a sort of the "logic" part of law.

**5-Urf:** Another secondary source of Islamic law is *Urf*, which refers to the local customs conventionally practiced by a group of people. The practice of tradition should be compatible with the provisions of the *Quran* and the tradition of the Prophet Mohammed to serve as a source of law. In the pre-Islamic era, custom played a decisive role in determining the law between the tribes.

Accordingly, Islam permitted custom to be a source of law to solve the legal issues when no text of the *Quran* or tradition of the Prophet Mohammed is available or no *Ijma* or *Qiyas* is pertinent to the case. It is necessary, however, to note that there is an argument between the Muslim scholars in relation to whether custom can be seen as a valid source of law. There are some examples that show the significance of custom in Islamic law.<sup>16</sup>

For instance, because no divine law or secondary source has decided the amount of dowry from a husband to his wife, custom plays a large role in determining the amount of the dowry. As a result, *Urf* in the modern era is a very accommodating tool and source particularly for those people who live outside of the Islamic world, such as the Muslim minorities in the United States and Europe especially in the topic of human rights.



**Rakan Alharbi**

- Lecturer, KFUPM, Saudi Arabia  
- SJD Candidate, McKinney School of Law





SBA President, Laura Walker handling the Certification to ILA President, Omar Alsunaid



Sean Southern &amp; Zahra Ayobi at ILA's Coffee Hour

The Islamic Law Association contributes meaningfully to our understanding of law around the world. I have attended several ILA events and learned something new every time.

**Sean Southern**

Associate Director, Office of Professional Development

## (QUR'AN) THE CONSTITUTION OF ISLAMIC LAW

By Alhadi Altower

The Qur'an is the first source of Islamic law (Sharia). It is like a constitution, which must be followed by all Muslims, and it is not permissible to depart from the rules it lays down. The Qur'an, in Islamic belief, is the words of God through revelation to the Prophet Muhammad (P. b. u. h). Prophet Muhammad (P. b. u. h) dictated it to His companions, and they wrote it directly from Him. In turn, the companions transferred it to a large number of people, and this process continues until today. The Qur'an was not subjected to distortion or change and has had no increase or decrease from Prophet Muhammad's (P. b. u. h) time to today. It is the source of many of the rules of Islamic law, and Muslims have been taking care of the Qur'an for more than 1400 years. "The Arabic speech of Allah . . . was revealed to the Prophet (p.b.u.h) both in word and in meaning. It is collected between the two covers of the Mushaaf, [Holy Qur'an], was narrated in Mutawaatir [by continuous testimony] chains, and is a challenge to humankind."<sup>17</sup> In another definition, "Qur'an is the book which Allah revealed in His speech to His Prophet Muhammad (P. b. u. h) in Arabic and this has been transmitted to us by continuous testimony or tawatur."<sup>18</sup>

In addition, the Qur'an contains rules regarding belief and worship; sales, purchase and contracts; ethics, such as sincerity, taking care of parents, orphans, and patients, giving to the poor and needy, and the rights of men, women, and neighbors; and saving private and public money. As well, the Qur'an contains the rules of inheritance, charity (Zakat) and alms, and penalties for various offenses that may be committed.

However, the Qur'an is the first principal source of the Islamic law. If Muslims find a rule in the Qur'an governs any issue, it is necessary to follow it, and Muslims shall not violate it, such as the prohibition of alcohol, drugs, murder, usury, fraud, lying or adultery. Therefore, anything is forbidden in the Qur'an cannot be permitted (Halal) for Muslims, except if there is a necessity.

For example, Islam prohibits alcohol, unless the person is choking and there is only wine to drink and he will die if he does not drink; in this case, he may drink alcohol. On the other hand, any of the things in the Qur'an that are permitted cannot be banned, such as selling, purchasing, rent, mortgage and credit.

(Continued)



These things are permitted (Halal) or Permissible (Mobah) in Islam and cannot be forbidden, except as an exception, such as prohibiting the sale of drugs or anything harmful to people.

One of the Western scholars who has talked about the Qur'an is Maurice Bucaille (The Bible, the Qur'an and Science. 1978, p. 125):

"Here, therefore, its merits as a literary production should perhaps not be measured by some preconceived maxims of subjective and aesthetic taste, but by the effects which it produced in Muhammad's contemporaries and fellow countrymen. If it spoke so powerfully and convincingly to the hearts of his hearers as to weld hitherto centrifugal and antagonistic elements into one compact and well-organized body, animated by ideas far beyond those which had until now ruled the Arabian mind, then its eloquence was perfect, simply because it created a civilized nation out of savage tribes, and shot a fresh woof into the old warp of history."<sup>19</sup>

Muhammad Asad<sup>20</sup> says about the Qur'an: "Unfolds a book which, more than any other single phenomenon known to us, has fundamentally affected the religious, social and political history of the world. No other sacred scripture has ever had a similarly immediate impact upon the lives of the people who first heard its message and, through them and the generations that followed them, on the entire course of civilization.

It shook Arabia, and made a nation out of its perennially warring tribes; within a few decades, it spread its world-view far beyond the confines of Arabia and produced the first ideological society known to man; through its insistence on consciousness and knowledge, it engendered among its followers a spirit of

intellectual curiosity and independent inquiry, ultimately resulting in that splendid era of learning and scientific research which distinguished the world of Islam at the height of its cultural vigor; and the culture thus fostered by the Qur'an penetrated in countless ways and by-ways into the mind of medieval Europe and gave rise to that revival of Western culture which we call the Renaissance, and thus became in the course of time largely responsible for the birth of what is described as the "age of science": the age in which we are now living."<sup>21</sup>



### Alhadi Altower

- Professor of law, AlJabal Al- Gharbi University, Libya  
- SJD Candidate, McKinney School of Law

However, the importance of the Qur'an came because Muslims believe that this book is not written by any human being, but by the creator of human being and all its words are what God says. On the other hand, the Qur'an is not just a book of law but it also contains a lot of the principles of ethics as well as many of the rules of commercial and non-commercial financial transactions and contracts. It also contains the rules of marriage and divorce. The couple's rights and children's rights, and much of what is stipulated in the human rights charters today has a basis in the Qur'an. Also the Qur'an contains many of the sciences, such as medicine, physics, astronomy and mathematics.



### Noah S Joseph

Associate Director for Graduate Admissions

The Islamic Law Association has been a great addition to the law school. We have had an increase in the number of students joining us from Islamic Law countries in the last few years, and this year we have seen a real interest from those students in educating and interacting with other students at the law school. I have attended several coffee hours with the ILA and also an International Student Speaker Series event, and the students that have spoken have been engaging and eloquent about Islamic Law, especially in explaining how it is different from law in the US, both positively and negatively. The students have been very open to questions and discussion, and to creating a dialogue between all students. The ILA in one short year has become a tremendous asset to the law school community, and I look forward to seeing what kind of impact it can have in the future.





## Omar Alsunaid

SJD Candidate, McKinney School of Law  
Islamic Law Association, President

The rights and obligations of men and women in *Sharey'ah*<sup>23</sup> are guided by primary Islamic sources, which are the Qur'an, Hadith, Ijma and *Qiyas*. In addition to these sources, cultural traditions play a significant role in Muslim communities and have, in many cases, conflicted with *Sharey'ah*. These conflicts concern many aspects of the lives of Muslim women, such as *Alquamah*, political participation, marriage, and inheritance. The conflicts have resulted in a misunderstanding of how *Sharey'ah* handles women's issues.

*Sharey'ah* is devoted to establishing a great community, in which its people completely practice their own rights pursuant to *Sharey'ah's* perspective of human rights.<sup>24</sup> *Sharey'ah* imposes various regulations on both men and women. Some of these are the same, while others are not. These differences between women's and men's rights and obligations are based on their nature and social responsibilities.<sup>25</sup> Accordingly, *Sharey'ah* seeks justice, not equality. This notion leads some non-Muslims to believe that women's rights in *Sharey'ah* and Muslim communities are controlled and dominated by men.

## Women's Rights in Islamic Perspective<sup>22</sup>

By Omar Alsunaid

This article will focus on the explanation of the objectives behind *Sharey'ah's* determination of women's rights and obligations. Understanding *Sharey'ah's* objectives is essential for everyone who seeks to understand the distinction between men's and women's rights. The article depends on The Textual Translation of *The Quran The Supreme*<sup>26</sup> in translating the Holy *Qura'n's* text.<sup>27</sup>

### Women Rights

*Sharey'ah* has many unique distinctions with regard to women's rights that other religions do not have. First, *Sharey'ah* preceded the Western nations, including Europe, in recognizing the independence of a woman's personality. A woman in *Sharey'ah* has never needed a husband's signature to accept a check or a form of security.<sup>28</sup> A woman in *Sharey'ah* keeps her family name after she marries, and, unlike the practice in other countries, her husband cannot change her family name. A woman in *Sharey'ah* keeps all of her possessions after marrying, and her husband has no right to control them.<sup>29</sup> *Sharey'ah*, in general, gives women the same right of inheritance that it gives to a man.

Second, *Sharey'ah* provides all rights to a woman that are harmonious with her personality, ability and her primary role in life. For example, no financial duties to earn money outside the home are imposed on a married woman because of her many burdens at home such as childbearing and rearing. *Sharey'ah* instead imposes the financial duties on the husband, thereby honoring the wife's role within the household as will be explained in the *Alquamah* section.<sup>30</sup> Many scholars, such as Samuel Smiles, have demonstrated that a family will suffer when the mother leaves her role in the household and the ill effects that result socially and economically.<sup>31</sup> Nevertheless, women have the right, under *Sharey'ah*, to work outside the home.

Third, *Sharey'ah* legislation is based on the equality of men and women. All of the texts in the Qur'an and the Hadith indicate that the Muslim nation is united, including the vital elements, which are men and women, and that men and women have their own independent personalities and respectful weight in the Muslim community. For example, the *Qur'an* indicates that the origin of mankind is oneself.<sup>32</sup> All males and females descended from a single individual, who is Adam. It is a primary principle in *Sharey'ah* that all mankind, which means men and women, are equal and have the right to live and the right to live with *Karamah*.<sup>33</sup>



## Zahra Ayoubi

JD, LLM Student

ILA has done a great job in disseminating information about Islamic Law and connecting the McKinney community. I learned a lot during ILA events. Specifically, I believe the coffee hours were a great way of allowing students to ask questions and discuss different topics related to Islamic Law. I look forward to more events in the coming semester.





### Bashar Almofadda

SJD Candidate, McKinney School of Law  
Lecture, The Higher Judicial Institute, Saudi Arabia

# Women and Marriage<sup>34</sup>

## By Bashar Almofadda

In the perspective of Islamic law, a man and a woman are a couple, and they should live in peace and love in good faith, with respect for each other. Because

there are numerous legal issues related to this relationship, Islamic law regulates it.

The most important rule that should be known before discussing women and marriage in Islamic law is that having sexual intercourse out of a legal marriage is taboo and forbidden, and its punishment is severe.

Sexual intercourse between a man and a woman is permitted only if they are married to each other. Consequently, marriage is highly recommended, and there are several Ayah (verses) and Hadith (traditions) that state this concept. In addition, there is a rule that a husband is financially responsible for supporting his family. Even a rich wife is not required to pay from her own money anything for the household expenses. In addition, no one can force a woman to be a first or a second wife. She reserves the right to refuse to marry anyone. The final rule is that she can include in the marriage contract a term that prevents the husband from marrying another woman while they are married.

Islamic law gives men and women different rights related to marriage. The women's rights include, but are not limited to, choosing her husband, financial support by her husband (*Nafagah*), having sexual intercourse with her husband,

*Mahr* (dowry), making terms in the marriage contract and *Khula* (terminating marriage). Islamic law protects these rights and no one can extinguish them.

One of the most misunderstood concepts related to Islamic law is polygamy. Islamic law permits men to have more than one wife, theoretically up to four at the same time. Islam did not introduce polygamy. It was legal in different religions and societies prior to the birth of Islam. In Islamic law, there are significant terms that must be attended to when a man desires to practice polygamy. These terms are as follows: **1.** There is no term in the first marriage contract that prevents the husband from marrying more than one woman during the marriage. **2.** The second woman has to agree to be a second wife. **3.** The husband must be able to provide the wives physical strength, loyalty and honor equally, as the *Qur'an* calls it '*Aladel*'. **4.** The husband must be able to support the wives financially (*Nafagah*). **5.** The husband must be able financially to host the wives in two different houses. **6.** The first and second wives must not be related to each other. These terms make polygamy difficult except for those who seriously desire to have more than one wife.<sup>35</sup> Consequently, few men marry more than one wife. For instance, in Saudi Arabia, only 0.64% of men have more than one wife.

One may ask why Islamic law permits men to have more than one wife? Islamic scholars have concluded that permitting men who meet the above-stated terms to have more than one wife meets the following objectives:

**1.** In general, there are more women in the population than men in the world.

(Continued)

The Islamic Law Association has been a valuable addition to McKinney. The events have brought a new level of diversity and insight into the lives of our international classmates and their legal systems. The Coffee Hours have been a great opportunity to have an informal chat about Islamic law and the general basis for different areas for the legal system. The ILA has successfully engaged McKinney students of all backgrounds in dialogue regarding Family Law, Shariah Law, and other relevant topics.

The ILA was also instrumental in the school's



Diversity Week and has sponsored an informative panel for the school's International Speak Series. Each of the ILA's events during the academic year 2014-2015 has been a golden opportunity for students to learn more about each other and about the international nuances of their practice area of interest.

I have been truly grateful to have participated in these events. I look forward to what the upcoming year holds for the organization!

### Kristen Coffey

JD Candidate, ILA member

For instance, according to the Census, 143.4 million women and 138.1 million men were counted in the United States in 2000.<sup>36</sup> If a man is permitted to marry only one woman, then 5.3 million women will not have a partner. Of course, in earlier societies, the numeric ratio was also influenced by frequent wars. Another factor that decreases the number of males who are able to marry is the inability of some of them to support a family financially. As stated above, men are alone financially responsible for supporting their families. If a man is unable or unwilling to support his family, he is not able to get married. The factor increases the number of women who do not have a partner. The 5.3 million women mentioned above have three choices: (a) they can live without a husband and children; (b) they can have an illegal relationship with a married man or (c) they can get married to a man who has a wife. From the Islamic point of view, the third choice is the best solution for women. It is also the best solution for society, which has a legal relationship between a man and a woman in the eyes of law.

2. Recent studies show that the first desire of a woman is to become a mother. In contrast, the first desire of a man is to have sexual intercourse.<sup>37</sup> How can these two desires be fulfilled in a society in which there are more women than men? The reasonable answer is to permit a man to marry more than one woman. By this solution, men can have sexual intercourse legally, and their wives can become mothers.

3. Many children do not have a father because of death or divorce. In such cases, fatherless children live with their mothers, other family members or in orphanages. From the Islamic law perspective, it is important that every child should have a father and a mother to take care of him/her. The best way to care for a fatherless child is to have the child live with the mother and a stepfather instead of with a single parent or in an orphanage. To illustrate, when the father dies, the brother will generally take care of the nephews as a stepfather, but he cannot do that if he has a wife. Because *Sharey'ah* permits the man to have more than one wife, the brother is permitted to be his nephews' stepfather to take care of them.

4. If a woman is poor or ill, no man, in general, will marry her. *Sharey'ah*, however, encourages men to help and support these women, and the best way to do so is to marry them and to be financially responsible for them. By being permitted to marry more than one woman, he can marry poor or ill women to take care of them.

5. Polygamy reduces the divorce percentage. When a husband wants to marry another woman, he must either divorce his wife or take the second woman as his second wife. If he chooses to divorce his wife, the percentage of divorce will increase and his wife will become partnerless. The second scenario, however, will help to reduce the divorce percentage by allowing the man to marry more than one woman. *Sharey'ah* has adopted the polygamist approach and considers the interests of the others and the current wife as well;

at the same time, *Sharey'ah* discourages divorce, which is a threat to the current wife and children and to society.

6. One of the Islamic philosophies is to encourage men to increase the population of a society. The fastest method to fulfill this philosophy is to permit men to marry more than one woman if the men meet the *Sharey'ah* conditions already mentioned.

7. Recent studies demonstrate that, in the United States "men think more about sex", and "men seek sex more avidly".<sup>38</sup> In addition, the statistics show that 59.9% of men have engaged in infidelity during their current relationship, while 40.1% of women have engaged in infidelity during their current relationship.<sup>39</sup> These studies indicate that some men need more than one woman with whom to have sexual intercourse, and they will have it whether it is legal or illegal. *Sharey'ah* made a path for these men and reserved their rights, with strong conditions, to fulfill their desire under the eyes of the law by permitting them to marry more than one woman.

8. Every wife has the right to have a term in the marriage contract that restricts the husband from marrying a second woman. In addition, a woman has the right to refuse to become a second wife. These rules demonstrate that a woman has gained independence under the *Sharey'ah*, because she can choose whether to become a second wife or not. When a wife permits the husband to marry a second woman, a reasonable question raised is what is the purpose of preventing men, under many laws and regulations, from getting more than one wife when his wife gives him approval to have a second wife? What is the difference between an open marriage in a jurisdiction that permits an open marriage and polygamy with the wives' approval? The significant point is that polygamy in *Sharey'ah* is under the eyes of the law, and it has to apply marriage rules and procedure, while an open marriage does not have any rules and can be done with unlimited women. With these rules and objectives of *Sharey'ah*, the situation might not be solved if morality has no role to play, even under other laws and regulations. *Sharey'ah* imposes morality on men and women to maintain long-term relationships and to prevent such exploitation. The husband in Islam knows that if he treats his wife by *ma'arofe*, the reward will be significant in this life and in the hereafter. The *Sharey'ah* provides many morality structures in many events of married life, such as working, eating, speaking, sleeping, travelling, and teaching and even in sexual matters. Morality is built in with *Sharey'ah* rules to maintain respected values among the couples in their married lives.

These are the objectives of polygamy that Islamic scholars have derived. However, as mentioned above, the difficult requirements that must be met before a man can have more than one wife decreases the percentage of polygamy.





### Perfecto “Boyet” Caparas

Graduate Studies Program Manager, ILA advisor

What we are seeing are young people who, while learning about the American legal system, precepts, and philosophy, share with the rest of us a vital part of themselves – their own identity, knowledge, language, laws, customs, culture, and tradition.

Their activities included participating in the law school’s Lunar New Year event, Diversity Week’s International Food Festival and ILA founding celebrations, Islamic Coffee Hour series, co-hosting the International Student Speaker Series event on Doing Business, Legal System and Human Rights in Saudi Arabia, and a host of other events and activities.

In the process, these young students, lawyers and professionals develop personal ties and friendships with their fellow students, our faculty, staff, and various people from America and other parts of the world.

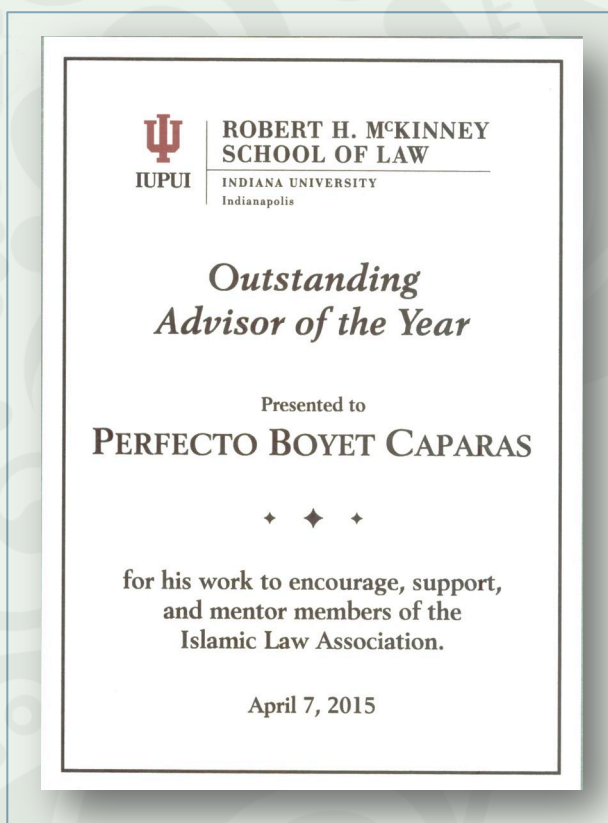
Attend ILA events. Meet their officers and members. Your action will promote international understanding, harmony, and solidarity through mutual respect, dialogue, and friendship.



To the ILA Advisor

# Congratulations

For Winning the Reward of *Outstanding Advisor of the Year*




**ILA Events Schedule – Fall 2015**


<b>Date</b>	<b>Time</b>	<b>Location</b>	<b>Event</b>
<b>Tuesday</b> Aug. 25, 2015	11:00 <sub>am</sub> - 01:00 <sub>pm</sub>	McKinney School of Law	Publishing Islamic Law Magazine & Welcoming 1 <sup>st</sup> year students
<b>Wednesday</b> Sep. 02, 2015	3:45 <sub>pm</sub> - 5:30 <sub>pm</sub>	McKinney School of Law	The Annual Students Organization Fair
<b>Tuesday</b> Sep. 08, 2015	11:30 <sub>am</sub> - 12:00 <sub>pm</sub>	McKinney School of Law	Islamic Coffee Hour
<b>Thursday</b> Sep. 30, 2015	4:00 <sub>pm</sub> - 6:00 <sub>pm</sub>	McKinney School of Law	Conference (Islamic Business Law)
<b>Saturday</b> Oct. 03, 2015	10:00 <sub>am</sub> - 5:00 <sub>pm</sub>	Outside Social	Picnic & Sport Activities
<b>Tuesday</b> Oct. 13, 2015	11:00 <sub>am</sub> - 01:00 <sub>pm</sub>	McKinney School of Law	Legal Course
<b>Wednesday</b> Oct. 21, 2015	11:30 <sub>am</sub> - 01:00 <sub>pm</sub>	McKinney School of Law	Islamic Coffee Hour
<b>Wednesday</b> Nov. 04, 2015	11:30 <sub>am</sub> - 01:00 <sub>pm</sub>	McKinney School of Law	Islamic Coffee Hour
<b>Saturday</b> Nov. 07, 2015	12:00 <sub>am</sub> - 03:00 <sub>pm</sub>	Outside Social	Call out Meeting
<b>Tuesday</b> Nov. 19, 2015	11:00 <sub>am</sub> - 12:00 <sub>pm</sub>	McKinney School of Law	Meeting of the board of the Association for 2015 with Advisor to prepare for the next election
<b>Monday</b> Nov. 23, 2015	11:45 <sub>am</sub> - 12:30 <sub>pm</sub>	McKinney School of Law	Celebration for the end of 2015 & Certificate of Appreciation

\* The Association will send several reminders for its members with more details for each event or for an updating within 10 days prior to the day of the event.



## Notes

1. ABDULLAHI AHMED AN-NA'IM, TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS, AND INTERNATIONAL LAW 19 (The American University in Cairo Press 1992) (1990).
2. Noting that the texts of the *Quran* may be silent when the Quranic context does not provide more details or the meaning of the verse can be defined in various ways.
3. The principle of *Naskh* is the theory of replacement, and it has its conditions, theories, and rules. For a detailed discussion of the principle of *Naskh*, See JOHN BURTON, THE SOURCES OF ISLAMIC LAW: ISLAMIC THEORIES OF ABROGATION 18-205 (Edinburgh University Press 1990).
4. JAMAL J. NASIR, THE ISLAMIC LAW OF PERSONAL STATUS 20-21 (Graham Trotman 1990) (1986).
5. For further details regarding the degrees of Hadith, See Nasir, *supra* note 63, at 21.
6. Kouriles P. Nicholas, The Influence of Islamic Law on the Contemporary Middle Eastern System: The Formation and Binding Force of Contracts, 9 Colum. J. Transnat'l L. 384, 390 (1970).
7. Noting that historical *Ijma* means consensus made by famous Muslim scholars depending on unambiguous verses of the *Quran* or the contents of *Sunna*. However, contemporary *Ijma* refers to the consensus of Muslim scholars of specific geographic areas on a particular issue as it happened these days in the Islamic world.
8. Johan. Makdisi, Legal Logic and Equity in Islamic Law, 33 AM. J. COMP. L. 63, 68 (1985).
9. WALID M. H. AL- MALIK, MINERALS INVESTMENT UNDER THE SHARI'A LAW 19 (Graham & Trotman 1993).
10. Kouriles P. Nicholas, The Influence of Islamic Law on the Contemporary Middle Eastern System: The Formation and Binding Force of Contracts, 9 Colum. J. Transnat'l L. 384, 392 (1970).
11. ABDULLAHI AHMED AN-NA'IM, TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS, AND INTERNATIONAL LAW 25, 26 (The American University in Cairo Press 1992) (1990).. The determination for the appropriate solution depends on the direct provision of the *Quran* or the tradition of *Sunna* or reasoning by the source of *Qiyas*.
12. Fadel, Hossam E. The Islamic Viewpoint on New Assisted Reproductive Technologies, 30 FORDHAM URB. L.J. 147, 149-150 (2002).
13. *Id.* at 150.
14. Ahmad Hassan, The Principle of *Istihsan* in Islamic Jurisprudence, 16 ISLAMIC STUD. INST. 347, 349 (1977). Some scholars, especially in the *Hanafi* School, see *Istihsan* as not an independent source of law, because it seems to be one division under *Qiyas*. See *Id.*
15. Radwa S. Elsaman Mohamed A. Arafa, The Right of The Elderly in the Arab Middle East: Islamic Theory Versus Arabic Practice, 14 Marq. Elder's Adviser 1, 8 (2012).
16. Gidon Libson, On the Development of Custom as a Source of Law In Islamic Law: *Al-rujuuila al-urfiahadu al-qawaidi al-khamsiallatiyatabannaalayha al-fiqhu*, 4 ISLAMIC LAW AND SOC'Y 131, 135-139 (1997). See also izzidien, *Supra* note 27, at 60-61.
17. Al-Mustasfa fi 'ilm al-isul (The Clarified in Legal Theory), Abū Hāmid Muḥammad al-Ghazālī, Dar Alkutb Alalmeh, 1413, Beirut, pag 22. Oluom Al Koran Mun Kelal Mukdemat Altfseer (Science of the Qur'an during introductions interpretation.), Dr Mohammed Safa, Sheikh Ibrahim Hakki, Moasst Alresalh, (founder of the message) Beirut 1425 2004. <http://sadisblog.wordpress.com/2012/05/05/the-definition-of-the-holy-quran-3/>. "I visited it on 2/7/2014" See also, [http://en.wikipedia.org/wiki/Al-Ghazali#List\\_of\\_works](http://en.wikipedia.org/wiki/Al-Ghazali#List_of_works). "I visited it on 2/7/2014" <http://uqu.edu.sa/page/ar/146950>. "I visited it on 2/7/2014, <http://en.wikipedia.org/wiki/Quran> "I visited it on 2/7/2014"
18. Usul Al Fiqh (Islamic Jurisprudence) by Shah Abdul Hannan, Pdf at: <http://www.hudainfo.com/Articles/E005.pdf> "I visited it on 3/2/2014."
19. Pdf available at: [http://www.sultan.org/books/what\\_they\\_say\\_about\\_quran.pdf](http://www.sultan.org/books/what_they_say_about_quran.pdf). "I visited it on 3/24/2015"
20. "Muhammad Asad, born Leopold Weiss; 2 July 1900 – 20 February 1992) was a Jewish-born Austro-Hungarian journalist, traveler, writer, linguist, thinker, political theorist, diplomat and Islamic scholar. Asad was one of the most influential European Muslims of the 20th century." Muhammad Asad, the Road to Makkah. Translation by Refaat Aseed Ali. King Abdul-Aziz Library. Riyadh, Saudi Arabia. P5, 6, 7. See also, [http://en.wikipedia.org/wiki/Muhammad\\_Asad](http://en.wikipedia.org/wiki/Muhammad_Asad)

21. The Message of The Qur'an, translated and explained by Muhammad Asad, Dar Al-Andalus Gibraltar, 1980. P1 (source [http://www.usc.edu/schools/college/crcc/private/cmje/religious\\_text/The Message of The Quran by Muhammad Asad.pdf](http://www.usc.edu/schools/college/crcc/private/cmje/religious_text/The_Message_of_The_Quran_by_Muhammad_Asad.pdf))
22. European Journal of Law Reform, Issue 2, 2014
23. *Sharey'ah* is the code of law derived from sources, including the Qur'an, the Hadith and the jurisprudence of Islam scholars, which cover all parts of Muslim life, such as civil and criminal justice, and regulating individual, personal and moral conduct.
24. G.A.-S. Aly, *al-Huqūq al-siyāsīyah wa-al-iqtisādīyah lil-mar'ah fī al-Islām*, al-Qāhirah : Dār al-Kalimah lil-Nashr wa-al-Tawzī' 2013.
25. F. Howeidly, *Islam and Women's Rights*, United Nations Development Programme 2 2005 <[www.arab-hdr.org/publications/other/ahdr/papers/2005/howeidly.pdf](http://www.arab-hdr.org/publications/other/ahdr/papers/2005/howeidly.pdf)>
26. A.F. AlMubarak, *The Textual Translation of The Quran The Supreme*, 2011.
27. According to the author of *The Textual Translation of The Quran The Supreme*, each word in the Qur'an is intended for itself to convey a specific message. The Qur'an does not have word-deficits or word-surpluses nor does it have synonyms. It is sacred and unique. It is for all of humanity. Accordingly, it must be translated *verbatim and taintless*.
28. Aly, 2013.
29. Aly, 2013.
30. If the husband died and the wife has finance capability, then she can spend on herself with no obligation towards other family members such as son or daughter. If the husband died and the wife has no finance capability, the family members who are financially capable, either son or daughter, will be obligated to spend on their mother. *See* <[http://fatwa.islamweb.net/fatwa/index.php?page=show\\_fatwa&Option=FatwaId&Id=134456](http://fatwa.islamweb.net/fatwa/index.php?page=show_fatwa&Option=FatwaId&Id=134456)>.
31. M. Aelsebai, *Women Between Jurisprudence and Law*, Al WARRAK PUBLISHING - Beirut 1966, p. 198.
32. AlMubarak, *The Textual Translation of The Quran The Supreme*, 2:1 2011.
33. *Generously and gratuitously bestowed countless boons benefits*.
34. European Journal of Law Reform, Issue 2, 2014
35. E. Alzamel, *The Percentage of Polygamy in Saudi Arabia Is Less Than 1%*, 2008, <[www.essamalzamel.com/?p=124](http://www.essamalzamel.com/?p=124)>.
36. D.I. Smith & R.E. Spraggins, *National Atlas of the United States*, 2000, <[http://nationalatlas.gov/articles/people/a\\_gender.html#t1](http://nationalatlas.gov/articles/people/a_gender.html#t1)>.
37. S. Alhussin, *Polygamy and Human Rights*, 2012, <<http://rowaq.org/?p=231>>.
38. R. Sine, *Sex Drive: How Do Men and Women Compare?*, 2013, <[www.webmd.com/sex/features/sex-drive-how-do-men-women-compare](http://www.webmd.com/sex/features/sex-drive-how-do-men-women-compare)>.
39. K.P. Mark, E. Janssen & R.R. Milhausen, 'Infidelity in Heterosexual Couples: Demographic, Interpersonal, and Personality-Related Predictors of Extradysadic Sex', *Archives of Sexual Behavior*, Vol. 40, No. 5, 2011, pp. 971-982.