

**School of Law, HILSR
Jamia Hamdard**

Course Syllabus

Course Overview:

Course Title: Family Law - I

Course Code: BA LLB – 302

Semester: Third

Credits: 4

Medium of Instruction/Assessment: English

Objectives of the Course:

This course aims to inculcate in the students a general understanding of Muslim Personal Law in India. Students will be exposed to the origins and development of different schools of Muslim Law besides providing them a deeper insight into some important topics in the subject like marriage, divorce, maintenance, inheritance and much more.

Learning Outcomes:

At the end of this course, students will be able to do the following:

1. Have a deeper insight of the foundations of Muslim Law and how it applies to the Muslim population in India.
2. Exhibit an understanding of the important concepts in Muslim law – marriage, divorce, maintenance etc.
3. Determine what rights the parties particularly a wife have in a marriage under Muslim personal law.
4. Know the rules of inheritance under Muslim law.
5. Know how wakfs under Muslim law are administered and its related legalities.

Assessment and Evaluation:

The course has a weightage of 100 marks. 75 % of the marks will be covered by the End Semester Examination; while as 25 % will constitute internal assessment to be done by the concerned instructor.

- (A) **End Semester Examination:** There shall be ten questions in the Question paper with two from each unit. Students shall have to answer five questions in all selecting one from each unit.
- (B) **Internal Assessment:** Students will be assessed and evaluated by the concerned teacher during the entire semester at regular intervals. This will be done by employing a wide range of methods including written tests, tutorials, term paper writing, presentations etc. Attendance of the students will also form a part of the internal assessment.

Course Outline:

The course is based on five units.

History and Development

Unit-I

1. Origin and development of Islamic law
2. Sources and Schools of Islamic law
3. Application of Islamic law in India
4. The Muslim Personal Law (Shariat) Application Act 1937

Law Relating to Status

Unit-II

1. Nature of Muslim marriage.
2. Essentials of Muslim marriage.
3. Kinds of marriages – Valid, Irregular and Void (*Saheeh, Fasid, Batil*)
4. Guardian in Marriage
5. Inter-Sect and Inter-Religious Marriage
6. Degree of prohibited relationship under Muslim Marriage Law
7. Dower, its concept, classification of dower, widow's right to retain the property of her husband in lieu of dower

Leading Cases:

Abdul Kadir v. Salima (1886) ILR 8 All 149.

Maina Bibi v. Chaudhri Vakil Ahmed (1925) 27 BOMLR 796.

Unit-III

1. Dissolution of Marriage:

- a. Concept and Historical Development of Islamic Law of Divorce
- b. Legal Effects of Divorce
- c. Classification of Dissolution of Marriage:
 - By the Husband
 - At the instance of the Wife

Talaq (Repudiation)

TALAQ AL-SUNNAH (APPROVED FORMS)

(*Ahsan* Form, *Hasan* Form)

TALAQ AL-BIDAH (DISAPPROVED FORMS)

SOME ANCIENT FORMS OF TALAQ

Ilaa (Vow of Continuance), *Zihaar* (Injurious Assimilation)

- Divorce by the Wife

Tafweed (Delegation of divorce), *Khula* (Redemption)

- Mubaraah* (Divorce by mutual consent or mutual freeing)
- Dissolution by Judicial Process

Liaan (Mutual Imprecation), *Faskh* (Judicial Recession)

Dissolution of Muslim Marriage Act, 1939

Grounds of Decree for Dissolution of Marriage

2. Maintenance of divorcee under Muslim law.

- a. Law of maintenance under (Muslim Women Protection of Rights on Divorce) Act, 1986.
- b. Maintenance under Criminal Procedure Code, 1973.

3. General Principles of Guardianship:

- a. Difference between guardianship and mother's right to custody of minor children (*Hizanat*)
- b. Acknowledgement and Paternity- Some basic principles and judicial interpretations

Leading cases:

Mt. Ghulam Kubra Bibi v. Mohd. Shafi Mohd. Din, AIR 1940 Pesh 2.
Chand Patel v. Bismillah Begum, 1 (2008) DMC 588 (SC).
Saiyid Rashid Ahmad v. Mt. Anisa Khatun, AIR 1932 PC 25.
Shamim Ara v. State of U.P., 2002 Cr LJ 4726 (SC).
Masroor Ahmed v. Delhi (NCT) 2008 (103) DRJ 137 (Del.).
Ghulam Sakina v. Falak Sher Allah Baksh, AIR 1950 Lah. 45.
Yousuf Rawther v. Sowramma, AIR 1971 Ker. 261.
Itwari v. Asghari, AIR 1960 All. 684.
Danial Latifi v. Union of India (2001) 7 SCC 740.
Noor Saba Khatoon v. Mohd. Quasim, AIR 1997 SC 3280.
Bai Tahira A vs Ali Hussain Fissalli Chothia 1979 AIR 362.
Fuzlunbi vs K. Khader Vali AIR 1980 SC 1730.
Mohd. Ahmed Khan v. Shah Bano Begum 1985 AIR 945.
Syed Habibur Rahman Chowdhury v. Syed Altaf Ali Chowdhury (1921) 23 BOMLR 636
Imambandi v. Sheikh Haji Mutsaddi (1918) 20 BOMLR 1022

Succession, Guardianship and Hizanat

Unit- IV

1. General rules of succession and exclusion from succession
2. Classification of Heirs
3. Distinction between Sunni and Shia Law of Inheritance

4. Classification of Guardians
5. Powers of Guardians
6. Right of Hizanat (Custody) and loss of right of Hizanat

Leading Cases:

Nawazish Ali Khan v. Ali Raza Khan, Privy Council Appeal No. 18 of 1945

Hafeeza Bibi v. Shaikh Farid (2011) 5 SCC 654.

Sayed Mazhar Hussain v. Bodha Bibi 21 All 91

Law Relating to Property

Unit- V

1. Gift and Will

- a) Meaning and essentials of a valid gift
- b) Delivery of possession
- c) Gift of Undivided property *Mushaa*
- d) Gift made during *Marz-ul-Maut*
- e) Concept of Will and its relationship with succession and inheritance
- f) Capacity to make Will
- g) Subject matter of Will
- h) One third limitation of will and its rationale
- i) Abatement of legacies

2. Waqf. – Creation, Subject-matter and Administration

- a. History of Family *Waqf* legislations in India
- b. Significance of inheritance laws in Islam
- c. Waqf Act 1959
- d. Waqf Alal Aulad (Waqf for the benefit of Inheritors)

Leading cases

Abul Fata Mahomed Ishak v. Rasamaya Dhur Chowdhuri (1891) ILR 18 Cal 399.

Mahomed Hamidulla Khan v. Lotful Huq (1881) ILR 6 Cal 744.
Hasan Ali v. Nazo (1889) I.L.R. 11 A. 456

Readings:

1. Fayzee A.A.A, *Outlines of Mohammadan Law*.
2. Tahir Mehmood, *The Muslim Law of India*.
3. Ameer Ali II *Mahommedan Law* 471(1985).
4. Tahir Mahmood & Saif Mahmood, *Introduction to Muslim Law*
5. Faiz Badrudin Tyabji, Muhsin Tayyibji, *Muslim Law: The personal law of Muslims in India and Pakistan*
6. Furqan Ahmad, *Towards the Renaissance: Shibli and Maulana Thanvi on Sharia*, with an introduction by Werner Menski

Note : The above readings and cases are not exhaustive. Teachers are advised to supplement the readings with updated cases and latest developments