Origins of Islam

- Prophet Muhammad
  - Muhammad ibn Abdullah (570–632 c.e.)
  - Born in what is today Saudi Arabia
  - Received revelation from God in 610 c.e.
  - Continued to receive revelations thru remainder of his life
  - Compiled into the Qur’an (Koran)

Monotheism

- Islam as the last of the divine revelations
- Islam is an Abrahamic faith
- Judeo-Christian-Muslim tradition
  - transcendent and all-powerful God
  - the prophets
  - revelation
  - divinely mandated community.
- Muhammad as the last in a long line of prophetic messengers
- Jewish, Christian, and Islamic Scriptures were made known to humankind through these messengers
Islam Today

Second largest religion today
Approximately 1.3 billion adherents

Shari’ah
Covers a combination of religious and secular topics
Religious duties
- Shahada
- Salat
- Zakat
- Sawm
- Hajj
Eating and drinking
continued

- Family life
- Marriage
- Divorce
- Child custody
- Sexual morality
- Inheritance
- Theft
- Business relationships
- War and peace

Sources of Law

- Sacred sources
  - Qur’an (revelations to the prophet Muhammed)
  - The Sunnah (deeds and teachings of the prophet Muhammad)
  - Originally oral
  - Recorded by followers
    - Hadith
    - Varying degrees of certainty

Divine Law

- Concept of divine law in Islam emerged in the late eighth and early ninth centuries C.E.
- the refinement of the definition of the sources of Islamic law
- the development of techniques by which general principles and specific rules were derived from those sources.
- Shari’ah is divine word of God and is unchanging
- Need to determine specific norms in accordance with Shari’ah (divine revelation)
- Fiqh roughly translated as “jurisprudence”
  - debating appropriate norms
  - writing books and treatises on the law
- Fuqaha (practitioners of fiqh) try to discover and give expression to the Shari’ah
Schools of Law within Islam

- Two major branches of Islam
  - Sunni (90%)
  - Shia (10%)
- Shia approach of Islamic law
- Four major Sunni “schools” of law:
  - Hanafis
  - Malikis
  - Hanbali
  - Shafii

Legal Reasoning

- Ascertaining law through *Ijtihad*
  - *Ijma*: reaching a consensus among experts
  - *Qiyas*: reasoning by analogy
  - *Takhayyur*: choosing among interpretations
  - *Talfiq*: combining previous juristic opinions from different schools to establish a new rule
- “Closing the gates” of *Ijtihad*
  - Is continued interpretation necessary?

Application of Islamic Law

- Islamic law has co-existed with state-centered law
  - Ottoman Empire, 1389-1922
- Islamic law has traditionally applied to issues such as family status, marriage, inheritance and the like
  - Relationships among Muslims
- State law has applied to criminal matters, property ownership, tort, business law
Legal Pluralism

- Coexistence of multiple legal systems within a given area
- Topical vs. geographic vs. communitarian application
- Personal principle vs. territorial principle
  - Personal principle applied to matters dealing with family and personal status

Adoption of Islamic Law

- Islamic law as the primary legal system
  - Saudi Arabia
  - Iran
  - Some parts of Nigeria
- Calls for adoption of Islamic law
  - Indonesia
  - Pakistan
  - Egypt

Extension of Islamic Law

- Movement to apply Islamic legal principles more broadly
  - Islamic banking
  - Prohibition of Riba
  - Profit and loss sharing
- Islamic economic order generally
  - Forbids economic activity which is morally or socially injurious
  - Individuals obligated to spend wealth judiciously and not to hoard it, keep it idle or to squander it.
  - Obligations of zakat
Unique to Islam?

Qadi
- Single judge, no jury
- Absence of formal mechanisms of appeal
  - Qadi may consult with a mufti (an expert on Shari‘ah) if he has a question about the law
- Emphasis on orality
  - Testimony (oaths) more important than documentation

Sanctions in Islamic Law
- Theft
- Adultery
- Evidence
- Mitigation
Modern Knowledge in Islamic Law
- Case of Amina Lawal
- How long is pregnancy?
- Prochnow v. Prochnow: how was the father?

Islamic Law and Local Culture
- Law and adaptation
  - Islamic law in Morocco
  - Islamic law in the U.S.
  - Islamic law in France
- Law and local culture
  - Civil law in Japan
  - Common law in India