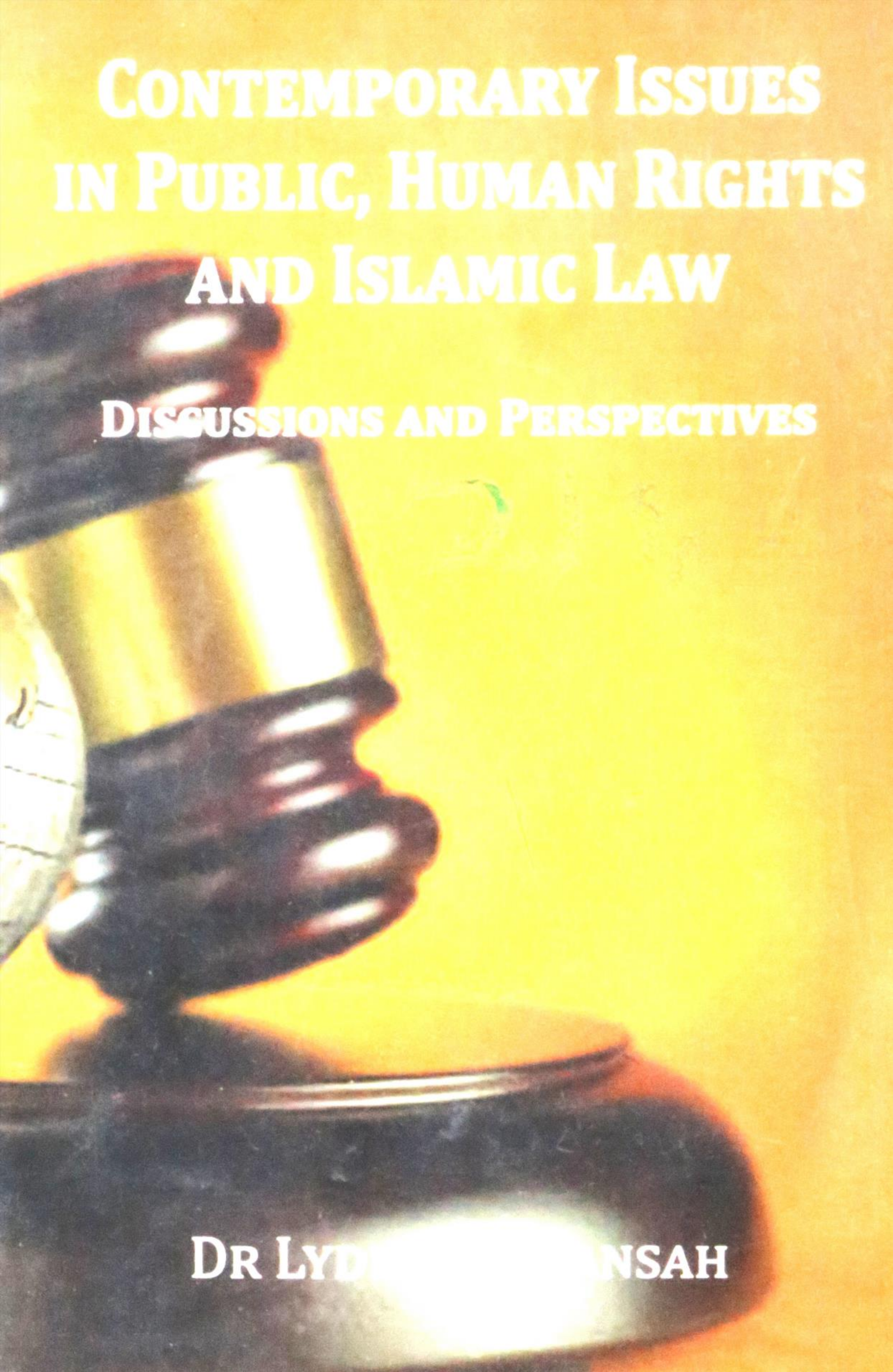




CONTEMPORARY ISSUES IN PUBLIC, HUMAN RIGHTS AND ISLAMIC LAW

DISCUSSIONS AND PERSPECTIVES

DR LYDIA A. ANSAH

CONTEMPORARY ISSUES IN PUBLIC, HUMAN RIGHTS AND ISLAMIC LAW

DISCUSSIONS AND PERSPECTIVES

DR LYDIA A. NKANSAH



Grosvenor House
Publishing Limited

All rights reserved
Copyright © Dr Lydia A. Nkansah, 2020

The right of Dr Lydia A. Nkansah to be identified as the author of this work has been asserted in accordance with Section 78 of the Copyright, Designs and Patents Act 1988

The book cover is copyright to Dr Lydia A. Nkansah
Front Cover image www.istockphoto.com/gb/portfolio/lilyoh.



This book is published by
Grosvenor House Publishing Ltd
Link House
140 The Broadway, Tolworth, Surrey, KT6 7HT.
www.grosvenorhousepublishing.co.uk

This book is sold subject to the conditions that it shall not, by way of trade or otherwise, be lent, resold, hired out or otherwise circulated without the author's or publisher's prior consent in any form of binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser

*Copyright © 2020 Research Academics, Lydia A. Nkansah, Dean of Law,
Kwame Nkrumah University Ghana in conjunction with the Faculty of Law,
Novena University, Ogume, Nigeria.*

A CIP record for this book
is available from the British Library

ISBN 978-1-83975-078-6

Contemporary Issues in Public, Human Rights and Islamic Law: Discussions and Perspectives

Edited by

Lydia A. Nkansah, Ph.D.

(Associate Prof. & Dean, Faculty of Law, Kwame Nkrumah University of Sci. & Tech., Ghana)

Professor B.B. Orubebe

(Provost & Dean, College of Law, Novena University, Ogume, Nigeria)

Saka M. Olokooba, Ph.D.

(Reader & Formerly Coordinator, Bus. Law Dept., Faculty of Law, University of Ilorin, Nigeria)

Valentine Tebi Mbeli, Ph.D.

(Snr. Lecturer & Dean, Faculty of Law, Kampala International University, Uganda)

Contents

General Introduction: *Lydia A. Nkansah Ph.D.*

PART I PUBLIC LAW

1. **Truth Commissions And Restorative Justice
In Post Conflict Sierra Leone And Liberia**
Lydia A. Nkansah Ph.D. 2
2. **Utilizing Taxation In Reducing Unemployment
In Nigeria** *Hafsat Iyabo Sa'adu, Ph.D.,
Dr. Efrida Ratnawati, S.H., & Ebenezer Ajayi Esq* 32
3. **Donald Trump Era and the "Wall" on NAFTA:
The implications on America and the Global Economy**
Olatoke J.O (SAN) & T.O Adeboye Esq 53
4. **The Viability Of The Mineral Development Fund
Act In Ghana Appraised** *Chris Adomako-Kwakye
& Ebenezer Adjei Bediako* 63
5. **Towards An Effective Whistle-Blowing Regime in
The Fight Against Corruption In Nigeria**
Ernest Ogwashi Ugbejeh Ph.D. 82
6. **Apathy to Voluntary Tax Compliance by Taxpayers:
A Focus on Kwara State of Nigeria** *Olokooba S.M. Ph.D.
Muhammed Lekan Z. Esq, & Ariyoosu D.A. Ph.D.* 95
7. **The Impact of Protectionist Economic Policies on
the African Continental Free Trade Agreement:
Nigeria's Border Closure as a Case Study**
J.O. Olatoke (SAN) Ph.D. 105

8. **Corporation And Corporate Criminal Liability in Nigeria: An Overview** *Valentine Tebi Mbeli Ph.D.* 119
9. **An Appraisal of Major Components of The Migration Policies Of Nigeria, 2015** *Josephine Aladi Achor Agbonika Ph.D. & Idachaba Martins Ajogwu Esq* 141
10. **Guidance And Counseling Unit In Nigerian Hospitals As A Necessary Tool In Curbing The Incessant Rate Of Abortion: Findings From A Case Study Research** *Ganiat Mobolaji Olatokun Ph.D., Professor Rusniah Ahmad & Harlidah Abdul Wahab Ph.D.* 157
11. **A Critical Analysis of The Allotment And Partition of Family Property Under The Customary Law In Nigeria** *Ijaiya Bashir Leke Ph.D. & Murtala G.A. Murgan Ph.D.* 177
12. **A Diagnostic Appraisal of China's Status as A Non Market Economy** *Nandita Chauhan* 187
13. **The Impending Demise of The WTO Appellate Body: A Vestigial Remnant of A Body Awaiting Post-Mortem** *J.O.Olatoke (SAN), Ph.D. & Adeboye Oluwaseye Thompson Esq.* 208
14. **Judicial interpretation of section 163 of the South African Companies Act 71 of 2008: Whither the Law?** *Friedrich Hamadziripi* 222
15. **A Review of Supreme Court's Decision in *APC & Ior v. Marafa & Ors* in the Light of *Bukoye v. Ijaodola*** *Professor Rasheed Jimoh Ijaodola & Lawal Babalola Ijaodola Esq* 245
16. **Garnishee Proceedings In Nigeria And Malaysia: Insights And Options On Government Account** *Abdulrazaq O. Abdulkadir Ph.D. & Dina Imam Supaat Ph.D. & Afolabi O.S. Ph.D.* 269

17. **Amicable Settlement Of Litigated Disputes through Mediation: A Key to Sustainable Development**
Ayinla L.A Ph.D. & Professor AbdulHak, N. 284

PART II HUMAN RIGHTS

18. **Right of Children To Health Under The Nigerian Child's Right Act: Exploring The Implementation Stratagems**
Farah Salwani Ismail Ph.D. & Abdulraheem Taofeeq Abolaji, Ph.D. 304
19. **Protection of Dignity and Rights of Persons in Nigeria**
Josephine A.A. Agbonika Ph.D. & Idachaba Martins Ajogwu Esq 321
20. **Basic Fundamental Human Rights as Against Aviation Security Provisions: A Need for an Equilibrium**
Ismail Adua Mustapha Ph.D., Professor Dr. Abdulghafur Hamid & Saka Toyin Abdulrahman 366
21. **Contemporary Human Rights Issues In Africa: A Focus On The Right To Peace**
Foluke Dada Ph.D. 386
22. **Criminalization and Rights of Rape Victims in Nigeria Appraised**
Josephine Aladi Achor Agbonika Ph.D. & Tomi Grace Obagboye Esq 403
23. **Sovereignty And Sovereign Right Of A Port State: Prognoses Of The Existing Customary Law And Epitome of A Developing Country Experience**
Abdulrazaq O. Abdulkadir Ph.D. & Sharifah Zubaidah Syed Abdul Kader SJD. 432

PART III ISLAMIC LAW

24. **Immunity Of Non-Combatants In A War Situation: An Analysis Of The International Humanitarian And Islamic Law Stand Point**
A. A. Owoade Ph.D. 452

25.	Enhancing the Teaching and Learning of Islamic Criminal Law in Nigerian Universities: A Practical Approach <i>Olagunju-Ibrahim, Ridwan Olawale Ph.D.</i>	471
26.	Appraising the Taxation Issues in Ijarah (Islamic Leasing) <i>S.M. Olokooba Ph.D., Olagunju-Ibrahim, Ridwan Olawale Ph.D. & Muhammed Lekan Z. Esq.</i>	487
27.	A SWOT Analysis of The Dispute Resolution Mechanisms In The Islamic Finance Industry In Malaysia <i>Aishat Abdul-Qadir Zubair & Professor Dr. Rabiah Engku Adawiah Ali</i>	497
	Bibiliography	532
	Index	561

Contributors

Abdulghafur Hamid Professor, Civil Law Department, Institute of Research Learning and Development, Ahmad Ibrahim Kulliyah of Laws, International Islamic University, Malaysia Ghafur.hamid@gmail.com ghafur@iium.edu.my

Abdulraheem Taofeeq Abolaji, Ph.D., (USIM, Malaysia) LL.M (O.A.U, Ile-Ife), LL.B (Ilorin), B.L, Lecturer, Department of Islamic Law, Faculty of Law, University of Ilorin, Nigeria

Abdullateef. A. Owoade LL.B, LL.M, Ph.D. Senior Lecturer, Faculty of Law, University of Ilorin, Ilorin, Nigeria, E-mail: mymission43@gmail.com Phone: +2348034453656

Abdulrazaq O. Abdulkadir, LL.B, LL.M, Ph.D. (IIUMalaysia) Senior Lecturer, Faculty of Law, University of Ilorin, Ilorin, Nigeria

AbdulHak, N. Professor, Ph.D.(Glasgow Caledonian University), MCL (IIUM, Malaysia), LL.B (IIUM, Malaysia), Ahmad Ibrahim Kulliyah of Laws, IIUM, Malaysia.

Adeboye Oluwaseye Thompson LL.B, LL.M, BL Counsel and Research Assistant at Kayode Olatoke & Co, Ilorin, Kwara State, Nigeria

Afolabi O.S. LL.B, LL.M (O.A.U, Ile-Ife, Nigeria), PhD, (ABU, Zaria), BL, Department of Private & Property Law, Faculty of Law, University of Ilorin, Ilorin, Nigeria and Barrister and Solicitor of the Supreme Court of Nigeria

Aishat Abdul-Qadir Zubair LL.B, (Unilorin) LL.M (IIUMalaysia) Lecturer Kwara State University, Malete, Nigeria

Ayinla, L.A. Ph.D. (IIUM, Malaysia), LL.M (OAU, Ile-Ife), BL. (Abuja), LL.B. (Combined Hons., UDUS), Associate Professor, Dept. of Jurisprudence & International Law, Faculty of Law, University of Ilorin, Nigeria

Chris Adomako-Kwakyie B.A. (HONS), B.L. Ghana, LL.M (Bristol, U.K.), Ph.D. Candidate, University of Cape Town, South Africa, Lecturer, Faculty of Law, Kwame Nkrumah University of Science and Technology, Ghana

Dauda Adeyemi Ariyoosu Ph.D.LL.B.(Combined Hons), LL.M. (Ife).Ph.D. (Unilorin) BL. Senior Lecturer, Department of Business Law, Faculty of Law, University of Ilorin, Nigeria E-Mail Address: ariyoosu4law@yahoo.com Phone No: +2348066497298

Dina Imam Supaat PhD, Faculty of Shariah and Law, Universiti Sains Islam Malaysia. Email: dinasupaat@yahoo.com.

Ebenezer Adjei Bediako LL. B, KNUST, B.L. Ghana, LL.M (Info Tech Law) (UNISA), Research Assistant, Kwame Nkrumah University of Science and Technology, Ghana

Ebenezer Ajayi, LL.B.B.L Legal Counsel, G.E. Akpanamasi &Co.,Atiku Abubakar Road, Jimeta-Yola. E-Mail:ebenezerdpoe@gmail.com.+2347037564739, +2348068232730.

Efrida Ratnawati, S.H., Dr. M.Hum.,M.Kn Lecturer, Faculty of Law, University of Trisakti, Jakarta, Indonesia +6281287038008 elfrida.r@trisakti.ac.id

Ernest Ogwashi Ugbejeh LL.B (AAU), BL (NLS), LL.M (UNIBEN). Ph.D.(University of Buckingham).Lecturer of Faculty of Law, National Open University Nigeria. E-Mail: eo.ugbejeh@gmail.com

Farah Salwani Ismail Ph.D. Lecturer, Faculty of Law and Shariah, Universiti Sains Islam, Malaysia.

Foluke Dada LL.B (Hons) (Ife), LL.M (Child & Family Law) (Chicago), SJD (Health Law & Policy) (Chicago), CinMgt. (London), Senior Lecturer, Faculty of Law, Federal University Oye Ekiti, Nigeria

Friedrich Hamadziripi LLB; LL.M; LLD Candidate, Nelson R Mandela School of Law, University of Fort Hare, South Africa

Ganiat Mobolaji Olatokun LL.B. LL.M, Ph.D. Senior Lecturer, Private and Property Law Department, University of Ilorin Kwara State Nigeria

Hafsat Iyabo Sa'adu, Ph.D Senior Lecturer, Department of Business Law, Faculty of Law, University of Ilorin, Ilorin, Nigeria. E-Mail: adu39asa@gmail.com or saadu.hi@unilorin.edu.ng.+2348060848422, +2348056746044

Harlidah Abdul Wahab LL.B. LL.M, Ph.D. Associate Professor, College of Law, Government and International Studies, Univesiti Utara Malaysia

Idachaba Martins Ajogwu Esq LL.B.(HONS.), LL.M, PGD, Ph.D. (in view), Faculty of Law, Kogi State University, Anyigba.08032224236, Idachabamartins@gmail.com

Ijaiya Bashir Leke LL.B, LL.M, Ph.D. BL Lecturer, Department of Private and Property Law, Faculty of Law, University of Ilorin, Nigeria

Ismail Adua Mustapha LL.B, LL.M, Ph.D.(IIUMalaysia) BL Senior Lecturer, Department of Business Law, Faculty of Law, University of Ilorin, Nigeria

Joshua O.Olatoke (SAN) LL.B, LL.M, M.Phil, Ph.D. FCIArb,BL Associate Professor, Department of Jurisprudence and International Law, Faculty of Law, University of Ilorin, Nigeria, e-mail:kayode_olatoke@yahoo.com

Josephine A.A. Agbonika LL.B, BL, LL.M, Ph.D., ACTI, ACI Arb, LSM, JP, Associate Professor, Faculty of Law, Kogi State University, Anyigba; Dean College of Law, Salem University, Lokoja (on Sabbatical 2017-2018); Former, Tax Appeal Tribunal Commissioner Enugu State from 2010-2016

Lydia A. Nkansah LLB, LLM, (Bendel State University), B.L (Ghana & Nigeria), PhD (Walden) Associate Professor and Dean, Faculty of Law, Kwame Nkrumah University of Science and Technology, Kumasi, Ghana

Lawal Babalola Ijaodola, LL.B, B.L, Legal Practitioner, Lagos

Muhammed Lekan Z. LL.B (Unilorin) BL Research Assistant, Faculty of Law, Igbinedion, University, Okada, Nigeria

Murtala Ganiyu A. Murgan, B.A Hons, MPA, LLB, LLM, PhD, Lecturer, Department of Jurisprudence and International, University of Ilorin, Nigeria. muritalganiyu@gmail.com

Nandita Chauhan Advocate Senior Associate, Shardul Amarchand Mangaldas, New Delhi, India

Olagunju-Ibrahim, Ridwan Olawale LL.B., LL.M., Ph.D. Department of Islamic Law, Faculty of Law, University of Ilorin, Ilorin, Nigeria. E-mail; ridwanolagunju@gmail.com, ibrahim.or@unilorin.edu.ng +2348038262823

Rabiah Engku Adawiah Ali Professor Dr. Institute of Islamic Banking and Finance, International Islamic University Malaysia

Rasheed Jimoh Ijaodola, Ph.D. (Jos), Ph.D (Okada), Ph.D (Ilorin), LL.B, LL.M (Lagos) M.A (Ilorin), B.L, CHATE, FIIA, GCOIA. Professor and Dean of Law, Igbinedion University, Okada, Edo State, Nigeria

Rusniah Ahmad, LL.B. LL.M, Ph.D. Professor, College of Law, Government and International Studies, Univesiti Utara Malaysia

Saka Toyin Abdulrahman LL.B, (UDU Sokoto) LL.M (DEL-Abraka), BL Lecturer, Nigerian Law School, Enugu Campus, Nigeria
toyinabulrahman@nigerianlawschool.edu.ng +2348035858424

Saka M. Olokooba LL.M. (Ife), B.A (Hons), LL.B.(Combined Hons), P.G.D.E, Ph.D. (Unilorin) BL. Reader, Business Law Department, Faculty of Law, University of Ilorin, Nigeria. E-Mail sakaskydlaw2002@gmail.com

Sharifah Zubaidah Syed Abdul Kader LL.B (First Class), MCL (IIUMalaysia) SJD (Bond University, Australia) formerly the Deputy Dean, Postgraduate and an Associate Professor at the Ahmad Ibrahim Kulliyyah of Laws and Director of the International Centre for Waqf Research at the International Islamic University, Malaysia

Tomi Grace Obagboye LL.B (Jos), LL.M (in view) B.L. Kogi State University, Anyigba, Nigeria

Valentine Tebi Mbeli DIL Dsch., LL.B (HONS) Dsch., LL.M, PhD Mkd., Senior Lecturer and Dean, School of Law, Kampala International University, Kampala, Uganda.

25. Enhancing the Teaching and Learning of Islamic Criminal Law in Nigerian Universities: A Practical Approach

Olagunju-Ibrahim, Ridwan Olawale Ph.D.

LL.B., LL.M., Ph.D.

Lecturer, Department of Islamic Law,
Faculty of Law, University of Ilorin, Ilorin, Nigeria

Summary of the Chapter

The main pre occupation in this work is to be discharged using the arm's chair doctrinal methodology of legal research for being about the most suitable for the specie of exercise here intended. Islamic law of crime and tort has been chosen as a case study in this paper. Having looked at the course syllabus and few relevant textbooks being used for the course, four different areas of improvement have been identified in order to enhance the teaching of this course. These are the need to relate Hudud offences to Maqasid al-Shariah while teaching and the need for mention of specific sub-topics in the bench mark for academic standards (BMAS). The other two are the need to upgrade the level of Arabic language taught to the combined law students and the need for quality ascertainment of Islamic law textbooks in English. What follows now is the analysis and exposition of each of these areas of improvement one after the other and conclusion comes immediately thereafter.

Keywords: *Teaching of Islamic Criminal Law, Nigerian Universities, Practical Approach*

1. Introduction

Colonialism has always been seen as one factor among others responsible for destroying the firm foundation for the early teaching and learning of Islamic law in Nigeria. Possibly due to deep rooted antipathy which the non-muslim white harbored and still harbor against Islam and Islamic law as both a faith and legal system respectively, the colonialists upon their advent into the country introduced a number of measures inimical to the high and quality standard at which Islamic law was then being taught locally among the indigenous knowledge seekers. One of these negative measures was the introduction of the tripartite test of validity.

The offshoot of the measures all together have continued to lace the formal system of legal education with inadequacies in the area of Islamic law teaching in our citadels of learning. A peep into the content of and teaching manuals for some of the courses under Islamic law in these institutions reveals a level far below the expected standard.

2. Synergy between *Hudud Offences vis-a-vis Maqasidus - Shari'ah*

Allegation of cruelty against Islamic penal law is a reoccurring phenomenon among the west and some nominal Muslims around the globe. Penalties prescribed in the Quran for Murder (i.e soul for soul),^[41] Theft (i.e. amputation of hand)^[42] and Adultery (i.e. stoning to death)^[43] among others are all often denounced as harsh penal consequences.

This allegation seems to have stemmed from the western self styled conception of human dignity which evokes unnecessary sympathy for criminals without considering the gravity of their deeds, impacts on the immediate victims and on the society of large. What the antagonists find more preferable alternatively in this context is to rather go by some light punishments instead of the firm code of punishment of

[41] Q 2:178

[42] Q 5:38

[43] Q 24:2

Islamic law which ensures peace and security for the rest of the society. This is in line with the ideal society which Islam longs for through the jurisprudential doctrine of *Maqasidus – Shari'ah* i.e. Objectives of Shari'ah.¹⁴⁴⁴

However, it appears the cynics and critics choose not to consider the overall public good inherent in the Shari'ah penalties which are known to have positive effect on reducing the crime rate. It is possible that harbor some antipathy against Islam which tends to becloud their sense of reasoning from recognizing that the so called severe punishments of Islamic law are there to serve the interest of the overwhelming majority of the populace. Gaskel, a non-Muslim, must have ruminated over this when he says that the foreigners consider Islamic punishments a horrible path, but they as well admit that it has made Saudi – Arabia the country with the lowest crime rate in the world.¹⁴⁴⁵

Our students who offer Islamic law courses, and in particular, Islamic Law of Crimes and Tort, must be equipped with requisite knowledge of the divine law in order to prepare them well be to able to debase and suppress the baseless allegation of cruelty against the penal provisions of Islamic law. One veritable way of doing this is to relate the teaching of *Hudud* offences to *Maqasidus-Shari'ah* i.e. the objectives of Islamic law. A deep understanding of these objectives reveals why some prescribed penalties in Islamic Law of Crimes and Tort exist the way they are. The so-called harshness in some of these penalties as it is being peddled in some quarters is for the good of the entire society.

The common good of the society is what the term *Maslaha* denotes. In the words of Imam Ghazali as quoted by Allaf, *Maslaha* is about securing benefit or preventing harm.¹⁴⁴⁶ This terse definitive approach shows that *Maslaha al-Ummah* (Interest of the community) is what the term *Maqasid al-Shāri'* (the higher objectives of the Lawgiver) is all about. The same meaning as above given is what the phrase

¹⁴⁴⁴ Abu Zahrah M., *Usul al-Fiqh* (1958) pp. 364-372.

¹⁴⁴⁵ Gaskel G., Reader's Digest (February, 1967)

¹⁴⁴⁶ Al-Allaf M., The Objectives (Maqasid) of the Islamic Divine Law or Maqasid Theory @ www.islamicphilosophy.com/ma/words/m... accessed on 12/04/2012.

Maqasid al-Shari'ah (the higher objectives of Islamic Law) and *al-Maqasid al-Shari'iyyah* (Islamic legal objectives also portray)¹⁴⁷.

As explained by Bukairy, the ultimate intent of Allah behind any of His legislations is per se not the very thing which a particular divine legislation prescribes or commands, but the benefit therefrom which shall radiate through the entire members of the society.¹⁴⁸ Bukairy illustrates this submission by the pillar of *Zakat* in Islam. As it well known, he explains the rationale behind its legislation as a step in combating miserliness (Bukhl) and alleviating the economic hardship of indigents.¹⁴⁹ It is on the basis of this analysis that one finds it difficult to pinch tent behind Imam al-Razi when Nyazee quotes him as refuting the idea that man's interest is the cause of Allah's Laws.¹⁵⁰ As put by Nyazee:

The majority of the Muslim jurists agreed that the Lawgiver lays down Laws in the interest of man. There have been some voices against it too, notable among them being the objections of the illustrious Imam al-Razi (d. 606). He gave extremely powerful arguments against this idea. His arguments are too complex and difficult to be related in a rudimentary discussion. Al-Razi did concede though that whenever we consider the Laws and the interests of man, we find them lying side by side, or existing together, yet will cannot establish a causal relationship between them, that is, the Laws are laid down because they serve the interest of man.¹⁵¹

On the interest of man being the causal influence on the Laws of Allah, a platitude which Razi denies as reported in the quotation above, it is herein submitted that Razi's denial in this context can be neutralized on the strength of a number of Quranic verses which portray existence

¹⁴⁷ Al-Raysum A., *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law* (The International Institute of Islamic Thought, London Office, 2006) p. 88.

¹⁴⁸ Bukairy, T., *Muwafaqah Qasd al-Shari' wa Mukhalafatuhu* (1st ed., Dar Ibn Hazim, Beirut, Lubnan, 2011) p. 162.

¹⁴⁹ Ibid.

¹⁵⁰ Nyazee T A K., *Theories of Islamic Law* (Islamic Research Institute Press, Islamabad, 1945) p. 43.

¹⁵¹ Ibid.

of causal connection between the interest of man and the Laws of Allah. The references by Allah to the Qur'an, the ultimate source of Islamic Law, as containing directional guidance to the people (An-nas)¹⁴⁵² and as constituting mercy to the faithful¹⁴⁵³ are two relevant Quranic verses in this context which lay credence to the position in this paper that interest of man is the influencing factor of Allah's Laws. The function of guidance and mercy which Quran is said to be in relation to human being is affirmations of that Allah's Laws are there for man's interest.

Thus, back to the issue of discussion under the subheading at hand,¹⁴⁵⁴ severity of some prescribed punishments in Islamic Law of Crimes should be understood as the best in the circumstance due to the overall purpose of man's interests it serves. Severe punishments are often times the most suitable to curb severe offences. It is therefore in this light that this paper recommends the need to teach offences and punishments in Islamic Law of Crimes and Tort alongside the objectives of Shari'ah (Maqasidus-Shari'ah).

To follow the path herein above described will even open the eyes of the non-Muslims among the students who come from non-law faculties (like criminology, as the case is in the University of Ilorin, where the writer works), to offer Islamic Law of Crimes and Tort as a borrowed subject. This arrangement of borrowing an Islamic law subject by non-law and even non-Muslim students is of beneficial value in the circumstance as it may correct the wrongly held opinion of such students about the penal provisions of Islamic law being cruelty based.

The BMAS, as it is, captures these *Maqasid* but schedules them to feature in the first semester of year 2 while the *Hudud* offences are designed to be taught in the second semester of the same year. This paper advocates that the two should go hand in hand while teaching so as to yield better outcome. With the indepth analysis of the rationale behind the prescription of each of the Islamic penal provisions, as it would be found explicit in the subject of *Maqasid*, reason for the

¹⁴⁵² Q2:185

¹⁴⁵³ Q21:107, Q10:57

¹⁴⁵⁴ Need to Relate Hudud Offences to Maqasidus-Shari'ah while Teaching

so-called severity of Islamic law punishments would be understood to be for the welfare of mankind at large.

3. Adequacy and or otherwise of BMAS on sub division of topics in Islamic law of crime and Tort

Some major Islamic law courses do generally have sundry issues (sub – topics) subsumed under them. Thus, mere mention of major topics in such a situation may be enough to warrant the need to delve into discussion of several other inter-woven issues under such major topics. However, where a particular subsidiary issue assumes paramount status, need for its specific mention, just like a major topic, may then become unavoidable in the preparation of academic curriculum for the course.

A good example in this direction which has been observed in the BMAS under the Islamic law variant of the LL.B programme is the crime of homicide (*Jarimatul Qatl*). Though, categorization of homicide among various schools of thought in Islamic law reflects monotony of number which extends at times to as many as five¹⁴⁵⁶, majority opinion seems to be in support of three classifications only. These are: intentional (*'amd*), quasi – intentional (*shibhul'amd*) and mistaken (*Khata'*)¹⁴⁵⁷. While Qisas or retaliation is the original penal consequence to follow intentional homicide, *Diyah* or Wergild is the original punishment for mistaken and quasi – international killings¹⁴⁵⁷.

It will be observed that in the example under reference, homicide is the major topic while Qisas and *Diyah* are subsumed under it. But

¹⁴⁵⁶ Maliki and Zahiri schools approve of two classes of homicide i.e. intentional and mistaken (*'amd wa khata'*). On the other hand, the Shafi'i, Shi'ah Imamiyyah and Zaydiyyah and the popular opinion in Hambali school favour homicide classification into intentional, mistaken and quasi-intentional (*'amd, khata and shibh 'amd*). There is a minority opinion in the Hambali school which classifies it into four: intentional, quasi-intentional, mistaken and its like (i.e. *Ma jara Majrah Dhalik*). In the Hanafi school, five classes of homicide are reckoned with. These are: intentional, quasi-intentional, mistaken, the likes of mistaken and killing for a purpose. Considering the opinions in all the schools, the three classifications of intentional, quasi-intentional, and mistaken killing enjoy vetting of the majority. See: Al-marsi A. S., pp. 28-30.

¹⁴⁵⁶ Ibid

¹⁴⁵⁷ Ibid

because of the importance of these subsidiary issues, all *fiqh* books treat the topic 'homicide' together with "*Qisas*" and "*Diyah*".

In the BMAS of the NUC however, only homicide and *qisas* enjoy specific mentions. *Diyah* is conspicuously left out. The implication of this is the possibility of skipping the imperative of teaching same especially by lecturers who may not be well equipped to consult primary sources of Islamic law which are always detailed and comprehensive. But where the sub-topic is specifically stated and there is dearth of English materials on it, such lecturers will be compelled to seek assistance of their colleagues who are more proficient and capable in the field. This, however, can only be achieved if there is effective quality assurance control on ground whose duty it is to monitor exhaustion of the curriculum content of each course which is written out in black and white.

4. The Significance of knowledge of Arabic for Combined Law Students

The combined law students in various Universities in Nigeria do pass through Arabic Language as a compulsory subject during the course of their study. This impressive design, captured over time in the BMAS, is there to familiarize the students with the language of the primary sources of Islamic law i.e Quran and Hadith. The end result rationale behind this is to enable the students acquire necessary weapon with which to consult these Arabic based primary sources in order to carry out quality research both before and after their graduation.

This arrangement has been so established that even the non-Muslims among the combined law students in some Northern Universities¹⁴⁵⁸ are made to pass through the subject of 'Arabic' mandatorily. As it will be expected, this set of students only has interest in pursuing common law programme. Their resolve to go for combined law programme in the said northern universities is consequent upon the course being the only approved programme thereat without the option of common law as a separate course of study. The students (especially

¹⁴⁵⁸ Like Bayero University, Kano

which, according to him, include using Arabic language as a medium for teaching the course and setting up faculties of Islamic law independently, and not as a department under faculty of law¹⁴⁶¹.

While this paper shares the perspectives of his lordship in toto on the issue at hand, the delay which may set in before realization of the laudable suggestions of his lordship can be neutralized by opting for a tentative measure in the circumstance. This is by mapping out an enriched curriculum of Arabic study to aid the smooth understanding of the students for the Islamic law aspects of their course. To this extent, the new take of the Department of Islamic law of the University of Ilorin to spread the span of the study of Arabic from the first academic year alone to the first three academic years with enriched curriculum content is highly commendable.

A similitude of this detailed arrangement was once in operation in the University of Ilorin but same later became reduced to a year duration of study. To this extent, its reintroduction in its earlier detailed form is a welcome development at this crucial time. Other Nigerian Universities offering combined law or separate Islamic Law as a programme are enjoined to borrow leaf from this reinvigorated approach of the Department of Islamic law of the University of Ilorin, Nigeria.

However, one important area of caution in this regard is to ensure that the modules, manuals, and syllabi to be developed for each of the three years' Arabic study must be tailored alongside the Islamic law need of the students and nothing irrelevant. The already existing segmentation of teaching of the subject into the two categories of advanced Arabic and Arabic for the beginners is also recommended to be sustained. This will block the possibility of students with rich background in Arabic to enroll for the beginners' Arabic which may not fetch such type of students much gain (on the substance) apart from scoring higher marks. At the NUC level, the stakeholders thereat are enjoined to approve of this three years' duration of teaching Arabic to the combined law students. They are also to ensure that the arrangement is reflected in black and white in the BMAS.

¹⁴⁶¹ Ibid

As said earlier, the importance of being well versed in Arabic language for combined law students can never be over emphasized. The strong nexus between Islamic law and the language of Arabic is as a result of the benefit of a better understanding of Islamic law which expertise in Arabic language affords. For instance, on the difference between Hudud and Ta'zir offences, most of the available English textbooks on Islamic law in Nigeria do not mention propriety of females as witnesses in establishing ta'zir offences as opposed to the category of Hudud offences in which males alone can give testimony. This dichotomy of positions is hardly captured in the English textbooks of Islamic law, whereas in the Arabic variants of these textbooks, the difference is always clearly stated. – How therefore will somebody in the field of Islamic law, having zero or weak background in Arabic ever come to discover this point?

Aside the above, another area of difference between Hudud and Ta'zir which may be hard to find in the popular English textbooks of Islamic law is the variation of punishments in Ta'zir on the basis of magnitude of the crime committed, circumstance of the criminal and status of the complainant, while infliction of Hudud offences does not require consideration of such tripartite determinants. Upon establishment of guilt on a person accused of a particular offence under the category of Hudud, infliction of punishment sets in immediately. This point of difference is often found in Arabic textbooks of Islamic law – not English textbooks.

5. Issue of Quality Ascertainment Board For Islamic Law Textbooks In English

Writing of Islamic law textbooks in English as teaching and learning manuals in Nigerian Universities is quite important and necessary in order to assist the students and others alike in the smooth understanding of Shariah. This is the usual practice in other branches of law in the country and experts in the field of Islamic law have also not been found

¹ Ali-Samaila M. A. – *Al-Binayah fi al-Andalus fi al-fiqh al-Islami* – Texts of Islamic Law in English – Maktaba Ahl al-Hadith, 2003 pp. 22

² Ibid. pp. 20-21

wanting in this laudable preoccupation. Professor Abdulquadri Zubair, first professor of Islamic law in West Africa,¹⁴⁶⁴ deserves profuse commendation for occupying position of primacy among the trail blazers in this highly rewarding literary exercise of the Islamic law variant. His works, just like those of few others in the field, continue to stand out in a special class as they always reveal in-depth research, accurate choice of registered words and proficiency in the language of primary sources of Shariah among others.

In writing further on Islamic law textbooks in English, efforts should always be made to maintain the kind of quality and standard herein above described. To achieve this, verification of submissions, correct reliance on authorities and adequate proof reading among others do need to be taken good care of by anybody venturing into the art of writing in this divine field of law in contemporary time. This is realizable if quality ascertainment board for Islamic law textbooks is established with capable constituent members to be appointed within the academia from various Nigerian Universities offering Islamic law either as a distinct course of study or together with common law as a combined law programme. Establishing this board can be championed by the National Association of Islamic Law Teachers (NAILT) if revived from its current moribund state.¹⁴⁶⁵ When this happens, Islamic law manuscripts intended to be published as textbooks for teaching and learning will pass through such control board for checking through, vetting and validating before coming out in print. By so doing, avoidable mistakes which may elude the grasp of authors will hopefully be expected to come within the full glare of the board's eagle eyes and thus, necessary corrections will be made for heeding.

Moving more to the side of Islamic criminal law which is the focus of this work, and going a bit practical thereon, writer of this paper has in recent times come up with few things discovered to be begging for

¹⁴⁶⁴ Oba A. A. Live And Let Live: Rethinking The Legal Responses To Religious, Ethnic And Legal Pluralisms(189th Inaugural Lecture at the University of Ilorin delivered on Thursday 16th of January, 2020). P 40

¹⁴⁶⁵ Discussions which shall gear towards revival of this Association are scheduled to hold at the University of Ilorin at a National Conference coming up there at from 24th to 25th of February, 2020 in honour of Professor Abdulquadri Zubair who just retired from active University service in January, 2020.

corrections upon glancing through the topic of *Qadhi* in a copy of the second edition of Yahya Yunusa Bambale's work titled **Crimes and Punishments under Islamic Law**.

Having gone through the said topic in the book under reference, the observation comes in two folds. The first one concerns the author's treatment of "proportionality of punishment to the crime committed" as one of the features of Islamic criminal liability, being the sub-heading caption used by the author.¹ However, contrary to this caption by the author, the opinion in the present paper is that "proportionality of punishment to the crime committed" fits in more as a feature of Islamic criminal justice system than Islamic criminal liability.

The latter phrase above, (Islamic criminal liability), appears to give a sense of what one would do to become criminally liable in Islamic law. Whereas, proportionality of punishment to the crime committed seems more of an event after crime commission and therefore should not be a feature of Islamic criminal liability but Islamic criminal justice system which is so elaborate in horizon as to accommodate even the topic of Islamic criminal liability. Bambale's opening sentence under his caption of "Islamic criminal liability" is perfectly in agreement with this submission. For clarity and precision, herein below are his words:

Islamic criminal justice system has certain noble features which are distinct from any known legal system in the world. Some of these are spelt out below.

The author, having said the above, goes ahead to mention and explain six of such features starting with intention² and ending with voluntariness of confession to the commission of a crime.³ Proportionality of punishment to the crime committed is mentioned as

[Bambale, Y.Y. (Crimes and Punishments under Islamic Law 2nd ed., Mathlouthi Press Limited, Lagos-Nigeria 2003) pp. 7-9]

[Bambale, Y.Y. p. 7]

[Ibid]

[Bambale, Y.Y. p. 12]

the third of these features.¹⁴⁷⁰ Our contention is that the first four words in above quotation should have been employed by the author as the caption instead of the phrase 'Islamic criminal liability' to which proportionality of punishment to the crime committed should not be a feature, as earlier argued.

Another important issue in this first fold of observation at hand is the author's presentation of the content under 'proportionality of punishment to the crime committed' in a somewhat ambiguous manner. He writes:

It is an aspect of Islamic law of crimes that whatever punishment (sic) is to be meted out or inflicted to the offender for committing a crime should be proportionate to the harm inflicted by him without any excess. This is the position, despite the fact that Islamic criminal law prescribes amputation of the hand as punishment for theft, without recommending for the cutting off of the tongue as punishment for *Qadhf*, castration as punishment of *Zina*. Even though, the hand, the tongue and the penis are used as implements in committing theft, (sic) of *Qadhf*, and *Zina* respectively...¹⁴⁷¹

The above presentation as it is seems to suggest that the 80 lashes punishment prescribe for *Qadhf* in Islamic law does not correlate with the offence of *Qadhf* which is committed by the use of tongue. The inference which is left for readers to pick from this is the appropriateness of cutting the tongue used in defamation (as in the case of hand amputation for theft). Though the present writer quite understands the discernment of the learned author on this point, he is, perhaps for academic purpose, trying to reason along the line of punishing the particular part of the body used to commit the offence. Nevertheless, one expects him to come out in a more emphatic tone that Allah's prescription of 80 lashes as punishment of *Qadhf* instead of tongue cutting is still the most appropriate in the circumstance. Though he says this in a way, it would have been better if he had placed reliance on

¹⁴⁷⁰ Ibid, p. 9

¹⁴⁷¹ Ibid

some Quranic verses to strengthen the emphasis, such as where Allah says: “Will He not known whom He creates...¹⁴⁷²”

Reliance on the above verse, among others, will go to show that Allah’s knowledge of His creatures makes all His prescribed punishments for human misdeeds as the most suitable and appropriate in all circumstances.

Having said the above, what follows is analysis of the second leg of the observation from the content of *Qadhif* as a topic in Bambale’s work. This touches his use of the words Qazaf¹⁴⁷³, Qazih¹⁴⁷⁴, and Maazuf¹⁴⁷⁵ instead of *Qadhif* (noun), *Qādhif* (subject) and *Maqdhūf* (object) respectively. The three lettered word of *Qadhafa* is a past tense verb in Arabic morphology whose context of usage in Islamic law of crime denotes that “someone has wrongfully alleged another in connection with lust”¹⁴⁷⁶. The well known rule in the science of Arabic morphology (Sarf) is for the formation of the noun (Masdar), subject (Ism al-fa’il) and object (Ism al-maf’ul bihi) from this three lettered verb (Qadhafa) to come as *Qadhif* (not Qazaf), *Qādhif* (not Qazih) and *Maqdhūf* (not Maazuf).

With respect to the learned professor, his use of the words Qazaf for the noun form (though just once)¹⁴⁷⁷, Maazuf for the object form (just once also)¹⁴⁷⁸ and Qazih for the subject form (34 times all through the pages of the topic in his work under reference)¹⁴⁷⁹ is grossly incorrect to say the least. That of Qazaf instead of Qadhif is quite understood as a genuine mistake possibly due to inadequate proofreading as the same word features correctly in the remaining 25 areas in the topic where the word is used. The same understanding of genuine mistake borne out of inadequate proofreading can also apply to

¹⁴⁷² Q. 67:14

¹⁴⁷³ Bambale Y.Y., p. 56

¹⁴⁷⁴ Ibid. p. 54 and a number of other pages under the topic

¹⁴⁷⁵ Ibid. p. 55

¹⁴⁷⁶ Al-Munjid: El allughah Wal a’lam (40th ed., Dar el-Machreq sarl Publishers, Lebanon, 2003) p. 615

¹⁴⁷⁷ Bambale Y.Y., p. 56

¹⁴⁷⁸ Ibid. p. 55

¹⁴⁷⁹ Ibid. pp. 54 and beyond

the incorrect use of Maazuf¹⁴⁸⁰ and Mazuf¹⁴⁸¹ as the author gets the correct spelling of the word in the remaining 11 places under the topic where the word appears.

As for Qazih, which should have been written as Qādhif, there does not appear to be any acceptable excuse for this incorrect use of word by the learned professor. Throughout the 34 times of usage of the word under the topic of Qadhif, this incorrectness of usage and wrong spelling pervades the ground. In the Arabic dictionary consulted, Qazih does not seem to convey any other meaning apart from what relates to defect in sight. It is thus clear that the word Qazih as used by Bambale instead of Qādhif projects an entirely irrelevant meaning unassociated with the context. While hoping that these observations and similar others will be addressed by the respected author in the upcoming editions of his book under reference, note of caution is being sounded to few other writers in the field to embrace the path of verification and proofreading before publishing. Allah is the best in knowledge.

6. Conclusion and Recommendation

A fact devoid of fallacy is that several academic papers abound on the inadequacies of both the content and teaching of Islamic Law in Nigerian Universities¹⁴⁸². Theme of recommending the overhauling of these twin areas has also been profusely reflected upon in the past¹⁴⁸³. The work at hand is more of a practical guide on enhancing the teaching of Islamic criminal law in Nigerian Universities as one of the core courses under Islamic law. The conviction is that the teaching of Islamic law will be set on the path to regain its long lost comprehensive

¹⁴⁸⁰ Ibid, p. 55

¹⁴⁸¹ Ibid, p. 56

¹⁴⁸² A typical example is Oba A. A. . Live And Let Live: Rethinking The Legal Responses To Religious, Ethnic And Legal Pluralisms(189th Inaugural Lecture at the University of Ilorin delivered on Thursday 16th of January, 2020). See further, Oba A.A. "Re-Conceptualising Islamic legal Education in Nigeria: The case for professionalism" *Al Maslah journal of Law and Religion*, Vol. 2 2004

¹⁴⁸³ This was done in Olagunju-Ibrahim R.O and Olokooba S.M "Overhauling the Contents of Islamic Law Courses in Nigerian Universities: An Overdue Phenomenon", authors private collection, 2019.

standard if all component courses of this divine branch of law are practically overhauled as the effort is being made through the recommendations in this treatise.

Recommendations

- To enhance the teaching and learning of 'Islamic Law of Crimes and Torts', in Nigerian universities, there is the need to relate *hudud* offences to *Maqasidus-Shari'ah* while teaching (so as to play down the allegation of cruelty against the penal consequences of Islamic law).
- There is also the need for mention of specific sub-topics under the major topics in the BMAS. This will ensure non-escape of any necessary issue or sub-topic which is reflected in the curriculum to be taught. This suggestion will work especially where there is efficient quality control team of the university on ground.
- Finally, there is also the need to upgrade the level of Arabic language taught to the combined law students. Heading all these recommendations will surely jack up the richness of the subject at hand to the maximum desirable standard.