
PERSPECTIVES IN ISLAMIC LAW AND JURISPRUDENCE

**Essays in Honour of
Justice (Dr.) Muritala Aremu Okunola (JCA)**

Edited by
M. Oloyede Abdul-Rahmon

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ESSAYS IN HONOUR OF
JUSTICE (DR) MURI. OKUNOLA (JCA)

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ISLAMIC LEGAL EDUCATION IN NIGERIAN UNIVERSITIES: SOME PROBLEMS & VISION

Professor I. O. Oloyede

Preamble

Many writers have contributed to the volume of literature on *Shari`ah* (Islamic Law) and its importance in the society. Fewer number of contributors limit their contribution to the value and importance of the *Shari`ah* to the Nigerian society. One clear common feature of the writings is the fact that ignorance of the nature, meaning, scope and even goals of the *Shari`ah* had created a large number of antagonists to the *Shari`ah*, which is the law held in high esteem and observed by a large proportion of the Nigerian citizens – the Muslims. Education is expected to expose the educated to facts about the norms, the value, the culture and the ethics of the society in such a way that he does not only understand his society but also play active role in its development.

Successive constitutions of Nigeria recognize the British common law, the legislation of the three tiers of government in Nigeria, the Islamic Law as well as the Customary Law as the sources of Law which are enforceable in the Nigerian courts. In the whole of Northern States of Nigeria, *Shari`ah* is the predominant law applicable in personal matters. Over eight percent of personal-law cases in the courts in Northern Nigeria have *Shari`ah* as the applicable law. Muslims in the Southern parts continue to demand for *Shari`ah* courts in the Southern (especially the South/Western) part of the country.

Despite the demand for knowledge about the *Shari`ah* and the need for experts in the field to serve as officers of the courts where *Shari`ah* is applied, only five of the Nigerian universities currently offer degree programme in the *Shari`ah*. It is the aim of this paper to highlight institutional problems militating against the

teaching of *Shari`ah* in the Faculties of Law in the Nigerian Universities particularly as regards the National Universities Commission (N.U.C) guidelines, and suggest practical ways of removing the obstacles with a view to enriching Islamic Legal Education in Nigeria.

Ajetunmobi,¹ Rashid² among others have made an analysis of the curricula of Islamic Legal Education in some of the few Nigerian Universities which offer a degree programme in Islamic Law. It is our view that the Universities which currently offer Islamic Law degree are so few to satisfy the yearnings and requirements of the Nigerian society.

***Shari`ah* Education in the Nigerian Universities**

Islamic Legal Education is a specialty within the major discipline of legal education, which is vital to the development of the nation. The importance explained why an autonomous council of Legal Education was established in 1962³ charged with the responsibility:

For the Legal education of persons seeking to become members of the legal profession⁴.

The 1962 Legal Education Act was subsequently amended by:

- (a) The Legal Education Act 1965
- (b) The Legal Education (Amendment) Act 1970
- (c) The Legal Education (Amendment) Act 1973
- (d) The Legal Education (Amendment) Act 1974.

The original Act of 1962 and the other enactment's were consolidated into the Legal education (consolidation etc) Act of 1976 which was later amended by Act No. 10 of 1977.

It is noteworthy that Legal Education in Nigeria has always been largely interpreted as the training for University degree in Law. It does not, as far as the Acts are concerned, include the Diploma and Certificate courses in Law. Even the refresher of

post-graduate courses for judges and other judicial officers are not included in this concept of legal education entrusted to the Council of Education in Nigeria. Thus, the Council regulates only the entry into the bar i.e. qualification to practice as a counsel in Nigeria. The training prescribed by the Nigerian Law School is intended to serve that sole purpose.

Surprisingly, however, was that the major argument in support of the establishment of the Nigerian Law School in 1962 was that the Nigerian lawyer who trains in the United Kingdom, for example, "would not have the opportunity to study the Nigerian Law which he would have to practise in Nigeria"⁵. The prevailing systems of Law in Nigeria are the common Law, the customary and the *Shari`ah*.

Shari`ah*, has many distinguished experts in Nigeria few of who even possess degrees in the field. Despite their erudition in the *Shari`ah and their training, they are not regarded as lawyers unless they undergo the Law School course. Many graduates of *Shari`ah* expect that the Nigerian Law School would provide them with further training in Islamic Law as it is operated in Nigeria. They become disappointed when they realize that courses in the Law School do not offer them any attraction or further training in their area of study - Islamic Law.

Numerous standard private schools exist in all parts of the Federation for the training of experts in Arabic, Islamic and Islamic Legal Studies. Almost every State in the Northern part of Nigeria has a State College of Arabic and Islamic Legal Studies. The most prominent of such State-owned College is school of Arabic Studies, Kano, which was established originally as Kano Law School in 1934⁶. The products of these schools who possess a credit pass in English Language at the West African School Certificate examination or at the University pre-degree programme have been found to be the most suitable materials for the LLB *Shari`ah* programme.

Those who possess the entry qualifications into the University to study Islamic Law discover that there are very few

Universities in Nigeria, which offer a degree programme in the *Shari`ah*. Of the sixteen Universities that offer Law in Nigeria, until recently when Ilorin University commenced its Law degree programmes (to be the fifth) only four Universities offered degree programmes in Islamic Law. The Universities are Ahmadu Bello University (ABU) Zaria, Bayero University Kano (BUK), University of Maiduguri and Usman Dan-Fodio University (UDUS) Sokoto. The effect is that, since all lawyers (whether learned in Islamic Law or not) are allowed to practise in the courts applying *Shari`ah*, incompetence are vividly displayed by lawyers and (at times) judges who know little or nothing of the law on which they argue or adjudicate.

The dearth of Islamic lawyers and judges created a situation in which Islamic law has to be entrusted to those who have no training in the field. One needs to find out why Council of Legal Education and the Nigerian Universities would not recognize the urgent necessity to step up training of Islamic Lawyers for the need of the Nation.

Need for Increased Production of Islamic Lawyers

Scholarship draws freely from sources without personal bias or sentiment. Islamic law has a lot to offer to improve aspects of other laws and legislations. Schacht emphatically draws our attention to this when he wrote that:

It is certain that the two great branches of the Oriental Christian Church, the Monophysites and the Nestorians, did not hesitate to draw freely on the rules of Islamic Law⁷.

One of the major determinants of a course to be taught in a university is the need for such course in the society in which the university is situated.

The individual Muslims apply *Shari`ah* in all States of the Federation. While in Southern States, the Muslims were forced to

resolve matters arising from their Islamic contracts, (such as marriage), at the Customary Court, where a law alien to the contract is applied; the Muslims in the North are, as it ought to be, provided with Courts of *Shari`ah* jurisdiction from Area Court to the Supreme Court of Nigeria. In all the twenty Northern States (including Abuja – the Federal Capital Territory), Area Courts, Upper Area Courts, *Shari`ah* Courts of Appeal adjudicate on civil *Shari`ah* matters.

There is the need to train and equip the lawyers who are expected to act as counsels and judges in these courts as well as at the Court of Appeal and the Supreme Court.

It is important to note that in addition to the fact the *Shari`ah* Courts are the platform for official (at the Government level) resolution of conflicts arising from contracts and agreements, which are of *Shari`ah* in nature, *Shari`ah* is also being operated by Muslims in their day to day engagements. Whether *Shari`ah* Courts exist or not, Muslims require those knowledgeable in the *Shari`ah* as guides and counselors in their personal and official transactions.

Addressing the Problems of Islamic Legal Education in Nigeria

It can be emphatically stated that colonial rule has removed a substantial steam from the practice of *Shari`ah* in Nigeria. It is also obvious that despite their non-recognition as professional lawyers, a large number of those who are presently employed by Government in Nigeria as judges on Islamic Law in the Courts are those not certificated or admitted by the Council of Legal Education as qualified professionals in Law. There are major impediments to the removal of this abnormal situation. The removal of the obstacles would, no doubt, brighten the prospect of utilizing legal profession for social engineering in the country.

Problems of Training of Adequate Number of Islamic Lawyers in Nigeria

Islamic Law Training and Political Maneuver

Right from the colonial era, *Shari`ah* was the target. The colonialists tolerated the *Shari`ah* only for a while and embarked on gradual elimination of the *Shari`ah* to the Muslims who form a substantial population of Nigeria, compelled the colonialists to pay some lip service to the development of Islamic legal Education in Nigeria, after having subjugated Islamic Law to the repugnancy doctrine which makes Common Law the basis of evaluating whether or not a provision of *Shari`ah* is just, equitable and in good conscience.

A European official of Nigerian Government opined that:

It would be folly to give any government support to sending any of our (Nigerian) students to Al-Azhar or any other of the Egyptian institutions for Higher Education. They would come into contact with the CRUDEST and extremist forces of Nationalism and anti-British propaganda⁸.

This type of fear for Islam was transferred to the *Shari`ah* which was not allowed to develop. It is our candid view that education should not be subjected to sentiments and settling of personal scores.

The authorities of the Council for Legal Education and the Nigerian Universities should reflect over lamentation of Rashid⁹.

It is unfortunately true that the teaching of Islamic Law is systematically ignored in all but the four of Nigerian universities (A.B.U., Bayero, Maiduguri and Sokoto). Even such a university as that of Jos, situated in a State which has a sizeable Muslim population and a

Shari`ah Court of Appeal of its own, pays only lip service to Islamic Law by making it a minor course component of Nigerian Legal system. So is the story elsewhere including even in some of those places which have a big concentration of Muslim population, like Lagos. Could these universities claim that the study of Islamic Law is not socially relevant and academically desirable to produce such lawyers who are ignorant of laws governing the personal affairs of a majority of Nigeria's population? Do they intend to produce regional lawyers who are ignorant of social laws of another region? Is it not a complete negation of our national ideals?

Arabic as an Additional Burden

Arabic is very fundamental to an intensive study of the *Shari`ah* for obvious reasons connected with sources of materials. It is thus necessary that the admission policies into the *Shari`ah* programme give preference to candidates with working knowledge of Arabic. Those who are not proficient in Arabic must take some strategically selected undergraduate Arabic courses that would enable them consult Arabic materials. Since the number of candidates offering Arabic at the school certificate level is very few, it is desirable to encourage products of Colleges of Arabic and Islamic Legal Studies and holders of University Diploma in Arabic and Islamic Studies to pursue the degree course in the *Shari`ah*. Such inducement may include scholarship and bursary awards.

Approved Minimum Academic Standard (AMAS) for Legal Education in Nigeria

Decree no. 16 of 1985 as incorporated into the National Universities Commission (NUC) amendment Decree no. 49 of 1998 empowers the National Universities Commission (NUC) to

set a minimum standard which must be attained in every course offered in the Nigerian Universities. The NUC, in compliance with the Law, published and circulated the "Approved Minimum Academic Standard (AMAS)" for courses in Nigerian Universities.¹⁰ The publication of AMAS regulates the curricula of Nigerian Universities. In the area of Religious Studies, for example, AMAS specifies the following number of programmes.¹¹

- a. B.A. (Islamic Studies)
- b. B.A. (Christian Studies)
- c. B.A. (Comparative Religious Studies)
- d. B.A. (Religious Studies – Islamic Studies)
- e. B.A. (Religious Studies – Christian Studies)
- f. B.A. (Religious Studies – African Traditional Religion).

It is obvious from the different programmes in the study of Religion that the producers of *AMAS* intended to make provision for every conceivable course in the Nigerian Universities. This trend is followed in the specification of other Nigerian University degree programmes.

It is regrettable that in the area of Law, *AMAS* makes provision for L.L.B (Law) which is expected to cover all areas of Law. The LLB (*Shari`ah*) which is awarded by five Nigerian Universities is not provided for. One may then conclude that the designed LLB (Law) is to cover all areas of Law; more so when it is stated that:

The programme (LLB Law in the *AMAS* is, therefore, not designed to make him (the student) an expert in any field of law, but to enable him see in a dim light what openings are available to him as Law student.¹²

The publication also begins with a preamble that:

...to ensure uniformity of courses taught in various Law Faculties, the following is approved

as the contents of syllabuses [syllabi] of the core and optional law courses.¹³

However, one does not need much research to find out obvious contradiction in the book, as well as the partisan posture of the curriculum designers. First and foremost, the Law programme is said to be aimed at:

Producing Lawyers whose level of education would equip them properly to serve as advisers to governments and their agencies ... individuals and families etc¹⁴.

Many families, individuals and government agencies in Nigeria require more than casual knowledge in the *Shari`ah* to be able to serve their requirements in the area of Law.

Additionally, the Law, according to the programme designers, "will be taught as it exists... and students will be **comparative** in their approach to legal studies."¹⁵ The implication of "comparative" is that the students would be exposed to more than one system of Law and the level of exposure to each would be sufficient to make him compare and contrast. The same document has identified that "there are many systems of Law - Statutory Law, Common Law, Customary Law and Islamic Law - concurrently in operation"¹⁶ in Nigeria. The publication¹⁷ listed compulsory (core) courses as follows:

Legal Methods	4 credits
Constitutional Law	8 credits
Contract Law	8 credits
Criminal Law	8 credits
Company Law	8 credits
Commercial Law	8 credits
Law of Equity and Trust	8 credits
Law of Evidence	8 credits
Jurisprudence	8 credits

Land Law	8 credits
Nigerian Legal System	8 credits
Law of Torts	8 credits
Long Essay	8 credits

The publication listed Islamic Law as one of the optional courses. Apart from the fact that Islamic Law covers, in its own right, all the areas of Common Law listed as core courses, it is a degree programme offered by five Nigerian Universities. Yet it is made an optional course whereas Common Law, which is listed as one of the systems was not specifically mentioned but given ample coverage through its sub-divisions. It is thus clear that it is a programme for LLB 'Common' Law. It is also important to note the LLB *Shari`ah* has its own core courses where it is being offered. A lecturer of Common Law whose training is in the field of Common Law cannot be expected to be an expert in the *Shari`ah* to the extent of comparing it with another system.

In order to be fair to all the systems of Law currently in operation in Nigeria, *Shari`ah* must be taught in as many universities as teach Law in Nigeria. It should be offered as either combined with Common Law (as LLB Common and Islamic Law) or as separate LLB (*Shari`ah*). Its own core and elective courses need be designed as guide for the universities that offer a degree programme in that area of Law.

The programmes listed non-Law Compulsory courses expected to be taken by Law undergraduates as Use of English, History, Political Science, Logic, Philosophical Thoughts, Nigerian People and culture, and English Literature.¹⁸

It is important that Arabic should be made central to the teaching of Islamic Law at the University level. Furthermore, it is our candid views that Arabic or Islamic Studies, rather than English Literature should be the special entry requirement for the study of the *Shari`ah*.

Some antagonists of the teaching of *Shari`ah* in Nigerian Universities, always quote a portion of AMAS which requires that

an Assistant Lecturer in Law must "hold a good honours degree in Law and be called to the (Nigerian) bar"¹⁹. They claim that competent and highly qualified experts in the *Shari`ah* who are not called to the Nigerian Bar cannot teach *Shari`ah* or any type of Law in the Nigerian University. The absurdity of the argument is clear from the fact that for lectureship and professorial appointment in Law, call to bar is not required. Rather, it specifies that such would only not teach core Common Law courses.²⁰ There is the need to state categorically in the programme for LLB (*Shari`ah*) or (*Shari`ah* and Common Law) that experts in that area need not be called to the Common Law bar to teach the *Shari`ah* in the Nigerian Universities.

For the combined degree, it is desirable to make six years to be its duration²¹ so as to offer, in addition to core Common Law core courses, the core courses in the area of Islamic Law. A close study of the designed optional Islamic Law course in AMAS, reveals a lot of spelling errors and misuse of terms which suggest that experts in the *Shari`ah* are not sufficiently involved in the design of the programme.

The Law School should recognize that a large area of the country has *Shari`ah* courts, and the school should pay the deserved attention to Rules and Procedures of the *Shari`ah* Courts in the training of the advocates. The substantive Islamic Law itself needs be given more attention than it presently attracts in the curriculum of the Nigerian Law School.

Conclusion

It is essential to consider the *Shari`ah* as separate sub-discipline in the area of Law and to encourage its teaching and learning in all the Nigerian Universities which offer degree in Law. A first step in that direction is that the N.U.C. should inaugurate a panel to design a programme for the L.L.B. *Shari`ah*. Since all lawyers are deemed qualified to practise in *Shari`ah* Courts, knowledge of Islamic Law is essential for all legal practitioners in Nigeria.

Legal Education should be all embracing in such a way that all courses which seek to improve the practice of Law should be regarded as part of legal education which the Council of Legal Education should regulate. Bias for Common Law and against the *Shari`ah* would, in our view, do further incalculable damage to the development of Legal Education in Nigeria. Muslim scholars (such as Kadis and Grand kadis) who are currently involved in the administration of justice should encourage specially trained Islamic Law experts to make a career in the judiciary so as to ensure the development of Islamic Law in Nigeria.

Notes and References

1. M.A. Ajetunmobi: "Colonial Impact on *Shari`ah* Legal Education in Nigeria" in *Muslim Education Quarterly*, Volume 6 Number 4, 1989, pp. 53-66.
2. S.K. Rashid: "On the Teaching of Islamic Law in Nigeria" in S.K. Rashid (ed.) *Islamic Law in Nigeria*, Lagos, I.P.B., pp. 88-104.
3. Vide *Legal Education Act of 1962*.
4. Section 1 (2) of the *Legal Education Act, 1962*.
5. Unsworth Report on Legal Education in Nigeria published by the Federal Department of Information, Lagos, 1959.
6. S.K. Rashid: *op.cit.*, pp. 88ff.
7. Joseph Schacht: "Islamic Religious Law" in J. Schacht *et al.* (ed.): *The Legacy of Islam*, Oxford, 1979, pp. 401-2.
8. A Mustapha: "Islamic Law in Nigeria: An Educational Perspective" in J.I. C. Zaria, pp. 15-16
9. S. K. Rashid, *op.cit.* pp. 91-92
10. National Universities Commission (N.U.C.) *A Summary of Minimum Academic Standard For Disciplines in Nigerian Universities*, Lagos, July 1989.
11. Federal Republic of Nigeria: *Approved Minimum Academic Standards in Religious Studies in All Nigerian Universities*,

Lagos, 1989.

12. N.U.C: A Summary ... *op.cit.*, pp. 54.

13. Federal Republic of Nigeria: *Approved Minimum Academic Standards in Law for all Nigerian Universities*, N.U.C., Lagos, 1989, p.6.

14. N.U.C. Approved... *Op.cit.* p. 154.

15. *Ibid.*

16. Federal Republic of Nigeria: *Approved Minimum Academic Standard ...in Law*, *op.cit* p.1.

17. *Ibid.*, p.3.

18. *Ibid.*

19. *Ibid.*, p.18

20. *Ibid.*, p.19.

21. L.L.B. Common Law is for a 5-year duration for holders of West African School Certificate