



# UDUS LAW JOURNAL

This Journal may be cited as  
UDUS LAW JOURNAL, Vol. 1, No. 1, 2020

A PUBLICATION OF THE FACULTY OF LAW,  
USMANU DANFODIYO UNIVERSITY,  
SOKOTO

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# ISLAMIC LEGAL EDUCATION IN NIGERIAN UNIVERSITIES: A PSYCHO-ANALYSIS OF ITS STATUS, PROSPECTS AND CHALLENGES

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## Abstract

Islamic Law has no doubt been given recognition by the Nigerian Universities Commission (NUC). It is included in the academic curriculum, though not offered in some Nigerian Universities. The learning and teaching of Islamic law has been on ground for decades. However, its importance as a guiding principle of human affairs has not yet been well acknowledged. Notwithstanding its recognition by the NUC, the teaching of Islamic law is facing noticeable challenges which have adversely affected its sustainability in our citadel of learning. Therefore, this paper investigates the constitutional status of Islamic law and challenges facing some Nigerian universities offering Islamic law as major or minor courses. The paper adopts doctrinal legal research method for analysis of issues in contention. It finds that the refusal to include Islamic law in the academic curriculum of some Nigerian Universities was born-out of the negative perception of non-Muslims on the doctrine of Islamic law. The paper recommends that Islamic Law should form part of academic curriculum of Nigerian Universities.

**Keywords:** Islamic Law, Prospects, Challenges, Nigerian Universities, Academic Curriculum.

## 1. Introduction

Islamic law, like other courses has been given recognition by the Nigerian Universities Commission (NUC) to be taught as part of accredited courses. This is based on its significance to both Muslims and non-Muslims across the globe having been recognised as one of the sources of law. While the Islamic law as a course is mandatory for the Common and Islamic Law students on one hand, the Common Law students offer it as optional course on the other hand in some universities. This is basically from the fact that its teaching, and importance has become known among the Nigerian universities. Therefore, both Muslims and non-Muslims in Nigeria universities are beneficiaries of its teaching one way or the other based on the fact that the students will guide their affairs and apply the knowledge of Islamic law in their daily activities.

It merits mentioning that the application and teaching of Islamic law are not without some problems and challenges in the Nigeria Universities. In some places of teaching, Islamic law lecturers are facing a lot of persecution in the discharge of

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of teaching Islamic law.<sup>1</sup> This attitude of hatred against Islamic law as a course or anything about Islam has been in existence since the time of colonial era. This age-long attitude has been a continued exercise by the view of the orientalists that the purpose of Islamic law is to Islamise the Country.<sup>2</sup> The opinion of the orientalists is premised on their assumption that there is no any discovery under Islamic law as new discovery may transform to innovation and basically the law based on sources of Islamic law and nothing more.<sup>3</sup>

Islamic law is being recognised and taught in some notable universities in Nigeria<sup>4</sup> either as a major or minor course. An aspect of this law is recognised by the Council of Legal Education (Nigerian Law School), though not as a course but an aspect of Civil Procedure. This is because, it is accorded recognition under the Nigerian Constitution as *Shariah* Court of Appeal is created to oversee the Islamic personal law of Muslims and such is allowed to be learnt in the Nigerian Law School.<sup>5</sup> It is important to stress that other aspects of Islamic law are neglected and this constitutes a big challenge, not only to the Muslim students but to the Nigeria legal system. This paper addresses some of these challenges affecting the development of Islamic Law to wit: using old syllabus, the relevancy of Arabic language to Islamic law, legal education versus Islamic law and others.

## 2. Teaching of Islamic Law in Nigerian Universities: A Loss Proclivity?

Islamic law as a unique law that covers all round of human development and provides solutions to the daily activities supposed to be a neutral assimilation between the law and the society.<sup>6</sup> The emergence of Common Law serves as barrier to development and teaching of this course in our universities.<sup>7</sup> The course is relevant to guide and guard against the individual transactions and dealing.<sup>8</sup> Aside

<sup>1</sup> Azizah, Y. A. 2000. Deconstructing Patriarchal Jurisprudence in Islamic Law: A faithful Approach. Available at [www.scholarship.richmond.edu](http://www.scholarship.richmond.edu). Accessed on 18/8/2019. P.2

<sup>2</sup> Agboola, A.K. 2006. Assessing the awareness and perceptions of Academic Staff in using e-learning tools for instructional delivery in post-secondary institution: A case study. *The Innovation Journal*. P. 23.

<sup>3</sup> Shumsky, D. 2004. "Post - Zionist Orientalism? Orientalist discourse and Islamophobia among the Russian-speaking intelligentsia in Israel. Taylor and Francis. P.56.

<sup>4</sup> The course is form part of Curriculum in Nigeria universities such as : University of Ilorin, Bayero University Kano, Usman Danfodio University, University of Maiduguri, Lagos State University, Ahmadu Bello University Zaira, University of Abuja (Although not as a department) . Some legal studies in Nigeria are also offering the cours to mention but few, Kwara State College of Islamic and Legal Studies, Ilorin, College of Islamic Legal Studies, Minna, College of Islamic Legal Studies, Kano, etc.

<sup>5</sup> S. 275 of the 1999 Constitution of Federal Public of Nigeria (as amended).  
<sup>6</sup> A.A. Oba (2005). *Lawyers, Legal Education and Shariah Courts in Nigeria. Islamic Law in Nigeria monograph series* 1.p.33.

<sup>7</sup> Kazeem, S.A. (2013) "Problem facing Islamic Education: Evidence from Nigeria." *Journal of Educational and Social Research*. Vol.3 No 9. Pg. 165-174.

<sup>8</sup> Christelow, A. A. (2002). *Islamic law and Judicial Practice in Nigeria: An historical perspective.* Journal of Muslim Minority Affairs. Taylor and Francis. P.15.

the relevance of this course (Islamic law) to the individual as a person and to the society at large, it needs to be taught in all universities in Nigeria because no doubt it forms part of the Nigerian legal system.<sup>9</sup> Also, it is a course full of wisdom and it is a Divine law that covers all rounds of human aspects of life to wit: socially, morally, economically even political aspect of life.<sup>10</sup> But owing to humans' penchant or decline in seeking knowledge, what the Islamic law offers in those areas is not appreciated.

### 3. Islamic Legal Education in Nigerian Universities: Any Impediment?

There are various challenges militating against the development of Islamic legal education in Nigerian universities. These challenges have been identified and discussed in this paper seriatim;

#### 3.1 Methodology as a Factor

The passage of time and the expansion of Islam after the demise of the Prophet Muhammad brought many cases that were not directly covered by the *Quranic* texts or the Prophetic *Hadith*. The concept of *Ijtihad* (legal reasoning) as a method of Islamic law from which later brought the emergence of concept of *Ijma* (juristic consensus) and *Qiyas* (legal analogy) as well as *Istisna* (Juristic preference) constituting secondary sources of Islamic law were products of human reasoning.<sup>11</sup> Because of contemporary issues and challenges, it is pertinent to adopt new methodologies to impact the knowledge of Islamic law.<sup>12</sup> These include migrating from lecturing method of passing knowledge, to a more inclusive discussion method via the introduction of audio-visual apparatus where necessary.<sup>13</sup> It is surprising that the method of impacting Islamic law where by the lecturers will put forward the topic citing authorities from *Quran* and *Hadith* has not changed. This method is more or less like teaching history of the past events. This therefore contributes negatively to the level of understanding of Islamic law to a new development by the Islamic law students.<sup>14</sup> The discussion methods should be encouraged and this will make research on Islamic law to be more inclusive and effective.<sup>15</sup>

<sup>9</sup> Bukar, B.A. 2014. "Legal Education and the challenges of contemporary developments in Nigeria." *International Journal of Clinical and Legal Education*. P.9

<sup>10</sup> See Surat-l-anam.....

<sup>11</sup> Mashood A. Baderin (2003). *International Human Rights and Islamic Law*. Oxford University. P.37

<sup>12</sup> Auda, J. 2008. (Maqasid al-Shariah as Philosophy of Islamic Law : a System Approach." Available at [www.books.google.com](http://www.books.google.com). Accessed on 17/8/2019.

<sup>13</sup> Althea Mighten. (2005). "A comparison of Teaching strategies : Lecture notes combined with structured group discussion versus lecture only." *International Journal of Nursing Education*. P.8.

<sup>14</sup> Personal Interview with Alhaji Umar Alikali. Ph.D, Department of Islamic Law, Faculty of Law, University of Maiduguri, Borno State, Nigeria. 21/10/2018/ 2pm.

<sup>15</sup> Bridget, O.J. M. "The Discussion Teaching Method: An interactive Strategy in Tertiary Learning. Available

[- 444 -](https://webcache.googleusercontent.com/search?q=cache:ETa3L66FK5EJ:https://pdfs.semanticscholar.org. Accessed on 24/10/2018.</a></p>
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#### Prejudiced view as a Factor

One of the factors hindering the development of Islamic law in our universities is the fact that the course is considered prejudiced owing to non-mandatory status of the course. The students that study other aspects of law see themselves as above students studying Islamic law. The superiority complex makes some aspiring law students to be running away from the course, because they believe Islamic law has no future as it is devoid of litigation tendency that could carry them to a lofty height of the profession.<sup>16</sup> Theologically, it is not permitted in Islam to advance arguments contrary to one's actual belief. If one says what is different from what one's real opinion is or what one's mind is, such is regarded as *nifaq* (hypocrisy), which is one of the great sins (*Kaba'ir*) in Islam.<sup>17</sup> This is a major departure from the perception or erroneous thinking of some people offering other aspect of law aside Islamic law. Under Islam, a submission by counsel which differs from what he believes to be correct position may amount to *Nifaq*.<sup>18</sup>

#### 3.3 Insufficiency of Materials

To properly teach or learn Islamic law, there must be availability of *Shari'ah* books that cover all aspects of Islamic law.<sup>19</sup> In some Nigeria universities, the Islamic law text books are not sufficient and some are out dated.<sup>20</sup> There are Islamic law text books needed and necessary to be in library of the schools which are not there to help both lecturers and students in learning Islamic law. Most of the Islamic books available are the one relating to Islamic studies such as Islamic history, education and others.<sup>21</sup> Text books dealing with Islamic legal issues are less available.<sup>22</sup> As a corollary to the above, soft copy or e-book, e-journal also helps in the acquisition and disseminating Islamic law knowledge. Research reveals that in some universities in Nigeria taking Islamic law, there is no department of Islamic law operating e-library of which both the lecturers and students will have direct access to

<sup>16</sup> A.A. Oba (2005). *Lawyers, Legal Education and Shariah Courts in Nigeria*. Islamic Law in Nigeria monograph series 1.p.30.

<sup>17</sup> Adh-Dhahabi, M. U., *Kitab al-Kabair [The Chief Sins]* Tr. Mahmoud Ibrahim, 3<sup>rd</sup> Ed. (Beirut: Dar al-Kotob al-Ilmiyah, 2006). P.56

<sup>18</sup> A.A. Oba (2005). *Lawyers, Legal Education and Shariah Courts in Nigeria*. Islamic Law in Nigeria monograph series 1.p.30.

<sup>19</sup> Abdullahi, U. Y. (1989) *Observation on Teaching Materials*. Pp. 123-128 in Rashid (ed).

<sup>20</sup> Personal Interview with Ya'aba Mohammed. Fati Lami Abubakar Institute for Legal and Administrative Studies, Minna, Niger State. 21/10/2018/ 2pm.

<sup>21</sup> Kendhammer, B. (2013). "The Shariah Controversy in Northern Nigeria and the Politics of Islamic law in New and uncertain democracies." *Journal of comparative Politics*. Available at [www.ingentaconnect.com](http://www.ingentaconnect.com). Pg.13.

<sup>22</sup> Personal interview with Nasiru Muktar, Department of Private and Islamic law, University of Abuja. 17<sup>th</sup> /10/2018. Time 12.00pm

the current books, journal, and all other useful materials in the field of Islamic law.<sup>23</sup> The availability of departmental e-library will assist the Islamic law lecturers to be able to prepare fully in their field of knowledge as to meet the contemporary issues of which Islamic law will take a position.<sup>24</sup>

### 3.4 Dearth of Proficient Scholars in the Field of Islamic Law

The study of Islamic Law requires expert and qualified teachers/lecturers to take the course. To be able to handle Islamic law, the personnel must be proficient in Arabic as well as English Language.<sup>25</sup> There is no doubt, most of the primary sources of *Shari'ah* are written in Arabic language which needs expertise in Arabic.<sup>26</sup> The problem we are having in Nigerian universities is that in some northern universities, some of the lecturers are versed in Arabic because Arabic language has been part of their language and thereby used in any dialogues, hence they could be competent to handle Islamic law courses.<sup>27</sup> However, the reverse is the case in other part of Nigeria where some personnel handling Islamic Law courses are not versed in Arabic language let alone the knowledge of Islamic law.<sup>28</sup> It is regrettable that most of these personnel handling *Shari'ah* courses, though graduate of combined law, lack one of the basic requirements necessary for proper teaching or lecturing of *Shari'ah*.<sup>29</sup> In addition, most of the lecturers are very shallow in Islamic knowledge and character.<sup>30</sup> The effect of this is that Islamic law students will not be exposed directly to the real and practical knowledge of *Shariah*.<sup>31</sup>

### 3.5 Obsolete Syllabus

The syllabus of Islamic law in Nigerian universities needs to be restructured as some of them are old-fashioned. To make this point clearer, some areas presently covered by Islamic law among other include, Islamic Constitutional Law, Islamic Law of

<sup>23</sup> Rashid, S. K. *Islamic Law in Nigeria (Application and Teaching)*. Lagos. Islamic Publication Bureau.

<sup>24</sup> Moruf, H.A. & Olajojo, P.O. (2017). "Virtual Law Library as a Veritable Tool for Justice Delivery System in Nigeria: An investigative Study of Oyo State High Court." *Journal of International Law and Information*. 4.

<sup>25</sup> Oba, A.A. (2007). "Towards Regaining learning and correcting leaning in the legal Profession in Nigeria." *CALS Review of Nigerian Law and Practice*. P.14. Available at [www.works.bepress.com](http://www.works.bepress.com). Accessed on 17/8/2019.

<sup>26</sup> Personal Interview with Abdulraheem Mashood Ajibola, Lecturer, Arabic Village, Borno State.

<sup>27</sup> Interview with Prof. Abdulrazaq Abdul Majeed Alaro, Department of Islamic Law, Faculty Law, University of Ilorin. 22/6/2019.

<sup>28</sup> Personal Interview with Onikosi, T. Lecturer, Al-Hikmah University, Ilorin. 20/7/2019, example is O.A.U. Ife.

<sup>29</sup> Zubair, A. (1989) "The importance of Arabic Language in the Study of *Shariah*." Pp. 203-209 in Rashid (ed).

<sup>30</sup> Personal interview with Nasiru Mukhtar, Department of Private and Islamic law, University of Abuja. 17<sup>th</sup>/10/2018. Time 12.00pm.

<sup>31</sup> Sodiq, Y. (1989). *The teaching of Islamic Law in Nigeria: Past and Present*. Pp. 109-116 in Rashid (ed).

vidence (*murafa'at*), Islamic Law of Transaction, Islamic Family Law, Islamic Law of Jurisprudence, Islamic Law of Tort and Crime, Islamic International Law and Introduction to Islamic law.<sup>32</sup> Some of the aforementioned courses do not include the course that will fit the contemporary issues, such as law relating to Islamic marketing, maritime, aviation, surrogacy, and health care just to mention but few. Therefore there is need to expand the scope of Islamic law by introducing other areas of Islamic law since it is wider in scope beyond human imagination.

Furthermore, the introduction of NUC Benchmark for minimum Academic Standard (BMAS) also contributes to the ineffectiveness of the syllabus, this is because it does not give room for proper operation of Islamic law. The total point allocated for the teaching of Islamic law is too low and it gives no room for adding another course as the total number of credit will be higher for the combined law students. Islamic civil procedure and Islamic criminal procedure cannot be accommodated.<sup>33</sup>

### 3.6 Inadequate Law Reporting System

To effectively pass the knowledge of Islamic law, there is need for relevant cases which are reported and to be cited accordingly. This is a great challenge to Islamic law as some of the cases decided on the principle of Islamic law were not reported. This is because there is lack of coordination and zeal to report Islamic law cases. Even where there is zeal to report, it is definitely not consistent.<sup>34</sup> For instance, the Kwara State *Shari'ah* Court of Appeal makes it as part of her responsibility to be publishing annual *Shari'ah* law report which is basically on Islamic matters. The law report is useful for counsels as well as judges but unfortunately it has stopped for some time now. There is also, *Shar'iah* Quarterly Law Report of *Shar'iah* Court of Appeal, Ilorin, Kwara State, but the report is no more forth published as the last edition of this report was in 2013. It is therefore not disputable that there are Islamic matters/cases that might have arisen from 2013 till date of which decisions have been made but not reported.

## 4. Islamic Law vs. Council of Legal Education: Hostility or Underprivileged?

The Council Legal Education in Nigeria is definitely considered hindrance to the development of *Shari'ah* legal education. The legal education in Nigeria emphasizes or makes mandatory training at the Nigerian Law School programme. The Council of Legal Education as the official institution responsible for regulating legal education in Nigeria and training of graduate lawyers toward their admission into the Nigerian Bar as solicitors and advocates of the Supreme Court of Nigeria makes

<sup>32</sup> Masud, M. K. "Teaching of Islamic Law in Nigeria: An Appraisal of the Teaching Methodology." Pp. 142-155

<sup>33</sup> Personal Interview with Mohammed Hilal Adamu PhD, Islamic Law Department, Faculty of Law, Usman Danfodio University, Sokoto. 4:pm. 16/10/2018

<sup>34</sup> Personal Interview with SMK Kosemani, State counsel (Principal State Counsel) Ministry of Justice Ilorin, Kwara State. 23/10/2018. 2pm.

no provision for *Shari'ah* legal education. Under the following sub-headings, the two folds of the traditional Islamic law and the problem associated therewith, which is modern Islamic law vis-a-vis challenges, would be addressed.<sup>35</sup> Traditional Islamic law has been defined as an aspect of law that derived its root from the main sources of *Shari'ah* that is the Quran and *Hadith*.<sup>36</sup> Thus, consensus of the Islamic jurists (*Ijma*), analogical deductions (*Qiyas*), and others constitute secondary sources. Therefore, the traditional legal education in the pre-colonial era<sup>37</sup> is directed at mastering these sources of law. Traditional Islamic education in Nigeria (and in most other parts of the Islamic world) consists of study of Arabic language, Quran, *Hadith* and *Fiqh* textbooks of the relevant school of law (*Madhab*). The primary sources consist of fixed and unchangeable texts. Education is directed towards memorisation and understanding of these texts. Similarly, secondary sources are really no more than the application of the primary sources to changing social, economic and political conditions. The excellence of an Islamic scholar is in his ability to do this effectively. He exists as a guide to his community in their anxiety to make sure that they live and conduct their affairs in line with the injunctions of Allah (SWT).

Similarly, the traditional Islamic law education system in Nigeria has faced many challenges. One of these challenges is the blind alley nature of education in the traditional Islamic schools known as (*Madaris*) system in Nigeria. Education here does not go beyond *Idaadi* and *Thanawi*, which are roughly equivalents of junior and senior secondary schools respectively. Graduates of these schools do not usually progress further in learning except if they are lucky to secure scholarship to study abroad, usually in North Africa and the Middle East, or if they also have Western education, go to a College of Arabic and Islamic studies for a diploma or certificate course in Arabic and Islamic Studies. Lucky ones eventually proceed to University to study the same or similar subjects. The various Colleges of Arabic and Islamic Studies were established mainly to provide an avenue for educational advancement for the products of the traditional Islamic educational system.<sup>38</sup> However, they have problems in gaining admission to study Combined Law degree programs because of the insistence of many faculties of law that they must possess credits in at least five subjects at Ordinary Level which must include Arabic or Islamic Religious Knowledge among other requirements including but not limited to English Language and Mathematics in addition to any other art related subjects required for the regular common law programme.<sup>39</sup>

<sup>35</sup> Agbetola Ade, (1980). "A recipe for the solution of the problems confronting Muslim minorities in Nigeria." *NATAIS Journal of the Nigeria Association of Teachers of Arabic and Islamic Studies*.

<sup>36</sup> Ambali M. A. 1992. The practice of Muslim Family Law in Nigeria. Zaria. P.45

<sup>37</sup> Ibid.

<sup>38</sup> Abdulmumini. A. Oba. (2004). "Lawyers, Legal Education and the Shariah Courts in Nigeria." *Journal of legal Pluralism*. Pg 113-154.

<sup>39</sup> Ibid

Furthermore, the problem associated to traditional *Shari'ah* education is that it does not accord any significant relevance. This is because the curriculum does not adequately prepare the students for actual life. Since western education is usually neglected completely in the *Madrasahs*, the products of such may find it difficult if not impossible to apply the original sources of Islamic law to changing modern conditions. Hence, stagnation, unsound judicial pronouncements, baseless opinions, and irrelevancies may be the main features of their subsequent professional life in the society. In this vain, another challenge is traditional education system is not well regulated and standardised. The various *Madaris* offer more or less, the same education based on similar curriculum, and award the same certificates. Each school conducts its own examination locally. The credibility and acceptance of the certificates depend on the reputation of the school. The prospects of further study abroad (mainly in North Africa and the Middle East) depend essentially on the personal contacts of the proprietor of the school.

Furthermore, there is also the issue of intellectual stagnation in Islamic world. According to the Sunnis, the gate of *Ijtihad* was closed after the major Imams. Impossible qualifications are laid down for would be *Al-Mujtahid* *fil Shari'ah* (one qualified to do *ijtihad* at the highest level).<sup>40</sup> No one has attained that status since then. This has resulted in intellectual stagnation which the Islamic world is still trying to free itself from. The issue of stagnation is a very sore one. The effect on traditional education is that emphasis is not usually placed on the mastery of the secondary sources of Islamic Law. Rather reliance is placed on authoritative texts written by distinguished scholars of earlier era. These textbooks were based on the primary sources of Islamic Law. However, most were written several centuries ago. While a substantial part of what they contain is still valid today, some aspects require modification, amplification, and outright amendment. This is because the books represented the efforts of their authors at applying Islamic Law in the circumstances of their era.

Those engaged in traditional *Shari'ah* education should seriously consider the issues of curriculum and standardisation. Relevant and result-oriented *Shari'ah* education today must include substantial western education properly equipped to deal with the crucial issues of our time. These include issues of secularism, legal pluralism, human rights, rights of minorities and non-Muslims living in Islamic States, and gender issues. In an ideal situation, Islamic law expects every judge to be a *Mujtahid* of lesser grades, but if these are not available then a non-*Mujtahid* who is conversant with the verdicts of the applicable *madhab* may be appointed a judge. In contemporary times, a higher minimum standard is necessary. Mastery of the classical text books should no longer be enough. An Islamic law expert in the modern era should not only know the rulings of his *madhab*, he must know the proofs or basis (*hujjah*) of the rulings. He should also be well versed in the legal

<sup>40</sup> Makinde, A.K. (2017). "The Entanglement of Shariah Application in South-West Nigeria." *Journal of Pan African Studies*. Vol. 10.No. 5.Pg 84-98.

reasoning in Islamic Law (*usul al-fiqh*) so that he will be able to appreciate a situation that calls for *ijtihad*. A judge must be well educated as to be able to distinguish between the *ijtihad* of other generations of Islamic Law Scholars from the actual text (*nass*) of the primary sources of Islamic Law. However, judge of the highest appellate courts should possess the requisite knowledge for *ijtihad*.<sup>41</sup> Such judges must be able to offer solutions to the peculiar problems of the contemporary era.

Modern legal education culminates at various law degree programs. These are essentially three in nature, that is Bachelor's Degree in *Shari'ah* Law, Bachelor's degree in Civil Law and Bachelor's degree in *Shari'ah* and Common Law. It is principally *Shari'ah* education in the countries where Islamic Law is practiced as the basic law. Universities in North Africa and the Middle East award this degree.<sup>42</sup> The program focuses essentially on *Shari'ah*. There was an attempt by Ahmadu Bello and Maiduguri Universities to introduce similar degree program in *Shari'ah*. It appears that the project died prematurely. This program would have produced the best prepared for handling Islamic law matters in Nigeria. However, the environment is hostile to *Shari'ah*. Graduates of this program from universities outside Nigeria usually have problem of employment and not even recognised to attend the Nigerian Law School. It is very difficult for them to get suitable jobs. Many teach in secondary schools and even in primary schools. Others with post-graduate degrees teach in institutions of higher learning. A few are lucky to secure judicial appointment if they come from states where there are Area Courts and *Shari'ah* Courts of Appeal. Many from southern states do not have this opportunity. The problem of these law graduates in securing admission into the law school is discussed herein later.

### 5. Islamic Law, Curriculum and Legal Education

It is not out of statement to say that Islamic Law has been neglected within the legal educational system in Nigeria.<sup>43</sup> The curriculum of Nigerian law school does not spell out *Shari'ah* procedure in details. The problem of Islamic legal education in Nigeria is frightening, and it is not limited to ignorance in *Shari'ah* alone. The Nigerian lawyers, including some Muslims by their training have become one-way approach to legal matters. They do not know that the Common Law is not the only

<sup>41</sup>Jordan D.A. & Lee Race. (2003). The dark ages of Islam: Ijtihad, apostasy, and human rights in contemporary Islamic Jurisprudence. Available at [www.scholarlycommos.law.wlu.edu](http://www.scholarlycommos.law.wlu.edu). Accessed on 18/8/2019.

<sup>42</sup>Oloyede, I.O. (2001). "Islamic legal Education in Nigerian Universities: some problems and vision." Pp.112-124 in M.O. Abdul-Rahmon (ed), perspective in Islamic Law and Jurisprudence, Essay in Honour of Justice (Dr.) A.A. Okunola (JCA), Ibadan: National Association of Muslim Law Students (NAMLAS).

<sup>43</sup>Abdulqadir, I. A. & Folorunsho, A.H. (2016). The Status of Shariah in the Nigerian Legal Education: An Appraisal of the Role of Madaris." *International Islamic university Malaysia law Journal*, P.4.

legal system in the world today. To the perception of some lawyers, the Common Law represents a universal standard by which all values are measured.<sup>44</sup> It will be useful if legal training in Nigeria includes a bit of comparative legal systems.<sup>45</sup> Prospective lawyers can therefore learn that the Common Law is just one of the legal systems in the world and that there are other systems such as the civil law system (which is the dominant system in Europe and the francophone countries) and the *Shari'ah* (which is the oldest surviving legal system in the world today).<sup>46</sup> When faculties of law were established in Nigeria universities in the early 1960s, expatriate officers discouraged the idea of including Islamic law as a separate part of the law curricula, but advocated that it should be merged into two existing Common Law courses, family law and jurisprudence.<sup>47</sup>

### 6. Islamic Law Teaching: The Orientalist Perception

The non-Muslims are pre-occupied with the perceptiveness of the Muslims introducing *Shari'ah* (Islamic Law) to govern the entire Nation. It is the perception of the orientalist that the inclusion of *Shari'ah* law in the 1999 Constitution is the bone of contention that its subtle motive to Islamise the entire Country has been overlooked.<sup>48</sup> It is their contention that *Shari'ah* law is a product of Islamic faith-based religion and one would wonder whether the Nation is still open for pluralistic society; a doctrine of a society with diverse group religion, race, or ethnic origin with cultural matrix and various distinctive characteristics that enhance solidarity and geo-polity.<sup>49</sup>

**7. Restriction of Shariah Court Jurisdiction to Islamic Personal Law**  
Sections 275-279 of the 1999 Constitution of Federal republic of Nigeria (as amended) dealing with establishment of the *Shari'ah* Court of Appeal of a state and its jurisdiction have raised new and complicated challenges. They provide that:  
The *Shari'ah* Court of Appeal of a state shall, in addition to such other jurisdiction as may be conferred upon it by the law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal Law.

<sup>44</sup>Aguda, T. A. (1988) The challenge for Nigerian Law and the Nigerian Lawyer in the Twenty first Century being the Nigerian National Merit Award Winners Lecture delivered on 14<sup>th</sup> September 1989, Lagos, Federal Government Press, p.25.

<sup>45</sup>Agbede, I.O. (1989) "Legal pluralism: the symbiosis of Imported, Customary and Religious laws: Problems and Prospect." Pp.235-284 in M. Ayo Ajomo (ed), Fundamental of Nigerian Law. Lagos: Nigerian Institute of Advanced Legal Studies.

<sup>46</sup>Abdulmumini, A. Oba. (2004). "Lawyers, Legal Education and the Shariah Courts in Nigeria." *Journal of legal Pluralism*, pp 113-154.

<sup>47</sup>Ibid.

<sup>48</sup>Gilbert Enyidah-OkeyOrdu. (2015). Sharia law in Nigeria: Can a Selective of Islamic Law Work in The Nation. *Journal of Islamic Studies and Culture*.

<sup>49</sup>Yadudu, A. H. (1992) "Colonialism and the Transformation of Islamic law in the Northern States of Nigeria." *Journal of Legal Pluralism*, pp 103-139.

This restricts the jurisdiction of the *Shari'ah* court of appeal to civil jurisdiction. In light of that, the cases handled by the author have involved appearing before a court that did not have the jurisdiction to impose a criminal sentence, and could not argue that the exercise of the court's jurisdiction was contrary to professional ethic, abuse of court process, and against the provisions of rule of law and due process. It was however, a process and challenge we had to undertake in the circumstances of the moment to save a life.

Importantly, jurisdiction of *Shariah* court needs to be expanded to include criminal aspect of Islamic Law. For instance, section 93 of the (SPCL) of Zamfara State enumerates the punishments and compensation that are allowed under the Code, but it does not list death by stoning or crucifixion. Such punishment is set forth in sections 127 (b) and 153(d). The Code is thus inconsistent and uncertain. Similarly, sections 136 (1) of the Kano State SPCL, Section 137, 149-159, of the Zamfara State SPCL, and section 68A (2) (e) dealing with rules regarding the "*hudud*" offences (offences with capital punishment, including the drinking of alcohol) of the Niger State SPCL are inconsistent with respect to the elements of the offences, the punishment to be applied, and the procedures for carrying out the punishment. In the case of Amina Lawal, who was sentenced to death by stoning, there was no law indicating how, by whom, in what way or by what means and where such a sentence could be executed. It gave room to so much speculation and uncertainty that it is inherently contrary to due process.

Sections 125 of Kano's SPCL, section 127 of Zamfara SPCL, and sections 68 (2) (c) of Niger's SPCL are not specific on the use of which drug(s) and which false accusation with regard to unlawful sexual intercourse will receive punishment by lashing. The sections also do not stipulate the punishment. The three codes are inconsistent on that. However, one form of proof of *zina* under both the SPCLs for Kano and Niger are testimonies from four male witnesses, but Zamfara's SPCL is silent on that. However, under the Classical Maliki doctrine, pregnancy is a direct proof of *Zina* in case of charge of adultery by a married man with an unmarried woman.<sup>50</sup>

With respect to rape, sections 126-127 of the Kano SPCL and sections 128-129 the Zamfara SPCL, state that the perpetrator should pay compensation. On the other hand, rape has been assimilated into *Zina*. This is shown by the fact that the prosecution in some cases has used the fact that the woman has a child out of wedlock to be proof of adultery. Other inconsistent provisions include section 134 of the Kano SPCL and section 145 of the Zamfara SPCL dealing with theft and amputation of limb(s). Definitions of the offences vary. Kano and Zamfara define the offence of theft as "covertly, dishonestly and without consent takes any lawful movable property belonging to another.....without justification," but that definition differs from the Maliki Law (the school of thought adopted by the twelve *Shari'ah*

<sup>50</sup> Azizah Mohd Rapini (2002). "Burden and Standard of proof in Zina Offence" *International Islamic university law journal, Malaysia*. P.56.

States), which defines theft from a monetary value perspective. The definition above differs also from Niger State section 68A (2) (a), which does not adopt any definition above.

Section 137 of the Kano SPCL and section 147 of the Zamfara SPCL provide for eight defenses of theft under Maliki, i.e. where the offence was committed by a descendant against descendant; where the offence was committed between spouses within their matrimonial home....; where the offence is committed under circumstances of necessity...where the offender believes in good faith he has a share....; where the offender retracts his confession before execution...it will reduce the offence and punishment of an offence of theft. The definition of theft is not consistent in the codes. While theft is defined as "covertly, dishonestly and without consent taking," in other codes it is defined by the amount of money involved.

Other sections to be looked into for review and reform include: sections 147 and 259 of the Zamfara SPCL and section 134 (b) of the Kano SPCL dealing with embezzlement; sections 229, 231, 227, and 229 of the Bauchi State SPCL; section 228 and 230 of the Kebbi State SPCL; sections 229 and 231 of the Jigawa State SPCL; sections 229 and 231 of the Yobe State SPCL. Section 156 of Bauchi's SPCL refers to "death by impalement (Crucifixion)," but does not define what is meant by the term impalement. Other SPCL sections in need of review are sections 139 for Kano and 152 for Zamfara, which refer to homicide and hurt and derive their wording from the Northern Nigerian Penal Code Law. The new Penal Code is in English, the language of the court is Hausa, the language of the victims is Hausa, and this has caused untold hardship in ensuring the administration of justice, especially where no clear definitions of a term exist. Sections 142 of the Kano SPCL and 68A (2) (f) of the Niger SPCL on intentional homicide and retaliation are ambiguous. Sections 59 of the Zamfara SPCL and 143 (c) of the Kano SPCL dealing with treacherous homicide, retaliation, blood money and imprisonment among others are not the same provisions in all these Codes despite the fact that all the provisions are supposed to be applied to the same Muslims in the same Country. The list is endless, but the point is that for these laws to apply justice to all Muslims and provide peace and harmony, the need for reform cannot be over emphasised.

## 8. Conclusion

Islamic law is one of the primary sources of Nigeria law. It is even older than the Received English Law comprising of Common Law, doctrine of equity, statute of general application as major source of Nigeria legal system. Therefore, it is important to make it mandatory for all Nigerian universities considering its usefulness to human life. However, teaching and learning of Islamic law has not been effectively carried out in Nigeria universities due to the aforementioned problems and challenges ranging from inadequate text book, insufficient experts of Islamic law lecturers who are versed in Arabic language. These challenges also include the constitutionality of Islamic law as well as the perception of the

orientalists to Islamic law who believe the teaching and learning of Islamic law in Nigeria institution is a ploy to propagate and Islamise Nigeria.

In view of the above challenges, it is hereby recommended that there is urgent need to introduce Islamic law procedure into the curriculum of the Nigerian Law School so that the combined law students will have the opportunity of practical aspect of Islamic Law. This will make them to appreciate the importance of Islamic law to day to day administration of justice. Also, there is need to reduce the Common Law courses work load for the combined law students. This is important to accommodate more Islamic law courses. Hence, the students will be able to choose and pick any of the Islamic law courses relevant to their field of study. In the alternative, the combined law students should be allowed to choose corresponding Islamic Law courses with the Common Law courses offered. This will give them the opportunity to compare and contrast the principles of law in both different legal systems.

The importance of Arabic language to the dissemination of Islamic Law is well recognised. This is due to the fact that the authoritative sources of Islamic Law are written in Arabic; thus, a better understanding and dissemination of the Islamic Law knowledge could only be done by those that are versed in real Arabic language. Therefore, there is need to make Arabic language as one of the mandatory requirements for those who are willing to lecture or teach Islamic Law in the Nigeria universities. It is therefore submitted that the argument of the orientalists as to the islamisation of the Country cannot hold water. This is due to the fact that the introduction of Islamic banking into the Country equally generated a lot of controversies, yet the non-Muslims are mostly benefiting from the scheme. This is not islamisation but lack of knowledge of Islamic Law as applicable to day to day activities of human life. It is further recommended that scholars of Islamic Law need to write articles, textbooks among others to further serve as education and research materials for would-be students of Islamic Law. Areas such as Islamic law of Insurance, Aviation, and Maritime just to mention but a few are required to further disseminate principle of Islamic law, since all these areas are covered by Islamic Law.