

***A Comparison Table of Shari'ah Law and English Law  
prepared by Sam Solomon and Kathryn Wakeling of CCFON  
for the Debate on 4<sup>th</sup> June 2009 Regarding the Oral Question  
Posed by The Rt. Hon. the Lord M. Pearson of Rannoch***



*Changing Society to put the  
Hope of Christ at its Centre*

***Godliness Makes a Nation Great Proverbs 14:34***

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Legal Issue	Shari’ah Law	English Law
1. Authority from which Laws Emanate	Revealed by Allah, communicated to Muhammad via the <i>Qur’an</i> and <i>Sunnah</i> , interpreted by the <i>Ulama</i> and applied by Shari’ah courts.	The “Queen in Parliament” and the European authorities as interpreted by the House of Lords and Court of Appeal.
2. Legal Basis on which the Court System is Established	<p>1. <b>Legal Basis of Sharia Courts in Muslim countries:</b> The legal basis of Sharia Courts by definition, wherever they may be, are established through the above authority line, both in Muslim and non-Muslim countries—and they regularly operate unofficially in non-Muslim countries in governing the affairs of the Muslim <i>Ummah</i> (the global Islamic state) in matters of Family Law.</p> <p>2. <b>Legal Basis of Sharia Courts in the UK:</b> It is known that Shari’ah courts in England and Wales were operating for many years without any legal sanction until 2007, when it is claimed that Muslim Arbitration Tribunals (“MAT”) were licensed by the Government. It is not clear whether the awards of these courts are fully or partially enforceable in English Courts under the Arbitration Act 1996, as different sources report different facts. There is a real risk that the awards of MAT may be enforced</p>	<p>1. <b>Legal Basis of English Courts:</b> The English Courts are established on the basis of the unwritten British Constitution as upheld by centuries of democratic mandate. Some courts were established by particular Acts of Parliament, such as the Crown Court, which was established by the Courts Act 1971 to replace the Assize Courts and the Courts of Quarter Sessions.</p> <p>2. <b>Compatibility of the Ecclesiastical Courts and the Beth Din with English Law:</b> Both entities are compatible with English Law, as both operate on rules founded on the same principles and concepts of morality, namely, our Judeo-Christian Heritage. The Beth Din operate as a dispute resolution forum under the Arbitration Act and are entirely subject to the law of England and Wales, whilst the Ecclesiastical Courts have their own independent jurisdiction that does not conflict in any way with other English Courts.</p>

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	<p>in English Courts without adequate enquiry into the basis on which they were reached. This risk is particularly apparent with regard to awards at variance with Human Rights or equality norms that the victim has failed to raise during the arbitration or within the time limit allowed. Those judged by the MAT may be unaware of the superior rights they enjoy under English Law, or they may be unaware of how to enforce them.</p> <p>Thus the Shari'ah Court in the UK is established on the basis of the argument that the Ecclesiastical Courts and the Beth Din enable Christians and Jewish people to resolve their disputes according to their religion. In actual fact, the Ecclesiastical Courts deal only with the internal affairs of the Church of England (not disputes between Christians) and bind only clergy and churchwardens within the context of the Church's constitutionally established status. Therefore, although now legally regarded as an arbitration tribunal, the Shari'ah Court and its law fundamentally contravene English law. In order to function legitimately, parliamentary approval would be required for the incorporation of Shari'ah</p>	

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	<p>Courts into the legal system and an explanation required as to how the system will be made to comply with the Human Rights Act.</p>	
<p>3. System of Governance</p>	<p>Legislation must be in conformity with the Shari'ah and in harmony with the general principles and spirit of Islam. Under the provisions of the Shari'ah, legislators do not have the authority to pass innovative laws. Their powers are limited to:</p> <ul style="list-style-type: none"> <li>• Passing laws to ensure the enforcement of the provisions of the Shari'ah; and</li> <li>• Passing laws to organise, safeguard and fulfil the requirements of society, in enforcing the general principles of the Shari'ah.</li> </ul> <p>Theocracy prevails. The Islamic doctrine of "consultation" means only the interpretation of Qur'anic verses by scholars so as to remain within its bounds. Even such consultation is prescribed by certain basic and immutable rules that have been clarified in the relevant injunctions of the <i>Qur'an</i> and the Sunnah of Muhammad.</p> <p>The Islamic Shari'ah has laid down both the rights and obligations of the ruler in detail. According to the Shari'ah, the main or prime responsibility of the ruler is to guard the faith of Allah and the religion</p>	<p>Liberal democracy with a sovereign Parliament that may pass any laws it pleases. The sovereignty of Parliament may be surrendered in whole or in part to external authority, such as the legislative organs and Court of Justice of the European Union, but may also be regained by an Act of Parliament. Parliament cannot bind itself.</p> <p>The electorate hold Parliament to account with the help of the media and other checks and balances.</p>

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	<p>of Allah, which is Islam. He is duty-bound to look after all the internal and external affairs of the <i>Ummah</i> to safeguard its interests within the limits prescribed by Allah and his apostle. He is also duty-bound to:</p> <ul style="list-style-type: none"> <li>• Create peaceful conditions (for the Muslim community);</li> <li>• Establish order for both Muslims and <i>Dhimmis</i>;</li> <li>• Enforce punishments;</li> <li>• Execute injunctions;</li> <li>• Defend Islamic proselytisers (<i>Da'wa</i>);</li> <li>• Promote and support <i>jihad</i>;</li> <li>• Collect taxes;</li> <li>• Look after the property (of Muslims) in the event of disturbances; and</li> <li>• Supervise officers charged with these duties.</li> </ul>	
4. Nature of Law	<p>Sharia Law is reckoned to be divine in origin, complete, comprehensive and perfect in all respects from the time when Allah revealed it to Muhammad, hence it remains flawless. It is thus not amenable to change. It is universal in nature and application.</p>	<p>Since an Act of Parliament in 1534, the monarch has been the head of the Church of England. However, Canon Law binds only clergy and churchwardens. In 1689, the Bill of Rights confirmed that Protestants were allowed to defend themselves and in 1998, the Human Rights Act confirmed that all citizens have a right to the freedoms in the Act without discrimination on grounds such as sex and religion, in</p>

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		<p>its Schedule I, Article 14.</p> <p>Law of human origin passed by democratic vote in Parliament following public debate, media comment, expert reports and consideration in committee. Laws are often criticised and improved upon or changed. Provisions may be revisited as often as the Government of the day sees fit.</p>
5. Scope of Law	<p>Shari’ah Law is classified by subject matter, but nonetheless proclaims itself to be indivisible: the “sacred” cannot be separated from the “secular.” It covers all areas of life, from religion, hygiene and dietary laws, to dress code, family and social life, and from finance and politics to the unity of religion with the state. This is why, for example, Islamic financial products import the exclusions of pork, alcohol and gambling into their prohibitions and why religious rulings from religious authorities are needed to validate and to regulate their operation. The family law applied in Muslim Arbitration Tribunals is inseparable from the rest of Shari’ah Law—it is integrated into it. Due to the indivisible nature of Shari’ah Law, its penal code will ultimately be enforced on Muslims through Muslim Arbitration Tribunals, just as it is being informally enforced at the moment through “honour” killings.</p>	<p>English Law governs all areas of life within England, although citizens are allowed their human rights and fundamental freedoms, so that areas of life such as religion, relationships between consenting adults, dress code, dietary choices, political views and economic choices are left to the preferences of individuals.</p>

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	<p>Whilst this may seem incredible at present, it is also true that Shari'ah Courts were operating informally for many years before they were integrated into the English Legal System.</p>	
<p>6. Access to Justice/Unity of Law</p>	<p>The theory and terminology of Islamic jurisprudence in personal law, civil law and criminal law are known and understood only by scholars in an elitist system—and by definition cannot be challenged by the populace.</p> <p>The jurists of different schools differ in their interpretation of Shari'ah Law and in their sentencing practice in relation to certain aspects of the law. This may result in interpretations and applications of the law that lack uniformity across the Shari'ah Courts.</p>	<p>Anyone can study law or can research its provisions and application. Solicitors' Firms, Citizens' Advice Bureau and Law Centres can assist the citizen to understand their rights and responsibilities. Certainty in the law is valued and the Common Law is established according to a single system of precedent, so that the judgment of a court in Newcastle ought to differ little from that of a court in Penzance on a given set of facts. One common legal method is used to argue and decide cases according to interpretation, reasoning and analogy.</p>
<p>7. Legal System</p>	<p>In Shari'ah Courts, all jurists, court officials and the judge must be Muslims; non-Muslims are not allowed to take part in any way, shape or form. No woman may become a judge.</p>	<p>Any suitably qualified and fairly selected individual may work in a court of law, practise law or judge cases irrespective of his or her religion, political beliefs or gender.</p>
<p>8. Jurisdiction</p>	<p>Shari'ah Courts claim universal jurisdiction. (Thus a crime (see items 14 &amp; 15) committed in England is justiciable in Pakistan).</p>	<p>England and Wales only. Some Acts of Parliament also apply to Scotland or to Northern Ireland.</p>

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9. Purpose of the Court System	<p>The Shari’ah Court requires Muslims to obey its authority in preference to national authorities. Every law that is incompatible with the Shari’ah or the spirit of Islam is unlawful for Muslims to do, apply, or enforce, whether the ruling authority permits or even orders such an act. In fact it would be incumbent on every Muslim to abstain from such mandates and to prevent their execution. <i>This may result in civil disobedience being required of British Muslims by the Shari’ah Court—in other words the Shari’ah Courts would create a state within a state. This may damage social cohesion.</i></p>	<p>To maintain law and order. To hold the Government and public bodies to account. To enable citizens to settle disputes peacefully.</p>
10. Relationship between Religion and the State	<p>Shari’ah does not distinguish between state and religion, between sacred and secular. It regulates every aspect of life.</p>	<p>Established Church with its own separate Canon Law that applies only to clergy and churchwardens and does not contradict the law of England and Wales, either in its provisions or in the principles upon which it is based; largely secular administration of the State.</p>
11. Status of Human Rights as set forth in the European Convention on Human Rights	<p>Not recognised as part of the Shari’ah Law and contradicted by many of its rules. An alternative Islamic set of human rights has been outlined for the benefit of Western onlookers in the Cairo Declaration on Human Rights 1990 and Durban II, amongst others—with the caveat that no right shall be granted “in contradiction to Shari’ah law.”</p>	<p>Recognised and implemented at all stages of the legislative and judicial process—at least in principle.</p>



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	<p>The right of a man (<i>haqq adami</i>) to compensation is recognised, though he can forgive the defendant if he wishes. The right of Allah (<i>haqq Allah</i>) is also recognised, but no forgiveness is possible for offences against him. Punishments for the breach of <i>haqq Allah</i> are the most barbaric. They are mandatory and are not subject to mitigation.</p>	
12. Freedoms	<p>Muslims must not question the doctrines of Islam or the rulings of Shari'ah scholars. There is no liberty in Islam:</p> <ul style="list-style-type: none"> <li>• No freedom of speech or expression</li> <li>• No freedom of thought, conscience or belief.</li> </ul>	<p>Largely respected, except where limitations are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.</p>
13. Presumption of Innocence	<p>A defendant is guilty until proven innocent.</p>	<p>A defendant is innocent until proven guilty.</p>
14. Definition of a Crime	<p>Legal prohibitions imposed by Allah, whose infringement entails punishment prescribed by Him. These legal prohibitions can be either commission of a forbidden act or omission of an act enjoined, hence the commission of any act declared unlawful and for which punishment has been laid down in the Shari'ah is a crime. Similarly, omission of any act enjoined by the Shari'ah constitutes a crime.</p>	<p>Legal prohibitions of serious acts or omissions that are also designated as criminal offences. Many prohibitions exist which are matters of civil law. Many other acts and omissions are disapproved of, but are not subject to legal judgment or to sanction by the courts. Acts and omissions disapproved of only by religions or philosophies ("sins") are not justiciable in the criminal court.</p>

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	<p>According to the Shari’ah all crimes are “<i>janayat</i>”, that is, “felonies” or “crimes triable on indictment”, whether they are mere sins against the religion of Islam, or crimes that other legal systems would punish.</p>	<p>Crimes are divided into those that are less serious (“triable summarily”) and those that are more serious (“triable on indictment”).</p>
<p>15. Categories of Crimes and Punishments</p>	<p><i>Huddood</i> <i>Qisas and Diyat</i> <i>Ta’zeer</i></p> <p><b><i>Huddood: all Huddood punishment are administered publicly</i></b></p> <ul style="list-style-type: none"> <li>• Adultery: 100 lashes and capital punishment (stoning or beheading by the sword or being hanged or shot);</li> <li>• False allegation of adultery: 80 lashes, loss of the right of being an upright witness;</li> <li>• Alcohol consumption/use of liquor: minimum 80 lashes—may vary but never less than 40;</li> <li>• Theft: chopping off of the right hand from the wrist, if repeated then also the left foot;</li> <li>• Apostasy: capital punishment;</li> <li>• Larceny;</li> <li>• Bloodshed;</li> <li>• Subversion;</li> <li>• Rebellion.</li> </ul>	<p>Life imprisonment is the most serious punishment that is meted out and then only for the most serious crimes such as murder and rape.</p> <p>No corporal punishment is permissible. Article 3 of the European Convention on Human Rights states that:</p> <p style="text-align: center;"><i>No one shall be subjected to torture or to inhuman or degrading treatment or punishment.</i></p> <p>This is respected and enforced.</p> <p>Adultery and the consumption of alcohol may be regarded as sins, but they are not crimes. At most they may be grounds for divorce.</p> <p>Apostasy may be regarded as a sin by the religion against which a person has turned, but it is not a crime.</p>

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	<p><b>Qisas/diyat</b></p> <ul style="list-style-type: none"> <li>• Wilful murder;</li> <li>• Quasi-wilful murder;</li> <li>• Murder by mistake;</li> <li>• Causing injury wilfully;</li> <li>• Causing injury by mistake.</li> </ul> <p><i>Qisas</i> punishments entail an eye for an eye or financial compensation known as <i>diyāt</i> or “blood-wit money”.</p> <p><i>Ta’zeer</i> are civil offences that can be settled for a financial fine or imprisonment, but this depends on the court, which may transmute the offence by interpretation into a serious crime.</p> <p>All the above crimes are regarded as “waging war against Allah and his apostle”. Horrific, barbaric punishments are prescribed for these crimes, such as crucifixion, beheading and the chopping off of opposite limbs.</p>	<p>Crimes differ from civil wrongs, or torts. Torts are not punishable at the initiative of the court, but compensation or a court order may be obtained by the victim if the victim decides to make a claim. Torts are not punishable by imprisonment except in the rarest of circumstances.</p>
16. Treason (including Apostasy)	<p>Under Shari'ah Law, treason is the betrayal of Muhammad, or the <i>Ummah</i>; it is regarded as waging war on Allah and his apostle, the culprit can be Muslim or non-Muslim. Critiquing Muhammad or depicting him in any form is waging war on Allah,</p>	<p>Betraying the security of one's nation results in a maximum sentence of life imprisonment. Changing one's religion is a personal choice and a matter of freedom of religion. See also item 20.</p>

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	<p>Muhammad and Islam. The punishment is crucifixion, the chopping off of opposite limbs and beheading. Invasion of Islamic land also falls under this category. See also item 20.</p>	
<p>17. Equality Before the Law</p>	<p>Inequality before the law at all levels of the Shari'ah court system and in all courts, whether civil, family, or criminal. Muslim men occupy a privileged position in relation to non-Muslim men. Muslim men occupy a privileged position in relation to Muslim women. All men occupy a privileged position in relation to all women.</p>	<p>All citizens equal before the law.</p>
<p>18. Evidence</p>	<p>The standard of proof in the Shari'ah court is variable and inconsistent as compared to that in English Courts.</p> <p>Not considered by a jury in any case.</p>	<p>In criminal cases evidence must be strong enough to convince the majority of a jury of the defendant's guilt of the offence charged beyond reasonable doubt. Corroboration and objectively verifiable evidence are used wherever possible.</p> <p>In civil cases the evidence must convince a judge (or jury) that the claim is more likely than not to be true.</p>
<p>19. Weight of a Witness's Testimony in Court</p>	<p>In rape cases only a Muslim male witness's evidence is admissible. In all other cases, a Muslim woman's evidence is worth half that of a Muslim man's.</p>	<p>All witnesses' testimonies of equal weight unless they are found to be of bad character.</p>

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20. Conversion to Another Religion (Apostasy)	<p>No freedom of religion: Conversion from Islam to another religion is neither allowed nor recognised; conversion results in the loss of legal personality, marriage, children and rights (see item 14).</p>	<p>Freedom of religion: A matter of individual choice that does not concern the State (except where the individual is a child in local authority care). Conversion does not need to be recognised, but a simple statement would suffice. Conversion does not affect the individual's other legal rights.</p>
21. Blasphemy	<p>No freedom of speech: Criticism of Islam or contradiction of its doctrines, together with insults levelled at its prophet, are forbidden and punishable by death.</p>	<p>Freedom of speech.</p>
22. Vices and Virtues	<p>The Shari'ah regards "moral virtues" as defined by Islam as the principal base of society. For this reason Shari'ah declares all acts which are inimical to its morality as culpable. "Virtues" include:</p> <ul style="list-style-type: none"> <li>• Polygamy</li> <li>• The killing of an apostate.</li> </ul> <p>Vices which are also crimes include:</p> <ul style="list-style-type: none"> <li>• Mixed company of unrelated males and females</li> <li>• Consumption of alcohol</li> <li>• Physical relations between two consenting adults, which is also a crime. Both would be</li> </ul>	<p>Some Shari'ah Law "virtues" are crimes under English Law, such as polygamy (bigamy), or the killing of an apostate (murder).</p> <p>There is no restriction on freedom of association between unrelated males and females, unless prohibited by a court injunction for the safety of one party.</p> <p>The consumption of alcohol by adults is generally permitted unless it causes drunkenness and disorder in public or in prohibited areas.</p> <p>Two consenting adults may engage in a physical</p>

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	whipped, and probably put to death by the sword or stoned.	relationship without restrictions.
23. Freedom of Movement	Women need written permission to travel and/or a male relative to accompany them.	All citizens free to come and go as they please unless arrested, imprisoned or excluded from private or Government property.
24. Dress code	Women must dress modestly, ensuring that their hair is entirely covered. Some schools of thought hold that only a woman’s eyes may be seen and others that no part of her may be seen.	Citizens at liberty to dress according to personal taste on condition that they are not indecent in public.
25. Dietary laws	<p>The consumption and trading in, or retail of liquor are prohibited and subject to <i>Huddood</i> punishment (minimum 40 lashes).</p> <p>Pork must not be consumed by Muslims or sold to Muslims.</p> <p>Consumption of non-<i>halal</i> meat is forbidden.</p>	No dietary rules for citizens, but food sold must be fit for human consumption and must be labelled with its ingredients, nutritional value and best-before date.
26. Financial Transactions	The most modern interpretation of Shari’ah Law states that Muslims may only conclude transactions that are Shari’ah-compliant—that is, those that appear to be Islamic in form and that have been approved by Islamic scholars. Muslims may not	Citizens free to conclude the contracts of their choice on condition that they do not contravene the laws relating to fraud, anti-competitive practices or taxation.

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	invest in enterprises that are un-Islamic in product or philosophy.	
27. Family and Property Law	<ul style="list-style-type: none"> <li>• Marriage is expected of all men. Celibacy is not encouraged amongst Muslims and homosexual practice is a capital crime.</li> <li>• In Shari'ah law no minimum age of consent to marriage for girls exists.</li> <li>• A girl may be married off to a man chosen by her family without her consent.</li> <li>• Polygamy is expected. Men may marry up to 4 free women with no limit on the number of concubines or sex slaves.</li> <li>• The husband has the right to divorce his wife for any reason by simply pronouncing the divorce three times, whereas the wife must apply to the court for a divorce.</li> </ul>	<ul style="list-style-type: none"> <li>• Marriage is a personal choice. Celibacy and homosexual relations are freely allowed.</li> <li>• Marriage to a girl under the age of 16, if consummated amounts to rape. Such a marriage will also be void.</li> <li>• Both parties must freely consent to a marriage. Lack of consent can lead to a multiplicity of charges including false imprisonment and rape.</li> <li>• Polygamy is the crime of bigamy. The ownership of slaves is a crime. Sexual activity with a person who does not consent involves either rape or sexual assault and probably false imprisonment and blackmail as well.</li> <li>• A husband or a wife can divorce the other only on specified grounds of a serious nature.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Custody of any children passes automatically to the man once the children have attained the age of 7.</li> <li>• Dowry rules vary and on divorce its recipient depends on whether the marriage was dissolved prior to consummation, after it, prior to the birth of children or afterwards and so on.</li> <li>• Inheritance must be apportioned as per Islamic Jurisprudence based on the <i>Qur'an</i> and <i>Sunnah</i>, in which a male's portion is double that of a female's, and none is to be given to an unbeliever (<i>kaffir</i>) even if s/he would otherwise be the most legitimately entitled.</li> </ul>	<ul style="list-style-type: none"> <li>• Custody of children is decided by the court.</li> <li>• There is no such thing as a dowry in English Law.</li> <li>• The deceased's estate is divided in accordance with the last valid will of the deceased; otherwise in accordance with statutory rules that do not discriminate on grounds of sex or religion.</li> </ul>