

OUTLINES OF ISLAMIC JURISPRUDENCE

Imran Ahsan Khan Nyazee

Contents

CHAPTER I

Introduction

SECTION I

THE FUTURE OF ISLAMIC LAW

SECTION II

THE STUDY OF ISLAMIC JURISPRUDENCE IS AN OBLIGATION

SECTION III

THE SCOPE OF THIS BOOK

CHAPTER II

The Scope of Islamic Law and Jurisprudence

SECTION I

THE SUBJECT-MATTER OF ISLAMIC JURISPRUDENCE

- A *Uṣūl al-Fiqh* ☞ 37
- B *Fiqh* ☞ 39
- C The *Siyāsah Shar‘iyyah*: Administration of Justice According to the *Sharī‘ah* ☞ 40
- D *Qawā‘id Fiqhiyyah*: The Principles of *Fiqh* ☞ 40
- E *Furūq*: The Science of Distinguishing Cases ☞ 41

- F *Maqāṣid al-Sharī'ah*: Islamic Justice Through the Purposes of the *Sharī'ah* ☞ 41
- G *Aḥkām al-Qur'ān* and *Tafsīr* ☞ 41
- H The Discipline of *Khilāf* ☞ 42

SECTION II

HAS A VARIETY OF OPINIONS CAUSED DISUNITY AMONG THE MUSLIMS?

SECTION III

THE SCHOOLS OF LAW ARE NOT SECTS BUT SYSTEMS OF INTERPRETATION

SECTION IV

ISLAM HAS A FULLY DEVELOPED AND MATURE LEGAL SYSTEM

CHAPTER III

The Meaning of *Uṣūl al-Fiqh* and Basic Terms

SECTION I

THE LITERAL MEANING OF FIQH

SECTION II

EARLIER GENERAL MEANING OF FIQH

SECTION III

LATER SHĀFI'ITE DEFINITION OF FIQH

SECTION IV

DISTINCTIONS BASED ON THE DEFINITION

- A Distinction between *sharī'ah* and *fiqh* ☞ 51
- B Distinction between *mujtahid* and *faqīh* ☞ 51
- C Distinction between *ijtihād* and *taqlīd* ☞ 52
- D Distinction between a *muqallid* and a *faqīh* ☞ 52

SECTION V

THE MEANING OF AŞL AND UŞŪL AL-FIQH

SECTION VI

WIDENING THE DEFINITIONS

- A A Wider Definition of *Fiqh* 55
- B A Wider Definition of *Uşŭl al-Fiqh* 56

I The *Ḥukm Sharʿī* 59

CHAPTER IV

The *Ḥukm*: What is Islamic Law?

SECTION I

THE ELEMENTS OF THE ḤUKM SHARʿĪ

SECTION II

THE MEANING OF THE ḤUKM SHARʿĪ OR THE MEANING OF ISLAMIC LAW

SECTION III

THE ḤUKM TAKLĪFĪ (OBLIGATION CREATING RULES)

SECTION IV

THE ḤUKM WADʿĪ—DECLARATORY RULES

SECTION V

THE DISTINCTION BETWEEN THE ḤUKM TAKLĪFĪ AND THE ḤUKM WADʿĪ

CHAPTER V

Classification of Islamic Law

SECTION I

THE MEANING OF WĀJIB (OBLIGATORY ACT) AND ITS
DIFFERENT TYPES

- A The *ḥukm* or rule for the *wājib* ☞ 72

SECTION II

THE CLASSIFICATIONS OF THE WĀJIB (OBLIGATORY ACT)

- A Classification based on the time available for performance:
wājib muṭlaq and *wājib muqayyad* ☞ 73
- B Classification based on the extent of the required act ☞ 76
- C Classification based on the subjects who are required to
perform ☞ 77
- D Classification based on the identification of the object of the
required act ☞ 78

SECTION III

THE MEANING OF MANDŪB (RECOMMENDED ACT) AND ITS
DIFFERENT TYPES

- A Types of *Mandūb* ☞ 79

SECTION IV

THE MEANING OF ḤARĀM (PROHIBITED ACT) AND ITS
DIFFERENT TYPES

- A The types of *ḥarām* ☞ 82

SECTION V

THE MEANING OF MAKRŪH (DISAPPROVED ACT) AND ITS
DIFFERENT TYPES

SECTION VI

THE MEANING OF MUBĀḤ (PERMITTED ACT) AND ITS
DIFFERENT TYPES

SECTION VII

THE ḤUKM WAD'Ī OR THE DECLARATORY RULE

- A *Sabab, shart* and *māni'* ☞ 86
- B *Ṣiḥḥah, fasād* and *buṭlān* (validity, vitiation and nullity) ☞ 89
- C *'Azimah* and *rukḥṣah* (initial rules and exemptions) ☞ 89

CHAPTER VI

The Lawgiver (*Hākim*)

SECTION I

ALLAH IS THE TRUE SOURCE OF ALL LAWS

SECTION II

THE FUNDAMENTAL NORM OF THE LEGAL SYSTEM

SECTION III

THE LAW AND THE INTEREST OF MAN

- A Is Man the sole purpose of creation? ☞ 94
- B Can we employ *maṣlahah* (interest) for new laws? ☞ 95

SECTION IV

ARE THE SHARĪ'AH AND NATURAL LAW COMPATIBLE?

CHAPTER VII

The Act (*Maḥkūm Fīh*)

SECTION I

THE CONDITIONS FOR THE CREATION OF OBLIGATION (TAKLĪF)

- A The act to be performed or avoided must be known ☞ 102
- B The subject should be able to perform the act ☞ 103

SECTION II

THE NATURE OF THE ACT (MAḤKŪM FĪH)

SECTION III

CLASSIFICATION OF THE ḤUKM TAKLĪFĪ ON THE BASIS OF RIGHTS

SECTION IV

CLASSIFICATION OF DUTIES: ORIGINAL AND SUBSTITUTORY

SECTION V

HUMAN RIGHTS AND OTHER CLASSIFICATIONS

CHAPTER VIII

The Subject (*Maḥkūm ‘Alayh*)

SECTION I

AHLĪYAH OR LEGAL CAPACITY

SECTION II

THE UNDERLYING BASES OF LEGAL CAPACITY

SECTION III

COMPLETE CAPACITY

- A The stages leading to complete legal capacity ☞ 116

SECTION IV

DEFICIENT AND IMPERFECT CAPACITY

- A Cases of deficient legal capacity ☞ 117
B Cases of Imperfect Capacity ☞ 121

CHAPTER IX

Causes of Defective Legal Capacity

SECTION I

NATURAL CAUSES OF DEFECTIVE CAPACITY

- A Minority (*ṣighar*) ☞ 126

- B Insanity (*junūn*) ☞ 127
- C Idiocy (*'atah*) ☞ 128
- D Sleep and fits of fainting (*nawm, ighmā'*) ☞ 128
- E Forgetfulness (*nisyān*) ☞ 128
- F Death-illness (*marad al-mawt*) ☞ 129

SECTION II

ACQUIRED CAUSES OF DEFECTIVE CAPACITY

- A Intoxication (*sukr*) ☞ 132
- B Jest (*hazl*) ☞ 133
- C Indiscretion (*safah*) ☞ 134
- D Coercion and duress (*ikrāh*) ☞ 135
- E Mistake and ignorance (*khata', shubhah, and jahl*) ☞ 137

II The Sources of Islamic Law

141

CHAPTER X

The Primary Sources of Islamic Law

SECTION I

THE DISTINCTION BETWEEN PRIMARY AND SECONDARY
SOURCES

SECTION II

GRADES OF THE SOURCES

SECTION III

THE QUR'ĀN

- A The Recording and Revelation of the Qur'ān ☞ 149
- B The *ahkām* in the Qur'ān ☞ 151

SECTION IV

THE SUNNAH

- A Kinds of *Sunnah* ☞ 153
- B Conditions imposed by jurists for acting upon the *muttaṣil ḥadīth* ☞ 157

SECTION V

STATUS OF THE SUNNAH WITH RESPECT TO THE QUR'ĀN

SECTION VI

CONSENSUS OF LEGAL OPINION (IJMĀ')

- A Conditions for the Validity of *Ijmā'* ☞ 161
- B Types of *ijmā'* ☞ 163
- C The legal force of *ijmā'* as a source ☞ 163
- D Role of *ijmā'* in the modern world ☞ 164

CHAPTER XI

Secondary Sources

SECTION I

QIYĀS (ANALOGY)

- A Elements of *qiyās* ☞ 168
- B Examples of *qiyās* ☞ 169
- C *Qiyās jalī* and *qiyās khafī* or manifest and concealed analogy ☞ 170

SECTION II

ISTIḤSĀN (JURISTIC PREFERENCE)

- A Examples of *istiḥsān* ☞ 172

SECTION III

ISTIḤĀB (PRESUMPTION OF CONTINUITY)

- A *Istiḥāb al-ḥāl* and the Islamization of laws ☞ 174

SECTION IV

MAŞLAḤAH MURSALAH (EXTENDED ANALOGY)

- A Illustrations of *maşlahah mursalah* ☞ 175

SECTION V

SADD AL-DHARĪ'AH (BLOCKING THE LAWFUL MEANS TO AN UNLAWFUL END)

SECTION VI

OPINION OF A COMPANION (QAWL AL-ŞAḤĀBĪ)

SECTION VII

EARLIER SCRIPTURES (SHAR' MAN QABLANĀ)

- A Types of earlier laws ☞ 179

SECTION VIII

CUSTOM ('URF)

- A Types of *'urf* ☞ 180
 B Can the Western laws obtaining in Pakistan be treated as custom? ☞ 182

SECTION IX

ISLAMIC LAW AND ROMAN LAW

CHAPTER XII

Maşlahah and the Maqāşid al-Sharī'ah

SECTION I

THE MEANING OF MAŞLAḤAH (INTEREST)

SECTION II

MAQĀŞID AL-SHARĪ'AH OR THE PURPOSES OF ISLAMIC LAW

SECTION III

WHAT IS BEYOND THE PURPOSES?

SECTION IV

MAQĀṢID AL-SHARĪ'AH AND THE TEXTS

SECTION V

THE NATURE AND STRUCTURE OF THE MAQĀṢID

- A Primary purposes in the service of the Hereafter 188
- B The two faces of the *maqāṣid* 190
- C Primary and secondary purposes 191
- D Priorities within the *maqāṣid* 193

III *Ijtihād* and *Taqlīd* 197

CHAPTER XIII

The Meaning of *Ijtihād* and its Modes

SECTION I

THE MEANING OF IJTIHĀD

SECTION II

THE TASK OF THE MUJTAHID

SECTION III

THE MODES OF IJTIHĀD

SECTION IV

THE COMPLETE PROCESS OF IJTIHĀD

SECTION V

THE QUALIFICATIONS OF THE MUJTAHID

SECTION VI

WHO IS A MUJTAHID TODAY?

SECTION VII
ABROGATION (NASKH)

SECTION VIII
THE RULES OF PREFERENCE (TARJĪH)

CHAPTER XIV
***Taqlīd* or Juristic Method**

SECTION I
TAQLĪD IN THE PAKISTANI LEGAL SYSTEM

IV Islamic Business Law and Property 211

CHAPTER XV
Property and Ownership

SECTION I
THE NATURE OF PROPERTY AND OWNERSHIP

- A Ownership (*milkīyah*) and possession (*milk al-yad*) ☞ 213
- B Types of ownership ☞ 214
- C Possession ☞ 216

SECTION II
THE CONCEPTS OF PROPERTY (MĀL) AND OWNERSHIP (MILK)

SECTION III
THE DIFFERENT CLASSIFICATIONS OF MĀL

CHAPTER XVI
General Principles of Contract

SECTION I

FUNCTION OF CONTRACTS IN ISLAMIC LAW

SECTION II

THE MEANING OF ‘AQD

SECTION III

AGREEMENT AND ITS FORM (ŞĪGHAH)

- A The meaning of *ījāb* (offer) and *qabūl* (acceptance) ☞ 223
- B The conditions of offer and acceptance (*şīghah*) ☞ 224
- C Termination of the offer (*ījāb*) ☞ 226

SECTION IV

CONSIDERATION AND ISLAMIC LAW OF CONTRACTS

- A The *maḥall* (subject-matter) and legality ☞ 228

SECTION V

LEGALITY OF CONTRACTS IN ISLAMIC LAW

- A Contracts contrary to Islamic law (*shar‘*) ☞ 229
- B Contracts contrary to public policy ☞ 231
- C The effect of illegality ☞ 232

SECTION VI

CONTRACTUAL CAPACITY

SECTION VII

GENUINENESS OF ASSENT

- A Mistake (*khata’* or *shubhah* not *ghalat*) ☞ 234
- B *Khilābah*, *taghrīr*, *tadlīs*, *ghabn*—fraudulent misrepresentation ☞ 237
- C Undue influence and *marad al-mawt* ☞ 237

- D Coercion and duress (*ikrāh*) ☞ 238

SECTION VIII

TYPES OF CONTRACTS AND THEIR EFFECTS

- A *Ṣaḥīḥ*, *bāṭil* and *fāsid* contracts ☞ 239
- B Immediate and suspended contracts or *nāfidh* and *mawqūf* contracts ☞ 240
- C Binding and terminable contracts or the *lāzim* and *ghayr lāzim* (or *ajā'iz*) contracts ☞ 241
- D Bilateral contracts versus unilateral contracts (*wa'd*) ☞ 242
- E Valid, void, voidable and unenforceable contracts ☞ 243
- F Executed and executory contracts ☞ 243

SECTION IX

OPTION (KHIYĀR) AND THE EFFECTS OF CONTRACTS

- A *Khiyār al-Sharṭ* or the Option to Revoke the Contract ☞ 243
- B *Khiyār al-Ta'yīn* or the Option to Ascertain the Subject-matter ☞ 244
- C *Khiyār al-Ru'yah* or the Option of Examination ☞ 245
- D *Khiyār al-'Ayb* or the Option of Defects ☞ 245

SECTION X

THIRD PARTY RIGHTS AND DISCHARGE OF CONTRACT

- A Assignments and delegations ☞ 246
- B Conditions of performance ☞ 247
- C Discharge of contract ☞ 248

SECTION XI

BREACH AND REMEDIES

- A Specific performance—*ijbār* ☞ 251
- B Rescission and Restitution (*faskh* and *irjā'*) ☞ 251
- C Reformation ☞ 252
- D Recovery based on quasi contracts ☞ 252
- E Principles of compensation and damages ☞ 252

CHAPTER XVII

Delegated Authority

SECTION I

GUARDIANSHIP (WILĀYAH)

- A Types of *Wilāyah* ☞ 255
- B Grades of the *awliyā'* ☞ 256
- C The extent of the *walī's* authority ☞ 257

SECTION II

AGENCY (WAKĀLAH)

- A The elements of *wakalah* ☞ 258
- B Types of agency ☞ 260
- C The *aḥkām* of *wakālah* ☞ 260
- D *Ḥukm* of the contract and its *ḥuqūq* ☞ 260
- E Termination of agency ☞ 261

SECTION III

RATIFICATION AND THE ACTS OF THE FUḌŪLĪ

- A The *ḥukm* of the acts of a *fuḍūlī* ☞ 262
- B Conditions for ratification ☞ 263

CHAPTER XVIII

Commercial Transactions

SECTION I

THE MEANING OF BAY' AND ITS TYPES

- A The basic types of *bay'* ☞ 265

SECTION II

GENERAL CONDITIONS FOR COMMERCIAL TRANSACTIONS

- A It must be *māl* ☞ 267

- B The subject-matter must be in existence at the time of the contract ☞ 270
- C The seller must have the capacity to deliver the subject-matter ☞ 272
- D The parties must have knowledge of the subject-matter ☞ 273

SECTION III

SALE OF GOODS FOR CASH

- A The spot sale ☞ 275
- B Credit sale (*bay' al-nasī'ah*) ☞ 275
- C Advance payment (*salam*) ☞ 276
- D Goods made to order (*istiṣnā'*) ☞ 277
- E Sale with earnest money (*'urbūn*) ☞ 277
- F Contract for supplies (*tawrīd*) ☞ 278
- G Sale with stated profit (*murābaḥah*) ☞ 278
- H Sale at cost price (*tawliyah*) ☞ 279
- I Sale at less than cost price (*waḍī'ah*) ☞ 279

SECTION IV

LOANS AND EXCHANGE OF CURRENCIES (ṢARF)

SECTION V

THE PROHIBITION OF RIBĀ AND COMMERCIAL TRANSACTIONS

- A The four rules of *ribā* ☞ 282

SECTION VI

TRANSACTIONS PROHIBITED (OR VITIATED) FOR VARIOUS REASONS

SECTION VII

THE CONTRACT OF HIRE (IJĀRAH)

- A The conditions of *ijārah* ☞ 286
- B Types of *ijārah* ☞ 287

SECTION VIII
GENERAL OFFERS (JI'ĀLAH)

CHAPTER XIX
**Security of Debts, Insolvency and
Interdiction**

SECTION I
THE MEANING OF DEBT: 'AYN, DAYN, AND ISTIQRĀD

SECTION II
ASSIGNMENT AND NEGOTIATION

SECTION III
ḤAWĀLAH AND MUQĀṢṢAH (ASSIGNMENT, TRANSFER OF DEBT)

- A *Ḥawālah* and negotiable instrument ☞ 293
B *Muqāṣṣah* (Claim-swapping) ☞ 293

SECTION IV
KAFĀLAH (SURETY)

SECTION V
RAHN (PLEDGE, MORTGAGE, COLLATERAL)

SECTION VI
BAY' AL-WAFĀ'

SECTION VII
EXTINCTION OF RIGHTS (IBRĀ')

SECTION VIII
TAFLĪS (INSOLVENCY, BANKRUPTCY)

SECTION IX

INTERDICTION (ḤAJR)

- A Types of ḥajr ☞ 299

CHAPTER XX

Acquisition of Property and Liens

SECTION I

ACQUISITION AND DISPOSAL OF PROPERTY

SECTION II

MODES OF ACQUISITION OF PROPERTY

- A Contracts and declarations ☞ 303
 B Claim as a third party (*Istiḥqāq*) and restitution ☞ 303
 C Preemption (*Shuḥʿah*) ☞ 303
 D Revival of Barren Land (*Iḥyāʾ al-Mawāt*) ☞ 305
 E *Ḥimā* and *Iqtāʿ* (Estates) ☞ 305
 F *Maʿādin* (Minerals) ☞ 306
 G Found Property (*Luqṭah*) ☞ 306
 H Prizes or Prize Money (*Sabq*) ☞ 308
 I Property of the *mafqūd* (missing person) ☞ 308

SECTION III

LIENS

- A Leaseholds (*ijārah, kirāʾ*) ☞ 309
 B *Wadīʿah* (deposit, bailment) ☞ 309
 C Rights in the property of others: easements and servitudes (*irtifāq*) ☞ 309

SECTION IV

PARTITIONING OF PROPERTY (QISMAH)

CHAPTER XXI

Enterprise Organization

SECTION I

DEFINITION OF PARTNERSHIP

SECTION II

TYPES OF PARTNERSHIPS

- A Types of partnership according to the majority ☞ 314
- B Types of partnership according to the Ḥanafis ☞ 315

SECTION III

THE 'INĀN PARTNERSHIP

SECTION IV

THE MUFĀWAḌAH PARTNERSHIP

SECTION V

MUḌĀRABAH

- A The Conditions of *MuḌārabah* ☞ 318

SECTION VI

MUZĀRA'AH (SHARE-CROPPING)

SECTION VII

MUSĀQĀH OR MU'ĀMALAH

SECTION VIII

CORPORATIONS AND ISLAMIC LAW

V The Islamic Law of Persons 323

CHAPTER XXII

Marriage

SECTION I

THE ḤUKM OF MARRIAGE

SECTION II

LOOKING AT THE WOULD BE SPOUSE BEFORE PROPOSAL

SECTION III

THE FORMATION OF THE CONTRACT

- A Consent in marriage (legal capacity) ☞ 326
- B Whose consent? Guardian's? ☞ 327
- C Is Guardianship a Condition for the Validity of the Contract of Marriage? ☞ 329
- D Stipulating an option (*khiyār*) ☞ 330

SECTION IV

WITNESSES (SHAHĀDAH)

SECTION V

DOWER (ṢADĀQ)

- A Dower amount ☞ 332
- B Species and void dowers ☞ 333
- C Deferred and prompt dower ☞ 333
- D Dower and divorce prior to consummation ☞ 334

SECTION VI

IMPEDIMENTS TO MARRIAGE

- A Lineage ☞ 336
- B Relationship Through Marriage ☞ 336
- C Fosterage (Suckling; Wet-nursing) ☞ 337

- D Unlawful Intercourse (*Zinā*) 337
- E Number of Marriages 338
- F Combination 338
- G Disbelief (*Kufr*) 339
- H The Ritual State of *Ihrām* 339
- I Illness 340
- J *Iddah* (Waiting Period) 340

SECTION VII

THE REQUISITES OF OPTION IN MARRIAGE

- A The Option of Defects 340
- B Option on Inability to Pay Dower and Maintenance 341
- C Option Upon Absence 341

SECTION VIII

MARITAL RIGHTS AND THE RESTITUTION OF CONJUGAL RIGHTS

- A Maintenance 342
- B Polygamous marriage 344
- C Nursing and taking care of the house 344

SECTION IX

ḤAḌĀNAH (ḤAZĀNAT IN URDU)

SECTION X

MARRIAGES PROHIBITED BY LAW AND VOID MARRIAGES

CHAPTER XXIII

Divorce and Separation

SECTION I

THE KINDS OF DIVORCE (ṬALĀQ)

- A *Bā'in* and *Raj'ī* Divorces 349
- B *Sunnah* and *Bid'ah* Forms of Divorce 350
- C *Khul'* (Redemption) 352

SECTION II

TAFWĪD, TAKHYĪR AND TAMLĪK

SECTION III

RETRACTION AFTER DIVORCE

SECTION IV

WAITING PERIOD (‘IDDAH)

SECTION V

GIFT OF CONSOLATION PAID TO A DIVORCED WOMAN (MUT‘AH)

SECTION VI

APPOINTMENT OF ARBITRATORS

SECTION VII

MOURNING (IḤDĀD)

SECTION VIII

VOW OF CONTINENCE (ĪLĀ’)

SECTION IX

INJURIOUS ASSIMILATION (ZIHĀR)

SECTION X

IMPRECATION (LI‘ĀN)

CHAPTER XXIV

Inheritance, Bequests and Trusts

SECTION I

INHERITANCE

- A The *aṣḥāb al-farā’id* or sharers 364
- B The *aṣabāt* or residuaries 365
- C The *dhawū’l-arḥām* or distant kindred 366

D The doctrine of *ḥajb* or exclusion ☞ 366

SECTION II

WAṢĪYAH (BEQUEST)

SECTION III

GIFT (HIBAH)

SECTION IV

‘ĀRĪYAH (COMMODATE LOAN) AND QARḌ (CASH LOAN)

SECTION V

WAQF (CHARITABLE TRUST)

VI The Islamic State and Public Law 373

CHAPTER XXV

The Islamic State and its Duties

SECTION I

SINGLE STATE AND MULTIPLE STATES

SECTION II

THE DUTIES OF THE RULERS IN AN ISLAMIC STATE

SECTION III

AMR BI AL-MA‘RŪF WA NAHY ‘AN AL-MUNKAR—THE CALL FOR JUSTICE

SECTION IV

THE ISLAMIC STATE AND DEMOCRACY

SECTION V

THE ISLAMIC STATE AND THE ECONOMIC SYSTEM

CHAPTER XXVI

Crimes and Torts

SECTION I

THE AIMS OF THE CRIMINAL LAW

SECTION II

CLASSIFICATION OF CRIMES IN ISLAMIC LAW

- A Classification on the basis of the right affected: *ḥadd*, *ta'zīr* and *siyāsah* ☞ 389
- B Differences between *ta'zīr* and *siyāsah* ☞ 391

SECTION III

OFFENCES AND THEIR PENALTIES

- A *Ḥadd* Penalties ☞ 394
- B *Jināyat* (bodily injuries) and *qīṣāṣ* ☞ 397
- C *Ta'zīr* or penalties imposed by the state ☞ 400
- D *Siyāsah shar'īyah* or the administration of justice ☞ 402
- E *Ghaṣb* (Usurpation, Misappropriation) ☞ 403
- F Destruction of Property (*Iṭlāf*) ☞ 404

CHAPTER XXVII

War and Fiscal Laws

SECTION I

JIHĀD AND TRUCE

SECTION II

THE AḤKĀM OF ENEMY PROPERTY

- A The fifth of the spoils (*khums*) ☞ 408
- B The four-fifths of the spoils ☞ 409
- C The *anfāl* (rewards) ☞ 411
- D Muslim property recovered from disbelievers ☞ 412

- E Land conquered by the use of force (*'anwatan*) 413
- F *Fay'* (booty) 413
- G *Jizyah* (poll-tax) 414

SECTION III

ZAKĀT AND 'USHR

- A Wealth of minors 415
- B Those under debt 416
- C Wealth liable to *zakāt* 416
- D Holding period for wealth 418
- E Those entitled to *zakāt* 418

CHAPTER XXVIII

Courts, Procedure and Evidence

SECTION I

COURTS

- A *Mazālim* Courts 421
- B Court of the *Qāḍī* 422
- C Court of the *Muḥtasib* 422

SECTION II

ADAB AL-QĀḌĪ:

- A Qualifications of the *qāḍī*: 423
- B Jurisdiction 424
- C Procedure 424
- D Evidence 426

CHAPTER XXIX

Islamic Law and Human Rights

VII History of Islamic Law and its Schools 435

CHAPTER XXX

The Islamic Legal Heritage

SECTION I

NATURE OF PRE-ISLAMIC LAW

SECTION II

THE FIRST PERIOD

- A The Qur'ān 438
- B The Sunnah 438
- C Fiqh 439
- D Changes in society 439
- E Compilation 439

SECTION III

THE SECOND PERIOD: AL-KHULAFĀ' AL-RĀSHIDŪN

- A Sources of law 440

SECTION IV

THE THIRD PERIOD: TĀBĪ'ŪN (FOLLOWERS)

- A Sources of *fiqh* 441
- B Narration of Traditions 441
- C The Rise of the Early Schools 441

SECTION V

THE FOURTH PERIOD: GROWTH

- A Growth and compilation of *fiqh* 442
- B Compilation of the *Sunnah* 443
- C Compilation of *tafsīr* 445

SECTION VI

THE FIFTH PERIOD: THE MATURING OF THE LEGAL SYSTEM

SECTION VII

THE SIXTH PERIOD: THE AGE OF QĀNŪN AND CODIFICATION

- A The Ottoman *Qānūn* ☞ 447
- B The Mughal Empire ☞ 447

SECTION VIII

THE SEVENTH PERIOD: COLONIZATION AND AFTER

CHAPTER XXXI

The Schools of Islamic Law

SECTION I

THE ḤANAFĪ SCHOOL

- A Abū Ḥanīfah: The Founder ☞ 450
- B Jurists of the School ☞ 450
- C Early works of the School ☞ 450
- D Influence of the School ☞ 451
- E The Ḥanafī School and legal theory ☞ 451

SECTION II

THE MĀLIKĪ SCHOOL

- A Mālik ibn Anas: The Founder ☞ 453
- B Jurists of the School ☞ 454
- C Mālikī School and legal theory ☞ 454

SECTION III

THE SHĀFI'Ī SCHOOL

- A Muḥammad ibn Idris al-Shāfi'ī: The Founder ☞ 455
- B Jurists of the School ☞ 456
- C Shāfi'ī School and legal theory ☞ 457

SECTION IV

THE ḤANBALĪ SCHOOL

- A Aḥmad ibn Ḥanbal ibn Asad al-Shaybanī: The Founder 458
- B Jurists of the School 458
- C Ḥanbalī School and legal theory 458

SECTION V

THE EXTINCT SCHOOLS

- A The Awzā'ī School 460
- B The Zāhirī School 460
- C The Ṭabarī School 461

CHAPTER XXXII

Geographical distribution of the schools

Select Bibliography

Glossary