
Book Reviews

Jamila Hussain, *Islamic Law and Society: An Introduction*, Sydney: The Federation Press, 1999.

The acquisition of knowledge and understanding of Islamic law is not the lightest of tasks to undertake. The reception of the fundamental concepts and guidelines contained in the Qu'ran (Hadith and Sunnah) and the madhabib (secondary sources) must be married with a comprehension of their contemporary application. This application involves both the legal and social domains. Further, an appreciation of the daily lifestyle of the modern Muslim must be derived from this knowledge and understood in the context of multicultural society.

Recent events have inevitably provoked much thought and study of the Islamic faith and law, highlighting the difficulties in ascertaining a lucid picture of an already complex system further complicated by the process of interpretation, sectarianism and migration.

The book *Islamic Law and Society: An Introduction* manages to present factual information about the laws and doctrines of Islam that is complemented by thought provoking comments on the social implications of these laws and doctrines. Jamila Hussain has presented an interesting view of Islamic law and its place in the modern world, and indeed the multicultural world.

The fact that Islamic law (Shariah) encompasses social guidelines as well as aspects of belief and religious practice¹ is an indication of the fundamental differences between Islamic law and laws of the Western world with which most of us are familiar. Islamic law provides rules on behaviour (prayer, fasting, diet, manners, morals, dress) and laws regarding crime, marriage and commercial transactions.² The idea of the

¹ At p.26.

² At p.26.

former set of rules is the primarily distinctive feature of Islamic law, and highlights the complex difficulties faced by Muslims who wish to express their beliefs and cultural system in multicultural societies where there exists only secular law. Therefore, in multicultural societies, one arm of the law of Islam is converted into a set of social mores rather than an enforceable set of laws.

In her discussion of Islamic jurisprudence, Hussain has provided helpful modern examples of the place and impact of Islamic law, allowing the reader to understand the weight of the doctrine and what the consequences of it are, once animated in the social environment. As with any religion, the strict interpretation of authoritative texts has caused concern in terms of basic equality, most noticeably regarding the concept of gender. This has led to the consideration of the cultural relevance of the traditional texts and has prompted a more socially appropriate approach to Islam by some Muslims.

The issue of the place and treatment of women in Islamic law has been one that has received much attention, both from the media of the Western world as well as those who interpret and enforce Islamic law. In the eyes of the western media, the Muslim woman is oppressed, devalued, hidden and separated from the world, and treated as inferior. This is a curious modern view when one considers that in the beginning, Islam was a liberating religion that gave women unprecedented rights.³ The language of the Quran includes women in discussions of spiritual and religious life. It could be argued that the status of women dwindled due to the socially patriarchal nature of Islamic practice, rather than the oppressive nature of the religious texts. The fundamental guidelines of Islam concerning women afforded them the rights to own property, and to deal with it as they wished, whilst still having maintenance paid to them by their husbands.⁴ The man was also obliged to pay the woman a dowry upon marriage, and a woman was entitled to inheritance as well as the right to divorce.⁵ Whilst these rights and guidelines were initially liberating for the average Muslim woman, once applied through centuries of a male-dominated social, academic and religious world and supported by particular misogynist interpretations of authoritative texts, the Muslim woman found herself covered, subordinate, obedient, and potentially incidental in the life of a man who was allowed the right of polygamy. The rationale for the place of women is that of male protection and responsibility, and the preservation and maintenance of sexual morality. The wearing of the hejab, social segregation, unequal education and employment, unequal participation in religious life and in leadership roles apparently renders a woman less vulnerable to the dangers of the

³ At p.45.

⁴ At p.46.

⁵ At p.46-47.

world and the temptation to sin. An enforced protection by the Muslim male that, when compared with the provisions of religious texts, no doubt leaves the Muslim woman placed in a life that exists by social consequence rather than religious prescription.

Of course there are issues that must be judged solely on socio-religious considerations rather than religious prescription, due to their purely contemporary nature. Hussain provides an interesting discussion on modern technology, including that pertaining to reproduction, general health issues and euthanasia.⁶ These issues have been addressed primarily by contemporary intellectual comment, but always by considering and referring to religious texts. Practices that interfere with the sanctity of marriage and sexual morality (eg. artificial insemination by a donor) are condemned whilst modern practices that can be seen to maintain and strengthen the marriage relationship are allowed according to the principle "necessity makes what is forbidden allowable" (eg. artificial insemination by a husband). Islamic law upholds strong moral standards in this area.⁷ Medical practices that uphold the marriage relationship, save lives or maintain health are allowed (once again, after reference and consideration of prescribed principles) whereas medical treatment for the sake of vanity and the taking of one's life are condemned.⁸

Islamic criminal law displays many distinctive features. The most evident is the use of corporal punishment. Seriously prohibited crimes and punishments of Islam include: theft (punishment includes cutting off the hand); robbery with violence (punishments include death [potentially by crucifixion], cutting off the hand and foot, or exile); drinking alcohol, taking drugs or other intoxicants (punishment is 40 - 80 lashes); unlawful sexual intercourse including rape, adultery, fornication between unmarried persons and, potentially, homosexuality (punishment is 100 lashes or stoning to death for adultery). The evidentiary requirements for these crimes includes age of majority, sanity, intent, absence of necessity, absence of duress. For theft and robbery the requirements and considerations also include knowledge of ownership, theft from custody, and the value of the subject matter. Hussain notes that the general Western attitude towards Islam is that of barbarism and encourages the reader to process the information objectively. The reader is reminded that the "humane treatment of criminals is a comparatively recent idea, and that the Islamic system has never had a monopoly over harsh punishments"⁹.

It is comments such as these that successfully give a balanced view of Islamic law and put the principles into perspective for the modern Western reader. The author provides a view of the Muslim in an accessible and relevant manner. A reflection on the life of the Muslim in Australia also

⁶ Chapter 9.

⁷ At p.133.

⁸ *Ibid.*

⁹ At p.139.

gives the reader a greater understanding of the social reality of Islamic doctrine and practice and educates the reader towards a more open-minded approach to understanding the lifestyle of the Muslim.

Jamila Hussain has created a book that provides a successful factual overview and an interesting and educational commentary on the social aspects of Islam.

Mary Pollatos

Philip Davenport, *Adjudication in the NSW Construction Industry*, Sydney: The Federation Press, 2000.

In 2000 a new and unique payment and security system for the construction industry was adopted in New South Wales. This new system was introduced by the *Building and Construction Industry Security of Payment Act 1999* ('the Act') and applies to all construction contracts (as parties cannot contract out of the Act). Considerable changes have been put in place which will affect all participants in the building and construction industry, including developers, contractors, subcontractors, related professions, manufacturers and suppliers. In *Adjudication in the NSW Construction Industry*, Philip Davenport has provided a concise and straightforward guide to the new system of payment which will be useful for all involved in the construction industry, including those providing advisory services such as accountants, lawyers and engineers. This book will also be extremely useful for students in construction law and building and construction management, as well as anyone who wishes to gain an understanding of the working of the new payment regime in the New South Wales construction industry.

This book is primarily aimed at those in the construction industry who propose to make a claim for payment under the Act, those who receive a claim for payment under the Act, and those who are called upon to adjudicate on a claim. To this end, Philip Davenport has provided a guide which clearly sets out the requirements of how to make a claim under the Act, how to defend claims and how to adjudicate disputes. As well as giving a concise and straightforward guide on the operation of the new payment system, the book also provides other valuable features such as "precedents, guidelines on procedures and suggestions for changes to standard contractual procedures and standard forms of contract".

Chapters 2 to 4 deal broadly with the operation of the Act. A brief overview of the operation of the Act is given which does provide a useful summary of how the new payment system will affect those involved in the construction industry. Of particular relevance is the timetable included in Chapter 3 which details the fixed maximum times under the Act in which the various parties to a construction contract must satisfy various requirements. Chapter 4 also provides a convenient summary of what payments and contracts are deemed to be governed by the Act.

The next section of the book provides the real nuts and bolts section of the operation of the new payment system. Chapter 5 covers payment claims. A detailed analysis is provided of who, why, when and how such a payment claim can and/or should be made. Chapter 6 covers payment schedules which must be served as a response to a payment claim. A thorough explanation of who can make a payment schedule, as well as when, why and how such a payment schedule is to be served is also given. Chapter 7 explains how to make an adjudication application where there is a dispute between the amount claimed in the payment claim and the

amount represented in the payment schedule. Chapter 8 then covers how the respondent to such an adjudication application should respond. Sample Adjudication Applications and Adjudication Responses are included which demonstrate what is required to be included in order to conform with the procedures set out under the Act.

Chapters 9 to 14 are concerned with providing a guide to adjudicators as to how they should perform their function in accordance with the Act. Practical examples are used to show adjudicators how they should deal with particular situations so as to ensure they accord with the Act. Chapter 15 then demonstrates what happens after an adjudication, and Chapter 16 describes how a claimant should go about enforcing rights under the Act.

The limited circumstances in which an adjudication decision can be set aside is dealt with in Chapter 17, and Chapter 18 covers the effect of an adjudication decision on other proceedings (including concurrent litigation). Chapter 19 then gives an account of how an adjudicator is to be appointed under the Act if the parties to a dispute cannot agree upon an adjudicator.

The recommendations found in Chapter 20 with respect to changes which should be made to standard form contracts in order to ensure compliance with the Act, will be of great benefit to anyone intending on entering into a construction contract. Such amendments will enable contractors to avoid the risks which will inevitably arise under the operation of the new payment system.

The strength of this work is undoubtedly the straightforward manner in which Philip Davenport details the operation of the new payment regime in the New South Wales construction industry. The work is clearly designed to be a practical guide for those involved in the construction industry with relevant examples given of the actual practices required to conform with each particular section of the Act. However, it must be remembered that this book is no more than a step by step guide through the operation of the *Building and Construction Industry Security of Payment Act 1999*, and is in reality not much more than an annotated version of the Act. But if it is rightly considered in this context, it can be seen to be a very useful text for all involved in the construction industry, including professional advisors and students. It is important to note that this text was written before any judicial treatment was given to the Act, and the author's interpretation of the requirements of the Act may not accord with the interpretation given by the judicial system. Thus it is necessary for this book to be considered in the light of any decisions of the courts of the requirements of the Act.

The publishers suggest that this book is suitable for everyone involved in the construction chain, "from the developer down to the local hardware store and all those who advise them, including... architects, accountants and lawyers." This is an apt description of the suitability of this book. It does provide a straightforward and concise guide to the operation of the

new payment system in the New South Wales construction industry, and if read in conjunction with subsequent interpretations of the Act by the courts, will provide an easy to understand approach to dealing under the Act suitable for those in the construction industry, professional advisors and students alike.

Andrew Craig