

HB

88

<TARGET><BILL>HB 88</BILL><SUBJECT>HB
88</SUBJECT><COMM>HSTA27</COMM></TARGET>

Alaska State Legislature

Chairman
State Affairs Committee

Member
Judiciary Committee
Energy Committee
Joint Armed Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
Administration
Corrections
Military and Veterans Affairs



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

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"Bob Lynn's Alaska Blog" RepBobLynnBlog.com

Session:
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To: Legal Services

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From: Nancy Manly 465-2794 *Nmanly*
Alaska State Capitol, room 104
Juneau, AK 99801-1182

of Pages (including cover): 1

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Re FINAL CS for HB 88 (27-LS0333\B)

3/24/2011

HB 88 moved out of the House State Affairs Committee this morning with no changes to Version B. Please draft a final CS. Thank you.

CS FOR HOUSE BILL NO. 88(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GATTO, Lynn, Keller

A BILL
FOR AN ACT ENTITLED

1 "An Act prohibiting a court, arbitrator, mediator, administrative agency, or
2 enforcement authority from applying a law, rule, or provision of an agreement that
3 violates an individual's right under the Constitution of the State of Alaska or the United
4 States Constitution."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 FINDINGS. The legislature finds that citizens of the state should be protected from
9 the application of a foreign law if application of the foreign law would violate an individual's
10 right guaranteed by the Constitution of the State of Alaska or the United States Constitution.

11 * **Sec. 2.** AS 09.68 is amended by adding a new section to read:

12 **Sec. 09.68.140. Foreign law prohibited.** (a) A court, arbitrator, mediator,
13 administrative agency, or enforcement agency may not apply a foreign law if
14 application of the foreign law would violate an individual's right guaranteed by the

1 Constitution of the State of Alaska or the United States Constitution.

2 (b) If an agreement includes a choice of law provision requiring foreign law to
3 govern its interpretation or the resolution of a dispute between the parties to the
4 agreement and if the interpretation or enforcement of the agreement would violate an
5 individual's right guaranteed by the Constitution of the State of Alaska or the United
6 States Constitution, the agreement must be modified or amended as necessary to
7 preserve the constitutional right. An agreement that may not be modified or amended
8 in order to preserve the constitutional right of an individual under this section is void.

9 (c) If an agreement provides for the choice of venue or a choice of forum
10 outside of the United States or its territories and if the enforcement of the agreement
11 applying the choice of venue or choice of forum provision would result in a violation
12 of an individual's right guaranteed by the Constitution of the State of Alaska or the
13 United States Constitution, the choice of venue or choice of forum provision in the
14 agreement shall be interpreted to preserve the individual's constitutional right.

15 (d) If a person subject to personal jurisdiction in the state asserts a claim of
16 forum non conveniens in litigation in the state, and if a court, arbitrator, mediator,
17 agency, or similar enforcement authority of this state finds that granting the claim of
18 forum non conveniens or similar claim would violate an individual's right guaranteed
19 by the Constitution of the State of Alaska or the United States Constitution, the claim
20 shall be denied.

21 (e) This section applies only to an actual or foreseeable violation of an
22 individual's constitutional right caused by the application of foreign law.

23 (f) This section does not apply to a corporation, partnership, or other form of
24 business association.

25 (g) In this section, "foreign law" means a law, rule, or legal code or system
26 established and used or applied in a jurisdiction outside of the United States and the
27 territories of the United States, except that "foreign law" does not mean nor shall it
28 include a law of an Alaska Native or Native American tribe in the state.

Ted Madsen

From: Jeffrey Mittman [JMittman@akclu.org]
Sent: Wednesday, March 23, 2011 5:19 PM
To: Ted Madsen
Subject: Cases sited in support of Anti-Sharia Law Bill

CONTENTIONS: The Act is not simply about sharia but also trans-nationalism—or the documented creep of foreign and offensive laws being recognized by state and federal courts. More, shariah has already crept into the legal systems of Western Europe, including 85 shariah courts operating openly with the full authority of law in the United Kingdom. There are numerous cases in which sharia doctrines have been invoked in the US. Here is a sampling of 17 examples from 11 states:
https://docs.google.com/viewer?url=http://publicpolicyalliance.org/wp-content/uploads/2010/11/Shariah_Cases_11states_11-08-2010.pdf&embedded=true&chrome=true

FACT: The document mostly contains examples of cases where Islam was involved due to a religious freedom claim, an arbitration claim, or in connection with a discussion of comity being granted to a decision of a foreign legal system that happens to be based on Islam. Other cases merely involve reference to Islam because it bears on the facts of the case. Such references to Islam are not impermissible.

The cases cited in this report illustrate exactly why Sharia law is NOT being improperly imposed in the United States and highlight the problem with this measure and others intended to target Islam.

Courts often consider a prisoner's religious beliefs and requirements when adjudicating a claim under RLUIPA, **a law passed to protect the religious exercise rights of prisoners of all faiths**. Thus, the court's discussion of an inmate's religious views in *Allah v. Jordana-Luster*, which is the first case cited in the report, is appropriate. Were the courts to be barred from referring to religious laws in these cases, Christian and Jewish inmates (or inmates of other faiths) would be unable to provide support for their free exercise claims. In any event, the court did not accept the inmate's evidence in that case, and the inmate lost his claim for halal meat.

In other cases involving Islamic law, where it conflicts with our public policy, courts have refused to recognize it, just as they are required to do with regard to any rule that violates public policy. For example, in *Aleem vs. Aleem*, which is cited in the report, a Maryland court of appeals held that a Pakistani divorce granted in accordance with Pakistani customs (based on Islamic law) would not be recognized in Maryland because it conflicted with state public policy requiring fair and equitable division of assets.

In another case, when a New Jersey court held that a man's Islamic religious beliefs regarding sex with his spouse meant that he did not have the requisite intent to commit sexual assault, consistent

with our public policy, the appeals court immediately reversed the decision and issued a restraining order to the petitioning wife.

Other cases involve courts enforcing agreements to present disputes for Islamic arbitration. ***But it is not unusual for a court to enforce an arbitration agreement where the parties agree in advance that they will take any disputes to a particular type of arbitrator. The court's enforcement is based on neutral principles of law and denying courts the ability to enforce such agreements could compromise arbitration itself as a means to settle legal disputes.***

These cases show that our courts are very aware of their obligations to comply with public policy and do so when presented with any claims that may undermine that public policy, regardless of whether Islam or some other faith may be involved.

27-LS0333\B
Bailey
3/23/11

CS FOR HOUSE BILL NO. 88()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GATTO, Lynn

A BILL

FOR AN ACT ENTITLED

1 **"An Act prohibiting a court, arbitrator, mediator, administrative agency, or**
2 **enforcement authority from applying a law, rule, or provision of an agreement that**
3 **violates an individual's right under the Constitution of the State of Alaska or the United**
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6 States Constitution, the agreement must be modified or amended as necessary to
7 preserve the constitutional right. An agreement that may not be modified or amended
8 in order to preserve the constitutional right of an individual under this section is void.

9 (c) If an agreement provides for the choice of venue or a choice of forum
10 outside of the United States or its territories and if the enforcement of the agreement
11 applying the choice of venue or choice of forum provision would result in a violation
12 of an individual's right guaranteed by the Constitution of the State of Alaska or the
13 United States Constitution, the choice of venue or choice of forum provision in the
14 agreement shall be interpreted to preserve the individual's constitutional right.

15 (d) If a person subject to personal jurisdiction in the state asserts a claim of
16 forum non conveniens in litigation in the state, and if a court, arbitrator, mediator,
17 agency, or similar enforcement authority of this state finds that granting the claim of
18 forum non conveniens or similar claim would violate an individual's right guaranteed
19 by the Constitution of the State of Alaska or the United States Constitution, the claim
20 shall be denied.

21 (e) This section applies only to an actual or foreseeable violation of an
22 individual's constitutional right caused by the application of foreign law.

23 (f) This section does not apply to a corporation, partnership, or other form of
24 business association.

25 (g) In this section, "foreign law" means a law, rule, or legal code or system
26 established and used or applied in a jurisdiction outside of the United States and the
27 territories of the United States, except that "foreign law" does not mean nor shall it
28 include a law of an Alaska Native or Native American tribe in the state.

Alaska State Legislature

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Representative Carl Gatto

Explanation of Changes from HB 88, version M To CSHB 88 () version B

There were several questions asked at the first hearing in HSTA Committee regarding how HB 88 will affect corporations, partnerships, or other business associations. In addition, a legal opinion from the Department of Law indicated that "*HB 88 might affect a foreign entity's willingness to do business ...in Alaska...*"

Therefore, a change to Page 2, Line 26 adds

(g) This section shall not apply to a corporation, partnership, or other form of business association.

There are several states with similar legislation and this amendment has been inserted in those bills as well.

In addition, there were concerns if HB 88 affected family matters involving tribes in Alaska. The Department of Law legal opinion states that although family matters should not be affected, "*...in limited circumstances, tribal members may be subject to the concurrent jurisdiction of the tribal courts and the state courts. ... Tribes have the concurrent authority to initiate cases regarding children's proceedings or custody proceedings involving native children.*"

To alleviate questions about tribal law under this Act, a change to Page 2, Line 25 adds

After 'States.' For the purposes of this act, foreign law shall not mean, nor shall it include, any laws of the Alaska Native or American Native tribes in the state of Alaska.

Karen Sawyer
March 23, 2011



SEAN PARNELL, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

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March 21, 2011

Representative Carl Gatto
State Capitol
Room 118
Juneau, AK 99801-1182

Re: HB 88

Representative Gatto:

You have asked the Department of Law ("Department") for an opinion on HB 88 and its impact on Alaska natives and tribal law, international conventions, litigation with foreign corporations, and contracts with foreign entities. One premise applicable to all of the questions posed is that HB 88 would have no effect to the extent it conflicts with a federal law or treaty. Pursuant to the Supremacy Clause of the US Constitution (Article VI, clause 2), the US Supreme Court has recognized for many years that State laws that conflict with federal law are "without effect." *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981).

HB 88 defines "foreign law" as a law, rule or legal code or system used or applied outside of the United States and the territories of the United States. With regard to family matters, tribes operate within the United States. Accordingly, HB 88 should not affect family matters involving tribes. Tribal members are citizens of Alaska as well as citizens of their tribes. Therefore, in limited circumstances, tribal members may be subject to the concurrent jurisdiction of the tribal courts and the state courts. One example of this concurrent jurisdiction is domestic relations among members. Tribes have the concurrent authority to initiate cases regarding children's proceedings or custody proceedings involving native children. As to the final question regarding American Indian tribal law and Alaska Indian tribal law, there is no difference between the two.

With regard to conventions on the Law of the Sea, the International Pacific Halibut Convention, and the Pacific Salmon Treaty, to name a few, Alaska is not a party to these conventions. Instead, it is the United States who is a party to some of these conventions and/or treaties. For example, the United States has not yet signed the latest Law of the Sea Convention, though there is a resolution currently pending before the Alaska legislature urging the United States to ratify the convention. The laws that directly affect Alaska are the federal statutes and regulations that implement the treaties,

such as the Northern Pacific Halibut Act. These federal laws, to the extent they apply to Alaska, will preempt inconsistent state law, including HB 88.

In general, Alaska courts and enforcement entities can only apply Alaska law and federal law. Sometimes they will apply applicable law from another state, but only after determining that that law is applicable to the matter before the tribunal. But Alaska courts will not apply a foreign law if application of the law would violate an individual's constitutional rights. Generally, "foreign law" does not apply in Alaska. Judges take an oath to uphold the laws of the state and of the United States. If a foreign choice of law provision in a contract deprives the party to the contract of a fundamental constitutional right, the offending provision would be void as against public policy. In some instances a court might confront the application of foreign law, but these instances likely involve foreign treaties and compacts (such as the Hague Convention on the Civil Aspects of International Parental Child Abduction), in which case the foreign law would not be impacted by a state statute such as HB 88.

All courts have the ability to reform or modify a contract provision if enforcement of the provisions would be contrary to public policy. This would apply to both a choice of law provision and choice of venue or choice of forum provision. If the contract has a choice of venue or forum provision and a party (whether an individual or a corporation or other type of business entity) complies with the provision by filing a dispute in the foreign venue, then HB 88 would have no effect for Alaska law would not be applicable in the foreign venue. The provisions of HB 88 would apply if the party filed a lawsuit in Alaska and was opposing a motion to change venue to the foreign venue because of the clause in the contract. If the fundamental constitutional rights of the party opposing the change of venue motion would be impaired by the foreign venue, the Alaska court could void the venue provision as against public policy.

HB 88 might affect a foreign entity's willingness to do business with individuals or businesses in Alaska if it knows that provisions of the contract may be void by law should HB 88 become law. If a contract is entered into with a foreign entity to provide goods or services to the foreign entity in that entity's country, it would not be unusual for the contract to contain choice of law and/or choice of venue provisions. The foreign entity might be hesitant to enter into such a contract if there is the possibility that in the future the terms of the contract might be changed by an Alaskan court because the other party to the contract claims that his or its constitutional rights are being violated if the choice of law or choice of venue provisions are enforced. Finally, what is unclear from HB 88 is how an Alaska state court could interpret a choice of venue or forum provision so as to preserve constitutional rights other than by determining the provision to be void and to allow a lawsuit to proceed in Alaska rather than in the country chosen in the contract.

Representative Carl Gatto
Re: HB 88

March 21, 2011
Page 3 of 3

As part of the common law doctrine of forum non conveniens, consideration is given to the laws applicable in the foreign jurisdiction and their impact on the parties to a lawsuit. A party will not be sent to a jurisdiction that does not have equal protection and due process. For example, in a divorce case between two Kenyan citizens, a judge denied a forum non conveniens motion to move the case to Kenya because the wife would have had diminished property rights under the laws of Kenya.

In conclusion, the general concern the Department has with HB 88 is whether the legislation is necessary considering the current ability of the courts to reform or modify contracts if enforcement of provisions of the contract would be contrary to public policy and the general premise that Alaska courts and enforcement entities apply only Alaska and federal law, not foreign law of a foreign country.

The Department is available to answer any question you have about these comments.

Sincerely,

JOHN J. BURNS
ATTORNEY GENERAL

By: *Mary Ellen Beardsley*
Mary Ellen Beardsley
Assistant Attorney General

MEB/ma

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February 15, 2011

States move to ban sharia/foreign law in 2011

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Last fall Oklahoma was the first state to ban foreign and/or sharia law from consideration in state courts. The director of CAIR Oklahoma, Muneer Awad, then sued the state and the certification of the vote was temporarily stopped by a judge appointed by President Clinton. The State Election Board advised the court they will appeal the ruling.

Below are the other states who have bills pending:

- **ALASKA:** Rep. Carl Gatto (R) has introduced [SB 88](#), which invokes the Constitution to make sure that “[foreign law is prohibited](#).”
 - **ARIZONA:** Arizona’s anti-sharia law is HB 2582, the “[Arizona Foreign Decisions Act](#).” In addition to banning the implementation of Sharia law, the bill would also ban “[canon law, halacha and karma](#).”
 - **ARKANSAS:** Arkansas’s antisSharia bill is SB 97, which says that the “[the recognition and enforcement of a foreign judgment or ruling is limited to the extent that its 33 enforcement would not directly conflict with the public policy of Arkansas](#).”
 - **GEORGIA:** Rep. Mike Jacobs (R) has introduced a bill that would “ban the use of sharia law in state courts.” “We’re seeing [more of a feeling that Sharia law should be applied in domestic cases](#).”
 - **INDIANA:** Indiana’s SRJ 16 would prohibit courts from enforcing a “law, rule, or legal code or system established from a jurisdiction [outside the states of the United States](#), the District of Columbia, or the territories of the United States if doing so would violate a right guaranteed by this constitution or the Constitution of the United States.”
 - **LOUISIANA:** Louisiana passed a law guarding against “[international law](#)” being used in its courts in June 2010.
 - **MISSISSIPPI:** House bill 301 was introduced to ban “Mississippi courts from using foreign laws [including sharia law](#).”
 - **NEBRASKA:** Legislative Bill 647 aims to “[prohibit Nebraska courts from using foreign laws in decisions](#).” If passed, it will have to be voted on by Nebraska voters in 2011 because it is a constitutional amendment.
- SOUTH CAROLINA:** In South Carolina, Sen. Mike Fair (R) has introduced a bill to ban the implementation of sharia law, saying there is “[a need to clarify that cultural customs or foreign laws don’t trump U.S. laws](#).” More [here](#).

- **TEXAS:** State Rep. Leo Berman (R) introduced a constitutional amendment “prohibiting a court of this state from enforcing, considering or applying a religious or cultural law.” If the legislature passes the amendment, it will appear on the November 2011 ballot for Texas voters to approve.
- **SOUTH DAKOTA:** HRJ 1004l that no court “may apply international law, the law of any foreign nation, or any foreign religious or moral code with the force of law in the adjudication of any case under its jurisdiction.”
- **WYOMING:** State Rep. Gerald Gay (R) says his bill banning sharia law is “a ‘pre-emptive strike...”

In Utah, Rep. Carl Wimmer (R) withdrew his bill that would have banned sharia and foreign law.

Update 2/24/11: Bill introduced in Tennessee to ban sharia law. Also see SB 1023

Update 3/02/11: Missouri (HB 708) and Oklahoma (HB 1522) have introduced bills to ban foreign laws from court consideration.

Update 3/03/11: Florida bill filed to ban foreign law from state courts. SB 1294

Update 3/04/11: Alabama's SB62, filed Tuesday will ban foreign laws from consideration in state court.

Update 3/15/11: Missouri House of Representatives enter legislation to add a constitutional amendment to ban foreign and/or sharia law HJR 31

That's 17 states.

Posted by zTruth on February 15, 2011 at 04:12 PM in [Sharia Law](#) | [Permalink](#) [ShareThis](#)
Technorati Tags: [sharia law](#), [SO 755](#)

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Townhall MAGAZINE

Terror's Secret Weapon: Shariah -- The Islamists' Plan To Destroy America From Within

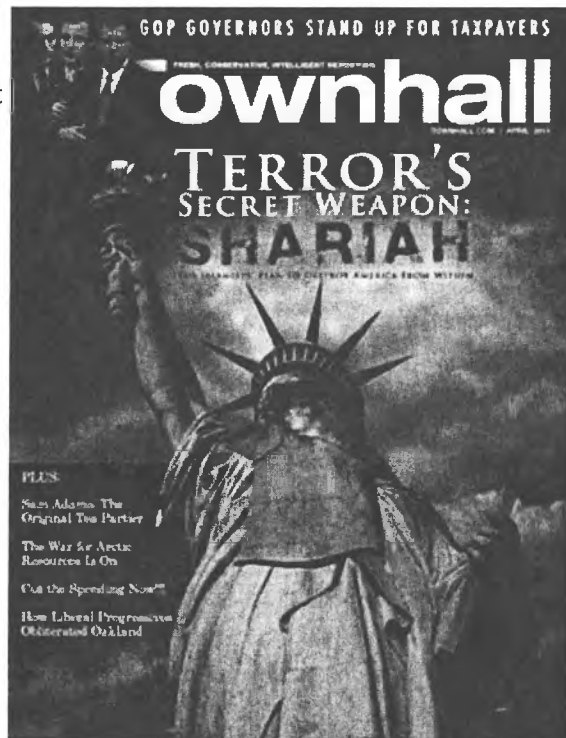
There is a creeping menace in America today: Muslim radicals are using liberal courts and activists, as well as U.S. businesses, to implement Islamic law that runs counter to every freedom our Constitution protects.

Liberals love to ridicule Americans who warn of Islamic infiltration in the U.S. as fear-mongers, xenophobes, bigots, racists or whatever usual epithet pops into their left-wing minds. Whether we are talking about the efforts of the Muslim Brotherhood to make inroad in the United States or the goal of the Islamists to implement Shariah Law in the West, the noise from the Left is always the same: ridicule and marginalize.

Well, this message is aimed straight at the minds of those thinking Americans who can and will make a difference and are willing to stand up for our republic: Islamic radicals want to see Shariah Law as the governing law of the United States and the rest of the West. They will not be satisfied until all of us are under their dictatorial thumb.

This is why you'll read the truth about the goals of the radicals in the pages of Townhall Magazine and not in the liberal media -- or even the pages of other conservative publications that bury their heads in the sand.

And you'll, of course, never hear the truth about it from the Obama administration. In fact, the Obama White House stands with those who criticize Americans worried about Shariah Law. In 2009, Dalia Mogahed, an Obama administration advisor on Muslim affairs, told a British television audience that the West misunderstands Shariah, calling its perceptions of Islamic tenants "oversimplified."





Our April cover story, "**The Shariah Threat**," exposes the efforts of Islamists to impose Shariah Law, including their use of U.S. courts, politicians, media and businesses.

Why is Islam sacred in the U.S. while other religions are frequently lampooned in cartoons and ridiculed in "art"? Are we, indeed, as some experts believe, already embracing de facto Shariah Law?

Janet Levy, a prolific writer on Islam and national security, says: "Our uniquely American virtues of tolerance and freedom have worked against us to produce intolerance and oppression. This has led to the stealthy introduction of Shariah Law and a climate in which criticisms of Mohammed and Islam are no longer possible without serious repercussions."

Are political correctness and moves to cool the osmosis of the American melting pot fundamentally changing us? Is the arena of ideas -- where Americans have historically tested competing beliefs -- being shut down so as not to offend?

Unless we read their plan and act to implement it, Obama will raise taxes, end the mortgage interest and charitable deduction, raise Social Security taxes, and add trillions more to the federal deficit in the process. Conservatives need to fight back - and Morris and McGann explain how to do it. For all the changes coming in Washington, the Tea Party revolution's most important changes will be at the state level.

So what does this all mean for Shariah in America? Find out more in the April issue exclusive report on the looming threat of Shariah Law.

Our cover story, "The Shariah Threat," reveals:

*A U.S. judge refused a protection order for a woman raped by her husband, ruling the man's abuse is allowed under Shariah Law

*An American cartoonist is in hiding after a tongue-in-cheek "Everybody Draw Mohammad Day" promotion earned her a fatwa death order

*A Shariah-compliant investment fund in the United States is camouflaged as a charity and funnels more than \$12 million to finance Hamas suicide bombers

*Can or should Shariah Law co-exist with the Judeo-Christian foundations of U.S. jurisprudence and the Constitution?

*How the infamous Council on American-Islamic Relations (CAIR) is blocking efforts to keep Shariah Law out of U.S. courtrooms

*Islam still has not banned "honor killings," genital mutilation, pre-teen marriages, polygamy and a host of other rules that undercut the standing of women

*Britain has gone so far as to implement two systems of justice for family law

*Deaths, abuse and threats involving Muslim women in the U.S. and Canada have put a Western face on Shariah Law

*Meet the New Jersey judge who ruled that Shariah permitted a man to rape his wife

*The deaths of at least 10 women in the U.S. and Canada in the last seven years have been linked to Islamic "honor killings"

*Members of the liberal media mock those worried about Shariah in America -- one even said: "A Martian takeover of New Jersey is more likely than the imposition of a caliphate, or of Muslim law, on America."

*A California elementary school has revised its instructional schedule and added a 15-minute "recess" after lunch to allow Muslim students to pray in a separate room and pork was removed from school-lunch menus

*A Massachusetts public middle school decided to take a "cultural diversity" field trip to a local mosque, where the boys participated in Islamic prayer while girls were excluded.

*Michigan Christians were arrested when they attempted to engage in a faith dialogue with Muslims in Dearborn

*One public university spent \$25,000 to install foot-washing stations on campus

*How "Shariah-compliant" businesses are funding terrorism

PHONE CALLS re: HB 88

as of March 23, 2011

7 support calls – Alaska

4 support calls – outside Alaska

1 oppose call - Alaska

Karen Sawyer

From: Bob & Connie Weel [weel@clearwire.net]
Sent: Saturday, March 19, 2011 4:58 PM
To: Rep. Carl Gatto
Subject: Islamic Sharia Law

Categories: KAREN

Dear Representative Gatto,

I saw a story on page A-3 of this morning's ADN and fully support your bill prohibiting state courts from honoring foreign law such as the Islamic Sharia Law. For other members of the State House who have any doubt about passing this bill, I would ask that you share the following message and video.

I am currently reading a book titled CRUEL AND USUAL PUNISHMENT - The terrifying global implications of Islamic Law written by Nonie Darwish. If you think what the video states are not true, I encourage you to read this woman's book.

A group calling themselves "White Roses" created a video to inform non-Muslims about Islam. The name of this video is Three Things About Islam. White Roses is headquartered in Sweden. The name "White Roses" is based on a student resistance group "Die weiße Rose" in Nazi Germany. The group became known for an anonymous leaflet campaign, from June 1942 until February 1943, which called for active opposition to Adolf Hitler's regime.

I urge you to view this video and forward it to your email list. You may be familiar with the points made in this video, but many Americans are too dumb to pull their heads out of the sand to avoid confronting the problem or just simple ignorance of the crisis we face. It may not be possible to get all the Dramatis Persona to acknowledge this Islamic road to perdition but those Americans, who just do not know, out of ignorance, just might find the learning experience worth while.

As a person who has spent time studying Islam I can tell you this video is one of the best I have seen. It's short and to the point and all those points are right on!

http://www.youtube.com/watch?v=Ib9rofXQl6w&feature=player_embedded
God Bless Alaska and America,

Robert C. Weel

Help us END POLIO NOW: www.rotary.org/endpolio

"You have not lived a perfect day until you have done something for someone who will never be able to repay you."

Karen Sawyer

From: Vicki Schneibel [schneibeldale@gci.net]
Sent: Saturday, March 19, 2011 10:04 AM
To: Rep. Carl Gatto
Subject: One of Your Proposed Bills

Follow Up Flag: Follow up
Flag Status: Completed

Categories: KAREN

Hello Rep. Gatto,

My name is Vicki and I'm not a constituent, but I'm very interested in a bill you're bringing to the Legislature.

I recently read that you've proposed a bill that will eliminate foreign law being honored in Alaska. Bravo! How can I help you with that? I hope your bill is successful. From what I've been reading it seems our state should be out a head of any problems that may come our way over this issue. If we're proactive(like the State of Virginia and the ObamaCare bill) it seems to me our standing is much stronger.

Please let me know what I can do. I don't know what the bill number is or any details in order to contact my Rep. and Senator about it.

Thanks for looking out for us Alaskans!

Vicki Schneibel
4811 E. 112 Avenue
Anchorage, AK 99516

907/349-5505

Karen Sawyer

From: Ray Phelps [rphelps@matsumail.com]
Sent: Friday, March 18, 2011 12:42 PM
To: Rep. Carl Gatto
Subject: note of support

Categories: KAREN

Dear Mr. Gatto,

As a constituent and a voting supporter, I want to voice my whole-hearted support of your bill prohibiting our state courts from honoring foreign laws. This is an important issue of national and state sovereignty. Keep up the good work! God bless.

Ray Phelps
Wasilla

Karen Sawyer

From: Larry McPhee [skiguy11@hotmail.com]
Sent: Friday, March 18, 2011 7:46 AM
To: Rep. Carl Gatto
Subject: Nice work

Categories: KAREN

Thanks for standing up for the Constitution and the American court system

L McPhee
Fairbanks, AK

Karen Sawyer

From: John Lopetrone [lptrnak@acsalaska.net]
Sent: Saturday, March 19, 2011 7:38 PM
To: Rep. Carl Gatto
Subject: sharia law

Categories: KAREN

Rep. Gatto, I just finished reading "Infidel" by Ayaan Hirsi Ali. It was a real eye opener for me. I think most people in this country have no idea what dangerous times we are living in. We are at war with Islam.! Their whole objective is to destroy the west and all nonbelievers. We have our laws and they should be forced to obey them or get out of the country. If we are not careful and vigilant we will be in the same situation Europe finds itself in. Good luck in your efforts and we will pray for your success. Barbara Lopetrone

Karen Sawyer

From: David & Susan Kilpatrick [dskilpat@acsalaska.net]
Sent: Monday, March 21, 2011 11:21 AM
To: Rep. Carl Gatto
Subject: Sharia Law

Categories: KAREN

Sir, I am 64 years of age and now have the ability to say I have witnessed a lot of change within our country. Words absolutely cannot express my disappointment in individuals who call themselves "American" who first would allow any form of "Law" outside of that equated to the United States Constitutionally based expression of law.

I will not debate with anyone the personal basis early lawmakers based their conclusions, I.e, the Bible, Hammurabi, as that is just stupid argument.

My wife and I as well as most persons I call friends support your and Rep. Bob Lynn's effort to prohibit Sharia Law. Keep up this good fight.

Sincerely,
David

David & Susan Kilpatrick
632-4443

Karen Sawyer

From: housemajority_email@housemajority.org
Sent: Wednesday, March 16, 2011 9:25 PM
To: Rep. Carl Gatto
Subject: HB 88

+-----+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'. Then change the TO: address to garydkearney@hotmail.com If suspected Spam please forward to: support@housemajority.org
+-----+

From: garydkearney@hotmail.com

HB 88 will be needed more as time goes by. It is essential that our constitution cannot be set aside by groups or individuals having laws contrary to our own.

~ gary d kearneyt
Zip Code: 99928
Voter ID: MUD BAY DISTRICT...KETCHIKAN

+-----+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'. Then change the TO: address to garydkearney@hotmail.com If suspected Spam please forward to: support@housemajority.org
+-----+

Karen Sawyer

From: Steve [hovenden3@alaska.com]
Sent: Friday, March 18, 2011 8:51 AM
To: Karen Sawyer
Subject: HB 88

Categories: Blue Category

Hooray for all of you! Please add my name to the list of enthusiastic supporters! Steve Hovenden, 360 Terrace Drive, Fairbanks, 99712. 457-8624.

Karen Sawyer

From: hillmer@mtaonline.net
Sent: Sunday, March 20, 2011 8:07 PM
To: Rep. Carl Gatto
Subject: Islamic Sharia law;

Categories: KAREN

I read your article in the paper and just wanted to let you know, we need more people like you doing the right think...thank you carl..dale hillmer, wasilla ak..

Karen Sawyer

From: cush [mmcushman@hotmail.com]
Sent: Friday, March 18, 2011 10:52 AM
To: Karen Sawyer
Subject: Thanks to Rep. Gatto

Categories: Blue Category

Thanks for Alaskan people intelligence for watching to protect American freedoms with State House Bill #88. Where the United Nations would force the U.S.A. to abandon our sovereignty. Thank you Rep Gatto.

Sincerely,
Rev. Mark Cushman

Karen Sawyer

From: housemajority_email@housemajority.org
Sent: Saturday, March 19, 2011 9:15 AM
To: Rep. Carl Gatto
Subject: Email to Rep. Gatto

Categories: KAREN

+-----+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To
correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to near and far17@hotmail.com If suspected Spam please forward
to: support@housemajority.org
+-----+

From: near and far17@hotmail.com

Dear Mr. Gatto,

Thank you very much for protecting our Alaskan laws and pushing to prevent other foreign laws
from being used in our justice system. It makes no sense whatsoever to use sharia or even
just another country's system of law when we have our own.

God Bless you for standing for what's right.

Jayme Cupples

~ Jayme
Zip Code: 99654

+-----+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To
correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to near and far17@hotmail.com If suspected Spam please forward
to: support@housemajority.org
+-----+

----- Original Message -----

From: Chris & Jennie Grimwood

To: Representative Bob Lynn@legis.state.ak.us ; Representative Wes Keller@legis.state.ak.us

Sent: Wednesday, March 23, 2011 4:08 PM

Subject: re: HB 88 letter for State Affairs Committee

To Chairman Bob Lynn and to the Committee members of the State Affairs Committee:

The Honorable Bob Lynn, Chair

The Honorable Wes Keller, Vice-Chair

House State Affairs Committee

Alaska State House of Representatives

State Capitol, Room 106

Juneau, AK 99801

via email: Representative Bob Lynn@legis.state.ak.us;

Representative Wes Keller@legis.state.ak.us

Re: House Bill 88

Chair Lynn, Vice-Chair Keller:

Thank you for the opportunity to submit written testimony regarding House Bill 88, relating to the application of international law. I am concerned about the spread of foreign and offensive laws being recognized by state and federal courts.

An imprisoned oncologist charged with setting up an unlicensed charity and illegally funneling \$4 million to Iraq was allowed to attend his trial without being strip-searched, as long as he is accompanied by a federal marshal, Dr. Rafil Dhafir, 56, had objected to being strip-searched, which he said is against his Muslim faith.

A public charter school, Tarek ibn Ziyad Academy, in Minneapolis has a mosque, has muslim studies and requires females to be fully covered with muslim style clothing. Prayers are compulsory.

In 1996, a father retained custody from Pakistan because the court determined that the best interest of the child should not be “determined based on Maryland law, i.e., American cultures and mores,” but rather “by applying relevant Pakistani customs, culture and mores.” The court said the mother was not likely to receive a public whipping or death if she returned to Pakistan to challenge custody as she said would happen.

I believe we should uphold our constitution and its laws and they should take precedence over foreign law. I am especially concerned how it affects the condition of women. Many foreign laws sanction forced abortions, murder, child marriage, polygamy, sexual mutilation, and sequestering of women in society. Islamic family law states the father has the absolute right to guardianship and physical custody of minor children. These laws should not follow women into the USA.

Sharia courts are staffed by imans that frequently preach wife-beating in their mosques. Sharia courts are used in England and in Texas to resolve domestic disputes.

The muslim community in Anchorage numbers 4000. A halal grocery opened in October and halal slaughtering is done in Palmer.

I remember reading about celebrations in Afghanistan after they were liberated from the Taliban. One of the things that impressed me was women celebrating by walking through Kabul without their burquas. These were oppressive garments as well as symbols of oppression. When I see muslim women with head coverings, I wonder how many actually wear these willingly.

Upholding our constitution and its laws will bring protection to all women who live in Alaska. I believe HB 88 is a protection for all citizens and female immigrants and their children.

Sincerely,

Jennifer Grimwood

Alaska President

Eagle Forum

beautifulfoundationef@gmail.com

Karen Sawyer

From: Neil O'Donnell [n.odonnell@gci.net]
Sent: Sunday, March 20, 2011 1:40 PM
To: Rep. Carl Gatto
Subject: Comment on HB No. 88

Categories: KAREN

Dear Representative Gatto:

I reviewed HB 88 after reading the recent ADN article about the bill. Having practiced law in Alaska for 28 years, I believe this bill is a "solution" in search of a problem. The bill – reflecting the lack of any real problem – is extremely vague and overbroad. It is very hard to predict what effect this bill would have if passed. What if an Alaskan company wants to work as a subcontractor for a Canadian company building a gas line across Alaska and Canada? Under HB 88, the Canadian general contractor and the Alaska subcontractor apparently cannot choose Canadian law or a Canadian forum to the extent that any dispute might be affected by the U.S. or Alaska Constitutions if the dispute were instead heard in Alaska under Alaska law. Maybe the Canadian company will just pass on hiring the Alaskan company and avoid this vague legal morass.

And if this bill is really directed against "Sharia law," as stated in the ADN article, then it seems even more pointless and counterproductive. I have never seen, heard, or have anyone ever suggest that "Sharia law" applied to any legal dispute in Alaska. Since the U.S. Constitution has unquestionably been the supreme law in the land since the United States Supreme Court decided Marbury v. Madison in 1803, I also cannot conceive of how "Sharia law" could possibly "violate an individual's right under . . . the United State Constitution" as stated in the bill's legislative "findings" provision. Absent a real problem, the only remaining purpose of the bill is simply to pander to anti-Muslim sentiment.

We have hosted several exchange students over the years including two Muslim students. Through them we have met several members of the small Anchorage Muslim community, including an Egyptian engineer working for a major oil company and several successful small business owners. The world is becoming more interconnected. Unless there is some real problem that needs to be addressed, I think it is a bad idea to be passing legislation intended to mark one religious group as dangerous outsiders whose alleged practices need to be carefully watched and guarded against.

As sponsor of HB 88, can you please include this e-mail as part of the official comments on this bill and any companion Senate bill.

I appreciate your consideration.

Neil O'Donnell
8537 Cormorant Cove Cr.
Anchorage, Alaska 99507

5334
4316**Committee Action on Legislation**

HOUSE RECORDS COMMITTEE SECRETARY: LORI ROLAND

22 MARCH 2011

HOUSE STATE AFFAIRS STANDING COMMITTEE

PAGE 1 OF 1

#	SHORT TITLE	ACTION TAKEN ON LEGISLATION
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		<input type="checkbox"/> Moved CS () Out of Cmte
		<input type="checkbox"/> Moved HCS () Out of Cmte
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		<input type="checkbox"/> Scheduled but not Heard
		<input type="checkbox"/> Failed to Move Out of Committee
		<input type="checkbox"/> Waived Out of Committee
		<input type="checkbox"/> Adopted Letter of Intent

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		<input type="checkbox"/> Waived Out of Committee
		<input type="checkbox"/> Adopted Letter of Intent

Alaska State Legislature

SESSION ADDRESS:

Alaska State Capitol
Juneau Alaska 99801
Phone: 907-465-3743
1-800-565-3743
Fax: 907-465-2381

**INTERIM ADDRESS:**

600 E Railroad Avenue
Wasilla AK 99654
Phone: 907-376-3725
Fax: 907-376-4768

Representative Carl Gatto

HB 88 Use of Foreign Law

HB 88 aims at preventing "a court or other enforcement authority" from enforcing foreign law in Alaska. The bill will preempt violations of an individual's constitutional rights resulting from the application of foreign law.

America has unique values of liberty which do not exist in foreign legal systems. Yet foreign laws are increasingly finding their way into U.S. court cases, particularly in the area of family law, involving divorce and child custody.

According to Christopher Holton with the Washington, DC-based Center for Security Policy (CSP), "There are numerous examples in dozens of states in which parties to such a dispute attempted to invoke sharia." David Yersushalmi, general counsel to the CSP, argues it's not just "patently bad foreign laws [creeping into our court systems]," it's that once in the system, the state's police power would be used to "enforce laws that could never pass federal or state constitutional muster."

HB88 offers a baseline law that provides a statutory framework for precluding constitutionally objectionable foreign laws and legal systems from finding their way into the state judicial system. One example of an offending transnational law is sharia—authoritative Islamic law that is applied as the law of the land in many countries around the world. Sharia is patently offensive to U.S. and Alaska constitutional law because it criminalizes apostasy (violation of Free Exercise of Religion) and blasphemy against Islam, Mohammed, and sharia itself (violation of Free Speech). Sharia also violates principles of due process and equal protection by discriminating against non-Muslims and women.

Countries that apply sharia as the law of the land include Saudi Arabia, Iran, Sudan, and Somalia. Many Muslim countries apply sharia as the law of the land in specific legal areas such as family law and inheritance. Examples of these countries and political regimes include Pakistan, Afghanistan, Nigeria, parts of Indonesia, Gaza, Jordan, and Yemen. In addition, just about all Muslim countries have a de jure or de facto sharia supremacy clause which effectively does not allow any "secular" law to violate sharia's fundamental principles of Islamic supremacy. Countries of this type include such "moderate" countries such as Egypt, Jordan, Afghanistan, and even Iraq.

Alaska, like other states, recognizes the growing need to emphasize the fact that our state and U.S. constitutions are the fundamental basis for civil law for everyone in our country. To those who are accustomed to their religion and their civil laws being inextricably connected, we must clarify that all individual rights are guaranteed and protected under the Constitution of the State of Alaska and the United States Constitution.

Contact: Karen Sawyer
465-5025
27-LS0333\M
March 9, 2011

Representative.Carl.Gatto@legis.state.ak.us

List of country legal systems

From Wikipedia, the free encyclopedia

The **legal systems of the world** today are generally based on one of three basic systems: civil law, common law and religious law — or combinations of these. However, the legal system of each country is shaped by its unique history (see State law), and so incorporates individual variations.



Legal Systems of the World

- Civil law
- Common law
- Bijuridical (civil and common law, also known as mixed jurisdiction)
- Customary law
- Shariah

Contents

- 1 Civil law
- 2 Common law
- 3 Religious law
- 4 Pluralistic systems
 - 4.1 Civil law and common law
 - 4.2 Civil law and religious law
 - 4.3 Common law and religious law
- 5 Hybrid law
- 6 Systems by geography
- 7 See also
- 8 External links
- 9 References

Civil law

Main article: Civil law (legal system)

Civil law is the most widespread system of law around the world. It is also sometimes known as *Continental European law*. The central source of law that is recognized as authoritative are codifications in a constitution or statute passed by legislature, to amend a code.

While the concept of codification dates back to the Code of Hammurabi in Babylon ca. 1790 BC, civil law systems mainly derive from the Roman Empire, and more particularly, the *Corpus Juris Civilis* issued by the Emperor Justinian ca. AD 529. This was an extensive reform of the law in the Byzantine Empire, bringing it together into codified documents. Civil law was also partly influenced by religious laws such as Canon law and Islamic law.^{[1][2]} Civil law today, in theory, is interpreted rather than developed or made by judges. Only legislative enactments (rather than judicial precedents, as in common law) are considered legally binding.


















Scholars of comparative law and economists promoting the legal origins theory usually subdivide civil law into four distinct groups:































Shamash (the Babylonian sun god) hands King Hammurabi a code of law













- French civil law: in France, the Benelux countries, Italy, Romania, Spain and former colonies of those countries;
- German civil law: in Germany, Austria, Switzerland, former Yugoslav republics, Greece, Portugal, Turkey, Japan, South Korea and the Republic of China;
- Scandinavian civil law: in Denmark, Norway and Sweden. As historically integrated in the Scandinavian cultural sphere, Finland and Iceland also inherited the system.
- Chinese law: a mixture of civil law and socialist law in use in the People's Republic of China.
















A comprehensive list of countries that base their legal system on a codified civil law follows:











Country	Description
 Albania	The Civil Code of the Republic of Albania, 1991 [1] (http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN014893.pdf)
 Angola	Based on Portuguese civil law
 Argentina	<p>The Spanish legal tradition had a great influence on the Civil Code of Argentina, basically a work of the Argentine jurist Dalmacio Vélez Sársfield, who dedicated five years of his life on this task. The Civil Code came into effect on January 1, 1871. Beyond the influence of the Spanish legal tradition, the Argentinian Civil Code was also inspired by the Draft of the Brazilian Civil Code, the Draft of the Spanish Civil Code of 1851, the Napoleonic code and the Chilean Civil Code. The sources of this Civil Code also include various theoretical legal works, mainly of the great French jurists of the 19th century. It was the first Civil Law that consciously adopted as its cornerstone the distinction between i. rights from obligations and ii. real property rights, thus distancing itself from the French model.</p> <p>The Argentinian Civil Code was also in effect in Paraguay, as per a Paraguayan law of 1880, until the new Civil Code went in force in 1987.</p> <p>During the second half of the 20th century, the German legal theory became increasingly influential in Argentina.</p>
 Andorra	Courts apply the customary laws of Andorra, supplemented with Roman law and customary Catalan law. ^[3]
 Aruba	Based on Dutch civil law
 Austria	The Allgemeines bürgerliches Gesetzbuch (ABGB) of 1811
 Azerbaijan	
 Belarus	
 Belgium	The Napoleonic Code is still in use, although it is heavily modified (especially concerning family law)
 Benin	
 Bolivia	Influenced by the Napoleonic Code
 Bosnia and Herzegovina	Influenced by Austrian law. The Swiss civil law (Zivilgesetzbuch) was a model for the Law on Obligations of 1978.
 Brazil	Derived from the German and Roman civil law
 Bulgaria	Civil Law system influenced by Germanic and Roman law systems
 Burkina Faso	
 Burundi	
 Chad	

 People's Republic of China	civil law system; based on native customs and practices with Soviet and German influence
 Republic of the Congo	
 Democratic Republic of the Congo	
 Cote d'Ivoire	
 Cambodia	
 Cape Verde	Based on Portuguese civil law
 Central African Republic	
 Chile	<p>The Spanish legal tradition exercised an especially great influence on the civil code of Chile. On its turn, the Chilean civil code influenced to a large degree the drafting of the civil codes of other Latin-American states. For instance, the codes of Ecuador (1861) and Colombia (1873) constituted faithful reproductions of the Chilean code, but for very few exceptions. The compiler of the Civil Code of Chile, Venezuelan Andrés Bello, worked for its completion for almost 30 years, using elements, of the Spanish law on the one hand, and of other Western laws, especially of the French one, on the other. Indeed, it is noted that he consulted and used all of the codes that had been issued till then, starting from the era of Justinian.</p> <p>The Civil Code came into effect on January 1, 1857. Its technique is regarded as perfect; it is distinguished for the clarity, logic and cohesiveness of its provisions. As mentioned by Arminjon, Nolde, and Wolff ('<i>Traite de droit comparé</i>', Paris, 1950–1952) Andrés Bello may be regarded as one of the great legislators of mankind. The influence of the Napoleonic code is great; it is observed however that <i>e.g.</i> in many provisions of property law, the solutions of the French <i>code civil</i> were put aside in favor of pure Roman law.</p>
 Colombia	Civil code introduced in 1873. Nearly faithful reproduction of the Chilean civil code
 Costa Rica	First Civil Code (a part of the General Code or Carrillo Code) came into effect in 1841; its text was inspired by the South Peruvian Civil Code of Marshal Andres de Santa Cruz. The present Civil Code is into effect since January 1, 1888, and reveals the influenced by the Napoleonic Code and the Spanish Civil Code of 1889 (from its 1851 draft version).
 Croatia	Influenced by Austrian and Hungarian law. The Law on Obligations of 2005.

 Cuba	Influenced by Spanish and American law with large elements of Communist legal theory.
 Czech Republic	Descended from the Civil Code of the Austrian Empire (1811), influenced by German (1939-45) and Soviet (1947/68-89) legal codes during occupation periods, substantially reformed to remove Soviet influence and elements of socialist law after the Velvet Revolution (1989).
 Denmark	Scandinavian-German civil law
 Dominican Republic	Based by the Napoleonic Code
 Ecuador	Civil code introduced in 1861. Nearly faithful reproduction of the Chilean civil code
 El Salvador	
 Estonia	
 Finland	civil law system based on Swedish law ^[4]
 France	Based on the Napoleonic code (<i>code civil</i> of 1804)
 Equatorial Guinea	
 Ethiopia	
 Gabon	
 Guinea	based on French civil law system, customary law, and decree ^[4]
 Guinea-Bissau	
 Georgia	
 Germany	The Bürgerliches Gesetzbuch of 1900 ("BGB"). The BGB is influenced both by Roman and German law traditions.
 Greece	The Greek civil code of 1946, highly influenced by the German civil code of 1900 (Bürgerliches Gesetzbuch); the Greek civil code replaced the Byzantine-Roman civil law in effect in Greece since its independence (Νομική Διάταξη της Ανατολικής Χέρσου Ελλάδος, Legal Provision of Eastern Mainland Greece, November 1821: 'Οι Κοινωνικοί Νόμοι των Αειμνήστων Χριστιανών Αυτοκρατόρων της Ελλάδος μόνοι ισχύουσι κατά το παρόν εις την Ανατολικήν Χέρσου Ελλάδα', 'The Social [i.e. Civil] Laws of the Dear Departed Christian Emperors of Greece [referring to the Byzantine Emperors] alone are in effect at present in Eastern Mainland Greece')

 Guatemala	<p>Guatemala has had three Civil Codes: the first one from 1877, a new one introduced in 1933, and the one currently in force, which was passed in 1963. This Civil Code has suffered some reforms throughout the years, as well as a few derogations relating to areas which have subsequently been regulated by newer laws, such as the Code of Commerce and the Law of the National Registry of Persons. In general, it follows the tradition of the roman-French system of civil codification.</p> <p>Regarding the theory of 'sources of law' in the Guatemalan legal system, the 'Ley del Organismo Judicial' recognizes 'the law' as the main legal source (in the sense of legislative texts), although it also establishes 'jurisprudence' as a complementary source. Although jurisprudence technically refers to judicial decisions in general, in practice it tends to be confused and identified with the concept of 'legal doctrine', which is a qualified series of identical resolutions in similar cases pronounced by higher courts (the Constitutional Court acting as a 'Tribunal de Amparo', and the Supreme Court acting as a 'Tribunal de Casación') whose theses become binding for lower courts.</p>
 Haiti	Influenced by the Napoleonic Code
 Honduras	
 Hungary	Based on codified Roman law, with elements of the Napoleonic civil code
 Iceland	Based on Germanic traditional laws and influenced by Medieval Norwegian and Danish laws.
 Italy	Based on codified Roman law, with elements of the Napoleonic civil code; civil code of 1942 replaced the original one of 1865
 Japan	Modeled after European (primarily German) civil law system. Japanese civil code of 1895.
 Latvia	Largely influenced by Germany, medium influences from Russian and Soviet law.
 Lebanon	Modeled after French civil law
 Lithuania	Modeled after Dutch civil law
 Luxembourg	Influenced by the Napoleonic Code
 Macau	Based on the Portuguese strand of the continental tradition, itself much influenced by Germany; also influenced by the law of the PRC

 Mexico		"The both Gre and com thro Lati Euro http Jain auth
 Mongolia	Civil Code of 2002 based on German BGB	
 Montenegro	First: the General Property Code for the Principality of Montenegro of 1888, written by Valtazar Bogišić. Present: the Law on Obligations of 2008.	
 Netherlands	Influenced by the Napoleonic Code	
 Norway	Scandinavian-German civil law. King Magnus VI the Lawmender unified the regional laws into a single code of law for the whole kingdom in 1274. This was replaced by Christian V's <i>Norwegian Code</i> of 1687.	
 Panama		
 Paraguay	The Paraguayan Civil Code in force since 1987 is largely influenced by the Napoleonic Code and the Argentinian Code	
 Peru	Based on civil law system; accepts compulsory ICJ jurisdiction with reservations	
 Poland	The Polish Civil Code in force since 1965	
 Portugal	Influenced by the Napoleonic Code and later by the German Civil Law	
 Republic of China (Taiwan)	Codification derived from German BGB.	
 Romania	Based on the Napoleonic Code	
 Russia	Civil Law system descendant from Roman Law through Byzantine tradition. Heavily influenced by German and Dutch norms in 1700-1800's. Socialist-style modification in 1900's, and Continental European Law influences since 1990's.	
 São Tomé e Príncipe	Based on Portuguese civil law	
 Serbia	First: the Civil Code of Principality of Serbia of 1844, written by Jovan Hadžić, was influenced by the Austrian Civil Code (<i>Allgemeines bürgerliches Gesetzbuch</i>). Present: The Swiss civil law (<i>Zivilgesetzbuch</i>) was a model for the Law on Obligations of 1978.	

 Slovakia	Descended from the Civil Code of the Austrian Empire (1811), influenced by German (1939-45) and Soviet (1947/68-89) legal codes during occupation periods, substantially reformed to remove Soviet influence and elements of socialist law after the Velvet Revolution (1989).
 Slovenia	A Civil Law system influenced mostly by Germanic and Austro-Hungarian law systems
 Spain	Influenced by the Napoleonic Code, it also has some elements of Spain's legal tradition, starting with the Siete Partidas, a major legislative achievement from the Middle Ages. That body of law remained more or less unchanged until the 19th century, when the first civil codes were drafted, merging both the Napoleonic style with the Castilian traditions.
 Sweden	Scandinavian-German civil law. Like all Scandinavian legal systems, it is distinguished by its traditional character and for the fact that it did not adopt elements of Roman law. It is indeed worth mentioning that it assimilated very few elements of foreign laws whatsoever. It is also interesting that the Napoleonic Code had no influence in codification of law in Scandinavia. The historical basis of the law of Sweden, just as for all Nordic countries, is Old German law. Codification of the law started in Sweden during the 18th century, preceding the codifications of most other European countries. However, neither Sweden, nor any other Nordic state created a civil code of the kind of the <i>Code Civil</i> or the BGB.
 Switzerland	The Swiss civil code of 1908 and 1912 (obligations; fifth book)
 Turkey	Modeled after the Swiss civil law (<i>Zivilgesetzbuch</i>) of 1907; this has been a conscious choice of Kemal Atatürk, the founder of the modern Turkish state, in order to abolish the Islamic law (<i>Sharia</i>), aiming at westernizing the country
 Ukraine	Civil Code of Ukraine of 2004
 Uruguay	
 Uzbekistan	Represents an evolution of Soviet civil law. Overwhelmingly strong impact of the Communist legal theory is traceable.
 Vietnam	Communist legal theory and French civil law

Common law

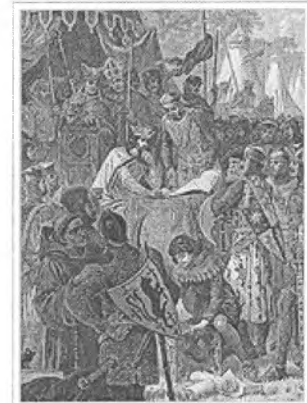
Main article: Common law

Common law and equity are systems of law whose sources are the decisions in cases by judges. Alongside, every system will have a legislature that passes new laws and statutes. The relationships between statutes and judicial decisions can be complex. In some jurisdictions such statutes may overrule judicial decisions or codify the topic covered by several contradictory or ambiguous decisions. In some jurisdictions judicial decisions may decide whether the jurisdiction's constitution allowed a particular statute or statutory provision to be made or what meaning is contained within the statutory provisions. Statutes were allowed to be made by the government. Common law developed in England, influenced by the Norman conquest of England which introduced legal concepts from Norman law, which in turn was influenced by aspects of Islamic law.^[2] Common law was later inherited by the Commonwealth of
































Nations, and almost every former colony of the British Empire has adopted it (Malta being an exception). The doctrine of *stare decisis* or *precedent by courts* is the major difference to codified civil law systems.







Common law is currently in practice in Ireland, most of the United Kingdom (England and Wales and Northern Ireland), Australia, India (excluding Goa), Pakistan, South Africa, Canada (excluding Quebec), Hong Kong, the United States (excluding Louisiana) and many other places. In addition to these countries, several others have adapted the common law system into a mixed system. For example, Nigeria operates largely on a common law system, but incorporates religious law.

In the European Union the Court of Justice takes an approach mixing civil law (based on the treaties) with an attachment to the importance of case law. One of the most fundamental documents to shape common law is Magna Carta^[5] which placed limits on the power of the English Kings. It served as a kind of medieval bill of rights for the aristocracy and the judiciary who developed the law.



King John of England signs Magna Carta

Country	Description
 American Samoa	
 Antigua and Barbuda	based on English common law
 Australia	based on English common law
 Bahamas	based on English common law
 Barbados	based on English common law
 Belize	based on English common law
 Bhutan	
 British Virgin Islands	based on English common law
 Canada	based on English common law, except in  Quebec, where a civil law system based on French law prevails in property and private matters
 Dominica	based on English common law
 England and Wales  (UK)	primarily common law, with early Roman and some modern continental influences
 Fiji	based on English common law
 Gibraltar	based on English common law
 Ghana	
 Myanmar	based on English common law
 Grenada	based on English common law
 Hong Kong	principally based on English common law
 India	based on English common law (except Goa which follows a Civil Law based on Portuguese Civil Law)
 Ireland	based on Irish law before 1922, which was itself based on English common law
 Jamaica	based on English common law
 Kiribati	based on English common law
 Marshall Islands	based on U.S. Law
 Nauru	based on English common law
 New Zealand	based on English common law
Northern Ireland  (UK)	based on Irish law before 1921, which was itself based on English common law
 Palau	based on U.S. Law
 Pakistan ^[6]	based on English common law with some provisions of Islamic law
 Saint Kitts and Nevis	based on English common law
 Saint Vincent and the Grenadines	based on English common law

 Singapore	based on English common law, but Muslims are subject to the Administration of Muslim Law Act, which gives the Syariah Court jurisdiction over Muslim personal law, e.g., marriage, inheritance and divorce.
 Tonga	based on English common law
 Trinidad and Tobago	based on English common law
 Tuvalu	based on English common law
 Uganda	based on English common law
 United States	Federal courts and 49 states use legal system originally based on English common law but which diverged greatly in 19th century with substantial indigenous innovations and borrowing of some civil law practices such as codification; State law in the U.S. state of Louisiana is based upon French and Spanish civil law (see below)

Religious law

Main article: Religious law

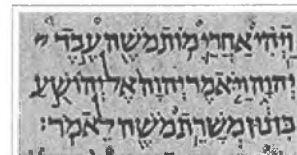
Religious law refers to the notion of a religious system or document being used as a legal source, though the methodology used varies. For example, the use of Jewish Halakha for public law has a static and unalterable quality, precluding amendment through legislative acts of government or development through judicial precedent; Christian Canon law is more similar to civil law in its use of civil codes; and Islamic Sharia law (and Fiqh jurisprudence) is based on legal precedent and reasoning by analogy (*Qiyas*), and is thus considered similar to common law.^[7]

The main kinds of religious law are Sharia in Islam, Halakha in Judaism, and canon law in some Christian groups. In some cases these are intended purely as individual moral guidance, whereas in other cases they are intended and may be used as the basis for a country's legal system. The latter was particularly common during the Middle Ages.















The Islamic legal system of Sharia (Islamic law) and Fiqh (Islamic jurisprudence) is the most widely used religious law, and one of the three most common legal systems in the world alongside common law and civil law.^[8] It is the most protected divine law, because, the majority of the rulings of Sharia law are based on the Qur'an and Sunnah, while a small fraction of its rulings are based on the Ulema (jurists) who used the methods of *Ijma* (consensus), *Qiyas* (analogical deduction), *Ijtihad* (research) and *Urf* (common practice) to derive *Fatwā* (legal opinions). An Ulema was required to qualify for an *Ijazah* (legal doctorate) at a *Madrasah* (school) before they could issue *Fatwā*.^[9] During the Islamic Golden Age, classical Islamic law may have had an influence on the development of common law^[2] and several civil law institutions.^[1] Sharia law governs a number of Islamic countries, including Saudi Arabia and Iran, though most countries use Sharia law only as a supplement to national law. It can relate to all aspects of civil law, including property rights, contracts or public law.

The Halakha is followed by orthodox and conservative Jews in both ecclesiastical and civil relations. No country is fully governed by Halakha, but two Jewish people may decide, because of personal belief, to have a dispute heard by a Jewish court, and be bound by its rulings.

Canon law is not a divine law, properly speaking, because it is not found in revelation. Instead, it is seen as human law inspired by the word of God and applying the demands of that revelation to the actual situation of the church. Canon law regulates the internal ordering of the Roman Catholic Church, the Eastern Orthodox Church and the Anglican Communion. Canon law is amended and adapted by the legislative authority of the church, such as councils of bishops, single bishops for their respective sees, the Pope for the entire Catholic Church, and the British Parliament for the Church of England.

























Aleppo Codex: 10th century Hebrew Bible with Masoretic pointing

Country	Description
 Afghanistan	Islamic law
 Bangladesh	Formerly based on English common law
 The Gambia	English common law, Islamic law and customary law
 Ghana	Based on English common law
 Iran	Islamic law
 Libya	Islamic law
 Mauritania	mix of Islamic law and French Civil Codes, Islamic law largely applicable to family law.
 Morocco	mix of Islamic law and French Civil Codes, Islamic law largely applicable to family law.
 Nigeria	Sharia
 Oman	Sharia and tribal custom laws
 Saudi Arabia	Islamic law
 Sudan	Based on Islamic law
 Vatican City	Based on principles of Code of Canon Law
 Yemen	Islamic law















Pluralistic systems

Civil law and common law







Country	Description
 Botswana	South African law (a mixed system) transferred <i>uno acto</i> through a proclamation of reception
 Cameroon	
 Cyprus	Based on English common law (Cyprus was a British colony 1878-1960), with admixtures of French and Greek civil and public law, Italian civil law, Indian contract law, Greek Orthodox canon law, Muslim religious law, and Ottoman civil law.
 Guyana	
 Israel	Originally (1948) based on English common law; in the process, influenced by German civil law—for instance, between 1962 and 1981, the Knesset issued twenty (20) wide-ranging laws, which were clearly influenced by civil law, and were in the form of codes. Religious law plays a role, especially in matters of personal status and family law, and judicial and legislative decisions take into account Jewish law (halakhah) on occasion. ^[10]
 Lesotho	South African law (a mixed system) transferred <i>uno acto</i> through a proclamation of reception
 Louisiana (U.S.)	Based on French and Spanish civil law, but federal laws (based on common law) are in effect in Louisiana as well.
 Malta	Initially based on Roman Law and eventually progressed to the Code de Rohan, Code Napoleon with influences from Italian Civil Law. English common law however is also a source of Maltese Law, most notably in Public Law
 Mauritius	
 Namibia	South African law (a mixed system) transferred <i>uno acto</i> through a proclamation of reception
 Philippines	Based on Spanish law; influenced by U.S. common law after 1898 Spanish and Philippine-American Wars, personal law based on sharia law applies to Muslims
 Puerto Rico (U.S.)	Based on Spanish law; influenced by U.S. common law after 1898 (victory of the U.S. over Spain in the Spanish-American war of 1898 and cession of Puerto Rico to the U.S.)
 Quebec (Canada)	After the defeat of the French in the battle at the Plains of Abraham, the British tried to convert Quebec to English language and Common Law, but given the growing menace of the United States, had to allow them to keep their language (French), their religion (Roman Catholicism), and their legal system (civil law), as part of the Quebec Act of 1774. However, as Quebec is part of the Canadian Confederation (since 1867), English-based laws applied at the federal level are in effect in Quebec also.
 Saint Lucia	
 Scotland (UK)	Based on Roman and continental law, with common law elements dating back to the High Middle Ages

 Seychelles	The substantive civil law is based on the French Civil Code. Otherwise the criminal law and court procedure are based on the English common law. See Seychelles Legal Environment (http://sites.google.com/site/theseychelleslegaleenvironment/legal-system) .
 South Africa	An amalgam of English common law and Roman-Dutch civil law as well as Customary Law.
 Sri Lanka	An amalgam of English common law, Roman-Dutch civil law and Customary Law
 Swaziland	South African law (a mixed system) transferred <i>uno acto</i> through a proclamation of reception
 Thailand	The Thai legal system became an amalgam of German, Swiss, French, English, Japanese, Italian, and Indian laws and practices. Even today, Islamic laws and practices exist in four southern provinces. Over the years, Thai law has naturally taken on its own Thai identity.
 Vanuatu	Consists of a mixed system combining the legacy of English common law, French civil law and indigenous customary law.
 Zimbabwe	South African law (a mixed system) transferred <i>uno acto</i> through a proclamation of reception

Civil law and religious law

Country	Description
 Afghanistan	
 Algeria	
 Bahrain	
 Comoros	
 Djibouti	
 Egypt	Based on Islamic law and French civil law system
 Eritrea	
 Indonesia	Based on civil law of Holland and adat (cultural law of Indonesia)
 Jordan	Mainly based on French Civil Code and Ottoman Majalla, Islamic law applicable to family law
 Morocco	Based on Islamic law and French and Spanish civil law system
 Oman	
 Qatar	Based on Islamic law and Egyptian civil law system (after the French civil law system)
 Syria	Based on Islamic law and French civil law system
 United Arab Emirates	Based on Islamic law and Egyptian civil law system (after the French civil law system)

Common law and religious law

Country	Description
 Bangladesh	
 Brunei	
 Gambia	
 Malaysia	based on English common law, personal law based on sharia law applies to Muslims
 Nigeria	Sharia is applied in some northern states
 Pakistan	based on English Common Law, some Islamic law applications in inheritance. Tribal Law in FATA

Hybrid law

The most prominent example of a hybrid legal system is the Indian legal system. India follows a mixture of civil, common law and customary or religious law. Separate personal law codes apply to Muslims, Christians, and Hindus. Decisions by the Supreme Court of India and High Courts are binding on the lower courts. Further, most of the laws are statutory and it also has a constitution which signifies the Civil nature of law in India.

Systems by geography

Despite the usefulness of different classifications, every legal system has its own individual identity. Below are groups of legal systems, categorised by their geography. Click the "show" buttons on the right for the lists of countries.

See also

- Comparative law
- English common law
- Rule of law
- Rule According to Higher Law
- Islamic law
- Socialist law
- Soviet law
- Tribal sovereignty
- Western law
- Anarchy

External links

- World Legal Systems (<http://www.droitcivil.uottawa.ca/world-legal-systems/eng-monde.php>) , Website of the Faculty of Law of the University of Ottawa
- Australian Institute of Comparative Legal Systems (<http://ausicl.com>)

- Factbook list of legal systems (<https://www.cia.gov/library/publications/the-world-factbook/fields/2100.html>)
- International & Foreign Law Community (<http://www.lexisnexis.com/community/international-foreignlaw/>)

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2. ^{a b c} Makdisi, John A. (June 1999), "The Islamic Origins of the Common Law", *North Carolina Law Review* **77** (5): 1635–1739
3. [^] Andorra (11/07) (<http://www.state.gov/r/pa/ei/bgn/3164.htm>)
4. ^{a b} <https://www.cia.gov/library/publications/the-world-factbook/fields/2100.html>
5. [^] "Magna Carta" (<http://www.fordham.edu/halsall/source/magnacarta.html>) . <http://www.fordham.edu/halsall/source/magnacarta.html>. Retrieved 2006-11-10.
6. [^] <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html>
7. [^] El-Gamal, Mahmoud A. (2006), *Islamic Finance: Law, Economics, and Practice*, Cambridge University Press, p. 16, ISBN 0521864143
8. [^] Badr, Gamal Moursi (Spring, 1978), "Islamic Law: Its Relation to Other Legal Systems", *The American Journal of Comparative Law* **26** (2 - Proceedings of an International Conference on Comparative Law, Salt Lake City, Utah, February 24–25, 1977): 187–198, doi:10.2307/839667 (<http://dx.doi.org/10.2307%2F839667>)
9. [^] Makdisi, George (April–June 1989), "Scholasticism and Humanism in Classical Islam and the Christian West", *Journal of the American Oriental Society* **109** (2): 175–182 [175–77], doi:10.2307/604423 (<http://dx.doi.org/10.2307%2F604423>)
10. [^] *E.g.*, see the work of Menachem Elon and Nahum Rakover.
 - Moustaira Elina N., *Comparative Law: University Courses (in Greek)*, Ant. N. Sakkoulas Publishers, Athens, 2004, ISBN 960-15-1267-5
 - Moustaira Elina N., *Milestones in the Course of Comparative Law: Thesis and Antithesis (in Greek)*, Ant. N. Sakkoulas Publishers, Athens, 2003, ISBN 960-15-1097-4

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Categories: Legal systems | Comparative law | Law by country

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P.O. Box 3915
Palmer, AK 99645

The Honorable Carl Gatto
State Capitol, Room 118
Juneau, AK 99801-1182

9 March, 2011

Subject: House Bill 88, Use of Foreign Law

Dear Representative Gatto:

It appears to me that the effect of House Bill 88 is to preclude within the borders of the State of Alaska the subjugation of Alaskans to the whims of laws practiced by foreign entities that conflict with rights guaranteed to us by our laws and Constitution. Particularly, it will shield Alaskans from the depredations of Islamic Sharia law. I fully support its' adoption.

I am forwarding this because the body of evidence suggests it's true that Sharia law is an affront to every person who values human rights. Already there is a shrill, galling Muslim voice in America that demands the practice of Sharia law be allowed here, and there are gullible, bleeding-heart non-Muslims who blindly and stupidly support this insidious Islamic "cause." Already, among Muslims, it is happening in our America!

I personally will not condone the imposition of Sharia law at any level of our free society, not for myself nor for anyone else in America. Those who wish to impose Sharia law in America are the enemies of my blood. Sharia law is the antithesis of every right guaranteed to Alaskans and to all people in the United States of America. This is the land of the free and our demand for equality is that which makes us great among nations. The practices and punishments inflicted by Sharia law are patently illegal in this land. Enslavement, subjugation, beating, torture, mutilation, murder, discrimination, and child abuse deprive others of their guaranteed human rights under our Constitution and are crimes, all punishable upon conviction in this country.

Anyone in Alaska or America, who harms another person or deprives another person of guaranteed rights under the auspices of Sharia law or any other alien, foreign law, including Muslims, must be held accountable under our country's laws and prosecuted to our law's fullest extent. Multiculturalism be damned. Sharia law is an abomination and a pox on anyone who seeks to practice it or condone it in these United States of America.

Champions of Sharia BEWARE! There is only one law in America, and that is American jurisprudence, established by the duly enacted legislations of those freely elected to represent us. I pledge, as a duty of my American citizenship and as the right of a human being, to seek the prosecution of anyone I find inflicting the cruel and illicit depredations of Sharia law upon anyone in my America and I expect every other American citizen to do the same.

It's time for Alaskans and all Americans to stand together, get some guts, and renounce all efforts to suborn our freedoms and subjugate us under the illusion that any discriminatory foreign law should have any sway within the boundaries the State of Alaska or of these United States of America.

Sincerely,

Jim

James B. Wood



March 15, 2011

**AMERICAN CIVIL
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The Honorable Wes Keller, Vice-Chair
House State Affairs Committee
Alaska State House of Representatives
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via email: [Representative Bob Lynn@legis.state.ak.us](mailto:Representative%20Bob%20Lynn@legis.state.ak.us);
[Representative Wes Keller@legis.state.ak.us](mailto:Representative%20Wes%20Keller@legis.state.ak.us)

Re: House Bill 88
ACLU Review of Legal Issues

Chair Lynn, Vice-Chair Keller:

Thank you for the opportunity to submit written testimony regarding House Bill 88, relating to the application of international law.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. We have several concerns with the proposed legislation, outlined in greater detail below, **and urge a DO NOT PASS vote by Members of the Committee.**

Attack on Separation of Powers and Judicial Independence

Fundamentally, HB 88 is counterproductive legislation. This bill represents an attack on the separation of powers, an unwarranted mistrust of the state judiciary and an unnecessary interference in the function of Alaska's legal system.

It is a core function of both state and federal courts to determine what law is at issue in a given matter. The Alaska Legislature should not seek to legislate what law the courts can and cannot consider when deciding cases. By doing so, the Legislature violates the fundamental principle of judicial independence and the constitutional principle of separation of powers.

Negative Impacts on Alaska Citizens and Businesses

Passage of HB 88 would harm the rights of Alaska citizens and businesses who travel and transact across international borders, and would also negatively impact the United States' standing in the global community.

In the normal course of business, organizations may voluntarily choose to waive certain constitutional rights. For instance, an individual generally retains the constitutional right to say what she thinks without restraint. U.S. Const., Amdt. I; Alaska Const., Art. I, Sec. 5. However, individuals regularly contract away their constitutional right to speak freely, for instance, by engaging in nondisclosure agreements. While the ACLU of Alaska strongly values constitutional rights, there are certainly legitimate and appropriate reasons why an informed, non-coerced waiver of such rights should be permitted and legally respected.

Contrary to these principles, the language of HB 88 presumes to disregard **all** waivers of constitutional rights, in any contract that contains a choice of law clause preferring the law of a foreign jurisdiction. For instance, proposed AS 09.68.140(b) states that if a contract contains a choice of law clause preferring foreign law and "if the interpretation or enforcement of the agreement would violate an individual's [constitutional] right," the contract **must** be read to preserve the constitutional right, not to waive it. The effect of the statute – by its literal terms – appears to be to nullify *any waiver* of constitutional right where made in conjunction with a foreign choice of law provision.

Other examples of commonly waived constitutional rights include the right of medical privacy permitting medical records to be shared with a foreign medical provider, or a due process right to an official hearing or trial, such as a provision mandating that disputes go to an arbitrator. The Alaska Legislature risks sweeping up a wide variety of commonplace waivers of constitutional rights in the bill as currently drafted.

HB 88 is structurally flawed in that it is not narrowly tailored to prevent coerced or uninformed waiver of rights. Its only *caveat* is that the contract must have a foreign choice of law provision. This overbreadth would result – should the bill pass – in exposing foreign partners to the potential that Alaska businesses may unilaterally *and improperly* evade their contractual obligations by using the Bill's provisions. This obvious legal flaw would make it highly problematic for Alaskans to conduct business with foreign individuals or organizations.

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Choice of Forum Provision

A similar problem attends subsections (c) and (d), which prohibit the application of choice of forum or venue contractual provisions, and the granting of motions to dismiss on the grounds of *forum non conveniens*, where a constitutional right could be impaired.

In the case of subsection (c), a business or person may have a valid, legally appropriate and commercially necessary reason to waive certain constitutional rights. But, the extremely broad language of the legislation would invalidate the contractual provisions.

An example of a problem with this language is presented by the Seventh Amendment to the United States Constitution, which guarantees the right to trial by jury in any civil case addressing a matter in value of at least twenty dollars. U.S. Const., Amdt. VII.

The United States jury system does not necessarily have a corollary in judicial proceedings in other countries. Not all countries apply a common law system, and fewer still have regular jury trials. HB 88 could thus be used to prevent the enforcement of any choice of venue or forum clause *in any contract with a foreign company*, or any *forum non conveniens* action, if the foreign court at issue does not guarantee a jury trial for civil action where \$20 or more was at stake. This would seriously deter foreign individuals or corporations from doing business in Alaska.

U.S. and Alaska Standing in Foreign Relations

HB 88 would generally strain our relations and standing with other nations. Opportunistic businesses and individuals could thwart efficient judicial enforcement by filing suit in Alaska and then demanding that the defendant respond in Alaska.

For example, a person with a contractual dispute with a Spanish oil services company¹ could (assuming that the matter had sufficient minimal Alaska contacts to establish personal and subject matter jurisdiction), file a suit for declaratory relief in Anchorage, even where all the evidence, witnesses, and items at issue were in Spain.

Even where such a suit would normally be dismissed as *forum non conveniens* and then re-filed in Spain, an Alaska court could be obliged to hear the case in Alaska, since the plaintiff would be deprived of her Seventh Amendment right to a jury trial if the case were heard in Spain.

While there may be foreign jurisdictions whose legal systems are so deeply unfair as to offend fundamental American values of fairness, there are many – such as Spain’s – that do not. One should also note that the doctrine of *forum non conveniens* is **one of mutual respect**, which may

¹ <http://www.businessweek.com/ap/financialnews/D9LRODGO0.htm>.

be undermined where one nation flouts the respect owed to other nations. Passage of HB 88, along with similar bills in sister states, could result in many American litigants finding themselves sued in foreign jurisdictions and unable to remove their cases to Alaska or other US state courts.

HB 88 signals to the rest of the world that Alaska believes that our judges have “little to learn from their counterparts in other nations This wholesale rejection of the value of consulting international law or foreign decisions in certain circumstances evokes years of ‘American exceptionalism,’ during which the U.S. was internationally criticized for exempting itself from human rights standards that were otherwise universal.”²

A vote for HB 88 would have the effect of alienating U.S. allies and the commercial partners of Alaska companies, putting at risk U.S. interests at home and abroad. Indeed, the simple perception that the United States is ignoring its legal obligations puts Alaskan citizens and Alaskan companies seeking to do business internationally at risk. If potential foreign business partners believe that Alaska’s courts will not enforce foreign judgments or adhere to the businesses’ choice of law in their contracts, international companies may simply be unwilling to contract with Alaska businesses or establish commercial ties to our state. Given the ambiguity surrounding which laws Alaskan courts may consider, foreign investors may be wary of ever consenting to jurisdiction in our state courts.

Conclusion

In sum, HB 88 is unnecessary, and its passage would cause real harm to Alaska’s citizens, businesses, and judicial system. **We urge you to oppose HB 88.**

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² Martha Davis & Johanna Kalb, *Oklahoma State Question 755 and an Analysis of Anti-International Law Initiatives*, American Constitution Society Issue Brief, 5 (2011).

House State Affairs Committee
Legal Analysis of H.B. 88
March 15, 2011
Page 5

Please feel free to contact the undersigned should you require any additional information. We are happy to reply to any questions which Members of the Committee may have.

Thank you again for the opportunity to share our concerns.

Sincerely,



Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: Representative Paul Seaton, [Representative Paul Seaton@legis.state.ak.us](mailto:Representative_Paul_Seaton@legis.state.ak.us)
Representative Peggy Wilson; [Representative Peggy Wilson@legis.state.ak.us](mailto:Representative_Peggy_Wilson@legis.state.ak.us)
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- U.S. District Court, District of Columbia.
- U.S. District Court, Eastern District Michigan (serving Detroit, Ann Arbor, Flint, and Bay City).
- U.S. District Court, Southern District New York (serving Counties of New York [Manhattan], Bronx, Westchester, Putnam, Rockland, Orange, Dutchess, and Sullivan).
- U.S. District Court, Eastern District New York (serving Counties of Kings [Brooklyn], Queens, Richmond [Staten Island], Nassau, and Suffolk).

U.S. Courts of Appeals:

- U.S. Court of Appeals, Second Circuit (serving New York, Connecticut, and Vermont).
- U.S. Court of Appeals, Sixth Circuit (serving Kentucky, Michigan, Ohio, and Tennessee).
- U.S. Court of Appeals, Ninth Circuit (serving California, Arizona, Nevada, Oregon, Washington, Alaska, Idaho, Montana, and Hawaii).
- U.S. Court of Appeals, District of Columbia.

U.S. Supreme Court.

Professional Bar Associations:

- American Bar Association
- Arizona Bar Association
- California Bar Association
- District of Columbia Bar Association
- New York Bar Association

✓ ABOUT US

David Yerushalmi, Esq.

David Yerushalmi is a lawyer specializing in litigation and risk analysis, especially as it relates to geo-strategic policy, national security, international business relations, securities law, disclosure and due diligence requirements for domestic and international concerns. David Yerushalmi has been involved in international legal and constitutional matters for over 25 years. After completing his undergraduate studies with a B.S. in public policy studies and criminal justice, summa cum laude, David Yerushalmi received his Juris Doctorate from Arizona State University College of Law in 1984 as the recipient of the Most Outstanding Graduate Award. After graduation, David Yerushalmi worked as a lawyer specializing in securities, banking, and environmental law in the Los Angeles office of the law firm of Dewey & LeBoeuf L.L.P. (then known as LeBoeuf, Lamb, Leiby & Macrae). David Yerushalmi is licensed to practice law in Washington, D.C., New York, California and Arizona.

David Yerushalmi is General Counsel to the Center for Security Policy in Washington, D.C., one of the nation's leading national security think tanks founded by former Reagan administration official Frank J. Gaffney, Jr., and has been Of Counsel and Senior Legal Advisor for Policy Affairs to the Institute for Advanced Strategic & Political Studies (Potomac, Maryland) since 1988. In 1991, teaming up with the Institute's policy experts, David Yerushalmi was instrumental in establishing the Israel Export Development Co., Ltd., as an entrepreneurial policy tool to initiate radical free market reforms in Israel. Working along side fellow board members and shareholders such as Robert Tishman, Jerry Speyer, Larry Silverstein, Lawrence Tisch, Eugene Grant and Sy Syms, David Yerushalmi was appointed the company's CEO and Chairman.

David Yerushalmi is today considered an expert on Islamic law and its intersection with Islamic terrorism and national security. In this capacity, he has published widely on the subject including the principle critical scholarship on Shariah-compliant finance published in the Utah Law Review (2008, Issue 3). This work and the empirical investigation known as the Mapping Shariah project in America was the focus of a recent monograph published by the McCormick Foundation and the Center for Security Policy. Mr. Yerushalmi participated as an associated author and member of Team 'B' in the seminal work on counter-terrorism entitled, *Shariah: The Threat To America. An Exercise in Competitive Analysis, Report of Team 'B' II*, published in 2010 by the Center for Security Policy and he has also produced and narrated a one-hour CLE program (accredited in NY, PA, CA, AZ, IL, TN, TX, CO, ND) for legal professionals addressing the requirement of proper disclosure in Shariah-compliant financial products.

In David Yerushalmi's role as an advocate of legal, economic, and political reform in the Middle East and in the former republics of the Soviet Union, he has been interviewed and written about in the Wall Street Journal, the New York Times, Reason Magazine, and appeared on local, national, and international radio and television programs.

David Yerushalmi continues his active involvement in policy and national security matters by editing and writing contributions to various off-line and on-line publications and has published several op eds and commentaries in the Wall Street Journal, National Review, the American Spectator, First Things, FrontPageMagazine, the American Thinker, The Intellectual Conservative, the Jerusalem Post, and Globes, Israel's leading business newspaper.

David Yerushalmi may be reached directly at david.yerushalmi@verizon.net

Professional Memberships »

AMERICAN LAWS FOR AMERICAN COURTS (ALAC)

FAQ, ISSUES AND OBJECTIONS

1. This bill is not needed because it states what is already reality in state courts

First, this is not true. Most states merely state that foreign laws and judgments that violate the state's "public policy" shall not be recognized. But the courts consistently rule that the state legislature has the responsibility to articulate clearly what the state's public policy actually is. For the state to make clear that comity, choice of law, and choice of venue issues must still safeguard fundamental state and federal constitutional rights is precisely the role of the state legislature.

Second, there are actually hundreds of cases on the books in which foreign laws and foreign legal doctrines were invoked by parties to a dispute. In many cases those foreign laws and foreign legal doctrines are anathema to our constitutional ideals.

2. This bill is not needed because shariah is not a threat in the US and is not in our court systems.

The Act is not simply about shariah but also transnationalism—or the documented creep of foreign and offensive laws being recognized by state and federal courts. More, shariah has already crept into the legal systems of Western Europe, including 85 shariah courts operating openly with the full authority of law in the United Kingdom. There are numerous cases in which shariah doctrines have been invoked in the US. Here is a sampling of 17 examples from 11 states:

http://publicpolicyalliance.org/wp-content/uploads/2010/11/Shariah_Cases_11states_11-08-2010.pdf

3. This bill interferes with foreign treaties.

By operation of law this cannot be. Treaties, when signed by the President of the United States and ratified by the United States Senate, are the law of the United States, and not foreign law. Thus, the *Act*, or a specific application of the *Act*, could not by operation of the Supremacy Clause affect in any way a treaty.

Some uninformed critics of the Act assume, without citation, that certain ratified treaties require the enforcement of foreign judgments or the application of foreign law in contradiction with the *Act*. Although some treaties address the treatment of foreign arbitral awards or child custody judgments, all of these treaties have an exemption when the foreign tribunal enforces a law that violates the fundamental public policy of the domestic

state. This is also the common law and state statutory rule for recognizing foreign judgments of any kind not affected by federal treaty or federal preemptive statutes.

The Act articulates what the boundaries are for the state's important public policy—to protect fundamental state and federal constitutional liberties.

Further, state courts consistently hold that it is up to the state legislature to set the state public policy in the first instance.

4. This bill restricts the right to contract.

The right to contract is not unlimited. The state may legitimately restrict the right to contract if the contract is found to have some deleterious effect on the public or to contravene some other matter of public policy. As the Supreme Court has noted, a state's police power to protect the health and safety of its citizenry in the area of contract law not touching upon a suspect class is subject to a rational basis scrutiny—does the state law have any rational basis.

Innumerable regulations exist governing contractual provisions, including choice of law and forum selection clauses. For an impairment of a contract to violate the constitutional right to contract the state regulation must constitute a substantial impairment, and no significant and legitimate public purpose may justify the regulation. The requirement of a legitimate public purpose is primarily designed to prevent a state from embarking on a policy motivated by a simple desire to escape its financial obligations or to injure others through the repudiation of debts or the destruction of contracts or the denial of the means to enforce them.

It is patently clear that the Act—which merely sets fundamental state and federal constitutional liberties as protectable interests—is constitutional.

Indeed, all of the state courts and the federal courts have allowed such impairments of contract when the provisions violate the public policy announced in statutes.

Moreover, American Laws for American Courts only restricts the right to contract in terms of enforcement. Theoretically, people can contract for whatever they want to, on whatever terms. Obviously the only time the state gets involved with regard to policy is when there is a dispute and the parties go to the courts to resolve and enforce. In this case it is properly the role of the state to protect constitutional liberties.

5. This bill impacts “comity” and violates the Full Faith & Credit Clause of the US Constitution

The Full Faith & Credit Clause only applies to sister states. Moreover, even sister states may deny comity if the sister state’s foreign judgment violates the domestic state’s public policy. In the context of the Act, however, only foreign country judgments are at issue. All state courts have ruled, as has the U.S. Supreme Court, that foreign judgments from abroad are subject to the public policy of the state granting comity.

Even in the case of granting domestic arbitral awards comity or recognition in state courts, the Federal Arbitration Act permits states to preclude granting comity or recognition if the arbitral award was based on a decision process or law that was contrary to public policy.

6. This bill interferes with business activity and commerce and thus would adversely impact economic development in the state.

Protecting the fundamental constitutional rights of the citizens of a state does not adversely impact commerce or business. In fact, quite the contrary. Our free enterprise system was built upon the fundamental liberties in our constitutions and thus preserving them protects free enterprise.

Specifically, state courts have consistently refused to allow parties to enter into agreements that violate public policy. Moreover, a party to a contract does not typically knowingly waive his/her/its fundamental constitutional liberties. The question the courts consistently ask is whether the contract waiver was entered into knowingly and at arm’s length. Courts consistently reject waivers of a parties statutory or inherent rights when the parties are not equally sophisticated and where there is evidence that the contract was an adhesion contract more or less forced upon the waiving party.

If these protections are applied to statutory or inherent rights, a fortiori they apply to is a purported waiver of a fundamental constitutional liberty.

Thus, in the case of two businesses entering into a contract and one business waiving its constitutional protections, at the very least any amendment to the Act should limit such waivers only to cases where all of the parties to the contract are businesses and the waiving party has expressly waived its fundamental constitutional liberties protected by the Act.

Nevertheless, because so many of the cases involving foreign laws that violate constitutional rights infiltrating our state legal systems involve family law, particularly the rights of women and children, appropriate language can be included to exempt businesses and corporations without destroying the intent of American Laws for American Courts.

7. The business exemption language used in some states violates the equal protection clause of the constitution.

The *Act* would not likely be struck as violative of “equal protection” simply because it exempts contracts involving corporations. There is no “protected class”, such as race, religion, sex or even age, affected by distinguishing individuals from corporations, that would require “strict scrutiny” by the judiciary. All the legislature requires is a “rational basis” for the distinction, the lowest level of judicial scrutiny. As constitutional rights affecting individuals rationally receive greater concern than rights of businesses, and businesses tend to be more sophisticated in entering contracts, the legislature has a rational basis for making the distinction and allowing businesses to contractually waive rights when submitting to foreign law, but individuals to not.

8. Provisions of this bill would violate the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

The UCCJEA only applies to foreign child custody judgments for those foreign countries not “contracting parties” to the Hague Child Abduction Convention. The UCCJEA specifically exempts states from granting comity or enforcing a foreign child custody judgment or foreign jurisdiction when doing so violates “fundamental principles of human rights.” It is hard to imagine how fundamental state and federal constitutional liberties are not fundamental human rights in the context of state law.

And, even among the contracting parties to the Hague Child Abduction Convention, the treaty exempts cases where the foreign jurisdiction or judgment would violate the public policy of the domestic jurisdiction.

9. This bill could violate the federal Parental Kidnapping Prevention Act (PKPA)

The PKPA does not apply to foreign jurisdictions. It applies within the US between the states.

10. This bill would violate international treaties dealing with child custody, namely the Hague Convention.

As noted above, the Hague Convention itself provides a public policy exemption. Beyond this, as a treaty entered into by the federal government, the Hague Convention is federal law and cannot be trumped by state law. There is no way for ALAC to do so. Moreover, it is important to note that the only country that employs shariah in its legal system that is a member of the Hague Convention is Morocco. The following countries are some that are not parties to the Hague Convention, thus it does not apply to US relations with them:

- Egypt
- Iran
- Pakistan
- Saudi Arabia
- Syria
- Jordan
- Libya
- Sudan
- Somalia
- Algeria
- Lebanon
- Indonesia
- Afghanistan
- Iraq
- India
- Bangladesh
- Nigeria
- Kuwait
- Bahrain
- Qatar
- Tunisia
- Yemen
- United Arab Emirates
- Oman

11. This bill would interfere with English Common Law

To the extent that English Common Law forms the foundation of our legal traditions, it is not a foreign law. Moreover, all states have by statute or by “common law” adopted the common law as adopted by the courts in that state to be part of state law and thus not foreign.

Moreover, this bill does not ban all foreign or international law, just the use of such law when it would violate the constitutional rights of someone in the state AND specifically applied in the particular case. The fact that a country like Germany or China might have some law that violates our constitutional liberties is wholly irrelevant. It only becomes relevant if the particular offensive law is the law at issue in the particular case being litigated in the domestic state court.

12. This bill would open up states that pass it to expensive law suits

This legislation already passed in two states in 2010 with no legal challenges. There is no basis on which to challenge a law which seeks to safeguard individual constitutional rights as its express purpose. Indeed, it is absurd to even suggest such a proposition. A state might be sued if it does NOT protect fundamental state and federal constitutional liberties.

13. This bill would interfere with Native American tribal law

Federal law, in the form of treaties with Native Americans, preempts state law. Thus, ALAC would not because it could not as a matter of law affect those federal laws. If absolutely necessary, language can be inserted in ALAC expressly confirming this.

14. This bill would interfere with Jewish law

This bill would not interfere with Jewish law because Jewish law has a provision inherent which instructs people of the Jewish faith to follow the law of the land in which they live. Moreover, ALAC only applies when the use of a foreign legal doctrine in a court would violate someone’s constitutional rights. This is not the case with Jewish law.

15. ALAC unfairly targets Muslims

Nothing in the ALAC bill prevents any person from freely exercising his or her right to freedom of religion and worship. ALAC only applies to legal doctrines in our court systems. Furthermore, ALAC is facially neutral. It does not discriminate in any way based on faith of any kind. The bill makes no mention of Islam or Muslims and is not even principally focused on religious law, but any foreign law that violates constitutionally protected liberties.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 15, 2011

SUBJECT: Limited application of foreign law
(Work Order No. 27-LS0333\M)

TO: Representative Carl Gatto
Attn: Karen Sawyer

FROM: Dennis C. Bailey *DCB*
Legislative Counsel
and
Dan Wayne
Legislative Counsel

Since there is a hearing on your bill coming up on March 17 and drafting attorney Dennis Bailey has been out of the office because of illness for a few days, I've briefly addressed the three concerns raised in the March 10 e-mail from Karen Sawyer to this office.

1. The bill's potential for interfering with a choice of law provision in a contract seems direct and not inadvertent, as far as I am able to determine. Language on page 2 of the bill, lines 2 - 8, relates to agreements containing choice of law provisions. This language would void an agreement containing a choice of law provision if the provision has an effect that violates an individual's constitutionally protected individual rights unless the provision can be changed to eliminate its unconstitutional effect.
2. The bill uses the term "foreign law" instead of "law," and defines the term to mean "a law, rule, or legal code or system established and used or applied in a jurisdiction outside of the United States and the territories of the United States." I understand that the "foreign law" that is of concern to you is the law from outside of the U. S. If that is correct, no change is necessary.
3. HB 88 does not necessarily conflict with provisions of AS 25.30.400 - 25.30.590 that may require enforcement of foreign orders under the Hague Convention on the Civil Aspects of International Child Abduction, a multinational treaty to which the United States is a signatory. The United States Congress implemented the Convention in the International Child Abduction Remedies Act, (ICARA), 42 U.S.C. 11601 et seq. The ICARA grants concurrent jurisdiction to state and federal courts. 42 U.S.C. 11603. It allows a court that has jurisdiction to exercise discretion that is potentially very broad. 42 U.S.C. 11604. This may reduce the risk of a conflict between the bill's provisions and federal law to some degree. 42 U.S.C. 11604, reads:

§ 11604. Provisional remedies

(a) Authority of courts. In furtherance of the objectives of article 7(b) and other provisions of the Convention, and subject to the provisions of subsection (b) of this section, any court exercising jurisdiction of an action brought under section 11603 (b) of this title may take or cause to be taken measures under Federal or State law, as appropriate, to protect the well-being of the child involved or to prevent the child's further removal or concealment before the final disposition of the petition.

(b) Limitation on authority. No court exercising jurisdiction of an action brought under section 11603 (b) of this title may, under subsection (a) of this section, order a child removed from a person having physical control of the child unless the applicable requirements of State law are satisfied.

Keep in mind that, as noted in the December 30, 2010 memo to your office, if the bill's provisions are adopted and are later found to be in conflict with federal law, including ICARA, the Supremacy Clause of the U. S. Constitution would cause the conflict to be resolved in favor of the federal law.

If I can be of further assistance, please advise.

DCB:DCW:plm
11-138.plm

Karen Sawyer

From: Karen Sawyer
Sent: Thursday, March 10, 2011 3:35 PM
To: LAA Legal
Cc: 'Carl Gatto'
Subject: HB 88 legal opinion requested
Attachments: HB 88; HB 88

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Hello,

Attached are two e-mails from Doug Wolliver, Courts System legislative liaison, in response to my request for information about whether any of the Family Courts in Alaska have experienced cases where foreign law (example, Sharia Law) had been invoked. These two e-mails are his replies to date. I am requesting a legal opinion on the questions below.

Doug made these suggestions based on what the family court judges said:

- look into **“choice of law” clauses in contracts**. I don't believe that such a contract clause can be upheld if it violated our constitutions and your bill drafter has probably already considered this (they generally think of most everything).
 - **MY REQUEST:** double-check just to make sure the bill does not inadvertently interfere with **choice of law clauses**, which are routine.
- consider **defining law “foreign law.”** In many contexts a foreign jurisdiction is any jurisdiction other than Alaska. So, for example, registering a domestic violence restraining order from Washington State is considered registering a foreign order.
 - **MY REQUEST:** HB 88, version M, already has a definition of foreign law. However, it limits the jurisdiction to the United States and its territories. **Do we need to specifically mention “Alaska jurisdiction”, or is it okay as is?**
- **AS 25.30.400-590 (a portion of the Uniform Child Custody Jurisdiction and Enforcement Act)** provides for the enforcement of foreign orders under the Hague Convention on the Civil Aspects of International Child Abduction. I don't know if HB 88 conflicts with that statute, but it is something you might consider investigating.
 - **MY REQUEST:** Does HB 88 conflict with statute above?

FYI: My request of the Department of Law regarding cases involving foreign law came back with the answer of 'the State has had no cases'.

We have a bill hearing on HB 88 next week, Thursday, March 17th, at 8AM in House State Affairs.

Thanks much.

Public Policy Alliance

Shariah Law

Shariah, often referred to as “Islamic Law,” is in actuality a legal doctrine based on the Quran and Hadiths (sayings and acts of Mohammed), but one which goes far beyond what Westerners would regard as religious matters or routine legal matters.

Shariah has in fact been introduced into U.S. civil court cases in many states, mostly in the area of family law - [see this summary of 17 representative cases from 11 states: Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, Ohio, Tennessee and Texas.](#)

Shariah covers all aspects of life, including criminal law, domestic law, statecraft and warfare (Jihad). Shariah encompasses personal ethics and legal issues, religion and state governance, this world and the afterlife. Shariah is said to enforce the will of Allah, as opposed to the will of humans. Shariah regulates belief, speech and religious practice, criminal and legal matters, and other fields including finance and war. There is no such thing as a separate secular authority or secular law under doctrinal Shariah, since religion and state are not distinct, but are one.

Shariah is the strict, exclusive law of the land or basis of that law in Saudi Arabia, Iran and Sudan. It is also enforced in Taliban-controlled areas of Afghanistan and Pakistan, as well as enclaves around the world controlled by violent Jihadist organizations. Shariah is either a parallel legal system or partly integrated into the legal systems of the other Islamic-majority nations, such as Egypt and Morocco. Some pro-Shariah groups such as the Muslim Brotherhood also support democratic elections as long as they result in governments, constitutions, legal systems and societies based on Shariah.

Shariah mandates violent Jihad as a religious obligation. Violent Jihad’s purpose against non-Muslims or former Muslims is to establish Islam’s rule worldwide. The establishment of Shariah rule is a stated goal of Al Qaeda, the Taliban, Hezbollah, HAMAS, Al Shabaab, Abu Sayaf, Lashkar-e-Taiba, Jemaah Islamiya and other Jihadist known or designated terrorist organizations, as well as the Muslim Brotherhood.

Shariah is frequently encountered in family law cases across the USA today; in Shariah-compliant accommodations that may result in discrimination against non-Muslims; and in Shariah-Compliant Finance on Wall Street and in the U.S. government.

Tennessee and Louisiana have passed laws to prevent the infiltration of Shariah into their court systems.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
Bill Version HB088 \M
() Publish Date _____

Identifier (file name): HB088-LAW-CIV-03-13-11 Dept. Affected Law
Title An Act prohibiting the use of foreign law that violates an individual's right Appropriation Civil
under the United States Constitution. Allocation Commercial and Fair Business
Sponsor Representative(s) Gatto
Requester (H) STA OMB Component Number 2717

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES							
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants							
Miscellaneous							
TOTAL OPERATING	***	***	***	***	***	***	***

CAPITAL EXPENDITURES							
-----------------------------	--	--	--	--	--	--	--

CHANGE IN REVENUES							
---------------------------	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (please identify)							
TOTAL	***	***	***	***	***	***	***

Estimate of any current year (FY2011) cost ***

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version.

Prepared by Eileen Donahue, Division Operations Manager
Division Administrative Services
Approved by John J. Burns, Attorney General
Department of Law

Phone 465-5427
Date/Time 3/13/11 1:30 PM
Date 3/13/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB088 WM

Analysis

This bill is designed to protect the rights of citizens of Alaska from the application of foreign law if the application would violate the individual's right guaranteed by the Alaska Constitution or the United States Constitution. Since this is a new legal standard for the court to apply, the Department of Law cannot estimate how many cases the state or state agencies may be named. The new legal standard would likely involve interpretation of federal treaties and the applications of those treaties on states by federal law.

The fiscal impact of this legislation cannot be accurately determined at this time.

Karen Sawyer

From: Mike Madar [madar@gci.net]
Sent: Thursday, March 10, 2011 11:44 AM
To: Karen Sawyer
Subject: HB 88

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Blue Category

I support HB 88 100% Mike Madar; 1270 Woodstock Dr; Palmer, Alaska 99645 (907) 746 6667

Alaska State Legislature

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Representative Carl Gatto

TO: Representative Bob Lynn, Chair
House State Affairs Committee

FROM: Rep. Carl Gatto

A handwritten signature in black ink that reads "Carl Gatto".

DATE: March 7, 2011

RE: Request for a hearing of HB 88

Enclosed is the committee packet for HB 88, *Use of Foreign Law*. I have included a sponsor statement, the original version of the bill, and other supplemental material.

I would appreciate a hearing before your House State Affairs Committee at your earliest convenience. I appreciate your time and look forward to your reply.

Please contact my staff member, Karen Sawyer at 465-5025, with any questions or comments regarding this request.

Thank you for your consideration.

American Public Policy Alliance

Representative Civil Legal Cases Involving Shariah Law

November 8, 2010

American Public Policy Alliance
www.publicpolicyalliance.org

Representative Civil Legal Cases Involving Shariah Law

Civil Legal Cases involving Shariah Law.....	3
ILLINOIS	3
<i>Shaheed Allah, Plaintiff, v. Adella Jordan-Luster, et al., Defendants: Inmate demands Halal-slaughtered meat in prison</i>	3
United States District Court, C.D. Illinois - August 3, 2007.....	3
<i>Wafra Leasing Corporation, Plaintiff, v. Prime Capital Corporation, et al., Defendants.</i>	3
United States District Court, N.D. Illinois, Eastern Division - August 30, 2004.....	3
LOUISIANA.....	4
<i>Amin v. Bakhaty: Louisiana court refuses to enforce Egyptian child custody order</i>	4
Supreme Court of Louisiana - October 16, 2001	4
MARYLAND	5
<i>Aleem vs. Aleem: Maryland's Highest Court Refuses to Recognize Pakistani Shariah Divorce</i>	5
Court of Appeals of Maryland - May 6, 2008	5
<i>Hosain v. Malik: Maryland grants custody of child to father over mother in accordance with (Shariah-based) Pakistani law</i>	5
Court of Special Appeals of Maryland – February 21, 1996.....	5
MASSACHUSETTS	6
<i>Rhodes v. ITT Sheraton Corp: Rejection of Saudi Arabia as an Alternate Forum for Resolving a Dispute</i>	6
Massachusetts Superior Court - 1999	6
MICHIGAN.....	7
<i>Saida Banu Tarikonda v. Bade Saheb Pinjari: Lower court recognizes Shariah divorce law; appeals court overrules.</i>	7
Court of Appeals of Michigan – April 7, 2009.....	7
<i>Nabil Taiseer Hassan and Sawsan Hassan v. Eric H. Holder, Jr. : Michigan case cites Shariah courts, documents and marriage certificates</i>	8
United States Court of Appeals, Sixth Circuit - May 11, 2010.	8
MINNESOTA.....	9
<i>Mohamed D. ABD ALLA v. Mohamed MOURSSI: Minnesota man appeals to court regarding decision in Islamic arbitration hearing</i>	9
Court of Appeals of Minnesota – June 1, 2004.....	9
NEW JERSEY	10
<i>S.D. v. M.J.R.: Man rapes wife and claims Shariah as a defense</i> S.D. v. M.J.R.....	10

Superior Court of New Jersey, Appellate Division - Decided July 23, 2010.....	10
<i>Odatalla v Odatalla</i> – Enforcement of Islamic Mahr Agreement.....	11
Superior Court of New Jersey, Chancery Div., Passaic County - June 24, 2002.....	11
NEW YORK	12
<i>Sofyan Ali SALEH, Petitioner, v. UNITED STATES DEPARTMENT OF JUSTICE</i> : Yemeni jailed in US fights deportation on Shariah grounds.....	12
United States Court of Appeals, Second Circuit - Decided April 29, 1992.....	12
<i>PEOPLE of the STATE of NEW YORK v. IBRAHIM BEN BENU</i> :.....	13
CRIMINAL COURT OF THE CITY OF NEW YORK, KINGS COUNTY - May 13, 1976.....	13
Case of forced child marriage following Islam that was voided as against public policy; the father of the child forced into marriage was also acknowledged to be in a polygamous "marriage".....	13
OHIO.....	13
<i>Mohammed Zawahiri v. Raghad Zahar Alwattar</i> : Islamic Mahr Agreements in Civil Courts.....	13
Court of Appeals of Ohio - July 10, 2008	13
TENNESSEE	13
<i>HOSSEIN AGHILI VS. HAMIDEH SABA SAADATNEJADI</i> : Legitimizes Polygamy and “expertise” in Islamic Studies	13
COURT OF APPEALS OF TENNESSEE June 11, 1997.....	13
TEXAS.....	14
<i>AMIR AHMED V. AFREEN S. AHMED</i> : Texas Divorce Case; \$50,000 Mahr agreement disputed.....	14
Court of Appeals of Texas - June 17, 2008	14
<i>Saadallah JABRI and Aida Jabri, Appellants, v. Jamal QADDURA, Appellee</i> : Texas Islamic arbitration court taken into account in divorce case	15
Court of Appeals of Texas - May 8, 2003.....	15
Accommodations	16

Civil Legal Cases involving Shariah Law

ILLINOIS

Shaheed Allah, Plaintiff, v. Adella Jordan-Luster, et al., Defendants: Inmate demands Halal-slaughtered meat in prison

United States District Court, C.D. Illinois - August 3, 2007

http://scholar.google.com/scholar_case?case=10507683704817451581

Shaheed Allah, an inmate incarcerated at Pontiac Correctional Center, alleged violations of the First Amendment and the Religious Land Use and Institutionalized Persons Act ("RLUIPA") caused by the Defendants' failure to provide him with a Halal diet.

Allah requested to be provided with a Halal diet. Pontiac Correctional Center claimed it was already in compliance with this dietary requirement as pork and pork by-products are not served at Pontiac. The Plaintiff disagreed that the only dietary restriction for Muslims is the abstinence of pork and pork by-products. Plaintiff requested that the Defendants confer with Aqueel Khan, the Muslim Chaplain, to verify the validity of the Plaintiff's dietary request.

Although he was provided with bread, fruit and vegetables, he asserted that a Halal diet must consist of "meat that has been slaughtered in the manner prescribed by the Sharia."

According to Plaintiff, the prescribed method for Halal meat includes keeping the animal "in a humane way prior to slaughter," then slaughtering the animal by "slitting of the throat" while reciting the Qur'an.

The court found that the Plaintiff has not met his initial hurdle of showing a substantial burden was placed upon his religious beliefs as he admittedly could consume vegetables and grains without violating his faith. Thus, the practice of the Plaintiff's faith was not hindered by the provision of a general prison diet rather than the Halal diet the Plaintiff sought.

Wafra Leasing Corporation, Plaintiff, v. Prime Capital Corporation, et al., Defendants.

United States District Court, N.D. Illinois, Eastern Division - August 30, 2004

http://scholar.google.com/scholar_case?case=1862554034514970966

Prime Capital was a specialty finance company that through its affiliates financed certain equipment leases. Wafra Leasing Corp. invested in Prime Capital securities. Wafra claimed it was the victim of securities fraud and improper auditing.

The plaintiff corporation, Wafra, is a wholly owned subsidiary of the Wafra Fund. The sole owners of the Wafra Fund are the Kuwaiti National Security Administration, a branch of the Kuwaiti government, and Aref Investment Group, owned by the Kuwait Public Institution for Social Security and an Islamic bank. Wafra invested in the 1999-A Securitization on May 4, 1999. Wafra's investors sought to comply with Islamic law, or Sharia, which prohibits investors from collecting interest, but allows them to earn money from the ownership and operation of assets.

Of the multiple counts against Prime Capital individuals, several requests for summary judgments were approved.

LOUISIANA

Amin v. Bakhaty: Louisiana court refuses to enforce Egyptian child custody order

Supreme Court of Louisiana - October 16, 2001

<http://www.thenewamerican.com/index.php/usnews/politics/4342-states-take-preemptive-strike-against-shariah>

http://scholar.google.com/scholar_case?case=4590415366527786188

In the 2001 custody case of *Amin v. Bakhaty*, 01-1967 (La.10/16/01), 798 So.2d 75, the defendant (father) Abdelrahman Bakhaty filed an affidavit when he petitioned for a civil warrant stating that by operation of Egyptian law both the temporary guardianship and physical custody of the child rested exclusively with him. Egypt follows Islamic family law, which structures some of the rights between family members based solely on gender. Under the Egyptian concept of "guardianship," the father has the absolute right to the guardianship and the physical custody of the minor child.

Louisiana Supreme Court refused to enforce an Egyptian custody order stating that:

The only other forum that could possibly determine custody would be Egypt. However, the Egyptian Court is not compelled to consider the minor child's best interest. [The father] would have the absolute right to guardianship, as well as the right to physical custody. This Court believes that a parent's interest in a relationship with his or her child is a basic human right. The unique circumstances of this case required more consideration for the best interest of this child than for the extension of comity toward the Egyptian/Islamic legal system.

The court ruled that the child would stay in the custody of the mother, Magda Amin, in Louisiana.

MARYLAND

Aleem vs. Aleem: Maryland's Highest Court Refuses to Recognize Pakistani Shariah Divorce Court of Appeals of Maryland - May 6, 2008

http://volokh.com/archives/archive_2008_05_04-2008_05_10.shtml#1210196695

<http://mdcourts.gov/opinions/coa/2008/108a07.pdf>

Farah Aleem filed suit for a limited divorce from her husband, Irfan Aleem in the Circuit Court of Montgomery County, MD. In response her husband, a Pakistani resident of Maryland, tried to divorce her preemptively by entering the Pakistani Embassy in Washington, DC and performing *talaq*, the Shariah-approved way for a man to declare a divorce by simply stating "I divorce thee ..." three times.

The court reasoned that while foreign divorces are generally recognized unless they violate the state's public policy, the sex-discriminatory nature of Islamic divorce law does violate Maryland public policy when the parties are Maryland residents:

The *talaq* divorce of countries applying Islamic law, unless substantially modified, is contrary to the public policy of this state and we decline to give *talaq*, as it is presented in this case, any comity. The Pakistani statutes providing that property owned by the parties to a marriage, follows title upon the dissolution of the marriage unless there are agreements otherwise, conflicts with the laws of this State where, in the absence of valid agreements otherwise or in the absence of waiver, marital property is subject to fair and equitable division. **Thus the Pakistani statutes are wholly in conflict with the public policy of this State as expressed in our statutes and we shall afford no comity to those Pakistani statutes.**

Hosain v. Malik: Maryland grants custody of child to father over mother in accordance with (Shariah-based) Pakistani law

Court of Special Appeals of Maryland - February 21, 1996

<http://www.thenewamerican.com/index.php/usnews/politics/4342-states-take-preemptive-strike-against-shariah>

http://scholar.google.com/scholar_case?case=13345154354945640474

In *Hosain v. Malik*, 108 Md.App. 284, 671 A.2d 988 (Md.1996), a Maryland Court granted comity and enforced a Pakistani custody order turning a child brought to the US by the mother (Joohi Q. Hosain) over to the father (Anwar Malik).

The Maryland Court held that: the burden was on the mother to prove the Pakistani court did not apply law in “substantial conformity with Maryland law” by a preponderance of the evidence; the case was “not about whether Pakistani religion, culture, or legal system is personally offensive to us or whether we share all of the same values, mores and customs, but rather whether the Pakistani courts applied a rule of law, evidence, or procedure so contradictory to Maryland public policy as to undermine the confidence in the trial”; the best interest of the child should not be “determined based on Maryland law, i.e., American cultures and mores,” but rather “by applying relevant Pakistani customs, culture and mores”; **“a Pakistani court could only determine the best interest of a Pakistani child by an analysis utilizing the customs, culture, religion, and mores of ... Pakistan”**; **“in the Pakistani culture, the well being of the child and the child’s proper development is thought to be facilitated by adherence to Islamic teachings”**;

The court recognized the **“longstanding doctrine [of Hazanit1] of one of the world’s oldest and largest religions practiced by hundreds of millions of people around the world and in this country, as applied as one factor in the best interest of the child test, is [not] repugnant to Maryland public policy.”**

The mother argued that Maryland law was violated because she may have been arrested for adultery if she returned to Pakistan for the custody proceedings and have been subject to “public whipping or death by stoning.” The court found this was “not repugnant” to Maryland public policy because such punishments were “extremely unlikely.”

MASSACHUSETTS

Rhodes v. ITT Sheraton Corp: Rejection of Saudi Arabia as an Alternate Forum for Resolving a Dispute

Massachusetts Superior Court - 1999

<http://volokh.com/2009/08/12/rejection-of-saudi-arabia-as-an-alternate-forum-for-resolving-a-dispute/>

The Plaintiff Rhodes was a British citizen on summer break from her university when she visited her parents at their home in Jeddah, Saudi Arabia. On August 23, 1994, she and her sister met two of their friends at the Sheraton Jeddah Hotel and Villas. The resort complex encompassed a beach, a large concrete wharf, a wooden platform or jetty and a lagoon. Coral stretched out from under the jetty and around the edge of the lagoon. The Plaintiff struck her head on this coral when she dove into the lagoon from the jetty. She lay in the water, face

down and unable to move, until she was pulled out and taken to a nearby hospital. The Plaintiff sustained a high level spinal injury and Plaintiff's expert estimated that her medical expenses resulting from the accident would exceed ten million dollars.

Under Massachusetts law a judge may dismiss or stay an action upon finding "that in the interest of substantial justice the action should be heard in another forum." The judge found that Saudi Arabia was not an adequate alternative forum because the **Plaintiff would experience severely restricted rights under the Shariah-based Saudi legal code:**

The first significant drawback to trial of this case in Saudi Arabia is that **plaintiff would not be permitted to testify...**

Prevailing in Saudi Arabia would be even more difficult for plaintiff in light of the requirement that, "[i]n financial matters, **a party must produce two male witnesses or one male and two female witnesses in order to prove a point.**"...

Saudi Arabia does not offer parties the opportunity to be heard by a jury...

... a Saudi forum would deprive plaintiff of basic procedures which she expects to enjoy in a Massachusetts forum.

Finally, the existence of biases against women and non-Muslims in Saudi Arabia would impose additional disadvantages on plaintiff. Defendants' expert attributes the differential treatment based on gender and religion to "long-standing, well-known provisions in the law." Although defendants promise to ensure that any recovery by plaintiff in a Saudi court would not be diminished because of her gender and religion, their guarantee cannot insulate plaintiff entirely from the systemic prejudices...

MICHIGAN

Saida Banu Tarikonda v. Bade Saheb Pinjari: Lower court recognizes Shariah divorce law; appeals court overrules

Court of Appeals of Michigan – April 7, 2009

<http://www.michbar.org/opinions/appeals/2009/040709/42377.pdf>

http://scholar.google.com/scholar_case?case=4294001533062003586

Plaintiff Tarikonda (wife) and defendant Pinjari (husband) are Muslim citizens of India who were married in Hyderabad, India in 2001. The couple resided in Michigan from February 2006 to January 2008, when they separated. Plaintiff remained in Michigan and defendant moved to New Jersey.

The triple talaq is a mechanism for divorce which exists in Sunni Islam. It simply consists of the husband saying the phrase I divorce you (Arabic:talaq) to the wife, three times.

In April 2008, the husband traveled to India and pronounced the following written triple talaq:

Now this deed witnesses that I the said Bade Pinjari, do hereby divorce Saida Tarikonda, daughter of T. Babu Khan, by pronouncing upon her Divorce/Talaq three times irrevocably and by severing all connections of husband and wife with her forever and for good.

1. I Divorce thee Saida Tarikonda
2. I Divorce thee Saida Tarikonda
3. I Divorce thee Saida Tarikonda

In May 2008, the wife filed a complaint for divorce in Michigan. The husband filed a motion to dismiss the complaint pursuant because of the existing Indian divorce. To prove the divorce occurred, he offered a divorce certificate from a Wakf Board in Andhra Pradesh, India. The trial court granted his motion. It instructed the wife to register the Indian divorce in Michigan and file a separate complaint for custody and child support.

On appeal, the wife argues that the trial court erred when it recognized the Indian divorce, because the triple talaq is violative of due process and contrary to public policy. **The court of appeals reversed the previous decision as void and against public policy since it violates due process and equal protection.**

***Nabil Taiseer Hassan and Sawsan Hassan v. Eric H. Holder, Jr.:* Michigan case cites Shariah courts, documents and marriage certificates**

United States Court of Appeals, Sixth Circuit - May 11, 2010.

http://scholar.google.com/scholar_case?case=17900651172709546887

The Petitioners were Nabil Hassan and his wife Sawsan Hassan, both Muslim and self-identified “Palestinians” born and raised in Jerusalem. Nabil Hassan was admitted to the United States in 1995 on an F-24 Immigrant Visa, which is reserved for unmarried children of lawful permanent residents. Hassan qualified for this visa because his mother was living in the United States and had LPR status. Sawsan Hassan entered the United States on the same day as Nabil and was admitted to the country on a Nonimmigrant Tourist Visa. On April 10, 1995, Nabil and Sawsan had a small wedding ceremony at a mosque in Michigan and signed documents to certify their marriage.

On December 29, 1999, Nabil filed an application for naturalization. Daniel Wells of the Immigration and Naturalization Service was assigned to investigate and adjudicate Nabil's application. On July 27, 2000, Officer Wells conducted an in-person interview of Nabil Hassan and became suspicious that Nabil and Sawsan had in fact married sometime before their 1995 entry in the United States. Nabil's naturalization application was denied. On May 23, 2002, the government served Nabil Hassan with a Notice to Appear, alleging that he had married Sawsan before entering the United States which would automatically revoke his visa.

Pursuant to Israeli law, the Shariah courts (and Shariah law) control personal status matters of Muslims residing in Jerusalem. Therefore the evidence in the case was based on Shariah marriage documents

issued by Islamic legal authorities in Jerusalem and whether the couple had “completed” their Shariah marriage via sexual intercourse.

Nabil testified that on February 24, 1995, the families created a written engagement contract, and that a Sharia agent named Nasra helped the families create the document and then file it with the appropriate authorities. **Nabil claimed that he and Sawsan did not finalize (i.e. consummate) their marriage in Jerusalem, however. Instead, they waited until April 10, 1995, when they had their ceremony in the mosque and celebration in Michigan.**

The appeals court noted that the lower court was looking for “**evidence that Petitioners had performed all the steps required for a marriage under Sharia law before they left for the United States.**” The lower court found that “**the evidence on the record, when viewed as a whole, compels the contrary conclusion that the government did not offer clear and convincing evidence that Petitioners had completed the steps required for a Muslim marriage under Sharia law before entering the United States.**”

The appeals court both affirmed in part and reversed in part the ruling, but ordered that “removal proceedings against Petitioners” be quashed and that they may remain in the United States.

MINNESOTA

Mohamed D. ABD ALLA v. Mohamed MOURSSI: Minnesota man appeals to court regarding decision in Islamic arbitration hearing

Court of Appeals of Minnesota – June 1, 2004

http://scholar.google.com/scholar_case?case=8449493111914467247

In August 2001, Mourssi and respondent Mohamed D. Abd Alla entered into a partnership to manage and acquire restaurants. The partnership was subject to a partnership agreement. The partnership agreement included an arbitration clause, which provides:

Any dispute, controversy or claim arising out of or in connection with or relating to this Agreement or any breach or alleged breach hereof shall, upon the request of any party involved, be **submitted to and settled by arbitration before the Arbitration Court of an Islamic Mosque located in the State of Minnesota pursuant to the laws of Islam** (or at any other place or under any other form of arbitration mutually acceptable to the parties so involved). Any award rendered shall be final and conclusive upon the parties and a judgment thereon may be entered in the highest court of the forum, state or Federal, having jurisdiction. The expenses of the arbitration shall be borne equally by the parties to the arbitration, provided that each party shall pay for and bear the costs of its own experts, evidence, and counsel.

At some point, the partnership acquired the Al-Bustan Restaurant. After purchasing the restaurant, numerous disputes arose between the partners. The parties agreed to arbitrate their difference before an Islamic arbitration committee. In September 2002, the committee issued its decision in favor of Abd Alla against Mourssi.

In April 2003, Abd Alla moved the district court to confirm the arbitration award. On May 14, 2003, Mourssi responded that the court should deny Abd Alla's motion and vacate the arbitration award "on the grounds that it was procured by corruption, fraud or other undue means and that the Committee exceeded its authority." During the hearing Abd Alla argued Mourssi had not timely contested the arbitration award and therefore could not now contest the award. **Mourssi argued that under Islamic law there is no set time for appeal.**

The district court confirmed the arbitration reward and appeals court affirmed their decision under Minn.Stat., ch. 572.

NEW JERSEY

S.D. v. M.J.R.: Man rapes wife and claims Shariah as a defense *S.D. v. M.J.R.*

Superior Court of New Jersey, Appellate Division - Decided July 23, 2010.

<http://www.leagle.com/unsecure/page.htm?shortname=innico20100723325>

Plaintiff S.D. (wife) and defendant M.J.R.(husband) are Muslim citizens of Morocco who were wed in an arranged marriage on July 31, 2008, when plaintiff was seventeen years old. On August 29, 2008, they came to New Jersey as the result of defendant's employment in this country as an accountant.

She describes a continual pattern of abuse culminating on January 22, 2009, when the defendant forced plaintiff to have sex with him while she cried. Plaintiff testified that defendant always told her, **"This is according to our religion. You are my wife, I c[an] do anything to you. The woman, she should submit and do anything I ask her to do."**

While recognizing that defendant had engaged in sexual relations with plaintiff against her expressed wishes in November 2008 and on the night of January 15 to 16, 2009, the judge did not find sexual assault or criminal sexual conduct to have been proven. He stated:

This court does not feel that, under the circumstances, that this defendant had a criminal desire to or intent to sexually assault or to sexually contact the plaintiff when he did. The court believes that he was operating under his belief that it is, as the husband, his desire to have sex when and whether he wanted to, was something that was consistent with his practices and it was something that was not prohibited.

After acknowledging that this was a case in which religious custom clashed with the law, and that under the law, plaintiff had a right to refuse defendant's advances, the judge found that defendant did not act with a criminal intent when he repeatedly insisted upon intercourse, despite plaintiff's contrary wishes.

An appellate court reversed in 2010, writing: **"Defendant's conduct in engaging in nonconsensual sexual intercourse was unquestionably knowing, regardless of his view that his religion permitted him to act as he did."**

The appeals court ruled that the judge was wrong to excuse the Defendant's actions due to his religious beliefs. The appellate court remanded for entry of a restraining order.

***Odatalla v Odatalla* – Enforcement of Islamic Mahr Agreement Superior Court of New Jersey, Chancery Div., Passaic County - June 24, 2002**

http://scholar.google.com/scholar_case?case=2649501230049632360

This case presented the issue of whether a civil court can enforce the terms of an Islamic Mahr Agreement, and arose in an action brought by the plaintiff for a divorce based upon grounds of extreme cruelty. The Defendant filed an answer and a countercomplaint for divorce also on grounds of extreme cruelty. The plaintiff sought enforcement of the Mahr Agreement contained in the Islamic marriage license.

The court used testimonial evidence from both plaintiff and defendant and an **actual copy of the Islamic marriage license. The videotape of the entire ceremony showed the families sitting on separate couches in the living room negotiating the terms and conditions of the entire Islamic marriage license including those of the Mahr Agreement.** After the negotiations, when a sum of money was determined for the Mahr Agreement, both families went to a table where the Imam began preparing the written Islamic marriage license including the Mahr Agreement. When the Islamic marriage license, including Mahr, was completed, the Imam presented it to each party for their signature. Each party read the entire license and Mahr Agreement and signed the same freely and voluntarily.

The Mahr Agreement, a section of the Islamic marriage license in the lower left portion of the license, read: "According to Islamic Law Dower is: Prompt One golden pound coin, Postponed Ten Thousand U.S. Dollars, Personal conditions___"

The defendant, Zuhair Odatalla, claimed the agreement was not a valid contract under New Jersey law. The court found that the Mahr Agreement is not void simply because it was entered into during an Islamic ceremony of marriage. Rather, enforcement of the secular parts of a written agreement is consistent with the constitutional mandate for a "free exercise" of religious beliefs. The court found that all of the essential elements of a contract were present and ruled that the defendant owed to the plaintiff the sum of \$10,000.

Clearly, the Mahr Agreement in the case at bar is nothing more and nothing less than a simple contract between two consenting adults. It does not contravene any statute or interests of society. Rather, the Mahr Agreement continues a custom and tradition that is unique to a certain segment of our current society and is not at war with any public morals.

NEW YORK

Sofyan Ali SALEH, Petitioner, v. UNITED STATES DEPARTMENT OF JUSTICE: Yemeni jailed in US fights deportation on Shariah grounds

United States Court of Appeals, Second Circuit - Decided April 29, 1992.

http://scholar.google.com/scholar_case?case=12533084801905965406

Saleh contended that because he was under a death sentence imposed by an Islamic court in Yemen for a homicide which he committed in the United States that had already resulted in his imprisonment here, he had established a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion" within the meaning of 8 U.S.C. § 1101(a)(42) (1988), and thus qualified for asylum and withholding of deportation.

Saleh, a Yemeni citizen, became a permanent resident alien through marriage to a U.S. citizen in 1982. On February 4, 1983, while living in New York City, he shot and killed Abdulla Elhosheshi, another Yemeni national. Saleh pled guilty to first degree manslaughter and commenced serving a sentence of 8 1/3 to 25 years. **Based on the same occurrence, Saleh was also tried and convicted in absentia in Yemen and sentenced to death by a "Sharia" (Islamic) court. Jurisdiction existed because Saleh and the victim were both Yemeni Muslims.**

He submitted a memorandum of law arguing that his Yemeni conviction entitled him to asylum. He argued that he was being persecuted on account of his religion — because he would be punished in Yemen under the **"fanatical interpretation of age old [religious] laws and customs,"** and that he was being persecuted because of his membership in a particular social group — Yemeni Moslems residing outside of Yemen, "upon whom the Islamic authorities in Yemen are attempting to exert their power and control."

Also, under Islamic law, the victim's family could waive the death sentence by electing to receive "blood money" from Saleh in lieu of his execution. In this case, the amount of "blood money" could range from \$186,000 to \$360,000. Saleh contended that he was being persecuted on account of his membership in the "particular social group" of poor Yemenis who could not afford to pay "blood money" to buy their way out of a death sentence.

On June 5, 1990, the IJ rendered a decision that denied Saleh's applications and ordered his deportation. The IJ concluded that Saleh's conviction in Yemen did not constitute statutory "persecution" because Saleh had simply been "prosecut[ed] for a common law offense."

PEOPLE of the STATE of NEW YORK v. IBRAHIM BEN BENU:

CRIMINAL COURT OF THE CITY OF NEW YORK, KINGS COUNTY - May 13, 1976

Case of forced child marriage following Islam that was voided as against public policy: the father of the child forced into marriage was also acknowledged to be in a polygamous "marriage"

http://ny.findacase.com/research/wfrmDocViewer.aspx/xq/fac.%5CNY%5CNY3%5C1976%5C19760513_0042949.NY.htm/qx

OHIO

Mohammed Zawahiri v. Raghad Zahar Alwattar: Islamic Mahr Agreements in Civil Courts

Court of Appeals of Ohio - July 10, 2008

http://volokh.com/archives/archive_2008_07_13-2008_07_19.shtml#1216332053

Mohammed Zawahiri and Raghad Z. Alwattar were married, in an arranged marriage. The day of the wedding, Zawahiri signed a "mahr" under which he promised to pay his wife \$25,000 in the event of divorce.

This case is similar to the *Odatalla v Odatalla* mahr agreement case in New Jersey above.

TENNESSEE

HOSSEIN AGHILI VS. HAMIDEH SABA SAADATNEJADI: Legitimizes Polygamy and "expertise" in Islamic Studies

COURT OF APPEALS OF TENNESSEE June 11, 1997

<http://www.tsc.state.tn.us/opinions/TCA/PDF/972/aghilih.pdf>

This appellate decision dealt with the validity of an Islamic marriage under U.S. law, and the decision acknowledges that Islamic law supports polygamy with up to four wives:

This appeal involves the validity of an Islamic marriage. Shortly after the marriage, the husband filed suit in the Circuit Court for Davidson County seeking a divorce or, in the alternative, an annulment. After the wife counterclaimed for a divorce, the husband moved for a summary judgment on his annulment claim. The trial court granted the summary judgment, finding that the undisputed evidence demonstrated that the officiant was not qualified to perform the marriage under Islamic law and that the officiant had failed to file the marriage license within the legally prescribed time. The wife takes issue on this appeal with the trial court's conclusion that the marriage was void ab initio. We have determined that the trial court erred and, therefore, reverse the summary judgment.

TEXAS

***AMIR AHMED V. AFREEN S. AHMED*: Texas Divorce Case; \$50,000 Mahr agreement disputed**

Court of Appeals of Texas - June 17, 2008

http://scholar.google.com/scholar_case?case=13628678145937799273

MAJORITY OPINION

LESLIE B. YATES, Justice.

In this divorce case, appellant Amir Ahmed appeals from the trial court's order awarding his ex-wife, appellee Afreen S. Ahmed, \$50,000 pursuant to an Islamic marriage certificate signed by the parties. We affirm in part and reverse and remand in part.

Amir and Afreen married in a civil ceremony in November 1999. Both are of Indian descent, and both practice the Islamic faith. The marriage was arranged 193*193 between the parties' families. They did not live together until about six months later after their Islamic marriage ceremony in New York on May 21, 2000. As part of this ceremony, the parties signed an Islamic marriage certificate called a "Nikah Nama," which mentions a deferred "Mahr" of \$50,000. According to Afreen's trial testimony, a Mahr is an Islamic religious custom whereby the husband contracts to give the wife a sum of money, either at the time of the marriage or deferred in the event of a divorce. On appeal, Amir argues that the trial court erred in enforcing the Mahr because (1) it is not a valid premarital agreement under the Family Code, (2) its terms are too vague and uncertain to be enforced, (3) the evidence is legally and factually insufficient to support the \$50,000 award, (4) it is a religious agreement and enforcing it violates the Establishment Clause of the United States Constitution, (5) it

encourages divorce, which is against public policy, and (6) according to **Islamic law**, enforcing a Mahr is inconsistent with an additional division of marital property.

The Court erred when it granted a money judgment in favor of [Afreeen] in the amount of \$50,000 for a [Mahr] agreement between the parties. Even though the court did not make an express finding, the court erred when it implicitly found that the religious based [Mahr] agreement constitutes an enforceable contract under the laws of Texas and [the] United States. The finding is not supported by evidence, or in the alternative, there is insufficient evidence to support the finding.

Saadallah JABRI and Aida Jabri, Appellants, v. Jamal QADDURA, Appellee: Texas Islamic arbitration court taken into account in divorce case

Court of Appeals of Texas - May 8, 2003

http://scholar.google.com/scholar_case?case=9457607297329156688

<http://www.2ndcoa.courts.state.tx.us/opinions/HTMLopinion.asp?OpinionID=14601>

Rola Qaddura and Jamal Qaddura were married on September 3, 1993. Previously, on August 28, 1993, they had signed an "Islamic Society of Arlington Islamic Marriage Certificate" which reflects that the 407*407 "dowry for the bride" was: "One-half of the value of the house located at 2206 Gladstone. This is in addition to \$40,000 Fourty [sic] Thousand U.S. Dollars the payment of which is deferred."

On October 19, 1999, Rola filed for divorce. She sought sole managing conservatorship of the parties' two children, child support, division of the parties' estate, and enforcement of the terms of the Islamic Marriage Certificate. Rola subsequently sued Jamal's brother, Osama Qaddura, as a third-party defendant, alleging he was engaged in a conspiracy with Jamal whereby Jamal was wrongfully transferring community assets to Osama, including a house on Vesta Via Court.

Jamal filed a counterclaim seeking sole managing conservatorship and child support. He sought a declaration that the Islamic Marriage Certificate was unenforceable because it was induced by Rola by fraud. He also alleged a separate cause of action against Rola for "defamation and false light," in which he sought \$250,000 actual damages and \$1,000,000 exemplary damages.

Osama filed a counterclaim seeking a declaratory judgment that he is the sole owner of the house on Vesta Via Court (with no right of reimbursement by Rola or Jamal) and of a specific bank account.

On January 18, 2002, Jamal filed a separate suit seeking a protective order against Rola's parents (the children's grandparents), Saadallah Jabri and Aida Jabri, alleging the children had been injured while in their care.

On September 25, 2002, all five parties signed an "Arbitration Agreement" to submit all claims to the TEXAS ISLAMIC COURT, 888 S. Greenville Ave., Suite 188, Richardson, Texas.

Accommodations

- **Deference to Islamist sensibilities in education.** A St. Cloud State student, who was disabled and assisted by a dog, was simply granted credit for a required course when the dog was found to be offensive to the majority of Muslim students at the school location where he was assigned to gain his teaching credit.
<http://www.wnd.com/?pageId=64151>
- **A public school with Islamist principles.** The Tarek ibn Ziyad Academy in Minneapolis is a public, magnet school, funded with taxpayer money, that was discovered to mandate prayer on the premises and impose other sharia mandates on its students, such as full coverage uniforms for female students. There is a mosque on campus and a Muslim studies course taught in addition to the regular curriculum, which is essentially mandatory due to the fact that school buses do not leave the campus until the extra course ends each day.
<http://www.startribune.com/local/17406054.html>
- **State governments going outside their duty to accommodate sharia.** In Minnesota, the state actively works to sponsor Murabaha financed mortgages, acting as intermediaries when they buy homes from realtors and re-sell them to Muslims at their total, with mortgage interest included, price. It is not within a state's duty to actively participate in the real estate market.
<http://wcco.com/local/islamic.mortgages.minnesota.2.952805.html>
- **US medical organization adopts accommodationist stance on FGM.** On April 26, the American Association of Pediatrics revised its 1998 policy on FGM. They replaced "mutilation" with "cutting" and advocated a "compromise" position of "clitoral nicking" be practiced in the United States. Under intense scrutiny from anti-FGM advocates, AAP reversed itself a month later. The WHO has fervently and repeatedly condemned the practice on ethical and medical grounds.
<http://www.who.int/reproductivehealth/publications/fgm/en/index.html>
- **Sharia activism in the political system.** In certain parts of Minnesota, politicians directly engage their constituency on a platform advocating Somali Muslim rights and sensibilities. Particularly, Representative Keith Ellison has come to be their national campaigner. It is clear that as a Muslim community with Islamist interests they are attempting to make a voice for themselves within the American legal system. Ellison's strong ties to radical groups is enough to cause great alarm.
<http://www.weeklystandard.com/Content/Public/Articles/000/000/012/764obcsx.asp?page=2>
- **Sharia rules for Minneapolis cabbies.** In October of 2006, the issue of sharia incorporation was brought to national attention when Minneapolis-St. Paul airport taxi cab drivers were refusing services to any potential riders who were carrying alcohol. They made an attempt to make a legal right of their refusal of service, going so far as to work with the Metropolitan Airports Commission to make sure that drivers were in no way penalized for this refusal. Only after major public outcry did the MAC back down on proposed solutions that seemed partial to sharia law deference.
<http://www.danielpipes.org/4046/dont-bring-that-booze-into-my-taxi>
- **Muslim on trial exempted from strip search.** An imprisoned oncologist, Rafil Dhafir, charged with setting up an unlicensed charity and illegally funneling \$4 million to Iraq was allowed to attend his trial without being strip-searched. Dhafir said strip searches were against his Muslim faith.
<http://query.nytimes.com/gst/fullpage.html?res=9C01E1DD133AF93AA25753C1A9629C8B63>

- **Teaching jihad in public schools.** "Become a Muslim warrior during the crusades or during an ancient jihad." Thus read the instructions for seventh graders in *Islam: A Simulation of Islamic History and Culture, 610- 1100*, a three-week curriculum produced by Interaction Publishers, Inc. In classrooms across the United States, students who follow its directions find themselves fighting mock battles of jihad against "Christian crusaders" and other assorted "infidels." Upon gaining victory, our mock-Muslim warriors "Praise Allah." A lawsuit to stop the program's use in California schools failed in 2003.
<http://www.danielpipes.org/430/become-a-muslim-warrior>
- **Proselytizing with taxpayer funds.** In 2002, PBS aired a documentary entitled "Muhammad: Legacy of a Prophet" funded in large part by the Corporation for Public Broadcasting, a private, nonprofit corporation created by Congress that in fiscal 2002 received \$350 million in taxpayers' funds. The film treated religious beliefs, such as Muhammad's trip to Heaven, as historical fact, painted Muslim wars as exclusively defensive, and praised Muhammad's treatment of women while ignoring the conditions of women in the Muslim world.
<http://www.danielpipes.org/982/pbs-recruiting-for-islam>
- **Muslim-only swim time.** A Seattle pool sets aside time for Muslim women to use the pool by themselves so they could adhere to strict religious restrictions, which require women to be completely covered. The outfit that organizes and pays for the Muslim Sister Swim program is the North Seattle Family Center, a unit of the Children's Home Society, a non-profit that gets most of its money from various government sources. As such, it should strictly comply with non-discrimination guidelines. Nevertheless, the Muslim Sister Swim is open exclusively to Muslims.
<http://www.soundpolitics.com/archives/004929.html>
- **Gender-separate classrooms.** In 2005, 60 faculty members from King Abdulaziz University in Saudi Arabia were taking courses at Virginia Tech. Though taking identical courses, the students met in gender-specific classes. Tech officials said administrators from the Saudi university separated the sexes to mirror classroom settings at their home institution, which operates separate campuses for men and women. The university spokesman said Tech chose to respect the Saudi culture "rather than impress our culture on them."
<http://www.roanoke.com/news/roanoke/28903.html>
- **Public Universities, including University of Michigan and George Mason University, have installed Islamic footbaths in student restrooms.** In 2007, UM-Dearborn announced that it would install \$25,000 foot-washing stations in several bathrooms to accommodate a student body that is 10% Muslim. According to the New York Times, "But as a legal and political matter, that solution has not been quite so simple. When word of the plan got out this spring, it created instant controversy, with bloggers going on about the Islamification of the university, students divided on the use of their building-maintenance fees, and tricky legal questions about whether the plan was a legitimate accommodation of students' right to practice their religion or unconstitutional government." <http://www.nytimes.com/2007/08/07/world/americas/07iht-muslims.4.7022566.html>
- **A community for sharia-practicioners only.** Little Rock, Arkansas's Local Planning Commission has granted the right to zone land for an Islamic community, which will feature a mosque, school, and public calls to prayer. Most importantly, however, the community will ban all alcohol, which is in direct contrast to American law, making this a specifically sharia-abiding community. Although the community is proclaimed as "open to everybody," there is no doubt that it will attract mainly Muslims.
<http://www.danielpipes.org/blog/2004/08/permit-muslim-only-enclaves>

- **Restrictions on mail to U.S. military.** Mail sent from United States families to their military relatives serving in foreign countries is often censored, with restrictions to certain codes barring the mailing of pork or pork byproducts, or more jarringly, “religious materials contrary to Islamic faith.”
<http://www.usps.com/cpim/ftp/bulletin/2003/html/pb22097/apofpo.html#0.2.LMRPOZ.NQFEZ8.BZO8BH.H>
- **Endorsement of prayer breaks in public schools.** Students at a San Diego elementary school are given 15 minute prayer breaks, and it has been alleged that a school aide often led these prayers. Opponents of the prayer breaks have noted that they feel the school to be endorsing Islam over other faiths, especially when it is considered that no other religious groups are given equal access to prayer leaders such as priests or rabbis.
<http://legacy.signonsandiego.com/news/metro/20070702-9999-1n2prayer.html>
- **An Arab-language institution may promulgate sharia.** In New York, the Khalil Gibran International Academy, was originally pitched as an Arabic-language institution, however, concerns soon arose when it became clear that the group’s leadership was known to have radical Islamist ties, and that the majority of the advisory board was composed of local imams. Add to this the fact that much Arab literature has Islamist overtones, and the school runs the risk of being a fully sharia-propagating shop.
<http://www.danielpipes.org/blog/2007/03/on-new-yorks-khalil-gibran-international>
- **Christians arrested for handing out leaflets at Arab festival.**
<http://the-american-catholic.com/2010/06/24/sharia-in-dearborn/>
- **Shariah compliant mortgages in NJ** <http://creepingsharia.wordpress.com/2010/06/08/islamic-shariah-based-banking-in-new-jersey/>

<http://minnesota.publicradio.org/display/web/2010/07/23/electrolux-eeoc-complaint/>
- **Colorado Plant Segregates Prayer Rooms for Muslims** ("JBS, Muslims vow harmony")
<http://www.greeleytribune.com/article/20090821/NEWS/908219988/1001>
- **Boston Mosque to Broadcast Amplified Call to Prayer Against Previous Assurances**
<http://www.solomoniam.com/blog/archive/2008/09/boston-mosque-to-broadcast-amplified-cal/index.shtml>