

Promissory Notes of 7 June 1930 and for Cheques of 9 March 1931, even though Saudi Arabia has not become party to the conventions themselves. As Shari'a forbids the payment and charging of interest, provisions within the Conventions relating to interest were omitted from the Negotiable Instruments Law. In practice, this position has been applied by offsetting interest payments made voluntarily by the debtor against the principle of the debt. The procedure before the Committee is subject to the provisions of the Code of Commercial Courts of 1931. Decisions may be appealed to the Minister of Commerce.⁵⁹ The competence of settling negotiable instruments disputes will move to the Commercial Courts by 2010/11 and as a result, this Committee will disappear.

Committee for the Settlement of Banking Disputes of the Saudi Arabian Monetary Agency (SAMA)

The Committee for the Settlement of Banking Disputes was established under the Saudi Arabian Monetary Authority (SAMA) for the purpose of settling disputes between banks and their clients arising from contracts and transactions that do not concern commercial papers such as bills of exchange, which should be settled through a different Committee. In exercising its powers, the Committee may decide to freeze a party's assets or restrict parties from travelling outside of Saudi Arabia.

The Committee consists of three members who are appointed by the Ministry of Finance upon the recommendation of the Saudi Arabian Monetary Agency governor. There is only one Committee for the Settlement of Banking Disputes in the kingdom, which is located in Riyadh. The Committee is under the umbrella of SAMA and all its members are SAMA employees. All members are equal. The working mechanisms of the Committee will be examined in detail in the last chapter.

Board of Grievances – Diwan Almazalim

The Board of Grievances, hereinafter Diwan Almazalim, was created in 1955 as a department of the Council of Ministers, Majlis Al wuzara'.⁶⁰ The Board was later reconstituted as an independent entity.⁶¹ At first the Board served as a general clearing house for complaints in the public domain; it has since evolved into the most important administrative and judicial body outside the Shari'a courts.⁶² Some authors argued that Diwan Almazalim is a sort of Conseil d'État that has been borrowed by the Egyptians from the Napoleonic Code; however, the principle of

59 Ibid.

60 See the Royal Decree No. 02/13/8759 of 1374 H. (1955).

61 See the Royal Decree No. (M/51) of 1402 H. (1982).

62 G. Sfeir, 'The Saudi Approach to Law Reform', *American Journal of Comparative Law*, 36 (1988), pp. 729–44.

Qadi Almazalim was well known in Shari'a treatises many centuries prior to the foundation of the Napoleonic laws.⁶³

Upon its establishment, Diwan Almazalim's competence was limited to receiving and investigating complaints to which the government or a governmental entity was party.⁶⁴ Owing to rapid economic growth following the oil boom in the 1970s and the trend of reducing the caseload in Shari'a courts, as well as founding a specialized legal body for settling commercial matters where the application of strict Shari'a rules may be seen as an impediment to the flow of foreign investment, the settlement of commercial and investment disputes has been added to the competence of the Diwan.⁶⁵ Another important step in that direction came when the Diwan was given the power to entertain applications for the execution of foreign judgments when questions of public policy arise.⁶⁶ The Diwan remained a commercial and administrative court until the issuance of the new Law of Diwan Almazalim, which changed the structure of the Diwan considerably.⁶⁷ The Diwan was restricted by the new law, which transferred the competence of settling commercial disputes from the Diwan to the new courts of first instance. With regard to arbitration, the Diwan is still the competent authority for the supervision of arbitration proceedings in Saudi Arabia. The Diwan is also competent for the enforcement of arbitral awards, both foreign and domestic, in addition to the enforcement of foreign judgments subject to the Riyadh Convention of 1983.⁶⁸ It is foreseeable that a procedural law for Diwan Almazalim, similar to that applicable before Shari'a courts, will be one day enacted.

The Diwan published some of its decisions and rulings at different stages in the 1980s and 1990s. In 2009, it announced the publication of more than 5,000 decisions, which were, according to the daily newspapers, printed in five volumes and given to judges and 'people who are interested in legal affairs!' Whatever the truth of that, the five volumes are not yet available either for sale or in academic libraries.

63 See, generally, M. Hanson, 'The Influence of French Law on the Legal Development of Saudi Arabia', *Arab Law Quarterly*, 2 (1987), p. 272.

64 Ibid.

65 Ibid. See also Royal Decree No. (M/51) of 1402 H. (1982). This opinion proved to be inaccurate for the reason that the Board of Grievances functions in the same way as Shari'a courts.

66 K. Roy, 'The New York Convention and Saudi Arabia: Can a Country Use the Public Policy Defence to Refuse Enforcement of Non-Domestic Arbitral Awards?', *Fordham International Law Journal*, 18 (1994–1995), p. 922.

67 The Law of Diwan Almazalim of Saudi Arabia, Royal Decree No. (M/78) dated 19/09/1428 H. *Umm Alqura Gazette*, issue No. 4170 dated 30/09/1428 H. (12/10/2007).

68 The Arab League Convention for Judicial Co-operation (Riyadh Convention). Signed in Riyadh, Saudi Arabia on 4 April 1983.

Wahhabism and Saudi Law

Foundation and Origin

Unfortunately, media forms such as televisions, radio and newspapers are the only sources of global information for many people, regardless of the fact that these media are largely biased and controlled by those who finance them. After September 2001, the Western world started to talk about something called Wahhabism when describing the state, law and religious institution of Saudi Arabia. Part of the Western media took an aggressive position against the Saudis, forgetting that they were talking about a different country with a totally different culture. It is likely that the majority of those media activists had never been to Saudi Arabia or even met a Saudi person.

The term Wahhabism, or Wahhabiya, has been used to describe the Islamic revival and reform movement that took place in the eighteenth century in the centre of Arabia. The movement mainly concentrated on restoring the correct Islamic rituals and beliefs, as polytheism had spread widely as a result of ignorance of Shari'a, especially among the Bedouins and people from remote villages and oases. Unlike some other reform movements of that era, the movement of Muhammad ben Abdulwahhab (1702–1791) did not start as a response to an external factor, such as European imperialism, hostility against the Turkish or the desire for political independence. The Wahhabi movement arose in response to internal conditions, notably the perceived deterioration in Muslim beliefs and practices.⁶⁹ What is called Wahhabism was no more than a socio-religious reform movement without any major contribution to the Islamic fiqh, because Muhammad ben Abdulwahhab was following the teachings of the late Hanbali scholars, especially Ibn Taymiyyah and Ibn Alqayem.⁷⁰ The name Wahhabiya was given to the movement of Sheikh Muhammad ben Abdulwahhab by its opponents, as the followers of Ibn Abdulwahhab called themselves Almuwahhideen (the Unitarians).⁷¹

The movement of Muhammad ben Abdulwahhab, or 'the Sheikh' as his followers called him, was described outside Najd as 'Islamic Orthodoxy'. The opponents of the movement inside Najd and within the Islamic world tried to stop it by attacking the movement and the Sheikh himself. For instance, they alleged that the Wahhabi school displayed an extreme hostility to intellectualism, spirituality and all sectarian divisions within Islam. Previous allegations were the main topics in a long debate between the Ulama of Najd and Hejaz during the eighteenth and nineteenth centuries. The Wahhabi movement also faced military attacks from outside the Arabian Peninsula. Starting in 1811, the military attacks led to the

69 See, generally, M. Kurdi, *Altareekh Alqaweem Le Mecca Wa Bait Allah Alkareem* (1st edn., Albaz Publications, 1962), Vol. 5.

70 Ibid.

71 N. Delong-Bas, *Wahhabi Islam from Revival and Reform to Global Jihad* (1st edn., Oxford University Press), p. 8.

collapse of the first Saudi state in 1818. The war between the Egyptian force of Muhammad Ali by the command of his son Ibrahim Pasha succeeded in stopping the 'political' Wahhabism, but it failed in defeating the faith of its followers. Some scholars of that time adopted an extreme position against the Sheikh to the extent that they described him and his students as apostates.⁷² Meanwhile, the Western world came to see Wahhabism as a 'new Islamic sect' that encouraged intolerance and extremism.⁷³ Nowadays, Wahhabism in the Western context refers to the form of Sunni Islam practised in Saudi Arabia, which bears the characteristics of extremism and intolerance, and supports terrorism.⁷⁴

The true main objectives of the Wahhabi movement are summarized in the following quotations:

Muhammad ben Abdulwahhab perceived the religious, social and political problems of his society and the critical conditions through which the Najdi people were passing. Thus he dedicated his life and enthusiastic energy to bringing about a comprehensive solution to the various problems of the Najdi society through the establishment of a strong central government that would enforce the Shari'a and impose peace and order in the land. Ibn Abdulwahhab was prepared for the great task by his own education and training, and was assisted by the particular religious and political conditions of Najd in his time.⁷⁵

Ibn Abdulwahhab aimed at renewing and reforming the faith and the practice of his people and both concepts are fundamental components of Islam's worldview, embedded in the Quran and the Sunna of the Prophet and both concepts, renewal and reform involve a call for the return to the fundamentals of Islam, the Quran and the Sunna.⁷⁶

Wahhabism and Politics

Sheikh Muhammad ben Abdulwahhab was initially persecuted by local religious scholars and political leaders who viewed his teachings as a threat to their power and influence. The Sheikh, who had been expelled from his home town Al O'yainah, looked for protection in many neighbouring towns but could not find any, either because the governors opposed him and his movement or because they

72 Ibid.

73 See, generally, supra n. 71, Delong-Bas and supra n. 62, Sfeir, p. 731.

74 C. Blanchard, *The Islamic Tradition of Wahhabism and Salafiyya* (Congressional Research Service Report for Congress, submitted on 17/01/2007).

75 U. Aljuhany, *Najd before the Salafi Reform Movement: Social, Political and Religious Conditions during the Three Centuries Preceding the Rise of the Saudi State* (1st edn., Ithaca Press in association with the King Abdul-Aziz Foundation for Research and Archives, 2002), p. 156.

76 J. Esposito, *Islam: The Straight Path* (1st edn., Oxford University Press, 1988), pp. 114–18.

feared his opponents. Eventually the Sheikh received a warm welcome in the town of Diriyah, which was ruled by Muhammad ben Saud.

Muhammad ben Abdulwahhab and Muhammad ben Saud formed an agreement to dedicate their lives to restoring the pure teachings of Islam to the Muslim community. The agreement was the Constitution of the first Saudi state; Muhammad ben Saud, 'the Imam', was required under this agreement to give political and military protection to 'the Sheikh'. Muhammad ben Abdulwahhab, in his turn,⁷⁷ gave spiritual guidance to the newly formed state under the political rule of Muhammad ben Saud. By 1788, the Saudi state ruled over the entire central province of Saudi Arabia. Since that time, the term Wahhabiya was used outside Najd to describe the Saudi state. The fame and success of the Sheikh's movement and the newly formed state stimulated the hostility as well as the panic of the Ottoman Empire, which was the dominant power in the Middle East and North Africa at the time. The Ottoman Empire and its allies in the region tried, as mentioned above, to break the Sheikh and the Saudi state in various ways. From then on, the term Wahhabiya started to be used for people of that particular geographic area, i.e., the central region of Saudi Arabia; and after that, for people who followed the teachings of Muhammad ben Abdulwahhab anywhere else, but especially for Saudis.⁷⁸

Wahhabism and Saudi Law

The Saudi legal system is based totally on the Shari'a, the Quran and the Sunna. There is no reference to the word Wahhabiya in any of the codes, royal decrees or court decisions, or even in the curriculum of the Shari'a colleges in Saudi Arabia. The term Wahhabiya has been given by outsiders to Saudi Arabia, its law and its people; it is in use only outside the country. Article 1 of the Saudi Basic Law states that the kingdom of Saudi Arabia is a sovereign Arab Islamic state; and that its constitution is made up of the Quran and the Sunna.⁷⁹ Article 1 of the Law of Judiciary states clearly that Shari'a rules are the only source of legislation in Saudi Arabia; it does not mention Wahhabiya or Sheikh Muhammad ben Abdulwahhab. It can be said that Wahhabiya exists only in the minds of the opponents of Saudi Arabia, who transferred their inaccurate understanding to the world in a way that represents the movement of Muhammad ben Abdulwahhab as a new Islamic school or Mathhab.

77 The agreement affected the Saudi religious institution, as the Sheikh's descendants are still in its top positions, e.g., the Minister of Justice, the Minister of Islamic Affairs and the Grand Mufti.

78 See, generally, A. Sa'ied, *The History of the Saudi State* (1st edn., Darat Almalik Abdul-Aziz, 1973).

79 The Basic Law of Saudi Arabia, *Alnezam Alasasi Lelhokm*, Royal Decree No. (90/A) dated 28/06/1412 H. (1992).

The Role of Women in the Saudi Legal System

Owing to some cultural controversies, women's participation in the Saudi legal system is very limited. In accordance with Shari'a ruling, women cannot be appointed as judges or arbitrators. This is not a matter for discussion in Saudi Arabia, as Shari'a requires arbitrators to be men. According to the vast majority of Shari'a scholars, the appointment of a woman as a judge/arbitrator is null and void, even if she gives a correct judgment.⁸⁰ Scholars have evidenced this opinion with the following Hadeeth:

When the Prophet heard the news that the people of Persia had made the daughter of Khosrau their Queen, he said, "Never will succeed such a nation as makes a woman their ruler."⁸¹

The vast majority of Muslim scholars do not recognize the appointment of women arbitrators because women are not qualified to be judges.⁸²

Scholars support their argument with the fact that a man's witness is equal to that of two women. The legal basis for this practice is the following Quranic verse:

Two men shall serve as witnesses; if not two men, then a man and two women whose testimony is acceptable to all. Thus, if one woman becomes biased, the other will remind her.⁸³

As stated, appointing women as judges is not a negotiable matter, however, in the near future, women will be allowed to practise law as licensed lawyers, and this issue is still under consideration by the Ministry of Justice. At the moment women are allowed to work as in-house legal advisers.

The Influence of the Mufti on the Application of Shari'a in the Saudi Judiciary

The role played by the official Mufti is very important because the Mufti is the highest religious authority in the Islamic state, occupying an intermediate position between the law, religion and real life. The main duty of the official Mufti is to give opinions concerning matters of Shari'a law and social affairs; in other words, the

80 M. Ibn Qodamah, *Almoghni* (1st edn., Hajar Publications, 1992), Vol. 11, p. 380.

81 A. Albukhari, *Aljame' Alsaheeh (Saheeh Albukhari)* (1st edn., Dar Aljeel, 2005), Vol. 9, Chapter 88, Hadeeth No. 219.

82 A. Al-Kenain, *Altahkeem fe AlShari'a Alislamiyah: Altahkeem Al'am, wa Altahkeem fe Alshiqaq Alzaouji* (1st edn., Dar Alasimah, 2000), pp. 77–79.

83 The Quran 1: 282.

Mufti is the authority which gives guidance on practical ways of applying Shari'a rules in legal and social matters.⁸⁴ It cannot be denied that the Saudi judiciary falls under the influence of the General Mufti, or Almufti Al'am, who works side by side with the monarch as a final resort after the Committee of the Senior Scholars, known as Hay'at Kibar Al Ulama'. The Grand Mufti belongs to the Hanbali school, and so the influence of the Hanbali school both on the reasoning of judges and on the application of Shari'a in Shari'a courts is very clear. The late General Mufti Sheikh Abdul-Aziz ben Baz (1910–1999), who served as a judge for many years, rejected the idea of basing legal opinions solely on the teachings of one school. Sheikh ben Baz instructed judges and scholars to liberalize their thinking and to develop a mechanism for allowing judges to decide on cases not on the basis of a particular school of thought, but on the basis of equity and mercy. It has been noted from his fatwa that Sheikh ben Baz always tried to find the simplest solution to any problem; in other words, he wanted to make life easier, and his judgments in the areas of family and criminal law are clear evidence of this approach.⁸⁵ Nowadays, it can be argued that the fatwa of Sheikh Abdul-Aziz ben Baz is one of the strongest legal sources before any Saudi court.⁸⁶ With the exception of Sheikh ben Baz, however, General Muftis of Saudi Arabia are known for their strict observance of the Hanbali teachings in accordance with the teachings of the scholar Ibn Taymiyyah.

The reasons behind the General Muftis' strict adherence to the Hanbali school under the teachings of Ibn Taymiyyah are firstly that the Hanbali school has been followed by the Saudi Arabian royal family since the time of the agreement between Muhammad Ibn Saud and Muhammad Ibn Abdulwahhab in the eighteenth century. Secondly, the vast majority of judges and senior scholars follow the Hanbali school because of either education or family background, especially the Mufti and the former minister of Justice (1993–2009), who are direct descendents of Sheikh Muhammad ben Abdulwahhab. The descendents of Sheikh Muhammad ben Abdulwahhab are known today as 'Al-Ash-Sheikh' and they occupy most of the highest religious and legal positions in the Government of Saudi Arabia.⁸⁷

84 J. Skovgaard-Petersen, *Defining Islam for the Egyptian State: Mufti and Fatwas of the Dar al-Ifta* (1st edn., Brill Publishers, 1997), pp. 5–9.

85 For more details, see Sheik Abdul-Aziz ben Baz's fatwa concerning divorce No. 2157 dated 09/11/1391 H. (1971); see also the Council of Senior Ulama decision concerning murder No. 38 dated 11/08/1395 H. (1975); see decision No. 167 of the Shari'a Supreme Court of Riyadh concerning divorce dated 14/06/1392 H. (1972).

86 The supremacy of the fatwa over some codes and regulations can be seen by looking at decisions of the Shari'a court in disputed matters such as the sale of tobacco.

87 The General Mufti of Saudi Arabia is Sheik Abdul-Aziz ben Abdullah Al-Ash-Sheikh; the ex-Minster of Justice and chairman of the parliament Dr Abdullah ben Muhammad Al-Ash-Sheikh 1993–2009, a member of the same family, was appointed as the first Minister of Justice between 1975 and 1990; the Minister of Islamic Affairs since 1996, Sheik Saleh ben Abdul-Aziz Al-Ash-Sheikh, also a member of the same family, was appointed as the first official Mufti in 1954.

The importance of the General Mufti's role with regard to the judiciary is evident when the Ministry of Justice refers a question to him, asking for legal or religious guidance on a specific issue. The Mufti's answer is considered to be a sort of binding precedent before any court in Saudi Arabia. With regard to arbitration, the guidance of the General Mufti is very important in determining the rules of public policy and the application of Shari'a in Saudi Arabia.

The Influence of Foreign Laws on Saudi Law

Owing to the lack of legal experience at the time of Saudi Arabia's formation, King Abdul-Aziz had to use the existing Ottoman Codes as a base for the legal system and a supplement to Shari'a rules. The newly formed state had to work further to develop a suitable body of legislation, which depended on the available bodies of law and on foreign expertise. That trend was established by his order to the attorney general of Hejaz to adhere to the Ottoman regulations until further notice.⁸⁸ The Code of Commercial Courts of 1931 was extensively inspired by the Ottoman Code of 1850. With many amendments since that time, the Code is still in existence today; it includes a lot of Turkish terms and can be considered as a direct translation from the Turkish Code.⁸⁹ Moreover, King Abdul-Aziz attempted to codify the teachings of the four Islamic schools in a similar way to the Majalla's codification of the Hanafi fiqh; however, this step was strongly opposed by radical scholars and never saw the light of day. In conjunction with that attempt, the King ordered Shari'a judges not to be bound by the rules of one school of fiqh in a way that would lead to one school's ruling abrogating another's.⁹⁰ Yet some Ulama had their own agenda; they opposed the King's reform plans and tried to put pressure on all the judges in the kingdom to apply the Hanbali fiqh under the teachings of the late scholar Ibn Taymiyyah. The main reason for their opposition was fear that the expansion of civil jurisdiction might come at the expense of Shari'a and might lead, in the end, to the application of laws unrelated to Shari'a.⁹¹

Later, Saudi law became indirectly inspired by the French system. French law influenced Saudi law deeply because of the influx of foreign experts from other Arab countries, especially Egypt, which was under French occupation during the eighteenth and nineteenth centuries, as well as the young Saudi legal scholars who graduated from law schools in Egypt, Lebanon and France at a later stage. Moreover, many of the consultants of the Saudi kings were Egyptians or Syrians, either by birth, origin or education – these are also countries highly influenced

88 See the Royal Decree No. 1166 dated 27/12/1345 H. (1927).

89 See, in general, the Code of Commercial Courts of Saudi Arabia, Nizam Almahkamah Altijariyah, issued by Royal Decree No. 32 dated 15/01/1350 H. (1931).

90 Supra n. 62, Sfeir, p. 732.

91 Ibid., p. 733.

by the French legal system.⁹² Those consultants imported Egyptian laws, which are direct translations of French laws, although, of course, in order to be adopted in Saudi Arabia, such regulations all had to comply with Shari'a principles. For instance, in 1966, Saudi Arabia enacted Royal Decree No. (M/6) dated 24/02/1386 H. entitled Regulation Governing Bids for Government Procurement, Sales and Leases. This was a copy of the Egyptian Bid Regulation of 1957, which was a textual translation of the French regulation of 1953. Another example of the French influence is the Saudi Companies Law enacted by Royal Decree No. (M/6) dated 22/03/1385 H. (1965). The law was copied from the Egyptian code, which was directly patterned after French company law.⁹³ The French influence can even be seen in the case of government representatives in the Aramco arbitration citing French administrative laws to support their arguments. The list of borrowed regulations is long and it applies to most aspects of Saudi law, such as the Banking Control Law of 1966, the Labour and Workers Regulation of 1969 and the Law of Procedure before Shari'a Courts of 2000. Although these laws have been borrowed from foreign sources, they are still Islamic in the sense that they do not contradict any Shari'a principles.

The Scope of Application of Shari'a Law in Muslim Countries

Since the time of the Cold War, the application of Shari'a law has been a matter of controversy in many Muslim countries. In Egypt, for instance, the regime of the late presidents Jamal Abdul Nasser and Anwar Al-Sadat battled against the application of the Muslim brother's version of Shari'a law. The application of Shari'a law in Egypt at that time was against the socialist ideas of President Nassir. In the 1970s, President Al-Sadat felt under pressure from Muslim activists, leading to the 1980 amendment, which implies that Shari'a rulings should prevail over all man-made regulations. According to article 2 of the 2007 Constitution, 'Islam is the Religion of the State. Arabic is its official language, and the Islamic Jurisprudence (Shari'a) is a principal source of legislation.'⁹⁴

During that time, the application of Shari'a in other Arab countries was faced with obstacles such as foreign occupation in countries like Algeria and Tunisia, multi-faith societies like Lebanon, and Communist ruling regimes like the one that existed in South Yemen until 1990. Yet the application of Shari'a remained an important social element in GCC states and was the main basis for the establishment of the state of Saudi Arabia, as will be seen in the course of this book.

⁹² See, generally, D. Holden and R. Johns, *The House of Saud* (1st edn., Sedgwick and Jackson, 1981).

⁹³ *Supra* n. 63, Hanson, p. 289

⁹⁴ Article 2 of the Constitution of Egypt, ratified on 5 April 2007.

Nowadays the influence of Islamic Shari'a on modern legislations varies widely, owing to the degree of social pressure or to the public policy of the ruling regime.⁹⁵ The position of Shari'a within the constitution and legal system of Arab countries can be classified into two main categories. First, countries where the Quran and the Sunna are themselves the law and the only sources of legislation. Saudi Arabia stands alone in this category, as the only country to have the Quran and the Sunna as the substantive law and the main sources of public policy.⁹⁶ Furthermore, Saudi Arabia has some Shari'a-based codified acts, such as the Arbitration Act of 1983, and also some borrowed acts from other countries such as Egypt that fall within this category, because any law or practice that contradicts the principles of the Quran and the Sunna violates public policy. Second, states where Shari'a is either the main source or one of the sources of legislation. Most Arab countries fall within this category, as their constitutions state.⁹⁷

In some Arab countries, Islam is only the religion; the influence of Shari'a is not as great as in other countries. However, the laws of personal status, such as the Moroccan family law, are based mainly on the principles of Shari'a.⁹⁸

Saudi Codes

After the unification of Saudi Arabia, King Abdul-Aziz started working on building the foundation for a legal system. As mentioned above, the King of Hejaz ratified the laws establishing Shari'a courts and the Shura Council, issuing the first regulation concerned with commerce in 1926. The founding body was a committee to settle disputes between traders, under the name of Majlis Altojjar, or the traders' council. Other than the memories of some elders, no evidence has survived from that period. However, its name suggests that the council was little more than a conciliation committee, which might well have been sufficient for the then relatively primitive economy, which depended on only a handful of sources. The establishment of Majlis Altojjar was followed by the establishment of what is known as Mosajjil Alsharikat, or the companies registry, which became the foundation stone of the Ministry of Commerce and the first step towards regulating

95 For more details please see N. Abiad, *Shari'a, Muslim States and International Human Rights Treaty Obligations: A Comparative Study* (1st edn., British Institute of International and Comparative Law, 2008).

96 See articles 1 and 7 of the Basic Law of Saudi Arabia, *Alnizam Alasasi Lil Hokm*, issued by Royal Decree No. A/90 dated 27/08/1412 H. (1992).

97 Article 2 of the Egyptian Constitution states that Islamic Jurisprudence is the principal source of legislation. Article 2 of the Constitution of Bahrain states that Islamic Shari'a shall be a main source of legislation. Article 3 of the Constitution of the Republic of Yemen of 1994 states that Islamic Shari'a is the source of all legislations.

98 See the preamble of the Moroccan Family Code (*Moudawana*) of 5 February 2004.

commerce in what came to be known as Saudi Arabia.⁹⁹ The long-lasting Code of Commercial Courts of 1931 was inspired extensively by the Ottoman Code of 1850. With many amendments since that time, the Code is still in existence today and still includes a lot of Turkish terms. The Code might even be a direct translation from the Turkish Code, bearing in mind that the Turkish had just left the country after many centuries of occupation. In 1946 the regulation of the Jeddah Chamber of Commerce was issued, but it was not until 1953 that Royal Decree No. 10/22/5/5703 provided for founding a Ministry of Commerce in Saudi Arabia. The Ministry was competent for the settlement of commercial disputes until 1987, when this competence was transferred to Diwan Almazalim and remained there for 20 years. The following section will give an overview of the codes that are mostly connected with commercial disputes in Saudi Arabia.

The Law of Trademarks

In accordance with international standards, the Law of Trademarks provides protection to the owner of the trademark by ensuring the exclusive right to use it to identify goods or services, or to authorize another to use it in return for payment. It can be said that the long-awaited reform provides relatively poor protection, mainly for two reasons. One may argue that the weakness is owing to the vast scope of public policy restrictions, but, in reality, it is owing to the great degree of misconduct in different public entities, including the customs authorities, the Ministry of Commerce and the local municipal authorities, or so-called Baladiyah. The Law came into effect to replace the Trademarks Law issued by Royal Decree No. M/5, dated 4/5/1404 H. (1984), which was ineffective. The Act excludes different kinds of signs, flags and emblems from being registered or considered as trademarks because that would violate public policy.¹⁰⁰

Although the same law provides for some fairly strict disciplinary actions, the enforcement mechanism is weak. The Ministry of Commerce usually argues that it lacks manpower and the technical infrastructure needed to enforce the law. Questions may arise here about how counterfeit goods enter into the country in the first place and then how they are marketed publicly on such a huge scale. It has been reported in one of the daily newspapers that the competent department in the Ministry of Commerce has only seven members of staff who are responsible for inspecting hundreds of thousands of shops, warehouses and factories in the kingdom.¹⁰¹ This enabled the counterfeit brands market in Saudi Arabia to reach several billion US dollars in 2008. With the exception of articles 2 b, c, d and e, the

⁹⁹ Ministry of Commerce of Saudi Arabia <<http://www.commerce.gov.sa/aboutus/history.asp>> [accessed 5 March 2009].

¹⁰⁰ Please see article 2 of the Law of Trademarks of Saudi Arabia, issued by Royal Decree No. M/21 dated 28/05/1423 H./07/08/2002.

¹⁰¹ *Okaz Saudi Newspaper*, issue No. 2881 dated 07/05/2009.