Article 24 provides for what the tribunal might do in case parties reach an extrajudicial settlement. The parties can request the tribunal at any stage of the case to record their agreement as to an admission, settlement and waiver or otherwise in the record of the hearing and the tribunal shall make an award based on the parties' agreement.[92] Article 67 of the Law of Procedure before Shari′a Courts supports this article and provides for the same steps to be taken by the court in the case of reaching a settlement for the dispute outside court to give it a binding nature, instead of being a mere statement from the parties without enforceability.[93]

Article 25 provides for the official language for arbitration proceedings. Arabic is the official language before the arbitral tribunal, whether in oral discussions or in writing. The tribunal, the parties and other persons should, exclusively, speak Arabic. A foreigner who does not speak Arabic should be accompanied by an accredited translator who should sign with him the record of the hearing as to the oral statement he translated.

Arabic language is the official language in Saudi Arabia; therefore all communications and contracts before any governmental entity must be in Arabic. Contracts with the Saudi Government can be signed in an additional language but in the case of a dispute relating to the execution of such a contract the disputants should refer to the Arabic version of the contract.[94] This principle was established by article 1 of the Basic Law.[95] It is also supported by article 1 of the Law of Procedure before Shari′a Courts, which states that Arabic is the official language for all hearings and communications, and that if circumstances require the use of another language the documents or statements must be translated into Arabic.[96] In Hanbali law, if one of the parties to a dispute does not speak Arabic and the arbitrator does not know the party's language, an accredited translator must attend the hearing to translate between him and the arbitrator and between him and the other parties to the dispute. The translators should possess the characters of adalah, or full legal capacity.[97]

Article 26 gives the arbitral tribunal discretionary power to postpone the hearing of a case if the parties request it in order to represent their documents, papers or comments material.[98] Article 27 provides for the writing of the facts and proceedings of the hearing in a record prepared by the secretary of the tribunal

92 Article 24 of the Implementing Rules.

93 See article 67 of the Law of Procedure before Shari′a Courts.

94 See, for example, articles 9–31 of the gas concession agreement between Saudi Arabia and Lukoil Overseas. *Umm Alqura Gazette*, issue No. 3990 dated 15/03/1425 H. 4/05/2004.

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

96 See article 1 of the Law of Procedure before Shari′a Courts.

97 Supra n. 5, Ibn Qodamah, Vol. 14, p. 84.

98 Article 26 of the Implementing Rules. See also article 65 of the Law of Procedure before Shari′a Courts.

under its supervision.[99] The principle of the writing of contracts and other similar documents related to arbitration agreements and clauses was established by the Quran in the following verse: 'When you deal with each other, in transactions involving future obligations in a fixed period of time reduce them to writing. Let a scribe write down faithfully as between the parties.'[100] The Sunna also supports the writing of commercial agreements, as do Islamic teachings, current laws and practices.[101]

Article 28 sets the conditions in which the arbitral tribunal can ask one of the parties to present any document material to the case.[102] *The Diwan* allows the use of foreign arbitral awards as precedent provided that it does not violate Shari′a rules or public policy in Saudi Arabia. Any foreign arbitral award as precedent should be used only to support a party's argument and not to claim enforcement of the foreign award, because enforcement is not under the competence of the arbitration tribunal.[103]

Article 29 deals with the conditions in which the arbitral tribunal can order the establishment of investigation measures having a material effect on the case if the facts sought to be established are relevant, admissible and material to the dispute. Article 30 deals with departing from the evidentiary procedure provided that the tribunal states the reasons for the departure in the record of the hearing and in the final award.[104] The issue of investigations and evidence has been dealt with in greater detail in other regulations, especially in the Law of Procedure before Shari′a Courts of 2000.[105]

Article 31 states certain rules for the oral statements of witnesses, which should be proved in writing or orally at the hearing and should accompany the witnesses. The hearing of such statements of witnesses should be in accordance with Shari′a principles. In addition, the article gives the other party the right to disprove the facts in a similar manner.[106] The article sets that the statements of witnesses should be in accordance with Shari′a rules, which require certain qualities to be possessed by persons giving statements. As a general rule, a witness should be a Muslim who has reached the age of puberty and who is not subject to any incapacity; he should also be a trustworthy person. The witness of non-Muslims is accepted in all subjects except hodoud. Shari′a requires a thorough investigation of witness trustworthiness because if there is any doubt about a witness he will not be heard. The oral testimony is to be made at the request of one of the parties.

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99 Article 27 of the Implementing Rules.

100 The Quran 1: 282.

101 See article 69 of the Law of Procedure before Shari′a Courts.

102 See article 28 of the Implementing Rules.

103 *Diwan Almazalim* decision No. 29/T/4 of 1413 H. (1993).

104 See articles 29 and 30 of the Implementing Rules.

105 See articles 154, 155, 211 and 261 of the Law of Procedure before Shari′a Courts.

106 See article 31 of the Implementing Rules.

Some witnesses can be disqualified – such people are not allowed to participate as arbitrators in a dispute.[107]

Article 32 set the rules of interrogation at hearings; and article 33 deals with the rules of expert assistance. Experts are considered witnesses under this article – they can be challenged on the same grounds as witnesses and arbitrators.[108]

Article 34 regulates some related aspects to the expert witness such as requiring a supplementary report; however, the tribunal is not bound to take it into consideration when rendering the arbitral award.[109] Under the Hanbali teachings, such a report cannot be classified as evidence.[110]

Article 35 gives the arbitral tribunal the option to relocate the seat of the hearing. The arbitral tribunal may relocate in order to inspect disputed facts or any matter affecting the case. The tribunal should also prepare a record of the inspection procedure that complies with article 112 of the Law of Procedure before Shari′a Courts of 2000.[111]

The Implementing Rules provide that the arbitral tribunal should comply with the litigation principles of Shari′a.[112] The Implementing Rules were issued in 1985 prior to the enactment of the Law of Procedure before Shari′a Courts. Prior to the enactment of the Law, arbitrators used to rely on Shari′a principles in order to find governing rules for arbitral proceedings but after the enactment of the Law in 2000, it become applicable to all litigations and arbitration proceedings within the kingdom.[113]

One of the main differences between arbitration and litigation is that the arbitrators do not have the judicial and enforcement power of the court judge. Therefore, if the arbitral tribunal faces an issue that is not under its competence, such as forgery or other criminal offences, the issue should be referred to the competent authority having jurisdiction over the dispute. The tribunal should wait until the case has been investigated and should suspend issuing the award until a final judgment is rendered by the competent authority.[114]

Making, Challenging and Enforcing Arbitral Awards

When a case is ready for decision, the arbitral tribunal should declare the proceedings closed, fix a date for making the award and bring the case under

107 Supra n. 5, Ibn Qodamah, Vol. 14, p. 262.

108 See article 33 of the Implementing Rules.

109 See article 34 of the Implementing Rules.

110 Supra n. 5, Ibn Qodamah, Vol. 14, p. 262.

111 See article 35 of the Implementing Rules and article 112 of the Law of Procedure before Shari′a Courts of 2000.

112 See article 36 of the Implementing Rules.

113 See, in general, the Law of Procedure before Shari′a Courts.

114 See article 37 of the Implementing Rules.

review and discussion. Such a review should be held in private, with attendance restricted to the members of the arbitral tribunal only. When the arbitral tribunal fixes the date for making the award it should take into consideration the relevant provisions of the Arbitration Act and other relevant laws – in other words the Law of Procedure before Shari′a Courts of 2000.[115] With regard to the Arbitration Act the relevant articles are:

- article 9, which provides for an extension in the time before the issuance of the arbitral award subject to the mutual agreement of the parties or under the discretion of the arbitral tribunal;
- article 13, which states that in case of the death of one of the arbitrators the time for the award shall be extended by 30 days unless the other arbitrators decide on a longer period;
- article 14, which states that where an arbitrator is appointed in place of a dismissed or withdrawing arbitrator the date fixed for the award shall be extended by 30 days; and
- article 15, which gives the arbitral tribunal a discretionary power to extend the deadline of rendering the award.[116]

Article 39 exempts arbitrators from being bound by regulatory procedures except as provided in the Arbitration Act and the Implementing Rules. The article also adds that the award should be made in accordance with Shari′a principles and regulations in effect.[117] Prior to the issuance of the Law of Procedure before Shari′a Courts, arbitrators relied on Shari′a principles to govern arbitral procedure. This depends to a great degree on the arbitrator's individual understanding of Shari′a texts, which resulted in variations in practice from one arbitrator to another. The Law of Procedure before Shari′a Courts of 2000 codifies Shari′a principles in the light of common practice; it provides a set of rules to be followed by arbitral tribunal in case of the silence of arbitration regulations. As a general principle, when 'man-made' law says nothing, the tribunal should go back to Shari′a principles, because they serve as a safety measure for ensuring compliance with Islamic law in all cases.

Article 40 regulates some aspects of equality between parties to the arbitration and the procedure of reopening arbitral proceedings. The arbitral tribunal may not, during the review of the case and deliberation, hear explanations of one of the parties without the presence of the other party; nor may it receive documents unless the other party examines the same. However, if the arbitral tribunal considers such explanations and/or documents to be material it may extend the date for pronouncing the award and reopen the proceedings, taking care to record

115 See article 38 of the Implementing Rules; see also article 162 of the Law of Procedure before Shari′a Courts.

116 See articles 9, 13, 14 and 15 of the Arbitration Act of 1983.

117 See article 39 of the Implementing Rules.

the reasons and justifications and to notify the parties of the new date fixed for hearing the case.[118] The same content is provided by articles 66, 159 and 160 of the Law of Procedure before Shari′a Courts.[119]

The arbitral award should be made by majority except in the case of a sole arbitrator, and it should contain all the information relevant to the parties, the dispute and the arbitral tribunal.[120] Under classical Shari′a literature, the award should comply with the opinion of the majority of the arbitrators. There are four methods for issuing an arbitral award if unanimity cannot be reached: First, when forming the arbitration agreement the number of arbitrators should be odd. Second, arbitrators can seek the assistance of an external arbitrator and decide the case according to his opinion. The external arbitrator is not allowed to come up with a new judgement; his job is to choose one of the available decisions only.[121] Third, if the arbitrators fail to issue the award the dispute can be decided by another tribunal or by a sole arbitrator.[122] However, this option may lengthen the dispute, which contradicts the objective of arbitration as a swift dispute settlement mechanism. Fourth, if unanimity still cannot be reached and the parties to the dispute have exhausted the above-mentioned methods, they can refer to litigation as a last resort.[123] In practice, if the arbitral tribunal fails to issue its decision within 90 days of the supervisory authority approving the arbitration agreement the whole case is referred to the *Diwan*, which will perform the role of external arbitrator and choose one of the available opinions, decide the case anew or give the arbitral tribunal a time extension.[124]

When making the award, the arbitral tribunal should not exceed its terms of reference and look at issues that are not included in the arbitration agreement. In decision number 33/T/4 of 1414 H. (1994) the arbitration agreement had given the arbitration tribunal jurisdiction to decide the amount of damages for late performance of the contract. The tribunal decided in the same award on the claim for the initial cost of the contract, which was rejected by the *Diwan* for unconformity with the arbitration agreement.[125]

The arbitral tribunal is responsible for correcting technical, typographic and mathematical errors.[126] It is also in charge of issuing a supplementary award to explain ambiguity and uncertainty in the text of the arbitral award, which should be issued at the request of the parties to the arbitration.[127]

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118 See article 40 of the Implementing Rules.
119 See articles 66, 159 and 160 of the Law of Procedure before Shari′a Courts.
120 See article 41 of the Implementing Rules.
121 Supra n. 31, Al Kenain, p. 124.
122 Supra n. 5, Ibn Qodamah, Vol. 10, p. 546.
123 Ibid.
124 *Diwan Almazalim* decision No. 35/T/4 of 1418 H. (1998).
125 *Diwan Almazalim* decision No. 33/T/4 of 1414 H. (1994).
126 See article 42 of the Implementing Rules.
127 See article 43 of the Implementing Rules.

If parties to the arbitration do not prevail in some claims, a judgment may be made apportioning the fee between them, according to the determination of the supervisory authority, or allocating the whole fee to one of the parties.[128] Any party may object to an order assessing arbitrator fees to the authority; however, the authority's decision on the objection is final.[129]

The arbitral award shall become an enforceable instrument upon the issuance of the enforcement order, which is the responsibility of the supervisory authority.[130] The supervisory authority should deliver to the prevailing party the enforcement copy of the arbitral award. This sets forth the enforcement order, ending with the following statement: 'All government departments and agencies concerned are hereby requested to execute this judgment by all available legal means even if it may require the use of coercive force by the police.'[131] The supervisory authority cannot issue the enforcement order unless requested to do so by the winning party or by third parties with interest in the enforcement of the arbitral award. Requests for the enforcement of arbitral awards should be accepted from third parties provided that they have interest in the enforcement of the award, such as guarantors and creditors, and that the argument of their not being party to the arbitration agreement has been rejected by the *Diwan*.[132] In addition, the competent authority should ensure that the party requesting enforcement has interest in the enforcement of the award. It should also review the award and ensure that it does not violate the public policies of the kingdom.[133]

Enforcement and Recognition of Foreign Arbitral Awards in Saudi Arabia

Recognition and enforcement are the most important steps after the issuance of the final award. Although Saudi Arabia only started to cooperate with the international legal community at a late stage, it has been in cooperation with its neighbouring countries since the 1950s. Saudi law does not have a clear answer for the conflict that arises when there is more than one application for the enforcement of different arbitral awards issued against the same person on the same specific issue. Some judges give priority to the application that is submitted first, whereas other judges give priority to the award that is issued first. Another opinion prefers that judges should look at the conflict of laws rules to decide which jurisdiction has the most connections with the arbitration and which law is more competent to govern the

128 See article 45 of the Implementing Rules.

129 See article 46 of the Implementing Rules.

130 See article 44 of the Implementing Rules.

131 Ibid., article 44 and see also article 196 of the Law of Procedure before Shari′a Courts.

132 *Diwan Almazalim* decision No. 136/T/4 of 1409 H. (1989).

133 Supra n. 6, Albejad, p. 240.

arbitration.[134] There are two important multilateral conventions of which Saudi Arabia is a member. These are the Riyadh Convention for Judicial Cooperation of 1983 (Riyadh Convention) and the New York Convention for the Enforcement and Recognition of Foreign Arbitral Awards of 1958 (New York Convention).

Riyadh Convention for Judicial Cooperation of 1983

The Riyadh Convention came into effect in order to replace the old Arab League Convention of 1952 in a way that mixed the spirit of the New York Convention of 1958 with Shari′a principles. In its preamble the Convention states that reaching a degree of legal harmony between the parties to the Convention is the main objective of the Convention, for the reason that these countries share many legal principles and fundamentals.[135] The Convention borrowed certain basic rules from the New York Convention and from Western bilateral agreements. Of the principles borrowed from Western conventions the one of most benefit is the rule restricting the courts in the place of enforcement from re-examining the merits of the dispute.[136] This principle was demonstrated in article 37 of the Riyadh Convention, which prohibited the judicial authority in the place of enforcement from looking again at the merits of the dispute. However, it seems that the judicial bodies in Saudi Arabia do not comply with this article of the agreement; they claim that the interpretation of the principle of public policy in Saudi Arabia differs even from most of the neighbouring countries. Actually, this claim is partly true, especially in cases involving prohibited or disputed issues under Shari′a such as banking interest and the sale of musical instruments and tobacco products. The same article provides that an arbitral award issued and recognized in one of the member states of the Convention cannot be set aside except in the following circumstances:

- if the dispute at issue is not arbitrable under the law of the place of arbitration;
- if the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings;
- if the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration; or
- if the recognition of the award would be contrary to the principles of Islamic Shari′a, relevant laws and regulations or public order.

134 This piece of information was provided by one of the judges of the Shari′a Supreme Court of Jeddah who preferred his name to remain confidential.

135 The member states of the Conventions are: Jordan, the UAE, Bahrain, Tunisia, Algeria, Djibouti, Saudi Arabia, Sudan, Somalia, Iraq, Oman, Palestine, Qatar, Kuwait, Lebanon, Libya, Morocco, Mauritania and Yemen.

136 Supra n. 3, Saleh, p. 151.

When reading article 37 in conjunction with article 30 of the same agreement, a foreign arbitral award cannot be recognized or enforced if the award is issued *in absentia* unless:

- the losing party was duly informed of the arbitration;
- the dispute was referred to litigation in the place of the issuance of the award;
- one of the parties lacks the legal capacity under the law of the place of the issuance of the award; or
- the law of the place where the enforcement is sought has no connection with the dispute at issue.

According to the Convention, a party seeking the enforcement of an arbitral award in a place other than the place of the issuance of the award should provide, with the arbitration agreement, a certificate from the court of the place of the issuance of the award stating that the award is enforceable. In contrast with the New York Convention of 1958, which requires the arbitral award to be binding on the parties, the Riyadh Convention called back the condition of double exequatur, which requires the award to be final and operative in the place of the issuance.[137] It can be said that for the load of official procedure required by the Riyadh Convention, the Convention seems to be ineffective – enforcing a foreign arbitral award under the New York Convention might be more practical for the party seeking the enforcement of the award.

New York Convention for the Enforcement and Recognition of Foreign Arbitral Awards of 1958

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, hereinafter New York Convention, came into effect to overcome some of the impracticalities of the Geneva Convention of 1927 and to make the enforcement and recognition of foreign arbitral awards easier. It set arbitration as an effective dispute settlement mechanism. According to the first article of the Convention, the scope of the application of the Convention should include:

> the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.[138]

137 See article 4.1 of the Convention on the Execution of Foreign Arbitral Awards (Geneva Convention) (26 September 1927) and article 5.1.e of the New York Convention of 1958.

138 Article 1 of the New York Convention of 1958.

In relation to Saudi Arabia, an arbitral award issued in a territory other than Saudi Arabia relating to a non-domestic dispute will be considered foreign. Moreover, if the arbitral award relating to a domestic dispute is issued outside Saudi Arabia it will also be considered foreign, meaning that the provisions of the New York Convention will apply. Parties seeking enforcement should apply to *Diwan Almazalim*, which will consider the enforcement after reviewing the award.

The New York Convention provides general guidance on the procedure of enforcing foreign arbitral awards and sets the documents that are required from the place of the enforcement of the award. The parties seeking the enforcement of an arbitral award should accompany their application with the following documents: the duly authenticated original award or a duly certified copy; and the original arbitration agreement or arbitration clause or a duly certified copy. The same article of the agreement adds that in cases where the award is made in a language other than the official language of the place where the parties are seeking the enforcement, the documents should be translated into the official language of the place of enforcement. The translation should be certified by an official or sworn translator or by a diplomatic or consular agent.[139] Furthermore, parties seeking the enforcement should be bound by the internal procedure of the place of enforcement of the award. Most of the jurisdictions in the world make their rules of procedure clear to everyone seeking the enforcement of an award, whereas in Saudi Arabia the rules of procedure rely heavily on royal decrees and ministerial circulars. However, this is not the problem. The problem arises when such royal decrees, ministerial circulars and internal regulations contradict each other and one has to search through hundreds of royal decrees, orders and circulars issued over a period of 40 years and mostly unavailable to the public. Royal Decree No. 51/M dated 17/02/1402 H. (1981) held *Diwan Almazalim* responsible for the recognition and enforcement of foreign arbitral awards in Saudi Arabia as well as judgments issued in the courts of the Arab League countries. The new law of *Diwan Almazalim* upholds the latter decree and provides that the administrative department of *Diwan Almazalim* is the competent authority for the enforcement and recognition of foreign arbitral awards in the kingdom.[140]

Diwan Almazalim's Circular No. 7 dated 15/05/1405 H. (1985) determines the procedure for filing an application for the enforcement of a foreign arbitral award in Saudi Arabia. According to the Circular, the party seeking the enforcement of a foreign arbitral award in Saudi Arabia should submit a request for the enforcement of the arbitral award in the same way as bringing a new claim before the *Diwan*. In order to commence the procedure, the party seeking the enforcement should submit certified copies of the relevant documents; however, in cases where the party does not have certified copies the *Diwan* may arrange for submission of the original documents. After receiving the request for enforcement, the *Diwan* will notify all the parties to the arbitration award. The person against whom the award has been

139 Article 4 of the New York Convention of 1958.

140 See article 13 of the law of *Diwan Almazalim*.

made has the right to see the application submitted against him and is allowed to defend himself before the *Diwan*.[141] This Circular is one of the main elements determining the credibility of arbitration as an alternative for litigation. The main problem here is that the *Diwan* re-examines all arbitration awards brought before it. Such practice is simply a waste of time, effort and resources; at the same time it indicates that arbitration is not a reliable dispute settlement mechanism.

Saudi law provides many remedies for cases in which the award is challenged before the *Diwan* and the *Diwan* accepts the challenge; however, foreign arbitral awards do not enjoy such treatment. The law is silent with regard to this issue; nonetheless, it can be understood that foreign arbitral awards are of no avail unless approved by the *Diwan*. It is unclear whether foreign arbitral awards or judgments can be used to establish facts before Saudi courts, as many judges have not yet reached the necessary level of understanding as to how legal systems really work. In addition, Saudi courts might enforce foreign arbitral awards or judgments on the basis of reciprocity; however, the application of this concept is still a matter of theoretical argument and no one knows how the *Diwan* applies it. The concept of reciprocity does not have a fundamental impact on the enforcement of foreign arbitral awards in Saudi Arabia nowadays as most of the country members of the United Nations have adopted the New York Conventions. For the countries that have not become members of the Conventions, Saudi Arabia has other instruments of enforcement of arbitral awards.[142]

Public Policy in Saudi Arabia

Public policy is of great importance to arbitration, especially when it comes to the enforcement of an arbitral award, irrespective of whether it is domestic or foreign. As a general rule, an arbitral award is unenforceable if it violates the public policy of the country in which the enforcement is sought.[143] This is also true in Saudi Arabia and is applicable to both foreign and domestic arbitral awards, despite the fact that the latter proceedings would have, by the time of the enforcement, already been very closely monitored by the supervisory authority. As a result, refusals to enforce are more common when setting aside foreign arbitral awards because public policy in Saudi Arabia covers a vast area of practice that might be unknown to foreign arbitrators sitting abroad and applying non-Saudi *lex arbitri*. The following section aims to provide an overview of Saudi public policy, its sources and how it is applied in practice.

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141 *Diwan Almazalim*'s Circular No. 7 dated 15/05/1405 H. (1985).

142 There are five countries who are members of the Riyadh Convention but not yet of the New York Convention, which are: Iraq, Yemen, Somalia, Libya and Sudan.

143 See article 5 of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 330 UNTS 538.

Public policy in the Saudi kingdom is derived from three principal sources: Shari′a; royal power, which is itself drawn from Shari′a with an emphasis on public customs and public interest within the framework of Shari′a's prescriptions; and public morals. At the outset, it should be noted that, historically, Muslim scholars have distinguished between Shari′a and Islamic jurisprudence, or fiqh. The concept of Islamic law was not in use at the time of the Muslim classical scholars – it began to develop as a reaction to Western influence. The concept of Shari′a is broader than jurisprudence – jurisprudence comes within, as along with other concepts of Islam such as Islamic creed and Quranic sciences, the umbrella of Shari′a. Shari′a, or Ash-Shari′a, literally means 'the pathway' or a way to be followed, the way that a Muslim has to walk in life. In its original usage, the term Shari′a meant the road to the watering place or the path leading to the water, i.e., the way to the source of life.[144] Arab lexicographers developed this to mean 'the law of water' and in time it has extended to cover all aspects of Muslim life, both spiritual and those pertaining to the exigencies of everyday life.[145] Shari′a is best translated as the 'way of life' and Ash-Shari′a as the 'way of the Muslim life' which is wider than the mere formal rites and legal provisions. Islamic law may be defined as the entire system of law and jurisprudence associated with the religion of Islam.

The primary sources of Shari′a are the Quran and the Sunna and there exist a number of other secondary sources or methods for adducing appropriate normative behaviour in response to new incidents and unregulated circumstances. These secondary sources are ijma′, ijtihad, qiyas and urf (public interest and custom). The methods of ijma′, ijtihad and qiyas are employed in the light of current circumstances in order to shed light on and analyse the Quran and the Sunna. The sustained use of these secondary sources led to the creation of a body of law known as fiqh. Western scholars tend to use 'fiqh' to describe Shari′a and Islamic jurisprudence interchangeably. The aforementioned distinction between the two should become clear and receive scholarly attention, given that Shari′a is the foundation of all doctrines formulated and developed under fiqh, whereas fiqh represents a human understanding and analysis of Shari′a sources. The term 'Saudi law' is more comprehensive than Shari′a and encompasses Islamic law and the codes and regulations adapted from other laws within the general framework of Shari′a principles. There are a few exceptions to this rule, particularly as regards Saudi legislation that is unrelated to Islamic teachings and principles. One example is the Banking Control Law, because it regulates some activities that are clearly prohibited under Islamic Law.

In Saudi Arabia, the primary sources of Shari′a – the Quran and the Sunna – have supremacy over all laws and man-made regulations or normative instruments. In the 1920s, King Abdul-Aziz attempted to codify the teachings of the four Islamic

144 Ibid.

145 See, generally, the Quran 45: 18 and 5: 48. See also C. Mallat, 'From Islamic to Middle Eastern Law: A Restatement of the Field (Part 1)', *American Journal of Comparative Law*, 51 (2003), pp. 699–719.