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## Doing Business in Saudi Arabia: The Contemporary Application of Islamic Law

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# Doing Business in Saudi Arabia: The Contemporary Application of Islamic Law†

## Introduction

Saudi Arabia possesses the largest proven oil reserves in the world and holds the second largest reserve of foreign exchange, with most assets held in United States dollars.<sup>1</sup> United States companies are thus provided with a large incentive to invest in and contract with Saudi Arabia. Saudi Arabia has welcomed increased commercial activity and has enacted numerous regulations to encourage and control foreign investment and commercial transactions.<sup>2</sup>

A knowledge and understanding of these regulations, for example in the areas of tax, company laws, and foreign investment, are vital for the attorney advising his client on transactions within Saudi Arabia.<sup>3</sup> Fortunately, a

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<sup>1</sup>R. NYROP, AREA HANDBOOK FOR SAUDI ARABIA 1 (3d ed. 1977).

<sup>2</sup>For an updated compilation of most regulations, see BUSINESS LAWS OF SAUDI ARABIA (N. Karam trans. 1977, as supplemented 1978, 1979 to 1980) [hereinafter cited as BUSINESS LAWS]. See generally Seaman, *Islamic Law and Modern Government: Saudi Arabia Supplements the Shari'a to Regulate Development*, 18 COLUM. J. TRANSNATIONAL L. 413, 453-479 (1980); L. GLICK, TRADING WITH SAUDI ARABIA: A GUIDE TO THE SHIPPING, TRADE, INVESTMENT AND TAX LAWS OF SAUDI ARABIA (1980); M. NAFA, SAUDI ARABIA: COMPANY AND BUSINESS LAW (1977); Z. JWAIDEH, LEGAL, TAX AND REGULATORY ASPECTS OF DOING BUSINESS IN SAUDI ARABIA (1976).

<sup>3</sup>See *id.* For information on Saudi Arabian tax legislation see also Hoyt, *Saudi Arabia—A Legal Update: A U.S. Lawyer's Perspective*, in THE MIDDLE EAST: A LEGAL UPDATE 99, 114-115 (1978); Bancal, *Saudi Arabia: Income Taxation of Foreign Companies*, 3 DROIT DE PRATIQUE DU COMMERCE INTERNATIONAL 603-614 (1977); Abrahams, *Doing Business in Saudi Arabia*, 3 DROIT DE PRATIQUE DU COMMERCE INTERNATIONAL 579, 582 (1977); Lee, *Tax Considerations*, in AN INTRODUCTION TO BUSINESS LAW IN THE MIDDLE EAST 39-54 (1975).

large quantity of material has recently become available to assist the practitioner in understanding these regulations.<sup>4</sup>

A mere understanding of Saudi regulations, however, will not answer a number of fundamental questions the practitioner must address in advising his client, such as, what is the legal status of these regulations, when will Saudi law apply to foreigners doing business in Saudi Arabia, what is the Saudi law on property rights, what is the Saudi law on contracts. The answers to questions such as these are almost entirely within the province of Saudi Arabia's constitutional law—Islamic law (the *Shari'a*).<sup>5</sup>

This article first examines the general legal system in Saudi Arabia today and then the application of Saudi law to foreigners doing business in Saudi Arabia. Lastly, the article focuses on the substantive areas of property and contract law under the *Shari'a*.

## The Legal System of Saudi Arabia

### I. The *Shari'a*

"Among all Muslim countries in the world, Saudi Arabia is one which is closest to being a fundamentalist Islamic state."<sup>6</sup> The law of Saudi Arabia is entirely based on the *Shari'a*.<sup>7</sup> The *Shari'a* though is not "law" in the Western sense of the word; rather, it is the "path" to be pursued by the believer.<sup>8</sup> It is considered to be the law of God and divine: to be the totality of God's commandments.<sup>9</sup>

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On the danger of retrospective taxation, see Nasir, *Practical, Financial and Legal Considerations for Companies Doing Business in Arab Countries*, in *supra*, at 53. For information on Saudi Arabian Company Law and Foreign Investment regulations, see also Mustafa, *Legal Aspects of Doing Business in Saudi Arabia*, in *THE MIDDLE EAST: A LEGAL UPDATE* 7, 14-25 (1978); Abrahams, *supra*, at 593-602; JWAIDEH, *supra* note 2, at 7-9; Spinks, *The Practical Aspects of Doing Business in the Middle East*, in *AN INTRODUCTION TO BUSINESS LAW IN THE MIDDLE EAST* 57, 67-70 (1975).

<sup>4</sup>See *supra* note 2.

<sup>5</sup>PEASLEE, 3 *CONSTITUTIONS OF NATIONS* 1089 (rev. 3d ed. 1966). A royal decree of Saudi Arabia states that "[o]ur Constitution is the Koran." *Um al-Quira*. No. 1320, July 19, 1950, as reproduced in translation in *Documents sur l'Arabie Saoudite*, NOTES ET ÉTUDES DOCUMENTAIRES No. 1529 (10 Sept. 1951). There are no separate provisions concerning the legislature, executive and judicial powers or the rights of the people. PEASLEE, *id.*

<sup>6</sup>Seaman, *supra* note 2, at 438-439. See Humphreys, *Islam and Political Values in Saudi Arabia, Egypt and Syria*, 33 *MIDDLE EAST J.* 1, 4 (1979); *Saudi Arabian Fundamentalist Approach*, *MIDDLE EAST ECON. DIG.*, Nov. 23, 1979, at 5.

<sup>7</sup>*Supra* note 5.

<sup>8</sup>See S. Hassan, *Islamic Law and Middle Eastern Legal Institutions* 98 (1979) (unpublished manuscript in Columbia University Law Library).

<sup>9</sup>Suratgar, *The Development of the Legal Systems of the Middle East: Islamic Law and the Importance of Civil Law to the Process of Modernization*, in *AN INTRODUCTION TO BUSINESS LAW IN THE MIDDLE EAST* 1, 3 (1975); Professor Saba Habachy, Seminar in Near and Middle Eastern Legal Institutions (1964), at 72 (unpublished manuscript in Columbia University Law Library) [hereinafter cited as Habachy Seminar]. See generally *id.*; H. LIEBESNY, *THE LAW OF THE NEAR AND MIDDLE EAST, READINGS, CASES, AND MATERIALS* (1975); J. SCHACHT, *AN INTRODUCTION TO ISLAMIC LAW* (1964); 1 *LAW IN THE MIDDLE EAST* (M. Khadduri and H. Liebesny eds. 1955); A. FYZE, *OUTLINES OF MUHAMMADAN LAW* 15 (1955).

It is a basic tenet of the *Shari'a* that God, not mankind, is the legislator.<sup>10</sup> This view of the *Shari'a* as divine results in an inherent rigidity in the system. The *Shari'a* cannot be modified to deal with the modern world and all regulations enacted by Saudi Arabia must conform with it.<sup>11</sup>

There are numerous schools of interpretation of the *Shari'a* in existence today. The four principal schools are the Hanafi, the Maliki, the Shaffei and the Hanbali.<sup>12</sup> Saudi Arabia follows the Hanbali school.<sup>13</sup> The schools do not differ in fundamentals but do disagree in several points of detail.<sup>14</sup>

The principal source of the *Shari'a* is the Koran. All schools believe that the Koran is the very word of God and nothing that contradicts the Koran is permissible.<sup>15</sup> The second principal source of the *Shari'a* is the *sunnah* or traditions of the Prophet. The *sunnah*, which literally means "habitual practice" or "trodden path," refers to the actual speech, deeds and approval of practices by the Prophet.<sup>16</sup>

The Hanbali school is considered "by far the most conservative and rigid school" because it purports to recognize no other legitimate source of the *Shari'a* outside the Koran and the *sunnah*;<sup>17</sup> other schools recognize, for example, consensus (*ijma'a*) of opinion of the great jurists and analogy.<sup>18</sup>

<sup>10</sup>Habachy Seminar, *supra*, at 73.

<sup>11</sup>See *id.*

<sup>12</sup>The Hanafi school is prevalent in Egypt, Syria, Lebanon, Libya, and Turkey and includes more than one-third of all Muslims; the Maliki school is prevalent in Morocco, Algeria, Tunisia, the Sudan, Kuwait, and Bahrain; the Shaffei school is prevalent in Southern Egypt, Syria, Lebanon, Palestine, Jordan, Iraq, Pakistan, and Indonesia; and the Hanbali school is the official school of law in Saudi Arabia and is prevalent in Pakistan, Syria, and Iraq. See S. MAHMASSANI, *FALSAFAT AL-TASHRI FI AL-ISLAM, THE PHILOSOPHY OF JURISPRUDENCE IN ISLAM 19-39* (F. Ziadeh trans. 1961) [hereinafter cited as MAHMASSANI], reprinted in S. Hassan, *supra* note 8, at 139, 143, 146, 148. For the history of the schools, see generally *id.*; N. COULSON, *A HISTORY OF ISLAMIC LAW 36-52* (1964); Schacht, *The Schools of Law and Later Developments of Jurisprudence*, in *LAW AND THE MIDDLE EAST 57-84* (M. Khaddini and H. Liebesny eds. 1955).

<sup>13</sup>It has been authoritatively stated in the *Government's First Memorial* in the 1958 arbitration between the Government of Saudi Arabia and the Arabian American Oil Company that there is no objection to the principles of the other three principal schools being preferred in suitable circumstances by the king. J. ANDERSON, *ISLAMIC LAW IN THE MODERN WORLD 83* (1959). *Contra see* note 5.

<sup>14</sup>Arbitral Award between Saudi Arabia and Arabian American Oil Company (1958), [hereinafter cited Arbitral Award], reprinted in Habachy Seminar, *supra* note 9, at 20.

<sup>15</sup>S. Hassan, *supra* note 8, at 94 and 103; J. ANDERSON, *supra* note 13, at 11.

<sup>16</sup>S. Hassan, *supra*, at 111. "The *sunnah* is divided into three parts: (1) *al-sunnah al-gawliyyh*, the sayings and statements of the Prophet; (2) *al-sunnah al-filiyyah*, the deeds of the Prophet; and (3) *al-sunnah al-taqririyyah*, the Prophet's silence or tacit approval regarding deeds which had occurred with his knowledge." Seaman, *supra* note 2, at 418.

<sup>17</sup>JWAIDEH, *supra* note 2, 3 *ENCYCLOPAEDIA OF ISLAM*, at 158-161 (B. Lewis, V. L. Menage, Ch. Pellat and J. Schacht eds. 1971); see also note 5.

<sup>18</sup>For a discussion of *ijma'a*, analogy and other sources, see Suratgar, *supra* note 9, at 4-6; Seaman, *supra* note 2, at 419-420; Habachy Seminar, *supra* note 9, at 88-103. "Unlike other legal systems, alternative means of escape from the rigidity of the system were not available to the Islamic lawyers. There is no concept of equity in the English sense of the word, little judicial discretion and little possibility for legal fictions." Suratgar, *supra* note 9, at 5.

Throughout this article the term "*Shari'a*" refers only to Islamic law as interpreted by the Hanbali school.

## II. *The Role of the King*

Saudi Arabia is a monarchy created early in the twentieth century by King Saud.<sup>19</sup> The authority of the monarch is based on the principles of the *Shari'a*, which unites the religious and political leadership of the country in one man who is simultaneously the propagator of Islam (the *iman*), the leader (*shaykh*) of the tribes and the king (*mālik*).<sup>20</sup> As *iman*, the monarch is responsible for upholding the *Shari'a*, as *shaykh*, he commands tribal allegiance, and as *mālik*, he is expected to act as would a Western king.<sup>21</sup>

The powers of the king are not unrestrained. As *iman*, the king promises to govern in accordance with the *Shari'a* and if he violates this oath, he can be legally deposed.<sup>22</sup> To rule, a Saudi monarch must retain the support of the dominant princes, chiefs of the important tribes, and religious scholars (*ulamā*).<sup>23</sup> These limitations on the monarch's powers were demonstrated by the relinquishment of power of King Saud. It was the loss of confidence of the *ulamā* and the princes which led to his abdication.<sup>24</sup>

The king does still have, however, a tremendous amount of power to direct the country. His powers are evidenced primarily through promulgation of royal decrees in the business area and control over the decisions of the judiciary.

## III. *Regulations*

A large amount of legislation has recently been promulgated in Saudi Arabia by royal decrees.<sup>25</sup> The royal decrees are often originated in the Saudi Arabian Council of Ministers. This council is directly responsible to the king,<sup>26</sup> and its members are appointed by royal order.<sup>27</sup> It decides state

<sup>19</sup>JWAIDEH, *supra* note 2, at 1.

<sup>20</sup>*Id.*; Edens and Snavely, *Planning for Economic Development in Saudi Arabia*, 24 MIDDLE EAST J. 1 (1970), at 1. Muslims view the monarch as being a successor in power to Muhammad. Lecture by Dr. Saad S. El Fishawy, Seminar in Middle Eastern Legal Institutions (Georgetown University Law Center, January 12—April 20, 1981) [hereinafter cited as Fishawy Seminar].

<sup>21</sup>Edens, *supra*.

<sup>22</sup>R. NYROP, *supra* note 1, at 177.

<sup>23</sup>Representatives of these groups are members of the national Consultative Council. In practice, no important decisions are made without the approval of a majority of the Consultative Council. Seaman, *supra* note 6, at 429; E. KOURY, *THE SAUDI DECISION-MAKING BODY OF AL-SAUD* 27 (1978).

<sup>24</sup>Edens, *supra* note 20.

<sup>25</sup>The first decree was the "Organic Instructions of the Hijaz," promulgated in 1926 by Abdul Aziz. See PEASLEE, *supra* note 5.

<sup>26</sup>The Council of Ministers was established by royal decree on Dec. 29, 1931, and its functions defined by royal decree on May 11, 1958. Its members must be Saudis. *Id.* Decree 38, Article 3.

<sup>27</sup>*Id.* Article 8, 11, and 44.

policy, has regulatory, executive, and administrative authority, and controls financial affairs.<sup>28</sup>

When a proposal for an administrative decree is approved by a majority of the council, it is presented to the king for ratification.<sup>29</sup> If approved by the king, the decree is published in the official gazette (*Um el Qura*).<sup>30</sup> In addition to royal decrees, all ministers and some heads of government organizations have delegated authority to make regulations by ministerial or administrative circulars.<sup>31</sup> These regulations are normally not published in the official gazette, but are forwarded only to interested parties. They carry the same weight as royal decrees, unless inconsistent with decrees.<sup>32</sup>

These decrees and circulars are assuming an ever-increasing importance in Saudi Arabia.<sup>33</sup> They are not, however, technically "law." Under the *Shari'a*, the term "law" is reserved to the religious or canon law of the *Shari'a*.<sup>34</sup> The decrees and circulars are instead merely ordinances (*nizam*) or regulations (*lai'hah*).<sup>35</sup>

The role played by regulations is limited under the *Shari'a*. "[A]ll human actions are subsumed, according to a widely accepted classification, under five categories: as commanded, recommended, left legally indifferent, reprehended, or else prohibited by Almighty God. And it is only in regard to the middle category (i.e., those things which are left legally indifferent) that there is in theory any scope for human legislation."<sup>36</sup> This limited authority to regulate is usually observed by the monarch. Sometimes, a statement, or even legal ruling (*fatwa*) is sought from the *ulamā* endorsing the new regulation and confirming the assumption that it is not contrary to the *Shari'a*.<sup>37</sup>

Although the general principles of most branches of law, such as contracts, property, inheritance, crimes, marriage, trusts, are governed by the *Shari'a*, there are many areas of business or commercial activity that are not covered by the *Shari'a* and thus may be regulated by royal decrees.<sup>38</sup> The royal decrees that have been enacted normally embody principles

<sup>28</sup>*Id.*, Article 18-43.

<sup>29</sup>*Id.*, Article 21 and 23.

<sup>30</sup>*Id.*, Article 24. The *Official Gazette* is published in Arabic and in all cases the more authoritative version is the one in Arabic. Unless otherwise specified, legislation comes into effect the day following its publication. Seaman, *supra* note 6, at 445; Mustafa, *supra* note 3, at 14.

<sup>31</sup>*Id.*

<sup>32</sup>*Id.*

<sup>33</sup>Edens, *supra* note 20.

<sup>34</sup>J. ANDERSON, *supra* note 13, at 37. See also, Mustafa, *supra* note 3, at 14.

<sup>35</sup>Habachy Seminar, *supra* note 9, at 73; Seaman, *supra* note 2, at 443.

<sup>36</sup>J. ANDERSON, *supra* note 13, at 3-4. See generally Seaman, *supra* note 2, at 443-44.

<sup>37</sup>Habachy Seminar, *supra* note 9, at 135.

<sup>38</sup>Any attorney advising a client who plans to move to Saudi Arabia would be well advised to familiarize himself or herself with all these areas of law. This article is confined to the general principles of *Shari'a* contract and property law. Fortunately, the other subjects have been adequately covered by Western Scholars. See generally J. ANDERSON, *supra* note 13; LAW AND THE MIDDLE EAST (M. Khadduri and H. Liebesny eds. 1955).

derived largely from continental jurisprudence.<sup>39</sup> The most important of these are:

- (1) Companies law
- (2) Commercial Agencies Regulation
- (3) Investment of Foreign Capital Regulation
- (4) Regulation for the Protection and Encouragement of National Industries
- (5) Income Tax Law
- (6) The Mining Code
- (7) Customs Regulations and Rules for Implementation
- (8) Saudi Development Fund Law
- (9) Saudi Industrial Development Fund Law
- (10) Saudi Arabian Monetary Agency Law
- (11) Banks Control Law
- (12) Labor and Workers' Regulations
- (13) Social Securities Law
- (14) Commercial Register Law and Implementing Regulations
- (15) Registration of Trade Marks Law
- (16) Commercial Law: Land Commerce and Maritime Commerce
- (17) Procurement of Government Purchases and Execution of its Projects and Work Law
- (18) Regulation on Agents' Commissions of Commercial Agencies' Regulations
- (19) Tenders and Auctions Law
- (20) Law of Negotiable Instruments
- (21) Law of Appropriation of Real Property in the Kingdom of Saudi Arabia by non-Saudi Nationals
- (22) Commercial Fraud Law
- (23) Issuance of Permits to Foreign Companies to Establish an Office
- (24) Exchange Control Law
- (25) The Residence Law<sup>40</sup>

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<sup>39</sup>Mustafa, *supra* note 3, at 13.

<sup>40</sup>All decrees, except numbers 4, 6, 7, 24, and 25, are translated into English and compiled in *BUSINESS LAWS OF SAUDI ARABIA*, *supra* note 2. A translation of the regulation for the Protection and Encouragement of National Industries is reproduced in Mustafa, *supra* note 3, at 23-26. The Mining Code has been translated by the Ministry of Petroleum Mineral Resources, Jidda, Saudi Arabia, *Mining Code, Kingdom of Saudi Arabia* (1967). The Customs Regulations have been translated by the Administrative and Translation Division, Local Government Relations Department of the Arabian American Oil Company. *Customs Regulations and Rules for Implementation*, Royal Approval No. 425 issued 5 Rabi'l 1372, 23 Nov. 1952 (1965). The author was unable to locate a translation of the Residence Law. *See generally supra* notes 2 and 3. In addition, for information on use of Saudi agents, *see also* Shamma & Morrison, *The Use of Local Representatives in Saudi Arabia*, 11 *INT'L. LAW.* 453 (1977). For information on recent changes in Saudi labor law, *see also* Taylor, Jr., *Changing Circumstances: Saudi Labor Law and Recent Developments*, 12 *INT'L. LAW.* 661 (1978).

#### IV. The Judicial System

##### A. THE SHARI'A COURTS

The *Shari'a* courts are presently comprised of two lower courts whose competence is determined by the amount in controversy and two courts of appeal.<sup>41</sup> In addition, since 1975, a Supreme Judicial Council has overseen the work of the *Shari'a* courts.<sup>42</sup> Members of the Supreme Judicial Council are within the Ministry of Justice in the Council of Ministers. The *Shari'a* judges are appointed by the king in consultation with the Supreme Judicial Council.<sup>43</sup>

The *Shari'a* courts have jurisdiction over the traditional areas covered by the *Shari'a*, i.e., criminal law, family law and civil law.<sup>44</sup> In administering justice, the judges are required to follow the *Shari'a*.<sup>45</sup> There are no provisions for jury trials and the judges are not bound by either their own prior decisions or decisions of higher courts.<sup>46</sup> "Judges do, however, have a reputation for incorruptibility and justice, and observers have often noted the essential fairness of *Shari'a* procedures."<sup>47</sup>

*Shari'a* judges are considered to be agents of the monarch by virtue of a delegation of his power as monarch.<sup>48</sup> As stated by an eminent legal counsel representing Saudi Arabia, while arguing the case for Saudi Arabia against Aramco in the 1958 Arbitration:

... a Ruler, according to Islamic law, has a wide jurisdiction: (1) he can restrict the liberty of the judges and order them to render justice according to the teachings of a single school; (2) he can order judges to decide according to a rule of law, which had been previously controversial, and by the authority of the Ruler such controversy is deemed to come to an end; (3) he has the right to ordain rules as to matters not treated by the law, in the interest of the Moslem Community. His decrees or Kanouris or laws are in this sense, considered to be a fulfillment of the mission of the Prophet, and thus form a part of the Islamic law.<sup>49</sup>

The monarch can even order the judges by a procedural device, called '*Adam Sam'a Al Da'Wa*', to suspend or abrogate a substantive rule of the *Shari'a*.<sup>50</sup> Through this device, the monarch can prohibit judges to hear a case, or entertain an action, unless certain conditions are met.<sup>51</sup>

<sup>41</sup>Seaman, *supra* note 2, at 440. See generally *id.*, at 440-442; R. NYROP, *supra* note 1, at 188-190; Solaim, *Saudi Arabia's Judicial System*, 25 MIDDLE EAST J. 403-404 (1971); Shamma, *Law and Lawyers in Saudi Arabia*, 14 INT'L & COMP. L.Q. 1034, 1035 (1965).

<sup>42</sup>Royal Decree No. M164, dated 4/7/1395 A.H. (1975 A.D.). The council replaced the traditional overseer—the grand mufti or senior religious advisor.

<sup>43</sup>*Id.*

<sup>44</sup>Seaman, *supra* note 2, at 441.

<sup>45</sup>Habachy Seminar, *supra* note 9, at 68.

<sup>46</sup>Seaman, *supra* note 2, at 441.

<sup>47</sup>*Id.*

<sup>48</sup>Habachy Seminar, *supra* note 9, at 138.

<sup>49</sup>*Id.* at 133-134.

<sup>50</sup>*Id.* at 138.

<sup>51</sup>*Id.*

## B. ADMINISTRATIVE COURTS

In addition to the *Shari'a* courts, Saudi Arabia has numerous semi-judicial organs that have been established by royal decrees. These semi-judicial organs are mostly concerned with disputes involving the application of regulations.<sup>52</sup> Although they are separate from the *Shari'a* courts and primarily are concerned with secular matters, the *Shari'a* is still the supreme authority in every case.<sup>53</sup>

For purposes of this article, the two most important semi-judicial organs are the Board of Grievances and the Commission for the Settlement of Commercial Disputes. The Board of Grievances (*Diwan al-Mazalim*), established in 1955,<sup>54</sup> is presently primarily concerned with administrative cases involving government actions. The Board of Grievances has appellate jurisdiction over certain administrative decisions concerning the investment of foreign capital, including the decision to withdraw a foreign investor's license to do business in the kingdom.<sup>55</sup> The board also investigates cases under Saudi-Arabia's Anti-Bribery Regulations.<sup>56</sup> Most importantly, a 1963 resolution of the Council of Ministers requires that any dispute arising out of a contract with a government organization be submitted to the board for resolution.<sup>57</sup>

The Commission for the Settlement of Commercial Disputes, established in 1964 (as the former Board for Settlement of Commercial Companies Disputed), resolves disputes involving companies created under the Saudi Company Laws.<sup>58</sup> The commission, of course, must follow the *Shari'a*, as well as regulations, in its decisions.

**Application of Saudi Law to Foreign Businesses**

As mentioned above, Saudi Arabian law applies in all contracts with government organizations.<sup>59</sup> Under the Company Law, all foreign companies, branches, agencies or representative offices established in Saudi Arabia or foreign companies issuing or offering any financial securities for sale or subscription in the country are governed by Saudi Arabian Law.<sup>60</sup> In addition, the recently enacted 1979 Investment of Foreign Capital Regulation

<sup>52</sup>Solaim, *supra* note 41, at 407. See Long, *The Board of Grievances in Saudi Arabia*, 27 MIDDLE EAST J. 71, 72 (1973).

<sup>53</sup>Solaim, *supra*. See also Labor and Workers Regulation, Royal Decree No. M/21, art. 185 of 6/9/1389 A.H. (Nov. 26, 1969 A.D.).

<sup>54</sup>Royal Decree No. 2/13/9759, dated 9/17/1374 A.H. (May 10, 1955 A.D.). See generally Seaman, *supra* note 2, at 445-48; Hoyt, *supra* note 3, at 107-109.

<sup>55</sup>Foreign Capital Investment Regulation, Royal Decree No. M/4, art. 10, dated 2/2/1399 A.H. (1 Jan. 1979 A.D.), in BUSINESS LAWS, *supra* note 2.

<sup>56</sup>Royal Decree No. 15, art. 17, dated 3 Rabi'l 1382 A.H. (Aug. 9, 1962 A.D.).

<sup>57</sup>Hoyt, *supra* note 3, at 107.

<sup>58</sup>Royal Decree No. 38, art. 227, dated 22 Shawal 1377 A.H., in BUSINESS LAWS, *supra* note 2.

<sup>59</sup>See note 57 and accompanying text. See generally Hoyt, *supra* note 3, at 106-109.

<sup>60</sup>Companies Law, Royal Decree No. 38, art. 227 and 228, dated 22 Shawal 1377 A.H., in BUSINESS LAWS, *supra* note 2. However, all commercial agents in Saudi Arabia must be Saudi

specifically states that all enterprises which enjoy the benefits of compliance with the regulation, which are substantial, are governed by the "Labour Law, Social Securities Law and other laws in force in the Kingdom."<sup>61</sup>

The only cases in which foreigners doing business in Saudi Arabia may be exempted from Saudi law are in cases governed by a clause in a contract, which requires dispute resolution through international arbitration applying non-Saudi law. Even in these cases, Saudi law may be determinative. Although arbitration clauses between private parties are normally accepted and enforced by Saudi courts, the Saudi courts do not automatically extend recognition to foreign judgments.<sup>62</sup> Thus, if a party found it necessary to enforce an international arbitration award against assets located in Saudi Arabia, it would be likely that a Saudi court would conduct a new hearing on the merits, applying Saudi law, before allowing execution on the assets.<sup>63</sup>

It is therefore important for the practitioner to understand the Saudi laws that will be applied. A distinction is made in the legal system of Saudi Arabia between the law of persons (*statut personnel*) and the law of property, contract and obligation (*statut réel*).<sup>64</sup> The law of persons includes such matters as marriage, divorce, alimony, inheritance, capacity to enter into a binding contract and the law governing religious trusts (*awqaf*).<sup>65</sup> When non-Muslims are concerned and both parties are of the same faith, the *Shari'a* courts apply the religious law of the parties to matters of personal status, other than to inheritance and *awqafs*.<sup>66</sup> In cases where the parties belong to different religions, the courts apply Islamic law.<sup>67</sup>

In the laws of property, contract and obligation, the *Shari'a* does not discriminate against foreigners or non-Muslims.<sup>68</sup> Once property is lawfully

nationals, *see* Commercial Agencies Regulations, Decree No. 3051, art. 1, dated 20/2/1382, in BUSINESS LAWS, *id.*

<sup>61</sup>Investment of Foreign Capital Regulation, No. M/4, art. 8 of 2/2/1399 A.H. (effective 25 Feb. 1979), in BUSINESS LAWS, *id.* The benefits include: (i) all privileges extended to industrial enterprises pursuant to the Protection and Encouragement of National Industries Regulations; (ii) exemption for an industrial or agricultural enterprise in which foreign capital has been invested from both income and companies tax for ten years and for five years for other enterprises (if at least 25 percent of the capital is owned by Saudi nationals during the entire exemption period); and (iii) the right to acquire needed land, in conformity with the Appropriation of Realities Law by non-Saudis. *Id.*, article 7.

<sup>62</sup>Hoyt, *supra* note 3, at 106.

<sup>63</sup>*Id.* In late 1979, Saudi Arabia signed the convention of the International Center for the Settlement of Investment Disputes (ICSID). The ICSID is part of the World Bank. If the convention is formally ratified, the decisions of the ICSID would be enforced in Saudi Arabia because ICSID decisions are considered binding in the courts of any member state. Seaman, *supra* note 2, at 449-450; *Saudi Arabia*, MIDDLE EAST ECON. DIG., Nov. 9, 1979, at 44.

<sup>64</sup>Habachy Seminar, *supra* note 9, at 60.

<sup>65</sup>*Id.*

<sup>66</sup>*Id.*; Fishawy Seminar, *supra* note 20.

<sup>67</sup>*Id.*

<sup>68</sup>Habachy, *Property, Right, and Contract in Muslim Law*, 62 COLUM. L. REV. 450, 451 (1962) [hereinafter cited as *Property and Contract Law*]. "The principle of equal treatment of nationals and foreigners is seldom denied, even by [Muslim] nations that have confiscated foreign assets. On the contrary, measures of nationalization are often justified on the ground that they

acquired or a contract validly entered into by a foreigner, the *Shari'a* applies the same rules and provides the same safeguards, regardless of the nationality or religion of the parties concerned.<sup>69</sup> Since foreigners doing business in Saudi Arabia will almost always be governed by the *statut réel* of Saudi Arabia, it is extremely important to understand how property is lawfully acquired and the rights that accrue thereto and how a contract is validly entered into and the nature of the parties' rights under a valid contract. The next two sections will discuss these substantive areas of the *Shari'a*.

## Property Law of Saudi Arabia

### I. General Principles of Shari'a Property Law

Property rights are considered sacred under the *Shari'a*.<sup>70</sup> Encroachment on the property rights of a person is not only considered a trespass against the law; it is also considered a sin against the religion and God.<sup>71</sup>

The teachings of the eminent Hanbali jurist, Ibn Taimiyya, on property are significant because he is the jurist whose works have had the greatest influence on the political and legal institutions of Saudi Arabia.<sup>72</sup> Ibn Taimiyya is quoted as saying that "the first duty of the state is scrupulously to respect private property."<sup>73</sup>

The most commonly used word in Islamic law for property in general is *māl*.<sup>74</sup> *Māl* has been defined as "[a]ll that has a commercial value," or "[t]hose corporeal, usufructuary and other rights of any kind the exchange of which is customary are to be regarded as property (*māl*) of commercial value."<sup>75</sup> Thus, property includes "both movables and immovables, both specific objects and their use (or the income which they produce), both what a man owns and has in his possession, and what is owed to him."<sup>76</sup> Under the *Shari'a*, there is little fundamental difference in the legal treatment of immovable and movable property, although certain laws apply only to immovable property, i.e., easements and preemption rights.<sup>77</sup>

are general in character and apply equally to nationals, and that foreigners are not entitled to more favorable treatment than citizens of the confiscating country." *Id.* at 452.

<sup>69</sup>*Id.*

<sup>70</sup>See generally *id.*, at 452-458; 1 SANTILLANA, *ISTITUZIONI DI DIRITTO MUSULMANO MALICHITA* 354-356 (2d ed. 1938).

<sup>71</sup>*Property and Contract Law, supra*, at 452.

<sup>72</sup>*Id.* at 454.

<sup>73</sup>LAOUST, *ESSAI SUR LES DOCTRINES SOCIALES ET POLITIQUES DE TAKI-D-DIN AHMAD B. TAIMIYA* 407 (1939). See also *id.* at 435-36.

<sup>74</sup>J. Anderson, *Islamic Law and Structural Variations in Property Law*, in 6 *INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW* 2 103 (1975), at 103. [hereinafter cited as *Property Law*].

<sup>75</sup>*Id.*, at 103-104.

<sup>76</sup>*Id.*, at 104. Liquor and pork cannot, however, be owned in Saudi Arabia. There is also no effective patent or copyright law. Spinks, *supra* note 3, at 62. For the regulation of trademarks, see *Registration of Trade Marks Law*, in *BUSINESS LAWS, supra* note 2.

<sup>77</sup>Easements include the right of the public to use private roads when public roads are congested and the right of the public to obtain the water from a renewable source (not well water

The right of ownership under the *Shari'a* is more absolute than in modern systems of law.<sup>78</sup> The difference between the systems was stressed in a letter from Eboul Hulla Bey, professor at the University of Istanbul, to an eminent Frenchman, Maurice Pernod, in which he said:

You French recognize that a right can cease to belong to a person who, during a certain period, has failed to exercise it; and that such right can pass on to another person who becomes entitled to it through having exercised it in a continuous manner. You are acquainted with an extinctive and an acquisitive prescription. At best, we admit the first; but to us, the second is unthinkable. It appears difficult for us to conceive that a right of ownership can ever become extinct, and impossible to envisage that prescription can give birth to a right. For us, in conformity with our sacred law, ownership is eternal and can never be abolished. The right of ownership may not be exercised; but, nevertheless it continues to exist. Our laws do not authorize expropriation except in extraordinary cases.<sup>79</sup>

The extraordinary cases referred to in which expropriation is authorized are for the execution of a judgment against a debtor's property and for the purposes of public utility.<sup>80</sup> In Saudi Arabia, however, the legality of expropriation for public utility may still be questionable.<sup>81</sup>

The *ulamās'* response to rent control legislation provides an excellent example of the depth of the *Shari'a* view on the absolute nature of property rights. During World War II, there was a housing crisis in Jidda, Saudi Arabia, causing rents to soar.<sup>82</sup> A regulation placing a ceiling on rents was proposed, but enactment was prevented because the *Ulamās* objected to the regulation as unlawfully restricting the right of the owners to enjoy the income that could be derived from their property.<sup>83</sup>

The *Ulamās'* objections were similar to those of Sahfi'i, founder of the Shaffei School of the *Shari'a*,<sup>84</sup> who refused to recognize the right of the monarch to fix the price for commodities, even in times of scarcity.<sup>85</sup> Shafi'i stated that "[p]eople are masters of the things they own . . . [and] nobody has the right to take over these properties, totally or partially, without the consent of their owner, except in cases which are clearly specified in the law."<sup>86</sup> The prohibition against fixing prices is based on a *hadīth*, one of the traditions that form the *Sunna*,<sup>87</sup> attributed to the Prophet, in which

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or stored water) from the landowner for household use. Fishawy Seminar, *supra* note 20. A preemption right is the right, in certain cases, of a third party to buy immovable property on the same terms of sale as the original sale by the owner to another person. The preemptive right is available to the co-owner of land held in undivided co-ownership when another co-owner sells his share. See generally Property Law, *supra*, at 105-106. For the law on ownership of the Islamic charitable trust or *wakf*, see *id.* at 105.

<sup>78</sup> Property and Contract Law, *supra* note 68, at 456.

<sup>79</sup> Reprinted in *id.*

<sup>80</sup> *Id.* at 455.

<sup>81</sup> *Id.* at 455-457; Fishawy Seminar, *supra* note 20.

<sup>82</sup> Property and Contract Law, *supra* note 68, at 457.

<sup>83</sup> *Id.*

<sup>84</sup> See note 12 and accompanying text.

<sup>85</sup> Property and Contract Law, *supra* note 68, at 457.

<sup>86</sup> *Id.*

<sup>87</sup> See note 16 and accompanying text.

he denied the power of the state to fix the prices of commodities under normal conditions.<sup>88</sup> The Prophet is reported to have responded to the question of whether he intended to regulate high prices by saying “[i]t is God who denies, and it is God who gives and dispenses. I hope some day to meet Him, and I do not want a man to bring me to account for an injustice I committed against his person or his property.”<sup>89</sup>

In 1974, Saudi Arabia reasserted its commitment to the *Shari'a* property law and the application of this law to foreigners. Section 10 of the 1974 statement of industrial policy provides, in part, as follows:

In recognition of the benefits which the kingdom's industrial development can realize from the entry of foreign capital accompanied with administrative and international marketing capability, the government reassures investors that its established policy is not to impose any restrictions on the movement of money into and out of the Kingdom and that it will always adhere to the policy of respecting private ownership which is based on Islamic Shari'ah.<sup>90</sup>

## II. *Acquisition and Transfer of Property*

Property is initially acquired by “acts.” One of the recognized “acts” for acquiring land in Saudi Arabia is “revival of land.”<sup>91</sup> Revival of land occurs when land which has never been owned is controlled and utilized.<sup>92</sup> This requires more than mere fencing or exploring for oil. The land itself must be used, if possible, for agriculture.<sup>93</sup> Land may be revived if two requirements are fulfilled: one must be able to scream at the edge of the land and no one in an urban area hear it and the land can not have been owned at any time in the Islamic era.<sup>94</sup> Once the land is revived, ownership can never lapse.

There are three other methods for acquiring property. The first is finding, acquiring, and possessing metals or treasures. Underground mining is not included in this category because any thing under the ground is considered to be part of the land.<sup>95</sup> The second method is obtaining possession by cutting wood, grazing, or collecting water from unowned land.<sup>96</sup> The third method is through hunting or fishing and requires the intent to obtain ownership of the wild animal and obtaining complete control over it.<sup>97</sup>

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<sup>88</sup>Property and Contract Law, *supra* note 68, at 457.

<sup>89</sup>LAOUST, *supra* note 73, at 459-461.

<sup>90</sup>Published in Gazette No. 2512 (Feb. 22, 1974), reprinted in JWAIDEH, *supra* note 2, at 5-6. This policy was reaffirmed on behalf of His Majesty King Khalid by His Royal Highness Prince Fahd Bin Abdul Aziz, First Deputy Premier and Minister of the Interior, thereby assuring the continuity of the policy laid down by the later King Faisal. *Id.* at 6.

<sup>91</sup>Fishawy Seminar, *supra* note 20.

<sup>92</sup>*Id.*

<sup>93</sup>*Id.*

<sup>94</sup>*Id.*

<sup>95</sup>*Id.*

<sup>96</sup>*Id.*

<sup>97</sup>*Id.*

Property is primarily transferred by sale, gift, and succession, under the same terms as the general *Shari'a* law in these areas.<sup>98</sup> Additionally, there are specific laws relevant only to the transfer of property.

Under the *Shari'a*, there is an important distinction made between transfer of the corpus (*'ain*) and the usufruct (*manfa'a*). Property rights in an *'ain* cannot be passed from one person to another with a time limit or with any conditions which would limit the future right of disposal of the one to whom the ownership is transferred.<sup>99</sup> Usufructuary rights, on the other hand, can be granted for a limited time or subject to specific conditions.<sup>100</sup> Transfer of only the usufructuary rights can include transfer of the use or enjoyment of property, i.e., by lease; the crops, minerals, or oil which come from it; or the interest it earns—as distinct from the land, mine, or capital itself.<sup>101</sup>

In addition to the general *Shari'a* property law, foreigners are affected in the acquisition and transfer of property by Royal Decree No. 38 on the "Appropriation of Real Property in the Kingdom of Saudi Arabia by Non-Saudi Nationals."<sup>102</sup> Royal Decree No. 38 provides:

*Article 1.*—Non-Saudi nationals may not, other than by succession, acquire the rights of ownership, servitude or usufruct to real property within the limits of Mecca or Medina. . . .

However, a non-Saudi may lease real property for a fixed period not exceeding one year; the term of the lease may be extended for a term or terms which do not exceed one year.

*Article 2.*—A non-Saudi national may not other than by succession and by the cases provided for herein acquire the right of ownership or any other right *in rem* to real property within the kingdom of Saudi Arabia.

*Article 3.*—By way of exception to the restriction provided for in Article 2, a non-Saudi national may appropriate real property in the following cases:

- (a) Subject to a licence issued by the Ministry of Foreign Affairs, diplomatic missions may on the basis of reciprocity appropriate the official residence of the mission or the residence of the ambassador; international organisations may, in conformity with the provisions of their agreement, appropriate their official residence.
- (b) A non-Saudi national may, subject to the terms and conditions of the Law of Distribution of Uncultivated Lands, acquire the right to own agricultural land, upon the motion of the Minister of Agriculture and Water after consulting the Minister of Interior.
- (c) Foreign establishments authorised to carry on their activities in the Kingdom of Saudi Arabia under the Investment of Foreign Capital Regulation may appropriate the real property required to carry on their licensed activities commensurate with such activities, including the real property to

<sup>98</sup>For the laws on gifts and succession, see note 38. The law on sales contract-law will be discussed in the next section.

<sup>99</sup>Property Law, *supra* note 74, at 104.

<sup>100</sup>*Id.*

<sup>101</sup>*Id.*

<sup>102</sup>Royal Decree No. 38 of 22/10/1377, reproduced in translation in BUSINESS LAWS, *supra* note 2.

accommodate the employees of the establishment concerned, provided a license is obtained from the Minister of Trade and Industry.

- (d) A non-Saudi national may, in the foregoing cases, appropriate real property for his residence or for exploitation, provided, upon the motion of the Minister of Interior, the Royal Assent is given.

*Article 4.*—The application of the foregoing provisions shall not be prejudicial to the rights of ownership which have devolved to other than Saudi nationals pursuant to previous laws; however, when conveyance of the property is made the provisions of the Law shall be applied.

*Article 5.*—Public notaries and other authorities which draft deeds in the Kingdom of Saudi Arabia shall not certify a disposal of real property which is inconsistent herewith.

*Article 6.*—This Law shall operate on the date of its promulgation in the Official Gazette and repeals any contrary provision.

The decree demonstrates the effect of the *Shari'a* on the form and content of regulations. The decree does not affect the *Shari'a* succession law, which is considered sacred.<sup>103</sup> The decree also does not affect the vested rights of foreign landowners. The decree does affect, however, the *Shari'a* law on revival of land and freedom to contract (which will be discussed in the next section). Article 5 of the decree limits these rights by the procedural device discussed previously in this article of *'Adam Sam'a Al Da'Wa*, by controlling the acts of governmental authorities.<sup>104</sup>

## Contract Law of Saudi Arabia

### I. *General Principles of Shari'a Contract Law*

The other major institution of private law that affects foreign companies doing business in Saudi Arabia is contract law. As with property, contracts are considered sacred and disregard of *Shari'a* contract law is considered a sin.<sup>105</sup>

There are two fundamental principles of the *Shari'a* that govern contracts: freedom of contract and the binding nature of contracts. Any agreement not specifically prohibited by the *Shari'a* is valid and binding on the parties and can be enforced by the courts. The great Hanbali jurist, Ibn Taimiya, expressed this principle as follows:

[i]f proper fulfillment of obligations and due respect for covenants are prescribed by the Lawgiver, it follows that the general rule is that contracts are lawful . . . since the Lawgiver recognizes the legality of their objectives.<sup>106</sup>

Under the *Shari'a*, a valid contract has the status of "law" and is binding until the end of its terms, even if concluded with non-Muslims.<sup>107</sup> This is

<sup>103</sup>"[V]erily," says the Koran, "the land belongs to Allah, He makes whomsoever He willeth of his servants inherit it. . . ." QUR'AN 7:125 (Bell transl., 1 BELL, THE QUR'AN 149 (1937)).

<sup>104</sup>See notes 50 and 51 and accompanying text.

<sup>105</sup>See generally Property and Contract Law, *supra* note 68, at 458-472.

<sup>106</sup>The quote is from an unpublished translation by Professor Abu Zahra of the Law School of Cairo University, in *id.* at 460.

<sup>107</sup>*Id.* at 465.

expressed by the rule that "the contract is the *Shari'a* of the parties" (*Al-Agd Shari'at Al-Muta 'agdin*).<sup>108</sup> Thus, a contract cannot be legally terminated or voided because of an unfair bargaining advantage by one of the parties.<sup>109</sup> Notwithstanding this rule, as in modern legal systems, there is an implied term of reciprocity.<sup>110</sup> Therefore, one party's fulfillment of its obligations is contingent on the proper implementation of the contract by the other party.<sup>111</sup>

As a consequence of the rule that a contract is the "Law" of the parties, there is no legal distinction between a treaty, a public contract and a commercial agreement. The following passages from the 1958 Arbitral Award in the dispute between Saudi Arabia and Aramco are relevant in this connection:

Hanbali Law contains no precise rule about mining concessions and "a *fortiori*" about oil concessions. Owing to the lacuna in Moslem Law, as taught by the Hanbali School, the Imam, i.e. H. M. the King, in his capacity of theocratic Ruler, has the power to adopt such solutions as he deems most appropriate to the general interest. To this end, he can resort to a régime of mining concessions, "in specie" of oil concessions, based on a contract, provided that this solution is not contrary to the rules of *Shari'ah*. The concession contract does not conflict with these rules, since it is in conformity with two fundamental principles of the whole Moslem system of law, i.e. the principle of liberty to contract within the limits of Divine Law, and the principle of respect for contracts. The first principle is stated by Ibn Taimiya as follows: "The following rule shall be obeyed: men shall be permitted to make all the transactions they need, unless these transactions are forbidden by the Book or by the Sunna." (Laoust, *Le Traite de droit public d'Ibn Taimiya, traduction annotée de la Siyasa Sar'iya*, Beyrouth, 1948, p. 167; Milliot, op. cit., p. 205, who stresses the principle of freedom to contract, as one of the basic rules of the Law of Obligations in Islam). The second basic rule, in Ibn Taimiya's opinion, results from the fact that Moslem Law does not distinguish between a treaty, a contract of public or administrative law and a contract of civil or commercial law. All these types are viewed by Moslem jurists as agreements or pacts which must be observed, since God is a witness to any contract entered into by individuals or by collectivities; under Moslem Law, any valid contract is obligatory, in accordance with the principles of Islam and the Law of God, as expressed in the Coran: "Be faithful to your pledge to God, when you enter into a pact" (Laoust, *Essai sur les doctrines sociales et politiques de Taki-D-Din Ahmad B. Taimiya*, Le Caire, 1939, p. 445). . . .

The Concession Agreement is thus the fundamental law of the Parties and the Arbitration Tribunal is bound to recognize its particular importance owing to the fact that it fills a gap in the legal system of Saudi Arabia with regard to the oil industry. The Tribunal holds that the Concession has the nature of a constitution which has the effect of conferring acquired rights on the contracting Parties.<sup>112</sup>

<sup>108</sup> *Id.*

<sup>109</sup> *Id. contra* Abrahams, *supra* note 3, at 590.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> Arbitral Award, reprinted in Habachy Seminar, *supra* note 9, at 21-22 and 135.

## II. Contract Formation

A contract of sale (*bai'*) can be concluded for the exchange of anything regarded as a commodity or property (*māl*).<sup>113</sup> Certain things are not included as *māl* under the *Sahri'a* and therefore cannot be the subject of a sale: things completely excluded from legal traffic, e.g., animals not ritually slaughtered; things which are not owned, e.g., public property; ritually impure items, e.g., pigs and alcoholic beverages.<sup>114</sup>

Most forms of contracts of sale recognized in modern legal systems are permissible under the *Shari'a*. There are two important exceptions to this rule: The Koran forbids the taking of interest (*ribā*) and the use of speculative contracts.<sup>115</sup> The Koran expresses the prohibition on taking interest as follows: "[t]hose who devour *ribā* shall only rise again as one whom Satan strikes with his touch; this because they say, 'selling is like usury'; but Allāh has permitted selling and forbidden usury . . . [t]hey who relapse to usury, are the people of Hell, they shall remain in it forever."<sup>116</sup>

The prohibition against the taking of interest, of course, can cause grave difficulties in the modern commercial world. Some Muslim Saudi Arabians refuse to enter into any contracts which provide interest payments.<sup>117</sup> Many business-people in Saudi Arabia, however, merely evade the prohibition. Two common methods of evasion are enlarged commissions to replace interest and the pretense that a loan was made of a larger amount than actually lent (the difference being the effective interest rate).<sup>118</sup>

The prohibition against *ribā* has also been interpreted as forbidding the hoarding of commodities during times of shortages, including such items as gold.<sup>119</sup> Another common interpretation of the prohibition against *ribā* is that the exchange of different quantities of the same thing, but of different quality, is forbidden.<sup>120</sup>

The prohibition against speculative contracts prevents any sale in which there is an inherent risk (*gharar*), because its object cannot be exactly defined. This prohibition has been interpreted to prevent such seemingly safe contracts as contracts for the sale of future crops.<sup>121</sup> The prohibition against *gharar* requires that the obligations of parties must be definite, in

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<sup>113</sup>SHORTER ENCYCLOPEDIA OF ISLAM 57 (H. Gibb and K. Kramer ed. 1961) [hereinafter cited as ENCYCLOPEDIA]. Marriage and employment agreements are also concluded by contract. *Id.*

<sup>114</sup>*Id.*

<sup>115</sup>*Id.* at 56. The Koran also prohibits games of chance (*maisir*).

<sup>116</sup>Sūra ii. 275-277, *id.* at 471.

<sup>117</sup>Comments of Dr. Yorguy Hakin, legal specialist at the Near Eastern and African Division of the Law Library, Library of Congress (May 27, 1981) [hereinafter cited as Hakin].

<sup>118</sup>*Id.* The issue of the legality of interest is presently being argued in the civil courts of Abu Dhabi and the commercial courts in London, see *London gets a whiff of brimstone*, THE ECONOMIST (March 21, 1981).

<sup>119</sup>*Id.*

<sup>120</sup>ENCYCLOPEDIA, *supra* note 113, at 471.

<sup>121</sup>*Id.* at 57.

particular the object of the sale, the price and the terms.<sup>122</sup>

As in modern legal systems, to conclude an agreement requires offer and acceptance.<sup>123</sup> Representation of a party by granting another the power of attorney (*wakāla*) is also possible; in this case, the *wakāla* is regarded as the main contracting party with corresponding rights and obligations, but the rights of ownership go directly to the principal.<sup>124</sup>

The rules on conclusion of the contract of sale, however, are stricter than the rules in most modern legal systems. Conclusion of the contract must take place at the same transaction as the offer and acceptance.<sup>125</sup> Furthermore, there is a right of withdrawal of the offer even after acceptance.<sup>126</sup>

Transfer of ownership is only completed when possession is taken, except in the case of the sale of real property.<sup>127</sup> An exception to this rule exists in favor of the purchaser. The purchaser has a right of withdrawal at the time he sees the goods and the right of withdrawal if the goods prove defective.<sup>128</sup>

### Conclusion

A review of the recently enacted regulations of Saudi Arabia, because of their similarity in form to Western legislation, can lull the practitioner into a false sense of comprehension of the legal system of Saudi Arabia. The *Shari'a* is still, however, very much the law in Saudi Arabia.

Although profoundly different from modern legal systems, the *Shari'a* is an extremely sophisticated system. It affects innumerable aspects of business in Saudi Arabia from acquiring property to retaining property, from entering into a contract to breaching a contract.

This article has, of course, only touched the surface of the *Shari'a* that could impact on foreigners doing business in Saudi Arabia. An awareness of the *Shari'a* can prevent, however, grave misconceptions of the nature of the Saudi regulations and excessive reliance on them for answers to fundamental questions on the applicable law in Saudi Arabia.

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<sup>122</sup>*Id.*

<sup>123</sup>*Id.* at 56.

<sup>124</sup>*Id.* at 57. See also, Spinks, *supra* note 3, at 35.

<sup>125</sup>*Id.* For the specific rules on government contracts, see Abrahams, *supra* note 3, at 579-591.

<sup>126</sup>ENCYCLOPEDIA, *supra*.

<sup>127</sup>*Id.*

<sup>128</sup>*Id.*

