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Legal Practice Shaped by Loyalty to Tradition: The Case of Saudi Arabia

Carolyn R. Ruis*

Political upheavals in Iran and terrorist attacks on Americans in Beirut have reinforced the Western perception that Islam is a hostile political force¹ which can dramatically affect corporate operations in the Middle East.² The religion, however, is much more than a political rallying force.

Foreign attorneys wishing to practice in Saudi Arabia must realize that Arab and Western views of the role of religion diverge. Whereas Westerners often have a pro forma view of religion,³ the Muslim's commitment to his religion is absolute. Islam, unlike mainstream Western religions, encompasses all aspects of life, from moral obligations and outward personal conduct to the legal structures of modern governments.⁴ To work successfully with Muslim business partners, who by Western standards may appear to be religious zealots, Western attorneys must strive to grasp the relationship between Middle Eastern religious

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1. A possible explanation for the Western conception of religion as a political force can be found in recent events in the West. The prominence of fundamentalist Christians in American party politics demonstrates that religion can be employed as a strong political force in a country as secular as the United States. Likewise, the power of Roman Catholicism in Poland exemplifies the force that may be attached to religious values.

2. Religion is included in one commentator's list of internal "points of power" that might affect U.S. corporations in the Middle East. See Weiner, *Political Issues Affecting U.S. Corporations in the Middle East*, in LEGAL ASPECTS OF DOING BUSINESS WITH EGYPT, IRAN, SAUDI ARABIA AND THE GULF STATES 5-6 (Protecting Law Inst. Supp. 1976). The development of the Israeli boycott list is a dramatic example of the effect that the desire to protect Islamic values can have on corporations doing business in the Middle East. Foreign businesses that disregarded Arab warnings against dealing with Israel were placed on a blacklist and prohibited from conducting business in the Arab world. See F. KHOURI, *THE ARAB-ISRAELI DILEMMA* 204 (2d ed. 1976).

3. See, e.g., Nottingham, *Religion and Types of Society*, in THE SOCIAL MEANINGS OF RELIGION 88-94 (W. Newman ed. 1974).

4. For a useful introduction to Islam and Islamic law, see F. RAHMAN, *ISLAM* (2d ed. 1979). See also C. FARAH, *ISLAM* (1970).

and legal systems and adapt their behavior to the social and business conventions of the region.⁵

This note employs Saudi Arabia as an example of an Islamic country that has retained its religious traditions while being forced by economic necessity to adopt some Western commercial practices. Part I reviews the legal system of Saudi Arabia, highlighting the major differences and similarities between it and Western commercial law. Part II considers the legal requirements and cultural norms which Western attorneys should be prepared to observe while practicing in a traditional Islamic society. It suggests that strict adherence to custom and the Saudi Government's recent attempts to strengthen restrictions on both the professional and personal lives of expatriates in the Kingdom⁶ may be interpreted as a defense against the increasing penetration of Western materialism which has accompanied economic internationalization.⁷

I. THE LEGAL SYSTEM OF SAUDI ARABIA

The legal system of Saudi Arabia is based on the *shari'a*, the law of Islam believed to be inspired by God and revealed by the prophet Muhammad.⁸ "The *Shari'a* . . . covers every aspect of life and every field of law—international,

5. One writer states: "[N]o one can disregard the importance of Islam, but dealing with it requires more than a superficial respect for all religions. Islam is conceived of as a total living system, adapted to the historical experiences of each Arab country." AbiNader, *Americans Overseas: Carrying the Culture of Technology*, MIDDLE E. EXECUTIVE REP., June 1980, at 2, 16.

6. *Crackdown on Expatriates—Again*, MIDDLE E. EXECUTIVE REP., Feb. 1983, at 21. Restrictions on expatriates are evident in various settings:

Women's exposed legs have been caned by religious police in Riyadh shopping centers. The deputy ambassador from a Northern European country was taken into custody after he was seen kissing his wife goodbye as he left her hospital room. Warnings to the expatriate community that they must adhere to the customs and Islamic values of the Kingdom have appeared in all the English language dailies and in the semi-official Saudi Economic Survey.

Id.

7. See, e.g., *Filling a Void: A Survey of Saudi Arabia*, ECONOMIST, Feb. 13, 1982, at 3 [hereinafter cited as *Survey*]. Many Saudi citizens have had to adapt their *bedouin* (nomadic) way of life to a more affluent Western one over a relatively short period. When the Kingdom of Saudi Arabia was formed in the 1920s, roughly one-fourth of its inhabitants were *bedouins*. The remainder lived in oases, market towns, and Islam's holy cities, Mecca and Medina. Prior to the institution of the Saudi monarchy, the governmental system of the Arabian Peninsula was tribal. Modernizing forces of contemporary society resulted in rural-to-urban migration and the settlement of *bedouin* tribes. For discussions of the impact of modernization on traditional society in Saudi Arabia, see P. MANSFIELD, *THE ARAB WORLD* 400-09 (1976).

In recent years, external signs of wealth said to characterize Western society have become visible in Saudi Arabia. Yet, "[a]s video sets, peanut butter and Pepsi-Cola threaten to become the Saudi way of life, so [the Saudis] cling all the more desperately to the two closely interwoven roots they have always possessed: the family and Islam." *Survey*, *supra*, at 4.

8. See C. FARAH, *supra* note 4, at 101.

constitutional, administrative, criminal, civil, family, personal, and religious."⁹ In addition, many areas not traditionally covered by modern legal systems are included in the *sharī'a*. All human actions are viewed by the degree to which they conform to *sharī'a* principles.¹⁰ In its narrow sense, *sharī'a* is founded on the principles of the *Qurān* (the holy book of Islam), the *sunna* (non-canonical records of the acts and words of the prophet), and *ijma'* (consensus of legal scholars).¹¹ According to this view, the *sharī'a* is binding on Muslims in all facets of daily life. A more liberal interpretation holds that the *sharī'a* encompasses the collected writings of Muslim jurists and public policy considerations. Under this latter construction, the *sharī'a* is binding only to the extent that there is consensus on a particular issue.¹²

Orthodox, or *Sunni*, Islam is comprised of four major schools of thought: *Hanafite*, *Malikite*, *Shafi'ite*, and *Hanbalite*.¹³ The *Hanbalite* school, predominant in Saudi Arabia, is considered to be the most conservative of the orthodox schools of thought.¹⁴ Using the narrow construction of the *sharī'a*, *Hanbalis* prescribe an almost literal adherence to the traditions of the *Qurān* and the *sunna*.¹⁵ The three remaining schools differ, among other points, on the importance attached to *ra'y* (a jurist's personal judgment), *qiyās* (analogical reasoning), and the use of local custom in interpreting legal principles.¹⁶ The four schools agree that the *Qurān* and the *hadith* (sayings of the prophet) are the basic sources of law.¹⁷

The growing importance of Saudi Arabia as a commercial center has necessitated supplementing traditional religious law with secular regulations dealing mainly with commercial practice. These regulations are issued by royal decree according to a right derived from the *sharī'a* which provides that the ruler may make regulations for the well-being of the people, provided they do not conflict with the traditional principles of the *sharī'a*.¹⁸

9. J. ANDERSON, *LAW AS A SOCIAL FORCE IN ISLAMIC CULTURE AND HISTORY* 14 (1957).

10. *See id.*

11. Yamani, *The Eternal Shari'a*, 12 N.Y.U. J. INT'L L. & POL. 205, 206 (1979).

12. *Id.* at 206.

According to the well-known *sharī'a* principle that "the validity of that on which there is a difference can be questioned, but not the validity of that on which there is consensus," it becomes imperative for countries that fully implement the *sharī'a*, like Saudi Arabia, and for countries that partially implement it, like most of the other Muslim countries, to adopt the narrow meaning of *sharī'a* (that is, the meaning confined to the *Qurān*, the *sunna*, and consensus) and then to select principles from the various juristic schools without bias.

Id. See generally F. RAHMAN, *supra* note 4, at 68-84, 100-16.

13. For an introduction to the orthodox schools of thought, see C. FARAH, *supra* note 4, at 184-95.

14. *See id.* at 193-94.

15. *See id.* at 194.

16. *See generally id.* at 189-95.

17. *Id.* at 190.

18. A. LERRICK & Q.J. MIAN, *SAUDI BUSINESS AND LABOR LAW*, xix (1982).

Although tradition is important in Muslim society, pressures for reform are exerted from within the Islamic legal community.¹⁹ Modern reformers face conflicts between the ideals of divine revelation and unity of juridical thought and the realism of diversity in the interpretation of the *shari'a* in light of the needs of contemporary society.²⁰ They reject complete adherence to traditional Islamic jurisprudence.²¹ Instead of advocating Western models, however, these reformers argue for reinstatement of the fundamentals of Islam and reinterpretation of Islamic principles in light of the needs of contemporary society.²²

The popularity of the movement to accommodate modern commercial needs to the mandates of the *shari'a* is evidenced in political as well as scholarly discussions. At a recent meeting of the Gulf Cooperation Council Justice Ministers, member states were asked to make the *shari'a* the basis for all legal rulings within five years.²³ Such decisions point to a growing consensus in the conservative Gulf States and Saudi Arabia that the area's economies should be made to conform to the religious beliefs of the local population.²⁴

Although the legal system in Saudi Arabia has its roots in the Islamic tradition, close examination reveals similarities between Western and Saudi commercial law.²⁵ Both recognize the binding force of contract; the freedom to negotiate contracts and to include a choice of law clause; and the right of recourse to an independent arbitration tribunal.²⁶ Although the judicial system in Saudi Arabia recognizes civil law actions, enabling private citizens to bring commercial suits,²⁷ there is no recognition of foreign judgments or arbitration agreements.

19. Kourides, *Traditionalism and Modernism in Islamic Law: A Review*, 11 COLUM. J. TRANS-NAT'L. L. 491 (1972).

20. *Id.* at 496.

21. *Id.* at 498.

22. *Id.* at 498-99. This reinstatement of Islamic principles is particularly evident in Egypt and Iran where westernization was rapid during the periods when Anwar Sadat and Shah Mohammad Reza Pahlavi were in power.

23. Hitchcock, *Gulf Arab Legal Systems Developing Fast But Still Leave Some Foreigners Uneasy*, AP/Dow Jones News Wire, Sept. 6, 1984, at 4.

24. *Id.* at 5.

25. Habachy, *Similarities and Common Principles of Western and Middle Eastern Systems of Law*, MIDDLE E. EXECUTIVE REP., July 1979, at 2, 13. Similarities between Western legal systems and those based on the *shari'a* are due to the influence of Roman law:

Even where there is no specific man-made regulation governing a legal matter, the general principles of Islamic law are very much the same as their counterparts in modern systems of law. In the final analysis, these modern systems, whether Anglo-American or European, are based more or less on the great legal heritage of Roman law.

Id. Cf. Badr, *Islamic Law: Its Relation to Other Legal Systems*, 26 AM. J. COMP. L. 187, 197 (1978) (examining similarities between the common law and Islamic law).

26. Habachy, *supra* note 25, at 13.

27. Z. JWAIDEH, *LEGAL, TAX AND REGULATORY ASPECTS OF DOING BUSINESS IN SAUDI ARABIA* 4 (1976). As in Western systems, two types of litigation are recognized: public right actions (criminal law); and private right actions (civil law). *Id.*

Foreign judgments must be reviewed by Saudi courts according to principles of the *shari'a*.

Despite these similarities, commercial law in Saudi Arabia is characterized by a dualism unknown in Western law. While the necessities of modern commercial transactions have forced the adoption of secular supplements to the traditional law, the fundamental principles of commercial law continue to be based on Islam. Hence, Western legal practitioners wishing to practice in Saudi Arabia should be prepared to work with a system that embraces seemingly inconsistent sources of law.

II. LEGAL AND CULTURAL RESTRAINTS ON FOREIGN PRACTITIONERS: THE EFFECT OF ISLAM

In addition to the apparent inconsistencies of Islamic legal systems, Western attorneys face obstacles posed by governmental and societal restrictions on foreigners.

A. Legal Requirements

Western lawyers wishing to practice in an Islamic setting must be aware of legal restrictions placed on foreign commercial enterprises operating in the various countries of the Middle East.²⁸ Two basic requirements for foreign business enterprises in Saudi Arabia are participation and registration.²⁹ Some form of Saudi participation is required of foreign enterprises in virtually all transactions executed within the Kingdom. In addition to aiding the Saudi Government in policing the actions of foreign enterprises, Saudi participants generally help foreign representatives familiarize themselves with the Islamic environment.³⁰

The Saudi participant may act as an agent or may enter into a joint venture agreement with the foreign enterprise.³¹ An agent must be a Saudi national.³² He receives a percentage of the proceeds from a transaction but has no equity interest in the venture.³³ Foreign-Saudi joint ventures may assume one of two forms: the contractual joint venture or the limited liability company. Unlike an agent, the

28. A detailed explanation of the technical requirements for setting up business enterprises in Islamic countries is beyond the scope of this note. The reader should consult Homsy, *Legal Aspects of Doing Business in Saudi Arabia*, 16 INT'L LAW. 51 (1982); Taylor & Weissman, *Middle East Agency Law Survey*, 14 INT'L LAW. 331 (1980); Santire, *Participation and Registration in the Kingdom of Saudi Arabia*, 15 INT'L LAW. 561 (1981); and LEGAL ASPECTS OF DOING BUSINESS WITH EGYPT, IRAN, SAUDI ARABIA AND THE GULF STATES (Practicing Law Inst. 1975 & Supp. 1976).

29. See generally Santire, *supra* note 28.

30. See Shamma & Morrison, *The Use of Local Representatives in Saudi Arabia*, 11 INT'L LAW. 453 (1977).

31. See Santire, *supra* note 28, at 564.

32. See Taylor & Weissman, *supra* note 28, at 351.

33. Santire, *supra* note 28, at 564.

Saudi participant in either type of joint venture is not limited to a five percent interest in the assets of the foreign enterprise. The government, however, does offer tax benefits and bid preferences to encourage the limited liability company and to maximize Saudi participation in the economy.³⁴

The other important requirement for foreign business enterprises in Saudi Arabia is registration. Registration assures the Saudi Government that the foreign business provides a service needed in the Kingdom and that the company is not on the Israeli boycott list and, therefore, prohibited from engaging in business in the Kingdom.³⁵ If the foreign business is using a Saudi agent, registration also allows the government to determine whether the agency fee is within the legal limit.³⁶ Furthermore, if an agent is not employed, the application for registration requires a statement of the reason, thus providing the government with additional assurance that participation requirements have been complied with.³⁷ Registration may be temporary, lasting only for the duration of the contract, or permanent.³⁸

In addition to formal registration and participation requirements for foreign commercial enterprises, Western attorneys must familiarize themselves with restrictions applied specifically to foreign legal practitioners in the Kingdom. The 1980 decision to restrict the practice of law to Saudi nationals³⁹ has meant that foreign firms which, through the 1970s, had been operating as branch offices of foreign firms are now required to practice under the auspices of a Saudi sponsor,⁴⁰ who apparently acts as agent for legal practitioners. The dearth of secularly trained Saudi attorneys has made locating Saudi sponsors a problem for foreigners wishing to continue existing practices or begin new ones.⁴¹

B. Cultural Adaptations

The recognition of cultural differences facing practitioners in the Middle East is as important as the observance of legal requirements for setting up commercial enterprises and law offices. Cultural expectations will change the manner in which foreigners conduct business.

Cultural nuances derived from the *shari'a* significantly affect the conduct of legal transactions. For example, faced with the question of when a deal in a major commercial contract is closed, Westerners would assume that it is finalized when

34. See *id.* at 569–70 (“Agency, like the contractual joint venture, has none of the official benefits of an LLC [limited liability company] such as the tax holiday or bid preference.”*Id.*).

35. See *id.* at 563.

36. *Id.*

37. See *id.*

38. See *id.* at 562.

39. Ministerial Decision 1190, translated in MIDDLE E. EXECUTIVE REP., Feb. 1982, at 26.

40. See Kenyon, *Lawyers' Mecca*, AM. LAW., Aug. 1980, at 11, 13.

41. See *id.* (“Although close to 3,700 students graduated from three schools of Islamic law in 1977, the Saudi Arabian embassy listed only 28 secularly trained Muslim attorneys in the kingdom in 1977.”*Id.*).

the contracts are signed. However, since agreements are enforceable by their terms according to the *shari'a*, and since many deals not involving the Saudi government are made orally, a Saudi might consider a deal to be final when an initial agreement is made over a handshake. A multitude of problems in contract modification may arise when the parties assume that the agreement was concluded at different points.⁴²

Differing methods of contract negotiation might also pose a problem to the uninformed Western practitioner. Contracts in Saudi Arabia are often awarded by virtue of personal connections. What is viewed as corruption in the West is seen as a normal economic pattern in Saudi society. "Government by family sees nothing wrong in business by connection."⁴³

Western attorneys might also be faced with adapting to a professional status unlike that to which they are accustomed. For female attorneys the transition is difficult if not impossible. The professions of business and law are the most difficult fields for women to enter in Saudi Arabia.⁴⁴ While female attorneys and financiers do work in the Kingdom, they are not easily found, primarily because women are required to be segregated from the male public. Because women are hindered in their work by the segregation requirement, female lawyers or financiers are viewed as less valuable employees than their male counterparts.⁴⁵ This drawback may not be as severe as it would seem, however, since women may deal openly with American and European men, with whom much business is done.⁴⁶

In other Islamic countries a negative perception of the legal profession affects male as well as female attorneys. In Egypt, for example, lawyers are thought to be members of a disreputable, avaricious profession.⁴⁷ While it does not appear

42. See generally Nelson, *Cross-Cultural Training*, MIDDLE E. EXECUTIVE REP., Dec. 1983, at 21.

43. Survey, *supra* note 7, at 8. According to one commentator:

[D]ifferences in culture lead to genuine differences in economic practice. What would be called corruption in the west is not so much an outgrowth of the Saudi economy as the way it works. . . . Patronage is the way the princes get rich; it is also, much more than coercion, the main source of the government's authority.

Id.

44. See Howe, *Western Women Working in Saudi Arabia*, MIDDLE E. EXECUTIVE REP., March 1981, at 16, 18.

45. See *id.*

46. See *id.*

47. E. HILL, MAHKAMA! STUDIES IN THE EGYPTIAN LEGAL SYSTEM 41 (1979). Hill comments on the status of the legal profession in Egypt:

Lawyers . . . are not of high status. They are viewed by many people as squeezing maximum fees from every case and thus having a stake in its prolongation. Popular wisdom sees them as mendacious, encouraging litigation and giving hope of success when the odds are against it. It is not a profession sought after by the young. Indeed, many law offices with their seedy furniture and faded paint reflect the less than prosperous circumstances of the occupants.

Id. But cf. F. ZIADEH, LAWYERS THE RULE OF LAW AND LIBERALISM IN MODERN EGYPT (1968) (regarding the liberalizing force of lawyers in Egypt).

that lawyers in Saudi Arabia and the Gulf States are relegated to such low status, Western practitioners nevertheless need to adapt to restrictions placed on both their professional and personal lives.

Foreigners must adapt to differing conceptions of a typical work-day or week. Although most Westerners assume a work-week which runs from Monday through Friday, they must realize that Friday is the Islamic holy day and, if not closed, commercial offices might be expected to keep irregular hours. In addition, Islam prescribes ritualistic prayer five times daily. Saudis have resisted the imposition of a Western time structure that would disrupt this schedule.⁴⁸

Western practitioners must also learn to adjust their schedules to the Islamic calendar. *Ramadān*, the Muslim month of fasting when no food or drink is taken from dawn until sunset,⁴⁹ must be accommodated in the workplace. Especially if the month falls during the summer (the Muslim calendar is based on a lunar system), work-days will be shortened considerably.

Linguistic barriers also exist between Westerners and Saudis. Since records are required to be kept in Arabic,⁵⁰ Western practitioners might feel dependent on their Saudi sponsors to keep offices operating in accordance with the law. Even Westerners who have studied Arabic will undoubtedly feel deficient in oral skills, since the Arabic studied formally rarely conforms to that actually used in the Middle East. Problems in exact translation of legal phrases will come into play when negotiating contracts, thus directly affecting Western attorneys in their legal practices. Although both the Western and Arab parties to a contract may agree on the general terminology, choice of wording is crucial to the agreement between their two languages.

While differences in daily schedules and language obviously affect business practices, more subtle cultural nuances can also be important. Formalities such as the offering of refreshments and inquiries about one's family or health might strike a Westerner as superfluous in a commercial setting. However, unless cultural attitudes such as these are complied with gracefully, the business relationship is not likely to endure.

Western practitioners will also find that their personal lives and the lives of their families will be influenced by Saudi traditionalism; expatriate communities in Saudi Arabia must adapt to Islamic social norms. Segregation of the sexes is

48. *Saudiization: The Emerging Trends*, MIDDLE E. EXECUTIVE REP., June 1984, at 16, 17 [hereinafter cited as *Saudiization*]. One writer states: "For historical and cultural reasons, Saudi men have resisted structuring their lives around a 9 A.M. to 5 P.M. day. To Saudis, such time restraints are not natural, having been devised, they feel, by Westerners to suit the need to keep machines operating constantly." *Id.*

49. See C. FARAH, *supra* note 4, at 143-45.

50. See *Saudiization*, *supra* note 48, at 16.

taken seriously in the social as well as in the business setting.⁵¹ In particular, the pressures on expatriate women to remain within the Saudi definition of decorum are intense. Women who are accustomed to complete freedom must conform to Saudi ideas of proper dress and behavior. This applies to female spouses as well as female legal practitioners. Women who enjoyed careers in their home countries often must be content to join the burgeoning field of cottage industries found in expatriate communities.⁵²

III. CONCLUSION

The long history of cultural traditionalism in Saudi Arabia suggests that the determination of contract terms by the mandates of the *shari'a* and the structuring of the business day around prayer times, is shaped by adherence to traditional Islamic values rather than by the mere desire to restrict the actions of foreigners. Nevertheless, Westerners wishing to practice commercial law successfully in Saudi Arabia or other Islamic states must be prepared to accommodate their view of the law and their methods of practice to the traditions of Islam. Those accustomed to working in several Western systems might find that their "international" experience has left them with few reference points regarding practice in an Islamic setting. In order to undertake a legal practice in Saudi Arabia, the Western attorney must understand the all-encompassing nature of Islam and the effect that it has on all aspects of life in the Middle East.

51. New arrivals from Western countries might be surprised to find that bachelor housing must be separated from family pools and playgrounds and that unmarried women may only socialize within a family setting. See *Crackdown on Expatriates—Again*, *supra* note 6, at 21.

52. Howe, *supra* note 44, at 18. Expatriate women have created a network of service:

Many foreign women in Saudi Arabia are self-employed. Cottage industries such as baking, sewing, hairdressing, and child care have sprung up simply because of the low quality, high price and inconvenience of service in the Kingdom. . . . Other women run businesses from their apartments or villas.

Id. Opinions vary, however, as to the extent to which the laws prohibiting women from outside employment are actually enforced. While women are not permitted to work in most fields, there is evidence that (to some degree) restrictions are overlooked: "[T]he majority of educated Saudis accept that women [both foreign and Saudi] are working and will continue to do so in spite of the periodic 'raids' on the major expatriate employers of women." *Id.* at 19.