

**CIVIL LAW AND THE LEGAL EDUCATION CULTURE IN THE  
KINGDOM OF SAUDI ARABIA:  
ALTERNATIVE ASPECTS**

By

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Submitted to the graduate degree program in Law and the Graduate Faculty of the  
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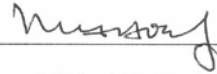
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OF SAUDI ARABIA:  
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Professor Michael H. Hoeflich (Chairperson)

Date approved: August 8, 2018

## **Abstract**

This dissertation is principally devoted to addressing significant aspects of the Saudi Arabian legal education system by comparison with countries who have established strong reputations in the field of legal education. It identifies and examines various international law schools' current instructional methodologies to better determine negative issues and difficulties encountered and how they were addressed. It is the hope that the results will produce viable information of use to the further development and improvement of Saudi Arabian law schools.

While the dissertation is not intended to be an empirical study of either Saudi or international law school curricula, it does attempt to expose existing, and potential problems within the Kingdom's various law school programs. The goal is to present and perhaps assist in the implementation of substantial updates to modern law school education that will provide the nation with well trained, critical thinking, skilled legal experts dedicated to the law, the land, and the people they serve.

Above all else, this paper is an attempt to present comprehensive proposals designed to challenge the disparity between expectation and reality in the education of Saudi Arabian legal professionals—; with an ultimate goal of producing lawyers equipped with extensive training in the vast and complicated system of Saudi Laws. Furthermore, it is envisaged that it will assist in confronting critical issues of modernizing legal curriculum and syllabi while making legal programs more inclusive with the incorporation of international legal education models.

## **Dedication**

To

The memory of my parents (*SHAHA and ALI*) may Allah's mercy be upon them;

My Brothers and Sisters;

To

My wife (*ALANOUD*)

My Children *TURKI, FAISAL, MOHAMMED, ADEEM, NASSER* and *MALAK*

## Acknowledgments

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of Allah, the Most Gracious, and Most Merciful

All praise and thanks be to Allah who gave me the strength, and capability to write this dissertation, and peace and blessings be upon His messenger, Mohammed, who said: "Whoever is not thankful to people then he cannot be thankful to Allah, either".

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## Abbreviations

<b>A.D.</b>	The year of Christ's birth.
<b>A.H.</b>	The Islamic lunar calendar.
<b>ABA</b>	American Bar Association.
<b>AERES</b>	Agency for the Evaluation of Research and Higher Education.
<b>Aka</b>	Also known as.
<b>BDC</b>	Banking Disputes Committee.
<b>BLG</b>	Basic Law of Governance.
<b>CAS</b>	Credential Assembly Service.
<b>CE</b>	Common Era or Current Era.
<b>CRSD</b>	Committee for the Resolution of Securities Disputes.
<b>CSBD</b>	Committee for the Settlement of Banking Disputes.
<b>ESL</b>	English as a Second Language.
<b>GATS</b>	General Agreement on Trade in Services.
<b>GPA</b>	Grade Point Average.
<b>GRE</b>	Graduate Record Examination.
<b>IELTS</b>	International English Language Testing System.
<b>IMAMU</b>	Imam Muhammad ibn Saud University.
<b>IPA</b>	Institute of Public Administration.
<b>IU</b>	Islamic University in Madinah.
<b>J.D.</b>	Juris Doctor degree.
<b>KAU</b>	King Abdulaziz University.
<b>KFU</b>	King Faisal University.
<b>KSU</b>	King Saud University.
<b>LCA</b>	Law of Commercial Agency
<b>LCM</b>	Law of the Council of Ministers.
<b>LL.B.</b>	Bachelor of Laws.
<b>LSAC</b>	Law School Admissions Council.
<b>LSAT</b>	Law School Admissions Test.
<b>NCAAA</b>	National Commission for Academic Accreditation and Assessment.
<b>PBUH</b>	Peace Be Upon Him.
<b>QIYAS</b>	Saudi Arabian National Centre for Assessment in Higher Education.
<b>SAMA</b>	Saudi Arabian Monetary Agency.
<b>SBA</b>	Saudi Bar Association SBA.
<b>STEP</b>	Standardized Test for English Proficiency.
<b>UCC</b>	Uniform Commercial Code.
<b>UQU</b>	Umm Al-Qura University.
<b>WTO</b>	World Trade Organization.

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# CHAPTER I

## INTRODUCTION

### § 1.1 Introduction

*“The acquisition of knowledge is the mission of research, the transmission of knowledge is the mission of teaching, and the application of knowledge is the mission of public service.”*

*James A Stafford*

My dissertation is principally devoted to addressing essential aspects of legal education in the Kingdom of Saudi Arabia in the hope of assisting in their improvement to meet the high legal education standards found in prestigious legal systems around the world. This work will focus on the study of legal education “*Law Teaching*” in Saudi higher education.<sup>1</sup> It will examine the current legal education system in the Kingdom by arguing thought-provoking questions such as:

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<sup>1</sup> The goal is to identify deficiencies in the essential dynamics of Saudi legal education systems and propose reform measures that will place it among the ranks of advanced modern legal education systems. It will provide a comparative study of global law school struggles to develop their education models to graduate students ready for practice.

Countless failures of legal education programs have prompted many studies in the hopes of identifying specific causative factors which can be addressed to repair and upgrade legal education. However, the issues still exist, and legal educators continue to posit various ways to make law students practice ready. *See* Beverly Petersen Jennison. *Beyond Langdell: Innovating in Legal Education*. 62 CATH. U. L. REV. 643, 644 (2013).

The struggle facing Saudi law schools is not just finding an appropriate education model; but finding one that will meet the needs for admissions, teaching methods, curriculum, study plan, and then, adopting it. However, at the present time, law schools commit to finding a balance between traditional legal education and the movement toward more hands-on training for students. Law schools seek theoretical and practical integration of more than one models’ approaches toward teaching, externships, and clinical training experience.

The imposition of reform of Saudi legal education is primarily driven by external influences such as changes in technology, communications, economics, and globalization— not because of the academic legal circles itself. Therefore, for clarification, this dissertation will address just part of the instructional process which is the teaching methods that are applied in schools and departments of law at Saudi universities. However, the door remains open for the pursuit of future studies that will obtain better knowledge and understanding of any problem of legal philosophy, legal history, comparative study of law, or any system of positive law in the Kingdom. It is also very essential for writing text and teaching and for the ascertainment of the correct rules bounded by their limitations.

What is the nature of laws that are the core of legal educational process? What is the doctrine of Saudi legal education? What are the issues facing it? What is the current model affecting Saudi legal education? Does it meet the demands of the local and global legal profession? Are the current legal training programs in law schools' compatible with global changes and challenges that have occurred in the profession and teaching method models? Finally, what are the suggestions for improving legal education and its yields?

By 1975, hundreds of billions of dollars in oil revenue poured into Saudi Arabia. The government began buying and building at a frenzied pace. Foreign contractors flooded into the country, straining the existing legal structure. Because of those circumstances and others, the government recognized the need to transition to a modern stage by issuing more legal codes and regulations to cover all aspects of life in the Kingdom. It also recognized the demand for additional laws appropriate for global efforts, aspirations, and ambitions of the new Saudi generation.

The Saudi legal system is described as one divided into two independent systems that are ostensibly combined in one system based on codification of particular topics. The majority of aspects of the law are based on the modern codified of codices of laws, for instance, at present, there are 351 of law (regulations aka "*nizam*") that include constitutional, civil, national security, criminal, commercial, and procedural laws.

The laws were promulgated in the 1920s, well before the official announcement of the unification of the country in 1932. In the last decades, the Kingdom has once again been making history by creating a new phase of economic development and reform, establishing political and democratic authority and practices, enhancing freedoms and adhering to the rule of law, and respecting human rights.

Beginning in the early 1970s, to better prepare a new Saudi generation for dealing with the legislation and regulations enacted by the government, modern legal education methodology began to enter into the Kingdom gradually. For the government to accomplish this, a Saudi legal education institution began offering a post-graduate diploma program in Saudi law which focused on modern legal theories. Later, in 1980, the first contemporary undergraduate law program was officially introduced by a Saudi University.

In more recent years, the government of Saudi Arabia has consistently endeavored to elevate the standards of general education in the Kingdom, while expanding specialized programs such as Law, Medicine, Dentistry, and many others. Students may now pursue undergraduate studies in Public, Private, and Commercial Law. These programs have exported their pilot programs to other public and private colleges and universities throughout the country. As of this writing, there are more than thirty (30) institutions of higher education in the Kingdom offering programs of the law sciences.

On 25 April 2016, the Saudi government announced, “*Saudi Vision 2030*,” which aims to diversify its economy and develop public service sectors such as health, education, infrastructure, recreation, and tourism. In one sense, this approach will change the Saudi legal education system, in addition to externally forced changes to the profession. The impact of the changes on society, culture, technology, economics, globalizing and options of the country will usher in a new phase. The challenge comprises enhancements to the curriculum which include a position of "law in fact" and using a generic legal theory teaching modality of merely lecture/textbook method, which is traditional. Unfortunately, this does not meet the current legal profession needs and does not graduate students ready for the legal market. Legal education must never be disengaged from active legal practitioners who can provide what textbooks never can—their experience. By recreating exact imitations of the legal cases, the students can learn directly from a practicing lawyer instead of the current continuous routine of legal theory lectures solitary.

## **§ 1.2 Importance of the Dissertation**

The goal of this dissertation is to explore the nature of the present Saudi legal system from a somewhat different perspective than in previous studies, many of which conveyed a more unilateral view of the system as a traditional one driven by the precepts of only one legal education methodology. Whereas the legal system is the core of the education process in any system of legal education, the study will examine the identity of this system in its historical development, and then, will explore the cultural and pedagogical challenges posed by a potential reform.



Furthermore, the discussion will address the opportunities afforded by adopting a new legal education methodology which applies a modern law school curriculum. Evaluation will center on some educational aspects currently employed by law schools in Europe and America. The ultimate goal is to present a multidisciplinary approach that brings together the issues of legal education in the State.

The study will provide comprehensive suggestions concerning reforming aspects of teaching methods while addressing the hopes and concerns of legal education administrators in the Kingdom. Furthermore, it will respond to present and potential future needs of the legal profession. The study will add significant insight into the use of legal study data to assist the researchers in analyzing the complicated relationship between legal education and regulation in Saudi Arabia today.<sup>2</sup>

Today, the American models of legal education are viewed as far surpassing others in most aspects of teaching law. Many countries have chosen to replicate American schools with specific modifications to meet their own country's needs. Being a licensed attorney in Saudi Arabia, I note a growing community opinion that the Kingdom would gain extensively from taking advantage of American leadership in law school programs; there are, however, pre-existent problems that many educators feel must be resolved along with reform.

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<sup>2</sup> Note: To the best of my knowledge, as of this date, 06-28-2018, there have been no comprehensive studies of the legal education published within, or by the Kingdom.

## § 1.3 Statement of the Problems

### Problem I

Within the Kingdom of Saudi Arabia, land of the two holy cities, Mecca and Medina, there is a long-held obligation to hold true to a covenant<sup>3</sup> with Allah. Thereby, Saudi authorities have committed to developing a unique legal system which relies on the principles of Sharia in harmony with modern civil law. The principles of Sharia have long been applied by courts in the absence of an enacted law that relates to the legal issue being argued before it; practical, in the courts' system, today, Sharia is used as an additional source to fill the legislative gap.

The semi-duality structure of the legal system, with its globalization demands, and various international exchanges has led to a problem which this study intends to detail—that is, the insufficient number and expertise of Saudi legal practitioners presently licensed and engaged in a law practice in the Kingdom. The future growth and proficiency of law school graduates. Will their training be more than sufficient to be eligible to practice legally? The answer lies not within the student but with the schools and government that must apply all joint cognitive talents and skills to address pressing issues adequately.

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<sup>3</sup> Note: The term “covenant” is used to better describe the Islamic commitment to the teachings of the Qur’an, Hadith and Sunna. While not a codified system of Law, this commitment commonly referred to as Sharia (aka Shari’ah) it is a guide to living a faithful Islamic life and the foundation on which modern Saudi laws are built.

There must be no doubt that the principal goal is the establishment of an identifiable Saudi Arabian national legal system, an object not easily attained but necessary for the future of the Kingdom. The primary obstruction to attaining this goal is an impasse between traditionalist and contemporary<sup>4</sup> educators and researchers, who have been unable to agree on the appropriate parameters of the application of the components of the modern legislated laws in a national legal system.

The identity of Saudi legal system has been building since well before the establishment of the creation of the Kingdom. Inspired by the French civil law in many of its legislative components, it has continued to take into account socio-economic changes over the past decades while augmenting it with new concepts derived from common law systems. Unfortunately, the problem has led to a lack of credibility in legal education being offered Saudi law schools, explicitly as a pathway to those wanting to become practitioners of the profession.

Up to the present time, for a prospective young attorney to be licensed, he had to complete a three-year apprenticeship with a licensed practicing attorney following graduation from a university. The problem with this practice is that there was no requirement for the student to complete a certified law school program; he only had to have a degree. On completion of the internship, the student was, in essence, a lawyer who had never attended law classes.

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<sup>4</sup> There are no existing of the official Traditional and Progressive parties within the Kingdom; however, it indicates to a way of thinking or behaving of the people

While the value of an internship cannot be denied, neither can the value of completing comprehensive legal education before entering it.

## **Problem II**

Despite a significant increase in the demands for the Kingdom legal education created by increasing complexity of the legal system; legal education methodologies have not changed to meet them. There remains a critical disadvantage in methods, curriculum, and standardized syllabi targeting the needs of both the student and the legal profession. Neither the students nor their instructors are held to any viable national standards of legal education and performance sufficient to produce highly trained legal practitioners ready to take on the profession in the Kingdom, let alone the challenges of international law.

The future of law both within the Kingdom and in international matters requires legal education programs be organized and regulated to standard goals and objectives throughout the Kingdom. Like any university program, students must take standardized courses relating to the legal profession (*e.g.*, History of Saudi Law, Professional Responsibility, Lawyering Skills, Legal Analytics, Law Writing and Editing, *etc.*)<sup>5</sup>

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<sup>5</sup> A wise man once said, that if you want to ride a vehicle, first you need to know what it is, which is the front end, how it is built, how it operates, how to mount and then ride as you learn to ride. The law is not very different.

In one sense, the transformation of the Saudi legal education system will inevitably come because of external pressures on the profession and the potential impact it will bring to society, culture, technology, economics, globalization and a new awakening within the country. The challenge— which includes enhancing the curriculum with the concept of "law in fact" and employing a straightforward legal theory instructional method to augment the traditional combination lecture/ textbook method— is substantial but must be done as the first step in modernizing legal education before any students can be accepted.

Experience shows there are six primary concerns to address when planning improvements in legal education:

1. Legal education facilities and methodologies must be designed to meet both the needs of the Kingdom and to place it on a level playing field in the international legal arena. Improvements must be made in standardization of program curriculum, syllabi, and attendant course tools.
2. Future programs will require instructional staff to be qualified teachers with both education and legal professional experience either as teachers, practicing attorneys or a combination of both. Due consideration may be given to requiring an exceptionally experienced attorney or judge for certain demanding classes.
3. Legal education methodologies must be specific to the needs of the Kingdom with instructional staff of the highest quality and training.

4. Pre-admission requirements and examinations are to be standardized and made readily available to students in secondary schools throughout the Kingdom allowing them the opportunity to better prepare for entry into universities and colleges.
5. Entry into law school will require satisfactory completion of a standardized entrance examination, proven acceptable grade point average in high school or equivalent and personal interview with a law school scholastic counselor.
6. Experience! One of the critical elements of comprehensive education is to learn hands-on. Equally crucial in learning to ride a bike or arguing a legal case, there is no better teacher than experience; this is especially true for law students. Internship programs for law school students must be created and made mandatory in all law school programs.

### **Problem III**

The mission of law schools consists of providing training that produce legal professionals to serve the citizens of the State. Therefore providing meticulous training of future lawyers is imperative. To accomplish this involves a commitment to providing research and service activities that will not only train lawyers but will improve the laws of the State. Furthermore, via the distinct expertise of law professors in drafting, evaluating, and improving law they are involved in the critical legislative drafting and legal reform initiatives of their community.<sup>6</sup> In other words, law schools must not only prepare students for the practice of law at the highest levels of the profession and emphasize public service, legal education must also produce leaders

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<sup>6</sup> Connie Lenz, *The Public Mission of the Public Law School Library*, 105 *Law Libr. J.*: 31, 56; 2013 at 37

and use legal resources to solve society's most difficult and vital problems on a local, national, and international level.<sup>7</sup>

Despite countless studies designed to identify and repair the failures of law schools, the Kingdom legal education administrators have not accepted any realistic solutions or appropriate programs models. Unfortunately, this has created an obstacle in any potential upgrading of legal education to address contemporary demands on the legal profession. The law schools should seeking to integrate more than one curriculum models' legal theory, externships, and clinical training experience.

However, regrettably, Saudi law schools are still far from accepting highly recommended legal educational reform plans currently employed by schools in developed countries.

## **§ 1.4 Confronting the Problems**

### **Approach 1**

To adequately address Problem 1, Saud Arabia that adopts a quasi-dual (Sharia and Civil Law) system, a format not seen in other countries, needs to restructure its legal system. In this format, the essential issues are to identify, and more importantly, understand what the term Saudi law truly means, where it originated and viable sources for its study. However, this could very possibly become problematic due to both positive and negative influences on the Kingdom itself.

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<sup>7</sup> *Id.*, at 42

Drawing a fine line between Civil Law and Sharia will, until all different issues are satisfactorily addressed, be a source of conflict.

However, there is one key factor that may play a significant role in addressing the confusion and perceived disparity, that being the development and inclusion of specialized legal education.

As the Kingdom grows and expands to take its place on the world stage, so do the demands for domestic and international legal representation in more specialized disciplines of law. It is critical to the future of Law in the Kingdom that law schools begin the process of diversifying legal education to allow students the opportunity to pursue careers in a discipline of their choosing.

## **Approach 2**

At present, the doctrine of Saudi legal education is a continuation of its historical principles and a constrained evolution which has reflected in the compliance of Saudi law itself.

The use of an outmoded teaching format based on non-participatory lectures and reading assignments served its purpose in the past, but the world has changed.



Today, Saudi legal education and practices are profoundly influenced by two significant movements: the traditionally conservative and the contemporary progressive, each of which has its merits, but neither of which is perfect.

The primary intent of this study is to examine the existing legal education structure, its methodologies, and curriculum to offer better suggestions for improvement and reform in the hope of answering critical questions such as:

1. Does tracking the legal education model lead to understanding legal doctrine in the Saudi law school systems?
2. Do the strategies of Saudi law school instruction show a trend to towards confounding the existing legal education model of today?
3. Does the examination both sides of the practical and theoretical method of teaching contribute to solving the current legal education dilemma?

The current law curriculum is outdated and does not have a primary focus on value-addition to engage students in the rigorous mental analysis of legal matters that will prepare them to understand how legal judgments are determined.

### **Approach 3**

The law schools of today rely heavily on an archaic vision and practice of legal education while ignoring the need to establish a balance in legal training that will shepherd the student into

the realm of law. The end goal is the provision of highly trained and skilled legal practitioners to fill both domestic and international needs of the Kingdom. For the law schools to achieve this goal, there should be a primary standard national curriculum with appropriate attendant syllabi and mutually productive associations with active law practitioners.

This study hopes to address the following questions and more:

1. How can legal education be taught without consideration to the best practice of legal education methods today?
2. Is there an interplay between current Saudi legal education and practice nationally and globally?
3. Do Saudi legal practitioners suffer a problem of insufficient legal knowledge because of the education methods?
4. What kind of lawyers does Saudi Arabia need?
5. Do Saudi law school models generate the type of lawyer needed?
6. Are there any educational methods, appropriate global experience, or legal academic guidelines that law schools in Saudi Arabia could apply to improve the legal education system?
7. Are there standardized exams, admission requirements, and legal programs for law schools that could help achieve this end?
8. Are Saudi law schools prepared to adopt newly detailed proposals to be applied in determining reform strategies for their legal programs and improve law curriculum?

## **§ 1.5 Dissertation Objectives**

For contribution to the existing legal literature, the distinguishing objectives of this dissertation could be summarized as:

### **Objective 1**

To the best of my knowledge, this dissertation is the first detailed study to discuss the Saudi legal system from a contemporary point of view. Most of the previous studies have mixed the "law" issued by the legislative bodies of the country, which is a purely "civil law" and the Sharia, which is considered the source of judicial rulings in the absence of the text of the law. Also, one of the most important goals of this dissertation is to help define what is law in the legal sense and what is considered to be the source of Saudi law. The intent is to identify through historical content, the cultural and esoteric motivations that led to the emergence of this confusion between the academic and legal circles.

### **Objective 2**

In consideration of the initial study, this dissertation, is the first study that addresses the legal education in the Kingdom and evaluates the model of Saudi law facilities by comparison within the applicable law. Therefore, it will be identifying the existing steady undercurrent of tension between the more traditionalist schools of Saudi jurisprudence and those of the more progressive contemporary fields of thought. Also, it will examine the socio-economic and

political circumstances which have played a significant role in the shaping of the restraints on the discipline of legal education within the Kingdom. It is important to note that restraints play a considerable role in expanding the gap between the two schools of thought regarding legal education models as each approach competes to create and maintain its principles and ideas.

Furthermore, the goal of this study is to identify and assess the various transformations that have taken place in legal studies which shaped the current system of education in the Kingdom.

What steps were taken culminating in obtaining a new study plan for legal education?

Do the law programs take into consideration the balance between the academic requirements for graduation of its students and the real needs of the labor market?

Hopefully, the study will highlight a viable new model which will become the inspiration for future legal education in the Kingdom.

### **Objective 3**

The full intent of this dissertation is to reflect on the results of past studies to identify flaws which have affected current legal education methodologies in the Kingdom's law schools and practices. The primary goal is to evaluate the accomplishment rates of law school graduates compared to the needs of the Saudi legal profession. The ultimate question: are the law schools

doing a good job or not? If not, what must be done to correct the causative factors preventing them from graduating qualified professionals?

To accomplish this will require analyzing possible common theories of legal instruction programs of other countries to gather information to design a Saudi specific law school curriculum. To meet this challenge will require commitments on the part of government education administrators, instructional staff, and students themselves. Then, and only then can Saudis fully realize that the 21<sup>st</sup> century the Kingdom Vision is within their power to attain for legal education.

#### **Objective 4**

During the preparation of this study, research developed no viable evidence of any previous comprehensive studies of potential weak links in existing law curriculum in Saudi law schools, but experience proves they exist. The fourth objective is based on the fact that weak links logically do exist and must be addressed if the goals of the Kingdom are to be met. Therefore, it is incumbent upon both traditionalists and modernists at Saudi law schools to recognize the problems and work together to develop a comprehensive set of educational guidelines for all legal schools in the Kingdom to include, national standards for:

1. Future design and construction of instructional facilities with an emphasis on mock courtroom class facilities.

2. Essential fundamental curriculum for all schools to include but not be limited to interactive and role-play modules.
3. Specialized curriculum for the various legal disciplines. Assigning specific disciplines to individual schools would centralize programs.
4. Establishment of legal libraries and legal technology centerin in each school plus adjunct libraries for specialized disciplines.
5. Accreditation of instructors.
6. Entrance criteria with examinations such as the LSAT, and mandatory prerequisites.
7. Grade point average (GPA) criteria for graduation.
8. Creation and maintenance of both intern and extern programs.

Note: This list is meant as to be a starting point and is not all-inclusive.

## **Objective 5**

In the hope of heightening awareness and interest in improving legal education in Saudi Arabia, this study is respectfully offered. If only a small portion of its content is of value to the decision makers in the Kingdom, then it shall have done its job.

## **§ 1.6 Dissertation Questions**

The study will seek to answer some of the following primary questions to achieve the above aims and objectives:

1. What is the nature of enacted law in the Kingdom of Saudi Arabia?
  - a. what is the extent of the application of Islamic Sharia provisions in the Saudi legal system; and
  - b. what are the reasons that led to the conflicts between the law and the legal source(s) in the eyes of Saudi and non-Saudi legal researchers?
2. When did the culture of legal education become established in Saudi Arabia;
  - a. what are the historical junctures of Saudi legal education; and
  - b. did the teaching of law besides the teaching Sharia play of role in the tensions within legal education; and
  - c. do the elite Saudi law schools have strategies for internationalization of their educational philosophy and ideology?
3. What are the central problems Saudi law institutions face today?
  - a. are the problems of legal education only Saudi issues; or
  - b. are there similar difficulties in other countries?
4. What should be taught in Saudi law institutions, and how?
5. What is the nature of the crisis in Saudi legal education today?
  - a. is it a time to re-examine the Saudi law curricula model; and
  - b. should the curricula be modified by the law faculty?
6. Is it the goal of Saudi law faculties to produce graduates ready for the profession?
7. Does the legal model based on teaching method aim to improve the skills of solving problems by using analytical reasoning?

- a. do law school educators take the consideration of stakeholders and professionals in determining what, and how practical skills should be incorporated into the curriculum?
8. Would it be in the best interests of Saudi legal students to have a closed system pre-requirement for the admission?
9. Would the requirement of English language proficiency solve the problems of consistency and the exchange of information in the legal field?

### **§ 1.7 Dissertation Methodology**

The research for this paper encompassed literature research and personal experience as a practicing legal consultant (*attorney*) for a governmental agency in Saudi Arabia and the use of electronic search engines and reference sources available in the Kingdom, America, and Europe to obtain broader perspectives.

To objectively compare existent Saudi legal education to those of other nations almost requires the intricate skills of a brain surgeon, especially when the research addresses long-held legal traditions, as Saudi law does. It is for that reason that the dissertation will descend to the very foundation of Saudi Arabian law and legal education to examine inherent problems such as failures in legal education instruction, and differences and similarities between the Saudi legal education model and more contemporary models.



It must be noted that for the study to attain its goals, this paper discusses neither the Saudi legal system proper nor specific government regulations pertaining to the education of law students. It does, however, address a generalized analysis of legal education within Kingdom via the evaluation of the structure of Saudi law schools, their curriculum and the nature of the legal practice.

## **§ 1.8 Dissertation Structure**

This dissertation consists of five interconnecting chapters.

### **Structure of Chapter I**

Chapter I is divided into seven subsections which are:

1. Introduction
2. Importance
3. Statement of issues
4. Addressing issues
5. Objectives
6. Questions
7. Structure

## **Structure of Chapter II**

Chapter II consists of seven main sections with applicable subsections giving background review concerning historical junctures of the legal system in the Arab Peninsula and ultimately the legal system of the Kingdom of Saudi Arabia.

The chapter will also provide a brief look at the paradigm-shifting of the practice of incorporating Sharia into contemporary legislation within Saudi Arabia, which enabled the government to integrate codified Civil laws into a once quasi-legal religious system which is considered the foundation of law in the Kingdom but is not a codified legal one.

## **Structure of Chapter III**

Included in Chapter III is three sections with numerous subsections giving more explicit information on historical stages in the development of the current Saudi Arabian legal system and how they may have influenced legal education.

It will provide confirmed information concerning the establishment of Saudi law schools and legal education, the doctrine of legal education, instructional methodologies, types of degrees, law curricula design and a comparison of the legal education systems of the Kingdom with those of the United States.

### **Structure of Chapter IV**

Chapter IV contains four sections, some of which are subsections designed to draw together current information and practices in Saudi and other legal education systems. The information in this chapter offers current scientific solutions to the identifiable weaknesses in law school programs in the hopes of suggesting viable solutions.

### **Structure of Chapter V**

Chapter V comprises three sections with some subsections giving recommendations methodologies for Saudi legal education upgrading, conclusion and recommendations for further research.

## Topics of Chapter II

### § 2 Saudi Arabian Legal System

#### § 2.1.1 History of the Legal Systems on the Arabian Peninsula

#### § 2.1.2 Introduction: Birth of the Lawgiver and Founding of Sharia

#### § 2.1.3 The Golden Age of Islam

#### § 2.1.4 The Religious-Political Alliance

#### § 2.1.5 Ottoman (Osmanli) Conquest and Occupation

##### § 2.1.5.1 Influence on Arabian Peninsula Law

##### § 2.1.5.2 Ottoman Legal System

##### § 2.1.5.3 Fall of the Ottoman Empire: European Influence on the Peninsula

### § 2.2 Unification and Founding of a Kingdom

#### § 2.2.1 Birth of a Kingdom

#### § 2.2.2 A Simple Legal System

### § 2.3 Foundations of the Law of the Land

#### § 2.3.1 Laying the Essential Ground Work (1932-1953)

#### § 2.3.2 The Early Stages (1953 -1964)

#### § 2.3.3 Separate Judicial Structure Instituted

### § 2.4 Identity of the Saudi Arabia Legal System

#### § 2.4.1 Nature of Legal System Unity

#### § 2.4.2 Duality of Law: 21st Century Saudi Arabia

#### § 2.4.3 Sources of Law

#### § 2.4.4 Adoption of the Hanbali School of Law

- § 2.4.5 The Traditional Norms of Participatory
- § 2.5 Justice System in the Kingdom
  - § 2.5.1 Dispute Resolution in Saudi Arabia
  - § 2.5.2 The Court System
- § 2.6 Saudi Civil Legal System Structure
  - § 2.6.1 The Concept of Law Versus Sharia
  - § 2.6.2 Basic Law of Governance
  - § 2.6.3 Saudi Arabian Rule of Law
    - § 2.6.4.1 Administrative Judiciary Body Amelioration
    - § 2.6.4.2 Statement of Administrative Judge's Legal Jurisdictions
      - § 2.6.4.2.1 High administrative Judiciary
      - § 2.6.4.2.2 Administrative Judiciaries of Appeal
      - § 2.6.4.2.3 Administrative Judiciaries Jurisdiction
- § 2.6.5 Commercial and Financial System
  - § 2.6.5.1 Commercial Judiciary
  - § 2.6.5.2 Financial Legal System
- § 2.7 The Formal Saudi Arabia Legislative Branch
  - § 2.7.1 Formation and Affairs of the Council of Ministers
  - § 2.7.2 System of the Consultative Council (Majlis Al-Shura)
- § 2.8 Law and Legal Profession
- § 2.9 Summary

## CHAPTER II

### § 2 Saudi Arabian Legal System

To the western mind, the moment someone mentions the Law in the Kingdom of Saudi Arabia, one may envision an erroneous belief in the alleged insecurities of Sharia, the principles, and disciplines that govern Muslim behaviors.<sup>8</sup> Often misinterpreted as Islamic Law, Sharia governs the interactions among communities, groups and social and economic organizations. It establishes the criteria by which all social actions are classified, categorized and administered within the governance of the State – it is a way of life.

While Sharia will be mentioned throughout this paper, the Law(s) discussed are not Canon laws but rather Administrative, Civil, and Commercial Laws. Therefore any reference to “Sharia/Sharia Law” shall be from cited source(s) for clarification purposes only.

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<sup>8</sup> Shaykh Muhammad Hisham Kabbani, *Understanding Islamic Law*, Islamicsupremecouncil.org, See <http://islamicsupremecouncil.org/understanding-islam/legal-rulings/52-understanding-islamic-law.html> (last visited Jan 10, 2018)

## SECTION I

From a simple desert community system to a great country on the world stage in less than one hundred years not only demonstrates the strength and will of a strong leader but also speaks of a proud and determined people willing to sacrifice for future generations.

### § 2.1.1 History of the Legal Systems on the Arabian Peninsula

“Three hundred people were in a boat sailing on the sea. They realized that their safety was at risk, and the lives of the majority could only be saved by throwing ten people overboard. Would it be morally right to kill ten people to save 290? This case was presented by Imam al-Ghazali (450-505 A.H./1058-1111 A.D.) in his book on the principles of Islamic Jurisprudence called “*al-Mustasfa Min ‘Im al-Usul*.”<sup>9</sup>

It is important to note that the justification of moral and legal actions in Islam is not based on personal reflection, personal desire or the benefits of the majority; it is only justified by the Holy Qur’an<sup>10</sup> and Sunna<sup>11</sup> (Sunna) or the Islamic legislative system (Sharia/Shari’ah).<sup>12</sup>

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<sup>9</sup> Mashhad Al-Allaf, *Islamic Divine Law (Shari’ah) the Objectives (Maqasid) Of the Islamic Divine Law or Maqasid Theory*, Available at <http://www.muslimphilosophy.com/ma/works/maqasid.pdf> (last visited Jun 7, 2017).

<sup>10</sup> *What is the Qur'an?* Al-Islam.org, See <https://www.al-islam.org/articles/what-is-the-quran-anwer-ali> (last visited Jun 29, 2017)

<sup>11</sup> *What is Sunna?* (the best guidance is the Sunna of Muhammad (s.a.w) Islaamnet.com, <http://www.islaamnet.com/whatisunnah.html> (last visited Oct 29, 2017)

<sup>12</sup> *The Shari’ah: The Place of Shari’ah in Islam*, Al-Islam.org, See <https://www.al-islam.org/introduction-islamic-shariah-sayyid-muhammad-rizvi/shariah> (last visited Oct 29, 2017)

<sup>5</sup> *Shariah And Fiqh. Do You Know The Difference?* Islamic Learning Materials, Available at <http://islamiclearningmaterials.com/shariah-fiqh/> (last visited Oct 29, 2017)

For centuries, the study of law on the Arabian Peninsula focused on the concept that Sharia was the fundamental source of law. Students and scholars alike studied, discussed and argued historical legal cases found in Islamic Jurisprudence (*fiqh* - “true understanding”)<sup>13</sup> books to compare their application of the rules and principles both in historical and contemporary context. The focus of all law on the Peninsula originally derived from Sharia, the living law of Allah that was developed and upheld by religious scholars throughout the Muslim world. However, in the 21<sup>st</sup> century, while still giving appropriate credence to Sharia, and the wisdom of the traditional scholars, it is the individual state legislatures in various Muslim countries that have taken the lead in enacting new laws. However, where appropriate, the principles of Sharia are incorporated into new legislation.

Given the fact that Saudi Arabia is the heart of Islam, this practice of incorporating Sharia into new legislation within the Kingdom has engendered numerous questions pertaining to how extensive it has and may be integrated into man-made laws such as:

- What is the positive versus negative impact of these laws on the Kingdom?
- Has the legal industry been able to draw, and maintain a fine line between Civil Law and Sharia without significant conflict?
- Does the Saudi legal model provide valid solutions to contemporary legal issues?



## § 2.1.2 Introduction: Birth of the Lawgiver and Founding of Sharia

On the 12<sup>th</sup> of Rabi al-Awal of the Year of the Elephant<sup>14</sup>, a date that corresponds to June 8, 570 CE the Prophet Muhammed PBUH,<sup>15</sup> was born in the city of *Makkah (Mecca)*. Unbeknownst to anyone, it was also the birth of Islam, and eventually Sharia.<sup>16</sup>

An orphan, Muhammad was cared for by his grandfather who was his guardian until he died. Following the death of his grandfather, Muhammad remained with an uncle until he was approximately twenty-five when he accepted a position as a caravaner for a widow whom he later married. At the age of forty, Muhammad experienced a revelatory visit by the angel Gabriel who recited five verses that would become Surah 96; the seeds of what was to become the Holy Qur'an,<sup>17</sup> the Sunna and Sharia, the very heart of Islam.

To the non-Muslim layperson, Sharia is an exotic, sometimes scary mystery surrounded by misinformation, but to a Muslim, Sharia is “a path,” “a channel,” and a commitment to one’s beliefs. It expects a Muslim to follow its principles in every aspect of life: personal and familial, religious and social, moral and political, economic and business, and other aspects.

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<sup>14</sup> WILLIAM MONTGOMERY WATT, *MUHAMMAD: PROPHET AND STATESMAN*, OXFORD UNIV. PRESS: 1<sup>st</sup>, 1961, at 7. This was the year in which the Abyssinian prince or viceroy of the Yemen marched on Makkah with a large army which supported by elephants.

<sup>15</sup> Why do Muslims write PBUH after the Prophet Muhammad's name? (may God’s blessings and peace be upon him) ThoughtCo., See <https://www.thoughtco.com/islamic-abbreviation-pbuh-2004288> (last visited Oct 29, 2017)

<sup>16</sup> *Birth of Muhammad and the Early Years of his Life*, Al-Islam.org, See <https://www.al-islam.org/restatement-history-islam-and-muslims-sayyid-ali-ashgar-razwy/birth-muhammad-and-early-years-his> (Last visited Jul 2, 2017).

<sup>17</sup> We acknowledge the existence of claims that the Prophet Muhammad did not author the Quran. That argument will not be addressed in this paper.

The question asked, “If God is in control and lays down the laws for men to follow, what need of learning Sharia does man have? Should he not follow blindly?”

The answer is a simple no. God, the creator of all things, crafted humans to have superior qualities over all creatures of the Earth. A race of beings with brains more complicated than any computer devised, they are charged to protect and preserve all that God has created. For a Muslim to accomplish that, he must understand the Laws of God (Sharia) and be able to interpret them for those seeking accurate guidance and counsel. God also gave them knowledge and free will to use wisely in the interpretation of human-made laws (Civil) which are in harmony as legally feasible as possible with the principles of Sharia; tragically some forget these gifts.

To be a "Muslim" is to stand firm in one's submission to God.<sup>18</sup>

### **§ 2.1.3 The Golden Age of Islam**

When the Prophet Muhammad (PBUH) passed away in *Medina (Madinah)* in 632 c, highly educated religious scholars (*'ulama*) and jurists (*Fuqaha*) were entrusted with the responsibility of elucidating Sharia as written in the Qur'an (Recitation) and teachings and practices of the Prophet (Sunna). Because Sharia, as written in the Qur'an was not as detailed as many may have wished, when the Prophet was no longer available to interpret the divine laws for the Muslim community, the scholars and jurists assumed the responsibility of interpreting

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<sup>18</sup> Sayyid Mohammad Rizvi, *An Introduction to The Islamic Shari'ah*, The Shari'ah Al-Islam.org, <https://www.al-islam.org/introduction-islamic-shariah-sayyid-muhammad-rizvi/shariah> (last visited Jul 2, 2017)

God's Law. Islamic jurisprudence (*fiqh* "understanding") is divided into worship (*Ibadat*) and transactions (*Muamalat*).

By the end of the eleventh century, four schools of Islamic Jurisprudence (*Madahib*)<sup>19</sup> emerged, each named after its founder.

1. The first is the Hanafi School (*Al Madhab al Hanafi*) founded by Imam Abu Hanafi, (c 702-772). This school ruled the Islamic empire from Iraq between 750 and 1258 A.D., as well as the Ottoman Empire. In the modern era, Hanafi is observed in many regions of the world.
2. The second is the Maliki School (*Al Madhab al Maliki*), (founded by Malik ibn Anas, c. 715–795), whose adherents are predominantly in North African countries.
3. The third is the Shafi'i School (*Al Madhab al Shafi'i*), founded by Imam al-Shafi'i (d. 820 A.D.), a disciple of Imam Malik.
4. The fourth, and primary school for Saudi Arabians is the Hanbali School (*Al Madhab al Hanbali*), (founded by Imam Ahmad ibn Hanbal, c 780-855); is the most conservative of the schools. It was the rigidity and intolerance of the Hanbali that caused it to go into a decline until the eighteenth century. However, with the rise of the Wahhabi reform movement, (Salafism)<sup>20</sup> and the rising influence of the House of

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<sup>19</sup> Muslims are divided into *Sunni* and *Shi'a*, and other minority sects of Islam. As the basis of this paper is *the Saudi Arabian legal system*, I have elected concentrate on my study on the Sunni, Hanbali school of jurisprudence (*fiqh*) practiced within the jurisdiction of the Kingdom and by non-Saudi adherents to the Sunni branch of Islam.

<sup>20</sup> The Strict Sunni Muslim sect founded by Muhammad ibn Abd al-Wahhab (1703–92) in the province of Najd which was considered an isolated land. It advocates a return to the early Islam of the Quran and Sunna and

al-Sa'ud,<sup>21</sup> it resurrected to eventually establish the formal system of Islamic Jurisprudence (*fiqh*) within the future Kingdom of Saudi Arabia.<sup>22</sup>

Although other religious jurists became popular during their times, only these four are now recognized by the vast majority of Sunni Muslims as having the most comprehensive and equally valid understanding and interpretation of Sharia as it applies to all possible legal situations. They all acknowledge the authority of the Holy Qur'an and the Sunna as the ultimate source of the Sharia. It is only in areas and cases where these two sources are silent, that the four schools may differ with each other as they exercise their independent reasoning.

Even though they may vary on interpretations, all schools of Islamic Jurisprudence believe the Holy Qur'an to be God's law. For Muslims, the Qur'an's 6,236 verses are the ultimate source of all legislation in the Kingdom. However, only about three percent of them

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calls to monotheism (*tawhid*), rejecting later innovations. It encourages a direct interpretation of the Holy Quran through the study its verses and content. While Wahhabism is still the predominant religious force in the Kingdom, it is often problematic as most of its adherents, especially Saudis, along with clerics commonly reject the title, preferring instead to be called Salafi or the invitation of *Shaikh* Abd al-Wahhab.

The Shaikh's invitation (*Salafi*) communicates an untainted monotheistic worship (*Tawhid*) and a fundamental clarification of the principles of the bin Abd al-Wahhab movement as precise Islam adopted by the Prophet Muhammad and his early followers. As a result, Saudis prefer to use the term of Salafi instead of Wahhabism, as it directly refers to the *Salaf* (predecessors) of Islam. However, the term Wahhabism reform movement is common in the books, articles and papers that are inside and outside of the Kingdom. Some of Saudi authors use it in their books See SULAIMAN BIN SUHMAN AL NAJDI, *THE GIFT OF THE SUNNI AND MASTERPIECE THE WAHHABISM OF NAJDIYAH*, AL MEYAR PRESS, CAIRO, 1923; (printed by order of Sultan Abdulaziz Al Saud, the Imam of the Kingdom of Najd and its accessories). In addition, other's use it in their paper See Abdulaziz H. Al-Fahad, *Ornamental constitutionalism: the Saudi basic law of governance*. Yale J. Int'l L. 30:375 (2005). However, others use the Wahhabi movement See Ayoub M. Al-Jarbou, *The Role of Traditionalists and Modernists on the Development of the Saudi Legal System*. Arab Law Quarterly 21.3: 91-229 (2007)

<sup>21</sup> The Arabic word "Al" in conjunction with a name denote the family of or the house of.

<sup>22</sup> *The Four Schools of Law in Islam - Understanding Islam, Understanding Islam*; 2017 See <http://free-islamic-course.org/stageone/stageone-module-4/four-schools-law-islam.html> (last visited Jun 6, 2017).

have legal relevance, and most of those involve family and inheritance law. No more than eighty directly relate to actual legal issues. While this may appear overly simplistic and narrow, the reality of Sharia is that it has developed since the time of the Prophet to become far more extensive and complex.

Professor Shaya'a Othman states that:

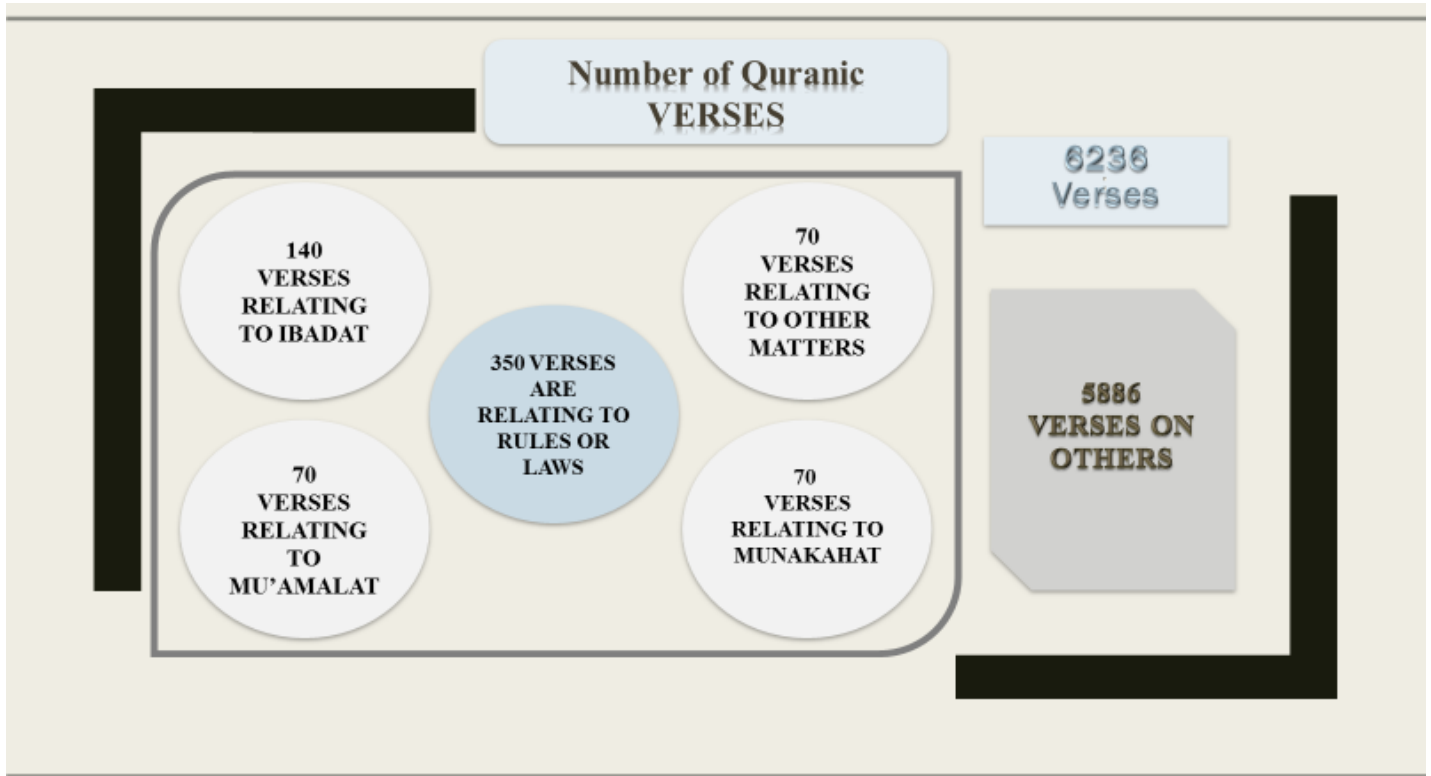
“The Holy Quran which is the Last Testament from Allah consisting of 6235 verses which are divided into 114 Chapter or Suras. Out of 6235 verses 350 verses are relating to rules or laws and further being divided into the following:

1. Verses Relating to Ibadat “worship” = 140
2. Verses Relating to Munakahat “matrimony” = 70
3. Verses Relating to Mu’amalat “transactions” = 70
4. Verses Relating to Other Matters =70.”<sup>23</sup>

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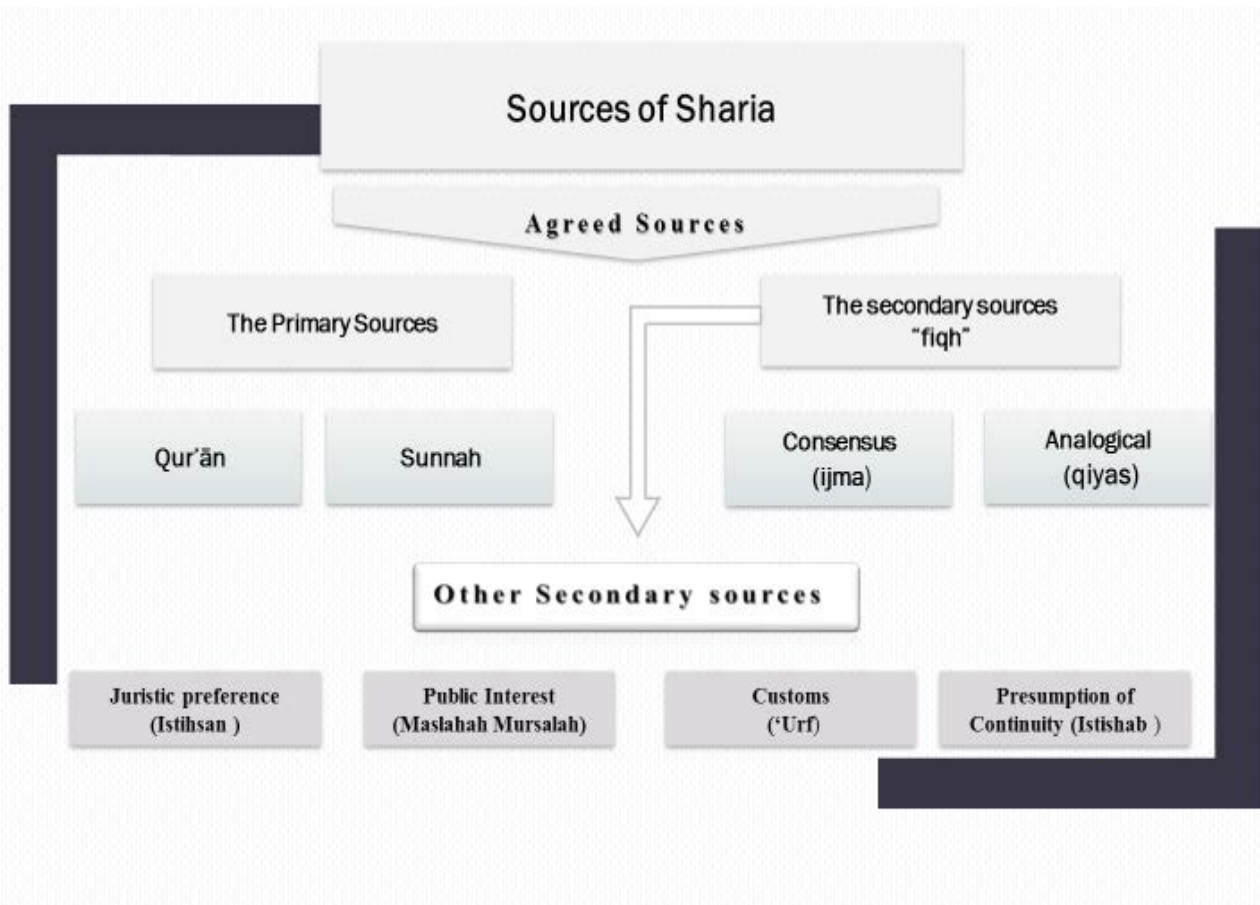
<sup>23</sup> Shaya'a Othman, *Shariah and Maqasid Al Shariah, A Brief Overview*, Islamic Strategy Management Center, 2013 Available at [http://islamicstrategymanagement.blogspot.com/2013/11/shariah-and-maqasid-al-shariah-brief\\_17.html](http://islamicstrategymanagement.blogspot.com/2013/11/shariah-and-maqasid-al-shariah-brief_17.html) (Last visited June 22, 2018)

Chart 2.1 The Holy Qur'an Verses Topics



It is important to note here that in addition to the Qur'an, sources of law are those Sunna (traditions) of the Prophet (PBUH) recognized as having legal significance, the *Ijma* (consensus) of Islamic scholars and, except in the more conservative Islamic societies such as Saudi Arabia, Sunna (interpretations) through the use of *qiyas* (analogies).

Chart 2.2 Sources of Sharia



It was during the reign of the Abbasid caliphs in Baghdad from 750 to 1258 CE, a time known as the Golden Age of Islam that scholars succeeded in bringing together and advancing the knowledge of previous civilizations to the great benefit of those that followed. As Cleveland and Bunton explain: “From the inception of the faith, trade has been a critical factor in the rise and spread of Islamic and Sharia.” Indeed, Sharia provides detailed guidance regarding terms of trade.<sup>24</sup> From the end of the Golden Age, until the Ottoman (*Osmanli*)<sup>25</sup> occupation of the

<sup>24</sup> William L. Cleveland and Martin Bunton, *A history of the modern Middle East*, Hachette UK (2016) See Dan Paracka, Year on the Arabian Peninsula, An Introduction, Religiondocbox; 2017 Available at <http://religiondocbox.com/Islam/76442162-Year-of-arabian-peninsula-an-introduction.html>. (last visited Nov 8, 2017)

<sup>25</sup> *Osmanli* – Arabic term for Ottoman.

Arabian Peninsula, Sharia was the primary law of the land. The judges (*al qudat*) continued to hear and interpret issues on a case by case basis, arguing each detail as they related to Sharia and Sunna until they reached a consensus opinion.

#### § 2.1.4 The Religious-Political Alliance

It was not until 1744 (1157 A.H.), when a religious-political pact was charted between Muhammad bin Saud and Muhammad Ibn Abd al-Wahhab (1703-1792) to establish the first Saudi State in the Peninsula, that real change and stability began to alter and unite various tribes and emirates of the Peninsula. Preaching a return to "pure" Islam and adoption of Hanbaliyya, Ibn al-Wahhab founded the Wahhabi (*Salafi*)<sup>26</sup> movement, an austere form of Islam that took root in the central Arabian state of Najd. Persecuted for his beliefs by religious and political detractors, Muhammad ibn Abd al-Wahhab, sought the protection of the *emir* of Najd, Muhammad ibn Saud, head of the Al Saud noble house. Seeing an opportunity to increase the status of the al-Saud clan, ibn Saud agreed to endorse al-Wahhab's ascetic form of Islam, in return for which, the house of ibn Saud would get political legitimacy over the region. This same religious-political alliance endures to the 21<sup>st</sup> century in Saudi Arabia.<sup>27</sup>

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<sup>26</sup> *Salafi* – “pious ancestors” – commonly refers to first three generations of Muslim communities to follow the teachings of the Prophet. The movement in the 18<sup>th</sup> Century remains actively restore traditional Muslim ethics, reverence and virtue.

<sup>27</sup> *A Chronology - The House of Saud | House of Saud | FRONTLINE | PBS* (2005) Pbs.org. Available at: <http://www.pbs.org/wgbh/pages/frontline/shows/saud/cron/> (Accessed: 30 August 2017).



By the 19<sup>th</sup> Century, the Al Saud (house) has spread its influence across the Arabian Peninsula, stretching from the Red Sea to the Arab Gulf, including the Two Holy Cities of Mecca and Medina. However, in 1818, forces of the Ottoman Empire overwhelmed the capital, Riyadh, and executed many of the religious and political leaders. Over the next eighty years, the Al Saud attempted to reestablish their rule on the Arabian Peninsula without success. During this period, the Ottoman Empire controlled vast portions of the Arabian Peninsula governing it with the precepts of the *Hanafīyya* School of Islamic jurisprudence. Ottoman scholars in Sharia called *‘ulama* organized a strict tiered hierarchal system of courts. Beginning, the top of two highest judicial positions in Empire were the two Islamic judges (*qadi- ‘Askars*) who controlled, respectively, the European and Asian jurisdictions of the Empire and who served as advisors to the Sultan. Directly under these judges were the *qadi* (similar to superior court judges) of the major cities who oversaw all the laws of the Empire. These *qadis* also managed lesser *qadis* that presided in smaller towns throughout the empire.<sup>28</sup>

Under the Sharia system, the solving of a legal question or the interpretation of Islamic teachings are based on several considerations which frequently led to a debate on the difference of opinions for a solution to a legal question to establish precedence for the same novel legal cases. It is common practice that each Islamic legal school represent a different methodology for its own distinct authoritative rules and therefore the *‘ulama* al Sharia (scholars) will hold different views and interpretations of legal questions. In an era of intertwining civil and commercial Ottoman relations, an internal reform movement sought to keep pace with the

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<sup>28</sup> See WAEL B. HALLAQ, *AN INTRODUCTION TO ISLAMIC LAW*, CAMBRIDGE UNIVERSITY PRESS, August 2009. Available at: <http://soerenkern.com/pdfs/islam/IntroductionToIslamicLaw.pdf> (Accessed: 30 August 2017).

unification of legal provision. The Ottoman's lawgivers took an important step to replace the traditional uncodified laws drawn from the Sharia and legislatively codified them to remove power from the '*ulama* al Sharia (scholars) and transfer it to the Civil government.

The legal heritage of the Ottoman illustrates the concept of dualism between modernist and traditionalist forces around the perspective of regulations. In that period, Islamic scholars (*'ulama*) opposed the codification of law when the Ottoman introduced the legal reforms. Even though the Civil Code was a codification of Islamic *Hanafiyya* School opinions; the oppositionists argued that, nevertheless, the Civil Code is a 'civil' code formed under the influence of European ideas.<sup>29</sup> For this perspective, the Ottoman legislators replaced the term "*nizam*"<sup>30</sup> rather than the legal name of law, and for the same reason currently, the Kingdom uses the same term to express the Civil Code of law.

There were, however some variances in the level of legal oversight throughout the Arabian Peninsula. For instance, in Hijaz (Western coast province) there was a well-established administration and legal system with a measure of procedural sophistication. While in other parts of the Peninsula, such as Najd (geographic center), al-Hasa (Eastern oasis region) and other areas the form of its judiciary was more tribal based on local customs and traditions without form or procedure.<sup>31</sup>

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<sup>29</sup> Avi Rubin, *Legal borrowing and its impact on Ottoman legal culture in the late nineteenth century*, *Continuity and Change*, 22.2, 279-303 (2007) at 279

<sup>30</sup> A single word "*nizam*", a plural word "*anzimah*".

<sup>31</sup> Ahmad A. Altawyan, *The Legal System of the Saudi Judiciary and the Possible Effects on Reinforcement and Enforcement of Commercial Arbitration*, University-Purdue University, Robert H. McKinney School of Law: 2017

## § 2.1.5 Ottoman (*Osmanli*) Conquest and Occupation

### § 2.1.5.1 Influence on Arabian Peninsula Law

It was from 1299 CE through its fall in 1923 CE that the Ottoman Empire dominated much of the Arabian Peninsula. During this occupation, the law on the Peninsula was the empire's interpretation of Islamic Sharia.<sup>32</sup> However, this hegemony was not consistent throughout the Peninsula. In areas, such as the heart land and eastern Peninsula, there was a loose infrequency of rule while in the west and southern regions Ottoman control was more consistent and rigid.<sup>33</sup>

On August 29, 1517, after seizing the Holy city of Makkah (Mecca) in a bloodless battle with the Mamluk (*Mamlūk* aka<sup>34</sup> *Mameluke*; Slave Army, 1250-1517)<sup>35</sup> who ruled, from their capital in Cairo, an area extending from northern Syria to the Arabian Peninsula, the Ottoman Sultan Selim was proclaimed its Caliph. For the next 400 years, the Peninsula would necessarily remain under the total control of the Ottoman Empire with its interpretation of the *Hanafiyya* school of Sharia. It was during this period the *Hanafiyya* school influence on the judicature began to wane.

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<sup>32</sup> Alshubaiki, Torki A. "Developing the Legal Environment for Business in the Kingdom of Saudi Arabia: Comments and Suggestions." *Arab Law Quarterly*, 27.4: 371-39 (2013)

<sup>33</sup> William Ochsenwald, *Ottoman Empire and the Holy Hijaz 1516-1918*, *Journal of Global Initiatives: Policy, Pedagogy, Perspective*: Vol. 10: No. 1, Article 3, 2016

<sup>34</sup> Aka = Also known as.

<sup>35</sup> Editors, Mamluk, *Islamic Dynasty Encyclopaedia Britannica*. <https://www.britannica.com/topic/Mamluk> See <https://www.britannica.com/topic/Mamluk> (Accessed: 9 November 2017).

The Ottoman ruling policy in Hijaz was not a clear-cut one relative to the maintenance of a well-founded hierarchy among the officials in the Hijaz and those in Istanbul. The geographical importance of the Arab lands in terms of the number of Arab citizens in the Empire was conspicuously absent in top government positions throughout Ottoman history.<sup>36</sup> From a broader perspective, the Ottoman rule of the region did establish an administrative structure and legal system in Hijaz which, though frequently in need of modification did provide a measure of procedural sophistication never before seen. In other parts, such as Najd, al-Hasa and other regions the form of judiciary was affected by tribal systems, customs and traditions without regard to form and procedure.<sup>37</sup>

#### § 2.1.5.2 Ottoman Legal System

So strictly structured was the Ottoman legal system that before laws could be sent down to individual *qadis* throughout the empire, they had to pass through another Islamic branch of the government. Separate and independent from the sultan was the *mufti* of Istanbul – also known as the *Shaykh al-Islam*. *Mufti* is an Arabic word meaning a scholar qualified to interpret the religious text, and *Shaykh al-Islam* (“the scholar of Islam.”) The *Shaykh al-Islam* had the right to review any laws the sultan wanted to implement and reject the ones that went against the Sharia. In many cases, the sultans would work closely with him to ensure all of the Empire’s laws conformed with Islam. For example, Sultan Suleyman was nicknamed *Kanuni*, meaning “the

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<sup>36</sup> Kayali, Hasan. *Arabs and Young Turks: Ottomanism, Arabism, and Islamism in the Ottoman Empire, 1908-1918*. Univ of California Press (1997) at. 20

<sup>37</sup> *Supra*. Altawyan., note 32

lawgiver” because he went through all the Empire’s legislation in the mid-1500s with the *Shaykh al-Islam* to ensure none contradicted Sharia.<sup>38</sup>

In the Ottoman legal system, laws promulgated by the regulation and reorganization of the judicial system led to a division in the court system between the application of Islamic religious law provisions before actual Sharia qadi (Judge) in the Sharia courts and the application of civil laws, which were modeled on European laws (predominantly French and English). Egyptian systems also contributed significantly to this regulation and reorganization, specifically in the area of production of Arabic law texts for schools on the Peninsula.

From the years 1839 thru 1876 of the Ottoman occupation, much of the Arabian Peninsula underwent a period of restructuring which became known as the “*Tanzimat* (reorganizational) Decrees.” It was a period of both social and political change designed to modernize the Empire by instituting European style institutions. Along with institutional improvements came the addition of supplemental laws governing legal matters in various such as government, trade, legal transactions, property registration, municipalities, and civil matters.<sup>39</sup> The *Tanzimat* of the legal system was designed to promote the concept of the rule of law and to give actual authority to the government to legislate specific jurisdictional responsibilities,

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<sup>38</sup> Firas Alkateeb, *Islam and the Ottoman Empire, Lost Islamic History - Reclaiming Muslim Civilisation from the Past*. 2012. Available at: <http://lostislamichistory.com/islam-and-the-ottoman-empire/> (Accessed: 28 August 2017).

<sup>39</sup> Dawood I. Ahmed and Gouda Gouda, *Measuring Constitutional Islamization: The Islamic Constitutions Index*. *Hasting International and Comparative Law Review*, 38.1 (2015) at 21

assigning them to appropriate courts and committees comprised of respected scholars of civil and religious Sharia to author a comprehensive code of civil law.<sup>40</sup>

In the mid-1860s, a new judicial system, the *Nizamiye*<sup>41</sup>, or regular court system was created by the Empire. These courts, inspired by French judicial sources and structure were set up to adjudicate criminal, civil and commercial law cases.<sup>42</sup> However, the introduction of these new courts required a specialized legal division which, when created ran afoul of the centuries-old dominance of the Sharia courts which were the historical backbone of the Ottoman judicial system.<sup>43</sup> With the fall of the Empire, the once monolithic *Nizamiye* court operations influenced by default, the court systems of countries that became independent. Numerous of those countries adopted the more codified laws of Western nations with the exclusion of traditional Sharia principles pertaining to personal status, property, inheritance and criminal law which were adjudicated by tribunals and legal opinions of the Muslim scholars.

While the successor state of the Ottoman Empire, Turkey, would officially employ a policy of national secularism, the history of the Empire was markedly interwoven with Islamic history. For centuries, the Ottoman were the protectors of the Islamic faith who presided over the holy sites of Islam. They made it their mission to protect Muslims from outsiders as Sharia was the fundamental basis of the empire's legal system. Along with this emphasis on Islam, non-Muslims never had their rights violated; in fact, they found stability and protection in the

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<sup>40</sup> Molly Greene, *Goodbye to the Despot: Feldman on Islamic Law in the Ottoman Empire*, *Law & Social Inquiry* 35(1). 219-242 (2010) at 221

<sup>41</sup> *Nizamiye*: Turkish word adopted into Arabic language.

<sup>42</sup> *Supra.*, Rubin, note 28, at 279

<sup>43</sup> *Supra.*, Alkateeb, note 38, Part 3: Nationalism.

Empire.<sup>44</sup> The Ottoman government even gave *Sharifs* of Makkah relative freedom to direct the affairs of the Hijaz, while on the other hand, they also authorized the Ottoman officials in Egypt to intervene in the concerns of the region.<sup>45</sup>

### § 2.1.5.3 Fall of the Ottoman Empire: European Influence on the Peninsula

When World War I broke out, the Ottoman Empire joined the forces of Germany and its allies against France and Great Britain. One of the British strategies was to turn the Ottoman Empire's Arab subjects against the government. They found their perfect weapon in the form of Hussein bin Ali, the Hashemite Amir (governor) of Makkah (Mecca) in the western region of Hejaz. The British offered *Sherif* Hussain, the prize of an Arab Kingdom if he sided with them and revolted against the Ottomans. They also sent the later (in)famous T.E. Lawrence (aka, Lawrence of Arabia) to Hussain to convince him to revolt and provide him with vast amounts of money and weapons.<sup>46</sup> Unfortunately for Sharif Hussein, at the end of the war, in 1916, the British and French entered into a secret arrangement known as the *Sykes-Picot Agreement*<sup>47</sup> which effectively divided up the Ottoman Empire among both countries giving each diplomatic, commercial and military benefits in the Middle East. In the Arab world, the British (of course) did not keep their promise to *Sherif* Hussain.<sup>48</sup> Simply put, a secret illegal European agreement had almost instantaneously replaced hundreds of years of stable Sharia law. However, the

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<sup>44</sup> ALBERT HOURANI, A HISTORY OF THE ARAB PEOPLES, 1 ed (2010)

<sup>45</sup> Abdulrahman S. Alorabi, *The Ottoman Policy in the Hejaz in the Eighteenth Century: A study of political and administrative developments, 1143-1202 AH/1731-1788 AD*, 2785-2785 (1989)

<sup>46</sup> Islam and the Ottoman Empire, Lost Islamic History, <http://lostislamichistory.com/islam-and-the-Osmanli-empire/> (last visited Jul 9, 2017).

<sup>47</sup> Sir Edward Grey & Paul Gambon, *Sykes-Picot Agreement* (1916).

<sup>48</sup> Marshall G. S Hodgson, *The venture of Islam* (1961).

British made a fatal mistake; they underestimated the strength of will of the Arab people and, more importantly, their commitment to Sharia divine law. In 1916, while the Hijaz was still officially an Ottoman province, the Sharif proclaimed it the independent Kingdom of Hijaz and declared himself King.

In Emirate of Najd and the other parts of the Arabian Peninsula, the system of government in Najd and al-Hasa<sup>49</sup> was primarily based on the Arab tribal traditions modified mainly by the *Hanbali madhab* interpretation of Sharia.<sup>50</sup> In most of the small townships, there was a ruler “*amir*”, aka (*emir*), a judge (*qadi*) and a treasurer (*ma'mur bayt al-mal*) all of which were under the supreme authority of an Imam (*amir*).<sup>51</sup> The ideological premise of the earliest founders of the Kingdom was based on the monolithic character of Islam and the oneness of God. In this view, customary law and indigenous customs contradicting Sharia had to be firmly suppressed.<sup>52</sup> In time, more foreign legal codes were added to other Middle Eastern nations' legal systems until the early 1920s, most of which still appear in their original form. The first adaptation of a complete code by an independent country occurred when the Ottoman Empire adopted the French Commercial Code in 1850<sup>53</sup> which occurred in Egypt between 1875-1883 revisions, and new codes have appeared since that time in virtually all areas of law.<sup>54</sup>

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<sup>49</sup> Al-Hasa is a traditional veld region in eastern Saudi Arabia.

<sup>50</sup> Soliman A. Solaim, *Constitutional and Judicial Organization in Saudi Arabia*, A Dissertation submitted for the Degree of Ph.D. to the Johns Hopkins University, University Micro-films International, Ann Arbor, Michigan: (1978)

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

<sup>52</sup> Frank E. Vogel, *Islamic Law and the Legal System of Saudi: Studies of Saudi Arabia*. Vol. 8. Brill (2000)

<sup>53</sup> Philip Marc Raworth, *The French commercial code in English* (1 ed. 2008). Rev.

<sup>54</sup> Enid Hill, *Comparative and Historical Study of Modern Middle Eastern Law*, *The American Journal of Comparative Law* 279 – 304: 1978, <https://american-journal-of-comparative-law.scholasticahq.com/> (last visited Nov 7, 2017).



## SECTION II

### § 2.2 Unification and Founding of a Kingdom

#### § 2.2.1 Birth of a Kingdom

To fully understand modern Saudi Arabian Law and its connections to Sharia, is to understand the man who unified the Arabian Peninsula to create the Kingdom of Saudi Arabia. Abdul Aziz al-Saud. Born on 15 January 1876 (d 1953) in Riyadh, Emirate of Najd, Abdul Aziz was the son of the last ruler of the Second Saudi State, Amir Abdul Rahman bin Faisal (1845-1928). From an early age, the future King's father ensured he received a comprehensive education in the Qur'an, Islamic theory, Sharia jurisprudence, and leadership. In 1890, at the age of 10, the House of Saud's long-time regional rivals, the Al Rashid, conquered Riyadh. Abdul Aziz and his family were forced to flee and seek refuge with a Bedouin tribe in the southern Arabian desert, beginning a diaspora that would take them to Qatar, and eventually to Kuwait where they remained for two decades.<sup>55</sup>

While living in exile in Kuwait, Abdul-Aziz bin Saud grew to become a masterful horseman, warrior, and leader. Beginning in 1904 with a band of the brothers (*al-Ikhwān*),<sup>56</sup> he united a people by dedicating himself and his followers to Islam and Sharia. In 1902, he accomplished a tactical and a strategic victory, when, with only forty men, he stole into the city

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<sup>55</sup> Revolvly LLC, *King Abdul-Aziz of Saudi Arabia*, *Revolvly.com*. (no date) Available at: [https://www.revolvly.com/main/index.php?s=King%20Abdul-Aziz%20of%20Saudi%20Arabia&item\\_type=topic](https://www.revolvly.com/main/index.php?s=King%20Abdul-Aziz%20of%20Saudi%20Arabia&item_type=topic) (Accessed: 9 November 2017).

<sup>56</sup> *Al-Ikhwān* was the first Saudi army made up from tribesmen in the Arab Peninsula.

of Riyadh late one night to recapture it for the al-Saud family. Once he had secured the region, he initiated a comprehensive reorganization and solidification of power while actively engaging in adding more regions to the al-Saud. In 1921, Amir Abdul-Aziz declared himself Sultan over Najd and its dependencies (*Sultan Najd wa mulhaqatiha*) to create the third Saudi state by the House of Saud.

With the *Ikhwan* by his side, Abd al-Aziz continued to capture province after province of the vast desert; by 1925, he had captured the holy cities of Madinah (Medina) and Makkah (Mecca) ending the 700 years of the Ottoman rule. On 8 January 1926, the leaders of Madinah, Makkah, and Jeddah proclaimed Ibn Saud *Amir* of Hijaz (Hejaz). The British government then signed the Treaty of Jeddah abolishing the Darin protection agreement<sup>57</sup> and recognizing the independence of the Hijaz and Najd with Ibn Saud as its ruler. With recognition and support from many influential nations, Ibn Saud continued to consolidate his power, and by 1928, his forces had conquered most of the Arabian Peninsula.<sup>58</sup> However, the *Ikhwan* wanted to spread the Wahhabi movement's ideology beyond Arabia. When he attempted to restrain them, they rebelled forcing him to seek approval of the *'ulama*, (religious authorities), who were regarded as the moral guardians of the realm for their endorsement to stop them by force.<sup>59</sup>

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<sup>57</sup> The Darin Treaty made the lands of the House of Saud a British protectorate and attempted to define its boundaries. Signed 26 December 1915

<sup>58</sup> See *House of Saud*, Available at: <http://houseofsaud.com/ibn-saud/> (Accessed: 2 July 2017).

<sup>59</sup> *Id.*

### § 2.2.2 A Simple Legal System

Once the problem of the *Ikhwan* was resolved, the Amir began to gradually focus on transforming a simple administrative structure into a series of institutions supervised and supported by an executive branch to manage the concerns of a growing domain. He then took the first steps toward inaugurating a system of governance and implementing the Islamic-based principle of consultation, as presented by the Qur'an (Islam's Holy Book) and authentic Sunna (Prophet's Traditions). In 1924, he introduced the "National Council" (*al-Majlis al-Ahli*), a consultative council that assumed most of the primary functions of management required to stabilize and grow a new country and its constitution. The only real exceptions to this were the control of the military and the Office of Foreign Affairs which remained in his control.<sup>60</sup>

Following the annexation of the Hijaz in 1925, the first challenge facing the new government was resistance to establishing an appropriate legal structure within the Hijaz territory.<sup>61</sup> This conflict emerged due to the lack of a single legislative authority in the region controlled by the House of al-Saud other than that of the Hijaz which, at the time had no real authority over other territories. As a result, the historical belief in the stability of Sharia texts had substantial direct influence over legal debates and decisions regarding a new legal system. Consequently, during the early stages of unifying the Kingdom, the National Council acting as a

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<sup>60</sup> See Umm al-Qura, No. 1, December 12, 1924. [Arabic text]. Umm al-Qura is the Official Gazette of Saudi Arabia, which published its first issue on December 12, 1924. It declares laws and decisions taken in the facilitating the consolidation of Saudi rule.

<sup>61</sup> *Supra.*, Al-Fahad, note 20

legislative body played a significant role in maintaining existing laws and legislating new ones that would be in compliance with the principles of Sharia.

In August 1926, the Amir approved a comprehensive constitution called the “Basic Regulation (*al-Talimat al-Assasiah*) for the province of Hijaz.” The document, which became known as the Hijaz Constitution, was similar to constitutions of many modern states, and may also be perceived as the precursor for future ones. It consisted of nine sections and seventy-nine articles, which dealt with core constitutional issues pertaining to System of Government, the Administration's Responsibility, the Affairs of the Hijazi Kingdom, the Department of Accounts, the Inspectorate General, the Kingdom's Employees, the General Municipal Councils, and the Municipal Administration Committees. Most importantly, the fourth article of this document established several governmental bodies, which included the Consultative Council, Administrative Councils, District Councils, and Village and Tribal Councils.

The “Makkah Consultative Council” had greater authority in legislation which conflicted with the ‘ulama (scholars) perspective according to traditional religious belief that the sovereignty and authority to legislate laws belongs only to Allah. The Kingdom, however, was successful in merging the beliefs and policies of theocracy and civil legislation, not merely to address conflicts but as a well learned a lesson in how to live with such contradictions by realizing that royal regulations and orders must be treated as statutory legislation. The end product for the Kingdom is that legislation is based on Islamic theocracy with the authority of the King playing a significant role in legitimizing the additional civil legislation thereby producing a combined system acceptable to the population.

A legal opinion issued on February 11, 1927, was clear that existing laws would be immediately abolished, and nothing except the pure Sharia would henceforth be applied.<sup>62</sup> Concurrently, the French-based, Ottoman legal codifications of jurisprudence that limited acceptance and application of Sharia were restricted to the regions under the direct control of the Empire. The most advanced of these was in the Hijaz<sup>63</sup> region “aka Western Province,” the area along the West coast of the Peninsula that borders the Red Sea which is home to the cities such as Jeddah, Madinah, and Makkah. The judicial system was more developed in the urban centers of Hijaz than in other regions of the country because of its position in the Muslim world. During the periods of *al-Hajj* and *al Umrah* (pilgrimages), connections often made between foreign pilgrims and citizens not only helped to unify the Muslim world but also contributed to the modernization of the judiciary.<sup>64</sup>

Following the unification of the Saudi Arabian Kingdom, it was determined that all regulations and orders then in force in the Hijaz, including Ottoman laws, should remain in effect. Included in this decision was the adoption of the Ottoman form of legislation which was seen to foster legal continuity, and equally important, contact with the outside world.<sup>65</sup> Therefore, after the annexation of the Hijaz January 8, 1926, the Saudi government issued the Sublime Order that stated; “The legal rulings of Ottoman law are still in effect up to the present for we have not issued our order for repealing them and setting down new ones in their place.

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<sup>62</sup> *Supra.*, Soliman, not 50, at 85

<sup>63</sup> The Kingdom of *Hijaz* (*Mamlakat al-Hijāz*) was a founded in the *Hijaz* region of the Arabian Peninsula, in Jun 27, 1916, which ruled by the Hashemite family. In December 19, 1925, *Hijaz* King Abdul-Aziz Al Saud created the Kingdom of *Hijaz* and *Nejd*.

<sup>64</sup> *Supra.*, Soliman, not 50, at 81

<sup>65</sup> Aharon Layish, *Saudi Arabian legal reform as a mechanism to moderate WahhĀbĪ doctrine*, *Journal of the American Oriental Society*, 279-292 (1987) at 280

Therefore, we accede to your suggestion concerning the continuance of the ruling of said laws.”<sup>66</sup>

In 1927, the "Commission on Inspection and Reform," a committee tasked with reviewing the administrative system, was formed by order of the Amir to make recommendations for courses of action on administrative reform. The commission sent a proposal for a new statute of the Consultative Council that was approved by the Amir in July 1927. This new Consultative Council consisted of four members chosen from the general population in consultation with prominent members of the community, another four appointed by the government, and the viceroy as Chairman. It was charged with oversight of the legal system and proper application of laws and statutes regulating other departments such as budgeting, construction, concessions, and licenses, and various areas. It also addressed issues of eminent domain, public property, employment of foreign nationals, general civil law, and statutory legislation.<sup>67</sup>

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<sup>66</sup> *Supra*, Soliman, not 50, at 86. *See* Umm Al-Qura (Makkah) August 15, 1927

<sup>67</sup> *Id.*, at 37

## SECTION III

### § 2.3 Foundations of the Law of the Land

#### § 2.3.1 Laying the Essential Ground Work (1932-1953)

On 18 September 1932, by Royal Decree No. 2716, 17/5/1351 H., the Kingdom of Saudi Arabia was established with King Abdulaziz ibn Saud becoming its first monarch.<sup>68</sup> Now the King of a Kingdom he once only dreamt of, but one he had carefully planned throughout his former life.

Upon ascending the new throne, the King immediately faced the difficult task of stabilizing and modernizing a culture that had been under the heel of foreign invaders for decades. He appointed leaders who understood that unification, the primary goal of all citizens of the new Kingdom under the green banner of Islam meant progress. Ever mindful of that goal, they set about fulfilling the needs of the Saudi people, and future generations by opening doors to the world while maintaining the principles of Islam. Advisors to the King recognized the fact that the country would need to establish a modern judiciary beginning with the enacting of temporal (*civil or human-made law*) laws if it were to survive.

However, due to the complexities of establishing a modern Kingdom, an *ad hoc* special Commission of Inspection and Reform (1927) was empaneled to issue a recommendation that a

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<sup>68</sup> See Umm al-Qura, No. 406, August 23, 1932. [Arabic text].

Council of Deputies (*Majlis al-Wukala*) be appointed in January 1932 to assist the Viceroy on purely administrative matters. The Commission recognized the need for distinguishing executive from legislative functions. For twenty-one years, the Deputies functioned by serving as a small council of ministers for the Hijaz until 1953 when all provinces united under a single legal jurisdiction with a permanent Council of Ministers.<sup>69</sup>

In tandem with the establishment of the *Majlis al-Wukala*, plans were approved and initiated to address educational goals. The initial step was the establishment of a Directorate of Education to oversee the development of a national system of compulsory education for all Saudi youth. Despite initial difficulties caused by the lack of a sufficient number of school facilities, the authorities persisted and won out. To rapidly address this issue, schools were built and staffed with teachers trained in the primary principles of Islamic instruction while utilizing the Egyptian educational system model of a six-year elementary education followed by a five-year subsequent cycle. The 1930's saw changes in education: the first Religious Sciences School (1933); issuance of rules for private schools (1934); *Dar Al-Tawhid* in Taif (1948); and the first secondary school, *Tahdeer Al-Ba'that School*, to prepare graduates for a university education (1935). In 1938, the General Directorate of Education was given full control over all education except for that of the military.<sup>70</sup>

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<sup>69</sup> *Supra.*, Soliman, not 50, at 36

<sup>70</sup> Saudi Arabia - Educational System—overview, Education.stateuniversity.com (2010), <http://education.stateuniversity.com/pages/1302/Saudi-Arabia-EDUCATIONAL-SYSTEM-OVERVIEW.html> (last visited Jun 1, 2017).



In 1949, demonstrating the state's wisdom and foresightedness for the future needs of the Kingdom, the government initiated plans to establish a formal College of studies in Sharia. Within the year, the first public institution of higher education in the country opened in the Holy City of Makkah. Unpretentiously named the College of Islamic Studies, the College was analmost immediate success, attracting students from all over the Kingdom and other Islamic states.<sup>71</sup>

As the College grew, additional programs developed, the first being the Teacher's College in 1952. Then, in 1961 the College of Sharia took over the responsibility for training future teachers in education thus becoming the College of Sharia and Education. In 1962 the College of Education was established as an independent college. In 1970 it became the first college to offer four-year, Bachelor's degrees in Sharia and Arabic languages. Expansions continued, and in 1981, following the progressive addition of other programs, the College was renamed by Royal Decree as Umm Al-Qura University (UQU). However, one imperative remained throughout this expansion, and into the 21<sup>st</sup> Century—, that the primary source for all law within the Kingdom shall be Sharia.

In 1953, in the capital city of Riyadh, two more colleges were established—: The College of Arabic Studies and the College of Sharia—both of which later expanded to meet the needs of higher education. In the ensuing years, other college offerings in Social Sciences, media studies,

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<sup>71</sup> See Umm Al Qura University, Available at <https://www.edarabia.com/8059/umm-al-qura-university-makkah-saudi-arabia/> (last visited Aug 29, 2017)

language translation, medicine, and engineering added programs deemed essential to the interests of the Kingdom.

### § 2.3.2 The Early Stages (1953 -1964)

During the nascent state of the Kingdom, the King aspired to keep pace with the evolution of comparative legal systems while rigidly clinging to standard Hanbali rules. It was, and in some sense, remains an arduous task with the lack of public development projects, educational institutes, and low wages of a growing labor force. In the early years of the Kingdom, the King lived similar to his subjects, in a sun-dried brick palace, shaykhs, public, and Beduin herdsmen called each other by their first names, and clothing for rich and poor was similar. However, as wealth from the newly discovered oil fields began to pour into the country, ordinary Saudi citizens began to become aware of a duality in their culture; a privileged class began to emerge and with it, an assumption by some that the laws were not the same for all.<sup>72</sup> Fortunately, the King was not oblivious to the perceived division and began taking steps to create the initial formation of a legal system whose identity was unique to the State.

In 1954, a newly formed Council of Ministers began sessions as an advisory body to the King. In 1958, the King granted the Council broad legislative, executive and administrative powers<sup>73</sup> with the enactment of the Law of the Council of Ministers, to assist him in developing

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<sup>72</sup> Saudi Arabia - THE REIGNS OF SAUD AND FAISAL Countrystudies.us, <http://countrystudies.us/saudi-arabia/11.htm> (last visited Jan 4, 2018)

<sup>73</sup> Abdullah F. Ansary, *A brief overview of the Saudi Arabian legal system*, See [http://www.nyulawglobal.org/globalex/Saudi\\_Arabia.htm](http://www.nyulawglobal.org/globalex/Saudi_Arabia.htm), 2008

government ministries, agencies and welfare administration programs to aid the general population.<sup>74</sup> Additionally, the Council was charged with establishing a ministerial form of government which continues to the present day.

The judicial system in Hijaz was up-to-date and followed the old Ottoman Sharia court organization. It consisted of a Hanafi chief judge and three deputy judges representing each of the other three Sunni schools. From 1931 to 1954, the initial judicial framework for Sharia Courts has affected by the judicial model of the Hijaz (in the cities of Makkah, Medina, and Jeddah); changes in jurisdiction divided the new regulations between the trial courts, and a lower-level authority of the *Musta'jalah*<sup>75</sup> or Summary Courts, were an improvement over the older system.<sup>76</sup>

This early organization of a body of the Sharia Courts was comprised primarily of two levels of courts, the courts of the first instance (trial courts) and the courts of cassation, which were abolished in 1954, but re-established in 1961. The trial courts' decisions were subject to judicial review by the Courts of Cassation rather than a rehearing of the case.<sup>77</sup>

The Courts of First Instance are the trial courts and are sub-divided into two distinct systems: General Courts and Summary Courts. Summary Courts hear minor civil and criminal

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<sup>74</sup> *Id.*

<sup>75</sup> The term "*Musta'jalah*" in the Arabic language is meant that in a hurry or rush; however, and, according to Arts. 24 and 25 of the Judicial Law (1957), the "*Musta'jalah*" courts are indication to the First instance courts (trial courts).

<sup>76</sup> *Supra.*, Vogel, not 52, at 89.

<sup>77</sup> Samir Shamma, Law and Lawyers in Saudi Arabia, 14 INT'L AND CoMP. L. Q. 1034 (1965) [hereinafter cited as Law and Lawyers in Saudi Arabia], at, 1037

cases. The General Courts hear all other cases outside the jurisdiction of the Summary Courts. The decisions of both courts can be appealed directly to the Courts of Cassation.”<sup>78</sup>

Vogel argues:

“The *Mustajala* or Summary Courts, which courts have jurisdiction over all criminal cases except certain crimes involving potential sentences of death or "cutting," meaning amputation or retaliation for physical injury, and over civil cases (except land and certain family matters) involving less than certain amounts... [t]hese restrictions have the consequence that the Summary Courts hear the great majority of criminal cases but few civil cases. Cases are heard in these courts by a single judge. The second level of trial court is that of the Shari'a Courts, called Great Shari'a Courts (*mahakim shar'iyya kubra*) in the larger cities. These courts hear all cases not heard by the Summary Courts; as a result they hear most of the civil cases, and few criminal cases, although these are the most serious ones. In these courts civil cases are heard by a single judge, and criminal cases are heard by panels of three judges.”<sup>79</sup>

The appeals hearing process in the Court of Cassation varied considerably over the years from 1931 to 1954. It was initially vested in the Presidency of the Judiciary (*ra'is al-qudah*) and presided as a Board of Review (*tamyiz*), a supreme administrative authority for the judicial system in the Hijaz. Appeals were limited to claims considered to be routine procedures and were only on rulings thought to be failed application of long-established procedures of justice. Once filed, the formal appeal was heard by the supreme judicial authority or another Sharia

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<sup>78</sup> *Kingdom of Saudi Arabia (AL MAMLAKAH AL ARABIYAH AS SUUDIYAH)*. Saint Louis, MO: Washington University. Available at: <http://law.wustl.edu/GSLR/CitationManual/countries/saudiarabia.pdf> (Accessed: 6 December 2017).

<sup>79</sup> *Supra.*, Vogel, note 52, at 89

tribunal.<sup>80</sup> However, by the early 1950s changes in the practice of formal appeals had risen to the jurisdiction of the Grand *Mufti* of Saudi Arabia, who regularly heard them.<sup>81</sup>

The judicial system at the time was a dual system until the State reorganized and unified the courts throughout the country under one system. The move toward modernization in the court system was the objective of renewal the system. In 1957, the Sharia Courts in the cities of Hijaz province (Makkah, Medina, and Jeddah) applied a dual parallel legal organization, and in 1960, the two systems became one and unified the Presidency of the Judiciary in Riyadh, extending to the entire country the regulations developed for the Hijaz.<sup>82</sup>

“The Courts of Cassation, or courts of appeals, are located in Meccas and Riyadh and consist of three departments: criminal law, personal status suits, and all others. The court located in Mecca hears cases from the western provinces, while the Riyadh court entertains cases from the central and eastern provinces. Because of the unique function of the Supreme Judicial Council, the decision of this court is final. Unlike western courts of appeal, the Courts of Cassation will only affirm or remand for a new trial, whether in whole or in part.

Vogel discusses the matter of abolishing the appeal which happened in 1954; one commentator attributes this to a desire to accelerate the procedure. There is no doubt this is partially true however a more likely reason was opposition by religious scholars “*ulama*” of

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<sup>80</sup> *Id.*, at 90

<sup>81</sup> *Id.*, at 88

<sup>82</sup> *Id.*, at 92

Najd region idea of being subject to formal appeals.<sup>83</sup> In 1962, the appeals system was restored to the format of the procedures of the new courts dedicated solely to appeals, called the Boards of Review (*hay'at al-tamyiz*). Even after 1962, until 1967, most Summary Court cases continued to be unappeasable.”<sup>84</sup> The religious establishment recognized the judicial system founded in Makkah, Medina, and Jeddah and agreed to its introduction to the rest of the country between 1957 and 1960.<sup>85</sup>

### § 2.3.3 Separate Judicial Structure Instituted

In 1955, new changes registered in the administrative judiciary, leading to the introduction of *Diwan al Mazalim*,<sup>86</sup> also known as the Board of Grievances under the administration of the King.<sup>87</sup> King Abdul Aziz embraced the use of Islamic rulers' traditions in solving all the complaints brought to him by the citizens, a process that involved the King making himself available to the individuals anytime there was a matter to solve.<sup>88</sup> He also set up a box, which allowed the citizens to leave written complaints as well as concerns without fear of retribution. He had said, "anyone who refrains from complaining of any injustice he suffers at the hands of an official, whether senior or low ranking or any other, has no one to blame but

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<sup>83</sup> *Id.*, at 92

<sup>84</sup> *Id.*, at 93

<sup>85</sup> Jan Michiel, Otto. *Sharia Incorporated. A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*. Leiden University Press (2010)

<sup>86</sup> The Classical Concept of *al-Mazalim* in Arabic, refers to persons who complain of having been grievously wronged, and the root verb *zalama* means "to treat unjustly." Thus, the legal concept of *al-mazlim* is one of adjudicating litigation arising out of complaints of injustice, i.e., grievances. See David E. Long, *The Board of Grievances in Saudi Arabia*. Middle East Journal, 27.1, 71-75 (1973)

<sup>87</sup> See Royal Decree No. 2/13/8759, dated 17/9/1374 A.H (May 9, 1955).

<sup>88</sup> *Id.*

himself."<sup>89</sup> However, any citizen making false allegations risked being challenged by trial and severely punished if found guilty. Almost immediately, this policy became popular spurring an increase in disputes which forced the Kingdom to increase the number of government facilities and staffing.

The formation of the Board of Grievances closely resembles that of the *Conseil d'Etat* of France<sup>90</sup> which acts as the administrative justice body in the form of the Supreme Court. The primary foundation for its rulings closely aligned with the Constitution of the Kingdom of Saudi Arabia in its "Basic Law of Government (*Alnezim Alasasi Lelhokm*)." Section I, General Principles, Article I of the Basic Law states that: "The Kingdom of Saudi Arabia is a sovereign Arab Islamic State. Its religion is Islam, and its constitution is the Holy Qur'an and the Prophet's (peace be upon him) Sunna (traditions). Its language is the Arabic language, and its capital city is Riyadh."<sup>91</sup>

In 1955, by Royal Decree,<sup>92</sup> a new Board was formed and given further functions in compliance with Sharia and Civil courts. It became a separate judicial branch, independent of the Administrative branch of the government with a mandate to arbitrate legal disputes and grievances.<sup>93</sup> In essence, it became equivalent to the Sharia Courts, and according to Article 8,

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<sup>89</sup> SAUDI ARABIA COMMERCIAL AND TRADE LAWS - BASIC LAWS AFFECTING BUSINESS, By IBP, Inc. (2016) at 18

<sup>90</sup> The *Conseil d'État* "the highest administrative jurisdiction" - it is the final arbiter of cases relating to executive power, local authorities, independent public authorities, public administration agencies or any other agency invested with public authority. "*Council of State*" is a highest court in France for issues and cases involving public administration. See <http://english.conseil-etat.fr> (Accessed: 6 March 2018).

<sup>91</sup> See Basic Law of Governance "*Alnizam Alasasi Lil Hokm*". Royal Decree No. A/90 (Published in *Umm al-Qura* Gazette No. 3397 in 2 *Ramadan* 1412 H - 5 March 1992)

<sup>92</sup> See Royal Order No. 20941 (28/10/1387 A.H, Jan. 28, 1968).

<sup>93</sup> See the Law of the Board of Grievances, Royal Decree No. M/51. Dated 17/7/1402 A.H (May 11, 1982).

was given four primary areas of adjudicative authority: disputes involving the government, unethical business practices subject to statutory provisions, disciplining civil servants for misconduct and executing foreign judgments.<sup>94</sup>

Furthermore, reviews of the formation of the Board of Grievances in 1927 highlighted several recommended changes to the judiciary. A list of these changes presented to the King for endorsement was quickly agreed to and acted on by Royal Decree.<sup>95</sup> The initial result was the expansion of Sharia courts, and the appointment of additional qualified Sharia judges<sup>96</sup> beginning in the cities of Makkah, Jeddah, and Medina and then expanding to the entire Kingdom. There were equally critical secondary results from those same changes which centered on Sharia and secondary education programs of Sharia that spread throughout the Kingdom between 1949-1970. The subsequent consequence was that jurisdiction of the Sharia courts widely expanded to serve the entire Kingdom with the philosophy that it governed all courts following the precepts laid out in the Qur'an and the Sunna as primary sources of guidance. The Sharia schools incorporated information from these resources of traditional Islamic jurisprudence into textbooks to help students in the process of understanding the obligations of judges of various courts.<sup>97</sup>

Another judiciary system, regulatory procedures of the Board of Grievances “*Diwan al-Mazalim*” (1955),<sup>98</sup> established in Riyadh and Jeddah, operate as investigative agencies for

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<sup>94</sup> *Id.*, Art. 8

<sup>95</sup> *Supra.*, Ansary, not 73

<sup>96</sup> fida' albadywii, *qadat yutalibun bitafeil layihatihim alwazifiat wamusakamat bialmustajidin*, (Feb. 26, 2015), <http://www.alhayat.com/article/635123/المحاكم-بالمستجدين-لانتهم-الوظيفية-وتعزيز-المحاكم-بالمستجدين>. [Arabic Texts]

<sup>97</sup> *Supra.*, Al-Jarbou, note 20, at. 212

<sup>98</sup> *See* Royal Decree No. 2/13/9759. Dated 9/17/1374 A.H. (May 10, 1955).



complaints of miscarriage or denial of justice and other allegations of unlawful acts by judges government officials.<sup>99</sup> The new administrative court system launched as an adjunctive system of the Sharia courts in establishing the principles of an administrative tribunal, thus giving the judiciary more flexibility to apply enacted laws and regulations in administrative cases. Furthermore, the adaptation of a new Grievance Board instituted limitations on the jurisdiction of the Sharia Courts of administrative operations relative to the government. The Board of Grievances thus accomplishes the functions which, in other countries, including a number of the Arab countries, are assigned to purely civil administrative tribunals established in the continental European pattern.<sup>100</sup>

The State opened the gate for the enactment of laws (*an`zimah*),<sup>101</sup> to address current regulations for legal issues. In 1961, the government passed the Protection and Encouragement of National Industries act.<sup>102</sup> The Act involves some exemptions from customs duty on all imports used to implement manufacturing projects. A minimum payment for those plots of property chosen for building factories and housing for personnel, and the protection of local production through limiting imports of commodities similar to those produced locally.<sup>103</sup>

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<sup>99</sup> *Supra.*, Shamma, note 77, at 1037

<sup>100</sup> David Long, *The Board of Grievances in Saudi Arabia*, 27 MIDDLE EAST J. 71 (1973)

<sup>101</sup> The Arabic term of “Nizam” is a single word and “a`nzimah” is the plural form of “nizam”.

<sup>102</sup> See Royal Decree No. M/50 dated 23/12/1381 A.H (May 28, 1962 A.D)

<sup>103</sup> Liano, Dante. *The Gcc Region: Political Balances and Global Dimension*. EDUCatt-Ente per il diritto allo studio universitario dell'Università Cattolica (2014)

## SECTION IV

### § 2.4 Identity of the Saudi Arabia Legal System

#### § 2.4.1 Nature of Legal System Unity

Early in Saudi Arabian education, students learn the simple philosophy that a clear understanding of a problem is more than half its solution. For the non-Arabic speaking student studying the legal system of the Kingdom, one crucial factor must be remembered; translation does not bring understanding, accurate interpretation does. With a goal to better understand the Saudi Arabian legal system, this analysis will identify and examine essential events and stages of development and change the system has undergone to bring it to its present level of expertise. The underlying assumptions and premises of law are that its systematic nature has an underlying basis of the fact that every law essentially correlates to one or more legal groups or families.<sup>104</sup>

In the 21<sup>st</sup> Century it is a fundamental right and national moral duty for countries to legislate the enactment of legal systems based on their cultural values and religious beliefs. For history has proven that without laws, there is only anarchy. The subject of this section is a historical analysis of the Saudi Arabian legal system (Sharia and Civil) itself not of its laws.

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<sup>104</sup> Herbert Lionel Adolphus Hart et al., *The Concept of Law*, Wiley-Blackwell 2 (2010)

The Law<sup>105</sup> may be defined as a body of imperatives established quantifiably by a governing authority to institute and maintain order in any given community. Whether in a small village or an entire world; the Law is the body of rules and principles of action which are binding upon civilized people and states in their relations with one another.<sup>106</sup> Whether written or oral, the acceptance of Law is an agreement between peoples concerning the limitations or lack thereof for the behaviors, duties, and rights of all.<sup>107</sup> However, to define and understand the Law solely as a tool to preserve a civilized society and promote civil rights would be to understand Law only in its ideal form.

The usage of the term “*legal system*,” as is commonly done in many legal publications and, occasionally, in court decisions is an incorrect utilization of a non-technical legal phrase. It is, however, primarily employed when considering the Law itself, and not its actual application. It is also an expression used in books of jurisprudence or comparative law but not in those of property, tort or copyright law.<sup>108</sup> The concept of the legal system presumes the existence of a quantifiable union involving the characteristics of its laws and the manner in which they are applied. It may be assumed that attainment of a formal unity of laws and legal institutions does establish a complete legal system. The term “*legal system*” signifies an attempt to establish all-pervasive principles and a traditional institutional structure with practices that permeate the system and lend to it its distinctive character, and not, as a means of delineating every regulation.<sup>109</sup>

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<sup>105</sup> For purposes of this study, the legal system may also be referred to as the Law.

<sup>106</sup> Gerhard Von Glahn and James Larry Taulbee, *Law among nations*, Rutledge 10 (2013) at 4

<sup>107</sup> Lawrence Meir Friedman, *The legal system: A Social Science Perspective* (Russell sage Foundation)

<sup>108</sup> Joseph Raz, *The identity of legal systems*, Cal. L. Rev. 59, 795 (1971)

<sup>109</sup> *Id.*

Can traditional canons play a role in the structure of a modern legal system to provide an accurate portrayal of its identity as expressed in legislative processes court procedures, substantive customs, and resolution of disputes?<sup>110</sup>

Joseph Raz summarized the legal philosophers' views on drawing a scientific framework of legal identity by saying:

“[T]he identity of the system is found in the criterion or set of criteria that determines which laws are part of the system and which are not. Some proposed answers to the problem of identity are well known; perhaps the best known are: A law is part of a legal system if and only if it was enacted directly or indirectly by the sovereign of that system (Austin), or if and only if it is authorized by the basic norm of the system (Kelsen), or if and only if it ought to be recognized according to the rule of recognition of the system (Hart).”<sup>111</sup>

The appreciation of the identity of a legal system is dependant upon the content of a complete and precise register of laws and the spirit of that system. It is also committed to the culture and practices of its most important legal institutions.

The identity of a national legal system is meant to be an acknowledged procedure by which laws are codified within a specific legal classification of applicability, or logic. More specific, the problem of identity is relevant to the aspect of the scope of a legal system in term of when it ceases to exist and the aspect of its continuity.<sup>112</sup> Legal philosophers interested in systemic identity regarded their inquiries as designed to further

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

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

<sup>112</sup> *Id.*, at 798

this purpose, but they were not interested in finding, or actively creating criteria for identifying the laws of any legal system. They also considered the problem of identity as a distinct one of general jurisprudence.<sup>113</sup>

In the case of Saudi Arabia, there is a belief that identity of the legal system has been forming since before the establishment of the actual Kingdom. These same efforts continue with the enlightenment and reformation of the government in the process of enacting the laws. With meticulous attention to detail, legal advisors, both Saudi Arabian and foreign, have listened to Saudi society and acted to develop a strong, modern legal identity. However, there appears to be a common misconception of the overall classification of the Saudi legal system. Research has shown there to be an apparent bias within both domestic and foreign legal communities that it is strictly a religious system.

Admittedly, past studies show that before the unification of the Kingdom, Sharia was the dominant driving force of law on the Arabian Peninsula. It was and remains an influential model for legal theories and debate in the structuring of a state-of-the-art system of jurisprudence patterned after contemporary western legal systems to meet the demands of the Kingdom.

In the early years of the Kingdom, Saudi authorities recognized that Law is an unavoidable necessity for a civilized country and its people to survive. Modern states grounded

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<sup>113</sup> *Id.*, at 800

in the Rule of Law separate the powers of government authorities to protect civil liberties. The supremacy of Law accepts the premise that all public authorities are subject to the Constitution of the country and its duly enacted, legally binding laws to provide guarantees of legal protection of citizens rights and the pursuit of legitimate interests.<sup>114</sup>

It is significant to note that the philosophy of Islam does not always bind the opinions (*fatwa*)<sup>115</sup> of Muslim scholars on all matters pertaining to purely religious acts and viewpoints as law. However, those same opinions do become statutory if related to transactions or laws legislated by the government. Therefore, the fatwa can take on a life of its own by encompassing many potential situations, whereas a judge's decision demonstrates its authority in each specific judgment.<sup>116</sup>

According to Frank Vogel:

“A favorite contemporary western concept of law is that it is a system of formal, objective, publicly known, generally applicable, compulsory rules, whether determined from general, published legislation, from the decisions of courts interpreting legal materials and applying them, or from authoritative scholarly analyses of legislation, court decisions, and other sources of law. So far we have seen little in Islamic law that resembles this concept. What one form of Islamic law is perhaps falling within it is a rule stated categorically and clearly in a Quranic verse or an authentic hadith<sup>117</sup>—for example, that a wife divorced for the third time must not remarry her husband without an intervening marriage to someone else. Such a rule, as stated in the abstract, is binding, generally

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<sup>114</sup> *Supra.*, Vogel, not 52, at 19

<sup>115</sup> Kabanni, S. (no date) *What is a Fatwa?*, Islamicsupremecouncil.org. Available at: <http://islamicsupremecouncil.org/understanding-islam/legal-rulings/44-what-is-a-fatwa.html> (Accessed: 14 November 2017)

<sup>116</sup> *Supra.*, Vogel, not 52, at 19

<sup>117</sup> The Arab term of “*hadith*” is a saying of Prophet Muhammad (PBUH) the report of his words, actions, or habits before he did.

applicable, universally known, and so forth. Perhaps another form of law resembling this western notion of law is the law of a legal school, insofar as it is seen as a fixed legal corpus of rules that is binding on the school's adherents. (However, as mentioned above, for Saudi Arabian judges the Hanbali School does not perform this function.) Otherwise, we have seen nothing that resembles western law as Westerners view it.”<sup>118</sup>

#### § 2.4.2 Duality of Law: 21<sup>st</sup> Century Saudi Arabia

In his Doctoral Thesis (2008),<sup>119</sup> Abdulrahman Baamir argues the West heavily influenced Saudi law following the fall of the Ottoman Empire and the birth of the Kingdom. He states that the French legal system imposed on Egypt and other Arab countries during its occupation in the 18<sup>th</sup> and 19<sup>th</sup> centuries resulted in their universities teaching French Law rather than their own. The subsequent effect on those young Saudi legal scholars who received their training in countries like Egypt, Lebanon, and France was a duality of Law within the Kingdom. Moreover, many of the consultants of the Saudi Kings were Egyptians or Syrians either by birth, origin or education— countries profoundly influenced by the French legal system. Those Consultants imported the Egyptian laws, which are direct translations of French laws. However, to be adopted in Saudi Arabia, all these regulations must comply with the Sharia principles. For instance, in 1966, Saudi Arabia enacted by Royal Decree No. (M/6) dated 24/02/1386 H. (Jun 13, 1966) an entitled Regulation Governing Bids for Government Procurement, Sales, and Leases. In essence, this was a copy of the Egyptian Bid Regulation of 1957, which was a textual translation of the French regulation of 1953. Another example of the French influence is the

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<sup>118</sup> *Supra.*, Vogel, not 52, at 22

<sup>119</sup> Abdulrahman Yahya Baamir, *Saudi Law and Judicial Practice in Commercial and Banking Arbitration*, A thesis submitted for the degree of Doctor of Philosophy (2008) at 120 <http://bura.brunel.ac.uk/bitstream/2438/6599/1/FullTextThesis.pdf> (last visited Nov 20, 2017).

Saudi Companies Law enacted by Royal Decree No. (M/6) dated 22/03/1385 H. (July 20, 1965). The law, copied from the Egyptian code which itself was directly patterned after the French company law (1953). The French influence can even be seen in the case when the Government representatives in the Aramco arbitration cited some French administrative laws to support their arguments. The list of such borrowed regulations is long and regulates most of the aspects of the Saudi law such as the Banking Control Law of 1966, Labor and Workers Regulation of 1969 and the Law of Procedure before Sharia Courts of 2000. These laws had been borrowed from French law, which is, in the viewpoint of some jurists still Islamic in the sense that they do not conflict with any of the principles of Sharia.<sup>120</sup>

Traditionally, the Sharia Schools have maintained an unreceptive stance relative to teaching Civil law legislated by the government but not included in their curricula. The irrelevancy concerning contemporary civil legal issues<sup>121</sup> which occurred created a duality in legal instruction that in turn generated conflict between Civil and Sharia principles of law.

It is important to note that Sharia Colleges focus on Islamic knowledge including:

- Islamic jurisprudence (*al-fiqh*),
- Quranic interpretation (*al-Tafsir*),
- Prophetic tradition (*al-Hadith*),
- Arabic linguistics.

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<sup>120</sup> *Id.*

<sup>121</sup> *Supra.*, Al-Jarbou, note 20, at 212



- The curricula is based on traditional Islamic jurisprudence books which were printed at least four hundred years ago.<sup>122</sup>

Al-Jarbou states:

- “The jurist books are always divided into two main parts:
1. Religious practice or the acts of worship or (*Ibaddt*) such as prayer (*salah*), fasting (*saum*), and pilgrimage (*hajj*), and;
  2. Corporations or transactions among people or social affairs, (*Mu'dmalat*).”<sup>123</sup>

These books in this aspect, for example, encompass various categories of corporate commercial activities, such as contracts in the jurist books. The problem is that the types of corporations they were written for do not exist in contemporary Saudi Arabian business. Even though other commercial corporations and contracts still do exist in the Saudi legal system, the Sharia Colleges' curricula do not include them because they were created by enacted laws such as the Corporate Law, and the Labor Law which is founded on them. That omission reflects an inadequacy of the curricula of Sharia Colleges as it makes no pedagogical sense to ignore these categories of corporations and labor contracts. Even in this age, people must deal with concerns on an everyday basis, and to focus only on the often-irrelevant traditional books on a daily basis, is a disservice to the daily life of contemporary society.<sup>124</sup>

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<sup>122</sup> *Id.*, at 212

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

<sup>124</sup> *Id.*, at 212

Saudi civil law schools provide knowledge-based educations structured on strict curricula similar to that of most any school of Civil Law in numerous other countries. It also gives particular attention to comparative studies of the Saudi systems and Civil Law provisions of France and Egypt. In addition to the programs above, Islamic jurisprudence (*fiqh*) courses such as Family law, Inheritance, and History of Islamic jurisprudence are offered.<sup>125</sup>

In 2014, an initiative was presented to, and discussed by the Consultative Council (Majlis al-Shura) supporting the appointment of law graduates to vacant courts and that judicial positions should not be exclusive to Sharia graduates. It was felt the Civil Law graduates are qualified to hear and rule on cases based on their intense training which includes participation in more than a hundred semi-judicial committees adjudicated by Civil Law graduates. The supporters of this proposal pointed out that judges without legal backgrounds often decide issues that involve hearing and debating cases even if they do not have a formal legal education in the field of the law argued. It was further stated that cases relative to employment, commercial, criminal and banking require Civil Law graduates more than graduates of Sharia.<sup>126</sup>

On December 2017, the proposal was re-presented and debated by members of the Consultative Council “Majlis al-Shura” that endeavored to change the paragraph (b) of the Article 34, of the Judiciary Law, which specifies the appointment of graduates of Sharia colleges to serve in the judiciary.<sup>127</sup>

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<sup>125</sup> *Id.*, at 212

<sup>126</sup> Rayan Alkhalawi, *Legal education reform in Saudi Arabia: a case study of Taibah University*. Diss. Maurer School of Law: Indiana University (2015)

<sup>127</sup> See <https://www.shura.gov.sa/wps/wcm/connect/shuraarabic/internet/news/1903143901> (last isited December 10, 2017)

On December 12, 2017, the *Shura* Council approved the appropriateness of studying the amendment of this Article to allow the law graduates to be appointed to the judiciary after passing a two-year qualification program that is implementation by the Supreme Jurisdiction Institute at Al-Imam Mohammad Ibn Saud Islamic University or any of Sharia colleges in the Kingdom.

### § 2.4.3 Sources of Law

Article 7: Chapter Two: Law of Governance (*Alnzam Alasasi Lil Hokm*); Basic Law of Governance states that:

The “Government in the Kingdom of Saudi Arabia derives its authority from the Book of God and the Sunna of the Prophet (PBUH), which are the ultimate sources of reference for this Law and the other laws of the State.”<sup>128</sup>

On 06 August 1927, the Saudi government announced that all Sharia Courts are required to:

- comply with the principles of Sharia without being bound to a specific school of Islamic jurisprudence; and
- should utilize the legal principles of all schools (*mada`hib*) without preferential treatment to any single one.<sup>129</sup>

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<sup>128</sup> *Supra.*, Basic Law of Governance, note 91

<sup>129</sup> “*About the Judiciary.*” The superior committee of justice. Official website of the superior committee of justice. [Arabic text]. <https://www.scj.gov.sa/about> (last visited September 9, 2017).

Furthermore, it is definitively understood that all Sharia courts would operate in compliance with mandated sources for judgments within the Kingdom, those being:

- Holy Qur`an, Sunna of Prophet “PBUH” and laws enacted by the states.
- The Articles of the Basic Law of Governance “*Alnizam Alasasi Lil Hokm*”<sup>130</sup>; which states that “Its religion shall be Islam and its constitution shall be the Book of God and the Sunna (Traditions) of His Messenger, (PBUH)...etc.”
- Moreover, as stated in Article (48) “The courts shall apply to cases before them the provisions of Islamic Sharia, as indicated by the Qur’an and the Sunna, and whatever laws not in conflict with the Qur’an and the Sunna which the authorities may promulgate.”<sup>131</sup> In this article, the Basic Law is more cautious when combining the main Islamic legal resources of Sharia (Qur’an and the Sunna) with the national laws issued by the Saudi authorities; it underlines the mandate that national laws should not conflict with Sharia. This Law does not just address itself to the active practice of law, but rather to a particular intellectual experience and concomitant cultural identity of the society.

It must also be noted that the Law reflects tensions that exist between unofficial<sup>132</sup> traditionalist and modernist movements in the country which have strongly affected the development of the existing laws.<sup>133</sup> Since, the discovery of oil in the 1930s, the country has

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<sup>130</sup> *Supra.*, Basic Law of Governance, note 91

<sup>131</sup> *Id.*, Art. 48

<sup>132</sup> These two movements are in the perspective of the people's mindset and do not have official representations in the government and the community.

<sup>133</sup> *Supra.*, Al-Jarbou, not 20, at 191

taken steps to rapidly reform the legal system, while working in unison to maintain its Islamic character and heritage. The tension between these two objectives created a split within the Saudi legal system that the government has struggled to repair by finding the best way to bring an acceptable equilibrium between Islamic principles vis-à-vis calls for progress and legal reform.<sup>134</sup> The Banking Control Law of 1966 demonstrates a system by which Saudi regulators deal with prohibited activities under Sharia. The Law is silent in regards to legalizing the practice of giving/charging interest in banking transactions as it was historically considered to be in violating of the Saudi Constitution. However, the law did leave the option to regulate such activities so long as they are not considered usurious.

#### **§ 2.4.4 Adoption of the Hanbali School**

Although the basis of the Saudi legal authority remained the Ottoman laws in effect in the Western region of the country, the government regarded them to be in interpretational conflict relative to what constitutes legally binding Ottoman law or Islamic jurisprudence that adhered to in the various regions of the Kingdom.

The initial alliance between Muhammad Ibn Saud and Ibn Abd al-Wahhab in the eighteenth century promoted the agenda of the religious authority remaining in the hands of the religious scholars (*'ulama aldiyn*) who were responsible for Islamic education and the interpretation of Sharia. They remained qualified, as specialists of interpretation of the Word of

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<sup>134</sup> *Supra.*, Otto, note 85, at 139

God, to give the ruler (*al hakim*) religious advice (*fatwa*) on any relevant topic. As authorized by the religious consultants, the Saudi authorities selected the Hanbali *fiqh* books as a primary foundation for the interpretation (*tafsir*) of Sharia.

In Najd, the homeland of the Wahhabi reform movement, a different judicial system had continued to exist until the unification in the late 1950s. Traditionally, the ruler (*al hakim*) appointed a single judge to each significant town who worked closely with the local governor (*amir*). The judge became involved only after the attempts by the governor failed to resolve a conflict amicably. The governor would then refer the case(s) to the judge for a ruling according to Sharia. Once the judgment had been made, the case would be re-submitted to the governor for enforcement if necessary. Appeals were only possible through a complaint to the local governor, who would often refer them to the senior scholars (*al-Mufti*).<sup>135</sup>

In 1928, a royal decree was issued mandating judges adjudicate cases following the Hanbali school (*mad`hab*) of jurisprudence *madhhab*, in case of dissent from the (*mada`hib*), to give reasons, evidence and the documents required.<sup>136</sup> It was early in the formation of the Saudi legal system that judges had been attempting to codify established legal principles to meet the requirement of consistency in applying the rule. For the judges to remain in compliance throughout the country, they are bound to follow one school of jurisprudence (*mad`hab*) which is the Hanbali and are committed to referring to just six of books of Hanbali jurisprudence.

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<sup>135</sup> *Supra.*, Vogel, not 52, at 88

<sup>136</sup> *Supra.*, note 129

The sources adopted in the judicial system are:

- *Sharh Muntaha al-Iraadaat*, the commentary by Shaykh Taqi ad-Din Muhammad ibn Ahmad al-Fatuhi (d. 972 e/1564). The explanation of al-Bahouti (d. 1051/1641)
- *Sharh al-Iqna*, the commentary by Hajjawi (d. 948 e). The explanation of al-Bahouti.
- *al-Rawd al-Murbi'*; the explanation of *Zaad al-Mustaqni*, by Imam Al-Hajjawi. The explanation by Imam al-Bahūṭī
- *Sharh Manar As Sabil* by Mar'i ibn Yusuf Karmi (d. 1032/1623). The commentary by Ibrahim ibn Dowyan (d. 1353/1935)
- *al-Mughni* by Ibn Qadamah al-Maqdisi (d. 620/1223)
- *Sharh al-Kabir by Ibn Qadamah al-Maqdisi (d. 620/1223)*

#### § 2.4.5 The Traditional Norms of Participatory

The Saudi Kingdom promotes itself as the cradle of Islam and, as such, the guardian of the Holy Sites. Likewise, the Saudi legal system claimed an age-old, untainted continuity, without interference from Western rulers. This claim appears to be justified to a certain extent; after all, Saudi Arabia had adopted some to none of the Western legislation, with one exception being the Ottoman Code of Commerce of 1850. The Code, based on the 1807 French Commercial Code, was stripped of all references to the charging of interest and then implemented in the Hijaz in 1931 in an adjusted form.

However, Western legal principles have impacted a large number of regulations and laws since the foundation of the Kingdom until the present time. It was especially true of the laws enacted by the Council of Deputies (1932) and Council Ministers. Also, since the 1930s, the specialized tribunals have applied new laws, most of which are based on Western law. The religious scholars ('*ulama*'), however, have resisted the implementation of these human-made laws, therefore (The Commercial Court Regulation "*Nizam al-Mahakim al-Tijariyyah*") and the Sharia courts refused to apply them.<sup>137</sup>

Despite the archaic language of this old law, it was considered by some Saudi academics to be a comprehensive source because it dealt with diverse commercial law subjects.<sup>138</sup> The regulation makes provisions for procedural rules, the effects of judgments and enforcement in matters concerning the Commercial Court.<sup>139</sup> In 1962, the Court was Dissolved then superseded by the Committee for the Settlement of Commercial Disputes (*hayy'at hasam al-Munazaeat al-Tijariyyah*), which is a more structured form, in 1967<sup>140</sup> The structure consisted of a first level of litigation consisted of (two) Sharia judges and (one) legal counsel. The second level of litigation consisting of three members: The undersecretary of the Ministry of Commerce and Industry is the chairman of the committee with two legal counsels. The legal counsel may hold a law degree from any law school.<sup>141</sup> In turn, this was succeeded in 1988 by the expansion of the Board of Grievances

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<sup>137</sup> Frank E Vogel, *Islamic law in the modern world: the legal system of Saudi Arabia*, Leiden: Brill (1999) at 88.

<sup>138</sup> See MOHAMMED AL-JABER, *SAUDI COMMERCIAL LAW (AL-QANUN AL-TIJARI AL-SAUDI)* (RIYADH: AL-DIR AL-WATANIAH PUBLISHERS (1987) at 8.

<sup>139</sup> SHOULT ANTHONY, *DOING BUSINESS WITH SAUDI ARABIA THIRD ED.* GMC PUBLISHING LET. LONDON, UNITED KINGDOM (2006) at 92

<sup>140</sup> See Decree No. 186 of on 5 *Safar* 1387 A.H (1967)

<sup>141</sup> See Decree No. 186 of on 5 *Safar* 1387 A.H (1967)



(*Diwan al-Mazalem*).<sup>142</sup> The Board of Grievances was authorized to hear commercial disputes within the Kingdom.<sup>143</sup> Eventually, the Court was abolished, but provisions of its regulations remain in effect in commercial disputes in Saudi Arabia. The new court system established in 2007<sup>144</sup> created the Commercial Courts that have a jurisdiction over commercial matters.

According to the Saudi scholars' ('*ulama*) doctrine, based on Ibn Taymiyya's<sup>145</sup> theory, rulers were proficient enough to promulgate necessary legislation for government policy (*Siyasa Shar'iyah*), provided it was complementary to and not in contradiction with Sharia and served the public interest. In Saudi Arabia, such legislations (*an`zimah*), which are products of written statutes, passed by a royal order 'ordinance' (*amr` malaki*), or by a royal decree' (*marshum` malaki*). In the processing of enactment of legislation, the royal order (*amr` malaki*) expresses of the King's willing directly and solely to pass a law (*nizam*), and the royal decree (*marshum` malaki*) expresses the King's approval of regulation passed based on the recommendation of the Council of Ministers and the Shura Council.

It should be noted here that the term *nizam* (law) or *la`eihah* (regulation) is used deliberately as distinct from the term "*qanun*" (law), and become effective after publishing in the official government gazette (*Um Al-Quran*). It is a term commonly used to refer to codified human-made law; many Saudi '*ulama* consider it to be a Western concept and alien to Islamic Sharia. Also, the term 'regulatory authority' is used instead of 'legislative authority' because the

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<sup>142</sup> *Supra.*, Anthony, note 139, at 92

<sup>143</sup> See Royal Decree No. M/63 on 26/11/1407 A.H. (July 7, 1987 A.D)

<sup>144</sup> See Royal Decree No. M/78 on 19/09/1428 A.H (October 1, 2007 A.D)

<sup>145</sup> Ibn Taymiyya, Taqi al-Din (1263-1328) Muslimphilosophy.com, <http://www.muslimphilosophy.com/ip/rep/H039.htm> (last visited Dec 30, 2017)

latter term can only be used to refer to God, the only legislature. It is important to bear this in mind when looking at the effects of the new regulations on the legal structure.

Beginning in the 1930s, many specialized tribunals or ‘committees’ to adjudicate matters in specific areas, such as labor law and commercial law, were created to apply the new laws and regulations, under the supervision of particular ministries *such as*:

- The Committee for Commercial Paper Disputes (1963)
- The Committee for the Settlement of Labour Disputes (1969)
- The Committee for the Settlement of Banking Disputes (CSBD) (1981)
- Committee for the Resolution of Securities Disputes (CRSD) (2004)
- Committees for resolution of insurance disputes and violations (2005) are just a few examples.

The government was forced to create these special tribunals because the ‘*ulama*’ opposed the new human-made legislation and the Sharia judges refused to apply it.<sup>146</sup>

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<sup>146</sup> *Supra.*, Vogel, note 52, at 286. *See Supra.*, Al-Fahad, not 20

## SECTION V

### § 2.5 Justice System in the Kingdom

The Saudi legal system is featured being divided into two independent systems that are ostensibly combined in one system. Since the laws are based on the Book of God and the Sunnah of his Messenger with codification of particular topics “laws”. The majority of aspects of law are based on the modern codified of codices of laws, for instance, at present days, there are the 351<sup>147</sup> of law (“*nizam*”) that include of constitutional, civil, national security, criminal, commercial, and procedural laws. The laws were promulgated since 1920s, and even before the official announcement of the unification of the country. In the last decade, Saudi was making history again by creating a new phase of economic development and reform, ascertaining political and democratic authority and practices, enhancing freedoms and adhering to the rule of law, and respecting human rights.

Since the gradual emergence of a new court system, a judge confronts different cases that regarding to legal theories and doctrines which practically birth and discusses in the curriculum of law schools despite not to graduate from the law colleges. Judges decide all cases in accordance with compilations of codes (regulations/laws) that were promulgated by the Saudi Arabian’s legislature body, or refer to, a combination of non-codified of resources of Islamic Sharia. Article (1) of the Law of the Judiciary states that ([J]udges are independent and, in the

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<sup>147</sup> Bureau of Experts at the Council of Ministers. Saudi Laws Compendium Avilabe at <https://www.boe.gov.sa/SystemExplorer.aspx?lang=en> (last visited Jan 27, 2017)

administration of justice, they shall be subject to no authority other than the provisions of Sharia and laws in force. No one may interfere with the judiciary.)<sup>148</sup>

The applications of these manners occur of legal duality that would erode the jurisdiction of traditional recourse to in favor of modern law (regulations). Coexistence with this legal dualism has become a familiar and acceptable in the courts, legal profession applications and legal education system. In education carries and side effects, both faculty members and students should accommodate and interact with the difference of the tow systems in term of the topics of Sharia's matters and modern legal technique of interpretations.

The Saudi people are fully aware of the importance of the role played by the law in public life and has a firm belief that Divine Law is the basis that addresses the general principles for people's transactions and the regulation of their affairs. Saudis want to preserve their religious heritage as a basis and adopting the modern laws to fill a legal vacuum in the processing of their social, economic, and political prosperity. To meet development needs and to accommodate newly adopted economic policies, legal reforms are important. In the light of this, the market economy necessitates a market-oriented legal framework within which market forces can function in an effective manner.<sup>149</sup> Also, people aware in the manner in which Saudi Arabian policymakers endeavor to satisfy the interests of individual residents and public legal persons in the country.

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<sup>148</sup> See the Law of the Judiciary., Royal Decree No. M/78, dated 1 October 2007

<sup>149</sup> Marar, Amr Daoud. "Saudi Arabia: The duality of the legal system and the challenge of adapting law to market economies." *Arab Law Quarterly* 19.1 (2004): 91-124.

According to the Saudi Arabia's national plan, the government has undergone its institutions, and entities a to the restructuring process to align them to the requirements of this phase. This would enable them to perform their tasks and expand their competencies. Ultimately, this will enhance the level and quality of services provided to beneficiaries; and achieve a prosperous future and sustainable development.<sup>150</sup> From the legal perspective, the achievement of the *Saudi Arabia's Vision* for 2030 is related with improvement of the legal infrastructure which needs a real procedure concerning the rule of law.

Saudi commitment to occur transformation process and remove the impediments to the creation prosperous future and sustainable development; creates a dualistic legal system. Despite the fact Islamic Sharia remains the paramount and primary the legal system in Saudi Arabia, the government has come to allow a separate, Western-based laws system to function within the Islamic law umbrella.<sup>151</sup>

In the past; unfortunately, and inside the judiciary system, radical opinions reject this actual semi-duality of the legal system, although the practical application and government's measures adopted the absorption of this matter. However, the government has considered the advisability of promoting both of the legal components in order to make the legal system more competitive.

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<sup>150</sup> National Transformation Program 0230m. Minister of Economic & Planning. <http://vision2030.gov.sa/en/ntp> (last visited 9/9/17)

<sup>151</sup> *Supra.*, Marar, note 149

So, the Saudi Arabian legal system is built on the combination of Islamic Sharia principles law and Saudi modern codified of laws. The identity of Saudi law was formed once the initial promulgated of codified laws were stated during the 1920s. The Saudi law, being considered as a Civil Law, and the supreme law is the Basic Law of Governance, which is considered a written constitution of the Kingdom.<sup>152</sup>

In brief, Saudi Arabia has a semi-dual system of courts, the Ordinary Courts system<sup>153</sup>, the Board of Grievances system<sup>154</sup> and committees had jurisdiction of solving disputes. The Ordinary Courts have jurisdiction over all disputes and offences in accordance with the court jurisdictional rules as set forth<sup>155</sup> in the Law of Civil Procedure<sup>156</sup> and the Law of Criminal Procedure<sup>157</sup>

To compare the current the Saudi Arabian's legal system with other systems over the world, especially with the American judiciary system, there are a significant differences in terms of regulation, procedures and litigations. (In this study, there is no need to discuss these differences)

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<sup>152</sup> Royal Order No. A/90 dated of 1 March 1992. Published in Umm al-Qura Gazette No. 339, dated 5 March 1992

<sup>153</sup> See the Law of the Judiciary. Royal Decree No. M/78. Date 1 October 2007

<sup>154</sup> Law of the Board of Grievances. Royal Decree No. M/78. Date 1 October 2007

<sup>155</sup> *Supra.*, note 153, Art. 9

<sup>156</sup> See the Law of Civil Procedure., Royal Decree No. M/1. Date 26 November 2013

<sup>157</sup> Law of Criminal Procedures. Royal Decree No. M/2. Date 26 November 2013

### § 2.5.1 Dispute Resolution in Saudi Arabia

The Ministry of Justice, officially established by 1970, is responsible for administering the country's courts. The Minister of Justice is appointed by the King, which since 1983, has also served as chief of the Supreme Judicial Council, a position that further enhanced his status as chief justice. The Supreme Judicial Council, a body of eleven members chosen from the leading ulama. The Supreme Judicial Council supervises the work of the courts, reviewed all legal decisions referred to it by the minister of justice, expressed legal opinions on judicial questions, and approved all sentences of death.

“It may be useful to note that the 1975 Law of the Judiciary (especially Article (5) identified the Supreme Judicial Council (SJC) as the highest legal authority in Saudi Arabia. Composed of (11) members, the SJC was staffed by five judges who constituted a Permanent Panel of the Council, which acted as its own embedded Appellate Court. These magistrates were full-time members, but were supplemented by another five part-time qadis, which included the Chief of the Appellate Court or his deputy, the Deputy Minister of Justice, and the three members with the longest time in service as Chief Judges of the General Courts in Mecca, Medina, Riyadh, Jiddah, Dammam, and/or Jizan. In addition to these ten men, a Chairman appointed by the King convened panelists on an as-needed basis. SJC duties encompassed a slew of activities, ranging from administrative, legislative, consultative, and judicial functions. Needless to say, because the SJC supervised most courts, administered employment-related affairs of the judiciary.”<sup>158</sup>

The Supreme Council of Justice represents the judiciary branch of the government and consists of twelve judges, all of whom are appointed by the King, according to recommendations

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<sup>158</sup> Joseph A. Kechichian, *Reforming the Judiciary in Saudi Arabia*, Middle East Institute (2009) available at <http://www.mei.edu/content/reforming-judiciary-saudi-arabia> (last visited Aug 18, 2017).

from the council members. The Supreme Council is empowered to appoint, promote, and transfer judges.

The tradition of the Saudi Arabian judiciary gives parties of dispute a fairness to build the case and freeness of the choice. The process of litigation is more influenced by the continental European civil law tradition. In the Saudi Arabian, the first instance courts consist from a single judge or three judges and trial by jury is wholly unavailable.

The administration of the trial, admissibility of evidence and overseeing the dispute are subject to the discretion of the judges. In general, courts are opened hearings for the public, except if the judge considers resolving the case behind closed doors due to privacy of the procedure or for affirm the emotion of one of the parties.

The courts decisions are published and avail to the public via the Ministry of Justice, Board of Grievances and other governments agencies. All the decision available in Arabic texts so the proceedings in front of courts should be in the Arabic language. Nonetheless the past decisions neither binding nor persuasive precedent for subsequent cases.

So, the approach of the Saudi ordinary courts is consistent with the law, and judges apply the statutory codes and regulations as long as do not conflict with the Shari'ah principles. The appeal of a judgment is complex due to the objection to judgments are appeal, cassation and



petition reconsideration.<sup>159</sup> The first stage is to review the judgment in front of the judge who rendered the appealed judgment at first instance. The judge of court of first level at its discretion in accordance with the facts has an authority to reconsider the judgment in term of grounds for appeal without a hearing or affirm or amend its judgment.<sup>160</sup> Consequently, if the first instance court has disregarded a fact, there is a chance to correct its decision. In certain circumstance, the judgments whom one party is an endowment administrator, a trustee a guardian or representative of the government agency or the like, the judgment must refer to the court of the appeals for revision<sup>161</sup> The Court of Appeal revisions the first instance court's decision via a hearing trial or reviewed without hearings, and might confirm or reversal the judgment either wholly or partly and rule the reversal part.<sup>162</sup>

### § 2.5.2 The Court System

According to the 1975 Law of the Judiciary , the First-Instance Courts in the Sharia Courts System (al-Mahakim al-Shariy'ah); is divided to Summary Courts; and, General Courts. The Summary Courts are composed of one or more judges and the General Courts are composed of one or more judges. The Sharia Court system is included two specialized courts: the Courts of Guarantee and Marriages (1963) which exercises jurisdiction over civil suits involving marital disputes, divorce, and child custody, and the Juvenile Court (1974), which hears cases involving juveniles.

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<sup>159</sup> *Supra.*, note 156, Art. 179

<sup>160</sup> *Id.*, Art. 189

<sup>161</sup> *Id.*, Art. 185

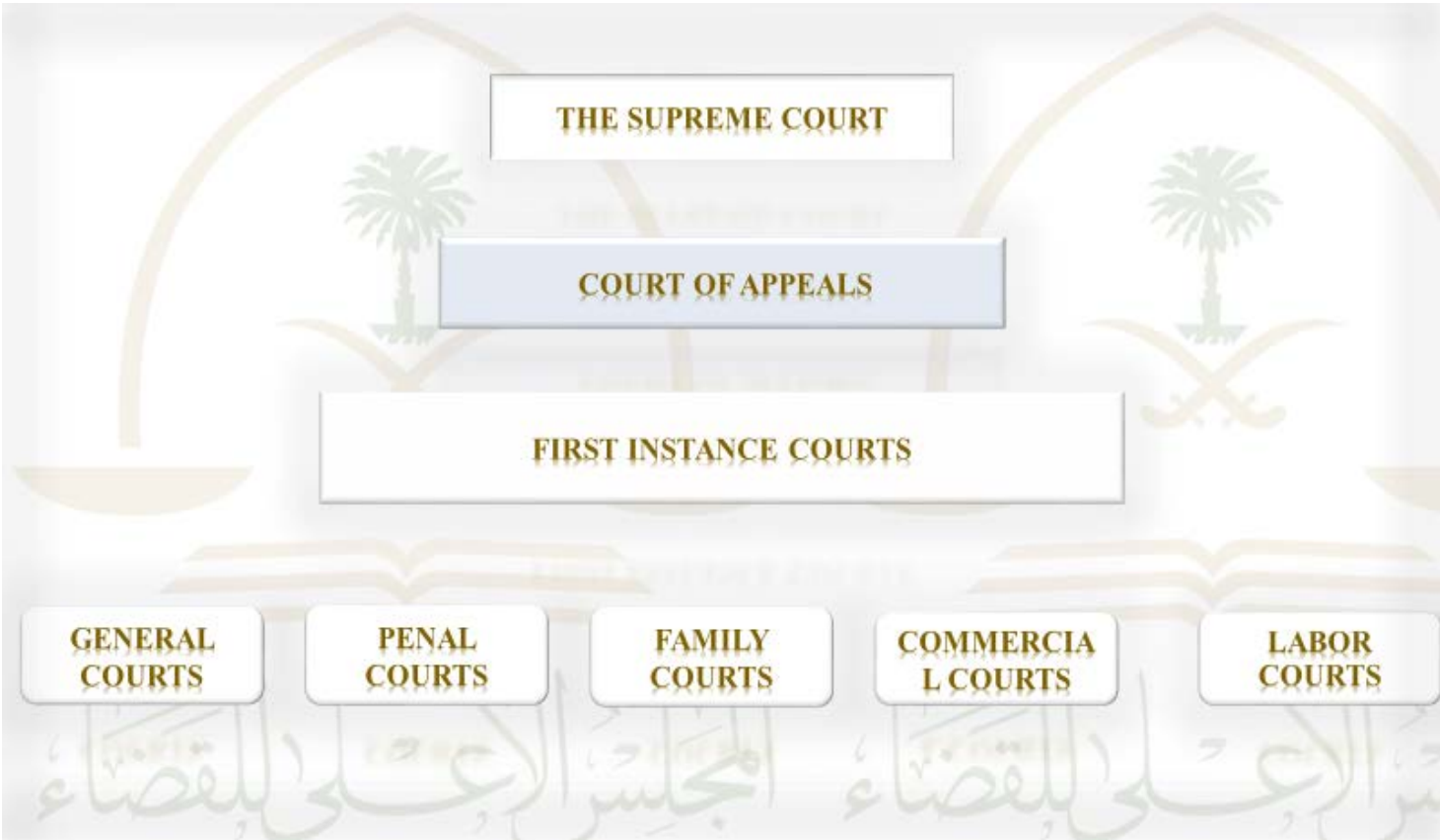
<sup>162</sup> *Id.*, Arts. 190-192

Decisions of the summary and general courts could be appealed to the Sharia appeals court. The appeals court, or court of cassation, had three departments: penal suits, personal status suits, and all other types of suits. The appeals had two seats, one in Riyadh and one in Mecca. The chief justice and a panel of several qadis presided over all cases. Saudi Arabia's judicial code stipulated that specialized courts may be established by royal decree to deal with infractions of government regulations not covered by the Sharia.

The Saudi Arabian's Ordinary Courts consist of the following:

- (1) The Supreme Court.
- (2) Courts of appeals.
- (3) First instance courts, which are:
  - (a) General courts.
  - (b) Penal courts.
  - (c) Family courts.
  - (d) Commercial courts.
  - (e) Labor courts.

Chart 2.3 The Structure of the Ordinary Courts



## SECTION VI

### § 2.6 Saudi Civil Legal System

#### § 2.6.1 The Concept of Law Versus Sharia

The Arabian Peninsula has been home to millions of people for over 20,000 years. Kingdoms rose and fell throughout the ages, each contributing cultures, customs, lore, and law to future generations. Once thought to be only nomadic Bedouins, these people created and maintained the economic lifelines known as caravan routes with oases where weary travelers might pause their journey to rest and share knowledge of other places and times: to teach, to learn, to experience something new. Logic suggests that it may have been through these types of casual and planned meetings that new cultures and laws may have developed.

Law? What is law, where did it come from and where can I learn more about it?

“A body of rules of conduct of binding legal force and effect, prescribed, recognized, and enforced by controlling authority.”<sup>163</sup>

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<sup>163</sup> What is law TheFreeDictionary.com, <https://legal-dictionary.thefreedictionary.com/What+is+law> (last visited Jan 11, 2018)

There is a school of thought that promotes the theory that laws are created by man to serve man. This theory is flawed. The situational needs create laws, and the legal system of the Kingdom of Saudi Arabia is a perfect example of this.

The law be it canon or civil is meant to assist humans to live safe and fulfilled lives with respect for others, but humans are ever changing; the law must keep up or fail them. The law must always be ahead of the curve to protect themselves from themselves.

The Kingdom has been confronting this issue by establishing schools of Sharia and Civil law in the hopes of training quality legal experts to assist the government and the people, but there is a gap that must close between the two programs for there to be real progress.

There is only one thing that can close that gap: improved Civil law, Commercial, Criminal and International law educational programs offering training and certification to qualified graduates to practice law in the Kingdom. Critical efforts must be put forth to train quality students in the various disciplines law. The legal system in the Kingdom has been the subject of much controversy through the years. Non-Saudis have given it various names, some of which may have been derogatory and majority of which are patently wrong, however, the most appropriate name heard is “Achievement.”

The Arabian Peninsula has a very long history of living and learning to live amid natural and human-made hardships. For at least a thousand years and more before unification, its small clans and tribespeople struggled against the climate and lack of natural resources such as water and food; their only real enemy was survival in their harsh world. However, they learned to

persevere by developing cultures with customs and ethics that met the needs of each group while adjusting to specific needs of each era.

As the small clans, tribes and groups began to grow and expand, a hierarchy of judicious members began to take leadership roles. In many tribal cultures, these were the wise elders who had studied in the classrooms of life, perhaps evening sharing knowledge and lore around a campfire at night or in the Majlis “a place of sitting,” while younger members vied for the best seat to hear, and more importantly learn. Each story told contained a sword called knowledge, a shield called wisdom, and a lesson in unity that held the group together.

One might ask, “Did these learned men also speak of law?” In a sense, yes, it is easy to believe they did speak of law, but most probably it was not the law as a 21<sup>st</sup> Century people would define it. It was cultural guidelines and parameters designed to protect the self and the community unit.

Islam is a culmination of the same monotheistic religion that was revealed to earlier prophets. Although the Glorious Qur’an is the only revelation that is extant in its original revealed text—the key word, in Saudi legal system. Are the verses of the Qur’an, Sunnah, and Hadith “Sharia” the substantive law? Are the prescriptions strictly statutory law or can they be interpreted by the Governor on a case - by-case basis?

It is essential for the modern Saudi Arabian student of law to understand what is considered law and what is not. To begin with, each student must realize the fact that Sharia is not an actual code of law. Sharia is a guidebook, a map, and a personal advisor rolled up into one

neat little package. It is the essential life-book of every faithful Muslim; it is the supreme source of the Saudi laws, but it is not a law book. It makes suggestions, gives advice, and points out human error, but it is not a codified legal system. However, Islamic *fiqh* crafted its opinions according to Islamic Sharia teachings in time when questions and answers were more yes or no, in truth it is meant to open one's eyes to the maybes of life while following the sanctioned correct path of life laid out by God.

As communities grew in population, the need for a more official form of legal jurisprudence was recognized. Scholars began to train a new generation of scholars who in turn would carry on and train younger ones. In the form of oral lore, the wisdom of the past was passed on to younger generations. Perhaps these were the first true legal lectures but were they also discussion groups?

Justin Elliot,<sup>164</sup> in his article on Sharia in America; “The right wants to ban it in America, but do they even know Sharia Law what it is?” He cites his source, Abed Awad, New Jersey—based attorney and an expert on sharia who regularly handles cases that involve Islamic law. He is also a member of the adjunct faculties at Rutgers Law School and Pace Law School. He recently answered my questions via e-mail.

Per Mr. Awad,

“Sharia is more than simply “law” in the prescriptive sense. It is also a methodology through which a jurist engages the religious texts to ascertain divine will. As a jurist-made law, the outcome of this process of ascertaining divine will

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<sup>164</sup> Justin Elliot, *What sharia law actually means*, Salon Media Group, Inc. 2011 Retrieved 9 March 2018, from [https://www.salon.com/2011/02/26/sharia\\_the\\_real\\_story/](https://www.salon.com/2011/02/26/sharia_the_real_story/)

is called *fiqh* (positive law), which is the moral and legal anchor of a Muslim's total existence. Sharia governs every aspect of an observant Muslim's life. The Sharia juristic inquiry begins with the Quran and the Sunna. The Quran is the Muslim Holy Scripture — like the New Testament for Christians or the Old Testament for the Jews. The Sunna is essentially the prophetic example embodied in the sayings and conduct of the Prophet Mohammed.

After the two primary sources of Islamic law, the Quran and the Sunna, the two main secondary sources of Islamic law are: (1) *ijma* (consensus of the scholars and jurists and sometimes the entire community), and (2) *qiyas* (reasoning by analogy to one of the higher sources). Other secondary sources of Islamic law are juristic preference, public interest and custom. Sharia is extremely flexible and subject to various interpretations. In the 19th century, Western colonialism decimated the Sharia legal system, replacing it with Western codes. This caused a serious decline in the community of jurists. In addition, there is today a debate that revolves around the failure of the modern jurists — not the system of Sharia — to develop the sharia to adapt with the current circumstances of modernity.”<sup>165</sup>

The Kingdom of Saudi Arabia obliges a unique legal system which relies on Sharia principles and modern civil law in parallel. At present, the principles of Sharia apply in courts in the absence of legislative text that is enacted by legislatures; therefore, the Sharia is a main source to fill the legislative gaps and interpretation of the law.

### § 2.6.2 Basic Law of Governance: Constitutional Law

“With the help of God, we, Fahd Bin Abdulaziz Al-Saud, Monarch of the Kingdom of Saudi Arabia, having taken into consideration the public interest, and in view of the progress of the State in various fields and out of the desire to achieve the objectives we are pursuing, have decreed the following:

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<sup>165</sup> *Id.*



- That the promulgation of the Basic Law of Governance is as the attached text.
- That all regulations, orders and decrees in force shall remain valid when this Basic Law comes into force, until they are amended to conform with it.
- That this decree shall be published in the Official Gazette, and shall come into force on the date of its publication.”<sup>166</sup>

The first mention of drafting a basic law (Constitutional Law) of country dates as far back as the unification of the Kingdom (1932). Over time, proposals were presented and committees formed to debate the merits of each until a long-awaited draft of the promised basic law was approved and it was promulgated on March 1, 1992, as the Basic Law of Governance (BLG).<sup>167</sup> The BLG is the original constitutional legal document established in the country. It decrees that Islamic Sharia drawn from the Qur’an and Sunna shall be the foundation for all legal authority throughout the Kingdom. This BLG is similar to the constitutional laws of other countries, which defines the function, powers, and structure of different governmental entities within the Kingdom, and protects individual rights of citizens and the principles of Islam. It includes the protection of private property, individual freedom from arbitrary arrest and punishment, except in cases of the legal due process.<sup>168</sup> The Law defines the relationship between ruler and the ruled based on brotherhood, consultation, friendship, and cooperation.<sup>169</sup>

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<sup>166</sup> King Fahd's Speech on the issuance of the Basic Law of Governance | Royal Embassy of Saudi Arabia Saudiembassy.net, <https://www.saudiembassy.net/king-fahds-speech-issuance-basic-law-governance> (last visited Jan 8, 2018)

<sup>167</sup> *Supra.*, Basic Law of Governance, note 91

<sup>168</sup> *Supra.*, Ansary, note 73

<sup>169</sup> *Id.*

However, the term “constitution” in the BLG of the Kingdom is not always clear. This Law provides that the Book of God and the Sunna (Traditions) of His Messenger, may God’s blessings and peace be upon him (PBUH) is a constitution of the country.<sup>170</sup> However, in legal practice terminology, “Constitution” is designated as the supreme law which defines the basic rules of the State; the system of government; the form of government; and regulates public authorities regarding composition and competence. Also, the constitution law regulates the relations between the authorities; limits of their authority; duties; and fundamental rights of individuals and groups. These concepts are provided in the Basic Law of Governance (BLG) of the Kingdom; which is interpreted as meaning constitutional law in each country. The Books of God, the “Quran and the Sunna of the Prophet are considered the primary resource of Sharia, which along with *qiyas* (analogic reasoning) and *ijma* (consensus), could be abstracted to *fiqh*<sup>171</sup> and the sources from which Sharia is derived.

However, the BLG says the Qur’an and Sunna are the constitution of the Country.<sup>172</sup> Then, it considers the Qur’an and Sunna are sources for the “*fatwa*” (religious legal opinion), courts and for the laws which the authorities may promulgate.<sup>173</sup> To avoid this confusion, the BLG might do not mean the constitution according to the legal definition of the term because in the Arabic perspective the constitution means a rule that works under it<sup>174</sup> or a approach that must follow, which differs from the specific legal terminology.

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<sup>170</sup> *Supra.*, Basic Law of Governance, note 91, Art. 1

<sup>171</sup> Corinna Standke, *Sharia - the Islamic law*, 1st ed. [Place of publication not identified]: Grin Verlag Ohg, (2008) at 3.

<sup>172</sup> *Supra.*, Basic Law of Governance, note 91, Art. 3

<sup>173</sup> *Supra.*, Basic Law of Governance, note 91, Arts. 7, 45, 48

<sup>174</sup> Ahmed Omar, *Contemporary Arabic Dictionary*, Alam Alkutub. Vol., 2008 [معجم اللغة العربية المعاصرة]

The King, by royal order, appoints all members of the cabinet and government, including the Minister of Justice, who administers the Judiciary Courts, and the president and vice presidents of the Board of Grievance. The head of the Board of Grievances reports directly to the King. The Minister of Justice has no authority over the Board and the Supreme Judicial Council which appoints all other appeals and lower court judges on the approval of the King.<sup>175</sup> All decisions are based initially on Sharia principles then in turn on promulgated laws and decrees issued by the government. The King, in his capacity as King or as Prime Minister, has sole authority to approve laws and regulations proposed by governmental agencies or ministers presented by his cabinet.<sup>176</sup>

### **§ 2.6.3 Saudi Arabian Rule of Law**

Understanding the nature and exact meaning of law within the Kingdom of Saudi Arabia is vital to the establishment of a consistent legal system which will faithfully serve all citizens of the country. The philosophies of many western nations are based on the premise that the law is supreme and protects the people against arbitrary or state interference. The significant difference is that in the Islamic principal belief, the highest law is that of the divine law.

The legal concept of the law within the existing legal system of Saudi Arabia is founded on a monarchical system, tribal structure, and traditional Islamic (divine) law.<sup>177</sup> The control of

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<sup>175</sup> See Royal Decree No. M/64, 14 Rajab 1395 (23 July 1975), Umm al-Qura No. 2592, 29 Sha'ban 1395 (5 September 1975), M/78, Law of the Judiciary Royal Decree (Kingdom of Saudi Arabia) 2007, Art. 6

<sup>176</sup> *Rule of Law: Country Studies — Saudi Arabia* / Democracy Web (2017) Democracyweb.org. Available at: <https://democracyweb.org/rule-of-law-saudi-arabia> (Accessed: 17 August 2017).

<sup>177</sup> Hossein Esmaeili, *On a slow boat towards the rule of law: The nature of law in the Saudi*.

the State lies solely with the civil dynastic monarchical system of the al Saud family established by King Abdul-Aziz bin Saud. The religious authorities (*'ulama*) have no formal jurisdiction over the functioning of the State. However, the Saudi state adheres to Islamic principles as the fundamental foundation of ruling for all activities in the Kingdom. The Kings are entrusted with the primary protection of Islam's holiest sites, and in 1986, the Saudi Kings undertook the burden of the Custodian of Two Holy Mosques as a formal title. In addition, all official religious institutions must be in charge of the religious scholars (*'ulama*) who are followers of the official jurisprudence school of the country.<sup>178</sup>

Al-Fahad argues that “[T]he Wahhabi interpretation of Islam, in contrast, does not allow for such claims, and the Basic Law shies away from endowing the Saudi King with any divine quality. The Wahhabi view entrusts the interpretation of Islamic law to its historical guardians, the *'ulama*, institutionalized in the Council of Senior *'ulama* and the Department of Ifta and [Religious] Scholarly Research; no interpretative role or divine attributes are given to the Saudi King. Indeed, the monarch, contrary to the usual privileges of kingship, is theoretically subject to the law and cannot rise above it.”<sup>179</sup>

The nature of Saudi law is that of an integration of Islamic principles and contemporary Civil Law. The Islamic Sharia is grounded in actual godly teachings which are adaptable to circumstances, evolving and submissive to improvement and application at all times and places. However, the legal system of the country is shifting from a traditional Sharia-based to a modern system with more updated legal institutions, significant improved legal principles and is moving towards the establishment of the rule of law.<sup>180</sup> For example, the new Companies Law (2015) in paragraph 3 of the Article 3 provides “The provisions of the law shall not apply to companies known in Islamic jurisprudence.”<sup>181</sup> The Companies Law is a result of the national law of the

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Arabian legal system, *Arizona Journal of International & Comparative Law*, 26:1 (2009)

<sup>178</sup> *Id.*, at 39

<sup>179</sup> *Supra.*, Al-Fahad, note 20

<sup>180</sup> *Supra.*, Esmaeili, note 177

<sup>181</sup> *See* the Companies Law. Royal Decree No. (M/3) dated 28/1/1437 A.H (10 November 2015), published in the Saudi Gazette (Um Al-Qura) on 4 December 2015

Kingdom and has no theoretical basis in the heritage of Sharia which upholds the aforementioned rule of law in the legal system of the State.

## **§ 2.6.4 Administrative Judiciary**

### **§ 2.6.4.1 Administrative Judicial Body Amelioration**

The new law of the Board of Grievances (*Diwan al Mazalim*)<sup>182</sup> (2007) affirmed that the Board is an independent administrative judicial body, which is directly associated with the King. It seeks to establish justice, equity, and effective judiciary control over the administration, works through the lawsuits presented before it to ensure proper application of the laws, and regulations and enabling rightful owners to recover under them, guaranteeing the protection of rights, application of law and Sharia provisions, and achieving justice and restitution of the rights. The Kingdom devoted additional effort to allocating an assembly to decide on administrative disputes up to the time of reforming the Board and deciding its jurisdictions. All was accomplished pursuant to the royal decree No (M/78) dated 19 Rammadan 1428 A.H. (October 1, 2007) and the law of pleadings before it was issued by royal decree No (M/3) dated 22 Muharram 1435 A.H. (January 22, 2013).

The Courts of the Board of Grievances formed according to Article (8)<sup>183</sup> of its law of the following:

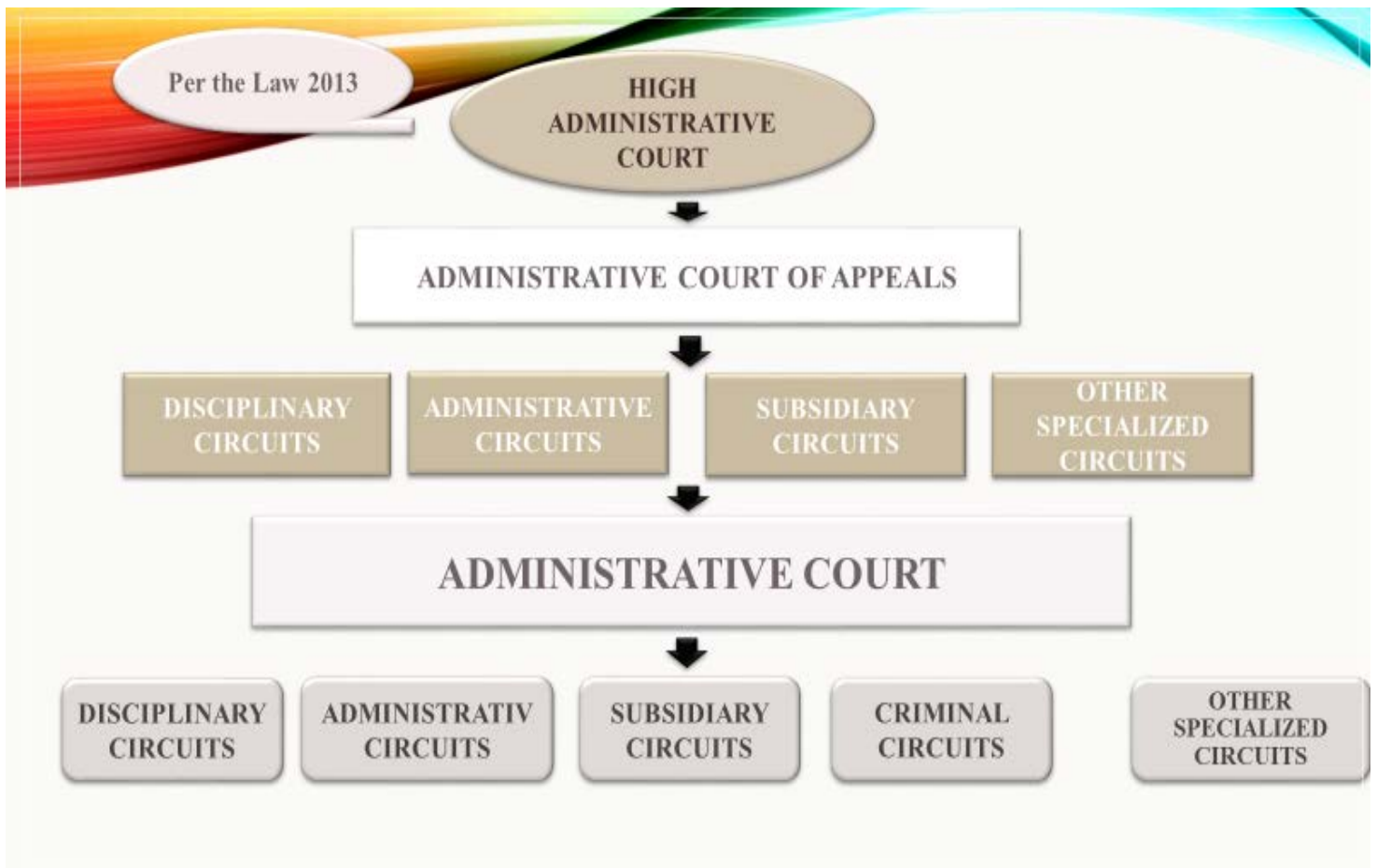
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<sup>182</sup> The Law of the Board of Grievances, Royal Decree No (M/3) dated 22 Muharram 1435 A.H. (January 22, 2013).

<sup>183</sup> *Id.*, Art. 8

- (1) The High Administrative Court.
- (2) The Administrative Courts of Appeal.
- (3) The Administrative Courts.

Chart 2.4 Structure of Administrative Judiciary



Under Article (10)<sup>184</sup> of the Law of the Board of Grievances, the High Administrative Court:

- The seat of the High Administrative Court shall be the City of Riyadh and shall be formed of a chief judge and a sufficient number of judges of the rank of Chief Judge of an Appeals Court.
- The Chief Judge of the High Administrative Court shall be named by royal order. His rank shall be that of Minister, and his service may not be terminated except by royal order. He shall satisfy the requirements for the rank of Chief Judge of an Appeals Court. In his absence, the most senior judge shall act on his behalf. Members of the High Administrative Court shall be named by royal order pursuant to a recommendation by the Administrative Judicial Council.
- The High Administrative Court shall have a general panel presided over by the Chief Judge of the court and membership of all its judges. In his absence, the most senior of its judges shall act on his behalf. The panel's meeting shall be presided over by the chief judge or whoever acts on his behalf. Its session shall not be valid unless attended by at least two-thirds of its members, including the chief judge or whoever acts on his behalf. Its decisions shall be issued by a majority vote of its members.
- If a high administrative court panel, when reviewing an appeal, decides to depart from a precedent established in a previous judgment rendered by it or by another

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<sup>184</sup> *Id.*, Art. 10

court panel, it shall bring the appeal before the chairman of the court to refer it to the general panel of the court to decide it.

#### **§ 2.6.4.2 Statement of Administrative Judge's Legal Jurisdiction**

##### **§ 2.6.4.2.1 High Administrative Judiciary**

The supreme administrative judiciary according to Article (11)<sup>185</sup> of the Board Law, shall have jurisdiction to consider objections issued by administrative courts of appeal if an objection to the judgment is the following:

- Violation of provisions of Sharia or laws not contradicting it or error in their application or interpretation, including violation of judicial principle decided in a judgment issued by the supreme administrative judiciary.
- It's issuance by a non-competent court.
- Its issuance by a court not formed according to the law.
- Error in the adaptation of the incident or its description.
- It is a decision in a dispute contradicting another judgment issued between the two disputing parties.

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<sup>185</sup> *Id.*, Art. 11



#### **§ 2.6.4.2.2 Administrative Judiciaries of Appeal**

According to Article (12)<sup>186</sup> of the law of Board of Grievances, Administrative judiciaries of appeal have jurisdiction to consider the judgments accepted for appeal issued by the administrative judiciaries and a decision is taken from them after hearing the pleas of litigants according to statutory procedures.

#### **§ 2.6.4.2.3 Administrative Judiciaries Jurisdiction**

Administrative judiciaries according to Article (13)<sup>187</sup> of the law of Board of Grievances have jurisdiction to judge the following:

- Lawsuits related to the rights determined pursuant to the military and civil service laws, the retirements of government employees, public and independent groups of corporate personnel and their heirs or worthy parties on their behalf.
- Lawsuits pertaining to the cancellation of final administrative decisions provided by, and for the concerned parties of the suit.
- When reference is made to the challenge is incompetence or presence of a defect the in form or cause or violation of the law(s) and regulations or error in application or interpretation or abuse of authority including disciplinary decisions, decisions by

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<sup>186</sup> *Id.*, Art. 12

<sup>187</sup> *Id.* Art. 13

semi-judicial committees and disciplinary councils. Moreover, decisions issued by public utility associations and their analogues associated with their activities are included in rejection of administrative decision refusal by the administrative body or refraining from making a decision that was supposed to be taken by it according to laws and regulations.

- Compensation lawsuits initiated by a concerned person(s) regarding decisions on or work of the administration body.
- Lawsuits related to contracts which the administration body is a part therein.
- Disciplinary lawsuits referred by the involved person(s)
- Other administrative disputes.
- Requests for execution of foreign judgments and arbitral awards

All judges shall exercise their jurisdiction according to Article (9)<sup>188</sup> of the Board law through a quorum formed of three judges while an administrative court shall be formed of a single judge.

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<sup>188</sup> *Id.*, Art. 9

## § 2.6.5 Commercial and Financial System

### § 2.6.5.1 Commercial Judiciary

The Commercial Court Regulation (*Nizam al-Mahakim al-Tijariyyah*), was enacted in 1931.<sup>189</sup> It was taken from Ottoman Law and relied heavily on the French Commercial Code of 1807. Despite the poor wording of this old law, it was considered by some Saudi academics to be a comprehensive source because it dealt with different commercial law subjects.<sup>190</sup> The regulation makes provisions for procedural rules, the effects of judgments and enforcement in matters concerning the Commercial Court.<sup>191</sup> Saudi commercial judicial system has a story in the legal history, the Commercial Court Regulation addressing the commercial provisions and establishing a commercial court to apply the enacted laws. The Commercial Court contained seven members, six of whom were to be merchants of good religion and character and only one a judge trained in the Islamic jurisprudence (*fiqh*).<sup>192</sup>

The court was dissolved in 1962, only to be superseded by the Committee for the Settlement of Commercial Disputes (*hayy'at hasam al-Munazaeat al-Tijariyyah*) in 1967,<sup>193</sup> the first level of litigation consisting of (two) Sharia judges and (one) legal counsel. The second level of litigation consisting of three members: The undersecretary of the Ministry of Commerce and Industry is the chairman of the committee and (two) legal counsels. The legal counsel who is

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<sup>189</sup> See Royal Decree No. M/32 of on 15 Moharram 1350 A.H (1931)

<sup>190</sup> *Supra.*, Al-Jaber, note 138, at 18

<sup>191</sup> *Supra.*, Anthony, not 139, at 92

<sup>192</sup> *Supra.*, Vogel., note 52, at 302

<sup>193</sup> See Decree No. 186 of on 5 Safar 1387 A.H (1967)

holds a law degree from any law school.<sup>194</sup> This in turn, was succeeded in 1988 by the expansion of the Board of Grievances (*Diwan al-Mazalem*).<sup>195</sup> The Board of Grievances was authorized to hear commercial disputes within the Kingdom.<sup>196</sup> Eventually, the Court was abolished, but provisions of its regulations remain in effect in commercial disputes in Saudi Arabia.

The commercial judiciary has experienced several changes in the Saudi legal system. The first regulation was the Law of Commercial Court (*nizam al-Mahakim al-Tijariyyah*), issued by High Order No. 32, dated 15 Muharram 1350 [2 June 1931]. That was followed by the Court being canceled in 1962, and its jurisdiction transferred to the Committee for the Settlement of Commercial Disputes (*hayy'at hasam al-Munazaeat al-Tijariyyah*) in 1967,<sup>197</sup> then, the Committee was also canceled and jurisprudence transferred to the Board of grievances. Eventually, it was transferred to the general judiciary. So, the traditional authority of the jurisdiction of the Commercial Court was eliminated in 1955. However, the government reinstated the commercial tribunals under the title of the Committee of Settlement of Commercial Disputes. In 1965 authorities instituted two commissions in Riyadh (Central Province) and Jeddah (Western Province). In 1967, the authorities added one more located in Dammam (Eastern Province) and were placed the commissions under the authority of the Ministry of Commerce, not the Minister of Justice.<sup>198</sup>

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<sup>194</sup> See Decree No. 186 of on 5 Safar 1387 A.H (1967)

<sup>195</sup> *Supra*, Anthony, note 139, at 92

<sup>196</sup> See Royal Decree No. M/63 on 26/11/1407 A.H. (July 7, 1987 A.D)

<sup>197</sup> See Decree No. 186 of on 5 Safar 1387 H (1967)

<sup>198</sup> *Supra.*, Vogel, not 52, at 302

Vogel states that each of these commissions was composed of three "specialists," or experts in modern commercial law (called, in every-day parlance, *qanuniyyun*); in 1968 the composition was changed to two Sharia experts and two legal experts. Finally, in 1969, it became two Sharia judges appointed by the Ministry of Justice, and one legal expert delegated from the Ministry of Commerce. To allow *qadis* (judges) of the regular Sharia court cadre to serve, the commissions met part-time in the evenings. In this way, the commissions came under the control of Sharia court *qadis*, the reverse of the situation in the original Commercial Court. The chief difference remaining between the commissions and Sharia courts was that the former was willing to apply relevant laws (*'nizam'*) according to their terms, while the latter was not.

However, since the *Nizams* in the commercial field do not oppose *fiqh* on face value, but merely add to it provisions regulating merchant practices, creating new legal institutions, and licensing and regulating new forms of business organizations, a Sharia court judge of middling to liberal mind could serve on the commissions with little conflict in conscience.

He further states that he attended sessions of the commercial commissions, in 1985 in the Riyadh commission for several months and 1987 in the Jidda commission for several days; in both Jidda and Riyadh," during which time he had several days to read reports of various decisions. The Jidda and Riyadh commissions were very different. "In Riyadh, the commission was controlled by its two 'qadi' members, but in Jidda, by far the most active city in the

Kingdom commercially, the two ‘*qadi*’ members followed the initiatives of the Ministry of Commerce legal expert, a particularly forceful and independent-minded individual.”<sup>199</sup>

### § 2.6.5.2 Financial Legal System

The Kingdom of Saudi Arabia has found ingenious ways to combine reformism with Islamic provisions of its tax system, which targets legal persons and natural persons at very low rates. Consistent with the Islamic teachings, *zakat* "purifier" is a form named of an annual payment, which is one of the five requirements Islam. In the 1950, the Saudi law-making passed the Law of *Zakat* Collection.<sup>200</sup>

Timur Kuran states that Saudi subjected some types of profit and dividend income as well as non-traditional assets such as machines, houses, and hotels to *zakat*; however, this revolutionary broadening of the *zakat* base was subsequently curtailed by exempting assets not meant for sale. Thus, a hotel, a factory, or automobile is no longer "*zakatable*," unless the owner is trying to sell it. Regarding livestock and agricultural products, *zakat* is levied strictly in the traditional manner. Amazingly, in view of the widespread sensitivity to tampering with traditional rates, the legal *zakat* obligation on many types of wealth and income was reduced in 1959 from 2.5 to 1.25 percent, following complaints from Nejd and Hijaz. People were left to

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<sup>199</sup> *Supra.*, Vogel, not 52, at 303

<sup>200</sup> The Law of Zakat Collection. Royal Decree No. 17/2/28/8634 dated 29/6/1370 H. (1950)

distribute the remainder of their religious obligations at their own discretion. Four years later the zakat department reverted collecting the full 2.5 percent from all eligible Saudis.

Under the Zakat Collection Law, Saudi individuals and companies are subjected to an annual flat rate of 2.5 percent of the total of capital resources held more than 12 months, net profits, retained earnings and reserves not created for specific liabilities. So, Saudis pay annually Zakat, which is 2.5% of their net worth, and if a company has Saudi and non-Saudi owners, Saudis pay Zakat on their share of the Zakat base and non-Saudis pay income tax on their share of the taxable income.<sup>201</sup>

The General Authority of Zakat and Tax (GAZT) states that:

“[t]he provisions of Income Tax law<sup>202</sup> apply to resident capital companies with respect to shares of non-Saudi partners, whether they are resident or non-resident natural or legal persons. Shares of non-Saudi partners in resident capital companies shall not include shares of non-Saudis held for speculation purposes through trading shares of joint stock companies in the Saudi Stock Exchange. Shares of non-Saudis in mixed companies, which are partners in resident capital companies, are not considered Saudi shares for the purposes of this Law. The Provisions of the Implementing Regulations shall also apply to natural or legal nonresident persons, whether Saudis or non-Saudis, who conduct business in the Kingdom through a permanent establishment or generate income within the Kingdom.”<sup>203</sup>

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<sup>201</sup> See General Authority OF ZAKAT & TAX. Available at: <https://www.gazt.gov.sa/en> (Accessed: 31 October 2017).

<sup>202</sup> See the Income Tax Law. Royal Decree No. M/1 dated 15/1/1425 A.H. ((March 07, 2004 A.D.).

<sup>203</sup> See General Authority OF ZAKAT & TAX. Available at: <https://www.gazt.gov.sa/en> (Accessed: 31 October 2017).

The Law of Commercial Agency (LCA) issued Royal Decree No. M/11 (1962),<sup>204</sup> which is still effective today, governs the relationship between a commercial agent and its foreign principal. This law requires foreign companies to appoint a Saudi commercial agent or distributor in order to sell their products in Kingdom. In this case, a Saudi citizen may be either a commercial agent or a distributor for a foreign company unless is registered the agency agreement in the registry designed for this purpose the Agencies' Agreements Department at the Ministry of Commerce. The LCA requires that commercial agents must be registered in the Commercial Registry, respect of rules regarding the goods and their descriptions and specifications. In addition, the law obliges commercial agents to provide certain registration data, including the name of the supplier, company name, and type of merchandises. Plus, a foreign principal is subject to various administrative practices and policies of the Ministry of Commerce.

In 1964 a new Law of Commercial Papers<sup>205</sup> was promulgated relating to modern type of business operations. The regulation was leading to issue a parallel judiciary to the Sharia Courts called the Settlement of Commercial Paper Committee Disputes “tribunal” for handling disputes involving private persons. The Committee has the jurisdiction to hear claims concerning bills of exchange, promissory notes, and checks. The Negotiable Instruments Law provides the substantive legal provision applied by the Commercial Paper Committee.<sup>206</sup> The law largely reproduces the provisions of the Geneva Convention Providing a Uniform Law for Bills of

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<sup>204</sup> The Law of Commercial Agencies. Royal Order No. 11, dated 20/02/1382 A.H. (corresponding to Feb. 23, 1962 A.D.)

<sup>205</sup> The Law of Commercial Papers. Royal Order No. 37, dated 11/10/1383 A.H. (corresponding to Feb. 25, 1964 A.D.)

<sup>206</sup> Abdulrahman Yahya Baamir, *Shari'a Law in Commercial and Banking Arbitration: Law and Practice in Saudi Arabia*. Routledge (2016)



Exchange and Promissory Notes of 7 June 1930, even though Saudi Arabia has not become party to the conventions itself. As Sharia forbids the payment and charging of interests, provisions within the Convention relating to interest were omitted from the Negotiable Instrument Law.<sup>207</sup>

The banking system in the Kingdom was founded as a traditional money exchange, and is governed by the Saudi Arabian Monetary Agency (SAMA) founded (1952). The authority of legislature of the Kingdom enacted the Banking Control Law of 1966<sup>208</sup> to control the operations of commercial banks. This law provides more specific instruments of control. The instruments are comparable to those in existing Western developed countries such as the UK, the USA, and Germany. However, the money exchange business is governed by separate regulations of the Ministry of Finance and National Economy.<sup>209</sup>

Within the Islamic norms, taking an excess money or interest in the operation of money is considered usury (*riba*) which is forbidden (*haram*), and it is prohibited as violating of the rules of the Sharia, which has led to the Saudi Sharia courts refused to consider the crimes “Banking Litigation” including usury. Such a concept of usury was bound to cast a tall shadow on the practice of modern banking in Saudi Arabia.<sup>210</sup> To avoid this judicial vacuum, in 1987 the Kingdom government established the Banking Disputes Committee (BDC) linked to SAMA for

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<sup>207</sup> *Id.*

<sup>208</sup> The Banking Control Law. Royal Order No. M/5, dated 22/2/1386 A.H. (corresponding to June 13, 1966 A.D.)

<sup>209</sup> Rolf Meyer-Reumann, *The Banking System in Saudi Arabia*. Arab Law Quarterly 207-237 (1995)

<sup>210</sup> *Id.*

settlement of disputes between banks and their customers which consists of three civilian-trained lawyers as advisor/judges.<sup>211</sup>

The initiative of regulation governing the conduct of business was in the 1965, when the Saudi Council of Ministers passed the first Companies Law. The law was a copy of Egyptian law, which was derived from the 1953 French Companies Act. However, some research mentions that the origin of the Saudi Companies Law goes back to the 1948 British Companies Act.<sup>212</sup> In fact, the Saudi legislation authority depended on the Egyptian legal counselors as non-Saudi advisors to write the draft of laws and they followed the French legal school (civil law).

“[a] major example of the influence of French law in the area of private law is the Corporation Law enacted in (1385 H/1965), which was transmitted to the Saudi legal system through “the Egyptian code which was directly patterned after the French company law before the amendments of 24 July 1966.”<sup>213</sup>

This fact supports the notion of the 1965 Saudi Companies Law is copy for the French Act more than it was a copy of the 1948 British Companies Act. However, the impact of common law has appeared to late on Saudi laws.

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<sup>211</sup> George N. Sfeir, *The Saudi approach to law reform*. The American Journal of Comparative Law 36.4: 729-759 (1988)

<sup>212</sup> Shahzad Uddin, *Corporate Governance in Less Developed and Emerging Economies*. Emerald Group Publishing, Business & Economics (2008) at 45

<sup>213</sup> SAUDI ARABIA CRIMINAL LAWS, REGULATIONS AND PROCEDURES HANDBOOK - STRATEGIC INFORMATION, REGULATIONS, PROCEDURES. IBP, INC. (2015) at 130

In any event, some of provisions of the 1965 Companies Law were amended in 1982, and 1998. The law regulated forms of companies' entities that could be created and operated in the country; the types of companies were: General Partnership, Limited Partnership, Joint Venture, Partnership Limited by Shares, Limited Liability Partnership, Variable Capital Company, Cooperative Company.<sup>214</sup> The law set provisions and conditions for companies' to be instituted in the Kingdom, and provided requirements for companies' agencies and their affairs, formation, structures, capital, liabilities of agencies, directors and so on.

In 1966, Saudi authorities enacted the Governing Bids for Government Procurement, Sales and Leases law<sup>215</sup>. This was a copy of the Egyptian bid regulations of 1957 which were a textual translation of the French regulations of 1953. Royal Decree No. M-6 was later amended by Royal Decree No. M-14 dated 7 Rabia II 1397 (26 March 1977) which, with more recent modifications, was promulgated to encourage the policy of Saudization<sup>216</sup> in the economic sphere.<sup>217</sup> On September 2007, the government passed the Government Tenders and Procurement Law,<sup>218</sup> which governs the public contracts, including rules of purchase, obligations of contractors, sale of movables, rental and investment of public properties, banking guarantees, and similar matters.

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<sup>214</sup> The Companies Law. Royal Decree No. (M/6), dated 22/03/1385 A.H. (1965 A.D).

<sup>215</sup> The Law of the Governing Bids for Government Procurement, Sales and Leases. Royal Decree No. (M/6) dated 20/02/1386 A.H. (June 06, 1966 A.D)

<sup>216</sup> A policy performs by its Ministry of Labor, whereby Saudi companies and enterprises are required to fill up their workforce with Saudi nationals up to certain levels. So, Saudization means that the local labor market should accommodate a certain number of work-seeking young Saudis. It aims at providing young Saudis with an opportunity to work and compete with others. *See*

Talal Alharbi, *Saudization: A boon or bane?* Arab News, Saudi Research & Publishing Company, 2016 Available at <http://www.arabnews.com/columns/news/883321> (Last visited August 18, 2017)

<sup>217</sup> Maren Hanson, *The Influence of French Law on the Legal Development of Saudi Arabia*, Arab Law Quarterly, 272-291 (1987)

<sup>218</sup> The Government Tenders and Procurement Law. Royal Decree No. M/58 dated 4 / 9 / 1427 H (September 27, 2006)

## SECTION VII

### § 2.7 The Formal Saudi Arabia Legislative Branch

#### § 2.7.1 Formation and Affairs of the Council of Ministers

In 1953, by royal decree, King Abdul Aziz Al Saud (1932-1953) created the original Council of Ministers to serve as civil administrators of the rapidly changing Kingdom at the time of its emergence on to the world stage. It was not until 1993, that King Fahd bin Abdulaziz (1982-2005) revised and updated the duties and expectations of the members of the Council of Ministers by creating the last Law of the Council of Ministers. The amended Law of the Council of Ministers (1993)<sup>219</sup> includes 32 Articles comprising the Law of the Council of Ministers (LCM) many of which address procedural matters not affecting the debate, deliberations, and outcomes of Council meetings. Thus, they will not be addressed individually.

The Council of Ministers, the highest position to which most Saudis can aspire, is the cabinet of the Kingdom and the primary advisory body to the Prime Minister (King), and meets in the city of Riyadh. Membership is restricted to Saudi nationals who are known to be righteous and capable, of good reputation, and without any convictions for crimes of immorality or dishonor. Each member is required to swear an oath of loyalty to Allah, Islam, King, and country. They are required to pledge never to reveal States secrets and to always protect the

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<sup>219</sup> The Law of The Council of Ministers Royal Order No. A/13 dated 3 / 3 / 1414 H (August 20, 1993).

interests of the State by obeying all laws and performing one's duty with integrity. They are banned from holding any other position in the government unless the Prime Minister (King) determines there is a definite need.<sup>220</sup> Cabinet ministers are banned from purchasing, leasing, renting directly or through a proxy, or by public auction, any properties of the State. A minister also may not sell or offer for rent any of his properties to the government. A minister may not engage in any commercial or financial enterprises. A minister also may not accept board membership in any firm.<sup>221</sup> Meetings are presided over by the Prime Minister (King) or by his deputy and all resolutions recommended by the council become final only after the King's approval. Cabinet ministers are appointed to four-year terms, and they are relieved of their duties or allowed to resign, by Royal Decree. Their duties are determined in accordance with Articles 57 and 58 of the Basic Law of Governance; By-laws of the Council of Ministers stipulate their rights.<sup>222</sup>

Ministers may deputize another minister in accordance to royal decree if necessary to act on behalf of the first minister in his absence.<sup>223</sup> The Council of Ministers is composed of a Prime Minister (The King), Deputy Prime Ministers (Crown Prince or person selected by the King), ministers with portfolios – varying based on profession relative to position – Ministers of the State appointed as members of the Council of Ministers by Royal Decree, and counselors of the King appointed members of the Council of Ministers by Royal Decree.<sup>224</sup>

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<sup>220</sup> *Id.*, Arts. 4 and 5

<sup>221</sup> *Id.*, Art. 6

<sup>222</sup> *Id.*, Arts. 7 and 8

<sup>223</sup> *Id.*, Art. 11

<sup>224</sup> *Id.*, Art. 12

The Council Law authorities include draw up the internal, external, financial, economic, educational and defense policies as well as conduct general affairs of the State and supervision of their implementation, and to review the resolutions of the Shura Council. It has the executive power and is the final authority in financial and administrative affairs of all ministries and other government institutions.<sup>225</sup> Laws, treaties, international agreements, and ‘concessions’ are issued and amended only by Royal Decrees after deliberations by the Council of Ministers.<sup>226</sup> In practice, the draft laws and regulations on the agenda and vote on the chapter by chapter and then as a whole in accordance with the By-laws of the Council.<sup>227</sup> Every minister may propose a draft law or regulation related to work of his ministry. Every member of the Council of Ministers may propose what he deems worthy of discussion in the Council of Ministers’ meetings after the approval of the Prime Minister.<sup>228</sup>

### § 2.7.2 System of the Consultative Council (*maj`lis al`Shura*)

For the non-Muslim layperson, the Majlis al-Shura (“*ash`Shura*”) Law may be somewhat confusing due to the word “Law.” If taken in the common context of western terminology, law may refer to a law, or laws established for the common good of the country. However, in essence, the Majlis al-Shura Law is an obligation placed upon the reigning monarch to assemble an advisory council comprised of knowledgeable Saudi specialists from various fields of endeavor who serve to advise the King on matters of great and lesser import to the Kingdom.

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<sup>225</sup> *Id.*, Art. 19

<sup>226</sup> *Id.*, Art. 20

<sup>227</sup> *Id.*, Art. 21

<sup>228</sup> *Id.*, Art. 22

The Majlis al-Shura (consultative council), has 150 members and a chairman, all appointed by the monarch for four-year terms, at least half of whom have to be new members.

The Majlis passed through several stages before its current structure was established. The founder, King Ibn Saud, called for the creation of the Majlis when he entered Mecca in 1924. Modestly structured, the Majlis al-Shura has been formed over the years under a Basic Law with a small number of advisors not exceeding twelve. The founding of the Council of Ministers in 1953 distributed the functions of the old Majlis al-Shura across various ministries and administrations. Ultimately, the council was left with limited power and efficacy until King Fahd bin Abdulaziz promulgated the Basic Law of the Majlis al-Shura in 1992.<sup>229</sup>

The law describes in 30 articles the basic functions of the council committees and the rules for floor debates. The King has the power to restructure and dissolve the Majlis as he deems appropriate. Initially, the Majlis al-Shura had 60 members and a speaker, and it was gradually enlarged to 120 members and now to 150 members chosen by the King. There are twelve committees in the Majlis al-Shura/Majlis, which deal with human rights, education, culture, information, health and social affairs, services and public utilities, foreign affairs, security, administration, Islamic affairs, economy and industry, and finance.

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<sup>229</sup> See Royal Decree No. A/91 dated 27/8/1412 H.(May, 1992)

The primary function of the Majlis al-Shura is to advise the King on treaties and policy matters, whether domestic or international. The Council can initiate discussion of policies in response to a royal order or a call from members or citizens. A council resolution is made official by a majority and is then forwarded to the Prime Minister (the King or his deputy) for consideration by the Council of Ministers. If both councils (the Advisory Council and the Council of Ministers) agree on a decision, the resolution will be sent to the King for his approval. In the event of a disagreement, the King decides what is appropriate. It takes at least ten members of the Majlis al-Shura to propose a law, policy, or a draft amendment. Laws, international treaties and agreements, and concessions are studied by the *Majlis*, promulgated and amended by royal decree, and published in the Official Gazette (*al-Jarida al-Rsmiya*) before they take effect.



## SECTION VIII

### § 2.8 Law and Legal Profession

Before the adoption of the Code of Law Practice,<sup>230</sup> the law practice was slowly emerging, but the representation of others in the courtroom has existed in the country, and its roots are extended to the legal systems had existed in the Peninsula before the unifying the Kingdom. Each phase was based on basic features of the judiciary which was suitable for its stage.

Judges applied the Islamic principles as procedures for hearing or trial, and in general Sharia provides a right for disputes by parties in which only the limited notion of attorney-in-fact was known (*al wakil bial khusuma*). Procuration of individuals in the case before the court has had the high attention of Muslim scholars through history. Al-Ghazali explains that the relationship between agent (*wakeel*) and client (*muakel*) is anchored in trust. This relationship of trust is possible only if *wakeel* has qualities that generate trust and *mutawakel* has the heart to trust.<sup>231</sup>

A comparison of the legal profession under Islam and common law is an odd comparison and might be rejected, but the religious and the secular are supported by the same core ethics that

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<sup>230</sup> See Code of Law Practice issued by the Royal Decree No. M/38 dated 28/7/1422 H. (corresponding to Oct. 15, 2001 G.), art. 1. See the Official Gazette (Umm al-Qura) No. 3867 dated 2 November 2001

<sup>231</sup> Liaquat Ali Khan, *Advocacy Under Islam and Common Law*, San Diego L. Rev. 45:547 (2008)

constitute advocacy as a doctrine of justice.<sup>232</sup> Professor John Makdisi provides credible evidence to demonstrate that the common law of England itself "could be the true offspring of Islamic law," particularly in adopting a rational civil procedure and trial by jury.<sup>233</sup>

In the Kingdom, in 1926, the King ordered to retain the practice of Ottoman laws and agents were there, also judges allowed for an absent litigant or one who is either sick, old, a woman, or a minor to appoint a representative. In 1929, the National Council (*al-Majlis al-Ahli*), decided that every litigant had the right to appoint an agent to represent him before the court.<sup>234</sup>

Samir Shamma describe the period of gradual stages in allowing agents to attend on behalf of their clients by stating:

“[T]he Courts Civil Procedure Rules, 1936, provided that an ordinary person could only represent relatives. The 1952 Rules still in force provide that an ordinary person should not represent more than three persons at a time, but might represent any one or more of them, in any number of cases. They also provide that licenses to practice before Sharia courts shall be issued in every locality. by a committee headed by the Chief *Kadi* (judge) of that locality. The license can only be issued (1) to Saudis, at least twenty-one years of age, who have had legal training in one of the local institutes or any other equivalent institute, and who must produce satisfactory testimonials of good character; (2) to such persons who served on the Bench or were instructors of law; and (3) to such persons for whom the local *kadi* or a well-known jurist can testify as to their ability to act as attorneys before courts, provided they pass a certain test before the said committee. The said licenses have to be approved by the Court of Cassation. A register of attorneys is kept in each court. The number of " licensed " attorneys in the country is 18, seven of them in ‘Mecca’, eight in ‘Jeddah’, two in ‘Tayif’ and one in ‘Madina’. Foreign attorneys are not allowed to practice before the Sharia courts. No attorneys used to be allowed in criminal cases and accused persons used to

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<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

<sup>234</sup> The Consultative Assembly's Decision No. 205 of 12.8.1347 A.H. (1929 A.D.), sanctioned by Royal Order No. 19-24 of 24.8.1347 A.H. *See Supra*, Shamma, note 77

defend themselves personally. Recently there has been some relaxation of this rule and attorneys are sometimes tolerated.”<sup>235</sup>

These proceedings lasted for a period, a party had a right to appoint (or perhaps hire) another party as agent or representative to pursue its claims in its stead before the court. <sup>236</sup> In general, the idea of dispute agency derives its legitimacy from the Islamic principles. But this right was a limited in the civil case, and not allowed in criminal trial, as defendants were simply expected to present their defense and the judge was entrusted with correctly upholding the law.<sup>237</sup>

The Commercial Court Law (1931) permits agents to represent the litigants in commercial cases before the court and the Board of Grievances allows attorneys who have civil, and not only religious, legal training to appear before it and argue the cases of their clients. The government agencies appoint legal advisers who are not necessarily Saudis or versed in Sharia. They are usually graduates of foreign law schools.<sup>238</sup>

The reasons for the tension between tradition and modernity pervades the field, the lawyering licenses were issued from two government agencies: the graduates of Sharia colleges, are granted licenses called "license to accept appointment as attorney-in-fact," by Sharia courts, and the Ministry of Commerce grants law college graduates licenses designating the holder as "legal advisor."<sup>239</sup>

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<sup>235</sup> *Supra.*, Shamma, note 77

<sup>236</sup> Abdulaziz H. Al Fahad, *The Prince, the Shaykh--And the Lawyer*, Case W. Res. J. Int'l L. 32 (2000): 307.

<sup>237</sup> *Id.*

<sup>238</sup> *Supra.*, Shamma, note 77

<sup>239</sup> *Supra.*, Al Fahad, note 236

It was no law governing the legal profession and was no Bar Association to adopt unified stranded for law schools' programs and profession licenses. The practice law was only males and females barred to practice law in the Saudi Arabia.

The profession was viewed contemptuously, especially by Sharia judges, but grew in socio-economic sophistication, and the legal services being necessary, it a grudging acceptance (if not respect) is slowly gaining hold.<sup>240</sup> Also, the demands of modernism granted the government a desire for legal education in non-Muslim countries and many western-trained lawyers having occupied very high positions in the bureaucracy of the State.<sup>241</sup>

In the 2001, the Code of Law Practice was issued to organize the legal profession and the conditions of practicing. The regulation dismissing the duplication in licensing and smearing the graduate of Sharia and regulations law by the name of lawyer.<sup>242</sup>

After the accession of Saudi Arabia to the World Trade Organization (WTO) in the 2005, many international law firms have invested in the Kingdom. In the 2013, the first license for practice of law was issued to a female lawyer in the country.

The Saudi Bar Association (SBA) was born in in the 2015,<sup>243</sup> as a professional body aimed at raising lawyers' practice. The SBA aims to raise the level of practicing lawyers for their

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<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> *Supra.*, Code of Law Practice, not 330

<sup>243</sup> The Saudi Council of Ministers Statement No. (317) dated 27/4/2015.

profession and ensure their good performance, and to increase their awareness of their professional duties.<sup>244</sup>

The SBA is responsible for the regulation of the legal profession in its jurisdiction and is also dedicated to serving their members in many cases.<sup>245</sup> But *as of now*, there is no a bar exam for lawyers or any other tests to determine who is qualified to practice. In addition, there is neither classification for lawyers nor requirements for training during the practice of the profession. Legal education remains outside the jurisdiction of the Saudi Bar Association.

The conditions for obtaining the Saudi Arabian license of legal profession is detailed article 3 of the Code of Law Practice:

“[A] person who practices law shall have his name included in the list of practicing lawyers, and shall satisfy the following requirements:

(a) He must be a Saudi national. However, a non-Saudi shall be entitled to practice law subject to the terms of agreements concluded between the Kingdom and other countries.

(b) He must be a holder of a degree from a Sharia college or a Bachelor of Law from one of the Kingdom’s universities or an equivalent of any of these degrees obtained from abroad, or a post-graduate diploma of legal studies from the Institute of Public Administration.

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<sup>244</sup> Saudi Bar Association. Overview. See <https://sba.gov.sa/en/overview/> (last visited 9/11/2017)

<sup>245</sup> *Id.*

(c) He must have at least three years of practical legal experience. This period may be reduced to one year for a holder of a Master's degree in Sharia or in law, or an equivalent of any of these degrees, or a post-graduate diploma in law for the graduates of a Sharia college. This requirement shall not apply to a holder of a doctorate in these fields of specialization.

(d) He must be of good conduct and not under interdiction.

(e) He must not have been subjected to any *hadd* (Qur'anic prescribed punishment) or any other sentence in connection with a crime that impugns integrity, except where a minimum period of five years has expired since execution of that sentence.

(f) He must be a resident of the Kingdom.

The Minister of Justice shall cause to be prepared a declaration form to be signed by the applicant wherein he confirms that the requirements of paragraphs stated in (d), (e), and (f) of this article are complied with.”<sup>246</sup>

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<sup>246</sup> *Supra.*, Code of Law Practice, not 330, Art. 3

## § 2.9 Summary

Saudi Arabia is a Muslim country that embraces Sharia provisions in governing the affairs of the State. The State is based on the Quran and the Sunna (traditions) of Muhammad the prophet in addition to the Civil legal system of the State. However, from a historical context of legal studies in the years of 1949 to 1970, the changes that occurred within the country led to several formations in the constitution, for instance, the formation of the Board of Grievances. The legislative processes of evolution and reform have been considered in term of a continuous yet gradual one in the Kingdom of Saudi Arabia. The processes have been witnessed phases in significant to further refine the legal system.

Several programs have been put in place to offer training to graduates through a combination of both the law studies as well as the Shari'ah laws. A good example is the Administrative Legal Committees, which was created due to the denial of Shari'ah judges in applying the rules in solving judicial matters. The committees set up in the country totals up to more than 100 in both the government and nongovernmental organizations. The purpose of the committees in question aims at creating and enforcing the laws that are favorable to solving a current issue facing the State.

The basic Saudi Arabian legal system in 1992 was based on the Sharia as indicated by the Qur'an and the Sunnah, and the Saudi laws not in conflict with the Qur'an and the Sunnah which

the authorities may promulgate. Historically, the Sharia was applied throughout the Kingdom in strict accordance with the interpretation of the Hanbali school of Sunni Islam. However, at the present, the law of codes has shaped the identity of the Saudi legal system of the State. In many cases, the principles of Sharia apply when there is an absence of legislative text that is enacted by legislatures. Thus, therefore, the Sharia is the main source to fill the legislative gaps and interpretation of the law.



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### § 3.1 Legal Education Systems

#### § 3.1.1 Introduction

#### § 3.1.2 History of the Development of the Saudi Arabian

##### § 3.1.2.1 Legal Education

##### § 3.1.2.2 Pre-Formation of Existing Legal Education System (1924-1949)

##### § 3.1.2.3 The Era of Solitary Sharia Education (1949-1970)

##### § 3.1.2.4 The Early Developments (1970-1979)

##### § 3.1.2.5 The Era of Forming Legal Education (1980-2006)

##### § 3.1.2.6 Flourishing Years of Legal Education (2006-to present)

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## CHAPTER III

### SECTION I

#### § 3.1 Legal Education Systems

##### § 3.1.1 Introduction

Law is the essential foundation of every civilization; without it, there is only anarchy.

Compared American law, the law in the Kingdom of Saudi Arabia does naturally bring to mind the active practice of law, but rather a particular intellectual experience and concomitant cultural identity.<sup>247</sup>

At present, there is a steady undercurrent of tension between the more traditionalist schools of Saudi Arabian jurisprudence and those of the more progressive contemporary fields of thought.<sup>248</sup> The socio-economic and political circumstances were, and remain to some extent, a consideration in the essential understanding of the restraints and achievements of the discipline of legal education within the Kingdom. Unfortunately, this tension plays a significant role in expanding the gap between them because each movement competes to create and maintain its principles and ideas through the legal curriculum.<sup>249</sup>

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<sup>247</sup> STEVE SHEPPARD II, *THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES: COMMENTARIES AND PRIMARY SOURCES* (LAWBOOK EXCHANGE, LIMITED, THE, 2D ED. 2007). VOL.I, AT 3

<sup>248</sup> *Supra.*, Al-Jarbou, note 20, at 211

<sup>249</sup> Jeffrey K. Walker, *The Rights of the Accused in Saudi Criminal Procedure*, Loy. LA Int'l & Comp. LJ. 15:863 (1992) at 211

The educational methodologies utilized for teaching law in the colleges and universities through the Kingdom have also had a massive impact on both the legal system and levels of the legal profession itself. The impact of these is best noted in the continual efforts expended to upgrade the curriculum to meet the demands of the profession.

To fully understand the complexities of the history, and future of the legal education system within the Kingdom, as other systems, one must understand the creation, maintenance, and change of law that it will have, and will continue to undergo to bring it in line with modern<sup>250</sup> society and the world as a whole.

Only through the education and training of qualified law students will the Kingdom begin to reform its legal system. Accomplishing this will require cooperation and contributions among traditional and contemporary legal academics, judges, practicing attorneys, and expert jurists. Law schools need to innovate in their curriculum, presentations, and classroom procedures to produce distinguished law graduates deserving of their law degrees.<sup>251</sup> On completion of their

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<sup>250</sup> *Supra.*, SHEPPARD, note 247, at 3

<sup>251</sup> Lucca Melchionna, *Global Legal Education and Comparative Visa Regulations*, *Transnat'l L. & Contemp. Probs.* 19.515 (2010)

training, every successful graduate will possess the knowledge and skills necessary to obtain a prominent legal position <sup>252</sup> anywhere in the Kingdom.

A majority of the educators consider legal education in exchange for work credit constructed by the law school faculty members. In the traditional concept of legal education, the instruction is limited to the classroom with a disregard for the reality that law schools are wholly and manifestly educational institutions, not just through their credited academic or experiential learning in faculty-approved courses.<sup>253</sup>

In the Kingdom, there is a widespread apprehension concerning of success of the traditional law school curriculum to provide and draw the professionalism and values of the legal education. The legal education is is will highly probably to become a global approach, and many law schools will be devoted to the training and preparation of global attorneys.<sup>254</sup> At the time of preparation of this report, the institutions of legal education are providing an undergraduate four-year college program for a law degree based on a one-sided lecture methodology. The question that arises is whether Saudi law schools can deliver appropriate professional and constitutional values to the students through their education. Furthermore, there is a question whether the traditional education methodology is able to ensure a quality outcome of this education are

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<sup>252</sup> R. Michael Cassidy, *Reforming the Law School Curriculum from the Top Down*. J. Legal Educ., 64:428 (2014) at 428.

<sup>253</sup> Hannah R. Arterian, *The Hidden Curriculum*, 40 U. TOL. L. REV., 279 (2009)

<sup>254</sup> *Supra.*, Melchionna, note 251

students trained in dynamic thinking and legal skills to compete in the legal field on a national or global basis?

The Ministry of Education has the authority to administer, supervise, plan, and coordinate all higher education in the Kingdom.<sup>255</sup> The Ministry authorizes the creation of a university, the programs offered and accreditation of college programs, plus oversight for Saudi citizens pursuing educational studies in foreign countries. In Ministry has further legislative authority in setting the regulations, internal rules, institutional framework, resources of the universities and law schools including the assessment of the universities' faculty members.<sup>256</sup>

Whether the Kingdom will be able to drive forward to a new era of legal and make a revolutionary change in both its objects and methodology depend on the readiness and appreciation of the country for the modification. The current curriculum was designed to approach the goals of comprehensive development in the country and provide for graduates who are ready to engage in the legal labor market. Legal education, in the Kingdom, has been based on the rote memorization but is sorely lacking courtroom training, critical thinking, and analytical reasoning skills. So, it is unlike the goals of legal education other law schools within

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<sup>255</sup> Law of the Council of Higher Education and Universities. Royal Decree No. M/8 dated 4/6/1414 A.H. (November 18, 1993)

<sup>256</sup> Mohamed A. Arafa, Islam Attia, Ahmad K. Bastaweesy, and Hassan Salama., *Arab World's Verdict on Legal Education: The Egyptian Case between Status Quo, Assessment, and Some Hope*, Journal of Social Sciences, Vol. 4, N. 4 (2015)

countries, where students are not passing courses by memorizing the substance of fundamental laws, but rather students are taught to think like lawyers, and assessed on that basis.<sup>257</sup>

Some critical questions require answers such as;

- Will changes made to legal education dramatically affect the present traditional education model and the legal curriculum in its place?
- Without change, will law firms and businesses both within the Kingdom and internationally trust in the skills of Saudi law school graduates?
- Do the current circumstances within the Kingdom demonstrate its need for positive reforms?

It is the goal of this chapter to identify into view the various transformations and to suggest developments that need to take place as well in the current system of education in the Kingdom of Saudi Arabia.

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<sup>257</sup> *Supra.*, Melchionna, note 251

## § 3.1.2 History of the Development of the Saudi Arabian

### § 3.1.2.1 Legal Education

The evolution of legal education in the Kingdom has closely followed that of the legal system itself. Throughout its history, the Kingdom, its laws, and the teaching of law has been influenced by two significant movements. The first is the conservative or traditional approach and the second being the more contemporary, or modernistic. The conservatives ardently support the principles of Sharia (*uncodified law code*), the religious norms as written by Islamic scholars throughout the history of Islam. Their influence is evident in their position on jurisprudence curriculum, programs, and textbooks. The surprising fact is that Islamic Sharia is founded on the text from Qur'an, Sunnah, a human interpretation which is a consensus (*ijma*) and analogical juristic reasoning (*qiyas*). It is acceptable to adopt human understanding, knowledge, and interpretation (*fiqh*) and broadly embodies social rules but refuses to accept man-made laws. In contrast, the modernists, while not negating all historical, and religious principles, support adopting Western teaching methodologies as a system of legal education in the Kingdom.

The opposing opinions represented by these movements have significantly affected the improvement of existing laws and enactment of new legislation. It also has underscored concerns over the various attitudes of citizens towards Sharia and over ratified legislation as it pertains to diversity within, and for the legal education system in the Kingdom. In contrast, the modernists have supported the view of adopting the Western teaching methodologies of legal education to

enhance the present system in the State. Accordingly, this conflict has negatively influenced attempts by both movements to reach a mutually agreeable accord.

### **§ 3.1.2.2 Pre-Formation of Existing Legal Education System (1924-1949)**

In the Islamic faith, Muslims have considered Sharia to be the “law” of God. However, it is not a codified legal system. The Sharia is a straight path to specific values that are essential to Islam.<sup>258</sup> For true believers, it regulates daily life, religious activity, social behavior, financial transactions, human beings’ relationships and family affairs. It also establishes and sanctions punishment for criminal and civil offenses.<sup>259</sup>

The principles of Sharia are maintained in Saudi Arabia, as goes for the vast majority of Muslims states in the world. However, the Kingdom is distinguishable from other Islamic countries as Sharia is the pre-eminent alongside to the rule of law in its jurisdiction which is distinguishable. As a result, it has affected all methods and systems of education within the country.

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<sup>258</sup> Mohammad H. Kamali, *SHARI’AH LAW: AN INTRODUCTION (THE FOUNDATIONS OF ISLAM)*, Oneworld Publications, London (2008) at 2

<sup>259</sup> *Supra.*, Walker, note 249



Unlike the present, during the 1950s and 60s, there appeared to be no official Saudi legal education program to train and certify legal professionals; colleges taught only “*fiqh*” (Islamic jurisprudence) or Sharia. Although Sharia is most often interpreted as “rule” of God, it does have a much broader meaning and application within the Kingdom where it means “a way of life” or “a path to felicity and salvation.”<sup>260</sup>

However, *fiqh* refers mainly to the *corpus juris* that developed in the Islamic jurisprudence schools (*madhhabs*) controlled by Islamic jurists (*fuqaha`*) and judges, leading to the application of legal reasoning (*ijtihad*) and issuance of a legal religious verdict (*fatw`a*). Thus, the term Sharia primarily refers to a dogma that decrees a set style of life rules and sources of law in Islamic countries.

“In 1924, Abdul-Aziz ibn Sa'ud-the founder and first King of Saudi Arabia (1932-1953)-took control of the Hijaz (the Western Province of Saudi Arabia), ending a long series of battles to consolidate and unite a vast but fragmented territory. Abdulaziz had his mind set on implementing a nation-building process that would respond to the needs and aspirations of the people in a manner consistent with the best interests of all. He realized that application of Islam Sharia the only way to realize this long-sought future, reflecting on its profound influence on the culture and history of the Arabian Peninsula and the perceptions of its inhabitants. National unity was achieved because Abdulaziz applied the doctrine of Islam to public policy, justice, and all

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<sup>260</sup> *Supra.*, Kamali. note 258, at 2

other spheres of life. He succeeded not only in unifying the country but also in proving the credibility of the Islamic solution and demonstrating its current and eternal validity.”<sup>261</sup> Before this time, the country now known as the Kingdom of Saudi Arabia was isolated from foreign legal influences.

After founding the Kingdom, there began a concerted effort by the new government to modernize the legal system while retaining the precepts of Sharia. In 1927, a Royal Decree launched a relatively modern and sophisticated system of courts—incorporating, for example, multiple-judge courts and regular appeals—which operated in the cities of Makkah, Medina, and Jeddah.”<sup>262</sup> Subsequently, within the Saudi Arabian legal profession inheres a concept that laws serve to supplement and enforce the Sharia. Almost all rules applied in Saudi Arabian courts can be found in books of Islamic jurisprudence (*fiqh*) written by medieval Islamic jurists (*ulama*). Therefore, in this way, the colleges were offering a curriculum based on direct correlation to instructions and teachings derived from the traditional textual sources of Sharia.

### **§ 3.1.2.3 The Era of Solitary Sharia Education (1949-1970)**

Established in 1949, the College of Sharia and Islamic Studies in the city of Mecca is regarded as the first college in the Kingdom to offer a four-year program in which students could

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<sup>261</sup> *Supra.*, Ansary, note 73

<sup>262</sup> *Id.*

earn a bachelor's degree in Islamic Studies.<sup>263</sup> (By royal decree in 1981, the college was joined with other colleges and renamed Umm Al-Qura University.) Two years later, in 1951, a college of Sharia was opened in Riyadh; eventually, this college came under the umbrella of the Imam Mohammed bin Saud Islamic University founded in 1974.<sup>264</sup>

What followed were a series of new institutions for the study of Sharia, all of which fell under the umbrella of the General Presidency of Sharia Colleges and Institutes.<sup>265</sup> The College of Sharia at the Islamic University in Madinah (IU) was founded in 1961.<sup>266</sup>

In addition, Royal Decree No (3/c/20527) established the Imam Muhammad ibn Saud University (IMAMU) as an academic institution comprising the higher institutes, colleges, and Sharia Institutes in Saudi Arabia. The original campus of the Imam University is in Riyadh, and it had Sharia colleges in Abha (1976),<sup>267</sup> Al-Qassim (1976),<sup>268</sup> and Al-Ahsa (1981).<sup>269</sup>

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<sup>263</sup> See <https://uqu.edu.sa/en/colshria/AboutUs>

<sup>264</sup> Imam Mohammed bin Saud Islamic University was founded by the Royal Decree No. 50/M in 09/10/1974.

See <https://www.imamu.edu.sa/en/about/Pages/aboutimamu.aspx>

<sup>265</sup> *Id.*

<sup>266</sup> The Islamic University in Madinah was established by the Royal Decree No. 11 in 09/06/1961. See <http://iu.edu.sa/Page/20234>

<sup>267</sup> The college of Sharia and Arabic in Abha was issued in 08/22/1976, by the Royal Decree No (3/c/20527). The college was a branch of the University of Imam Muhammad bin Saud Islamic University. Abha is the capital city of Asir province which located in the southwest of the Saudi Arabia. Then, on July 6<sup>th</sup>, 1998, the Royal Decree No. (7/87/CE) to merge the college to King Khalid. See <http://islp.kku.edu.sa/ar/content/185> [Arabic Text]

<sup>268</sup> The College of Sharia and Arabic language in Al-Qassim was established affiliated to the University of Imam Muhammad bin Saud Islamic University by the Royal Decree No. (3/c/20527) in 08/22: 1976. In the 2003, the Qassim University was found; wherefore the college became under the shade of the nascent university.

Al-Qassim region is located almost in the center of the Arabian Peninsula. see

<http://www.csi.qu.edu.sa/About/Pages/النشأة.aspx> [Arabic]

<sup>269</sup> The College of Sharia and Islamic Studies in Al-Ahsa was founded 1981 pursuant to the Royal Decree No. (6366) in 02/02/1981. Also, this college is a branch of the University of Imam Muhammad bin Saud Islamic

According to Dr. Ayoub M. A. A-jarbou, the Sharia colleges have offered Bachelor's Degrees in Sharia. Educational methodology and plan of study in the colleges are often close and homogeneous among them. The methodology relies on teaching four underlying themes: (1) Islamic Jurisprudence and the Holy Qur`an, (2) its interpretation (*fiqh*), (3) *Ha`dith* (a collection of traditions containing sayings of the prophet Muhammad), (4) Arabic Language. In addition to secondary supplementary education is offered on topics such as education, research methods, teaching methods and English Language.<sup>270</sup>

At present, the number of institutions of Sharia education in the Kingdom offering professional studies is evident increasing. These schools all have had different approaches to their educational objectives. However, it is apparent that few, if any of these same schools offer programs in law beyond an introductory one. For example, the English version of the study plan for the bachelor's degree in Sharia (Islamic Law) at the Department of Sharia in the College of Sharia (Islamic Law) at the Department of Sharia in the College of Sharia "Islamic Law" and Islamic studies at the Umm Al-Qura University (*see* table 3.1) includes (63) courses with (170) credit hours. However, the amended study plan for the bachelor's degree (2016) includes (70) courses with (170) credit hours, and requires only one actual law course (Introduction to the Study of Law) for two credit hours.<sup>271</sup> Also, the current study plan of the bachelor's degree in Sharia degree "Islamic Law" at the Imam Mohammed bin Saud Islamic University includes (82)

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University. Al-Ahsa is region in eastern of Saudi Arabia. *See* <https://units.imamu.edu.sa/colleges/Sharia-Ahsaa/profile/Pages/default.aspx>

<sup>270</sup> Ayoub Al-Jarbou. Evaluation of legal education in the Kingdom of Saudi Arabia. *See* <http://twitmails3.s3-website-eu-west-1.amazonaws.com/users/27139646/7/attachment/P1.doc> [Arabic Text] تقييم التعليم القانوني في المملكة العربية السعودية

<sup>271</sup> Umm Al-Qura University. *See* <https://uqu.edu.sa/shreeahm/App/Plans?major=18&type=1&edition=38> (Last visited December 28, 2017)

courses with (185) credit hours. However, it requires students to study just two (2) credit hours of law which is (Introduction to Law) and two (2) hours on judicial systems.<sup>272</sup>

Table 3.1 Courses & Hours - Bachelor's Degree (Islamic Law)

LEVEL I		LEVEL V	
Course Name	Hrs.	Course Name	Hrs.
Islamic Culture I	2	Syntax "Arabic grammar"	3
The Holy Qur`an I	2	The Holy Qur`an III	2
Introduction to the Sciences of The Holy Qur`an	2	Islamic Laws of Inheritance I	2
Introduction to the Study of Shari`ah 'Islamic Law'	2	Islamic Culture III	3
	5	Islamic Jurisprudence	5
The Biography of Prophet Muhammad (PBUH)	2	Comparative Islamic Jurisprudence	2
Islamic Jurisprudence	2	Prophetic Traditions of Ordinances	4
Fundamentals of Islamic Jurisprudence		Fundamentals of Islamic Jurisprudence	
Introduction to the Sciences of the Traditions			
LEVEL II		LEVEL VI	
Course Name	Hrs.	Course Name	Hrs.
Arabic Language	2	Syntax "Arabic grammar"	3
Introduction to the Study of <i>Aqidah</i> 'Islamic Creed'	2	Islamic Creed	2
	2	Principles of Islamic Economics	2
English Language	2	Quranic Verses of Ordinances	3
Muslim Religious Sects	4	Islamic Jurisprudence	4

<sup>272</sup> Imam Mohammed bin Saud Islamic University. See <https://units.imamu.edu.sa/colleges/sharia/Pages/tosifatnew.aspx> (Last visited December 17, 2017)

Islamic Jurisprudence	2	Prophetic Traditions of	3
Landmarks of Islamic Civilization	2	Ordinances	3
Sciences of the Holy Qur`an	2	Islamic-Juristic Rules	2
Sciences of the Traditions of Prophet	4	Comparative Islamic	
Fundamentals of Islamic Jurisprudence		Jurisprudence	
<b>LEVEL III</b>		<b>LEVEL VII</b>	
<b>Course Name</b>	<b>Hrs.</b>	<b>Course Name</b>	<b>Hrs.</b>
Syntax “Arabic grammar”	3	Islamic Jurisprudence	2
Islamic Creed	2	Syntax “Arabic grammar”	3
History of the Age of Rashiduns ' <i>Caliphs</i> '	3	Research Project on Islamic	2
Fundamentals of Islamic Jurisprudence	2	Jurisprudence	
Islamic Jurisprudence	4	Comparative Islamic	2
Prophetic Traditions of Ordinances	3	Jurisprudence	
Interpretation of Qur`anic Verses of Ordinances	3	Islamic Jurisprudence	4
		Quranic Verses of Ordinances	3
		Islamic	
		Islamic Legal Rules	2
		Prophetic Traditions of	2
		Ordinances	
<b>LEVEL IV</b>		<b>LEVEL VIII</b>	
<b>Course Name</b>	<b>Hrs.</b>	<b>Course Name</b>	<b>Hrs.</b>
Syntax “Arabic grammar”	3	The Holy Qur`an IV	2
Islamic Culture II	2	Islamic Culture IV	2
The Holy Qur`an II	2	Islamic Creed	2
Fundamentals of Islamic Jurisprudence	4	Semantics “Arabic Language”	2
Islamic Jurisprudence	5	Fundamentals of Islamic	
Prophetic Traditions of Ordinances	3	Jurisprudence	4
Interpretation of Qur`anic Verses of Ordinances	3	Islamic Jurisprudence	
		Research Project on the	5
		Fundamentals of Islamic	2
		Jurisprudence	
		Comparative Islamic	
		Jurisprudence	2

Chart 3.2 Courses & Hours - Bachelor's Degree (Islamic Law)

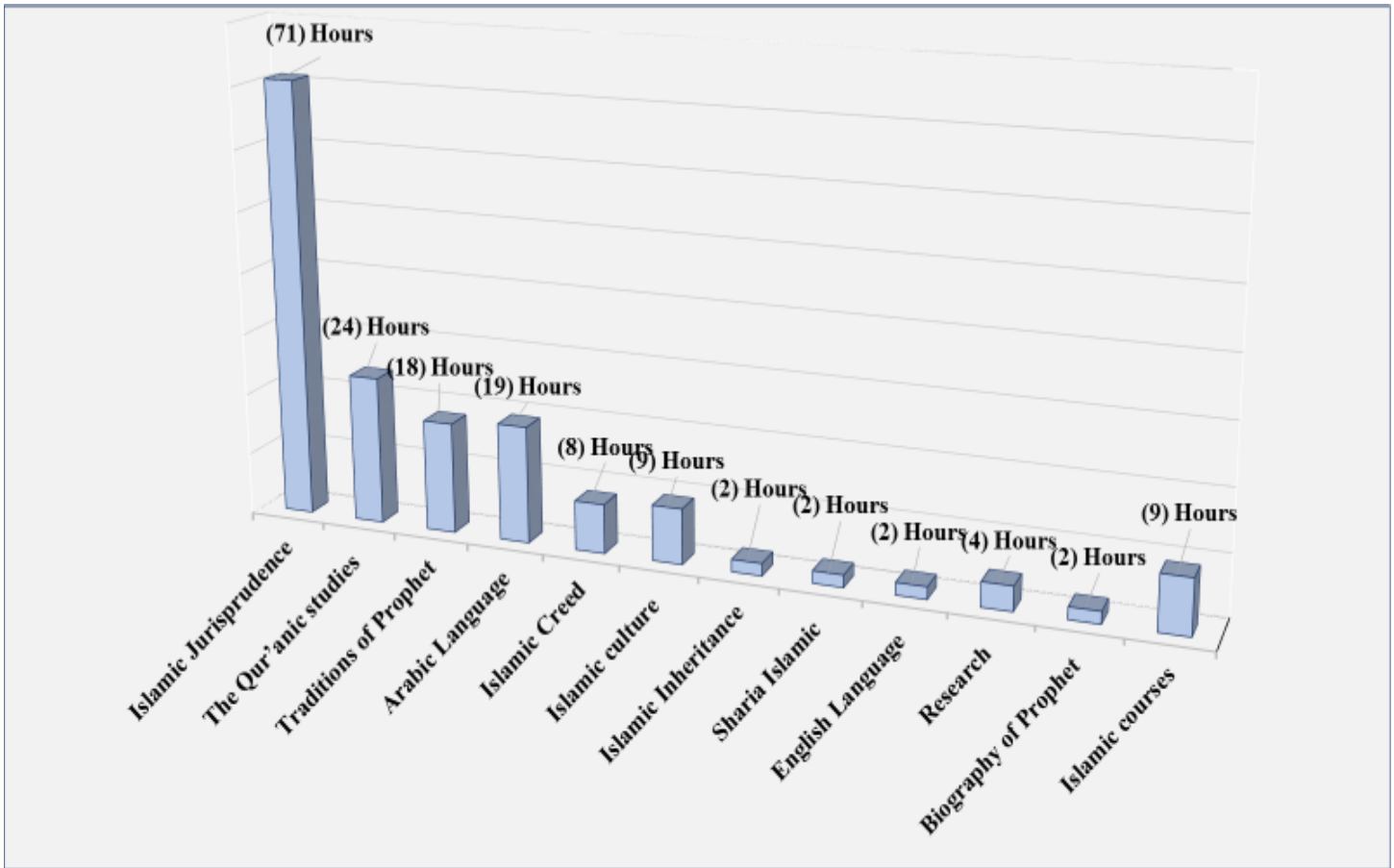
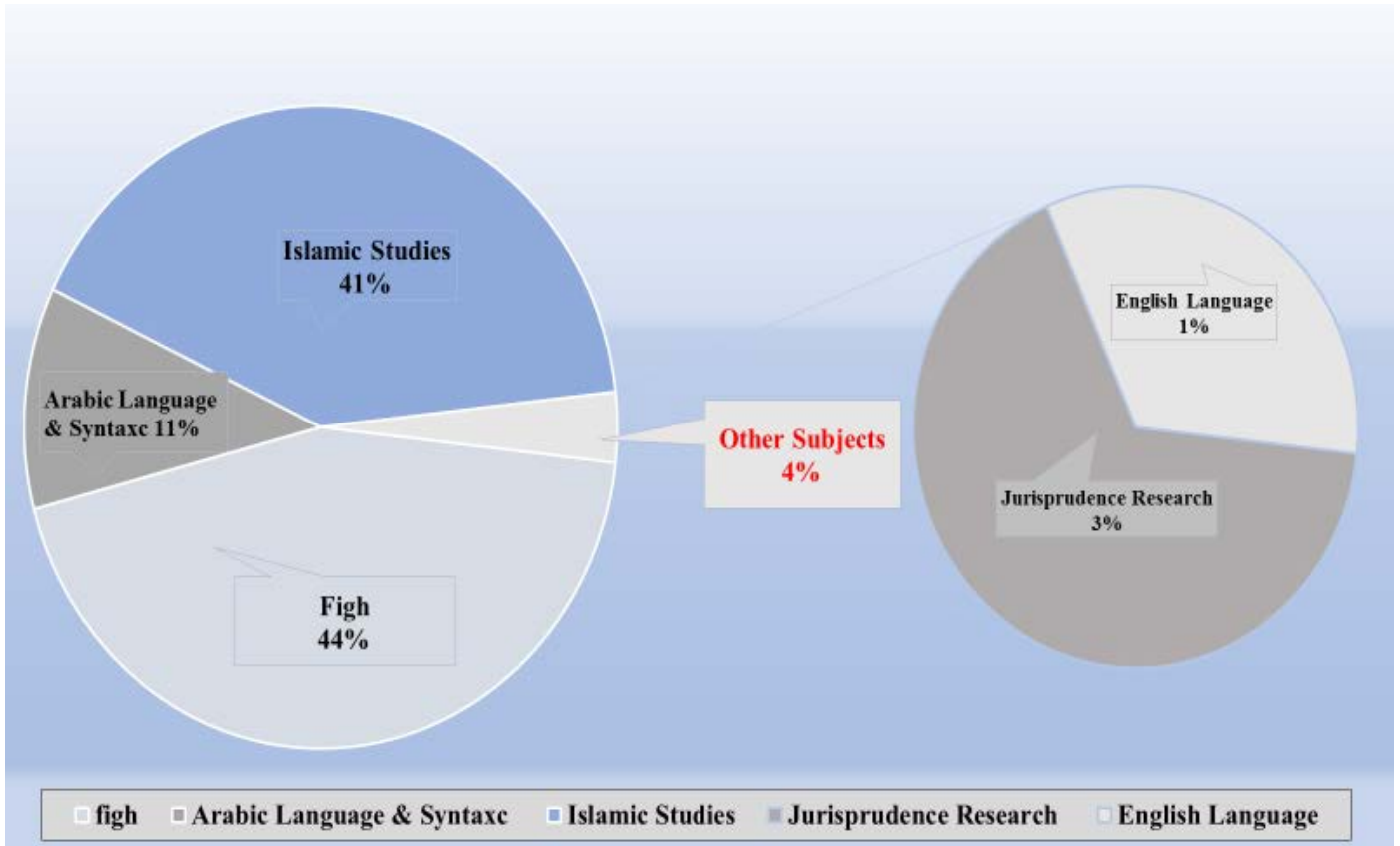


Table 3.3 Courses & Credit Hours Required- Bachelor's Degree (Islamic Law)

<b>Courses Subject</b>	<b>HRS.</b>	<b>Percentage</b>
Islamic Jurisprudence/Fundamentals/ Rules/Comparative	<b>71</b>	<b>42%</b>
The Holy Quran and its sciences	<b>24</b>	<b>14%</b>
The Traditions of Prophet	<b>18</b>	<b>11%</b>
Islamic Creed	<b>8</b>	<b>5%</b>
Islamic Laws of Inheritance	<b>2</b>	<b>1%</b>
Sharia Islamic	<b>2</b>	<b>1%</b>
Arabic Language & Syntax	<b>19</b>	<b>11%</b>
Jurisprudence Research	<b>4</b>	<b>2%</b>
English Language	<b>2</b>	<b>1%</b>
Islamic History & Civilization	<b>5</b>	<b>3%</b>
Islamic culture	<b>9</b>	<b>5%</b>
Islamic Economic	<b>2</b>	<b>1%</b>
The Biography of Prophet (PBUH)	<b>2</b>	<b>1%</b>
Muslim Religious Sects	<b>2</b>	<b>1%</b>
<b>Total</b>	<b>170 Hours</b>	<b>100%</b>



Chart 3.4 A % of Courses Required- Bachelor's Degree (Islamic Law)



The curricula of Sharia schools have focused on qualifying students in Sharia, Islamic jurisprudence, and Islamic studies which are academic and professional programs in line with Islamic and Sharia education. This focus is in line with the national and international standards that aim at qualifying graduates and endowing them with competencies, skills, knowledge, Islamic and professional ethics so that they can meet labor needs and contribute to scientific research to better serve the community.<sup>273</sup> The method relies on teaching the core of Sharia

<sup>273</sup> Umm Al-Qura University. See <https://uqu.edu.sa/en/colshria/App/Departments> (last visited December 17, 2017)

courses, which are the Qur'an and its interpretation (*ilm al tafsir*), Islamic Jurisprudence (*fiqh*), the fundamentals of Jurisprudence (*usul al-fiqh*), the narration (*ilm al-hadith*) “a collection of traditions containing sayings of the Prophet Muhammad” and Arabic Language. Colleges have been the leading platform for Sharia and religious studies, which prepares students for entering the competitive labor market within and outside the country.

Course materials have played a considerable role in interpreting Sharia studies making it easier for the student to acquire the relevant knowledge in the field of practice. Also, it has played a significant role in sponsoring the traditional schools which have helped interpret the Islamic norms for better understanding and practice. Islamic jurisprudence textbooks play the role of interpreting Islamic legal matters in traditional schools in the country. They help students to understand the traditions of *Salafism* for a more natural understanding of Islamic ideologies.

In contrast, with regard to the modern legal education, the education provided by the legal framework is assumed to be enough for students to enter the legal market without any further assessment.<sup>274</sup>

The modern Sharia education witnessed working within the framework of modern philosophy and the concept of the theory of purposeful goal-seeking. The new method benefits from systems philosophy's critique of both modernism and postmodernism, to critique the Islamic versions of modernism and to re-interpret the philosophy of piecemeal analysts.<sup>275</sup>

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<sup>274</sup> *Supra.*, Baamir, note 206

<sup>275</sup> Jasser Auda, *Maqasid al-Shariah as philosophy of Islamic law: a systems approach*. International Institute of Islamic Thought (IIIT) (2008) at 29

The Saudi educational system itself plays a significant role in the trends of teaching methods within the Sharia institutes. The lecturing manner is dominated as an educational philosophy in the State, while it is integrated manner to relate to the skills acquired from the aspects of employability.

#### **§ 3.1.2.4 The Early Developments (1970-1979)**

In response to the constant changes in national legislation and the State, this period lacked official academic legal programs being launched in educational reform in the country. The State was cognizant that the most important fact that for a country to be a state of law it had to provide sound legal education. So, the government assigned a specific agency the task of providing legal education for public schools.

In early 1970, a modern form of legal education was gradually entering into the Kingdom through a government institution when the Institute of Public Administration (IPA), Law Department opened the first academic programs in law. Although the IPA is not considered to be an official university,<sup>276</sup> it did provide both academic and non-academic services to other agencies and the public as a whole. Despite this, the Institute offered a post-graduate diploma

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<sup>276</sup> *Supra.*, Al-Jarbou, note 20, at 213

program in Saudi law to grad students which focused on the modern legal theories, and the legislation and regulations enacted by the government rather than on the legal system *per se*.

The legal diploma program at the IPA has aimed to prepare the candidates who hold bachelor's degree in Sharia from any Sharia college or department or Judiciary Department for further learning using a sound scientific methodology. It was done to increase the efficiency and sensitization of public officials to be able to assume their responsibilities and use their ability in a manner that raises the level of management and supports the foundations of national economic development. The program provides a curriculum related improving skills of legal analysis and methods to enable the student to address national and international legislation, disputes and other legal matters.

As previously mentioned, the Kingdom has adopted the idea of the integrating Saudi legal system based on the Islamic heritage with Western legal concepts. It was inspired by Egyptian legal concepts which had been the conduit for the reception of French legal principles. As a liberal school in the State, IPA took a thoughtful approach in the method of legal education considering both modern and ancient sources to be relevant in currently evolving legal matters based on the fact that they had useful historical context. Additionally, the educational sources of this program embraced textbooks and the written materials from international legal studies, specifically from Egypt and France which were not previously known in many Sharia schools.

It was the first time a program was made available for Saudis to earn a law degree from a national institution that graduates qualified lawyers to enter the local legal market. Before Saudi

Arabia became a country, it lacked any legal academic program that supplied students with minimum knowledge of necessary rules and regulations of the country and the ability to face numerous decision-making challenges in solving legal conflicts.

The program opened doors for law students to study the Civil Code and prepare the graduates to practice law in the country alongside citizens who hold a foreign law degrees. For many years, the Law Department at IPA followed the same approach when providing a comprehensive study of law in substantive areas using the integration of French and the Egyptian legislation and jurisprudence as legal materials in teaching. It was this that made the IPA the earliest school to offer a legal education and begin to supply legal practitioners who already had training as Islamic Sharia graduates.

The most important plan of the IPA legal diploma program is the policy of admission, which requires that an applicant of the legal program must hold a bachelor's degree in Sharia from the any Sharia college or department or Judiciary Department, with a GPA of not less than 2.5 of 4, or 3.5 of 5. Furthermore, the applicant cannot be older than the age forty years and must pass personal interview. The two years of study are divided into four semesters each being seventeen weeks long.<sup>277</sup> The program targets graduate of Sharia facilities to repair the deficit in their legal education and prepare them for the legal market.

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<sup>277</sup> The IPA. Programs information *See* <https://webservices.ipa.edu.sa/Daleel/ProgInfo.aspx> (Last visited at December 14, 2017)

In the 1970s, the Saudi education system was deeply reliant on foreign educators. That and the need to create adequate legal education moved the State to direct educators to develop and adopt a robust legal curriculum. In that era, most faculties were from Egypt and had contributed to accreditation of the Egyptian teaching method and curriculum in the legal education with demonstrations of Egyptian instructional style and standards of teaching law in the classrooms. The law textbooks were written by Egyptian scholars and essential skill of objectives classes followed Egyptian perspective since the first legal program launched at the IPA.

The curriculum of the IPA law diploma program has focused on general legal areas, and the academic methodology is the most common method used in numerous law colleges in other countries of the world. The curriculum has 69 required credits, and two credits of training; all credits are cores; “table 3.5” shows the details of the study plan for the Law Studies program at the Institute of Public Administration.<sup>278</sup> It was the first time a Saudi institution taught law doctrines, statutory law, the justice system, and analysis. The curriculum has included the usual courses taught in any modern law college, such as Administrative Law, Civil Law, Criminal Law, Procedure, Business Law, et al. With this tiresome average course load, students sacrifice profound assimilation for superficial memorization, though all parties seem content with this performance due to the absence of any system of revision or evaluation.<sup>279</sup>

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<sup>278</sup> *The IPA Preparatory Programs Manual* See <https://webservices.ipa.edu.sa/Daleel/ProgInfo.aspx> (Last visited at December 14, 2017)

<sup>279</sup> Mohamed Serag, *Legal Education in Egypt*, 43 S. Tex. L. Rev., 615 (2002) at 622

Table 3.5 The Current IPA - Sector of Law: Study Plan for the Law Studies Program

First Semester		Third Semester	
Course Name	Hrs.	Course Name	Hrs.
Introduction to Law	3	Criminal Procedures	3
Principles of Commercial Law	3	Securities [Commercial Papers	4
General Criminal Law	4	and Contracts]	
Judicial Systematization	2	Civil Contracts	3
Principles of Administrative Law	3	Labor and Social Security Law	3
Constitutional Law	3	International Private Law	2
		Legal Research Methods	3
		Origins of Legal Drafting	2
<b>Total</b>	<b>18</b>	<b>Total</b>	<b>20</b>
Second Semester		Fourth Semester	
Course Name	Hrs.	Course Name	Hrs.
Sources of Obligations and Provisions	4	In Kind Rights	2
Corporate and Bankruptcy	3	Administrative Judicial	3
Specific Criminal Law	3	International Trade	2
Administrative Law	3	Legal pleadings and proving	3
Industrial and Commercial Property Rights	2	Training	2
Public International Law	2		
Public Finance	2		
<b>Total</b>	<b>19</b>	<b>Total</b>	<b>12</b>

Chart 3.6 Required Classes of Legal Program at IPA

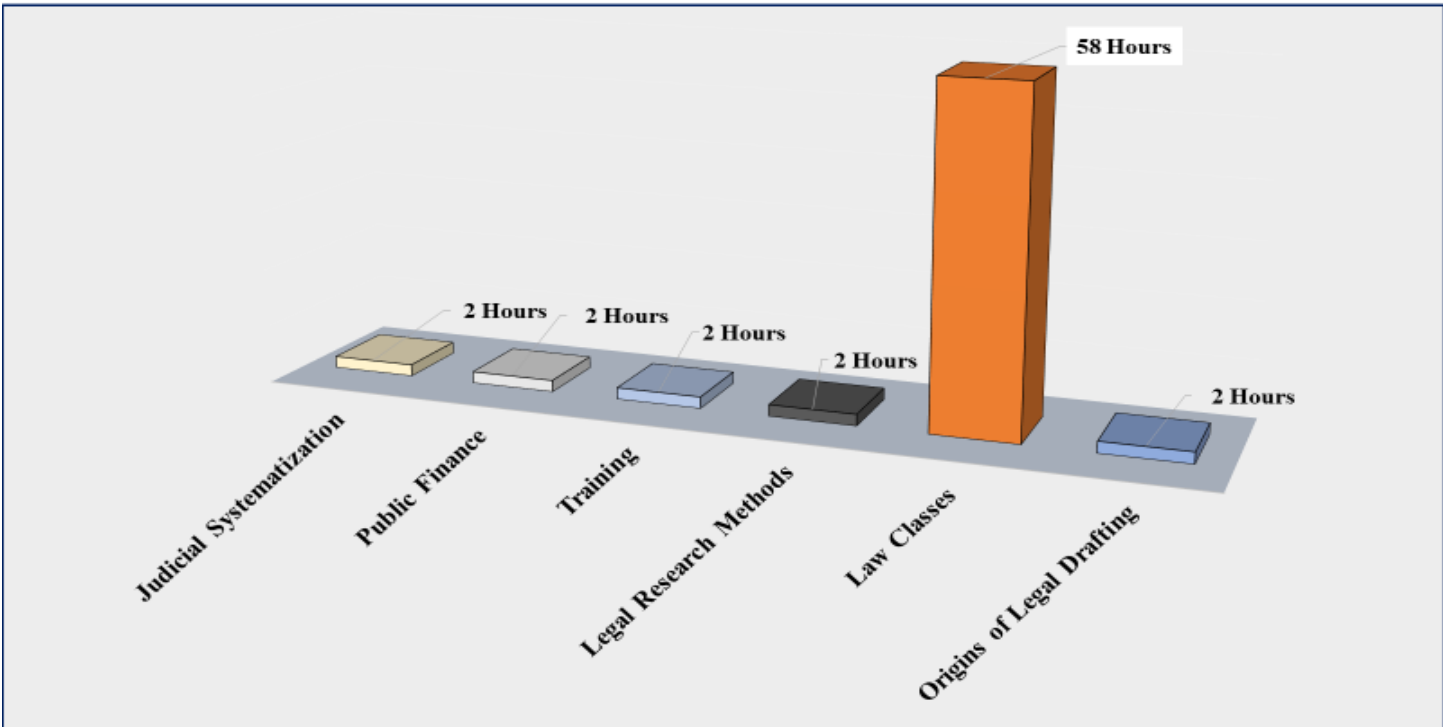


Table 3.7 Courses & Credit Hours Required at IPA

COURSE	HOURS REQUIRED PER	CENTAGE
Law Courses	58-Credit hours required	85%
Judicial Systematization	2-Credit hours required	3%
Legal Research Methods	3-Credit required	4%
Public Finance	2-Credit hours required	3%
Origins of Legal Drafting	2-Credit hours required	3%
Training	2-Credit hours required	3%
<b>TOTAL</b>	<b>69 CREDITS</b>	<b>100%</b>



The nucleus of legal education in the Kingdom was founded by the IPA institute, which was established as the first composition of the modern academic legal society in the State. Nevertheless, the Saudi legal education system does not go further to consistently evolve the educational format and curriculum of law programs in academic institutions across the State.

### **§ 3.1.2.5 The Era of Forming Legal Education (1980-2006)**

In 1980, the first modern academic law program was officially introduced by the Department of Law at the College of Administrative Sciences, King Saud University (KSU).<sup>280</sup> The curriculum for the four-year, Bachelor of Law program provided students with basic understanding of the fundamentals of legal doctrines, theories, and Islamic principles. The length of study is four years, with the degree requirements included for the completion of a specified number of hours (128). As the program flourished and gained prominence, it was added to the Humanities Colleges and the Law and Political Sciences College.<sup>281</sup>

As the first and oldest law program in the Kingdom, to offer a comprehensive education in Saudi Arabian law, it paved the way for numerous colleges and universities throughout the country. Later then, the legal education was expanded to other public universities: the King Abdulaziz University (KAU) announced its academic law program in 1981, then, few years later,

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<sup>280</sup> See the KSU, *the Humanities Colleges and the Law and Political Sciences College*  
<http://clps.ksu.edu.sa/ar/edu5>

<sup>281</sup> See <http://ksu.edu.sa/colleges/HumanitiesColleges/Pages/default.aspx>

the King Faisal University (KFU) was the third public institution that launched its law program in 1984.

At the KSU-Law program, while remaining cognizant of the precepts of Sharia, the curriculum of law schools in the Kingdom provides legal instruction which includes typical courses taught in any modern law college, such as in Introduction to Law Studying, the History of Legal Systems, Civil Law, Criminal Law, Procedure, Commercial Law, Constitutional Law, and Administrative Law. The law schools' curriculums additionally include Islamic jurisprudence that is Sharia compliant, while still instructing students in civil law, criminal law, and business law, which qualify graduates to work in civil or criminal law. For instance, the present study plan of the Law School at King Saudi University divides into two prime sections which are the Public Law and Private Law. Also, the program curriculum involves civil law curriculums divided into several courses relating to contracts, penal law, business law, property, civil transactions, the theory of rights, sources of obligation, international law, *et al.* Additionally, the curriculum includes coursework relevant under the Islamic legal system, which includes Family Law, Inheritance, Islamic Jurisprudence, Foundations of Islamic Jurisprudence, *et al.*<sup>282</sup> There are specific groups of courses relative to Islamic jurisprudence, and modern law, which, while still instructing students in civil and criminal law, also qualifies graduates to work in both areas of law. In practical practice in the Kingdom, the legal education provided by these institutions is supposed to be enough for students to enter the legal market without any additional evaluations or exams.

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<sup>282</sup> The KSU, *Study Plan*. See <https://clps.ksu.edu.sa/ar/node/298> (Last visited on December 21, 2017)

For a student to be able to enter the legal studies in the curricula of Sharia education, the Supreme Committee of Education Policy in the Kingdom was aware that education and preparation structures of legal professionals must be combined with knowledge of the Sharia studies and legal aspects of the system, in line with the constitutional system in the Kingdom. The Committee on Article (146) of the Education Document issued in 1970 recommended that the Faculty of Sharia studies create academic programs to graduate legal specialists to meet the needs of the country. Article (IV) of the Council of Ministers' Decree No. (167) dated 14 Ramadan 1401 A.H. (July 15, 1981, A.D) states that "[t]he law should be taught in Sharia colleges," and Article (V) of this Decree formed "a committee to study the implementation of the resolution and submit its recommendations thereon." Since that date, the implementation of the recommendations was delayed until 2008, a resolution was approved that launched the first law department in the Faculty of Sharia, which is in accordance with the decision of the Council of Higher Education No. (50) dated 10 Rajab 1429 A.H., approving the establishment of a department of law in the College of Sharia at the University of Taif. The study plan of this program includes 74 credits hours of law out of 143 which is the total program credit hours.<sup>283</sup> This program appears to be insufficient to prepare students for the legal market compared to other law programs in the State, in part because the study plan of law program at the King Saud University includes 99 credits hours of law out of the total 151 hours.<sup>284</sup>

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<sup>283</sup> *Supra.*, Al-Jarbou, note 270

<sup>284</sup> *Supra.*, note 267. See [https://clps.ksu.edu.sa/sites/clps.ksu.edu.sa/files/attach/hqwq\\_bklwryws\\_tdy11.pdf](https://clps.ksu.edu.sa/sites/clps.ksu.edu.sa/files/attach/hqwq_bklwryws_tdy11.pdf) (Last visited on December 30, 2017)

### **§ 3.1.2.6 Flourishing Years of Legal Education (2006-to present)**

In recent years, the government of Saudi Arabia has consistently endeavored to elevate the standards of general education in the Kingdom, while expanding specialized programs such as Law, Medicine, Dentistry and many others. Furthermore, in responding to filling the demand deficit for graduates of law, the higher education institutions have actively pursued the expansion of the legal education and revised its existing programs accordingly. There is a recognition of the need for specialized legal specialists. However, the diversity in the quality of specialized programs was not as much as hoped. The preservation of the particular identity of Saudi legal education while simultaneously achieving a distinguished status among the elite law schools worldwide will require bringing generations of capable instructors to develop the legal intellect to challenge the most demanding objectives that will face the State reform plans of the legal education.

The flowering years of legal education began with the creation of the College of Law and Political Science at the King Saud University in 2006, where the initial independent law school in the State providing undergraduate course in law sciences offered a Bachelor of Laws (LL.B.) degree on graduation. The establishment of the law program dates back to 1980, while the Law Department was established in the College of Administrative Sciences at the (KSU).

This college has sought to establish itself as a leading facility in its field within the Kingdom of Saudi Arabia and beyond, through several steps that culminated in obtaining the international academic accreditation from the French academic research evaluation agency

(*Agence d'évaluation de la Recherche et de l'enseignement supérieur*) AERES. The school established a new study plan for legal education, which is taking into consideration the balance between the academic requirements for graduation of its students and the real needs of the labor market.<sup>285</sup>

Also, the college launched a Master's program in law that is in both its public and private service branches, a new course of study has been added that will only require courses without the need for a thesis.

Through decades of teaching, the department has graduated generation after generation who served their country and occupied the highest ranks in their occupations. The faculty established distinguishing academic services for students who became essential elements in the educational process, created an academic and educational environment that works to refine and develop the integrated personality of a legal professional, and developed the various departments of the college regarding curricula, teaching methods and programs provided.

The college has freely distributed throughout the Kingdom the legal and cultural knowledge it developed, and it has been eager to activate its capabilities and management expertise in all legal fields. Thus, disciplined students may now study to earn degrees in Public law and Private Law. Through the program, students learn legal logic, theoretical thinking and legal rules regarding function, content, basis, characteristics, sorts, sources, rules application and

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<sup>285</sup> The KSU, the Humanities Colleges and the Law and Political Sciences College. *see* <http://clps.ksu.edu.sa/ar/node/215> (Last visited on December 21, 2017)

problems resulting from this application. The program provides students with the concept of legal rights, their sources, the approach of using of them, and their protection.

By expanding the traditional curriculum, the law college at KSU succeeded in inculcating the concepts of legal values which were previously hidden within the curriculum. The value messages that have been delivered through legal education have beneficial effects for respect and enhancement of the rule of law in the country that has adopted a dual legal system. In general, the Saudi law schools have succeeded in adapting to make radical changes in the once held position that the legal education with the Kingdom was unprofessional and unacceptable in the legal community.

In addition, a Master's Program in Law has been developed in both its public and private branches, as well as the modernization of the Master's Program in Political Science, where a new course of study has been added that will only study courses without the need for a thesis. Moreover, students of the College benefit from the agreements and memorandums of understanding concluded by the college with many public and private entities in order to provide students with various opportunities to train and learn about the mechanisms of dealing with the labor market. The College is keen to continue to organize many training courses for its students. The College has also adopted its strategic plan (1438 / 1433H), which has been activated on the ground, which will positively reflect on all its activities.<sup>286</sup>

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<sup>286</sup> *Id.*

With King Saud University in the lead, programs like these have been implemented at other public and private colleges and universities, throughout the country. As of this writing, there are more than thirty (30) institutions of higher education in the Kingdom offering programs in all areas of the law.

### § 3.1.2.7 Legal Education Junctures

Before 1980, it was only the legal diploma program at the IPA or academic programs in Sharia education. In most Islamic countries, academic Sharia programs focus primarily on moral and religious obligations that fall outside the jurisdiction of common law within the respective countries.<sup>287</sup>

Thus, Sharia policies and constraints are classified into two broad categories: *ibada`t* (religious matters) and *muamala`t* (civil transactions).<sup>288</sup> Historically, the Saudi Sharia colleges have provided sound education on Islamic principles, theory, and jurisprudence but they are not considered to be schools of law. Whereas portions of their curriculum include courses that rely primarily on established books and manuals of Muslim *fiqh*, the Saudi Sharia colleges are now beginning to offer advanced academic programs derived from traditional historical sources.

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<sup>287</sup> *Supra.*, Kamali, note 258, at. 17

<sup>288</sup> *Id.*, at. 17

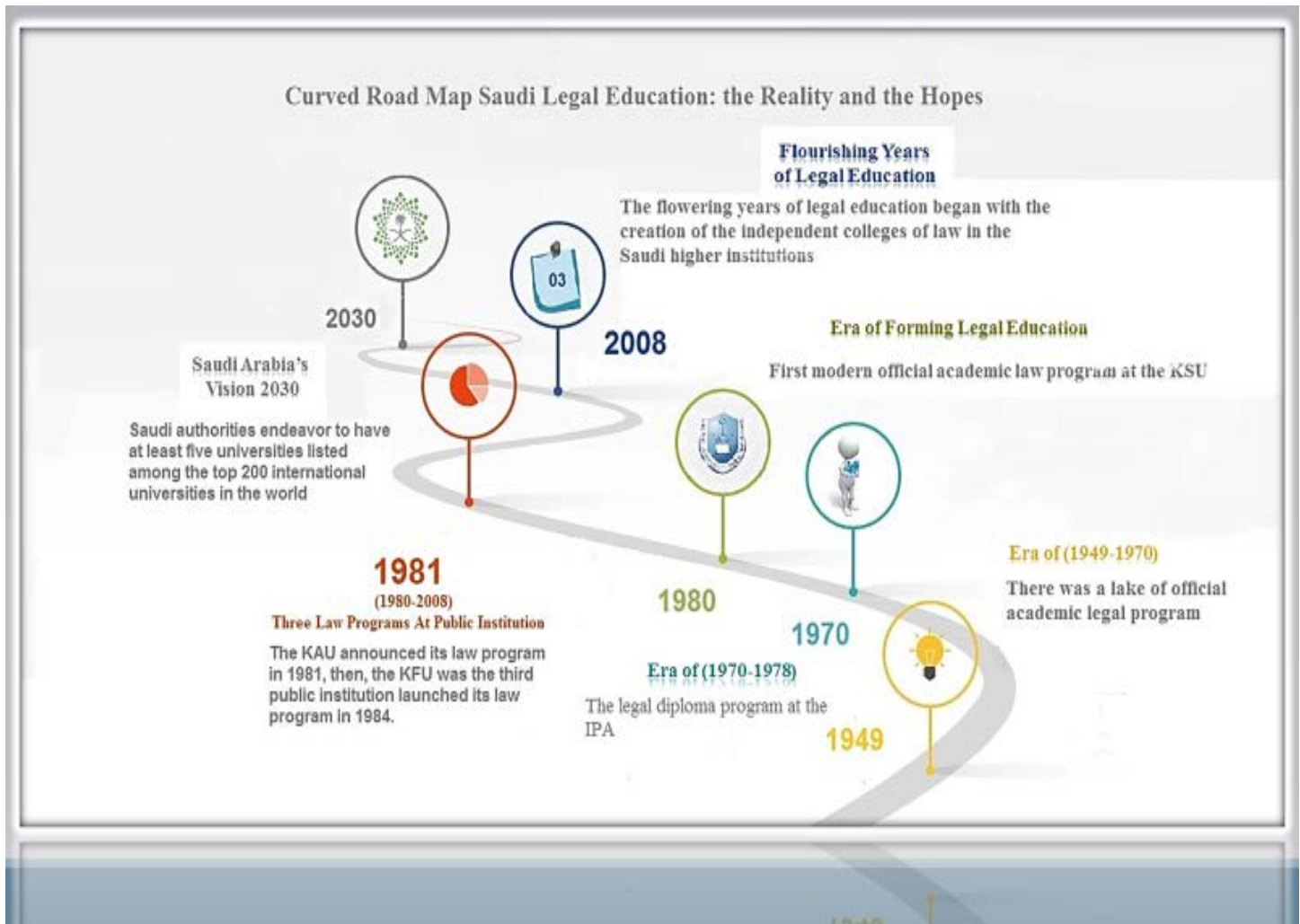
Accordingly, the Saudi Arabian legal profession, and moreover, its approach to legal education has progressed beyond many critical junctures. Where once learned Islamic teachers in Sharia colleges led the country in teaching only Islamic theory and jurisprudence new trends of legal knowledge and practice are emerging. Otherwise, the modern law curriculum is designed to train students in the tenets and virtues of viable historical law as well as instructing them in modern laws.

The Institute of Public Administration (IPA) of Saudi Arabia was established to educate and increase the proficiency of public employees within the Kingdom. Its goal was, and remains to elevate the role of these employees to substantial support administration efforts to improve national economic development. When respected academics and government officials at the IPA saw a developing need for modernization of the legal system evolving out of their decisions, they determined, they determined that the legal system would benefit from conjoined facilities to teach Saudi Arabian law.

The decisions of the IPA and their subsequent actions were a tremendous leap into the 21<sup>st</sup> century.



Chart 3.8 Curved Road Map Saudi Arabian Legal Education: The Reality and The Hopes



### § 3.1.2.8 The Transformation of Legal Education

Once the King Saud University (KSU) established itself as the prototype of the Saudi legal education system in the Kingdom, other colleges and universities began similar programs. Initially, all the schools produced minimal numbers of graduates even when their educations

were supplemented by study abroad.<sup>289</sup> Since that time the number of graduates' students has steadily increased providing qualified licensed attorneys who enter practice within the Kingdom. However, to date, there remain an insufficient number of skilled practitioners to meet the demands of the legal profession. The report of the Saudi Bar Association for its activities and activities during the third quarter of the fiscal year 2017, shows that the number of licensed lawyers in the Kingdom reached 4620 lawyers, and of whom 185 were women.<sup>290</sup> The current total of population of Saudi Arabia according to the results of population characteristics for 2017 is estimated (32,552,336),<sup>291</sup> which means that there is one lawyer for every 7,046 people in our community.

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<sup>289</sup> Joseph L. Brand, *Aspects of Saudi Arabian law and practice*. BC Int'l & Comp. L. Rev., 9:1 (1986) at 8

<sup>290</sup> See the Saudi Bar Association, <https://sba.gov.sa/en/annual-reports/> (Last visited on March 12, 2018)

<sup>291</sup> See General Authority for statistics. Available at <https://www.stats.gov.sa/en/indicators/1> Last visited on March 12, 2018)

Chart 3.9 Attorneys as a % of the Saudi Population

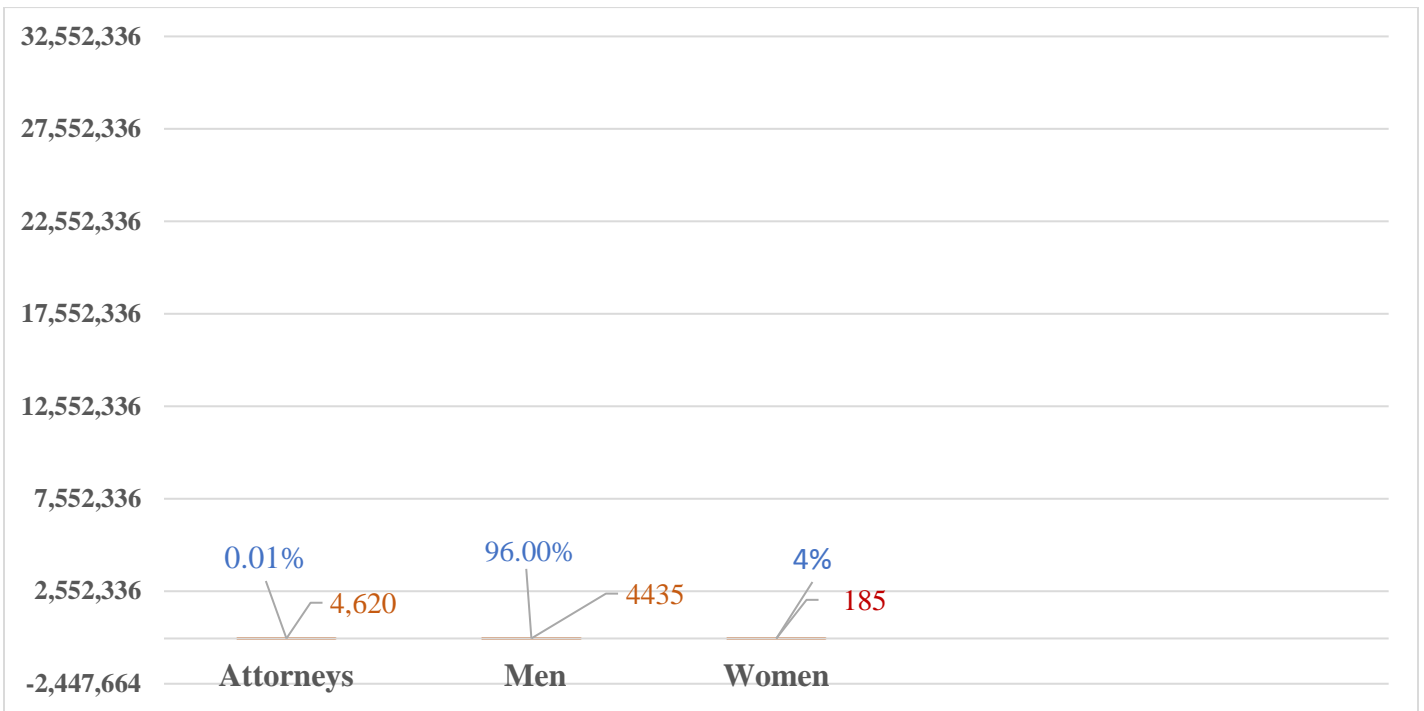


Chart 3.10 Attorneys as a % of the Saudi Population

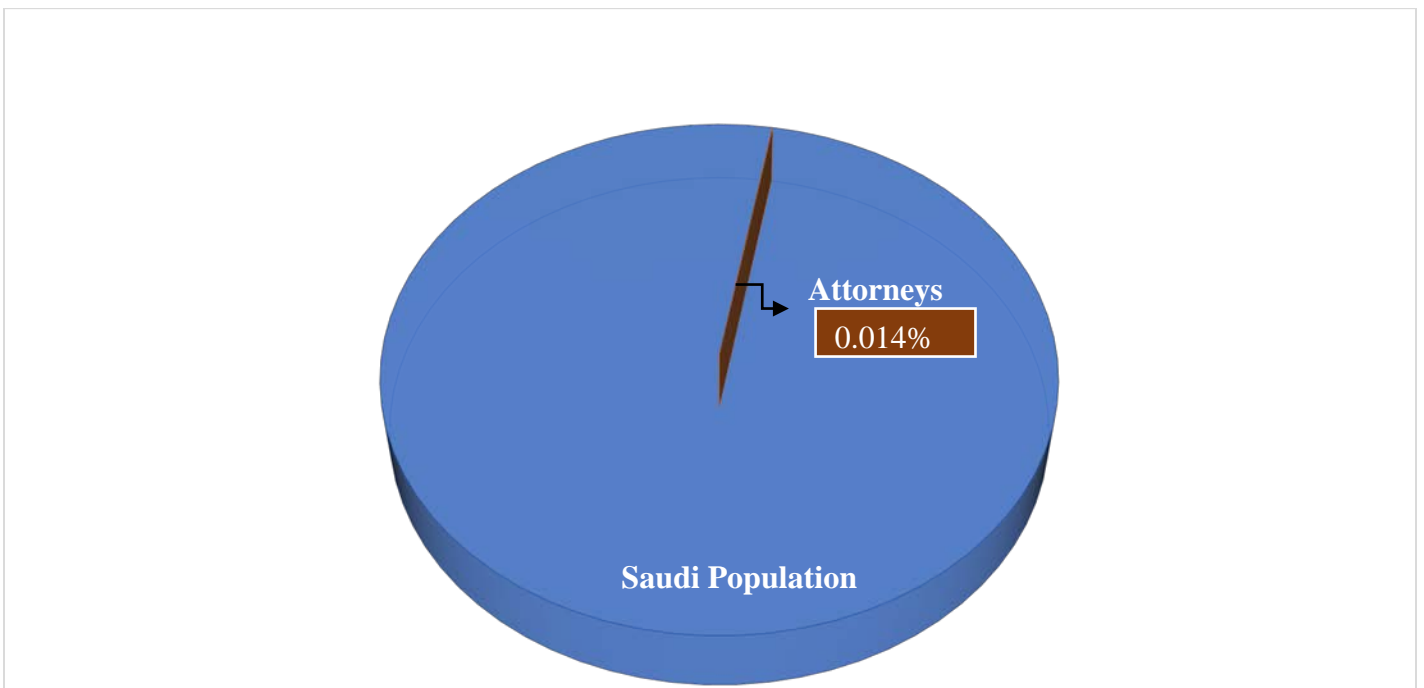
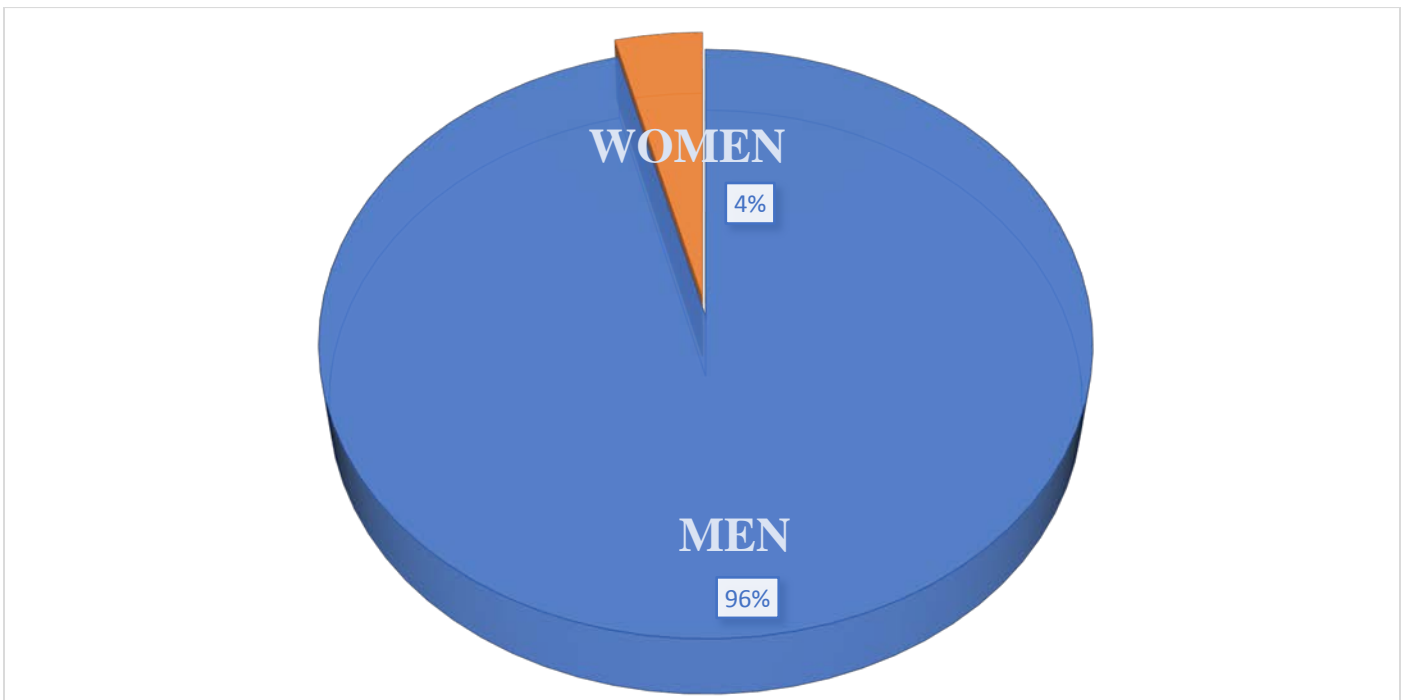


Chart 3.11 Men Vs. Women Lawyers



Since the birth of the Kingdom of Saudi Arabia, the Kingdom and its people have undergone immensely profound transformations that have affected everyday life. The discovery of oil changed the economics that turned a struggling Kingdom into a world power. The new wealth brought better housing, medicine, transportation and communications along with free schooling for every citizen. What it did not bring was a sufficient change in traditional attitudes about the law; Sharia was still respected on the land and for setting the bounds, ethos and Islamic provisions.

As of this date, there remains a considerable active opposition to the modernization of the Law in the Kingdom. This resistance best described as Traditional versus Progressive has impeded the development of existing laws efficiently.<sup>292</sup>

Since the evolution of the legal education system within the Kingdom is associated with the improvement and progression of the Legal System itself, and its advocacy by the professional community, conflicts between Traditionalist and Progressive factions constitute a significant cause for continued concern.

Government sponsored Legal Education in the Kingdom is a comparatively new, and as yet unproven field that has, to date, demonstrated itself to be insufficient to the aspirations of the legal professionals who have supported it. In the three decades since the establishment of the first Bachelor of Laws (LL.B.) program, there has been minimally measurable progress made in modernization. The schools have shown no substantiative improvements in content, curriculum, and academic standards. While the Kingdom continues to progress with modernization, the Law schools appear to adhere to an archaic form of education known as “indoctrination methodology.” The result of this conflict becomes evident in the quality of the graduates are unmotivated, inadequately trained and equipped to practice law. In a sense, it fosters failure by not simulating the students’ minds to think critically and functions when practicing law.

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<sup>292</sup> *Supra.*, Al-Jarbou, note 20. There are no existing of the official Traditional and Progressive parties within the Kingdom; however, it indicates to a way of thinking or behaving of the people.

There is a direct correlation between the apparent malaise of law students and the teaching of legal ethics and professional responsibility. In the United States, when suggestions were sought to address this malaise, numerous American law school professionals proposed emphasis placed on curricular inadequacies be the path of least resistance rather than addressing specific issues in need of improvement.<sup>293</sup> In the United States, professional educators took issue with this by identifying substantial challenges as being attempts to restructure the curriculum to include specific programs in Ethics and Accountability as mandated by a Judicial Academy in the United States.<sup>294</sup>

Saudi Arabia as a Kingdom and as a culture has been gradually taking cautious strides into the modern era; correspondingly, there has been growth in its approach to education. In the 1980s it emerged as a newer, more complex society eager to enjoy the fruit of its labors by advancing both economic and community programs designed to introduce the Kingdom, and more importantly include it on the world stage, while still retaining critical conservative values. However, this progression has not been without its detractors and obstacles from the conservatives. Unfortunately, this has caused friction and discontent<sup>295</sup> both between and within various segments of Saudi society. As a consequence, this conflict has affected the development of existing and new laws, and impeded the development of the desired diversity of academic jurisprudence programs and overall judicial system in the Kingdom.<sup>296</sup>

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<sup>293</sup> Elizabeth D. Gee and James R. Elkins, *Resistance to Legal Ethics*, J. Legal Prof. 12:29 (1987) at 31

<sup>294</sup> Ai Nhan Ho, "Reforming the Vietnamese Legal Education system: possibilities and perspective." Int'l J. Clinical Legal Educ. 23 (2016) at 49

<sup>295</sup> *Id.* at 48

<sup>296</sup> *Supra* Ayoub, note 20, at 192

Nowhere is this conflict more evident than in the halls of academia where educational experts might challenge, purposefully or not, the tenets of the conservatives by association and comparison of instructional styles. The unfortunate nature of this situation is that when one side of the argument devalues the other, there is an echo effect; this applies in particular to the harmful devaluation of the traditional style.<sup>297</sup>

The strength and longevity of the Saudi legal and legal education systems are directly related to the ability of educators and legal experts to establish and maintain a viable, and more importantly, flexible curriculum compatible with the objectives of the legal community, and requirements of the Kingdom.

No longer a matter of selective interpretation of archaic laws, the modern legal education system must teach qualified students the fundamental precepts of the various areas of civil law required for the advancement of the Kingdom. Curriculum development must adhere to a consistently incremental instructional program with adaptable teaching methodologies that will set a path to achievement for students. The final successful accomplishment of this goal can be attained only with the cooperation and contribution of conservative and progressive factions.

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<sup>297</sup> Susan Sturm, and Lani Guinier. *The law school matrix: Reforming legal education in a culture of competition and conformity*, Vand. L. Rev. 60 (2007) at 515.

Experts in legal education now face the challenge of determining how best to realize the ultimate goal of a unified Saudi Arabian system of jurisprudence with compatible modern laws and highly qualified Saudi attorneys.

The modern educational concept supposes to be based on the pledges to create a balance in the training that provides, in theory, and legal doctrine, with training in the growth of skills and legal professional identity in the State. The educational experts are aware that students need to understand the vast revolution in the business world and the qualifications of performance required for businesses to be successful and operate within the law in the twenty-first century. The law schools need to take advantage of the industrial revolution to set in motion innovation in the compelling new training methodologies for students. In the view of international experts, law schools need to innovate the product they are offering to convince college graduates that a law degree is worth the investment. They also need to distinguish themselves from competitors in order to attract legal employers in a persistently soft job market.<sup>298</sup>

Solidarity, teamwork, coordination, collaboration, fellowship, and joint effort are all synonyms of cooperation; the key to unlocking the doors of the legal future of the Kingdom. Conservatives and modernists must cooperate to establish at least minimal standards of legal education. The era of only creating teaching students to become legal theorists, philosophers, or

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<sup>298</sup> *Supra.*, Cassidy, note 252, at 428, 442



academics must come to an end. A new era of training certified legal practitioners must begin. No longer can there be a disconnect between theoretical and practical law education.<sup>299</sup>

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<sup>299</sup> Larry E. Ribstein, *Practicing Theory: Legal education system for the Twenty-First Century*, Iowa Law Rev. Vol. 96, 1649-1676 (2011)

## SECTION II

### § 3.2 Legal Education Practice Today

#### § 3.2.1 The Present Model Legal Education

The Kingdom authorities realized the country needs to train students either to practice law or to engage in serious legal education and to generate legal professionals capable of engaging in non-governmental organizations, private firms, and government legal departments. The government has realized there has been confusion in the legal education programs in the Kingdom because the legal system in the country combines more than one system. The Saudi legal system combines the rules that are derived from the religious precepts of Islam and modern laws and regulations. The Kingdom of Saudi Arabia is attempting to harmonize the teachings of the religion with economic development and industrialization by evolving a form of government and a legal system that are capable of meeting the needs of modern society.<sup>300</sup> Saudi Arabia, which maintained Sharia as the primary source of its constitutional and legal systems, has more recently adopted some of the power structures and legal concepts of modern nation states.<sup>301</sup> The promulgation of legislative decrees supplement the Sharia to meet the regulatory requirements of the developing society. The government is trying to achieve an acceptable balance between Islamic tradition and modern society.<sup>302</sup> Thus, there has been a tremendous increase in legislative

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<sup>300</sup> Bryant W. Seaman, *Islamic Law and Modern Government: Saudi Arabia Supplements the Shari'a to Regulate Development*, 18 Colum. J. Transnat'l L. 413 (1979) at 417

<sup>301</sup> Abdullahi A. An-Na'im, *Civil Rights in the Islamic Constitutional Tradition: Shared Ideals and Divergent Regimes*, 25 J. MARSHALL L. REV. 267- 284 (1991)

<sup>302</sup> *Supra.*, Seaman, note 300, at 416

and regulatory activity from lawmakers, signaling the need to better prepare law students for a practice that increasingly involves enacted law.<sup>303</sup>

The kingdom has needed to fill the legislative vacuum that was existed, where Sharia did not make mechanisms available for shaping professional business entities appropriate for contemporary some similarities between the two systems.<sup>304</sup>

Joseph L. Brand explained the influence of Western laws on Saudi's regulations. He stated that: "Since Britain and not France was the major modern influence in the Gulf, however, it might seem reasonable that Saudi Arabia would adopt the common law instead of the civil law as the model for modern commerce. There are three reasons why this did not occur. First, the common law came too late to influence the Islamic system in its formative stages. Second, when it did come, it was a stranger; it was difficult for Muslim law-makers are accustomed to using treatises to find the rule of law revealed in a string of cases. Finally, the major Western commercial influence in the region, the British, made the task more difficult by never translating the common law into Arabic. Insofar as the common law has had any influence on current regulations in Saudi Arabia, that influence has come essentially in the form of craftsmanship. The income tax regulations, for instance, were drafted by U.S. tax lawyers."<sup>305</sup>

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<sup>303</sup> David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, U. Kan. L. Rev., 52:105 (2003)

<sup>304</sup> *Supra.*, Brand, note 289

<sup>305</sup> *Id.*

In particular, and in contrast to the critics who view doctrinal learning as inconsistent with the emphasis on law in law school serves an essential.<sup>306</sup> Law schools emphasized the demand for students to identify the law and to apply it to factual scenarios, and by assessing whether students have mastered the ability to understand and apply the law; doctrinal courses reinforce the centrality of the law to legal work.<sup>307</sup> During the past years creative scholarly and pedagogical approaches have developed that can contribute to both the intellectual sophistication and the practical utility of legal education.<sup>308</sup>

### § 3.2.2 The Law Schools' Core Curriculum

Legal education is influenced by many matters that are different from society to society. There is a difference between the curriculum-in-action and the curriculum-on-the-books. Behind the formal curriculum, there is a hidden curriculum consisting of a set of very powerful although usually unarticulated messages about substantive law, the definition of professional role and expertise, and the possibilities of and constraints upon human freedom.<sup>309</sup>

Law schools fail to produce graduates who are qualified for the legal profession because of the common power of hidden curricula rooted in religion and the cultural demands of law students. Social and cultural change must be an influence in establishing the law school

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<sup>306</sup> Alice Woolley, *Legal education reform and the good lawyer*, *Alta. L. Rev.* 51, 801 (2013)

<sup>307</sup> *Id.*, at 2

<sup>308</sup> Paul J. Spiegelman, *Integrating Doctrine, Theory and Practice in the Law School Curriculum: The Logic of Jake's Ladder in the Context of Amy's Web*, *Journal of Legal Education* 38.1/2, 243-270 (1988)

<sup>309</sup> Karl E. Klare, *The Law-School Curriculum in the 1980s: What's Left?*, *Journal of Legal Education* 32.3, 336-343 (1982)

curriculum, but these must be moderated by continued commitment to social and religious features that have endured through change.<sup>310</sup>

There is, of course, a healthy relationship between a legal system, a law school doctrine, a legal education system, and a law school curriculum needs. Doctrinal legal teaching shaped the legal education system in the country; moreover, the doctrine of the law school usually builds the form of the law curriculum. The very structure of the law-school curriculum, then, is the notion that the core of private property and private ordering arrangements constitute of the lawyering identity.<sup>311</sup>

The doctrine of Saudi legal education is in a continuation of its historical evolution over the past years and shows the compliance to the Saudi legal system itself. Additionally, the structure of study plans, law courses, and curriculum of law schools in the Kingdom show that a significant degree of confusion exists in the legal education model today. The description and analysis of this confusion require examining both sides of the practical and theoretical method of teaching. The examination of the legal curriculum leads to understanding the role of doctrine in the legal education system, and legal theoreticians and practitioners can trace the legal education model through the theoretical and the application of the law in the system.

At the same time the practice of law in the Kingdom has been revolutionized, legal education in the Kingdom has been primarily unchanged under the pressure of immobility in the

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<sup>310</sup> John D. Whyte, *Finding Reality in Legal Education*, Sask. L. Rev. 76: 95 (2013) at 102

<sup>311</sup> *Supra.*, Cassidy, note 252, at 339

moving toward more creative learning approaches. In the Kingdom, the legal education has become the inheritance of traditional sluggish norm slow to embrace development, and often hostile to any thought that would touch or change it.<sup>312</sup> Saudi students often sit in lecture rooms where instructors deliver their courses without interacting much with the students. From this perspective, much of the call for reform in legal education can be seen as a conflict between theorists, who want to move toward more sophisticated abstraction, and practice-oriented teachers, who want to move toward more concrete learning.<sup>313</sup>

In Saudi Arabia, the legal education programs are a part of higher organizations like any other academic departments or academic colleges hosted by universities, and yet, they have had none of the self-governing of the official public law schools setting over the country. Furthermore, the law faculties and departments have depended on its universities that belong to it financially and administratively, and, the universities had hosted mainly academic staff and employees.

The King Saud University (KSU) was the first university had held the academic law program in the Kingdom in 1980, which was launched in the law department linked to the College of Administrative Sciences at the KSU. So, since that time, Saudis have been able to earn a Bachelor of Laws (LL.B.) Also, the law department at the KSU had adopted the lecture style as a technique of teaching in the law classroom which remains the form of the program

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<sup>312</sup> Dr. Khalid Bin Othman Al-Omair, *law in Saudi Arabia between reality and expectations* (1999) [Arabic] this is an abbreviated study that had represented in the Scientific Forum (prospects of cooperation between departments of laws in Saudi Arabia). Available at

<http://www.mohamoon.com/montada/Default.aspx?Action=Display&ID=112373&Type=3>

<sup>313</sup> *Supra.*, Cassidy, note 252, at 245

from of the program its launch until the present. The KSU academic law program has provided a cognitive knowledge and skills in the field of law through the four-year course of study. Then, the KSU has spread its experience to the other institutions of higher education in the Kingdom.

Over the years movement in Saudi legal education has seen little progress and change. The law faculties have retained the lecturing style, a staple of the traditional law course in the law programs in the Kingdom. The use of classroom lecturing is more profoundly affected in Saudi legal education, and then, the professional orientation has influenced by the theoretical method with an understanding of the context in which law operates and the competition of the law graduates. The theoretical lecture style has left the student no reason to be actively engaged throughout the lectures. Training and skill development in doctrinal analysis does have an appropriate place in the law-school curriculum, however.<sup>314</sup>

This situation should lead the official's Saudi law schools to review their goals and pedagogies associated with legal education and think seriously and comprehensively about reforming the legal education to build a capacity to deal adress the challenges in law today. Success reform of legal education promoting academic excellence, social relevance, and professional competence will enhance the level of economic development and globalization in the Kingdom.

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<sup>314</sup> *Id.*, at 339

The first department devoted strictly to the teaching of law in a university was the KSU program. Formal law program at the King Saudi University was the first successful legal education at the College of Administrative Sciences. From 1980 to 2006, the Kingdom witnessed movement in the legal education gradually; during this period just three public universities offered the LL.B. degree for residents. Obviously, the King Saud University (KSU), which it took the banner of legal education and the starting of the first academic law program in the Kingdom since 1980. Later then, the legal education in the country was expanded to the King Abdulaziz University (KAU) in 1981 and the King Faisal University (KFU) in 1984.

In 2006, Saudi legal education witnessed the launching of the first law college in the public universities under the name of Law and Political Science. Again, the King Saud University took the lead in establishing the first law college in the country. Today, Saudi Arabia has over thirty law programs in the Saudi higher education institutions some of which are legal programs hosted in public institutions and others in private institutions.<sup>315</sup>

Historically, across the entire breadth of the Arabic region, Arab educational systems were influenced by Egyptian academics.<sup>316</sup> The teaching methods, the setting of the classroom, the administrative hierarchy of the law school, and the overall organization of the formal curriculum were simulated the Egyptian style in the most counties in the Arab world. Saudi Arabia's first educational system was modeled on Egypt's system, which, in turn, was heavily

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<sup>315</sup> The number of colleges, institutes and deanships of the education in higher education institutions in the kingdom of Saudi Arabia. See the official website of the Saudi Ministry of Education Available at: <http://education.stateuniversity.com/pages/1302/Saudi-Arabia-EDUCATIONAL-SYSTEM-OVERVIEW.html>

<sup>316</sup> STEPHEN A. ROSENBAUM, AND MUTAZ M. QAFISHEH, *EXPERIMENTAL LEGAL EDUCATION IN A GLOBALIZED WORLD*, CAMBRIDGE SCHOLARS PUBLISHING (2016) at 108. Available at: [http://works.bepress.com/stephen\\_rosenbaum/37/](http://works.bepress.com/stephen_rosenbaum/37/)



influenced by the French educational model. Saudi Arabia's educational system was designed to observe the teachings of Islam, disseminate knowledge, and construct schools.<sup>317</sup>

In legal education, also the Arabic countries had imitated the educational manner of Egypt which had followed the French model. Many Egyptian legal scholars looked to France and received their advanced degrees in Paris, then returned home to enrich the faculties of Egyptian universities until, today, Egyptian law faculties attract students from all the Arab countries who, in turn, return to enrich their countries with a French-inspired legal tradition.<sup>318</sup> After that, the Egyptians scholars spread to the rest of the Arabic region. Typically, in the Kingdom, the legal education system for a Bachelor of Laws (LL.B.) follows the Egyptian model. Thus, the majority of the Saudi legal codes have been inspired by the French system and consisted of the work of experts and professors from neighboring countries, in particular, Egyptian scholars. For these circumstances, the legal materials of Saudi law academic programs most were founded by Egyptian professors.

Since the 1980s, the Saudi legal curriculum design uses theoretical techniques for teaching the law more than a practical style. Legal practitioners seek the learning method that ensures greatest benefit in the practice of law, and substantial knowledge resources, and continuing legal education. Especially, lawyers would like a curriculum design that continues to provide access to the best conceivable of skills including knowledge in taught legal subjects. The law students need a professional and well-equipped curriculum to be able to service the

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<sup>317</sup> *Saudi Arabia - Educational System—overview*, StateUniversity.com Available at: <http://education.stateuniversity.com/pages/1302/Saudi-Arabia-EDUCATIONAL-SYSTEM-OVERVIEW.html#ixzz4ZOE3A7P9>

<sup>318</sup> *Supra.*, Hanson, note 217

requirements of society. In the Kingdom, the legal curriculum stands astoundingly unexamined compared to that of the rest of the academy.<sup>319</sup>

### § 3.2.3 Slow Integration to a New Approach to Teaching Law Students

Despite repeated calls to reform legal education over the globe and to take a new approach to keep pace with the development that is happening in the other areas of life, an LL.B. program that is a comparable reproduction of the legal education style in Egyptian universities is still applied in the Kingdom. The Egyptian approach to legal education is based on theoretical analysis. Tragically, these programs show that the legal education system itself is behind and cannot achieve the substantive objectives of the today's legal profession and its demands. The primary function of all law schools is to prepare students to be principled professional advocates for justice and the rule of law.

Under the Egyptian style, students have pursued a meaningless race for grades, and spoon-feeding prevails as they sit in the classrooms and listen to professors, memorizing often outdated textbooks or notes, and regurgitating what they learned in the exams at the end of a semester.<sup>320</sup> The curriculum comprises a single viewpoint provided by professors and lectures whose priority is content memorization, without developing critical thinking skills.<sup>321</sup> The

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<sup>319</sup> Frances Lee Ansley, *Race and the Core Curriculum in Legal Education*, 79 Cal. L. Rev. 1511-1598 (1991) at 1515

<sup>320</sup> Bechir Lamine, *Towards an Arab higher education space: international challenges and societal responsibilities: Proceedings of the Arab Regional Conference on Higher Education*, UNESCO (2010)

<sup>321</sup> *Supra*, SHEPPARD, note 247, at 109

classes consist of monologue lectures that have been adopted as a method of teaching inside law programs. In this new age of electronics, this is a failing system.

In contrast to the highly educated and experienced law professors employed in Western law schools, those in Saudi Arabia may be hired directly out of law school without having real legal experience. It is not to say Saudi teachers are not intelligent and well versed in the theoretical aspects of law; it is saying they may not have felt the drama of the courtroom or the sense of failure when losing a case. It is all a part of learning.

In general, legal teaching system within the Saudi law schools has undergone a remarkable transition to fill the gap caused by the increased demand for legal professionals in terms of quantity. However, the schools are meeting challenges of providing contemporary legal courses in their curriculum for updating, re-direct and dramatically improve them to meet the demands of growth within the legal profession itself, but there is so much more to do.

Saudi law schools are lacking in the study of evaluative methodologies for teaching law; this is, in and of itself a primary deficiency that must be addressed if the Kingdom is to grow. New instructional methods based on case law, evidentiary, problem solving and use of the Socratic methodology are only a few areas in need of improvement. When one adds to this, the lack of actual courtroom and clinical experience and the students graduate sorely unprepared.

The case method and clinical education are pedagogical and philosophical methods to provide law students experience in actual legal environs which teaches problem-solving, legal

analysis, and reasoning, legal research, factual investigation, communication, counseling, negotiating, litigation, alternative dispute resolution procedures, organization and management of legal work, and recognizing and resolving ethical dilemmas.<sup>322</sup> Unfortunately, in most study plans in the Saudi law programs have become shorter teaching legal theories and the doctrines of law, and yet, not beginning to teach how to apply them.

Legal schools in the Kingdom have had to face numerous critiques and commentaries to improve their curriculums and syllabi in their law programs and in applying more professional skills, ethics, and competencies. Of course, the prevailing approach to legal education in Saudi universities is employing the system that is opposite of what the critics call for. The law curriculum does not meet the legal skills needed by the student after graduating from the program and becoming immersed in the reality of the workplace.

The core issue concerns the expectation as regards to public interest, principally relating to educational purposes.<sup>323</sup> The efforts of the legal reformers have focused on the qualifications of the faculty of law schools and to provide current model study plans and education that is applicable at the current juncture.

In 1980, Saudi law students had taught in lecture classrooms located on campuses, but there has been some discussion on the merits of online instruction. As of this date, no determinations have been made.

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<sup>322</sup> Nina W. Tarr, *Current issues in clinical legal education*, Howard LJ., 37 (1993)

<sup>323</sup> Afida Mastura Muhammad Arif, *An analysis of copyright protection in Saudi Arabia*, International Journal of Law and Management 56.1, 38-49 (2014) at 38

An important issue is that to date, law school graduates have not been eligible to be appointed as judges in courts; but The Shura Council approved the appropriateness of studying the amendment of paragraph (d) of Article (31) of the Judicial System, to allow the law graduates to be appointed in the judiciary after passing a two-year qualification program implemented by the Supreme Jurisdiction Institute at Al-Imam Mohammad ibn Saud Islamic University or any of Sharia colleges in the Kingdom. Notwithstanding, in the present-day, the just ruling of cases requires an educational background in law because most resolutions of the legal disputes involve new regulations. However, law school graduates have served on Judicial committees and quasi-judicial committees (administrative tribunals).

#### **§ 3.2.4 Programs and Course Design**

The approach of the law programs must keep pace with today's demands and changes in the legal market. The curricula should be planned to provide knowledge, resources, and continuing legal education as well access to the best possible skills including many subjects which may look far moved from the present realities of local society. Knowledge and fitting preparation is essential for legal students because, as practitioners, they must be ready in any moment for a test of their legal knowledge and familiarity. The courses of study at law schools are formed to make students competent, capable, and as well-equipped as possible to be able to service the requirements of society. It also needs to create additional measures in the methodology to continue legal education and incentivize students to acquire additional skills.

The quality of legal education and the contribution it makes to a given society is determined by the overall nature of the provisions of legal academia within a society. In ongoing evaluations of the Saudi Arabian legal education systems, critical questions have arisen about the best methods to ensure students learn the substantive law and the best methods to prepare students to practice law. The outcome of such assessments will, hopefully, produce more efficient instructional methodologies to improve the learning experience for students.<sup>324</sup> The institutional assessment also focuses on its effectiveness in its entirety, including curricular and co-curricular programs, *e.g.*, the success of a law school in preparing graduates for legal practice.<sup>325</sup>

Law schools claim that their curricula in the Kingdom at present are designed to cover all fields of law methodically and practically. They aim to follow the development of this purpose internally and externally, linking it to the social conditions and the requirements of economic development in the context of social values in comparison with other legal systems. The law programs seek to form classes of well-trained graduates who will participate in the development of the legal consciousness in society<sup>326</sup> and have the capability to deal with the challenges in law today.

Of course, theoretically, the Saudi core and elective law school curriculums of today are designed to give students a solid base in the essential areas of law in the hope of instilling them

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<sup>324</sup> Ruth Jones, *Assessment and Legal Education: What Is Assessment, and What the Does It Have to Do with the Challenges Facing Legal Education*, 45 *McGeorge L. Rev.* 85-110 (2012)

<sup>325</sup> *Id.*, at 88

<sup>326</sup> King Saud University, *Bulletin Undergraduate Studies*, at 149., See <http://studylib.net/doc/18094624/king-saud-university-bulletin-undergraduate-studies-1> (Last visited January 2, 2018)

with knowledge and pride in their future careers as legal practitioners. However, by combining both conventional lecture methodologies with more modern instructional tools will enhance their legal education by eliminating significant portion of the more burdensome lecture— only presentations. This should include allowing student in-class opportunities to ask pertinent questions, discuss, and even debate issues under the supervision of a qualified instructor.<sup>327</sup> The importance of proper lecture presentations in the classroom must never be outweighed by a need for open discussion, which must be an integral part of the overall class presentation.

However, the lecture style had dominated Saudi law schools since the start of Diploma in Laws at the IPA in 1970. Following, the Department of Law in the KSU adopted this pedagogic style of legal education while the Bachelor of Laws (LL.B.)<sup>328</sup> program launched in the university as the first academic undergrad program in the country. Subsequently, it became the primary method in the Department of Law at the KSU and was adopted by law schools in the country as the accepted mode of teaching. The lecture method of legal education has been frozen in the solitary model since the institution of legal education in the country.

Frank argues

“[T]he same conservatism has sustained the lecture method of teaching in Europe and most other countries around the world, although the content of the books may be different. In civil law countries, the source is not so many cases but rather codes. However, the dynamic is that teachers convey information that the students receive. In the extreme version, it is rote memorization via a one-way

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<sup>327</sup> Myron Moskovitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241-245 (1992) at 242.

<sup>328</sup> The undergrad, and LL.B. Legal education models used in this paper, is adopted from the College of Law and Political at the King Saud University the first facility to offer a teaching program within the Kingdom.

transmission of knowledge. The teacher is teacher and student is a student, and there is no room for either to assume any other role.”<sup>329</sup>

A quick glance at the subjects taught in Saudi law schools shows that they include, among other things, a study of the general legal system of government in all its aspects. It also focuses on the rights and duties of individuals in society, and the organization of the relation between the individual and the state, the delimitation of expenditure and volumes of imports through the system of Zakat and other taxes, and also the relation between the states and other states and international agencies and organizations.<sup>330</sup>

### **§ 3.2.5 The Curricular Standard**

In the Kingdom, since 2004, the National Commission for Academic Accreditation and Assessment (NCAAA) is the curricular reference for Higher Education institutions throughout the country. The curriculum and study plans of Higher Education schools must comply with the Law of the Council of Higher Education and Universities,<sup>331</sup> and regulations approved by the Higher Education Council. The NCAAA was established in the Kingdom with responsibility for determining standards and criteria for academic accreditation and assessment and for postsecondary accrediting institutions and the programs they offer. The Commission is committed to a strategy of encouraging, supporting, and evaluating the quality assurance

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<sup>329</sup> Frank S. Bloch, *Global Legal Education: The Role of Clinics in Legal Education Reform*. See MUTAZ M. QAFISHEH (ED), *EXPERIMENTAL LEGAL EDUCATION IN A GLOBALIZED WORLD: THE MIDDLE EAST AND BEYOND.*, CAMBRIDGE SCHOLARS PUBLISHING (2016) at 7.

<sup>330</sup> *Supra.*, Bulletin Undergraduate Studies, note 326, at 149

<sup>331</sup> Law of the Council of Higher Education. Royal Decree No. M/8 dated 4 Jumada al-Ula 1414 H (November 1993)



processes of postsecondary institutions to ensure that excellence of learning and management of institutions meet or exceed the highest international standards.<sup>332</sup> The creation of new law schools or subject matter in existing ones is subject to the NCAAA standards, and such standards are to be met.

According to the NCAAA, institutions and the programs are equally subject to the standards of the accreditation. All rules and regulations are applied equally along with, and including aggregate assessments of the institution as a whole, and at the same time to identify organizational units within the institution where there are significant variations from the overall level of performance.<sup>333</sup> That means law schools do not have a specific set of standards or requirements that they must meet to obtain and retain NCAAA approval.

According to the Standards for Quality Assurance and Accreditation of Higher Education Programs states:

“The National Commission for Academic Accreditation & Assessment in the Kingdom of Saudi Arabia has developed a set of standards for quality assurance and accreditation of higher education institutions and programs in eleven general areas of activity.”<sup>334</sup>

1. Mission Goals and Objectives
2. Program Administration

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<sup>332</sup> HANDBOOK FOR QUALITY ASSURANCE AND ACCREDITATION PART 2, VERSION 3, MUHARRAM 1437H, OCTOBER (2015)  
*See* <http://www.ncaaa.org.sa/en/Releases/HandBookDocuments/Handbook%20Part%202.pdf> (Last visited January 2, 2018)

<sup>333</sup> *Id.*, at 20

<sup>334</sup> *Id.*,

3. Management of Program Quality Assurance
4. Learning and Teaching
5. Student Administration and Support Services
6. Learning Resources
7. Facilities and Equipment
8. Financial Planning and Management
9. Employment Processes
10. Research
11. Relationships with the Community

These standards are based on what is considered good practice in higher education throughout the world and adapted to meet the particular circumstances of higher education in the Kingdom of Saudi Arabia. The standards are described with several levels of detail.

**First**, there are general descriptions for each of the eleven significant areas of activity.

**Second**, these are broken down into sub-standards dealing with requirements within each of the major areas.

**Third**, within each of those sub-standards, there are some good practices that are carried out in good quality institutions.

**Fourth**, to evaluate the performance of the standards, a college or department offering the program should investigate whether these good practices are carried out and how well this is done.<sup>335</sup>

Consequently, to be eligible, an institution must meet minimal requirements established for a legal program, not exclusively to determine whether legal education is satisfactory and sufficient to meet the legal professional requirements. Therefore, the policy planners of law schools are involved in the balancing of some differing demands, and soliciting support, or at least tolerance, from the many different segments of society which have an interest in education.

### **§ 3.2.6 The Strategies and Metacognitive of Law School Teaching**

A required curriculum which consists of legal courses taken during four years of study does not address the criticism concerning the knowledge provided and the teaching methods. The lecture/textbook method has done nothing to enhance helping students to sharpen their minds and to think on their feet. Also, this method of education has not been helping students to express themselves, and to develop case reading skills that a practicing lawyer needs.<sup>336</sup> So, the critics of the principal model of legal education in the Kingdom have been raising not only questions of legal thought process or outdated curricula. Further, many of textbooks required for courses are written by Egyptian authors, which are no longer to be a studied as it requires the author include

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<sup>335</sup> *Id.*, at 2

<sup>336</sup> *Supra.*, Moskowitz, note 327

each unit paragraph with the Saudi legal system to be acceptable. The current law curricula do not have an actual primary focus on value-addition to engage students to be a rigorous mental analysis of the legal matters and to conduct prepared for known how to the judgment was reached.

Commitment to the continuation of the recent education approach has is high among those government officials, academics, and lawyers who are interested in legal education from. Not surprisingly, up until now, the curricula have resisted change that has been forced, upon other education fields, by influential changes in the communities, cultures, economics, and globalization. In contrast, the elite law schools worldwide apply the practical method and curriculum-in-action approach or a combination of approaches.

For example, but not limited to the American law schools, some schools have been adopting a number of teaching approaches such as the Socratic method (or case method) and clinical problem method. Nevertheless, in recent years one of the "hot" topics in legal education has been the debate over the extent to which it is desirable and possible to integrate a more practical approach into the predominantly theoretical classroom model of legal education used in most American law schools, to fill the gap between the doctrinal/rules-oriented Socratic method and the realities of the legal profession has grown in recent years.<sup>337</sup>

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<sup>337</sup> Michael H. Hoeflich, *Plus Ca Change, Plus C'est La Meme Chose: The Integration of Theory & (and) Practice in Legal Education*, 66 Temple L. Rev. 123-142 (1993) at 123

Professor Myron Moskowitz argues;

“[T]he current trend toward problem-based learning in higher education. The current trend toward problem-based learning in higher education stems in part from Dr. Benjamin Bloom's analysis and ranking of the types of learning (in ascending order of difficulty and importance): (1) knowledge, (2) comprehension, (3) application, (4) analysis, (5) synthesis, and (6) evaluation. Graduate schools of business have used the problem method for some time, calling it (ironically) the "case method." Harvard began using it in 1911. Students work on elaborate problems (called "cases") created especially for this purpose. Each case contains raw facts about a firm faced with some sort of crisis. The students study the cases at home and discuss them in large classes... [B]ut the realities of what medical students need to learn overcame these obstacles. Doctors (like lawyers) spend their careers trying to solve problems, and to do so they must "learn how to learn." No medical student can learn all the scientific knowledge she might need in practice, and much of what she does learn will soon be forgotten or obsolete. When she gets into practice, she must be able-without the help of any teacher-to read what she needs to read in order to learn how to solve a patient's current problem. The problem method is the best way to get a medical student headed in that direction. In addition, it helps students retain knowledge: knowledge acquired to help solve a problem is remembered better than knowledge acquired without such a motivation. "Knowledge *used* is better remembered." And the problem method motivates medical students to work harder, for it "challenges them with the very situations they will face in their elected professional field." Because of these advantages, several medical schools have by now adopted the problem method, and the method is making its way in other fields. In some schools, first-year medical students start with problems, without any prior study of medicine, and the problem method is used in large classes.”<sup>338</sup>

The mission of law school education is to support students to get a better education by addressing strategies of instruction and adopting an appropriate method of teaching. The initiation of a new era of legal education in the Kingdom and making significant revolutionary modifications in its goals, institutions, and methodology essential to engage students in the

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<sup>338</sup> *Supra*, Moskowitz, note 327, at 247

program proven to develop dynamic thinkers from the first day in the school needs tremendous work. Also, the objective of law school is to enable students to be attorneys capable of applying the legal principles learned to concrete cases. Such direction can only be given by appropriate planned strategy and by instructors who know how legal principles are handled and applied in the courtrooms.

What is typical in Saudi's legal education system is the four-year undergraduate program (LL.B.) offered by law institutions affiliated with public or private universities. At the graduate level, in the last few years, there are a few Master and Doctorate programs, which are new educational programs and need to be studied their outputs to determine their efficiency.

### **§ 3.2.7 The Law Curricula**

In the Kingdom, the LL. B undergraduate program of legal education is a humanities education and in principle a theoretical study of the law lacking practical training. In the current Study Plan of LL. B. program at King Saud University KSU, Law students<sup>339</sup> are required to accomplish 151 credit hours; at least 33 core legal courses (99 credit hours) and 12 core non-law courses (38 credit hours) such as foreign languages, mathematics, computer skills, statistics, communication skills, learning thinking and research skills, health and fitness, Arabic writing, and political theories which are the Common First Year of the University. In addition, four non-

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<sup>339</sup> LL. B degree program, College of Law and Political of the KSU. *See* <http://clps.ksu.edu.sa/ar/node/298> (Last visited January 13, 2018)

law courses (8 credit hours) are required by the University and two courses (6 credits hours) are required by the Law Department.

In general, this is a required curriculum of the LL. B degree in the Kingdom, though some schools may have some curricular differences. For example, the Taif University hosts a legal program, which is required four-year course study a total of 143 credit hours which the half of them non-law course. The students are required to complete only 74 to fulfill the law degree,<sup>340</sup> which is practice has no distinction between the student who graduates from this program and the others who study more law courses. In the Kingdom, the only educational requirement to qualify for the legal profession is an undergraduate law degree, and there is no required national examination.

The law department at the KSU<sup>341</sup> designs the LL.B. study plan as a four-year course for the Bachelor of Laws plus the Common First Year at the university.

The following minimum curriculum:

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<sup>340</sup> *Supra.*, Al-Jarbou, note 268

<sup>341</sup> *Supra.* Bulletin, note 322, at 151-169.

Table 3.12 Study Plan Bachelor's Degree in Laws (LL.B.) at Law-KSU

<b>REQUIRED COURSE</b>	
<b>YEAR I</b>	
Required Common First Year Courses	<b>Total: 31</b> Credit hours
<b>YEAR II</b>	
Arabic language skills	
Introduction Political Science	
Principle of Law	
History of Law	
Introduction to Islamic Jurisprudence	
General Theory of Obligation I	
Family Law	
Constitutional Law	
Administrative Law I	
	<b>Total: 28</b> Credit hours
<b>YEAR III</b>	
Arabic Writing	
Public International Law I	
General Theory of Obligation II	
Procedural Law	
Administrative Law II	
Criminal Law	
Civil Transactions	
Commercial Law	
Principles of hereditaments will and Endowment	
Administrative Judiciary	
Public International Law II	
	<b>Total: 30</b> Credit hours
<b>YEAR IV</b>	
Labor Law	
Property Principles	
Commercial Contracts and Banking Operations	
Maritime Law	
Special Criminal Law	
Principles of <i>Fiqh</i> in Islamic Jurisprudence	
Execution Law	
Principles of Jurisprudence ( <i>Usul al-Fiqh</i> )	
Social Insurance Law	
Commercial Law	
Commercial Instruments and Bankrupt	
	<b>Total: 33</b> Credit hours



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**YEAR V**

Research and Training  
Real & Personal Security Principles  
Private International Law  
Intellectual and Commercial Property Principles  
Criminal Procedures

**Total: 15** Credit hours

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**REQUIRED COURSES**

The University -Bound Column

8-Credit **Required**

The College-Bound Column

6-Credit **Required**

**Total: 14** Credit hours

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**TOTAL CREDITS REQUIRED 151 CREDITS**

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Chart 3.13 A % of LL.B. Courses Required at Law-KSU

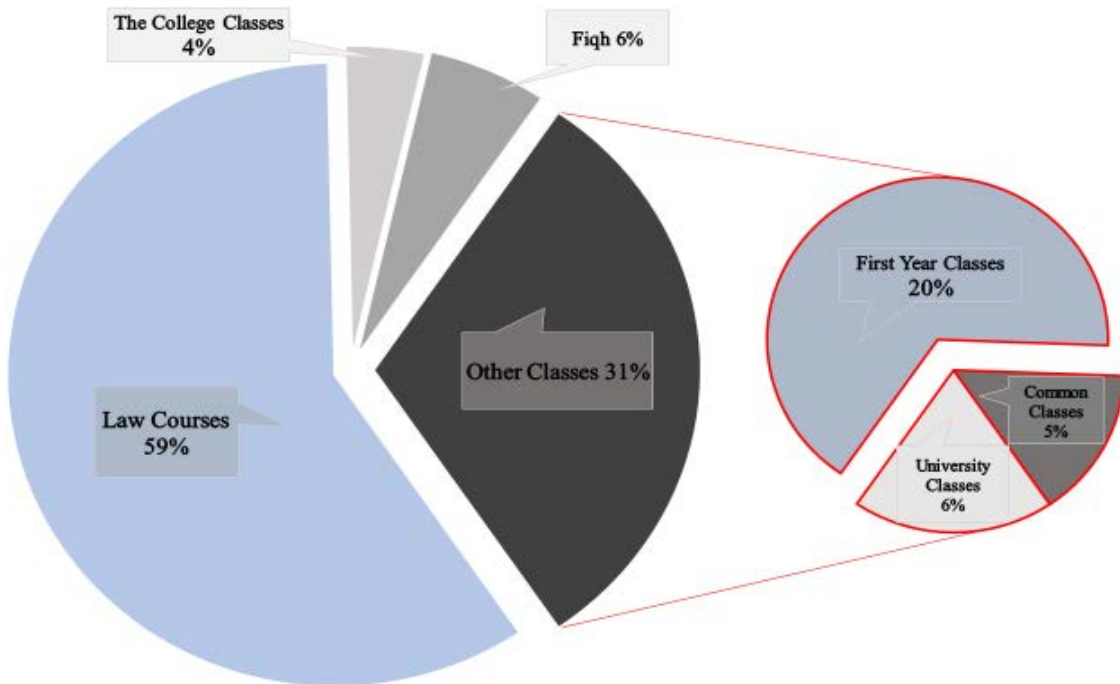


Chart 3.14 LL.B. Courses & Credit Hours Required at Law-KSU

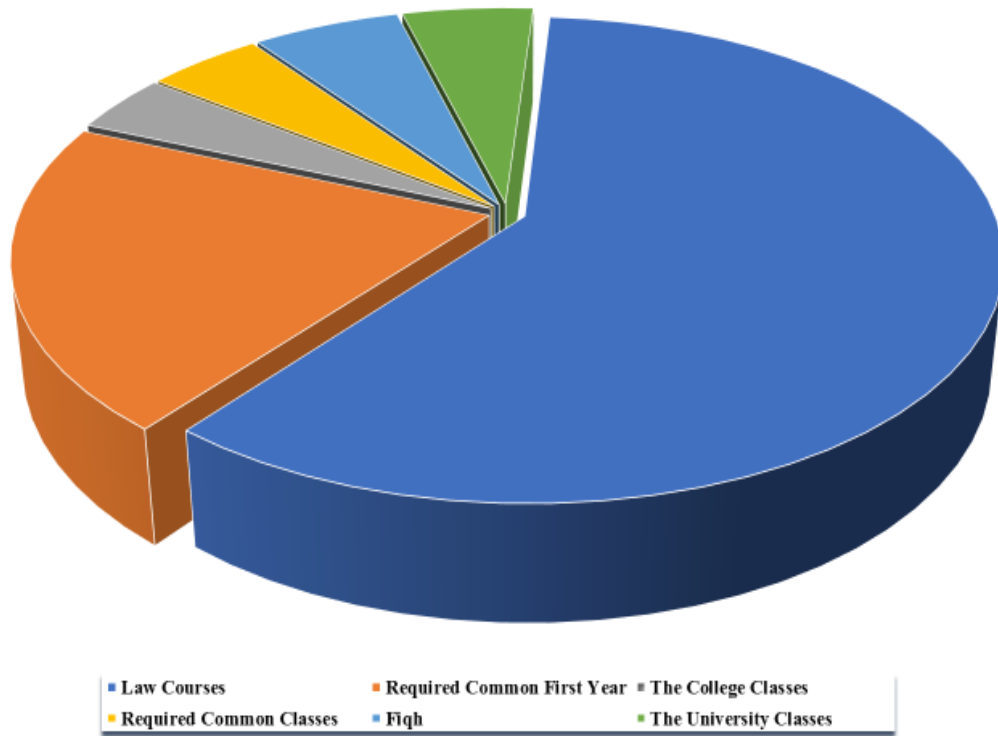


Table 3.15 LL.B. Course & Credit Hours Required at Law-KSU

COURSE	HOURS REQUIRED	PERCENTAGE
Law Courses	90-Credit hours required	60%
Required Common First Year Courses	31-Credit hours required	20%
The College-Bound Column	6-Credit required	4%
Required Common Classes	7-Credit hours required	5%
The University -Bound Column	8-Credit hours required	5%
<i>Fiqh</i>	9-Credit hours required	6%
<b>TOTAL</b>	<b>151 CREDITS</b>	<b>100%</b>

The current curriculum of the LL. B. program includes different categories of law subjects which are very important to building the legal thinking of the student. It is interesting to note that the students who graduate from the LL. B. programs offered by Saudi universities do not enter law practice. Law graduates are required to engage in an apprenticeship at a licensed law firm or provide a legal experience for three years after they graduate. At the time of writing, there is no bar exam required to engage in a legal career, and typically faculty members have no admitted legal experience and practice or any additional requirement only hold a law degree with requirements related to the GPA in undergraduate and graduate degrees. Saudi universities encourage the faculty to pursue graduate studies abroad.

The subjects and objectives of the law curriculum are the same as any law school in the world. For example, the Principle of Law (Law 101/ 3 credits) is a class that considered an introduction to the study of the legal sciences, addresses the study of the two bases on which the legal regulation is based— the theory of law (Part one) and the theory of right (Part Two). Part one is interested in analyzing the legal rule, and Part Two is interested in showing the rights regulated by the law. The course aims to provide the legal knowledge, give the beginner the fundamentals, and develop the ability of mediation and deduction. The outcomes of the class assume that the student will be able to sense the importance of law and the necessity of respecting it, deduct and analyze some of the legal texts, and know how Kingdom law is enacted.

The curriculum strategies produce confusion among the students in terms of non-order subjects or design a single course for the essential subjects in the law. For example, the study plan of the LL.B. program does not have a dependence class for “Contracts Law.” At present, the

subjects of contracts are taught in several classes. The commercial contracts are taught including the Commercial Contracts and Banking Operations Class, and administrative contracts are taught including the Administrative Law. Plus, the types of contracts involve the General Theory of Obligation Class, and civil contracts are involving the Civil Transactions Class.

### **§ 3.2.8 Brief Comparison of the Legal Education Systems of the KSA and the US**

Over the past several decades, the improvement of legal education programs throughout the world has increasingly attracted attention. Some law schools, including those in America, have, through rigorous training achieved quality goals and objectives of legal education that qualify the vast majority of students to practice law in their chosen fields.

In the United States, the progression of legal education has arguably improved overall as a result of the American Bar Association's pressures following the publication of the MacCrate Report in the early 1990s, focusing on what it called the "skills and values." This publication focused on the goals of legal education in two things which are the skills and the values. However, there remains significant and continuing friction that operates to inhibit a change of the kind of scale needed.<sup>342</sup> As the same time, the schools in other countries have taken a broad series of steps into the development method and processes of law school education.

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<sup>342</sup> David R. Barnhizer, *The purposes and methods of American legal education* J. Legal Prof. 36:1 (2011) at 3

Legal education models are continually changing from the one legal education system to another, but the conditions of a university degree have become more or less uniform, which in many countries require passing a succeeding examination prepared by professional legal experts. Apprenticeship, once a traditional way of entering the profession in common-law countries, has everywhere been increasingly displaced by a university education.<sup>343</sup> Since the latter half of the 19<sup>th</sup> century, the prevailing method of teaching in law schools has been the Christopher Columbus Langdell model based on the “case-Socratic” method of instruction. The case-dialogue model targets analytical thinking the prime objective of the education process. Then, in the late of the 20<sup>th</sup> century, law schools tended to adopt the idea of integrating clinical methodology with mainstream teaching is assuredly not a new one.<sup>344</sup> The educational strategies have sought to combine a variety of methods of instruction. Each new format has been designed to improve the program beyond the typical course to enhance the students understanding of both theory and practice of the law and the systems in which it is applied.<sup>345</sup>

In addition to the lecture, case study, and clinical education methodologies, a new problem method was added as a significant alternative to the case study method instruction. An appropriate definition of the problem method is that it focuses on requirements of the student of the student.<sup>346</sup> The problem methodology is more appropriately applied in advanced, upper-level

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<sup>343</sup> Lionel Astor Sheridan, William P. Alford & Mary Ann Glendon, *Legal Education*. Encyclopedia Britannica (2004)

<sup>344</sup> Ross Hyams, *Nurturing Multiple Intelligences through Clinical Legal Education*, 15 U.W. Sydney L. Rev. 80-93 (2011) at 88

<sup>345</sup> *Supra.*, Barnhizer, note 342, at 66

<sup>346</sup> Gregory L. Ogden, *The Problem Method in Legal Education*, 34 J. Legal Education 654-673 (1984) at 654

classes, than in first-year courses.<sup>347</sup>

In this subsection of the study, I will provide a brief comparative discussion concerning the present method of legal education in American schools versus those in the Kingdom of Saudi Arabia. Therefore, by examining both Saudi and American legal education philosophies, the significant differences in the history of legal education, models, requirements, materials, resources of classes required to attain law degrees. In the following brief, I will identify some of the differences between the present legal education system.

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<sup>347</sup> Stephen J. Shapiro, *Teaching First-Year Civil Procedure and other Introductory Courses by the Problem Method*, 34 Creighton L. Rev. 245-282: 2000; at 249

## SECTION III

### § 3.3 Establishment of Legal Education

#### § 3.3.1 The United States

Historians of American colonial law has shown that by the mid-1700s a college education and law-office apprenticeship were becoming the academic norm for aspiring lawyers.<sup>348</sup> Some colleges had also established professorships in the late 1700s and early 1800s which brought a more standardized instructional lecture format to the classroom. However, these lectures were part of the general curriculum of the various Liberal Arts schools; while valuable to the student wishing to go into government, they were not of direct value to those students pursuing careers in the more general Civil and Commercial Law arenas.<sup>349</sup>

Until the second decade of the nineteenth-century training for the practice of law in the United States was, by law, almost entirely restricted to apprenticeship. Only William and Mary College, (Williamsburg, Virginia) because of the influence of Thomas Jefferson, was an exception. As the apprenticeship requirements in Virginia were the least strict in the country, a law school of sorts was able to be established in 1779.<sup>350</sup>

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<sup>348</sup> Mark Warren Bailey, *Early Legal Education in the United States: Natural Law Theory and Law as a Moral Science*, 48 J. Legal Educ. 311-328 (1998) at 311

<sup>349</sup> Susan Katcher, *Legal Training in the United States: A Brief History*, 24 Wis. Int'l L.J. 335-376 (2006) at 341.

<sup>350</sup> Kirkwood, Marion Rice, and William Brownlee Owens. *A brief history of the Stanford Law School, 1893-1946*. School of Law, Stanford University (1961) at 1

In 1730, the initially formal legal professionals training program; a seven-year clerkship was established in New York. What ensued was the New York City bar establishing a set of professional standards that called for a minimal four-year college or university program of Law. On graduation, the student was rewarded a Bachelors Degree then required to serve a five-year clerkship culminating with the passing of an examination and recommendation by six attorneys. Ultimately, the degree requirement was dropped, and replaced by a five-year clerkship requirement. Eventually, the requirements were reduced to require only two-years of a college education.<sup>351</sup>

“As late as 1890 only seven of the sixty-one schools were requiring the three years of study first set by Harvard in 1878.”<sup>352</sup>

“The earliest, and best known of such private law schools was the Litchfield School in Connecticut, which was started around 1784 by lawyer Tapping Reeve and which continued for almost 50 years; over a thousand students were taught at the Litchfield School by the time it closed in 1833.”<sup>353</sup> The schools that evolved from these apprentice-based lecture programs were the beginnings of traditional, legal training in the United States. Between 1810 and 1836 the Massachusetts Supreme Court admitted law students to the bar after five years of legal

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<sup>351</sup> Ralph Michael Stein, *The Path of Legal Education from Edward I to Langdell: A History of Insular Reaction*, 57 Chi.-Kent L. Rev. 429 (1981) at 439

<sup>352</sup> *Supra.*, Kirkwood. note 350, at 2

<sup>353</sup> *Supra.*, Susan, note 349



apprenticeship (three years for college graduates).<sup>354</sup> The first law degree granted in America was a Bachelor of Law Degree L.B. from the College of William & Mary in 1793.<sup>355</sup>

Kirkwood states that “in 1900, Harvard began requiring graduation from a college for admission to its Law School, it seemed to its faculty inappropriate to give a second bachelor’s degree and, by analogy to the M.D. and Ph.D., it proposed that the degree of Juris Doctor (J.D.) be given to those graduating from the Law School. The proposal was rejected by the University authorities, but it was taken up by the newly established University of Chicago Law School in 1902 for use in its combined six-year course. Stanford and the University of California were the first to follow, both in 1905. Twenty years later 32 law schools were awarding the J.D. degree, but after that, quite a number, including Stanford, returned to the LL.B.”<sup>356</sup>

American professional law schools provide a standard academic and professional experience shared by all past, present, and future U.S. attorneys. These schools are renowned not only for teaching law but also for teaching students "how to think like lawyers" and developing their professional skills. Regardless of one's ultimate career goals, a graduate can apply the knowledge gained and skills acquired at an American law school to many different professions. In fact, American law schools are acclaimed for educating and preparing students to fill a host of roles in law as well as government, business, economics, labor, social reform, and other non-legal disciplines. At the same time, however, some argue that U.S. law schools fall short of their

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<sup>354</sup> *Supra.*, Bailey, note 348, at 312

<sup>355</sup> James S. Heller, *America's First Law School Library: A History of the College of William and Mary's Marshall-Wythe Law Library, 1779-1995* (1996) at 48.

<sup>356</sup> *Supra.*, Kirkwood. note 350, at 19

mandate to prepare students for the practice of law adequately and that improvement is needed in teaching practical skills, ethics, and non— litigation areas.<sup>357</sup>

### § 3.3.2 The Kingdom of Saudi Arabia

In the case of Saudi Arabian legal education, the first formal university law programs in the country were established in 1980 at the King Saud University (KSU). It is a four-year undergrad program, and the curriculum designed to include the theoretical techniques for teaching law more than a practical approach. Students are well-equipped by lecture methods concerning the law, legal philosophies, and legal theories. Until now, the lecture model was the only method offered in the law classroom. In 1980, the Department of Law officially introduced the contemporary methodology at the College of Administrative Sciences, King Saud University.<sup>358</sup>

The curriculum for the four-year, Bachelor of Law degree program provides students with a basic understanding of the fundamentals of legal doctrines, theories, and Islamic principles. (The length of the study was four-years, and degree requirements included the rule that each student completed a specified number of lecture/classroom hours “128 minimum”).

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<sup>357</sup> Matthew J. Wilson, U.S. Legal Education Methods and Ideals: Application to the Japanese and Korean Systems, 18 *Cardozo J. Int'l & Comp. L.* 295 (2010) at 297

<sup>358</sup> See the KSU College of Law and Political Science, available at <http://clps.ksu.edu.sa/ar/edu5> (Last visited January 23, 2018)

As the program at KSU flourished and gained prominence, it was added to the College of Humanities, Law, and Political Sciences Department.<sup>359</sup> During the period from 1980 to 2006, there were only three departments at Saudi universities offering a Bachelor of Law (LL.B.) degree. Those schools are King Saud University (KSU) 1980, the King Abdulaziz University (KAU) 1981 and the King Faisal University (KFU) 1984

The King Saud University has the first and oldest law program in the Kingdom to offer a comprehensive education in Saudi Arabian and Islamic law; it paved the way for numerous other colleges and universities throughout the country. The curriculum of the law schools in the Kingdom provides legal training in legal jurisprudence, civil, commercial and criminal law. Hence, the experience of the legal education of the Kingdom is considered nascent compared to the U.S. experience.

### **§ 3.3.3 Instructional Methodologies**

Currently, there are several differences between American and Saudi Law schools regarding legal education models and methodologies.

In Saudi Arabia, the law schools have been adopting the more traditional models of lecture and textbook of teaching law sciences, which is the lecture method or the textbook method that relies on books and pays attention primarily to the inculcation of familiarity. In

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<sup>359</sup>

*Id.*

Saudi legal academia, the educators consider the primary purpose of legal education is to furnish the students with a massive quantity of Information— legal philosophies, theories, and statutes— which they believe that are the most significant equipment for future careers of law graduates. Consequently, the students, merely sit without interacting to carefully listen to the professor who is presenting the class lesson and explaining legal theories, laws, and regulations. In the United States, the Socratic dialogue method of teaching in the U.S. has grown to be the primary method, since the 1870s, when Professor Christopher Langdell of Harvard Law School promoted the practice of learning law through the analysis of appellate court opinions, commonly referred to as the case method.<sup>360</sup> The U.S. system of legal education is well known for the "case method." Indeed, for many, the case method conjures up the American model of legal education, even though the current American law school is multi-varied in its approaches to learning. Although the case method was introduced more than 130 years ago, remarkably it continues to be used in American law schools.<sup>361</sup>

Through this model, the instructor engages the students in discussion; they are being taught to think like lawyers.

Chery argues

“[C]asebooks evolved into compilations of "Cases and Materials, supplementing the selected opinions with notes and problems. Classes consist of varying degrees of lecture and calling upon students to explicate the reasoning and holding of the opinions, statutes, and rules under consideration. Within these

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<sup>360</sup> Cheryl Rosen Weston, *Legal Education in the United States: Who's in Charge - Why Does It Matter*, 24 *Wis. Int'l L.J.* 397-424 (2006) at 406

<sup>361</sup> *Supra.*, Susan, note 349, at 336

courses, the focus varies. Emphasizing national or local law, looking for rules or identifying policy considerations, examining the impacts of other disciplines, or focusing on the problem method and cultivating practitioner's skills are some of the distinct approaches that distinguish schools or the predilections of individual law teachers.”<sup>362</sup>

By comparing legal education models in both countries, it shows that the Saudi legal education model cannot inspire law students with practical skills and critical abilities that regularly disregard the real practice needs of the legal professional field. In the Saudi legal education system, educators and students both are concerned more about academic grades than practice-related skills and knowledge, which is considered exam-oriented education; common in many law schools of developing countries.

### **§ 3.3.4 Types of Degrees**

In contrast to in many other countries, to obtain a law degree in the United States requires a minimum of three years professional legal internship acquired in post-baccalaureate or post-graduate schools. The program is required to be accredited by the American Bar Association (ABA).

American law school systems require that students must earn a bachelor's degree in other majors primarily offering three years of coursework and some clinical training before starting their J.D (Juris Doctor) program. The J.D. applicants must also take either the LSAT or GRE

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<sup>362</sup> *Supra.*, Weston, not 360, at 407

tests as part of the application requirements. Some law schools require the registration with the Law School Admissions Council (LSAC) Credential Assembly Service (CAS).

All decisions for admission are based on a variety of criteria that suggest the student's potential. These include undergraduate coursework and grades; LSAT scores; employment history; professional or volunteer experience; leadership in school or civic activities; unique qualities and achievements; diversity of background and experience; and the ability to overcome financial or other disadvantages.<sup>363</sup>

Saudi law schools do offer law courses at the bachelor's degree level. However, the education system requires holding only a high school diploma before entering university for a bachelor's degree. Law students are eligible to enroll as graduates from high schools without showing proficiency directly. They are also allowed to teach law without possessing the fundamental foundation of laws, regulations, or even teaching credentials.

### **§ 3.3.5 Basic Student Differences**

To teach Legal education in the United States requires an advanced degree while in the Kingdom only a general or fundamental degree is required. American law students are more experienced, more mature, and have higher professional training objectives and requirements. Saudi law students are relatively younger, lack fundamental social skills, and work experience as their educations are more theory.

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<sup>363</sup> See the University of Kansas, available at <http://law.ku.edu/apply#committee> (Last visited January 23, 2018)

## Topics of Chapter IV

### § 4.1 Best Model of Legal Education

#### § 4.1.1 Introduction

#### § 4.1.2 Methods of Legal Education in Law Schools

#### § 4.1.3 The Most Common Methods of Legal Instruction

##### § 4.1.3.1 The Socratic Method

##### § 4.1.3.2 The Case Method Model

##### § 4.1.3.3 The Problem-Based Method

##### § 4.1.3.4 Clinical Legal Education

##### § 4.1.3.5 Lecture Method

#### § 4.1.4 Future Instructional Methodologies

#### § 4.1.5 Considerations for Improving the Legal Education

### § 4.2.1 The Legal Education Models in Arab Region

#### § 4.2.2 Saudi Legal Education as It Now

#### § 4.2.3 Saudi Law Instructional Method

#### § 4.2.4 Sailing Along with The French Model

#### § 4.2.5 Perspective Comparative on Legal Education: the KSA-French-the US

## CHAPTER IV

### SECTION I

#### § 4.1 Best Model of Legal Education

##### § 4.1.1 Introduction

The question is asked: “Are Saudi Arabian law school graduates prepared to defend and forward the agendas of the people in both domestic and international courts?”

The primary goal of this study is to identify critical deficiencies in the legal education programs throughout the Kingdom of Saudi Arabia. Though not all-inclusive, specific essential objectives targets for both enhancements and complete modernization with emphasis on assimilating international methodologies applicable to both Saudi Arabian and International legal standards of practice.

In recent years, a number of studies have been conducted in Saudi Arabia by the various government and educational organizations to determine causative factors which are undermining the graduation success rate of the various law schools.<sup>364</sup> The results of these studies have given cause to the more progressive educators to suggest new methods and curriculum for the programs. However, despite these efforts, the law schools themselves remain locked in what

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<sup>364</sup> Beverly Petersen Jennison, *Beyond Langdell: Innovating in Legal Education*, 62 CATH. U. L. REV. 643 (2013) at 644



they see as a time-honored, traditional form of an education structured around more archaic formats such as lecture presentations without student interaction.<sup>365</sup>

In the rapidly changing world of the 21<sup>st</sup> century, law students in schools all over the world are demanding programs that challenge not only their learning abilities but so too, their cognitive abilities; they seek the art of the legal argument, the essential component that makes an excellent attorney. The only way they can attain their goal is to learn; to study, read, listen, ask questions, challenge themselves and their teachers, who must challenge them in return.

Law schools and their instructional staffs must cease clinging to past methodologies and open their minds to new variants. The change should begin with the pre-eminent practice of lectures. The schools need to level the educational field by not eliminating the lectures, but by making them more interactive. By doing this, it will allow students to ask questions and challenge the lecturer in real time.<sup>366</sup>

While international influences drive the impetus for improving the Saudi legal education systems, the primary goal is to enhance the overall legal structure of the Kingdom to serve the populace at large and the nation itself. To accomplish this, educators will require modern educational tools in such as communications, electronics, and audio-visual equipment for the classrooms, but the most important tool will be the well-prepared educator be he a professor or lecturer, he must be willing to challenge and be challenged for his students to learn

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<sup>365</sup> Ray Worthy Campbell, *The End of Law Schools: Legal Education in the Era of Legal Service Businesses*, 85 Miss. L.J. 1, 98 (2016) at 5

<sup>366</sup> *Id.*, at 5

Considerable thought must be given to the school curriculum and syllabi to better train law students in their field of interest such as commercial, civil, international or other categories as identified. This will involve establishing a basic law course coupled with relevant electives for each specific area of law. The ultimate intent will be to provide qualified legal professionals for all areas of the national and international law.

The question not asked is: What does the future hold for the traditional scholars and educations?

To answer in the most understandable language is this:

Does one discard a sharp old sword because it is no longer shiny?

The answer is a firm no.

If the same question were asked about aged scholars, the same would also be no. For it is within the minds of those scholars the knowledge and experience of the ages resides, they are a living encyclopedia of legal wisdom.

Therefore, the emphasis of this study will not be on supplanting the present Saudi Arabian legal educational system with an entirely new one, but rather on refining and supplementing it to meet the challenges of the 21<sup>st</sup> century. The primary goal will be upgrading the legal knowledge and skills of graduates to meet modern standards and prepare them to take their place in the Kingdom as representatives of the new national and international legal profession.

### § 4.1.2 Methods of Legal Education in Law Schools

Legal education is taught by various methods, and the technique applied as per time is often dependent more upon the lecturer or professor than on the subject matter. Professors in institutes of higher education and tertiary institutions trust unique content delivery methodologies. Often the approaches applied by professors range from the Socratic to the clinical model with variants or additions of the case study approach, problem-solving, role-playing, and many other models. The characteristics of some of these methods may slightly overlap, but each, in its way is useful in achieving its specific objectives.<sup>367</sup> However, other factors affect the success of each methodology; this is especially true in the relationship among the student, the professor, and other students. Legal instruction often entails the sharing of opinions and argument rationale, hence the importance of relationships. This dissertation seeks to investigate and discuss some of the instructional methodologies, within the context in which they occur and their effectiveness in circumstances where they have been practiced.<sup>368</sup>

### § 4.1.3 The Most Common Methods of Legal Instruction

Legal education has evolved from the training by orators in ancient Rome to educating by social scientists in the 21<sup>st</sup> century. However, it was not until the Middle Ages that European jurists labored to draft rules aimed at protecting the discriminatory interests in service to the

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<sup>367</sup> CAROLINE STREVEN, RICHARD GRIMES, AND EDWARD PHILLIPS, EDS. *LEGAL EDUCATION: SIMULATION IN THEORY AND PRACTICE*. ROUTLEDGE, NEW YORK (2016)

<sup>368</sup> Nimer Sultany. *Law and revolution: Constitutionalism after the Arab spring*, Oxford University Press (2018) at 15-65

nobility once taught throughout the known “civilized” world. Some might find it more appropriate to refer to the Middle Ages as the age of re-establishing special privileges and protections for the territorial legal enclaves of the aristocracy.<sup>369</sup> In the diverse, legal approaches to the world today, the two most dynamic systems are the Roman-Germanic and the Anglo-American.<sup>370</sup> For that reason, the contemporary legal educational practices of the world are generally bound by this diversity. It is the by-product of the progressive contemporary revolution of instant global communication between nations and the continuous exchange of ideas and knowledge.

Our world is steadily growing smaller making comprehensive legal systems more easily accessible to globalization’s influence. Legal services are regularly exchanged at international levels which even the most conservative estimates recognize as "significant" international trade in legal services; one can more accurately describe it as on a massive scale.<sup>371</sup> Sabina Schiller adds that “since the implementation of the 1994 General Agreement on Trade in Services (GATS), legal services have been viewed as an exchangeable ‘service,’ a commodity capable of being traded internationally.” The accuracy of this designation is apparent; it is a multi-billion-dollar international trade in legal services.<sup>372</sup>

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<sup>369</sup> *Supra.*, Melchionna, note 251

<sup>370</sup> *Supra.*, Hanson, note 217

<sup>371</sup> Sabina Schiller, *A New Global Legal Order, with or without America: The Case for Accrediting Foreign Law Schools*, Emory Int'l L. 26: 2012; [http://law.emory.edu/eilr/\\_documents/volumes/26/1/comments/schiller.pdf](http://law.emory.edu/eilr/_documents/volumes/26/1/comments/schiller.pdf) (last visited May 14, 2018)

<sup>372</sup> *Id.*, at 414

Currently, in the Kingdom of Saudi Arabia (KSA), the process of globalization of the legal education programs requires the understanding that there is a definitive need to reconcile the past evolution of law with a vision of global education for a better future. Once accomplished, the overall effect will rapidly open new paths allowing for the expansion of legal education throughout the Kingdom, and the world.

For a non-Saudi to understand the principles behind established policies, it must be known that a primary prerequisite for entering a law school within the Kingdom centers on national regulations that control the operations of domestic legal markets within it. In the beginning in the early 20<sup>th</sup> century, American law schools began to propagate a global influence of legal education methodologies by admitting international students overseas which in turn became exporters of the main features of American law.<sup>373</sup>

Most legal education programs in the world begin with the applicant completing a Law School Admissions Test (LSAT) or similar pre-entry examination. As a mandatory exam, the LSAT is meant to gauge the potential student's level of education as well as cognizant ability to follow the curriculum and potentially complete the law school program. However, in contrast, students in the United Kingdom (UK) can study law while in what is referred to as the "A" level, which is an advanced level of high school studies. Some of the conventional legal instruction methodologies in both countries do, however, include the Socratic methodology which entails

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<sup>373</sup> *Supra.*, Melchionna, note 251

dialogue that may be initiated either between the professor and the students or among the students themselves; a bonus for any student who wishes to practice international law.

The beneficial significance of being able to share ideas is an invaluable tool in the stimulation of critical thinking.<sup>374</sup> It also encourages active participation and discourages passivity. Discussions may reveal the student's weaknesses in general theory and may also be helpful as an assessment tool for student performance levels. This procedure, however, needs effective regulation by the professor as they may lose control and fail to cover the learning objectives satisfactorily.

The case study approach is also another standard legal study methodology that is uniquely practiced in the US. It has its origins in England during pre-colonial times, when the law was taught, not in schools, but through apprenticeship under already established legal professionals.<sup>375</sup> The case method involves the scrutiny and analysis of various past cases, as they are deemed relevant in a particular legal area. These cases are established precedents and can be used to offer insight on how specific legal questions and procedures should be treated. This method is also often accompanied by discussions on the cases to spur critical thinking among the legal students. This method has English roots and continues being common in many European countries such as France and the UK, as well as the U.S.<sup>376</sup>

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<sup>374</sup> *Supra.*, Strevens, note 367

<sup>375</sup> *Id.*

<sup>376</sup> Michael Hunter Schwartz et al., *What the Best Law Teachers Do*, Harvard University Press (2014)

Another educational approach often applied is the problem-based approach. This method is standard in Germany and in Japan whose systems draw tremendous influence from the Germans) whereby the emphasis is not merely on the application of legal statutes, but on reasoning out of the case based on the circumstances. In this approach, the students are trained using legal problems, whereby instead of being fed information and then being tested using issues later, the process is reversed. The teaching is done using arguments in such a way that the students can work their way out towards solutions.<sup>377</sup> This method is a deviation from traditional training methods and can be very useful when well applied as it allows the students to be more cognizant of the legal issues that face their societies, as well as the world in general. It also trains them to develop and maintain a logical perspective when approaching most legal situations.

Role-playing is another standard technique whereby students are pitted against each other as they would in a court so that they can argue out an individual case. This method mainly draws its strength from its ability to expose the students to a court situation or conditions.<sup>378</sup> The students are often asked to engage in mock court proceedings with the lecturer as the judge and the other students as the jury. It is one of the practical parts of legal training where real-life situations can often be successfully simulated and used by the lecturer to teach the students. The method is also applied in legal education programs in many other countries, including the US, Canada, England, and Germany.<sup>379</sup>

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<sup>377</sup> *Supra.*, Strevens, note 367

<sup>378</sup> Gerald F. Hess et al., *Techniques for Teaching Law 2*, Carolina Academic Press, 2011; Available at <https://cap-press.com/pdf/2240.pdf> (last visited May 17, 2018)

<sup>379</sup> *Supra.*, Schwartz, note 376

Fifth is legal clinics. Legal clinics are used as a technique at the advanced learning stages. They are usually legal practices that are often established under the legal studies department of a higher learning institution.<sup>380</sup> These legal practices are then operated by the law students who take pro-bono cases and offer other legal solutions to the community for free. In the process of their training during a legal clinic, a student can interact with the real world and gain practical experience in different aspects of the legal profession. At this point, the students are usually working as apprentices under the head of the legal clinic who is often a registered legal practitioner. It is a common instructional technique in the American and Canadian colleges and universities offering legal programs. In France, apprenticeship is also practiced, which is similar to legal clinics.<sup>381</sup>

#### § 4.1.3.1 The Socratic Method

In America (U.S.), the Socratic, Case, and Problem methods are the most common legal training approaches. Of the three, the Socratic Method<sup>382</sup> is frequently considered to be the ideal method by which educated students.

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<sup>380</sup> Howard E Katz and Kevin Francis O'Neill, *Strategies and techniques of law school teaching: a primer for new (and not so new) professors*, Aspen Publishers, Inc. (2009)

<sup>381</sup> Christopher Gane & Robin Hui Guang, *Legal Education in the Global Context*, Taylor and Francis 1, 2017

<sup>382</sup> *Socratic Teaching*, Criticalthinking.org, <https://www.criticalthinking.org/pages/socratic-teaching/606> (last visited May 18, 2018) “Socrates (469-399 B.C.) was a classical Greek philosopher who is credited with laying the fundamentals of modern Western philosophy. He is known for creating Socratic irony and the Socratic method (elenchus) which is the teaching practice of pedagogy, wherein a teacher questions a student in a manner that draws out the correct response. He has had a profound influence on Western philosophy, along with his students Plato and Aristotle. Though much of Socrates' contribution is to the field of ethics, his input to the field of epistemology and logic is also noteworthy.”



In the Socratic method, students are required to discuss legal issues while the professor interacts with them in such a way that he does not reveal an opinion, allowing the students to think and analyze question for themselves. Traditionally, U.S. universities often administered one examination to be taken at the end of a course. However, in response to a rising need for professionalism in legal practice, better testing techniques have been adopted whereby tests are administered periodically throughout the length of the course.<sup>383</sup> The Socratic methodology is often included in the final examination to better assess the success of both the individual student and the program as a whole.

The Problem method is conventional and frequently combined with other methods such as the Socratic. It is an educational technique that teaches the ability to learn from a particular scenario. It is designed to present students with both real and simulated case problems in the hopes of stimulating them to exercise their legal knowledge when confronted with diverse scenarios. The problem-based approach has also been proven to be effective in compelling students to study widely different issues and learn to proficiently research topics to understand better and employ information obtained through lectures and assignments. Often, the student is presented with problems they may not be able to solve at their current level of proficiency thereby forcing them to seek to improve their knowledge through all available resources, including meeting with professors. While it is essential to solving a problem, some issues presented during problem-based learning exercises may necessarily not be the focus as the emphasis is usually put on learning from them.<sup>384</sup>

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<sup>383</sup> *Supra.*, SHEPPARD, note 247

<sup>384</sup> *Supra.*, Sultany, note 368, at 15-65

### § 4.1.3.2 The Case Method Model

Although it is often less commonly used in schools as compared to the Socratic or Case-Dialogue methods, the case method is arguably one of the primary modes of teaching law in America. In many cases, it is applied along with the Socratic method when used in the discussion, analysis, and arguments of cited historical cases and their rulings.

The case method entails the study and analysis of original judicial proceedings and decisions to understand the legal framework behind them. It is used in many countries for legal training systems, including the U.S., Canada, UK (England, Wales, Scotland), and France. The case method is also useful in allowing the students to mentally visualize a hypothetical situation whereby they analyze the case from different legal standpoints of the parties involved in the case.<sup>385</sup>

The history of case law in America goes back to the 17<sup>th</sup> and 18<sup>th</sup> Centuries where it was introduced by the English settlers as they immigrated to the newly found continent. At the time, case law originated from the concept of apprenticeship, which was the only method through which the English learned law at the time. Legal apprentices spent their time in the offices of experienced legal professionals studying the complexities of law and its various applications both in and out of the courtroom. They analyzed cases by using the actual case arguments of

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<sup>385</sup> *Supra.*, SHEPPARD, note 247

their superiors until they were knowledgeable enough to handle lawsuits of their own, hence the phrase ‘case law.’

In the 19<sup>th</sup> century, bar examinations<sup>386</sup> were introduced as a method of testing apprentices to determine whether they would be allowed to go into private practice.<sup>387</sup> Even then, neither the apprenticeship system nor the legal profession itself was associated with any tertiary educational institutions. It was not until 1817 that the first law school opened at Harvard University, a private university in Cambridge, Massachusetts setting the standard for legal education in America at the time.<sup>388</sup> Other tertiary education institutions soon followed suit, creating their faculties from law offices and practiced lawyers who could provide students with factual case histories from which to learn.

One of the distinct advantages of this method is that it employs actual historical cases to illustrate and demonstrate specific legal principles and applications. It is, therefore, one of the most relevant means of delivery. Additionally, when applied to its maximum, case law study actively engages the students’ minds by encouraging them to create an effective argument and interact with a realistic view of the legal framework.<sup>389</sup> In turn, the method enhances the understanding and retention of legal knowledge and equally important, the student’s ability to prepare and present sound legal arguments. Cases are also useful reference points during problem solution, as they are past precedents.

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<sup>386</sup> “A *written test that an individual must pass before becoming licensed to practice law as an attorney.*,” <https://legal-dictionary.thefreedictionary.com/bar+exam>

<sup>387</sup> *Supra.*, SHEPPARD, note 247

<sup>388</sup> *Id.*

<sup>389</sup> *Id.*

One of the disadvantages of this method is that it is difficult to analyze all the cases that have been through the courts. Thus, some relevancy that would have been more useful in the illustration of a concept may be left out. Moreover, some of the cases may be too old to be studied.<sup>390</sup> The case method also puts the students under tremendous pressure since it involves full reading and students have to learn a significant amount of content to pass the examination.

#### **§ 4.1.3.3 The Problem-Based Method**

Generally, law courses are taught through the case method, while professors work to engage students in the process of education by analyzing and studying of a series of appellate court decisions. The students read and prepare relevant cases in advance of the class which they present in class to initiate significant dialogue about the intricacies of the decisions presented. By the end of class, students should realize both the legal principles established in those decisions, as well as how and why the courts reached their particular conclusions.<sup>391</sup>

While the case study method remains the signature pedagogy style of instruction in law schools, the problem-based method is fast becoming an attractive model to legal educators in many facilities.<sup>392</sup> In traditional legal education, problems employed by professors as hypotheticals or real examples to examine the students' engagement in the class and to encourage

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<sup>390</sup> *Supra.*, Katz, note 380

<sup>391</sup> Rachel Arnow-Richman. *Employment Law inside Out: Using the Problem Method to Teach Workplace Law*, 58 St. Louis U. L.J. 29 (2013) at 30

<sup>392</sup> Wilfried Admiraal, Theo Wubbels and Albert Pilot. *College teaching in legal education: Teaching method, students' time-on-task, and achievement*. *Research in Higher Education*, 687-704 (1999) at 687. Also, *See Id.*, note. 374, at 31

them to interact with the professor, as well as their peers. Furthermore, some law professors use problems as capstone exercises upon completing a set of cases or as a review in anticipation of the final exam. When coupled with the Socratic method, the students are better prepared for the final examinations, and ultimately the courtroom. The problem method is also a good tool to for summing up the material, probing students' understanding of the doctrine and its application, or prepping for a possible exam question on the subject.<sup>393</sup>

The case-dialogue instructional model is a "basic science" approach which was found to improve the lecture-textbook method of teaching and assisting students in perfecting their analytical skills and articulating perceptions of the rules of law and judges' policy considerations.<sup>394</sup> The problem method does not ignore cases, statutes and law codes; it calls upon them all and does not give one set of sources a higher status than another.<sup>395</sup> Law professors focus on the lecture format and providing the student with an applicable study of cases for homework assignments, although there is some freedom for other teaching methods. While the case method shows the students how others solve legal problems, the problem method lets them learn how to solve problems by actually finding, framing, and analyzing issues themselves.<sup>396</sup> To be an effective method, the professor must use a complex problem that includes several issues and involve one or more cases and statutes. The problem must distribute all class and students are expected to work on the problem outside of class and come to class to discuss their results. The core of the problem-based method is the class discussions, since the

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<sup>393</sup> *Supra.*, Richman, note 389, at 33

<sup>394</sup> Cynthia G. Hawkins-León, *The Socratic Method-Problem Method Dichotomy: The Debate Over Teaching Method Continues*, *BYU Educ. & L.J.* 1 (1998) at 5

<sup>395</sup> Thomas D. Morgan, *Use of the Problem Method for Teaching Legal Ethics*, *Wm. & Mary L. Rev.* 39, 409 (1998) at 414

<sup>396</sup> *Supra.*, Admiraal, 389, at 690

cases, statutes, and other resource materials provide information to enable the student to solve the problem, the benefits of the Socratic method of study are also realized.<sup>397</sup>

The problem-based method is found in several disciplines of higher education, principally in healthcare and medicine but rarely, at present, is it adopted by legal educators.

The primary merit of the problem-based system is when the class is working on given scenarios fictitious or real but anonymized and designed by the educational provider, the students, in small groups, deconstruct and analyze the problems. The students then work on the perceived issues involved in this and, in a structured way, identify what they need to know and how they will find this out.<sup>398</sup> There is a linkage between teaching by using the problem method and the case method, while students are focusing on task grades, the law professors' task is to bring the student's thinking closer to the lawyer's approach to the law. To ensure the eligibility of law professors teaching law and to achieve its goals, the law professors use more strong motivations to engage students in the class objectives and raise their performance in general. Moreover, by using varieties and alternative training methods, the law professors are able to test the full breadth of students' knowledge, enhancing the effectiveness of the legal education. The problem-based method depends on the context of simulated client problems, which is extensive use with code-based courses, such as those on tax law, evidence and procedure, legal ethics, and the various articles of the Uniform Commercial Code (UCC). The law professors realize that

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<sup>397</sup> *Supra.*, Hawkins-León, note 394, at 9

<sup>398</sup> Richard Grimes, *Problem-based learning and legal education: a case study in integrated experiential study*, REDU: Revista de Docencia Universitaria, 13.1 (2015) at 17

requires a skill of estimation the best strategy, tactics, and decision-making of choosing the instructional method most appropriate for the students and the class subject.

#### **§ 4.1.3.4 Clinical Legal Education**

Indeed, legal education endeavors to train law students to be competent legally and ethically, manage controversy skillfully, and to be intellectual and analytical adept. In layman's terms, to be a perfect candidate for a prospective lawyer to practice law. The fundamental knowledge and understanding of the law, professional skills, and personal deportment are the significant objectives of law schools. Law school graduates must be accomplished to engage in a continuing dialogue with academics, practitioners, judges, licensing authorities, and the public to achieve maximum professionalism.<sup>399</sup> While criticism arose concerning the potential omission of the traditional model of legal education which concentrates on the analytical skill in the preparation of students for law practice, there remained a severe lack of efficient and effective practical training, most specifically preparation and presentation of the argument. To improve the path of legal education, and to respond to students' desire to learn how to use the law, the educators and law professors worked to find a new model that would not only work well with the traditional training but also complement the overall course curriculum and satisfy the vast majority of educators.

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<sup>399</sup> ROY T. STUCKEY AND OTHERS. BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP. CLINICAL LEGAL EDUCATION ASSOCIATION (2007) at 8. See Adam Babich, *The Apolitical Law School Clinic*, 11 *Clinical L. Rev.* (2007) at 447

Globally, the first proposal of the clinical education in law schools was by a Russian professor Alexander Lyublinsky in early 1901, which was sixteen years before the earliest proposals for clinics appeared in the United States. Professor Alexander believed that a law school clinical component could be modeled on medical training.<sup>400</sup> He was fortunate enough to realize his belief when he was able to introduce clinical legal education to law schools where it has become an accepted and integral complement to traditional law school curricula. Its unique ability to integrate the teaching of practical skills and legal doctrine, that elevated students' understanding of both, thus providing an opportunity for interdisciplinary education. It is also seen as a public relations benefit, while simultaneously serving an essential need in most communities for quality legal representation for all parties.<sup>401</sup>

Today, the clinical legal education method has grown and spread among law schools throughout the science. However, around the world, some legal education systems have not been enthusiastic about applying the clinical education model. There is remains a dedication to the archaic forms of traditional learning paradigm as the best methods of legal education. Unfortunately, the Saudi Arabian culture of legal education has adhered the old style of legal education within law schools.

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<sup>400</sup> Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, Penn St. Int'l L. Rev. 22 (2004) at 421

<sup>401</sup> Donald N. Duquette, *Developing a Child Advocacy Law Clinic: A Law School Clinical Legal Education Opportunity*, 31.1 U. Mich. J.L. Reform (1997) at 1



For the operation of the clinical legal definition, Professor Richard J. Wilson states that :

“[c]linical program would have six components. First, it is created through a law school with the intent that the program is integrally linked to the academic program of the institution. Second, law students, usually in their final years of law school, learn experientially by providing legal services or advice to real clients who qualify for representation by the law school's clinic. Third, those students are closely supervised by an attorney admitted to practice in the relevant jurisdiction, preferably by a member of the law school faculty or a private or practitioner, who shares the pedagogical objectives of the clinical experience. Fourth, the clients served by the clinical program generally are not able to afford the cost of hiring private counsel, and they usually come from traditionally disadvantaged, underserved or marginal sectors of the community. Fifth, supervised case representation by students is preceded or accompanied by a pedagogical program that prepares students for what might be called theories of the practice of law. This would include components of substantive doctrine, skills, ethics, and values of law practice, and would be taught by a professor who knows the students' cases well enough to integrate that experience into the clinic classroom. Sixth, the students would receive academic credit toward graduation, hopefully for both the case and class-work they undertake as part of their participation in a clinic.”<sup>402</sup>

When regarding the analytical technique of clinical legal education, it is important to note that law school students not only learn to think like lawyers, but correspondingly begin to internalize the integrity, competence, respect for the rule of law, and loyalty to clients' incumbent on a professional attorney.<sup>403</sup> Therefore, with the clinical legal education model, students gain an ideal education under the supervision of a member of the faculty or a private attorney who is licensed to practice. Students also obtain a significant chance to integrate their academic life with the reality of the legal profession to better recognize and adapt to the practice and implementation of the law. It is this type of educational methodology that provides

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<sup>402</sup> *Supra.*, Wilson, note, 400 at 423

<sup>403</sup> *Supra.*, Babich, note 397

invaluable practical experience under the direct supervision of legal professionals before taking the bar examinations.

Frequently, legal clinic students, under the guidance of a licensed lawyer, will engage in pro bono representation of persons from different socio-economic status than their own who seek assistance with various of legal issues. It is this type of exposure that may, but need not, motivate them to give attention to the public interest and service of the community.<sup>404</sup> However, the legal services provided to clients create innovative training for students to recognize approaches to interaction and service to clients while applying the tenets of appropriate professional ethical standards and values learned in school and required by the legal institutions and peers.

If made compulsory, the real value of participating in legal clinics will not immediately be realized by all students. There will be those students who will criticize having to donate their time and effort to the less fortunate. Unfortunately for them, it will be their loss as there is educational value in learning by doing; something that will never be replaced by the classroom. When coupled with the provision of legal services, law schools' curricula provide substantially more reflective experiential training for future legal practice. Thus, the experience that cannot be made available in traditional education also cannot create a reflective and public-minded legal professional in the future.<sup>405</sup>

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<sup>404</sup> *Supra.*, Wilson, note 400, at 423

<sup>405</sup> *Id.*, at 424

In the American legal education curricula, the practice of pro bono clinical legal education has become firmly entrenched. The schools have constructed their course syllabi and curriculum relying on legal clinic experiences to be a valuable tool. In their pursuit of quantifiable educational opportunities for their students, American law schools have attempted to design and construct the perfect combination of clinical and classroom education programs for developing practical competency, and increasingly expecting them to be educationally disciplined and focused. An exclusive American Bar Association (ABA) committee stated: "Deans and faculties of law schools should keep in mind that the law school experience provides a student's first exposure to the profession and that professors inevitably serve as important role models for students. Therefore, the highest standards of ethics and professionalism should be adhered to within law schools."<sup>406</sup>

Nonetheless, this method of education differs in law schools throughout the world for diverse reasons. Law schools in various countries appear to lack the knowledge, experience or resources to start a program in clinical legal education similar to those in the American law schools. Additionally, the culture of the legal system and society in some countries has placed stringent restrictions on the disclosure of case information. According to professor Richard J. Wilson, the governments are rarely willing, at least initially, to commit funds for the development of clinical education when facing seemingly insurmountable demands on their meager budgets. While some law schools have drawn from indigenous sources to create effective

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<sup>406</sup> Peter A Joy, *The Law School Clinic as a Model Ethical Law Office*, William Mitchell Law Review, 30:35 (2003)

clinical programs, most of the new clinical programs started internationally are begun with funding from a foreign donor(s).<sup>407</sup>

In Saudi Arabia, there are no apparent scientific reasons for the lack of clinical legal education in the law schools other than an unwillingness of individual educators to implement them. However, since the material resources and logistic services are generously available, one might ask why not use them? The answer may be as simple as, we do not know, or it may be due to the lack of experience of current and former law school educators who are either unwilling or uninterested in improving legal education within the Kingdom. Additionally, since the revolutionary establishment of new universities and colleges throughout the Kingdom between 2005 and 2015, many new faculty members were inexperienced educators and a number of them lacking to hold the first-degree in law sciences.

Tragically, some officials of the law schools do not possess even the necessary legal training needed to teach law. It would not be difficult to assume this to be a primary reason for not accepting clinical legal education in the Saudi law schools.

#### **§ 4.1.3.5 Lecture Method**

The word lecture is a Latin term, which means “which is read.” To lecture is perhaps the oldest teaching technique known to man. By the 16th century, the word lecture was used to

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<sup>407</sup> *Supra.*, Wilson, note 400

describe oral presentations of instruction given by an instructor to a body of learners.<sup>408</sup> The lecture is a method of teaching in which the instructor verbally presents facts or principles to students, who are then required to take notes but not allowed to ask questions.<sup>409</sup>

Lecturing is the actual physical act of presenting information to students, and while it may be common in legal education, employing it as the singular mode of information delivery is often discouraged. There are many reasons for this the prime of which is lecturing is a one-way street of knowledge. At present, law schools such as those in the Kingdom of Saudi Arabia tend to cling to the lecture method as a long-established and time-honored system of instruction, but is it enough for modern legal education?

The typical scenario of a lecture lesson is the professor or lecturer stands in front of the classroom facing the students and delivers his lecture. He may do it with visual aids or handouts but what he does not do is interact with his students. There is no question and answer process during the presentation, not after. The students are expected to be respectful, pay attention, and take copious notes, but they are not allowed to ask questions!<sup>410</sup>

Although the lecture method is a vital tool in the education process, especially during the first years of legal studies, when students are introduced to the law they can also have drawbacks such as being uninspiring to the students. Much depends upon the voice and delivery of the

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<sup>408</sup> Paris C. *Lecture Method: Pros, Cons, and Teaching Alternatives*, Retrieved from; 2014, Available at: <http://blog.udemy.com/Lecture-Method> (Last visited March 16, 2018)

<sup>409</sup> BARKLEY F. ELIZABETH AND CLAIRE H. MAJOR, *INTERACTIVE LECTURING: A HANDBOOK FOR COLLEGE FACULTY*, JOHN WILEY & SONS 2018) at 5

<sup>410</sup> *Supra.*, Katz, note 380

lecturer, the topic, and the time of day. Lectures are also often used when the tutor needs to give explanations of various legal concepts. Lecturing is a conventional technique, practiced in the UK, France, U.S., Arabic countries such as Saudi Arabia, Egypt, Qatar, and the UAE, and in China, Singapore, and Japan.<sup>411</sup>

The lecture method has various advantages, the first of which is its cost-effectiveness. It is one of the least expensive method of legal education. Lecturing assists students to develop their hearing skills, which are paramount for any lawyer. Lectures can also be carried out without any supplementary learning materials or a particular setting. All a lecture requires is for the students and the tutor to be together in one place. Also, the lecturer usually has organized the material for the student before the lecture.<sup>412</sup> The probability of the student being confused is therefore low. Finally, lectures typically involve the oral presentation of one person, the lecturer to many, the students. There is no argument as to the value of lecture; they do save resources and usually cover extensive amounts of information in each session.

The primary drawback of the Lecture method is that it does not engage the students. Both student and lecturer are at a disadvantage because only one voice is heard and no questions are asked.<sup>413</sup> If the lecturer is not likable, exciting, or lively enough, many students may be easily distracted. Lectures also expect that the students understand what the lecturer is saying. If there are any language barriers such as accents, dialects, and idiolects unfamiliar to the students, the lecturer's words may only be shouting into the wind leaving the students at a loss.

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<sup>411</sup> *Supra.*, Gane, note 381

<sup>412</sup> *Supra.*, Schwartz, note 376

<sup>413</sup> *Supra.*, Hess et al., note 378

Information learned during lectures may also not be retained. It is easier for students to remember material obtained through more interactive methods. Lectures are highly passive, and lecturers should find ways in which to engage the students so that they remain alert.

It is also argued that lectures should not be redundant as not all students learn at the same pace. While the claim may be valid, is it incumbent upon the school to slow the pace for one student, at the cost of potentially crippling another who does possess the ability to keep pace? This argument appears to be more of a course prerequisite one than a lecture issue. Balancing the learning abilities of a filled 30-seat classroom seems an impossible task, which perhaps explains the value of pre-screening students and providing tutors. Regardless, the point of an education is not to be programmed in a specific manner to fit the instructors' of the ideal student but to critically analyze the information provided and learn how to apply it in different contexts.<sup>414</sup>

Another distinct disadvantage is students may find it hard to concentrate. Lecturing should, thus, be accompanied by other techniques of legal instruction such as audio/visual and handouts, to maximize effectiveness.<sup>415</sup> Furthermore, students may sometimes miss out on some of the information communicated due to inefficient note taking skills or the inability to keep up with the lecturer's pace. Any possible clarification may also not necessarily be accessible to obtain as in most cases; questions are customarily asked at the end of the lecture session, but only if the lecturer remains available after class.

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<sup>414</sup> *Supra.*, Paris, note 408

<sup>415</sup> *Supra.*, Katz, note 380

Furthermore, this method is considered a general weakness in legal education due to its inability to impart both the knowledge and skill sets that lawyers need. Additional to this, the over-reliance on this method with its dependency on the inadequate delivery of much-needed information required to meet the aspirations and demands of promising new legal practitioners in the Kingdom.

Conclusively, proper educational methods have evolved significantly over the last few centuries. Once the lecture method was common in legal training in the law schools throughout the European countries and the United States; however, after the adoption of the case method, it declined in use. The decline is attributed to the fact that it does not stimulate students during the lesson, as it fails to grab and hold their attention when the professor only lectures. More importantly, the lack of interaction between professor and students hurts both; the primary argument is there is no argument, nor are there discussions which might challenge students to think.<sup>416</sup>

Currently, the most dominant educational strategy employed in legal education is the Socratic method, which is very similar to a lecture, and the case study technique. The role-playing method is also used, and the legal clinics always assist the student in entering actual legal practice.<sup>417</sup> However, it should be noted that these techniques interrelate to each other, and it is almost impossible to teach using one specific method while avoiding all others. All approaches are, therefore, essential, as they complement one another. Nevertheless, the teaching

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<sup>416</sup> John N Hazard, *Comparative Law in Legal Education*, University of Chicago Law Review, 18.2: 264-279 (1951) at 276

<sup>417</sup> *Supra.*, Gane, note 381



methodology used is usually based on two factors; the lecturer's choice or personality, and the nature of the material that the students should learn.

In fact, this has occurred due to the contamination of the Islamic norms which previously governed the Arabs' way of life by the French and other European and western cultures. A good example can be seen among the Arab's learning institutions. Moreover, most higher learning institutions are slowly changing their technique to cope with the increased demand for quality law graduates.

#### **§ 4.1.4 Future Instructional Methodologies**

In general, legal education has evolved from the traditional law-office apprenticeship to a more experiential style of teaching. Experiential education and experiential learning are not new to legal education or professional education in general. Learning is not education, and experiential learning defers from experiential education. Learning happens with or without educators and institutions.<sup>418</sup> With a particular direction to Saudi law schools, in the era of the global multilateral trading system, legal education faces many challenges and intricacies. Legal education demands the provision of a combination of legal knowledge to meet the requirements of facing both complex and interdisciplinary of those challenges.

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<sup>418</sup> James E. Moliterno, *The History and Future of Law Teaching Methods*, Legal Education in the 21<sup>st</sup> Century, International Conference. Turkiye Barolar Birliği (2015) at 29

Muna argues that;

“[T]he practices of law in a globalized world requires a body of knowledge which is both complex and interdisciplinary. It requires the acquisition of a broad range of new skills and techniques for solving legal problems. To equip lawyers with the needed skills to practice law in a globalized world will require changes in the traditional law school curriculum. It will require a curriculum which trains lawyers for the practice of law in a dynamic and rapidly globalizing world. Law schools lack adequate resources to implement the necessary changes in their curricula to meet the needs of globalized legal education. Law schools also have to deal with the retention of highly experienced law professors and scarcity of teaching materials. The retention of law professors and the availability of teaching materials are essential to meet the challenges of legal education in a globalizing world.”<sup>419</sup>

#### § 4.1.5 Considerations for Improving the Legal Education

In the late 20<sup>th</sup> and early 21<sup>st</sup>-century legal education programs began an explosive expansion around the world that significantly altered the identity and objectives of learning law.

In the typical modern format of legal education, a professional training model has separately prevailed over the more traditional professional education and the apprenticeship model of training. For example, modern American law schools offer a 3-year post-graduate law degree with the goal of focusing on the application of the relevant academic knowledge required to practice law.<sup>420</sup> It has become a trend-setter that law schools in many other countries have

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<sup>419</sup> Muna Ndulo, *Legal Education in an Era of Globalisation and the Challenge of Development*, Cornell Law School (2014) at 1

<sup>420</sup> Judith A. McMorow, *Comparative Legal Education: An Introduction to US Legal Education and Preparation for the Practice of Law*, Boston College Law School Legal Studies Research 6 Jurist Review No 02 (2009)

attempted to emulate by engaging in legal education reforms. The world of legal education is recognizing, and better still, acknowledging that the global legal market is headed toward standardization based on the United States model of legal education and training.<sup>421</sup>

Unlike the American legal education system, the Saudi Arabian legal instructional model is not entirely expected to train practicing attorneys. It strives towards goals leading to generations of law graduates to be better at understanding theories and principles of law but not to become critical thinkers; without an argument, there is no argument. In fact, the current legal system reflects the realities of Saudi Arabia and its singular goals of addressing domestic public interest, cultural and economic. However, rather than being invested in the global legal experience and taking advantage of integrating a new legal education model that will best suit its present, and more importantly, future legal market needs, the legal education authorities have chosen the old path. This attitude is demonstrated in current law school curriculum and syllabi designed to include classes on study skills, law, and non-law subjects. However, what the Saudi model of education has been adopting in law classrooms is exclusively the lecture method.

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<sup>421</sup> Rosa Kim, *The Americanization of Legal Education in South Korea: Challenges and Opportunities*, Brook. J. Int'l L. 38: 9 (2012) at 49. Rosa states that South Korea adopted an American style three-year law school system in 2007, which has effected a radical change in the legal education process. The average of passage under the old legal education was below a 5 percent which was yielding too few practitioners to provide affordable legal services. Under the new system the average was expected to be 70-80%, with those who successfully complete law school having little difficulty passing the exam. Also, Rosa states that "In July 2007, the legislature passed the Graduate Law School Act ("GLSA"). To achieve the ideals of the GLSA, both the content of the curriculum and the pedagogical method employed at law schools must be altered. The curriculum needs to become more globalized and diversified, offering courses taught in English and covering foreign legal systems and international law. The new emphasis on coverage of international law reflects the understanding that Korea needs to produce lawyers who have the skills necessary to deal with a globalized economic and legal community. So, in August 2008 time, to regulate entrance into these new schools, a Korean version of the American Law School Admissions Test ("LSAT") was created, called the Legal Education Eligibility Test ("LEET"). The objective of this major overhaul of the legal education system has been to address the need for professional legal education and legal specialists. Thus, the transition will shift Korean legal education away from high-status-but- generalist training to specialized, professional education aimed at producing lawyers ready for practice." *Id.*, at 59

Unfortunately, it is becoming evident that the lecture method alone does not offer the critical thinking skills required of lawyers in the 21<sup>st</sup> century.

The teaching of law courses in Saudi Arabia has consistently relied solely on the lecture model of instruction while refusing to address much-needed changes. Legal education appears to be decisively outdated, and its old folder of approaches is restrictively inefficient and insufficient for today's law students. It has become increasingly evident that for law students to be successful in the legal field, they must possess a significantly different set of knowledge and skills from those provided. Unfortunately, Saudi legal schools which practice one-way teaching, have not kept pace with the evolution of global legal education; this is unacceptable for law schools in the 21<sup>st</sup> century. There must be a definitive interaction between the lecturer and the students offering the opportunity for legal discussions about, and perhaps even challenges to the subject matter. The interaction not only opens a dialogue between the lecturer and the students, but it also allows him to evaluate his presentation and skills personally. Along with this, it allows him the opportunity to better gauge individual students by observing their participation in the interaction, including the quality of questions they might ask.<sup>422</sup>

Studies have proven that students who participate in interactive programs tend to learn faster, retain what they have learned, and are more open to new knowledge. While this is the ideal scenario, contemporary evidence strongly suggests any number of other factors come into play when assessing lecture-based curriculum performance.

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<sup>422</sup> *Supra.*, Stuckey, note 399, at 168

Among these are the lecturer's (in no specific order):

- Presence, Voice, and Delivery
- Extent of topic knowledge
- Ability to hold class interest
- Sincerity
- Willingness to challenge and be challenged
- Adeptness at use of redundancy

Among students' considerations are (in no specific order):

- Enthusiasm for learning
- Passion for challenges
- Dedication to goals
- Detail orientation
- Ability to be both objective and subjective
- Organizational skills

Note: This is not meant to be an all-inclusive list.

If even 50% of these ideal goals were met, the positive dynamic interaction for students would overwhelm the benefits of the more mundane lecture routine. If coupled with the more active Socratic method of education, the student's role in his education would no longer be

passive; active participation will undoubtedly be the keystone of success for both school and student.<sup>423</sup>

By employing open and honest in-class discussions of the lecture material, students will learn to recognize relevant case facts and their appropriate management in the courtroom. They learn about precedent-setting court rulings, how they came about, and how they are best applied in actual practice. Someday, the existing curriculum of the “Science of Law,” in the Kingdom will be replaced by factual case methodologies and debate to prepare future attorneys to practice law.<sup>424</sup>

There can be no argument if there is no argument. Existing legal education curriculum in the Kingdom provides neither lecture nor discussion of the art of the legal argument, yet it is the backbone of the law profession, but what is a legal argument?

West’s Encyclopaedia of American Law defines an argument as: “A form of expression consisting of a coherent set of reasons presenting or supporting a point of view; a series of reasons given for or against a matter under discussion that is intended to convince or persuade the listener.”

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<sup>423</sup> *Id.*, at, 154

<sup>424</sup> *Supra.*, Moskowitz, note 327, at 241

For example, an argument by counsel consists of a presentation of the facts or evidence and the inferences that may be drawn from that place, which are aimed at persuading a judge or jury (Saudi legal system does not use the jury system) to render a verdict in favor of the attorney's client.

An attorney may begin to develop an argument in the Opening Statement, the initial discussion of the case in which the facts and the pertinent law are stated. In most cases, however, an attorney sets forth the main points of an argument in the closing argument, which is the attorney's final opportunity to comment on the case before a judge or jury retires to begin deliberation on a verdict.”<sup>425</sup>

If there is no argument, there may be no case.

In his book, *The Five Types of Legal Argument*, Wilson R. Huhn, Professor Emeritus identifies five basic legal argument categories: 1) text, 2) intent, 3) precedent, 4) tradition, and 5) policy analysis.<sup>426</sup> He then goes on to state that “students of law, as well as practicing attorneys, must learn to recognize various types of legal arguments along with their strengths and weaknesses. Students who are initially learning about arguments, and how to frame them will often become confused as to the type, and applicability of the argument they are preparing.”<sup>427</sup>

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<sup>425</sup> West's Encyclopedia of American Law Argument, Available at <https://searchworks.stanford.edu/view/5659855>

<sup>426</sup> Wilson Ray Huhn, *The five types of legal argument*, California Academic Press 3<sup>rd</sup> (2014)

<sup>427</sup> *Id.*

Huhn goes on to explain that each category of legal argument derives “from a different source of law; is based on a different set of evidence, and serves different values.”<sup>428</sup>

Dr. Huhn states that **the first**, Text “arises from Many areas of U.S. law are governed by controlling legal texts such as the constitution, statutes, regulations, and court rules. Textual arguments are arguments that center around using methodologies for interpreting the language of these texts.”<sup>429</sup>

Dr. Huhn describes three primary textual interpretation methods—plain meaning, canons of constructions, and intra-textual arguments:

- The plain meaning rule relies on the definitions of particular words and phrases in the text to interpret the text.
- Canons of construction are rules of interpretation that draw inferences about the meaning of a rule from its textual or legal context.
- Intratextual arguments use one portion of the legal text (document) to interpret another portion. To determine intratextual argument’s meaning of a provision either look to the placement of a provision of law within the organization of the document or look to the use of similar/dissimilar terms in other parts of the document.

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<sup>428</sup> *Id.*

<sup>429</sup> *Id.*



**The second type** is what Dr. Huhn describes as “the meaning of the intent of the enactors..” A prime example is the original intent of the drafters of the American Constitution or the intent of legislators who drafted a statute. Evidence of intent may be drawn from:

1. text of the law itself,
2. previous versions of the text,
3. drafting history of the text,
4. official comments to the text, or
5. contemporary commentary.

**The third is Precedent** – In American legal education systems, court opinions are probably the most common type known to first-year law students. It is an argument based on judicial precedent which means making an argument based on judicial precedent which includes analogizing or distinguishing the client’s case from the facts of precedential cases. In the case of arguing for a particular rule to be adopted, it also includes examining what rules past courts have adopted on the issue, and why. It may entail arguing which courts are correct and which are wrong based on how they interpreted the constitution, a statute, or essential binding precedent such as a U.S. Supreme Court case.

**The fourth type is Tradition.** The fourth type is Tradition. Herein lies the crux of the major law school issues and discussion “The Supreme Court has identified tradition as an important test for determining our fundamental rights. Tradition is looked to in various areas of

law, such as the law of commercial transactions, where courts consult industry customs and traditions. Similarly, social traditions play a role in the allocation of liability for tort.”<sup>430</sup>

In Western academia, the description of Islamic culture is used for religious practices and a common way of life among Muslim peoples, while the tradition in a Muslim's perspective is different than Islamic teachings.

There is considerable controversy throughout the non-Muslim world regarding the true meaning of Sharia. To many, Sharia is law, Islamic law, but to the Muslim, Sharia means the path to be followed and includes a set of teachings that must be followed and refrained from doing; thus, it is an umbrella that binds the Saudi people together in a covenant with Allah. Generations of ancestors established Saudi cultural, traditions, and customs with one primary goal in mind, survival. Seen by some non-Muslims, some of these customs may appear archaic and perhaps even barbarous, but they evolved through time to become the heritage of tradition that joins a people to their land and their beliefs.

To bring legal education up to a competitive level with schools in other countries requires valid assessment of some of the older, more archaic traditions still enforced in the country's law schools. The logical point to begin must be the lecture-based curriculum. That is not to say there is no longer extended value in lectures, for that, would be an unfair assessment. What is needed is upgrading in the system that would allow for open communication and the exchange of

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<sup>430</sup> *Id.*

questions and ideas in the classroom. For the proposal of improving legal education, law schools may learn from the experience and research already performed in the United States to implement curricular strategies that will produce lawyers who are more practice-ready.<sup>431</sup> However, in the Kingdom, law professors may believe that change or improvement of legal education through applying a model of instructing that formed in the foreign law schools is not necessary, or appropriate for the educational process in the country, nor would it lead to positive outcomes. They perhaps consider that the case method of teaching is no more than an educational tool for assisting students in learning, not as a prime instructional tool method of education. They may have further questions such as what it is, whom it involves, what are its effects, how might it be managed, and how long will take to learn the new style, and what if the new method fails to improve outcomes of the instructing. Additional concerns may be that neither resources released by the judiciary authorities nor released cases cover all aspects of lessons nor applicable materials for educating.

**The final type is Policy.** Policy arguments interpret laws by inquiring into their underlying purposes. It determines the meaning of the law based on the values the law is intended to serve. “Policy arguments are different from the other four types because they are consequentialist in nature.” “Unlike the other four types of arguments, which look to the past in that they are appeals to authority, policy arguments look to the future by arguing that a certain interpretation of the law will bring about a certain state of affairs. That state is either desirable or unacceptable in the eyes of the law.”<sup>432</sup>

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<sup>431</sup> *Supra.*, Kim, note 419, at 69

<sup>432</sup> *Supra.*, note 424

Understanding each type of these arguments will help law students and young attorneys tasked with writing briefs in learning to formulate effective legal arguments.

In fact, the burden of preparing students for law practice is on the law schools; it assumes that law professors are cognizant of the responsibility to ensure that law school graduates be prepared to provide professional legal services before they are eligible for licensure to provide such services. The law programs should be designed to provide students with organized learning that increasingly leads graduates to gain a comprehensive knowledge required for their first professional jobs. Members of the legal profession and others who are concerned about the public's interests should ask why licensing authorities continue to issue unrestricted licenses to practice law without testing for minimal competency in the broad range of skills and values required for the essential practice of law.<sup>433</sup>

Law professors need to improve their methods for achieving educational objectives and perhaps consider integrating traditional pedagogical methodologies with the more modern contemporary techniques. Traditional wisdom never goes out of style and can be of immeasurable value in determining whether current instructional methods are achieving the school objectives.

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<sup>433</sup> *Supra.*, Stuckey, note 399, at 12

In his book, *Best Practices for Legal Education*, Stuckey states that:

“[I]t is no easy task to consider how to improve legal education even if all concerned agree there is a need for improvement. Generations of the debate have not resolved the relative merits of a liberal, general education versus a technical, professional orientation for the practice of law. Nor will we ever be able to reach universal agreement about the specific knowledge, skills, and values that law schools should teach if for no other reason than the vastly diverse practice settings in which our graduates work. There are some fundamental things about which we should be able to agree, however, and we should not refrain from trying to improve legal education simply because the task is difficult. Other countries are reforming their systems of legal education; our attention to improving the preparation of lawyers for practice in the United States is long overdue.”<sup>434</sup>

On the whole, acceptance of change in legal education is not easily accomplished, especially in an environment that is properly and profoundly rooted in history and traditions. It is a struggle between what is perceived as religious teachings and what are human-made laws. However, the Kingdom has been proven to produce robust and progressive leadership in its monarchy while maintaining respect for traditions. It is no easy task and will require those with good legal knowledge and skills to help pave the way.

In the contest, currently, Saudi Arabia has attained a position as being on an equivalence among the twenty largest economies in the world and aspires to an even higher standing. It is a remarkable feat considering it has only been a country since 1932.

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<sup>434</sup> *Id.*, at 3

Under Saudi Arabia's Vision 2030,<sup>435</sup> Saudi authorities will endeavor to have at least five universities listed among the top 200 international universities in the world.<sup>436</sup> To attain this goal, the educational aspect of the vision focuses on three primary areas: curriculum development, higher education advancements, and building the skill sets needed in the ever more complex job market. It also assists students to help them achieve their goals of attaining higher than average undergrad and grad school entrance Scholastic Achievement Testing (SAT) examination scores, which will open new career opportunities both in the country and internationally as representatives of the Kingdom.

The overall format of the 2030 agenda will emphasize curriculum modernization while working towards developing job-specific training for every educational field. The core driving force behind this decision is the necessity for the Kingdom to have an educated and skilled Saudi workforce capable of taking charge its own country and future. Primary among the various skill-sets is law; Law is the bond that lifts the spirit, yet stays the hand.

Unfortunately for the people of Saudi Arabia, modern law is still in its infancy; perhaps one might compare it to a newborn child who learns something new each day. Just as the child is a living, breathing entity, so too is the law, and those who would practice it; each in its own right must achieve specific desired goals for the child to grow and the law to serve. If this is not recognized, then the dream of achieving modernization of the legal field in accordance with

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<sup>435</sup> *Saudi Vision 2030*. See [Vision2030.gov.sa](http://vision2030.gov.sa) at <http://vision2030.gov.sa/en> (last visited May 22, 2018)

<sup>436</sup> *Id.*, Available at <http://vision2030.gov.sa/en/node/6> (Last visited March 26, 2018)

Vision 2030 will not be achieved.<sup>437</sup> Unfortunately, the child called Law has been faced with failure by legal academia within the Kingdom. From its birth in 1980, legal education has steadily fallen behind its international peers. The once hoped for an abundant crop of highly trained and qualified practitioners of law became an unrealized dream; a mere cup of water in a vast desert. The tragedy is compounded by the burden of not having affordable, skilled legal representation in a growing economy and society. Many Saudis see this neglect of legal education and practitioners as not being in line with the Vision 2030 agenda and transition.

For the Kingdom to move forward, the legal education must lay the ground work and pave the path, or the transformational change hoped for in the 21<sup>st</sup> Century will not materialize. To do this will require improvement and advances in the Saudi Arabian law schools to include, but not be limited to new strategies, creative innovations, and modern techniques to explore multiple dimensions of legal education. However, to be successful legal educators must develop a broad range of learning competencies that will challenge the minds of students. They must foster meta-analysis skills for interpretive and problem-solving assignments that demonstrate the function of facts as they evolve in legal arguments and decisions.<sup>438</sup>

By incorporating innovative methods into Saudi legal education, there creates an urgency which will enable students to gain experience managing legal complications and develop their

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<sup>437</sup> Khadija Mossad, *How Will Saudi Arabia Revamp its Education System*, Fair Observer (2016) [https://www.fairobserver.com/region/middle\\_east\\_north\\_africa/will-saudi-arabia-revamp-education-system-11082/](https://www.fairobserver.com/region/middle_east_north_africa/will-saudi-arabia-revamp-education-system-11082/) (last visited May 22, 2018)

<sup>438</sup> *Supra.*, Stuckey, note 399, at 164

abilities for expository and problem-solving exercises in analysis simulating the implications of critical decisions and contextual factors.

It is appropriate for the researcher to take into account attendant concerns of educators who are essential to the successful implementation of the proposal if innovations are to succeed. Developing a program without conducting a needs assessment can be a costly mistake producing limited results. With the transformational changes occurring in Saudi education, professional development must be strategically planned, focused, and specific to support instructors in the modifications required for implementation.<sup>439</sup> There exist differences in the Stages of Concern of professors for understanding the apprehension and questions of professors concerning the evolution of legal education methods in Saudi law schools during the submission or application of the proposal. It is therefore imperative that the researcher uses a theoretical framework as a guideline and clarify for understanding the change process. However, the theoretical framework is the assertion that facilitating change requires the understanding of the existing attitudes and perceptions of the individuals in the change process. This understanding solidifies the fact that the most critical factor in any change process is the people involved.<sup>440</sup> The study will not include the measure of professors' concerns from the proposal of changes in the legal teaching methods, however, with strong consideration, it will open the door for more research to examine this aspect.

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<sup>439</sup> Tami Boatright, *Technology Integration for Common Core State Standards Implementation: Developing Differentiated Professional Development based on the Concerns-Based Adoption Model*. Diss. Brandman University (2015) at 11

<sup>440</sup> *Id.*, at 11



## SECTION II

### § 4.2.1 The Legal Education Models in Arab Region

In the early years of the Kingdom of Saudi Arabia, the French legal education model was initially used to train legal practitioners and affected Arab law schools in numerous ways. To fully understand French impact on Saudi Arabian legal instruction techniques, it is essential to acknowledge that Saudis have a distinctively different legal system as compared to western culture; this is especially so in the Arabian Peninsula.<sup>441</sup> Given the location and import of Saudi Arabia, it was less affected by the fusion of the western legal values.

The contamination of Arabian law by western culture led to the introduction of French teaching methods, especially in Egypt, a country whose culture appears to be torn between the East and the West. French legal education methods include the lecture/textbook and legal theory study methods. These methods were introduced into the Arabic the legal instruction systems where instruction was often conducted through lectures. Furthermore, the Arab systems employed lecture-based legal education to train the students before allowing them to work under already established legal professionals. Since that time, the case study and problem-focused approaches have gained popularity in most higher learning institutions, but not in legal education within the Saudi law institutions.

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<sup>441</sup> *Supra.*, Sultany, note 368

Before the 19<sup>th</sup> century, the entire western legal framework was foreign to the Arabs.<sup>442</sup> However, the introduction of western influence has undermined many of the traditions of the Islamic communities causing unintended conflict.

Historically, the Arab territories have been favorable to the influence of legal systems emanating from Roman law. However, French interest in the region dated back to the Ottoman rule and was extended, after France, under the leadership of Napoleon, carved out her colonial empire in North Africa, occupied Egypt, and created French mandates in Syria and Lebanon.<sup>443</sup>

To protect French interests, administrative and legal institutions were fashioned adapting themselves to local conditions until today the administrative systems of the Islamic states in the Middle East find themselves strongly marked by the French system.<sup>444</sup> In the legal sphere, this influence was felt in the formation of domestic legal institutions copied from the French. The French codified system of law was easily adapted and rapidly spread throughout the Middle East.<sup>445</sup> The majority of Arab laws were inspired by the French system and consisted of the work of experts and professors who hold their law degrees from French schools, in particular, Egyptian, Lebanese, and Syrian scholars.<sup>446</sup>

While the French legal system distinguishes between public and private law, the Arab law schools automatically have applied this classification in their law schools' curricula. This

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<sup>442</sup>

*Id.*

<sup>443</sup>

*Supra.*, Hanson, note 217

<sup>444</sup>

*Id.* at 290

<sup>445</sup>

*Id.* at 274

<sup>446</sup>

*Id.* at 289

simulation in the culture of legal education has entrenched the notion of subsidiarity to the French model regarding the legal system and legal education system as well. Now, various higher education institutions in Arabic countries such as Egypt have embraced numerous western aspects of their teaching methods. Modernization has played a role in this transition and fusion, because at current technological levels, interdependency has increased, and it has become close to impossible for the Islamic countries to isolate themselves, culturally or otherwise.

#### **§ 4.2.2 Saudi Legal Education as It Now**

Saudi Arabian legal education found its roots in a government institution known as “the Institute of Public Administration” (IPA); the establishing of the API and its subsequent actions were a tremendous leap into the 21<sup>st</sup> Century. It was created in response to government officials and respected academics who recognized the coming of a modern era and its urgent public need to establish a legal legal training in the country. It began participating in the development of a new legal system for the country evolving out of the officials’ decisions; accordingly, they determined to introduce the first graduate diploma program for teaching legal sciences in the Kingdom. The IPA was launched to educate and increase the proficiency of governmental employees within the Kingdom, and it had been carrying the banner with the idea of inserting improved legal education into the country despite the displeasure of some community groups protesting the start of the program form in one form or another.

Undeniably, the IPA's mission has been the elevation of the role of public officials to significantly support administration efforts to improve national economic development;

nonetheless, it is not an institution of higher education for awarding academic degrees in various academic disciplines. The task of the legal program at IPA has been to train Saudis in adjudicating disputes as members of administrative committees with legal jurisdiction and providing specialists in legal advice.

Thus, the modern form of the legal education system was introduced into the Saudi educational field through IPA in the early part of the 1970s. The Department of Law at IPA was the Saudi institute that held the first academic programs of law studies in the country; although the IPA does not consider it to be an official university.<sup>447</sup> The IPA offers to provide both academic and non-academic services to other agencies and the public as a whole. Despite this, as a national institute, the IPA provides a post-graduate diploma program in legal sciences to graduate students; the legal program has been focusing on modern legal theories, and the legislation and regulations enacted by the government rather than on the legal system *per se*. However, the enrolment in the law diploma program at the IPA is limited to those who hold a bachelor's degree in Sharia from any Sharia college or department or Judiciary Department in the country. The law diploma degree at the IPA is a 2-year full-time program for preparing candidates who aspire to practice law in the Kingdom.<sup>448</sup>

It was in the early 1980s that Saudi students at King Saud University (KSU) in Riyadh, first began to take formal law classes with related course materials and formal curriculum. Once the university began to offer the Science and Theory of Law classes, accompanied by Analytical

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<sup>447</sup> *Supra.*, Al-Jarbou, note 20, at 213

<sup>448</sup> The IPA Webservices.ipa.edu.sa, دليل البرامج الاعدادية [Arabic Text]  
<https://webservices.ipa.edu.sa/Daleel/ProgInfo.aspx> (last visited May 22, 2018)

Skills of Law, it began to fill the vacuum of legal education that had existed in the country.

Finally, academic-led education was beginning to supersede personal training and practitioner-led training. The modern curriculum is designed to train law students in the tenets and virtues of viable historical law as well as instructing them in modern law.

For years though, the Saudi legal education had been frozen in time. There were several reasons for this state including cultural, religious, and educational planning factors. The significant issue facing legal education in the country was the acceptance of a new application of the law and getting it approved for instruction. The acceptance procedure was too complicated because the law, in the perspective of the majority of Saudis is considered human-produced while people are, by Islamic teachings, required to follow Divine Law. This fallacy was caused by the belief of former religious scholars that human-made law might oppose Sharia, which is not a law but is a covenant with the divine. While the Law, as understood by academics, is a humanistic science of framing and collecting provisions, principles, and rules in codes by the authoritative source of a country. If legislators wish to consider Sharia as the primary source of legislation, this will refute the issue of conflict, which is the case in the Kingdom of Saudi Arabia.

Also, the adoption of the Egyptian-French approach to legal education since the establishment of the legal education system, and the subsequent tendency to send off missions of faculty members to France to pursue higher education contributed to the consolidation of the prevailing pattern of education in the country. In the perspective of the old generation of officials of legal education and law educators who arose under this type of teaching methodology, the

concept of renewal of the education method may lead to undermining the confidence gained by that generation. The revolution of legal education since 2006 and beyond is focused on quantity of increasing law schools and improving legal curriculum in a modest way rather than focusing on substance, and without regard to the development of methods and curricula of education and upgrading its outputs.

It is understood that legal education is another facet of a national legal system, and since the French legal system has a direct influence on the Saudi legal system, it has a legal education with a similar impact. Distinctively, Saudi Arabia is a country that was never under the influence of any European or foreign occupation but has been influenced by French jurisprudence. This is because French legal concepts were well-known throughout the Arab World long even before the formulation and unification of the Kingdom of Saudi Arabia. It is Egypt that has been the conduit for the reception of French legal principles and culture of legal education into the Arab World including Saudi Arabia.<sup>449</sup> The Kingdom has now entered the 21<sup>st</sup> century along with a path of development integrating Western legal concepts for the benefit of its citizens while retaining its Islamic heritage.<sup>450</sup>

It is essential to bear in mind from the outset that when the legal programs were initially established in the Kingdom, the educational authorities avoided using term "Law" (*kanun* in Arabic) when referring to the legal education programs. The reasoning behind this is that Saudis believe only God can legislate law, therefore, the word "*kanun*" is not used. However, in place of

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<sup>449</sup> *Supra.*, Hanson, note 217, at 291

<sup>450</sup> *Id.*, at 291

kanun which represents the secular or temporal law, Saudi Arabia employs the word ‘*nizam*’ meaning "regulation." Therefore, legal degrees and law departments are given degrees with “*an`zmah*” names instead of “*kanun*” for the law programs. However, this practice is gradually being phased out with some law schools using term "*kanun*" in their title.

### § 4.2.3 Saudi Law Instructional Method

Generally speaking, teaching methodologies can be considered a way of learning by providing students with comprehensive knowledge in specific disciplines, subjects, and topics of literature and sciences. In other words, teaching methods are described by a professor as strategies which he or she uses for the delivery of lessons to attain specific goals and objective in the class. In the Kingdom, the teaching of humanity sciences including law studies is based on traditional teaching techniques comprised of non-interactive lectures. The lecture method is considered a cornerstone of colleges and universities in the country, and an effective manner used to teach organized bodies of knowledge, theories, ideas, and facts to students. Typically, researchers have proven that the lecture method is considered a popular teaching model in different subjects and it is the traditional style of teaching still found in many schools and colleges around the world.<sup>451</sup>

Since the establishment of the legal education system in the official universities during the 1980s in the Kingdom of Saudi Arabia, law programs have employed the Egyptian legal

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<sup>451</sup> Kaur Gurpreet, *Study and Analysis of Lecture Model of Teaching*, International Journal of Educational Planning & Administration., 1 No. 1, 9-13 (2011)

education method which becomes the prevalent model in law schools or departments until the present-day in the country. The circumstances of a shortage to prepare graduates to be principled advocates for justice and the rule of law in the country at that time contributed to adopting this kind of educational methodology in the law schools. The goal of legal education was to provide the country with qualified candidates to serve in the legal employment and replace Saudis in jobs occupied by non-Saudis. The legal profession was not widely accepted and was no law enacted regulating it for reasons that already explained in this study. Thus, the programs designed with a single perspective priority without consideration of developing the skills of lawyers thinking or abilities of how to argue. However, the tremendous increase in legislative and regulatory activity from law-makers signaled the need to better prepare law students for a practice that increasingly involves enacted law.<sup>452</sup>

The consequence is that in the move towards better academic preparation, Saudi universities have had traditionally pursued the education perspective of an abstract approach to knowledge. This approach views texts and codes as a system of norms which are interpreted through highly formal and rational means.<sup>453</sup> Otherwise, modern legal education through using elements of craft training and methodology content developed is characterized by providing the student with life experience rather than knowledge from books. In the Kingdom, it is time to focus on the results of legal education to gain the confidence of legal professionals and those interested in profession-related sectors. The method of education needs to be reviewed and scrutinized and benefit from the experiences of developed countries in this regard. The education

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<sup>452</sup> *Supra.*, Romantz, note 303

<sup>453</sup> John Flood, *Legal education in the global context: challenges from globalization, technology and changes in government regulation*, U. of Westminster School of Law Research Paper No. 11-16 (2011) at 3



system should be more useful in training students to be lawyers, jurists, and counselor who will be able to sit on international legal bodies after graduation.

A theoretical method in legal education has produced a deep gulf between the preparation of law students in the law institutions and the law practice in the Kingdom. The highlighted issue is the method of teaching and legal education purposes. Attention must be attracted to the inappropriateness of legal education programs provided in the Kingdom to the stage of scientific and cognitive revolution, given the advanced position occupied by the State between the two countries. Saudi Arabian authorities are attempting to harmonize legal instruction with economic and social development to be capable of meeting the needs of modern society. Thus, the tremendous increase in legislative and regulatory activity from lawmakers signaled the need to better prepare law students for a practice that increasingly involved the enacted law.<sup>454</sup>

Supposedly, in practice, the law school graduates are educated to be qualified for all legal works in both public or private sector and eligible for judiciary tasks, not to be unqualified for law practice. However, in quality education, the hardest perspective for today's students to gain is how to be practicing law in the last half of the twenty-first century and the challenge of legal education, helping them navigate toward that indefinite future.<sup>455</sup>

To become a licensed legal practitioner in the Kingdom of Saudi Arabia, a candidate must nominally obtain a Bachelor of Law degree (LL.B.) from a certified law school or be a

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<sup>454</sup> *Supra.*, Romantz, note 303

<sup>455</sup> Thomas D. Morgan, *Educating Lawyers for the Future Legal Profession*, 30 OKLA. CITY. U. L. REV. 30:537 (2005) at 545

holder of a degree from a Sharia college. Also, the candidate must achieve all mandatory requirements and have previous legal experience in the Kingdom for a minimum period of three years after graduation. According to Paragraph (C) of Article (3) of the Saudi Code of Law Practice (2001)<sup>456</sup> certain law degrees may require specific apprenticeships for graduates to acquire a permit of law practice. Accordingly, the requirement of legal experience under the direct supervision of a licensed attorney or at legal departments are no longer considered a viable educational option. The requirement is considered evidence of a lack of trust from stakeholders and specialists in the effectiveness of law programs that provided by law schools in the State. Plus, it demonstrates that law programs and the methods of education in the Kingdom are weak and have a deficiency in promoting deep comprehension of law and preparing students to be responsible professionals in a speedily shifting, interdependent world. With the development of legal education tools, the legal apprenticeship has become almost extinct and has ceased to exist only in a few countries that do not trust in the possibilities of its legal education.

Fundamentally, legal education in the Kingdom is based on theories presented through lecture and textbook study. Students are expected to take copious notes and memorize theories in preparation for examinations. Many of the senior members of the instructional staff consider the system to be time proven and vigorously pursue a position of retaining it. However, the younger, perhaps more internationally educated members of the staff feel that modifications and enhancements to the lecture presentation systems may substantially improve both the quality of legal education and expertise of graduates going into law practice.

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<sup>456</sup> *Supra.*, Code of Law practice, note 330

It must never be thought that the lecture method has become outdated; no longer viable in education! Precisely the opposite is true, now, more so than ever before, the experience and knowledge of Saudi Arabian legal experts lecturing in law schools can be the wellspring of improving the legal profession. However, it cannot do it without the dedication and cooperation of both legal experts and governmental authorities.

To tell a man he is starving does not feed him. To criticize established procedure such as the lecture methodology used in Saudi law schools, without recognizing its merits, and moreover, its potential value as a teaching tool in more contemporary programs is guaranteeing failure in the classroom.

The present-day Saudi legal education programs rely heavily on the traditional lecture method, to cast it out as old and worn, is arbitrarily eliminating hundreds of years of knowledge and perhaps ideas for improvement that never came to fruition. Whatever the case, there is a no logical replacement for a knowledgeable human instructor lecturing eager students. The problem lies in the absence of instruction and application of critical thinking and problem-solving skills needed to address challenging both domestic and international legal issues.

To put it succinctly, Saudi Arabia is teaching law students the theories of law, but not the skills required to practice it; does this portend economic disaster?

English is now the global language of business. More and more multinational companies are mandating English as the typical corporate language to facilitate communication and

performance across geographically diverse functions and business endeavors.<sup>457</sup> In Saudi Arabia, the ability to speak English became a sign of prestige, an opportunity for better education, and a definite asset in the business and legal arenas. Furthermore, public opinion of English as a mode of instruction was seen as highly competent and considered an essential skill that all nationals should possess.<sup>458</sup> Regrettably, law graduates suffer a deficiency in English, because the schools' study plans do not consider it a priority in their curriculum outlines.

Often the deficiencies in the principles and instruction methods are the cause of the failure of many graduates in the practicum failed. Thus, the deficiencies in the preparation of law students by the failure to provide training in practical skills, lawyering skills, legal analysis, reasoning, research, legal investigation, and negotiation, mediation, and communication skills should not be put directly on the shoulders of the student. It is proven that the more unique skills required by law students demand much better training in problem-solving, analysis, legal-writing, cooperative skills, argument, and English language. Each legal education model along fails to deliver these skills; it paddles upstream against the natural flow of global legal education. In fact, prospective legal professionals need a more holistic approach instead of merely teaching legal principles and traditions of the profession. Law schools need to innovate in the creation of their instructional curriculum and method to convince those interested in the additional value of the investment in their offerings.

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<sup>457</sup> Tsedal Neeley, *Global Business Speaks English Harvard Business Review - Cross Cultural Management*, 2012; See <https://hbr.org/2012/05/global-business-speaks-english> (last visited Jun 13, 2018)

<sup>458</sup> Julie A. Nash, *New curriculum design and teaching methods to enhance course performance and increase motivation of Saudi Arabian college students*, *Learning and Teaching in Higher Education: Gulf Perspectives* 13, no. 2 (2016) at. 1

Currently, all parties concerned with the success of legal education in the Kingdom, need to expand their opinions and accept the fact that not enough is being done to educate law school students appropriately. Substantial effort must be put forth to improve not just the curriculum and syllabi, but also the teaching skills of the staff that will allow them to instill the legal skills, professional judgment, and ethical values required of Saudi legal practitioners.<sup>459</sup>

According to the present Saudi legal education philosophy, the “lecture method” is the superior format for teaching law. It requires very little from the student other than to remain alert, polite, and to take copious notes for independent study. In turn, the lecturer is expected to know his topic and the information in any textbooks used; it is designed to adhere to a standard syllabus of three sections: Introduction, lecture and summary; all delivered without interaction with the students.

Amid these circumstances, any proposal for improving the legal education methods offered might better be addressed by examining options for thoroughly reforming the legal education system. They are, however, not free of challenges, and potentially open to attack from the “old guard”<sup>460</sup> who believe themselves guardians of education and, as such, are not willing to abandon historical approaches. Therefore, an examination of the association between the educational outcomes of students and teaching models of Saudi law education is necessary; it

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<sup>459</sup> *Supra.*, Cassidy, note 252, at 429

<sup>460</sup> In the other expression “Conservatives”. This term is used by some Saudi writers to indicate the Salafist movement, which is strict and very reluctant to accept modernity for fear of having an unfavorable reflection on the constants of community that they believe should not be affected and even to be not touch, whether religious or social. Although this movement is not officially recognized an in the State due to the Kingdom does not recognize the parties or the unions regardless of their form or purpose but it still exists and has some sort of influence especially in the judicatory, religious and educational institutions.

will end with suggestions that the adoption of modern academic performance will achieve higher outcomes for students under multiple flexible models. Each is an attempt at evolving education, especially while addressing the challenges of supplying higher education to a growing number of students. The projected result is meeting the demand of providing the labor market with professionals as well as enhance the quality of education's outcomes; ergo it is appropriate not to ignore the experience of prestigious educational institutions.

#### **§ 4.2.4 Sailing Along with The French Model**

The legal studies curriculum in Saudi Arabia closely follows the Egyptian school, which in turn was heavily inspired by the curriculum of the French legal schools. “[s]ince the end of the nineteenth century, legal education in France has been viewed as a general preparation for a career in fields other than law. In fact, only a very small proportion of French law graduates enter the legal profession, and those who do are given practical training by way of either an apprenticeship program or further study in a specialized school.”<sup>461</sup> It should be mentioned that the French legal system and the legal education system in the countries that follow the French model, aim to educate jurists as opposed to the training of lawyers.<sup>462</sup> In a word, the legal education model of those countries symbolizes traditional academia which is centered on the earlier educational system dominant the in the teaching substantive legal doctrine; a system which has ultimately been proven to be ineffective.

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<sup>461</sup> Thomas E. Carbonneau, *The French Legal Studies Curriculum: Its History and Relevance as a Model for Reform*, McGill L.J. 25:445 (1980) at, 446

<sup>462</sup> *Id.*, at 446

Thomas E. Carbonneau states that: “[A]t the beginning of the twentieth century, French legal education while remaining faithful to certain traditional features of its past, had advanced considerably in its substantive curriculum. The most salient of the traditional characteristics that persisted into the modern era was the method of law teaching by way of the formal lecture. The preference for this pedagogical method - allowing for little, if any, student participation - inhered in the nature of the French legal system and educational process. Despite the integration of French law into the law school curriculum to supplement the more academic subjects, case law in the French civil law system never occupied the central position that it has in common law countries... However, since 1940 it has provided for more substantial change by requiring all law students to attend weekly sessions devoted to individual practical work on the subject matter of one of the lecture courses. Regular attendance at these lectures and practical work was a prerequisite to sitting for examinations, and the student's performance. These sessions were a factor in the faculty's total evaluation of his work. The purpose of introducing this additional requirement was to bridge the gap between students and professors, between the virtual absence of student participation.”<sup>463</sup>

However, by 1954, the legal studies program reformed to four-year and divided into two cycles - a general and a specialized cycle - and which placed renewed emphasis on the weekly practice work. The rationale behind the additional year of study was that it provided students with a more complete education. The first cycle consisted of a general program of required

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<sup>463</sup> *Id.*, at 458

courses; in the final two years, in addition to a limited common program, students would specialize in one of three sections—either private law, public law and political science, or political economy—and would take the courses corresponding to their choice of specialty.<sup>464</sup>

In 1968, the French upgraded the basic pattern of legal studies to be a four-year basic degree program consisting of two principal "cycles" or stages of the study.<sup>465</sup>

According to Thomas:

“[T]he first two-year cycle essentially is a period of general orientation to the study of law; students achieve a limited concentration (or major) in an academic department only in the second year. Upon completing this first cycle, students are awarded a general studies degree, called the graduate of university studies law (U.E.G.), which corresponds to an associate degree with a specialization in law. During the second two-year cycle, students must concentrate in one of the departments providing instruction in law. For example, a senior law student may take the majority of his courses in the program designed by the departments of commercial law, political science, or economics. At the end of the third year, students receive a degree in law the equivalent of a B.A. in law; at the end of the fourth year, they are granted a master’s degree in law, an M.A. in law, which, for all practical purposes, has become the basic French -law degree. The weekly workload of French law students during each year of study normally amounts to twenty class hours, consisting approximately of fifteen hours of university lecture courses (lectures), three hours of directed study classes (tutorials), a one-hour introductory course to professional practices, and a weekly language seminar.”<sup>466</sup>

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<sup>464</sup> *Id.*, at 461

<sup>465</sup> *Id.*, at 464

<sup>466</sup> *Id.*, at 455



As previously mentioned, with the beginning of the establishment of the legal curriculum in the Saudi universities and thanks to the Egyptian professors, the French model (*lecture method*) had been adopted and was accepted to as the prevalent, dominant model. The lecture methodology is considered an extension of the method of teaching in public education, which makes it readily adapted by students in law schools. However, this model suffers from some problems, most notably the failure to give sufficient attention to the application of legal rules to solve sample lesson problems. It is also considered to be an ineffective model for the development of student analytical skills. With the neglect of practicum training in the curriculum and no attention given to equipping students with the ability to critically think as lawyers to solve legal issues, the legal education model, in this case, is failing to achieve its objectives.

Since the original French legal education model, as explained above, has rectified this imbalance by introducing weekly sessions of individual practical work, it has become more student friendly. Unfortunately, the Saudi approach, once inspired by the French model, did not keep up with the reformation that occurred to the legal education methods of France. As an obvious result, the upgrading of this method within the Kingdom has become an imperative, especially since the State plans to promote education reform through its “*Kingdom Vision*” program; an agenda it plans to share with developing countries.

#### § 4.2.5 Comparative Perspective on Legal Education: the KSA-French-the U.S.

Law schools in Saudi Arabia, France, and America have designed significantly different systems for the education of prospective lawyers. While the Saudi and French students have comparatively similar programs; the American schools provide appreciatively dissimilar legal educations.

In this subsection, I will rely on personal experience and comprehension to expound on some of these differences and what distinguishes each experience from the other two. Also, in this brief comparison, I will address the current legal education system in those countries.

In Saudi Arabia, the number of law school admissions is determined by the Ministry of Education, which allocates a specific number of students to each university. Positioned in each school, is an admissions committee that functions to receive applications and sort them based on the candidates' grades and personal desires with emphasis primarily driven by the employment market.<sup>467</sup> Additionally, admissions do not require specific testing such as the American Law School Admissions Test (LSAT) and a specific Grade Point Average (GPA), both of which are not considered critical factors in acceptance determinations for Saudi law schools.<sup>468</sup>

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<sup>467</sup> *Supra.*, Serag, note 279, at 616

<sup>468</sup> Brent E. Newton, *The Ninety-Five Theses: Systemic Reforms of American Legal Education and Licensure*, S. C. L. Rev. 55: 64 (2012) at 64

The fundamental nature of legal education schools in both Saudi Arabia and France is that of university-based legal academic programs departmentalized on a similar basis as other countries. The instructional staff are both full- and part-time paid employees reporting to a department head as well as appropriate deans. In many schools, some Law programs are associated with Political Science programs where which may or may not give it more emphasis on governmental legislation.<sup>469</sup> However, the primary problem is that the curriculums are heavily focused on the science of legal theory rather on on developing the necessary skills a new lawyer will need ot set up, and more importantly, maintain a growing legal practice.

In the Kingdom, students who wish to become attorneys are required to take four years of theoretical legal training to receive their law degree. On completion, they are required to register for an additional three years in an internship program consisting of participating, as approved and under the supervision of a licensed attorney, the routine, and extraordinary legal casework. It is hoped that each student will be exposed to both law office operations and in-court cases during this period.

The emphasis on this program is to expose the student to actual client contact, preparation of appropriate legal documents, preparing arguments and, if possible, participate in the actual court proceedings on a limited basis. Admittedly, there is a potential for shortcomings

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<sup>469</sup> See College of Law and Political Sciences at KS. Available at <http://ksu.edu.sa/en/colleges.html>. (Last visited Jun 2, 2018). See Adrien Habermacher. *A French-American Perspective on Legal Education: Institutions, Experience, And Debate*. Columbia Law School's Journal of Law and Social Problems. Available at <http://clscommonlaw.com>. (Last visited Jun 2, 2018).

and exploitation of the students such as those assigned to do only personal correspondence or providing services unrelated to the legal practice and other personal interests.

The legal education system for French students is different in that before entering universities; they select a specific area of law they wish to study. The objective is to serve both the student and the legal market better. On receipt of their Bachelor's Degrees, they must complete a Master program before being allowed to enroll in the l'Ecole du Barreau (the School of Bar) which involves an eighteen-month period of professional training before being allowed to take their oath as an attorney.<sup>470</sup>

In America, potential law students must complete a four-year Bachelor Degree program before they are accepted into law school. Additional to this, all schools require the satisfactory completion of the LSAT exam within no more than one year before their desired first-semester starting date. Acceptance in the three-year Juris Doctorate (J.D.) law programs requires both high range Grade Point Averages (GPA) in undergrad programs and on the LSAT. The actual final exam for students in the state bar associations licensing exam for the state in which they wish to practice.

Professor Charles R. Calleros states:

"[W]hen an appellate court reaches its decision in a dispute and publishes its opinion, it creates precedent that amounts to a primary source of law. I encourage the students to refer to this as 'case law,' underscoring the way in

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<sup>470</sup> *Id.*

which it contrasts with law found in the text of codes and with judicial decisions in the French civil law system, which have no formal status as a primary source of law. They learn that U.S. case law sometimes interprets and applies constitutional, statutory, or regulatory law, or some combination of these types of 'enacted law.' Alternatively, case law sometimes creates, abandons, or further refines common law rules. Those rules are developed by judges within parameters permitted by constitutional law and subject to displacement by statutes, but otherwise, lie within the control of the judicial branch. In many disputes, case law will address multiple issues that call for analysis of both enacted law and common law."<sup>471</sup>

In reference to this comment, the essential steps lie in the initiative of reforming legal education methodologies adopted in the State, which are seen as the banner of theoretical legal education. Calls for reforming legal education methods may receive some acceptance by following the French experience. The table below breaks down the differences and similarities between in the legal education the Saudi Arabia, France, and America.

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<sup>471</sup> Charles R. Calleros, *Introducing Civil Law Students to Common Law Legal Method Through Contract Law*, *Journal of Legal Education* Vol. 60, No. 4: 641-663 (2011) at 643

Table 4.1 Comparison of Legal Education System Between the KSA, France and the USA

<b>COUNTRY</b>	<b>SAUDI ARABIA</b>	<b>FRANCE</b>	<b>THE UNITED STATES</b>
<b>TYPE OF INSTITUTIONS</b>	Law institutions are departments of their universities like any other academic program	Law institutions are departments of their universities like any other academic program	Professional schools in the university setting; for financial reasons, they are now part of their universities but still continue to enjoy a semi-autonomous functioning
<b>EDUCATION OBJECTIVES</b>	The legal education focuses on a theoretical knowledge of the law science. Education seeks to educate legal experts (jurists) rather than train future attorneys	The legal education focuses on a theoretical knowledge of the law science. Education seeks to educate legal experts (jurists) rather than train future attorneys	The training approach for future attorneys is more deeply ingrained in American legal education
<b>LAW DEGREES</b>	Legal education is provided as an undergraduate program (Bachelor of Laws, LLB); LLM (Master of Laws) and (Ph.D.) doctoral program in law.	Legal education is provided as an undergraduate program (Bachelor of Laws, LLB); LLM (Master of Laws) and (Ph.D.) doctoral program in law.	Law is taught as a post-graduate degree after receiving a B.A.; the three-year law program that leads to a Juris Doctor (J.D.) degree.
<b>TO BE A LAWYER</b>	7 years after high school to be qualified for practice law. 4 years studying; and 3 years apprenticeships.	7 years studying is the time between the end of high school to be qualified to practice law.	students take a 7 years studying after high school to be qualified to practice law.
<b>METHODS OF TEACHING</b>	The pedagogy is based on operating lectures. Students do not fear to be “on call.” Professors focus on a theoretical approach to law.	The pedagogy is based on operating lectures. Students do not fear to be “on call.” Professors focus on a theoretical approach to law.	Professors use interactive methods; call on students randomly for refined answers. Teaching methods rely on the case/Socratic, clinical education, Problem-Based-Learning.

## Topics of Chapter V

### § 5.1 Recommended Methodologies for Legal Education Upgrading

#### § 5.1.1 Introduction

#### § 5.1.2 Suggested Prerequisite

##### § 5.1.2.1 English Language

##### § 5.1.2.2 Suggested Solutions

##### § 5.1.2.3 Legal Education Efficiency Test

##### § 5.1.2.4 Suggested Solutions

#### § 5.1.3 Multiple Methods of Legal Teaching

##### § 5.1.4.1 Rethinking of Teaching Methods

##### § 5.1.4.2 Suggested Solutions

##### § 5.1.5.1 Simulation Teaching Methods

##### § 5.1.5.2 Suggested Solutions

##### § 5.1.6.1 Legal Education and the Saudi Bar Association

##### § 5.1.6.2 Suggested Solutions

#### § 5.2.1 The Road Ahead

#### § 5.2.2 Closing Argument

### § 5.3.1 Conclusion

### § 5.3.2 Recommendations for Future Work

## **CHAPTER V**

### **SECTION I**

#### **§ 5.1 Recommended Methodologies for Upgrading Legal Education**

##### **§ 5.1.1 Introduction**

What is the best practice teaching methodology for legal education?

The best method for legal education in the Kingdom of Saudi Arabia is the one that creates well trained, critically thinking, skilled legal experts dedicated to the law, Saudi Arabia, and their faith as a people. In Saudi Arabia today, law school educators have a much different mission than the perspectives of the actual legal profession, seeing legal education as a purely academic science. Unfortunately for all, this has developed a gap between expectation and reality which has fostered recriminations between educators and practicing lawyers.

The tragedy is that the demands of the 21<sup>st</sup> Century far outweigh the skills of the law students who graduate without the basic knowledge of drafting contracts or preparing arguments, coupled with the fact that many professors and lecturers have never been in a courtroom let alone argued a case. The goal of legal education must be in devoting its efforts to preparing future legal professionals with exceptional knowledge, skillsets, and wisdom to support the vast and complicated system of laws developing within the Kingdom.



For the Kingdom to meet the domestic and international demands for qualified legal services, the law schools must confront the critical issues of modernizing curriculum and expanding course syllabi to make education methodologically all inclusive. As the Kingdom grows and expands into new roles and responsibilities in the family of nations, it must have highly trained and qualified legal experts to tread those paths—specialized legal education for commerce, international law, bio-medical, imports and exports and every other facet of a functioning government leading a prosperous nation. It can only happen if the administrators, educators, legal experts, and students open their minds.<sup>472</sup>

Perhaps those interested in the improvement of legal education methods in the Kingdom could ask this question: Is the incorporation of foreign legal education models into Saudi law schools a sound strategic maneuver to improve the quality of legal education?

“Law is an art, not a science! But, in recent years, the practice of law has become more focused on the science side of things. Many of the services that lawyers have traditionally provided are now automated, think repeatable processes, technology solutions, eDiscovery, and contract coding. Some have argued that this automation will only continue and will eventually eliminate the need for lawyers. My hope is that we will see a renaissance in the legal profession that will allow lawyers to get back to the practice of law as an art.”<sup>473</sup>

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<sup>472</sup> Samuel O. Manteaw, *Legal Education in Africa: What Type of Lawyer Does Africa Need*, 39 *McGeorge L. Rev.* 903: 976 (2008) at 940

<sup>473</sup> Lee Angela Holcomb: *Is The Practice Of Law Art Or Science?*, The Tennessee Lawyers' Association for Women, 2018 See <https://leeangelaholcomb.com/blog/2017/12/25/great-art-the-practice-of-law> (last visited Jun 15, 2018)

This quotation, while not perfect, does speak to the primary issue of legal education in the Kingdom. To date, the predominant format of teaching law it has been the non-interactive lecture method which, admittedly is an art form, but, as mentioned, it can no longer sufficiently function as the only method.

However, for some, legal education is like other sciences; it can attract the educational methodology foundations that contribute to the development of vocational education in countries that have gained a long-standing reputation in the field.

The opposition to modernization bases its argument on:

1. Historically, graduates have been able to achieve prominence as lawyers without having to undergo formal legal education.
2. A substantial number of graduates have chosen to practice law in their communities rather than pursue national or international career options.
3. Comfort in recognized methodologies (bringing a false sense of security).
4. Uncertainty in the value of updating the traditional French/Egyptian curriculum for fear of overwhelming the instructional staff with new ideas.

These and many other concerns need to be addressed in open discussion forums before there can be any real consensus. However, there will be no consensus until Saudi Arabian

educators face the reality of an ever-changing 21<sup>st</sup> Century world and a rapidly changing Kingdom.

The challenges facing the reformation of Saudi Arabian legal education are not only limited to the teaching methods, but also its vast organization. It is the intent of this study to open the minds of all participants in legal education; to step back from the politics and misconceptions of the goals of improvement and the support the Kingdom's Vision for the future.

## **§ 5.1.2 Suggested Prerequisite**

### **§ 5.1.2.1 English Language**

In the 21<sup>st</sup> Century, the world has seen both high and low periods of economic change as it appears to pursue a neo-liberal agenda. Some changes have been fundamental, while others have been dramatic, each has not only affected the country of origin but the economic stability of the world in general. Throughout this era, the international community has struggled to restructure the global agenda by establishing a range of institutions which are goal oriented towards conserving stability.

To accomplish this monumental task requires one primary tool – communications. In this era of electronics, with computer systems, cell phones, and other forms of communication devices, the art of actually communicating with each other in a common language is not receiving the attention it needs.

If one looks in a dictionary under the word definition of communication, one sees four primary forms: Verbal -Non-Verbal -Written - Visual, all true. However, when we refer to communicating with one another, we are talking about how we communicate information to make the recipient fully understand our position and rationale on any given topic.

Never before has the ability to *communicate* in English been more critical. As French was once adopted as the language of diplomacy; English has been adopted as the language of business and banking the world over. Was this planned; did someone say, “I declare English is the language of world trade?”

Does it make a difference now?

No, but what will make a difference is Saudi Arabian lawyers and businesspersons being able to communicate with their clients, and perhaps the competition on a level playing field. At present, this is not happening because English as a Second Language (ESL) programs in the Kingdom are not teaching the students how to *communicate!*

In the 21<sup>st</sup> Century, few things may be more critical to the prospective Saudi Arabian law student than the ability to communicate in the English language. As the Kingdom takes its place on the world stage, more and more international legal issues are brought home to be dealt with which cannot happen when attorneys cannot communicate in a common language.

At present, colleges and universities in the Kingdom are reliant upon foreign instructors of English as a Second Language (ESL) imported from all over the world to teach. Subsequently, this may have caused significant problems for legal students, the first of which being the difference in English dialects and idiolects spoke by each foreign instructor.

The second problem and perhaps the more essential is the omission of ESL Communications training and experience. One might say that speaking in English is communicating, and they would be correct however they may be unable to communicate why they are correct. Speaking a foreign language is like translating; the word for word which is fine for short remarks like “Hi,” “Good evening” and so forth, however, to communicate in a foreign language, one must be able to translate thoughts and ideas into that language.

The third problem is consistency; since there are an estimated 1,000+ dialects of the English language in the world; with at least 365 of them in continental America alone, there will be difficulties with both interpretation and translation. As challenging as this may sound, there may be ways to address it both in the Kingdom and outside of it.

Other potential formats might include, English only communications groups (or clubs) within the schools led by English-fluent upper-classmen; perhaps students in the teacher training programs might get extra credit for participating.

Another alternative is to send students to various countries where English speaking host families would allow them to learn by immersion. While there may be other options, the key lies in Saudi students learning to communicate, not just talk with English speakers.

“[I]n Saudi Arabia, in 1927 the English language was introduced at the secondary schools without a specific syllabus. In 1953, teaching the English language was introduced at intermediate and secondary schools with a specific syllabus (Al-Subahi, 1989). Over the years as more Saudi students left their home countries to study in English speaking countries, the demand for English speaking skills beyond just being conversational has increased. Students now need English not only for communicating and for connecting with the domestic and foreign cultures they encounter away from home, but they also need the language to cope in academic settings. Particularly useful skills in academic setting include understanding others when they speak or in speaking and writing fluently. Saudi Arabian educational curriculum should be doing much more to prepare their students for such opportunities.”<sup>474</sup>

The Saudi Arabian National Centre for Assessment in Higher Education (*Qiyas*)<sup>475</sup> offers proficiency tests in English and Arabic language for non-native speakers. The educational institutions in Saudi Arabia accept these proficiency test scores for admissions.

The Standardized Test for English Proficiency (STEP) has four sections: (percentage of questions):

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<sup>474</sup> Salwa Alkhuzay, *Introducing English as a Second Language to Early Primary School Curriculum in Saudi Arabia*, Arab World English Journal (AWEJ) Vol.6. No.2, 365: 371 (2015)

<sup>475</sup> *Qiyas: Standardized Test for English Proficiency (STEP) The National Center for Assessment of Higher Education*,. Available at <https://www.moe.gov.sa/en/TheMinistry/Education/Institutions/Pages/TheNationalCenterforAssessmentinHigherEducation.aspx> (last visited May 28, 2018)

- Reading Comprehension (40%)
- Sentence Structure (30%)
- Listening Comprehension (20%)
- Composition Analysis (10%)

The STEP test's testing is primarily intended to measure the following skills :

- Listening:
- Reading comprehension:
- Sentence structure:
- Composition Analysis:

Unfortunately, at present, Saudi law facilities do not require English language proficiency test scores for academic admission in their programs.

However, for Saudi law students, two critical factors are missing from this list:

1. Verbal Communications Skills!

2. Periodic ESL progress evaluations. Average minimum International IELTS score for entering most prominent colleges and universities in English speaking countries is 6 on the IELTS scale. The average score for Saudi students in 2016 was 5.10.<sup>476</sup>

Students who aspire to become legal advocates for the Kingdom and its people must be able to communicate. In our ever-shrinking world, people are reaching out to each other as friends and sources of new mutual prosperity; this requires communication skills in a common language – that language is English.

#### § 5.1.2.2 Suggested Solutions

While not perfect, there are three primary options to solve the immediate problem:

1. Make the English language proficiency test scores a prerequisite for admission to the university
2. Adopting a quick plan to introduce the English language program to be stable and consistent within the curricula of the faculties of law.
3. Contracting with instructors from one central English-speaking area.
4. Sending Saudi ESL teachers to a core area such as above to study English language and communications programs under the guidance of the college or university.
5. Teaching students via domestic internships.

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<sup>476</sup> IELTS: *Performance for test takers*, Ielts.org, Available at <https://www.ielts.org/en-us/teaching-and-research/test-taker-performance> (last visited May 30, 2018)



### **§ 5.1.2.3 Legal Education Efficiency Test**

For an aspiring attorney to be successful, he must be able to communicate his argument in definitive and wise legal language to the court as well as his client. Thus, those responsible for legal education in Saudi Arabia should rethink adoption of a test model to measure students' eligibility for admission to Saudi law schools. At present day, Saudi law faculties are not different than others colleges concerning the conditions for admission. It should be mentioned that these conditions are not an appropriate tool to measure candidates' skills and not to give a valid indicator of the possibility of success in legal education in law schools.

### **§ 5.1.2.4 Suggested Solutions**

The test model should be providing a measure of skills that are reading, comprehension of texts, extracting issues, critical thinking, and analyzing. The legal education efficiency test will provide an indicator of how the candidates successful in legal education before gaining admission. As well as, in the beginning, Saudi law programs could use the U.S. law school admission LSAT as a guidance model then design their own model to take into account priorities and sensibilities important to the KSA.

### **§ 5.1.3 Multiple Methods of Legal Teaching**

When taken entirely into account, the fragile nature of the Saudi legal educational methodology, coupled with a policy of non-inclusive interaction in the classrooms is fast becoming a self-destructive system. The lack of diversity and resistance to change is instrumental in the slow development of a more modern legal system in a country on the fast track to greater world recognition.

If the Kingdom is to succeed on the 21<sup>st</sup> Century world stage, it must be equipped with the latest instruments of success, including the best trained and qualified legal experts it can produce. Every educational tool must be obtained and employed to meet the demands that are and will continue to be placed upon it. Great minds and educators must come together to preserve that which is valuable, and add that which is improved to the classrooms.

#### **§ 5.1.4.1 Rethinking of Teaching Methods**

A good professor not only imparts knowledge to his students, but he challenges them to learn and own it by allowing them to challenge him. To attain this goal requires quality communications.

What better way to accomplish that goal than incorporating the Socratic and Problem-Solving methodologies into the lecture modules. Hypotheticals are the food of inquiring young minds.

Often not mentioned, but equally important is the combined process of lecture (Lecture-Dialogue), Socratic and problem-solving methods of education which, when done correctly, allows instructors to gauge the level of knowledge retention of each student; for a wise professor always learns from his students.

In formatting a new curriculum for legal education, consideration must be given to the most potent weapon in the attorney's arsenal – the legal argument. From day one, lecture one, the primary objective of legal education must be to produce an attorney with the knowledge and skills required to construct and defend a sound legal argument. It will not be accomplished in a single class or even semester; training must begin in the first semester of law school and end at graduation. It must be encouraged in lecture halls and study groups. Each class must provide time for questions, challenges and open argument of the material—debates encouraged and professors disputing student decisions. The best method for accomplishing this is the Lecture-Dialogue method which allows students to participate in their education by interaction with their professors.

#### **§ 5.1.4.2 Suggested Solutions**

Almost everyone seems to agree that combination of the case method, clinical courses and externships is the right way, but the issue as of now seems to be how to implement this. If all the basic courses of the first year are case studies and comparative studies, no additional exercise class or comparative class would have to be offered as part of the law school curriculum.<sup>477</sup> The Case Method is a superior systematic method, for all intellectual sciences, when seriously utilized.

Thus, I strongly recommend that improving the current education legal method of teaching in the faculties of Saudi law and adopt the caes method, which currently in place in most of the legal schools around the world.

#### **§ 5.1.5.1 Simulation Teaching Methods**

There is no doubt that the lecture has its effectiveness, particularly when teaching theory, but the concern here is the almost exclusive use of the lecture in most Saudi Arabian law schools. Thus, the lecture method used exclusively in law schools should be reduced due to its lack of benefit to legal training. The time is fast coming that Saudi legal institutions must rethink the traditional teaching pedagogy and recognize a new interactive approach to legal education.

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<sup>477</sup> Young-Cheol K. Jeong, *Korean legal education for the age of professionalism: Suggestions for more concerted curricula*, E. Asia L. Rev. 5155 (2010) at 181

Law students need to acquire knowledge from legal practice which cannot be developed by any other method than focusing on the *case study method*; which is the core philosophy of American legal education when coupled with a clinical approach. American students rely on the case method to improve their critical thinking and raise their ability to learn legal rules.<sup>478</sup>

The Langdell "case method" used in American law schools is based on reading and examining court decisions from their sources to determine their meaning and effect on the law. Students are expected to analyze historical, and contemporary cases to discover their fundamental rules and principles of law. As this is the accepted process that prepares a real lawyer; it is considered a positive educational experience and tool to help students acquire mastery of an important legal process.<sup>479</sup>

American law schools readily exploit the "Socratic" teaching methodology to guide students through analyzing judicial decisions. As a time-honored method, it not only challenges the students' knowledge but stimulates their creativity and curiosity to make them want to delve deeper into evidence, case law, and significant previous court decisions in search of precedence setting rulings.

Through interactive dialogue with classmates and the professor, students can learn the art of legal argument while presenting their evidence and opinions in a faux confrontational debate.

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<sup>478</sup> Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, Vill. L. Rev., 36: 517 (1991) at 519  
<sup>479</sup> *Id.*, at 528

Correctly done, this can be one of the most valuable educational experiences students can have; some schools go so far as to assemble quasi-courtrooms for mock trials.<sup>480</sup>

As noted, the instructional presentation is designed to be a teaching tool and a legal experience all in one.<sup>481</sup> The ideal Langdell Case Study Method has described the following:

“[C]ase studies typically consist of a short narrative (less than 25 pages), told from the point of view of a manager or business leader embroiled in a dilemma. Case studies provide readers with an overview of the main issue; background on the institution, industry, and individuals involved; and the events that led to the problem or decision at hand. Cases are based on interviews or public sources; sometimes, case studies are disguised versions of actual events or composites based on the faculty authors’ experience and knowledge of the subject. Cases are used to illustrate a particular set of learning objectives; as in real life, rarely are there precise answers to the dilemma at hand.”<sup>482</sup>

It is highly recommended that Saudi law school faculties consider past, present and potential future effects of modern upgrades and modifications to legal education when developing curriculum. Significant consideration must be given to the future of law within the Kingdom and in international alliances and commerce before negative effects can develop. No longer can schools merely train lawyers they must now train legal craftsmen, experts who will defend and propel the Kingdom into a position of honor among nations!

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<sup>480</sup> *Id.*, at 532

<sup>481</sup> See the Case Study Teaching Method. Harvard Law School, The Case Studies, Available at <https://casestudies.law.harvard.edu/the-case-study-teaching-method/>. (Last visited Jun 6, 2018)

<sup>482</sup> *Id.*

To achieve this goal, it has become essential to form alliances with law schools in other countries to establish student and professor exchange programs. Even as little as one semester at a school in another country can be an invaluable educational experience; for knowledge shared is wisdom learned.

As an adjunct to this, consideration should be given to the development and offering of dual degree agendas such as those in American Juris Doctorate programs currently being studied with China.<sup>483</sup>

#### **§ 5.1.5.2 Suggested Solutions**

However, as the legal student progresses with his education, every effort should be made to create legal experiences as often as possible. There are two proven methods for this:

1. Classroom Role-Play – Simulated courtrooms are created within classrooms with the professor acting as the judge. Desks and chairs should be arranged to make it as realistic as possible. One portion of the student will be the prosecution while the other is the defense. Since the objective is learning to argue, there will be no actual defendant.

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<sup>483</sup> *Supra.*, Flood, note 453, at 9

2. Clinical Internship – Students will work in public and private legal offices under the direct supervision practicing attorneys who are trained as student mentors. The objective will be to expose the student to the various phases of preparing a legal case such as:
  - a. Interviewing, counseling and advising clients
  - b. Preparing to require documentation for the presentation of the case in court.
  - c. Investigating and analyzing facts
  - d. Developing negotiating skills
  - e. Preparing legal arguments
  - f. Representing clients in court

#### **§ 5.1.6.1 Legal Education and the Saudi Bar Association**

The Saudi Bar Association (“SBA”) is a professional body aimed at raising the quality of lawyers’ practice. The Authority was established by the Saudi Council of Ministers Statement No. (317), dated 8/7/1436H (corresponding to 27/4/2015) approving the organization of the Saudi Bar Association, which is the basis of the Commission’s work. The Authority’s purposes are to raise the level of qualifications and experience of practicing lawyers and their profession to ensure excellent performance as well as increase their awareness of their professional duties.<sup>484</sup>

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<sup>484</sup> See Saudi Bar Association, Overview, Available at <https://sba.gov.sa/en/overview/> (Last visited 6/9/18)



Still, after graduation, Saudi law students are allowed to go into legal practice without proving their skills and abilities thru the challenge of a nationally required legal exam and registry such as a bar association. Unfortunately, this is considered by many to be a very detrimental procedure since it leaves the door open to students who did not take law classes to obtain licensure without the appropriate educational training.

In countries such as Japan, South Korea, and America, bar associations have been established on both the national and regional levels (state bar associations) to oversee the quality and performance of attorneys. These professional institutions have also been instrumental in identifying and establishing various rules and regulations for the approval of law schools and instructional staffing. They have also been influential in assisting in founding and maintaining accreditation criteria not only for schools and instructors but for graduate students and practitioners of law by their participation in and administration of State and national proficiency exams and membership registry.

At present, candidates for the legal profession in the Kingdom must pass a professional exam to be eligible to practice law. Adding the requirement for each student to successfully pass a standardized national bar exam would not only increase the quality of lawyers but would enhance their status in world courts, both of which would be of immense benefit not only to the lawyer but to the Kingdom as well.

### § 5.1.6.2 Suggested Solutions

1. **Accreditation:** A proposal to open a law school or reforming the curriculum of an existing law school should be approved from the Saudi Bar Association ("SBA").
2. **Bar Exam:** Setting a minimum measure for admission to the practice of law in the country; by examining a candidate's analytical abilities and comprehension of the basic knowledge of the law. After passing the bar examination the candidate will be eligible to the practice.
3. **Legal Education:** As a practicing legal consultant (*attorney*) for a governmental agency and S.J.D. candidate in Law, I strongly recommend that the Kingdom promote and support Saudi Arabian Bar Association as an independent body. Furthermore, I also enthusiastically encourage that the association be given a role in the assessment of legal schools and programs and continuing legal education programs for practicing attorneys designed to sustain and advance their knowledge and skills to keep them on a par with their international peers.

## SECTION II

### § 5.2.1 The Road Ahead

The future is a challenge, a call to all Saudi law faculties to make improvements and diversify their pedagogical methods—to upgrade their standards for preparing qualified students to practice law. The future demands they give more attention to evaluating their programs to achieve excellence and effective academic standards.

It is well to note that the Kingdom is not alone in facing issues of legal education. For example:

“Harvard Law School recently undertook a sweeping overhaul of its first-year curriculum. The new curriculum reflects legal practice in the 21<sup>st</sup> Century, adding courses in legislation and regulation and international and comparative law to the traditional curriculum of civil procedure, contracts, criminal law, property, and torts. All first-year students now take a problem-solving workshop in which they grapple with real-world challenges involving complex fact patterns and encompassing diverse bodies of law. Students also participate in legal research and writing courses which teaches essential skills essential to the practice of law. Moreover, students choose electives, in the international law arena and, more generally, from the vast array of courses Harvard offers.

“The first-year class is divided into seven sections of eighty students each. Faculty Section Leaders, generally senior faculty members who teach one of the section’s basic courses, provide guidance and support to the students in their sections and develop a program of extra-curricular activities related to the law.

“In addition to section activities, students may participate in first-year discussion groups of 10-12 students that offer the opportunity to interact with faculty in informal settings outside the classroom. Led by faculty members who often focus on areas of particular personal interest, these ungraded groups explore

such topics as diverse as law and literature, legal responses to terrorism, regulation of climate change, and issues of bioethics.”<sup>485</sup>

Curriculum changes in the Kingdom face similar issues and would benefit from similar solutions. Despite appeals to the contrary, the present “*Lecture*” methodology must remain a viable educational tool in Saudi colleges and universities. However, the guidelines and actual procedures used, by their very nature, demand updating; no longer can professors and lecturers be allowed to merely present their lecture without permitting students the opportunity to ask questions, challenge and educationally debate the material. Like Harvard, Saudi legal schools must establish opportunities for students to learn in more interactive formats.

In the halls and classrooms of Saudi Arabian legal academia, voices are silent, stilled by the time-honored custom of respectfully listening to the wisdom and experience of professors as they mold young minds there arises a question.

“Are we doing everything we can to properly educate our students to serve the people and the country?”

“The world is changing, can we?”

“It is time to give voice to the students who are our tomorrow?”

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<sup>485</sup> J.D. Program | Harvard Law School Harvard Law School, Available at <https://hls.harvard.edu/dept/academics/degree-programs/j-d-program/> (last visited May 24, 2018)

Critics of the current law school curriculum and teaching methodologies would suppress tradition and charge into the 21<sup>st</sup> Century unprepared while proponents would resist any change. If the Kingdom is to survive and excel, both sides must open their minds and find common ground on which to build a better system; that can only be accomplished with collaboration and self-determination.

### § 5.2.2 Closing Argument

Legal education and the overall legal systems in the Kingdom of Saudi Arabia are at a crossroads. If the wrong path is taken, a crisis will ensue and there *may be* a disaster. Unless steps are taken to improve these two systems then *may be* will become *will be*. It is time to rebuild the structure of Saudi Arabian legal education which, in turn, will rebuild the legal system.

To accomplish this immense task requires a solid foundation to build upon; that foundation is the wisdom and experience of the elders. The cornerstone is the willingness of both the traditionalists and the progressives to reach a consensus and develop a more inclusive and interactive curriculum for the law schools.

The building blocks of this new structure will be the educators and ancillary service people held together by a mortar of cooperation, knowledge, experience and wisdom coupled with new philosophies, instructional techniques and tools.

How tall should our structure be? It should be tall enough to provide each student the opportunity to excel and progress upwards to twice the height of their perceived ultimate capabilities. Criteria must be established as goals for the students to attain and divisions of legal interest created so that students have access to all areas of law if they wish to specialize.

Competition is an instructional tool seldom used in colleges yet is the fundamental scenario of law. Therefore though should be given to constructing mock courtrooms in schools where student can argue case studies between their own classmates, or perhaps have legal tournament between class or schools.

To borrow from a very old comedian who said; “How do you get to Carnegie hall? You practice, practice, practice.”

In Saudi Arabia, it should be amended to say: How does one get to become a good lawyer? Practice, practice, practice.

Law students must be able to effectively argue their case for if there is no argument, there can be no argument.

## SECTION III

### § 5.3.1 Conclusion

As previously stated, the primary focus of this dissertation is attaining the ultimate goal of developing a new legal education approach within the Kingdom of Saudi Arabia. This approach should be readily available to all law schools and applicable in all levels of Saudi legal practice while training new legal practitioners. It further suggests that new, and more effective instructional methodologies should be applied to a standardized legal curriculum throughout the country.

The objectives of this study will be achieved by the integration of the most common modern legal education models throughout the world. From the arguments in the dissertations chapters, the main contributions of this study are summarized as follows:

1. In the law school programs, the legal industry shall draw and maintain a line between Civil Law and Sharia without significant conflict.
2. The Saudi legal model must provide valid solutions to contemporary legal issues.
3. The nature of Saudi law is that of integration of Islamic principles and contemporary Civil Law. Both the legal and court systems of the country are shifting from a traditional to a modern system with more updated legal institutions,

significantly improved legal principles and are moving towards the establishment of a codified rule of law.

4. The Council of Ministers has the authority to pass laws, treaties, international agreements and ‘concessions,’ and amend them by Royal Decrees, after deliberations by the Council of Ministers. Thus, it is considered the principal legislative body in the Kingdom.
5. Throughout its history, the evolution of legal education in the Kingdom has closely followed that of the legal system itself, which has been influenced by two significant movements. The first is the conservative approach, which has had an influence on jurisprudence curriculum, programs, and textbooks, and broadly embodies the refusal to accept man-made laws. The second approach is the more contemporary, or modernistic, which, while not negating all historical and religious principles, supports adopting Western teaching methodologies as a system of legal education in the Kingdom.
6. Saudi legal education programs are a part of higher organizations, and like any other academic departments or colleges hosted by universities. Yet, there have been no self-governing official public law schools established within the country. Furthermore, the law faculties and departments are dependent on host universities for financial and administrative management under the direct control of academics with little or no legal experience.

The Saudi legal education system at present is influenced by the Egyptian model, which was heavily influenced by the French educational model, in teaching



methods, classroom setting, the administrative hierarchy of the law school, and the overall organization of the formal curriculum. Since the inception of official legal education in the 1980s, law school curriculum design has relied on the theoretical analysis approach of teaching law more than the practical style. Tragically, the curriculum comprises a single viewpoint provided by professors and lectures whose priority is content memorization, without developing the skills of critical thinking. The classes consist of monologue lectures adopted as the primary method of teaching law programs, a rapidly failing approach in this new age of electronics.

7. It is appropriate for Saudi legal education officials to rethink prerequisites for admission in law programs; two of the primary ones must be English (Preferably American dialects) and legal education efficiency testing. Also, vital to the future success of Saudi law schools is establishing a primary national legal education curriculum for new law students followed by specialized classes in diverse disciplines of law. These programs are so vital to the future of law in the Kingdom that planning and supervision must be sought out and accepted from active members of the Saudi Bar Association who shall administer a final legal exam to all aspiring lawyers on satisfactory graduation of law school.

### **§ 5.3.2 Recommendations for Future Work**

This dissertation provides a share of legal literature in general and especially in the legal studies concerning the Saudi legal system and legal education approach. Additionally, this study will attract the attention of Saudi legal academic institutions and professional associations.

Stakeholders of law schools, both private and public, in the Kingdom to the need to rethink current legal education systems and the urgent need to keep pace with rapid modernization in instructional methods.

For future studies, I recommend examining the differences in the Stages of Concern of professors to understand and address apprehension and questions regarding the evolution of legal education methods in Saudi law schools.

The dissertation recommends the adoption of strategic plans aimed to support legal instructors in the required modifications and implementation of a practical framework. It is vital that all educators be on the same wavelength of understanding about what is transpiring during the modernization process and how they will each fit into the process.

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