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Shaping the Legal Landscape: The Interplay of Customs,
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Saudi Arabian Legal System

تشكيل المشهد القانوني: تفاعل العادات والممارسات
والتأثيرات الأجنبية في النظام القانوني السعودي

Doctor

Abdulkarim Saud Saeed Althiyabi

Assistant Professor

Law Department

University of Tabuk

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عبدالكريم سعود سعيد الذيابي

قسم القانون، كلية الشريعة والقانون، جامعة تبوك، المملكة العربية السعودية.

البريد الإلكتروني: Asalthiabi@ut.edu.sa

ملخص البحث:

يقدم هذا البحث تحليلاً شاملاً للنظام القانوني في المملكة العربية السعودية، مع التركيز على التفاعل الديناميكي بين الشريعة الإسلامية التقليدية، والعادات والممارسات الوطنية، وتأثير الأنظمة القانونية الأجنبية. يستند الإطار القانوني في المملكة بشكل أساسي إلى مبادئ الشريعة الإسلامية، وهو مشكل بشكل كبير من خلال السياقات الدينية والثقافية والتاريخية التي تحدد هوية المملكة العربية السعودية. مع تزايد تفاعل المملكة العربية السعودية مع التجارة الدولية، خاصة بعد اكتشاف النفط، أصبح دمج مفاهيم القانون الغربي ضرورياً، على الرغم من أنه يتم ذلك بعناية لضمان التوافق مع الشريعة للحفاظ على الامتثال الثقافي والديني.

يحدد هذا الدراسة التأثير العميق للشريعة كسلطة قانونية رئيسية تحكم جميع جوانب الحياة في السعودية. كما يناقش كيف أسهمت الممارسات التجارية الحديثة والاعتماد التاريخي على الأنظمة القانونية الأجنبية، مثل الأكواد العثمانية والنظام القانوني الفرنسي، في تطور الإطار القانوني السعودي. يختتم البحث بتوصيات لتعزيز الإطار القانوني لتحسين التوافق مع المعايير الدولية والنمو الاقتصادي مع الحفاظ على النزاهة الثقافية والالتزامات الدينية للمملكة.

الكلمات المفتاحية: المشهد القانوني، القانون السعودي، العادات والممارسات،

التأثيرات المؤثرة، تفاعل النظام القانوني.

Shaping the Legal Landscape: The Interplay of Customs, Practices, and Foreign Influences in the Saudi Arabian Legal System

Abdulkarim Saud Saeed Althiyabi

Department of Law, College of Sharia and Law, University of Tabuk, Saudi Arabia.

E-mail: Asalthiyabi@ut.edu.sa

Abstract:

This paper provides a comprehensive analysis of the legal system of the Kingdom of Saudi Arabia (KSA), focusing on the dynamic interplay between traditional Islamic Sharia, national customs and practices, and the influence of foreign legal systems. Rooted in the principles of Islamic law, the KSA's legal framework is shaped significantly by the religious, cultural, and historical contexts that define the nation's identity. As Saudi Arabia increasingly engages with international commerce, particularly following the oil discovery in 1938, the integration of Western legal concepts has become necessary, albeit carefully aligned with Sharia to ensure cultural and religious compliance.

This study identifies the profound influence of Sharia as the primary legal authority governing all aspects of life in Saudi Arabia. It also discusses how modern business practices and historical reliance on foreign legal systems, such as the Ottoman Codes and the French civil system, have contributed to the evolution of the Saudi legal framework. The paper concludes with recommendations for enhancing the legal framework to better accommodate international standards and economic growth while preserving the kingdom's cultural integrity and religious obligations.

Keywords: Legal Landscape, Saudi Arabian Law, Customs and Practices, Foreign Influences, Legal System Interplay.

introduction:

The legal system of Saudi Arabia is a unique blend of Islamic Sharia principles and modern adaptations influenced by global interactions. Predominantly rooted in Sharia, which forms the cornerstone of governance and societal norms in Saudi Arabia, the legal framework also incorporates elements from foreign legal systems and local customs, reflecting the country's historical and socio-economic developments.

This paper delves into the intricate sources shaping Saudi legal practices, highlighting the interaction between traditional Islamic laws, indigenous customs, and foreign legal influences. As Saudi Arabia has integrated into the global economy, particularly post-oil discovery, there has been a noticeable trend towards adopting some Western legal practices. However, such integrations are meticulously balanced to maintain harmony with Islamic tenets, which are fundamental to all legal and regulatory reforms in the kingdom.

The discussion extends to how national culture and long-standing practices influence legal norms and their alignment with modern governance and international business demands. It also examines the historical dependence on and gradual movement away from foreign legal systems like the Ottoman Codes and the French civil system, illustrating their adaptation within the Sharia framework and Saudi administrative necessities.

Overall, the paper aims to provide a thorough understanding of Saudi Arabia's legal landscape, demonstrating how historical influences,

cultural identity, and international relations collectively mold the legal statutes and judicial decisions. This synthesis of law not only mirrors the evolving identity of Saudi Arabia but also its strategic legal positioning in both regional and global contexts.

Foundational Sources of the Saudi Legal System

Since the Kingdom of Saudi Arabia (KSA) is based on Sharia principles, most of its regulations are derived from the teachings of Islam. Even those originating from other sources must not conflict with the principles of Sharia. These sources fall into four categories: Islamic law, state regulations, international treaties, and customs and practices.

a) The Evolution of Islamic Law in Saudi Arabia

Islamic law stands as the paramount legal authority in the Kingdom of Saudi Arabia (KSA), with all subordinate legal sources required to conform to its dictates or risk invalidation. Governing key aspects of societal interaction, including property rights, criminal justice, and family law, Islamic law is sourced primarily from the Quran and Sunnah, complemented by secondary sources like Ijma, Qiyas, and Ijtihad (Ansary, 2015). The Hanbali school, designated as the official Madhhab of Saudi Arabia under the 1992 Saudi Basic Law, guides the application of Islamic principles within the kingdom.

However, Saudi judges may also consult other Sunni jurisprudential schools to resolve cases where Hanbali rulings are ambiguous or another school offers a more fitting judgment. This approach fosters a richer jurisprudential tapestry and underscores a pragmatic engagement with the breadth of Sunni legal thought.

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The dynamic nature of Islamic jurisprudence in Saudi Arabia is particularly evident in the activities of the Council of Senior Scholars, empowered exclusively to issue Fatwas. This body, significantly reformed in 2008 under King Abdullah Bin Abdulaziz, now includes representatives from diverse Sunni schools, reflecting a broadened perspective in religious legal interpretation (Scholarly Research and Fatwa Portal, 2018). Initially dominated by Hanbali perspectives, the inclusion of other Sunni views has enriched the legal discourse, enabling more nuanced and effective Fatwas.

Looking forward, the expansion of the Council to embrace scholars from all Islamic branches and other academic disciplines like law, economics, and finance could further enhance the relevance and acceptance of Fatwas. Such diversity would not only cater to the needs of both Muslim and non-Muslim populations but also address broader societal issues such as interest and public policy, aligning with the Sharia-based public policy of Saudi Arabia as stipulated in Article 11(3) of the 2013 Saudi Enforcement Law. This proposed inclusivity could provide a comprehensive approach to contemporary legal challenges, reflecting both the kingdom's rich Islamic heritage and its modern governance aspirations.

c) State Regulations and Resolutions within the KSA legal system.

In Saudi Arabia, state regulations and resolutions play a pivotal role in addressing modern legal challenges arising from advancements in various fields. These legal instruments are specifically designed to deal with contemporary issues while ensuring they align with the foundational principles of Sharia law. Given the supreme authority of Sharia in the Kingdom, any state regulation or resolution that conflicts with Sharia is considered null and void. This alignment underscores the primacy of Islamic principles in the Saudi legal system and ensures that new regulations enhance rather than contradict the established religious doctrines.

The term "regulations" in the context of the Saudi legal system is synonymous with "legislation," used interchangeably without a practical difference in their application or influence. These regulations are imbued with the characteristics of robust legislation found in other developed nations, possessing significant force, broad jurisdictional reach, substantive significance, and associated sanctions to ensure compliance and enforcement (Amin, 1985).

The process for enacting these state regulations is comprehensive and involves multiple layers of review and approval to ensure thorough vetting and alignment with national and Sharia law standards. Initially, the drafting process is undertaken by legal advisors within the relevant ministry who are tasked with forming the initial version of the

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regulation. This draft is subsequently submitted to the Council of Ministers' Division of Experts, a specialized body responsible for the scrutiny and revision of legal drafts to ensure they meet the required legal and ethical standards.

Once the Division of Experts has reviewed and possibly revised the draft, it is presented to the full Council of Ministers for approval. Following this, the draft is sent to the Consultative Council (Shura Council), as stipulated by Article 67 of the Basic Law of 1992. The Consultative Council plays a critical role in the legislative process, providing a further layer of review by examining the draft for any potential improvements or amendments that could enhance its effectiveness and compliance with existing laws and principles.

After incorporating feedback from the Consultative Council, the draft returns to the Council of Ministers for final adjustments. The finalized draft is then forwarded to the King, who ratifies it through a Royal Decree. This decree is officially published in the Um al-Qura, the official Gazette, thereby becoming law (Council of Minister Law, 1993).

Beyond these formal legislative instruments, Saudi Arabia also permits the issuance of administrative resolutions and laws through ministerial circulars. Heads of public agencies and ministers utilize these circulars to address more specific or urgent matters. Although these circulars are influential, they carry less legal weight than Royal Decrees and are not published in the official Gazette. In any case of conflict between a circular and a Royal Decree, the provisions of the Royal Decree

prevail, underscoring the hierarchical nature of legal authorities within the Kingdom (Council of Minister Law, 1993).

This meticulous legislative process not only ensures that new regulations are robust and comprehensive but also reflects the Kingdom's commitment to a legal system that respects traditional values while progressively integrating modern legal principles. The dynamic interplay between tradition and modernity in Saudi legal reforms highlights the Kingdom's approach to governance in an ever-evolving global landscape.

d) International Treaties as a Source of Law in the Kingdom of Saudi Arabia

International treaties represent a fundamental source of law in the Kingdom of Saudi Arabia (KSA), highlighting the country's engagement with the global legal framework. The interplay between international and national law is shaped by the ongoing debate between monism and dualism, pivotal in determining the integration of international treaties within domestic legal regimes. Monists argue that international law, including treaties and conventions, automatically integrates into national law upon ratification and coming into effect, assuming constitutional completion (Aust, 2000). In contrast, dualists maintain that international law remains distinct from municipal law, necessitating specific domestic legislation to confer legal status upon treaties (Aust, 2000, p. 143).

This distinction is crucial for understanding the application of international law by domestic courts and resolving conflicts between international and national legal orders (Haris, 1998). The KSA operates under a dualist approach, where international treaties do not automatically become part of domestic law without explicit legislative action. This stance is supported by the Basic Law of the KSA, which stipulates that international laws, treaties, agreements, and concessions are to be enacted and amended by Royal Decrees (Article 70). Additionally, it assures that the enforcement of these laws does not compromise any existing international commitments (Chapter 9, Article 81).

In practice, the process of incorporating international treaties into Saudi law mirrors that of domestic legislation, emphasizing the rigorous approach to international engagement. The journey of a treaty from negotiation to enforcement involves several critical steps. Initially, the relevant ministry drafts the treaty, which then proceeds to the Shura Council and the Council of Ministers for review and approval. Following this, the treaty requires ratification by the King through a special Royal Decree. Once ratified, the treaty is published in the official Gazette as a Royal Decree, affirming its status as enforceable law within the Kingdom (Jeanne, 1982).

The Saudi approach respects the general principles of international law, particularly the obligations to abide by treaties and implement them in good faith (Alkahtani, 2010). By requiring that treaties undergo the same legislative scrutiny as domestic laws, the KSA ensures that these

international agreements align with national interests and legal standards before they acquire legal authority. This methodical process highlights the significance of international treaties in the Saudi legal system and underscores the Kingdom's commitment to a meticulous and principled approach to international relations and law.

e) The Role of Customs and Practices in Shaping Saudi Arabia's Legal System

Customs and practices hold a fundamental role in shaping the legal framework of the Kingdom of Saudi Arabia (KSA), particularly in the context of modern international commerce and trade. Since the discovery of oil in 1938, Saudi Arabia has seen significant legal developments influenced by the need to accommodate new types of contracts and business dealings with both governmental entities and foreign international companies. These dealings, which include importation, exportation, and various investment activities, have gradually infused Western legal concepts into the Islamic traditions of Saudi Arabia (Maren, 1987). This intermingling of domestic and international legal practices has given rise to numerous regulations designed to meet modern commercial and financial demands, addressing aspects such as commercial agencies, corporate structures, banking transactions, and maritime law (Amin, 1985).

Furthermore, the national culture of Saudi Arabia, deeply entrenched in Sharia law and Arab traditions, exerts a profound influence on the evolution of its legal system. These cultural underpinnings dictate

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behaviors and interactions at both individual and governmental levels (Moran et al., 2014). Politically, Sharia shapes the dynamic between rulers and citizens, emphasizing values such as allegiance, loyalty, and the principle of consultation or Shura, which is pivotal in Saudi governance (At-Twajjri, Al-Muhaiza, 1996). Legally, it serves as the bedrock of the national constitution, ensuring that all issued regulations adhere strictly to Sharia principles (Saudi Basic Law, 1992).

Social customs under Sharia encourage virtues like generosity, hospitality, truthfulness, fulfilling debts, and honoring commitments (At-Twajjri, Al-Muhaiza, 1996). Additionally, while Sharia is the guiding principle, other indigenous Arab customs also play a significant role in shaping societal norms and the interpretation of laws. A notable example of this is the regulation concerning women driving; despite there being no Islamic prohibition against women driving, it was only permitted in the KSA in 2018, underscoring how traditional customs can delay or shape the adoption of new legal practices (The Guardian, 2018).

As Saudi society continues to evolve, so too do its legal norms and regulations. This ongoing transformation is likely to bring further amendments addressing current legal issues, such as public policy and the representation of women in legal contexts, including courts and arbitral tribunals. This dynamic interplay between entrenched customs and evolving practices highlights the complex yet adaptive nature of the Saudi legal system in responding to both traditional values and modern necessities.

f) Integration of Foreign Jurisdictions into Saudi Arabian Law

The legal system of the Kingdom of Saudi Arabia (KSA) initially depended on foreign legal models due to its limited domestic legal experience. This reliance was particularly evident in its early adoption of the Ottoman Codes, which were used alongside Sharia principles to form the backbone of the Saudi legal system. The King underscored this approach in 1927 by directing the Hejaz attorney general to adhere to the Ottoman codes pending further developments (Royal Decree, 1927). The influence of these codes is apparent in the 1931 Regulation for Commercial Courts, which retained many Turkish legal terms, suggesting a direct translation from the Ottoman Commercial Code of 1885 (Article 290).

Additionally, the Saudi legal framework has been indirectly influenced by the French civil system. This influence came through foreign legal experts from Arab states like Egypt and Syria, which had themselves been heavily shaped by the French legal traditions during the 18th and 19th centuries due to French occupation (Holden and Johns, 1981). This led to the King ordering the adoption of Egyptian laws—essentially translations of French laws—within Saudi jurisdictions (Maren, 1987).

However, any foreign law considered for adoption in Saudi Arabia must align with Sharia principles. This prerequisite was exemplified in the 1966 Regulation Governing Bids for Government Procurement,

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which was modeled directly after the Egyptian Regulation of 1957, itself a copy of the French Regulation of 1953 (Maren, 1987). Similarly, the Saudi Companies Law enacted in 1965 drew heavily from Egyptian law, which was influenced by French company law, demonstrating a layered integration of foreign legal influences (ibid).

Despite these influences, all adopted laws must either comply with Sharia or, at a minimum, not conflict with its doctrines. The Saudi Labour Law of 1969 serves as an example, where despite its basis in Egyptian Labour Law, adjustments were made to align it with Islamic practices. These adjustments included provisions prohibiting mixed-gender workplaces and allowing for special vacations for religious pilgrimages, which were absent in the Egyptian law (Thabet, 2000). This careful integration of foreign legal elements into the Saudi legal framework illustrates a deliberate effort to balance international legal practices with the immutable principles of Sharia.

Conclusion:

In conclusion, this paper has explored the multifaceted legal system of the Kingdom of Saudi Arabia (KSA), highlighting how it intricately blends Islamic Sharia with customs, practices, and influences from foreign legal systems. This exploration has yielded several key findings and recommendations that are critical for understanding and further developing the KSA's legal framework.

Key Findings:

- 1. Islamic Sharia as the Cornerstone:** Sharia remains the fundamental source of law in the KSA, influencing all legal, political, economic, and social affairs. Its overarching presence ensures that any legal adaptation, whether from within or outside Saudi borders, aligns with Islamic principles.
- 2. Impact of International Commerce:** The oil boom and subsequent international business engagements have necessitated the adoption of certain Western legal practices, particularly in commerce and trade. This has led to a gradual integration of international legal norms with local regulations.
- 3. Cultural Influence on Legal Practices:** Saudi culture, deeply intertwined with Islamic traditions, significantly influences legal practices. This cultural lens affects everything from daily business operations to broader regulatory reforms.
- 4. Historical Dependence on Foreign Legal Systems:** The reliance on the Ottoman Codes initially and later influences

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from the French civil system illustrate the kingdom's historical openness to foreign legal frameworks to shape its own system.

5. **Dynamic Adaptation of Laws:** The legal system in Saudi Arabia is dynamic, adapting over time to accommodate changes in societal norms and international standards while maintaining compliance with Sharia.

Recommendations:

1. **Enhance Legal Framework for International Business:** As Saudi Arabia continues to expand its economic horizons, further development of its commercial laws to align with international standards, while respecting Islamic principles, will be crucial.
2. **Promote Legal Education and Awareness:** Strengthening legal education programs to include both national and international legal practices can prepare future legal professionals to better navigate the complexities of the KSA legal system.
3. **Encourage Cultural Sensitivity in Lawmaking:** Lawmakers should continue to consider the profound cultural and religious sentiments of the Saudi population when drafting laws, ensuring that legal reforms are both effective and culturally sensitive.
4. **Systematic Update of Legal Codes:** Regular reviews and updates of existing laws, particularly those influenced by historical foreign systems, to ensure they remain relevant and efficient in addressing current legal and economic challenges.
5. **Expand International Legal Collaboration:** Further engagement in international legal forums and treaties, with careful consideration of Sharia compliance, can enhance the KSA's position in global legal discussions and contribute to a more comprehensive legal system.

By addressing these findings and implementing these recommendations, Saudi Arabia can continue to develop a legal system

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that not only respects its rich traditions but also embraces the necessary changes brought about by globalization and modernization. This balance will be essential for sustaining its growth and ensuring a stable and prosperous future for the kingdom.

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