

to the custom of the community to determine the issue.³² As a simple example, if an agreement does not determine the commission in a sale contract, the judge will turn to the usual practice of the place of the conclusion of the contract and issue his judgment on that basis. Custom can serve as persuasive evidence or as the basis for legal presumption; however, even when the case requires reference to local custom, judges still rely on experts and notaries to indicate the acceptable form of the local customary practice.³³

As a final remark about *usul alfiqh*, it is appropriate to add this quote from Professor Hallaq, who concluded that:

[U]sul alfiqh as a mixed product of human reasoning was articulated in a double-edged manner as it was both descriptive and prescriptive. It expounded not only the method of *modus operandi* of juristic construction of the law as the later scholars carried them out, but also the proper and sound ways of dealing with the law. Moreover, *usul alfiqh* provided the jurists with a methodology that allowed them not only to find solutions for a new case, but also to articulate and maintain the existing law. Even old solutions to old problems were constantly rehabilitated and reasoned anew.³⁴

Codification of Shari'a Law

The call to codify the rules of Shari'a in a similar way to modern Western codes and acts has met with some success in different Muslim countries. Issued in 1882, *Majallat Alahkam Al Adliyah*, the so-called 'Majalla', was the first-known attempt to codify the Shari'a. The Majalla did not work in practice, because it was drafted for a non-Muslim authority and because it forced the society to follow the *Hanafi* school to the exclusion of the others. The popular belief that the Majalla was drafted as a civil code for the Ottoman Empire is partly incorrect. The Majalla was initially drafted under a reciprocal agreement between the Ottoman Empire and the Russian Orthodox Church; it was only later that the Majalla was adopted as the Ottoman civil code. In the aftermath of the Crimean War (1853–1856), a Muslim population was living within the Russian Empire; there was also a number of Orthodox Christians living within the Ottoman Empire. The original agreement resulted in the Majalla being adopted as a Muslim code in exchange for a Christian code.

32 S. Heynman, *Islam and Social Policy* (1st edn., Vanderbilt University Press, 2004), p. 102.

33 L. Rosen, *The Justice of Islam: Comparative Perspectives on Islamic Law and Society* (1st edn., Oxford University Press, 2000), p. 16.

34 W. Hallaq, *The Origins and Evolution of Islamic Law* (4th edn., Cambridge University Press, 2007), p. 148.

As a general rule, Shari'a judges decide on each case individually without giving any consideration to precedents. Moreover, the judge is not bound by the rules of any school of jurisprudence and he can choose to apply whichever rules are the most convenient for the given case. This leaves the judge free directly to apply the principles and spirit of the Shari'a texts under his own reasoning.

In Saudi Arabia, where the Quran and the Sunna form the substantive law, codification of the teachings of the Quran and the Sunna might impair the Shari'a and take away some of its flexibility. It could be said that codification might disable all the mechanisms of *usul alfiqh* that would enhance the culture of single school jurisprudence. In addition, codification might make the teachings of one school prevail over the rest of the schools' teachings – such strict adherence to one opinion might achieve equality, but not equity. For laymen, codification might become a tool for emphasizing the differences among the Islamic schools; rather than encouraging the accommodation of different opinions and practices, codification would become, instead, in that case, a tool of segregation. However, codification is needed in those areas of practice that emerged as a result of changing circumstances. Moreover, any prospective codification should concentrate on the procedural issues, which are the only parts that really need to be reformed.

Foru' alfiqh – 'Branches of Fiqh'

The result of applying the methodologies of *usul alfiqh* to Shari'a texts is known as *foru' alfiqh* in Arabic, which translates literally as 'branches of fiqh'. *Foru' alfiqh* are the actual laws or legal interpretations of Shari'a texts, as can be found in the *fiqh* textbooks, referred to as *fiqh*. Scholars have categorized *foru' alfiqh* according to subject matter; however, there is disagreement over these classifications, as each group of scholars has divided the branches in different ways. Classical scholars divided *foru' alfiqh* into the two broad categories of *ibadat* and *muamalat*.³⁵ *Ibadat* is the part of the teachings concerned with the relationship between human beings and Allah; whereas *muamalat* regulates the relationships among people. The most common classifications for *fiqh al muamalat* are:

- family
- food
- wills, trusts, estates and inheritance
- contracts, trade and commerce
- property
- criminal
- evidence
- administrative procedure
- administration of justice (*al qada*)

³⁵ The term *ibadat* can be translated as rituals, whereas the term *muamalat* can refer to different meanings such as transactions, dealings, conducts, etc.

- zakat³⁶
- domestic relations
- relations with non-muslims
- war
- ethics.

The Emergence of the Islamic Schools of Thought (Mathahib)

Differences of background, circumstance, personal understanding of Shari'a texts and application of *usul alfiqh* have a great influence on legal interpretation in real life. Some Muslim scholars stop at the clear wording of the Quran and the Sunna, while others go further, attempting to achieve a deeper understanding using analogies, reasoning or even personal opinion. When talking about Sunni Islam, there are four main developed schools of thought, or *mathahib*, in Arabic.³⁷ The differences between these schools are noticeable only in very minor practical divergences, which are owing to differences in the interpretation of Shari'a texts; otherwise, the four schools are basically one, for the reason that Sunni Muslims do not identify themselves according to their mathhabs.

The four main schools in existence nowadays are Hanafi, Maliki, Shafi'e and Hanbali. These schools exist because their teachings have been maintained and developed by their followers, giving them the potential to spread around the Muslim world and allowing them to keep up with changes in daily life. In pre-Islamic times, Arabs used to rely on their memories to store events, stories and poetry. The same concept was applied to the Quran, the Sunna and the teachings of religious scholars, especially in the early stages of Islam's development. During the first two centuries of Islam, the Quran and the Sunna were transferred between generations by narration, using the same methodology as the Arabs before Islam. By the ninth century, a few attempts were made to collect the Sunna, the teachings of the scholars and other intellectual works. Those efforts resulted in the spread of some scholars' works over others. These ways of scholarly thought were followed by other scholars and, as a result, people started to refer to the followers of a particular school of thought by the name of the founder.

Hanafi School

The Hanafi school is the oldest of the four schools of Islamic law; it was named after its founder, Abo Hanifa, Annu'man Ben Thabit (699–767), also known as

36 Zakat is one of the five pillars of Islam. Zakat is the giving of a certain percentage of one's wealth to certain beneficiaries after the fulfilment of some conditions.

37 For a deeper understanding of the emergence of mathhabs, please see, generally, P. Bearman, R. Peters and F. Vogel, *The Islamic School of Law: Evolution, Development and Progress* (1st edn., Harvard University Press, 2005).

Alimam Ala'azam, 'the greatest imam in Iraq'. Although this school is the oldest, it is also considered to be the most open to modern ideas and the most liberal in certain matters. The Hanafi school is characterized by the use of subjective opinions (*ra'i*), which partly gave it its name, ahl ar ra'i. The teachings of this school give priority always to the Quran, then to the Sunna and finally to Abo Hanifa's opinion. New problems are examined and often anticipated by the use of *qiyas*. *Urf*, or local custom, is not a source of law, but it can be a dependable reference in the case of a lack of other sources.³⁸ The Hanafi school is also known for giving legal opinions or fatwa in proposed, or sometimes imaginative, cases that did not exist at the time of discussing the matter. The Hanafi school was the official school of the Ottoman Empire and a selected part of the Hanafi teachings was embodied in the *Majalla* as an attempt to codify the financial provisions of the Hanafi teachings.³⁹ The followers of this school spread to Iraq, the region of the Caucasus and South Asian countries such as Pakistan, India and Bangladesh.

Maliki School

The Maliki school was founded in Medina, Saudi Arabia, by Malik Ben Anas (713–795). His major work, *Almuwatt'a*, was the first comprehensive work in Islamic history; it includes a collection of the Sunna, in addition to a selection of the Medina scholars' *ijma'* in his time. This *ijma'* is mainly based on the Quran, the Sunna and *qiyas*. Along with the main sources of Shari'a, Malik added the practices of the people of Medina at the time of the Prophet Muhammad's companions as a source of legislation.⁴⁰ A draft code in French, based on Maliki teachings, was prepared by M. Morand in Algeria in 1916, but this work has remained in draft form.⁴¹ The Maliki school is widespread in North and West Africa.

Shafi'e School

The Shafi'e school was founded by Muhammad ben Idri's Alshafi'e (769–819). Alshafi'e was a student of Malik ben Anas, founder of the Maliki school, and was also influenced by the Hanafi scholar Muhammad ibn Alhasan Alshaibani, but he soon founded his own school. The Shafi'e teachings are mainly eclectic, borrowing from both Maliki and Hanafi schools, because Alshafi'e himself was inspired by both schools. Alshafi'e was the first scholar to address the concept of

38 A. Aljaziri, *Ketab Al Fiqh Ala Almathahib Al Arba'a* (1st edn., Dar Alkutob Alilmiyah, 2003), p. 28.

39 See, generally, M. Alatasi, *Sharh Almjallah* (1st edn., Maktabah Haqqaniyah, 1949).

40 M. ben Anas, *Almuwatt'a*, ed. Muhammad Fouad Abdulbaqi (1st edn., Dar Alkotoub Alilmiyah, 2000), p. 3.

41 S. Saleh, *Commercial Arbitration in the Arab Middle East: Shari'a, Syria, Lebanon and Egypt* (2nd edn., Hear Publishing, 2006), p. 5.

usul alfiqh (legal theories) in his book *Alresalah*. The Shafi'ees do not recognize the concept of istihsan but they do emphasize the concept of istislah. The Shafi'ee school is the official school in Indonesia, Malaysia and Brunei Darussalam, and it is widespread among the Kurds (Turkey, Syria, Iran and Iraq), Egypt, Yemen and the whole of East Asia.

Hanbali School

The Hanbali school is the official school in Saudi Arabia, which makes it the most relevant school for this study. The Hanbali school was founded by Ahmad ben Muhammad ben Hanbal (780–855), who was a narrator of the Sunna and a Shafi'ee student. The teachings of Ibn Hanbal are quite conservative because they are strongly based on the Quran and the Sunna, with a little room for qiyas and other methods of reasoning. Although the Hanbalies are relatively strict in religious ritual, they are the most tolerant and flexible in commercial and financial transactions.⁴² As mentioned above, the Hanbali is the official school in Saudi Arabia; it is also widespread in some parts of Syria and in some of the Gulf States. In 1927 King Abdul-Aziz Al Saud (1876–1953) declared his intention to draft a code embodying the teachings of Hanbali scholar Ibn Taymiyyah. Although this plan was opposed by traditional religious scholars and was eventually given up, Ibn Taymiyyah's teachings are still one of the main pillars of the Saudi legal system. Despite the fact that cancelling the codification plan was heavily criticized, it did favour the legal system as a whole in terms of allowing more flexibility in deciding controversial subject matter in disputes, concerns with family and criminal law. Non-Saudis in general use the term Wahhabism, or Wahhabiya, when describing the Saudi legal system or the official religious school in Saudi Arabia, which is actually a misunderstanding of the political history of that country, as will be seen below.

The Establishment of the Legal System in Saudi Arabia

The Foundation (1920s–1960s)

The modern state of Al Saud was established in 1932, when the King of Hejaz and Sultan of Najd, Abdul-Aziz ibn Saud, established the kingdom of Saudi Arabia with himself as absolute monarch. Since his first days as King of Hejaz, Abdul-Aziz was concerned with establishing a modern independent legal system based on the principles of the Islamic Shari'a. In issue No. 64 of Umm Alqura, the official gazette, dated 5/9/1344 H. (18/03/1926), King Abdul-Aziz issued the first provisional regulation for the judiciary; according to that royal decree, the act had

⁴² See, generally, S. ben Hanbal, *Sirat Alimam Ahmad ben Hanbal*, ed. Muhammad Alzali (1st edn., Almaktab Alislami Lel Tiba'a wa Annashr, 1997).

the title of Provisional Act to Reform the Shari'a Courts. The act consisted of 15 articles, with very simple wording; it gave general guidance and established the framework of the Shari'a courts. In his speech at Majlis Alshura,⁴³ King Abdul-Aziz held the Shari'a principles as the main source of legislation in the kingdom. He added that all legislation should be approved by the Shura Council before becoming effective in order to enhance transparency and public participation in the process of decision-making.⁴⁴

In the following year, another royal decree called for the establishment of two summary courts in Mecca, in addition to the Shari'a Supreme Court Almahkamah Alshar'iyah Alkobra. The decree also called for establishing summary courts and Shari'a courts in Jeddah and Medina.⁴⁵ The same royal decree established a committee, to be in charge of appeals and judicial supervision, and named it Hay'at Almuragaba Alqada'iyah; the name of the committee later changed to Hay'at Altadqiqat Alshar'iyah. The committee used to serve as a court of appeal and as a regulator and supervisor for all the judicial bodies in the kingdom at that time.⁴⁶ A few weeks later, the King gave his order to establish ketabat alad'l, 'the notary public'.⁴⁷

The provisional law of 1926 was replaced in 1931 by nizam sair almuhakamat Alshar'iyah, which was more comprehensive than the previous one and more concerned with the procedural issues of judicial proceedings. The new act came with only 36 articles at first; it was amended in 1936, and increased to 142 articles, under the title of nizam almurafa'at. In 1938, another act established the competence of judges and their responsibilities. The latter two acts were redrafted in 1952, under the titles of nizam tarkeez almasoliyat Alshar'iyah, and nizam tanzeem al'amal al idariyah fee aldawa'er Alshar'iyah. By Royal Decree dated 23/10/1381 (1962) the old committee for judicial supervision or Hay'at Altadqiqat Alshar'iyah was replaced by Mahkamat Altamyeez, or the court of appeal, which opened in Mecca in the same year. The court of appeal worked under a provisional regulation till the approval of its law by Royal Decree No. 24836 dated 29/10/1386 H. (1967); the new regulation gave Mahkamat Altamyeez an exclusive duty to serve as a superior court instead of executing the load of duties of the old committee, which included revision of the regulations, legal consultation and a commercial court in some situations, in addition to its duty as a court of appeal.⁴⁸ The above regulations established the foundation of the Saudi judicial system, which was

43 It is a consultative body equivalent to parliament; it was founded in 1924 under the name of Almajlis Alahli (the National Council).

44 The speech dated 9/03/1349 H. (1930).

45 *Umm Alqura Gazette*, issue No. 140 dated 21/02/1346 H. (1927).

46 Ibid.

47 *Umm Alqura Gazette*, issue No. 143 dated 13/03/1346 (1927) and issue No. 144 dated 20/03/1346 (1927).

48 The Ministry of Justice of Saudi Arabia, *Litigation in Saudi Arabia: History, Institutions and Principles* (1st edn., The Ministry of Justice of Saudi Arabia, 1999), p. 89.

followed not only by many royal decrees and ministerial decisions, but also by administrative circulations in many fields of activity, such as commerce, banking, labour, social security, arbitration, etc. Such legislations intend to complement Shari'a, not to replace it, and they can also be considered as updates to existing Shari'a principles.

Judicial Bodies in Saudi Arabia

Competence for the settlement of disputes is generally divided, in Saudi Arabia, between different judicial and semi-judicial bodies. These bodies are supervised by different ministries in accordance with the dispute subject matter. According to the 2007 amendments to the law of judiciary, the judicial bodies in Saudi Arabia are:

- the judicial bodies under the Ministry of Justice, courts of first instance, courts of appeal and the High Court;
- the independent judicial authorities – the Board of Grievances, Diwan Almazalim; and
- the semi-judicial committees that work under the supervision of the competent ministry, such as the Committee for the Settlement of Banking Disputes of SAMA, the Committee for the Settlement of Customs Disputes, which belongs to the Ministry of Finance, etc.

The Ministry of Justice

In 1962 King Faisal gave his order for establishing the Ministry of Justice; however, it was another eight years before the ministry started its activities. The first judiciary law was issued by Royal Decree No. (M/64) of 1395 H. (1975); this law experienced a major amendment in 2007. The recent amendments will change the face of the Saudi judicial system considerably, as for the first time there will be specialized courts for each branch of legal practice in Saudi Arabia. Prior to these amendments, a judge deciding a criminal case one minute might settle an inheritance dispute 30 minutes later. The Ministry of Justice was allowed a transition period of two years before the new law became effective; however, the transition has been taking place very slowly. As with the previous law, the new law covers various issues related to the judicial system, such as: provisions securing the independence and impartiality of the courts; types of court and their jurisdictions; judges, their appointments and promotions; and the role of the Ministry of Justice, etc. Interestingly, the law comprises 85 articles on only eight A4 pages.

In the foreseeable future, there will be three main divisions for Shari'a courts in Saudi Arabia. According to article 9 of the 2007 judiciary law, Shari'a courts shall consist of:

- the High Council of the Judiciary, *Almajlis Al'ali Lilqada'*
- the High Court, *Almahkama Al'olia*
- the Court of Appeal, *Mahkamat Alisti'naaf*
- the courts of first instance, *Mahakim Aldaraja Al'oula*. This class of court is subdivided into:
 - general courts
 - courts of personal status
 - commercial courts
 - labour courts.⁴⁹

The High Council of the Judiciary – Almajlis Al'ali Lilqada'

The new amendments of the Law of Judiciary split the competence of the supreme judicial council, or *Majlis Alqada' Ala'ala*, between two newly-formed bodies. The duty of being the highest court in the kingdom was assigned to the High Court. The rest of the duties, including supervising judicial affairs in the country and establishing new courts, appointing judges, etc. are among the duties of this council.⁵⁰

The High Court – Almahkama Al'olia

The High Court in Riyadh was constituted partly to replace the Supreme Judicial Council, or *Majlis Alqada' Al A'ala*, which, in its current structure, is the result of many decades of development from the committee of judicial supervision in the 1920s to the enactment of the previous law of judiciary of 1975. The new High Courts will have legislative, administrative and judicial powers. The High Court as a successor to the Supreme Judicial Council will be the highest judicial authority in the kingdom, which makes it the final court of appeal. The duties of the High Court in accordance with article 11 of the Law of Judiciary of 2007 are:

- giving legal opinions with regard to issues related to the judiciary upon the request of the Minister of Justice;
- examining questions referred to said court by the King, with a view to issuing relevant Shari'a guidance;
- reviewing death, amputation or stoning sentences;
- reviewing cases in which one of the parties is not satisfied with the decision of the Court of Appeal, in case the decision of the Court contradicts Shari'a or the decision was issued by a court lacking the competence to decide such a matter; and

⁴⁹ The Law of the Judiciary of Saudi Arabia, Royal Decree No. (M/78) dated 19/09/1428 H. *Umm Alqura Gazette*, issue No. 4170 dated 30/09/1428 H. (12/10/2007).

⁵⁰ See article 5 of the Saudi Law of Judiciary of 2007.

- examining Shari'a questions that, in the opinion of the Minister of Justice, require a statement of general Shari'a principles.

Just like the Supreme Judicial Council, the High Court's decisions on cases referred to it from the Court of Appeal are binding upon all other courts, including the Court of Appeal. As a result, the High Courts have a powerful influence on the development of law in the country.

The previous law of judiciary of 1975 provided for the regular publication of a selection of judicial decisions; however, the first volume of the judicial decisions report of the Saudi courts was not issued until 32 years later, in 2007, under the title of *Modawanat Alahkam Alqada'iyah*. It contained a small selection consisting of 39 court decisions and nine of the Supreme Judicial Council's resolutions.⁵¹

The Court of Appeal

The Court of Appeal was established in 1927, under the name of Hay'at Altadqeqat Alshar'iyah. After the enactment of the law of judiciary of 1975, the same committee functioned under the name of Mahkamat Altameez. The new law added a new division to this court and divided it into five departments: the Civil Division, the Criminal Division, the Personal Status Division, the Commercial Division and the Labour Division.⁵²

Courts of First Instance

The general courts were established by the same royal order that established the Court of Appeal in 1927. The judge in these courts sits alone except in cases of executions, stoning, amputation, kidnapping, armed robbery and other serious criminal offences specified in the judiciary act, which must be decided by three judges.⁵³ These courts have civil and criminal jurisdiction as they deal with more cases than other judicial bodies in the kingdom. Saudi courts in general assume jurisdiction over all cases brought before them except in cases *in rem* involving real estate located outside the kingdom.⁵⁴ The general courts have the authority to deal with all civil and criminal cases, regardless of their nature and financial value, unless cases fall under the competence of other judicial bodies that have been given exclusive jurisdiction, such as the Saudi Arabian Monetary Agency, the Ministry

⁵¹ See, generally, The Ministry of Justice of Saudi Arabia, *Modawanat Alahkam Alqada'iyah* (1st and 2nd edn., Ministry of Justice of Saudi Arabia, 2007).

⁵² See the 2007 Law of Judiciary, article 16.

⁵³ Article 10.4, 2007 Law of Judiciary.

⁵⁴ See the law of procedure before Shari'a Courts, Royal Decree No. (M/21) dated 20/05/1421 (19/08/200). *Umm Alqura Gazette*, issue No. 3811 dated 17/06/1421 (15/09/200).

of Commerce, Diwan Almazalimm, the Ministry of Culture and Information, etc.⁵⁵ The new law of judiciary provides that such courts should also be divided into the same five departments – Civil, Criminal, Personal Status, Commercial and Labour – as the Court of Appeal.⁵⁶ The law joined most of the semi-judicial committees in the new courts, with the exception of issues over which Shari'a courts might dispute legality, such as banking disputes, insurance, media and information.

Independent Judicial Bodies

Shari'a courts have general jurisdiction over civil disputes; however, judicial regulation takes into account the constitution of specialized courts. The word 'independent' means that there is a dichotomy between these bodies and the authority of the Ministry of Justice. The jurisdiction of these bodies is defined in terms of both subject matter of and parties to the dispute.⁵⁷ The rule is that these commissions do not usually have the jurisdiction to adjudicate cases to which the Saudi Government or any of its entities is party, because such disputes should fall under the competence of the Board of Grievances, hereinafter Diwan Almazalim. The next few paragraphs will give a brief overview of the authority most connected with arbitration in Saudi Arabia in general and with banking disputes in particular. It should be noted that, with a few exceptions such as the Committee of the Settlement of Banking Disputes and the Committee for the Settlement of Insurance Disputes, some of these committees will be incorporated under the competence of the newly formed courts of first instance.

Committee for the Settlement of Negotiable Instruments Disputes

The Committee for the Settlement of Negotiable Instruments Disputes is also known as the Negotiable Instruments Office. The Committee falls under the jurisdiction of the Ministry of Commerce and Industry. Established by the Law of Negotiable Instruments, the Commercial Paper Committee, also known as the Office for the Settlement of Commercial Papers Disputes, has the jurisdiction to hear claims concerning bills of exchange, promissory notes and cheques. The Negotiable Instruments Law provides the substantive legal provisions applied by the Commercial Paper Committee.⁵⁸ The law largely reproduces the provisions of the Geneva Convention Providing a Uniform Law for Bills of Exchange and

⁵⁵ Ibid.

⁵⁶ Article 20 of the Saudi Law of Judiciary of 2007.

⁵⁷ A. Lerrick and Q. Mian, *Saudi Business and Labour Law* (2nd edn., Graham & Trotman, 1987), p. 222.

⁵⁸ The Law of Commercial Papers, Nizam Alawraq Altejariyah. Issued by Royal Decree No. 37 dated 11/10/1383 H. (1963). *Umm Alqura Gazette*, issue No. 2010 dated 15/10/1383 H. (1963).

Promissory Notes of 7 June 1930 and for Cheques of 9 March 1931, even though Saudi Arabia has not become party to the conventions themselves. As Shari'a forbids the payment and charging of interest, provisions within the Conventions relating to interest were omitted from the Negotiable Instruments Law. In practice, this position has been applied by offsetting interest payments made voluntarily by the debtor against the principle of the debt. The procedure before the Committee is subject to the provisions of the Code of Commercial Courts of 1931. Decisions may be appealed to the Minister of Commerce.⁵⁹ The competence of settling negotiable instruments disputes will move to the Commercial Courts by 2010/11 and as a result, this Committee will disappear.

Committee for the Settlement of Banking Disputes of the Saudi Arabian Monetary Agency (SAMA)

The Committee for the Settlement of Banking Disputes was established under the Saudi Arabian Monetary Authority (SAMA) for the purpose of settling disputes between banks and their clients arising from contracts and transactions that do not concern commercial papers such as bills of exchange, which should be settled through a different Committee. In exercising its powers, the Committee may decide to freeze a party's assets or restrict parties from travelling outside of Saudi Arabia.

The Committee consists of three members who are appointed by the Ministry of Finance upon the recommendation of the Saudi Arabian Monetary Agency governor. There is only one Committee for the Settlement of Banking Disputes in the kingdom, which is located in Riyadh. The Committee is under the umbrella of SAMA and all its members are SAMA employees. All members are equal. The working mechanisms of the Committee will be examined in detail in the last chapter.

Board of Grievances – Diwan Almazalim

The Board of Grievances, hereinafter Diwan Almazalim, was created in 1955 as a department of the Council of Ministers, Majlis Al wuzara'.⁶⁰ The Board was later reconstituted as an independent entity.⁶¹ At first the Board served as a general clearing house for complaints in the public domain; it has since evolved into the most important administrative and judicial body outside the Shari'a courts.⁶² Some authors argued that Diwan Almazalim is a sort of Conseil d'État that has been borrowed by the Egyptians from the Napoleonic Code; however, the principle of

59 Ibid.

60 See the Royal Decree No. 02/13/8759 of 1374 H. (1955).

61 See the Royal Decree No. (M/51) of 1402 H. (1982).

62 G. Sfeir, 'The Saudi Approach to Law Reform', *American Journal of Comparative Law*, 36 (1988), pp. 729–44.