

THE EVOLUTION OF CIVIL TRANSACTIONS LAW (CTL) IN SAUDI ARABIA: BALANCING SHARĪ'AH PRINCIPLES AND MODERN LEGAL TRENDS

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Abstract

This paper investigates the evolution of civil transactions law in Saudi Arabia with a specific emphasis on the influence of Sharī'ah principles and their intersection with contemporary legal patterns. The recent enactment of the new Civil Transactions Law is a noteworthy achievement in the legal system of Saudi Arabia, as it signifies a shift from an adherence to uncoded principles of Islamic law to the establishment of a structured framework based on civil law. This study analyses the primary components of the recently enacted legislation and their ramifications on civil transactions, considering the balance between Sharī'ah principles and contemporary legal practices. The paper further examines the strengths and weaknesses associated with the implementation of the new legislation with provide some solutions.

Keywords: Civil Transactions Law, Islamic law, Saudi Arabia, codification, modern legal trends, implementation

Introduction

The legal framework of Saudi Arabia is founded upon Islamic law, which is an Islamic legal system that draws its principles from the Qur'an and the Sunnah (Van Eijk, 2010, p.142). The sources of Islamic law include not just the primary texts of Islam, namely, the Qur'an and the Hadith, but also incorporate Islamic scholarly consensus that emerged subsequent to the passing of the Prophet Muhammad (Vogel, 2000, p.6). The manner in which judges in Saudi Arabia interpret Islamic law is inspired by the classical works of the Ḥanbalī School of Islamic Jurisprudence, known for its literalist approach. Saudi Arabia is the only Muslim country to adopt Islamic law in its uncoded form (Hagel, 1983, p.144). Due to this and the absence of legal precedents, there is a lot of confusion about what is and is not legal in the government legislation. Therefore, in 2010, the Government made a public declaration of its aim to codify the Islamic law. Subsequently, in 2018, the Saudi government released a comprehensive compilation of legal principles and precedents (Al Sewilem, 2012, p.95; Alanzi, 2020, p.2). It is important to note that these guidelines are non-binding in nature, serving as instructive references for judges in their decision-making processes (Ibid). In recent years, Saudi Arabia has undertaken efforts to modernise and reform its legal system with the aim of enhancing citizen welfare and fostering international investment (Natasha Turak, 2021). The evolution of the legal framework in Saudi Arabia has undergone a complete trajectory including the establishment and refinement of constitutional, administrative, commercial, and financial legislation (Abdul Nissar, 2023). Hence, a confluence of these elements has facilitated the enactment of a new Civil Transactions Law (CTL) in the Kingdom of Saudi Arabia, signifying a significant transformation in the country's legal framework. The Civil Transactions Law, which received approval from the Saudi Cabinet in 2023, is a recent addition to a comprehensive set of changes designed to modernise the legal environment in Saudi Arabia, in accordance with the objectives

outlined in the Saudi Vision 2030. The legislation is anticipated to facilitate the process for firms to engage in contractual agreements and enhance their comprehension of their legal responsibilities (Anas Alswailem, 2023). The enactment of the Civil Transactions Law is a noteworthy achievement in the legislative changes of the Kingdom, marking a transformative phase in the comprehension and implementation of Saudi law in accordance with globally recognised standards (Ibid). The legislation was formulated in a manner that strategically incorporates contemporary legal developments and globally recognised judicial methodologies, while also taking into account the principles and objectives of Islamic law (Huwayda and others, 2023).

The legislation aligns with Saudi Arabia's international commitments, as seen by the signed accords, in order to adapt to the evolving aspects of modern society. The CTL seeks to preserve the inherent connection with Sharia while adapting to the changing demands of a modern economy and culture. Achieving a harmonious coexistence between tradition and modernity within the legal system is a multifaceted challenge, as it necessitates deftly maneuvering the intricacies of religious tenets within the framework of worldwide legal standards. The CTL has always shown a keen interest in the development and progression of family law and business transactions. The Centre for Traditional Law (CTL) focuses on complex issues such as marriage, divorce, inheritance, and property rights. Its objective is to maintain traditional Islamic family ideals while also embracing societal changes. Within the domain of commerce, the CTL endeavours to harmonise business practices with the principles of Islamic finance, therefore meeting the increasing need for Shari'ah-compliant financial services while also engaging in the global economy. Nevertheless, the process of reconciling Shari'ah principles with contemporary legal tendencies presents some difficulties.

In this particular setting, it is possible to pose a question of significance. To what extent does the recently enacted civil law in Saudi Arabia achieve an appropriate balance between upholding Islamic traditions and adopting modern legal principles? What are the potential obstacles in the execution of the recently enacted Civil Transactions Law in Saudi Arabia?

Considering that qualitative research is a comprehensive analytical technique that incorporates several research ways, the paradigm of document analysis would be used as the conceptual framework and research strategy for data analysis, given that the paper only concentrates on literature. The objective of this study is to examine the progression of civil transactions law in Saudi Arabia, specifically emphasising the way the recently implemented Civil Transactions Law (CTL) harmonises Sharia principles with contemporary legal developments. The paper further examines the strengths and weaknesses associated with the implementation of the new legislation and will provide some solutions.

Literature Review

The present study undertakes a comprehensive review of relevant scholarly literature in order to provide a solid foundation for the research at hand. The objective of doing literature reviews is to provide a compilation of relevant studies previously conducted in a certain field, with the aim of identifying any shortcomings or gaps in the existing literatures. Additionally, literature reviews serve to provide a comprehensive assessment and contribute to the body of scholarly works in the subject area. The

amount of scholarly literature pertaining to the new civil law in Saudi Arabia is currently scarce, mostly due to the recent law was introduced in 2021 and will be came into effect on December 16, 2023. Nevertheless, a limited number of academic works have addressed the significance of implementing a Civil law system in Saudi Arabia, shedding light on the evolution and current advancements in the country's legal framework. Nevertheless, I have identified nothing that would specifically address the topic at hand.

The following literary sources are of significant importance and readily accessible. Sfeir's paper provides an overview of the Saudi approach to law reform, focusing on the reconciliation of two distinct legal systems: Islamic law and contemporary civil law. According to Sfeir (1988, p.733), the article highlights the efforts made by the Saudi government to modernise its legal system in recent years. However, the pace of change has been hindered by opposition from conservative factions inside the nation. In addition to the aforementioned points, a scholarly investigation conducted by Awad Ali Alanzi delves into the evolution of the constitution, administrative law, commercial law, and financial legislation within the context of Saudi Arabia. According to Alanzi (2020, p.4), the research highlights that the legal framework in Saudi Arabia is characterised by the amalgamation of Islamic principles and current civil law. Furthermore, it is observed that the legal system of the nation is undergoing a transition towards a more modernised structure. In general, the literature reviewed in this study did not adequately address the new Civil Transactions Law.

Overview of the New Saudi Civil Law

The legal system of any given nation assumes a pivotal role in upholding societal order and ensuring the administration of justice. Over the course of history, the legal systems in the Muslim world have been significantly influenced by the rules of Civil law. This influence may be attributed to the efforts of 'Abd al-Razzāq al-Sanhūrī, who introduced Civil law principles. As a result, a new Civil Code was issued in Egypt in 1948, which has since been widely adopted in many Arabic countries, including Syria, Libya and others Arabic courtiers (Zada and others, 2016, p.164).

In the context of Saudi Arabia the civil law plays a prominent role in regulating a wide range of rights and responsibilities pertaining to persons. The objective of this article is to examine the evolution and fundamental tenets that underpin the Saudi civil law. The origins of contemporary Saudi civil law may be traced back to Islamic law. As a nation governed by Islamic law principles, Saudi Arabia relies on the Qur'an and Hadith as primary foundations for its legal framework. Additionally, the field of fiqh draws from these fundamental sources to address the contemporary issues. Moreover, these sources are often regarded as the foundational laws of the civil law system in Saudi Arabia. Civil law provisions provide the necessary framework for the establishment of diverse terms and rules of law, with the primary objective of benefiting the populace. However, it is crucial to ensure that these developments consistently adhered to the principles of Islamic law (Alanzi, 2020, p.4).

The attempt of judicial reform began at an early stage. Since the discovery of oil in the 1930s, the nation has undertaken significant efforts to expeditiously overhaul its legal framework, all the while striving to preserve its Islamic identity and cultural legacy. The conflict between these two goals resulted in a division within the Saudi legal

system that the government has had difficulties in resolving, as it seeks to strike a balance between Islamic values and the demands for modernization and legal changes (Otto, 2010, p.150). Consequently, after the annexation of the *Hijāz* on January 8, 1926, the Saudi Government declared a Royal Decree which affirmed the continued validity of the legal decisions of Ottoman law. This declaration pointed out that, “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. Therefore, we accede to your suggestion concerning the continuance of the ruling of said laws” (Solaim, 1978, p.95). In 1928, the Saudi Government issued a declaration mandating that all Shari‘ah Courts adhere to the tenets of Islamic law, without being restricted to any one School of Islamic Jurisprudence. Furthermore, these courts were instructed to include legal concepts from all Schools without showing favouritism towards any one School.

In the year 1975, a Royal Decree was issued, stipulating that judges are required to decide cases in accordance with the Ḥanbalī School. If the judge believes that the Ḥanbalī School is not suitable for this case then it is necessary to provide proof and supporting documents in order to justify reasons. The inception of the Saudi legal system saw the establishment of the Committee of Justice, which played a pivotal role in the codification of established legal concepts. This endeavour aimed to ensure the consistent application of the rule of law. In order to ensure nationwide adherence, judges are obligated to adhere to a certain School of Jurisprudence, namely the Ḥanbalī School, and are committed to looking into just six books of Ḥanbalī jurisprudence. The legal system relies on many sources, including:

Sharḥ Muntahā al-irādāt, *al-Rawdh al-Murbi* ‘*Sharḥ of Zād al-Mustaqni*’, *Sharḥ al-Iqnā*’, *al- Sharḥ al-Kabīr* and *Sharḥ al-Manār*, *al-Mughnī*. The need of reforming the judicial system arises from the fact that the 1975 legislation of judiciary has been in existence for about four decades. Therefore, the establishment of the new court system in 2007 resulted in the creation of the Commercial Courts, which possesses jurisdiction over cases pertaining to commerce (Alanzi, 2020, p.4).

The passing of the Law of judicial in 2007 served as a vital component of King Abdullah’s initiative aimed at improving the court system. The initiative entails collaboration across many governmental sectors, including several ministries and the Bureau of Experts of the Council of Ministers. As previously indicated, a series of measures have been implemented since 2007, which include the establishment of specialty courts within the general judicial system. Moreover, a multitude of codes have been promulgated, including the Law of Procedure before Shari‘ah Courts and the Law of Criminal Procedure. Another concern is to the codification of the 2007 legislation, with the objective of initiating the process of codifying Shari‘ah Law as a positive act on the path to reform. The objective of the 2007 Law pertaining to the Court System in Saudi Arabia is to achieve the consolidation and standardisation of the Saudi Court System (Al Sewilem, 2012, p.110).

It is noteworthy that the Judicial Law of 1975 has acknowledged the significance of Judicial Precedents, however the subsequent Judicial Law of 2007 has removed this provision. While the actual implementation of Judicial Precedents in Judicial legislation 1975 may have been lacking, it may be argued that this advantage was a positive aspect of the prior judicial system. The Judicial Law of 2007 has enacted the establishment of Judicial principles, which will be formulated by the supreme court. Nevertheless, there

is a contention that this novel strategy will just provide significant outcomes and may not effectively address the existing legal deficiencies (Ibid).

Nonetheless, in recent years, Saudi Arabia has experienced significant societal and economic transformations due to the modernization efforts led by Crown Prince Mohammad Bin Salman. These initiatives, which commenced on April 25, 2016, with the launch of Vision 2030, have highlighted the necessity for a comprehensive and structured civil law framework to reform the legal system in Saudi Arabia (Huwayda and others, 2023). The exponential expansion of Saudi Arabia's economic landscape necessitates the implementation of a robust legal framework that is capable of adapting to and governing the evolving legal dynamics in commercial and civil domains, as well as transactions. Academics, legal experts, and politicians have called for the implementation of a codified Civil Transactions Law in order to provide a clear legal framework, tackle contemporary issues, and respect the ideals of Islamic law (Abdul Nissar, 2023). Therefore, it was imperative for Saudi Arabia to update the Judicial Law and enhance the legal environment. The implementation plan for these enhancements led to the revocation of the Judiciary Act of 2007 and the enactment of the new Civil Transactions Law in 2023.

The New Saudi Civil Law highlights the evolution of Saudi Arabia's legal system, reflecting a transition from traditional Islamic jurisprudence to a more contemporary framework that harmonises tradition with present-day need (Baker and others, 2023). The progress highlights the country's dedication to augmenting legal clarity, advancing equality, and fostering a conducive climate for business, all the while safeguarding its cultural and religious history. The enactment of the New Saudi Civil Law signifies a significant legal metamorphosis, serving as a manifestation of Saudi Arabia's objectives towards fostering a society that is characterised by principles of justice, equity, and advancement.

Shari'ah Principles in the Civil Transactions Law

In Saudi Arabia, the inclusion of Shari'ah principles into the Civil Transactions Law is a crucial component of the country's overall legal structure. Islamic law places a strong emphasis on the significance of justice, fairness, and the preservation of property rights. The Qur'an and the Sunnah of the Prophet are the ultimate sources of reference for the laws of the State, and hence the Government in Saudi Arabia draws its authority from these two sources (Vogel, 2000, p.17). In addition, it is very clear that all courts within the Kingdom would work in accordance with prescribed sources for judgements. These sources include the Qur'an, the Sunnah of Prophet Muhammad and laws that have been adopted by the state. The fundamental law of governance declares that Islam is the official religion, and that the Qur'an and the Sunna shall serve as the basis for the nation's constitution (Jones, 1992, p.45). In addition, the Islamic law, which is outlined in the Qur'an and the Sunnah, should be the sole legal code that the courts are allowed to apply to cases. Furthermore, the authorities should be allowed to enact any laws that are not in direct contradiction with the Qur'an and the Sunnah. When it comes to merging the primary Islamic legal resources of Shari'ah with the national legislation produced by the Saudi Government, the Basic Law takes a more circumspect approach. It highlights the imperative that national legislation should not clash with Shari'ah, which may be translated as Islamic law (Alanzi, 2020, p.4). For instance, in Article 1 of the new law, there is a clear reference to the 'rules [*al-ahkām*] derived from the

Islamic Sharī‘ah which are most consistent with the present law’ as the source of law in the event that there is no applicable provision of the new law or a rule of general principles contained in its last chapter from the Law (Abdul Nissar, 2023). This is the case in the event that there is no applicable provision of the new law. It is interesting to note that Saudi Arabia has a rather advanced legal system that integrates Islamic law principles with contemporary civil law principles (Aldayel, 2022, p.240). In the event that there is a lack of legal texts that were issued by legislative authorities, then the courts will employ Islamic law in order to decide the matters that have been brought before them. As a consequence of this, Islamic law is a main source that is used for closing legal loopholes and providing interpretations of the regulations (Alanzi, 2020, p.5). Its unique history, culture, and politics have contributed to the formation of its one-of-a-kind personality. In contrast to secular legal systems, religion and the law are not treated independently in Saudi Arabia’s system. Instead, Saudi Arabia, which is an Islamic State, bases its legal system on the Qur’an and Hadith, which are both considered to be key sources of Islamic law. In addition, Fiqh is derived from these primary sources in order to solve contemporary issues. In addition, these texts are taken into consideration to be the foundational laws of Saudi civil law. These sources are also regarded as the Saudi Civil Law’s basic codes. Civil law provisions enable other legal terms and norms to be formed as required and to benefit the populace, provided that the fundamentals of Islamic law are upheld throughout developments period (Ibid).

On the other hand, the legal system of Saudi Arabia is characterised by the amalgamation of Islamic principles with modern civil law. Islamic law is founded upon divine precepts and has the capacity to accommodate evolving conditions, extend its scope, and remain receptive to modification, application and use at any time and in any setting in response to shifting conditions (Alanzi, 2020, p.2). Nevertheless, the country’s legal system is undergoing a transformation towards a more contemporary framework. An excellent illustration of this can be seen in practice: the body of legislation that regulates the transactions that humans have with one another is referred to as Islamic civil law since it is founded on the principles and teachings of Islamic jurisprudence (Al-Marzwqi, 2014, p.67). The incorporation of Islamic law principles inside the CTL framework assures its adherence to Islamic law while also adhering to international norms. The process of harmonisation facilitates the establishment of a legal framework that is firmly grounded in Islamic law principles, while also accommodating the changing demands of the contemporary business landscape .

The Impact of Western Legal Systems on Saudi Arabia’s Legal Development

The question of the influence of Western legal systems on the formation of Saudi Arabia’s legal system is one that is complicated and diverse. The legal framework of Saudi Arabia’s legal system is founded on Sharia law, which is drawn from the Qur’an and the Sunnah. However, it is worth noting that the Kingdom has also experienced some degree of influence from Western legal systems in several aspects. According to Vogel (1999, p.22) Saudi authorities understood early on in the history of the Kingdom that the rule of law is an unavoidable prerequisite for the flourishing of a civilised society and the people who live in it (Ibid). Al Sewilem (2012) points out that the King Abdul Aziz, who ruled Saudi Arabia from 1932 to 1953, is credited as being the first ruler to bring modern laws into the country. As Aldayel states ‘A good example of this can be found in 1930s, in the laws passed by the Council of Deputies (1932) and the Council of Ministers (1933) specialised courts have implemented new laws, the

majority of which are based on Western legal principles such as the Saudi Companies Law, issued by Royal Decree No. (M/6) dated July 20, 1965. This law was based on the Egyptian company law, which was derived from the French company law (1953)' (Aldayel, 2022, p.232).

The Saudi legal system has a greater resemblance to a civil law system as opposed to the common law system. Indeed, Shari'ah is implemented in a manner that is more adaptable to civil law systems in the vast majority of Muslim nations, notably in the Middle East and in the Arab world (Esmaeili, 2009, p.8). Because of a variety of different influences, Shari'ah law has evolved from its primary sources, most notably the Qur'an and the Sunnah, thanks to the efforts of Islamic jurists that have been carried out over the course of many centuries (Al-Jabr, 1996, p.124). One of the most significant factors is the impact of the Ottoman Empire, which established a system of legal codification that was comparable to the methods used in continental Europe. Also, in the recent years, many legal professors and attorneys in the Middle East have finished their education in France, Switzerland, and other civil law nations in Europe. Due to this, civil procedures and rules have made their way into the Middle Eastern court system. The current state of the judiciary system reflects a greater resemblance to the civil law system in terms of the roles of judges and the process of selecting judicial officials (Esmaeili, 2009, p.11).

Aldayel point out that Egyptian legal professors helped significantly with their junior Saudi colleagues to formulate first Saudi commercial legislation. These young Saudi scholars received their education in Egypt and other regions of the former Ottoman Empire, whose legal systems are significantly influenced by the French civil code, or in Europe. This ultimately resulted in the legislation adopting a European particularly a French character. Although one may anticipate that imperial British influence in the Gulf would have led to the establishment of a common law tradition during that period. Nevertheless, Saudi Arabia did not adopt the common law system. Numerous variables contributed to this occurrence. The impact of Egyptian law, which is mostly based on French legal concepts, is considerable. Furthermore, the lack of Arabic translations of common law has impeded its proliferation in the region. Ultimately, the common law reached the region too late to influence Islamic law. The Arabs' necessity to address a deficiency elucidates the importance of civil law as a contemporary impact. Where Islamic did not provide any of provisions for contemporary commercial companies' forms, French legislation offered such frameworks, which Saudi Arabia subsequently adopted. A prominent example of this legislation is the Saudi Company Law of 1965. The influence of the French civil legal system is most evident in the Saudi Company Law of 1965, which replicates the Egyptian code, itself a derivative of French Company Law (Aldayel, 2022, p.233).

Nevertheless, in order to be implemented in Saudi Arabia, it is essential that these legislations do not contradict the principles of Islamic law. Civil law systems differ from common law systems in their reliance on codified laws, as opposed to the common law tradition which has evolved through time via judicial judgements made by higher courts in the United Kingdom and other jurisdictions following the common law. The possibility of codifying the Islamic law and introducing a codified system of law has long been debated among ulama and other authorities in Saudi Arabia, as it has been done in other Muslim countries (Esmaeili, 2009, p.13; Al Sewilem, 2012, p.121). In

terms of the codification of Islamic law, scholars views may be roughly divided into two camps: those who are opposed to codifying Islamic law and those who support the codification (Aldayel, 2022, p.233). However, it is beyond the scope of this paper to examine such perspectives.

It is also important to note that the idea of codifying the law is not entirely foreign to Saudi Arabia and has a long history there. The search for judicial reform and the proposed codification of the law began early on, including in the early days of the newly formed Kingdom and the reign of the first King. For instance, in the year 1973, King Faisal, who was the third King, requested the Permanent Committee for Islamic Research and Issuing Fatwas to offer their views on codifying and obligating judges to apply the codified judgements in court, and there were numerous opinions addressing this subject. King Faisal's request was met with a variety of different responses. Despite this, most members of the 1973 Committee are of the view that the law should not be codified (Al Sewilem, 2012, p.107).

Islamic scholars have the goal of protecting the process of *ijtihad*, in contrast to the objectives of the State, which tries to 'modernise,' 'adhere to economic principles,' and 'respond to international pressure.' As a result, the issue of codification in Saudi Arabia has always been a controversial one among the scholars in the past (Ibid).

It is widely acknowledged that Islamic law does not differentiate between actions that are considered civil and those that are considered commercial (Alshubaiki, 2013, p.373). It makes no difference what kind of transaction is being conducted or what kind of work a person is doing when it comes to the application of the principles of Islamic law such a matter. Nevertheless, it is important to note that within the framework of Islamic law there are no explicit prohibitions that would prevent an Islamic Muslim ruler (*hākim*) from enacting or embracing legislation specifically designed for merchants as long as these laws remain in alignment with the general principles of Islamic law. This authority is based on a doctrine known in Islamic jurisprudence called *al-siyasa al-shar'iyyah* ('Abd al-Wahhāb al- Khallāf, 2002, p.40; Alshubaiki, 2013, p.379). This doctrine grants the ruler of an Islamic society the power to undertake necessary actions for the betterment of the public, which encompasses various aspects, including the enactment of regulatory measures for local merchants within the business community .

The ulema eventually concluded that the absence of codification might lead to a reduction in efficiency in a variety of economic transactions. In conjunction with the Saudi Arabian Government's endeavours to facilitate global trade and attract foreign investment, they have recognised, akin to legal professionals in numerous jurisdictions, that certain international contracts are subject to the laws of the host state. Furthermore, in specific circumstances, the scope of international standards is considerably restricted. This phenomenon is often seen in domestic contractual agreements, local supply and distribution arrangements, insurance policies, and finance agreements with domestic institutions (Alshubaiki, 2013, p.380).

Consequently, the recent enactment of the new Civil Transactions Law signifies the acknowledgment of the necessity to codify and systematise Islamic law principles within the legislative structure that regulates civil transactions, encompassing contractual affairs, property rights, family law, and commercial dealings. The primary

objective of codification is to provide legal lucidity, uniformity, and respect to Islamic principles within the domain of civil transactions.

Recent Legal Reforms in Response to Changing Societal and Economic Needs

Following the dissolution of the Ottoman Empire, a notable development in the realm of international commerce emerged globally, including some of the Gulf States especially subsequent to the discovery of oil. The avoidance of Islamic law in international commercial contracts may be attributed to certain factors such as its lack of clarity, insufficiency, or unsuitability for such transactions (Alshowish, 2016, p.201; Alshubaiki, 2013, p.380) despite the fact that Islamic law was stipulated to be the applicable law under the contract. In this regard, one example to consider is the award that was handed down in the case of Saudi Arabia v. Arabian American Oil Co (ARAMCO).¹ In that specific instance, the arbitral tribunal's decision was as follows: In light of the insufficiency of Muslim law as it has been interpreted by the School of Imām Aḥmad bin Ḥanbalī, and in light of the fact that the law currently in effect in Saudi Arabia does not contain any determined rule concerning oil extraction, it is necessary to resort to the general principles of law. These instances resulted in significant adverse responses and a prevailing lack of confidence in the international arbitration and the judicial system inside the Arab Gulf nations. These instances prompted the Saudi Arabian Government to enact a resolution that prohibits its entities from engaging in arbitration without first gaining consent from the Council of Ministers (Alshubaiki, 2013, p.381).

On the other hand, as the global society progresses into the 21st century, it is imperative for Muslim nations to adopt a proactive approach in reforming their legal systems. This is not just a responsibility towards their own citizens but also as a means of fulfilling their obligations as members of the international community (Hersi, 2009, p.2). In the contemporary, no nation, including Saudi Arabia, can ignore the need of progress and advancement in this contemporary time. Consequently, considering the global economy's requirements, Saudi Arabia has implemented significant changes with the objective of attracting international investment and cultivating a conducive climate for business. The changes include modifications to commercial rules, company laws, and bankruptcy processes, so enhancing the facilitation of corporate operations and fostering the promotion of economic diversification. Furthermore, in recent times, Saudi Arabia has made significant efforts to encourage foreign investment by relaxing regulations and establishing a distinct and authoritative framework of commercial law that is separate from the Islamic law. This initiative aims to offer multinational

¹ This issue involved the interpretation of a concession agreement between the Standard Oil Company of California and the Government of the State of Saudi Arabia, executed on May 29, 1933. The California Arabian Standard Oil Company subsequently acquired the contract and rebranded itself as the Arabian American Oil Company, commonly referred to as "Aramco." The primary issue in this conflict was the disagreement about an arbitration action related to rights conferred by a 1933 concession agreement between Saudi Arabia and the Arabian American Oil Company (Aramco). The primary point of disagreement was whether the agreement conferred onto Aramco exclusive power to transport Saudi oil via maritime routes. The arbitration panel ultimately determined that, due to the absence of alternative methods for transporting oil from Saudi Arabia to international ports, the agreement's provision granting Aramco the exclusive right to "explore, prospect, drill for, extract, treat, manufacture, transport, deal with, carry away and export petroleum" inherently encompassed the right to export oil via maritime routes (Akhdar, 1974, p. 94).

corporations a sense of assurance and reliability that aligns with their anticipated outcomes. However, it is important to note that ambiguity remains widespread. Despite the inclusion of extensive man-made laws that permit activities not originally addressed in traditional Islamic scriptures, the Kingdom is deeply rooted in Islamic principles and practice (Al Sewilem, 2012, p.105).

The uncertainty occurs for instance, because of Saudi Arabia encourages the growth and formation of commercial law; yet Islamic law will take preference over commercial law in situations where the two laws are in conflict. The difference becomes even more acute in cases when a conflict is resolved inside Western legal systems, since there arises a fundamental uncertainty about the recognition of Islamic law as a legitimate legal framework. Additional difficulties emerge when considering conflict resolution in Saudi Arabia, due to the presence of several uncertainties associated with litigation in a traditional Islamic court system that has undergone recent reforms (Al Sewilem, 2012, p.94; Alshowish, 2016, p.205). In this system, judgements are not codified and the principle of *stare decisis* is not observed.

This difficulty may be addressed by asserting that the accelerated expansion of Saudi Arabia's commercial landscape necessitates the implementation of a proficient legal framework that is regularly updated to govern emerging legal changes within the business domain. Maintaining an updated and effective legal system is of utmost importance within the legal and regulatory framework of Civil Transactions, particularly in relation to its influence on the business environment. This is particularly crucial when addressing novel business instances and transactions. Therefore, it was necessary for Saudi Arabia to update the structure of its courts and enhance the legal environment. Saudi Arabia, a country with strong adherence to Islamic traditions and values, has undertaken a process of legal changes to harmonise its legal system with the changing needs of its community and the global economy (Al Swailem, 2023). The implementation plan for these changes led to the initiation of the process to codify Islamic Law inside the legal system of Saudi Arabia, serving as a progressive measure on the trajectory of reform (Abdul Nissar, 2023). The Civil Transactions Law was one of the extremely essential reforms of this most recent round of legal changes.

The Civil Transactions Law of the Kingdom of Saudi Arabia was officially passed on June 19, 2023, by Royal Decree M/191. It has since been published in the official gazette 'Umm Al-Qura'². The Law will be implemented after a period of 180 days after its publication, namely around December 16, 2023, which is referred to as the Effective Date. The Law, consisting of seven chapters and including a total of 720 Articles, stands as a significant legislative document within the historical context of Saudi Arabia. The recent enactment of this Law marks a noteworthy achievement for Saudi Arabia. Before the passing of this new law, contractual matters in KSA were mostly controlled by Islamic Law which drew its principles primarily from the Qur'an and the Sunnah (Andrew and others, 2023). The implementation of this codification is expected to significantly influence contractual ties inside Saudi Arabia, both domestically and globally. Saudi Arabia is now experiencing a significant transformation, driven by its Vision 2030 initiative (Baker and others, 2023). This transformation aims to attract

² Arab News on 14 Jun, 2023, see the official website of the Arab News, available at: <https://www.arabnews.com/node/2321796/saudi-arabia> (Accessed: 22/08/2023).

substantial investments to the kingdom, coinciding with the implementation of its Regional Headquarters Programme (RHQ). The system allows the incorporation of Saudi Arabia into many international treaties and accords to which KSA is a party, while also governs the management of daily transactions with globally recognised standards (Huwayda and others, 2023). The latest law changes implemented in Saudi Arabia highlight the country's dedication to embrace societal transformations while upholding its cultural and religious traditions. The reforms demonstrate a sophisticated reaction to the changing demands of a society that is becoming more linked and dynamic. Nevertheless, the process of legislative reform is not devoid of obstacles, since any significant change requires meticulous evaluation of its consequences on society, economy, and identity.

Harmonizing Shari'ah Principles and Modern Legal Trends

Saudi Arabia has a legal system of considerable sophistication, whereby Islamic law principles are harmoniously integrated with contemporary legal frameworks. In instances when legislative authorities have not promulgated any legal texts, the courts will resort to the application of Islamic law in order to adjudicate the matters at hand (Jones, 1992, p.47). Consequently, Islamic law assumes a pivotal role in addressing legal gaps and elucidating the regulations (Alanzi, 2020, p.2). The particular nature of this entity is attributed to its unique history, culture, and politics. In contrast to secular legal systems, religion and the law are not treated independently in Saudi Arabia's system (Al Sewilem, 2012, p.110).

With respect to this matter, Seaman (1979, p. p.413) point out that, 'The Kingdom of Saudi Arabia is distinguished from other Islamic countries by the continuing, strong influence of its special heritage that based on Islamic law, which provides insight into the evolution of the current legal and political structure.' The previously mentioned concept is evident in many provisions of the Basic Law of Governance of the Kingdom. The Government officially designates Islam as the state religion and uses it as a conceptual framework for outlining the Islamic tenets that should be followed while writing laws (Al Sewilem, 2012, p.114). According to the Saudi legislation, the constitution of the country is based on the Qur'an and Sunnah, and the country strives to conduct its affairs in a manner that is consistent with these two sources by adhering to the values of *shūrā* (consultation), fairness, and equality (Basic Law of Governance, Article 1). The State endeavours to enforce the principles of Islamic law, while promoting virtuous conduct, abstaining from immoral behaviour, and fulfilling their obligations to propagate the teachings of Islam (Basic Law of Governance, Articles 7-8). According to Saudi legislation, the courts are required to mainly adhere to the principles of Islamic law, and secondly consider the applicable Royal Decrees, as outlined in the (Basic Law of Governance, Article 23). Islam is recognised as the prevailing authority inside the state, and it mandates that its inhabitants pledge loyalty to the monarch in order to align with the teachings of the Qur'an and Sunnah (Basic Law of Governance, Article 67). Nevertheless, Saudi Arabia, being a state characterised by a distinct amalgamation of cultural heritage and religious identity, encounters the difficult challenge of modernising its legal framework while upholding its historic values. Legal changes have arisen as a strategy to reconcile traditional practices with the demands of contemporary society. These changes include a wide range of aspects within the legal system, such as family law, commercial rules, judicial processes, and

individual rights. These efforts embody a conscious endeavour to achieve equilibrium between continuity and transition, as well as tradition and development.

As a result of this, the Kingdom of Saudi Arabia has implemented a distinctive legal framework that operates in conjunction with both Islamic law principles and contemporary civil law. The Saudi Civil Transactions Law might be characterised as a fusion of Islamic law principles and modern civil law (Aldayel, 2022, p.231). According to Esmaeili (2009, p.1), the Islamic law is based on divine instructions that are adaptable to various circumstances, subject to evolution, and amenable to enhancement and implementation in all temporal and spatial contexts. Nevertheless, the country's legal system is undergoing a transformation towards a more contemporary legal system. An excellent illustration of this can be seen in practice: the body of legislation that regulates the relationships that humans have with one another is referred to as Islamic civil law since it is founded on Islamic law (Al-Marzwūqi, 2014, p.67). The enactment of the Civil Transactions Law can be attributed to the process of codifying the Islamic law principles governing human transactions and financial dealings. This codification aimed to simplify these principles into concise legal articles, facilitating their accessibility for legal judgement, consolidating legal precedents, and enhancing litigants' understanding of legal interpretation and their underlying rationale (Huwayda and others, 2023). The aim is to streamline the procedures of litigation in court, unifying legal rulings, and providing litigants with insight into the rationale behind the judgement. However, the provisions in the Saudi Civil Transactions Law do not comprehensively address all aspects of transactions. Thus, it is essential to refer to the sources of Islamic law. Legal experts in Saudi Arabia generally assert that, in the absence of civil law provisions, the norms and principles of Islamic law should be employed to fill the gaps (Al-Marzwūqi, 2014, p.165; Al-Jabr, 1996, p.120). Moreover, Article (1) of the newly enacted legislation clearly indicates that Islamic law serves as the primary source of law. In the absence of provisions from the Civil Transactions Law regarding specific cases, it is necessary to apply the rules and principles of Islamic law to address this gap. Thus, Islamic law functions as a fundamental basis for rectifying legislative shortcomings and aiding in the interpretation of legal principles (Andrew et al., 2023).

Strengths and Weaknesses in the New Saudi Civil Transactions Law

The Saudi Civil Law Transactions law has certain features that help to positioning Saudi Arabia as an active member within the global legal community. The recent passing of the new Civil Transactions Law in Saudi Arabia signifies a noteworthy achievement in the nation's legal reform efforts. The passing of this legislation aligns with the Saudi vision 2030 and its notable advancements in the pursuit of establishing an improved legal framework encompassing contemporary laws and regulations. This has resulted in a significant transformation in the legislative system of the Kingdom, aimed at ensuring contractual stability and fostering transparency (Baker and others, 2023).

The law in question has been appropriately characterised as 'innovative' due to the absence of any previous codification of civil law in the Kingdom. In the past, civil law matters have been regulated by the established principles of Islamic Sharia, as interpreted by the predominant Hanbalī School of Fiqh in the Kingdom. The primary objective of the legislation is to contemporise the existing legal framework and harmonise it with globally recognised standards and benchmarks.

The Saudi civil law system has certain features that significantly contribute to its efficacy in upholding social order. Since it adheres to Islamic principles, it offers a solid moral framework that is consistent with the ideals of society. Moreover, persistent efforts aimed at modernization have facilitated the emergence of constructive modifications inside this particular legal structure.

The recently enacted Civil Transactions Law encompasses approximately 720 articles that govern various aspects of civil legal matters. These include provisions pertaining to the legal capacity of individuals, regulations concerning gifts, donations, and endowments, provisions for compensatory measures in cases of both material and moral damages, regulations governing contracts of diverse nature, considerations regarding the validity and consequences of contracts, provisions addressing the nullity and termination of contracts, regulations concerning property rights, and provisions pertaining to the rights and obligations associated with usufruct. The Civil Transactions Law also include regulations pertaining to statutory periods and the statute of limitations .

The newly enacted legislation also places emphasis on the legal aspects pertaining to property rights and the associated duties, both contractual and non-contractual in nature. One of the most important articles in the Civil Transactions Law is the considered hierarchy between the legislative sources, where the special legal provision took priority and then the legal provision included in the Civil Transactions Law. In the absence of a provision, the general rules mentioned in the folds of the conclusion of the Civil Transactions Law should be applied, and then the provisions derived from Islamic law (Shari'ah) that are most appropriate to such Civil Transactions Law.

On the other hand, it is possible to identify vulnerabilities within the Saudi Civil Transactions Law. The Saudi Civil Transactions Law encounters several problems and objections that have been articulated by academics and specialists in the field. The issues and critiques include a range of dimensions pertaining to the legislation, including its efficacy, regulatory frameworks, legal safeguards, and the need for change. In this article, I will aim to address the most significant problems and objections to the best of my ability, acknowledging that it may not be possible to include all of them within the scope of this discussion. Additionally, I will endeavour to provide alternative remedies for reducing these difficulties from my perspective. One of the primary problems faced by the CTL is on achieving a harmonious equilibrium between the integration of Sharia principles and the accommodation of contemporary legal ideas. The CTL seeks to incorporate Islamic principles into civil transactions, while also grappling with the intricacies inherent in a globalised and linked society. Critics contend that the aforementioned equilibrium sometimes gives rise to difficulties and contradictions in the implementation of legal statutes, as certain Islamic principles may come into conflict with the ever-changing norms of society and economic. One potential solution may include the establishment of a legal commission consisting of legal professors, practitioners, and specialists well-versed in both Shari'ah and contemporary legal systems. The establishment of this commission might facilitate the integration of Islamic ideals with contemporary legal principles, so ensuring the continued relevance of the CTL while upholding Islamic law rules. One such critique of the CTL is to its use of novel ideas and terminology that may lack precise or well-

defined interpretations within the Saudi legal framework. Examples of such notions include good faith, public order, public policy, force majeure, hardship, and others. The presence of ambiguity and confusion in the interpretation and execution of the Law may be exacerbated, particularly in situations where there is a lack of precedent or direction from the courts (Alswailem, 2023). Nevertheless, a potential solution might include offering more clarifying and interpretation of the legal provisions to guarantee a uniform and foreseeable implementation. Furthermore, it is essential to establish comprehensive standards and implement training programmes aimed at augmenting the comprehension and implementation of legal principles among legal practitioners. Additionally, it is essential to develop a legal aid system that offers pro bono legal counsel to persons who are financially unable to get legal help.

One such critique of the Saudi Civil Transactions Law is to its ability to effectively adapt to evolving societal dynamics and the intricate nature of commercial transactions. Critics contend that the application of the CTL to contemporary economic transactions, especially within the framework of a globalised economy, might provide complexities. It is, therefore, arguable that the existing legal framework may not comprehensively cover specific problems and difficulties that emerge within the contemporary commercial landscape, including but not limited to e-commerce, digital contracts, safeguarding of data, and safeguarding of consumer rights. The need for updating and aligning the Law with other current and prospective legislation and regulations governing diverse industries and activities inside Saudi Arabia should also be considered. One potential solution may include the development of a specialised digital platform that facilitates the collaboration and engagement of legal experts, researchers, practitioners, and business representatives. This platform might be used to support continuous meetings, seminars, and workshops pertaining to the legal difficulties that arise from contemporary corporate practices. This collaborative platform facilitates the dissemination of timely updates and comprehensive recommendations pertaining to emerging technologies, data protection, and consumer rights. Additionally, it is recommended to establish a systematic evaluation procedure for the CTL in order to evaluate its relevance in addressing contemporary business concerns. The assessment process needs to include engaging in conversations with industry stakeholders, legal professionals, and academic researchers in order to ascertain any existing deficiencies and put-up recommendations for improvements.

Conclusion

The enactment of the Saudi Civil Transactions Law signifies a notable achievement in the process of modernising the legal framework inside Saudi Arabia. This research work has conducted a comprehensive examination of the Saudi civil law, including its historical roots, developmental trajectory, underlying tenets, and present state. The development of the Civil Transactions Law in Saudi Arabia signifies a noteworthy progression that encompasses the difficult effort of harmonising deeply ingrained Sharia principles with the requirements of a quickly developing contemporary legal world. As Saudi Arabia grapples with the complex task of reconciling Sharia principles with contemporary ideals, the CTL serves as a tangible manifestation of the country's dedication to cultivating a fair and impartial society. The recently enacted Civil Transactions Law in Saudi Arabia encompasses a comprehensive legal framework that regulates all facets of civil and commercial transactions. The strengths of the law encompass its extensive scope, contemporary updates and harmonisation, effectiveness in resolving conflicts, safeguarding of legal stances, protection of creditor rights, and

incorporation of Sharī'ah principles. These strengths exemplify the country's endeavour to reconcile cultural and religious sensitivities with contemporary legal developments. The legal system establishes a comprehensive framework that is readily accessible and comprehensible to all parties concerned, hence fostering principles of equity and impartiality. Despite the existence of various challenges and criticisms pertaining to the law, it is imperative to acknowledge the necessity of addressing emerging issues within the contemporary business environment. This can be achieved through continuous review and revision of the law, ensuring its alignment with other relevant laws and regulations, the establishment of comprehensive guidelines and best practices, the provision of adequate legal education and training, and the inclusion of stakeholders in the decision-making process. These measures hopefully contribute to the effective resolution of the aforementioned issues.

The success of the CTL is attributed not alone to its legislative framework, but also to its efficient execution, awareness initiatives, and judicial interpretation that align with the underlying principles of its development. In its whole, the progression of civil transactions law in Saudi Arabia signifies a momentous advancement in the process of legal modernization and harmonisation with global legal norms, while concurrently upholding the country's cultural and religious legacy. Nevertheless, the process of legislative reform is not devoid of obstacles, since any significant change requires thoughtful study of its consequences on society, economy and identity.

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