

# The Influence of Islamic Sharia on Arab Constitutions and Civil, Commercial and Family Legislation: Comparative Arab Experiences

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## ABSTRACT

This research paper is an overview of some of the Islamic Sharia's influence on Arab constitutions and legislation based on a comparative approach to some Arab constitutional and legal frameworks with diverse backgrounds. The paper focuses on three models. The first model is the Arab Gulf model. The paper reviews and analyzes the extent to which the constitutional and legal frameworks in one of the Gulf states, namely Qatar, are influenced by Islamic Sharia. The second model is the Arab-African model, where the Islamic law's influence on constitutional and legal frameworks in Egypt is reviewed and analyzed. The third model is the unique Lebanese model, different from all other Arab countries since Lebanon is a country of multiple sects and different cultures. The paper will attempt to shed light on the specificity of the impact of Islamic Sharia on some legal rules in the Lebanese legal system.

The paper formulates a set of results and recommendations that shed light on the specificity of Islamic Sharia as a determinant of the state's legislative path according to the specific legislation philosophy espoused by each of these three states, although they are all "Arab countries."

The paper also highlights the role of Islamic Sharia by focusing on the its influence on Arab constitutions and legislation in the field of civil and commercial transactions and personal status.

Keywords: *Islamic Sharia, constitution, civil transactions, Qatari law, Egyptian law, Lebanese law, civil code.*

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## INTRODUCTION

Islamic Sharia plays an important role in the constitutions and laws of Arab countries. The majority of these countries adhere to Islam. This has marked the legislation in these countries in terms of the rules governing constitutional, civil, financial, commercial, economic, social, personal status, and other matters.

From a constitutional perspective, in the State of Qatar for example, Islamic Sharia is a major source of legislation, as stated in Article One of the Qatari Constitution.<sup>1</sup> In Egypt, according to the preamble of the Egyptian Constitution, the principles of Islamic Sharia represent the main source of legislation. This was further confirmed by Article Two of the Constitution which expressly stated that the principles of Islamic Sharia are the main source of legislation.<sup>2</sup> Meanwhile in Lebanon, there is no such source in the constitution due to the specific nature of the political and legal system of this country.<sup>3</sup>

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<sup>1</sup> Text of the Qatari constitution: <https://www.almeezan.qa/LawView.aspx?opt&LawID=2284&language=ar>

<sup>2</sup> Text of the Egyptian constitution: <https://www.sis.gov.eg/newvr/theconstitution.pdf>

<sup>3</sup> Text of the Lebanese constitution: <https://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf>

From the perspective of ordinary legislation, Islamic Sharia is one of the sources of the legal rule in Arab legislation,<sup>4</sup> although its ranking varies for each legislation, according to the country<sup>5</sup>.

Reference is made here to the definition of the sources of the legal rule in the texts<sup>6</sup> of the Unified Arab Civil Code (Guiding Model). This definition indicated that the provisions of the approved civil<sup>7</sup> code shall apply to all issues governed by these provisions in letter and spirit. In the absence of a text in this code, the provisions of Islamic jurisprudence that are most consistent with the texts of this code shall be applied without being restricted to a specific school of jurisprudence. In the absence of such provisions, the principles and purposes of Islamic law shall be applied, taking into account the custom, if any, under the conditions established by jurisprudence,<sup>8</sup> provided that the content and interpretation of the text are based on the rules of Islamic jurisprudence.<sup>9</sup>

In this context, it is worth reviewing some aspects of the Islamic Sharia's influence on Arab constitutions and legislation in the field of civil transactions. This is done by shedding light on some of the various Arab experiences to better understand the legal aspects of this influence in a way that contributes to the development of legal rules in force in different legal systems, in accordance with the philosophy of each legislation<sup>10</sup>.

The problem arises about the extent to which Islamic Sharia is deemed a principal or backup source of legal rules in the studied countries, irrespective of whether or not the constitution stipulates for the Islamic Sharia's impact on these rules. This will appear by comparing constitutional texts and those

<sup>4</sup> Ali Najida, The Role of Islamic Sharia in Positive Law - A Comparative Study, research published in the Legal and Judicial Journal issued by the Legal and Judicial Studies Center - Ministry of Justice - State of Qatar, Issue One - Year Nine - June 2015, Ministry of Justice Publications, Doha - Qatar, 2015 p. 21

<sup>5</sup> See the impact of religion in Egyptian and Lebanese laws: Muhammad Hassan Qassem, Introduction to the Study of Law - Part 1 - Legal Rule, Al-Halabi Legal Publications, Beirut, 2008, p. 239ff., and the references referred therein

<sup>6</sup> Link to the Arab Civil Code

<http://www.lasportal.org/ar/legalnetwork/PublishingImages/Lists/TypicalArabLaws/AllItems/07.%20%D8%A7%D9%84%D9%82%D8%A7%D9%86%D9%88%D9%86%20%D8%A7%D9%84%D9%85%D8%AF%D9%86%D9%8A%20%D8%A7%D9%84%D8%B9%D8%B1%D8%A8%D9%8A%20%D8%A7%D9%84%D9%85%D9%88%D8%AD%D8%AF.pdf>

<sup>7</sup> The Unified Arab Civil Code was approved by the Council of Arab Ministers of Justice as a model law by virtue of Resolution No. 228-D12 dated November 19, 1996.

<sup>8</sup> Articles 87 and 88 of the (model) Unified Arab Civil Code

<sup>9</sup> See the most prominent principles in force in Islamic legislation that have affected some Arab civil laws:

[https://www.moj.gov.qa/ar/Departments/MOJ\\_InternationalDeptLibrary/%D8%A3%D8%A8%D8%AD%D8%A7%D8%AB/%D8%A3%D8%A8%D8%AD%D8%A7%D8%AB%20%D9%81%D9%8A%20%D8%A7%D9%84%D8%AA%D8%B9%D8%A7%D9%88%D9%86%20%D8%A7%D9%84%D8%AF%D9%88%D9%84%D9%8A/2.pdf?csrt=7715438922152691038](https://www.moj.gov.qa/ar/Departments/MOJ_InternationalDeptLibrary/%D8%A3%D8%A8%D8%AD%D8%A7%D8%AB/%D8%A3%D8%A8%D8%AD%D8%A7%D8%AB%20%D9%81%D9%8A%20%D8%A7%D9%84%D8%AA%D8%B9%D8%A7%D9%88%D9%86%20%D8%A7%D9%84%D8%AF%D9%88%D9%84%D9%8A/2.pdf?csrt=7715438922152691038)

<sup>10</sup> Ali Najida, Introduction to Legal Sciences compared to the Provisions of Islamic Law, Dar Al-Fikr Al-Arabi and Cairo University Printing House, Cairo, 1990, p. 11

related thereto in the civil and commercial transactions and personal status laws in order to clarify the role of religion in laws.

The study will be based on a multi-dimensional approach due to the complexity of the subject and the necessities of the study. Analysis will be applied as an existing approach in presenting the experiences of the countries under study. This is followed by comparison in light of the diversity of the experiences referred to, and description as a simplified way to present the legal aspects of the subject.

The subject will be studied under the following axes:

1. Islamic Sharia and the Qatari legal system
2. Islamic Sharia and the Egyptian legal system
3. Islamic Sharia and the Lebanese legal system

## 1. ISLAMIC SHARIA AND THE QATARI LEGAL SYSTEM

Islamic Sharia is reflected in Qatari legislation, starting with the Qatari constitution. The preamble to the constitution stressed the importance of the state's affiliation to Islam. Moreover, the constitution stipulated that Islam is the religion of the state and that Islamic Sharia is a major source of legislation in the state of Qatar.<sup>11</sup>

A constitutional text was also mentioned in the oath that the Emir of the state takes before assuming his powers.<sup>12</sup> This text placed respect for Islamic Sharia ahead of respect of the constitution and the law.<sup>13</sup> The same constitutional requirement was mentioned in the text on the heir apparent.<sup>14</sup> The same applies to the oath taken by a member of the Shura Council, where the member swears, before discharging his parliamentary functions, to respect Islamic Sharia, the Constitution, and the law,<sup>15</sup> on the grounds that the Islamic Sharia is a determinant of his supervisory and legislative work.<sup>16</sup> The situation is also the same for the Prime Minister and members of the Council of Ministers<sup>17</sup> who are subject to a constitutional obligation to take an oath stating that the executive authority shall respect Islamic Sharia in the performance of its work.<sup>18</sup>

Regarding the correlation between Islamic Sharia and civil transactions and the former's impact on said transactions, we find that they are based on Article 1 of the Qatari Civil Law entitled "Statutory Provisions." This Article is located in Subchapter 1 on the application of the law in Chapter 1 on the application of the law and temporal and spatial jurisdiction in the Introductory Part.<sup>19</sup> It states that

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<sup>11</sup> Article 1 of the Qatari Constitution.

<sup>12</sup> Article 74 of the Qatari Constitution

<sup>13</sup> The text of the oath is as follows: "I swear by Almighty God to respect Sharia law, the Constitution and the law, protect the independence of the State, safeguard its territorial integrity, and defend the freedom and interests of its people." The Emir shall take this oath in a special session convened by the Shura Council.

<sup>14</sup> Article 10 of the Qatari Constitution reads as follows: "The Heir Apparent, on his appointment, shall take the following of oath: "I swear by Almighty God to respect Sharia law, the Constitution and the law, maintain the independence of the State and safeguard its territorial integrity, defend the freedom and interests of its people, and be loyal to the State and the Emir."

<sup>15</sup> Article 92 of the Qatari Constitution

<sup>16</sup> The text of the oath is as follows: "Prior to the discharge of their duties before the Shura Council and in an open session, the Members shall take the following oath: "I swear by the Almighty God to be loyal to the country and to the Emir, respect Sharia law, the Constitution and the law, and safeguard the interests of the people and perform my duties with honesty and integrity."

<sup>17</sup> Article 119 of the Qatari Constitution.

<sup>18</sup> The text of the oath is as follows: "Prior to assuming office, the Prime Minister and the Ministers shall take before the Emir the following oath: "I swear by Almighty God to be loyal to the country and to the Emir, respect Sharia Law, the Constitution and the law, fully safeguard the interests of the people, perform my duties faithfully, conscientiously, and with honor, and fully safeguard the territorial integrity and safety of the State."

<sup>19</sup> The Qatari Civil Law available on the following link:

[https://www.almeezan.qa/LawView.aspx?opt&LawID=2559&language=en#Section\\_8876](https://www.almeezan.qa/LawView.aspx?opt&LawID=2559&language=en#Section_8876)

Islamic Sharia is the second basis of judicial ruling to be applied in the absence of legislative texts governing the issue dealt with. The legislative texts in this case, must be in line with the Islamic Sharia<sup>20</sup> in accordance with the constitutional texts referred to above.

When examining a civil dispute, the judge must apply the laws in force regarding the issue in question before him. Where there is no statutory provision, the Judge shall rule according to the relevant provision of the Islamic Sharia, if any. Otherwise, the Judge shall rule according to the customary practice. In the absence of such customary practices, the Judge shall rule in accordance with the rules of equity.<sup>21</sup> It is clear here that Islamic Sharia is an official backup source to be resorted to in the absence of a legislative text to rule on the dispute of a civil nature.<sup>22</sup> It is worth mentioning that the legislative text, if it exists, must be essentially consistent with the provisions of Islamic Sharia.<sup>23</sup>

We also find the impact of the principles contained in Islamic Sharia in some of the bases enshrined in the civil law. These include the rule that abuse of right is inadmissible and deemed an illegal use of the right. This was stipulated in the Qatari Civil Code. It provided that “The exercise of a right shall be unlawful in any of the following circumstances: If the desired interest by such use is unlawful; If such use is intended solely to cause damage to others; If the interests desired are disproportionate to the harm that will be suffered by others; or If such use may cause unusually gross damage to third parties.<sup>24</sup> An example of this is when a person builds in its on property a high wall that blocks his neighbor’s air

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<sup>20</sup> Ramadan Muhammad Abu Al-Saud and Muhammad Hussein Mansour, Introduction to the Law, Al-Halabi Legal Publications, Beirut - Lebanon, 2003, p. 160.

<sup>21</sup> Abdullah Abdullah, “The Legal Impact of Islamic Law in the Identity and Provisions of Qatari Legal System: Conceptual Frame and Legislative Directions,” p. 455ff.

ABDULLAH, Abdullah. The Legal Impact of Islamic Law in the Identity and Provisions of Qatari Legal System: Conceptual Frame and Legislative Directions. *Al-Jami'ah: Journal of Islamic Studies*, [S.l.], v. 58, n. 2, p. 451-482, dec. 2020. ISSN 2338-557X. Available at: <https://aljamiah.or.id/index.php/AJIS/article/view/58207>. Date accessed: 03 sep. 2021. doi:<https://doi.org/10.14421/ajis.2020.582.451-482>.

<sup>22</sup> Muhammad Hussein Mansour, “The supremacy of Islamic Sharia on the constitution, legal hierarchy and the role of the Supreme Constitutional Court in monitoring the constitutionality of laws violating Sharia,” a research published in the volume of the conference of the College of Law at Qatar University entitled 'The Qatari Civil Code in its First Decade,' held at Qatar University on 23-24/11/2014 on the occasion of the tenth anniversary of the enactment of the Qatari Civil Law, Publications of the College of Law at Qatar University, Doha, 2014, p. 21.

<sup>23</sup> ABDULLAH, Abdullah. The Legal Impact of Islamic Law in the Identity and Provisions of Qatari Legal System: Conceptual Frame and Legislative Directions. *Al-Jami'ah: Journal of Islamic Studies*, [S.l.], v. 58, n. 2, p. 451-482, dec. 2020. ISSN 2338-557X. Available at: <https://aljamiah.or.id/index.php/AJIS/article/view/58207> . Date accessed: 03 sep. 2021. doi:<https://doi.org/10.14421/ajis.2020.582.451-482>.

<sup>24</sup> Article 63 of the Qatari Civil Law

flow, light and view without this wall being needed by the builder. Another example would be the legal restrictions to the owner's powers in the exercise of the right of ownership.<sup>25</sup>

Perhaps such legal rules stem from some of the principles stipulated in Islamic Sharia, such as “*a greater harm is eliminated by means of a lesser harm*,” “*harm is not eliminated by another harm*,” and “*Unlawful things are to be prevented irrespective of benefit*.”<sup>26</sup>

Some of the legislative examples in civil law where the influence of Islamic Sharia is apparent include the rules governing tort liability. This influence appears clearly in the obligation of the wrongdoer stipulated in the civil law to compensate the victim for the fault on the grounds that “*any person who commits an act that causes damage to another party shall be liable to indemnify such damage*.” These legal rule<sup>27</sup> derived from basic principles related to transactions contained in Islamic Sharia, such as the principles that “*harm may neither be inflicted nor reciprocated*” and that “*harm must be eliminated*.”

In terms of contracts, the *Pacta sunt servanda* (the contract is the law of the contractors) rule and the rules related to the eligibility to conclude contracts are the most prominent examples. These are basic rules in civil law and are at the same time derived from Islamic Sharia.<sup>28</sup> The Islamic Sharia's influence on civil transactions was most significant when the Qatari legislator stipulated in the civil law the annulment of the provision on benefit in the loan contract when it is greater than the amount agreed in the contract.<sup>30</sup>ns valid, despite this annulment. The contract, however, remain<sup>29</sup>

In commercial transactions, we find a clear influence by the principles of Islamic Sharia that prohibit commercial fraud. We can also find this influence in the relationship between traders and consumers. God Almighty has warned of punishment traders who commit fraud when taking measurements in their commercial activities for the purpose of selling with a great profit. God Almighty said in the Holy Quran, “*Woe to the defrauders who, when they take a measure from people, take it in full, but when they give by*

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<sup>25</sup> Article 837 of the Qatari Civil Law

<sup>26</sup> Hassan al-Barawi, Islamic Sharia Influence on the Qatari Civil Law: Comparative study, research published in the International Review of Law, issued by the College of Law at Qatar University, p. 14, available on the following link: <https://www.qscience.com/docserver/fulltext/irl/2013/3/irl.2013.cl.2.pdf?expires=1630387635&id=id&acname=guest&checksum=1ED6F82A33EF99B0583CF42EF1BFE68D>

<sup>27</sup> Article 199 of the Qatari Civil Law

<sup>28</sup> Sayed Abdullah Ali Hassan, Legislative comparisons between civil positive laws and Islamic legislation: a comparative study between French jurisprudence and the doctrine of Imam Malik, study and investigation of the Center for Jurisprudence and Economic Studies, Dar Al Salam For Printing, Publishing, Distribution & Translation, Cairo, 2001, p. 100.

<sup>29</sup> Article 568 of the Qatari Civil Law

<sup>30</sup> Hassan al-Barawi, Ibid, p. 16.

*measure or weight to men, they cause loss. Do they not think that they shall be raised [to life again] for a Great Day, the day when mankind shall stand before the Lord of the Worlds?”<sup>31</sup>*

Likewise, the Consumer Protection Law in the state of Qatar was enacted to protect consumer rights and guarantee them in accordance with its provisions. It banned any person from concluding any <sup>32</sup> agreement or conducting any activity that prejudices such rights, in particular the following: the right to health and safety in the ordinary use of goods and services, the right to obtain correct data and information about the goods and services purchased, used or provided and the right to obtain knowledge related to protection of the consumer's legitimate rights and interests. This is in addition to the right to choose goods and services that meet conditions of quality and conform to specifications, the right to respect religious values, customs and traditions and the right to file lawsuits concerning anything that may violate, harm or restrict the consumer's rights. Furthermore, the law consecrated the consumer's right to fair compensation for any property or financial damages sustained by him as a result of the purchase or use of commodities and services. It provided that any agreement contrary to the aforesaid shall be deemed null and void.<sup>33</sup>

With respect to personal status related matters, the Qatari legislator enshrined a general principle in Qatari family law, of Islamic <sup>35</sup> vailing view in the Hanbali school of thought whereby the pre<sup>34</sup> jurisprudence shall be applied with respect to matters not specifically provided for in this law<sup>36</sup>, which in itself is based on the Islamic Sharia.<sup>37</sup>

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<sup>31</sup> Holy Quran, Surah Al-Mutaffifin

<sup>32</sup> Law No. 8 of 2008 on Consumer Protection and the amendments thereto:

<https://www.almeezan.qa/LawView.aspx?opt&LawID=2647&language=en>

<sup>33</sup> Legal regulation of consumer protection in Qatari law; A study on the Qatari Consumer Protection Law and related laws and the role of the Ministry of Trade and Industry and other institutional frameworks in enforcement protection, publications of the Ministry of Trade and Industry in the State of Qatar, Doha - Qatar, accepted for publication 2020.

<sup>34</sup> Law No. 22 of 2006 on the promulgation of the Family Law:

<https://www.almeezan.qa/LawArticles.aspx?LawTreeSectionID=8706&lawId=2558&language=en>

<sup>35</sup> Article 3 of the Qatari Family Law

<sup>36</sup> However, this solution is restricted, unless the court decides to adopt a school of thought other than the Hanbali school of thought for reasons mentioned in its ruling. Also, if there is no preponderant opinion in the Hanbali school of thought regarding an incident not specifically provided for in a text in the family law, the judge applies what he deems appropriate from the opinions of the four schools of thought, and if this is not possible, he applies the general doctrinal rules in Islamic Sharia.

<sup>37</sup> ABDULLAH, Abdullah. The Legal Impact of Islamic Law in the Identity and Provisions of Qatari Legal System: Conceptual Frame and Legislative Directions. *Al-Jami'ah: Journal of Islamic Studies*, [S.l.], v. 58, n. 2, p. 451-481A2, dec. 2020. ISSN 2338-557X.

Available at: <https://aljamiah.or.id/index.php/AJIS/article/view/58207>. Date accessed: 03 sep. 2021.

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## 2. ISLAMIC SHARIA AND THE EGYPTIAN LEGAL SYSTEM

The principles of Islamic Sharia are deemed the main source of legislation in Egypt, according to the preamble to the Egyptian Constitution. This means that these principles are the main determining factors of Egyptian laws, with the Supreme Constitutional Court being granted the authoritative power to supervise the extent of abidance by the foregoing, as this is stipulated by a constitutional text. The Islamic Sharia's constitutional importance for the Egyptian legal system was enshrined in a constitutional text in the first and second articles of the Egyptian constitution. These articles emphasized that Egypt is part of the Islamic nation, Islam is the state religion, and that the principles of Islamic Sharia are the principal source of legislation in Egypt. This falls within a tridimensional equation consecrating the legal position of Islamic Sharia in relation to Egyptian laws from a constitutional perspective.

In the field of civil law, it is important to refer to what was written by the Egyptian scholar Abdul Razzaq El-Sanhuri when talking about the Islamic Sharia's influence on the drafters of the Egyptian civil law.<sup>38</sup>

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<sup>38</sup> Al-Sanhuri, may God have mercy on him, stated – with respect to the comment made by the Senate Committee assigned to revise the Egyptian Civil Law in its report on the draft civil law - as follows: “It also appeared to the Committee that the draft extensively relied on the Islamic Sharia as one of its sources. It made it a general source to which the judge shall refer in the absence of a provision in the legislation or customs. Furthermore, the draft made Islamic Sharia a special source for a significant group of its provisions. The prominent standing of Islamic jurisprudence among the international schools of jurisprudence is undeniable. It is all the more undeniable since it has been deemed, and still is, the common law governing several matters in Egypt. It is worth mentioning here that strengthening the correlation between the draft and the provisions of the Sharia preserves a spiritual heritage that is worthy of being safeguarded and benefited from. The Committee notes some provisions in the draft that were borrowed from the Islamic Sharia, such as the provisions related to the theory of abuse of right, the assignment of debt and the principle of unforeseen circumstances. All of these provisions include sufficient rules that attest to the evolution of Western codes. Of note, the Sharia jurists had understood the rulings that had been modernized and applied them to cases submitted during their eras, centuries before that these rulings occur to the minds of Western jurists or legislators. Furthermore, the draft borrowed from the Islamic Sharia a set of detailed provisions. It is sufficient to refer in this respect to matters related to the contracting session, lease of (Waqf) endowment property, Hikr contract (a special form of long-term or permanent lease contract), lease of agricultural land, destruction of crops in the leased property, termination of the lease on death of lessee and termination for an excuse. This is in addition to several other provisions in the current code that are borrowed from the Islamic Sharia and preserved as is in the draft. These concern matters such as disposition while on death bed, risk of loss or ghubn (lesion) in a purchase, planting on leased land and ownership of different stories in the same building or a party wall. Meanwhile, the provisions in the draft on eligibility, gift and pre-emption rights and the principle of no inheritance until after payment of debts, were also derived from the Islamic Sharia and these provisions are important in practical life. Within the limits of this second source, the draft seemed to follow a straightforward approach that pleased the Committee, which saw in it an inclination to recognize the advantages of Islamic jurisprudence that Western scholars have realized a long time ago. Therefore, the countries of the East ought to confer to this jurisprudence the adequate standing and to express in practice their pride in it and their eagerness to ensure its sustainability. It goes without saying that it should be pointed out that this approach showed great care to preserve the sanctity of the past and exaggerated in agreeing with the traditional scholars who safeguarded the Islamic Fiqh

We find that the civil law is strongly influenced by the Islamic Sharia, starting with Article 1 of the Egyptian Civil Law. This article enjoins judges to issue their judgments in accordance with the letter<sup>39</sup> and spirit of the provisions of the law itself, failing that, in accordance with custom, and in the absence of custom, in accordance with the principles of Islamic Sharia. In the absence of the latter, judges will apply principles of natural law and rules of equity.”<sup>40</sup>

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(jurisprudence) thanks to their Ijtihad (Juristic deduction) and conferred flexibility to its rulings in such a way that it evolved to include what people are accustomed to in their transactions. The Committee does not see in referring to Islamic Sharia in this way any prejudice to the stability of transactions. Rather, it sees it as a catalyst for stability by closely examining the righteous traditions that transactors have been familiar with in the country for hundreds of years. Drafting works group 1, p. 131 - p. 132. Quoted from Abdul Razzaq Al-Sanhuri in his book: *Al-Waseet in the Explanation of the Civil Law, Part One - The Theory of Obligation in General - Sources of Obligation, Arab Heritage Revival House, Beirut, p. 45.*

<sup>39</sup> The texts of the Egyptian Civil Code are available on the following link : <https://manshurat.org/node/69432>

<sup>40</sup> See the comparative perspective in other Arab countries:

- Jordan: Jordanian Civil Code; Law No. 43 of 1976 (Art. 2: 1 - The provisions of this law apply to matters provided for in these texts in letter and spirit and where there is a text there is no room for interpretation. 3- If the court fails to find a text in this law, it shall rule according to the provisions of Islamic doctrine that are more most in line with the texts of this law, failing such provisions it shall rule based on the principles of Islamic Sharia. 3- Otherwise, the court shall rule according to the customary practice. In the absence of such customary practices, it shall rule in accordance with the rules of equity and custom is required to be general, ancient, constant and steady and not conflict with the provisions of law, public order or morals. If a customary practice is specific to a given country, it shall be applied in said country. 4- All this will be guided by what was admitted by the judiciary and jurisprudence, provided that it does not conflict with the foregoing). <http://www.lob.gov.jo/AR/Pages/AdvancedSearch.aspx>
- UAE: The Civil Transactions Law of the United Arab Emirates; Federal Law No. 5 of 1985 (Art. 1: Legislative provisions shall be applicable to all matters dealt therein, in letter and context. In presence of an absolutely unambiguous text, there is no room for personal interpretation. In the absence of a text in this Law, the judge shall adjudicate according to the Islamic Sharia taking into consideration the choice of the most appropriate solutions in the schools of Imam Malek and Imam Ahmad Ben Hanbal and, if not found there, then in the schools of Imam El Shafe'i and Imam Abou Hanifa, as the interest so requires. Where no such solution is found, the judge shall decide according to custom, provided it is not incompatible with public policy and morals. In case the custom is restricted to a specific Emirate, it shall be effective therein...). <http://www.adjd.gov.ae/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/FooterResource/ADJDBooks/ADJDBooks/03092015/Fed.Civil.Transactions.Law.pdf>
- Bahrain: Bahraini Civil Law: by virtue of Law No. 19 of 2001 (Art. 1.a- Provisions of laws govern all matters to which these provisions apply in letter and spirit. b-In the absence of a provision of a law that is applicable, the Judge will decide according to custom and in the absence of custom in accordance with the principles of Islamic Sharia that suit the conditions and circumstances of the country. In the absence of such principles, the Judge will apply the principles of natural justice and the rules of equity). <http://www.legalaffairs.gov.bh/Media/LegalPDF/L1901.pdf>
- Tunisia: Code of Obligations and Contracts of 1906 and its amendments; There is no corresponding text in this regard: [https://www.justice.gov.tn/fileadmin/medias/references\\_juridiques/codes\\_juridiques/COCArabe.pdf](https://www.justice.gov.tn/fileadmin/medias/references_juridiques/codes_juridiques/COCArabe.pdf)
- Algeria: Algerian Civil Code; Ordinance No. 58-75 of September 26, 1975, containing the amended and supplemented Civil Code (Art. 1: The law applies to all matters dealt with in its texts in letter and in spirit. In the absence of a legislative text, the judge shall rule in accordance with the principles of Islamic Sharia, and if not, according to custom. In the absence of custom, then by virtue of the principles of natural law the rules of equity). <http://www.joradp.dz/TRV/ACivil.pdf>
- Sudan: Civil Transactions Act of 1984 (Art. 3: Courts are guided in applying the provisions of this law and the interpretation of the words and phrases contained therein, as well as in cases of absence of texts, by the Sharia principles...). <https://www.moj.gov.sd/sudanlaws/#/loading>
- Syria: Syrian Civil Code; Legislative Decree No. 84 of 1949 (Article 1: 1 - Legislative texts apply to all issues addressed by these texts in their letter and spirit. 2 – In the absence of a legislative text that can be applied, the judge shall rule in accordance with the principles of Islamic Sharia. and if not, according to custom. In the absence of custom, then by virtue of

the principles of natural law the rules of equity).

<http://www.parliament.gov.sy/arabic/index.php?node=5595&cat=12162&&>

- Iraq: Iraqi Civil Code; Law No. 40 of 1951 (Art. 1: 1 - Legislative provisions shall apply to all matters covering these provisions in letter and spirit. 2 – In the absence of any applicable legislative provisions in the law, the court shall adjudicate according to custom and usage; in the absence of custom and usage in accordance with the principles of Islamic Sharia that are most consistent with the provisions of this law but without being bound by a particular school of thought; and otherwise in accordance with the law of equity. 3- The court shall in all the foregoing be guided by the adjudication determined by the judiciary and jurisprudence in Iraq and then of the other countries the laws of which are proximate to the laws of Iraq).  
<http://iraql.d.hjc.iq/LoadLawBook.aspx?SC=120120013721926>
- Oman: Royal Decree No. 29/2013 promulgating the Civil Transactions Law (Art. 1: The provisions of this Law shall apply to all matters dealt with by said provisions in letter and context and not regulated by special laws. If there is no provision in the present law, the court shall rule under the provisions of the Islamic Doctrine, if absent, then under the general principles of the Islamic Sharia, or else according to custom. Art. 2: The understanding, interpretation, construal, and signification of the provision shall be based on the rules and principles of the Islamic Doctrine).  
<https://mjla.gov.om/legislation/decrees/details.aspx?Id=613&type=L>
- Palestine: Civil Law No. 4 of 2012 (Art. 1: 1- The provisions of this law apply to all matters dealt with in its letter and spirit. 2. If the judge does not find a legislative text that can be applied, he shall rule according to the principles of Islamic Sharia, and in the absence thereof according to custom, otherwise according to the principles of natural law and the rules of equity).  
[http://www.plc.ps/upload/law/law\\_plc/9b5a23f390f25788fc54653414f04875.pdf](http://www.plc.ps/upload/law/law_plc/9b5a23f390f25788fc54653414f04875.pdf)
- Kuwait: Kuwaiti Civil Code; Decree-Law No. 67 of 1980 regarding the promulgation of civil law (Art.1/1: 1 Legislative texts apply to the matters addressed by these texts in letter and spirit. 2 – In the absence of such legislative text, the judge shall rule according to the provisions of Islamic doctrine that are most in agreement with the situation and interests of the country, otherwise according to custom).  
<https://www.e.gov.kw/sites/kgArabic/Forms/QanoonMadani.pdf>
- Libya: Civil Code issued on November 28, 1953 AD. (Art. 1: Rules of Law 1- Provisions of law govern all matters to which these provisions apply in letter and spirit. 2- In the absence of applicable legal provisions, the judge shall pass judgments in accordance with the principles of Islamic Sharia. In the absence of Islamic legal precedent, he shall pass judgments according to the prevailing custom, and the absence of precedents in customary procedure, he shall pass judgments according to the principles of natural law and the rules of equity). Noting that this law was amended in 2016, then the amendment was rescinded and the original text before the amendment was reinstated, according to Law No. 1 of 2020 published in the Official Gazette No. 1 on 19/2/2020.  
<http://aladel.gov.ly/home/wp-content/uploads/2016/04/%D8%A7%D9%84%D9%82%D8%A7%D9%86%D9%88-%D9%86-%D8%A7%D9%84%D9%85%D8%AF%D9%86%D9%8A.pdf>
- Morocco: Law of Obligations and Contracts of 1913 and its amendments (no similar text appears)  
<https://adala.justice.gov.ma/production/legislation/ar/Nouveautes/%D9%82%D8%A7%D9%86%D9%88%D9%86%20%D8%A7%D9%84%D8%A7%D9%84%D8%AA%D8%B2%D8%A7%D9%85%D8%A7%D8%AA%20%D9%88%D8%A7%D9%84%D8%B9%D9%82%D9%88%D8%AF.pdf>
- Mauritania: Law of Obligations and Contracts No. 126 of 1989 (Art. 1179: For all issues not addressed by a text in the present law, reference may be made to the Maliki school of thought. In case of ambiguity in the French text, the Arabic text shall prevail). <http://www.coursupreme.mr/docs/7Codesobligationsetcontrats.pdf>
- Yemen: Yemeni Civil Law; Republican Decree Law No. (14) for the year 2002 AD regarding civil law (Art. 1: This law, which is borrowed from the provisions of Islamic Sharia, applies to all transactions and matters addressed in its texts in letter and spirit. In the absence of an applicable text in this law, the Islamic Sharia principles from which this law was borrowed shall be referred to. In the absence of such principles, the judge shall rule in accordance with the Sharia permissible custom, and in the absence of such custom according to the principles of equity that are in accordance with all of the principles of Islamic Sharia. The Islamic Sharia scholars who with juristic deduction shall be consulted; and custom is required to be constant and not conflict with the provisions of Islamic Shariaa, public order or morals).  
<http://agoyemen.net/userimages/pdf/%C7%E1%DE%C7%E4%E6%E4%20%C7%E1%E3%CF%E4%ED.pdf>

Perhaps this text carries an indication that Islamic Sharia is deemed an official backup source. The meaning here is that reference should be made to the general principles of Sharia with its universal rules and not to the doctrinal details subject to several opinions.<sup>41</sup>

We also find an explicit text in the Egyptian Civil Code indicating that the provisions of Islamic Sharia apply to the legal status of missing and absent persons in the absence of special legislative texts governing these categories.<sup>42</sup>

Whereas this was the case, it is the Islamic Sharia that is applied with regard to the legal status of the heirs in terms of their appointment, their shares, and the inheritance that devolves upon them.<sup>43</sup>

The same situation applies to the will, as it is governed by the provisions of Islamic Sharia and the laws issued in this regard.<sup>44</sup>

Moreover, the legislator borrowed the provisions of Islamic Sharia in ruling on sale made on deathbed and included it in the civil law.<sup>45</sup> It decided that the sale of a property made by a sick person on deathbed would not be valid if the sale value exceeds the price by one-third in view of the sale value at the time of death. The scope of invalidity is a difference exceeding the one third.<sup>46</sup> In case of a difference below the one third, the sale shall be effective against the heirs.

With regard to the provisions governing legal transactions carried out by a person on death bed, the Egyptian legislator borrowed the detailed provisions enshrined by the of Islamic Sharia, in particular regarding the will. The legislator indicated that the provisions of Islamic Sharia and the relevant laws shall apply to the will. It further noted that the provisions governing the will shall apply to any legal act of donation made by a person on death bed, considering such donation as falling within the scope of acts made after death. In this case, the heirs of this person must prove that the legal act was made by the inheritee while on death bed.<sup>47</sup>

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<sup>41</sup> Muhammad Hassan Qassem, *Ibid*, p. 291.

<sup>42</sup> Article 32 of the Egyptian Civil Code

<sup>43</sup> Article 857/1 of the Egyptian Civil Code

<sup>44</sup> Article 915 of the Egyptian Civil Code

<sup>45</sup> Article 477/1 of the Egyptian Civil Code

<sup>46</sup> The sale in excess of one third shall not be effective against the heirs unless they accept the sale or unless the purchaser returns such excess to balance the estate to become two thirds.

<sup>47</sup> Articles 915, 916 and 917 of the Egyptian Civil law.

The same was followed by the legislator in the civil law regarding issues of eligibility, gift, preemption, ghubn (lesion), statute of limitations, abuse of right, emergency circumstances and provisions governing the contracting session.<sup>48</sup>

### 3. ISLAMIC SHARIA AND THE LEBANESE LEGAL SYSTEM

The Lebanese legal system is unique. Lebanon is a multi-sectarian and multi-cultural country, which has affected constitutional, civil and commercial rules, as well as personal status and other rules that govern society. Two phases have marked this legal system and characterize the impact of religion on Lebanese laws in general. The first phase is the phase in which Lebanon was under the Ottoman Empire, and the second phase is the French Mandate era and beyond.<sup>49</sup>

During the Ottoman Empire, and before the issuance of the Ottoman laws, Islamic Sharia in Lebanon was the first source of all various legal rules. The Hanafi school of thought applied to various transactions as well as personal status matters, with the exception of non-Muslims in some issues related to their personal status such as marriage and divorce. Those were subject to their own religious laws. The situation remained the same until the laws enactment movement began in the middle of the nineteenth century in the Ottoman Empire. The scope of application of these Ottoman laws extended to Lebanon, where at that time, legislation became the main source of legal rules, provided that the role of Islamic Sharia was limited to ruling on transactions and other issues that were not addressed by the enacted laws. Moreover, the Islamic Sharia became the original source for personal status matters. It applied to Muslims in all their personal situations and to non-Muslims in matters not covered by their religious laws such as inheritance and wills.

However, during and after the French Mandate, the role of Islamic Sharia was limited to the personal status matters of Muslims. The legal rules that apply to Muslims themselves multiplied according to the multiplicity of their sects, with each sect having a separate special court and specific legal rules. Special

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<sup>48</sup> See the following articles in the Egyptian Civil Code: Eligibility (Articles 44 and 45), gift (Article 486-504), preemption (Article 935-948), ghubn (lesion) (Article 129-130), statute of limitations (Article 374 and Article 968), abuse of right (Article 5), emergency circumstances (Article 147). / 2) and the provisions of the contracting session (Article 94).

<sup>49</sup> See in detail the influence of religion in Lebanese law: Muhammad Hassan Qassem, *ibid*, p. 246 ff, and the relevant references therein.

laws were issued to govern some personal status affairs for non-Muslims, such as the law of inheritance for non-Muslims, which made legislation the source of these rules instead of religion.<sup>50</sup>

In 1932, the Lebanese Code of Obligations and Contracts was issued to govern civil transactions. This code remains applicable to this date<sup>51</sup>. It is composed of several detailed sections.<sup>52</sup>

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<sup>50</sup> Muhammad Hassan Qassem, *Ibid.*

<sup>51</sup> The Lebanese Code of Obligations and Contracts promulgated on 03/09/1932, published in the Lebanese Official Gazette under No. 2642, Publication Date: 04/11/1932, page 2, available electronically at the following link: <http://77.42.251.205/LawView.aspx?opt=view&LawID=244226>

<sup>52</sup> The Lebanese Code of Obligations and Contracts is divided as follows: The first section presents obligations in general. The First Book sets forth the types of obligations. It tackles in Title I civil obligations and natural obligations. Title II addresses obligations relating to several persons (multiple creditors or debtors). Title III addresses consecutive and non-consecutive obligations. Title IV addresses the positive and negative obligations. Title V addresses personal and in-kind obligations, and Title VI addresses obligations with multiple subjects which are the cumulative, alternative and optional obligations. Title VIII addresses divisible and indivisible obligations. Title VIII addresses initial and additional obligations. Title IX addresses conditional obligations and Title X addresses term obligations. The Second Book presents the sources of the obligations and the conditions for their validity. Title I contains general provisions and presents legal obligations. Title II addresses illicit acts (delicts and quasi-delicts), including the causes of liability arising from the delict or quasi-delict, such as the liability arising from the personal act, the liability arising from the act of others, the liability arising from the act of an animal, the liability arising from the inanimate objects, as well as the compensation associated with this liability and some related provisions. Title III, addresses illicit gain in the sense of unlawful enrichment, whether in terms of general provisions or in terms of the ruling on undue payment. Title IV is devoted to legal acts, whether those made by one party (*Negotiorum gestio*) or provisions related to contracts, which are the most important sources of commitment. The Lebanese legislator allocated a large space to this topic, which included the relevant general provisions, the basic elements of contracts or the conditions for their validity, represented in consent including the provisions on affirmation or acceptance, on determining the time of consent and the conclusion of the contract, in addition to the elements of subject and reason. This part also covers provisions on defects of consent represented by error, deception, fear, unfairness, incapacity and some general provisions on defects of consent, as well as the contract form, the effects of contracts and the mechanisms for suspending them including the annulment, cancellation and termination of the contract. The Third Book was allocated to the effects of obligations. Title I is allocated to the in-kind implementation of the obligation and Title II is allocated to the compensatory implementation, i.e. by paying the compensation for damages, whether according to the contract conditions or as determined by the court, the law or by virtue of an agreement, which is called the penal clause. Title III addresses the means granted to the creditor for the purpose of the execution of the obligation due thereto (right of imprisonment - direct action - indirect action - revocatory action). The Fourth Book is allocated to the transfer of obligations. Title I addresses the transfer of the debt of the creditor and Title II addresses the transfer of the debt of the debtor. The Fifth Book came under the title "Extinguishment of Obligations." Title I addresses the extinguishment of the obligation by its fulfillment. It determines the party obligated to fulfill the obligation to the party to whom this obligation is due, specifies the nature of the subject of the fulfillment, determines the place, time and expenses of fulfillment, the production of evidence thereof and the fulfillment effects (determining the fulfillment party – fulfillment associated with the replacement of the creditor) in addition to the fulfillment by transfer (check). Title II addresses the obligation extinguishment that confers to the creditor a benefit other than the one he/it was entitled to request, such as fulfillment by compensation, renewal of the obligation, the offsetting and the settlement through a consortium. Title III addresses extinguishment of the obligation for reasons to be assessed, regardless of any benefit to the creditor, and this includes the discharge of the debt, the impossibility of execution and the lapse of time causing the extinguishment of the obligation or leading to exoneration. The Sixth Book is allocated to evidence in terms of the rights of obligations. The Seventh Book addresses the rules of interpretation of legal acts. The Second Section of this code clarifies the rules related to some contracts. The First Book is allocated for sale. Title I thereof addresses the conditions of sale. Title II addresses the effects of the sale, and Title III explains some special types of sale, such as the sale with option to repurchase, forward buying, and the promise of sale or purchase. The Second Book is devoted to the barter contract. The Third Book is allocated to the deed of gift. Title I explains the nature of the gift and its creation; Title II tackles the persons who can donate and accept the gift; Title III addresses the effects of the gift; and Title IV explains the gift retraction and reduction. The Fourth Book is devoted to the rental contracts of objects. Title I includes general provisions related to the rules in force in all rents in addition to rules

Perhaps one of the most prominent articles of the Code of Obligations and Contracts is Article 1106. It contains an implicit reference that the Majallah el-Ahkam-i-Adliya (Mecelle) [or civil code in force in the Ottoman Empire and that remained applicable until the date of the issuance of the Code of Obligations and Contracts — in relation to civil transactions] shall remain applicable with respect to all matters that do not violate the provisions of the Lebanese Code of Obligations and Contracts. Perhaps this interpretation of the content of the provision of this article is consistent with the text of Article 4 of the Lebanese Code of Civil Procedure,<sup>53</sup> which sets the order of the sources that the judge must resort to in the event of obscurity or lacunae in the law. It states that “if the law is obscure, the judge shall interpret it in a manner consistent with its purpose and with other texts.” In the absence of a law, the judge shall apply the general principles of law, most notably those included in the Mecelle, only in so far as they do not violate any of the texts of the Lebanese Code of Obligations and Contracts.<sup>54</sup>

Moreover, in the field of commercial transactions in the Lebanese law, we find that the Lebanese Code of Commerce indicates in Articles 2 and 3 thereof that in the absence of any applicable legal solution

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related to the lease of real estate properties. Title II addresses the effects of renting objects and Title III addresses the termination of rent of objects. Title IV addresses the rental of agricultural land. The Fifth Book is devoted to the contract of service or employment contract and to the manufacturing contract (Istisna) or the contracting agreement. Title I includes general provisions. Title II addresses contract of service or employment contract and Title III addresses the manufacturing contract (Istisna) or the projects commitment contract. The Sixth Book is devoted to the topics of deposit and sequestration. Title I addresses the ordinary deposit and Title II addresses the appointment of a receiver. The Seventh Book is devoted to the loan contract. Title I addresses the commodate (commodatum), also known as loan for use; Title II the consumer loan, and Title III the interest-bearing loan. The Eighth Book is devoted to the agency contract. Title I presents the agency in general; Title II presents the effects of the agency between the client and the agent; Title III addresses the effects of the agency in relation to others, and the Title IV is devoted to the termination of the agency. The Ninth Book is devoted to companies. Title I addresses quasi—corporations and Title II addresses contract companies. The Tenth Book is devoted to contracts of gharar (uncertainty). Title I addresses the guarantee contract, Title II gambling and betting, and Title III lifetime income. The Eleventh Book is devoted to reconciliation. Title I addresses the conditions of reconciliation and Title II the effects of reconciliation. The Twelfth Book is devoted to guarantee contract. Title I addresses the conditions of the guarantee, Title II the effects of the guarantee, Title III the extinguishment of the guarantee, and Title IV guarantee of appearance. Perhaps the aim of reviewing the main divisions of the Lebanese Code of Obligations and Contracts is to show how the Lebanese law is influenced by the French law, without disregarding the fact that many of its legal ideas stemming from the Majallah el-Ahkam-i-Adliya (Mecelle/The civil code of the Ottoman Empire) are based on Islamic Sharia. The best evidence is the content of the last Article of the Lebanese Code of Obligations and Contract. Indeed, Article 1106 maintains the relationship with the Mecelle. It stipulated the abolition of all provisions of the Mecelle and other legislative texts that violate the Code of Obligations and Contracts or contradict its provisions. This means that the legal provisions contained in the Mecelle that do not violate the Code of Obligations and Contracts shall remain valid and applicable. This has been confirmed by many judicial rulings issued by the Lebanese judiciary (see: Civil Appeal No. : 111/2019 dated 09/07/2019- Civil Cassation No.: 18/2018 dated 19/02/2018- Civil Cassation No.: 46/2014 dated 29/04/2014- Civil Cassation No.: 13/2 014 dated 20/02/2014 -Civil Cassation No.: 28/2004 dated 27/05/2004). The judicial decisions referred to are available on the website of the Legal Informatics Center: <http://77.42.251.205/RelatedRuling.aspx?Pid=1&LawID=244226&articleId=972540>

<sup>53</sup> Lebanese Code of Civil Procedure <http://77.42.251.205/LawView.aspx?opt=view&LawID=244565>

<sup>54</sup> Article 4 of the Lebanese Code of Civil Procedure states as follows: “Article 4- A judge shall be liable for a denial of justice if he: 1- Refrains from ruling on the pretext of obscurity or lacunae in the law. 2- Delays the rendering of a judgment for no reason. If the law is obscure, the judge shall interpret it in a manner consistent with its purpose and with other texts. In the absence of a law, the judge shall apply the general principles of law, customs, and the principles of equity.”

for commercial matters in the Code of Commerce, the provisions of the common law, which is the Code of Obligations of Contracts shall apply — including the text referred to concerning the Mecelle — only in so far as they are reconcilable with the principles proper to the commercial law. In the absence of any text in the Lebanese Code of Obligations and Contracts, the judge can draw upon previous judicial precedents for guidance as much as he may let himself inspired by the strictures of commercial equity and loyalty.<sup>55</sup>

Meanwhile, the Lebanese constitution is devoid of any reference to the Islamic Sharia or any other religious laws. In its preamble, it consecrated basic principles that emphasize the Arab identity of Lebanon and its membership in the League of Arab States. It noted that Lebanon is a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. It also emphasized respect for public freedoms, especially freedom of opinion and belief, and asserted that the people are the source of authority and sovereignty and they shall exercise these powers through the constitutional institutions. One of the most prominent features of the Lebanese constitution is that it did not set any religious law as a source of the legal rules. The preamble further stated that the abolition of political sectarianism is a basic national goal that must be achieved.<sup>56</sup>

It is worth mentioning that the Lebanese Constitution included an article that guaranteed the constitutionality of freedom of belief in an absolute manner, with the constitutional obligation to respect all religions and sects. The Constitution provided that the state shall guarantee the freedom to practice religious rites insofar as they do not disturb public order. It further provided that the state shall guarantee the respect of the personal status and religious interests of the population, regardless of the religious sect.<sup>57</sup> This means that the constitution referred to the existence of personal status regulations, which are based on the various divine laws, without stipulating whether or not they are considered a source of legal rules. The constitution also guaranteed respect for religious communities' rights to have their own schools in light of the regulations in force.<sup>58</sup>

The Lebanese constitution guaranteed to the heads of legally recognized sects - including Islamic sects - the right to refer to the Constitutional Council to ensure supervision of the constitutionality of laws related to personal status, freedom of belief, the practice of religious rites, and freedom of religious

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<sup>55</sup> The Lebanese Commercial Law: <http://77.42.251.205/LawView.aspx?opt=view&LawID=244586>

<sup>56</sup> Preamble of the Lebanese Constitution:  
<https://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf>

<sup>57</sup> Article 9 of the Lebanese Constitution.

<sup>58</sup> Article 10 of the Lebanese Constitution.

education.<sup>59</sup> This may be interpreted to mean that Muslims will refer to the Islamic Sharia for personal status matters and the practice of their religious rites, under the guarantee of the constitution.

## CONCLUSION

This paper addressed the Islamic Sharia's influence on some Arab legislation and the following findings and conclusions were deduced:

1. The Islamic Sharia's position in relation to Arab legislation varies according to the identity of the applied legal system in light of the religion's impact on the constitution and transactions in each country. It also varies in terms of place and time.
2. Islamic Sharia occupies an important position for the Qatari and Egyptian laws from the constitutional and civil perspectives. This includes the Sharia's influence on civil and commercial transactions and personal status matters.
3. In Lebanon, the Islamic Sharia played a remarkable role in transactions and personal status matters in particular in the era of the Ottoman Empire. However, its legal position soon changed to the point of being limited to applying to personal status matters of Muslims. On the other hand, the Mecelle maintained its influence in the field of civil transactions in all matters not covered by the Lebanese Code of Obligations and Contracts or matters that do not violate the provisions thereof. It is worth keeping in mind that the rules of transactions in the Lebanese Code of Obligations and Contracts derived from French legislation may converge with the rules of transactions in Islamic Sharia, given the influence of Imam Malik's school of thought in Islamic Sharia on the French law.<sup>60</sup>

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<sup>59</sup> Article 19 of the Lebanese Constitution.

<sup>60</sup> On the influence of Islamic Sharia on positive law in general, as well as the relationship with the French, see the following references:

- Abd El Razzaq El-Sanhori, Sources of Legal Rights in Islamic Jurisprudence: A Comparative Study of Western Jurisprudence, Volume 1-6, House of Arab Heritage Revival, Beirut, 1954.
- Subhi al-Mahmassani, The Legislative Situation in the Arab Countries, Past and Present, Dar Al-Ilm for Millions, Beirut, 1975.
- Sayed Abdullah Ali Hussein, Legislative comparisons between civil status laws and Islamic legislation, a comparison between French jurisprudence and the school of thought of Imam Malik bin Anas (May Allah Be Pleased With Him), a study and investigation by the Center for Jurisprudence and Economic Studies; Mohammad Ahmad Siraj, Ali Gomaa Ahmad and Ahmad Jaber Badran, Dar al-Salaam for printing, publishing, distribution and translation, Cairo, 2001 edition.
- Ahmed bin Sheikh Mohammad Al-Zarqa, explanation of jurisprudential rules, corrected and commented on by Mustafa Ahmed Al-Zarqa, 2nd Edition, Dar Al-Qalam Publications, Damascus - Syria, 1989.

The recommendations we reached are:

- 1- Perhaps one of the practical recommendations is to shed light on the modern jurisprudential and judicial trends in the countries where the legal position of Islamic Sharia in relation to the legal rules is being studied, whether these rules were inspired by the Sharia or referred to it. This should be done by integrating the reference to Islamic Sharia in the core of legal studies as well as judicial rulings when it is used as a source of the legal rule in the field of civil transactions as well as personal status matters in the Qatari and Egyptian judiciary. As for the Lebanese legal jurisprudence, as well as the Lebanese judiciary, it is recommended to clarify the provisions that are still in force from the Mecelle according to the Code of Obligations and Contracts by virtue of the text of Article 1106. The said article abolished the rules of the Mecelle that contravene or are inconsistent with the Lebanese Code of Obligations and Contracts, keeping all other provisions valid.
- 2- It is important for those studying the reciprocal relationship between Islamic Sharia and man-made laws to study the impact of Islamic Sharia on the legislation adopted in a certain period of time, such as the Mecelle. This will allow determining the provisions that are still in force from the Mecelle as an Islamic legal legacy that has an impact on some of the Arab legislative system. It is also important to try harmonizing the legislative solutions referred to by the Mecelle with the current situation, legal developments and legislative developments in more than one field.

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- Mohammad Kamal El-Din Imam, Maqasid al-Sharia (Purposes of the Sharia) and Comparative Law, research within the activities of the third scientific session entitled "Objectives of Sharia and Legal Sciences", publications of Al-Furqan Islamic Heritage Foundation, the Centre for the Study of the Philosophy of Islamic Law and the Center for Legal and Economic Studies, Faculty of Law, Alexandria University, Alexandria, 2011.
  - Ben Khedda Hamza, The Influence of Maliki Fiqh on the French Civil Law, The Contract as a Model, PhD Thesis, Faculty of Law, University of Abu Bakr Belkaid, Tlemcen, Algeria. 2017.
  - Abed Fayed Abdel-Fattah Fayed, the Fiqh of Imam Malik bin Anas, (May Allah Be Pleased With Him) and the French Civil Code of 1804, A New Vision, research published in the Algerian Journal of Comparative Law issued by the Faculty of Law, University of Abu Bakr Belqayd Tlemcen, Algeria, No. 5, 2018. p. 9.
  - Mohammad Yahya Matar, The Influence of Islamic Fiqh on English Law, Publications of the Ministry of Endowments and Religious Affairs, the 13th session of "Symposium on Developing Jurisprudence Sciences" held in Muscat - Sultanate of Oman from 6 to 9 April, 2014, entitled "Common Human and interests-related Islamic Fiqh." Available at: <https://nadwa.mara.gov.om/>
  - Mohamed Y. Mattar, Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards, Available at : <https://harvardhrj.com/wp-content/uploads/sites/14/2013/05/V26-Mattar.pdf>
  - Mohamed Y. Mattar, Human Rights in Islamic Law, Specifically the Guarantee of Procedural Justice, 16 EUR. J.L. REFORM 274 (2014). Mohamed Y. Mattar Unresolved Questions in the Bill of Rights of the New Iraqi Constitution: How Will the Clash Between "Human Rights" and "Islamic Law" Be Reconciled in Future Legislative Enactments and Judicial Interpretations? Available at: <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2036&context=ilj>
  - Mohamed Y. Mattar, Combating Trafficking in Persons in accordance with the Principles of Islamic Law, Available at: [https://www.unodc.org/documents/human-trafficking/Islamic\\_Law\\_TIP\\_E\\_ebook\\_18\\_March\\_2010\\_V0985841.pdf](https://www.unodc.org/documents/human-trafficking/Islamic_Law_TIP_E_ebook_18_March_2010_V0985841.pdf)
  - Mohamed Y. Mattar, Integrating the UNIDROIT Principles of International Commercial Contracts as a source of contract law in Arab Civil Codes, Uniform Law Review, Volume 22, Issue 1, March 2017, Pages 168–201, <https://doi.org/10.1093/ulr/unx009>