

(Conference Draft)

“Sharia Law and its Impact on the Development of Muslim and Non- Muslim Business Relations in the United Arab Emirates”

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2019 Law and Development Conference

Dubai, UAE
December 2019

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Abstract

The United Arab Emirates (UAE) are situated near the Persian Gulf in the North Eastern part of the Arabian Peninsula. Established in 1971 by the late Sheikh Zayed Al Nahyan the UAE form a federation of the seven Emirates of Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al Quwain, Ras Al Khaimah, and Fujairah.¹ The country has always been a crossroad and prime location for people and trade. Because of its diversity and cosmopolitan nature a variety of legal options in conducting business on both the domestic as well as overseas levels were realized. Since Islam and Islamic principles have influenced Gulf societies in the very core of its existence, the Islamic way of conduct in trade relations and dispute resolutions are also an element of paramount significance. The UAE is a peaceful country with a deeply religious Sunni Emirati population, where the all-embracing system of Islam has been harmonised with elements of the tribal society and local customs. And where Sharia Law has great impact on the societies' legal infrastructure. However since the commercial exploitation of oil by Petroleum Developments Trucial States in the 1970's the individual Emirates were transformed into wealthy rentier states 'overnight', transforming not only the architectural landscape of the country, but at the same time diversifying and incrementing the economic and law development and demographic figures as well.² The open global economy based upon international economic developments and Common Law standards has left an intense pressure on the hegemonic and Islamic character of the indigenous society and Sharia Law. The population of today's UAE encloses 200 different nationalities and various religious groups, whereof foreign residents make up 85 % of the total population. A cosmopolitan society, which represents an international and global interaction of people, trade and business activities. This Article explores how the law and (economic) development of the UAE has shaped its current legislative process, legal framework and institutions, Financial Free Zones and Dispute Resolution mechanisms.

Keywords: United Arab Emirates (UAE), Law and Development, Sharia Law, Muslim and non- Muslim Business and Trade Relations, Common Law, Dubai International Finance Centre (DIFC), Dispute Resolution, LFI's (law, legal framework, and institutions).

¹ The Emirate of Ras Al Khaimah had officially joined the federation on the 11th of February 1972.

² According to the latest available demographic figures, the UAE's population has grown from an esteemed number of 200,000 inhabitants in the 1970's towards a flexible number of estimated 9,701,315 inhabitants in July 2018. Available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/ae.html> accessed 25 November, 2019.

1. Introduction to Law and Development from an Islamic Perspective.

In this Article the Law and Development of the United Arab Emirates (UAE) from a relatively ‘closed’ Islamic tribal society towards its transformation into a twenty-first century world class international business and financial trading hub in the Middle East will be discussed. As a prime location for International trade, state of the art facilities are provided by the UAE government such as the designated Free zones within the Emirates to enhance trade. Free zones’ jurisdictions where Common Law based regulations are implemented, which is highlighted with the establishment of for example the Dubai International Finance Centre (DIFC) and the Dubai International Arbitration Centre (DIAC). However next to these specific located International Business zones, the UAE itself is a relatively conservative and religious country, where Islam and Sharia law take a prominent position within its society and legal infrastructure. Special emphasis will be made to the position Sharia law has in the national legal system of the contemporary UAE and how Islamic principles and norms have shaped the country’s economic and legal development.³ The question rises how Islamic law mechanisms and in particular Sharia law has secured its core position within the UAE as a nation state and contributed towards the achieved (inter)national economic developments. Significant reference will be made towards the role Islamic principles and Sharia law play in conducting business and trade relations among Muslims and non- Muslims. This since Islam prohibits the use of *riba* and *gharar* in the conduct of business affairs.⁴ International trade and business conduct with non- Muslim nations, companies or individuals who are often not familiar or lack legal abilities nor adopt similar rules in their business strategies to deal with the outcome of these Islamic norms and regulations, pose interesting questions in regard to how business relationships among Muslim and non- Muslim businesses are established.

The law and development of the UAE plays a crucial role in the analysis of how law mechanisms and legal enforcements procedures initiated by the UAE government have stimulated economic development and prosperity within the nation. To analyse the implementation of such legal measures in the UAE legal system further key factors such as regulatory design, regulatory compliance and the quality of implementation can be useful tools. Regulatory design significates how optimally a law is designed to achieve its regulatory objective through for example the anticipated policy outcome, the organization of law, legal frameworks, institutions and socio economic conditions. Regulatory compliance refers to the conduct of the general public in complying with the law. Which entails a general regulatory compliance referring to the overall level of compliance with law in any given jurisdiction. And secondly a specific regulatory compliance which refers to the strength of public compliance with a particular law. The quality of implementation measures the degree to which a state meets the requirements of law through legislation, judicial decisions, and

³ This Article is part of the series publications for ‘The 2019 Law and Development Conference to be held in Dubai, 7th and 8th of December 2019 in the UAE.

⁴ *Riba* or *riba al- fadl* is usury also known as interest or excess, while *gharar* signifies any element of uncertainty in a contract, business or commercial transaction, which is otherwise preventable or avoidable.

administrative actions. State capacity and political will translates itself in the commitment and devotion a country’s political leadership has in the fulfilment of the implementation of certain laws. And finally social, political, cultural, and economical factors such as for example religious and customary norms of a society play an important factor in the implementation of laws.⁵

In practice this will mean how Sharia based laws and other laws, such as International Trade Laws, foreign Common Law jurisdictions in regard to International Arbitration and Dispute Resolution are imbedded within the legal system of the UAE for Business and Trade relations among both Muslims and non- Muslims. And which legal system is eventually behind the success of the economic growth, law and development of for example the Emirate of Dubai. To comprehend the legal functioning apparatus of the UAE, first of all the historical, social, cultural, religious and cultural norms of the nation needs further analysis. This will be viewed in paragraph 2 where the historic and Islamic background of the UAE will be outlined. Special emphasis will be made to early law mechanism involving trade and business relations, traditional dispute resolution, followed by the impact of British Common Law during the Trucial States period when British extraterritorial jurisdiction defined Muslim and non-Muslim trade relations.

Subsequently after UAE’s independence in 1971 a new legal system was build. As Sharia is a source of law as stated in Article 7 of the UAE Constitution, Islam and Islamic principles are part of the legal normative framework of the UAE as a nation.⁶ To understand the substance of Sharia law in relation to its position within the legal framework of the UAE, key aspects of Sharia law in the UAE’s Constitution will be placed in connotation with constitutional rights of Muslim and non-Muslims in paragraph 3. This regarding their rights to enhance trade and business entities and the implementation of this legal framework in the area of legal developments of Trade, Financial and Business related laws. And since the UAE is a federal state, the position of Sharia law and Islamic principles within the federal promulgation of legislation as well as the variety in local Emirate legislation regarding Business and Trade relations needs consideration. Specific mentioning will be given to the Federal Civil Code of 1986, which is a commercial code based upon Islamic principles and how it relates to International Commercial Business Laws, operating from within the same legal framework in the UAE.⁷

In paragraph 4 the UAE’s state capacity and political will to develop economic prosperity is reflected by promulgating laws promoting foreign investment and trade through designated locations for (International) commercial activities in the ‘Economic Free zones’ within the (individual) Emirates. Especially the Emirate of Dubai’s success story in reaching economic development will be used as an example. The legal functioning of the DIFC and DIAC will be

⁵ Y.S. Lee, *General Theory of Law and Development*, 50 Cornell International Law Journal no. 3 (2017): 415-472.

⁶ Article 7 of the UAE Provisional Constitution of 1971.

⁷ In line with the 2019 Conference’s theme ‘Law and Development from an Islamic Perspective’.

explored. This to further enhance the understanding of how Sharia and Islamic Laws, Local Emirate Legislation, Federal UAE Laws and International Business Laws are in relation to one and other and how business relations are conducted, build and strengthened.

And finally in paragraph 5 the legal practice will exhibit how these different systems of law are blended into one legal UAE framework, which facilitates Trade, Financial and Business Relations among both Muslim and non- Muslim Businesses. The question is though which Legal Institutions such as the Sharia Courts, the Dubai International Finance Centre (DIFC), and Dubai Courts are accessed by both parties to issue their complaints, dispute resolutions, or demands for the executions of local and DIFC judgments.

2. Historic overview of (Islamic) law mechanisms and dispute resolution in early trade relations in the Gulf.

2.1 Islam and tribal hierarchy as legal references in the early Gulf communities.

Historically the Gulf waters encompassing the Persian Gulf, the Gulf of Oman, and the Strait of Hormuz had influenced and dominated the early trade routes and relations among the local inhabitants of the coastal settlements of the Gulf. Famous seaports were those of Sohar (Oman), Julphar (Ras Al Khaimah), the seaports of Basra (Iraq) and Siraf (Iran), where last stops were made from ships coming from the Far East and India through the spice, silk and perfume routes. Not only trade, but also religious and cultural ideas and practices found their way through the Gulf waters.⁸ With the advent of Islam in the coastal areas of historical Oman in 630 A.D., the new religion was accepted by the Arab tribes’ whole heartedly and the region became part of the new Eastern Province of the Islamic Empire. As being part of the all expanding Islamic territory (*Dar Al Islam*), law and governance was established based upon the *Quran* and the *Sunnah* of the Prophet Muhammad (PBUH), and the general law practices of the all-encompassing Sharia. Islam would be one of the most significant and dominant factors shaping the political, social and religious lives of the tribal communities.

After Islam, a second factor of great importance influencing daily life was the traditional tribal society. The Gulf sheikhdoms were governed by a single *sheikh* a tribal leader who had been selected by the acceptance of the family elders based upon tribal structures and conform patriarchal traditions. The general rule of the sheikhdom was accustomed to be passed on from father to son. The administrative system of the tribal society was observed to be non-existent. There was no written or unwritten constitution to define the jurisdiction of the ruler. Furthermore there were no civil services, law courts or judges appointed by the *sheikh* until the twentieth century. The sheikhdom’s internal system was completely based on Bedouin

⁸ Between the fourth and seventh century A.D. Zoroastrian religious beliefs from the Persian Sassanid Empire had predominated and controlled the North Eastern region of historical Oman. Also the existence of early Christianity in the fourth and fifth century A.D. can be derived from the presence of Nestorian churches spread near the coastline of Abu Dhabi. Recent excavations discovered the existence of a monastic complex on the island of Sir Bain Yas in I. Al- Abed and P. Hellyer, *United Arab Emirates: A new Perspective*, (Gloucestershire: Book craft UK, 2001), 78- 81.

traditions and tribal values and the ruler’s personal authority. The inhabitants of the Gulf coast vowed their loyalty and pledges to their tribal leader, who would make provisions for their clan and guarantee their protection. The local traditions and customs of the tribal society could not impose restrictions on the executive powers of the ruler. In a legal sense he impersonated both the exclusive legislative, executive and judicial authority. Only Islamic Sharia was capable to restrict the ruler’s authority.⁹ Nevertheless each sheikhdom had its own organs of consultation and advice. The *amiri diwan* for example, a forum of appointed counsellors was responsible for the application of the ruler’s policies and instruments, but at the same time functioned as a consultative organ for the ruler. Its members were represented by a section of the princes of the sheikhdom, members of leading tribes, prominent families, merchants and religious leaders. In the daily *majlis*, which functioned as the more traditional forum taking place in the ruler’s residence, the representative groups of the *amiri diwan* assembled and exhibited their general interests to the ruler. But since the institution of the *majlis* was of an informal and flexible nature, it was also used to hear the grievances and requests of the local inhabitants of the sheikhdom. And to settle disputes among themselves during the ruler’s visits throughout the sheikhdom.¹⁰ This form of dispute resolution, which was mostly used as a method in early disputes is known as *nasihah*, which means sincerely advice or good counsel in this case by the *sheikh*. Though this form of counselling could also be done by another trustworthy person within the sheikhdom. In general every Muslim could give *nasihah* to both Muslims and non- Muslims alike.¹¹

2.2 Tribal and Islamic dispute resolution in the Gulf.

2.2.1 The tribal judicial system.

In the Gulf societies traditionally legal disputes regarding trade and business relations were preferred to be dealt with in the ‘closed’ tribal community, rather than to be submitted to the ruler of the sheikhdom. Preference was given to legal dispute mechanisms that would cause less harm to society and parties concerned such as *sulh*. *Sulh* is a method for resolving disputes which can be interpreted as an amicable settlement of disputes, which includes various options and methods such as negotiation, mediation/ conciliation, and compromise of action.¹² Often these cases were handled among tribesmen themselves or by the family heads or tribal leaders with knowledge of customary law *urf*. The chief of each tribe generally settled disputes between the members of his tribe. An important factor in the seeking for justice was a fair judgment and acceptance of the verdict by both parties. Verdicts were most of all established by compromises made on both sides. The decisions made by the chief of the tribe were based upon Bedouin desert tradition, customary law *urf*, and the Sharia. Individuals

⁹ B. S. A. Al Muhairi, *The Development of the UAE Legal System and Unification with the Judicial System*, 11 ALQ no. 2 (1996), 116- 160, at 121.

¹⁰ J. D. Anthony, *Arab States of the Lower Gulf; People, Politics, Petroleum*, (Washington D.C.: The Middle East Institute, 1975), 124.

¹¹ A. Rasyid, *Relevance of Islamic Dispute Resolution Process in Islamic Banking and Finance*, 27 ALQ (2013), 343- 369, at 349, 350.

¹² S. K. Rashid, *Alternative Dispute Resolution in the Context of Islamic Law*, *Vendobona Journal of International Commercial Law & Arbitration*, no. 7 (2004), 97.

were thus not automatically subjected to the legal authority of the ruler. Only in cases where parties couldn’t come to an agreement, they could ask for interference by the ruler of the sheikhdom. Therefore the ruler’s involvement in legal disputes was mainly established by request than by force. This approach is characterized by the seeking of justice of parties, than bringing a culprit to justice by force.

The institution of *al qada* meaning the judicial determination of conflicting claims with the help of Sharia law, or the amicable settlement of disputes on the basis of good faith, negotiation, mediation and the compromise of a dispute during court proceedings, would be used in most cases of the sheikhdoms.¹³ The legal principles used in the process of reaching a verdict by the ruler encompassed customary law *urf*, the qualities of common sense and impartiality, and Sharia elements. Islam played an important role in finalising a verdict since in most cases all parties were Muslims. Nevertheless *al qada* was widely accepted among both Muslim and non- Muslim litigants. Even though not all verdicts were based upon Sharia elements, most rulers installed out of religious motives an Islamic judge also known as *qadi*. Characteristics of a *qadi*’s qualifications were generally stated that he or she should be an adult with the highest integrity and be fully learned with knowledge of Sharia. According to the *madhhabs* of Maliki, Shafi’i and Hanbali a *qadi* must have the ability of exercising *ijtihad* meaning independent reasoning. And be familiar with the sources of Islamic law and able to refer to the *Quran* and *Sunnah*.¹⁴ In the Gulf sheikhdoms the *qadi* was not formally trained, but a learned person or *mutawwa*, who had studied the *Quran* and Sharia and had knowledge of a limited number of written sources in the sheikhdom. In the *majlis* of the ruler, the *qadi* would be consulted, next to others who could present their visions regarding a certain matter. The homogeneity of Islamic jurisprudence was not affected by the verdicts taken. Three out of the four *madhhabs* were adhered to by the tribal community. These were the Hanbali, Maliki and Shafi’i *madhhabs*, which differed in minor rules concerning certain legal interpretations. Every sheikhdom had its own *madhhab*, which was followed, according to the tribe it belonged too.¹⁵ Since the *qadi* had limited knowledge about Islamic jurisprudence and other written sources, arguments about the details and minor differences between the *madhhabs* never formed part of the jurisdiction in the tribal society.¹⁶

2.2.2 Salifah al Ghaus the Diving Court and Sharia Courts.

The most notable economic sources of income along the Gulf coast was gained through the lively pearl diving industry until the 1930’s. In summer influential and rich tribal families would set up divers’ communities and small commercial centres would arise from where Indian merchants would buy the pearling returns. As a result of the flourishing seasonal pearl

¹³ e.g., Rasyid (2013), *supra* note 11, at 344.

¹⁴ M. K. Masud, R. Peters & D. S. Powers, ”Qadis and their Court: an Historical Survey”, in: M. K. Masud, R. Peters & D. S. Powers (Eds.), *Dispensing Justice in Islam: Qadis and their Judgements* (Leiden: Brill, 2006), 20.

¹⁵ The tribes under the authority of the Qawasim, who were strongly influenced by the Wahhabi movement, were followers of the Hanbali *madhhab*. The Bani Yas tribe and the tribes from the Persian coasts were followers of the Maliki and Shafi’i *madhhabs*.

¹⁶ F. Heard- Bey, *From Trucial States to United Arab Emirates: A Society in Transition*, (London/ New York: Longman, 1982), 121- 122, 132- 133.

diving industry the (non- local) population of the coastal towns expanded. Also criminal offences and disputes over the lack of payments of debts, and property increased. The people affected by these offences or disputes had no local tribal linkage, so the seeking of justice through the tribal judicial system of the sheikhdom was not permitted. Therefore the merchant and pearling communities developed their own customary courts known as *Salifah al Ghaus* or Diving Court. The judges of these customary courts had full authority over the lawsuits they heard. The jurisdiction of these judges was not restricted to a certain sheikhdom, but extended far beyond. Cases from other sheikhdoms could be brought to the customary judge, who was neither a resident nor a subject of the sheikhdom the litigants lived in. The decision of the customary judge though was not binding, unless it was accepted by both parties.

For other non- related pearling offences and disputes the ruler of the sheikhdom established Sharia Courts. These courts were based on the universally accepted Sharia. The ruler would appoint the Sharia judges and he had the sole authority and legal competency to decide to which particular judge litigants had to proceed. The Sharia judges applied substantive rules of Sharia, but wouldn’t follow a specific and uniform judicial litigation process during trial. The judges conducted the litigation procedure in their own personal way, which could lead to a variety in rules that differed from Sharia Courts to Courts. The jurisdiction in the Sharia Courts covered criminal and personal status related matters, financial rights and debts and property related conflicts. In this court system both parties were entitled to reject the decision taken by the Sharia judge. If that occurred the case would be taken from the Sharia Court to the ruler of the sheikhdom. He then would appoint a second Sharia judge to whom the case would be referred to. This concept in Islamic dispute resolution is known as *takhim*, a permissible substitute for the jurisdiction of an ordinary judge also known as a form of arbitration. Though the dispute was to be determined according to Sharia law both in procedure and in substantive matters, whether or not the dispute would be qualified as extra-judicial or not.¹⁷ The judge could be from the same sheikhdom or from outside the area. If the second judgment wasn’t accepted either by the concerned parties, they were entitled by the ruler to refer their dispute to the religious authorities of different centres based in Egypt, Mecca or Qatar.¹⁸

2.3 *British extraterritorial jurisdiction and Common Law based Business Laws.*

2.3.1 The Trucial States and the establishment of British extra- territorial jurisdiction in 1946.

Another aspect of the formation of the legal history of the present UAE can be found in its encounters with the British Empire in the nineteenth century. Several British peace treaties such as the Treaty of Peace in 1820, the Maritime Truce in 1835, and the Treaty of Peace in 1853 were signed with each of the individual sheikhdoms of the Gulf. From then onwards the Gulf sheikhdoms would be called the Trucial States.¹⁹ The endorsement of the Protectorate

¹⁷ e.g., Rasyid (2013), *supra* note 11, at 355.

¹⁸ e.g., Al Muhairi (1996), *supra* note 9, at 123- 124.

¹⁹ H. M. Al- Baharna, *British Extra- Territorial jurisdiction in the Gulf 1913-1971; An Analysis of the*

Agreements of 1892 would form the pillar of British presence in the region. In these exclusive agreements the Gulf sheikhdoms would be consolidated within the British Empire. For the first time in the history of the Gulf the territorial boundaries of each sheikhdom were established. Secondly their territorial sovereignty could not be yielded to other foreign powers without British consent. The rulers of each sheikhdom agreed that neither they nor their successors would cede, sell, mortgage or on any account give for occupation their territory. The British Empire in return would be held responsible for the foreign policy of the Trucial States and assured their protection.²⁰ Despite British regional domination, each Trucial sheikhdom retained nonetheless according to its own self-determination its autonomous status, its independent authority and legal administration.²¹

Britain’s presence in the Gulf was next to strategic and political factors shaped by economic motives. Therefore the policy to uphold an informal British Empire along the Gulf coast would gradually make place for a more proactive British approach and presence through direct British influence and rule. An example of firmer British rule in the Trucial States was the establishment of British extra-territorial jurisdiction in 1946. British extra-territorial jurisdiction found its judicial basis upon the authority of the Foreign Jurisdiction Acts of 1890, the Trucial States Orders in Council, the Queen’s Regulations and other legislations. Preparations for establishing British extra- territorial jurisdiction was enhanced by the British Political Resident proposing that Britain should be given jurisdiction over British subjects, British protected persons and non- Muslim foreigners in the Trucial States. The rulers of the Trucial States granted the British Government the right to establish extra- territorial jurisdiction by ceding their jurisdiction over British subjects and other foreigners to the British authorities within the territories of the Trucial States. Thereto in 1946 the Trucial States Order in Council was issued which established British extra- territorial jurisdiction in the Gulf. In the Trucial States Orders in Council, British jurisdiction was extended to all British subjects and persons under British protection in the sheikhdoms.²² Under persons under British protection former British subjects were included. This in accordance with the British Nationality Act of 1948. Furthermore British jurisdiction was extended to British property, ships and aircrafts.²³

However not all residents of the Trucial States were subjected to this Order in Council. It was evident that the local tribal population, who were subjects of the Trucial sheikhdoms were exempted, but other groups of persons were also kept out. In the Queens’s Regulation in article 77 of the Order certain persons were excluded from British extra-territorial

System of British Courts in the Territories of the British Protected States of the Gulf during the Pre-Independence

Era, (Slough: Archive Editions Ltd, 1998), 8- 9 and M. A. J. Al Fahim, *From Rags to Riches; A Story of Abu Dhabi*, (Abu Dhabi: Makarem G Trading and Real Estate LLC, 2013), 33- 35.

²⁰ This mandate was exercised by the British East Indian Company at first and later replaced by the British government of India itself through the governing system of British Residencies headed by a Political Resident.

²¹ R. S. Zahlan, *The Creation of Qatar*, (London: Croom Helm Ltd, 1979), 13 and e.g., Al Muhairi (1996), *supra* note 9, at 121.

²² See Article 8 of Orders in Council of 1949, 1953 and 1956.

²³ e.g., Al Muhairi (1996), *supra* note 9, at 125.

jurisdiction.²⁴ These groups remained under the jurisdiction of the sheikhdom they were residents of and were subjected to Islamic and Sharia Courts of the local ruler, which would now be referred to as the Ruler’s Court.

2.3.2 British Courts and Commercial dispute resolution in the Trucial States.

With the establishment of British extra- territorial jurisdiction in 1946 a dual legal system came into existence within the Trucial States, where a British and local Sharia Court system operated side by side. The British Courts that exercised British jurisdiction within the Trucial States’ territory can be distinguished in article 14 of the Trucial States Order of 1959 as:

‘1) the Court for the Trucial States. 2) the Chief Court for the Persian Gulf. 3) the Full Court for the Persian Gulf. 4) the Joint Court and the Joined Court of Appeal.’

The Court for the Trucial States operated as a Court of First Instance. The Chief Court for the Persian Gulf had a dual function and exercised original and appellate jurisdiction in criminal and civil cases. The Chief Court for the Trucial States could also function as the Chief Court for other Gulf nations. The Full Court for the Persian Gulf was an appellate court, which heard cases from the Court for the Trucial States and the Chief Court. Jurisdiction was given in both civil and criminal matters. The Joint Court was to hear mixed cases, meaning cases involving persons falling both in the scope of the Orders in Council and the local Islamic jurisdiction of the sheikhdoms.²⁵

Laws applicable to commercial disputes in the Trucial States was a mixture of British and Indian statutory law barring the adaptations, modifications and exceptions pointed out in the Schedules of the Order of 1959. In particular the Indian Contract Act of 1872, the Indian Companies Act of 1913 and the United Kingdom Merchant Shipping Act of 1894 were mentioned. In case these enactments were not applicable for dispute resolution in commercial matters, the British Courts were empowered to act in accordance with justice, equity and good conscience. Article 11 of the Trucial States Order of 1959 states the following:

“Every judge and officer of the courts established under this Order shall, as far as there is proper opportunity, promote reconciliation and encourage and facilitate the settlement in an amicable way, and without recourse to litigation, of matters in difference between persons subject to this Order, or between persons within the limits of this Order who are not subject to this Order.”

In commercial disputes related to small amounts reconciliation was effective in reaching an acceptable settlement for both parties involved. But in other cases the procedure was followed

²⁴ (a) persons who are nationals of Afghanistan, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Morocco, Muscat and Oman, Saudi Arabia, the Somali Republic, Sudan, Tunisia, the United Arab Republic of Yemen, or subjects of the Rulers of Bahrain, Kuwait or Qatar. (b) Stateless persons of Palestinian origin.

²⁵ e.g., Al- Baharna (1998), *supra* note 19, at 63- 65, 110.

to refer the matter towards a majlis. In Bahrain for example a special *Majlis- al- Tijarah* a commercial body for merchants was set up by the local *sheikh*.²⁶ However in the Trucial States this particular body did not exist, but a similar procedure of referral to the local scenery was recommended and prescribed in article 47¹ of the Trucial States Order:

“The Court for (...) may refer any matter in the progress of a suit:

- (a) Between parties belonging to the same community to a punch of jamaah of the local leaders of that community for consideration and report;*
- (b) In commercial cases, to a majlis or jamaah of the principal local merchants for consideration and report.”*

So in the case of commercial dispute resolution eventually the local legislative powers were to determine the judicial outcome of commercial cases. British Courts were denied jurisdiction insofar the matter involved parties of both local descent. So eventually with the establishment of British jurisdiction in 1946 the Trucial States officially entered the spheres of British legislation. Where the Trucial States were used to have only Sharia Courts in the coastal area for the pearling seasons, the system of voluntary arbitration *takhim* made definite way for a more obligatory arbitration by means of permanent courts. The introduction of British jurisdiction in the Gulf meant for British law subjects and persons under British protection to be referred to British Courts and institutions for justice. British Courts principally held the exclusive jurisdiction for the non- Muslim population in the Trucial States introducing thereby a dual court system. Next to the traditional Sharia Courts with jurisdiction for the local and other Arabic Muslim population, British Courts were now installed with judges trained by Western skills. Local rulers or judges were considered to govern over the local and Islamic legal domain and were not entitled to administer justice over British and non-Muslims. This was preserved to the British judges and they were to decide whether a person would be referred to either courts in case of doubt.²⁷ In commercial matters the local rulers prevailed and were granted jurisdiction and in the mixed cases both local and British were entitled to have shared jurisdiction. This dual system created a bipartite law system in the Gulf during British presence, which would leave its marks on the further development of the legal system.²⁸

Though British legal theory and practice did not have an everlasting impact on the Trucial States by endowing them with a permanent tradition of British legal principles. Since there was no direct confrontation, submission or assimilation of British rule of law on the entire Gulf judiciary. Reasons for this can be sought in British policy of maintaining both local and British jurisdiction side by side with little interference in the local rule of law or replacing it

²⁶ e.g., Al Baharna (1998), *supra* note 19, at 96- 98.

²⁷ In the field of criminal law British jurisdiction would prevail on a whole, while in the family law section both jurisdictions were executed separately. With a first time introduction in the history of the Trucial States of dispute resolution for non- Muslims law subjects.

²⁸ e.g., Al Muhairi (1996), *supra* note 9, at 137, 138.

by British laws altogether. Therefore on a local level little influence of foreign British rule within the local rule and governance was felt. In this manner local jurisdiction was able to develop on its own pace and it was able to preserve its authenticity in the local and Sharia Courts. Another reason for the minor impact of British legislation itself could be found in the relatively low density of both local and British law subjects. Besides in the cases where British law subjects were tried, they were often concerned with matters which were not essential for the local region. For example dealing with cases about international contracts involving the postal services and air traffic control.²⁹ But nevertheless with the introduction of British rule of law a process of law making was initiated and the British handed over the tools to transform and shape the jurisdiction of the Trucial States. A first base and structure of administrating the sheikhdoms was provided, which would later be useful for the building of their own judicial and Sharia Court system.

3. The position of Sharia in the national legal system of the UAE.

3.1 The reassertion of Sharia in the UAE Constitution.

On the 2nd of December 1971 the UAE was declared a sovereign nation state by formally signing the instruments of terminating the treaties between the Trucial States and Great Britain.³⁰ As British extra-territorial jurisdiction was officially terminated, the dual legal system within the Trucial States ended. In this paragraph the law mechanisms of the new nation state will be analysed through its measures on law and development such as regulatory design, regulatory compliance and the quality of implementation. Regulatory design in relation to how the UAE’s Federal government optimally designs Federal legislation to achieve its regulatory objective through for example the anticipated policy outcome, the organization of law, legal frameworks, and the establishment of judicial institutions. And in response to regulatory design, regulatory compliance will measure the conduct of the general public in complying with the laws in any given jurisdiction of both Federal and local Emirate making. The quality of implementation measures the degree to which a state meets the requirements of law through legislation, judicial decisions, and administrative actions. The UAE had laid its (federal) basis and fundamentals in the Provisional Constitution by creating UAE’s federal bodies.³¹ These federal bodies were a first step towards the establishment of a federal judiciary and the unification of the Emirates’ judicial systems. The five most important federal bodies established in the UAE are the Supreme Council of the Union (SCU), the President and his Deputy, The Council of Ministers representing the executive authorities, the National Assembly also known as the Federal National Council (FNC) functioning as the legislative authority and finally the independent Judiciary. They represent the traditional Western approach of the division of state powers into an executive, a legislative and a judicial authority and can be found in article 45 of the Provisional Constitution.³²

²⁹ e.g., Al Muhairi (1996), *supra* note 9, at 126.

³⁰ This was achieved by the signing of the Trucial States Termination of Jurisdiction regulation 1972.

³¹ e.g., Al- Abed & Hellyer (2001), *supra* note 8, at 134.

³² e.g., Al Muhairi (1996), *supra* note 9, at 119, 141.

Since British legal influence in the sheikhdoms had left the local legal administrative system intact, the UAE choose to break with the former British traditions and Common Law based legislation. The UAE would follow its neighbouring countries in enhancing its Islamic nature and promoting Arab nationalism. The Kuwaiti Constitution predominantly based upon the Egyptian Constitution, its constitutional writing and French Continental law were the primary sources and major influences for the UAE’s Provisional Constitution of 1971.³³ Article 7 of the Provisional Constitution states:

“Islam is the official religion of the Union. The Islamic Shari’a shall be a main source of legislation in the Union”.

Article 7 became the core of the UAE Constitution and would be one of the most important legal influences of new legislation and Islamisation programmes of both federal and local initiative. According to Article 151 of the UAE Constitution, provisions of the Constitution should prevail over all Constitutions of the member Emirates of the Union and their legislation. In case of any conflicting laws or inconsistencies with the superior laws of the Constitution the inferior laws would be rendered null and void.

The UAE Constitution incorporated many principles of Western constitutions relating to individual rights and obligations and blended this with the local Islamic culture.³⁴ Article 25 of the Constitution institutes equality among citizens and residents alike: ‘All persons shall be equal before the law. No discrimination shall be practised between citizens of the Union by reason of race, nationality, religious belief or social position. One of the latest new federal laws in support of article 25 is the Federal decree Law No. 2 of 2015 on Combatting Discrimination and Hatred, which aims to protect everyone in the UAE. The law intends to provide a solid legislative ground for the environment of tolerance, co-existence and acceptance. It aims to fight discrimination against individuals or groups based on religion, caste, doctrine, race, colour or ethnic origin. Equality of citizens and residents resulted in equality in accessibility and the use of federal, local laws and establishing equality in jurisdiction of the court system. Both Muslim and non- Muslims are equally allowed to access all courts in the UAE including Sharia Courts for Financial and Business relations.

3.2 Formal materialisation of Sharia Law in Federal legislation.

One of the major achievement of the UAE government was the codification of the UAE’s Civil (Commercial) Code also known as the Civil Transactions Code in 1986. The Provisions and approximately 1,528 articles of the Civil Code were principally based on Islamic Sharia jurisprudence. In line with Article 7 of the Constitution, where Sharia has become a main source of legislation, the codification of UAE’s Civil Commercial Code reaffirmed this position. The Ottoman *Majella* and the Jordanian Civil Code had served as a model for the

³³ The Provisional Constitution reached a permanent status in 1996. From then onwards it was regarded as the Constitution.

³⁴ A. M. Khalifa, *The United Arab Emirates: Unity in Fragmentation*, (London: Croom Helm Ltd, 1979), 37- 38.

basic frame and formulation of the Civil Code. According to Article 1 of the Civil Code judgments should be based upon provisions of this law. If however no provision can be found in the Civil Code, judgments should be passed according to the Islamic Sharia. Article 1 Civil Code:

“If no provisions can be found there he should choose the most appropriate solution from the schools of Imam Malik, Hanbal or subsidiary from the schools of Iman Shafi’i and Hanafi. If the judge can’t find a solution either there, he should judge in accordance with the local customs of the Emirate concerned, if not conflicting with public orders or morals”.

Secondly the prominent position of the Sharia is also emphasized in Article 2 of the Civil Code where the judge should rely on the principles and sources of Sharia jurisprudence in its understanding and interpretation of the provisions of the Civil Code. Together with Article 3 of the Civil Code, these 3 Articles incorporates aspects of Sharia and Islamic jurisprudence into the framework of law governing the UAE.³⁵ Furthermore Article 27 of the Civil Code prohibits the application of principles of law which are contrary to the Sharia or ‘public policy or morals’ in the UAE.

Sharia Law differs from Common Law and Continental Law on several issues and approaches and intentions of the concerned parties by for example not accepting legal precedents. In Business contracts this could lead to a diverse outcome according to which legal system prevails. Therefore it’s important to determine to what extend Sharia as a main source of legislation within the UAE as a Federal state implicates for both Muslim and non- Muslim business relations. As a main source of legislation, Sharia Law takes a prominent position within the UAE’s Constitution. In Article 7 Sharia Law is considered to be interpreted as a material source, as part of the Islamic religion and part of historical and religious factors. Its influence is not determined by its power to implement mandatory injunctions by law and legal enforceability, but by its essence of making religious rules by morality. Therefore the Constitutional Clause of Article 7 is rather aimed at the legislature than at citizens or judiciary, as a main source of law to derive all legal rules from Sharia. The formal sources of Sharia Law can be found in the actual materialisation of legal rules provided by the legislator as performed in the actual texts of the Civil Code of 1986 in Article 1 to 3.³⁶ The scope of Sharia Law is explained by the legislator in the texts of the Civil Code Law. Sharia Law has thereby gained binding legal force by the adaptation and formation of this specific legislation.

3.3 The Federal Courts and the Supreme Court’s application of Sharia Law.

The Provisional Constitution had provided in a unifying system of Federal Courts with both civil and criminal jurisdiction. The Federal Courts consist of the Federal Courts of First

³⁵ B. S. A. Al Muhairi, The Islamisation of laws in the UAE: the case of the Penal Code, 11 ALQ no. 4 (1996), 350- 371, at 359.

³⁶ B. S. A. Al Muhairi, The position of Shari’a within the UAE Constitution and the Federal Supreme Court’s Application of the Constitutional Clause Concerning Shari’a, 11 ALQ (1996), 219- 244, at 223- 225.

Instance, two Federal Courts of Appeal and the Federal Supreme Court.³⁷ The Federal Courts of First Instance were established by the Federal state authorities in 1978. The legislator encouraged the local governments to transfer their judicial authority to the federal authority by providing for this in Article 105¹ of the Provisional Constitution. This Article enabled the transformation of the local Civil Courts of the individual Emirates in a uniform federal judiciary. The Emirates of Dubai and Ras Al Khaimah did not transfer their judiciary to the federal authority, but the local governments of the Emirates of Abu Dhabi, Sharjah, Ajman and Fujairah responded to the request made and transferred their local jurisdiction to the federal judicial authority. As a result Federal Law No. 6/ 1978 was promulgated.³⁸ According to Article 8 of this law the applicable sources of law for the Federal Courts were defined:

“The Federal Courts shall apply the provisions of the Islamic Shari’a, Federal Laws, and other laws in force, just as they shall apply those rules of custom and general legal principles which do not conflict with the provisions of the Shari’a”.

Article 8 implicates that Sharia Law as a source of law within the judiciary is very strong and preferred above federal legislation in case of searching for a provision or solution in particular cases. Only if Sharia Law isn’t able to provide such provision, federal laws and after that other sources of law are applied.

Next to the Federal Courts, the Federal Supreme Court was established in 1973 by Federal Law No. 10/ 1973 and is considered to be the highest judicial body in the UAE. As a federal constitutional authority it operates independently between the federal and local authorities. Federal Law No. 17/ 1978 has granted the Supreme Court an appellate jurisdiction of reviewing the Federal Appeal Court’s decision when a petition of cassation has been made against it.³⁹ Thus since 1978 the Federal Supreme Court had also become a Cassation Court. In exercising this new jurisdiction the Federal Supreme Court interprets ordinary laws of local and federal origin. Though decisions of the Federal Supreme Court are only comprised to a specific individual case and not legally binding on other decisions of the lower courts. But create a ruling precedent for the lower courts to follow. The Federal Supreme Court in exercising its jurisdiction of cassation is confined to Article 75 of Federal Law No. 10/ 1973:

“The Supreme Court shall apply the provisions of the Islamic Shari’a, Federal Laws, and other laws in force in the member Emirates of the federation conforming to the Islamic Shari’a. Likewise, it shall apply those rules of Custom and those principles of natural and comparative law which do not conflict with the principles of the Shari’a”.

³⁷ N. B. Angell, Regulation of Business under the Developing Legal System of the United Arab Emirates, 119 ALQ (1985), 119- 140, at 123.

³⁸ In 1991 Federal Law No. 18/ 1991 was issued when the Emirate of Umm Al- Quwain joined the federal judiciary. In A. Carballo, The Law of the Dubai International Financial Centre: Common Law Oasis or Mirage Within the UAE?, 21 ALQ no. 1 (2007), 91-104.

³⁹ e.g., Angell (1995), *supra* note 37, at 123.

This Article implicates that the Federal Supreme Court in deciding a pending case of lower courts, is bound to check the conformity of the law with Sharia. In practice the interpretation and understanding of a particular (local) law given by the Federal Supreme Court has widely been accepted and imitated by the lower courts in determining if local laws were compatible with Sharia.⁴⁰

3.4 The freedom of the individual Emirates in promulgating Sharia Law, the case of Dubai.

To consolidate the political authority of the federal state, the federal government alone has been given the undisputed right to exercise legislative and executive functions in an extensive line of important fields.⁴¹ The Provisional Constitution stipulates in Article 120 and 121 that the principle state affairs, authority and mandates of the UAE are under the jurisdiction of the central federal state. According to Article 122 of the Provisional Constitution, the areas of laws that aren’t specified in Article 120 and 121 are for the individual Emirate to regulate each within its own territory.

“Art. 122. The Emirates shall have jurisdiction in all matters not assigned to the exclusive jurisdiction of the Union in accordance with the Provisions of the two preceding Articles.”

So the individual Emirates maintained their autonomous status within the federation and were still able to promulgate their own laws and upheld their own court system. To enhance federal legislation and a federal uniform court system the UAE Constitution provided in provisions that could be used as a tool for creating a national identity and a uniform legal system.⁴² The Provisional Constitution has restricted the right of the local authorities to enact laws by two conditions. First of all local authorities shall not legislate in fields within the domain of the federal legislature. And secondly local laws shall not conflict with federal laws. If in any case such conflict should arise, the local law will become null and void. Responsibility for the examination of laws towards the conformity of the restrictions ordered by the Constitution and federal laws has been given to the Federal Supreme Court of the federal judiciary. So federal laws prevails over local laws in an attempt to achieve a unified legal system.⁴³

The Emirate of Dubai for example choose to remain its exceptional status within the federal Union and has its own judicial and legal court system that are independent from the federal judicial court system of the UAE (Ras Al Khaimah also has an independent court system), while the five Emirates of Abu Dhabi, Sharjah, Ajman, Fujairah and Umm Al- Quwain transferred their judiciary to the federal authority. The Dubai Courts were established in 1970, issued under the law entitled Formation of the Dubai Courts Law. This law specified the court system into the Courts of Personal Affairs and Civil Courts and established two degrees of

⁴⁰ e.g., Al Muhairi (1996), *supra* note 9, 159.

⁴¹ e.g., Khalifa (1979), *supra* note 34, at 55.

⁴² For more information see Article 150 of the Constitution.

⁴³ See article 151 of the Provisional Constitution. e.g., Al Muhairi (1996), *supra* note 9, at 140, 141 and e.g., Angell (1985), *supra* note 37, at 122.

litigation; the First Instance Court and Appeal Court. And furthermore underwent a series of amendments and replacements. The Dubai Courts Law divides the jurisdiction in Dubai into either the Civil Court or the Sharia Court. The law also provided in the need for the ruler to order the setting up of other courts and tribunals to try special cases, if the occasion and special circumstances required so.⁴⁴

The Sharia Court had been given exclusive and comprehensive jurisdiction in all cases and matters except for matters where the Civil Court was given jurisdiction. Article 10 of the Dubai Courts Law states:

“Art.10[...] the Shari’a Court shall have the right of adjudication over all individuals and all cases and matters except such as, according to the provision of this or other laws in force in the Emirate of Dubai, are reserved for adjudication by the civil court or other authorities.”

The Sharia Court consists of one judge, the *qadi*, who is directed to exercise its jurisdiction in accordance with the laws of the Emirate of Dubai and with the Islamic principles of Sharia. The Civil Court on the other hand consists of the Court of First Instance and the Appeal Court. The Appeal Court hears cases against decisions of the Court of First Instance. When appeals are made against decisions issued by the Small claims division, the Court consists of one judge.⁴⁵ In decisions of the Ordinary Court or of the Serious Offences Division, the appeal is heard by two judges. In 1988 the Emirate of Dubai had reached complete independence of its judicial system by establishing the Cassation Court.⁴⁶ The sources of law and jurisdiction of the Civil Court are defined by Article 13 of the Dubai Courts Law stating;

“Art. 13[...]

- (1) In cases or matters in which the right of adjudicating is conferred thereon by virtue of the provisions of Laws in force in the Emirate of Dubai.*
- (2) In any case or matter or any prescribed kind of cases or matters delegated for adjudication therein by virtue of a Decree issuing from the Ruler from time to time.*
- (3) In any case or matter prescribed by order of the Chief Justice to be transferred to it for consideration and decision.”*

A Decree of 1970 had specified the Civil Courts jurisdiction in matters both criminal and civil related to the Traffic Law, the law regarding the issuing of cheques without balances, offences related to drugs, the Workmen’s Compensation Law 1965, contracts of insurance and financial banking transactions and personal affairs of non- Muslims. Apart from these laws, it’s not easy to speculate in any particular case or matter whether it would fall within the

⁴⁴ e.g., Al Muhairi (1996), *supra* note 9, at 156, 157 and W. M. Ballantyne, *Legal Developments in Arabia*, (London: Graham and Trotman, 1980), 177.

⁴⁵ See article 11 and 12 of the Dubai Court Law of 1970.

⁴⁶ See for more information Dubai Law No. 1/ 1988. And e.g. Al Muhairi (1996), *supra* note 9, at 133.

jurisdiction of the Civil judge or the Sharia *qadi*.⁴⁷ Article 14 of the Dubai Courts Law provides that the Civil Court should exercise its powers in accordance with;

“Art. 14 [...] the Civil Courts shall exercise its power in accordance with;

- (1) The laws in force in the Emirates.
- (2) The provisions of Shari’a.
- (3) The rules of Customs and usage, provided the same be not in conflict with the laws, or public order or morals.
- (4) The rules of natural justice, law and equity.”

This means that the Civil Court shall first adhere to sources of secular laws of Dubai and if the court doesn’t find a provision it shall adhere to Islamic Sharia.⁴⁸

In the Dubai legislation it has been clear that Sharia Law takes an important position. The original jurisdiction of the Emirate has been given to the Sharia *qadi*. In those matters not expressly granted to the Civil Court, the Sharia Court has residuary jurisdiction. It will not only apply Sharia Law, but also the secular local law in both substantial and procedural matters.⁴⁹ Only selective laws and decrees are subjected to the jurisdiction of the Civil Court. But if the Civil judge can’t come to a decision based upon sources of Civil Law, he recurses to the provisions of the Sharia. So in the Emirate of Dubai Sharia Law is kept in mind in both the Sharia and Civil Courts. Subsequently Dubai Law No. (2) of 1979 was issued for the formation of the Supreme Court of Appeal and Dubai Law No. (1) of 1988 was issued to constitute the Court of Cassation. However in 1992 the ruler of Dubai issued Dubai Law No. (3) of 1992 regarding the forming of the courts in the Emirate of Dubai, which replaced all previous laws and which brought together three courts under the umbrella of one law. The Courts of Dubai were in addition advanced with the issuing of Dubai Law No. (3) of 2000, which established the Department of the Courts and gave the courts the authority to regulate the technical, financial and administrative departments of the court. In 2003 Dubai Law No. (1) was issued, which established the Department of Justice. This law united the Dubai Courts and Public Prosecution as well as the Judicial Inspection Authority. After that Dubai Law No. (6) of 2005 separated the Public Prosecution from the Dubai Courts again and renamed the Dubai Courts, as ‘Dubai Courts’ and restructured departments and remained so until today.⁵⁰

Dubai Law No. (3) of 1992 effectuated that the Dubai Courts consists of three (litigation) courts: the Court of First Instance, Court of Appeals and the Dubai Court of Cassation. The Courts of First Instance have the following sections; Civil, Criminal, Labor, Commercial,

⁴⁷ e. g., Ballantyne (1980), *supra* note 44, at 118.

⁴⁸ e.g., Al Muhairi (1996), *supra* note 9, at 137 and e.g., Ballantyne (1980), *supra* note 44, at 118.

⁴⁹ e.g., Carballo (2007), *supra* note 38, at 94 and e.g., Al Muhairi (1996), *supra* note 9, at 131.

⁵⁰ Information is available at:

http://www.dubaicourts.gov.ae/portal/page?_pageid=292,547748&_dad=portal&_schema=PORTAL, accessed 25 November, 2019. R. Taneja, *Constitutional and Statutory Provisions regarding the Appointment and Removal of Judges in the United Arab Emirates*, 15 ALQ no. 2 (2000), 156-167, at 159, 160 and e.g., Al Muhairi (1996), *supra* note 9, at 133.

Real Estate and Sharia (Personal Status). The structure and stages of litigation are described in Article 3¹ of Dubai Law No. 3 of 1992 stating:

“The Courts shall comprise the Court of Cassation, the Court of Appeal and the Primary Court, being the Court of First Instance. The Court of Cassation is the highest court of appeal on matters of law in the Emirate of Dubai.”

The Dubai Court of Cassation applies similar laws and principles as the Federal Supreme Court of Cassation with the following exceptions. First of all the Dubai Court of Cassation supervises decisions of the lower courts of the Emirate of Dubai and acts as an appellate court in relation to these decisions. Secondly the Dubai Court of Cassation assures that the lower courts in the Emirate of Dubai apply both the federal laws of the UAE and the local laws of the Emirate of Dubai. And finally the judgments of the Dubai Court of Cassation have only persuasive effect to the courts of the Emirate of Dubai. The judgments have no binding effects on the Federal Courts or the Federal Supreme Court of Cassation of Abu Dhabi. Likewise the Federal Supreme Court of Cassation has no persuasive effect in the Dubai Court of Cassation. But it is only the Federal Supreme Court of Cassation, which has the exclusive privilege to determine federal constitutional matters, matters related to the UAE Constitution (of all Emirates) and disputes among individual Emirates. The Emirate of Ras Al Khaimah has no Court of Cassation.⁵¹

The laws applied by the Dubai Courts are described in Article 4 of Dubai Law. No. (3) of 1992 stating:

“The Courts [of Dubai] shall exercise their powers on the basis of: the laws in force in the Emirate of Dubai; provisions of the Islamic Sharia; provisions of custom, unless these contradict the Law or public order or decency; the principles of natural justice, right and equity.”

According to Article 4 of Dubai Law No. (3) of 1992 the Sharia is positioned second after the local laws of Dubai. In those matters not explicitly granted to the Civil Courts, Sharia Courts have residuary jurisdiction. This means the Sharia Courts apply not only the Sharia Law, but also the local secular laws in both substantive and procedural matters. A similar situation is applicable to the jurisdiction of the Emirate of Ras Al Khaimah. Alongside its own and independent legal system, the Emirate of Dubai nevertheless applies the Federal Civil Procedures Law, Fed. Law No. 11 of 1992, and the Federal Law of Evidence in Civil and Commercial Transaction, Fed. Law No. 10 of 1992, in its Civil Courts. And with the enactment of the Federal Civil Transactions Law also known as the Civil Code in 1985, all courts in the UAE were required to apply the principles of Sharia in cases where no explicit legislative provisions exists. This has resulted in the situation where both federal and local

⁵¹ In Ras Al Khaimah the right of appeal is automatic if the claim amount exceeds the amount of AED 10,000. If this is not the case, the leave of the court is required. In E. Al Tamimi, *Practical Guide to Litigation and Arbitration in the United Arab Emirates*, (The Hague: Kluwer Law International, 2003), 11-16.

courts further reinforce the mandatory provisions and principles of the Sharia.⁵² But to what extent the principles of the Sharia eventually would reach in practice had not been determined to the fullest as in the other Emirates, where federal legislation had harmonized the use and scope of Sharia. The federal Islamization programs had its effects on the neat dichotomy and internal hierarchy of both the federal and local judiciary. Federal empowerment of the domain of the Sharia and Islamic principles were set out to achieve uniformity of law, the judiciary and other legislative regulations throughout the UAE. At the same time on the local level the individual Emirates maintained a certain degree of autonomy and governance. The reflections of this policy can be seen both in the encouragement of Emirate governance and the modernization of the institutes of local administration as well as in the preservation of local tribal and customary laws. But in the end federal governance would overrule them all with its superseding powers, however the Emirates of Dubai and Ras Al Khaimah maintained the ability to determine their own local visions and legislation.

4. Law and Development in the UAE, the example of Dubai’s International Free Zones.

4.1 Applicable Law: Economic and Social Development objectives.

For the realization of a sustainable economy the internationalization and diversification of the local economies was required. The financial and banking sector for example was predominantly under the control of the Central Bank and foreign banks were limited and restricted in their business conducts. The UAE banking system was established in 1980 by the Union Law No. 10 of 1980 ‘Concerning the Central Bank, the Monetary System and Organization of Banking’. The law also provided in the regulation of investment banks, financial institutions, financial and monetary intermediaries and the representative offices of foreign banks.⁵³ In the commercial sector, foreign enterprises faced restrictions in the form of limited ownership of 49 % by foreign companies under the Commercial Companies Law No. 8 of 1984 and the Civil Code Law. No. 5 of 1985.⁵⁴ The UAE federal government and the local Emirate of Dubai were very eager in developing national and local economies by creating legal mechanisms to enhance foreign investment and international trade. The creation of Financial Free Zones in designated areas through the Emirates reflects UAE’s state’s capacity and political will to use legal measurements to obtain prosperity.

To encourage and diversify the non- oil sector, the federal government acknowledged to open the economy to attract (Western) foreign investments and commercial companies in mainly the financial and commercial sectors.⁵⁵ Thereto Article 121 of the UAE Constitution was

⁵² W. M. Ballantyne, *Essays and Addresses on Arab Laws*, (Surrey: Curzon Press Richmond, 2000), 70- 71 and e.g., Carballo (2007), *supra* note 38, at 94.

⁵³ e.g., Angell (1985), *supra* note 37, at 136, 137.

⁵⁴ Akin, Gump, Strauss, Hauer & Feld (Eds.), *Business Laws of the United Arab Emirates*, (Abu Dhabi, Thomson Reuters, 2013), 28, 29, 47.

⁵⁵ e.g., Carballo (2007), *supra* note 38, at 95 and R. Mohtashami and S. Tannous, *Arbitration at the Dubai International Financial Centre: a Common Law Jurisdiction in the Middle East*, 25 *Arbitration International* no. 2, (2009), 173- 186, at 174, 175.

amended by Amendment No. 1 of 2004 to allow the establishment of Financial Free Zones in the Union stating that:

“The order and the manner of establishing Financial Free zones and the boundaries within which they are exempted from having to apply rules and regulations of the Union”.

Following the Constitutional Amendment No. 1 of 2004, Federal Law No. 8 of 2004 allowed the establishment of Financial Free Zones in any Emirate of the UAE. And Article 3 of the law exempted Financial Free Zones from all federal civil and commercial laws, but with the exception of federal criminal laws.⁵⁶ Even so local and Sharia jurisdiction would have no effect. The jurisdiction in the Financial Free Zones is Common Law based and seemed to be a reintroduction of the British extra- territorial jurisdiction of the past. Although not restricted to certain law subjects as in the Trucial States’ period. The Common Law based jurisdiction however was chosen to enhance international trade and investment, since this jurisdiction has worldwide been used by international investment companies.

4.2 Dubai’s development into a metropolitan city state.

The diversification towards a non- oil economy of the Emirate of Dubai has by far been the most successful of all Emirates. And quite the opposite of the more conservative oil based economy of the Emirate of Abu Dhabi and of the relatively small economies of the smaller Emirates. The city of Dubai has always been a lively crossroad of trade and culture, but for the past decade it has been well known for its architectural landmarks, real estate boom, luxurious lifestyle and tourist destination. Expansions of the infrastructure with sea and airports went hand in hand with the creations of Financial Free Zones for trade, commerce, financial and banking sectors, real estate and tourism. Both developments were facilitated by federal and local laws, which would exempt foreign investments from local interference.

Dubai began the diversification of its economy already in the late 1970’s with the building of its infrastructural foundations of its sea and airports, its agriculture and light manufacturing industries. In the 1980’s and 1990’s the commerce sector was further boosted by the construction of Dubai’s ports Mina Rashid and Mina Jebel Ali. The Dubai ports have become one of the busiest ports in the world with non- oil related traded goods per year of US \$31 billion. The value of re- exporting foreign goods has been increased in the past 25 years.⁵⁷ New business law regulations in the Jebel Ali Free Zone resulted in the exemption of export fees and taxes and full repatriation of invested capital, but also in the release of the local sponsorship conditions for foreign businesses. Since the period of 1990’s and onwards the 2000’s the Jebel Ali Free Zone has witnessed great economic expansion and was soon followed by similar projects like the Dubai Investment Parks Development, the Dubai Airport

⁵⁶ Such as the UAE Penal Code and Federal Law No. 4 of 2002 concerning anti- money laundering.

⁵⁷ A. Ehteshami and S. Wright, *Reform in the Middle East Oil Monarchies*, (Berkshire: Ithaca Press, 2008), 154-156.

Free Zone and the development of the Dubai Internet and Media Cities.⁵⁸ These developments were only made possible through a second wave of liberalizations of local laws, which guaranteed Free Zone companies exemption of local laws, UAE laws and GCC laws on a whole.⁵⁹ Next to the Dubai ports, the aviation sector had underwent great transformation since the founding of Emirates Airlines in 1985 and its worldwide expansion ever since with its home base at the Dubai International Airport.

Further extension of the diversification strategy has been in the commercial and Financial Free Zones with its aim to encourage foreign direct investments through foreign companies and enterprises. For the realization of foreign direct investment, the Emirate of Dubai was required to make significant reforms. The Emirate of Dubai had become a pioneer in launching as first of the Emirates a full integrated financial market by the opening of the Dubai International Finance Centre (DIFC). Its goal was to serve as a regional financial hub for investors and international banks and to join Dubai in the list of top international financial markets such as those of London, New York, Tokyo and Singapore. Another financial institution is the Dubai International Financial Exchange (DIFX), which is the first international exchange of the Middle East to be a fully electronic marketplace for equities, bonds futures and derivatives.⁶⁰ Furthermore the Dubai Financial Market (DFM) was established in March 2000, followed by the establishment of the Dubai Gold & Commodities Exchange (DGCX) in 2005 and NASDAQ Dubai.⁶¹

The attraction of foreign investment wasn’t solely limited to financial institutions, but also individuals were targeted by Dubai’s investment groups, this time by the real estate sector. Where in the past Dubai property laws forbade the ownership of property of foreigners and non- nationals, Law No. 7 of 2006 concerning Real Property Registration in the Emirate of Dubai made this possible. According to the law UAE and GCC nationals and their 100 % owned companies have the right to own property anywhere in Dubai. Non- UAE and non- GCC nationals will have the right to own a freehold interest, right of usufruct or a long lease of up to 99 years in designated areas in the Emirate of Dubai as approved by the ruler. Regulation No. 3 of 2006 specified the areas where non UAE and non GCC nationals can own property and confirmed 23 designated areas where foreigners may own freehold interests.⁶² Property developers like Emaar and Nakheel were the first to start of major cityscape projects such as “Palm Jumeirah” and “The World”, which transformed and advanced the process of

⁵⁸ Dubai Technology, Electronic Commerce and Media Free Zone Law No. 1 of 2000, issued by Sheikh Maktoum Al Maktoum.

⁵⁹ In total Dubai has the following free zones: The Dubai Airport Free Zone, The Dubai Auto Zone, The Dubai Biotechnology and Research Park, The Dubai Flower Centre, The Dubai Gold and Diamond Park, The Dubai Healthcare City, The Dubai International Finance Centre (DIFC), The Dubai Internet City, The Dubai Knowledge Village, The Dubai Logistics City, The Dubai Maritime City, The Dubai Multi Commodity Centre, The Dubai Outsource Zone, The Dubai Silicon Oasis, The Dubai Studio City, The Dubai Media City, The International Humanitarian City, International Media Production Zone and the Jebel Ali Free Zone. In e.g., Akin, Gump, Strauss, Hauer & Feld (Eds.) (2013), *supra* note 54, at 48.

⁶⁰ E. Cotran and M. Lau (Eds.), *United Arab Emirates*, 10 YIMEL (2003- 2004), 225- 237, at 229.

⁶¹ e.g., Akin, Gump, Strauss, Hauer & Feld (Eds.) (2013), *supra* note 54, at 56, 57.

⁶² E. Al Tamimi and H. Arab (Eds.), *United Arab Emirates*, 12 YIMEL (2005- 2006), 355- 373, at 358.

Dubai’s urbanization and at the same time built national landmarks, more refined and luxurious shopping complexes, hotels and business centers.⁶³

The expansion of the real estate sector had many windfalls for other sectors like tourism. From the 1990’s onwards major investments were made in the tourism industry, which has witnessed a massive growth and became a prominent source of income for the Emirate. Dubai has actively promoted its attractive climate and beaches by providing luxurious hotels and accommodations and transport facilities. The creation of landmark shopping malls and the organization of various themed festivals have contributed to a fifth of Dubai’s GDP income from tourism. In 2007 the UAE as a whole received 8, 5 million tourist with 80 % having Dubai as their holiday or business destination. Based on a survey of 2008 most tourists visiting Dubai, originated 32 % from Europe, followed by 23 % from Asia, 14 % from GCC countries and the USA and other Arab countries equally accounted for 8 %.⁶⁴ These figures are likely to rise in the near future since the Emirate invests more on tourism in the area of sport events such as the ATP and WTA tennis tournaments, the Dubai Grand Prix and the Golf Dubai Desert Classic. And more recently the Expo 2020 exhibition is expected to draw many tourists and visitors to the Emirate.⁶⁵

4.3 Dubai’s DIFC and Arbitration Centre.

The UAE has rapidly grown into an investment hub for regional and multi-national companies in the therefore designated commercial and Financial Free Zones. The creation of these Financial Free Zones affected the processes of dispute resolution and litigation concerning commercial and business laws. In the Gulf region negotiation and informal mediation or reconciliation had always been the most common way of solving a commercial dispute. In case of excesses the litigation procedure would proceed through the local Civil Courts of the concerned Emirate. The commercial and business sectors were governed by laws on a federal level such as the Civil Code of 1985 and the Law of Commercial Procedures (the Commercial Code) of 1992. Legislations, which were primarily emphasized on the reassertion of the Sharia and Islamic principles in general, where *riba* and *gharar* were prohibited.⁶⁶ But with the increase of foreign companies and foreign direct investments in the Free Zones the need increased for the creation of specific jurisdiction courts in the Emirates. Especially in the Emirate of Dubai gradually the need for a more formal (international) dispute resolution and litigation procedure arose. In order to create an investment friendly environment that would attract international banks, financial institutions and commercial companies more law reforms were required on both federal and local level. Reforms that would respectively create the Dubai International Arbitration Centre (DIAC), the Dubai International Financial Centre (DIFC) and the DIFC Arbitration Law, which will be described in the following.

⁶³ e.g., Ehteshami and Wright (2008), *supra* note 57, at 159- 167.

⁶⁴ P. Cadène and B. Dumortier, *Atlas of the Gulf States*, (Leiden: Brill, 2013), 49.

⁶⁵ More information is available at: <https://expo2020dubai.ae/en/>, accessed 25 November, 2019.

⁶⁶ e. g., Ballantyne (2000), *supra* note 52, at 250.

The first initiative in the Emirate of Dubai was the creation of the DIAC independently to the already established Dubai Chamber of Commerce & Industry. The DIAC has the ambition to be the leading International Arbitration Centre in the Middle East region. Important decisions on federal level were the UAE’s formal ratification of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 2006. And secondly the replacement of the UAE Civil Procedure Law concerning arbitration with an arbitration law based upon the UNCITRAL Model Arbitration Law.⁶⁷

The call and need for an international jurisdiction for civil and commercial disputes in the Free Zones of Dubai had materialized in the establishment of the DIFC. For the establishment of the DIFC on a federal level (next to the Constitutional amendment of article 121 in Amendment No. 1 of 2004 and Federal Law No. 8 of 2004 regarding the creation of Financial Free Zones in the UAE), the authorization of Federal Decree No. 35 of 2004 was required, which formally established the DIFC in the Emirate of Dubai. On a local level the government of the Emirate of Dubai passed Dubai Law No. 9 of 2004 to formally set up and recognize the legal framework of the DIFC and its financial and administrative independence and Dubai Law No. 12 of 2004 to establish the law of the DIFC Judicial Authority.⁶⁸ The DIFC constitutes three bodies; a) the DIFC Authority; b) the Dubai Financial Services Authority (DFSA); and c) the DIFC Judicial Authority also known as the DIFC Courts. Dubai Law No. 12 of 2004 officially established the DIFC Courts, which includes a Court of First Instance and Appeal with the exclusive jurisdiction over:

- “1. Civil or commercial disputes involving the DIFC or any of its bodies or establishments;*
- 2. Civil or commercial disputes arising from or related to a contract that has been executed or a transaction that has been concluded, in whole or in part, in the DIFC; and*
- 3. Civil or commercial disputes arising from or related to an incident that has occurred in the DIFC.”*

According to Article 7 of Federal law No. 8 of 2004 Financial Free Zones were entitled to create their own legal and regulatory framework. The DIFC used this option to constitute a foreign jurisdiction of its preference derived on the best practice in the financial world, the British Common Law system by establishing DIFC Law No. 10 of 2004 and DIFC Law No. 7 relating to the application of DIFC Laws. The rules of the DIFC Courts are closely modelled on the British Civil Procedure Rules of 1998 and the Admiralty and Commercial Courts Guide of 2006.⁶⁹ Lacunae in the DIFC laws are supplemented by British laws.⁷⁰ The DIFC

⁶⁷ e. g., Al Tamimi and Arab (2005- 2006), supra note 62, at 365, 366.

⁶⁸ Dubai Law No. 7 of 2011 was proclaimed to amend certain provisions of Dubai Law No. 9 of 2004 concerning the DIFC.

⁶⁹ DIFC Law No. 3 of 2004 Law on the application of DIFC Civil and Commercial Laws in the DIFC and DIFC Law No. 7 of 2005 concerning Law of Damages and Remedies.

⁷⁰ The list of DIFC Laws and Regulations are categorized in the following legal subjects: Obligations, Company Law, Partnerships and Family Businesses, Insolvency, Administration and Winding up, Property, Personal Property, Employment, Contracts, Anti- Money Laundering, investments and Securities, Arbitration and Data Protection.

Courts are separate and independent of the courts of Dubai and the UAE. Judgments of the DIFC Court of Appeal are binding and with no ability for further litigation and appeal to any other court in the Emirate of Dubai or beyond.⁷¹ How the DIFC and the Dubai Courts relate to one and other is stipulated in the 2009 Protocol of Jurisdiction between the Dubai Courts and the DIFC. On the 9th of June 2016 the ruler of Dubai issued Dubai Decree No. 19 of 2016 concerning the establishment of a Judicial Tribunal for the Dubai Courts and DIFC Courts. The Decree establishes a new judicial tribunal, whose task is to resolve conflicts of jurisdiction between the DIFC and Dubai Courts.

And finally the DIFC Arbitration Law within the jurisdiction of the DIFC was established in 2004. This law has been modelled on the 1985 United Nations’ Model Law on International Commercial Arbitration (UNCITRAL Model Law). But because of its exclusive and restricted use -for at least one of the parties or the dispute should be related and connected to the DIFC- many non- qualifying parties had only the option to choose arbitration through the arbitration regime of the federal UAE Civil Procedure law. Due to the objectives of the use of a local law regime, the law was replaced by the DIFC Arbitration Law in 2008. In this law there are no restrictions whatsoever for parties from the UAE or abroad to choose the DIFC as their seat of Arbitration. The DIFC Arbitration Law 2008 was to encourage international arbitration and at the same time provide in a solid and reliable British arbitration forum in the UAE. This has resulted in a rare joint venture of the DIFC with the London Court of International Arbitration (LCIA) and the establishment of the DIFC- LCIA.⁷²

5. Dispute resolution; Islamic principles versus International Trade Standards.

5.1 Federal Civil Code and Sharia Courts versus DIFC and International Arbitration.

In essence both the Federal and Local Courts in the UAE represent predominantly the traditional Islamic forum of dispute resolution, where the peaceful and amicable settlement of disputes between parties to a contract is a desired aim. As been viewed Sharia Law governs judicial decisions and both Federal and Local legislation. As Sharia Law differs from Western jurisprudence, in practice the legal results in commercial matters could differ considerably. Issues such as the capacity of parties to contract, the validity of a contract, its enforcement, its discharge, remedies for breach of contract, commercial frustration and other related matters could have a different outcome then under Common Law for example. Besides that Sharia Law does not apply the doctrine of binding legal precedent. Until the promulgation of the Federal Civil Code any provision in a commercial contract to exclude the jurisdiction of a UAE court would be rendered void. Also to confer the exclusive jurisdiction to a foreign court would fail to receive recognition in the UAE until the 1980’s.⁷³ However the Islamization

⁷¹ e.g., Carballo (2007), *supra* note 38, at 95, 96 and e.g., Mohtashami and Tannous (2009), *supra* note 55, at 174, 175.

⁷² e.g., Cotran and Lau (2009- 2010), *supra* note 60, at 190 and e.g., Mohtashami and Tannous (2009), *supra* note 55, at 184.

⁷³ G. R. Feulner and A. A. Khan, *Dispute Resolution in the United Arab Emirates*, 1 ALQ (1985- 1986), 312-318.

process of Federal laws such as the Federal Civil Code did not result in a comprehensive understanding of how commercial contracts and business related matters should be dealt with. Conflicts of law between modern and international legal systems versus Islamic and Sharia based laws and traditions created certain lacunae and disadvantages in the legal practice of the UAE. How for example the Federal Civil Code relates to the International Trade Standards of the DIFC or the DIAC in the Emirate of Dubai and how Sharia based norms can be harmonized with Western like ideologies is the core question? This since the economic development particularly in the Emirate of Dubai has attracted foreign investors and overseas companies not familiar with the traditional Islamic dispute resolution mechanism. Islamic dispute resolution is open to all -Muslims and non- Muslims alike- in the UAE. Whether residents and citizens choose to do so, is another question.

International Arbitration is a very popular legal solution for most (foreign) business parties. The majority of foreign parties shun Sharia Law and are very hesitant to choose for the Federal Civil Code regime, since the legal vagueness of how Sharia Law and International Arbitration relate to one another and whether Islamic principles will prevail or overrule other forms of legal dispute resolutions. As part of Dubai’s strategic vision to diversify its economic resources and to attract capital and investment in the region, the DIFC is established as an independent jurisdiction, and empowered to create its own legal and regulatory framework for all civil and commercial matters. In practice DIFC- registered companies can carry out their business activities, which includes a variety of financial sectors such as banking, brokerage services, capital markets, wealth management, re- insurance and Islamic finance. In case of civil and commercial disputes involving the DIFC, arising from a contract that has been concluded in the DIFC, or arising from an incident that has occurred in the DIFC, the DIFC Courts have exclusive jurisdiction following Article 5 of the Judicial Authority Law.⁷⁴ The DIFC Courts are separate and independent of other courts in Dubai and the UAE. Judgments of the DIFC Courts of Appeal are final with no other legal remedy given to other courts in the UAE. In order to promote the DIFC independency from the UAE legal system, financial independency from the UAE government is guaranteed in accordance with Article 3 of Dubai Law No. 9 of 2004. Thus by the establishment of the DIFC, in theory a functioning independent and impartial legal enforcement framework to enhance foreign investors without the concern of local protectionism, exposure to local courts, legal proceedings in Arabic and the application of Sharia Law, was created.⁷⁵

5.2 *‘Public Policy and Morals’ and the implementation of DIFC (Foreign) Judgments and Arbitration Awards.*

So in the Emirate of Dubai a parallel legal system of both Sharia Law and Common Law exists side by side without intervention of both systems into one another’s legal proceedings. Article 7 (3) of the Judicial Authority Law states that the Dubai Courts shall enforce a DIFC Court judgment, order or DIFC (arbitration) award without undertaking the merits of the dispute, underlining the DIFC Courts independency. However Article 7 (2) of the Judicial

⁷⁴ Judicial Authority Law, Dubai Law No. 12 of 2004.

⁷⁵ e.g., Carballo (2007), *supra* note 38, at 98.

Authority Law also states that DIFC judgments and awards ratified by the DIFC Courts, shall be enforced by the executive judge at the Dubai Courts when:

- “a) the judgment, award or order is final and is appropriate for enforcement; and*
- b) the judgment, award or order has been translated into Arabic.”*

Under a) the wording that the judgement or award needs to be ‘appropriate’ makes the Dubai Court eligible to possible control over DIFC judgments and awards, when enforcement is sought in Dubai or in some other location of the UAE. Next to that avoidance of translating judgments in the Arabic language failed.

Another concern is the power of the Dubai Courts to review DIFC judgments and awards on the grounds of compliancy with UAE’s ‘public policy’ as a precondition of enforcement in Dubai. The DIFC Arbitration Law 2008 goes a step further and states in Article 41 that all awards of the DIFC are at risk of being set aside if incompatible with UAE’s ‘public policy’ even for awards destined for implementation in a third jurisdiction outside the UAE.⁷⁶ ‘Public policy’ can be defined against the norms and traditions prevalent in the UAE, which also encompasses Sharia Law. This has been made clear in for example Article 6 of the Judicial Authority Law, where parties can choose explicitly a different legal system, which will apply DIFC Laws and Regulations unless they ‘conflict with the public policy and morals’. Article 8 and 9 of the DIFC Law No. 3 of 2004 on the application of civil and commercial laws clarifies this further. And should be viewed along with the provisions of Article 27 of the Federal Civil Code, where the application of principles of law which are contrary to the Sharia or ‘public policy or morals’ are prohibited.

In case of Islamic finance products in the DIFX which are guided by Sharia principles, the DIFC and Common Law jurisdiction have to apply Sharia Law when disputes occur involving the Sharia compliancy of the products.⁷⁷ Special clauses in the parties’ contract can prevent UAE laws to be applied and British Courts to settle the disputes. But in the end both legal systems of Sharia Law and the DIFC Laws and Regulations meet and result in the reassertion of Sharia Law on Common Law grounds.

6. Conclusion.

The position of Sharia Law in UAE’s legal system has historically been paramount and can still be determined through different branches and levels within its internal legal spheres. Law and Development in the UAE’s legal system starts with Article 7 of the UAE Constitution, where Sharia Law is positioned as a main source of law. But this can be interpreted as a material source of law and should be viewed in line with the ‘public policy and morals’ of the nation and is aimed at the legislator for promulgating new laws. One of these laws has been

⁷⁶ e.g., Mohtashami and Tannous (2009), *supra* note 55, at 176- 183.

⁷⁷ e.g., Carballo (2007), *supra* note 38, at 98- 100.

the Federal Civil Code, where Sharia Law as a formal source is represented. So the Civil Code has been shaped and ruled completely by principles of Sharia jurisprudence and the segregation of Muslims and non- Muslims as previously been the legal practice under British extra- territorial jurisdiction ended indefinite in 1986. Leaving little room for other forms of legal jurisdictions or dispute resolutions for business conduct between both groups. Since a uniform legal system was established Islamic commercial principles were used for both Muslim and non- Muslim business relations and trade. Various issues with regard to the practical application of Sharia doctrines in Islamic financial or other business related transactions, such as *riba* and *gharar*, which can be incompatible with modern commercial contract laws, however left lacunae in the legal practice. Due to the increase in economic development in especially the Emirate of Dubai, the need implicated by foreign investors and companies for new legal remedies such as international dispute resolutions was reason for Dubai to implement in its Financial Free Zones special International Arbitration standards such as the legal institutions of the DIFC and the DIAC.

As has been witnessed in the previous paragraphs the Sharia has taken a central position in both federal and local jurisdiction, but the drive for success and economic prosperity made concessions and easements for laws based on the Sharia and on the Islamic commercial principles of *riba* and *gharar*. Where the local Emirate became the executive arm for federal Sharia based principles, the economic diversification process provided a certain level of freedom on the local level for the Emirates to conduct business and to promulgate their own legislation in the Financial Free Zones. In the Emirate of Dubai in particular this has led to a certain extend to the (re)introduction of British jurisdiction on Emirate level. In this sense the local Emirates had demanded the autonomy to what extend they would grant exclusive rights to commercial activities and (foreign) investments conducted in their respective Emirate. And although federal laws were promulgated to create a legal consenting framework for new commercial laws, the local Emirates retained the right to define the scope of these laws. Which resulted in a diverse execution of laws throughout all the Emirates and in theory the decline of Sharia based laws in areas of International business such as the Financial Free Zones. Creating a new domain for non- Muslim trade and led to unintentionally segregation of Muslims and non- Muslims again, while both groups were able to access and use UAE’s legal system to the fullest. Nevertheless the enforcement of DIFC judgments and Arbitration awards via the Dubai Courts opened the backdoor for Sharia to enter. This through the definition of ‘public policy and morals’ as a precondition for enforcement as stated in the Judicial Authority Law of the DIFC. In the end its Sharia Law’s supremacy that determines UAE’s Law and Development.