

القانون التجاري العربي: مبادئ وتصورات

Arab Commercial Law:

Principles and Perspectives

Edited by

**William M. Ballantyne
and Howard L. Stovall**



Section of International Law and Practice American Bar Association

Preface

Most of the papers gathered in this book were first presented at a one-day conference in London, on 20 July 2000, “Arab Commercial Law—Into the Future.” That conference was co-sponsored by England’s Middle East Association and the Middle Eastern Law Committee of the American Bar Association’s Section on International Law and Practice. (The authors were asked to update their papers as of August 2001 for publication in this book.) We had the honor of serving as co-chairs for that well-attended conference, bringing together respected legal practitioners from the United States, England, and the Arab world. We are now equally honored to serve as co-editors of this book.

Our planning for that conference began on a cold, wet London afternoon in December 1999 at a meeting in Professor Ballantyne’s Chambers. Giles Dixon (Nabarro Nathanson) was with us from the beginning, and provided invaluable support throughout. We quickly decided upon six topics relevant to the Arab world that we thought would generate lively discussion—Islamic law, corruption, privatization, arbitration, trade sanctions, and e-commerce. In an effort to further enliven the conference proceedings, we decided to ask speakers to examine their topics through both solid analysis of existing law and predictions as to likely developments in the years to come—“into the future.”

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On 11 September 2001, the terrorist attacks on the U.S. provided a tragic reminder of the difficulties in trying to predict the future. Those events also reminded us that international trade cannot, by itself, bridge the political, cultural, and religious differences that exist in our world. Nonetheless, international trade remains one of

the shared activities of otherwise disparate peoples, and a foundation for greater tolerance, understanding, and respect.

Nabil Saleh, whose London conference paper is published in this book, had previously spoken to this point, in the context of differences between Western and Islamic banking:

I hasten to say that those who anticipate failure of the [Islamic banking] system with eagerness, should think twice before they start rejoicing, for its collapse, if it ever occurs, will develop resentment, frustration, and a further mistrust of Western standards and values. Only religious radicalism will reap advantage from such a situation, and the divorce between East and West will be nearly complete in case the financial and economic systems collide and their legal systems segregate. Religions, cultures, and languages being already distinct, no common ground or interest would remain to bring the two worlds near each other.

Brian Constant, the Director General of The Middle East Association, also presciently touched upon a related point in his remarks at the opening of our London conference:

It is my pleasure to welcome you, members of the American Bar Association, to this conference. I understand that you and your fellow ABA delegates here in London were welcomed yesterday by our prime minister, Tony Blair, and—if one can believe what one reads in the newspapers—he emphasized the fact that America and Britain share the same ethical and moral values. Oh dear!

In the context of your Middle East law program today, I would express a word of caution. It will behoove anyone from the West, particularly America and Britain, to exercise great caution before lecturing those in the Middle East on issues of law, morality, and/or ethics.

Just look how lawful, moral and ethical we Brits and Yanks can be, whether through the bombing of an innocent pharmaceutical factory in Sudan by the U.S. (and praised by our Tony Blair), or through the declaration of no-fly zones

over Iraq, patrolled by the U.S. and Britain with regular bombings, and with no U.N. mandate for such action.

I urge that American and English lawyers work to ensure that our respective governments act lawfully and be respectful of others' rights in international affairs. If we accomplish that necessary minimum, then—maybe—we will possess some credibility in our relations with Middle East governments, towards common goals in various commercial and legal fields.

Of course, terrorism (from whatever source) should never be appeased. But we demonstrate strength and maturity, not appeasement, by seeking to better understand (and respect) the legitimate differences that exist in various regions of the world.

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A brief word of caution about the title of this book: although we use the short-hand reference “Arab Commercial Law,” there is not (yet) a *lex arabica*, or more particularly a *lex mercatoria arabica*. The Arab world is comprised of separate jurisdictions and, while many of those jurisdictions do have common elements in their laws, they do not have a common law. In many instances, however, a comparative law approach to the region is illuminating and valuable, because of the common features that exist in those separate Arab jurisdictions. These common features (most notably the *Shari'a*, Islamic law) exist to an extent that is not discernable in other jurisdictions; but that is very far from saying that there already exists a *lex arabica*. To assume that there is such a body of law would be a dangerous mistake.

In any event, we will not make the mistake of failing to thank all the kind individuals who so generously supported the London conference and this book—first and foremost Giles Dixon and his colleagues Katy Jarrah-Layegh and David Starr, without whom the London conference would have been immeasurably more difficult to organize. We are also appreciative to the Middle East Association (and its Director General, Brian Constant) for hosting the London conference at its Bury House facilities, and we salute all the participants who

filled the conference room to bursting. Of course, we are indebted to the speakers/authors whose papers are compiled in this book, particularly Shaikh Salah Al-Hejailan—whose thoughtful presentation on transparency served as the keynote address at the London conference. We also express special thanks to panelists Sabah Al-Mukhtar (Arab Lawyers Network), Martin Amison (Trowers & Hamblins), Anita C. Esslinger (Bryan Cave), Steven Miles (Baker Botts), and Emad Tinawi (Booz-Allen & Hamilton).

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William M. Ballantyne
(London)

Howard L. Stovall
(Chicago)

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