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Law in the Gulf

Construction law, for the purpose of this book, comprises the laws of the United Arab Emirates and the Arab Gulf states of Bahrain, Kuwait, Oman, Qatar and Saudi Arabia as applied to the issues commonly arising out of construction projects. An overview of the applicable legal regime of these jurisdictions is the purpose of this introductory chapter.

But the applicable legal regime is not merely an interesting backdrop to construction law. An appreciation of the legal systems of the United Arab Emirates and the Gulf states is critical not only to an understanding of the application of construction law in these jurisdictions but also to overcoming preconceptions based on academic and judicial contributions to construction law in jurisdictions where this has been a recognised branch of law for many years. Although the disputes and differences that arise on projects in the Gulf are essentially the same as those that arise in other jurisdictions, the applicable laws, although in some respects similar to those elsewhere, have their own unique heritage, resulting not only in differences of emphasis and analysis but also, in some cases, a departure from what might be considered elsewhere to be orthodox principles of construction law.

1.1 Basis of Government

Following the British government's announcement on 16 January 1968 of its intention to withdraw from the Gulf by the end of 1971, Bahrain, Qatar and the seven Trucial states¹ embarked on a process to establish themselves as independent sovereign states. Oman and Saudi Arabia had already been independent sovereign states for many years by the time of this announcement, Kuwait since 1961.

Bahrain issued a declaration of independence from the United Kingdom on 14 August 1971 and Qatar on 3 September 1971. Uniquely amongst the Gulf states, the UAE Constitution when it was signed on 2 December 1971 brought into existence a new, federal state.

¹ A term derived from the truces signed with the United Kingdom. Referred to at the time as 'the nine', Abu Dhabi, Ajman, Bahrain, Dubai, Fujairah, Qatar, Ras Al Khaimah, Sharjah and Umm Al Quwain, contemplated a union but ultimately this proved to be a step too far.



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Each of Bahrain, Kuwait, Oman, Qatar and the United Arab Emirates has a written constitution from which the authority of all legislative and judicial bodies derives.² Although Saudi Arabia does not have a written constitution in a conventional sense, the Saudi Basic Law of Government serves a similar purpose but provides that the constitution is the Qur'an and the Sunna.³

Each constitution declares the existence of an independent sovereign state and that state's part in a broader Arab nation. In the case of Saudi Arabia this is expressed as a commitment to 'the aspirations of the Arab and Muslim nation to solidarity'.⁴

The UAE Constitution is, in effect, an agreement between the rulers of the emirates of Abu Dhabi, Dubai,⁵ Sharjah, Ajman, Umm Al Quwain and Fujairah. Ras Al Khaimah joined the other six emirates in adopting the UAE Constitution the following year.⁶ The UAE Constitution, uniting the seven constituent emirates, declares the United Arab Emirates a federal state, paving the way for the creation of a Federal or Union Government to which the seven rulers ceded part of the sovereignty recovered from the United Kingdom.

Each of the other Gulf states is governed by a constitutional monarch, albeit with varying degrees of consultative and representative input. In Bahrain the constitutional monarch formally operates alongside a democratic form of government.⁷

1.2 Federal Jurisdiction in the UAE

The powers of the UAE Federal Government are defined in and limited by the UAE Constitution which lays down guidelines for legislation required to establish the machinery of government, including the administration of justice. Except insofar as the rulers of each emirate ceded power to the Federal Government pursuant to the Constitution,⁸ they retained for themselves and their successors power over the internal affairs of their respective emirates:

Each emirate exercises, in accordance with Article (3) of the Constitution, sovereignty over its territorial land and water in all affairs in which the Federation is not competent pursuant to the Constitution, including court jurisdiction which is an act of sovereignty. Each emirate is obliged, pursuant to Article (10) of the Constitution, to respect the independence and sovereignty of the other emirates in regards to their internal affairs within the scope of the Constitution.⁹

In consequence, there are two tiers of government in the United Arab Emirates: the Federal Government and each government of the seven emirates.

² Bahrain (1973 and 2002), Kuwait (1962), Qatar (2004), Oman (1996) and the United Arab Emirates (1971). Initially the UAE Constitution was provisional, being renewed and extended at five-year intervals until 1996 when the provisional designation was removed.

³ Saudi Basic Law of Government, Article 1.

⁴ Saudi Basic Law of Government, Article 25.

⁵ Abu Dhabi and Dubai agreed, in principle, to a union on 18 February 1968 in the Sumaih Union Accord.

⁶ 10 February 1972.

⁷ Bahrain Constitution, Article 1c.

⁸ UAE Constitution, Article 122.

⁹ UAE Federal Supreme Court No. 116/13 dated 1 October 1991.

Both tiers of government have their own legislative authority, the Federal Government by virtue of the UAE Constitution and the governments of each emirate by virtue of their retained sovereignty. As a result, there are also two tiers of laws: Federal laws which apply in all emirates, and emirate laws which apply only in the emirate by which such laws are enacted.¹⁰

The UAE Federal Government is represented by the Supreme Council,¹¹ which is composed of the rulers of each emirate and which elects a president and vice president, each for a five-year term.¹² The ruler of each emirate represents that emirate and exercises both legislative and executive authority to the extent not ceded to the UAE Federal Government pursuant to the UAE Constitution.¹³

The UAE Federal Government's authority covers not only areas of national interest such as foreign affairs, defence and internal security but extends to domestic affairs, covering specified industries such as banking, insurance and publishing. Significantly for the construction industry, the UAE Federal Government has authority over the introduction of laws pertaining to civil and commercial transactions, in effect, submitting the law of contract to the jurisdiction of the UAE Federal Government. Construction law in the United Arab Emirates is, in consequence, predominantly a matter of Federal law.

Nevertheless, power over construction and related activities was not ceded to the Federal Government except for the construction, maintenance and improvement of union roads.¹⁴ Each emirate retains power, therefore, to enact legislation covering the construction industry, provided that such legislation does not conflict with any Federal laws of general application. Given the significance of the construction sector in the development of a young country it will come as no surprise that each emirate has exercised this residual power to regulate the industry within their respective territories. The Emirates of Abu Dhabi and Dubai in particular, have taken the opportunity to introduce a large number of laws regulating the construction industry within their respective borders.

1.3 Role of Islamic Shari'ah

The Islamic Shari'ah, in essence, is the law of the Islamic religion as derived principally from the Holy Qur'an and the Sunna, the code of conduct established through example by the Prophet Mohammed.¹⁵

¹⁰ UAE Constitution, Article 151 and UAE Federal Supreme Court No. 4/2012 dated 19 February 2012 in which the constitutional court rejected a submission that the case could not be heard until it had proceeded through a notification process required by the laws of Dubai as this law did not apply to proceedings initiated in the UAE Federal Supreme Court.

¹¹ UAE Constitution, Article 46.

¹² UAE Constitution, Article 51. Since the inception of the United Arab Emirates, the office of President has by convention been occupied by successive rulers of the Emirate of Abu Dhabi and the office of Vice-President has been occupied by successive rulers of the Emirate of Dubai.

¹³ The juridical status and representation of the UAE Federal Government and each emirate is addressed in UAE Federal Law No. 5/1985 (the Civil Code), Article 92 and Article 93.

¹⁴ UAE Constitution, Article 120(9).

¹⁵ A key additional source is the Hadith, comprising records of the teachings of the Prophet Mohammed compiled from indirect sources after his death.

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The Islamic Shari'ah plays a central role in the legal system of all the Gulf states. Thus, for example, the UAE Constitution records the status of the Islamic Shari'ah in the following terms:

Islam is the official religion of the Union. The Islamic Shari'ah shall be the main source of legislation in the Union.¹⁶

By virtue of the UAE Constitution and those of Bahrain, Kuwait, Qatar and Oman,¹⁷ it is a guiding principle in the formulation of all legislation that the main source for such legislation shall be the Islamic Shari'ah. The Islamic Shari'ah provides the inspiration for the legislation that applies within these Gulf states, and principles derived from the Islamic Shari'ah are adopted in the primary legislation of the Gulf states.¹⁸

Notwithstanding its constitutional status, the Islamic Shari'ah is not the exclusive source of legislation, which may be supplemented by or draw on sources other than the Islamic Shari'ah.¹⁹

In contrast, the Saudi Basic Law of Government expresses the role of the Islamic Shari'ah in the following terms:

The Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion. The Constitution [of the Kingdom of Saudi Arabia] is the Quran and the Sunna of His Prophet, peace be upon him.

The centrality of the Quran and the Sunna reflects the history and culture of the Kingdom. Notwithstanding this, the Saudi Basic Law of Government has many characteristics in common with the constitutions adopted in the other Gulf states.

The influence of the Islamic Shari'ah is evident in the region's Civil Codes which typically provide that in the absence of any express provision, the principles of the Islamic Shari'ah shall be used to fill the void²⁰ and by legislation requiring the domestic courts to apply its provisions alongside applicable laws, customs and principles. Thus, it is provided in relation to UAE Federal Courts:

Federal courts shall enforce the provisions of the Islamic Shari'ah and the Federal Laws and other laws in force and shall enforce customary rules and general legal principles that are not in contradiction of the Islamic Shariah.²¹

¹⁶ UAE Constitution, Article 7.

¹⁷ Bahrain Constitution, Article 2, Kuwait Constitution, Article 2, Qatar Constitution, Article 1 and Oman Constitution, Article 2.

¹⁸ By way of example, the admonishment in the Holy Qur'an on followers to honour contracts (see Chapter 4.1 [Effects of a Contract: Binding and effective]).

¹⁹ For a review of the relevant laws and some authorities on the tension between Article 7 of the UAE Constitution and applicable laws, see 'Commercial Law in the Arab Middle East', Ballantine (1986) pp. 57–65 and 'Arab Commercial Law: Principles and Perspectives', Ballantine and Stovall (2002), pp. 15–41.

²⁰ Bahrain Civil Code, Article 1(b); Oman Civil Code, Article 1; Qatar Civil Code, Article 1(2); Saudi Civil Code, Article 1(1).

²¹ UAE Federal Law No. 6/1978, Article 8. Also, the UAE Civil Code, Articles 1, 2, 3 and 27; UAE Federal Law No. 33/2022, Article 45; and Dubai Law No. 3/1992, Article 4. A similar provision is found in other Gulf states, for example, Qatar Civil Code, Article 1. See also the Saudi Basic Law of Government, Article 48.

Likewise, in Saudi Arabia:

Courts shall apply the provisions of Sharia to cases brought before them, as derived from the Quran and Sunnah, and State laws not conflicting therewith.²²

This requirement finds expression in the reliance of judges on one of the four schools of Islamic jurisprudence: Hanbali, Hanafi, Shafi'i and Maliki. Precedence is given in the United Arab Emirates to the jurisprudence or teachings of the schools of Imam Malik and Imam Ahmad bin Hanbal²³ and in Saudi Arabia to the latter.

In practice, the laws of the Gulf states not only borrow heavily from the laws of other Arab countries, in particular those of Egypt, but also in many cases reflect the needs of an expanding and diversifying economic block in which domestic and foreign businesses play a crucial part. As a result, these laws share many common features not only with those of other Gulf states but also with the laws of countries further afield.

Preparation of individual laws using the Islamic Shari'ah as a source is a matter for the legislature. The extent to which these laws and the results of applying them are consistent with Shari'ah²⁴ is not a matter for determination by the courts.²⁵ Accordingly, although uncertainty occasioned by tension between temporal and spiritual laws is not unknown, such controversies are few and, in most cases, now historic.²⁶

Despite the status accorded to the Islamic Shari'ah, instances of it having an impact on day-to-day business activities in the Gulf are rare.²⁷ Although construction contracts and arbitration awards must be consistent with public order, which includes the Islamic Shari'ah,²⁸ the domestic courts have shown little appetite for applying theological objections to contemporary business activity. Indeed, the use of construction contracts such as those published by FIDIC, has the blessing of Islamic scholars.²⁹ The conduct of business is, instead, governed by legislation, albeit that such legislation and its application are influenced by the Islamic Shari'ah, ensuring that its impact is largely tangential.

²² Saudi Royal Decree No. M/1 on 22/01/1435H (25 November 2013), Article 1.

²³ UAE Civil Code, Article 1.

²⁴ For example, courts occasionally cite the well-known Hadith that 'no harm shall be done nor harm done in return', for example, Dubai Cassation No. 281/95 dated 6 July 1996 whilst applying principles of contract interpretation which are consistent therewith.

²⁵ UAE Federal Supreme Court No. 14/9 dated 28 September 1981.

²⁶ Issues influenced by the Islamic Shari'ah include building defects (UAE Federal Supreme Court No. 59/16 dated 28 June 1998), time limits (UAE Federal Supreme Court No. 721 and 815/26 dated 22 January 2006), awards of interest (UAE Federal Supreme Court No. 18/25 dated 19 June 2004), blood money or *diyya* (UAE Penal Code, Article 1) and issues that are not capable of being referred to arbitration (Dubai Cassation No. 146/2008 dated 9 November 2008).

²⁷ Matrimonial, inheritance and other personal status cases are dealt with by the Shari'ah division of the domestic courts, further reducing the day-to-day implementation of the Islamic Shari'ah by the commercial and civil courts.

²⁸ UAE Civil Code, Article 3.

²⁹ Resolution 232 (3/24) International Islamic Fiqh Council on FIDIC Contracts.

1.4 Civil Law

In each civil law state³⁰ a civil code or equivalent piece of legislation, derived mainly from Roman law, is the cornerstone of its body of law.³¹ The aim is to put in place – or codify – a comprehensive and universally applicable set of laws and regulations governing all citizens.³² This is accomplished by enacting wide-ranging laws or codes that are a blend of provisions targeting specific issues, with others aimed at establishing general principles, which together guide judges to a broadly consistent and fair result. Reflecting this approach, most civil codes explicitly direct that they shall be applied not only literally but also in spirit.³³

Until the withdrawal of the British from the Gulf, starting with Kuwait, the domestic laws of the region were largely based on the *Majella*, the nineteenth-century Ottoman codification of the Islamic Shari'ah in the Hanafi School.

The apparent imminence of the cessation of British extraterritorial jurisdiction in Kuwait in the late 1950s gave an immediate and urgent impetus to the necessity for legislation in Kuwait to fill the vacuum left by that cessation. It is perhaps strange that at that time in Kuwait only two choices were really considered: the continued use of the *Majella* or the adoption of occidental codes based upon the Egyptian model behind which lie, of course, the French and other great continental codes of Europe.³⁴

Upon the completion of Britain's formal withdrawal a decade later, Bahrain, Qatar and the United Arab Emirates followed suit.

Bahrain, Kuwait, Qatar, Oman and the United Arab Emirates have, thus, each adopted a civil code modelled on the Egyptian Civil Code (1949) – itself a derivative of the French Civil Code (1804) – influenced, in turn, both by the Ottoman *Majella* and the civil codes of other Arab states.³⁵ As a result, the legal system of each Gulf state is based predominantly on the civil law model, adapted to reflect the region's Islamic and Arab heritage. As the civil code is the backbone of any civil law jurisdiction, it follows that there is a considerable degree of similarity in the principles of law applicable to construction contracts in these countries.

30 Notable civil law jurisdictions include France, Germany, Egypt and Japan. China has a modified civil law system.

31 See also Chapter 25 [Gulf Construction Law: Essence and Essentials].

32 The word 'civil' derives from the Latin *civis*, which roughly translates as citizen. The origins of civil law lie in the early attempts to codify Roman law, which ultimately led, via the Justinian Codes, to a successful codification in the form of the French Civil Code (1804).

33 Saudi Civil Code, Article 1(1) 'The provisions of this law shall apply to all matters addressed herein, in letter and in spirit', UAE Civil Code, Article 1, Bahrain Civil Code, Article 1(1), Kuwait Civil Code, Article 1 and UAE Civil Code, Article 1. See further, Wahab, M.A. (2023) Construction arbitration in the MENA region, *Global Arbitration Review*. Available at: <https://globalarbitrationreview.com/guide/the-guide-construction-arbitration/fifth-edition/article/construction-arbitration-in-the-mena-region> [Accessed: 27 Oct. 2023] at page 3.

34 Ballantyne, W. 1999. *Essays and Addresses on Arab Laws*. 1st Edition. Routledge. Chapter IX.

35 'Civil Codes of Arab Countries: The Sanhuri Codes', N. Saleh, *ALQ*, Vol. 8, No. 2 (1993), pp. 161–167.

This civil law system co-exists with a broadly common law system that applies within some special economic zones.³⁶

In Saudi Arabia the Islamic Shari'ah was the direct and main source of law until the adoption of the Saudi Civil Code in 2023.³⁷ Notwithstanding some notable differences from its regional counterparts,³⁸ the Saudi Civil Code adopts most of the key features of other civil codes, thus harmonising to some extent the key legal principles underpinning Saudi business law, including construction law, with those in the other Gulf states as well as other civil law countries.

Acknowledged to be greatly outdated,³⁹ the French Civil Code has, nevertheless, escaped wholesale revision, at least in relation to those provisions that are commonly applied to construction contracts and disputes. Notwithstanding the modernising influence of Professor Al-Sanhuri on the Egyptian Civil Code, including his introduction of some elements of Islamic jurisprudence,⁴⁰ the civil codes of the Gulf states consequently remain firmly rooted in the 19th century. It is axiomatic that these civil codes do not always provide a clear solution to a dispute arising from a modern construction project.

In contrast to civil law, common law is based primarily on the content of judgments which are binding on the courts in accordance with a strict hierarchy, limiting the element of discretion exercised by the judiciary.⁴¹ Common law develops incrementally, as it has done from its medieval origins, by means of such judicial pronouncements or precedents with limited intervention from the legislature. Although the legislature prevails in the event of any conflict with precedents, the latter remain the cornerstone of a common law system. Laws tend to be precisely and narrowly drafted with the result that the scope for discretion when applying such laws is limited and that precedents are preserved.

There is no equivalent of a civil code in common law countries, each piece of legislation being limited to a specific topic or a relatively narrow range of topics. Thus, whereas common law courts instinctively look to resolve disputes based on principles derived from

36 Dubai International Financial Centre, Abu Dhabi Global Market and the Qatar Financial Centre. See Chapter 1.6 [Law in the Gulf: Financial free zones].

37 Law reform is a key commitment in Saudi's Vision 2030, a template for Saudi's ambitions plans to diversify and expand its economy and relax some elements of its religious conservatism.

38 One of the most welcome differences being a reduction in length: the Saudi Civil Code has 720 Articles, compared to the UAE Civil Code which has 1528. The omissions have not done any obvious harm to the truncated version. The Saudi Civil Code has jettisoned many redundant provisions, such as those relating to insolvency and personal status which remain in the region's other civil codes despite being governed by subject-specific laws.

39 John Bell, 2008. *Principles of French Law*. 2nd Edition. Oxford University Press. p. 24.

40 For a review of the origins of the UAE Civil Code and the Egyptian and Ottoman influences, particularly the Ottoman Majalla, see 'The New Civil Code of the United Arab Emirates', W. M. Ballantyne, ALQ Vol. 1, No. 3, p. 245, which notes that the UAE Civil Code marks a resurgence of the Islamic Shari'ah as the main source of law, 'Application of Islamic Law in the Middle East – Interest and Islamic Banking', S. Majid, [2003] ICLR, 177 and 'Tort Law in the United Arab Emirates', a paper delivered to the Society of Construction Law (SCL) by Richard Harding QC on 9 July 2010 and available on the SCL website.

41 Notable common law countries include the United States of America (in all federal courts and in state courts except for Louisiana), Australia and New Zealand. India is a common law jurisdiction in all federal courts and in most state courts. Within the United Kingdom, England and Wales have a purely common law system.

previously decided cases, courts in civil law jurisdictions, including those in the Gulf, instinctively look first to the civil code and then to any other relevant codes.⁴²

The result is that for a lawyer with a common law background civil law can appear imprecise and unpredictable, perhaps even less intellectually challenging, due to a lack of detailed legal analysis and limited reference to centuries of accumulated legal wisdom. For a lawyer with a civil law background, common law may appear to be hidebound by intricate and often outdated rules, making it not only inflexible and impenetrable to the businesses and consumers that it serves but also vulnerable to a charge that it is founded on a pretence that judgments are actually derived from the dispassionate application of precedents rather than on subjective considerations of fairness and common practice.

1.5 Jurisprudence Constante

The absence from civil law jurisdictions of a system of binding precedent is one of the most significant differentiators between civil and common law traditions. Although domestic courts in the Gulf are bound instead to apply codified law, they are required to do so alongside custom, practice and general legal principles.⁴³ Ascertaining and applying custom, practice and, crucially, general legal principles is a recognised component of the judicial function.

Consequently, domestic courts do not disregard their earlier judgments but neither are they compelled to follow them. It is common for previous judgments, particularly those of a final appellate court, to be deployed in support of submissions, but the purpose is to identify an established principle, rather than to invite rigid adherence to a binding precedent.⁴⁴ This reflects the practice of showing deference to previous judgments of a Court of Law.⁴⁵

Evidence of the application of a consistent approach can be found in the courts' common practice of prefacing a judgment with a restatement of an 'established' principle, signalling the implementation of prior decisions to a common or recurring issue and acknowledging the supervisory role conferred on the highest courts in each Gulf state over important issues of legal principle.⁴⁶

Formal recognition can also be given to established principles. In a case that came before the UAE Federal Supreme Court⁴⁷ in 1991 the appellant relied on a number of inconsistent judgments concerning the award of interest unsuccessfully to invoke the appointment of a special panel of the Supreme Court, which can be established to deal with a departure

⁴² The limitations of using a single, outdated source of codified law across all industries and topics are tacitly acknowledged by the proliferation of subject-specific laws emerging from the Gulf's energetic legislative programmes.

⁴³ UAE Federal Law No. 6/1978, Articles 8 and 45.

⁴⁴ The ADGM Courts considered the distinction between the common law and civil law approaches to the application of precedent in *AC Network Holding Ltd v Polymath Ekar SPVI* ADGMCA-2023-01.

⁴⁵ The Court of Merits comprises the Court of First Instance and the Court of Appeal, both of which determine issues of fact and law, in contrast to the Court of Cassation or Supreme Court which is restricted to determining issues of law only and, therefore, is referred to as a Court of Law.

⁴⁶ For example, Qatar Law No. 8/2023, Article 9.

⁴⁷ UAE Federal Supreme Court No. 294/12 dated 28 May 1991.

from an established principle or to resolve conflicting decisions.⁴⁸ The Federal and Emirate Principle Unification Authority is separately tasked with ensuring consistency between judgments issued by the Federal courts located in various emirates, its decisions having binding force on all Federal judicial bodies.⁴⁹

In 2021 the General Assembly of the Dubai Court of Cassation published a decision setting the rate of interest on commercial and judgment debts at 5% per year in the absence of any contrary agreement.⁵⁰ In Bahrain the Committee for the Unification of the Court of Cassation Principles⁵¹ publishes the records of its meetings and a similar function is performed by a Technical Bureau and a general panel of the Supreme Court in Qatar and Saudi Arabia respectively.⁵² In Abu Dhabi, if the Court of Cassation wishes to depart from an established principle, this must be referred to the Court President and, in turn, to the full panel (civil or criminal) of the court for a reversal ruling.⁵³

It is envisaged, therefore, that decisions of the highest court establish principles and that the intention is for there to be consistency between decisions. This is consistent with the civil law doctrine of *jurisprudence constante*⁵⁴ which roughly corresponds to the common law doctrine of *stare decisis*, the main difference being that in the case of the latter a single judgment is sufficient to establish a precedent, whereas in the former a series of consistent decisions is generally required.⁵⁵

In consequence, a consistency of approach to many issues that commonly arise can be discerned from judgments of the domestic courts notwithstanding the absence of a formal system of binding precedent.

In a manner consistent with the less prescriptive approach of civil law the body of principles built up from decisions of the final appellate court or Court of Law tends to offer selective guidance on the application of the codified laws rather than establishing the type of carefully crafted rubrics, supplemented by multiple refinements, that are a feature of common law. The Court of Merits, which must interpret and apply the codified laws and the principles established by a Court of Law, in consequence, is less constrained in its

48 UAE Federal Law No. 33/2022, Article 39 replacing UAE Federal Law No. 10/1973, Article 65 pursuant to which the application was made.

49 UAE Federal Law No. 10/2019, Articles 14–18.

50 Resolution No. 1/2021 dated 9 June 2021 issued pursuant to Dubai Law No. 13/2016, Article 20. The UAE Federal Supreme Court can decline to consider an appeal if it raises a settled principle which there is no reason to revisit: UAE Civil Procedure Code, Article 185.

51 Bahrain Law No. 8/1989, Article 7 provides that the Technical Office of the Court of Cassation shall ‘conclude the legal principles recognized by the Court in the judgments rendered thereby as well as to compile and classify said judgments’.

52 Qatar Law No. 10/2003, Article 9 and Saudi Royal Decree M/78 (1 October 2007) promulgating the Law of the Judiciary, Article 13(2).

53 Abu Dhabi Law No. 6/2024, Article 9.

54 See Fon, V. and Parisi, F. (2005) *Judicial Precedents in Civil Law Systems: A Dynamic Analysis* for a commentary on the aversion to precedent in modern civil law.

55 For an example of *jurisprudence constante* in operation, see Dubai Court of Cassation No. 56/2004 dated 26 December 2004 in which the court stated that it was applying an established principle when declining to apply principles of delict where the parties had entered into a contract. For the same approach to different but equally well-established principles see, for example, UAE Federal Supreme Court, Appeal No. 322/1999 dated 26 January 1999 (contract interpretation is a matter for the Court of Merits) and Dubai Cassation No. 18/2000 dated 21 May 2000 (where the wording of a contract is clear there is no scope for applying a different meaning).

decision-making by this civil law regime than any common law counterpart. Although reference is made, on occasion, by the Court of Merits to judgments of a Court of Law, the latter themselves do so rarely.⁵⁶

Insufficient attention is generally given to these differences of approach, not merely in the context of claims or disputes but also in the preparation of construction contracts used in the Gulf, most of which are governed by local law, whether by choice or by default. As common law precedents have no value in the domestic courts of the Gulf, principles applicable to construction contracts and disputes that are well-established by precedent under common law are not merely inapplicable but are sometimes in conflict with local law.

Furthermore, the terminology typically used in construction contracts and upon which the mechanisms of the contract rely may not have the same meaning or effect in the domestic courts as in courts in other jurisdictions. It cannot be taken for granted, for example, that commonplace concepts, such as a defects liability period, are interpreted in a manner that is consistent either with the framework of standard form contracts or with customary usage. Neither are terms of art, such as 'time is of the essence' or 'fitness for purpose', which have a well-established meaning and effect in many common law jurisdictions, necessarily understood and applied in the same way by the domestic courts of the Gulf.

1.6 Financial Free Zones

Financial free zones are an exception to the nature and hierarchy of the governing laws described above. The first such financial free zone was established in 2004 within the designated boundaries of the Dubai International Financial Centre.

By virtue of an amendment to the UAE Constitution⁵⁷ provision was made for the Federal legislature to disapply Federal laws within designated financial free zones.⁵⁸ Further enabling legislation⁵⁹ created an independent jurisdiction, exempt from all civil and commercial Federal laws and subject instead to the exclusive legislative authority of the Ruler of Dubai.

Business performed by construction industry participants within the DIFC, including works executed or services performed for projects located within the DIFC, is, accordingly, governed by the law of the DIFC⁶⁰ in the absence of any contrary agreement between the

⁵⁶ For an example, see Dubai Cassation No. 1009/2015 dated 29 March 2015, quoting Dubai Cassation No. 282/2012 dated 3 February 2013 as authority for the principle that a costs award is a severable part of an arbitral award and, thus, can be annulled whilst preserving the remainder of the award.

⁵⁷ UAE Constitutional Amendment No. 1/2004.

⁵⁸ This power is not geographically restricted. The Abu Dhabi Global Market was established as a financial free zone by UAE Federal Law No. 15/2013 and is expected to adopt a legal model similar to that of DIFC.

⁵⁹ UAE Federal Law No. 8/2004, UAE Federal Decree 35/2004 and UAE Cabinet Resolution No. 28/2007.

⁶⁰ Dubai Law No. 2/2005, Article 23 and DIFC Law No. 10/2005 (Amending and Restating DIFC Law No. 4/2004), Articles 9 and 10.

parties and is subject to the jurisdiction of the DIFC Courts.⁶¹ A significant consequence for construction activity within a financial free zone is that this is not subject to the mandatory provisions of the onshore civil codes,⁶² including, for example, strict liability for serious defects.⁶³

DIFC law is largely codified in the civil law tradition but draws inspiration from a range of jurisdictions, resulting in a fusion of common law and civil law:

DIFC operates on a unique legal and regulatory framework with a view to creating an optimal environment for financial sector growth. Such framework was achieved through a synthesis of Federal law and Dubai law which permitted DIFC to have its own civil and commercial laws modelled closely on international standards and principles of common law and tailored to the region's unique needs.⁶⁴

Included within the body of laws applicable within the DIFC is the Contract Law,⁶⁵ the Implied Terms in Contracts and Unfair Terms Law,⁶⁶ the Law of Obligations⁶⁷ and the Arbitration Law⁶⁸ that are of particular application to the construction industry.

The DIFC Courts similarly operate in accordance with international best practice, which includes a system of binding precedent, giving the jurisdiction a key common law characteristic.

The amendment to the UAE Constitution that facilitates the creation of a financial free zone is not geographically confined. The Abu Dhabi Global Market was, accordingly, established in 2013 on the basis of the same enabling legislation,⁶⁹ but, in contrast to the DIFC, the ADGM applies English law directly except as modified in certain areas by specific legislation.

The common law of England (including the principles and rules of equity), as it stands from time to time, shall apply and have legal force in, and form part of the law of the Abu Dhabi Global Market.⁷⁰

⁶¹ Dubai Law No. 2/2025, Article 14. In addition to its default territorial jurisdiction, parties may agree to submit to the jurisdiction of the DIFC Courts as per Article 14(B). See Chapter 22.1 [Civil Proceedings: Court structure].

⁶² Chapter 4.2 [Effects of a Contract: Statutory limits].

⁶³ Chapter 10 [Decennial Liability].

⁶⁴ <http://www.difc.ae/laws-regulations>. The sources of law include, as a last resort, those of England and Wales, the birthplace of common law: DIFC Law No. 3/2004, Article 8(2). *The Industrial Group Limited v Abdelazim EL Sheikh EL Fadil Hamid* [2022] DIFC CA 005/006 in which the Court of Appeal considered the role of English law as a direct source of law in DIFC.

⁶⁵ DIFC Law No. 6/2004. This is based on the UNIDROIT Principles of International Commercial Contracts, a codification of common law, civil law and commercial contractual principles.

⁶⁶ DIFC Law No. 6/2005.

⁶⁷ DIFC Law No. 5/2005.

⁶⁸ DIFC Law No. 1/2008.

⁶⁹ UAE Federal Law No. 8/2004, UAE Federal Decree No. 15/2013, UAE Cabinet Resolution No. 4/2013 and Abu Dhabi Law No. 4/2013.

⁷⁰ Application of English Law Regulations 2015, Article 1(1).

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This has the effect of applying the English law rule of *stare decisis* or binding precedent.⁷¹ A regime similar to the DIFC exists in Qatar.⁷² The Qatar Financial Centre:

operates to international standards and provides a first class legal and business infrastructure ... the QFC's commercial and regulatory environment and systems conform to international best practices and are separate from and independent of the host Qatari systems.⁷³

Regulations enacted within the Qatar Financial Centre cover contracts, companies, arbitration, employment and insolvency, amongst others.

⁷¹ *AC Network Holding Ltd v Polymath Ekar SPV1* ADGMCA-2023-01.

⁷² Qatar Financial Centre Law No. 7/2005.

⁷³ www.complinet.com/qfcra.