The extent to which the Shari'a must be regarded as paramount in the jurisprudence of the United Arab Emirates (UAE) has been dealt with at some length in the first issue of this Quarterly. The long-awaited Civil Code provides a topical and important example of the increasing trend towards a reassertion of Islam in legislation and jurisprudence in the Islamic countries, and gives further emphasis, if such were needed, of the essentiality in all cases of an analysis of the extent to which the Shari'a may apply in any particular case.

In anticipation of the detailed analysis which follows, it may be said that the new Civil Code of the UAE is firmly based on Shari'a principles.

Before turning to a detailed analysis of the Civil Code it is relevant to consider shortly the recent legal history of the Gulf area as a whole. It is particularly relevant to recall that the British Crown exercised extraterritorial jurisdiction over, broadly, all non-Muslim foreigners in Kuwait, Bahrain, Qatar, and The Trucial States (now the UAE). To a lesser extent such jurisdiction also operated in Oman, although this was a special case and need not concern us here. No such jurisdiction operated in Saudi Arabia where there has remained throughout a virtually unalloyed adherence to the Shari'a, modified only by secular "regulations". The extraterritorial jurisdiction ended in Kuwait in 1961; and in the rest of the area in 1971. During the currency of the extraterritorial jurisdiction, the local or indigenous courts operated, of course, in parallel with British extraterritorial courts. In the former courts there was little written law. It is not surprising that the one book to be found at the right hand of, perhaps, every judge of such courts in the area was the Majella, the nineteenth century Ottoman "codification" of the Shari'a in the Hanafi School. The Majella was never promulgated expressly as law in any of the Gulf jurisdictions but in practice

1 See the article by the author "The States of the GCC: Sources of Law" in (1985) 1 ALQ 3; and at pp. 11 et seq.
2 Union Law No. 5/1985 issuing the Code of Civil Transactions for The United Arab Emirates, Gazette 158, December 1985. The Law was dated 15 December 1985 to come into force three months after its publication. In the absence of a precise publication date, it must be presumed that the Law came into effect at the latest, at the end of March 1986. The Code will be referred to in this article simply as "The Civil Code".
3 I use the words here in the French sense of court practice rather than the English sense.
4 See generally the article in 1 ALQ above cited: ibid. at p. 109; Ballantyne, Legal Development in Arabia, 1980, foreword by Professor Sir Norman Anderson at p. viii; and at pp. 109 et seq.; 121.
5 For a detailed account see Ballantyne, Commercial Law in the Arab Middle East: The Gulf States, Lloyd's of London Press, 1986.
became the *ad hoc* civil code in those jurisdictions. 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. In the event, Kuwait opted for the latter course and in its Commercial Code of 1961 took the bold step of recording the inapplicability of the Majella to modern commercial transactions and virtually the rejection of Shari'a principles to such transactions. This set the pattern for ensuing legislation in the rest of the area. The middle way was not considered: namely whether Shari'a principles might be adapted and newly codified to suit the modern needs of the State. In fairness it must be said that the latter solution presents immeasurable difficulties: firstly, certainly in Kuwait, time did not permit such an immense undertaking; secondly, it would have envisaged the facing, four-square, of what has been described elsewhere as the situation of an irresistible force against an immovable object; thirdly, it would have involved equally a consideration of whether the Shari'a can in fact be adapted to what the world has made of modern commerce. This embarrassing issue was similarly begged on the cessation of extraterritorial jurisdiction in the other Gulf States in 1971, and has continued to be so until recently. Now the realisation has dawned upon the Arab legislator that in avoiding the issue or, in particular, opting for occidental legislation in defiance of the Shari'a, he has been moving too far and too fast in the wrong direction in States which all have as their basic concept the constitutional principle of the Shari'a as *a*, or sometimes *the*, principle source of legislation. Pressures for a reversion to Shari'a principles in legislation are increasingly apparent. In Kuwait in 1980 the device was adopted of maintaining those principles largely in the Civil Code, while promulgating at the same time a Commercial Code which diluted the Shari'a in matters of Commerce. As will be apparent from the following analysis, the new UAE Civil Code hardly begs the question at all: it comes down four-square on the basis of the Shari'a.

There can be little doubt that the pressures to which reference has been made owe their origin in no small measure to increasing discontent in the Islamic countries at the imposition of laws which are regarded as "foreign" in concept, as distinct from the Shari'a which is, of course, a part of their innermost faith. There is a feeling that society, having "outgrown" the Majella in its present form, made the mistake of imposing law which the citizen feels to be alien, thus causing a split between society and the law and making the law "a burden rather than a source of confidence and respect." Legal scholars who make and expound the law found the gap ever widening, not only because of the people's coolness towards it, but because some of it

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7 Ballantyne, *Legal Development in Arabia*, op. cit., p. 121.
11 See the article by Mohammad Farouk Al Nabhaan in *El Araby* magazine, No. 299, October 1983 (Arabic).