THE STRUCTURE AND LAWS OF THE MIXED COURTS OF EGYPT*

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Introduction
We have considered in an earlier article** the origins of the Mixed Courts. The next stage is to look at their structure and place in the early Egyptian legal system in 1875. Starting with Jurisdiction, to determine the scope of the courts, this article deals with the Law of the Mixed Courts, followed by the Judiciary, with a look at the background and experience of the first members of the bench. It continues by considering the Mixed Court Bar and its influence, and then the Organisation of the Courts, to indicate the administrative basis of the system. This leads to the Parquet, and in Egyptian Sovereignty and the Mixed Courts the question of whether the courts were Egyptian or not, and whether they derogated from Egypt’s sovereignty, is reviewed.

Jurisdiction
The jurisdiction of the Mixed Courts may be viewed in two ways, by territory and by parties.

1. Jurisdiction by territory
The territorial jurisdiction was throughout the territory of Egypt. The Alexandria first instance, or District, court covered the Governorates of Alexandria and Rosetta, and the Moudiries of Behera and Gharbieh, together with the Western frontier territories. The Cairo first instance court covered the Governorate of Cairo, the Moudiries of Galiobieh, Giza, and Menoufieh, and Middle and Upper Egypt to the Sudanese border. The Mansourah District Court covered the Governorates of Damietta, El Arish, Canal and Suez, and the Moudiries of Charkieh, Dakelia, and the Eastern frontier territories.¹

Each court thus had a clearly defined area of operation, and the major cities of Cairo and Alexandria had their own court. Alexandria was also home of the Court of Appeal, situated there both because that city was Egypt’s major trading port and commercial centre, and also because the Mixed Court of Appeal, heading the Mixed Court hierarchy, was consequently further away from government and ambassadorial interference.

¹The Courts were finally disbanded in 1949.
**(1986) 1 ALQ 60, 220.
¹ Decree 28 Dec. 1875, Art. 4, Plan II; minor amendments were later made.
The grouping of all the courts in the Delta, and the absence of a court in Upper Egypt, was later to prove of some inconvenience and doubtless led to Mixed cases in Upper Egypt, when the cost of going to Cairo outweighed the sum or principle at stake, being decided by the Native Courts there with the parties' agreement. This was, however, of little concern in 1875. Almost all trade and commerce was in the Delta, and the Native Courts at that time were universally viewed with suspicion. It could not have been contemplated that the three Mixed Courts would be insufficient for all cases, and it would have been difficult to attract judges and staff to serve in Upper Egypt. The Sudanese troubles were still on, and the frontier area was regarded as unhealthy.

The territorial application of the courts over the whole country meant that the only limiting factor in their right to hear cases was the extent of jurisdiction by virtue of the parties.

2. Jurisdiction by parties

The purpose of the courts was to adjudicate in mixed cases. The terms "mixed courts", "mixed law", "mixed codes" and similar phrases serve to separate these new courts from other Egyptian legal institutions. There were four basic court systems in Egypt in 1875:

(a) Sharia courts, which had residuary jurisdiction over all cases not within the competence of other courts;
(b) The Meglis, or administrative courts of the ruler, for general regulations and crimes;
(c) Personal status courts—foreigners to their consuls, and non-moslem locals to mila or religious courts.
(d) The Mixed Courts.

It is therefore a matter of convenience to refer to the attributes of the new courts as "Mixed" but in fact, as all laws, courts and codes were Egyptian, the only mixed elements were the parties. Regardless of their actual nationality parties were subject to the uniform Mixed codes. Nevertheless, the term "mixed" does illustrate the courts' jurisdiction by virtue of the nature of the cases, and will be used throughout to identify the new courts and their various functions. It must be emphasised though that these were Egyptian courts.

The Mixed Courts had exclusive jurisdiction over civil and commercial litigation between natives and foreigners, and between foreigners of different nationalities, but this did not extend to personal status matters. These latter questions were decided by the courts of personal status, i.e., the relevant religious or consular courts. In addition to this uniformity of jurisdiction over mixed cases, the Mixed Courts had jurisdiction over all land and property transactions between foreigners of the same nationality.²

The only non-personal status matters still before the consular courts were therefore

² Art. 9, Règlement d'Organisation Judiciaire, hereinafter referred to as ROJ; "les actions réelles immobilières"—thus all actions regulating real property, no matter if classified procedurally as real or personal; this followed Art. 7 of the Italian Civil Code, and the firman of 16 June 1867 allowing foreigners to own property subject to local laws; Art. 5 Mixed Civil Code, hereinafter referred to as MCC.