A recent decision of the English Court of Appeal has once again highlighted the problems surrounding insurance transactions connected with Saudi Arabia. The plaintiff, Islamic Arab Insurance Co. (IAIC), is a company incorporated in the UAE, with representation in Saudi Arabia. The defendant, Saudi Egyptian American Reinsurance Co. (SEARCO), is registered in Panama and has its operational headquarters in the USA. IAIC insured certain risks in Saudi Arabia, and reinsured with SEARCO, through a major broker based in London. A loss occurred under the primary policy, and IAIC sought recovery under the reinsurance treaties. SEARCO disclaimed liability, and in 1985 IAIC issued a writ against them out of the High Court in London. Leave to serve the writ out of the jurisdiction was given ex parte. SEARCO appealed, and Steyn J granted a stay, on the condition that the Saudi courts would assume jurisdiction. He held, inter alia, that the treaties were governed by Saudi law.

SEARCO signed a deed of submission to the Saudi courts, but were referred to the Ministry of Commerce. In a letter to the Ministry, SEARCO stated that it would only agree to have the dispute heard by a judge with specialisation in the insurance field, and that the USA or the UAE, or possibly Switzerland, would be more appropriate fori. IAIC appealed from Steyn J's judgment to the Court of Appeal (Parker and Bingham LJJ), who allowed the appeal. Before commenting on the decision, I will discuss the peculiar position of insurance in Saudi Arabia:

The Shari'a and insurance

Saudi Arabia is one of the few countries where the Shari'a is applied in toto, without qualification or resorting to legal fictions. This is not merely a sentimental reverence for traditional values, but the constitutional cornerstone on which the Al Saud’s rule over the country that bears their name is based. In 1744 Muhammad ibn Saud and Muhammad ibn Abdul Wahhab made their now legendary pact to spread the latter’s message of a return to Islam in its pure, original form based on the Qur'an and the Sunna. Ever since, the political support received by the Al Saud from the people and Ulama of central Arabia has depended on the dynasty’s pledge to pursue the goal set by their forefather. Abdul Aziz ibn Abdul Rahman’s ability to rally the tribes to this...
cause resulted in the creation of the modern Kingdom of Saudi Arabia in 1932, which would not have been possible without approval and support from an often strong-willed Ulama,\textsuperscript{2} and until today no legislation may be passed without a thorough vetting from the Ulama. It is therefore constitutionally impossible for the Saudi Arabian Government to pass laws which would in any way undermine the Shari'a's authority.

However, the areas of commercial law where the Government cannot pass legislation\textsuperscript{3} to supplement the Shari'a in order to facilitate modern business operations are relatively limited.\textsuperscript{4} The business transactions most adversely affected in this context are banking and insurance. Much has been written about the Shari'a prohibition of riba, which, in Saudi Arabia, is interpreted to mean that no interest for whatever amount and in whichever form or guise may be paid or charged.\textsuperscript{5}

The position of insurance under the Shari'a is a more complex issue. Few persons go through life in the industrialised societies without being involved in some form of insurance transaction: wage earners must participate in state-run social insurance schemes, third party liability insurance is compulsory for motorised transport in most countries, and those with a little money to spare will normally invest in some form of life insurance. Put simply, insurance is a contract whereby the insurer agrees to indemnify the assured in respect of losses which he may suffer, in return for a premium. The premium amount is determined by the size and scope of cover, and particularly the risk factor: a 40-year-old Volvo driver with no past claims pays a much lower premium for his motor insurance than a 20-year-old Porsche driver. The insurer's objective is that premium income exceeds claims, so that he can make a profit. Of course, a prudent insurer does not simply collect premiums and pay claims, but will almost invariably invest a considerable proportion of premium income, and spread the risk by reinsuring with other insurers. Furthermore, not all insurance transactions are purely designed to re-allocate risk; many forms of life insurance are of an investment method rather than pure insurance, with the assured paying premiums over a fixed number of years and receiving a lump sum at the end of the period. And insurance for profit is by no means the only method of insurance: for several centuries interest groups have pooled their resources to effect mutual cover, without anyone profiting therefrom since insurer and assured are the same. Perhaps the best known form of mutual insurance in commerce is shipowners' protection and indemnity associations, also known as "P & I clubs",\textsuperscript{6} but recently the mutual principle has found wide appeal among many other forms of businesses, too.\textsuperscript{7}

Shari'a scholars have several complaints against insurance in general, and against insurance for profit in particular:


\textsuperscript{3} Legislation in Saudi Arabia is not referred to as "law" (\textit{qanun}), but as "regulation" (\textit{nizam}).

\textsuperscript{4} For the extensive commercial legislation of Saudi Arabia see Karam, \textit{Business Laws of Saudi Arabia} (London).

\textsuperscript{5} A particularly thorough and useful discussion of riba under Shari'a can be found in Nabil A Saleh, \textit{Unlawful Gain and Legitimate Profit in Islamic Law} (Cambridge, 1986).

\textsuperscript{6} Coghlin, "Protection & Indemnity Clubs" [1984] LMCLQ 403.

\textsuperscript{7} In particular professional indemnity insurance on a mutual basis is becoming increasingly popular, but airlines and several major multinationals are now also arranging mutual insurance.