UNFAIR DISMISSAL STUDY IN OMANI LABOUR LAW
WITH EMPHASIS ON THE RELEVANCE
OF SHARI'A

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by

FAWZI MUBARAK AL KIYUMI

A thesis submitted to the University of Bedfordshire in partial fulfilment of
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FAWZI MUBARAK AL KIYUMI

ABSTRACT

The aim of this research is to investigate the implications of unfair dismissal within the boundaries of Omani labour law with particular relevance to the role of Shari’a. Shari’a itself does not provide a legal code, contract law, or a law of tort as yet but it does provide examples of applicable rules, supported with analogies, to deal with employment.

The basic principles of forming a contract in Omani Commercial Law; English Law and Shari’a are similar; however, they differ in application. Likewise, the principles of the employment contract are similar with a few differences being seen in implementation; specifically with regards to unfair dismissal issues.

This research used a qualitative approach that has enabled the generation and analysis of data from multiple sources including literature review, semi-structured interviews, court cases, Shari’a implied employment contract principles as found in the Qur’an, the Sunnah and relevant Islamic texts.

The research shows that the main reasons for employee dismissal can be categorised into: poor performance, disobedience regarding the contractual rules and regulations, absenteeism, aggressive behaviour and an extreme critical attitude in the work-place. From the employee’s perspective, the main reasons for filing cases at Oman Courts were to seek justice, to obtain fair compensation or to highlight the moral values that form the Islamic code of practice. In contrast the employers considered seeking financial gain and revenge as the motivating factors for employees for filing court cases. There obviously is a mismatch to the reasons
by each side and the key findings from this research suggest that there is a modest impact of the legal aspects of Shari’a on the Omani Law of Contract and the Employment Law though it is normally conceived by the public that Shari’a is the fundamental law that governs all aspects of muslim life. There needs to be an overwhelming expectation and requirement to develop procedures in the Omani Employment Law that expedite the process of dealing with dismissal cases and the propositions of establishing an arbitration committee may seem to be a way forward. In addition, the establishment of a Labour Court is paramount as at present the employment cases are heard in the Commercial Courts. This will align with the approach taken in the English system where the Employment Tribunals and the Employment Appeal Tribunal oversee cases and minimize delays in achieving justice. There is also a strong argument that there needs to be a review of Article 40/35/2003 that deals with employer rights to dismiss the worker without prior notice in order to establish a solid foundation for justice in the Sultanate of Oman.

Unfair dismissal is a phenomenon that impacts on the employee, the employer, the employee’s wider family network and society. This study provides an in-depth understanding and insight into these impacts and into the capacity of Shari’a impact to address modern employment issues in relation to the labour laws and secular laws being used in Oman today.
Declaration

I declare that this thesis is my own unaided work. It is being submitted for the degree of Doctor of Philosophy at the University of Bedfordshire.

It has not been submitted before for any degree or examination in any other University.

Fawzi Mubarak Al Kiyumi

Signature:

Date: December 2012
Acknowledgement

First and foremost, all praise is due to Allah who gave me the strength and patience, guiding me along the right path to complete this project.

I would like to first of all thank my advisor and Director of Studies, Professor Angus Duncan, for his guidance, instruction, and patience throughout this long research journey. He was an excellent supervisor and stimulating to work with. Professor Angus has been my director of studies and regular correspondent since 2001 and has constantly offered me valuable advice. Without his encouragement and guidance, I could not have completed this dissertation. He was always willing to discuss progress, to sometimes proofread and mark my papers and gave me direction by asking pertinent and inquisitive questions.

I would like to also particularly express my gratitude to my research committee member, Dr. John Lodge, lecturer in Employment Law at Luton Business School, for his invaluable contribution and sound advice and who retired before this thesis was completed. I must extend my sincere thanks to Professor Mohamed Branine, who accepted, at a late stage, to join the supervisory team and has been committed to providing full support, advice and guidance that has added great value to my research.

Several others contributed to this work. My external advisors and mentors have been incredibly supportive. Professor William M Ballantyne has been a reliable collaborator since I asked him to supervise this work in the early spring of 2001. He has been an excellent supervisor who enlightened my perspective on the role of Shari’a in the legal systems of Islamic countries.

I would like to also say a big thank you to all the people who agreed to be interviewed by me for this thesis and who so willingly participated.

Finally, I would like to acknowledge the support of the Luton Business School in leading the supervisory team, especially Professor Mary Malcolm, for their valuable advice and assistance.

Lastly, and most importantly, I wish to thank my wife for her love, support, forbearance and her encouragement along the journey, nevertheless my family, children, brothers, sisters, grandfather and many of my friends for their unconditional support and encouragement. They stood by me throughout the long dissertation process and listened to me when I expressed complaints or frustrations.
Table of Contents

List of Abbreviations ............................................................................................................... 13
List of Terms .......................................................................................................................... 14

CHAPTER ONE ..................................................................................................................... 17
1. Introduction ......................................................................................................................... 17
1.1 The Rationale for the Study .......................................................................................... 17
1.1.1 Challenges of legal terminology Arabic - English .............................................. 20
1.1.2 Relevance of Shari’a ......................................................................................... 20
1.2 Statement of the Problem and Research Question ................................................... 22
1.3 Aim and Objectives of the Study ............................................................................... 23
1.3.1 Objectives .......................................................................................................... 23
1.3.2 Research questions ................................................................................................... 24
1.4 The scope of the study ............................................................................................... 24
1.5 The conduct of the study ...................................................................................... 25
1.6 The Structure of the thesis .................................................................................. 26

CHAPTER TWO .................................................................................................................. 28
2. Employment Law: Conceptual and Theoretical Review of Unfair Dismissal and Contrast with English law ........................................................................................................... 28
2.1 Introduction ................................................................................................................. 28
2.2 Contract Law ....................................................................................................... 28
2.3 The Freedom of Contract ..................................................................................... 29
2.4 Types of contracts .................................................................................................... 31
2.5 Employment Contract ............................................................................................ 32
2.5.1 Essential Elements of the Employment Contract ....................................... 33
2.6 The Role of Acceptance ......................................................................................... 35
2.7 Termination of Employment Contract .................................................................... 37
2.7 Unfair Dismissal ...................................................................................................... 39
2.8 Aspects of English unfair dismissal law in Omani Labour law .............................. 40
2.9 Conclusion .............................................................................................................. 43

CHAPTER THREE .............................................................................................................. 45
3. Employment Law in Shari’a: The Concept of Contract in Islam ............................... 45
3.1 Introduction .............................................................................................................. 45
3.2 The Meaning of Shari’a ....................................................................................... 45
3.3 Shari’a in Practice .................................................................................................... 46
3.4 Shari’a as a basis for Islamic law ............................................................................. 47
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.5</td>
<td>The Role of Shari’ā in informing legislation in Arab states</td>
<td>48</td>
</tr>
<tr>
<td>3.6</td>
<td>Referencing in Islamic Law</td>
<td>62</td>
</tr>
<tr>
<td>3.6.1</td>
<td>Shari’ā Methods for deriving rulings from the sources</td>
<td>65</td>
</tr>
<tr>
<td>3.7</td>
<td><em>Shari’ā</em> General Theory of Contract</td>
<td>71</td>
</tr>
<tr>
<td>3.8.1</td>
<td>Principles of Shari’ā Contract</td>
<td>77</td>
</tr>
<tr>
<td>3.8.2</td>
<td>Contract Classification under Shari’ā</td>
<td>79</td>
</tr>
<tr>
<td>3.8.3</td>
<td>Offer and Acceptance under Shari’ā Contracts</td>
<td>82</td>
</tr>
<tr>
<td>3.8.4</td>
<td>Freedom of Contract in Shari’ā</td>
<td>84</td>
</tr>
<tr>
<td>3.8.5</td>
<td>Contracts forbidden under Islamic Law</td>
<td>85</td>
</tr>
<tr>
<td>3.8.5.1</td>
<td>Riba (Usury)</td>
<td>87</td>
</tr>
<tr>
<td>3.8.5.2</td>
<td>Exclusion clauses &amp; Special Terms</td>
<td>89</td>
</tr>
<tr>
<td>3.8.6</td>
<td>The Need for Employment Contract</td>
<td>90</td>
</tr>
<tr>
<td>3.10</td>
<td>Employment Contract in <em>Majallat al Ahkam al Adaliyyah, Sharh Al Majalla</em></td>
<td>91</td>
</tr>
<tr>
<td>3.11</td>
<td>Rules of Employment Contract under Shari’ā</td>
<td>96</td>
</tr>
<tr>
<td>3.11.1</td>
<td>Arabic Terminology in an Employment Contract</td>
<td>98</td>
</tr>
<tr>
<td>3.11.2</td>
<td>Definition of <em>Ijara</em> (Leasing contract)</td>
<td>99</td>
</tr>
<tr>
<td>3.11.3</td>
<td>Using the Terms <em>Ijara</em> or <em>Kirah</em></td>
<td>102</td>
</tr>
<tr>
<td>3.12</td>
<td>Employment in the Qur’an and the Sunnah</td>
<td>103</td>
</tr>
<tr>
<td>3.12.1</td>
<td>Employment as stated in the Qur’an</td>
<td>103</td>
</tr>
<tr>
<td>3.12.2</td>
<td>Employment as stated in the Sunnah</td>
<td>108</td>
</tr>
<tr>
<td>3.12.6</td>
<td>Discussion of <em>Ijara</em> theme under Shari’ā</td>
<td>112</td>
</tr>
<tr>
<td>3.13</td>
<td>End of Service Benefit (Indemnity)</td>
<td>123</td>
</tr>
<tr>
<td>3.14</td>
<td>Shari’ā stands on Labour Exploitation</td>
<td>125</td>
</tr>
<tr>
<td>3.15</td>
<td>A Shari’ā view on Modern Employment Concepts</td>
<td>126</td>
</tr>
<tr>
<td>3.15.1</td>
<td>Shari’ā Views on Minimum Wage</td>
<td>127</td>
</tr>
<tr>
<td>3.15.2</td>
<td>Annual increment</td>
<td>129</td>
</tr>
<tr>
<td>3.15.3</td>
<td>Annual leave</td>
<td>129</td>
</tr>
<tr>
<td>3.15.4</td>
<td>Future employment / <em>Ijara</em></td>
<td>131</td>
</tr>
<tr>
<td>3.16</td>
<td>Condition applied for the benefit</td>
<td>132</td>
</tr>
<tr>
<td>3.16</td>
<td>Conditions of <em>Ijara</em> (rent / employment)</td>
<td>134</td>
</tr>
<tr>
<td>3.18</td>
<td>Conditions of Obligation</td>
<td>136</td>
</tr>
<tr>
<td>3.19</td>
<td>Private Employee and Public Employee</td>
<td>136</td>
</tr>
<tr>
<td>3.19.1</td>
<td>Private employee</td>
<td>137</td>
</tr>
<tr>
<td>3.19.2</td>
<td>Public employees</td>
<td>138</td>
</tr>
<tr>
<td>3.20</td>
<td>Time and period of contract</td>
<td>139</td>
</tr>
</tbody>
</table>
5.8 Planning the interview .................................................................187
5.9 Design of questionnaires ............................................................188
5.10 Pilot Study ................................................................................189
5.11 Main survey (design informed by the pilot study) ......................189
5.12 Data Collection ..........................................................................190
5.12.1 Interview ..............................................................................191
5.12.2 The Questionnaire .................................................................193
5.13 Analysis of data ..........................................................................194
5.13.1 Analysis of Court Cases .........................................................198
5.13.2 Analysis of Interview data .......................................................198
5.14 Validity and Reliability ..............................................................199
5.15 Conclusion .................................................................................200

CHAPTER SIX ..................................................................................202
6.1 Introduction .................................................................................202
6.2 Findings from Court Cases ..........................................................203
6.3 Findings from the semi-structured questionnaires .......................204
6.3.1 Background information ..........................................................204
6.3.2 Information on the Employment Contract .................................206
6.3.4. Responses to Questions in Relation to Labour Law vs. Shari’a ....217
6.4 Summary of the main findings ......................................................234
6.4.1 Main Findings from the Court Cases .........................................234
6.4.2 Main Findings from the semi-structured interviews .................235
6.5 Conclusion .................................................................................237

CHAPTER SEVEN .............................................................................240
7. Discussion and Analysis ..............................................................240
7.1 Introduction .................................................................................240
7.2 The main reasons for employee dismissal ....................................241
7.3 Employees’ Entitlements in Employment Contract .......................243
7.4 The validity of a company’s practiced disciplinary procedure ........244
7.5 The quality of judgment awarded in the court case under the current law ..............................................................245
7.6 Expectations of both parties in dispute .......................................245
7.7 Time and Cost ............................................................................246
7.8 Financial gain versus morality ....................................................250
7.9 The clarity of information in employment contracts and employment terms and conditions ....................................................252
7.10. Level of awareness of Shari’a Employment law ..............................................254
7.11. Flaws - miscarriage of justice of the current legislation .................................255
7.12. Conclusion ...........................................................................................................258

CHAPTER EIGHT .............................................................................................................259
8. Summary, Conclusion and Recommendations ......................................................259

8.1 Summary and conclusion ......................................................................................259
8.1.1 The Influence of Shari’a on Oman Law of Contract...........................................260
8.1.2 Evidences of unfair dismissal in Oman ............................................................261
8.1.3 Inconsistency in the application of the law .......................................................261
8.1.4 There is a need for a modern employment contract ..........................................262

8.2 Reconsideration of Research Objectives ..............................................................262

8.3 Recommendations ..................................................................................................265

8.4 Contribution to Knowledge .....................................................................................267

8.5 Limitations of the Study ..........................................................................................268

8.6 Proposals for further study ......................................................................................269

Bibliography ..................................................................................................................271

Appendixes ....................................................................................................................278
Appendix 1 References in Arabic scripts ......................................................................278
Appendix 2 Definition of Wilayat al Madhalim, Diwan al Madhalimi .........................289
Appendix 2 List of Labour dispute cases review at Higher Court 2005 ..........................291
Appendix 3 Summary of Court Cases Verdicts .............................................................293
Appendix 4 Unfair dismissal interview questionnaire Sample of Data Analysis ..............295
Appendix 5 Case Study Research ..................................................................................331
Appendix 6 Unfair dismissal interview questionnaire Sample ......................................386
List of Tables and Figures

Table 1.1 Labour Dispute Cases Registered in the Ministry of Manpower .......... 18
Table 3.1 Articles of the Constitutions of Arab Countries.................................52
Table 3.2 Comparison between percentage of population and the wording used to
describe Shari’a influence on legislation..............................................................55
Table 3.3 Articles in the constitution: North and South Yemen and after unification 57
Table 3.4 The four pillars of analogy of referencing in Islamic Law.......................65
Table 5.1 Data Analysis matrix Sample used: .................................................... 196
Table 5.2 A simple qualitative thematic coding analysis: ................................. 196

Figure 3.2 Summary of the principles that govern contracts under Shari’a........... 72
Figure 3.3 Shari’a Employment Contract............................................................ 115
# List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full phrase</th>
<th>Corresponding Arabic</th>
</tr>
</thead>
<tbody>
<tr>
<td>ET</td>
<td>Employment Tribunal</td>
<td></td>
</tr>
<tr>
<td>EAT</td>
<td>Employment Appeal Tribunal</td>
<td></td>
</tr>
<tr>
<td>ERA</td>
<td>Employment Rights Act 1996,</td>
<td></td>
</tr>
<tr>
<td>ETA</td>
<td>Employment Tribunals Act 1996</td>
<td></td>
</tr>
<tr>
<td>GCC</td>
<td>Gulf Cooperation Council</td>
<td>المجلس التعاون لدول الخليج العربية</td>
</tr>
<tr>
<td>IIUM</td>
<td>International Islamic University Malaysia</td>
<td></td>
</tr>
<tr>
<td>GF</td>
<td>Gulf Air</td>
<td></td>
</tr>
<tr>
<td>HR</td>
<td>human resource</td>
<td></td>
</tr>
<tr>
<td>ILO</td>
<td>International Labour Office</td>
<td></td>
</tr>
<tr>
<td>KSA</td>
<td>The Kingdom of Saudi Arabia</td>
<td>المملكة العربية السعودية</td>
</tr>
<tr>
<td>p.b.u.h</td>
<td>often say after saying (or hearing) the name of one of the Prophets of Islam</td>
<td>صلى الله عليه وسلم sallallahu alaihi wasallam</td>
</tr>
<tr>
<td>PBUH</td>
<td>Peace be upon him’ a phrase used by practising Muslims</td>
<td>صلى الله عليه وسلم sallallahu alaihi wasallam</td>
</tr>
<tr>
<td>UK</td>
<td>The United Kingdom</td>
<td></td>
</tr>
<tr>
<td>YAR</td>
<td>Yemen Arab Republic</td>
<td>الجمهورية العربية اليمنية</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
<td>Corresponding Arabic</td>
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<tr>
<td>Akhlaq</td>
<td>is Arabic word refers to behaviour, temperament, and manners of the way people carry their actions.</td>
<td>الاخلاق</td>
</tr>
<tr>
<td>Al Ain</td>
<td>Literally in English means the eye. It refers to “subject matter”, the item or the goods.</td>
<td>العين</td>
</tr>
<tr>
<td>Al Ijarah</td>
<td>Lease agreement</td>
<td>الإجارة</td>
</tr>
<tr>
<td>Aqd Ghar Lazima</td>
<td>Contracts not obligatory</td>
<td>عقد غير لازم</td>
</tr>
<tr>
<td>Aqidah</td>
<td>faith &amp; belief</td>
<td>عقائد</td>
</tr>
<tr>
<td>Aqd</td>
<td>Contract</td>
<td>عقد</td>
</tr>
<tr>
<td>asl</td>
<td>original case</td>
<td>اصل</td>
</tr>
<tr>
<td>Ayat</td>
<td>verses</td>
<td>آية</td>
</tr>
<tr>
<td>Bay Al Alin</td>
<td>Sale of the main subject</td>
<td>بيع العين</td>
</tr>
<tr>
<td>bay’a al mudtarr</td>
<td>sales under coercion compelled sale</td>
<td>بيع المضطر</td>
</tr>
<tr>
<td>far’a</td>
<td>Parallel case</td>
<td>قرع</td>
</tr>
<tr>
<td>Faskh</td>
<td>termination or repudiating of the contract</td>
<td>فسخ</td>
</tr>
<tr>
<td>fiqh</td>
<td>is Islamic jurisprudence</td>
<td>الفقه</td>
</tr>
<tr>
<td>fouholi</td>
<td>unsound mind</td>
<td>الفصولي</td>
</tr>
<tr>
<td>haddiiah, hibah</td>
<td>Gift</td>
<td>هبة, هدية</td>
</tr>
<tr>
<td>Hadith</td>
<td>Is reported sayings, actions, and traditions of Prophet Mohammad. A Hadith is a saying of Muhammad or a report about something he did</td>
<td>الحديث</td>
</tr>
<tr>
<td>Haj</td>
<td>pilgrimage</td>
<td>الحج</td>
</tr>
<tr>
<td>hukm</td>
<td>The rule of the original case</td>
<td>حكم</td>
</tr>
<tr>
<td>Ibadat</td>
<td>worship</td>
<td>عبادات</td>
</tr>
<tr>
<td>ibn al sabeel</td>
<td>Wayfarer: a person who on a journey and end up with no means to return home.</td>
<td>ابن السبل</td>
</tr>
<tr>
<td>ibra</td>
<td>off-set the debt</td>
<td>إبراء</td>
</tr>
<tr>
<td>Ijab</td>
<td>Offer</td>
<td>إيجاب</td>
</tr>
<tr>
<td>Term</td>
<td>Arabic Translation</td>
<td>English Translation</td>
</tr>
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<td>---------------------------</td>
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<td>--------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Ijtihad</td>
<td>إجتهاد</td>
<td>Personal effort by qualify person based on reasoning to reach a decision in Islamic Shari'a in a matter that are NOT covered by the express words of Qur'an, Hadith, or has been determined by Ijma. There will be no Ijtihad with clear guidance from the Qur'an and the Hadith.</td>
</tr>
<tr>
<td>illsah</td>
<td>العلة</td>
<td>Effective cause</td>
</tr>
<tr>
<td>Iqallah</td>
<td>إقالة</td>
<td>Termination of the contract and cancel based on consent of the parties.</td>
</tr>
<tr>
<td>Khala'a</td>
<td>خلع</td>
<td>wife’s right to end marriage</td>
</tr>
<tr>
<td>Khiyar al Majalis</td>
<td>خيار المجالس</td>
<td></td>
</tr>
<tr>
<td>Kirah</td>
<td>الأكراه</td>
<td>Lease: a term used to express the lease agreement of un-minded things, (i.e., hours, shop etc).</td>
</tr>
<tr>
<td>La darar Wa-la dirar</td>
<td>لا ضرر ولا ضرار</td>
<td>No injury is to be caused and none is to borne</td>
</tr>
<tr>
<td>Majallat al Ahkam al Adaliyyah:</td>
<td>مجلة الأحكام العدالة</td>
<td>the Ottoman Empire civil Code 1922</td>
</tr>
<tr>
<td>Majallat al Ahkamn al Shar'iyyah</td>
<td>مجلة الأحكام الشرعية المملكة العربية السعودية</td>
<td>The Saudi Arabia law 1981</td>
</tr>
<tr>
<td>qard</td>
<td>قرض</td>
<td>Loan</td>
</tr>
<tr>
<td>qirats</td>
<td>قيراط</td>
<td>The carat is a unit of weight used for measuring of precious stone.</td>
</tr>
<tr>
<td>Qubool</td>
<td>قبول</td>
<td>Acceptance</td>
</tr>
<tr>
<td>Riba</td>
<td>الربا</td>
<td>Riba means Interest. Riba is forbidden in Islamic economic jurisprudence fiqh</td>
</tr>
<tr>
<td>Rukn Al Aqdm</td>
<td>ركن العقد</td>
<td>Base/Foundations of Contracts</td>
</tr>
<tr>
<td>Shari'a</td>
<td>الشريعة الإسلامية</td>
<td>Shari’a is the set of rules derived from both the Holy Qur’an and the Sunnah of the Prophet (peace be upon him)</td>
</tr>
<tr>
<td><strong>Sunnah</strong></td>
<td>Prophet Mohammed way of Life includes teachings and actions.</td>
<td></td>
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<tr>
<td><strong>Sunnī and Shi‘īte</strong></td>
<td>The two main groups of Islam, of which the Sunnis are the majority.</td>
<td></td>
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<tr>
<td><strong>Sura</strong></td>
<td>Chapters in Qur‘an</td>
<td></td>
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<tr>
<td><strong>Tazeer</strong></td>
<td>Punishment, discipline</td>
<td></td>
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<tr>
<td><strong>The Qur‘an</strong></td>
<td>The Qur‘an is the Last and Final Word of Allah Almighty to all of humankind as communicated to the Prophet Muhammad on a number of different occasions. The Qur‘an is composed of verses (Ayat) that make up 114 chapters (suras).</td>
<td></td>
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<tr>
<td><strong>Usul al fiqah</strong></td>
<td>The science of Source Methodology in Islamic Jurisprudence</td>
<td></td>
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<tr>
<td><strong>waqf</strong></td>
<td>Endowment</td>
<td></td>
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<tr>
<td><strong>Wasiyyat</strong></td>
<td>Will</td>
<td></td>
</tr>
<tr>
<td><strong>Wilayat al Madhalim, Diwan al Madhalmi</strong></td>
<td>a system of traditional justice used by Arabs with the concurrence of Islamic law. This system is concerned with enforcing justice for the persons of a poorer or weaker social status to ensure that rich and powerful people in society can also be tried.</td>
<td></td>
</tr>
<tr>
<td><strong>Yameen Hasism</strong></td>
<td>Decisive or Determining Oath</td>
<td></td>
</tr>
</tbody>
</table>
CHAPTER ONE

1. Introduction

This chapter provides a general overview and introductory information about the rationale for the study, the problem and the research questions, the aims and objectives of the study, and the structure of the thesis. In this chapter, the relevance of Shari’a to this study is explained.

Every day many employees leave their jobs by mutual agreement or their employers dismiss them. Regulatory authorities and legislative bodies in every society strive to manage and stabilise social welfare by introducing regulations and laws to protect the interests of both parties. One of these regulations is the labour law governing the employee-employer relationship, which includes provisions of fair employment termination or dismissal procedures. In general, the aim of most codes of unfair-dismissal regulations is to protect the weaker party in this equation against hardship resulting from unfair termination.

1.1 The Rationale for the Study

The dismissal of staff is a sensitive and complex matter. This thesis is intended to provide a comprehensive analysis of unfair dismissal under Omani labour law with particular relevance to the role of Shari’a from a Sunni perspective. In Oman, every year, thousands of dismissal cases are registered in the labour department court. Settlement is reached in most cases at the Department of Labour with only a third transferred to a commercial court for judgement. Two-thirds of these cases are related to expatriate employees.

From Table 1.1 below, it can be noted that in 2003 the number of cases filed at the Dispute Department in the Ministry of Labour was 4,590 cases. An amicable settlement was reached for 3,121 such cases at the Department of Labour with only 1,469 being transferred to a commercial court for judgement. A third of these cases were related to Omanis with the rest being for expatriate employees.
Generally, the trend indicates a growth of labour-dispute cases registered every year in the labour department that are transferred to the court. Data on the number of successful cases is not available. According to the Ministry of Justice, in 2004, the number of disputes that came to the Omani court reached 2,707 cases.

Table 1.1 Labour Dispute Cases Registered by the Ministry of Manpower; Muscat, Sultanate of Oman

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of dispute cases filed in the Labour Court</th>
<th>Number of cases transferred to court</th>
<th>Number of labour disputes reviewed at court</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>4165</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>1998</td>
<td>3072</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>1999</td>
<td>4307</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>2000</td>
<td>4356</td>
<td>1189</td>
<td>NA</td>
</tr>
<tr>
<td>2001</td>
<td>4714</td>
<td>1496</td>
<td>2011</td>
</tr>
<tr>
<td>2002</td>
<td>5028</td>
<td>2011</td>
<td>2675</td>
</tr>
<tr>
<td>2003</td>
<td>4590</td>
<td>1469</td>
<td>2427</td>
</tr>
<tr>
<td>2004</td>
<td>NA</td>
<td>NA</td>
<td>2707</td>
</tr>
<tr>
<td>2005</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>2006</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>2007</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>2008</td>
<td>4592</td>
<td>1341</td>
<td>596</td>
</tr>
<tr>
<td>2009</td>
<td>3228</td>
<td>865</td>
<td>865</td>
</tr>
<tr>
<td>2010</td>
<td>3016</td>
<td>927</td>
<td>1031</td>
</tr>
<tr>
<td>2011</td>
<td>8169 *</td>
<td>2059</td>
<td>NA</td>
</tr>
</tbody>
</table>

Source Ministry of Manpower annual report / Oman and Ministry of Justice / Oman

* Year 2010 Labour disputes 1130 Omani and 1886 Expats
* Year 2011 Labour disputes 4500 Omani and 3669 Expats (Effects of the Arab Spring)

The table above shows number of cases filed in the Labour Department, (that collates data for ministerial considerations) number of cases transferred to court and subsequently number of labour disputes reviewed at court. The cases filed in the Labour Department doubled between 1997 – 2011.
My interest in the topic started in early 1999 after the collapse of the Muscat Stock Market, when companies had to restructure and downsize operations. At the time of the collapse I was working at Gulf Investment Services Company and I was directly involved in the dismissal of 50% of the workforce. A few months later, and in some part due to the experience of this dismissal process, I decided to leave and join the Airline industry in the capacity of Personnel Manager. I commenced my new assignment in the airline industry in September 2001, a tumultuous year for the Aviation Industry. Unfortunately, my first task was yet again to reduce manpower by 15%. The process was exhausting and emotionally stressful and consequently led to my interest in the study of dismissal procedures.

A number of subsequent issues of interest contributed to the choice of this research topic. Firstly, the provision of a just and fair employment environment is the ultimate goal of every society but this environment is made more complex when dealing with cross cultural situations as well as different values and belief systems. Secondly, the termination of employees is, from my experience, unavoidable in corporate life. Indeed, between 2008 and 2009, the global financial crunch affected numerous organizations resulting in the introduction of many downsizing measures. On 28 May 2009, the International Labour Office (ILO)\(^1\) issued a press release reporting that 50 million job losses were projected worldwide by the end of the year.

Globally, therefore, the concept of unfair dismissal has become a major concern. In each society, the justice system is expected to resolve conflicts with the principle of resolution stemming from deep rooted values and beliefs. In Gulf countries, and in the Islamic world, the influence of Shari’a is of foremost importance. Although Shari’a forms the basis of Islamic legislation its role has not been fully explored. And many dismissed employees have experienced emotional stress that has led them to claim unfair dismissal. These aspects and their relationships sparked the motivation for this research.

Labour laws are usually influenced by the country’s highest law: the constitution. In Oman and other Arab counties the constitution is influenced theoretically by Shari’a which, in practice, is the driving force of every aspect of day-to-day life in

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Muslim society. The challenge of this research is to uncover employment laws and guidance under Shari’a and determine how Shari’a contributes to the legal code in Oman. Hence, it is my overall intention to research the effect of Shari’a on the labour law in respect to employability and dismissal of workers with the least effect on the profitability of the company, the political, social and cultural variables within the Sultanate of Oman.

1.1.1 Challenges of legal terminology Arabic - English

The lengthy research journey presented many challenges. Firstly, I encountered difficulties with language. For example: the English legal terminology is different from Arabic, and there is a lack of equivalent terms in Arabic and vice versa. Legal issues are therefore extremely difficult to interpret and it is one of the reason as to why the Omani Judicial system only accepts documents translated back in to Arabic as Arabic is the only language accepted in the Courts. Engaging in to the English legal system provides a broader context for the study of unfair dismissal in Oman and the relevance of Shari’a. The research is equally a comparative study of these two very different systems both logistically and in the application. Each system uses a different linguistic structure and different terminology. [Islamic Fiqh2 literature covers all subjects including employment, Ijarah, and court cases which are all written in Arabic – this sentence does not make sense!!!]. For this study many of the original rules, concepts and terminologies when translated from Arabic to English may have lost the accuracy and specificity; this may equally be put down to cultural differences. Whenever possible, a generic interpretation of the meaning has been used and/or provided.

1.1.2 Relevance of Shari’a

Legislation is very much influenced by constitutions. It is imperative, therefore, to examine the constitutions of Arab countries, including Oman, and to study the articles of those constitutions in order to determine the effect and influence of Shari’a on legislation. For this research, the situation in the Arab countries was

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2 Al Sayyid Sabiq, *Fuqha us – Sunnah*, translators: Muhammad Sa’eed Dabas & Jamal al Din M. Zarabozo, Egypt, Islamic Printing & Publishing defines (Fiqh: play one’s intellect and ability to exercise analogical reason )
analyzed and the resulting discussions compiled into two sets of groups. Firstly countries that mention the word Shari’a in their constitutions and secondly countries whose constitutions do not refer to Shari’a. For example, Oman’s constitution of November 1996 is unique in its approach to how it incorporates Shari’a as is illustrated in the following articles:

Article 2: *Islam is the religion of the state and Arabic its official language.*

*Islamic jurisprudence is the principal source of legislation.*

The Constitution defines Oman as an Islamic State with Islamic Shari’a as the basis of legislation (Article 2). Articles 10 and 11 stress the relevance of Shari’a. Article 10 lays suitable foundations for the establishment of a genuine Shura Consultation, based on national heritage, with values founded on Islamic Shari’a, while incorporating such contemporary manifestations as appropriate. Article 11 states that Inheritance is a right governed by the Shari’a of Islam. (see Article 10 and 11 below):

Article 10  [Political Principles]

The political principles are:

- … *compliance with international and regional charters and treaties, and the generally recognised principles of international law, in a manner conducive to the promotion of peace and security between States and Peoples.*

Article 11  [Economic Principles]

-…*Inheritance is a right governed by the Shariah of Islam …*

The influence of Shari’a evolves around two themes. The first theme concerns whether Shari’a is the basis of legislation. Is Shari’a the sole source of legislation with all laws derived from the *Islamic fiqh*, or is Shari’a one of many sources of legislation (not the sole source)?

The second theme regards the influence of Shari’a on the constitution. If the view is adopted that considers Shari’a as the sole source of legislation, then it follows that it is unconstitutional to conduct any activities contradicting the principles of Shari’a. This leads to the need to analyse every law, including labour law as part of commercial law, to determine its compatibility or divergence from Shari’a. A
dilemma therefore arises when a court decides that an act in question conflicts with Shari’a law but does not conflict with constitutional law - it finds that act unconstitutional for example, interest rates in the banking system which are acceptable under the commercial law of the constitution but which conflict with Shari’a.

1.2 Statement of the Problem and Research Question

The Omani labour market, comprises more than 963 thousand expatriate workers and more than 250 thousand Omani workers. Annual grievances recorded in the Ministry of labour exceed 4000 cases a year. The main problem investigated in this research is related to the claims of unfair dismissal cases in Omani’s commercial law taking into consideration the influence of Shari’a. The study considers the effects and implications of the law on both categories of employees in Oman: expatriates and nationals.

The Omani labour law governing the employee-employer relationship includes provision for fair employment termination and dismissal procedures and it is designed to protect the weaker party against unfair termination of contract but there exist issues in the general code of practice.

This study addresses the problem experienced by dismissed employees, employers and society.

Because the code of practice is not specifically spelt out in Shari’a there exists a problem in implementing especially in the cases of employment dismissal as it is outside the scope of fairness as prescribed in Shari’a. Employment contract as a commercial activity falls under contract law and governed in Oman by Commercial Law Decree 55/1990 which restricts its provision to being a decree (royal ascent that must be obeyed) and secondly by the rules of custom where particular or local custom taking preference over general custom; thirdly in the absence of custom, the provisions of Islamic Shari’a then apply and in the final instance then natural rules of justice apply. This approach is very different from that of English law.

3 Ministry of Manpower Annual Report 2010 - Oman
Many cases of dismissal do not make reference to Shari’a principles when resolving disputes or conflict but rather refer to the provision of Labour Law Royal Decree 35/2003 and the Commercial Law Royal decree 55/1990 which indicates that the principles provided by Shari’a are being used as a last resource for conflict resolution.

1.3 Aim and Objectives of the Study

The aim of this research is to investigate the implications of unfair dismissal of workers within the boundaries of the Commercial Law of the Sultanate of Oman. The focus is on the evaluation of the role of Shari’a with regard to law in the Sultanate and its implementation on unfair dismissal. The research examines the relationship between Shari’a and the Omani Labour Law in order to uncover the context of how Shari’a influences the legal system in Oman. Therefore, it aims to identify guidelines for developing a Shari’a-based employment contract accommodating the needs of a contemporary labour force and recommend a modern Shari’a employment contract.

1.3.1 Objectives

To achieve the aim stated above, the following objectives have to be met.

1. To investigate the extent to which Shari’a employment-contract principles can accommodate modern employment-contract needs and development.
2. To analyse the role and impact of Shari’a on unfair dismissal in Oman
3. To explore the implications of unfair dismissal on Oman’s economy and society.
4. To identify the similarities and differences between Shari’a and the Oman Law.

Furthermore, the investigation addresses the following issues:

a. The experience of unfairly terminated employees
b. The effects of unfair dismissal on employees and employers.
c. Current trends in providing remedies for unfair dismissal.
1.3.2 Research questions

In order to meet the objectives stated above, the following research questions have to be answered.

1. What are the main reasons for employee dismissal?
2. What are the Employee entitlements in an employment contract?
3. Does the company’s disciplinary procedure stand in court?
4. Is financial gain or morality the main force to legal action?
5. What is the quality of judgement awarded in court cases under the present law?
6. What are the expectations of parties in the dispute?
7. What is the effect of dismissal on the employee and employer?
8. How does the clarity of information in an employment contract and the terms and conditions of employment relate to unfair dismissal?
9. What is the level of awareness of Shari’a employment law
10. How effective is the current legislation?

1.4 The scope of the study

There are several parameters that frame the scope of this research and a number of key aspects that have influenced the scope of study.

Firstly, the focus of this research is unfair dismissal. This means that all those grievances which are settled between the employer and employee before a court review or that are settled within the company, or through a third party, are outside the scope of this study. The type of arbitrated grievance this study investigates is limited to unfair dismissal arbitration cases determined by the court.

Secondly, there are some unavoidable limitations related to the data from interviews and, as a result, female employees were excluded from this research. This was due to non availability of female employees to interview. The primary data collected in the interview is limited to the male gender because the research was unable to generate any unfair dismissal case interviews for females.
Thirdly, this research focuses on an Omani context and only some areas may have possible generalisation to international contexts or to neighbouring Islamic countries.

Fourthly, the study only reviews unfair dismissal cases brought forward to court within the time boundaries of the labour law provision. This means that unfair dismissal cases are only those that the employee successfully managed to lodge grievances within a limited time. Some employees were deported before lodging grievances, and others were mis-advised and they did not file a case.

Fifthly, this thesis is framed within the context of Shari’a from a Sunni perspective which means that the analysis of unfair dismissal under Shari’a is limited. The Sunni perspective of the principles of Shari’a employment will be addressed from two main sources; the Qur’an and the Sunnah.

This research intends to pave the way through which the Sultanate of Oman can consider application of the Commercial Law, specifically the labour law, and the role of unfair-dismissal regulations in addition to guidelines which must be followed at the international level, in order that decisions can be compared between countries.

The intended outcome of the research is to identify aspects that would be beneficial for Oman as well as to determine how to incorporate good practices from other judicial systems. The research does also centre on issues that will sustain a competitive edge in the country regarding the employability of its nationals and expatriates on terms that are fair and appropriate.

The outcome of the above will be beneficial to legislators, business, CEOs, human resource managers and all managers operating under the Omani labour law.

1.5 The conduct of the study

The study was conducted in Oman in eight stages:
Stage 1 a thorough review of the literature on the subject covering aspects of dismissal, Shari’a and the Oman labour law.
Stage 2 the collection of all dismissal case data in Oman followed by analysis of the quantitative data.

Stage 3 designing a questionnaire to generate information related to the research questions including data on unfair dismissal, taking into consideration Oman’s labour-court cases, Shari’a influence and the primary findings from the literature review.

Stage 4 a pilot survey which was conducted to evaluate the effectiveness of the interview questionnaire. The initial survey covered a sample of the intended sample group of 10 interviewees as follows: interviews with three individuals who filed unfair-dismissal cases in court; and interviews with two general managers, three human-resource or labour-industry managers and two lawyers.

Stage 5 improvement and modification to the questionnaire after the pilot study.

Stage 6 data collection interviews conducted in Muscat, Oman, from July to December 2008. A total of 30 interviews were concluded covering a sample of four groups of interviewees as follows:

1. Individuals who filed unfair-dismissal cases in court
2. Corporate general managers, human resource or labour industry managers
3. Lawyers defending claimants
4. Judges

Stage 7 analysis of qualitative research dealing with narrative data. The data was mainly generated using semi-structured field interviews. The qualitative data analysis focused on the points of views and opinions of participants to generate hypotheses. Data were analysed using a five-step methodology.

Stage 8 bringing together all the data, interpretation and writing up the thesis.

1.6 The Structure of the thesis

This thesis consists of eight chapters:

Chapter 1 presents an overview of the research, the rationale for the study, aims and objectives, and the structure of the thesis.

Chapter 2 deals with the contract of employment law in general with a specific focus on Unfair Dismissal drawn from Western law (English). This will
also include a discussion of the employment contract, and terms used to form a contract of employment.

Chapter 3 Analysis of employment law as it relates to Shari’ah and the concept of ‘contract’ in Islam. Shari’ah is explained as the basis and the highest legal instrument of Islamic law, referencing and deriving rule from original sources in Islamic Law. Furthermore, the discussion covers the role of Shari’ah in informing legislation in Arab states, employment law in Qur’an and Sunnah, the principles governing a Shari’ah contract, conditions of a Shari’ah employment contract (Ijarah) and analysis of the effect of Shari’ah and employment law in Oman.

Chapter 4 considers the Oman Labour Law, outlining the nature and role of the effect of Shari’ah and Western employment law on Omani Law. It compares and contrasts Oman Labour Law versus the Ijarah contract and the issues surrounding employees’ dismissal and the Disciplinary and Grievance Procedure of an employment contract under the Omani Labour law.

Chapter 5 puts forward and defends the study’s selected methodology used to determine the effect of unfair dismissal. The qualitative data in this research was generated through Yin’s case-study approach. The method permits the examination of information from multiple sources to allow evidence to be verified. The data were taken from many sources such as literature review, semi-structured interviews, court cases, the Shari’ah and other documents.

Chapter 6 presents the data analysis results and presents the main findings. The chapter summarises the results of data collected to assess the effect of dismissal claims in Oman.

Chapter 7 expounds on the findings and critically evaluates and comments on the results of the analysis of the data from Chapter 6.

Chapter 8 provides the conclusion and recommendations including a summary of the main points, a reconsideration of research objectives, and proposals for further research.
CHAPTER TWO

2. Employment Law: Conceptual and Theoretical Review of Unfair Dismissal and Contrast with English law

2.1 Introduction

This chapter is designed to discuss the contract law in general with a specific focus on unfair dismissal in the context of English Law. This chapter contains the following sections: contract law, freedom of contract, types of contracts, the employment contract, the role of acceptance, termination of employment, unfair dismissal and aspects of English unfair dismissal law in the Omani Labour Law.

2.2 Contract Law

Contract law is defined as: The body of law which regulates the formation and enforcement of contracts. Therefore, the need for Contract law is crucial to enabling the exchange of goods and services in the market.

Mckendrick summarised the concept of contract law as follows:

The general principles of formation, content, misrepresentation, mistake, illegality, capacity, duress and discharge apply to all contracts, subject to statutory qualification. These principles therefore remain “general” but only by default.

Contract law is needed to protect both parties. If promises are broken then a person has the opportunity to take legal action to obtain justice. This can be compensation - such as money or an apology (to say sorry). Therefore, it is

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necessary that rules are made for the society and these rules are regulated. These rules are needed for the following reasons:

1. To give a legal framework that will offer security and enable commercial activity to prevent actions that are harmful in commercial life.
2. To provide a way in which the people who wish to make agreements can do this but then the agreement must be legally binding.

Bakar argues that there is a strong need to establish law to maintain order and justice in a society as humans by nature are trying to seek things that suit them without fairly considering the other person.\(^6\)

In view of the fact that man is social by nature, he cannot live in solitude like other animals, but is in need of co-operation with his fellow man in order to promote an urban society. Every person, however, seeks the things which suit him and is vexed by any competition. As a result, it has been necessary to establish law to maintain order and justice.

### 2.3 The Freedom of Contract

Freedom of contract is one of the fundamental aspects of a laissez-faire economy. Storm\(^7\) discussed this issue as:

The very first function of contract law is not to impose certain forms of behaviours but, rather, to enable certain forms of behaviours, to enable parties to exchange foods and services in the marketplace.

People should have and enjoy complete freedom to enter into a contract.\(^8\) They must not be forced to enter any contract. Therefore, the role of acceptance

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\(^6\) Bakar Mohammed Daud, 2004 Contracts in Islamic commercial Law in the in the Middle East, Arab Commercial Law, London, 2000 July.


becomes crucial. The English Contract Law is derived overwhelmingly from decided cases (i.e. common law) and, to a very large extent commercial parties enjoy complete freedom of contract. The impact of statute and applicable codes on the principle of “freedom of contract” in a business to business context Statute law have an important role in three principal areas: Implied terms, Limitations of liability and Competition law.

Turner and Martin state that:

Many rules of contract law developed in the nineteenth century under the doctrine of laissez faire economics, when the idea also developed that parties to the contract should be free to negotiate any terms they wish to be in the contract.\(^9\)

This freedom can cause hardship in an employment contract because the parties do not have equal bargaining strength when negotiating the terms of a contract. Practically, one party (employer) can always impose their own standard terms, without negotiation, on the other party (employees) to prevent them taking on any liability for their breaking the contract. The weaker party could say no to the other party but that could possibly result in loss of job.

Such inequality becomes an issue of concern in any contract, but especially in employment contracts. All persons involved in the contract must be equal. The contract must be of benefit to both sides. It should not be a ‘take it or leave it’ situation.

Therefore, both the government and the law stop employers taking advantage of their positions, as the strong party, and protect the employees. Consequently not only do find the terms of a contract are not always freely negotiated, but terms can be influenced by:

- a. Statute (i.e. The Oman Labour Law 1973)
- c. Decisions of the Courts
- d. Shari’a principles and teachings

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\(^9\) Turner, C & Martin J 2001 Contract Law Hodder Education Oxon p.3

see also Hugh Collins, Keith D. Ewing, and Aileen McColgan  2005 p69 and p.211
2.4 Types of contracts

There are different types of contract (simple and complex) and each type of contract may have different terms to suit the purpose of the agreement. The contract can be verbal, simple or special.

In this respect, Duxbury\textsuperscript{10} points out that:

The traditional classification of contract into contracts by deed and simple contracts. Contract by deed: the contract of ancient origin and derives its validity from the form in which it is made. It must be in writing and must be signed, witnessed, and delivered. Promises made by deed do not need to be supported by consideration. Simple contract: all other contracts may be classified as simple contracts, whether they be made in writing, orally or by conduct.

He further added:

Another way of classifying contract is according to whether they are “bilateral” or “unilateral”. "Bilateral" means a promise to meet an exchange for a promise by the other (sales of goods). "Unilateral means a promise by one party without exchange for a promise by the other (i.e. divorce in Shari'a, or free from debt) \textsuperscript{11}

There is a similarity in Shari'a to this classification by which a contract is classified into bilateral or unilateral as stated above.\textsuperscript{12}

Duxbury\textsuperscript{13} points out that a principle in common law is:

A contract may be invalidated by mistake, or by illegality and where that contract has been induced by misrepresentations, duress or undue influence, the innocent party may have right to set it aside. As a result of this principle any contract that is made by misrepresentation, duress or

\textsuperscript{11} \textit{Ibid}
\textsuperscript{12} Abu Zahrah, Imam Mohmed 1996: \textit{Al Mulkia wa Nadhariyat Al Aqud fee al Shai'a Al Islamiyah}: Dar Al Fiqr Al Arabi; p. 176
undue influence is not a valid contract. Therefore, because of
misrepresentation, duress or undue influence the beneficiary party of the
contract made unjustly gain illegally (e.g. stealing, robbing, deceiving,
etc...)

As a result of this principle any contract that is made by misrepresentation, duress
or undue influence is not a valid contract. Therefore because of misrepresentation,
duress or undue influence, the beneficiary party of the contract made gains
unjustly and illegally (e.g. stealing, robbing, deceiving, etc...).

Moreover, Duxbury\textsuperscript{14} summarised a valid simple contract as comprising of three
elements:

First, the parties must have reached agreement (offer and
acceptance); second, they must intend to be legally bound; and third,
both parties must have provided valuable consideration.

The general rules that apply to all contracts are\textsuperscript{15}:

a. formation,
b. content,
c. misrepresentation,
d. mistake,
e. illegality,
f. capacity,
g. duress and discharge,

Each of these elements can cause legal dispute.

2.5 Employment Contract

The aim of this section is to discuss the employment contract, elements of
employment contract and terms to form a contract of employment.

The work of humans up to the end of the 19th Century was perceived as a
commodity that could be bought and sold. The development of human

\textsuperscript{14}Duxburg, Robert 2003, Contract Law, 6th ed. Thomson, Sweet & Maxwell p.2.
\textsuperscript{15}Turner C. 2001, Contract Law: The Comparative Guide To All the Facts, Hodder
&Stoughton, UK
work far from the view of being seen as a commodity has changed to a greater value of human as individuals. The shift of this view led to more complex legislations specifically to address employment relations in order to protect society and individuals. This led to the birth of complex employment laws including employment contracts that cover every aspect of employee/employer relationships.

2.5.1 Essential Elements of the Employment Contract

The purpose of this section is to discuss Employment Contract. The discussion starts with comparing the definition of employment contract in different systems. A sample of Shari’a definitions are provided here, however, detailed definitions as per different sects of Shari’a will be provided later under Definition of Ijarah section.

The dictionary definition of employment is: when someone is paid to work for a company or organization  

The Omani labour law, Article 8, defines the employment contract/work contract as: Any contract under which any person is employed either for a set period of time or to perform a set work in return for monetary remuneration or its equivalent.

Al Warqa  and Jaber  argue that there are three main principles that could be extracted from any legal employment contract relationship:

1. Fellowship, the fellowship relation between worker and employer. This fellowship relation concentrates on four main factors: Economic, Legal, Administrative and Organizational.
2. Payment
3. Work Fellowship

A contract is defined as a legal document that states and explains a formal

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16 Cambridge Advanced Learner’s Dictionary
18 Mahmood Jaber 2004, Unfair Dismissal of Employment contract, Abna Wahbah, Cairo p.23

January 2013
agreement between two different people or groups, or the agreement itself 19. Most employers offer written contracts of employment that cover most terms and conditions of employment. Generally speaking, the majority of people are familiar with contracts of employment.

The contract of employment is the basis of the employment relationship and it defines, the scope and limitations of duties, the termination procedures, the rights and obligations of both parties - employer and employee

Collins, Ewing, and McColgan.20 indicated that:

The contract sets a framework for their relation of production between employer and employee, but most of the details have to be constructed through further managerial directions, customs, agreements and procedures. Most employers supplement the contract with further written directions known as works rules of staff handbooks, which contain description of standing instructions, procedures, facilities as, opportunities and employee’s rights.

Commercial laws govern the employment contract. If no contract of employment is signed prior to commencing employment, it must be signed as soon as an employee starts work. Contracts of employment can be oral or in writing. For example, the Omani and English labour relations systems agree that the contract need not be written down. Shari’ah is more inclined to verbal contract as the Arabic culture is an oral culture. However, the problem with oral contracts is that they are hard to prove if the other side denies making a contract or disagrees with the terms of employment. That is the main reason why many employers place employment contracts in writing when they hire employees especially in professional, managerial and senior positions.

In this context, Al Warqa21 argue that writing a contract is not a condition of contract validity but it is only for proving the contractual agreement.

Contracts of employment are made up of offer and acceptance. The Offer is

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19 Cambridge Advanced Learner’s Dictionary
20 Hugh Collins, Keith D. Ewing, and Aileen McColgan 2005 Labour Law Hart, Oregon p.3
defined as: *A definite promise to be bound provided that certain specified terms are accepted.*

Acceptance is defined as: *A final and unqualified assent to all terms of offer together with a communication of this acceptance.*

In my view, all these definitions have the same common theme that is that the employment contract is an agreement between two parties and that this relationship is enforceable by law. Generally, the word contract is sufficient to define the relationship between two parties. The general concept is also almost the same with three main components that encompass setting up the employment relationship, setting the scope and limitations, and that the contract is an obligatory promise between the two parties enforced legally; where the second party provides a service under the supervision of the first party in exchange for a wage.

### 2.6 The Role of Acceptance

Acceptance is an important element in any contract. The terms to form a Contract of Employment include:

a) An offer 
b) Acceptance of that offer 
c) Consideration - an exchange of value, typically this means an employer’s promise to pay the employee in return for the employee's promise to work 
d) An intention by both parties to make the contract legally binding 
e) A lawful contract

A contract may contain expressed terms - terms, which are clearly defined and implied terms - covers many terms, which are not expressed but apply and fill the gaps between the expressed terms.  

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23 Turner, C & Martin J 2001 *Contract Law* Hodder Education Oxon p.49  
24 Lindsay, Mr Justice ‘The implied term of trust and confidence’ Industrial Law Journal, 30(1) 2001 pp.1–16.
These terms can be derived from:25

a. Statutory obligations (i.e. the right to equal pay for equal work of equal value) as in the UK system.
b. Collective agreements as in the UK system
c. Basic duties (e.g. duty of mutual trust and confidence between employer and employee).
d. Custom and practice (see also: Cavendish 2002; Employment Law)

‘Incorporated terms’ are terms specified in other documents such as collective agreements, staff handbooks, pension plans, etc., which are incorporated into the contract. In Oman, the Labour law is considered as part of the incorporated terms and if not stated, then Shari’a principles of contract are used. Before October 2010, incorporated terms agreed collectively with workers did not exist in Oman, and as a consequence of massive worker demonstrations that swept throughout the whole country. These demonstrations resulted in greater collective bargaining benefits to Omani workers. The benefits included adjustments to the cost of living, two days weekends, medical benefits, and a 9 hour day or a less than 45 working hour week. Subsequently, the benefits agreed were incorporated to an amendment of the Omani Labour law 35/2003 with a Royal Decree 113 / 2011 in October 2011.

Employment contract is governed by many terms. The terms of employment contracts need to be clear and unambiguous. The expressed agreed terms include work, payment, benefits, allowances, and other compensations items. Other terms on employment contract comes from implied terms.26 The sources and terms of the contract of employment in the UK comprise of:27

a) Expressed terms, (agreed terms in the contract)
b) Statutory rights and provision / codes of practice
c) Statuary statement (s1 of the ETA 1996)
d) Disciplinary / Grievance procedure
e) Customs and practice / works rule
f) Implied terms (employee obligations and employer obligations)28

26 ibid
27 Cavendish 2002; Employment Law, 3d Ed, Cavendish Publishing Limited, UK p.3.
28 See Lewis D and Sargeant p. 55
The contract of employment produces a set of obligations for both parties: the employee and the employer. Lewis and Sargeant stated\(^2\) that the duties of the employer include:

a. paying wages if an employee is available for work, and not making unlawful deductions.

b. providing work in circumstances where a lack of work will affect an employee's earnings or reputation or his / her skills.

c. co-operating with the employee and preserving the mutual trust and confidence upon which this co-operation depends.

d. taking reasonable care of the employee by providing a safe working environment and safe working practices.

e. special care with regards to references of ex-employees.

The duties of the employee include:

a. co-operating with the employer and obeying lawful and reasonable instructions

b. not damaging the employer's business by competing with the employer in breach of a duty of fidelity

c. To maintain fidelity

d. not disclosing certain confidential information to competitors.

e. take reasonable care and exercising reasonable skills in the performance of his or her contract.

An employment contract is a commercial activity therefore commercial law applies.\(^3\) The written contract enforces the concept of offer and acceptance.

### 2.7 Termination of Employment Contract

Employment contract as any commercial contract can be terminated under specific terms. It is not the purpose of this research study to discuss termination of contracts.
employment contract under UK system however, a brief summary of the main points determining the termination of employment contract is needed. These terms are summarized in the Employment Right Act 1996, Part IX: *Termination of employment*, as follows:

**Minimum period of notice**
- Art. 86. Rights of employer and employee to minimum notice.
- Art. 87. Rights of employee in period of notice.
- Art. 88. Employments with normal working hours.
- Art. 89. Employments without normal working hours.
- Art. 90. Short-term incapacity benefit, contributory employment and support allowance and industrial injury benefit.
- Art. 91. Supplementary.

**Written statement of reasons for dismissal**
- Art. 92. Right to written statement of reasons for dismissal.
- Art. 93. Complaints to employment tribunal.

The UK Employment Right Act, 1996, protects employee’s rights and provides employees with privileges relating to their termination of employment. These rights include working hours, notice period, benefits, the right to receive a written statement with reason of dismissal and the right to file a complaint if employment terminated.

The Employment law of England provides specific rights to the employee and any termination without taking these rights into consideration can be subject of unfair dismissal procedures such as a right to a minimum period of notice and a right for a written statement of the reasons for dismissal with the final remedy through the Employment Tribunal. These rights are protected with the assumption that the employee is the weaker party in the employment contract equation and needs to know the grounds for termination of contract. In comparison to Oman Labour Law, the second right, that of a written statement, is not part of current provisions. It seems logical that a written statement of reason for dismissal is mandatory by law in UK in orders to establish the validity of the decision to terminate the contract. As

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the employment contract was established in writing then so is the termination which is equally confirmed to provide evidence to protect both the individual and the employer.

2.7 Unfair Dismissal

Unfair dismissal can be defined as “dismissal contrary to statute”. That means that the employer must be able to justify that the dismissal is in accordance with provisions stipulated in the law. The court then has to determine that the employer has acted reasonably within the law and has not misused his/her power to unjustly treat or intentionally harm the employee. In reality, people have built much of their lives around their jobs and therefore, the employer should not dismiss an employee without a valid reason.

In UK, Employment Rights Act 1996, section 98 provides a definition unfair dismissal as follows:

Employment Rights Act 1996, section 98, provides a definition of unfair dismissal as follows:

Unfair Dismissal - Meaning of Dismissal

Dismissal is defined as the termination of employment by the employer, with or without notice; or the employee's resignation, with or without notice, where the employee has resigned because the employer by his or her conduct, in breach of the contract of employment, has shown an intention not to be bound by the contract (this is commonly known as 'constructive dismissal' or the expiry of a limited-term contract without its renewal.

This definition excludes a limited-term contract, which is a contract for a fixed term or the performance of a specific task, or one which ends with a specified event. The purpose of this Article 98 is to determine whether the dismissal of an employee was fair or unfair. The Act set out fair grounds for employee dismissals.

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32 Jefferson, Michael, 2002 Principles of Employment Law, Gavendish Publishing Limited, Great Britain p. 91
34 Employment Rights Act 1996, section 98 (definition unfair dismissal).
Under the UK system, dismissing an employee is governed by provisions stated in the ERA 1996, summarized as follows:

Employees with 12 months’ service have the right “to not be dismissed unfairly”. Irrespective of service, the following are examples of reasons for dismissal that could not also give rise to claims:

- Pregnancy
- Trade union membership (or non-membership)
- Activities or duties as a statutory employee representative
- Failure to follow an instruction to carry out an unsafe practice
- Refusal to work on a Sunday by a shop worker
- Asserting a statutory right
- Exercise of a number of rights, \(^{35}\)

Every law makes provisions for justifiable termination of employment contract. In Oman this is governed by the Omani labour law, Article 40. In the United Kingdom (UK) this is governed by the Employment Rights Act 1996, (ERA) 1996\(^{36}\). Unfair dismissal is considered when the employee is terminated in contravention to the conditions of the Employment Rights Act 1996. A reasonable dismissal is covered under the following criteria of the Employment Rights Act 1996, section\(^{37}\):

- employee's conduct
- the employee's capability or qualifications for the job
- the employee’s job was redundant
- the employee reaches normal retirement age in line with the law.
- the employee cannot continue legally.
- other reasons which justifies the dismissal. \(^{38}\)

### 2.8 Aspects of English unfair dismissal law in Omani Labour law

The discussion regarding aspects of English unfair dismissal law in Omani law takes two dimensions. The first dimension concerns aspects of English unfair
dismissal law not in Omani Law, and the second regards aspects of English unfair dismissal law in Omani Law.

In summary, the unfair dismissal in the English system takes two directions: termination of employment by the employer without notice, including termination of a limited-term contract before the expiry date, or when an employee is forced to resign because the employer has made life so difficult that the employee has no choice but to resign. This is classified as constructive dismissal. The first way exists in Omani Labour law but not the second aspect the constructive dismissal. English law provides five legal reasons that cover almost every case in which an employer can dismiss an employee fairly. The legislation governing the employer states that he/she must “have a valid reason for dismissing the employee, and act reasonably in treating that reason as a sufficient reason for dismissing the employee”\textsuperscript{39}. Legislation lists five types of reasons for dismissal: conduct, capability, redundancy, a statutory requirement or some other substantial reason. Some of these can be noticed in Omani labour law but others do not exist. First, let us go over the main points of English unfair dismissal law.

English law considers the dismissal of an employee for any other reason than stated above as unfair dismissal\textsuperscript{40}: The dismissal of an employee is considered unfair and gives rise to a claim of automatic Unfair Dismissal if it is for one of the following reasons:

\begin{itemize}
  \item dismissing an employee as a result of being a member of an independent trade union;
  \item dismissed on maternity related grounds;
  \item dismissed for taking or seeking to take paternity leave;
  \item taking or seeking to take adoption leave;
  \item requesting flexible working arrangement;
  \item the employee asserting a statutory employment protection right;
  \item taking or proposing to take certain specified types of action on health and safety grounds;
  \item worker refuses to work on Sundays;
  \item his or her role as an employee occupational pension scheme trustee;
  \item the national minimum wage;
  \item reasons relating to the Working Time Regulations 1998;
  \item making a protected disclosure within the meaning of the Public Interest Disclosure Act 1998;
  \item reasons relating to the Tax Credits Act 2002;
  \item taking, or seeking to take, parental leave;
\end{itemize}

\textsuperscript{39} \url{http://www.roydens.co.uk/content14.htm} accessed on 19 June 2012

\textsuperscript{40} \textit{Ibid}
taking, or seeking to take, time off for dependants;
• taking lawfully organised official industrial action lasting eight weeks or less
(or more than eight weeks, in certain circumstances) where the action
started on or after 24 April 2000;
• exercising or seeking to exercise rights relating to trade union recognition
procedures;
• exercising or seeking to exercise the right to be accompanied at a
disciplinary or grievance hearing, or to accompany a fellow worker;
• on grounds related to the Part-time Workers (Prevention of Less Favourable
Treatment) Regulations 2000;
• on grounds relating to the Fixed-term Employees (Prevention of Less
Favourable Treatment) Regulations 2002;
• employee was dismissed without statutory dismissal and disciplinary
procedures having been followed;
• reasons relating to the European Public Limited-Liability Company
Regulations 2004;
• reasons relating to the Information and Consultation of Employees
• reasons relating to jury service.

Now let us review which aspect of the English unfair dismissal can be found in
Omani Labour law. The following are aspects of English unfair dismissal in Omani
Labour law:

• Dismissing of an employee as a result of being a member of an independent
trade union;
• Dismissed on maternity related grounds; Oman labour law provides 50 days
maternity leave.
• taking or proposing to take certain specified types of action on health and
safety grounds; Oman labour law protects employee for any health and
safety hazard.
• the worker refuses to work on Sundays; Oman Labour law protects
employee rights for 2 days rest days after 5 days work. The employee
cannot dismiss employee for asking rights provided by law.
• because of the national minimum wage; Oman labour law specified the
minimum wage for workers.
• exercising or seeking to exercise rights relating to trade union recognition
procedures; employee cannot be dismissed for taking part in trade union.
• because of reasons relating to jury service. Oman labour law provide
provision to attend court.

In conclusion, some aspects of English unfair dismissal exists in Omani labour
law, others do not. It can be concluded that these are not necessarily influenced
by English law but derived from the principles of justice. The principle of justice
is the main goal of all societies.
2.9 Conclusion

Overall, this chapter provides a brief overview of major issues related to contract law, and related topics such as: freedom of contract, the employment contract and finally discussion of employment law. The main concern has been employment contract in general, components of an employment contract, unfair dismissal, and termination of employment contract within English law.

The literature review in chapter 2 clearly indicated that the relation of an employer with an employee has a beginning (i.e. signing contract of employment) and can end with separation. The most common separation methods are:- Resignation – (employee decides to leave the organization), or Absconding (when the employee decides to leave the organization without following the proper process of separation) or Termination – (employer decides to break the contract of employment fairly or unfairly). Each way of ending employment contract (separation) has its implication on employer, employee and society. This research will investigate the implications of unfair dismissal.

In chapter 2 literature review, Employment Law the Conceptual and Theoretical Review of Unfair Dismissal was discussed. The response to statements in section 3, court case, in the questionnaire will be analysed to assess the implications of unfair dismissals.

The literature review revealed broad consensus in a number of areas: The general principles of contract law are the same in English contract law, Omani law and Shari’a, Implementation may, however, differ slightly from one system to another.

1. There is some autonomy in the contract in Shari’a, Omani and English system, however, this freedom is limited to specific rules in each system.

2. Each system of law considers that a contract, including an employment contract, is legally binding and cannot be terminated without valid reasons. If terminated then it may be against the law, thus each system makes provision for compensation of the other party.

3. Unlawful termination of an employment contract is seen as unfair dismissal. Each legal system has specific rules governing what is considered fair and/or unfair dismissal.
4. Intangible remedies can be seen in Shari’a and English law, but is not taken into account in the provision of compensation in the Oman law.

There are a number of similarities and differences between Oman and English law. The similarity mainly centres around the principles of justice and fairness and difference on the sources of law and derived principles. English Contract law is based to some extent on common law and is generally uncodified whereas Oman uses codified law. In terms of unfair dismissal, the English law has established comprehensive provisions. The Omani law governing unfair dismissal is very basic in comparison to English law and still under development. As the Omani labour law is relatively new, established in 1970 with the first amendment made in 2003 and the second amendment in 2011.

There is a gap in the literature on the employment contract in relation to Shari’a in Arab countries in general and specifically in Oman. To the best of my knowledge, there are no studies that address this subject of Shari’a application on employment and there is some confusion in the interpretation of the concepts of Shari’a principles of contract and Shari’a employment principles. Although these principles exist in the Shari’a to ensure justice and resolve conflict through establishing rights and obligations, some of these principles have not been incorporated to modern laws.
CHAPTER THREE

3. Employment Law in Shari’a: The Concept of Contract in Islam

3.1 Introduction

The main concern of this chapter is to provide theoretical background upon which the arguments of the present study will be developed. The discussion will also include a theoretical review of the requirements of Shari’a in terms of contracts and this is interpreted in terms of an employment contract.

3.2 The Meaning of Shari’a

The highest legal instrument of Islamic law practiced in some Muslim countries is called Shari’a. Most Islamic nations operate a dual legal system; Shari’a together with elements of secular law. Shari’a governs all aspects of a Muslim’s life, and its principles are derived from two main sources: the Qur’an ⁴¹ and the Sunnah - the sayings and the conduct of the Prophet Mohammed.

The best way to understand Shari’a is to identify few definitions that can illuminate the concept.

The most important and comprehensive concept for describing Islam as a function is the concept of Shari’a or “Shar” This word originally means “the path or the road leading to the water”, i.e. a way to the very source of life. The verb shara’a means literally «to chalk out or mark out a clear road to water». In its religious usage, from the earliest period, it has meant “the highway code of good life”, i.e. religious values, expressed functionally and in concrete terms, to direct man’s life⁴²

⁴¹ All the Qur’an English translations of King Saud University, KSA: http://quran.ksu.edu.sa/ accessed on October 2011.
Ballantyne defines Shari’a as:

Shari’a, or Sharia, is the body of religious law governing the cultural life of Islam, both in its Sunni and Shi’ite branches. Islam draws no distinction between religious and secular life, and hence Shari’a covers not only religious rituals and the administration of the faith but every aspect of day-to-day life.\(^{43}\)

Shari’a has also been referred to as ‘law’ which is misleading as it extends beyond the realms of law, “Shari’a is the total way of life. Any comprehensive definition of Shari’a must include all its aspects including religious, political, social, domestic and private life. Shari’a is the highest legal instrument and has the final say in the Muslim world. Shari’a is derived from the Qur’an and the Sunnah.\(^{44}\)

Shari’a provided overall guiding principles in all aspect of life which includes three main dimensions: Aqidah, (Faith & Belief) Shariah (Practices & Activities) Akhlaq (Moralities & Ethics). The Aqidah, Ibadah is a relation between (man to Allah) and Muamalat is a relation between (man to man) are applicable to all Muslims; the main aim is to manage the relationship between Muslims and Allah and for Muslims amongst themselves and with the remaining society. The Shari’a (Practices & Activities) provide guidance in areas of Ibadat and Muamalat. The Muamalat addresses the political, economic and social aspects of interaction between person to person’s relation. One aspect of this relationship is contract, and specifically the employment contract. The employment contract falls under the category of both person to Allah and person to person.

### 3.3 Shari’a in Practice

Muslims in the Muslim world are not fully administered by the Shari’a principles in all life aspects, political, social or legal. Shari’a is not something that man’s intelligence can prove wrong, it is only accepted by humans, since it is based on the will of God. Most Islamic countries maintain a dual system in courts: man-

\(^{43}\) W.M. Ballantyne, Commercial Law in the Arab Middle East: The Gulf State, London: Graham & Trontman, 1995, P.30

\(^{44}\) Qur'an is the Holy book of Islam and the Sunnah: includes everything, which has been transmitted from the Prophet (PBUH); what he said, did, and agreed to.
made law and Shari’a principles. The practice in Islamic countries is that Shari’a courts mainly regulate marriage, civil rights and inheritance. Only a few countries maintain religious courts for all elements of jurisprudence.

The gap between Shari’a principles that should be practiced and the day-to-day governance of man-made legislation generates constant debate. This debate is frequently addressed in the first article of Muslim country constitutions. The discussion is whether Shari’a should be considered the main principle of legislation or one of the principles of legislation among others. There is a continuous struggle in the Islamic world to replace man-made, secular principles of governance that in general emanated from Western legislative system. This is, for example, one of the main reasons for the development of the Islamic Banking System.

3.4 Shari’a as a basis for Islamic law

Shari’a is the focal point of this research and needs to be examined first. A limited view of Shari’a as Islamic law actually covers only a small part of Shari’a. Labour concepts or ideas will be compared to determine their compatibility with or difference to Shari’a. The Qur’an and Sunnah will be used as references of the Shari’a stand. Since Shari’a is the main aspect of comparison in this research, then the first obvious question has to be: “Can an employment contract be found in Shari’a?” In other words, can we find rules governing employment in the Qur’an and Sunnah? The Qur’an verses below indicate that general employment contract principles can be found in the Qur’an.

And there is no creature on [or within] the earth or bird that flies with its wings except [that they are] communities like you. We have not neglected in the Register a thing. Then unto their Lord they will be gathered. (Qur’an, Chapter 6, (Al-An’am), Verse 38).
And [mention] the Day when We will resurrect among every nation a witness over them from themselves. And We will bring you, [O Muhammad], as a witness over your nation. And We have sent down to you the Book as clarification for all things and as guidance and mercy and good tidings for the Muslims. (Qur’an, Chapter 16 (An-Nahl), Verse 89).

Wael Hallaq: Can the Shari’ah be Restored? Islamic Law and the Challenges of Modernity (Walnut Creek: Altamira Press, 2004), 21-53
The verses mentioned above imply that there is an explanation and guide for everything related to human life including an employment law. The hypothesis being formed here is that there are rules governing this relationship including termination and compensation in Shari’a. The challenge in this research is to discern what these employment rules are in Shari’a. A full discussion of employment as stated in the Qur’an will be addressed in this chapter.

3.5 The Role of Shari’a in informing legislation in Arab states

The focus of the next few pages will be a discussion of the relationship between Shari’a and the Constitutions of Arab states. Furthermore, some Omani court cases related to this relationship will be also examined. This study seeks to investigate the role of Shari’a with regard to the unfair-dismissal law in the Sultanate of Oman and its implementation. The investigation involves consideration of the relationship between Shari’a and the Omani Labour Law. The content of this relationship will be examined in the context of how Shari’a affects the legal code in Oman and other Middle Eastern states.

The first point of discussion looks at the verbal restriction and interrelated words. The term “constitution” refers to a methodology of managing a political structure. A constitution is a nation’s basic law. The constitution contains the basic principles according to which the nation is governed. It both authorizes and limits governmental power. It is a written document which forms the set of political principles by which a state or organization is governed, especially in relation to the rights of the people it governs. This specifically defines a nation’s fundamental political principles and establishes the power and duties of each government.

Furthermore, the definition of “constitution” leads to the discussion of two related key words: “unconstitutional” and “constitutional court.” The term “unconstitutional” can be interpreted as meaning that it is not allowed by the constitution (set of rules for government) of a country or organization. It can be understood as an act of the legislature of a government in conflict with a constitution.

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46 Norman Redlich, John Attanasio, and Joel K. Goldstein, Understanding Constitutional Law, 2003 LexisNexis.
47 Cambridge Advanced Learner’s Dictionary.
48 Ibid
When a court decides that the act in question conflicts with the constitution, it finds that law unconstitutional and declares it void in whole or in part. The portion of the law declared void is considered to be struck down as the statute is considered to be struck from the statute books as a law that is unconstitutional.

Therefore, any act contrary to principles laid down in a constitution is unconstitutional and, as such, becomes an act of constitutional violation. This point of discussion will be examined in detail when discussing the relationship between Shari’a and constitution in Arab Islamic countries. In the case of Oman, which is the subject of this study, the constitution is the Basic Law of the Sultanate and is adopted by Royal Decree No. 101/96, promulgated on November 6, 1996, by Qaboos bin Said, Sultan of Oman, called The White Book.

Occasionally, court disputes take another dimension and the dispute focuses on the interpretation of the law. The dispute is handled in a high court. However, when the dispute challenges the legitimacy of the law in relation to the constitution, it has to be addressed at a different level. To resolve any constitutional dispute the act has to be considered at a higher level, or a ‘constitutional court’.

A constitutional court is normally the court of last resort, the highest legal instrument in the government. Most countries have a constitutional court. However, in the case of Oman there is a higher court but no constitutional court to address issues such as those raised in law that contradict the constitution.

Ballantyne\textsuperscript{49} referring to Badawi in his book on constitutional law, wrote:

\begin{quote}
Whether the Constitution is customary or written, it is considered the highest law in the state, taking precedence over anything contravening it whether laws or acts.
\end{quote}

To further emphasize this point, Ballantyne, states\textsuperscript{50}:

\begin{quote}
By virtue of the principle of predominance of the Constitution, the legal
\end{quote}

\textsuperscript{49} Ballantyne, W.M., 1995, Commercial Law in the Arab Middle East: The Gulf State, London: Graham & Trontman, P.30

\textsuperscript{50} ibid
system in the state is bound by constitutional principles in such a way as to prevent any public authority from exercising jurisdiction other than as laid down for it by the Constitution. It is the Constitution which creates the legal system in the state and prescribes the jurisdiction of every one of the public authorities which is created. It is natural that all public authorities should be subject to the Constitution without which they would not exist.

In other words, the constitution is the highest benchmark of the legal system, and any act contrary is considered unconstitutional. The principle of the constitution is deemed to limit the country's law and rule. The discussion of this point will be perused further when addressing the Omani constitution in relation to Labour Law 35/2003 and Commercial Law 55/90.

It is necessary therefore to examine the constitutions of some Arab countries and to study the articles of those constitutions to determine the effect and influence of Shari’a on legislation.

The analysis will cover three main points:

1. Comparison by dividing the Arab countries into two groups.
2. Addressing ambiguity associated with words.
3. Examining population mix and words used to describe Shari’a influence on constitutions.

In this work, Arab countries are placed into two groups. The first group comprises constitutions of Gulf countries as they are similar in cultural background and political structure and the second group comprises other Arab countries’ legislations.

Examining articles related to the role of Shari’a in Gulf countries, Gulf Cooperation Council (GCC) and other Arab countries the words used to describe Shari’a’s influence in GCC countries’ legislation are “the basis”, “a principal source”, “the

51 Unless stated otherwise, when referring to the Oman Labour law version 35/2003 will be used.
source”, “the main source” and “the principal source”. For example, on the one end of the scale there are Morocco and Lebanon where legislation does not state the word Shari’a at all, on the other side of the scale, there are Saudi Arabia and Yemen (before unification) where legislation is based entirely on Shari’a law, and, finally, we have in the centre Egypt, Kuwait and most Gulf states where Shari’a law has a limited effect on legislation.

The Saudi constitution states: “God’s Book and the Sunnah of His Prophet, (God’s prayers and peace be upon him) are its constitution” whereas in Yemen it states that Islamic Shari’a is the source of all legislation (North Yemen’s constitution prior to reunification in 1990). After unification, the constitution of Yemen evolved similarly to that of the Gulf States.

There is some ambiguity associated with these words describing Shari’a influence in constitution when translated into the English language. However, the most difficult part is to find explicitly agreed definitions in Arabic which interpret the words used to define Shari’a influence. This can cause a major dispute in courts such as in the Case of Egypt and Kuwait.  

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52 Habachy, Saba, Commentary on the Decision of the Supreme Court of Egypt Given on 4 May 1985 Concerning the legitimacy of Interest and the constitutionality of article 226 of The New Egyptian Civil Code of 1948. A translation of the decision of the Supreme Court was published in (1985) 1 ALQ 100
See also a translation, by Prof Ballantyne, of the decision of the Constitutional court of Kuwait on 28.11.1992 of the case 3/1992
<table>
<thead>
<tr>
<th>Country</th>
<th>Article of the Constitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oman</td>
<td>Article 2 [Religion] The religion of the state is Islam, and Islamic Shari’a is the basis of legislation.</td>
</tr>
<tr>
<td>UAE</td>
<td>Article 7: Islam is the official religion of the Union. The Islamic Tiara's shall be a main source of legislation in the Union. The official language of the Union is Arabic.</td>
</tr>
<tr>
<td>Yemen</td>
<td>Article (3) Islamic Shari'a is the source of all legislation. YAR, 1971 Unified state, 1990 (3), Islamic law is the principal source of legislation. Article (3) Islamic Shari'ah is the source of all legislation. 1994</td>
</tr>
<tr>
<td>Bahrain</td>
<td>Article 2: Islamic Shari’a is a principal source for legislation.</td>
</tr>
<tr>
<td>Qatar</td>
<td>Article 1: Its religion is Islam, and Shari’a law shall be a main source of its legislation.</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>Article 1 : The Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion. God’s Book and the Sunnah of His Prophet, (God’s prayers and peace be upon Him) are its constitution.</td>
</tr>
<tr>
<td>Kuwait</td>
<td>Article 2: The religion of the state is Islam, and the Islamic Shari’ā shall be a main source of legislation.</td>
</tr>
<tr>
<td>Egypt</td>
<td>Article 2: Islam is the religion of the state, and Arabic its official language. Islamic jurisprudence is the principal source of legislation</td>
</tr>
<tr>
<td>Morocco</td>
<td>Article 4 [binding law] The law is the supreme expression of the nation’s will. All must submit to it. Law can have no retroactive effect. Article 6 [state religion] Islam is the religion of the state which guarantees to all freedom of worship.</td>
</tr>
<tr>
<td>Lebanon</td>
<td>Article 19 [Constitutional Council] A Constitutional Council is established to supervise the constitutionality of laws and to arbitrate conflicts arising from parliamentary and presidential elections. The president, the president of parliament, the prime minister along with any 10 members of parliament have the right to consult this council on matters relating to the constitutionality of laws. The officially recognised heads of religious communities have the right to consult this council only on laws relating to personal status, the freedom of belief and religious practice as well as the freedom of religious education. Rules governing the organisation, operation, composition and modes of appeal of the council are decided by a special law.</td>
</tr>
</tbody>
</table>

- Note Yemen's constitution after unification.

There are a few different interpretations of English words describing the effect of Shari’a on legislation. This becomes clear when examine in depth the structure of the Arabic language and becomes more obvious when the Arabic version is
examined as Ballantyne\textsuperscript{53} pointed out in the Egyptian case. In Egypt the National Assembly made an amendment to the constitution in 1980, assigning Shari’a as “the…principal source of legislation” instead of “a…principle source of legislation”.

Ballantyne\textsuperscript{54} also addressed this issue by stating:

\begin{quote}
The recent constitutional developments in Egypt, where I believe Shari’a has recently been proclaimed as the principal source of law as distinct from being one of the sources of law.
\end{quote}

Furthermore, on 29 Nov 2012 an assembly drafting Egypt’s new constitution voted to keep the principles of Islamic law as the main source of legislation.\textsuperscript{55}

\begin{quote}
Article 2 states that "Islam is the state religion, and the Arabic language is its official language. The principles of Islamic shari’a are the main source of legislation."
\end{quote}

The difference in interpretation of the above amendment to the constitution had a strong influence on social, political, economic and legal systems of the country. The principal source of law would make it illegal to take from any other source but Islamic Shari’a (Islamic \textit{fiqh})\textsuperscript{56}. In other words, it would be unconstitutional to draw laws from any source but Islamic \textit{fiqh}.

If the issue of language interpretation between “the principal source of legislation” instead of “a principal source of legislation” causes a constitutional problem, why including it in the constitution? To answer this question Brown\textsuperscript{57} argues:

\begin{quote}
All Arab constitutions, with the exception of Lebanon’s, make some provision for Islam, generally in one of three different ways. First, they proclaim Islam as the state religion (and sometimes mandate a Muslim
\end{quote}

\textsuperscript{53}W.M. Ballantyne, Essays and Addresses on Arab Laws, Curzon 2000, P.5.

\textsuperscript{54}ibid

\textsuperscript{55}http://sharek.dostour.eg/sharek/ acceded on 1 December 2012

\textsuperscript{56}See Ballantyne W.M. 2000: \textit{The Challenge of Islamic commercial Law in the Middle East}, ABA/MEA Meeting on Arab commercial Law, London 20 July 2000.

\textsuperscript{57}Nathan J. Brown, \textit{Drafting Islam into the Iraqi Constitution Arab Reform Bulletin}, September 2003, Volume 1, Issue 3
head of state). The intention behind these clauses is generally to sanction institutions and practices that predate the constitution (such as a state mufti, responsible for advising political officials on religious laws). Second, constitutions often recognise religious law as a role in matters of personal status (such as marriage, divorce and inheritance). Again, such clauses merely recognise existing practice.

The third point of discussion is to examine the population mix of each country of the Arab countries. Studying the relationship between the percentage of ethnic diversity of the population, their background, religions and beliefs reflects the constitutional direction in which Shari’a is stated in legislation. There is a positive relationship between the percentages of population with specific beliefs in a country and the word used to describe the influence of Shari’a on legislation.

Table 3.2 shows that the larger the percentage of Muslims within a population, the stronger is the word describing the influence of Shari’a in the constitution. The higher the percentage of other religious sects, the weaker the word a country has to describe the influence of Shari’a in the constitution.

The second group of constitutions to be examined are those of other Arab countries. Table 3.2 displays a population percentage in each country on the one hand and on the other the article in the constitution determining the effect of Shari’a on legislation.
Table 3.2 Comparison between percentage of population and the wording used to describe Shari’a influence on legislation

<table>
<thead>
<tr>
<th>Country</th>
<th>Population (million $)</th>
<th>Muslim %</th>
<th>Others</th>
<th>The words describing the Shari’a effect on the constitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Morocco</td>
<td>32</td>
<td>98.7</td>
<td>0.2</td>
<td>Article 4 [binding law] Law is the supreme expression of the nation’s will. All must submit to it. Law can have no retroactive effect. Article 6 [State Religion] Islam is the religion of the state, guaranteeing to all freedom of worship.</td>
</tr>
<tr>
<td>Lebanon</td>
<td>3.8</td>
<td>59.7</td>
<td>1.3</td>
<td>Article 19 [Constitutional Council] A Constitutional Council is established to supervise the constitutionality of laws and to arbitrate conflicts arising from parliamentary and presidential elections. The president, the president of parliament, the prime minister along with any 10 members of parliament have the right to consult this council on matters relating to the constitutionality of laws. The officially recognised heads of religious communities have the right to consult this council only on laws relating to personal status, the freedom of belief and religious practice, and the freedom of religious education. Rules governing the organisation, operation, composition and modes of appeal of the council are decided by a special law.</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>25.7</td>
<td>100</td>
<td></td>
<td>God’s Book and the Sunnah of His Prophet, God’s prayers and peace be upon him are its constitution.</td>
</tr>
<tr>
<td>Yemen</td>
<td>20</td>
<td>99</td>
<td></td>
<td>YAR, 1971 (3) Islamic Shari’a is the source of all legislation. Unified state, 1990 (3) Islamic law is the principal source of legislation.</td>
</tr>
<tr>
<td>Egypt</td>
<td>76.1</td>
<td>92</td>
<td>*</td>
<td>Islamic jurisprudence is the principal source of legislation. * Coptic Chris-tian and others 6%</td>
</tr>
<tr>
<td>Kuwait</td>
<td>2.25</td>
<td>85</td>
<td>15</td>
<td>Islamic Shari’a shall be a main source of legislation.</td>
</tr>
<tr>
<td>Bahrain</td>
<td>.677</td>
<td>99.8</td>
<td></td>
<td>Islamic Shari’a is a principal source for legislation.</td>
</tr>
<tr>
<td>Qatar</td>
<td>.840</td>
<td>95</td>
<td></td>
<td>……Its religion is Islam, and Shari’a law shall be a main source of its legislation.</td>
</tr>
<tr>
<td>UAE</td>
<td>2.5</td>
<td>96</td>
<td>4</td>
<td>Islamic Shari’a shall be a principal source of legislation</td>
</tr>
<tr>
<td>Oman *</td>
<td>2.9</td>
<td>100</td>
<td></td>
<td>Islamic Shari’a is the basis of legislation.</td>
</tr>
<tr>
<td>Iraqi Interim</td>
<td>25.3 (July 2004 est.)</td>
<td>97</td>
<td>3</td>
<td>Article 4. Islam is the official religion and shall be considered a basic source among the sources of legislation. This law shall respect the Islamic identity of the majority of the Iraqi people and shall completely guarantee freedom, practice and the rites of other religions.</td>
</tr>
</tbody>
</table>

Note: most Governments do not keep official statistics on religious affiliation.

In comparison to Oman (Oman’s population is 2.9 million: The majority of population are *Ibadhi* Muslim 75% (Sunni Muslim and Shi’a, Muslims) and Hindu & Christians @ 25% that has recorded 100 per cent Muslims, Morocco and Lebanon have a population of Christians and other religions all living together under common legislative customs where the higher the percentage of nationals of other religions except Islam, the lower the influence of Shari’a. This is clearly noted in the words related to the effect of Shari’a in legislation. It tends to take an undefined role in legislation, for instance, in the case of Morocco and Lebanon.

With regard to Egypt, Brown\(^{58}\) elaborates on the difference between a source and the source of legislation.

Some Arab constitutions provide for a more ambitious role for Islamic law, proclaiming its principles to be “a chief source” or, in the case of Egypt since 1980, “the chief source” of legislation. Such clauses are usually seen as attempts to Islamicise the legal (and political) system though they have not had that effect in practice. Islamic clauses change little in the legal order but send important signals about the balance of political forces and suggest more religious understanding of the national identity.\(^{59}\)

Brown’s argument clearly suggested that although there is a shift to incorporate Shari’a in Egypt, in practice it is not implemented. For example when looking at the Yemeni constitutions, prior to 1990 when Yemen was two different countries, North and South Yemen, South Yemen was a socio-democratic country whereas North Yemen was a democratic republic. Table 3.3 below shows the difference between the two articles in this constitution.\(^{60}\)


\(^{59}\) Ibid.

Table 3.3 Articles in the constitution: North and South Yemen and after unification

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Yemen is an Arab Islamic state, independent and enjoying complete sovereignty. There is a consultative, parliamentary republic, and the people of Yemen are a part of the Arab nation. article (1)</td>
<td>The People’s Democratic Republic of Yemen is a democratic, popular, sovereign republic which gives voice to the interests of the workers, peasants, intellectuals and all labourers, striving to achieve a united democratic Yemen and total completion of the tasks of the national democratic revolutionary stage preparatory to the transition to building socialism. Article (1)</td>
<td>The Republic of Yemen is an independent, sovereign state, an inviolable unit, no part of which may be relinquished. The people of Yemen are part of the Arab nation and the Islamic world. article (1)</td>
</tr>
<tr>
<td>Islam is the religion of the state, and Arabic is its official language. article (2) The Islamic Shari’a is the source of all laws. article (3)</td>
<td>Islam is the religion of the state. Freedom of belief in other religions is guaranteed. Article (47)</td>
<td>Islamic law is the principal source of legislation. Article (3)</td>
</tr>
</tbody>
</table>


Analysing the constitution of South Yemen, it is obvious that there was no article to address the role of Shari’a. The only article dealing with this point was: Islam is the religion of the state. It was further elaborated on by article 47: ‘Freedom of belief in other religions is guaranteed’. On the other hand, the article related to Shari’a in North Yemen was ‘Islamic Shari’a is the source of all laws’ (article 3). This controversial issue was exacerbated when the new sentence in the constitution of Yemen after unification was changed to article 3 in order to accommodate the South Yemen philosophy, to become: Islamic law is the principal source of legislation.

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61 Yemen Population is 21,456,188. Major religion: Islam including Shaf’i (Sunni) and Zaydi (Shia), small numbers of Jewish, Christian, and Hindu. Source: CIA World Factbook at http://www.cia.gov/cia/publications/factbook/index.html, accessed on 22 June 2010. Note the use of words describing the role of Shai’a in constitution: Article (3) Islamic law is the principal source of legislation. In making the Shari’a is one of many sources of legislation and not the sole source takes care of the ethnic mix.
Whitaker\textsuperscript{62} argues that Islam was considered the religion of both Yemeni states, despite the fact that Shari’a had not been an issue of primary concern in the case of South Yemen. Islamic (Shari’a) law had not been mentioned in the PDRY [People’s Democratic Republic of Yemen] constitution, and Article 3 of the unified constitution was an attempt to compromise between the relative secularism of the south and the idea prevalent in the north that Shari’a should be the source of all law. The form of words chosen for this article of the unified constitution is used by several other Arab states (Egypt, for instance) and means that legislators can at times draw on laws and legal concepts from non-Islamic states. The form previously used by YAR [Yemen Arab Republic] - omitting the word ‘principal’ - tends to weaken democratic processes because it gives considerable power to unelected religious scholars and can at times amount to the right of veto if they decide that a proposed law is not based on Islamic teaching.\textsuperscript{63}

The true test of this observation can be witnessed in the new constitutions of Islamic countries where legislation is influenced directly by Western political forces, i.e., Iraq, Afghanistan, Sudan and Turkey.

Brown\textsuperscript{64} discussed the Iraqi\textsuperscript{65} Interim Constitution in its January 2004 draft, highlighting the same controversy relating to the role of Shari’a and legislation in Arab countries constitutions. For example, this can be seen from Article 4 of the Iraqi constitution as stated below:

\begin{quote}
Article 4 Islam is the official religion and shall be considered a basic source among sources of legislation. This law shall respect the Islamic identity of the majority of the Iraqi people and shall completely guarantee the freedom, practice and rites of other religions.
\end{quote}

\textsuperscript{63}Ibid.
\textsuperscript{64}Ibid.
\textsuperscript{65}Ibid.

Note that Iraq population is 25,900,000, Muslim (97 percent) [Shi’a Muslim (60-65 percent), Sunni Muslim (32-37 percent)], Christian or other (3 percent). Source: human rights country report, and CIA World Factbook at http://www.cia.gov/cia/publications/factbook/index.html, accessed on 22 June 2010.
This article will undoubtedly attract great attention because of the provisions for Islam and religious freedom. It is not clear, however, that it will have much effect on the Iraqi constitutional and legal order. Designating Islam the official religion has tremendous symbolic importance and is standard in Arab constitutional documents but the practical meaning of such a designation is probably quite limited.

The article related to Shari’a in most of Islamic countries excluded Shari’a influence from having the exclusivity to govern political structure and financial systems to a combination for Shari’a Law and secular statutes. After discussing the influence of Shari’a in Gulf Countries, let us now examine the influence in other Arabic countries. (See Table 3.2 Comparison between percentage of population and the wording used to describe Shari’a influence on legislation)

As stated earlier the percentage of Muslims within a population effects the word used describing the influence of Shari’a in Constitution. For example on the one hand of the scale there is Morocco66 and Lebanon67 where the legislation does not state the word Shari’a at all and on the other side there is Saudi Arabia68 and Yemen69 where the legislation is based on Shari’a Law and finally there countries in the middle of the scale such as Egypt70, Kuwait71 and most of the Gulf States72 where Shari’a Law has limited effect on the legislation. The aforementioned discussion revolves around two legal points of view:

The first view asserts that Shari’a is the basis of all legislation. This can be interpreted as meaning that Shari’a is the sole source of legislation with all laws derived from Islamic fiqh. Ballantyne73 makes reference to this point in a translation of a case from the constitutional court of Kuwait (28.11.1992) which

66 Muslim 98.7%, Christian 1.1%, Jewish 0.2%
67 Lebanon: Muslim (Shi’a, Sunni, Druze, Isma’ilite, Alawite or Nusayri), Christian (Maronite Catholic, Melkite Catholic, Armenian Orthodox, Syrian Catholic, Armenian Catholic, Roman Catholic, Protestant),
68 Ibid
69 Muslim including Shafi’i (Sunni) and Zaydi (Shi’a), small numbers of Jewish, Christian, and Hindu. Ibid
70 Muslim (mostly Sunni) 94% ibid
71 Muslim (Sunni 70%, Shi’a 30%), Christian, Hindu, Parsi, and other ibid
72 Ibid
states that:

the provision in the second article of the constitution provides “the religion of the state is el-Islam, and Shari’a is a principal source of legislation”, and with the passage of the law is an explanatory memorandum on such a provision: “This article does not restrict itself in its limitation, that the religion of the state is Islam but also meaning that Shari’a, meaning Islamic fiqh, is a principal source of legislation and thus provides and directs the legislator to a basic Islamic approach without precluding that from giving effect to principles of other sources in matters in which fiqh does not lay down any provision….

He further quoted the court judgement in his translation:

...and Shari’a is the principal source of legislation”, in that the requirement of such a provision would be to make it illegal to take from any other source on any matter dealt with by Shari’a ….

In comparison to Kuwait, Article 2 of Oman’s constitution takes an extreme side. There is a difference between stating Shari’a is a source of legislation and Shari’a is the only source of legislation. Therefore, as per the points of view made above, it would be illegal to take from any other source on any matter dealt with by Shari’a.

This view creates commercial implications for the economic system of the country. This view maintains that it is illegal and unconstitutional to conduct any activities contradicting the principles of Shari’a such as interest in the banking system which is referred to as riba in Shari’a. In other words, it means that any legislation and law that is contradictory to Shari’a principles is unconstitutional including the labour law and commercial codes. This article could cause a legal crisis which could then have an immediate implication on the economic and commercial system of the country which is currently run by an interest-based banking system.

The second point of view is that Shari’a is one of many sources of legislation and not the sole source. If Shari’a is considered as, “a source (among other sources) of legislation, this implies that it is possible to draw legislation from other sources. In cases where Shari’a is the only source of legislation, drawing on legislation from
any other source is not allowed. This led to establishment of legislations other than what is in Shari’a. For example, adopting the first view, a source (among other sources) of legislation, indicates that a person who steals should spend time in jail rather than having his hand cut off, and similarly for a person who drinks alcohol, uses drugs, or commits adultery, although the punishments themselves are not conducted according to Islamic law.

This, in practical terms, is what is currently being practised. Only when there is no Royal Decree or local custom is Shari’a used to fill voids. If the view that Shari’a is the basis of legislation and as the only source of legislation is adopted, then we can be quite certain that any dispute regarding an interest rate, ‘riba’, dealt with in court will be denied. There have been a few commercial cases identified in the Omani primary court where judgement was made in accordance to Article 2 of the Constitution. However, banks appealed these verdicts on the grounds of commercial codes 55/90 and contract law and the ruling went in favour of the banks.

It can also be argued that this is unconstitutional, as per the Basic Law of the Sultanate of Oman, the White Book Constitution, Shari’a is stipulated as the basis of legislation.

Oman decided to simplify the legal system, combining all different types of courts into one regular system. Royal Decree 90 of 1999 announced the establishment of its three-tier court system: preliminary and appeal courts and the Supreme Court. The Supreme Court is responsible for standardising legal principles and reviewing the decisions of lower courts.

It is not the purpose of this work to discuss in detail the difference between Shari’a and the common law method of deriving rule from original sources to make judgments. However, a brief description is given below of each method and how it works is essential because this research analyses issues related to Employment Law between the two systems.

The previous sections highlighted Shari’a, Shari’a and the constitution, Shari’a as a basis for Islamic Law and the role of Shari’a in informing legislation in Arab States. The next section will discuss referencing in Islamic law, from which fundamental of Islamic laws are derived.
3.6 Referencing in Islamic Law

Islam teaches that God has sent prophets (human beings) to humanity to communicate God’s message and to teach the people about faith in one Almighty God, how to properly worship God, how to walk on the path of righteousness and live their lives. Prophets revealed God's words to humans through books, the last prophet is the Prophet Mohammed, and the last book is the Qur’an. The belief in Qur’an as Gods words is fundamental in Islam and provides the platform of Shari’a law.

In this respect, Cammack\(^{74}\) states that:

> The scope of Islamic law is broader than the common law or civil law. In addition to core legal doctrines covering the family, wrongs, procedure, and commercial transactions, Islamic law also includes detailed rules regulating religious ritual and social etiquette. References to the application or proposed application of “Islamic law” or “Shari’a” (also transliterated in English as Syariah) often refer narrowly to state enforcement of these social mores rather than more strictly legal doctrines”.

It is debatable as to whether or not Cammack accurately describes Islamic law as the Scholars of Islamic Law in the Islamic countries would describe it. Indeed, contrary to Cammack, Taha Jabir Al Alwani\(^{75}\) argues and discusses the principles of Islamic Jurisprudence from the Qur’an and Sunnah in ‘Usal Al Fiqh Al Islami\(^{76}\) as follows:

> Allah has provided articulate proofs and clear source-evidence in order that the believers should have no trouble in finding their way to the particulars of His legislation, or Ahkam. With reference to some of this

\(^{74}\) Cammack, Mark: Course provides a brief introduction to the Islamic legal tradition. Islamic law University: Los Angeles, www.lfip.org/laws827s07/link02-islamiclaw.htm site was reassessed on 25 June 2007.


\(^{76}\) See Kamali, Mohammad Hashim 2003: Principles of Islamic Jurisprudence, IST. p. 4
source-evidence, the Islamic Ummah has agreed on its validity and its relevance to the Ahkam, and has accepted it as such. However there are differences with regard to other source-evidence. The source-evidence upon which the whole Ummah fully agrees, and on the validity of which there is general consensus, comprises the two sources that formed the basis of legislation at the time of the Prophet (PBUH).

The two sources of legislation referred to above are:\textsuperscript{77}:

1. The Qur’an: the words of God revealed to the Prophet (PBUH), the recitation of which in itself constitutes an act of worship.
2. The Sunnah: everything, other than the Qur’an, which has been transmitted from the Prophet (PBUH); what he said, did, and agreed to.

According to Kamali,\textsuperscript{78} the two main sources of Shari’ah are:

Revealed and non - revealed. Whereas the former provides the basic evidence and indication from which detailed rules may be derived, the later provides the methodology and procedural guidelines to ensure correct utilisation of the source evidence. Usul al-fiqh, or the roots of Islamic law, thus expounds the indications and methodology by which the rules of fiqh are deduced from the source evidence.

Every utterance of the Prophet (PBUH) that is not set down in the Qur’an, as well as his every deed, from the beginning of his mission to the last moment of his life, constitutes the ‘Sunnah’.

Regardless of whatever the Prophet (PBUH) did his every word, deed and approval may be taken as the basis for evidence in a legal ruling.

The Qur’an is the main source of Shari’ah law and the second main source of rules in Shari’ah is the Sunnah. Shari’ah’s rules are drawn from these two main sources and sometimes have been abstracted via analogy. Some Islamic rules are not clearly stated in the Qur’an or Sunnah. Therefore, there is what is called ‘Usul al

\textsuperscript{77} My investigation and analysis of Shari’ah employment law will be limited to the two main source of legislation.

\textsuperscript{78} Kamali, Mohammad Hashim 2003: Principles of Islamic Jurisprudence, IST. p. 1

January 2013
fiqh that “is concerned with the sources of Islamic law, their order of priority, and the methods by which legal rules may be deducted from the source materials of the Shari'a”. 79

Moreover, Kamali argues that:

The rules of fiqh are thereby derived from the Qur’an and Sunnah in conformity with a body of principles and methods which are collectively known as usul al-fiqh. 80

Furthermore he argues that:

The principle objective of usul al-fiqh is to regulate ijtihad and to guide the jurist in his effort at deducting the law from its sources.

In comparison to Common Law methods of reference using previous judicial decisions, the Shari’a uses a different set of principles to formulate rules. Kamali, 81 summarized these principles as:

(1) the original case, or asl, on which a ruling is given in the test and which analogy seeks to extend to a new case.
(2) The new case (far’a) on which a ruling is needed,
(3) The effective cause (illah) which is an attribute (wasf) of the asl and is found to be common to the original and the new case.
(4) The rule of (hukm) governing the original case which is to be extended to the new case.

To illustrate this, the following example of Qur’an (al-Maidah, 5:90) explicitly forbids wine-drinking. If this prohibition is to be extended by analogy to narcotic drugs, the four pillars of analogy in this example is set out on Table 3.4.

79 Kamali, Mohammad Hashim 2003: Principles of Islamic Jurisprudence, IST. p. 1
81 Ibid p. 126
### Table 3.4 The four pillars of analogy of referencing in Islamic Law

<table>
<thead>
<tr>
<th>(1) Asl</th>
<th>(2) far’a</th>
<th>(3) illah</th>
<th>(4) Hukm</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wine drinking</td>
<td>taking drugs</td>
<td>intoxication</td>
<td>forbid</td>
</tr>
</tbody>
</table>

O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful. (Qur’an , chapter 5 (Al-Ma’idah), verse 90)\(^{82}\).

This is an important method of referencing in Islamic Law to abstract laws from its sources only when rules are not clearly stated in the main source.

### 3.6.1 Shari’a Methods for deriving rulings from the sources

Islam has provided a guidelines for deriving rules to address different modern-day issues such as modern contracts. *Ijtihad* is the method used to derive rules from the two main sources. Al’Alwani\(^{83}\) discussed the role of *Ijtihad* as one principle for deriving rules from the *Hadith* stated below.

*Ijtihad* is defined as: “exertion” and is technically the effort a jurist makes in order to deduce the law, which is not self–evident, from main sources.\(^{84}\) Kamali refers to Amidi \(^{85}\) who defines *Ijtihad* as the total expenditure of effort made by a jurist in order to infer, with a degree of probability, the rules of Shari’a from the detailed evidence in the sources.

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82 King Saud University Qur’an Translation see also Picktal translation
   http://www.islamicity.com/QuranSearch/
84 Kamali, Mohammad Hashim 2003: Principles of Islamic Jurisprudence, IST. p. 523
Note that there is a *Fiqh* principle indicates that: there is not room for *Ijtihad* when rules are clearly stated in the main source.\(^86\)

The indications that *Ijtihad* is valid and relevant in the contemporary context are many. For example, when *Mu‘adh ibn Jabal* was sent by the Prophet (PBUH) to Yemen, he asked him:

> What will you do if a matter is referred to you for judgment?” Mu‘adh said: “I will judge according to the Book of Allah.” The Prophet asked: “What if you find no solution in the Book of Allah?” Mu‘adh said: “Then I will judge by the *Sunnah* of the Prophet.” The Prophet asked: “And what if you do not find it in the *Sunnah* of the Prophet?” Mu‘adh said: “Then I will make Ijtihad to formulate my own judgment”. The Prophet patted Mu‘adh’s chest and said “Praise be to Allah who has guided the messenger of His Prophet to that which pleases Him and His Prophet.

In his discussion on deriving laws from the original source, Kamali\(^87\) used the principle outlined in the prophet’s companion Mu‘adh case of obtaining inference which is explained in more detail below. This would be the common method used in deriving laws addressing the subject of employment and contract related to Shari‘a.

Therefore, the role of *Ijtihad* is fundamental to Shari‘a’s ruling principles. According to Ballantyne\(^88\):

> The Shari‘a does not seek to propound general principles of law, it rather deals with specific instance or transactions, and propounds rules relating thereto. There is no law of “contract”; no law of “torts”: There are examples of nominate contracts with rules applicable thereto, from which general principles must be deduced by analogy.

\(^{86}\) لا مساغ للاجتهاد في مورد النص

\(^{87}\) Kamali, Mohammad Hashim 2003: Principles of Islamic Jurisprudents, IST Cambridge p.468

\(^{88}\) Ballantyne, W. M. Essays and Addresses on Arab Laws, Curzon 2000. p.34.
Ballantyne made a valid statement regarding contract law or law of torts in Shari’a. Shari’a does not possess a law of contract, however, it provides principles that cover three main areas: *akhlaq* (morals), *ibada* (religious observance) and *mu’amalat* (transactions). These Shari’a principles can be applied to all the situations during life.

The principle of this *Hadith* allows the human brain to extend its capability to address the needs of society which is governed by *Usul al Fiqh* method.

Ballantyne argues that no introduction to the Shari’a would be complete without a reference to the *Majella*. The *Majella* will be one of the main references when addressing employment under Shari’a.

Intellectuals and Scholars of Islamic Principles of Jurisprudence (*Usul al Fiqh*) in the four main sects of Islam including Ibdis/Ibadi agree on the primary source-evidence (*The Qur’an* and *The Sunnah*) in order to derive employment principles under Shari’a.

The topic of employment is discussed in Islamic Shari’a books extensively focusing on the following main points:

1. The legality and legitimacy of Employment under Shari’a supported by Qur’anic verses, *Sunnah* and *Ijtihad* or *Qias*.
2. Conditions of employment and employment contract.
3. Type of employment and governing rules.

The discussion in this study will follow the same sequence as above. Furthermore, a comparison to the Omani Employment Law for each concept and idea will be addressed to establish similarities and difference between Omani Labour law and Shari’a.

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89 *Ibid* p. 42.
90 The first documented Shari’a code was developed in 1876 by the Ottoman Empire: *The Ottoman Civil Code*. The first translation was by: Hopper, C.A 1938, *The Civil Law of Palestine and Trans-Jordan*, Sweet & Mazwell, Limited, London
   The Arabic version is by Saleem Rustom Baz al Libnaini, member of Shoorah of Ottoman Empire: *Sharh al Majalla*, 3rd Ed. August 25, 1304, Dar al Kotob, Beirut
   سليم رضومن باز اللبناني: *شرح المجلة* دار الحكمة العلمية بيروت لبنان
91 Shafi’i, Hanafi, Maliki, and Hanbali are four main jurisprudence schools of fiqh in Sunni.
3.6.2 The Sunnah as part of Shari’a

The Sunnah has received considerable attention in Islamic jurisprudence. The discussion related to this study is to establish the place of Sunnah position in Shari’a. A few definitions of Sunnah are provided below:

According to Kamali,\(^{92}\):

\textit{Sunnah} refers to all that is narrated from the Prophet, his acts, his sayings and whatever he has tacitly approved, plus all the reports which describe his physical attributes and character.

Similarly Al’Alwain\(^{93}\) defines Sunnah as:

\ldots what the Prophet (PBUH) did was instinctive or otherwise, his every word, deed and approval may be taken as the basis for evidence in a legal ruling.

These two definitions state the fundamentals of Sunnah. The Qur’an provides a number of verses that indicate the place of Sunnah as a source of legislation in Islam. For example:

\textit{He who obeys the Messenger has obeyed Allah; but those who turn away - We have not sent you over them as a guardian. (Qur’an Chapter 4: Verse 80)}

\textit{It is He who has sent among the unlettered a Messenger from themselves reciting to them His verses and purifying them and teaching them the Book and wisdom - although they were before in clear error – (Qur’an Chapter 62: Verse 2)}

\(^{92}\) Kamali, Mohammad Hashim 2003: Principles of Islamic Jurisprudents, IST. p. 58

And what Allah restored to His Messenger from the people of the towns - it is for Allah and for the Messenger and for [his] near relatives and orphans and the [stranded] traveler - so that it will not be a perpetual distribution among the rich from among you. And whatever the Messenger has given you - take; and what he has forbidden you - refrain from. And fear Allah; indeed, Allah is severe in penalty. Qur’an (Chapter 59 Al-Hashr verse 7)

But no, by the Lord, they can have no (real) Faith, until they make thee judge in all disputes between them, and find in their souls no resistance against Thy decisions, but accept them with the fullest conviction. (Qur’an, Chapter 4, verse 7)

1. By the Star when it goes down, - 2. Your Companion is neither astray nor being misled. 3. Nor does he say (aught) of (his own) Desire. 4. It is no less than inspiration sent down to him: 5. He was taught by one Mighty in Power, 6. Endued with Wisdom: for he appeared (in stately form); 7. While he was in the highest part of the horizon (Qur’an, Chapter 33, verse 36)

It is not fitting for a Believer, man or woman, when a matter has been decided by Allah and His Messenger to have any option about their decision: if any one disobeys Allah and His Messenger, he is indeed on a clearly wrong Path. (Chapter 53 An-Najm (The Star) verse 1 – 7)

O ye who believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If ye differ in anything among yourselves, refer it to Allah and His Messenger, if ye do believe in Allah and the Last Day: That is best, and most suitable for final determination. (Qur’an, Chapter 4, verse 59)

And thou (standest) on an exalted standard of character.
(Qur’an, Chapter 68, verse 4)

The question that might be raised here is how the Hadith is collected to be trusted to be considered as the second source of legislation? This issue occupied Muslim
specialists since the early classical period, and has continued to command the intense attention of western scholars since the middle of the last century.

The Prophet said: “whoever lies about me deliberately must prepare himself for a place in Hell-fire” 94

Most of the rulings related to employment are extracted from the Sunnah except for a few Qur’anic verses that are related to transaction relationships between people. The Sunnah therefore plays a significant role in Shari’a and therefore, in forming the Shari’a employment code.

A Hadith is a saying of Muhammad or a report about something he did. Over time, during the first few centuries of Islam, it became obvious that many so-called Hadiths were in fact spurious sayings that had been fabricated for various motives, at best to encourage believers to act righteously and at worse to corrupt believers’ understanding of Islam and to lead them astray. Since Islamic legal scholars were utilizing Hadith as an adjunct to the Qur’an in their development of the Islamic legal system, it became critically important to have reliable collections of Hadith. While the early collections of Hadith often contained Hadith that were of questionable origin, gradually collections of authenticated Hadith called Sahih were compiled (Sahih literally means "correct, true, valid, or sound."). Such collections were made possible by the development of the science of Hadith criticism, a science at the basis of which was a critical analysis of the chain of (oral) transmission (isnad) of the Hadith going all the way back to Muhammad. The two most highly respected collections of Hadith are the authenticated collections the Sahih Bukhari and Sahih Muslim. In addition to these, four other collections came to be well-respected, although not to the degree of Bukhari and Muslim's sahih collections. These four other collections are the Sunan of Tirmidhi, Nasa'i, Ibn Majah, and Abu Da'ud. Together these four and the two sahih collections are called the "six books" (al-kutub al-sitta). Two other important collections, in particular, are the Muwatta of Ibn Malik, the founder of the Maliki school of law, and the Musnad of Ahmad ibn Hanbal, the founder of the Hanbali school of law.

94 Abu Dawood, Sunan, Hadith no. 1036
3.7 **Shari'a General Theory of Contract**

The main point of discussion in this study regards whether there is a general theory of contract in Shari’a. Shabeer\(^{95}\) discussed the general theory of contract. He argues that there are five main areas, which govern all contracts under Shari’a:

2. Formation of Contract.
3. Conditions associated with contract.
4. Options and its effect on contracts.
5. Contract law and its effects on ending employment.

According to this classification, it is implied that a general theory of contract exists in Shari’a, despite the argument that Shari’a contract laws are extracted from Qur’an and Sunnah. The Qur’an and Sunnah do not provide one complete set of laws in one place, but separate directions on specific occasions (See Figure 3.2 below on the Shari’a contract law is a comprehensive code of law that covers a wide range of interrelated topics.

It is argued that there is no general theory of contract in Islamic law and that there are only principles which jurists apply in deriving both contract and content in the contract law\(^{96}\). The Shari’a contract system, as in any contract law, provides a general set of rules governing the enforceable contract-formation process. The main difference between a Shari’a contract and a common-law contract is that Shari’a contract principles are derived from Qur’an and Sunnah while common law is based on the principle reference to previous judicial decisions. Shari’a looks at each contract differently, and each one is evaluated against a set of principles to determine whether the contract is valid, void or voidable.

The contract in the Shari’a concept is called *Aqd*, and the main principle for a contract under Shari’a is derived from the Qur’an, chapter 5, verse 1.

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\(^{95}\) Shabeer, Mohamed Outhman, 2004 Al Madkhal ila fiqh Al Moamalat Al Maliyah, Dar Al Nafees, Jordan.

O you who have believed, fulfil [all] contracts.

A common-law contract is defined as an agreement between two or more parties that establishes one enforceable legal relationship. In principle, there are many similarities between the basic concepts of a contract in common law and Shari'a. However, the implementation differs. For instance, freedom of contract is restricted under common law and restricted under Shari'a. However, the restriction principles are different as the driven sources of the law are.
Figure 3.1 Summary of the principles that govern contracts under Shari'a

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97 Figure 3.2 was developed specifically for this research
3.8 Shari’a and Contract Code

A contract is mentioned illustrate in the Qur’an and therefore the topic has received considerable attention in Shari’a. There are many verses related to a commercial contract available in the Holy Qur’an. The most important verse on performing a contract is in Qur’an, Chapter 5 (Al-Ma’idah): Verse 1:

(1) O you who have believed, fulfill [all] contracts.

The Qur’an in Arabic has broader scope of meaning than the English translation. In order to offer as close an understanding as possible, a few other translations are listed below.\(^9^8\)

- Sahih International: O you who have believed, fulfil [all] contracts.
- Pickthall: O ye who believe! Fulfil your indentures.
- Shakir: O you who believe! Fulfil the obligations.
- Muhammad Sarwar: Believers, stand by your contracts (and obligations).
- Mohsin Khan: O you who believe! Fulfil (your) obligations.
- Arberry: O believers, fulfil your bonds.

These translations provide a better and clearer meaning of what the verse is saying, that an employee/employer should promise to fulfil their obligations. In other words if someone makes a promise in a contract, it must be kept and legally enforced, including all other expectations as related to the contract.

The other verse from the Qur’an relates to enforcement and the fulfilling of the promise of obligations as listed in Chapter 23, verse 8:

And they who are to their trusts and their promises attentive\(^9^9\)

This verse also provides the guiding principle that a promise must be kept including in contracts.

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\(^9^8\) [http://corpus.quran.com/translation.jsp?chapter=23&verse=8]

Al Shanqity argues that the fundamental nature of the development of the economic relations between individuals in a society and between human societies generated new types of contract that did not exist in the past. Al Shanqity argues that Shari’a laws are to protect individuals and society and there are no rules of Shari’a that refer to labour law. Therefore, there are principles that must be adhered to when composing each contract. Therefore, all modern contracts must be measured against Islamic principles.

If primary sources do not provide a clearly defined law then the following procedure is adopted.

1. ‘Ijma’ (consensus of opinion). ‘Ijma’ is the verbal noun of the Arabic word ajma’ which has two meaning: to determine and to agree upon something.

2. Qiyas (analogy reasoning). Qiyas literally means measuring or ascertaining the length, weight or quality of something. Technically, qiyas is the extension of Shari’a value for an original case asl, or to a new case, because the latter has the same effective cause as the former.

3. Ijtihad, (an interpretation of a scholar) or personal reasoning. It is usually defined in usul works as the greatest possible effort by a qualified jurist to reach a legal decision within the framework of Shari’a.

Basic Shari’a principles or Fiqh-al-Muamalat of Islamic Business Contracts govern all aspects of commercial transactions. It is therefore the Shari’a law that we must look at to provide the general rules when looking at what must exist to make a contract. The Arabic word for contract is al-aqd, which means: ‘an obligation or a tie’ when two parties enter into a contract, it is called ‘al-in‘iqad’. When an offer

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100 Al Shanqity,: Mohamed Mustafa: Shari’a study for modern financial contract 2001 p.46.
101 ibid
102 Kamali, Mohammad Hashim 2003: Principles of Islamic Jurisprudence, IST. UK p.229
103 ibid p.264
104 ibid p. 469. Kamali, argues that ijtihad continues to be the main instrument of interpreting the divine message and relating it to the changing conditions of the Muslim community in its aspirations to attain justice, salvation and truth...... ijtihad derives its validity from divine revelation, its propriety is measured by its harmony with the Qur’an and the Sunnah.
and acceptance are the same there is a meeting of the minds – an agreement. Such an agreement produces obligations (responsibilities) on both parties (called bi-lateral obligations). AbuZahrah\textsuperscript{106} discussed the ‘Rukn Al Aqdm’ the Base/Foundations of Contracts saying: if Al Aqd is defined as all activities engaged in behaviours exercised by one party such as ‘divorce’ (Under Islamic System)\textsuperscript{107}. Therefore, this action is binding and carried out by the will of the two parities, such as selling, buying, renting, etc. then the contract is only binding when meeting both parties willing statements. These two statements are ‘Ijab and Qubool’ translated into English as offer and acceptance. This is the same as the two basic contractual components of employment contract in Oman contract \textsuperscript{108} and as well as in the English contract law.

The Contract, from an Islamic legal perspective, is conceptually divided into two main categories, namely unilateral and bilateral contracts\textsuperscript{109}. While the former is gratuitous in character and does not require the consent of the recipient, the latter is bound to strict rulings and guidelines since it requires the consent of both parties to the contract.

Hussein Hassan\textsuperscript{110} discusses the Islamic contract and the concept of unilateral (one side) or bilateral contracts (multiple parties) in his research stating that:

“In the classic manuals of Islamic law, the term aqd (contract) is most frequently used for two-party transactions, concluded by offer on the one hand, and acceptance on the other. However, it is also used for transactions (guarantees, gifts, bequests) concluded by an offer only. Again, for acts merely juristic in nature (divorce, release, manusmission of debts), the term is still aqd. In fact, the term covers obligation in every field: one’s religious obligations to God, the interpersonal obligations of marriage, the political obligations

\begin{footnotes}
\item[106] Abu Zahrah, Imam Mohamed: Al Mulkiyah wa Nathariyet Al Aqd: 1996, Dar Al Fiqr Al Arabi; p. 176 (the book is in Arabic).
\item[107] Under Islamic Shari’a, The husband has the right to divorce without the consent of the wife unless specified otherwise in the marriage contract.
\item[108] Abu Zahrah argument was translated from Arabic.
\item[109] The same classification exist in UK system however, it is deferent in application. See Cavendish 2002. Contract law,
\end{footnotes}
expressed in treaties, and the commercial obligations of the involved parties in a range of particular contracts”.

Baker,111 discussed the same concept of contracts under Shari’a Law and categorizes the following transaction as unilateral contract:

“Unilateral contract comprises of transactions in favour of the recipient such as gift (haddiiah, hibah), off-set the debt (ibra), will (Wasiyyat), endowment (waqf) and loan (qard)”.  

Baker112 suggests that contracts in the Islamic system are classified into three categories:

the legal effect(s) arising from a contract; be it a valid, void or voidable contract respectively.

These three forms of contracts will be discussed after considering the elements of making invalid and forbidden contracts. The word Aqd (obligations) in a contract has a wider meaning in Arabic in contrast to the meaning and use of the word obligations in the English law. In the English law contractual obligations are limited to the responsibilities listed and placed on the parties in the contract. Subsequently, a contract is an agreement creating legally binding obligations that a court will enforce. Under Shari’a employment contracts fall automatically under bilateral contracts that require offer and acceptance to become a valid contract.

3.8.1 Principles of Shari’a Contract

Shari’a contract is governed by many principles applied to all contracts. Shari’a scholars have summarised these principles in eight main areas113.

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111 Baker, Mohd Daud: Contracts in Islamic Commercial And Their Application In Modern Islamic Financial System, International Islamic University Malaysia (IIUM).
112 Ibid
The eight principles according to Al Shanqity\textsuperscript{114} (translated from Arabic) are\textsuperscript{115}:

1. **Obligation of acceptance:**

   In the Qur’an, Chapter 4 (An-Nisa’) verse 29, it is stated:

   \textit{O you who have believed, do not consume one another’s wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful.}

   Prophet Mohammed (p.b.u.h) said: Sales are based on Consent (subject to the conditions discussed further in relation to employment wages) Prophet said : Narrated by Abdullah ibn Amr ibn al-‘As: The Prophet (peace be upon him) said: Both parties in a business transaction have a right to annul it so long as they have not separated unless it is a bargain with the option to annul is attached to it; and it is not permissible for one of them to separate from the other for fear that one may demand that the bargain be rescinded.\textsuperscript{116}

2. **Ban all types of cheating, harming and covering up.** In the Qur’an, chapter 8 (Al-Anfal), verse 27 it is stated:

   \textit{O you who have believed, do not betray Allah and the Messenger or betray your trusts while you know [the consequence]}

3. **Rule of Customs:** applies whenever there is no set of statements in Qur’an or Sunah by Prophet Mohammed.\textsuperscript{117}

4. **Work is considered to be worshiping God** the intention must be to obey God’s orders. Truth and honesty is the basic assumption of every contractual agreement. One ought to accept the intention of devotion to work as work is part of prayer. It is stated in the Qur’an, Chapter 1 (Al-Fatiha ) verse 5), \textit{It is You we worship and You we ask for help.}

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\textsuperscript{114} Al Shanqity, Moh’d Mustafa Aboh 2001; Dirasah Le Aham Al Uqod Al Malyah al Mustahdathah. P.46 (Study of the Most Important New Contracts)

\textsuperscript{115} See also Sameeh atif Al Zain1994: Al Uqood, Dar Al Kitab Al Libnani Beirut p.333

\textsuperscript{116} Sunan Abu Dawud, Book 23, Number 3449.

\textsuperscript{117} See also Article 437 Majallat al Ahkam Al Adliyyah

January 2013
4. Contracts are based on stability not fluctuating terms: Contracts reflect obligation and respect of results of the contractual agreement.

5. Contracts are built on justice and forgiveness in order to meet social services. Contracts must carry benefits for the contractors (i.e. you cannot have a contact to cure a dead person). It is stated in the Qur’an, Chapter 1 verse 280,

\[\text{And if someone is in hardship, then [let there be] postponement until [a time of] ease. But if you give [from your right as] charity, then it is better for you, if you only knew.}\]

Also in the Qur’an, Chapter 16 (An-Nahl), verse 90 it is stated:

\[\text{Indeed, Allah orders justice and good conduct and giving to relatives and forbids immorality and bad conduct and oppression. He admonishes you that perhaps you will be reminded.}\]

6. The contract must result in benefits to the contractors\(^{118}\). The main purpose of contracts in Islam is that contracts must be able to generate benefits to both contracting parities and subject to matters that is lawful and in line with Shari’a principles.

8. All modern contract principles can be drawn from Islamic principles and guidance. Change is a fact of life and the evolution of human required new types of contracts. However, in Islam all newly created contracts must comply with Islamic legal principles and therefore, it prohibits unequal exchanges or unfair advantage in trade.

3.8.2 Contract Classification under Shari’a

Shari’a classifies contracts under many categories. Shabeer\(^{119}\) identifies three categories. First, classification according to the nature of the contract. Second classification according to the contract as to whether it has been stated in Shari’a or is a modern type of contract and third, a contract based on another form of contract.

\(^{118}\) See also AlZuhayli p. 731 Fiqah Al Isalmi Wa Adilatih

Moreover, Schaefer\(^{120}\) classified contracts according to their validity as (i) valid, (ii) voidable, (iii) void contracts or agreements, (iv) illegal, and (v) unenforceable.

Under Shari’a classification a group of contracts of similar nature can be similar or different. Similarities and differences of contract under Shari’a are guided by their aim, purpose and the outcome effect of each contract. Al Shanqity\(^{121}\), classifies contracts under Shari’a into eight categories.

1. Contracts that have been named in Shari’a and new contracts invented by people as needs evolved. People will always invent new contracts as needed i.e. stock market contracts.

2. By looking at the aim of the contract it will include the following:
   a. Ownership Contract: donation, sale and rent. Means that the aim of the contract is ownership is for the purpose via compensation such as sales. Or without compensation such a donation or gifts.
   b. Waiver, to capitulate the right with compensation or without.
   c. Give someone a free hand to do something: power of attorney.
   d. Restrictions: constrain someone from doing something or take away the agency
   e. Documentation, warranties, insurance and transfer,
   f. Partnership contract.
   g. Saving contract, a contract intended to save one money (deposit).

3. Receiving conditions on completion of contract: contract required receiving such as donation, lending, depots, pledge, and loan.

4. Classification based on valid or void contact. Valid contract is the one that has all the correct components: form, contractors, and \textit{Mahal}. Void contract is a contract that is not in line with Shari’a in one of its components. The void contract must not be executed as per Shari’a and has to be stopped by contractors or a Judge.

5. Classification based on execution or seized. The executed contract is


\(^{122}\) Al Shanqity, Mohammed Mustaff 2001: Dirasah Shari‘ah le Ahm Al Uqud al Maliyah Al Mustahdathah, Maktabat al Oloom, Al madinah, Sadia v.1 p. 75

January 2013
the one that can be executed. Seized contract is a right contract but is seized for a specific reason such as child contract.

6. Classification based on obligation. Is a contract that is legally binding and no one can break it.

7. Classification based on originality or tied. It is a contract that is not tied to any other contract such as a sales contract. The opposite contract is one tied to another such as pledge or warranty as they do not exist without being originally connected to others.


Al Zuhayli\textsuperscript{122} argues that there are two different types of contract in Shari‘a. The first type is the named contracts such as employment, sales and gifts. The first group of contracts will be governed by the general rules of contract and its own specific rules. The second type is the un-named contracts that the Shari‘a did not place any guidance on such as modern contract, insurance, stock broker’s agent contract. They follow the general principles and guidance of contracts under Shari‘a. Al Zuhayli discussed the employment contract in detail.

Abu Zahra\textsuperscript{123} divided contracts in Islamic system in relation to *Khiyar al Majalis* (the option of withdrawal before parting, whereby an offer or acceptance may be withdrawn as long as both parties are still presents) into three groups:

First: Contracts not obligatory (*Aqd Ghar Lazima*) for both parties such as loan, deposit, or agency (nominating another person to act) or obligatory from one side and not obligatory from the other side such as mortgage.\textsuperscript{124}

Second: Obligatory contracts that cannot be broken by both parties or by one

\textsuperscript{122} AlZuhayli Dr. Wahbah 1984; *Al Fiqh Al Islami Wa’Adillatu*h, Dar Al Fikr, Damascus, P. 729-782.

\textsuperscript{123} Mohmed Abu Zahrah *Al Mulkiyah and the theory of aqd in Islamic Shari’a*: 1996, dar al fiqr al arabi; p.179 (the book is in Arabic) (translated as the ownership and the theory of contract in Islamic Shari’a).

\textsuperscript{124} On this type of contracts Khiar al Majalis is not required as a condition, since untie the knot / contract always is acceptable.
party, such as marriage or Khala’a (wife’s right to end marriage). In these cases Khiyar al Majalis\textsuperscript{125} is not required as the decisions in these actions should not be rushed.

Third: Obligatory Contracts that can be broken: this includes all contracts of compensation nature, such as sale and rent. All of these contracts require Khiyar Al Majalis to enforce acceptance completely. If the contractors have separated physically then the contract is complete. The Prophet (p.b.u.h) said: ‘Vendors on choice as long as they did not separate’\textsuperscript{126}

3.8.3 Offer and Acceptance under Shari’a Contracts

Offer and acceptance are the main pillars of any contract in Shari’a. Moh’d Abu Zahra\textsuperscript{127}, states that offer and acceptance are the cornerstones for valid contracts. The offer has to meet the acceptance on terms and conditions. For example, if a proposal is made to marry a woman and the acceptance is received on different dowry conditions there is no contract as the conditions were not met. However, if there is acceptance on a lower figure condition (i.e. 100 and the offer comes back with a higher figure i.e. 150 then there is a contract)\textsuperscript{128}. To further, explain this concept an analogy of that is provided below.

If a man offered marriage to a woman and she accepts the marriage on a dowry of £100 and the man replies to her acceptance to marry her on £150. There is a contract as if you accept to marry on £100 then you will definitely accept to marry on £150. These did not meet both wishes, but the acceptance is made in favour of the accepter, the wife in this case.

According to Abu Zahrah, there are three conditions under which the offer and the

\textsuperscript{125} Translated by: Mohmoud A. El Gamaly 2003 for the book of Wahba Al Zuhayli; Financial Transactions in Islamic Jurisprudence, Dar Al Fikr, Damascus p.10 ‘neither the offer nor the acceptance is binding until both have been expressed. Therefore, each party to the contract has the option to withdraw their part as long as the other has not been extended.’ This concept is not clearly practised in Muslim societies when conducting a sale not exists in western systems.

\textsuperscript{126} Al Maqdisy, Al Hafeed AbdulGhani: Umdat Al Ahkam معلمة الأحكام 295/26

\textsuperscript{127} ibid

\textsuperscript{128} Abu Zahrah, Imam Mohmed: Al Mulkiyah wa Nathriyat Al Aqd fee al Shari’a Al Islamic:1996, Dar Al Fiqr Al Arabi; p. 176

January 2013
acceptance have to be met:

1. Both offer and acceptance have to be at one Majlis (one place) Majlis al Aqud.
2. There should not be any interruptions during the proceedings, such as unrelated topics.
3. No amendments or withdrawal of the offer may be made prior to acceptance.

There are two schools of thoughts in this matter. The first one is the acceptance must be immediately after the offer in Al Shafiy. However, the Hanaffiy feel that this is not required as this might pressurise the party accepting, thus placing them in a position of disadvantage. If the offer is refused immediately, this may lead to the loss of opportunity, or if it is accepted immediately, may result in a poor deal.

*Khiair al Majalis* means according to Abu Zahra that the contractors can change their mind on the contract as long as they did not separate physically (i.e. the offer and acceptance have to be made during the same meeting). The right to withdraw is enforced on both parties as long as they did not separate the sitting.

As narrated by Abdullah bin Umar, Allah’s Apostle, Prophet Mohammed, said: *Both the buyer and the seller have the option of cancelling or confirming a bargain unless they separate, or the sale is optional.*

Offer and acceptance are subject to principals of Shari’a as per the following:

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129 Shafi’i, Hanafi, Maliki, and Hanbali are four main jurisprudence schools of *fiqh* in Sunni.
130 Abu Zahrah Mohamed 1996 Al Mulkiyah wa Nadhriat Al Aqd fe Al Shari’a Al Islamyah. *(the Ownership and the Theory of contact in Islamic Shari’a)* Dar Al Fiqr Al Arabi, Cairo pps. 180-183
131 Khiair al Majalis: option of cancelation which provides that ‘the parties to a sale are free to change their minds so long as they have not left the meeting of the contract’. Kamali, Mohammad Hashim 2003: *Principles of Islamic Jurisprudents,* IST. UK p.103
132 *Imam Al Hafidh Abd Al Ghany Al Maqdsi Ktab Al Biyoo.*
133 Sahih Bukhari Volume 3, Book 34, Number 296. Narrated by Hakim bin Hizam The Prophet said, “The buyer and the seller have the option to cancel or to confirm the deal, as long as they have not parted or till they part, and if they spoke the truth and told each other the defects of the things, then blessings would be in their deal, and if they hid something and told lies, the blessing of the deal would be lost”.

January 2013
Hadith:

As narrated by Ibn Umar, Allah’s Apostle, Prophet Mohammed said: *The seller and the buyer have the option of cancelling or confirming the deal unless they separate, or one of them says to the other, Choose (i.e. decide to cancel or confirm the bargain now)." Perhaps he said, or if it is an optional sale.*

3.8.4 Freedom of Contract in Shari’a

Shari’a provides freedom of exchange of wealth between people. This freedom is restricted on some occasions as laid down by the Prophet Mohammed (pbuh).

It is narrated by Anas ibn Malik that:

During the time of the Apostle of Allah (peace-be-upon-Him), a man used to buy (goods), and he was weak in intellect. His people came to the Prophet of Allah (PUBH) and said: Prophet of Allah, stop so-and-so (to make a bargain) for he buys (goods) but is weak in intellect. So the Prophet (PBUH) called on him and forbade him to make a bargain. He said: Prophet of Allah, I cannot keep myself away from business transactions. Thereupon the Apostle of Allah (PUBH) said: If you cannot give up making a bargain, then say: Take and give, and there is no attempt to deceive.

According to this Hadith, the freedom of contract under Shari’a is governed by the principle of capacity to form a contract. Al Zuhayli discussed this point, capacity, in his book under the section of fulfilling contractual conditions (execution of conditions). One of the conditions is that the contractor should have ownership and freewill. Therefore, the contract of juveniles and a mad person or one of unsound mind (fouholi) is pending subject to approval. This justification for the freedom of contract being placed due to the fact that they are unable to give their consent freely. Prophet Mohammed placed restriction on an individual’s freedom

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134 Al Bukhari: Volume 3, Book 34, Number 32.
135 Sunnan Abu Dawud, Book 23, Number 3494
136 Anas Ben Malik one of prophet Muhammad’s companions
137 Sunan Abu Dawud, Book 23, Number 3494.
138 Al Zuhayli, Whabah 1984: Al Fiqih al Islami, Dar Al Fikr, Damascus v. 4 p. 734
of contract. The Prophet’s Hadith reinforces the concept of freedom of contract is restricted: (Hadith of stopping a man from selling as he was addicted to sale) a mad person or one of unsound mind.

One of the main factors in contract formation is the capacity of the contracted individual. There is a limited reference to this concept in the Oman Labour Law and it has been strictly confined under Shari’a in the section of contract conditions. Articles 444 and 458, of Majalat al Ahkam Al Adlyah, address the capacity of the individual as part of a valid condition of formation of a contract under the Shari’a code.

The Islamic system places restrictions on all types of transactions between parties unless the contract is binding to the basic principles of Shari’a derived from the Qur’an or Sunnah. The system allows a considerable amount of freedom to contractual agreements as opposed to other systems.

Either party to the contract can add conditions to the contract as long as those conditions do not contradict Islamic Law or repeal one of the legal purposes of contract. Specific conditions related to employment contracts that do not comply to Shari’a will be discussed in depth under Shari’a Employment contract.

The Hadith in this effect is:

Any condition that is not in God’s book is void, even if making a hundred conditions, God’s condition is right and stronger.\(^{139}\)

3.8.5 Contracts forbidden under Islamic Law

Islamic law poses restrictions on people entering into a contract that concerns areas prohibited by Islam. A forbidden contract is a contract that does not comply with the general rule of Islamic principles. The following verse from the Qur’an gives guidance on Shari’a method of exchange of wealth.

\[O\ \text{you who have believed, do not consume one another’s wealth}\]

\(^{139}\) Sahih Al Bukari, no 3561, Sahih/ Muslim (1504)

January 2013
unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful.
(Qur'an, Chapter 4 (An-Nisa) verse 29)

A number of barter arrangements peculiar to pre-Islamic market trading were expressly forbidden by the Prophet Mohammed (p.b.u.h). The characteristics they have in common are that they depend on conjecture or on uncertain definition of the goods being traded. It is from the explicit prohibition of such barter arrangements that Islamic law developed its strict rules about definition of the object (and terms) of contract. Examples of forbidden contracts are.¹⁴⁰

*Muzabana*: The exchange of fresh fruits for dried fruits such that the quantity of the dried fruit is measured and fixed but the quantity of the fresh to be given in exchange is estimated while still on the trees.

*Muhaqalah*: The sale of grains still growing (that is, unharvested) in exchange for an equal quantity of harvested grains. (The prohibition of this particular transaction is an important element in the general discussion of *gharar*: the basis of the prohibition of future trading in grain and other foodstuff and stock commodities

*Gharar, Riba, or Usury* are forbidden elements in contracts under Islamic Law. In business transactions each of the three elements can apply. However, in employment contracts only the element of Gharar applies.

**Gharar**

Al Zuhayli¹⁴¹ states that Gharar in the language of jurists:

Hanafi School: *gharar* is that whose consequences are hidden.
Maliki School: *gharar* is what is not known to exist in the future, e.g. birds in the air and fish in the water.
Shafi School : *gharar* is that whose nature and consequences are hidden.

¹⁴¹ *ibid* v.1 p. 83
Hanbali School: *gharar* is that whose consequences are unknown.

In summary the *gharar* sale is any sale that incorporates a risk that affects one or more of the parties to the contract and may result in the loss of property.

Abdul Awwal Sarker \(^{142}\) discusses *Gharar* in the following:

*Gharar* originated out of deception through ignorance by one or more parties to a contract. There are several types of *gharar*, all of which are *haram* (forbidden).

The first group of the aforementioned forbidden types of *gharar*\(^ {143}\) are related to the contract in general but a second group is related specifically to wages in the employment contract. The following Hadiths of the Prophet Mohammed set out the second group of *gharar*. The first example tells us that we should not buy that whose consequences are unknown. In this case it is bull insemination.

The Prophet discouraged paying a miller his wage from the milled wheat he worked on, and wage of bull insemination.\(^ {144}\)

In other words, it is not allowed to pay wages of the same or unknown.

The following *Hadith* specifically prohibits earnings of slave girls through prostitution.

The Prophet prohibited the earnings of slave girls (through prostitution)\(^ {145}\)

### 3.8.5.1 Riba (Usury)


\(^{143}\) Al Zuhayli Wahbah, *Financial Transactions in Islamic Jurisprudence*, Dar Al Fikr Beirut v.1 p. 83 : Mahmoud A. El Gamali, translation for: “a *gharar* sale may occur in a number of forms: through undeliverability of the object of Sale (e.g. a run-away hours or camel), non-existence or ignorance of full ownership of the object by the seller, lack of full ownership of the object by the seller (e.g. fish in large volumes of water [i.e. in a sea, ocean, river, etc.])”

\(^{144}\) Sahih Al Bukhari Number [2122]

\(^{145}\) Sahih Al Bukhari Number [5033] 2163
Shari’a prohibits the payment of fees for the borrowing of money (Riba, usury). Riba is “an increase in one good for another in an exchange, without a compensation, for the increase”\textsuperscript{146}. There are two main arguments regarding these concepts that are popular among Islamic scholars. The first argument asserts that all types of interest should be viewed as usury and therefore, prohibited by Shari’a. The other argument considers that simple interest is acceptable and that only compound interest should be prohibited. While the argument on interest continues, interest in general, is not acceptable in Islam. These strong views about interest in Islam have led to the creation of an Islamic banking system and informal financial societies\textsuperscript{147}.

The following are a few verses from the Qur’an with references to the use of interest (Riba, usury). The first example says that Allah will deprive usury/Riba of all blessing.

\textit{Allah destroys interest and gives increase for charities. And Allah does not like every sinning disbeliever. Qur’an, Chapter 2 (Al-Baqara) verse 276}

The following verses all warn that usury will lead to hell fire and grievous punishment.

\textit{O you who have believed, fear Allah and give up what remains [due to you] of interest, if you should be believers. Qur’an Chapter 2 (Al-Baqara) verse: (278)}

\textit{Qur’an Chapter 2 (Al-Baqara) verse: (275) Those who consume interest cannot stand [on the Day of Resurrection] except as one stands who is being beaten by Satan into insanity. That is because they say, “Trade is [just] like interest.” But Allah has permitted trade and has forbidden interest. So whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah. But whoever returns to [dealing in interest or usury] - those are the companions of the Fire; they will abide eternally therein}

\textsuperscript{146} ibid p. 309

\textsuperscript{147} Informal financial societies: a group of people agree to pay lump sum every month for a specific agreed period. In return each month one person collects all the month. This is very common among Muslims who feel uncomfortable dealing with conventional the banking system. The fund usually used to build houses.
Qur’an   Chapter 3 (Al-Imran 3) verse: (130)  O you who have believed, do not consume usury, doubled and multiplied, but fear Allah that you may be successful

And [for] their taking of usury while they had been forbidden from it, and their consuming of the people's wealth unjustly. And we have prepared for the disbelievers among them a painful punishment. (Qur’an , Chapter 4, (An-Nisa 4) verse161)

And whatever you give for interest to increase the wealth of people will not increase with Allah. But what you give in zakah (charity), desiring the countenance of Allah - those are the multipliers. (Qur’an , Chapter 30, (Ar-Rum) verse, 39)

3.8.5.2 Exclusion clauses & Special Terms

Businesses try to reduce liabilities by using terms in the employment contract called ‘exclusion clauses’. An exclusion clause is a term in the contract which says that one party has no responsibility, or only limited responsibility, for breaking a promise or not doing what they said they would do in the contract.

The concept of exclusion clauses can be discussed within two parameters; the Oman Labour Law and the Shari’a ijarah contract. First, let us examine Shari’a then the Oman Labour Law:

The Prophet said that: “any conditions included in an agreement that are not in the Book of Allah cannot be accepted, as the conditions set down by God are fairer” 148/149.

The Omani Labour Law, Article 3, states the following:

Any condition which violates the provisions of this law shall be null and void

148 Al Muhala Balathar, conditions of Sales on acceptance V. 7 pp 320-327

149 Sahih al Bukari ( 2168 ) , Sahia Muslim ( 1504 )
even if it precedes its implementation and unless it is more favourable to the employee.

Any discharge, reconciliation or renunciation of rights emanating from this law shall be null and void if it is contrary to its provisions.

Any condition considered more favourable to the employee, according to law, regulations and decisions in force on the date this law came into force, shall be applicable. The law provides the principles of governing the contractual agreement. Employment contract conditions must not violate the provisions of the Oman Labour Law. Principally, the labour law must not violate the higher order of the constitution. Article 2 of Oman constitution states that: “The religion of the State is Islam, and the Islamic Shari'a is the basis of legislation.” The Shari’a provides the principles for the conditions for contract agreements as any condition not in Allah’s Book is considered void. Theoretically, therefore, the labour law should also incorporate the principle of Article 2 of the constitution so the labour law should read: ‘any condition which violates the provisions of Shari’a shall be null and void’.

This element relating to the employment contract can be viewed as equivalent to the exclusion clauses in the English legal system.

One way for businesses to reduce their liability (responsibility in law) is by incorporating special terms into their contracts.

3.9 The Need for Employment Contract

The simple way of life that was easy to cope with in human interaction no longer exists in the modern world. The simple transaction that involved an agreement to cut firewood or harvest the crops in exchange for food and shelter is no longer applicable to modern complex life. The simple business interaction in small communities of hundreds of people has become more complicated with multiple functions and thousands of workers and employees requiring more complex legislation.

These are the same reasons that led the Ottoman Empire to develop the first
Shari’a contract legislation: the Majallat al Ahkam Al Adliyyah 150 which led the modern legislators to develop more comprehensive legislation. 151

3.10 Employment Contract in Majallat al Ahkam al Adaliyyah, Sharh Al Majalla

The first Islamic and Shari’a-based civil-documented law was established by the Ottoman Empire in Majallat al Ahkam al Adaliyyah152. Abstracts of those principles are referenced in the Sharh Al Majalla.153 In reviewing the Sharh al Majalla, the following aspects are relevant to the employment contract. Firstly, under basic Shari’a employment, contractual principles fall under the category of the Usual Al-Fiqh154 (Islamic jurisprudence) with the subcategory of fiqh al muamalat (the principle of transaction).

150 See Ballantyne, W.M 1988; The Majella: Introduction, Arab Law Quarterly p. 364
151 The History of Majallat al Ahkam Al Adliyyah, Sharh Al Majalla Baker, Mohammed Daud, Contracts in Islamic Commercial and Their Application in the Modern Islamic Financial System, associate professor at International Islamic University, Malaysia (IIUM),, argued that the first documented general theory of a contract in Shari’a was developed in 1876 by the Ottoman Empire in its civil code: the Majallat al Ahkam Al Adliyyah. He argues, however, that the theory of a contract has not been comprehensively developed in Islamic law, and the majority of Muslim jurists have only focused on the contract of sale.
Saleem Rustom Baz Al Libnaini, in Sharah al Majalla, commented that the main reason for consolidation of the law of contract in the Ottoman Empire was related to two main reasons: First, the complexity of modern trade transactions and the vast stretch of the Ottoman Empire led to the need to establish unified legislation governing business transaction rules. Second, despite the effort made by the empire in promulgating laws parallel to civil law, these regulations were not sufficient to cover all aspects of transactions under Islamic principles.

However, there is no evidence of a comprehensive, documented employment contract that can be used to govern guidance of use of Shari’a in the Islamic world except the Sharh al Majalla.
The majority of disputes and judgements in employment interaction or rent (service rent) in the past were conducted orally. The Shari’a provides detailed guidance on organizing human interactions.

153 Sharh al Majallah is an Arabic document and I carried out the translation of these articles to English.
154 the methodology by which the rules of fiqh (Shari’a) are deducted from their source of evidence’ see also footnote 78
Secondly, these principles govern all transaction activities under Shari’a. The concept of contract in the Shari’a is called ‘aqd’, and those principles relating to employment fall under the section ‘rent or lease’. In other words, renting or leasing the human to conduct a specific service (employment contract). This is the same section on rent as in the Sharh al Majallah and the translation of Majallat al Ahkam al Adaliyyah by judge Hooper. This contractual transaction is covered in Sharh al Majallah in Book Two under “Rent” which has eight chapters, articles 404-612.

The introduction to the Sharh al Majalla covers Shari’a terminology in relationship to employment. When applying the provisions of fiqh, the following terms are used:

- Article 404: rent or lease is compensation of a benefit.
- Article 405: rent is used in fiqh to denote the sale of a specific service or sale of benefit in a specific compensation.
- Article 415: the specified wage is the wage mentioned within the contract time.

In Hooper, Article 404 deals with the issue of rent: ‘Rent is hire, that is to say, the price paid for the use of a thing; letting is giving on hire, and hiring is taking on hire’. This article deals with the basic definition of rent, lease, or employment.

The Sharh Al Majalla (Article 562) states that hiring a human to carry out a service or to be involved with manufacturing is of a specific duration or for a specified job. This indicates that the contract is only valid for a specific job or a specific service as defined by time. Otherwise, the contract is considered as ‘a release’/ void (aqd fasid) or ‘rotten’, these being the literal translation.

Furthermore, a contract may validly be made for the hire of personal service or the performance of skilled labour for a specified period or in some other way, as by specifying the nature of the work.

Articles 420-432, In Chapter One of the Sharh al Majella, define general conditions of employment.

Article 418 (p.235) covers employment of the Nursing child oriented from the Qur’an, Chapter 2 verse 233. Hooper’s translation of Article 418 is: ‘A hire of a

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156 Hooper, Article 562, section III, chapter II, p.128
157 Hooper (p.96). See also Employment Contract Terminology used in Primary Sources

January 2013
wet nurse is a person who hires a nurse to give milk to a baby'.

In Article 422 of Hooper’s translation of the Majallah (p. 236), employees are of two classes. The first class comprises private employees, that is, persons whose services are retained by one employer only, as in the case of a servant paid a monthly wage. The second class comprises public employees, that is persons who are not bound by and undertaking not to work for more than one employer.  

Article 425, (p.239), mentions that a private employee who deserves a wage during employment time with no condition of doing a job. However, a worker cannot refuse work, and, if refuses, he does not deserve a wage.

Hopper’s translation of this article is:

The wages of a private employee are due if the is ready to work during the period for which his services were hired. it is not essential that he should actually have performed the work. He cannot, however, decline to do the work. if he does so, he is not entitled to this wage. 

In Chapter Two, in Sharh Al Majalla, there are three relevant sections that examine aspects of employment:

1. The foundation for Ijar contracts
2. Conditions of rent
3. Human Employment: conditions of rent

Section One deals with Rukn al Ijar (translated as ‘the cornerstone of employment of service) and forms the fundamental basis for an employment contract.

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158 See Hopper page 98 also Al Zuhayli 1998, Nazariyat al-Dhaman (Theory of Security), Dar al- fikr, Damascus, p.168. As a result of this classification each class of employee has deferent obligation and security/guarantee.  
159 As per Shari’a, wages for the private employee are due only if he/she surrenders him/herself for work as per the hours contracted. He/she is not permitted to engage in any other work activities elsewhere during contracted hours. The only exception to this rule is the time required to perform basic Islamic prayers. If the employee engages in any other activities, the wages must be deducted for the lost hours.
Article 433 (p.24) of *Al Majallah* states that a contract is formed by offer and acceptance. This is supported by Hooper\(^{160}\), who quotes Article 433 as saying ‘As in the case of sales, the contract of hire is concluded by offer and acceptance (p.100). The same Article goes on to explain that ‘an employment contract is similar to a sales contract, binding only in the past tense; a contract cannot perform in future tense’. In Hooper’s translation of Article 435 he also states that, ‘As in the case of sale, the contract of hire is concluded by the use of the past tense. It cannot be concluded by the use of the future tense’ (p.101).

Article 436 mentions that an employment contract, by *ijara* agreement may be concluded by other means: verbally, in writing or by deaf signs. A contract can also come into force through an act of behaviour / exchange as is stated in 

Article 437, (*be-al ta’aty*), such as getting into a- bus means accepting to pay the tariff / fee/price, if known, or an equal fees; fees or similar as per custom.

Article 438 states that silence in a contract means tacit acceptance. For example, if a tenant leases a shop and pays 50 pounds per monthly and after a few months the property owner comes and tells him if he agree to pay 60 pounds he can stay, but if he does not he can leave. He refuses to pay 60 pounds and remains in the shop. He is only obliged to pay 50 pounds. If, however, he remains silent and continues to reside in the shop he must pay a monthly rent of 60 pounds.\(^{161}\)

After the discussion of formation of employment contract in *Majalleh*, the code provides provisions for ways of contract termination. Article 443 reports that if for any reason he is unable to fulfil the contract, the contract is withdrawn, termed repudiation or termination e.g., if an employee is a chef employed to cook for a wedding and one of the married couple dies of food poisoning, the contract is terminated or become invalid.\(^{162}\) Hooper’s translation of Article 443 is similar: If


\(^{161}\) Hooper 1938 also mentions this in his translation saying, “In a contract of hire, silence is considered to indicate assent and acceptance” p. 101.

\(^{162}\) Saleem Rustom Baz Al Libnaini, *Sharh Al Majala*, p.249.
any event happens whereby the reason for the conclusion of the contract disappears, so that the contract cannot be carried out, such a contract is cancelled.\textsuperscript{163}

All these articles are examples of aspects of employment laws as set down in the \textit{Shair’a} and their relevance today is still valid.

Section Two examines at conditions of rent, the employment contract and its conclusion\textsuperscript{164} the conditions relates to capacity. Article 444, Right sense of mind; not in sound mind and undifferential child cannot enter into a contractual agreement. To conclude a contract of hire, the two contracting parties must possess the requisite capacity, that is to say, they must be of sound mind and perfect understanding.

Article 445 Connection of offer and acceptance of an Ithad al Majalis (see “Taken from condition of sale”) being in the same place in the rental contract, employment contract as in the sale contract.

Section Three looks at Conditions of the right to rent human services or employment and two Articles refer to this, Article 449, which refers to acceptance of both contractors Qur’an Chapter 4 (\textit{An-Nisa’}) verse 29 and Article 450, which refers to a specified wage.

The fourth section of \textit{Sharh Al Majallah} covers articles 562-581 and relates to provisions pertaining to the hire of personal services. The articles covers conditions related to conducts of employment contract.

The \textit{Majallat al Ahkam al Adaliyyah} was the first official document that set out Shari’a codes in 1876 and it was followed by the \textit{Majallat al-Ahkam al-Shariyyah} of Saudi Arabia. Both codes have an employment law section. It is important to comment that despite the availability of these two original Shari’a code sources, the labour laws of most Arab countries are not based on Shari’a even when the

\textsuperscript{163} Hopper 1938 p. 102
\textsuperscript{164} see Saleem Rustom Baz Al Libnaini, \textit{Sharh Al Majala}, condition of sales conclusion p. 252
constitution has articles citing Shari’a as the main source of legislation.

3.11 Rules of Employment Contract under Shari’a

Human interaction in business, social or political life is a natural phenomenon in life. Obviously, these interactions are never without guiding rules, whether man-made or religious. In Islamic societies the theoretically guiding rules or Shari’a, for everyday life events are drawn from the Qur’an and Sunnah. Shari’a sets the basic principles of everyday life events. The Qur’anic verses [16:89] and [6:38] indicate that every event in life is guided by Allah’s Book.

And [mention] the Day when We will resurrect among every nation a witness over them from themselves. And We will bring you, [O Muhammad], as a witness over your nation. And We have sent down to you the Book as clarification for all things and as guidance and mercy and good tidings for the Muslims. (Qur’an, Chapter 16 (Al-Nahl), verse 89)

Also in Qur’an it is stated: And there is no creature on [or within] the earth or bird that flies with its wings except [that they are] communities like you. We have not neglected in the Register a thing. Then unto their Lord they will be gathered. (Qur’an, Chapter 6 (Al-’An`am), verse 38)

As stated previously, the Qur’anic verses above indicate that there is nothing neglected in the Book (the Qur’an).

People need to exchange, engage or utilise or make use of each other to generate or exchange benefits. The Qur’an recognises the natural life events of human’s need to utilise each other and addresses this in Qur’an Chapter 43 (Al-Zukhruf) verse: 32 as follows:

Do they distribute the mercy of your Lord? It is We who have apportioned among them their livelihood in the life of this world and have raised some of them above others in degrees [of rank] that they may make use of one another for service. But the mercy of your Lord is

165 Qur’an English translations of King Saud University, KSA: http://quran.ksu.edu.sa/
The employment contract is an important transactional contract in people’s lives. Shari’a did not leave this natural phenomenon unorganized and unstructured so as to ensure fairness and justice. Indeed, due to its complexity, Shari’a established a considerable governing framework. This section of the research discusses the contract of employment under Shari’a, specifically to explore both the primary source of Shari’a principles (through Qur’anic verses) and the secondary source (Sunnah). Therefore, this section sets out to discuss details of employment-contract rules and guidance as set out in Shari’a.

Conceptually, Shari’a scholars have discussed the employment contract using two main approaches. The first one considers whether the employment contract is legitimate or permitted under Shari’a, and the second approach examines when an employment contract can be considered as a sales contract.

The topic was discussed in detail under a specific heading: Ijarah which means rent / hire. The starting point of this discussion is to establish the legitimacy of employment under Shari’a and to provide supported evidence from the two main sources. The topic of employment is discussed by scholars in Islamic Shari’a books extensively.

Authorities in the field have generally approached and discussed employment contract under the following main points:

1. The legality and legitimacy of employment under Shari’a, supported by the Qur’an verse, Sunnah and ijtihad or qias
2. Conditions of employment and an employment contract
3. Type of employment and governing rules

With regard to the two main theoretical views of an employment contract, the majority of scholars in Islamic fiqh agree on the legitimacy of an employment contract.
contract with only a few who do not agree.\footnote{Al Zuhayli, Wahbah 1984; Al Fiqh Islami Wa’Adillatuh, Dar Al Fikr, Damascus. P. 730.}
The employment contract is in general considered to be an obligatory transaction to do something. The general principles for forming any contract are based on Shari’a principles of an Islamic business contract. Shari’a classified the employment contract as similar to a sales contract. It is classified as a sale of benefits. The Figure 3.3 Shari’a Employment Contract shows the principles of Employment Contract under Shari’a jurisprudence replicate form Shari’a Contract principles.

Prior to a detailed discussion of the Shari’a code of employment, it is essential to explore and highlight employment terminologies used in Arabic literature.

3.11.1 Arabic Terminology in an Employment Contract

The nature of this research is to carry out study between two different systems and two different languages: English and Arabic. Each system is written in a different linguistic structure and uses different terminology. Islamic Fiqh literature discusses all subjects including employment in writing in Arabic. Therefore, many original rules, concepts and the terminology in Arabic must be translated into English. Sometimes the translation of terms and concepts might not be very accurate due to cultural linguistic differences. In this research, whenever possible, a general interpretation of meanings is provided. For example in the discussion of the concept of \textit{ijtihad} the meaning is interrupted as: there is not room for \textit{ijtihad} when rules are clearly stated in the main source. See footnote for Arabic script \footnote{Ballantyne W.M.: Essays and Addresses on Arab Laws, Curzon 2002 UK p.9.}

Ballantyne\footnote{Ballantyne W.M.: Essays and Addresses on Arab Laws, Curzon 2002 UK p.9.} concurs with the view of the difficulty of translation in the Arab language in legal documentation. He wrote:

\begin{quote}
In my opinion, an English lawyer can make a fair shot at construing an English translation of French law: the same does not apply with Arabic. You invariably get a diversity of translation, largely because of the richness of Arabic and even more the different thought processes
\end{quote}
The Arabic term ‘Ijar’ and its associated words is equivalent to the term ‘employment’ in English. The Islam fiqah/fiqh uses the Arabic term Ijar al Adami to mean any employment relations. Ijar al Adami is literally translated into English as ‘human wage’ or ‘to engage in a wage’ as per the Qur’anic expression. The literal translation is ‘rent of a human’, which when used in its direct translation could provoke confusion and be misinterpreted. Therefore, to avoid any misrepresentation or mistake in presenting the exact intended meaning, the following Islamic principles are provided:

a. The first principle is that Islam forbids exploitation and awards an individual freedom and rights.

b. Secondly, Ijar is commonly used in Shari’a to discuss different types of rental arrangements such as rental of a house, shop, animal, land or boat.

c. The third principle is that it is forbidden to engage in activities on issues that Islamic principles do not permit, (e.g., the selling of alcohol, pork or engaging in prostitution).

Therefore, strictly speaking, the definition of ijar al adami is limited only to a service agreement between two parties. The first party provides a service compensated by the second party in monetary and non-monetary benefits.

The word Ijar will be referred to in this research to employment as this word is more relevant to the study. In other words, every time the words Ijar, istajar or ujarah are used in Arabic literature, the word “employment” will be used to reflect the concept of engaging someone with a wage. However, in some instances, I study will refer to Ijar as an employment contract. In examining Arabic literature for the equivalent meaning of employment, there are mainly two words used “Ijarah and Kira”

3.11.2 Definition of Ijarah (Leasing contract)
The concept of *Aqd Ijar/Ijara* (employment contract) has received considerable attention in Islamic *fiqah* jurisprudence. Some scholars in Shari’a have classified *Ijarah* or employment as sales of benefits while others, like the *Ibadis*, do not agree with this classification. Al Kindy\(^{173}\) disagrees with *Shafie* that *Ijarah* is different to sales. Sales are a permanent transaction but *Ijarah* is temporary. For example, the tenant does not own the rented house. He or she owns the right to benefit from the rent during a specified period. Therefore, the employer does not own the employee. He or she only owns the benefit of the service provided by the employee during the contract period.

The *Aqd al Ijarah* (employment contract) when translated literally into English means “offset beneficial contract. That means engaging someone to do work in exchange for benefits or by offsetting benefits. It is considered an ‘offset contract’ because the compensation for the job does not necessarily have to be in cash or be tangible but can also take a different form of payment, thus be intangible. The compensation or wage is subject to a number of rules.\(^{174}\)

Shari’a scholars classify an employment contract as a sale-of-benefit contract. Therefore, rules derived from a valid sales contract apply to an employment contract, taking into account the incorporation of specified guidance related to employment, (e.g., for a specific time, wage).

Shari’a scholars\(^{175}\) define *Ijarah* or employment differently but all are agreed on general principles. The following definitions show a number of literal translations in English highlighting the potential for ambiguity and misinterpretation of terms: see Arabic scripts in Appendix:

1. *Hanafi* defines *Ijarah* as a sale of benefits for compensation.
2. *Shafai* defines *Ijarah* “it is a contract over a desirable, known permissible, and accessible usufruct, in exchange for a known compensation”\(^{176}\)
3. *Maliki* and *Hanbali* define *Ijarah* as possession of permitted benefits at a

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\(^{173}\) Alkindy, AbuBaker 1984 al Musanaf v. 21 p. 127

\(^{174}\) See also wage condition in Shari’a

\(^{175}\) Shafi‘i, Hanafi, Maliki, and Hanbali are four main jurisprudence schools of fiqh in Sunni, Ibadi is the closest to Sunni schools but differentiates in some concepts.

\(^{176}\) Mughni Al Muhatatag v.2 p.338. المحتاج مغتني Translation Al Zuhayli, Wahbah 1984; Al Fiqh Islami Wa’Adillatuh, Dar Al Fikr, Damascus. P. 387.
specified time for compensation.\textsuperscript{177} Or “it is the transfer of ownership of permitted usufruct for a know period in exchange of a compensation”. The Hanbali School’s definition of \textit{ijarah} is “a contract of a specified benefit and of a specific compensation.”\textsuperscript{178}

4. \textit{Ibadi} defines \textit{ijarah} as sales of known benefits at a specified time and value.\textsuperscript{179} or as compensation for permitted wealth.

5. The Majallat al Ahkam al Adliyyah defines Al \textit{ijarah} in Article 562, as permitted to hire a human for service or to manufacture for a specified time or stipulated work, one or the other, as in section 3, chapter 2, article 563.\textsuperscript{180}

6. The Omani labour law, Article 1.7, defines an employment contract as:

\begin{quote}
any contract under which any natural person undertakes to work for the interest of an employer under the employer’s management and supervision in return for a salary.
\end{quote}

7. In the Majalat Al Ahkam Al Shari’a of Saudi Arabia Article 516 of refers to employment contract as: Rent, lease, and \textit{Kira} are the same meaning and it is as a contract of possession of permitted benefits at a specified compensation\textsuperscript{181}

In summary, the definition of a \textit{ijarah} contract (service contract) is a benefit contract which under Shari’a has to be specified, permitted and known with specified compensation. There is a very important rule for contract of rent under Shari’a. The Shari’a definitions limit \textit{ijarah} to sales of a benefit but not the sale of the main source “\textit{Baya} Al \textit{Ain}”.\textsuperscript{182} It is, therefore, not permitted to rent a candle for light, a goat for milk or wool or rent trees for their fruit. This transaction is not classified as rent but sale.

\textsuperscript{177} Al Sahrih al Kabeer Al-Dardir v.4 p.4.\textsuperscript{178} Al Zuhayli, ibid\textsuperscript{179} Al Badayai v.4 p.174\textsuperscript{180} Al Salimi: Jawaher Al Nitham, v.3 p.61\textsuperscript{181} Saleem Rustom Baz Al Libnaini, Sharh Al Majala, p. 302\textsuperscript{182} See Arabic script in Appendix

January 2013
3.11.3 Using the Terms *Ijara* or *Kirah*

*Ijara*[^183] is a word used to address all types of rental agreements including the hire of a human. Both words, *Ijara* and *Kirah* have the same meaning when translated into English. Mohamed bin Yousif Itfash’s[^184] definition of *Ijara* infers that the term is used for a rental agreement of a minded, (i.e., a human) while *Kirah* is a term used to express the rental agreement of un-minded things, (i.e., hours, shop etc).

Maliki[^185] also defines the word *ijra*/*Ijara* as a word used for a contract related to a service or benefits contracted by humans excluding rent of a ship or an animal. The word *kira* stands for a contract agreement related to lands, a house, a ship or an animal.

Salem[^186] refers to the *Sharh al Majala* in defining *Ijara*, as a specified benefit contract for a specific compensation. In *Majala*[^187] *Ijara* and *Kira* are a compensation of benefits. Article 405 further states that *Ijara* in the language means rent and it is used with the terminology of *Fiqha* to mean sales of a known benefit in exchange of a known compensation.

To summarize despite the slightly different interpreting given by various Muslim scholars, in general, all rental agreements under the Shari’a system are limited to two words: *Ijra*/*Ijirah* and *Kira*. An employment contract falls under *Ijara*, not under *Kira*.

When discussing employment under Shari’a it is necessary to discuss related words that are used in relationship to employment. There are four words that are derived from the term *Ijara* to form the main terms that cover a transaction agreement. Syeed Sabiq[^188] defined and summarised the four words as follows:

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[^183]: In Arabic script *Al Ijara* (الأجرة), *and Kirah* (كِرَة).
[^185]: Maliki: one of the main branches of Islamic Schools of thoughts.
[^187]: Majala v. 1 p.79.
- **Muajer**: the one who owns the benefit.\(^{189}\)
- **Mustajer**: the second party who provides the wage
- **Al Manfaha**: the benefit is called Majoor.
- **Ijer / Ujrah**: the compensation for the effort in a wage, the price or tariff.

In modern terminology these can be interpreted as: the employee, the employer, the work, and the wage.

### 3.12 Employment in the Qur’an and the Sunnah

The concept of employment is discussed in both the Qur’an and Sunnah and this next section will highlight the terminology used in Shari’a primary sources to address employment.

#### 3.12.1 Employment as stated in the Qur’an:

*Istajerh* is the word that can be found in the Qur’an, as follows:

*One of the women said, “O my father, hire him. Indeed, the best one you can hire is the strong and the trustworthy”. (Qur’an, chapter 28, verse 26)*

A few words in Arabic driven from the word *Ijara* which means renting or engaging in a wage are used in the Qur’an. *Istajerh* is used in the Qur’an, chapter 28: verse 26, *Ajra* means payment used in chapter 18, verse: 77, and *uojorahon* is used in the Qur’an, chapter 65, verse 6 which means payment.

Most Islamic scholars\(^ {190}\) agree that *aqd al aijrah*, a human-service rental contract, is a conventional contract similar to a marriage or sales contract.\(^ {191}\) The principles from the Qur’an governing these contractual relationships are to be found in the Qur’an:

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\(^{189}\) Arabic script Muajer (محافظة), Mustajer (مستشار), Al Manfaha, Ijer / Ujrah.

\(^{190}\) Hanafi, Shafai, Maliki, Hanbali, and Ibadi

\(^{191}\) Ibid.
Lodge them [in a section] of where you dwell out of your means and do not harm them in order to oppress them. And if they should be pregnant, then spend on them until they give birth. And if they breastfeed for you, then give them their payment and confer among yourselves in the acceptable way; but if you are in discord, then there may breastfeed for the father another woman. Qur’an , chapter, 65 verse 6,

He said, "Indeed, I wish to wed you one of these, my two daughters, on [the condition] that you serve me for eight years; but if you complete ten, it will be [as a favor] from you. And I do not wish to put you in difficulty. You will find me, if Allah wills, from among the righteous."

(28 )[Moses] said,"That is [established] between me and you. Whichever of the two terms I complete - there is no injustice to me, and Allah, over what we say, is Witness" Qur’an , chapter 28,Verse 27, and 28

( 32 ) Do they distribute the mercy of your Lord? It is We who have apportioned among them their livelihood in the life of this world and have raised some of them above others in degrees [of rank] that they may make use of one another for service. But the mercy of your Lord is better than whatever they accumulate. Qur’an , chapter 43, verse 32.

The verse classified people into different categories, rich, poor, weak and strong. Some have been raised above others in degrees and rank in order that they may make use of one another for service. In other words, people need each other at different levels and to serve each other in employment as required. This implies that employing each other to do a job or service is a natural relationship in human interaction and it is in general an acceptable course of action.

The Qur’an highlights the relationship of employment in five different verses in several parts of the Qur’an (three mentioned above)

Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period]. Upon the father is the mothers' provision and their clothing according to what is acceptable. No person is
charged with more than his capacity. No mother should be harmed through her child, and no father through his child. And upon the [father's] heir is [a duty] like that [of the father]. And if they both desire weaning through mutual consent from both of them and consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. And fear Allah and know that Allah is Seeing of what you do.

Qur’an , chapter 2, verse 233,

So they set out, until when they came to the people of a town, they asked its people for food, but they refused to offer them hospitality. And they found therein a wall about to collapse, so al-Khidr restored it. [Moses] said, "If you wished, you could have taken for it a payment. Qur’an , Chapter 18, verse 77

The main Qur’anic verses that specify a detailed employment contract, or service contract, are to be found in chapter 28 verse 23 (Al Qasas /The Narration). These verses laid down the fundamental concept for forming an employment contract. It is the story of Prophet Moses as follows:

And when he came to the well of Madyan, he found there a crowd of people watering [their flocks], and he found aside from them two women driving back [their flocks]. He said, "What is your circumstance?" They said, "We do not water until the shepherds dispatch [their flocks]; and our father is an old man. (Qur’an , Chapter 28, verse 23)

The narrative of the story goes on to recount that one of the daughters asked her father to employ Moses. In her talk with her father, she established the very basic principles of recruitment and employment. The two main principles of employment she considered important were strength and trustworthiness. Strength implies not only physical strength but also in terms of knowledge, skills and job competency. Modern day recruitment practices include medical, security, screening and a reference check. All these modern recruitment practices determine the suitability of the candidate in terms of history, physical suitability and job knowledge and which
have been summarised in two words: strong and trustworthy.\footnote{Plenty of modern life examples proved the validity of this rule in employment. For example: The president of World Bank, Enron Company, Europe energy committee.}

These principles of strength and trustworthiness were set out in the Qur'an, Chapter 28, verse 26

\textit{One of the women said, "O my father, hire him. Indeed, the best one you can hire is the strong and the trustworthy."}

\textit{He said, "Indeed, I wish to wed you one of these, my two daughters, on [the condition] that you serve me for eight years; but if you complete ten, it will be [as a favor] from you. And I do not wish to put you in difficulty. You will find me, if Allah wills, from among the righteous."}

A contract had therefore been formed between the two parties, and the basic component of the contract was identified as: 8-10 years’ work and the wage is marriage and food.\footnote{Sunan ibn Majah P. 917 v 2} The story continues with the second part of the man’s talk:

\textit{But I intend not to place thee under a difficulty. Thou wilt find me, indeed, if Allah wills, one of the righteous, expresses the basis of implying terms.}

This verse is a reference to support the argument that permits employees to accept food, clothes and shelter as a wage. Other evidence to support this can be found in many statements made by Sahaba (the Prophet’s companions) in Prophet Mohammed’s time. Close examination of the above stated verse 27 in the Qur’an, chapter 28 indicates that the agreement was concluded between two parties and the witness is specified endorsing the agreement.

The Qur’an goes on to address the employment agreement in the following verse:

\textit{Lodge them [in a section] of where you dwell out of your means and do not harm them in order to oppress them. And if they should be pregnant, then spend on them until they give birth. And if they breastfeed for you, then give them their payment and confer among}
yourselves in the acceptable way; but if you are in discord, then there 
may breastfeed (Qur’an, Chapter 65, (At-Talaq /The Divorce) verse 6)

In the Qur’an chapter 2 Al-Baqara (The Cow), verse 233 the employment service 
relationship is addressed as follows:

Mothers may breastfeed their children two complete years for whoever 
wishes to complete the nursing [period]. Upon the father is the 
mothers' provision and their clothing according to what is acceptable. 
No person is charged with more than his capacity. No mother should 
be harmed through her child, and no father through his child. And upon 
the [father's] heir is [a duty] like that [of the father]. And if they both 
desire weaning through mutual consent from both of them and 
consultation, there is no blame upon either of them. And if you wish to 
have your children nursed by a substitute, there is no blame upon you 
as long as you give payment according to what is acceptable. And fear 
Allah and know that Allah is Seeing of what you do.

People have the need for each other. For example, we need carpenter, plumber, 
doctor, electrician and so forth. The following Qur’anic verse is used by Shari’a 
scholars to confirm permissibility of employment.

Do they distribute the mercy of your Lord? It is We who have 
apportioned among them their livelihood in the life of this world and 
have raised some of them above others in degrees [of rank] that they 
may make use of one another for service. But the mercy of your Lord is 
better than whatever they accumulate. (Qur’an , Chapter 43, verse 32)

Working for a payment or wage is referred to in the Qur’anic verse below in which 
the discussion is related to a request for compensation for work. Scholars of 
Shari’a have also used this verse to support the argument to permit an 
employment contract.

So they set out, until when they came to the people of a town, they 
asked its people for food, but they refused to offer them hospitality. 
And they found therein a wall about to collapse, so al-Khidhr restored
it. [Moses] said, "If you wished, you could have taken for it a payment."

(Qur’an Chapter 18 verse 77)

Yusuf Ali\(^{194}\) translates this verse as:

“If thou hadst wished, surely thou couldst have exacted some recompense for it!”

Picktall\(^{195}\) translates this verse as:

(Moses) said: If thou hadst wished, thou couldst have taken payment for it.

The above Qur’anic verses set an example from which general principles can be deducted by analogy see Ballantyne on page 65.\(^{196}\)

Therefore, the principle here is that it is permitted to engage in employment for exchange of monetary reimbursements.

The second major source of Islamic laws is the Sunnah of Prophet Mohammed. The Sunnah addresses the employment contract in many incidences and these are discussed below.

3.12.2 Employment as stated in the Sunnah

Previously it was discussed that all that is narrated from the Prophet (PUBH), his acts, his every word, deeds, sayings and whatever he has tacitly approved may be taken as the basis for evidence in a legal ruling. There are many Hadiths by the Prophet Mohammed reflecting the legitimacy of employment in Shari’a. In researching Shari’a references, it was possible to extract 17 Hadiths addressing an employment relationship under Shari’a and a number of these are given below.

1. The first example is a Hadith that addresses employment aspects, which says:

\(^{194}\) http://www.islamicity.com/QuranSearch/

\(^{195}\) Ibid

\(^{196}\) See Ballantyne, W. M. Essays and Addresses on Arab Laws, Curzon 2000. p.34
As narrated by Abu Huraira: ‘The Prophet said, ‘Allah said’, I will be an opponent to three types of people on the Day of Judgment:

1. One who makes a covenant in My Name but proves treacherous
2. One who sells a free person and eats his price, and
3. One who employs a labourer who works fully for him but does not pay him for his labour.”

The previous Hadith discusses employment and wage. By inference, should employment not be permissible, it would not have addressed the issue of a wage default for employment as an issue of concern.

2. The following example relates to an incident in which the Prophet Mohammed and his companion Abu Bakr employed a man from Bani Ad-Dail family:

As narrated by Aisha:

The Prophet and Abu Bakr employed a (pagan) man from the tribe of Bani Ad-Dail and the tribe of Bani Abu bin Adi as a guide. He was an expert guide and he broke the oath contract which he had to abide by with the tribe of Al-Asi bin Wail and he was in the religion of Quraish pagans. The prophet and Abu Bakr had confidence in him and gave him their riding camels and told him to bring them to the Cave of Thaur after three days. So, he brought them their two riding camels after three days and both of them (The Prophet and Abu Bakr) set out accompanied by ‘Amir bin Fuhaira and the guide who guided them below Mecca along the road leading to the sea-shore.

In this Hadith, the Prophet Mohammed indicated that he employed a (pagan) man as a guide. If the action of employing some one for service or to do a job is not permissible then the Prophet would not have done so; which, based on Prophet Mohammed’s action, provides proof that employment is permitted in Shari’a.

197 Sahih al Bukhari Volume 3, Book 36, No. 470
198 Sahih Bukhari Volume 3, Book 36, Number 464: Translator: M. Muhsin Khan
3. In the following Hadith there is further reference to employment:

   As narrated by Abu Huraira: 'The Prophet said, ‘Allah did not send any prophet but shepherded sheep. ‘His companions asked him, ‘Did you do the same?’ The Prophet replied, ‘Yes, I used to shepherd the sheep of the people of Mecca for some qirats.’

The prophet Mohammed (PBUH) employed himself as a shepherd, which is hard work that requires a lot of patience and mercy. It was part of his training to manage and to move the flock which required him to be alert and to protect his herd from wolves. In that era these were considered as essential leadership characteristics

The Prophet Mohammed (PBUH) indicates that he accepted a job as a shepherd for a wage. By analogy, if employment for a wage was prohibited under Shari'a, the Prophet would not have accepted it. Evidence is taken from Prophet Mohammed’s action and used in Shari'a guidance.

4. The following Hadith makes reference to payment for services:

   Narrated by Ibn Abbas: ‘When the Prophet was cupped, he paid the man who cupped him his wages.

5. Payment is again the main topic of this next Hadith:

   As narrated by Ubai bin Ka'b: ‘Allah’s Apostle said, “Both of them (Moses and Al-Khadir) proceeded on until they reached a wall which was about to fall.” Al-Khadir pointed towards the wall and then raised his hands, and the wall straightened up. Ya’la said, “I think Sa’ad said, He (Khadir) passed his hand over it, and it straightened up.” Moses said to him, “If you had wanted, you could have taken wages for it.” Sa’ad said, “Wages with which to buy food”.'
6. The Hadith below addresses many aspects of employment, wage specification, payment and work load:

As narrated by Ibn Umar: The Prophet said, “Your example and the example of the people of the two Scriptures (i.e., Jews and Christians) are like the example of a man who employed some labourers and asked them, Who will work for me from morning until midday for one qirat?’ The Jews accepted and carried out the work. He then asked, ‘Who will work for me from midday up to the Asr prayer for one qirat?’ The Christians accepted and fulfilled the work. He then said, Who will work for me from the Asr until sunset for two qirats?’ You Muslims have accepted the offer. The Jews and the Christians got angry and said, Why should we work more and get less wages?’ (Allah) said, Have I withheld part of your right?’ They replied in the negative. He said, It is my blessing I bestow upon whomever I wish.”

This Hadith will be discussed again when dealing with a minimum wage and an annual increment. An increment on the wage agreed is considered under Shari’a to be solely the right of the employer.

In summary the main Hadith that addresses employment relations specifically is:

“Whoever has engaged someone must inform him of his wage.”

“Give the employee his wage before his sweat has dries.”

Both Hadiths addressed clearly the importance of the employment wage and the payment time. The two main principles derived from these Hadiths are that employed labour is permitted under Shari’a principles, and the wage must be paid, immediately after the work is completed.

Scholars of Shari’a discuss the employment contract in areas covering the Shari’a concept of employment under the following main headings.

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202 Shahih Al Bukari Volume 3, Book 36, Number 468
203 Fatawi Al Saidi v. 2 p. 558
3.12.6 Discussion of *Ijara* theme under *Shari’a*

This section is designed to discuss the Shari’a view of *Ijara* / employment contract. The discussion will explore the extent to which employment contracts are permitted under Shari’a and, when it is applicable, comparison will be made to the Oman labour law on a specific article. This section will discuss the following issues:

1. The legitimacy of *Ijara*, or employment, under Shari’a, foundation principles and meaning
2. Conditions of *Ijara*
3. Character of an employment contract and its rules
4. Kinds of *Ijara* and their governing rules
5. Security of the employee and no rights for a wage if damage is incurred
6. Termination of employment contract

The Figure on Shari’a Employment contract (Figure 3.3) is useful to help conceptualize the relationship between concepts.

1. The legitimacy of *Ijara*, or employment, under Shari’a and Foundation Principles and Meaning

There are two arguments regarding the legitimacy of the employment contract under Shari’a. The first argument which is accepted by the majority of scholars in Shari’a agrees with the permissibility of an employment contract or permits an employment contract under Shari’a for the following two reasons:

a. Their argument is based on evidence derived from the main source of Shari’a legislation: the Qur’an and Sunnah.

b. Secondly, it is a logical argument. It is natural that as much as there is a need to exchange tangible material goods, there is a need to exchange intangible benefits. The inference here is drawn by logic. As

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206 Hanafi, Shafiy, Hanbeli and Malik, Ibin Qudama, Al Zuhayli, Al Sayyid Sabiq, Abu Zahrah
it is permissible to contract on sales of what is tangible, it is therefore permissible to contract on benefits. (This will refer to later the definition of the employment contract under Shari’a).

The opposite argument is based on the belief that the employment contract is classified as a sale of benefits contract. Therefore, the benefits at the time of the contract are nil, but will be received slowly. One of the rules for a valid contract is that: the nilihility cannot be sold. (Refer to condition of sales contract in Shari’a.)207.

2. Fundamental principles of Ijarah

Islamic fiqah classifies an employment contract similar to a sales contract. Therefore, all conditions of a valid trade contract apply. There are, in addition, some specific conditions related specifically to employment contracts, (e.g., time, payment and benefits which will be discussed in more detail below).

Scholars in Shari’a consent with the fundamentals of the valid trade contract principle: Offer and Acceptance.208 Equally, a valid employment contract (Ijarah) as with a sales contract is governed by same principles: Offer and Acceptance. A valid employment contract (Ijarah) under Shari’a consists of four main factors:

1. Two contracted parties: the employer and employee (Adiliyah209 Articles 448 and 444)
2. Manner or form, Language of the contract offer, (Adiliyah 433)+435
3. Wages (Adiliyah article 450)
4. Benefit (Adiliyah Article 451 & 452)

Al-Shar’iyyah 210 places general rules on each of these main employment contract factors such as is referred to in Judge Hooper’s translation of the Majalat al Ahkam al-’Adliyyah articles 445-452, that refer to ‘conditions relating to the conclusion and execution of the contract of hire’.

207 Shanqiti, Mohamed Mustaffa 2001, P. 141.
208 AlZuhayli Whbah 1984; Al Fiqh al Islami wa’Adillatuh, Dar Al Fikr, Damascus. p. 731.
209 Al Adaliyyah refers to Majallat al Ahkam al Adaliyyah of the Ottoman civil Code 1922.
210 Majallat al-Ahkamn al-Shar’iyyah (Saudi Arabia 1981)
Article 445 of *Majalat al Ahkam al-Adliyyah* states: ‘to conclude a contract of hire, the two contracting parties must possess the requisite capacity, that is to say, they must be of sound mind and perfect understanding’. The same inference can be found in the Majallalt Al Ahkam Al Shariyyah Articles 530 - 533.
Figure 3.2 Shari’a Employment Contract was developed for this research
3. Two Parties: the employer and employee

Legal capacity addresses a person’s ability to enter into legal obligations and to make contracts. In Shari’a law the following people are not legally able to enter into a contract:

1. A child
2. An insolvent person (someone who cannot pay his or her debts when asked to do so on demand)
3. One of unsound mind; this is because they are unable to give their consent freely
4. A drunken person; this is because he or she cannot give consent rationally
5. A person suffering from a terminal illness

4. Manner and Form, Language of the contact: offer, acceptance in employment contract

The *Mujalat Al Ahakam Al Adliyyah*\(^ {212} \) addresses in detail the aspects of offer and acceptance, the main principles of a valid employment contract, under chapter two as is seen in the following examples:

In Section One, the *Rukn al Ijar*, translated as the cornerstone or fundamental basis of the contract of hire, makes a number of references to offer and acceptance.

Article 433 of *Mujalat Al Ahakam Al Adliyyah*, details the *Ijar* contract on offer and acceptance\(^ {213} \).

The principles of offer and acceptance as stated above in the *Mujalat Al Ahakam Al Adliyyah* the principles stipulating a valid employment contract under Shari’a. Offer and acceptance has to take one of these forms. For example, in certain cases silence might be considered acceptance for an offer. The Oman Commercial Law, Royal Decree 55/90, sets out the law in respect of specific contracts such as that of the sale of goods and the employment law. The following


\(^ {213} \) Saleem Rustom Baz al Libnaini, in Shahr al Majalla, p. 242.
Articles are the main references:

Article 2: Contracts are effective upon congruence of offer and acceptance unless articles of this code provide otherwise.

Article 9.6: Employment contracts are ‘commercial activities,’ therefore, the Royal Decree (RD) 55/90 applies to them.

In summary, offer, acceptance and price [salary already paid on a monthly basis] equal contract.

RD 34/73: Oman Labour Law 1973\(^{214}\) governs the majority of terms and conditions of employment. Terms and conditions can vary. Even if a contract is in its proper form, it may have something wrong with it making it invalid. In a contract the parties' many obligations to one another can be set out clearly in terms.

Terms and conditions of employment in the Oman Labour Law are further covered in Article 23. The article states that the contract of employment must, in particular, include the following information:

1. The name of the employer, the name of the establishment and the address of the place of work
2. The name of the worker, the date of his birth, his qualifications, his job or occupation, his place of residence and his nationality
3. The nature and type of work and the period of the contract
4. The basic salary, any allowances or advantages to which the employee would be entitled under the conditions of service currently effective and the mode and time of payment of the salary agreed upon;
5. The suitable period of notice which must be given by the party who wishes to terminate the contract. Provided that the period of notice, which the employer gives to the employee must not be less than the period provided for in this law.

\(^{214}\) Note Oman Labour Law 1973 was revised as Oman Labour Law 35/2003 and last revision on some articles Nov 2011.
In comparing the fundamental principles of an employment contract (*aqid ijar*) under Shari’a and under the Oman Labour Law, Articles 1.7 and 23.4, both emphasise and draw attention to the same basic set of employment-contract components: employee, employer, work and payment. Also, they both assert that there is no legal requirement for the contract of employment to be written. The Oman Labour Law in Article 21/35/2003, for example, states that:

The contract of Work shall be confirmed by writing and issued in Arabic of two copies, one copy for each party. If the contract is written in a language other than Arabic, at least one copy in Arabic shall be annexed thereto and approved by the two parties to the contract which shall be equally authentic if there is no written contract of work, a worker may establish his rights by all means of proof. The worker shall be given a receipt for the documents and certificates which he might have deposited with the employer.

Shabeer 215 accordingly does not limit the method of formation of a contract to written form but also accepts other forms such as verbal, by action, sign, exchange or silence.216 In compassion, English law only accepts written and oral offers.

Article 21 of the Omani Labour Law states that the employee/worker may establish his rights of proof. This implies, in a limited way, that other types of contract formation are acceptable legally. Contracts formed by silent or conduct are acceptable.

Another article in the Omani Labour Law addresses the issue of the inability to read and makes provision for executing the contract in a different form. Article 22 declares that:

‘If a party to the contract is unable to read or write or if he does not know the language in which the contract is written, the contract must be authenticated by the legally concerned authority.’


216 see also formation of employment contract p. 158
It can also be found in the Adliye in Article 436 where it says that, ‘A contract of hire may also be concluded by word of mouth, or by writing, or by the use of generally recognized signals by dumb persons’.

So, in conclusion there are some parallels to be found between Oman Labour Laws and the Shari’a with regard to offer and acceptance.

5. Wage Conditions & Wage specification

The wage is what both contractors have agreed on to be the compensational payment for work completed. It can be argued that whatever has value could be used as wage even if not priced. It could be an exchange of benefits subject that the two benefits are not alike, for example, to rent a house for the benefit of planning a farm.

The precise specification of an employment wage is a fundamental concept in employment under Shari’a. Without a clear wage specification in each employment contract under Shari’a principles, the contract is not valid. Wage is the employee’s right, and the employer’s obligation. This right is not waived and is the employer’s liability that is transferred to the inheritance. The main source of Shari’a principles with regard to wage are addressed in the Qur’an chapter 28, verses: 24–28, and in many of Prophet Mohammed’s Hadiths. Specific laws can be derived from these sources. These rules cover a number of major issues such as salary disclosure, forbidden types of wage, payment, time, and future payment.

The following Hadith specifies the law for wages in an employment contract. ‘One who employs a labourer must inform him of his wages.’

The Ibadis also determined that employment could not be contracted unless a wage is specified.

Wages can take many forms and scholars of Shari’a have examined in detail the different types of wages given to employees and consider some among those

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217 see Alkhafaf Ali 1992, Ahkam Al Muamalat, Dar Al Fiqir, Egypt, p. 415
218 AlZuhayli Fiqah Al Islam Wa Adilatih Fatawi p. 731 al Sa’di v.2 p.558
wages as permissible and some as being not permitted. The basic principle is that the wage must be known and has to be in line with Shari’a principles. The main concept is to ensure a clear declaration of the wage when forming an employment contract so as to prevent any dispute or disagreement, or gharar.

Under the Shari’a wage conditions, some types of wages are not permitted and are classified as a forbidden item. The majority of rules here are drawn from the Prophet’s Hadiths. The following Hadiths have references to forbidden transactions:

As narrated by Ibn Umar: the Prophet forbade taking a price for animal copulation.\(^{220}\)

A question to pose here would be: what about other forms of wages, for example, food? Normally, employing someone using food as a reward or to employ a person to do work with his animal for fodder is not permitted under Shari’a. The reasoning for this is that the food and fodder quantity being given is unknown. Since the food and the fodder quantity is unknown, so the wage is unknown. The Malike School, however, permitted employment for food, clothing and fodder.\(^{221}\)

It has been reported that Ali, the cousin of Prophet Mohammed, employed himself to water a farm of a Jewish person to enable him to get food for Prophet Mohammed. The Prophet approved his wage of 17 dates as payment for each water bucket carried. Ali specified the quality of dates to be received as wage.\(^{222}\) In this case, the quantity and quality of food are identified as being part of the agreement.

Under Shari’a, wages can take different forms. Al Khafeef\(^ {223}\) defines al Ajer (wage in Arabic) as:

“what two contractors have made as reward for a benefit”

\(^{220}\) Sahih Al Bukari Volume, 3 Book 36, Number 484.
\(^{221}\) Al Mughni v 5 p. 297
\(^{222}\) Sunan bin Majah: v. 2 p. 818.
\(^{223}\) Al Khafeef, Ali Ahkam Al Muamalat Al Shaiyah 3rd Ed. page 415.
The wage could be anything that has a price and can be a benefit of any kind, subject to being a different type to avoid *riba*.

One area which has received a considerable amount of attention in the employment contract in Shari’a is child nursing. The principle of nursing a child originates in the Qur’an, chapter 2 (Al-Baqara /The Cow), verse 233:

> Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period]. Upon the father is the mothers’ provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child, and no father through his child. And upon the [father’s] heir is [a duty] like that [of the father]. And if they both desire weaning through mutual consent from both of them and consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. And fear Allah and know that Allah is seeing of what you do.

Shari’a scholars have shown leniency towards a non-wage stipulation in the case of the nursing of a child. It would usually not be permissible to give food and clothing as a wage to women who nurses a child for another party because the quantity of food given or consumed and the type of clothing given are unknown and unknown wages can lead to dispute. Nevertheless, scholars of Shari’a permitted unknown wage agreements for women nursing children, in part due to this being a strong and acceptable custom in society and partly from a recognition of the need to protect children’s welfare. The result is that the woman nursing a child gets a greater wage than expected.\(^\text{224}\)

This concept, that employees can receive ‘greater benefits’ appears in the Oman Labour Law on a number of occasions. Article 106 applies this concept of giving greater benefit to the employee when service is ended. Omani courts have often taken the stand of supporting an employee in the case of unfair dismissal and

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\(^\text{224}\) See AlSharaiyar Article 610 and Al Adilyah 418 + 443

The general custom in Arab society and part of being compassionate to children is that people tend to be more generous with women who nurse their child.
awarded greater benefit to employees in several ways. The court may decide to either reinstate the employee or oblige the employer to pay a fair wage. Two areas where a greater benefit could be awarded to employees are:

1. The end-of-service gratuity to which the employee is lawfully entitled and all other benefits prescribed by the law or the contract of employment whichever is greater.
2. The basic salary, together with the other allowances, if any, in the notice period provided for by law or the contract of employment whichever is greater.

6. Payment Time Specification

The time within which the payment should be made is an important factor under a Shari’a-based employment contract. The wage-stipulation rule also covers the time of payment. This was highlighted by Prophet Mohammed in his Hadith where he encourages the expediting of wage payment to employees. The Prophet’s Hadith emphasizes the importance of wage payment on time. Practicing this important wage element in an employment contract could probably reduce the number of claims presented in court.

The Prophet’s Hadith stipulates a wage payment within a quick timeframe, before the employee’s sweat has dried. Oman Labour Law, on other hand, requires the salary to be paid weekly, monthly or proportionally as per the work performed. This is a clear indication that salary must be paid on time, whether contracted per assignment or service by time.

Payment in Ijarah - employment whether immediate or a future-added contract - can take many forms: it does not have to be made instantly. There are many options: the payment of wage can be made instantly, in instalments, or at a later date depending on the condition of the permanent agreement that must be honoured. One option is not permitted: immediate payment for a future contract.\(^{225}\)

An advance payment for a future contract is not permitted.

\(^{225}\) Bak p. 157.
Shari’a scholars\textsuperscript{226} agree that the wage is not limited to one form or type of reward but can be whatever is agreed between the two parties subject to specific conditions described by Shari’a contractual principles. The \textit{Ijarah} definition of employment is more comprehensive. The wage is also specified more precisely under the Shari’a contract, covering a wider range of receivable benefits only allowed under Shari’a. Shari’a specifies a wage condition precisely in order to avoid a dispute, the example being of Ali, the cousin of Prophet Mohammed, when he accepted work carrying water with his wage being dates to be in a certain condition.

A wage can take many forms under both Omani law or Shari’a. It can be monetary such as salary or benefit such as food and shelter, clothes and accommodation. However, in modern life there is another form of payment: end of service benefit or indemnity.

3.13 End of Service Benefit (Indemnity)

End of Service benefit or indemnity is a benefit awarded to an employee at termination of service and most countries have an Article in their Labour Law setting out the basis for statutory gratuity payments. The discussion here will address: the Shari’a stand on end-of-service benefits and that of the Omani Labour Law.

The end of service benefit falls under delay of payment in Shari’a and is classified as \textit{Ijraha Modafah}. End-of-service benefits or indemnity is practiced in many Gulf countries, including Oman, and takes the form of future payment. Al Kibi\textsuperscript{227} argued that the end-of-service benefit is a type of wage agreed on in deferred-payment terms, to accept it at the end of contract. The end-of-service benefit, a indemnity, is a deferred payment whether agreed on by contract or enforced by Labour Law.

The application of a future contract can be derived from the terms of the employment contract. Most organizations include an article to the contract that makes reference to the governing law such as: ‘Other terms and conditions of employment will be governed by the Oman Labour Law’ or ‘This contract shall be

\textsuperscript{226} See footnote 160 , 161

\textsuperscript{227} Al Kibi, \textit{Al Muamalt Al Maliyah al Muasirah}: 2002, Al Maktab al Islami, p. 552
governed by the laws of Oman, and the Oman courts shall have exclusive jurisdiction.'

The following is taken from the Oman Labour Law, Article 39, regarding gratuity:

Article 39: If the employment relationship is terminated, the employer shall, in respect of employees who do not benefit from the rules of the Social Insurance Law, pay to the employee an end-of-service gratuity equal to the salary of 15 days for each year of service for the first three years and a one-month salary for each year for the following years, and the employee will be entitled to a gratuity for fractions of the year in respect of the period he spent in service, and the last basic salary shall be the basis of calculating the gratuity. The duration of continuous service which began before the commencement of this law shall be counted within the period of service considered for determining the payable gratuity period.

The Employer provided the employee with many non-contractual benefits such as leaving early to conduct personal issues, arriving to the office late because he/she had to take a sick child to hospital or extra payment and an annual bonus. These benefits do not appear in the contract; only the end of service benefit appears in the contract under the Oman labour law and then only for the expat employees. The end of service benefit can be viewed as compensation to the expat employee for his/her time and effort devoted to the company.

There is no evidence in Shari’a on end of service benefit. When Moses completed his ten years of service, he did not get additional wages, instead received help towards the wedding of the daughter, his food and shelter. The end of service concept is considered modern and was developed to improve loyalty and devotion to employer but one needs to look at Moses case where benefits in kind were provided as part of an income.

In Shari’a the end of services benefit, or gratuity, could be seen as part of the employee salary that is paid at a later date but this is in contradiction to the Shari’a employment contract. It can also be seen as part of the wage but with future conditions attached, this is Gharar. If the employee turns to work,
he/she is entitled to wage. The wage cannot be postponed without his permission.

3.14 Shari’a stands on Labour Exploitation

Shari’a places strict self-control on labour exploitation and strongly discourages taking advantage of an employee’s work. One of the main concerns of Shari’a is the risk of exploiting one another unjustly. Shari’a strongly disapproves of disadvantaged employees receiving wages after exploitation of their service. The same Hadith that was stated earlier on page 108 for wage stipulation refers to where Shari’a stands on slavery and labour exploitation. Prophet Mohammed said: “Allah said, I will be an opponent to three types of people on the Day of Judgment.”²²⁸

1. One who makes a covenant in My Name but proves treacherous
2. One who sells a free person and eats his price, and
3. One who employs a labourer who works fully for him but does not pay him for his labour.

The potential effect of this principle on expediting payment in the labour industry is phenomenal and could reduce a huge amount of claims.

The Oman Labour Law states in Article 53 that the employer must fulfil his duty to pay his employees:

Article 53: The employer will not be discharged from payment of the employee’s salary unless the employee signs the register designed for this purpose acknowledging that he has received his salary or signs the payroll or a specific receipt designed for such purpose or unless the salary is transferred into the account of the employee in one of the locally approved banks, provided that the particulars of these documents state the details of the salary.

²²⁸ Sahih Bukhari Volume 3, Book 36, No. 470: Translator: M. Muhsin Khan / Sunan Al Bhehaqi Al Kubra v.7 p. 121
Under Shari’a, one of the references to the law of *Ijahrah* comes from the story of three men trapped in the cave. Prophet Mohammed said:

...Then the third man said, O Allah, I employed a few laborers, and I paid them their wages with the exception of one man who did not take his wages and went away. I invested his wages, and I got much property thereby. (Then after some time) he came and said to me: O Allah’s slave, pay me my wages. I said to him: All the camels, cows, sheep and slaves you see are yours. He said: O Allah’s slave, don’t mock me. I said: I am not mocking you. So, he took the herd and drove them away and left nothing. O Allah, if I did that for Your sake only, please relieve us from the present suffering.’ So, that rock shifted completely and they walked away.\(^{229}\) …

The guiding principle, of Shari’a, being taken from this story that can be applied today is that an employer will not be discharged from payment of the employee’s salary, even if the employee gone for so long.

In conclusion, the condition for payment of a wage under Shari’a has to fulfil two main criteria: wage must be known in advance and paid on time as soon as the work is finished, (before the worker sweat dries out).

1. Wage should be of transferable wealth. This also includes the time of payment.
2. The wage should not be a benefit of likewise – likewise (similar; gold for gold, silver for silver, wheat for wheat) item. It is classified as *Ribā Al Nasee*.
3. Wage must be paid on the due day (before the employee’s sweat dries)

### 3.15 A Shari’a view on Modern Employment Concepts

Most countries have established employment departments to regulate employment relationships. The regulations include areas such as: contract of employment,

\(^{229}\) Sahih Al Bukari Volume 3, Book 36, Number 472.
minimum wage, working time that are addressed and discussed in line with Shari’a provisions for employment contracts are:

- Minimum wage
- Annual increment
- Holiday and annual leave
- Future employment / ijarah

3.15.1 Shari’a Views on Minimum Wage

The discussion of minimum wage in Shari’a is centred around four main factors as pointed out by Kibi\textsuperscript{230}. They are:

- freedom of contract and mutual consent
- fulfilment of all obligations,
- Muslims are asked to meet the terms of their obligation
- and fixed price.

The first factor asserts that people should be free to enter into a contractual agreement subject to conditions. The Shari’a sets general principles for freedom of contracts. It allows people to enter into contractual agreements provided they are of mutual consent. This general freedom allows them to freely set all contractual conditions including type of work, duration, time and price.

The second factor concerns fulfilling obligations. The freedom mentioned above generates responsibilities to both parties. Mutual consent is a must, Qur’an chapter 4: verse 29]. Therefore, parties to the contract are obliged to fulfill the terms and conditions of a contractual obligation Qur’an chapter 1: verse 5. The Qur’an reference to this is in Qur’an chapter 4: verse 29. ‘O ye who believe, eat not up your property among yourselves in vanities: But let there be amongst you traffic and trade by mutual good-will’. There is also reference made in Qur’an chapter 5 verse 1 and in chapter 23 verse: 8 as shown below:

5:1 O you who believe, fulfil [all] contracts.

\textsuperscript{230} Al Kibi, SaadAldeen 2002 Modern Financial Transaction under Islam, Al Maktb al Islami pp. 521-549 see also Sayyid Sabiq Fiqh us-Sunnah p. 117
23:8 *Those who faithfully observe their trusts and their covenants*\(^{231}\);

The third factor regards Shari’a views on minimum wage and can be derived from the following *Hadith* of Prophet Mohammed:

As narrated by Abu Hurayrah: “The Prophet (p.b.u.h) said: Conciliation between Muslims is permissible. The narrator Ahmad added in his version: “except the conciliation which makes lawful unlawful and unlawful lawful”. Sulayman ibn Dawud added: The Apostle of Allah (p.b.u.h) said: Muslims (i.e., stick to) their conditions.\(^{232}\)

Scholars of Shari’a agree that it is not lawful under Shari’a to interfere in prices between the seller and the buyer as people should be free in their transaction. It is unjust to force the buyer to buy for a higher price or to constrain the vendor to sell at a lower price. It is certainly not in line with the general principle of the Shari’a guidance on mutual consensus: As stated in the Qur’an, chapter 5: verse 1(stated earlier) and the prophet hadiths of price fixation (stated below).

The final factor regards fixed price and is referred to in the following two *Hadiths* of the Prophet Mohammed:

As narrated by *Abu Hurayrah*: A man came and said: Apostle of Allah, fix prices. He said: (no) but I shall pray. Again, the man came and said: Apostle of Allah, fix prices. He said: It is but Allah who makes price low and high. I hope that when I meet Allah, none of you has any claim on me for doing wrong regarding blood or property.\(^{233}\)

The second *Hadith* is narrated by *Anas ibn Malik*: The people said: Apostle of Allah, prices have shot up so fix prices for us. Thereupon the Apostle of Allah (p.b.u.h) said: Allah is the one who fixes prices, who withholds, gives lavishly and provides, and I hope that when I meet Allah, none of you will have any claim on me for an injustice regarding blood or property.\(^{234}\)

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\(^{232}\) Sunan Abu Dawud, Book 24, Number 3587.

\(^{233}\) Sunan Abu Dawud, Book 24, Number 3443.

\(^{234}\) Sunan Abu Dawud, Book 24, Number 3444.
Only on limited occasions may the government intervene to impose a minimum wage restriction and this is only when injustice is perpetrated against employees. It is, therefore, the government who is permitted to intervene on the price when the employer is taking advantage of the employee and wants to pay him or her less than an acceptable wage. In conclusion, Shari'a does not permit price fixation, and there is no minimum-wage concept as only in exceptional cases that the government is permitted to intervene under specific conditions.

3.15.2 Annual increment

An annual increment is usually given to employees to meet the cost of rising inflation. Inflation is measured nation-wide and the employee is given an annual adjustment in salary accordingly. Some companies pay between 1 – 5 % and sometimes the increase is linked to individual performance and company profitability/performance in the same year. In some countries this increment is a legal obligation, UK and India.

With regard to Shari'a view on annual salary increment, AlKubi²³⁵ argues that the employment contract is a contract of exchanging benefits. Prophet Mohammed’s Hadith supports this argument: Muslims are to (stick to) their conditions.

An employment contract is a contract of obligations. Therefore, it is not allowed to annul or terminate it. See also discuss theme of Shari’a Views on Minimum Wage argument footnote 230 p. 127.

3.15.3 Annual leave

The modern concept of Annual leave received little Shari’a attention. The majority of Arab and Islamic states declare Friday as an official weekly day off. Despite of that, there is no reference in the Shari’a that Friday is a weekly holiday. On the contrary the Qur’an, chapter 62 (Al Jumu’ah / Friday), verses 9-10 states that:

\[
O \ you \ who \ have \ believed, \ when \ [the \ adhan] \ is \ called \ for \ the \ prayer \ on \ the \ day \ of \ Jumu'ah \ [Friday], \ then \ proceed \ to \ the \ remembrance \ of \ Allah \ and \ leave \ trade. \ That \ is \ better \ for \ you, \ if \ you \ only \ knew.
\]

And when the prayer has been concluded, disperse within the land and seek from the bounty of Allah, and remember Allah often that you may succeed.

In fact every day when there is a call for prayer, people must stop trading and attend the prayer. They can resume trading and seeking wealth when the prayer ends. Therefore, there is no day off from working, working and work only stops for prayers. Hence, the annual leave is a contractual obligation.

The issue of annual leave has not been explored in Shari’a, as the concept did not exist at that time. The modern concept of being owed annual leave emerged with the development of psychology contracts in the workplace as a means to look after the employee in order to improve productivity. The Oman labour law, article 61, grants an employee 30 days annual leave and article 71 states that the employer must grant the employee no less than two consecutive days of rest per week after five continues working days. The theory behind it is that workers can rest and recharge leading to better performance on their return. This concept can be seen in the Shari’a, when the Prophet Mohammed said, “your body has a right on you” to give it a rest and also in the Qur’an, “And I do not wish to put you in difficulty.”

Having days off is common to many societies with Muslims taking Friday, the Jewish have Saturday, and the Christians taking Sunday. Furthermore, when there is no Shari’a’s rules specifically related to any subject, Shari’a usually endorse rule of customs as long as the custom rule does not contradict with permitting forbidden issues or prohibited issues.

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236 Sahih Al Bukhari Volume 8, Book 73, Number 155 and Qur’an chapter 28 verse 27.

Narrated 'Abdullah bin 'Amr: Allah's Apostle entered upon me and said, "Have I not been informed that you offer prayer all the night and fast the whole day?" I said, "Yes." He said, "Do not do so; Offer prayer at night and also sleep; Fast for a few days and give up fasting for a few days because your body has a right on you, and your eye has a right on you, and your guest has a right on you, and your wife has a right on you. I hope that you will have a long life, and it is sufficient for you to fast for three days a month as the reward of a good deed, is multiplied ten times, that means, as if you fasted the whole year." I insisted (on fasting more) so I was given a hard instruction. I said, "I can do more than that (fasting)" The Prophet said, "Fast three days every week." But as I insisted (on fasting more) so I was burdened. I said, "I can fast more than that." The Prophet said, "Fast as Allah's prophet David used to fast." I said, "How was the fasting of the prophet David?" The Prophet said, "One half of a year (i.e. he used to fast on alternate days)."
3.15.4 Future employment / Ijarah

As stated earlier rental contract agreement under Shari’a covers many types of rent including the rent of a house, animal, boat or employment. Therefore, the examples provided in old Shari’a Fiqih books discussing this issue conceptually are not related to contemporary life and only applicable to their time. The challenge is to integrate, innovate, and legislate these principles within modern life situations.

Based on time-line categorization of Shari’a hire agreements and the starting date of the contract, Shari’a classifies a rental contract, including an employment contract, into two categories. First, the conventional employment contract starts immediately after formation of the contract. Shari’a categorises this type of contract as “Ijarah Munjazah” and executed instantly. Secondly, if the contract starts at a later date it is termed “ijarah al mudhafah”, which means literally in English as added rent. However, the meaning is a contract executed at a later date. For instance, a future employment contract was discussed in old Shari’a Fiqih books as follows: Two people rent an animal to ride for a journey and each ride half way (i.e. from Mecca to Basra). It is a fact that the commencement time for the second rider is not linked to the contract at the time of contract formation. This example can be adapted to a modern car-hire case when booking a car for a holiday in another city.

This case was agreed by Shari’a scholars and is considered to be permitted. This is similar to a future contract of sales with a condition.

Al Mabsoot argues that future added time, ijarah modafah lil mustaqbal is permitted and therefore, by analogy this is accepted and considered as a basis for a future employment contract.

Majallat al Ahkam al Adaliyyah article 407 also discusses future rent contract.

\[237\] Al Shair’yah 537 and Al Adly’ah 407 – 408
\[238\] Al Mabsoot v. 17 p. 17
\[239\] Hooper translation article 407. An immediate contract of hire is a contract of hire, which comes into force immediately upon the conclusion of the contract. Article 408. A future contract of hire is a contract of hire which comes into force as form some definite future date
This is applicable to both the rental of a house or a rent of a shop, or hiring of human service: employment. And it is called *ijarah munjazah* Article 404 *ijarah munjazah* is considered from the time the contract was agreed. Article 408 *ijarah mudhafah* is considered from a future point in time.

*Hanafi, Hanbali* and *Maliki* agreed on the permissibility of future rental agreements. The following example of renting a house is provided: “I will rent you a house in March but the time of the contract is January.” They classified this under a Shari’ah reference as *ijarah* added to the future. *Hanafi, Hanbali* and *Maliki* permitted this contract as an exception to a future sales contract.

In summary, a close look at the employment future contract indicates that a future contract concept is employing someone at a later date, not today’s date but another date. Under Shari’a this is called: “*ijarah al mudhafah*.” Literally translated into English, as added rent but the meaning is future added time to the rent contract. A future rent contract (employment) is permitted under Shari’a.

### 3.16 Condition applied for the benefit

It was stated earlier that *ijarah* (Rent) as hire in English is a sale of a specific benefit/service for a specific compensation (price/wage). Therefore, the Shari’a also places some rules on benefit type engagements. Modern scholars, of Shari’a (*Al Zuhayli, Al Sayyid Sabiq*) summarise the main principle associated with benefits related to a valid employment contract into five main governing conditions as follow:

1. To be commonly known as a rented item to the exclusion of all rent for the purpose of being forbidden in Shari’a or squandering money or in meaningless rent.
2. The rental agreement should not include taking over the main source.

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240 Majallat al Ahkam al Adaliyyah v.1 p. 80
241 Al Mabsoot v. 17 p. 20
242 Badayia Al Sahay v. 4 p. 203
243 AbdulAziz, Amir *Fiqha Al Kitab wa Al Sunnah* v.3 pps 1541-154 6
Renting goats for milk. One buys the milk.

3. Deliverability: you cannot rent a blind man to obtain something that requires sight to be delivered.

4. To be permitted action by Shari’a for example, it is not permitted to employ someone to kill someone else.

5. The benefit must be known. You cannot say, I rent you one of these houses. You must say I rent you a specific house for a specific sum.

Salem Naderah, reviewed seven conditions for valid reward/payment contract (Ijarah contract) in Islamic fiqh.244

First: Benefits have to be known.

Second: It should not be something (al ain) that will die or finish such as a candle or gas. Al ain is translated literally into English as any term referring to a sale or an employment contract. The meaning of this word refers to “subject matter, the item or the goods,” (i.e., al ain could be one of the following: to contract a service to pull out painful teeth, the teeth here are al ain). Renting an animal or a car in a modern term to ride or as transport, the animal or car is considered al ain, or employing a teacher to teach a child. In this regard, some Muslim scholars have taken an extreme approach, not to allow rental al ain that will be destroyed, die or become extinct, exhausted or worn out.245

Third: It could be delivered. Al ain has to be deliverable. That means if al ain cannot be delivered physically or is otherwise not permitted in Shari’a, then it cannot be ijarh, contracted or employed.

Fourth: A condition to see the leasing item

Fifth: Benefits must have a financial value.

Sixth: There must be a benefit to the employer.

Seventh: The benefit must be permitted, should not be a mandatory prayer or a forbidden action.

Al Sahira’yah articles 593-600 and Majallat al Ahkam al Adaliyyah Article 463 address this issue.

244 Salem, Naderah, 1994, p. 96-107.
245 Al Hariri Abdulrahman Kitab 1994 Al Fiaquh a la al Mathahib Al Aribah, Dar Al Hadithah, Dar Hadith, Cairo p.102 see also Al Zuhayli 2003, p.385
A thing which is valid as the price in a contract of sale, may be the rent in a contract of hire. On the other hand, a thing which is not valid as the price in a contract of sales may nevertheless be valid as the rent in a contract of hire. (Article 463)

3.16 Conditions of Ijarah (rent / employment)

In Shari’a there are a few general rules and guidance for an ijar contract of both types of Ijarah: leasing of an item or employment contract. Scholars (Al Zuhayli 246, AL Khafir 247, Abdulaziz 248 and AlHariry 249) of Shari’a specified four basic main conditions for a valid Ijarah (leasing) contract which can be implemented in an employment contract (see also Shari’a employment contract Figure 3.3).

The conditions are similar to those of a valid sales contract:
1. Formation of conditions includes three types: some related to contractors, other to contract, and the third is related to the contracted place “Mahal Al Aqd” (item); in other words, a condition related to an employer, a employee and a contract.
2. Execution of conditions: a condition of ijarah is that employment is to have a free will. The officious or obtrusive person’s employment contract is not valid unless approved by the custodian or the governor.
3. Validation of conditions: a condition related to contractors (employer and employee), the contracted, contracted item and wage
   3.1 Acceptance of both contractors: employer and employee (by mutual goodwill) as in Qur’an, chapter 4, verse 29.
   3.2 Contracted subject “Al Maqood Alayh”:
      Specifying the contracted subject clearly to prevent dispute; the unknown contracted subject leads to dispute. Therefore, the contract is then void. The

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246 Al Zuhayli, Wahba, 1984: Al Fiqh al Islami, Dar Al Fikr, Damascus v. 4  p. 734
248 AbdulAziz, Amir Fiqha Al Kitab wa Al Sunnah  v.3 pps 1541-154 6
249 Al Hariri Abdulrahman Kitab 1994 Al Fiaquh a la al Mathahib Al Aribah, Dar Al Hadithah, Dar Hadith, Cairo
unknown, contracted subject prevents delivery. Therefore, it defeats the purpose of the contract. The specification of the employment contract's subject includes the topics of contract, time and a description of the work.

a) Specifying the subject: the contracted subject has to be clearly specified. Knowledge of the subject includes item employed for, benefits and time.

b) Specifying time: the undetermined time leads to dispute. Therefore, time must be clearly stipulated in the event of the renting of a house, shops or even the services of nursing a child. (A maximum and minimum contract time is to be discussed in detail later.)

c) Specifying the work, defining the type of work (it could be expressed in a modern concept: job description). But in the event of employing a "joint employer," the job has to be clearly specified, e.g., tailoring a textile.

3.3 Deliverability of the contracted subject physically and through Shari'a; compliance, for example it is not permissible to employ the dumb to speak or to employ a lady in her period to clean the mosque.  

3.4 The contracted subject (job description) has to be permissible in Shari'a: e.g., employing someone to take part in a lottery or someone to kill is obviously disallowed. Prophet Mohammed (p.b.u.h.) said in the narration of Narrated Abu Mas'ud that: The Prophet forbade the utilization of the price of a dog, the earnings of prostitute and the earnings of a foreteller.  

3.5 Should not be part of religious obligations; e.g., employing someone to perform prayers, to fast or employing a wife to serve in her own house; it is not permitted as this task ought to be undertaken by her in the first place.

3.6 The employee should not benefit from the job he is undertaking; e.g., the miller to get part of the milled wheat. The miller benefits from the grinding the wheat. The Prophet (p.b.u.h.) prohibited the hiring of a male animal for mating and the hiring of a worker to grind wheat with his wage paid in flour.

3.7 The benefit must be intended to be obtained by contract: The use of it must be commonly known among people. For example, it is not permitted to rent a tree for hanging clothes to dry not to us the shadow. On the other hand, the

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250 Al Zuhayli  W. Al fiqh al Isalmi  P. 741
251 Sahih Al Bukhari Volume 3, Book 36, Number 482
252 Ghareeb Al Hadith v 2 p 257 , Al Nihayah fee Ghareeb al Ather v 4 p 90
253 Al Daraqtuni  V.5/295 p. 407
contract must be receivable, if not, it is not permitted, according to the Prophet’s statement or not selling what is not receivable. An analogue employment contract is similar to a sales contract. Therefore, the same principle applies.

3.18 Conditions of Obligation

Conditions of obligation are conditions imposed on a contract that compel contractual enforcement. These include a valid contract, and therefore an invalid contract is not enforceable. A legitimate excuse of any of the contracted parties, such as a child that has not reached puberty stage renders the contract invalid.

The Ijar contract to be enforceable has two necessary / obligatory conditions (this included rental agreements):

1. The leased item should be in good condition; otherwise, the tenant has the right to break the contract. For instance, the house must be habitable. If not, then the contract can be breached. In the case of employment, if the employee becomes sick, then he has to execute the contract when he becomes well.

2. Unfounded excuse allowing for the breaking of the contract; an excuse related to contractors or the contracted item.

In general, a reasonable excuse and a legitimate excuse permits breaking the contract. A contract can be broken for valid reasons as continuing to enforce the contract leads to harm. These reasonable factors can be related to contractor, client and contracted item.

3.19 Private Employee and Public Employee

Shari’a classifies an employment contract as being either for a private employee or a public employee. Each one of these categories has its associated rules and obligations. The current discussion focuses on Shari’a, however, when applicable, the Oman labour law will be referred to.
3.19.1 Private employee

A private employee\textsuperscript{254} is one who engages in work, permanent or temporary, for one employer only for a specific period.\textsuperscript{255} Once again some of the example provided in old Shari'a *Fiqih* books are not related to contemporary life and are only applicable to their time. For instance, a chef to be employed under the condition that he does not work for anyone else during the contractual period, or a woman to nurse a child. The example provided is in relation to these categories from a lifestyle of bygone days: child nursing. For instance, a woman is not permitted to nurse another child, and she will not get paid for her service, as she did not fulfil the contract of nursing the child. In contemporary life a private employee covers all types of employment in the business sector such as clerks and managers.

There are a few governing rules to this employment contract; some are implied while others are stated clearly between the two parties:

A private employee is entitled to a salary as soon as reporting to the employer on time, whether there is work to conduct or not and whether work is completed or not. But if the employee works for someone else the salary will be deducted pro rata to the time spent doing other work. The Oman labour law article 6 states: Employee: Any natural person working in return for a salary with an employer and under his management and supervision.

A private employee is not permitted to work for any other employer during the time of the contract. If the employee works for another employer during the time of the contract, a wage will be deducted pro rata toward the contract. An employee is not allowed to engage in other work activities but prayer. Therefore, under Shari'a, in an employment contract, a private employee deserves a wage as soon as he reports to the employer whether there is work or not.

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\textsuperscript{254} See Hooper: *the Civil Law of Palestine and Trans-Jordan*, article 422 p. 98

\textsuperscript{255} Sayeed Sabiq *Fiquh Al Sunnah* 1994 v. 3 p 125
3.19.2 Public employees

A Public employee is an employee who conducts work for someone temporary or not temporary with a condition not to work for one sole person. A public employee is one who is not working for a specific employer but for several at a time. A contemporary example for a joint employee is a contractor who builds several houses at a time for several people, a tailor, a lawyer, dentist or shoemaker. There are a few rules governing this employment contract. Some are implied, others are stated clearly between the two parties:

1. Public employees are entitled to a wage on the job contracted without taking into account time.

2. Public employees are entitled to a payment or wages only after completion of work. The wage is measured and payable on completion of work, not on completion of a period.

Specific employment conditions of time are applied differently to each type of employee.

Majallat al Ahkam al Adaliyyah\(^{256}\) categorises employees as private and public as in article 422. Al Shari’yah also classifies employees as private and public/ public article 522 – 523. This can be translated as the public employee being one who is not working for one sole person but is employed to work for one person for a specific time as a private employee during this period. Article 422: a private employee is employed by one person or group acting as one person. For people, in a village, employing a shepherd for the village, he is a private employee only if he raises the sheep for the village but if he raises other sheep he is a public employee.

Article 424, a public employee does not deserve a wage only for work. Article 425, a private employee deserves a wage during the period whether or not he has to work and is not allowed to refuse work given.

\(^{256}\) Al Mujalah v.1 p 80 and Syeed Sabiq v. 3 p. 152
3.20 Time and period of contract

Time is an important factor of discussion under the Shari’a employment contract. Therefore, it is essential to discuss the Shari’a concept of Time. Ibn Qudamah al Maqudisy summarises the time concept under a Shari’a employment contract in the following points:

1. The year is counted as 360 days with a month at 30 days.
2. The starting date of an employment contract can be any time and not immediately after agreement. However, it should be specified, for example, whether employment is for a month. Then the month must be stipulated, e.g., January, February, etc.
3. The employment period cannot be more than one year due to the fact that the need or al ain cannot last for more than a year.

According to Ibn Qudamah Al Maqudisy, the beginning of the contract can be immediately at the formation of it or can be specified by month or date. The reference is drawn from the Qur’an, chapter 28: verse 27 as there is no indication of a starting date.

Shari’a scholars have three views in regards to the maximum time duration for Ijarah (Rent / Employment contract):

1. It has been argued that the maximum duration for a contract is as long as the eye can last, eye here referred to an item or that thing (Al Ain) and that is what most Shari’a scholars agree on.
2. The second argument is for not more than one year because all needs are not sustainable for longer than that.
3. The third argument is for not more than 30 years because things do not last for more than that, and there will be a change in wage and prices. However when referring to the Qur’an, chapter 28, verse 27-28, it can be concluded that the maximum period is 8 – 10 years.

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257 Al Mughni v.6 P.262

258 In Arabic script
3.21 Security, warranties or liability of the employee

The other main concept of discussion is the issue of security. Security is associated with the meaning of warranties or liability (see security under Shari’a page or chapter). The concept here is discussed in relation to the two types of employees, private and public. The private employee characteristics are that he is trusted, loyal and gives the best advice to his employer in returned for employer responsibility to take care, protect employee rights and pay a wage in full. This falls under implied conditions. As a result of this complicated relationship, if an item is destroyed in the employee’s hand without negligence, intent or corruption, the employee is not eligible for compensation or remedies. The security or warranties for responsibilities for a public employee is different.

In summary, the general idea is if a public employer damaged an item it could be either intended or unintentional. If an item is damaged by employee action, it could be either intentional or unintentional. Both incidents require employees to take responsibility for his action and compensate the employer. If an item damaged is not by employee action, there is no responsibility associated with the item destroyed.

3.22 Disputes of the contract of employment under Shari’a

The reference for dispute resolution can be derived from the Prophet’s statements. The dispute can occur at different stages of the contract and on different issues such as compensation amount or benefit. Shari’a provides specific guidance at each stage and for each issue.

In the past, when an employment contract was not in writing, if an ijarah dispute occurred, the oral contract was valid and correct. Taking oath was one way of resolving dispute. The reference here is the Prophet’s Hadith:

The Hadith says:

If disagreement between seller and vender and there is no evidence, the say is what the seller or dispute/ debate.  

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259 Bak p. 163
260 Al Mughni v 4 p 138
This Hadith presents a different view. If after presenting evidence the dispute is on the wage, then the statement for the landlord take president. However, if the dispute revolves around the benefit, then the statement of the tenant takes precedence.

Acceding to the above Prophet’s statement, the Shari’a rule in the (ijarah) lease contract or employment contract in case of disagreement on the amount before exchange benefits are met, is what the seller says. The seller is either the landlord or employee. In other words, in case of leasing a house it is for the landlord to say, but in case of employment it is for the employee to say; he is the seller here.

There are a few consequences resulting from taking an oath. If taking it, the agreement is then void. Should one party refuse to take an oath, he would be obliged to compensate the other with his/her claim. It could take place before obtaining the benefit or after obtaining the benefit. At that time, this type of disagreement was resolved by taking an oath. Each one took the oath as per the Prophet’s Hadith.

Should the dispute occur during the obtaining of a benefit, such as during the lease of a flat, is the final say the tenants? Shari’a scholars address this as follows:

- The reference to the dispute resolution in a sales agreement under Shari’a is the Prophet’s Hadith: If two vendors disagree with each other, one takes the oath and replicate the oath. ²⁶¹
- If the dispute occurs on the compensation amount or benefits, then both parities of contract take the oath and replicate. ²⁶²
- If the dispute occurs on duration, or period, the seller statement takes precedence. And the buyer has the choice to take it or leave it. ²⁶³
- If the dispute occurs after completing the period of the contract, then they do not take an oath, and the final say is the landlord’s on the compensation amount with an oath. And there is no oath for the tenant. ²⁶⁴

²⁶¹ Al Mughni v. 5
²⁶² Al Mughni v 5
²⁶³ Al Aum, For Al Sha Fee v3 pp 6-11
²⁶⁴ Badya Al Sana’ya v 4 p 219
− This applies on sale agreement; however, the employment is classified as a sale under Shari’a contractual arguments. Therefore, the same principle applies.

3.23 Ending of an Ijarah - Employment Contract

This section is designed to discuss the process of ending an employment contract. Many Muslims scholars agree that if an employment contract is formed under valid conditions it is binding and cannot be terminated unilaterally. The *ijarah* covers both employment and a rental contract, e.g., a house.

Under Shari’a this employment contract is an obligatory type of document and is classified as a sale’s contract. It can only be broken, breached, infringed or terminated for valid reasons. Al Hariri 265 summarised Shari’a valid reasons for termination of employment contract as:

a) An option call. if any party made a condition to cancel in 3 days.

b) View option, if any party made a condition to see first with option to evoke the contract

c) If there is a default in the rented item, such as in the event the employee is unable to carry out duties.

d) If employed to do a job, then finds it is more beneficial not to carry out the job, (e.g., employing someone to pull a tooth, then deciding that the position no longer warranted (the pain disappeared); or Employing someone to tear down a house, then changing his mind)

e) Death of any of the contracted parties.

The *Majallat* addresses this issue in article 441 in which it says that the contract is formed on the consent of both parties and cannot be terminated unilaterally266.

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265 Al Hariri Abdulrahman Kitab 1994 Al Fiaquh a la al Mathahib Al Aribah, Dar Al Hadithah, Dar Hadith, Cairo p.145

266 *Majallat al Ahkam al Adaliyyah*: Article 441 v.1 p. 246
Hooper\textsuperscript{267} gives further details in his translation of Article 441 as follows:

“If after the conclusion of a valid contract of hire, some other person offers a higher rent, the contract of hire may not be cancelled by the lessor by reason of that fact alone. If a guardian or trustee of a pious foundation, however, lets the real property of an orphan or of a pious foundation for a rent which is less than the estimated rent, the contract of hire is voidable and the rent must be increase to the estimated rent”.

Majalat Al Al Ahakam Al Shari’a article 546 addresses this issue\textsuperscript{268}.

Contract of hire is an obligator contract, neither party are to dissolve or terminate without reason.

Majallat al Ahkam al Adaliyyah provides reasons for termination of contract in Article 443, as follows:

If there is reason do not permit the contract to be executed \textsuperscript{103}. it can be terminated 302, 303 and 403 as examples. If employing a chef for a wedding but one of the bridal couple dies, thus terminating the employment contract. Also, if a toothache subsides before the tooth is extracted, then the contract is terminated and the ijarh is terminated as well as a boy to be nursed dies.

Hooper\textsuperscript{269} furthermore states that Article 443 also says that, ‘If any event happens whereby the reason for the conclusion of the contract disappears, so that the contract cannot be carried out, such contract is cancelled’.

There are two ways of ending an Employment contract under Shari’a or Omani Labour Law: normal and abnormal. In the normal way:

\begin{itemize}
\item If the end of contract period or completion of the work is agreed upon,
\end{itemize}

\textsuperscript{267} Hooper, C.A (1938), The Civil Law of Palestina and Trans-Jordan, volume 1. Sweet & Maxwell, Limited, London p. 103

\textsuperscript{268} Ahmed Abdullah al Qari, 1981, Mjallat al Ahkam Al Adliyyah, Tiham, Saudi Arabia p. 213

\textsuperscript{269} Hooper, C.A (1938), The Civil Law of Palestina and Trans-Jordan, volume 1. Sweet & Maxwell, Limited, London p. 102
An 'Abnormal' way of ending the employment contract could be either by excuse or default which covers the following areas:

- Employee excuses could be: bankruptcy, or changing professions, or travelling to another country.
- Excuses for the employer side cover the following: taking out a large loan that leads to selling of the house that is rented, or when buying an item to rent then to find out it is defected.
- Excuses related to the rented item such as renting a place to do something then the people in the town abandoned the town.

The employment contract under Shari’a, *Ijarah*, can also end in many other ways. Ameer Abdulaziz summarises four ways of ending an employment contract.

First: One of the main conditions for valid Employment contract is to specify the duration of the contract.

Second: *Iqalah*, as in a sales contract, if a party in the contract regrets entering into a contract and wants to get out of it with the approval of the second party, then it is possible as per the Prophet’s Hadith: “whoever absolves a person regrets sales Allah will absolve his fault on Judgement Day.”

Third: Death of either party

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270 *Iqallah*, Revocation, Resignation. This way Resignation allows employee and employer to end the contract amicably without encountering legal action. See also Al Sayyid Sabiq Fiqh us-Sunnah p. 124

271 Ameer Abdulaziz Fiqh Al Kitab wa al Sunnah, Dar Al Salam pps. 1558-1561

272 See also: Ali AlKhafeef p. 419, Al Zuhayli, Al fiqh Al Islami wa Adilat’h p. 781, Al Sayyid Sabiq Fiqh us-Sunnah p. 153

273 See Al Zuhayli 2003, Financial Transactions in Islamic Jurisprudence, Dar Al fikr, Beirut

274 Anees Al Fuqah v.1 p. 213 / Nusab Al Rayah v. 4 p . 30 / Al Mabsut v.12 p.130
Fourth: If you cannot benefit from what you contracted, such as a house that is destroyed, the contract is void.

Fifth: finding default in the item, Al Ain; for instance, if renting a well, and the well runs dry you have the right to end the contract. The implication of this in an employment contract is an inability of the employee to perform duties. Repetition

A definition of Iqalah has been provided by Ibn al Ather\textsuperscript{275} as comprising, ‘Akal, Yukeel, Ikalah or Takayla,’ when they terminate sales and goods are returned to the seller, and the price to the buyer if one or both regret, ikalea will be the sale.

Al Zuhayli\textsuperscript{276} argues similarly that the termination of Ijara, or the employment contract, in Shari’a falls under one of the following cases:

1. Death of one of the contracted parties;
2. Termination or resignation (see footnote 106).
3. Terminated if the subject is destroyed; this covers the subject in the event of the death of an animal rented or damaged of clothing
4. Ending of the period or an excuse

Shari’a ways of ending an employment contract provides greater room for fairness and prevention of unfair dismissals. An example of this is the ‘abnormal’ way of ending such legally binding contracts. An employment contract is bilateral, the contract cannot be terminated unilaterally as this is advantageous for both parties. There is a general rule, that an employment contract, like a commercial contract cannot be terminated before its expiry period but there are reasons that can provide legal grounds for early termination. For example, sickness of the employee. The Shari’a provides a valid reason to end the employment contract if the employee becomes sick and is unable to deliver the benefit to the employer.

Sayeid Sabiq argues that the Ijarah (which includes both rent and employment) contract is a contract of obligation. Neither party of obligation is allowed to breach the contract as it is a compensatory agreement. The contract is not breached after

\textsuperscript{275} Ibn Al Atheer, Al Nihayah Fe Gharib Al Ather v.4 p 134
\textsuperscript{276} AlZuhayli Wahbah 1984; Al Fiqh Al Islami Wa ‘Adillatuh, Dar Al Fikr, Damascus. p. 781
the death of one of the contracted parties, subject to the contracted item remaining safe but it is inherited. He suggests five terms of termination or repudiating (Faskh) of the contract:

1. Finding a default in the rented item
2. Damage of the rented item, (e.g., a house or an animal)
3. Damage to the contracted item such as clothing.
4. Obtaining the benefit, completing the work or completing the time
5. It is possible to terminate the contract for a valid reason. Valid reasons beyond the person’s ability such as bankruptcy, stolen, destruction by burn.

The contract is treated as a sale-of-goods contract in all Shari’a schools and terminated only on specific conditions. The contract is formed on the consent of both parties and cannot be terminated unilaterally as stated in Article 441 of the Majallat al Ahkam al Adaliyyah:

“Ijarah after conclusion is valid and cannot be terminated without valid reason.

This argument is given further support in the Qur’an, verse 5:1

3.24 Immaterial compensation in Shari’a

Compensation is the main claim for any unfair dismissal. The claim usually takes two main forms: tangible and intangible remedies. Tangible remedies cover a loss of earning and any benefits that can easily be evaluated and measured financially. Intangible remedies, immaterial, moral or injury of feels are translated in Arabic as “Manawi”

The subject of immaterial compensation has been discussed in detail under Shari’a and summarised in the following lines:

There should be neither harm nor malice
No harm and no reciprocated harm^{277}

^{277} Forty Hadith of Imam Nawawi (RA), Hadith number 32
Harm must be removed /cleared
Harm is not removed by a similar harm
Harm is pushed as much as it can.
Disability, grievance, injury, lesion, loss, nuisance, torture

Harm is defined as *dhara* and is the damage affecting someone’s rights, interest or a matter guaranteed by law. It is classified into two parts: tangible and intangible. Tangible harm affects someone in connection with his/her rights or interests and is measured and accountable at a price that can be compensated subject to financial means.

Intangible harm is the harm to someone’s subconscious and unseen damage associated with thinking and feeling.
Intangible harm covers four different categories:

1. Effects on the body: burns, fractures and deficiencies that affect an individual’s capacity to operate normally.
2. Damage that affects integrity, dignity, reputation and that could be slanderous.
3. Damage that affects feelings.
4. Damage that is caused by infringement or violation of one’s rights, such as attacking property, stopping someone from travelling against one’s wishes.

Shari’a provides specific views on intangible or immaterial damage. There are two schools of thought. Both schools draw references from Shari’a principles.
The first school disapproves of immaterial damage compensation for the following reasons:

a) The first one considers remedies in Shari’a only for tangible things as intangible damage, such as reparation, slander and damage to dignity deserve punishment, not remedies. For example, punishment for slander is 80 lashes. Therefore, Shari’a does not approve such remedies because it is not possible to evaluate the damage.

b) Second, the compensation is to restore matters to where they were before the damage. In such a case it is not possible.

c) Third, in some cases, taking money for immoral damage is disliked by many people.
In this case, damage caused by someone deserves another type of punishment called *Tazeer*. Therefore, immaterial remedies are not approved.

The second school of thought approves of immaterial remedies under Shari’a on the basis of Prophet Mohammed’s *Hadith*. Stated earlier:

> “La darar Wa-la dirar” (No injury is to be caused and none is to borne)\(^{278}\)

Such modern practice must find roots for compensation under Shari’a based on the principle of “*There should be neither harm nor malice and the principle of the harm must be removed*”

### 3.25 Conclusion

In conclusion, the main concern of this chapter has been to provide insights into the Shari’a general theory of contract, to set out the principles of contract in Shari’a and the concept of employment law in Islam. Shari’a is the basis of legislation in Oman and other Arab countries and the highest legal instrument of Islamic law. Shari’a is used for referencing and deriving laws from original sources.

This chapter provided a discussion of the degree and the role that Shari’a plays in informing legislation in Arab states, with some principles of the Qur’an and the *Sunnah* informing employment contract.

Employment contract in Shari’a is discussed in details from the stage of formation of employment contract, forbidden elements of employment contract, employee obligations and employer obligations to the stage of principles of termination of employment contract. Furthermore, the discussion also addresses Shari’a principle of dispute in employment contract. Finally, tangible and intangible compensation in Shari’a, which is an important aspect of compensation, are discussed.

The above literature review concern of unfair dismissal in Oman and the role of Shari’a. The proposition is to identify the role and impact of Shari’a on unfair dismissal in Oman and to indentify the influence of Shari’a on legislation and Omani unfair-dismissal and their impact on individual, organization, and society.

\(^{278}\) Forty *Hadith* of Imam Nawawi (RA), *Hadith* number 32

January 2013
Very little research has examined unfair dismissal in relation to Shari'a in Oman or in any of the Arab countries. Shari’a principles are able to accommodate and reach conflict resolution, however; these principles are often not well understood.
CHAPTER FOUR

4. Employment Law in Oman: Analysis of the Effect of Shari’a and English Employment Law

4.1 Introduction

This chapter examines the effect of Shari’a on Oman Labour Law, outlining the nature and role of English employment law influence on Omani Law. It compares and contrasts Omani Labour Law in relation to *ijarah* contract and the issues surrounding employees’ dismissal and the Disciplinary and Grievance Procedure of an employment contract under the Oman Labour law. The discussion in this will cover the following areas: Shari’a influence on the Oman labour Law, Omani Labour Law vs. *ijarah* Contract, Freedom of Contract in Oman labour law, Written Contract in Oman Labour Law, Compensation or Payment, The concept of Year and Time in Oman Labour Law vs Shari’a, Duration for Remedies Claim in Omani Labour Law, Probation Period, Duration of an employment contract in Omani Labour, Dismissal from Employment in Omani Labour Law and Shari’a, What is unfair dismissal in Oman Labour Law?, and Disciplinary and Grievance Procedure under Oman Labour Law

4.2 Shari’a influence on the Oman labour Law

Historically, all Oman labour-relation matters prior to the current Omani Labour Law 34/1973 were governed by the Shari’a system and local custom. Most employee – employer disputes were resolved by judgements passed down on the basis of Shari’a. The only available documented labour law can be found in a small section in *Jaahir Al Nitham*, Al Salimi which happens to be a Shari’a-based document. In the absence of documented law, judges make rulings based on Shari’a principles which are based on what is termed “Fiqh” or the knowledge of Shari’a.


January 2013
The first modern written Omani labour law was issued in 1973 and then revised with Labour Law 35/2003. Therefore, the second hypothesis in this research is: Shari’a affects Oman and other Arab world constitutions, and is the driving force in legislation and laws and, specifically in Oman law. The influence of Shari’a is clearly demonstrated in many articles in the Oman labour law. These articles are covered under part II, Leave section in the Oman labour law. In the following discussion the influence of Shari’a will be addressed first, followed by a summary of the Oman labour law.

The following Hadith specifies the rule for wages in an employment contract. ‘One who employs a labourer must inform him of his wages.’\(^{280}\) Reference to this principle can be found in the Omani Commercial Law, Royal Decree 55/90. Article 93, sales shall be concluded by mutual agreement of the vendor and purchaser in respect of the items sold and the price. Thus, offer, acceptance and price [salary already paid on a monthly basis] equal contract. Also the Oman Labour Law, Article 23.4, specifies the rule of salary and payment time which include the basic salary, any allowances or prerequisites to which the employee would be entitled under the conditions of service currently effective and the mode and time of payment of the salary agreed upon.

It is apparent from the following cases that Shari’a has some influence on the Omani law where they are equivalent cases in the English law. The cases are summarized below:

4.1.1 The 130 days leave for bereavement

First, the following Qur’anic verses below demonstrate the concept regulated by Shari’a on specific occasions. Although this issue does not relate directly to this research, a brief discussion is required to establish the link, then a particular issue that is directly related will be addressed.

Shari’a imposed a certain timeframe rule in case of divorce. The woman must not enter into marriage immediately after divorce, waiting until three months have passed. There are many reasons for imposing this restriction. The first is that it is

\(^{280}\) AlZuhayli p. 731 Fiqah Al Isalmi Wa Adilatih and Fatawi al Sa’di v.2 p.558

January 2013
commonly known that within three months pregnancy appears clearly. This is to generate child protection of paternity and to maintain child descent rights. Secondly, it is a period of reflection and recovery before entering into any new marital life. The third reason is to give a couple sufficient time to consider evaluating the possibility of re-establishing their marriage bonds and to continue life as a couple, particularly if children are involved. Qur’an, chapter 2’ verse 228 and chapter 65, verse 4 set out three months for women to stay unapproachable by a male after divorce.

Divorced women remain in waiting for three periods, and it is not lawful for them to conceal what Allah has created in their wombs if they believe in Allah and the Last Day. And their husbands have more right to take them back in this [period] if they want reconciliation. And due to the wives is similar to what is expected of them, according to what is reasonable. But the men have a degree over them [in responsibility and authority]. And Allah is Exalted in Might and Wise. (Qur’an , chapter 2, verse 228).

That refers to a normal case of divorce. However, in the event of divorce of an elderly woman, the recovery period is also specified by Shari’a.

And those who no longer expect menstruation among your women - if you doubt, then their period is three months, and [also for] those who have not menstruated. And for those who are pregnant, their term is until they give birth. And whoever fears Allah - He will make for him of his matter ease. (Qur’an , Chapter 65, verse 4)

The Shari’a rule for a widow is not to meet any male whom she can marry for duration of four months and 10 days. The two justified reasons for this are similar to the previous reasoning in case of a divorce. The first reason is to ensure the clearance of pregnancy in order to protect child paternity rights. The second reason is to allow women an emotional recovery period and grieve for her husband before being approached by a male.

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A study led by Geoffrey Findlay 2008 at the University of Washington has finally shed
Therefore, Shari’a and for the well being of women has provided 130 days recovery period.

The Qur’anic verse setting out the Shari’a rule in chapter 2 verse 234 is:

And those who are taken in death among you and leave wives behind - they, [the wives, shall] wait four months and ten [days]. And when they have fulfilled their term, then there is no blame upon you for what they do with themselves in an acceptable manner. And Allah is [fully] Acquainted with what you do. (Qur’an, chapter 2, verse 234)

The three-month restrictive period for women not to pursue marriage after divorce is not addressed in the labour law as it is a normal life event that does not require the law to intervene. However, the case of the women losing her husband has consequences for labour law. For example, no employer would want to pay a full salary for an employee for 130 days without that employee being present in the office. Consequently, the Omani labour law provides a provision for women to follow Shari’a guidance under Article 67. The article allows for 130 days special leave for the Muslim married female in case of the husband’s death based on the Qur’an, chapter 2, verse 234 (stated earlier).

Article 67 of Omani Law (35/2003) states that an employee is entitled to special leave with full salary, according to the following circumstances:

1. Three days for marriage which shall not be given more than once throughout the period of service
2. Three days for the death of a son, daughter, mother, father, wife,

some light on the phenomenon. It turns out there are proteins in seminal fluid, many of which transfer to the female after sex. Some of these proteins are warrior-like — they fight the sperm of rival males. Other proteins are like hypnotists — entering the female’s circulatory system, they may hormonally dampen her interest in sex with other males. Somewhat disturbingly, the more semen a female is exposed to, the more influence the male has over her reproductive tract and her mating behaviour. Semen, it seems, has mind control properties. It could be viewed as one of the reasons for Shari’a to provide 130 days prescribed period (period of waiting) for Muslim female who lost her husband, and Omani Labour law supports it. See also Gordon G. Gallup, Jr., Rebecca L. Burch, and Steven M. Platek, Does Semen Have Antidepressant Properties? Archives of Sexual Behavior, Vol. 31, No. 3, June 2002, pp. 289–293 (°C 2002)
grandfather, grandmother, brother or sister

3. Two days for a paternal uncle or an aunt

4. Fifteen days for performing pilgrimage which shall be once throughout the period of service, provided the employee has completed one year of continuous service with the employer

5. Fifteen days in one year for examinations for Omani employees who study in a school, institute, college or universities

6. A hundred and thirty days for a Muslim married female employee in case of the husband’s death

In order to be entitled to leave provided for in points 2, 3 and 6 above, the employee must present proof of death from the relevant authorities. Article 67 (4) and (6) does not exist in English law nor does it exist in some other Arabic countries, for example the Bahrain labour law.\textsuperscript{283}

4.1.2 The 15 days leave for Pilgrimage

The second place where Shari’a influences the Oman labour law is on leave to pursue the fifth Pillar of Islam which is the Pilgrimage. The annual pilgrimage to Mecca, the Hajj, is an obligation once in a lifetime, only for those who are physically and financially able to perform it.

The annual Hajj commences in the 12th month of the Islamic lunar, or Hijra, calendar. In contemporary times the Hajj can be performed between three and 14 days. The Oman labour law makes provision for 15 days for performing the pilgrimage once in the lifetime of every employee.

The third place to demonstrate the influence of Shari’a on Oman labour law can be found in the Oman court procedures where it practices a unique system in comparison to western world. This procedure, philosophy and background derive

\textsuperscript{283} In Bahrain, these 130 days of mourning for females technically is handled differently. The 130 days given to widows are assigned to accumulated sick leave accounted for in her service as 15 days a year. If there are not sufficient days to be deducted, then it is taken from her annual leave. If it is still not covered, it goes through a special approval process in the human-resource authority. This practice can cause debate in the company. Therefore, it is proposed that an amendment is made to accommodate the Shari’a right for a female widow in Bahrain’s labour law.
from Shari’{a as explained below.

4.1.3 Decisive or Determining Oath (Yameen Hasism)

The Omani legislature made approval of evidence a provision to determine the direction of the case in a dispute by providing a decisive-oath procedure when evidence is not adequate. Article 23 in court regulations allows for a decisive oath. The Omani labour court, on limited occasions, grants approval to carry out Article 23 and approve a decisive, or determinant, oath. See Appendix 2 for a detailed discussion of Yameen Hassim, background and the philosophy.

This ‘Alyameen’ is granted by the court only when supportive evidence is not available for what has been claimed. The court will approve the decisive or determining oath (Alyameen Hasism) at the request of one of the adversaries. The decisive oath will only be granted by court under circumstances where the adversary does not have supportive evidence. This oath is final, and the outcome of the oath, whether yes or no, determines the court action. The oath takes place only after the assent of the court (appeal case 105/2003). 284 (See footnote for sample of the oath in Arabic)

Alyameen Hasism is an appeal to the conscience of the individual to say the truth, bearing in mind that this is a very critical appeal to be made before Allah. It is the belief and the fear of Allah’s justice and punishment that withholds people from lying and transgressing against others. The call here is to leave the punishment to Allah in the event the individual is not telling the truth.

A decisive oath is defined in Arabic on page 621 in the Oman court legal rules 1998-99 as being a special legal system put in place by the Omani legislature to support the disputant who fails to provide evidence to support his claim and asks for a decisive oath whereby he refers to the conscience of his opponent to swear and witness to Allah to testify to the truth. Whenever the disputant takes the oath, he swears the case will be judged as per the person taking the oath. The court makes final judgement accordingly. It is up to the judge’s discretion to allow this practice in the court and only when there is an element of subjectivity in the

284 I swear by Almighty God that I did not receive amount (800 rials) eight hundred riyals after the amount (800 rials) is the first of the plaintiff · Source, Al Watan Daily newspaper, Oman 14 November 2009
evidence provided.\footnote{The court has the right to change and modify the oath to suit the subject of the case (appeal court 360/95 and 734/98 [19 June 1999]).}

It is also possible to request reciprocation of the oath. The decisive or determining oath (\textit{Alyameen hasism}) is not a unique principle in the Omani judicial system. It has also been practiced in the Egyptian system. Egyptian court procedures (law 25/1968, articles 114-118) detail the specific implementation procedure and practice of a decisive oath under the Egyptian judicial system.\footnote{Ibraheem Syid Ahmed 2004: Al Yameen Al Hasimah.}

A final aspect that demonstrates Shari’a influence in the legal system is an Oman court practice called Whayat Al Madalim. This is also an example of how Shari’a and the application of the rules of custom influence Omani courts with regards to employment contracts and unfair dismissal.

\section*{4.1.4 Wilayat al Madhalim, Diwan al Madhalmi}

There are a few cases were Shari’a influences the direction of the decision in the court. This is demonstrated in the case [129-130/2002] \textit{Wilayate Al Madalim}. This refers to the case of \textit{Al Tahir Establishment} (defendant) vs. Anwar Ahmed Mushtaq (plaintiff) [129-130/2002]. See Appendix 1 for a detailed discussion of \textit{Waliyate al Madalim}, background and the purpose.

In the case of al Tahir Establishment versus Anwar Ahmed Mushtaq [129-130/2002] [160/2002] under the Omani system, the case was revised with the judgement made in favour of the plaintiff. This case was dismissed based on exceeding the time limit to fill the case, but reviewed under the principle of \textit{Wilayat al Madalim}. To illustrate this concept few cases in other systems are compared below:

In English Law, the following cases are used to illustrate the issue of time limit: First, the Machine Tool Industry Research Association versus Simpson [1988] IRLR 212 Court of Appeal]. Simpson made a complaint of unfair dismissal but this was received by the industrial tribunal some three days outside the statutory three-month time limit. The industrial tribunal maintained, however, that under the
circumstances it had not been reasonably practicable for Mrs. Simpson to present her claim within the time limit, that it was presented within a reasonable time thereafter and that they had the jurisdiction to consider her complaint. The Employment Appeal Tribunal (EAT) and the Court of Appeal dismissed the employees’ appeal against the decision.287

Second, London International College versus Sen [1993] IRLR 333 Court of Appeal. Sen presented his claim a day after the deadline. Despite advice given to Dr Sen, regarding the time limit he, presented his claim one day late. “upholding a tribunal finding in favour of Dr Sen, the EAT hold that there is no rule that taking the advise of a solicitor makes it reasonably practicable to comply with the time limit”. The Court of Appeal dismissed the employer’s appeal.288

A Court of Appeal dismissed both UK cases on the basis of failing to comply with the time requirement.

Back in Oman and the case of al Tahir Establishment versus Anwar Ahmed Mushtaq [129-130/2002], the time factor had well passed the required time limit. However, despite the court decision to dismiss the case and close the file permanently as per the appealed court decision on 23/09/2002, the case was reopened based on the Wilayat al Madhalim principle. The Wilayat al Madhalim as an Islamic principle influenced the court’s judgement. This case demonstrates the effect of Shari’a in the court. Under normal circumstances, without the introduction of the Wilayat al Madhalim principles stated in the higher court to justify opening the case after a final verdict and time limit, this would not have been reconsidered.

This indicates that the court looks to Shari’a only when there is no judgement to be drawn from existing legislation as per royal decree: 55/90, Article 5, where it states that if no royal decree exists, the rules of custom apply with particular or local custom taking preference over general custom. In the absence of custom, the provisions of Islamic Shari’a shall apply and thereafter the rules of justice.

In conclusion, Shari’a affects Oman and other countries in Arab world, and is the

288 Ibid p. 474
driving force in legislation and laws and, specifically in Oman law. The influence of Shari’a is clearly demonstrated in many articles in the Oman labour law. The first influence identified is granting female Muslim employee 130 days leave in the circumstances of the husband’s death. The second influence is granting leave once in the lifetime of every employee to perform Haj. The third influence was demonstrated in the court procedure by allowing Decisive Oath. Final influence identified is applying the principle of Wilayat al Madhalim. These principles and articles in the Omani labour law which do not exist in English law.

4.2 Omani Labour Law vs. Ijarah Contract

This section aims to compare and contrast the Oman Labour Law with the Ijarah contract under the Shari’a employment contract. The main purpose is to illustrate similarities and highlight main differences, if any, in relation to Article 2 of the constitution. Furthermore, it is intended to present evidence showing which parts of the Omani Labour law are in common with Shari’a and where the differences lie.

In the following pages, a detailed discussion of Oman Labour Law 35/2003 is presented together with an examination of Ijarah, the Shari’a concept of employment.

Oman Labour Law 35/2003 defines the employment contract in Article 1.7 as a contract of work any contract under which any person undertakes to work for the interest of an employer under the employer’s management and supervision in return for a salary.

The article highlights the basis of the relationship between the employee and the employer. This contractual relationship involves the employee’s dependence on the guidance and supervisory role of the employer in return for a wage. This dependence is created based on the intention of the two parties to enter into a legally binding agreement.

Furthermore, the employee under the Oman Labour Law is defined as in Article

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289 when referring to the Oman Labour law the version 35/2003 will be used unless stated otherwise
Any person working in return for a salary with an employer and under his management and supervision.

The article classifies an employee as “any person working in return for a salary with an employer under his management and supervision.” However, this natural person is not anyone but further defined in another article in the code. The natural person referred to here is further defined and specified in chapter 5 of Omani Labour law 35/2003 in relation to the employment of juveniles and females.

Article 75: It is prohibited to employ both male and female juveniles. Such juveniles are not permitted to enter places of work before attaining the age of 15. The minister may, by a decision, rise this age in respect of some industries and works if the nature of such works so requires.

Article 76: Juveniles aged under 18 years shall not be required to work between 6 p.m. and 6 a.m., nor shall they be required to work for more than six hours a day.

In comparison to the Oman Labour Law Shari’a does not restrict the employment-compensation definition to a limited set of standards but covers a wider range of benefits that can be exchanged (i.e. in case of prophet Moses working for 10 years in exchange for marriage). The relationship between the employee and the employer is managed by a contract.

It is noticeable that there is a link between this definition and the Shari’a and the definition of an Omani employment contract. The Shari’a concept is derived from the Prophet Mohammed (p.b.u.h.)

The common parameters between the two employment concepts are: employee, employer and wage.

Additionally, the Omani Labour Law, Article 23.4, states that the contract of employment must, in particular, include the following information:

290 See Hadith footnote 197
1. The name of the employer, the name of the establishment and the address of the place of work
2. The name of the worker, the date of birth, qualifications, job or occupation, place of residence and nationality
3. The nature and type of work and the period of the contract
4. The basic salary, any allowances or advantages to which the employee would be entitled under the conditions of service currently effective and the mode and time of payment of the salary agreed upon
5. The suitable period of notice which must be given by the party who wishes to terminate the contract, provided that the notice period which the employer gives to the employee is not less than the period provided for by law.  

On examination of the fundamental principles of the Shari’a employment contract (aqd el ijar) and the Oman Labour Law, Articles 1.7 and 23.4, both emphasise drawing attention to the same basic employment contract principles: employee, employer and work conditions such as time and payment. An analogy can be drawn to verse 28:27 in the Qur’an:

He said "Indeed, I wish to wed you one of these, my two daughters, on [the condition] that you serve me for eight years; but if you complete ten, it will be [as a favor] from you. And I do not wish to put you in difficulty. You will find me, if Allah wills, from among the righteous" (Qur’an , chapter 28, verses 27-28)

In this case the employer is the father and the employee is Moses, the payment is to wed one of his daughters and the time period is specified as 8-10 years

4.3 Freedom of Contract in Oman labour law

Mohamid Ibn Tufash  1985

محمد بن يوسف اطفيش: مكتبة النيل وشفاء العليل محكمة الارشاد السعودية
The Oman Labour Law places a legal restriction and limit on the freedom of contract. The legal restriction concerns only the age, as the age is the sole restriction on the capacity of the person entering into a contractual agreement. However, there is a difference between Omani labour law and Shair'a regarding the freedom of contract.

Shair'a places restrictions on all types of transactions unless the contract is binding to the basic principles of Shari'a derived from the Qur'an or Sunnah. The room that is provided by Shari'a for freedom of contract and justice is greater than other systems. The restrictions placed on the freedom of contract to provide justice includes eligibility of the parties to conclude the contract. The contract is considered a null contract in cases of: sale by a discerning child, sales under coercion, compelled sale (bay'a al mudtarr), sale to pre-empt danger and brokerage sales. These restrictions placed in Shari'a as conditions for the valid execution of contracts is to ensure provision of justice.

4.4 Written Contract in Oman Labour Law

This is a fundamental point to be addressed in regard to the employment contract in the Oman Labour Law.

Article (115):
Whoever violates the provisions of Part Three and the decisions issued for the implementation thereof, shall be punished with fine of not less than R.O.10/- and not exceeding R.O. 100/- which shall be multiplied by the number of workers who are the subject of such violation and the penalty shall be doubled upon repetition of such violation.

Part three is related to Contract of Work Article (21):The contract of Work shall be confirmed by writing and issued in Arabic of two copies, one copy for each party. If the contract is written in a language other than Arabic, at least one copy in Arabic shall be annexed thereto and approved by the two parties to the contract which shall be equally authentic if there is no written contract of work, a worker may establish his rights by all means of proof.

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292 Al Zuhayli, Whabah 1984: Financial Transaction in Islamic Jurisprudence, Dar Al fikr, Damascus v. 1 pps.16-19
The worker shall be given a receipt for the documents and certificates which he might have deposited with the employer.

As the fine in Article 115 is minimal, employers have a tendency to neglect the importance of respecting written employment contracts. The fine should be a minimum of RO 1,000 (exchange rate approx. OR 600: £1), and the fine will be compounded by the number of workers for whom the offence is committed.

It could be argued that Oman Labour Law does not set and enforce strong, legally binding contractual employment agreements between two or more persons/parties. This could be found in labour law articles below:

Old Article -107/34/1973 anyone contravening the provisions of the fourth chapter, concerning the contract of work and the decisions issued for its implementation is liable to a fine not exceeding RO [Omani riyals] 100. The fine will be compounded by the number of workers for whom the offence has been committed. Punishment will be doubled if the offence is repeated.

Such a small penalty for breaking chapter four by not issuing a work contract will not support enforcement of the law. Since the law indicates that, an employer in Oman is not permitted to employ foreign citizens without prior clearance from the Ministry of Manpower, this could be used as a mean to enforce application of the law.

4.5 Compensation or Payment

One of the main components of the employment contract is payment, salary or compensation. The Oman Labour Law specifies this element of the employment contract in Article 7 of 35 /2003. The article addresses the payment for work and salary as a wage. Additionally, Oman Labour Law Articles 12 and 13 classify salary into two parts: basic salary and gross salary. The article also defines a salary structure that could be either cash or in kind. The in-kind part of the salary could be interpreted as paid days off with any other benefits the employee might be receiving considered additional privileges.

Article 12. Basic salary: the consideration agreed upon between employee
and employer in cash or in kind as stated in the contract of work in addition to a periodical allowance, if any.

Article 13. Gross salary: the basic salary in addition to all other entitlements payable to the employee in return for his work; this includes consideration for overtime work and what the employee may receive as gratuities, gifts or allowances due to the high cost of living or subsidies except travelling, transport and residence allowances.

Articles 53 and 57 of the Oman Labour Law also provide rules for salary payment:

Article 53 states that, ‘The employer will not be discharged from payment of the employee’s salary unless the employee signs the register designed for this purpose acknowledging he has received his salary or signs the payroll or a specific receipt designed for such purpose or unless the salary is transferred into the account of the employee in one of the locally approved banks, provided that particulars of these documents must state the details of the salary’. 

Article 57 says that, ‘An employer may not transfer an employee who receives his salary monthly to a group of employees who receive their salaries daily or a group of employees who receive their salaries weekly, per assignment or hourly unless the employee agrees to such a transfer in writing. The employee shall, in case he agrees to be transferred, enjoy all the rights acquired during the period in which he receives his salary monthly salary in accordance with the rules of this law’.

One element of a compensation package is the annual increment. Oman Labour Law has no clear provision for annual increments stipulated in the code. However, there is an administrative order by the Ministry of Manpower to encourage companies to provide annual increments.

Although, there is no Minimum wage in Oman, the Council of Ministers, according to Article 50 of the Omani Labour Law, is empowered to impose a minimum-wage restriction. This reflects Shari’a guidance when injustice has been done, for
instance, in cases where the employer has taken advantage of the employee to accept a lower salary.

The Council of Ministers shall determine the minimum limit of salaries according to the requirements of economic circumstances, and it may determine the minimum limit of a certain category of employees who hold jobs or occupations, the circumstances or nature of which require such determination. Article 50.

4.6 The concept of Year and Time in Oman Labour Law vs Shari'a

The Omani Labour Law provides a general framework for the time concept in relation to a contractual agreement and addresses it in Article 1/16 of 35/2005, which specifies a year as 365 days from the date of signing the contract unless otherwise provided. Article 17 specifies the month as 30 days, unless otherwise provided.

*Ibn Qudamah al Maqdisy* summaries the concept of time under a Shari'a employment contract with the following points:\(^{293}\)

1. The year accounted as 360 days with a month as 30 days
2. The starting date of an employment contract can be anytime and not immediately after the contract. However, it should be specified, for example, if employment is for a month. Then the month must be specified; i.e., January, February.
3. The employment period cannot be for more than one year. Due to the fact that needs cannot be sustained longer than that. However, others have said that it cannot be for more for then 30 years. This is due to the fact that *AlAayan*\(^{294}\) or ‘the items in the contract’ cannot be sustained for longer than that and prices change over time.
4. The Qur’an, the chapter 28 (Qassas) verse 27, specified the time as between 8-10 years.

The Oman Labour Law, addresses the commencement of a working date in Article 26.3:

\(^{293}\) *Ibn qudamah al Maqdisy*, *Al Mughni* V. 6 p. 262

\(^{294}\) In Arabic script: الابيضان
The employer must open a special file for each employee, containing particularly the following:

1. The name of the employee, his age, social status, place of residence and nationality
2. His job, occupation, experience and qualification
3. Date of starting work, his salary and any developments in respect thereof
4. Annual, sick and special leaves given to him and any disciplinary action taken against him
5. Date and reasons for termination of service

Conceptually, commencement of the employment contract is discussed in the Shari’a employment contract under different terms. Contrary to the Oman Labour Law, Ibn Qudamah Al Maqdisy\textsuperscript{295} asserts that under Shari’a, commencement of the contract can be immediately, at the formation of it or specified by a month or date. The reference to the time concept is drawn from Qur’an chapter 28 verse: 27. The Qur’anic verse provides no indication of a starting date. The verse only discusses the duration of the contract, leaving out the starting date as unspecified.

\textit{He said, "Indeed, I wish to wed you one of these, my two daughters, on [the condition] that you serve me for eight years; but if you complete ten, it will be [as a favor] from you. And I do not wish to put you in difficulty. You will find me, if Allah wills, from among the righteous."}

The nature of the relationship created by an employment contract offers a special bond between the two parties of the contract. Ideally, as per Qur’anic guidance, the employer is asked not to impose any hardship on an employee; on the contrary, it encourages us to be righteous in all dealings.

The practical implementation of this guidance is that the Shari’a employment contract provides more than one option of starting the contract. It recognises that people might face hardship and unexpected inconveniences. It provides a more

\textsuperscript{295} Al Mughni 262 ص6
suitable solution to the employee/employer and does not impose any hardship that might lead to disputes.

### 4.7 Duration for Remedies Claim in Omani Labour Law

The Oman Labour Law places restrictions on the time limit for an employee’s claim. This is addressed in Article 7 of the Oman Labour Law 35/2003 which provides a limited claim time. It is stated that:

> The employee’s right to make any claim under the provision of this law shall expire after a lapse of one year from the date on which such claim arises. As regards cases instituted before the implementation of this law, the one-year period shall start from the date on which this law comes into force.

Most cases of unfair dismissal leading to dispute in the labour court revolve around claims for remedies. There are some big differences between the Omani Labour Law and Shari’a regarding remedies and claims. The right to claim under Shari’a can take up to 15 years.

For instance, the defendant in the Oman case of *Tahir Establishment vs. Anwar Ahmed Mushtaq* [129-130/2002] [160/2002] argued the dismissal of the case as per Article 7/35 of the Labour Law. However, the judgement was made based on an Islamic principle related to the time aspects of claim for remedies under Shari’a. The final judgement of this case was made based on *Willayat al Madhalim*, and not on the basis of the above Shari’a principle.

The subject of immaterial compensation has been discussed in the literature review. Al Zuhayli\(^\text{297}\) stated that, “*In my view the Shari’a remedies claim provides greater stability and room for justice than other systems*”. The most difficult part of

\(^{296}\) In my opinion, Shari’a provides greater room for fairness, justice and stability.

immaterial damage compensation is how to quantify the damage in order to award the appropriate compensation. This is a regular challenge for judges and therefore, they rely on experts to assess the damage in order to quantify compensation.

Al Zuhayli added that: “The right is old and does not fade / die away with time.”

In comparison, English law does not provide provisions to look into a claim and case beyond the time-frame specified by law. For example, (Machine Tool Industry Research Association vs. Simpson [1988] IRLR 212 Court of Appeal), and London International College vs. Sen [1993] IRLR 333 Court of Appeal) there is no provision to the right to claim after 15 years but it was only a matter of a day.

4.8 Probation Period

One of the contemporary human resources management concepts is specified as the 'probation period', 'trial period' or 'introductory period.' The probation period is provided by law to allow the employee and organisation to determine if the employee is suited for the job. It should also be a trial period for the employee to determine the suitability and benefits of working with such organisation. By providing a three-month probationary period, employees may be terminated at short notice without any legal burdens. The Oman Labour Law (35/2005) provides a probation-period right to an employer to determine the employee’s suitability for the job in Articles 14 and 24:

Article 14: Probationary Period: the period during which the employee’s fitness for work is tested and which enables the employer to appraise the employee either technically or ethically and which enables the employee to acquaint himself with work conditions.

Article 24: an employee may not be appointed under probation for a period which exceeds three months for those who receive their salaries monthly and one month for those who receive their salaries

\[298\] See Appendix for Arabic script.

otherwise.
No employee shall be appointed under more than one probationary period by the same employer, and the probationary period, if successfully passed, will be counted in the period of service.

Any party may terminate the contract during the probationary period by giving the other party at least a seven-day notice.

The probation period provided by the Omani Labour Law to allow organisations to determine employee suitability for the job is not addressed in the *ijarah* contract. However, under the *ijarah* contract, should the employee be unable to do the work, the employer has the right to dissolve or terminate the contract.

The modern concept of a probation period is linked to the idea of providing a reasonable evaluation timeframe to either party to decide the suitability of continuing to execute the contract. This part of the contractual agreement is covered in Shari’a under the general formation condition of the contract. Therefore, there is no probation period under a Shari’a employment contact. Should either party not be able to fulfil the contract, they can terminate it. Shari’a provides sufficient room to the employer to terminate the contract when the employer finds that the employee is not competent enough to carry out duties based on performance.

4.10 Duration of an employment contract in Omani Labour Law

Omani labour law articles 36 and 37 specifies two types of contract: limited and unlimited.

Article 36: If the contract is for a limited period, and the parties continue to execute it after the expiry of its term, the contract will be deemed to have been renewed with the same terms and conditions for an unlimited period.

Article 37: If the contract is for an unlimited period, any party may choose to terminate it by giving the other party a 30-day written notice of termination in the case of employees receiving salaries monthly and 15 days for other employees unless agreed in the contract for a longer period.
If the contract is terminated without such a period being observed, the party who terminates the contract will be obliged to pay the other party a compensation equal to the gross salary of the notice period or the remaining part thereof.

### 4.10 Dismissal from Employment in Omani Labour Law and Shari’a

In employment relationships, the separation could be in many ways. It could be as resignation, retirement or dismissal. This discussion will only focus on dismissal. The analysis will focus on comparison between Oman dismissal process and the interpreted requirements of Shari’a.

#### 4.10.1 Termination of an Employment Contract

This section aims to discuss termination of employment contract. The discussion will focus on the termination of employment contract under Oman Labour Law. The Oman Labour Law addresses the end of contract in Article 43 of 35/2003 as follows:

**Article 43:** The contract of employment may expire in any of the following events:

1. Upon the expiry of its period or by completion of the work agreed upon
2. Upon the death of the employee
3. If the employee becomes incapable of carrying out his work
4. Upon resignation or abandonment of work in accordance with the provisions of this law.
5. If the illness of the employee requires discontinuation of work for a continuous or interrupted period of no less than 10 weeks within one year.

The contract may not be terminated by the employer unless the employee attains the age of 60. The employer shall, in case the contract is terminated for any of the reasons referred to above, pay the end-of-
service gratuity provided for in Article 39 to the employee or his successors if the employee is not subject to the rules of the Law of Social Insurance.

There are several similarities with regard to ending a contract between the Oman Labour Law and Shari’a. The difference exists in that Shari’a does not provide any guidance to termination or employment at the age of 60 whereas the Oman labour law does.

In both the Shari’a and Oman Labour law, there is agreement that the employment contract is deemed terminated upon the death of an employee. In Shari’a, when the employer dies, any ‘wealth’ that remains is transferred to the inheritors and the employment contract then expires. However, in Omani Labour law (35/2003) the transfer of wealth does not automatically cancel all employment contractual agreements with the employee as is recognised in Article 47

Article 47: Dissolution of the establishment, its liquidation, closure, bankruptcy or merger with another establishment or its conveyance by inheritance or sale or lease or assignment or will or gift or the like, does not prevent it from discharging all its obligations.

Save in cases of liquidation, bankruptcy and final approved closure, the contract of employment will continue to exist, and the successors will be jointly responsible with the former employers for discharging all obligations prescribed by the law provided that priority is given to the employee’s rights”.

There is evidence that the court has taken this into consideration with judgement addressing employment disputes such as the Appeal case 235/2000, Humadi Salih Amin Al Jundi vs. Oman Gulf Enterprises.

Ameer Abdulaziz: Fiquh Al Kitab wa al Sunnah, Dar Al Salam pps. 1541-154

Appeal case 235/2000, Humadi Salih Amin Al Jundi vs. Oman Gulf Enterprises. Humadi was working in a company that was eventually bought by Oman Gulf enterprises. He was terminated by the new management for performance, which was not validated. Since he had a 2 years renewable contract with his initial company, the court applied article 47 and consider it unfair dismissal and awarded him OMR 8,440/- and tickets from him and his family to his home country.
4.10.2 Other Circumstances of Dismissal of Workers

There are circumstances in which the employer can legally dismiss a worker without notice and payment. The reasons for dismissing a worker in this way are set out in Article 42/34/1973 which has been modified to article 40/35/2003 and are considered very serious.

The Oman Labour Law provides the employer with nine legal methods to terminate the employment contract without any legal obligations toward the employee. Article 40 states that the employer may dismiss the employee without notice and without paying an end-of-service gratuity in any of the following cases:

1. If the employee assumes a false identity or resorts to forgery to obtain employment
2. If the employee commits a mistake which results in grave material loss to the employer, provided that the latter reports the incident to the concerned directorate within three days from the date of his knowledge of such an incident
3. If the employee does not abide by instructions which must be followed for the safety of employees and the place of work despite being warned in writing, provided that such instructions are made in writing and displayed in a conspicuous place
4. If the employee is absent from work without reasonable justification for more than 10 days in one year or more than seven consecutive days, provided that the employer gives the employee a written warning after being absent for five days in the first instance
5. If the employee discloses secrets of the establishment at which he works
6. If the employee is finally convicted of a crime or misdemeanour involving a breach of honour or trust or a misdemeanour committed in the place of work or whiles the work is being performed.
7. If during working hours the employee is found drunk or intoxicated by a narcotic substance or a mind stimulant.
8. If the employee assaults the employer or the manager in charge or
gravely assaults any of his superiors during work or because of the it or if he beats one of his fellow employees in the place of work and such beating results in illness or discontinuation of work for a period which exceeds 10 days.

9. If the employee gravely breaches his obligations to perform the work agreed upon in his contract of employment.

If the worker does not agree with the instant dismissal and lack of notice, the worker has the right to appeal to the Department of Labour (art.106/35/2003) which will then try to settle the matter in a mutually agreeable manner. If the matter cannot be settled, it will be taken to the Commercial Court within two weeks. If the dismissal was not lawful, the worker can be given his job back or compensated with salary, allowances and after-service gratuity.

During this appeal process by the worker, the court can reinstate the worker until a final judgement is made. If the worker is paid in this period these sums must be deducted from the equation on final payment to the worker.

4.10.3 Worker’s Right to end the contract

If a worker wishes to end the contract of employment he is required to give the employer notice as set out in the contract. Generally, the length of the notice period depends upon the nature of the employment and may increase in relation to the number of years served with the employer. The Oman Labour Law, Article 41, states the worker’s right to end the contract without notice.

Article 41: Without prejudice to his right to claim all his entitlements, an employee may, after giving notice to the employer; abandon work before expiry of the contractual period in any of the following instances:

1. If the employer or the employer’s representative uses fraud against him at the time of contracting in respect of the terms and conditions of work.
2. If the employer does not perform his substantial obligations towards the employee in accordance with the contract of employment.
3. If the employer or the employer’s representative commits an act contrary to morals against the employee or any member of the employee’s family.
4. If the employee is assaulted by the employer or the employer’s representative.

5. If there is severe danger, which threatens the safety of the employee or his health provided that the employer is aware of the existence of such danger and fails to take prescribed measures imposed by the concerned authorities at the material time."

Other ways of terminating the employment contact by an employee in Oman are by using an end of contract notice as per Articles 36 and 37 of the Oman Labour Law (35/2003):

Article 36: If the contract is for a limited period, and the parties continue to execute it after the expiry of its period, the contract will be deemed to have been renewed with the same terms and conditions for an unlimited period.

Article 37: If the contract is for an unlimited period, either party may choose to terminate it by giving the other party a 30-day written notice of termination in case of employees who receive their salaries monthly and 15 days for other employees unless it is agreed in the contract for a longer period.

4.11 What is unfair dismissal in Oman Labour Law?

Unfair dismissal is a term used to express the act of terminating employees in an unreasonable manner. In such cases, employers take a decision to break the contract without having a legally valid reason to do so or to adopt an unfair termination procedure. In some incidents, pressuring the employee to submit a resignation can be considered as unfair-dismissal.302

A fair termination can be made according to the law in which the employer acts in a reasonable manner. In Oman, the employer has the right to terminate employment according to Article 40 of the Oman Labour Law 35/2003, as stated earlier.

302 Mahmood Jaber 2004, Unfair Dismissal of Employment contract, Abna Wahbah, Cairo p.87
Unfair dismissal occurs when a worker is dismissed from work by an employer without a valid reason, and/or when the employer has acted in an unreasonable manner. Claims of unfair-dismissal are generally made by workers whose contracts have been terminated. According to Oman court-procedure regulations, it is up to the claimants/plaintiffs to prove their claims as defined in Article 50. However, “a worker may establish his rights by all means of proof” according to Article 21-35/2003.

Article 40 of the Oman Labour Law 35/2003, which governs dismissal, is not clearly defined. The ambiguity of the law, except for one section related to absenteeism, leads to disputes. Therefore, unless Article 40 provides a clear set of provisions of the employer’s right to dismiss an employee, there will be an increase in the number of disputed cases registered in the labour department and subsequently transferred to the court. Because of the lack of clarity in interpretation of the law, differing interpretations lead to disputes and diverse judgements.

Moreover, there was nothing in the law, up until the Labour Law Amendment, Nov 2009 that provided clear guidelines for compensational judgements (Royal Decree 63/2009). It was left to the judge’s evaluation and interpretation of the case.

4.12 Disciplinary and Grievance Procedure under Oman Labour Law

There are rules and procedures that must be followed to make businesses work profitably and well, while treating both individuals and employers fairly. Rules set out standards of conduct at work and procedures to help to make sure those standards are kept and provide a FAIR method of dealing with anyone who does not follow the rules.

It is important that workers know what standards of conduct are expected of them. If they are not aware of the behaviour that is expected of them by their employer it would be unfair to punish the worker for something they knew nothing about. That is why there must be a public document that everyone has access to listing what the management expect of the workers (A Disciplinary Procedure) and how the workers can raise their problems with the employer (A Grievance Procedure).
The worker will always find during their employment that there are some things in their work that they are not happy about. Some are hygienic conditions such as (bad air conditioning, bad light, noisy workplace), others relate to workers who find it difficult to do their job properly or receive low pay. These are some of the problems or complaints that employees raise and express their feeling of dissatisfaction. If not resolved this leads to frustration.

The management also will have complaints about the workforce such as the workers not doing their jobs properly, they don’t arrive at work on time, they spend too much time talking, they are always off sick, they take too long on their breaks before returning to work, and many more actions and behaviours that dissatisfy the employer.

In Oman, labour disputes are first referred to the Department of Labour at the Ministry of Manpower. The Department of Labour will attempt to bridge the gaps between the two parties and reach a settlement within two weeks. The dispute may proceed to the court system once the settlement between the employer and the employee is not reached.

Article 104:

The provisions of this chapter shall apply to any dispute concerning work or work conditions, which takes place between an employer and one of his employees or between one or more employers and all or any of their employees.

However, the Oman Labour law makes it more difficult to terminate the employment contract on grounds of sickness without a proper investigation process, as noted in Article 43 below:

5- sickness of the worker to an extent that compels him to discontinue his work for a continuous or an interrupted period of not less than ten weeks during one year;

The disability or illness of the worker shall be established by medical certificate as well as the proof of his age if it is not possible to establish it by a birth certificate or an official extract therefrom. The medical certificate shall be issued by the medical commission pursuant to a decision of the Minister of Health in co-ordination with the Minister for the purposes of
Implementation of the law, and such decision shall include the regulation of the work procedures and the decisions of such commission shall be final.

In addition, the Oman Labour Law, Article 66 places the following controls:

Subject to the provisions of the Social Insurance Law, an employee whose sickness is proved shall have the right to a sick leave not exceeding in total ten weeks in one year whether such weeks are continuous or separate and the sick leave shall be granted as follows:

- The first and second week, with gross salary.
- The third and fourth week, with three quarters of the gross salary.
- The fifth and sixth week, with half the gross salary.
- The seventh to the tenth week, with a quarter of the gross salary.

Proof of sickness shall be by a medical certificate. However, in case there is a dispute, the matter shall be referred to the Medical Committee, provided for in Article 43 of this Law.

A sick employee may make use of the remaining annual leave in addition to the sick leave he is entitled to.

Such provision in the law provides an obvious ground for dispute and debate. However, it also provides a methodological and structural approach to handle an employee’s sickness. The rule is not in favour of the employer and overall ensures the social welfare of the employee. For example, it offers a 10 week employment protection and places the employer at a disadvantage of not getting the benefit of employment contract.

In contrast, Shari’a scholars have not addressed sickness in the employment contract. Shari’a considers the contract defective when the employer is unable to get any benefit from the contract. In this case, Shari’a permits the employer to terminate the contract.

Both systems allow the contract to be terminated in case of sickness of the employee. The difference between the two systems is that the law specifies sick leave for the employee before termination whereas Shari’a leaves this as unspecified.
Shari'a provides clear guidance on terminating the contract due to defects found by the employee or employer after forming the contract. This is based on the contract formation that:

- Bans all types of cheating, harming and covering up
- Ensures contracts are built based on Justice and Forgiveness:
- Assures results in benefits for the contracting parties

If the employee is found unable to work then the three principles can be easily applied and provide the employer with valid reason to terminate the contract or not as the case may be.

The Omani Labour Law provides similar provision for terminating the contract when the employee becomes incapable of carrying out his work. 303

The Omani Labour Law in Article 40 of 35/2003 provides another provision for terminating the contract. It states:

Old: If the employee is finally convicted of a crime or misdemeanour involving breach of honour or trust or a misdemeanour committed in the place of work or while the work is being performed. 304 Article 40.3 of 35/2003

New: If a final judgement is entered against him for an offence or felony for breach of honour or trust or for a felony committed in the work place or during the course of his work; Article 40.6 of 35/2003

The terminating the contract could also be according to Article (32):

If a worker is accused of committing an offence or misdemeanor inside the place of work the employer may suspend him from work for a period not exceeding three months from the date on which the relevant authorities were informed of the incident. Such worker shall be

303 See Article 43.3/35/2005
304 This is a valid reason to terminate employment contract under Shari'a. If employee is imprison the benefit of contracting in receivable.
deprived of his Gross Salary in the first month and shall be paid half of his Gross Salary in the second and third months. If the relevant authority decides not to commit the worker for a trial, or if the period of his suspension has expired, or if he has been acquitted, he shall be reinstated and the previously suspended payments of his wage shall be paid to him. Article 32 of 35/2003

4.13 Conclusion

The focus of this chapter has been to provide an insight into Oman’s labour law highlighting the influence of Shari’a. It compared the Labour Law with the Shari’a employment contract and discussed Article 40 of the Omani Labour Law in relation to unfair dismissal.

A comparison between an employment contract under current Omani law and an *Ijarah* contract, indicates that the law limits the definition of an employment contract to a contract for employing human beings to carry out specific tasks. The *Ijarah* definition under Shari’a is similar to a lease agreement which also includes “human service”. However, whatever the terminology used in current law or Shari’a law, the use of ‘employment contract’ is generally limited to human employment.

In general, the word ‘contract’ is sufficient to define the relationship between two parties. The meanings of both are very close despite the differences in word use. The employment contract under the current law and the *Ijarah* contract have three particular similarities: an employee promises to work for an employer, under the supervision of the employer, in exchange for wage.

4.14 Literature Review Conclusion

The literature review aimed to give an overview of the background to the employment contract under the current Oman’s labour law and under Shari’a. The review indicated that the labour component of Shari’a encompasses the basic elements required to manage an employment contract as summarized below:

1. Shari’a considers any contract, that is not specifically prohibited under Shari’a law, to be legally binding.
2. Shari’a permits employment in order to facilitate human needs otherwise
interaction between people would be impossible.

3. Shari’a provides equal protection to both employer and employee by specifying their right and obligations under Shari’a principles and under the ‘Akhlaq code’.

4. Shari’a specifies that it is the employee’s moral obligation to be honest, trustworthy, and dedicated at all times and to make an effort to complete the job contracted for during the duration of employment. This includes protecting the interests of the employer’s welfare, including information acquired whilst in employment and maintaining confidentially of trade secrets.

5. Shari’a provides guidance on employee rights, including provision for the mandatory prayers, for the pilgrimage (Haj), for prompt payment of wages and for guarantee only damage caused intentionally.

6. Shari’a provides rights of freedom of contract and guarantees employee rights in exchange for the payment of an agreed wage. This freedom is limited to prevent exploitation and misuse in order to protect society and individual.

7. The formulation of an employment contract under Shari’a is not limited to the written contract, but also extends to other means of offer and acceptance to protect employee, such as verbal and or commonly none non-verbal acceptance signs.

8. Shari’a emphasizes the importance of job specification and wage specification to prevent disputes.

9. Shari’a restricts the wage and extent of services so as to conform to Shari’a law. Furthermore, Shari’a prohibits employment in areas that are forbidden and enforces mandatory religious duties such as prayers.

10. Shari’a provides specific guidance to the Employee on their obligations to ensure fairness and compliance and adherence to high moral standards.

11. Shari’a provides a longer time period for claims to entitlements and does not limit it to one year for entitlements and 15 days to claim for unfair dismissal.

12. Shari’a provides more opportunity to break the contract in cases with valid reasons and so as to provide justice and a greater balance between the contracted parties and society as a whole.

13. Shari’a provides greater provision for contracts for children and does not limit them to the age of 15, as per Oman labour law, which is meant to
protect the needs and interest of minors.

14. There are limited restrictions on the minimum wage under Shari’a. It is market driven and only on limited occasions can the governor interfere to maintain justice and ban exploitation.

15. Wages in Shari’a are not limited to the monetary (cash) aspect only but also include other none monetary benefits such as food, shelter, and even marriage.

16. Employment contract, lease agreement in Shari’a, can be terminated in two ways:
   a. normally: in case of end of contract period or completion of the work that was agreed upon, Iqallah, revocation, death of one party, or no benefit gained from the contract, defected item (Al Ain),
   b. abnormal in case of valid excuses such as; bankruptcy, or changing professions, or travelling to another country.

17. Shari’a makes provision for immaterial damages based on the principle of “There should be neither harm nor malice” and the principle of “No injury is to be caused and none is to be borne”.

After completing a comprehensive literature review on the Shari’a contract law and the Oman Labour law including termination of contract, a research methodology began to emerge. The literature review posed valuable research questions on unfair dismissal in Oman. These questions address the role and impact of Shari’a on unfair dismissal in Oman, the impact of Shari’a on the Oman Law of Contract, specifically to the labour law, the extent to which Shari’a employment-contract principles can accommodate modern employment contract needs and development and Omani unfair-dismissal legislation and its impact in comparison to Shari’a.

The literature review also highlighted areas that have not been fully researched or that are in need of greater clarification as follows:

1. There has been a little research focus on the relations between the two main pillars of production in economy, the employer and employee.
2. There is a limited practical awareness of the rights and obligations of both employee and employer.
3. The difference between ‘man to man’ and ‘man to Allah’ relations’ in the
employment contract law as in Shari’a is not clearly defined.

4. There is a need for a greater comparison of the rights and obligation of the employee and employer between Oman labour law and Shari’a.

5. Shari’a provisions on specific guidance for the employee / employer relation and their obligations and rights needs clarification.

In the light of the above literature review, the following research propositions were formulated:

Proposition 1:
The literature review in chapter 3, ‘Employment Law in Shari’a’, addressed the concept of the employment contract in Islam. The review concluded that since Shari’a is the basis of legislation in the Omani constitution, Shari’a impacts on all legislation including the Omani law of contract and the labour law. Subsequently, the response to section 2 of the questionnaire will be analyzed to assess the impact of Shari’a on the Oman Law of Contract, specifically the Omani labour law.

Proposition 2:
Further to the literature review on the ‘Employment Law in Shari’a’, the extent to which Shari’a employment-contract principles can accommodate modern employment-contract needs and development will be analysed by considering the responses to section 4 of the questionnaire.

Proposition 3:
In Chapter 2, the literature review addressed the ‘Employment Law with a Conceptual and Theoretical Review of Unfair Dismissal’. The response to statements in section 3, regarding the unfair dismissal in court cases in the questionnaire, will be analysed to assess the implications of unfair dismissals.

Proposition 4:
The literature review in Chapter 3 addresses the employment law in Shari’a and in Chapter 4 addresses the employment law as prescribed under the Oman constitution. Statements in section 4 of the questionnaire regarding the labour law as opposed to Shari’a law will be analysed to identify the role and impact of Shari’a on unfair dismissal in Oman and a comparative analysis undertaken.
The research seeks to prove that these two variables, the influence of Shari’ā on legislation and the provisions under Omani law for unfair-dismissal, will have an impact on the individual, organizations, and society.

The next chapter provides a full discussion of the research design and methodology used to achieve the objective of this study. The aim of the survey was to make a case study of the Omani labour law with a focus on the relevance of Shari’ā using a questionnaire and semi-structured interviews as the data collection instrument.
CHAPTER FIVE

5. Methodology

5.1 Introduction

This chapter focuses on the research design and methodology used to conduct this study. The chapter begins with a discussion of case study investigation approach. This is followed by a description of the mixed methodology approach used in this study. Finally a discussion of the approach used in this research for data analysis.

The qualitative data in this research was generated through a case-study approach. The method permits examination of information from multiple sources to allow evidence to be verified. The information was taken from many sources such as a literature review, semi-structured interviews, court cases in Oman and England, the Shari’a and other documents.

This research applies Yin’s\textsuperscript{305} method of case-study investigation consisting of five important components:

1. The study’s questions
2. Its propositions, if any
3. Its unit(s) of analysis
4. The logic linking data to propositions
5. The criteria for interpreting the findings

5.2 The Research Questions

The explanatory case-study approach mainly addresses how, what and why

questions. The specific research question arose from examining the trend of disputed cases recorded by the Ministry of Manpower's annual statistical report. The main investigation addresses the effect of unfair dismissal claim in Oman with reference to the influence of Shari'ah. In applying a case-study method, the main research question is addressed by answering the following questions:

- Why is there an increase in the number of disputed cases registered in the courts under the Oman Labour Law?
- How are these cases handled?
- What is the influence of Shari'ah?
- What are the implications of unfair dismissals in Oman? And how unfair dismissal affects employees?
- What are the similarities and differences between Omani unfair-dismissal legislation in comparison with Shari’ah systems?
- What is the experience of unfairly terminated employees?
- What are the current trends in providing remedies for unfair dismissal?

5.3 Propositions

The proposition is referred to as something that should be examined within the scope of the study. From the comprehensive review of literature presented in chapter 2, 3, and 4 the following propositions were developed:

1. The role and impact of Shari’ah on unfair dismissal in Oman
2. The impact of Shari’ah on the Oman Law of Contract, specifically the labour law
3. The extent to which Shari’ah employment-contract principles can accommodate modern employment-contract needs and development
4. The implications of unfair dismissals
5. Comparison of Omani unfair-dismissal legislation and its impact in comparison to the Shari’ah

5.4 The unit (s) of analysis

The unit of study defines what the case is, and it can refer to an individual person.
being studied, and the individual being the primary unit of analysis. The unit of study in this case covered five types of groups: claimants, defendants (general managers of companies, human-resource or labour-industry managers), lawyers and possibly some judges. The number of interviewees varied depending on availability.

5.5 The logical linking data to propositions

After the collation of research data, it was analysed using the content-analysis method to identify a key phrase, or words, being counted, the frequency and rearranging such arrays. Themes were identified around the boundaries of the propositions. Each statement was coded based on its effect into a subcategory using one of the 16 main codes. Each statement was interpreted in two ways, therefore, primary 1 and secondary code 2 topics were created (see page 198). Evidence was placed into a matrix of categories including creating a flowchart or data display, tabulating the frequency of different events, variance and cross-tabulation to examine the relationship between variables. Mind Mapping and Excel were used support development of the analysis of the data.

5.6 Criteria for interpreting the findings

The challenge of analysing data and interpreting the findings was overcome by using a grounded-theory approach. Grounded theory provides a more open approach to dealing with transcribed data. In this method, seven steps were used for data analysis and interpretation\textsuperscript{306}.

The seven steps are:

1. Familiarisation
2. Reflection
3. Conceptualisation

\textsuperscript{306} See Saunders, Lewis, Thornhill p. 46,489: research approach strategy in which theory is developed from data generated by a series of observations or interviews principally involving an inductive approach. See also Cooper and Schindler p.209 and Bryman and Bell p. 8.
5.7 Evaluation of Court Cases

Court cases and verdicts are one of main components of the data sources for this research. All verdicts are issued in the Arabic language, and therefore, only judgments and substantial supporting rationale were translated into English by the researcher. Cases are also compared to similar ones in English system.

An Analysis of the matrix has been used to draw themes and key points. The comparison highlights issues arising from relevant unfair-dismissal cases from very different legal systems. Court cases are not officially published and not easily accessed in Oman. Verdicts are only released to stakeholders. This was a factor that could have hindered data collection on court cases. To overcome this obstacle, and to obtain a sufficient number of court cases for analysis, the researcher approached lower-echelon court staff on a personal level to request copies of verdicts with the hope of obtaining sufficient evidence to support the research.

Court verdicts were examined to derive:

1. The extent of Shari’a influences on judgment
2. The value of judgments
3. The nature of remedies awarded

The themes of court cases in the initial survey focused around the following concepts:

a. Each case is judged independently and compensation awarded accordingly.

b. An end of serving benefit / gratuity is awarded according to a method as per Omani labour law, Article 39

Article 39: ... end-of-service gratuity equal to the salary of 15 days for
each year of service for the first three years and a one-month salary for each year for subsequent years, and the employee will be entitled to gratuity for a fraction of the year in respect of the period he spent in service, and the last basic salary shall be the basis of calculating the gratuity.

c. The claimant can request any amount of compensation for unfair dismissal. Nevertheless, the court does not necessarily award the compensation requested. The general observation is that compensation awarded between 20-30 per cent of the claim in maximum and in big-claim cases above OR 50,000 and up to 10 per cent below OR 50,000. See Appendix 2 Current trends in providing remedies for unfair dismissal under the Omani Labour Law: List of Labour dispute cases review at Higher Court.

d. No clear consistent compensation standard can be found between cases.

5.8 Planning the interview

Semi-structured interviews were conducted to evaluate unfair dismissal under the Omani Labour Law, specifically the effect of unfair dismissal. The study covered a sample of 26 people in four groups of interviewees as follows:

(1) Individuals who filed unfair-dismissal cases in court (9)
(2) Corporate general managers, human-resource or labour-industry managers (8)
(3) Lawyers defending claimants (8)
(4) Judges (3)

Interviewees were selected based on the following method:

• The selection of individuals who filed unfair-dismissal cases was made through their lawyers and based on availability and willingness to participate in the study. Some refused politely to participate as this was perceived as a personal matter.
• General managers, human-resource or labour-industry managers were
selected based on company size. This was to ensure coverage of a varied and diverse range of participant companies (small firms: 1-50 employees; medium firms: 51-100 staff, and large: over 100 personnel);

- Lawyers from reputable firms who handled eight to 10 employment cases in a year and are registered at the appeals court.
- Judges selection based on availability and willingness to participate in the study.

5.9 Design of questionnaires

The questionnaire was designed as a tool to generate information related to the research questions including data on unfair dismissal, taking into consideration Oman’s labour-court cases, Shari’a influence and the primary findings from the literature review. The questionnaire specifically collected data on:

a. The experience of unfairly terminated employees
b. The effects of unfair dismissal
c. Current trends in providing remedies for unfair dismissal
d. A suggested regulation to overcome the unfair-dismissal law
e. Levels of functionality provided by the Shari’a contract of employment
f. The suitability of the Shari’a employment contract in the contemporary world
g. Remedies provided under Shari’a contracts

The questionnaire consisted of four sections:

1. The first section of the interview was designed to collect general information about interviewees.
2. The second main component of the questionnaire was to collect data on employment contracts. Most questions in this part were closed-ended with a few open-ended ones at the end to collect qualitative data on opinions, such as to whether the employer carried out fair-dismissal procedures.
3. The third section collected information on court cases. Most qualitative data collected are from closed-ended questions with an option for comments, such as what was the initial reason to file a court case,
e.g., revenge, pay back, fair compensation, seeking justice, establishing a legal record, financial gain or other reasons.

4 The fourth section was designed to collect data on the Labour Law vs. Shari’a with most questions starting with closed-ended questions (yes/no type) followed with open-ended questions, like why or why not?

5.10 Pilot Study

The pilot study was conducted to evaluate the effectiveness of the interview questionnaire on unfair dismissal. The pilot study covered a sample of the intended sample group of 10 interviewees as follows: interviews with three individuals who filed unfair-dismissal cases in court; two general managers; three human-resource or labour-industry managers; and two lawyers.

Data were collected using three versions of the questionnaire tailored specifically to each group: employees, employers and lawyers. Most questions were similar. However, some modifications were made to suit each group.

In the pilot study the following method was used, and the same was followed in the full-scale case study:

- Each interview was undertaken separately, lasting up to an hour.
- Responses of each interview were recoded in a separate questionnaire form.
- Collected data from each questionnaire are transferred to an analysis sheet. All questions are at one side of the table with all responses recorded on the left side of the table. Responses to each question of all interviewees are recorded in the same place to allow for drawing of key features of data; (see appendix 6)

5.11 Main survey (design informed by the pilot study)

The outcome of the pilot study indicated that:

1. It was necessary to divide the questionnaire into three parts related to each group of interviewees that is: claimants (terminated employees), employers (defenders) and lawyers.
2. The wording itself and the order of questions needed clarifying. For example, questions 4.12 and 4.13 were modified from the present legislation which is biased against the employee as the present legislation protects employers and in question 4.12, another category of answer choice was added: included/excluded/unsure. The amendment to the questions was undertaken due to the fact that the question was not understood by interviewees.

3. Some questions were omitted. It was found that some questions were not applicable to the interviewee. For example, Question 3.6, how did you think the employee managed his or her life during this period? This question was inappropriate to ask the employer. They usually do not know or do not care.

4. Some questions had to be rephrased or replaced within another question such as question 4.9 which had to be replaced.

Q.4.9: Should remedies in relationship to the employee contract regarding basic interest be covered by legislation?
This was replaced with another question.
‘Should other remedies be available, such as composition or restitution damages?’

5. In some closed questions there was a need to add another response option such as Question: should the Oman Labour Law be regulated further?
Yes/No and it was necessary to add Unsure

In addition, the interviewees were provided with the option of making comments. The pilot study provided an identification of potential concerns in the survey. During the interview it was felt that some questions had to be translated into Arabic. The translation led occasionally to misunderstanding. In providing further explanation and elaboration of the question, it guided the interviewee to answer in a certain manner. In other words, in providing leading information to the question, it assumed that there is a fact though not yet proved.

5.12 Data Collection

The main process of data collection followed the same method as used in the pilot study. Data were collected on:
Both the semi-structured interviews and self-administered questionnaire were conducted as in the pilot study as follows:

1. Each interview was undertaken separately with each interviewee taking up to an hour.
2. Responses of each interview were recorded in a separate questionnaire form.
3. Collected data from each questionnaire were transferred to an analysis sheet. All questions were listed on one side of the table with all responses recorded on the other side of the table. Responses to each question for all interviewees were recorded in the same place to allow for the extraction of key features of data.
4. Collected data were examined and analysed against a set of principles from both Shari'a and the Labour Law as well as some English cases.

### 5.12.1 Interview

The interviews were conducted in Muscat, Oman, dated from July to December 2007. A total of 28 interviews were conducted. The interviews were structured as follows:

1. General information: Questions 1-9
   - The interview started with questions to collect general information such as the profile of the terminated employee, companies and lawyers. The sample covered industries from small, medium and large companies small or medium-sized companies.
2. Data on the employment contract: Questions 10-27
   
   This section covered details of the employment contract including:
   
   a) Type of contract
   b) Contract duration
   c) Contractual notice period for termination
   d) Benefits provided by the employer

3. Data on court cases: Questions 28-36
   
   This section of the survey collected information on the court cases. It explored issues such as:
   
   a) Initial reason to file a court case
   b) Degree of satisfaction with the court decision
   c) Assessment of the quality of judgement under the present code
   d) Duration of the court case to be resolved
   e) Perception on how the issue might develop legally in future
   f) Overall impact of the dismissal on the employee

4. Data on Labour Law vs. Shari’a: Questions 37-68
   
   The main part of this section was to gauge responses on:
   
   a) the Omani law, in general, covers the issue of unfairness in employment contracts adequately.
   b) the main drawbacks of the current labour law
   c) the need to regulate contract terms which are unfair in themselves
   d) Shari’a employment law adequately covers the issue of unfairness in employment contracts
   e) Omani Labour law should be further regulated.
   f) the disadvantages or advantages of Omani employment contract
   g) the main drawbacks of the current labour law in relation to unfair-dismissal legislation

   The section also collected data on awareness of the employment law under Shari’a.

5. Employers
   
   This section of the interview covered the employer’s perspective on court
cases, specifically identifying:

a) How the code impacts their business
b) What is the cost of a disputed case on the business?
c) How the code impacts the staffing process

6 Lawyers

In this section the lawyers’ perspective was gauged on areas such as:

a) whether Oman law, in general, adequately cover the issue of unfairness in employment contracts
b) Perceptions regarding the advantages or disadvantages, if the Omani employment contract is not regulated further
c) How the issue should develop legally in the future.

7 Judges

Judges as the ruling party in the equation because they perceive and judge a case using different parameters. This section of the interview collected data on mainly their opinions on the subject to assess:

a) The quality of judgement under the present code
b) How the issue can legally develop in the future
c) What the main drawbacks are of the current labour law
d) What the main judgement theme is.

5.12.2 The Questionnaire

Data were also collected using a self-administered questionnaire as part of the interviewing process. The semi-structured-interview technique is used to allow a more in-depth exploration and elaboration of issues. This method was adopted due to the sensitivity of cases so that participants would feel more confident in stating issues which a more structured interview technique might have prevented.

Each questionnaire version was tailored to address the four groups: claimants, employers, lawyers and judges. The majority of questions were similar for each questionnaire, with some specific modifications made to suit each group.

Data were collected on four main areas as follows:
5.13 Analysis of data

Qualitative research deals with narrative data. Research data was collected from different sources. The main data were generated using semi-structured interviews. This technique was adopted to enable a critical and in-depth exploration of information.

Data were analysed to identify:

a) The outcome of the court case
b) Remedies awarded
c) Degree of satisfaction on the quality of judgement
d) The adequacy of the Oman law to cover the issue of unfairness in employment contracts
e) The adequacy of the Shari’a employment law to cover the issue of unfairness
f) The need to regulate contract terms which are unfair in themselves
g) The effect of Article 40 of the Oman Labour Law on the staffing process
h) The future of unfair-dismissal laws
i) Consequences arising from dismissal

The qualitative data analysis focused on words and the points of views and opinions of participants to generate hypotheses. Data were analysed using a five-step methodology.

1. Getting to know the data: knowing, understanding and verifying the data. This addresses data generated from documents, such as court verdicts, a literature review and interviews. Additionally, a track record of the source of information was kept and marked.
2. Identification of the focus of the analysis
3. Categorisation of information; identification of themes or patterns, ideas, concepts, behaviour, interaction, incidents, terminology or phrases used.
In this step, data was categorised, coded, and key themes were identified for analysis by organising them into logical and rational categories

4. Identification patterns, connection within and between categories and relationship

5. Interpretation: bringing it all together

After the collation of research data, it was analysed using the following two approaches:

1. A matrix of categories, a flowchart or data display, tabulating the frequency of different events, variance and a cross-tabulation to examine the relationship between variables.

2. To support development of the analysis, Mind Mapping and Excel were used.
Table 5.1 Data Analysis matrix Sample used:

<table>
<thead>
<tr>
<th>Respondent group</th>
<th>(a) Yes</th>
<th>(b) No</th>
<th>(c) Why</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claimer</td>
<td>•</td>
<td>•</td>
<td>•</td>
</tr>
<tr>
<td>Defendants</td>
<td>•</td>
<td>•</td>
<td>•</td>
</tr>
<tr>
<td>Lawyers</td>
<td>•</td>
<td>•</td>
<td>•</td>
</tr>
<tr>
<td>Judges</td>
<td>•</td>
<td>•</td>
<td>•</td>
</tr>
</tbody>
</table>

Table 5.2 A simple qualitative thematic coding analysis:\n
<table>
<thead>
<tr>
<th>Person</th>
<th>Theme 1</th>
<th>Theme 2</th>
<th>Theme 3</th>
<th>Theme 4</th>
<th>Theme 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>2</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>3</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>4</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>5</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>6</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>7</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>8</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>9</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>10</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
</tr>
</tbody>
</table>

---

http://www.socialresearchmethods.net/kb/qualdeb.php
### Table 5.1

**Q57: What are the main reasons for employee dismissal?**

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code</th>
<th>Code 1</th>
<th>Narrative</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>defendants</td>
<td>Performance</td>
<td></td>
<td></td>
<td>Refusing new assignment, Breaking instructions, Absenteeism, criminal acts verdicts, Medically unfit for the job, captain, crew, disobeying rules and regulations. (GF) Performance, Culture, 5 (3 fighting, did not work and did not listen to the supervisor. One 30 days absent, and one was smoking in a dangers area, security) Performance, customer services, liability to the company, company reputation (English employee fired)</td>
<td></td>
</tr>
<tr>
<td>CL1</td>
<td>Employee</td>
<td>Culture</td>
<td></td>
<td>Friends support and some saving</td>
<td></td>
</tr>
<tr>
<td>CL3</td>
<td>Legal</td>
<td>DEV</td>
<td>EDC</td>
<td>detrimental to the Bias by judges will be system</td>
<td></td>
</tr>
<tr>
<td>Er1</td>
<td>Legal</td>
<td>DEV</td>
<td></td>
<td>I disagree with one clause employee get 30 days leave after one year, it can be interrupt that one is 12 months. It should be after 11 months. (law is unclear)</td>
<td></td>
</tr>
<tr>
<td>CL1</td>
<td>Employee</td>
<td>FIN</td>
<td>PSY</td>
<td>Immediate loss of earnings, using my savings to live.</td>
<td></td>
</tr>
<tr>
<td>La3</td>
<td>Employee</td>
<td>Finance</td>
<td></td>
<td>Family welfare and Time Lost of earning</td>
<td></td>
</tr>
<tr>
<td>CI1</td>
<td>Employee</td>
<td>Law</td>
<td>SPY</td>
<td>I got 3 months salary, renewal visa for 2 years, my passport, and indemnity.</td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Legal</td>
<td>Law</td>
<td>DEV</td>
<td>Yes, the Oman law is codified therefore it has to be set by the legislators.</td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>Judicial Bas</td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Legal</td>
<td>Law</td>
<td>DEV</td>
<td>Yes, as it is fairer than the current mechanism of Wasta</td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Employee</td>
<td>Law</td>
<td></td>
<td>Contract Terms must be uphold</td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>Included</td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Employer</td>
<td>Law</td>
<td>Remedy</td>
<td>Yes, as this would be a deterrent to employers</td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>Fixed structure to adhered to by the judiciary where detailed allowances against contractual terms are listed with no minimum &amp; maximum levels + heavy fines to employers for Mischief.</td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>Since my legal case Article 40 has been amended to the detriment of employee. This shows a complete bias toward the employer.</td>
<td></td>
</tr>
</tbody>
</table>

A sample of qualitative analysis.

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code 1</th>
<th>Code 2</th>
<th>Narrative</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>CI3</td>
<td>Performance</td>
<td>Refusing new assignment, Breaking instructions, Absenteeism, criminal acts verdicts, Medically unfit for the job, captain, crew, disobeying rules and regulations. (GF) Performance, Culture, 5 (3 fighting, did not work and did not listen to the supervisor. One 30 days absent, and one was smoking in a dangers area, security) Performance, customer services, liability to the company, company reputation (English employee fired)</td>
<td></td>
<td></td>
<td></td>
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<tr>
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<td>Employee</td>
<td>Culture</td>
<td></td>
<td>Friends support and some saving</td>
<td></td>
</tr>
<tr>
<td>CL3</td>
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<td>DEV</td>
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<td>detrimental to the Bias by judges will be system</td>
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</tr>
<tr>
<td>Er1</td>
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<td>DEV</td>
<td></td>
<td>I disagree with one clause employee get 30 days leave after one year, it can be interrupt that one is 12 months. It should be after 11 months. (law is unclear)</td>
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<tr>
<td>CL1</td>
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<td>Finance</td>
<td></td>
<td>Family welfare and Time Lost of earning</td>
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<td>Employee</td>
<td>Law</td>
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<td></td>
</tr>
<tr>
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<td>Legal</td>
<td>Law</td>
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</tr>
<tr>
<td>CI3</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>Judicial Bas</td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Legal</td>
<td>Law</td>
<td>DEV</td>
<td>Yes, as it is fairer than the current mechanism of Wasta</td>
<td></td>
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<tr>
<td>CI3</td>
<td>Employee</td>
<td>Law</td>
<td></td>
<td>Contract Terms must be uphold</td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>Included</td>
<td></td>
</tr>
<tr>
<td>CI3</td>
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<tr>
<td>CI3</td>
<td>Legal</td>
<td>Law</td>
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<tr>
<td>CI3</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>Since my legal case Article 40 has been amended to the detriment of employee. This shows a complete bias toward the employer.</td>
<td></td>
</tr>
</tbody>
</table>

January 2013
5.13.1 Analysis of Court Cases

The court cases and verdicts examined in this study were of cases reviewed by the Higher Court between the years 2003 - 2009. The Court verdicts were analyzed to derive:

1. The extent of Shari’a influences on judgments.
2. The value of judgments.
3. The type of remedies awarded

A matrix was developed to tabulate data in order to assist analysis and to highlight themes and key points. The court cases all included the following elements:

a. That each case was judged independently and compensation awarded accordingly.

b. That an end of service benefit or gratuity was awarded according to the Labour Law, Article 39 (discussed earlier).

c. The claimant was free to request an unlimited amount of compensation for unfair dismissal. However, the court did not necessarily award the requested amount. In general, compensation was awarded to a maximum of between 20 to 30 per cent of the claim.

d. No clear or consistent levels of compensation were found between cases.

5.13.2 Analysis of Interview data

The research used the following method of analysis for the qualitative data so as to ensure structure and to focus on providing information for the research questions. Data collected during interviews were recorded in its original coding system, Arabic. The Arabic narrative data were classified into four main categories to identify themes or patterns. The main categories were the effect of dismissal with regard to: employees, employers, legal aspects and social aspect.

Following that each statement was coded based on its effect into a subcategory using one of the 16 main codes. Each statement was interpreted in two ways, therefore, primary 1 and secondary code 2 topics were created. The 16 main codes are:
1) Political  
2) Legal  
3) Economic  
4) Psychological  
5) Cultural  
6) Family  
7) Development  
8) Competitive  
9) Socio-cultural  
10) Management conceit  
11) Knowledge  
12) Time  
13) Practice  
14) Training  
15) Finance  
16) Remedies

Statements with similar codes were then clustered to identify ideas, concept, behaviours or interactions, followed by organisation into coherent categories and main themes.

**5.14 Validity and Reliability**

The final point of discussion regarding research methodology is the question of Validity and Reliability. Cooper and Schindler\(^{308}\) state that:

- Validity is the extent to which a test measures what we actually wish to measures.
- Reliability has to do with the accuracy and precision of a measurement procedure. And
- Generalizibility, regards the degree to which findings from a piece of research can be generalized from the study sample to the entire

---

\(^{308}\) Donald R. Cooper and Pamela Schindler, 2006: *Business Research*, TATA McRraw Hill p. 318
This research has focussed on cases that is part of populations size and analysed not only the actual behaviour, but behaviour which was examined over time along with a self-administered information report. The data collated were of natural human behaviour in a real environment rather than in an experimental simulated environment. It was expected that the outcome would therefore be more true to actual behaviour.

These suggest that similar results will be reached using similar tests. Hence, data collected from a formal government source is the same and it is therefore likely to produce similar results.

The secondary data used for court cases, verdicts and statistics which was provided by the Ministry of Manpower, supports the validity of this study. In addition, the fact that actual court case verdicts were used to determine unfair dismissal also contributes to the validity of the study. The secondary data from the Ministry of Manpower is for the number of disputed cases that were transferred to the Omani court between 1997 – 2011. The data indicated that between 27% - 34% of the cases filed in the ministry do not reach settlement in the ministry and therefore, they will be transferred to court. The data also indicates that 60% of the cases filed in the ministry are for expats employees. Secondary data from the court cases were from the cases reviewed by the Higher Court between the years 2003 - 2009.

5.15 Conclusion

This chapter provides a discussion of the selected methodology and the methods used to collect and analysis the data for the study. A range of methods are used to collect data to determine the effect of unfair dismissal. This study employed Yin’s case-study research approach, which makes use of different research methods. The use of different methods to collect data helped to ensure the validity and reliability of the data collected, and appropriateness of the research approach used. In doing so, the following steps were taken:

---

• The literature review was completed to develop an in depth understanding of contract law, Shari’a contract, employment contract, and unfair dismissal in Oman labour law and Shari’a. This also ensured that the interviews focused on the topics under investigation.
• The interview process was developed and revised in accordance to the pilot study to ensure consistency.
• The interviews were conducted under conditions and environment acceptable to the interview to enforce the process of confidentially and honesty.
• During the interview, the purpose of the study was clearly explained and every interviewee was assured confidentially of their response to encourage frankness.
• The self administered questionnaires were completed by the respondents in order to provide more information that might have been not possible to collect from the interview.

<table>
<thead>
<tr>
<th>Number of interviewees participated</th>
<th>Claimant</th>
<th>Employer</th>
<th>Lawyers</th>
<th>Judges</th>
</tr>
</thead>
<tbody>
<tr>
<td>No of Questionnaire</td>
<td>15</td>
<td>12</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>Questionnaire fully completed and valid</td>
<td>9</td>
<td>7</td>
<td>8</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>27</td>
<td>67%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Response rate</td>
<td>64%</td>
<td>67%</td>
<td>70%</td>
<td>60%</td>
</tr>
</tbody>
</table>

• The collected data were analysed using a critical and in depth exploration of information by adopting a five step methodology by Yin.

The next chapter presents the findings of the study.
CHAPTER SIX

6. Presentation of Research Findings

6.1 Introduction

This chapter summarises the results of data collected to assess the effect of dismissal claims in Oman. The data were collected from two sources: face-to-face semi-structured interviews and court cases and verdicts that were reviewed by a higher court between the years 2003 - 2009. The face-to-face semi-structured interviews were supported by a self-administered questionnaire that elicited individual responses regarding the respondents’ level of satisfaction under the present employment law and to identify the effect of unfair dismissal. Furthermore, the analysis of the court cases and verdicts was intended to examine the extent of Shari’a influence on judgments, the value of judgments and the nature of remedies awarded.

This chapter is organized into two parts. The first part presents the findings from the examination of the adjourned court cases. The second part presents the findings from the analysis of the data gathered through semi-structured questionnaire interviews. The findings from the interviews are presented as follows:

First, demographic data is presented on all participants, drawing attention to points of interest within this information (General Information, questions 1-9).
Second, data on the respondents’ perceptions of employment contract are analysed and presented (Questions 10-27).
Third, information collected on court cases are presented (Questions 27-37).
Fourth, data collected on the Labour Law vs. Shari’a are analysed and presented (Questions 38 – 51).
Finally, the chapter is concluded with a summary of the main findings of the research.
6.2. Findings from Court Cases

The analysis of court cases highlighted a number of issues in relation to employees’ rights to file a case of unfair dismissal under the current labour law. These are:

1. Oman labour law applies to both local and expatriate employees. There are no specific laws for expatriates who come to work in Oman under different terms and conditions of employment.

2. The employee is the weak party in the employment contract equation as he is at risk of agreeing to unlawful terms of contract. Under the labour law, the employer cannot any rights provided by the law from the contract (cases 154/2005 and 28/2007).

3. Since the employee is the weak party in this equation, there must be a contract between the two parties notarised by the Ministry of Manpower. This is to ensure the protection of the employee’s contractual rights (case 147/2005).

4. The employee has the right to file a case for unfair dismissal within a one-year period after which it cannot be reviewed by a court. This highlights a problem in the current labour law as compared to Shari’a. This study found that the Court dismissed all claims that did not meet the one year time frame except for one case which is referred to earlier (cases 129-130/2002, 202/2005, 223/2007 and 229/2007) for a 15 day period after dismissal).

5. The probation period for new workers is restricted to three months and it is against the law for any employer to extend this period. The Court regarded any employee dismissed after the probation period as unfair if not in line with Article 40 of Oman’s Employment Law (case 333/2006).

6. The employment contract specifies the job title, tasks and wages. Employers cannot impose new tasks outside the employment contract. The Court considered it unfair dismissal if the employer dismisses an employee who refuses to execute tasks outside the employment contract (147/2005).

7. The Employee cannot be charged for mistakes discovered after 15 days of his/her dismissal. The Court considered it unfair dismissal if the employer dismissed an employee for mistakes discovered after 15 days (Case 208/2005).

8. The Employment contract can only be revoked under conditions stipulated
by the law not by conditions set by the employer. If the employer dismissed an employee based on a condition in the contract that is not in line with the labour law, it was considered unfair dismissal (150/2005).

9. It is unlawful to dismiss an employee without due notice unless the employee has committed an action of gross misconduct as listed in Article 40 of the Oman labour law (Case 87/2006).

10. A fixed term contract is for the period specified in the contract. However, if the parties continue to use it beyond its duration, it becomes an open-ended contract. The Court considered it as unfair dismissal if an employer dismissed an employee not taking into account the duration of the contract (Cases: 69/2005; 165/2005; 4/2006; 59 & 63 /2006 and 169/2008).

11. Providing the other party 30 days notice terminates an open-ended contract. The Court considered it as unfair dismissal if the employer dismissed an employee without recognising the time frame stipulated by the law (Case 86/2006).

12. Unfair dismissal compensation is not a means to financial gain and should only be used to compensate for damages. However, the law guarantees the employee’s rights to request fair compensation in addition to all his/her dues (Case 86/2006).

13. When an unfair dismissal case reaches the court, it is the employer’s responsibility to prove the fairness of the dismissal action. If the employer, for any reason, changes the evidence provided, it is then considered as a wrong dismissal intention (Case 178/2007).

6.3. Findings from the semi-structured questionnaires

The remainder of this chapter presents the results from the analysis of data obtained from the semi-structured questionnaire interviews. The results are presented in sections and question by question as in the questionnaire. Each question is followed by the responses generated from the interviewees as follows:

6.3.1 Background information (Questions 1-9)

Table 6.1 shows the background information on the survey sample. This information is useful for identifying the type, age, location, and marital status of the respondents as well as the name, nature and size of employing organizations.
### 6.1 Background Information

<table>
<thead>
<tr>
<th>Question</th>
<th>Rating</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Information</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Interviewee code number</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claimant, Cramer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defendants (general managers of companies, human-resource or labour-industry managers),</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claimer, Defendants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lawyers, Lawyers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judges</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>2 Age</strong></td>
<td>Under 20</td>
<td>1</td>
</tr>
<tr>
<td>21-29</td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>30-39</td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>40-49</td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>50-59</td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Over 60</td>
<td></td>
<td>6</td>
</tr>
<tr>
<td><strong>3 How far do you work from your original hometown?</strong></td>
<td>Same town</td>
<td>1</td>
</tr>
<tr>
<td>More than 100 km.</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>200-400 km.</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>More than 500 km.</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td><strong>4 Where do you come from?</strong></td>
<td>Western countries</td>
<td>1</td>
</tr>
<tr>
<td>Neighbouring Arab countries</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Asian countries</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td><strong>5 Marital status</strong></td>
<td>Married</td>
<td>1</td>
</tr>
<tr>
<td>Single</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Widow/Widower</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Divorced</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td><strong>6 The name of the employer (optional)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>7 The nature of the employer’s business?</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>8 The firm’s size?</strong></td>
<td>Small: 1-50</td>
<td>1</td>
</tr>
<tr>
<td>Medium: 51-100</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Large: &gt;100 employees</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td><strong>9 Please give details of how did you start to work for the employer and what is your belief about employment arrangements?</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
6.3.2 Information on the Employment Contract (Questions 10-27)

The analysis of the data shows that most companies offer two-year automatic renewable contracts. It should be noted that this type of contract can lead to disputes when it has been automatically renewed more than once. This is because, under the labour law, if a contract is of a limited duration, and the parties have continued the execution thereof after expiry of this duration, the contract is deemed to have been renewed with the same terms and conditions for an indefinite period as per Article 36. Thereafter, the contract is terminated based on Article 40.

All the employees interviewed stated that they had a written; fixed-term contract, and that none of them had been under a contract of service. The duration of the contract differed between Omani and non-Omani employees. The contract for Omanis was for one year with a one-month notice of termination period. However, expatriate contracts were for two years or more. The data indicated that none of the respondents were employed under an open-ended contract. Nonetheless, data also shows that two-thirds of the contracts did not specify the date when the contract expires.

To avoid any conflict with the law, some employers try to make sure that the Ministry of Manpower approves their contracts. For instance, Employer 7 suggested that the Ministry of Manpower, according to the Oman Labour Law, had approved all the contracts they offered to employees.

Most employers interviewed reported providing different benefits to employees. Besides wages, such benefits included medical cover, transport tickets for expatriates, local transport, bonus and paid holiday leave. Some employers provide double wages to employees who work during public holidays as well as no-interest loans.

From the data collected, it was clear that all contracts had the following information; date when employment began, salary, ordinary working hours, job title and a minimum notice period for termination. This notice period varied between one to three months, depending on the seniority of the employee. These details are important according to Oman Labour Law.
The following are examples of answers to some of the questions asked with a summary of the data collected (see Appendix 6 for the interview questionnaire).

Q11: Were you employed or did you work under a contract of service?

The responses to this question show that there were no employees working under a service contract or open-ended contract. Most of them started their work with a two-year contract renewed automatically for another two years. Only in the agriculture sector where there were few employees under service contracts.

Q14 Do you have a written contract? If yes, is it a fixed-duration contract? Is it a job contract?

The responses to this question show that most employees had a written contract. However, this research identified cases of an employment dispute reaching a higher court where the employee had no written contract. For example in the case of claimant 6 he had an unlimited contract.

Q15 What are the benefits provided by the employer? Mark an X for all applicable benefits.

The answers to this question show that most employers offered standard compensation packages such as basic salary, accommodation and transport allowances, annual leave and travel tickets for expatriates. Some of the respondents said that their companies provided family medical cover and an annual bonus. Only a few respondents said that their companies provided other benefits such as club membership and nursery care. Usually any additional benefits were also stated in the contract although sometimes vaguely. For example Claimant 6 stated that the commission had been based on sales and become the main reason for the dismissal and court cases.

Q16. Did the contract specify that working for other companies or individuals was prohibited?

The majority of the respondents said that this was implied but only a few companies addressed this formally in the company’s code of conduct.
Q18. My contract included the following details to the terms: Starting Date, Salary, Usual working hours, Statutory notice period, Job title and duties, Provision for disciplinary, rules and grievance procedures, contract was for a fixed term, contract was open ended, expiry date, specific purpose, employment contract.

The majority of the respondents said that the contract details included; starting date, salary, usual working hours, job title and duties and a statutory notice period. A few respondents said that their employers provided additional information such as whether the contract was a fixed term or open ended, and whether it had a renewal date and provision for disciplinary rules and grievance procedures.

Q19. What was the contractual notice period for termination of the contract?

The majority of the respondents said that the notice period was one month. Only a few respondents said that longer periods were specified for upper level positions. This is due to the fact that the more senior the position the longer it takes to recruit.

Q23. How and when was your contract terminated?

A majority of the respondents said that their contract had been terminated half way through the contract period.

Q24. Were you involved in any dispute that led to dismissal?

The majority of the respondents said that they were not involved in any dispute that led to dismissal. Only very few indicated that there had been some sort of dispute preceding dismissal.

Q27. Did the employer carry out fair-dismissal procedures?

When the employers were asked, the majority responded that they had carried out fair-dismissal procedures. However, all the dismissed employees and their lawyers believed that the employer did not carry out fair dismissal procedures. In 2011, there were 8169 claims of unfair dismissal registered in the Department of Labour in the Ministry of Manpower.
6.3.3 Responses in relation to the court cases (Questions 28-37)

The respondents were asked about their experiences and opinions of claimants’ court cases. Their responses to questions 28-37 were as follows:

Q28: In your opinion what was your initial reason to file a court case?

Most of the claimants responded by saying that they wanted justice. For example, Claimant 1 stated that the initial reason for filing a court case was to look for “fair compensation, and to seek justice”. Also Claimant 3 stated that “seeking justice was the initial reason to file a court case”. However, Claimant 6 expressed his feeling very emotionally, almost with tears in his eyes stating, “I felt unfairly treated, a dismissed employee feels afraid to file a case, and my case kept being prolonging”. He further elaborated that should he have had a chance again he would not have gone through this process. Moreover, Claimant 7 stated:

I reported my case to the Department of Labour in the Ministry of Manpower, then the company agreed with the Ministry that I can go back to my job, I refused to be mistreated. Then the company offered to give me compensation based on working for 4 years, an amount of OMR 1000 but I refused this settlement. The case was then transferred to the court. After a long time waiting, the court made a verdict to compensate me with OMR 2400 and to issue me a no objection letter to transfer sponsorship.

Some employees believed that damaging a company’s image could also be one of the reasons to take action against a company. In some cases, the employee wanted to make a forcible return to work, or, for non-Omanis, to stay in the country in order to get another job. Additionally, some employees used it as a means to bargain the employer while seeking other work.

The judges endorsed the claimants’ responses by stating that seeking justice was the initial reason for filing a case. For example, Judge 2 said: “the initial reason is to claim rights that could not have been given otherwise”. Also Judge 3 stated: the company’s unfair/adverse unjustified decision, and seeking fair compensation were the initial reasons filing cases. Employees want to sustain earning opportunity and to reduce losses.
However, most employers felt that the initial reason for filing a case was financial gain. For example, Employer 7 stated that, “someone informed the employee about unfair dismissal so that he can claim money”.

In summary, the employers considered financial gain and revenge to be the main reasons for filing court cases while employees stated that seeking justice and retaining earnings were the main reasons for filing a case. The judges reported that unjustified company decisions and the need to sustain earnings as well as to reduce losses had been the main reasons for filing court cases. Lawyers were of the opinion that the main reasons for filing a court case were seeking justice and financial compensation.

Q29: Overall, how satisfied are you with the court judgment on your unfair-dismissal case?

Most of the respondents showed a degree of dissatisfaction with court judgments on unfair-dismissal cases. For example, claimant 1 said:

I received a compensation judgment of OMR 2300 after a two year trial, I was expecting 6-12 months. I received 3 months’ salary, my passport, my visa renewal for 2 years and indemnity, I also received modest compensation after the 2 year trial and was unable to move out the country.

Not just employees were unhappy with the courts’ verdicts, employers were also dissatisfied. For example, Employer 7 stated that, “the judgment in his case was based on procedures and did not review the reasons for the dismissal”.

However the judges were naturally pleased with the courts’ decisions. For example, Judge 2 stated that he found the courts’ judgments to be acceptable to all parties because, as he explained, “the pillars of justice are judges, witness, the parties to the conflict and lawyer”. Also Judge 3 stated that:

the judge’s dilemma is related to the extent of his awareness of the need of the injured employee and to the judge’s background as well as the compensation culture that existed.
Q30: What is your own assessment of the quality of judgment awarded in the court case under the present code?

The analysis of the level of satisfaction of the quality of judgements indicated that more than half of the sample agreed with the court judgement. Only some of the respondents strongly disagreed, and only a few of them strongly agreed or neither agreed nor disagreed. On probing more deeply, the interviewees made a few further comments. There was a feeling that judgements had been biased and depended on the judges while others maintain that the law should be properly enforced and that the Omani employee should not be dismissed without a very good reason.

Others felt that the law was not clear and was left to interpretation, biased toward the employee and was not sufficiently detailed. For example:

Claimant 3, who was a Western expatriate employee who had lived in Oman with his family for 2 years stated that “in English law the compensation would had been crippling for the organization. The heavy compensation and fines are meant to be a deterrent for employer’s behaviour”. This does not happen in Oman. Moreover, Claimant 6, said, “I disagreed with the judgment - I did not even get all my entitlements.”

Employer 1 stated that “he had had No court cases for last 7 years. This is due to his approach in dealing with workers”. Employer 3, on the other hand, responded in one word, shaking his head with discontent and with a serious facial expression, “Bad”.

Judge 2 responded very firmly with an authoritarian tone saying, “the fairness in judgment is in its fairness”. Judge 3 responded more elaborately suggesting that the, “perception of the quality of judgment is gauged relative to what the dispute parties really want”.

From the lawyers’ position, Lawyer 2 said that, ”the quality of judgment is related to the judges background, and therefore, there are different judgments”. Also, Lawyer 3 responded by emphasizing the issue of the judges’ background and not taking court cases into consideration. Moreover, Lawyer 6 stated briefly: “they are fair for making verdict”. This Lawyer 6 had empathy toward the employees by
stating that, “the judgment provides the employee with the full right to obtain his rights”. He specifically stressed the words, “full right” in his response. However, Lawyer7 responded with a non-committal answer by saying, “some met expectations and others did not meet expectations”.

Q31: What were your expectations and why?

The question on expectations is a difficult one to measure. It was clear from the data collected that both parties’ expectations were partially met but both parties also felt that their expectations were not completely met. Most of the time high expectations were not met. Neither party came out of the court fully satisfied with the court judgment. For example Claimant 6 said,

I was expecting fair compensation taking into consideration the damage of having to spend at least ½ of the time at home idle; my expectations were about OMR 9500 and 5700 bounce with half of expenses.

Claimant 6 also commented that:

I was not even allowed to speak to the judge. I was not expecting the case to last 6-12 months and was expecting that the compensation would take into account my contract till it expiration date. I was expecting a quick resolution, but the trial process and defendant prolonged it.

When a judge was asked to comment on the above statement that the Claimant was not allowed to speak to the judge, the judge replied that, “labour court cases are documentation cases”.

Claimant 7 stated that his expectations were to at least receive a no objection letter to transfer sponsorship, OMR 2400 as entitlements, and unfair dismissal compensation to be decided by the judge, but not less than OMR 5000. Employer 7 also said that, “as I am not fully aware of the law, I consulted Lawyers”.

Lawyer 8 said that, “many have met expectations and those that did not meet expectations were a hard judgment”. However, Lawyer 6 stated that his expectations were “to a great extent fair toward employee”.

January 2013
Q32: How do you see the issue developing legally in the future?

In response to this question, most of the interviewees felt that there would be a natural development of the law to accommodate modern needs. Some of these developments are about the employee’s expectation for better treatment, for freedom of movement and transfer of employment. However, only a few respondents felt that the present legislation is sufficient to address the issue of unfair dismissal in the future. Also only a few felt that unless this problem is addressed at the highest level there will be more cases seen in the court, and an increase in unemployment. For example, Claimant 7 said:

I had to wait for one year and 6 months for the primary court and yet, I don’t know how long I have to wait for appeal court.

Claimant 7 further stated in disappointment that,

there would be no development in the future. My case took one year and a half in the appeal court.

On the other hand, Employer 7 said that it “is important for all contracts to be reviewed by the Ministry, as most employees are Omanis”.

Judge 3 stated that, “it has to evolve naturally and steadily in line with international laws such as intellectual property law”.

Lawyer 3 stated that he was expecting “to see a natural development as all parties to the equation are applying pressure for change”.

Lawyer 6 responded that by saying that,

there is a degree of Injustice, people feel that you do not like it get out of the country, I expect a development in rights and treatment, one area is to remove the ban of two years transfer sponsorship and freedom of employment movement.

Lawyer 7 stated that “the present legislation is enough especially if combined with an existing contract”, whereas Lawyer 8 said that “the law would develop as Oman judges become more experienced”.

January 2013
Q33: How long did it take to resolve the dispute?

Responses from the sample suggested that most cases took 6-12 months and some exceeded that time. The average time taken to resolve a case from the date of being filed in the Department of Labour till the final judgment in the higher court passing through the 3 court levels, primary, appeal and higher court was 23 months. In this respect, Lawyer 8 replied (sarcastically) by saying that the claimant could, “wait or find another job”.

Both Claimants 6 and 7 mentioned that their cases took between 6 to 12 months to resolve and similarly, Lawyer 6, 7 and 8 all stated that cases took them 6 to 12 months to resolve. In addition, Lawyer 7 said that,

the reason for disputes to take a long time to resolve is that the labour law provides about 2 weeks for each stage, sometimes an expert in the subject matter is requested to investigate, and calling witnesses all lead to the postponement of procedures.

Claimant 6 had obviously been badly affected as he stated sadly that, after one year and 3 months sitting at home, with my passport in the employer's custody, the situation was very painful psychologically and humiliating. During this period, I think the government should look after the welfare of the dismissed employee.

Claimant 7 also stated that his case took one year and six months and was still at the appeal stage and not resolved yet.

Question 34: How did employees manage their life during this period?

The analysis of the responses collected shows that during court cases the majority of dismissed employees managed their welfare by depending on family support; others managed their lives through the support of friends and others by using their personal savings. For example, Claimant 1 said:

It was hard to manage my life, I didn’t know what to do, I could not work, I felt watched by employer because if I worked somewhere else I would lose my case, and I felt that there was no dignity for the worker, Ahle al Khair, (with the support of good people I managed)
Claimant 6 said:

at the beginning I used my savings, then I got support from family and friends.

Lawyer 2 stated:

The law is clear, there are some indication during suspension period till case is resolved.

Lawyer 6 replied by saying that “some beg, others take loans, some get sick, or take some of their entitlements”.

Lawyer 7 said:

there is a provision in the law that says that the employer should give the dismissed employee some of his entitlements until the case is resolved.

Lawyer 8 said: “it is very painful socially and financially and is also a negative experience”.

Lawyer 3 said: “the law is clear in providing some provisions until the case is resolved”.

Q35: What was the impact of the dismissal on the employee?

The data suggested that psychological impacts and financial aspects are at the top of the list regarding impact of dismissal. Most interviewees replied that the future loss of earning was the single most important impact. Immediate losses stem from earnings from the date of dismissal to the date of the hearing with a loss of other fringe benefits. For example, Claimant 7 said that the dismissal made him feel degraded, with no dignity,

I felt unable to look at my family, every day I leave the house and come back at the end of the day. After 4 years of working I felt that there is no appreciation for the worker.

Claimant 1 stated that the immediate impact was “immediate loss of earnings, and having to start to use my savings to live”.

Claimant 6 said:

the most difficult impact is psychological and family problems. Imagine having to sit at home as the breadwinner, for a period of one year and six month, with empty pockets. There is a huge psychological impact and the dangerous part is its effect on the family.
Judge 2 stated: “only the court is able to decide whether it is fair or unfair dismissal. There is a material and immaterial effect”.

Judge 3 stated: “the impact is on the family, financial obligations, and psychological”.

Lawyer 6 said:
the impacts are psychological, feelings of helplessness, debts. One of my clients poured hot oil on himself while cooking as he is an old man and needed someone to take care of him.

Moreover, Lawyer 7 stated that his client had lost his means to make a living; “he was up against scarcity of job opportunities as he was an elderly worker, this caused disruption in his family life, and he also had financial obligations”.

Q36: Which one issue mattered the most to the employee in deciding how to pursue legal action against unfair dismissal?

When the interviewees were asked to identify the issue that was most responsible for instigating legal action against unfair dismissal, their responses varied. Moral values were the number one priority with finance taking the second place. Some interviewees added Job opportunity. For example, Claimant 1 said: “I wanted justice, I wanted to get back at the management and show them, I want to take a stand and to register an official complain”. However, Claimant 7 said: “It would be self-degrading if I did not file a case and seek justice. I did not take my dues and the manager refuses to give it to me, I felt injustice”. He stopped for a second then he said, “Ok the court will give me my rights”, in a challenging voice.

Claimant 6 stated:
I felt injustice had been done to me, and I wanted my rights, I feel a sense of injustice and unfairness, the court will give me my rights.

Claimant 7 said angrily,
injustice and unfairness, the court will get me my rights to get financial compensation.
The employers, however, believed that financial gain was the most single dominant factor for their employee to file a case of unfair dismissal against them. Family welfare, job, and economy were secondary important factors and moral value ranked the least. Employers felt that the main reason for employees pursuing legal action against the company was mainly financial gain.

6.3.4. Responses to Questions in Relation to Labour Law vs. Shari’a (Ques. 37– 68)

This section of the research focuses on the Labour Law and Shari’a. Here is a summary of the respondents’ answers to the questions on this area:

Q37: Based on your experience, does Oman law, in general, adequately cover the issue of unfairness in employment contracts?

Most of the respondents felt that the Omani law in general covers adequately the issue of unfairness in an employment contract. Only a few felt that the law is not adequately able to cover the issue of unfair dismissal. The respondents expressed a variety of different views such as:

Claimant 7 stated:

only the law can state what is right or wrong. He added but this is not practiced. Furthermore he stated that the employee is afraid to complain, and as soon as he does the harassment starts.

Claimant 6 felt that the law needed some modifications. He expressed the need for modifications to assist the dismissed employees manage their lives until the case is resolved. Furthermore he said:

an employee should be given his passport, and a permit to work to make a living, and the procedure should not take more than 3 months.

However, the employers’ responses were completely the opposite. For example, Employer 1 stated that, “the Oman law is very fair”. Whereas Employer 7 stated that the law provides a dismissal procedure, “should these procedures be followed properly, there will be no problems with the law”.

January 2013
In this respect, the judges were very protective of the current laws. For example, Judge 1 argued, “the law is capable of handling unfair dismissal and to guarantee employees’ rights”. Also, Judge 2 said: “the law is under review. Judges would never state that there is a mistake in the law”. However, Judge 3 admitted the existence of some weaknesses in the current legislation when he stated that the law consists of only 60 Articles, it is not complete and it should be supported by additional provisions to make it clear as to the responsibilities of both employee and employer.

The lawyers were slightly critical of the current laws. For example, Lawyer 6 said that the law had made it difficult to terminate employees. Whereas Lawyer 7 stated that the law was capable of handling this problem. However Lawyer 8 was defensive and protective of the current laws when he said: “the law is capable though it provisions”.

Q38a: How aware are you of the employment principles under Shari’a?

An important feature of the findings of this study is the high level of ignorance or the lack of knowledge of Shari’a employment law among all the respondents. Most of the respondents had no knowledge of employment law in Shari’a. Even the lawyers and the judges were ignorant of such concepts. For example, Lawyer 3 said: “There is no Shari’a employment law”, while Lawyer 6 said: “I am not aware but Shari’a can be accommodated”. Also, Lawyer 7 replied: “Yes and Shari’a is able, and can only if Shari’a techniques were established this field”. Whereas, Lawyer 8 said: “Some compensation levels are not stated in Shari’a”.

The judges’ views were not too dissimilar from those of the lawyers. For example, Judge 2 said: “Shari’a is not a readymade pot there are principles to be derived from it”. Also Judge 3 said: “These are modern issues, and the price we pay for civilization”. The employers were equally unaware or ignorant of any employment law in Shari’a. For example, Employer 1 stated: “We do not have a Shari’a employment contract because the labour law is derived from international law”. Also, Employer 7 said: “I am not an expert but Shari’a is far away from this”. Employer 3 replied: “For any Muslim, Shari’a is adequate, it is only a matter of implementation”. Employer 6 said: “I believe that Shari’a has all the components of justice and fairness”.

January 2013
Most of the claimants (employees) were not aware of employment law in Sharia and some of them thought that Shari’a had nothing to do with employment. For example, Claimant 7 said: “Shari’a is not relevant, western societies have employment laws and do not have Shari’a”. Claimant 6 stated: “I do not know what the Shari’a implications is, I anticipate if there is a merger between law and Shari’a that will be a perfect combination”.

The study established that employees’ awareness of Shari’a employment principles is very limited. More than half of the respondents were unaware of Shari’a employment laws and the other half thought they existed but they knew very little about them. Only few lawyers mentioned that Shari’a employment law, in general, could adequately deal with the issue of unfairness in employment contracts.

Q39: Is there a need to regulate contract terms that are unfair in themselves?

More than half of the respondents indicated that there was a need to regulate contract terms that were unfair in themselves. However, the most interesting comment was made by Judge 1 who stated that “the court is capable of annulling terms that are unfair”. The other comment was made by Lawyer 3, who said: “contract terms must be in line with the law”. However, it was also suggested by Lawyer 7 that “the current code is capable of handling issues of unfair dismissal”. The other respondents had mixed views about the subject and responded as follows:

Claimant 6 said: “it is very important because the worker gets to know his rights and obligations”. Also, Claimant 3 said: “Yes, the Oman law is codified therefore it has to be set by the legislators” and Claimant 7 replied: “Yes, my contract was unfair and in favour of the company”.

By contrast, Employer 1 stated that, “it is fair to them but perceived unfair by employees”. Also, Employer 7 said: “yes and I am sending all my contacts to the Ministry of Manpower for approval”. Similarly, Judge 1 stated: “not necessary as the court can cancel out any unfair conditions in the contract”. Judge 3 said: “yes for sure, employment contracts are bond contracts, and employers ignore the needs of employees”. On the other hand, Lawyer 6 stated that “there must be some guidelines for contracts, as employees add unfair clauses leading to
employees accepting because of them needing employment”. Also, Lawyer 8 stated that, “each party of the contract could make changes as they are not an adhesion contract”.

Q40a: Should Omani Labour Law be further regulated?

The majority of the respondents’ thought that more laws were needed and the labour market should to be further regulated. Almost all of the respondents agreed that Omani Labour Law should be revised to meet the needs and the changes of the current labour market. Some of them mentioned that the law should be revolutionized. Only a few, mainly judges, felt that there was no need for further regulation.

Question 40b: What do you perceive as being the disadvantages or advantages of the Omani employment law?

The survey established that there was a degree of agreement on the advantages and disadvantages of the current law. Some of the advantages mentioned are:

1. It does not discriminate between Omani and expatriate employees (Lawyer 8)
2. It treats Omanis and expatriates equally, but it is not applied (Claimant 7).
3. It treats both expatriates and local equally (Claimant 6).
4. It balances employees and employers’ rights equally (Employer 2).

Some the disadvantages are:

1. It is a new law and doesn’t reflect the current labour issues (Judge1)
2. It partially gives the employee his rights but it requires some flexibility, employees cannot wait for a long time to get his dues (Claimant 6)
3. It deals with both locals and expatriates, therefore, needs to accommodate both in accordance with International Labour Laws (Employer 6).
4. It is ambiguous in relation to how employee’s absenteeism time is calculated and to how to reach the maximum days required to implement termination (Employer 7).

Q41: Is it desirable to adopt the Shari’a employment law to the Omani context?

Most of the respondents felt it was important to adapt Shari’a employment law to
the Omani context. Some felt it was not necessary while others were unsure. The following are some of the responses of those who thought it was important to adopt Shari’a employment law to the Omani context are:

“Yes, as it is fairer then the current mechanism of the West” (Claimant 3).
“Shari’a supports and complements our current civil laws” (Claimant 6).
“Yes but there is ignorance about Shari’a” (Claimant 4).
“Yes, it provides principles of justice” (Judge 1).
“Yes, it is part of the faith and protecting the workers is one of the Shari’a principles, it provides more discipline then secular laws” (Lawyer 2).
“Yes if it is for the benefit of both, employer and employee” (Lawyer 6).

Those who felt it was necessary to adapt Shari’a employment law said:
“There is no Shari’a employment law” (Lawyer 3).
“There are no articles in Shari’a similar to the present labour law” (Lawyer 8).
“The subject of employment law is far away from Shari’a” (Employer 6).
“Shari’a comprises only principles on which employment laws can be derived” (Judge 3)
“I don’t think so, but I am not sure” (Claimant 7)

Q42a: Should there be any other remedies in relation to employment contracts covered by legislation?

Many of the respondents suggested that intangible remedies should be covered in the law. Some employees felt that there should also be remedies covering the period when they stay at home waiting for judgment. Here are some of their comments:

“Yes, should include in immaterial damage” (Lawyer 3)
“Yes, in my case the judgment should have taken into consideration the period I stayed home idle doing nothing. That is harm” (Claimant 6).
“I don’t think so” (Claimant 7).
“The present remedies are OK” (Employer 7).
“Yes, for immaterial damages, the present legislation does not cover it” (Judge 3)

Q42b: Should employment terms, individually negotiated, be challenged on the grounds that they are unfair?
The data indicates that there were different views on this subject. For example, Employer 1 said “everybody should be given a chance to negotiate” while Employer 4 replied by saying that “standard agreements apply”. However most of the claimants disagreed with the employers’ views. For example, Claimant 3 said that “contract terms must be upheld”. Also, Claimant 6 stated:

the statement should be referred to a language expert to determine the employer’s commitment not to a financial expert. And the condition clauses should be taken in favour of the employee.

Whereas, Claimant 7 said: “you don’t have the right to negotiate, take it or leave it”.

On the other hand, Lawyer 6 said: “this is coercion, and it is not legal. The need makes employees accept any terms”. He further added: “the needs make the employee accept unfavourable conditions. Therefore, the employee must have someone to protect his interests”. He justified his answer by saying: “the employee can later file a case to amend the conditional clause”. Lawyer 7 supported this when he said: “unfair conditions can be challenged in the court and the employee can file a counter court case to repeal the condition”. Similarly, Judge 3 said: “the legal system should not look at a dispute not filed in court”.

Q43: Should Work or Time be the main subject matter in a Shari’a employment contract be included in or excluded from coverage of unfair-terms regulation? Please give reasons, if any, if they should be excluded?

The results suggest that Work or Time be the main subject matter in a Shari’a employment contract be excluded from coverage of unfair-terms regulation. Some of the responses recorded were:

“there is no conflict in this aspect as long as both parties agreed and it is in the interest of the worker” (Claimant 6).
“it should be included” (Claimant 3)
“it should be excluded” (Employer 1)
“it is included in the present law” (Employer 7).
“these are principles, and the contracts are the one executing agreed values”
“it is the same as in the labour law, there is a provision in the law” (Judge 3).
“The current situation is ideal” (Lawyer 3).
“No, it is better for locals to be on a fixed term contract” (Lawyer 8).
“It already exists in the Labour Law” (Lawyer 7)
“No conflict if it is to the advantage of the employee and both parties have agreed to” (Claimant 6).

Q44: Should there be other remedies available such as compensation and restitution damages?

Most of the respondents replied positively that there should be other remedies available for employees. Most of the claimants responded positively. For example, Claimant 3 said: “Yes, as this would be a deterrent to employers” while Claimant 6 expressed his views elaborately by saying:

Compensation should be taken from employers to develop a future fund to help employees waiting for their cases to be finished. And any employer with a record of terminating employees should not be given an employment work permit. Compensation should be given for the period while staying at home waiting for judgment.

Also, Claimant 7 stated:

I should have received a compensation for the one year period I was sitting at home. I should have received my salary during the period until the case was over.

However, all the respondents among employers were not in favour of any changes to the current situation and they supported the principle of no compensation while in dispute. For example, Employer1 said: “I think anyone can approach the court of law and wait for the verdict. It is open to everyone”. Whereas, Employer4 was very specific when he said: “No, it is hard to prove it in the court. Compensations should not exceed 6 months wage”. Also, Employer 7 said: “There should be no remedies. The employee who is not doing his job should not be paid”.

January 2013
On the contrary, the judges felt that something should be done to help employees. For example, Judge 1 said:

Harm must be removed, as this is a legal principle. If the court finds out that harm has been done to the employee, it will estimate the damage and compensate accordingly.

Also, Judge 2 explained, “Compensation is based on claims”. The lawyers, who strongly argued that employees should be compensated for the harm done to them as a result of dismissal, supported the views of the judges. For example, Lawyer 1 stated:

any damage caused, material, immaterial, and moral, family hurt, even a loss of children’s school opportunity should be compensated.

Also, Lawyer 4 said: “Compensation obligates an employer to pay a basic salary while the case is in court”. Similarly, Lawyer 6 said:

Material and immaterial compensation should be made for psychological damage and harm done to them in line with each circumstance.

Q45a: Does the current legislation protect employees?

The data suggested that there is no consensus as to whether the current legislation protects employees. However, data indicates that there are more respondents who believe that the current legislation protects employees than those who believe it does not. Only a minority of respondents was not sure. For example, Lawyer 7 said: “not in all circumstances” while Claimant 6 stated: “in some aspects” and Claimant 7 said: “far better than other countries”. Most of the judges and lawyers said that the current legislation protects both the employee and the employer.

Question 45: b) Does the current legislation protect employers?

The responses to this question varied as most employees (claimants) said it did while the employers said it did not. The judges and the lawyers thought the law was fair and protects both. For example, Lawyer 8 stated: “it protects both
equally”. Claimant 6 said: “the employers of course” and Employer 7 said: “it provides more rights to employees”.

Q46: What do you see as the main drawbacks of the current Labour Law in relation to unfair-dismissal legislation?

The responses to this question show that there are many drawbacks to the current Labour Law in relation to unfair-dismissal legislation. For example, Claimant 6 said: “it should be an independent legal system, firm, quick, so employees do not suffer”. Moreover, Claimant 7 said: “the problem is in the application. There is equality in the law between Omanis and expatriates”. However, Employer 1 disagreed with the interpretation of the law with regard to annual leave to be taken only after continuous employment with the company for over one year. He felt that this was not justice to employees. He said:

There is one clause in the labour law that I don’t agree with. Employees get 30 days after one year. You can interpret this as that work for 12 months and get 30 days or is after 11 months work employee should get 30 days leave. Business owners’ do not agree with the second interpretation and want after the completion of 12 months.

Moreover, Employer 4 thought that the absolute power should be given to the employer, while Employer 7 admitted that “the law must be reviewed especially in relation to unfair dismissal to address interests of both side”. The lawyers had a different view. For example,

Lawyer 6 said:

there are some provisions in the law that are abused by the employer regarding termination of the employee. The law needs some tuning, for example, introducing minimum wage as per qualifications.

Similarly, Lawyer 3 was more specific when he said: “Article 40 is not practical. You cannot approve any provision except the one related to absenteeism”. He further added:

The Immigration Law, article 11, is changing due to international trade
agreement. Employee’s rights in the law are weak, annual leave is only 15 days per a year. End of service benefit is practical. The law provides unfair compensation to an employee whose court verdict proclaimed him innocent after 3 years. This harms the company because it has to pay him back all 3 years salary. End of service benefits is not practical.

Also, Lawyer 7 said:

Regarding the issue of sponsorship, the law provides the employer with authority that could be misused. Some employers abuse this by not giving a no objection letter to the employee to work somewhere else and cause hardship to the employee.

Interestingly, some respondents felt that the current legislation protects both employees as nationals and expatriates and employers as national and international companies, as shown from the statements below:

“it treats Omani and expatriates equally, it provides equal rights for both Omani and expats.

There is equality in the law between Omanis and expatriates” (Claimant 7).

“it equally protects the rights of employee and companies” (Employer 7).

“it does not discriminate between Omani and expats, it protects both equally” (Lawyer 8).

However, some other respondents believed that the current legislation protects the employees, as being the weaker party in this equation, than the employers. For example:

Claimant 1 said: “It protects employee”

Claimant 7 said: “the law protects workers more than the employers”.

Lawyer 3 said: “it is in the side of the employee”.

Lawyer 1 said: “ I agree, the current legislation protects the employee”.

Employer 6 said: “ I definitely agree that the current legislation protects the employee”.

Employer 3 said: “ I strongly believe that the present employment law protects employees”.

Q47: What would you like to see proposed to legislators to benefit employment not contained in current legislation?
The responses to this question varied as seen from the statements below:

“we had to have regulations that look after the interests of the employee” (Lawyer 7).
“a quick resolution of the disputes and provision of temporary compensation till the case is resolved” (Lawyer 4).
“better control over the labour department, companies and employer unfair conducts” (Lawyer 1).

However, the results suggest that the following employment terms and conditions are not covered by the current legislation or are abused by employers. For example, Employer 1 said:

The law should be changed in a way that makes it difficult for the employee (expatriate) to come back to the country because he is banned for 6 months. For example, BHW company issues visas to employees to obstruct them coming back to the country. Some companies in Oman hold 3 months salary to force them back after leave. Companies hold the employees’ passport although the passport is the property of the individual and should not be held by the employer. I also suggest the law to make a provision to comply business to provide allowance for employee severing outside local station.

Moreover, Employer 5 pointed out that “maternity leave is part of sick leave, that should not be allowed”. Also, Employer 6 said: “there is a need for explanation of the law and to make amendments to how the law is interpreted so there is no doubt in implementing it”. He added: “the law has changed in the last couple of years regarding the transfer of sponsorships. In the past the employee must leave the country and stay out for two years before he can come back again”.

The employees (claimants) responses were more focused on the issue on unfair dismissal. For example, Claimant 7 said:

the law should look after employees’ interests when dismissed unfairly, and give a no objection letter to work somewhere else, and not to hold the employee’s passport.

Also, Claimant 3 said:
Fixed structure to be adhered to by the judiciary where detailed allowances against contractual terms are listed with no minimum and maximum levels and heavy fines to employers for misconduct.

The judges agreed with the claimants interpretation of the current legislation. For example, Judge 3 said:

there should be provision on immaterial damage compensation, there should be a committee from the Ministry of Manpower to supervise the implementation of labour laws.

Q48: Should a specific regulation be included in the law to allow a fixed-term contract over a certain period to end without being considered a dismissal and therefore neither fair nor unfair?

There was no agreement among the respondents in response to this question, as shown from the statements made below:

“The current legislation is sufficient. It gives the right to terminate the contract for one month” (Lawyer 7).

“it does not discriminate between OMANis and expatriates” (Employer 2).

“A contract is a law between the parties” (Judge 3).

“No, Agreement makes the law” (Judge 2)

“the contract after two years becomes an indefinite contract (open end contract)” (Lawyer 2).

“the contract is not a Catholic marriage. It cannot continue forever. The employee has the right to end the contract by giving one month’s notice when the contract has become open-ended contract” (Lawyer 4).

“No fixed time, it is in the best interests of both” (Lawyer 5).

Q49: If such a regulation is included in the law, should it apply only to contracts over a maximum period of time and end without being considered a dismissal? If yes, please provide details including what the maximum period of time of a contract should be and if there should be any other criteria to allow the contract to end without being considered a dismissal.

Most of the respondents to this question were lawyers or judges and all of them replied with a negative No. They did not see the need for change to the current or future employee relations.
Q50: Do you have any comments on the validity of unfair-terms conditions?

Most of the respondents had no additional comments, except for some, for example:

Employer 3 who said: “I would like to see special articles on performance, ethics, moral, and freedom of employment”.

Q52: How many dismissal cases did you handle in court in the last two years?

This question was mainly for employers and their responses were as follows:

Employer 1: Nil
Employer 7: Nil
Employer 6: 50 employees
Employer 5: 5 employees
Employer 4: 3 employees

Q53: How many of them saw judgment in favour of the employee?

None of the employers were able to recall the number of cases that had verdicts made in favour of the employee.

Q54: What would you like to see done to resolve the problem of unfair dismissal?

Some of the suggestions made by the respondents to improve the unfair dismissal code comprised the following:

“when a decision is in the hand of Omani management, it will have an effect on the system” (Lawyer 8).

“Improve the role of the Labour Department to resolve issues amicably, and obligate the two parties to execute what they have agreed on” (Lawyer 7).

“When an employee is terminated, he should be given a no objection transfer letter to work elsewhere” (Lawyer 6).
Q55: What was the main judgment theme?

Some of the responses indicate that court judgments were unsatisfactory. In particular, all the lawyers were not satisfied with the courts’ judgments. For example, Lawyer 6 stated: “employees do not get fair compensation that is equal to the termination decision in court”. Whereas Lawyer 8 said: “it is good that companies start to understand unfair dismissal. It is good that the court is on the side of employees”. Also, Lawyer 7 replied that

Most of the cases are for employee claims for entitlements. It seems that Omanization is sometimes the cause, but most of the times the cause is a personal clash with management.

Q56: How many employees did your company dismiss in the last two years?

This question was addressed to the employers and their responses are as follows:

- Employer 1: Nil
- Employer 7: 15 employees
- Employer 6: 200 employees
- Employer 5: 5 employees
- Employer 4: 3 employees

Q57: What are the main reasons for employee dismissal?

Many responses stated that dismissal is often due to performance or absenteeism. It was also mentioned that breaking instructions, disobeying rules and regulations, being medically unfit, and criminal acts as per court verdicts contributed to the termination of contracts. The question generated a number of different responses as stated below:

“Refusing a new assignment, breaking instructions, absenteeism, criminal act, medically unfit for the job, disobeying rules and regulations” (Employer 1).

“Disobeying rules and regulation, fighting, breaking instructions, tardiness” (Employer 4)

“Strike, demonstration, and encouraging others into distractive behaviour as well as poor performance and laziness” (Employer 7).
“Personal issues / disagreement with manager, trivial mistakes and issues that are more personal rather than administration and company’s affairs” (Lawyer 7)
“Trivial mistakes and more personal issues rather than administration and company’s affairs” (Lawyer 8).

Q59: In how many cases did the court make judgment in favour of the employer?

This question was addressed to the employers. Only Employer 6 stated 10 cases, the others were not able to say how many, but they said that they had won the cases.

Q60: How many hours of a manager’s time is spent in unfair-dismissal cases?

This question was also posed to the employers. They all said they spent a lot of time dealing with cases of unfair dismissal. For example, Employer 6 said:

I used to spend most of my office time on these cases for almost a whole year. Every day I would meet up with the company’s lawyers to discuss, draft and collect evidences. I have been so fully occupied that I had to ask for an assistant.

Q61: What was the impact of the dismissal on your company?

In response to this question, most of the respondents mentioned that the loss of time, financial damages, and employee low morale as the main negative impacts of the dismissal on their companies. For example, some of their comments are:

Negative comments:

“dismissal affected staffing, employees morale, and loyalty to the company” (Employer 2),
“it was a waste of time” (Employer 3)
“it affected company reputation” (Lawyer 1)
“Financial implications, time lost, damage to reputation” (Lawyer 3)
“Compensation financial obligation and Staff morale” (Lawyer 8).
“Negative effect on productivity, work flow, economic, social and family problems” (Judge 3).
Positive comments:

“my staff liked it, cause of troubles was eliminated and saved in cost of labour” (Employer 1).
“improved company’s reparation and restoration of order and discipline” (Employer 5)
“increased staff motivation and reduced troubles” (Employer 7)

Most of the respondents agreed that dismissals had very few major impacts on the employer. The monetary impacts being the first and time lost being the second. Financial costs to the employer included aspects such as labour card renewal and cost of new recruitment. Non-monetary impacts included psychological effects on the workforce, company reputation, staff morale and employee loyalty.

Q62: How does article 40 of the Oman Labour Law affect staffing process?

The results suggested that the majority of the respondents believed that Article 40 had a negative effect on staffing and employees. For example, Claimant 3 said: “since my legal case, Article 40 has been amended to the detriment of the employee. It is completely biased towards the employer”. The employers had different views. While Employer 3 replied: “Not much”, Employer 4 said: “obviously I think 50 times before hiring Oman employees”. From another perspective, Lawyer 3 said: “Article 40 is a joke, you cannot prove any section of the provision, if you only insult the manager you will be dismissed”. In this respect, Lawyer 5 said: “employers are cautious about it when they want to hire staff rather than firing them”. Interestingly, Lawyer 7 said: “it does not affect recruitment” while Judge 2 said: “it affects recruitment”. Moreover, Judge 3 mentioned that there were some positive and some negative aspects of the Article, “for example short periods of absenteeism, it is required to reach maximum days before termination takes place” while Lawyer 3 said: “ the Article is not is not practiced because it is not practical”.

Q63: Please provide any further details you believe may be relevant:

Is there anything else on which you would like to comment?

The purpose of this open question is to generate any information that the respondent wanted to add to the study. It attracted a number of interesting responses. For example, Claimant 2 suggested “the establishment of a fund by
taking 5% from companies to support staff dismissed till their case is resolved”. He also suggested that “the fund could also be used to support the development of the labour law”. It was surprising that Employer 2 suggested “the introduction and improvement of trade unions” because in Oman most employers do not recognize trade unions and many companies do not have trade unions. Judges 1 and 2 suggested “the regular review of the law”.

Q64: Do you have any additional comments, concerns or suggestions regarding unfair-dismissal provisions?

This question is more specific as it asks the respondents to add any comments on unfair dismissal provisions. There were quite a few additional comments, concerns or suggestions. The additional comments can be summarized as:

   I suggest that a provision in labour law to be made for additional living allowance for those who work away from their home. For example, the law says that the company is not obliged to pay accommodation. On the other hand, the contract says that the employee should be ready to work in any place, Nizwa, Sur, or Salala. How can they come to work? The company should provide accommodation to help employee to come to work on time. Labour law says that log in time is 7.30 if employees are not in by that time they have to go back home (Employer 1).

Among the employees, Claimant 6 stated that

   the duration until the case is finally resolved is too long. Employee should be given a choice to take his passport or transfer sponsorship. We need to ensure that the employer does not exploit the employee with unlawful term of contract.

Also, Claimant 3 said:

   The UK & European legislation seems to be far better and the Omani judiciary should consider the adoption of some of those principles.

However, Judge 1 stated:

   Interpretation of Article 2 of the legislation: The article does not automatically cancel all previous legislations; however, Shari'a dominates all future legislations.
Judge 2 stated:

as far as I know the case does not take so long to be resolved. Labour cases are documentation cases. The judge makes his judgment according to presented facts.

6.4 Summary of the main findings

This chapter presented the results of data collected to assess the effect of dismissal claims in Oman. The data collected sought to identify the effect of dismissal claims from two sources: court cases and semi structured interviews.

6.4.1 Main Findings from the Court Cases

Despite the effort to provide justice within the framework of the law, there is still much to do to ensure that justice is achieved. The discrepancy of judgments resulting in differences to unfair dismissal compensation received is one area for further review. It has been shown that each case was judged independently based on evidence provided but no standard compensation appear to have been used, so judgements were made on a case by case basis subjective to those making the judgements. On the one hand, employees have learned the defensive mechanism to present their cases with the support of lawyers to obtain greater benefits. In some cases the evidence was presented from different angles and secondly, the court tend to protect the weaker party in the equation (the employee). On the other hand, it is the employer’s obligation to prove that the dismissal is not ‘unfair, still tend to dismiss employee without proper and careful consideration of the case. The methodology used is first dismissing the employee then bringing lawyers to rationalize the dismissal action. This dismissal process, most of the time, is not well reviewed by the court.

Another main issue that can be derived from the analysis of the court cases is that the majority of those involved in the disputes (employer and employee) do not have sufficient knowledge of their rights and duties, or knowledge of the current laws and regulations. Dismissal decisions are made spontaneously without proper documentation and clear evidence, and many employees file cases based on an emotional reaction. Both parties approach lawyers, and each lawyer advises his
party separately on the legal approach to pursue. In most cases, the employee seeks compensation by filing a case, and the employer seeks reduction of damages to the organization. Therefore, time and effort is lost to reach court settlements.

6.4.2 Main Findings from the semi-structured interviews

The first section of interview questionnaire collected background information on the interviewees. Data collected on age, sex, country of origin, position, marital status, nature of business, or size of firm are believed to have very little influence on unfair dismissal claim conclusions. The second section of the interview questionnaire was to elicit information on the employment contract. It was found that the majority of companies offered two-year contracts, renewable automatically. This caused problems when the contract continued to be executed after the expiry date with most companies tending not to follow the right procedure for renewing closed end contracts, simply renewing it for a further period under the same terms and conditions. This is one of many reasons for unfair dismissal claims. Employees, on the other hand, were found to have a tendency to remain silent about their contract closer to its expiry date and would most likely continue working, if not given official notice in advance. The contract is renewed automatically beyond it expiry date unless either party informs the other a month earlier otherwise. Should the employer ask the employee to leave, in this case, most of the time the employees file an unfair dismissal case. It was also found that some companies had a tendency to include an unlawful conditional clause in the contract to enable them to terminate the contract by referring to this unlawful clause. The court very often challenged these terms and conditions and hence any unlawful conditions in the contract were ignored.

The third section of the interview questionnaire collected information on experiences of court cases. The findings suggest that there is a tendency towards a degree of dissatisfaction with court judgments on unfair-dismissal cases. Two-thirds of the respondents believed that the employer did not carry out fair-dismissal procedures, although most employers perceived that they had actually carried out fair-dismissal procedures.
It was also found that the financial gain represented around 75% of the initial reason for filing an unfair-dismissal court case and to receive a fair compensation was the second most important reason at about 37%. Employers believed that the main reason for employees pursuing legal action against the company was financial gain.

The analysis indicated that more than half of the sample agreed with the court judgement. However, there was a feeling that judgements were biased and depended on the individual judge's decision. In general, there was a tendency towards being dissatisfied. Both party's (employees and employers) expectations were only partially met and neither party was fully satisfied with the court judgment.

The fourth section collected data on the Labour Law vs. Shari’a, and most of the respondents felt that the Oman law in general adequately covers the issue of unfairness in an employment contract with only a few considering the law inadequate. The majority of the respondents believed that the law needed to be further developed. There was a degree of agreement on the advantages and disadvantages of the current law and most of the respondents thought that the current legislation should be further developed.

Moreover, there was a high degree of unawareness or a lack of knowledge of Shari’a employment law. More than half of the respondents were unaware of Shari’a employment law and the other half was aware but not in great depth. Their understanding of Shari’a Employment Principles related to the employment law was also very limited. Overall, there was a belief that the Shari’a employment law, in general, could adequately deal with the issue of unfairness in employment contracts. They believed that Shari’a contained all elements of justice and fairness and that it just needed to be applied.

There was also a high level of dissatisfaction with regards to the remedies and a majority of the respondents believed that intangible remedies should be covered in the law to compensate for issues such as hurt feelings and the psychological effects of unfair dismissal to their life and family. Poor performance, absenteeism, breaking instructions, disobeying rules, and involving in criminal act were the main reasons given for dismissal from the
employer’s point of view. The main impacts on the company were reported as being financial as well as non-monetary impacts including loss of work time, employee’s morale and company reputation.

Moral values and seeking justice were what mattered most to the employee in deciding how to pursue legal action against unfair dismissal. The financial gain was the single most dominant factor in filing for an unfair dismissal claim. Family welfare, the job, and the economy were secondary important factors in with moral values ranked last. Psychological impacts and financial aspects were the main impacts of dismissal on the employee. Furthermore, damage to the company’s image was one of the reasons to take action against a company. On some occasions, filing a court case is a means to blackmail the employer while the employee seeks another job.

One of the main concerns about unfair dismissal under Omani labour law is related to Article 40. The article consists of 9 sections, 8 of those sections are subjective and not easy to prove. Only one section related to absenteeism could establish valid evidence for dismissal. Furthermore, the article does not address performance as a valid reason for dismissal despite of it being considered as a valid dismissal reason in Shari’a and English law. Because of this article in Oman labour law, organisations react differently in order to protect their interests when recruiting staff.

6.5 Conclusion

The research findings, support the following conclusions:

1. Continuing to execute a limited contract beyond the date of expiry without written notification specifying rights and obligations leads to disputes.

2. Financial gain represented around 75% of the initial reasons for filing an unfair-dismissal court case and to receive fair compensation was the second most important reason at about 37%.

3. Employers believed that the main reason for employees pursuing legal action against the company was financial gain.

4. The employer’s point of view of dismissal is related to: poor performance, absenteeism, breaking instructions, disobeying rules, and involvement in a criminal act. The main impacts on the company are: financial as well as
non-monetary impacts including loss of work time, employee’s morale and company reputation.

5. Moral values and seeking justice were what mattered most to the employee in deciding how to pursue legal action against unfair dismissal.

6. Psychological impacts and financial aspects were the main impacts of dismissal on the employee.

7. Financial difficulty was the single most dominant factor in filing for an unfair dismissal claim. Family welfare, the job, and the economy were of secondary importance, with moral values ranked last.

8. Damage to the company’s image is one of the reasons to take action against a company.

9. In general, there was a tendency towards being dissatisfied with the court judgment and there was a feeling that judgements were biased and depended on the individual judge’s decision.

10. Employee and employer expectations were only partially met and neither party was fully satisfied with the court judgment.

11. There is a degree of dissatisfaction with court judgments on unfair-dismissal cases and two-thirds of the respondents believed that the employer did not carry out fair-dismissal procedures. On the other hand, most employers perceived that they had carried out fair-dismissal procedures.

12. In general, the Oman law adequately covers the issue of unfairness in an employment contract with only a few considering the law inadequate.

13. The majority believed the current law has some advantages, but considered that it requires further development.

14. There is a high degree of ignorance and a lack of knowledge of Shari’a employment law and the understanding of Shari’a employment principles related to the employment law was also very limited.

15. There is a belief that the Shari’a employment law, in general, could adequately deal with the issue of unfairness in employment contracts because Shari’a contains all elements of justice and fairness that just needed to be applied.

16. There is a high level of dissatisfaction with regards to the remedies and that intangible remedies should be covered in the law to compensate for issues such as hurt feelings and the psychological effects of unfair dismissal to their life and family.
17. Article 40 in Omani labour law is one of the main concerns about unfair dismissal.

This chapter starts by presenting the findings obtained from court cases and findings from the semi-structured interview questionnaires. The case studies investigated the impact of unfair dismissal in Oman and sought to draw conclusions about the success method of tackling this issue and how the key players should address it. The findings from employee contracts, data on court cases, and labour law vs. Shari'a are summarised. Then in more detail, the next chapter will provide a discussion and analysis of the findings presented in chapter 6.
CHAPTER SEVEN

7. Discussion and Analysis

7.1 Introduction

The previous chapter presented the research findings regarding the effects of unfair dismissal under Omani labour law. This chapter provides analysis and discussion of the main findings in relation to the literature review presented in earlier chapters, with the aim to clarify understanding of unfair dismissal in the context of Shari’a and Omani Labour Law. This chapter presents an analysis of the major findings from the study, critically evaluating and commenting on important issues as well as providing further evidence in order to clarify the process of unfair dismissal in Oman. It should be emphasized that the main aim of the unfair dismissal law is to ensure that workers and employees are treated fairly. It also aims to encourage employers to adopt transparent human resource management practices. The law is not intended to prevent employers from dismissing an employee whose performance is unsatisfactory but to ensure that this is carried out in accordance with the current laws. Despite the existence of the law, many cases of unfair dismissal still turn up in the courts as well as disputes over what are considered fair dismissals. In the literature review, we established that any dismissal contrary to statute is considered unfair dismissal. That means the employer must justify that the dismissal is in accordance with provisions stipulated in the law. The court then has to determine that the employer has acted reasonably within the law and has not misused his/ her power to intentionally harm the employee. Since people have built much of their lives around their jobs and therefore, employers should not dismiss an employee without a valid reason causing an increase of unemployment to the society.

This chapter is organized into a further 11 sections. The main findings from the analysis of data collected are categorized under 10 themes and summarized as follows:

11. The main reasons for employee dismissal
12. Employees’ entitlement in an employment contract
13. The validity of a company’s disciplinary procedure.
14. Financial gain versus morality
15. The quality of judgement awarded in court cases under the present law.
16. Expectations of both parties in dispute
17. The effects of loss of time and money.
18. The clarity of information in an employment contract and the terms and conditions of employment.
19. Level of awareness of Shari’a employment law
20. Flaws - miscarriage of justice due to the current legislation

### 7.2 The main reasons for employee dismissal

There are many reasons for employee dismissal. As stated in chapter 6, the main reasons for dismissal included refusing a new assignment, breaking instructions, absenteeism, criminal acts, being medically unfit for the job (this mainly involved airplane captains and crew, as these jobs are heavily regulated by the medical section of the aviation body) and disobeying rules and regulations. Furthermore, dismissal could also be related to performance and laziness, weakness in customer services, liability to the company, and damaging company reputation. In some cases, dismissal is caused by trivial mistakes, personality clashes and disagreements with the manager. There were also a few cases which involved fighting in the work place, strikes and demonstrations, or encouraging others into distractive behaviour. The lawyers stated that in some cases a change of management was a reason for dismissal. Employees, however, said that one of the main reasons for dismissal had nothing to do with employee performance but that this was used as a principal reason for termination. The dismissal was mainly to do with a personality clash and conflict with management.

These findings are very much in line with those of a Canadian study of 357 human resource professionals working in Canadian organizations.\(^{310}\) The aim of the study was to identify the most common workplace conflicts, causes and effects, how effective people were at dealing with conflict, what employees, managers, and senior leaders could do to reduce the number of negative outcomes, how conflict

\(^{310}\) *Warring Egos, Toxic Individuals, Feeble Leadership*, A study of conflict in the Canadian workplace, Psychometrics Canada, February 4, 2009
could be better managed, and how positive outcomes could be encouraged. The study concluded that almost everyone had to deal with conflict at some time or another and that in most cases (99%) the human resource (HR) professionals had to deal with conflict. The most common causes of conflict were found to be warring egos and personality clashes (86%), poor leadership (73%), lack of honesty (67%), stress (64%), and clashing values (59%). At the top of the list was personality clash. These conflicts frequently resulted in negative outcomes such as unfair dismissal.

This study found that that personality clash and disagreement with the manager regarding personal issues rather than issues in the best interests of the company were one of the main causes of dismissal. On the other hand the study also identified that conflict causes sickness and absenteeism that can then lead to dismissal. Thus there is indication that there is a link between personality conflict and dismissal.

Every country has its own set of fair and unfair dismissal law that covers the reasons for the fair dismissal and which include performance and gross misconduct. Gross misconduct includes but is not limited to theft, fraud, committing an assault, being intoxicated at work, behaving in a way that causes serious risk to the health and safety of a person, property, or the reputation of the business, or refusing to carry out a lawful and reasonable instruction. As in other countries, the law in Oman specifies valid reasons for dismissal and this is found in Article 40 of the labour law.

This study also supports the findings of a study by Gerry Voll\textsuperscript{311}, which indicated that dismissal in some case had been due to personality clashes. Voll reported that in Australia, dismissal for office politics is a phenomenon that can lead to unfair dismissal. This study established two issues: the first one is that there is no provision in Omani labour law for ‘Justification of Termination’ and secondly, termination can be based on reasons such as office politics or personality clash.

\textsuperscript{311}Voll, Gerry, 2005: Case studies in ‘unfair dismissal’ process, Charles Sturt University, AIRAANZ
7.3 Employees’ Entitlements in Employment Contract

It is important to expand on the issue of entitlements provided to the employee, because if not clearly stated beyond any doubt and free of Gharar as described in Shari’a, it can cause dispute and lead to court proceedings. Employers and employees usually agree on the specific types of benefits which are then stated in the contract. As a case in point, the following demonstrates the lawsuit of claimant 6.

Claimant 6 stated:

The dispute was based on my claim for entitlements after reaching the agreed target. The wording in the contract for the target was vague. It was said that, after the first OR 1,000, the employee receives .05 per cent upon reaching 12,000. For the second OR 1,000, the commission would be .1 per cent, etc. The company, an optical outlet, was making a very healthy OR 7,500-8,000 in sales per month. Therefore, the set target of OR 12,000 was unrealistic for a newly established business to penetrate the optical industry in Oman. As I achieved the agreed target, the company wanted to transfer my employment base to Bahrain to be able to change the contract. On refusal of a transfer, which was against my original contract, my employment was ended. My dispute with the company in the court was based on the interpretation of the calculation of the commission target agreed.

This is a clear example of ambiguity in the contract concerning the structure of the remuneration. In Shari’a, the ‘object of a lease contract must be known sufficiently which will prevent any potential legal dispute.’\(^{312}\) The dispute in case in was due to the fact that the wage was insufficiently known which led to legal dispute. Claimant 6 highlights the crux of the issue when he says:

The reason for the conflict is my request for entitlement as per the set targets. The company put an unrealistic target of OMR 12,000. When I achieved the target, they asked me to move to Bahrain so changing the contract in order to reduce my entitlement on achieving the target.

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\(^{312}\) Al Zuhayli, Whabah 1984: Financial Transaction in Islamic Jurisprudence, Dar Al fikr, Damascus v. 1 p. 391
When the company found that the employee had reached the agreed target, they realized the amount the employee was entitled to was financially unrealistic. In order to avoid making the additional payment, and as it was not possible to revise the contract, the company tried to transfer the employee to a different country. This case was eventually referred to a finance expert rather than a contract-language specialist and the financial expert's opinion was that both methods of calculation were correct.

In another case, Claimant 7 reported that:

I was working in the airport. Then I received a phone call to meet the HR manager and was given a termination letter with immediate effect. The reason stated for the dismissal was that I had not taken leave for 2 years. I received very bad treatment from an Arab manager.

Claimant 7 was employed by an international organisation in an airport sales/service outlet based on a local contract. His sponsorship was transferred locally (within Oman) to the new company. He worked with his new employer for three years and 10 months without taking annual leave. One day he received a call from the main office to see his manager who handed him a termination letter with immediate effect. At the time, the reason as stated above, was that he had not taken annual leave. Subsequently he tried to get a release letter to stay and work in the country with another employer, to claim his four years end-of-service benefit, to retrieve his passport and to request compensation for unfair dismissal. A settlement was not reached between the employee and the employer and therefore it was referred to the court. This case illustrates the importance of entitlements stated in the contract in the claim for unfair dismissal.

### 7.4 The validity of a company’s practiced disciplinary procedure

Most large companies have codes of conduct and disciplinary procedures. These should be normally executed in line with law and it should be an accurate document that will stand up in court if necessary. For example, the response given by Lawyer 3 indicated that in his opinion a company’s disciplinary code has no legal value. The company’s disciplinary procedures should be in line with the labour law and it is the labour law that takes precedence in any dispute over a company’s disciplinary procedure. In addition, the company’s disciplinary rules
must be approved by the Ministry of Labour as per Articles 28 and 29 of Labour Law 35/2003. However, in case of dispute even the approved disciplinary code by ministry can be overruled if it contradicts the law.

### 7.5 The quality of judgment awarded in the court case under the current law

The feedback from lawyers pointed out that there is no clear-cut compensation rule, it depends entirely on a judge’s ruling. The quality of judgment awarded in the court under the current laws depends on the quality of the judge when making a judgment. This issue was raised by Lawyer 4 when he said:

‘I had personal experience of a judgement that awarded six months’ service as compensation of OR 20,000 and a 13-year service compensation award amounting to OR 6,000. The lack of a unified practice is directly related to the different approaches of judges that have not been adapted to the court-case system. Subsequent to the overall quality assessment of a court-judgement matter, it was then felt there was an importance in gauging stakeholder expectations in an unfair-dismissal court case. Both parties (plaintiffs and defendants) expressed very high expectations, which were not met by the court judgement, although there is general agreement that the judgements did meet some expectations.

The overall assessment of the quality of judgment was found to be unsatisfactory due to many reasons, including the judge’s personal values and experience. Although it is believed that the court generally came out in favour of the employee, in the majority of cases high expectations were not met.

### 7.6 Expectations of both parties in dispute

In general, the study found that most disputes came to court with preset expectations. The responses from the majority interviewed indicate that in the majority of cases the court took the employee’s side. However, high expectations were, for the most part, not met. Neither party came out of the court fully satisfied with the court judgement. The following case studies help clarify how expectations of how an issue could be legally developed in the future.
Claimant 1 said:
I received compensation of OMR 2300 after a two-year trial, I was expecting 6-12 months salary but I got 3 months' salary, my passport, visa renewal for 2 years and indemnity. I received this modest compensation after a 2 years trial and was unable to move out the country.

Claimant 6 said,
I was expecting fair compensation taking into consideration the damage. I had to spend at least ½ of the period at home idle. I was expecting to receive about OMR 9500 and 5700 bonus with half of expenses.

Claimant 6 also stated:
I was not even allowed to speak to the judge. I was expecting 6-12 months salary and expecting the compensation to take into account the period up until the end of my contract. I was expecting a quick resolution, but the process and defendant prolonged it.

Claimant 7 also stated:
My expectations were at least to receive a no objection letter to transfer sponsorship, to receive OMR 2400 for my entitlements, and to be awarded unfair dismissal compensation up to the judge to decide, but not less than OMR 5000. Some met expectations and others did not meet the expectations.

An analysis of the court verdicts showed that most of them awarded modest compensations. Statistically, the award varied between 10-17 times the basic salary depending on the level of seniority of the employee. This is generous in comparison to neighbouring counties such as Bahrain, which awards a maximum of seven months’ salary and to the six months’ salary offered in the United Arab Emirates. See Appendix 2 Current trends in providing remedies for unfair dismissal under the Omani Labour Law: List of Labour dispute cases review at Higher Court.

7.7. Time and Cost

The amount of time an employee-dismissal case took to be resolved is another important issue that was raised by this study. Evidence from the survey and a
court case statistical time analysis suggests that, in general, cases take a long
time to process with time wasted at different stages which could be perceived as a
weakness in the legal system. A dismissal case in Oman takes, on average, 23
months to be resolved from the initial stage of filing the case in the Labour
Department up until it reaches the higher court. This takes into account the case
from the time it was filed in the Labour Department, including the appeal court and
a higher appeal court. The research identified some key areas affecting the courts
and which had a prime influence in wasting time. For example, Lawyer 3 stated:

This lawyer fulfilled his role by appealing every verdict including, for the first
time a higher court verdict. In the end, the case dragged on for four years. By
the time the case was over, most of the employees had resigned, and those
who were eventually compensated got less than a fourth of their claim.

He also stated that employers did not mind time spent on the case. “The result is a
saving for them even if they have to finally pay compensation, the money stays in
the company accounts for longer, making interest”.

By prolonging the case as much as they can, the lawyers accomplished the task
they are hired for successfully, as instructed by employers. However, justice was
far from practised. For example, Lawyer 4 mentioned that one case he handled
was with a company terminating a number of employees. The company was aware
of its position but made an agreement with the lawyer to drag on the case for as
long a time as possible.

Another way in which time is wasted was found to be when a primary court with
one judge can make a judgment on a compensation claim over OR 10,000. Once
the judgment is made, the verdict has good legal ground for appeal as per Articles
36 and 37 of the court-procedures law. This study has found that many cases were
appealed on this ground and so took longer time to process.

There is also a shortage of judges in Oman. This means that cases take longer
because there is a queue of cases waiting to be assigned to a judge, either a sole
judge or a panel of three judges (in cases where the claim exceeds OR 10,000). A
primary court consists of one judge who will not make a judgement on a disputed
case exceeding the amount. Articles 36 and 37 of the court-procedures law
4/2005, specify the level of judgment according to the amount of dispute. This
finding supports Harding\textsuperscript{313} study that one third of businesses indicated that unfair dismissal laws increased their costs as compared to a situation where there were no laws. The present study suggests that time and financial cost is a factor influencing unfair dismissal.

Most of claimant’s lawyers and claimants reported that much time is wasted in court whether it involved three judges or just one. Judges are still relatively inexperienced and not competent enough to make a fair judgement in primary courts. Prolonging a case in court could be to the advantage of the employer but is certainly neither to the advantage of the employee nor society. It is not in the best interest of the expatriate employee or local employee. In the case of the expatriate employee, his life is put on hold because he can neither move to the next stage nor leave the country. In the case of a local employee, he can at least go to work with another company. However, his case is in a queue waiting for judgement, and the compensation has no significant value after a certain time.

The lengthy trial process begs the question as to how employees managed their lives during this period. Results from this study suggest that during court cases, the majority of dismissed employees managed their welfare through family support, others through the support of friends and yet others got along using their personal savings.

Data shows that one of the main employment disputes in the courts is late wage payments or failure to pay wages. The majority of the cases at the courts are because employees did not receive their wages on time. Implementing the two fundamental principles\textsuperscript{314} of Shari’a’s provision for the employment contract, wage and time could reduce the majority of court cases and disputes between employer and employee. \textsuperscript{315}

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\textsuperscript{313} Harding, Don (2002), \textit{The Effect of Unfair Dismissal Laws on Small and Medium Sized Businesses}, Melbourne Institute of Applied Economic and Social Research, The University of Melbourne, Australia

\textsuperscript{314} Reference to the Hadith: Give the employee his wage before his sweat has dried and Allah said, I will be an opponent to three types of people on the Day of Resurrection.

\textsuperscript{315} See Shari’a rules for maximum time allowed for claim.
\end{flushleft}
A study by Bernal-Verdugo, Furceri, and Guillaume\textsuperscript{316} suggests that among the indicators of labour market flexibility that were analyzed, hiring and firing regulations and hiring costs were found to have the strongest effects on changes in unemployment outcomes. The study of Bernal-Verdugo of a sample of the data from 97 countries over the period 1980-2008 indicated that, after taking into account other macroeconomic and demographic variables, the increases in the flexibility of labour market regulations and institutions have a statistically significant negative impact both on the level and the change of unemployment outcomes. In this study, some of the interviewees suggested ways to resolve this issue. They recommended that companies should continue to pay a salary until the case is resolved. Others were of the opinion that even if it is against the law, dismissed employees should request the court to approve permission for them to continue to work for a salary until the court case is finished.

Moreover, the problem of unemployment represents a loss of income and, if unemployment is long term, a potential loss of skills, and is a social cost to the community as well. Unemployment is associated with higher levels of family breakdowns, alcohol and drug abuse, and suicide. On the other hand, unemployment affects the whole economy, not just those unfortunate enough to be unemployed as a result of a dismissal.

Sometimes the court overrules the employer and rules that the employee should be permitted to work in order for the employee in dispute to make a living during the interim period. Many court cases, however, have declined to release the employee to another sponsorship claim and applied Article 56 35/2003 (as seen in the higher court verdict of case 105/2004). This Article states that the employer is obliged to repatriate a non-Omani employee to his country after expiry of the work relationship but is not obliged to provide a release letter. The employee's sponsorship has to be transferred upon mutual agreement. However, in appeal court 109/115/2006, the court made a judgement in favour of the employee, obliging the employer to provide a release letter (2/05/2006). The amendment to the Labour Law Royal Decree No. 35/2003 and No. 63/2009 places a restriction on compensation for unfair dismissal. The new amendment provides a ceiling for maximum remedies awarded by the court for any unfair dismissal.

The research identified that immaterial compensation is not properly addressed either in court verdicts or in the law. It is left to the judge to review the case and to set the appropriate compensation. Usually, the compensation is very moderate, if it is even considered. One judge suggested that immaterial compensation is not referred to in the law and also not in Shari’a.

Due to the complexities and challenges of modern life it is important that provision is made in the employment contract for immaterial remedies. The best example of such remedies in unfair-dismissal cases in Oman is the example of Claimant 6, who had to stay in the country without permission to travel because the employer held his passport during the court case. What made it more difficult was that he was not permitted to work with another employer or he would lose his case. There are many similar situations in Oman.

7.8. Financial gain versus morality

The analysis of the data shows that the one issue that matters most to the employee in deciding how to pursue legal action against unfair dismissal is not financial gain but the moral right to do so. A job gives an individual dignity, worth and purpose but dismissal takes that away from him/her. Therefore, moral values and seeking justice were what mattered most to the employees in deciding how to pursue legal action against what they perceived as unfair dismissal. This moral value also comprises of an obligation to look after family welfare and the sense of contributing to the society by doing a job. Employers, however, believed that finance is the main reason for legal claims. This is in line with the definition of human morality by Gintis et al. 317 who state that:

Because of our nature as moral beings, humans take pleasure in acting ethically and are pained when acting unethically. From an evolutionary viewpoint, we argue that ethical behavior was fitness-enhancing in the years marking the emergence of Homo sapiens because human groups with

many altruists fared better than groups of selfish individuals, and the fitness losses sustained by altruists were more than compensated by the superior performance of the groups in which they congregated.

As per the above definition, this research has suggested that Human Morality is a greater driver than finance in pursuing a legal case. The current study collected statements that give initial reasons for filing court cases such as: revenge, a payback (10%) or in order to destroy a company's image. Organizations that provide a positive environment are less likely to be sued or have employees who engage in violent activities. On the contrary, termination of employment contract can create a negative environment for employees who are likely to sue the company. Taking legal action is one way of expressing or giving negative feedback to the company.

In comparison, arguably Shari'a provides a greater scope of morality and ethics than any other system in general but perhaps more specifically in employment law. What Shari'a does is that it places ethics at a higher level of importance. This is reflected in the description of Prophet Mohammed (PBUH) in Quran at Chapter 68 (Al-Qalam) where the verse 4: And indeed, you are of a great moral character. The Prophet (p.b.u.h) said, “was sent to perfect good manners.”

_Akhlāq_ (Morality & Ethics) is the Islamic code of conduct for the way of life and one of the three main dimensions of the principal guidance provided by Shari'a. _Akhlāq_ in Arabic refers to behaviour, temperament, and the manners in which people carry out their actions. Shari'a provides such guidance to raise the level of human interaction, to a higher moral standard rather than an eye for an eye, like for like, approach. When it comes to employee dismissal most employees are looking for a higher moral principle than that of an eye for an eye. The employer, as the stronger party in this equation, should therefore consider the moral principles of any termination decision.

The moral and ethics placed in employment is stressed in the Qur'an at Chapter 28, verse 27. According to this verse, the employer is asked to act in a manner

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319 Al-Sunan al-Kubra, Al-Baihaqi, *Hadith* 19144
that is of a higher ethical standard than legal and/or contractual terms. It is the
Quran guiding the employer to not make difficulties for the employee and to
courage the employer to be honourable. 320

7.9. The clarity of information in employment contracts and
employment terms and conditions.

The current study indicated that many contracts are not clearly defined specifically
regarding the benefits provided to employees, and are sometimes vague. This lack
of clarity causes disputes. The terms of an employment contract need to be clear
and unambiguous including agreed terms such as job description, payment,
benefits, allowances, and other compensation items. Some terms of employment
contract are implied or psychological. A great emphasis is placed on the terms and
conditions of the contract when the dispute is brought to court.

An earlier study by the University of Cambridge321 shows that collective bargaining
appears to facilitate both access to and improvement on statutory rights. It
indicated that collective bargaining by the Union influenced the terms and
conditions of the employment contract. This study, however, could not confirm that
employment terms, individually negotiated, be challenged on the grounds that they
are unfair. Moreover, a study by Brown W., Nash; D., Deakin; S. Oxenbridge, S.
(2000)322 of 32 firms that had recently taken active steps to individualise
employment contracts found that increasing standardization occurred in firms that
retained collective bargaining. It also concluded that even if the employment
contract was more standardised individually in terms of the non-payment reward, it
is likely to be more differentiated in terms of the pay reward and also, because it is
more open-ended, more differentiated in terms of the employee’s job
requirements.

The responses also suggested that many contracts are not clear, specifically in

320 Trafseer Al Saadi, Mossast al Risalah, Damascus, Syria.
321 Brown W., Nash; D., Deakin; S. Oxenbridge, S. 2000: The Employment Contract: from
Collective Procedures to Individual Rights. 2000, ESRC Centre for Business Research,
University of Cambridge
322 William Brown, Simon Deakin, Maria Hudson, June 1998: The individualisation of
employment contracts in Britain, Centre for Business Research, University of Cambridge
relationship to bonus, incentives, and commissions. The benefits provided to employees, if not clearly stated and free of ‘Gharar’, as described in Shari’a, can cause dispute and lead to court proceedings. According to Al Zuhayli\textsuperscript{323} there are two conditions pertaining to wages: 1) wages must have a known valued property. Jurists are in consensus regarding this condition. The effects of this condition are well-known as detailed under the sales contract. The origin regarding the conditions of knowledge of the rental or wage payment is the Hadith: “whoever hires an individual must inform him of his wages”. In this regards, knowledge of the wages or hire must be obtained through explicit specifications. 2) Rent cannot be a usufruct of the same genus.

\textit{Al Adliyyah,} Article 462, indicates that the violability of a contract of hire sometimes arises from the amount of the hire not being known and sometimes owing to the absence of other conditions essential to the validity of the contract. In the first case, the estimated rent must be paid, whatever the amount thereof may be. In the second case, the estimated rent is payable, provided that it does not exceed the fixed rent.

Another concern that emerged was that in certain cases termination appears to have been invoked immediately without sufficient notice being given to the employee. This has caused unnecessary disruption to the employee’s life, disruption to the family and to the children at school. The clarity of information in the employment contract is very important for employees to know their rights and their duties. The results of a study by Lauren J. Manheim, Sarah Moore, and Leon Grunberg (2000)\textsuperscript{324} concur with those found in this study noting similar psychological impacts post termination of employment. The study examined a sample of 171 former employees of a large manufacturing organization to evaluate the psychological impact surrounding the termination of employment. The study suggested that companies should place greater emphasis on providing a positive work environment that supports commitment while employed. Such an environment may result in a situation where former employees feel positively

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\textsuperscript{323} Al Zuhayli, Wahbah, 2003: \textit{Financial Transaction in Islamic Jurisprudence}, v.1p. 401, Dar Al fikr, Beirut.
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\textsuperscript{324} Lauren J. Manheim, Sarah Moore, and Leon Grunberg:(2000) \textit{Pre- and Post-Termination}, University of Colorado, Boulder
\end{flushright}
towards the organization, and are more likely to view the organization as a good corporate citizen and a socially responsible employer. Furthermore, the study confirmed that those who feel positively toward the organization are less likely to sue or engage in violence.

7.10. Level of awareness of Shari’a Employment law

The study attempted to ascertain employees’ awareness of employment law in Shari’a and the general view of Shari’a’s ability to cover the issue of unfairness in employment contracts. An important feature of the data obtained from the interviews showed that there is a high level of unawareness and limited understanding of the Shari’a employment law. More than half of those interviewed were unaware of Shari’a employment principles and the other half - aware but not in great depth. A minority stated that they believed the Shari’a employment law adequately dealt with the issue of unfairness in employment contracts. Others felt that Shari’a contained all elements of justice and fairness and that it was only lack of implementation because there is no employment clauses in Shari’a. There are some reference which protect the employee and employer but there are no clear guideline.

The Shari’a employment concept is not clearly understood. There is a lot of uncertainty on the principles of the Shari’a employment contract. Most interviewees have only been exposed to secular labour law and had never been exposed to Shari’a employment law. Only a minority avoided any discussion on Shari’a employment without having been fully exposed to its principles. The study suggests that there is uncertainty as to whether work or time is the main subject matter in a Shari’a employment contract included in or excluded from coverage of an unfair dismissal regulation. In this regard, Alzuhayli\textsuperscript{325} states that the condition of validation includes knowledge of lease object.

The object of a lease contract must be known sufficiently so that it will prevent any potential legal dispute. The type of ignorance that might lead to dispute would prevent delivery, thus negating the purpose of the contract. In

\textsuperscript{325} Al Zuhayli, Whabah (1984): \textit{Financial Transaction in Islamic Jurisprudence }, Dar Al fikr, Damascus v. 1 p. 391
this context, knowledge of the object of lease consists of: i) knowledge of the type of benefits or usufruct to the derived for the object; ii) Knowledge of the period of the lease; and iii) knowledge of the nature of labour in the leasing of the labour of skilled or unskilled workers.

7.11. Flaws - miscarriage of justice of the current legislation

This study has revealed a number of flaws in the current legislation, especially in relation to employment contract. One of the main shortenings of the current labour law, as evidenced from the court cases and the respondents’ replies, is that many expatriate employees are held against their wishes in the country by the withholding of their passport and by not allowing them to travel. Most companies in Oman keep expatriate employees’ passports in their custody. By doing so, the employees cannot leave the country at their will and they find themselves in an awkward predicament where they can neither seek new employment nor leave the country. Also, the transfer of employment is banned so employees who have been terminated have to leave the country when dismissed and their sponsorship (work permit) cannot be transferred to another company without mutual agreement between employee and employer.

Another concern is that the current legislation does not provide the employee with rights related to their termination of employment or the right to receive a written statement notifying the reason for dismissal. This is also related to the issue of entitlement, discussed above.

Another concern is that the current legislation does not provide the employee with rights related to their termination of employment or the right to receive a written statement notifying the reason for dismissal. This is also related to the issue of entitlement, discussed above.

Many countries provide the employee with a written statement of the reasons for their dismissal and some countries require the employer indicates the appeals procedures too. Furthermore, many counties provide provision for notice periods and severance pay for an individual's dismissal. These employment rights are to provide protection and fair procedure to the employee in case of dismissal.
The Omani Labour Law, Article 21/2003, deems that an employment contract for work shall be confirmed in writing and issued in Arabic with two copies, one copy for each party. However, there is no provision in the current Omani law that makes provision for written communication of the detailed reasons for dismissal. Arguably if there is a written rule in the law to have the contract in writing, there should be a rule to state the reason for termination.

Furthermore, another inadequacy of the current legislation is that there is no provision in the law for dismissal based on performance. The current legislation is silent in this aspect as it also lacks provisions in relation to immaterial remedies.

However, the company’s disciplinary code has no legal value and cannot supersede the law. In Oman the Omani labour law takes precedence in any dispute over a company’s disciplinary procedure. It is therefore necessary that a company’s disciplinary procedures are in line with the labour law. The Ministry of Manpower must approve a company’s disciplinary rules as per articles 28 and 29, Labour Law 35/2003. Even if the Ministry of Manpower approves the company’s disciplinary procedures, the labour law takes precedence in any dispute in the court. The study indicated that there is an issue with companies dismissing employees based on the company’s disciplinary procedures. This argument is supported by the Matthew Whitley case against the giant Coca-Cola Company in the United States. Matthew Whitley was terminated by Coca-Cola Company once accounting irregularities were disclosed after Congress passed the Sarbanes-Oxley Act. This act was intended, “to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.” He filed a case at the Superior Court of Fulton County in Atlanta for wrongful termination. Whitley ultimately settled his claim with the Coca-Cola Company for $540,000. In light of Whitley’s allegations and lawsuit, it was obvious that Coca-Cola Company’s procedures for handling internal complaints did not comply with the securities law.

The employee deciding to pursue legal action against unfair dismissal is yet

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326 Ford, Robert Stephens, Linda Cooper, August, 2007: *Coca-Cola Case Study: An Ethics Incident*, Archive of Marketing Education, Macon State College

another issue requiring review. The study established that the main reason for taking legal action was financial gain, however, the court does not view unfair dismissal claims as a means to gain but simply of awarding compensation for damages incurred. Generally, there is sufficient evidence to determine that the code does not adequately cover the issue of unfairness in employment contracts. Basically, Article 40 does not provide clear definitions for guiding interactions in the work place. Article 40 of the Oman Labour Law 35/2003, which governs dismissal, is ambiguous, except for one section related to absenteeism, and this leads to disputes. Unless Article 40 provides a clear set of provisions for dismissal of employees will continue to increase in the number of disputes registered in the court. Differing interpretations of the law lead to disputes and diverse judgements. Moreover, there has been nothing in the law, up until the Labour Law Amendment of November 2009, that provide clear guidelines for judgements on compensation (Royal Decree 63/2009).

Most of those interviewed with regards to the effects of Article 40 on recruitment and staffing reported that the law influenced their recruitment and selection procedure. The survey established that the majority of stakeholders believe that the code has an effect on recruitment and the staffing process. However, the ambiguity of the Article makes companies react in self-interest. Don Harding\textsuperscript{327} carried out a similar study for small and medium size business in Australia. The study investigated unfair dismissal laws effects on firms recruitment and selection procedures. The study concluded that the harder to dismiss the employee is, the more the firms react and change their recruitment and selection procedures.

The dismissal of an employee in Oman, unless it is in line with the provision of Article 40, is considered as unfair dismissal. There are similarities in terminating the employment contract between Oman Labour law and Shari’a that includes that: the employment contract is bilateral and the contract cannot be terminated unilaterally without mutual agreement between both parities (\textit{Iqallah}), death of one party, completing of the duration of the contract or completion of the task.

In contrast to Oman labour law, Shari’a provides greater room for fairness and

\textsuperscript{327} Harding, Don (2002), \textit{The Effect of Unfair Dismissal Laws on Small and Medium Sized Businesses}, Melbourne Institute of Applied Economic and Social Research, The University of Melbourne. Australia
prevention of unfair dismissal. An example of this is the way in which such legally binding contracts are terminated. In Shari’a, it is possible to terminate the contract for a valid reason, beyond the person’s ability, without it being considered unfair dismissal.

7.12. Conclusion

This chapter discussed and analysed the main issues arising from the court cases reviewed and the responses obtained from the semi-structured interview questionnaires. There are many key factors contributing to unfair dismissal that chiefly cover issues related to employees, the employer and legislation. There are also many key factors that influence the employees’ decision to pursue legal action against dismissal such as ambiguity in the contract related to benefit and entitlements. Hence, expectations are not always met and very often dismissal cases become costly and time consuming for both employee and employer and have a negative effect on legislation and the economy.

It has also been concluded that dismissal (fair or unfair) has a negative impact on the employee. However, differences between responses indicated that defendants displayed more negative attitudes than plaintiffs regarding the compensation. Furthermore, the results of this study have also revealed that termination cases take a long time to be resolved. As a result, the employee is affected financially, morally, psychologically, and socially.

The next chapter concludes the thesis with a summary of the main findings, a reconsideration of the research objectives, some recommendations, a statement on the limitations of the study and suggestions for further research.
CHAPTER EIGHT

8. Summary, Conclusion and Recommendations

8.1 Summary and conclusion

This study aimed to investigate the implications of unfair dismissal of workers within the boundaries of the Commercial Code of the Sultanate of Oman. Unfair dismissal is a term used to express the act of terminating employees in a cruel, unreasonable or unfair way. In this case, employers take a decision to break the contract without a legally valid reason or by adopting an unfair termination procedure. In some incidents, pressuring the employee to submit a resignation can be considered as unfair-dismissal under the law. A fair termination is made according to the law, and where the employer has acted in a reasonable manner. Employees whose contracts had been terminated made most unfair-dismissal claims, and they tried to prove their rights using all means of evidence in accordance with Article 21-35/2003. In Oman, the employer has the right to terminate employment according to Article 40 of the Oman Labour Law 35/2003. According to the Omani court procedure regulations, it is also up to the claimant/plaintiff to prove the claim as per Article 50 of the Labour Law.

This study has revealed different levels of effect regarding the application of Shari’a on legislation. Shari’a is applied only to fill the gap when a Royal Decree does not exist or rules of custom are not able to provide guidance. The research has also found that the influence of Shari’a on the commercial and labour law is limited. This means that not all principles of Shari’a are incorporated into the labour law specifically with regard to unfair dismissal provisions. The findings have also suggested that the unfair dismissal law is not comprehensive, judgments vary, compensation for unfair dismissal is modest and there has been no significant compensation for psychological damages. In the light of these findings, the main conclusions can be made in relation to the following issues:
8.1.1 The Influence of Shari’a on Oman Law of Contract

There is actually no influence of Shari’a on Oman Law of Contract, specifically the
labour law, despite a constitutional declaration that Islamic Shari’a is the basis of
legislation in Oman. Shari’a does not come first in the legislative process. The
provisions of Shari’a apply only to fill the gap when a Royal Decree does not exist
or rules of custom are not able to provide guidance. According to article 5 of
clause 55/90:

If no legislative provisions exist, the rules of custom shall apply with
particular or local custom taking precedence over general custom. In the
absence of custom, the provisions of the noble Islamic Shari’a shall apply
and thereafter the rules of justice.

Although this can be challenged in the constitutional court, a constitutional court
has never been created. There is a legislative dilemma between a court’s
judgment in primary court decisions and an appeal court and the constitution
because of the Shari’a stand on certain issues. It has been noted that Shari’a
principles of contract are not fully integrated into the Oman contract law.
Nevertheless, the main principles for the common contract are the same and
Shari’a does still have some influence on the Omani labour law, such as in the
laws dealing with a husband’s death and the pilgrimage.

Had all the principles for hire the employment contract been measured against
Shari’a, it would have been possible to avoid certain dilemmas. The employment
contract under Shari’a is bound around knowledge of leasing objects and this
includes: i) knowledge of the type of benefits or usufruct to the derived for the
object; ii) knowledge of the period of the lease; and iii) knowledge of the nature of
labour in regard to leasing skilled or unskilled workers. In other words, knowledge
of the period of time being contracted, knowledge of the nature of the job and
knowledge of the wage(benefits).

This study has also found that Shari’a has some impact on unfair dismissal cases
in Oman. The general observation is that courts tend to make a judgement justified
from Shari’a when they are unable to find relevant principles in the law. For
example, in the literature review *Wilayat Al Madhalim* was discussed as a Shari’a
principle applied to draw judgment when unable to find reference in the law. This indicates that Shari’a is able to accommodate different types of cases that are not covered by the law. However, there are still some limitations. For example, what is a fair, acceptable compensation? Shari’a compensation principles versus the Omani Labour Law compensation have yet to be investigated.

8.1.2 Evidences of unfair dismissal in Oman

One of the main questions this study attempted to answer is whether there is evidence for unfair dismissal in Oman. This study has confirmed that many employees in Oman pursued legal action, claiming unfair dismissal, and there was a general feeling that employees believed to have been terminated unfairly. Therefore there has been a significant increase in the number of cases transferred to the courts each year. This is a clear indication that there is a problem that needs to be investigated. However, the respondents from both parties, employees and employers, felt that judgments had been biased and did not meet their expectations partly because they depended on the judges’ opinions. It was felt, as a result, that the law should be further enforced and that Omani employees should be protected.

It has been established that the ambiguity of Article 40 in the Oman Labour Law has led to many unnecessary disputes and hence unnecessary claims of unfair dismissal. The article is left to interpretation and tends to favour the employer. After reviewing Article 40, a conclusion can be drawn that all clauses in the Article are subjective except one, and there is nothing in the law to suggest that the employer can terminate an employee’s employment based on poor performance.

8.1.3 Inconsistency in the application of the law

This study has revealed a number of inconsistencies in the application of the law in Oman. For example, there is no clear-cut ruling on compensation. It all depends on the judge’s ruling and this leads to inconsistency of judgement. There is no objective or standardized measure for compensation. It depends on the judge’s personal evaluation of the case. Different judgments are made on similar cases of
unfair dismissal claims. This inconsistency has led to variations in the level of satisfaction regarding the quality of the judgements.

8.1.4 There is a need for a modern employment contract

On the basis of the preceding conclusions, this research study concludes that there is an urgent need for a modern employment contract, especially those working in private sector organizations and who have been demanding salary increases, better benefits and better working conditions. The legislator has to act promptly to meet the demands of many unsatisfied employees. As far as the impact of Shari’a on the new employment law is concerned, it can be argued that Shari’a provides specific provisions regarding a number of modern labour concepts such as annual increment, duration of employment contract, ending of an ijarah contract, minimum wage and future ijarah (future employment contract). This shows that Shari’a employment-contract principles are able to accommodate modern employment-contract needs and their development.

Moreover, Oman has been attracting many international companies to set up businesses, in different sectors and they have brought with them their employee relations practices. This is a challenge to the existing Omani contract law that specifically deals with employment and which theoretically ought to be influenced by Shari’a. The basic principles of the employment contract under Shari’a are challenged by the modern development of labour and by entering into the international labour market. The new employment contract and employment laws should incorporate the principles of contract and employment in Shari’a as well as the relevant international employment laws and practices.

8.2 Reconsideration of Research Objectives

The aim of this thesis, as defined in Chapter 1, is to provide a comprehensive analysis of unfair dismissal under Omani labour law with particular reference to the role of Shari’a. The reason for this is that the present Oman Basic Law (or the constitution) states that Shari’a is the basis of legislation. This study has found that although Shari’a forms the base of legislation, Shari’a law is used only to fill in gaps when a Royal Decree does not exist or rules of custom are not able to
provide guidance. The research has raised questions about the ability and effectiveness of the present system to address unfair dismissal cases. It has further shown that the dismissed employees, the lawyers, and the employers were not completely satisfied with the unfair dismissal verdicts.

Therefore, the research objectives of this study have been met to a great extent. There were five objectives and each objective has been met as follows:

1. To investigate the extent to which Shari’a employment contract principles can accommodate modern employment contract needs and development.

   The fundamental concept of the contract in Islamic Law means that any conditions made that are not covered in God’s book are considered void. The sources of legislation in Islam are the Holy Qur’an and the Sunnah of the Prophet Mohammed, as explained in the literature review chapters. There are many verses in the Qur’an and a number of Haddiths about the importance of a contract. Therefore, as far as employment relationships are concerned they are covered by Shari’a employment contract. Shari’a stipulates that the basic principle of employment is to employ the strong (able) and the trustworthy (loyal and committed). Should this principle be applied as per modern selection practise, such as through reference checks, due diligent check for seniors, and psychometrics tests, we can appoint the able and the trustworthy employees. Therefore it can be concluded that Shari’a’s employment contract principles can accommodate modern employment contracts.

2. To analyse the role and impact of Shari’a on unfair dismissal in Oman.

   This study has concluded that all decisions made in the court are based on the provisions of the contract law and the Oman Labour Law. Only a few cases were identified in the research that found judgments made had been based on the concept of Shari’a. Only a minimum of evidence was found regarding the effect of Shari’a on unfair dismissal. The research also found that there was very limited compensation considered for immaterial damages and this is not properly addressed, neither in the making of the court verdicts nor in the current legislation, despite the fact that Shari’a recognises such compensation.

3. To explore the implications of unfair dismissal on Oman’s economy and society.

   This study has established that unfair dismissal has had two effects: The first
effect is on the employee and is manifested in three dimensions: psychological, financial and social. The second effect is on the employer and is also manifested in three dimensions: financial, reputation, and staffing.

4. To identify the similarities and differences between Shari'a and Oman Law

Shari'a is the basis of Omani legislation. This is enforced by a Royal Decree No. 101/1996), which states in Article 2: “The religion of the State is Islam and the Islamic Shari’a is the basis of legislation”. This research study has identified the influence of Shari’a in a number of Articles in the Oman labour law. They are as follows:

- A Muslim married female employee in the event of her husband's death is allowed to be absent from work with full payment for one hundred and thirty days for mourning.
- The Pilgrimage. The second area where Shari’a influences the Oman labour law regards the leave-allowance to employees with full payment for 15 days to complete the Pilgrimage to Mecca. This is provided only once in an employee's term with the company.
- The Omani legislature makes a provision in the law when a case yields insufficient evidence to use the Shari’a principal of decisive-oath (Yameen Hasism).
- The research identified one case where the principle of Shari’a was applied, “Wilayat al Madhalim, Diwan al Madhalmi”: a system of traditional justice used by Arabs with the concurrence of Islamic law. This system is concerned with enforcing justice for the persons of a poorer or weaker social status to ensure that rich and powerful people in society can also be tried.

In practice, however, Shari’a law in Oman is visible in family law matters such as marriage, divorce and inheritance. In family law, Shari’a governs family relationships and all matters are strictly carried out in accordance with Shari’a principles. However, when it comes to the Omani commercial law, Shari’a law usually provides guidelines rather than definite rules. This is clearly demonstrated in Article 5 of the Commerce Law: Royal Decree No. 55/1990 which provides the following guidance:
If no legislative provisions exist, the rules of custom shall apply with particular or local custom taking precedence over general custom. In the absence of custom, the provisions of the noble Islamic Shari’a shall apply and thereafter the rules of justice.

This article places commercial law provisions at the top of legislation and designates Shari’a law to fill in the gaps. Oman labour law falls under contract law and is governed by the Commercial Law 55/1990. The research highlighted differences in the use of Shari’a and Oman labour law. The influence of Shari’a is noticed only in a few areas. Although the constitution states that Shari’a is the basis of legislation, Oman labour law is not fully compliant with Shari’a. There are also influences from other legislation in many areas such as International labour law.

8.3 Recommendations

After a thorough analysis of data collected through the use of semi-structured interviews and based on the findings and conclusions drawn, the following recommendations are offered in order to improve the current legislation in relation to employment contract and employment law:

1. In order to speed up process, reduce costs, and reach a fair and satisfactory settlement of unfair dismissal disputes the authorities should establish an arbitration committee that consists of a judge, representatives of each party, a businessman, labour-relations or a union representative and an HR expert, when required, to:
   a) work on reaching an acceptable settlement between the two parties: employer and employees.
   b) review the cases first and then, only cases not settled would be transferred to court.
   c) direct the claim to the right court whether to one judge or three.

2. Establishment of a special labour court to speed up process of settling unfair dismissal cases. Statistically, it has been proven that the average time of a case going from the Labour Department to higher court verdicts is 19 months, with a minimum of three months and a maximum of 61 and a mean of 24
months. The establishment of the new court will help to reduce the number of cases in court as well as costs and the workload on the judges.

3. Article 40/35/2003 is impractical and does not provide a sound foundation for justice for many reasons. There is a strong need to balance the scale in a manner that does not lean to one side than the other and that is fair to both parties. The law should be fair and neutral neither towards the employer nor towards the employee. By analogy, since the measuring scale (Article 40/35/2003) is weak, most judgments in unfair-dismissal disputes are consequently weak and do not necessarily provide fairness. Article 40/35/2003 should be revised/amended in line with the Shari’a termination of contracts principles.

4. Since the majority of dismissed employees manage their welfare through family support, others through friends’ support while others deal with life through personal savings, it is suggested the issue be resolved in the best interests of society and employees as follows:
   a) Companies should pay a salary until the case is resolved.
   b) Terminated employees should request the court to approve permission to work.
   c) Establish a fund to support such cases as per a Shari’a principle of *ibn al sabee.* This can apply in particular to the terminated expatriate employees who have to go back home. All or part of the money can be recovered compensation after the court case is closed.

5. The legal process in Oman has to be reviewed critically in order to provide a fair judicial system, especially in relation to factors such as:
   a) Judges in Oman are from different cultural backgrounds and different legal systems (e.g., Sudanese judges are from a court-case system. Egyptian, Tunisian and Moroccan judges are from a codified system). As a result the two different judicial systems make it difficult to unify court verdicts in similar cases.
   b) The court system does not take account of previous court cases.
   c) Most of Omani judges lack sound experience in employment law.
   d) Lack of training and development programmes for Omani judges
   e) Labour dispute cases are handled by commercial courts rather than a labour tribunal.

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328 *ibn al sabee*, Qur’an Chapter 2 verse 177 see Arabic script in appendix 1
These factors can be seen as limitations of the legal process in Oman, and they should be addressed immediately.

6. Establish a committee to evaluate fair moral and immaterial compensation. The panel would consist of experts in finance, legal matters, commercial, social affairs, psychology and business. It is easy to evaluate and decide on financial compensation but the psychological and immaterial effects of unfair dismissal need to be evaluated by experts in the field.

7. The research identified the means by which employers and lawyers prolong the trial process. The action is beneficial to the employer but it inflicts damage on the terminated employee. Therefore, it is suggested that the process in court should not exceed a specific period. If a lawyer keeps asking for extra time to present additional documents, they should be allowed only one opportunity. If the judge finds a deliberate trend to extend the process, they should be penalised. The penalty should be raised higher each time.

8.4 Contribution to Knowledge

The potential contributions to improving knowledge can be summarized as follows:

1. The research sought to enhance the knowledge and understanding of issues related to the questions or problems in addressing the effect of unfair dismissal in Oman, as an Islamic country and the relevance to Shari’a. The study has presented some realistic insights into the unfair dismissal problem and its effect in Oman. These findings are intended to contribute towards a better understanding on how to handle dismissal fairly and to help employers and society to deal with this issue effectively.

2. Assessment of the unfair dismissal claims in Oman, under the present labour law, highlighted the effects of dismissal on the individual and society. The assessment and diagnosis of the problem suggests that there is a need to improve in dealing with this critical issue in society.

3. This study has also provided an in-depth understanding and fresh insight into the capacity of the Shari’a employment law to address modern employment issues in relation to Oman labour law and secular laws.

4. This thesis will help business people, employers, and lawyers in how to handle dismissal cases appropriately, fairly and morally. It is important to adopt appropriate policies to handle unfair dismissal cases so as to prevent negative
outcomes such as deterioration in morale, productivity, company image, difficulty recruiting, as well as the time and effort wasted on lawsuits against the company.

8.5 Limitations of the Study

There are a number of limitations regarding the present study that need to be acknowledged and addressed. However, some of these limitations can be viewed as possible opportunity for future research under the same theme.

The first limitation was linked to resource constraints, whether related to availability of data or concerns related to the resistance of interviewees to give straightforward and frank responses. This made it difficult to conduct a truly comprehensive and comparative study. This can only be put down to cultural concerns of the people in Oman. In addition, the unfair dismissal survey covered only males, as it was not possible to identify female employees claiming for unfair dismissal due again to the cultural constraints. In general, females in the Arabic culture have a tendency to be more reserved when it comes to dealing with research, questionnaires and surveys.

A second limitation is in relation to the court cases. There is no comprehensive record of court judgments available to the public. Court verdicts are only available for the plaintiff, defender, and lawyer. Is lack of information made it difficult to review a sufficient number of cases for this study.

The third limitation is that it was not possible to collect data from expatriate employees who had been dismissed unfairly. A few dismissed expatriates took a defeatist approach towards their termination and left the country without filing any unfair claim.

The fourth limitation was the inability of the researcher to interview trade union leaders and government officials to get their views on the subject. This is because trade unions are a new development in Oman, brought into being by Royal Decree in 2006 and only in February 2010 was the General Federation of Oman Trade Unions completely formed. With regards to government officials, they are reluctant to participate in any research or surveys.
8.6 Proposals for further study

This research raised several questions pertaining to the process of unfair dismissal. The analysis of the research findings indicates that unfair dismissal can cause major difficulties for employees and the remedies awarded are questionable. This outcome is yet to be contested and there is a need for further research in this respect. This research identified weaknesses in legislation of unfair dismissal in Oman; similar studies could be conducted to investigate other legislation of unfair dismissal in neighbouring countries. Comparative studies could be conducted with a view to identifying the outputs that different legislation and frameworks produce. The extent of diversity in regulation of unfair dismissal between Gulf counties and the remedies awarded would provide a good base for further research.

Another aspect for further study would be to explore the effect of unfair dismissal on female employees in Oman because this study is based on data collected from male respondents only. It is not clear how many, how and why female employees are dismissed.

The research investigated the effect of unfair dismissal of Omani labour law with emphasis on the relevance of Shari'a. Another dimension of research on this issue could be to consider the influence of Shari'a on other legislations such as those related to equal opportunities in recruitment and selection, health and safety at work, etc. Having found capacity in the Shari'a employment contract to address modern employment issues as compared to Oman labour law and secular law, a further study could be dedicated to explore Shari’s effects on other aspects of employment law not just limited to unfair dismissal.

The administering of dismissal whether fair or unfair as evidenced in this study would benefit from further research. Other research could evaluate the understanding and practices used by employers to carry out employees' dismissal in comparison to legal requirements of 'best practice'. The evaluation would assist employers understand the appropriate methods to be used in dismissal, and a systematically fair process to administer.

Further study could be dedicated to research commonality in the labour law with
respect to employability and dismissal of workers that respects worker rights and that indicates the approach that has the least effect on the profitability of the company, bearing in mind the political, social and cultural variables within Oman.

The comparison of Omani unfair-dismissal legislation and its impact in comparison with English systems has yet to be explored. This can only be achieved through examining court cases in Oman, which have been identified in the interview process, and then the English counterpart case.
Bibliography

Abd al Nabi A  1999  Ending of Employment Contract
Abu Zahrah Mohamed 1996 Al Mulkiyah and the Theory of Aqd in Islamic Shari’a. (the Ownership and the Theory of contact in Islamic Shari’a) Dar Al Fiqr Al Arabi, Cairo
Adawi M  2003 Brief on Oman Labour Law, Oman
Ahmed, Ibraheem Syid 2004 Al Yameen Al Hasimah. Der Al Ktabe al Qanoniah, Cairo
Al Atoom, Mansour “Unfair Dismissal in Jordan Labour Law” Balqaa Journal v 9, 2009
Al Hariri Abdulrahman Kitab 1994 Al Fiaquh a la al Mathahib Al Aribah, Dar Al Hadithah, Dar Hadith, Cairo
Al Kibi, SaadAldeeen 2002 Modern Financial Transaction under Islam, Al Maktb al Islami
Al Nasiry S 2005 Brief explanation of Oman labour law
Alan Bryman and Emma Bell 2004 Business Research Methods
Al Qadri Ahmed Abdullah 1981 Majalat al ahkam al Sharaiah Tuhama Publication, Saudi Arabia
Al Rifaie, Abdul Hameed 1989 Administrative Judgment between Shari’a and Law Dar Al Fikir, Damascus
Al Zuhayli, Whabah 1984: Financial Transaction in Islamic Jurisprudence, Dar Al fikir, Damascus v. 1
Al Zuhayli Wahbah 1984, Al Fiqh al Islami wa Adillatuh, Dar al Fikr, Damascus, P. 729-782
Al Zuhayli Wahba 1984 Al Fiqah al Islami wa Adelath Dar al Fiqir, Damascus, Syria
Al Zuhayli Wahba 1998, Theory of Security (Nazariyt Al Daman), Dar Al Fikr, Damascus

January 2013
Ameer Abdulaziz, *Fiqh Al Kitab wa al Sunnah*, Dar Al Salam pps. 1558-61
Bakar Mohammed Daud, 2004 Contracts in Islamic commercial Law in the in the Middle East, Arab Commercial Law, London, 2000 July.
Ballantyne paper: The Challenge of Islam Commercial Law in the Middle East; Arab Commercial Law, London, July 20, 2000
Ballantyne W M 2000 Essays and Addresses on Arab Laws, Curzon Richmond Surrey
Ballantyne W.M., the Shari’a : Bridge or Conflict; Arab Regional Newsletter (International Bar Assn., Dec.) 1994 p.2.
Ballantyne: The Shari’a: Bridge or Conflict?; Arab Regional Newsletter (International Bar Assn., Dec. 1994) p. 2
Brown Nathan, Professor of Political Science and International Affairs Reform Bulletin September 2003, Volume 1, Issue 3.
Cammack Mark, Islamic Law Southwestern University Law: Los Angeles, course provides a brief Introduction to the Islamic Legal Tradition.
Cooper & Schidler, 2006 Business Research Methods. 9th ed. TATA McGRAW HILL
DiTella, Rafael; MacCulloch, Robert (1999) : The consequences of labour market flexibility: Panel evidence based on survey data, ZEI working paper

Harding, Don (2002), The Effect of Unfair Dismissal Laws on Small and Medium Sized Businesses, Melbourne Institute of Applied Economic and Social Research, The University of Melbourne. Australia


Hugh Collins, Keith D. Ewing, and Aileen McColgan  2005 Labour Law Hart, Oregon


Itfash Mohamed ben Yousif, 1985 *Kitab al Nile Wa Shifa Al A’lil*, Maktabat al Irshad, Jeddah

Jaber M S 2004 *Unfair termination of employment contract*


Journal , 30(1) 2001 pp.1–16.


Kerttuli Visuri & Jarno Vähäniitty, Analysis and Interpretation of Qualitative Data, 26.11. 2001, VeTO, SEMS & Sarcous,.

http://www.soberit.hut.fi/~mmantyla/work/Research_Methods/Qualitative/V eTOSEMS_qualitative_kkv_jvahanii_02.ppt


Lindsay, Mr Justice ‘*The implied term of trust and confidence*’ Industrial Law


January 2013
Malakawi B 2005 *Principles of Employment Law*
Maquidisi ibn Quadma 1990 Al Mugni. Dar al Kitab al Ilmiah, Beirut, Lebanon
Martin M, Jackson T, and Hailstone P 2002 Employment Law Management Pocketbook, Hants, UK
Mashawi Mohammed Abdullah 1999 Qada’ al Madhlim, (injustice judgeship) Khartoum
Moawad, F 2004 the *Role of Judge in amendment of employment contract*, MudGhamish J 2005 Majallat al Ahkam al Adaliyyah
Mulcahy Linda 2008 *Contract Law in Perspective* 5th ed Routledge-Cavendish New Your
Oman Commercial Law 1990 Chamber of commerce and Industry Al Akidah Publisher Oman
Saba Habachy, Unpublished paper, Commentary on the Decision of the Supreme Court of Egypt on May 4 Concerning the Legitimacy of Interest at the Constitutionality of Article 226 of the New Egyptian Civil Code of 1948.
Sahih Bukhari Volume 3, Book 36, No. 464: Translator: M. Mushin Khan
Sale, Nabil, Definition and Formation of Contracts under Islamic and Arab Laws, 5
Arab Law Quarterly 101 (1990)
Saleem Rustom Baz al Libnaini, Sharh al Majala, 3rd Ed. August 25, 1304, Dar al Kotob
Saleh, Nabil, Remedies for Breach of Contracts under Islamic and Arab Laws, Four Arab Laws Quarterly 269 (1989)
Samih Atif Al Zain; Al Ouquod, Dar Al Kitabl Al Libnani, 1994
Sayed Sabiq 1997 Fiqh al Sunnah. Al Majma’ al Arabi, Cairo
Shabeer Mohammed Mustafa 2004 Shari’a study for a modern financial contract, Dar al Nafa’s Jordan
Shanqity M.M. 2001 Shari’a study for an Important Modern Financial Contract Al Madina al Monawarh, KSA
Smith, Thorpe & Lowe 1991, Management Research An Introduction. SAGE
Termination of Employment Digest:
The Majalla, Introduction, the First instalement to the Hooper translation, Arab Law Quarterly.
Turner, C & Martin J 2001 Contract Law Hodder Education Oxon
Turner, C & Martin J 2001 Tort Hodder Education Oxon UK
Turner, C & Martin J 2002 Employment Law Hodder Education Oxon
Valerie J. Hoffman (Professor of Islamic Studies at the University of Illinois) Ibadi Islam: An Introduction.
Verdicts Published by Departments of Higher Courts, 2003, 2004, 2005 labour Court Oman
Warkaa A 1999 Void of Employment Contract Bahrain
Warkaa A 2002 Controversy on Labour Law Articles Bahrain
أبي محمد عبد الله بن قدامه المقدسي المغناي لأبن قامة المقدسي المغناي على مختصر الخريقي 1223
AD = Hijiri 620 Died

إبراهيم سيد: التواريخ الحاسمة أحمد رئيس محكمة بمحكمة الإسكدرنية الابتدائية – دار الكتب القانونية – مصر

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مطبوعات تهامة السعودية

أمير عبد العزيز فقه الكتاب والسنة، دار السلام

بشاره عدنان ملكاوي 2005 اهم مبادئ القانون التي تحكم وزان العمل الفردي دار وانل الاردن

جمال عبد النبي مدغمش 2005 مجلة الاحكام الشرعية لدار الإسراء الاردن

عبد النبي محمد الكبي: المعاملات المالية المعاصرة في ضوء الإسلام، الكتب الإسلامي

سيلم رستم باز البحري شرح المجلة دار الكتب العلمية بيروت لبنان

سليمان بديري الناصري 2005 البسيج في شرح قانون العمل العماني المكتب الجامعي الحديث، مصر

سليم عاطف الزين 1994, موسوعة الأحكام، العقود الشرعية الميسرة في الكتب والسنة، دار الكتاب

اللبناني

السيد سابق، فقه السنة

عبدالرحمن الحربي، القضاء الإداري بين الشريعة والقانون، دار الفكر، دمشق

عبدالرحمن الحربي، كتب الفقه في المذاهب الأربعة، دار الحديث، القاهرة

العثماني، منصور 2002, "الفصل التدريبي في قانون العمل الأردني", مجلة البلقاء للبحوث والدراسات،

المجلد 9

عزت عبد النبي 1999 انتهاء عقد العمل مطعمة وزارة العمل البحرين

العقود المسماة، دار الفكر، دمشق 2002, وهبة الزعبي

علي محسن الورق 1999 بطليان عقد العمل الفردي البحرين

علي محسن الورق 2002 الجدل حول نصوص قانون العمل، دار المهمة بالبيضاء البحرين

فؤاد محمود معوض 2004 دور القاضي في تحرير العقد دار الجامعة الجديدة الإسكدرنية

January 2013

عمان
محمد أبو زهرة 1996:الملکیة ونظریة العقد في الشريعة الإسلامية – دار الفكر العربي – القاهرة
محمد بن يوسف أطافش:كتاب النيل وشفاء التیل, مكتبة الإرشاد جدة السعودية 1995
محمد عبد الله مشاوي:قضاء المطاوم للشركة العالمية للطباعة والنشر في القاهرة
محمد عم먼 شیب:المدخل إلى قه المعاملات المالية:دار النفيس
محمد مصطفی الشنفیسی 2001: كتاب دراسة شرعیة لأهم العقود المالية المستحدثة مكتبة العلوم والحكم،
المدينة المنورة، السعودية
محمود سلامہ جبر الانتهاء التعبی لعقد العم 2004: مطبعة ابناء وآیة حسان الفاخرة
محمود سلامہ جبر الوسطی في عقد العمل الفردي 1999: مطبعة ابناء وآیة حسان الفاخرة
مصعب عبدالحیم عدی:الوجيز في قانون العمل للسلطة عمان مطبعة حمد العلیه قوسمیا
نادراء محمود سالم 1991: عقد العمل بين الشريعة والقانون الوضعي دراسة مقارنة، دار الهیئة العربية
القاهرة
هیام محمد محمود زهران 2003: عقد العمل الفردي دار الجامعة الجديدة، مصر
وهيزة الزحیلی 1984: الفقه الإسلامي وادله، دار الفكر، دمشق
وهيزة الزحیلی 1998:نظریة الضمان أو أحكام المسؤولیة المدنیة والجنائیة في الفقه الإسلامي، دار الفكر
Appendixes

Appendix 1 References in Arabic scripts

Qur'an is a sacred text of Islam believed by Muslims to record the revelations of God to Prophet Mohammed be peace be upon him and as such all the Arabic verses listed in Appendix 1 that are submitted in partial fulfillment of the requirements for the thesis for the degree of Doctor of Philosophy at the University of Bedfordshire must only be referred to and/or used by others with the explicit acquiescence of the author of this thesis.

I wish the readers will respect my wishes. Thank you

1. The Qur'an references in Arabic scripts

Chapter 6: verse 38 Al-An'am (The Cattle)

َوَمَا مِن دَأْبِ ِلِلنَّارِ وَلَا طَنَّارٍ يُصْبِحُ بِجَنَّتِكَ إِلَّا أَمْمُ أَمْنِاكُمْ مَا فَرَّطْنَا فِي كِتَابِنَا مِن شَيْءٍ ثُمَّ إِلَى رَبِّهِمْ

Chapter 16: verse 89 An-Nahl (The Bee)

ْوَيَدَمْنَ تَبْعُثُ ﴿كَلِّ أَمَّةٍ شَهِيدًا عَلَيْهِمُ مِنْ أَنفَسِهِمْ وَجَنَّةٍ ﴾ إِلَى هُؤُلَاءِ وَثَزَّارًا عَلَيْكَ الْكِتَابَ تَبَيَّنَا لَكَ شَيْءٍ وَهَذِهِ وَرَحْمَةٌ وَبَشْرَى للْمُسْلِمِينَ

Chapter 5: verse 5 Al-Ma'idah (The Table Spread)

َيَا أَيْبَاهَا الْذِّينَ أَنْمَأُوا أَوْفِوا بِالْعَوْدَةِ أَجْعَلْنِي بِهِمْ عَفُوًّا إِلَّا مَا يَقُولُ عَلَيْكُمْ غَيْرُ مَعْلُومٍ إِلَّا أَنْتُمْ تَحْكُمُونَ

Chapter 5: verse 90 Al-Ma'idah (The Table Spread)

َيَا أَيْبَاهَا الْذِّينَ أَنْمَأُوا إِلَّا الْحَمْرَةُ الْمَيْسَرِ وَالْأَلْفَابِ وَالْأَلْزَامِ رَجُلٌ مِّنْ عَمْلِ الشَّيْطَانِ فَأَقْلِمْ وَلَا تَقْلِمْنَآ إِلَّا مَا تَأْتِمُ عَلَى نَفْسِكُمْ

Chapter 59: verse 7 Al-Hashr (The Gathering)

َمَآ أَفَأَوَّلَ اسْتَفْلَى عَلَى رَسُولٍ مِّنْ أَهْلِ الْقُرْءَانِ وَلَيْسَ نَا لَا نَكُونُ لُكُومَةَ لَنَا مَا هُمُّ الْأَخْيَرُ ِبَيْنَ الْأَخْيَرِينَ فَخُذُوهُ وَمَا نَهَىَنَّكُمْ عَنْهُ مَا دِينُ اسْتَهْدَى إِلَّا اللَّهُ وَالَّذِينَ يَتَّبِعُونَ وَلِلَّهِ مَثَلُ الْحَيَاةِ الْأَخْرَى (59)

Chapter 53: verse 1 – 4 An-An'ajj (The Star)

َوَالْجَمَّ إِذَا هُوَ (1:53) َوَمَا ضَلِّلْتُكُمْ وَمَا غَرَّتْكُمْ (3:53) إِنَّهُ إِلَّا وَحْيٌ بَيْنِي (4:53)

Chapter 62: verse 2 Al-Jumu'ah (Friday)

َهُوَ الَّذِي بَعْثَ فِي الْأَمْهِمِينَ رَسُولًا مِّنْهُمْ بِيَدٍ عَلَيْهِمْ مَكْرُكُمْ وَيُزِكِّيْكُمْ وَيُعَلِّمُكُمْ الْكِتَابَ وَالْحِكْمَةَ إِنْ كَانَتْ مِنْ قَبْلِ فَيَوْمِ مَا ثُمِّنُ (62)

Chapter 4: verse 59 An-Nisa (The Women)

َيَا أَيْبَاهَا الْذِّينَ أَنْمَأُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأَوْلَى الْأَمْرِ إِذَا فَتَنَّا فِي شَيْءٍ فَرَتَهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كَانَتْ تَوْلُونٌ بِلَادٍ وَالْيَوْمُ الآخرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلاً (4:59)
Chapter 4: verse 80 An-Nisa (The Women)
من يطبع الرسول فطغى أطاع الله ومن تولى فما أرسلنا عليهم خفيًا (4:80)

Chapter 33: verse 36
وأما كان مؤمنًا ولا مؤمنة إذا قضى الله ورسوله أمرًا أن يكون له الخيرة من أمرهم ومن بعض عين ورسوله فقل صل صلاة مبينًا

Chapter 4: verse 65 An-Nisa (The Women)
فلا وربك لا يؤمنون حتى يحكموه فيما شجر بينهم ثم لا يجدوا في أنفسهم حرجًا ما قضينا وسندوا تنبيها (4:65)

Chapter 68: verse 4 Al-Qalam (The Pen)
وإنك لم تلق عظيما (4:68)

Chapter 6: verse 38 Al-An'am (The Cattle)
وأما من ذاتي في الأرض ولا طائر يطير بجنانه إلا أمَّة اشتكى ما قرهذا في الكتاب من شيء ثم إنهم يحضرون (3:63)

Chapter 2: verse 228 Al-Baqara (The Cow)
والملحقات بينه وبينن بأنفسهم ثلاثة فروء فلا يجد هن إلا ما كتب الله في أُوَّامه إن كن اشتكى الله واليوم الآخر ونعلموهم أحق يرددهم في ذلك إن أرادوا إصلاحا ونرى مثل الذي علني بالمغزوع والرجال على أن تدرك وازن

Chapter 65: verse 4 Al-Talaq (The Divorce)
واللائي يشتكى من الحبيش من نسائهم إن اشتكى غلطاهن في ذاتي أَرْزَعْ أَشْهَرََّينَ وَأَوْلَادَ الأَحْمَال أَجْلِهَا لِي

Chapter 2: verse 234 Al-Baqara (The Cow)
والذين يشكونه ومن بذروا أَمَّة يبتغون أشيئًا يبتغون بأنفسهم أَبْعَاذَة أَشْهَرَ وَعَشْرَينَ فإذا بلغن أجله فلا شاهد عليهم فيما فعل

Chapter 2: verse 225 Al-Baqara (The Cow)
لا يَؤَذِّبْكُم اللَّهُ بالغوَرِ في أُوَّامكُم ولكن يُؤَذِّبْكُم بما كسبت فُلُونُكُم والله غفور حليم (2:225)

Chapter 2: verse 224
ولا تجعلوا الله عرضة لإيمانكم أن تبرو وتنجوا وتصبحوا بين الناس والله سميع علم

Chapter 16: verse 94
ولا تتخذوا إيمانكم دخانًا بيتكم فَزَّل قدم بعد أًوَّامها وتلقو السوء بما صدحت عن سبيل الله وَلَكُم عذاب عظيم

Chapter 5: verse 106 Al-Ma'idah (The Table Spread)
بِأَيْنَ يَأْتِي الْإِيمَانَ عَلَى الْأَهْدَاء وَبِأَيْنَ يُؤْمِنُونَ مَقَامًا مِّن أَيْنَ اسْتَحْلَقُوا عَلَيْهِمُ الْأَوَّلِينَ فَقُلْ لَهُمْ شَهَادَةُ الْأَمْمِ (5:106)

Al-Ma'idah (The Table Spread)
فإِنْ غَفِلْ عَلَى الْأَمْمِ فَشَهَادَةُ الْأَوَّلِينَ وَمَا أَعْطَيْنَاهُمْ إِلَّا أَيْنَ اسْتَحْلَقُوا عَلَيْهِمُ الْأَوَّلِينَ فَقُلْ لَهُمْ شَهَادَةُ الْأَمْمِ (5:107)

Chapter 24: verse 6
وَالذِّينَ يَعْمَلُونَ أَزْوَاجَهُمْ وَلَا يَنْفَعُهُمْ شَهَادَةُ أَيْنَ اسْتَحْلَقُوا عَلَيْهِمُ الْأَوَّلِينَ فَقُلْ لَهُمْ شَهَادَةُ الْأَمْمِ (24:6)

January 2013
Chapter 24: verse 7, 8, 9

والخامسة أن لعنت الله عليه إن كان من الكاذبين(24:7)
ويزدان عنها الغراب أن تشهد أربع شهادات بالله إن لم الكاذبين(24:8)
والخامسة أن غضب الله عليها إن كان من الصادقين(24:9)

Chapter 24: verse 6

والذين يرمون آزواجههم لم يكن لهم شهادة إلا أنفسهم شهادة أربع شهادات بالله إن من الصادقين والخامسة أن لعنت الله عليه إن كان من الكاذبين وبدرا عنها الغراب أن تشهد أربع شهادات بالله إن لم الكاذبين والخامسة أن غضب الله عليها إن كان من الصادقين.

Chapter 58: verse 14

ألم طر إلى الذين تولوا قوما غضب الله عليهم ما هم منكم ولا منهم ويخفون على الكتب وهم يعلمون

Chapter 5: verse 89

لا يأخذكم الله بالغرب في إيمانكم ولكن يأخذكم بما عهدتم الله إطعام عشرة مناسك وابتعوا أهلكم أو كسبتهم وترحموا رقبة فمن لم يجد فصام ثلاثة أيام إيمانكم إذا فصاموا وإيمانكم كذلك بييبي الله لكم أيته لحكمكم التكررون.

Chapter 4: verse 29 An-Nisa (The Women)

يا أيها الذين هم نساء لا تأكلوا أموالكم ببنكم بالباطل إلا أن تكون تجارة عن تراض منكم ولا تقتلو أنسكم إن الله كان بكم رحما.

Chapter 2: verse 188 Al-Baqara (The Cow)

ولا تأكلوا أموالكم ببنكم بالباطل وتدلو بها إلى الحكام لتأكلوا فيها رقيقا من أموال الناس بالائم والمائم تعلمون.

Chapter 4: verse 29 An-Nisa (The Women)

يا أيها الذين هم نساء لا تأكلوا أموالكم ببنكم بالباطل إلا أن تكون تجارة عن تراض منكم ولا تقتلو أنسكم إن الله كان بكم رحما.

Chapter 2: verse 188 Al-Baqara (The Cow)

ولا تأكلوا أموالكم ببنكم بالباطل وتدلو بها إلى الحكام لتأكلوا فيها رقيقا من أموال الناس بالائم والمائم تعلمون (188:2)

Chapter 5: verse 1 Al-Ma'idah (The Table Spread)

يا أيها الذين هم نساء أئتموا أوقات العبادة أحلت لكم نعمة الله إلإ ما بلى علىكم غير مباحك العبادة وأئتم خزيمة إن الله يحكم ما يريد (1:5)

Chapter 8: verse 27 Al-Anfal (The Spoils of War)

يا أيها الذين آمنوا لا تخونوا الله والرسول وتخونوا أماناتكم وأنتم تعلمون (27:8)

Chapter 16: verse 90

إن الله يأمر بالعدل والإحسان وإيذاء ذي الدين وينهي عن الفحشة والمنكر والذبح يعطكم لحكمكم تذكر (90:16)

Chapter 16: verse 89
Chapter 28: verse 23  al Qasas (“The Narration”) is the story of Moses.

ولما ورد ماء منين وجد عليه أية من النعام يغفلون ووجد من دونهم امرأتي نذوراً فان ما حطت كأثربًا لا نسفي
حتى يصدح الزعاء وأبونا شيخ كبير (28:23)
فنصي لما ثم تؤل إلى العظام فقال رضي الله تعالى إني أنا أنزلت إلي من خبر فيه (28:24)
فجعلهنا إعداها نجلى على استنجاء قلتنا إن أبي ذعرك ليجزيتك أجر ما سقيت لنا فعلما جاءه وقص علينا القصص قال
لا نخف نجوم من أهل السماكين (28:25)
قالنا إدهاشنا يا أبا استناف السماكين إن خبر من استناء السماكين الأئمن (28:26)
فقال إني أريد أن أكن كهدى إلى النحاس هائين على أن تأجروني نمياً جمع فإن اتمنتم عثراء فمن عندك وما أريد أن أكن
عليك سنجذب إن شاء الله من الصالحين (28:27)
فقال ذلك بنى وتنبك أيما الأئمن قنصب فلا تذكرون على الله بغير مكنون إني أتنكر أن ننسب نحن من ملك نحن (28:28)
فإنما قضينا موسا الأجل ونذار بألهه آمن من جانب الطور نذاراً فإن له أن يكلمك منها بذره أو جذوة من النار لا Türkün (28:29)

Chapter 65: verse 6  At-Talaq (The Divorce)

أنكون في حبة منكمن من وحدهم ولا تضماروه فلا ترضوا عليهم وإن كل أوان حل فان يؤفوا تنزه حتى يستعن
حملين فإن أرضعوا لهم أثربائنا أخورهم وأتمروا بنفسيه بمغروف فإن تعسرت فسترضع له أخرى (65:6)

Chapter 2: verse 233  Al-Baqara (The Cow)

والوالدين يرضعون أولادهن خالتين كامتين لمن أراد أن يبنى الزكاة وعلى المؤلله لرخله وإن كتب Ôه بالغروف لا
نكلف نفسي إلا ونفسه إلا حصان ولا ريد ولا موليد له ولد عليه وعلي الوارث مثل ذلك فإن أرادا فصلاً عن تراص
منهما وتشاور فلا جناح عليهم وإن أردتم أن تسترتوه عمودك فلا جناح عليهم إذا ضمت ما أتمنى بالكره وألونه
الله وأعطتم أن الله ما تعلوه بصر (233:2)

Chapter 43: verse 32  Az-Zukhruf (The Gold Adornments)

أتمهم رخامة ركبت نحن فسناً بينهم معيشتهم في الحياة الدنيا ورفعتا بعضهم فوق بعض درجات ليخذل بعضهم
بعضاً سفراً ورخمت ركبت خير ما يجمعون (43:32)

Chapter 18: verse 77  Al-Kahf (The Cave)

فانطلقنا حتى إذ أننا أهل فؤاد استمعنا أهلها فإنوا أن يضفوهما فوجدوهما في جدارة يزيد أن يقنعان أهلهم قال لو شئت

January 2013
الآيات 177:233

الوقال: يَا أَيُّهَا الْيَهُودَ أَلْبَسْنَاكُم مَا كُنْتُمْ تَعْرَضُونَ عَلَى الْمُلُوتَةِ لَوْ نَعَدْتُمْ لَأَنْعَدْ النُّورُ عَلَيْكُمْ وَأَنْفَقْتُمْ مَا آتَيْتُمُوا إِلَّا أَنْ تَعْرَضُوا أَلْبَسَتُكُمْ فَلَا جَاحِرُ عَلَيْكُمْ إِذَا سَلَمْتُمْ مَا آتَيْتُمُوا إِلَّا رَحْمَةً (29:43)

الآيات 5:5

لا تَنَّى الْيَهُودَ أَلْبَسْنَاكُم مَا كُنْتُمْ تَعْرَضُونَ عَلَى الْمُلُوتَةِ لَوْ نَعَدْتُمْ لَأَنْعَدْ النُّورُ عَلَيْكُمْ وَأَنْفَقْتُمْ مَا آتَيْتُمُوا إِلَّا أَنْ تَعْرَضُوا أَلْبَسَتُكُمْ فَلَا جَاحِرُ عَلَيْكُمْ إِذَا سَلَمْتُمْ مَا آتَيْتُمُوا إِلَّا رَحْمَةً (4:39)

الآيات 32:8

وَلَوْ نَعَدْتُمْ لَأَنْعَدْ النُّورُ عَلَيْكُمْ وَأَنْفَقْتُمْ مَا آتَيْتُمُوا إِلَّا أَنْ تَعْرَضُوا أَلْبَسَتُكُمْ فَلَا جَاحِرُ عَلَيْكُمْ إِذَا سَلَمْتُمْ مَا آتَيْتُمُوا إِلَّا رَحْمَةً (2:293)

الآيات 4:282

وَلَوْ نَعَدْتُمْ لَأَنْعَدْ النُّورُ عَلَيْكُمْ وَأَنْفَقْتُمْ مَا آتَيْتُمُوا إِلَّا أَنْ تَعْرَضُوا أَلْبَسَتُكُمْ فَلَا جَاحِرُ عَلَيْكُمْ إِذَا سَلَمْتُمْ مَا آتَيْتُمُوا إِلَّا رَحْمَةً (2:282)

الآيات 23:8

وَلَوْ نَعَدْتُمْ لَأَنْعَدْ النُّورُ عَلَيْكُمْ وَأَنْفَقْتُمْ مَا آتَيْتُمُوا إِلَّا أَنْ تَعْرَضُوا أَلْبَسَتُكُمْ فَلَا جَاحِرُ عَلَيْكُمْ إِذَا سَلَمْتُمْ مَا آتَيْتُمُوا إِلَّا رَحْمَةً (23:8)
2. Hadiths reference in Arabic scripts:

The superscripts correspond to the footnote in the main thesis.

من كتاب على متعدا فليتاُأ مقعده من النار
15 كل شرط ليس في كتاب الله فهو باطل

1504 Shaih Muslim  الصحيح مسلم/كتاب العق

[1504] وحدثنا يحيى بن يحيى قال قرأت على مالك عن نافع عن ابن عمر عن عائشة أنها أدرت أن تشتري جارية

[1504] حديث قديم بن شعبة نافع عن ابن عمر عن عائشة أنها أدرت أن تشتري جارية

انتسبوا هذه الأحاديث لم تكن في كتابها ولم تكن في كتابات شبايك وعائشة المُجذبة، وإنما كان في كتاب المَجَد، بقوله: إن الشيَّانة تلتسلم على الله، وإن الشيء لا يشترط عليه، وإن الرأي لا يشترط عليه.

1504 

329 شرط الله أحق وأوّل

قال ( إما بعد فما قال يشترط شرطاً ليس في كتاب الله ما كان من شرط ليس في كتاب الله عز وجل فهو باطل وإن كان من شرط شرط كتاب الله أحق وشروط الله أحق )، وذكر بقية الخبر، ومن طريق أبي داود، حديثاً حديثاً حديثاً حديثاً حديثاً حديثاً حديثاً حديثاً حديثاً حديثاً حديثاً.

247 روى الإمام البخاري رحمه الله:

على أبي بكر الصديقي رضيع الله عن النبي صلى الله عليه وسلم نهى عن تَمَّن الأكل والأضحية.

1652 صحيح البخاري 2237، صحيح مسلم برقم 2237.

صحيح البخاري 2277، حديث أبي يوسف.

347 Sahih Bukhari - Book: 34 Hadith: 2277 Narrated Abu Mas'ud Al-Ansari: Allah's Apostle forbade taking the price of a dog, money earned by prostitution and the earnings of a soothsayer.

Translated by: Muhammad Muhsin Khan

English (translation) ref: Vol:3, Book:34 Number:439

قال الدارقطني 3080 _ حديثنا ابن مسنود بن الفضل الأنصاري حديثاً تَمَّن الأكل والأضحية نهى عن تَمَّن الأكل والأضحية.

في سنن عميد النحاة قبله كتب ابن أبي سعيد الخدري قال نهى عن تَمَّن الأكل والأضحية.
راذ عيَّن الله وعن قَنـبر الطَّخان

المغنى ابن قدامة المقدسي دار إحياء التراث العربي سنة النشر: 1405هـ / 1985م

(4326) فضل: إذا أختلفا في فتر الآخر، قال: أجرتهما سنة بيدنا. قال: بين بيدنا. تخالف، وثبتت بين الآخر.

نص عليه أخذه، وهو قول الشافعي: فإن الإجارة نُوع من الربح، فإذا تخالفنا قلب مكسي شيء من المدة فسخاً العقد.

وجَزء كل واحد منها في ماله. وإن رضي أخذهما بما خلف عليه الآخر، فِرَّ الوعد. وإن فسخاً العقد بعد المدة، أو شيء منها، سقط المسمى ووجب أجل المثل، كنا لو اختلفنا في المبيع بعد تلقية. وهذا قول الشافعي.

وَبَهَ قال أبو خنيفة إن لم يَكن عمل العمل، وإن كان عمله فالقول قول المستأجر فيما بينه وبين أخر مثله. وقال أبو

ثور: القول قول المستأجر: لائة منكسرة في الأجر، وقال قول المستأجر. لماذا أن الإجارة نوع من الربح، فيتخالفان عند الخلافهما في عوضهما، كالبَني، وكتما قبل أن يَعمل المنزل عند أبي خنيفة. وقال ابن أبي موسى: قال

قُول البَني: صل الله عليه وسلم. فإذا خلفت المتنبيان، فالقول قول البائع. (وهذا يحمل أن يريد به إذا

اختلفا في المدة، وأما إذا اختلفا في العوض، فالصحابي البَني يتخالفان: لما ذكرنا.

السِّلَةُ الآيِّاتِ الْمُخْلِية 441 "الإجارة بعد ما عقدت صحية لا يجوز للأجر فسخها بمجرد زيادة في الاجرة و لكن

لو أجر الوصي أو الموالي عقار البيت، أو الوقف بالنف من أجل المثل هذه السما الإجارة ولزوم المستأجر أجر المثل" ص

246

315 عن أبي هريرة رضي الله عنه، قال: قال رسول الله صلى الله عليه وسلم: "إذا بعثت لأختم مكارم الأخلاق "،

كذا روي عن الزرارة، وأخرجه أحمد في مسندنا، والبيهمي في صحيح الإمام، عن أبي هريرة. رقم الحديث: 19144
3. Other statements reference in Arabic script:

The superscripts correspond to the footnote in the main thesis.

Shari’a scholars classify an employment contract as a sale-of-benefit contract.

Definition of *Ijarah* in Arabic script

Leasing contract:

Hanafi

*عقد على المنافع بوعوض* 174-179

Shafii

*عقد على منفعة مقصودة ملزمة مباحة قابلا للبدل والبازع بوعوض معلوم* 180

Maliki and Hnbali

*تملك منافع شيء مباح بمقدمة ملزمة بوعوض معلوم* 179

Ibadi

*والبيع للمنافع المعلمة مقدر بوقتها والقيمة* 179

*عقد على منفعة ملزمة بوعوض معلوم* 180

*Majalat Al Ahkam Al Shari’a of Saudi Arabia* Article 516

الإيجار والإيجار والمكاري بمعنى واحد *عقد تمليك المنفعة المباحة المعلمة بوعوض معلوم* 182

Mohamed ben Yousif Iftash defines *al ijarah* in Arabic, translated literally, as a reward for work. ( )

January 2013
1. *La darar Wa-ladir* لا ضرر ولا ضرار

No injury is to be caused and none is to borne
The Constitutions of Arab countries in Arabic Script:

دستور دولة الامارات العربية المتحدة

مادة 7

الإسلام هو الدين الرسمي للاتحاد، والشريعة الإسلامية مصدر رئيسي للتشريع فيه، ولغة الاتحاد الرسمية هي اللغة العربية.

سلطنة عمان

مادة 2

دين الدولة الإسلام والشريعة الإسلامية هي أساس التشريع.

دولة البحرين

المادة 2:

دين الدولة الإسلام، والشريعة الإسلامية مصدر رئيسي للتشريع، ولغتها الرسمية هي اللغة العربية.

الجمهورية اليمنية

مادة (3) الشريعة الإسلامية مصدر جميع التشريعات.

دولة قطر

المادة (1)

قطر دولة عربية مستقلة ذات سيادة. دينها الإسلام، والشريعة الإسلامية مصدر رئيسي لتشريعاتها، وتظامها ديمقراطي، ولغتها الرسمية هي اللغة العربية. وشعب قطر جزء من الأمة العربية.

المملكة العربية السعودية

المادة الأولى

المملكة العربية السعودية دولة عربية إسلامية ذات سيادة تامة دينها الإسلام ودستورها كتاب الله تعالى وسنة رسوله صلى الله عليه وسلم. ولغتها هي اللغة العربية، وعاصمتها مدينة الرياض.

دولة الكويت
مادة 2

دين الدولة الإسلامية، والشرعية الإسلامية مصدر رئيسي للتشريع.

المملكة المغربية

الفصل السادس

الإسلام دين الدولة، والدولة تتضمن لكل واحد حرية ممارسة شؤونه الدينية.

الفصل الرابع

القانون هو أسمي تعبر عن إرادة الأمة، ويجب على الجميع الامتثال له، وليس للقانون آخر رجعي.

جمهورية مصر العربية

المادة (2)

الإسلام دين الدولة، واللغة العربية لغتها الرسمية، ومبادئ الشريعة الإسلامية المصدر الرئيسي للتشريع.

بتاريخ 29 نوفمبر 2012 صوتت الجمعية التأسيسية لكتابية دستور جديد لمصر لصالح بقاء مادة تنص على أن

مبادئ الشريعة الإسلامية هي المصدر الرئيسي للتشريع دون تغيير في الدستور السابق.

الإسلام دين الدولة، واللغة العربية لغتها الرسمية، ومبادئ الشريعة الإسلامية المصدر الرئيسي للتشريع.

دولة لبنان

عدل نص المادة 18 بموجب القانون الدستوري الصادر في 10/10/1927، ثم عدل بموجب القانون الدستوري رقم

18 تاريخ 21/9/1990 على الوجه التالي:

لمجلس النواب مجلس الوزراء حق إقرار القوانين. ولا ينشر قانون ما لم يقره مجلس النواب.

عدل نص المادة 19 بموجب القانون الدستوري الصادر في 10/10/1927، ثم عدل بموجب القانون

الدستوري رقم 18 تاريخ 21/9/1990 على الوجه التالي:

يشأ مجلس دستوري لمراقبة دستورية القوانين ويلت في النزاعات والطعون الدائمة من الانتخابات الرئاسية

والنيابية. يعود حق مراجعة هذا المجلس من مراقبة دستورية القوانين إلى كل من رئيس الجمهورية ومجلس

النواب ورئيس مجلس الوزراء أو إلى عشرة أعضاء من مجلس النواب، وإلى رؤساء الطوائف المعترف بها قانونًا في

ما يتعلق حصرًا بالأحوال الشخصية وحرية المعتقد والشئون الدينية والتعليم الديني.

يحدد قواعد تنظيم المجلس وأصول العمل فيه وكيفية تشكله ومراجعته بموجب قانون.

January 2013
Appendix 2 Definition of Wilayat al Madhalim, Diwan al Madhalmi

This is a system of traditional justice used by Arabs with the concurrence of Islam. The system’s central issue was to align wise people to the task of enforcing justice for the poor, so ensuring that rich and strong people in society can also be tried. Proponents of Wilayat al Madhalim argue that this is an original Arabic system already established at a time when the Prophet Mohammed was 25 years of age, before he received the prophecy. The approximate time, according to the Gregorian calendar, would be AD 1426, therefore, after Prophet Mohammed’s emigration from Mecca to Madina.

In AD 554 in Mecca there was an incident involving a man from the Zubaidi tribe of Yemen standing on the mountain of Abi Qubass before sunrise and shouting: “Oh people of Mecca, Al Aas bin Wa’il bought from me merchandise without paying me the price”. The people of Mecca started to whisper: who would dare talk to him? He is one of the chiefs of Mecca?

A second recorded incident/event regarding injustice was that of Qais bin Al Salimi who sold merchandise to Ubai bin Khalf who, in Mecca, was a most powerful chief without giving the seller the price agreed. He stood in the middle of Mecca pleading for justice: “Do I get injustice in Mecca?”

These two incidents led many honorable people to call for a meeting in Mecca to make an alliance to prevent injustice to people. This alliance was called: al foodhol alliance. The main purpose was to prevent injustice, aiding the weaker party in a contract against the strong and powerful until rights are granted. Prophet Mohammed attended this meeting and said after he became Prophet, ‘Would I have been called, I would respond.’ This is a confirmation of approving the action of aiding the weaker party in the society.

Opponents to Wilayat al Madhalim argued that it was not a part of the Islamic judicial system. This system, they argue, was actually invented by governors to conceal the injustices growing out of society in order to satisfy a political agenda that contradicted a doctrine which was fair and just to Islamic jurors Therefore, there is no need to have a higher court and authority to impose justice and fairness. On the other hand, proponents of Wilayat al Madhalim argued that the need for justice and fairness was a lofty social aspiration and ambition. There is a time when justice cannot be implemented precisely as one disputed party can bear a higher social
status and authority than the other, or bear a higher social status than the judge. There is, therefore, a need for justice supported by a higher authority to enable him to carry out justice in his judgement and implement it.
That was the background of Wilayat al Madhalim that is part of Islamic judicial system and approve by Prophet Mohammed. One case in Omani legal system was identified applying this Wilayat al Madhalim principle.
Appendix 2 List of Labour dispute cases review at Higher Court 2005

| Case Number | Labour Dep. | Start Date | File Date | Date of Judgment | Date of Primary Court | Date of Higher Court | Judgement | Successfully | Approved | Rejected | Approved back to 1st court | Rejected back to 1st court | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for remand | Rejected back to Primary for reman...
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<th>Amount</th>
<th>Date</th>
<th>Amount</th>
<th>Date</th>
<th>Amount</th>
<th>Date</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
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<td>275</td>
<td>28/03/2005</td>
<td>15,000</td>
<td>8,000.00</td>
<td>Back to court 1</td>
<td>573</td>
<td></td>
</tr>
<tr>
<td>84</td>
<td>123&amp;135/2004</td>
<td>275</td>
<td>28/03/2005</td>
<td>15,000</td>
<td>1,000.00</td>
<td>Reject the compensation and back to court 1</td>
<td>573</td>
<td></td>
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<td>101</td>
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<td>5000 &amp; 630</td>
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<td></td>
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<td>109</td>
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<td>371</td>
<td>13,000</td>
<td>18/04/2005</td>
<td>11,000</td>
<td>Dismissed need 3 judges</td>
<td>728</td>
<td></td>
</tr>
<tr>
<td>109</td>
<td>003/2005</td>
<td>371</td>
<td>13,000</td>
<td>19/04/2005</td>
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<td>Rejected the appeal case</td>
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<td>1,000,000</td>
<td>09/05/2005</td>
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<td>125</td>
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<td>20000 &amp; 2000</td>
<td>16/05/2005</td>
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<td>30/2005</td>
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<td>718</td>
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<td>Rejected the judgment back to court 1</td>
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<td>140</td>
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<td>50,000</td>
<td>30/05/2005</td>
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<td>7,250.00</td>
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<td>011/2005</td>
<td>520</td>
<td>200,500</td>
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<td>12,000</td>
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<td>151</td>
<td>17/2005</td>
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<td>120</td>
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<td>Back to court 1 / 3 judges</td>
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<td>164</td>
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<td>506</td>
<td>10,185</td>
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<td>347/004</td>
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<td>10/10/2005</td>
<td>8,000</td>
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</table>

The verdict approved judgment and declined release letter request 239

Reject the appeal and back to court to review verdict 3,175

Rejected Article 7 7,257

Approved court verdict 1,004

Approved 979

Rejected 695

Average 846

...
Appendix 3

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<th>Compensation Value</th>
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<td>55/2004</td>
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<td>6875</td>
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<td>30/04/2003</td>
<td>50/2004</td>
<td>250</td>
<td>50000</td>
<td>50000</td>
<td>05/05/2004</td>
<td>3200</td>
<td>1000</td>
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<td>6875</td>
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<td>Approved</td>
</tr>
<tr>
<td>13</td>
<td>06/01/2006</td>
<td>50/2004</td>
<td>200</td>
<td>50000</td>
<td>50000</td>
<td>10/01/2006</td>
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<td>50000</td>
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Current trends in providing remedies for unfair dismissal under the Oman Labour Law

List of Labour disputes case review at Higher Court 2005
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<thead>
<tr>
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<th>Date Filed</th>
<th>Amount</th>
<th>Date</th>
<th>Date of Review</th>
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**Average**: 23
### Appendix 4 Unfair dismissal interview questionnaire Sample of Data Analysis

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<th>Code 2</th>
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<td>Law</td>
<td>Practice</td>
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<td>DEV</td>
<td>TIME</td>
<td>لا يمكن أن يظهر في المستقبل سنة و ستة أشهر في الاتفاق اقل شيء عم مالية 2400 ريال قياسي و تعويض عن الفصل برفع للقاضي و المواقع 2500 ريال عماني القانون فقط يقول صح أو خاطئ و لكن القانون لا يطبق و العامل يخاف ينوى و عندما يشكي ببدء الاضطهاد ذهبت وزارة العمل و طلبت ذهبت وزارة العمل و طلبت و رح و خص مافو كرامه ولا تدير للعامل بعد أربع سنوات لا يعرف العامل و امكن في مكان الشركة و مراقب لا يستطيع أن اعمل ما لها دخل هذه حاجات إنسانية سنة و ستة أشهر ما زالت في الاستئناف</td>
<td></td>
</tr>
<tr>
<td>CI7</td>
<td>Employee</td>
<td>PSY</td>
<td>Economical</td>
<td>و يوصي العامل في ذلك الشكل و امكن في مكان الشركة و مراقب لا يستطيع أن اعمل ما لها دخل هذه حاجات إنسانية سنة و ستة أشهر ما زالت في الاستئناف</td>
<td></td>
</tr>
<tr>
<td>CI7</td>
<td>Employee</td>
<td>PSY</td>
<td>Socio cultural</td>
<td>و يوصي العامل في ذلك الشكل و امكن في مكان الشركة و مراقب لا يستطيع أن اعمل ما لها دخل هذه حاجات إنسانية سنة و ستة أشهر ما زالت في الاستئناف</td>
<td></td>
</tr>
<tr>
<td>CI7</td>
<td>Social</td>
<td>Shari’a</td>
<td></td>
<td>Friends support and some saving</td>
<td></td>
</tr>
<tr>
<td>CI1</td>
<td>Employee</td>
<td>FIN</td>
<td>PSY</td>
<td>Immediate lost of earnings, using my savings to live.</td>
<td></td>
</tr>
<tr>
<td>CI1</td>
<td>Employee</td>
<td>Law</td>
<td>SPY</td>
<td>I got 3 months salary, renewal visa for 2 years, my passport, and indemnity.</td>
<td></td>
</tr>
<tr>
<td>CI1</td>
<td>Employer</td>
<td>Procedurally</td>
<td>SPY</td>
<td>Yes the investigation was not carried as per the book rules and labour rules</td>
<td></td>
</tr>
<tr>
<td>CI1</td>
<td>Employee</td>
<td>PSY</td>
<td></td>
<td>Fair Compensation, Seek justice</td>
<td>Fairness</td>
</tr>
<tr>
<td>CI2</td>
<td>Employer</td>
<td>Procedurally</td>
<td>SPY</td>
<td>No One month notice and was ask to leave</td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Legal</td>
<td>DEV</td>
<td>EDC</td>
<td>Bias by judges will be detrimental to the system</td>
<td>Disadvantage</td>
</tr>
<tr>
<td>CI3</td>
<td>Legal</td>
<td>Law</td>
<td>DEV</td>
<td>Yes, the Oman law is codified therefore it has to be set by the legislators.</td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Legal</td>
<td>Law</td>
<td>DEV</td>
<td>Judicial Bas</td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Legal</td>
<td>Law</td>
<td>DEV</td>
<td>Yes, as it is fairer then the current mechanism of Wasta</td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Employee</td>
<td>law</td>
<td>Contract Terms must be upheld</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Legal</td>
<td>Law</td>
<td>Included</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Employer</td>
<td>Law</td>
<td>Remedies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Legal</td>
<td>law</td>
<td>Yes, as this would be a deterrent to employers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Legal</td>
<td>Law</td>
<td>Fixed structure to adhered to by the judiciary where detailed allowances against contractual terms are listed with no minimum &amp; maximum levels + heavy fines to employers for Mischief.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Legal</td>
<td>Law</td>
<td>Since my legal case Article 40 has been amended to the detriment of employee. This shows a complete bias toward the employer.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CL3</td>
<td>Legal</td>
<td>Practice</td>
<td>the Lack of confidence in judiciary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Employee</td>
<td>PSY</td>
<td>Law</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>In English law the compensation wild had been crippling for the organization. The heavy compensation and fines are meant to be a deterrent for employer’s behaviour. This did not happened in Oman.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td>Employee</td>
<td></td>
<td>Seek Justice</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CI3</td>
<td></td>
<td></td>
<td>The UK &amp; European legislation seems to be far better and the Omani judiciary should consider adoption of the through and codification process.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CI6</td>
<td>Legal</td>
<td>DEV</td>
<td>TIME</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>ولكن يحتاج للنواة العامل لا يستطيع الانتظار لفترة طويلة يجب أن تكون الإجراءات مرنة وسرعة في فترة وجيزة لإعداد صندوق لتفويض المستقل ومساعدة العمال الذين تتقطع بهم السبيل ويفل العامل حتى صدور الحكم.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CI6</td>
<td>Legal</td>
<td>DEV</td>
<td>remedies</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>الشركة التي تصل الموظف بدون أسباب تمنع من مازونية العمل أو تقدم قانوناً على لكن بحاجة لبعض التعديلات بحاجة لبعض التعديلات</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CI6</td>
<td>Legal</td>
<td>DEV</td>
<td>remedies</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>يعطي المقصود جواز ورخصة عمل أخرى</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CI6</td>
<td>Legal</td>
<td>DEV</td>
<td>Time</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>مذكرات في البداية في النهاية اهلي بثوا لي فلوس</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CI6</td>
<td>Employee</td>
<td></td>
<td>Time</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>أنا لا أعرف ما هي معطيات الشريعة - أتوقع إذا كان في توافق بين الشريعة و القانون يكون الوضع مثالي</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CI6</td>
<td>Employee</td>
<td>Finance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CI6</td>
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<td>KNOW</td>
<td></td>
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<td>January 2013</td>
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<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Cl6</td>
<td>Employee</td>
<td>Remedy</td>
<td>PSY</td>
<td>Procedural</td>
<td></td>
</tr>
<tr>
<td>Cl6</td>
<td>Employee</td>
<td>PSY</td>
<td>Remedy</td>
<td>PSY</td>
<td>TIME</td>
</tr>
<tr>
<td>Cl6</td>
<td>Legal</td>
<td>LAW</td>
<td>Law</td>
<td>PSY</td>
<td>Absently note</td>
</tr>
</tbody>
</table>

**شورى بالظلم:**
لم أن يكون فضاء مستقل حازم سريع لا يتعین قليلة تتفتخ في سبيل

**المستحقة كامنة:**
لم أعطي فرصة للكلام مع القاضي

| Cl6 | Employee | PSY | Time |
| Cl6 | Employee | PSY | FAM FIN |

- **الenerima النفسية:** يحجز جزءه في خلال
- **الenerima المدة:** لم أكن موقوف على الحكم - حتى لاعتي
- **مشكلة عائلية:** أصعب شي في الموضوع نسي وعلتي

- **تحقت أعطي أقلي شيء نصف الفترة التي:**
- ** حتی الانتظار:** 9500
- **الكمية:** 5600
- **لسنة تلاشة أقلي جالس في البيت يجري جزءه في خلال فترة الانتظار تكلف الدولة

- **إذا تم الاتفاق بين الاثنين:**
- **في بعض الجوانب:**
- **الفترة الزمنية طويلة جدا حتى الحكم النهائي - على المال أن يجري في إعطاء جزءه
- **اور في فرض عمل للكلة في حالة إنهاء العمل من ناحية الشركة يجري نظر كائنة فترة زمنية قصيرة

- **مساعدات وتوافر بين القانونين:**
- **لم يطبق القانون يكون مفيد الحقوق المتساوية بين المئات أو الوافد لكن القانون لا يطبق

- **الحقوق المتساوية بين المئات أو الوافد لكن القانون لا يطبق

- **بعد خالص عن الشريعة:**

**If for the benefit of employee**

- **Yes if**
- **Fair**
- **No**

January 2013
<table>
<thead>
<tr>
<th>CI7</th>
<th>Employee</th>
<th>Law</th>
<th>لا اعتقد - لا أعتقد - في تطبيق الإجراءات و مشاركة 社会</th>
<th>Advantage</th>
</tr>
</thead>
<tbody>
<tr>
<td>CI7</td>
<td>Legal</td>
<td>practice</td>
<td>Law</td>
<td>المفروض ممارسة مصلحة العامل في الفصل من عمله من الشركة</td>
</tr>
<tr>
<td>CI7</td>
<td>Legal</td>
<td>practice</td>
<td>PRT</td>
<td>العقد غير منصف كان في صالح الشركة</td>
</tr>
<tr>
<td>CI7</td>
<td>Employee</td>
<td>PSY</td>
<td>Practice</td>
<td>مالك حق تناقل تقبل أو ترفض ما لم حق</td>
</tr>
<tr>
<td>CI7</td>
<td>Employee</td>
<td>PSY</td>
<td>Remedies</td>
<td>الفترة التي أنا جالسها لمدة سنة لا بد أن</td>
</tr>
<tr>
<td>CI7</td>
<td>Employee</td>
<td>Remedies</td>
<td>DEV</td>
<td>أعوض عليها</td>
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<tr>
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<td>Socio cultural</td>
<td>Socio cultural</td>
<td>مفروض الراتب ممشي حتى تنتهي القضية</td>
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<tr>
<td>CI7</td>
<td>Legal</td>
<td>LAW</td>
<td>Procedurally</td>
<td>و لا ص� الزين بمشي حتى لجنة فعال المنظمة العملية تأمر براتب الموظف</td>
</tr>
<tr>
<td>CI7</td>
<td>Er 2</td>
<td>Employer</td>
<td>LAW</td>
<td>حقيقته</td>
</tr>
<tr>
<td>Er 6</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>التي اتمناه دون دليل أخر</td>
</tr>
<tr>
<td>Er 1</td>
<td>Legal</td>
<td>DEV</td>
<td>I disagree with one clause</td>
<td>Everybody should be given a chance to negotiate</td>
</tr>
<tr>
<td>Er 1</td>
<td>Legal</td>
<td>Law</td>
<td>employee get 30 days leave</td>
<td>Excluded</td>
</tr>
<tr>
<td>Er 1</td>
<td>Employer</td>
<td>Law</td>
<td>after one year, it can be interrupt that one is 12 months. It should be after 11 months.</td>
<td></td>
</tr>
<tr>
<td>Er 1</td>
<td>Legal</td>
<td>law remedies</td>
<td>I think anyone can approach labour law. It is open</td>
<td></td>
</tr>
<tr>
<td>Er 1</td>
<td>Legal</td>
<td>Law</td>
<td>One clause in the law I don’t agree. Employee gets 30 days after on year. You cannot interrupt work for 12 months and get 30 days or after 11 months he should get 30 days leave. They don’t agree and want after completion of 12 months.</td>
<td></td>
</tr>
<tr>
<td>Er 1</td>
<td>Employee</td>
<td>Law</td>
<td>The change in the law employee cannot come back to country because he is band</td>
<td>Disadvantage to employees</td>
</tr>
<tr>
<td>Er 1</td>
<td>Legal</td>
<td>Law</td>
<td>i issues Bahwan. months for 6 visa to for employees to abstract them coming back to the country</td>
<td></td>
</tr>
<tr>
<td>Er 1</td>
<td>Legal</td>
<td>LAW</td>
<td>No Effect</td>
<td>Very fair</td>
</tr>
<tr>
<td>Er 1</td>
<td>Employer</td>
<td>Practice</td>
<td>No court cases in late 7 years</td>
<td></td>
</tr>
</tbody>
</table>

January 2013
<p>| <strong>Er1</strong> | <strong>Employer</strong> | <strong>Practice</strong> | <strong>Law</strong> | <strong>Some companies in Oman hold 3 months salary to force them back after leave.</strong> |
| <strong>Er1</strong> | <strong>Employee</strong> | <strong>Practice</strong> | <strong>Law</strong> | <strong>Passport is the property of individual and should no be held by Employer.</strong> |
| <strong>Er1</strong> | <strong>Employee</strong> | <strong>Practice</strong> | <strong>Law</strong> | <strong>Refusing new assignment, breaking instructions, absenteeism, criminal acts verdicts, medically unfit for the job, captain, crew, disobeying rules and regulations.</strong> |
| <strong>Er1</strong> | <strong>Employer</strong> | <strong>Procedurally</strong> | <strong>PSY</strong> | <strong>Gave the chance to talk</strong> |
| <strong>Er1</strong> | <strong>Employee</strong> | <strong>PSY</strong> | <strong>EDU</strong> | <strong>People are scared to approach labour court</strong> |
| <strong>Er1</strong> | <strong>Employee</strong> | <strong>PSY</strong> | <strong>Finance</strong> | <strong>Cost of troubles eliminated</strong> |
| <strong>Er1</strong> | <strong>Chinese embassy came and inspect my worker accommodation, to check if the living conditions are correct, The law says that the company is not obliged to pay accommodation. The contrast say that the employee should be ready to work any place, Nizwa, Sur, or Salala. How can they come to cite.</strong> |
| <strong>Er1</strong> | <strong>Labour law say that log in time is 7.30 if the are not in by that time they have to go back home&gt; (check the article) I suggest that a provision in labour law to be made for additional living allowance for those who sever, outside local station.</strong> |
| <strong>Er1</strong> | <strong>We give letter to the bank, It is workers business.</strong> |
| <strong>Er1</strong> | <strong>Additional allowance for employee severing outside</strong> |</p>
<table>
<thead>
<tr>
<th>Er1</th>
<th>Employee</th>
<th>Practice</th>
<th>Law</th>
<th>Performance, bad output, fighting, liqueur</th>
<th>.local station</th>
</tr>
</thead>
<tbody>
<tr>
<td>Er2</td>
<td>Legal</td>
<td>Law</td>
<td>No need</td>
<td>No</td>
<td>Performance</td>
</tr>
<tr>
<td>Er2</td>
<td>Employee</td>
<td>Practice</td>
<td>Law</td>
<td>Performance, customer services, liability to the company, company reputation (English employee fired)</td>
<td>Moral, loyalty staffing</td>
</tr>
<tr>
<td>Er2</td>
<td>Employer</td>
<td>PSY</td>
<td>Social</td>
<td>,loyalty, Staffing, moral</td>
<td></td>
</tr>
<tr>
<td>Er2</td>
<td>Legal</td>
<td>Remedies</td>
<td>No</td>
<td>Yes, reputation, and compensation</td>
<td></td>
</tr>
<tr>
<td>Er2</td>
<td></td>
<td></td>
<td>Protect your staff and interest, sign a contract</td>
<td>Yes based on contract + notice</td>
<td></td>
</tr>
<tr>
<td>Er3</td>
<td>Employer</td>
<td>LAW</td>
<td>Procedurally</td>
<td>Time lost</td>
<td>Staffing</td>
</tr>
<tr>
<td>Er3</td>
<td>Employee</td>
<td>Practice</td>
<td>Law</td>
<td>Performance, customer services, liability to the company, company reputation</td>
<td>Fair</td>
</tr>
<tr>
<td>Er3</td>
<td>Justice</td>
<td>Shari'a</td>
<td></td>
<td>For any Muslim Shari'a is adequate only a matter on implementation</td>
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<tr>
<td>Er3</td>
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<td>SPY</td>
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<td></td>
</tr>
<tr>
<td>Er3</td>
<td>Employer</td>
<td>Time</td>
<td>Remedies</td>
<td>Yes, Interest</td>
<td></td>
</tr>
<tr>
<td>Er3</td>
<td></td>
<td></td>
<td>No much</td>
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<td>Time lost</td>
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</tr>
<tr>
<td>Er4</td>
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<td>Law</td>
<td>Remedies</td>
<td>Time lost</td>
<td>Yes, but there is ignorance</td>
</tr>
<tr>
<td>Er4</td>
<td></td>
<td></td>
<td>Yes, Interest</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Er4</td>
<td></td>
<td></td>
<td>No much</td>
<td></td>
<td></td>
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<tr>
<td>Er4</td>
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<td>Staffing</td>
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<td>Er4</td>
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<td></td>
<td>Time lost</td>
<td></td>
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<tr>
<td>Er4</td>
<td></td>
<td></td>
<td>Yes, Interest</td>
<td></td>
<td></td>
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<td>Er4</td>
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<td>Fair</td>
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<td>Employer</td>
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<td>Standard argument apply</td>
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<td></td>
<td>Law</td>
<td>Disobeying rules and regulation, Fighting, Breaking instructions, Tardiness</td>
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**Performance, culture, Fair**

- **Order**
- **Cultural**

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| Er7 | Employee | Practice | Law | |
| Er8 | Employee | PSY | Financial |
| Ju 2 | Legal | Justice | law |
| Ju 2 | Legal | LAW |
| Ju 2 | Employee | PSY | Financial |
| Ju 2 | Legal | SPY | LAW |
| Ju 3 | Legal | KNOW | Cultural |
| Ju 1 | Legal | DEV |
| Ju 1 | Legal | Law | Remedies |
| Ju 1 | Legal | Law | Remedies |
| Ju 1 | Employee | Legal | Socio cultural |
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| Ju 2 | Legal | Law | |
| Ju 2 | Legal | Law | Remedies |
| Ju 2 | Legal | Law | Remedies |
| Ju 2 | Legal | Law | Remedies |

**Performance Law**

- 30 days absent, and one was smoking in a dangerous area, security

**Performance, Culture, 5 (3 frightening, did not work and did not listen to the supervisor.**

**Yes**

- Empowered to fire employees

**Fair**

- **Moral values**

**Yes but**

- The law is in your favor

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See Cl 6

No Shari’a Employment

Fair

compensation

journalist

Journalist

Vague and Ambiguity of the Article 40 Yes

Final

See Cl 6

No Shari’a Employment

Fair

compensation

Journalist

Journalist

Vague and Ambiguity of the Article 40 Yes

Final
in the court.

In the case of a legal dispute, the judge may order the employer to:
- Pay the worker's wages and cover their expenses for the duration of the dispute.
- Provide legal representation.
- Pay compensation for damages caused by the employer.
- Reinstatement of the worker.

Legal provisions:
- Article 211 of the Labor Law.
- Article 212 of the Labor Law.
- Article 213 of the Labor Law.

In- depth analysis of legal and cultural aspects of the workplace.
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January 2013

see Q38

NO Comfort Zone

Article 40 is unpractica l but absenteei sm

International Trade law

Negative effect on employer Weak employee’ s rights

End of service benefits weak Law change

La3 Legal Law DEV

La3 Legal PRT LAW

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January 2013

see Q38

NO Comfort Zone

Article 40 is unpractica l but absenteei sm

International Trade law

Negative effect on employer Weak employee’ s rights

End of service benefits weak Law change

La3 Legal Law DEV

La3 Legal PRT LAW

La3 Employer PSY Finance Financial, Time lost, Reputation Damage

La3 Employee PSY UNC

La3 social Shari'a KNOW

La3 Remedies

La3
<table>
<thead>
<tr>
<th>Employee</th>
<th>PSY</th>
<th>Finance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer</td>
<td>MGC</td>
<td>Practice</td>
</tr>
</tbody>
</table>

**Before termination they look at article 40**, you can discuss the contract on other bases.

**Reputation Damage, Financial**

Workers who face economic hardship and work related to the employer's reputation may be affected by it.

**Appointments**

If workers are affected by reputation damage, it may be due to economic hardship.

**Employer Practice**

Workers who have been appointed by the employer's reputation may be affected by it.

**Employee Law**

Workers who are affected by the employer's reputation may be affected by it.

**Employer MGC**

Workers who are affected by the employer's reputation may be affected by it.

**Employee PSY**

Workers who are affected by the employer's reputation may be affected by it.

**Legal Law**

Workers who are affected by the employer's reputation may be affected by it.

**Legal PSY**

Workers who are affected by the employer's reputation may be affected by it.

**Legal Law**

Workers who are affected by the employer's reputation may be affected by it.

**Legal PSY**

Workers who are affected by the employer's reputation may be affected by it.

**Social Economical**

Workers who are affected by the employer's reputation may be affected by it.

**Employee LAW**

Workers who are affected by the employer's reputation may be affected by it.

**Employer MGC**

Workers who are affected by the employer's reputation may be affected by it.

**Employer MGC**

Workers who are affected by the employer's reputation may be affected by it.

**Employer Practice**

Workers who are affected by the employer's reputation may be affected by it.

**Employee LAW**

Workers who are affected by the employer's reputation may be affected by it.

**Employee PSY**

Workers who are affected by the employer's reputation may be affected by it.

**Employer MGC**

Workers who are affected by the employer's reputation may be affected by it.

**Employer MGC**

Workers who are affected by the employer's reputation may be affected by it.

**Employer Practice**

Workers who are affected by the employer's reputation may be affected by it.
‫‪309‬‬
‫استقرار العالقة التقاعدية‬

‫‪Personal issues /‬‬
‫‪conceit‬‬
‫‪disagreement with manager‬‬
‫ال تأثر في التوظيف‬
‫في حالة قناعة المحكمة ھو تعويض عادل و‬
‫كان على راس عملة حتي تاريخ الفصل‬
‫‪ Fair‬من خالل النصوص القانونية‬
‫يشعر بأنه فصل تعسفي‬
‫ال تأثير تعطي المادة ميزة للشركات‬
‫ال‪ :‬أفضل للمواطن أن يكون محدد المدة‬
‫‪Felling‬‬
‫‪helpless‬‬

‫‪Socio‬‬
‫‪Cultural‬‬

‫‪remedies‬‬

‫‪Legal‬‬

‫‪La7‬‬

‫‪Employee‬‬

‫‪La7‬‬

‫‪Law‬‬

‫‪Legal‬‬
‫‪Legal‬‬

‫‪La7‬‬
‫‪La8‬‬

‫‪LAW‬‬
‫‪PSY‬‬

‫‪Legal‬‬
‫‪Employee‬‬

‫‪La8‬‬
‫‪La8‬‬

‫‪Law‬‬

‫‪Employee‬‬

‫‪HLT‬‬
‫الموظف المفصول – ظلم و يخاف رفع‬
‫قضية المماطلة ‪ .‬لو أعيدت لى الفرصة‬
‫ثانيا لما رفعت قضية‪.‬‬
‫قالوا يمكن يرجع العمل رفض العامل ان‬
‫يرجع للعمل و عرضت له يعطوني حقوقي‬
‫أربع سنوات و قالوا نعطيك ‪ ã 1000‬و‬
‫رفضت و ثم تحولت للمنازعات للحكمة‬
‫صدر حكم ابتدائي عدم ممانعة و مبلغ‬
‫‪2300‬‬
‫يروا ان قرار الشركة مجحف غير مبرر‬
‫يريد ان يحافظ على ما فتة من كسب و ما‬
‫لحقه من خسارة‬
‫األحكام اال تتغير ‪ -‬و ركائز العدالة القاضي‬
‫إطراف النزاع الشھود – المحامي ) نزاھة (‬

‫موقف الشريعة‬

‫في ذات الوقت النسبة تنخفض مع رافع‬
‫الدعوة لم يصل لمطالبة من القضاء‪.‬‬

‫تتطور – بخطوات صحيحة في تطور‬
‫متسارع في القوانين تتماشي مع متطلبات‬
‫العالمية مثل قانون الملكية الفكرية‪.‬‬
‫‪January 2013‬‬

‫‪La8‬‬
‫‪La8‬‬


عرض حصول على وظيفة جديدة
his life

لمساعدة الموظف المغفل بتدبير موضوع لحين البت في الموضوع
الإجراءات لا تكون طويلة بفض الموضوع
في 3 أشهر.

تبيين حقوق الموظف وواجباته يدرجة
أيضاً على رب العمل
القانون يحتوي على 60 مادة فقط
الدول العربية ليس لديهم تشريع إسلامي و
لكن يوجد قانون
مبادئه مستبطن منها قوانين تنظم هذه
العلاقة - فيها المبادئ ما يمكن أن يستبطن
كافة التنظيمات للبشر يرجع للفقهاء أو
المشرع

هذا قانون عمل شرعي و هذا غير شرعي.

CL 7
Refer to regulate the code

بكر من قانونين العمل عقود إذعان بمعنى
صاحب العمل يستغل حاجة الموظف
بعض حقوق العامل بصور غير كافية ما في
مناطق

رضيت لأني مبجر و مفهور
في مصر لا توجد مثل هذه القضايا - قانون
العمل يحكم هذه الروابط

اعترف بها مهنة شخصية

تمرين في خلال السنة - خذ جزء من
الحقوق

تخيل يجلس رجل فترة سنة ونصف في
البيت و جيبه فاصي.
ضعط تحتوي هائل أخطر ما في الموضوع
يثر إلى الأسرة كلها

FIN
PSY

Refer to

January 2013
DEV to deal with International Law

Employee

Medically unfit for the job, captain, crew, disobeying rules and regulations. (GF)

5 (3 fighting, did not work and did not listen to the supervisor. One 30 days’ absent, and one was smoking in a dangerous area, security).

mistakes and more. Trivial personal issues rather then administration and company’s affairs

More cases

هل أريد الموظف يرتج أو متعني و أزيده

بديل إيجار

عمر بن الخطاب لا يرى في التعويض check ( )

المعنوي ( ) يحمي حقوق العامل أكثر من حق رب العمل لأنه ظرف الفضفاض لا يمكن إلقاء أي من المادة ما عدى مادة الغرب

قانون العمل الحالي يعني إنهاء العقد خلال شهر

عدد موانعة للعمل ومنحة جواز السفر

Recruitment suitability dismissal 

dismissal

Recruitment suitability dismissal dismissal

15 days - 30
Financial cost of labour
card renewal

Effect – company’s time. Effect other staff

Interpretation of Article 2 of the legislation: The article does not automatically cancel all previous legislations; however, Shari’a dominates all future legislations.

From a juridical perspective, there are three types of cases:

- Personal
- Temporal
- Spatial

Classification of cases is based on conditions and conditions of the case

A case is a personal matter

The case is settled by the court

In 5% of cases, it is the case of the employee. If a case is settled in the employees’ favor, then the employee wins within the specified period. The employee and his assistant win. January 2013
<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
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<th>Code 2</th>
<th>Narrative</th>
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<td>Practice</td>
<td>Law</td>
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<td>Cl7</td>
<td>Legal practice</td>
<td>Law</td>
<td></td>
<td>Advantage</td>
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<td>La3</td>
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<td>المادة 40 غير عملية</td>
<td>Article 40 is unpractical but absenteeism Bias</td>
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<td>Social</td>
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<td>Personal issues / disagreement with manager mistakes and more Trivial personal issues rather then administration and company's affairs.</td>
<td>conceit conceit Manageme</td>
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<td>La6</td>
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<td></td>
<td>مخالفات سبيطة و مسائل شخصية أكثر من إبها إدارية وفي مصلحة العمل ظاهريا التعيين- و بانطيا خلافات شخصية</td>
<td>conceit Manageme Manageme</td>
</tr>
</tbody>
</table>

January 2013
The change in the law that employee cannot come back to country because he is band issues Bahwan . months for 6 visa to for employees to abstract them coming back to the country 5 (3 fighting, did not work and did not listen to the supervisor. One 30 days' absent, and one was smoking in a dangerous area, security).

People are scared to approach labour court since my legal case Article 40 has been amended to the detriment of employee. This shows a complete bias toward the employer.
<table>
<thead>
<tr>
<th>Ju1</th>
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<th>LAW</th>
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<td>Law</td>
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<td>La8</td>
<td>Employer</td>
<td>Education</td>
<td>Law</td>
<td>Employmen</td>
</tr>
</tbody>
</table>

January 2013
| Er5 | Employer | PSY | Practice | تحمنت سمعة الشركة اضطلاع أكثر التزام بالسلطة والأمن في الشركة |
| Er2 | Employee | Practice | law | Performance, customer services, liability to the company, company reputation (English employee fired) |
| Er8 | Employee | Practice | Law | Performance, Culture, 5 (3 frightening, did not work and did not listen to the supervisor. One 30 days absent, and one was smoking in a dangers area, security) |
| Er8 | Employee | Law | | Performance |
| La 8 | Employee | Practice | Law | عدد صلاحية الموظف و إنفاذية و تغيب |
| La 6 | Employee | PSY | FAM | مرض الالتزامات مادية دون حالة نفسية في شخص كان يطير و احترق بالرئة لأنه كبير في السن و ما في أحد براعة Mediically unfit for the job, captain, crew, disobeying rules and regulations. (GF) |
| La1 | Employer | PSY | Law | سمعة - قانونية للحصول على مكسب |
| La5 | Employer | PSY | Finance | Reputation Damage, Financial |
| La3 | Employer | PSY | Finance | و يتعلق من قضية لأخرى, Financial, Time lost, |
| Ju3 | Legal | PRT | | Reputation Damage |
| La3 | Legal | law | | لا يوجد قانون العمل في الشريعة |
| Er3 | Employer | Time | Time lost | |
| La 6 | Employer | Finance | | Staffing |
| Cl6 | Education | KNOW | | Unaware of Shari'a |
| La 7 | Education | KNOW | Procedure | |
| La 8 | Education | Law | KNOW | |
| La 8 | Education | Law | KNOW | |
| Ju3 | Legal | LAW | DEV | |
| La3 | Employee | Law | | حقوق العامل ضعيفة: الإجازة (15 يوم في السنوات الثلاث الأولى) حسب المادة |

January 2013
<table>
<thead>
<tr>
<th>Ju1</th>
<th>Legal</th>
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<th>مبادئ الموادة – معبر عن الشريعة يلزم أن يُعطى حقه</th>
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January 2013
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<td>CL3</td>
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<td>DEV</td>
<td>EDC</td>
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<td>Law</td>
<td>DEV</td>
</tr>
<tr>
<td>Cl3</td>
<td>Employee</td>
<td>law</td>
<td></td>
</tr>
<tr>
<td>Cl3</td>
<td>Legal</td>
<td>Law</td>
<td>Remedies</td>
</tr>
<tr>
<td>Cl3</td>
<td>Employee</td>
<td>Law</td>
<td></td>
</tr>
<tr>
<td>Cl3</td>
<td>Legal</td>
<td>Law</td>
<td></td>
</tr>
</tbody>
</table>

Yes the investigation was not carried as per the book rules and labour rules

I got 3 months salary, renewal visa for 2 years, my passport, and indemnity.

Friends support and some saving

Immediate lost of earnings, using my savings to live.

No One month notice and was ask to leave

In English law the compensation wild had been crippling for the organization. The heavy compensation and fines are meant to be a deterrent for employer's behaviour. This did not happened in Oman.

Yes, the Oman law is codified therefore it has to be set by the legislators.

the Lack of confidence in judiciary

Bias by judges will be detrimental to the system

Yes, as it is fairer then the current mechanism of Wasta Contract Terms must be uphold

Included

Yes, as this would be a deterrent to employers

Fixed structure to adhered to by the judiciary where detailed allowances against contractual terms are listed with no minimum & maximum levels + heavy fines to employers for Mischief.

The UK & European legislation seems to be far better and the Omani judiciary should
<table>
<thead>
<tr>
<th>Code</th>
<th>Role</th>
<th>Department</th>
<th>Category</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cl6</td>
<td>Employer</td>
<td>LAW</td>
<td>PSY</td>
<td>consider adoption of the through and codification process. Absently note:</td>
</tr>
<tr>
<td>Cl6</td>
<td>Employee</td>
<td>PSY</td>
<td>Time</td>
<td>'..'</td>
</tr>
<tr>
<td>Cl6</td>
<td>Employee</td>
<td>PSY</td>
<td>Finance</td>
<td>..</td>
</tr>
<tr>
<td>Cl6</td>
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<td>PSY</td>
<td>Time</td>
<td>..</td>
</tr>
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<td>Cl6</td>
<td>Employee</td>
<td>PSY</td>
<td>Finance</td>
<td>..</td>
</tr>
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<td>PSY</td>
<td>FAM FIN</td>
<td>..</td>
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<td>..</td>
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<tr>
<td>Cl6</td>
<td>Legal</td>
<td>DEV</td>
<td>TIME</td>
<td>..</td>
</tr>
<tr>
<td>Cl6</td>
<td>Employee</td>
<td>Law</td>
<td>DVE</td>
<td>..</td>
</tr>
<tr>
<td>Cl6</td>
<td>Legal</td>
<td>DEV</td>
<td>remedies</td>
<td>..</td>
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<tr>
<td>Cl6</td>
<td>Legal</td>
<td>DEV</td>
<td>remedies</td>
<td>..</td>
</tr>
<tr>
<td>Cl6</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>..</td>
</tr>
</tbody>
</table>

Imبئبر مظلاً

لم أكن مواقف على الحكم - حتى لم أعطي مستحقات كلمة

توقفت أعلاني نصف الشهرين في فترة التي

جلس في البيت مع نصف إنعاش توقفت

9600 غير الضرر المادي والمعنوي وденي و

7600 سنة وثلاث أشهر جالس في البيت

الحالة النفسية - جوزاء جوامع في خلال

فترة الانتظار -

سنة وثلاث أشهر جالس في البيت يجوز

جوزاء في خلال فترة الانتظار تكلف الدولة

مجرات في البداية في النهاية أهله وثنا

لم فوز

أصعب شيء في الموضوع نفسي وعاناني

مشاكل عائلية

لم أخذ حقوقي ثم رفض إعتبار الحقوق -

الشعور بالظلم

 قادر على محاكمة لبعض التعديلات

بأحاجة لبعض التعديلات

يعطي المفسول جوامع ورخصة عمل

أخري

مه مجا لان العامل يستطيع ان يعرف مال

له وما عليه

نعم ما يعني العامل جزء من حقه

و لكن يحتاج للبونه العمل لا يستطيع

الانتظار لفترة طويلة بحث أن تكون

الإجراءات مرة وسريعة في فترة وجيزة

كان وارداً في بناء الاستدلال عن

وجوه في البيت وال productList أن يعمل مع

شечен اختيار - ضرر

إعداد صندوق لتطوير المستقبل ومساعدة

العمال الذين يتقطع بهم سبيل و يسلم

العامل حتى صدور الحكم.

الشركة التي تفعل الموظف بدون أسباب

مقد من مديونية العمل أو تقدم

في بعض الجوانب

لا يوسف شهور قليلة تقطع في السبيل
| CI6 | Employee | Socio cultural Law | The period of time is long enough for the final decision - on the conditions to be kept, the law, or in a case where the company terminates the employee before the end of the period, the company should keep all the costs of the expenditure. |
| CI7 | Legal | PRT | The unfair dismissal is unlawful in the company’s interest where the provisions of the law are met, and the employee does not meet the provisions of the law. |
| CI7 | Legal | Law | No court cases in late 7 years Very fair |
| CI7 | Employee | Law | I disagree with one clause employee get 30 days leave after one year, it can be interrupt that one is 12 months. It should be after 11 months. (law is unclear) |
| CI7 | Employee | PSY Practice | Yes except smoke |
| CI7 | Employee | PSY Remedies | No court cases in late 7 years Very fair |
| CI7 | Employee | Finance Remedies | I disagree with one clause employee get 30 days leave after one year, it can be interrupt that one is 12 months. It should be after 11 months. (law is unclear) |
| CI7 | Employee | Finance DEV | Everybody should be given a chance to negotiate |
| CI7 | Legal | Practice | Excluded |
| CI7 | Legal | Law remedies | I think anyone can approach labour law. It is open |
| CI7 | Legal | Law | One clause in the labour I don’t agree. Employee gets 30 days after on year. You cannot interrupt work for 12 months and get 30 days or after 11 months he should get 30 days leave. They don’t agree and want after completion of 12 months. Some companies in Oman hold 3 months salary to force them back after leave |

January 2013
<table>
<thead>
<tr>
<th>Er1</th>
<th>Employer Practice</th>
<th>Passport is the property of individual and should no be held by Employer.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Er1</td>
<td>Employer PSY Finance</td>
<td>Cost of .My staff liked it .troubles eliminated</td>
</tr>
<tr>
<td>Er1</td>
<td>Legal Law</td>
<td>No Effect</td>
</tr>
<tr>
<td>Er1</td>
<td></td>
<td>Strongly suggest expatriates accommodation to be improved, improve housing conditions, no inspection for ministry of Labour, better living conditions.</td>
</tr>
<tr>
<td>Er1</td>
<td></td>
<td>2 years contract.</td>
</tr>
<tr>
<td>Er1</td>
<td></td>
<td>Chinese embassy came and inspect my worker accommodation, to check if the living conditions are correct,</td>
</tr>
<tr>
<td>Er1</td>
<td></td>
<td>The law says that the company is not obliged to pay accommodation. The contrast say that the employee should be ready to work any place, Nizwa, Sur, or Salala. How can they come to cite.? company should be</td>
</tr>
<tr>
<td>Er1</td>
<td></td>
<td>Labour law say that log in time is 7.30 if the are not in by that time they have to go back home&gt; (check the article) I suggest that a provision in labour law to be made for additional living allowance for those who sever, outside local station.</td>
</tr>
<tr>
<td>Er1</td>
<td>Employer Practice</td>
<td>We give letter to the bank, It is workers business.</td>
</tr>
<tr>
<td>Er1</td>
<td>Employer Practice</td>
<td>Additional allowance for employee severing outside local station.</td>
</tr>
<tr>
<td>Er1</td>
<td>Employee Practice law</td>
<td>Punctuality, bad output, fighting, liqueur</td>
</tr>
<tr>
<td>Er2</td>
<td>Legal Remedies</td>
<td>No fair Yes, reputation, and compensation</td>
</tr>
<tr>
<td>Er2</td>
<td></td>
<td>Protect your staff and interest, sign a contract Yes based on contract + notice</td>
</tr>
<tr>
<td>Er3</td>
<td>Employer LAW Procedureally</td>
<td>For any Muslim Shari’a is adequate only a matter on</td>
</tr>
<tr>
<td>Er3</td>
<td>Legal SPY</td>
<td></td>
</tr>
<tr>
<td>Er3</td>
<td>Justice Shari’a</td>
<td></td>
</tr>
<tr>
<td>Er3</td>
<td>Er3</td>
<td>Remedies</td>
</tr>
<tr>
<td>-----</td>
<td>-----</td>
<td>----------</td>
</tr>
<tr>
<td>Er4</td>
<td>Legal Law</td>
<td>Remedies</td>
</tr>
<tr>
<td>Er4</td>
<td>Employer PSY</td>
<td>No much</td>
</tr>
</tbody>
</table>

Standard argument apply

No much

التعويضات لا تتجاوز مدة معينة بعد أقصى ستة أشهر

بعض الضعفاء تعلموا العادات السبعة

طبيعي أثرب 50 مرة قبل تعيين موظف عماني و أفك أثر عند تعيني الأجنبي.

القانون غير كافٍ ولا يغطي كل شيء و هو سبب المشكلة

إجازة الولاده جزء من الإجازة المرضية

إذا توافق من الموظف للعمل في الأعيد - تعطي صلاحيات للشركة بالمطلبة

بالإضرار في حالة العبد

اعتماد بأن الشرعية تحتوي على كل ما يتعلق بالظلم و الإنصاف و العدل

Yes, 20 years of service – should not be taken away. Not to stop facilities.

It makes recruitment process proper measures.

في احد شرح له الفصل التشريعي و أراد أن يصل على مبلغ مالي.

Financial Gain

ضرورة دراسة العقود بشكل جيد من قبل وزارة العمل و دارسة العمل لأن أغلبهم عماني.

Finance

في خطوات نص عليها القانون بحق إنهاء خدمة الموظف المقرر فيما لو أتبع هذه الخطوات إنهاء دون مسألة قانونية

أنا مش خبير - الشريعة عبارة عن هذا الموضوع

نعم و لهذا السبب أرسل العقود لائحة العمل لا استدعائه

التعويضات الحالية سلمة المذكورة في عقود العمل

أرسل العقود لتصديقها من دائرة العمل

هو مضمون في القانون الحالي

يفصل بعد قيامواجهة و تصريحه في صف الطرفين

يثبت إعادة صياغة قانون العمل فيما يتعلق بالفصل التشريعي و التطبيق لمصلحة

<table>
<thead>
<tr>
<th>Er4</th>
<th>Law</th>
<th>Remedies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Er5</td>
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<td>DEV</td>
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<td>Er5</td>
<td>Employer Law</td>
<td>Practice</td>
</tr>
<tr>
<td>Er6</td>
<td>Justice Shari'a</td>
<td>remedies</td>
</tr>
<tr>
<td>Er6</td>
<td>Legal Law</td>
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</tr>
<tr>
<td>Er7</td>
<td>Employer Financial</td>
<td></td>
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<tr>
<td>Er7</td>
<td>Legal DEV</td>
<td>Cultural</td>
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<td>Er7</td>
<td>Employer Finance</td>
<td>PRT</td>
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<tr>
<td>Er7</td>
<td>Legal Shari'a</td>
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<td>Legal PRT</td>
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<td>Er7</td>
<td>Legal Law</td>
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<td>-----</td>
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<td>PSY</td>
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<tr>
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<td>SPY</td>
</tr>
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<td>Ju2</td>
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<tr>
<td>Ju2</td>
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<td>Ju2</td>
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<td>Ju1</td>
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<td>LAW</td>
</tr>
<tr>
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<td>Law</td>
</tr>
<tr>
<td>Ju2</td>
<td>Legal</td>
<td>Law</td>
</tr>
</tbody>
</table>

**No**

Has not effect on the company.

(January 2013)
لا تحدد من التوظيف لا تستطيع
لا تحدد من التوظيف ولا تستطيع الفصل
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تعويض عادل
الرضی في الإحكام نسبی يتحقی عند
وصول المتکفل للمنزل ویستی
یجب أن يفرض تطور طبيعي على الفضاء

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یجب أن يفرض تطور طبيعي على الفضاء

لا تحدد من التوظيف
لا تستطيع الفصل
نتيجة للاعلاق بين انتحار بين الطرفین
الإحكام يستند على الحکم وشرح
تعويض عادل
الرضی في الإحكام نسبی يتحقی عند
وصول المتکفل للمنزل ویستی
یجب أن يفرض تطور طبيعي على الفضاء

لا تحدد من التوظيف
لا تستطيع الفصل
نتيجة للاعلاق بين انتحار ب
| La 6 | Legal | Law | 这个预约和解雇，除非法律允许。
| La 6 | Employee | Law | 这个预约和解雇，除非法律允许。
| La 6 | Legal | Law | 这个预约和解雇，除非法律允许。
| La 6 | Employer | Law | 这个预约和解雇，除非法律允许。
| La 6 | Legal | DEV | 这个预约和解雇，除非法律允许。
| La 6 | Employer | DEV | 这个预约和解雇，除非法律允许。
| La 6 | Legal | DEV | 这个预约和解雇，除非法律允许。
| La 6 | Social | Socio cultural | 这个预约和解雇，除非法律允许。
| La 6 | Legal | DEV | 这个预约和解雇，除非法律允许。
| La 6 | Employee | PSY | 这个预约和解雇，除非法律允许。
| La 6 | Employer | Finance | 这个预约和解雇，除非法律允许。
| La 7 | Legal | Procedural | 这个预约和解雇，除非法律允许。
| La 7 | Legal | LAW | 这个预约和解雇，除非法律允许。
| La 7 | Employee | Financial | 这个预约和解雇，除非法律允许。
| La 7 | Legal | PRT | 这个预约和解雇，除非法律允许。
| La 7 | Employee | Law | 这个预约和解雇，除非法律允许。
| La 7 | Legal | Dev | 这个预约和解雇，除非法律允许。
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| La 8 | Legal | DEV | 这个预约和解雇，除非法律允许。
| La 8 | Employee | PSY | 这个预约和解雇，除非法律允许。
| La 8 | Legal | 这个预约和解雇，除非法律允许。

January 2013
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<td>Culture</td>
<td>Culture</td>
<td>Law</td>
<td>Law</td>
<td>Management</td>
</tr>
</tbody>
</table>

The is no Sharia employment contract because the labour law is derived from international law.
La4 Legal Law Remedies

La4 Employee Law

La4

Before termination they look at article 40, you can discuss the contract on other bases

La5 Employee Law

La5

العامل صاحب حق

La6 Legal LAW

La6

بأخذوا محادثة و يدعوا كلاً من الطرفين

La6 Employee PSY

La6

القانون لتعويض العمال العادل وممنوع

La6

لا تلزم بقانون تعويض العمال بضمان العمال

La6

في حالة إنهاء العمال من ناحية الشركة

La6

لا يعطى نقل كافة - فترة زمنية قصيرة

La6

ما في تأثير

La6

وافق العلاقة التعاقدية

La6

الثقة في الاقتصادو الشركات الوطنية

La7 Legal Socio Cultural

La7

الموجود في عدد العمل

La7 Social Economical

La7

تعويضات معنية - سمعة العمل - إظهاره أمام أهلة و أولاده بأنه مفكر

La7

الكافلة - القانون يربط العامل بصاحب العمال

La7

العمل ربط بادي - بعض أصحاب العمل

La7

يتفق في النزل على الكافلة - يجب أن يكون في نتيجة مراجعة مصلحة العامل وصاحب العمل

La7

مطالبة مستحقات

La7

ظاهر التعنين

La7

باطلية خلافات شخصية.

La7

لا تثر في التوظيف

La8 Employee PSY

La8

يشعر بأنه فصل تعسفي

La8

في حالة فصلة المحكمة هو تعويض عادل و كان على رأس عملة حتى تاريخ الفصل

La8

لا تثير تعويض المادة ميزة للشركات

La8

لا أفضل للمواطن أن يكون محدد المدة

La8

الموظف المحسن - يطلب و يخفف رفع قضية المحالة. لو أعيدت إلى الفرصة

La8

ثانيًا لما رفعت قضية.

January 2013
قالوا يمكن يرجع العمل رفض العامل ان يرجع للعمل و عرضت له بعثوني حقوق و أربع سنوات و قالوا تعطيل 1000 ريال و رفضت و ثم تحولت للمنازعات للحجة صدر حكم ايدائي عدم مطالعة و مبلغ 2300 ريال ان قرار الشركة محظف غير مبرر.

يريد ان يحافظ على ما فتا من كسب و ما يحقق من خسارة الأحكام الا تنتصر - و ركائز العدالة الفاضي اطراف النزاع الشهود - المحامي ( نزاهة )

في ذات الوقت النسية تنخفض مع رافع الدعوة لم يصل لمطالية من القضاء.

تتطور - بخطوات صحيحة في تطور مشروج في القوانين تشكي مع متطلبات العالمية مثل قانون الملكية الفكرية.

اعتبرها مهنة شخصية

تعرض في خلال السنة - خذ جزء من الحق.

تخيل جلس رجل فترة سنة ونصف في البيت و جمه فاضي.

ضغط نفسى هائل اخطر ما في الموضوع يؤثر على الأسرة كلهما

FIN

PSY

Stop

his life
لمساعدة الموظف المقصود بتقدير
موظف يعينه أن يتحايل في الموضوع
الأجراءات لا تكون طويلة فائض الموضوع
في 3 أشهر

تبين حقوق الموظف، وواجباته يدرج
أيضاً على رب العمل
القانون يحتوي على 60 مادة فقط
الدولة الغربية ليس لديهم تشريع إسلامي و
لكن يوجد قانون
مبادئ ينتمي من فوائده تنظيم هذه
العلاقة - فيهما المبادئ ما يمكن أن يستنبط
كافة التنظيمات للبشر يرجع للفقهاء أو
المشرع
هذا قانون عمل شرعي وهذا غير شرعي.

هذه سلطة تقديرية بالطابع
رضيت لأن معجب و مهؤور
في مصر لا توجد مثل هذه الفضياء - قانون
العمل يحكم هذه الروابط
لا يمكن أوقف العمل - تحتاج إلى
مراجعة

مثل فترة غياب الموظف المتواصلة أو
المنطقة مصيرة جداً، و يترتب على
وصول الأدلة على هذه المدة لفصل
الموظف - عامة. تسبب في خسائر
جسيمة
بعض الشروط إذا كانت تختلف النظام العام
تتصدى لها المحكمة
في الشركة أغلب الفضياء من العرب و
الأجانب، وليس البنود.

More cases

هل أريد الموظف يرتج أو متعني أو أزيده
بدل إيجار
عمر بن الخطاب لا يرى في التعويض
check ( )

BMI: حقوق العمل أكثر من حق رب
العمل لأنه الطرف الأضعف
لا يمكن إثبات أي من المادة ما على ما 
الgear
قانون العمل الحالي يعطي إنهاء العقد خلال
شهر
عند مبالغة للعمل ومنحة جواز السفر

الأداء والكامل
Financial cost of labour card renewal

Effect of the Legislation: The article does not automatically cancel all previous legislations; however, Shari'a dominates all future legislations.

Interpretation of Article 2 of the legislation: The article does not automatically cancel all previous legislations; however, Shari'a dominates all future legislations.

Effect on productivity, work flow, Economical, social and Family

Negative effect on productivity, work flow, Economical, social and Family

Effect – company's time. Effect other staff

Financial cost of labour card renewal

Interpretation of Article 2 of the legislation: The article does not automatically cancel all previous legislations; however, Shari'a dominates all future legislations.

Negatives:

- Unemployment
- Political
- Economic
- Social

Financial cost of labour card renewal

Negatives:

- Unemployment
- Political
- Economic
- Social

Financial cost of labour card renewal

Negatives:

- Unemployment
- Political
- Economic
- Social
Appendix 5 Case Study Research

The Study of unfair dismissal:
A case study of the Omani Labour Law
with emphasis on the effect of Shari’a

January 2008
Acknowledgements

I gratefully acknowledge the contribution made to this study by several groups of individuals. The methodology used in this research involved many people without whose input it would not have been impossible to achieve. The core theme of the research is to identify areas of consensus among groups of individuals on the subject of unfair dismissal in Oman. Especially, I greatly appreciate the support given to this project by the claimants, lawyers, employers and judges who participated voluntarily and responded, with patience and courtesy, to the interview questions that at times seem to be endless.

I trust that the recommendations for this case-study report will be of value towards creating fairness and justice in employment relations that we all strive for.
TABLE OF CONTENTS

Executive Summary

1 Introduction
2 The survey
2.1 The questionnaire
3 Content of unfair-dismissal survey
4 Detailed findings
5 Discussions
5.1 The effect of unfair dismissal
5.2 The effect on employees, employers, legal and social
5.3 Intended effects of unfair dismissal in the Oman Labour Law
5.4 Cost and impact of unfair-dismissal laws
5.5 The effect of unfair-dismissal laws on unemployment
6 Discussion of findings and recommendations
7 Summary and conclusion
8 Appendices:
8.1 Questions on unfair dismissal
8.2 Detailed findings report
Executive Summary

There has been an increase number of dismissal cases in Oman. This report presents the findings from research designed to assess the effect of unfair dismissal under the Oman Labour Law. As soon as termination takes place, usually many terminated-employee files are turned over to the Department of Labour, Ministry of Manpower.

The research established that two-thirds of Omani dismissal claims are mutually settled outside court. Settlement is reached in most cases at the Department of Labour with only one-third transferred to a commercial court for judgement. In most cases, employee and employer reach agreement on a settlement before going to court because pursuing legal action is unaffordable, costly, a prolonged process, involving an unguaranteed outcome. The research suggests that this is normally related to cases of expatriates intending to obtain a release to work with another employer. Furthermore, there are no data on how much exactly each settlement costs because settlements of claims at this stage are confidential.

In many occasions, reconciliation sessions at the Department of Labour, Ministry of Manpower, to reach a settlement involves no cost unless the parties decided to bring a representative, such as lawyers. If no resolution is reached, both parties have the right to proceed with the matter to court for a formal hearing. The process can take up to an average of one–two years in the three-level courts: primary, appeal and higher courts. At this stage, costs start to mount as well as energy and time, producing a lot of frustration and sometimes disappointment.

Termination of employment is an expected shocking event. For most workers, dismissal generates a number of losses to an employee including money, time, energy and an unpleasant experience. In addition to the obvious economic difficulties resulting from seizing the sole income for an employee, dismissal can lead to family problems, children suffering the shocking, unplanned event, unemployment, stress, depression and a loss of confidence.

Dismissal problems are usually magnified if dismissal is unjust or unfair. Therefore, for the principles of fairness and justice, societies strive to stabilise the well being
of the weaker party. It is therefore important that the weaker party in this equation, "the employee," has the opportunity to seek justice with a higher authority.

The research identified that not only are genuine unfair-dismissal cases brought to courts but often, we see unfair-dismissal claims involving a fair dismissal. There are no official statistics on this subject as to how many cases are classified as unfair dismissal.

Dismissal dispute cases produce a substantial cost to employers, employees and society. The cost involves money, time and energy. Usually, employers find themselves in a difficult position defending their decisions in courts, not only disrupting their business but also incurring many losses and expense.

In some cases the cost is overlooked by Western employees who usually pursue legal action, assign a lawyer and leave the country. Research also found that many non-Western expatriates exercise this option in order to be able to stay in the country legally and not be deported as this is used as a bargaining tool. The law protects employees with a legal case to stay in the country until the case is resolved. This has been used as a bargaining chip to obtain the release which by the labour law is the right of employers.

In summary

The survey established that compensation is the most common outcome of any successful unfair-dismissal case. However, reinstatement of employment is also possible but rarely occurs. This option is hard to execute due to the psychological mind frame of both parties in disputes and the unpleasant experience.

Most verdicts awarded modest compensation. It was found statistically that simple compensation varies between 10-17 times of a basic salary depending on years of service. This can be viewed as generous in comparison to neighbouring counties where courts award seven months’ salary as maximum, such as in Bahrain and six months’ salary in the United Arab Emirates.

For example, in 2005 data extracted from cases reached a higher court where the
higher court endorsed lower court judgement with maximum compensation awarded being OMR 11,229.18 and the minimum award valued at OMR 350.

It had been a commercial-court practice in the Oman court system that has evolved during the last few years that any claim up to OMR\textsuperscript{330} 10,000 was awarded by a judge, until 2005. However, any claim exceeding this amount could only be ruled by a court of a panel of three judges.\textsuperscript{331} In 2005 the practice changed by Royal Decree 92/2005 raising the amount to OMR 70,000. The provision is still debated in the higher court.

The research identified two types of unfair-dismissal effects, tangible (financial) and intangible (non-financial). Tangible effects that can be quantified, such as loss of earnings which is easy for the court to award. Intangible, a non-financial loss, could include injury to feelings, humiliation, stress, depression, marital difficulties, family and children, and damage to reputation. This is the most difficult award for a judge to estimate. There is a law in the English system addressing this type of compensation. However, no similar provision is found in the Oman Labour Law to estimate such damage. It is left to the judge to make a fair estimation. Most verdicts tend to ignore or award a very modest compensation for any intangible damage. This is due to the complexity of estimating such damage and also due to the limited expertise of judges. The determining the level of unfair dismissal and the fair compensation value in the Omani system is the jurisdiction of such subject matter in court.

The rest of this report summarises results obtained from a semi-structured interview survey conducted in Oman, findings, discussion and recommendations.

\textsuperscript{330} Omani Rial 1 = 1.30737 British Pound, Omai Rials 1 = $ 2.60, Omani Rial = 1.92944 Euro. Exchange rate on August 16, 2007
\textsuperscript{331} Commercial court practice procedure 36 – 37
Introduction

This report summarises the outcome of data collected to assess the effect of unfair dismissal in Oman. The face-to-face unstructured interviews were based upon a questionnaire to obtain responses of a group of individuals about their level of satisfaction under the present Omani code. The secondary purpose is to identify the effect of unfair dismissal.

What is unfair dismissal?

Unfair dismissal is a term used to express the act of terminating employees in a cruel, unreasonable or unfair way. In this case, employers take a termination decision to break the contract without a legally valid reason or by adopting an unfair termination procedure. In some incidents, pressuring the employee to submit a resignation could be considered an unfair-dismissal action under the law. A fair termination is made according to the law, and the employer has acted in a reasonable manner. For the Omani case, the employer was given the right to terminate employment, according to article 40 of the Oman Labour Law 35/2003.

Unfair dismissal occurs when a worker is dismissed from work by an employer without a valid reason, and/or the employer has acted in an unreasonable manner. Generally, unfair-dismissal claims are made by workers whose contracts have been terminated. According to Oman court-procedure regulations, it is up to the claimant/plaintiff to prove the claim as defined in article 50. However, the employee may prove his rights by all means of evidence, according to article 21-35/2003.

In this research, the terminology of unfair dismissal will be limited to reasons other than what is provided in article 40 (this article will be further discussed in detail), Oman Labour Law 35/2003. The article states that the employer can terminate the employee without compensation for nine principal reasons:

Article 40: The employer may dismiss the employee without notice and without paying an end-of-service gratuity for any of the following cases:
If the employee assumes a false identity or resorts to forgery to obtain employment.
If the employee commits a mistake which results in grave material loss to the
employer, provided the latter reports the incident to the concerned directorate within three days from the date of his knowledge of such an incident.

If the employee does not abide by the instructions which must be followed for the safety of employees and the place of work despite being warned in writing, provided that such instructions are made in writing and displayed in a conspicuous place.

If the employee is absent from his work without reasonable justification for more than 10 days in one year or more than seven consecutive days, provided that the employer gives the employee a written warning after being absent for five days in the first instance.

If the employee discloses the secrets of the establishment in which he works.

If the employee is finally convicted of a crime or misdemeanour involving breach of honour or trust or a misdemeanour committed in the place of work or while the work is being performed.

If during working hours the employee is found inebriated or intoxicated by a narcotic substance or a mind stimulant; if the employee assaults the employer or the manager in charge or gravely assaults any of his superiors during work or because of the work or if he beats one of his fellow employees in the place of work and such beating results in illness or discontinuation of work for a period which exceeds 10 days.

If the employee gravely breaches his obligations to perform the work agreed upon in his contract of employment.

If he commits a grave breach of his obligation to perform his work as agree upon in his contract of work.
The general-information section covering questions 1-9 has no significant effect on the study. Therefore, it will not be addressed in this report.

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<td>1 Interviewee code number</td>
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<td>Defendants (general managers of companies, human-resource or labour-industry managers),</td>
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<tr>
<td>Lawyers</td>
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<tr>
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<td>Judges</td>
<td>4</td>
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<td>2 age</td>
<td>Under 20, 21-29,30-39,40-49, 50-59 Over 60</td>
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<td>3</td>
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<td>More than 500 km.</td>
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<td>4 Where do you come from?</td>
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<td></td>
<td>Other</td>
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<td>5 Marital status</td>
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<td>6 The name of the employer (optional )</td>
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<td>7 The nature of the employer’s business?</td>
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<td></td>
<td>Medium 51-100</td>
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<td></td>
<td>large Over 100 Employees</td>
<td>3</td>
</tr>
<tr>
<td>9 Please give details of how did you started to work for the employer and what is your belief about employment arrangements?</td>
<td></td>
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</table>
Information on the employment contract questions 10-26

The responses from most companies offer two-year automatically renewable contracts.
It is noted that this type of contract might lead to disputes when it has been automatically renewed more than once. As per the labor law, if a contract is of a limited duration, and the parties have continued the execution thereof after expiry of this duration, the contract shall be deemed to have been renewed with the same terms for an indefinite period. Article 36 Thereafter, the contract is terminated based on article 40.

To avoid such a dilemma in executing an employment contract, it is therefore highly recommended that Shari’a jurisprudence apply.

For example, Claimant 7 indicated that he was given a six-month offer letter, then changed to an annual contract.

The sample reported that they have a written, fixed-term contract, and none of the employees is under a contract of service. The duration of a contract differs between an Omani and a non-Omani. The contract for Omanis is for one year with a one-month notice of termination period. However, expatriate contracts are for two years or more. The data indicate that none was employed under an open-ended contract. Nonetheless, data show that two-thirds of the contracts do not specify the date when the contract expires.

To avoid any conflict with the law, some employers tend to pursue a diffident direction. For instance, Employer7 suggested that all contracts he offers to employees are approved by the Ministry of Labour according to the Oman Labour Law.

Most businesses report providing many different benefits to employees. Such benefits include, besides wages, medical, transport tickets for expatriates, local transport, bonus and paid holiday leave. Others industries provide double wages if working during public holidays as well as no-interest loans.
From the data collected, it is clear that all contracts had the following information: date when employment began, salary, ordinary working hours, job title and minimum notice period for termination. From data collected, a notice period varies between one to three months, depending on the seniority of the employee. These details are important according to Oman Labour law. However, some concepts are in line with Shari’a.

Q11: Were you employed or did you work under a contract of service?

Were you employed or did you work under an open-ended contract?

Data for the survey suggested that there were no employees working under a service contract or open-ended contract. Most of them start their work with a two-year contract renewed automatically for another two years. Only in the agriculture sector were few employees under service contracts.

Q13 Did you work as an independent contractor?

Data for the survey suggested that there were no employees working under an independent contractor.

Q14 Do you have a written contract? If yes, is it a fixed-duration contract? Is it job contract? Most employees have a written contract. However, research identified cases of an employment dispute reaching a higher court where the employee had no written contract, where Claimant 6 indicated that he had an unlimited contract.

Q15 What are the benefits provided by the employer? Mark an X for all applicable benefits.

Most companies showed standard compensation packages such as basic salary, accommodation and transport allowances, annual leave and tickets for expatriates. However, any additional benefits are usually stated in the contract, though sometimes vaguely, e.g., Claimant 6, states that commission based on sales become the main reason for the dismissal and court case.

Q27 Did employers carry out fair-dismissal procedures? If not, why not (please provide details)?

Data indicate that two-thirds of the sample believe the employer did not carry out fair-dismissal procedures. Responses to the question of whether the employer implemented fair-dismissal procedures generated dubious arguments. Most employers perceive that they did carry out a fair-dismissal procedure. But, on the other hand, most employees believe the employer did not implement such a procedure.
Claimant 7 stated:
لا طبعا لا إثارة أو أي شيء خذ حقوقك و سافر مصر رغم أنهم تعادوا معي محليا

Question 27: Did the employer carry out fair-dismissal procedure?

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code 1</th>
<th>Code 2</th>
<th>Narrative</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claimant 1</td>
<td>Employer</td>
<td>Procedurally</td>
<td>SPY</td>
<td>Yes the investigation was not carried as per the book rules and labour rules</td>
<td></td>
</tr>
<tr>
<td>Claimant 2</td>
<td>Employer</td>
<td>Procedurally</td>
<td>SPY</td>
<td>No One month notice and was ask to leave</td>
<td></td>
</tr>
<tr>
<td>Claimant 6</td>
<td>Employer</td>
<td>LAW</td>
<td>PSY</td>
<td>Absently note</td>
<td></td>
</tr>
<tr>
<td>Employer2</td>
<td>Employer</td>
<td>LAW</td>
<td></td>
<td>Yes except smoke</td>
<td></td>
</tr>
<tr>
<td>Employer1</td>
<td>Employer</td>
<td>Procedurally</td>
<td>PSY</td>
<td>Gave the chance to talk</td>
<td></td>
</tr>
<tr>
<td>Employer3</td>
<td>Employer</td>
<td>LAW</td>
<td></td>
<td>Yes based on contract + notice</td>
<td></td>
</tr>
</tbody>
</table>

Responses to the question of whether the employer implemented fair-dismissal procedures generated different arguments. Most employers perceive that they did carry out a fair-dismissal procedure. Although, on the other hand, most employees believe the employer did not implement such a procedure. Data generated indicates that most of the employers and lawyers representing employers sample believes that the employer carry out fair-dismissal procedures.

Information of Court Case

Question 28: What was the employee's initial reason to file a court case?
It is clear from data that that initial reason for filing an unfair-dismissal court case in ranking order is:

1. Financial gain being the main reason that accrue around 75% of the time in the selected. Sample.
2. Fair compensation being the second most important reason which is reported about 37%.
3. Make a legal record 25% indicated that this could be one of the good reasons.
4. Revenge, a payback
5. Seeking justice
Others believe that destroying a company’s image could also be one of the reasons to take action against a company. On the other hand, in some cases, the employee wanted to return to work by force or to stay in the country, for non-Omanis, to get another job. Additionally, some have used it as means to blackmail the employer while the employee seeks another job.

**Question 29: Overall, how satisfied are you with the court judgment for your unfair-dismissal case?**

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Extremely Dissatisfied</td>
<td>Somewhat Dissatisfied</td>
<td>Neither Satisfied nor Dissatisfied</td>
<td>Somewhat Satisfied</td>
<td>Very Satisfied</td>
</tr>
<tr>
<td>Claimant</td>
<td>Claimant 7</td>
<td>Claimant 1</td>
<td>Claimant 6</td>
<td>Claimant 3</td>
<td></td>
</tr>
<tr>
<td>Lawyer</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employers</td>
<td>Employer7</td>
<td>Employer2</td>
<td>Judge 3</td>
<td>Judge 2</td>
<td></td>
</tr>
<tr>
<td>Judges</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code 1</th>
<th>Code 2</th>
<th>Narrative</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claimant 1</td>
<td>Employee Law SPY</td>
<td></td>
<td></td>
<td>I got 3 months salary, renewal visa for 2 years, my passport, and indemnity.</td>
<td></td>
</tr>
<tr>
<td>Judge 2</td>
<td>Legal SPY LAW</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employeer 7</td>
<td>Legal LAW Procedurally</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. مقبول من قبل إطراف ما في شك في أنه محبوب
2. الأحكام الانتقادات - و ركائز العدالة القضائي إطراف النزاع للواحد – المحامي (نزاية)
3. يقول قاضي - لأن الحكم استند إلى إجراءات معينة ولم يدخل في محكمة على أن أسباب الفصل
4. القضايا المعالجة
5. قضايا ووثائق

January 2013
An important feature of the data obtained from this survey shows tendency lean toward a degree of disaffection of court judgment for unfair-dismissal case.

**Question 30: What is your own assessment of the quality of judgment awarded in the court case under the present code?**

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Extremely Dissatisfied</td>
<td>Somewhat Dissatisfied</td>
<td>Neither Satisfied nor Dissatisfied</td>
<td>Somewhat Satisfied</td>
<td>Very Satisfied</td>
</tr>
<tr>
<td>Claimant 6 / Claimant Claimant 3</td>
<td>d</td>
<td>d</td>
<td>nor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claimant 7</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lawyer</td>
<td>Lawyer2 / Lawyer3</td>
<td>Lawyer8 / Lawyer6 / Lawyer7</td>
<td>Lawyer8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employers</td>
<td>Employer7</td>
<td>Employer3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judges</td>
<td>Total</td>
<td>3</td>
<td>1</td>
<td>2</td>
<td>4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code</th>
<th>Code 2</th>
<th>Narrative</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Claimant 3 Employee</td>
<td>PSY Law</td>
<td>In English law the compensation wild had been crippling for the organization. The heavy compensation and fines are meant to be a deterrent for employer’s behaviour. This did not happened in Oman.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

January 2013
<table>
<thead>
<tr>
<th>Claimant 6</th>
<th>Employee</th>
<th>PSY</th>
<th>لم اكن موافق على الحكم - حتى لم أعطي مستحقاتي كاملة</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer1</td>
<td>Employer</td>
<td>Practic</td>
<td>No court cases in late 7 years</td>
</tr>
<tr>
<td>Employer3</td>
<td>Legal</td>
<td>SPY</td>
<td>سيئ</td>
</tr>
<tr>
<td>Judge2</td>
<td>Legal</td>
<td>LAW</td>
<td>الحكم في عدله يكم في عدله</td>
</tr>
<tr>
<td>Judge 3</td>
<td>Legal</td>
<td>PSY</td>
<td>الرضي في الإحکام نسبى يحقق عند وصول المتکاضی لما يريد في ذات الوقت النسبة تتخفیض مع رافع الدعوة لم يصل لمطالية من القضاء</td>
</tr>
</tbody>
</table>
| Lawyer2 | Education | Cultura KNOW | الطبيعة الثقافية للقضاة مختلفة  
| | | | و عليه تحصل على أحكام مختلفة |
| Lawyer2 | Legal | Cultura Procedural | عدم تبني نظام السوابق القضائية الإلزامية في الإحکام السوابق |
| Lawyer3 | Legal | law DEV | الطبیعة الثقافیة للقضايا متنوعة - عدم تبني نظام السوابق القضائية |
| Lawyer6 | Legal | Practic | منصفة بإصدار الحكم |
| Lawyer6 | Employee | Procedural | و لكن يعطي الموظف الحق الكامل لأخذ الحقوق المستحقة |
| Lawyer7 | Legal | | البعض أصاب التوقعات و البعض لم يصب |

Analysing the respondents level of satisfaction of the quality of judgement, data provided an indication that more then half of the population of the sample agreed with the court judgement. Only some of the population strongly disagreed, and only few fall in the category of strongly agree or neither agree nor disagree. The sample did not record any Somewhat Dissatisfied category.

On probing more deeply, interviewees made few comments. There is a feeling that judgements are biased and depend on the judges while others maintain that the law should be enforced and that the Omani employee should not be dismissed without a very good reason though others feel that the law is not clear and is left to interpretation, biased toward the employee and is not detailed.

The data has tendency to lean more towered dissatisfaction side.
Question 31: What were your expectations and why?

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code 1</th>
<th>Code 2</th>
<th>Narrative</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claimant 7</td>
<td>Employee</td>
<td>KNOW</td>
<td>SPY</td>
<td>أقل شيء عدم ممانعة 2400 ريال حفي و تعويض عمان عن الفصل يرجع للقضي جو و متوقع 5000 ريال</td>
<td></td>
</tr>
<tr>
<td>Claimant 6</td>
<td>Employee</td>
<td>PSY</td>
<td>Procedural</td>
<td>راجع تعقي لما أعطي فرصة للكلام مع القاضي عقوب - القضايا العمالية قضايا مستنذات</td>
<td></td>
</tr>
<tr>
<td>Claimant 6</td>
<td>Employee</td>
<td>Finance</td>
<td>PSY</td>
<td>توقعات أعطي أقل شيء نصف الفترة التي جلست في البيت مع نصف اتعابي توقعات 9500 غير الضرر المادي والمعنوي وال النفس وال 5600</td>
<td></td>
</tr>
<tr>
<td>Employer  7</td>
<td>Employer</td>
<td>KNOW</td>
<td>Procedural</td>
<td>استرشت محامي - و عدم المعرفة بالقانون ولن البلغ دائرة العمل</td>
<td></td>
</tr>
<tr>
<td>Lawyer 3</td>
<td>Legal</td>
<td>Law</td>
<td>DEV</td>
<td>توقع أن يحصل تطور طبيعي - اطراف العلاقة ضاغطين ولا يج أن يصلوا لحلول</td>
<td></td>
</tr>
<tr>
<td>Lawyer 8</td>
<td>Legal</td>
<td>LAW</td>
<td>SPY</td>
<td>نسبة كبيرة أصابت التوقعات و التي لم تحقق التوقعات كانت أحكام قاسية</td>
<td></td>
</tr>
<tr>
<td>Lawyer 6</td>
<td>Legal</td>
<td>LAW</td>
<td></td>
<td>إلى قد كبير تنصصف العامل لأن الشركات لا تتزم بقواعد الفصل التصفي</td>
<td></td>
</tr>
</tbody>
</table>

The question on level of expectation is difficult concept to measure:. It is clear from the data that the both party expectations are partially met; employees feel that there expectation are not met and employers also feel that there expectations are not met. Most of the times high expectations are not met. Neither parties come out of the court fully satisfied with the court judgment.

Question 32: How do you see the issue legally developing in future?

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code 1</th>
<th>Code 2</th>
<th>Narrative</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claimant 7</td>
<td>Legal</td>
<td>DEV</td>
<td>TIME</td>
<td>لا يمكن أن يتطور في المستقبل سنة و ستة أشهر في الاستناف</td>
<td></td>
</tr>
</tbody>
</table>

January 2013
Responses to the question how do you see the issue legally developing in future generated the following responses:

- Most of the interviewers feel that there will be a natural development of the law to accommodate the modern needs.
- Some of these development related to the Employee expectation for better treatment and freedom of movement and transfer of employment.
- However, only few feel that the present legislation is sufficient to address the issue of unfair dismissal.
- Again few feel that unless this problem is addressed at high level there will be more cases in the court, more unemployment and irresponsible people

**Question 33: How long does it take to resolve the dispute?**

<table>
<thead>
<tr>
<th></th>
<th>1-6 months</th>
<th>6-12 months</th>
<th>1-2 years</th>
<th>More than 2 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claimant 6 / Claimant 7</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lawyer 6</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

January 2013
**Response from the sample suggested that most cases take 6-12 months and some exceed that time. However, analyzing data from court cases indicate that average time taken to resolve the case for the date it is filed in the department of labour till final judgment in higher court going through the 3 court level, primary, appeal, higher court is: 23 months.**

**Question 34: How did the employee manage their life during this period?**

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code 1</th>
<th>Code 2</th>
<th>Narrative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer8</td>
<td>Employer</td>
<td>Manage</td>
<td>Socio</td>
<td>ينتظر أو يجد عمل آخر شيء راجع له</td>
</tr>
<tr>
<td>Lawyer7</td>
<td>Legal</td>
<td>LAW</td>
<td>Procedural</td>
<td>قانون العمل أعطي مدة أسبوعين لكل فترة إجراء مما يسبب الإطالة في التنزيل للحالة بعض الدعاوي للخبراء يترشح اجد التعرفين تقديم الشهود</td>
</tr>
<tr>
<td>Claimant 6</td>
<td>Employee</td>
<td>PSY</td>
<td>TIME</td>
<td>السنة وثلاث أشهر جائز في البيت</td>
</tr>
<tr>
<td>Claimant 6</td>
<td>Employee</td>
<td>PSY</td>
<td>Cultural</td>
<td>الحالة النفسية - يحجز جوازه في خلال فترة الانتظار - اعتبرها ميزة شخصية</td>
</tr>
<tr>
<td>Claimant 6</td>
<td>Social</td>
<td>Socio</td>
<td>Procedural</td>
<td>سنة وثلاث أشهر جائز في البيت يحجز جوازه في خلال فترة الانتظار تكلف الدولة</td>
</tr>
<tr>
<td>Claimant 7</td>
<td>Employee</td>
<td>LAW</td>
<td>Procedural</td>
<td>سنة وستة أشهر ما زالت في الاستماع</td>
</tr>
</tbody>
</table>
Results from the survey suggested that during court cases, majority of dismissed employees managed their welfare through family support; others managed their life through friends support yet other manage their life with personal savings.

Question 35: What is the impact of the dismissal on the employee?

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code 1</th>
<th>Code 2</th>
<th>Narrative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claimant 1</td>
<td>Employee</td>
<td>PSY</td>
<td>Socio</td>
<td>Woquis و تحص مافي كرامة ولا تقدر للعامل بعد اربع سنوات</td>
</tr>
<tr>
<td>CLAIMANT 1</td>
<td>Employee</td>
<td>FIN</td>
<td>PSY</td>
<td>Immediate lost of earnings, using my savings to live.</td>
</tr>
<tr>
<td>Claimant 6</td>
<td>Employee</td>
<td>PSY</td>
<td>FAM FIN</td>
<td>الصعب شي في الموضوع نفسى و عائلي مشاكل عائلية نخيل جلس رجل فترة سنة ونصف في البيت و جبهه فاضي. ضغط نفسى هائل اختار ما في الموضوع يؤثر على الأسرة كلها</td>
</tr>
<tr>
<td>Judge2</td>
<td>Legal</td>
<td>Justice</td>
<td>law</td>
<td>المحكمة فقط تستطيع ان تقرر انه</td>
</tr>
</tbody>
</table>

January 2013
Lawyer3 Employee PSY Psychological
 Judge 3 Employee FAM Psychological
 Lawyr6 Employee PSY Psychological
 Lawyer7 Employee Financial Psychological
 Lawyer3 Employee PSY Psychological

The interpretations of the survey evidence suggested that Psychological impact and financial aspects are on the top of the list of the impact of the dismissal. Many of those interviewed responding replied that the future loss of earning is the single main impact. Immediate losses stem from earnings from the date of dismissal to the date of the hearing with a loss of other fringe benefits consisting of another 50 per cent equally.

However, when interviewers asked to choose the issue that most instigated legal action against unfair dismissal, interviewees’ responses varied. When interviewees were asked to take options, moral values spelled the number one priority with finance taking a second priority. Additionally, job opportunity was added by some interviewees.

**Question 36: Which one issue mattered the most to the employee in deciding how to peruse legal action against unfair dismissal?**

<table>
<thead>
<tr>
<th>Moral values</th>
<th>Economy/job values</th>
<th>Family values</th>
<th>Others (please specify)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

January 2013
The survey established that financial gain is the single most dominant factor among all the respondents. Family welfare, job, and economy is the second most important factor that matters the most in perusing legal action. Moral value ranks the least.

Narrative, most of the interviews mentioned one way or another important aspect of perusing a legal case, this could be summarised in English as:

- I fail a case to free my conscience from any future guilt and if I did not and to put the blame on the society for justice in front of God. Judge1
- Self degrading if I don’t file a case and seek justice. Lawyer 6
- I feel injustice done to me, and I want my rights. Claimant 6
- I feel Injustice and unfairness, the court will get my rights.

January 2013
Although employers feel that the main reason for employees peruse legal action against the company was mainly Financial gain.

Labour Law vs. Shari'a covered in question 37 – 68.

Question 37: Based on your experience, does the Oman law, in general, adequately cover the issue of unfairness in employment contracts?

<table>
<thead>
<tr>
<th>Category</th>
<th>Yes</th>
<th>No</th>
<th>Un sure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claimant</td>
<td>Claimant 6 /</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claimant</td>
<td>Claimant 7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lawyer</td>
<td>Lawyer6 /</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lawyer</td>
<td>Lawyer8,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lawyer</td>
<td>Lawyer7</td>
<td>Lawyer3</td>
<td></td>
</tr>
<tr>
<td>Employers</td>
<td>Employer1 /</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judges</td>
<td>Judge1</td>
<td>Judge 3</td>
<td>Judge2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code1</th>
<th>Code 2</th>
<th>Narrative</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claimant 7</td>
<td>Employee</td>
<td>LAW</td>
<td>KNOW</td>
<td>القانون فقط يقول صحة أو خطأ و لكن القانون لا يطبق</td>
<td></td>
</tr>
<tr>
<td>Claimant 7</td>
<td>Employee</td>
<td>LAW</td>
<td>Practice</td>
<td>العامل يخاف يشتكي و عندما يشتكي بدء الاضطهاد</td>
<td></td>
</tr>
<tr>
<td>Claimant 7</td>
<td>Employee</td>
<td>LAW</td>
<td>PSY</td>
<td>قادر على لن بحاجة لبعض التعديلات</td>
<td></td>
</tr>
<tr>
<td>Claimant 6</td>
<td>Legal</td>
<td>DEV</td>
<td></td>
<td>بحاجة لبعض التعديلات لمساعدة الموظف المفصول بتدبير موضوعه لحين البت في الموضوع.</td>
<td></td>
</tr>
<tr>
<td>Claimant 6</td>
<td>Employee</td>
<td>DEV</td>
<td>Time</td>
<td>يعطي المفصول جوازه و رخصة عمل اخري الإجراءات لا تكون طويلة بعض الموضوع في 3 أشهر</td>
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</tr>
<tr>
<td>Employer1</td>
<td>Legal</td>
<td>LAW</td>
<td></td>
<td>Very fair</td>
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</table>

January 2013
It is clear from the data that the most of those interviewed felt that the Oman law in general adequately covers the issue of unfairness in an employment contract. Only few felt that the law is not adequately able to cover the issue of unfair dismissal.

Narrative, interviewers expressed different views summarised as:
- The law guaranteed employees' rights: Judge1
- The law stated difficult rules for terminations: Lawyer7
- The law can but need some modifications. Claimant 6
- The law only can determine right or wrong, and the law is not practiced therefore, employees’ fear to approach legal. Claimant 7
- The law is incomplete and need to be developed. Judge 3

However, most of interviewees stated that the law need to be further developed.
Question 38 a: Is there Shari'a employment law, in general, adequately cover the issue of unfairness in employment contracts?

Awareness of Shari’a Employment Principles

<table>
<thead>
<tr>
<th>Category</th>
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<td>Lawyer3 / Lawyer7</td>
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38 b) Shari'a employment law is adequate to cover the issue of unfairness in employment contracts?

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<tbody>
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<td>Lawyer3 / Lawyer7</td>
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</tr>
<tr>
<td>Employers</td>
<td>Employer6</td>
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<td>Judges 1</td>
<td>Judge2/ Judge3</td>
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<th>Code 2</th>
<th>Narrative</th>
<th>Note</th>
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</thead>
<tbody>
<tr>
<td>Claimant 7</td>
<td>Justice</td>
<td>Shari’a</td>
<td></td>
<td>ما لها دخل هذه حاجات إنسانية الدولة الغربية ليس لديهم تشريع إسلامي و لكن يوجد قانون</td>
<td></td>
</tr>
<tr>
<td>Claimant 6</td>
<td>Education</td>
<td>KNOW</td>
<td></td>
<td>أنت لا تعرف ما هي معطيات الشريعة - ان الفلسطيني يعرف إذا كان في توافق بين الشريعة و القانون يكون الوضع مماثل</td>
<td>Unaware of Shari'a</td>
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<td>Employer2</td>
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</tr>
<tr>
<td>Employer3</td>
<td>Justice</td>
<td>Shari’a</td>
<td></td>
<td>For any Muslim Shari’a is adequate</td>
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</tr>
<tr>
<td>Lawyer6</td>
<td>Legal</td>
<td>LAW</td>
<td>قادر على احتواء الفصل التفصيلي للشريعة في عقود كنها، والقوانين غير محظورة على هذا. لكن الشريعة تتفق كثير من الجوانب و يمكن أن يستشف منها.</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Lawyer6</td>
<td>Education</td>
<td>Shari'a</td>
<td>غير متعلق على هذا. لكن الشريعة تتفق كثير من الجوانب و يمكن أن يستشف منها.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lawyer7</td>
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<td>Procedure</td>
<td>الشريعة قادرة في حالة وجود تفويضات شرعيه</td>
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<td>of Shari'a</td>
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<td>Lawyer8</td>
<td>Education</td>
<td>Law</td>
<td>KNOW</td>
<td>القانون الوضعي غير من الشريعة في تعاون</td>
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<tr>
<td>Lawyer8</td>
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<td>of Shari'a remedies.</td>
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<td>Lawyer3</td>
<td>Education</td>
<td>Shari'a</td>
<td>KNOW</td>
<td>لا يوجد قانون الوضعي غير من الشريعة في تعاون</td>
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<tr>
<td>Lawyer3</td>
<td>Education</td>
<td>KNOW</td>
<td>The is no Shari'a employment contract because the labour law is</td>
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</tr>
</tbody>
</table>

only a matter on implementation

Lawyer8 | Legal | Shari'a | معتقد بأن الشريعة تحتوي على كل ما يتعلق بالظلم و الإنصاف و العدالة |
<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Judge 3</td>
<td>Legal</td>
<td>Shari'a</td>
<td>أنا مش خبير - الشريعة بعيدة عن هذا الموضوع</td>
</tr>
<tr>
<td>Judge 2</td>
<td>Education</td>
<td>KNOW</td>
<td>الشريعة ليست قانون جاهزة مبادئ يستند إليها قوانين تتناسب هذه العلاقة - فيهما المبادئ ما يمكن أن يستند إلى كافئة التنظيمات للبشر يرجع للفقهاء أو المشرع</td>
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<tr>
<td>Judge 3</td>
<td>Legal</td>
<td>Shari'a</td>
<td>من الأمور الحديثة - في نفس - ضريبة تطورا لنشر</td>
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**January 2013**
An important feature of the data obtained from interviews shows a high degree of unawareness or lack of knowledge of Shari'a employment law. Narrative data such was such as was recorded:

- we do not have a Shari'a employment contract because the labour law is derived from international law. Employer1
- There is no Shari'a employment law. Lawyer3
- I am not aware but Shari'a can accommodated. Lawyer6
- Shari'a is able in case of establishing Shari'a techiness in this area. Lawyer7
- Shari'a is not a ready made bricks, there are principles driven from. Judge 2
- Some compensation are not stated in Shari'a. Lawyer8
- I am not an expert but Shari'a is far a way form this. Employer7.
- These are modern issues, and price we pay for civilisation. Judge 3.

The survey established the awareness of Shari'a Employment Principles is limited. More the half of the interviewed were unawares. Were the other half are only aware but not in grate depth.

However, minority stated that they believe that the Shari'a employment law, in general, adequate deals with the issue of unfairness in employment contracts. Comments made by interviewees are:. Others feel that Shari'a contains of all elements of justice and fairness. It is only a matter of application.

**Question 39: Is there a need to regulate contract terms which are unfair in themselves?**

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<tr>
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<tr>
<td>6 /</td>
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</tr>
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<td>Lawyer7</td>
</tr>
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<td></td>
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</tr>
<tr>
<td>Judges</td>
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<th>Code</th>
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<th>Note</th>
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</table>

January 2013
<table>
<thead>
<tr>
<th>Claimant 6</th>
<th>Legal</th>
<th>Law</th>
<th>متهم جداً لأن العامل يستطيع أن يعرف مال له وما عليه</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claimant 3</td>
<td>Legal</td>
<td>Law</td>
<td>DEV Yes, the Oman law is codified therefore it has to be set by the legislators.</td>
</tr>
<tr>
<td>Claimant 7</td>
<td>Legal</td>
<td>PRT</td>
<td>العقد غير منصف كان في صالح الشركة</td>
</tr>
<tr>
<td>Employer 1</td>
<td>Legal</td>
<td>Law</td>
<td>Unfair for employees Fairness</td>
</tr>
<tr>
<td>Employer 7</td>
<td>Legal</td>
<td>PRT</td>
<td>المحكمة قضائية بإبطال الشروط غير العادلة</td>
</tr>
<tr>
<td>Judge 1</td>
<td>Legal</td>
<td>LAW</td>
<td>هذه سلطة تدبيرية للقاضي</td>
</tr>
<tr>
<td>Judge 3</td>
<td>Legal</td>
<td>PRT</td>
<td>كل تأكيد بضع قانون كثير من قوانين العمل حقوق إذاعة إعفاء يعنى صاحب العمل يستقل حجة الموظف.</td>
</tr>
<tr>
<td>Judge 3</td>
<td>Employee</td>
<td>PRT</td>
<td>في كثير من الأحيان بقي الموظف شروط غير عادلة ما منفتح فيها.</td>
</tr>
<tr>
<td>Lawyer 6</td>
<td>Legal</td>
<td>DEV</td>
<td>لازم يكون هناك ضوابط للعقود. محامي يريد المحامي - أخوي و كتب في العقد &quot; لا تسري إحكام هذا العقد إلا بعد اعتماد من لجنة قبول المحاميين. شروط تعزى: قال له خليما بالود مش بالقانون بعض حقوق العامل بسور غير كافية ما في منافع رضيت لأنى مخبر و مقهور في مصر لا توجد مثل هذه القضايا - قانون العمل يحكم هذه الروابط</td>
</tr>
<tr>
<td>Lawyer 7</td>
<td>Legal</td>
<td>PRT</td>
<td>FAIR Refer to regulate the code</td>
</tr>
<tr>
<td>Lawyer 8</td>
<td>Legal</td>
<td>PRT</td>
<td>القانون الحاله يكشف لمواجهة هذه المشكله - يمكن بشير العامل على وجود غين في العقد.</td>
</tr>
<tr>
<td>Lawyer 3</td>
<td>Legal</td>
<td>LAW</td>
<td>يمكن أن اطرش أن يعدل فهي ليست عقود إذاع انت بند العقد اما مطابقة للقانون أو غير مطابقة</td>
</tr>
</tbody>
</table>

As shown in Table ..... more than half of the interviewers" responds indicates that there is a need to regulate contract terms which are unfair in themselves.
However, the most interesting comment made by Judge 1 was that the court is capable to defuse terms that unfair and Lawyer 3 contract terms either inline with law or not.

However, Lawyer 7 feels that the current code is capable of handing the issues.

Question 40 a: Should Omani Labour law be further regulated?

<table>
<thead>
<tr>
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Question 40 b: What do you perceive as being the disadvantages or advantages of the Omani employment code?

<table>
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<th>ID</th>
<th>Category</th>
<th>Code 1</th>
<th>Code 2</th>
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<td>Disadvantage</td>
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<td>Legal</td>
<td>KNOW</td>
<td>Cultural</td>
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</table>

Claimant 3 – Legal  DEV EDC: Bias by judges will be detrimental to the system.

Claimant 7 – Legal  Law: The rights of the employee are not protected.

Employer1 – Legal  DEV: I disagree with one clause. Employee get 30 days leave after one year, it can be interrupted for 12 months. It should be after 11 months. (law is unclear)

Employer7 – Legal  LAW  DEV: Fair protection of the rights of employees. After one year, it can be interrupted for 12 months. (law is unclear)

Judge1 – Legal  DEV: Fairness is required. Needs a reconsideration.

Judge 3 – Legal  LAW  DEV: Vague and ambiguous. The system of Article 40.

Lawyer8 – Legal  

Lawyer3 – Legal  KNOW Cultural: Fairness of the judge who leads the court. In the company, the Arab judge and the Arab.
Almost of interviewed individuals reported that Omani Labour law should be further regulated. In one interview it was mentioned that the law should be revolutionized. Where only few felt there is no need to further regulate the law.

The survey established that some agreement on advantages and disadvantages of the current law.

Advantages are:

Lawyer8, Claimant 7, and Claimant 6: The law treats both expatriates and local equally.

Employer7: Balanced employees’ and employers’ rights equally

Disadvantages are:

Judge1: New law and don’t reflect the current labour issue.

Claimant 6: Partially gives the Employee his rights. Required some flexibility, employees cannot wait long time to get his dues.

Employer7: Required some development to be in line with the development of Omani economy. Deals with both local and expatriate therefore need to accommodate both in accordance with international labour laws.

Judge 3: Some positive and other negatives such as employee’s absenteeism time is calculated Ambiguity to reach the maximum date required. Article 40 is vague.

**Q41: Is it desirable to adapt the Shari’a employment code to the Omani context?**

<table>
<thead>
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<th>Category</th>
<th>Yes</th>
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</tr>
</thead>
<tbody>
<tr>
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<td>Claimant 7</td>
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<td></td>
</tr>
<tr>
<td>Judge1</td>
<td>Legal</td>
<td>Law</td>
<td></td>
</tr>
<tr>
<td>Judge 2</td>
<td>Legal</td>
<td>Law</td>
<td></td>
</tr>
<tr>
<td>Judge 3</td>
<td>Legal</td>
<td>Law</td>
<td></td>
</tr>
<tr>
<td>Lawyer6</td>
<td>Legal</td>
<td>Law</td>
<td></td>
</tr>
<tr>
<td>Lawyer7</td>
<td>Legal</td>
<td>Law</td>
<td></td>
</tr>
<tr>
<td>Lawyer8</td>
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<tr>
<td>Lawyer2</td>
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<td>Law</td>
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</tr>
<tr>
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<td>Legal</td>
<td>law</td>
<td></td>
</tr>
<tr>
<td>Lawyer6</td>
<td>Legal</td>
<td>Law</td>
<td></td>
</tr>
</tbody>
</table>

**Note:**
- Yes: Yes if
- No: No need
Many suggested that there is no desire to adapt the Shari’a employment code to the Omani context then those who desired to. And only few of interviews felt unsure.

Narrative for those who desired NOT to adapt are:
Lawyer3: There is No Shari’a employment law.
Lawyer8: There are no articles in Shari’a similar to the present labour code.
Employer6: The subject is far a way form Shari’a.
Lawyer6: If it is for the benefit of both parties.

Narrative stated by those who desired to adapt are:
Judge1: Principle of justice
Lawyer7: Total justice.
Claimant 6: Supporting and complementing rules.
Employer4: There is a total ignorance of Shari’a.
Judge 3: Shari’a is principles that rules can be drown from.
Lawyer2: Part of the faith, employee protection, proved more disciplinary code then man made rules.

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code 1</th>
<th>Code 2</th>
<th>Narrative</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer3</td>
<td>Legal</td>
<td>DEV</td>
<td></td>
<td>طلب غير المباشر</td>
<td></td>
</tr>
<tr>
<td>Employer1</td>
<td>Employer</td>
<td>Practice</td>
<td></td>
<td>We give letter to the bank, It is workers business.</td>
<td></td>
</tr>
<tr>
<td>Claimant 6</td>
<td>Employee</td>
<td>Law</td>
<td>DVE</td>
<td>قان لازم يأخذ في عين الاعتبار فترة جلوسوه في البيت ولا استطيع ان يعمل مع شخص اخر - ضرر</td>
<td></td>
</tr>
<tr>
<td>Claimant 7</td>
<td>Employee</td>
<td>Law</td>
<td></td>
<td>لا اعتقد -</td>
<td></td>
</tr>
<tr>
<td>Employer7</td>
<td>Employer</td>
<td>Law</td>
<td></td>
<td>التخليات الحالية سليمة المذكورة في عقود العمل</td>
<td></td>
</tr>
<tr>
<td>Judge 3</td>
<td>Legal</td>
<td>DEV</td>
<td></td>
<td>القانون عالجه - نعم تعويض المعنوي غير موجود في القانون</td>
<td></td>
</tr>
</tbody>
</table>

Question 42: Should there be any other remedies in relationship to employment contracts be covered by legislation?

There is no doubt that many interviewed suggested intangible remedies to be cover in the law such us hurt of feeling and psychological effect. Where some
employee feels that there should be remedies coving the period they stay home waiting for judgment.

Question 42 b: Should employment terms, individually negotiated, be challenged on the grounds that they are unfair?

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
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<th>Code 2</th>
<th>Narrative</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer1</td>
<td>Legal</td>
<td>Law</td>
<td>Practice</td>
<td>Everybody should be given a chance to negotiate</td>
<td></td>
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<tr>
<td>Employer4</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>Standard argument apply</td>
<td></td>
</tr>
<tr>
<td>Lawyer6</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>هذا إدعاء و الإدعاء مخالف للقانون.</td>
<td></td>
</tr>
<tr>
<td>Lawyer6</td>
<td>Employee</td>
<td>Law</td>
<td></td>
<td>الحاجة تجعل الشخص يتخذ قرار، فلا بد أن يحمي القانون الشخص.</td>
<td></td>
</tr>
<tr>
<td>Lawyer7</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>رفع دعوة البطال العقود أو الشرط</td>
<td></td>
</tr>
<tr>
<td>Claimant 3</td>
<td>Employee</td>
<td>Law</td>
<td></td>
<td>يتناول على هذا الكلام في المحكمة</td>
<td></td>
</tr>
<tr>
<td>Claimant6</td>
<td>Employee</td>
<td>Law</td>
<td>Practice</td>
<td>كان من المفترض تحويل النص إلى خبير لغة وليس لخبر حسابات.</td>
<td></td>
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<tr>
<td>Claimant6</td>
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<td>Law</td>
<td>DEV</td>
<td>في حالة تكتب الشركة عقود مبدئ تأخذ عليه غرر.</td>
<td></td>
</tr>
<tr>
<td>Claimant6</td>
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<td>Law</td>
<td>Practice</td>
<td>يجب تحويل النص لما فيه مصلحة العامل</td>
<td></td>
</tr>
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<td>Claimant7</td>
<td>Employee</td>
<td>PSY</td>
<td>Practice</td>
<td>مالك حق تنافش تقبل أو ترفض ما لك حق</td>
<td></td>
</tr>
<tr>
<td>Employer7</td>
<td>Employer</td>
<td>Practice</td>
<td>law</td>
<td>أرسل العقود لتصديقه من دائرة العمل</td>
<td></td>
</tr>
<tr>
<td>Judge1</td>
<td>Legal</td>
<td>Practice</td>
<td></td>
<td>المحكمة قادرة على إبطال الشرط</td>
<td></td>
</tr>
<tr>
<td>Judge 3</td>
<td>Legal</td>
<td>Practice</td>
<td></td>
<td>القضاة لا يتدخل في نزاع غير معرض</td>
<td></td>
</tr>
</tbody>
</table>

It is clear from the data that there is three different views on this subject:

Lawyer6: this is coercion, and it is not legal. The need makes employees accepting any terms.

Lawyer7: unfair conditions can be challenged in the court and employee can file a counter court case to repeal the condition.

Claimant 6: the statement should be referred to language export to determine the employer commitment not to financial expert. And the condition statement should be taken in favorite of employee.
Employer7: send contract to ministry of labour for approval.
Claimant 7: you don’t have the right to negotiate, take it or leave it.
Judge 3: legal system should not look at the dispute not filed to court,
Judge1: But responded to Q39 that the court is able to suspend any unfair condition.

Question 43: Should a Work or Time be the main subject matter in a Shari'a employment contract be included in or excluded from coverage of unfair-terms regulation?.

Please give reasons if they should be excluded what limits, if any?

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code 1</th>
<th>Code 2</th>
<th>Narrative</th>
<th>Note</th>
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</thead>
<tbody>
<tr>
<td>Claimant 6</td>
<td>Legal</td>
<td></td>
<td></td>
<td>ما في تعارض إذا كان هذا من مصلحة العامل</td>
<td>If for the benefit of employee</td>
</tr>
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<td>Law</td>
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<td>Included</td>
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<tr>
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<td>Employer</td>
<td>Law</td>
<td></td>
<td>Excluded</td>
<td></td>
</tr>
<tr>
<td>Employer7</td>
<td>Legal</td>
<td>law</td>
<td></td>
<td>هو مضمون في القانون الحالي</td>
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<td>Judge 2</td>
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<td>law</td>
<td></td>
<td>عبارة عن مبادئ – العقود التي تنفذ قيمة هذه العلاقة</td>
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<td>Legal</td>
<td>law</td>
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<td>نفس الشيء حني قانون العمل – في مادة تصف نوع العمل</td>
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<td>Lawyer7</td>
<td>Legal</td>
<td>Law</td>
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<td>موجود في عقد العمل</td>
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<td>Employee</td>
<td>Law</td>
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<td>لا : أفضل للمواطن أن يكون محدد المدة</td>
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<td>Lawyer3</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>الوضع الراهن هو الأمثل</td>
<td>Comfort Zone</td>
</tr>
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</table>

The results of this survey suggest that Work or Time be the main subject matter in a Shari'a employment contract be excluded from coverage of unfair-terms regulation.
Narrative the respondend recorded were:
- Lawyer3: Current situation is Ideal.
- Lawyer8: No, it is better for local that be on fixed terms contract.
- Lawyer7: It is already exist in the labour law.
- Claimant 6: No conflict if it is to the advantage of the employee and both parties have agreed to.
- Judge 2: These are principles and the contracts governed this relationship.
Question 44: Should there be other remedies available, such as compensation, restitution damages?

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<tr>
<td>Employer6 / Employer7 / Employer8</td>
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<td>Employer3 / Employer5</td>
<td></td>
<td></td>
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</tr>
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<td>Employer2 / Employer4</td>
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</tr>
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<th>Code 2</th>
<th>Narrative</th>
<th>Note</th>
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<td>Law</td>
<td>Remedies</td>
<td>Yes, as this would be a deterrent to employers</td>
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<tr>
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<td>Law</td>
<td>Remedies</td>
<td></td>
<td></td>
</tr>
<tr>
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<td>Legal</td>
<td>DEV</td>
<td>remedies</td>
<td>إعداد شروط لتطوير المستقبل ومساعدة العمال الذين يتغطى بيه السبيل و يسرّ العامل حتى صدور الحكم.</td>
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<td>Claimant 6</td>
<td>Legal</td>
<td>DEV</td>
<td>remedies</td>
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</tr>
<tr>
<td>Claimant 7</td>
<td>Employee</td>
<td>PSY</td>
<td>Remedies</td>
<td>الفترة التي أنا جايلها لجنه سنة لا بد أن أعرض عليها</td>
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</tr>
<tr>
<td>Claimant 7</td>
<td>Employee</td>
<td>Finance</td>
<td>Remedies</td>
<td>مفروض الراتب يمشى حتى تنتهي القضية</td>
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<tr>
<td>Claimant 7</td>
<td>Employee</td>
<td>Finance</td>
<td>DEV</td>
<td>ولازم الراتب يمشى حتى لجنه قضية المنازعة العامية تأمر براتب الموظف حتى الفصل في الحكم.</td>
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</tr>
<tr>
<td>Employer1</td>
<td>Legal</td>
<td>law</td>
<td>remedies</td>
<td>I think anyone can approach labour law. It is open</td>
<td></td>
</tr>
<tr>
<td>Employer</td>
<td>Legal</td>
<td>Law</td>
<td>Remedies</td>
<td>Yes, reputation, and fair compensation</td>
<td></td>
</tr>
<tr>
<td>----------</td>
<td>--------</td>
<td>-----</td>
<td>----------</td>
<td>----------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Employer3</td>
<td>Remedies</td>
<td>Yes, Interest</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employer4</td>
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<td>law</td>
<td>Remedies</td>
<td>صعب إثباتها قانونا - التعويضات لا تتجاوز مدة معينة بعد أقصى ستة أشهر</td>
<td></td>
</tr>
<tr>
<td>Employer6</td>
<td>Remedies</td>
<td>Yes, 20 years of service – should not be taken away. Not to stop facilities.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Counsel**

Fails to care for obligations and to continue.

**Judge 1**

Legal | Law | Remedies |
|------|-----|----------|

الضرر إليها (نص قانوني - أنا تيتم للمحكمة وجود ضرر على العامل يقدر بقدر.

**Judge 2**

Legal | Law | Remedies |
|------|-----|----------|

التعويضات تبنى على أسس المطالبات

**Judge 2**

Legal | Law | Remedies |
|------|-----|----------|

التعويضات تبنى على أسس المطالبات

**Judge 3**

Legal | Law | Remedies |
|------|-----|----------|

التوعيض المعنوي

عمر بن الخطاب لا يرى في التعويض المعنوي

**Lawyer 1**

Legal | Law | Remedies |
|------|-----|----------|

توعيض معنوي - أربي - الأزمة - تكريسي

الأنباء تقوي فرصته قيمة

**Lawyer 2**

Legal | DEV | Law |
|------|-----|-----|

ضمان اجتماعي خاص بالنسبة للذين قضوا فترة طويلة في الخدمة - معاش اجتماعي من الشركة

**Lawyer 3**

Remedies |
|----------|

ضرر غير المباشر

**Lawyer 4**

Remedies |
|----------|

يمكن يكون تعويض يلزم صاحب العمل في فترة التي تنظر المحكمة في القضية وسرعة الرابط الأساسي وجزء من المبلغ

**Lawyer 6**

Legal | law | remedies |
|------|-----|----------|

تعويض العمل عن الفصل: مادية نفسها و معنوية. شرط تعويضات تلامع كل ظرف.

**Lawyer 7**

Legal | law | remedies |
|------|-----|----------|

توعيض معنوية - سمعة العمل - إظهاره أمام أهل وأولاده بأنه مقصر

January 2013
The evidence of the survey suggested that most of the interviewee responded positively that there should be other remedies available for employees. Narrative, responds were:

Claimant 6: *Compensation from employers, develop a future fund to help employees waiting for their case to finished. And Employer with record of terminating employees should not be give employment work permit.*

Claimant 6: *Compensation for the period while stay at home waiting for judgment.*

Employer2: *Reputation damage compensation. Intangible remedies, such as hurt of feeling.*

Lawyer7 Lawyer6, Lawyer 1: *Incorporeal, incorporeity or morale compensation*

Lawyer4: *Compensation obligate employer to pay basic salary while case in court.*

Lawyer2: *Employer pays Social insurance for employee serve long time.*

**Question 45: a) The present legislation protects employees**

<table>
<thead>
<tr>
<th>Category</th>
<th>Agree</th>
<th>Disagree</th>
<th>Unsure</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Claimant</strong></td>
<td>Claimant 1/</td>
<td>Claimant 3</td>
<td></td>
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<tr>
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<td>Claimant 7</td>
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<td>Lawyer3 / Lawyer5/Lawyer4</td>
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<td><strong>Lawyer</strong></td>
<td>Lawyer8/ Lawyer 1</td>
<td>Lawyer3/ Lawyer2</td>
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<td>Employer8/</td>
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<td>EMPLOYER1 /</td>
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<td></td>
<td>/Employer3</td>
<td>Employer7 /</td>
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<td>Employer5 /</td>
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<td><strong>Employers</strong></td>
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<td>Employer1</td>
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<td><strong>Judges</strong></td>
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<td><strong>Total</strong></td>
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</tbody>
</table>
The majority of the respondents said that there is no consensus on the present legislation regarding more protects employees. However, data indicates that there are more who believes that the present legislation do proved more protect to employees then those who believe it does don’t. Only minority are not sure.

**Question 45: b) The present legislation protects employers.**

<table>
<thead>
<tr>
<th>Category</th>
<th>Agree</th>
<th>Disagree</th>
<th>Unsure</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Claimant</strong></td>
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<tr>
<td><strong>Lawyer</strong></td>
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<td><strong>Employers</strong></td>
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</tr>
</tbody>
</table>

The data indicates that there are more who believes that the present legislation do proved more protect to employees then those who believe it does don’t. Only minority are not sure.

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**Question 45: b) The present legislation protects employers.**

<table>
<thead>
<tr>
<th>Category</th>
<th>Agree</th>
<th>Disagree</th>
<th>Unsure</th>
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</thead>
<tbody>
<tr>
<td><strong>Claimant</strong></td>
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<tr>
<td><strong>Employers</strong></td>
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<td><strong>Judges</strong></td>
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</tr>
</tbody>
</table>

The data indicates that there are more who believes that the present legislation do proved more protect to employees then those who believe it does don’t. Only minority are not sure.

The majority of the respondents said that the there is no consensus on the present legislation regarding more protects employees. However, data indicates that there are more who believes that the present legislation do proved more protect to employees then those who believe it does don’t. Only minority are not sure.

**Question 45: b) The present legislation protects employers.**

<table>
<thead>
<tr>
<th>Category</th>
<th>Agree</th>
<th>Disagree</th>
<th>Unsure</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Claimant</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Lawyer</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Employers</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Judges</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The data indicates that there are more who believes that the present legislation do proved more protect to employees then those who believe it does don’t. Only minority are not sure.
Question 46: What do you see as the main drawbacks of the current labour law in relationship to unfair-dismissal legislation?

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code 1</th>
<th>Code 2</th>
<th>Narrative</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claimant 6</td>
<td>Legal</td>
<td>law</td>
<td></td>
<td>لا يلزم يكون فضاء مستقل حاسم سريع لا يتخطى شهرين كتقلع في السبيل</td>
<td></td>
</tr>
<tr>
<td>Claimant 7</td>
<td>Legal</td>
<td>practice Law</td>
<td></td>
<td>Advantage في التطبيق كالإجراءات و المساواة بين العمال والوافق</td>
<td></td>
</tr>
<tr>
<td>Employer1</td>
<td>Employee</td>
<td>PSY EDU</td>
<td></td>
<td>People are scared to approach labour court Education / Awareness</td>
<td></td>
</tr>
<tr>
<td>Employer4</td>
<td>Employer</td>
<td>Law Social</td>
<td></td>
<td>لا يمكن أن أعطي حق مطلق للحكومة Government</td>
<td></td>
</tr>
<tr>
<td>Employer1</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>One clause in the labour I don’t agree. Employee gets 30 days after on year. You cannot interrupt</td>
<td></td>
</tr>
</tbody>
</table>

The opposite question was is the present legislation protects employers. It is clear from the data that in this question there are more have a consensus that the present legislation protects employers then those who disagree. Evidence from the survey indicates that few feel that the present legislate is in both side. However, it protect the employees more as been the weak party in this equation.
work for 12 months and get 30
days or after 11 months he should
get 30 days leave. They don’t
agree and want after completion
of 12 months.

Employer7 Legal DEV

Jeff 3 Employee

Judge 3 Legal DEV

lawyer 3 Legal DEV

lawyer 6 Employer Law

lawyer 6 Legal DEV

lawyer 6 Legal Law

lawyer 3 Legal Law DEV

lawyer 3 Legal Law Employee

lawyer 3 Legal Law

lawyer 3 Legal Law Employer

End of
The survey results suggest the following main drawbacks of the current labour law in relationship to unfair-dismissal legislation:

Lawyer3 responded: Article 40 is not practice and you cannot prove any item on it. Immigration law article 11 is changing due to international trade agreement. Employee’s rights in the law are weak. The law provides unfair compensation to employee who is court made a verdict of being innocent after 3 years. This harms the company to pay him back all 3 years salary. End of service benefits is not practical.

Employer1: Disagreed with the interpretation of the law on annual leave to be given only after one continues employment with the company for one year. He feels this is not justice to employees.

Lawyer7: the present law ties the employees with employer forever based on sponsorship relationship. It should be look favorably to the employee.

Claimant 6: The legal system should be independent, quick and firm don’t exceed few months.

Employer7: the law must be revisit and made not to the advantage of the employee.

Question 47: What would you like to see proposed to legislators to benefit employment not contained in current legislation?
<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code 1</th>
<th>Code 2</th>
<th>Narrative</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer1 Employee</td>
<td>Law</td>
<td></td>
<td></td>
<td>The change in the law that employee cannot come back to country because he is ban for 6 months. <em>Bahwan issues visa to for employees to abstract them coming back to the country.</em></td>
<td>Disadvanta</td>
</tr>
<tr>
<td>Employer1 Employee</td>
<td>Practice</td>
<td>Law</td>
<td></td>
<td>Some companies in Oman hold 3 months salary to force them back after leave.</td>
<td></td>
</tr>
<tr>
<td>Employer1 Employee</td>
<td>Practice</td>
<td></td>
<td></td>
<td>Passport is the property of individual and should no be held by Employer.</td>
<td></td>
</tr>
<tr>
<td>Employer1 Employee</td>
<td>Practice</td>
<td></td>
<td></td>
<td>Additional allowance for employee severing outside local station.</td>
<td></td>
</tr>
<tr>
<td>Employer5 Legal</td>
<td>Law</td>
<td></td>
<td>DEV</td>
<td>إجازة الولادة جزء من الإجازة المرضية</td>
<td></td>
</tr>
<tr>
<td>Employer6 Legal</td>
<td>Law</td>
<td></td>
<td></td>
<td>إيجاد شرح للقانون ومن المواد التي تحتوي عليه بشكل لا يعطي مجال للتأويل</td>
<td></td>
</tr>
<tr>
<td>Employer6 Legal</td>
<td>Law</td>
<td></td>
<td></td>
<td>تفسير نصوص - ما لا يجعل مجال للشك</td>
<td></td>
</tr>
<tr>
<td>Lawyer6 Employer</td>
<td>DEV</td>
<td></td>
<td></td>
<td>بنود يستغلها رب العمل إذا حصلت مشاغبه في العمل ففصل لازم في تحقيق عن طريق دائرة العمل و يؤخذ برئ مكتب العمل.</td>
<td></td>
</tr>
<tr>
<td>Lawyer6 Legal</td>
<td>Law</td>
<td></td>
<td></td>
<td>نظر القانون قبل سنتين - بإن الشخص الذي يريد تحويل مكتب آخر ويتعي عم ممانعة - فيما كان سابقا يجب ان يسافر و يبقى خارج السلطة بعد سنتين</td>
<td>Advantage</td>
</tr>
<tr>
<td>Lawyer7 Legal</td>
<td>Law</td>
<td></td>
<td></td>
<td>الإجراءات تسد هذا الأجراءقانون العمل الحالي يعطي إنهاء العقد خلال شهر</td>
<td></td>
</tr>
<tr>
<td>Claimant 7 Legal</td>
<td>Law</td>
<td></td>
<td></td>
<td>المغفروض مراعاة مصلحة العامل في الفصل من عمله من الشركة عدم ممانعة للعمل ومنحة جواز السفر</td>
<td></td>
</tr>
</tbody>
</table>
The responses from many suggest what would be seen to be proposed to legislators to benefit employment not contained in current legislation are:

Employer1: *employee cannot come back to country because he is band for 6 months. Some companies hold employee 3 months salary to force them coming back.*

Lawyer6: *labour department should be involved directly in case of termination.*

Claimant 6: *employee should be given his passport and allowed to travel.*

Employer7: *Unfair dismissal is a concept introduced by legislator that has been abused.*

Judge 3: *introduce articles to proved intangible compensation, established committees overseen law implementation.*

Employer3: *proved a clear interpretation to the code articles beyond any doubts.*

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code 1</th>
<th>Code 2</th>
<th>Narrative</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer8</td>
<td>Social</td>
<td>Procedure</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lawyer7</td>
<td>Legal</td>
<td>Law</td>
<td>Dev</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Question 54: What would you like to see to resolve the problem of unfair dismissal?**
Question 55: What was the main judgment THEM?

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code 1</th>
<th>Code 2</th>
<th>Narrative</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer6</td>
<td>Employer</td>
<td>Finance</td>
<td></td>
<td>جيدة بدأ الشركات تستوعب الفصل التصفي و Not true</td>
<td>في نقصان العدد statically</td>
</tr>
<tr>
<td>Lawyer8</td>
<td>Employer</td>
<td>Education</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lawyer8</td>
<td>legal</td>
<td>Law</td>
<td></td>
<td>جيدة و دائما المحاكم في طرف العامل</td>
<td></td>
</tr>
<tr>
<td>Lawyer7</td>
<td>Employer</td>
<td>MGC</td>
<td></td>
<td>مطالبة مستحقات</td>
<td></td>
</tr>
<tr>
<td>Lawyer7</td>
<td>Employer</td>
<td>Practice</td>
<td></td>
<td>ظاهرة التمييز</td>
<td></td>
</tr>
<tr>
<td>Lawyer7</td>
<td>Employer</td>
<td>MGC</td>
<td></td>
<td>باطليا خلافات شخصية.</td>
<td></td>
</tr>
<tr>
<td>Lawyer5</td>
<td>Employee</td>
<td></td>
<td></td>
<td>لا يجب للشركة أن تفصل العامل أو الموظف الا</td>
<td></td>
</tr>
<tr>
<td>Lawyer2</td>
<td>Legal</td>
<td>law</td>
<td>Practice</td>
<td>بوجود القانون</td>
<td></td>
</tr>
<tr>
<td>Lawyer4</td>
<td>Employee</td>
<td>Law</td>
<td></td>
<td>العامل ضيف و يحتاج لحماية</td>
<td></td>
</tr>
<tr>
<td>Lawyer1</td>
<td>Legal</td>
<td>DEV</td>
<td></td>
<td>جيدة تلامس الواقع لحد كبير و لكن لست</td>
<td>بالأهداف المرجوة</td>
</tr>
</tbody>
</table>

Few suggestions were made from the responses to improve the unfair dismissal code.

Lawyer8: *when decision is on had of Omani management, it will have an effect on the system.* (Bias comment)

Lawyer7: *Improve the role of Labour Department.*

Lawyer6: *when employee is terminated, he should be given no objection transfer letter.*
Many of the responses of this survey suggest that the main judgment THEM is:

Lawyer6: employees do not get fair compensation equal to the termination decision.

Lawyer8: Good the companies start to realize the unfair dismissal. Good the court is to the side of employees.

Lawyer7: most of the cases is employee claim for entitlements. It seems that Omanization is the case, but most of the times personal clash with management.

Lawyer5: Employee is the one how has the right.

Lawyer2: Employer should not terminate only within the law.

Lawyer4: employee is weak and need protection.

**Question 57: What are the main reasons for employee dismissal? P. 11**

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code 1</th>
<th>Code 2</th>
<th>Narrative</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer1 Employee Practice Law</td>
<td>Refusing new assignment, breaking instructions, absenteeism, criminal acts verdicts, medically unfit for the job, captain, crew, disobeying rules and regulations.</td>
<td>Fair dismissal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employer1 Employee Practice law</td>
<td>Punctuality, bad output , fighting, liqueur</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employer2 Employee Practice law</td>
<td>Performance, customer services, liability to the company, company reputation (English employee fired) Medically unfit for the job, captain, crew, disobeying rules and regulations. ( GF)</td>
<td>Performance Recruitment suitability</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employer3 Employee Practice law</td>
<td>Performance, customer services, liability to the company, company reputation ( English employee fired)</td>
<td>Fair dismissal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employer4 Employee Practice Law</td>
<td>Disobeying rules and regulation, Fighting, Breaking instructions, Tardiness</td>
<td>Fair dismissal</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The open-ended question on what are the main reasons for employees' dismissal addressed to different group generated a response could be summarised in the following reasons:

- **Lawyer2**
  - **Employer**
  - **Practice**
  - **Law**
  - Performance, culture, 5 (3 fighting, did not work and did not listen to the supervisor. One 30 days' absent, and one was smoking in a dangerous area, security).

- **Lawyer6**
  - **Management**
  - **Law**
  - Management conceit
  - Trivial mistakes and more personal issues rather than administration and company's affairs.

- **Lawyer8**
  - **Employee**
  - **Practice**
  - **Law**
  - Performance, Culture, 5 (3 frightening, did not work and did not listen to the supervisor. Performance Recruitment suitability)

- **Employer 8**
  - **Employee**
  - **Practice**
  - **Law**
  - Performance
  - One 30 days absent, and one was smoking in a dangers area, security.

- **Lawyer6**
  - **Management**
  - **Law**
  - Management conceit
  - Trivial mistakes and more personal issues rather than administration and company's affairs.

- **Lawyer7**
  - **Management**
  - **Law**
  - Management conceit
  - Personal issues / disagreement with manager

- **Lawyer8**
  - **Employee**
  - **Practice**
  - **Law**
  - Performance
  - Recruitment suitability

- **Lawyer2**
  - **Employer**
  - **Practice**
  - **Law**
  - Management Change
Employer1: Refusing new assignment, breaking instructions, absenteeism, criminal acts verdicts, medically unfit for the job, captain, crew, disobeying rules and regulations.

Employer3: Performance, customer services, liability to the company, company reputation (English employee fired)

Lawyer7: Personal issues / disagreement with manager, trivial mistakes and more personal issues rather then administration and company's affairs

Lawyer8: unsuitability of the employee, absenteeism and output.

Employer7: Strike, Demonstration, and encourage others to distractive behavior. Performance and laziness.

- Employer2: Performance, customer services, liability to the company, company reputation (English employee fired). Medically unfit for the job, captain, crew, disobeying rules and regulations. (GF)

- Employer8: Performance, Culture, 5 (3 frightening, did not work and did not listen to the supervisor. One 30 days absent, and one was smoking in a dangers area, security)

- Employer4: Disobeying rules and regulation, Fighting, Breaking instructions, Tardiness

- Lawyer8: Trivial mistakes and more personal issues rather then administration and company's affairs

Question 61: What was the impact of the dismissal on the company?

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code 1</th>
<th>Code 2</th>
<th>Narrative</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer1</td>
<td>Employer</td>
<td>PSY</td>
<td>Finance</td>
<td>My staff liked it. Cost of troubles eliminated.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Financial cost of labour card renewal.</td>
<td></td>
</tr>
<tr>
<td>Employer2</td>
<td>Employer</td>
<td>PSY</td>
<td>Social</td>
<td>Staffing, moral, loyalty,</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Moral, loyalty staffing</td>
<td></td>
</tr>
<tr>
<td>Employer3</td>
<td>Employer</td>
<td>Time</td>
<td>Time lost</td>
<td>Staffing</td>
<td></td>
</tr>
<tr>
<td>Employer5</td>
<td>Employer</td>
<td>PSY</td>
<td>Practice</td>
<td>تحسنت سمعة الشركة انضباط أكثر التزام</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>بالسلطة و الأمن في الشركة</td>
<td></td>
</tr>
<tr>
<td>Lawyer1</td>
<td>Employer</td>
<td>PSY</td>
<td>Law</td>
<td>تحسنت من قانونية للحصول على مكاسب</td>
<td>Reputation</td>
</tr>
<tr>
<td>Lawyer3</td>
<td>Employer</td>
<td>PSY</td>
<td>Finance</td>
<td>Financial, Time lost, Reputation</td>
<td>Reputation</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Damage</td>
<td>Damage</td>
</tr>
</tbody>
</table>

January 2013
Many of the responses suggest that there are few impacts on company when dismissing any employee. The impacts reported are:

- **Employer1**: reported: *My staff liked it. Cost of troubles eliminated. Financial cost of labour card renewal.*
- **Employer2**: *Staffing, moral, loyalty,*
- **Employer3**: *Time lost*
- **Employer5**: *Company reparation improved and restoration of order and discipline.*
- **Lawyer 1**: *Company reputation*
- **Lawyer3**: *Financial, Time lost, Reputation Damage*
- **Lawyer5**: *Reputation Damage, Financial.*
- **Lawyer6**: *Finance and staffing*
- **Lawyer8**: *compensation financial obligation and Staff moral.*
- **Employer7**: *Staff motivation and reduced troubles*
- **Judge 3**: *Negative effect on productivity, work flow, Economical, social and Family*

Most of the interviewees agreed on few dominators of the impacted of dismissal on employer. The monetary impact are Financial cost being the first and time lost been second. The financial cost include of labour card renewal and cost of new recruitment.

Non monetary impact is the second impact and covered Psychological impact on work force that, company reputation, staff moral and loyalty.

January 2013
**Question 62: How does article 40 of the Oman labour law affect staffing process?**

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code 1</th>
<th>Code 1</th>
<th>Narrative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer1</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>No Effect</td>
</tr>
<tr>
<td>Claimant 3</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>Since my legal case Article 40 has been amended to the detriment of employee. This shows a complete bias toward the employer.</td>
</tr>
<tr>
<td>Lawyer 1</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>Fair</td>
</tr>
<tr>
<td>Lawyer 2</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>تأثر</td>
</tr>
<tr>
<td>Lawyer 3</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>المادة 40 عبث لا يمكن إلقاء الأبن الغيب.</td>
</tr>
<tr>
<td>Lawyer 4</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>ضرب المدير و إهانة الموظف يكمن الفصل.</td>
</tr>
<tr>
<td>Lawyer 5</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>Before termination they look at article 40, you can discuss the contract on other bases</td>
</tr>
<tr>
<td>Lawyer 6</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>ياخدوا محافز و يدقوا في التوظيف ما في تأثير</td>
</tr>
<tr>
<td>Lawyer 7</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>لا تأثر تعويض المدة مباعة للشركات</td>
</tr>
<tr>
<td>Lawyer 8</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>لا تأثر في التوظيف</td>
</tr>
<tr>
<td>Judge 2</td>
<td>Legal</td>
<td>Law</td>
<td></td>
<td>لا تحد من التوظيف لا تستطيع الفعل ناتج عن العلاقة التعاقدية بين الطرفين</td>
</tr>
</tbody>
</table>

Employer1: No
Question 64: Do you have any additional comments, concerns or suggestions regarding unfair-dismissal provisions?

<table>
<thead>
<tr>
<th>ID</th>
<th>Category</th>
<th>Code 1</th>
<th>Code 2</th>
<th>Narrative</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer1</td>
<td></td>
<td></td>
<td></td>
<td>Strongly suggest expatriates</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>accommodation to be improved,</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>improve housing conditions, no</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>inspection for ministry of Labour,</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>better living conditions.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2 years contract.</td>
<td></td>
</tr>
</tbody>
</table>

The majority the responses believe that article 40 has a negative effect on staffing and interviewed.
Chinese embassy came and inspect my worker accommodation, to check if the living conditions are correct,

The law says that the company is not obliged to pay accommodation. The contrast say that the employee should be ready to work any place, Nizwa, Sur, or Salala. How can they come to cite? company should be

Labour law say that log in time is 7.30 if the are not in by that time they have to go back home> (check the article)

I suggest that a provision in labour law to be made for additional living allowance for those who sever, outside local station.

Judge1

القانون الزمنية طويلة جدا حتى الحكم

النهائي - على العامل أن يخبر في إعطاءه جوازه أو في فرضه عمل نقل كفالة في حالة إنهاء العمل من ناحية الشركة يعطي نقل كفالة فترة زمنية قصيرة

Claimant 6

عمر الأعتراف الصحي بالإلغاء أو هيئة

الشرعية في التشريعات المستقبلية.

Interpretation of Article 2 of the legislation: The article does not automatically cancel all previous legislations; however, Shari'a dominates all future legislations.
Judge 2

The UK & European legislation seems to be far better and the Omani judiciary should consider adoption of the through and codification process.

Claimant 6 stated:

Target

Sسبب الخلاف مطلبة بالمستحقات - سبب الفصل تحايل وضع هدف تعويزي مبلغ 12000 ريال، وعندما حلقATIONS قال الإدارة نريد نوديك البحرين حتى نغير العقد، أعطت رسالة سري وخاص في العقد كان فيه مكافحة بيع=
'Judge 2

The UK & European legislation seems to be far better and the Omani judiciary should consider adoption of the through and codification process.

Claimant 6 stated:

Target

Sسبب الخلاف مطلبة بالمستحقات - سبب الفصل تحايل وضع هدف تعويزي مبلغ 12000 ريال، وعندما حلقATIONS قال الإدارة نريد نوديك البحرين حتى نغير العقد، أعطت رسالة سري وخاص في العقد كان فيه مكافحة بيع
Claimant 7 Stated

كنت اعمل في المطار - استلمت اتصال لمقابلة المدير و أعطيت رسالة إنهاء خدمة
أسباب - ما أعطيت إجازة سنين - معامله وحشية من مدير عربي
تاريخ الفصل من عندما استلمت الرسالة مباشرة.

Discussion of article 40 of the Oman Labour Law
The discussion of this article takes two approaches in line with the survey’s results and in comparison to the Shari’a termination of employment code.
First, let us discuss the outcome of article 40 based on survey results.

Discussion of article 40 of the Oman Labour Law

Employer6 كلها مبهمة لا يمكن إثباتها ما عدى المادة 4

Lawyer3 المادة 40 عيب لا يمكن إثبات إلا بند الغياب ضرب المدير و اهانة الموظف يكمن الفصل

Claimant 3: Since my case, article 40 has been amended to the detriment of the employee. This shows a complete bias toward the employer.

Lawyer4 Before termination, they looked at article 40. You can discuss the contract on another basis

Judge 3 جوانب إيجابية ولا تخلو من السلبيات

مثلاً فترة غياب الموظف المتواصلة أو المتقطعة قصيرة جدا. و يترتب على وصول الحد الأدنى لهذه المدة فصل الموظف - عامة.

تسبب في خسائر جسيمة

بعض الشروط إذا كانت تختلف النظام العام تتصدى لها المحكمة

Lawyer3 Article 40 is not practical

المادة 40 غير عملية

لا يمكن إثبات أي من المادة ما عدى مادة الغياب

Cannot prove any of the provisions

Additional points made by interviewers

<table>
<thead>
<tr>
<th>البطاقة الزمنية طويلة جدا حتى الحكم النهائي - على العامل ان يخبر في إعطاء جوازه او في فرضه</th>
</tr>
</thead>
<tbody>
<tr>
<td>عملاً نقل كفالة في حالة إنهاء العمال من ناحية الشركة يعني نقل كفالة فترة زمنية قصيرة</td>
</tr>
<tr>
<td>تأخذ 5% من الشركات وتوضع في صندوق تنحية للعمال الذين تم فصلهم في فترة مقطوعة. و توضع لتطوير قانون العمل و مساعدته المفصليين لحين البت في قضيتهم.</td>
</tr>
</tbody>
</table>
القانون غير كافٍ ولا يغطي كل شيء وهو سبب المشكلة

نري بأن العامل لا يرفع الدعوة إلا عن طريق القوى العاملة و تكون ملزمة مم يساعد على

تأخير في الفصل في الدعوة.
Appendix 6 Unfair dismissal interview questionnaire Sample

January 2013