# The Impact of Mix-Jurisdiction in Sudanese Civil Law

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## Abstract

The Sudanese civil code is distinguished by a character that could not be seen in any legislation in the Arab world. The Sudanese legislator experienced different schools of legislation including Latin, Anglo-Saxon jurisprudence and some of the Islamic Sharia rules. This has given rise to a wide-range argument over such experiences on the judicial application.

No doubt such different experiences in the schools of law were imposed by the composition of the Sudanese state from this historic point of view. So, in this study we would explore the impacts of the Sudanese legislator's transitions from the Anglo-Saxon to the unified Arabian Legal System, whose provisions are drawn from the French Civil Law, it is also aims to highlight the advantages and disadvantages of such transition and the justifications for the change of the legal system and its impact on the judicial judgments.

Through this study, which addresses the principles of the Supreme Court judgments, we realized that the transition to the Latin Laws entailed certain shortcomings, because it was only partial and supplemented by judicial precedence's which are not in conflict with the Islamic Sharia. The study came up with numbers of recommendations in this respect.

**Keywords:** Schools of legislation, Sudanese civil Law, English System, Unified Arab Legislation, Latin jurisprudence, Islamic Sharia Rules, Anglo-Saxon jurisprudence.

## Introduction

This article examines the Sudanese Civil Law Evaluation; it highlights the various stages the Sudanese legal system has gone through. It is the aim of this paper to prove that the Sudanese legal system is actually a mix-jurisdiction.

It is a common fact that Sudanese Civil Law is primarily influenced by Sharia (Islamic Law). However, external factors such as the direct influence of English law had altered the scope and orientation of law makers in Sudan.

Since the year 1900, the Common Law had been the dominant law in the country with the Sudanese Civil Ordinance a point of fact and proof to that effect.

It was hardly uncommon, therefore, to see Sudanese judges wearing wigs and hearing them citing Lord Denning or Wilberforce(1).

By the end of 1956, it was highly anticipated the Common Law system would diminish, but law makers to the surprise of many remain loyal to their legal system up to the year 1970.

It was that year; the Egyptian Civil Law had become an ultimate source for the Sudanese legal system. Gradually, lawmakers as well as practitioners (lawyers & judges) began to literary adopt the legal writings and opinions of Egyptian jurists such as Dr. Abdularazaq AL-Sanhory. It was also during that time that Latin principles were incorporated into the Civil Law.

In 1983, Sudanese law makers had rather abruptly decided to revert to the Islamic Law and thus to do away with the Common Law & Latin Principles. Although it appears that the Sudanese legal system is heading towards total "Arabization", however, as legal records shows that there is an unmistakable trait among Sudanese lawmakers to adopt the old system of English law. Consequently, one can easily argue that the Sudanese legal system is intrinsically a mix jurisdiction.

This study used the historical, descriptive and analytical methodology, focused on the problem of whether the Sudanese legislation better to leave the Anglo-Saxon system or to be mix system as it is now?

(1) Lord Denning and Wilberforce were prominent English judges.

**Part one: An Overview of the Sudanese judicial system**

It is established that the Sudanese Civil Law in enforcement is the Civil Transaction Code of the Year 1984. It included five main sources of obligation as prevalent in the recent order of sources, adopted in the modern codification, such as the Germa((2). Swiss, new Italian and Egyptian codification. It contained the contract, Sole intention, illegal acts and unlawful enrichment in Articles (23 to 77). The law also contained the provisions of the contracts mentioned in Articles (178 to 505). It also included the provisions, restrictions and reasons for gaining the ownership, in the Articles (516 to 819).

The judiciary in Sudan consists of two stages of litigation Courts of First instance and Court of appeal. Civil Procedures Code of 1983 specified the jurisdiction of each one, noting that the vast area of Sudan among the Arab and African Regions, required an independent judicial system in each of the Sudanese provinces (states now), and headed by the president of the court of appeal, who shall have no less than 25 years of services in judiciary. The judicial System in each state consists of court of appeal, common courts, summary courts and justice councils.

The most important jurisdictions of the Court of Appeal are to hear the challenges of the judgments rendered by courts of first instance, where the dispute ends. If it appeared that the judgment is defective, it shall be referred to the Supreme Court, not as a third degree of litigation but as a Court of Law(3).

According to our view, Sudan is one of the Arab countries which adopted Islamic Sharia as a source of its law, similarly like the Kingdom of Saudi Arabia, since 1983, to be precise sharia has been adopted in Sudan since the birth of Islamic kingdoms in Dar fur and Sinar, however, its ceased to be so later.

(2) Dr. Abdalrazag Alsanhory, The Brief in the General theory of Commitment, Munshat Al- Maaref, Alexendria, 2004, p. 23.

(3) «The Supreme Court is composed of seventy judges and operates through panels that are composed of three judges, which are presided over by the most senior of the three. Decisions are reached by a majority of opinion and are subject to revision only if and when the chief justice deems that an infringement of (shari›a laws) has taken place. In this case the Chief Justice convenes a five-member panel, the majority of whom must not have participated in reaching the disputed decision in order to receive the matter. The court disposes of appeals against the judgments of the courts of appeal in civil, criminal and personal matter cases The Court also has «preliminary jurisdiction of a single judge to consider appeals against the administrative decision of the president of the republic of the governors and of the federal and state ministers. Appeals from the decision of this single judge›s court are dealt with by panel of three Supreme Court judges] Four circuits of the Supreme Court operate outside the capital in the western, central and eastern states". (Sharanjeet Parmar, An Overview of the Sudanese Legal System and Legal Research, January 2007).

In fact, most of the Arab countries tended to re-consider their civil laws, however the measures of dependency differed from one country to the other, some opine that the stages of application, is understandable, in view of the fact that the application of Sharia rules was gradual, where some of the provisions were suspended during the era of Omar Bin Al Khattab (may Allah be pleased with him), where he suspended the doctrinal provision of theft in Ramadan Year[4].

**Part two: The Evaluation of Civil Law and Judiciary**

No doubt the origin of the Sudanese Civil Law dates back to the ancient Sudanese state. The Sudanese Land witnessed ancient civilizations, such as Nebta and Kush Civilizations. The Sudanese civilization is part of Nile Valley history for more than Seven Thousand years B.C. The study of the inscriptions and engraves on the Pyramids at (Karmah), (Nabta) and (Bajrawia) area in Shendi. Sudan mingled with the human civilization, North of Nile Valley [Egypt] and South Nile Valley [Sudan].

Perhaps, the Sudanese state established in 1505 after the fall of Andalucía was one of the Islamic Kingdoms, which fully adopted the Islamic Law in the civil cases, until Sudan came under the rein of the Turkish Caliphate, where the Sudanese Civil Law submitted to the law of the "Ottoman State", including the justice rules derived from the Islamic Sharia[5].

Again, the above facts supports our view of the Islamic origins of Sudanese laws, it is not accurate to date back an application of sharia rules to 1983, but one can say 1983 is distinguished and a turning point in recent history of Sudan.

We decided to make the historic development of laws in Sudan apart from the subjects to be raised. Some may think that the Sudanese Judiciary is isolated from the Arab legislations, on assumption that it belongs to the Anglo-Saxon System. So, I would briefly address the three stages of the Sudanese Civil Law. But generally, the comparative legislations and judicial applications are divided into three basic schools of thoughts:

**First School:** derived its provisions from the French Civil Law, such as Egyptian, Moroccan, Algerian, Tunisian, Libyan, Syrian and Sudanese Laws.

**Second school:** This is influenced by the Islamic jurisprudence, such as Sudan,

(4) Prof. Osama M. O. Khalil, from the precious opportunities in the unification of the Islamic Nation, «Justice» magazine – Khartoum –Jarsh University - Jordan – Faculty of Sharia – Dec. 2016 – p. 86.

(5) (Prof. Hassan Makki, The Mining and the Content, University of Africa, Khartoum, 2008, p. 5.

Iraq, Jordan, Yemen and the United Arab Emirates. Despite such classical classification, all such Arab countries have European laws, which combined the features of the French Law with the Islamic Sharia(6).

**Finally,** the third school is the law school widely implemented in Sudan for a considerable period of time, i.e. the English Law (Common Law System).

Finally, we draw attention to common law system which has been imported by the governing authority, It is generally observe that there is wide spread influence of common law culture evident of the local laws, and this influence can be easily attributed to many factors; such as; changing the legal mentality of judges as well as expanding the common law rule in Africa.

The circumstance of the occupation required nationalizing and imposing it on the Sudanese people.

Hence, we are speaking about the development of the Civil Law and Judiciary in Sudan, we should not skip the previous narration on the components of the Sudanese legislation, which passed through many stages and fluctuations. However, this in the end helped to build an enriched legal structure which combined the Latin system with the Anglo-Saxon in harmony.

This had enriched the culture of the Sudanese Judiciary in dealing professionally with the civil cases. In order not for our analysis of the Sudanese Civil Judiciary in the contracts, seems to be strange, it became imperative to mention the historic stages to understand why the Judiciary sought assistance from the English Law, at a certain stage, and then adopted the school of de-codified Arab legislation at a later stage.

### 1- Sudanese State (Sinnar Kingdom) 1505 A.D.

At that stage the Sudanese Civil Law included the personal status and civil transactions. It was historically established that the Personal Status Laws were governed by and derived from the Islamic Jurisprudence, since the modern Sudanese state in the Blue Sultanate or what was then called, "Sinnar State" to date. Whereas the Sudanese Law did not take any provisions from the Anglo-Saxon or the Latin schools, in any manner. The judicial applications were in harmony with the Islamic Jurisprudence (7).

(6) Prof. Usama M. Osman, Unification of civil law in the Arab and Islamic countries of precious opportunities to unite the Islamic nation, University of Jarash, College of Law, Jordan, 2016, p. 86.

(7) An Interview with Prof. Al Hag Al Doush, Prof of the Sudanese Comparative Jurisprudence and Law, Sudanese Universities dated 23.10.2017.- University of United Arab Emirates.

## 2- Common Law System (1898-1971)

As Sudan was among one of the British colonies, the English Law was applied to the civil disputes, since the occupation and until Sudan gained Independence in 1956 and thereafter.

At that period our judges were committed to the application of the English judicial precedents as a permanent source of judiciary in various subjects such as contracts, evidence and rules of default liability, in additions to the possibility to seek assistance from the Indian Law and Jurisprudence as guidance.

The judicial precedents are defined as (a set of principles in the judicial judgments, being the judgments of the Supreme Courts adopted by the lower courts in any subsequent similar cases)[8] .

The above mentioned judicial records consisted one of the main legal references and sources of civil law in Sudan, so it is not difficult to predict the vast influence of English jurists, such as: Lord Denning, Cheshire & Fifoot, if we go through judiciary records.

It seems that the Sudanese Judiciary, at the time managed to gain a judicial reservoir to be proud of, in all the law branches. Judicial Judgment Magazine contained such reservoir from 1956 and the Civil Law of 1929 was abolished[9].

Later, we noticed a dis-satisfaction with the English Law. Even some were not embarrassed to criticize the adoption of the English Law and instead to follow the Egyptian Civil Law for two main reasons:

The first one, following and copying of English common law blindly and unconditionally is not different from importing equipment from a specific country, because they will be forced for the rest of their life to import the necessary spare parts of such equipment from the same source. Here the risk is represented in granting the English parliament an absolute right to enact whatever laws it deems fit, thus the concept of sovereignty is affected.

The second is criticism to the view which supports excluding the Egyptian law because it does not fit to be applied to Sudan due to its complicated terminology, as stated in one of the cases, which promoted some people to ask (If the Egyptian Law which is applied at a neighboring country, having common language and creed, along with a set of customs and traditions and

(8) Prof. Mohammad Al Sheikh Omar, Civil Transaction Code of the year 1984 Cons. and pros., A research published in the Sudanese Judiciary Magazine of 1997, p. 1, http://www.sudanjudiciary-org.

(9) Prof. Usama Mohammad Osman, Chapters Law Fundamental previews reference, p. 138.

even in history yet described by some people as (unsuitable) then how we describe the English law? being the law of another country with different customs and traditions and written in a language that the vast majority of litigants in civil cases do not command it[10].

No doubt the English colonialists insisted that the Sudanese legislation should follow their law based on case law and not the codified legislation. The most important characteristics of the Anglo-Saxon system is un codification. But out of their intention to give some sort of sovereignty to the Sudanese people at that time, they allowed the issuance of laws written in English such as the Civil Cases Law of 1910, followed by the Civil Judiciary Law of 1929[11].

**3- Impact of Continental Law (Egyptian and French laws) 1971-1983**

This stage witnessed a conflict between two cultures. One of them called for putting an end to the English law and focus on the Arabian legislation system, while the other called for sticking to the English judicial system. However, the Sudanese were determined to adopt the Arabian legislations since the beginning of Seventies. This promptly led to the establishment of a committee comprising senior Egyptian advisors and Sudanese judges. The activities of such committee, eventually led to the enactment of the Civil law of 1971, which in essence was consistent with the Egyptian law and most of the Arabian Laws at that time[12].

The explanatory memorandum which was the first explanatory note for the Sudanese law stated that the committee had accomplished the assignment in eight months, being a short period compared to the size of the mission and its accuracy.

However, we noticed that the influence of the Egyptian law on the Civil law of 1971 was incomplete. There were some provisions referring to the Islamic (Shariaa) emerged such as abuse of right, non-discriminatory liability and necessity theory, etc... [13].

We think that the most important influence of the Egyptian law, was derived from the French law, that the (Tort Liability) as a term was replaced at that time by (Illegal Action) because Article 149 of the Civil law of 1971 established the

(10) Prof. Mohammad Al Sheikh Omar, op. cit., p. 5.
(11) Introduction to the Explanatory, Note to the Civil Code of 1971, Republic of the Sudan.
(12) Prof. Mohammad Al Sheikh Omar, Op. cit, p. 89.
(13) «The Egyptian Dr. Alsanhory and his colleague Dr. Mohamed Ali Arafa participated of adding a lot of efforts of making the civil law by influences of Islamic Law», Professor Usama Mohammad Osman Khalil, from the precious opportunities in the unification of the Islamic Nation, Op, cit., p. 87.

(Tort Liability) on the fault not the act, although the difference seems big in the judicial physical application.

It is worth noting that the Sudanese Judiciary at that stage combined the Latin with the Anglo-Saxon systems, based on the English precedents in certain judgments, although the English system was abandoned at that time. However, this did not seem to be strange, as the customary has always been known as one of the sources of the Civil law of 1971, which was interpreted by some people[14] that the custom is either judicial or jurisprudent and the judicial means the past judicial precedents.

As an example, keeping the judicial precedents as a substitute source, was the Supreme Court rule[(15)] in the case No. M/N/70/76 which established the following principle:

(This judicial precedent addressed all the previous judgments, by explaining and analyzing, and the court of appeal concluded that the legal rental offer prior to the procedures, in addition to a serious and real dispute regarding the basic rental value, are the two reasons for relieving the Tenant from the eviction order, because the rental value was not legally due, so the Tenant sickness or long holding over are not among the reasons which justify not to issue an eviction order.

However, the issue of the Eviction order, provided that it is reasonable, was the provision of the English Law in 1933 legislation. This Law may achieve justice more than the Rentals Restriction Law.)

Although we left in this period the Anglo-Saxon system, but the Sudanese judiciary still used English law to establish a new doctrine, this was applied in the case SC/TM/115/1980

"1- Purpose of compensation according to the contracts law of 1974 as practiced by the Sudanese Judiciary and the provisions of the English Common Law to cover the damage as much as possible by a cash compensation in its status if the contract is performed. The purpose of the compensation is not to punish the defaulting party".

We noticed that the effect of the English law continues to apply under the law of 1971 and 1973(law of contract) as we find in the case SC/TM/38/1982

"Principles: - apparent authority- meaning.

(14) Dr Abdalgaeom Ibrahim Babiker, Explanation of the law of the assets of judicial judgment 1983, Al maktaba alwatnia, Khartoum, p. 382.

(15) Supreme Court judgment, Republic of Sudan, No 761/70/A, Journal of judicial judgments, 1972.

Visible power of attorney basically means the absence of the necessary information about the person with whom the principle deals. If he is aware of the express limits of the attorney, then there is no way to claim that there is a visible power of attorney. "And the researcher had written a research about the apparent authority that arisen from agency by stopple, which is applied in the English law(16).

Furthermore, we find out the application of English Law during adopting the Arabic law, as we see in the case no FC/ASM/375/1979

"Principles: Contracts law of 1974 the right of the affected party to terminate the contract before the due date of payment- Articles 75/76. The other party refused to perform his obligation without a legal justification, giving a reason to the affected party to terminate the contract before the date of payment which is called "Anticipation Breach" in the English Law".

**4- Adoption of Arabian and Islamic Law (1983-2019)**

The judicial judgment law of 1983 in Sudan paved the way for a new era of the civil law. It created a strong will to move towards the Arabian legal culture influenced by the Islamic (Sharia).

We conclude this from the Judicial Authority memorandum on the judicial precedents by the following remarks:

The judicial precedents system suits the communities working under non-codified laws such as England, while in Sudan, who early adopted the codification system, it began since 1972 to reduce the dependency on judicial precedents.)

The memorandum also contained the precedents theory which is known as a theory related to the English common law. It is clearly seen in the so-called Anglo-American system. But this theory immensely developed over time, whereupon it no longer gets in the way of the development of Judicial Jurisprudence(17).

Perhaps such signs represented an introduction for the issuance of the Civil Transaction Law of 1984(18). Many opposing views this law, on ground that it was promulgated in haste and lacked the participation by all the components

(16) Ayman M. Zain Osman, Ostensible agency, University of Alneelain, Khartoum, 2005, p.1.

(17) Sudanese judicial Commissions memorandum on the principles of the judicial provisions 1983.

(18) Sudanese Civil law transaction1984- It was issued as a temporary order No.(6) of 1984 and was ratified and became law No. (8) of 1984.

of justice. What made it worse was the lack of an explanatory note for its provisions[19].

In fact, we think that the current civil law was the outcome of the Civil Law jurists whose efforts bore impress on the previous civil law of 1971; nevertheless, some of the legal articles primarily taken from the Jordanian Law were added thereto.

The Sudanese legislator let "jurisprudence" as one of the major sources of civil law, particularly that famous author Dr. AL Sanhory, this famous jurist's views inspired judges in many occasions ,see case No FC/ASM/161/1986, in this case the court cited its decree by depending on AL Sanhory, saying the following:

"The contract is rescinded [Egyptian Jurisprudence stated that this could be true if the parties agreed without the need for a court judgment]. Often it deprives the Judge of his discretionary authority.

The contract is automatically rescinded without any judgment or notice. The debtor shall be given a grace period to perform his obligation and the judge has to declare the contract as abrogated. This is the maximum limit the stipulation for the termination can reach. The contract shall be deemed terminated when the time for performance is due and non-performance by the debtor without the need for a notice or a grace period for the performance (Dr. AL Sanhory in the Explanation of the Civil Law, page 275 and the following).

Regarding what is stated and cited by the court in the foresaid judgment makes it imperative to say that the current civil law has completely changed the tendency towards the English law based on the judicial precedents to the Latin system that depends on the codification and influenced by the Islamic Sharia and jurisprudence, as mentioned in the Jordanian law no.43 of 1976[20] which stated in chapter one that the Islamic law and the provisions of the Islamic Jurisprudence are considered as the most outstanding sources of the Civil Law.

The difference between the Sudanese and Jordanian law is that, in the absence of any provision the Sudanese judiciary adopted the Islamic rules and not the Islamic jurisprudence contrary to the Jordanian civil law.

(19) Prof. Mohammad Al Sheikh Omar, Civil Transaction Code of the year 1984 Cons. and pros., op. cit., p.2.
(20) Jordanian civil law No 34 1976.

Confirming the above mentioned, Sudanese Supreme Court said[21]:

"The National Supreme Court stated as follows: "Pursuant to the provisions of article 6-2 of the Civil Procedures Code of 1983 which provided as follows (in the matters governed by any legislative provision the courts will apply the Islamic Shariah and judicially established principles in Sudan, as well as custom, justice and common sense), bearing in mind that Islamic Shariah means the clear cut evidence in the holy Quran and pure Sunnah and there is a difference between Islamic Sharia and Islamic jurisprudence. The interpretative matters are included in the meaning of the Islamic Jurisprudence such as how to assess the Government of Justice. Then in this regard rely on the principles which were judicially established in Sudan, whereas the above-mentioned Article six was intended to arrange such sources and not the delay…".

We would conclude by saying that the Sudanese Civil Law now considers the judicial precedents as alternative source and may not be applied if there is a contradict with the clear provision, which means to be adapted as an alternate secondary source.

The Sudanese Supreme Court said that (the judicial precedents shall be binding if they are consistent with the law, if not they shall have no legal force, as the legislation shall come first, followed by precedents interpreting it without contradiction with its text)[(22)].

We noticed in this period that some of English rules disappeared from the law of 1984e.g apparent or ostensible Agency, finally the law did not mention it, but cancel using it by the case Cassation order No. 76/1987, Issued on 25.6.1987

"Power of attorney is the authorization by the Principal to another in his property. Disposition on other property with a delegation, shall be invalid unless approved by the owner".

**Part three: Appendix**
**Methodology and Statistics**
**Methodology**

This section provides a general view of methodological approaches taken during this paper; the main resources of research carried out were collected mainly via secondary references, journals, websites and books. This research tries to trace the evolution of Sudanese civil law by focusing on the impact

(21) Government of Sudan v. MA HA 2013/224.
(22) Supreme Court judgment- Republic of Sudan-W.A.Y v.A.A No.746/1994.

of mix-jurisdiction in Sudanese land scape, to achieve this task the authors adopted descriptive &analytical methodology.

In the research we followed the method of collecting the Sudanese Court judgments, with simple analysis to be in line with the pervious legislative changes. Luckily, the Judicial Authority in Sudan had issued an encyclopedia for the Sudanese laws and judicial precedents in 1970 and 2009, which is available on the website: http://www.sudanjudiciary.org , in addition to an annual hand copy magazine, last edition of which was released in 2016.

The Magazine covers all the judicial bulletins, in addition to the legal researches written by Judges and magistrates who enjoy outstanding experience and track record in this field.

We consider the 33 court judgments by the Supreme Court addressing in general different stages in the contract in terms of its formulation and performance, along with the default in obligations, methods of the contract dissolution and compensation, as sufficient.

**Content Analysis:**

Supreme Court

**1) Ref No. SC/TM/1024/1994**

The Source: Website: http://www.sudanjudiciary.org

**Rule Summary:** Civil Transactions- Contract- Conducting Promise, Article 46 (1) of the Civil Transaction Law.

The possibility to obligate, who promises to enter into contract by signing the official contract and the legal subsequences represented in the performance of the sale contract, depends in the first place on the completion or incompletion of the substantial questions of merit of the sale contract.

**2) Ref No. FC/ASM/169/1990**

The Source: Website: http://www.sudanjudiciary.org

**Principles:** Transaction Law- Article 46- Promise to Contract.

- According to Article 46 (1) of the Civil Transaction Code of 1984 the promise to enter into contract is conditional on both parties agreement to all substantial questions of merit of the contract intended to be entered to, in addition to its term, to pave the way for the conclusion of the final contract as soon as the promised party is willing, without the need for another agreement.

- The questions of merit mean the contract basic terms and conditions, which both contracting parties agree on, without which the contract cannot be concluded.
- **Researcher Note:**
  Please see the Supreme Court judgment No. TM/1.24/1994 published in the Court Judgments Magazine (1994) p.232. The judgment addressed the same subject "Promise to Contract" Article 46 (a) of the Civil Transaction Code of 1984.

**3) Case No. SC/TM/1.12/2001**

Website: http://www.sudanjudiciary.org
Court: Supreme Court
Edition: 2001
**Principles:** Civil Transaction Code of 1984- Contract- Suspended Contract, the right to rescind it by filing a nullification action-may not take place by plead for nullification- considered as waiver of right- Article 90 (1) of the law.

- Insistence on the right to annul a suspended contract by a nullification action, may not be insisted on by plea to nullification.
- If the prescription provided for in Article 90 (1) of the Civil Transaction Code of 1984, lapses, without the nullification right has been exercised, this shall be deemed as a waiver upon which, such right may not be insisted on again, by any means and the contract shall become valid towards it.

**4) Ref No. SC/TM/113/1994**

Website: http://www.sudanjudiciary.org
**Principles:** Civil Transaction Code- Death sickness- Definition.
The death sickness which nullifies the patient acts is the one that renders the patient unable to exercise his daily routine life, which may only be by orientation and observance. It should be a fatal disease leading to death and related to death before one year.

**5) Ref No. SC/TM/825/1995**

Website: http://www.sudanjudiciary.org
Civil Transaction Code of 1984. Acts of an interdicted person for

dissipation, Articles 59 (1), 55 (1) and (2).

- This applies to the act of dissipation by an interdicted person after registering the interdiction order that applies to the acts of a boy capable of discretion as provided for in Article 55 of the Civil Transaction Code of 1984.
- If the boy is capable of discretion, his financial acts shall be valid if useful and invalid if harmful and may become revoked if they fall between usefulness and harm.
- If the act of interdicted person is for the need for treatment and the sale is fair, the act shall be deemed as purely useful and hence the act is valid.

**6) SC/MT/239/1993**

Versus: SC/MT/230/1992
Website: http://www.sudanjudiciary.org
**Principles:** Civil Transactions- contract-capacity-acts of mad person before interdiction- Rule- Article 58 (2) of the Civil Transaction Code of 1984.

- The acts by the mad person before the registration of the interdiction shall not be invalid, unless it has been proved that the state of madness or mental deficiency prevailed at the time of contracting or the other party was aware of.

**7) Case No. SC/TM/1816/2006**

Website: http://www.sudanjudiciary.org
Court: Supreme Court
Edition: 2007
**Principles:** Civil Transaction Code of 1984

- Articles 207/92 (1) Insurance case and contract revocation case due to one of the consent defects-distinct and not to combine them.
- Distinct between the guarantee and contract revocation cases due to one of the consent defects, is important due to the fact that the prescription is different, and characterization of evidence in all.
- Buyer may have a recourse to the seller with a guarantee case or contract revocation case due to one of the consent defects and may not join the two cases together.

**8) SC/TM/299/1976**

Website: http://sudanjudiciary.org

**Principles:** Contracts Code- What is the meaning of the contract nullification for fault, swindle or coercion- Article 37 of the contract's law of 1974.

- Plea under Article 37 of the contracts law of 1974 means no contract exists due to a fault in the kind of the contract or the signature on the written contract was due to swindle or coercion of the other party and onus to prove the same is on the claimant.

**9) SC/TM/38/1982**

Website: http://www.sudanjudiciary.org

**Principles:** Power of Attorney- Visible power of attorney- meaning.

- Visible power of attorney basically means the absence of the necessary information about the person with whom the principle deals. If he is aware of the express limits of the attorney, then there is no way to claim that there is a visible power of attorney.

**Researchers Note:** Please see Article (11) of the Power of Attorney of 1974 which provided for the visible authority of the attorney. Judgment 11.8.1986

**10) Cassation order No. 76/1987**

Issued on 25.6.1987

Power of attorney is the authorization by the Principal to another in his property. Disposition on other property with a delegation, shall be invalid unless approved by the owner.

Website: http://www.sudanjudiciary.org

**Principles:** General Sale authority- Designation of the place of sale requires no power of attorney. Attorney authorization sale in general does not require to designate the place of sale. Hence Attorney may sell the assets of the Principal, when he grants this power, to sell all the assets.

**11) SC/TM/66/1405**

Website: http://sudanjudiciary.org

**Principles:** Power of Attorney- Attorney Authorization Sale authority in

general- No requirement to designate the place of sale.

- When the attorney is granted the sale authority in general, he is not required to designate the place of sale and hence he may sell any of the principal's assets and such authority extends to cover all the principal's assets.
- **Principles:** Traffic law- Third Party Liability Insurance, Objective- protective of the third party. Breach of any of the conditions of the insurance policy- consequences- Traffic Law.
- The aim and essence of the compulsory third party liability insurance, is to protect the third party. Any violation of the provisions of the insurance policy, committed by the Insured, shall not in no way affect the right of the right of the affected party- third party.
- The Insurance Policy covered the rights of the insurer towards the insured and hence the Insurer may sue the Insured upon any violation by the latter of the provisions of the Insurance Policy.

**12) No. FG/72/1987**

Website: http://www.sudanjudiciary.org

Traffic Law of 1983- Insurance Policy- Third Party- Passenger with or without fare. Compulsory Insurance- Objective-

**Principle:** The compulsory insurance policy includes the third party, including the passenger with or without fare, except those excluded by Article (59) of the Traffic Law of 1983.

The aim of the compulsory insurance is to protect the third party. The court may not issue any arbitrary stipulation that may adversely affect the rights of that party.

**13) SC/TM/245/1976**

Website: http://www.sudanjudiciary.org

**Principle:**

General Rules- Things are originally allowed.

Mortgage- Article 34 (g) of the contract's law of 1974- contract.

Important advantages of the Contracts law.

According to the basic rules, each work or contract is deemed legal, unless expressly forbidden by a law, because originally things are allowed.

**14) MA/ASM/161/1986**

Website: http://www.sudanjudiciary.org

The fundamental rules in the interpretation of the contract give the expressions in the visible professional contract, pursuant to Article (101) of the Civil Procedures Code [If the contract text is clear, it may not be deviated from by the interpretation to identify the will of the contracting parties]. As long as the text is clear without any doubt or ambiguity, the intentions of the contracting parties may not be investigated, because originally the words and writing express such intention and bring it into being by expressing it.

**15) MA/ASM/161/1986**

Website: http://www.sudanjudiciary.org

[The visible meaning of the contract may not be ignored or deviated from by saying that the will of the contracting parties referred to another meaning, in so far as the contract text is clear. We did not find in all the contract provisions, anything otherwise or raise any doubts that force us to investigate the intentions of the parties. Clause Four, as we will see- will not change anything, as the court of merit has a full authority to interpret the contracts and the terms therein, using all the circumstances of the case. It may change the visible reference to the contrary, as long as it is convinced that this is the intention of the contracting party [It is subjected in this to the control by the court of appeal].

**16) Ref No. SC/MT/975/1991**

Website: http://www.sudanjudiciary.org

**Principles:** Civil transactions, emergency, prices increase during the period between the bid submission and the contract conclusion- Not considered as an emergent case- Article 117 of the Civil Transaction Code.

The price increase of a certain commodity is a normal incident for seen by those who deal in this commodity and is not considered as an exceptional emergency case, which requires the court intervention to divide the damage between the two parties, according to Article 117 of the Civil Transaction Code of 1984.

**17) SC/TM/481/1996**

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**Principles:** Civil Transaction Code of 1984-Prescription of the Nullification case and the difference between it and plead for the contract nullification. Article 92 (2) of the Civil Transaction Code- Civil Transaction Code of 1984- Reinstatement of the contracting parties in case of invalid contract or nullification of the contract.

- Article 92 (2) of Civil Transaction Code refers to hearing the nullification action after 10 years from the date of the contract conclusion. This does not mean the lapse of the right to plead for the invalidity of the contract after the end of such prescription. The plead for contract invalidity shall not lapse regardless of its term.
- If the sale or loan contract provided for the payment by a certain currency, such as the Riyal. No doubt it should be in the same currency of the sale or loan. Shafiah said to repay by the same in the case of the loan and in rejecting the currency which can only be by the currency of the contract, whether it is less or more. Malikiah and Hanabila said the same. All the jurisprudents the fluctuation of the currency has no effect as the debt should be required with the same amount and description.
- Researcher Remark: The content of paragraph (2) is the same provided for in Article (28) of the Civil Transaction Code.

**18) Ref No. SC/MT/609/2003**

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- The compensation against damage is calculated according to the extent of damage sustained by the affected party and the forfeited gains.
- Upon breach of the contract, it should be rescinded and as a result, both contracting parties should be reinstated to their position before the contract, on ground that the status prior to the contract, should not be accompanied by a compensation equal to the fortified gains, as the latter case is not perceived except when assuming that the contract is concluded and its provisions are performed, because of the difference and rules of the compensation in case of the contract breach and the case of harmful act.
- No equal compensation may be claimed against the contract breach, except for bringing both parties to their position prior to the contract.

- No compensation may be ordered by the court if the contract is terminated and the compensation in kind. But in both cases a compensation related to the claim condition, may be raised in the case statement.

**19) SC/TM/279/1976**

Website: http://www.sudanjudiciary.org
Principle: Slackness in performing the contract for a long time is a reason for which the court will not order to perform the contract.

**20) Ref No. SC/MT/263/1996**

Website: http://www.sudanjudiciary.org
**Principles:** Individual Labor Relations law of 1991. Labor Office Director's decision to reinstate the worker. The court must adjudge otherwise.

- The individual Labor Relations Law of 1991 provides for the reinstatement of the worker. However, such right is granted to the director of the Labor Office without obligation on the Employer, because the latter has the right to abide by the order to reinstate the worker.
- If the dispute reaches the Supreme Court, such court is governed by the general rules of the contract, including its right to order a compensation instead of the actual performance, represented in forcing the employer to keep the labor contract valid. The law took a precaution for this by providing for an alternative that is to grant a compensation to the worker equal to six month salary, which infers that the director of the Labor Office himself cannot force the employer to reinstate the worker.

**21) Ref No. SC/TM/381/1989**

Website: http://www.sudanjudiciary.org
**Principle:** Combining both responsibilities because there are differences between the default and contractual liabilities because allowing such combination shall allow the Plaintiff to take the attributes, he selects in each one case. In case of a contract, obligation shall be within the limits drawn by this contract the contracting party may resort to the default

liability which may not be allowed. However, if the obligation is of the kind that stipulated by the contract, the affected party shall have the right to select one of them.

**22) Ref No. SC/TM/152/1982**

Website: http://www.sudanjudiciary.org
If the relationship is legal and specified by its parties, terms and scope and the damage sustained by one of the parties, was caused by the other party non-performance of the contract, the contract and its complementary regulations shall be applied. The provisions of the default liability may not be applied, because this is considered as a waste of the contract terms related to the liability upon non-performance.

**23) SC/TM/115/1980**

Website: http://www.sudanjudiciary.org
**Principles:** Civil Procedures- Points of dispute- not identified- effect
Compensation- cheque returned unpaid by mistake- Represents a breach by the bank of its obligation- standards of compensation if no financial loss is established.
Compensation- compensation for the breach of the contract- and its standard- tort and not a penal punishment, Article 79 of the Contracts Law of 1974.

- Purpose of compensation according to the contracts law of 1974 as practiced by the Sudanese Judiciary and the provisions of the English Common Law to cover the damage as much as possible by a cash compensation in its status if the contract is performed. The purpose of the compensation is not to punish the defaulting party.
- Cheque returned unpaid due to a mistake, although there were enough funds in the account, represents a breach by the bank, which required to be compensated, but the affected party must take steps to mitigate the damage. If the affected did not prove the material loss caused by the returned cheque, the compensation in this case whether base on contract breach or the default liability shall be nominal only.
- If the litigation is clear, thee point of dispute is known and its evidence is presented, there is no defect if the points of dispute are not identified.

**Different Opinion:**

The principles governing the banking transactions, are those not mentioned by the legislator in any law and hence governed by clause (2) Article (6) of the Civil Transaction Code of 1974 to which the custom of such transactions is applied, which stipulates that the proof of the financial loss is not a requirement of the compensation right if the check is dishonored and if Plaintiff is a businessman.

**24) Ref No. M/ASM/130/1991**

Website: http://www.sudanjudiciary.org
**Principles-** Civil transactions-notices-not included in the Public Order. Civil transactions-notices-in favor of the debtor- Article 128, transactions Plead for notice is not of the Public Order and therefore the court may not raise it on its own.
The Notice mentioned in Article 128 of the Civil Transaction Code is in favor of the Debtor, on which he can insist that he did not receive it, when he plead to the nullification case filed against him by his creditor.

**25) FC/ASM/161/1986**

Website: http://www.sudanjudiciary.org
The contract is rescinded [Egyptian Jurisprudence stated that this could be true if the parties agreed without the need for a court judgment]. Often it deprives the Judge of his discretionary authority. The contract is automatically rescinded without any judgment or notice. The debtor shall be given a grace period to perform his obligation and the judge has to declare the contract as abrogated. This is the maximum limit the stipulation for the termination can reach. The contract shall be deemed terminated when the time for performance is due and non-performance by the debitor without the need for a notice or a grace period for the performance (Dr. AL Sanhooy in the Explanation of the Civil Law, page 275 and the following).

**26) Court: Supreme Court**

Website: http://www.sudanjudiciary.org
Edition: 2004
Civil Transaction Code of 1984- contract- Contract Termination-notice- Article (128) of the law.

The termination can be on mutual agreement such as considering the contract as terminated upon breach, which should be provided for in the contract. The sale contract contained a stipulation considering the contract as terminated upon non-payment and the petitioner breached this part, upon which the contract shall be terminated as agreed. This is provided for in Article (129) Transactions. In this case the court must decide to terminate the contract after ensuring that there is a provision to this effect and that the breach of the contract is established, this indeed happened. The termination could be legal as provided for in Article (130) Transactions if there is a reason prevented the contract performance.
Notice for payment must be official, such as a notice through a lawyer or written notice. A phone call, verbal notice or claiming the amount, shall suffice.

**27) Case No. SC/TM/499/2004**

Website: http://www.sudanjudiciary.org
Termination of the contract by the Court of Merit due to breach by Petitioner. The contract termination can be by court according to the principles of Article 128 (1) of the Civil Transaction, if the other breaches his obligation and the First Party demanded and if applicable and the breach by the Petitioner of the obligation is established in paying the balance which is a huge amount exceeds by far what has been paid and had no way to pay it. He has been informed and notified, which is called judicial termination.

**28) Ref No. SC/TM/494/1989**

Website: http://www.sudanjudiciary.org
**Principles:** Civil Transactions- legal termination of the contract due to non-payment of the price- conditions.
If the two parties agreed that the sale validity is conditional on the payment of the price, the court shall order to terminate the contract upon failure to pay the price or part thereof at the time specified in the contract, provided that the sale ownership is still with the Seller. But if it is transferred to the Buyer before the payment of the price, the contract cannot be terminated, even if the buyer died bankrupt.

**29) FC/ASM/375/1979**

Website: http://www.sudanjudiciary.org
**Principles:** Contracts law of 1974 the right of the affected party to terminate the contract before the due date of payment- Articles 75/76. The other party refused to perform his obligation without a legal justification, giving a reason to the affected party to terminate the contract before the date of payment which is called "Anticipation Breach" in the **English Law**.

**30) SC/TM/261/1979**

Website: http://www.sudanjudiciary.org
**Principles:** If the affected party selected to terminate the contract, he shall be compensated under Article 85 of the contracts law by keeping the contracting parties in their same condition before the contract. If this is not possible a fair compensation shall be decided.

**31) SC/TM/259/1977**

Website: http://www.sudanjudiciary.org
**Principles:** In the joint or individual liability there is nothing to prevent issuing a judgment against the car owner, without a judgment against the driver, in so far as there is a proof for the accident. There is no need for the car driver to appear as a party in the case.

**Part four: Conclusion**

The Sudanese judiciary follows all the legal rules under the Civil Transaction Code of 1984. Following the judicial precedents may not be followed with a provision conditional on not breaching the Islamic Sharia.

The Sudanese judges benefited from the diversity of the legal systems in the Anglo Saxon and Latin laws, influenced by Islamic Sharia which made them gain practical capabilities in the Judiciary field.

- Certain legal rules should be completed under the Civil Transaction Code, which are not organized in the provisions of the Civil Transaction Code, which are generally related to the regularization of the rules of the general principles of the effects of the obligation, which help the debtor in execution. In addition to that they help the Judiciary in Sudan

to interpret certain other rules related to the right in detention, which many laws followed. Moreover, the said law, in its present condition, gets in the way of the judges in dealing with certain cases, which have no provisions such as the descriptions amending the obligation (condition and term) and the number of optional or alternative obligations. The said law does not include the regularization of the obligation's parties.

- The Islamic and Arab Nations should be unified to revive the jurisprudence attempts to the Civil Law. This makes the Islamic Shariaa rules as the principle followed as guiding provisions are absent without following a certain sect. We should not forget the reference, because each Arab country has its own characteristics which should be respected and intensify the efforts to bring the states together to achieve the elements of the contemplated unity.
- I would recommend abolishing the system of judicial precedents, because it created many problems, relating to application to a state, law of which has been written for many years. This in addition to the obstacles mentioned in this paper. The judicial precedents can be kept as a reserve source.
- Sudan remained a model for the states which sought to get closer to each other and the Arab comparative schools in making the current Civil Transaction Code, which makes most of its rules harmonious in terms of responding to the desire to unify the Arab and Islamic laws.

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