# MODERN LEGAL SYSTEMS
## SUMMARY OF CONTENTS

**Volume Five Revised**

### MIDDLE EAST

#### PART I

#### COUNTRY STUDIES

<table>
<thead>
<tr>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface ........................................... ix</td>
</tr>
<tr>
<td>CHAPTER ONE: Introduction .................................... 5.10</td>
</tr>
<tr>
<td>CHAPTER ONE (A): The Legal System of Bahrain ............... 5.20</td>
</tr>
<tr>
<td>CHAPTER TWO: The Legal System of the Republic of Cyprus ... 5.30</td>
</tr>
<tr>
<td>SECTION ONE: Offshore Operations; Shipping Operations and Shipping Companies; Foreign Investments; and Transit Trade ........................................... 5.40</td>
</tr>
<tr>
<td>SECTION TWO: The Legal System of Egypt ..................... 5.50</td>
</tr>
<tr>
<td>SECTION THREE: Egypt-United States Bilateral Investment Treaties .......... 5.60</td>
</tr>
<tr>
<td>SECTION FOUR: The Legal System of the Arab Republic of Egypt ...... 5.70</td>
</tr>
<tr>
<td>SECTION ONE: The Legal System of Iran ........................ 5.80</td>
</tr>
<tr>
<td>SECTION TWO: The Iran-United States Claims Tribunal .......... 5.90</td>
</tr>
<tr>
<td>(A) In General ........................................... 5.90</td>
</tr>
<tr>
<td>(B) Private Rights and State Responsibility ................. 5.100</td>
</tr>
<tr>
<td>CHAPTER FIVE: The Legal System of Iraq ..................... 5.110</td>
</tr>
<tr>
<td>CHAPTER FIVE (A): Sitting in the Dock of the Day: Applying Lessons Learned from the Prosecution of War Criminals and Other Bad Actors in Post-conflict Iraq and Beyond by Major Jeffrey L. Spears .......... 5.115</td>
</tr>
<tr>
<td>CHAPTER SIX: The Legal System of Israel .................... 5.120</td>
</tr>
<tr>
<td>SECTION ONE: In General .................................... 5.120</td>
</tr>
<tr>
<td>SECTION ONE (A): The Israeli Military Legal System .......... 5.125</td>
</tr>
<tr>
<td>SECTION TWO: Judaism as a Legal Religion System ............. 5.130</td>
</tr>
<tr>
<td>SECTION THREE: The Legal Implication of Israel's 1982 Invasion into Lebanon ........................................... 5.140</td>
</tr>
<tr>
<td>SECTION FOUR: Proof of Foreign Law in Israel: A Comparative Study .......... 5.150</td>
</tr>
<tr>
<td>SECTION FIVE: The Legal Status of the Israeli-Occupied Territories .......... 5.150</td>
</tr>
<tr>
<td>CHAPTER SIX (A): The Legal System of Jordan ................. 5.170</td>
</tr>
</tbody>
</table>
CHAPTER SEVEN

THE LEGAL SYSTEM OF LEBANON

TABLE OF CONTENTS

§ 1.1. Historical Background.
  § 1.1(A). In General.
  § 1.1(B). Lebanon under Ottoman Rule.
  § 1.1(C). The French Mandate.
  § 1.1(D). Independent Lebanon—The Lebanese Republic.

§ 1.2. Sources of the Law.
  § 1.2(A). Ottoman Law—Islamic Law and the Mejelle.
  § 1.2(B). French Law.
    § 1.2(B)(1). Land Ownership Law.
    § 1.2(B)(2). Law of Obligations and Contracts.
    § 1.2(B)(3). Civil Procedure Law.
    § 1.2(B)(4). Commercial Law.
  § 1.2(C). Laws of the Lebanese Legislature.
    § 1.2(C)(1). Civil, Penal and Special Laws.
      § 1.2(C)(1)(a). Penal Law.
      § 1.2(C)(1)(b). Maritime Law.
      § 1.2(C)(1)(c). Criminal Procedure Law.
      § 1.2(C)(1)(d). Labor Law.
      § 1.2(C)(1)(e). Miscellaneous Other Laws.
    § 1.2(C)(2). Civil Code Law and Shari'a Law.

§ 1.3. Form of Government.
  § 1.3(A). The Constitution.
  § 1.3(B). Parliament—Chamber of Deputies.
  § 1.3(C). The President of the Republic.
    § 1.3(C)(1). Dual Executive Power.
    § 1.3(C)(2). Election of the President.
    § 1.3(C)(3). Powers of the President of the Republic.
    § 1.3(C)(4). The Legal Position of the President of the Republic.
  § 1.3(D). The Council of Ministers (The Cabinet).

§ 1.4. The Legislative Process.
    § 1.4(A)(1). The Right to Initiate.
      § 1.4(A)(1)(a). The Right of the President of the Republic to Initiate Law (Government Sponsored Legislation).
§ 1.4(A) (1)(b). The Right of the Chamber of Deputies to Initiate Law (Member Sponsored Legislation).

§ 1.4(A) (1) (c). Legislative Procedure.

§ 1.4(B). The Urgent Law-Making Process.
§ 1.4(B) (1). Normal Urgent Procedure.
§ 1.4(B) (2). Bas Urgent Procedure.
§ 1.4(B) (3). Urgent Promulgation.
§ 1.4(B) (4). Urgent Publication.
§ 1.4(B) (5). Urgent Procedure Specified by the Council of Ministers in the Referral Decree.

§ 1.4(C). The Exceptional Legislative Process-Legislative Decree.

§ 1.5. The Judicial System.

§ 1.5(A). The Ottoman Empire.
§ 1.5(A) (1). Background In General.
§ 1.5(A) (2). Shari'a Courts.
§ 1.5(A) (3). Ordinary Courts.
§ 1.5(A) (4). Exceptional Courts.

§ 1.5(B). The French Mandate.

§ 1.5(C). Present Court Structure.
§ 1.5(C) (1). In General.
§ 1.5(C) (2). The Ordinary Courts.
§ 1.5(C) (2)(a). Courts of First Instance.
§ 1.5(C) (2)(b). Courts of Appeal.
§ 1.5(C) (2)(c). Court of Cassation.
§ 1.5(C) (2)(d). Location and Number of Courts.

§ 1.5(C) (3). The Exceptional Courts.
§ 1.5(C) (3)(a). The Administrative Courts.
§ 1.5(C) (3)(a)(i). The Council of State (Conseil d'Etat).
§ 1.5(C) (3)(a)(ii). Court of Settlement of Conflicts (Tribunal des Conflits).

§ 1.5(C) (3)(a)(iii). The Audit Office.

§ 1.5(C) (3)(b). The Labor Court—The Labor Arbitration Council.
§ 1.5(C) (3)(c). Land Court.
§ 1.5(C) (3)(d). Customs Committee.
§ 1.5(C) (3)(e). Military Court.
§ 1.5(C) (3)(f). Juvenile Court.
§ 1.5(C) (3)(g). Shari'a and Ecclesiastical Courts.
cassation in Beirut. The court of cassation was discontinued twice a period of fifteen years, the first between 1930 and 1934, and the second with World War II in 1939 and until 1950.

However, the Shari'a and Ecclesiastical courts continued to handle cases relating to the personal status matters of Lebanese citizens without any basic changes.

We have referred in the preceding paragraph to the privileges which were enjoyed by foreign subjects in the Ottoman Empire and which included the system of consular courts. On November 16, 1921, the French High Commissioner issued Decree No. 1109 whereby Mixed Courts, consisting of French and Lebanese judges and presided over by a French judge, were established to have jurisdiction in cases between foreign citizens of whatever nationality. The Consular Courts were kept for certain cases, the most important of which were personal status matters, bankruptcy and liquidation. However, foreigners, who were subject to the jurisdiction of Consular Courts, and Lebanese citizens were permitted to select the jurisdiction of the new Courts. Mixed Courts of First Instance, a Court of Appeal and a Court of Cassation were established which were located in Beirut.

On July 22, 1923, the High Commissioner issued Decree No. 2029 whereby Consular Courts were abolished. This Decree also provided that presidency in the Mixed Courts of first instance, appeal and cassation should be assigned to a French judge in all cases where one of the parties is a foreign subject who also had the right to request trial before a court with a French majority of judges. The Decree specified the foreign nationalities which enjoyed this judicial privilege. Both the Arabic and French languages were the official languages of the State, and consequently, of the judicial system.

However, as we shall see in the next section, the present judicial system of Lebanon is the result of several amendments made after the country gained its independence in 1943.

§ 1.5(C). Present Court Structure.

§ 1.5(C) (1). In General.

On December 31, 1946, when all foreign troops withdrew from Lebanon, the Mixed Courts were abolished by a Law carrying the same date and thus a national independent judicial system came into existence in which Lebanese judges adjudicated in all cases and to whom all litigants, whether Lebanese or foreigners, became subject. The location of courts follows the administrative division of Lebanon which consists of six Districts called "Mohafazat."

The present court structure is based on the provisions of the Law which was promulgated by Decree No. 7855 of October 16, 1961 (informally referred to as the Judicial Organization Law). This law repealed the Law of May 10, 1950, whereby the Lebanese Government had made changes in the system which existed at the time of the French Mandate. The court structure is now made up of ordinary and exceptional courts.

§ 1.5(C) (2). The Ordinary Courts.

The ordinary courts, both civil and criminal which apply their respective procedure laws, are divided into three degrees:

(1) Court of First Instance;

The Civil Court of First Instance is divided into Chambers each consisting of three judges and Divisions each consisting of a Single Judge. The Single Judge (Civil Bench) adjudicates in civil (real and personal) and commercial cases, the value of which is less than fifteen thousand Lebanese Pounds (equivalent to $3000— at the present exchange rate). He also hears other cases specified in the Law with the exception of bankruptcy cases which are specifically within the jurisdiction of a Chamber of the Court of First Instance.

The Single Judge (Criminal Bench) tries all cases of contraventions and misdemeanors, except those which have been specifically excepted by a provision in the law such as cases under the Press Law and felonies which are within the jurisdiction of the Court of Appeal (Criminal Bench) as a Court of First Instance. The provisions of Decree No. 7855 (Judicial Organization Law), relating to the establishment of a Criminal Chamber of the Courts of First Instance, has been repealed and all matters that were within its jurisdiction are now within the jurisdiction of the Single Judge except for those cases which have been assigned to the Court of Appeal.


The Court of Appeal is the second level court in Lebanon and consists of a number of chambers composed of three judges. The Court sits as a Court of Appeal and as a Court of First Instance.

In its appellate capacity, the Civil Bench reviews the judgments of the Courts of First Instance in civil and commercial cases, the value of which exceeds one thousand Lebanese pounds or which have no determined value. The Criminal Bench reviews sentences pronounced by the Single Judge in misdemeanors and contraventions if the accused is sentenced to imprisonment, to payment of damages to the plaintiff in excess of one thousand Lebanese pounds, or if a sentence orders the confiscation of property. Decisions made by the Bar and other professional associations such as those of physicians, dentists, pharmacists and engineers are subject to appeal to the Court of Appeal.

The Court of Appeal also tries, as a court of first instance, felonies committed within the territory of its Mohafazat. In Lebanon a felony is a crime, the legal penalty for which exceeds imprisonment for three years.

A “First President” of the Court of Appeal in each Mohafazat is appointed who is considered the Chief Judge among the other judges of the Court. The First President supervises the activities of the various Chambers of the Court and the administrative duties of the Court officials. The Court of Appeal in each Mohafazat also has a Public Prosecution Department which is headed by an Attorney General who is assisted by a number of public attorneys and an Investigation Department which investigates crimes and important misdemeanors. It is headed by a First Examining Magistrate who is assisted by a number of Examining Magistrates. The decisions of the Examining Magistrates are subject to appeal to the Court of Appeal.
The Legal System of Lebanon

The Public Prosecution Department is represented in all criminal cases before the Criminal Bench of the Court of Appeal.

§ 1.5(C) (2) (c). Court of Cassation.

The Court of Cassation in the Supreme Court of Lebanon is located in the capital, Beirut. It consists of four civil and two criminal chambers each composed of three judges, one of whom is designated as President. The Court itself is presided over by a "First President" who is equivalent to a Chief Justice in other judicial systems. The First President performs the same duties with respect to the Court of Cassation as those performed by the First President of the Court of Appeal. The First President is entitled to preside over any of the civil or criminal chambers. He also presides over the Supreme Judicial Council which is in charge of the appointment of judges, their promotion and discipline, and administers the training of judges in the Official Judicial Studies Institute.

The Council is composed of the First President of the Court of Cassation, chairman, the Attorney General at the Court of Cassation, vice-chairman, Head of the Judicial Inspection Board, an Inspector General from the Judicial Inspection Board, and three judges appointed by Decree for a two-year period. The First President of the Court of Cassation also presides over the Judicial Council, a special Criminal Court to which cases relating to crimes committed against the security of the State or public safety are referred by a Decree adopted by the Council of Ministers.

The Court of Cassation's principal jurisdiction involves reviewing judgments of the Court of Appeal in civil and commercial matters and either confirming them or quashing them for one or more of the following reasons:

(1) violation of the law;
(2) error in applying the law;
(3) error in interpreting the law;
(4) absolute lack of jurisdiction of the court which rendered the judgment;
(5) failure to decide on one of the demands;
(6) awarding what was not demanded;
(7) awarding more than what was demanded;
(8) absence of legal grounds for the judgment;
(9) contradiction between the paragraphs of the same judgment; and
(10) contradiction between two final judgments of the same case.

The Court of Cassation also has jurisdiction with respect to petitions relating to the cases provided for in Articles 112, 113, 116, 117 and 118 of the Civil Procedure Law, namely those cases wherein it is not possible to constitute a court because of non-availability of the required number of judges, when the Court is not able to perform its duties due to causes beyond its control, where there is a request to transfer the case from one court to another due to the family relationship between one of the parties to the case and a judge, because of justified doubt, or where security reasons so require.

However, it should be noted that the Court of Cassation, in the stage preceding the quashing of a judgment, is not a third level of litigation. The present judicial organization in Lebanon has basically established two levels of litigation, first instance and appeal. The judgment rendered by the Court of Appeal is final in the sense that the losing party is not entitled to submit its case for the third time to the Court of Cassation, because