

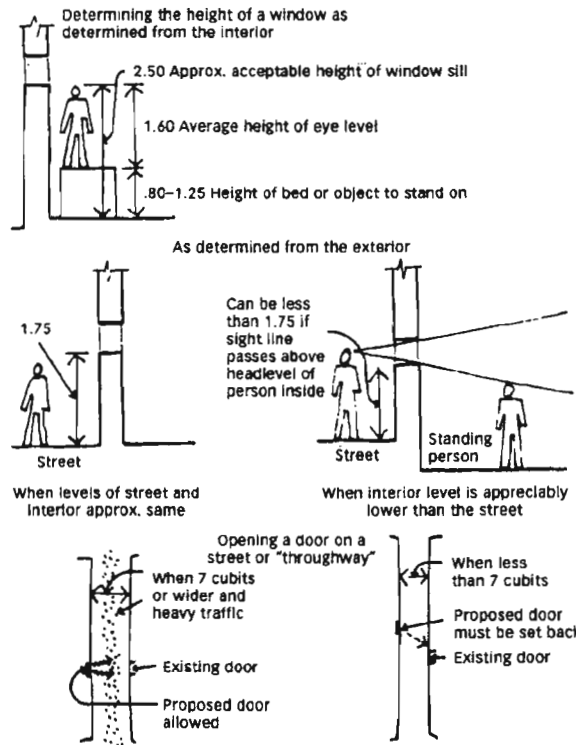
1.VII.4.k Rule systems: Islamic

The Near East in history has witnessed developments in law since the ancient civilizations in the area. Well-known and relatively late examples from Mesopotamia are the laws of Hammurabi, King of Babylon, who reigned from 1792 to 1750 BC. There has also been a long and ancient tradition of respecting local customs. Thus the region has experienced until very recently two types of 'rule systems', the centralized imposed system, and the localized, community-based customary rules.

Both types of 'rule system' have had their impact on the traditional built environment of Islamic societies. Ideas and stipulations from the former tended to create a unity of concepts and attitudes to the built environment in the various regions of the Islamic world. The latter tended to influence the details and architectonics of the local built form. These two types of rules operating simultaneously contributed to the phenomenon of the diversity of settlements of subregions of the Islamic world, yet unified by the general concepts and attitudes which all regions shared. Essentially resulting in uniqueness at the micro-level and certain similarities at the macro-level.

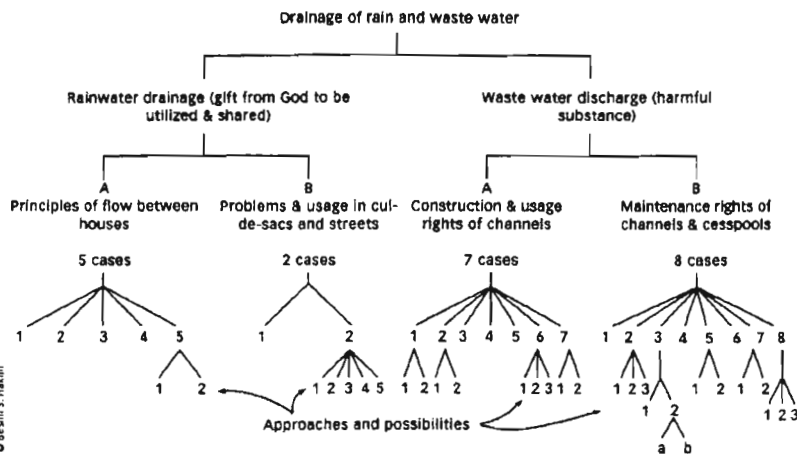
These two aspects of the law are analysed and explained in detail elsewhere (Hakim, 1986, 1994). This entry highlights some points related to: pre-Islamic customary laws in Arabia; sources of Islamic law, and differences in the attitudes of the various schools of law; and the attributes of the law and its impacts on built form.

The majority of pre-Islamic Arab societies in Arabia regulated their lives in response to deeply rooted meta-customs known to different tribes in the region, and to localized customs followed by a specific tribe. The former usually emanated from religious beliefs and helped to regulate inter-tribal



Islamic rule system addresses privacy by controlling visual penetration into the private realm. Diagrams show aspects related to the placement of windows and doors.

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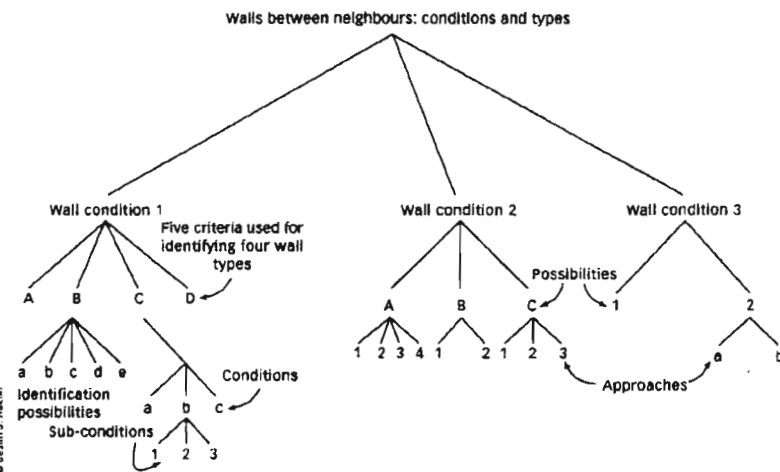


Separation of drainage of rain and waste water according to the Islamic rule system.

conflicts, such as the concept of Haram and Hawtah (Serjeant): essentially the demarcation of space into sacred and profane areas where in the sacred area certain types of activities and behaviour are prohibited. An example of localized customs is the manner in which the fitra (an instinctive impulse or innate understanding) generated building solutions which had local specificity and character. A large number of those customs, both at the meta and local levels, continued during Islam because they did not contravene Islamic values and ethics as stipulated in the texts.

Islamic law underwent gradual development and reached maturity during the latter half of the third Islamic century, that is, by around AD 900. The sources of law, which all Sunni schools of law agree on, are the Koran, Sunna (the Prophet's sayings and deeds), Ijma (opinion based on consensus of majority of learned Muslims), and Qiyas (judgement based on reasoning by analogy). In the case of the Hanafi, Maliki and Hanbali schools, they added Istihsan (deviation from a common ruling to a problem to a ruling based on special circumstances). In the case of the Hanbali, and especially the Maliki schools they also added the concept of Al-Istislah or Al-Masaleh Al-Mursala (those problems which the primary sources have not addressed before, and which require solutions due to the special circumstances of time and place). As for

Determination of conditions for ownership rights and usage of walls between neighbours, Islamic rule system.



sources of the law in the Urf (customs), it was especially recognized by the Hanafi and Maliki schools and was for practical reasons accepted by all schools in one aspect or another. For the Urf to be followed, it had to be 'correct' (that is, it must not contravene clearly specified Islamic laws and prohibitions) (Badran). Traditional building activities and methods of construction were primarily shaped by local customs, affecting the specificity of design resulting from the art and construction practices of a locality.

There are over one hundred principles upon which Islamic jurisprudence is based (Zarka). The following are seven, chosen because they have had a direct effect on the traditional built environment. They are here woven together to portray their cumulative rational:

- 1 The basis for action is the freedom to act
- 2 stimulated and judged by the intentions for those actions
- 3 and which are constrained by the prevention of damages to others.
- 4 However, it is sometimes necessary to tolerate lesser damages so as to avoid greater ones.
- 5 Older established facts must be taken into account by adjusting to their presence and conditions.
- 6 People's customs must be respected and followed.
- 7 However, time might change those customs and new solutions will be needed.

When applied to the context of the built environment these principles provided the freedom to act and build, restrained by certain limits. They are thus proscriptive in nature, allowing the liberty to generate solutions to specific local problems, in response to the site and the conditions around it. An equilibrium is established on the site where the 'best' solution is achieved for a specific microcondition at a specific period in time. Diversity is thus achieved in the built environment, so that every locality and street becomes unique in character and contributes substantially to its identity. This in turn contributes to the richness of the total built environment. People's customs are fully incorporated in the manner they build and can express their world-view in built form. The system also recognizes and adapts to changes in those customs across time.

There are numerous aspects of the built environment which can clarify the working of this system. Two concepts are introduced and briefly defined. One is the spatial concept of the fina, which is the space enveloping a building, usually in the range of 1 m (3 ft) in width, and which surrounds all the exterior configurations of a structure. Within it the owner has certain rights and responsibilities. The other is a physical entity called the sabat, which is a structure bridging a public right-of-way and is constructed for additional space. There are specific rules which must be adhered to for construction, especially the manner in which the supports are resolved. The working of these and many more examples as governed by the above principles is available elsewhere (Hakim, 1986, 1994).

Unfortunately, in contemporary times, the traditional system of law and its associated process was abandoned in favour of a prescriptive method, based on quantitative stipulations at the local level, coupled with another system of differentiating space into separate zones at the settlement level. The resulting

contemporary built environments in the Islamic countries do not possess the positive attributes of the traditional system described briefly above.

In effect an imported system of rules and processes had replaced the indigenous one – with roots that date back to over four thousand years – resulting in the decline of the vernacular.

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See also for 1.VII.4.k
2.IV.1–A Arabian Peninsula
2.IV.8 Mesopotamia and Plateau
2.IV.9 North Africa and Maghreb

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