

Research Article

# Courting Tourists: Establishing A Tourist-Specific Judicial Body in Qatar

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## Abstract

A key element of attracting tourists to any country is the promise of safety and security. One of the great fears weighing on the minds of tourists is being embroiled in the legal system of a foreign land. As with attracting foreign direct investment (FDI), one approach to allaying fears is to establish a legal space and regulatory infrastructure purpose-designed to deal with tourists and tourist related grievances. The simplicity of this proposal masks the intricate logistical, regulatory and jurisprudential issues raised when the idea is translated into policy. Other jurisdictions, notably Thailand, have attempted to implement similar policies with little clear documented success. With the impending influx of tourists for the FIFA World Cup 2022, Qatari policy makers might be well served considering the establishment of a tourist-specific judicial body in Qatar. This article explores the practicalities of such a proposal in the context of similar experiments and the "rule of law" ideal.

**Keywords:** Qatar; Tourism; Law; Dispute resolution; Judicial Design

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مقالة بحثية

## محاكمة السياح: إنشاء هيئة قضائية خاصة بالسياحة في قطر

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### ملخص

من العناصر الأساسية لجذب السياح إلى أي دولة في العالم ضمان الأمن والسلامة، فإن من أعظم المخاوف التي تثقل كاهل السياح هو التورط في النظام القانوني للبلاد الأجنبية. أحد الأساليب المتبعة في تهدئة هذه المخاوف هو أن يتم إنشاء حيز قانوني، وبنية تحتية تنظيمية مصممة خصيصاً للتعامل مع السياح، والشكاوى التي تخصهم. إن بساطة هذا الاقتراح تحجب القضايا اللوجستية والتنظيمية والفقهية المعقدة التي يمكن أن تثار عند ترجمة الفكرة إلى سياسة. حاولت ولايات قضائية أخرى كتابلاً تنفيذ سياسات مماثلة، وقد حققت نجاحاً بسيطاً دون توثيق واضح. ومع اقتراب بطولة كأس العالم لكرة القدم 2022، وتدفق السياح مع هذا الحدث، فإن صناع السياسة القطرية مدعوون للتفكير في إنشاء هيئة قضائية مختصة بالسياحة في قطر. يستكشف هذا البحث الجوانب العملية لهذا الاقتراح في سياق تجارب مماثلة وفي ظل مبدأ سيادة القانون.

**الكلمات المفتاحية:** السياحة، المحكمة، قطر، الإصلاح، التنوع الاقتصادي

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## I. Introduction

This article examines and explores the potential for developing a unique and somewhat novel judicial body in the state of Qatar focussed on tourism and tourist related legal disputes. The discussion seeks to answer the primary questions: Why might such a court be needed? Moreover, how might such a tribunal function and operate within Qatar's existing legal framework?

The answer as to why such a court is needed is tied to Qatar's broader national vision of economic diversification and the role of tourism within that strategy. A tourist court would be a way to raise the profile of Qatar, and, at the same time, entice and reassure travellers that Qatar is a safe destination. A tourism court would also appropriately posture the State of Qatar in preparation for hosting the FIFA World Cup 2022. The secondary question of how such a court might operate is approached from the perspective of other comparable courts in the context of financial disputes - mainly the Qatar International Dispute Resolution Centre (QICDRC) established and operational in Qatar Financial Centre (QFC) since 2009. Although the QFC provides a comparable context, the differences in tourism and attracting foreign investment are too vast to draw any direct parallels - particularly given the separate legal design underpinning the QFC (based on common law principles).

For many years, the economy of Qatar was based on pearl fishing. In recent decades, as pearling declined, Qatar replaced one valuable export with another. Qatar is now one of the largest exporters of hydrocarbon fuel in the form of liquefied natural gas (LNG) in the world. New technologies have made it increasingly possible and economical to export natural gas by means of liquefaction.<sup>1</sup> This has significantly increased Qatar's national wealth. Qatar is now also one of the richest countries in the world measured by GDP per capita.<sup>2</sup> Given this economic windfall, policymakers have wisely invested in projects and initiatives aimed at helping Qatar sustain and even enhance its prosperity into the future. Guided by the important governmental policy paper *Qatar Vision 2030*, the Qatari economy is being strategically diversified.<sup>3</sup> In addition to investments in education, finance and health, Qatar is also seeking to enhance its position as a prime tourist destination.<sup>4</sup> Supported by one of the world's most decorated and highly ranked airlines, Qatar Airways, and located in a strategically significant high-volume airway corridor, there are many reasons why Qatar should be a very attractive tourist destination.

This idea highlights the nexus between law and tourism. Although this field has been studied in other contexts such as "law and medical tourism"<sup>5</sup>, "law and sex tourism"<sup>6</sup> and even "law and space tourism"<sup>7</sup>, there has yet to be any concerted efforts to explore the interaction of tourists and domestic legal systems in a general way. In a globalised world, tourism is an increasingly significant area of human

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1 See Fromherz, A.J., *Qatar: A Modern History* (Georgetown University Press, 2012).

2 See Nagraj, A., "World's Richest Nation: Qatar", in *Gulf Business*. Retrieved from <<https://gulfbusiness.com/worlds-richest-nation-qatar/>> last accessed 20 January 2019.

3 Qatar Vision 2030, Ministry of Development Planning and Statistics, <<https://www.mdps.gov.qa/en/qnv1/pages/default.aspx>> last accessed 20 January 2019.

4 Qatar National Tourism Sector Strategy (QNTSS) (2017-2023) <<https://www.visitqatar.qa/corporate/QNTSS>> last accessed 20 January 2019.

5 See, for example, Dan Jerker B. Svantesson, "From the Airport to the Surgery to the Courtroom - Private International Law and Medical Tourism"(2008) 34 Commonwealth Law Bulletin, 265.: [https://www.law.ox.ac.uk/sites/files/oxlaw/oscola\\_4th\\_edn\\_hart\\_2012.pdf](https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf)

6 See, for example, Melissa Curley, M., Stanley, E., "Extraterritorial Jurisdiction, Criminal Law and Transnational Crime: Insights from the Application of Australia's Child Sex Tourism Offences" (2016) 28 Bond Law Review 169.: [https://www.law.ox.ac.uk/sites/files/oxlaw/oscola\\_4th\\_edn\\_hart\\_2012.pdf](https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf)

7 Stephan Hobe, "Legal Aspects of Space Tourism" (2007) 86 Nebraska. Law Review 439; See also Frans G.von der Dunk., "Space Tourism, Private Spaceflight and the Law: Key Aspects" (2011) 27 (3) Space Policy, 146.

activity. Some scholars even see a right to tourism emerging as a so-called third generation "human right" under international law.<sup>1</sup>

Law is a social institution that touches all aspects of life. "contract law" regulates transactions, "family law" addresses familial relations - but there is no recognised area of "tourism law". In a broad sense, the term "tourism law" is ill defined and has been described as "eclectic in nature".<sup>2</sup> As Giri notes, "[t]he fragmented nature of the tourism industry is not conducive for regulation".<sup>3</sup> The sheer breadth of activities that may touch the tourist sector is formidable making an all-encompassing legal framework nearly impossible to develop. The conceptual idea, therefore, is not to pre-emptively bring law to potential tourist disputes, but rather to provide a forum for tourist disputes to be resolved in a transparent juridical setting.

It is important to note, the Qatari legal system is already a well-developed and functional institution (albeit not perfect). Proposals for a tourist specific judicial body are not meant to remedy any serious deficiencies in the current judicial system, rather, this initiative will be designed to reduce fears of the "unknown" that so often scare tourists away from visiting a particular destination.<sup>4</sup> Tourists mistakenly believe that all aspects of Qatari society are governed solely by *shari'a* or religious based laws. The reality is that the Qatari legal system is largely based on European Civil Law. The establishment of a tourist court will signal to visitors that Qatar has a legal regime that caters to their needs, minimising (founded or unfounded) fears.

The relative novelty of a tourist court, in and of itself, will enhance knowledge of Qatar as a tourist destination and strengthen the confidence of potential visitors thinking of coming to Qatar. A tourist court, however, should not be a marketing ploy or gimmick. The experience of other jurisdictions has shown that there is a distinct possibility of such marketing motives dictating developments in this space. A Qatari tourist court should have real substance and embody those transcendent principles that characterise the "rule of law" (i.e. transparency, fairness, equality before the law).

In the specific context of "tourist courts" there have only been a handful of examples around the world. Very little scholarly literature is emerging from these examples meaning that a Qatari incarnation of this idea will have minimal guidance to draw upon. The abundance of wealth in the Gulf region, however, means that often policies and initiatives are limited only by one's ambition and imagination. With many high-profile international events hosted and slated to be hosted in Qatar in coming years, the country has the opportunity to establish something truly innovative in the tourism sector.

## II. What is a "Tourist Court"?

Tourists can encounter a whole host of legal issues when they are travelling.<sup>5</sup> Law and tourism intersect at several important junctures.<sup>6</sup> In this specific context, a tourist court is conceived as a judicial body that is specifically designed to resolve legal disputes involving tourists. "Legal disputes involving

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1 See McCabe, S., Diekmann, A., "The Right to Tourism: Reflections on Social Tourism and Human Rights" (2015), 40(2) *Tourism Recreation Research*. <https://doi.org/10.1080/02508281.2015.1049022>. See also Maghami, A., Dorudgar, M., "Tourism and Foreign Tourist Rights under International Law" (2018) *Journal of Tourism Planning and Development*, 23 (6), 25-27.

2 Giri, NP., "An Appraisal of Tourism Law: Eclectic in Nature" (2017) 5 *Kathmandu School of Law Review*, 88.: [https://www.law.ox.ac.uk/sites/files/oxlaw/oscola\\_4th\\_edn\\_hart\\_2012.pdf](https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf)

3 Ibid, 100.

4 Brunt, P., Mawby R., and Hambly Z., (2000). *Tourist Victimization and the Fear of Crime on Holiday*. *Tourism Management*, 21 (4) 417-424.

5 Atherton T., and Atherton, T., "Current Issues in Travel and Tourism Law" (2003) in Jeff Wilks and Stephen Page, *Managing Tourist Health and Safety in the New Millennium*, 101-115.

6 Poutsie, M., Ross, J., Geddies, N., Stewart. W., *Hospitality and Tourism Law* (International Thomson Business Press, 1998)

tourists" is in itself a broad categorisation. The proposal of a tourist court sounds simple in theory - when the practicalities of such an initiative are examined, however, it becomes clear that the establishment of a tourist court is potentially a very complicated and subtle enterprise.

Some of the most important preliminary questions that have arisen in the course of this research, and that must be answered before such an endeavour can be seriously contemplated, include:

1. What kind of disputes can be brought before such a body?
2. Would the jurisdiction of the court extend to both criminal as well as civil disputes?
3. Who has standing to bring a dispute before the court (as plaintiffs)?
4. Over whom will the court have jurisdiction (as defendants)?
5. Where would such a court sit in the broader design of the state judicial apparatus?
6. Can litigants appeal the decisions of such a court?
7. If decisions can be appealed, to whom may such appeals be made?
8. How would the decisions of the tourist court be enforced?

These, and many more questions, illustrate the potential complexity of proposing such a court. The issues, however, are not insurmountable. Guided by core legal principles and jurisprudential perspective on judicial design and practice, many of these issues can be adequately addressed.<sup>1</sup>

In the past, other countries, specifically Thailand and the UAE, have tried (or announced they *will* try) the tourist court experiment. To date, however, there is insufficient evidence to conclude that anyone has got it right. Judicial design is not a mechanical enterprise. It requires insightful and well-informed procedural guidelines informed by both cultural and logistical considerations.

### III. The Experience of Other Jurisdictions

There are only two examples of tourist courts being established, or at least considered, around the world. Unfortunately, neither example provides any tangible evidence or practical guidance upon which Qatari policymakers could seriously rely. In fact, it would appear that such initiatives have likely been pursued solely for PR purposes rather than a genuine desire to better serve and manage the legal needs of tourists.

#### A. Thailand

The first ever specifically designed and documented tourist court can be found in Thailand. This is unsurprising given the importance of tourism to the Thai economy. In 2013, it was reported that an "airport court" was being established in Suvarnabhumi Airport in Thailand.<sup>2</sup> This specific court was actually a division of a local provincial court in Samut Prakan. The airport court was intended to function as the main "tourist court" for the region. The court was officially opened with much fanfare, ceremony and media attention. The opening, however, was preceded by an international controversy involving the deaths of a number of tourists and calls for Thailand to better regulate its tourism sector.<sup>3</sup> There were clear political motives in the establishment of a tourist court in Thailand. Upon the opening of the court, Deputy Thai Attorney General Sattaya Arunthari announced:

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1 See, for example, Koch Jr., C., "The Advantages of the Civil Law Judicial Design as the Model for Emerging Legal Systems," (2004) 11 *Indiana Journal of Global Legal Studies* 139.: [https://www.law.ox.ac.uk/sites/files/oxlaw/oscola\\_4th\\_edn\\_hart\\_2012.pdf](https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf)

2 Manta, D., *Chiangrai Bulletin*, "First Tourist Court of Thailand Opens in Pattaya" (2013) <<https://www.chiangraibulletin.com/2013/09/05/first-tourist-court-of-thailand-opens-in-pattaya/>> last accessed 20 January 2019. See also Integrity Legal Community, Thailand to see a new "Airport Court" coming to Suvarnabhumi <<http://integrity-legal.com/legal-blog/legal-news/thailand-legal-news/thailand-to-see-a-new-airport-court-coming-to-suvarnabhumi/>> last accessed 20 January 2019.

3 John Stapleton, *Thailand: Deadly Destination* (A Sense of Place Publishing, 2015), 107.

...the Pattaya Tourist Court would handle lawsuits filed by foreign visitors involving crimes committed against them in the city such as fraud, robbery, theft, rape, physical assault especially over unfair services and personal security.

In touting the efficiency and benefits of the Court, Sattaya further noted:

The tourist court can even hand down a verdict on a lawsuit in one day if the complainant or the victim has sufficient evidence and can present credible witnesses against the accused. Among cases that can be speedily tried are those involving swindling of tourists or stealing of valuables...

Cynical critics of the Thai authorities greeted the establishment of the court with scepticism. Many saw the court as merely a publicity stunt designed to improve the image of Thailand as a tourist destination and the reputation of the government as being concerned with tourist welfare. Adding to the suspicion that this initiative was merely a "smoke screen" was that one of the first cases resolved by the court was related to "a Jet ski collision claim". Anyone familiar with the Thai tourist scene, particularly the southern parts, will be aware of the common "jet ski scam" and the other dangers associated with Jet Ski activities on the coast.

From the available information published in local newspapers and press releases, the tourist court in Pattaya has been expanded to other Thai tourist centers including Bangkok. It would appear from media reports that the jurisdiction of the court allows both civil and criminal cases to be heard.<sup>1</sup> Tourists are also able to file suits against other tourists or even commence legal proceedings against Thai nationals. Statistics published in the *Phuket News* show that between the establishment of the court in late 2013 and March 2014<sup>2</sup>:

...a total of 22 cases, mostly civil suits involving tourists, had been lodged with the tourist court there and most of the cases had already been settled.

In Phuket, 184 cases had been lodged with the tourist court. The cases included 21 civil suits, 134 criminal suits and 29 cases involving consumer protection violations.

Of the 21 civil suits, rulings had already been delivered on 11 suits and 10 other suits were being considered.

Of the 134 criminal suits, 115 had already been settled and the remaining 19 were being considered.

Of the 29 consumer protection cases, court rulings had already been given on 18 cases and the remaining 11 cases were being considered.

Although the veracity of these numbers cannot be verified, they do provide a purported glimpse into the type of matters that have been resolved by the various Thai tourist courts.

## **B. Abu Dhabi**

In early 2017, officials from the United Arab Emirates (UAE) announced the establishing of a "tourist court" in Abu Dhabi.<sup>3</sup> The motivations for establishing a tourist court in Abu Dhabi were more transparent than in Thailand. Numerous news reports specifically noted that the court was designed to improve the "image" of Abu Dhabi in the eyes of tourists. In August 2017, it was announced that the court had in fact been established. UAE officials have been quoted as

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1 Unfortunately, no scholarly literature or official government reports have yet been published with respect to these courts.

2 Thai Visa, "Bangkok Tourist Court Opens, 15 more to follow" <<https://www.thaivisa.com/forum/topic/709676-bangkok-tourist-court-opens-15-more-to-follow/>> last accessed 20 January 2019.

3 Syndicated, Special Court to Deal with Tourist Cases Launched. *Abu Dhabi World*, Retrieved from <<http://www.adwonline.ae/special-court-deal-tourist-cases-launched/>> last accessed 20 January, 2019. See also, Trade Arabia, "Tourist Court and Prosecution Launched in Abu Dhabi" in Trade Arabia, <[http://trade-arabia.com/news/TTN\\_328571.html](http://trade-arabia.com/news/TTN_328571.html)> last accessed 20 January, 2019.



emphasising that this initiative would "reduce wait times" and lead to "more accurate verdicts". To date (mid 2019), no subsequent reports, cases or online portals have appeared in relation to the Abu Dhabi tourist court. Nor are there any specific regulations or laws referring to the establishment of such a court. The Judicial Department in the Emirate of Abu Dhabi has not released any procedures as to apply to the tourist court services and no statistics or judgements have been reported. It is safe to assume that the initiative was never actually realised.

From the limited information available regarding the Thai experience and the talk of establishing a tourist court in the UAE, it is difficult to glean any lessons from the two particular experiences. This lack of guidance represents a clear opportunity for Qatar to be a world leader in the establishment of a tourist court. Moreover, the upcoming FIFA World Cup 2022 is also the ideal platform wherefrom this innovative piece of logistical tourist infrastructure can be showcased to the world. In principle, the idea of a tourist court is attractive. In practical terms, however, many important and fundamental issues require attention prior to any serious attempt at implementing such a court.

#### IV. How Might a Tourist Court Function?

The key to any discussion as to how a tourist court in Qatar might operate is the awareness of those enlightened philosophical and legal principles that characterize just and fair legal decision-making. In order to avoid the criticism that a tourist court in Qatar is merely a PR ploy meant to "hood wink" tourists into a false sense of security, a Qatari tourist court should be founded squarely within and upon the principles of "rule of law". Specifically, those principles include transparency, accessibility, impartiality, efficiency and capacity. As tourism law expert Antonios Maniatis maintains, "the principle of the "rule of law" promotes the status of tourism to a very large extent".<sup>1</sup> Each one of these respective ideals is explored in greater depth below:

##### A. Guiding "Rule of Law" Principles

For a tourist court to take roots and succeed in Qatar, the institution itself must embody, in its design and procedural framework, all of the "rule of law" principles noted above. Globally in recent years, a distinct body of laws has emerged dealing with travel and tourism. This field of law covers contract law, consumer protection law, intellectual property law and even international law.<sup>2</sup> As Anolik notes, given that tourism is the largest service industry in many countries and one of the largest and fastest growing industries in the world, it is curious that not many lawyers know about or specialise in "travel law".<sup>3</sup>

##### 1. Transparency

Transparency is an essential component of any decision-making body that can impact the interest of others. In a context where cultural or linguistic obstacles may obscure judicial proceedings, transparency is a doubly necessary requirement. Public and user confidence in the courts is greatly impacted by both at the perceived level of transparency as well at the actual level of transparency. In a recent "smart courts" project in Azerbaijan, for example, policy makers were able to enhance public confidence in the courts through the implementation of new technology aimed at enhancing transparency in court processes.<sup>4</sup>

Transparency would include the critical procedural practice of informing litigants of the matter(s) in dispute prior to the commencement of proceedings. Furthermore, litigants must

1 Maniatis, Antonio, "Tourism and the "Rule of Law"" (2016) *African Journal of Hospitality, Tourism and Leisure*, 5(1). Open Access- Online @ <http://www.ajhtl.com>.

2 Anolik, A., *Travel and Tourism Law: The Law of Leisure*, (2010) 27(3), 10-13.

3 Ibid.

4 World Bank, "'Smart Courts': Promoting Judicial Transparency and Efficiency in Azerbaijan" (2015) <<http://www.worldbank.org/en/news/feature/2015/10/17/promoting-judicial-transparency-and-efficiency-in-azerbaijan>> last accessed 7 February, 2019.

also be given ample opportunity to consult legal counsel (if desired) and formulate a response to the legal problems in dispute. From personal experience, it can be attested that in some consumer tribunals in other parts of the world (for example the Consumer, Trader and Tenancy Tribunal (CTTT)<sup>1</sup> in New South Wales (NSW, Australia), lawyers are limited in their ability to represent clients in proceedings.<sup>2</sup> This procedural arrangement is designed to make the tribunal less intimidating and easier to use for ordinary litigants.

The decision-making process of judges serving upon a tourist court, and the basis upon which their final determinations are premised, should also be clearly presented and available to litigants at the conclusion of a matter. As is the practice in common law countries, the handing down of a written judgement is a key factor in the transparency of the legal system.<sup>3</sup> In the State of Qatar, the Civil law tradition informs the prevailing legal norms.<sup>4</sup> Importantly, Law No. 10 of 2003, Art. 15, already also mandates transparency under Qatari law:

Court hearings shall be public unless the law prescribes, or the Court orders *ex mero motu*, or a litigant requests, that they be held *in camera* to maintain public decorum or respect for morals or to protect the sanctity of the family.

In all cases, judgment must be given in a public hearing. The judge presiding over the hearing shall govern the court's management and control its procedure.

Although one of the main constraints upon a tourist court is the short period available to tourists within any given country, tight time limits ought not be used as an excuse to undermine transparency. The issue of time limits is a matter that may be left to the discretion of the Court itself to be determined on a case-by-case basis. Irrespective of any procedural time limits, information regarding a case before the court should be immediately communicated to parties as an ordinary part of proceeding. Trials *in absentia* or without notification are an anathema to the rule of law. Logistically, this would require an efficient manner of serving court notices and documents to litigants. There is a clear potential for technology to play an important role in this context.<sup>5</sup>

## 2. Accessibility

The rule of law requires that courts are accessible in every manner. Accessibility is not merely about one's legal right to litigate but also includes linguistic or even physical obstacles. Accessibility issues need to be addressed in the design of any tourist court established. The language employed by a tourist court represents one of the main benefits to tourists. Conversely, the foreign language of a local legal system is one of the main obstacles and fears of any tourist caught up in the legal system of a foreign land. In contrast with local Qatari courts, where the only applicable language of litigation is Arabic, a tourist court may operate under either English or any another prominent global language (i.e. French).<sup>6</sup> As Ramos succinctly states: "access

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1 Now known as the "NSW Civil and Administrative Tribunal" (NCAT) (since 1 January 2014).

2 See < [https://www.ncat.nsw.gov.au/Pages/cc/Dispute\\_resolution/ccd\\_representation.aspx](https://www.ncat.nsw.gov.au/Pages/cc/Dispute_resolution/ccd_representation.aspx)> last accessed 1 July, 2019. The tribunal is designed for self-representation but special requests can be made for legal representation.

3 Herrero, A., Lopez, G., "Access to Information and Transparency in the Judiciary" (2010) World Bank Institute: Governance Working Paper Series.

4 A Nizar Hamzeh, "Qatar: the Duality of the Legal system" (1994) 30 (1) Middle Eastern Studies 79-90. See also Law No. 22 of 2004 Promulgating the Civil Code. .

5 Dixon Jr., Herbert, "Technology and the Courts: A Futurist View" (2013) American Bar Association < [https://www.americanbar.org/groups/judicial/publications/judges\\_journal/2013/summer/technology\\_and\\_the\\_courts\\_a\\_futurist\\_view/](https://www.americanbar.org/groups/judicial/publications/judges_journal/2013/summer/technology_and_the_courts_a_futurist_view/)> last accessed 7 February, 2019.

6 Article 16, *Law of Judicial Authority* (2003) requires that judicial proceedings in Qatar are in Arabic. This has not prevented the Qatar International Dispute Resolution Centre from holding proceedings in English (with the option of Arabic) and delivering its judgements in English and Arabic.



to language means access to justice".<sup>1</sup> Indeed, the judges appointed to a tourist court may be chosen because of their competence in a particular language in addition to their knowledge of the law and legal decision making in any particular legal context.

Anyone who meets the legal standing requirements to commence a legal action in a tourist court should not be limited in that pursuit by physical disability or impairment. Accessibility, therefore, may go beyond language and also apply to persons with special needs such as mobility issues or visual and hearing impairments.<sup>2</sup> Tremendous advancements in technology means that many of the potential issues impacting access to justice because of the disabilities of potential litigants, can now be addressed and overcome.<sup>3</sup> There is clear scope for a Qatari tourist court to be a world leader in this field and a beacon of inclusiveness to the rest of the world.

### 3. *Impartiality*

The very words "rule of law" evoke a sense of fairness and impartiality. A general principle of legitimate judicial institutions is the neutrality of decision makers. This foundational principle is no different in the context of a tourist court. The decision maker should be independent from both parties in a professional and personal capacity. The judicial officer should also enjoy independence and certainty of tenure such that they can dispense justice in a free, fair and fearless manner.<sup>4</sup> In a 2015 report by the UN Human Rights Council, it was concluded that the Qatari judiciary was hampered by the lack of Qatari judges. The appointment of expat judges was identified as a weakness in the Qatari legal system in the sense that it undermined the independence of the judiciary.<sup>5</sup> A tourism court in Qatar ought to implement the recommendation of the UN report and consolidate the independence of the judiciary.

### 4. *Efficiency*

The main incentive in establishing a tourist court is its ability to resolve legal disputes in a timely, efficient manner as compared to local courts. This is a direct benefit to tourists who are often limited in the time they have available. It is also of benefit to the host jurisdiction in that the legal system is not further clogged with unresolved disputes involving litigants no longer in the country.

In order to realize this important end whilst maintaining the rule of law, procedures establishing a tourist court need to balance competing interests in the determination of time limits pertaining to when a claim can be brought and when that claim has expired (i.e. the statute of limitations). Additional procedures dealing with time limits can also specify when a decision is to be handed down by a judge, and, most importantly, when a judgement is to be enforced. In this context, the work of Wistrich is instructive. In 2008, Wistrich examined how the design of deadlines has a measurable impact on human psychology and by extension how people behave.<sup>6</sup> Such insights can be leveraged to design a judicial body most attuned to the needs of tourists

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1 Ramos, T., "When Access to Language Means Access to Justice" (2018) Clearinghouse Community < <http://povertylaw.org/clearinghouse/articles/Ramos>> last accessed 7 February 2019.

2 Hurder, A., "ABA Urges Equal Access to Courts for Individuals with Disabilities" (2002) 26 (5) *Mental and Physical Disability Law Reporter* 772-774. See also Dooley, J., Wood, E., "'Program Accessibility': How Courts can Accommodate People with Disabilities" (1993) 76 (5) *Judicature* 250 -253.

3 The Supreme Judiciary Council in Qatar has taken some major steps to leverage technology to enhance access to justice including its (*Beta Version*) E-Services portal: <https://www.sjc.gov.qa/en/Pages/default.aspx> last accessed 1 July 2019).

4 Nouri, S., "Life Tenure and the Dynamic of Judicial Independence in the Federal System (2018) 5 *Stetsons Journal of Advocacy and the Law* 155.

5 See Gabriela Knaul, "Report of the Special Rapporteur on the independence of the Judges and Lawyers - Addendum - Mission to Qatar" (2015) A/HRC/29/26.Add.1.

6 Wistrich, A., "Procrastination, Deadlines and Statues of Limitation" (2008) 50 (2) *Willian and Mary Law Review* 607-667.

and their psychological states when in a foreign land. Other procedural methods discussed in the literature, such as mandatory pre-litigation conferencing (mediation), have also been identified as a means through which efficiency of judicial processes can be enhanced.<sup>1</sup>

Although, ostensibly, these procedural considerations may appear to be mere questions of logistics - important conceptual and more substantive "fairness" considerations are embedded in the process of forum design.

### 5. Capacity

Finally, a tourist court should be capable of realising all of these key "rule of law" elements whilst also embodying these principles in practice. Capacity, therefore, requires both resource capacity and human capacity. The State of Qatar is presently in a very capable financial position and able to invest in initiatives that will benefit the country in the medium to long term. On the human side, many top jurists from around the world are already connected to the judicial system of the State of Qatar by means of their involvement in other legal projects and enterprises - most notably the Qatar International Court. The capacity therefore, in a resource and technical skill perspective, to design, establish, publicise and operate a tourist court in Qatar already exists.

Technology will play an important role in further building this capacity. The use of technology to cross-reference personal information databases in Qatar would be the clearest means by which technology can be leveraged to enhance capacity. Most notably, in Qatar, all mobile phone numbers must be registered to a valid identification document (either Qatar ID card or passport). Potentially, this allows litigants to be immediately informed of developments in proceedings, as well as other important information related to an application or case. This is already in practice through the Supreme Judiciary Committee's E-Services initiative. Through the adoption of a registration or an "opt-in" model (see below), travellers could register their contact details at the airport upon arrival and thus be brought within the system.

In terms of resources, human capital and technical capabilities - Qatar is very well placed to establish and operate a tourist court of the highest ethical and procedural standards.

## V. Institutional Framework

A fundamental question relating to regulatory design is how would a tourist court be placed within the existing legal and institutional framework prevailing in Qatar? The most practical and logical government ministry under which such a court would be based is the Ministry of Justice. This subsequently raises an additional question of whether the court is part of the state judicial hierarchy. This is an important question as it directly relates to whether the decisions of a tourist court could be appealed to state courts. Again, an examination of the QFC courts shows a limited scope for appeal restricted to courts existing within the legal framework of the QFC itself.

An alternative institutional approach differing slightly from that of a full-blown court, is the establishment of an "executive tribunal". This "Tourist Dispute Tribunal" (TDT) (as it might be called) would enjoy all the advantages of a tourist specific dispute resolution forum such as a court without being subject to the rigorous standards of procedure characterising a formal court of law. The establishment of a so-called tourist tribunal under the Ministry of Interior (MOI) also avoids the

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<sup>1</sup> Pieras, J., "Judicial Economy and Efficiency Through the Initial Scheduling Conference: The Method" 35 (4) Catholic University Law Review 943-959.

question of appeals within the judicial hierarchy.<sup>1</sup> Although a tribunal under the MOI may ostensibly violate the separation of powers doctrine, it is important to note that this "tribunal" would not be a Court but rather an "executive decision making body" - like an ombudsman - subject to the rules of administrative review and Administrative Law.

Whether the idea of a dedicated dispute resolution body is pursued as a "tourist court" or a "tourist tribunal", the system can still be organised as an "opt-in" service or facility. What this means, is that upon arrival, tourists may apply and register to have access to the scheme. Ideally, registration would be easily available online with participants being required to provide personal details such as contact information and passport details in order to have access to the tourist legal safety net scheme. A nominal fee might also apply with collected money being put towards a compensation fund for losses incurred by tourists.

On a logistical level, the court facilities currently being utilised by the Qatar International Court, located centrally in the "West Bay" area, are set to be vacated sometime in 2020. Those facilities include state of the art technology and support infrastructure. Rather than abandon or dismantle those facilities, it would be ideal for those existing judicial offices to be repurposed as a Qatari tourist court or tribunal.

#### **A. Whole of Government Approach**

In order to realise the full potential of this proposed initiative, a cross-governmental approach would be essential. Beyond the Ministry of Justice, several other important Qatari ministries would also need to be involved in order to allow the scheme to reach its full potential.

The Ministry of Interior (MOI) is a critical component of any such scheme. The MOI controls who comes into and who leaves Qatar. Access to MOI records would thus be required in order to confirm the status of litigants as in fact being in the country on a tourist visa or otherwise. Having a tourist visa would be a precondition to being able to bring a matter before the tourism court.

The Qatar Central Bank (QCB) would also need to be involved in the enforcement stage of any judicial proceeding where funds and bank accounts may need to be frozen.

In the context of consumer disputes involving tourists, the Ministry of Economy and Commerce (MEC) would be a key stakeholder. Although the MEC already has a dedicated consumer disputes and consumer protection division, consumer disputes involving tourists might be better addressed through a tourist court scheme. Transport related disputes involving taxis, buses or the Doha metro might also fall under the responsibility and oversight of the Ministry of Transport and Communications (MOTC). Similarly, communication related disputes involving mobile phone carriers (either Ooredoo or Vodafone) may also engage the MOTC. With a "whole of government approach", all of these potential disputes can be brought under the single streamlined umbrella of a tourist dispute resolution scheme. The tourist court will be a "one stop shop" for all disputes involving tourists.

Finally, the involvement of the Qatar Tourism Authority (QTA) would be vital to the success of this vision. The QTA would be needed to enhance awareness of the scheme and promote its benefits.

#### **B. Justiciability**

In addition to institutional arrangements, there is the important and substantive matter of the court's jurisdiction. In legalese - the matters over which a court has power to rule are known as "justiciable matters".

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<sup>1</sup> For a related discussion comparing judicial and administrative tribunals in the context of competition law, see Power, V., "The Relative Merits of Courts and Agencies in Competition Law - Institutional Design: Administrative Models; Judicial Models; Mixed Models" (2010) 6 *European Competition Journal* 91.

A primary precondition to any matter being heard before a tourist court is that the litigant(s) are within the State of Qatar on a tourist visa. More specifically, however, what type of matters would be justiciable for the court (as in criminal, civil, commercial etc.)?

### 1. *Consumer Matters*

The idea of the tourist as traveller has now evolved into the reality of the tourist as a consumer.<sup>1</sup> Indeed, many legal disputes involving tourists in foreign countries can be classified as "consumer disputes". Misunderstandings as to prices, quality or the elements of characteristics of goods or services inevitably draw tourists into unpleasant encounters. A tourist court, therefore, must address consumer disputes.

As part of the strategic design of a tourist court, the jurisdictional limit of the court should be clearly established. For example, consumer disputes where the amount in question is under a certain threshold (i.e. 2000 QAR (apx. \$US 550)) would be within the remit of the court to decide. This would include disputes with hospitality service providers such as hotels and restaurants as well as other providers of consumer goods and services. Where the amount in question is above that threshold, tourist would only have recourse to local courts.

### 2. *Civil Disputes*

Civil claims could be contractual in nature or based on other civil wrongs such as reputational damage or negligent infliction of loss. A civil dispute is a private legal matter between two parties. "Standing" (is the right to bring a case) is again an issue in this context. In civil matters, policy makers would need to clarify several key issues. First, would a tourist court be able to adjudicate complaints involving two tourists? Or would the jurisdiction only apply where only the complainant is on a tourist visa and the respondent is not. Furthermore, would the court's jurisdiction also extend to matters brought against a person on a tourist visa by a resident of Qatar. That is, could the court entertain claims where the tourist is the respondent in the matter? Furthermore, where the defendant is a tourist - how will their travel status change should they be the subject of a claim? Could they still abscond the country?

### 3. *Crimina Disputes*

Where criminal matters are concerned, it is difficult to determine just what type of criminal infractions would be dealt with by a tourism court. How serious ought a criminal offence be before it is dealt with by the State courts? Moreover, would criminal matters be limited to situations where a person who is on a tourist visa is the accused party? Or would criminal matters where the tourist is a victim of a crime also be justiciable?

The severity and consequent classification of criminal matters is largely arbitrary. What makes a crime "indictable" (serious) as opposed to only merely "summary" (less serious or a "misdemeanour") is not an objective question. A simple approach would be for misdemeanours involving tourists to go to a tourist court whilst indictable offences would be dealt with by the state courts.

Especially in the midst of high-profile sporting events, such as the World Cup 2022, it would be expected that most criminal offences might be misdemeanours such as public drunkenness or disorderly conduct. Traffic infringements, depending on the severity, could also be dealt with through the tourist court. Qatar has a well-developed road and traffic administration, meaning offences of speeding and unsafe driving are easily verifiable through digital photographs and

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<sup>1</sup> Ibanez, O., "El derecho Turístico: de Viajero a Consumidor (Tourism Law: From Traveller to Consumer)" (2016) 113 Revista CIDOB d'Afers Internacionals, 33-50. (Spanish)

other documentary evidence. These are proverbial "open and shut" cases. Rather than a tourist trying to navigate the local traffic department to understand why they were fined or penalised, a tourist court could operate as a single point of explanation. Presented with clear evidence of an offence, a tourist who files a complaint against an infringement would likely accept the penalty and walk. At the very least, the encounter with the local legal system will not be negative; hopefully it may even be seen as positive.

#### *4. Event Specific Dispute Resolution*

A tourist could also be given temporary jurisdiction in relation to disputes arising from specific events. For example, ticketing disputes for World Cup 2022 or claims of unjustified refusal of entry into venues, restaurants or hotels might come before the tourist court. Specific claims for liability arising from activities directly relating to an event (i.e. injury within a stadium or the conduct of volunteers or event employees) could also be delegated to a tourist court. The Supreme Committee for Delivery and Legacy (the main Qatari governmental body overseeing World Cup issues) could easily delegate responsibility to the court to deal with certain disputes.

### **C. Enforcement**

A judicial body without the concurrent power of enforcement is, in effect, a toothless tribunal. The ability of a court to enforce its judgements is imperative for the success of any project of this nature. The remedial powers of the court in a civil and criminal context would have to be clearly stipulated in any law that establishes a tourist court. The power to freeze accounts, order payments and even deprive a person of their liberty in a criminal context need to be clearly stipulated. Judicial transparency demands as much. The involvement of other government entities such as the Ministry of Interior, the Qatar Central Bank or other law enforcement branches, as noted before, will be critical to the realisation of a rapid enforcement mechanism.

Tourists do not have the time or ability to pursue additional litigation in the name of enforcing a judgement. One proposal that would address this issue is a government backed rapid compensation scheme. The Qatari government could establish a fund whereby successful litigants before the tourist court could immediately access compensation (up to a stipulated threshold - perhaps 3500 QR (apx \$US 1000)) - the government scheme could subsequently recover that amount from the actual perpetrator, or the party determined to be liable by the tourist court. This scheme may even be self-funded in the sense that tourists that seek to "opt-in" to the tourist court safety net might have to pay a nominal fee upon registration (as noted above).

Akin to the Customer Dispute Resolution Scheme (CDRS) under the Qatar Financial Centre (QFC) framework<sup>1</sup>, the decisions of a tourist court - in a consumer, commercial or civil context - might only be binding if they are accepted by the plaintiff. That is, if a tourist brings a matter before the tourist court and they are unsatisfied by the outcome, they retain the right to refuse the decision and to pursue their matter in a local Qatari state court. As with the CDRS, a time limit would apply in which to accept or reject the decision. If the decision is not rejected within that time limit, it is deemed to be accepted. Under the CDRS rules, that time limit is 14 days.

In line with prevailing practice in all common law jurisdictions, every decision handed down by the tourist court ought to be published and made publicly available online on a dedicated English language portal. Over time, the cases will constitute a body of case law wherein tourists and legal advisors will begin to understand how matters are regularly dealt with in Qatar.

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<sup>1</sup> It is important to note that the Qatar Financial Centre is a separate legal jurisdiction carved out within Qatar: Law No. 9 of 2005. The establishment of Tourist Court would not be within the self-enclosed universe of a Financial Centre such as the QFC or the Dubai International Financial Centre (DIFC). It would be important, therefore to acknowledge the broader legal and judicial Qatari frameworks (Judicial Authority Law, Civil and Commercial Procedure Law etc).

A forum such as this would also make diplomatic assistance easier to render for individuals caught up in a legal dispute in Qatar. Foreign missions and diplomats would be in a better position to advise foreign nationals on processes and procedure when the tribunal dealing with a dispute is transparently constituted.

Tourists seeking to pursue travel insurance claims would also benefit from the transparency of a tourist court. Indeed, insurance companies would have a vested interest in supporting a tourist court of this nature in Qatar - and in fact all over the world as it will ostensibly reduce the number of insurance claims by reducing the number of uncompensated claims. Through a tourist court, losses are recovered from wrong doers rather than through insurance companies. Supporting the establishment of a network of tourist courts might in fact be a smart financial investment for insurance companies operating in the travel insurance space.

## VI. Conclusion

The "rule of law" ideal alludes to the idea that there is one law that applies to all equally. The idea that some people in society who are on special visa's might be subject to different laws or legal processes will inevitably be disconcerting to those who prefer a fundamental rule of law ideal. This arrangement, however, is not unprecedented - even in Qatar. The Qatar Financial Centre (QFC), for example, has a different set of laws for entities registered within that framework. The idea of a tourist court is an extension of the long standing judicial idea of curial specialisation.<sup>1</sup>

Upon reflection, the experiences of other jurisdictions in establishing a tourist court are generally unhelpful in the Qatari context. There is little evidence or literature about tourist courts upon which Qatari policy makers can draw. In certain respects, the dearth of guidance represents a blue sky for Qatar. The small gas-rich country has an opportunity do something quite revolutionary in the world of tourism. The establishment of a tourist court, however, should be ultimately inspired by a genuine desire to address the needs of tourists not as a marketing or promotional gimmick.

There are few things scarier than being caught up in the legal system of a foreign country. The uncertainty and stress are enough to drive any tourist (and prospective tourists) away from that country permanently.<sup>2</sup> Having a tourist court as a legal safety net would be a bold, innovative and reassuring project that would greatly encourage visitors to come to Qatar - both as ordinary tourists, but also as participants in many upcoming global sporting events to be hosted in Qatar. This discussion is intended to spark debate and imaginative solutions towards creating a tourist tribunal in Qatar, that, should it be successful, might be emulated all over the world.

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1 See Gordon M. Griller, "The Quiet Battle for Problem-Solving Courts" (2011) *National Centre for State Courts*, < <https://www.ncsc.org/-/media/Microsites/Files/Future%20Trends/Author%20PDFs/Griller.ashx> > last accessed 1 May, 2019. In the US, for example, there are more than 1300 specialty courts in fields as diverse as domestic violence, guns, drugs and even homelessness: < <https://www.nij.gov/topics/courts/pages/specialized-courts.aspx> > last accessed 1 May 2019.

2 See Susanna Curtin, "Wildlife tourism: the intangible, psychological benefits of human-wildlife encounters" (2009) 12(5-6) *Current Issues in Tourism* 451. See also Emma Pope, "Tourism and Wellbeing: Transforming People and Places" (2018) 1(1) *International Journal of Spa and Wellness* 69.



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