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Tort Reform in Saudi Arabia: Obstacles and Solutions

Othman Talbi

Submitted to the faculty of Indiana University Maurer School of Law

In partial fulfillment of the requirements for the degree

Doctor of Juridical Science

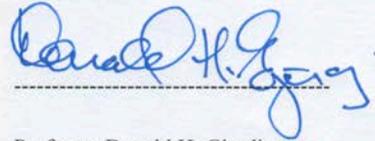
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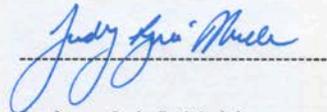
Othman Talbi

Accepted by the faculty, Indiana University Maurer School of Law, in partial fulfillment of the requirements for the degree of Doctor of Juridical Science.

Doctoral Committee

A handwritten signature in blue ink, reading "Donald H. Gjerdingen", written over a horizontal dashed line.

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Professor Jody L. Madeira

July 31, 2015

Abstract

TORT REFORM IN SAUDI ARABIA: OBSTACLES and SOLUTIONS

Othman Talbi

Saudi Law is based on the broad guidelines of Sharia. This means that religion forms the basis of all Saudi law. Thus, because of the absence of a statutory law in Saudi Torts Law, Sharia' principles take the place of the statutes. Consequently, when deciding tort cases judges need to consider these principles by interpreting them, and then apply them to each case individually. Furthermore, due to economic improvement and industrialization in Saudi Arabia, the nature and type of legal issues have changed. Therefore, complex cases have emerged for which it is very important to produce a reform resolving new issues. Moreover, Saudi Arabia is still a tribal society in many ways.

Although these issues are critical problems for the Saudi torts system, there is a conspicuous lack of academic research addressing the topic. This dissertation will propose a comprehensive plan for tort reform. In this dissertation a classification of Sharia principles that are relevant to torts system will be proposed in such a way as to make them easily accessible to judges in Saudi courts, and widely applicable to modern cases. The overall goal of this effort would be to produce a tort system equivalent of the Restatement of Torts. As well as, the dissertation will examine Saudi legal experts' reaction regarding the proposed restatement as a tort reform.

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Chapter 1: Statement of the Problem: The Saudi Tort System

A. Torts in Saudi Arabia — The Importance of the Topic.

Saudi Arabia has undergone tremendous modernization in the past few decades, becoming an important player in the global economy. This process necessitates finding a place for traditional religious and cultural values in a modern society. Although great strides have been made in this direction already, Saudi Arabia's system of civil law remains underdeveloped and is largely ignored by the average Saudi who prefers instead to rely on traditional tribal methods of conflict resolution. Unfortunately, these methods are not a substitute for a modern system of tort law, because they do not properly transfer liability to the perpetrator of the harm and instead allow negligent tortfeasors to externalize the cost of their dangerous activities.

In fact, as a Muslim society Saudis generally believe that Sharia is completely perfect, meaning that it has the ability to resolve all present cases and the flexibility to accommodate any contemporary or future issues.¹ However, due to economic improvement and industrialization in Saudi Arabia, the nature and type of legal issues have changed involving workplace injuries, car accidents, and insurance claims against

¹ Muslims consider Sharia to be the basis of relationships among people within a society, as well as the relationship between Muslims and ALLAH "God."

large companies. Therefore, complex cases have emerged for which it is very important to deduce resolutions from the main principles of Sharia.

Theoretically, Saudi Arabia already a tort system based on Sharia,² which if applied would resolve all recent and future issues. However, this depends on the role that judges and scholars can play in the matter of deriving their judgments from Sharia. Indeed, a gap has emerged between Sharia and the judicial system, which is largely characterized by an underutilization of the theoretical tools of Sharia in order to derive judgments suitable for modern issues.

Although this issue is an acute problem for the Saudi torts system, there is a conspicuous lack of academic research addressing the topic. This project will be one of the first empirical academic studies to address the topic of tort reform in Saudi society. This dissertation will propose a comprehensive plan for tort reform. Furthermore this will be a groundbreaking attempt to transfer Sharia's broad guidelines to a restatement of torts for use in Saudi courts.

B. Tort System in Saudi Arabia.

Saudi Law is based on the broad guidelines of Sharia. This means that religion forms the basis of all Saudi law. Therefore, in order to understand the tort theory in Saudi Arabia it is necessary to identify the three elements of Sharia torts system; the

² Unlike most of the other laws in Saudi, the tort system has no statutory code, whereas trade law and international trade law have their own codes in order to meet the demands of the modern economy.

wrongdoing, the harm, and the causation. These elements would apply for all tort cases regardless of the time or type of the case. Proof of these elements will determine whether or not there is a sufficient basis for a case. In the next chapter these elements will be discussed and explained separately; however it must be kept in mind that the religious principles take the place of statutes in Sharia, which will make the judgments based on these principles more efficient for judges to rule on.

Sharia is the highest source of legal authority in Saudi Arabia. Thus, because of the absence of a statutory law in Saudi Torts Law, Sharia principles take the place of the statutes. Consequently, when deciding tort cases judges need to consider these principles by interpreting them, and then apply them to each case individually.

Throughout Western history, religion has played a prominent role in shaping public morality. The religious basis of public morality was reflected in the opinions of judges and as a result became part of a common law. On the other hand, religious morality in Islam derived from Sharia, which is almost equivalent to a common law. Therefore, all regulations that govern tort cases in Saudi Law rely on moral and religious principles that are derived from Sharia.

C. Obstacles within the Saudi Tort System.

Because Sharia law consists of guidelines that are intended to apply broadly to a wide range of situations, the rules of Sharia are not very specific and must be interpreted according to the situation. This interpretation is complicated by the existence of four schools of thought, all of which are equally valid. The result of this situation is that

judgments are highly unpredictable, which discourages individuals from filing tort claims and makes the system seem arbitrary.

Furthermore, judges in Saudi courts are not bound by any specific school of thought or the interpretations of other judges. Rather, they are bound by the Sharia principles directly. Based on this, judges have broad discretion to interpret the Sharia source material in individual cases, and are not required to reach the same result in cases sharing similar fact patterns.

Additionally, Saudi Arabia is still a tribal society in many ways, which means that Saudi law is heavily influenced by tribal culture. People in tribal society prefer to resolve their disputes inside the tribe and to avoid litigation. The combination of these influences can be seen in the Saudi tort system, which at present is highly inefficient and heavily biased against plaintiffs. Furthermore, the judges themselves in their decisions reflect cultural bias against compensation and might ask the plaintiffs to seek their reward from ALLAH.

Indeed, Saudi traditional values are not in conflict with Sharia. In fact, the goals of tribal mediation are identical with the goals of tort law. However, Saudi citizens are unaware of the benefits of resolving their conflicts through the court system, and therefore deprive themselves of the benefits of procedural justice. The result of this deprivation creates a gap between the Sharia and its implementation. Furthermore, this problem contributes to the larger issue of a lack of application of tort law for the Saudi court system.

Finally, the broad discretion given to judges to interpret the principles under the four schools of thought in combination with a lack of written law gives rise to judicial decisions too unpredictable to allow plaintiffs to effectively use the system. Under the current system, plaintiffs' uncertainty concerning unpredictable outcomes discourages them from investing time and money in filing lawsuits. The result is a mismatch between the intention of the Sharia rules and reality, which ultimately undermines the legitimacy of the judicial system.

The inadequacy of the current tort system in Saudi Arabia requires a comprehensive plan for reform that takes into account the religious, cultural, and political issues that govern the topic and can be implemented despite expected opposition that such a reform will face.

D. Potential Solution.

Based on the aforementioned obstacles related to the broad guidelines of Sharia, the absence of written law, broad discretion, and cultural and social bias, this Dissertation proposes the establishment of an official publication, which would include all torts' principles that are derived from the Quran and the Sunnah. Like a Restatement of the common law, the publication, produced under the auspices of the Ministry of Justice, would be an analysis of all the important sources of Sharia, starting with the Quran and Sunnah and proceeding onto famous torts cases. The publication would be a combined work of judicial opinion and scholars' jurisprudential opinions.

Creating a standardized body of tort law would discourage irresponsible behavior and give Saudi's greater access to justice. Sadly, as of this moment the process of reform on this issue has yet to begin. While not perfect, the American system of tort law goes a long way towards addressing these issues in American society, therefore the *Restatement of Torts* in the American system is closely considered for this project, in order to find a solution to these obstacles that meets the needs of a modern society, while also being consistent with Saudi religious values.

In this Dissertation the researcher would like to contribute to resolving these issues and filling the gap between Sharia and the judicial system. A classification of Sharia principles that are relevant to the tort system will be proposed in such a way as to make them easily accessible to judges in Saudi courts, and widely applicable to modern cases. The overall goal of this effort would be to produce a tort system equivalent of the restatement of tort.

As a former lawyer and current law professor at a major Saudi university, the researcher has both the prerequisite practical and academic perspective to address this issue. Furthermore, despite the lack of research on the topic the researcher is able to gain access to important research materials such as judicial opinions and case files that are not available to the public, as well as interview Saudi legal experts and high-ranking judicial officials.

E. The Study Strategy.

An empirical qualitative study will be utilized in this study. The researcher will conduct in-depth interviews with judges and legislators on the subject of reforming the tort system. Open-ended questions will be used in this study to investigate the potential reaction of Saudi legal experts to an attempted reform of the tort system, and also to examine the extent to which such reform is needed. During these interviews the researcher will propose various solutions to problems within the tort system, and analyze the reactions of the interviewees. Based on these interviews the researcher will be better able to understand the potential reaction to the proposal and to anticipate any resistance of legal experts to attempts to reform.

Therefore, in order to understand the nature of the proposed solution and the obstacles facing Saudi tort law, it is necessary to define for the reader a theoretical framework for understanding the significance of Sharia within Saudi law. Thus, the following section will discuss the study theoretical framework that contains, Sharia as the basis of Saudi law, including its primary and secondary sources. Further, the section will include a discussion of the main principles of Sharia as the foundation of Saudi tort law, the nature and scope of the obstacles facing the Saudi tort system, as well as the details of the solution proposed to address them.

Chapter 2: Theoretical Framework

A. Illustration of Sharia.

Saudi Arabia has undergone tremendous modernization in the past few decades, becoming an important player in the global economy. Saudi Arabia has a unique legal system in that all its laws are deduced totally from Sharia. Sharia means... Also, Sharia has four schools of thought that enrich its sources; these schools are sometimes different in their results or judgments.

In fact, Muslim society believes that Sharia is completely perfect which means that it has the ability to resolve all present cases and the flexibility to accommodate any recent or potential issues. However, due to economic improvement and industrialization in Saudi Arabia, the nature and type of legal issues have changed involving workplace injuries, car accidents, and insurance claims against large companies. Therefore, we have complex cases and it is very important now to deduce resolutions from the main principles in Sharia. In addition to the main principles of Sharia, the four schools of thought, by virtue of their distinct perspectives, can apply and accommodate recent cases and new legal issues.

Theoretically, Saudi Arabia already has its own tort system,³ which if applied would resolve all recent and future issues; however, this depends on the role that judges and scholars (the whole legal departments in the country) can play in the matter of deriving the judgments from Sharia. Indeed, there is a gap between Sharia and the judicial system consists of the lack of efforts to use Sharia's tools to derive its judgments and illustrate the main principles in order to make it suitable for modern issues.

In this dissertation I would like to contribute to resolving this issue and filling the gap between Sharia and the judicial system. I will classify Sharia principles that are relevant to the tort system in a way to make them simply reachable to judges in Saudi courts and widely applicable to modern cases. The overall goal of this effort would be to produce a Sharia equivalent of the "Blackstone Commentaries" and the restatement of torts in Saudi.

1. Primary and Supplementary Sources of Sharia.

Under Sharia there are two types of primary and secondary sources. The Holy Quran⁴ and the Sunnah⁵ are the primary sources of Sharia.⁶ The supplementary sources are comprised of Ijma; consensus among jurists, Qiyas; analogic legal reasoning and

³ Unlike most of the other laws in Saudi, the tort system has no statutory code, whereas trade law and international trade law have their own codes in order to meet the demands of the modern economy.

⁴ Muslims Book. The words of ALLAH that revealed to the prophet Mohamed.

⁵ The compilation of the sayings, actions, and approvals of the Prophet Muhammad (peace be upon him and all of Allah messengers).

⁶ See Manna Alkattan, *Sharia Legislation History*, at 39, Almaarif library, 1996.

interpretation, Ijtihad; independent juristic interpretation.⁷ Additionally, the textual sources of Sharia are enriched by the existence of four schools of thought that provide varying interpretations of the primary sources.

In addition to the Quran and the Sunnah, Muslims consider Prophet Mohamed's daily life and traditions to be guiding principles for their lives.⁸ They are expected to follow and interpret these models of behavior as being legal precedents, with a clear distinction between what is mandatory and optional.

2. The Four Interpretive Schools of Thought in Sharia.

In addition to the primary and supplementary sources of Sharia, there are four interpretive schools of thought that broadly interpret the principles of Sharia that are derived from the Quran and Sunnah, in order to make them more suitable for use in daily life. In addition, within the books of these schools, they define these principles, on the basis of these definitions deduce secondary principles that can be applied in different situations. Indeed, these four schools of thought are related to each other, and between them there is a largely consensus regarding spiritual and religious issues... However, as a result of each school relying of its own interpretation of Sharia principles, there emerges

⁷ See Mohammed Abu Zahra, *History of Islamic Schools* at 225, Dar al-Fiqr al-Arabi, 1946.

⁸ Id. Manna Alkattan, at 74.

between the schools, variation regarding issues like tort and trade.⁹ Further, each school is influenced by the region within which it tended to predominate.

The Hanafi School is the oldest school of thought in Islam. Describing the Hanafi school, Imam Shafi'i, said; "people in Fiqh are considered the sons of Abu Hanifah." The most important element of this school is the deduction from the Quran and Sunnah, because this includes all Ijtihad types. This school's hierarchy of sources is organized in decreasing significance from the Quran, Sunnah, the companions sayings,¹⁰ Qiyas, Alestihsan,¹¹ Ijmaa, and lastly custom.¹²

The second school of thought is the Maliki School. This school of thought prioritizes Al-ray (the opinion). However, the hierarchy of Sharia sources in this school is Quran, Sunnah¹³, Qiyas, custom, and norms.¹⁴ Imam Malik lived in Madinah, as a result he had the opportunity to meet with the prophet's companions and be influenced by their opinions. Therefore, this school largely prioritizes the sayings of the companions of the Prophet.¹⁵

⁹ Id. Muhammad Abu Zahra, at 11.

¹⁰ Companion say means that what a companion might interpret regarding specific issue and say. Means a companion opinion.

¹¹ Id. Muhammad Abu Zahra, at 354.

¹² Id. Muhammed Abu Zahra, *History of Islamic Schools* 354.

¹³ Sunnah in this school includes companions' judgments and opinions, and Qiyas which in this school includes benefit, Sad Altharaae, custom, and norms.

¹⁴ *Id.* at 397.

¹⁵ *Id.* at 400.

The third school of thought, named after Imam Mohammed Al-shafi'i. Imam Mohammed Al-Shafi'i had been one of the most prominent students of Imam Malik. However, he ultimately came up with his own school of interpretation that took his name. Al-Shafi'i lived a fairly itinerant existence, frequently moving between countries, which enabled him to learn from and develop unique opinions. Within the Shafi'i school, the hierarchy of Sharia sources is as follows; Quran and Sunnah together, Ijmaa, companions saying, and Qiyas. Thus, this school considers the Quran and Sunnah to be the primary sources for Sharia, while everything else is considered to be supplementary. It should be noted that Imam Shafi'i was the teacher of Imam Ahmed ibn Hanbal.¹⁶

The final school is the Hanbali school. The Imam of this school was Ahmed Ibn Hanbal who was one of Imam Al-Shafi'i students. He was acutely interested in the Sunnah, in particular the Hadith (meaning the sayings of the Prophet Muhammad), in order to compile a large collection of sayings he moved widely around the cities of the Middle East. This school of thought ranks the sources of Sharia as following; Quran, Sunnah, Ijmaa, Qiyas, Masaleh, Alestihsan.¹⁷

B. Elements of Tort Law in Sharia.

The Sharia system of torts is designed broadly in order to remain applicable for any and all tort cases. Furthermore, Muslims believe that the Sharia is completely perfect,

¹⁶ Id. at 430.

¹⁷ Id. at 491.

and therefore able to address any contemporary or future issues through reference to legal principles found in the Quran and Sunnah. Additionally, because of the absence of written statutes regarding tort issues in the Sharia system, these principles take the place of statutes.

To better understand the tort theory in Sharia it is necessary to identify the three elements of tort that would apply for all tort cases regardless of the type of the tort case or its time. So the existence of these elements will be to strategically decide whether we have a successful case or not. These elements are the wrongdoing, harm, and causation. In this exhibit I will bring to light these elements and explain each one separately; however it must be kept in mind that, relying on these elements Sharia has a broad perspective regarding torts.

The law of torts in the common law system addressed many major topics such as; intentional torts, negligence, and strict liability¹⁸. However, unlike common law Sharia torts law does not have such classification, instead it includes torts topics in various chapters in torts and criminal law, and it addresses them in different ways. Sharia sets and specifies three general elements of torts that are derived from its main principles, which require certain conditions to met in each tort action. The elements are as follows:

¹⁸ See Victor Schwartz, Kathryn Kelly & David Partlett, *Prosser, Wade and Schwartz's Torts Cases and Materials* (12th ed.), 2010.

1. Wrong Doing as an Element of Torts.

Most Sharia scholars prefer to describe wrongdoing as an act or an utterance in order to make it generally applicable to any offence. They define the act broadly in order to include any possible action that may cause harm. Therefore, they define the act related to wrongdoing as any act that would cause damage to another.¹⁹ Sharia broadens the definition of wrongdoing to include any act that causes harm. On the other hand, Sharia scholars define utterances such as vulgar language, perjury, and defamation as being emotionally harmful.

In addition, Sharia scholars describe forbearance in specific situations as being a breach of duty to society and individuals.²⁰ For example, to refrain from upholding the rights of society is considered to be an act of harm and the individual would be held liable. In order for the perpetrator to be responsible there must be a trespass and damages. Also, all these acts could be done intentionally or negligently.

a. An Act as an Element of Torts.

Within the Sharia tort system an act should consist of a trespass, which in this context means any wrongful or unusual conduct that causes harm to another. In the

¹⁹ See Alla al-Din Al-Bukhari, *Kashf al-Asrar an Asool fakhr al-Islam*, 1947, Part 4 at 380. See also, Youssef Al-Kurtabi, *Al-Kafi fi fiqh ahl al-Madina*, Part 2 at 1106, Riyadh Library, 1980.

²⁰ See Al-Qarafi, *Al-Foroq*, Part 2 at 207, Ahlam al-Kuttoub. See also Al-Sharbini, *Mughni al-Mohtaj elah Marifat maani Alfath al-Minhaj*, Part 4 at 207, Cairo: 1958. See also, Al-Mardawi, *Al-Insaf fi Marifat al-Rajeh min Al-Khilaf ala Mathhab al-Imam Ahmad ibn Hanbal*, Part 10 at 51, Cairo: 1955.

Sharia tort system there is no classification of assault or battery, as is found in the U.S. tort system. However, it would be defined along the lines of an act of harm done to another individual (or group of individuals). For instance, if someone intended to shoot an animal while hunting, but unintentionally hit another person or their property, as a result of which harm was done, this would be considered battery. Even if the result was unintended, while the action was intentional, the tortfeasor will be held liable.²¹

In another example, if a sleeping person rolled over or fell down and caused damages to another, they will be liable even if they did not intend the act or the result.

Under Sharia, such an act can be considered wrongdoing, even without a trespass if it meets one of the following criteria: the act itself is religiously forbidden, the act will largely cause harm to another, or if the act itself is permissible, but the intent is to harm another. Further, if the act is permissible, but is performed negligently or carelessly the tortfeasor is still held liable.

In Sharia tort system even if the act was unintentional, but harm was caused to another person or property, the tortfeasor will be considered liable regardless of their age or any other extenuating factors. The most common example for this is that: if a newborn

²¹ When it comes to a person soul/spirit, the rule in Sharia is that if it is intentionally the person who commits the crime should be killed as soul for soul however if it's unintentionally there is another compensations. So the main principle in such situation that: The harms could happen by fault or misgiving and the compensation should be guaranteed on it, if its intentionally or not, however, there is no criminal punishment but only if it is intentionally. For example, *Ranson v. Kitner*. Id. at 24.

child flipped and broke a bottle he or she will be held liable. Liability in this context means that the parents or guardians should compensate the plaintiff.²²

b. An Utterance as an Act of Wrongdoing.

In addition to the act, Sharia considers any utterance that may cause harm to another, as being wrongdoing. Regardless of the nature of the physical or emotional harm caused by the utterance, Sharia considers the tortfeasor liable. For example, considering the act of perjury, if one or more witnesses lied or misled the court unfairly causing damage to another, and then if, for whatever reason, they confessed or were exposed, they will be liable for compensation. If the judgment causes substantial harm to another, additional punishment may be applied.²³ Further, if, for example, someone recklessly screams at a child standing on a wall, and the child falls as a result of being startled, the individual who screamed would be held liable for any harm.²⁴

c. Causation as an Element of Torts.

Sharia defines two categories of causation: direct and indirect cause. Considering direct cause, Sharia states that the tortfeasor will be held liable in all situations, regardless

²² Compare this case to *Garratt v. Dailey*. *Id.* at 17.

²³ See Ali Al-khafif, *Compensation Compilation* 154, Dar al-Fiqr al-Arabi, 2000. Also, the Sharia tort system recognizes what is called malicious lawsuit, and malicious telling/report.

²⁴ *Id.* at 154. Under Sharia both defamation and vulgar language or obscenity are considered to be acts of harm.

of the type of trespass.²⁵ Further, Sharia makes no distinction regarding age or capacity. Discussing indirect cause, Sharia requires the existence of a trespass in order to establish liability. For example, if someone digs a hole on their property and another person falls in, the property-owner would not be held liable, because they did not commit a trespass in digging the hole. However, if they dig a hole in the street or on someone else's property, and an animal or person falls into it and dies, they would then be held liable because they trespassed in digging the hole.

When the action is not lawful then the tortfeasor is presumptively at fault. This concept is illustrated by one of the major principles of Sharia regarding torts, which states that, "permissible acts are restricted by safety" meaning that an individual can do whatever they want, as long as the act causes no harm to another.

Concerning the issue of an act committed by multiple people, Sharia makes a distinction between joint and several liability. In cases of joint liability, for instance, a group of people committing the same act, Sharia considers the direct and indirect cause of harm. In this case, the individual most directly responsible for causing harm, would be held liable. Furthermore, in cases involving several liability, Sharia takes into account whether or not the individual actions were direct or indirectly responsible for harm. Sharia assigns priority to the direction act.²⁶

²⁵ Ibn Nujaim, *Al-Ashbah wa Al-Andhaer*, Dar al-Kuttub al-Elmiah, Beirut: 1980, at 290.

²⁶ Id. at 165. See also Ibn Qudamah, *Al-Moghni*, Part 7 at 430, Cairo: 1990. Among the four schools of thought there are different interpretations regarding the direct and indirect cause of harm.

Additionally, the principle of forbearance is considered when discussing the nature of direct or indirect cause. For example, if someone sees their neighbor's house burning, and they have the ability to help put out the fire, but they choose not to, would that individual still be held liable? Similarly, if an individual was capable of assisting another, but as a result of negligence did not, they may or may not be held liable, among the four schools of thought there are varying opinions regarding this issue.

Within the Hanafi and Hanbali Schools there is considered to be no liability in this type of situation, because there is no cause of action, directly or indirectly. However, in the Hanafi school, it is required that, in order to not be held liable, the individual in question should refrain from intervening at all.²⁷ Bible. The Maliki and Shafi'i schools argue that there is a liability on the person who refrains from helping if they are able. As a result of the principle that, as a Muslim, an individual should protect or help other Muslims in any way they are able, and should they be found to be negligent in doing so, they would therefore be held liable.²⁸

An example of deriving a principle of sharia in tort cases is found in the case of the successor of the prophet Umar Ibn-al khatab, the third caliph, who called upon a woman to speak with him. She was pregnant and because of her fear of being called upon by the caliph, she miscarried her fetus. He asked his companions to give him advice

²⁷ See Ibn Qadi, *Jami al-Fasouleen*, Part 2 at 84, Cairo: 1884. See also, Ibn Qudamah, at 102.

²⁸ An example provided by the Maliki School is this: if an individual, while passing by, saw an animal caught in a trap that had been set for that purpose, but through negligence allowed it to escape, they would be held liable. *Id.* Al-Qarafi, Part 2 at 205.

regarding the situation, to which they replied, “You are not to be blamed because you are the Caliph who calls and asks.”²⁹ Ali Ibn Abitalib, who subsequently became the fourth Caliph, expressed a different opinion, stating that, “if they wanted to compliment you, they have cheated you and if this was their opinion after trying their best, they have mistaken. You have to compensate her. Umar and the companions referred to Ali’s opinion.”³⁰ This exemplifies the principle of responsibility that a person has towards another to compensate a harm, which has been perpetrated regardless of premeditation.

d. Harm as an Element of Torts.

Sharia principles state that, in order for harm to be covered by a tortfeasor, the harm should be the result of a direct or indirect act. The harm, as defined by Sharia, can range from loss of money or property, bodily injury, or emotional damages. However, regarding the issue of emotional damages, in order for an individual to be compensated, Sharia requires that the harm should be the result of physical injury.³¹

Thus, unlike common law, Sharia does not classify intentional torts individually as assault or battery. However, it broadens the guidelines in order to accommodate entire tort actions. For instance, in the case of battery or assault both require an act, harm, and causation, which are also required under common law systems, within which they are

²⁹ Ibn Al-Jawzi *The History of Umar Ibn Al-khatib* at 117.

³⁰ *Id.* at 117.

³¹ *Id.* Ali Al-Khafif, at 38.

distinguished. Thus, as was shown in the examples on pg. 15, Sharia in some cases does not even require the existence of the intent to act in order to compensate the plaintiff.

2. Religious Principles in Lieu of Statutes within Framework of Sharia.

Because of the diffuse nature of Sharia principles regarding tort issues, and the lack of statutes that provide specificity application of tort law, religious principles take the place of these statutes. Therefore, judges when ruling on cases, rely on their own interpretation, based on the variations found between the four schools of thought, in order to apply these principles individually to cases, in much the same way that statutes would otherwise be applied.

This resembles the way in which American judges derive legal principles from cases with similar fact patterns and apply them to the case at hand. However, the difference is that the principle derived from Sharia is a religious principle. Sharia scholars use The Holy Quran and Sunna to extract legal principles, which are then interpreted by judges. The main difference between the two systems is that, whereas Sharia principles are broadly designed in order to be generally applicable, regardless of time or place.

Furthermore, Sharia is the highest source of legal authority, unlike the Common Law, which applies only in the absence of statutes. Judges in the Sharia system are not bound by the interpretation of other judges but persuasively; instead they are bound by the Sharia principles directly.

C. Main Principles of Torts in Sharia.

Tort law is governed by the principles of the Sharia, which emphasize the protection and respect others' property, feelings, and honor. One of the principles in the Quran (the meaning of the interpretation) is: And if you punish [an enemy, O believers] punish with an equivalent of that with which you were harmed.³² This is a principle and its application is dependent on the situation, as the judge perceives the case.

Another rule from the *Sunnah* is: "There is no harming and no reciprocation of harm." Meaning that, everyone is free to act as long as their acts are reasonable and don't hurt others.³³

Another principle derived from daily life of the Prophet Mohammed is that, while he was in the house of one of his wives, one of the others wives sent him a meal in a dish. The wife with whom he was staying, struck the hand of the servant causing the dish to fall and break. He then took a sound dish from the wife he was with and sent it to the other after which he said, "dish for dish."³⁴

This example from his life provides a jurist with examples of the ethics of the prophet, which support the concept of justice in Islam and the idea of compensation. Thus

³² See *The Quran, English Meaning and Notes* By Saheeh International, Chapter 16 Surah (An-Nahl) Verse 126 at 388., Dar Qiraat (2010). See also *The Noble Quran, English Translation of the meaning and commentary*. Chapter 16 Surah (An-Nahl) Verse 126 at 367. King Fahd Complex For The Printing of The Holy Quran (1996).

³³ See Ibn Majah, *Sunnan Ibn Majah*, Part 2 at 44, 2nd ed., Riyadh: 1984.

³⁴ See Abu Daoud, *Sunnan Abu Daoud*, Beirut: 1969.

this action as a main principle of Sharia can be applied in many situations regardless of the parties or the nature of the cause of the dispute.

1. Tort Principles from the Holy Quran.

The interpretations are as follows:

- “The recompense for an evil is an evil like thereof”³⁵ This is Equivalent to the biblical quotation “an eye for an eye.”
- “Whoever does a wrong will be recompensed for it.”³⁶ This means: All wrongdoers will suffer harm equivalent to the harm they have done.
- “And no bearer of burdens will bear another’s burdens.”³⁷ This means: You cannot punish a person for an evil act done by someone else.
- “Whoever does righteousness – it is for his [own] soul; and whoever does evil [does so] against it.”³⁸ This means: Doing good deeds brings a positive benefit and doing bad deeds brings a punishment.
- “O you who believe, do not consume one another’s wealth unjustly but only [in lawful] business by mutual consent among you.”³⁹ This means: Don’t take wealth from others by unjust means or without mutual consent.
- “Then whoever transgresses the prohibition against you, you transgress likewise against him.”⁴⁰ This means: If somebody transgresses on you, you are entitled to compensation by the legal process.
- “Whoever does an evil deed will not be recompensed except by the like thereof”⁴¹ This means: The punishment for doing evil will be exactly proportionate to the evil done.

³⁵ Id. Chapter 42, Surah Ash-Shura (Consultation) Verse 40 at 658.

³⁶ Id. Chapter 4, Surah An-Nisa (Women) Verse 123 at 129.

³⁷ Id. Chapter 35, Surah Fatir (The Originator) Verse 18 at 628.

³⁸ Id. Chapter 41, Surah Fussilat (Clearly Spelled Out) Verse.46 at 701.

³⁹ Id. Chapter 4, Surah An-Nisa (Women) Verse 29 at 110.

⁴⁰ Id. Chapter 2, Surah Al-Baqarah (The Cow) Verse 194 at 39. Also Id. at 41.

⁴¹ Id. Chapter 40, Surah Ghafir (Forgiving) Verse 40 at 687.

2. Tort Principles from Sunnah.

- “O people, your blood, wealth, and honor are sacred by Allah but for others rights.”⁴² This means: That Allah forbids harming people physically, financially, or emotionally, unless they did something to deserve punishment, which revokes their protection.
- “There is no harming and no reciprocation of harm.”⁴³ Which mean everyone is free to act as long as their acts are reasonable and don’t hurt others.
- “A hand is responsible for whatever it takes until returns that which it took.”⁴⁴
- “Dish for a dish and food for food.”⁴⁵
- “A back of Muslim is protected and forbidden but for a right for another.”⁴⁶ In this phrase the word “back” is used metaphorically to invoke flogging and also all forms of punishment including compensation.

3. General Principles of Torts.

- “If direct and indirect cause are jointed the liability will be on the direct.”⁴⁷
- “No liability for unavoidable act.”⁴⁸
- “Damage should be removed.”⁴⁹
- “Permissible acts are restricted by safety.”⁵⁰

⁴² See Albukhari, *Saheeh Albukhari*, part 1 at 52.

⁴³ Id. at 44.

⁴⁴ See Alzailaee, *Nasb Alrayah Fi Takhreej Ahadeeth Akhedaiah*, part 5 at 399 (1st ed) (1995).

⁴⁵ Id. This principle derived from the actions of the Prophet Mohammed is observed by his daily life. While he was in a house of one of his wives, one of the others wives sent him a meal in a dish. The wife who was staying with, struck the hand of the servant causing the dish to fall and break. Then he took a sound dish from the wife he was with and sent it to the other after that he said, “dish for dish.”

⁴⁶ Ibn Hajar, *Fath Al-bari Sharh Saheeh Albukhari*, part 12 at 85 Lahore (1981).

⁴⁷ See Ali Hidar, *Durar Alhokkam Sharh Majalat AlAhkam*, part 2 at 597. Books Words Library, Riyadh (2003).

⁴⁸ Id. part 1 at 37, 38.

⁴⁹ Id.

⁵⁰ Id.

D. Obstacles to Improving the Saudi Tort System.

Within the Sharia system as it is applied in Saudi Arabia, there is a range of obstacles that would obstruct the improvement of the Saudi tort system. The first obstacle is comprised of elements that exist within the system itself, namely, the broadness of the guidelines of Sharia, the absence of statutes, the four schools of thought, in addition to the freedom of independent judicial interpretation. The second set of obstacles is largely related to Saudi society itself that promote the instructions of Islam that advocate for the idea of magnanimity. In addition to this, there is bias against seeking litigation because to do so will give rise to animosity. All these elements and factors will be discussed in detail in the discussion chapter.

E. Potential Solutions.

As has been shown, there are numerous obstacles to reform within the Saudi tort system. Within this section, the researcher will propose two main solutions to these obstacles, considering the Sharia and religious and cultural norms and biases.

1. Establishment of an Official Publication.

Beginning with the step towards reform, the establishment of an official publication, which includes all tort principles that are derived from the Quran and the Sunnah will address the issue of a lack of written statutes. Like a restatement of the common law, this publication would be an analysis of all the important sources of Sharia, starting with the Quran and Sunnah and proceeding onto famous torts cases. The

publication would be a combined work of judicial opinion and scholars' jurisprudential opinions. The Ministry of Justice should be responsible for producing this publication. The overall goal of this effort would be to produce a Sharia equivalent of the *Restatement of Torts*⁵¹ (or a *Blackstone's Commentaries*⁵²).

2. Obstacles to the Establishment of an Official Publication.

a. Scope and Breadth of the Publication.

Generating a publication for tort law in Saudi Arabia, derived from Sharia principles, will require numerous Sharia scholars, legislators, lawyers and executive officers to work together, as a result of which the project could be potentially very challenging. Regardless of the difficulties in enacting this solution, the responses of all of the project's participants illustrate the existence a will to reform the system.

b. Opposition from Ultra-Conservative Legal Experts.

Any attempt to reform Sharia or create and establish law in Saudi Arabia, resistance from ultra-conservative Sharia scholars, because they believe that any attempt to reform Sharia would be an attempt to reduce the value of its principles. When speaking of ultra conservative judges, what is it meant is that people who prefer a strictly literal interpretation of the sources of the sharia would refrain from using the method of juristic

⁵¹ American Law Institute, *Restatement (Second) of Torts* (1965).

⁵² See William Blackstone, *Commentaries on the Laws of England*, Philadelphia (1893). This was first published in 1775 and became a widely-used standard for English and American law.

interpretation and reasoning that has been articulated by past jurists and commentators on Sharia.

The following anecdote about the prophet Mohammed, demonstrates that the Sharia should be followed according to its spirit rather than merely the letter. Some of his companions were on a journey and a man from amongst them suffered a head injury, which made it dangerous for his head to be submerged in water. However, Sharia required that he take a full bath, which would have worsened his injury. As a compromise the man wanted to perform an alternative type of purification known as *Tayammum* or dry ablution, which means using the sand or dust instead of water. When the injured person asked his group to accept this solution they said that compromise was not permissible since dry ablution was only permissible if there was no water to use. Subsequently, the injured man bathed and died as a result. When the Prophet Mohammed was told he replied, “You have killed him and may Allah kill you too. It would have been enough for him to perform *Tayammum*.” In response to this incident the prophet also said “The healing of the ignorant person is the asking of a question.”⁵³ Meaning that, if one does not know, they should ask.

⁵³ Id. Abu Daoud, part 1 at 93.

This example serves to show that the principles of Sharia are very flexible and appropriate for all times and situations. As a result of which there is no excuse for anyone to say that certain situations are not addressed in Sharia or to allege that some new type of situation is not mentioned in Sharia. However, it is equally false to allege that since the rule is phrased in a particular way we have to follow it literally rather than adhere to the rules underlying logic.

To accommodate the opinions of ultra-conservative legal experts, who believe that Sharia is perfect and any attempt to reform would reduce its perfection, the researcher will provide the following counterarguments:

1. This publication is merely a guide for interpreting Sharia not an alteration of addition to Sharia. Further, it will be a compilation of principles for use by judges when ruling on cases.

2. The researcher will explain the concept of a Restatement of Tort, and how it does not change the underlying law but simply makes it easier to apply the law effectively.

These counterarguments will be described in greater detail in the discussion section.

3. Publishing Judicial Opinions to Improve Transparency.

In this section, the researcher will explain, during the interview, the benefits of publishing judicial opinions, and provide a sense of how it is applied in the United States,

and how in certain cases the publishing of judicial opinions would increase judicial oversight and effectiveness within the Saudi judicial system.

This project is primarily focused on the establishment of an official publication regarding torts. The second solution is intended as a recommendation for future work and research projects.

Chapter 3: Methodology

A. The Aim of the Study.

Saudi Law is based on the broad guidelines of Sharia. This means that religion forms the basis of all Saudi law. So Sharia's main principles take the place of statutes in Saudi Arabia. Furthermore, Saudi law is heavily influenced and impacted by cultural and religious norms. Judges in Saudi Arabia are not restricted to a particular school of thought or other judicial opinions. However, they are directly bound by the broad guidelines of Sharia principles. As a result of this, judges exercise broad discretion over individual cases, which in the yields variations between cases that have similar fact patterns.

The current tort system in Saudi Arabia must be adapted to deal with the challenges of a modern economy. Reforming the tort system to accommodate industrialization will require a comprehensive plan that takes into account the religious and cultural issues that heavily influence the Saudi Legal System. Because recent economic advances have brought more complicated legal issues such as, workplace injuries, product liability, and insurance claims against large companies.

In this dissertation the researcher would like to contribute to resolving this issue and filling the gap between Sharia and the judicial system. The researcher will classify

Sharia principles that are relevant to the tort system in a way that will make them easily accessible to judges in Saudi courts and widely applicable to modern cases.

B. Research Method.

In this study the researcher will conduct in-depth interviews with Sharia scholars, legislators, judges, and lawyers on the subject of reforming the tort system in a way that will not affect Sharia instructions but will be a compiled resource including all Sharia principles related to torts. The proposed solution (*Restatement*) will be an analysis of all the important sources of Sharia, starting with the Quran and Sunnah as well as the judgments that were applied in the time of The Prophet Mohammed “Peace be upon him and all Allah’s messengers,” subsequent caliphs, and recent judicial opinions related to torts. The overall goal of this effort would be to produce a Sharia equivalent of the restatement of torts.

The researcher will utilize qualitative methods in this study. Participants were asked open-ended questions during interviews to investigate the potential reaction of Saudi legal experts to an attempted reform of the tort system, and also to examine the extent to which such reform is needed. Further, the participants’ responses to the proposed reform will be analyzed in a separate chapter.

C. Participants.

The participants of this study were recruited by word of mouth and randomly from different regions of Saudi Arabia, in order to discover any varying attitudes towards

tort issues and to examine their reaction towards the study. The researcher interviewed scholars, judges, and lawyers in order to examine their reactions.

Unfortunately, most if not all experts who are working in the field of law are men so all my participants were male. Initially the intention of the researcher was to conduct interviews with a total of thirty experts with backgrounds in Sharia and Saudi Law. However, some of the intended participants were unable to be interviewed, because of time constraints and previous commitments, especially given that at the time of the study, numerous ministries were experiencing substantial changes as a result of the accession of King Salman.

In order to reach some of the participants, especially those who were working in the legislative branch and Shura Council, I received assistance from my colleagues in the School of Law at King Saud University. Initially, I had a great number of participants to contact, however because of the aforementioned obstacles the researcher ended up interviewing only nineteen of the intended participants. Three of the participants were interviewed in a group, rather than individually. The participants consisted of Sharia scholars, judges, academics, prosecutors, lawyers, and legislators.

Because this study is largely concerned with the Saudi tort system, the researcher had to conduct a field study to collect the data by interviewing the participants in person. By meeting the participants face-to-face this allowed the researcher to examine their body language. It is necessary to mention that since interviews were conducted in Arabic, the researcher had to translate them individually while retaining the participants intended

meaning. The researcher confirmed the accuracy of the translations by asking a bilingual Ph.D. Candidate to examine the translations in order to ensure that the intended meaning was kept.

The main goal of the study is to confirm through scholarly work, that Saudi Arabia is in need of reforms within the torts system in order to accommodate all new types of cases, as well as to propose a tort restatement that consists of a compilation of all torts' principles that are derived from the Quran and the Sunnah. Like a restatement of the common law, the publication would be an analysis of all the important sources of Sharia, starting with the Quran and Sunnah and proceeding onto famous torts cases. The publication would be a combined work of judicial opinion and scholars' jurisprudential opinions. The proposal suggests that the restatement will ultimately fall under the jurisdiction of the Ministry of Justice.

D. Interviewing and Procedures.

Prior to the interview the researcher gave an overview of the current research and importance of the topic to the participants. Also, in order to assuage any fears among conservative judges and scholars regarding their concerns about any attempt to reform Sharia, it was necessary for the researcher to explain that the aim is not to reform Sharia, but instead to compile Sharia principles in one resource in order to make them widely applicable and more broadly accessible to judges in Saudi courts. Furthermore, this restatement does not intend to replace Sharia. However, it is intended to serve as a non-

binding supplementary resource in order to promote a more effective form of tort law in Saudi courts.

In order to ensure that the participants felt more comfortable and free to talk, the researcher found it necessary to illustrate to them the seriousness of the proposal, and how it would fix many issues within the tort system. Subsequently, the researcher received their verbal consent to record the interviews. However, three judges requested that the researcher not record them, alleging that there are regulations that stipulate that they are not allowed to be recorded. But they are free to talk and give their opinions. As such, while conducting the interviews, the researcher noted their responses.

The researcher met the participants individually in suitable places for interviews. However, three of the participants were interviewed separately as a group. During the group interviews the researcher noted that the respondents' answers were affected by each other, particularly by the highest-ranking member of the group. In order to avoid influencing the responses of junior-ranking members of the group, the researcher altered the order by which the respondents were questioned.

E. Questionnaire.

Due to a lack of scholarly work concerning Sharia in Saudi Arabia, the researcher designed the study's questionnaire by consulting with the dissertation committee members. These questions will be composed of five main ideas, in particular, a discussion of the existence of the obstacles, the source of these obstacles, reactions to the

proposed solution, and lastly, a discussion of the development and applicability of the proposed solution (restatement), within Saudi Law.

The questions designed for the study are as follows:

1. Currently, there is no written code for the tort system. Judges are not restricted to any specific school of thought. Rather, they have the option to obtain the judgment from whichever school they choose. There is variation of interpretation between judges for the same Sharia principle because of variation in their thoughts, academic background, and expertise. In light of these facts, what do you think about the discretion that is given to judges when deciding tort claims?

2. Do you think judges' decisions reflect cultural biases against different forms of damages, such as money damages, emotional damages, and future damages?

3. Do you notice clearly that there are variations in judgments, even in cases that have almost the same fact pattern, and are in the same area?

4. What is the main reason do you think behind this variation?

5. In my dissertation I am proposing to create a compilation of Sharia's principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed "Peace be upon him and all Allah's messengers." and the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their rights. There are many reasons why this resource will be valuable. For instance, we have industrial and commercial cities currently under construction, which will bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights.

What is your opinion about such a resource?

6. How do you think it would fit into the current framework of law?

Restatement. Notation.

7. How should it be developed?

8. Would you please talk a little about compensation?

9. Do you have any advice or anything else you think I need to add to this project?

Based on the researcher's consultation with the dissertation committee, the questions were overall deemed suitable for the study. These questions are mainly

composed of five primary idea beginning with three basic questions to illustrate the problematic issues within Saudi Tort system.

The first idea is to establish and confirm the existence of obstacles to be fixed, and to illustrate that the interviewees are aware of the issues. The second idea of the questions is to examine and discuss the root causes of the obstacles in the tort system, and then provide examples (in particular, regarding issues of compensation) in the implementation in the certain obstacles to discuss.

The third idea is to propose a solution to advance the tort system in a new template to improve the whole system in practice, as well as elicit the participants' reactions to just such a proposal. After examining the reaction attitude toward the proposal and reaching the result, the fourth part is intended to discuss how this resource or proposal would fit into the current framework of Saudi law, and how it further can be developed. The final part of the questionnaire is intended to obtain any additional information or opinions regarding the topic.

After reaching an agreement with the dissertation committee regarding the questionnaire, I had to obtain approval from three institutional review boards concerning the study and its questionnaire. Thus, both the questionnaire and the study were submitted to the IRB at Indiana University Bloomington, in order to be reviewed.⁵⁴ Upon

⁵⁴ See IU Office Research of Compliance regulations at <http://researchcompliance.iu.edu/hso/index.html>.

receiving approval from the IRB, the study was submitted to the institutional review board, at the Saudi Ministry of Education from whom it similarly received approval. Finally the study, along with all supporting documents, was sent to the IRB at King Saud University, who endorsed the implementation of this study.

Chapter 4: Discretion within the Saudi Torts System

This chapter will provide an analysis of the participants' responses towards question number one. In this chapter, the researcher will analysis the responses of the broad discretion given to judges in Saudi courts considering three main categories, the absence of written law, the four schools of thought, and the variation in interpretation between judges.

Question No. 1 - Currently, there is no written code for the tort system. Judges are not restricted to any specific school of thought. Rather, they have the option to obtain the judgment from whichever school they choose. There is variation of interpretation between judges for the same Sharia principle because of variation in their thoughts, academic background, and expertise. In light of these facts, what do you think about the discretion that is given to judges when deciding tort claims?

This question is comprised of three main points that will be discussed with the participants in order to prove that broad discretion is given to judges when deciding torts cases. The first point is that there is no written law for torts in Saudi Arabia and this impacts the whole system. Secondly, judges are not restricted to any specific school of thought when deciding tort cases. Thirdly, there is variation of interpretation between judges regarding the same Sharia principle. Primarily, this question is designed to establish the existence of the three aforementioned issues.

A. Discretion as an Obstacle in the Tort System.

The first issue is whether there are obstacles that exist within the Saudi tort system which affect the application of law and give judges broad discretion. The obstacles within the tort system are the absence of written law, a lack of a specific school of thought which judges would be required to base their judgments upon, the variation of interpretation between judges. These factors allow judges to exercise broad discretion when deciding tort cases.

Based on the data collected regarding the discretion that is given to judges in Saudi Courts, most participants if not all, confirmed that the aforementioned problems lead to the broad discretion exercised by judges. The participants believe that these factors undermine the legitimacy of the Saudi judicial system. Overall, all participants agree that this is the one of most significant issues within the legal system of Saudi Arabia. The participants argue that broad judicial discretion needs to be resolved by passing laws regarding tort issues, or at least promulgating some regulations. However, some participants qualify their answers by assuming that an absence written tort law and the freedom to choose between the four schools of thought are actually advantages that help judges reach justified and well-founded judgments.

B. The Absence of Written Law within the Saudi Torts System.

In this section will present the participants' responses regarding the absence of written law within Saudi torts system as part of question number one, then will discuss the responses.

The responses are as follows:

While there is an acknowledgment of lack of a written law for torts, there is a tendency to view the four schools as an equally valid alternative in lieu of codified principles regarding torts. Participant 1 agrees that there is no written law for torts stating, “For the absence of written code related to the torts, yes there is no written law specifically for torts; however, judges have the option to choose between the four schools, which give a strong and detailed judgment.”

Participant 1 argues further that the choice between the four schools of thought compensates for the absence of written law. He believes that the freedom of choice amongst judges regarding these schools to be an advantage of the Sharia system. He suggests that by relying on interpretations from the four schools of thought will lead judges to reach a suitable judgment. Further, he argues that by utilizing the four schools of thought judges can find the sound legal reasoning for their rulings.

Also, the participant alleges that the variation in interpretation of the same Sharia principles would illustrate the flexibility of Sharia when applying it to various types of cases. Participant 1 added that “.....this variation gives broadness and flexibility in applying Sharia principles to emphasize that Sharia is suitable for all cases and times. Additionally, it is expected to have variation judgments because of the variation of judges’ expertise, opinion, and diligence that led them to the result.”

Although Participant 1 argues that the authority of judges to choose a particular school of thought is one of the advantages of the system, and that variation of

interpretations illustrates the flexibility of Sharia when it is applied to cases. However, he still believes that having a written law will help the system and address any criticisms of the tort system. The participant concludes by saying that, “Undoubtedly; having an organized written law would make it easier for judges, decrease/lessen the variation in judgments, and reduce the criticism of the judicial system.”

Some participants allege that this absence of written law is related to the trust that is assumed in judges as the most educated and prepared people in the country. Participant 3 attributes this discretion to the level of trust placed in judges by the Saudi judicial system, as well as the assumption that they possessed the necessary knowledge to rule on various cases. The participant stated that, “there was a debate to unify the standards that govern the discretion and why there is no law to resolve the issue or at least to limit it. However, the philosophy behind that was the base of the judicial system is to give judges vast discretion. Why? Because you trust the judge and assuming that he is prepared and equipped with the knowledge and expertise to decide cases.”

On the other hand Participant 4, without discussing the absence of written law, transitioned directly to discretion. He attributes the discretion that is given to judges to two issues, the variety of case types, and the small number of judges in relation to the number of cases. The participant said that, “In my opinion the discretion that is given to judges in Saudi Law System needs to be reconsidered for many reasons. First reason is the diversity of the cases. Second, is the lack of the numerous of judges in Saudi legal system”. He argues that this overly broad discretion overwhelms judges and undermines

the efficacy of judicial system, stating that “which overwhelm judges so they need assistance at least to have a clear regulation to help them when deciding tort cases”

A senior expert lawyer Participant 5 adds that “From what I know, there is no written law was passed to regulate torts system especially the issue of compensating”

It is noticeable that as a judge Participant 7 asserts that the absence of written law is an issue with the system however, he considers that as an advantage in limited cases where it needs additional interpretations.

Participant 11 echoes a similar sentiment, stating that, “The absence of written law or any type of resource that gives judges very broad discretion.” Also, Participant 12 said “Always, the main issue in Saudi Arabia that is the absence written law. Most cases are relying on the judges’ opinion.” He concludes stating that, “The discretion that is given to judges is broad”

Even though, there is no written law for the torts system, some participants agree that existing social custom would compensate for the lack of a written law. For instance Participant 14 argues that, “I think judges have custom to follow, however, it’s difficult to cover everything so the other kind of resource “restatement” would work better, help judges, make it easier and faster for them”

Overall, there is general agreement that the absence of written law within torts system causes a broadness of interpretation among judges. While expressing some concerns, in general, the participants asserted that this absence of written law allows judges to exercise broad discretion in tort cases.

C. Four Schools of Thought when Deciding Cases in Saudi Courts.

In the issue of binding judges to specific school of thought: all participants agree that the judges in the Saudi legal system are not restricted by a specific school of thought except one participant “Participant 10” who insisted that even though the law does not say so, the judges are still restricted by the Hanbali School.

Among the participants who agree that the legal system gives the judges the option to choose between the four schools of thought, some participants still see that having the choice helps the judges when deciding cases, especially when there is no clear solution for the cases or the cases themselves are new to the court. Additionally, the legal reasoning in each school of thought is different, which would enrich judges’ thought and broaden judicial interpretation on how to decide and justify the judgments. So this option would help them to achieve justice instead of not resolving the issue.

Participant 1 considers this option between the four schools of thought as an advantage of the legal system within Saudi Arabia by stating that, “There is no doubt that these regulations give the judges the option to choose from the four schools of thought, which give a strong and justified judgment.” Participant 3 concurs, stating that, “the philosophy behind that was the base of the judicial system is to give judges vast discretion. Why? Because you trust the judge and assuming that he is prepared and equipped with the knowledge and expertise to decide cases.”

Further, Participant 4 in his response specified that judges should consider the popular opinion within the school they will choose. The participant adds that, “I don’t

think that the courts in Saudi Arabia are obligated by specific school of thoughts but its obligated by the most popular opinion in each school of thought, which are supported by the Holy Quran and Sunnah.” However, Participant 11 argues that, “In fact, such laws have no problematical at all, that these laws give judges broad discretion in two manners. Firstly, judges are free to choose which school of thought they can apply.”

Participant 16 argues that there are differences in the result between judges regarding the school of thought that he will apply. The participant states that, “regarding to the four schools of thought each judge would read the cases differently according to his school of thought.” Participant 17 qualifies his argument by stating, “1. I think it’s broad especially when you have four schools of thought to search in. 2. It gives the judges more extend and help him to find the proper judgment to the case in front of him.”

However, in contrast to the responses of other participants regarding the freedom afforded to judges when choosing between the four schools of thought, Participant 10 argues that regardless of the freedom judges exercise within the judicial system regarding a particular school of thought, he still insists that judges should apply the Hanbali school.

Participant 10 claims that judges are required to follow the Hanbali School. In discussion with researcher, the participant argued that:

“Regarding to the school of thought that is applying in the courts it’s the Hanbali School not the four schools. This was the decision of Judicial Surveillance Committee in 1347H (1928) with an exception of real estate that would apply the area’s school of thought. Also, if there is a tough decision in Hanbali School judges can switch to an easier decision in another school of thought.”

The researcher asked; How about the law that was passed in 1328H/2008?

The participant replied; “The law itself does not provide an exact school.”

The researcher suggested by stating that: So it opened the door for judges to choose from the four schools. However, the participant replied; “The law says Sharia, but as practical issue is the Hanbali School”

Participant 10 argues that, based on the 1928 decision of the Judicial Surveillance Committee, judges should apply the Hanbali school.⁵⁵ Additionally, he states that “if there is a tough decision in Hanbali School judges can switch to an easier decision in another school of thought”. Yet, his response does not correlate with the judicial regulation that was passed in 2008, which allows judges to choose between the four schools of thought by not specifying any particular school of thought.⁵⁶ Participant 10, when was asked about the 2008 judicial law, alleged that the regulation does not specify a certain school of thought. Therefore, regardless of whether or not there are regulations allowing judges to choose, he insists that the Hanbali school that is the official one.

For example, Participant 10 insists that there is no option among judges regarding their ability to choose between the four schools of thought.⁵⁷ Contrastingly, he stated that, “now as a law professor if I was asked which school of thought is applying in the courts I would say I don’t know.” Additionally, at a point during the interview, when asked about

⁵⁵ Appendix, Participant 10.

⁵⁶ See The New Saudi Judicial System for 2008.

⁵⁷ This response does not correlate with the New Judicial System that allows judges to choose between the four schools of thought by not specifying a school of thought for judges to follow. *Id.*

judges from different regions in courts, he contradicted his earlier responses, and when asked about the inconsistency, he responded [I don't give up].⁵⁸

Based on Participant 10's response, it becomes apparent that he considers the choice between the four schools of thought to be the fundamental issue regarding discretion. Essentially, he is denying the reality of these options, in order to insist that there is no discretion. He ultimately admits that there is discretion when deciding criminal cases but not tort cases. However, in reality, there is no clear procedure to separate criminal and tort issues in most cases.

Overall, there is general agreement that the four schools of thought affect the tort system by promoting a broadness of interpretation among judges. While expressing some concerns, in general, the participants stated that the four schools of thought allow judges to exercise flexibility when citing Sharia principles in tort cases.

D. Variation in Interpretation among Judges for the same Sharia Principle.

The issue of variation among judges regarding Sharia principles is an essential factor regarding discretion, as well as being the focus of criticism. The participants' responses illustrate a variety of opinion, but overall, the respondents agree about the existence of this variation. This variation creates inconsistencies and unpredictability within judicial procedures, which cause litigants to be reluctant in exercising their rights

⁵⁸ The participant was in effect saying that, regardless of the inconsistency, he would not change his response.

through the courts. Most participants attribute this variation to the discrepancies between individual judges' knowledge, expertise, and background. However, some participants consider this to be an advantage, while other subjects consider the variation in interpretation to be a disadvantage. A small group of participants consider the age of judges to be a factor influencing their decisions when ruling on tort cases.

Following are the participant responses and will discuss them:

All participants agree that the variation of interpretation between judges for the same Sharia principles is something that clearly exists and that the variation causes divergence in judgments. Also, this variation of interpretation gives flexibility when applying the law. Some participants consider this as a natural result of the variations between human beings in their thoughts, experiences and backgrounds. Other participants say that variation is acceptable as long as it based on a reasonable interpretation of the principle.

Participant 1 argues that the variation of interpretation among judges for the same principle would result to vary judgment for cases have the same fact patterns. The participant 1 states that, "For the variation of interpretation between judges for the same principle that would lead to variation in judgment and at the same time open the door for legal reasoning, which makes the judgments clearer and stronger." He further adds that, "Also, this variation gives broadness and flexibility in applying Sharia principles to emphasize that Sharia is suitable for all cases and times. Additionally, it is expected to

have variation judgments because of the variation of judges' expertise, opinion, and diligence that led them to the result"

However, Participant 3 attributes the variation to custom and individual judge's personalities, stating, "The variation between judgments when interpreting principles would be influenced by many factors such as the custom that popular in the area, environment, and the judge personality" Participant 5 agrees, stating "Each judge has an opinion and judgment that could be vary to others." This sentiment is echoed by Participant 6 who states, "there is no doubt judges' expertise and knowledge are vary which in most cases give a different judgments, I believe that is something usual if it in the regular/normal percentage, however, if it went beyond regularity it would affect the whole judicial system."

Participant 11 strongly believes that the age of judges is a major influence on their interpretation regarding Sharia principles, given that their age and years of service imply a certain level of expertise. He states that, "It depends on judge's age and expertise and his understanding. Some judges are very professional so you see their interpretation is so wide and perfect. However, some judges have narrow-minded so they are stuck with one school of thought or one opinion or interpretation trying to apply it in most cases."

Participant 15 agrees considering judges' expertise, stating that, "I believe judges have different opinions, interpretations, and expertise....The issue of interpretation depends on the time and expertise of judges. So the elder judges are more understanding, and considering each fact widely."

Participant 16 argues for the existence of this variation, which he attributes to the knowledge of judges regarding Sharia principles. He argues that, “judges must have an acute understanding of the principles and how to interpret them properly to the case that needs to be decided. Sometimes there are two cases that have same fact pattern but the judgments are totally different, because judges limit their interpretation of Sharia principles, by relying on personal opinion, and without considering previous cases.”

Therefore, the variety of interpretations of Sharia principles is considered to be a potential flaw within the system, because it leads to variation between judgments for cases that have the same fact pattern. Furthermore, participants 4 and 6 admit that the only way to monitor this variation is through referring to the appellate court in order to affirm or reverse a judgment.⁵⁹

Finally, the primary motivation for the question was to examine and prove that judges do have broad discretion when deciding torts cases. In order to produce more accurate result the researcher investigated the three aforementioned factors; the absence of written law, no standard of specific school of thought, and the variation in interpretation among judges for the same Sharia principle

All the participants, including those who expressed reservations regarding certain points, still agreed upon the main point that there is a broad discretion given to judges in torts cases. However, only Participant 10 stated that there is broad discretion in criminal

⁵⁹ Appendix, Participants 4 & 6.

cases, but not in torts cases.⁶⁰ *Following are some of the answers that emphasize there is a broad discretion is given to judges in torts issues:*

Participant 3 confirms that, “I believe it’s not only broad but it is too broad and it must be limited. Right now the only limitation/restriction is the court of appeal or the appeal procedures, which is not utilized most the time by the defendants” Participant 5 agrees, stating that “It’s broad and I think it needs to be restricted or at least to be limited.” Participant 6 further concurs that, “In fact, according to the points you have aforementioned, the discretion that is given to judges is very broad” Also, Participant 7 confirms that, “I think the discretion that is given to judges it too broad”

In contrast, Participant 10 argues that, “for the discretion in tort cases, I would say it is suitable enough, even in the schools of thought there is a limitation. However the discretion is broad in criminal cases” However, Participant 12 agrees, stating “The discretion that is given to judges is broad” Also, Participant 13 asserts “It is very broad and has no limitation in addition to that it is sometimes rely upon judge’s personal opinion and bias, also rely on judges interpretation for the rules or circumstance.”

Participant 14 states that, “there is no doubt the discretion will be broad.” Participant 15 confirms that, “Yes, we agree that discretion is too broad and need to be limited or controlled by laws.” Participant 16 Agrees, stating that, “Yes. “it is too broad”

⁶⁰ In the opinion of the researcher, criminal and torts cases are related to each other.

It should be limited to be helpful to achieve justice and not to harm the parties.” Finally, Participants 17 as a group “generally it’s very broad and it should be limited.”

Overall the participants’ answers show that the three main issues are the absence of written statute of tort law, the four schools of thought, and variation in interpretation among judges for similar Sharia principles. However, these factors simultaneously provide advantages and disadvantages. These elements allow judges to deduce judgments from a range of schools of thought, and exercise a high degree of flexibility when deducing their rulings based on Sharia principles. In order to address these issues as well as the broad discretion given to judges within the Saudi judicial system it is thus necessary to consider the publication of a codified set of statutes that concern tort law, which would limit the extent of discretion and provide a shared set of guidelines for judges.

In conclusion, discretion is a major issue within the Saudi court system that needs to be reconsidered by passing new laws in order to retain this flexibility, while curtailing judicial arbitrariness. The data confirms that the absence of written law, the four schools of thought, and the variation between judges’ interpretations necessarily contribute to the broad discretion that is exercised by judges. The participants’ answers illustrate that this discretion is very broad, but that it should be well defined within reasonable parameters.⁶¹

⁶¹ For further participants’ responses regarding variations, see the Appendix.

E. Variations between Judgments for Cases with Same Fact Patterns.

In this section the researcher will present the participants' responses to question number three. This question is designed to confirm that there is a variation in judgments for cases that have the same fact patterns in individual regions, as well the whole country. This variation emerges as a result of the absence of written law, and bias amongst judges against torts rewards. Additionally, because there are four schools of thought, and because there is no written law, judges have broad discretion, which leads to decisions that reflect cultural bias against granting rewards in tort cases. Having broad discretion leads to variations between judgments among cases with the same fact pattern.

Question No. 3 - Do you notice variations between judgments, even in cases that share similar fact patterns, and are in the same region?

The participants were divided into four groups based on their responses. The answers varied from complete agreement to disagreement. Their responses will be displayed as following:

1. First Group – Complete Agreement.

The first group completely agrees that there are varying judgments for cases that have the same fact pattern and they assert that this is an obvious and crucial issue within the judicial system. However, they would attribute this to either the absence of written law, or to the variation in judges' interpretations.

Participant 1 attributes this variation to the differences between judges thoughts and opinions by stating that, “Yes, there is variation in judgment due to the variation of judges’ opinions and legal reasoning. However, these variations should not be broad. So there is a trend to limit this discretion and pass laws. The participant adds that, “Undoubtedly; having an organized written law would make it easier for judges, decrease/lessen the variation in judgments, and reduce the criticism of this variation between judgments.”

Participant 2 confirms the variation by stating that, “Yes, there is a clear variation. And the most reason is the discretion.” Furthermore, participant 3 states that, “Indeed, in the past seven year the newspapers’ reviewer/reader would clearly notices that the cases that are pointed out or more interesting are the ones that have same facts pattern but have huge diversity in the results or the judgments. So the issue was that judges have the same discretion but why each one uses it differently.”

Additionally, participant 3 adds that, “Therefore, there was a debate to unify the standard that governs the discretion and why there is no law/regulation to resolve the issue or at least to limit. However, the philosophy that was the base/rule of the judicial system is to give judges vast discretion. Why? Because you trust the judge and assuming that he is prepared/equipped with the knowledge and expertise to decide cases”

Participant 4 argues that, “Of course, this is one of the most debatable topics; furthermore, sometimes the cases would be identical. The first reason is because of absence written law so this variation exists mostly in all law branches, torts, criminal, and

commercial law. The second reason, the Saudi judicial system had two courts of appeal one in Riyadh and the other one in Jeddah. This was an issue because each court would review the judgments differently which created a variation in the applicable rules between regions.”

Participant 4 concludes stating that, “Now with the new judicial system and the higher court, one of its duties is to put the rules together to unify them in addition to the judgments. I believe the social media on its effect would affect this variation positively to decrease it. Also, the variations also depend on the judges and the case circumstances.”

2. Second Group – Complete Agreement – Variation among Schools.

The second group also agrees that there is variation between cases. However, they attribute this variation to differences between the four schools of thought.

Participant 12 argues that attributing the variation to specific factors, stating that “I think it is something exists as pointed out because of the choice between the schools of thoughts, absence of written law, and the broad legal reasoning, which finally lead us to the main issue that is the broad discretion.” Participant 13 adds that by asking question, “should we establish such work or not? Especially in the cases that would have same fact pattern but the result or the judgments are vary.” The participant replied to his question by saying that, “I think to write down such rule will achieve justice so what can be applied to A case will be apply to B case that has the same facts. I believe that we need to regulate/put together the rules.”

Participant 14 argues that, “That is true. To be honest I can’t tell for sure because I didn’t see the judgments. You have to see some cases’ judgments to decide surely.”

Participant 15 confirms that, “This is an existing status.” Participant 16 states that, “In my opinion it’s useless/unhelpful because there will be variation in judgments. Also, regarding to the four schools of thought each judge would read the cases differently according to his school of thought. Such rules should be regulated”

3. Third Group – Complete Agreement – Variation among Judges.

The third group also agrees that there is variation. However, they attribute it to the variations between judges’ interpretations, expertise, and background. Also, they consider variations to be the result of fundamental differences between human beings. This group is largely interested in ensuring that these variations remain at a low percentage of total cases.

Participant 5 argues that, “All judgments that regarding compensation are merely legal reasoning utilized by judges according to their personal opinions, therefore, judgments could be different even for cases have same facts. Each judge has an opinion and judgment that could be vary to others.”

This response confirms that how the absence of written law within the torts system affecting justice by giving judges the broad discretion when deciding cases. However, Participant 6 accepting the variation under one condition that is the reasonability, the participant states that, “this is something acceptable if it’s in the normal

percentage, and obviously it's existing in our system for the same reasons we were talking about."

Participant 7 alleged this variation by stating, "I agree. This is because of the variation of judge's backgrounds and the variation in their opinion how they reach the result."

4. Fourth Group – Disagreement – No Variation.

Only one participant stated that there is no variation in the judgments between cases with the same fact pattern. He believes that all current judges apply what they find in books of jurisprudence, and they are not diligent in coming up with their own interpretations. Also, he attributes the variation, if it exists, to mistakes in the implementation of the principles they might find in these works.

Participant 10 claims that, "I don't think there is a variation in judges' interpretation because most if not all current judges are not diligent so they mostly copy what are in the jurisprudence's books. But the issue is always in the application that where mostly where the wrong occurs."

F. Participant Views Regarding Primary Issues within Tort System.

The Participants, when asked about the primary issues within the tort system obstructing the application of justice, stated those issues such as, the broad discretion of judges, the four schools of thought, and the lack of written statutes.

Their answers are as follows:

Participant 3 states that, “The discretion, judge personality, and absence of written law.” Participant 5 further argues, “It could be this “the absence of written code” or it could be the differentiations between the four schools of thought or it could be both.

Participant 6 adds that, “I believe it is all together you can’t pick only one because they all connected and complete each other” Participant 10 said “I would say both. The absence of written law and the four schools of thought.” However, Participant 11 argues that, “Indeed, the issue of compensation or torts generally needs to be reconsidered by the judicial system. So we have most rules but almost no fair judgments. We have a lack in tort.

Participant 13 suggests that, “It could be both together. Indeed, the absence of law would make/allow judges to use legal reasoning broadly, which would cause the variation.” On the other hand, participant 15 states that, “There is no specific reason I can refer to it, but I think it is because of the absence of written laws, or even some regulations, or some old cases that would help on the issue. Finally, participant 16 states that, “It is because of the absence of written law”

The participants’ responses illustrate that the absence of written law, the freedom of judges to choose between the four schools of thought, and broad discretion can both individually and in conjunction with one another can affect the implementation of the law. However, the project proposes that the most important part is the absence of the written law, because by promulgating a written law code, the Saudi judicial system will be able to develop a higher standard of justice.

Chapter 5: Religious and Cultural Issues within the Saudi Tort System

As was stated in the section regarding this project's theoretical framework, the people of Saudi Arabia have a society shaped strongly by religion and tribal social institutions meaning that the law is heavily influenced by Islamic instructions and Saudi custom. Therefore, the ideas of forgiveness, generosity, and magnanimity highly valued within Saudi society, and are ultimately derived from Sharia principles. Judges exist part of the community, as such they are influenced by its norms and cultural practices. Consequently, judges' decisions reflect cultural bias against plaintiffs in tort cases, which will be illustrated by the participants' responses

For the second question, the Participants were asked whether they believe that judges' decisions reflect cultural bias against tort claims. The potential for bias against tort claims is one of the most important obstacles that would stymie any attempt at improving the torts system in Saudi Arabia. In order to resolve this issue, the researcher found it necessary to establish the existence of bias against plaintiffs in tort cases. Also, judges in Saudi Arabia prefer to resolve cases through Alternative Dispute Resolution, for many reasons, such as the customs that are popular in particular regions and a judge's

personality, as was described in the response of Participant 3⁶². Also, based on the response of Participant 15, there is a concern among judges about the potential to rule unjustly.⁶³

A. Cultural Bias towards Compensation in Tort.

The overwhelming consensus among the respondents was that there is a bias against tort claims, however, some participants argued that this bias is justified in so far as judges are required to utilize custom and cultural norms when deciding tort cases. Therefore, these participants argue that religious and social customs should be considered in their rulings. Additionally, they emphasize that judges should understand and take into consideration the customs of the region within which they are working.

Question No. 2. Do you think judges' decisions reflect cultural biases against different forms of damages, such as money damages, emotional damages, and future damages?

Except for Participant 10, all of the respondents agreed that there is a bias against torts cases in the courts. Some participants refer to the religious issue that Islamic instructions encourage judges to consider culture and custom when deciding cases.

⁶² Appendix, Participant 3.

⁶³ Appendix, Participant 15.

For instance, Participant 10 completely ruled out the possibility that judges' decisions would reflect cultural biases against compensation. However, he agrees that judges can offer reimbursement as an alternative, although they are not obligated to do so.

Further, while Participant 15 expressed disagreement in the beginning, when asked specifically about compensation, he stated that, "Absolutely not. Because the main role of judge is to judge between people not offer settlement" However, he reversed his opinion, and gave a specific example from his own experiences, that affirmed the presence of bias among judges against plaintiffs in tort cases.

From the answers the researcher noticed that some judges prefer to avoid compensation because they are frightened of ruling unjustly or unfairly. Also, some others judges would ignore the rules, applying whatever they believe to be right, based on their broad discretion.

In his response, Participant 1 emphasized that culture and custom are required by Islamic instruction to be considered when ruling on cases. He states that, "Custom and mores are considered by Sharia ⁶⁴ so judgments could be relied on them. Also, the judge who lives in a society should consider its mores and so Sharia gives judges the space and the options to choose the best solution that would be suitable in the society such as mediation or settlement."

⁶⁴ The Holy Quran, Al-A'raf (The Faculty of Discernment), Chapter 7, v. 199.

The researcher responded, “But the compensation is a right?”

To which Participant 1 replied, “Yes, it’s a right but because of custom, judge would choose not to apply it.”

Participant 1’s response provides an insightful analysis of the significance of the broad discretion of judges, because he argues that it provides space for social custom and cultural mores to be applied in the court. Nevertheless, he still insists that the Saudi tort system needs to be reformed in such a way that it is compatible with Sharia. He argues that this discretion should be clearly delineated.

Discussing the variations between judgments he stated that, “these variations should not be broad. So there is a trend to limit this discretion and pass laws” The participant 1 adds that, “I believe the broadness of discretion led to this variation and it is not necessarily negative in all situations, it could be positive in other cases, for example, some judgments would work in some societies and serve as a deterrent to potential tortfeasors, whereas in other societies this would not work”.

Based on the Participant 1’s answer it becomes apparent that he considers the discretion to be a flaw within the system that should be limited. At the same time, he argues that, the choice between the four schools of thought is in keeping with the flexibility of interpreting Sharia principles. Also, he believes that discretion should necessarily exist within well-defined parameters in order to benefit the judicial system.

Participant 2 concurs, adding that there is “No doubt that the culture and tribal system affect the judge’s decisions. Indeed such judgments would enrich your

dissertation” Additionally, Participant 3 agrees that, judges’ decisions reflect the cultural bias against tort claims, however, he attributes this to popular customs within society. Further, he insists that judges should consider and understand the social and cultural norms within their specific regions. He states that, “there is a clear variation. And the chief reason is the discretion”

Further participant 3 adds that, “The variation between the judgments would be influenced by many factors such as the custom that popular in the area, environment, and the judge personality. I know some judges they mostly all the time impose settlement” The participant 3 further believes that “the discretion is not only broad but it’s too broad and it must be limited. Right now the only limitation/restriction is the court of appeal or the appeal procedures, which is not utilized most the time by the defendants”

Therefore, Participant 3 agrees that judges reflect cultural and social biases when deciding tort cases. However, he argues that the social and cultural norms of a given region should only influence cases to a reasonable extent. Also, the participant affirms the existence of a very broad discretion that needs to be limited because its lack of clearly defined parameters.

Participant 4 agrees about the bias however, he carious more about the fairness of the amount of monetary damages. The participant adds that, “Indeed, the idea of compensation is legally exist but the issue is the sum amount of compensation in Saudi Arabia, especially when comparing it between to another legal systems.” Further, the participant stated, “I think this is related to many reasons. First, the absence of law that

would give standards to assess compensation, also, the compensation is considered by harm assessment, which sometimes can be misread/misevaluated.”

Further, participant 4 states that, “Regarding the culture bias, there is no doubt that Sharia encourage people to forgive and to apply custom but it is an option/recommended not mandatory order. It’s a right and it should be respected and guaranteed. The Saudi society also motif the forgiveness and consider it as good deed but does it mean that judges are infected/influences by this? Indeed, I can’t tell for sure but generally if we have judgments that impose compensation we would have more people have more responsibility considering the results of their actions so consequently we will have an organized society.

Furthermore, participant 4 adds that, “Also we should not look at the compensation as a reward to people or to make them whole, but also as a way to preventing others from being tortfeasors and to limit other’s bad actions. For instance, traffic issues. So the compensation is a right for injured person so we should not leave this person to the society impact to lose his right.”

Participant 5 argues that judges in most cases do not apply compensation. The participant states that, “As I knew the Saudi courts mostly do not apply the rules of compensation in all regions as it should, but only in one portion which is the ALKASAS because it is explained clearly by Sunnah, such as body cuts. I believe the lack of

implementing compensation is because of the lack of the knowledge about its rules. However, there is a regulation from the Ministry of Interior that regulates the issue of false impressment, the parson should claim to the court. But generally, the compensation is rarely given.”

Participant 6 states that, “I would say judges would encourage parties to set their dispute without litigation because of what litigation may cause between people of hates and grudges. Additionally, I think, judges as part of the community are not familiar with this type of remedies to apply because we are living in tribal society that honors forgiveness.” The participant adds that, “However, if they have to decide such cases they would do their best but indeed most the time they rarely give a fair compensation either because of misreading/misevaluating the harms or because they have no clear standards to assess compensation.”

Participant 7 agrees that, “Judges are part of community so they should consider the custom and culture as it’s stated in the Quran. Also, considering the tribal system judges need to consider the public custom.”

In contrast, Participant 10 suggests that, “I would exclude that from any consideration. There is no doubt they would try to settle the case or offer an alternative solution for the parties and encourage them to accept it. However, the judges are not obligated to offer the settlement, and the parties are not obliged to accept it. So I don’t think such issue would affect judges or their decisions.” He completely denies that

custom would be considered when ruling on cases.⁶⁵ Nevertheless; he still endorses the idea of this proposal to advance a new framework for Sharia principles within Saudi law, by stating that “There is no doubt we are in need of the resource.”

Participant 12 agrees attributing the lack of succeeded compensation’s cases to the social and cultural issues by stating that, “Indeed, compensation’s cases in Saudi Arabia are very few because of many reasons such as Saudi is a Muslim country which encourage people to forgive also the culture does.” The participant 12 adds that, “Additionally, the police officers themselves would try to resolve the issues between the parties before the courts. Leadership settlements. Judges apply laws and I think the culture regarding this issue is starting to disappear. Also, sometimes people prefer not to sue when they are sure the harm or the wrong was not intentionally”

Participant 13 stated that, “Indeed, I would like to talk specifically about Saudi society; we would like to consider the changing that going on. There are many changes and improvement. The western culture started to be part of our culture so this brought new cases to the courts that judges are not expected to resolve. For example the

⁶⁵ Indeed this is inconsistent with Islam instructions. See The Holy Quran, Al-A’raf, Chapter 8, v. 199.

tech/electronic cases have not be seen in Saudi courts in the past. So no doubt I believe we need such resource.”

Participant 14 argues that, “I think they would to start with mediation/settlement is a rule exist in everywhere which is a positive thing but it’s related to the parties’ decision. Also, there is no doubt that the culture has a role in the matter of compensation.”

Participant 15 stated that, “Of course no because the main role of judge is to judge between people not offer settlement.” The researcher replied, “But sometimes judges do not address fair compensation, which gives a sign that judges would consider parties situations/status? What do you think?”

Participant 15 in response, provided an example, stating that, “Let me give you an example. I had one case that I was ordering sum amount as compensation for my client ‘everything was obvious’ however, when I asked that, judge was surprised and his opinion was its huge amount of money.” The researcher stated, “So let’s go back to the question that judges’ decisions are reflect culture against compensation and they are influenced by the community culture.”

Participant 15 replied, “Yes. Additionally, indeed, judges do not consider compensation in most cases. I have many examples on that even with different judges that have different expertise and ages.”

In order to confirm the participant's answer, the researcher responded, "So as a result judges' decisions reflect culture bias against compensation."

Participant 15 again replied, "Indeed, also there are many cases I can tell you about but generally judges try to avoid compensation because they have no written law or clear standard to rely on when deciding firstly. Secondly, they fear of being unjust judges." In this particular response, the participant, after disagreeing with the original argument, reversed his opinion. The participant's response will be discussed in greater detail in the discussion section.

B. Cultural Bias against Compensation in Torts.

Participant 15 when asked about his opinion regarding whether judges' decisions reflect cultural biases against different forms of tort compensation, stated that "Absolutely not. Because the main role of judge is to judge between people not offer settlement". However, he later provided an example that contrasted with his earlier responses regarding how judges deal with compensation.⁶⁶ When the question was reiterated he modified his answer, stating that, "Yes. Additionally, indeed, judges do not consider compensation in most cases. I have many examples on that even with different judges that have different expertise and ages."

⁶⁶ Appendix, Participant 15.

Indeed, his first response implied that he assumes that judges theoretically should not be affected by culture or custom because they are appointed to simply to apply the law and not to offer alternative settlements or solutions. Also he argues that judges should not intervene in the disputes between litigants by offering alternative solutions, but should simply provide a judgment. However, the participant's second response, based on his personal experience, contradicts his previous answer. Most judges would prefer to resolve the cases without litigation.

However, Participant 16 remarked, "It depends on the type of the case."⁶⁷ Indeed, some time the parties may emotionally get hurt from the judges because sometimes judges would use harsh words with them. I believe first of all judge should make parties feel comfort first to provide all evidence they might have." Furthermore, Participant 17-1 stated, "I can't tell for sure. But judges should consider custom and norms. In fact, Muslims would prefer to be compensated from a company not from a person."

C. Overall Conclusions about Bias against Compensation in Torts.

Overall the participants' answers show that there is a clear bias against plaintiffs in tort cases, specifically regarding compensation. This bias is influenced by the religious instruction, as well as social and cultural norms that encourage people to forgive and

⁶⁷ Appendix, Participant 16. At this point, while the respondent was providing their answer, the researcher interjected and stated, "Think only of tort cases."

settle the issues by relying on arbitration between Muslims, instead of litigating against each other, which could give rise to animosity amongst individuals. In this result it becomes apparent that the religious and cultural norms are affecting the implementation of tort law.

The data demonstrates that there are religious considerations underlying the reluctance of judges to rule in favor of compensation. These concerns reflect a religious belief amongst judges that if a case is decided unjustly, they would ultimately be punished in the hereafter. Therefore, they prefer to offer alternative solutions to the litigants, and by doing so avoid the possibility of becoming unjust judges.

Therefore, the participants can be divided into two groups: The first group admits the existence of the effect of cultural and religious bias in tort cases; the second group admits that with some justifications religious and social customs should be considered in line with Islamic instructions. Finally, Participant #10, whose response did not correlate with the other participants' responses, denies that custom or cultural issues would affect judges when deciding tort cases.

Chapter 6: The Proposed Solution and Participants' Reactions

In recent years, Saudi Arabia has undertaken tremendous steps towards modernizing industry and manufacturing, as well as the economy as a whole, therefore, it has become necessary for Saudi legal experts to introduce reforms to the tort system, in order to accommodate new case types emerging as a result of these modernizing processes. As a result of the enormous level of foreign investment in Saudi Arabia and the aforementioned modernization of industry and business, new industrial and financial cities have emerged, giving rise to new case types

Without either a written law or guidelines concerning tort law, foreign investors will be wary of investing in Saudi Arabia. Therefore, this project proposes a solution whereby, the collection and classification of Sharia principles relevant to torts within a standard template of restatement, will address the lack of codified principles. Further, the proposed restatement of tort law, will facilitate foreign investment and accommodate newly emerging case types. Therefore, in order to discern the perception of reform, it was necessary to obtain the reactions of Saudi legal experts to the proposal, by discussing with them the potential advantages of the restatement of tort law.

A. The Proposal Description.

This section will define the template of the proposed solution to the aforementioned problems within the Saudi judicial system. Subsequently, the reaction of Saudi legal experts towards the proposal (as well as the idea of reform) will be examined in order to resolve and avoid extant obstacles in the tort system.

Sharia is rich with examples and principles of tort law, however, these principles are diffused across myriad sources and interpretative schools. The basis of the proposal is to collect, classify, and restate the principles relevant to torts within one resource, including the applications of these principles since the time of the prophet Mohammed and the Caliphs who followed. This project aims to provide a template for modern Tort law in Saudi Arabia by creating a Restatement' for Tort law.

Once done, this will have two significant benefits for law in Saudi Arabia. First, much like the earlier Restatement project in the United States, it can systemize and standardize Sharia principles relevant to Torts and make them accessible to judges within the courts, as well as making them widely applicable to new issues raised by industrialization. Second, it can provide a tort system better suited to the new economy of Saudi Arabia, while at the same time, being consistent with Sharia.

This proposal intends to make these principles more widely applicable by providing examples of the old Sharia cases in order to allow judges to use *Qiyas*⁶⁸ and to

⁶⁸ This means analogic legal reasoning and interpretation.

deduce judgments by partially relying on the applications of tort principles in order to accommodate new type of issues.

For example, one such principle discussed in Sharia asserts that, “There is no harming and no reciprocation of harm.”⁶⁹ Meaning that everyone is free to act as long as their acts are reasonable and don’t hurt others.

Similarly, another major principle is that “Any act that causes harm to another person or property shall be compensated.”⁷⁰ Essentially meaning that, should any person or property be damaged by the tortfeasor, the victim has recourse to compensation.

An example of deriving a principle of Sharia in tort cases is found in the account of the successor of the prophet, Umar Ibn-al khatab, the third caliph, who once sent for a woman in order to ask her about an incident. However, she was pregnant at the time, and because of her fear of facing the Caliph, she miscarried the fetus. The Caliph consulted his companions regarding the incident. They said to him: “you are not to be blamed because you are the Caliph who can call and ask.” Ali Ibn Abi-talib, who would later become the fourth Caliph, possessed a different opinion. He said to the Caliph “If they wanted to compliment you, they have cheated you and if this was their opinion after trying their best, they have mistaken. You have to compensate her. Umar and the companions referred to Ali’s opinion.”⁷¹ This exemplifies the principle of responsibility

⁶⁹ See Ibn Majah, *Sunnan Ibn Majah*, Part 2 at 44.

⁷⁰ See Ali al-Khafif, at 34.

⁷¹ Abd-Alrahman, *Hashiat Alraod Almorbee Sharh Zad Almustaqnee*, Part 7 at 236. (1st Ed) 1979.

that a person has towards another in order to compensate for any harm that has been perpetrated regardless of premeditation.

Furthermore, the restatement will provide alternative applications for the same principles as a means to enable judges, in a more flexible manner, to broadly apply these principles. For instance, regarding the principle of responsibility, as a hypothetical example; if someone, by recklessly screaming in an inappropriate location, caused, for example a pregnant woman, to suffer any harm (such as a miscarriage) she could sue. However, in such cases Saudi judges would ignore the fact that the scream was the cause of the harm. They are likely to attribute this to the Acts of God, and would not consider the causation of the action and harm.⁷² Bringing to light such an example will at least enable judges to reconsider and, gradually over time, appreciate the value of the restatement.

B. Participants' Reactions Regarding Proposal.

This chapter will provide an analysis of the participants' responses towards the idea of a restatement of tort as a supplement to Sharia. In this section, the researcher will analyze the reaction of Saudi legal experts to the restatement, and the applicability of the

⁷² This kind of hypothetical example was discussed with some of the participants, and confirmed that judges would likely reach a decision along these lines. Further, they assert that the role of the researcher is to provide similar examples through which the judicial system can be reformed.

restatement to the current framework, as well as its development. Question number five was asked to the participant in order to obtain and analyze their reaction.

Question No. 5 - In my dissertation I propose to create a compilation of Sharia's principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed "Peace be upon him and all Allah's messengers," the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their rights. There are many reasons why this resource will be valuable. For instance, in Saudi Arabia, we have industrial and commercial cities currently under construction, which will bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights. What is your opinion about such a resource?

This question is designed to illustrate the main idea of the project in describing the procedures of compiling Sharia principles in a well-defined way, in order to ensure that there is no misunderstanding about the reason for the restatement. In order to obtain the participants reaction towards the idea of restatement, the researcher explained goal of compiling Sharia's principles in one resource in order to make them more widely applicable and readily available for judges.

This question is designed to be presented to the participants after comprehensive discussions about the obstacles affecting the tort system. At this point in the interview, the researcher had already discussed the broad scope of Sharia, broad discretion, and the culture biases utilized in the courts when deciding tort cases.

By studying the participants' responses regarding the restatement, it becomes apparent that there is complete agreement that there is an acute need for such work. The participants' responses were divided into four groups, all of which were in agreement

about restatement, however, some expressed concern about the results of its implementation.

1. Group One – Complete Agreement.

This group completely agrees about the project and its details asserting that we are in need of it at least to organize torts issues. Some of the answers:

Participant 1 regarding the absence of written law, as well as, the need of producing any type tort reform, he states that, “In fact, the lack of such work made many investors unwilling to start investing in Saudi Arabia.....Indeed, this type of work is very good and it’s your duty/mission as a researcher and your colleagues to bring to the light the principles and some of its applications.” He further, adds that, “We have many researches in the library, which are very beneficial to judges. I totally support such work and it’s very good”

In his response Participant 7 mentioned how such restatement will benefit the whole judicial system, the participant argues that, “I believe its going to be great work and very helpful to judges. Such work will also save litigation time by preparing related principles and making them available in one resource. Currently the research requires searching through and comparing many resources.”

Participant 11 remarks that the government is making great efforts to advance the legal system, by stating that, “Indeed, the country has trend to regulate laws, which I was hoping would include such a work or resource.” The participant further adds that, judges in order to achieve justice would make more effort when deciding tort cases. He states

that, “I believe such work would help judges and make them more responsible when judging because they have a resource to rely on. I believe many judges would love to have such a resource to rely on when deciding tort cases. It would save their time and make things easier for them. I think it should be persuasive and reachable for the parties. Also, I suggest such work to be issued by the Counsel of the High Judiciary.”

Participant 12 made an attribution to the Islamic sources by stating that, “Indeed, any researcher in the Islamic Jurisdiction will find that we have strong and stable principles related to torts, however, these principles are distributed throughout the jurisdiction books. But in regard to your question, there is no doubt that we are in need of a restatement.” Further, the participant adds that, “Also, as we say, “If you’ve lost most of the thing don’t lose it all” meaning: if you are losing part of something don’t lose it all, try to get some of it before it disappears. What you have mentioned is very important and that can be the first drop of the heavy rain. Which will be the core of regulation in the future. We are in great need for such work.”

Participant 13 confirms the need of the restatement; especially takes into account the investment, and new type of cases. Participant 13 states that, “.... Considering changings that are going on and the improvement. Likely, foreign investments and western culture brought new cases to the courts that judges are not familiar with..... There is no doubt that we need such a resource”

In his responses Participant 16 argues the benefits that the restatement will advance to the judicial system. He states that, “I agree with you that we are in need of

such a resource. This will make the litigation much easier because the principles will be simply reachable to judges to make them decide cases easily, and the parties can be aware of their rights. Participant 17 as a group states that,” 3. I totally support the idea. 2. It is going to be great work. It is going to be helpful for parties.”

2. Group Two – Agreement but Concerns about Opposing Views.

This group largely agrees about the restatement, however they have only one concern, namely, that such a restatement would face some resistance mostly from judges, because it would limit their broad discretion. Furthermore, this group argues that the difficulty of completing such a task would necessitate a substantial effort. They also stated that judges would claim that we already have Sharia, which is perfect, and as such it does not require any reform, that might open the door to placing it within a legislative framework.

Participant 2 express the effort needed to complete the work, he states that, “In fact, to compile all principles or old cases related to torts is not going to be an easy work, it will require a lot of effort. If you could compile 60% of it that would still be great work...As a matter of fact, I notice that very few researchers either in Sharia or Law have written about the issue.”

In his response Participant 2 adds, “You are talking about the principles that help judges to justify their decisions which very important. Such work is not going to be easy but it is going to be very helpful to the judges.” Further, the participant suggests that,

“The new object in your dissertation that you can get advantage of the western countries’ especially American experience in passing laws and classifying torts principles. You need to refer to their cases and the rules they rely upon when deciding and assessing compensation.”

Participant 3 remarks that the resistance that would be from judges by saying that, “I think it’s a small picture of passing laws or rationing. However, this will be debatable and it has different reaction from judges. But what I have seen from the committees and workshops I have worked with is that most judges would be opposed to the idea. The main reason is that you are going to limit judges’ discretion, which is something undesirable for judges.” Also, the participant suggests that the restatement needs to be produced by the government, he suggests that, “I don’t see that we should consider judges’ opinion but merely pass the regulation to be applied. I believe judges have a strong allergy against such work because of they think that any attempt to put Sharia in a legislative template will reduce its perfection, which is unacceptable.”

The researcher explained that: To be clearer, what I am planning to do is not to rewrite Sharia in a legislative format, but merely to compile the main torts’ principles in Sharia into one resource where they will be reachable and applicable. Also, the resulting resource will not be binding but will be persuasive. Therefore, judges are required to consult the resource before deciding cases.

In his reply, participant 3 argues that, “It will be great but if there is no obligation on judges to consult the resource, judges would not do so. Judge would say why should I

go to such a resource when I have Sharia resources, which are broader and more flexible to apply? It needs to be binding or judges won't consult it."

However, Participant 5 argues that, "In the beginning I would like to say that there is no work is perfect so your work will be criticized, but I believe this type of work is going to be beneficial especially because it will be deduced and compiled from many different sources in Sharia."

As a part of a group, participant 17-1 expressed his thought about judges by stating that, "In fact, judges are against the idea of a restatement for two reasons. First, they do not want to abandon the Quran and Sunna as the main sources, like what happened in Noah's time.⁷³ Second, they want to keep the highest authority in the earth and don't want to be asked to justify any judgment. In some countries judges work in the court as if it is their job, but here they want to be rulers and judges on the people having the highest power in country."

3. Group Three – Agreement but Concerns about Implementation.

This group also agrees with the restatement and its proposed benefits. However, they expressed concern over whether or not the restatement would be binding or merely

⁷³ Appendix, Participant 17-1.

persuasive. They would prefer that it be persuasive in order to be acceptable to judges, and widely applicable by them.

Participant 4 makes a distinction between what it should be binding and what it should be persuasive. He states that, “First of all, I would like to distinguish between binding or persuasive. Firstly, are the binding judgments, and the principles that were derived from Sharia sources; the Quran and the Sunnah. Secondly, the persuasive principles that would include knowledge and some tools to help judges which. I think should be deduced from varied sources like previous cases, Sunnah, and scholars opinions.”

Further, the participant 4 adds that, “However, this work would be very helpful to judges in reasoning out their judgments. Therefore, we need to build the judicial system with both binding resources and persuasive resources. Consequently, all parties would be aware of their rights and judges would have detailed, strong, and justified judgments. Also, the parties will trust in judges and judgments because they can see a clear justification.” Additionally, participant 4 argues that, “As we consider the judgment as the declaration of the truth and justice, so this truth should be declared with a clear justification to satisfy the litigants. Also, the higher courts need to see justification to monitor and observe the judges.”

The researcher asked participant 4; “So you say that we need such resources but how do you think the resources should be presented: as binding rules or persuasive resource has knowledge and tools to provide? The participant replied that, “In fact, I

prefer them both to be together. However, they should mostly be provisions in the same place and then use other rules to be helpful to help in deciding cases. The researcher asked; “So, you support such resource?” The participant responded; “Yes.”

Participant 6 in his response mentioned the potential benefits from the restatement by stating that, “There is no prohibition against having such a resource based entirely on from the Quran and Sunnah. Additionally, this work would make research easier for judges and open their thoughts on how to look at or read some cases that related to some main principles as you explained in your sample.”

Furthermore, participant 6 illustrated the flexibility of Sharia that allows people to regulate whatever is suitable for their life, by arguing that, “Thanks to Allah, Sharia is broad religion that gives the instructions to Muslims and allows them to regulate their life fully in accordance with Sharia principles. These also to consider changing of time and social norms however, there are areas related to worshipping ALLAH which are not changeable at all. But the matter of dealing with other people is a subject that scholars and the leaders can regulate in a way that benefits the nation and respects Sharia’s redlines.”

In order to confirm, the researcher asked; “So do you say we are in need of such a resource? The participant 6 replied: “Of course because of the reasons I mentioned that would save time and effort for judges and lead them directly to the rules that would be applied and as I said, give them a different way of thinking in the cases.”

Similar to participant 4, participant 10 expressed concern regarding whether the restatement will be binding or persuasive, the participant 10 states that, “There is no doubt we are in need of it but the issue is: will it be binding or merely persuasive?”

Participant 14 argues that, “No doubt that such work will help judges when deciding cases as a persuasive resource for them to make the procedures easier and faster. Also, to make the parties feel comfort and be aware of their rights. Furthermore, in his responses participant 15 suggested that, “I strongly support this notion. I also suggest adding some binding cases into the resources. Eventually, it can be treated as binding law not merely persuasively. This is going to be helpful for judges, parties, and lawyers. Consequently, lawyers or parties can predict the result and measure it if they would like to pursue the litigation or set the cases out of the court.”

4. Final Group – Agreement but Concerns about Potential Issues.

This particular respondent is in complete agreement, but he expressed fears that such a restatement would preclude judges from thinking broadly about cases, by directing them towards principles that would fit the case they are deciding. However, he assumes that if the restatement does not include recent judicial opinion, then judges would be limited to older and outdated rulings, because of an overreliance on the restatement.

Participant 17 argues that, “2. I think one of the important qualities of our judicial system that is its broadness. The researcher explained that the idea is to make it applicable and reachable. Then, the participant 17-1 replied stating that, “The idea is great but one of the disadvantages is that you direct judges to think in a specific way so

they are mostly going to stick with the principles in the resource and not look beyond that. This will narrow the application of diligence. But indeed it is very helpful to judges, under the one condition that the judges must be expert and highly qualified.”

In summation, there appears to be generally positive reaction to the idea of restatement. The participants’ responses show that there is a high need for restatement, in order to resolve torts issues. Participants’ reactions serve as an endorsement for the restatement of torts.

C. Applicability of Restatement.

Question No. 6 - How do you think it would fit into the current framework of law?

This question comes after affirming that there is a need for a restatement that would compile Sharia principles in one resource. Thus, this question is designed to study how the restatement would fit in Sharia, and how it would be used in the court as a regulation or law. Additionally, the question is designed to confirm how the resource and the reform will be compatible with Sharia, and how to address it within Saudi law.

The responses were as follows:

In his responses Participant 1 stated his opinion in two wards by stating, “Restatement or Notation.” However, Participant 2 adds illustration an old experience in the Ottoman Empire by saying that, “Regarding to regulating law or reforming Sharia the Ottoman Empire did something similar to that which was derived from Hanafi School, however, in Hanbali school you will be able to find more and more because they have

additional and wide principles in applying tort cases. Also, the Maliki School will enrich your needs in the issue. Personally, I get advantage of French laws and judgments so I would advise you to get advantage of the American laws in tort cases and ask Saudi judges for some similar cases to study and compare how it's treated in the US and how its treated in Saudi also how to assess compensation.”

Participant 3 starts expecting resistance against the project by saying that,, “Firstly, I think this project will face opposition/dissent in the beginning but if it was written/published and sent/distributed to judges I am sure it is going to be a core and primary resource to judges. Even the judge would think in the beginning that would limit his diligence but in the end he would know how it is beneficial to him.”

The researcher replied, “You said to be sent to judge. Who is the sender/institution that should send it?” Participant 3 replied, “The court’s management. Each court has its chair so Ministry of Justice sends the resource to the chair and he would disrepute it to the judges. So this is going to be the court chair responsibility.” The researcher emphasized, “So we do say that we need such resource even if it would face dissimilar reactions in the beginning.”

To which the participant replied, “Yes.”

Participant 4 suggests that this project can part of a whole work of regulating the many branches of Saudi laws. He states that, “I think in the torts can be part of the civil law. So just tort would not be enough but it can be a restatement or whatever, there is no matter of the name, the issue is how we can take advantage of it.”

Participant 5 suggests that, “It should be advanced to the highest court to study it and it can adopt it but it’s not obligated to do so then it can distribute to the courts to be reachable for judges” Participant 6 states that, “It can be in a book or a small publication as a core for a book that would be under the Ministry of Justice and distribute to the courts to be reachable for judges and it will persuasive resource for their decisions.”

Participant 7 in few words suggests that, Restatement. Notation. Whatever it will be helpful. As well as, Participant 10 suggests that, “Restatement. It should be official” Official in his response means that it should passed by the government.

Participant 11 states that, “I agree and suggest such work to be issued from the Counsel of High Judicial” In addition to that, Participant 12 provides some names and ideas by stating that, “It can be named “To unified judicial principles in torts” or “Standards help judges when deciding torts cases” in a publication under the highest court to be binding for judges because when the highest court demand to apply certain

principles the judges will be under questions why don't follow it and the judgments will be under review by the highest court. Not Binding 100%”

Similarly to participant 4's response, Participant 14 adds that, “In my opinion it can be part of the civil responsibility “torts” not by itself. Or it can be “general rules in torts” And I believe it going to be appreciated.”

Participant 15 states that, “Issuing a magazine in the judicial system every 6 months. Currently, I think it good to have every year but in the future we can develop it by adding to it every new case that would be helpful” Participant 16 argues that, “I think it should be restatement issue by the Ministry of Justice for certain year. After that it can be developed as needed.

Regarding the issue of the applicability of the proposed solution, the researcher has found that there is an identifiable trend among participants to treat the proposed solution as a restatement, notation, or law review. However, as the data has shown, there is variation among the participants as to how this proposed restatement would obtain legitimacy. Based on the participants' responses, the researcher divided the participants into three groups, on the basis of their opinions regarding the institutions that would be responsible for its implementation. The first group argues that a restatement should come from the Ministry of Justice. Whereas the second group asserts that it should be the

responsibility of the highest court in the Saudi Judicial system. The third group prefers that it should be implemented by the leading judges of different courts.

1. First Group – Ministry of Justice.

Participant 6 suggests that, “It can be in a book or a small publication as a core for a book that would be under the Ministry of Justice and distribute to the courts to be reachable for judges and it will be a persuasive resource for their decisions.”

Participant 16 argues that, “I think it should be restatement issued by the Ministry of Justice for a certain year. After that it can be developed as needed.

2. Second Group – Highest Court.

Participant 5 states that, “It should be advanced to the highest court to study it and it can adopt it but it's not obligated to do so then it can distribute to the courts to be reachable for judges”

Participant 12 suggests that, “It can “to unite judicial principles in torts” or “standards help judges when deciding torts cases” in a publication under the highest court to be binding for judges because when the highest court demands to apply certain principles the judges will be under questions why don't follow it and the judgments will be under review by the highest court. Not Binding 100%

3. Third Group – Leading Judges of Different Courts.

Participant 3 replied, “The court’s management. Each court has its chair so Ministry of Justice sends the resource to the chair and he would disrepute it to the judges. So this is going to be the court chair responsibility.”

D. Development of the Restatement.

Question No. 7 - How should it be developed?

This question is designed to solicit responses from the participants regarding how they think any such reform should be carried out.

Participant 1 states that, “I think it defer by the time. Each time has its own cases. The cases are renewed and new type of cases might appear which need updating system/law. It is true the rules are steady/constant but it needs to be deduced and applied on the new type of cases.” The researcher asked, “When do you think this development should be? Participant 1 replied, “As needed”

Participant 3 argues that, “In my opinion the first thing the project itself/the restatement to be exist, so don’t worry right now about the development but I believe with the time judges themselves after getting its benefits would really think about how developing the resource and adding everything new to it such new cases.

Participant 4 remarks by saying, “It’s a good point because one of the law’s criticisms the solidity “not easy to be modifies”. So you need to put all effort you could to formulate the principles simply, clearly, and precisely. Also, you need to monitor and

track the applications of it and modify as needed. So we can avoid any criticism would be pointed to this regulation or resource but any way this will be better instead of having no written law at all.”

Participant 4 adds, “Indeed, the Saudi courts would be criticized in such issue from the Human Rights Committee that Saudi has now clear criminal law would respect people rights or at least to be aware of their rights. Regarding torts I believe its principles is existing in Sharia but its need to be reform/transform in a modern way to be more helpful and applicable. We have examples of that such criminal law, commercial law.”

Participant 5 argues that, “Once it is in the courts, reachable to judges it can be developed in many patterns like to add the new cases to the resource as needed.

Participant 6 adds that, “Once we have new cases or something important to add. However, it can republish every 3-5 years.

Participant 7 suggests that, “When judges examine the resource they will decide themselves how to develop it” Participant 10 states that, “In my opinion the principles will not change but the facts or the way of causing damages would change.”

Participant 11 adds that, Reviewing it every five years and consider new type of cases to be added to it. Researcher replied: “How do you think we can avoid any disadvantage when applying torts rules?”

Participant 11 replies that, “The role of Shura Council. About 250 councilor should reflect community beat, so I believe the most important part in this issue is the

role of Shura Council that it should take its place on the ground by suggesting and amending laws.”

Participant 12 suggests ideas by saying that, “Firstly, establish an annual conference for the resource or torts and establish permanent committee from many ministries to look at the resource.”

The participant 11 further adds that, “The judges are not obligated to know everything so according to the new law in Saudi Arabia the expertise considered as evidence that can be used in the courts so judges can ask experts to proof evidences or reject.” Then the researcher asked: How do you think if we have insurance for most things or cases? The participant replied that, “There is a religious dispute in the issue but I think it can be settled before going to the court.”

Participant 13 states that, “I think it should be develop as needed so every new case should be add to it in certain time in addition to some old cases and we should consider this development not timely but by the future so we need to build it step by step and not to be hurry on that to obtain its benefits in the future. So why not to be 7-8 years. I believe after that we will not need to add that much but only few cases.

Participant 14 adds that, “First of all the work itself is kind of development. And it should develop as needed by adding cases briefs once we have new cases. Participant 15 “I think it good to have every year but in the future we can develop it by adding to it every new case that would be helpful.

Participant 16 argues that, “I think it can be developed as needed accordance to the new type of cases. Participants 17 suggests for the time of developing by stating that, “3. I think as needed. Also, get help from the experts. 2. Once we have new cases we can add it so every 1-2 year. 1. I think 3 months are suitable enough to redevelop”

Regarding the issue of the developing the restatement, the researcher divided the respondents into two groups. The first group is not concerned about the development because they are more specifically interested in establishing the resource and having it in practice. Further, this group would prefer to delay the discussion of the development, until after its implementation in the court, alleging that judges themselves will contribute to developing it in a way that benefits the judicial system.

Examples from Group One are as follows:

Participant 3 states that, “In my opinion the first thing the project itself/the restatement to be exist, so don’t worry right now about the development but I believe with the time judges themselves after getting its benefits would really think about how developing the resource and adding everything new to it such new cases.

Participant 7 “When judges examine the resource they will decide themselves how to develop it” similarly Participant 14 adds that, “First of all the work itself is kind

of development. And it should develop as needed by adding cases briefs once we have new cases.

The second group is largely concerned with the frequency with which the restatement would be updated, and new cases added.

Examples from Group Two are as follows:

Participant 5 argues that, “Once it is in the courts, reachable to judges it can be developed in many patterns like to add the new cases to the resource as needed.

Participant 6 suggests that, “Once we have new cases or something important to add. However, it can republish every 3-5 years.

Participant 11 states that, “Reviewing it every five years and consider new type of cases to be added to it. Participant 13 argues that, “I think it should be develop as needed so every new case should be add to it in certain time in addition to some old cases and we should consider this development not timely but by the future so we need to build it step by step and not to be hurry on that to obtain its benefits in the future. So why not to be 7-8 years. I believe after that we will not need to add that much but only few cases.

Participant 17 adds that, “3. I think as needed. Also, get help from the experts. 2. Once we have new cases we can add it so every 1-2 year. 1. I think 3 months are suitable enough to redevelop”

E. Compensation as Main Issue within Saudi Torts System.

Question No. 8 - May I ask you to discuss a little bit the issue of compensation with the Saudi Tort System?

This question is designed to obtain any evidence of the need of the proposal. Also, it is intended to prove that the absence of written law and the discretion in Saudi Arabia complicates the whole system. Further, the researcher intended to solicit information from the participants who agree upon the proposal, in order to provide proof regarding their opinions, while simultaneously ascertaining whether or not participants would expressed any reservations about the proposal.

Further, this question is designed to provide an example of how the obstacles within the Saudi tort system could affect the application of Sharia, by preventing parties from seeking their rights (in particular compensation) through the courts. The assumption is that there is a practical issue with compensation that this question is intended to display.

Participant 1 expresses concerns about providing fair compensation by stating that, "In my view all these situations should be considered and also judges should not be solo when assessing compensation. They should involve other expert judges to obtain a fair compensation." In his response Participant 2 distinguished between the physical and emotional distress. He carious more about the emotional harm, which is rarely given. Participant 2 states that, "In compensation you will face what is called physical and emotional harm. We have a lack in the emotional distress compensation especially when

the harm is merely emotionally not due to physical object. For example: defamation, and obscenity resulting in harm. Sometime a lie can be a reason to compensate someone.

Furthermore, participant argues that, “Most the time it is not an issue to proof a physical harm. However, the emotional harm is the big challenge proof. So you need to get advantage of the US experience they have a lot of examples you can mention in your project. Whereas here the emotional harm rarely compensated. I think you need more effort in how to explain the philosophy of the torts principles.”

Participant 3 mentioned the absence of any standard of assessing compensation, by stating that, “Its exist but the main issue that there is no rules or standards to assess compensation,” Further, the participant remarked that, “Additionally, I have seen some judgments perfectly justified and detailed more than you think but when you see the sum of amount of compensation/or the award you will be surprised because of the amount is trivial. So from what I know there is no rules to assessment compensation so I ask to create clear rule and to be distributed to judges.”

Participant 4 considers the harm to be taken in the account when assessing compensation. He states that, “Assessing compensation this is an issue, it shouldn’t be haphazardly but it should consider the harm. So you need to assess the harm indeed/truly, and you need to consider the assessment from two sides physically and emotionally”

Further, Participant 4 regarding emotional distress, adds that, “I don’t think there is a true assessment for the emotion distress it is almost not existed even it has many applications in Sharia. But indeed there is a lack in Saudi courts in this matter. Also,

some time the plaintiff has no tools/ability to assess the harm or there is a time between the harm and raising the claim, which make the assessment harder for the court. In traffic accidents there is already some rules so the courts need to get advantage of another institutions in assessment compensation. Additionally, the courts need to hire some experts to assess compensation.”

Participant 5 argues that, “In fact, the compensation rules are already exist in the Sunnah, however, it’s not applicable accurately, because until now, as I know, there is no written law is passed to compensate a person who is injured by a wrongdoer either man or woman. The harm is either bodily or emotionally. All current compensation’s judgments are merely legal reasoning by judges according to their personal opinions”

Further, participant 5 adds that, “as I knew the Saudi courts mostly do not apply the rules of compensation in all regions as it should, but only in one portion which is the ALKASAS because it is explained clearly by Sunnah, such as body cuts. I believe the lack of implementing compensation is because of the lack of the knowledge about its rules.” Also he states that, “However, there is a regulation from the Ministry of Interior that regulate the issue of false impressment, the parson should claim to the court. But generally, the compensation is rarely given.”

Participant 6 in his response attributes the lack of applying compensation to the Islamic and cultural instruction that encourage forgiveness by stating that, “I would say judges would encourage parties to set their dispute without litigation because of what litigation may cause between people of hates and grudges. Additionally, I think, judges as

part of the community are not familiar with this type of remedies to apply because we are living in tribal society that honors forgiveness. However, if they have to decide such cases they would do their best but indeed most the time they rarely give a fair compensation either because of misreading/misevaluating the harms or because they have no clear standards to assess compensation.”

However, Participant 7 attributes the issue to the judges themselves who do not consider compensation when deciding torts cases. He states that, “This a big issue that not all judges appreciate it as a core reason for litigation. Judges most the time try to avoid it because they have no clear rules to assess it or it is difficult to measure the harm especially in emotional distress.”

Participant 11 when asked: How about the Saudi culture that mostly prevents people from being compensated? They don’t accept compensation? Even it is a right!

In his response Participant 11 replied remarking the people’s knowledge or awareness about their rights, by stating that, “I think it is not only a culture issue it is related to ignorance and the lack of education so people are not aware of their rights. This is because of the lack of the media role, the regulation role, the community role, and the absence of specialists on the law fields, which are supposed to provide and educate people with their rights.”

Further, participant 11 adds that, “I think the issue that people not aware of their rights so they prefer to not sue and even if they knew they would decide not to sue because of the vague of the procedures and the long time of litigation. The other thing

that the changes in the people culture because of the opening world, many people traveled and came back with new positive cultures that help people to seek and be aware of their rights such as compensation in torts.”

Participant 12 argues that, “Indeed, compensation cases in Saudi Arabia are very few because of many reasons such as Saudi is a Muslim country which encourage people to forgive also the culture does. Additionally, the police officers themselves would try to resolve the issues between the parties before the courts. Leadership settlements. Judges apply laws and I think the culture regarding this issue is starting to disappear. Also, sometimes people prefer not to sue when they are sure the harm or the wrong was not intentionally.”

Similarly, Participant 13 states that, “In the issue of compensation, the Saudi community as Muslim and tribal society would prefer to avoid taking money from another person even this sum of money came from a judgment. So they prefer to forgive and get the reward from Allah “God” even if the defendant is very rich.”

The researcher asked that: So do you think judges’ decisions reflect cultural biases against different forms of damages, such as money damages, emotional damages, and future damages because judges are part of the community?

Participant 13 replied that, “I agree with you, there an idiom in the community says: “there is no benefit in compensation” as a bad lock. So sometime judges would avoid compensation. Additionally, some tribes in Saudi Arabia don’t accept the

compensation at all. Because they consider accepting compensation as a shame and scratch in the honor of the tribe and its reputation.”

Participant 15 provided an example from his experience by saying that, “Let me give you an example. I had one case that I was ordering sum amount as compensation for my client “everything was obvious” however, when I asked that, judge was surprised and his opinion was its huge amount of money.

The researcher replied, “So let’s go back to the question that judges’ decisions are reflect culture against compensation and they are influenced by the community culture.

Participant 15 replied that, “Yes. Additionally, indeed, judges do not consider compensation in most cases. I have many examples on that even with different judges that have different expertise and ages.”

Participant 15 adds that, “Indeed, also there are many cases I can tell you about but generally judges try to avoid compensation because they have no written law or clear standard to rely on when deciding firstly. Secondly, they fear of being unjust judges.”

In summation, all the participants’ responses show that there is a clear bias against compensation in Saudi courts, utilized by judges. In fact, the compensation itself is rarely given to the victims, regardless of the type of damages. The participants feel that judges rarely if ever apply compensation in their rulings. In the event that it is given, the participants believe it would not equivalent to the harm.

Indeed, the main issue in the tort system within Saudi Arabia, is that the act of seeking compensation (in particular monetary damages) from individuals within the tribe is considered shameful. This perception is the result of religious and cultural influences that encourage people to exercise forgiveness, instead of seeking litigation. However, Saudi people do not appreciate compensation as a means to discourage wrongdoing, disregarding the fact that by applying for compensation, many tortfeasors will be deterred from committing torts. Considering the role of modernization and industrialization in reshaping Saudi Arabia's relationship with foreign investors and businesses, these values hold less relevance in more contemporary cases in which people are suing corporations, rather than private individuals.

The data shows that the idea of compensation is rarely given within Saudi tort cases. This emerges as a result of a general lack of awareness about rights to compensation in many circumstances. In order to widely implement compensation, society should be made cognizant of their rights to compensation. Further, people's lack of awareness concerning their rights, as was evidenced in the participants' responses, needs to be reconsidered by individuals themselves.

Examples from the Participants' responses are as follows

Overall, there is a lack within the tort system of the dispensation of compensation within Saudi courts, which obstructs the application of justice. This further causes people

to be reluctant in seeking their rights in court because of the vagaries of judicial procedures. Further, fair compensation is seldom given.

Question NO. 9. Do you have any advice or anything else you think I need to add to this project?

This question is designed solicit from the participants any additional information or advice they have about the project and the proposal.

Participant 1 stated that, “I just advise you to work hard and to make your intent clear for sake of ALLAH. I think this project will advance/provide good instructions and directives and will be very helpful to the judges and the judicial system.”

Participant 2 said “I happy knowing you I am going to help as much as I can. The only thing you need to consider, the tribal cases, U.S. cases, and comparison study between Saudi torts cases and U.S. cases.”

Participant 3 stated that, “I ask ALLAH to help you and return you to us safe with the knowledge we need. I would like you to mention many different cases that have very variation in the compensation.” Participant 4 added that, “Indeed, I am happy talking to you and I noticed the research topic and its goal are clear to you which very important to get beneficial result. I hope you can take advantage of others system especially in the U.S. so it’s good if you can study cases from there to display the differences and similarities in the cases such the variations in the judgment. You might historically show the process of the U.S. tots system that went through.”

Participant 5 suggested that, “I would like you to meet some other people in higher positions in the Saudi courts so they can enrich your needs about the topic. I believe they would advise you and revise some of your work because there is no perfect work.”

Participant 6 states that, “I would pray for you that ALLAH will make it easy for you and pure your intent to be on the path of ALLAH. Thanks. Further, Participant 7 stated that, “This a big issue that not all judges appreciate it as a core reason for litigation. Judges most the time try to avoid it because they have no clear rules to assess it or it is difficult to measure the harm especially in emotional distress.”

Participant 10 “Discuss the issue of insurance.”

Participant 11 suggested that, “In regarding torts that has more discretion we should get benefits of other advanced country such as France, British, and United States as the first one. Which are succeeded. The sign of succeed is the satisfaction/contentment which we are looking for. Sharia allows us to take and benefit from others’ laws unless there is a conflict.”

Participant 12 stated that, “When regulating procedures it’s very easy issue in Saudi Arabia but when it comes to law implementing principles we have conservative judges mostly against legislating/passing law. Also it’s a new project I hope it going to be translated to Arabic so it can be helpful in Saudi Arabia.”

Participant 13 suggested that, “I think you need to focus also in some commercial, economics and money cases especially that Saudi undergoing tremendous progress in the

civilization and industrialization so we need to accommodate/correspond with all this issues.” Participant 14 stated that, “I would say you can try to discuss some advantage and disadvantage for torts system.”

Participant 15 suggested to interview more judges, by stating that, “I think it would helpful for your work to spend some more time with judges than any other specialists. I believe such work would be very support to the whole judicial system and would make judges and parties to feel comfort and trust.”

Participant 16 “Just try to add some previous cases that might helpful to you and to use them as evidence to your ideas and project.”

Participant 17 suggested that, “3. Educate the lawyers themselves, and active the role of lawyers. 2. The general look of the lawyers would affect the judges so affect the judgments.3. Get benefit of France and England’ experiences in the law matters.”

Chapter 7: Conclusion

A. Overall View.

This dissertation has discussed how the impact of modernization and industrialization has necessitated a reexamination of the tort system within Saudi Arabia and the extent to which it requires reform. As a result of this modernization, new types of cases have emerged that require the standardization of tort law, in order to accommodate any potential issues. Furthermore, a discussion of the biases among judges and society in general against plaintiffs in torts, illustrates the effect of religious and cultural elements in facilitating opposition to the act of litigation.

This dissertation has analyzed the nature and scope of social and cultural issues within the Saudi torts system. Beginning with an illustration of Sharia law as the basis for law within Saudi courts, and proceeding to a detailed analysis of the role played by social and cultural norms in affecting the processes of the judicial system, as well as practical issues regarding torts within Saudi law, this dissertation has shown how the convergence of these elements has impeded the improvement of Saudi law.

The data gathered by the researcher has shown that there is a broad discretion given to judges within the Saudi tort system. This discretion is the result of broad guidelines from the Sharia that allow judges to choose between the four schools of thought, and to interpret principles relying on their opinions or backgrounds. This

discretion is further facilitated by the absence of statutes concerning torts. As a result of this, the tort system is viewed as being an arbitrary and ineffective means of dealing with tort issues.

Moreover, this discretion in conjunction with cultural and social norms complicates the application of law within the Saudi judicial system. Therefore, the researcher, in order to contribute to the resolution of these issues has proposed the introduction of a Restatement of Torts.

Thus, the questionnaire, designed by the researcher, after proving the existence of these obstacles, was intended to solicit the reactions of Saudi legal experts to the proposed Restatement of Torts.

The data has shown that there is agreement among the participants regarding the potential benefits and necessity of a restatement of torts. Moreover, the data has also shown that while there is consensus among the participants regarding the restatement. The participants anticipate resistance from conservative legal experts. They also expressed concern as to whether the restatement would be binding or persuasive, suggesting that it should be persuasive until it is more broadly developed and implemented. Furthermore, one participant expressed concerns about whether or not the application of a restatement would preclude judges from utilizing other Sharia resources.

The study has shown that Saudi legal experts are supportive of the proposed solution (i.e., a restatement of tort law) and believe that the Saudi torts system is in need of reform. Thus, the researcher suggested that the restatement should be treated as a

persuasive resource published by the Saudi Ministry of Justice and distributed by the highest Saudi court. The researcher believes that by relying on the authority of the government to implement the restatement that conservative judicial experts will be more receptive to the proposed reforms. In addition, the application of the restatement should be overseen by the appellate courts, in order to assure compliance. Finally, the researcher has suggested that the development of the restatement occurs contemporaneously with the application of the proposed reforms in court.

B. Limitations of the Study.

In this study the researcher faced many obstacles in reaching the result, not the least of which was traveling, because the study was implemented in Saudi Arabia while the researcher was studying in the United States. Thus, the researcher had to travel from the United States to Saudi Arabia. Also, the interviews were conducted in Arabic and yielded approximately twenty hours of recording. Related to this, the researcher sought to retain the original sense and meaning of the Arabic while translating the transcripts into English. As a result of these time constraints the researcher was limited to around sixty pages of translated text.

Furthermore, while conducting the interviews the researcher was presented with the issue of participants, who, as government officials, would prefer to not be recorded. However, the researcher was able to persuade all but three of the participants to consent to being recorded.

In order to emphasize that the goal of the study is to improve but not criticize the judicial system, the researcher assured the participants who might be hesitant to discuss potential problems within the judicial system publicly or on the record. Also, in order to convince the participants to speak freely and honestly regarding the proposed benefits of the study, the researcher emphasized that no identifiable information would be available.

C. Future Research.

During the course of the interviews the researcher noticed that there is a noticeable tendency among judicial experts to draw from American judicial experience regarding issues of torts. Therefore, the researcher suggests that any future work should attempt to produce a translated body of prominent U.S. tort cases in order to analyze any potential advantages that could be adapted to the Saudi tort system.

Based on some of the respondents' answers, the researcher could discern a sentiment among certain participants that judges would prove to be resistant to the introduction of any reform. Therefore, the researcher suggests that future studies should examine the opinions of Saudi judges regarding legal reform within the judicial system.

In addition, the researcher suggests that future study would examine the issue of compensation, what are the rules to assess it and to establish standards when deciding compensation cases. As well as, the role of insurance companies that can be played in compensation cases particularly.

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Resume

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Educational Background:

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- 2008-2009 Coordinator of the Department Of administrative science - Community College KSU.
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- 2004-2008, Staff member of Law Committee for Foreign Affairs, Ministry of the Interior, Saudi Arabia.
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Training:

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Appendix A — The Questionnaire

1. Currently, there is no written code for the tort system. Judges are not restricted to any specific school of thought. Rather, they have the option to obtain the judgment from whichever school they choose. There is variation of interpretation between judges for the same Sharia principle because of variation in their thoughts, academic background, and expertise. In light of these facts, what do you think about the discretion that is given to judges when deciding tort claims?

2. Do you think judges' decisions reflect cultural biases against different forms of damages, such as money damages, emotional damages, and future damages?

3. Do you notice clearly that there are variations in judgments, even in cases that have almost the same fact pattern, and are in the same area?

4. What is the main reason do you think behind this variation? Do you think it is due to the absence of written law, the options and discretion that are given to the judges or all together?

5. In my dissertation I am proposing to create a compilation of Sharia's principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed "Peace be upon him and all Allah's messengers." and the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their rights. There are many reasons why this resource will be valuable. For instance, we have industrial and commercial cities currently under construction, which will bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights.

What is your opinion about such a resource?

6. How do you think it would fit into the current framework of law?

7. How should it be developed?

8. May I ask you about compensation? Would you please talk a little about compensation?

9. Do you have any advice or anything else you think I need to add to this project?

Appendix B — The Interviews

1. Participant Number 1.

1. Currently, there is no written code for the tort system. Judges are not restricted to any specific school of thought. Rather, they have the option to obtain the judgment from whichever school they choose. There is variation of interpretation between judges for the same Sharia principle because of variation in their thoughts, academic background, and expertise. In light of these facts, what do you think about the discretion that is given to judges when deciding tort claims?

First of all I would like to point out that the judicial system in Saudi Arabia has many qualities make it special. As you know there were many regulations passed to improve the judicial system. There is no doubt that these regulations give the judge the option to choose from the four schools of thought, which give a strong and justified judgment this is for the first point the four school. For the absence of written code related to the torts, yes there is no written law specifically for torts but as I said judges have the option to choose between the four schools, which give a strong and detailed judgment.

For the variation of interpretation between judges for the same principle that would leads to variation in judgment and at the same time open the door for diligence which makes the judgments clearer and stronger. Also, this variation gives broadness and flexibility in applying Sharia principles to emphasize that Sharia is suitable for all cases and times. Additionally, it is expected to have variation judgments because of the variation of judges' expertise, opinion, and diligence that led them to the result.

2. Do you think judges' decisions reflect cultural biases against different forms of damages, such as money damages, emotional damages, and future damages?

Custom and mores are considered by Sharia so judgments could be relied on them. Also, the judge who lives in a society should consider its mores and so Sharia gives judges the space and the options to choose the best solution that would be suitable in the society such as mediation or settlement.

But the compensation is a right?

Yes, it's a right but because of custom, judge would choose not to apply it.

3. Do you notice clearly that there are variations in judgments, even in cases that have almost the same fact pattern, and are in the same area?

Yes, there is variation in judgment due to the variation of judges' opinions and diligences. However, these variations should not be broad. So there is a trend to limit this discretion and write/pass laws. Undoubtedly; having an organized written law would make it easier for judges, decrease/lessen the variation in judgments, and reduce the criticism of this variation between judgments.

4. What is the main reason do you think behind this variation? Do you think it is due to the absence of written law, the options and discretion that are given to the judges or all together?

I believe the broadness of diligence and discretion led to this variation and its not cons/disrepute/bad in all situations it could be good in others like some judgments would work or would be deterrent in some areas but not in others.

10. As you know judges are appointed after graduation from Sharia School and they work as an assistance judge from 6 months to 3 years then they can decide cases independently. Do you think this period of time is suitable/enough?

Indeed, I don't see this period of time is enough. I have visited western countries where there is no person can be a judge unless he has already spent many/long years between courts and after that he could be granted/allowed to decide cases independently. I believe this period is not enough and it does not give judges enough expertise.

-What do you suggest regarding this period?

I suggest that this period should be double, to be 6 years at least, however, the lack of the number of judges impose the Ministry of Justice to accept/cockiness this period for the need.

5. In my dissertation I am proposing to create a compilation of Sharia's principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed "Peace be upon him and all Allah's messengers." and the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their rights. There are many reasons why this resource will be valuable. For instance, we

have industrial and commercial cities currently under construction, which will bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights.

What is your opinion about such a resource?

Indeed, the absence of such work made many investors reluctant/unwilling to start investing in Saudi Arabia. I think there is a kind of such work under process in the Ministry of Justice and the Highest Court to write/notate/register/restate judicial opinions.

Okay, I agree with you but this is for the judicial opinions which going to be part of my work/proposal, however, generally what do you think about my proposal?

Indeed, this type of work is very good and it's your duty/mission as a researcher and your colleagues to bring to the light the rules and some of its applications/implementation. We have many researches in the library, which are very beneficial to judges. I totally support such work and it's good.

6. How do you think it would fit into the current framework of law?

Restatement. Notation.

7. How should it be developed?

I think it defer by the time. Each time has its own cases. The cases are renewed and new type of cases might appear which need updating system/law. It is true the rules are steady/constant but it needs to be deduced and applied on the new type of cases.

7. When do you think this development should be?

As needed.

3. As a general view from your expertise and experience what do you think the most important issue in the tort cases?

It's the variation in judgments and also the lack of workshops/training judges in the new type of cases. It is really an issue face judges when deciding cases which delay the court's procedures.

8. May I ask you about compensation? About the rules of damages and the loss of chance, the situation of tortfeasor, and victims. What is your thought about that?

In my view all these situations should be considered and also judges should not be solo when assessing compensation. They should involve other expert judges to obtain a fair compensation.

9. Do you have any advice or anything else you think I need to add to this project?

I just advise you to work hard and to make your intent clear for the sake of ALLAH. I think this project will advance/provide good instructions and directives and will be very helpful to the judges and the judicial system.

2. Participant Number 2.

5. In my dissertation I am proposing to create a compilation of Sharia's principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed "Peace be upon him and all Allah's messengers." and the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their rights. There are many reasons why this resource will be valuable. For instance, we have industrial and commercial cities currently under construction, which will bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights.

What is your opinion about such a resource?

I see what you are talking about "torts" which mostly related to the wrongdoing not intentional. Of course it's totally related to judges' opinion so its judges' duty to decide whether it's direct or indirect cause. In fact to compile all principles or old cases that related to torts is not going to be an easy work, it will requires a lot of efforts and if you could collect/classify 60% of it that will be grate work.

The nice think that you are studying in the U.S. where they appreciate the compensation because it rely upon judges and jury's satisfaction. As you said in the beginning it is to deter tortfeasor but that is in everywhere. However, you have mentioned in your sample a nice thing such as forgiveness, indeed, it's our traditions and cultures.

As a matter of fact, I notice that very few researchers in either Sharia or Law have written about the issue. I said: “this is a testimony I am proud of it”

In fact, I have read many books in torts that are poor so I think you can take advantage of your study at the U.S. and compare the two systems. It is not a shame to compare it's very essential especially in compensation. Indeed, my specialty/field is judicially so it related to court and decision procedures, rather than whether a person deserves compensation or not.

You are talking about the principles that help judges on justifying their decisions which very important. Such work not going to be easy but it is going to be very helpful to the judges. In Sharia there are many principles and examples such are the ones that related to digging well in the road and another one fall down so who is going to be responsible. Also, if someone fall down and another one was trying to help and fall down too. So these are huge cases and situations require thoughts and laws. Law is not something easy to pass because each word has its own indication and meaning so that need extra accuracy.

The new object in you dissertation that we really support you on that is to get advantage of the western countries especially American experience in passing laws and classify torts principles. You need to refer/indicate to their cases and the rules they rely upon when deciding and assessing compensation.

8. May I ask you about compensation? About the rules of damages and loss of chance? The situation of tortfeasor and the victims. What is your thought about that?

In compensation you will face what is called physical and emotional harm. We have a lack in the emotional distress compensation especially when the harm is merely emotionally not due to physical object. For example: defamation, and obscenity resulting in harm. Sometime a lie can be a reason to compensate someone.

Most the time it is not an issue to proof a physical harm. However, the emotional harm is the big challenge proof. So you need to get advantage of the US experience they have a lot of examples you can mention in your project. Whereas here the emotional harm rarely compensated.

I think you need more effort in how to explain the philosophy of the torts principles.

-I am planning to compile at least the main principles in Sharia that related to torts with subsidiary principles that were branched from the primary principles, in addition to its applications such as the case of the pregnant woman which the Caliph Omar. I believe such case when be reachable for the new judges it is going to be very helpful to them when deciding torts cases so this is the idea.

Regarding to regulating law or reforming Sharia the Ottoman Empire did something similar to that which was derived from Hanafi School, however, in Hanbali school you will be able to find more and more because they have additional and wide

principles in applying tort cases. Also, the Maliki School will enrich your needs in the issue.

Personally, I get advantage of French laws and judgments so I would advise you to get advantage of the American laws in tort cases and ask Saudi judges for some similar cases to study and compare how it's treated in the US and how it's treated in Saudi also how to assess compensation.

2. Do you think judges' decisions reflect cultural biases against different forms of damages, such as money damages, emotional damages, and future damages?

No doubt that the culture and tribal system affect judges decisions. Indeed such judgments would enrich your dissertation also the judgments from the tribes' leaders would help you. For the tribal judgments once it's accepted by the government and stamped by the governor it's considered binding judgments. Also, what are the limitation of the compensation and how it assessment? Definitely, each community has its own custom and norms that fit for the people.

Anything you thing I need to add to my dissertation?

I happy knowing you I am going to help as much as I can. The only thing you need to consider, the tribal cases, U.S. cases, and comparison study between Saudi torts cases and U.S. cases.

3. Participant Number 3.

Would you please introduce yourself?

Indeed this topic is very interesting and it's kind of new in Saudi Arabia.

1. Currently, there is no written code for the tort system. Judges are not restricted to any specific school of thought. Rather, they have the option to obtain the judgment from whichever school they choose. There is variation of interpretation between judges for the same Sharia principle because of variation in their thoughts, academic background, and expertise. In light of these facts, what do you think about the discretion that is given to judges when deciding tort claims?

Indeed, in the past seven year the newspapers' reviewer/reader would clearly notices that the cases that are pointed out or more interesting are the ones that have same facts pattern but have huge diversity in the results or the judgments. So the issue was that judges have the same discretion but why each one uses it differently. Therefore, there was a debate to unify the standard that governs the discretion and why there is no law to resolve the issue or at least to limit. However, the philosophy that was the base/rule of the judicial system is to give judges vast discretion. Why? Because you trust the judge and assuming that he is prepared/equipped with the knowledge and expertise to decide cases.

The variation between the judgments would be influenced by many factors such as the custom that popular in the area, environment, and the judge personality. I know some judges they mostly all the time impose settlement.

-So generally, do you think the discretion under/with the aforementioned circumstances is suitable or broad?

I believe it's not only broad but it's too broad and it must be limited. Right now the only limitation/restriction is the court of appeal or the appeal procedures, which is not utilized most the time by the defendants.

3. Do you notice clearly that there are variations in judgments, even in cases that have almost the same fact pattern, and are in the same area?

Yes, there is a clear variation. And the most reason is the discretion.

4. What is the main reason do you think behind this variation?

The discretion, judge personality, and absence of written law.

5. In my dissertation I am proposing to create a compilation of Sharia's principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed "Peace be upon him and all Allah's messengers." and the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their rights. There are many reasons why this resource will be valuable. For instance, we have industrial and commercial cities currently under construction, which will

bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights.

What is your opinion about such a resource?

I think it's a small picture of passing laws or rationing. However, this will be debatable and it has different reaction from judges. But what I have seen from the committees and workshops I have worked with is that most judges would be opponents/disagree to the idea. The main reason is that you are going to restrict judges' discretion, which is something undesirable from judges. So I don't see that we should consider judges opinion but merely pass the law/regulation to be applied. I believe judges have high allergic against rationing/restating/writing down the law because of they think that any attempt to put Sharia in a legislative form/template will reduce its perfection, which is unacceptable. Secondly, rationing is something incompatible/contrary to what was in the time of the prophet Mohammed and the caliphs after him so they highly against it.

-To be clearer, what I am planning to do is not to rewrite the Sharia in a legislative format, but merely to compile the main torts' principles in Sharia into one resource where they will be reachable and applicable. Also, the resulting resource will not be binding but will be persuasive. Therefore, judges are required to consult the resource before deciding cases.

It will be great but if there is no obligation on judges to consult the resource, judges would not do so. Judge would say why should I go to such resource while I have

Sharia resources, which are broader and more flexible to apply? So it needs to be binding for judges to consult.

6. How do you think this would fit into the current framework of law?

Firstly, I think this project will face opposition/dissent in the beginning but if it was written/published and sent/distributed to judges I am sure it is going to be a core and primary resource to judges. Even the judge would think in the beginning that would limit his diligence but in end he would know how it is beneficial to him.

6. You said to be sent to judge. Who is the sender/institution that should send it?

The court's management. Each court has its chair so Ministry of Justice sends the resource to the chair and he would disrepute it to the judges. So this is going to be the court chair responsibility.

- So we do say that we need such resource even if it would face dissimilar reactions in the beginning.

7. How should it be developed? When?

In my opinion the first thing the project itself/the restatement to be exist, so don't worry right now about the development but I believe with the time judges themselves after getting its benefits would really think about how developing the resource and adding everything new to it such new cases.

8. Regarding to compensation what do you thing about the rules of assessment compensation?

Its exist but the main issue that there is no rules or standards to assess compensation, Additionally, I have seen some judgments perfectly justified and detailed more than you think but when you see the sum of amount of compensation/or the award you will be surprised because of the amount is trivial. So from what I know there is no rules to assessment compensation so I ask to create clear rule and to be distributed to judges.

Do you have any advice or anything else you think I need to add to this project?

I ask ALLAH to help you and return you to us safe with the knowledge we need. I would like you to mention many different cases that have very variation in the compensation.

4. Participant Number 4.

1. Currently, there is no written code for the tort system. Judges are not restricted to any specific school of thought. Rather, they have the option to obtain the judgment from whichever school they choose. There is variation of interpretation between judges for the same Sharia principle because of variation in their thoughts, academic background, and expertise. In light of these facts, what do you think about the discretion that is given to judges when deciding tort claims?

There is no doubt that judge in any legal system has discretion but the limitations and regulations of this description are different from system to another. In my opinion the discretion that is given to judges in Saudi Law System needs to be reviewed/reconsider for many reasons. First reason is the diversity of the cases. Second, for the lack/small of numerous of judges in Saudi legal system, which overwhelm judges so they need assistance at least to have a clear regulations to help them when deciding cases.

Of course the discretion is restricted by the degree/levels of litigation like appellant court but objectively I believe that we are in need to pass laws to be helpful to judges and the parties to predict the results so each party can decide to raise the claim or not. We claim that is Saudi courts the discretion is restricted by the level of litigation, which means the trial court's decision will be reviewed by the appellate court, which is considered as a limitation for discretion.

I don't think that the courts in Saudi Arabia are obligated by specific school of thoughts but it's obligated by the most popular opinion in each school of thought, which is supported by Quran and Sunnah or by the other sources.

However, we could notice that we have a lack in judgments' justification so the reader would not find the legal logic/reason that led judge to the result. I believe with specialist courts, judges training, and increase judges number we would reach clearer judgments and the hope result.

-So, generally you said that the current discretion that is given to judges is broad so it needs at least to be limited?

True, also I think the discretion should be in assessing/ the evidence that is provided by the parties the discretion in the object should be very limited.

2. Do you think judges' decisions reflect cultural biases against different forms of damages/compensation, such as money damages, emotional damages, and future damages?

Indeed, the idea of compensation is legally exist but the issue is the sum amount of compensation in Saudi Arabia, especially when comparing it between to another legal systems. I think this is related to many reasons. First, the absence of law that would give standards to assess compensation, also, the compensation is considered by harm assessment, which sometimes can be misread/misevaluated.

8. What are the rules or standard that judges would rely upon when assessing compensation?

Assessing compensation this is an issue, it shouldn't be haphazardly but it should consider the harm. So you need to assess the harm indeed/truly, and you need to consider the assessment from two sides physically and emotionally.

I don't think there is a true assessment for the emotion distress it is almost not existed even it has many applications in Sharia. But indeed there is a lack in Saudi courts in this matter. Also, some time the plaintiff has no tools/ability to assess the harm or there is a time between the harm and raising the claim, which make the assessment harder for the court. In traffic accidents there are already some rules so the courts need to get advantage of other institutions in assessment compensation. Additionally, the courts need to hire some experts to assess compensation.

2.2 Regarding the culture bias there is no doubt that Sharia encourages people to forgive and to apply custom but it is an option/recommended not mandatory order. It's a right and it should be respected and guaranteed. The Saudi society also motif the forgiveness and consider it as good deed but does it mean that judges are infected/influences by this? Indeed, I can't tell for sure but generally if we have judgments that impose compensation we would have more people have more responsibility considering the results of their actions so consequently we will have an organized society. Also we should not look at the compensation as a reward to people or to make them whole but also as a way to preventing others from being tortfeasors and to limit other's bad actions. For instance, traffic issues.

So the compensation is a right for injured person so we should not leave this person to the society impact to lose his right.

- Insurance companies. The solution.

3. Do you notice clearly that there are variations in judgments, even in cases that have almost the same fact pattern, and are in the same area?

Of course, this is one of the most debatable topics; furthermore, sometimes the cases would be identical. The first reason is because of absence written law so this variation exists mostly in all law branches, torts, criminal, and commercial law. The second reason, the Saudi judicial system had two courts of appeal one in Riyadh and the other one in Jeddah. This was an issue because each court would review the judgments differently which created a variation in the applicable rules between regions.

Now with the new judicial system and the higher court, one of its duties is to put the rules together to unify them in addition to the judgments. I believe the social media on its effect would affect this variation positively to decrease it. Also, the variations also depend on the judges and the case circumstances.

5. In my dissertation I am proposing to create a compilation of Sharia's principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed "Peace be upon him and all Allah's messengers." and the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their

rights. There are many reasons why this resource will be valuable. For instance, we have industrial and commercial cities currently under construction, which will bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights.

What is your opinion about such a resource?

First of all, I would like to differ/distinguish between what it could be binding to judges and persuasive. Firstly, are the binding judgments, and the principles that were derived from Sharia sources; the Quran and the Sunnah. Secondly, the persuasive principles that would include knowledge and some tools to help judges which. I think should be deduced from vary sources like previous cases, Sunnah, and scholars opinions.

However, this work would be very helpful to judges to reason the judgment. So we need to build the judicial system with the binding resources and persuasive together. Consequently, all parties would be aware of their rights and judges strongly would have detailed, strong, and justified judgments. Also, the parties will trust in judges and judgments because they can see clear justification.

As we consider the judgment as the declaration of the truth/justice so this truth should be declared with a clear justification to satisfy the litigants. Also, the higher courts need to see justification to monitor and observe the judges.

-So you say that we need such resource but how do you think it should be: as binding rules/previsions or persuasive resource has knowledge and tools to provide?

I fact, I prefer them both to be together. But mostly to be provisions in the same place and then use another rules to be helpful to help in deciding cases.

So, we can say you support such resource?

Yes.

6. How do you think it would fit into the current framework of law?

I think in the torts can be part of the civil law. So just tort would not be enough but it can be a restatement or whatever, there is no matter of the name, the issue is how we can get advantage of it.

7. How do think it should be developed?

It's a good point because one of the law's criticisms the solidity "not easy to be modifies". So you need to put all effort you could to formulate the principles simply, clearly, and precisely. Also, you need to monitor and track the applications of it and modify as needed. So we can avoid any criticism would be pointed to this regulation or resource but any way this will be bitter instead of having no written law at all.

Indeed, the Saudi courts would be criticized in such issue from the Human Rights Committee that Saudi has now clear criminal law would respect people rights or at least to be aware of their rights. Regarding torts I believe its principles is exiting in Sharia but its need to be reform/transform in a modern way to be more helpful and applicable. We have examples of that such criminal law, commercial law.

9. Any advice or anything else you think I need to add to this project?

Indeed, I am happy talking to you and I noticed the research topic and its goal are clear to you which very important to get beneficial result. I hope you can take advantage of others system especially in the U.S. so it's good if you can study cases from there to display the differences and similarities in the cases such the variations in the judgment. You might historically show the process of the U.S. tots system that went through.

5. Participant Number 5.

1. Currently, there is no written code for the tort system. Judges are not restricted to any specific school of thought. Rather, they have the option to obtain the judgment from whichever school they choose. There is variation of interpretation between judges for the same Sharia principle because of variation in their thoughts, academic background, and expertise. In light of these facts, what do you think about the discretion that is given to judges when deciding tort claims?

In fact, the compensation rules already exist in the Sunnah, however, it's not applicable accurately, because until now, as I know, there is no written law is passed to compensate a person who is injured by a wrongdoer either man or woman. The harm is neither bodily or emotionally. All judgments that regarding to compensation are merely diligences by judges according to their personal opinions, therefor, judgments could be different even for cases have same facts. Each judge has an opinion and judgment that could be vary to others. The appellate court in different areas would affirm all judgments even if they are different trusting judges and assuming the variation in the facts.

-Let's go back to back to the discretion, what do you think? Is it broad or suitable?

It's broad and I think it's need to be restricted or at least to be limited.

3, 4 You have mentioned there are variant judgments because of these discretion and diligence, can we exactly say the main reason of this is the absence of written code or what do you think?

It could be this “the absence of written code” or it could be the differentiations between the four school of thoughts or it could be both.

5. In my dissertation I am proposing to create a compilation of Sharia’s principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed “Peace be upon him and all Allah’s messengers.” and the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their rights. There are many reasons why this resource will be valuable. For instance, we have industrial and commercial cities currently under construction, which will bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights.

What is your opinion about such a resource?

In the beginning I would like to say that there is no work is not criticize but I believe this type of work is going to be beneficial especially because it will be deduced and compiled from many different sources in Sharia.

-Do we agree that we are in strong need for such work “resource”?

Yes, we do.

6. How do you think it would fit into the current framework of law?

It should be advanced to the highest court to study it and it can adopt it but it’s not obligated to do so then it can distribute to the courts to be reachable for judges.

7. How should it be developed?

Once it is in the courts, reachable to judges it can be developed in many patterns like to add the new cases to the resource as needed.

8. We would like to ask you to talk a little bit about compensation in Saudi courts, to which extend to you think the notion/rule of compensation is implemented?

As I knew the Saudi courts mostly do not apply the rules of compensation in all regions as it should, but only in one portion which is the ALKASAS because it is explained clearly by Sunnah, such as body cuts. I believe the lack of implementing compensation is because of the lack of the knowledge about its rules.

However, there is a regulation from the Ministry of Interior that regulate the issue of false impressment, the parson should claim to the court. But generally, the compensation is rarely given.

9. Is there anything else about this project you thing I should know?

I would like you to meet some other people in higher positions in the Saudi courts so they can enrich your needs about the topic. I believe they would advise you and revise some of your work because there is no perfect work.

6. Participant Number 6.

1. Currently, there is no written code for the tort system. Judges are not restricted to any specific school of thought. Rather, they have the option to obtain the judgment from whichever school they choose. There is variation of interpretation between judges for the same Sharia principle because of variation in their thoughts, academic background, and expertise. In light of these facts, what do you think about the discretion that is given to judges when deciding tort claims?

Indeed, according to the points you have already mentioned, the discretion that is given to judges is very broad, however, in the appellant courts senior judges can restrict these issues by reviewing judgments and return the weak ones to the same judges in the trial courts or may be to different judges.

Also, there is no doubt judges' expertise and knowledge are vary which in most cases give a different judgments, I believe that is something usual if it in the regular/normal percentage, however, if it went beyond regularity it would affect the whole judicial system.

▪ **3. Do you think it is existing in our courts?**

Of course, it's noticeable in few cases. However, as I said the appellant courts would help to avoid such conflicts. Finally, fore the variation in interpretation I would say it is also related to judge's expertise and thoughts. I believe, having four school of thoughts is something remarkable and unique that allows judges to resolve the issue no

matter how it is complex by searching and studying the opinions in the schools to find the right decision instead of being restricted by only one school of thought that might be has no clear solution for the case that need to be decided.

3. Do you notice clearly that there are variations in judgments, even in cases that have almost the same fact pattern, and are in the same area?

As I said before, this is something acceptable if it's in the normal percentage, and obviously it's existing in our system for the same reasons we were talking about.

▪ **4. What is the main reason do you think behind this variation?**

I believe its altogether you can't pick only one because they all connected and complete each other.

2. Do you think judges' decisions reflect cultural biases against different forms of damages, such as money damages, emotional damages, and future damages?

I would say judges would encourage parties to set their dispute without litigation because of what litigation may cause between people of hates and grudges. Additionally, I think, judges as part of the community are not familiar with this type of remedies to apply because we are living in tribal society that honors forgiveness. However, if they have to decide such cases they would do their best but indeed most the time they rarely give a fair compensation either because of misreading/misevaluating the harms or because they have no clear standards to assess compensation.

10. As you know judges are appointed after graduation from Sharia School and they work as an assistance judge from 6 months to 3 years then they can decide cases independently. Do you think this period of time is suitable/enough?

I think it needs to be reconsidered. However, the lack of the numbers of judges force/impose the Judicial system to reduce the period of time to enrich courts with suitable number of judges to decide cases.

5. In my dissertation I am proposing to create a compilation of Sharia's principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed "Peace be upon him and all Allah's messengers." and the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their rights. There are many reasons why this resource will be valuable. For instance, we have industrial and commercial cities currently under construction, which will bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights.

What is your opinion about such a resource?

There is no prevention/prohibition to have such resource relying and deducing totally from the Quran and Sunnah. Additionally, this work would help judges to easier the research for them and open their thoughts how to look or read some cases that related to some main principles as you explained in your sample. Thanks to Allah, Sharia is

broad religion that gives the instructions to Muslims and allows them to regulate their life fully compatibly/correspondingly with Sharia principles. These also to consider changing of time and norms however, there are areas are related to worshipping ALLAH are not changeable at all. But in the matter of dealing with other people it is subjects that scholars and the leaders can regulate in a way that benefit the nation and respecting the Sharia redlines.

-So do you say we are in need of such resource?

Of course because of the reasons I mentioned that would save time and effort for judges and lead them directly to the rules that would be applied and as I said to give them a different way of thinking in the cases.

6. How do you think it would fit into the current framework of law?

It can be in a book or a small publication as a core for a book that would be under the Ministry of Justice and distribute to the courts to be reachable for judges and it will persuasive resource for their decisions.

7. How it can be developed?

Once we have new cases or something important to add. However, it can republish every 3-5 years.

8. May I ask you about compensation? About the rules of damages and loss of chance? The situation of tortfeasor, the victim. What is your thought about that?

“I have the answer in top”

9. Any advice or anything else I need to add on this project?

I would pray for you that ALLAH will make it easy for you and pure your intent to be on the path of ALLAH. Thanks.

7. Participant Number 7.

1. Currently, there is no written code for the tort system. Judges are not restricted to any specific school of thought. Rather, they have the option to obtain the judgment from whichever school they choose. There is variation of interpretation between judges for the same Sharia principle because of variation in their thoughts, academic background, and expertise. In light of these facts, what do you think about the discretion that is given to judges when deciding tort claims?

I think the discretion that is given to judges is too broad. In fact judges themselves would like to have such resource in the judicial system so they can rely upon directly instead of searching in the jurisdiction books especially those who are recently appointed.

2. Do you think judges' decisions reflect cultural biases against different forms of damages, such as money damages, emotional damages, and future damages?

Judges are part of community so they should consider the custom and culture as it is stated in the Quran the meaning as "take the forgiveness." also considering the tribal system judges need to consider the public custom.

3. Do you think that there are variations in judgments, even in cases that have almost the same fact pattern, and are in the same area?

I agree. This is because of the variation of judge's backgrounds and the variation in their opinion how they reach the result.

5. In my dissertation I am proposing to create a compilation of Sharia's principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed "Peace be upon him and all Allah's messengers." and the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their rights. There are many reasons why this resource will be valuable. For instance, we have industrial and commercial cities currently under construction, which will bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights.

What is your opinion about such a resource?

I believe it's going to be great work and very helpful to judges. Such work will also save the time of litigation by preparing related principles and make them available in one resource instead of searching and comparing in many resources.

6. How do you think it would fit into the current framework of law?

Restatement. Notation. Whatever it will be helpful.

7. How should it be developed?

When judges examine the resource they will decide themselves how to develop it

8. Compensation!

This a big issue that not all judges appreciate it as a core reason for litigation.

Judges most the time try to avoid it because they have no clear rules to assess it or it is difficult to measure the harm especially in emotional distress.

8. Participant Number 8.

5. In my dissertation I am proposing to create a compilation of Sharia's principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed "Peace be upon him and all Allah's messengers." and the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their rights. There are many reasons why this resource will be valuable. For instance, we have industrial and commercial cities currently under construction, which will bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights.

What is your opinion about such a resource?

I think it is a new and great idea to work on, in order to fix many loopholes in the legal system. In the same time the will help judges when deciding tort cases and save their time

6. How do you think it would fit into the current framework of law?

Restatement or Notation.

7. How should it be developed?

When we have new type of cases we should develop it according to the new requirements.

9. Participant Number 9.

5. In my dissertation I am proposing to create a compilation of Sharia's principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed "Peace be upon him and all Allah's messengers." and the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their rights. There are many reasons why this resource will be valuable. For instance, we have industrial and commercial cities currently under construction, which will bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights.

What is your opinion about such a resource?

Such work needs vast effort but you can put the core and many other continue the work. Generally, even it is still an idea; I believe it will help a lot within torts in Saudi Arabia especially in compensation cases

6. How do you think it would fit into the current framework of law?

As you explained to me, restatement would work perfectly.

7. How should it be developed?

As needed.

9. Anything you would like to add?

I would pray for you.

Thank you.

10. Participant Number 10.

1. Currently, there is no written code for the tort system. Judges are not restricted to any specific school of thought. Rather, they have the option to obtain the judgment from whichever school they choose. There is variation of interpretation between judges for the same Sharia principle because of variation in their thoughts, academic background, and expertise. In light of these facts, what do you think about the discretion that is given to judges when deciding tort claims?

Regarding to the school of thought that is applying in the courts it's the Hanbali School not the four schools. This was the decision of Judicial Surveillance Committee in 1347H with an exception of real estate that would apply the area's school of thought, also if there is a tough decision in Hanbali School so that judges can switch to an easier decision in another school of thought.

-How about the law that was passed in 1428H/2008?

The law itself does not provide an exact school.

-So it opened the door/scope for judges to choose from the four schools.

The law says Sharia but as practical issue is the Hanbali School. So the discretion in torts I would say it is suitable enough, even in the schools of thought there is a limitation. However the discretion is broad in criminal cases. "Now as a law professor if I was asked which school of thought is applying in the courts I would say I don't know."

3. Do you think there a variation in judges' interpretation for Sharia Rule and how do you see that?

I don't think there is a variation in judges' interpretation because most if not all current judges are not diligent so they mostly copy what are in the jurisprudence's books. But the issue is always in the application that where mostly the wrong occurs.

2. Do you think judges' decisions reflect cultural biases against different forms of damages, such as money damages, emotional damages, and future damages?

As a judge I would rule out that. There is no doubt they would try to settle the case or offer a settlement/reconciliation for the parties and encourage them to do so. However, they are not obligated to offer the settlement or insist. So I don't think such issue would affect judges and their decisions.

3. Do you notice sometimes there is a variation in judgments in torts?

This is indeed an issue. It's not similarity in the facts from the same judge but from a different judge has different jurisprudential tendency.

3. This takes us back to the torts issue. So you say that there is a variation in judgments because of the differentiation of judges' knowledge, expertise, thoughts, and their jurisprudential opinions.

No doubt. But notice that is mostly in different areas in Saudi Arabia. So you will not find that one court of appeal has two different trends in one issue. However, you can

find that for example in Riyadh the court has specific trend it follows and in Mecca they have specific jurisprudential tendency it's more like USA.

-Okay, but judges are from many areas in same court so there is nothing in the court would say or restrict them to follow specific tendency so they would decide relying on their opinion and thoughts!

No. But in the end even if the judge is new in the court area but decided a case differently and his decision was reversed he would know the trend. However, this does not mean that we do not need a law/regulation no we are in need.

-So this again this takes us back that is this variation even if it's only in areas

.....

I don't give up.

3. Do we agree that there is a variation in the judgments?

Yes.

4. Why do you think that is because of the different tendency or the absence of written law?

I would say both.

5. In my dissertation I am proposing to create a compilation of Sharia's principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed "Peace be upon him and all Allah's messengers." and

the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their rights. There are many reasons why this resource will be valuable. For instance, we have industrial and commercial cities currently under construction, which will bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights.

What is your opinion about such a resource?

There is no doubt we are in need of it but the issue that is: will it be binding or merely persuasive?

-The idea to be under the Justice ministry to be reachable to judges. So Judges are obligated to consult it but not to apply it.

6. How do you think it would fit into the current framework of law?

Restatement. It should be official

7. How it can be developed?

In my opinion the principles will not change but the facts or the way of causing damages would change.

9. Any advice or anything else I need to add to this project?

Discuss the issue of insurance.

11. Participant Number 11.

1. Currently, there is no written code for the tort system. Judges are not restricted to any specific school of thought. Rather, they have the option to obtain the judgment from whichever school they choose. There is variation of interpretation between judges for the same Sharia principle because of variation in their thoughts, academic background, and expertise. In light of these facts, what do you think about the discretion that is given to judges when deciding tort claims?

It depends on the expertise of judges. I distinguish between the expert judges who spent many years in courts and the new judges who have very lesser expertise. There is a gap between judges those who are the young ones and the expertise/elders/senior. The absence of written law or any type of resource that gives judges very broad discretion.

How about the interpretation of the principles?

It depends on judge's expertise and his understanding. Some judges are very professional so you see their interpretation is so wide and perfect. However, some judges have narrow vision so they stuck with one school of thought or one opinion or interpretation.

3+8 How about the Saudi culture that mostly prevents people from being compensated? They don't accept compensation? Even it is a right!

I think it is not only a culture issue it is related to ignorance and the lack of education so people are not aware of their rights. This is because of the lack of the media role, the regulation role, the community role, and the absence of specialists on the law fields, which are supposed to provide and educate people with their rights.

I think the issue that people not aware of their rights so they prefer to not sue and even if they knew they would decide not to sue because of the vague of the procedures and the long time of litigation. The other thing that the changes in the people culture because of the opening world, many people traveled and came back with new positive cultures that help people to seek and be aware of their rights such as compensation in torts.

-General preview about discretion, advantage and disadvantage.

We will repeat what we have just said which is that the variation between judges in the education/knowledge, age, and experience is the tools to measure the advantage and disadvantage of the discretion. However, in all situations it should be there is a limitation. If there is no limitation we will see very variation in judgments for cases have same fact pattern and consequently this might be resulting in people anger/irritation against judicial system which is unwelcomed because we are a country applies Sharia that should be completely just.

3. So the important disadvantage you see that the variation judgments for cases have same fact pattern?

Yes. Also, the existence of the type of current judges highly required passing a clear limitation laws.

10. Do you think judges need to be specialist in certain fields?

There should be something called houses of expertise where expert judges can educate/train/prepare judges to decide most important cases. This houses and training include workshops/certificates that should be requirements for judges' promotion. We should also get advantage of other countries' laws. Also, counselors connected to the judges working in courts have experience in some fields. Also, Sharia graduated should be work and study law and the skills in the law.

4. What do you think the main reason of the judgments variation?

Indeed, the issue of compensation or torts generally needs to be reconsidered by the judicial system. So we have most rules but almost no fair judgments. We have a lack in tort.

5. In my dissertation I am proposing to create a compilation of Sharia's principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed "Peace be upon him and all Allah's messengers." and the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their rights. There are many reasons why this resource will be valuable. For instance, we have industrial and commercial cities currently under construction, which will

bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights.

What is your opinion about such a resource?

Indeed, the country has trend to regulate laws, which I was hoping such work or resource would be part of it. I believe such work would help judges and make them more responsible when judging because they have some resource to rely on. I believe many judges would love to have such resource to help them deciding torts cases and save their time and make it easier for them. I think it should be persuasive and reachable for the parties.

I agree and suggest such work to be issued from the Counsel of High Judicial.

7. How it can be developed?

Reviewing it every five years and consider new type of cases to be added to it.

-How do you think we can avoid any disadvantage when applying torts rules?

The role of Shura Council. About 250 councilor should reflect community beat, so I believe the most important part in this issue is the role of Shura Council that it should take its place on the ground by suggesting and amending laws.

9. Any advice or anything else I need to add on this project?

In regarding torts that have more discretion we should get benefits of other advanced country such as France, British, and United States as the first one. Which are

succeeded. The sign of succeed is the satisfaction/contentment which we are looking for.

Sharia allows us to take and benefit from others' laws unless there is a conflict.

12. Participant Number 12.

1. Currently, there is no written code for the tort system. Judges are not restricted to any specific school of thought. Rather, they have the option to obtain the judgment from whichever school they choose. There is variation of interpretation between judges for the same Sharia principle because of variation in their thoughts, academic background, and expertise. In light of these facts, what do you think about the discretion that is given to judges when deciding tort claims?

Always, the main issue in Saudi Arabia that is no written law. Most cases are relying on the judges' diligence. Before talking about discretion we need to point out that the civil law in Saudi Arabia is not in a legislative format especially torts. But, on the other hand, the Saudi judicial system made tremendous process/steps on regulating the civil procedures. 1428 Saudi has passed the new Judicial Law and 1435 passed the new law of Saudi Litigations Procedures. In fact, such laws have no problematical at all that these laws give judges broad discretion in two manners. Firstly, the notion of that judges are free to choose which school of thought they can apply. Secondly, the issue of assessing the banishments.

The discretion that is given to judges is broad however; there is no standard or one type of rule that would be implement in all Saudi courts. So consequently, we might notice that variations in judgments that related to torts.

2. Do you think judges' decisions reflect cultural biases against different forms of damages, such as money damages, emotional damages, and future damages?

2+8 Indeed, compensation cases in Saudi Arabia are very few because of many reasons such as Saudi is a Muslim country which encourage people to forgive also the culture does. Additionally, the police officers themselves would try to resolve the issues between the parties before the courts. Leadership settlements. Judges apply laws and I think the culture regarding this issue is starting to disappear. Also, sometimes people prefer not to sue when they are sure the harm or the wrong was not intentionally.

10. As you know judges are appointed after graduation from Sharia School and they work as an assistance judge from 6 months to 3 years then they can decide cases independently. Do you think this period of time is suitable/enough?

Mostly, in the first-degree courts we would notice that there is lack in the judgments because of that these stage required only one judges and the minimum age for the judges is 22 years. However, we might avoid such lack conflict in the second-degree courts that the minimum age for the judges is 40 years. The nothing of training judges is exist in most countries so I believe the issue in Saudi Arabia needs to be reconsider.

Also, the rules of the first degree courts need to be reviewed/reconsider and at least establish institutions to train judges and prepare them. I suggest that judges should stay and train for 3-5 years before they can be authorized to start decide cases independently.

Another issue that the labors in Saudi Arabia can be compensated from Social Security which makes people reluctant of raising torts claims even though it's legally by the law.

3. Do you notice clearly that there are variations in judgments even the cases has almost same fact pattern and in the same area?

I think it's something exist as pointed out because of the choice between the schools of thoughts, absence of written law, and the broad diligence which finally lead us to the main issue that the broad discretion.

Mahkamat Kanoon.

5. In my dissertation I am proposing to create a compilation of Sharia's principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed "Peace be upon him and all Allah's messengers." and the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their rights. There are many reasons why this resource will be valuable. For instance, we have industrial and commercial cities currently under construction, which will bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights.

What is your opinion about such a resource?

Indeed the researcher in the Islamic Jurisdiction will find that we have a strong and stand principles related to torts however they are distributed in the jurisdiction books. But for your question, no doubt, that we in extremely need for written law/to have written code/restatement. Also, as we say “what you lost most of it can’t be completely lost” meaning: if you are losing part of something doesn’t lose it all, try to get some of it before it disappears. What you have mentioned is very important and that can be the first drop of the heavy rain. Which will be is the core of the regulation. We are in very need for such work.

-In my opinion this resource won’t be binding it will be persuasive so judge can avoid by a clear justification.

In the highest court the notion of unite judicial rules allows judges to decide cases with new judgment that unusual but should be clearly justified then the highest court can study the judgment and has the right to guarantee/confirm or revers it.

6. How do you think it would fit into the current framework of law?

I think the issue of passing new law will not be easy. In the binging we should have some principles that cavern the issue to start with to apply. So after implementation as first step we can see and affirm the principles and avoid any conflicts between them in order to pass it as a law. So the implementation would tell us about the disadvantages that we can avoid them in the future. Also it needs extra effort.

6. Do you think this resource can be magazine or just publication in Ministry of Justice?

It can “to unite judicial principles in torts” or “standards help judges when deciding torts cases” in a publication under the highest court to be binding for judges because when the highest court demand to apply certain principles the judges will be under questions why don’t follow it and the judgments will be under review by the highest court. Not Binding 100%

7. When do you think this resource should be developed?

Firstly, establish an annual conference for the resource or torts and establish permanent committee from many ministries to look at the resource.

-Some disadvantage in torts litigations?

No written law, when the plaintiff die, emotional distress, DEAH/criminal issue and torts.

The judges are not obligated to know everything so according to the new law in Saudi Arabia the expertise considers evidence that can be used in the courts so judges can ask experts to proof evidences or reject.

-How do you think if we have insurance for most things or cases?

There is a religious dispute in the issue but I think its can be settled before going to the court.

9. Anything you would like to add?

When regulating procedures it’s very easy issue in Saudi Arabia but when it comes to law implementing principles we have conservative judges mostly against

legislating/passing law. Also it's a new project I hope it going to be translated to Arabic so it can be helpful in Saudi Arabia.

13. Participant Number 13.

1. Currently, there is no written code for the tort system. Judges are not restricted to any specific school of thought. Rather, they have the option to obtain the judgment from whichever school they choose. There is variation of interpretation between judges for the same Sharia principle because of variation in their thoughts, academic background, and expertise. In light of these facts, what do you think about the discretion that is given to judges when deciding tort claims?

I would like to go back a little bit to the past in the Ottoman Empire to the Justice Judgments Magazine which had a written rules and judgments for that time as cases so judges were required to rely on them. Before around 8 years, in the time of issuing the Litigation Procedures system there was a big debate in the issuing such work should we establish such work or not? Especially in the cases that would have same fact pattern but the result or the judgments are vary. I think to write down such rule will achieve justice so what can be applied to A case will be apply to B case that has the same facts. I believe that we need to regulate/put together the rule.

1. Do you say that the current discretion that given to judges is very broad?

It is very broad and has no limitation in addition to that it sometimes rely upon the judge's personal opinion and bias, also rely on judges interpretation for the rules or circumstance. So I believe having written rules would be very helpful especially to the new judges.

8. In the issue of compensation, the Saudi community as Muslim and tribal society would prefer to avoid taking money from another person even this sum of money came from a judgment. So they prefer to forgive and get the reward from Allah “God” even if the defendant is very rich. So do you think judges’ decisions reflect cultural biases against different forms of damages, such as money damages, emotional damages, and future damages because judges are part of the community?

I agree with you, there an idiom in the community says: “there is no KAIR benefit in compensation” So sometime judges would avoid compensation. Additionally, some tribes in Saudi Arabia don’t accept the compensation at all. Because they consider accepting compensation as a shame and scratch in the honor of the tribe and its reputation.

3. Beside the variations in judgments you already mentioned, do you think there is another disadvantages or advantages you see?

Indeed, I don’t see characteristic in opening the door for discretion because in the end it is going to be relying upon judge personality and his way in interpretation which I don’t see it achieve justice.

4. We already agreed upon that there is variation in some judgments even the cases have same fact pattern, could we reason/refer that to the absence of the written law or the judges’ diligence?

It could be both together. Indeed, the absence of law would make/allow judges to diligence broadly, which would cause the variation.

-So finally the discretion is needed but should be limited.

5. In my dissertation I am proposing to create a compilation of Sharia's principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed "Peace be upon him and all Allah's messengers." and the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their rights. There are many reasons why this resource will be valuable. For instance, we have industrial and commercial cities currently under construction, which will bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights.

What is your opinion about such a resource?

Indeed, I would like to talk specifically about Saudi society; we would like to consider the changing that going on. There are many changes and improvement. The western culture started to be part of our culture so this brought new cases to the courts that judges are not expected to resolve. For example the tech/electronic cases have not been seen in Saudi courts in the past. So no doubt I believe we need such resource.

-Also another issue I am considering as a researcher the foreign investors can be aware of their right when deciding to invest in Saudi Arabia.

7. How should it be developed? And in what "period of time"?

I think it should be develop as needed so every new case should be add to it in certain time in addition to some old cases and we should consider this development not timely but by the future so we need to build it step by step and not to be hurry on that to obtain its benefits in the future. So why not to be 7-8 years. I believe after that we will not need to add that much but only few cases.

8. (Insurance role. Religious issue)

9. Any advice or anything else I need to add on this project?

I think you need to focus also in some commercial, economics and money cases especially that Saudi undergoing tremendous progress in the civilization and industrialization so we need to accommodate/correspond with all this issues.

14. Participant Number 14.

1. Currently, there is no written code for the tort system. Judges are not restricted to any specific school of thought. Rather, they have the option to obtain the judgment from whichever school they choose. There is variation of interpretation between judges for the same Sharia principle because of variation in their thoughts, academic background, and expertise. In light of these facts, what do you think about the discretion that is given to judges when deciding tort claims?

I think judges have custom to follow, however, it's difficult to cover everything so the other kind of work "restatement" would work better, help judges, make it easier and faster for them. So no doubt that will be helpful.

1. So do you say the current discretion is broad or you have another thought?

It depends, I think judges would start looking at the Hanbali School but because there are so many jurisdiction books and many opinions so there is no doubt the discretion will be broad.

2. Do you think judges' decisions reflect cultural biases against different forms of damages, such as money damages, emotional damages, and future damages?

I think they would to start with mediation/settlement is a rule exist in everywhere which is a positive thing but it's related to the parties' decision. Also, there is no doubt that the culture has a role in the matter of compensation.

Generally, discretion is something essential when deciding cases however, do you see any advantage or disadvantage of it?

Nothing is perfect, so discretion has some advantage and some disadvantage. So some of the advantages are that cases are not similar all times so we need discretion to distinguish cases and its judgments, sometimes even you have law you can't stuck with that or apply it literally so judges need more space to decide cases which will be the discretion. The disadvantages are the vague of procedures and the unpredictable judgments.

3. With this discretion I don't think we have a disagreement that there is a variation judgments even for cases have same fact pattern?

That is true. To be honest I can't tell for sure because I didn't see the judgments. You have to see some cases' judgments to decide surely.

5. In my dissertation I am proposing to create a compilation of Sharia's principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed "Peace be upon him and all Allah's messengers." and the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their rights. There are many reasons why this resource will be valuable. For instance, we have industrial and commercial cities currently under construction, which will

bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights.

What is your opinion about such a resource?

No doubt that such work will help judges when deciding cases as a persuasive resource for them to make the procedures easier and faster. Also, to make the parties feel comfort and aware about their rights.

6. How do you think it would fit into the current framework of law?

In my opinion it can be part of the civil responsibility “torts” not by itself. Or it can be “general rules in torts” And I believe it going to be appreciated.

7. How it can be developed?

First of all the work itself is kind of development. And it should develop as needed by adding cases briefs once we have new cases.

8-In your opinion do you see anything important in torts need to be reconsider?

I see some new laws making good progress but the issue that people avoid it for many reasons, such culture. And people need more education to be aware of their rights.

9. Anything else do you think I need to know about this project or advice?

I would say you can try to discuss some advantage and disadvantage for torts system.

10. As you know judges are appointed after graduation from Sharia School and they work as an assistance judge from 6 months to 3 years then they can decide cases independently. Do you think this period of time is suitable/enough?

I think the issue was the number of the judges but by the time if they have enough judges this period of working as judge' assistant should be longer at least five years.

15. Participant Number 15.

1. Currently, there is no written code for the tort system. Judges are not restricted to any specific school of thought. Rather, they have the option to obtain the judgment from whichever school they choose. There is variation of interpretation between judges for the same Sharia principle because of variation in their thoughts, academic background, and expertise. In light of these facts, what do you think about the discretion that is given to judges when deciding tort claims?

I believe judges have different opinions, interpretations, and expertise. However, in the issue of discretion in tort cases it should be limited to achieve justice so judges can't go beyond the limitation. The issue interpretation depends on the time and expertise of judges. So the elder judges are more understanding, and considering each fact widely. Yes, we agree that discretion is too broad and need to be limited or controlled by laws.

2. Do you think judges' decisions reflect cultural biases against different forms of damages, such as money damages, emotional damages, and future damages?

Of course no because the main role of judge is to judge between people not offer settlement.

8. But sometimes judges do not address/offer a fair compensation, which gives a sign that judges would consider parties situations/status? What do you think?

Let me give you an example. I had one case that I was ordering sum amount as compensation for my client “everything was obvious” however, when I asked that, judge was surprised and his opinion was its huge amount of money.

2+8 So let’s go back to the question that judges’ decisions are reflect culture against compensation and they are influenced by the community culture.

Yes. Additionally, indeed, judges do not consider compensation in most cases. I have many examples on that even with different judges that have different expertise and ages.

2+8 So as a result judges’ decisions reflect culture bias against compensation

Indeed, also there are many cases I can tell you about but generally judges try to avoid compensation because they have no written law or clear standard to rely on when deciding firstly. Secondly, they fear of being unjust judges.

3. According to the broad discretion, don’t you think there is a variation decisions even for cases have same fact pattern?

This is an existing status.

4. Why do you think is that?

There is no specific reason I can refer to it but I think it is because of the absence of written laws, or even some regulations, or some old cases that would help on the issue.

10. As you know judges are appointed after graduation from Sharia School and they work as an assistance judge from 6 months to 3 years then they can decide cases independently. Do you think this period of time is suitable/enough?

Of course this period of time is enough in only one situation that if this judge is under a continuous/periodic evaluation so he would be able to evaluate himself. So he can look at his cons and try to resolve them in the future.

But of course this period of time is not enough. I would suggest that the period of time to be from one year at least to 3 years. I believe also it depends on the place of the court, so a court like Riyadh that has all kind of cases would be suitable to help building judges strongly. However, this would not be the same issue if the court in a small town that has only few cases and might be few types of case, in such situation I believe judges need more time. So it should be from 1-2 years.

5. In my dissertation I am proposing to create a compilation of Sharia's principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed "Peace be upon him and all Allah's messengers." and the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their rights. There are many reasons why this resource will be valuable. For instance, we have industrial and commercial cities currently under construction, which will

bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights.

What is your opinion about such a resource?

I strongly support this notion. I also suggest adding some binding cases in such resource. Evenly, it can be treated as binding law not only persuasively. This is going to be helpful for judges, parties, and lawyers. Consequently, lawyers or parties can predict the result and measure it if they would like to pursue the litigation or set the cases out of the court.

6+7 How do you think it would fit into the current framework of law? How it can be developed?

Issuing a magazine in the judicial system every 6 months. Currently, I think it good to have every year but in the future we can develop it by adding to it every new case that would be helpful.

9. Any advice or anything else I need to add to this project?

I think it would helpful for your work to spend some more time with judges more than any other specialists. I believe such work would be very support to the whole judicial system and would make judges and parties to feel comfort and trust.

16. Participant Number 16.

1. Currently, there is no written code for the tort system. Judges are not restricted to any specific school of thought. Rather, they have the option to obtain the judgment from whichever school they choose. There is variation of interpretation between judges for the same Sharia principle because of variation in their thoughts, academic background, and expertise. In light of these facts, what do you think about the discretion that is given to judges when deciding tort claims?

Indeed, your question brought to the light all disadvantage in the discretion. However, the discretion would result in variation of judgments. We need to work until we reach a point that tort rules would be similar to a contract which mean all of the rules should be clear so each party can be aware of his rights.

In my opinion there are two parts in this issue, first there is ignorance from the parties. Second, judges must be aware of the principles and how to interpret them properly to the case that needs to be decided. Some time there are two cases have same fact pattern but the judgments are totally vary, this is because of the limit in interpret principles, the reliance on judge personal opinion, and no consultation to the previous cases. Frankly, in some cases we have clear principles or laws but some judges would ignore them and apply what they believe in even if it is not proper for the case.

-Let us go back to the question, how do you think about the discretion, do you think it is benefit to achieve justice or it is not? (Advantage and dis)

In my opinion it's useless/unhelpful because there will be variation in judgments. Also, regarding to the four schools of thought each judge would read the cases differently according to his school of thought. Such rules should be regulated.

- **-So you think this discretion is too broad and it needs to be at least limited?**
- -Yes. It should be limited to be helpful to achieve justice and not to harm the parties.

2. Do you think judges' decisions reflect cultural biases against different forms of damages, such as money damages, emotional damages, and future damages?

It depends on the type of the case. "Think only about torts" indeed, some time the parties may emotionally get hurt from the judges because sometimes judges would use harsh words with them. I believe first of all judge should make parties feel comfort first to provide all evidence they might have.

3+4 We already agreed upon that there is variation in some judgments even the cases have same fact pattern, could we reason that to the absence of the written law or the judges' diligence?

It is because of the absence of written law.

10. As you know judges are appointed after graduation from Sharia School and they work as an assistance judge from 6 months to 3 years then they can decide cases independently. Do you think this period of time is suitable/enough?

I think the minimum period of time should be 3 years after that they could decide cases independently.

-Do you think we need to specialize judges in specific fields and train them?

I totally agree with you especially current judges decide all cases without exception, which I believe unhelpful to reach justice. “Yes you are a judge but you are specialist in this field and you have the chance and the ability to improve yourself”

5. In my dissertation I am proposing to create a compilation of Sharia’s principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed “Peace be upon him and all Allah’s messengers.” and the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their rights. There are many reasons why this resource will be valuable. For instance, we have industrial and commercial cities currently under construction, which will bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights.

What is your opinion about such a resource?

I agree with you. This will make the litigation much easier. So these principles would be easy reachable to the judge to make him decide cases easily, and the parties can be aware of their rights.

So you said we need such resource?

Yes.

6. How do you think it would fit into the current framework of law?

I think it should be restatement issue by the Ministry of Justice for certain year.
After that it can be developed as needed.

7. How it should be developed?

I think it can be developed as needed accordance to the new type of cases.

8. In the issue of compensation, accordance to your expertise, how do you think judges deal with such case or what any disadvantage you might notice while your work?

The first disadvantage is that some judges do not read they memorandums, they merely rely upon the verbal/speaking allegiances of the parties, also the most the time are on the side of plaintiff thinking that he is the weak party so mostly he is right especially in the admin cases. Also, the period of time in litigation is too big.

How do you think we can avoid such disadvantage?

By education and awareness using media. Another issue that is the judgments should be clearly justified. The judgments form should be changed because it includes many things are not needed at all such all the introduction and the procedures of the litigation.

9. Any advice or anything else I need to add on this project?

Just try to add some previous cases that might helpful to you and to use them as evidence to your ideas and project.

17. Participant Number 17, Group of 3 officers. 1, 2, 3.

1. Currently, there is no written code for the tort system. Judges are not restricted to any specific school of thought. Rather, they have the option to obtain the judgment from whichever school they choose. There is variation of interpretation between judges for the same Sharia principle because of variation in their thoughts, academic background, and expertise. In light of these facts, what do you think about the discretion that is given to judges when deciding tort claims?

1. I think it's broad especially when you have four schools of thought to search in.
2. It gives the judges more extend and help him to find the proper judgment to the case in front of him.

- Do you think it's something good or not?

1. Always judges in torts cases can change their judgment in accordance to the facts and the time when deciding. So judges can apply the heist or lowest judgment that gives flexibility when deciding cases.

3. Discretion in criminal cases is broader than any fields else. So it should be broader in some fields and restricted in some others.

1. So Discretion is something beneficial but it should be restricted by case and should be limited.

-So generally it's very broad and it should be limited.

2. Do you think judges' decisions reflect cultural biases against different forms of damages, such as money damages, emotional damages, and future damages?

1. I can't tell for sure. But judges should consider custom and norms. In fact, Muslims would prefer to be compensated from a company not from a person. Also variations in judgments consider as one of the discretion disadvantages.

10. As you know judges are appointed after graduation from Sharia School and they work as an assistance judge from 6 months to 3 years then they can decide cases independently. Do you think this period of time is suitable/enough?

1. It depends on the personal expertise. I think 2 years at least as an assistant.

2. I think from 2-4 years

3. At least 2 years and then depend on the other judge's opinions. Decisions.

ALEDARH

5. In my dissertation I am proposing to create a compilation of Sharia's principles related to torts. This work will collect judgments that were applied in the time of Prophet Mohammed "Peace be upon him and all Allah's messengers." and the caliphs after him, and recent judicial opinions related to torts, into one resource. This resource will be persuasive, widely applicable, and easily available to judges when deciding tort cases. Also, this resource will help litigants to be aware of their rights. There are many reasons why this resource will be valuable. For instance, we have industrial and commercial cities

currently under construction, which will bring new types of cases. In addition, foreign investors will also use this resource to be aware of their rights.

What is your opinion about such a resource?

2. I think our judicial system is featured/quality by its broadness. The idea is great but still broad.

-The goal is to make it applicable and reachable.

1. The idea is great but one of its disadvantage that you lead/direct the judges to think in specific way so they mostly going to be stuck with the principles in the resource and do not look beyond that, which narrow the application of diligence. But indeed it is very helpful to judges, under one condition that the judges should be expert and eligible.

3. I totally support the idea.

2. It is going to be grate work. It is going to be helpful for parties.

1. Indeed judges are against the idea of restatement because of two reason. First, they do not want to lose the Quran and Sunna the main sources as what happened in Noah time. Second, they want to keep the heist authority in the earth and not to be asked to justify any judgment. In some countries judges are working in the court as it's their jobs but here they want to be rulers and judges on the people having the heist power in country.

2. It is very great work.

7. How do you think this resource should be developed?

3. I think as needed. Also, get help from the experts.
2. Once we have new cases we can add it so every 1-2 year.
1. I think 3 months are suitable enough to redevelop.

- In the issue of compensation. How to assess it?

1. Experts and lawyers.

9. Anything to add?

3. Educate the lawyers themselves, and active the role of lawyers.
2. The general look of the lawyers would affect the judges so affect the judgments.
3. Get benefit of France and England' experiences in the law matters.