Compensatory Damages Granted in Personal Injuries: Supplementing Islamic Jurisprudence with Elements of Common Law

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Common Law

Majed Alshaibani

Submitted to the faculty of Indiana University Maurer School of
Law In partial fulfillment of the requirements for the degree
Doctor of Juridical Science
2017
On the authority of Abu Saied al-Khudree- may Allah be pleased with him- that the Messenger of Allah- peace and blessings of Allah be upon him- said: "There should be neither harming (darar) nor reciprocating harm (dirar)."
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:

[Signatures]

Professor J. Alexander Tanford

Professor Donald H. Gjerdingen

Date of Defense: March 27, 2017
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DEDICATION

I dedicate my work to my father, mother and my siblings for their encouragement and prayers that helped me to achieve my SJD degree. I also dedicate this work to my lovely wife for her support and her standing beside me when times were tough. Last, but most importantly, I dedicate my dissertation to my little son, Naif, for his inspiration that pushed me to work hard.
# Table of Contents

## I. Introduction

A. Background.................................................................................2  
B. The issue of dissertation.........................................................5  
C. Goals.........................................................................................7  
D. Research Roadmap.................................................................8

## II. The Legal Framework in Saudi Arabia.................................10

A. The Concept of Sharia............................................................11  
B. The Purposes of Sharia...........................................................13  
C. Sources of Saudi Law.............................................................17  
   1. The Quran.............................................................................18  
   2. The Sunnah..........................................................................20  
   3. Ijma.....................................................................................23  
   4. Qiyas...................................................................................25  
D. The Fourth Interpretive Schools of thought in Sharia...............27  
   1. Hanifah...............................................................................27  
   2. Maliki..................................................................................28  
   3. Al- Shafi..............................................................................29  
   4. Hanbali...............................................................................30  
E. The Types of Judiciary Systems in Saudi Arabia.....................34  
   1. Sharia Courts......................................................................34  
   2. Board of Grievances............................................................36

Conclusion..................................................................................38
III. The Overview of Compensatory Damages in Sharia.........................39
   A. The Concept of Tort in Sharia Law........................................40
      1. Definition.................................................................42
      2. Pillars of Compensation in Sharia Law.............................45
   B. Harm as an Element of Compensation.................................48
      1. The Principles of Sharia Related to Harm..........................49
      2. Types of Harm............................................................51
   C. Compensatory Damages in Sharia Law.................................53
      1. The definition of Compensation.....................................53
      2. Compensation in pre-Islam...........................................54
      3. The Sources of Compensation.......................................55
      4. Sharia Principles of Compensation.................................61

Conclusion..................................................................................65

IV. Current Compensatory Damages Before Saudi Courts...............66
   A. Types of Personal Damages.................................................68
   B. Emotional Distress in Sharia Law.......................................72
      1. Conducts that Cause Emotional Harm.............................74
      2. Different Point of Views for Compensating Emotional Harm...........................................79
      3. Saudi Arabian Culture as an Obstacle for Compensation..84
      4. The Methods to Compensate Emotional Harm for Some Conducts in Sharia Law..................86
   C. Remedies for Personal Injuries in Sharia Law......................90
1. Diyah.................................................................91
2. Tazier.............................................................95

Conclusion...........................................................................................................97

V. Criticisms and Obstacles Toward Compensation in Saudi Courts.....98
   A. Criticisms.................................................................98
   B. Obstacles.............................................................111
   C. Solutions.............................................................117

Conclusion...........................................................................................................121

VI. Practical Personal Injuries Cases from the Courts of Saudi Arabia
    and the United States of America......................................................122
   A. Practical Compensation Cases From Saudi Courts..............122
   B. Personal Injuries Cases from Some U.S. Courts..............138
   C. Compare and Contrast.........................................................146

Conclusion...........................................................................................................152

VII. Review of Compensatory Damages in Personal Injuries and Suggested
     Proposals .................................................................153
     A. The Concept of Personal Injuries.................................154
     B. Monetary Losses.........................................................155
     C. Non-Monetary losses.....................................................167
     D. Parties Liable for Compensation.................................171

Conclusion...........................................................................................................174
VIII. Results, Recommendations and Conclusion…………………………175

A. Results………………………………………………………………175

B. Recommendations…………………………………………………..177

C. Conclusion………………………………………………………….178
Abstract

COMPENSATORY DAMAGES GRANTED IN PERSONAL INJURIES:
SUPPLEMENTING ISLAMIC JURISPRUDENCE WITH ELEMENTS OF
COMMON LAW

Al Shaibani, Majed

This dissertation discusses the types of compensatory damages, monetary and non-monetary losses, granted in Saudi Arabian personal injury cases. The main issue of this paper is to determine the missing types of monetary and non-monetary losses when estimating compensation, thereby unjustly leaving injured parties without fair compensation. The problem of this study is that some victims do not get compensation for certain personal injuries claims, such as loss of wages, lost earning capacity, and emotional distress. This is due to many reasons. One of the most obvious reasons is the absence of clearly written personal injuries statutes that cover all types of damages and can be used as guidelines for judges. The absence of statutes leads judges to rely on their interpretation of Sharia principles in personal injuries cases. The second reason is the misunderstanding of Sharia principles among judges about compensating some types of personal injuries. The third reason concerns victims not being aware of their rights as well as the obstacles they face while pursuing their right of compensation.

This dissertation will examine the reasons behind the missing types of personal damages and present solutions by extracting and analyzing the elements of damages from Sharia principles along with United States common law. One of the main goals of this dissertation is to study the solutions by looking at the principles of Sharia related to personal injuries compensation for monetary losses or non-monetary losses and to fill in gaps for missing elements of personal injuries. Also, this dissertation will present the criticisms and obstacles for compensation in Saudi courts and eventually conclude by proposing workable changes and adjustments that can be made to Saudi laws governing compensation.
I. Chapter One:

- **Introduction**

It happens in practical life that a person gets injured as a result of the negligence or recklessness of another. This injury may arise from various situations such as car accidents, defective products, medical malpractice or defamation. Consequently, when one is injured due to the negligence of another and that injury caused losses stemming from the negligence; he or she has the right to get a legal remedy in the form of monetary compensation. Therefore, an injured has the legal right to be “made whole” for all loses whether it is monetary or non-monetary losses.

Sharia principles extracted from the Quran and the Sunnah of the Prophet Muhammad -peace be upon him- prohibit any acts that may cause harm or damages to another. Hence, everyone has duty to act reasonably in a way that a reasonable person would do. Thus, in driving, drivers have a legal duty to drive safe and operate their cars with the level of care, as any reasonable person would do. In medical matters, doctors have duty to provide medical care with the level of competence that a reasonable professional would do in similar circumstances. Also, manufacturers have a duty to put products on the market in a good status.

In consequence, when injured due to the negligence of another is caused to all losses stemming from any incidents; he or she has the right to get a legal remedy in the form of monetary compensation. The right of injured is preserved by Sharia principles. Thus, Sharia law allows victims to be made whole due to the negligence conducts of another.
There are several incidents that cause personal injuries to an individual and these incidents as follows:

1. **Accident**: when a driver acts in a negligence manner that causes injury or harm to others, he will be liable for compensating all damages caused to the other part.

2. **Defective products**: a consumer may get injured due to defective or designed product he bought from a store. Therefore, the manufacture is liable for product liability that caused personal injures to consumers.

3. **Medical Malpractices**: a failure of a doctor to exercise the degree of care.

4. **Defamation**: according to Sharia law mentioned in the Quran, when someone is falsely accused another that he is a son of adultery and couldn’t prove it by providing four eyewitnesses as evidence; he will be punishable by 80 lashes. The Quran states: “And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient.”

   Further, when someone insults or causes harm to someone reputation by untrue statements but not accusing another of adultery, he will be punished at the judge discretion usually lashes or enforce the accuser to make apologies. Some judges, though, rule monetary compensation for such conducts in cases of ruining reputation.

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1 The Holy Book, Quran, *SAHIH INTERNATIONAL*, surah Al nur (24:4)
The legal system in Saudi Arabia is based on Sharia Islamic law derived from the Qur’an and the Sunnah of the Islamic prophet Muhammad and is considered the constitution of the country. As a result, all the laws and provisions that have been issued are based on Sharia law. This makes it mandatory for Saudi Judges to refer to the main sources of the Sharia before they can make judgment that is compliant with Sharia law. It is also important to note that laws in Saudi Arabia are uncodified. This allows judges some flexibility in interpreting and applying the law to individual cases.

When it comes to personal injuries in Saudi Arabia, car accidents are among the top causes of injury and death for individuals and groups. Studies and researches in 2015 has shown that the number of decedents of car accidents has reached up to 86,000 for the last two decades which resulted in monetary loses reached 13 billion riyal (470,090,489.28 USD). In addition there are other incidents that may cause personal injuries such as defective products and medical malpractice.²

Further, the Kingdom of Saudi Arabia has witnessed a tremendous evolution in various fields such as industry and trade. For instance, in 2005 Saudi Arabia joined the organization of world trade. Developments like this have brought new types of tort cases in employment and products liability. This creates a need for clear written laws in order to achieve justice, secure investors, and so that parties are aware of their rights.

The Issue of the dissertation

In fact, in Saudi courts, some injured persons do not get compensation for some personal damages such as subsequent damages resulted in loss of wages, earning capacity and emotional distress. This issue is due to many reasons. One of the most obvious reasons is due to the absence of clear written personal injuries statute that can cover all types of personal injuries damages and use as guidelines for judges. This absence of statute leads to let judges rely on their interpretation of Sharia principles in personal injuries cases. The second reason is the misunderstanding of Sharia principles among judges in compensating some types of personal injuries.

Yet, Saudi Arabia has no written tort law defining personal injuries or any wrong acts that causes injuries to someone. Therefore, defining types of personal injuries in tort cases remain up to the individual judge’s interpretation of Sharia principles. As a result, some judges do cover all monetary and non-monetary losses to an injured party; others on the other hand, do not recognize some types of personal injuries. Consequently, some victims end up without compensation.

In carrying out this research, I will start by analyzing Islamic legal rules that govern compensation and showing how broad and vague they are. Thereafter, I will make an analysis of American law regarding compensation followed by a discussion of the differences and similarities between the two systems using case law. I will conclude by proposing workable changes and adjustments that can be made to Saudi laws governing compensation.
In a tribal society the idea of compensation is almost non-existent because the people would prefer to forgive and attain a reward from God. This idea makes the rule of compensation moot. There are several other reasons that would affect the implementation of monetary compensation. For instance, people think of the compensation as bad luck (qua superstition).

Additionally, due to the absence of a clear and well-written statute governing tort claims and compensation, the procedure that an injured person with a tortious claim is supposed to follow in order to be compensated is ambiguous. This has led to victims being reluctant to bring claims against tortfeasors. It is difficult for judges to decide these cases with all these lingering obstacles in the law. The only option available for judges is to merely rely on their own interpretation of the main rules in Islamic law and decide cases using the broad discretion that is given to them.

In terms of compensation for the personal damages, Sharia law has imposed “Diyah” as a measured monetary compensation. Whereby at old era, ancient people were satisfied to be compensated for just the actual bodily injury measured by Sharia without seeking for compensation of any subsequent damages. Perhaps the reasons for sufficient compensation for physical damage is that the people of the desert were dependent on agriculture and the results of animal and palm fruit without regard to the industry whereas currently, compensation for just body injuries are not enough because the injury may exceed to subsequent damages such as loss of wages and lack of earning capacity. So, it is unfair to ignore these damages and stick to what has just been estimated by Sharia.
A few years back, there was a huge debate about victim compensation due to lack of rules that govern the claim; and where compensation exists, it is not proportional with the magnitude of the harm suffered. In a recent case, the judge stated that having no clear elements to assess compensation makes the compensation uneven with the magnitude of the harm. Whereas, theoretically, Islamic law has the solutions for this issue, the challenge is to deduce the rule and apply it to cases with all of its ambiguity and vagueness.

This research area is of utmost importance because it has not been explored by other researchers in relation to U.S common law and yet it affects people of all walks in life. My goal will be to suggest practical rules that will act as guidelines in assessing compensation that is reasonable, justifiable and equivalent to the harm faced.

○ **Goals**

The essential goal of this dissertation is to mention the different types of personal injuries damages and the way in which an injured can get his right of compensation. Also, this dissertation aims to conceal the types of personal damages that are not taken into account at the time of estimating damages in Saudi courts. Further, taking into account the following goals:

1. Educate Saudi People about their rights regarding compensation

2. Study Sharia texts and extract all types of damages

3. Present the obstacles of compensation culturally and procedurally

4. Review Islamic texts relating to compensation

5. Suggest practical standards that will act as guidelines in assessing compensation
Research Roadmap

Chapter one will be introduction. In this chapter, I will talk about the background of the issue along with the issue of the study. Also, I will mention the multiples of goals of conducting this study I am hoping to achieve by the end of this dissertation.

Chapter two will explain the legal framework in Saudi Arabia. Section one of this chapter will introduce the concept of Sharia. Section two will cover the purpose of Sharia and its sources in section three. In section three, I will present the four interpretive Schools of thought in Sharia. Then, I will conclude this chapter by discussing the types of judiciary systems in Saudi Arabia.

In chapter three, I will provide the overview of compensation in Sharia. The first section on this chapter will mention the concept of Tort and its pillars. In section two, I will focus on defining harm and its types as pillars of compensation in Sharia. Section three of this chapter will provide a brief history of compensation along with its sources and principles.

Chapter four will cover the current compensatory damages in Saudi courts. Section one of this chapter will be about the concept of personal injuries. Then, in section two. I will introduce the types of personal damages. Sections two of this chapter will focus on emotional harm and the types of conducts that cause it. I will conclude this chapter by providing the types of remedies for personal injuries.
Chapter five will cover the criticisms and the obstacles towards compensation in Saudi Arabia. Section one of this chapter will present some criticisms such as: the absence of compensation statutes; the lack of some elements of personal damages; rejecting emotional distress as a separate claim; inadequate compensation for physical injuries; and, finally the variation in judgments among judges in the same fact patterns. Then, in section two, I will present the obstacles and section three will provide some solutions.

Chapter six will introduce practical personal injuries cases from both some US courts and Saudi courts. Section one of this chapter will provide some compensation cases from Saudi courts. Section two will also provide some compensation cases from United States common law. Then, in section three, I will try to discuss the differences and similarities between the two different legal systems in dealing with tort cases.

Chapter seven will review the types of compensatory damages and reconsider some elements of personal damages by extracting the rules from the principles of Sharia. Section one of this chapter will cover the types of monetary losses. Then, section two will cover the types of non-monetary losses. I will conclude this chapter by providing the responsibility of remitting compensation.

I will conclude this research in chapter eight by providing some results of conducting this study. I will also give some recommendations related to solve the issue of the study.
II. The Legal Framework in Saudi Arabia

○ Introduction:

The law in Saudi Arabia is an Islamic Law. This makes Saudi Arabia a unique country. Saudi Arabia is not like other countries when issuing laws because its system mainly relies on the Islamic Sharia. Sharia occupies the first place in the Kingdom in all matters of its cities, private and public. It is the most important obligation for the country. Therefore, when issuing regulations or rules, the government ensures regulations are consistent with Sharia; otherwise, it is unconstitutional.

Beside Sharia, the Saudi government has the power to issue modern rules or regulations to supplement Islamic law when the need arises. These rules issued by the king, are to regulate life in the society. The good example of that are the rules or regulations about traffic system. Sharia does not mention modern issues that come up lately but has left them to the king to deal with. However, these new rules that did not come from Sharia must not conflict with Sharia law. The constitution of Saudi Arabia has mentioned in article seven that Government drives the power from Quran and all regulation must consist with Sharia.3

This chapter will be divided into five sections. The first section of this chapter will talk about the concept of Sharia in Saudi Arabia as well as the purpose of it in section two. Section three will cover the sources of Law in Saudi Arabia along with the fourth section discussing schools of thought in interpreting these sources. The fourth section will provide a clear understanding of the legal system in Saudi Arabia. In the last section, I will present the two types of judicial systems when deciding cases.

A. Section One: The Concept of Sharia in Saudi Arabia

Sharia is an integral part of Saudi legal system. It translates literally as “the way”, “the approach” or “the path.” The Quran states: “Oh Prophet, We have put you on the Right Way (Shariah) concerning the religion, so follow it . . .”\(^4\) This verse means that Sharia is the right path to follow. Sheikh ul-Islam Ibn Taymiyyah\(^5\), an Islamic scholar, said: “Sharia is Allah has prescribed from beliefs and actions.”\(^6\) Sharia Law is based on revelatory principles coming from Allah that include the two main sources, the Quran (the Holy Book) and the Sunnah (teachings of Prophet Muhammad) and also based rationally on Ijma (consensus) and Qiyas (analogical jurists reasoning).\(^7\) Therefore, Sharia is a compensation of principles enacted by Allah to mankind.

Sharia Law is intended to fix mankind and society. Therefore, it is considered a civil system that organizes people in a way to preserve their rights and ensure the justice in earth. Further, Sharia is considered a judicial system that solves all issues among people in their lives. Sharia is a way for all mankind to live without racism. That said, all people are equal under Sharia Law.\(^8\)

One of the characteristics of Sharia is overall. Sharia is considered a complete package of different laws. It includes some legal issues related to different areas of law such as civil, criminal, commercial matters.\(^9\)

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\(^4\) The Holy Book, surah 45. Al-Jathiya, verse 18.

\(^5\) Ahmad ibn Taymiyyah, a Islamic Scholar and logician who was a member of the school founded by Ahmad ibn Hanbal

\(^6\) Abudallah Alwan, *Islamic law and jurisprudence and sources*, (1404)

\(^7\) The Islamic Supreme Council of America, [http://www.islamicsupremecouncil.org/understanding-islam/legal-rulings/52-understanding-islamic-law.html](http://www.islamicsupremecouncil.org/understanding-islam/legal-rulings/52-understanding-islamic-law.html)

\(^8\) Alwan, Supra at 10.

\(^9\) *Id*, at 11.
Here are some legal issues that the Quran mentions that relate to different laws civil or criminal laws. These examples read as follows:

- In contracts cases, the Quran states: “O you who have believed, fulfill [all] contracts.”\(^\text{10}\) From this verse, the demand was obvious that parties must take contract seriously and fulfill it.

- Another case in contract, the Quran states: “O you who have believed, when you contract a debt for a specified term, write it down. And let a scribe write [it] between you in justice. Let no scribe refuse to write as Allah has taught him. So let him write and let the one who has the obligation dictate.”\(^\text{11}\)

- In criminal cases, the Quran states: “O you who have believed, prescribed for you is legal retribution for those murdered.”\(^\text{12}\) This verse indicates the penalty of killing people, which is death.

- In judicial matters, the Quran states: “Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice.”\(^\text{13}\) This verse demands judges to rule justly between two disputing parties.

Therefore, the Kingdom of Saudi Arabia depends entirely on Sharia in all things, whether it relates to solving cases in courts or in the issuance of regulations. Sharia is considered the supreme document in Saudi Arabia in all areas related to the judiciary system and enacting laws.\(^\text{14}\)

\(^{10}\) SAHIH INTERNATIONAL, Quran, surat al Maeda verse one. [http://quran.com/5](http://quran.com/5)

\(^{11}\) Id, Quran, surah al Baqarah verse (282) [http://quran.com/2/282](http://quran.com/2/282)

\(^{12}\) Id, Quran, surah Al Baqarah verse (178). [http://quran.com/2/178](http://quran.com/2/178)

\(^{13}\) Id, Quran, surah al Nisa verse (58) [http://quran.com/4/58](http://quran.com/4/58)

\(^{14}\) Muhammed, Al Sead, *Reading the legitimacy of the Statute of the rule in Saudi Arabia*, (2011)
B. Section Two: The Purposes of Sharia

Sharia law protects peoples’ life and rights and aims to preserve the five basic necessities. They are: Deen (religion), life, intellect, lineage/honor and property.

1. Religion “deen”:

One of the purposes of Sharia is to preserve religion. “Deen” is an Arabic word that has the same meaning of religion. Therefore, Muslims are supposed to preserve religion by worshiping Allah. One of the means of preserving religion is to practice it and obey all its principles. Therefore, Saudi Arabia appears and applies the principles of Sharia as a way to preserve the religion from being lost. Further, Saudi government is responsible of carrying out the Sharia Law and this responsibility comes from Sharia as its first purpose.

The Quran states: “Say, "O People of the Scripture, you are [standing] on nothing until you uphold [the law of] the Torah, the Gospel, and what has been revealed to you from your Lord." This verse means that people are nothing without religion.

In Saudi Arabia, the followed religion is Islam. Islam is the dominant and official religion and the government has established its principles and regulations from Sharia Law.

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16 Id., at 187.
17 SAHIH INTERNATIONAL, Quran, surah al Maidah verse (68). http://quran.com/5/68
2. Life:

Life is clearly sacred in Islam. Sharia Law has set up combinations of principles to protect people in life. Therefore, each is protected by Sharia Law and as a result of that people are prohibited from killing each other. In addition, Sharia Law has put some means to preserve persons from assault.\(^{18}\) These means are:

- It is prohibited to assault to anyone.
- Sharia places some penalties as a punishment in cases of killing or trespassing on others’ lives.
- Sharia has guaranteed a person’s life from any threats.

The Quran states: “Because of that, we decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely.”\(^{19}\)

Also, the Quran states: “And do not kill the soul which Allah has forbidden, except by right. And whoever is killed unjustly - We have given his heir authority, but let him not exceed limits in [the matter of] taking life. Indeed, he has been supported [by the law].”\(^{20}\) Clearly, this verse indicates that Sharia has protected the life of people from any harm and set up in case of violation a punishment. This verse emphasizes that preserving peoples’ life is one of the purposes that Sharia has preserved.

\(^{18}\) Alyobi, supra at 213.
\(^{20}\) Id, Quran, suarh al Isra, verse (17:33). [http://quran.com/17/33](http://quran.com/17/33)
3. Intellect:

Sharia seeks to protect and preserve the intellect of human beings. Therefore, Sharia has stated and warned that anything affecting the intellect is forbidden. A good example of that is the prohibition of drugs. In Sharia, drugs are forbidden because it affects the intellect of human beings.

The Quran states: “Or do you think that most of them hear or reason? They are not except like livestock. Rather, they are [even] more astray in [their] way.” This verse indicates that intellect is the greatest blessing human beings have, however, in case of not protecting the intellect from harm; a person may be like livestock without intellect.

4. Lineage/Honor:

Lineage and honor are one of the purposes that Sharia has come to preserve. That is why Sharia has encouraged Muslims to marry in order to preserve lineage. The Quran states: “And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four.” This verse indicates the legality of the marriage to increase and preserve lineage. Moreover, Sharia has come with some rules to protect peoples’ honor such as prohibiting backbiting and spying on one another that may result in emotional injuries.

Messenger of Allah (PBUH) said, "Verily your blood, your property and your honor are as sacred and inviolable as the sanctity of this day of yours, in this month of yours and in this town of yours. Verily! I have conveyed this message to you.”

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21 Alyobi, supra at 239.
23 SAHIH INTERNATIONAL, Quran, verse (4:3). http://quran.com/4/3
24 Alyobi, supra at 252.
5. **Property:**

People have the right to own property and Sharia has come to preserve this right. The principle of Sharia has forbidden trespassing on others property. As a result, Sharia has placed some penalties to protect peoples’ rights. A good example of that is the prohibition of stealing from one another.26

The Quran states: “O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful.”27 Also, the Quran states: “And do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful].”28 These verses indicate clearly the prohibition of trespassing on people property or money. In addition, according to Sharia, it is forbidden and illegal to steal a person’s money and doing so results in cutting the hand of the thief.29 The reason beyond that is to preserve and protect peoples’ property. In torts, for example, a wrongdoer is liable to compensate the victim for damages the latter may sustain. Therefore, preserving people properties is one of the purposes of Sharia.

To sum up, Sharia rules Saudi Arabia in all its matters. Saudi government adheres to the principle of Sharia. Therefore, Sharia Law is the system in Saudi Arabia that is interpreted by judges.

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26 Alyobi, supra at 288.
29 Alyobi, supra at 298.
C. Section Three: The Sources of Saudi Law:

The legal system of Saudi Arabia is based on Sharia Islamic law that is considered the main foundation that Saudi Arabia relies on in many aspects of day-to-day life in all different fields. Sharia linguistically indicates a clear and straight route for human beings to follow. That means all God’s commands and exhortations that have come from the Qur’an and Sunnah are intended to regulate all aspects of human conduct and guide them on the straight path.30 Further, Sharia Law derived from the Qur’an and the Sunnah of the Islamic prophet Muhammad and is considered the constitution of the country. Saudi Arabia has mentioned in the first article of its constitution that the Holy Book (Qur’an) and the Sunnah are the constitution of the kingdom.31 As a result, all the laws and provisions that have been issued are based on Sharia law. This makes it mandatory for Saudi Judges to refer to the main sources of the Sharia before they can make judgment that is compliant with Sharia law.

It should be noted that Sharia Law in Saudi Arabia is the law of Allah (God) that organizes and fix the society. Sharia Law also organizes the life of people amongst themselves and each other. Moreover, Muslims believe that Sharia maintains their rights and educates them of their duties that make them feel secure. Therefore, the beholder to Sharia texts will find that Quran and Sunnah have not left anything to talk about it. Muslims believe that Sharia has covered all the different aspects of life.

30 Alshahat Ibrahim, INTRODCUTION TO ISLAMIC CULTURE, 11, (2007)
Under Sharia, there are two types of sources, primary and secondary sources. The Holy Book\textsuperscript{32} and the Sunnah\textsuperscript{33} are considered the main or the primary sources whereas Ijma\textsuperscript{34} and Qiyas\textsuperscript{35} are the secondary sources of Sharia.\textsuperscript{36}

1. The Holy Book (Qur’an):

The Quran is the first and the main source of Law in Saudi Arabia. The Quran is the actual word of God (Allah) that has been revealed to the Prophet Mohammed - peace be upon him. Allah revealed the Quran to the Prophet Muhammad by the Angel Gabriel on the 27\textsuperscript{th} of Ramadan\textsuperscript{37} after around twenty-three years of the Prophet Mohammed staying in Mecca. Allah says: \textit{“The month of Ramadan [is that] in which was revealed the Qur'an . . .”}\textsuperscript{38} and that day is known as the Night of Power.\textsuperscript{39} Allah says: \textit{“Indeed, We sent the Qur'an down during the Night of Decree . . .”}\textsuperscript{40}.

Saudi Arabia relies highly on the Quran when enacting regulations and for all its matters locally or internationally. Therefore, the kingdom never issues any regulations that would contradict with Sharia texts regarding its own local business or international conventions and treaties.\textsuperscript{41} Muslims believe that the Quran has covered all matters of life. In fact, the Quran has covered some legal issues such as principles related to justice, torts, commercial transactions, crime and punishment.\textsuperscript{42} For instance, 140 verses among 6,235

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{32} Muslims Book. The words of ALLAH that revealed to the prophet Mohamed.
\item\textsuperscript{33} The compilation of the sayings, actions, and approvals of the Prophet Muhammad (peace be upon him and all of Allah messengers).
\item\textsuperscript{34} consensus among jurists
\item\textsuperscript{35} analogic legal reasoning and interpretation
\item\textsuperscript{36} See RAJ BHALA, UNDERSTANDING ISLAMIC LAW, 289, (2011)
\item\textsuperscript{37} http://islam.about.com/od/ramadan/f/ramadanintro.htm
\item\textsuperscript{38} Quran, Surat Al-bagara, verse 185.
\item\textsuperscript{39} http://www.huffingtonpost.com/entry/what-is-laylat-al-qadr-the-night-of-power_us_55a3d9c9e4b0ece71bc7069
\item\textsuperscript{40} Quran, Surah Al-qadr, verse 97:1
\item\textsuperscript{41} The Saudi Basic Law of Governance, (1991)
\item\textsuperscript{42} Angela Tang, \textit{Comparative Analysis of Certain Criminal Procedure Topics In Islamic, Asian and Common Law System}.
\end{enumerate}
\end{footnotesize}
verses in the Quran have mentioned legal issues. For example, about justice, Allah states: “O you who believe! Stand out firmly for justice, as witnesses to Allah, even though it be against yourselves, or your parents, or your kin, be he rich or poor. Allah is a better Protector to both” This verse upholds justice and encourages people to be true and fair. Harvard University has posted this verse on the wall of the main entrance of its college, describing the verse as “one of the greatest expressions of justice in history.”

The Quran states, for crimes, “anyone killed a person not in retaliation of murder, or (and) to spread mischief in the land – it would be as if he killed all mankind, and if anyone saved a life, it would be as if he saved the life of all mankind.” This verse prohibits people from killing each other without justification. Further, the Quran provides a punishment for perpetrators. Allah says: “O you who have believed! Prescribed for you is legal retribution for those murdered,” According to this verse, it is clear that the punishment for perpetrators is retribution.

Also, under Torts law, the Quran has mentioned many verses prohibiting trespass or harming others. The Quran states: “So whoever has assaulted you, then assault him in the same way that he has assaulted you.” This verse clearly means that one is liable for any harm he causes another and those tortfeasors are legally liable for their mistakes. This verse prevents tortfeasors from doing wrong things to others.

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43 Id,
44 Quran, surah Al Nisa, verse 135.
45 Quran, surah al-Maida, verse 32.
46 Quran, Surah AL-bagara, Verse (2:178)
47 Id, surah 2, verse 194.
Later in my research, I will mention some of the verses of the Quran and Sunnah regarding damages and compensation in respect to torts.

It is worth mentioning that all these legal verses in the Quran are not in the form of statutes; therefore, it is the jurists’ task to derive the rules and set them aside as statutes. Further, for those verses containing principles that need more explanation, it is the Sunnah’s role to clarify some of these principles of the Quran. There are also some principles Quran has not mentioned and were left to the Sunnah to discuss. That is the Sunnah’s role to present these principles.

2. The Sunnah (Tradition):

Sunnah is the second source of law in Saudi Arabia. It is the explanation of the Quran. It means, when translated, the path or the way that is followed by a person in his or her life.48 The Prophet Muhammad -peace be upon him- said: “Whosoever introduces a good practice in Islam, there is for him its reward and the reward of those who act upon it after him without anything being diminished from their rewards. And whosoever introduces an evil practice in Islam, will shoulder its sin and the sins of all those who will act upon it, without diminishing in any way their burden.”49 Sunnah has a wide collection of the deeds, actions, habits, and the behavior of Prophet Muhammad. In other words, it is a record of what Prophet Muhammad did and said. Therefore, whoever follows the Prophet Muhammad’s Sunnah, he or she will be rewarded, but that does not mean those who leave it will be punished.50

48 See Mohammed Fatah Allah, Sunnah, (2005)
49 Id, at 16
The question may arise, what is the relationship between the Quran and Sunnah?

In fact, the Quran states the answer: “We sent them with clear proofs and written ordinances. And we revealed to you the message that you may make clear to the people what was sent down to them and that they might give thought.”^51 Imam Al-Baghawi said, “The message in the verse refers to the divine inspiration. And the Prophet is the clarifier of the divine inspiration.”^52 Thus, the relation between the Quran and the Sunnah is that the latter is a clarification of the former. The Sunnah explains, clarifies and interprets the Quran. It gives more details about the principles mentioned in the Quran. Good examples of that are praying, fasting and pilgrimage. The Quran did not explicitly state details about all these matters and left them to be explained through the Sunnah.

Jurists have agreed that the Sunnah is the second important source of legislation in Saudi Arabia. Muslims obey the Messenger in compliance with the Quran. The Quran states: “Obey Allah and obey the Messenger . . .”^53 This verse commands Muslims to obey the Messenger of Allah and believe in him and follow his Sunnah. The Quran states also: “And whatever the Messenger has given you – take; and what he has forbidden you – refrain from.”^54 Therefore, it is an obligation to follow the Sunnah of the messenger. The Quran also mentions that for Muslims in case of facing disputed issues, must solve these issues from the Quran and Sunnah. The Quran states: “And if you disagree over anything, refer it to Allah and the Messenger.”^55

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^51 Quran, Surah Al-Nahl, verse (16:44)
^52 One of the well-versed scholars of Islam.
^53 Quran, Surah Al-Nor, verse (24:54)
^54 Id, Surah Al-Hashr, verse (59-7)
^55 Id Surah Al- Nisa, verse (4:59)
Islamic Jurisprudence has divided Sunnah into two categories: legal and non-legal Sunnah. The legal Sunnah refers to all the commands or actions of Prophet Muhammad that a people are required to follow; whereas, non-legal Sunnah means the actions or words that are not obligatory.56 Thus, the Sunnah along with Quran are highly considered the foundational source of law in Saudi Arabia to extract evidence in decision-making.

As a matter of fact, Muslims follow the Prophet Muhammad’s step regarding his commands, actions and even his behavior. They consider him the best guide in their lives. Moreover, the Quran encourages Muslims to follow what the Prophet Muhammad did and said. The Quran states: “Verily in the messenger of Allah ye have a good example for him who looketh unto Allah and the last Day, and remembereth Allah much.”57 This verse encourages Muslims to follow the straight path that is the way of Prophet Muhammad.

A lot of Saudi scholars have emphasized that the Kingdom of Saudi Arabia has followed Sunnah and it will continue going on this path. The kingdom "will not deviate from the Sunnah ever," Saudi Grand Mufti said. One of the manifestations that Saudi Arabia follows Sunnah is regarding the entering of the first day of each month. Saudi Arabia as to comply with the Prophet Muhammad, depends on the vision in determining the entering months and this process is done by seeing the moon by experts.58

56 Matthew Wallis, *The various types of Sunnah and role in Islamic Law.*
57 Quran, Surah Al-Ahzab, (33:21)
58 [http://islammemo.cc/akhbar/locals-ksa/2015/10/16/267458.html#2](http://islammemo.cc/akhbar/locals-ksa/2015/10/16/267458.html#2)
Saudi Arabia follows the Prophet Muhammad’s instructions in all its matter. A good example of that is when Saudi judges are deciding cases. There are some steps that Saudi Courts should take in order to solve cases. First, they seek to solve the case by looking to the Quran and if they find the rule then it is unnecessary to look further for the law. However, as has been mentioned, the Quran does not mention all matters; therefore, Saudi Courts seek to look further to Sunnah to find the law. 59

3. Ijma (Consensus of Legal Opinion):

The primary sources of the Islamic law are the Quran and Sunnah. The Secondary sources are Ijma and Qiyas. Ijma and Qiyas are derived from the legal injections of the Quran and the Sunnah of the Prophet. It is undoubtable that Ijma is the third source of Islamic law. It is considered one of the jurisprudential bases of Islamic law. Ijma means “the agreement of the jurists from among community of Muhammad -peace be upon him- after his death in a certain period of time upon a rule of Islamic law.” 60 Therefore, the agreement comes to issues that are not mentioned in the Quran and in the Sunnah. Importantly, this agreement must be unanimous in order to become applicable and binding law. It is clear from the definition of Ijma that it only occurs after the death of the Prophet. That is because the Prophet, during his lifetime, had the power and the heights authority to solve all matters.

60 E. Okon, The sources and schools of Islamic jurisprudence Etim, (2012)
The recognition of Ijma has come from The Quran and Sunnah. The Quran sates: “O you believe, obey God and obey the messenger and also those in charge among you.”\(^{61}\) The word “Those in charge among you” covers a wide variety of people, and one of intended meanings is that of jurists and religious scholars. It is clear from this verse that the jurists, whom Allah orders, must be obeyed by Muslims as to be in compliance with the order of Allah. Hence, Ijma gets its authority from one primary source of Sharia. Further, Saudi society considers jurists the people that Allah mentions in the Quran; therefore, they refer confusing questions to those jurists in those matters that concern them.\(^{62}\) On the other hand, the Sunnah as a second primary source did not forget to mention the importance of Ijma. The Prophet Muhammad said: “My nation will not agree unanimously on error.”\(^{63}\) It is inferred from this Hadith\(^ {64}\) the emergence of Ijma as a source of Law. This Hadith indicates that jurists’ agreement will not be inconsistent with the Quran and Sunnah.

There are some scholarly consensuses about upcoming issues. The number of issues solved by jurists is 151 out of 208 cases.\(^ {65}\) As an example of Ijma, there is consensus of the scholars that whoever is insulted or emotionally injured by another party he or she is entitled to be monetarily compensated.\(^ {66}\)

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\(^{61}\) Quran, Surah An-Nisa verse 4:59.
\(^{64}\) Hadith are collections of the reports claiming to quote what the prophet Muhammad said verbatim on any matter. The hadith literature is based on spoken reports that were in circulation in society after the demise of the Prophet Muhammad. It occurs in the Qur’an twenty three times (4.42, 4.78, 4.87, 4.140, 6.68, 7.185, 12.111, 18.6, 20.9, 31.6, 33.53, 39.23, 45.6, 51.24, 52.34, 53.59, 56.81, 66.3, 68.44, 77.50, 79.15, 85.17, 88.1). http://www.quranicstudies.com/prophet-muhammad/the-meaning-of-hadith/.
\(^{65}\) http://www.dorar.net/lib/book_end/16255
\(^{66}\) http://dar-alifta.org/ar/ViewFatwa.aspx?ID=6922&LangID=1
The texts of the Qur'an and Sunnah do not clearly indicate compensating one who is insulted monetarily but instead is punitive, meaning the other party would be punished by whipping him 80 lashes, Scholars have since agreed to compensate the victim of such injuries monetarily.

To sum up, Ijma depends on the emergence of new confusing questions among people in a particular time. These questions have not solved directly from the Quran and Sunnah. Thus, there is a need for solving these questions by Ijma. Once jurists get together and unanimously solve these questions this Ijma become a binding law.67

4. Qiyas (Analogy):

Qiyas is the second secondary source of Law. It is considered the legal principle of comparing between similar cases in order to reach logical conclusions of a particular case in a certain situation.68 "Qiyas meant to seek similarity between new situations and early practices, especially those of the Prophet."69 In other words, Qiyas helps to find an answer to a new case that is not mentioned in the Quran, Sunnah and Ijma. However, there could be a similar case solved from the main sources in which the new case may rely on to be solved. This means that in the absence of an express provision from the Qur'an, Sunnah or Ijma, judges resort to a legal source, which is Qiyas to resolve the issue. So, Qiyas here is to look for precedent set by a similar case that has been addressed by Quran, Sunnah and Ijma in order to answer a current case.70

68 Id, at 25
69 AbuSulayman, at 66.
70 E. Okon, Id, at 21
Unlike Ijma, the purpose of Qiyas is to address a new case by looking to similar cases, whereas Ijma is intended to make a new law. The recognition of Qiyas comes from the main sources. The Quran states: “O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result.”71

The Sunnah also accepts Qiyas. Under the Sunnah, Hadith by Muadh bin Jabil when the Messenger of Allah would have sent him to Yemen, Muadh said, “I will judge according to what is in the Book of Allah.” The Prophet said: What if it is not in the Book of Allah? Mu’adh said, “Then with the tradition (Sunnah) of the Messenger of Allah.” The Prophet said: What if it is not in the tradition of the Messenger of Allah? Mu’adh said, “Then I will strive to form an opinion (Ijma).” The Prophet said: All praise is due to Allah who has made suitable the messenger of the Messenger of Allah.”72

A good example of Qiyas happened in the era of Prophet Muhammad. A woman came to the Prophet Muhammad -peace be upon him- and said that her father had died without performing the hajj73. She asked the Prophet whether it would benefit her father if she performs the hajj on behalf of him? The Prophet told her: “Supposing your father had a debt to pay and you pay it on his behalf, would this benefit him?” She replied: yes, and the Prophet said, “The debt owed to Allah merits even greater consideration”.74

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71 Quran, surah Al-Nisa, verse (59).
72 Sunan At-Tirmidhi 1327, Grade: Sahih.
73 It is one of the pillars of Islam that al Muslims must perform at least once in their lifetime.
74 http://ufaoil.blogspot.com/2008/02/rule-of-qiyas-its-meaning-justification_09.html
Finally, Muslims refer to Qiyas in case of there is no evidence from the Quran, Sunnah and Ijma. Therefore, Qiyas is considered the last source in deriving legal principles.

It is worth to noting that Sharia law in Saudi Arabia is not codified. As a result of that, there is extreme differences between judges when applying and interpreting sources of Sharia law. Therefore, judges are compelled to rely on the four interpretive schools of thought for interpreting Sharia texts. The next section will talk about the schools of thought that Saudi Courts rely on in interpreting Sharia principles.

**D. Section four: The Four Interpretive Schools of Thought in Sharia**

Schools of thought are considered Interpretive Muslims follow in interpreting their daily religious matters. People refer to these schools of thought to find answers for some of the ambiguity of Sharia principles. Before the school of thought, people used to ask the Prophet Muhammad questions regarding their daily religious matters. Obviously, the schools of thought had come after the death of the Prophet Muhammad. Although these schools of thoughts agreed that the Quran, Sunnah, Ijma and Qiyas are the sources of deriving principles and rules, each school has its own interpretation and explanation of principles from these sources. They are different when it comes to interpreting some details of Sharia principles. A good example of that is that some schools are different in compensating a victim monetarily for emotional distress.
1. The Hanifah School:

The Hanifah School is the oldest school of thought in Islam. It is founded by Imam Abu Hanifah Al Numan. This school has approached in its study the jurisprudence (Fiqh) and extracting principles from the Quran and Sunnah. In addition, this school builds its ideas and addresses issues through primary sources namely the Quran and Sunnah. What has been known about the founding of this school is that Imam Abu Hanifah memorized the Quran and he is the scientist in the Quran and Hadith.

Therefore, he is known as the interpreter of the Quran. Imam Shafi’I said; “people in Fiqh are considered the sons of Abu Hanifah.” What distinguishes this school from others is this school assumes premature matters that did not happen and decrees upon it. What also distinguishes this study is the flexibility in its matters of correcting human behavior and its respect for freedom.75

Hanifah Schools has many opinions on different matters. For example, in personal injury cases, Hanifah’s opinion is that there is no monetary compensation for emotional injury cases. Instead the compensation in such cases is just to punish a defendant by beating, imprisonment, slapping and speaking with the defendant with a harsh manner by a judge.76

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75 See Mohammed Abu Zahra, History of Islamic Schools at 359, Dar al-Fiqr al-Arabi, 1946.
76 Karph Mohammed, compensation for moral damage, (2014)
2. Maliki School:

Maliki Schools is the second school of thoughts founded by Imam Malik bin Anas. The sources of deduction in this school come from the Quran, Sunnah, Ijma and Qiyas. Unlike Hanifah, Maliki considers Qiyas when deducting principles. Imam Malik was following a unique judgmental approach that is different from other schools. As known, Imam Malik was the school of Hadith in Madinah where he lived, Saudi Arabia. What distinguishes this school from other schools is the moderation in its judgments and attitudes. As well as the logic and ration in its provisions. Unlike to Hanifah, the founder of this school, Imam Malik did not answer issues that did not come true. In cases when he did not know the answer, he made a clear statement that he did not know.77

One of Maliki’s opinions regarding sales was iterated by Imam Malik. He said that when two parties are about to make a contract at a particular time, each one of them has the right to terminate the contract before they change their place otherwise it will come binding.78

3. Al-Shafi’i School:

Al Shafi’i School is the third interpretive school of Sharia texts. The school was founded by the Imam Mohammed Al Shafi’i. Imam Mohammed started his journey in science at a young age. One of the Imam’s favorite things was traveling from one country to another to seek knowledge and jurisprudence from ancient jurists until he became an independent scientist himself with his own students. Al Shafi’i considered himself a student of Al Maliki. He was following Al Maliki’s opinions in explaining and solving issues. However, Al Shafi’i had his own approach in jurisprudence by collecting all

77 Id., at 379
78 Id., at 399
opinions and analyzing them to come up with a close and logical opinion to the justice from these different opinions. It should be noted that the hierarchy of Sharia sources in this school is the Quran and Sunnah as one source, Ijmaa and Qiyas that helped to encounter any legal issues raised.\textsuperscript{79}

One of the legal issues that Al Shafi’i talked about was emotional distress as a personal injury. His opinion was that in case of the absence of physical injury, a tortfeasor must be punished (Tazir)\textsuperscript{80} as a deterrent compensation for a victim. Meaning, there is no monetary compensatory relife because this type of injury is considered one of non-monetary damages: therefore, it cannot be compensated by money otherwise a judge will face obstacles in assessing it.

4. Hanbali School:

The Hanbal School is the last school of thought founded to solve and answer new questions and issues. In the absence of clear evidence from the Quran and Sunnah toward new issues, the Hanbali School was one that emerged as an important key in interpreting Sharia texts and extracting laws and principles to be applied to these new issues arising among Muslims. This school was named Ahmed ibn Hanbal who was one of Imam Al-Shafi’i students. Learning Hadith and convey it to people is what distinguishes Imam Ahmed from other schools. He was interested in studying and codifying Hadith (the Prophet's sayings-peace be upon him) that prompted him to travel from one place to another. Eventually, learning Hadith pushed him to jurisprudence.\textsuperscript{81}

\textsuperscript{79} Id., at 432  
\textsuperscript{80} It refers to punishment for offenses at the discretion of the judge.  
\textsuperscript{81} Id., at 456
A good example of Imam Ahamed under torts -especially in personal injury damages is that he considered the monetary compensation for emotional distress resulting from physical injuries a clear violation of Sharia law because it is additional compensation, which the Quran and Sunnah banned. Therefore, in the eyes of Imam Ahmed, compensation for monetary losses estimated in the Qur'an and Sunnah is enough and considered emotional distress injury already covered. Furthermore, he considered emotional distress injuries resulting from insult and verbal abuse without physical injury invalid cases to be compensated monetarily; however, he did consider confinement, beating and scolding as fair punishments for compensation.82

In summary, the schools of thought play an important role in resolving new emerging issues by relying on their interpretation of the main sources. Although these schools depend on the main sources, sometimes each school has different opinions, leaving Muslims the right to choose the easy solution.

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82 See Karph, at 29.
• **Other Sources of Law in Saudi Arabia:**

The Constitution of the Kingdom of Saudi Arabia states in Article Seven that the Quran and Sunnah are the main sources in the kingdom and all principles must be derived from these sources. Article Seven states that “Government in Saudi Arabia derives power from the Holy Quran and the Prophet's tradition.” Therefore, all Saudi courts must apply Sharia Law to cases before them. According to the Saudi judicial system in Article One, “Courts applies Sharia to cases before them, and in accordance with what is indicated by the Quran and Sunnah, and what is decreed by the Guardian (the king) ruler of the regulations that do not conflict with the Quran and Sunnah (Mraeih) systems, and comply with the procedures for its consideration of what is stated in this system.”

Additionally, due to the changes and the huge improvements that Saudi Arabia has witnessed, Saudi government realized their duty to organize legal issues that arise by enacting regulations to achieve the public interest in a manner that is consistent with Sharia Law. Therefore, there are three sources of law for the purpose of regulating the society. These sources are the Royal Order, the Ministry Council and the House of Shura (House of Council).

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83 Constitution of the Kingdom of Saudi Arabia Article 7.
84 Saudi judicial system 2008.
The king, as the president of the Kingdom, has the power to enact laws and regulations on his subjects that are not presented to the council of Ministry and Shura. Furthermore, the King has the authority under “Royal decree” by the constitution to make and modify regulations after presenting them to the councils of Ministry and Shura. Article 70 states that “International treaties, agreements, regulations and concessions are approved and amended by Royal decree.” A good example of a Royal Order was in 2007, when King Abdullah issued royal decrees with the aim of reforming the judiciary and creating a new court system.

Another example is what happened recently in the city of Mecca on September 12, 2015. Saudi Arabia’s King Salman ordered the monetary compensation of one million, Saudi riyals (270,000 USD) to the families of each person killed as a result of the crane collapse at Mecca’s Grand Mosque. Further, those who were non-fatally injured would be compensated 500,000 riyals (130,000 USD).

The Ministry of Council has the power to issue laws after having the signature of the King as the president of the Kingdom. The Ministry of Council has twenty-three ministries appointed by the King, which carry out the functions of their ministries. The main function of the council is drafting general affairs of the country. A good example is the law issued by the Ministry of Council to combat informatics crimes in social media. The House of Shura is considered one the sources of law in Saudi Arabia. It includes 150 members who are responsible for drafting and debating legislation issued by the Ministry of Council. One of the council’s tasks is to study and propose regulations.

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85 Id, Article 70.
86 ASHARQ AL-AWSAT, Saudi Arabia to compensate families of Mecca crane collapse victims, sanctions Binladin Group, Sep. 12, 2015.
87 Council of Ministers system (1995)
88 Council of Shura System (1993)
E. Section Five: Judiciary System in Saudi Arabia

In Saudi Arabia, the judicial system is divided into two courts that decide cases; Sharia Courts and the Board of Grievances. Each court hears a particular set of cases. For instance, Sharia Courts has the jurisdiction to hear all cases related to the violation of rights and breach of law; whereas, the Board of Grievances hears cases involving government bodies as a party. In addition to the two court systems, there are several committees for considering specific claims, such as; the banking committee to consider the claims of the banks; the Supreme Committee settle labor disputes; the customs committees; committees to settle insurance disputes and irregularities resolution; committee to settle securities disputes; and, a committee to settle investment disputes. This section will briefly present the tasks of the two types of judiciary and the types of cases they look at.

1. Sharia Courts:

In 2007, King Abdullah issued royal decrees with the aim of reforming the judiciary and creating a new court system. Sharia courts have the jurisdiction to hear all civil and criminal cases. They are comprised of three levels of courts and each level looks at specific cases. These levels are: The First Instance Courts that includes general court, criminal court, family court, commercial court, and labor court. The Appellate Court that is located in each province to review decisions of lower courts (the First Instance Courts); and the Supreme Court that is aimed to make sure the application of the principles of Sharia law along with regulation decreed by the king, are not in conflict with Sharia.\(^{89}\)

\(^{89}\) The Saudi Judicial System 2007.
i. **The Supreme Court:**

The Supreme Court is the highest authority in Saudi Arabia. It is located in the capital city, Riyadh. According to Article 10 of the Saudi Judicial System, the Supreme Court is comprised of a chairman and three judges except in criminal cases, which have five judges. The Supreme Court has the jurisdiction to review decisions of appellate courts in criminal cases that involved Hudud.

ii. **The Appellate Court:**

This court has the jurisdiction to review decisions of the lower courts (The First Instance Courts). It is located in each province and has specialized departments to hear cases. Each department is comprised of three judges except in department of criminal cases that is comprised of five judges. These departments are Legal, Criminal, Personal Status, Business and Labor department.

iii. **The First Instance Courts:**

The first instance courts have the jurisdiction to hear civil and criminal cases. It is located in each region and province. It is comprised of several courts that are general court, criminal court, commercial court, personal status court, and labor court.

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90 The Saudi Judicial System, article 10, (2007)
91 An Islamic concept, literal meaning "limit", that is punishment for specific crimes that Allah mentions in the Holy book and these crimes are as follows adultery, fornication, accusing someone of illicit sex but failing to present four male Muslim eyewitnesses, consuming intoxicants, outrage (rebellion against the lawful Guardian, robbery and theft.
92 The Saudi Judicial System, article 17, (2007)
93 Id, Article 15.
94 Id, Article 16.
95 Id, Article 17.
96 Id, Article 18.
The general courts have the jurisdiction to hear cases related to car accidents and other cases related to the violation of traffic.\(^9\) The criminal court is comprised of three departments with three judges each. Each department and each department hears specific cases; the department of Hudud and Qisas\(^9\) cases, the department of Tazir\(^9\) cases and the department of juvenile cases.\(^1\) The commercial court hears all cases related to businesses between merchants. The personal status court has the jurisdiction to hear all cases related to marriage and divorce. The labor court hears cases for settlement of labor disputes.

2. The Board of Grievances.

The Board of Grievances is the second type of judiciary in Saudi Arabia. It is an Independent judicial body form other courts and directly linked to the King.\(^1\) The Board of Grievances strives to solve cases of people against government bodies. The Board of Grievances is comprised of three levels of courts: the Administrative Court, the Administrative Court of Appeals, and the Supreme Administrative Court.\(^1\) Each court has different departments with three judges for each department.\(^1\) One example of the claims heard by the Board of Grievances is a claim for compensation that is submitted by concerned parties for the decisions or actions by the administrative body.

\(^9\) *Id*, Article 19.
\(^9\) Qisas is an Islamic term and a category of crime that means “retaliation in kind”. In case of murder, it means taking the life of the killer by the relative of the victim.
\(^9\) In Sharia Law, Tazir is considered punishment at the discretion of the judge.
\(^1\) *Id*, Article 20.
\(^1\) The Broad of Grievances, Article 1, (2007)
\(^1\) *Id*, Article 8.
\(^1\) *Id*, Article 9.
Other issues and complaints heard by the Board of Grievances are complaints related to the rights stated in the Civilian and Military Service System, the regulation of retirement for government employees, administrative dispute, requests for enforcement of foreign judgments, and disciplinary proceedings brought by the competent authority.\textsuperscript{104}

Saudi Arabia has allocated a separate judiciary to adjudicate in disputes among people and one of the government bodies. It is worth mentioning that the decisions by a court or any judicial committee have no binding authority with respect to another case. In fact, there is no concept of judicial precedent. Unlike the United States, in all cases, Saudi judges do not rely on judicial precedents. Due to the omission of judicial precedent, judges look at cases that have similar facts and rule on these cases differently although these cases have the same pattern of facts.

\textsuperscript{104} Id., Article 13.
Conclusion

Sharia Law has recognized all types of rights and guarantees those rights to its people. Muslims have realized that Sharia is the way that manifests the correct way of using their rights as well as the means of protecting their rights. Sharia also helps to spread stability in all transactions among individuals in Saudi Arabia. On the other hand, Sharia Law has set up some punishments for those who break Sharia Law by trespassing on peoples’ rights and has established a judicial system to practice its principles. In Saudi Arabia, the schools of thoughts are considered the interpretive tool for the some the ambiguity of Sharia principles.

In Saudi Arabia, Sharia is the dominant law of the country. As a result, all business of the government is subject to Sharia Law in terms of internal and external interests and must be in a manner that does not conflict with it. The Saudi Constitution indicates in its first article that the constitution of the country is the Book of Allah (the Holy Book, Quran) and the Sunnah of the Prophet. Therefore, the main sources of legal principles in Saudi Arabia are those principles derived from the Quran, Sunnah, Ijma and Qiyas.

In addition, regarding the work of all Saudi courts, the Constitution of the Saudi Arabia states that courts must apply to the cases before them the principles of Sharia. However, with the recent developments in Saudi Arabia and with the expansion of its activities, a need arose to let the government issue regulations, consistent with Sharia in order to organize the emerging activities of life. Therefore, the Saudi government has issued a number of regulations and rules that address different subjects of life.
III. Chapter Three: The Overview of Compensatory Damages in Sharia

○ Introduction:

Sharia Law is intended to achieve the interests of the people. One of Sharia’s goals is to preserve peoples’ life and rights. Therefore, Sharia has forbidden causing harm to people and wrongdoing on peoples’ property. It has attempted to deter these harms by enforcing compensation and determining punishments to protect people from damages. Under Sharia Law, everyone has a duty not to injure others and breach of this duty is considered more of a violation of ethics than the law. One of the most important principles in Sharia is, “There should be neither harming nor reciprocating harm.” This means a person shall not harm himself nor cause harm to others. In torts, Sharia has arranged monetary compensation for some damages and nonmonetary punishments for others.

In Sharia Law, monetary compensation is not always the method to fix the harm; rather there are ways to remedy the harm by punishment or apology. A good example of this is in the case of injury resulting from emotional distress without physical injury. When the tortfeasor has hurt someone’s feelings, he or she will be punished by lashes at the discretion of a judge. However, in other case of injury resulting from emotional distress, the tortfeasor may have to apologize or withdraw what he said by telling the truth if he had told a lie about the victim.

This chapter will be divided into three sections. The first section will talk about the concept of torts in Sharia along with the elements of compensation. The second section will be focusing on injury as an element of tort and will illustrate the types of
injuries found in Sharia. The third section will talk about the concept of compensation and its principles in Sharia.

**A. Section One: the Concept of Tort in Sharia Law**

Muslims have both a moral and legal duty recognized and established by Sharia Law that requires the Muslim to conform to a certain conduct. The duty of conduct is what an ordinary person would do in the same circumstances.\(^{105}\) This duty requires Muslims to act in a good behavior for the protection of others against unreasonable risks. Therefore, beyond their legal responsibility, everyone under Sharia Law is morally responsible in all matters of his or her life. Violation of this duty will make the tortfeasor liable and he will face punishment or compensation.

Besides the Sharia’s establishment of the legal duty in torts, Saudi judges can also establish a legal duty based on their interpretation of Sharia sources. Therefore, the question of the existence of duty is sometimes a matter of the judge’s discretion. The judge presiding over tort case can, at his discretion, establish a legal duty. The breach of the duty in Sharia occurs when anyone fails to act or even intends to make fault.

Breach of duty in Sharia can be any wrong act or wrongdoing in civil and criminal law\(^{106}\). Whereas in US torts law, a breach of duty occurs in only three ways: negligence, reckless disregard, and intentional tort.\(^{107}\)

In Sharia, there are five sources of obligations in torts, they are as follows: contract, individual will, harmful action, useful action and principles of Sharia. Therefore, harmful action resulting from a wrongful act is one of the sources of

\(^{105}\) Wahbah Zoheily, the Provisions of Guarantee, (1998)
\(^{106}\) Id, at 24.
\(^{107}\) Rondald B. Standler, elements of Torts in the USA, (2011)
obligation recognized by Sharia. As a result, the harm establishes the right of a person to recover from this harm.\textsuperscript{108}

In Sharia, scholars have argued whether a person has a duty to rescue someone from peril. They have concluded that, generally, no person has a legal duty to rescue; however, it is a moral duty and a Muslim who rescues someone from peril will have a great reward from Allah. According to the Quran, Allah said: “And whoever saves one - it is as if he had saved mankind entirely.”\textsuperscript{109}

Sharia encourages Muslims to help each other and to seek rewards from Allah (for the sake of Allah). Therefore, it is not a legal duty but it is more a human duty. However, in of judicial rulings, Sharia scholars have confirmed and recognized a legal duty to rescue someone from peril in three different situations:

1. Maliki scholar; When a person is able to help but he refrains. Therefore, refraining from rescuing a person in peril while one is able to but refrains makes him liable.\textsuperscript{110}

2. Hanifi and Shafi scholars; A person has a duty to rescue someone from peril if the person himself does a dangerous act. For example, in cases of car accidents, passersby have no legal duty to rescue; however, the one who caused the accident does have a duty to come to the aid of the victims.\textsuperscript{111}

\textsuperscript{108} Id, at 16.
\textsuperscript{109} Quran, Surah Al maeda, verse (5:32).
\textsuperscript{110} Wahbah Zoheily, at 38.
\textsuperscript{111} Id, at 39.
3. Hanbali scholars have a different point of view; no one has a duty to rescue whether or not he does the dangerous act unless he was called to help by a victim.\footnote{112}{Mohammed Adnan, Searchlight of Mask about the toughen of persuasion, (2000)}

In comparison with US common law, a person has a legal duty in two situations:

1. When a tortfeasor has a special relationship to the plaintiff. For example, common carriers owe a duty of care to their passengers.\footnote{113}{Restatement Second of Torts & 314A.}

2. When the peril is created by a person. So, he or she had a duty to exercise reasonable care to prevent the risk.\footnote{114}{Id, & 322.}

In the eye of Sharia Law, cases of necessity do not negate liability. For example, whoever was in need and takes someone’s property, he or she will be held liable to return the exact thing even if he has consumed it or its value has been lost. This is a Sharia principle known “necessity does not invalidate rights”.\footnote{115}{Id, at 26.}

**1. The Definition of Tort in Sharia:**

Muslims jurists did not always use the term “tort” in their research; instead, they used the term “guarantee” which referred to a wrongdoer as guarantor for compensating a victim’s damages.\footnote{116}{Id, at 22.} Therefore, when a Muslim violates a legitimate responsibility, he or she will be guarantor for the results of their wrong acts. In tort law, Muslims jurists have distinguished between the reliefs available for different wrongful acts. They have mentioned that wrongful acts may result in different categories of retribution. For instance, some tortfeasor, depending on their act, may be subjected to punishment, discipline or compensation.
In order to provide a definition of tort, one must understand the source of tort. In Sharia a tort arises from the violation of a legal duty, that is from the principles of human rights.\textsuperscript{117} Whereas a tort in the United States is defined as a civil wrong that arises from the violation of a legal duty,\textsuperscript{118} in Sharia, a tort is defined as a commitment to compensate a victim for all damages he has sustained.\textsuperscript{119} It also can be defined as the violation of legal or moral responsibility that requires making the victim whole from his damages.

In Sharia, this duty comes from the goal of preserving life and property of people. It is also to deter tortfeasors from engaging in wrong behaviors. The Quran states: “So whoever has assaulted you, then assault him in the same way that he has assaulted you.”\textsuperscript{120} This verse indirectly mentions aggression of others is forbidden. One of the forms of aggression can be injuring a victim due to engaging in wrongful behavior. Therefore, Saudi judges in the case of torts, use this principle as a type of compensation.

Another example of compensation for damages can be found in the Sunnah, when one of the wives of the Prophet Mohammed (PBUH) broke a bowl that had food sent from one of his wives and the bowl fell down and broken. The Prophet Mohammed said: "Food for food and vessel for vessel."\textsuperscript{121} From this Hadith, Jurists have concluded that one is liable for his wrongful act and is liable for compensating damages he made.

\textsuperscript{117} Dr, Abdul Razzaq Sanhouri, \textit{Mediator to explain civil law}, (1946)
\textsuperscript{118} Prosser & Keeton, & 1,p.2 of Hornbook edition.
\textsuperscript{119} Sobhi Mahmassani, General theories of obligations and contracts of Islamic, (1948)
\textsuperscript{120} Quran, surah al baqara, verse (2:149), \texttt{http://quran.com/2/194}.
It should be noted that Sharia did not leave any issues unresolved either by direct or indirect solutions. However, unlike the US tort system where the tortious issues are divided and each cause of action has its own elements, Saudi judges did not classify the tortious issues into different causes of actions. Rather, Saudi judges make sure the elements of tort are met and then rely on their own interpretation resolving the issues. As a result, there is huge debate among Saudi judges about what is and is not actionable in terms of personal injuries damages. The cause of this debate simply returns to the disagreement among judges over Sharia texts that address tort cases among judges. This leaves the issues of torts ambiguous. A good example is in situations where an emotional injury is the cause of action. Some judges say that compensating a victim monetarily is incompatible with Sharia texts while others disagree. Both sides of this argument have brought evidence to merit their claims. In the section on injury, I will talk more in detail about this subject.

Therefore, the disagreement among them is found in the understanding of Sharia texts. Moreover, a difference between the role of American and Saudi judges in tort cases is that Saudi judges are not bound by precedents and the only sources available before them are the principles of Sharia derived from the Quran and Sunnah along with Ijma and Qiyas as a secondary source. Further, Saudi judges solve the issues of torts based on criminal law. In other words, Saudi judges mix between criminal and civil law when solving the issues of torts. A good example is that Saudi courts view some torts issues as criminal and therefore, apply the criminal law on them. In terms of the elements of torts, Sharia sets three elements for a tortfeasor to be guarantor or be held liable.
2. The Three Pillars of Compensation in Sharia Law

In Sharia, there is no guarantee of damages on the tortfeasor’s shoulders until the elements of tort are met. Notice that someone can be held liable, but if they do not make fault or breach their moral responsibility to the plaintiff, then there is no guarantee of damages. Someone can be guarantor to his acts, but if his act does not cause harm to the plaintiff, then he is not liable. Therefore, the plaintiff must satisfy all three elements before winning a tort case.

These elements are as follows: wrongdoing (fault), injury, and causation. On the other hand, the elements of a tort in US common law are as follows: duty, breach of duty, causation, and damages. It is important to note that due to the absence of written tort statutes of tort in Sharia, Saudi judges refer to the principles of the main sources and the schools and interpret the principles to extract tort elements. As a result, these principles are considered statutes. It is worth saying that Sharia scholars use the pillars of guarantee instead of the elements of torts due to the fact that everyone is guarantor for his bad act and liable for compensation.122

i. **Wrongdoing (fault) as an element of tort:**

Fault occurs when someone acts in a wrongful act. Such acts are known in Sharia law as wrongdoing. Sharia scholars define wrongdoing as a wrongful act, inaction or exercising of a right that results in harming people that also violates Sharia Law. According to Sharia scholars, the standard that defines wrongdoing is the deviation from the familiar behavior of a reasonable person or any actions that are not legitimately privileged.\(^\text{123}\) Under Sharia Law, unlike US common law, liability is not negated by good faith or mistake. However, unlike the US, tortfeasors are liable regardless of their age as a minor or adult.\(^\text{124}\) In US common Law, in terms of intent, volitional act is required with knowledge that the will occur not intent to injure or a showing of malice.\(^\text{125}\) "It is not enough that the act itself is intentionally done and this, even **1094 though the actor realizes or should realize *202 that it contains a very grave risk of bringing about the contact or apprehension. Such realization may make the actor's conduct negligent or even reckless but unless he realizes that to a substantial certainty, the contact or apprehension will result, the actor has not that intention which is necessary to make him liable under the rule stated in this section.\(^\text{126}\)

Sharia scholars have recognized the two types of wrongdoing resulting in harm: positive and negative wrongdoing. Positive wrongdoing is simply when a person commits a fault; whereas, negative wrongdoing is when a person’s omission results in harm. A good example of that is when a persona creates a dangerous act and did not help the victim.\(^\text{127}\)

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123 *Id.*, at 24.
124 *Id.*, at 25.
126 *Id.*
127 *Id.*, at 25.


ii. Harm:

Harm in Sharia includes any injury to the victim whether it is financial, physical, or emotional. It also includes any harm caused by the damaging of property or dignitary harms. Sharia scholars have divided the harms into the categories of physical and emotional harms. For physical harms, a tortfeasor will be liable for compensation, whereas in the case of emotional distress absent physical harm, a tortfeasor will be subjected to punishment. In section two of this chapter, I will talk about harms and its different types in detail.

In the US tort system, there are some torts committed without harm or fault where a defendant still can be held liable. The first kind of torts are those committed without harm known as “actionable per se”. An example of this is the tort of trespass. Trespass is when a person enters the land of others without permission. Even though entering the land of another may not cause damage, the trespasser is still imposed a liability. The second kind of torts are those committed without fault known as “strict liability”. This is when a defendant has done nothing to prevent the harm. A good example can be found in dangerous animal acts, which states that the owner of a dangerous animal is liable even though the defendant himself does not commit the fault. In comparison with Sharia, no one is liable for the actions of others except if the first was negligent and the results are because of his negligence.128

iii. Causation:

Sharia scholars consider causation the third pillars of guarantee (tort) whether the causation is direct or indirect.129

129 *Id*, at 31.
B. Section Two: the definition of Harm and its types:

One of the objectives of Sharia is achieving the public’s interest. Muslims believe that Sharia is available any time at any place. They believe that Sharia prevents any harm and it has set up principles to fix those harms and deter wrongdoers from engaging in wrongful acts. Sharia recognizes harm and considers it one of the reasons of liability for compensation.

Generally, under Sharia law, a person can be held liable in three situations:

1. Violating Sharia principles:

One important objective of Sharia is to preserve the individual (soul). Therefore, any wrongdoing that causes harm to others is considered violating Sharia law. Thus, a plaintiff is entitled to claim compensation to recover damages. Interestingly, Sharia law has determined the value of compensation for harm that causes the loss of a bodily member. I will discuss this in further detail in the section on compensation.

1. Breach of contract:

Sharia encourages Muslims to fulfill their obligations. In the eye of Sharia Law, when a party breaches contract he or she will be held liable for damages stemming therefrom.

2. Harmful Action:

Harmful action is the third reason for holding a person liable. A defendant is liable for his or her wrongful act that causes harm to others. Thus, the existence of harm is one of the elements that judges will look for to decide case. According to Sharia Law, a person can be held liable whether he deliberately or wrongfully committed the harmful
act. So, judges must decide if a plaintiff has proven a recognized harm to him or his property.

   1. The Definition of Harm:

   According to Sharia scholars, harm refers to any injury sustained by a person causing him financial loss. It is also defined as causing injury to another whether or not the injury is physical or financial.\textsuperscript{130} By looking to these definitions it is easy to note that these definitions do not cover all types of damages. Instead, they are aimed to any material damages, those which are tangible. These definitions do not indicate emotional injury. In comparison with US torts, harm may cause monetary losses that includes medical expenses, cost of living, expense of living with a disability, loss of wages, loss of earning capacity, repair of property, and funeral expenses.\textsuperscript{131}

   However, in the Saudi judicial system, there is no clear division of personal injury damages. Thus, the types of personal injury damages are just physical and financial. In fact, Sharia scholars have divided the types of harm into two types: material and emotional damages. One of the criticisms of material damages is that they are neither obvious nor determined. Damages are not classified the way that US personal injury torts are. For emotional harm, Saudi courts do not look at these kinds of cases as a tort case. Instead they are considered crimes and so fall under the criminal law. Therefore, there must be a clear division of personal injury damages. This will help people to know their rights and assist judges to more easily decide the tort case before them instead of spending time looking for the cause of action.

\textsuperscript{130} Id, at 46
\textsuperscript{131} Dobbs, The Law of Torts, 2008
2. The Principles of Sharia Related to Harm:

Sharia Scholars have derived all principles related to harm from the main sources, the Holy Book (Quran), Sunnah (Prophet teachings), and Ijma. They have drafted these principles directly from these sources and indirectly based on their interpretations. The principles are as follows:

i. “There should be neither harming nor reciprocating harm”:

This is one of the most important principles of Sharia in forbidding the causing of harm. This principle came from the Prophet Muhammad’s (PBUH) Hadiths and is considered one of his teachings. It serves as a Sharia principle that includes two rules: First: “There should be neither harming,” clearly means causing harm is unacceptable and is forbidden. This is for the protection of people and their properties. Second: “nor reciprocating harm,” which means preventing harm that may result from revenge. The second part of this principle is aimed to forbid confronting harm with harm.

ii. “Harm should be eliminated”

Sharia Law grants the right to an injured person to seek his or her right from a wrongdoer through courts. Therefore, when a person gets injured, a tortfeasor is responsible to fix and remove the harm by compensating the injured person for all damages he sustained. In Sharia, there are specified sums of money determined for bodily injuries. Therefore, Saudi judges, in cases of bodily injury, reward what Sharia has stipulated in assessing bodily injuries.
iii. “Harm should not be overruled by another harm or by the same harm”

iv. “If two blights were conflicted, ignoring the greatest blight and moving to the less blight”

v. “Facing private harm is tolerated than facing public harm”.

vi. “Severe harm is removed by lesser harm”

3. Types of Harm:

Sharia scholars have divided harms into two types; material harm and moral harm. Material harm refers to any tangible harm that can easily be assessed by judges while moral harm is any intangible harm that effects a person’s emotions.

i. Material harm:

It is the harm that causes monetary losses as well as bodily injury.\(^{132}\) However, scholars do not clearly mention what the monetary losses are that will be compensated. Instead, they mention that material harm may result in the death of a victim and this will lead judges to compensate his or her family according to what Sharia has determined. see section three of this chapter. Sharia scholars have determined that material harm can cause bodily injury or property injury, but what about other material losses?

As mentioned previously, judges do not cover all types of material harms or losses such as costs of living with a disability, lost wages, and loss of earning capacity. Saudi judges tend to only award actual, direct damages that are quantifiable and can be established with certainty. Further, Saudi courts do not acknowledge some types of compensatory damages such as consequential damages. In chapter five, I will discuss

\(^{132}\) Al Kafeaf, at 46.
some missing types of compensatory damages and the reasons behind that according to the opinions of Sharia scholars.

ii. Moral Harm:

Moral harm is defined as a damage to the personality of another such as their dignity, hurt feelings, scratching their honor, accusing them in their religion, or causing detriment to their reputation.\(^{133}\) It is also defined as any harm that hurts a person in his honor, emotion, dignity and even what results from slandering his close relative (mother, sisters, wife). These harms are represented in defamation, swearing and slandering. Moral harm also includes pain and suffering resulting from physical injury.\(^{134}\)

Sharia protects the honor and dignity of people. The Quran states: “And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference.”\(^{135}\) This verse ensures that Sharia law will protect peoples’ emotions disregarding their religions or races.

In spite of that, Saudi courts do not consider pain and suffering resulting from bodily injury as a separate claim. Instead, they combine this claim with the compensation of bodily injury. For example, when a person is hit in a car accident, and as a result of the accident he lost his leg or hand, he cannot claim for the pain and suffering because the amount of specified money he will get from the bodily injury is considered covering pain and suffering as well.

\(^{133}\) See e.g. Mohammed Fawzi, the theory of guarantee at. 92, Tort Between Sharia and law at 135.

\(^{134}\) Id., at 44.

In Saudi courts the remedy for tortious conduct is monetary compensation for material harm while the penalty for moral harm is punishment. Therefore, the due penalty is what Sharia principles have determined in the Quran and Sunnah. Section three of chapter four of this research will discuss emotional distress, its remedy, and will answer the question as to why there is no monetary compensation for emotional distress in the Saudi Judicial System.

In this coming section, I will talk in details about the definition of compensation in Sharia Law as well as the Theory of compensation and historical development. I will also mention the source of compensation from the main sources of Sharia as well as the jurisprudential principles for compensation in Islamic Sharia.

C. Section Three: Compensatory Damages in Sharia Law

1. The definition of compensation:

Compensation in Sharia is to repair the harm and to place the victim in the position he or she would have been had the harm never occurred. Sharia scholars have defined compensation in multiple ways. They are as follows:

- Compensation is returning the same thing that was damaged.  

- It is giving the value of what was damaged.

- It is a commitment for monetary compensation to an injured person.

From these definitions, compensation in Sharia Law can be ordered in three different situations. Hanifa scholars mention that one type of compensation is when a person damages something can be replaced, he or she must return the same thing he damaged.

\[\text{136 Al Zoheily, at 21.}\]

\[\text{137 ld, at 22}\]

\[\text{138 ld}\]
For example, when a tortfeasor breaks a dish of another person he or she must give the same dish to that person. This is known in Sharia as compensating the same damaged. This principle came from the Prophet Muhammad’s teachings when he said: "Food for food and vessel for vessel" when one of his wives broke another of his wives’ bowl with food in it. One of the reasons behind this principle is to achieve justice among opponents. However, when it is unavailable for a defendant to return the same thing he damaged, he will move to compensate the plaintiff the same value of the thing damaged. This principle is in compliance with one of the Sharia principles “When Al-Asl (that must be first) is not available, we proceed to Al-Badal (alternative)”.139 The third situation is when a tortfeasor monetarily compensates the plaintiff for bodily injury.

2. Compensation Pre-Islam:

Compensation was not known before Islam. Instead revenge was dominant. Ancient Arabs at that time belonged to different tribes that each had its own traditions and customs. There was no law regulating the life of these tribes but strength was the law. The right was with the strongest, whether or not he was the wrongdoer or the victim. Shame pursued the tribe who did not take revenge for its member and in the eyes of other tribes became an easy prey for invasion or harm of its people. Members of the injured tribe did not eat meat, sleep with their wives, or change their clothes until they took revenge from the aggressing tribe. Therefore, any wrongdoing to a member of a tribe meant a wrongdoing to the whole tribe. As a result, all members of the tribe would join together as one man to take revenge on the wrongdoer tribe.140

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139 Id., at 87.
140 See Al Kafeaf, at 305.
One of the most famous Arab wars of revenge was known al Basus War. The war was between two tribes because of killing a camel of the other tribe. The two tribes fought for roughly forty years. ¹⁴¹

After the loss made by wars of revenge, ancient Arab tribes accepted the idea of compensation. Some tribes moved to accept compensation for either the love of money or because they were weak. However, some tribes did not accept compensation to avoid shame and seeming weak. Finally, all Arab tribes accepted compensation because they wanted peace and security. ¹⁴²

That means the concept of compensation did not exist at that time. It has emerged from crime as a punishment. After that the term compensation has come in the form of Diyya which is financial compensation handed to the victim or heirs of a victim in the cases of murder, bodily harm or property damage.

3. The Sources of Compensation:

One of the Sharia objectives is protecting people and preserving their blood. According to Sharia, compensation is the right of an injured party and is to deter a wrongdoer. Therefore, Sharia law has forbidden causing harm to others and came up with compensation as one of the Sharia principles to fix harm. Sharia texts have indicated from the Quran and the Sunnah of the Prophet the legitimacy of compensation.

¹⁴² Al Kaef, at 306.
i. **Form the Quran:**

The Quran states: “The recompense for an injury is an injury proportionate to it; but if a person forgives and makes reconciliation he shall be rewarded by Allah; He does not like the wrongdoers.”\(^{143}\) It also states: “And if you punish [an enemy, Oh believers], punish with an equivalent of that with which you were harmed. But if you are patient - it is better for those who are patient.”\(^{144}\) Another verse states: “So whoever has assaulted you, then assault him in the same way that he has assaulted you.”\(^{145}\) Sharia scholars have interpreted these verses as the meaning of compensation for damages.

In addition, the Quran tells one of the most famous stories of a ruling in compensation during the era of the two prophets David and Solomon. The Quran states: “And David and Solomon when they gave judgment concerning the field, when the sheep of the people pastured in it by night, and we were witnesses to their judgment.”\(^{146}\)

The summary of this story, there was a person owned sheep. One night these sheep were not tended to and they went to someone’s farm and caused damage to the grass. The owner of the farm complained to the Prophet David (PBUH) and asked him to judge in his case. The Prophet David (PBUH) ruled in favor of the owner of the farm (Plaintiff). David ruled by giving the sheep to the owner of the farm as compensation for the damages occurred in the farm. However, the owner of the sheep was not satisfied. The Prophet Solomon was attendant and he told David that he had another solution to please both sides. He ruled that by giving the sheep to the owner of the farm just for one

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\(^{143}\) *Id*, Malik, surat al shuraa, verse (42:40)  
\(^{144}\) *Id*, surat Al nahl, verse (16:126)  
\(^{145}\) *Id*, surat Al baqara, verse (2:194)  
\(^{146}\) *Id*, surat al anbiya, verse (21:78)
year to take advantage of the sheep from their yogurt, butter and wool and to use them for ploughing until the grass grows and then he should return the sheep to his owner.\textsuperscript{147}

It is obvious from this case that each Prophet ruled differently. Sharia Scholars have inferred from this case that each judgment had a meaning that included two types of compensation. The Prophet David’s judgment (PBUH) is to compensate the victim the same value of damages. Probably the defendant did not have money to pay the plaintiff so, the judgment was to give the plaintiff the sheep as a replacement of money.

On the other hand, Prophet Solomon’s judgment (PBUH) was to compensate the plaintiff by repairing the damages (when possible).\textsuperscript{148}

\textbf{ii. From the Sunnah:}

1. An example of compensation from the Sunnah is when one of the wives of the Prophet Mohammed (PBUH) broke a bowl that had food sent from one of his wives and the bowl fall down and broken. The Prophet Mohammed said: "Food for food and vessel for vessel."\textsuperscript{149}

This Hadith indicates that the Prophet Muhammad (PBUH) required his wrongdoing wife to repair her mistake by giving his other wife the same food and plate she had broken. Therefore, Sharia scholars got from this Hadith that one type of compensation can be restitution.

2. The Prophet Muhammad (PBUH) said: “Do you know who the bankrupt is?” They said: “O Messenger of Allah! The bankrupt among us is the one who has no Dirham nor property.”

\textsuperscript{147} Al Zoheily, at 83.
\textsuperscript{148} Id, at 83.
The Messenger of Allah (PBUH) said: “The bankrupt in my Ummah (people) is the one who comes with Salat (prayers) and fasting and Zakat (Support of the Needy) on the Day of Judgment, but he comes having abused this one, falsely accusing that one, wrongfully consuming the wealth of this one, spilling the blood of that one, and beating this one. So he is seated, and this one is requited from his rewards. If his rewards are exhausted before the sins that he committed are requited, then some of their sins will be taken and cast upon him, then he will be cast into the Fire.”\(^{150}\)

This Hadith clearly shows the dangers of hurting people. According to this Hadith, whoever causes harm to others and does not fix her harm now, hereafter Allah will be the judge and will compensate those who gets injured by a tortfeasor by taking her good deeds and giving it to the injured ones.

3. The Prophet Muhammad said: “None of you should take the property of his brother in amusement (jest), nor in earnest.”\(^{151}\)

According to this Hadith, taking someone’s stuff may result in causing him fear or shock. Doing such things may also lead to sadness and suffering of losing things. Thus, this act, even if it was in jest, should not be conducted because it is not good to make people fear.

\(^{150}\) Sunnah.com, [http://sunnah.com/urn/725980](http://sunnah.com/urn/725980)

4. Al-Bara had a camel that damaged a garden belonging to the people. The Prophet Muhammad (PBUH) was informed about it. So, he gave the decision that the owners of gardens are responsible for guarding them by day, and the owners of the animals are responsible for guarding them by night. Any damage done by animals during the night is a responsibility lying on their owners.152

All these Hadiths mentioned above indicate that it is forbidden to cause harm to others. The first and second Hadiths indicate that whoever causes harm, that he or she must repair his wrongful act. The third Hadith indicates that emotional distress in the absence of physical injury is also forbidden. The last Hadith states that the owners of animals are liable for their animals’ actions.

Interestingly, ancient Sharia scholars mentioned that there are some conditions to damages in order for them to be compensable. Meaning, in the eye of Sharia scholars, not all damages can be compensated. There are considerations for excluding these damages.

Customs play an important role in compensating damages. Therefore, anything not recognized by custom cannot be compensated. The Hanifa school of thought states that anything that does not have financial value among people will not be compensated for if damaged due to custom and Sharia. The standard of defining the value of any object is whether it is permissible and useful. For instance, according to Sharia, drinking alcohol is forbidden so when a person damages a battle of alcohol owed by another, there is no compensation for it because it is not seen as valued objects, so damaging them may not result in the right to compensation.153

152 Id, Sahih Al-Albani, Sunan Abi Dawud 3570.
153 See Al Zoheily, at 57.
Moreover, according to Sharia Scholars, in order to be compensated the damaged object should not be forbidden by Sharia law. When the thing is useful and beneficial, Sharia has protected such things and replaced them with compensation. However, if the thing damaged is not allowed by Sharia and cannot benefit the owner, such a thing would not be compensated. For instance, when a person, whether or not the wrongdoer is a Muslim, breaks the bottle of wine or alcohol owned by a Muslim, the latter cannot claim compensation for the loss of alcohol. This is because the possession of alcohol is forbidden (Haram). However, when the bottle of alcohol is owned by non-Muslim, and is damaged by any wrongdoer, he can claim compensation for his loss.\(^{154}\)

According to the Hadith narrated by Jabir bin Abdullah (Allah be pleased with them), he heard the Prophet Muhammad saying “Verily Allah and His Messenger have forbidden the sale of wine, carcass, swine and idols, It was said: Allah's Messenger, you see that the fat of the carcass is used for coating the boats and varnishing the hides and people use it for lighting purposes, whereupon he said: No, it is forbidden.”\(^ {155}\)

Furthermore, Sharia Scholars rely on this Hadith for not remedying any forbidden object. This also includes items such as the drums, flutes, tambourines and any type of musical instrument.

\(^{154}\) *Id.*, at 58.

4. Sharia Principles of Compensation:

Sharia scholars have drafted rules and principles for compensation from the main sources of Sharia (Quran, Sunnah, Ijma). The main objective of these rules is to determine situations where a person is liable for his wrong actions. In the absence of statutory regulation in Saudi Arabia, these rules take the place of statutes. Therefore, these rules have the force and effect of law. These rules cover a variety of actions. As a result, each action mentioned under these rules are considered tortious acts and can lead to compensation. These rules of torts regulate peoples’ interactions in such a way to protect and preserve their rights. Some Sharia judges consider these rules when applying judgment to actions. These rules are as follows:

i. **If there is both a direct and the indirect cause, the direct is liable**\(^{156}\)

This rule has two parts, the direct and the indirect. The direct refers to one who causes harm, whereas the indirect is one who creates the risk that may result in damaging but the damage did not happen by him. Therefore, the meaning of this rule is that when a person creates the risk of harm but someone else actually causes the harm, the person who created the risk is not liable because he is the indirect cause.

For instance, if a person digs a hole on his property and someone else pushes a person to fall in it, the person who dug the hole is not liable because his action was indirect but the latter party is liable because he is the direct cause of the harm.\(^{157}\)

This rule, as well as other upcoming rules, has some exceptions; however, since it is not the center of my research, I will not talk about it in detail.

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\(^{156}\) The Periodical of Justice Provisions, item (90)

\(^{157}\) Al Zoheily, at 165.
ii. **The direct cause is liable regardless of intent**\(^{158}\)

According this rule, a person who did not intend to cause harm is liable for compensating damages. When harm has occurred, intent is not taken into consideration. Therefore, there is no consideration as to intent no matter if the act was mistaken or deliberate. Further, minors and the mentally insane are liable even though they are unaware of the gravity of their decisions.

A good example is if a person were to slip and fall onto something and thereby damage it, he or she is liable for compensating it. Also, if a minor were to overturn themselves onto something and break it or onto a person and kill them, he is liable for compensation.\(^{159}\)

iii. **The indirect cause is not liable unless he intends**\(^{160}\)

The difference between this rule and the previous rule is that while the direct cause is liable despite his intentions, the indirect cause is liable only if he intends to cause harm by his actions. The indirect cause, as mentioned earlier, is the one who makes an action that eventually leads to harm by an act of someone else. Therefore, he did not commit the harm but he was liable by reason of his action. Unlike the first rule, indirect cause will be held liable for his wrong act if it was deliberate.

According to Egyptian tort law, whoever has a duty of supervision over another, he is committed to compensating any damages that may result from his wrong act of that person.\(^{161}\)

\(^{158}\) The Periodical of Justice Provisions, item (92)

\(^{159}\) See, Al Zoheily, at 172.

\(^{160}\) The periodical of Justice Provisions, item (93)

\(^{161}\) Egyption Civil Law, Article (173)
iv. Acts are associated with the actor, not one who incite the actor\textsuperscript{162}

This rules applies when a person commands another to act in a way, and the actor causes damages, only the actor is liable for compensation. The actor is the person who directly causes the damage whereas the commander is the indirect cause. Therefore, the actor will be held liable for compensating damages. However, the actor may not be liable if he was forced by the commander.

An example of the rule is if a passenger asked a driver to run a stop sign and hit pedestrians, the driver will be held liable for compensation unless he was forced by the threat of the passenger.\textsuperscript{163}

v. Legal permissibility negates liability\textsuperscript{164}

When an act is permissible by Sharia law, there is no liability on the shoulders of the actor even if damages are incurred as a result of the act. It was narrated in the Sunnah that a man was walking with his mother who sat on the back of a donkey. Suddenly, a fast horse passed by and frightened the donkey which caused it to trip and fall down. Upon its falling, his mother subsequently fell down and died. The man went to one of the companions of the Prophet (PBUH), Omer bin Al Khattab (MAPH), to sue the owner of the horse. Omer asked the man whether the horse hit his donkey. The man said: no. Omer asked him whether the horse had touched his donkey in any way. The man said: no. Omer then ruled that it was the last day of his mother’s life.\textsuperscript{165} So, since the person riding the fast horse is not the cause of the fall of the women, he is not liable.

\textsuperscript{162} The periodical of Justice Provisions, item (89)
\textsuperscript{163} Al Zoheily, at 175.
\textsuperscript{164} The periodical of Justice Provisions, item (91)
\textsuperscript{165} Al Zarqa, \textit{Harmful Act and Guarantee}, at 49.
vi. **Necessity does not negate compensation**

Sharia scholars have agreed that a wrongful act done out of necessity does not, for any reason, exonerate the defendant of liability. Regardless of what necessity forced the defendant, he will be compensating for the harm. A good example of that is the driver swerved into another lane not to hit a car but ended up hitting a pedestrian.

In the US common law, public and private necessities are two defenses that can be employed in tort litigation. However, unlike public necessity, both Sharia law and US common law have held that when a person commits any harm and invokes the defense of private necessity, he or she will still be liable to compensate any harm done.

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166 The periodical of Justice Provisions, item (33).
Conclusion

Sharia has forbidden causing harm. Therefore, an act that leads to harm should be fixed by the wrongdoer via compensation. By doing so, the victim’s rights are preserved. Neither status nor age of the wrongdoer prevents liability. One of the most important principles of Sharia relating to torts is that, “There should be neither harming nor reciprocating harm.” Thus, harm should be remedied by compensation. Additionally, harm is the first element of compensation. Meaning, no compensation will be available if there is no harm.

Moreover, whatever the harm was, material or moral, compensation will be a deterrent penalty. In the physical damages, despite unclear thoughts of some scholars, compensation is the solution. Saudi judges have defined material damage as tangible and direct harm that can be monetarily compensated with certainty.

In the eyes of Saudi judges, moral injuries (emotional distress) are non-monetary damages that cannot be compensated with money because it did not result in a financial loss. Furthermore, there is difficulty in assessing the loss associated with moral harm. So, the remedy to harm resulting from an emotional distress injury is punishment. This gives Saudi judges broad discretion in ruling for appropriate punishments.
IV. Current Compensatory Damages Before Saudi Courts

○ Introduction:

Generally speaking, in Islamic law, damages are any harm that is done to someone. This damage consists of three types: physical damages “monetary losses”, which are easy for courts to quantify based on what the injured person has sustained or lost; or, emotional distress damages “non-monetary losses”, which are often difficult to calculate; and, lastly, financial damages\textsuperscript{167}. For instance, when someone sustains an injury that causes him to lose his leg, many damages such as medical expenses, loss of earning capacity, and loss of wages occur as a direct result of the injury. This leads to monetary losses; furthermore, there is likely to be emotional distress in this case that will have a huge impact on the daily lifestyle of that victim.

Deciding compensation for victims in Saudi Arabia is a controversial matter. It has been said that the biggest obstacle that Saudi judges face is the difficulty in assessing compensation for the monetary losses of costs of living, lost wages, and loss of earning capacity after the physical disability of a victim. Another obstacle is determining whether non-monetary losses, such as emotional distress, can be fairly quantified monetarily. Therefore, if Sharia allows the judges to make decisions in such damages without the absence of elements govern such cases; it will result in giving judges a wide discretion in assessing it because they rely on their own interpretation of Sharia principles derived from the Holy Book and the Prophet’s teachings.

\textsuperscript{167} Dr. Abdullah Al-Najar, Moral Damage, (1994)
The legal system of Saudi Arabia is based on Sharia Islamic law\textsuperscript{168} derived from the Quran\textsuperscript{169} and the Sunnah\textsuperscript{170} of the Prophet Muhammad that are considered the constitution of the country. As a result, all of the laws and provisions that have been issued by the government are based on Sharia law. This makes it mandatory for Saudi judges to refer to the main sources of the Sharia before they can make a judgment and ensure it is compliant with Sharia law. It is also important to note that the laws in Saudi Arabia are uncodified. This allows judges some level of flexibility in interpreting and applying the law to individual cases.

The main goal of Sharia is to ensure a system that protects the interests of all people, so whatever matter is in the best interest of public, Sharia covers it. On the contrary, if there is any matter that is not concerned with the public, Sharia strictly prohibits and warns of it. As previously discussed, Sharia law imposes compensation for both physical injuries as well as emotional distress. It also has provisions for emotional distress damages that do not result from physical injury. For instance, an apology is the punishment for a defendant resulting from an insult or obscenity made against a plaintiff.

Therefore, instead of compensating the injured person of emotional distress damages monetarily, Sharia has imposed a non-monetary punishment named “Tazier”.\textsuperscript{171} Tazier handles complaints based on emotional distress caused by the outrageous conduct of the defendant.

\textsuperscript{168} It is the body of Islamic law. The term means "way" or "path"; it is the legal framework within which the public and some private aspects of life are regulated for those living in a legal system based on Islam.
\textsuperscript{169} It is the central religious text of Islam, which Muslims believe to be a revelation from God “Allah”.
\textsuperscript{170} It is the way of life prescribed as normative for Muslims on the basis of the teachings and practices of the Islamic prophet Muhammad and interpretations of the Quran.
\textsuperscript{171} It refers to punishments applied to the other offenses for which no punishment is specified in the Qur'an.
These punishments are represented in the form of an apology offered by a defendant as a result of his conduct, while it could also lead to lashes when a defendant defames a plaintiff with unproven accusations.¹⁷²

This chapter will talk about personal injury damages. It will be divided into three sections. Section one will discuss the types of personal damages and the way they are applied in Saudi courts. Section two will cover emotional distress as moral damages in Sharia law. The final section will introduce the remedy for personal injuries according to Sharia law.

A. Section One: The Types of Personal Damages

Sharia scholars have divided personal injuries into two types: material damages and moral damages.

i. Material damages

Material damages are defined by Alkofiaf as “the harm that leads to financial loss or damage to the human body resulted in destruction or wound his body which requires monetary compensation determined by Sharia law.”¹⁷³ In the context of personal injuries, material damages in the eye of Sharia scholar either means the defendant caused the death of a person that will lead to a specified amount of monetary compensation or he has wounded a person in a way that can be estimated by Sharia experts.¹⁷⁴

¹⁷² See Al-Najar,
¹⁷³ Alkofiaf, p38
¹⁷⁴ Id, p38
There are two types of material damages:

A. Financial damages: damages that affect a person’s finances.

B. Bodily harm: a harm that physically injures a person that results in disfigurement or the inability to work.

In this situation, there are two types of due compensation:

a) Certain amount of monetary compensation measured by Sharia law or

b) Estimated monetary compensation at the judge’s discretion.\(^\text{175}\) This is used in cases where Sharia law did not set an exact estimate and instead is left to experts and judges.

The question that arises is: what about personal injuries such as emotional distress, the costs of living with a disability, lost wages and earning capacity? Saudi courts do not recognize these types of damages and tend to only award tangible, direct damages that are quantifiable and can be established with certainty. A Sharia scholar stated in his book, *The Provisions of the Civil and Penal Responsibility in the Islamic Jurisprudence*, that an injured person is entitled to monetary compensation for emotional distress when stemming from a physical injury and is based on the severity of the injury.\(^\text{176}\)

\(^{175}\) Alzohaily, p5

\(^{176}\) Id, p29
Also, the injured party can be compensated for medical expenses, including the costs of both past and future medical care.\textsuperscript{177} In Saudi Arabia, there are both public hospitals at which an injured party can go to and be treated for free as well as private hospitals that charge a fee. Thus, the injured party is able to get medical care from either and if he decides to go to a private hospital he can recover his medical expenses from the opposing party.

As for lost wages and earning capacity, some Sharia jurists have not even mentioned it in their books. Others have stated that monetary compensation is the set compensation identified by Sharia principles for bodily injuries and any tangible losses that can be monetarily compensated. These jurists see emotional distress, lost wages and earning capacity as more difficult to determine as there is no set amount or receipts to show. Therefore, these damages cannot be monetarily compensated for because they are neither actual nor quantifiable.\textsuperscript{178} Nonetheless, other jurists have stated that a judge can rule to compensate emotional distress, lost wages and earning capacity based on the general rules of Islamic Sharia that prevent any form of harm or damages and that a victim should be made whole for present and future injuries.\textsuperscript{179} Section one of chapter seven will talk about monetary losses in further detail.

In comparison to the US tort system, an injured person is entitled for compensatory damages under three basic categories: loss of time, expenses incurred by reason of the injury, and pain and suffering in its various forms which include emotional distress and loss of consciousness.\textsuperscript{180}

\textsuperscript{177} Id, p30
\textsuperscript{178} Ali Alkofaif, Indemnity in Islamic Jurisprudence, (2000)
\textsuperscript{179} See Alzohaily, p30
\textsuperscript{180} Horn Book, p1048
In addition to the principle victim, a relative of an injured person can be compensated for witnessing the injury as well as consortium damages. These are some of the missing elements of damages in Saudi courts when deciding torts cases.

ii. Moral damages

A moral damage is any harm that hurts the dignity of a person, such as an insult or an utterance that negatively affects one’s reputation via slander, defamation or swearing. The majority of scholars have limited monetary compensation to material damages. Sharia scholars have considered that the appropriate and deterrent compensation for moral damages are punishments: these include, the penalty of 80 lashes for defamation, imprisonment, a fine, or any sentence the judge deems necessary.\textsuperscript{181} However, some Sharia scholars have stated that an injured person should be compensated for emotional distress that arises from physical injuries.\textsuperscript{182}

This coming section will focus on emotional distress as moral damages in Sharia law and if it is possible to compensate a person who is suffering from emotional distress, whether that be monetarily or any other possible manner of compensation. I will present how emotional harms are treated in Saudi courts as non-monetary damages and discuss whether these kinds of damages can be estimated by money or otherwise. I will also present an overview of compensation along with the contrasting points of view between those for and against monetarily compensating emotional distress. It is undisputed that these differences are due to a misinterpretation of Sharia law and an improper understanding of different types of damages.

\textsuperscript{181} Id, p29
\textsuperscript{182} Id, p29
B. Section Two: Emotional Distress in Sharia Law:

Sharia forbids any harm that may result from saying bad things about someone if they are untrue. In other words, no one shall inflict harm to someone’s reputation by defaming him. Sharia explicitly mentions some forms of defamation, such as accusing someone of illicit sex but failing to prove it. This kind of behavior is considered criminal conduct in Sharia that will be subjected to punishment as a Hud\textsuperscript{183}. This rule was derived from the Quran where Allah says, “And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient, except for those who repent thereafter and reform, for indeed, Allah is Forgiving and Merciful.”\textsuperscript{184}. Therefore, from this verse, the punishment for defamation is eighty lashes if the defendant cannot prove his accusations.

As a result, the emotional harm that a victim sustains from a wrongdoer’s conduct is solved by this rule that came from the Quran. Specifically, in cases when a plaintiff sues a defendant for emotional distress that resulted from defamation, courts apply the rule that is stated in the Quran. If the defendant fails to prove his evil words the judgement is eighty lashes. In fact, falsely accusing someone of illicit sex is the only form of defamation that has a determined punishment in the Quran.

\textsuperscript{183} literal meaning “limit or restriction” an Islamic concept, based on Quran and Sunnah, that define crimes against God
\textsuperscript{184} The holy Quran, chapter (24), verse l-nūr.
Another form of conduct that may result in affecting someone’s emotion is backbiting. Sharia warns to not say bad things concerning someone while he is not present. This type of conduct does not have a specified punishment in the Quran, rather the punishment is determined on the judgment day. Therefore, when someone backbites another, Allah will punish him. Allah says in the Holy Quran, “O you who have believed, avoid much [negative] assumption. Indeed, some assumption is sin. And do not spy or backbite each other. Would one of you like to eat the flesh of his brother when dead? You would detest it. And fear Allah; indeed, Allah is accepting of repentance and Merciful.”

Further, ridicule is not a Muslim trait because this conduct may affect someone’s reputation. Allah says, “O you who have believed, let not a people ridicule [another] people; perhaps they may be better than them; nor let women ridicule [other] women; perhaps they may be better than them. And do not insult one another and do not call each other by [offensive] nicknames. Wretched is the name of disobedience after [one's] faith. And whoever does not repent - then it is those who are the wrongdoers.”

All these provisions from the Quran and the Sunnah establish punishments regarding a wrongdoer’s conduct that may inflict emotional damages on another. Therefore, I conclude that by saying if a plaintiff sued a defendant alleging defamation and the defendant fails to prove his claim, then a judge will have the defendant punished by eighty lashes as stated in the Quran.

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185 The Holy Quran, chapter (24), Sūrat l-ḥujurāt
186 Id.
Emotional distress may arise from a physical injury or even from a nonphysical injury. It is difficult for judges to assess compensation for emotional distress as it is not a tangible quantity that can be estimated by the judges. Further, in many cases, plaintiffs face difficulty in providing evidence to prove the injury, especially when the emotional distress arises in the absence of physical injury. Thus, to determine whether there is a legitimate emotional distress case, judges look for these elements:  

1) The harm should be obvious.

2) It should be direct from the wrongdoer.

3) The damage should be personal.  

1. Conduct that Cause Emotional Harm in the Absence of Physical Injury:

Sharia warns not to inflict any harm onto someone. Even though there may be no physical injury, victims can still be compensated. However, the compensation is punishment of the wrongdoer instead of monetary reimbursement. Additionally, the type of harm that results from a wrongdoer’s conduct defines the punishment. Therefore, judges must determine what type of harms caused the emotional distress. There are two forms of emotional harms that are resolved by punishments:

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188 *Id.*
i.  **Defamation:**

Defamation is when one person calls another person by inappropriate words that may offend. These words are described in the Quran as accusing someone of illicit sex by calling him that he or she is a son of adultery. This phrase is offend and as a result he seeks the justice from the judiciary.

a) **The Rule of Defamation:**

Defamation is forbidden in the Holy Quran and the Sunnah. The provision from Sunnah as said by the Prophet Muhammad, "Keep away from the seven fatalities." It was asked: "What are they, O Messenger of Allah?" He replied, "Associating anything with Allah in worship (i.e., committing an act of Shirk), sorcery, killing of one whom Allah has declared inviolable without a just cause, devouring the property of an orphan, the eating of usury, fleeing from the battlefield and accusing chaste believing women, who never even think of anything touching their chastity."

Further, Allah says, “Indeed, those who [falsely] accuse chaste, unaware and believing women are cursed in this world and the Hereafter; and they will have a great punishment.” Therefore, the meaning of this evidence is clear that no one shall hurt anybody by making such accusations, otherwise he will be punished because he or she had violated the rights of others and the will of Allah in disobeying Him.

As a result, the punishment should be based on the behavior of the wrongdoer and a penalty should be imposed for the emotional distress caused to the victim. Defamation is classified as one of the Hudud (limits) that are described in the Quran. This Hud has a specific punishment of eighty lashes unless the wrongdoer can prove his accusations

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189 *Id.*
190 Sunnah.com, Book 18, Hadith 1614
191 The holy Quran, chapter (24), Sūrat l-nur.
towards plaintiff as true by providing four witnesses\textsuperscript{192} Therefore, the victim in this case cannot demand monetary compensation since it has been resolved in the Holy Quran and the Sunnah. In other words, any rule that has been issued from the Quran cannot be substituted otherwise. Meaning Saudi judges do not have the power to change the rule or the penalty that has been issued by the Quran or Sunnah by making any amendments of their own.

ii. Swearing and Backbiting:

a) Swearing:

Sharia law regards the interests of the public with upmost importance and regulating these interests is one of the main goals of the law. It is known that social communication is an integral part of any community and these communications should be carefully scrutinized by the people who are the touchstone that defines the good from bad. Sharia law does not ignore this aspect of life and mentions some provisions that act to regulate people’s lives and the communications between them. What arises out of improper communications may hurt others in some way. For instance, Sharia prohibits swearing and backbiting because these conducts hurts others emotionally.

Swearing is defined as any vile, profane or obscene communication that results in debasement that causes emotional harm to a person\textsuperscript{193}. There are many provisions from the Sunnah that prohibit this kind of conduct. The Prophet said, “Abusing a Muslim is evil doing and killing him is disbelief.”\textsuperscript{194} If a person violates this provision, he is considered to be disobeying Allah directly.

\textsuperscript{192} The holy Quran, chapter (24), verse l-nūr.
\textsuperscript{193} Mukhtar Al saha, P. 281.
\textsuperscript{194} Sunnah.com, Book 92, Hadith 27
As result, the rule for such conduct that violates the will of Allah is strictly forbidden. The penalty is that Allah will judge a wrongdoer on the day of the judgment as stated in the Holy Quran. Moreover, the Sunnah also forbids such conduct and mentions that saying bad words about others is prohibited as is disobedient towards the provisions that God has stated in the Holy Quran.\textsuperscript{195}

\textbf{a) Backbiting:}

Backbiting is another kind of forbidden behavior that means to slander a person in his or her absence or to speak of things which he or she does not wish to be said. This kind of act can result in hurting someone emotionally and in their reputation\textsuperscript{196}. The Holy Quran considers backbiting a sin and has forbidden it. Allah says, “Would one of you like to eat the flesh of his brother when dead? You would detest it. And fear Allah; indeed, Allah is accepting of repentance and Merciful.”\textsuperscript{197} The Sunnah has also mentioned that backbiting is a sin in Hadith. The Messenger of Allah said, "Do you know what is backbiting?" The Companions said: "Allah and His Messenger know better.” Thereupon he said, "Backbiting is talking about your (Muslim) brother in a manner which he dislikes." It was said to him: "What if my (Muslim) brother is as I say." He said, "If he is actually as you say, then that is backbiting; but if that is not in him, that is slandering."\textsuperscript{198}

Therefore, in the Holy Quran and the Sunnah swearing, backbiting, and other forbidden conducts are considered sins that are not specified with certain punishments in life.

\textsuperscript{195} Abdullah Al-Najar, Moral Damage, (1994)
\textsuperscript{196} Pathways to Peace. P.380.
\textsuperscript{197} The Holy Quran, chapter (24), Sūrat l-ḥujurāt.
\textsuperscript{198} Sunnah.com
Therefore, the consequence of doing these forbidden behaviors makes the wrongdoer guilty before God until he repents for his sins before his death. In such cases, a victim cannot ask a judge to compensate monetarily as there is no provision in the Quran or Sunnah that mentions money as a means of compensation. However, the concept of monetary compensation for such legal complaints has just come into the picture. Many Saudi people make complaints alleging that their emotional harm has led to material losses. Hence, many researchers have discussed whether emotional harm occurring in the absence of physical injury can be compensated monetarily. So far they have inaccurately overlapped physical and emotional injuries; thus, deep research is required to distinguish between these types of injuries and the elements to establish a claim. Thus, I will present the position of Sharia for monetarily compensating emotional harm.

2. Different Point of Views for Compensation of Emotional harm.

Scholars have addressed emotional damages in the chapters of Hudud\(^{199}\), Diyya and Tazier. Many scholars have said that Sharia does not consider emotional distress as damages since it cannot be estimated in the absence of physical injury. For instance, when someone is found guilty of swearing or backbiting about someone else, the plaintiff cannot demand compensation for this but he can have the defendant to be punished.\(^{200}\)

In this part, I will talk about the two theories of compensation for emotional distress under Sharia by providing evidence from both its proponents and opponents. Some Saudi scholars agree that there should be a punishment for a wrongdoer who causes a victim emotional harm; however, they do not agree on whether the compensation

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199 Literal meaning "limit", or "restriction") is an Islamic concept, based on Quran and Hadith that define "crimes against God.  
200 Muhammad wahied Aldayen. The expression of Will in Sharia jurisprudent.
should be monetary. First, I will define what emotional distress means according to Sharia scholars:

1) Damage to one’s reputation or feelings in the absence of a physical injury. ²⁰¹
2) It is any injury that relate to one’s nobleness, credits, or reputation. ²⁰²

i. First theory: Monetary compensation for emotional harm:

Proponents of monetary compensation for emotional distress have inferred evidence supporting their opinion from the Quran, Hadith (Prophet Muhammad’s sayings and deeds), and what past scholars have said and applied after Prophet Muhammad’s death.

1) Evidence from the Quran:

Allah said: “If ye punish, then punish with the like of that wherewith ye were afflicted. But if ye endure patiently, verily it is better for the patient.” ²⁰³, and said: “The guerdon of an ill deed is an ill the like thereof. But whosoever pardoneth and amendeth, his wage is the affair of Allah. Lo! He loveth not wrong doers.” ²⁰⁴. And Allah said: “If then any one transgresses the prohibition against you, Transgress ye likewise against him.” ²⁰⁵. According to these verses, proponents have inferred that Allah has imposed equal punishments for everyone. Meaning that wrongdoers should be punished with equal retaliation such as Qisas. Therefore, the justice of Allah is to punish criminals and deter aggressors.

²⁰² Id,
²⁰³ Al-Nahl verse 126
²⁰⁴ The Shura verse 40
²⁰⁵ Al Baqara verse 194
However, in cases when the punishments are not enforceable to the wrongdoers then the judges can apply monetary compensation called Diyya\textsuperscript{206}. Diyya is an alternative punishment to Qisas (equal retaliation).

Therefore, monetary compensation takes place in two situations: first, if it is impossible to punish an aggressor of the same harm he caused to a victim; second, when there is room for settlement and reconciliation between parties. As a result, instead of punishment, Sharia has determined and estimated the amount of money that the wrongdoer has to pay when the family of a victim disclaim their right to apply Qisas. Proponents have also mentioned that even though capital punishment is an equal punishment for the death of a victim, it may not always be the most appropriate, especially in cases when a wrongdoer did not intent to commit the action. Therefore, monetary compensation is the best solution to punish an aggressor, and to relieve the victim’s family from the emotional trauma. In conclusion, the proponents are saying that according to the Holy Quran, there is no problem in applying monetary compensation since Sharia has resolved many issues through this method.

2) **The Evidence from Hadith\textsuperscript{207}**: 

On the authority of Abu Seed Sad bin Sinai al-Khudree the Messenger of Allah said, “There should be neither harming nor reciprocating harm.”\textsuperscript{208} That means the Messenger of Allah has warned people not to harm each other because it is forbidden. As a result, any conduct of a wrongdoer that causes emotional harm to another person is

\textsuperscript{206} the financial compensation paid to the victim or heirs of a victim in the cases of murder, bodily harm or property damage

\textsuperscript{207} "Prophetic traditions", meaning the corpus of the reports of the teachings, deeds and sayings of the Islamic prophet Muhammad.

\textsuperscript{208} An excellent hadith which Ibn Majah, Al-Daraqutni and others related as of sound isnad
Another Hadith, the Messenger of Allah sent Abu Jahm bin Hudhaifah to collect Zakah and a man argued with him about his Sadaqah, so Abu Jahm struck him. They came to the prophet and he said: "Diyah, O Messenger of Allah." He said: "You will have such and such," but they did not accept it. The Messenger of Allah said: "You will have such and such," and they accepted it. The Messenger of Allah said: "I am going to address the people and tell them that you accepted it." They said: "Yes." So the Prophet addressed (the people) and said: "Those people came to me seeking compensation, and I offered them such as such, and they accepted." They said: "No." The Muhajirun wanted to attack them, but the Messenger of Allah ordered them to refrain, so they refrained. Then he called them and said: "Do you accept?" They said: "Yes." He said: "I and going to address the people and tell them that you accepted it." They said: "Yes." So the Prophet addressed (the people), then he said: "Do you accept?" They said: "Yes."

It is clear in this Hadith that the Messenger of Allah compensated the victim with money when he was struck on his face even though there was no lasting physical damage from the hit. Obviously, the concept of monetary compensation for emotional distress existed and was applied in the lifetime of the Prophet. According to this Hadith, the Prophet has estimated monetary compensation for the harm caused by the defendant that satisfied the victim. This was estimated from the pain caused to victim by the strike on his head. The Prophet’s estimate was based on the emotional harm and pain that the victim sustained.

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209 Hadith; Sunna.com
210 Id

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3) Evidence from the companions of Prophet Muhammad:

The companions were the scholars who accompanied Muhammad and learned from him. In the era of Umar Son of Al-Khattab, a successor and senior companion of the Prophet Muhammad, he went to a barber to cut his hair. While he was there, he unintentionally scared the barber. This dread caused the barber to become flatulent. As a result, Umar Son of Al-Khattab compensated him by money.\textsuperscript{211} Hence, according to this evidence, the victim was monetarily compensated for the fear that caused his emotional distress. This evidence proves the argument that monetary compensation should be given in cases of emotional harm.

Another instance of monetary compensation happened when Umar Son of Al-Khattab compensated a pregnant woman when she was so frightened that it caused her fetus to die. In this case, fear caused emotional distress and resulted in the fetus’ death and was compensated monetarily.\textsuperscript{212}

After looking at these evidences from the Holy Quran, Hadith, and the companions of Prophet Muhammad, proponents conclude that there is no doubt that there should be monetary compensation for emotional harm. Proponents rely on the main sources of Sharia to infer from cases and precedent that money can be a tool to compensate victims.

\textsuperscript{211} Abdullah Al-Najar, \textit{Moral Damage}, (1994)
\textsuperscript{212} Id, P 44
ii. Second theory: Opposing monetary compensation for emotional harms:

Generally, opponents have mentioned that there is no need for monetary compensation for emotional distress since Sharia has determined punishments through Hudud. For instance the due punishment for making unproven accusations is eighty lashes or by apology rendering to the victim. Opponents have indicated many reasons for not treating emotional distress as a separate damage to be compensated monetarily. The evidence is as follows:

1) Sharia law regards it as impossible to monetarily estimate the defamation of a reputation, because there is no way to measure the loss of value.213

2) Compensating a victim because of emotional distress by money is like taking money from another for no reason. It is unjust to do so.214

3) It is impossible to estimate and assess emotional distress quantitatively since it is intangible.215

4) Monetary compensation for emotional distress damages cannot return a victim to the place they were before the damages.216

5) It would open the door for judges to arbitrarily compensate victims.217

I would like to conclude by saying that proponents have strong evidence from reliable resources that emotional harm can be compensated by money. All evidence and facts have resolved such cases by giving money to the victim who sustained emotional harm. Opponents have focused on lashes and apology as punishments for wrongdoers.

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213 Mustafa Zarqa, tort,
214 See Al-Najar, at 39
215 Id. p 44
216 Id. p 45
217 Id. p 50
They mentioned that since there is already punishments for emotional distress damages set by Sharia, there is no need to add additional compensation that is not mentioned in the Quran\textsuperscript{218}. In response to that, I would like to say that there is no conflict in compensating for such damages either by punishments or by money since there is no provision preventing the application of monetary compensation.

3. **Saudi Arabian Culture as an Obstacle for Compensation:**

Saudi culture has played a vital role in hindering the institution of compensation for both physical and emotional injuries. Victims rarely accept money as compensation for the injuries they sustain. They have reasons for not accepting the concept of compensation; these reason can be cataloged as follows:

i. **First: For the Sake of Allah:**

The instructions of Islam encourage Muslims to forgive for the sake of Allah. The Holy Quran has many verses that mention patience and forgiveness. For instance, Allah said, “Those who patiently persevere, seeking the countenance of their Lord; Establish regular prayers; spend, out of (the gifts) we have bestowed for their sustenance, secretly and openly; and turn off Evil with good: for such there is the final attainment of the (eternal) home.”\textsuperscript{219} Therefore, people forgive others to obey Allah believing that Allah will reward them on the Day of Judgment\textsuperscript{220} before Him. As a result, people ignore seeking compensation in this life and instead seek it from Allah. This makes compensation an uncommon resolution in personal injury cases.

\textsuperscript{218} Id
\textsuperscript{219} The Thunder verse 13:22
\textsuperscript{220} This is believed to be the final assessment of humanity by Allah, consisting of the annihilation of all life, resurrection and judgment.
Moreover, Saudi judges presiding over compensation cases first ask victims to forgive and, if they do not want to forgive, then judges will look at their cases.

ii. Second: Feeling of Shame:

Accepting compensation for some people is considered shameful. People rarely accept it in order to avoid the feeling of shame. It is a common conception by the majority of people that accepting monetary compensation will affect his or her reputation and that he or she might be seen as an unforgiving person. In Saudi culture, since they believe in the Quran, people strongly respect each other and choose not to accept money from others when instead they can forgive. In addition, in a tribal community, the chief of the tribe is involved in attempting to settle the case between parties before it goes to court. Therefore, chiefs play an effective role in asking the victim or his family to forgive the wrongdoer for the sake of Allah. As a result, the victim or his family will be shy and will not refuse the request from their tribal chief out of respect.

iii. Third: Avoiding Bad Luck:

It is a common belief in Saudi culture that accepting compensation is considered a sign of bad luck. It is said that when a person asks for compensation, bad things are in store for his future. Saudis think it is unacceptable to take money from others for events that they had no control over as they believe that what happens is in the control of Allah. This superstition prevents many victims from accepting compensation as Saudis strongly believe that once they accept monetary compensation, terrible and unfortunate incidents like a car crash, house fire and other kinds of accidents may happen to them.

Saudis are also tentative to accept monetary compensation for emotional distress damages resulting from an aggressor’s saying—defamation, backbiting or obscenity—because there are already punishments that have been mentioned in the Quran. Therefore, I will distinguish between the types of conducts that cause emotional harms.

i. Punishment based on the Hudud\(^{221}\):

The punishments for Hudud offenses are fixed by the Quran or Sunnah. Hudud has mentioned the due punishment for defamation is eighty lashes by flogging. In cases where a wrongdoer has defamed a person by saying untrue statements that he could not prove, then he will be subjected to the definite punishment.\(^{222}\)

ii. Punishment based on Tazier:

In cases when the conduct is not defamation then the punishment will be based on Tazier. In Islamic Law, Tazier, refers to punishment that can be administered at the discretion of the judge, unlike Hudud which is administered by the Holy Book and the Sunnah of the Prophet. The punishments for Hudud offenses are fixed by the Quran or Sunnah, whereas Tazier refers to punishments applied to the other offenses or acts for which no punishment is specified in the Quran.\(^{223}\) These punishments for emotional harms resulting from conduct or improper speech, such as swearing or backbiting, can be fixed in four ways:

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\(^{221}\) Literal meaning "limit", or "restriction") is an Islamic concept, based on Quran and Hadith that define "crimes against Allah.

\(^{222}\) See Al-Najar, at 69

\(^{223}\) *Id.*
a) **Apology:**

In cases when the emotional harm is raised not from defamation rather from other kind of bad words such as calling a person an obscene word or saying hurtful things about him, the penalty is to have the wrongdoer apologize to the complainant after admitting that what he said about the complainant is not true.

b) **Feeling Guilty and Seeking Forgiveness of Allah:**

Further, if the conduct or the offense was backbiting then the compensation is to regret and repent. The Messenger of Allah said: “The atonement of backbiting a man is to ask Allah to forgive him.” Therefore, there is no room for monetary compensation in these situations. The compensation in these cases is punitive not monetary.

c) **A fine and imprisonment**

The fine is one of Tazier’s forms prescribed by the government. In personal injuries, especially in emotional distress cases, Saudi Arabia has criminalized any verbal abuse through social networking sites that may result in mental anguish or emotional distress. Therefore, the way Saudi courts fix such cases is by imprisonment and a fine not compensation.

d) **Flog**

Finally, flogging is another form of Tazier. When a person verbally abuses someone face to face with offensive words, he will be punished by flogging at the discretion of a judge.

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224 Sunnah.com
C. Section Three: Remedies for Personal Injuries in Sharia law

The Holy Quran and the Sunnah of Prophet Muhammad are the main sources of law that defines both the approach to life and governs the legal system in Saudi Arabia along with many other Arab countries. There are many provisions from these sources that forbid any assault, battery and general wrongdoing from one person to another. Allah says:

“And we ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives [up his right as] charity; it is an expiation for him. And whoever does not judge by what Allah has revealed – then it is those who are the wrongdoers”\(^{225}\).

This was a message from Allah to the prophet Muhammad to apply these rules as mentioned. An explanation of this verse could be that anyone who kills another without a rational reason should be punished by the same act he committed (the explanation of al-Tabari)\(^ {226}\). Therefore, the Quran has stated these punishments as a penalty for wrongdoers or killers through the Qisas\(^ {227}\). However, if the Qisas cannot be applied, the victim or his family will be financially compensated, known as Diyya\(^ {228}\), which is already determined by the Sunnah in situations where the wrongdoer was not willful but acted negligently.

The Prophet Muhammad said, “Whoever kills a believer deliberately for no reason or a crime that he committed, he should be killed (in retaliation), unless the family of the murdered person agrees to take Diyah. The Diyah for a life is a hundred camels. Full blood money (i.e. total Diyah of 100 camels) is paid for the total cut off of each of the following: the nose, the eyes, the tongue, the lips, the penis, the testicles and the backbone. For the cutting off of one leg; half a Diyah is paid (i.e. 50 camels). For a head injury a third of the Diyah is paid, for a stab which penetrates the body, one third of the Diyah, for a blow which breaks a

\(^ {225}\) The Holy Quran, chapter (5) sūrat l-māidah..
\(^ {226}\) It is a classic Sunni tafsir by the Persian scholar Muhammad ibn Jarir al-Tabari
\(^ {227}\) Retaliation “in kind” or revenge, or "eye for an eye" as a punishment against the accused to a victims’ heirs
\(^ {228}\) The financial compensation paid to the victim or heirs of a victim in the cases of murder, bodily harm or property damage
bones or dislocates it, 15 camels. For each finger or toe, 10 camels are paid. For each tooth five camels are paid. For a wound which exposes a bone five camels are paid. A man is killed in Qisas for killing a woman. For those who possess gold, they should pay the equivalent of the 100 camels which is fixed as one thousand Dinars."

Further, Sharia forbids any harm that may result from saying bad things about someone if it is not true. In other words, no one shall inflict harm upon someone’s reputation by defaming him. Sharia has determined compensations for some forms of defamation, such as accusing someone of illicit sex but failing to proving it. This kind of behavior is considered criminal conduct in Sharia that will be subjected to a punishment as a Hud\textsuperscript{230}. This rule was derived from the Quran where Allah says, “And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient, except for those who repent thereafter and reform, for indeed, Allah is Forgiving and Merciful.”\textsuperscript{231} From this verse, the punishment of defamation is eighty lashes if the defendant cannot prove his accusations.

As a result, the emotional harm that a victim may sustain from a wrongdoer’s conduct is solved by this rule that came from the Quran. Essentially, in cases when a plaintiff sues a defendant for emotional distress that resulted from defamation, courts apply the rule that is stated in the Quran in case the defendant fails to prove his evil words. As a result, the judgement is eighty lashes. In fact, accusing someone of illicit sex is the only form of defamation that is determined by specific punishment in the Quran.

\textsuperscript{229} Sunnah.com
\textsuperscript{230} literal meaning “limit or restriction” an Islamic concept, based on Quran and Sunnah, that define crimes against God
\textsuperscript{231} The Holy Quran, chapter (24), verse l-nūr.
Another form of conduct that may result in effecting someone’s emotion is backbiting. Sharia warns not to say bad things about a person in their absence. This type of conduct does not have a specific punishment in the Quran, rather the punishment is decided on the judgment day. Therefore, when someone backbites, Allah will punish him.

Allah says in the Holy Quran, “O you who have believed, avoid much [negative] assumption. Indeed, some assumption is sin. And do not spy or backbite each other. Would one of you like to eat the flesh of his brother when dead? You would detest it. And fear Allah; indeed, Allah is accepting of repentance and Merciful.”

Furthermore, ridicule is not a Muslim trait because this conduct may affect someone’s reputation. Allah says,

“O you who have believed, let not a people ridicule [another] people; perhaps they may be better than them; nor let women ridicule [other] women; perhaps they may be better than them. And do not insult one another and do not call each other by [offensive] nicknames. Wretched is the name of disobedience after [one's] faith. And whoever does not repent - then it is those who are the wrongdoers.”

All these provisions from the Quran and Sunnah establish punishments regarding wrongful conduct that may affect one’s emotions. Therefore, if a plaintiff sued a defendant alleging that the latter defames him, then a judge (after the defendant has failed to prove his accusation) will have the defendant punished by eighty lashes as prescribed in the Quran.

Those who are injured by the wrongful conduct of another party are entitled to recover compensation. A court awards monetary compensation to make an injured person whole and is designed to place an injured party in the position he or she would be in if the injury had never occurred. Monetary compensation seeks to restore the injured party financially, physically, and emotionally.

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232 The Holy Quran, chapter (24), Sūrat l-ḥujurāt
233 Id
In Saudi courts, monetary compensation is not the only option before the courts as punitive compensation is also another way of resolving tort cases. The latter is represented in the form of physical punishments, such as eighty lashes in the case of defamation or a fine if one has spoken obscenely through social media.

As mentioned earlier, injuries may result in the loss of or wounding of a bodily member and emotional damages. In Sharia law, when an injury results in bodily damages, the appropriate compensation is represented either in the specified monetary compensation by Sharia (Diyah) or at the judge’s discretion in cases when there is no specified compensation. On the other hand, when an injury results not in physical damages but in emotional distress the appropriate compensation is corporal and/or financial punishment as set by Sharia law but not monetary compensation. This is called Hudud and Tazier as mentioned in Chapter 4 subsection D.

Thus, in compensation cases, judges rely on two factors in estimating personal injuries: Diyah, as a specified monetary compensation for body injuries; or, Tazier, a non-monetary compensation but punishment for emotional distress or mental anguish in the absence of physical injury.

1. **First: Diyah**

Diyah is the due monetary compensation that is paid for the wrongful death or bodily injury of another. It is a term that is used in both criminal and tort law for compensating the injured party. Diyah is ordered by judges in two situations: first, when the wrongful act by a wrongdoer is intended; or, when the wrongful act occurs by mistake as a result of negligence

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234 Alkofiaf, p 306
All the four schools of thought have agreed in the past that 100 camels is the measurement to compensate a killing, whether it be accidental or on purpose. However, in light of the increase in the price of camels in modern day, a request by the Saudi Supreme Court was made to adjust the set 100 camels that has been the standard for 29 years in Saudi courts. Eventually, the request was consented to in 2011 by the Royal to raise the monetary compensation for murder to be limited by 400,000 riyal (107,000 USD) and accidental killings to 300,000 riyal (80,000 USD).236

Furthermore, Sharia scholars unanimously agreed that the monetary compensation for a woman equals half of the compensation of an injured man. The Prophet Muhammad—peace be upon him—said: “the Diyah of a woman is the half of men”.237

The sources of Diyah came from the Quran, Sunnah, and Ijma. The Quran states:

“And never is it for a believer to kill a believer except by mistake. And whoever kills a believer by mistake - then the freeing of a believing slave and a compensation payment presented to the deceased's family [is required] unless they give [up their right as] charity. But if the deceased was from a people at war with you and he was a believer - then [only] the freeing of a believing slave; and if he was from a people with whom you have a treaty - then a compensation payment presented to his family and the freeing of a believing slave. And whoever does not find [one or cannot afford to buy one] - then [instead], a fast for two months consecutively, [seeking] acceptance of repentance from Allah. And Allah is ever Knowing and Wise.”238

This verse provides the appropriate compensation for an injured party when there is no determination or specified amount of compensation.

In addition to that, the Sunnah is considered the second source of Diyyah that provides the set monetary compensation for bodily injuries. The Messenger of Allah—peace be upon him—wrote to the people of Yemen:

236 Issuance of approval to amend the value Diyyah and multiples up to 400 thousand riyals, Asharq Al-Awsat newspaper Sep.6, 2011,
237 see Azohily, p281.
238 Quran, surat al nisa verse 29, (4:29), Sahih interneational.
“Whoever kills a believer deliberately for no reason or a crime that he committed, he should be killed (in retaliation), unless the family of the murdered person agrees to take Diyah (blood money). The Diyah for a life is a hundred camels. Full blood money (i.e. total Diyah of 100 camels) is paid for the total cut off of each of the following: the nose, the eyes, the tongue, the lips, the penis, the testicles and the backbone. For the cutting off of one leg; half a Diyah is paid (i.e. 50 camels). For a head injury a third of the Diyah is paid, for a stab which penetrates the body, one third of the Diyah, for a blow which breaks a bone or dislocates it, 15 camels. For each finger or toe, 10 camels are paid. For each tooth five camels are paid. For a wound which exposes a bone five camels are paid. A man is killed in Qisas for killing a woman. For those who possess gold, they should pay the equivalent of the 100 camels which is fixed as one thousand Dinars.”

According to Sharia law, monetary compensation is divided into two types. The first type is the estimated monetary compensation by Sharia for bodily injuries. An example of that is in cases of a lost bodily member. Each member of the human body has a monetary estimation from the era of the Prophet Muhammad—peace be upon him. The other type of monetary compensation is the undetermined compensation that is left to the judge’s discretion, with the assistance of experts, in estimating the value of an injured part of the body.

In Sharia law, the damage can be physically related to body injuries, financially or emotionally. Each type of these damages in Sharia law has been compensated as follows:

1) When the injury is physical, the due compensation is represented by what Sharia has specified or, if the value is undetermined, at the judge’s discretion.

2) When the damage is financial, the due compensation is either by replacing the damages or by its current market value.

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239 Sunnah, Book 9, Hadith 1218, sunnah.com
240 Alzohaily, p 293.
3) Lastly, when the damages are emotional, the due compensation is punishment as described in section three of this chapter.\textsuperscript{241}

In cases of bodily injuries, Sharia law has set monetary compensation for each part of the human body, which later became a guide for judges to rely on in compensating the injured in tort cases. For instance, when the injury results in the death of the victim, his or her family will be compensated with 300,000 riyal (80,000 dollars), which is set by Sharia law. Thus, a victim must prove by medical reports which part of his body was injured so that he will be compensated according to specified amount by Sharia law.

The whole monetary compensation (Diyah) is set with 300,000 riyal in case of the injury causes a person to die. Thus, bodily injuries can be rated as the whole of Diya, half, third, and fourth. There are many different bodily injuries. Some injuries result in cutting off a member of the body such as a nose, leg, or ear; further, some injuries result in losing a benefit of the body such as hearing, taste, eyesight. Some bodily injuries occur by lashes or wounds.\textsuperscript{242} All these injuries have specified monetary compensation by Sharia law and those injuries left unspecified are left to judges, with help from experts, to estimate their value.

According to Sharia, a court may apply the specified monetary compensation of 300,000 riyal in these cases:

1. When an injury causes a person to die.

2. When an injury results in losing a benefit of the body such as smell, taste, and other types of sense.

\textsuperscript{241} Dr. Ahmead Mwafi, Damage in Islamic jurisprudence, (1997)

\textsuperscript{242} See Alzohaily, p 289.
3. When an injury results in cutting off a non-paired appendage of the body such as a nose, a tongue, penis and others.

4. When an injury results in damaging pairs of the body such as ears, eyes, lips, hands. Each pair is estimated by half of the whole 300,000 Diyah.

5. When an injury damages a quarter of the body such as the eyelids, for each eyelid a quarter of 300,000 is awarded.

6. A fifth of 300,000 is awarded for injuring each finger or toe.\(^{243}\)

Section one of chapter seven will present the schedule of monetary compensation for wrongfully injured members of the body. This schedule will provide the specified monetary compensation for each member of the body as well as the members that have been left at the discretion of judges to estimate.

2. Tazier

Tazier is a punishment for specified conduct that results in the emotional distress or mental anguish in the absence of a physical injury. In personal injury cases Tazier refers to the penalty for conduct that is not discussed by the Quran or Sunnah. Instead, judges or the government decide the due punishments for the conduct. According to Sharia scholars, when someone defames, swears, or accuses another and ruins his or her reputation, the due resolution of these types of conduct is punishment (Tazier).\(^{244}\) The punishments of Tazier are divided into two parts: corporal and financial.

i. Corporal punishment

Flogging is one feature the Tazier. In personal injuries cases, when someone swears, insults or commits any verbal abuse against another, he or she will be punished

\(^{243}\) Id, p 294.

\(^{244}\) See Mawfi, p 1023
by flogging, imprisonment, or both. Flogging is a corporal penalty for any verbal abuse that may result in mental anguish. Thus, a corporal penalty is a way to fix mental anguish resulting from verbal abuse. Corporal punishments are represented by flogging and imprisonment.\textsuperscript{245}

\textbf{ii. Financial punishments:}

There are some harsh conducts that may cause emotional harm or mental anguish for another that are punished by a mandatory fine. These forbidden conducts include defamation, swearing, or insults by any kind of verbal abuse. These offenses are punished by some amount of lashes less than eighty, imprisonment, or a fine.\textsuperscript{246}

According to article three of the law of combating Informatics crimes, one is punishable by imprisonment up to one year along with a fine not exceeding five thousand riyals (1,333.35 USD) for committing verbal abuse through social networking sites.\textsuperscript{247} Therefore, Saudi courts treat such kinds of conduct as crimes and have specified punishments by the law.

In summary, Saudi courts overseeing personal injuries actions compensate the physically injured by the monetary compensation specified by Sunnah. For emotional distress claims, Saudi judges look to two main aspects: if the emotional distress leads to monetary losses, an injured will be monetarily compensated; however, if the injury did not lead to monetary losses but to mental anguish, judges render punishments instead of compensation.

\textsuperscript{245} Abduallah Al konain, \textit{Ensure the moral damage money}, P 26.
\textsuperscript{246} \textit{ld.}, p 26
\textsuperscript{247} combating Informatics crimes law, article (3), 2006.
Conclusion

Section three summarizes the overview of compensation in Saudi legal system for both physical and emotional distress injuries. This chapter is based on Sharia law for resolving compensation cases. It also mentions those types of injuries that are determined in the Quran and the Sunnah. For emotional harms, Sharia law has determined the forms of conduct that are mentioned in the Quran with specific punishments.

This chapter also discussed the position of Sharia law towards whether emotional harm can be compensated monetarily. Some researchers have found it impossible to compensate emotional distress in cases that are not mentioned in the Quran or the Sunnah. The majority have found that there is no provision from the main sources preventing monetary compensation. However, they have found difficulty in estimating its value in the absence of clear elements. This chapter distinguished between the types of conduct where there is no room for monetary compensation as punishment has already been prescribed by the Quran or the Sunnah. This chapter did not discuss other sources of emotional harm other than defamation, swearing and backbiting. Perhaps the reason for this is because there are no clear elements to resolve other forms of emotional harm that may arise.
V. Criticisms and Obstacles Towards Compensating in Saudi Courts:

   o Introduction

   There are a number of criticisms and obstacles towards compensation in Saudi Arabia. These criticisms are directed to the judicial system and the work of judges. Such criticisms include the absence of legislation governing compensation to assist judges in ruling cases. The judicial system is also criticized for declining to compensate damages such as loss of wages, earning capacity, as well as emotional distress damages. Moreover, people criticize the insufficient monetary compensation awarded to plaintiffs. Finally, there is criticism of the different outcomes of compensation by judges between tort cases with like fact patterns.

   The waves of obstacles are represented in the nature of accepting compensation among the people. These obstacles are cultural, procedural, social, and religious.

   This chapter will be divided into three sections. The first section will list the criticisms of compensation in Saudi Arabia. The second section will offer the obstacles toward compensation and the third section will present the potential solution.

   A. Section One: Criticisms

   People argue that the ambiguity of compensation prevents them from exercising their rights. Further, these ambiguities are stationed in the absence of statutes regulating compensation. As a result, the lack of compensation statutes has resulted in a failure to identify the elements of the damages and has led to confusion of victims. A criticism of Saudi courts that has arisen due to the absence of appropriate statutes is the rejection of emotional distress claims. Finally, inadequate compensation for the magnitude of harm is another criticism toward compensation in the Saudi legal system.
1. The Absence of Compensation Statue:

One of the most criticized aspects of compensation in Saudi Arabia is the absence of statutes regulating cases. Due to the absence of clear and well written statutes governing tort claims and compensation, the procedure that an injured person with a tortious claim is supposed to follow in order to be compensated is ambiguous. This has led to victims being reluctant to bring claims against tortfeasors. It is difficult for judges to decide these cases with all these lingering absence in the law.

The only option available for judges is to merely rely on their own interpretation of the main rules in Islamic law and decide cases using the broad discretion that is given to them.

A few years back, there was a huge debate between civilians, judges and lawyers about victim compensation due to the lack of rules that govern claims and that compensation is not always proportional to the magnitude of the harm suffered.

In a recent case, the judge stated that having no clear elements to assess compensation makes the compensation uneven with the magnitude of the harm. Whereas, theoretically, Islamic law has the solutions for this issue, the challenge is to deduce the rule and apply it to cases with all of its ambiguity and vagueness.

The absence of statutes leads to significant differences in how judges rule in tort claims. Moreover, there is no system of precedent; therefore, when Saudi judges care deciding cases they can refer either to the four schools of thought or rely on their personal interpretations and experiences.
There are many demands to draft Sharia principles in the form of statutes regarding civil, criminal, and commercial actions. This would ease the task of judges as they could rely on these statutes when ruling cases. Also, lawyers could refer to these statutes and make people aware of the law.

There are initiatives to codify Sharia, but there have been many collisions between lawmakers and Sharia scholars. The unwillingness of scholars to codify Sharia is that it would limit the discretion of the judges and make them trapped in the written.

One of the Saudi judges mentioned that the Sunnah of the Prophet Muhammad (PBUH) dealt with types of personal injury and compensations. He stated that the principles of compensation for all types of compensation exist; however, the main issue is the absence of written law. He added as a negative that judges rely on their personal opinion.\(^\text{248}\)

2. **The denial of certain damages in personal injury cases:**

There has been a controversial matter about the way the Saudi judicial system has treated the principles of compensation. Saudi courts face a problem in determining the elements of personal injuries damages especially those damages resulting from physical injuries. These missing elements are the loss of wages, earning capacity, profits, emotional distress and pain and suffering. In fact, currently, Saudi judges tend to only award damages that are considered actual, direct and quantifiable. The main reason is that these damages can be established with certainty.

A former judge in the Board of Grievances, Muhammad Al jathlani, stated that all judgments on compensation in Saudi Courts could be broken down into three types.

First, compensation judgments for actual damages do not usually cover the consequential damages and is often considered not suitable compared to the magnitude of the harm occurred.

The second type of judgment is rejecting a compensation claim concerning emotional distress or monetary losses that could not be proven with certainty.

The third type of judgment is rejecting some material harm under the pretext that a plaintiff could not prove what he has lost.249

In fact, there is ambiguity between Saudi judges as how to differentiate between physical and emotional harm. Sharia scholars named monetary losses as material harm. Therefore, they consider material harm as any tangible harm or losses. As a result, some judges do not see the loss of wages or earning capacity as tangible losses like physical harm. Due to the lack of elements to determine damages, this has led some judges to avoid compensation because they have no clear elements to assess it or because difficulty of measuring the harm especially in emotional distress cases.

One case that ended up without full compensation is when a victim broke his hand when hit by a car. The court demanded the tortfeasor to compensate the victim with all damages as to the physical injury (his hand) and all medical expenses. However, while the victim was an employee and had missed work for a couple of days and he was not able to receive any compensation for that.250

Another example of is when a victim had an accident due to the negligence of the tortfeasor. As a result form the accident; the victim lost one of his eyes. His father paid some money out of pocket in order to treat his eye. The court demanded the tortfeasor to compensate the victim the specific amount of money determined in Sharia, which is the half of the Diyah (500,000 riyal); however, the court did not take into consideration what his father had paid and did not compensate him.\textsuperscript{251}

Clearly from these cases, there are some missing elements of damages. Some judges argue that Sharia principles do not mention such cases. However, this goes back to the misunderstanding of Sharia principles.

3. \textbf{Rejecting Emotional Harm claims:}

Generally speaking, claims for compensating emotional harm are rarely successful. Saudi judges refer to the difficulty of proving such cases as the problem. One Sharia scholar argues that emotional distress is not a monetary loss so it is hard to assess it with money. Therefore, they have established punishments as a way to remedy emotional harms. To better understand, emotional distress results with or without physical injury; furthermore, sometimes emotional harm may result in physical injury. There are considerations of each of these types of emotional distress claims within the Saudi judicial system. I will mention these types, the view of Sharia scholars, and analyses of the types in general.

\textsuperscript{251} Islamweb.net, http://fatwa.islamweb.net/fatwa/index.php?page=showfatwa&Option=Fatwaid&Id=137419
i. Emotional Harm Resulting from Physical Injury:

In Saudi courts, when emotional harm results from physical injury, there is no compensation available for this claim. Meaning, emotional harm is not available as separate tort action. Some Sharia scholars have the opinion that no additional money above those awarded for physical injuries. In other words, the specific monetary compensation set in Sharia for physical injury simultaneously covers emotional harm. For instance, when a person loses his hand or eye, there is already specific amount of compensation for bodily injuries set forth in the Qur'an and Sunnah. That is to say, to compensation extra for the emotional harm above would be inconsistent with the principles of Sharia Law.

Additionally, they regard taking money from a person in the absence of a real harm as to taking his money without his consent. They support their argument by referring to the Quran. The Quran sates: “O believers! Do not consume one another’s wealth through unlawful means…”

While what Sharia scholars have argued might be correct, it that does not mean that emotional harm should be left uncompensated. However, since there is clear text from Sharia preventing monetary compensation for emotional distress, there is an obstacle to manage compensating such cases.

Further, the Sunnah, as considered one of the main sources of Sharia, has solved this kind of case. Umar bin Al Khattab, one of the Prophet Muhammad's companions (PBUH), had ruled for emotional harm. A man came to Umar with a complaint towards those who killed his camel. Umar asked him about the value of his camel and he said 400

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252 Quran, al Nisa, verse (4:29).
Dirham (Fils small coin). Then Umar asked the wrongdoers to compensate the man for his killed camel plus the same amount as extra.253

According to this story, Umar—may Allah be pleased with him—added some money as compensation for the emotional harm sustained by the owner of the camel. That is to say, there is no conflict in adding monetary compensation for emotional harm as long as it is resulted from a physical injury.

As a consequence of these missing elements, judges usually play an important role in compensations cases. One of the methods Saudi judges use to avoid of being unjust in their judgment for compensation is encouraging a victim to forgive the tortfeasor by reminding the victim of the reward he will get from Allah. Thus, judges, by encouraging the victim to forgive, try to prevent any hate or grudges between the claimant and the tortfeasor.254

In U.S. tort common law, as long as there is evidence of a physical injury, a plaintiff is entitled to recover for emotional distress. In the case Kroger v. Beck, the court ruled that emotional distress suffered by the plaintiff as a result of physical injury is an important element of damages. In this case, the court took into consideration the fear the plaintiff had when she thought she was going to choke to death from putting a piece of steak in her mouth that had an inch-long piece of metal in it.255

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253 Abdullah Al Khnen, Guarantee moral damages, at 29.
254 Supra note, Talbi, at 104.
ii. **Stand-Alone Emotional Harm:**

In the eye of Sharia scholars, the concept of emotional harm is the non-material harm resulting from certain conduct. Such conduct includes accusing someone of illicit sex but failing to present four male Muslim eyewitnesses, defamation, libel, and slander. According to a Hanbali scholar, these harms are not subject to monetary compensation. Instead, punishment of the defendant will take the place of monetary compensation. He supported his argument by the law mentioned in the Quran for accusing someone of illicit sex, which is 80 lashes. Therefore, Saudi courts apply punitive compensation for non-monetary losses as a law of Sharia. That is say, if a person accused another of illicit sex, he will be punched. However, if he instead said disgraceful words to another, he will be subjected to a lesser punishment, which is less than 80 lashes.

All the four schools of thought agree that the remedy to pure emotional harm is by punishment. They have stated that a judge presiding over such cases could apply many different methods. He can flog the wrongdoer, rebuke him, slap him, or even send him to prison. This approach is seen as a clear way for judges to avoid remedying distress monetarily and prevent opening the door for many victims to bring such cases and cause a flood of litigation.

Some scholars of Sharia see the solution for pure emotional distress as punishment and is based on their arguments that is unjust to monetarily compensate a victim and the inability to estimate the harm. However, in the era of the Prophet Muhammad (PBUH), he required one of his companions to give a man twenty dry measure of dates when the companion caused him fear by his harsh words.\(^\text{256}\)

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\(^{256}\) Supra note, Khunain at 18.
It is apparent from this Hadith that the Messenger of Allah had ruled to compensate pure emotional distress. Therefore, Saudi courts should create some presumptive measures for emotional harm because it is supported by the sources of Sharia law.

Indeed, there is an inability to accurately estimate emotional distress damages. However, in contrast with US tort law that limits elements of emotional harm, emotional harm is available as separate tort if the conduct of the defendant is intentional, extremely or outrageously reckless, and the emotional distress is severe. Thus, the plaintiff in such cases is entitled to recover monetary compensation.257

Apparently, Saudi courts have determined some wrong conducts for pure emotional harm and manage punishments to remedy it whereas in US there are some elements that have to be shown by a plaintiff to recover monetary compensation.

iii. Emotional Harm leading to Physical injury:

According to Sharia scholars, when emotional harm leads to physical injury, the injured person will be monetarily compensated. As mentioned earlier, punishment is the solution for pure emotional harm; however, when this harm results in monetary losses, monetary compensation will be the solution. When a person sustains material harm as a result of emotional harm, he will be entitled to recover for his physical injury or anything else he loses.

Therefore, Saudi courts tend to compensate emotional harm cases when it results in monetary loss. A good example occurred in the era of Umar when he caused fear to a pregnant woman that lost her baby, as recounted earlier.

In comparison with US tort law, the Third Restatement of Torts states that, “[A]n actor who by extreme and outrageous conduct intentionally or recklessly causes severe emotional harm to another is subject to liability for that emotional harm and, if the emotional harm causes bodily harm, also for the bodily harm.”

Therefore, Sharia and US common law rule for emotional distress whereas there are no set elements to limit emotional distress cases like US common law.

In summary, the point of contention among judges is whether or not emotional harm should be monetarily compensated. Hence, when the emotional harm arises due to physical injury, it will be rejected. However, if emotional harm is pure and stand-alone claim due to certain conduct by the wrongdoer, it will be remedied by punishment. Lastly, if the emotional distress leads to monetary loss, what was lost will be monetarily compensated.

4. Inadequate Compensation for Physical Injury:

The vast majority of victims are not satisfied with the sum of money they receive compared to the harm they sustained. In most cases, the sum amount rewarded for physical injury is trivial. Hence, there have been calls to review the process of judging compensation for physical harms. For instance, in Sharia law, the specified monetary compensation applied in ancient eras is no longer equivalent with the present requirements of life.

A good example of the modern inadequacy of specified compensation for physical harm is what the Saudi Supreme Court determined for wrongful death. It is determined by 300,000 RS (80,000 USD) regardless of one’s net income or survivors.

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258 Restatement (Third) of Torts: Liability for Physical and Emotional Harm & 46 (2012)
259 Supra note, Talbi at 103.
This is the current amount of monetary compensation for wrongful death by negligence. This amount of money is currently not enough and is considered unfair.

Although Saudi judges have wide discretion in ruling for compensation, their judgments do not typically restore the victim to the place he would have been but for the injury. Indeed, the absence of statutes regulating and determining elements of personal injuries damages allows judges to rely on their discretion and interpretation. Thus, the final judgment will likely not cover all harms sustained and the compensation will not be proportionate to the harms. Additionally, judges, as a part of the Saudi society are not familiar with some types of personal injury damages.\textsuperscript{260}

Consequently, some harms are rejected and not compensated due to the absence of standards guiding judges. Thus, ignoring some elements of damages is a method of judges. They, instead, apply whatever they think is clear and right based on their interpretation of Sharia and the facts before them. On the other hand, some judges do recognize these missing elements of tort law and rule in favor of them.

A recent case from the Board of Grievances ruled in favor to monetarily compensate stand-alone emotional harm. It is, in fact, considered an unprecedented judgment. After this case, the Board of Grievances informed all administrative courts that it is possible to compensate emotional harm with money. Previously, an apology was the remedy for ruining someone’s reputation.\textsuperscript{261}

\textsuperscript{260} \textit{Id}, at 105.

\textsuperscript{261} Okaz, N 5229, (2015), \url{http://www.okaz.com.sa/new/issues/20151011/Con20151011801404.htm}. 
5. Variation in Judgments Among Judges for The Same Facts Pattern:

One of the criticisms toward the Saudi judicial system related to torts cases are the contrasting judgments between cases of like facts patterns. Undoubtedly, one of the most important factors is due to the absence of codified law. Additionally, the existence of the four schools of thought in this uncodified system allowed judges broad discretion in relying on one of these schools with variations based on interpretation. This broad discretion resulted in the various rulings among judges. The people of Saudi Arabia would notice these variations through newspapers or by hearing from victims whose cases had similar fact patterns but nevertheless were judged differently.

There has been research in 2012 conducted by the standing committee for Scientific Research titled “Codifying the Most Correct Opinion of Scholars in Transactions and Requiring Judges to Rule in Light of It.” The committee conducted this research with the goal of collecting all Sharia principles and reforming them into statutes as standards for Saudi to promote consistent judgments and to limit their wide discretion. Unfortunately, this research was rejected by a decision from the Council of Senior Scholars.262

Additionally, there was a trend to codify Sharia texts to govern discretion, but it was faced with rejection by the vast majority of judges. The philosophy behind the rejection was to let judges to rely on their diligence not bind them.263

262 Council of Senior Scholars, No. 8, (1972)
263 Supra, Talbi at 62.
These variations are represented throughout many judgments, including:

- Variance between physical punishment, such as lashes, and financial punishment. Some judges only rule for financial punishment whereas others rule for both physical and financial punishment.

- Variance in judgments for emotional harm resulting from defamation or slander. Some judges apply the criminal law when presiding over such cases while others regard it as tortious conduct and apply civil law.

- Variance in judgments for assessing monetary compensation.

- Variance in assessing compensation for wrongful death.

- Variance in judgments related to the liable party in the wrongful death in a car accident caused by camels. Some judges direct liability to the driver while others hold both the driver and the owner of the camel responsible in proportion of their negligence.²⁶⁴

Some attribute two reasons to these variations. The first reason is due the absence of codified law. Having organized statutes would help Saudi courts rule on tort cases and stop the variations between judgments.²⁶⁵ Others attribute the variations to the different opinions between the schools of thought in interpreting Sharia principles. Each school of thought has its own interpretation of Sharia texts. Therefore, some schools of thought differ with another in interpreting these texts. In light of the differences among the schools of thought related to Sharia principles, judges have the discretion to choose which school to follow in interpreting principles.²⁶⁶

²⁶⁴ Mansour Althbyta, *highlights of the disparate judgments that have taken place - or potential - in the Saudi judicial application*, [http://www.saaid.net/bahoth/200.htm](http://www.saaid.net/bahoth/200.htm).
²⁶⁵ Supra note, Talbi at 62.
²⁶⁶ Id, at 63.
Some experts say another reason for these variations is the period in which judges are appointed. Saudi judges are appointed upon graduation from Sharia School and having worked as an assistant judge. Typically a judge will work as an assistant from six months to three years before they can decide cases independently. In the eyes of some experts, this period of time is not considered enough. A potential reason for such a short time period was the lack of judges available which led the ministry of justice to allow such short apprenticeships. Therefore, these experts suggested adding three more years of experience.\textsuperscript{267}

The wide discretion given to judges is believed to be a result of the combination of the absence of written law, the choice between schools of thought, and such broad legal reasoning.\textsuperscript{268} The waves of variation have been obvious to the public eye and the government has just started treat these variations by codifying the law.

\textbf{B. Obstacles}

There are waves of obstacles to the general nature of accepting compensation among the Saudi people. These obstacles are cultural, procedural, social, and above all religious.

\textbf{1. Cultural Obstacle}

Saudi culture has played a vital role in hindering the institution of compensation for both physical and emotional injuries. Victims are not aware of their rights in compensation. One of the most important reasons is because they are cautious as to halal (lawful and permitted money) and haram (unlawful money) related issues. They do want to take money belonging to someone else. Once, a victim asked a scholar of Sharia

\textsuperscript{267} id, at 125.
\textsuperscript{268} Id, at 63.
whether the money he received in compensation due to a car accident by the tortfeasor’s negligence was halal or haram.\textsuperscript{269} The Scholar’s response was that it was (halal) permissible since it was due to the harm he had received. That being said, the caution of Muslims concerning halal and haram issues make the work of compensation paused and inactive.

Additionally, the reason for the unawareness of Saudis about their compensation rights is also due to another factor, which is the weakness of media awareness. "Ignorance and the lack of education has made people unaware of their rights. This is because of a lack of the roles of media, regulation, community, and the absence of specialists in legal fields, which are supposed to provide and educate people with their rights."\textsuperscript{270}

Saudi judges also play a role in the work of compensation. An empirical study has uncovered that Saudi judges sometimes offer settlements in tort cases when it comes to compensation. The reason is to avoid being unjust or unfair in ruling for compensation, especially in cases when the harm is hard to estimate. Therefore, they reconcile between parties.\textsuperscript{271}

In fact, some judges have thought that Sharia conflicts with the concept of compensation in cases when the harm is emotional distress or consequential damages. Based on their understanding, they argue that in Sharia emotional harm is not treated with compensation but by punishment, and consequential damages should be proven by clear evidence by the victim otherwise no compensation is awarded.

\begin{thebibliography}{1}
\bibitem{269} Islamweb.net, \url{http://fatwa.islamweb.net/fatwa/index.php?page=showfatwa&Option=Fatwaid&Id=123643}.
\bibitem{270} Supra note, Talbi at 105.
\bibitem{271} \textit{Id}, at 69
\end{thebibliography}
On the other hand, some highly educated judges disagree and refer their peers’ opinions to the misunderstanding and wrong application of Sharia principles for compensation that some judges possess.272

Khalid Al Shahrani, a Saudi lawyer and legal adviser, notes that Saudi society is not aware of their legal rights towards the procedural way to get compensation. He points out that in most cases victims are surprised by the court's judgment that their cases are not under the jurisdiction of the court, which leads victims to give up and dismiss their rights.273

Interestingly, a study shows that Saudis have recently become more aware of their rights in compensation. The Minister of Justice discloses the number of cases looked by courts. In this year of 2016, Saudi courts have seen 1,940 compensation cases.274

2. Social Obstacles:

Saudi Arabia has a tribal society and is considered an important part of the Saudi society. Each tribe has its own customs and traditions. It is not uncommon that what it is acceptable in one tribe may not be acceptable in another. These customs and traditions dominate over thought and behavior. “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.”275

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273 http://www.alhayat.com/Articles/10402096/.
274 Id.
275 Supra note, Talbi at 106.
As a tribal community, the tribal chiefs are involved in cases of compensation to try and settle the case between the parties before it goes to the court. Therefore, chiefs play an effective role in asking the victim or his family to forgive the wrongdoer for the sake of Allah. As a result, the victim or his family will be shy and will likely not refuse the request from their chief out of respect.

Furthermore, in a tribal society the idea of compensation is almost non-existent because the people would prefer to forgive and attain a reward from God. This idea makes the rule of compensation moot. As mentioned earlier, there are several other reasons that would affect the implementation of monetary compensation, such as the belief many Saudis hold that accepting compensation as bad luck (qua superstition).

3. Religious encouragement:

Saudi Arabia is a Muslim country and thus people in this country tend to forgive people where it is in compliance with Islamic teachings. In compensation cases, victims or their heirs waive their rights to compensation when they seek the reward from Allah where there is a room of forgiveness when the tortious action is not intentionally. In a recent case from 2016, the victim’s father forgave the tortfeasor after he ran over his son, which resulted in his death. His son was coming from the nearby grocery and some of his bags fell down. He went back to pick them up while the defendant’s car was coming and hit him. Afterwards, his father took his son to the hospital and was informed of the death of his son. Then the father went to the police station and wrote down his waiver of his right to compensation. This is just one example of many that result in making the actual number of compensation cases very few.

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276 Sabaq News, [https://sabq.org/vtqkFx](https://sabq.org/vtqkFx), 2016
As a result, people ignore compensation from people in this life and instead seek it from Allah. This causes compensation to be an uncommon resolution. The Quran states: "The recompense for an injury is an injury proportionate to it; but if a person forgives and makes reconciliation he shall be rewarded by Allah; He does not like the wrongdoers."\(^{277}\)

In addition, victims often hesitate to claim compensation when they are not sure about what there are seeking. This is because the compensation they do receive could be considered haram\(^{278}\), as it is forbidden by Islam to take or ask for something not belonging to you. Furthermore, victims often decide not to sue because the hearings have been so delayed. This leads us to the fourth obstacle.

4. **Procedural Obstacles:**

Vague litigation procedures are another obstacle that prevents an injured from claiming her right to compensation. Many victims give up or hesitate to pursue their right to compensation due to delayed hearings in the courts and the procrastination of opponents. An example of how a person’s right to compensation can be stalled by procedural obstacles is as follows: Muhammad was a victim of a car accident by the other party’s negligence and filed a complaint against the defendant. He claimed that the defendant hit him with his car while he was driving. He provided to the court a report from the Traffic Department as evidence proving that the defendant was negligent and mistaken in the rate of 100% along with a witness who was with the plaintiff at the time of the accident. He requested to recover damages to his car, estimated as 25,000 RS

\(^{277}\) Malik translator, Quran, surat al Shura, verse, (42:40).

\(^{278}\) Haraam is an Arabic term meaning "forbidden." Thus it may refer to: either something sacred to which access is forbidden to the people who are not in a state of purity or who are not initiated into the sacred knowledge; or to an evil thus "sinful action that is forbidden to be done."
(6,666 USD), plus an injury to his hand and the amount of money he paid for taxies while his car was damaged. The whole amount was 28,000 RS (7,466 USD).²⁷⁹

This case took full year, which compelled the plaintiff to waive some of the damages, such as the costs of his injury and the subsequent loss of taxi cost, and was only awarded the value of damage to his car. Due to the absence of the defendant for some hearings along with slow court procedures, the plaintiff was pushed because he wanted the process to be over to finish this case by waiving some of his damages and to just ask for the value of damage to his car. The court ruled in his favor to compensate him for the value of damage to his car, which was 25,000 RS (6,666 USD).

Clearly, from this case and many other examples, victims sometimes decide not to sue but rather seek the reward from Allah due to delay in hearings and appointments.

Some experts have reasons that they associate with the issue of delayed hearings. One reason is the lack of qualified judges for the massive amount of tort cases. Yusuf al-Qasim, a Saudi academic and lay reader, refers this problem to three reasons. First, the sheer lack of judges in the Saudi legal system; however, this can be resolved by attracting competent science students and multiplying the nomination of judges. The second reason is the lack of specialized judges for certain cases. The third reason is the lack of preparation for some of the cases, which leads to a postponement in the decision.²⁸⁰

²⁷⁹ Journal of Justice judgments, number 31/171, 1426/2005
²⁸⁰ http://www.almoslim.net/node/164216.
However, Mohammed Al Jathlan, a former Saudi judge, sees the problem as victims becoming bored of tracking their cases as a result of delayed case schedules along with the length of hearings. He mentions that there are some court schedules that last for six months and is a sign of a judge’s flawed diligence.\textsuperscript{281} A source from the Board of Grievances clarified that judges cannot only be blamed, but that some litigants hand their cases to the wrong courts. After long months litigants are shocked that the court does not have jurisdiction over their case.

**C. Solutions**

After presenting these criticisms and obstacles, steps should be taken to overcome them. These steps are in the form of suggestions that would prove to be helpful for people, lawyers, judges, etc.

**1- Enacting personal injuries statutes:**

Personal injuries compensation should refer to the laws and regulations that form the framework for personal injuries. The purpose of this statute is to govern all claims for both monetary and non-monetary losses arising from personal injuries damages as a result of negligence or fault. This statute will help Saudi judges to uniformly apply principles to all cases involving claims for compensation, such as injuries resulting from accidents, individuals, defective products, medical malpractice, or defamation.

Statutory compensation for injuries benefits should include compensatory damages and punitive damages:

1) Monetary damages:
   - Death benefits, bodily injuries, medical expenses, cost of living with a disability, lost wages, and repair or replacement of property.

2) Non-monetary losses:
   - Pain and suffering
   - Emotional distress
   - Loss of companionship

2- Applying the five elements of damages in personal injuries

In estimating damages in personal injuries cases, judges may have to establish elements that aid them in estimating the harm. These elements according to the US common law are as follows:

(1) Past physical and mental pain;
(2) Future physical and mental pain;
(3) Future medical expenses;
(4) Loss of earning capacity; and
(5) Permanent disability and disfigurement.

3- Considering emotional harm a separate tort case.

As has been shown, Saudi courts do not consider emotional harm resulting from bodily injury as a separate claim. Instead, they consider the determined amount of monetary compensation for bodily injuries as covering emotional harm. Therefore, there is no compensation for such claims in Saudi courts.

One of the most common reasons to ignore emotional harm claims is that allowing such claims may flood courts with many trivial or frivolous matters and waste the time of judges. Clearly, the issue is not a matter of proving an emotional harm claim since it arises from physical impact. Therefore, as a suggested solution, courts should assign a committee to look through such cases and ensure it is serious and deserves to determine compensation. This committee will help to reduce frivolous claims and illuminate those that do not waste the time court’s time.

In some states in the US, emotional distress may arise from different claims. A plaintiff can claim for emotional distress that arises from intentional infliction of emotional distress, inflicting an injury to another, shock, and an injury to a relative. For each situation there are conditions that the plaintiff must meet to recover emotional distress damages. These claims will be further discussed through cases in section two of chapter six.

Qatar and the United Arab Emirates, as examples of other countries applying Sharia law, have enacted law to solve personal injuries cases. Both countries have recognized emotional distress as a separate cause of action that is monetarily compensable in cases of damaging someone’s reputation or verbally abusing another. In Article 293 of Emirate Civil Law, the law states that compensation will address moral damages resulting from any damage to reputation, honor, or social status. Further, it states in the same article that emotional distress resulting from the death of a relative is compensable.

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283 Civil transaction law, United Arab Emirates, (1987)
284 Id, number 2.
Qatar is another example of a country that applies Sharia law. The civil law of Qatar states in article 202 that wrongful acts will be compensated, even if the damage is moral. Moreover, monetary compensation is allowed in cases of the death of couples or close relatives by blood.  

- Further suggestions:
  - Set up legal programs for public.
  - Convey real court settings through television as it gives people a predictable picture of judgments in the future.
  - Establish legal training programs with the goal to educate people of their rights and teach them to be knowledgeable of legal principles. It is been known that proper legal education is only for law students; however, learning how to think critically along with basic legal education is necessary for everyone so that they can learn and exercise their rights. When a person knows his right, he will be able to protect himself and pursue his right. In fact, the lack of knowledge is the main reason that certain rights of a person get violated.
  - Universities should add a legal course on basic legal information for non-legal students. That will help them understand their rights and aware of others’ rights. In comparison with U.S. universities, students are free to take any class as an elective that may broaden their understanding of their degree or life skills.

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Conclusion

The work of compensation has many criticisms and obstacles in Saudi courts. These criticisms are the absence of tort statutes, the lack of certain elements of personal damages, the rejection of independent emotional distress claims, inadequate compensation for physical injuries, and, finally, the variation in judgments among judges using similar fact patterns. Obstacles, on the other hand, play a role in preventing or making an injured party hesitant of pursing his right. These obstacles can be classified as cultural, social, religious, and procedural. All these factors make an injured hesitant and sometimes give up his pursuit of his rights. Therefore, there is an urgent need to enact law in order to regulate personal injuries from the type of damages recognized to the elements necessary to measure damages.
VI. Practical Personal Injuries Cases from the Courts of Saudi Arabia and the United States of America.

- **Introduction:**

  This chapter will provide some cases that related to personal injuries damages and the way that courts from both Saudi Arabia and America handle these cases. Both countries have different legal systems they use when deciding cases before their courts. This chapter will examine the ways in which judges from different legal systems decide personal injuries they preside over. There are eleven cases in total, five from Saudi courts and six from American courts.

  This chapter is divided into three sections. The first section will present compensation cases from Saudi courts. The second section will proceed with compensation cases from US courts. The third section will compare and contrast the two legal systems regarding how they handle such cases.

  **A. Section One: Practical Compensation Cases From Saudi Courts**

  1. **First Case:**

     **Facts:**

     Two girls, the plaintiffs, were hit in an accident while riding a taxi. This accident resulted in flipping the taxi upside down and caused severe damage to the girls. The cause of the accident was solely the negligence of the taxi driver. The plaintiffs brought suit against the driver alleging claims of negligence, personal injury damages that they had sustained, travel, and treatment expenses.

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286 Unlike to U.S. courts, case names in Saudi Arabia are confidential.
287 Judicial precedent, number 15402, collection of judicial judgments (2013)
• **Rule of Sharia Law:**

  The prophet Muhammad—peace upon him—says: “The guarantor is responsible and the debt must be repaid.”²⁸⁸ He also stated: “There is no injury nor return of injury.”²⁸⁹

• **Judgment:**

  The judge asked the plaintiff to prove their bodily injuries and they presented medical reports as evidence of their injuries. One of the plaintiffs sustained the following:

  - Head injury with skull fracture
  - Weakness of the muscles in the upper right-hand side with a deficit of 25% and weakness in the lower right with estimated deficit of up to 20%
  - Loss of control over bodily functions, such as urine and feces.
  - Loss of the ability to speak

  For the other plaintiff, she sustained the following:

  - Amputation of the right foot
  - Breaking of the fourth and fifth ribs with an estimated working deficit of 8%
  - Multiple scars on the upper eyelid, left leg (estimated deficit of 2%), right and left thigh estimated (estimated deficit of 1%), left arm, left side of the face, nose, and some scars on her chest.

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²⁸⁸ Vol. 3, Book 15, Hadith 2405, sunnah.com
²⁸⁹ Book 36, Hadith 31, sunnah.com. Meaning that, everyone is free to act as long as their acts are reasonable and don’t hurt others.
The judge looked to the medical reports and sent them to a specialized court for estimating the bodily injuries. In Saudi courts, there are specialists working in some courts to receive medical reports concerning bodily injuries and work on estimating their value. Some injuries have been estimated since the era of the prophet Muhammad. However, some injuries do not already have an estimated value and are left to a judge to determine based on the facts before him.

**Holding and Decision:**

After looking to the police report concerning the cause of the accident that was because of the negligence of the driver and estimating injuries report, the first plaintiff was awarded 1,346,250 SR (359,000 USD). The second plaintiff was awarded 450,000 SR, (120,000 USD) along with 421,942.23 SR (112,500 USD) split between the plaintiffs for the expenses incurred by travelling to treatment.

**Analysis:**

Looking at this case, both plaintiffs claimed compensation for their bodily injuries as well as their travel and medical expenses. The judge looked at two things to decide the case. He first looked to the cause according to the accident report issued by the police. Then, he sent the plaintiffs’ medical reports to the court of estimating bodily injuries. Afterwards, he looked at the report estimating the bodily injuries that was issued by the specialized court. In cases of bodily injuries, a Saudi judge can get help from specialized experts who work in judiciary to help a judge estimate the value of bodily injuries. Those experts look at the medical report of injuries and then assign a value according to the percentage of injury.
It is worth mentioning that the assessment of body injuries is based on what the prophet Muhammad—peace be upon him—stated during his life through his teachings. Therefore, experts estimate monetary compensation based on the Prophet's sentiments while taking into account the proportion of the damage.

The judgment in this case was in favor of the plaintiffs. The judges asked the defendant to compensate the plaintiffs for their bodily injuries in addition to the monetary loss they sustained for pursing their right and their medical expenses.

2. Second case

- **Facts:**

  In this case the plaintiff was injured on a sled trolley\(^{290}\) manufactured by a carnival, the defendant. The accident occurred when the plaintiff was riding in the trolley and, while it was sliding, a defect occurred that resulted in throwing the plaintiff fifteen meters which caused her to crash into some rocks adjacent to the park. She claimed compensation for her bodily injuries that were allegedly caused by the malfunction of the sled trolley.\(^{291}\)

- **Rule of Sharia Law:**

  Whoever gets the benefit of something he or she should bear its harm.\(^{292}\)

- **Judgment:**

  After hearing the plaintiff’s complaint, the court wrote to the hospital to provide more details about the injuries and to estimate the proportion of disablement. The court then sent the medical reports to experts for estimating body injuries. According to the medical reports the plaintiff sustained the following:

\(^{290}\) an electric vehicle that runs along the street on tracks.

\(^{291}\) Judicial precedent, number 311666, collection of judicial judgments (2013)

\(^{292}\) Id
- Bleeding above the “dura mater”
- Cracked skull
- Scar on the left side of the forehead along with two scars on the nose and the lower lip
- Deficiency of memory by 10% and the sense of smell by 10%
- Loss of four teeth from the upper jaw with a deficit ratio of 8%
- Loss of the front three teeth from the lower jaw

According to the experts, the total of estimated recovery was 142,500 SR (38,000 USD)

**Holding and Decision:**

The court allowed the defendant his response: the defendant claimed that the actual cause of the accident was that the plaintiff had not fastened her seat belt and that there was no defect with the sled trolley. In response, the plaintiff stated that the employee attending the ride at the time of the accident had indeed fastened her seat belt. As proof, the plaintiff brought forward her two sisters to testify that they witnessed the accident and saw her seat belt fastened before the accident occurred. The defendant was unable to provide evidence for his claim that the plaintiff had not fastened her seat belt. However, he demanded the court have the plaintiff take an oath that she did in fact fasten her seat belt. The plaintiff complied and swore under oath that she had fastened her seat belt. The judge then ruled in favor of the plaintiff and held that the defendant was to pay the plaintiff the estimated monetary compensation.

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293 A thick membrane that is the outermost of the three layers of the meninges that surround the brain and spinal cord. It is derived from mesoderm.
**Analysis:**

In this case, the court first wrote to the hospital to assess the injuries sustained and determine the percentage of disability. The medical reports were then sent to experts to estimate her bodily injuries according to Islamic law. The judge, in response to the defendant’s allegations, asked for proof from the plaintiff that she had fastened her seat belt. The defendant was questioned to bring evidence that the plaintiff did not fasten her seat belt and was unable to do so. Finally, in response, the defendant made a request that the plaintiff should take an oath that the employee did in fact fasten her seat belt.

In Saudi courts, taking an oath is a mean for Saudi judges to decide cases in cases that lack evidence. The Prophet—peace be upon him—said: "If people were given whatever they claimed (in disputes), some people would claim the lives and wealth of others; but the oath (of denial) must be taken by the defendant."^294

The court did not take into account any estimated damages for emotional distress or mental anguish as elements; furthermore, the plaintiff herself did not seek these damages. In contrast, American courts, when reviewing a case with this same fact pattern, consider emotional distress an important element in estimating damages no matter how light the injury was as long as there is evidence of an injury.^295

Saudi courts do not recognize emotional distress as an independent element in estimating damages unless the emotional distress results in monetary losses. In other words, when emotional distress causes a victim personal injuries, such as medical expenses, courts will take this into account but will otherwise be dismissed.^296

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^296 Al-Jala, Muhammed, monetary compensation for emotional distress resulted from personal injuries.
A case decided in Jeddah, Saudi Arabia, ruled for the monetary compensation for emotional distress that parents incurred after witnessing their three-year-old girl fall into a reservoir. The court’s analysis was that parents may recover for emotional distress if they witnessed their child be injured.\textsuperscript{297}

3. **Third Case:**

- **Facts**

  In this case, the plaintiff was hit by the defendant’s car and resulted in personal damages to the plaintiff. The percentage of the fault assigned to the defendant was 75% on while the plaintiff was found 25% contributorily negligent. The defendant escaped from the scene of the accident. The plaintiff brought this tort action against the defendant for injuries he sustained and claimed compensation.\textsuperscript{298}

- **Rule of Sharia Law**

  The Prophet Muhammad said: “There is no injury nor return of injury.”\textsuperscript{299}

- **Judgment:**

  The court looked at the police report concerning the accident that stated the defendant’s negligence was the cause of the accident. In addition, the plaintiff was found to be speeding which indicated that there was contributory negligence on both sides. The court then looked at the medical report to determine the injuries caused by the accident. According to the medical report the plaintiff sustained the following:

\textsuperscript{297} N. 4961,2,G,2013.
\textsuperscript{298} Judicial precedent, number 3257689, collection of judicial judgments (2013)
\textsuperscript{299} Book 36, Hadith 31, sunnah.com.
- Severe injuries to the head, with bleeding and scarring in the brain
- Paralysis of the lower limbs
- Permanent disability
- Loss of three of teeth

According to the experts estimating the bodily injuries, the total estimated recovery was 626,000 SR (167,000 USD) and since the plaintiff bore 25% of the fault he recovered 469,500 SR (125,200 USD).

**Analysis**

In this case the court relied on these facts:

- Police report indicated that the defendant was at fault by 75%
- Police report indicated that the plaintiff was at fault by 25%
- Medical reports showed the bodily injuries with the percentage of disability
- Experts estimated the monetary damages according to the medical reports.
- The government compensates plaintiffs in cases of defendants who flee the scene of an accident

In this case, the court relied on clear evidence, such as the police reports and hospital expenses in estimating damages. However, what can be said about this case is the low amount of recovery. A recovery of $125,000 is not enough for a victim who has been permanently disabled. According to the medial reports, the plaintiff must now rely on a wheel chair for the rest of his life and this amount of recovery is not suitable in comparison to his harm.
In addition, there was no mention of the important element of damages that is loss of earning capacity. In this case, the plaintiff has been permanently disabled, meaning he is no longer able to work due to his severe injury. In this situation, the four interpretive schools of thought in Sharia law have conflicting views. Some schools see the defendant as liable for paying the victim until he or she recovers financially and the damage is permanent then a judge should compensate the victims for the disability. However, other schools are silent on the matter.\(^\text{300}\)

A question that is often raised is whether or not the determined monetary compensation for physical injuries in Sharia is enough for an injured victim. Since Sharia law has determined a certain monetary compensation for physical injuries, Saudi courts do not award beyond that amount. In fact, scholars of Sharia do not recognize some elements of damages in personal injuries such as the loss of earning capacity, costs of living with a disable, lost wages, and emotional distress damage. Unfortunately, these elements are not taken into consideration while estimating personal damages. So, the answer for the question presented is “no” and there must be new law enacted for compensation.

Notably, in Sharia law the set monetary compensation for physical injuries is called “Arsh”. There are two categories of Arsh: the first includes the specific physical injuries that were estimated monetarily by Sharia Law. These physical injuries were estimated in advance at the time of the Prophet Muhammad—peace be upon him—and were more recently updated to suit current costs of living. The second category includes physical injuries that have not been estimated by Sharia law and instead are instead

\(^{300}\) See Jalal, p77.
independently compensated by judges.\textsuperscript{301} Therefore, judges in Saudi courts are not allowed to simply estimate the damages that have been estimated already by the Prophet Muhammad—peace be upon him. However, they are allowed to make independent estimations for physical injuries that are not determined by Sharia law.\textsuperscript{302}

\textbf{4. Fourth Case:} This is a controversial case that has been debated on television shows between the mother of the plaintiff, two lawyers, and a judge.

- **Facts:**

  Muhammad, the plaintiff, two years old, was out with his family in the park. In the park, there is a small zoo of deer. Muhammad approached the fence to view the animals. While looking at the deer, one of the animals ran toward him and gouged his eye with its horn, which resulted in Muhammad losing that eye. The plaintiff’s family brought this tort action against the municipality of that region for its negligence in making the holes of the fence so wide that the plaintiff was able to get his head through the fence.\textsuperscript{303}

  In this case, the plaintiff suffered from the following personal injuries:

  - Gouged eye
  - Medical expenses
  - Lost earning capacity
  - Pain and suffering

\textsuperscript{301} See Alzohily, p293
\textsuperscript{302} Id, p 296
\textsuperscript{303} http://www.mbc.net

131
• **Judgment:**

After three and a half years, the judge rules that the municipality was not responsible, rather, the operator of that park was the negligent party. The plaintiff’s family stopped pursuing their right and did not sue the operator. Neither party appealed this decision.

• **Analysis:**

In this case, Muhammad lost one of his eyes due to the deer that hit him through the wide hole of the fence. His family sued the municipality and were shocked after three years of waiting that the defendant was not responsible. This long awaited judgment caused the plaintiff’s family to lose the hope. As a result, they give up their right to compensation for the harm done to Muhammad.

What can be extracted from this case are the obstacles the plaintiff’s family faced while pursuing their right to compensation.

• The plaintiff’s family faced some of the obstacles that were discussed earlier in chapter five. The plaintiff’s family suffered from the length of the decision making process by the court.

• The judge in this case would often postpone the sessions due to many unexcused absences of the other party. Muhammad’s mother stated that the waiting between sessions would last up to three months.

• The plaintiff’s family was not well educated in their right to compensation.
Due to the absence of a clear and well-written statute governing tort claims and compensation, people and judges have become unaware of the principles and the elements of compensation. In theory, if this case was brought before the court the plaintiff should expect to recover the amount of monetary compensation that has been estimated by Sharia law for his eye. This means that some elements that the victim might have suffered, as mentioned above, may be taken into consideration when estimating damages and that is what many lawyers keep demanding to be remedied in the absence of compensation statute.

5. **Fifth case:**

This case concerns emotional distress as a non-monetary loss.

- **Facts:**

The plaintiff was an employee at a university and was shocked one day when he received a suspension letter issued by the head of the university. Unfortunately, his suspension from work was based on an erroneous confidential letter from a government entity. The misunderstanding occurred when the government entity mistakenly misspelled the identity of the plaintiff as another man wanted for drug dealing. As a result, the plaintiff brought an action against the university for negligently suspending him from work. This wrongful action from the university caused him emotional distress represented by ruining his reputation among his coworkers, family, and relatives. Also, as a result of the university’s action, the plaintiff lost his opportunity for a promotion he was entitled to at that time.
In his compliant he claimed for monetary compensation in the amount of an estimated three million riyal (800,000 USD).\(^\text{304}\)

- **The defendant’s response:**

  The representative of the university stated that the university has the power to suspend any suspect worker until proven otherwise. Moreover, the overall period of suspension did not last more than three days. They discovered the wrong and withdrew the suspension. The university claimed that it was impossible that the plaintiff’s reputation was ruined in three days, plus the decision was strictly confidential. In response, the plaintiff stated that all his coworkers knew about the suspension and was enough to damage his reputation.

- **The rule of Sharia:**

  The court, according to Sharia principles, stated that harms in Islamic jurisprudence are various. Harm can be financial, physical, and emotional. In the case at hand, the harm is in the form of emotional distress damages, which is rarely compensated monetarily in Saudi courts.

- **Judgment:**

  The court found that the plaintiff suffered from emotional distress resulting from ruing his reputation. After two years of court sessions, the judgment was entered to compensate the plaintiff with the amount of 100,000 SR (27,000 USD).

\(^{304}\) Attached in the list of references.
• **Analysis:**

The plaintiff brought this action against the defendant (university) for its negligence in failing in their duty to ensure the allegations accuracy before deciding to suspend his work. The plaintiff claimed that his reputation had been ruined due to his suspension upon being based on mistaken information for a wanted criminal. In his complaint, the plaintiff asked for three million riyal as compensation. The defendant responded that they had fulfilled their duty by investigating the problem and returned the plaintiff to work after three days.

The defendant objected to the amount of money the plaintiff claimed as his suspension from work for three days cannot logically ruin his reputation to warrant such a high amount of recovery. After two years of court sessions, the court asked the plaintiff to reconsider the sum of compensation. So, he reduced his requested compensation to 300,000 SR (80,000 USD) in order to preserve his time and his health and his desire to end the case as soon as possible. The defendant again objected to 300,000 as compensation for the plaintiff which made the court lower the monetary compensation to 100,000. This decision was mutually accepted by both parties.

The court in this case did not rely on the elements of emotional distress compensation, rather it relied on the facts before them. Despite the fact that there are no statutes or binding precedent for such compensation, the court reasoned that emotional distress damages is actionable for monetary compensation in Islamic jurisprudence. The court derived this reasoning from the main two sources of law in the Saudi Arabia, the Qur’an and Sunnah.
It is worth noting that the main reason behind the delay in some tort actions is the absence of legal standards illustrating the types of personal injuries damages and compensation allocated to them. This is what contributed to the plaintiff reducing the amount of compensation requested from 3,00,000 to be 100,000. By enacting tort statutes, the task of the judge will be eased as he will be more confident regarding his decisions as they would be based on the elements and standards that are clear and in writing.

6. Sixth Case:

• Facts

The plaintiff was driving his car with his son at night. Suddenly, when he reached the railroad tracks, a train appeared without giving any sign or caution to the drivers. The plaintiff turned to the right but was hit by the train that resulted in multiple personal damages. The plaintiff sued the railroad for its negligence in not providing any sign or caution at the railroad crossing. In his claim, the plaintiff requested recovery of the damages for his son’s bodily injuries, medical expenses, damages to his car, and emotional distress sustained by his son. The plaintiff sought to recover 642,000 SR (171,200 USD) as monetary compensation for all his damages.305

• Rule of Sharia

The Prophet Muhammad said: “"There is no injury nor return of injury."
• **The Defendant’s respond**

The defendant contested that the plaintiff was the cause of his injury. He mentioned that the plaintiff did not exercise reasonable care as a driver as he failed to slow as he approached the railroad. Therefore, according to the defendant, the plaintiff was truly the negligent party.

• **Judgment**

The judge ruled in favor of the plaintiff only for the damages sustained to his car. The court asked the defendant to compensate the plaintiff with 54,250 SR (14,500 USD) and dismissed any further claims arising from the incident.

• **Analysis**

The court looked at the traffic report that showed that the defendant was liable for failing to warn drivers, the plaintiff was also found to be contributory negligent by 50%. Even though the plaintiff presented estimates of the medical expenses of the injury that his son sustained, the plaintiff failed to present any evidence as to how much he paid for his son’s medical expenses. The judge also dismissed the mental anguish claim due to the plaintiff failing to present adequate evidence.

In this case, the judge used an expert report estimating the value of the plaintiff’s car before the accident. The value of the plaintiff’s car before the accident was 108,500 SR (29,000 USD); however, because the plaintiff bears half of the fault, he received 54,250 SR (14,500 USD).
As mentioned previously, claims concerning mental anguish or emotional distress are not ordinarily compensated monetarily. Rather, emotional distress by certain conduct is remedied with punishing the defendant.\textsuperscript{306}

\textbf{B. Section Two: Personal Injuries Cases from Some U.S. Courts}

\textit{1. First case: Selders v. Armentrout}

\begin{itemize}
  \item \textbf{Facts:}

  The plaintiffs were involved in a car accident in which three of the plaintiff’s children were wrongfully killed. The parents sued the defendants to recover damages for wrongful deaths of their children.\textsuperscript{307}

  \item \textbf{Rule of Law}

  “The measure of damages recoverable by a parent for wrongful death of a minor child includes the loss of society, comfort, and companionship of the child, as well as any pecuniary losses”\textsuperscript{308}

  \item \textbf{The judgment:}

  At the trial court, the defendant was found negligent and a verdict was returned against them for the exact amount of medical and funeral expenses. The court instructed the jury the “damages should be the monetary value of the contribution and service which the parents could reasonably have expected to receive from the children less the reasonable cost to the parents of supporting their children.” The defendants were found liable due to their negligence based on the jury verdict. The plaintiffs appealed and contested this jury instruction, saying that the instruction should be extended to include

\end{itemize}

\textsuperscript{306} Case N. 687, Ap, 2009  
\textsuperscript{307} Selders v. Armentrout, 207 N.W.2d 686 (1973)  
\textsuperscript{308} Schwartz et al. torts: cases and materials, 2016
the loss of society, comfort, and companionship of the child, as well as any pecuniary losses.

- Analysis:

  The monetary losses awarded at the trial court level were for the medical and funeral expenses. The plaintiffs were not satisfied and appealed to recover subsequent damages resulting from the death of their children, such as the loss of society, comfort, and companionship of their children. The defendant rejected this, saying that what the plaintiff requested was beyond the pecuniary losses that the measure of damages is limited to. The plaintiff responded saying that the loss of the society, comfort, and companionship of the children are compensable elements in the wrongful death of children.

  The Supreme Court of Nebraska concurred with the plaintiffs that pecuniary expenses, along with the loss of the society, comfort, and companionship of the child are elements of wrongful death damages. In this case, the law allows for such compensation in the loss of a wrongfully killed child on the theory that the death of the child prevents any future monetary contribution to he might have given parents. In the dissent by Associate Justice White, he raised an argument that emotional, conjectural, and speculative sentimental values cannot be translated into monetary compensation.

- **Facts:**

  The plaintiff's infant daughter was severely burned due to a heater that had been defectively manufactured by the retailer Sears. As a result, the plaintiff's daughter suffered from multiple permanent injuries. Thereafter, the plaintiff sued the manufacturer.  

- **Rule of Law**

  “In determining whether a damage award is excessive in a personal injury case, the court must individually examine each of the five elements of damages: (1) past physical and mental pain; (2) future physical and mental pain; (3) future medical expenses; (4) loss of earning capacity; and (5) permanent disability and disfigurement.”  

- **The judgment**

  The jury returned a $2,000,000 judgment. Thereupon, the defendants contested that the damages awarded were excessive and sought remittitur to reduce the damages awarded, which was eventually rejected.

**Analysis**

In order to determine whether the damages awarded were excessive, the court applied the “maximum recovery rule” based on each element of damages and proceeded to individually examine each of the elements of personal injuries damages. In this case, the five elements of damages arose from multiple injuries. After the five elements of damages were examined, it was determined that the award was not legally excessive.

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310 See Schwartz, at 160
3. Third Case: *Harris v. Jones*

- **Facts:**
  
  The plaintiff, Harris, was a lifelong stutterer who worked at the General Motors plant. The defendant, Jones, ridiculed the plaintiff’s speech impediment, causing him acute nervousness and thus increasing in his stuttering. Therefore, the plaintiff sued the defendant for intentional infliction of emotional distress.\(^{311}\)

- **Rule of law:**

  “*In order to recover damages resulting from the intentional infliction of emotional distress, a plaintiff must show that the distress suffered by him was severe.*”\(^{312}\)

- **The judgment:**

  At the trial court, judgment was found in favor of the plaintiff by the jury. However, it was thereafter overturned on appeal and favor was given to the defendant. As a result, the plaintiff appealed to the Court of Appeals which affirmed the judgment of the lower court.

- **Analysis**

  According to this case, the intentional infliction of emotional distress (IIED) is a valid tort action independently. This case established certain elements of IIED that the plaintiff is required to prove, these elements are: (1) the conduct must be intentional or reckless; (2) the conduct must be extreme and outrageous; (3) there must be a causal connection between the wrongful act and the emotional distress; (4) the emotional

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\(^{311}\) *Harris v. Jones*, 380 A.2d 611 (1977)

\(^{312}\) See Schwartz, at 26
distress must be severe. In this case, although the defendant’s conduct was intentional, the plaintiff failed to prove the fourth element that the emotional distress was severe.

4. **Fourth Case: Taylor v. Vallelunga**

   - **Facts**

     The plaintiff, Taylor, suffered mental anguish when she saw her father beaten by the defendant. The plaintiff sued the defendant to recover damages of intentional infliction of emotional distress. However, the defendant contests that he was not aware of her presence.

   - **Rule of Law**

     In order to recover damages for the mental suffering resulting from the injury of a third party, the plaintiff must show that the defendant had the “intention to cause severe emotional distress exists when the act is done for the purpose of causing the distress or with knowledge on the part of the actor that severe emotional distress is substantially certain to be produced by his conduct.”

   - **The judgment**

     The trial court dismissed her action to recover damages for the mental distress resulting from witnessing her father being beaten by the defendant. The plaintiff appealed and the Court of Appeals affirmed the judgment of the trial court.

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313 Restatement (second) of torts, section 46.
• Analysis

One can recover for emotional distress of inflicting injury to his parents. To recover for emotional distress resulting from witnessing an injury of another, the plaintiff must prove the defendant intended to cause emotional distress to her. In this case, the plaintiff lost her cause of action because she failed to present evidence that the defendant intended to inflict emotional distress upon her or even knew that she had witnessed the beating of her father.

5. Fifth Case: Daley v. LaCroix

• Facts:

While driving his car, the defendant careened off the road and crashed into a utility pole that resulted in an electrical explosion that damaged the plaintiff’s house. Beside damages to the plaintiff’s house, she sued the defendant for emotional distress although there was no physical impact on her.\(^{315}\)

• Rule of law

“Whenever a definite and objective physical injury is produced as a result of emotional distress proximately caused by a tortfeasor’s negligence conduct, the injured party may recover damages for such physical consequences to himself notwithstanding the absence of any physical impact upon him at the time of the emotional shock.”\(^{316}\)

• The judgment

The trial court directed a verdict for the defendant and was affirmed at the Court of Appeals after the plaintiff appealed. The Supreme Court reversed and remanded for a new trial based on the new rule presented.

\(^{315}\) Daley v. LaCroix, 179 N.W.2d 390 (1970)

\(^{316}\) See Schwarts, at 143
• **Analysis**

The trial court ruled in the favor of the defendant on the grounds that there was no physical impact sustained by the plaintiff. The issue here before court is whether one can recover for emotional distress in the absence of physical impact. The Supreme Court in this case rejected that physical impact is a requirement for emotional distress. In this case, the jury found that there was a causal relationship between the fright and subsequent nervous condition of the plaintiff and the tortious conduct by the defendant.

6. **Sixth Case: Thing v. La Chusa**

• **Facts:**

In this case, the plaintiff’s son was hit by a car driven by the defendant. Due to the accident, the son was injured. His mother was informed by her daughter of the accident and she ran to the scene. The plaintiff saw her son lying down, bloody. She truly thought her son was dead. Therefore, she sued the defendant for the emotional distress resulting from shock.³¹⁷

• **Rule of law**

“One may recover emotional distress damages for an injury to a relative only if he observes the injury-producing event.”³¹⁸

• **Judgments**

The trial court granted the defendant’s motion for summary judgment. Upon appeal of the mother, the Court of Appeal reversed the decision. The Supreme Court granted review of the case and reversed the judgment of the Court of Appeal and found for the defendant.

³¹⁸ *Id*
• Analysis

The issue at hand in this case was whether one can recover for emotional distress damages for an injury to a relative that they did not personally witness. The trial court denied recovery for negligent infliction of emotional distress because the plaintiff did not actually witness the accident. The Supreme Court further stated that in the absence of physical injury or impact to the plaintiff personally, damages for emotional distress would be recoverable only if the plaintiff:

1. Was closely related to the injury victim, by blood or marriage

2. Was present at the scene of the injury-producing event at the time it occurs and was then aware that it was causing injury to the victim and,

3. As a result suffered emotional distress beyond that which would be anticipated in a disinterested witness.\(^{319}\)

In this case, the plaintiff did not recover for emotional distress damages because she was not at the scene of the accident. The court limited liability for emotional distress to the three conditions that must be met.

\(^{319}\) Id
C. Section three: Compare and Contrast

After presenting personal injuries cases from the two different legal systems, Saudi Arabia and the U.S., there are some noticeable differences came up in how they treat these cases. These differences are as follows:

1. Legal system

The legal system of U.S. is based on “common law”. In tort cases, many personal injuries laws came from common law which is law made by judges. At trial, judges in the common law system act more an umpire than a manager whereas attorneys control the production of proof.\(^{320}\) By contrast, in Saudi legal system, personal injuries law came from Sharia law, which is Quran and Sunnah that are called the main sources of Saudi legal system. Judges in this system are more like managers and investigators searching for the truth than an umpire.

2. The role of judges

In the U.S. legal system, the decision of a judge after hearing and deciding a case becomes binding precedent on all other courts which is eventually becomes common law.\(^{321}\) However, in Saudi courts, when a judge applies Sharia principles coming from the main sources Quran and Sunnah, it is nonetheless based on his interpretation and understanding of Sharia texts. Thus, no judge is bound by another judge’s decision even if cases have like fact patterns.

\(^{320}\) John, An introduction to the American legal system, 2007

\(^{321}\) Id, p86.
3. **The Source of Personal Injuries Damages**

In Saudi Arabia, work compensation is the only source or personal injuries laws that passed by legislation. On the other hand, in the U.S., common law and workers’ compensation are the two sources of personal injuries laws. In addition, in U.S. common law the task of a plaintiff and his lawyer is to find precedent cases while in the Saudi legal system the goal is to look up Sharia principles or texts governing personal injuries cases.  

4. **Finding the law**

Common law in the U.S. legal system related to tort cases are collected into “Restatements of tort” which is a guidebook that explains what the rules are for tort cases and helps judges draw guidance in personal injuries issues. Such a thing does not exist in Saudi Arabia. Instead, each judge relies on his own diligence in extracting rules from Sharia principles that may fit with the case before him. However, this method shows huge gaps in solving personal injuries cases. Therefore, it is the time to establish “tort reform” by collecting all personal injuries from Sharia principles so that will help a judge to follow as guidance for tort cases.

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322 Id, p88.
5. **The source of law**

In the U.S. legal system the sources of law are as follows:

1. Constitution
2. Statutes
3. Judicial precedent
4. Custom
5. Convention

Whereas the sources of law in Saudi Arabia are:

1. Quran (the holy book)
2. The Sunnah (the Prophet teachings)
3. Ijma
4. Qiyas
5. Statutes
6. Custom

6. **Jury opinion**

In Saudi courts, there is no role of the jury. However, experts play an important role in estimating bodily injuries resulting from any accident. Those experts work at courts assisting judges by giving estimates in bodily injuries cases. In contrast, in U.S. courts, juries play the role of weighing the evidence presented to them and finding the verdict.
7. Measuring wrongful death damages:

In Saudi courts, the only exact compensation that the family of decedent will receive is the specific monetary compensation by Sharia for wrongful death as an application of Sunnah. According to Sharia law, the “Diyah” for a life is a hundred camels that has been translated by Saudi judicial review into 300,000 SR (80,000 USD). On the other hand, the elements of wrongful death damages statutes in some U.S. states include medical and funeral expenses, loss of the society, comfort, and companionship.

8. Intentional Infliction of Emotional Distress Cases

In U.S. common law, the majority of jurisdictions recognize emotional distress as an independent, valid tort action that can be compensable if the plaintiff had met its four elements. According to the Restatement (Second) of Torts, the elements of intentional infliction of emotional distress are: (1) the conduct must be intentional or reckless; (2) the conduct must be extreme and outrageous; (3) there must be a causal connection between the wrongful act and the emotional distress; (4) the emotional distress must be severe. However, in all Saudi courts, this kind of tort action are not recognized as actionable on the ground that it is hard to estimate its value it monetarily. However, when this kind of tort leads to monetary loss or physical impacts, it will be actionable.
9. Cases to Recover Damages for witnessing an injury of a parent

Most of U.S. courts deem damages for mental distress resulted from the infliction injury to a third party a cause of action in torts. However, the plaintiff must show either that the defendant intended to cause emotional distress to her or he knew that his conduct would produce severe emotional distress with substantial certainty. In contrast, this cause of action is not available in all Saudi courts on the grounds that the injury was not upon victim.

10. Emotional distress in the absence of Physical Injury:

In some U.S. states, one can recover for emotional distress despite the absence of any physical impact upon a plaintiff at the time of the emotional shock. On contrast, Saudi courts do not compensate such cases even if the emotional distress was accompanied with physical impact. The court will only compensate the emotional distress that leads to monetary losses, otherwise it will be rejected. The reasoning behind this is the difficulty of measuring emotional distress monetarily as well as the difficulty in proving it. Moreover, if such cause of action allowed, courts will be flooded with these cases, which in turn has the effect of slowing litigations.
11. Seeking Emotional Distress Damages from an Injury to Another

Both Saudi courts and U.S. courts are similar in solving this kind of tort action. Although there is no written law or statute in the Saudi tort system, some judges recognize emotional distress resulting from the injury of a relative. Both legal systems have limited this cause of action to three conditions. The conditions for a plaintiff to recover for emotional distress caused by the injury of another are as follows;

1. Was closely related to the injury victim, by blood or marriage,
2. Was present at the scene of the injury-producing event at the time it occurs, and as then aware that it was causing injury to the victim and,
3. As a result suffered emotional distress beyond that which would be anticipated in a disinterested witness.\textsuperscript{323}

\textsuperscript{323} Thing v. La Chusa, 771 P.2d 814 (1989)
Conclusion

This chapter was divided into three sections. In the first section, five compensation cases were presented along with the way that Saudi courts handle such cases. In personal injuries cases, Saudi judges make sure that the three elements of compensation—wrongdoing, harm, and causation—are met so that they move to the second step, which is remedy.

Saudi judges have followed the guidance provided by the Prophet Muhammad as to the specified monetary for each member of the body when compensating victims. However, when an injured member of the body has not been estimated monetarily by Sharia, it is the discretion of judges, along with the help of experts, to estimate its value. In the absence of a restatement of tort law to determine the elements of personal damages, judges reimburse an injured party with the actual and current damages he has suffered. That means consequential damages resulting from an injury may not be compensated on the ground that they are based on possibility and are unavailable in Sharia.

The second section presented six compensation cases from some U.S. courts. Victims in these cases claimed different causes of action. U.S. common law has determined all types of compensatory damages along with the manners for recovering these damages in a way to make a victim whole.

Similarities and differences arise when presenting compensation cases from different legal systems. These differences start from the very sources of law within the legal systems. Despite that, there are some similarities between these legal systems in terms of compensating damages.
VII. Chapter Seven: Review of Compensatory Damages in Personal Injuries and Suggested Proposals

○ Introduction:

An injured party can be exposed to several damages at the moment of his injury. These damages may cause him both monetary and non-monetary losses. Further, these damages may occur at the time of the incident or consequentially in the future. Monetary losses, for example, can be a result in wrongful death, bodily injuries, medical expenses, loss of wages, loss of earning capacity and benefits. On the other hand, non-monetary losses are found in pain and suffering from physical injuries of body, defamation, insults, verbal abuse, fear, and loss of companionship.

This chapter will serve as a proposed solution to assist organizing personal injuries suffered as a result of negligence in the absence of personal injuries statute. This solution is to aid Saudi judges in their knowledge of tort law and assist in estimating damages. This solution will provide the types of damages related to personal injuries cited by Sharia scholars and organization along with their due compensation. Also, it will provide the way Saudi court deal with certain types of personal injuries.

This chapter will be divided into four sections. The first section will explain the concept of personal injuries. Section two will cover the types of monetary losses. The third section will cover the types of non-monetary losses. Lastly, the fourth section will explore the responsible party for compensation. All information and data provided in this chapter will be based on Sharia law relating to the types of damages raised from personal injuries.
A. Section one: The Concept of Personal Injuries

Generally speaking, personal injuries are the damages to party by the negligence or unlawful conduct of another party. These damages can be any the injured person to sustains upon his body, emotions, property, and financials. Personal injuries are categorized as bodily injuries, emotional distress, and monetary loss.

A scholar of Sharia said that personal injuries are “Every hurt that causes a person damages in his finance, body or his emotion.” The most common types of personal injuries claims are road traffic accidents, work accidents, defective product accidents. The injured person may be entitled to monetary compensation from the other party through a settlement or judgment.

An injured person obviously can claim compensation for any injury sustained to any member of his body and medical records will serve as evidence to prove his bodily injuries. He can also be compensated for the pain and suffering he has sustained as a result of his actual physical pain.

The injured party is entitled to recover for any future damages or consequential damages when the injury temporarily prevents him from working or in case of permanent disability. There are many factors that a court will take into consideration whether the injured person will be able to work in the future.

Not all damages result from injuries, some damages are caused by the wrongful death of another. In addition, some damages can be estimated by the current injuries while others may cause consequential damages, such as medical expenses and loss of wages.

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324 See ALzohiy, p23.
B. Section One: Monetary losses

Monetary loss refers to any damage inflicted on an individual’s body or finance that results in costs or the loss of benefits that are valued monetarily. There are various types of monetary losses and these types are as follows:

1. Wrongful death

Wrongful death is one of the types of injuries that results in monetary loss. It is a claim against tortfeasor due to his negligence or recklessness. Wrongful death may arise from different situations, such as car accidents, crimes, malpractice, and product liability. According to Sharia law, Diyah is the monetary compensation that has been prescribed and specified by Sharia principles for wrongful death or any harmed member of the body.

The Holy Book, the Quran, states: “And never is it for a believer to kill a believer except by mistake. And whoever kills a believer by mistake - then the freeing of a believing slave and a compensation payment presented to the deceased's family [is required] unless they give [up their right as] charity. But if the deceased was from a people at war with you and he was a believer - then [only] the freeing of a believing slave; and if he was from a people with whom you have a treaty - then a compensation payment presented to his family and the freeing of a believing slave. And whoever does not find [one or cannot afford to buy one] - then [instead], a fast for two months consecutively, [seeking] acceptance of repentance from Allah. And Allah is ever Knowing and Wise.”

In the past, the compensation for wrongful death was 100 camels due to the family of the decedent. The prophet Muhammad—peace be upon him—wrote in his letter sent to Aomer Bin Hazm about blood-money, " it was one hundred camels for a life.” The Sunnah is considered an integral part of the primary sources of Sharia. So, this hadith helps to specify the amount of Diyah mentioned in the Quran. Therefore, camels are the method used to calculate monetary compensation for wrongful death and bodily injury.

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326 Quran, *the Holy Book*, surat al nisaa, verse 92, (4:92), SAHIH INTERNATIONAL.
In Saudi Arabia, monetary compensation for wrongful death is set at 300,000 SR (80,000 USD). Therefore, when someone mistakenly or negligently causes the death of another by any tortious acts, he will be liable for paying the set compensation of 300,000 SR to the decedent’s family regardless of any subsequent damages due to the death of the injured.

Further, the death of an injured party may bring about several subsequent losses. These losses can be the cost of medical care (which can be paid by the government in certain situations), emotional distress of decedent’s survivors, and loss of service and support. All of these losses stemming from the death of the victim are considered to have been processed under the specified monetary compensation for wrongful death by Sharia principles. Therefore, the value of 300,000 SR covers all these subsequent losses. As a result, from the perspective of scholars, adding money over the estimated compensation overrides the provisions of Sharia and is unacceptable.

2. Body injuries

Not all tortious acts result in the death of an injured. Some accidents may end up with causing body injuries to an injured and this is the predominant image. For example, traffic accidents are one type of incidents that cause personal injuries to an individual. These injuries may be serious as in cutting a member of the body or minor as in wounds and scars. Thus, Sharia has identified beforehand the monetary compensation for each member of the body pre-injury and left some body injuries to judges to estimate.

Here is the schedule of specified monetary compensation for pre-injury. This schedule serves as guidance for Saudi courts in personal injuries cases. It provides each member of the body with its value when it is damaged.

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327 Muhammed Esa, Monetary compensation resulting from car accidents in Islamic jurisprudence, (2012)
<table>
<thead>
<tr>
<th>The injured members</th>
<th>Men U.S. Currency</th>
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<td>At the judge’s</td>
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<td></td>
<td>judge’s</td>
<td>discretion</td>
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<tr>
<td>A broken tooth</td>
<td>At the</td>
<td>At the judge’s</td>
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<td></td>
<td>judge’s</td>
<td>discretion</td>
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</tbody>
</table>

At the judge’s discretion
In personal injuries cases, Saudi judges will follow this schedule along with their
discretion concerning damages that have not motioned by Sharia as they were left to the
judges to estimate and decide.\textsuperscript{328}

3. Medical expenses

Medical expenses are another subsequent loss related to personal injuries. As a
result of an accident, the injured may spend money on medical treatment. Therefore, the
injured has the right to be compensated for all costs of his treatments. According to
Sharia law, tortfeasors must compensate the injured for his treatments unless he is
forgiven by the injured.\textsuperscript{329} However, the tortfeasor may not be liable to pay the costs of
the treatment of the injured if it was paid for by the government of Saudi Arabia. For this
purpose, the costs of treatment may not be an element when assessing compensation for
personal injury and because the treatment of injured person is free in public Saudi
hospitals.\textsuperscript{330}

4. Fourth: Loss of Wages

Most car accidents result in keeping the injured employee from going to work due
to his injury. For example, if an injured sustains a broken leg and cannot return to work
for 6 months, he is entitled to six months’ worth of wages. Lost wages refers to the wages
that the injured missed because he was undergoing the treatment for or recovery of his
injury. Sharia principles regarding this damage have different points of views. For
example, the Hanafi School does not permit compensating lost wages\textsuperscript{331}.

\textsuperscript{328} Abdulaziz Ghadian, \textit{the schedule of estimated Diyah}, (2006)
\textsuperscript{329} \textit{id}, p93
\textsuperscript{330} \textit{id}, p 93.
\textsuperscript{331} \textit{id}, p 100
Other schools state that the specified monetary compensation for the bodily injury that the injured has sustained is considered covering loss of wages for the injured.\footnote{Id, p 101} Despite these differences, an injured employee is entitled to reimbursement for any day he misses as a result of his injury. This can be calculated by his monthly salary divided by 30, and multiplied by the missing days.

Further, in cases where the injury results in permanent disability, there are three Saudi systems regulating work that treat permanent disability. These systems are the Civil Service Retirement System, Military Retirement System, and Social Insurance System. These systems have pension settlements available not only when the injury occurred due to his work but also when it is not due to his work. The Civil Service Retirement System states in article 20 that an employee is entitled to a pension equivalent to 40% of his last salary when the injury is not due to his work.\footnote{Civil Service Retirement System, (1972)} For soldiers, the Military Retirement System states in article 15 that a soldier who is not able to continue work, whether or not the injury was due to his work, is entitled to receive a pension equivalent to 70% of his last salary.\footnote{Military Retirement System, (1974)} The Social Insurance System, which covers employees of all firms and self-employed persons, states in article 38 that disability pension is 2.5% of the average monthly wage during the last 2 years, which is then multiplied by the number of years employed.\footnote{Social Insurance System, Current (2000)}

All these systems address permanent disability resulting from the injury occurring outside of work. Therefore, when any person who is insured through these systems sustains injury, occurring outside his work, and this injury makes him unable to continue

\[332\] Id, p 101
\[333\] Civil Service Retirement System, (1972)
\[335\] Social Insurance System, Current (2000)
work, he is entitled to receive a pension from government. As a result, a tortfeasor is not liable to compensate him since there is a system that regulates this injury.

However, in case of temporary disability, a tortfeasor is liable for reimbursing an injured party for each day missed while he was undergoing treatment.

5. Loss of Earning Capacity and Profit

Another type of personal injury is the subsequent losses of earning capacity and benefits. Loss of earning capacity refers to when an injured party may be wholly or partly unable to make comparable earnings or carry out gainful activity as a result of the inflicted injury. Some Sharia scholars contrast with this view. They argue that Sharia does not compensate potential damages like loss of benefits because it is based on conjecture and not actual.\(^{336}\) As a result, some judges do not consider this type of damages and instead enter judgment for the set remedy. However, some Sharia scholars state that if an injured party is not able to earn his wages, the tortious is liable to compensate the injured for the loss of earning capacity until he recovers and is able to work.\(^{337}\)

Despite the differing views among Muslim scholars concerning compensation for certain elements of personal injuries, judges may rule for loss of wages, earning capacity and benefits based on the general rules of Sharia. This is because Sharia prohibits the occurrence of damage and demands compensation for damages resulting from tortious acts. As previously stated, one of the most important general rules of Sharia is "There is no injury nor return of injury."\(^{338}\)

\(^{336}\) Alkofiaf, p 38.
\(^{337}\) AL jalal, p 76.
\(^{338}\) Al zohealy, p 30
A reason for the lack of compensation for these losses could be Sharia principles have already estimated the value for each member of the human body with Diyah (monetary compensation) or at the discretion of judges. Therefore, loss of earning capacity interferes with this calculation. Furthermore, it is because the compensation sought by the injured is for damages that are potential and uncertain. Moreover, preventing compensation for such losses serves to prevent injustice where the injured attempts to prove his decreased earning capacity and through falsified documents.

However, in Saudi courts, when the injury is permanent and prevents the injured from returning to work, judges will take this into account when estimating the deficit to each injured member of the body. The current concept of Diyah is considered to already cover these types of damages even though they are not addressed separately in Sharia. Likewise, the role of judges when estimating the proportion of deficiency in the injured bodily part by the help of medical reports is also not separately discussed within Sharia. The judge studies all medical reports related to the bodily injuries and assigns the injury with the proportion and magnitude harm rendered. Yet, if the injured member of the body can be healed after treatment, there is no increase beyond the set Diyah. By way of illustration, if the injury causes a fractured leg, it will be compensated by the specified sum within Sharia law. However, if the leg cannot be healed through treatment, the compensation will be increased based on the proportion of harm.
C. Section Two: Non-Monetary Losses

Non-monetary losses are incurred during an injury that hurts one’s emotion. Non-monetary losses have no market value or monetary equivalent. This makes it difficult to remedy these damages monetarily. There are various types of monetary losses and these types are as follows:

1. Pain and suffering

Pain and suffering is the actual physical pain that occurs subsequent a physical injury.\textsuperscript{339} According to ancient Sharia scholars, cases concerning claims of pain and suffering are compensable when the pain is outrageous and associated with bodily injury. Their reasoning referred to one of the Prophet Mohamed’s companions—peace be upon him—when he ruled in favor of compensating pain and suffering. The measurement of pain and suffering is left to the judge’s discretion and is based on the severity of pain sustained by the victim.\textsuperscript{340}

2. Emotional Distress

Emotional distress is a cause of actions in torts and can take many forms. It can occur by the intentional or negligent acts of the tortfeasor. An act is intentional when the actor behaved with malice and harmful purpose. Intent can also arise from negligence when the conduct of the actor resulted from his negligence.

\textsuperscript{339} Al zohailly, p 53
\textsuperscript{340} AL jalal, p 55-56
The main source of Sharia law, the Quran, has generally discussed allowing emotional distress damages be awarded. The Quran states:

“And if you divorce them before you have touched them and you have already specified for them an obligation, then [give] half of what you specified - unless they forego the right or the one in whose hand is the marriage contract foregoes it. And to forego it is nearer to righteousness. And do not forget graciousness between you. Indeed Allah, of whatever you do, is Seeing.”

This verse indicates that a man must give half of his promised dowry to his wife in case of their divorce before consummating the marriage. The purpose of awarding the wife half of the dowry is to relieve any emotional distress she may have sustained as a result of the divorce.

Therefore, the Quran states in this verse, in an indirect way, that emotional distress is an integral part of personal damages that is compensable. Hence, there is no reason for scholars to state Sharia has not discussed emotional distress damages. This verse can be a starting point for enacting laws regulating compensation for emotional distress damages that are in compliance with the principles of Sharia. Within this statutory framework there should be elements to define the emergence of emotional distress.

There are several situations in which emotional distress can arise. According to Sharia, these situations are as follows:

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341 Quran, surat al baqara verse (237).
i. Fear

Fear can be a cause for emotional distress due to the intentional or negligent tortious conduct of an actor. A good example of that is when the wrongdoer, whether by intent or negligence, puts the injured party in a state of shock or stress. As recount previously, a story illustrating such damages occurred when the companion Omer—may Allah please with him—who was known for his intimidating appearance, ordered to see a woman. When the pregnant woman was told that Omer had requested her, she was overcome with such immense fear that her pregnancy miscarried on her way to Omer. As a result, she got compensated for the loss of her child.\textsuperscript{342} The result of this story became a principle of Sharia for compensating emotional distress when it leads to monetary losses.

ii. The Loss of a Relative

The loss of a relative can cause emotional distress to another, especially if the relative is a spouse, sibling, or child. One of the well-known rules of Sharia derived from Sunnah of the Prophet Muhammad is that “There is no injury nor return of injury.”\textsuperscript{343} Therefore, this rule indicates that physical or emotional injury can be compensable, according to Sharia scholars. Despite the absence of tort statutes, some judges rely on this rule in compensating damages when the damage is actual and current. As in the Saudi case where the judge ruled in favor of compensating the emotional distress of two parents who witnessed their three-year-old daughter fall into a reservoir. This initial event, along with her stay at the hospital in intensive care, caused shock and panic to her parents. These facts undoubtedly caused severe emotional distress to her parents and was the support for

\textsuperscript{342} See al zohaily, p 35.
\textsuperscript{343} Hadith, the Prophet teachings.
compensating their damages.\textsuperscript{344} The judge ruled for each parent to be compensated with 5,000 SR (1,334 USD).

Personal claims of this nature are valid when the following elements are met: (1) the plaintiff was closely related, by blood or marriage, to the injured victim; (2) the plaintiff was present at the time of the injury and was then aware that the relative had been injured; and, (3) the plaintiff suffered emotional distress beyond that which would be anticipated in a disinterested witness.\textsuperscript{345}

iii. Swearing and Defamation

When emotional distress results due to verbal abuse, Sharia imposes punishment for such conduct. Defamation, in the eye of Sharia, is calling somebody certain forbidden words and failing to prove it. In Sharia, this conduct falls under criminal law and has been prescribed with the specified penalty: 80 lashes, according to Quran. The Quran states: “And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient.”

Additionally, the Saudi legislature enacted law by Royal decree on March 26, 2007 to criminalize any verbal abuses or the publishing of libelous information about an individual throughout social networking sites, such as Twitter, Facebook, WhatsApp or any other kind of social network. Article 3 states, “Any person who commits defamation and infliction of damage upon others through the use of various information technology

\textsuperscript{344} Case N. 44/1, 2012
\textsuperscript{345} Thing v. La Chusa, 48 Cal. 3d 644, 257 Cal. Rptr. 865, 771 P.2d 814 (1989)
devices shall be subject to imprisonment for a period not exceeding one year and a fine not exceeding five hundred thousand riyals or to either punishment”. 346

**D. Parties Liable for Compensation**

When a tortfeasor is found to be legally responsible for harm sustained, they will be liable for the compensation to an injured person.

The Quran states: “Never should a believer kill a believer; but (If it so happens) by mistake, (Compensation is due): If one (so) kills a believer, it is ordained that he should free a believing slave, and pay compensation to the deceased’s family, unless they remit it freely.” 347

This verse indicates that the wrongdoer is the one person who is charged with paying compensation to an injured party; however, in cases where the accident occurred by the tortfeasor’s mistake, he may not bear the burden of compensation himself. Instead, Sharia scholars have said that the relatives of the tortfeasors and the government, through its ministries and institutions, are to sometimes be involved in partially or completely paying compensation.

1. **The Relatives of A Tortfeasor**

According to the Hanbali School, the wrongdoer’s relatives are those who are both closely and distantly related through lineage. 348 Relatives are to bear the burden of compensation in cases of wrongful death and bodily injury. The purpose behind joining relatives of tortfeasor to compensate the plaintiff is that the tortfeasor, in these cases, did not intend to cause damages otherwise. Relatives are not involved if the tortfeasor intended the tortious conduct.

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346 Anti-Cybercrime Law (promulgated by Royal Decree No. M/17 (March 26, 2007)
347 The Holy Book, Quaran, suart al nisa, (4:92)
348 See Awad, p 343
Further, it is to financially aid the actor in remedying the plaintiff’s harm. Sharia Scholars have limited the involvement of relatives in such cases to two conditions: first, when the accident occurred by mistake of the tortfeasor; second, when the compensation is for any kind of bodily injury.  

Relatives of the actor are not committed to prepare compensation at once. Instead, according to Sharia scholars, they have a maximum of three years to collect the due amount of compensation. This is to give the family plenty of time and to avoid putting them under pressure. Scholars have inferred evidence for the need to involve relatives in the payment of compensation from the teachings of Prophet Muhammad—peace be upon him—and the actions of his companions after him. The involvement of relatives is seen as a means of consolation and cooperating for good. The Quran states: “And cooperate in righteousness and piety, but do not cooperate in sin and aggression.”

2. Government

The Saudi government, through its financial ministry, is sometimes responsible for remitting compensation. The government bears the burden of paying compensation in three situations:

1. When the tortfeasor does not have any relatives.

2. When the actor has relatives but they could not bear the burden of compensation.

3. When the actor is unknown, the government will compensate the family of the injured.

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349 Id, p 348
350 Id, p 349
351 The Holy Book, Quran, surat Al-Maidah, verse (5:2), Sahih International.
352 See Awade, p 354
3. The Government’s Ministries and Institutions

The Saudi government plays an important role in resolving compensation cases. As mentioned above, when the relatives of the actor cannot pay compensation, the government intervenes financially from the State Treasury represented by the Saudi Arabian Ministry of Finance. Furthermore, the Saudi government, in cases of injuries that render the victim unable to work and earn money, authorizes the Ministry of Social Security to take care of those no longer able to work. Victims unable to work temporarily or permanently need only apply to receive this service. Through this service, victims receive a monthly salary that satisfies their needs.

The first article of the Social Security System states that the beneficiary of this system must be medically proven as incapable of work—permanently or temporarily—due to decreased ability by illness or disability. People may also apply if they do not have a competent family breadwinner or sufficient resources for living.\(^{353}\) Article six sets the total amount of annual pension the beneficiary can receive at 9,400 SR (2,507 USD).\(^{354}\)

For this reason, many victims resort to applying for the services provided by the government after suffering injuries that prevent them from working. As a result, judges do not consider the element of lost earning capacity as a damage required to be compensated by tortfeasors. Judges in compensation cases look at this governmental service as a means to bridge the gap in the absence of lost earning capacity as an element of damages.

\(^{354}\) Id, article 6
Conclusion

In summary, this chapter presented suggested proposals for judges in measuring compensation cases. This chapter has mentioned the two types of personal damages: monetary losses and non-monetary losses. All these damages were extracted from the principles of Sharia, mainly coming from the teachings of the prophet or the actions of his companions after his time. These suggested proposals serves as a guideline for judges in determining personal damages and to aid in measuring the amount of monetary compensation. This proposal will also assist victims in knowing their rights to compensation in the absence of torts statutes or restatements.

Monetary losses are represented in cases of wrongful death, body injuries, medical expenses, loss of wages, loss of earning capacity and benefits, and the replacement of property. Non-monetary losses consist of the pain and suffering sustained from physical injuries, defamation, insults and verbal abuse, fear, and loss of companionship.

This chapter also clarified who may be the responsible to compensate an injured party. It is well known that the actor is liable for the results of his actions. However, in Sharia law, when the accident occurs by mistake of the tortfeasor, he may get help from his relatives to help him collect the total amount of compensation. The second responsible party is the government, who is involved in the three situations previously mentioned. Further, when the injury renders the victim unable to work, the Saudi Arabian Ministry of Social Security assists those who qualify with an annual a pension.
VIII. Results, Recommendations and Conclusion.

A. Results

1. Sharia law protects the life and rights of people and exists to preserve the five basic necessities that are Deen (religion), life, intellect, lineage/honor and property.

2. The term compensation, in the eye of Sharia scholars, is replaced with the term guarantee. Whereby ancient Sharia scholars did not use the word compensation instead they used guarantee to refer to the tortfeasor’s responsibility.

3. Sharia law seeks to restore an injured party financially, physically, and emotionally.

4. According to Sharia scholars, there are two types of personal damages: material damages (tangible losses); and moral damages (emotional distress resulting from specified conducts).

5. Sharia does not compensate for the potential losses because it is based on conjecture.

6. This research holds that Sharia law allows compensating the loss of earning capacity; although, some judges do not take this into account.

7. For pain and suffering as a result of bodily injury, Sharia principles allow monetary compensation above the set specified compensation for bodily injuries to heal envy inside the injured.

8. Emotional distress claims in the absence of bodily injury are not compensable unless the distress leads to monetary loss.
9. Sharia law addresses emotional distress claims resulting from defamatory statements by punishing the victim with 80 lashes.

10. Saudi legislatures have enacted a law to punish any verbal words that result in damaging someone’s emotions by imprisonment, fine, or both.

11. The principles of Sharia allow compensating parents who witness the accident of their kids.

12. In Sharia law, the wrongdoer is not the only one liable for compensating the injured in tort cases. His close relatives are also involved in compensating the injured.

13. The government is involved in certain situations to compensate the injured in cases of wrongful death.

14. “Diyah” is the Sharia term that refers to specified monetary compensation for bodily injuries. It is used to refer to punishments and monetary compensation at the same time.

15. Each member of the body that may be injured has a set monetary compensation.

16. A judge has the power to estimate some members of the body that were not set by Sharia during the Prophet Muhammad’s time—peace be upon him.

17. Sharia law treats all classes of society equally in monetary compensation for bodily injuries. There is no difference between the rich and the poor, small and large, nor the king and the server.
B. Recommendations

- There is an urgent need to enact complete law to regulate personal damages cases and its compensation.

- Sharia principles related to the matters of personal damages should be codified and formalized in a legal framework that would help judges, lawyers, and victims to better predict judgments.

- All courts’ decisions related to personal injuries compensations should be collected and bind judges when addressing cases with like fact patterns.

- A call for all legal researchers, from judges to lawyers, to work side by side with the legislature to address compensation cases.

- Educating injured parties about their right to compensation through courses offered and organized by courts at the hands of judges who are competent and specialized in personal injuries cases.

- Compensation cases should be quickened by facilitating the procedures to appoint specialized judges on the matters of compensation.

- Adding courses in schools, universities, and on television that aim to raise legal awareness in the society.

- The need to enforce mandatory insurance on car drivers as car accidents are the most common source of the personal damages in Saudi Arabia.

- The courts should format a committee to examine the seriousness of the compensation for some personal injuries, such as emotional distress, to ease the heavy work load on judges and to save their time.

- Judicial precedents should be set to bind courts in regards to compensation cases.
Conclusion

The main goal of Sharia is to ensure a system that protects the interests of all people. So, whenever a matter arises that concerns the public’s interest, Sharia will cover it. The five essential principles that Sharia seeks to protect are: Deen (religion), life, intellect, lineage/honor and property. The current state of the Saudi legal system in tort litigations is not adequately satisfying these five principles. The courts do not universally recognize certain critical damages such as loss of wages, loss of earning capacity, and emotional distress. This comes from the misunderstanding and misapplication of the sources of Sharia: the Quran and the Sunnah. As discussed, these sources clearly depict the use and approval of monetary compensation in cases of these moral and emotional harms. By depriving the Saudi citizen of his right to compensation, the court is failing to meet comply with the Sharia principles of honor, life, and property.

The courts are also inconsistent as to the application of their legal principles between cases of like facts. This causes distrust of the legal system among the people and infringes on the basic concept that Sharia treats all its people equally. Between the inconsistency of the courts and the long trial periods, potentially lasting up to several years, citizens often forego their right to compensation. Judges are known to encourage plaintiffs to forego their right and to forgive the wrongdoer as requested by Allah. However, asking one to forego their legally and religiously given right to compensation is infringing on one of the principles that Sharia strives to protect: Deen. A person who has been wronged has the option to forgive the tortfeasor or pursue compensation. While Allah requests that people consider forgiving in this life so that they may be rewarded in the next, plaintiffs have the choice as to how they will remedy the harm done to them.
The goal of this dissertation was to identify the missing damages within the Saudi tort law and the way in which an injured party can achieve his right to compensation. Having done so, recommendations have been drafted as proposals for potential tort law reform in Saudi Arabia. These recommendations are intended to aid all parties involved in the legal system: plaintiff, defendants, judges, lawyers, and legislatures. By educating the Saudi people about their right to compensation through innovative classes and programming the country can work to remove the list of obstacles that face victims in being properly compensated. Using existing legal framework, like that of U.S. common law, and building a system that is in compliance with Sharia law, Saudi Arabia can address the criticisms facing its court system, such as inconsistency, lengthy trials, and inadequate compensation in comparison to a victims harm. The use of legal precedent in Saudi courts would be novel but in practice would work as an expansion of Ijma (consensus) and Qiyas (analogical reasoning).

These recommendations are not without their challenges. Legislative reform would be lengthy, requiring research and time that could be costly. There is also still the legitimate concern as how to properly estimate emotional damages that are considered conjecture and intangible. Concerns such as these are valid and should continue to be addressed by legal scholars in their discussions going forward. However, with the aid of existing model legal systems and properly applied principles of Sharia, the potential challenges of such an endeavor would be met with great reward for all involved.
The changes proposed are not intended to replace or overhaul existing Sharia law. Rather, they are intended to supplement and expand Sharia to injuries not yet fully considered as well as clearly identifying compensable personal damages and their elements. The courts need not worry that all non-monetary claims will suddenly change and flood the courts. The basic principles of Tazier still stand and are applied as mandatory apologies or physical punishments in certain cases of emotional distress. A purpose of these proposals is to ease the task of judges in estimating damages and their participation in preserving the rights of individuals.
Bibliography:

- **Saudi Laws**
  - Constitution of the Kingdom of Saudi Arabia
  - Saudi Judicial System, 2008
  - Council of Ministers system, 1995
  - Council of Shura System, 1993
  - Anti-Cybercrime Law, 2007
  - The Social Security System, 2006
  - Civil Service Retirement System, 1972
  - Military Retirement System, 1974
  - Social Insurance System, 2000

- **Arabic Cases**
  - Journal of Justice Judgments, 31/171, 1426, 2005
  - Judicial Precedent, 15402, Collection of Judicial Judgments, 2013
  - Judicial Precedent, 311666, Collection of Judicial Judgments, 2013
  - Judicial Precedent, 3257689, Collection of Judicial Judgments, 2013

- **American Cases**


• *Thing v. La Chusa*, 771 P.2d 814 (Cal. 1989).

  ▪ **Arabic References**

• *The Quran, English Meaning and Notes*, Saheeh International, Dar Qiraat, 2010

• Zahra, *The History of the Schools of Islamic Thought*, Dar al-Fiqr al- Arabi, 1946

• Alwan, *Islamic Law and Jurisprudence and Sources*, 1404

• Al Sead, *Reading the Legitimacy of the Statute of the Rule in Saudi Arabia*, 2011

• Alyobi, *Purposes of Islamic law and its Relationship to the Evidence of Legality*, 1989

• Ibrahim, *Introduction to Islamic Culture*, 2007


• Mohammed, *Compensation for Moral Damage*, 2014


• Adnan, *Searchlight of Mask About the Toughen of Persuasion*, 2000

• Sanhouri, *Mediator to explain civil law*, 1946

• Mahmassani, *General Theories of Obligations and Contracts of Islamic*, 1948


• Alzarga, *Explaining jurisprudential rules*, 1357

• Al-Najar, *Moral Damage*, 1994

• Alkofaif, *Indemnity in Islamic Jurisprudence*, 2000

• Vaueze. *The Theory of Guarantee*
• Talbi, *Tort Reform in Saudi Arabia: Obstacles and Solutions*, 2015

• Al-Jalal, *Monetary Compensation for Emotional Distress Resulting From Personal Injuries*

• Adries, *Diyah Between Punishment and Compensation*, 1986

• Esa, *Monetary Compensation Resulting From Car Accidents in Islamic Jurisprudence*, 2012

  ▪ **English References**

• Scheb, *An Introduction to the American Legal System*, 2007

• Restatement (Third) of Torts: Liability for Physical and Emotional Harm & 46, 2012

• Restatement Second of Torts & 314A

• Okon, *The Sources and Schools of Islamic Jurisprudence*, 2012

• Tang, *Comparative Analysis of Certain Criminal Procedure Topics In Islamic, Asian and Common Law System.*

• Wallis, *The Various Types of Sunnah and Role in Islamic Law.*


• Estimo, *Saudi Arabia 2nd in ME in Accident Fatalities*, ARAB NEWS, Oct. 29, 2015


• Standler, *Elements of Torts in the USA*, 2011


• Schwartz et al., *Torts: Cases and Materials*, 2016