

Evolution of the Concept of Punitive Damages in Takaful Insurance in the Kingdom of Saudi Arabia: Lessons Learned from British Common Law

Dr. Abdullah Mohammed Barakat

Law Department, Shaqra University,
Shaqra City, Kingdom of Saudi Arabia
Email: abarakat@su.edu.sa

Abstract:

The concept of punitive damages is evolving in the legal system of the Kingdom of Saudi Arabia (KSA) along with the insurance industry (Islamic insurance, known as takaful). The meaning of punitive damages is a kind of remedy where the party has endured irreparable damages, occurred because of a breach of duty of care by the defendant. The Saudi laws and courts have developed a good deal of jurisprudence on how these punitive damages, in general, are ascertained by the courts. In takaful insurance, the objective of punitive damages is to provide the insured with a remedy beyond insurance compensation in the cases of reckless breach of duty of care. There is a difference of opinion on including punitive damages, a remedy where compensation is not adequate, in the scope of takaful. However, the idea of including punitive damages under the operation of takaful is evolving and this may benefit the takaful insurance framework in the KSA. This paper develops an argument that the concept of punitive damages has been accepted in medical practice under the Saudi legal system and has not yet been recognized in the scope of Saudi takaful insurance laws. Using a doctrinal research method complemented with an analytical and comparative approach, this study answers the question of how the legal system in the KSA is evolving toward adopting the British Common Law standards of punitive damages and applying them to Saudi takaful laws. This paper contributes to the evolution of the takaful industry in the KSA by applying punitive damages on abuseful takaful companies as a remedy in the takaful framework.

Keywords: punitive damages, takaful, insurance, Islamic, law, Saudi.

تطور مفهوم الأضرار التأديبية على شركات التأمين التكافلية في المملكة العربية السعودية: دروس مستفادة من القانون العام البريطاني

ملخص

في المملكة العربية السعودية، مفهوم الأضرار التأديبية متطور في النظام القانوني وأيضاً الصناعة التأمينية (التأمين الإسلامي، المعروف بالتكافلي). الأضرار التأديبية هو نوع من العلاج للأضرار التي لا يمكن إصلاحها والتي قد تحدث بسبب إخلال المدعى عليه بمبدأ الرعاية الواجبة. القانون والمحاكم السعودية طورت مفهوم الأضرار التأديبية وكيفية استخدامها في المحاكم. في التأمين التكافلي، الهدف من الأضرار التأديبية هو وسيلة علاجية إضافية للمؤمن له يتجاوز تعويضات التأمين في الحالات التي مخالفت مبدأ الرعاية والواجبة. هناك اختلاف في الرأي حول مدى إدخال الأضرار التأديبية في نطاق التكافل. ولكن، فإن فكرة إدخال الأضرار التأديبية ضمن العمليات التكافلية هي في مرحلة التطور. هذه الدراسة تتعمق مفهوم الأضرار التأديبية في الممارسة الطبية ومدى قبولها في القانون السعودي إلا أنه لم يتم تطبيقها في نطاق القوانين التكافلية. باستخدام أساليب البحث التحليلي والمقارن، هذه الدراسة تجيب على سؤال مفاده كيفية تطور النظام القانوني في المملكة العربية السعودية نحو تبني معايير الأضرار التأديبية في القانون العام البريطاني وتطبيقها على القوانين التكافلية السعودية. هذه الدراسة أيضاً ستساهم في تطور الصناعة التكافلية في المملكة العربية السعودية من خلال جعل الأضرار التأديبية على شركات التأمين التكافلي كعلاج في أنظمة التأمين التكافلي.

الكلمات المفتاحية: الأضرار التأديبية، تكافل، تأمين، إسلامي، قانون، سعودي.

**Evolution of the Concept of Punitive Damages in Takaful Insurance in the
Kingdom of Saudi Arabia: Lessons Learned from British Common Law
Dr. Abdullah Mohammed Barakat**

مجلة علمية محكمة

المجلة القانونية (مجلة متخصصة في الدراسات والبحوث القانونية)

**Evolution of the Concept of Punitive Damages in Takaful
Insurance in the Kingdom of Saudi Arabia: Lessons Learned
from British Common Law**

Dr. Abdullah Mohammed Barakat

1. Introduction

When compensatory damages fail to compensate, punitive damages are assessed. This legal remedy offers appropriate compensation for harm and protects policyholders from abusive insurance companies.¹ Punitive damages cover overlooked tort injuries. This legislative mechanism relaxes the criminal justice system by providing an alternative remedy for hard-to-find law violations.² Punitive damages uphold justice and correct misbehaviour that may go unpunished. As the doctrine of punitive damages is practiced in the KSA, it is imperative to develop a theoretical framework for the guidance of policymaking and the interpretation of law. Therefore, through systematic analysis of what the law is and what it should be about punitive damages, the paper finds what the law is on punitive damages in the KSA and how to further improve it. The legal system in Saudi Arabia applies Islamic law (Shariah law). Punitive damages are therefore an accessible legal remedy in Saudi Arabia for civil proceedings in the form of compensation. The amount of compensation in civil disputes is restricted to the plaintiff's real losses. Hence, plaintiffs can receive compensation for the actual losses they have suffered because of the defendant's deeds or omissions. It is noteworthy, though, that Saudi Arabia is constantly updating its legal

¹ James Goudkamp, and Eleni Katsampouka, 'Punitive Damages and the Place of Punishment in Private Law' (2021) 84 (6) *The Modern Law Review* 1257-1293; Wang Chuxuan, 'Study on Punitive Damages in Environmental Torts' (2023) 5 (12) *The Frontiers of Society, Science and Technology* 20-26.

² Xingmei Zhang, and Yu Wang, 'Punitive Damages in Consumer Public Interest Litigation in China: An Empirical Study' (2023) 10 (1) *Humanities and Social Sciences Communications* 1-14.

framework to bring it up to par with world norms. As a result, it is feasible that Saudi Arabia's legislation governing punitive damages will alter in the future. Introducing punitive damages in takaful insurance necessitates a meticulous analysis that aligns with Islamic finance principles, guaranteeing compliance with Sharia law and ethical considerations to uphold coherence within the legal system and avoid clashes with the fundamental goals of mutual support and unity.

The analysis of Saudi insurance laws and related rules is important because it confirms that Islamic Sharia is the state's constitution. As a result, logically, all rules applied, especially in the case of insurance law, must adhere to Islamic Sharia teaching, and any law or regulation that violates Sharia principles should be null and void and, in theory, have no force or effect.³ Insurance laws and rules in Saudi Arabia are issued and regulated by the Saudi Central Bank (previously known as SAMA).⁴ Therefore, the question is: To what extent is Saudi Arabia's insurance legal system effective vis-à-vis English tort law in the matter of punitive damages?

Takaful insurance functions in Saudi Arabia under the legal framework provided by Islamic (Sharia) law. The Saudi Central Bank (SAMA) oversees the regulatory framework for takaful insurance and assures adherence to Sharia standards.⁵ The Saudi Arabian concept of insurance (Takaful) is that of conventional insurance from the perspective of the application's logic. Instead of reflecting the idea of conventional insurance based on a clear financial reimbursement contract, the *Law on Supervision of Cooperative Insurance Companies*, the *Rules Attributable to the Council of Cooperative Health Insurance*, and their implementation regulations reflect the idea of conventional

³ *Basic Law of Governance 1992* (Kingdom of Saudi Arabia by Royal Order No. A/90), art 1; *Law on Supervision of Cooperative Insurance Companies 2003* (Kingdom of Saudi Arabia by Royal Decree M/32), art 1.

⁴ Saudi Central Bank (SAMA), *Insurance* (2023) SAMA <<https://www.sama.gov.sa/en-US/FAQs/Pages/InsuranceFAQs.aspx>>.

⁵ Ibid.

**Evolution of the Concept of Punitive Damages in Takaful Insurance in the
Kingdom of Saudi Arabia: Lessons Learned from British Common Law
Dr. Abdullah Mohammed Barakat**

مجلة علمية محكمة

المجلة القانونية (مجلة متخصصة في الدراسات والبحوث القانونية)

insurance (*muawadah*).⁶ All deals between a business and an insured person is a financial reimbursement contract with a *gharar* that nullifies the contract.⁷ The term *gharar* may be taken as ‘trading risk’.⁸ Because of the potential for the relationship between the insurance company and the total insured to qualify as a fee-based agency for the management and regulation of insurance and the wage's dishonesty (*gharar*), the fee-based agency contract is void. On the other hand, the insurance company's status as a joint trader (*mudarib*), which makes each policyholder an owner of the capital (*rabuallmal*), while simultaneously being an absolute trading point, is relevant to the investing of money.⁹

Because the contract period is only one year, this is still a time-constrained situation. As a result, I can attest that, under Islamic *mudarabah* rules, this invented application is invalid for two reasons: first, the amount of capital was unknown, and second, the insurance company would take a portion of the surplus, which it is not authorized to do. The allocation of the surplus does not match what ought to be an Islamic insurance concept. In the case of the Council of Cooperative Health Insurance, the shareholders and the Cooperative Health Insurance Council assert an illegal right that involves depriving policyholders of their rights. Insurance companies receive a portion of the surplus, which is not income

⁶ Fahad Albejaidi, ‘Emerging Role of Cooperative Health Insurance in Achieving Health System Goals under Saudi Vision-2030’ (2018) 8 (2) *Journal of Biology, Agriculture and Healthcare* 1-8.

⁷ Fatma Maraiki, et al., ‘Methodological Approaches to Cost-Effectiveness Analysis in Saudi Arabia: What Can We Learn? A Systematic Review’ (2022) 7 (1) *Sage Journals*.

⁸ Mahmoud El-Gamal, ‘An Economic Explication of the Prohibition of Gharar in Classical Islamic Jurisprudence’ (2001) 8 (2) *Islamic Economic Studies* 29-55.

⁹ Amirul Afif Muhamat, et al., ‘Development of Social Cost and Benefit Analysis (SCBA) in the Maqāṣid Shariah Framework: Narratives on the Use of Drones for Takaful Operators’ (2021) 14 (8) *Journal of Risk and Financial Management* 387.

generated by the insurance company.¹⁰ The presence of *gharar* in the investment funds violates Islamic Sharia law since it forbids interaction with corporations. An Islamic finance corporation must adhere to Islamic law, and all transactions—including those involving investments and assets—should be regarded as lawful (*halal*) financial goods. In Saudi Arabia, Article 61 of the *Implementing Regulations* affirms that all enterprises are permitted to invest in things that constitute incentive-based investment activities, including foreign and government bonds, investment funds denominated in Saudi riyals, foreign currency, etc.¹¹ The legal framework of takaful insurance strives to foster ethical conduct, impartiality, and collaborative engagement. Takaful insurance contracts are designed to conform to Sharia principles, with a focus on promoting transparency and social accountability. Saudi Arabia's dedication to promoting a strong Islamic finance industry is evident in the changing legal and regulatory environment. This framework supports the concepts of takaful insurance and the wider principles of Islamic law.

In Islamic philosophy, cooperative insurance is legitimate, but that does not automatically entail that insurance companies' applications are legitimate. The existence of an Islamic Sharia committee within insurance organizations does not imply the legality of the contracts, financial dealings, or other activities

¹⁰ Usama Tahir, and Abdul Rashid, 'Evaluation of Contemporary Takaful Practices from the Perspective of Maqasid Al-Shariah' (2021) 11 (2) *Journal of Islamic Business and Management* 1-8; Ssonko Muhammedi, Mohammadtahir Cheumar, Yusuf Haji-Othman, 'Emergency of Takaful, An Islamic Insurance Model, as an Alternative to Conventional Insurance in Uganda' (2023) 1 (1) *International Journal of Contemporary Issues* 35, 35-36.

¹¹ Mohammed Khaled Al-Hanawi, and Gowokani Chijere Chirwa, 'Economic Analysis of Inequality in Preventive Health Check-Ups Uptake in Saudi Arabia' (2021) 9 *Frontiers in Public Health* <[https://www.frontiersin.org/articles/10.3389/fpubh.2021.745356/full#:~:text=Results%3A%20The%20results%20reveal%20that,0.0831%3B%20P%20%3C%200.001](https://www.frontiersin.org/articles/10.3389/fpubh.2021.745356/full#:~:text=Results%3A%20The%20results%20reveal%20that,0.0831%3B%20P%20%3C%200.001>)> accessed 6 December 2023; *Implementing Rules for the Law on Supervision of Cooperative Insurance Companies 2004* (Kingdom of Saudi Arabia by Ministerial Order No. 1/596), art 61.

**Evolution of the Concept of Punitive Damages in Takaful Insurance in the
Kingdom of Saudi Arabia: Lessons Learned from British Common Law
Dr. Abdullah Mohammed Barakat**

مجلة علمية محكمة

المجلة القانونية (مجلة متخصصة في الدراسات والبحوث القانونية)

carried out by these organizations.¹² Because of this, I believe that the Saudi governor should create an independent central Sharia board and grant it the necessary permissions so that it can review and revise all of the provisions that have been criticized in this article and by academics. The subsequent section will discuss the development of principles of punitive damages under the Common Law system to help set the framework of punitive damages in the KSA.

2.1. Development of legal practices related to punitive damages in the Common Law

In the British legal system, compensatory damages are typically awarded to the injured party to provide compensation for the losses they have incurred, rather than inflicting punitive actions on the person who caused the harm. Punitive damages are additional accommodative amounts that are designed to penalize the accused person for his malfeasance and to secure the future of a country by preventing the citizens from doing a similar act.¹³ Punitive damages can only be imposed if an adequate claim has been made by the plaintiff. *Wilkes v. Wood*¹⁴ (trespass to land) and *Huckle v. Money*¹⁵ (illegal imprisonment) were the initial and significant exemplary records of punitive damages in 1763. This law was recognized quite before based on other compensation proceedings such as blasphemy, violence, and invasion of the territory, which

¹² Accounting and Auditing Organisation for Islamic Institutions (AAOFII), 'Shari'a Standards for Islamic Financial Institutions' (2010) *AAOFII*, 467, [5.9].

¹³ Renée Charlotte Meurkens, *Punitive Damages and Private International Law: State of the Art and Future Developments* (Wolters Kluwer Italia, 2019) 1-2; Alex Mills, *Recognition of Punitive Damages in the United Kingdom*, (Wolters Kluwer Italia, 2019) 68.

¹⁴ David Lewis, 'Stigma and Whistleblowing: Should Punitive Damages be Available in Retaliation Cases?' (2022) 15 (1) *Industrial Law Journal* 62-83.

¹⁵ *Huckle v Money* [1995] Eng. Rep. 768 C.P. 1763.

might also result in punitive damages. *Rookes v. Barnard*¹⁶ substantially developed the jurisprudence on punitive damages.

The punitive damages law was opposed by the judgement in *Rookes v. Barnard*. In the judgement, Lord Dalvin, representing the views of the House of Lords, found that the traditions and legal standards limited him from eliminating and disapproving the award in its entirety.¹⁷ Therefore, his Lordship limited their applicability to just three kinds of cases, as follows:

1. Circumstances in which the constitution permits the granting of punitive damages
2. In the official power government employees' actions of exploitative, unjustified, or illegal activities
3. Conditions that cause the accused person to estimate that his action would result in a profit that could be greater than the remuneration due to the plaintiff

In *Cassell v. Broome*, Lord Denning (the judge) attempted to circumvent the restriction on the rules for punitive damages.¹⁸ However, it was rejected by the House of Lords in an appeal, as government servants are also the servants of the people. Judge Lord Devlin interpreted that by using their power, they must always follow the duty of service. This argument was used to support the first category. Cases falling under this category have involved complaints against the police, immigration agencies, and local governments.¹⁹ The perpetrator in a case must have been a government employee acting in that position at the time in question for it to fall under this heading.²⁰ The decision determined that an

¹⁶ *Rookes v Barnard* [1964] AC 1129.

¹⁷ Jilly Boyce Kay, *Gender, Media and Voice: Communicative Injustice and Public Speech* (Springer Nature, 2020) 54.

¹⁸ *Broome v Cassell & Co Ltd* [1972] A.C. 1027.

¹⁹ Fan Zhipeng, Li Zhu, and Wen Haoliu, 'Application of Punitive Damages for Ecological Damage' (2022) 4 (3) *The Frontiers of Society, Science and Technology* 17-23.

²⁰ Eleni Katsampouka, *Rethinking Punitive Damages* (Diss. University of Oxford, 2021) 71.

**Evolution of the Concept of Punitive Damages in Takaful Insurance in the
Kingdom of Saudi Arabia: Lessons Learned from British Common Law
Dr. Abdullah Mohammed Barakat**

مجلة علمية محكمة

المجلة القانونية (مجلة متخصصة في الدراسات والبحوث القانونية)

employer can be held responsible for the conduct of their employees if such conduct occurs within the scope of their employment, regardless of whether the employer explicitly sanctioned or endorsed the conduct. The case also established the legal precedent that employees are precluded from filing lawsuits against their employers seeking compensation in such circumstances. The case established that an employer could be held liable for the actions of their employees if those actions were committed in the course of their employment, even if the employer had not authorized or approved of the actions. The case also established that employees could not sue their employers for damages in these types of situations.

Other aspects of the finding consist of situations where the defendant determined the benefit he anticipated from his mistake would outweigh any damages that could be due to the petitioner. It was needless for the respondent to perform a careful balancing act in this case.²¹ It suffices if the defendant had a general understanding that what he was doing was illegal and believed that the anticipated gains would outweigh any potential losses. Within this group of causes of action, punitive damages were granted for conversion, intrusion on real property, unlawful methods of conspiracy, false imprisonment, battery, statutory competition torts, fraud, and defamation.²² Only two instances of statutory authorization to impose damages. Under the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951, Section 13(2), punitive damages may be granted in a lawsuit for compensation for conversion or other proceedings that lie under a breach of the Act's prohibitions against interfering with the rights of service

²¹ Yanan Zhang, 'Punitive Damages in Trademark Infringement Disputes in China: Challenges and Prospects' (2021) 11 (3) *Queen Mary Journal of Intellectual Property* 362-385.

²² James Goudkamp, Eleni Katsampouka, 'Punitive Damages and the Place of Punishment in Private Law' (2021) 84 (6) *The Modern Law Review* 1257-1293.

members.²³ The Crime and Courts Act 2013's sections 34–39 have another illustration.²⁴ Due to their flagrant disregard for the claimant's rights, journalists who are not subject to the control of an authorized independent press regulation may receive punitive damages from the court.²⁵

Punitive damages may be granted as per the *Rookes v. Barnard* findings, subject to three other restrictions.²⁶ It is generally acknowledged that punitive damages cannot be awarded if there are sufficient remedies available to punish and deter misbehaviour, or if the offender has already faced previous penalties for the relevant behaviour.²⁷ Second, punitive damages are a last-resort remedy. To get a punitive damages award, a claimant in this case cannot rely on conduct that was intended by a third party. Third, considering the claimant's actions, a court may also decline to grant punitive damages. A further, significant restriction existed before 2001: the cause-of-action test.²⁸

According to that standard, only claims for which punitive damages had previously been found to be possible might be granted after 1964, the year in which the *Rookes v. Barnard* decision was made.²⁹ In the findings of *Kuddus v. Chief Constable of Leicestershire Constabulary*,³⁰ the House of Lords overturned this legal prohibition. Punitive damages are still not accessible in

²³ Valur Ingimundarson, 'Unarmed Sovereignty versus Foreign Base Rights: Enforcing the US-Icelandic Defence Agreement 1951–2021' (2022) 44 (1) *Taylor & Francis Online, The International History Review* 73-91.

²⁴ Matthew Dyson, *Explaining Tort and Crime: Legal Development Across Laws and Legal Systems, 1850–2020* (Cambridge University Press, 2022) 89.

²⁵ David Lewis, 'Stigma and Whistleblowing: Should Punitive Damages be Available in Retaliation Cases?' (2022) 51 (1) *Industrial Law Journal* 62-83.

²⁶ Nicholas J. McBride, 'Between Chaos and Cosmos: Tony Weir in the Cambridge Law Journal' (2021) 80 *Cambridge Law Journal* S107-S125.

²⁷ Ewan McGaughey, *Liability for Climate Damage and Shipping; Disruptive Technologies, Climate Change and Shipping* (Informa Law from Routledge, 2022) 194-207.

²⁸ Ibid.

²⁹ *Rookes v Barnard* [1964] AC 1129.

³⁰ *Kuddus v Chief Constable of Leicestershire Constabulary* [2001] UKHL 29.

**Evolution of the Concept of Punitive Damages in Takaful Insurance in the
Kingdom of Saudi Arabia: Lessons Learned from British Common Law
Dr. Abdullah Mohammed Barakat**

مجلة علمية محكمة

المجلة القانونية (مجلة متخصصة في الدراسات والبحوث القانونية)

some cases of litigation, even if the cause-of-action test is relevant. They are not available, for instance, in cases involving violations of the Human Rights Act 1998 or in actions for contract violations. Moreover, in *Rookes v. Barnard*, Lord Devlin (the judge) emphasized that the concept of moderation should underpin the calculation of punitive damages.³¹ The judge emphasized the gravity of the wrongdoing, as well as the significance of the defendants' approach in carrying out that action. When multiple defendants are collectively liable for punitive damages, they will be obligated to pay a unified sum. The sum will be determined based on the minimum level of liability that can be attributed to each individual defendant. The claimants will divide the punitive damages portion of the verdict equally.³² As said earlier, the legal system in the KSA has been evolving about punitive damages, so the following discussion will explore them under the principles of Islamic law and related sources of law in the KSA.

2.2 Analysing the principles of Islamic law on insurance from the perspective of punitive damages

The practice of takaful insurance, founded on the principles of the Sharia concepts of common responsibility, reciprocal cooperation, commonality, and association, offers an alternative to the idea of insurance.³³ Takaful is a word that has an unlimited number of meanings. The term *kafl*, whose main quality is *al-m*, is takaful which implies assurance, shared duty, or guarantee. From an economic perspective, takaful technically refers to a joint

³¹ Giovanna Gilleri, *Compensation at the Intersection of Tort Law and International Human Rights Law: Comparative Tort Law*, (Edward Elgar Publishing, 2021) 63-83.

³² Mauro Bussani, Anthony James Sebok, and Marta Infantino, *Common Law and Civil Law Perspectives on Tort Law* (Oxford University Press, 2022) 59.

³³ Mohammad Nur Rianto Al Arif, and Bella Firmansyah, 'Market Structure and Profitability: Evidence in the Indonesian Islamic Insurance Industry' (2021) 22 (2) *International Journal of Business and Society* 1004-1014.

guarantee or assurance offered by any group of people residing in an identical community contrary to a certain danger or calamity involving one's life, property, or any other kind of valuable item.³⁴ As a result, takaful is often referred to as cooperative insurance.³⁵

The Sharia endorsement of the notion of takaful insurance is justified by the fact that policyholders collaborate in order to collectively achieve the objective of shared risk protection. Under the contract of contribution, each policyholder would contribute to their subscription in order to receive aid or financial security. This spreads the obligation around the community and removes any question over compensation. Furthermore, it does not seek to advantage others at their own expense or for their own gain.³⁶ In general, any transaction involving *riba* (usury/interest), *gharar* (uncertainty), or *maysir* (gambling) is illegal under Islamic law. According to Islamic law, insurance cannot be considered legal unless it is devoid of these components.³⁷

Therefore, the majority of Islamic jurists have concluded that the insurance system that adheres to the principles of Islam should be based on the concept of takaful, incorporating the essential characteristics mentioned earlier. In contrast, conventional insurance is not considered permissible in Islamic law. The participants involved in an Islamic insurance transaction are required to make authentic contributions to the principle of

³⁴ Umidjon Imomov, 'Features of Islamic Insurance Takaful' (2021) 8 *International Academy of Theoretical and Applied Sciences* 38-41.

³⁵ Khairil Faizal Khairi, Nur Hidayah Laili, and Aimi Fadzirul Kamarubahrin, 'An Addressing on Risk of Mental Health Disorders Through Hybrid Takaful (Islamic Insurance): A Case of Malaysia' (2021) 16 (1) *Jurnal Intelek* 74-82.

³⁶ Waheed Akhter, Hassan Jamil, and Kim-Shyan Fam, 'Islamic Influence on Customer Satisfaction: Evidence from Takaful and Conventional Insurance Industry' (2021) 12 (2) *Journal of Islamic Accounting and Business Research* 524-543; Hania Masud, 'Takaful: An Innovative Approach to Insurance and Islamic Finance' (2011) 32(4) *University of Pennsylvania Journal of International Law* 1133, 1139-1141.

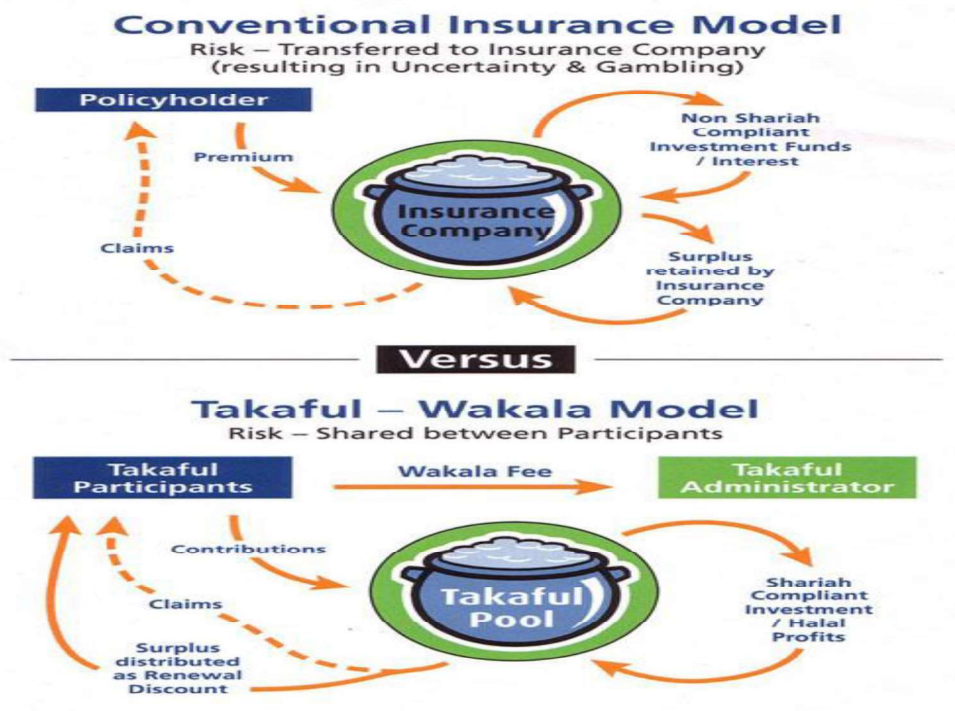
³⁷ Ibid.

Evolution of the Concept of Punitive Damages in Takaful Insurance in the Kingdom of Saudi Arabia: Lessons Learned from British Common Law
Dr. Abdullah Mohammed Barakat

المجلة القانونية (مجلة متخصصة في الدراسات والبحوث القانونية) مجلة علمية محكمة

collective safeguarding against disasters..³⁸ The guiding concepts of takaful insurance are fundamentally different from those of conventional insurance. Islamic jurists, like Prof Mustafa Ahmed Al-Zarqaa, have rejected the prevailing takaful insurance position endorsed by most Islamic academics.³⁹

Figure 1: Conventional Insurance Model vs Takaful Model.⁴⁰



³⁸ Amirul Afif Muhamat, et al., ‘Development of Social Cost and Benefit Analysis (SCBA) in the Maqāṣid Shariah Framework: Narratives on the Use of Drones for Takaful Operators’ (2021) 14 (8) *Journal of Risk and Financial Management* 387.

³⁹ Mustafa Ahmed Al-Zarqaa, *Insurance Regulation: Its Truth and its Sharia Opinion* (Al-Resalah Foundation, 1 ed, 1984).

⁴⁰ Islamic Finance Resource <<https://ifresource.com/2009/03/24/takaful-and-conventional-insurance-compared/>> accessed 24 September 2023.

Under Sharia law, takaful insurance has a connotation that follows certain rules. Takaful insurance business practices must adhere to Sharia law. If any aspect of a takaful insurance activity is shown to be against Sharia law, it may be declared void from the beginning. The operation of takaful insurance is typically based on the guiding principles of *al-mudarabah* (profit and loss sharing financing technique), an alternative to the conventional practices of interest-based (*riba*) financing. The operation of takaful insurance practices is typically supervised by a body known as the Sharia Supervisory Council. It is the responsibility of the takaful insurance operators to advise them on their business practices, ensuring that none of the activities incorporate any elements against Sharia law (e.g., all elements must be compliant with Sharia law). To put it another way, the establishment of a Sharia Supervisory Council for each takaful insurance operator is a requirement before the start of takaful insurance operations. Furthermore, it includes the fact that upholding the highest level of good faith or sincerity is also one of the core tenets of takaful insurance operations. This enables the parties to demonstrate a breach of good faith in the relevant factual matters of each policy, or takaful insurance policy.

Gulf countries, whose Shariah law is the primary legal framework, have begun to reap the advantages of the punitive damages doctrine. Gulf countries often prioritize compensatory damages over punitive damages, aiming to adequately compensate victims for their actual suffering. Under exceptional conditions, these damages may additionally encompass additional amounts to indemnify the victim for their anguish, foregone earnings, and other detriments. It is crucial to consider that the legal systems in Gulf countries vary, and certain legal systems may incorporate elements from other legal systems that allow for punitive damages. Nevertheless, several nations may have specific laws or regulations that permit compensation of punitive damages under particular conditions. Therefore, it is advisable to consult with a local legal specialist to obtain comprehensive information regarding the legal structure and legislation of a certain Gulf nation.

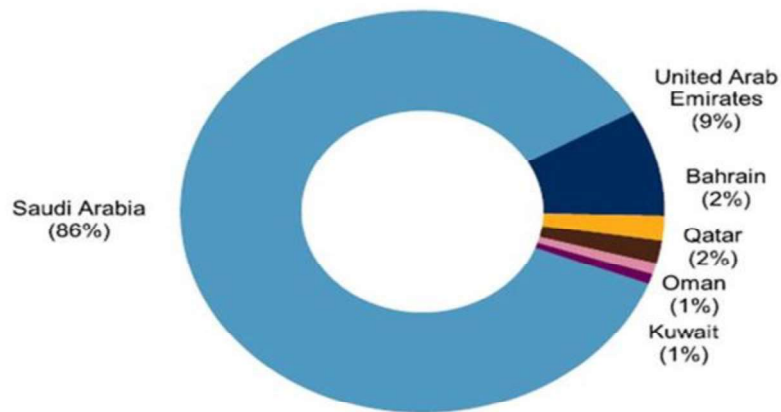
Evolution of the Concept of Punitive Damages in Takaful Insurance in the Kingdom of Saudi Arabia: Lessons Learned from British Common Law
Dr. Abdullah Mohammed Barakat

مجلة علمية محكمة

المجلة القانونية (مجلة متخصصة في الدراسات والبحوث القانونية)

Figure 2: Islamic Insurance Industry Estimated Gross Written Premiums/Contributions by GCC Country, 2020.⁴¹

Islamic Insurance Industry Estimated Gross Written Premiums/Contributions By GCC Country, 2020



⁴¹ Gulf News, *GCC's Islamic Insurers Face Profitability Challenges in 2020: High Completion, Asset Price Risk and Slow Premium Collection to Weigh on 2021 Earnings* (2021) <<https://gulfnews.com/business/banking/gccs-islamic-insurers-face-profitability-challenges-in-2021-1.81147054>> accessed 9 December 2023

As a result, both the takaful insurance operator and the participants are equally responsible for disclosing relevant facts or matters. This conceptual knowledge leads to the conclusion that takaful insurance is a special doctrine created as an alternative to conventional insurance.⁴² Takaful insurance is a fully Sharia-justified insurance model as a result. However, in practice, it is expected that every aspect will be carried out following strict Sharia norms.⁴³ This section will analyze the use of punitive damages as remedies in the field of medical practice, which has been the primary use of such damages.

3.1. Application of punitive damages in the medical practice of the KSA

The Saudi legal system employs punitive damages as a means of regulating the behaviour of medical practitioners. Individuals who fail to adhere to established medical protocols are held accountable for any harm inflicted upon patients. For example, the rule mandates that practitioners possess specific medical credentials, administer approved medications from reputable companies, and adhere to established surgical protocols in their medical procedures.⁴⁴ To regulate the conduct of medical practitioners in

⁴² Amer Sarfraz, Asif Khurshid, and Wisal Ahmad, 'The Impact of Basic Values on Consumer Purchase Intention of Takaful with Moderating Role of Similarity of Competitors' (2022) *Journal of Islamic Accounting and Business Research* 865-880; Accounting and Auditing Organisation for Islamic Institutions (AAOFII), 'Shari'a Standards for Islamic Financial Institutions' (2010) *AAOFII*, 467, [5.9].

⁴³ Sallemi, Nourhen, Rim Zouari Hadiji, and Ghazi Zouari, 'Governance Mechanisms and the Takaful Insurance Performance: The Moderating Role of the Leader's Seniority' (2021) *Journal of Islamic Accounting and Business Research* 149.

⁴⁴ Fatimah Alshakhs, Turki Alanzi, 'The Evolving Role of Social Media in Health-Care Delivery: Measuring the Perception of Health-Care Professionals in Eastern Saudi Arabia' (2018) 11 *Journal of Multidisciplinary Healthcare* 473.

**Evolution of the Concept of Punitive Damages in Takaful Insurance in the
Kingdom of Saudi Arabia: Lessons Learned from British Common Law
Dr. Abdullah Mohammed Barakat**

مجلة علمية محكمة

المجلة القانونية (مجلة متخصصة في الدراسات والبحوث القانونية)

the KSA, the *Law of Practicing Healthcare Professions* fixes punitive damages in cases of breach of their duty of care towards their patients. Under the law, the office of the public prosecutor, under its fundamental role as an officer of the state, supervises medical rights and can pursue the case against the medical practitioner at fault.⁴⁵ Along with the punitive damages, the medical practitioner may face administrative action by the hospitals, and in some cases, the regulatory authority may cancel the practitioner's right to practice medicine.⁴⁶ The regulatory body for monitoring the practice of doctors is not private; rather, it has a governmental mandate as it was established under the Royal Decree.⁴⁷

The legal and regulatory system in the KSA has adopted the practices of the UK in order to address medical liability through the use of punitive damages. Within a regulatory system, such as the one in the UK, the supervisory body lacks the authority to penalize practitioners, whereas the law possesses this power. The Medical Act 1983 in the UK has instituted a tribunal to oversee and govern issues pertaining to medical practice. The tribunal has rigorously scrutinized medical practice and has established specific penalties for individuals found guilty of breaching the prescribed norms of medical practice.⁴⁸

In the judgment of *Cassiday v. Ministry of Health*, the principle of vicarious liability of the practitioners was settled; the principle is

⁴⁵ *The Law of Practicing Healthcare Professions Royal Decree No M/59 dated 1426H/11/04*, Saudi Arabia, arts 33-38. Available from URL <<https://www.boe.gov.sa/ViewSystemDetails.aspx?lang=en&SystemID=164&VersionID=178>>.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Raed Almannie, et al., 'The Status of Medical Malpractice Litigations in Saudi Arabia: Analysis of the Annual Report' (2021) 15 (2) *Saudi Journal of Anaesthesia* 97-100.

rooted in the legal systems of both the KSA and the UK.⁴⁹ The judgment settles the vicarious liability of the central authority in cases of breach of duty of care by the practitioner. For instance, the Saudi body regulating or supervising certain hospitals will hold responsibility for any breach of duty of care committed by the doctor or practitioner working in the hospital. Although the principle of vicarious liability is recognized in the legal system of the KSA, the courts have been very careful in fixing the vicarious liability and imposition of punitive damages in medical negligence.⁵⁰ As the matter of medical negligence has come to the Saudi judicial attention and the courts starting to rely on the use of punitive damages, the same approach may become relevant in other cases (such as takaful insurance) where the conduct of party has recklessly breached the standards of duty of care.

To safeguard the well-being of healthcare professionals, such as hospitals and doctors in the KSA, it is necessary for the Saudi takaful insurance laws to prioritize the establishment of takaful insurance companies' accountability in instances of negligence, particularly when it involves a violation of the insurance policy. This approach aligns with both Sharia principles and global standards. In contrast to the punitive damages' fines imposed on doctors and medical practitioners under Saudi medical laws, the Saudi regulations pertaining to takaful insurance do not impose similar punitive damages' costs on takaful insurance companies that violate takaful insurance laws, namely by breaching the insurance policy.

Therefore, it is necessary for the Saudi takaful insurance laws to impose punitive damages' fines on insurance companies under specific conditions. One such circumstance is when an insurance

⁴⁹ Helen Cassidy, Adam Sims, and Susanna Every-Palmer, 'Psychiatrists' Views on the New Zealand End of Life Choice Act' (2022) 30 (2) *Sage Journals, Australasian Psychiatry* 254-261.

⁵⁰ Sarah M Sternlieb, 'The Rule of Law Is Only Relevant to Those who Subscribe to it: The Failure of Punitive Damages in Terrorism as Tort Litigation' (2015) 11 *Journal of International Law and International Relations* 61.

**Evolution of the Concept of Punitive Damages in Takaful Insurance in the
Kingdom of Saudi Arabia: Lessons Learned from British Common Law
Dr. Abdullah Mohammed Barakat**

مجلة علمية محكمة

المجلة القانونية (مجلة متخصصة في الدراسات والبحوث القانونية)

company denies a policyholder's claim and fails to provide enough justification, resulting in harm to the policyholder. Applying punitive damages to takaful insurance companies violating insurance policies would be consistent with the application of punitive damages in Saudi medical malpractice laws, as well as aligned with the intended purposes of punitive damages mentioned earlier in the definition - to penalize the offender and discourage others from engaging in similar misconduct. The takaful insurance company would be punished, and other takaful insurance companies would be deterred from breaching insurance policies.

To illustrate, the Saudi *Law of Practicing Healthcare Professions* considers punitive damages in the case of a hospital or doctor breaching their duty of care towards their patients. By *qiyas* (reasoning by analogy as a Sharia main source), the insurance company is in the position of the hospital or doctor, and the policyholder is in the position of the patient. Therefore, Saudi takaful insurance laws should consider punitive damages for insurance companies breaching the insurance policy subject to the Saudi *Law of Practicing Healthcare Professions*.

Furthermore, intentional negligence may be treated under tort law and, in some instances, under criminal law, as discussed next.

3.2. Can punitive damages be applied in *Diyah*?

Diyah refers to ‘blood money’ or compensation paid to the legal heirs of a deceased.⁵¹ To understand the discussion and relevance of *diyah* in the domain of punitive damages, it is important to understand the following illustration. X, a construction company, is building a tower building in Jeddeh city and has secured takaful insurance for the safety of its workers from the Y company. In case of the death of any worker resulting from an accident or breach of

⁵¹ Mohammad Adel Ziaey, and Narges Fahim, ‘Diyah (Blood Money) of Non-Muslims Living in Islamic States from the Perspective of Islamic Schools of Law’ (2016) 4 (7) *Fiqhe Moqaran* 47-60.

duty of care, the liability to pay for *diyah* the ‘blood money’ will be fixed against the company through takaful insurance paid by the Y company.

Considering the universal equality of humans in terms of physical pain, harm, or distress, it may appear peculiar that compensation for accidental death or bodily injury should not be based on the victim's social rank, position, gender, or age, but rather on the extent of their loss or suffering. These damages should not be awarded for the purpose of ensuring security or fulfilling personal desires.⁵² Takaful insurance refers to a way of offering protection against hurt, loss, or sorrow. Although it is acknowledged that the takaful insurance policy derives from the idea of continental skills, it does not imply that Sharia permeates every aspect of its application.⁵³ Another objection can be made, such as the fact that the damages paid by the takaful insurance operator for the loss of future revenues may not be supported by Sharia standards.⁵⁴ Since it has been noted that, even though the traditional policy of determining the quantum of damages may not be entirely rejected in light of Sharia principles, there are some concerns surrounding the Common Law practice of determining the number of damages that may not be justified in an Islamic context.⁵⁵

As a result, takaful insurance operators may use 'Sharia-defined damages'. *Daman* may be used as a responsibility for financial coverage in the case of destruction or damage.⁵⁶ The theories of

⁵² Ibid

⁵³ Ibid.

⁵⁴ Martin H. Pritikin, ‘Toward Coherence in Civil Conspiracy Law: A Proposal to Abolish the Agent's Immunity Rule’ (2005) 84 *Nebraska Law Review* 2-51.

⁵⁵ Rayan Assaad, and Mohamed-Asem Abdul-Malak, ‘Legal Perspective on Treatment of Delay Liquidated Damages and Penalty Clauses by Different Jurisdictions: Comparative Analysis’ (2020) 12 (2) *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction*.

⁵⁶ Staci Strobl, ‘Policing in the Eastern Province of Saudi Arabia: Understanding the Role of Sectarian History and Politics’ (2016) 26 (5) *Taylor & Francis Online, Policing and Society* 544-562.

**Evolution of the Concept of Punitive Damages in Takaful Insurance in the
Kingdom of Saudi Arabia: Lessons Learned from British Common Law
Dr. Abdullah Mohammed Barakat**

مجلة علمية محكمة

المجلة القانونية (مجلة متخصصة في الدراسات والبحوث القانونية)

diyah and *daman* are becoming relevant in the alternate damages debate of Common Law.⁵⁷

To understand the possible theoretical interaction between the modern understanding of damages and Sharia-defined damages, the paper takes the following as an illustration: For example, two types of damages might be given for a personal injury.⁵⁸ The first type of injury is the particular damage, which refers to the monetary compensation provided prior to the trial for the accident. Second, there is a broader form of harm known as general damage, which encompasses two specific subcategories: pecuniary compensation and non-pecuniary compensation. The pecuniary compensation may consist of monetary remuneration provided for circumstances such as the loss of potential future earnings or impending medical expenses. The non-pecuniary compensation may encompass the fulfilment of particular duties instead of financial payment. In the event of an accident resulting in accidental death, permanent disability or physical injury may be sought. The ideas of *diyah* and *daman* may become relevant in the takaful insurance process. Except for damages for the loss of future profits, the theory of *daman* may provide the same number of damages as those specified under the heading of Sharia-defined damages. Therefore, it may not be viable for takaful insurance operators to apply Common Law concepts to the calculation of damages where there is a suitable answer provided by the *diyah* and *daman* doctrines.⁵⁹ Furthermore, as stated in Saudi Arabia under the *Law on Supervision of Cooperative Insurance*

⁵⁷ Deena M Barakah, and Shakir Ahmed Alsaleh, 'The Cooperative Insurance in Saudi Arabia: A Nucleus to Health Reform Policy' (2011) 20 *International Conference on Information and Finance* 6-10.

⁵⁸ Ibid.

⁵⁹ Aishath Muneeza, and Zakariya Mustapha, *Settlement of Islamic Finance Disputes in the Kingdom of Saudi Arabia; Dispute Resolution in Islamic Finance* (Routledge, 2019) 120-135.

Companies,⁶⁰ the takaful insurance is founded on a financial strategy, whose goals and objectives, as well as operational procedures, should be wholly founded on Sharia principles.⁶¹

Takaful insurance, as per the traditional interpretation of Islamic insurance, is based on the concept of mutual assistance, where individuals combine their resources to provide support to each other in the case of losses or harm. Nevertheless, takaful insurance can provide financial safeguarding to individuals or entities that may face risks associated with punitive damages. While Sharia law does not explicitly specify punitive damages, takaful insurance companies may offer coverage for actual financial losses that a participant may be compelled to pay as a result of a lawsuit or court ruling. The coverage for damages, including the type and extent, the duration of coverage, and the payment of premiums, can all be modified to suit the specific requirements of the participant. Takaful insurance enterprises must adhere to Sharia standards, which include operations that are transparent, fair, and socially conscious. Takaful insurance enterprises are required to adhere to the legal and regulatory norms of the jurisdiction in which they operate. Although takaful insurance does not explicitly provide coverage for punitive damages, it can serve as a means of financial protection for individuals or entities at risk of being held liable for court-ordered damages. Medical practice and *diyah*, discussed above, are both strongly related applications of punitive damages. In Islamic law, "*diyah*" is a type of restitution given to the victim or their heirs in situations where an accident or death occurred because of carelessness or malicious harm. *Diyah*, which is frequently translated as "blood money," aims to financially make up for the harm done to the victim or their family. If there was

⁶⁰ *Cooperative Insurance Companies Control Law 2003* (Kingdom of Saudi Arabia by Royal Decree No M/32) <<https://www.saudiembassy.net/cooperative-insurance-companies-control-law>> accessed 25 September 2023.

⁶¹ Aishath Muneza, and Zakariya Mustapha, *Settlement of Islamic Finance Disputes in the Kingdom of Saudi Arabia; Dispute Resolution in Islamic Finance* (Routledge, 2019) 120-135.

**Evolution of the Concept of Punitive Damages in Takaful Insurance in the
Kingdom of Saudi Arabia: Lessons Learned from British Common Law
Dr. Abdullah Mohammed Barakat**

مجلة علمية محكمة

المجلة القانونية (مجلة متخصصة في الدراسات والبحوث القانونية)

medical malpractice and it caused harm, incapacity, or death, *diyah* may be awarded to the sufferer or their family. The precise amount of *diyah* that must be paid in a particular instance, however, may depend on several variables, including the gravity of the injury that was done, the financial standing of the individuals involved, and the legal and cultural setting in which the case is heard.

Other types of compensation, such as '*arsh*' (the monetary award made to the family of a person who dies as a result of negligence) and '*mudhahana*' (the award made to a woman who has suffered harm as a result of medical negligence, such as during childbirth), may also be involved in medical negligence cases under Islamic law in addition to *diyah*. It is important to keep in mind that the specific legal framework for medical malpractice and compensation can differ depending on the Islamic legal system being followed as well as the national laws and customs of the country in which the case is being considered. Nonetheless, in general, Islamic law strongly emphasizes the idea of making amends for harm done and offers several legal safeguards to make sure that patients who suffer due to medical malpractice receive fair and just compensation.

4. Conclusion

This paper finds that the concept of punitive damages is taking space under takaful (Islamic insurance), an ingenious version of insurance in the Kingdom of Saudi Arabia (KSA). With recent developments during the last two decades, the Saudi government has proactively adopted modern laws to regulate the area of takaful insurance and modern laws to regulate punitive damages on medical practitioners (hospitals and doctors). In some cases, malpractice insurance offered by Saudi insurance companies may cover medical practitioners' punitive damages claims filed by injured patients. Saudi insurance laws should be in line with the modern Saudi laws, discussed above, that apply punitive damages to medical practitioners who harm patients. This can be done by

applying *qiyas* (reasoning by analogy as a Sharia main source). Saudi insurance laws should adopt punitive damages for insurance companies breaching their insurance policies negligently and maliciously. These recommended punitive damages are adopted by *qiyas* derived from Saudi laws imposing punitive damages on medical practitioners (hospitals and doctors) who harm patients.

Moreover, the paper finds that the idea and framework of punitive damages under the scope of Saudi takaful insurance are in line with international practice, particularly the Common Law jurisprudence developed by the British courts. Among many similarities is the distinction between tort law and crime in the Common Law and the framework of the KSA for punitive damages; both laws are careful in using the concept of punitive damages in criminal law. There are arguments for treating the *diyah* and other domains of compensation under criminal law under the scope of punitive damages and takaful insurance. Along with developments in takaful insurance, punitive damages, and insurance companies, the role of Sharia cannot be denied, as Sharia principles play a vital role in the adoption of legal principles from the Common Law or any other jurisdiction. The scope of Sharia, in the jurisprudence of the KSA, has been accommodative for the foreign legal concept if it does not violate the fundamental principles of Sharia. The jurisprudence in the KSA has started its journey towards adopting the Common Law understanding of punitive damages; therefore, adopting punitive damages on insurance companies is possible.

Bibliography (References)

Books

Al-Zarqaa, MA., *Insurance Regulation: Its Truth and its Sharia Opinion* (Al-Resalah Foundation, 1 ed, 1984).

Bussani, M, Anthony James Sebok, and Marta Infantino, *Common Law and Civil Law Perspectives on Tort Law* (Oxford University Press, 2022).

Dyson, M., *Explaining Tort and Crime: Legal Development Across Laws and Legal Systems, 1850–2020* (Cambridge University Press, 2022).

Gilleri, G., *Compensation at the Intersection of Tort Law and International Human Rights Law: Comparative Tort Law*, (Edward Elgar Publishing, 2021).

Katsampouka, E., *Rethinking Punitive Damages* (Diss. University of Oxford, 2021).

Kay, JB., *Gender, Media and Voice: Communicative Injustice and Public Speech* (Springer Nature, 2020).

McGaughey, E., *Liability for Climate Damage and Shipping; Disruptive Technologies, Climate Change and Shipping* (Informa Law from Routledge, 2022).

Meurkens, RC., *Punitive Damages and Private International Law: State of the Art and Future Developments* (Wolters Kluwer Italia, 2019).

Mills, A., *Recognition of Punitive Damages in the United Kingdom*, (Wolters Kluwer Italia, 2019).

Muneeza, A., and Zakariya Mustapha, *Settlement of Islamic Finance Disputes in the Kingdom of Saudi Arabia; Dispute Resolution in Islamic Finance* (Routledge, 2019).

Court Cases

Applied Equipment Corp. v Litton Saudi Arabia Ltd., [1994] 7 Cal.4th 503, 28 Cal. Rptr. 2d 475, 869 P.2d 454.

Broome v Cassell & Co Ltd [1972] A.C. 1027.

Huckle v Money [1995] Eng. Rep. 768 C.P. 1763.

Kuddus v Chief Constable of Leicestershire Constabulary [2001] UKHL 29.

Rookes v Barnard [1964] AC 1129.

Journals

Accounting and Auditing Organisation for Islamic Institutions (AAOFII), 'Shari'a Standards for Islamic Financial Institutions' (2010) *AAOFII*.

Akhter, W., Hassan Jamil, and Kim-Shyan Fam, 'Islamic Influence on Customer Satisfaction: Evidence from Takaful and Conventional Insurance Industry' (2021) 12 (2) *Journal of Islamic Accounting and Business Research*.

Al Arif, MNR., and Bella Firmansyah, 'Market Structure and Profitability: Evidence in the Indonesian Islamic Insurance Industry' (2021) 22 (2) *International Journal of Business and Society*.

Albejaidi, F., 'Emerging Role of Cooperative Health Insurance in Achieving Health System Goals under Saudi Vision–2030' (2018) 8 (2) *Journal of Biology, Agriculture and Healthcare*.

Almannie, R., et al., 'The Status of Medical Malpractice Litigations in Saudi Arabia: Analysis of the Annual Report' (2021) 15 (2) *Saudi Journal of Anaesthesia* 97-100.

Al-Hanawi, MK., and Gowokani Chijere Chirwa, 'Economic Analysis of Inequality in Preventive Health Check-Ups Uptake in Saudi Arabia' (2021) 9 *Frontiers in Public Health* <<https://www.frontiersin.org/articles/10.3389/fpubh.2021.745356/f>

Khairi, KF., Nur Hidayah Laili, and Aimi Fadzirul Kamarubahrin, 'An Addressing on Risk of Mental Health Disorders Through Hybrid Takaful (Islamic Insurance): A Case of Malaysia' (2021) 16 (1) *Jurnal Intelek*.

Lewis, D., 'Stigma and Whistleblowing: Should Punitive Damages be Available in Retaliation Cases?' (2022) 15 (1) *Industrial Law Journal*.

Maraiki, F., et al., 'Methodological Approaches to Cost-Effectiveness Analysis in Saudi Arabia: What Can We Learn? A Systematic Review' (2022) 7 (1) *Sage Journals*.

Martin H. Pritikin, 'Toward Coherence in Civil Conspiracy Law: A Proposal to Abolish the Agent's Immunity Rule' (2005) 84 *Nebraska Law Review*.

Masud, H., 'Takaful: An Innovative Approach to Insurance and Islamic Finance' (2011) 32(4) *University of Pennsylvania Journal of International Law*.

McBride, NJ., 'Between Chaos and Cosmos: Tony Weir in the Cambridge Law Journal' (2021) 80 *Cambridge Law Journal*.

Muhamat, AA., et al., 'Development of Social Cost and Benefit Analysis (SCBA) in the Maqāṣid Shariah Framework: Narratives on the Use of Drones for Takaful Operators' (2021) 14 (8) *Journal of Risk and Financial Management*.

Muhammedi, S., Mohammadtahir Cheumar, Yusuf Haji-Othman, 'Emergency of Takaful, An Islamic Insurance Model, as an Alternative to Conventional Insurance in Uganda' (2023) 1 (1) *International Journal of Contemporary Issues* 35.

Nourhen, S., Rim Zouari Hadiji, and Ghazi Zouari, 'Governance Mechanisms and the Takaful Insurance Performance: The Moderating Role of the Leader's Seniority' (2021) *Journal of Islamic Accounting and Business Research* 149.

Sarfraz, A., Asif Khurshid, and Wisal Ahmad, 'The Impact of Basic Values on Consumer Purchase Intention of Takaful with

**Evolution of the Concept of Punitive Damages in Takaful Insurance in the
Kingdom of Saudi Arabia: Lessons Learned from British Common Law
Dr. Abdullah Mohammed Barakat**

مجلة علمية محكمة

المجلة القانونية (مجلة متخصصة في الدراسات والبحوث القانونية)

Moderating Role of Similarity of Competitors' (2022) *Journal of Islamic Accounting and Business Research*.

Sternlieb, SM., 'The Rule of Law Is Only Relevant to Those who Subscribe to it: The Failure of Punitive Damages in Terrorism as Tort Litigation' (2015) 11 *Journal of International Law and International Relations*.

Strobl, S., 'Policing in the Eastern Province of Saudi Arabia: Understanding the Role of Sectarian History and Politics' (2016) 26 (5) *Taylor & Francis Online, Policing and Society*.

Tahir, U., and Abdul Rashid, 'Evaluation of Contemporary Takaful Practices from the Perspective of Maqasid Al-Shariah' (2021) 11 (2) *Journal of Islamic Business and Management*.

Zhang, Y., 'Punitive Damages in Trademark Infringement Disputes in China: Challenges and Prospects' (2021) 11 (3) *Queen Mary Journal of Intellectual Property*.

Zhang, X., and Yu Wang, 'Punitive Damages in Consumer Public Interest Litigation in China: An Empirical Study' (2023) 10 (1) *Humanities and Social Sciences Communications* 1-14.

Zhipeng, F., Li Zhu, and Wen Haoliu, 'Application of Punitive Damages for Ecological Damage' (2022) 4 (3) *The Frontiers of Society, Science and Technology*.

Ziaey, MA., and Narges Fahim, 'Diyah (Blood Money) of Non-Muslims Living in Islamic States from the Perspective of Islamic Schools of Law' (2016) 4 (7) *Fiqhe Moqaran*.

Kingdom of Saudi Arabia Legislation: Laws, Regulations, and Government Reports

Basic Law of Governance 1992 (Kingdom of Saudi Arabia by Royal Order No. A/90).

Cooperative Insurance Companies Control Law 2003 (Kingdom of Saudi Arabia by Royal Decree No M/32).

Implementing Rules for the Law on Supervision of Cooperative Insurance Companies 2004 (Kingdom of Saudi Arabia by Ministerial Order No. 1/596).

Law on Supervision of Cooperative Insurance Companies 2003 (Kingdom of Saudi Arabia by Royal Decree M/32).

Saudi Central Bank (SAMA), *Insurance* (2023) SAMA <<https://www.sama.gov.sa/en-US/FAQs/Pages/InsuranceFAQs.aspx>>.

The Law of Practicing Healthcare Professions 2005 (Kingdom of Saudi Arabia Royal Decree No M/59).

Newspapers and Media

Gulf News, *GCC's Islamic Insurers Face Profitability Challenges in 2020: High Completion, Asset Price Risk and Slow Premium Collection to Weigh on 2021 Earnings* (2021) <<https://gulfnews.com/business/banking/gccs-islamic-insurers-face-profitability-challenges-in-2021-1.81147054>>.

Islamic Finance Resource <<https://ifresource.com/2009/03/24/takaful-and-conventional-insurance-compared/>> accessed 24 September 2023.