

## Relationship between Judges and Lawyers (Actual and Prospected Situation)

**Dr. Ahmad bin As-Saqyah**

*Lawyer and Legal Counsellor*

The author discusses the importance of relationship between judges and lawyers in order to realize better harmony between the two sides and to have more active participation by both parties. The author presents proposals for exchange of points of view and expertise to reflect the positive relationship between the men of law and the judiciary. He also discusses the basis of integrated relationship between the judiciary and lawyers.

Moreover, the author speaks about the actual and prospected relationship between judges and lawyers. He recommends qualification and training of judges and lawyers to promote their efficiency, activation of the National Committee of Lawyers and several other recommendations.

## Partial Impossible Contract Performance

**Dr. Ibraaheem bin Sa'd Al-Huwaimil**

*Judge, Ministry of Justice*

The author states that some emergencies may render performance of the contract impossible and that these emergencies require suitable solutions based on justice and removal of hardship. Therefore, jurists have been aware of this fact and many of them wrote numerous juristic maxims based on the theory of necessity including “no harm and no mutual harm”, “hardship begets facilitation”, “harm should be removed” and many other juristic gestalt maxims which permit termination of contracts when it is impossible to perform them. He mentions some examples like:

1. Wars which lead to embargo, and
2. Damage to the object of the contract like the leased house as a result of an earthquake or flood.

## Contractual Responsibility

**Bakr bin Abdullateef Al-Huboob**

*Lawyer and Legal Advisor*

The author divides the present study into four topics:

Topic One: General Definition of Responsibility

The topic elaborates on the linguistic and technical meanings of responsibility.

Topic Two: Criterion for the Establishment of Contractual Responsibility

Topic Three: Pillars of Contractual Responsibility

The author elaborates on three pillars as follows:

1. Contractual fault,
2. Harm, and
3. Causative relationship between fault and harm

Topic One: Denial of Responsibility

The author presents cases of denial of causative relationship like the following:

1. Force majeure,
2. Fault by the harmed person, and
3. The transgression by a third party.

## International Criminal Courts: Authorities and Duties

**Dr. Ali Fayez Ash-Shihree**

*Legal Counselor, Ministry of Justice*

The author divides the present paper into three chapters. The first chapter discusses martial courts of World War II criminals in Nuremberg and Tokyo.

Under the first topic, the author speaks about the war crimes tried in Nuremberg and Tokyo courts. Under the second topic, the author speaks about human genocide crimes tried by Nuremberg and Tokyo courts.

In the second chapter, the author discusses special international courts for Yugoslavia and Rwanda. He first discusses the war crimes tried by former Yugoslavia and Rwanda courts and then discusses genocide crimes tried by former Yugoslavia and Rwanda courts.

In the third chapter, the author speaks about the international criminal court and delineates on the following points:

1. The need for an international criminal court,
2. Authorities of the international criminal court, and
3. Trials of presidents from the perspective of the international criminal court, and

The author concludes by discussing the future of the international criminal court of state terrorism criminals.

## Real Estate Assessment

**Dr. Ahmad bin Abdul Azeez Al-Umayrah**

*Judge Commissioned to Supreme Judicial Council*

The author divided this study into two topics and each topic into several parts and sections as follows:

Topic One: Definition and origin of real estate assessment. This topic is divided into four sections:

1. Linguistic and technical definition of assessment,
2. Linguistic and technical definition of real estate,
3. Definition of real estate assessment, and
4. Origin of real estate assessment

Topic Two: Pillars of real estate assessment. This topic includes four sections:

1. 1<sup>st</sup> Pillar: The assessor. This section includes five branches:
  - a. Definition of the assessor,
  - b. Juristic description of the assessor,
  - c. *Sharee'ah* and legal conditions of the assessor,
  - d. Guarantee of the assessor, and
  - e. Remuneration of the assessor.
2. The Requestor of Assessment
3. The object of assessment,
4. The process of assessment. This includes two branches:
  - a. Methods of assessment, and
  - b. Requirements of assessment

## ***Sharee'ah* Policy in the Prevention and Fighting of Corruption**

**Sheikh Yaasir bin Hamad**

Member of the General Prosecution Commission in Riyadh

The author divides the paper into seven topics as follows:

Topic One: Definitions

It includes three sections:

1. Definition of *Sharee'ah* policy
2. Definition of corruption
3. Definition of prevention

Topic Two: Causes of corruption

Topic Three: Types of corruption

Topic Four: Danger and fatal consequences of corruption

Topic Five: Islamic jurisprudence attention to and means of protection of society from corruption

Topic Six: Role of Islamic administration in the fight against corruption

It includes two sections:

4. Definition of administration
5. Role of administration in the fight against corruption

Topic Seven: Saudi anti-corruption regulations

Conclusion: Most important conclusions and recommendations.

## Aspects of Invalidation in Saudi Law of Criminal Procedure (Comparative Analytical Study)

**Naasir bin Raajih Ash-Shahrane**

**Member of General Prosectution Commission in Makkah**

The author divided the present study into four topics as follows:

Topic One: Discusses the nature of invalidation. It is delineated in four sections:

1. Definition of invalidation,
2. Difference between invalidation and nullification,
3. Cases of invalidation, and
4. Criteria of invalidation

Topic Two: Discusses invalidation in comparative laws. It is delineated in three sections:

1. Invalidation in the Saudi Law of Criminal Procedure,
2. Invalidation in GCC Laws of Criminal Procedure, and
3. Invalidation in Egyptian Law of Criminal Procedure.

Topic Three: Discusses rebuttals by invalidation. It is delineated in two sections:

1. Conditions of rebuttal, and
2. Effect of acceptance in the elimination of invalidation.

Topic Four: Discusses effects of invalidation.

## Islamic Experience in the Regulation of *Sharee'ah* Laws

**Prof. Dr. Hassan bin Muhammad Safar**

Professor of *Sharee'ah* Policy and Regulations, King Abdul Aziz University, Jeddah

The author gives examples of the Islamic experience in the regulation of *Sharee'ah* laws as follows:

1. Ottoman *Al-Ahkaam Al-Adliyah Journal* containing provisions of old juristic heritage.

The author elaborates on this journal, the reason it was dubbed so, the sources it relied on, its juristic, political and legal position, the attention jurists, men of law and lawyers gave to the journal with regard to application and interpretation and the juristic methodology it applies.

2. *Al-Ahkaam Ash-Shar'iyah Journal* of the Hanbalite School of Jurisprudence based on the modern juristic and judicial heritage.

The author explains the attention jurists give to the regulation of judicial provisions, regulation of judicial procedures and judgments and the modern Islamic experience, the position of the journal in the field of jurisprudence and law, the comparison between the two Islamic experiences, *Al-Ahkaam Al-Adliyah Journal* and *Al-Qadaa'iyadh Journal*.



18. If the motive, psychological tendency and upbringing do not affect the intellect and will but they affect behaviour and form a strong motive on the person only, they do not have any effect on the decisions and acts of the patient.
19. Whoever abuses or misuses his property, he should be prevented from acting and a guardian should be appointed to manage his affairs.

## Judicial Inspection and its Development in Saudi Arabia

**Sheikh Abdul Majeed Abdul Azeez Ad-Duhaishee**  
*Judicial Inspection, Supreme Judicial Inspection*

The author discusses the early stages of the modern judicial regulation in Saudi Arabia. He states that the Law of the Judiciary was issued in 1395 AH and that the most important features of that stage were 1) the declaration of the control and independence of justice, 2) formation of judicial institutions and 3) the appointment of the chief of justice.

The author discusses the second stage of the Saudi judicial regulation during the period 1395-1428 AH. and the third stage which started from 19.9.1428 AH. when the new Law of the Judiciary was issued by Royal Decree No. M/78 dated 19.9.1428 AH.

## Implications of Acts by Psychiatric Patients

**Dr. Hanee Al-Jubair**

*Judge at the General Court in Riyadh*

13. Psychiatric illness is a disorder that presents in the form of different combined or separate affective, cognitive and somatic symptoms in various aspects of human life. It results from organic, hereditary, psychological, social and familial factors with varied effect of each factor from one patient to another.
14. Human acts include acts that the legal implications of which do not stipulate sanity like harmful acts which entail liability whether the culprit is sane or insane and acts which stipulate sanity to be considered like contracts and commitments. The first type of acts render the person liable for mere humanity while the second one requires some qualifications that make the person have capacity to perform.
15. The basis of human capacity is puberty, sanity, legal age, sound intent and will.
16. If one loses sanity, none of his acts may be given any consideration but he is held financially liable for crimes and damages. If he does not intend an act or a statement, no implication may be entailed except for harmful acts as already stated hereinabove.
17. Psychiatric disorders can be labeled into: disorders that remove or adversely affect comprehension (intellect). In this case, the patient is considered insane in aspects that are affected by this sanity but not the other aspects, disorders that affect will but not comprehension or orientation and his verbal behavior in the aspect affected by this disorder and disorders that affect behaviour but not reason and will and these do not have any acts of the patient.

whipping, fining or otherwise, the said punishment should meet the following conditions:

1. The novel punishment should be permissible as no impermissible punishment like drinking or eating swine may be applied.
2. The intent of the novel punishment should be realized.
3. The novel punishment should not violate a legal provision or a final judgment.
4. The novel punishment should not contradict a *Sharee'ah* based or legal punishment.
5. The novel punishment should not be a pure act of worship.
6. The novel punishment should be fair.
7. The novel punishment should be applied for a prohibited and legally criminalized act.
8. The novel punishment should not cause any harm to the criminal or other parties that is not consistent with the nature of the punishment.
9. The person against whom the judgment is issued should be of legal age.
10. The novel punishment should be applied by a final court judgment.
11. The judgment on the novel punishment should be clear and applicable.
12. The novel punishment should be executed by the authority having jurisdiction.

# Alqadhaa'iyah Journal

## Novel Punishments

**Dr. Ali bin Rashid Al-Dubayyaan**

*Judge at the Court of Appeal, Ministry of Justice*

The author states that *Sharee'ah* based punishments are generally meant to preserve the five necessities: religion, life, reason, honour and property. For the protection of every necessity, a punishment is set down by the Islamic *Sharee'ah*. For the protection of religion, the hadd of recanting is established; for the protection of life, the hadd of *qisaas* is laid down, for the protection of reason, the *hadd* of intoxication is established, for the protection of honour, the *hudoos* of adultery and defamation are established, for the protection of property, the *hadd* of theft is set down, for the protection of public order and the maintenance of security, the *hadd* of *haraabah* is established. These are the punishments provided for in the Islamic *Sharee'ah*.

In addition, discretionary punishments have been legislated subject to consideration and estimation of rulers, judges and governors as may be necessary to realize public interest and as suitable with the conditions of criminals. However, if the ruler and the judge decides a novel discretionary punishment other than imprisonment,