

Research Article

TRACKING JUDICIAL CHANGE TOWARDS MORE LEGAL CERTAINTY THROUGH CITATION ANALYSIS: A CASE STUDY ON THE LEGAL BASIS FOR COMPENSATION RULINGS BEFORE SAUDI COMMERCIAL COURTS AFTER THE ENACTMENT OF THE CIVIL TRANSACTIONS LAW

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ABSTRACT

Background: Legal certainty is a guiding principle in all European countries. One of the main tools for achieving legal certainty in Europe is the codification of law. In 2023, Saudi Arabia adopted its first codification of contractual and non-contractual obligations through the Civil Transactions Law (CTL), aiming to achieve greater legal certainty. This shift represents a major shift from a predominantly Shariah-based jurisdiction towards civil law. This research examines whether the enactment of the CTL has influenced the Saudi Commercial Court's interpretation of compensation claims.

Methods: A mixed-methods approach was adopted to track citation trends over time and to examine case law documents to confirm the quantitative results. Qualitative empirical analysis, specifically document analysis, was utilised to identify and extract Shariah jurists' opinions, providing depth to the statistical results. Quantitative empirical methods, including interrupted time series (ITS), were applied to assess whether the compensation provisions in the CTL led to significant shifts in compensation claims decisions. Overall, 2,913 cases decided before the enactment of the CTL and 61 decided under the CTL were analysed in this study.

Results and conclusions: The pre-law analysis indicates that courts cited Shariah jurists or general legal principles to establish the liability for compensation. In contrast, post-law analysis

suggests a discernible shift, with courts increasingly citing civil law provisions directly, notably Articles 120 and 720 of the CTL. This shift is supported by an increase in overall article citations within compensation judgments, rising from 36% to 62%, supported by the examination of cases decided based on these articles. These findings indicate that the enactment of the Civil Transactions Law has contributed to enhancing the legal certainty in Saudi commercial courts.

1 INTRODUCTION

Legal certainty is a fundamental principle in all legal systems. In civil law countries, legal certainty has come to be a kind of supreme value.¹ It is a guiding principle of European legal systems.² According to the European Court of Human Rights (ECtHR) “The law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail”.³ Legal certainty has also been recognized very early as a general principle of EU law by the Court of Justice of the EU (CJEU).⁴ In the words of CJEU “The principle of legal certainty is a fundamental principle of Community law which requires, in particular, that rules should be clear and precise, so that individuals may ascertain unequivocally what their rights and obligations are and may take steps accordingly.”⁵

Traditionally, the main tool for civil law to achieve legal certainty has been the codification of law.⁶ However, codification is not without its flaws. For example, it may increase the quantity and complexity of provisions; it may cause courts to focus more on legislative intent rather than their traditional role in decision-making; and it makes it easier for certain interest groups to include solutions that pursue their own agenda.⁷

1 John Henry Merryman and Rogelio Pérez-Perdomo, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America* (4th edn, Stanford UP 2019) 48-55.

2 James Maxeiner, ‘Legal Certainty and Legal Methods: A European Alternative to American Legal Indeterminacy?’ (2007) 15(2) *Tulane Journal of International and Comparative Law* 541.

3 *Maestri v Italy* App no 39748/98 (ECtHR, 17 February 2004) para 30 <<https://hudoc.echr.coe.int/eng?i=001-61638>> accessed 17 February 2025.

4 *Westzucker GmbH v Einfuhr- und Vorratsstelle für Zucker* No 1/73 (CJEU, 4 July 1973) para 13 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61973CJ0001>> accessed 17 February 2025.

5 *International Air Transport Association et al v Department for Transport* No C-344/04 (CJEU, 10 January 2006) para 68 <<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62004CJ0344>> accessed 17 February 2025.

6 Mathias Seims, ‘Comparative Legal Certainty: Legal Families and Forms of Measurement’ in Mark Fenwick, Mathias Siems and Stefan Wrba (eds), *The Shifting Meaning of Legal Certainty in Comparative and Transnational Law* (Hart Publishing 2017) 118.

7 Dru Stevenson, ‘Costs of Codification’ (2014) 4 *University of Illinois Law Review* 1132-3.

Over the last few decades, there has been a growing demand for the law to be more flexible and responsive to an environment characterised by rapid social, technological, and economic change.⁸ The movement towards value-oriented justice demands the creation of legal rules in a way that enhances legal certainty while also accounting for differences between individual applications of these rules; hence, such rules need to include a certain degree of flexibility.⁹

Judicial practices in some jurisdictions have been examined to determine whether legal rules promote predictability in transactions.¹⁰ In this context, predictability is closely associated with the principle of legal certainty, which holds that laws—and their enforcement—must be clear and foreseeable for those affected by them. This is why courts in some jurisdictions often prioritise this principle when deciding whether to revoke granted rights.

The emphasis on predictability can be attributed to the economic value it conveys, especially in commercial transactions. When parties can anticipate which laws apply and how they will be enforced, they are better positioned to manage legal risks. However, if the legal framework is unpredictable, the principle of legal certainty gives rise to “risk costs”. Individuals who are risk-averse toward unpredictable legal changes incur additional expenses to protect themselves.¹¹ This protection might manifest in services, such as hiring a lawyer or buying insurance.

Importantly, risk costs are not associated with the absence of written laws. Even where codified laws exist, similar risks may arise—particularly when previously unwritten norms such as customs, traditions, and judicial precedents are rigidified through codification. This rigidity can prevent such risk norms from adapting or changing over time.¹² This aspect is relevant in Shariah-based jurisdiction, where legal norms are subject to *Ijtihad* (the scholarly authority to interpret Islamic sources). Some Shariah scholars argue that codification (*Taqnin*) imposes one interpretation obligatory on

8 Mark Fenwick, Mathias Siems and Stefan Wrba, ‘The State of Art and Shifting Meaning of Legal Certainty’ in Mark Fenwick, Mathias Siems and Stefan Wrba (eds), *The Shifting Meaning of Legal Certainty in Comparative and Transnational Law* (Hart Publishing 2017) 17.

9 Patricia Popelier, ‘Five Paradoxes on Legal Certainty and the Lawmaker’ (2008) 2(1) *Legisprudence* 47, doi:10.1080/17521467.2008.11424673.

10 For the EU see e.g.: Elina Paunio, ‘Beyond Predictability: Reflections on Legal Certainty and the Discourse Theory of Law in the EU Legal Order’ (2009) 10(11) *German Law Journal* 1469, doi:10.1017/S2071832200018332.

11 Aurélien Portuese, Orla Gough and Joseph Tanega, ‘The Principle of Legal Certainty as a Principle of Economic Efficiency’ (2013) 44(1) *European Journal of Legal Studies* 131, doi:10.1007/s10657-014-9435-2.

12 Jonathan S Gould, ‘Codifying Constitutional Norms’ (2021) 109 *Georgetown Law Journal* 703, doi:10.2139/ssrn.3769465.

other jurists, which contradicts the established consensus that no individual opinion should be binding on others.¹³

On the other hand, legal uncertainty undermines predictability. Researchers have identified the unpredictability of court decisions as a source of legal uncertainty. Some have developed a model to illustrate how legal uncertainty affects the scale of production, suggesting that as legal uncertainty increases, production decreases.¹⁴

After due consideration of the advantages and disadvantages of codification, Saudi Arabia chose the path of other civil law countries by adopting its first Civil Transactions Law (CTL). The aim was to comprehensively regulate all matters related to contractual and non-contractual civil transactions.¹⁵ The efforts of Saudi Arabia to adopt codification based on European models are not an isolated initiative in the Middle East.¹⁶ The CTL is one of four legal instruments announced as part of the Specialised Legal Instruments Project—¹⁷an initiative aimed at moving away from the previous legal system by providing legal instruments that regulate legal relationships through legal norms.

While prior research in other jurisdictions has examined the impact of codification on judicial interpretation, there remains a lack of empirical studies assessing how codification affects judicial interpretation in Saudi Arabia. This gap is especially relevant given that Saudi Commercial Courts have historically relied on Shariah jurists and general principles when deciding compensation cases. The recent enactment of CTL presents the question of whether, and how, the codification of compensation provisions has influenced the interpretation of such claims by the Commercial Courts.

This research aims to investigate the impact of the codification of compensation provisions under the CTL on judicial interpretation of compensation claims in the Saudi commercial courts. The findings may contribute to the broader theoretical understanding

13 Sidra Zulfiqar, 'Islamization of Laws: Various Determinants, Modern State and Codification' (2018) 2(1-2) Islamabad Law Review 21. Published by Legal Education Support Program in Pakistan (LESP), in collaboration with Sandra Day O'Connor College of Law, Arizona State University.

14 Jiwon Lee, David Schoenherr and Jan Starmans, *The Economics of Legal Uncertainty* (Working Paper Series in Law 669, European Corporate Governance Institute 2022) doi:10.2139/ssrn.4276837.

15 Zlatan Meškić and Mohammed Al-Eissa, 'Sale of Goods Contracts in Saudi Arabia: Accession to the CISG, the Civil Transactions Act and Conflict Rules' (2025) 73(1) Anali Pravnog Fakulteta u Beogradu 12, doi:10.51204/Anali_PFBU_25101A.

16 See e.g. regarding Qatar: Mohamed Salem Abou El Farag, Tarek Gomaa Rashed and Ahmed Qatami, 'Developing a Legal Framework for Electronic Contracts in the Context of Traditional Contract Theory: An Analytical Study' (2025) 8(1) Access to Justice in Eastern Europe 166, doi:10.33327/AJEE-18-8.1-a000105. See regarding UAE, Pierre Mallet and Hala Nassar, 'Consensual Terms Modifying Contractual Liability in the Light of UAE Law: A Comparative Study with French Law' (2024) 7(4) Access to Justice in Eastern Europe 218, doi:10.33327/AJEE-18-7.4-a000107.

17 'Crown Prince Announces the Development of the Specialized Legal Instruments' (*Saudi Press Agency*, 8 February 2021) <<https://www.spa.gov.sa/2187777>> accessed 17 February 2025.

that codification not only provides a clear legal ground for awarding compensation but also enhances legal certainty.

It is important to note that the CTL was issued by Royal Decree No. M/191 dated 29/11/1444H, which ratified Resolution No. 820 of the Council of Ministers dated 24/11/1444. Item (First) of the resolution approves the issuance of the Civil Transaction Law, while Item (Sixth) states: *“The provisions of the Civil Transactions Law and what is mentioned in Item (Fifth) of this resolution includes commercial transactions, without prejudice to the nature of commercial transaction, unless it is stipulated otherwise in commercial laws”*. This highlights the importance of civil transactions law in commercial disputes, particularly because its compensation provisions are general and may apply in any given commercial dispute.

2 METHODOLOGY

The authors opted for a mixed-methodology approach, combining a qualitative empirical method (document analysis) to analyse case law documents, identify and extract Shariah jurist opinions, and give depth to the statistical analysis. The quantitative empirical method, including an interrupted time series (ITS) design, was employed to examine whether the introduction of compensation provisions in the law led to significant shifts in judicial decisions regarding compensation claims. Measurable indicators, such as the frequency and context of judicial citation in compensation claims, along with the outcome of the claim, serve as a measurable indicator of judicial discretion. These indicators help determine whether codification has enhanced the clarity and predictability expected under the principle of legal certainty.

The mixed-methodology approach is commonly used in the legal analysis of judicial opinions.¹⁸ For example, Luca S. Marquard used statistical analysis to compare the enforcement percentage of liquidated damages in two jurisdictions, complementing it with qualitative analysis.

18 For example, M. A. Livermore, A. B. Riddell, D. N. Rockmore used Topic Modeling to conduct three quantitative analyses, then the authors augmented the quantitative findings with qualitative analysis. See, Michael A Livermore, Allen B Riddell and Daniel N Rockmore, ‘The Supreme Court and the Judicial Genre’ (2017) 59 Arizona Law Review 837, doi:10.2139/ssrn.2740126. Another example is that L. S. Marquard used statistical analysis to compare the enforcement percentage of liquidated damages in two jurisdictions and supported it with qualitative analysis. See, Luca S Marquard, ‘An Empirical Study of the Enforcement of Liquidated Damages Clauses in California and New York’ (2021) 94(3) Southern California Law Review 637.

2.1. Data Collection

The data consists of commercial court cases that include compensation claims before and after the enactment of the Civil Transactions Law. The primary objective of data collection is to observe judicial decisions before and after the enactment of the Law to understand how compensation claims were interpreted, identify common trends in judicial citation, and track changes in citation themes before and after the law's implementation.

To conduct the analysis, a systematic collection and categorization of case law data was carried out. This involved a careful reading of each case prior to encoding it into the dataset. The data was obtained from the **Scientific Judicial Gate** database, administered by the Ministry of Justice.¹⁹ The search term used was "تعويض" (Compensation) in all commercial court decisions issued within the period 01/01/1435 Hijri (4 November 2013) to 03/06/1446 Hijri (16 December 2023). No additional filters were applied.

The initial search produced 20,152 cases; however, this count included duplicate cases, which were later identified and removed. Following 25 December 2024, the Scientific Judicial Gate transitioned to the **Legal Gate** (البوابة القانونية),²⁰ which included additional courts beyond the commercial court. Consequently, from that date onward, search results were filtered to exclude non-commercial court cases.

Using a database administered by the court for case law data collection is recommended as a source for empirical legal analysis.²¹ Moreover, to facilitate analysis, the extracted cases were recorded in an Excel spreadsheet, with each case categorized based on the following criteria:

Table 1. Categorization of the dataset

Case Number	Case Date (Hijri)	Court Region	Type of Compensation	Court Decision	Articles Cited	Citation	Post-Law	Case date (Gregorian)
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Type of Compensation is classified based on the type of legal relationship and the harm involved. It is classified either as **Contractual Damage** (CD) if the claimant seeks to enforce a penalty clause or requests compensation for a breach of contract, or as **Non-Contractual Damage** (NCD) if the claimant asks for compensation for fault-based liability or unjust enrichment.

19 'Scientific Judicial Gate' (Ministry of Justice, 2025) <<https://sjp.moj.gov.sa>> accessed 17 February 2025.

20 'Legal Gate' (Ministry of Justice, 2025) <<https://laws.moj.gov.sa/ar/JudicialDecisionsList/0>> accessed 17 February 2025.

21 Peter Cane and Herbert Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford Handbooks, OUP 2010) 1314, doi:10.1093/oxfordhb/9780199542475.001.0001.

Court Decision is coded as follows: **Granted** if the court accepts all compensation claims, regardless of the amount granted; **Rejected** if the court rejects all compensation claims, or **Partial** if the court accepts some compensation claims and rejects the rest.

Citation includes the following categories:

- **(Article)+(The Law)**: If the decision is justified using a law, the article, and the law's short code is mentioned (e.g., CTL, LOC, IRCC)
- **Shariah Jurists**: If Islamic jurisprudence books/authors were referenced.
- **General Principles**: If the general principles of compensation or Islamic legal maxims were referenced without citation
- **Contract**: If the court cited contract articles or referenced the contract provisions without specifying the article.
- **No Citation**: Refers to cases where the court did not explicitly reference any law article, juristic opinion, or clearly articulated legal principle, such as the essential elements of compensation (fault, damage, and causation), this includes both cases that lacked any justification, and cases where the reasoning was limited to factual observations or evidence outcomes without naming or connecting to formal legal concepts. Therefore, this category reflects an absence of formal legal citation, not necessarily an absence of judicial reasoning.

Finally, **Post-Law** was included to compare trends before and after the enactment of the Civil Transactions Law -before (0) or after (1).

2.2. Data Selection and Exclusion Criteria

During data extraction, cases were scanned to determine their relevance to the research. Only law articles that directly established the rejection or approval of the compensation claim were considered; articles mentioned for other purposes (e.g., Evidence Law articles, Articles that set the ground to decide other claims, articles that establish the court jurisdiction) were not considered. If the court cited general principles without citing a specific legal provision, the case was categorised under "General Principles". If an appellate court modified a lower court's ruling, only the appellate decision was included in the dataset.

In cases involving late payments, if the compensation claim was contract-based, it was classified as Contractual Damage (CD). If no contractual provision was cited, it was Non-Contractual Damage (NCD). Cases where courts relied on expert reports without citing laws were classified as "No Citation."

Some law articles were cited incorrectly, requiring a cross-checking of other relevant provisions within the same legal code to identify the correct article that matched the court's reasoning. When multiple citations applied (e.g., a ruling based on both Shariah Jurists and general principles), both classifications were recorded (General Principles and Shariah Jurists).

The following types of cases were excluded from the dataset:

- Cases where compensation was mentioned but not claimed (e.g., cases involving arbitration ratification).
- Cases where compensation was rejected on purely procedural grounds without examining substantive elements (e.g., lack of jurisdiction, failure to meet procedural requirements).
- Cases where compensation claims were referenced but not adjudicated upon (e.g., where the primary claim was granted but the secondary compensation claim was not dropped by the claimant).
- Cases where expert expenses were shared equally between parties without a specific compensation justification.

3 CITATION TYPES

The judicial system of Saudi Arabia is unique, as its constitution is based on the Quran and the Sunnah of the Prophet (PBUH).²² References to these sources—and to Shariah scholars—who interpret them—can be observed in many commercial courts' decisions, as will be shown in this research. Such references may also serve as a basis for appeal before the Supreme Court.²³

Until the issuance of the Civil Transaction Law (CTL), commercial courts typically established tort liability by citing general principles of compensation and the opinions of Shariah jurists. The Civil Transactions Law Decree was issued by the Royal Decree No. M/191 on 29/11/1444H. The law is structured into three main parts, along with preliminary and concluding provisions. The first part addresses Obligations, covering its sources, its effects, the incidental characteristics, and its termination. The second part regulates Nominate Contracts, while the third part addresses provisions of Right in Rem. The concluding provisions include general rules.²⁴ The law introduces several provisions establishing civil liability.

In this section, the focus will be on examining citations mentioned in commercial court decisions used to establish tort liability or estimate damages. These citations may include general principles of compensation, Shariah jurists' opinions on tort liability, and formal legal provisions.

22 Royal Order No (A/90) of 1 March 1992 'Basic Law of Governance', art (1) <<https://www.wipo.int/wipolex/en/legislation/details/7973>> accessed 17 February 2025.

23 Royal Decree No (M/78) of 1 October 2007 'Law of the Judiciary', art (11) <<https://www.wipo.int/wipolex/en/legislation/details/14616>> accessed 17 February 2025.

24 Royal Decree No (M/191) of 18 June 2023 'Civil Transactions Law' <<https://www.wipo.int/wipolex/en/legislation/details/22447>> accessed 17 February 2025.

3.1. General Principles

Islamic Legal Maxims (القواعد الفقهية) are general rules of Islamic law (*Fiqh*) that can be applied in particular cases.²⁵ One of the five universal maxims is “Harm must be eliminated” (الضرر يزال),²⁶ which is mentioned in Article 20 of the Mecelle.²⁷ The general meaning of this rule is that the harm inflicted must be removed, and it is not permissible to maintain such harm.²⁸

Islamic law scholars have explained the types of harm depending on the considered perspective. For example, if the subject of its effect is considered, harm can be divided into:

- **Material:** Any harm that has a tangible impact on a person by any means of assault, or their property, or any other material damage.
- **Moral:** Any harm that has an impact on the psyche.²⁹

The conditions required to apply this maxim are:

- 1) The harm must be real; imaginary or harm that rarely occurs does not meet this condition.
- 2) The removal of the harm must not cause a greater harm.
- 3) The harm must not serve a legitimate objective of the legislator, which excludes harm that is inflicted as a penalty.
- 4) The removal of the harm must not negatively affect individuals' rights.
- 5) The harm must not be of minor significance; it must be excessive.³⁰

An application of this maxim arises when a perpetrator of a harmful act is held liable for financial loss. Here, the harm is removed through compensation and imposing a liability (ضمان).³¹

Prior to the issuance of the Civil Transactions Law, the essential elements of compensation—fault, harm, or damage, and causal relation (علاقة سببية، ضرر، خطأ)—were cited in commercial court decisions examined in this research. These were often

25 Buerhan Saiti and Adam Abdullah, ‘The Legal Maxims of Islamic Law (Excluding Five Leading Legal Maxims) and Their Applications in Islamic Finance’ (2016) 29(2) Journal of King Abdulaziz University: Islamic Economics 139, doi:10.4197/Islec.29-2.12.

26 Sayyed Mohamed Muhsin, Muhammad Amanullah and Luqman Zakariyah, ‘Framework for Harm Elimination in Light of the Islamic Legal Maxims’ (2019) 63 (2) The Islamic Quarterly 233.

27 Ya'qub bin 'Abd al-Wahhāb Al-Bāḥisīn, *A Detailed Examination of Islamic Legal Maxims* (4th edn, Dar Al-Tadmuriyyah 2014).

28 ibid 357.

29 ibid 346.

30 ibid 345.

31 Muhsin, Amanullah and Zakariyah (n 26).

associated with the maxim "Harm must be eliminated" and the concept of "*Ḍamān*" (liability) in Islamic law.

The term "*Ḍamān*" has been used by Islamic law scholars for more than one meaning. For instance, the word is used to convey the concept of Suretyship (كفالة), or more generally, to compensation, indemnity, damages, penalty, or restoration.³² Scholars define *Ḍamān* as the legal liability to fulfil an obligation, whether in the form of money or work.³³ Scholars explained that such liability cannot be incurred until the essential elements of *Ḍamān* had been established:

- Transgression (الاعتداء): Any harmful act that is illegitimate and without acceptable excuse.³⁴
- Harm (الضرر): Any harm or damage inflicted on a person, whether to his property, body, honour, or emotions.³⁵
- Causation (الإفشاء)

Causation is considered by some scholars to be a condition rather than an essential element to *Ḍamān*.³⁶ However, in Islamic jurisprudence, causation is determined by examining the source of the harm in question. If the harm directly results from the transgressive act without any intervening factor, it is considered a direct consequence of that act, thereby imposing liability (*Ḍamān*) on the individual responsible for the transgression. However, if an intermediate act occurs between the initial transgressive act and the harm, liability depends on the foreseeability. If the intermediate act is a probable occurrence, the person responsible for the initial act is generally not liable for the resulting harm, unless they acted wrongfully (متعدي).³⁷

Since *Ḍamān* is the establishment of liability, the distinction between "*Ta'wīd*" (compensation) and "*Ḍamān*" (liability) is that the former is a consequence of the latter.³⁸

Another Islamic legal maxim that can be observed in some commercial court decisions is the general rule (لا يجوز لأحد أخذ مال أحد بلا سبب شرعي), which translates to "It is not permissible for anyone to take another person's property without a legitimate legal basis".

32 Abdul Basir bin Mohamad, 'Islamic Tort Law' in Mauro Bussani and Anthony J Sebok (eds), *Comparative Tort Law: Global Perspectives* (Research Handbooks in Comparative Law series, Edward Elgar Publishing 2021) 489, doi:10.4337/9781789905984.00030.

33 Ali Al-Khafif, *Liability in Islamic Jurisprudence* (Dar Al-Fikr Al-Arabi 2000) 8.

34 Wahbah Al-Zuhayli, *Theory of Liability or the Rules of Civil and Criminal Responsibility in Islamic Jurisprudence* (9th edn, Dār al-Fikr al-Mu'āshir 2012) 25.

35 ibid 29.

36 ibid 24.

37 Al-Khafif (n 33) 58.

38 Hamad bin Muhammad Al-Hajri, *Jurisprudential Rules and Principles in Financial Liability* (Dār Kunūz Ishbiliyya 2008).

Application of this rule includes:

- If a person claims a right against another person, but it is later revealed they have no such right to what they claimed, the defendant is entitled to recover the equivalent of the settlement amount from the claimant.³⁹
- A buyer who pays for an item that is later found to belong to someone else may only reclaim their payment if the seller accepts or by court decision.⁴⁰

An example of how commercial courts cite this type of citation can be seen in Case No. 439337994, which was decided before the law entered into force. In this case, the plaintiff claimed to have entered into a purchase agreement with the defendant, under which the defendant agreed to sell refrigerators, ovens, and shelves for a total price of SAR 79,693, which was fully paid. However, the plaintiff alleged that the defendant failed to deliver the goods on time, resulting in damages including rental costs and employee wages. As a result, the plaintiff sought compensation of SAR 115,000 for the delay in delivery.

The court rejected the plaintiff's claim based on the findings that there was no evidence demonstrating that the plaintiff had experienced any harm or incurred losses as a result of the defendant's actions. Consequently, the court held that the claim for liability was invalid due to the absence of a crucial element—namely, damage. Since a valid compensation claim requires the presence of all three essential elements—fault, damage/harm, and causation—the court concluded that the absence of damage rendered the entire claim untenable.⁴¹ In reaching this conclusion, the court explicitly relied on general principles of tort liability and established that the absence of one of these elements—the damage in this case—rendered the compensation claim invalid.

3.2. Shariah Jurists

In most commercial court cases prior to the implementation of the Civil Transactions Law, courts cited Shariah jurists' opinions to establish or deny the defendant's liability in certain types of compensation claims. Among the most frequently cited opinions is the principle that "If the debtor is capable of repayment but delays the repayment to the point where the creditor is forced to complain -file a complaint-, the expenses incurred due to the delay of repayment shall be borne by the delaying debtor, provided that such expenses are incurred in the usual manner."⁴² Courts have applied this reasoning to establish liability for litigation expenses caused by unjustified delay in repayment.

39 Ali Haydar Khawaja Amin Afandi, *A Commentary on the Mejelle* (Fahmi Al-Husaini tr, Dar Al-Jil 1991) 98.

40 Muhammad Al-Zuhayli, *Jurisprudential Principles and their Applications in the Four Schools of Thought* (Dar Al-Fikr 2006) 560.

41 Case No 439337994 [2022] Commercial Court (KSA).

42 Ibn Taymiyyah, *Collected Fatwas of Sheikh al-Islam Ibn Taymiyyah*, vol 30 (Umar Al-Jazzar and Anwar Al-Baz eds, Dār al-Wafā' 2005) 18.

In other decisions, courts referenced Resolution No. 123 (5/13) of the International Islamic Fiqh Academy to establish the impermissibility of financial charges beyond the principal debt. It states that:

*“If the buyer/debtor delays the payment of instalments after the specified date, it is not permissible to charge any amount in addition to his principal liability, whether it is made a pre-condition in the contract or it is claimed without a previous agreement, because it is Ribā, hence prohibited in Shariah.”*⁴³

Less frequently, courts have invoked Shariah principles to establish the liability of a *Muḍārib* who exceeds his authority. One commonly cited rule holds that: “If the *Muḍārib* transgresses by acting beyond his authority or purchasing something he was instructed not to buy, he shall be liable for the capital”.⁴⁴

Courts also cite Resolution No. 109 (3/12) of the International Islamic Fiqh Academy, which states:

*“The loss, which is permissible to compensate, includes the actual financial loss suffered by the partner, any other material loss and the certainly realisable gain that he misses due to his partner’s default or delay. This does not include moral prejudice.”*⁴⁵

In lease contract disputes, courts have cited the classical principle that: “*The lessee holds a trustee possession of the leased asset; if it is lost or damaged without negligence, the lessee is not liable.*”⁴⁶

An illustrative case that demonstrates the use of Shariah juristic citations is Case No. (4683) where the plaintiff claimed that he had entered into a Mudaraba Partnership contract with the defendant, wherein he contributed SAR 25,000 in capital, and the defendant was to design, operate, and manage a tea cart. The plaintiff alleged that the defendant failed to fulfil his contractual obligations under the agreement and argued that this failure deprived him of the intended benefit of the contract. To support his claim, the plaintiff referenced the view of the majority of Shariah jurists, who hold that liability arises from depriving a benefit whose cause for existence has been established, as it is deemed equivalent to a realised benefit. He further cited Ibn Taymiyyah, who stated:

43 International Islamic Fiqh Academy, Resolution No 123 (5/13) of 2001 ‘Qirad or Joint Muḍārabah in Financial Institutions (Investment Accounts)’ *Resolutions and Recommendations of the International Islamic Fiqh Academy: Organization of Islamic Cooperation* (IIFA 2024) 256.

44 Ibn Qudamah, *Al-Mughnī* (Abdullah Al-Turki and Abdulfattah Al-Hilu eds, Dār ‘Ālam Al-Kutub 1997) vol 7, 162.

45 International Islamic Fiqh Academy, Resolution No 109 (3/12) of 2000 ‘Penalty Clause’ *Resolutions and Recommendations of the International Islamic Fiqh Academy: Organization of Islamic Cooperation* (IIFA 2024) 226.

46 Ibn Qudamah (n 44) vol 5, 396.

“If a worker abandons his task until the fruit spoils, he should be liable for the owner's share. An estimation should be made of what would have resulted had he worked diligently, just as he would be liable if the trees had dried up. This is because abandoning the work without terminating the contract is impermissible (haram) and entails *ḡarar* (excessive uncertainty), and it directly causes the loss of the fruit, making it akin to its destruction under wrongful possession.”⁴⁷

Based on these principles, the plaintiff requested the court to issue a judgment obligating the defendant:

- 1) Return of the invested capital (SAR 25,000), and
- 2) Compensation for the lost benefit (SAR 25,000), resulting from the failure to realise the investment.

The court accepted the first request (return of the invested capital) based on evidence of payment (payment transfer) and the defendant's absence from court despite being duly notified. However, the court rejected the second claim—compensation for the lost benefit—based on the explanation that the plaintiff did not prove the existence of actual damage. The court explained that the calculation of the missed profit would be speculative, subject to ambiguity (جهالة) and *ḡarar* (uncertainty), both of which are prohibited under Shariah. It also noted that commercial court precedent has established that anticipated or missed profits cannot be compensated if the loss is uncertain or unsubstantiated.

The court further invoked the Islamic legal maxim: “It is not permissible for anyone to take another person's property without a legitimate basis,” and analogised the case to scholarly positions on delaying debtors. Scholars agree that it is not permissible to award compensation for lost profits arising from delay, as such profits are inherently uncertain. They have further stated that even a usurper is not liable for the presumed profit or missed opportunities. Preventing the rightful owner from accessing their property through usurpation or theft is deemed more unjust than a delay in repayment. Nevertheless, classical jurists did not require the usurper or thief to compensate for the harm caused by delay, the loss of property benefits, or the actual damage resulting from possession of the property during the period of wrongful deprivation. Thus, the rightful owner bears the consequences. The court concluded by stating that judicial rulings have established this principle.⁴⁸

Since this case was decided before the implementation of the CTL, the court cited Shariah jurists and general principles to establish that uncertain damage or harm—described as missed profit—cannot be compensated. However, such a ruling may be revisited under

47 Ibn Taymiyyah, *Completion to the Collected of Fatwas of Sheikh al-Islam Ibn Taymiyyah*, vol 4 (Mohammad ibn Abd al-Rahman ibn Qasim ed, nd) 43.

48 Case No 4683 [2021] Commercial Court (KSA).

Article 137 CTL, which allows compensation for both actual and expected losses.⁴⁹ This reform indicates that codification might improve legal certainty by clarifying when missed profits can be compensated, thereby limiting the discretion courts had before the implementation of the law.

3.3. Laws and Regulations Articles

Before the implementation of CTL, articles cited by the Commercial Court to ground its approval or rejection of the compensation claim varied. However, Article 164 of the Implementing Regulation of the Commercial Courts Law (IRCC) dominated, accounting for 90% of the articles cited. This article sets up the standards for assessing the amount of compensation. It stipulates:

“The court shall include in its judgement on the merits, deciding on a petition for compensation for material and moral harms, including litigation expenses. The court shall, in estimating the compensation, observe the following:

a) Severity of the damage; b) Adjudged amount; c) Repeated default of the person against whom the judgment is rendered; d) Established custom or regular practice; e) Expert's opinion, when necessary.”⁵⁰

While Article 164 IRCC provides rules for compensation estimation, these rules might be generally applied as a principle or specifically applied in certain cases.⁵¹ It also does not provide a legal basis to establish the liability for compensation. Nevertheless, it has been the most frequently applied provision in commercial court decisions. For example, in Case No. 4570263473, dated 20/6/1445 Hijri, the plaintiff requested the court to issue a judgment obligating the defendant to pay his contractual entitlements arising from a construction contract and to compensate for attorney's fees. The court obligated the defendant to pay based on the defendant's admission. Regarding attorney's fees, the court relied on general principles (“harm must be removed”), opinions of Shariah jurists, and Article 164 IRCC.⁵² This reflects the most common citation structure prior to the CTL's implementation: the

49 Royal Decree No (M/191) (n 24) art (137). Article 137 of the Saudi Civil Transaction Law stipulates “The harm for which a person is liable for compensation shall be determined according to the aggrieved party's loss, whether the loss is actually incurred or in the form of lost profits, if such loss is a natural result of the harmful act. Such loss shall be deemed a natural result of the harmful act if the aggrieved party is unable to avoid such harm by exercising the level of care a reasonable person would exercise under similar circumstances.”

50 Minister of Justice Resolution No 8344 of 7 June 2020 ‘The Implementing Regulation of the Commercial Courts Law’ <<https://portaleservices.moj.gov.sa/TameemPortal/TameemList.aspx>> accessed 17 February 2025.

51 Mohammed Awad Saad Al-Ahmadi, *Assessment of Compensation arising from Unjust Enrichment in Saudi Civil Transactions Law* (Qadha Association 2023).

52 Case No 4570263473 [2024] Commercial Court (KSA).

court established liability using general principles, and/or Shariah jurisprudence and relied on Article 164 to establish the court's discretion to estimate the compensation amount.

Following the implementation of CTL, several of its articles have frequently been cited in commercial court decisions. Among the most cited provisions is Article 120 CTL, which states: "Any fault causing harm to a third party shall entail liability for compensation".

This article has been interpreted to establish that the Saudi legislator recognises two types of harm: material and moral.⁵³ Courts also often cite Article 136 to affirm that the compensation amount, stipulating: *"Compensation shall fully cover the harm; it shall restore the aggrieved party to his original position or the position he would have been in had the harm not occurred."*

In Case No 4571330846, dated 14/11/1445 Hijri, the plaintiff requested the court to issue a judgment obligating the defendant to pay SAR 7,544, representing the value of returned goods, in addition to compensation for attorney's fees. The plaintiff supported his claim with an invoice for the goods issued by the defendant, a return invoice for the same goods issued by the defendant, and a bank transfer for the same amount of the goods.

The defendant acknowledged the validity of the sale contract and receipt of the payment but contested the validity of the return invoice, arguing that the plaintiff had attempted to return the goods after the seven-day period and had failed to provide the original invoice.

The court, however, ruled in favour of the plaintiff. It cited Article 33 of the Civil Transactions Law, which states that an offer and acceptance may be made in any form that clearly conveys intent. Based on this, the return invoice issued by the defendant's employee constituted acceptance of the return. Regarding the compensation request, the court stated:

"This request falls under the category of damage compensation, as per Article 120 of the Civil Transactions Law. This law stipulates that any fault that causes harm to others obligates the perpetrator to provide compensation. Furthermore, Article 136 of the same law defines compensation as the amount that fully compensates for the harm, restoring the harmed party to their original position or the position he would have been in had the damage not occurred."

The court found that the defendant's delay in returning the amount constituted a fault, which led the plaintiff to incur expenses, including the cost of filing the lawsuit and hiring an attorney. Therefore, the plaintiff suffered harm that warranted compensation under Article 164 of the IRCC.⁵⁴ The court established the defendant's liability by citing Articles 120 and 136 and used Article 164 to justify awarding compensation for attorney's fees.

53 Tariq Al-Samara, *Sources of Obligation in the New Saudi Civil Transactions Law and the French Civil Code: A Comparative Study* (Prince Sultan UP 2025) 184.

54 Case No 4571330846 [2024] Commercial Court (KSA).

Article 137 is another important provision, which states:

"The harm for which a person is liable for compensation shall be determined according to the aggrieved party's loss, whether the loss is actually incurred or in the form of lost profits, if such loss is a natural result of the harmful act. Such loss shall be deemed a natural result of the harmful act if the aggrieved party is unable to avoid such harm by exercising the level of care a reasonable person would exercise under similar circumstances."

One commentator explained that this article establishes the basis for determining the scope of compensable harm. Compensation should be based on direct harm caused by the harmful act, including both actual losses and lost profit—whether it is material or moral, foreseeable or unforeseeable, current or future—as long as the harm is actual and constitutes a natural result of the harmful act. Direct harm can be described as a natural result of the harmful act if the aggrieved party is unable to avoid such harm.⁵⁵

Commercial Court decisions have frequently cited Article 125 of the CTL, which states:

"A person shall not be liable for harm the cause of which is established to have been for a reason beyond said person's control, such as force majeure or a default committed by a third party or the aggrieved party, unless agreed otherwise."

This article is often cited alongside Article 138 CTL, which affirms that "1. Compensation for a harmful act shall include compensation for moral harm. 2. Moral harm shall include physical or psychological harm sustained by a natural person as a result of an infringement on his body, freedom, honour, reputation, or social standing. 3. The right to compensation for moral harm may not be transferred to a third party, unless its value is determined pursuant to a legal provision, agreement, or judicial ruling. 4. The court shall assess the moral harm sustained by an aggrieved party, taking into consideration the type and nature of such harm and the person of the aggrieved party."

In Case No. 4571045157, dated 24/10/1445 Hijri, the court rejected the plaintiff's claim for compensation of attorney's fees based on Articles 125 and 138, and on the findings that the plaintiff did not make a reasonable effort to avoid the damage.⁵⁶

Another important provision is Article 180 CTL, which provides:

"If the amount of compensation is not specified in a contract or a legal provision, it shall be determined by the court in accordance with the provisions of Articles 136, 137, 138, and 139 of this Law. However, if the obligation arises from the contract, the debtor who has not committed any act of fraud or gross negligence shall be liable only for compensating harm that could have been anticipated at the time of contracting." One commentator raised the question of how compensation can be specified by legal provision and provided the theoretical background on this concept.⁵⁷

55 Khalid al-Sayyid Muhammad Abdulmajeed Musa, *Commentary on the Provisions of the New Saudi Civil Transactions Law*, pt 1 (Dar Al-Kitab Al-Jamei for Publishing and Distribution 2025) 363-5.

56 Case No 4571045157 [2024] Commercial Court (KSA).

57 Musa (n 55) 472.

An examination of Commercial Court decisions shows that the compensation amount is specified by legal provisions. For example, in Case No. 7653 dated 20/02/1442 Hijri, the court cited Article 15 of the Passenger Rights Protection Regulations, which stipulates:

“...4. In case of baggage delay at the Final Destination, the passenger shall be compensated according to the following details: a. The equivalent of 148 Special Drawing Rights Units when the baggage arrives after the arrival time specified in the Reservation, for the first day. b. The equivalent of 60 Special Drawing Rights Units for each day of delay starting from the second day, with a maximum compensation of 1288 Special Drawing Rights Units...”

In Case No. 41823623 dated 16/11/1442 Hijri, the court established the carrier's liability and assessed the amount of compensation based on Articles 19 and 20 of the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention). Article 19 provides that:

“The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures”.

The compensation amount was specified according to Article 20, which stipulates that:

*“In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4150 Special Drawing Rights.”*⁵⁸

The citing of Article 720 CTL is the second most common among CTL provisions, which states that:

“Without prejudice to the provisions of Article 1 of this Law, the rules set forth in this Article shall be applied in a manner not inconsistent with legal provisions, subject to their respective nature, conditions, and exceptions. Said rules shall comprise the following: ... Rule 16 Harm shall be removed. Rule 17 Harm shall not be removed by a similar harm ... Rule 38 What is forfeited may not be reinstated... Rule 40 A person who attempts to renege on a matter shall be estopped”.

An example can be found in Case No. 4571282058 dated 25/8/1445 Hijri, involving a purchase between the plaintiff and the defendant. The plaintiff claimed that he did not receive the goods and requested that the court issue a judgment obligating the defendant to reimburse the purchase price and compensate him for litigation expenses. As the defendant

58 Convention for the Unification of Certain Rules for International Carriage by Air (Montreal, 28 May 1999) [2001] OJ L 194/39 <<https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280078e04>> accessed 17 February 2025. The Montreal Convention signed by the Kingdom of Saudi Arabia on 28 May 1999, and came into force on 15 December 2003.

failed to appear before the court, the court issued its judgment in favour of the plaintiff. In support of its decision to grant compensation, the court relied on Article 120 CTL and Rule 16 of Article 720 CTL, which states that “Harm must be removed”. The court then estimated the compensation amount based on Article 164 IRCC.⁵⁹

4 ANALYSIS

The goal of this analysis is to closely examine commercial court decisions published on the **Legal Gate** website administered by the Ministry of Justice⁶⁰ to understand how the Commercial Court interprets and decides compensation claims before and after the implementation of the CTL. The analysis seeks to determine whether judicial interpretation has shifted following the implementation of the CTL.

To this end, court decisions were closely examined to identify which type of citation was used the most by courts, patterns in court citation, and whether a certain type of citation is associated with a higher rate of rejection or approval of the compensation claim, in accordance with the data collection and exclusion details mentioned above. However, it is important to note that the number of post-CTL decisions was relatively small.

4.1. Overview of the Dataset

Following the collection of data based on the prior specifications, the final number of cases issued before the CTL includes 2,913 for the period from 3 May 2016 to 10 December 2023, from 13 court regions: *Abha, Albaha, Buraydah, Dammam, Hail, Jazan, Jeddah, Madina, Makkah, Najran, Riyadh, Skaka, Tabuk*.

The total number of citations by type is as follows: **(Article)+(The Law)** – 1,056; **Shariah Jurists** – 1,153; **General Principles** – 850; **Contract** – 130; and finally, **No Citation** – 537.

Table 2. Pre-Law Overview of Citation Types

<i>Citation Type</i>	<i>No. of Cases Cited</i>	<i>Percentage</i>
<i>Law Articles</i>	1,056	36%
<i>Shariah Jurists</i>	1,153	40%
<i>General Principles</i>	850	29%
<i>Contract</i>	130	4%
<i>No Citation</i>	537	18%

59 Case No 4571282058 [2024] Commercial Court (KSA).

60 Legal Gate (n 20).

On the other hand, the total number of decided compensation cases after the implementation of the Civil Transactions Law, covering the period from 16 December 2023 to 1 April 2025, is 61 cases (Table 3).

Table 3. Post-Law Overview of Citation Types

<i>Citation Type</i>	<i>No. of Cases Cited</i>	<i>Percentage</i>
<i>Law Articles</i>	38	62%
<i>Shariah Jurists</i>	13	21%
<i>General Principles</i>	11	18%
<i>Contract</i>	1	2%
<i>No Citation</i>	10	16%

4.2. Citation Trends before CTL

Commercial Court decisions published and available from 3 May 2016 to 10 December 2023 reveal common themes that can be drawn from both the data and close observation of the cases. These trends represent the Commercial Court citation standpoint before the issuance of the Civil Transactions Law and can be referenced for comparison after its issuance.

a) **Structured Citations in Attorney's Fees cases:**

Some cases include a combination of more than one citation type; 798 out of 2,913 cases mention multiple citation types, representing approximately 27% of the total. The distribution within the 27% different citation combinations is illustrated in Chart 1, which shows that Law Article + Shariah Jurists constitutes approximately 59% of these 798 cases, which is 474 cases.

The prevalence of this combination can be attributed to the fact that most compensation cases in this analysis concern attorney's fees, with the most common cited article being Article 164 IRCC, representing 90% of the articles cited.

Accordingly, the Commercial Court in attorney's fees compensation cites Shariah Jurists to establish liability (*Ḍamān*) and Article 164 IRCC to estimate the compensation amount. A noticeable trend in commercial courts' decisions is the structured judicial citation in attorney's fees and litigation expenses compensation claims.

In these cases, courts commonly follow a two-stage citation structure. First, courts establish the debtor's liability (*Ḍamān*) by citing Shariah jurists' opinion regarding unjustified delay of payment. Second, the courts estimate the compensation by citing Article 164 IRCC. This pattern is consistent across many cases and supported by qualitative examination as well as

quantitative findings. Roughly 90% of all article citations refer to Article 164 IRCC. The combination of Law Article + Shariah Jurists constitutes 59% of the overall citation combinations; considered separately, it represents 41% of all Shariah Jurists citations (1,153), and 45% of all article citations (1,056). The prevalence of this citation structure suggests that judicial interpretation of attorney’s fees/litigation expenses claims was relatively consistent and based on the opinion of Shariah jurists.

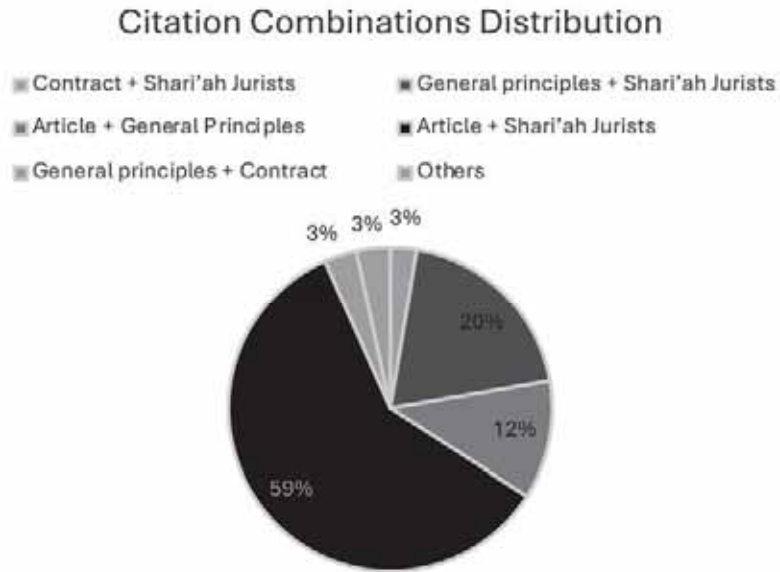


Chart 1. The combination of citation types in cases decided before the implementation of CTL

b) Rejection rates in cases citing only General Principles:

Another aspect of the dataset meriting examination concerns the approval and rejection rates for each citation type. The data indicate 1,000 out of 1,056 cases citing Articles resulted in a favourable ruling, representing roughly 95% of cases citing Articles (Table 4). This high rate of acceptance may be attributed to the fact that 90% of the Article citations refer to Article 164 IRCC, which is generally invoked subsequent to the establishment of liability. However, there are some instances where Article 164 IRCC is cited to affirm the court's discretionary power to deny compensation claims. For example, in Case No. 438524 dated 17/09/1443 Hijri, the court upheld the plaintiff's primary request to enforce contractual obligation, but rejected the secondary claim for compensation related to material damages—interpreted by the court as attorney’s fees, based on Article 164 IRCC. The court stated that, regarding the attorney’s fees request, since it has the discretionary power to

estimate the compensation amount and litigation expenses under Article 164 IRCC, the plaintiff is not entitled to such a claim.⁶¹

That being said, cases citing Shariah Jurists also exhibit a substantial proportion of granted decisions. This observation is explicable by the 474 cases cited both Articles and Shariah Jurists, amounting to 41% of all cases referencing Shariah Jurists, in contrast to the structured citation patterns observed in cases citing Articles or Shariah jurists, cases relying exclusively on General Principles, or cases labelled as No Citation show higher rejection rates. Among cases citing only General Principles, or those categorised as having No Citation, tend to demonstrate higher rejection rates. Specifically, among cases citing General Principles, 37.8% were granted (213 out of 563), whereas cases labelled as No Citation yielded a more balanced outcome, with a grant rate of 55.6%.

These findings raise the question of whether the existence of specific legal provisions contributes to a higher grant rate. The data suggests this might be the case, for example, Article 164 IRCC provides a basis for the commercial court to determine the harm in attorney's fees compensation disputes, which represents 90% of all Article citations and is frequently granted. On the other hand, only General Principles citations appear in cases where the court expresses uncertainty regarding the extent of the harm, fault, or causation.

Such findings can be observed in commercial court decisions, for example, in Case No. 439473627 dated 9/4/1444 Hijri, the court found that the defendant (company director) breached his legal obligation under Article 152 of the Companies Law and was therefore liable for the company's obligations. However, the plaintiff's claim for compensation for material damages was rejected because the plaintiff did not specify the type and extent of harm or establish a causal link between the breach and the alleged harm.⁶²

Table 4. Pre-Law Courts Decision Outcome by Citation Types

<i>Court Decision</i>	<i>Articles</i>	<i>Shariah Jurists</i>	<i>General Principles</i>	<i>Contract</i>	<i>No Citation</i>
<i>Granted</i>	1000	954	395	69	297
<i>Partial</i>	12	25	46	19	13
<i>Rejected</i>	44	174	409	42	227
<i>Total</i>	1056	1153	850	130	537

61 Case No 438524 [2022] Commercial Court (KSA).

62 Case No 439473627 [2022] Commercial Court (KSA).

c) Tendency toward Article-based citation:

Given that the scope of the data collection covers the period from 2013 to 2024, the available and collected data span from 2016 to early 2024. Considering that the data from 2016 to 2019, along with cases dated in 2024 prior to the issuance of the CTL, are insignificant in volume—amounting to only 30 cases—they were disregarded from the time percentage increase calculation (Table 5). This calculation instead focuses on the period from 2020 to the end of 2023, and amounts to 2,884 cases.

The analysis shows an increase in court citations of codified legal texts prior to the issuance of the CTL. Specifically, 13.9% of commercial court decisions cited legal articles in 2020, rising to 49.6% by 2023. Such an increase can be attributed to the issuance of the IRCC in June 2020.

Table 5. Percentage of Cases Citing Articles before CTL

<i>Year</i>	<i>Number of Cases</i>	<i>Article Citation</i>	<i>% Article Cited</i>
2020	173	24	14%
2021	383	70	18%
2022	1,209	407	34%
2023	1,119	553	49%

4.3. Citation Trends after CTL

The analysis of cases following the implementation of the CTL shows an increasing shift toward article-based citation. Commercial Courts relied on Articles to ground their judgments in over 62% of the cases (38 cases) after CTL (Table 3). Only 11 cases (18% of the 61 cases) featured combined citations (Chart 2), suggesting that most courts are citing Articles independently.

Out of all cases that cited Articles after CTL, a total of 70 individual citations were recorded (Chart 2). These citations were concentrated primarily on three articles:

- Article 164 IRCC with 28 citations, which represents 40% of all Article citations
- Article 120 CTL with 13 citations
- Article 720 CTL with 8 citations

These three articles represent approximately 70% of the total citations, indicating that commercial courts are increasingly adopting the compensation provisions of the Civil Transactions Law. The remaining 30% of citations are scattered across more than ten other articles.

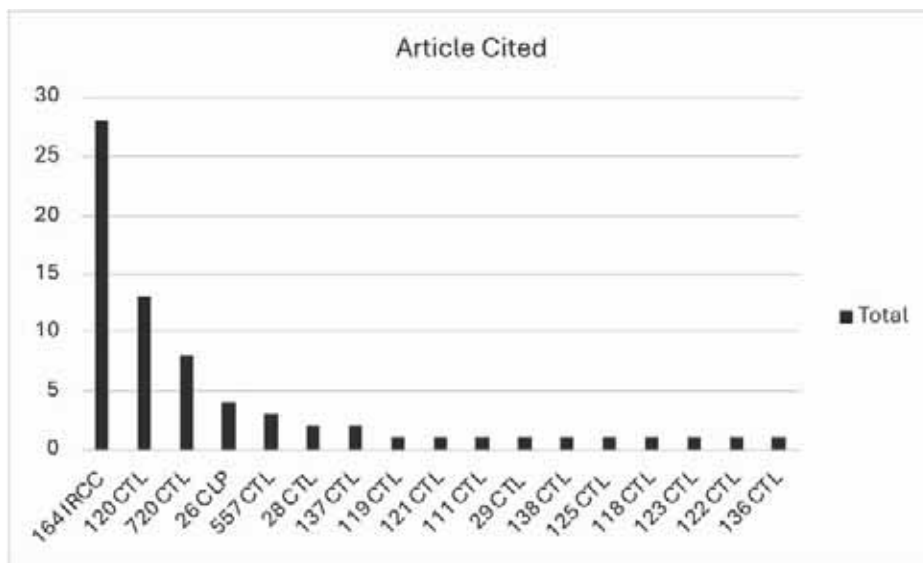


Chart 2. Distribution of the most cited legal provision after the implementation of CTL

The distribution of court decision outcomes with each citation type for cases after the law's implementation (Table 6) indicates that 30 of 38 cases citing Articles were granted, representing 79%, while only 7 cases were rejected. In contrast, cases citing General Principles or No Citation exhibit a lower rate of granted decisions.

Table 6. Post-Law Courts Decision Outcome by Citation Types

<i>Court Decision</i>	<i>Articles</i>	<i>Shariah Jurists</i>	<i>General Principles</i>	<i>Contract</i>	<i>No Citation</i>
Granted	30	9	4	0	4
Partial	1	0	0	0	0
Rejected	7	4	7	1	6
Total	38	13	11	1	10

5 ANALYSIS FINDINGS

Based on the results of Table 4 and Table 6, the rate of cases that cite **Article** and were **Granted** or **Partial** increased from 34.7% in the pre-law period to 50.8% in the post-law period. This upward shift is evidence for the notion that codification through judicial practice promotes legal certainty.

Furthermore, in line with the research goal of examining commercial court citations following the implementation of the Civil Transactions Law, an interrupted time series analysis (ITS) was conducted to track the judicial citations from April 2016 to November 2024. The analysis considers the month of each commercial court decision as the time unit. The point of interruption was set at January 2024, despite some cases citing CTL from 16 December 2023 to 1 January 2024, since there was at least a day when the law was not yet in effect. Prior to the implementation of CTL, the proportion of cases citing Articles showed a general upward trend, as shown in Table 5 and Chart 3.

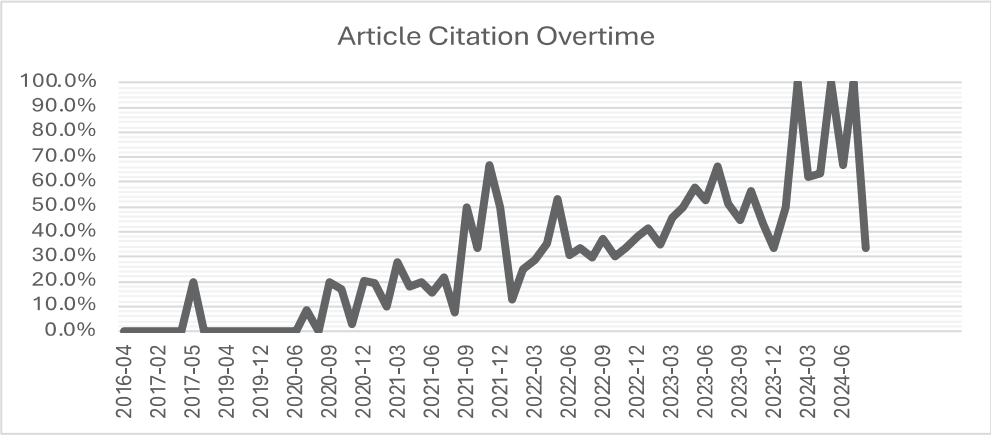


Chart 3. Article citation trend for the period (2016-2024), which covers cases that were decided before and after the implementation of CTL

However, Chart 3 also reveals a sharp increase in the proportion of articles cited following the interruption point in January 2024. This abrupt increase, together with the qualitative analysis presented above, suggests that commercial courts began to substantially rely on CTL provisions when interpreting and adjudicating compensation claims. Although the limited number of cases after the interruption point is a factor, the conclusion that commercial courts immediately adopted CTL to interpret compensation claims is supported by the close examination of the case law.

Prior to the implementation of the law, the most common citation structure combined Articles with Shariah Jurists or General Principles, where courts cited Shariah jurists or general principles to establish or deny the defendant's civil liability. For example, in Case No.4470937079 (pre-law), compensation for attorney's fees was granted based on the court's findings that the defendant procrastinated in settling the unpaid price without any acceptable excuse. The court associated this with Islamic jurisprudence, which states that if someone incurs expenses as a result of a transgression by another person, that person is liable for such expenses. The court estimated the compensation amount based on Article 164 IRCC as 10% of the amount awarded.

In contrast, after the implementation of the CTL, in Case No. 4570707007, the court accepted the plaintiff's request for compensation after establishing the defendant's wrongful act and the causal link between his action and the plaintiff's damages, in accordance with Article 120 of the CTL. The compensation amount was then estimated based on Article 164 IRCC.

Taken together, the ITS trend and the close examination of cases indicate that commercial courts are increasingly substituting citations of General Principles and Shariah Jurists with CTL Articles, which, in essence, are derived from these two sources.

6 CONCLUSIONS

This paper explores the extent to which the adoption of the Civil Transaction Law and the shift from Shariah to civil law have contributed to legal certainty in Saudi courts. Post-law analysis suggests that commercial courts have replaced the combined reliance on general principles and Shariah jurists with Articles 120 and 720 of the Civil Transactions Law. This finding is supported by both quantitative (e.g., increase in Article citation from 36% to 62%) and qualitative examination of commercial court cases decided based on these articles.

While a limited number of cases after the implementation of the law restricts the ability to draw long-term conclusions, the available data support the hypothesis that the enactment of the CTL has led the Commercial Court to increasingly rely on codified compensation provisions contained in the law when deciding compensation claims. This shift in citation—from General Principles and Shariah Jurists to specific Articles of CTL to establish the liability for compensation—signals an increasing role for legal certainty in Saudi judicial practice.

As researchers have noted, predictable and clear laws reduce uncertainty, enhance economic efficiency, and facilitate legitimate expectations.⁶³ From this perspective, it can be argued that the codification of compensation provisions under the CTL contributes to economic efficiency and legal security in Saudi Arabia. Moreover, the Commercial Courts' increasing

63 Portuese, Gough and Tanega (n 11).

reliance on codified provisions, as explained in this paper, could be interpreted as an effort to promote legal certainty and reduce the economic cost of unpredictability.

Overall, it is impressive how quickly the shift toward applying civil law has been implemented by the courts, with the expectation that parties will benefit from a higher level of legal certainty in civil and commercial disputes.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ВІДСТЕЖЕННЯ СУДОВИХ ЗМІН У НАПРЯМКУ БІЛЬШОЇ ПРАВОВОЇ ВИЗНАЧЕНОСТІ ЗА ДОПОМОГОЮ АНАЛІЗУ ЦИТУВАННЯ: ДОСЛІДЖЕННЯ ПРАВОВОЇ ПІДСТАВИ ДЛЯ РІШЕНЬ ЩОДО КОМПЕНСАЦІЇ В КОМЕРЦІЙНИХ СУДАХ САУДІВСЬКОЇ АРАВІЇ ПІСЛЯ ПРИЙНЯТТЯ ЗАКОНУ ПРО ЦИВІЛЬНІ УГОДИ

Файсал Алсувайлем* та Златан Мескич

АНОТАЦІЯ

Вступ. Правова визначеність є керівним принципом у всіх європейських країнах. Одним з основних інструментів досягнення правової визначеності в Європі є кодифікація права. У 2023 році Саудівська Аравія прийняла свою першу кодифікацію договірних та недоговірних зобов'язань через Закон про цивільні угоди (CTL), прагнучи досягти більшої правової визначеності. Цей крок є суттєвим переходом від переважно шариатської юрисдикції до цивільного права. У цьому дослідженні розглядається, чи вплинуло прийняття CTL на тлумачення Комерційним судом Саудівської Аравії позовів про відшкодування збитків.

Методи. Для відстеження тенденцій цитування з плином часу та вивчення документів судової практики з метою підтвердження кількісних результатів було застосовано змішаний підхід. Якісний емпіричний аналіз, зокрема аналіз документів, було використано для виявлення та виокремлення думок юристів-експертів шариату, що забезпечило глибину статистичних результатів. Кількісні емпіричні методи, зокрема аналіз часових рядів з інтервенцією (ITS), були застосовані для оцінки того, чи призвели положення про компенсацію в Законі про компенсацію до значних змін у рішеннях щодо компенсаційних позовів. Загалом у цьому дослідженні було проаналізовано 2913 справ, розглянутих до запровадження Закону про компенсацію, та 61 справу, розглянуту відповідно до Закону про компенсацію.

Результати та висновки. Аналіз до прийняття закону показує, що суди посилалися на юристів-експертів шариату або загальні правові принципи для встановлення відповідальності за компенсацію. На противагу цьому, аналіз після прийняття закону свідчить про помітні зміни: суди дедалі частіше посилаються безпосередньо на положення цивільного законодавства, зокрема на статті 120 та 720 Закону про компенсацію. Це підтверджується збільшенням загальної кількості цитувань статей у рішеннях про компенсацію з 36% до 62%, про що свідчить розгляд справ, вирішених на основі цих статей. Ці висновки свідчать про те, що прийняття Закону про цивільні угоди сприяло підвищенню правової визначеності в комерційних судах Саудівської Аравії.

Ключові слова: правова визначеність, Саудівська Аравія, Закон про цивільні угоди, позов про компенсацію, емпіричний правовий аналіз, судова аргументація.