

The Applications of Intention (*Qaedat al- Umu:r bi Maqasidaha*) in Saudi Law: A Comparative Study

Majed Al-Shaibani¹

¹ Department of Law, College of Business Administration, Prince Sattam Bin Abdulaziz University, Al-kharj, Riyadh, Saudi Arabia

Correspondence: Majed Al-Shaibani, Department of Law, College of Business Administration, Prince Sattam Bin Abdulaziz University, Riyadh, Saudi Arabia. E-mail: m.alshaibani@psau.edu.sa

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Abstract

The current study aims to tackle the theoretical understanding of intention as between Sharia and law. It addresses the similarities and differences in the analysis of interpretation of intention across sharia law and law. The paper contrasts between the two ways of dealing with the concept of intention that is both technical and intuitive, across law and religion. Starting from the hypothesis that the concept of intention in sharia law originated in classical contextual realities different from the contemporary realities of Saudi Arabia and become outdated, the study attempts to answer the following questions: How can the concept of intention be adapted to the new socio-economic realities of Saudi Arabia with its new vision toward the world? How can the concept of intentionality adopt by sharia benefits from the analysis of law theory relating to intention? In order to answer the questions of the study, the study adopts the comparative law methodology through which concept of intention is comparatively examined in both sharia and law. The research investigates the historical and cultural context that gives rise to the concept of intentionality in both sharia law and law, as it helps reflect on aspects of similarity and differences and how gap between the sharia law and law can be bridged. The collected data is obtained through comparing sharia law in Saudi Arabia to the law applied in the West. The study has reached a conclusion that the sound methodological application of the concept of intention in sharia law requires the integration of elements and concepts from the Western law concept of intention.

Keywords: intention, conceptual analysis, jurisprudential rules, ordinary usage, role of the intention

1. Background

The paper aims to tackle the theoretical understanding of intention as between Sharia and law. In sharia law, the concept of intentionality is largely derived from the Holy Qur'an and Prophet's Sunna, which are considered to be divine sources. However, in the Western law, the concept of intentionality is derived from the common law. That is to say, the theoretical underpinning for intentionality in sharia is divine and it is human in Common law. The study compares the implications and theoretical foundation of the concept of intentionality in both sharia law and Common law. It seems that the theoretical understanding of intentionality as between sharia and Common law has been a significant and under researched topic, which can be attributed for several reasons. First, Saudi Arabia has recently subjected to unprecedented change in its cultural and social values and has started to change its own rigid life style that has created new realities, renewed values, and different concept of life with its complexities. Second, Saudi Arabia has recently witnessed unprecedented socio-economic changes and has become more open to external world. Third, the homogenous nature of Saudi society has gradually disappeared and Saudi society has taken its first step to be a hybrid society that hosts people belonging to different cultural, social, and historical values, which entails that sharia law should be modified to be consistent with the transformative realities of Saudi Society in order to be able to treat with non-Saudi residents who belong to different religions and different cultures. Finally, in terms of Saudi 2030 Vision, Saudi Arabia has started a major plan for diversifying its sources of economy and starts to attract international investments which require the adaption of sharia law to the common law so that Saudi sharia law can deal with the new complexities, and the emerging socio-economic realities and can attract foreign investments.

Therefore, one major objectives of this research is to reflect on aspects of similarities and differences between the concept of intention in sharia law and common law in order to explore its legal implications. Despite the significance of the intention and its wide scope of applications in Sharia law, it has not been adequately addressed yet by researchers. There is a scarcity in the studies tackling the impact of the intention of the offenders on the decisions of the judges. As such, this study is mainly concerned with studying the theoretical and practical aspects of the intention as envisaged by the Islamic sharia. The concept of intention is decisive in Sharia law and its Western counterpart. In addition, the applications of intention in sharia law are in dire need to have its legal framework. Though intention is claimed to be widely used in different aspects of sharia law, it lacks explicit practical methodology and sound approach, where the analysis and interpretation of such a concept in law cases is given to the personal experience of the judges and their common sense and their own interpretations of religious texts pertaining to such a concept. The religious nature of such a concept affects the judgment of judgment and shifts his focus from the legal issues to the moral issues; his job has been confined to an evaluator of morality of offender rather than judging his crime through direct intention and legal facts. The paper is divided into the following sections. The first section is made of introduction that includes research problem and methodology. The second section is concerned with examining the concept of intention in sharia law; the third section addresses the concept of intentionality in Western law. The fourth section discusses legal cases taken from the common law and sharia law. The fifth section states the results through clarifying the differences and similarities between sharia law and common law. The sixth section is intended for writing the discussion. The last section is designed for the conclusion.

2. Research Problem

The studies addressing the concept of intention in sharia law and law are very few and the topic of the study has not been adequately addressed in the previous studies. In addition, in sharia law, the concept of intention has been studied from a purely religious perspective and it is mainly derived from the principles of the jurisprudence, which problematize its applications in the common and civil cases in Saudi courts simply because the religious concept of intention focuses on promoting morality and ethics in society rather than stipulating laws. However, in common law, there are many studies that have examined the concept of intention, its implications and its application in criminal and common cases and these studies are based on a sound methodology, definite strategies and explicit and practical approach which may yield their positive results if they are incorporated into sharia law concept of intention. Starting from the hypothesis that the concept of intention in sharia law originated in classical contextual realities different from the contemporary realities of Saudi Arabia and become outdated, the study attempts to answer the following questions: How can the concept of intention be adapted to the new socio-economic realities of Saudi Arabia with its new vision toward the world? How can the concept of intentionality adopted by sharia law benefit from the analysis of Western law theory relating to intention?

3. Methodology of the Study

Answering the questions of the study, the study adopts the comparative law methodology through which concept of intention is comparatively examined in both sharia and Western law. The research investigates the historical and cultural context that gives rise to the concept of intentionality in both sharia law and Western law as it helps reflect on aspects of similarity and differences and how gap between the sharia law and civil law can be bridged. The collected data is obtained through comparing sharia law in Saudi Arabia and law applied in the West. The insights collected can help elucidate the workings of the concept of intentionality in in the legal system of Saudi Arabia and that of the law. The core issue of the idea of comparison is to highlight similarities and differences between data points to be used as a measure to comprehend the content and range of the data points. How can concept of intentionality in sharia law be compared to that of the common and criminal law? How does it diverge from the point it was compared to? What is the nature of the divergences? What do the divergences and similarities reveal? This methodology is not confined on comparing words but it largely considers the idea that law suits within a culture. Law is shaped and influenced by the culture of the home country. So, using the comparative approach, the paper looks beneath the textual level of the law and examine carefully its contextual realities. Therefore, the superstructure that influences the concept of intentionality in both cultures will be securitized and investigated. The superstructure includes religion, customs, and ideology. Therefore, the study extensively uses data from Islamic sharia and social world as it investigates the impact of the transformative socio-economic realities on the applications of sharia law concepts like intentionality.

4. Intention in Quran and Sunna

Ibn Manzur (711 AH) remarks that *maqasid* is the plural of *Maqsd*, which is equivalent to "intention." Al-borno remarks that *al-Umu.r bi maqasidah* can be rendered into English as follows: the acts of defendants can be legally interpreted pursuant to the intentions empowering them. Ibn Ashour interprets *maqasid* in relation to two meanings: the first is related to the intention of the lawmaker while making the laws and the second is related to the intention of defendant while taking an action. The concept of intention has its origins and roots in the glorious Quran. Al-Tabri explains that intentions seem to be problematic issue in sharia law and is a core issue in Islamic faith. If one intentionally commits a sinful deed, which is prohibited by Islamic laws, he will be subsequently subjected to God's punishment. However, if one commits such sinful deed unintentionally, he will be forgiven by God. Al-Tabri states that the difference between the two deeds draws heavily on the intentions of actor (207). Allah says: "Allah does not impose blame upon you for what is unintentional in your oaths, but He imposes blame upon you for what your hearts have earned. And Allah is Forgiving and Forbearing (A-Baqra, 225). Yusuf bin Hayyan (1413 AH) argues that Almighty God never holds people accountable for their unintentional deeds and actions. Rather, He holds them accountable for their intentional deeds. According to the verse, when one took an oath of something and the truth of which was later proved untrue, Allah would hold him accountable for his true intentions (190). Al-Qurtabi (1384) remarks that if it was proven that the actor's intentions were untrue whilst taking an oath; he would be held accountable before God and he had to pay expiation for a broken oath (99). The principle of intention seems to be essential in Islam where people's deeds and actions are judged by their intentions. The intentions are core issue in Islamic creed to the extent that if one is forced to denounce Islam but remains a Muslim by heart and intention, he will not be classified as an unbeliever. However, the concept of intention in Islam aims to spread morality and ethical values. It has nothing to do with law.

Al-assayuiti(1991) states that the rule of intention is also originated in the Prophet's Hadith. Abu Haf's Umar Ibn Al-Khattab said: I heard Allah's messenger saying, "The reward of deeds depends upon the intentions and every person will receive the rewards according to what he has intended. So, whoever emigrates for the sake of Allah and his Messenger, his emigration will be (counted as being) for Allah and his Messenger and whoever emigrates for worldly benefits or for a woman to marry, his emigration will be (counted as being) for what he emigrated for(collected by Al-Bukhari and Muslim). The hadith is sound, authentic, and approved by the Muslim traditional scholars.

5. Intention in Sharia Law

The applications of the rule of intention in the Islamic sharia law are subsumed under the four *fiqhi* categories; worship, *ibādah*, business transaction *mu'āmalāt*, *family law* and criminal law. In sharia law, intention is used in the chapter of dealings. If Muslim has entered into a legal contract but he intends to use it for illegal purposes, his contract will be regarded as forbidden. The punishment of committing a crime can be removed, intensified or mitigated according to the intentions of defendant. For example, if defendant has no direct intention for killing someone, which is known in criminal law as involuntary manslaughter, or he has the intention to kill someone but kills someone else by mistake, he will not be convicted as a murderer in sharia law; he, however, has to pay blood money (52).

Ibn Alqaym (1411AH) remarks that intention rule can be applied to the divorce disputes. For example, if a husband verbally divorces his wife irrevocably, but he does not intend so, his divorce will not be legally enforced, and this opinion is adopted by the Hanbali School. However, there is still a gap in the Islamic sharia regarding how to evaluate the intention of the actors involved in the divorce cases. Stiles (2004) remarks that "establishing validity is not simply a matter of determining whether the divorce has been issued, but hinges on whether the proper intention was there when the divorce action was performed. If the meaning of the action relies on the attention, how, in such circumstances, can the intention of the actor be established?" (273). It is clear that there is a gap between the principle of intention and its application in sharia martial law. Messick (2001: 178) has written; "Given the assumed gap between the forms of expression and intention, legal analyses amount to attempts to erect bridges from the accessible to the inaccessible. The interpretative work of evaluative spoken and written expression...represents such a bridging effort."

The rule of the intention has largely affected the civil transactions in sharia law since judges give their judgments in relation to evaluating the intention of the defendants. A set of examples tackling the civil transactions and their connections with the concept of intention are to be introduced in in the following:

The First example: Promising a bounty or what is known by Islamic jurists as reward is considered to be an example of the application of the concept of the intention. Islamic sharia obliges the party who promised a

bounty to be a serious and willing to fulfill his promise, otherwise his promise will be invalid and nullified. Talabi (2016) explains that if the one who promised a bounty is not a serious enough in his promise, lies or just makes fun, he is no longer obliged to fulfill his promise because he does not intend to abide by his promise (35). Talabi (2016) remarks that the purchase and the sale of the playful person cannot obligate him to fulfill his contract because they are in short of the serious intention.

The second example: Alborono (1424) states if someone picks up something from the ground with the intention of possessing it, he will be legally condemned as a thief. Accordingly, he has to refund its value if it is damaged. However, if he picks up something with the intention of keeping it as a trust, he will be legally classified as a custodian and he may not refund its value if it is damaged.

The third example: if someone tells someone else, "take this money" and he intends to give him this money as a donation, this amount of money will be regarded as endowment. However, if he intends to lend him this amount of money, it is considered a loan, which has to be refunded. Alborono (1424) argues that despite the two conditions are based on lending money, the intentions of the moneylender in the first case is a kind of endowment, and in the second case is a loan. Hence, the judgments are issued in connection with the interpretation of the intentions.

The fourth example: if some is coerced to do something unwillingly, this coercive action will exempt him any legal consequences resulting from his action. Osman (2016) remarks that if someone is forced to enter into an agreement, he has the right to request for cancelling the contract, because he does not intend to sign the contract, and the coercive force affects his free will (40). The majority of jurists unanimously agreed that the speech of the coerced person does not involve him in any legal responsibilities because his speech is incongruent with his intentions and it has been produced as a kind of protection against any expected harm that may befall him.

What is clearly remarked in the above four examples is that there is no direct and explicit methodology that can help Saudi judges to reveal the direct intentions of the defendant. The concept of intention and its applications in civil law seem to be vague and ambiguous. There is no definite strategy proposed for analyzing the intention of the defendant and the role of intention is not clearly stated. We do not know how the judge can learn about whether the actor intends to give his money to someone else as a kind of donation or as a good loan. Nothing can prove whether the person who promised a bounty is serious in his promise or just gives a false promise.

6. The Applications of the Rule of the Intention in Saudi Courts

Summary of the Case:

The facts of this case are summarized in the following: the plaintiff lent the defendant 28,800 riyals as a good loan and the defendant promised him to pay the amount when he was asked by plaintiff to do so. When the plaintiff requested the defendant to pay him the amount of money, the defendant argued that the amount of money had been given to him not as a good loan but it was given for trading and making profit, which is not a loan and he had lost the amount in the stock exchange. Therefore, the plaintiff has no legal right to claim for the money.

Discussion and Analysis of the First Case

The judge asked the defendant to prove that the amount of money that he borrowed from the plaintiff was for the sake of making business and profit, or it was not taken as a loan, as claimed by the plaintiff. The defendant replied that there is no evidence proving the claim of the plaintiff. The judge asked the plaintiff to take an oath and the plaintiff swore that the amount, which he lent to the defendant, is a loan, and it is not for trading or making profit. The judge decided to judge in favor of the plaintiff by obliging the defendant to pay a sum of 28,800 riyals to the plaintiff, after the plaintiff has sworn that he paid the amount of money as a good loan.

The judge gave his judgment in the above case in connection with his evaluation to the evidence of both defendant and plaintiff, which can be summarized in the following points: The judge wanted to know about the direct intentions of both parties about the basis of the amount of money, as the direct intentions play an important role in constituting the wrong in this case. Therefore, the judge has taken the following steps:

- 1) The judge asked the defendant to let him know whether the amount was paid as a good loan or for trading purpose.
- 2) The judge issued his judgment in relation to the principle of Islamic sharia entailing that the witness of money lender is important evidence in settling the conflict. Therefore, the judge issued his judgment in relation

to the plaintiff's oath that would help reveal his intention as to whether the amount of money was paid as a good loan or for trading purpose.

It seems to be clear that the judge has no clear methodology for evaluating or learning about the direct intentions of the plaintiff and defendant. Direct questions cannot be considered as critical tool evaluating or defining the intentions of defendant or plaintiff. In addition, the testimony of money lender does not represent a tangible evidence for proving the soundness of his testimony nor did it help reveal the direct intention.

7. The Concept of intention in the Law

Duff (1978) argues that the concept of intention is not related to every expected side-effect of actor's actions, but only to those for which the actor is directly held accountable. The actor is held accountable for those acts which are directly intended by him and under his responsibility and he is fully aware of their consequences. Duff (1978) remarks that 'intention' is simply ambiguous as between its legal and its extra-legal uses—that there is no significant relation between them"(76). De Jong (2011) remarked that "the concept of intent constitutes one of the central concepts in substantive law. Before the court can convict a person of a certain intent crime, it must have been declared proven that the offender committed the unlawful act under consideration intentionality, that is: knowingly and willingly"(1). Markby (1874) says: "Intention, then, is the attitude of mind in which the doer of an act adverts to a consequence of the act and desires it to follow"(220). Cook (1917) remarked that:" the most important problem in law in this connection is whether the actor did or did not intend certain consequences to follow from his act or acts. Was it his intention to produce them?" (36).

Lacey (1993) addressed the concept of intention and its application in the law. She focused on the problematic and controversial issues embedded in the conceptual analysis of intentions and the aspects which are obscure to the judges, jury and law specialists. In other words, Lacey aimed to reveal the points of weaknesses and those of strengths in the conceptual analysis. In addition, Lacey examined the significance and the controversial issues arising in using common sense and ordinary language while handling the legal difficulties pertaining to the interpretation of intention. She argued that the conception of intention occupies a peculiar place in law. Despite the fact that it has been subjected to investigation and study, there is no practical or critical consensus around a clear definition of intention.

Lacey stated that there are two kinds of skepticism regarding intention. The first skepticism is descriptive that identifies intention in relation to *mens rea* or what is known as the criminal intent or the states of mind on the defendant's part. Understanding the state of mind of the defendant and what was turning in his in mind while committing his offence is a decisive in law. Each offence should be associated with the principle of *mens rea*. For Hart, intention is closely related to free choice and control, which are the basis for responsibility. For Duff, the defendant who acts with intention identifies himself with his action, which reflects his responsibility. Intentional conduct represents the corner stone for self-determined action.

Descriptive skepticism about the conception of intention is based upon practical marginality in the law. In other words, intention can be proven in a small number of offences in order to meet the requirements of blameworthiness element and it can be easily demonstrated in the crimes of murder. Therefore, descriptive skepticism belittles the importance of concept of intentional analysis in the law since it is applicable to a few cases. The crime of theft is removed from the list of crimes that requires intentions to be proved.

The other kind of skeptic is known as the reductive sceptic. The reductive sceptic believes that the concept of intention "merely serve to mask retrospective rationalization of substantive value judgment"(Lacey, 1993, 622). In this way, intention is a barrier toward getting a sound and fair judgment because it covers the process of logical rationalization. The function of concept of intention in legal cases is not logical but it is ideological.

Lacey has some reservations over the application of marginality of intention and its confinement to the case of offences which require proof of *mens rea*. She states that intention is also applicable to the case of offences "which are formally of 'strict' liability, where research has shown that informal attributions of blame premised on assumptions about potential defendants' attitudes influence regulators' enforcement decisions"(623). She also notices that intention has an ideological significance in law which outweighs its empirical significance.

Lacey rejects the reductive sceptic's argument that constrains the power of legal concepts, which is epitomized in its inability to determine concrete and measurable outcomes in many cases. In contrast, Lacey argued that the legal concepts have been a significant instrument in making critical arguments about the political prejudices of law. In order to address the problematic issue arising from the application of legal concept to the law, Lacey remarks that intention in law has to be relevant to the context, political and ethical conditions. Intention should be contextually oriented.

Lacey attempts to distinguish between the conceptual analysis and the ordinary usage concept and their relationship with the law and how they can affect the application of intention in the law. For her, the mere idea of using conceptual analysis in the debate about the meaning of intention is inevitable and necessary. The conceptual analysis is used for analyzing the intention of the offender. It helps judges, jury and commentators, and law makers to provide clear and relatively uncontested conception for controversial concepts like intention. According to Lacey, commentators like Williams, Buxton, and Clarkson and Keating who favor appeal to ordinary usage in fixing criminal legal concepts, do not eschew entirely a discussion of the conceptual issues about the relationship between intention, desire and foresight"(624). Although Lacey stresses the importance of conceptual analysis, she rejects the mere idea of having uncontested concept for intention because the conceptual analysis in itself is constrained by broader ethical and political questions about whether the defendant deserves punishment or not. In addition, the conceptual analysis is changeable, transformative and it is shaped by its surrounding circumstances and the foresight of the judge, jury and commentators, which means that it is not fixed and relative by nature. Therefore, Lacey remarks that the uncertainty and disagreement in the application of intention do not stem from the conceptual analysis of the legal concept. Rather, they result from practical, moral and political issues. Lacey (1993) argues that

the principal message is this: the real source of uncertainty and disagreement in the application of law concepts such as intention is not ultimately do with the concept, but with practical, moral and political issues. Should this person be convicted, and of what offence? What is the appropriate role of law in this area? Conceptual analysis of mens rea terms, let alone their stipulation, is inadequate as a lid to keep a jar containing these kinds of substantive issues shut. (624)

The practical, moral and political issues are among the major hindrances of the application of using the conceptual analysis for interpreting the concept of intention and its application in the law. The concept of intention is relative, soupy and subject to a set of endless interpretations and it is also contextually and culturally oriented. The sociopolitical realities are different from culture to culture and from country to country. In addition, the concept of morality is not the same everywhere. Therefore, the practical, cultural, social and moral implications of the concept of intention may hinder the usage of conceptual analysis for giving a clear, explicit and definite interpretation to the concept of intention which is valid to be applied to the law. The conceptual analysis does not address the problematic issues arising when applying the idea of intention.

Accordingly, Lacey argues that the ordinary usage of the concept of intention may represent a valid solution for the problem of its application in the criminal law. Ordinary usage starts from the hypothesis that legal concepts like intention, is comprehensible to ordinary people and its interpretation requires the common sense of the judge, jury and commentators. Therefore, they are applicable to the law. According to Lacey (1993), some critics argue that a conceptual analysis in itself in legislative or judicial form is unnecessary because of the following reasons:

It is unnecessary because, in the case of concepts such as intention, dishonesty, violence and so on, 'ordinary people' have a clear if unarticulated sense of what these terms mean. So, it can simply be left to the jury or the lay magistrate to apply those ordinary understandings to the case at hand. And it is misguided, because part of the function of laws which employ those terms is precisely to bring to bear on the alleged offender the standards of judgment thought to be buried within and reflected by 'ordinary usage': the thought behind the legal proscription in question is the application of a general rather than a technical standard in this respect. (627)

Concepts like intentions, honesty, and dishonesty are easily known to the ordinary people and they have clear sense of these terms, the understanding of which does not require the complexity of conceptual analysis. In addition, the use of conceptual analysis for the application of the intention to the law is also misguided since the standards of judgment have to conform to the ordinary usage and the understanding of common and ordinary people. When using ordinary language for describing the concept of intention, the concept can be more factual and more related to the reality of the legal cases. Law is made to resolve the problem of the people; therefore, it should be closer to their language and their realities, which can be done by using the ordinary concepts and ordinary language. The approach of using ordinary language for analyzing the concept of intentionality seems to make the conviction depend on the fact and lay evaluation.

However, Lacey refuses the assumption entailing that ordinary usage can be valid for analyzing the concept of intention. She stated that this assumption is undermined by recent case law history such *Moloney*, *Hancock*, and

Shankland. The idea is the use of ordinary language is not adequate in itself for explaining the concept of intention. The ordinary usage requires to be underpinned by the conceptual analysis and stipulation. Therefore, Lacey advocates an analysis which combines both conceptual elements and ordinary language usage. The conceptual analysis is necessary; however, it should not ignore the ordinary language. She stated that the judge and jury's reliance on the ordinary meaning of intention is illusory rather than elusive

Horder (1995) constituted his argument about the concept of intention in criminal in relation to Lacey's article published in 1993 entitled " 'A Clear Concept of Intention: Elusive or Illusory.'" He further develops Lacey's argument on the conception of intention by focusing on the different roles that intention plays in the criminal law. The meaning of intention should be different in terms of the role it performs in a certain context. The role and the context of the intention may identify its understanding. Horder was against the idea that identifying the intention of defendant can demonstrate whether he is responsible for his wrongdoing or not. Horder (1995) writes:

This is a false supposition, because one is just as responsible (even if not as much to blame) for wrongs committed unintentionally as one is for those done intentionally. Questions of responsibility are focused on issues such as sanity, maturity, voluntariness and control; they are not focused on intention. (680)

Horder states that intention is misconceived by Lacey and by a number of commentators. Starting from the hypothesis that the intention should determine the responsibility of defendant seems to fallacious and lacks common sense simply because those who are committing crimes unintentionally are also subject to criminal responsibility. The responsibility of the defendant can be shaped in terms of the soundness of his mind, his age, and his self-control. Responsibility is not directly related to intention. He also criticizes Lacey's presupposition that having a clear analysis of the intention of the defendant can help allocate blame for the wrongs done. For Horder, "the role of intention as a means of allocating blame is the least important and interesting of its roles in the law" (1995; 681). Horder remarks that the role of intention has nothing to do with the idea of allocating blame. In addition, he was against the conceptual analysis and ordinary usage of the intention simply because the power of legal intention is not derived from its clear analysis or uncontested definition. The idea of presenting an accurate, specific and clear definition for the concept of intention is unachievable, and it is difficult to claim that one is able to reach the accurate intention of the defendant. However, it is not difficult to determine the roles played by intention in the law. Horder (1995) writes:

One can think of intention as playing at least four roles in the law: it plays a part in constituting wrongs, in maintaining the boundary between the protection of autonomy and promotion of morality for its own sake, in shaping representative labels, and finally, in exemplifying criminal blameworthiness. The clarity of a conception of (direct) intention is only occasionally of any great importance in understanding these roles. I shall look at each role in turn. (681)

Intention does not represent the whole issue in identifying whether the defendant is convicted or innocent. However, it plays at least four roles in the criminal and common law. It seems that Horder has emphasized on the idea of direct intention rather than indirect or oblique intention. The first role of intention is that it constitutes wrongs. Horder (1995) argues that "sometimes one can only recognize a harm as a particular type of wrong when it is committed with a certain kind of direct intent"(681). The second role is represented in protecting autonomy as "a focus on direct intention may be necessary to prevent the law straying from the prohibition of attacks on autonomy into the promotion of morality for its own sake"(683). The third role is known as shaping representative labels. The direct intention of the actor plays a major role labeling the crime; for example, if a person is involved in killing someone with indirect intent, he cannot be labeled as murder. However, this can be labeled as involuntary or voluntary manslaughter. The role of intention in shaping representative labels is manifested in Moloney's Case. In Moloney's case, the defendant killed his stepfather while they were talking. They were drunk as they had a large amount of alcohol, and according to Maloney's testimony, they were engaged in a contest of speed in loading their guns. Moloney denied that he had any intention to murder or cause harm to his stepfather. "Intention often plays an important role in the formation of these conceptions and that is hardly surprising. Crimes like murder or torture lose their integrity as representative labels if one holds that they can be committed unintentionally"(Horder;1995, 684). The direct intention is decisive in constituting murder as a representative label. For some crimes, it is difficult to identify its nature and its label without learning about the role the intention of the actor. Rape crimes are also difficult to be given its label as a rape without identifying the role of the intention of the defendant. Horder was against using the morality approach in labeling of murder and of dishonesty and so on. "Horder admits that "this

approach clearly minimizes the role played by legal specificity in the definition of *mens rea* and makes everything turn on the jury's role as a moral evaluator of the defendant's conduct"(685). Horder states that there is another approach which is based on finding facts including the 'mental fact of intention' rather than issuing moral judgments. However, according to Horder both strategies have their disadvantages from the perspective of representative labeling. The final role of intention is that defines the culpability and blameworthiness of the defendant.

8. Conclusion: The Impediments of the Application of the Islamic Concept of Intention to Sharia Law

There are several impediments and challenges that impede the applications of the sharia concept of intention to Saudi contemporary criminal, civil and marital law cases. First of all, the overwhelmingly religious nature of concept of intention in sharia law that makes it more applicable to ethical and moral cases than legal cases. Since the concept of intention in sharia law is derived from the glorious Qur'an and Sunnah, it is highly ethical and moral. Second, Sharia law's use of intention is morally and religiously oriented which is considered to be a clear point of weaknesses when it comes to the complexities of law cases and their difficult procedures. Third, the religiosity of the concept turns the judge into an evaluator of the moral conduct of the defendant rather than judging objectively his actions. Fourth, according to Islamic religious doctrine, the intentions of people either direct or indirect are exclusively revealed to God, which undermines the mere idea of using intention concept in sharia law. Fifth, sharia law is different from law in the sense that it does not follow an explicit methodology for defining the concept of intention, nor does it provide a clear strategy or approach for addressing the conceptual, legal, cultural, political and ideological issues embedded within its application to sharia. Sixth, Despite the fact that intention is nearly applicable to different aspects of Islamic sharia law, like those aspects relating to business transaction, martial law, law and so on, the jurists in sharia law have not defined what is meant exactly by intention and how far it contributes to constituting the wrong in the crime. Seventh, the conceptual analysis of intention is non-existent in sharia law. Finally, Sharia law does not also consider the ordinary usage of the concept of intention. Rather, it focuses on its traditional theological interpretations which were written centuries ago. These interpretations of intention are taken from ancient texts, which were addressed to different contextual, social and cultural realities from the contemporary one. The concepts which were used in the past cannot be culturally, socially, contextually appropriate to the changing needs of the present.

9. The Recommendations of the Study: How Sharia Law can Overcome the Challenges and Impediments of the Applications of Intention to Contemporary Law Cases in Saudi Courts

The current study recommends that the law makers in Saudi Arabia should renovate and renew their understanding of the concept of intention in order to be relevant to the changeable sociocultural realities of Saudi Arabia. This goal can be achieved through two methods. The first method rests upon the concept of *Ijtihad*, which is the exertion of a jurist's mental faculty in finding solutions to legal contemporary problematic issues and jurists have to adapt the Islamic classical and religious to the actual needs of the present time. The second method, which is overlapped and intertwined with the first one, is to rely heavily on the Western law strategies and approaches for the application of intention to the law cases. The following recommendations are considered to be a brief suggestions for the law makers, judges, and commentators in Saudi Arabia courts and represent a starting point for incorporating the fundamentals and pillar of the English law concept of intention to Sharia law, which has become a necessity, particularly after Saudi Arabia has initiated its 2030 vision which is based on extending the cultural, social and economic ties with the Western world through encouraging global investments. As a result, adapting Sharia laws to the international law will be considered highly motivating and encouraging steps to the international investments in Saudi Arabia that provides them with security and safety. Therefore, the current study suggests that the concept of intention in Sharia law has to take into considerations the following elements:

- The concept of intention should be defined in terms to *mens rea* or what is known as the criminal intent or the states of mind on the defendant's part.
- Focusing on the conceptual analysis when interpreting the intentions of the defendant.\
- The conceptual analysis should be relevant the political, cultural and social conditions involved in the criminal act.
- Using common sense and ordinary language in handling the legal difficulties pertaining to the interpretation of intention.
- Legal concepts have not only to be analyzed in terms of moral and metaphysical standards but also

they have to be based mainly on concrete, visible and tangible acts of the defendant.

- Focusing on the concept of direct intention rather than indirect or oblique intention
- The meaning of intention should be identified in terms of the role it performs in a certain context.
- Focusing on the different roles that intention plays in the law
- Focusing on how intention plays a part in constituting wrongs
- Focusing on how intention plays a role in protecting the autonomy of defendant through differentiating between what is worthy for punishment and what is moral and ethical.
- Focusing on how intention plays a role in shaping representative labels, where crimes like Involuntary Manslaughter should be labeled differently from murder, and so on.
- Focusing the role of how intention in identifying the culpability.

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