



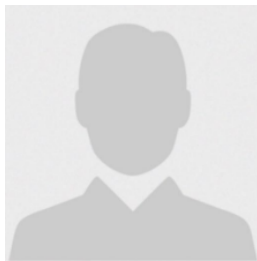
The Legal regulation of Blood Money in Civil Kuwaiti law



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Abstract

The original rule is that the compensation value is assessed by the Judge exactly. Compensation comes after the occurrence of the damage. Despite that, the Kuwaiti Civil law No. 67 of 1980 defined another type of compensation the value of which was pre-determined by the law, i.e. before the occurrence of the damage, therefore, the judge has no power to determine its value, which is called: legal blood money or in Arabic term (Deyyah Sharia) which has taken all its provisions from the Islamic Sharia (rules) and related to compensation for death and 26 specific types of body injuries. In this research, we explained the regulation taken from the Islamic Provisions for compensation against bodily injury, known as legal blood money which was added to the compensation for other material, moral and body injuries that are out of the blood money concept.

Keywords

Al-dyyah;
blood money;
compensation;
Deyyah Sharia;
justice gov;
moral damage;
physical harm;
sole compensation;

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1 Introduction

Article 2 of the Constitution of the State of Kuwait stipulates that Islam is the supreme State religion and Shari'ah the main source of Kuwaiti jurisprudence. Therefore, Kuwait was keen to ensure that all its laws should conform with Islamic provisions. One of these laws is the Kuwaiti Civil Law No. 67 which was promulgated in 1980, which prohibited payment of 'interest' (*ribā*) or usury which are forbidden in Islam, but this law incorporated the customary law of monetary restitution for physical harm called 'blood money' or *diyāh*, which was the lone compensation that was assessed by the judge and it fully compensates the damage by looking at the circumstances of the injured, as its amount differs from one person to another according to the damage. Regarding the legal blood money, the situation is different, as the law assesses compensation objectively by looking at the harm itself without considering the circumstances of the injured, and then its amount is fixed.

Kuwaiti Civil Law chose not to draw up a separate law on blood money but rather decided to include *diyāh* in Civil Law No. 67 with its provisions to adjudicate the liability for 'illegal' acts. However, blood money is not dependent on whether an injurious act is 'illegal' or due to an offender's negligence, fault, or error.

While Kuwait preferred to dissociate the Islamic (Shari'ah) concept of 'blood money' from the Western concept of compensation for illegal acts, a total separation of these legal notions, however, would prove unproductive while a certain link could help achieve harmony in the law. This article will discuss whether Kuwaiti Civil Law managed to achieve a degree of conformity between the special nature of Islamic provisions for the blood money system and the Western rules regarding liability and compensation for illegal acts. The researcher divided this article into three parts:

- 1) Part one: the concept of the blood money (*diyāh* Shari'ah).
- 2) Part two: Cases of blood money entitlement and its multiplicity.
- Part three: the legal rules for blood money.

After the introduction, Section 2 discusses different attitudes towards 'blood money' (*diyāh*) and touch upon secondary matters such as *arsh* for damages less than 1,000 KD and Government Justice (*ḥukūmah 'adl*) where a judge applies discretion and his knowledge of the law to decide if a remedy is appropriate or not. Here we will show why the Blood Money Decree was necessary. Section 3 discusses various types of physical injury that warrant either full, partial, or percentage entitlement to redress damages. Section 4 lists six legal rules that pertain to blood money compensation. Section 5 concludes by summarizing some relevant legal issues.

2 The Concept of 'Blood Money' (*Diyāh*)

The Arabic term for 'blood money' is *diyāh*. The concept of 'blood money' was known and practiced in tribal groups before the emergence of Islam. This practice helped restrain the often never-ending cycle of revenge (*al-tha'r*) between the families or tribes of the victim and his/her offender.² Therefore the payment of blood money represented a conciliation between feuding families, with the motive to establish peace and social justice as well as to avoid further vengeance killing (*al-āḥith bi l-tha'r*) and social unrest. In ancient times *diyāh* was paid in terms of 100 camels that were then considered a form of 'currency' "Blood money is the first successor to punish retribution (Mohamad, 2019). Therefore, if the retribution, which is the basic punishment, is not respected or abandoned, the payment of punishment will be proved, and this will not be forgiven".³

2.1 Blood Money under Islamic Law (Shari'ah)

Shari'ah provisions sanction payment of blood money or *diyāh* as compensation for non-lethal assaults to the body or for the unintentional killing of a human being (Bahnasi, 1988). Islamic legal tradition regards *diyāh* as a monetary remedy in lieu of *qiṣāṣ* (قصاص) or 'retaliation in kind'. Blood money was usually paid, but rarely a

² Mukhtar al-Sahah, Mohammad Al-Razi, Lebanon Library, 1989, p. 631.

³ Mohamad, Momeni. "The concept of blood money and retribution in Islam." *Research on humanities and social sciences* 9.12, (2019), p. 78.

pardon given, due to the great value of human life in Islam, which should not be subject to aggression without just cause.⁴

Originally, Shari'ah rules provided that, in cases where the physical injury was not severe, *e.g.*, only resulting in scars, a remedy called '*arsh*' was employed that generally did not exceed 1,000 dinar.⁵ In cases involving more extensive bodily harm, reparation would be decided by a judge (Al-Yacoub, 2002), known for having just and expert opinions.⁶ Thus, because a victim's particular circumstances were taken into consideration; the determination of remedies for injuries suffered was arbitrary, differing amongst individual cases. However, because blood money compensation was more commonly applied, it would later be adopted under the new Kuwaiti Civil Law (Al-Tramanini, 1982).

2.2 The concept of Blood Money according to Kuwaiti Civil Law

Before its independence, the State of Kuwait applied Shari'ah rules to assess liability for harmful, illegal acts. The value of blood money at that time was 16,000 Rupees for a man and 8,000 Rupees for a woman.⁷ After Kuwait's independence in 1961, new laws were enacted such as Law No. 6/1961 to regulate an offender's obligations to his/her victim resulting from an illegal act. Intending to reconcile modern laws and Shari'ah rules and make its new law acceptable for Kuwaiti society, the State of Kuwait adopted the concept of *diyah* from Shari'ah provisions and considered it legal compensation for physical damage caused to a victim's body. The law addressed injury resulting in death as well as non-lethal physical injury. Moreover, the law acknowledged the need for compensation to cover the victim's medical expenses and possible loss of income during treatment and recovery. It also acknowledged that a victim might well require support for moral or psychological damage resulting from the onslaught to his/her body and possible loss of the ability to function normally.

It should be noted that, at this time, *diyah* or blood money was legally determined to be 16,000 Rupees, without discrimination between Muslims and non-Muslims or between men and women. Therefore Law No. 6/1961 abrogated the law that had been applicable before Kuwait's independence and now stressed the principle of equality for all members of society.

Over the years as the State became more stable, Kuwait revised the law, including all its provisions. On 25 February 1981, Law No. 67/1980 became effective. Under the title 'Compensation for Damages against an Illegal Act', Article 245 stipulated that: 'If no agreement is reached for the damage resulting from the illegal act, the Judge shall determine it without prejudice to Article 248.' The said Article points out that the general legal rule to assess compensation for illegal acts shall be determined by a judge if no agreement is reached between the victim and the perpetrator (Leardini et al., 2005). Thus 'Government Justice' (*hukūmah 'adl*) or the court had formerly been responsible for assessing what level of compensation was just unless an agreement or legal ruling stated otherwise. There must be no complexity in an agreement on compensation where the agreement shall apply, but this should not take place before damage has occurred. Legal enactment for compensation is limited in civil law to blood money; therefore, Article 248 of the Kuwaiti Civil Law states:

[...] if the damage is caused to the self, the compensation against the damage shall be according to the rules of the blood money without discrimination between a person and another and without prejudice to compensation against other elements of the damage.

When evaluating the level of compensation, the judge's role is limited to considering the legal provision which represents a common pre-defined value (Al-Sanhouri, 2004). He cannot adjust the level of compensation except within the limits of what the law stipulates – no more, no less.⁸ The Kuwaiti Civil Law does not stipulate any amount of compensation except for 'legal blood money' according to Article 251 that states:

⁴ Ahmad Fathi Bahnasi, *Blood Money in Islamic Provisions*, 4th edn. (Cairo: Dar al-Shuruq, 1988), p. 9.

⁵ Al-Sahah, *supra* note 4 at 12.

⁶ Abdul Salam al-Tramanini, *Al-Waseet in the History of Law and Legal Systems*, 3rd edn. (Kuwait: Kuwait University, 1982), p. 538.

⁷ Bader Jassem al-Yacoub, *Responsibility for using Hazardous Objects in the Kuwaiti Law*, 2nd edn.2002 (without Publisher, 2002), p. 181. The Indian Rupee was the currency of trade in Kuwait before Independence.

⁸ Abdul Razzaq al-Sanhouri, *Al-Wasset in Interpreting the Civil Law, Part II* (Alexandria: Al-Maraef Library, 2004), p. 821. He said that the original view is the Judicial assessment of Compensation whereas the Legislative assessment is applied only in very rare cases.

Full blood money is 10,000KD, and the amount may be modified by a decree of law.

2.2.1 Features of Blood Money as Legal Compensation

'Blood money is compensation against bodily injury in itself'. In Kuwaiti Civil Law, blood money represents the third type of compensation, namely in addition to compensation for financial and moral damage. Blood money is paid for the victim, even it covers the cost of medical treatment, disabilities, inability to earn a living, and moral damage such as sensual or psychological pain due to body deformity. Blood money does not preclude awards of additional compensations, *e.g.*, for material or moral damage, even when it results from the same onslaught. Bodily injury or the death of a human being endows the law with a distinctive feature entailing the application of special rules, such as blood money, and direct guarantees against harmful acts. The same has been confirmed in Article 248 of the Kuwaiti Civil Law as stated above.

In this way, Kuwaiti Civil Law prevailed over the dispute raised in Egyptian Civil Law which did not provide blood money in case of the 'damage' is either material or moral.⁹ One opinion stated that physical injury may more closely resemble 'moral damage' because it affects the human being itself is neither a commodity nor part of a financial transaction (Zaqrad, 1996). Another opinion stated that such physical injuries represent 'material damage' resulting from the individual's diminished capacity to move and act, which will have an impact on his/her financial interests (Ahwaei, 1998). Moreover, loss or injury to any part of the body, regardless of the severity of the injury or its consequences, will cause the victim to experience a deep sense of loss or grief.¹⁰

The Egyptian Court of Cassation took the view that injury to the body must be considered 'material damage' as Egyptian Civil Law did not provide for 'biological' or physical damage to a human being. Therefore, because Egyptian law did not differentiate between physical injury and material damage, the court reversed its previous opinion that defined material damage as prejudiced to the victim's financial interest. This makes it impossible to list physical injury among financial interests. Thus, an injured party will only receive compensation if the said injury has resulted in the victim's inability to work or bear the expense of medical treatment. Therefore we may consider this to be damaging to the victim's financial interests. The Egyptian law only provides for judicial compensation in contrast to Kuwaiti Civil Law that has provided a legislative adjustment for physical injury. Despite this fact, in one decision, the Kuwaiti Court of Cassation followed its Egyptian counterpart and failed to consider bodily injury, stating: "the damage to the safety of the body shall be prejudice to a right guaranteed by the Constitution and the Law".¹¹

2.2.2 Equal Legal Compensation for both Men and Women

Based on the above, we noted that, before independence, the Kuwaiti Civil Law applied the provisions of Islamic jurisprudence and held the opinion that the value of blood money differed according to gender, namely that reparation for a woman was less than that for a man. However, after independence, a new law was enacted whereby restitution for damages would be equal regardless of gender; Article 248 of the Kuwaiti Civil Law stated 'without distinction between one person and another'.

The Explanatory Memorandum of the law stipulated that there would be no distinction made for blood money entitlements – neither in terms of gender, age, religion, nationality, nor any other considerations. People would be considered equal: woman or man, child or adult, beggar or nobleman, non-Muslim or Muslim, non-Arab or Arab. However, the said Law was contrary to the view of some Islamic scholars who differentiated, *e.g.*, between men and women or Muslims and followers of other religions, thus influencing their rights to *diyah*. One Islamic scholar thought that 'blood money' in both Christians and Jews was the same as that of the Muslims at the time of the Prophet, Abu Bakr and Othman, but came to only one-half that

¹⁰ AL-Ahwaei Husam ALDin: the General theory of Commitment, First part, Sources of Commitment. Second Volume, the non-voluntary sources, 1998 edn, P. 68 where he discussed the Juries opinions in this issue.

¹⁰ Ahmad Saeed Zaqrad, 'Modern trend of the Egyptian Court of Cassation in terms of the concept of the material and moral damage compared to the Provisions of the Kuwaiti Court of Cassation', *Kuwaiti University Magazine of Law*, Year 20 (1996).

¹¹ Challenge in Cassation No. 174/99, Civil Session dated 28/2/2000, Group of Legal Principles determined by the Court of Cassation within 40 years, March 2009, p. 68.

amount during the era of Caliph Mu'āwiyah ibn Abī Sufyān, founder of the Umayyad Dynasty, who collected half for the Treasury. Other scholars also agreed that blood money should be gender-neutral, based on the Prophet's saying that "there was no distinction between man and woman".¹²

2.3 Scope of Blood Money Compensation for Bodily Injury

According to Article 248 of the Kuwaiti Civil Law, blood money is limited to bodily injury, only without details if it includes all or some injuries. Article 251(1) of the Civil Law stated the need for a decree listing injuries to the mind, body, organs, or limbs and the degree to which either partial or full restitution was due according to Islamic provisions.

Kuwait's Blood Money Decree enumerated 26 types of injuries to the human body along with the pre-determined partial or full compensation demanded each case. Therefore listed injuries became linked legally to the concept of blood money. However, the Decree neither defined all possible types of injuries to the body nor specified whether such injuries warranted financial compensation nor did it state how compensation should be assessed. Therefore one must assume that any injury to the body left unlisted in the Decree was out of scope, regardless of whether it could be allocated compensation in terms of *arsh* or the so-called 'Justice of Government' (*ḥukumah 'adl*) rule whereby a judge determines fair compensation as he deems fit.¹³ However, this situation is invalid because, after the Civil Law's referral, the Blood Money Decree should have determined the legal nature of all body injuries not included in its list: namely, were such injuries worthy of compensation from the offender and what type of compensation was warranted? The question should not be left to a particular judge's discretion, which would result over time in arbitrary decisions as is now the case.

The Explanatory Memorandum of the Kuwaiti Civil Law stated that blood money for injury of self is determined according to Islamic provisions. Such definition shall be invalid except where bodily injury is sufficient to demand blood money from the perpetrator. If such injury is minor and fails to meet the standards for a legal remedy according to Islamic provisions, then the necessity for any compensation shall be left to the discretion of a judge for restitution via *arsh*.¹⁴

We do not agree with certain scholars' views¹⁵ that the Kuwaiti Civil Law failed to determine blood money cases for those injuries provided in the Decree (Al-Hindiani, 2002). If an onslaught is sufficient to cause physical injury and leave traces, a victim shall deserve compensation from the offender regardless of whether that type of injury is listed in the Blood Money Decree. Article 248 linked blood money entitlement and injuries to the self without restriction. As for the level of blood money, it is left for the judge to decide under the so-called 'Justice of Government'.¹⁶

The said judgment considered that any bodily injury is subject to blood money compensation according to the legal rules. However, in Section 3 we shall see that the Court of Cassation neither adopted such a view nor applied the legal rules to guarantee compensation for damages directly, as provided in the Blood Money Decree, and excluded other body injuries.¹⁷

3 Cases of Entitlement for Blood Money

Article 251 of the Kuwaiti Civil Law states that, while the full value of blood money is 10,000KD, this may be amended by legal decree. Tables in the Blood Money Decree list injuries to the mind, body, organs, and extremities and provide blood money entitlements for each type of injury according to Islamic provisions.

In its comment on Article 251, the Explanatory Memorandum stated that, if the original principle defined the value of blood money according to the Islamic provisions in terms of 100 camels, then there is nothing in

¹² Explanatory Memorandum of the Civil Law, Fatwa & Legislation Version, 2004, p. 239.

¹³ Two challenges in Cassation No. 315 and No. 323, Civil, session dated 20/5/2002, *Group of Legal Principles determined by the Court of Cassation*, 5th Section, Vol. 7, p. 448.

¹⁴ Explanatory Memorandum, *supra* note 13 at 238.

¹⁵ Khaled Jassem al-Hindiani, 'Certain issues involved in the indemnity against self injury', *Kuwait University Magazine of Law* (26 March 2002): 97.

¹⁶ Challenge in Appeal No. 371/1999, Civil, session dated 29/12/1999. The Judgment is issued in Al-Hindiani, *ibid.*, p. 88.

¹⁷ Challenge in Cassation No. 287/2000, Civil, session dated 11/3/2002, and challenge in Cassation No. 4/2004 Commercial, session dated 4/6/2005.

the said provisions that estimates *diyah* in terms of money. The law permitted the amendment of blood money rules by issuing a Blood Money Decree to facilitate legislation and standardize compensation. This is evidenced by the increase in compensation from 8,000 Dirham (800 KD) at the time of the Prophet to 12,000 Dirham (1,000 KD) during the era of Caliph Omar, who saw the price of camels increase.¹⁸

For such cases entitled for the blood money, the judiciary preferred that a decree must be issued to include the clear details that are not provided in the law itself. On 24 January 1981, the Blood Money Decree (hereafter Decree) was promulgated in which tables stipulated which damages to the body warranted a certain monetary remedy. This Decree was applied along with the Kuwaiti Civil Law on 25 February 1981. The following three sub-sections will list certain entitlements that warrant full, partial, or percentage *diyah*.

3.1 Blood Money Entitlement for Full Compensation

Article 1 of the Blood Money Decree stipulates the following nine types of bodily harm that warrant full compensation: *i.e.*, 10,000 KD.

- 1) Death: The family, kinsfolk, or guardian of the victim who has died as a result of physical injury will receive full blood-money compensation, regardless of whether the death was immediate or occurred after some time. The Court of Cassation has ruled that the text of Article 6 (A) in the Decree is general and absolute in that it fails to differentiate between injuries that result in an immediate or delayed death. To limit the application of the legal provision to immediate rather than prolonged death shall be a restriction to the absolute text without legal basis, which is invalid.¹⁹ Article 250 of the Kuwaiti Civil Law stipulates that blood money for the loss of human life becomes part of each heir's legacy, according to the Law of Inheritance. Blood money compensation for an unlawful act resulting in death is not dependent on the time between injury and death. The victim, even in death, still has civil rights, including the right to blood money. His heirs, who have the right of inheritance from the victim's estate, are therefore entitled to claim blood money damages from the liable party.²⁰
- 2) Loss of memory or mind: Loss of one's memory or mind deserves full compensation. However, if the loss is partial, the right of compensation must be decided by a judge and may not exceed the full value of blood money. The Court of Cassation has refused to rule for full compensation when someone has lost 90% rather than 100% of his/her cognitive or mental abilities.²¹
- 3) Loss of one's vision or visual perception: Full blood money entitlement is warranted for complete loss of vision in both eyes or one eye if the victim had only one functional eye before the injury. In other words, complete deprivation of one's ability to see, whether due to the loss of both or one functional eye, only deserves single compensation because vision is lost once *in toto*.²² The strength or quality of the victim's sight before the injury is irrelevant. Full compensation will be sought even when the victim's vision was poor before the injury. The Court of Cassation will rule according to the facts presented in the medical report, and not more harshly such as when, for example, an offender claimed in his defense that the medical report failed to confirm 'total loss of vision'.²³ In contrast, because the court itself does not consider separation of the retina equivalent to blindness, compensation for a detached retina must be decided at the judge's discretion.²⁴
- 4) Loss of one's hearing or auditory perception: What has been said about blindness can also be applied to the loss of hearing, regardless of whether one or both ears are involved.
- 5) Loss of one's sense of smell or olfactory function: Damage to both nostrils, resulting in olfactory dysfunction, warrants full blood-money compensation. If only one nostril has been damaged, neither full nor partial restitution will be required. However, several Islamic scholars have stated that 50% of blood money would be appropriate even when only one nostril has lost its sense of smell.²⁵

¹⁸ Explanatory Memorandum, *supra* note 13 at 240.

¹⁹ Challenge in Cassation No. 200/93, session dated 1/5/1994, *Magazine of Law*, Year 22, Part 1, p. 316.

²⁰ Husam Al-Din Al-Ahwaei : previous ref. P.70

²¹ Two challenges in Cassation No. 236 and No. 238/96, Commercial, session dated 17/3/1997, *Magazine of Law* 25(1): 173.

²² Al-Yacoub, *supra* note 8 at 169.

²³ Challenges in Cassation Nos. 96, 101, and 425/2005, session dated 5/6/2006, *Group of Legal Rules prescribed by the Court of Cassation* 7(5) (March 2009): 453, Rule 12.

²⁴ Challenge in Cassation No. 173/92, Commercial, session, *ibid* . P.105 No. 14

²⁵ Al-Yacoub, *supra* note 8 at 169.

- 6) Loss of one's sense of taste or gustatory perception: Full entitlement requires total, not partial, loss of one's sense of taste via the tongue. If, however, an individual is for some reason mute, his/her disability is neither considered equivalent to nor relevant for one's inability to taste.
- 7) Loss of one's ability to speak: To qualify for full blood money entitlement, the victim must have completed, rather than partially, lost the ability to speak or produce words. The quality of one's voice or speech before the injury is irrelevant. Hence, if one's loss is incomplete, a judge must decide what compensation for damages will be just. In such a case, the Court of Cassation has ruled that compensation for a victim's injuries was necessary but that entitlement fell outside the scope of blood money, which can only be allotted in cases of 100% loss. Thus, compensation was decided at the discretion of the judge.²⁶
- 8) Fracture of the backbone or spinal cord :To be eligible for full compensation, injury to the spine must result in a fracture so serious that paralysis is complete. The Court of Cassation ruled, as in the aforementioned decision, that damage to the spinal muscles or ligaments, resulting in 30% weakness or stiffness, would not qualify for full compensation. In one case, because the spinal injury was partial, the victim did not qualify to receive 3,000 Dinars, *i.e.*, ca. 33.5% of full blood money entitlement or 10,000 Dinars. The Decree neither listed muscular weakness nor torn ligaments but only damage to the spine resulting in complete immobility or paralysis.²⁷ In another Court ruling, full blood money entitlement was given because the victim had suffered from the damage of the spinal cord resulting from two fractured vertebrae. Paralysis stabilized at a level that affected only the lower extremities, leaving the victim a paraplegic unable to move independently.²⁸
- 9) Sexual incapacity or non-performance: Entitlement is for complete sexual dysfunction such as total impotence, loss of sexual function, inability to ejaculate, or damage to the reproductive system resulting in a woman's inability to conceive or give birth (Mansour, 2006). In one case, the Court of Cassation ruled that a victim's medical report provided insufficient evidence to prove either diminished or complete sexual dysfunction and therefore ruled that full blood-money compensation was unwarranted.²⁹

3.2 Blood Money Entitlement for Partial Compensation

The Decree provides a list of injuries worthy of partial compensation. Although the majority of scholars referred to such restitution as *arsh*, the Decree took a different view of Islamic jurisprudence and called such compensation 'blood money'. The Decree further divides partial entitlements into 50%, 33%, or a certain percentage of full blood money ranging from 5% to 15%. The Decree's list links types of injuries with the percentage compensation warranted, as discussed in the following three sub-sections.

3.2.1 Types of Injury Worthy of 50% Blood Money

Article 2 of the Decree stipulates six types of injury that require 50% blood money compensation. In this case, the law takes into account whether the torso, a limb, or an organ has been cut, resulting in the loss of functionality.

- 1) Hand cut to the wrist: Take, for example, the case where the hand has not been amputated but nevertheless has sustained such damage that causes paralysis. Regardless of which hand has been cut or whether it is the powerful or preferred hand, damage to one hand requires 50% compensation while damage to both hands will receive the full 100%.
- 2) Foot cut to the joint: Rules for damage of the hand also apply here as well as the loss of functionality due to paralysis. The Court of Cassation ruled that an injury to the left foot, which caused permanent disability, reduced the leg's functionality by 25% which is not considered equal to the loss of the foot or its function. Therefore, the injury did not warrant 50% compensation and was referred to a judge for

²⁶ Two challenges in Cassation Nos. 236 and No. 238/96, Commercial, session, previously noted.

²⁷ *Ibid.*

²⁸ Challenge in Cassation No. 6/90, session dated 1/6/1993, *Magazine of Law* 21(2) (year): 313.

²⁹ Two challenges in Cassation No. 27 and No. 21/2003, session dated 15/3/2004; Mansour Hussein Abdul Aziz, 'Ensure of Self Harm', *Kuwait Institute for Legal Studies*, 2006, p. 176.

further assessment. Compensation may not exceed 50%, which would be warranted had the entire foot been lost.³⁰

- 3) Damage to or loss of a functional eye: Here one must assume that the victim was able to see before suffering injury, although the Court of Cassation has ruled that the degree of vision before the injury was irrelevant.³¹ If vision is lost in only one eye, compensation will be 50%.
- 4) Loss of an ear: The physical loss of one ear or its inability to hear will warrant 50% blood money if the victim still had both ears before the injury. The Court of Cassation has ruled that the loss of one-third of the left ear's functionality shall not warrant even partial blood money but that any compensation must be left to the judge's discretion. In one case, the court ruled that the injured party should receive 1,000 KD synonymous with *arsh*.³²
- 5) Female breast and/or nipple: To warrant full blood money, the entire breast with its nipple must be lost. Damage to the nipple, although a part of the breast, will also warrant the same compensation due to its importance for breastfeeding. Damages caused by the loss of a man's breast must be assessed by the court and will not be awarded 50% compensation as men do not breastfeed.
- 6) Loss of a testicle: The Decree failed to specify whether one or both testicles must be lost. From the general text, it appears inevitable to say that loss of one testicle is sufficient.³³

3.2.2 Types of Injury Worthy of a Percentage Blood Money

Article 3 of the Decree stipulates a certain proportion of full blood money entitlement for the loss of one of the five organs listed, noting that the injury should result in an actual loss. This does not apply to the final paragraph of Article 2 in the Decree which states that compensation for a defunct organ's permanent inability to function is equivalent to the loss of the organ itself. This is a special text for injuries listed in Article 2 but left unmentioned in Article 3 of the Decree.³⁴

- 1) Loss of a permanent or secondary tooth: Compensation for the loss of teeth is based on a Prophetic Hadith: 'Every tooth is worth five camels'. The law does not distinguish between types of teeth: incisors, canines, pre-molars, and molars. Rather, it stipulates that the tooth be secondary or permanent, rather than a deciduous tooth in a child. Loss of a tooth warrants 5% of blood money, even when implantation of an artificial tooth is possible.³⁵ Loss of all one's teeth is the only case where more blood money is warranted than for any of the body's organs or death. Namely, there are 32 teeth and each tooth equals 5% of full blood money which calculates to 160% or 16,000 dinars in contrast to 10,000 dinars for full restitution for death.³⁶
- 2) Loss of a thumb: Blood money, regardless of which hand, is 15%. Compensation requires complete rather than partial loss of the thumb for which a separate rule exists as we shall see later.
- 3) Loss of a finger: Blood money for a finger (10%) is less than that for a thumb, due to the importance of the thumb for the hand's functionality. Loss of the thumb will result in a greater disability.
- 4) Loss of the thumb's phalanx: Loss of one of the two thumb phalanges is worth 7.5%. Therefore, loss of the complete thumb warrants twice the blood money for one phalanx.
- 5) Loss of a finger's phalanx: In contrast to the thumb, a finger has two joints and three phalanges. Thus, compensation for the loss of one phalanx is 33.5% of full blood money for a finger. The law chooses an estimate of 33.5% rather than 33.3%.

3.2.3 Special Cases Worthy of Partial Blood Money

Article 4 of the Decree stipulates specific blood money for each of the following six types of injury. First, we should note that the Court of Cassation has ruled that injuries must be referred to according to their proper

³⁰ Challenge in Cassation No. 74/2002, Civil, session dated 2/6/2003; see Abdul Aziz, *ibid.* p. 179.

³¹ Challenge in Cassation No. 17/1981, Civil, session dated 30/11/1981, *Magazine of Law* 10(2) (year): 160.

³² Challenge in Cassation No. 312/89, Commercial, session dated 19/3/1990, *ibid.*, year 37 –second part .p.189

³³ Al-Yacoub, *supra* note 8 at 166.

³⁴ Abdul Aziz, *ibid.* P. 187

³⁵ Challenge in Cassation No. 3/2008, Civil, session dated 6/4/2009, *Magazine of Law* 37(2) (year): 286.

³⁶ Al-Yacoub, *supra* note 8 at 168.

terminology derived from Islamic law provisions and applied in the Decree. Entitlements require reference to Shari'ah rules to identify the maximum values of blood money in the Decree,³⁷ although the Decree defined each injury mentioned above.

For example, a fractured, dislocated bone is listed in the Decree under the category 'Mover' and is described in general terms. However, the reference to Islamic jurisprudence tells us that 'mover' refers to a fracture of the head or the skull only and does not include fractures, or dislocations, in any other part of the body. Moreover, dislocation of a bone itself does not warrant blood money but rather compensation decided by a judge. This applies to *amah* (i.e. fracture of the skull laying bare the brain's membranes), *hāshimah* (crushing.e. fracture or crushing of a bone), and *Moudeha* (wounds that occur in the head or face. It is called (Moudeha) because it is clear to anyone), all of which are fractures or wounds that are only found in the face or head.³⁸

We should note that the determination of the value of blood money, listed in the Decree, for the following six types of injuries conforms to the ratios prescribed in Islamic law provisions.³⁹

- 1) Wounds to the abdominal or thoracic (chest cavity): Generally Islamic jurisprudence is in agreement with the Decree that these types of wounds warrant 33.5% of blood money.⁴⁰ However, damage to the abdominal or thoracic cavity must have been caused by injury, not a surgical intervention or medical treatment.⁴¹
- 2) Fracture of the skull laying bare the brain's membranes (meninges): In Islamic law, the brain is said to be located only in the upper part of the head. Therefore, only 33.5% of blood money is required for such injury.
- 3) Fracture and displacement of a bone: This case is also mentioned above regarding head wounds and requires 15%.⁴²
- 4) Fracture or crushing of a bone: The Decree did not explain the meaning of *hāshimah* or 'crushing' except that it concerned fracture of a bone warranting 10% of blood money. This definition should be introduced in Islamic law, which is taken by the Kuwaiti judiciary to mean only the head or face. However, the other types of wounds can be called surgery⁴¹ It is what breaks the bone without removing it from its original position⁴². These types of wounds in the body other than the head do not require blood money or part of it, but compensation that the judge determines⁴³ except for "cadaver."
- 5) Fetal death or spontaneous abortion or miscarriage: To justify 10% of blood money, the evidence must prove that the fetus was viable in the mother's womb before the injury which resulted in spontaneous abortion (1-3 months) or miscarriage (4-6 months). Islam believes that the Spirit descends into the fetus after 4 months. Full restitution is not warranted as a fetus is considered part and parcel of its mother's body, and thus not existing independently from her.
- 6) Wounds exposing an unbroken bone: 'Exposure' of a bone not only pertains to the head or face and calls for 5% of blood money.

Finally, the Decree does not mention bodily injuries that warrant compensation but must be decided at the court's discretion. However, judicial compensation shall not exceed the full legal blood money entitlement, *i.e.*, 10,000 KD, for death or complete loss or detriment of an organ.⁴³ For example, when an injury to the hand only, but not the wrist, results in complete loss of the hand's functionality, then compensation will be assessed at the judge's discretion and shall not exceed 50% according to the Decree. The Court of Cassation has ruled that compensation awarded by a judge shall neither be substandard nor flawed about blood money ascertained in the Decree.⁴⁴ Thus, *e.g.*, if the loss of a hand's functionality calls for 50% compensation, then a

³⁷ Challenge in Cassation No. 710/2002, Commercial Session dated 13/5/2006, Group of Legal Rules prescribed by the Court of Cassation, Section 5, Vol. 7, p. 455, Rule 15.

³⁸ Abdul Aziz, *ibid*, P. 190

³⁹ Challenge in Cassation No. 177/2000 – Civil, Session dated 22/1/2001; Abdul Aziz –*Ibid*. P 191.

⁴⁰ Al-Yacoub, *supra* note 8 at 172.

⁴¹ Two challenges in Cassation No. 73 and No. 69/89 - Commercial, Session dated 21/5/1989, Group of Legal Principles prescribed by the Court of Cassation in 40 years, Vol. 11, Aug. 2016, p. 99.

⁴² Challenge in Cassation No. 202/90 - Commercial, Session dated 16/12/1991, Group of Legal Principles prescribed by the Court of Cassation in 40 years, Vol. 11, Aug. 2016, p. 100.

⁴³ Two Challenges No. 315 and No. 323/2000 - Civil, Session dated 20/5/2002, *ibid*, 5th section, volume 7 P. 448 Rule 1

⁴⁴ Challenge in Cassation No. 29/93 - Civil, Session dated 7/3/1994, *ibid*, P. 97 No. 9

judge can award the victim 3,000 Dinars. The Court of Cassation has ruled that when a fractured spine does not prevent complete paralysis, as required in the Decree, then the case must be referred to the court.⁴⁵

3.3 Right to Single or Multiple Blood Money Entitlements

In accordance with Articles 5 and 6 of the Decree, multiple compensations were originally permitted, regardless of whether blood money was full or partial. Whether the injury was inflicted on one's body or extremities, or affected one's sensory faculties or physical capabilities, or caused wounds, fractures or worse was not an issue. However, the original blood money concept exclusively earmarked four cases where there is no multiple compensations as laid out in the following two sub-sections.

3.3.1 Single Entitlement to Blood Money

Article 6 of the Decree stipulates four cases in which injury does not warrant multiple blood money compensation. This represents an exception to the original blood money rule which allows for multiple compensations. The four exceptions are mentioned below.

- 1) Injuries resulting in death: A deceased victim will only be entitled to receive full blood money (10,000 KD) once. The heirs cannot claim other types of compensation because death, it is argued, results in the simultaneous termination of all bodily functions leaving nothing else to claim.
- 2) If the loss of an organ or a part of the body that is multifunctional inevitably results in the loss of other parts or functionality: This means, *e.g.*, that if the victim loses his hand to the wrist then inevitably the thumb, fingers, and phalanges will also be missing. In such cases, compensation will be awarded once for the largest part, namely the hand. In the example given, the hand will be awarded 50% compensation but the loss of the thumb, fingers, and phalanges will not deserve additional compensation. This is also true for a defunct or missing organ that by necessity might adversely affect other bodily functions, such as the interaction between heart, lungs, and kidneys.⁴⁶ The Court of Cassation has ruled that when a medical report has shown that a patient's diminished mental capacity has resulted in the inability to see, hear, taste or smell, then blood money compensation will be for the loss of mind rather than the senses.⁴⁷
- 3) If one organ has multiple functions: This is similar to the previous example. A functional heart fuels the healthy working of all the body's organs.⁴⁸
- 4) Loss of an organ for which a part is separately linked to blood money: As stipulated in Article 2 of the Decree, *e.g.*, 50% compensation is warranted for loss of or damage to a woman's breast or its nipple, the latter being worth blood money compensation in its own right. However, if both are lost, compensation will only apply to the breast.⁴⁹

3.3.2 Multiple Entitlements of Blood Money

Multiple compensations for injury are possible as long as the four above-mentioned cases limited to single compensation have not been proven. That is why multiple compensations occur more frequently. Accordingly, multiple entitlements shall remain valid even if the total sum exceeds that which would be paid to the victim's heirs upon his/her death.⁵⁰ For example, the Court of Cassation has ruled that if there is damage to the bone marrow, hands, feet, and sexual function, then multiple entitlements would remain although bone marrow is not listed specifically in the Decree.⁵¹

⁴⁵ Challenges in Cassation No. 85 and No. 79/1993 – Commercial, Session dated 19/2/1993, *ibid.* page 112 No. 4

⁴⁶ Two challenges in Cassation No. 69 and No. 73/89 – Commercial, Session dated 21/5/1989, *Magazine of Law*, Year 17, Part 1, p. 417.

⁴⁷ Challenge in Cassation No. 172/2004 – Commercial, Session dated 20/12/2004, *ibid.*, volume 7 P. 458 Rule 18.

⁴⁸ Abdul Aziz, *ibid.*, P. 210

⁴⁹ *Ibid.*, p. 211.

⁵⁰ Two challenges in Cassation No. 73 and No. 69/89 – Commercial, Session dated 21/5/1989, *ibid.* – year 17 P. 417

⁵¹ Challenge in Cassation No. 237/86 – Commercial, Session dated 13/5/1987, *Magazine of Law*, Year 15, Part 1, p. 318.

4 Legal Rules for Blood Money

Although blood money is meant to compensate for certain bodily injuries, the Kuwaiti Civil Law has also allocated some rules that do not apply to compensation for other types of damage. To elucidate provisions related to blood money, the following sub-sections will present six requirements about these legal rules.

4.1 Blood Money does not belong in a Creditor's General Guarantee

In accordance with Article 249 of the Kuwaiti Civil Code, a victim's blood money entitlement for injuries suffered is separate from any creditor's general guarantee. This does not apply to other compensations to which a victim might be entitled.

This law does not apply to any other compensation for unlawful work, even if it is compensation for bodily harm that was not mentioned in the Blood Money Decree. General rules in the law require that all the debtor's funds remain as a guarantor of his debts, whether he already has them or those that he did not collect from others. They are among his financial rights, even if they are in the possession of others unless there is a special legal text that takes them out of the general guarantee, as is the case about the blood money. Therefore, creditors cannot seize it nor can they claim it in the name of their debtor on his behalf through an indirect lawsuit. But if the blood money is paid to the one who is entitled to it, then it is mixed with his money and is included in the general guarantee of his creditors.

Therefore, creditors may neither seize nor claim the victim's blood money for bodily injury on behalf of a debtor through an indirect lawsuit. However, once blood money has been paid and after time has become part and parcel of the victim's capital, it can thereafter be targeted by a creditor. The Explanatory Memorandum to the Kuwaiti Civil Code states clearly that blood money paid to compensate either death or bodily injury is earmarked for the guardian of or heirs to the person having suffered harm and not for creditors seeking to recover a debt. The importance of this legal rule in the case of death is clear when we recall that blood money is a legacy from the deceased to be divided between his/her heirs according to the Law of Inheritance to which a creditor has no rights.⁵²*(This text means that the Creditors cannot seize or recover their debt due from the person who is entitled to blood money payment till it is paid to him or his heirs and became part of their Funds)*

4.2 The Perpetrator's Liability is Limited to Payment of Blood Money⁵³

Stated in the Kuwaiti Civil Code, as in Western laws, proof of a perpetrator's error and liability for damages is the responsibility of the victim (the claimant) rather than the offender (defendant), although there are several exceptions to the rule. This means that error – whether proven beyond a reasonable doubt or presumed – is one of the pillars of responsibility for a wrongful act. However, while proof of error was perhaps less cumbersome in the distant past, *e.g.*, due to the scarcity of motor accidents, this is no longer the case. The lives of today's populace increasingly intersect with the mechanized world of motorized transportation, home appliances, and machinery in the workplace as well as humans with the potential to cause injury. Therefore it is increasingly difficult to prove 'error' and pinpoint the liable party.

⁵² Explanatory Memorandum, *supra* note 13 at 240.

⁵³ In accordance with Article 255 of the Civil Code, if an injury occurred and incurred the entitlement of blood money and the damage by doing a direct and using something dangerous things mentioned in Article 243 of the Civil Code, the person who is already directly did the damage is committed to compensate the injured in accordance with the provisions of blood money even he is not mistaken And the civil law did not indicate the intended occurrence of the act by direct means, and as this was one of the terms of Islamic jurisprudence, it must be referred to determine its meaning, and Islamic jurisprudence distinguishes between the occurrence of the act by direct method and its occurrence by the cause. The error in the direct action is not required to hold him responsible, while the error in the act is caused by the cause. It means the person who did the direct action it is the person whose action has led to the occurrence of the damage and was a reason for it without the presence of another person's act that mediates between his action and the damage as is the case in the occurrence of the act by causing. An example of the occurrence of the action by direct means: if the car is traveling and a tire is exploded suddenly resulting in the death of one of the passengers, the act of driver of the car is a direct cause of the damage even though not attributed to a specific error and thus is obliged to pay the deceased passenger blood money (challenged discrimination No. 30/95 – Civil, Session dated 26/6/1995, Set of Principles decided by the Court of Cassation in 40 years, Vol. 11, No. 21, August 2016, p. 91). For more detail about the responsibility of proceeded damage to review, see Al-Yacoub, *supra* note 8, and Ibrahim Abu ALail: the obligated to compensate the damage caused by car accidents, the reference of the former, p. 25 *et seq.*

According to Article 243 of the Civil Code,⁵⁴ it is difficult to adjudicate liability in the case of damages caused by a 'non-living' or inanimate object or by the person operating the equipment (Mansour, 1980), whether he is the user or the owner:

- A person who is responsible for operating, taking care of, or overseeing a mechanical or inanimate object; in principle, the owner is also considered responsible for said object, as outlined in Articles 243-244 of the Kuwaiti Civil Code; and
- Damage occurs due to an object's failure. This requires an object's direct interference to become available.

It is true that the expansion of the assumption of error by considering the guardian of dangerous things wrong as soon as the harm is caused by him. However, the guardian of dangerous things can deny his responsibility by proving that the damage has been caused by an external cause whether it is by force, a sudden accident, the action of the injured, or the action of others according to Article 243 of the Civil Code.

Such measures were applied in Kuwait after its independence in 1961 when the State developed modern laws derived from the West after having applied solely Islamic Shari'ah rules before independence. Law No. 6 of 1961 regulated the obligations arising from illegal work was issued. Then after seven years, a new article was added to it. Article 19 ordered everyone who by his direct action harms others using something dangerous. However, his act was not wrong, he should compensate the injured following the rule of blood money. In justifying this, the Explanatory Memorandum of Law No. 42 of 1967, was added. It states the following:

[...] It was noticeable at the beginning that accidents caused by objects, especially cars, often made it difficult to identify the offender because the injured party could not always explain how the accident had occurred, perhaps in the darkness of night or in a place without witnesses. Nevertheless, the law stated that evidence of a wrongful act caused by a 'non-living' dangerous object placed responsibility for that act on the shoulders of its caretaker, operator, or owner and made him liable due to an 'assumed error' on his part. Thus, the injured party is relieved from having to prove wrongdoing although the law still demands that the claimant give evidence that proves the defendant's role as owner or guardian of the dangerous object and thus responsible for the said injury. Article 19 allows the guardian of the dangerous object to deny liability or prove that damage was caused by *force majeure* or a sudden accident, or by a wrongful act by the claimant, or by a third party. If proof was beyond doubt, then the defendant would no longer be held liable for damages.

Accordingly, if a car runs over someone, compensation for damages depends on who is responsible for the unlawful act, according to the general rule that requires the burden of proof of fault or negligence regarding dangerous objects. If responsibility cannot be proven and compensation provided, then the blood of the victim will have been wasted. The car's driver (direct damage) cannot be held responsible because the law abolished the legal basis that was in place which requires that injury must result from a direct action involving direct responsibility if no mistake has been made, referring to original Islamic jurisprudence.

The current state of the country's economic development, modernization, and increasing urban life necessitates a stricter emphasis on individual responsibility, *e.g.*, for the use of cars, machinery, or dangerous objects that present an increased risk to one's well-being. For this reason, Law No. 6/1961 was amended by Article 19-R to validate the rule that anyone directly responsible for an injurious act shall be liable even if he/she did not commit an error or mistake. This is a rule established in Islamic jurisprudence, and Article 19-R is based on the idea of monetary reparation, equal to legal compensation in all cases according to the law. Such compensation shall not be equivalent to full compensation in a legal sense but should correspond to proof of responsibility by the force of law that shall not be denied even in cases of *force majeure*. However, compensation will be denied if there is proof that the injured party deliberately injured himself. In that case, the injured party is responsible for spilling or wasting his blood and shall not benefit from such action. Compensation will neither be forthcoming nor the so-called victim qualifies for protection under the law if the

⁵⁴ Mansour Mustafa Mansour: Non-Willful sources of commitment – Kuwait university -1980 –P 57

accident occurred due to his/her own deviant behavior, namely while perpetrating an attack, rape, robbery, for example.⁵⁵

When Law No. 6/1961 was repealed and amended by Article 19-R for the issuance of the current Kuwaiti Civil Law No. 67/1980, stipulations from Article 19 under the title 'Ensuring Harm of Self' were retained in Articles 255-261 of the Civil Law. Article 255 corresponds to Article 19 in the repealed law.

The Court of Cassation has ruled that in the concept 'blood money', the liable party is only held responsible for what has been specified in the Blood Money Decree regarding bodily injury but not for other damages. Thus, the driver of the car does not pay blood money as the victim's injury is not in the Decree. In another judgment, the Court ruled that if, *e.g.*, the victim suffers from a broken bone, or injury not listed in the Decree, then compensation will be left to 'government justice' or discretion of the court.⁵⁶

4.3 *The State is Responsible to Compensate for Bodily Harm following Blood Money Provisions*

Article 256 in the current Kuwaiti Civil Law provides a new legal rule to address a situation where an offender remains unknown (Al-Sirifi, 2005), according to the rules regarding liability for an illegal act or according to the guarantee of the perpetrator causing direct damage.⁵⁷ For example, how does the law rule, concerning blood money, when a victim's killer remains unidentified or when someone suffers significant physical injury in a car collision but the driver escapes the scene of the accident nameless? In such cases, neither the victim nor the deceased's heirs can claim compensation from an unspecified, unknown perpetrator. Article 256 of the Civil Code has determined that, in such cases, the State as the third party will award civil damages to the victim in place of a blood money remedy. The Explanatory Memorandum decided that, because the State is an individual's final resort when seeking compensation, it bears a responsibility to the victim of an unknown offender so that no human blood is wasted without compensation, which is consistent with Islamic law.⁵⁸

The State's responsibility, however, is restricted to physical injuries listed in the Decree. Other injuries will not be considered by the State. Also, the State will not provide any restitution if there is proof that the individual has harmed himself or that the deceased committed suicide. Moreover, if before death the victim or one of the heirs has falsely claimed not to know the identity of the perpetrator, the State will later have legal recourse to demand reimbursement of the compensation from the offender if his identity is eventually discovered.

4.4 *Validity of the long period of limitation on the fall of the right to claim blood money except for the state's claim for it*

The Statute of Limitations is based upon the rule that, after the passage of a certain period, an individual who has failed to claim his/her right provides evidence that this right has been forfeited. The inability to claim one's right before the judiciary after expiration leads to the stability of transactions.

Article 438 of the Kuwaiti Civil Law states that 15 years is the maximum period during which a plaintiff can delay filing his/her claim before the judiciary. This is the longest interval allowed and represents the general rule that applies to any personal rights issues unless a special text specifies a shorter timeframe.

Concerning liability for a wrongful act, Article 253 of the Civil Code stipulates a short period for limitations: namely, a case shall be dropped 3 years from the day the victim became aware of the injury and knew the identity of the offender, or 15 years from the date of the illegal act, *i.e.*, whichever of the two periods expires first. If a lawsuit results from a crime, it will not be dismissed as long as criminal charges have not been dropped.

At first glance, it appears that this short 3-year statute of limitations applies to blood money as compensation for an illegal act due to the absence of a special provision that decides otherwise. Because Article 261 states that, in the absence of a special provision, blood money shall be subject to the provisions

⁵⁵ Mansour Mustafa Mansour, *The Non-Willful Sources of the Obligation*, Kuwait University, 1980, p. 57.

⁵⁶ Challenge in Cassation No. 287/2000 – Civil, Session dated 11/3/2002, and challenge in Cassation No. 4/2004, Session dated 4/6/2005, Set of Rules prescribed by the Court of Cassation, Section 5, Nos. 22 and 23, p. 462.

⁵⁷ Yaser al-Sirifi, 'Compensation of Victims of Traffic Accidents of Unknown Doer in the Kuwaiti Civil Law', *The Lawyer Magazine*, Kuwait Lawyers Society, Year 29, Oct. 2005, p. 83.

⁵⁸ Explanatory Memorandum, *supra* note 13 at 247; see Ibrahim Abo EL-Lail: the Party liable to compensate the damage caused by Cars Accidents, *ibid.* p. 277

regarding responsibility for an unlawful act, which should not be inconsistent with its provisions. However, the judiciary has not applied the 3-years' timeframe for blood money because of its special features,⁵⁹ namely, its provisions are taken from Islamic law. Thus a long timeframe is generally applied in cases of blood money in the absence of a legal provision to decide otherwise.⁶⁰ This is confirmed by the fact that the civil law interfered demanding a short timeframe if the State failed to make a blood money claim when the perpetrator is unknown. Therefore Article 256/2 stated that a claim can no longer be made after 3 years have passed, beginning from the date of the accident.

4.5 The Value of Blood Money shall not be decreased if the Victim and Perpetrator are both at Fault

Legal rules governing liability for wrongful acts also include 'comparative negligence' where both the victim and the offender share responsibility for the act. In such cases, the injured party, as well as the offender, will share part of the damage commensurate with each one's degree of fault following Article 234/1 of the Civil Code. However, Article 234/2 stipulates that the above shall not be applied in the case of physical harm which necessitates some blood money, or in the case of death of the victim which requires full blood money (Cook & Fox, 2012). In the case of injury not leading to death, the specific blood money entitlement is that stipulated in the Blood Money Decree.

Such exceptions are related to situations in which blood money is due following rules on liability for damages where the error is a factor. However, if the blood money is stipulated for the direct damage, then the matter raises the question of whether the occurrence of a mistake from the injured leads to the inclusion of the act of the perpetrator in which there is no error and thus not being included with the exception mentioned in Article 234/2. The aforementioned exception is applied in this case without considering the fault of the injured.

4.6 Limitation of the Judge's Power to Rule on Blood Money paid in Installments

After the end of the Articles of the law that regulated the direct guarantee of damage. Article 261 of the Civil Code stipulated the application of the legal rules for liability for illegal work. There should be a guarantee of direct damage that does not contradict the legal rules related to this rule. Then, it should be applied to the guarantee of direct damage. And every agreement that took place before the responsibility for the illegal work should be invalid. It would exempt from liability in whole or in part according to Article 254 of the Civil Code. However, the question arises about the applicability of Article 252 of the Civil Law, which provides that a judge may order payment of compensation in installments or as a salary for either a certain period or for a lifetime on the amount of blood money. Since Article 252 came after the articles that regulated both compensations for illegal work and blood money. Or that is limited to judicial compensation and does not include blood money. Some jurisprudence holds that there is nothing in the text of Article 252 nor in the Explanatory Memorandum of the Civil Law that decides the answer to this question.

The difference between the blood money, which is a compensation that the law determined its value, from the compensation estimated by the judge, is not allowed for the judge to have any discretion. Deciding something else means that the amount of blood money becomes less or more than what is specified by law if it is stipulated in the form of a lifetime salary

⁵⁹ Challenge in Cassation No. 96/99, Session dated 15/5/2000, Legal Principles Prescribed by the Court of Cassation in 40 years, Vol. 11, p. 119.

⁶⁰ *I.e.*, [...] that the judiciary considers that applying the 3-year statute of limitations to blood money contradicts with its provisions, as Islamic law only knows that the passage of 15 years is a prohibitive period from hearing claims and there is no period less than that is known. See in two challenges in Cassation No. 319 and No. 341/2008 – Commercial, Session dated 5/5/2009, Set of Principles established by the Court of Cassation in 40 years, Vol. 11, No. 6, August 2016, p. 123. More than that the Judiciary expanded applying the time bar of 15 years period when it was considered that this was a special legal text without specifying the number of article which stipulates that, and limited the application of Article 807 of the Civil Cod , which stipulates the validity period of limitation of three years from the date of the accident leads to the failure of lawsuits arising from the insurance contract unless the law stipulates otherwise . See in this regard the challenge in Cassation No. 480/2001 – Civil, Session dated 27/5/2002, Legal rules established by the Court of Cassation, Section 5, Series, Vol. 7, p. 465, Rule 26. And contradicting this view, see Mansour Mustafa Mansour : *ibid*, p .80 ,where he sees the application of the 3-year statute of limitations stipulated in Article 253 of the blood money.

5 Conclusion

This study has revealed that considering different legal systems when writing a law should be carefully undertaken with caution. Thus, Kuwaiti legislation faced several difficult issues when considering the application of Sharī'ah provisions in Kuwaiti Civil Law, but with an eye to Western concepts about the law of tort and liability or responsibility for personal injury. For example, Western and Sharī'ah laws approach the concept of fault concerning liability and damages for personal injury differently. Islamic Sharī'ah acknowledges a relationship between a perpetrator's fault and determination of damages or legal 'blood money' (*diyah*). Problems also occurred with the introduction of the law of *diyah*, which is a system grounded in Islamic Sharī'ah, as a legislative compensation for bodily injuries, in addition to compensation for damages according to the Western legal system. While Western law considers compensation for either material or moral harm, thus making physical injury of a material issue, in Islamic law physical injury remains an independent category. Kuwaiti law also faced difficulties related to the concept of blood money because the Blood Money Decree it failed to declare *diyah* comprehensive for all physical injuries. While there are numerous forms of bodily injury, the Blood Money Decree limited its list to only 26 types entitled to either full or partial *diyah*. Other cases were expected to be properly compensated by *arsh* or 'government justice' according to the discretion of a judge on matters that had no definitive *diyah* assigned under Islamic provisions. The law made the restriction that compensation in such cases shall not exceed full or partial *diyah* compensation for the injury.

Here, the difficulty seems clear: namely, if the physical injuries omitted from the Blood Money Decree list included in the concept of legal blood money, and accordingly its provisions applied, or do they deviate from this concept? If they deviate from the concept of *diyah*, do the rules of judicial compensation apply as in Western laws where damages are divided into material and moral injury or do *diyah* provisions apply although there is no legal provision with which to decide the matter? The issue is further complicated by the fact that, under Kuwaiti Civil Law, blood money compensation is independently regulated by special rules that do not apply to compensation for other illegal harmful acts. Not all cases that appear in court apply to blood money compensation. Even if physical damage does not warrant blood money compensation, due to the multiple blood money ruling, the victim might still receive *diyah* for material damage. However, certain rules are applied by the Court of Cassation to ascertain that such compensation is *diyah* and thus ruled against multiplicity. In contrast to the above, we found that in other provisions the Court did not apply *diyah* rules for bodily damages that were not listed in the Blood Money Decree. They are not mentioned in the Blood Money Decree. It is not applied to direct physical damages. The same is applied to state guarantee if the person responsible for the damage is not known.

This difference between the concept 'blood money' and compensation by the Court of Cassation will inevitably repeatedly arise whenever one must decide whether bodily harm falls under the concept of blood money. Our research has also shown that the Kuwaiti Civil Law includes its own legal rule that does not include compensation for other damages, in addition to ensuring direct damage and the State's responsibility if the perpetrator is unknown. Blood money is not included in the general guarantee of creditors. The timeframe during which a victim can sue for damages is 10 years, not 3 years as is the case for damages caused by other wrongful acts. It is not allowed to reduce the amount of blood money if the fault of the injured person contributes to the occurrence of the damage. Also, it is not allowed to pay in installments or to be paid as a salary for a lifetime. All this does not apply to compensation outside the framework of the legal blood money.

To solve such problems the Blood Money Decree should be modified. This amendment will not prove difficult because it involves a decision rather than a law which would necessitate a far lengthier procedure. We believe that an amendment should include compensation for blood money for all bodily injuries. One cannot justify divisions between types of bodily damages due to the unity of the human being by nature whereas physical, moral, and material damages differ.

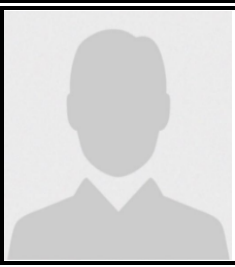
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Biography of Author

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