

Historical Background on the Limitation of Liability in Saudi Arabia

Abdulrahman Aljaser

Master of Commercial Law Program, College of Law, Prince Sultan University,
Riyadh, Kingdom of Saudi Arabia
222121258@psu.edu.sa

Zlatan Meskic

College of Law, Prince Sultan University, Riyadh, Kingdom of Saudi Arabia
zmeskic@psu.edu.sa

Abstract

This qualitative study explores the evolution and implications of limiting contractual liability in Saudi Arabia, focusing on the interplay between Sharia principles, international conventions, and domestic legal reforms. Through a comprehensive analysis of primary and secondary sources, including the new Civil Transactions Law 2023 and relevant legal documents, the research aims to thoroughly understand the historical roots and contemporary dynamics shaping contractual practices in Saudi Arabia. The study uncovers the challenges and opportunities inherent in harmonizing Sharia principles with global legal norms within the Saudi legal framework. Examining the new legislation reveals notable changes in the treatment of liability in commercial contracts, signaling a shift towards modernization and alignment with international standards. Its findings highlight the complexities of balancing contractual autonomy with legal constraints in the Saudi context, emphasizing the need for ongoing dialogue and research to address emerging issues and enhance the clarity and enforceability of contractual agreements. The study underscores the importance of a collaborative approach that integrates legal, cultural, and

international perspectives to strengthen the legal framework and foster a conducive environment for commercial transactions in Saudi Arabia. In doing so, it offers a nuanced analysis of the legal landscape, shedding light on stakeholders' challenges and opportunities in navigating contractual practices within the Kingdom of Saudi Arabia.

Keywords: Contractual Liability, Sharia Principles, Civil Transactions Law, Commercial Contracts, Legal Harmonization.

Introduction

The historical background on the limitation of liability in Saudi Arabia is a multifaceted exploration that intertwines Islamic Sharia principles, international conventions, and modern legal developments. This research delves into the intricate tapestry of contractual limitations within the Saudi legal landscape, tracing its origins, influences, and implications. At the heart of Saudi Arabia's legal framework lies the Islamic Sharia, a comprehensive system of law derived from the Quran, the Sunnah, and secondary sources (Al-Shamrani, 2014). The Sharia not only shapes the validity and enforceability of contracts but also sets the boundaries for contractual freedom, emphasizing justice, fairness, and good faith. Understanding the Sharia's role in limiting contractual liability is crucial to unraveling the historical evolution of commercial contracts in Saudi Arabia. Saudi Arabia's integration of international conventions, such as The Hague Rules and the Montreal Convention, reflects a global perspective on the limitation of liability in specific industries like maritime and air transport (Seaman, 1979). These conventions not only influence Saudi contract law but also contribute to harmonizing legal practices on a global scale.

In December 2023, Saudi Arabia implemented the new Civil Transactions Law 2023, a groundbreaking legislation to modernize and harmonize contract law in the country. This new law introduces significant changes to contractual liability rules,

emphasizing efficiency, profitability, and the autonomy of contractual parties (Mahasneh, 2023). However, introducing this law also challenges maintaining the balance, fairness, and consistency of contractual agreements within the Sharia framework. To understand the historical background of the limitation of liability, this study will explore the intersections of tradition and modernity and Sharia principles and international standards. In doing so, we will be able to unravel the complexities of limiting contractual liability in Saudi Arabia. By examining the historical foundations, legal influences, and contemporary developments, this research aims to comprehensively understand the evolution and implications of contractual limitations in the Saudi legal landscape.

Study Problem

The historical background on the limitation of liability in Saudi Arabia presents a compelling research landscape marked by a convergence of traditional Sharia principles and modern legal reforms. Within this context, a critical problem emerges concerning the compatibility and harmonization of international conventions with domestic laws, particularly in the realm of contractual limitations. One key issue revolves around the potential conflicts between international conventions and the Sharia principles that underpin the Saudi legal system (Alotaibi, 2021). These conventions, while essential for aligning Saudi practices with global standards, may pose challenges in maintaining consistency and adherence to Sharia tenets in contractual agreements. Furthermore, the introduction of the new Civil Transactions Law 2023 signifies a significant shift in Saudi contract law, aiming to modernize and harmonize legal practices with international standards (Mahasneh, 2023). However, the implementation of this new law raises concerns regarding its impact on the balance, fairness, and enforcement of contractual rights within the Sharia framework. As Saudi Arabia navigates the complexities of integrating international conventions and modern legal reforms into its traditional legal system, the study problem lies in

understanding how these dynamics influence the limitation of liability in commercial contracts. Therefore, this research seeks to shed light on the evolving landscape of contractual limitations in Saudi Arabia by probing the historical background of the concept of limitation of liability and connecting it to the current legal practices.

Hypotheses

1. The integration of international conventions into Saudi contract law will enhance the efficiency and profitability of commercial contracts while promoting the autonomy of contractual parties.
2. The implementation of the new Civil Transactions Law 2023 in Saudi Arabia will modernize and harmonize contract law with international standards, potentially impacting the limitation of liability in commercial contracts.
3. The historical foundations of limiting contractual liability in Saudi Arabia, rooted in Islamic Sharia principles, will continue to influence and shape the evolution of contractual agreements in the country.
4. The adaptation of provisions from other legal systems and international conventions, such as the UNIDROIT Principles of International Commercial Contracts and the CISG, will contribute to providing clarity and certainty for contractual parties and courts regarding the limitation of liability in Saudi Arabia.
5. The study of Qiyas and the influence of different schools of Islamic jurisprudence on the Sharia concept of limiting contractual liability will reveal insights into the adaptability and application of contractual limitations in diverse circumstances.

Objectives of the Study

1. To examine the historical evolution of contractual liability principles in Saudi Arabia, tracing the influences of French and Egyptian legal systems on the Saudi Civil Transaction Code.

2. To analyze the impact of international conventions on the limitation of liability in Saudi Arabia, exploring challenges and adaptations required to align with global standards while respecting Sharia principles.
3. To evaluate the implications of the new Civil Transactions Law 2023 on limiting contractual liability in Saudi commercial contracts, focusing on modernization, harmonization with international practices, and adherence to Sharia principles.
4. To investigate the challenges and opportunities presented by the integration of international legal concepts into Saudi contract law, aiming to enhance clarity and certainty in contractual agreements.
5. To assess the effects of the new law on contractual autonomy, balance, and fairness in commercial contracts, considering the impact on contractual parties, courts, and the overall legal landscape in Saudi Arabia.

The Importance of the Study

This study sheds light on the historical developments of the concept of limitation of liability in the context of Saudi Arabia. The importance of studying the evolution and implications of limiting contractual liability in Saudi Arabia lies in unraveling a complex interplay of historical, legal, and cultural factors that shape the country's legal landscape. By delving into the historical influences of French and Egyptian legal systems on Saudi contract law, researchers can gain valuable insights into the adaptation and modernization of legal frameworks in a global context. Understanding the impact of international conventions on contractual limitations is crucial for Saudi Arabia to navigate the challenges of harmonizing domestic laws with global standards while upholding Sharia principles. The implementation of the new Civil Transactions Law 2023 emphasizes modernization and harmonization with international practices. In retrospect, this highlights the need to study its effects on contractual autonomy and fairness. Exploring the integration of international legal

concepts, such as the UNIDROIT Principles and the CISG, into Saudi contract law provides a unique opportunity to enhance clarity and certainty in contractual agreements.

Additionally, this study puts into perspective the effects of the new law on contractual parties, courts, and the legal landscape in Saudi Arabia. Doing so is essential for identifying challenges and opportunities in the evolving legal framework. Overall, studying the evolution of limiting contractual liability in Saudi Arabia is not only academically enriching but also holds practical significance in shaping the future of commercial contracts in the country. Therefore, this study helps balance tradition with modernity and local practices with international standards.

Limitations of the Study

While exploring the evolution and implications of limiting contractual liability in Saudi Arabia offers valuable insights, there are inherent limitations that warrant consideration. One limitation pertains to the complexity of integrating international conventions with Sharia principles. This may pose challenges in achieving a seamless harmonization of legal frameworks. Another limitation lies in the scope of the study, which focuses primarily on the historical influences and the recent Civil Transactions Law 2023. This potentially overlooks nuances in contractual practices and interpretations that could impact the limitation of liability in commercial contracts.

Furthermore, the study may face limitations in generalizing findings beyond the specific context of Saudi Arabia, as legal systems and cultural norms vary across jurisdictions. This could restrict the applicability of the study's conclusions to other countries or legal frameworks. Additionally, the dynamic nature of legal reforms and evolving international standards introduces a temporal limitation. The study's findings may become outdated with future legislative changes or advancements in

global legal practices. Lastly, the availability and accessibility of comprehensive data and resources on the subject may present challenges in conducting a thorough analysis. The lack of studies relevant to Saudi Arabia could potentially lead to gaps in understanding the full extent of the implications of limiting contractual liability in Saudi Arabia.

Study Terms

- **Limitation of Liability:** The legal concept that restricts the extent of liability that a party may incur under a contract, typically outlining the maximum amount of damages or losses for which the party can be held responsible.
- **Sharia Principles:** Fundamental Islamic legal principles derived from the Quran and Hadith, guiding ethical behavior, justice, and fairness in contractual agreements.
- **Civil Transactions Law:** Legislation governing commercial transactions and contractual relationships, outlining rights, obligations, and procedures for parties involved in civil transactions.
- **International Conventions:** Agreements between countries that establish common rules and standards for international transactions, influencing contractual practices and legal frameworks across borders.
- **Contractual Autonomy:** The principle that allows parties to freely negotiate and determine the terms of their contract without external interference, promoting freedom of contract.
- **Legal Harmonization:** The process of aligning domestic laws with international standards and best practices to ensure consistency and compatibility in legal frameworks.

- Sharia Compliance: Adherence to Islamic law principles in contractual agreements and business practices, ensuring compliance with religious doctrines and ethical standards.

Theoretical Framework and Previous Studies

The theoretical framework for studying the evolution and implications of limiting contractual liability in Saudi Arabia encompasses a multidimensional approach that integrates legal, historical, cultural, and international perspectives. Drawing on previous studies and theoretical foundations provides a comprehensive understanding of the complex interplay between Sharia principles, international conventions, and domestic legal reforms in shaping contractual practices in Saudi Arabia. A critical theoretical framework is the concept of legal pluralism, which recognizes the coexistence of multiple legal systems within a society (Mégret, 2012). In the context of Saudi Arabia, where Sharia law coexists with influences from French and Egyptian legal systems, understanding how these diverse legal traditions interact and influence contractual liability is essential. Moreover, the theory of legal transplants offers insights into how legal systems borrow and adapt principles from other jurisdictions (Mousourakis, 2013). By examining how international conventions have been incorporated into Saudi law, researchers can analyze the challenges and opportunities of aligning domestic practices with global standards.

Additionally, the concept of contractual autonomy plays a crucial role in shaping the theoretical framework. By exploring the extent to which parties can freely negotiate and limit their liability in contracts, researchers can assess the balance between contractual freedom and legal constraints imposed by Sharia principles and international norms. Previous studies have laid the groundwork for understanding the historical and legal foundations of contractual liability in Saudi Arabia. Research has highlighted the influence of Sharia principles on contractual relationships

(Mohd-Noor et al., 2019; Aljifri & Kumar Khandelwal, 2013). Scholars have emphasized concepts of justice, fairness, and good faith as fundamental to limiting liability in commercial contracts. These studies have examined the impact of international conventions on contractual practices in Saudi Arabia. Analyzing how conventions like The Hague Rules regulate liability in maritime and air transport enables researchers to identify the challenges of harmonizing international standards with Sharia principles in contractual agreements. Moreover, research on the new Civil Transactions Law 2023 has provided insights into the modernization and harmonization of contract law in Saudi Arabia (Mahasneh, 2023). Therefore, previous studies have shed light on the changes and challenges introduced by the new legislation as an aspect of the historical background of limitation of liability.

In sum, the theoretical framework for studying limiting contractual liability in Saudi Arabia encompasses legal pluralism, legal transplants, and contractual autonomy. Previous studies have contributed valuable insights into the country's historical, cultural, and international dimensions of contractual practices. By building on this theoretical foundation and existing research, scholars can further explore the complexities and implications of limiting liability in commercial contracts within the Saudi legal context.

Study Methods

This qualitative study involved an in-depth analysis of primary and secondary sources to explore the evolution and implications of limiting contractual liability in Saudi Arabia. Current research focused on examining legal texts, historical documents, and scholarly articles to gather insights into the historical, cultural, and legal factors influencing contractual practices in the country. Primary sources such as the new Civil Transactions Law 2023, the Quran, and relevant legal documents were scrutinized to understand the specific provisions related to the limitation of liability in commercial contracts. Secondary sources, including academic

publications and international conventions, were reviewed to contextualize the findings within a broader legal framework. The qualitative methodology allowed for a detailed examination of the interplay between Sharia principles, international influences, and domestic legal reforms in shaping contractual practices in Saudi Arabia.

Historical Background on the Limitation of Liability in Saudi Arabia

1. Background

Limitation of liability clauses are commonly used in commercial contracts. The primary purpose of such clauses is to allocate the risks and responsibilities between the parties, to provide certainty and predictability, and to avoid excessive or disproportionate liability (Azad, 2019). This can be traced back to the Islamic Sharia principles, which forms the basis of the Saudi legal system (Al-Shamrani 2014). The “Sharia” is a comprehensive system of law that covers the aspects of human life. It is derived from two primary sources: The Quran, which is the holy book of Islam, and the Sunnah, which is the collection of sayings and actions of Prophet Muhammad (peace be upon him). The Sharia also relies on secondary sources such as consensus (Ijma), analogy (Qiyas), and juristic preference (Istihsan; Mohamed, 2014).

According to the Sharia, contracts are valid and enforceable if they meet specific requirements. These include acceptance, capacity, consent, legality, and definiteness (Al-Shamrani, 2014). Contracts that violate any of these requirements are voidable. Moreover, contracts that contain any element of uncertainty, interest, gambling, or harm are prohibited under the Sharia. The Sharia recognizes the principle of freedom of contracting, but only to the extent that it does not contradict Sharia laws (Al-Shamrani, 2014). Limitation of liability clauses may be considered valid under the Sharia if they are agreed upon by both parties with mutual consent and without any coercion or deception (Al-Shamrani, 2014). However, such clauses may not be

enforced by the Saudi courts if they are contrary to any mandatory rule under the Sharia. This enforceability is also barred if such clauses result in injustice or oppression for one of the parties. For example, limitation of liability clauses that restrict liability for intentional wrongdoing, gross negligence, or fraud are invalid under the Sharia (Kadi, 2023). Similarly, limitation of liability clauses that waive or limit certain types of damages, like punitive damages, may not be upheld by the Saudi courts if they are deemed disproportionate.

The history on the limitation of liability in Saudi Arabia also reflects the influence of other legal systems and international conventions that have been incorporated into the Saudi legal system over time. For instance, Saudi Arabia has ratified several international conventions that regulate maritime and air transport, such as the 1924 International Convention for the Unification of Certain Rules Relating to Bills of Lading (The Hague Rules) and the 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air (Sturley, 1991; Bernard, 2021). These conventions provide for the limitation of liability for certain types of claims arising from the carriage of goods or passengers by sea or air.

Moreover, Saudi Arabia has enacted several laws and regulations that govern specific types of contracts and transactions. The Commercial Court Law 193 is an example of such regulations. The law contains provisions on limitation of liability for certain types of claims arising from commercial activities. Saudi Arabia has recently issued a new Civil Transactions Law 2023, which took effect in December 2023 (Law of Commercial Court, 1931; Civil Transactions Law 2023). The new law is a comprehensive legislation that covers all aspects of contracting from formation to termination, as well as specific types of contracts. It aims to modernize and harmonize the contract law in Saudi Arabia with international standards and best practices by introducing some significant changes and clarifications to the existing rules and practices on limiting contractual liability (Civil Transactions Law, 2023).

2. The Sharia Origins of Limiting Contractual Liability

The Islamic Sharia principles have significantly influenced the historical background of the limitation of liability in commercial contracts in Saudi Arabia. These religious doctrines form the basis of the Saudi legal system, as introduced above. It is therefore important to focus on the origins of Sharia limiting contractual liability to trace the history of this concept, particularly in Saudi Arabia. Scholars argue that the Sharia principles of justice, fairness, and good faith underpin this concept (Saleh,1989). Therefore, to establish a connection, this chapter will examine the different types of contracts and liabilities recognized by the Sharia. It will also delve into the conditions and exceptions the Sharia imposes on the parties' contractual freedom to limit their liability. Discussing the Sharia concepts of contractual limitation of liability will majorly examine the sources and evidence that support the Sharia concept of limiting contractual liability. By doing so, we aim to provide a comprehensive and critical overview of the Sharia foundations and implications of limiting contractual liability in Saudi Arabia.

2.1 The Sharia Concept of Contract and Liability

Sharia, the fundamental religious laws that guide the lives and decisions of Muslims, is a notable background of the early forms of limitation of liability, especially in Saudi Arabia– an Islamic Kingdom (Al-Shamrani, 2014). In Sharia, a contract, known as “aqd” is a legal relationship established by the mutual consent of two or more parties, creating rights and obligations between them. In any Islamic jurisprudence, a contract can be either binding (uqud) or non-binding (aqd), depending on the nature and purpose of the contract. Saleh defines a binding contract as creating a legal obligation on the parties to perform their contractual duties (Saleh, 1989). This means the courts or arbitrators can enforce it in case of breach or dispute. On the other hand, a non-binding contract does not create a legal obligation on the parties but expresses their intention or promise to perform their contractual duties.

The courts cannot enforce this type of contract in case of breach or dispute (Saleh, 1989). Binding contracts include sale, lease, partnership, and loan contracts. Different examples of non-binding contracts are donation, pledge, and gift contracts.

When probing the background of the concept of limitation of liability, it is important to understand all the connecting key concepts. Liability is one of these concepts. Islamically referred to as “dhaman”, a liability is a legal responsibility that arises from a contract or a tort (Mohammed, 1988). Essentially, it obliges the liable party to compensate the injured party for the loss or damage caused by the breach or negligence. A liability can be contractual (dhaman aqdi) or tortious (dhaman jinai), depending on the source and cause of the liability. A contractual liability arises from a breach of a binding contract. It obliges the breaching party to compensate the non-breaching party for the loss or damage caused by the breach (Mohammed, 1988).

Conversely, a tortious liability arises from a wrongful act or omission. It, therefore, obliges the wrongdoer to compensate the victim for the loss and damages caused by the wrongdoing. Default, delay, and defect liabilities can be considered contractual, while assault, battery, and defamation are tortious.

The concept of limiting contractual liability is based on the Sharia principle of contractual freedom, which allows the parties to a binding contract to determine the terms and conditions of their contract. This freedom accords contracting parties the liberty to decide the extent and scope of their liability as long as they do not violate the Sharia rules and principles. The parties can limit their liability by stipulating a clause in their contract specifying the amount and compensation method in case of breach or negligence. Traditionally, these were appended by writing or word of mouth. However, with the progression and complexity of transactions, binding clauses emerged to take care of scenarios like the penalty, liquidated damages, and exclusion clauses (Almajid, 2010). The purpose of limiting contractual liability is to protect the parties from excessive and uncertain liability and to encourage the parties

to perform their contractual duties. It also provided the conditions for facilitating the resolution of contractual disputes.

The Sharia concept of contract and liability is derived from the fundamental sources of Islamic law, which are the Quran, the Sunnah, the Ijma, and the Qiyas. The Quran is the primary source of Islamic law, and it contains several verses that deal with the formation, validity, and performance of contracts. This holy book also outlines the rights and obligations of the contract parties. For instance, the Quran states: "O you who have believed, fulfill [all] contracts" (Q. 5:1), "And do not consume one another's wealth unjustly or send it [in bribery] to the rulers so that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful]" (Q. 2:188). These holy scriptures provide religious guidance for businesses and contracting parties to act with prudence and honesty, which are some of the founding Islamic principles. Another verse of the scripture reads, "And if you are on a journey and cannot find a scribe, then a security deposit [should be] taken. And if one of you entrusts another, then let him who is entrusted discharge his trust [faithfully] and let him fear Allah, his Lord. And do not conceal testimony, for whoever conceals it - his heart is indeed sinful, and Allah knows what you do" (Q. 2:283). Medieval merchants upheld these principles, which formed the basis of contractual and civil laws in present-day Islamic jurisdictions like Saudi Arabia.

Notably, the Quran verses above enforce the Sharia concept of limiting contractual liability, as they affirm the principle of contractual freedom. They promote stewardship and honest dealings while allowing the parties to stipulate clauses that limit their liability, subject to certain conditions and exceptions. Another extract from the Quran states:

"O you who have believed, when you contract a debt for a specified term, write it down. And let a scribe write [it] between you in justice. Let no scribe refuse to write as Allah has taught him. So let him write and let the one who has the obligation

dictate. And let him fear Allah, his Lord, and not leave anything out of it. But if the one with the obligation has limited understanding or is weak or unable to dictate himself, then let his guardian dictate justice...That is more just in the sight of Allah, stronger as evidence, and more likely to prevent doubt between you, except when you conduct an immediate transaction among yourselves. For [then] there is no blame upon you if you do not write it. And take witnesses when you conclude a contract. Let no scribe or any witness be harmed. For if you do so, indeed, it is [grave] disobedience in you. And fear Allah. And Allah teaches you. And Allah is Knowing of all things" (Q. 2:282).

This verse supports the Sharia concept of limiting contractual liability, as it affirms the principle of contractual freedom. It goes ahead and permits the parties to a debt contract to stipulate a clause that specifies the term of the debt; this limits their liability to the duration of the term. However, this verse also imposes some conditions and exceptions on the parties' contractual freedom. For instance, it provides the requirements of writing, dictating, witnessing, and justice. These conditions ensure the validity and enforceability of the contract. In doing so, they prevent any dispute or fraud between the parties. These concepts were used in early forms of commercial dealings in the Arab world, like the pre-Islamic trade and in the Silk Road era. Over time, they have evolved to reflect and apply to the current transactions.

An important takeaway of the significance of the Quran as a Sharia source is its novelty and applicability over different periods. In this sense, its guidance has been monumental over the past century. There is always a relevant verse that helps contracting parties set boundaries in their dealings. For instance, another verse that supports the Sharia concept of limiting contractual liability is: "And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then

[marry only] one or those your right hand possesses. That is more suitable that you may not incline [to injustice]" (Q. 4:3). This verse supports the Sharia concept of limiting contractual liability, as it affirms the principle of contractual freedom and allows the parties to a marriage contract to stipulate a clause that specifies the number of wives, which limits their liability to the maintenance and treatment of the wives. While it does not apply to commercial contracts, it provides a background for any contractual covenant. Differently, it requires justice, fairness, and equality, which protect the rights and interests of the wives. In essence, it prevents any oppression or injustice between the parties. Such guidelines can be used to decide the nature of relationships, even in commercial transactions and dealings.

Besides the Quran, the Sunnah is another set of Islamic traditions and practices that provides a behavioral model that has guided the lives and decisions of Muslims since the time of the Prophet Muhammad. The Sunnah is the secondary source of Islamic law. It consists of the sayings, actions, and approvals of the Prophet Muhammad (peace be upon him), as narrated by his companions and followers. The Sunnah complements and explains the Quran, providing guidance and examples on various aspects of contract and liability (Thalib et al., 2020). Some of the elements of contracts it discusses are the types, conditions, and effects of contracts, the remedies and penalties for breach or negligence, and the methods and principles of dispute resolution. Prophet Muhammad (peace be upon him) said: "The Muslims are bound by their conditions, except a condition that makes the lawful unlawful, or the unlawful lawful" (Abu Dawud), "The hand of the oppressor is uppermost, then come, O Allah, on the Day of Resurrection, with a complaint against him" (Ibn Majah), and "The proof is upon the claimant and the oath is upon the one who denies" (Al-Bayhaqi).

These sayings support the Sharia concept of limiting contractual liability, as they affirm the principle of contractual freedom. Although spoken centuries ago, the

sayings allow the parties to stipulate clauses that limit their liability subject to certain conditions and exceptions. Abu Dawud's saying above enables the parties to stipulate any clause that limits their liability. It holds conditioned that it does not violate the Sharia rules and principles like the prohibition of “gharar”, “riba”, and “ihtikar”. The second saying allows the parties to stipulate a clause that limits the liability of the oppressor conditioned it does not deprive the oppressed of his right to complain and seek justice from Allah on the Day of Resurrection. Similarly, the Al-Bayhaqi saying allows the parties to stipulate a clause that limits the liability of the one who denies, conditioned he/she swears an oath by Allah that he/she is truthful and innocent.

The third source of Islamic law from which the limitation of liability originates is Ijma. It refers to the consensus or agreement of the Muslim scholars and jurists on a certain issue or matter of Islamic law. The Ijma is a collective and authoritative interpretation of the Quran and the Sunnah, and it reflects the unity and diversity of the Muslim community and its legal system (Trumbull, 2006). It can be either explicit or implicit, depending on the degree and manner of the scholars' and jurists' agreement. The Ijma can also be universal or regional, depending on the scope and extent of the scholars' and jurists' representation. This religious-legal doctrine has played an important role in developing and refining the Sharia concept of contract and liability, especially regarding the new and emerging types of contracts and transactions, such as insurance, banking, and e-commerce (Trumbull, 2006).

Some of the Ijma support the Sharia concept of limiting contractual liability by affirming the principle of contractual freedom. They allow the parties to stipulate clauses that limit their liability, subject to certain conditions. There is an Ijma among Muslim scholars and jurists that the parties to a sale contract can stipulate a clause that limits their liability to the delivery or receipt of the subject matter of the sale (Ziaurraman, 2017). This was a common trading courtesy among Muslim merchants. It stated that the seller is not liable for any defect or damage that occurs after the

delivery unless he concealed or caused the defect. There is also an *Ijma* among Muslim scholars and jurists that the parties to a lease contract can stipulate a clause that limits their liability to the maintenance or use of the leased property. This *Ijma* specifies that the lessor is not liable for any defect during the lease unless he concealed or caused the damage. These universal Sheria doctrines gave the classic traders the right guidance and freedom (Ziauraman, 2017). For instance, they outlined that the parties to a partnership contract can stipulate a clause that limits their liability to the capital or profit of the partnership. Also, the partner is not liable for any loss in the partnership unless he is negligent or dishonest. These might have seemed to be common trading knowledge or religious rules. Still, in a real sense, they contributed immensely to the development of the contemporary legal system around the limitation of liability, especially in the Arab world, such as Saudi Arabia.

The *Qiyas* is the fourth source of Islamic law, and it refers to the analogical reasoning or deduction of the Sharia rules and principles from the Quran, the Sunnah, and the *Ijma*. This is a case-specific approach that ties the above-discussed tenets to a new or similar case or situation that they do not explicitly cover (Thalib et al., 2020). The *Qiyas* is a rational and flexible method of Islamic jurisprudence. It aims to achieve the objectives and purposes of the Sharia, known as the *maqasid al-sharia*, which are the protection and promotion of the people's religion, life, intellect, lineage, and property (Trumbull, 2006). It has contributed to the evolution and adaptation of the Sharia concept of contract and liability, especially regarding the complex and diverse issues and challenges arising from the changing and dynamic nature of contract law and practice.

Well-thought *Qiyas* support the Sharia concept of limiting contractual liability, as they affirm the principle of contractual freedom. Muslim scholars and jurists from the medieval ages used the *Qiyas* to extend the Sharia concept of limiting contractual liability to new or similar types of contracts and transactions (Trumbull, 2006). In

the banking and insurance industries, they drew analogies and comparisons with existing contracts and transactions. They defined the basic principles of contractual agreements like loans, leases, and partnerships by applying the relevant Sharia rules and principles. Such rules as gharar, riba, and ihtikar were intertwined with these new or similar contracts and transactions. Scholars and jurists have also used the Qiyas to modify or adapt the Sharia concept of limiting contractual liability to different circumstances, such as emergency, force majeure, hardship, fraud, mistake, coercion, or unconscionability (Mahasneh, 2023). They did this by considering the objectives and purposes of the Sharia, known as the maqasid al-sharia, and applying the relevant Sharia principles to these different situations.

The Sharia concept of contract and liability is also influenced by the different schools of Islamic jurisprudence, known as the “mathahib”: The Hanafi, the Maliki, the Shafi'i, and the Hanbali. These schools represent Muslim scholars' and jurists' opinions and interpretations of the Sharia rules and principles (Trumbull, 2006). They are undertaken based on their respective methodologies and sources of Islamic law. Each school has different views and approaches on some aspects of contract and liability. For instance, Maliki and Hanbali differ in their statement of the validity and enforceability of certain contracts and clauses, the calculation and measurement of compensation and damages, and the jurisdiction and authority of the courts and arbitrators. These schools have also influenced the Saudi legal system and practice. This is because the Saudi courts and arbitrators apply the Hanbali school as the main source of reference (Trumbull, 2006). However, they can also resort to the other schools as supplementary sources to achieve justice, fairness, and good faith in contractual matters. This window has been there for at least the past two centuries, leading to the stellar development of the laws of contractual liability, especially in Saudi Arabia.

The Sharia concept of contract and liability has influenced the Saudi legal system and practice, as the Sharia is the main source of law in Saudi Arabia. The Saudi courts and arbitrators rely on Sharia sources and evidence to adjudicate and resolve contractual disputes and claims (Abdul & Saupi, 2017). The Saudi contract parties also refer to the Sharia principles and rules to draft and execute their contracts and limit and enforce their liabilities. However, the Sharia concept of contract and liability is not the only source of law in Saudi Arabia. The Saudi legal system has also been influenced by other legal systems and international conventions incorporating rules and principles for limiting contractual liability in specific types of contracts and transactions (Almajid, 2010). However, when probing the historical background of this concept, especially in Saudi Arabia, it is important to talk about the Sharia system and all its tenets, as this was the founding legal doctrine upon which the country's legal system was built.

2.2 The Sharia Conditions and Exceptions for Limiting Contractual Liability

As we have seen in the previous subsection, the Sharia principle of contractual freedom allows the parties to a binding contract to determine the terms and conditions of their contract. These parties are free to include the extent and scope of their liability conditioned they do not violate the Sharia rules and principles. However, this principle is not absolutely unconditional. Until now, it is clear that Sharia imposes certain conditions and exceptions on the parties' contractual freedom to limit their liability. These were the founding principles that were put in place to ensure justice, fairness, and good faith in contractual matters (Abdul & Saupi, 2017). While investigating the role of Sharia in the development of the Saudi legal clauses on limitation of liability, it is important to discuss the main conditions and exceptions that the Sharia imposes on the parties' contractual freedom to limit their liability. This probe will be considered sufficient if it extends to discussing how these conditions apply to different types of contracts and clauses, such as penalty clauses, liquidated

damages clauses, and exclusion clauses (Abdul & Saupi, 2017). Doing so gives a clear view of how different facets of the law have developed over the years.

One of the main conditions that the Sharia imposes on the parties' contractual freedom to limit their liability is the prohibition of gharar (uncertainty, risk, or speculation). Gharar is a concept that refers to any element or factor in a contract that creates ambiguity or unpredictability about the existence or delivery of the subject matter of the contract (Ahmad et al., 2018). It also encompasses any element of doubt on the rights and obligations of the contract parties. The Sharia prohibits Gharar, as it violates the principle of transparency and disclosure. It may lead to injustice, exploitation, and disputes between the parties. Examples of gharar contracts are gambling, insurance, and futures contracts. Traditional Islamic practices forbade these concepts as they involve unknown or contingent outcomes that may or may not occur (Ahmad et al., 2018). The uncertainty of such practices has been recognized by the Saudi legal system, leading to their repulsion.

The prohibition of gharar affects the parties' contractual freedom to limit their liability. It does so by restricting the parties from stipulating clauses that create uncertainty or risk about their liability and compensation. For instance, the parties cannot stipulate a clause that makes their liability dependent on a future or uncertain event (Ahmad et al., 2018). In other words, events like the occurrence of a natural disaster, the performance of a third party, or the outcome of a lottery are not considered admissible contractual terms or outcome factors. The parties also cannot stipulate a clause that makes their liability or compensation disproportionate or excessive. This aspect is discussed in depth by Alrdaan, who believes that any clause that imposes a penalty or liquidated damages that exceeds the actual loss caused by the breach or negligence is not admissible (Alrdaan, 2016). The scholar also argues that parties also cannot stipulate a clause that makes their liability unfair or unjust to the other partner. Regardless of the matter at stake or the influence of any party, a

clause that excludes or limits the liability of one party without a valid reason is averted in contractual dealings.

Another condition that the Sharia imposes on the parties' contractual freedom to limit their liability is the prohibition of riba—interest. Riba is a concept that refers to any excess that is charged or paid in exchange for a loan or for a deferred payment for a commodity (Alrdaan, 2016). The need for an additional payment without a corresponding increase or benefit for the other party is against Sharia laws. For a long time in Muslim society, riba has been prohibited because it violates the principle of equality and balance. According to Alabdulqader, it may lead to oppression, exploitation, or injustice between the parties (Alabdulqader, 2018). Examples of riba contracts are interest-bearing loans, debts, and bonds. They were considered unethical as they involved an excess that is charged for the use or delay of money.

The prohibition of riba affects the parties' contractual freedom to limit their liability by restricting the parties from stipulating clauses that create interest in their liability or compensation. For example, the parties cannot stipulate a clause that charges any increase for a loan or a debt or for a delayed payment. Any of such clauses that in any way impose a compound interest, a late payment fee, or an inflation adjustment are repealed if the contract is to be considered lawful and valid (Alabdulqader, 2018). Similarly, parties also cannot stipulate a clause that charges interest for a breach or negligence, such as a clause that imposes a penalty or liquidated damages that exceed the principal amount. In the Islamic legal system, such dealings are considered opportunistic and thus do not extend the virtue of prudence as guided by Sharia.

Moreover, traditional Islamic jurisprudence prohibits ihtikar, which implies monopolizing or hoarding. This is another exception to the Sharia laws imposed on contracting parties. Ihtikar is a concept that refers to any act or practice that restricts or manipulates the supply or demand of a commodity (Abdul & Saupi, 2017). Such manipulations are often manufactured to create an artificial scarcity or increase the

price of the commodity without a valid justification. The Sharia prohibits Ihtikar, as it violates the principle of circulation and distribution. Again, it may lead to harm, hardship, or injustice for the consumers and the society at large. Examples of ihtikar contracts are a monopoly, cartel, and exclusive dealing contracts. These are shoddy dealings prohibited by the quarry, as seen in the analysis in the previous section, because they involve putting a section of the market or society in distress when others profit from such conditions (Alabdulqader, 2018).

Restricting the parties from stipulating clauses that alter the supply or demand to create an artificial scarcity is the essence of prohibiting ihtikar. This significantly affects the parties' contractual freedom as they cannot increase the price or value of the commodity to their benefit. The parties cannot stipulate a clause that limits the availability or accessibility of a commodity (Almajid, 2010). The restriction covers any clause that imposes a minimum or maximum quantity, a territorial restriction, or a non-compete obligation. The parties also cannot stipulate a clause that prevents competition or innovation in a commodity. For instance, it forthrightly prohibits clauses that impose price fixing, market sharing, or patent licensing agreements (Almajid, 2010). Such conditions contaminate the market and affect the quality the consumer gets. These unethical conditions were historically not allowed because of their aftermath. Similarly, they have been adopted to coin some of the laws that guide the concept of limitation of liability in Saudi Arabia.

In addition to these conditions, the Sharia also imposes some exceptions on the parties' contractual freedom to limit their liability. This is done to protect the rights and interests of the third parties or the public interest. Such exceptions are also meant to help achieve the objectives and purposes of the Sharia, known as the maqasid al-sharia (Trumbull, 2006). These exceptions are based on the Sharia principles of maslaha (public interest), dharurah (necessity), and ihsan (performing duties/tasks with excellence). These principles allow the parties to a binding contract to deviate

from the general rules and principles of the Sharia. It also directs them to stipulate clauses that limit their liability in certain circumstances that require special treatment to prevent harm, hardship, or injustice. Examples of these situations are emergency, force majeure, hardship, fraud, mistake, duress, or unconscionability, as already discussed above.

These exceptions affect the parties' contractual freedom to limit their liability by allowing the parties to stipulate clauses that limit their liability. They are considered closely even if they violate the Sharia rules and principles. Kholiq argues that there are special cases whereby parties can stipulate a clause that limits their liability, even if it involves gharar, riba, or ihtikar (Thalib et al., 2020). These often happen in situations that require a public interest, a necessity, or an equity. Examples of such circumstances are when public service, public utility, public health, public safety, and public welfare are at stake. The parties can also stipulate a clause that limits their liability, even if it violates their contractual freedom (Thalib et al., 2020). In essence, the Sharia system was not and has not been rigid, especially when guiding contracting parties on limitation of liability. It offers a window to adjust accordingly, especially in circumstances whereby the public interest and greater good are at stake (Mahasneh, 2023). Such flexibility has also been reflected in present-day Saudi laws, where the limitation of liability and the burden of the outcomes of contractual terms are sometimes laid on the parties involved.

3. The Influence of Other Legal Systems and International Conventions on Limiting Contractual Liability in Saudi Arabia

The limitation of liability in commercial contracts is quite dynamic and interactive. In essence, it reflects the legal, economic, and social realities of the contract parties and their respective jurisdictions. As such, the limitation of liability in Saudi Arabia has been influenced by various legal systems and international conventions (Esmaeili, 2009). These systems have incorporated rules and principles for limiting

contractual liability in specific types of contracts and transactions in ways also relevant to Saudi Arabia. These influences have shaped and transformed the Saudi legal system, as well as the contractual practices and expectations of the Saudi contract parties, over time (Bhatti, 2018). However, these influences have also posed significant challenges and difficulties for the Saudi legal system. In doing so, it has to balance the benefits and risks of harmonizing and converging with other jurisdictions while maintaining its own identity and values based on the Sharia principles. Therefore, it is without doubt that the common law system, the civil law system, the Islamic law system, and the international conventions have influenced the Saudi legal system. In one way or another, these influences have affected the historical background and the current state of the limitation of liability in Saudi Arabia.

3.1 The Influence of Civil Law

The concept of limitation of liability in Saudi Arabia has been influenced by the civil law tradition, which originated from Roman law and was later codified by the French Civil Code of 1804. The civil law tradition emphasizes the role of legislation as the primary source of law and the importance of general principles and concepts that guide the interpretation and application of the law. The development of this doctrine is subject to the transmission of legal principles from French law to Egyptian law and eventually to Saudi Arabian law (Sassi, 2023). Understanding this progression is crucial in comprehending the legal framework surrounding liability limitations in commercial contracts within the Saudi context. One of the main features of the civil law is the distinction between contractual and extra-contractual liability. The Saudi Civil Transaction Law recognizes the principle of proportionality (Aldahmash, 2023). This limits the number of damages that can be awarded to the injured party according to the degree of fault and the extent of harm caused by the liable party.

The influence of the civil law tradition on the limitation of liability in Saudi Arabia can be traced back to the historical and legal connections between France, Egypt, and Saudi Arabia. In the 19th and early 20th centuries, France exerted a significant cultural and legal influence on Egypt, which was then under the Ottoman Empire (Masferrer & van Rhee, 2023). France assisted Egypt in drafting its first civil code in 1883, which was largely based on the French Civil Code and incorporated many of its principles and rules on liability (Bechor, 2007). The Egyptian Civil Code of 1883 served as a model for many other Arab countries, including Saudi Arabia, which adopted its civil code, the Civil Transaction Code, in 2023.

The Civil Transaction Code 2023 reflects the influence of the Egyptian Civil Code of 1883 and, by extension, the French Civil Code of 1804 on the limitation of liability in Saudi Arabia (Alfaifi, 2024). It contains several provisions that regulate the contractual and extra-contractual liability of natural and legal persons. The law also establishes the criteria and limits for compensation for damages. Consistent with the Egyptian civil code and other Arabian civil codes adapted from the French Civil Code 1804, the Saudi Civil Code states that the liability of the debtor for the damages resulting from his default shall be limited to what he could have foreseen at the time of the conclusion of the contract (Mahasneh, 2023). Similar arguments are also in Egypt's civil code, which further states that the limitation of liability holds unless the default is due to fraud or gross negligence.

The transmission of legal principles from French law to Egyptian law played a pivotal role in shaping the legal landscape of Saudi Arabia. As Egypt modernized its legal system based on French civil law, these legal principles gradually made their way to Saudi Arabia through various channels. In the context of limitation of liability in commercial contracts, the transmission of legal principles from French law to Egyptian law and then to Saudi Arabian law introduced concepts such as the validity and enforceability of limitation of liability clauses (Alfaifi, 2024). These principles

emphasized the importance of clarity, predictability, and fairness in contractual relationships, providing a framework for parties to negotiate and define the extent of their liability in commercial transactions.

The influence of French legal principles on Egyptian law, and subsequently on Saudi Arabian law, has had a profound impact on the limitation of liability in commercial contracts. French civil law's emphasis on clarity, predictability, and the enforcement of contractual obligations has influenced the development of contractual liability principles in Saudi Arabia (Atwan, 2023). This influence has led to the recognition of the limitation of liability clauses as valid and enforceable, provided they meet certain criteria, such as not being unconscionable or contrary to public policy. Specific legislations and acts that the civil law traditions have influenced include the New Saudi Civil Transactions Law, which introduced new concepts and rules regarding contractual liability and the limitation of liability in commercial contracts like binding force of contract and compensation (Civil Transactions Law 2023). This law, influenced by both Islamic Sharia principles and modern legal practices, reflects a balance between contractual freedom and the protection of parties from unfair or unreasonable limitations of liability.

The harmonization of legal systems between France, Egypt, and Saudi Arabia has facilitated the transfer of legal concepts and principles related to contractual liability. This harmonization has allowed Saudi Arabia to benefit from the experiences and developments in French and Egyptian legal systems, enabling the country to adapt and modernize its legal framework concerning the limitation of liability in commercial contracts (Mahasneh, 2023). Therefore, the Saudi Arabia Civil Transaction Code has introduced the distinction between contractual and extra-contractual liability as guided by the preceding French and Egyptian sources (Dawwas, 2023). It also pioneered the principle of proportionality as the main legal framework for the limitation of liability in Saudi Arabia. By tracing this historical

influence and examining specific legislations and legal doctrines, we can better understand the evolution of contractual liability principles in Saudi Arabia and appreciate the interconnectedness of legal systems in the global context.

3.2 The International Conventions Influence

The limitation of liability in commercial contracts in Saudi Arabia has been influenced not only by the domestic legal systems but also by international conventions. These international codes have been concluded and ratified by Saudi Arabia and other states or international organizations. Such international conventions aim to establish uniform and harmonized rules and standards for regulating and facilitating international trade and commerce. They also resolve the issues and disputes that may arise from international commercial contracts (Drahozal, 2000). Rules and principles for limiting the parties' liability in specific types of contracts and transactions underscore the international conventions. Examples of such rules are the contracts for the international sale of goods, the limitation period for contractual claims, and the recognition and enforcement of foreign arbitral awards (Drahozal, 2000). Therefore, in tracing the historical development and impact of these international conventions on the limitation of liability in Saudi Arabia, it is possible to find a connection between how they have shaped and transformed the Saudi legal system. Understanding the historical significance of such conventions for the concept of limitation of liability in Saudi Arabia, one will have a clear view of the contractual practices and expectations of the Saudi contract parties over time.

The first international convention that Saudi Arabia ratified in relation to the limitation of liability in commercial contracts was the United Nations Convention on Contracts for the International Sale of Goods (CISG) in 2023 (Spagnolo & Bhatti, 2023). The CISG is the main international convention governing the contracts for the international sale of goods. It provides a uniform and comprehensive set of rules and principles for the formation, performance, and termination of such contracts.

Scholars argue that the CISG also includes some provisions and mechanisms for limiting the parties' liability (Spagnolo & Bhatti, 2023). Such provisions are the limitation of remedies, the exemption of liability, the reduction of damages, and the notice requirement. The ratification of the CISG by Saudi Arabia was a significant milestone for the limitation of liability in Saudi Arabia (Spagnolo & Bhatti, 2023). This is because it marked the first time that Saudi Arabia agreed to be bound by a uniform and harmonized international convention that may differ or conflict with its domestic laws and practices, especially the Sharia principles.

The new arbitration law is mainly based on the UNCITRAL Model Law, which is a universal framework for international commercial arbitration (Bachand & Gélinas, 2013). It introduces some significant changes and improvements to the arbitration regime in Saudi Arabia. Other key aspects relevant to the limitation of liability are enforcement of the arbitration agreement and the arbitral award and the limited intervention and supervision of the courts. The new arbitration law also allows the parties to limit their liability in arbitration by agreeing on the scope and extent of the arbitrator's powers and duties (Bachand & Gélinas, 2013). It also guides the remedies and sanctions available, as well as the allocation of costs and fees.

Moreover, the ratification of the New York Convention by Saudi Arabia also reflected the recognition and acceptance of the benefits and advantages of the New York Convention for the validity and enforceability of the arbitration agreement. It has been a significant tool in the resolution and prevention of disputes arising from international commercial contracts (Alsubaie, 2022). A combination of the New York Convention and Saudi Arabia's domestic laws has some implications and consequences for the limitation of liability in Saudi Arabia. It required the courts and arbitrators to interpret and apply the New York Convention rules and principles consistently and coherently. Contracting parties could also rely on the New York Convention mechanism to limit their liability without worrying about the validity of

their outcomes. Therefore, the international conventions have influenced the limitation of liability in Saudi Arabia in various ways, as discussed (Alsubaie, 2022). They have shaped and transformed the Saudi legal system, as well as the contractual practices and expectations of the Saudi contract parties, over time. However, international conventions also pose some challenges and difficulties in the limitation of liability in Saudi Arabia. A notable deadlock is that they may not always be compatible or consistent with the domestic laws and practices of Saudi Arabia, especially the Sharia principles (Alsubaie, 2022). Also, they may require some adaptations by Saudi Arabia. Still, the Kingdom of Saudi Arabia has accommodated these international conventions and infused them into its legal system over the years. In turn, this harmonization has provided an enviable historical foundation for the doctrine of limitation of Liability in Saudi Arabia.

4. The New Civil Transactions Law on Limiting Contractual Liability in Saudi Arabia

The contract law in Saudi Arabia has undergone significant development and reform with the issuance of the new civil transactions law. This new legislation was approved by the Council of Ministers on 15/12/1441 AH (corresponding to 4/8/2020 AD) and published in the Official Gazette on 22/1/1442 AH (Mahasneh, 2023). It is the most recent development of the Saudi commercial acts, and it took effect in December of 2023. It changed the landscape of commercial law, replacing the previous civil transactions law that was issued in 1984. The new law consists of 1,163 articles that cover various aspects of civil transactions, such as the general principles of contract law, the formation and validity of contracts, and the interpretation and performance of contracts (Sfeir et al., 2023). It also provides the right guidelines for the types and effects of contracts, the termination and rescission of contracts, the remedies and damages for breach of contracts, and the limitation and prescription of

contractual claims. This means that it overhauled commercial practices in Saudi Arabia, influencing economic-centric pillars like the limitation of liability.

The main objective of the new law is to modernize and harmonize the contract law in Saudi Arabia with international standards and best practices. It is not a standalone law as it converges international commercial practices and laws while preserving and respecting the Sharia principles that form the basis and the supreme authority of the Saudi legal system (Sfeir et al., 2023). The new law aims to achieve this objective by incorporating and adapting some of the provisions and concepts of other legal systems and international conventions that are relevant and compatible with the Sharia principles. Some of the codes it borrows from are the civil law, the common law, the UNIDROIT Principles of International Commercial Contracts, and the Convention on Contracts for the International Sale of Goods (CISG) (Spagnolo & Bhatti, 2023). It can be considered a solid source of the limitation of liability in Saudi Arabia as it borrows the best practices from the above conventions, opening the market and the economy of Saudi Arabia. The new law also aims to provide more clarity and certainty for the contractual parties and the courts. It does so by codifying and defining some of the general principles and rules of contract law that were previously derived from the Sharia sources and the judicial precedents.

The enactment of Saudi's new civic transaction law introduces some significant changes and clarifications to the existing rules and practices on limiting contractual liability (Sassi, 2023). With this new law also comes the enhancement of the role and authority of the courts and arbitrators in interpreting and enforcing contracts. These changes and clarifications have important implications and challenges for the limitation of liability in commercial contracts in Saudi Arabia. This is because they may affect the interests and the rights of the contractual parties, the interpretation and the application of the Sharia principles, and the harmonization and compatibility of the contract law in Saudi Arabia with international standards and best practices.

Scholars argue that Saudi Arabia's New Transaction Code reflects the efforts and aspirations of the Saudi government and the legal community to keep pace with the rapid and dynamic changes in the local and global markets (Mahasneh, 2023). It has expedited the competitiveness and the attractiveness of the Saudi economy and the legal system. The new law is also a result of a long and extensive process of consultation and deliberation among various stakeholders and experts. Industry experts with an in-depth understanding of the contractual conditions in Saudi Arabia contributed to making the law. Their engagement can be seen in the clear articulation and new standards, especially in dictating the limitation of liability in commercial contracts (Mahasneh, 2023). As a result, the law is expected to have a significant impact and influence on the legal culture and practice in Saudi Arabia, as it will introduce some new and innovative concepts and rules that will enrich and diversify the sources and methods of contract law in Saudi Arabia.

One of the most important and relevant aspects of the new civil transactions law for this study is the limitation of liability in commercial contracts in Saudi Arabia. Its development is crucial yet controversial, as it introduced new orders that affect the rights and obligations of the contractual parties, the interpretation and enforcement of the contracts, and the resolution and prevention of disputes (Mahasneh, 2023). The law enforced the definition of limitation of liability in commercial contracts as the contractual clause or a contractual term that limits the liability of one or both of the contractual parties for non-performance of the contract. It extends the scope of such limitations to damages and losses that may result from such breach or non-performance. It acknowledged the limitation of liability in commercial contracts as a widespread practice in modern contractual transactions. Therefore, the new law was formulated in a way that provides immense benefits and advantages for the contractual parties. Scholars highlighted the expected influence of the new civil transaction law on the limitation of liability, such as reducing the risks and the costs

of the contracts, increasing the efficiency and the profitability of the contracts, and promoting the freedom and autonomy of the contractual parties (Sassi et al. (2023).

However, it is important to understand how the limitations of liability in the new law also pose some challenges and difficulties for the contractual parties and the courts. Since this is a new law that might end up being quite disruptive, it may affect the balance and fairness of the contracts, the protection and enforcement of the rights of the contractual parties, and the consistency and harmony of the contract law with the Sharia principles (Caulfield & Karia, 2023). It leans on international standards and best practices, notwithstanding the Saudi traditions upon which the country's legal system entirely lies. Therefore, the limitation of liability in commercial contracts requires a careful and comprehensive examination and evaluation in the wake of this new law. Nonetheless, it is important to probe the main features and implications of the new civil transactions law on limiting contractual liability in commercial contracts in Saudi Arabia. In doing so, it will be easier to lay a finger on the effects of such legal developments and their history, helping to identify and address some of the potential issues and challenges that may arise from the implementation and application of the new law.

4.1 Main Features and Implications of the New Law Touching on Limitation of Liability

The recent civil transactions law that was issued and enforced in 2023 exhibits various features that align with the key tenets of the limitation of liability in Saudi Arabia. The new law introduces some significant changes and clarifications to the existing rules and practices on limiting contractual liability in Saudi Arabia, as already discussed. However, it is important to look into the specifics of these laws to have a wider view of what this implies to contract law in the Kingdom of Saudi Arabia. It also reflects the influence and the compatibility of the principles of Islamic Sharia. In essence, it mediates the main sources of law in Saudi Arabia with

contemporary contractual practices and transactions (Mahasneh, 2023). The new law has several features and implications that are relevant to the limitation of liability in commercial contracts in Saudi Arabia, like its codification, recognition of various contract clauses, the establishment of a unified limitation period, and enhancing the role and authority of courts in commercial contracts.

According to the New KSA Civil Transactions Law, parties are free to determine the terms and conditions of their contract. Article 2 guarantees this as long as they do not contradict the Sharia, the public order, or the mandatory provisions of the law (Civil Transactions Law 2023). Therefore, the parties can agree on a limitation of liability clause as long as it does not violate the Sharia principles of justice, fairness, and good faith. Article 3 further states that the contract must be interpreted in accordance with the common intention of the parties and the purpose of the contract (Civil Transactions Law 2023). As such, the customs and practices of the relevant trade or profession must be taken into account. Therefore, the limitation of liability clause must be clear and unambiguous and must reflect the reasonable expectations of the parties and the nature of the transaction.

The codification and definition of the general principles of contract law, such as freedom of contract, good faith, offer and acceptance, and capacity, have significantly rebased the essence of limitation of liability in Saudi Arabia. The new law provides a clear and comprehensive framework and guidance for the formation, validity, interpretation, and performance of contracts in Saudi Arabia. It also affects the limitation of liability clauses in commercial contracts by recognizing and upholding the contractual freedom of the parties to agree on the extent and the consequences of their liability (Civil Transactions Law 2023). This is upheld as long as these parties do not violate the Sharia principles or the public policy. However, the new law also imposes some restrictions and conditions on the contractual freedom of the parties. For instance, consent is required to be free, genuine, and

informed. It also prohibits any clause that causes harm, injustice, or oppression to one of the parties (Caulfield & Karia, 2023). Therefore, the new law balances the contractual freedom of the parties with the protection of their rights and interests and the principles of justice and fairness. This ties it to the Sharia principles as a source of the concept of limitation of liability even though it is a hybrid law.

Moreover, the new civil law's features, like the recognition and regulation of various types of contracts and clauses, such as standard form contracts, electronic contracts, adhesion contracts, and agency contracts, make it a great source of Saudi contract law. The new law reflects the diversity and complexity of modern contractual practices and transactions in Saudi Arabia (Caulfield & Karia, 2023). In doing so, it affects the limitation of liability clauses in commercial contracts by providing specific rules and provisions for each type of contract and clause. It regulates the standard form contracts, which are contracts that are prepared in advance by one of the parties and are not subject to negotiation. The new law stipulates that the standard form contracts are binding on the parties unless they contain any clause that is unfair, unreasonable, or contrary to the Sharia principles. It also gives the courts and arbitrators the power to amend or invalidate any such clause and award compensation for any damage caused by it (Caulfield & Karia, 2023). Therefore, the new law ensures that the limitation of liability clauses in standard-form contracts are not used to exploit or disadvantage one of the parties. It also keeps them in check, ensuring that they are consistent with the nature and the purpose of the contract.

Additionally, article 168 of the New Civil Transaction law has established a unified limitation period for contractual claims, which is 15 years from the date of the breach or the termination of the contract. This is a major overhaul of Saudi Arabia's contract jurisprudence. This period is the default and legally holds unless otherwise agreed by the parties or specified by the law (Caulfield & Karia, 2023). It is an important source of limitation of liability as it provides certainty and uniformity for the

contractual parties and the courts. Also, it affects the limitation of liability clauses in commercial contracts by setting a clear and consistent time limit for filing and enforcing contractual claims. Essentially, it allows the parties to agree on a shorter or longer limitation period as long as it does not exceed 30 years. While the law sets the unified limitation period, it does not prejudice the rights of third parties. However, the new law also provides some exceptions and extensions to the limitation period. Some exceptions given are the cases of fraud, concealment, or force majeure (Sfeir et al. (2023). Therefore, the new law respects the contractual autonomy of the parties but also protects them from any undue delay or loss of their contractual rights.

Furthermore, the new civil transaction law enforces and enhances the role and authority of the courts and arbitrators in interpreting and enforcing contracts. Article 169 of the new law empowers the court to adjust the contractual obligations of the parties if there is a change of circumstances that makes the performance of the contract excessively burdensome (Civil Transactions Law 2023). It allows them to consider the intention and the purpose of the parties, the nature and the circumstances of the contract, and the customs and the usages of the trade. It has also redefined the role of third parties like courts and arbitrators in keeping the contracting parties in check on the principles of justice and equity (Civil Transactions Law 2023). The new law enables the courts and arbitrators to deal with the limitation of liability clauses in commercial contracts flexibly and fairly. In doing so, it helps them balance the interests and the rights of the contractual parties. It also empowers the courts and arbitrators to award any type of remedy or relief that is appropriate and proportionate to the breach or the damage (Caulfield & Karia, 2023). It is arguable that the new law also allows the courts and arbitrators to reduce or increase the amount of damages if they find that the agreed amount is excessive or insufficient. This leverage is also accorded when there are mitigating or aggravating circumstances. Therefore,

the new law gives courts and arbitrators more discretion and flexibility in applying and enforcing the limitation of liability clauses in commercial contracts.

5. Conclusion and Recommendation

In conclusion, the study sheds light on the intricate dynamics of limiting contractual liability in Saudi Arabia, highlighting the intersection of Sharia principles, international conventions, and domestic legal reforms. The historical evolution of contractual practices, influenced by diverse legal traditions, underscores the complexity of balancing contractual autonomy with legal constraints. The analysis of the new Civil Transactions Law 2023 reveals significant changes in the regulation of liability in commercial contracts, signaling a shift towards modernization and harmonization with international standards.

Based on the findings, it is recommended that stakeholders in Saudi Arabia's legal system continue to navigate the challenges of harmonizing Sharia principles with global legal norms to ensure consistency and effectiveness in contractual practices. Furthermore, ongoing research and dialogue on the implications of limiting contractual liability are essential to address emerging issues and enhance the clarity and enforceability of contractual agreements. Fostering a collaborative approach that integrates legal, cultural, and international perspectives enables Saudi Arabia to strengthen its legal framework further and promote a conducive environment for commercial transactions.

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