



LEGAL REPRESENTATION IN LITIGATION:  
A CRITICAL ANALYSIS OF THE LAW IN THE  
KINGDOM OF SAUDI ARABIA

BY

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## **ABSTRACT**

This study discusses the position of legal representation in the Kingdom of Saudi Arabia through a review of the obstacles faced by lawyers while exercising legal practice for defending the accused. As the Kingdom of Saudi Arabia adopts Islamic law in the legislative and judicial matters, the study addresses the status of legal practice as per Quran, Sunnah and Islamic rulings. This is achieved by relying on the sources in Islamic jurisprudence and the subsequent contribution of the eminent scholars which shows that Islamic law guarantees the right to the accused to defend himself either through self-representation or by giving the power of attorney to others. In addition, the study also focuses on the guarantees to the accused in the Code of Criminal Procedure for accessing a lawyer. The study also addresses the rights and duties of lawyers, the conditions which must be interpolated for executing legal practice, the guarantees and immunities given by legislation to a lawyer for the performance of his job and so on. All this is addressed in relation to Saudi judicial system and comparing it with Egyptian and Syrian law. The study also reveals the defects of Saudi judicial system which allows non-specialist individuals to practice law and, at the same time, does not provide any guarantees to academically qualified practitioners. On the contrary, it imposes obligations on lawyers and enacts penalties against them in case of any violation while the non-specialists have been kept away from such. On the other side, it studies what has been guaranteed by the Code of Criminal Procedure to the accused in terms of getting a lawyer at all the stages of criminal proceedings. Consequently, it clarifies the role of a lawyer in the backing and support of the defendant. The study reveals the consequences of the presence of a lawyer beside the accused who is considered the weaker party in the case. It also shows how the support of a lawyer with the accused may help achieve some equality between the accused and the prosecutor who is assisted by all state agencies in order to convict. Finally, the researcher demonstrates the main reasons behind the court denying the defendant access to legal counsel. This is followed by some findings (as excavated by this study) and recommendations that pertain to the issue at hand for emphasizing the principle of the rule of law. The study concludes that Saudi law does not allow the accused to access a lawyer except after making him go through investigating and judicial authorities.

## ملخص البحث

تناولت هذه الدراسة بحث إشكالية التمثيل القانوني في المملكة العربية السعودية، وذلك من خلال استعراض المعوقات التي تواجه المتهم والمحامي حين ممارسته للمهنة. وحيث إن المملكة العربية السعودية تتبنى الشريعة الإسلامية في منظومتها التشريعية والقضائية، فقد تناولت الدراسة الحكم الشرعي لممارسة هذه المهنة من خلال الاعتماد على القرآن والسنة وعلى المصادر في الفقه الإسلامي، وأقوال العلماء، وتبين أن الشريعة الإسلامية قد ضمنت حق المتهم في الدفاع عن نفسه وحقه في إنابة غيره للدفاع عنه. وقد تناولت الدراسة أيضاً وفقاً لما ورد في قانون المحاماة السعودي مع إجراء مقارنة مع القانون المصري والسوري حقوق وواجبات المحامي والشروط الواجب استيفؤها لممارسة المهنة، والضمانات والحصانات المقررة للمحامي ومدى التزام القوانين بتوفيرها أثناء تأدية المحامي لعمله، وقد كشفت الدراسة أن قانون المحاماة السعودي يسمح لأي شخص أن يكون محامياً وفي ذات الوقت لا يوفر أي ضمانات للمحامين بل فرض التزامات على عاتق المحامين ورتب عقوبات عليهم في حال مخالفتها، في حين أن وكيل الخصومة بمنأى عن هذا الالتزام، ولم يرتب عليه أي عقوبة مع أن القانون سمح لهم بالترافع أمام جميع جهات التحقيق والمحاكم. وفي الجانب الآخر تم دراسة ما ضمنته قوانين الإجراءات الجزائية للمتهم للوصول إلى محام للدفاع عنه في جميع مراحل الدعوى الجنائية، وبناء عليه تم توضيح الدور الذي يقوم به المحامي في مساندته ودعمه للمدعى عليه في جميع مراحل الدعوى الجنائية، وقد كشفت الدراسة مدى أهمية وجود المحامي بجانب المتهم الذي يعتبر الطرف الأضعف في الدعوى وأن مساندته للمتهم ستحقق بعضاً من المساواة بين المتهم وبين المدعي العام الذي تسنده جميع أجهزة الدولة في سبيل إدانة المتهم. وقد توصلت الدراسة إلى أن القانون السعودي لا يسمح للمتهمين بالوصول إلى محام إلا بعد السماح لهم من قبل سلطات التحقيق وسلطات المحكمة. وفي نهاية البحث قدم الباحث الأسباب الرئيسية التي جعلت المحكمة تمنع المتهمين من الوصول إلى المحامين والتي كان أبرزها حرمة المهن القانونية، ثم صوراً عملية للواقع القضائي في المملكة العربية السعودية. ثم ختمت ببعض النتائج التي وصلت إليها الدراسة، وتقديم بعض التوصيات التي يرى أهميتها في حل مشكلة التمثيل القانوني والذي كان أهمها هو التأكيد على مبدأ سيادة القانون.

## APPROVAL PAGE

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## DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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## TABLE OF CONTENTS

Abstract .....	ii
Abstract In Arabic .....	iii
Approval Page .....	iv
Declaration .....	v
Copyright Page .....	vi
Acknowledgements .....	vii
<b>CHAPTER ONE: INTRODUCTION .....</b>	<b>1</b>
1.0. INTRODUCTION .....	1
1.1. RESEARCH QUESTIONS .....	3
1.2. STATEMENT OF PROBLEM .....	3
1.3. HYPOTHESIS OF THE STUDY .....	3
1.4. OBJECTIVES OF THE STUDY .....	4
1.5. LITERATURE REVIEW .....	5
1.6. SCOPE AND LIMITATION OF THE STUDY .....	16
1.7. RESEARCH METHODOLOGY .....	16
1.8. ORGANIZATION OF THE RESEARCH .....	17
<b>CHAPTER TWO: LEGAL REPRESENTATION IN HISTORY AND ISLAMIC LAW ..</b>	<b>19</b>
2.0. INTRODUCTION .....	19
2.1. DEFINITIONS OF ESSENTIAL CONCEPTS .....	21
2.1.1. Legal Representation .....	22
2.1.2. Litigation in Islamic Jurisprudence .....	23
2.1.3. Legal Representation in Litigation in Islam .....	24
2.2. THE SIGNIFICANCE OF LEGAL REPRESENTATION .....	24
2.3. A HISTORICAL SURVEY OF THE DEVELOPMENT OF LEGAL REPRESENTATION IN ANCIENT, MODERN AND ISLAMIC CIVILISATIONS .....	28
2.3.1. Development of Legal Representation in Ancient Civilisations .....	29
2.3.2. Development of Legal Representation in the Modern Western Civilisation .....	31
2.3.3. Development of Legal Representation in Islam .....	33
2.3.4. Development of Legal Representation in the Prominent Arab States .....	35



2.3.4.1. Egypt and the Practice of Legal Representation .....	36
2.3.4.2. Development of Legal Representation in Morocco, Algeria and Syria.....	37
2.3.4.3. Development of Legal Representation in Lebanon .....	38
2.3.4.4. Development of Legal Representation in Sudan .....	39
2.3.4.5. Development of Legal Representation in the Kingdom of Saudi Arabia .....	40
2.3.4.5.1. General Jurisdiction Courts.....	42
2.3.4.5.2. Administrative Courts .....	43
2.3.4.5.3. Administrative Departments with Judicial Competence .....	44
2.4. LEGAL REPRESENTATION AND ITS LEGITIMACY IN ISLAM.....	48
2.4.1. Proponents of the Legitimacy of Legal Representation.....	49
2.4.1.1. Tradition-Based (Al-Naql) Evidence.....	50
2.4.1.1.1. The Story of Moses (Peace Be Upon Him).....	50
2.4.1.1.2. God’s Injunction Against Defending the Oppressor .....	51
2.4.1.1.3. The Story of Companions of the Cave .....	52
2.4.1.1.4. Cooperation in Righteousness and Piety .....	53
2.4.1.1.5. The Inability of Self-Defence.....	54
2.4.1.2. Reason -Based (Al-‘Aql) Evidence .....	57
2.4.2. Opponents of Legal Representation .....	58
2.4.2.1. Absence of the Practice in Islamic History.....	58
2.4.2.2. Forbidden Earning .....	60
2.4.2.3. Defence Before Illegitimate Courts .....	60
2.4.2.4. Legal Practice Unjustified on Ethical Grounds .....	61
2.4.2.5. Ambiguity of Legal Practice.....	62
2.4.2.6. Distortion of Facts.....	62
2.4.2.7. Defence Against the Prescribed Penalties.....	62
2.4.3. Illegitimacy of Legal Representation: A Discussion.....	63
2.4.3.1. Legal Practice in Islamic history.....	64
2.4.3.2. Prohibited Earning .....	66
2.4.3.3. Legal Practice and its Ethical Position.....	67
2.4.3.4. Legitimacy of Courts .....	68
2.4.3.5. Lack of Sufficient Justification to Existence of Profession .....	70
2.4.3.6. Ambiguity .....	71
2.4.3.7. Manipulation of Facts .....	72
2.4.3.8. Interceding the Prescribed Penalties .....	72

2.5. CONCLUSION .....	75
-----------------------	----

**CHAPTER THREE: LEGAL REGULATION FOR THE LEGAL PROFESSION UNDER SAUDI LAW ..... 77**

3.0. INTRODUCTION.....	77
3.1. THE MEANING OF LEGAL PRACTICE IN LEGAL PROFESSION .....	78
3.2. CONDITIONS FOR LEGAL PRACTICE IN SAUDI ARABIA .....	80
3.3. THE RIGHTS OF LAWYERS .....	83
3.3.1. The Right to Pleading.....	83
3.3.2. The Freedom of Pleading .....	87
3.3.3. Immunity of the Lawyer.....	90
3.3.4. The Right of Lawyers to Appoint another Lawyer.....	95
3.3.5. Fees for the Lawyers.....	98
3.3.6. Access to the Facilities .....	102
3.4. THE DUTIES OF LAWYERS .....	104
3.4.1. Duties towards Legal Practice .....	105
3.4.1.1. Practising the Profession according to Legitimate Methodology .....	105
3.4.1.2. Avoiding Inclusion of Personal Matters and Avoiding Profanity .....	107
3.4.1.3. The Prohibition of the Means of Co-Optation and Propaganda .....	109
3.4.1.4. Obligation to Set Up a Workplace .....	112
3.4.1.5. Submission to Power of Attorney .....	114
3.4.2. Duties of a Lawyer towards His Client .....	117
3.4.2.1. Duty for Non-Disclosure of Secrets (Confidentiality).....	117
3.4.2.2. Duty not to Abandon the Power of Attorney at an Inappropriate Time .....	120
3.4.2.3. Duty Not to Buy Disputed Rights.....	123
3.4.2.4. Duty of Non-representation in Conflicting Interests .....	125
3.4.3. Breach of Duties and Penalties for a Lawyer .....	128
3.4.3.1. The Competent Authority to Discipline Lawyers.....	128
3.4.3.2. Disciplinary Proceedings for a Lawyer.....	131
3.4.3.3. Appeal Against Disciplinary Decisions.....	138
3.5. CONCLUSION .....	141

**CHAPTER FOUR: LEGAL REPRESENTATION DURING INFERENCE AND PRELIMINARY INVESTIGATION STAGES..... 143**

4.0. INTRODUCTION.....	143
------------------------	-----

4.1. THE LEGAL REPRESENTATION DURING THE INFERENCE STAGE.....	145
4.1.1. The Meaning of the Inference Stage.....	146
4.1.2. Significance of Inference.....	147
4.1.3. The Difference Between Inference and Preliminary Investigation .....	148
4.1.4. The Competent Authority on Inference Stage.....	149
4.1.5. Supervision of Inference.....	151
4.1.6. Controls of Inference.....	152
4.1.7. Presence of a Lawyer at Inference Stage.....	154
4.1.7.1. Laws Acknowledging the Presence of the Lawyer at the Inference Stage .....	156
4.1.7.2. Jurists' Views of the Lawyer's Role During Inference .....	160
4.2. LEGAL REPRESENTATION DURING THE PRELIMINARY INVESTIGATION STAGE.....	168
4.2.1. The Meaning of Preliminary Investigation.....	169
4.2.2. The Significance of the Preliminary Investigation .....	170
4.2.3. Characteristics of Preliminary Investigation .....	171
4.2.4. The Competent Authority on Preliminary Investigation .....	173
4.2.5. The Procedural Safeguards During Preliminary Investigation.....	176
4.2.5.1. The Lawyer's Contact with and Visit to the Accused .....	176
4.2.5.2. Access to the Case File and Making its Copies .....	182
4.2.5.3. Inviting the Lawyer to Attend the Investigation Procedures .....	187
4.2.5.4. Lawyer's Presence during the Procedures of Interrogation.....	191
4.3. CONCLUSION.....	195
 <b>CHAPTER FIVE: LEGAL REPRESENTATION AT THE TRIAL STAGE.....</b>	<b>198</b>
5.0. INTRODUCTION.....	198
5.1. GENERAL PRINCIPLES OF A TRIAL .....	199
5.1.1. Public Trial .....	199
5.1.2. Oral Proceedings.....	206
5.1.3. Documenting the Proceedings.....	208
5.1.4. Confrontation in the Lawsuit.....	210
5.1.5. Legality of the Proceedings and Penalties.....	213
5.1.6. Adherence to the facts of the case .....	217
5.2. THE TRIAL PROCEDURES .....	221
5.2.1. The Law Defining the Procedures.....	222

5.2.2. Initiation of a Criminal Case .....	222
5.2.3. The Impact of Initiating the Legal Action.....	224
5.2.4. Procedures of Hearing of the Case .....	225
5.2.4.1. Submitting Requests .....	226
A. Discussion on the Prosecution Evidence .....	227
B. Request to Reopen Pleading .....	230
5.2.4.2. Submitting the Pleas (Defences).....	231
A. The Difference Between Requests and Pleas.....	231
B. Types of Pleas .....	232
5.2.4.3. Submitting the Challenges .....	232
A. Ordinary Challenge.....	233
B. Extraordinary Challenge .....	234
5.2.5. Parties to the Proceedings in the Criminal Case.....	235
5.4.5.1. Causes of Prohibiting the Accused to Access a Lawyer.....	238
5.4.5.2. Practices from Judiciary.....	245
5.3. CONCLUSION .....	250
<b>CHAPTER SIX: FINDINGS AND RECOMMENDATIONS.....</b>	<b>253</b>
6.0. FINDINGS .....	253
6.1. RECOMMENDATIONS .....	257
<b>BIBLIOGRAPHY .....</b>	<b>261</b>

# CHAPTER ONE

## INTRODUCTION

### 1.0. INTRODUCTION

It is the custom, practice, and traditions of people that structure the modus operandi of legal practices of any society and shape the nature of legal agency and litigation peculiar to each nation. Additionally, the legal system prevailing in a nation influences the basic fundamental human rights that citizens enjoy. In many countries where democracy is the bedrock of government, the freedom of hearing is given paramount importance. Nevertheless, there are still some countries in this world where the professional practice of lawyers to provide legal representation is still an illusion.

Ideally, a person is required to be in charge of his legal affairs; even so, he may need aid from others due to certain legal or daily-life conditions. As a result, legal representation has become an important academic discourse. Traditionally, in Saudi Arabian, legal representation can be made in cases of adjudication due to an incapacity and inability to defend oneself in a court during the hearing, or because the defendant is weak or sick.<sup>1</sup> Based on this, the need arises for those who have the ability and are qualified to undertake such tasks, thereby highlighting the role of lawyers and attorneys.

Given the importance of this profession and the desired outcomes in achieving justice, countries around the world have enacted laws, which are dedicated exclusively to the practice of law. Legal practice, as a proper profession, had not been legalised in Saudi Arabia despite the issuance of an act allowing its practice in 1422AH\ 2001 A.D. One of

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<sup>1</sup>Aḥmad Ḥassan ibn Curzon, *al-Muhāmāh Risalatan wa Amānāh*, 1st ed., (Al-Qāhirah: Dār Ibn Ḥazm, 1993), v 1, p 47.

the main reasons behind delaying the emergence of such a practice had been the prevailing Islamic legal perspective, which rejects the job of a lawyer. Based on this view, the role of a professional lawyer in the Saudi context is seen as a means of earning illegitimate money by defending people regardless of whether they are right or wrong. The practice is also perceived as a job that strives hard to seek evidence at all costs to protect the client and win cases by using tricks and deception. It does not matter if a lawyer's client is right or wrong, guilty or not as his motivation is making money, and thus whoever gives him money is right from his point of view. The proponents of such a view base their opinion against legal practice on the Prophet's saying, "The Last Hour will not arrive till people come forth who make a living with their tongues as cows eat with their tongues".<sup>2</sup>

Based on this view, the motive of a legal practitioner, especially regarding legal representation is not to ensure a fair hearing for his clients, but to make money. In order to achieve this he may go to any lengths without having any qualms in defending killers, criminals, and thieves. A lawyer, is said to mislead the jury and influences the course of the proceedings, thus attempting to distort the course of justice.

The issuance of the Saudi Code of Legal Practice was followed by a bid to disable it due a lack of respect for this law. This happened on account of the fact that these laws do not bind the investigating authorities and court in terms of application and implementation. Hence, it is clear that the enactment of a legal system that would allow the legal practice to be adopted as a profession is a proof of the significance of this issue.

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<sup>2</sup> Reported by Aḥmad Ibn Ḥanbal, Quated: Nāṣir al-Dīn al-Albānī, *Silsilat al- Aḥādīth al-Ṣaḥīḥat*, 1st ed., (Bayrūt: Dār al-Maktabat al-Islāmiyyah, 1997), v 1, p 705.

Consequent to this, one must first consider the legitimacy of the said practice and then discuss the Code of Criminal Procedure concerning the access of the accused to a lawyer.

### **1.1. RESEARCH QUESTIONS**

1. When the Code of Legal Practice was originated in the Islamic history and Arab country? And what the extent of its legitimacy in the Islamic *Shari'ah*?
2. What is the Code of Legal Practice? Moreover, what distinguishes it from other similar terms?
3. What requirements that must be provided in lawyer? And what is the duties and rights of the lawyer? What is the guarantees granted by the laws to the lawyer during the practice of the profession?
4. What are tasks of a lawyer in the criminal case, while support for the accused? What is the extent commitment the investigation and court authorities with laws that states enable the accused to access to a lawyer?

### **1.2. STATEMENT OF PROBLEM**

The research problem relates to extensive violations of the law at all stages of criminal cases. Added to this is the practice and treatment of the legal provisions that reveal the nature of the application of law, though these also refer to the non-binding nature of the legal provisions.

### **1.3. HYPOTHESIS OF THE STUDY**

*Shari'ah* law provides a viable criminal justice system. The system allows the accused individuals to be represented by their lawyers in the court proceedings. A fair hearing is obtainable under genuine *Shari'ah* law practice. The judicial system of the Kingdom of

Saudi Arabia [henceforth referred to as the Kingdom] needs to be upgraded by reviewing the Code of Legal Practice and the Code of Criminal Procedure so that proper and professional legal representation may be granted to the accused individuals. This is possible by adopting a Code of Legal Practice based on *Sharī'ah* and the Code of Criminal Procedure of other *Sharī'ah*-based judicial systems such as Egypt and Syria. These may act as models for the judiciary in the Kingdom.

#### **1.4. OBJECTIVES OF THE STUDY**

This study aims to achieve the following objectives:

1. To discuss the extent of the legitimacy of professional legal representation under Islamic law.
2. To clarify the need for legal representation at all stages of criminal cases.
3. To carry out a critical discussion on all the articles that restricts the access the accused to a lawyer in the Kingdom of Saudi Arabia.
4. Disclosure of the practical reality about legal representation in a criminal case.
5. To suggest the adoption of a Code of Legal Practice in line with *Sharī'ah*, such as those in Egyptian and Syrian law which may serve as model legal framework for the professional legal practice in the Kingdom.
6. Demonstrate the extent of commitment shown by investigating authorities and the court to the provisions of the law.



## **1.5. LITERATURE REVIEW**

Conducting research on Saudi laws, in particular on the matter of legal representation and the laws issued pertaining to it that regulate the job of a lawyer in all the proceedings of a lawsuit is indeed a thorny issue due to the lack of studies that criticise the law when it comes to the legal practice. The bulk of literature available on the issue at hand deals with legal representation in organisational terms and according to the vision of the legislator in the enactment of the law without considering other legal systems in comparison to Saudi law. This implies that the scarcity of references in Saudi law caused real difficulty in obtaining the literature on the position of legal representation within legal system of Saudi Arabia. The present endeavour is the first critical and analytical study of legislation in Saudi Arabia regarding the practice of law on the part of lawyers. Research on legal representation in Saudi Arabian law is limited. Those that do address the matter are reviewed below:

### **1. The Code of Legal Practice in Islamic jurisprudence and its applications in Saudi Arabia<sup>3</sup>**

This study was conducted by Muḥammad ibn ‘Alī ibn Muḥammad in 1425/2005 as his doctoral research submitted to the Zaytūnah University in Tunisia. The study discusses the history of the Saudi Code of Legal Practice, its legitimacy and conditions, the expiration of the power of attorney, and the job of a lawyer. The study mentions the origins of legal practice that existed in Islamic history regarding practical organisation known as the power of attorney as well as in other practices. These were there both in the

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<sup>3</sup> Muḥammad ibn ‘Alī ibn Muḥammad, *Niẓām al-Muḥāmah fī al-Fiqh al-Islāmī wataṭbīqātuhū fī al-Mamlakah al-‘Arabiyyah al-Sa‘ūdiyyah ma‘a Dirāsatin li Niẓām al-Muḥāmah*, 1st ed., (Riyāḍ: Kanūz Ishbīliyah, 2005).

time of Prophet Muḥammad (peace and blessings be upon him) and his companions. The study is focused on the historical and regulatory side of the practice without referring to the job of a lawyer in a civil or criminal law. Setting the study is thus consistent with what the researcher has brought forth regarding the legitimacy of legal practice. It nonetheless differs from the present study, which expands on the problems related to the Saudi Code of Legal Practice and its comparison with other legal systems.

## **2. The legal profession in the light of Islamic law and Arab laws<sup>4</sup>**

This study by Muslim Muḥammad Jawdat al-Yūsuf 1422/2002 was his Ph.D. Dissertation submitted to the Imam Awzā'ī College for Islamic Studies in Beirut. The study discusses the history of the Code of Legal Practice, its legitimacy in Islamic jurisprudence, and the differences between legal practice and the power of attorney in dispute. It mentions the requirements to be fulfilled by those who wish to practice law. It also sheds light on the lawyers' rights, the immunities that should be there for them, and the way a lawyer should represent litigants in the courts and elsewhere. The purpose of this study is to highlight the role of counsel in lawsuits. The researcher concludes the study with a view that there is a dire need for lawyers at this moment because of the complexities and difficulties of procedures at government departments and courts.

This study focuses on the procedural and organisational side of practice in the Arab States without referring to the contents of Saudi law. In this context, it is consistent with what the researcher has pointed out on the legitimacy of a lawyer's job. The most prominent difference, however, is the fact that the present study addresses the issues that

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<sup>4</sup> Muslim Muḥammad Jawdat al-Yūsuf. *al-Muḥāmāt fī daw'i al-Sharī'at al-Islāmiyyah wa al-Qawānīn al-'Arabiyyah*, 1st ed., (Bayrūt : Mu'assasat al-Rayyān, 2001).

hinder the job of a lawyer in criminal cases at all the stages of judicial proceedings in Saudi law and compares the situation with other justice systems.

### **3. The legal profession in Islamic jurisprudence and the Saudi law and its role in achieving justice<sup>5</sup>**

This study was conducted by ‘Abd Allah Muṭṭlaq in 1424/2004 as his Master thesis submitted to Naïf Arab University for Security Sciences in Riyadh. The researcher confirms the legality and conditions attached to the Saudi Code of Legal Practice, the power of attorney, and the difference between them. He mentions that the most notable difference between the agent and lawyer is that the law requires a lawyer to have a headquarters for his practice unlike the agent in a dispute. He mentions the duties and rights of a lawyer, and the disciplinary and criminal liability on him. The most prominent among these, as referred to by the researcher, is that a lawyer has to study the case before accepting the power of attorney; he must make sure with absolute certainty that the accused is standing on a justified footing failing which the lawyer is supposed not to represent him. For Muṭṭlaq, the women should not indulge in practicing law as this may lead to sin and evils such as mixing with men.

He focuses on the responsibilities incumbent upon a lawyer, closely looks at his job and examines the organisational side only. This dissertation agrees with the current study regarding the legitimacy of legal practice. The difference nevertheless lies in the comparison between Saudi and the other judicial systems, as offered by this study, as well as a scrutiny of the rules regarding the said practice and criticism on laws pertaining to it.

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<sup>5</sup> ‘Abd Allah Al-Muṭṭlaq, *al-Muḥāmmāt fī al-Fiqh al-Islāmī wa al-Nizām al-Sa‘ūdi wa Dawruhā fīTaḥqīq al-‘Adālah*, 1st ed., (Riyāḍ: Jāmi‘at Nāyif, 2003).

#### **4. Lawyer's rights and his duties in the common Code of Legal Practice of Gulf Cooperation Council (GCC) a study comparing with the Saudi Code of Legal Practice<sup>6</sup>**

The study is a Master thesis by Muḥammad 'Alī al-Masradī. Presented in 1423/2003, the study had been submitted to Naif University Arabic for Security Sciences at Riyāḍ. The researcher discusses and defines the concept of legal practice and distinguishes it from various other professions. He brings forth its significance to the community and addresses the lawyer's rights in the eyes of judges and state authorities. It also expands on the duties of counsel in the common Code of Legal Practice of Gulf Cooperation Council (GCC), and the necessity of practicing law in accordance with the *Shari'ah*.

The study also discusses general provisions and duties of law (that must be followed by lawyers) and displays the right of lawyers to represent litigants and attend the court hearings. There is also focus on the rights and duties of lawyers in Saudi law while comparing it to the Uniform Law (GCC) only. The researcher is interested in the organisational aspect of the practice, something making it consistent with the present study. The difference between the two, however, lies in the former being non-critical and non-comparative in its nature.

#### **5. Provisions of the Saudi Code of Legal Practice<sup>7</sup>**

The book was authored by Muḥammad ibn Barrāk al-Fawzān in 1434/2014. It contains comments on various articles of the law. The author states the duties and rights of

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<sup>6</sup> Muḥammad ibn 'Alī ibn Fahad Al-Masradī, 'Huqūq al-Muḥāmī wa wājibātuhū fī al-Qānūn al-Muwaḥḥad li al-Muḥāmāt fī Majlis al-Ta'āwun li Duwal al-Khalīj- Dirāsatan Muqāranatun bi Qānūn al-Muḥāmāt al-Sa'ūdī'. (2005), Unpublished doctoral dissertation, Nāyif University, Saudi Arabia.

<sup>7</sup> Muḥammad ibn Barrāk al-Fawzān, *Al-Ta'liq 'Alā Nizām al-Muḥāmāh*, 1st edn., (Riyāḍ : Maktabat al-Qānūn wa al-Iqtisād, 2014).

lawyers. He discusses at length the articles relating to the ethics of practicing law, and the organization of the lawyer's relationship with other bodies such as government authorities and individuals. He comments on the defence method, its organisation and the prohibitions imposed on a lawyer for conducting his practice. Al-Fawzān sheds light on the discipline of lawyers, disciplinary sanctions against them, the independence of the disciplinary case with a compensation claim, and the appointment of the competent authority to raise the disciplinary action.

In terms of its discussion of the rights and obligations of lawyers, al-Fawzān's study is congruent with the present research. However, the difference lies in the fact that al-Fawzān neither criticises law, nor talks about the lawyers' position in front of the investigating authorities and the court.

#### **6. Ethics for Agents of Litigation and their Impact on Justice<sup>8</sup>**

The study aims to clarify the dimensions of the concept of justice, its significance in general and the basis of the right to defense. It also aims to identify the ethical aspects conforming to which leads to efficiency on the part of the agent of litigation while achieving justice. The researcher explores opinions of judges and such agents about the job and duties of an agent of litigation and the impact of these on the achievement of justice.

This study is consistent with what has been mentioned by the researcher in the present study that the reality of legal practice in Saudi Arabia relies heavily on agents of

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<sup>8</sup> Hamzah Ya'qūb Khayyāt, "Akhlāqiyyāt Mihnat Wukalā' al-Khuṣūmat wa Atharuhā 'Ala al-'Adālat", (Master's thesis submitted at Jāmi'at Nāyif al-'Arabiyyah li al-'Ulūm al-Amniyyah, 2001).

litigation while the points of reference for them are some old regulations that had been issued to regulate their actions.

This study differs from the current study since it focuses solely on the career ethics associated with these agents. Despite the importance of such career ethics, however, the study only focuses on this aspect dramatically.

## **7. The Code of Legal Practice in Islamic Jurisprudence and Law<sup>9</sup>**

The study aims to prove that the texts on Islamic jurisprudence can accommodate all the guarantees for the accused to defend himself through the agent of criminal case better than those provided in man-made law. It stipulates specific rules existing in the books of jurisprudential encyclopedias in various doctrines.

All these revolve around the interests conserved by *Shari'ah*, i.e. in the matters of religion, life, mind, money and family. The study brings forth the progress that has surfaced in relation to the power of attorney in the eyes of Islamic jurisprudence. It then compares this advancement with the developments in the Western jurisprudence.

This study is also consistent with the current study as it discusses the rules of legal practice in Islamic law. The researcher demonstrates how the practice of law is allowed in Islamic law and the way it offers a regulatory mechanism for the power of attorney. It nonetheless differs from the present study in the sense that the researcher in the former has kept his efforts confined to the provisions of the Code of Legal Practice in Islamic law. He focuses exclusively on these while drawing help from Arab and international

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<sup>9</sup> Dumpa Tsher Noglo, *Al-Muḥāmāt fī al-Fiqh al-Islāmī wa al-Qānūn*, 1st ed., (Riyāḍ: Jāmi'at Nāyif al-'Arabiyyah, 2003)

laws. Unlike the current study however, it does not address these issues either critically or analytically.

## **8. Fair Trial in Islamic Penal System and International Conventions<sup>10</sup>**

This study brings forth the sources that shed light on the rules of a fair trial in Islamic criminal justice and international conventions. It also lays bare the guarantees given by Islamic criminal system to the accused for the achievement of a fair trial. The author mentions the similarities and points of convergence as evident in Islamic criminal justice and international covenants. The latter notably included the guarantees given by Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Several advantages distinguish the Islamic criminal system from other contemporary legal systems as noted by the researcher. He stresses the scientific fact that the Islamic criminal system has been a pioneer in the adoption of all the measures that guarantee a fair trial with reference to the rules that confirm this.

This study is consistent with the current study in terms of the significance of a legal representative for the achievement of a fair trial. This enables the legal representative of the accused to emphasize the presumption of innocence and thus the accused is treated on its basis.

This study differs from the current one in the sense that the researcher in the former has made efforts pertaining to fair trial in both Islamic criminal system and international law. He however does not mention Saudi or comparative jurisprudence in specific.

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<sup>10</sup> Būḍīyāf, 'Ammār *al-Muḥākamat al-Ādilah fī al-Nizām al-Jinā'ī al-Islāmī wa al-Mawāthiq al-Duwalīyyah*, (Al-Jazā'ir: Dār Jusūr, 2010).

## **9. The Code of Legal Practices history in the systems and the position of Islamic law from it<sup>11</sup>**

He addressed in this study for the keenness of Islamic law to achieve justice and equality among the people in general and opponents in particular, and then addressed the history of The Code of Legal Practice in ancient history and modern history and also addressed it in the Islamic countries, and then stated the point of consensus and disagreement between the Code of Legal Practice and the power of attorney in the rivalry, then mentioned legitimacy and stated the evidence which support the view of the Permissibility the work in this profession and the wisdom behind allow the exercise of this profession. It has also touched on the Muslim lawyer who defends the Jewish and the Christian and biblical defense lawyer for a Muslim accused.

The face of the compatibility between this study and the study that you have made is that the researcher Search this profession in terms of legitimacy and this is the face the only compatibility. It differs did not refer to the profession in contemporary laws.

## **10. Access to a Lawyer at the Inference Stage<sup>12</sup>**

The study addresses the legislation which is approved to counsel at the first stage of the criminal action in addition to the one which is stipulated in the laws preventing the accused to access a lawyer. It also touches upon the judicial rulings through which one may conclude the position upheld by the judiciary in the countries covered by the study.

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<sup>11</sup> Salmān, Mashhūr Ḥasan, *Al-Muḥāmāh : Tārīkhuhā Fī al-Nuẓum w' Mawqif al-Sharī'ah al-Islāmīyah minhā*, 1<sup>st</sup> ed., (Amman, Dar al-Fayha', 1987).

<sup>12</sup>; Sayf Ibrāhīm al-Maṣāwirah, "Ḥaqq al-Isti'ānah bi Muhāmī fī Marḥalat Jam'a al-Istidlāl "Dirāsah Muqaranah" Majallat al-Sharī'ah wa al-Qānūn, Kulliyat al-Qānūn, Jāmi'at al-Imārāt al-'Arabiyyah al-Muttaḥidah, no.56, 2013).