

Custom in Insurance Law: A Doctrinal and Applied Analysis of Usage as a Source of Legal Norms*

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Abstract

Custom has long served as an implicit yet powerful source of legal norms, particularly in fields characterized by technical complexity and rapid evolution. This article examines insurance custom—the unwritten practices consistently adopted by insurance market participants—as a source of legal authority in insurance contracts. While insurance regulation is increasingly comprehensive, it cannot anticipate every contingency or dispute, leaving gaps often filled by industry usage. Drawing on doctrinal legal theory and applied analysis, this study consolidates scattered jurisprudential principles and industry practices to clarify the concept, emergence, authority, types, and conditions of insurance custom. It distinguishes verbal custom (customary terminology) from practical custom (customary conduct), and analyzes their legal functions as mandatory, interpretive, and supplementary norms in contract adjudication. The article also explores judicial reliance on custom to interpret ambiguous policy terms, enforce implied obligations, or reject claims that contradict established usage. The findings highlight the dual nature of insurance custom as both a stabilizing force and a potential source of uncertainty. It argues for structured mechanisms to document, evaluate, and integrate custom into insurance adjudication, ensuring both legal predictability and responsiveness to evolving industry practices.

Keywords: Custom usage; Insurance law; Legal theory; Risk regulation; Socio-legal studies; Contract interpretation

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A. INTRODUCTION

Custom has always occupied a central place in the formation of legal systems. From the earliest civilizations, jurists recognized that consistent societal practices could carry binding legal force even without codification (Abu Sinna, 2004; Al-Qarafi, 2001). In the field of Islamic jurisprudence, for example, scholars emphasized that legal norms often emerge from repeated communal behavior, not only from written statutes (Ibn Nujaym, 1999; Ibn ‘Ābidīn, 2004). Moreover, legal maxims in classical jurisprudence explicitly affirm the authority of custom. Well-known principles such as “*al-‘ādah muḥakkamah*” (“custom is authoritative”) and “*al-ma‘rūf ‘urfān ka-l-mashrūṭ shartan*” (“what is known by custom is as if stipulated”) reflect this recognition (Al-Bahsain, 2012; Sultan, 1983). Because of this, courts and jurists historically treated prevailing usage as a source of legal obligation where written law was silent. Building on this, modern legal systems continue to incorporate custom as a supplementary source of law, especially in commercial and contractual settings where parties rely on shared industry practices (Al-Zarqa, 2004; Zaydan, 2003).

Within this context, the insurance industry represents a field where custom plays an especially significant role. Historically, many foundational aspects of insurance emerged from informal mercantile practices before becoming codified. For instance, early marine insurance agreements in Lombardy in 1182 and the later development of life and fire insurance were initially governed by trade usage rather than legislation (Al-Sharqawi, 1966; Ericson & Doyle, 2004). In addition, insurance contracts have grown increasingly complex and technical, making it impossible for legislation to anticipate every possible scenario. Scholars have noted that even highly regulated markets leave interpretive gaps that courts fill using industry norms (Abraham, 2013; Baker, 2010). Because insurance involves sophisticated risk allocation and specialized terminology, judges often depend on customary practices to interpret contractual language or determine reasonable conduct (Heimer, 2002). Consequently, modern insurance regulation still relies heavily on the stabilizing influence of custom. Even comprehensive frameworks cannot eliminate uncertainty, especially when new forms of risk or coverage emerge (Faure & Hartlief, 2003; Schwarcz & Schwarcz, 2014). As a result, market practices continue to shape obligations and expectations in ways that statutory texts alone cannot fully capture.

Despite this reliance, insurance custom remains largely uncoded and undertheorized in legal scholarship. Although courts and practitioners frequently invoke unwritten norms—such as industry standards for claim settlement or definitions of covered losses—these practices are rarely recognized

as formal legal sources (Ben-Shahar & Logue, 2012; Randall, 2007). Furthermore, existing literature tends to discuss custom in broad commercial terms without addressing insurance-specific usage as a distinct doctrinal category. While general works on commercial custom exist (Ericson, Doyle & Barry, 2003), they seldom explore how insurance customs operate as autonomous legal norms within a complex regulatory field. Because of this gap, there is still no systematic legal framework for understanding insurance custom's authority, scope, or conditions of application. This absence leaves judges and regulators without clear criteria when deciding whether to uphold or disregard industry practices during contractual disputes, which can undermine legal predictability and fairness.

For this reason, it has become increasingly important to examine insurance custom as an independent legal concept rather than as a subsidiary of commercial practice. By clarifying how unwritten norms gain authority in insurance markets, scholars and regulators can better ensure consistency, transparency, and fairness in dispute resolution. Addressing this gap would also align legal practice with the realities of the insurance industry, where shared practices often shape expectations more strongly than formal statutes or codes.

B. METHODS

Building on this foundation, the study sets out with a clear objective: to examine insurance custom as a legitimate and functional source of legal norms within insurance contracts. While many studies have analyzed insurance regulation or contractual doctrines in isolation, few have systematically explored how unwritten industry practices gain legal authority and shape obligations between insurers and policyholders. To fill this gap, the study frames four guiding questions. First, what is insurance custom, and how can it be defined in legal terms? Second, how did it emerge, and what is its doctrinal and legal authority? Third, what are its types, functions, and conditions for validity? Fourth, how has it been applied in judicial and regulatory decisions to resolve contractual disputes? These questions aim to establish a coherent understanding of insurance custom as a doctrinal category that can be recognized, analyzed, and applied consistently.

To answer these questions, the study adopts a doctrinal legal methodology that integrates inductive, deductive, and applied approaches. On one hand, the inductive analysis gathers principles from classical jurisprudential sources on the nature and authority of custom, showing how repeated societal practices become legally binding (Ibn Nujaym, 1999; Al-Qarafi, 2001; Ibn 'Ābidīn, 2004). On the

other hand, the deductive analysis applies these principles to the specific context of insurance contracts, where technical language and complex risk-sharing structures often require interpretation beyond statutory provisions (Abraham, 2013; Baker, 2010; Heimer, 2002). In addition, the study uses applied analysis to examine selected judicial decisions where courts relied on or rejected industry customs, illustrating how custom operates in practice and how its absence can lead to legal uncertainty (Schwarcz & Schwarcz, 2014; Ericson, Doyle & Barry, 2003). This three-part method ensures both conceptual clarity and practical relevance.

Through this approach, the study offers several contributions to legal scholarship and practice. Most importantly, it addresses a doctrinal gap by identifying insurance custom as an independent legal source rather than a mere by-product of commercial behavior. It also provides a structured framework for judges, regulators, and practitioners to assess when and how insurance customs should influence contractual interpretation. By doing so, the study aligns legal analysis with the realities of modern insurance markets, where shared practices often shape rights and duties more than formal statutes (Ben-Shahar & Logue, 2012; Faure & Hartlief, 2003). More broadly, the study bridges classical jurisprudential theory and modern socio-legal research, offering a conceptual foundation that can enhance legal predictability while preserving the flexibility needed for innovation in risk regulation (Abraham & Schwarcz, 2023; Ericson & Doyle, 2004).

To guide the reader, the remainder of this article is organized into five main parts. The first part defines the concept of insurance custom, drawing on both linguistic and juristic sources. The second part traces its historical emergence and examines its legal authority within the broader framework of custom as a source of law. The third part explores the forms and functions of insurance custom, distinguishing between verbal and practical customs and analyzing their roles as mandatory, interpretive, and supplementary norms in contractual relations. The fourth part identifies the conditions required for a custom to be legally valid and enforceable in insurance disputes. The fifth part presents selected judicial applications where decision-makers relied on or rejected insurance customs, highlighting their implications for legal certainty. The article concludes with key findings and recommendations for incorporating insurance custom into legal adjudication more systematically.

C. RESULTS AND DISCUSSION

1. The Concept of Insurance Custom

To begin with, understanding insurance custom requires first clarifying what “custom” itself means in legal theory. In classical jurisprudence, scholars described custom as a practice that becomes binding through consistent repetition and general acceptance by a community. For example, Ibn Nujaym (1999) defined custom as “what becomes established in people’s minds and is accepted by sound natures,” while Ibn ‘Ābidīn (2004) emphasized that legal rulings often turn on the prevailing customs of their time and place. Similarly, Al-Qarafi (2001) noted that “many legal rulings are built on custom, and they change when custom changes,” highlighting its dynamic nature. Because of this, legal maxims such as “*custom is authoritative*” (*al-‘ādah muḥakkamah*) and “*what is known by custom is as if stipulated*” (*al-ma‘rūf ‘urfān ka-l-mashrūṭ shartan*) became foundational principles in classical legal theory (Al-Bahsain, 2012; Sultan, 1983). These maxims reflect a long-standing recognition that law cannot function solely through written rules and must also respond to social practice.

It is important to distinguish custom from habit, since the two are often conflated. According to Al-Zarqa (2004), custom refers to collective behavior that is socially recognized, whereas habit may describe only an individual’s personal pattern. This distinction is significant because only collective, public practices can generate normative force. Al-‘Ala’i (1994) similarly argued that custom involves repeated behavior by a community that becomes presumed in legal interpretation, while personal habit does not. Thus, while all customs are habits in a sense, not all habits can be treated as customs. This distinction ensures that only practices with broad social acceptance and predictable continuity can shape legal obligations.

Equally essential is clarifying what is meant by “insurance,” since custom applies to insurance both as a system and as a contract. As Al-Sanhuri (2010) explained, insurance as a system refers to an economic and social mechanism for pooling risks, whereas insurance as a contract refers to a legally binding agreement between an insurer and a policyholder. Building on this, Heimer (2002) described insurance as a form of private regulation, where specialized institutions manage uncertainty on behalf of individuals and firms. This dual character explains why insurance often generates its own technical language, risk allocation structures, and operational routines, which gradually evolve into industry customs. Because legislation cannot anticipate all contingencies, courts and regulators often interpret ambiguous insurance obligations by referring to these shared practices (Baker, 2010; Abraham, 2013).

Bringing these elements together, insurance custom can be defined as the set of verbal or practical practices that insurance market participants consistently

follow, which gain binding effect through repetition and shared acceptance. In other words, it is the informal body of norms that guide how insurers, policyholders, and intermediaries interpret and perform their contractual obligations. This definition aligns with the view that “what is established by custom is like what is established by stipulation” (Ibn ‘Ābidīn, 2004; Al-Bahsain, 2012) and reflects the role of custom as a bridge between formal legal rules and the realities of industry practice. As such, insurance custom functions as an implicit source of law—one that quietly underpins many daily operations of the insurance market despite its lack of codification.

2. Emergence and Legal Authority of Insurance Custom

To understand the significance of insurance custom today, it is helpful to trace how it first emerged. Historically, many of the foundational practices in insurance developed as informal usages long before they were codified into law. As Ericson and Doyle (2004) note, early insurance markets relied on trust-based routines among merchants, where repeated behavior gradually hardened into enforceable expectations. A classic example is the development of marine insurance in Lombardy in 1182, which began as a practice among traders to share losses from shipwrecks or theft and was only later formalized in written contracts (Al-Sharqawi, 1966). Likewise, the first life insurance policy in 1583 and the rise of fire insurance after the Great Fire of London initially followed commercial habits before any legislation addressed them (Faure & Bruggeman, 2008). These examples show that custom is not peripheral to insurance—it has been part of its DNA since the very beginning.

In addition, the expansion of modern insurance markets reinforced the reliance on custom as a practical necessity. As industrialization produced new technologies and risks, insurers responded by creating new forms of coverage—such as accident, liability, and health insurance—often before legislators could regulate them. As Heimer (2002) explains, insurers acted as “private regulators,” developing technical standards, risk categories, and claims practices that courts later treated as benchmarks. Because of this, many legal systems eventually incorporated industry practices into the fabric of insurance law. For example, the American Law Institute’s *Restatement of the Law of Liability Insurance* recognizes usage of trade as an interpretive tool for understanding policy language (American Law Institute, 2018). This illustrates how industry customs can evolve from informal practices into recognized sources of contractual meaning and legal obligation.

Furthermore, insurance custom derives legal authority from broader legal doctrines that treat custom as a source of law. Classical jurisprudence affirmed

that custom has binding force when it is consistent, widespread, and not contrary to higher legal principles (Ibn ‘Ābidīn, 2004; Al-Qarafi, 2001). Legal maxims such as “the established by custom is like the established by text” (*al-thābit bi-l-‘urf ka-l-thābit bi-l-naṣṣ*) reflect this principle (Al-Bahsain, 2012; Sultan, 1983). Modern scholarship also recognizes that courts rely on custom when statutes are silent or ambiguous, especially in complex fields such as insurance where the law cannot cover every contingency (Abraham, 2013; Baker, 2010). As Schwarcz and Schwarcz (2014) observe, insurance markets often operate as “semi-autonomous regulatory systems,” and acknowledging their customs helps bridge the gap between formal law and practical governance. Because of this, insurance custom carries both historical legitimacy and doctrinal authority as a source of law.

3. Forms and Functions of Insurance Custom

Examining how insurance custom operates in practice requires to distinguish its main forms. Broadly, insurance custom appears in two primary forms: verbal custom and practical custom. Verbal custom refers to the established meaning that certain words or phrases carry within the insurance industry. For example, a term like “vehicle” might be understood by market participants to mean road automobiles only, even if its general dictionary definition is broader. As Al-‘Ala’i (1994) and Al-‘Ayni (2001) explain, when specialized language develops within a professional community, that community’s customary usage becomes the controlling meaning in legal interpretation. This principle reflects the maxim that “literal meaning yields to customary meaning,” ensuring that contracts are read as their authors and audiences understand them, not merely according to abstract linguistic definitions.

Practical custom refers to the repeated behavioral practices of insurers, intermediaries, and policyholders that become standard industry conduct. Examples include issuing policies electronically without wet signatures, using Gregorian calendar dates for coverage periods, or paying premiums in advance as a precondition for coverage. According to Ibn al-Najjar (1998) and Al-Shatibi (2004), repeated conduct can rise to the level of binding custom when it becomes widely accepted and relied upon in practice. In this sense, practical customs shape how insurance contracts are performed and enforced, even if they are not written into the contract. They create predictable expectations that guide daily transactions in the industry.

Beyond their forms, insurance customs also play distinct legal functions. First, some customs operate as mandatory norms, meaning they are presumed to

be part of the contract even without express agreement, such as compliance with standard regulatory filing procedures. Second, many customs serve as interpretive norms, helping courts clarify ambiguous terms in insurance policies. Third, customs can function as supplementary norms, filling contractual gaps where neither the text nor the law provides guidance, such as customary practices for handling small goodwill payments after minor claims disputes. As Ericson, Doyle, and Barry (2003) note, these unwritten expectations reduce uncertainty and transaction costs by creating shared understandings. Taken together, these functions show that insurance customs do not merely reflect how the market behaves—they actively shape the legal content of insurance obligations.

4. Conditions for the Validity of Insurance Custom

To ensure that customs are not applied arbitrarily, legal theory has long required certain conditions for a custom to acquire binding authority. As Ibn ‘Ābidīn (2004) explains, not every repeated behavior qualifies as a legal custom; only practices that meet specific criteria can influence judicial interpretation. These conditions are particularly important in the insurance context, where informal industry norms can significantly affect contractual rights and obligations.

First, a valid insurance custom must be consistent and widespread. This means the practice should be followed by the majority of industry participants and observed with regularity over a significant period of time. Al-Qarafi (2001) emphasized that custom becomes authoritative only when it is stable and well established, while Al-Zarqa (2004) similarly stated that fleeting or rare practices cannot create legal expectations. Consistency ensures that the custom represents a genuine collective norm rather than isolated behavior.

Second, a valid custom must not contradict explicit legal provisions or public policy. As Al-Din (1990) noted, custom cannot override mandatory statutory rules or principles of public order. This limitation is crucial in insurance, where consumer protection laws and regulatory frameworks set boundaries on permissible practices. Al-‘Alyan (2003) likewise stressed that customs conflicting with the core objectives of law—such as fairness, transparency, and risk disclosure—cannot be upheld, even if they are common. This condition preserves the hierarchy of legal sources by ensuring that custom supplements rather than displaces positive law.

Third, a valid custom must not contradict explicit contractual stipulations. According to Al-‘Ala’i (1994), when parties expressly agree on a matter in

writing, their agreement overrides any contrary custom. This principle is widely accepted in contract law and reflected in insurance jurisprudence, where courts enforce clear policy language over conflicting industry habits (Abraham, 2013; Baker, 2010). This rule ensures that custom functions as a gap-filling tool rather than as a means of rewriting agreed obligations.

Fourth, a valid custom must exist at the time of contracting and persist through the relevant period. As Al-Zarqa (2004) explained, a practice that emerges only after the contract is formed cannot be used to interpret or modify its terms. This condition protects parties from being bound by evolving norms they did not know about or rely upon when they entered the agreement. Stability over time is therefore a key marker of legal authority.

Finally, a valid custom must carry a sense of normative obligation among its practitioners. As Sultan (1983) observed, it is not enough for a practice to be common; it must also be perceived by industry participants as something that “ought” to be done. This sense of obligation distinguishes binding customs from mere conveniences or informal preferences. When insurers and policyholders view a practice as obligatory, it gains the normative weight necessary to influence legal interpretation. Together, these conditions provide a clear framework for distinguishing enforceable insurance customs from mere informal habits. They ensure that custom operates as a reliable source of legal meaning while respecting the hierarchy of statutes, regulations, and contractual terms.

5. Judicial and Regulatory Applications of Insurance Custom

To see how insurance custom operates in practice, it is useful to examine how courts and regulatory bodies have relied on—or rejected—custom when resolving disputes. As Ericson, Doyle, and Barry (2003) note, insurance markets often function as “self-regulating systems,” and judicial decisions frequently draw on shared industry practices to interpret ambiguous policy terms or assess the reasonableness of conduct. However, this reliance is not automatic; courts apply the conditions of validity discussed earlier to determine whether a claimed custom should influence their rulings.

In many cases, courts have accepted established customs as interpretive tools when contractual language was unclear. For example, in several industry disputes, decision-makers treated customary definitions—such as the meaning of “total loss” in marine policies or “accident” in liability policies—as controlling where the policy did not define the term explicitly. This approach aligns with the principle that “literal meaning yields to customary meaning” (Al-‘Ala’i, 1994; Al-‘Ayni, 2001). By doing so, courts preserved the parties’ presumed intent,

assuming that they contracted with the shared industry meaning in mind (Abraham, 2013; Baker, 2010). Such rulings show how verbal customs help courts give effect to commercial expectations even when policy language is incomplete.

At the same time, courts have also rejected customs when they conflicted with explicit policy terms or legal rules. In one dispute, a tribunal dismissed an insurer's claim that it was customary to deduct certain administrative fees from payouts, noting that the policy text made no such allowance and explicitly required full payment. This reflects the principle that custom cannot override clear contractual stipulations (Al-'Ala'i, 1994) or statutory protections (Al-Din, 1990). Schwarcz and Schwarcz (2014) emphasize that such judicial caution prevents customs from undermining consumer protection regimes, ensuring that flexibility does not erode legal certainty. These rulings illustrate that custom is subordinate to express terms and public law, operating only where gaps exist.

In addition, courts have sometimes recognized practical customs as supplementary obligations when they were consistent, widespread, and non-controversial. For instance, some decisions upheld the practice of issuing small goodwill payments after minor claim disputes, treating them not as waivers of contractual rights but as industry norms intended to preserve client relationships. As Heimer (2002) explains, such practices serve as private governance mechanisms that stabilize market relationships. Similarly, the American Law Institute (2018) acknowledges that courts may consider "usage of trade" to interpret the conduct required of parties, especially when the contract is silent. These examples show that practical customs can shape the performance of insurance contracts even without being expressly written.

These judicial applications reveal a consistent pattern: courts are willing to treat insurance customs as legally relevant when they meet established doctrinal conditions, but they strictly limit their role to avoid undermining explicit law or contractual autonomy. This balanced approach reflects the dual nature of insurance custom—as a tool for flexibility and market alignment, and as a potential source of legal uncertainty if left unchecked.

6. The Role and Implications of Insurance Custom in Legal Frameworks and Risk Governance

The findings of this study highlight the central yet often overlooked role that custom plays in shaping insurance law. From its historical origins in early marine and fire policies to its modern presence in complex liability and health coverage markets, insurance custom has consistently filled gaps that formal

legislation cannot anticipate (Ericson & Doyle, 2004; Faure & Bruggeman, 2008). As Abraham (2013) observes, the technical complexity of insurance makes it impossible to regulate every detail in advance, which is why industry practices have become an informal yet powerful source of legal meaning. This study has shown that customs influence how courts interpret terms, assess conduct, and resolve disputes, even though they remain largely unwritten.

Furthermore, the analysis also underscores the risks of relying on uncoded practices without clear legal criteria. While customs can provide stability and efficiency, they can also create uncertainty if applied inconsistently or allowed to override statutory protections. Schwarcz (2014) notes that excessive reliance on informal norms can obscure accountability and reduce transparency, especially for consumers who are not insiders to the industry. This tension reveals the need for a structured framework that preserves the benefits of custom—flexibility, expertise, and responsiveness—while safeguarding the rule of law and contractual certainty (Ben-Shahar & Logue, 2012; Heimer, 2002). In other words, customs should operate as gap-fillers and interpretive aids, not as substitutes for clear legal rules.

Beyond its doctrinal importance, the recognition of insurance custom also has practical implications for risk governance in an increasingly globalized market. As Ericson, Doyle, and Barry (2003) argue, insurance institutions are not merely passive risk distributors but active organizers of social and economic behavior. Their internal customs—such as methods of classifying risk, processing claims, or structuring coverage—can subtly influence the allocation of responsibility across entire industries. If courts and regulators remain unaware of these embedded norms, they risk reinforcing practices that may privilege institutional efficiency over fairness or consumer protection (Schwarcz, 2014). Acknowledging custom explicitly as a source of law creates an opportunity to critically evaluate these industry-driven norms, ensuring they serve public policy objectives as well as private market goals.

In addition, integrating insurance custom into legal analysis can enhance the adaptability of legal systems in the face of emerging risks. As new hazards such as pandemics, cyberattacks, and climate-related disasters challenge existing insurance frameworks, written regulations often lag behind market innovation (Knutsen & Stempel, 2021; French, 2020). In such contexts, custom can operate as an early-warning system, signaling how industry actors are responding to novel risks before formal law adapts. Systematically studying these emerging customs could allow lawmakers to anticipate regulatory gaps and design more responsive policies (Faure & Hartlief, 2003). In this way, the concept of insurance custom is

not only backward-looking—rooted in tradition—but also forward-looking, offering insight into the legal contours of future risk governance.

Building on this, the study offers three key recommendations for integrating insurance custom more effectively into legal adjudication. First, regulatory and judicial bodies could develop mechanisms for documenting and verifying recurring industry customs, such as expert committees or advisory panels that maintain updated guidance on recognized practices (Faure & Hartlief, 2003; American Law Institute, 2018). Second, courts should apply consistent validity criteria—requiring customs to be widespread, consistent, non-contradictory to law or contract, and perceived as obligatory—to prevent ad hoc or selective use (Ibn ‘Ābidīn, 2004; Al-Qarafi, 2001). Third, legal education and scholarship should explicitly recognize insurance custom as a doctrinal category, bridging classical jurisprudential principles with contemporary socio-legal analysis (Abraham & Schwarcz, 2023; Ericson, Doyle & Barry, 2003). These steps would enhance predictability, fairness, and alignment between legal interpretation and market realities.

D. CONCLUSION

In conclusion, this study has argued that insurance custom functions as a vital yet under-theorized source of legal norms. By clarifying its definition, historical emergence, forms, functions, and conditions of validity—and by examining how courts have applied it—the study contributes a structured framework for understanding and evaluating insurance customs within legal systems. Recognizing and regulating these customs does not diminish the role of formal law; rather, it strengthens the law’s capacity to respond to a complex and evolving industry. In doing so, this study invites future legal scholarship and policy development to engage more directly with the powerful but often invisible influence of custom in the governance of insurance.

REFERENCES

- Abraham, K. S. (2013). Four conceptions of insurance. *University of Pennsylvania Law Review*, 161, 653–729.
- Abraham, K. S., & Schwarcz, D. (2023). The limits of regulation by insurance. *Indiana Law Journal*, 98, 215–270.
- Abramovsky, A. (2009). Reinsurance: The silent regulator? *Connecticut Insurance Law Journal*, 15, 345–384.
- Abu Sinna, A. (2004). *Custom and habit in the opinion of jurists* (1st ed.). Cairo: Dar al-Basair.

- Al-'Ala'i, S. al-D. (1994). *The comprehensive compilation of legal maxims* (1st ed.). Amman: Dar 'Ammar.
- Al-'Alyan, S. (2003). *Insurance in Sharia and law* (3rd ed.). Riyadh: Dar al-Shawwaf.
- Al-'Ayni, B. al-D. (2001). *The commentator's pillar* (1st ed.). Beirut: Dar Ihya' al-Turath al-'Arabi.
- Al-Bahsain, Y. (2012). *The legal maxim "custom is authoritative"* (2nd ed.). Riyadh: Maktabat al-Rushd.
- Al-Darini, F. (2008). *Methodologies of Islamic legal theory* (1st ed.). Beirut: Mu'assasat al-Risalah.
- Al-Dhunaibat, M. (2012). *Introduction to the study of law* (1st ed.). Riyadh: Maktabat al-Qanun wa al-Iqtisad.
- Al-Din, J. (1990). *Basic principles in law* (2nd ed.). Sharjah: Dar al-Qalam.
- Al-Qarafi, A. (2001). *The legal distinctions* (1st ed.). Beirut: Dar 'Alam al-Kutub.
- Al-Sanhuri, A. al-R. (2010). *The intermediate commentary on civil law* (1st ed.). Cairo: Dar al-Shuruq.
- Al-Shanqiti, M. (2002). *Commercial insurance* (2nd ed.). Medina: Maktabat al-'Ulum wa al-Hikam.
- Al-Sharqawi, M. (1966). *Risk in marine insurance* (1st ed.). Cairo: al-Dar al-Qawmiyyah li-l-Tibaa'ah wa al-Nashr.
- Al-Shatibi, I. b. M. (2004). *The reconciliations in legal theory* (1st ed.). Beirut: Dar al-Kutub al-'Ilmiyyah.
- Al-Zarqa, M. (2004). *General introduction to Islamic jurisprudence* (2nd ed.). Kuwait: Dar al-Qalam.
- American Law Institute. (2018). *Restatement of the law, liability insurance (Chapter 1: Interpretation)*. Philadelphia, PA: ALI.
- Baker, T. (2010). Insurance in sociolegal research. *Annual Review of Law and Social Science*, 6(1), 433–447. <https://doi.org/10.1146/annurev-lawsocsci-102209-152839>
- Ben-Shahar, O., & Logue, K. D. (2012). Outsourcing regulation: How insurance reduces moral hazard. *Michigan Law Review*, 111(2), 197–248.
- Ericson, R. V., & Doyle, A. (2004). *Uncertain business: Risk, insurance and the limits of knowledge*. Toronto: University of Toronto Press.
- Ericson, R. V., Doyle, A., & Barry, D. (2003). *Insurance as governance*. Toronto: University of Toronto Press.
- Faure, M., & Bruggeman, V. (2008). Catastrophic risks and first-party insurance. *Connecticut Insurance Law Journal*, 15(1), 1–52.

- Faure, M., & Hartlief, T. (2003). *Insurance and expanding systemic risks* (pp. 124–125). Paris: OECD.
- Financial Conduct Authority. (2021). *Business interruption insurance guidance*. Retrieved from <https://www.fca.org.uk/firms/business-interruption-insurance>
- French, C. C. (2020). COVID-19 business interruption insurance losses: The cases for and against coverage. *Connecticut Insurance Law Journal*, 27, 1–28.
- Heimer, C. (2002). Insuring more, ensuring less: The costs and benefits of private regulation through insurance. In T. Baker & J. Simon (Eds.), *Embracing risk: The changing culture of insurance and responsibility* (pp. 117–145). Chicago: University of Chicago Press.
- Ibn ‘Abidin, M. A. (2004). *The dissemination of custom in building rulings on custom* (2nd ed.). Beirut: Dar al-Fikr.
- Ibn al-Humam, M. b. ‘Abd al-Wahid. (2004). *Victory of the Able (Fath al-Qadīr)* (1st ed.). Beirut: Dar Ihya’ al-Turath al-‘Arabi.
- Ibn al-Najjar, M. b. A. (1998). *Commentary on the Brilliant Star* (2nd ed.). Riyadh: Ministry of Islamic Affairs.
- Ibn Manzur, M. b. M. (1994). *The tongue of the Arabs* (3rd ed.). Beirut: Dar Sadir.
- Ibn Nujaym, Z. al-D. (1999). *Analogous principles (Al-Ashbah wa al-Naza’ir)* (1st ed.). Beirut: Dar al-Kutub al-‘Ilmiyya.
- Knutsen, E. S., & Stempel, J. W. (2021). Infected judgment: Problematic rush to conventional wisdom and insurance coverage denial in a pandemic. *Connecticut Insurance Law Journal*, 27, 185–197.
- Randall, S. (2007). Freedom of contract in insurance. *Connecticut Insurance Law Journal*, 14, 107–125.
- Schwarcz, D. (2014). Transparently opaque: Understanding the lack of transparency in insurance consumer protection. *UCLA Law Review*, 61, 394–454.
- Schwarcz, D., & Schwarcz, S. L. (2014). Regulating systemic risk in insurance. *University of Chicago Law Review*, 81(1569), 1611–1656.
- Shubayr, M. ‘U. (2007). *Contemporary financial transactions in Islamic jurisprudence* (6th ed.). Amman: Dar al-Nafa’is.
- Sultan, A. (1983). *General legal principles* (1st ed.). Beirut: Dar al-Nahda al-‘Arabiyyah.
- Zaydan, A. al-K. (2003). *Concise explanation of legal maxims* (1st ed.). Beirut: Mu’assasat al-Risalah.