

Banha University
Faculty of Law
Department of Islamic Sharia

Doctoral Dissertation

Entitled

**Practical Solutions for the Legal and Sharia Problems
Resulted from Using the Mobile Phone
In light of the Verdicts of Islamic Sharia and the
Egyptian Civil Law**

Submitted by the Researcher

Jamal Gebril Al-Damarany

For the Fulfillment of Doctoral of Philosophy in Law

Supervised by

Prof. Dr. Mohamed Mansour Hamza

Professor of Islamic Sharia- Faculty of Law- Banha University

And

Prof. Dr. Mohamed Al-Said Roushdy

Professor of Civil Law- Faculty of Law- Banha University

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Examination Committee

1- Prof. Dr. Mohamed Al-Said Roushdy

Professor of Civil Law- Faculty of Law- Banha University

Chairman and Civil Supervisor

2- Prof. Dr. Al-Shahat Ibrahim Mohamed Mansour

Professor of Islamic Sharia and Dean of Faculty of Law- banha University

Member

3- Prof. Dr. Nabila Ismail Raslan

Professor of Civil Law- Faulty of Law- Banha University

Member

4 - Prof. Dr. Mohamed Mansour Hamza

Professor of Islamic Sharia- Faculty of Law- Banha University

Sharia Supervisor and Member

***In the name of Allah, the most Merciful and most
Beneficent***

Praise to Allah, Lord of the Worlds, the researcher is gratefully praising Almighty Allah, Peace and Grace are upon the messenger of mercy to the whole World, Seal of Prophets Muhammad and all his companions.

In this humble research, the researcher has handled to his great extent some phenomena prevailed in the society because of the misuses of the mobile phones.

The mobile phone has enjoyed a large extent of sophistication and very high technology. Thus, every now and then we hear about great development in its potential uses. The highly sophisticated and very advanced technology of the mobile phone along with its correct and misuses have raised argumentation among the Islamic Sharia scholars and the ordinance law jurists due to the several Sharia and legal problems resulted from these ways of using the mobile phone. Therefore, it is felt inevitable to look into practical solutions for such problems both at the Sharia and civil levels separately with the possibility of linking them together.

In this regard, the Faculty of Law- Banha University has evidently dedicated- under the supervision of its Dean Professor Doctor/ Ibrahim Mansour Al-Shahat- its fourth annual conference to discuss problems related to the mobile phone at the legal and economic aspects and their effect on the individual, family and society. The conference entitled “Legal and economic aspects of the mobile phone”; it was held on 27-28th April, 2010 dated Jamadi Al-Awal, 1431H. The participants were several scholars, researchers affiliated to different faculties and universities. This conference was one of the strong

reasons that motivated and urged me to do this humble research under the supervision of my veteran professor Doctor/ Mohamed Mansour Hamza; the Sharia supervisor of this dissertation. He has the great share of guiding and advising me to select this topic per se for the research and dissertation. May Allah richly reward him.

Among its cover, the dissertation contained an introductory chapter, four parts, conclusion, bibliography and table of content. They can be summarized as follows:

The introductory chapter consists of two sections:

The first Section:

It handles the concept of communication in the old ages and its various advancement stages.

The second section:

It handles communication development since the medieval ages through the renaissance age till the current age and the emergence of information technology and communication and their wide spread.

Part one of this dissertation entitled:

Definition of the mobile phone: its emergence, development, risks, and uses constraints according to the verdicts of the tolerant Islamic Sharia. It consists of three chapters:

Chapter one:

It handles the definition of mobile phone, emergence, development, characteristics, and motives of its uses, risks, harms at the ethical, health, and social, economic levels. It falls in four successive sections.

Chapter two:

It deals with the right of privacy, respect of private life in the Islamic jurisprudence and the ordinance law. It handles the rule of “no harm and do no harm” and its application to the mobile phone. In this chapter, the researcher has handled as well the reinforcement as one of the Sharia punishment that can be enforced on some of the mobile phone uses while explaining the meaning of reinforcement punishment meaning and the Sahria verdict of reinforcement according to the tolerant Sharia jurists.

Chapter three:

It deals with the theory or jurisprudence Fiqh of pretext fulfillment in the Islamic Sharia and its practical application to the misuses of the mobile phone. The researcher has handles as well in this chapter the Sharia stances against the visual and sound spying over the mobile phone and their ways. The researcher has also clarified the Sahria stance against using the mobile phone in taking photos of the pornography scenes and its stance against downloading the prohibited pornography materials. It consists of three sections.

Part two of the dissertation:

This researcher has allocated this part to discuss large and sensitive legal and Sharia problems occur over the mobile phone, namely legitimacy of marriage and divorce over the mobile phone. It consists of three chapters.

Chapter one:

It handles the jurist stance of some misuses of the mobile phone such as legitimacy of marriage via the internet and mobile messages. The researcher has then clarified the difference between the formula expression through an

oral and written message and their relation to the mobile phone. It falls into three sections.

Chapter two:

It deals with definition of divorce, its reasons, wisdom, legitimacy and the divorce occurs verbally or written whether clarified or non-clarified and its relation to divorce through the mobile phone. It comprises three sections.

Chapter three:

It handles the legitimacy of verbal divorce occurred over the mobile phone; how it occurs, its Sharia and legal verdicts and the necessary requirements in the mobile phone message of divorce according to which the divorce occurs or not. The researcher has handled as well the stance of the new Egyptian personal affairs law on the verbal and written divorce occurs over the mobile phone. It comprises three sections.

Part three:

Throughout this chapter, the researcher has dealt with some positive and negative phenomena in the society, the role of the mobile phone in the glorified 25th January revolution and the effect of the mobile phone on facilitating the spying operations on several countries including Egypt. It consists of four chapters. They are as follows:

Chapter one:

It handles the influence of the mobile phone on the increasing phenomenon of the common law marriage and its effect on the individual, family, and the society. It comprises two sections.

Chapter two:

It handles the verdict of operating the mobile phones while being in the mosques, the effect of using the mobile phone while driving and in the university halls, different knowledge and work places under the verdicts of the Islamic Sharia and the ordinance law. It comprises three sections.

Chapter three:

It handles the legitimacy of the engaged couple speech over the mobile phone and the extent to which a Muslim may have private talk with a woman to her he is not married over the mobile phone and the Sharia constraints. It consists of two sections.

Chapter four:

It handles the role of the mobile phone in the glorified 25th January revolution in 2011. The researcher has as well dealt with the effect of widely using the mobile phone in facilitating the spying operations on different countries including Egypt. It consists of two sections.

Part four (the final part):

It deals with the contractive and restrictive liability of the mobile phones agreements and the compensations for the damages resulted from them. It consists of three chapters. They are as follows:

Chapter one:

It deals with defining the mobile phone agreements, their types and characteristics. It handles the legal characteristics of such agreements and the legal liabilities of both parties of the mobile phone agreement. It comprises three sections.

Chapter two:

It handles the contractive and restrictive liability of the mobile phone agreements. It also deals with the civil contractive liability of both the user and the mobile phone companies and the subjective liability and its relation to the restrictive liability. it falls into two sections.

Chapter three:

It handles the legal protection and compensation right due to damages resulted from using the mobile phone, its networks and towers. It deals with the different scientific evidence on damages resulted from the networks and towers of the mobile phone and the difficulty to prove them. It then handles the suggested solutions for the compensations of the damages, networks and towers of the mobile phone. It consists of four sections.

In the research conclusion, the researcher has focused on a group of recommendations and suggestions which are mainly related to the topic of this research. They are mainly as follows:

First:

The researcher urges the Egyptian lawmaker expedite the issuance of legislations that thickening punishments on the mobile phone companies which do not adhere to the constraints and safety conditions stated by the world organizations and the domestic laws regarding the installation and operation constraints of the aerals and networks of the mobile phones, particularly in the populated areas.

Second:

Enforcement of the unforgivable mistake principle against the mobile phone companies:

This occurs whenever the mobile phone companies do not adhere to implement what is stated in the previous recommendation mostly important the adherence to the world measurable standards in relation to the radiation elements emanated from the networks and towers of the mobile phone.

Third:

Enforcement of the precautionary principle against the damages resulted from the networks and towers of the mobile phone: it is possible to file a liability claim to prevent the reoccurrence of a due damage as this liability is based on the precautionary principle. It adequately states there are probable health dangers and assumptions based on a group of reasonable scientific evidence. This is what the researcher has recommended.

Fourth:

Modification of laws related to anti-spying and preservation of the national security:

It is undoubtedly evident that the mobile phone has an effect on the Egyptian national security as it facilitates spying on the vital and military establishments of the country. Therefore, it is imperative to issue legislations that thickening punishments on the spy and his assistants. The punishment can be elevated to the death penalty. The punishment can be implemented whether or not there are friendship treaties between Egypt and that country.

Fifth:

The researcher urges the authorities concerned to issue a deterrent punishment law that force all mobile phone companies in Egypt not to operate any mobile slice card unless there is complete and full data base including the national number identity card for all who want to operate a mobile slice card on his

expense. This procedure facilitates the identification and punishment of the criminals.

Finally:

The researcher has completed this research after the conclusion and the recommendations. The researcher has then introduced a bibliography list of the old and contemporary references on which he has relied to obtain the information needed for the completion of this research. The researcher has concluded the research by designing a comprehensive table of contents that contains the entire dissertation topics and the pages numbers that include the main topics such as parts, chapters, sections and requirements. The researcher humbly prays to Almighty Allah that the dissertation has correctly handled its main topic so as all knowledge seekers can benefit of it. Whoever wants further reading and details on this topic can find the original copy of the dissertation available at the library of the Faculty of Law, Banha University. With bless and help of Allah.