

The Impact of Shariah Law on the Development of Legal Education in the Kingdom of Saudi Arabia

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Abstract The Islamic Shariah forms the foundation of the regulatory framework in the Kingdom of Saudi Arabia (KSA). Despite the modern legal system, which includes both written and unwritten rules, Shariah is considered the supreme law of the land and any other law that comes into contradiction with it is deemed void. Individuals who wish to practice law in Saudi Arabia are required to study all laws in force in the Kingdom. However, since Shariah is the supreme law of the land, many universities fail to offer comprehensive degree plans, which negatively impacts the development of legal education in the Kingdom. The aim of this study will be to determine whether the supremacy of the Shariah negatively impacts legal education and if so, what recommendations can be given to ensure that universities offer comprehensive degrees, which include both Shariah laws and the newly codified rules. This research will make use of secondary sources of information, which includes books and journals to evaluate the progress of legal education in KSA and its impact on future legal experts.

Keywords Sharia Law, Legal education system, Kingdom of Saudi Arabia, Court structure, Legal framework, Codified laws, The Basic Law of Governance

1. Introduction

Over the past several years, the Kingdom of Saudi Arabia (KSA) has observed incredible progress in the area of legal education; these changes have been due to recent developments in the Kingdom's legal system. For instance, the Kingdom has codified laws in various fields such as criminal, administrative, and commercial laws. Research indicates that the legal system in Saudi Arabia is made up of both written and unwritten laws with the Shariah law as the main source of law¹.

Due to the increased modernisation of the legal system, there has been an increase in the need for legal professionals. Increased codification of laws has encouraged the development of legal education in various universities with some of them willing to offer respective courses and as such, introduce Bachelor degrees in legal education. However, despite the advancements made, the expansion of legal education in the Kingdom is faced with significant challenges that impact the continued development of legal education². In order to have an effective legal education in

Saudi Arabia, there is need to pursue intentional change aimed at directing the growth of legal education in KSA as observed in other countries.

In order to overcome the challenges witnessed in the Kingdom's legal education system, it is important to assess the impact of Shariah law on codified laws as well as the issues presented by the structure of legal education. For instance, arguments have been made for the increased comprehensive knowledge of the Shariah by students, which means that the duration for education will be increased to five years. The idea is that increasing duration of study will allow students to gain enough knowledge of the Shariah, thereby allowing them to comprehend its importance in various societal issues and state decisions³. Consequently, the graduates would be able to work in all legal practice fields, including the judiciary. Additionally, there is a belief that universities will be able to offer Islamic courses that are more comprehensive and effective.

On the other hand, proposals to alter the legal education system in Saudi Arabia are championed as they are believed to increase the efficiency of the existing legal education plan, which focuses on an abstract approach to knowledge resulting in poor preparation of legal students. For instance, research was conducted at the Taibah University to evaluate the institution's comprehensiveness and adequacy of legal courses offered in an attempt to determine whether they meet the advanced standards of legal education. According to the

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¹ Salameh MH and Fotouh JA, "The Development of Legal Education in the Kingdom of Saudi Arabia" (2018) 11 FIAT JUSTISIA: Jurnal Ilmu Hukum 289

² ibid

³ Ali Alanzi A, "The Models of Legal Education: Implication for Saudi Arabia" (2020) 7 Journal of Education and e-Learning Research 235

study, the university's current curriculum was found to be unsuitable regarding the professor's background, the admission and selection standards, and the overall environment⁴.

Moreover, the study concluded that the current curriculum was ineffective as it did not offer graduates an opportunity to gain success with the potential legal frameworks. Consequently, there is a need for the curriculum to be revised in order to comply with the realistic market perspectives applied in the KSA. For example, assessment of professors prior to employment is ineffective and the qualification and skills of aspiring law students were found to be significantly lacking.

Therefore, looking at the current state of legal education in the KSA and the modern advancements made in the legal system, an issue that arises is that modernisation of laws in the Kingdom is viewed as an abandonment or disregard for the Islamic laws. Support and respect for the position of Shariah law is one of the main reasons why there is less research into this topic and why modernisation acquires less support⁵. Similarly, proponents of legal education advancement are usually critiqued for their opinions and accused of disregarding the power of Shariah law.

Due to the importance of Shariah law, law students often face confusion as they try to understand the relationship between Shariah law and the newly codified laws. It is clear that the supremacy of Shariah law impacts the development of legal education in the Kingdom.

2. Research Method

The research will make use of secondary sources of information to analyse the various sources of law and examine the judicial system in the KSA. Additionally, the paper will evaluate the current degree plans offered in various institutions and how effective they have been in delivering legal education. An analysis of legal practices in the KSA will be beneficial for depicting the issues related to the structure of legal education in the Kingdom. Furthermore, assessment of the curricular and degree plans within different institutions will help demonstrate the issues prevalent within a fragmented legal education system.

3. Discussion

1. The Legal Framework in Saudi Arabia

The constitution of the KSA was formulated in 1932 and it marked the beginning of the Kingdom's legal history. Islamic law is the main source of law of the land and the 1992 Basic Law of Governance validated its supremacy.

According to Article 7 of the Basic Law of Governance, the Kingdom is subject to the rules of the Holy Book Quran and Sunnah⁶. Additionally, Article 46 provides for the supremacy of the Islamic Shariah in providing guidance for the main functions and duties of the judiciary. Furthermore, Article 67 provides that the regulatory authorities are guided by the principles of Shariah in the conduct of their duties, which includes making laws for the state⁷.

The Shura Council, which was established in 1992 by a Royal Decree, also affirms the importance and supremacy of Shariah law and Article 2 of the Decree obligates the Shura Council to strictly adhere to Islamic law in the conduct of its duties⁸.

2. Sources of Law in the Kingdom of Saudi Arabia

Article 7 of the Basic Law of Governance provides for the basis of the Kingdom's authority, which is the Book of God and the Sunnah of the Prophet as the definite sources of law. Therefore, it is clear that the Basic Law of Governance affirms the supremacy of Shariah law, which means that laws issued by states must conform to the Quran and Sunnah⁹. However, affirming the supremacy of the Shariah creates problems because the Judiciary is left confused on whether to decide cases based on codified laws or the laws of Shariah. Subsequently, judges have to make decisions based on Shariah law and ignore the modern laws especially where the modern laws are in conflict with Shariah law¹⁰.

For instance, the commercial law was created in 1970 with an aim to modernise the Kingdom's commercial rules and regulations. However, the majority of judges refuse to apply the law based on the belief that they are man-made and as such, their application would breach Shariah rules and regulations. The establishment of quasi-judicial committees helps deal with issues brought about by the failure of judges to apply codified laws for fear of abandoning Shariah principles. These committees are extremely administrative and they adjudicate on commercial and financial issues. In addition, the committees assist in resolving disputes as they support dispute resolution mechanisms and the use of competent and specialised individuals¹¹.

Some of the newly codified laws include the Judicial Code of 2006, the court proceedings of 2014, the criminal procedures of 2014 and the Labor Law of 2004. Article 67 of the Basic Law of Governance provides that regulatory authorities are to make laws in accordance with Shariah, which further cements the role that Shariah has in the

⁴ R. Alkhalawi, Legal Education Reform in Saudi Arabia: A Case Study of Taibah University, PhD dissertation, Maurer School of Law, Indiana University, Indiana, (2015)

⁵ Salameh MH and Fotouh JA, "The Development of Legal Education in the Kingdom of Saudi Arabia" (2018) 11 FIAT JUSTISIA: Jurnal Ilmu Hukum 289

⁶ Basic Law of Governance (1992)

⁷ *ibid*

⁸ "The Royal Embassy of Saudi Arabia" (Majlis Al-Shura (Consultative Council) | The Embassy of The Kingdom of Saudi Arabia) < <https://www.saudiembassy.net/majlis-al-shura-consultative-council> > accessed December 1, 2022

⁹ Kamøy K, Diversity of Law in the United Arab Emirates: Privacy, Security, and the Legal System (1st edn. Routledge, Taylor & Francis Group 2021)

¹⁰ Alanzi AA, "DEVELOPMENT OF THE CIVIL LEGAL SYSTEM IN SAUDI ARABIA" (2020) 23 Journal of Legal, Ethical and Regulatory Issues

¹¹ Salameh MH and Fotouh JA, "The Development of Legal Education in the Kingdom of Saudi Arabia" (2018) 11 FIAT JUSTISIA: Jurnal Ilmu Hukum 289

Kingdom.

Moreover, laws adopted from the French legal system, such as the Governing Bids for Government Procurement, Sales, and Leases and the Saudi Companies Law, are only applicable because they do not contradict Shariah principles. Thus, despite outside influence, Saudi Arabia still insists on the operation of Shariah as the main source of law and also allows for the operation of codified laws as long as they do not contradict the law of God and Sunnah.

Saudi Arabia exhibits a dual legal society whereby Islamic principles form the bedrock of the Kingdom's legal framework whereas the adoption of modern laws is based on the fact that they do not contradict the main source of the law, in this case, Shariah¹². The incorporation and use of the Banking Control Law of 1966, the Law of Procedure before Shariah Courts of 2000 and the Labour and Workers Regulation of 1969 are all laws borrowed from French Law and which are used in the Kingdom on the premise that they are in line with Shariah laws and regulations.

Therefore, one might deduce that despite the evident modernisation of the legal system in the Kingdom, the growth made in the legal system and inadvertently within the legal education sector is minimal since Shariah cannot be contradicted. Consequently, aspiring legal practitioners must be provided with adequate knowledge of laws and rules, to enable them have a better comprehension of Shariah laws and the codified laws, as well as find a complementary balance aimed at making informed decisions¹³.

a. The judicial system in Saudi Arabia

As an Islamic state, Saudi Arabia's judicial system is founded on the Islamic law for both criminal and civil cases. The King is at the top of the legal system and acts as the final court of appeal. The Kingdom's court system is comprised of three parts with the Shariah Courts being the largest¹⁴. Shariah courts are organised into three categories, which includes the Courts of First Instance, Courts of Cassation, and the Supreme Judicial Council.

Additionally, the Shariah Courts are supplemented by the Board of Grievances, which is mandated with hearing cases involving the government. The third part of the court system is made of several committees that address specific disputes, such as labour disputes. However, on October 1, 2007, a royal order approved the reorganisation of the judicial system¹⁵. Among the changes brought about by the new order was the establishment of a Supreme Court as well as special administrative, commercial, and labour courts.

In order for an individual to be qualified as a judge, the candidate must fulfill the following requirements in

accordance with Article 3 of the 2001 Code of Law Practice¹⁶;

- I. The candidate must a Saudi national by descent
- II. Must be of good conduct and behaviour
- III. Must be completely competent to hold the position in line with Shariah law
- IV. Must have a degree in Shariah or any other degree that certifies qualification and is prepared by the Supreme Judicial Council¹⁷;
- V. Must be above the age of forty for Appeals Judge and above twenty-two for other judicial ranks
- VI. Must not be convicted of violating religious laws or involved in disciplinary action dismissing the candidate from public office or for rehabilitation reasons¹⁸.

Since Shariah law remains the supreme law of the land and it is uncoded, so are the Civil Code and the Penal Code, which rely on Islamic principles. Moreover, the Code of Civil Procedures and the Code of Criminal Procedure which form the main procedural laws in the country are not properly applied because judges in the country have extensive knowledge in Shariah law but they are unfamiliar with the procedural laws, which further impacts the effective application of these laws.

However, the establishment of specialised courts by the country is a remarkable move that demonstrates the Kingdom's desire to develop the judicial system, as there will be more need for specialised judges in the future. In the spirit of development and reorganisation of the judicial system, the Personal Status Court and the Commercial Court were established in 2016¹⁹.

Labour Courts were not established and, in an effort to remedy the gap, judicial committees for the settlement of labour disputes were established. The committees were to be made up of specialists with law certificates so as to quicken the legal processes. Nevertheless, since these committees were established by the Ministry of Justice, they lack independence, which is the most critical aspect of the judiciary, as the independence and impartiality of the judiciary helps reinforce trust and respect in the judicial system²⁰.

b. The Legal Profession in Saudi Arabia

The legal profession in the Kingdom of Saudi Arabia is still in its infancy stages. In 2001 the first procedures for lawyers were issued and among these procedures, the most important is the requirement for lawyers to have a Bachelor's degree in Shariah Law. Therefore, graduates are expected to have extensive knowledge of Shariah law and to adhere to accepted rules and regulations, which as stated above must

¹² Alanzi AA, "A Comparative Study on the Legal Education Model in Saudi Arabia" (2020) 9 International Journal of Higher Education 70

¹³ W. GCH and Huang RH, *Legal Education in the Global Context: Opportunities and Challenges* (1st edn Routledge 2017)

¹⁴ "The Royal Embassy of Saudi Arabia" (Legal and Judicial Structure | The Embassy of The Kingdom of Saudi Arabia) < <https://www.saudiembassy.net/legal-and-judicial-structure-0#:~:text=In%20the%20Shari'ah%2C%20and,Prophet%20Muhammad%20during%20his%20lifeti me.> > accessed December 1, 2022

¹⁵ *ibid*

¹⁶ Code of Law Practice, Royal Decree No. (M/38)28, (2001)

¹⁷ *ibid*

¹⁸ *ibid*

¹⁹ Salameh MH and Fotouh JA, "The Development of Legal Education in the Kingdom of Saudi Arabia" (2018) 11 FIAT JUSTISIA: Jurnal Ilmu Hukum 289

²⁰ *ibid*

not contradict Shariah Law²¹. In essence, law graduates are expected to understand all facets involving Shariah Law and their knowledge of codified laws is dependent on the fact that those laws are in line with Shariah law. Due to the emphasis on Shariah law, there is a lack of understanding of the new laws, which weakens the overall legal education system.

The Saudi Bar Association Charter was issued in 2015 by the Council of Ministers Resolution no. 317. It included several provisions aimed to support the role of lawyers in the advancement and protection of human rights. As such, the Association's aim was to improve the level of performance and professional awareness by lawyers²². Some of the powers afforded to the Association include the development of rules and standards of practice for lawyers, consideration of interests associated with principal members of the Association with regard to their duties towards improving the legal profession, organisation of legally related courses, meetings and exhibitions among many other activities, development and assessment of training programs aimed at producing professional and competent lawyers, and the publication of books, scientific, and professional journals, as well as periodicals related to the legal field²³.

Despite efforts aimed at improving the legal profession, the Association is not independent as the appointment of its members is carried out by the Ministry of Justice. Moreover, the Association is prohibited from issuing regulations or instructions that conflict with the Saudi advocacy system, which is deemed supreme since it was issued by a Royal Decree.

c. Legal Education in Saudi Arabia

The Institute of Public Administration (IPA) is the foundation of the Saudi Arabian legal education. As Saudi Arabia leapt into the 21st century, the formation of the IPA was a tremendous milestone and the aim was to respond to the recognised needs of the oncoming modern era, including an established legal training in the Kingdom²⁴. As such, the IPA instituted the development of a new legal framework, which evolved out of the decisions made by the officials.

The launch of the IPA led to the introduction of the first graduate diploma program and the organisation also aimed at increasing government employees' proficiency via education. As such, the IPA constituted elevating the role of public officials with an aim to increase support for administration efforts in order to improve national economic development²⁵.

The IPA trained Saudis in the adjudication of disputes and the modern form of the legal education framework was introduced by the IPA in the early 1970s. The Department of Law at IPA was the first institute in Saudi Arabia to hold the

initial academic programs involving law in the Kingdom. However, the IPA offered both academic and non-academic services and as such, it was not considered an official university²⁶. Despite this, the IPA offers graduate students a post-graduate diploma program in legal sciences and the enrollment is limited to Shariah law degree holders.

The first University offering formal law classes was started in the 1980s at the King Saud University (KSU) in Riyadh. The University started by offering science and theory of law classes as well as legal analytical skills, which began to fill the gap in the Kingdom's legal education that had existed for years prior²⁷. Eventually, legal education transitioned from personal and practitioner-led training into academic-led education.

Due to cultural, religious, and educational planning reasons, Saudi Arabia's legal education remained stuck in time. However, modernisation has allowed for the development and inclusion of a modern curriculum designed to not only train law students in aspects and relevance of historical law but also in the importance of modern law. For instance, one of the main obstacles facing legal education in the country was the approval of a new legal system and its acceptance in application.

Acceptance of the new legal environment was difficult because Shariah law, which is believed to be made by God and which is the supreme law of the Kingdom, did not allow for any laws made by man. As such, since a majority of modern laws were considered man-made, it was difficult for these laws to be accepted, as the Shariah requires everyone to follow divine law²⁸. The belief that man-made law might oppose Shariah law is a misconception that some former religious scholars held. However, given that Shariah law is given supremacy in the Kingdom of Saudi Arabia, it is not necessary to question man-made laws, as they are not superior to Shariah law²⁹.

Moreover, the prevailing pattern of education in Saudi Arabia, which evidences a dual legal system, is attributable to the Kingdom's adoption of the Egyptian-French approach to legal education as well as the subsequent tendency to send faculty members of law schools to France for the purpose of pursuing higher education³⁰. Subsequently, due to the new teaching methodologies, the old generation finds it difficult to move away from what they deem the correct legal education, which undermines their confidence.

Despite the changes evidenced in legal education, one thing that is prominent is the Kingdom's modest approach to revolutionising the legal system. As opposed to focusing on the curricula of education and development methods, which ultimately improve output, the Kingdom is more focused on

²¹ Ali Alanzi A, "The Models of Legal Education: Implication for Saudi Arabia" (2020) 7 *Journal of Education and e-Learning Research* 235

²² Alanzi AA, "DEVELOPMENT OF THE CIVIL LEGAL SYSTEM IN SAUDI ARABIA" (2020) 23 *Journal of Legal, Ethical and Regulatory Issues*

²³ *ibid*

²⁴ Alanzi AA, "A Comparative Study on the Legal Education Model in Saudi Arabia" (2020) 9 *International Journal of Higher Education* 70

²⁵ *ibid*

²⁶ *ibid*

²⁷ Salameh MH and Fotouh JA, "The Development of Legal Education in the Kingdom of Saudi Arabia" (2018) 11 *FIAT JUSTISIA: Jurnal Ilmu Hukum* 289

²⁸ Alanzi AA, "A Comparative Study on the Legal Education Model in Saudi Arabia" (2020) 9 *International Journal of Higher Education* 70

²⁹ *ibid*

³⁰ W. GCH and Huang RH, *Legal Education in the Global Context: Opportunities and Challenges* (1st edn Routledge 2017)

increasing the quantity of law schools³¹.

Furthermore, the development of legal education in the Kingdom, especially in the 21st century, has been slow due to the country's stance on Islamic principles as the supreme law of the land. Therefore, from the beginning, the education authorities in the legal field avoided the term "Law" (*kanun* in Arabic) because under Islamic teachings God is the only law maker and so to use the word "law" would mean that men are equated to God. Therefore, legal educational institutions would use *nizam*, which means regulation. Moreover, Law degrees and law degree departments would be named *an'zma* as opposed to *kanun* for the law programs. It is important to note that this practice is slowly but surely being left behind with some law institutions using the term *kanun* in their title.

d. Degree Plans of Law Programs in KSA

Traditionally, Shariah Colleges and Departments in Saudi Arabia have continuously maintained resistance against teaching civil law in their curricula. This is because contemporary legal issues have been considered irrelevant creating a conflict between Shariah and civil law principles. However, due to modernisation and the realisation of contemporary legal issues, a duality in legal instruction has been created³². For instance, Shariah Colleges focus on Islamic knowledge, which includes Quranic Interpretation, Islamic jurisprudence, prophetic tradition, and Arabic linguistics.

The issue with relying on Islamic instruction is that it relies on books written over 400 years ago and the issues contemplated then, no longer exist in the modern Kingdom³³. The Shariah Colleges also ignore enacted laws relating to corporations and labour, depicting an inadequacy within the curricula since commercial corporations and contracts still exist. Therefore, a strict focus on outdated guidelines involving everyday lives, which are ever evolving, is a disservice to modern day society.

On the other hand, Saudi civil law universities provide knowledge-based legal education that is founded on strict curricula, which is similar to that of most civil law schools in countries such as France and many others³⁴. Moreover, legal education focuses on comparing the Saudi systems and Civil Law provisions of France and Egypt and the inclusion of additional courses such as Inheritance, Family law, and history of the Islamic jurisprudence.

Legal education in Saudi Arabia was founded in Egypt, Jordan, and France because the majority of the degree programs offered are similar to the aforementioned countries. The main similarities relate to the credit hours, program

duration, and types of courses offered³⁵. In addition, Shariah courses offered in these institutions differ depending on the department or college but they are all capped at a total of 15%. For instance, fundamental legal courses taught in various departments include Shariah policies, principles of jurisprudence, *zakat*, family law, wills and inheritance and rules of jurisprudence.

Upon review of law degrees offered in Saudi Arabia, it is apparent that there are some downsides which negatively impact the development of legal education in the country. For instance, both criminal and civil law courses are not codified and as such, Shariah law applies. In addition, legal courses that follow course plans from countries that follow the Latin Legal system, such as Egypt and Jordan, create confusion³⁶.

Moreover, law courses are also taught by Arab nationalities who received their degrees in other countries and as such do not exclusively adhere to Shariah law. The issue here is that these teachers negatively impact the full comprehension of Shariah law by the students³⁷. Additionally, there are very few fully comprehensive degree plans under the Kingdom's current legal system due to its dependence on both Shariah law and codified laws. Furthermore, the lack of inclusion of both laws within the curriculums further weakens legal education. For example, since civil laws are not codified, any dispute relating to the various rights are handled in accordance with the state's supremelaw, Shariah Law.

On the other hand, certain civil laws, such as the laws relating to the rights of ownership are codified and this requires law students to familiarise themselves with both the codified law and Islamic law. The issue is that studying codified law becomes redundant because Shariah is the supreme law that cannot be contradicted³⁸. Thus, due to the different laws, it becomes difficult to have a comprehensive degree plan that incorporates all legal and Islamic subjects in a manner that ensures the student graduates with complete knowledge of both laws.

4. Conclusions

The research findings indicate that the development of legal education in the Kingdom is hindered by an unfounded strict adherence, without rational balance, to Islamic jurisprudence dating back 400 years and which fails in some instances to provide solutions for modern world issues. Law constitutes rules guiding society and as such, laws can be said to be a reflection of societyⁱ. Even though the Kingdom's supreme law hails God as the ultimate law maker,

³¹ Salameh MH and Fotouh JA, "The Development of Legal Education in the Kingdom of Saudi Arabia" (2018) 11 FIAT JUSTISIA: Jurnal Ilmu Hukum 289

³² W. GCH and Huang RH, *Legal Education in the Global Context: Opportunities and Challenges* (1st edn Routledge 2017)

³³ *ibid*

³⁴ Alanzi AA, "DEVELOPMENT OF THE CIVIL LEGAL SYSTEM IN SAUDI ARABIA" (2020) 23 Journal of Legal, Ethical and Regulatory Issues

³⁵ R. Alkhalawi, *Legal Education Reform in Saudi Arabia: A Case Study of Taibah University*, PhD dissertation, Maurer School of Law, Indiana University, Indiana, (2015)

³⁶ Salameh MH and Fotouh JA, "The Development of Legal Education in the Kingdom of Saudi Arabia" (2018) 11 FIAT JUSTISIA: Jurnal Ilmu Hukum 289

³⁷ *ibid*

³⁸ *ibid*

Islamic jurisprudence scholars have disseminated the misconception that man-made law is *haram* and as such find that where necessary and in the interests of the public good, it is prudent for laws to be made to encourage the achievement of societal needs. Therefore, it is important to find a balance between the operation of Shariah law and civil law without undermining Shariah lawⁱⁱ. Consideration of Shariah law as the supreme law of the land and the operation of civil law has created confusion in the Saudi system of education and from the findings, it is clear that the Kingdom is in dire need of reforms to its legal system. In order to resolve these challenges, the researcher makes the following recommendations: Comprehensive and clear written laws are required to ensure their effective enforcement in a manner that does not violate Islamic provisions. Since judges are given the discretion to decide which laws to use, the discretion should not be for the judges to choose between the application of Shariah or the written lawsⁱⁱⁱ. Additionally, the judicial system requires reforms, especially since it was last updated over ten years ago. Moreover, a comprehensive knowledge of both Shariah law and modern law must be a requirement for the specialised courts' judges so as to expedite the process. In order to ensure that only competent law graduates practice law, the merit sector must be strengthened. All law practitioners must show an adequate understanding of both Shariah law and modern law and how each relates to the other. Furthermore, the educational curricula must reflect global development in legal education as well as meet local and international needs. In conclusion, legal education must not only be focused on Shariah law but also on recent developments.

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ⁱ W. GCH and Huang RH, Legal Education in the Global Context: Opportunities and Challenges (1st edn Routledge 2017)

ⁱⁱ *ibid*

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