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CONCLUSIVE AND NON-CONCLUSIVE JUDGEMENTS: A COMPARATIVE STUDY OF JURISPRUDENCE AND LAW IN THE FIQH AND SECULAR LEGAL SYSTEMS

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Abstract. In this work, we compare conclusive and non-conclusive judgements in the Fiqh and secular legal systems. The research focuses on the processes of these legal systems that are used to define, enforce and explain judgements that are considered to be conclusive (final) or non-conclusive (provisional). This paper is specifically concerned with the analytical continuum of these judgements and related stereotyped procedures in each system, with the Jordanian legal framework used as an example, as it is based on both Islamic and secular laws. Thus, by methodically comparing Islamic and secular legal systems, we highlight that although both recognise legal finality, the former draws upon Shariah as the decisive source of legal authority and the latter on procedural admissibility. We demonstrate that, in both systems, non-conclusive judgements operate as intermediate or partial solutions, although they are based on divergent ethical and procedural rules. Our findings can enhance the understanding of these legal differences, especially in the global and multicultural legal environments in which both systems operate.

Keywords: Conclusive Judgements, Non-Conclusive Judgements, Islamic Jurisprudence, Comparative Law, Jordanian Legal System.

Introduction

Globally, the delivery of justice in legal systems is heavily dependent on whether court rulings are final or provisional (Dixon, 2023). In practice, in most legal systems, whether they are Islamic or secular, there is a general misunderstanding of both conclusive and non-conclusive judgements, and they are also inconsistently applied (Rosen, 2000). This is one of the reasons why litigation is often extended and justice is delayed, due to the misuse of provisional decisions; as a consequence, the public's level of trust in the legal system is greatly reduced. For example, in current legal systems, conclusive judgements are frequently challenged by the affected parties, while affected parties act in a premature manner in relation to non-

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conclusive judgements, which leads to confusion in both procedural and legal activities (Graham, 2009). Therefore, the present research is aimed at addressing the above-mentioned issues that require clear distinctions to be made between conclusive and non-conclusive judgements. We investigated how conclusive (final) and non-conclusive (provisional) judgements are formulated, implemented and understood within two different legal traditions: Islamic jurisprudence (Fiqh) and contemporary secular legal systems. We also examined how the two systems operationalise legal finality, balance procedural justice with moral authority, and adapt to fit changing social circumstances, using as a case study the dual legal framework that operates in Jordan.

Although Islamic and secular institutions both seek to settle conflicts and dispense justice, their underlying ideas are very different (Ahmad, 2009). Whereas secular legal systems can offer the possibility for appeal and change established in procedural law, Islamic law reflects immutable rulings and draws authority from divine sources (the Quran and the Sunnah) (Husain et al., 2024). Even though the reasons for flexibility are different, in ijtihad and maqasid al-sharia in Islam (Tohari et al., 2022) and procedural and constitutional protections in secular systems, both approaches see non-final decisions as temporary and based on the situation. These differences are the primary cause of confusion between the two legal systems, specifically when both Islamic and secular systems are operating in a parallel manner in practice (Roy, 2007). It can be difficult for litigants and their lawyers to determine which decisions are final, especially when it comes to personal status cases (Landsman, 2009). This can result in enforcement issues, venue shopping and delays in justice. These practical challenges highlight the need for an improved theoretical and procedural framework to distinguish conclusive and non-conclusive judgements across both legal systems, underscoring the necessity for the comparative research we have conducted.

This paper emphasises the similarities and differences between these two systems by using a comparative legal approach. Based on doctrinal research and practical examples, particularly from the Jordanian context, our study illustrates how conclusive and non-conclusive judgements reflect more general legal philosophies, societal requirements and institutional structures. Despite their importance in shaping legal outcomes, these judgements are not clearly defined, applied or understood within and across Islamic or secular legal contexts (Emon, 2006). This uncertainty results in procedural confusion, delays in justice, and disagreements between court and legal practitioners. Thus, the present study aimed to address the following research question: How can Islamic and secular legal systems better define and harmonise the conceptual and functional distinctions between conclusive and non-conclusive judgements to improve legal certainty and procedural fairness, especially in hybrid legal environments such as Jordan?

Using Jordan as a sample paradigm of legal dualism, the main aim of this study was to investigate how conclusive and non-conclusive judgements operate, in theory and in practice, in Islamic and secular law. The methodology involved textual examination of fundamental Islamic texts (the Quran, Sunnah, Ijma and Qiyas), doctrinal and statutory assessments of Jordanian laws and relevant comparable statutes, and examples to illustrate how judgements are issued and contested in each system. During the preparation of this work, the authors used AI-assisted technology (ChatGPT) to check the grammar and spelling. After using this tool, the authors reviewed and edited the content as necessary and take full responsibility for the publication's content, declaring adherence to the highest standards of scientific integrity.

Several earlier studies have investigated the themes of judicial finality and the significance of decisions within either Islamic or secular legal systems. For instance, Emon and Ahmed (2018) investigated the theological foundation for judicial power in Islamic law, while Moqbel and Ahmed (2020) explored procedural flexibility in Sharia courts. Regarding secular law, Dixon (2023) investigated how provisional and final verdicts impact due process in common law nations. Welchman (1988) explored the coexistence of religious and civil legal institutions in Jordan. However, most of the available literature has tended to evaluate each system in isolation or concentrate primarily on procedural improvements without a comparative context. The present research makes a unique contribution by bridging the gap between Islamic

and secular legal concepts via a detailed comparative examination, using Jordan as a case study of legal dualism.

1. Foundational frameworks: Islamic jurisprudence and secular legal systems

The basis of Islamic jurisprudence or Fiqh's authority is the Quran and the Sunnah (also known as divine revelation) and interpretative approaches that include analogical reasoning (Qiyas) and consensus (Ijma) (Arshad, 2021). These sources provide a normative framework meant to represent the intention of Allah, particularly regarding issues of legal and moral significance (Moravčíková, 2024). Moreover, from this perspective, definitive decisions (ahkam qat'iyyah) are typically linked with scripturally given directives. For instance, fixed punishments in hudud situations (e.g. theft or adultery) are considered direct manifestations of divine will and are not susceptible to human override or appeal, provided that the prerequisites for their application are met (Nafees, 2020). Conversely, non-conclusive decisions (ahkam zanniyyah) depend on human reasoning (ijtihad) in cases where textual clarity is missing or contextual factors need judicial flexibility (Hallaq, 2004).

Modern legal systems, especially those rooted in legal positivism, are characterised by their reliance on human-authored statutes, judicial precedents and constitutional principles (Morant, 1998). Law is not viewed as sacred but as a construct designed to facilitate justice, order and individual liberty within an evolving society (Kumari, 2024; Selznick et al., 2020).

In these systems, conclusive judgements are final court decisions, typically in civil or criminal matters that establish legal obligations or rights with binding authority (Gusarov & Terekhov, 2019). However, these judgements are often procedurally contingent and subject to appeal, review or modification in light of procedural errors or newly emerged facts (Kovarsky, 2022). Non-conclusive judgements, such as temporary restraining orders, bail decisions or preliminary injunctions, serve interim purposes and are designed to prevent harm or preserve a status until a case is fully resolved (Gerdy, 2003).

Despite their divergent philosophical foundations – theological finality in Islam versus procedural adaptability in secular systems – both traditions employ conclusive and non-conclusive judgements to uphold justice (Madanat, 2023). Each system also recognises the practical necessity of legal flexibility, especially in complex or unresolved matters (Schuck, 1992). The means by which flexibility is authorised (ijtihad vs. statutory discretion) and the authority behind finality (divine vs. procedural) differ substantially, but their legal functions are, at times, parallel (Alam & Ayaz, 2020).

2. Conclusive and non-conclusive judgements

2.1. Conclusive judgements

In Islamic law, a conclusive judgement (hukm qat'i) is one that reflects an unequivocal ruling based on clear, divine sources, primarily the Quran and the Sunnah (Pill, 2018). These decisions are not open to reinterpretation or appeal unless there is a procedural irregularity or demonstrable injustice (Allan, 2016). For instance, hudud punishments – such as amputation for theft or lashes for adultery – are deemed conclusive when all prescribed evidentiary and contextual conditions are fulfilled (Kamali, 1998). These judgements are grounded in the belief that they implement Allah's will and are thus morally and theologically binding (Fadel, 2008).

In modern secular law, a conclusive judgement is a final, binding court decision that resolves a legal dispute with legal effect, such as a criminal verdict or civil court ruling (Greenberg-Kobrin, 2013). These decisions typically end litigation at the trial level and are enforceable unless overturned by a higher court (Redish, 2004). However, finality is procedural rather than absolute, and parties may appeal based on legal errors,

new evidence or violations of due process (Martineau, 1992). Thus, while both systems affirm the value of finality, Islamic law roots it in divine command, whereas secular law views it as the conclusion of a procedurally fair process (Fadel, 2008).

2.2. Non-Conclusive Judgements

Non-conclusive judgements (ahkam zanniyyah) in Islamic law are typically issued in situations lacking definitive scriptural guidance. They rely on judicial reasoning (ijtihad) or analogical reasoning (qiyas) and are open to revision in light of new facts, evolving contexts or shifting societal norms. For example, in a child custody dispute following divorce, an Islamic court may issue a temporary custody order pending further investigation or testimony (Hallaq, 2004). These rulings preserve flexibility within a divinely inspired system, preventing rigidity where certainty is unavailable.

In modern legal frameworks, courts frequently issue interim rulings, such as temporary restraining orders, bail decisions or preliminary injunctions, that provide immediate yet non-final remedies (Morotti, 2023). These measures aim to safeguard legal rights, maintain the integrity of evidence or avert potential harm while a case is still being adjudicated. As a case progresses, such decisions may be revised. For example, a judge might revoke bail if the risk of flight increases, or lift a temporary restraining order following a comprehensive hearing (Gouldin, 2016; Koepke & Robinson, 2018). Table 1 provides a summary comparing judicial decisions in Islamic and contemporary legal systems.

Table 1. A comparison of judgements in Islamic and modern legal systems.

Criteria	Conclusive judgements	
	Islamic legal systems	**Modern/contemporary legal systems**
Source of authority	Quran, Sunnah and Ijma	Statutory laws and judicial precedents created by humans
Finality	Binding and irrevocable once issued	Final only upon appeal, subject to change
Examples	Hudud (criminal penalties), inheritance law	Final verdicts in criminal and civil cases
Application	Fixed rulings, limited room for adjustment	Procedurally grounded, it can be revisited through judicial review
Criteria	**Non-conclusive judgements**	
	Islamic legal systems	**Modern/contemporary legal systems**
Source of authority	Ijtihad (reasoning in Islamic law)	Procedural legislation and the judgement of the court
Finality	Temporary and subject to change	Temporary and requires more legal action
Examples	Temporary family law judgements, child custody	Bail hearings, temporary restraining orders
Application	Adaptable, depending on new legislative developments	Flexible, guaranteeing prompt justice while awaiting a final ruling

3. Comparative analysis of judgements

In Islamic jurisprudence, definitive rulings derive their authority from sacred sources – the Quran and the Sunnah – making such decisions irreversible in areas where clear, divine instruction is present. This legal structure underscores the religious foundation of its verdicts, interpreting them as obligations rooted in faith (Arshad, 2021). These judgements carry not only legal weight but also profound moral and spiritual significance (Merrill, 1993).

In contrast, secular legal systems are built upon legislative acts, constitutional provisions and court precedents, all stemming from human-established authority (Novak, 2000). Final judgements, while

binding, are based on procedural correctness rather than metaphysical finality (Solum, 2004). This allows for review mechanisms, such as appeals and judicial oversight, to help prevent miscarriages of justice (Walker & Starmer, 1999).

While both systems issue judgements intended to resolve disputes, the nature of their finality differs in fundamental ways:
- In Islamic jurisprudence, finality is often irreversible and reflects divine decree. A hudud punishment, once all conditions have been met, leaves little room for further challenge unless new facts invalidate the preconditions.
- In secular systems, finality is conditional, open to appeal or constitutional review, reflecting a more procedural conception of justice.

Thus, Islamic law emphasises moral clarity, while secular systems emphasise procedural safeguards.

Non-conclusive judgements in both systems serve to maintain legal order while deferring final resolution, but the basis of this flexibility varies:
- In Islamic law, non-conclusive rulings (ahkam zanniyyah) arise from ijtihad, where ambiguity in texts or evolving social conditions call for interpretive judgements. These rulings are responsive to contextual necessity and allow for adaptability within a divine legal framework.
- In secular law, non-conclusive decisions such as temporary restraining orders, bail hearings and preliminary injunctions serve procedural needs. They are issued to preserve rights or prevent harm, pending final adjudication (Cane, 2012).

Although functionally similar, the source and justification of flexibility are religious and interpretive in Islamic systems and procedural and pragmatic in secular systems.

Both systems aim to deliver justice, yet their philosophical orientations differ:
- Islamic jurisprudence views justice as the implementation of divine will, with conclusive rulings as expressions of moral obligation. Flexibility is permitted but always within the bounds of Shariah principles.
- Secular systems treat justice as a human-centred pursuit, balancing fairness, rights and due process. Finality is respected but never absolute, reflecting the belief in the fallibility and reformability of legal systems.

4. The Jordanian legal system: a case study in legal dualism

Jordan presents an excellent case for examining the coexistence of Islamic jurisprudence and a secular legal system. With both systems constitutionally enshrined and applied in practice, Jordan exemplifies the challenges and opportunities of integrating divine and procedural sources of law, particularly with regards to conclusive and non-conclusive judgements.
The Jordanian legal framework is bifurcated as follows:
- Sharia courts preside over matters of personal status (e.g. marriage, divorce, child custody, and inheritance) for Muslim citizens, applying Hanafi jurisprudence in line with Islamic law.
- Secular courts (based on civil law systems, particularly French legal traditions) govern criminal, civil and commercial law and are empowered by legislative statutes.

This duality is explicitly recognised in the Jordanian constitution and gives rise to a pluralistic legal environment in which conclusive and non-conclusive rulings are dealt with differently depending on the domain and the court in question (Lombardi, 2006).
In Sharia courts, conclusive judgements are often passed in cases involving inheritance or marital dissolution, drawing directly from Quranic injunctions (Abdulsiddik et al., 2024). For instance, the

distribution of an individual's assets following their death adheres to explicit Quranic formulae, while a husband's unilateral divorce (talaq) may be considered legally final once issued, with limited procedural scrutiny (Islam & Nahar, 2011). These rulings are rarely subject to appeal unless there is evidence of gross injustice or misapplication (Richman & Reynolds, 2013).

In contrast, secular courts reach conclusive rulings in criminal convictions, property disputes and contractual claims, but these are inherently subject to appeal and judicial review. Finality is understood to be a procedural stage, not an immutable outcome (van de Velden, 2014). For example, a criminal conviction may be reversed if new evidence emerges or if due process was violated (Findley, 2008).

Both court systems also issue non-conclusive or provisional judgements, but for different purposes and under different principles:
- Islamic courts may issue temporary child custody rulings or spousal maintenance orders while a full divorce case is underway. These decisions are rooted in ijtihad and the principle of maslaha (public interest), allowing responsiveness to changing circumstances.
- To maintain stability and prevent harm before a final adjudication, secular courts issue preliminary injunctions, temporary restraining orders or bail decisions. For example, a secular judge may order an abusive spouse to vacate the family home pending trial.

The coexistence of Islamic and secular legal systems frequently results in legal tension and jurisdiction overlap (Husain et al., 2024). For example, a Sharia court may issue a final divorce decree, but if the division of property is contested, the secular court may intervene (Taufik, 2021). Particularly when it comes to matters such as gender equality or child custody, a final Islamic decision founded on religious principles may conflict with international human rights standards (Mayer, 2018). Public confidence in the legal system may decline if individuals perceive inconsistencies or unfairness, encounter conflicting judicial decisions, or observe litigants gaining an advantage by strategically choosing court venues (Greene, 2015).

Jordan has demonstrated a willingness to reform some aspects of its dual legal system despite the ongoing challenges. Some of the noteworthy developments include legal reforms that allow women to file for divorce under specific conditions (Fadil et al., 2024) and regular revisions to the Personal Status Law aimed at promoting fairness and aligning with contemporary social values. These initiatives indicate a movement towards harmonising traditional Islamic legal principles with modern standards of human rights and judicial equity.

5. Interpretation of our main findings

Our research highlights that in Islamic law, particularly in relation to matters such as hudud crimes and inheritance, final judgements are seen as expressions of divine will, granting them a unique moral and spiritual permanence. In contrast, secular legal systems treat finality as a procedural milestone, one that can be revisited if new evidence emerges or judicial errors are discovered. Both systems rely on non-final rulings to navigate complex and evolving legal scenarios. In Islamic law, such flexibility stems from ijtihad and that, in some circumstances, divine guidance can be open to interpretation. Meanwhile, in secular frameworks, these interim decisions serve to maintain order, deliver provisional relief and uphold justice. Jordan's hybrid legal model exemplifies the interaction between these sacred and procedural traditions, often in harmony but sometimes at odds, especially when Islamic rulings diverge from global norms on individual rights and gender equality.

The findings of the current study are highly relevant for countries with dual or hybrid legal systems similar to that of Jordan. For instance, although it can sometimes result in contradictory judgements or in justice being fractured, legal pluralism is also necessary to guarantee cultural and religious traditions. It is very important that a clear mechanism of coordination be established between Sharia and civil courts to limit

confusion and conflicts between the two jurisdictions. Islamic law has the ability to evolve, as evidenced by the gradual increase in women's rights in divorce provision, without undermining core theological principles. Cross-disciplinary training is the key to pluralism: judges must have knowledge of both religious and civil legal systems and their relationship, so they may give equivalent weight to doctrinal requirements and the demands of procedural justice.

The present research highlights the growing challenge to national legal systems to conform to international standards of human rights. In areas such as women's rights, religious freedom and child welfare, Islamic legal precepts can come into conflict with global norms. For example, in the case of Jordan, the option for men to seek unilateral divorce under Sharia law contradicts secular and international norms that emphasise mutual consent and gender equality.

The present study also highlights the critical need to address disparities in legal access and perceptions of fairness. In many cases, Muslim and non-Muslim citizens follow distinct legal pathways, especially in matters of family law. Women, religious minorities and non-Muslim individuals often encounter obstacles when navigating the dual legal framework or seeking to achieve fair outcomes. Addressing these challenges requires inclusive legislative reforms grounded in the principle of equality, robust judicial oversight capable of overturning biased rulings, and comprehensive legal education initiatives to empower citizens with knowledge of their rights and available legal remedies.

Conclusions

In this paper, we evaluated the nature and role of conclusive and non-conclusive decisions and compared them in Islamic jurisprudence and modern secular legal systems, using the dual legal system in Jordan as an example. The finality of divine sources in Islamic law leads to legal finality, such as in inheritance or hudud cases. They correspond to procedural finality under secular regimes, which is subject to appeal under due process. Both systems depend on non-final decisions to address dynamic or unsettled issues. In Islam, interpretative tools such as ijtihad largely determine the nature of non-final rulings; secular systems depend more on procedural devices, e.g. bail decisions or temporary restraining orders.

By stressing the manner in which distinct legal philosophies (divine mandate vs. human construct) exist in judicial practice, the present work represents a conceptual improvement for comparative legal research. It increases our understanding of legal finality and flexibility as representations of multiple worldviews in relation to justice, authority and change, rather than solely as doctrinal principles. Practically speaking, our findings provide insights into how legal plurality may be drafted, negotiated and strengthened, particularly in countries that are under pressure to modernise while maintaining their religious and cultural traditions.

Our comparison and case study findings lead to several important suggestions and recommendations for policymakers in countries where dual legal systems are present. Firstly, the ongoing dialogue between legislators, civil society actors and religious leaders should be encouraged, to develop reforms that are based on consensus and that are socially and doctrinally sound. Secondly, further evaluation of present legislation should be performed, taking into account international human rights norms and highlighting areas where harmonisation could improve access to justice and legal legitimacy, such as gender equality. Thirdly, educational campaigns should be initiated and promoted to educate the public about their rights and responsibilities under the two legal systems, with a special focus on low-income communities, women and religious minorities. In addition, it is recommended to put in place judicial training programmes that provide judges, solicitors and legal academics with a practical understanding of both legal traditions, in order to promote competency and reduce conflicts in interpretation. Gradual legal reform that upholds Islamic values while meeting international human rights standards and procedural justice, especially regarding women's rights, family law and inheritance, should be encouraged. To accomplish this, it would be helpful to create official channels to facilitate collaboration between Sharia and secular courts in legal areas where their

jurisdictions intersect, such as property rights and divorce, to ensure mutual respect, clarity and consistency in decision-making.

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