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Liability for Injury Resulting from a Premise: A Study on Who Will Be Liable for it in Islamic Law of Tort, Lebanon Civil Code and Sudan Transaction Civil Code

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Abstract: Tort wrongs can exist either through the acts of human beings or inanimate beings including premises. If an injury or death has occurred resulting from a building or premise, its owner or possessor should be identified. Who is actually liable in such a case, its real owner only or including its possessor? This is the aim of this study that is to recognize the party, whom should be put the burden of liability for injury caused by the premises. Islamic law primarily takes care of this matter and it can be seen that all Muslim jurists of Sunni schools discussing it in their study. Likewise, it has been codified into Lebanon and Sudan civil codes. Islam gives permission that every person can own and possess houses and buildings; however, he is required to maintain and look after them properly so that his houses and buildings not causing any risk to others. This study is written through arm-chaired research. As a result, after recognizing who should be liable for this case, the claim of compensation should easily be made and optimistically peace and harmony will establish in the society.

Key words: Liability for premises, Islamic law, law of tort, Lebanon civil code, Sudan civil code, owner of premises, injury

INTRODUCTION

Premise in this study includes messuages, houses, buildings, lands, tenements, easements and hereditaments of any tenure, whether open or enclosed, whether built on or not, whether public or private. It also includes warehouse, office, shop, school, lift, balcony, bridge and water gutter which is fitted up to a building. When we mention building, it normally includes any house, hut, shed or roofed enclosure, whether used for the purpose of a human habitation or otherwise and also any wall, fence, platform, staging, gate, post, pillar, paling, frame, hoarding, slip, dock, wharf, pier, jetty, landing-stage or bridge or any structure support or foundation connected to the foregoing (Street, Drainage and Building Act 1974 (Act 133) of Malaysian Law). Further, it could be said that premise might be as a principle which follows apply not only to real property but also to appliances or objects upon it of which the plaintiff has been invited or allowed to make used such as grandstands, staging, diving boards, ship in dry dock, ladders and electricity pylons. The principle may also be used to ships, aero planes and trees.

When liability refers to a person, the person may include owner, who means a registered proprietor of the land, a company, a partnership, a body of persons and a corporate sole.

THE PERSON WHO IS LIABLE FOR INJURY IN ISLAMIC LAW

From the studies of Muslim scholars, researchers can see few particular words which were used by them in order to imply and represent the party who will actually be liable for injury resulting from premises. There are Muslim scholars who used the word of rabb al-dar and the other using the word of malik al-dar which both mean or refer to the owner of premises. Besides, there are also Muslim scholars who preferred to use sahib al-ha'it which means the owner of wall.

When we look at precisely the words which used by the Muslim scholars for the meaning of owner, viz. rabb, malik and sahib, it should rightly be looked at the elaboration of those words, whether such words are also included the mortgagee, trustee, lessee or borrower. As such, we have to know first that to whom the request, warning or notice (in Arabic word, it is called as taqaddum) should be given to remove an expected injury from their premises. In the Islamic law of tort, the request to pull down the inclining wall and to remove it from the space is valid when it is made to any one who possesses the power to do so. The one who possesses the power is the owner of the wall or any other person who has the same right, i.e., who has the position of ownership or possession continually during the time of request,

demand, order or ask and also testimony to the time of collapse. If, after the request, the owner sells his wall which is leaning over and the purchaser takes possession of it and anything be then destroyed by its collapse, there is no liability whatever upon either party. The seller is not liable as tort cannot be established against him by reason of the fact that the wall is not in his ownership any more at that time and his ability terminated with the sale. Neither is the purchaser responsible because no request has been made to him. But if the request has been made to the purchaser after the sale, he then becomes responsible as in that case, he possesses the ability to comply with the requisition. In al-Hidayah, it is said that neither is the purchaser responsible because no testimony has been made to him. The word testimony here has been construed as meaning of request (Al-Babarti, 1970).

In order to validate the request, it should be expressed to the owner of the wall who is a competent person in full possession of his faculties or to his private representative or his general representative who will be a person empowered to make decision while the owner is absent. The private representative is like parents or guardians of a minor and a lunatic, an administrator of endowment, etc. It is valid for him to receive the request and if after the request he neglects to pull down the inclining wall and anything is destroyed by its collapse, the compensation falls upon the endowment property of the minor or lunatic. The compensation is not against the parent or guardian or administrator of endowment because they merely deputize and work on behalf of them (minors, lunatics). So, their acts are in effect the acts of the minor, lunatic and (administrator of) endowment itself (Samawanah, 1882; Al-Baghdadi, 1890; Qudamah, 1947; Al-Bahuti, 1982). The Muslim jurists of the Maliki school opine that a guardian of a person who has not been competent in full possession of his faculties will be liable for compensation from his own property when he neglects to pull down the leaning wall. Likewise the liability for compensation is upon the administrator of endowment and also the private representative when the element of negligence can be proved in the case.

The request for pulling down an inclining wall or a building is invalid when it is made to one who does not possess the power to pull it down and to make the space vacant like a borrower, a lessee, a trustee, a pledgee, etc., because they do not possess the power of demolition and the inclining wall is not owned by them (Al-Baghdadi, 1890; Qudamah, 1947; Al-Bahuti, 1982).

Regarding the case of request for the inclining wall or building, when the owner is incapable to reclaim that building or to pull the wall down, the liability is not upon him because the occurrence happened without his negligence (Qudamah, 1947). But, if the request is made to a mortgagor and he is able to redeem the pledge (whether the house or the wall), he will be liable for compensation if he does not do so as he has the power to pull it down by redeeming it (Al-Baghdadi, 1890; Qudamah, 1947).

There are few statements which should be referred to in order to substantiate the above statements. One of them is the statement made by al-Sarakhsi, a Hanafi scholar. He said:

> If a wall being a mortgaging and it is requested to its mortgagee (to pull it down/to take a proper action), he is not liable for any liability (of any result from the wall) because of the fact that he has no power to pull it down and it is invalid to make a request to him and if the request is made to its mortgagor, he is liable because of he is able to settle his debt to take his wall back and to pull it down

From this statement, it could be said that the owner of a dangerous premise is merely liable for injury caused by such a premise. The expression of owner could include a shared party, a partnership. Thus in the case of collapse of a premise, liability will be shouldered to its real owner, not others. Many more statements and further discussions of it have been explained by Bin Mohamad (2003) in his study.

CIVIL CODES OF LEBANON AND SUDAN REGARDING THE LIABILITY OF OWNER OF A PREMISE

In this part, Lebanon Civil Code 1932 and Sudan Transaction Civil Code 1984 will be referred to. The provisions which will be referred to are sections regarding the damage resulting from the collapse of premises. In the Section 133 of the Lebanon Civil Code 1932, it ruled that:

> The owner (Malik) of a building is liable for injury resulting from the collapse of such a building or the collapse of a part which connecting to it as long as the incident is caused by negligence of maintenance or there is a damage while constructing it or the building has been old

From the above provision, it would briefly be elaborated regarding the expression of owner of the building and then it will be made a short comparison to the views of Muslim scholars in their studies.

Based upon the Section 133 aforementioned, it shows that the word of owner was used in order to indicate the party who will be liable for any injury caused by a

building or a premise. At a glance, it obviously displays and provides that the word of owner or malik is similar to the word which is used by the Muslim scholars and it apparently being agreed upon by the Islamic law. The word malik might be signified as the real owner of a building or any other person who owns the building while injury occurs.

Thus, it may be said in general that the needs of Section 133 of Lebanon Civil Code 1932 with regard to the liability for dangerous premises and buildings is tantamount to the rule of Islamic law of tort. The Sudan Transaction Civil Code 1984, it ruled in Section 148 (1) that:

> Whosoever is authorized to take care of a thing he is liable for injury resulting from it to others, whether the thing is an animal or a chattel and whether the thing is a kind of moveable or immoveable object

Section 149 (1) provided:

> It is regarded as a keeper (Haris) of a thing is a person who by himself or by intermediation of others, having the power of action upon it in the matter of protection and management regarding all affairs of it for his interest, even though he has not reached the age of discretion

Section 149 (2) ruled that:

> It is regarded that an owner of a thing is its keeper so long as it is not proved that the power of protection of the thing has been transferred to other party

Section 150 of the Code enacted:

> It is permissible to whomever (a claimant) is threatened with damage from a thing which is under the protection of a person, may request to its owner or its keeper to take necessary measures to abate the danger. If the owner or the keeper shall not comply with the court may grant him (the claimant) permission to take those measures at the expense of the owner or the keeper

Based on provisions of the civil code, it could be further elaborated relating the needs of such sections as to the owner and the keeper of a building or a premise and then a comparative approach will be made with the allocation recorded by Muslim scholars in their studies.

Section 148 (1) of Sudan Transaction Civil Code 1984 puts liability for any injury which occurs to others, upon any person who has the power of protection of a building. The expression of building in the section in fact is not clearly mentioned but the word immoveable property which is stated in this study may be perceived to include the building and premise.

It would also be said that the signification of the person who has the power of protection is quite general, it is unclear to whom it has been aimed. And after the Section 148 (1) is connected to the Section 149 (1), the party who has the power of protection could be listed as follows:

- The owner of a building
- A person who has been given a power to act in all affairs of protection and management of a building

From these categories, it is obvious as to whom will be responsible to look after a building. The meaning owner of building, it is apparent that he is the party who will be liable for any damage caused by his building and in this conjuncture, the Islamic law of tort has been agreed upon it.

As to the second category, it could be in the Islamic law of tort analogized to the keeper of a handicapped person, the guardian of children, the guardian of an orphan and the administrator of endowment. All of them have the power of action in protection and management thereof. And then this study connects the word keeper to the word before mumayyiz. This could be understood that the owner of a building will be liable for injury resulting from his building even though he/she is a child who has not reached the age of discretion. In the case of if he/she is taken care by a guardian, the guardian should settle down the tort cases which occurred on behalf of him/her by using the child's property, not from the property of the guardian.

Further in Section 150 of the Code, there are two terminologies manifestly stated in respect of the owner and the keeper of a building, viz., malik and haris. When both of them are looked into, malik may be referred to owner whereas haris is keeper like the guardian of children, the guardian of handicapped person, the guardian of orphan and the administration of endowment.

Briefly, after being entirely scrutinized into this code, it might be said that this code is similar in its sense to the needs of Islamic law of tort in respect of the person who will be liable for the injury endangered by a building or a premise. From the discussion, it could be said that the Islamic law primarily and extremely takes care as to the cases of injury occurred, irrespective of whether it resulted from the acts of human beings, animals or premises. The discussion of liability for ruinous premises

is not an alien subject matter in Islamic law, it has even been discussed by all Sunni schools of law, including the Shii school.

On account of the important of this matter, it has to be controlled through the enforcement of law. Therefore, most civil codes of Arab countries enacted a special section relating to that. So, the related sections could be seen in the Civil Codes of Lebanon 1932 and Sudan 1984. When we scrutinize Islamic law regarding the party who should be liable for a collapsing of and ruinous building, it seems that the Islamic law fixes and determines liability is borne by its real owner; not others who have no right of ownership.

This situation also includes the case where a building is charged, guarded and kept by a person where its real owner does not have the legal capacity of management and control thereof, whether by reason of the fact that he is a minor, a lunatic or he is a disabled person. In this case if his building engenders injury to another person, the person who has the power of charge, management or control thereof will be liable but however, the liability will be referred to its real owner. Furthermore in the case of a building of endowment, after the agreement of endowment has been performed, any liability of injury thereafter, which is caused by the building, will vicariously be borne by the administrator of endowment. This is because of the fact that the right of ownership and possession has been moved from the real owner to the administrator of endowment.

In another case that is the case of a building which is handed over to a person in order to charge and manage it for a specific period of time via a contract. For this case, it seems that the Islamic law does not clearly mention for the position of it. However, the researcher opines that if a contract has been performed with putting together the responsibility and liability of injury which possibly occurs in its terms and conditions then the contract would be valid, unless that particular thing is not being a subject matter.

When we examine and observe the civil codes which have been aforementioned, it seems that the Lebanon civil code and the Sudan transaction civil code are prepared and carried out in accordance with the need of Islamic law. Those codes put the burden of liability upon the real owner of a building, not upon others.

CONCLUSION

It could be concluded that the Islamic law gives more concentration and focus on the liability of a person who possesses a legal possession (Hiyazah qanuniyyah), rather than physical possession (Hiyazah maddiyyah). This signifies that if an injury occurs resulting from a building, the name registered in the certificate of ownership of the building should be found out and identified in order to place the burden of liability on him, not on others. This has been agreed, practiced and followed by the Civil Codes of Lebanon 1932 and of Sudan 1984.

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