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The Legal Issues of Contractual Liability for the Act of the Thing "Comparative Study"

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Abstract

Civil liability is based on a fundamental principle that anyone who causes harm through their fault is obligated to provide compensation. The essence of this principle is that an individual is held accountable only for their personal conduct, even if it takes the form of omission, particularly within the scope of contractual liability. However, there are always exceptions to the rule. Does an individual bear responsibility for the actions of objects used in the execution or hindrance of a contract, or for causing harm to the creditor, such as tools, means, or machinery used in conjunction with contract execution?Based on this, the study seeks to explore one of the exceptional cases in contractual liability that goes beyond the scope of personal theory in its basic and general concept, namely, contractual liability for the act of the thing.Especially considering that civil legislation, for the most part, has not explicitly addressed the regulation of this liability, which has sparked controversy and discussions regarding adaptation and the determination of the responsible party and the extent of their liability. This study aims to propose logical solutions based on the realities of the available legal principles.

Keywords: *Contract, Contractual Liability, Act of the Thing, Guardian of Things, Presumed Fault.*

Introduction

Contractual liability is subject to traditional legal principles and still requires further research and development to keep pace with and accommodate new developments, in addition to the legal system's struggle with legislative gaps in many issues.

Problem of the Study

It revolves around addressing the issues resulting from the rise of the debtor's liability due to failure to fulfill contractual obligations. The challenge lies in establishing a causal relationship between the act of the thing and the damage resulting from non-compliance with contractual commitments, especially since this is exceptional to the personal theory, which is based on the personal act of the debtor and forms the cornerstone of contractual fault. This raises questions about adaptation, the responsible party, the scope of contractual liability, and the elements of compensable damages.

On another note, it was necessary to distinguish between contractual liability for the act of the thing and the special liability represented by the guardian of things within the scope of tortious liability. The two concepts are not redundant due to the existence of the contractual relationship in the former and the differences in the aspects and scope of each liability from the other.

Importance of the Study

It lies in the imperative need to discuss, formulate, and attempt to regulate the principles of contractual liability for the act of the thing. Furthermore, the significance extends to exploring the legislative aspect and assessing the suitability or adequacy in order to propose a theory that recognizes the independence of this type of liability. Especially since objects, tools, and machinery have become essential elements in the execution of contracts, given their integration into technological advancements and the consequent emergence of material and legal facts that require thorough study and careful consideration to establish legal judgments.

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Study Objectives

The study aims to explore one of the exceptional aspects of contractual liability, focusing on the partiality of "contractual liability for the act of the thing." This liability is shrouded in mystery and lacks legislative regulation while becoming a practical issue due to technological advancements in machinery and tools used in contract execution. The research adopts a comparative study approach across civil legislation.

Study Questions

The discussion surrounding the theory of contractual liability for the act of the thing evokes controversy and raises numerous questions. Based on this, the study aims to address several inquiries, including:

What is the essence of contractual liability for the act of the thing?

What are the pillars of contractual liability for the act of the thing?

What is the legal adaptation of contractual liability for the act of the thing?

What are the forms of contractual liability for the act of the thing?

What are the legislative solutions for the rise of contractual liability for the act of the thing?

Methodology

The study adopts an analytical and comparative methodology by examining legislations, relying on jurisprudential opinions, elucidating factual realities, analyzing them meticulously, comparing them, and striving to reach conclusions within the framework of available data.

The nature of contractual liability for the act of the thing

It lies in its status as a derivative liability stemming from the primary contractual liability. It is characterized by the presence of a contractual agreement, unlike the liability of the guardian of things within the realm of tortious liability, which does not establish any prior legal relationship between the parties involved.

Therefore, it is incumbent upon us to elucidate the nature of this liability and to examine its essence, including its definition, various forms, parties involved, significance, and finally, to provide examples that reinforce its concept.

Definition of Contractual Liability for The Act of The Thing

The contractual relationship arises initially upon the conclusion of a valid contract, as defined and situated. The French jurist Jaques Ghestin defined a contract as: "An agreement of wills expressed with the aim of producing legal effects that the objective law renders as such (Ghestin, 1980) ." Therefore, the existence or non-existence of liability is linked to the proper formation of the contract based on the manifestation of the will, which is considered by jurisprudence as a fundamental pillar for the emergence of such liability (Jordanian Civil Code, Art. 87; Egyptian Civil Code, Art. 89; French Civil Code, Art. 1101) .

Based on this, contractual liability arises when the damage complained of by the creditor results from the non-performance of the contract. In such cases, the debtor is obliged to compensate for the damage resulting from the breach of their obligation (Starck, Roland, & Boyer, 1996, p. 9; Varadarajan, 2001-2002, p. 735 (Dajeh, 2024)) . It is defined as: "A general penalty that can be imposed on the contracting party who fails to fulfill their commitment, regardless of the source of this obligation within the contract. In a more precise sense, it is the penalty for breaching an obligation arising from the contract (Qasim, p. 190; French Civil Code, Art. 1231-1) ."

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The general principle regarding the emergence of contractual liability is that it arises from the failure of the natural person contracting party to fulfill their contractual obligations, whether through achieving the intended outcome or exercising due care (Bénabent, p. 281) , whether it involves positive action or abstention from action. However, controversy arises when the breach is not caused by the actions of the contracting debtor but rather by the actions of an object or machinery used in the execution of the contract, resulting in harm to the creditor.

In fact, the concept of contractual liability for an act is divided into two terms:

Contractual liability: This is legally defined as the occurrence of damage resulting from the breach of contractual obligation, whether through non-performance, delay, or defective performance.

Act of thing: The concept of the act of thing encompasses every event arising from a traditional tool, machine, or means used in the execution of the contract.

On another aspect, the utilization of objects, instruments, and machines involves several elements regarding the liability of their users, including:

Freedom of choice: Signifying that the user has the liberty to select suitable instruments that fulfill the purpose safely.

Competence: It is presumed that the instruments used possess the capability, efficiency, and technical aptitude necessary for proficient task performance.

Supervision and oversight: Implies that the user has the ability to exercise control and supervision over the performance of these instruments for the required tasks.

Guidance: Referring to the necessity for the user to be able to control and direct the instruments in a manner that accomplishes the intended tasks.

Based on the foregoing, we can define contractual liability for an act as the civil accountability established against the debtor following an error resulting in harm due to objects or means utilized in fulfilling the contractual obligation, pursuant to the duty of supervision, oversight, usage, and selection of appropriate or competent means.

Describing The Reality of Contractual Liability for An Act of The Thing

Undoubtedly, contractual liability for an act assumes a distinct character, necessitating an examination of its nature and distinguishing features from other civil liabilities, specifically within the scope of contractual liability. In this regard, the following aspects are addressed:

Illustrations of Contractual Liability for An Act of The Thing

If the subject matter of the contract involves the delivery of a machine that explodes in the hands of the recipient, causing harm to the creditor either in his property or person, the explosion of the machine constitutes a positive event. Consequently, the debtor's liability arises due to non-performance of the proper delivery and the subsequent harm inflicted, which may be considered a latent defect falling under warranty obligation.

If the subject matter of the contract is the return of an item as per the contractual agreement, and an instrument or object causes damage to the subject of the contract, such intervention constitutes a positive act by another entity, holding the debtor contractually liable for the act.

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If the execution of the contract involves the use of a means or the utilization of an object, and these objects used in contract execution result in harm to the creditor, such interference constitutes a positive intervention. Thus, the contractual liability of the debtor arises not due to their personal action but due to the act of the instrument or object.

Parties Involved in Contractual Liability for An Act of The Thing

The debtor: This is the contracting party entrusted with the execution of contractual obligations, who utilizes objects, tools, traditional machines, or any means to fulfill the contract.

The creditor: This is the contracting party for whose benefit the contractual obligation exists and who has suffered actual harm.

The thing: This refers to the object, traditional machine, or means used in fulfilling the contractual obligation or may be the subject matter of the contract itself.

The Importance of Contractual Liability for An Act of The Thing

In fact, with the advancement of technological and technical progress and the widespread use of newly developed machinery and industries in contract execution, attention is directed toward the risks that affect the safety of the contracting parties. This has led to the introduction of the concept of safety guarantee obligations. The evolution of machinery is accompanied by an exacerbation of risks; a machine or object may not inherently pose a danger, but it can become hazardous and causative of harm depending on its usage or the surrounding circumstances.

As previously mentioned, technological advancement has imposed a new paradigm on the contractor, especially since the use of machinery and objects in fulfilling contractual obligations has become a professional norm. This is due to its inherent benefits of speed and reduced effort, even in the simplest contracts. However, this machinery or object may become a cause for non-performance of the obligation or may cause harm to the creditor. Hence, the contractual liability of the debtor for the act of things extends beyond the scope of negligence liability or the specific liability for the guardianship of things and machinery. The latter previously monopolized jurisdiction based on its rules regarding such damages.

Real-Life Examples of Contractual Liability for The Act of Thing

A scientific example illustrating the debtor's liability for things is found in the case of an airplane passenger. The airplane serves as a means of executing the transportation contract, and if an accident occurs causing harm to the creditor (the passenger), the fault lies not personally with the airline company (the debtor) but with the act of the thing (the airplane). Therefore, the debtor is liable for the damages incurred by the creditor as a result of the act of the thing.

Another example arises when the subject matter of a sales contract is a machine or object. If a defect occurs in the machine at the time of delivery, causing harm to the buyer (the creditor), or if the object explodes due to its nature, two scenarios emerge: first, the contract is not fulfilled due to the delivery of the object without defects or damage, and second, the object causes harm to the creditor. In both cases, the debtor's liability for the act of the thing is questioned regarding the breach of obligation after proper delivery and the damage caused to the creditor.

In the context of a gardener (contractor) using a machine to mow the lawn or trim trees, if the debtor neglects proper care and the machine damages valuable plants instead of enhancing the landscape, thereby failing to fulfill the contract and causing harm to the creditor (the owner), the liability of the contractor for the act of the machine arises both in terms of breaching the contractual obligation and in causing damage to the creditor.

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Legal Status of Contractual Liability for The Act of The Thing

Undoubtedly, it is agreed upon that contractual liability for an act of thing arises from the causation of the means, tools, and machinery used in the execution of the contract leading to a breach of contractual obligation. The discussion regarding this liability emphasizes its unique character, distinct from the general principle of the personal theory in the realm of civil liability, specifically within the scope of contractual liability. On another note, liability for the act of thing lacks legislative regulation, as there is no statutory provision governing its provisions. Therefore, recourse will be made to jurisprudential interpretation to address the legislative vacuum.

Based on this, it became necessary to delve deeper into the legal reality of contractual liability for an act of thing in order to correctly assert the rise of this liability in the relevant circumstances. This entails addressing legal adaptation, the elements of liability, and its alignment with responsibilities regulated by the legislator.

The Legal Adaptation of Contractual Liability for The Act of Thing

When discussing contractual liability for the act of things, one may initially think of the specific liability for the guardianship of things and machinery regulated by the legislator within specific provisions. However, the essence of the issue addresses the liability of the debtor entrusted with contractual obligations involving the use of machinery and objects in contract execution, or where the subject matter of the contract involves a machine preventing contract fulfillment or causing harm to the creditor. This liability arises from the debtor's duty of supervision, oversight, guidance, and selection.

Therefore, we conclude that this liability is the subject of inquiry and does not constitute a subsidiary concept to the liability of a custodian of things within the scope of general liability. The latter arises without the existence of a contractual relationship and upon the occurrence of damage caused by machinery or objects, leading to the responsibility of the individual for the things under their custody, where their liability is presumed based on the theory of presumed fault. From this, we find that Article 1242 of the French Civil Code stipulates that "a person shall be held accountable not only for the damage caused by their personal actions but also for the damage caused by others for whom they are responsible or for the damage caused by things under their control (Egyptian Civil Code, Arts. 173, 174, 176, 177, & 178; Jordanian Civil Code, Arts. 288, 289, 290, & 291) ".

Contractual liability for the act of the thing is not based on the theory of personal fault of the debtor; rather, it entails the responsibility of guaranteeing damages resulting from the thing used to fulfill their contractual obligations. This is contrary to the general principle which involves the debtor's liability for their personal actions. In other words, this liability is exceptional and is not founded on the basis of an error committed by the debtor, but rather on the act of the thing (Al-Sanhouri, p. 752, para. 434; Qasim, p. 292) .

In cases where the nature of the contract necessitates the use of machinery or tools for execution, the debtor, by virtue of their expertise and knowledge of the nature of things, has absolute freedom and sole discretion to select the necessary and appropriate tools or machinery to perform the tasks assigned to them under the contract. Consequently, the creditor has no right to intervene in the matter of selection and use of such tools or machinery. Therefore, the debtor is held accountable for non-performance, defective performance, or damages resulting from such machinery and tools since they are chosen, supervised, and controlled by the debtor. These tools are under their management and use, and any errors resulting in damage can be attributed to their negligence, misuse, or incompetence in managing and supervising these items, whether they are manual, automatic, or even smart self-operating machines. As a result, the debtor bears direct responsibility for the damages inflicted on the creditor by these means. Thus, it can be concluded that the debtor is personally responsible for the damages suffered by the creditor in connection with the execution of the contract, whether due to the debtor's personal fault or as a result of their use of things or means to fulfill the obligation, especially since all of the above arises from the contractual relationship and in connection therewith.

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In accordance with this, the debtor's responsibility for the machinery or items that are the subject of the contract is assessed; as in the case of a sale (machine) causing harm to the buyer (creditor) upon delivery or through use, except in cases of latent defects.

Furthermore, we support the legal approach that indicates contractual liability for the actions of a thing is subject to the same principles as contractual liability for personal actions. The judgment is unified, resulting in the same consequences. There are no separate rules governing contractual liability for the actions of a thing; therefore, the action of the thing is considered equivalent to the personal actions of the debtor and is held accountable accordingly. Consequently, the action of the thing is not considered an external cause relieving the debtor of responsibility (Al-Sanhouri, p. 753, para. 435) .

In another aspect, we lean towards the theory of "presumed fault" and consider it applicable in this article. This is because failure to fulfill the obligation—whether in achieving the result or exercising due care—presumes fault on the part of the debtor, whether the cause is non-performance or damage occurring during execution due to the debtor's personal fault or due to the things and means used in execution. The principle is that when the obligation in contracts is proven, the burden of proving compliance falls on the debtor, and conversely, contractual fault is presumed on his part, leading to his liability. This situation is measured in the context of contractual liability for the act of the thing.

Legal Convergence with Contractual Liability for The Act of The Thing

In fact, there is a legislative gap regarding the regulation of the reality of liability for the act of the thing. Therefore, we have chosen to focus on the issue of dropping the rules based on the reasons for that liability. Accordingly, the discussion will proceed to drop the original elements of contractual liability onto the elements of that liability.

Legal Convergence with Contractual Liability for the Act of the Thing

A clear legislative gap exists in regulating the issue of liability for the act of the thing. This has prompted us to explore the notion of applying the principles governing such liability. Accordingly, we will discuss the application of the elements of original contractual liability to the elements of liability for the act of the thing.

Building on the previous discussion, this section delves into the application of the elements of original contractual liability to contractual liability for the act of the thing. It is argued that the elements of contractual liability for the act of the thing align with those of contractual liability for the act of another, with the distinction between the "other" and the "thing." Essentially, both forms of liability adhere to the general rules governing personal contractual liability. This application can be summarized as follows:

Existence of a Valid Contract

There must be a valid and enforceable contract between the creditor and the debtor, meeting all legal requirements.

Contractual Fault

Contractual fault is generally defined as: "the debtor's failure to fulfill their obligation arising from the contract (Al-Sanhouri, 2015, p. 954, para. 532; Sources of Truth in Islamic Jurisprudence, p. 112) ". However, in this context, the concept of fault refers to a breach of contract that caused harm to the creditor due to the act of the thing, according to the aforementioned forms of liability for the act of the thing (Flour, Aubert, & Savaux, p. 121) .

Damage

This is the essential element in both this and any civil liability. Without damage, liability cannot be established, even if there was a fault. The damage must be suffered by the creditor and necessitate

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compensation (Previous reference, p. 236; Al-Jabour, p. 412, para. 826; al-Zhunun, p. 137) . It is important to note here that the nature of the damage and the obligation to compensate are measured against the damages considered in the original contractual liability, and moral damages are not included.

Causal Link

This refers to the situation where the damage arises as a natural consequence of the element of negligence or breach of contractual obligation. In contractual liability for the act of the thing, the causal link represents the connection between the damage suffered by the creditor and what the thing caused, meaning the direct cause of the harm to the creditor. Without this link, liability is not established (Ali, p. 9, para. 2; Jabr, p. 351) .

Act of the Thing

This element is new to the world of contractual liability in general and takes on a specific character for this type of liability. Here, it refers to the tools, means, or machinery used in the execution of the contract, or it could be the subject matter of the contract itself that causes the damage.

It is worth mentioning here that contractual liability for the act of the thing, like primary contractual liability, requires the condition of notice of Default. Some aspects of jurisprudence view it as a necessary condition to ensure the realization of liability and the progression of liability lawsuit procedures under the risk of lawsuit dismissal (Jordanian Court of Cassation, 2013) .

In fact, we did not find in Egyptian, French, or Jordanian civil legislation any explicit or implicit provision addressing the regulation of contractual liability for things or even referring to such liability, even for the purpose of inference. Rather, it is deduced from the indications found in some texts. This constitutes a legislative gap that it is advisable to rectify to avoid debate and disagreement in interpreting and applying the texts and to prevent the corruption of judicial inference.

Conclusion

Undoubtedly, contractual liability still requires development to keep pace with technological advancements, societal needs, and the requirements of the modern era, aiming to move beyond traditional thinking and legislative norms. Legal accountability regarding this liability has taken a different direction, possibly beyond the conventional, particularly concerning contractual liability for the actions of a thing. The evolution of tools, means, and machinery essential for contract execution, especially in industrial, commercial, and professional sectors, cannot be denied, especially in an era characterized by rapid technological progress. All of the above prompts us to question the future of regulating such liability and the feasibility of encompassing it within modern liability frameworks.

In light of the foregoing, the study has arrived at several conclusions and recommendations as follows:

Results

The legal principles of contractual liability have become traditional, lacking the ability to keep up with developments and address legal issues and challenges associated with modern advancements.

The issue of contractual liability for the actions of things is both ancient and contemporary, yet civil legislators have not explicitly and clearly regulated its rules, such as liability for the actions of things in cases of negligence, leaving a legislative gap that requires reconsideration.

The liability of the contracting debtor arises from contractual liability for the act of the thing, even if there is no act or fault capable of causing contractual breach and damage.

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Product liability is not applicable in matters of contractual liability for the act of the thing, as it has a distinct nature different from the concept of products.

Contractual liability for the act of the thing is not equivalent to the liability of a guardian of things in the concept of negligence liability, due to the exceptional nature of the contractual relationship.

Contractual liability for the act of the thing has a broad and extensive scope, encompassing the machinery subject to the contract and the means used in contract execution.

Recommendations

We recommend that legislators develop traditional legal principles regarding contractual liability to keep pace with advancements and electronic contracting methods in a clear and explicit manner.

We urge civil legislators to address the regulation of contractual liability for the actions of things, given the urgent need in light of technological advancements impacting contract execution. Additionally, contracts have become increasingly diverse and complex, leading to the creation of subsidiary contracts dictated by the nature of the contract's subject matter. These contracts may involve significant financial values that could result in substantial losses to individuals and the national economy.

We propose considering the theory of "presumed fault" regarding contractual liability for the actions of things at this stage, within the framework of available legal principles.

Embracing the theory of objective liability on a wide scale to encompass all civil liability rules simultaneously with technological advancements should be considered.

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