

•
•

—

2004

(26)

(25)

}

{(28)

(27)



:

()

-

2004

•

•

•

•

•

“

”

“

”

“

”

•

ABSTRACT

The Rules (Hukum) of Civil Liability in Motor Vehicle Accidents and its Application in Sultanate of Oman Laws:

A Comparative study between Islamic Law and Civil Law

Automobiles have occupied a vital place in our daily life and considered as an indispensable means of transportation and motions to an extent that accompany us most of the time. Despite its numerous benefits and advantages, it has become a dangerous means that kills lives of thousands of people and destroys a large scale of properties everyday. Therefore, there is a rational need to explain laws and acts related to accidents in order to make everyone aware of consequent procedures and rules in the world and the Hereafter. The Islamic Law has dealt with the issue of civil responsibility under the provision of “*Dhaman*” in general. It is understood that earlier Islamic jurists did not have the idea of automobiles due to its nonexistence during that time. They were just familiar with riding animals such as horse, mule, donkey and camel in addition to ships. Accordingly, those jurists have explained the rulings related to such accidents between horse riders or ships. They also established certain juristic foundations in order to draw rulings based on them. This is to facilitate the process of extracting rulings in defining the responsibility for the harm that he should compensate irrespective of harm being caused to life, or other things, for which Islamic Law has specifically defined rules in line with nature of the crime and its severity. This is when the harms might seem to be disparate as in cases of injuries and pain. As for the destruction caused in properties, Islamic Law has established a foundation that “Things have to be compensated with the same”, and if it is not feasible the cost will be estimated and settled as per the foundation of “The estimates will be settled with similar amounts”. Thus, the civil responsibility in vehicle accidents would be easy to deal with in accordance with Islamic Law. The legal thinking has borrowed certain principles, on which Islamic jurisprudence have been anchored. Both agree in defining the concept of carelessness that enjoins civil responsibility in cases of vehicle accidents as well as they agree in considering certain excuses that prevent the relation of causality in such accidents, such as act of God, aspects that were out of control of the rider or driver, action or error on the side of driver himself or involvement of a third person etc. As for presence of causality, the man-made laws are more stringent than the Islamic jurisprudence owing to the existence of compulsory

insurance for carriers and vehicles, which gives the laws a chance to take the responsibility in certain cases that cannot be linked to human causality. As for defining the penalty for physical damages, the man-made laws hold a different view that clearly contradicts with Islamic jurisprudence in the sense that it leaves the matter to the discretion of the judge, who takes charge of defining the harm based on its gravity, material and moral cost for the concerned person as well as it permits compensating with an amount in case of physical harm instead of returning a similar one. From the above presentation of a few foundations, on which Islamic jurisprudence has been built up with relation to the practical reality of Omani laws, it is found that it complies with Islamic legislation in defining the concept of carelessness. In addition, Omani laws consider the relation of causality between the act and the harm as a principal condition for the civil responsibility in the case of vehicle accidents. When the relation of causality disappears, the accused by no means will be held accountable for damages caused due to the absence of absolute evidence. In addition, Omani laws are drafted in a same way, whereby other laws are made in instance of defining physical damages as well as they seek to define abstract harm that results from physical damages based on the discretion of the judge. However, they have determined the amount of Shariah blood money, and takes different amounts for damages that involve other than killing in proportion to impairment or mutilation caused.

APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality as a thesis for the degree of Master of Comparative Laws.

Mahmood M. Sanusi
Supervisor

I certify that I have examined and read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality as a thesis for the degree of Master of Comparative Laws.

Abdul Rahman Awang
Internal Examiner

I certify that I have examined and read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality as a thesis for the degree of Master of Comparative Laws.

Md Amin Hj. Abdul Rahman
External Examiner

This thesis was submitted to the Department of Islamic Law and is accepted as a fulfillment of the requirements for the degree of Master of Comparative Laws.

Aznan Hassan
Head. Department of Islamic Law

This thesis was submitted to the Kulliyah of laws and is accepted as a fulfillment of the requirements for the degree of Master of Comparative Laws.

Nik Ahmad Kamal Nik Mahmod
Dean. Ahmad Ibrahim Kulliyah of laws

DECLARATION

I hereby declare that this thesis is the result of my own investigation, except where otherwise stated. Other sources are acknowledged by footnotes giving explicit references and bibliography is appended.

Name: Badar Khamis Said Al-Yazeedi

Signature:.....

Date:.....

2004

:

)

(

:

.1

)

-

.2

(

.3

-

.4

-

.5

-

:

.....

.....

...

...

...

...

...

...

...

...

...

...

| | | |
|----|--------|----|
| 1 |: | |
| 1 | ..... | .1 |
| 1 | ..... | .2 |
| 2 | ..... | .3 |
| 3 | ..... | .4 |
| 3 | ..... | .5 |
| 4 | ..... | .6 |
| 5 | ..... | .7 |
| 5 | ..... | .8 |
| 11 |: | : |
| 11 |: | : |
| 11 |: | : |
| 15 |: | : |
| 15 |: | : |
| 19 |: | : |
| 22 |: | : |
| 23 |: | : |
| 25 |: | : |
| 27 |: | : |
| 31 |: | : |
| 31 |: | : |
| 31 |: | .1 |
| 33 |: | .2 |

| | | |
|----|-----------|----|
| 36 |: | .3 |
| 39 |: | : |
| 39 |: | .1 |
| 42 |: | .2 |
| 43 |: | .3 |
| 45 |: | : |
| 45 |: | .1 |
| 48 |: | .2 |
| 50 |: | .3 |
| 56 |: | : |
| 56 |: | : |
| 57 |: | : |
| 57 |: | .1 |
| 58 |: | .2 |
| 59 |: | .3 |
| 60 |: | : |
| 61 |: | : |
| 61 |: | : |
| 68 |: | : |
| 71 |: | : |
| 70 |:() | : |
| 77 |: | : |
| 78 |: | : |
| 83 |: | : |
| 83 |: | : |

| | | | |
|-----|--------|---|----|
| 83 |: | : | |
| 84 |: | : | |
| 94 |: | : | |
| 97 |: | : | |
| 97 |: | : | |
| 104 |: | : | |
| 114 |: | : | |
| 123 |: | : | |
| 123 |: | : | |
| 124 |: | : | -1 |
| 124 |: | : | - |
| 128 |: | : | - |
| 129 |: | : | - |
| 133 |: | : | - |
| 146 |: | : | -2 |
| 154 |: | : | |
| 154 |: | : | -1 |
| 157 |: | : | -2 |
| 167 |: | : | |
| 167 |: | : | .1 |
| 171 |: | : | .2 |
| 173 |: | : | .3 |
| 177 |: | : | .4 |
| 179 |: | : | |
| 179 |: | : | |

| | | |
|-----|---------------|---|
| 179 |: | : |
| 181 |: | : |
| 186 |: | : |
| 192 |: | : |
| 197 |: | : |
| 200 |: | : |
| 200 |: | : |
| 203 |: | : |
| 204 |: | : |
| 213 |: | : |
| 217 |: | : |
| 218 |: | : |
| 221 |: | : |
| 223 |: | : |
| 225 |: | : |
| 225 |: | : |
| 228 |: | : |
| 229 |: | : |
| 230 |: | : |
| 234 |: | : |
| 237 |: | : |
| 237 |: | : |
| 237 |:(1970) | : |
| 239 | : | : |
| 243 |: | : |

| | | |
|-----|--------|---|
| 244 |: | : |
| 246 |: | : |
| 247 |: | : |
| 251 |: | : |
| 253 |: | : |
| 256 |: | : |
| 268 |: | : |
| 272 | ..... |  |
| 276 | ..... |  |
| 279 | ..... |  |

:

1958 / 1 / 18 (7)

103

.....1958

:

263 249

2002/6/12

(2001/27) :

.()

:

263

2001/1/1

(2001/6) :

()

:

256

2001/10/22

(2001/36) :

()

:

252

2001/12/30

(2001/86) :

()

:

249

2002/2/11

(2002/3) :

.()

:

253

2004/4/13

(2004/51) :

()

:

268 249

2004/4/13

(2004/49) :

()

:

255

2004/5/4

(2004/62) :

()

:

| | | | |
|----------|------------|---------------|----------|
| 257 256 | 2002/5/6 | (2001/27) : | |
| 264 258 | ..... | 102 | |
| 259 249 | 2002/7/10 | (2002/79) : | |
| 269 266 | ..... | 159 | |
| 259 250 | 2002/10/15 | (2002/69) : | |
| 263 | ..... | 184-181 | |
| 263 ,246 | 2002/4/22 | (2002/36) : | |
|  | ..... | 55 | |
| 257 | 2002/10/15 | (2002/64) : | |
|  | ..... | 179 | |
| 260 257 | 2002/10/29 | (2002/101) : | |
| 230 -240 | | |244 |
| 260 252 | 2002/11/12 | (2002/160) : | |
| 271 | | |307 |
| 254 | 2002/11/12 | (2002/98) : | |
|  | ..... | 252-149 | |
| 259 249 | 2002/11/12 | (2002/151) : | |
| 269 | | |294 |
| 259 | 2002/11/12 | (2002/118) : | |
| | | |267 |

| | | | |
|---------|------------|-------------------|---------------|
| 262 | 2002/11/12 | (2002/172 171) : | |
| | -315 | |318 |
| 262 | 2002/11/12 | (2002/104) : | |
| | | |266 |
| 260 | 2002/12/17 | (2002/165) : | |
| | | |421 |
| 266 249 | 2002/12/24 | (2002/167) : | |
| 271 270 | | |454 |
| 259 251 | 2002/12/24 | (2002/159) : | |
| 270 260 | -451 | |452 |
| 261 | : | 2002/12/24 | (2002/170) : |
| | -459 | | 113 |
| | | |461 |
| 267 261 | 2002/12/31 | (2002/200 199) : | |
| | -486 | |490 |
| | | | : |
| 122 | 1940 | 1940/9/30 | |

.....165

:

1091977 /5 /11 1975 (75/59)

159) 1977 /5 /18 1976 (76/19)

171(

92 1971 /12 /5 1971 (168،179)

.....()

137 /27 (2/ 1980/32)

.....() 1980 /5

137 28 (2/ 1980 /558)

.....() 1980

117) 1980 /12 /17 (1980/30)

.....(

133 /4 /9 (1973/59)

.....() 1975

113 93 5 (1973/32)

122() 1973 /12 /

94 6 (1979/52)

) 1980 /2 /

.....(

109 /24 (73/466)

) 1973 /10

.....(

113 (1980/116)

1981 /3 /18

.....1983

122 / /14 (1981/83)

15093 1981

113 1980 17

1331983

109 (107 106)

.....() 1969 13

143 (1970/465)

) 1971/2/16

.....(

109 /11/13 1975 (75/42)

.....() 1976

:

138817 20 1969/5/2 (208)

139 34 1973/12/27 (5873)

.....1082

154 ...632 25 1974/6/24 (651)

160 12 3 1958/6/10 (580)

259745

133 18 1934/3/12 (553)

| | | |
|-----|------------------|-----------------|
|  | ..... | 137 |
| 133 | 21 | 1970/11/8 |
| | |1069 |
| 103 | ...290-1551-2-31 | 1980/5/28 |
| 102 |391 36 | 1985/5/13 |
| 110 | 56/296 | 1988/11/15 |
| | | |
| 110 |107 19 | 1968 /1 /29 |
| 110 |921 28 | 1977/11/7 |
| 133 | -1099-32 | 1981 /12 /15 |
| | | ..999 |
| 134 | -284-26 | 1975/2/24 (990) |
| | | ...41 |
| 137 | /4/20 | (1590) |
| | |1982 |
| 156 | -708-25 | 1980/2/25 |
| | |153 |

:

| | | |
|--|----------------|-----|
| <i>Barkway v. South Wales Transport Co Ltd</i> | [1950] AC 185, | 135 |
| [1950] | 1 All ER | |
| 392..... | | |
| <i>Blyth v. Birmingham Waterworks Co</i> | (1856) 11 Ex | 38 |
| 781..... | | |
| <i>Boardman v. Sanderson</i> | [1964] 1 WLR | 167 |
| 1317..... | | |
| <i>Brown v. Kendall</i> | | 91 |
| <i>Carmarthenshire County Council v. Lewis</i> , | [1955] AC 549, | 123 |

| | | | | | |
|---|-----|-----|-----|-----|---------|
| [1955] 1 All ER 565..... | | | | | |
| <i>Che Jah binte Mohamed Ariff v. CC Scott</i> [1952] 18 MLJ 69..... | 135 | 103 | | | |
| <i>Dann v. Hamilton</i> [1939] 1 KB 509, [1939] 1 All ER 59..... | | | 140 | | |
| <i>Davies v. Davies</i> [1975] QB 172, [1974] 3 All ER 817..... | | | | 177 | |
| <i>Dulieu v. White and Sons</i> [1901] 2 K.B 669..... | | | | | 167 |
| <i>Fardon v. Harcourt-Rivington</i> (1932) 146 LT 391..... | | | 176 | | 38 |
| <i>Fitzgerald v. Lane</i> [1988] 2 All ER 961..... | | | | | 161 |
| <i>Froom v. Butcher</i> [1976] QB 286, [1975] 3 All ER 520..... | 146 | 113 | | | |
| | | | | | 178 164 |
| <i>Government of Malaysia v. Jumat bin Mahmud & Ors</i> [1977] 2 MLJ 103..... | | | | | 104 |
| <i>Greenock Corpn v. Caledonian Rly Co</i> [1917] AC 556..... | | | | | 102 |
| <i>Henderson v. Jones</i> (1955) 119 JP 304..... | | | | | 140 |
| <i>Kay v. Butterworth</i> (1945) 173 LT 191, 61 TLR 452..... | | | | | 140 |
| <i>Malcolm v. Brodhurst</i> [1970] 3 All ER 508..... | | | | | 235 |
| <i>Manchester Corporation v. Markland</i> [1936] AC 360..... | | | | | 122 55 |
| <i>Noble v. Harrison</i> [1926] 2 KB 332, 95 LJKB 813..... | | | | | 104 |
| <i>Nugent v. Smith</i> (1876) 1 CPD 423..... | | | | | 102 |
| <i>O'Connell v. Jackson</i> [1972] 1 QB 270, [1971] 3 All ER 129..... | 164 | 113 | | | |
| <i>Oliver v. Ashman</i> , [1962] 2 QB 210, [1961] 3 All ER 323..... | | | | | 233 |
| <i>Oliver v. Mills</i> 144 Missouri 852 (1926)..... | | | | | 49 |
| <i>Owens v. Brimmell</i> [1977] QB 859, [1976] All ER 765..... | 164 | 140 | | | |
| | | | | | 178 |
| <i>Paris v. Stependi Borough Council</i> [1951] Times, 19 January..... | | | | | 38 |
| <i>Redex v. Collins</i> | | | | | 55 50 |
| | | | | | 104 |
| <i>Re Polemis</i> [1921] 3 KB 507..... | | | | | 104 52 |