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Law of Tort in the UAE



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What does Tort mean in UAE Law?

A tort in UAE law is a civil wrong resulting from an act or omission that has caused injury or loss to a person or to property, regardless of whether or not the act or omission constitutes a crime or is caused by a breach of contract. Tort is recognised in UAE law under Articles 124 and 282-298 of Federal Law No.(5) of 1985 (as amended), the Civil Code. Articles 124 and 282 read as follows:

Article 124

"Personal obligations or rights shall arise out of dispositions, legal events and the law, and the sources of obligation shall be as follows;

1. contracts;
2. unilateral acts;
3. acts causing harm (tort);
4. acts conferring a benefit; and
5. the law"

Article 282

"Any harm done to another shall render the perpetrator, even if he is a minor, liable to make good the harm."

These articles form the basis of the Law of Tort in the UAE.

Who will be responsible for a tortious act?

The person who commits a tortious act (i.e. the ‘tortfeasor’) will be the person responsible for compensating the injured party by paying damages for the loss caused, whether for personal injury or damage to property.

When will a person be liable in tort?

A person will be liable in tort if he has committed an act or omission which has directly resulted in loss or damage to another person.

Is it necessary for the resulting loss to have been intended, for a person to be liable for a claim in tort?

It is not necessary to prove that the person responsible intended to cause loss in order to establish liability in tort. It is sufficient for the party claiming compensation to show that the person who committed the act or omission violated a legal obligation to take reasonable care, whether intentionally or not.

Would a person be liable even if the loss was caused by “force majeure”?

Article 287 of the UAE Civil Code states, “if a person proves that the loss arose out of an extraneous cause in which he played no part such as natural disaster, unavoidable accident, force majeure, act of a third party, or act of the person suffering loss, he shall not be bound to make it good in the absence of a legal provision or agreement to the contrary.”

If a person is able to show that the loss was caused by circumstances outside that person’s control (such as those listed in the Article) that person would not be held liable, unless of course there existed a prior agreement between the parties to the contrary.

Would a person be liable to pay damages, if the loss resulted from an act of self defence?

A person who acts in order to defend himself, his family, his property or other individuals and their property, shall not be liable to pay damages, provided that the act committed and the loss caused was the result of a necessary response to the situation and was not excessive under the circumstances (Article 288, UAE Civil Code).

Would a person be liable for damages even if he was ordered to carry out the act or omission?

A person who carries out a tortious act will be held personally liable even if he was told to do so by another person. For ‘force’ to be a mitigating factor, it must be of a type that compels a person against their will to commit the act or omission.

However, an officer working in a government department or in public office would not be held liable for carrying out an act or omission that caused loss to another person if, by so doing, he was complying with an order given to him by his superior and was therefore obliged to comply with such an order by virtue of his employment at the time. In this case the act or omission is legal and permissible provided that he has taken due care in the matter. However, the government department concerned may itself be liable if a tort has been committed.

Would a person be liable to pay damages even if another person had contributed to the loss?

Article 240 of the UAE Civil Code states that, “it shall be permissible for the judge to reduce the level by which an act has to be made good, or to order that it need not be made good, if the person suffering harm participated by his own act in bringing about or aggravating the damage.”

In such cases each person would be liable to compensate the other to the extent of the loss he had caused. Further, if a person caused or contributed to the loss by his own act of omission, he may not be awarded damages or the damages may be reduced proportionately.

In the case of loss caused by more than one person, who would be liable to compensate for the loss?

In the event of loss caused by more than one person, each person shall be liable to the extent of the loss caused by their act. However, the court may order all persons found liable to pay damages jointly and severally.

How are damages normally assessed?

Damages are generally assessed according to the extent of the loss suffered by the injured party, including, for example, material damages and future earnings always provided that the loss was the direct result of the tortious act.

How does UAE Law treat consequential loss?

Article 283 (1) of the UAE Civil Code states “harm may be direct or consequential”.

Article 283 (2) states that “if the harm is direct, it must unconditionally be made good, and if it is consequential there must be a wrongful or deliberate element and the act must have led to the damage”.

Article 283 (2) distinguishes between damages payable for “direct” loss and damages payable for “consequential” loss. All loss of profit and consequential loss requires a “malicious element” to be present, and this has been interpreted by the Dubai Court of Cassation as requiring a “stronger” element than negligence. The claimant is required to prove a “malicious” element on the part of the defendant at the time the tort was committed, which may be a difficult burden of proof to discharge.

Would a person be entitled to moral as well as material damages?

It is possible for a person to make a claim for moral damages. These may include violation of a person’s freedom, dignity, reputation, social or financial status.

How is the amount of damages assessed?

Damages are normally assessed by the UAE courts in terms of financial compensation. And a judge at the execution court stage may order the liable party to provide a guarantee in order to secure payment. However, a judge may, in some circumstances, order the responsible party to rectify the situation or to carry out certain acts by way of compensation.

Would it be possible for parties to agree to exempt each other from compensation for wrongful acts or to limit the amount of compensation payable?

It is prohibited under UAE law to enter into agreements which exempt the payment of compensation resulting from a wrongful act and any agreement to this effect would be declared by the Courts null and void. However, it is permissible for parties to limit compensation to a certain amount or to a specified remedy, provided that such agreement does not violate an existing law, regulation or public policy.

There have been Court of Cassation judgments which have indicated that a party cannot claim in both contract and tort if the party has a contractual relationship with the tortfeasor. There have also been contradictory judgments indicating the opposite. The current theory is that a claim can be brought in both or either.

Would a person be liable to pay for the whole value of an affected item even if the loss was minor?

If the loss is minor and the item or the affected part of the item is replaceable, the person liable will only have to pay the cost of restoring the item to its previous condition or for the replacement value of the item. However, if the loss or damage cannot be rectified, the person liable must pay for the full value of the goods or materials. In cases where a person has paid damages or replaced the affected items, he is entitled to take the affected goods as consideration for the amount paid.

Is it necessary in a claim under tort that the party responsible be found guilty in criminal proceedings?

Criminal and civil jurisdiction are entirely separate in UAE law.

Not every wrongful act constitutes a crime under the criminal law in force in the UAE. Therefore, a person may be found liable in tort, without being convicted in the criminal (or traffic) courts. It follows that even if a person is found innocent in a criminal action, he may still be liable for any loss caused by his act or omission under tort in the civil courts. In terms of evidence however, it may be difficult to prove fault or mistake if the Prosecutor has not been able to establish guilt in the criminal proceedings.

What is the significance of a guilty verdict in a criminal court to a subsequent claim for damages in tort?

If a wrongful act committed by an individual constitutes a crime under the UAE Federal law No. 3 of 1987 (the Penal Code) or UAE Federal Law No.21 of 1995 (the Traffic Act), any guilty judgment delivered by a criminal court will be useful in a subsequent civil claim in tort. Because the guilty judgement will be considered conclusive evidence to show that the person has committed the act, enabling the other party to use this as evidence to claim damages in the claim in tort.

When would a person be prosecuted in a criminal court for a wrongful act?

If the wrongful act amounts to a crime as specified in the Penal Code, the Traffic Act or any other legislation, a person may be prosecuted for that wrongful act and may be either fined or sentenced to imprisonment. This is, of course, without prejudice to the rights of the person who has suffered loss as a result of the act to claim damages through the criminal proceedings or by filing a separate civil action in tort.

When would a claim in tort be time barred?

Any claim in tort will be time barred three years from the date that the person who suffered the loss became aware of the act or omission of the identity of and the party who was responsible for it. However, if the act constitutes a crime and the criminal case is still pending before the court even after the lapse of three years, the time will be extended until the date on which the criminal case is determined.

In the case of other specific laws, the time bar period can be more or less than three years depending upon the act or omission involved. In Federal Law No.26 of 1981 (the Maritime Code for example, claims for compensation arising out of a marine collision are time-barred after two years from the date of the incident.

(6) DEATH

What would be the compensation payable in tort for causing death to another person?

A person who causes death to another person, whether intentionally or accidentally and without prejudice to any other criminal proceedings that may be brought against him, will be liable to pay Dhs.200,000 in diyah (“blood money”) to the heirs of the deceased. Diyah will only be payable if the person who caused the death is found guilty under criminal proceedings or liable in tort for committing a wrongful act or omission.

Is diyah compensation or a punishment under UAE Law?

Diyah is compensation that is payable by an individual who has committed an act or omission, which led to a person’s death. However, it is also applied as a form of punishment and as a means of protecting the rights of the heirs of the deceased. Therefore, it is not required that the heirs of the deceased bring an action in tort for damages in order to be awarded diyah. The judge presiding over the criminal proceedings may award the diyah when pronouncing a guilty sentence on a defendant (or defendants).

Can the heirs of the deceased claim diyah in addition to other compensation or is their claim limited to diyah only?

It is unclear in UAE law if the heirs of a deceased person may claim additional compensation if they have been awarded diyah. Article 299 of the Civil Code states clearly that if diyah is payable, compensation for harm will not be payable, unless there is an agreement to the contrary. The Dubai Court of Cassation has handed down various judgments on this point, the last of which however indicates that a party can be found liable in the civil courts for tortious damages despite having already paid diyah.

Would the diyah awarded as compensation for a deceased male be equivalent to that awarded for the death of the deceased female?

The diyah payable for a deceased female in all the Emirates and in the UAE Federal Courts is the same as that payable for a male.

Can a claim for diyah be time-barred?

The Dubai Court of Cassation has held that diyah must be paid by the person who is charged with causing the death and the obligation to pay it cannot cease unless it is either paid or the allegedly responsible party is acquitted. There is therefore no time-bar for a diyah claim.

Would a minor be liable to pay for loss caused to another party?

Persons under the age of 16 are regarded as minors under UAE Law. Minors, however, are liable to pay for loss caused to another person in tort. Compensation will be paid from their own money or from the money of their guardian. Article 313 of the Civil Code may render a guardian liable for the acts committed by the tortfeasor if he is a minor or requires supervision.

Would a person who has goods under his custody be liable to compensate for loss?

A person who has goods or materials under his custody (i.e. a bailee) has a duty to take care of those goods and to return the goods to their owner in good condition, and therefore would be liable to pay the owner of the goods for any loss or damage.

Would a person be liable to pay damages on behalf of another person who had committed a tortious act?

Normally, a person would not be liable to pay damages or compensation for the act or omission of another person. However, under UAE law, the following persons would be liable to pay damages for the act or omission of another person:

- (a) A person who has under law, or by an agreement, a duty to supervise another person because he is minor and/or suffers from a mental or physical illness or condition. Unless he proves that he has carried out his duties with proper care and diligence and that the damages were inevitable notwithstanding the required care; and
- (b) A person who has an actual duty to supervise and guide a person who has committed the tortious act or when the act or omission was committed by an employee in the course of his employment.
- (c) However, in both the above instances, the person who paid the damages may have a claim against the person who has actually committed the tortious act.

Would a person be liable for loss caused by animals in his custody?

A person who has an animal in his custody, whether he is the owner or not, has a duty to control the animal and shall be liable for any loss caused by the animal to another party.

Would a person be liable for loss suffered from the collapse of a building?

The owner of a building, or the manager, shall be liable for any loss caused to another person due to the collapse of the building, unless he could prove that he was not at fault and had taken all due care as required of him by law.

Would a person be liable for loss caused by material or machinery?

If a person has, under his custody, objects or machinery that require special care, he will be liable for any loss such objects or machinery may cause to another person.

Would a person who, in the exercise of his legal rights, causes loss to another, be liable to compensate for such loss?

The exercise of legal rights is limited by the understanding that the exercise of such rights should not cause loss to others. Therefore, if any person in the exercise of his legal rights causes loss to others he will be liable to compensate them, if the act was intentional or excessive in the circumstances, or committed in bad faith.

When is an act or omission considered illegal or harmful?

An act will be considered illegal or harmful if it is committed by illegal means or in violation of the following:

1. If a person has caused loss intentionally.
2. If what was intended to be gained from the act is contrary to the principles of Sharia or public policy.
3. If the right which a person is seeking is limited in relation to the excess of loss which has been caused.
4. If a person has acted contrary to usage or custom.

Unless one of the conditions above is met, a person will not be responsible for loss caused to another person.

What is the difference between a claim for damages in contract and a claim for damages in tort?

A claim for damages in tort is founded upon a breach of a legal obligation by a party that causes loss to another. A claim for damages in contract is founded upon a breach of a contractual obligation by one party under the terms of that contract.

Can someone who is a party to a contract claim damages from the other party in tort as opposed to claiming damages for a breach of contract?

It is possible under UAE law for a party to a contract to claim damages under the contract or in tort. Therefore, if a claim in tort would be more beneficial to the claimant, he may choose to pursue a claim in tort. (of course, not all breaches of contract will amount to a tortious act.). However, judgements on the point are contradictory as one judgement has been handed down by the Dubai Court of Cassation ruling that a party cannot claim in the alternative in both contract and tort. Therefore, the position is still somewhat unclear.

Is there a limit as to how much a person can claim for damages in tort?

There is no limit to the amount of damages that a person can claim in tort. Damages are usually assessed on the basis of actual loss or injury suffered, and there is no concept of "punitive" tortious compensation in the UAE.

Can you insure against liability arising from tort?

Liability arising from tort can be insured against in many different forms. For example, insuring motor vehicles vis-à-vis damage to third parties or any other form of insurance that covers the negligence, fault or wrongful act of a person. In terms of UAE civil proceedings, an insurer will take the place of the insured via subrogation, and claim directly against any third parties who may have caused the loss, showing the letter of subrogation as evidence of the right to sue.

Is it possible to exempt one party to a contract from liability?

Liability is not a matter of public policy, especially in the context of a contractual relationship. Article 390 (1) of the Civil Code states that "contracting parties may fix the amount of compensation in advance by making a provision therefore in the contract or in a subsequent agreement, subject to the provisions of the law." Hence, it is certainly possible in a contract for the parties to limit their liability to each other.

This exemption will always be subject to judicial review should a dispute arise at a future date. Normally, the only exception to this arises if the loss was caused by cheating or gross negligence. In these circumstances the Court will most definitely review any contractual exemption from liability.

However, it is not possible to exempt liability from tort or limit liability in advance from tortious acts, as any agreement that attempts to provide for this will be null and void. This may be one reason why a claimant in the UAE court may opt to claim damages under tort rather than for breach of contract.

Who should be claiming damages for loss in the case of tortious acts of omissions?

The party who has suffered loss will be the only person entitled to claim compensation. Such right however can be subrogated to an insurance company, which under UAE law is then allowed to bring a claim in its own name. In the case of a death, only the legal and rightful heirs of the deceased will be entitled to claim compensation. In such a case, evidence of the identity of the legal heirs must be provided to the Court.

Would an employer be liable to pay damages for loss in tort?

An employer will be liable to pay an employee compensation under the UAE Federal Law No. 8 of 1980 (as amended) (the Labour Law) if the employee dies or is injured or suffers loss during the course of his employment because of a labour accident or occupational disease (Articles 149, 150 & 151 of the Labour Law). However, under the Labour Law, an employer's maximum liability has been set at Dhs.35,000 for death or injury to an employee. This is irrespective of actual fault or mistake and without prejudice to the rights of an employee's heirs to claim further damages against any person who may be liable in tort, including the employer.

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