

Tortious Liability of Good Samaritan by Comparative Study in Islamic Jurisprudence and Law

Maryam Saghafi *

Abbas Niazi **

DOI: 10.22096/law.2021.95612.1343

[Received Date: 13/10/2018 Acceptance Date :06/09/2020]

Abstract

"Ehsan" rule is among Islamic jurisprudence rules that in order to support good Samaritans, knowing excluded the tortious liability arising from their actions. Similar to this rule, is the doctrine of Good Samaritan Immunity that has formed in common law with a 2000-year history and like "Ehsan" rule and Good Samaritan will be considered exempted from liability. Each of these rules is considered some conditions for good Samaritans that that agree in two conditions: acting based on good faith and no consideration for action. Aside from the exemption of good Samaritans that have been investigated in numerous books and articles, significant issue is the exemption of good Samaritans from liability that is not unqualified and absolute. Good Samaritan also is liable for losses resulting from his actions although the action is motivated by charity and gratuitous. Among these are creation of intentional damages, more losses and any legal or contractual duty in helping others and with harm in from of loss, which will be studied in this paper.

Keywords: Ehsan rule; Good Samaritan immunity; Tortious liability; Good Samaritan.

* PhD in Private Law, Assistant Professor, Department of Law, Zanjan University, Zanjan, Iran.
Email: m.saqafi@hotmail.com

** Ph.D. in Private Law, Lecturer in University of Isfahan, and Judge of Justice. (Corresponding Author)
Email: abasniazi@ut.ac.ir



Bibliography

A) Books and Articles

- A group of authors (2003). *Journal of Ahl al-Bayt jurisprudence*, Vol. 9&53, First edition, Qom: Encyclopedia of Islamic jurisprudence on the religion of the Ahl al-Bayt. [In Persian]
- A group of researchers under the supervision of Shahroudi, Hashemi, Seyyed Mahmood Hashemi (2003). *Encyclopedia of Islamic jurisprudence according to the doctrine of Ahl al-Bayt*, Vol.7, First Edition, Qom: Institute of Encyclopedia of Islamic jurisprudence on the religion of the Ahl al-Bayt. [In Arabic]
- Abdi, Yaser (2018). "Legal jurisprudential analysis of the effects of urgency in non-contractual liability", *Quarterly Journal of Islamic Jurisprudence and Law*, No. 51, pp.77-98. [In Persian]
- Afshar Ghochani, Zohreh (2010). "Force majeure and civil responsibility", *Kanoon Monthly Journal*, No. 113, pp. 123-141. [In Persian]
- Al Kashef Al-Gheta, Mohammad Hossein (1940). *Magazine editing*, Vol. 1, Najaf: Kashef al-Gheta Institute. [In Arabic]
- Albuznoo, Mohammad Sedghi (2003). *Encyclopedia of jurisprudence rules*, Vol.5, Beirut. [In Arabic]
- Alidoost, Abolghasem (2008). "The Holy Quran and the rule "Ehsan", *Law and Jurisprudence*, No. 17, pp.7-38. [In Persian]
- Alsharif, Mohammad Mehdi (2013). *The logic of law*, 2nd Edition, Tehran: Publishing Joint Stock Company. [In Persian]
- Ameli, Seyyed Javad (n.d), *Meftah Al-Keramat fi Sharh Ghavaed Allameh*, Vol. 5, Beirut: Dar Ehya al-Toras al-Arabi. [In Arabic]
- Ameli, Shahid Sani, Zein al-Ddin Ibn Ali (1992). *Masalek Al-Afham Ela Tanghih Sharaei Al-Islam*, Vol. 2, Qom: Al-Maarif Islami Institute. [In Arabic]
- Ardabili, Mohammad Ali (2006). *General criminal law*, Vol. 1, 10th Edition, Tehran: Mizan Publications. [In Persian]
- Ayati, Mohammad Reza & Ali Purjavaheri (2008). "The role of Ehsan rule in physician civil liability", *Quarterly Journal of Jurisprudence and Fundamentals of Law*, No. 14, pp. 11-26. [In Persian]
- Bahrami Ahmadi, Hamid (2016). *Tortious Liability*, 2nd Edition, Tehran: Imam Sadegh (AS) University. [In Persian]
- Bariklu, Ali Reza (2014). *Civil responsibility*, 5th Edition, Tehran: Mizan Publications. [In Persian]

- Best, Arthur, Barnes, David W (2007). *Basic Tort Law*, Aspen Publishers.
- Bojnoordi, Seyyed Hassan (1998). *Jurisprudence rules*, Vol. 4, Qom: Al-Hadi.
[In Arabic]
- Carper, Donald L. Mckinsey John A (2012). *Understanding the Law*, Cengage Learning, 6th Edition.
- Couing, Mary Pat, Kelley, Patricia Watts (2012). *Annual Review of Nursing Research*, Vol. 30, Springer Publishing Company.
- Dezfuli, Morteza Ibn Mohammad Amin Ansari, (n.d), *Faraeid Al-Osul*, Vol. 1 &6, Qom: Islamic Publications Office. [In Arabic]
- Hafta, Jacob, Fedor, Victoria L (2004). *EMS and the Law*, Jones & Bartlett Learning.
- Hayati, Ali Abbas (2013). *Civil liability*, Tehran: Mizan Publications.
[In Persian]
- Helli, Meghdad ibn Abdollah Seivari (1983). *Altanghih alraei le Mokhtasar alsharaei*, Vol.4, 22, Qom: Ayat allah Marashi Najafi Libearary. [In Arabic]
- Helli, Najmeddin Jafar Ibn Zohdari (2007). *Eizah Taraddat Al-Sharaei*, Vol.2, 2nd Edition, Qom: Ayatallah Mar'ashi Najafi Libearary. [In Arabic]
- Hudson, David L (2010). *The Handy Law Answer Book*, United State of America: Visible Ink Press.
- Ibn Manzur, Abolfazl, Jamal al-Ddin Mohammad Ibn Mokram(1993). *Arab's Tong*, Vol. 11, 3rd Edition, Beiroot: Dar Al-Fekr al-Tebaa publications.
[In Arabic]
- Joneidi, Laeiya (1999). "The fault of the injured", *Faculty of Law and Political Science*, Vol. 46, pp.51-91. [In Persian]
- Katuziyan, Naser (2008). *Introductory Course, Civil Law Legal Practices*, 13th Edition, Tehran: Publishing Joint Stock Company. [In Persian]
- Katuziyan, Naser (2009). "Evolution of the concept of fault in civil liability law", *Law Quarterly*, No. 39(1), pp. 189-214. [In Persian]
- Katuziyan, Naser (2012). *Civil liability, non-contractual obligations*, Vol.1, 11th Edition, Tehran: University of Tehran. [In Persian]
- Kazemi, Mahmood (2005). "Effects of Harmful Fault on Civil Liability", *Research Quarterly of Imam Sadegh University*, No. 28, pp. 109-142.
[In Persian]
- Lankarani, Mohammad Fazel (1995). *Jurisprudence rules*, Qom: Khaney-e Mehr. [In Persian]

- Lewis, Marcia A. Tamparo, Carol D. Tatro, Berenda M (2012). *Law, Ethics, & Bioethics for the Health Professions*, F.A.Davis Company, 7th Edition.
- Lippman, Matthew (2010). *Contemporary Criminal Law*, United States of America: Sage Publications.
- MacDonald, Russell D. Burgess, Robert J (2010). *Emergency Care in the Streets*, Jones & Bartlett Publisher, 6th Edition.
- Makarem Shirazi, Naser (1990). *Jurisprudence rules*, Vol. 1, Qom: Matba'ah Al-Hikmah, Imam Ali School. [In Persian]
- Maraghi, Seyyed Mir Abdol Fattah (1996). *Jurisprudence Titles*, Vol. 2, Qom: Office of Islamic Publications affiliated with the Society of Teachers of the Seminary of Qom. [In Persian]
- Mohaghegh Damad, Seyyed Mostafa (1985). *Rules of jurisprudence*, Vol. 2&3, 12th Edition, Tehran, Islamic Sciences Publishing Center. [In Persian]
- Morissette, Emily Lynch (2009). *Personal Injury and the Law of Torts for Paralegals*, United States of America, Aspen Publishers.
- Mostafavi, Seyyed Mohammad Kazem (2000). *The rules - a hundred jurisprudence rules*, 4th Edition, Qom: Office of Islamic Publications affiliated with the Society of Teachers of the Seminary of Qom. [In Arabic]
- Mostafavi, Seyyed Mostafa (2005). "Kindness; Source of responsibility", *Jurisprudence of law*, No. 6, pp. 63-88. [In Persian]
- Mulheron, Rachael (2010). *Medical Negligence: Non-patient and Third Party Claims*, Ashgate Publishing.
- Naeini, Mirza Mohammad Hosein Gharavi (1992). *Winnings and selling*, Vol.1, Qom: Office of Islamic Publications affiliated with the Society of Teachers of the Seminary of Qom. [In Persian]
- Najafi, Kashef Al-Gheta, Ali Ibn Mohammad Reza (1961). *Al-Noor Al-Saei Fi Al-Fiqh Nafei*, Vol.1, Najaf: Matba al-Adab. [In Arabic]
- Najafi, Kashef Algheta, Jafar Ibn Khazar (1961). *Sixteen rules*, Najaf: Kashef Al-Gheta Institute. [In Arabic]
- Najafi, Kashef Al-Gheta, Jafar Ibn Khazar (2001). *Anwar al-Faqihah - The book of gains*, Najaf: Kashef Al-Gheta Institute. [In Arabic]
- Najafi, Mohammad Hassan (1983). *The jewels of speech in explaining the laws of Islam*, Vol.43, 7th Edition, Beirut: Arab Heritage Revival House. [In Arabic]

- Parsapur, Mohammad Bagher (2003). "Urgency in civil liability law", *Nameh Mofid*, No. 40, pp.141-158. [In Persian]
- Rashti, Mirza Habib Allah (n.d). *Usurpation Book*, n.pn [In Persian]
- Richards, Edward P. Rathbun, Katharine C (1999). *Medical Care Law*, United State of America, Aspen Publication.
- Rodway, Matthew, *Complexity of Good Samaritan Laws for Health Professionals*, Available at: [Http://ssrn.com/abstract=1519566/1-29](http://ssrn.com/abstract=1519566/1-29).
- Sa'di, Hossein Ali (2011). "Analysis of physician liability for unintentional damages in the light of the rule of kindness", *Quarterly Journal of Medical Jurisprudence*, No. 7&8, pp. 41-71. [In Persian]
- Safaei, Seyyed Hossein & Habiballah Rahimi (2016). *Civil liability (non-contractual requirements)*, 9th Edition, Tehran, Samt. [In Persian]
- Safaei, Seyyed Hossein (1985). "The concept of heavy fault in relation to the condition of irresponsibility", *International Legal Journal*, No. 4, pp.165-196. [In Persian]
- Samaha, Joel (2011). *Criminal Law*, Cengage Learning, 10th Edition.
- Schwab, Nadine, Gelfman, Mary H.B (2005). *Legal Issues in School Health Services*, United State of America, iunivese.
- Shahidi, Mehdi (2007). *Formation of contracts and obligations*, Vol. 1, 6th Edition, Tehran: Majd. [In Persian]
- Shahrudi, Seyyed Mahmood Hashemi (1998). *The requirements of criminal jurisprudence*, Tehran, Mizan Publications. [In Persian]
- Sharpe, Charles C (1999). *Nursing Malpractice*, United States of America, Greenwood Publishing Group.
- Smits, Jan M (2000). *The Good Samaritan in European Private Law on the Perils of Principles without a Program and a Program for the Future*, Maastricht University, Kluwer, pp. 1-46.
- Somit, Albert, Peterson, Steven A (2003). *Human Nature and Public Policy*, Palgrave Macmillan.
- Staunton, Patricia, Chiarella, Mary (2013). *Law for Nurses and Midwives*, Elsevier Australia, 7th Edition.
- Taheri, Habiballah (1997). *Civil Law*, Vol.2, 2nd Edition, Qom: Office of Islamic Publications affiliated with the Society of Teachers of the Seminary of Qom. [In Persian]
- Waisman, Dov (2011). *Negligence, Responsibility, and the Clumsy Samaritan: Is There a Fairness Rationale for The Good Samaritan Immunity?* Georgia State University Law Review.

- Wilkinson, Judith M. Treas, Leslie (2011). *Fundamentals of Nursing*, 2nd Edition, Vol. 1, F.A. Davis Company.
- Yazdaniyan, Alireza & Abbas Niyazi (2017). "Investigate the civil liability of rescuers resulting from animals used in relief operations", *Quarterly Journal of Rescue and Relief*, No. 36, pp.54-68. [In Persian]
- Yazdaniyan, Alireza (2007). *Civil law, rules of civil liability*, Vol.1, Tehran: Mizan. [In Persian]