

SAUDI ARABIA'S NEW TORT LAW

MICHAEL O'KANE
SENIOR LEGAL ADVISOR
LAW OFFICE OF MOH'D AL-SHARIF

Following passage of the Consumer Transactions Law (CTL), there has been a good deal of discussion concerning the effect of the new law on tort practice in Saudi Arabia. What follows is a brief outline.

Joint and Several Liability. Under the CTL, the concept of joint and several liability has been introduced. Art. 127. However, unlike the common-law rule imposing liability for the entire amount of harm caused upon any joint tortfeasor, Saudi law requires a judge to determine the percentage of liability which is the responsibility of an individual joint tortfeasor. Art.127. If this allocation is not possible, percentage liability will be shared equally amongst joint tortfeasors. An individual who is contributorily negligent shall have his award decreased by a calculation of the amount of his own negligence. Art. 128.

Respondeat Superior. The concept of respondeat superior is recognized as a component of tort law. That is, a principal will be responsible for the torts of his agent. Art. 129(2). Subrogation is also permitted: an employer who pays an injured third-party compensation for damages has an action against a person who committed the tort. Art. 129(3).

Construction. A custodian of a building is liable for the full or partial collapse of the structure unless it is established that such harm is not due to negligence in maintenance, the old age of the building, or a defect therein. Art. 131. While it appears that this is an instance of strict liability, an accused tortfeasor is nevertheless provided a "not negligent" defense.

Strict Liability? Similarly, Article 132 would appear at first glance to impose strict liability in the case of dangerous products, but requires a fact-finding exercise and a substantial defense is provided:

If a thing, due to its nature or pursuant to a legal provision, requires special care to prevent any harm that it may cause, the custodian of said thing shall be liable for any harm caused thereby, unless it is established that the harm was due to a reason.

Under Article 140,

If a harmful act results in severe and irreparable damage that renders the

thing unusable for its intended purpose, the aggrieved party may retain said thing or leave it to the person who caused the harm; in both cases, the aggrieved party shall be entitled to compensation.

Limitations, 3 and 10 Years. There is a general three-year statute of limitations on tort actions, calculated from

the time of discovery of the tort, but in all cases the cause of action prescribes after ten years.

Do you have questions about tort liability in Saudi Arabia? Is this a subject you feel needs to be addressed in existing contracts? The CTL is retrospective and reaches contracts that have already been executed. Perhaps a contract review and review of insurance coverage would be in order. For more information, contact me at mok@mu7ami.com.