

Criminal Liability in the Absence of Perpetrator Eligibility: Applied Jurisprudential Study

Mohammad Ali G. Zuraib¹

Abstract

This research focuses on discussing the impact of the perpetrator's loss of eligibility and accountability, where the criminal act is committed by an irrational entity lacking legal responsibility, such as an animal, metal, or well. The study is arranged as follows, with an introduction, two major sections, and a conclusion: Introduction: In addition to giving a definition, this section discusses the significance of the study, its goals, and a summary of earlier research. First Section - Incidents in Wells or Mines: This section explores two scenarios: First Subsection: Death by falling into a well or its collapse. Second Subsection: Death resulting from excavation for metal extraction. Second Section - Crime of Livestock: This section discusses two situations: First Subsection: The crime of livestock when not under someone's control. Second Subsection: The crime of livestock when under someone's control. Conclusion: This section summarizes the findings and conclusions reached by the researcher. References: The conclusion is followed by two additional pages listing sources and references used in the research.

Keywords: *Crime, Eligibility, Accountability, Metal, Well-Livestock.*

INTRODUCTION

Because they pertain to the fundamentals of life and property, the questions of criminal culpability in the event of a crime are central and important in the subject of law. Consequently, I have concentrated on one facet of these problems in my research—namely, the loss of eligibility required for inclusion in criminal responsibility. This is especially crucial because these problems could have real-world applications in certain situations these days.

Because of decisions that resemble precedents that can be graduated and measured, these are some of the areas that academics are interested in studying. Their significance stems from their relationship to applied jurisprudence, which improves the jurist's capacity for legal reasoning as well as the cognitive capacity associated with comprehending the problems and decisions that are being examined. As a result, the key elements can be summed up as follows:

Enriching the Jurisprudential Heritage with Judicial Applications: This necessitates careful consideration of the mechanism for handling and examining these applications.

The Need to Ground Judicial Issues Related to Recording an Incident with No Other Party Involved or with an Ineligible Party: This involves exploring how jurisprudence addresses issues such as well and mine collapses, as well as the consequences of livestock crimes.

Contributing to the Development of the Jurist's Craft: This pertains to nurturing scholars who can utilize legal texts and tools to address emerging issues effectively.

METHODOLOGY

I used the following analytical and inductive techniques when writing this paper:

The Inductive Method: I used the inductive method to collect the scientific data, looking over fundamental works to extract pertinent information and citing the texts to their sources. When directly quoting, I enclose the passage in quote marks "...". I gave due credit to hadiths by citing them from their trustworthy sources. I identified a hadith as coming from one of the two Sahihs or both of them when I quoted it that way; if not, I

¹ Ph. D in Sharia, Associate Professor of Jurisprudence, Sharia Department, College of Sharia and Fundamentals of Religion, Najran University, Najran, Saudi Arabia. E-mail: mazurib@nu.edu.sa, ORCID: <https://orcid.org/0009-0003-0859-2127>

took it directly from the trustworthy sources and explained its strength or validity by referencing the hadith's number, page, volume, and chapter.

The Analytical strategy: I used this strategy to examine the gathered texts on the problem and identify the factors that influenced it.

LITERATURE REVIEW

After reviewing earlier research, I was unable to locate an original study that concentrated on the topic of disagreement's source and brought it all together under one framework.

The First Section: "Incidents in Wells or Mines," consisting of two sub-sections:

The First Subsection: Death by Falling into a Well or by Its Collapse.

Most jurists have concluded that there is no indemnity for the blood of an individual who perishes by falling into a well or due to the well collapsing on them, unless there is negligence or fault on the part of the well owner. This is based on the saying of the Prophet, peace be upon him: "A well does not guarantee (against harm)." However, if there is negligence or fault in its excavation, they unanimously agree on its inclusion in the matters that warrant legal consideration. (Al-Qadi, A. Y. 2018).

One of the most crucial situations upon which jurists unanimously agree, regarding the exclusion of liability due to the absence of transgression and negligence, is when a well is exposed and clearly situated within the property of an individual who dug it for the purpose of providing water or similar needs. If someone falls into it without seeking permission before entry, or if it is dug in a desert or an abandoned place for the purpose of providing water and satisfying needs with the permission of the authority, or if it is dug in a wide public path for the benefit of the people with the permission of the authority, then the owner is not held liable. Other instances include when the landowner hires someone to dig a well on his property, and it collapses on the digger, or when the owner digs a well for himself and falls into it and dies. Similarly, an old well for which the digger is unknown, and which has no owner, situated in a valley where someone falls into it, is not subject to liability from the public treasury. (Ibn Najim, Z. 2022).

The Second Subsection: Death Resulting from Excavating Metal for Extraction.

If a person dies due to the collapse of a mine during excavation for extraction, there is no indemnity for anyone, as we mentioned earlier regarding the one who perishes in a well. The similarity between the two lies in that they are both encompassed by the saying of the Prophet, peace be upon him: "(Injuries caused by) animals, wells, and mines have no indemnity," provided that there is no trespassing or negligence on the part of the person conducting the excavation and mining. (Al-Buhuti, M. 2000).

If someone engages in excavation on his property or on abandoned land - with the permission of the authority - and a person falls into it and dies, his blood is not guaranteed. Similarly, if he hires a worker to do the excavation, and it collapses on the worker causing death, there is also no indemnity; as long as there is no trespassing or negligence involved. (Al-Qarafi, A. I. 1994).

Likewise, mining is subject to the regulations of wells and is akin to them in terms of including excessiveness or aggression in its extraction. This can occur by digging in a narrow path, on someone else's property without permission, or by forcibly compelling the digger to excavate, leading to a collapse and similar circumstances. Therefore, liability for the waste or harm caused by mining and wells is contingent upon the absence of trespassing or negligence.

The Second Section: "Animal Crime," comprising two sub-sections:

The First Subsection: The Crime of Livestock When It Does Not Have a Handler.

The jurists unanimously agree that harm caused by a neglected and abandoned animal is not guaranteed. The owner of such an animal is not liable for the harm it causes unless he exceeds the limits or neglects in controlling

it. Similarly, the public treasury (Bait al-Mal) does not guarantee compensation for harm caused by such an animal if it is dispatched and has no owner. Their basis for this is:

The saying of the Prophet, peace be upon him: "(Injuries caused by) animals, their crimes are not guaranteed."

Because liability is only established through direct involvement or causation, and the owner of the animal did not commit the act nor was the cause of it. The action is not attributed to him because his hand did not have an impact on it. (Al-Marghinani, A. B. 2020).

Examples of harm caused by an animal for which the owner is not responsible, and there is no excess or aggression from its sender, include:

If a dispatched animal steps on a person, causing their death.

If the animal strikes a person with its leg, resulting in the person falling from a height.

Similarly, if the dispatched animal slips on a path, causing a person to fall and die.

Also, if the animal hits someone with its head, bites them, or strikes them with its tail. (Khattab, M. 2015)

The Second Subsection: "The Crime of Livestock When Its Owner Has Control Over It.

The consensus among the scholars of the various schools of thought is that the person in control of an animal is deemed responsible if they exceed the limits, neglect, or intentionally direct the animal to commit harm. In such cases, the animal's wrongdoing becomes an act of the person controlling it, and the animal is then considered as a tool used in the commission of the offense. (Al-Sindi, M. B. A. H. 1986).

They then disagreed on the criminal liability of the animal if it was under control, but deviated from control or committed an offense unintentionally, according to two opinions:

The first opinion: The owner is not held responsible for what the animal acquires through its hind parts, such as its legs and tail, unlike what it causes with its front, like its limbs and mouth, which is considered the owner's responsibility. They supported this by the following argument:

It is mentioned in one of the narrations of the preceding hadith with the wording, "The hooves are not guaranteed for their offenses." Thus, the specific understanding of exempting the owner from liability for the hooves involves guaranteeing the liability for the front parts.

Because the owner has control over the animal, he can take precautions to safeguard its front parts and prevent it from stepping on things he does not want it to by controlling its movements. This is in contrast to its hind parts, for which he is not held accountable, such as tail swaying and similar actions.

The second opinion: Absolute liability without distinguishing between the front and rear parts.

The rationale for this opinion includes:

The animal is under the control and ownership of its owner, implying a commitment and responsibility on their part. Therefore, any offense committed by the animal is considered evidence of the owner's negligence, and they are liable for what they have neglected.

Furthermore, if the owner is present with the animal, the actions of the animal are attributed to the owner, treating the animal as a tool or instrument in their hands. (Al-Shawkani, M. A. A. 1414).

The argument presented by the proponents of the second viewpoint can be discussed as follows:

Discussion of the First Argument

They argue that the animal's wrongdoing is not necessarily evidence of the owner's negligence in all circumstances. For instance, if the animal got agitated, escaped without the owner's knowledge, or unintentionally stepped on something, it does not indicate negligence in such situations. This suggests that there are instances where the owner cannot be held responsible for the actions of the animal.

Discussion of the Second Argument

Their second argument revolves around the idea that the owner can only be attributed with the action if they caused it or had the ability to prevent it but failed to do so. In this particular case, attributing the action to the owner is a distant possibility. The argument implies that the owner cannot be held accountable for the action unless they directly caused it or could have prevented it.

These discussions highlight the nuances and complexities surrounding the responsibility of the owner in cases involving the actions of an animal. The proponents of the second viewpoint contend that a more direct and preventable connection must exist between the owner and the animal's actions for legal responsibility to be established. (Al-Mawaq, M. Y. A. 1994).

RESULTS

When a murder incident involves only one party with no other party present, such as falling into a well or the collapse of a mine, or when the other party lacks legal capacity, like being kicked by an animal, the primary concern is to ensure the absence of negligence or misconduct on the part of the well, mine, or livestock owner. If negligence or misconduct is found, the owner is criminally implicated.

The importance of expertise in applying jurisprudential issues from the traditional legal corpus to contemporary issues, coupled with knowledge of the paths of disagreement and the process of prioritizing among the opinions of jurists.

The reinforcement of such research emphasizes the aspect of apologizing to the jurists for the abundance of their differences, by explaining the reasons for their disagreements. (Khattab, M. 2015)

RECOMMENDATIONS

Based on the results of this study, the researchers make the following recommendations in their conclusion:

Emphasizing the Importance of Studying Criminal Liability in Cases Where the Perpetrator Lacks Eligibility in a Comprehensive and Expansive Manner.

Undertake further in-depth research to define Islamic jurisprudence and knowledge, defining terms and concepts in accordance with linguistic, jurisprudential, and foundational viewpoints.

Analyzing a Larger Number of Pieces of Evidence and Texts Pertaining to Criminal Incrimination When the Perpetrator Lacks Competence.

ACKNOWLEDGMENT

The authors extend their thanks to the Deanship of Scientific Research, at Najran University, for funding this work within a grant from the Research Funding Program at Najran University under the code: (NU/RG/SEHRC/12/24).

REFERENCES

- Al-Qarafi, A. I. (1994). Al-Dhakhira [The Ammunition]. In M. A, Al-Salami, M. Haji, S Arab, & M. Boukheza (Eds). Dar Al-Gharb Al-Islami.
- Al-Shawkani, M. A. A. (1414). Fath al-Qadeer. Damascus: Dar Ibn Kathir.
- Al-Shirazi, A. I. (1992). Al-Muḥaddab fī Fiqh al-Imām al-Shāfi'ī. Dar Al-Kotob Al-Ilmiyah.
- Al-Sindi, M. B. A. H. (1986). Hashiyat Al-Sindi Ala Sunan Al-Nasai (2nd ed.). Aleppo: Maktab Al-Matbuat Al-Islamiyah.
- Al-Zurqā, A. A. M. (1989). Sharh al-Qawa'id al-Fiqhiyyah [Explanation of the Legal Rules]. (M. A. Al-Zurqā, Ed.). Dar Al-Qalam.
- Al-Zurqani, M. A. (2003). Sharh Al-Zurqani Ala Muwatta Al-Imam Malik. In, T. A. Saad (Ed.). Cairo: Maktabat Al-Thaqafah Al-Diniyah.
- Bin qasim, M. (1406AH). Al-Ihkam Sharh Usul Al-Ahkam (2nd ed.). Dar Al-Qasim
- Elfeky, A. I. M., Najmi, A. H., & Elbyaly, M. Y. H. (2023). The effect of big data technologies usage on social competence. PeerJ Computer Science, 9, e1691.
- Elfeky, A. I. M., & Elbyaly, M. Y. H. (2023). THE EFFECT OF E-TUTORIAL PROGRAMS ON IMPROVING THE PRODUCING DIGITAL CONTENT SKILL. European Chemical Bulletin, 12, 6581-6587.

- Elfeky, A. I. M., & Elbyaly, M. Y. H. (2023). MANAGING DRILL AND PRACTICE PROGRAMS WITH A MOTIVATIONAL DESIGN AND THEIR EFFECTS ON IMPROVING STUDENTS' ATTITUDES TOWARD INFORMATION AND COMMUNICATION TECHNOLOGY COURSES. *European Chemical Bulletin*, 12, 6567-6574.
- Elfeky, A. I. M., & Elbyaly, M. Y. H. (2023). THE IMPACT OF PROJECT-BASED LEARNING ON THE DEVELOPMENT OF COGNITIVE ACHIEVEMENT IN THE COURSE OF APPLICATIONS IN EDUCATIONAL TECHNOLOGY AMONG STUDENTS OF THE COLLEGE OF EDUCATION AT NAJRAN UNIVERSITY. *European Chemical Bulletin*, 12, 6643-6648.
- Elbyaly, M. Y. H., & Elfeky, A. I. M. (2023). THE EFFECT OF A SIMULATION PROGRAM ON STUDENTS AT THE COLLEGE OF EDUCATION'S ACQUISITION OF HAND EMBROIDERY SKILLS. *European Chemical Bulletin*, 12, 6575-6580.
- Elbyaly, M. Y. H., & Elfeky, A. I. M. (2023). FLIPPED CLASSROOM: ENHANCING FASHION DESIGN SKILLS FOR HOME ECONOMICS STUDENTS. *European Chemical Bulletin*, 12, 6559-6566.
- Elbyaly, M. Y. H., & Elfeky, A. I. M. (2023). THE IMPACT OF PROBLEM-SOLVING PROGRAMS IN DEVELOPING CRITICAL THINKING SKILLS. *European Chemical Bulletin*, 12, 6636-6642.
- Elbyaly, M. Y. H., & Elfeky, A. I. M. (2023). COLLABORATIVE E-LEARNING ENVIRONMENT: ENHANCING THE ATTITUDES OF OPTIMAL INVESTMENT DIPLOMA STUDENTS TOWARDS THE DIGITAL SKILLS COURSE. *European Chemical Bulletin*, 12, 6552-6558.
- Elfeky, A. I. M., & Elbyaly, M. Y. H. (2023). THE IMPACT OF MOBILE LEARNING ON DEVELOPING THE SKILLS OF INTEGRATED SCIENCE OPERATIONS AMONG STUDENTS OF THE OPTIMUM INVESTMENT DIPLOMA. *European Chemical Bulletin*, 12, 6629-6635.
- Elbyaly, M. Y. H., & Elfeky, A. I. M. (2023). THE EFFECTIVENESS OF USING ADVANCED ORGANIZATIONS WITHIN THE VIRTUAL CLASSROOM TO ENHANCE THE ACCEPTANCE OF TECHNOLOGY DURING DISASTERS. *European Chemical Bulletin*, 12, 6603-6612.
- Elbyaly, M. Y. H., & Elfeky, A. I. M. (2023). THE EFFICIENCY OF ONLINE LEARNING ENVIRONMENTS IN FOSTERING ACADEMIC MOTIVATION. *European Chemical Bulletin*, 12, 6622-6628.
- Elbyaly, M. Y. H., & Elfeky, A. I. M. (2023). THE EFFICIENCY OF INSTRUCTIONAL GAMING PROGRAMS IN STIMULATING CREATIVE THINKING. *European Chemical Bulletin*, 12, 6613-6621.
- Elfeky, A. I. M., & Elbyaly, M. Y. H. (2023). THE EFFECT OF SIMULATION PROGRAMS ON ENHANCING SKILLS OF DIGITAL APPLICATIONS. *European Chemical Bulletin*, 12, 6588-6594.
- Elbyaly, M. Y. H., & Elfeky, A. I. M. (2023). THE EFFECTIVENESS OF EMPLOYING MOTIVATIONAL DESIGNED E-LEARNING SITUATIONS ON DEVELOPING ACHIEVEMENT IN COMPUTER SCIENCE CURRICULA FOR OPTIMAL INVESTMENT STUDENTS. *European Chemical Bulletin*, 12, 6595-6602.
- Ibn Abi al-Fath. (2003). *Al-Matala' 'ala Alfaz al-Muqni'*. In, M. Arnaut & Y. M. Al-Khatib (Eds.). *Maktabat al-Sawadi lil-Tawzi'*.
- Ibn Abidin. (1992). *Radd Al-Muhtar 'Ala Al-Durr Al-Mukhtar* [Response to the Chosen Pearl]. Dar Al-Fikr.
- Ibn Farris, A. (1986). *Majma' al-Lughah* [Compendium of the Language] (Z. A. Sultan, Ed.). Dar Ihya' al-Turath al-Arabi.
- Ibn Majah. (n.d.). *Sunan Ibn Majah*. Dar Ihya al-Kutub al-Arabiyya.
- Ibn Muflih. (1997). *Al-Mubdi' fi Sharh Al-Muqni' li Ibn Muflih*. Dar Al-Kutub Al-Ilmiyah.
- Ibn Najim, Z. (2022). *Al-Bahr al-Ra'iq Sharh Kunz al-Daqa'iq*. Dar al-Kutub al-Islamiyya.
- Ibn Qudamah. (1968). *Al-Mughni* [The Enricher]. Cairo: Maktabat Al-Qahira.
- Ibn Rajab, A. (1419AH). *Taqrir alqawaeid watahrir alfawayidi*. Dar Ibn Affan. Dar Ibn Affan.
- Khattab, M. (2015). *The Clear Quran. Message for Humanity*.
- Khusrav, M. (1480). *Durar al-Hukam Sharh Ghurar al-Ahkam*. Dar Ihya al-Kutub al-Arabiyya.
- Muslim. (2013). *Sahih Muslim* [Authentic Compilation of Muslim]. Edited by Muhammad Fuad Abdul-Baqi. Dar Ihya Al-Turath Al-Arabi.
- Qararat wa Tawsiyat Majma' al-Fiqh al-Islami (1995). *Al-Taba'a Lel-Muntada Al-Islami* [Decisions and Recommendations of the Islamic Fiqh Academy: Resolution No. 90 (7/9) on the Disease of Acquired Immune Deficiency Syndrome (AIDS) and Its Jurisprudential Rulings]. *Majallat Muntada Al-Islami*, 9(1), 65.