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LEGAL LIABILITY OF ARCHITECT

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LEGAL LIABILITY OF ARCHITECT

Abstract

To conduct a comprehensive analysis of architect's Professional liability, a range of legal areas must be considered so that to identify the possible sources that can give rise to such liability. A general understanding of contract law, tort law and criminal law proves to shed ample light onto these possible sources. Apropos contract law, a basic issue must be recognized and dealt with; i.e. the valid existence of a contractual relationship. Further issues involve; the type of contract adopted the main obligations the architect assumes in terms of contract and the remedies available to the client in case the architect is in breach of his contractual obligations. The role of the architect as fiduciary should also be considered as a possible basis for further obligations towards client. Failure on behalf of the architect to fulfill any such legal duties results into tortuous responsibility. Deliberations on principles of tort law and an in depth explanation of care of professionals should be discussed. Finally, it is pertinent to explore the possibilities for criminal liability. The basic principles of criminal law and the ensuing liability are needed to be analyzed before entering into an examination of the type of conduct that is sanctioned by criminal law. There are several possible realms giving rise to criminal liability; such as willful, reckless or negligent conduct resulting in convictions of voluntary or involuntary manslaughter and abuse, practicing the profession without the relevant syndicate's approval or even violating the construction laws.

Keywords

Civil and Criminal liability, Tort law, Contract law, Intentional Homicide and injury, Unintentional Homicide and injury, Building contraventions

LEGAL LIABILITY OF ARCHITECT

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ABSTRACT: *To conduct a comprehensive analysis of architect's Professional liability, a range of legal areas must be considered so that to identify the possible sources that can give rise to such liability. A general understanding of contract law, tort law and criminal law proves to shed ample light onto these possible sources. Apropos contract law, a basic issue must be recognized and dealt with; i.e. the valid existence of a contractual relationship. Further issues involve; the type of contract adopted the main obligations the architect assumes in terms of contract and the remedies available to the client in case the architect is in breach of his contractual obligations. The role of the architect as fiduciary should also be considered as a possible basis for further obligations towards client. Failure on behalf of the architect to fulfill any such legal duties results into tortuous responsibility. Deliberations on principles of tort law and an in depth explanation of care of professionals should be discussed. Finally, it is pertinent to explore the possibilities for criminal liability. The basic principles of criminal law and the ensuing liability are needed to be analyzed before entering into an examination of the type of conduct that is sanctioned by criminal law. There are several possible realms giving rise to criminal liability; such as willful, reckless or negligent conduct resulting in convictions of voluntary or involuntary manslaughter and abuse, practicing the profession without the relevant syndicate's approval or even violating the construction laws.*

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1. INTRODUCTION

In Common Law, liability can be defined as the state of being responsible for a possible or actual loss wrongdoing, expense or burden. Black's Law Dictionary defines liable as : (1) bound or obliged in law or equity, responsible, chargeable, answerable, compellable to perform compensation or restitution; (2) exposed or subject to a given contingency, risk or casualty, the probability of which may vary ; and (3) bound because a wrong has occurred. Liability may also relate to a future, possible or probable event, which may not actually occur, or an occurrence within a range of possibility.

In Henri Capitant's dictionary, liability is defined as the 'obligation to compensate the damage arising from either non-performance of contract or breach of the general duty not to cause a damage to other people by one's own acts, or for the actions of things'. In Lebanese doctrine, Pr. Moustafa al Ougi has defined liability as ranging from a moral or natural obligation to a civil one, and from a financial interest to an act or omission. (Ougi. M, 1996). Liability has both civil and criminal aspects. Civil liability imposes sanctions for the non-observance of contractual obligations and for the breach of rules of conduct imposed by statute, regulation or case law. Criminal liability aims to inflict punishment on those who have committed an act punishable by law, as criminals must pay their debt to society. This article will try to illustrate the liability of the architect and the engineer, its foundations in our laws, practices and jurisprudence.

2. THE CIVIL LIABILITY OF ARCHITECT

Liability' and 'malpractice' are words that evoke the medical profession. In fact, engineers' professional liability is not newly created either, as it dates back to antiquity, when engineers were responsible for the design and construction of Roman aqueducts, between 312 BC and 52 AD. Monetary

claims were made and, in some instances, capital punishment was inflicted for errors, omissions and poor judgment.

In recent years, however, liability and malpractice suits against architects and engineers have increased and the value of the claims has tripled. Several reasons have been given to explain this. Firstly, the use of new materials, sometimes not fully tested, has increased injured parties' willingness to sue design professionals. The second reason why liability claims have become more common is the increasing technical complexity of buildings. Here, the difficulty lies in determining who is at fault when a failure occurs. The third reason is

that traditional engineering methods to avoid liability or malpractice are becoming ineffective; sometimes, they may even be used against engineers.

Occasionally, contractors or employers seek legal action against design professionals such as architects or engineers to recover damages. In Lebanon, liability claims are based on the provisions of the Code of Obligations and Contracts (C.O.C.) and case-law. According to the C.O.C., the architect can be liable based on tort or contract law. In addition, he cannot be considered as a mere man of art, but must always remember his moral and ethical duties and obligations for public safety, health and welfare, as provided for in the law regulating the Engineering Profession in Lebanon and the Construction Law.

2.1 Tort liability:

Tort law is an area of civil law intended to provide compensation for personal injuries and property damage, usually to a third party to a contract. While there are many types of torts, negligence is commonly used to seek compensation for damages from architects. When seeking to prove negligence, a contractor must bring an action in tort, as negligence claims are not covered by contract law. (Negligence is an unintentional tort and defined as "failure to use the degree of care required under the particular circumstances involved", *Duncan v. State of Board of Architects*, 1988)

An individual is liable for negligence when their actions put the lives and property of others at imminent risk, regardless of whether there was a privity of contract between the individual and the injured person. Article 122 of the C.O.C. states the following: "Any fact due to man's action which causes unjust prejudice to another man compels its author to offer reparation, at least if he is gifted with understanding". In a tort case arising out of negligence, and according to the terms of Article

123 of the C.O.C., a plaintiff seeking compensation from an architect must prove that : (a) the defendant has breached a duty imposed on him in favor of the plaintiff ; (b) the breach was the cause of the harm (causation), and (c) the plaintiff suffered damages. (Article 123 of the C.O.C. provides that "A person is liable for any damage caused by their negligence or imprudence as well as for what may result from a positive act.")

2.1.1 Duty of an architect

It is an engineer's duty to act as a reasonable professional with similar training would act, under similar circumstances. This is what the 'reasonable person' (under Anglo-american laws), the 'bon père de famille/bonus pater familias' (under Lebanese law) and the more recent 'reasonable architect' (under French law) standards provide for. Hence, architects whose performances reveal a lack of required skills will not be able to recover remuneration and may be held liable for damages, should loss or injury result from their negligence or lack of skills. The skills and knowledge required to be a competent architect are generally listed as follows : (1) the preparation of plans, drawings or design suitable for the particular work to be executed; (2) knowledge of the materials and of their proper use ; (3) knowledge of relevant local building requirements, in particular regarding light-and-air, support or other easements. Of course, the amount of skill and knowledge required in each case depends upon the nature and importance of the particular work to be done.

Nonetheless, Lebanese Courts have applied the principle of derivative tort and decided, in a case where an engineer had been charged by project owner with supervising implementation, to impose tort liability on the latter, as the engineer in this case was under his authority and control. (Single Judge of Beirut, 1954; Derivative tort is a tort liability that may be imposed on a principal for a wrong committed by their agent and to this extent, the principal's liability is derivative, *Black's Law Dictionary*, 1991)

The second element in establishing a viable claim for professional negligence is the proof that the claimant actually suffered damages.

2.1.2 Damages

Where damages arise from a tort, which is a legal fact (a fact which is recognized by the law), the wrongdoer is legally obliged to compensate the aggrieved party. According to Article 134 of the C.O.C., a delict or quasi- delict victim is entitled to full compensation for the damage suffered. Moral and material damages are taken into account in the calculation. The judge may also take into consideration the sentimental prejudice suffered by the victim's spouse or relative.

In principle, the damage should be taken into account from the date it occurred in the assessment of reparation. As an exception, the judge may include future damage in the assessment, as long as it can be precisely quantified. Damages can result from the most common ordinary acts of negligence, such as (1) failure in planning in accordance with the rules of the architect's science and art; (2) using unsuitable materials; (3) insufficient supervision of contractors on site; (4) mismanagement of project costs.

Lastly, the claimant must show a causal connection between the architect's breach of duty and the damages suffered.

2.1.3 Causation

The proximate cause of an injury is defined as "that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces injury, and without which the result would have not occurred".

It is important to mention that many violations of tort duty can also be alleged to be breaches of contract, so the second option for a claimant to recover economic damages from an architect is to sue him for failing to perform his contractual obligations.

3. CONTRACTUAL LIABILITY

When negotiating an agreement, each party usually assumes the other one will perform their obligations. They devote more attention to spelling out what is required than to detailing what would happen if the performances required are not forthcoming. Consequently, breach of contract occurs when one party to a contract fails to perform their obligations in accordance with the terms of their agreement, without sufficient justification. The aggrieved party may ask the wrongdoer to fulfill the requirements of the contract or to complete the performance of the contract (specific performance). Damages would only follow if this approach failed. According to Article 250 of the C.O.C.: *"to the extent possible, discharge of an obligations must occur in kind, as the creditor has the right to the performance of the contract, which forms the object of their contractual relationship"*.

First, claimants or aggrieved parties must provide proof of a contractual relation with the person from whom they are seeking damages under a breach of contract action. The principle laid down in Article 225 of the C.O.C. reflects the doctrine of privity of contract: in principle, contracts do not confer or impose obligations upon a person who is not a party to the contract ; they only have effects between contracting parties and their legal successors.

Construction law generally requires the existence of a contract between claimant and defendant to establish privity, referred to as privity of contract. Therefore, a contractor can only recover damages from an architect if both are parties to the same contract, or if there exists a special relationship between the two parties that establishes privity. The main question is how far does the engineer's legal duty extend under a building contract? For instance, if an owner has contracted with a general contractor, who himself has then contracted with an engineer, can the owner make a claim for damages against the engineer? Under Lebanese and French law, the owner may invoke the rules relating to chains of contracts. Under English law, some courts have allowed the owner to recover his losses as a third party beneficiary, that is, not a party to the contract itself. (Eastern Steel constructors v. City of Salem, 2001; *"In many contractual settings, there is multilateral productive interaction but the parties are not able to contract as a group. Instead, they must form contracts in a decentralized way, whereby pairs of agents establish contracts independently of one another. As an example, consider a subcontracting arrangement that is common in construction projects. A developer may contract with a general building contractor, who separately establishes agreements with subcontractors for the provision of some of the constituent components. This example features an externality, since the developer cares about the subcontractors' work (it influences his benefit of the*

completed project) but he doesn't contract directly with the subcontractors" J. Watson, 2011 and Syndoulos Lutheran Church v. A.R.C Indus, 1983)

A properly drafted building contract addresses all these matters and the rights and liabilities of the parties are determined by reference to particular provisions.

Second, the non-execution of the contract can result from a non-performance, a lack of performance or a partial performance of contract obligations. For instance, in order to prove a lack of execution, the claimant must demonstrate that the architect party to the building contract did not use their skills, knowledge and sufficient care in the preparation, the design or the supervision of the work.

Finally, in order to give rise to damages, the claimant must prove that a prejudice has been caused and that such prejudice is attributable to the debtor. In contractual matter, damages must correspond exactly to the prejudice and losses suffered. Incidental damages may only be taken into consideration as direct damages if they can be linked up with complete certainty to the non-performance of the obligation. Such damages will be compensated for if they were foreseeable at the time the agreement was formed, provided that the debtor has committed no fraud.

Hence, the basic principle for the quantification of those damages is that of compensation based on the injured party's expectation.

One of the main reasons why a contractor would initiate a tort claim is that architects' insurances often do not insure against breach of contract claims, but generally insure against claims in negligence. Therefore, for both legal and practical reasons, most actions against architects will be founded in tort. In addition, damages for breach of contract and delict are computed using different methods. On one hand, a litigant who brings a contractual claim seeks to have his bargain or its equivalent in money. On the other hand, an action in tort aims at recovering losses suffered because of a wrongful conduct. Moreover, the architect must design a feasible project that takes into account soil constraints, as well as legal ones. He must carry out the project in accordance with town-planning rules and urban servitudes. The built environment is governed by a safety-related policies intended to ensure public safety and to protect properties.

4. PROFESSIONAL LIABILITY OF THE ARCHITECT UNDER THE LAW REGULATING THE ENGINEERING PROFESSION IN LEBANON AND CONSTRUCTION

Design professional liability (e.g. for architects and engineers) is governed by many texts. A lack of familiarization with local regulations and neighbouring rights may render drawings and proposals, however excellent, totally impracticable and useless. It is therefore of utmost importance for engineers and architects to be roughly familiar with such requirements and rights. Ignorance of the law is no excuse, and engineers no less than lawyers must carry on their practice under the burden of this presumption.

The Lebanese legislator issued a special law no. 636/97 – amended by law no. 141/1999 – to regulate the practice of engineers. The architecture profession is also governed by Construction Law no. 646/2004. On one hand, these laws require engineers and architects to: (1) have the level of education, skills and experience regarded by other professionals in the same sector as necessary to qualify to practice the profession, (2) use reasonable and ordinary care and diligence when exercising their skills and knowledge and performing the duties assigned to them; (3) exert skill with diligence and care; and (4) use their best judgment in the interest of their employer. More specifically, Article 55 of the law no. 636/87 provides that engineers shall perform their duties with accuracy and honesty, in accordance with the generally accepted rules of the profession and the principles of professional ethics. Under any circumstances, the engineer should abide to the principles of honor, integrity and decency. They shall also refrain from carrying out any work that might bring discredit to the profession. Under Article 66 of the same law, the Chair of the Order of Engineers may refer any violation to the board of discipline, after serving a formal notice to the concerned engineer. Article 66 adds that any engineer who violate their duties or perform their obligations without abiding by the principles of honor, integrity and decency can be subjected to the following disciplinary sanctions :

- Warning
- Reprimand
- Prohibition from practicing the profession for a period of maximum three years.
- Licence withdrawal and permanent disqualification from the practice of the profession.

On the other hand, Article 22 of the Construction Law provides that buildings contravention should be demolished between the date of issuance of the license and that of the occupancy permit. The responsible engineer has the obligation to withdraw the contract immediately after the occurrence of the contravention, to inform the property owners or their legal representatives as well as the Engineers Syndicate, and to warn the owner to demolish the contravention in case of reluctance. If the engineer does not withdraw the contract or if

the situation occurs again, they could face disciplinary sanctions in accordance with Article 61 of the law regulating the Engineering Profession in Lebanon.

Furthermore, Article 23 states that digging foundations, building, renovating or altering without prior authorization or without complying with the terms of the license shall be interrupted; the owner and the person responsible for the implementation can be charged with a fine. Construction activities are governed by a wide variety of safety-related regulations intended to protect public safety and property. Common sense dictates that an architect should not recover fees for drawings and specifications that do not comply with the rules applicable to construction work. As a professional, the architect is the one who should have thorough knowledge of construction law and zoning ordinances, not the client.

Over the past two decades, the professional liability of the architect preparing drawings and specifications has faced rapid changes, which have left the jurisdictions sadly inconsistent with the rules they apply. These changes should be a mere prologue for the changes still needed. Law, as an instrument for justice, has infinite capacity for growth. Its growth should be directed at strict liability for architects. Having thus far examined the possible routes for civil responsibility, the second part endeavours to explore the possibilities for criminal liability. The architect's conduct has been categorized into the three possible cases giving rise to criminal liability: wilful, reckless or negligent conduct.

5. THE CRIMINAL RESPONSIBILITY OF ARCHITECTS IN LEBANON

Building and construction sector witnessed major developments in recent years especially after the aggravation of the housing crisis and the consequent expansion of construction. With the advance of modern technology, modern mechanization and large machinery to the construction industry, the dangers resulting from building defects have increased leading to another increase in the victims of professional fraud and neglect. The architect is one of the most responsible parties for the construction work as they develop the architectural drawings, manage the construction works and oversee the implementation (Husseini. A-L, 1987).

The Court of First Instance in Beirut explained the architect's task, " The architect is committed in principle to providing a service to the owner of the project represented in developing the designs and preliminary maps of the project and presenting them to the owner to obtain the initial approval. The architect is also committed to developing the final designs and maps to obtain the necessary licenses as well as assisting the project owner to obtain these licenses. The architect oversees the construction works to ensure the proper implementation of the maps, while the contractor is the one who is committed to implementing the project on behalf of and for the project owner according to the designs and maps developed by the architect. The task of the architect may extend to include not only overseeing the implementation, but also managing the project, choosing the implementing contractor, contracting with the contractor, giving instructions and orders, purchasing materials and supplies... ". (Ruling No. 242 of 28/5/2015).

The Lebanese Penal Code of 1943 did not pay particular legal attention to the criminal responsibility of architects. The Lebanese Code of Obligations and Contracts of 1932 singled the architect out in the civil liability resulting from construction defects within a five-year period following the construction completion as provided in Article 668 which maintained that "The architect or engineer and the contractor whom the owner has directly engaged are liable for the five-year period that follows the completion of the building or other edifice which they have managed or executed. If such building or edifice collapses, wholly or partially, or evidently threatens to collapse, resulting from deficiency of materials, a vice in the construction or a vice in the soil; and if the architect has not managed the construction works, the same is only held liable for the defects of the drawings;

The above five-year period runs from the acceptance date of the construction works.

The action must be brought within thirty days from the discovery of the fact which affords grounds for the guarantee, otherwise it is subject to rejection by the court".

The above article limits the architect's responsibilities to the defects in the construction and soil or in the architectural drawing with the consequence of either:

- A. Total or partial destruction of the building;
- B. Damage to the durability and safety of the building;
- C. Damage to one of the basic parts of the construction.

In light of that, we will address the criminal responsibility of architects in Lebanon according to the provisions of the General Penal Code guided by the text of the aforementioned Article 668.

6. THE RESPONSIBILITY FOR CRIMES AGAINST PERSONS

The human right to life, the right to exist and to remain, is a natural right that nobody can dispute. In addition, humans also enjoy the right to the physical integrity of the body, which is the physical entity of the

human personality that embodies the human existence and from which life derives its survival and exercises its functions. The safety of the body is the means to the safety of life and protecting the human body is the natural extension of protecting the life. (Al-Fadhel. M, 1962).

The Penal Code in Lebanon called the acts of offense that aim at depriving a person of their right to life "homicide". It also called the acts of offense that aim at violating the humans right to the integrity of their bodies "crimes of injury".

The architectural works of the architect may result in crimes against the human right to life and the right to the body integrity; therefore, we will clarify the extent of the architect's responsibility for crimes against persons.

6.1 Intentional Homicide and Injury

Homicide refers to crimes against the human life and results in the termination and execution of such life (Mohammed Jaafar. A, 2006). The Lebanese Penal Code criminalized intentional homicide under Chapter VIII entitled: Felonies and Misdemeanors Against Persons under Section I entitled: Felonies and Misdemeanors Against Human Life and Physical Integrity in Articles 547-549. Accordingly, we hereby explain the intentional homicide and murder:

Article 547 of the Lebanese Penal Code provided that: "Anyone who intentionally kills another person shall be punishable by hard labor for a term of between fifteen and twenty years". In light of this text, we will clarify the two elements of intentional homicide:

1. The Physical Element: The phrase "kills another person" in the above legal text assumes the existence of the following three factors:
 - I. An act of offense;
 - II. The death of a living person;
 - III. Causal link between the offense and death (Hakim. J, 1982).
- I. An Act of Offense: the physical element consists of a positive act perpetrated by the perpetrator or by a negative attitude taken by them. The positive act is an action done by one of the senses of the perpetrator in reality so that initiating a concrete, tangible, or hearable change such as shooting a person and killing that person. Crime exists also upon omitting to do a physical action (Homed. A-W, 1990). The text of Article 204 of the Lebanese Penal Code regarding omission is worth mentioning: "A causal link between an act and omission on the one hand, and the criminal consequence on the other, shall not be precluded by the concurrent existence of other previous, simultaneous or subsequent causes, even if they were unknown to the perpetrator or independent of their act. If, however, the subsequent cause is independent and sufficient in itself to bring about the criminal consequence, the perpetrator shall incur the penalty only for the act that they committed".
Regarding homicide, the Penal Code does not make difference between the means used by the perpetrator in the crime as long as it is proven to have caused the death of a living person on the one hand and the intention of the perpetrator to kill a life on the other (Hakim. J, 1982).
- II. The Death of a Living Person: This factor is self-evident as there is no homicide without death of a living person. This means that there shall be no prosecution for homicide if the deceased is an animal or a dead person.
- III. Causal link between offence and death: The death of the homicide victim is a result necessary to constitute the completion of the crime in a way distinguished from the act of offense. It must be proven that it is indeed linked to the causal link (Hakim. J, 1982). This means that the act of offence should sufficiently be the cause of the crime result, which is death.
2. The Mental Element "Criminal Intent": the criminal intent is in general the knowledge of the elements of the crime and the will to do the criminal behavior and its consequences. Accordingly, the criminal intent of the intentional homicide is available in the case where the offender has complete knowledge of all the elements constituting the homicide by law (Al-Kahwaji. A-K, 2002).
The perpetrator must know that their action is directed at a living person. If they believe that their action is directed at a dead person, then the intent is not available, and their will should be to commit the act of offence and causing death (Mohammed. J. A, 2006).

It is possible that the intent of the murder is possible (indirect), i.e. "The criminal consequence of the act or omission exceeds the intent of the perpetrator if they had foreseen its occurrence and thus accepted the risk"

(Article 189 of the Lebanese Penal Code). For example, a person may erect a barrier on a railroad or on a highway to overturn a train or a car knowing that such an accident could lead to the death of the passengers. If the accident occurs and the passengers die, the perpetrator shall be punished for intentional homicide if they expected the result and accepted it without refraining from doing it despite knowing the possibility of its occurrence (Auji, M, 1999).

The above discussion was on homicide in its simple form in accordance with Article 547 of the Lebanese Penal Code. Articles 548 and 549 specify the aggravating circumstances which, if accompanied the intentional homicide, the punishment shall be aggravated. What concerns us in the responsibility of the architect is the first paragraph of Article 549 that clarifies intentional homicide:

The Lebanese Penal Code differentiates between intent "simple intent" and premeditation "aggravated intent". Intent in its general concept is knowing of the act, its result and the will to cause them. Premeditation intention on the other hand is a special kind of intent that requires determination in a state of calm and peace of mind. It is a criminal intention that starts with taking the decision to perpetrate the crime, determination to perpetrate it, and then perpetrating the crime in a calm state of mind, and the same applies in the state of calm, untroubled thinking (Al-Seraj, A, 2014). Meaning, the criminal considered the idea of killing before perpetrating the crime; they considered it carefully, premeditated carrying it out, and perpetrated the criminal act. Thus, it is a premeditated crime (Mohammed Jaafar, A, 2006).

In accordance with Article 668 of the Lebanese Code of Obligations and Contracts that defines the works of architects pertaining to their special civil liability and Articles 547 and 548 of the Lebanese Penal Code, each construction process supervised by the architect, whether by implementing, management or even the architectural drawings, of the building with the intention to kill a human being, the architect shall be punishable for intentional homicide felony.

In more detail, if the architect's intention, through any implementation behavior within their engineering work, is to kill a human being in ways like diminishing the building supplies for the purpose of demolishing the building and killing the intended person, or if the architect intends through any other planning behavior in the engineering work to kill a human being in acts like defining in the drawing an insufficient amount of steel and the homicide was through partially or totally destruction of the building.

It is more probable in our point of view to consider all homicides for which the architect is held liable as detailed above as intentional homicides according to the first paragraph of Article 549 of the Lebanese Penal Code because the nature of the architect's work is based on preparation and prudence in a design in terms of drawing, managing or implementation. However, it is up to the discretion of the court of law according to the facts of each case.

Offenses are defined as crimes against the human right to physical integrity, and they aim at harming the person's health, disrupting its normal functioning and disrupting the life functions in whole or in part (Al-Fadhel, M, 1962).

Criminalizing intentional offence was provided for in the Lebanese Penal Code under Chapter VIII entitled: Felonies and Misdemeanors Against Persons under Section I entitled: Felonies and Misdemeanors Against Human Life and Physical Integrity in Articles 554-559. Accordingly, we hereby explain "intentional offence": Article 554 of the Lebanese Penal Code mentions the common physical element in all intentional offenses, "Anyone who deliberately strikes, wounds or otherwise injures a person".

Accordingly, the physical element of offence is divided into three sections (Mohammed Jaafar, A, 2006) which are:

- A. Striking: It is any harm to the body tissues by pressing it directly or indirectly without causing a wound. It may occur by slapping the victim or kicking them with the foot. It may also occur using a tool such as a stick, stone or other means;
- B. Wounding: It is any harm to the body tissues and pressing on them causing a tear. The effect of this harm maybe apparent or not apparent such as in the case of rupture in the tissues leading to internal bleeding. The perpetrator may use any tool to cause the harm directly or indirectly i.e. using their body organs or a sharp instrument;
- C. Injury: It is the comprehensive concept of all acts that affect the safety of the body without

being considered as striking or wounding. It covers the acts of violence and severity that affect the safety of the body whatever their forms are such as shooting or detonating a bomb near the victim without an intention to harm the victim but to cause terror to them that leads to paralysis or internal bleeding.

The moral element of the of intentional offense is not different from the moral element of homicide as we have already clarified. Accordingly, the perpetrator should know all the elements of the physical offense and have a will to materialize its result.

The penalty of intentional offense in the Lebanese Penal Code varies according to the magnitude of the result, and they are six cases:

- ✓ Rendering the victim incapable for work for a period not exceeding 10 days (Article 554);
- ✓ Rendering the victim incapable for work for a period exceeding 10 days (Article 555);
- ✓ Rendering the victim incapable for work for a period exceeding 20 days (Article 556);
- ✓ The rupture or removal of an organ or the amputation of a limb or the failure of either to function or to grave impairment of one of the senses, or if it causes a serious deformity or any other permanent disability or apparent permanent disability (Article 557);

Serious deformity means the serious effect caused by the injury in a noticeable or main part of the body resulting in changing its beautiful appearance or the natural symmetry of the body making the damaged organ seem abnormal. Whereas permanent disability is losing the natural utility of a body organ or one of the senses in part of in whole. Assessing such effect remains subject to the discretion of the judge after using of the expertise of experts (Nasr. F, 2013);

- ✓ Causing a pregnant woman whom the perpetrator knows to be pregnant to abort (Article 558);
- ✓ Perpetrating offense in one of the circumstances mentioned in Article 547, 548 and 549 (Article 559).

Thus, in accordance with Article 668 of the Lebanese Code of Obligations and Contracts on the works of the architect in connection with their special civil liability and Articles 554 to 559, each construction process supervised by the architect, whether by implementation, management or even the architectural drawing of the building with the intention to harm another person shall be punishable according to the magnitude of the result as detailed above.

In more detail, if the architect intends through any implementation behavior within their engineering work to harm a person by causing a permanent disability to them or intends by means of any planning behavior in their engineering work to harm a person by deforming one of their body organs.

In conclusion, we would like to emphasize that the criminal intent of the architect is rarely present whether it is simple or premeditated. In most cases, the homicides and offenses for which an architect is being tried are unintended, and this is what we shall explain in the branch below.

6.2 Unintentional Homicide and Injury

Article 191 of the Lebanese Penal Code clarifies unintentional crime as: A crime is unintentional if the perpetrator did not foresee the consequence of their wrongful act or omission although they could or should have foreseen it, or if they foresaw it and believed that they could prevent it.

Article 190 of the Lebanese Penal Code explains the unintentional crime as: Fault exists where a harmful act results from negligence, lack of prudence or non-observance of laws or regulations, and therefore we demonstrate the types of unintentional crimes as (Alieh. S & Alieh. H, 2010):

1. Negligence: The mistake results from a negative attitude by leaving, refraining or not undertaking precautions that would have prevented the occurrence of a harmful result.
2. Lack of prudence: The mistake of a positive behavior indicating a lack of insight into the consequences and seriousness of the act performed by the perpetrator. Thoughtlessness which falls under the concept of lack of prudence is embodied in faults of specialists such as doctors, pharmacists, nurses, engineers and contractors in non-observing the principles of their profession, causing harmful accidents to people.
3. Non-observance of laws or regulations: It is a separate type and does not need to be associated with negligence or default since it is committed simply by violating the peremptory norms set by laws or regulations.

Article 564 of the Lebanese Penal Code specifies the unintentional crime as follows: Anyone causes death to a person through negligence, lack of prudence or non-observance of laws or regulations shall be sentenced six months to three years in prison.

According to the text mentioned above, the unintentional homicide occurs through negligence, lack of prudence or non-observance of laws and regulations. The text assumes two elements: the first is a physical act causes death, and the second is a fault. The latter is not punishable unless it results in occurrence of damage (Shalala. N, 2000).

Every killing resulted from a fault of leaving, refraining or neglecting of undertaking precautions that could prevent the result is killing through negligence. Every killing resulted from a serious action expecting potential harmful consequences, yet not taking precautions to prevent the consequences is killing through a lack of prudence. Killing through non-observance of laws or regulations happens when the person's behavior does not fall under the rules established by these laws and regulations (Safi. T, 1998.)

Article 565 of the Lebanese Penal Code which depends on Article 564 provides that unintentional injury: If the offender's fault results only in injury, as provided in Articles 556-558, the penalty is two months to a year. The punishment of any other unintentional injury is either six months in prison at most, or a fine not exceeding two hundred thousand Lebanese pounds.

According to the text mentioned above and in order to avoid repetition, any injury resulting from negligence, lack of prudence or non-observance of laws or regulations according to the specificity of each case and if the result is injury but not a loss of a human life, this injury is unintentional.

According to article 668 of the Lebanese Code of Obligations and Contracts on works of the architect about their specific (I used special) civil liability, and according to articles 564 and 565 of the Lebanese Penal Code, any negligence, lack of prudence or non-observance of laws or regulations considered as the fault of the architect in supervising the construction process by implementing, managing or architectural drawing of the building leading to a human life loss or injury according to the description of articles 564 and 565, the architect shall be punished for the unintentional homicide or unintentional injury.

In more details, any negative attitude taken by the architect within the engineering work, either in architectural drawing, managing or implementing by not taking the necessary precautions to prevent the occurrence of any damage, and if this negative attitude leads to injure or kill people such as the architect who is responsible for implementing building and tolerates leaving the building tools uncensored which may cause harm to the public shall be punished for the unintentional homicide resulting from negligence or the unintentional injury resulting from negligence.

Any behavior done by the architect within the work of engineering, whether by drawing, managing or implementing and considered as violating the professional conduct embodied by carelessness about the seriousness of the act or lack of experience, such as the architect responsible for drawing and makes mistakes in the method used in drawing and identifying the aspects of construction which leads after the implementation of the building to injure or kill any person shall be punished for the crime of unintentional homicide resulted from lack of prudence or unintentional injury resulted from lack of prudence.

Any positive or negative behavior attributed to the architect that violates the laws or regulations and leads to the killing or injury of any person, such as the architect who is responsible for running a construction project and allows a large number of workers to work in a closed area with no respect to the law (non-observance of labor safety rules) and this causes killing or injuring any person as a result of suffocation shall be punished for the crime of unintentional homicide resulting from violating the laws or regulations or the unintentional injury resulting from violating the laws or regulations.

7. THE RESPONSIBILITY FOR CRIMES RELATED TO THE ARCHITECTURE PROFESSION

The Lebanese legislator gave importance to the engineering profession and issued a special legislation concerning regulating the practice of the engineering profession. This legislation is Law No. 636 issued on April 23, 1997, and amended by the Law No. 141 issued on October 27, 1999. This law contains 76 articles in five sections and it sets rules for the mechanism of practicing engineering, organizing two engineers' unions, the rights and duties of engineers, and the discipline of engineers.

The architecture profession is specifically related to another provision issued by the Lebanese legislator; the Building Provision No. 646 issued on December the 11th, 2004. The provision is demonstrated in 29 articles in three chapters, which organizes: how to obtain building permits, technical conditions for building, building contraventions.

In light of the aforementioned, we define the professional crimes set out in the above laws.

7.1 Building contraventions

Article 55 of the Lebanese Regulation of Engineering Profession Code clarifies the most important obligations of the engineer as follows:

“In their professional works, engineers must maintain accuracy, honesty, and observe the rules of art. In addition, in their works and behaviors, architects shall maintain the profession dignity and abide the honor principles, straightness and decency under any circumstances. Architects shall refrain from doing any works that might disgrace the profession.”

What might be architects’ most important legal obligation according to the article above mentioned is: maintaining accuracy, honesty, and observing the rules of art when practicing the profession. Hence, they are not to break these rules, or otherwise, they shall be punished.

Building contraventions are criminalized in Building Code in articles 22 to 24: Article (22) stipulates building contraventions that require removal (without mentioning their types) within the period of granting the license and granting the residence permit. In this case, the Engineer must withdraw their contract immediately after the occurrence of the contravention, inform the property owners or their legal representatives and the Engineers Syndicate and warn the owners to demolish the contravention in case of reluctance. If the engineer does not withdraw the contract or if they repeat it, it will result in disciplinary sanctions in accordance with the text in Article 61 of the Lebanese Regulation of Engineering Profession Code within the syndicates of Beirut or Tripoli:

- I. Warning as a minimum penalty of disciplinary punishment;
- II. Blame;
- III. Prohibition of all or part of engineering work practicing for no more than three years;
- IV. Deletion from the syndicate registry and the prevention of practicing the profession permanently.

Article 23 of the Building Code provides that:

"Any digging the foundations, construction, repairing or alteration carried out without a permission or authorization according to its license or is conducted in contrary to the license shall be stopped, and a control record of the contravention shall conduct against the owner and the person responsible for the implementation.

It is clear that any engineering construction work without a license or a permission is considered a contravention. To hold the architect responsible for this, they must be responsible for the implementation.

Article 24 of the Building Code stipulates that:

"The official who contravenes the provisions of this law and the texts adopted for its implementation shall be liable to a fine from 2,000,000 (two million Lebanese pounds) to 100,000,000 (one hundred million Lebanese pounds).

The violator who continues to work after being suspended shall be fined from 4,000,000 (LL 4 million) to 200,000,000 (two hundred million Lebanese pounds) and to imprisonment term from one week to 15 days or one of these two penalties, provided that this does not prevent the demolishing of the contravention when needed.

The first item of the above text includes any contravention of the Building Code or the texts adopted for its implementation such as constructing in contrary to the conditions of constructing in cities. The second item specified a severe punishment for any violator of the Building Code who has been suspended due to the contravention, yet they continue working with no respect to the suspension.

In conclusion, we, hereby, present some practical provisions regarding building contravention:

- ✓ The judge of urgent matters issued a verdict against Electricity of Lebanon establishment for violating properties belonging to Zouk Mikhael Municipality. This violation was starting the building work. The judge found that Electricity of Lebanon had started the construction work without a license. The EDL was ordered to stop the construction work on the properties related to Zouk Mikhael Municipality pending obtaining the license to build assets in accordance with the laws in force under the penalty of a compulsory fine of one million Lebanese pounds for each day proved the failure to implement duly (verdict No. 343 of 14/7/2015).
- ✓ The single criminal judge in the Northern Region who is in charge contraventions cases of the Building Code issued a verdict against a defendant for constructing two floors without a legal license in accordance with the accredited codes in force. The verdict was issued according to Article 24 of the Building Code, and the violator was fined two million Lebanese pounds (verdict No. 1414 of 25/11/2010.)

7.2 Practicing the Profession of Engineering without Legal Authorization

In its second article, the Lebanese Regulation of Engineering Profession Code limited the practice of architectural engineering in Lebanon to those registered in Beirut Syndicate or Tripoli Syndicate only. Therefore, no one can open a private engineering office and practice the engineering profession without officially registering in the syndicate. The Lebanese legislator stipulated in the third article of the same law the availability of a number of conditions in the Lebanese engineer for practicing the profession, and the most important of which are:

1. Holding an engineering certificate from a university or an engineering institute accredited in Lebanon; or an engineering degree from outside Lebanon that has been equalized;
2. Holding a baccalaureate degree or its equivalent;
3. Shall not be sentenced to a felony or one of the heinous misdemeanors that denies the right to vote;
4. Registered in the Engineering Syndicate;
5. Must be licensed to practice engineering from the Ministry of Public Works.

According to the above article, one of the most important conditions for practicing the profession of engineering is to take permission to practice the profession of engineering from the Ministry of Public Works. Article 5 of the same law provided how to obtain this permission in detail as follows:

The permission to practice the engineering profession is granted by the Minister of Public Works upon a request annexed with the engineering certificate and the affidavits of the matters laid down in Article 3 regarding the Lebanese Engineer, and upon the proposal of a committee called the Engineering Practice Committee. The job of this committee is to examine the applications and engineering certificates and express its viewpoint on their conformity with the law and their technical and scientific value.

Therefore, in view of what was mentioned above, we can infer the reason for the legal protection of the practitioner of engineering and the reason for the criminalization and punishment of anyone who practices the profession of engineering without permission;

Article 7 of the Lebanese Regulation of Engineering Profession Code stipulates the following: "Anyone who engages in the profession of engineering unlawfully or impersonates themselves as an engineer is subject to the penalties stipulated in article 393 of the Penal Code".

Article 393 of the Lebanese Penal Code stipulates the following: "A person who unlawfully practices a profession subject to a legal system shall be punished by imprisonment for a maximum of six months and a fine of fifty thousand to four hundred thousand Lebanese pounds".

In light of the two texts above, this crime is founded on:

- I. Carrying out engineering work such as drawing or supervising the implementation or supervision of management or engineering consultancy;
- II. Doing the above without obtaining the official permission of the Ministry of Public Works in accordance with the provisions of Article 5 of the Regulation of Engineering Profession Code;
- III. Impersonating an engineer, and this means using fraudulent methods that convince others that the person is a professional engineer, which is not true, to get the benefit he wants;

Accordingly, anyone who engages in the profession of architecture without obtaining permission from the Ministry of Public Works shall be liable to imprisonment for a maximum term of six months and a fine of fifty thousand to four hundred thousand Lebanese pounds.

Anyone who assumes the status of an architect by fraudulent methods shall be punished by imprisonment of a maximum term of six months and a fine of fifty thousand to four hundred thousand Lebanese pounds.

8. CONCLUSIONS

A professional engineer is liable for their professional actions at any time. The number of claims against engineers and architects has been increasing at an alarming rate. Specifically, an architect can be held liable if their drawings and specifications were faulty and defective in terms of design, materials or construction. They should be most careful in criminal cases, because of the high risk of conviction, as criminal liability cannot be excluded or limited by a clause in the contract. With the complexity of construction today, unexpected surprises are common to all jobs. Prevention is the best medicine when it comes to structural failure.

Learning from the mistake of others could help the engineering profession, particularly insurance is considered the key to survival in this field.

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