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# The Civil Liability For Bad Roads Conditions

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## Abstract

This study clarifies the responsible entity and the guarantor for damages caused by faults in the building or maintenance of roads by introducing the responsible entities for roads and outlining portions of their applications and regulations. Determine who is accountable for road damage, describe the types of damages that can be compensated for, and describe how Saudi Arabian courts process compensation claims. To achieve their objectives, the researchers employed an analytical-descriptive methodology centered on gathering data, describing it, and then analyzing it to produce study results. The study's primary finding is that road damage liability must be assessed. Since this is not specified in the rules, those injured do not know who should pay for their injuries. The investigation results also indicate that the regulations must be revised so that it is obvious who is accountable for the subsidiary when the contractor or the maintenance contractor violates the contract's terms and criteria. It is improper for these entities to avoid their obligations. Based on the findings of the inquiry, many recommendations have been made. The essential ones are that there should be separate rules and regulations on this issue, that the Saudi courts should be assisted, and that the affected parties' claims should not be subject to additional procedures.

**Keywords:** Road Damage, Saudi Justice, Responsible Authority, Road Construction, and Maintenance

## Introduction

Most cases brought before the courts involve harm resulting from road cracks and maintenance work. These cases are characterized by their dialectical nature due to the complexity of road responsibilities between four parties: the Ministry of Transport, which is legally responsible for the maintenance of roads. The general secretariat of the cities, which regulates road construction projects and assigns them to contractors, and the available traffic department, which would organize traffic, put the directional signs, and the implementation destination, is known as the contractor. This prolongs the litigation process and obtaining the appropriate compensation, given the diversity of competent authorities and perhaps overlap in powers.

It is evident in many instances - mainly if it was brought against a city's secretariat or the Department of Transportation - that it is going toward compelling the executing business to take compensation. The following query appears: Who will pay for the damage compensation if the executing company ceases to exist owing to bankruptcy or total closure?

This compensation is the victim's right. The state protects it through its systems, regulations, and judges. Consequently, it should have a precise mechanism that determines its course. It is simple for all parties and guarantees the victim's rights regardless of changes. It is vital and necessitates that it be activated effectively by most experts in legal affairs, insurance affairs, and other related fields.

Through this study, the researcher aims to provide a clear picture of the reality of the roads in terms of responsibility and relevant regulations. The study is to identify the gaps that impede the injured party's ability to obtain compensation and may consume a portion of the judiciary's time to resolve while also providing an overview of the relevant judicial applications in Saudi Arabia.

## Research Questions

The main question of the research is:

1. Who is the guarantor of the damages arising from the imbalance in the construction of roads or maintenance work?

It is followed by other questions, including:

1. What is the responsibility for road damage?
2. What is the damage due to compensation?
3. What are the judicial applications in the Kingdom of Saudi Arabia regarding compensation cases?

## **The Importance Of The Study**

Even if the topic is open-ended, there are components of it that require additional research, and this is the significance and rationale for the choice, which can be stated by one of the following:

1. The requirement to give an integrated picture of road interactions regarding responsibility and specialized roles
2. The need to determine the sort of legal liability resulting from road damage
3. Identify the essential pillars the Saudi judiciary utilizes in handling claims for road damage.

## **Research Objectives**

The research is undertaken considering the following objectives:

1. To present the authorities responsible for roads, along with an example of one of their applications or regulations.
2. To determine the type of liability for road damage damages.
3. To describe the harm to recompense
4. To state compensation-related judicial applications in the Kingdom of Saudi Arabia.

## **The Relevant Authorities Related To Accidents**

It is beneficial for the research to clarify its key concepts to show its objectives and establish its course and treatments, and the essential concepts in this case are:

The General Directorate of Traffic is a state institution with a service function administratively linked to public safety. One of its primary responsibilities is to prevent traffic accidents, investigate them after they occur, and participate in traffic awareness and peace programs (Mona, 2009).

The Ministry of Transport was established to oversee all public transport by air, sea, and land. It concerns the study, design, implementation, and maintenance of road works. It seeks to expand sources of financing for the establishment and maintenance of transport facilities by involving the private sector in this endeavor (Al-Qahf, 1995).

The Municipality refers to an official institution that is established in a city in the Kingdom of Saudi Arabia by royal decree and entrusted with the responsibility of organizing that city urbanely and economically, developing its facilities, upgrading its appearance, preserving environmental health in it, preserving the safety and comfort of the city's residents, as well as organizing and monitoring Roads (Al-Din, 1985).

The general contractor is a corporation whose legal entity is disciplined by state-established norms and prosecuted by the state. It is contracted to do a particular project based on certain specifications (Al-Din, 1985).

The Roads are paved ground channels for the movement of automobiles and wheeled vehicles, connecting the country's towns and villages (Al-Barakti, 2003).

In contrast to benefit (Attar, 1986), harm is defined by jurists as harm, understatement, or deficiency (Al-Zahra, 2016), and these are matters requiring a warranty.

## Discussion

### Civil Responsibility For The Damage To The Roads By The Saudi Regime

Paved roads are a civilized feature that all nations and human groups have always utilized due to their need to determine the destination, reduce the distance and time required to pass them, and use them in the desired manner (Al-Zarqa, 1988). The Saudi government has enacted a set of laws that will ensure the continuity of road readiness and all road-related institutions, including establishment, organization, and maintenance, as shown below:

### Traffic Measures

The traffic regulation comprised several organizational articles and rules about the road traffic system, and from those sources pertinent to the research topic:

Rule 50/1/2 mandates compliance with the traffic system and its implementing regulations on public roads (Al-Hanbali, 1998). Rule 50/1/8 requires the driver to control his vehicle and maintain a constant speed when approaching crossroads, road turns, bridges, railroads, or tunnels and whenever visibility is impaired. He must also adapt the vehicle's course to all natural and road conditions to ensure the safety of himself, his passengers, and the beneficiaries of the road (Ministry of Interior, Civil Defense Council, 2000).

These articles result in vehicle drivers holding a portion of the liability for road accidents, which must be considered while litigating and assessing the damages caused by accidents, as well as deciding compensation and claiming parties.

Rule 51/2 confirms this obligation by stating, "In all instances, neither the orders of the traffic men, the traffic rules, nor the guidance signs free them from their duty to exercise care and caution throughout their shift" (Ghayeb, 2009).

It is also noted in some other articles. The text on the placement of warning signs is straightforward (such as in the base 50/1/39). This article gives a general indication that any malfunction or damage to the road must be distinguished. With warning signs that avoid accidents as much as feasible, especially with drivers' awareness and adherence to the specified speeds. Despite this generalization, the party obligated to put these signs in the event of road structure damage such as subsidence or side erosion is not defined.

Nevertheless, as per rule 50/4/48/4, The entity is appointed to the person of the company licensed to perform excavation and road repair work. This company is obligated to 'Put the internationally agreed guidelines and warning signs before and around the excavation business area, in addition to placing the lit night lights before and around the work area according to the required standards (Al-Sanhoury, 1996). Article 50/1/48/5 is obligated to set the necessary barriers to protect pedestrians. Thus, the company responsible for the repair is also liable for any accidents or damages resulting from its work. A compensation claim may be filed in the event of non-compliance with traffic regulations.

Paradoxically, Article 50/1/48/6 (Traffic system issued by Royal Decree, 2007) of the Traffic Department's regulations allows it the authority to suspend the project's execution, yet it bears no responsibility for this delay. The paradox is that traffic is the one that decides to halt, and since behavior has consequences, the administrator must bear the repercussions of his behavior. Then, it is determined whether or not he has recourse against the suspended corporation in case of accident compensation. Does the Saudi judicial system take this into account? Or does he have access to additional independent controls when examining road accidents and their compensation? This can be acknowledged as a requirement for court applications.

By studying the rules of the traffic regulations, it becomes apparent to the researcher that they are progressing sequentially toward exempting traffic from duty and charging them to other parties. Rule 60/1 determines the percentage of mistakes in an accident based on carelessness, recklessness, or failure to respect regulations (Traffic system issued by Royal Decree, 2007); negligence and carelessness are stated in the rule with a general explanation that places the driver of the vehicle first, followed by the road executing business or the duty for the vehicle's upkeep (Traffic system issued by Royal Decree, 2007).

The conclusion is that traffic is exempt from liability, regardless of the sort of collision or its causes. It is stated in the driver and by the contractor for implementation or maintenance.

### **Measures Of The Ministry Of Interior (Civil Defense Council)**

When examining the list of safety conditions on the roads issued by the Ministry of the Interior (Civil Defense Council), it is evident that (the employer, the executing contractor, or the person in charge) bears civil responsibility for road damage. As per the regulation's first article, the sixth paragraph requires taking all precautions and safety measures required by the situation, and the employer and the executing contractor are responsible for solidarity for road damage.

In general, liability for damages is limited to the (executive authority) in the articles of these regulations, as stated in Article 3 and Article 20. As for civil defence, it plays a supervisory role but is in no way responsible for road damage (Ministry of Interior (Civil Defense Council). (2000).

### **Measures Of The Ministry Of Transport**

Whether roads are constructed through the Ministry of Transport's channels or by the general public, all roads are eventually attached to the Ministry of Transport and included in its maintenance programs. Therefore, it is essential to have safety aspects such as directional and leading boards, reflective paints and signs, water drainage systems, and other protections and obstacles. Existing roads are also monitored, their safety elements are kept up-to-date, and the Ministry participates in several road traffic safety committees with relevant authorities. (<https://www.mot.gov.sa/ar/Roads/Pages/SafetyOnRoad.aspx>). Generally, the Ministry has an integrated program for roads and their periodic maintenance to preserve their preparedness and repair the natural damage caused by accidents or bad contractor execution.

Referring to the issue of civil responsibility, we find that the Ministry is not responsible for the damages, as it implements all road projects and maintenance through (contracting with Saudi contractors (<https://www.mot.gov.sa/ar/Roads/Pages/SafetyOnRoad.aspx>), and he, in turn, is committed through the contract to all those works. Consequently, the responsibility for the damages will fall on this contractor, and of course, He will bear all compensation resulting from his failure to perform in implementing the project.

### **The Type Of Civil Responsibility For The Damage To The Road**

The correct contract and a contract violation must exist for civil liability to be proved. There are instances in which a follower is liable for the actions of a subordinate (responsibility for the acts of others), and in such cases, three conditions must be met ([https://www.aleqt.com/2018/11/14/article\\_1489261.html](https://www.aleqt.com/2018/11/14/article_1489261.html)) (Al-Qahf, 1995):

- First: the subordination link is established between the subordinate and the subordinate.
- Second: committing an error that brings others pain.
- Third: The occurrence of the work during or as a result of duty performance.

Another aspect is that civil tort liability arises from injury to the individual, necessitating the emergence of a special right to compensation. (Al-Qahf, 1995) This responsibility is absolute, in which case the person who caused the damage is liable for compensation regardless of any precautions he may have taken. It may be the result of negligence, and in this case, it must be proven that the defendant did not take all the measures and precautions required by the standard practice of his work; otherwise, he is exempt from liability. (Al-Qahf, 1995) Or, at least, this is the basis for the lawsuit.

In general, according to the preceding, the responsibility lies with the contractor, with the caveat that the contracting parties may be required by the Municipality or the Ministry of Transport or Traffic due to the subordinate relationship between these institutions and the contractor.

### **Damage In Terms Of The Basis Of Civil Liability**

Damage requiring compensation is either direct or by cause (Mona, A. 2009). Given the nature of accidents and harm resulting from road damage, it is determined by direct damage, which Ibn Rajab al-Hanbali defined from the jurists as: "To proceed with the destruction for a necessary reason, such as killing and combustion, or to set up an aggressive cause, in which case the damage occurs by digging a well outside of his possession in

aggression." (Al-Hanbali, A. R. A. R, 1998) And some jurists defined it as "an act that led to harm without mediating between that act and the result that occurred something else, or another act"((Al-Hanbali, A. R. A. R, 1998), and consequently, the direct is the one who did the act that caused harm to others, and this damage is represented by finding a pit, for example, deliberate, or neglect to repair a road descent or damage due to the time factor or poor implementation, or the contractor's failure to set safety instructions s.

One of the prerequisites of direct damage is the necessity of compensation as soon as it happens, regardless of whether it is direct or indirect. The direct indication is strong evidence of the relationship between the act and the resultant damage (Al-Sanhoury, A. R, 1996). But when will the guarantee materializes and the obligation is met?

Jurists define warranty as "repay like of the stale if it is actual currency, or its value if valued." (Al-Barakti, M. 2003). Al-Sanhoury(1996) noted that there are two types: "The guarantee of the contract, which is contractual responsibility, and the guarantee of the act, which is Omissive Responsibility." (Al-Sanhoury, A. R, 1996)

When comparing the number of accidents caused by road paving and maintenance, we discover that they differ. Contractual liability arises when the contract's provisions are violated. Any damage caused to the users of the paved road due to a contract breach is subject to compensation. These accidents are also subject to Omissive Responsibility when roadwork injures road users, and compensation is subsequently determined.

The question remains, which is deciding the amount of compensation, and it is evident from Al-Sanhoury's(1996) comments that the guarantee coming from the civil Omissive Responsibility is at the judge's discretion. He stated, "This is the fundamental concept about illegal employment that affects the body, which complements the fundamental principle about illegal work involving finances. It is the guarantee, particularly in cases of devastation and repression, and the combination of these two fundamental principles constitutes Omissive Responsibility in Islamic law. (Al-Sanhoury, A. R, 1996)

There is consensus between jurists and legitimists regarding the principle of compensation, as Al-Zarqa (1988) warned that the harmful act if its three conditions are met: the error, the harm, and the causal link between the error and the harm, necessitates the obligation of the perpetrator to compensate the injured in an amount equal to his injury (Al-Zarqa, M. A., 1988). He referenced Jordanian law.

## **Saudi Judiciary Applications Regarding Road Damage**

It is evident from the preceding that roads are susceptible to damage due to obsolescence or poor implementation. Also, emergency works occur in them, such as sanitary and electrical installations and others, all of which update immediate or future changes when implemented. In several cases, vehicles are involved in accidents that result in varying degrees of damage, prompting the owners of those vehicles to seek compensation through the legal system.

A claim for compensation for a traffic accident caused by a lack of safety entails the following:

This case was presented to the court, and the primary case No. 991/6/s/ in 1435 Hijri was taken, and the Court of Appeal affirmed the judgment in 1436 Hijri in case No. 2175/ s/. (A set of administrative provisions and principles).

The defendant was involved in a traffic accident on one of the courses due to the absence of any safety measures, guide boards, or illumination before the roundabout that indicated the presence of a commercial sector.

- Article No. 13/c of the system of the Board of Grievances issued by Royal Decree No. M78 and dated 9/19/1428 Hijri, stipulates the authority of administrative courts to assess compensation claims presented by people affected by administrative decisions and actions. Decision No. 44 of 1436 Hijri by the President of the Administrative Judiciary Council.
- Article No. 8, paragraph 6 of the Board of Grievances' system of pleading
- Comprehensive traffic report in support of the defendant
- Accepting OMISSIVE liability for compensation for the availability of its three elements: error, injury, and cause
- The authority of the workplace (The Municipality) to oversee the contractor's work during the contract's execution, fulfilling the subordinate's obligation for the work of his subordinates.

After hearing the evidence and defenses, the court determined that the defendant was entitled to monetary compensation and ordered the Municipality to pay it.

A claim for compensation for damage to a vehicle caused by its fall into a ditch:

This case was presented to the court. The primary case No. 9053/2/s/ for the year 1434 Hijri was taken, and the Court of Appeal affirmed the judgment in case No. 3217/2/s/ for the same year (A set of administrative provisions and principles).

The conclusion of the case: the defendant's vehicle was damaged after it fell into a ditch.

- Article No. 13/c of the system of the Board of Grievances issued by Royal Decree No. M78 and dated 9/19/1428 Hijri, stipulates the authority of administrative courts to assess compensation claims presented by people affected by administrative decisions and actions. Decision No. 44 of 1436 Hijri by the President of the Administrative Judiciary Council.
- Article No. 8, paragraph 6 of the method of pleadings before the Board of Grievances. And the Municipality's recognition of this.
- Establish the Municipality's liability, as it is the entity that authorized the company to perform repairs, notwithstanding its negligence and inaccuracy in monitoring the company's activity.
- The Noble Hadith states, "There should be neither injuring nor being harmed."
- Municipalities' system specifies in its fifth item on the maintenance of health, comfort, and public safety that they have the authority to take the required steps, including the licensing and monitoring of constructions and buildings as all public and private extensions.
- The estimate of damage compensation is due to the judge

After hearing the case and the parties arguments, the court ruled that the defendant should be rewarded for the difference between the worth of his car if it was undamaged and faulty at the time of the accident, in addition to the towing expenses.

To reach a fair judgment in the two cases, it is noted that the type of responsibility and the availability of its conditions concerning the state's systems and regulations, in parallel with the legal texts in the Holy Qur'an and the illustrious Prophetic Sunnah, and jurisprudence rules, are examined thoroughly, along with the content of both the lawsuit and the defenses.

Notable is that (Municipality), in two cases, attempted to dodge responsibility and place it on the executing company. Still, the judiciary denied this based on the pillars of the subordinate's accountability for the conduct of the subordinate.

## **Conclusion**

Following a scientific and realistic examination of damages resulting from a breach during the construction or maintenance of roads, the researcher can identify the most significant findings.

Responsibility for road damages requires additional clarification and specificity, as the regulations do not provide explicit text on the subject; consequently, the injured party remains uncertain as to whom he should sue.

The responsibility of the subordinate on behalf of the follower must be made more evident in the regulations and organizational rules, but this does not prevent him from referring to the executing company or the maintenance contractor if it is determined that one or both of them violated the contract's terms and requirements.

It is illogical for a party to make a decision and then deny responsibility, as the rules of the Traffic Regulations stipulate that the traffic has the right to halt maintenance work if the contractor breaches the contract terms without bearing any responsibility whatsoever. In this case, the suspension believes there are still traces of maintenance from excavations and other work, and it is evident that this is one of the causes of accidents. Consequently, such executive regulations must be reconsidered.

The Saudi judiciary bears additional burdens when addressing the cases of those affected by roads; therefore, it is in their best interest to create independent clauses relating to this issue and incorporate them into the regulations and their organizational rules to facilitate their work.

The researcher's most important recommendation is forming a joint committee of the Ministry of Transport, the Ministry of Municipal and Rural Affairs and Traffic, and the judiciary to propose a road regulation and streamline the litigation, pleading, and compensation processes. God bestows success.

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