

## Tort Liability Imposed on Restaurants and Its Impact on Human Health from An Islamic Jurisprudence Perspective

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### ABSTRACT

The research aimed to elucidate the Tort Liability imposed on restaurants and its impact on human health from an Islamic jurisprudence perspective. The study employed a descriptive methodology and relied on an analytical approach, yielding significant findings:

It is impermissible under Islamic law for anyone to cause harm to a human body, whether the harm is external through physical assault resulting in death or injury, or internal by serving food that is harmful to the body. Tort Liability is defined as the guarantee of damage arising from harmful actions. Scholars have discussed the damages related to food extensively, and any harm inflicted on others by an individual's actions or their cause is accountable. Common instances necessitating liability due to tort include: restaurants that slaughter animals and serve them to customers where the meat contains growth stimulants or hormones not intended for medical use, or restaurants using pork products, carrion, blood and its products, or employing impurities in feeding livestock intended for food production.

### Recommendations

1. Intensify the supervision of food and beverages supplied by restaurants and cafeterias.
2. Increase deterrence and penalties for restaurants that fail in their duties towards guests.

**Keywords:** Tort Liability - Restaurants - Impact - Human health.

### 1. INTRODUCTION

All praise is due to Allah, who guides whomever He wills to seek knowledge in religion and leads whomever He pleases to His straight path. I bear witness that there is no deity worthy of worship except Allah alone, without partner, and I bear witness that Muhammad is His servant, His messenger, His chosen one among His creation, and His beloved. May Allah be pleased with his companions, his wives, his family, and all those who righteously follow them until the Day of Judgment.

Legal developments are perpetual, and juridical jurisprudence excellently keeps pace with every new issue through the texts of Sharia, its generalities, its juristic principles, and foundational rules. Among these contemporary issues are the jurisprudential rulings related to restaurants and cafeterias and their compliance with health standards in the balance of Islamic jurisprudence. Restaurants, cafeterias, and cafes, especially recently, have been bustling with activity related to establishment, preparation, service, purchasing, payment, and health regulations—a set of rulings this research intends to monitor, God willing, alongside addressing numerous violations in light of Sharia texts and juristic discourse.

This research highlights a number of jurisprudential rulings associated with these matters.

**Research Problem:** The primary question to be addressed in this study is: What is the Tort Liability incumbent upon restaurants and its impact on human health as per Islamic jurisprudence?

**Research Objectives:** Based on the aforementioned inquiries, the objectives of the study are articulated as follows:

- To define Tort Liability.
- To elucidate the damages resulting from tort in some restaurants and their impact on human health.
- To illustrate real-world examples of damages arising from restaurants.

**Research Methodology:** The study relies on an inductive approach, where the issue under investigation is tracked through specialized writings that have discussed it extensively and analytically.

**Research Plan:** The study consists of an introduction, two topics, a conclusion, and an index:

Introduction: it addresses the research problem, its objectives, significance, methodology, and plan, including two topics, a conclusion, and a reference index.

Topic One: Defining the Tort Liability incumbent upon restaurants.

Topic Two: Compensation for Tort Liability arising from restaurants in Islamic jurisprudence and statutory law, with examples of restaurant foods that demonstrate the extent of tort.

**Then a Conclusion**

**And a Reference List:**

**Topic One: Definition of Tort Liability on Restaurants.**

The human body is protected by many rights from a legal perspective, making it impermissible by law for anyone to cause harm to it, whether the harm is physical through acts such as killing or injuring, or internal by serving food that is harmful to the body. It is noted that some restaurants may not adhere to their commitments to meet health standards that qualify them as "green businesses." Environmental activities now push the restaurant industry towards adopting environmental and health standards through regulations and environmental legislation. Additionally, international pressures play a significant role in tightening control and legislation in all areas of the food sector due to fears of tort and threats [1].

**What then is the liability resulting from restaurants' tort?**

Fundamentally, bodies must be preserved from any cause that might alter their natural state, which human beings are innately designed to maintain, and every avenue that might lead bodies away from their natural conditions should be blocked.

**Tort Liability:** Ensures compensation for damage arising from harmful acts. This liability is due to causing an item to cease being beneficial in the usual desired manner, constituting a reason for liability because it represents an assault, causing harm, and bringing misfortune to others [3].

**Jurisprudential Principles Governing Tort Liability**

**First Rule:** Any act that inflicts harm upon others holds the doer or cause accountable if avoidance was possible. If the doer did not neglect or fail in caution and foresight, he is considered to have guarded against harm. If he could not have avoided the act at all, then no responsibility is attributed to him.

**Second Rule:** If an act is unauthorized (not permitted) by law and is committed without compelling necessity, it constitutes an unnecessary violation. The doer is responsible for any outcomes, whether avoidable or unavoidable [4].

**Jurisprudence of Restaurant Tort and Its Relation to Human Health**

After examining the realities, it is observed that common nutrition products in restaurants are primarily in processed foods, especially stored foods.

**Regarding food:** Jurists have discussed the damages inflicted upon foods. Imams As-Suyuti and Ibn Rajab Al-Hanbali noted that causing destruction, such as adding poisons to food or placing fire near crops, typically leads to damage. Whether the initiator had control over the release of the damage or not, the common result is destruction [2].

We find from the discourse of the jurists that there is significant concern for the sustenance of people. Food and drink should be in the best condition. Non-compliance with set standards subjects these essentials to the category of destruction, necessitating compensation for the damage caused.

**Regarding industries:** Companies that produce food preservatives often commit to adhering to health regulations and other conditions to ensure a healthy food environment. However, it is often discovered later that these commitments are not met, leading to environmental and health damages.

**Topic Two: Compensation for Tort Liability Arising from Restaurants in Islamic Jurisprudence and Examples of**

## **Restaurant Foods Demonstrating Tort**

### **Firstly: Compensation for Tort Liability Arising from Restaurants in Islamic Jurisprudence:**

Al-Kasani states regarding damage and destruction, "Compensation should be equivalent if the destroyed item is replaceable, and compensation should be the value if there is no equivalent; because the compensation for destruction is an indemnification for aggression, and aggression is only legitimized by equivalence. Where possible, the exact equivalent must be used in both form and essence, and where not possible, the value, which is the equivalent in essence, must be used" [5].

**Compensation:** is achieved through the payment of an assessed monetary equivalent or a settlement agreed upon by those affected by the damage, to prevent disputes and conflict among people [6].

**Evidence for this** is found in the hadith narrated by Abu Hurairah: A man from the Children of Israel named Jurayj was praying when his mother called him. He wondered, "Should I answer her or continue praying?" When he did not respond, she prayed against him: "O God, do not let him die until he sees the faces of prostitutes." A woman then declared she would tempt Jurayj. She approached him, but he refused her. She then seduced a shepherd and bore a child, claiming it was from Jurayj. The people broke his hermitage, descended upon him and reviled him. After performing ablution and praying, Jurayj approached the child and asked, "Who is your father, O child?" The child replied, "The shepherd." The people said, "We will rebuild your hermitage in gold," but he requested, "Only in mud" [7].

The hadith illustrates that compensation for damage in the law of those before us was by restoring the original item. If restoring the original was impossible, then liability was settled by replacing like for like in cases of fungible items or paying the value in cases of non-fungible items [8].

### **Real-Life Examples of Restaurant Tort:**

#### **First Example:**

Restaurants that slaughter animals and serve their meat to customers, including meat that contains growth stimulants or lactation inducers, egg production enhancers, antibiotics, or hormones for non-medical reasons.

#### **Islamic Ruling:**

The injections given to animals vary, some of which are for normal nutrition called 'growth acceleration hormones,' which include vitamins and the like, and are not harmful to the animals or humans consuming their meat. These are permissible. However, if the injections contain substances that could harm humans consuming the meat, they are not permissible, as they involve hormones that can cause harm even in the long term and are considered a form of deception.

Prophet Muhammad (SAW) said, "There should be neither harming nor reciprocating harm" [7].

Islamic law emphasizes consulting experts in such matters; if they declare that there is no harm, then it is permissible.

Penalties in Saudi law: For the first offense, a fine of (SAR 5000); for the second, (SAR 10000); and for the third, (SAR 20000) per animal [9].

It may be appropriate in the coming periods to expand the use of technology to support this field (Ahmed, Alharbi, & Elfeky, 2022; Elbyaly & Elfeky, 2023a, 2023c, 2023e, 2023f, 2023g, 2023h, 2023i; A. Elfeky, 2017; A. I. M. Elfeky & Elbyaly, 2016, 2019, 2023a, 2023b, 2023c, 2023e, 2023f, 2023g; A. I. M. Elfeky, Najmi, & Elbyaly, 2023, 2024a, 2024b; Elfekyand, 2016; Masada, 2017; Masadeh & Elfeky, 2016).

#### **Second Example:**

Use of pork products, dead meat, blood and its derivatives, or impurities in the feed of livestock intended for food.

- The participants agreed on the fatwa and recommendation issued by the Islamic Organization for Medical Sciences at the seminar on prohibited and impure substances in food and medicine, held in Kuwait from 22-24 Dhul-Hijjah 1415 AH, corresponding to 22-24 May 1995, organized by the Islamic Organization for Medical Sciences in Kuwait, in participation with Al-Azhar Al-Sharif, the Islamic Fiqh Academy in Jeddah, and the Regional Office of the World Health Organization in Alexandria. The statement is as follows:

Foods that include pork fat in their composition, such as certain cheeses, some types of oils, fats, butter, some kinds of biscuits, chocolate, and ice cream, are forbidden and cannot be consumed under any circumstances, due to the scholarly consensus on the impurity of pork and the prohibition of consuming it, and the absence of any necessity to consume these products.

Penalties in Saudi Law: The fines range from SAR 10,000 to SAR 20,000, and up to SAR 40,000 [9].

## 2. CONCLUSION

The study has arrived at several key findings:

1. It is not permissible, legally, for anyone to cause harm to a human body, whether it be overt harm through physical assault or covert harm through the provision of harmful food.
2. Tort Liability: Assuring damages arising from harmful actions.
3. Jurists have diligently discussed the damages incurred on food.
4. Anyone causing harm to others is held accountable for their actions and the resulting consequences.
5. Common examples that require assurance due to tort include restaurants that slaughter animals and serve their meat containing growth enhancers.
6. Other common examples necessitating assurance for tort are the use of pork products, carcasses, blood and its derivatives, or impurities in feeding livestock that produces food for human consumption.

## 3. RECOMMENDATIONS

1. Intensify the oversight of food and beverages supplied by restaurants and cafeterias.
2. Increase the deterrence and penalties for restaurants that fail in their duties to their guests.

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