An Evaluation of The Theory of Abuse of Rights: Between Sharia and Civil Law a Comparative and Analytical Study

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Abstracts: Purpose: This research aims to show how Egyptian and Qatari legislators codify the “abuse of rights” theory and compare it with Islamic law. This is done to correct the defects and deficiencies in the Egyptian and Qatari legal texts. Although the Arab laws are considered among the first laws that adopted this theory, they did not establish private regulation for this theory in their legal rules. Instead, they copied French civil law, which created a conflict between Islamic jurisprudential rules and the legal texts. Methodology: This Article has been written using two methodologies to find answers to the fundamental questions raised by this Article. The first methodology analyzes the legal texts that regulate the theory of Abuse of Rights in Egyptian and Qatari laws. In contrast, the second one is based on comparing the legal texts with Islamic jurisprudential rules. Findings: In the end, we concluded that the theory of “abuse of rights” was stipulated in the Egyptian and Qatari Civil Codes, and judicial rulings established the application of this theory. However, Article (5) of the Egyptian Civil Code and Article (63) of the Qatari Civil Code do not involve this theory. On the other hand, the general texts in Mecelle have organized this theory better and more accurately. Originality: The originality of this Article lies in the fact that it analyzed the position of the Egyptian and Qatari legal texts and commented on the judicial provisions issued by the Egyptian and Qatari courts of Cassation and the Arab courts, and the opinions of civil law jurists related to “abuse of the right.” Moreover, it criticized these texts and highlighted aspects of their deficiencies in comparison with the jurisprudential rules extracted from Islamic law.

Keywords: Abuse of Rights, Civil Liability, Unlawful Acts, Civil Law, Good Faith, Gross Damage, Responsibility for Personal Acts, Fault, Qatari Civil Code.

1. INTRODUCTION

The idea of rights is inherent to human beings, as it is part of their identity. One of the effects of this is that the rules of the theory of rights are always placed under the microscope, and the question arises: Are rights absolute or restricted? That is why the theory of rights has always been associated with the theory of abuse of rights, so is it a restriction that responds to it because the right is the complete authority of the will and a legitimate interest restricted only by law? Therefore, the theory of abuse of rights is a restriction and an exception to a general rule and should not be expanded. Alternatively, is abuse of rights only an integral part of the right itself, as it is nothing but a coin with two sides? The first side represents the right of the individual and his legitimate authority, and the other side is nothing but the rights of society that must not be infringed upon through abuse of rights and the deviation from its social function, which is determined by the principles of society [1].

Thus, rights were legislated to achieve lofty goals that serve individuals in particular and society as a whole [2].

To answer the previous question, through the historical development of this theory, we find that it was not applied during the adoption of the individualistic doctrine, which granted individuals absolute sovereignty, even if their interests conflicted with the interests of society. The law was legislated to serve individuals only and achieve their interests characterized by sanctity [3]. Then, at a later stage, the Romans turned to linking the rights of individuals to the public interest so that the rights of individuals should not conflict with the interests of others. This approach represented the beginning of a shift from the individualist doctrine to the social doctrine. However, the outbreak of the French Revolution led to giving priority to the interests of individuals again and demanding more individual rights, even if it conflicted with the interests of society.

Another doctrine was adopted, known as the social doctrine, which is based on the idea of protecting the interests of society and giving it priority over the interests of individuals. They see that the right has an absolute social nature.

Due to the exaggeration in defining the concept of rights between the individual and social doctrines, the theory of abuse of the right has been adopted, establishing a balance between the two doctrines in a way that preserves the rights of individuals and society and gives priority to the interests of society if it conflicts with the rights of individuals.

Several modern legislations adopted this theory (abuse of rights), including those of the French, Arabs, Egyptians, and Qataris [4].

Jurisprudents have worked hard to study this theory, but the most important of those who have studied this theory are Islamic jurists. This is because the Islamic religion is based on the idea of respecting the rights of others and not harming them. Hence, the theory of abuse of rights has a solid origin in Islamic law and has had many practical applications since the time of Prophet Muhammad, peace be upon him [5]. Therefore, this research paper studies the theory of abuse of rights by analyzing Article No. 5 of the Egyptian Civil Code and Article (63) of the Qatari Civil Code and comparing them with the legal rules found in the Mecelle [6]. Finally, it analyzes and criticizes the jurisprudents' opinions to reach the desired purpose of this research.

1.1. The Concept of Abuse Of Rights

The Egyptian and Qatari legislators did not define “abuse of rights.” Moreover, there is no word “abuse” in these civil laws. The reason for this is the influence of the Egyptian civil law on Arab civil laws. It seems that the main reason why the Egyptian legislator does not use the term “abuse” is to avoid the ambiguity surrounding this term in its Arabic form [7]. From his point of view, the term “abuse” is broad and indefinite.

Based on that, the Qatari legislator avoided using that term and preferred the phrase “The exercise of unlawful rights.” On the other hand, Sharia jurists utilized the term harmfulness in rights and for non-reprehensible use [8].

This does not mean the Egyptian and Qatari legislators did not adopt the “abuse of the right” theory. Instead, they used it under another term.

In addition, the Mecelle took the same path, as it did not address this theory under its legal name, which is known in our time. For example, if we look at Article 1197 of Mecelle, which states, “No person may be prevented from dealing with their property which they own in absolute ownership. Nevertheless, suppose such a person, by doing so, causes great injury to any other person. In that case, they may be prohibited from that place, as outlined in Section II.” It is clear that Mecelle means the theory of “abuse of rights” by this Article, even if the traditional terms are not used.

However, Muslim jurists used “harmfulness of rights” as a contrast to the “abuse of rights” [9][1].

This theory is not defined in either the Civil Code or Mecelle, which is not a defect since setting definitions is the responsibility of jurists and judges.

[1] it was mentioned that the term “harmfulness of rights” had been used in the case of “Samra bin Jundub” when he and his family were passing through the Ansari's orchard to reach his palm tree, and the Ansari was harmed by that, so the Prophet, may God bless him and grant him peace, ordered the cutting of Samra's palm tree as an outweigh for the interest of the Ansari in exchange for the insignificance of Samra's interest and said to him, “You are harmed”, see: al-Jawziyya IQ. Al-Ṭuruq al-Ḥikmīyah fī al-siyāsah al-shar‘īyah. 1st ed. Beirut: Maktabat al-Mu’ayyad; 1989.

1.1. Definition Of Abuse of Right

There are many jurisprudential definitions of this theory, the most important of which was set by the jurist El-Sanhuri, where he defined abuse of rights as the deviation of the right holder from usual and customary behavior, which entails his responsibility for his action [10]. Another jurist [8] defined this theory as “any conduct, which is basically licit, but contradicts the purpose for which the rights were legislated” [11].

On the other hand, the Qatari Court of Cassation has defined the theory of abuse of rights in several court rulings. For example, the Court of Cassation defined abuse of the right to litigation as deviating from the person's usual behavior, by using the right to litigation other than what was prescribed for it, with the desire to cause harm to others [12]. Some also defined it as “the unlawful use of a person's right” [13, 14].

The aforementioned definitions are very similar to one issued by the Japanese Supreme Court in Mitamura v. Suzuki, which defined abuse of the right as “When a conduct by one who purports to have a right to do so fails to show social reasonableness and when the consequential damages to others exceed the limit which is generally supposed to be borne in social life” [15]. If we compare the previous definitions and try to compose a comprehensive definition of the abuse of rights, we can say that it is the transformation of a lawful act into an unlawful one. This can be attributed to the harmful consequences it causes unto others, which often outweigh the benefits gained by the abuser or the unlawful result that the abuser wants to use his right to achieve [16].

1. Points extracted from the definitions mentioned above

- The nature of the act is legitimate, but it becomes unlawful because of its consequences.

This sentence raises an essential difference between responsibility arising from the “abuse of rights” theory and civil liability arising from the fault. Although both responsibilities share the final result, the need for compensation [17] differs significantly in the elements upon which they are based. In the case of civil liability, the person commits an act that violates the law, and therefore, his act is initially outside the scope of legality. In the case of abuse of rights, we find that the Egyptian and Qatari Civil Code[2] and the Mecelle[3] affirm that the abuser practices a legitimate act.

This point raises legal and logical questions, and it depends on the validity of claiming that an act changes from a lawful act to an unlawful one. Actions are either legitimate or illegitimate regardless of their outcome and implications from our point of view. The correct thing is to clarify that the act is legitimate and remains legitimate. However, this act is prevented because of its unlawful consequences, and the person is held accountable for it.

Therefore, the abuse of rights cannot occur from a person with the right to act himself, and it cannot be said otherwise [18]. In confirmation of this, using a legitimate right differs from “exceeding the limits of the right itself,” in which the individual does not use a right granted to him by law [19]. But, he exceeded the limits of his right to attack the rights of others [20].

This is confirmed by Dr. Muhammad Fathi Al-Darini's definition of the concept of abuse as “contradicting the legislator in legally authorized behaviour, and intent” [21].

By doing so, we will have differentiated between the person doing the unlawful act in the first place and the person whose act did not break the law. The reason for this is that the first person committed a wrong act. Here, we are talking about civil liability in its customary form, which is based on fault - and therefore, his good or bad intentions should not be considered. Article 163 of the Egyptian Civil Code and Article (199)[4] of the Qatari Civil Code related to the rule (civil liability) do not require the existence of an intention to harm others. This is consistent with

[2] In article (62), and article (63).
[3] Article (1197) of the Mecelle.
[4] In the Qatari Civil Law, Article (199) states that “Any person who commits an act that causes damage to another party shall be liable to indemnify such damage”.

what the Qatari Court of Cassation ruled, as it ruled in one of the cases, “The legislator in the scope of civil liability does not distinguish between intentional and unintentional fault” [22].

On the other hand, the other person did not do a wrong legal act, as he exercised his right within the scope of the law. Therefore, his intention must be considered [23] In his case, it may allow certain causation of harm [17], and we will notice this later when analyzing the Egyptian and Qatari legal texts for this theory.

1.1.1. The “Abuse of Right” Theory

This theory is an exception to the general rule of “individual freedom of action or on the intangibility of individuals' rights” [17]. This is true because the general rule is that all acts by a person within the scope of his rights are considered permissible. Article 4 of the Egyptian Civil Code and Article 62 of the Qatari Civil Code states, “Any person who lawfully exercises his rights shall not be liable for any harm arising therefrom.” This provision is similar to Article 91 of Mecelle, which states, “An act allowed by law cannot be made the subject of a compensation claim.” The general rule in both Mecelle, Egyptian and Qatari civil law is the intangibility of individuals' rights.

In interpreting the aforementioned legal rule, the Qatari Court of Cassation ruled the following: “It is established that the principle is that whoever lawfully uses his right is not responsible for the damage that results from it, given that the basis for liability for compensation for damage is the occurrence of a fault, and that there is no fault in the right holder's use of his right to bring the legitimate benefit that this right allows him to have, taking into consideration that the act's departure from the scope of lawful acts is an exception to the general rule” [23].

1.2. Civil Liability and The Theory of Abuse of Rights

It is often difficult to reach a unified legal basis because legal scholars always differ in their opinions. If one were to look at the difference of opinions from afar, it would be evident that these differences are beneficial in building renewable legal opinions that can keep pace with legal issues.

So, opinions related to the theory of “abuse of rights” are not far from all this where the theory began in its contemporary from the corridors of the French courts [17]. where many French jurists adopted it, then it was adopted by many laws, such as the Arab laws, and based on the point of view of the French jurists.

In addition, the theory of abuse of rights was linked to civil liability, based on the idea of fault [24] in many legal systems.

Many opinions believe linking the “abuse of rights” theory to civil liability is unwise. They prefer to link this theory with other legal terms, such as the principle of “good faith” [25] or the “Estoppel” [26] rule. We find out that the Egyptian and Qatari legislators have explicitly adopted the old jurisprudential opinion, which is based on the idea of considering abuse of the right as a form of civil liability [11], and many points prove this, such as:

1. Both legislators did not use the term “abuse of right” but organized this theory under “liability for Unlawful Acts.” As Article (5) of the Egyptian civil code and Article (63) of the Qatari civil code are insufficient to apply this theory, returning to the general rules related to civil liability for unlawful acts is necessary.
2. Most Arab jurisprudents link the theory of “abuse of rights” to responsibility for Unlawful acts, such as El-Sanhuri, who considered this theory an application of responsibility for Personal Acts [10].
3. Judicial precedents confirm the previous, as Arab courts use the term “liability for Unlawful acts” as a synonym for the theory of “abuse of rights,” as the Egyptian Court of Cassation stated in one of its rulings: “The legal basis for the theory of abuse of rights is responsibility for the Unlawful acts” [27].

We also find that the Qatari Court of Cassation, in one of its rulings related to the abuse of rights theory, rejected the plaintiff's requests due to the lack of civil liability elements [28].

From our point of view, the theory of “abuse of rights” differs from the aforementioned legal basis, and it does not need a legal basis. This is because all the options available currently cannot cover this theory. For example, one

aspect of jurisprudence sees the basis of this theory as the principle of “good faith” [26]. However, by analyzing many judicial precedents, we find that the principle of “good faith” was reached by implementing the theory of “abuse of rights” [26]. Therefore, the “abuse of rights” theory is broader and can even be considered as the basis of the principle of “good faith” at times. On the other hand, we can find out that considering liability for unlawful acts as the basis of the theory of “abuse of rights” is completely incorrect for the following reasons:

1. Responsibility for unlawful acts is a general rule in civil law, while the “abuse of rights” theory is an exception.
2. Responsibility for unlawful acts is based on the fault element, while the fault element is not required in the theory of “abuse of rights”. According to Article 163 of Egyptian Civil Law and Article (199) of Qatari Civil Law, civil liability for unlawful acts is based on the fault element and the damage that results from this fault to others. Therefore, there is no civil liability if there is no fault. If we apply the aforementioned to the “abuse of rights theory,” we will find that it often arises without stipulating the fault.

In order to avoid this point, we find that jurisprudence and courts have adopted a strange theory to try to link the theory of “abuse of rights” to civil liability by adopting the idea of civil liability without the existence of fault [29].

Some jurists believe that the theory of “abuse of the right” has a preventive nature, as it prevents the use of the right in a way that is expected to cause harm in the future. It is similar to the principle of “Sadd al-dhari'ah”, and this differs from the rules of tort liability which have a remedial nature because its provisions are applied after the occurrence of the damage [8, 30].

From our point of view, the attempt to link the theory of “abuse of rights” with the rules of civil liability is useless, as the attempt to invent new theories is not considered in this case as thinking outside the box because in this case not the theory of “abuse of rights” won't be accommodated. This problem will emerge as time progresses and the need to resort to the judiciary in cases related to “abuse of rights” increases.

Therefore, it would be helpful to accept the difference between the theory of “abuse of rights” and the generally accepted rules of civil liability and to base liability in this case on the damage element [23] as it is the essential element in the theory of “abuse of rights”.

Furthermore, when we analyze the Mecelle texts, such as Article (20), which states, “Injury is removed,” we can conclude that they are compatible with Islamic jurisprudence, which assesses responsibility based on damage, not fault [31].

1.3. Abuse Of Rights Instances

As we said previously, the most crucial difference between civil liability and the theory of “abuse of rights” is that the theory of “abuse of rights” is an exception to the general rule, and this exception is limited to four instances. Article (5) of the Egyptian Civil Code and Article (63) of the Qatari Civil Code clarify the four instances, as it states, “The exercise of a right shall be unlawful in any of the following circumstances”:

1. If the desired interest in such use is unlawful.
2. If such use is intended solely to cause damage to others.
3. If the interests desired are disproportionate to the harm that others will suffer.
4. If such use may cause unusually gross damage to third parties.

These instances may appear at first glance to be similar, especially if we consider that they are all based on the intention to harm others [29] However, these instances differ among themselves in the conditions on which they are based so that each case will be dealt with separately.

1.3.1. If The Desired Interest by Such Use Is Unlawful

This is the first instance of abuse of rights. It is distinguished from other cases by being related to the result, not the action. In this case, the person practices a legitimate action, but intends to cause an illegal result [2]. For example, the conclusion of a sale contract to realize interests [18].

The idea of this criterion is similar to the idea of achieving the social objective of the law, as it highlights the "legislator's acceptance of the theory that law should be considered in its social and functional aspects" [17]. In addition, the theory of abuse of the right will be more flexible in application to all instances of abuse, whether related to will or not, depending on the criterion of interest [32].

In Islamic jurisprudence, a person is considered an abuser of his right if he uses it for a purpose other than what was prescribed for it because the rights were legislated to achieve the beneficial interests and goals of society and were not legislated to achieve an illegitimate aim contradicting the intention of Islamic Sharia. Therefore, this purpose is considered invalid and represents a circumvention of the provisions of Islamic Sharia. So, whoever wants to marry for legalization or who decides to give his money to others to refrain from paying zakat, his intention is considered invalid and illegitimate even though he uses his right to dispose of his money. The reason is that Islamic Sharia considers the intentions and purposes of actions [19].

1.3.2. If Such Use Is Intended Solely to Cause Damage to Others

This criterion is based on an absolute intention to harm others [3]. Intent is the basis of this criterion and should not be assumed. This situation is achieved when the person's goal is only to harm others. For this to happen, two conditions must be met:

1. That the person intends to harm others.
2. That the person's intention is limited to harming others without having the desire to obtain any benefit.

The abuse of rights in this instance can be deduced in two cases. The first one, the most famous case, is when a person exercises his rights intending to harm others [11].

Thus, the intention to harm is the motive for the abuser, and this case is evident when he does not intend to use the right to achieve a legitimate interest. This is considered evidence of intent to harm others only [33].

In confirmation of the foregoing, the Qatari Court of Cassation ruled: "The use of the right is not lawful unless it is intended only to harm others, which is only achieved by the absence of any benefit from the use of the right"[34]. It is understood from the foregoing that the absence of benefit is evidence of an intention to harm others [35]. One of the most famous applications of abuse in using rights to harm others is exercising the right to litigation without the plaintiff having any interest [36].

From our point of view, we see that using the right is considered illegal, even if the will and intention of its abusers were not directed at causing harm to others. The occurrence of damage is the only factor that needs to be considered, and not the intention of its abusers to harm others [33].

The second case is when a person uses his rights to harm others. However, this act may result in a benefit he did not intend to obtain. This case remains an abuse of rights, and the reason for that is that the benefit accruing to the person was not taken into account when he did the act.

An example is when a person plants trees in his house to block the light from his neighbors' house. If the trees bear fruit and the owner of the house benefits from them, he is still arbitrary in using his rights because he exercised his right from the beginning to harm his neighbour [10].

This case can be linked with Article (20) of the Mecelle. In explaining the intention to harm, Judge Ali Haidar says, "It is not permissible to harm others because harm is nothing but injustice, and injustice is forbidden in all religions and all heavenly books." He gave an example of this when the people of a village prevented a person from living in the village only to harm him [37]. For example, when a terminally ill patient divorces his wife to deprive her of inheritance [18].

1.3.3. If The Interests Desired Are Disproportionate to The Harm That Will Be Suffered by Others

This criterion is based on weighting the harm when it outweighs the benefit. It differs from previous cases in that it does not aim to achieve an illegitimate goal. Secondly, there is no pure intent to harm as the person is exercising a legitimate right to obtain a legitimate benefit. Thus, this instance is based on preferring to minimize harm, where we have two conflicting interests, and the least harmful one must be chosen.

This criterion is based on whether or not the person intended to harm others, as the Qatari Court of Cassation clarified in one of its rulings: “What is clear from the analysis of cases of abuse of rights is that these instances share a common criterion, which is the intention to harm others, whether in a positive way by deliberately seeking to harm others without bringing any benefit, or negatively by intentionally underestimating the severe harm that befalls on others, which makes it intentional harm” [23].

This case can be compared with Article (30) of the Mecelle, where the Article states, “Repelling an evil is preferable to securing a benefit.” This rule is based on prioritizing avoiding harm over obtaining benefit. Judge Ali Haidar, explaining this rule, says that “when the benefit conflicts with the harm, and the harm is greater than the benefit, it is obligatory to remove the harm and give it precedence over the benefit” [37]. This is because the “Maqasid” of Sharia takes care of the forbidden things more than others. Therefore, the Mecelle in Article (1197)[5] restricts the right to ownership to ensure that no harm is caused to others.

The rule found in the Mecelle differs from the instance mentioned in the Egyptian and Qatari Civil Code. As stipulated in this instance, there should be no proportionality between benefit and harm. In one of its rulings, the Egyptian Court of Cassation made clear that this abuse of rights is based on the idea that there is no proportionality between harm and benefit, as the damage is much greater than the benefit [38].

On the other hand, Mecelle set a more straightforward, logical, and fairer criterion. If the harm from an action is greater or equal to the benefit [37], it is forbidden to do that action. Therefore, the Mecelle does not stipulate a large discrepancy between damage and benefit. Therefore, the excess of harm over interest, even if it is not significant, is considered an abuse of rights because the benefits that can be obtained may not be given priority over avoiding the risks of evil and averting their consequences [39].

The Mecelle provided a better solution in this case. The reason for this is that Egyptian and Qatari civil laws, in this case, permit the infliction of great harm on others as long as there is a great benefit. Therefore, both civil laws tend towards benefit, while the Mecelle tends towards avoiding damages as much as possible. This is a better solution because it follows Sharia and achieves societal justice. Because we do not live alone in this world, and we must consider others and not harm them, even if that results in giving up some interests we desire.

1.3.4. If Such Use May Cause Unusually Gross Damage to Third Parties

This instance is the most challenging case to discuss. We are facing a broad, ambiguous instance, and the Egyptian and Qatari legislators did not clarify its intended purpose, or the meaning of the phrases used. Especially if we consider that Egyptian jurisprudence does not consider this case an abuse of rights but an unusual neighborhood hazard [10]. That is why the Egyptian legislator organized this rule within the restrictive covenants on ownership.

Therefore, regardless of the jurisprudential difference related to this case, the Qatari legislator explicitly stipulates that it is considered an abuse of rights. There are two essential points on which this case is based, and they are as follows:

[5] Article (1197) “No person may be prevented from dealing with his property which he owns in absolute ownership. Nevertheless, if such person by so doing causes great injury to any other person, he may be prohibited therefrom, as will be set forth in Section II”.

1. This criterion is not based on the element of fault, as the person bears responsibility based on damage and not based on fault. In this case, this theory is similar to Egyptian and Qatari civil law and Mecelle. As we said previously, liability under Sharia is based on damage [40].
2. This criterion is not achieved once the damage has occurred, as the legislator stipulated the occurrence of "unusually gross damage."

The meaning of the phrase (unusually gross damage) needed to be clarified, and no article in Qatari civil law clarifies this sentence. Therefore, we return to the sources of civil law in Article (1), which states in its second paragraph, "Where there is no statutory provision, the Judge shall rule according to the relevant provision of the Islamic Shariah."

We find no clear definition of unusually gross damage when looking at Islamic Shariah. Instead, we find a jurisprudential opinion that customary practice should be adopted to define this phrase, as it determines whether the harm is gross or unusual [41].

So, if the doctor performs surgery and informs the patient of its risks, then the patient dies; this doctor is not an abuser or guilty due to this harm because he follows medical principles while performing the surgery, but if he was negligent in performing this surgery, he must be punished for this mistake [18].

CONCLUSION

To conclude all of the above, both Egyptian and Qatari legislators stipulated the theory of "abuse of rights" in Articles (5) and (63) of the Egyptian and Qatari Civil Codes and considered it an application of illegal action. However, the theory of abuse of rights differs in its characteristics and nature from the rest of the rules and legal theories. This theory is not limited to one field but is a general theory that can be applied to all rights. Although this theory is general and applicable to all rights, it is restricted to four cases identified by the Egyptian and Qatari legislators, and all of these cases are based on the idea of "intention to harm others." For this reason, this theory may intersect with the theory of good faith and other legal theories.

Reviewing the above, the Egyptian and Qatari legislators have converged with the Mecelle on some points. However, the dominant feature is the difference in the mechanism of the Egyptian and Qatari legislators in organizing the theory of abuse of rights from the Mecelle. The Mecelle took care of this theory, although it did not adopt it under its usual name today. The Mecelle developed several general rules that fit within the scope of the theory of abuse of rights. For example, the rule "Injury is removed" or the rule "Repelling an evil is preferable to securing a benefit" are all more comprehensive than the text of Articles (5) and (63) of the Egyptian and Qatari Civil Codes.

The Mecelle avoids the shortcomings of the Egyptian and Qatari legal texts, which limit cases of abuse of rights to only four cases, through its approval of many comprehensive texts. Thus, the Mecelle texts can keep pace with the developments of legal life better than Egyptian and Qatari civil laws. For example, according to the four cases of abuse, there is nothing to prevent a person from using his rights in a way that contradicts the public interest, as the four cases are not related to this case.

By studying this theory according to the perspective of Egyptian, Qatari legislators and Sharia, we reached the following results:

1. The Egyptian and Qatari legislators organized the theory of "abuse of rights" under the name of the unlawful use of the right and devoted Articles (5) and (63) to it in both civil laws. On the other hand, Mecelle did not allocate a specific text to the theory of arbitrariness but mentioned general rules that prevent harm to others and scattered examples.
2. According to Egyptian and Qatari legislators, the "abuse of rights" theory is an exception to a general rule, so it is limited to four specific cases exclusively. Therefore, the judge may not extract new cases or apply the rule to cases not provided for. The Mecelle expanded on cases of abuse of rights by setting general rules that include many new forms of abuse.

3. The fault element in its traditional form is not required in the theory of abuse of rights.
4. The common denominator among all cases of abuse of rights is the intention to harm others, whether represented by seeking to harm others or by underestimating the rights of others and underestimating the compensation that occurs to them.

Based on these results, we have made the following recommendations:

1. Reformulation of Articles (5) & (63) of the Egyptian and Qatari civil codes through the use of terminology that expands the scope of this theory.
2. Studying the legal rules included in “AL-MAJALLA AL AHKAM AL ADALIYYAH” as it contains many general rules that can be used as guidance.
3. Removing the aforementioned cases of “abuse of rights” and adopting the “abuse of rights” theory in its broad sense so that it responds to all damages resulting from the abuse of rights and does not limit it to only four cases.

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