



## A Comparative Study of Ten-Year Liability of Fixed Structures in French, Egyptian, Iranian, and Afghan Laws

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### **Abstract**

The construction of non-standard fixed structures and their deterioration after construction, which causes human and financial losses, is a challenging issue. Preventing the construction of non-standard structures and their adverse consequences requires the serious attention of builders, managers, judges, and lawyers. The ten-year responsibility of fixed structure builders, in this paper, has been studied with a comparative view and with the aim of determining an appropriate and comprehensive solution. It shows that the laws of the studied countries, except Iran, hold the constructors of a fixed structure liable for any general, partial, failure, subsidence and defect that threatens the health and strength of the structure after performing and submitting it for up to ten years, whether damaged or the defect is caused by the ground of the construction site or the defective construction is done with the consent of the employer.

**Keywords:** *Ten-Year Liability; Contractor; Engineer and Contractor; Fixed Structure; Builders; Compensation*

### **Introduction**

The construction of standard buildings requires scientific skills, technical skills, and technology. It, also requires the care and effort of builders, serious supervision of city managers, the existence of appropriate law, legal awareness of the responsibility of builders of fixed structures, and dealing with offending builders. In addition, it provides security and peace of mind for the people, is economically viable and prevents casualties and financial losses. presence of non-specialists and profiteers in fixed construction, non-use of new technologies in its reinforcement, use of poor quality materials and materials, unplanned constructions, lack of serious government supervision and their inefficiency, lack of sufficient knowledge of lawyers, judges, and the lawyers defending the responsibility of the constructors of the fixed structure and the lack of proper treatment of the violators in the Afghan judiciary, the lack of a proper law in Iran all reduced the strength of the structure, sometimes caused its destruction and resulted in loss of life and property. For example, a building in Baghlan, Afghanistan, which was built for eleven million dollars, was demolished six months after its construction and delivery to the employer. (10/6/2017

WWW.BBC) In industrialized countries, it is 100 to 300 years. (Dehghani, Rana; Gorgin Karaji, Arash, 2016).

The main question is if a building is completely or partially destroyed after construction and delivery to the employer, who is responsible? How long is the responsibility? What are the conditions for fulfilling the responsibility? What damages are covered? The legislators of the countries have tried to solve this problem and have provided solutions per their legal system. Some countries have dealt with this problem according to the general rules of civil liability. (Darabpour, 2006, p. 194). A group has set a ten-year objective responsibility for the builders of fixed structures. In the studied countries, there are three types of liability for builders of fixed structures: contractual, non-contractual, and ten-year liability. Contractual and non-contractual liability are analyzed according to general rules. Many books and articles on this subject have been published and are outside the scope of this research. What is important is that it did not work and that the reason for writing this agreement is the "ten-year responsibility of the manufacturers of fixed structures". In this study, the laws of Iran, Afghanistan, Egypt, and France are comparatively reviewed and the results are presented at the end. To examine this issue, it is necessary to explain some terms such as contract, engineer, and fixed conceptual structure, and then explain the substance of the issue.

### 1. The Concept of Contracting

Contracting in Afghan and Arab countries is called a "contract" and in France "contrat de louage d'ouvrage" (paragraph 1 of Article 1792 of the Civil Code). This contract has the nature of rent in the law of Iran (Khorsandian, 1383, p. 132) and France. (Article 1779 of the French Civil Code). There is disagreement about the definition of contracting. Some have defined contracting as the commitment of one person to work independently for another person in return for a fixed fee (Khorsandian, 2004, p. 132). It seems that contracting is not an obligation, but a contract that creates an obligation. Others see a contractor as a contract under which the employer outsources the purchase of goods or the performance of a particular transaction for a specified price under certain conditions and a specified period to another person as a contractor (Karimi Tazeh Kand et al., 2017, p. 619). Article 1481 of the Civil Code of Afghanistan states in this regard: "A contract is a contract under which one of the parties commits to build or perform an action temporarily or non-temporarily for the other party in return for payment." The same definition is provided by Article 646 of the Egyptian Civil Code. The last two definitions are general, including employment contract; Because the worker also does the work for pay. The main difference between a work contract and a contract is the absence of a worker's independence. The worker works under the guidance of the employer, but the contractor is independent in doing his job; Thus, contracting is a contract under which one of the parties performs a certain action in return for remuneration without the guidance of the other party. In this contract, the party who does the work for the other is called the contractor, and the other party is called the employer. According to this definition, a contract has the following characteristics:

**One:** Definiteness, contracting in the law of Afghanistan and Egypt are specific contracts; Its title, conditions, and effects are mentioned in the law. But in Iranian law (Khorsandian, 1383, p. 132) and France is an example of a lease of individuals (Paragraph 3 of Article 1779 of the French Civil Code).

**Two:** Satisfaction, Contracting is a satisfactory contract. It does not require formalities to conclude, although documents of proof are required in some countries. (Article 1341 of the French Civil Code, Article 1025 of the Afghan Civil Code, and Article 60 of the Egyptian Proof Law).

**Three:** Exchange, contracting is an exchangeable contract; That is, each party to the contract receives something in return for what it pays. The contractor is paid for the work performed and delivered to the employer.

**Four:** In a contract, two things must be agreed upon. One is the act or object that is required to be performed or constructed and is the subject of the contractor's obligation. Another is the contractor's remuneration, which is the subject of the employer's commitment. The purpose of action in this research is to build a fixed structure.

## 2. Fixed Structure

The term "fixed structure" does not appear in the law, but the sum of the words used in this concept is used. Articles 1490 and 1491 of the Civil Code of Afghanistan and equivalent articles are used in the laws of the countries under study, the subject of the contract must have two conditions:

**First**, the subject of the contracting must be structural. Structure means to sweep, agent, factor, instrument, build and operate. (Moein, 1375, vol. 2, p. 1795). Some structures have been considered as a building composed of integrated and connected elements (Sadri Afshar, 2002, p. 728). In engineering context, it refers to a set that is built or constructed; Simply put, that part of the body is an architectural phenomenon that is responsible for carrying and providing static. (Kabir Saber, 1394, p. 400).

**Second**, the subject of the contract must be fixed. That is, it is non-transferable.

The sum of the two conditions can be summed up as a "fixed structure". Fixed structure refers to structures that are not removable; Therefore, ten-year liability arises in cases where the subject of the structural contract is fixed; Such as bridges, dams, and buildings. In a fixed structure, it is not required to be made of stone, brick, or cement, but it is sufficient if it is made of clay, wood, or glass. What matters in a structure is that it is immovable; In such a way that it can't be transferred without damage. There is disagreement as to whether wells, aqueducts, and water canals are fixed or not. Some do not consider them as fixed structures (Server, 1985, p. 219). Others know (Bakr, 2016, p. 451) It seems that the subway tunnel, wells, aqueducts, and water canals are fixed. In a fixed structure, it is not required to be on the ground, if it is underground, the structure is also considered fixed.

Ten-year liability arises when a fixed structure is constructed based on a contract. If the fixed structure is built on a non-contractual contract, the ten-year liability is not included and is analyzed according to general rules. (Al-Sunnah, 2000, vol. 7, p. 108).

## 3. Ten-Year Responsibility

The ten-year liability of a statutory engineer and contractor is a legal obligation to the employer or their public and private deputy. This responsibility starts from the day of completion and submission of the structure to the employer and continues until ten years after that. During this period, any general, partial destruction, failure, subsidence, and any defect that endangers the health and strength of the structure sit down within the scope of this responsibility, even if the defect is caused by the ground of the construction site or is made with the consent of the employer. Defects in a fixed structure that do not threaten the health and strength of the structure are outside the scope of this responsibility and are analyzed according to general rules. Ten-year liability has an exception, it is the case that according to the agreement of the contractors, the structure is built for less than ten years and its existence is temporary, like the temporary workers' rooms where workers stay until the main project is completed. Ten years of responsibility is objective; This means that in the event of liability, the engineer and the contractor are jointly liable, even if their fault has not been proven. Article 1490 of the Civil Code of Afghanistan states: The civil engineer and the contractor shall be jointly liable for the destruction, failure, and total or partial erection of the constructed buildings or other fixed attachments for ten years, even if the destruction, failure, and subsidence are due to faults on the ground or the owner has allowed the building to be defective, "unless they have the will to keep the mansion for less than ten years." Article 1491 of the same law adds: "(1) Defects that threaten the maturity, strength, and health of the building are subject to the guarantee contained in Article (1490) of this law. (2) The ten-year period specified in Article (1490) of

this law, from the date of submission the work begins». The same thing is stipulated in Article 651 of the Egyptian Civil Code. The equivalent is Article 1792 of the French Civil Code.

There is no ten-year liability in Iranian law. In 2006, the Cabinet of Ministers sought to establish this responsibility for builders of fixed structures; (Darabpour, 2006, p. 193) But this effort did not succeed. In 2015, the Ministry of Roads and Urban Development of Iran drafted a "Second Amendment to the National Building Regulations" in which building permits were issued only to general contractors, and after construction, the builder was required to provide a quality guarantee for each residential unit. Issue ten years. This guarantee was a condition for the completion of the building. (World Economy, 2015, News Number: 987975). This draft was not approved either. Today, the liability of builders of fixed structures in Iran is examined only based on the general rules of civil liability. (Darabpour, 1385, p. 194).

### 3.1. *The Nature of Ten-Year Responsibility*

There is disagreement about the nature of the ten-year responsibility. Some have considered it non-contractual and due to the fault of the engineer and the contractor (Mansour, 2003, p. 143). Others consider it to have a contractual nature and due to non-fulfillment of contractual obligations (Al-Sarhan, 2009, p. 87). Some have considered the nature of the contract as stipulated by law and likened it to the seller's responsibility for the seller's hidden defects in the sale contract (Mark, 1992, vol. 1, p. 412). The fourth group is considered to be legal and derived from the text of the law. (Abdul Hamid Samara, n.d., p. 27 / Al-Duri, 1985, p. 52) The fourth view seems to be correct; Because:

*First*, if there is a contractual liability, the builder should not be liable if the employer and the builders agree to build the structure non-standard and it is damaged ten years ago, while the builders are explicitly per Article 1490 of the Afghan Civil Code, Article 651 of the Egyptian Civil Code and Article 1792 of the French Civil Code is responsible.

*Second*, contractual liability is according to the rule, but ten-year liability is against the rule.

*Third*, contractual liability is based on contractual fault, but ten-year liability is not required, the builders are liable even if there is no fault.

### 3.2. *Characteristics of Ten-Year Responsibility*

Ten years of liability is exceptional in French, Egyptian, and Afghan law and cannot be analyzed according to general rules. The legislators of these countries have recognized this responsibility due to the importance of the issue:

*First*: Joint liability for the injured employer not to face the builder's liability, the engineer and the contractor have joint liability against the employer. (Article 1490 of the Civil Code of Afghanistan, paragraph 4 of Article 1792 of the French Civil Code, and Article 651 of the Egyptian Civil Code).

*two*: Public order, The general rule of civil liability is that the two parties to the contract can agree to reduce, increase, or not to be held liable; (Article 830 of the Afghan Civil Code, Article 217 of the Egyptian Civil Code, and Article 1134 of the French Civil Code) but ten-year liability does not follow general rules; Therefore, such responsibility is part of public order and the agreement between the two parties on the reduction or non-responsibility is void (Article 1493 of the Civil Code of Afghanistan, paragraph 5 of Article 1792 of the French Civil Code, Article 653 of the Egyptian Civil Code). There is no consensus on the purpose of establishing ten years of public order. Some have considered the public interest (Kamal Bouhmar, 2014, p. 41) as a support group for an employer unfamiliar with construction (Samara, n.d. p. 35). There does not seem to be a conflict between the two views; Therefore, the legislator's goal of establishing this responsibility in public order is to protect the public interest of both the employer and the employer.

Three: Dangerous defects, ten-year liability in Afghan and Egyptian law includes only dangerous defects that threaten the health and strength of a fixed structure. Other defects are analyzed according to the general rules of civil liability. Dangerous defects are total, partial, or defects that threaten the health and strength of the fixed structure, even if the damage is caused by the ground at the construction site. In French law, in addition to defects threatening the strength of the structure, the unsuitability of the structure for the intended purpose is also in the realm of ten years of responsibility (Article 1792 of the French Civil Code).

#### 4. Bilateral Ten-Year Liability

The two ten-year liability parties are the engineer and the contractor as fixed structure builders, on the one hand, the employer, their public and private deputy on the other. One party to the contract who is an engineer and contractor is liable to the other party whose employer is a public or private deputy.

##### 4.1. Committed

Committed to ten years of structural structure responsibility is fixed structure builders. There is no consensus on who the builders are. Its scope varies from country to country. In Iran, all persons involved in the construction and sale of fixed structures, including development and construction companies, builders, first and second-hand contractors, architects, planners, building designers, supervising engineers, civil engineers, accountants, mechanical and electrical installations, and officials Local builders become fixed. (Darabpour, 1385, p. 179). Afghanistan and Egypt laws include major engineers and contractors. (Articles 1490 and 1491 of the Afghan Civil Code and Article 651 of the Egyptian Civil Code / Al-Sarhan, 2009, p. 71). Building sellers, local authorities, electrical engineers, day laborers, subcontractors are not subject to builders (Paragraph 3 of Article 1491 of the Civil Code of Afghanistan and Article 651 of the Egyptian Civil Code). According to paragraph 1 of Article 1792 of the French Civil Code, the builders of fixed structures with ten years of responsibility are:

One: Architectural engineer, contractor, technician, and any person who has a relationship with the employer through a contract.

Two: A seller who has built the building himself or by someone else.

Three: Anyone who performs the duties of a contractor on behalf of the owner, even as a lawyer.

An engineer is someone who measures a canal and an aqueduct. (Farahidi, 1410 AH, vol. 4, p. 120).

In engineering terms, an engineer is someone who practices science and uses it in the construction of himself or society (Durability and God blessing Pirklani, 1389, p. 37). There is disagreement as to who is meant by a fixed structural engineer in law. Some structural engineers consider someone who has a degree in fixed structural engineering and is legally qualified as an engineer. (Al-Sarhan, 2009: 72). On the other hand, an engineer is the person who designs the plan of this fixed structure and sometimes manages, supervises, and reviews the work. (Al-Sunuri, 2000, vol. 7, p. 109). According to Article 1490 of the Afghan Civil Code and Article 651 of the Egyptian Civil Code, a fixed structural engineer is anyone who performs fixed structural engineering practices in practice, whether or not he has an engineering degree or is technically qualified as an engineer; Because the purpose of the legislator from the mentioned materials is to prevent the construction of non-standard structures and to hold their builders responsible, whether they are engineers or not; Therefore, anyone who performs fixed structural engineering works under a contract. According to the legislator, the engineer is subject to ten years of responsibility, whether she is an engineer or has scientific and technical competence in engineering work.

Many engineers, such as the design engineer, the executor, the consultant, and the supervisor, are involved in the construction of the fixed structure. The question is which of these is responsible? In response, it should be stated the word engineer refers to the materials of the law and includes all of them (Al-Sunuri, 2000, vol. 7, pp. 109 - 110). According to article 1492 of the Afghan Civil Code and article

652 of the Egyptian Civil Code, anyone who practically performs fixed structural engineering is liable, unless the engineer only designs the structural plan and is not involved in the execution. According to articles 1792 and 1792-1 of the French Civil Code, the design engineer is liable to the employer, although he has no supervision over the construction.

A contractor is a person who commits to doing something for money and is synonymous with contracting work. (Moein, 2007, vol. 1, p. 401). The term refers to a person who, based on a contract, undertakes the construction of a structure according to the plan, whether the materials are provided by himself or the employer (Al-Sunuri, 2000, vol. 7, p. 110). The contractor may be one or more persons. There are two types of employment contracts, main contractor and subcontractor.

The main contractor is the person who concludes the contract directly between him and the employer and the construction of the structure by the employer. According to Articles 1490 and 1491 of the Civil Code of Afghanistan, Article 651 of the Egyptian Civil Code, and Article 1792 of the French Civil Code, the main contractor is liable to the employer for up to ten years for total, partial failure, failure, subsidence or defect that endangers the health and strength of the fixed structure, although the damage is caused by the ground of the structure or has been made defective with the consent of the employer.

A subcontractor is a person who undertakes the construction of the structure on behalf of the main contractor. Do ten years of liability include subcontractors? In response, it should be noted that under paragraph 1 of Article 1792 of the French Civil Code, paragraph 3 of Article 1491 of the Civil Code of Afghanistan Civil Code, and Article 651 of the Egyptian Civil Code, the employer cannot claim damages from the subcontractor; Because there is no contract between the employer and the subcontractor, and its existence is one of the ten-year liability conditions. So, the subcontractor's liability is analyzed according to general rules (Al-Sunuri, 2000, vol. 7, p. 111).

#### 4.2. Promisee

The obligor or the person in whose favor the ten-year liability has been created is the employer, the deputy, the public and private authorities, and his creditors (Ibid). Ten-year responsibility is to support the employer. As ownership of the structure is transferred from one to another, ten-year liability is also in the public and private interest of the deputy of the employer (Articles 691 and 692 of the Afghan Civil Code, Articles 145 and 146 of the Egyptian Civil Code, and Article 1792 of the French Civil Code). The employer is a party to the contract and the structure is built on his account, whether he is a natural or legal person. In most cases, the employer owns the structure. However, sometimes the ministry, municipality, or company is the employer.

The deputy general manager of the employer is the heir and those who have made a will in his/her favor. If the fixed structure is destroyed after the death of the employer and before ten years or a defect is created in it that its strength is endangered, the employer's deputy general manager can sue the builders. (Al-Sunuri, 2000, vol. 7, p. 111). The employer's private representative is the person to whom the structure is transferred through the contract; like the buyer of a building. If someone buys a building from the original owner and it breaks down ten years before it is built, the customer can file two lawsuits. (Al-Sunuri, 2000, vol. 7, p. 111). A lawsuit based on general rules, against the seller due to hidden defects of the seller (Articles 422 and 423 of the Iranian Civil Code, Article 1641 of the French Civil Code, Article 447 of the Egyptian Civil Code, and Article 1097 of the Afghan Civil Code); Another lawsuit, based on ten years of liability, against the builders. (Articles 692 and 1490 of the Civil Code of Afghanistan, Articles 146 and 651 of the Egyptian Civil Code, and Article 1792 France / Maroush, 2014, p. 166). However, the buyer can only make one claim; in the other words, the customer can't receive more than the damage.

The question is if a person builds a building for himself and then sells it, the building will be demolished before ten years. Can the buyer claim damages from the seller on a ten-year liability?



According to paragraph 2 of Article 1792 of the French Civil Code, the answer is yes. Afghan and Egyptian law does not say anything about this. However, some have sued the buyer for the right to claim (Morsi, 1952: 569). The latter view, however, does not use the appearance of Article 1490 of the Afghan Civil Code and Article 651 of the Egyptian Civil Code. The builders on the one hand and the employer on the other. Assuming the question, there is no contract; However, the spirit of Article 1490 of the Civil Code of Afghanistan and Article 651 of the Egyptian Civil Code is used. Certainly, it can be said that the main goal of the legislator was to prevent the construction of non-standard structures and she/he wanted to impose a ten-year responsibility on the builders of fixed structures, but the appearance of the material is such that it does not include the question.

The reason for not including the mentioned materials was the attention of the compilers to more cases; This means that most construction is done by contractors. The legislator, when drafting the mentioned article, paid attention to the dominant case and neglected the subject of the question. Nowadays, when opportunistic vendors with non-standard constructions endanger the lives, property, and psychological security of the people, it is appropriate for the legislators of Afghanistan and Egypt to amend the article in such a way as to include the ten-year responsibility of builders and vendors.

The employer creditor also has the right to claim damages through indirect litigation against the constructors of the fixed structure. In cases where the builders have built or damaged a defective structure for the employer, the employer waives her/his right to claim damages and this refusal will cause her/his bankruptcy or increase of bankruptcy, his debtor can sue the builder (Article 832 of the Civil Code of Afghanistan, Article 235 of the Egyptian Civil Code and Articles 1166 and 1167 of the French Civil Code).

## 5. Cause of Responsibility

Ten-year liability arises when there is a cause. In Egyptian and Afghan law, one of the following causes liability: total or partial destruction of a fixed structure, a defect in the plan or the execution of the plan, or a defect in the ground where the structure is constructed, and any defect that threatens the health and strength of the structure. Defects that do not threaten the health and strength of the structure are not within the ten-year liability. In French law, moreover, the inappropriateness of the structure for the intended purpose is considered a ten-year liability (Article 1792 of the French Civil Code). The builders are responsible, whether the defect is before or after the work is submitted. (Al-Awdon, n.d., p. 153) A defect that existed at the time of submission and the employer was aware of it or was so clear that if the employer was careful to the extent of a normal person, he would realize that the engineer and contractor are not responsible (Al-Sarhan, 2009, p. 76); Unless the makers have deliberately concealed the defect. Article 1098 of the Civil Code of Afghanistan says: "It is not considered a guarantor unless the customer proves that the seller pretended to be defective or that he intended to cover up the defect." The same is stated in paragraph 2 of Article 447 of the Egyptian Civil Code and Article 1642 of the French Civil Code. The reason for the non-responsibility of the engineer and the contractor, if there is a clear defect during the submission and the employer does not object, is her/his implicit waiver of the claim for damages.

### 5. 1. The Defect Caused by the Ground of the Construction Site

In case of destruction, failure or subsidence of the building due to land defect at the construction site, the engineer and contractor are responsible; Because builders are required to inspect the ground of the structure and ensure its strength. It is usually the engineer's job to assess the soil at the construction site; because he has the scientific and technical competence to estimate the land; However, Article 1490 of the Civil Code of Afghanistan and its equivalent articles in France and Egypt do not differentiate between an engineer and a contractor and hold both jointly and severally liable.

### 5.2. The Defect Caused by the Map

The engineer designs the structural plan and the contractor executes the project under his supervision. If the defect is due to the plan and the engineer does not supervise the implementation, according to the laws of Afghanistan and Egypt, the engineer is only responsible for the defect of the plan. Article 1492 of the Afghan Civil Code states in this regard: "A plan and map engineer who does not supervise the execution of work is only responsible for the defects of the plan and map." The same thing is stipulated in Article 652 of the Egyptian Civil Code. According to Articles 1792 and 1792-1 of the French Civil Code, an engineer who designs a fixed structural plan is liable to the employer, although he/she has no supervision over the construction.

## 6. Burden of Proof

The employer can claim damages from the builders when he/she proves the following two things:

*One:* The existence of a contract between the engineer and the contractor whose subject matter is the construction of a fixed structure.

*Two:* The employer proves total, partial or defective destruction of the structure that threatens its health and strength, and this destruction or defect has occurred within ten years from the date of delivery. By proving these cases, there is no need to prove the guilt of the builders; (Al-Sarhan, 2009, p. 79); Because the commitment of builders to keep the structure healthy for up to ten years is a kind of commitment to the result. In such an obligation, mere non-fulfillment of the obligation is considered a fault. If the cause of destruction is not known, the builders are responsible; Because the destruction of the building is the reason for the construction error. (Ajil, 2016, p. 259).

## 7. How to Avoid Responsibility

After proving the responsibility of the creators, they are responsible for compensating the damages, unless the creators deny the responsibility by severing the causal relationship. The burden of proving the severance of causality lies with the engineer and the contractor (Al-Shahwan, 2009, p. 147). Article 783 of the Civil Code of Afghanistan: ("If a person proves that the loss of income due to an external cause without his intervention, or due to an unexpected accident or due to compelling causes, or due to the error of the injured person or caused by other, he is not obliged to guarantee unless the law or agreement of the parties to rule against it). The same thing is stipulated in Article 165 of the Egyptian Civil Code. The equivalent is Article 1792 of the French Civil Code. Therefore, the engineer and the contractor are not exempt from liability by proving their innocence; Because their commitment is to the result ((Al-Sarhan, 2009, p. 81). The only way to avoid liability is for the builders to prove that the destruction or defect of the structure by the Cairo force was the fault of a third party or the fault of the employer. If the employer proves to be at fault in the failure of the structure, the builders must also prove their innocence, otherwise, they will not be exempt from liability. In case of fault of the employer in permitting the construction of a defective structure, the engineer and the contractor are not exempted from liability; Because the employer is non-technical, his permission is not valid, it is the duty of the engineer and the contractor to inform him (Al-Sunuri, 2000, vol. 7, pp. 138-139). Article 1490 of the Civil Code of Afghanistan and the equivalent articles in France and Egypt are explicit in this regard.

In case of structural failure due to defective materials or drawings prepared by the employer, are the engineer and contractor exempt from liability? Here, a distinction must be made between the two modes. Sometimes the defects of materials and drawings prepared by the employer can't be detected by the manufacturers, they are not responsible; Because the fault of the employer alone has caused the failure of the structure (Al-Douri, 1985, p. 264). In cases where manufacturers can detect defects, there is disagreement. Some hold engineers, contractors, and employers jointly responsible (Lafta, 2011, p. 233 / Al-Sunuri, 2000, vol. 7, p. 137); Unless the employer's expertise is greater than the manufacturers, in which case the creators will be held accountable. (Ajil, 2016, p. 267 / Al-Sarhan, 2009, p. 83). Some groups hold only the builders responsible unless the employer has more expertise, of which he alone is



responsible. (Al-Douri, 1985, pp. 264 - 265). According to Article 1490 of the Civil Code of Afghanistan and its equivalent articles in France and Egypt, which consider the builders to be solely responsible despite the consent of the employer to build the defective structure. The second opinion is preferable to the first; But in the author's opinion, even if the employer's expertise is greater, the creators are not exempt from liability, unless the employer satisfies the manufacturers technically; Because the main purpose of the ten-year responsibility is to support the employer who is unaware of the construction work, to build stronger structures, to ensure the life, financial and psychological security of the community as a whole, not to support the employer alone.

Articles 1490 and 1491 of the Civil Code of Afghanistan and its equivalent articles in France and Egypt explicitly hold the builders responsible, even if done with the order and consent of the employer. The explicitness and applicability of the materials prevent the creators from being exempted from liability.

### **8. Agreements on Adjustment of Manufacturers' Liability**

The agreements between the two sides to increase the responsibility of the creators are correct; Such as the agreement of the contractors to guarantee the builders for more than ten years or the acceptance of liability for damages caused by the force majeure by the engineer and the contractor. Paragraph 1 of Article 830 of the Civil Code of Afghanistan states: "(1) The agreement of the parties to the responsibility of the obligee for unforeseen events and causes is permissible." The same thing is stipulated in paragraph 1 of Article 217 of the Egyptian Civil Code, and the equivalent of Article 1134 of the French Civil Code. The agreement of the parties on the fall of the responsibility of the builders is void; Because this responsibility is related to public order. Article 1493 of the Civil Code of Afghanistan says: "Any condition that prevents the guarantee of a civil engineer and contractor is void." Paragraph 5 of Article 1792 of the French Civil Code, and Article 653 of the Egyptian Civil Code, with the exception that French and Egyptian law has also invalidated the agreement to reduce liability; only the Afghan law nullifies the agreement to drop liability.

### **9. Liability of Builders**

If the ten-year liability conditions exist, the builders are jointly liable, whether they are both involved in the damage or one of them. So, the employer can request the builders to fulfill the same obligation; Therefore, if the structure is completely or partially destroyed, the employer can ask the builders to rebuild it. If a fault occurs in the structure, the employer can request the structural defect correction. Article 815 of the Afghan Civil Code says: "The obligor is obliged to perform exactly what he has promised." The same thing is stipulated in Article 203 of the Egyptian Civil Code. In French law, if the obligor did not fulfill his obligation before 2016, it was not possible to compel the fulfillment of the same obligation, but according to Article 1142 of the Civil Code, he could only claim damages; But in 2016, new articles were passed, and according to Articles 1217, 1221, and 1222 of the new French Civil Code, coercion is obligatory to fulfill the same obligation. According to Article 1-241 of the French Insurance Law, the builders of fixed structures are required to have a ten-year warranty to start work, in which case, they do not have the right to build fixed structures. The article states: "any natural or legal person whose ten-year liability may be covered by the presumption laid down in Article 1792 of the Civil Code must be covered by insurance."

In addition to requesting the fulfillment of the same obligation, the employer can claim damages. Of course, this is the case if there is a ground for it; As if the reconstruction includes the period during which the employer is deprived of the benefits of the structure; (Al-Sunuri, 2000, 7, p. 126); Because compensation includes material, spiritual losses and lost profits. (Articles 734 and 778 of the Civil Code of Afghanistan, paragraph 1 of Article 221 of the Egyptian Civil Code, Article 1149 of the French Civil Code / Al-Sarhan, 2009, p. 91). The employer can ask the court for permission to reconstruct the structure at the expense of the builders by others, and if the defect is repaired immediately, the court permission is not required, but after notifying the builders, the employer can fix the defect at the obligated cost. Article

820 of the Civil Code of Afghanistan states: "(1) If the obligor does not enforce the action he has undertaken, while the performance of the said action by him is not considered necessary, the other party can obtain permission to perform the said action, if possible, at the obligated account of the court. (2) In an urgent case, the other party may, without requesting permission from the consignee, after informing the obligor, enforce the obligation on his account." The same thing is stipulated in Article 209 of the Egyptian Civil Code; the equivalent is Article 1144 of the French Civil Code.

## **Conclusion**

From what has been said, the results are as follows:

1. The construction of a fixed structure is of vital, financial, economic, and psychological importance. It must be taken seriously by those involved. Manufacturers of fixed structures are required to construct the structure in such a way that it can withstand at least ten years, otherwise, they are jointly liable to the victims.

2. Ten-year liability is legal. This responsibility is intended to protect unfamiliar employers with construction matters and the protection of public interests and is part of public order, which is not waived by a contract or condition. The mentioned responsibility starts from the day of submitting the structure to the employer and lasts up to ten years.

3. The mentioned liability includes the incurred losses and the lost profit. Also, the mentioned liability includes material and moral damage.

## **Suggestions**

1. Nowadays, there are many opportunistic builders and sellers, on the one hand, they endanger the lives, property and psychological security of the people with non-standard constructions, on the other hand, the ten-year responsibility in Afghanistan and Egypt does not include them; As a result, there is the absence of required laws for abusers. To solve this problem, it is proposed to amend Article 1490 of the Civil Code of Afghanistan and its equivalent in Egypt. "Manufacturers of fixed structures such as civil engineers, contractors, technicians, sellers who sell fixed structures after construction, whether built by themselves or by someone else and anyone else who is in contact with the employer through a contract, for ten years, they shall be jointly and severally liable for the demolition, failure and total or partial collapse of the constructed buildings or other fixed structures they have constructed, even if the demolition, failure, and subsidence are due to faults on their own or to the builder, the defective building is allowed, together, they are responsible for the destruction, failure and total or partial collapse of the constructed building or other fixed structure they have constructed for ten years, "unless the contractor intends the survival of the mansion for less than ten years."

2. There is no ten-year liability for fixed structure builders in Iranian law. Given the boom in construction and the increase in apartment construction in this country, it is suggested that the Iranian legislature, using the experience of developed countries, formulate and approve the ten-year responsibility of fixed structure builders.

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