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Extent of the assumption of fault in civil liability "A comparative study"

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Abstract

This study identifies the extent of the assumption of error in civil liability, and indicates the adequacy of civil legislation in establishing liability on the basis of the supposed lag through the identification of the general provisions of liability that are based on the assumed error, and the clarification of the assumed error that is based on a simple presumption and is capable of proving the opposite and the presumed error that is based on a conclusive presumption that cannot prove the opposite, the conditions for achieving the responsibilities based on an assumed error were clarified, as well as the legal basis on which these responsibilities are based. It also aims to clarify the difference between the position of Jordanian law that established tort liability on the basis of damages, and between the Syrian law that established it on the basis of error and an indication of the appropriateness This is to adopt the theory of the supposed error in the two legislations, and the position of the Jordanian Court of Cassation on the assumed error has been clarified, and since that the position of Islamic jurisprudence has been clarified of the responsibilities that were established on the supposed error.

The study resulted in a number of results, the most prominent of which was that the Jordanian legislator deviated from the general rule established for responsibility on the basis of the assumed error, contrary to the general rule which it establishes on the basis of damages, and that the Jordanian legislator established it on the basis of a supposed error that is capable of proving the opposite and at other times on The basis of a supposed error is not capable of proving the opposite, despite the fact that Islamic jurisprudence has dealt with these responsibilities in a detailed and inherent way, and so did the Syrian law when it deviated from the general rule of responsibility, which is based on the fault of the duty of proof and established it on the basis of the supposed error.

The study recommended the necessity to cancel the legal texts that assess responsibility on the basis of the supposed error and to act according to what the Islamic jurisprudence has decided in line with the general rules that the legislator followed or because Islamic jurisprudence has dealt with these responsibilities so there was no need to transfer and keep pace with the French and Egyptian diffusion as those legislations faced a problem in establishing these responsibilities on the wrong side, and it found a solution and a way out of the futility of establishing responsibility on the basis of the error.

Key words: **fault, guarantee, directness, cause, infringement, damage**

Introduction:

Civil liability includes contractual liability and tortuous liability, and it is also called (harmful act) and (illegal action), in both of which the doer has breached an established obligation of his. Such breach shall cause harm to third parties; He becomes responsible before the person who is harmed, and he must be obligated to compensate him for what he has suffered from Harm, and the injured person alone has the right to claim compensation, and this right is a purely civil right for him (Mark, 2019, pg.5).

The basis of liability ranges from adopting a fault as a basis for compensation, and based on the existence of harm without stipulating fault. You find that the Jordanian civil law follows the approach of the provisions of Islamic jurisprudence, which evaluates liability on the basis of harm. As the text of Article (256) of the Jordanian Civil Code came, and set the general rule that every harm to others obliges the doer - even if he is not distinguished - to guarantee. This rule is derived from what is established in Islamic law, from that: "No Harm" (P. 19 magazine), and "Harm must be removed" (P. 20 magazine), or: "If the original becomes invalid, then the replacement" (M. 53 magazine). .

In Islamic jurisprudence, the liability of the one who harms others is not based financially on the mistake, but rather on the harm; Since its focus is on the action and not on the subject, and the goal lies in the algebra of the Harm. Therefore, in financial liability, it is not required that the perpetrator of the act be distinguished, so the non-distinguished one is responsible for his money if he damages the money of another, and it was stipulated in Article (916) of the magazine that if a boy damages the money of others, then the guarantee is required from his money, and it is stipulated in Article (960) of it that (The interdicted who were mentioned in the previous articles, they are the young, the insane, the lunatic, the fool, and the debtor interdicted), even if their verbal behavior is not considered, but they guarantee immediately the harm and loss that resulted from their action indiscriminate. If a boy, whether he is privileged or not distinguished, authorized or unauthorized, destroys the money of another, whether a boy or an adult, without another matter, or causing any deficiency in it, then the guarantee of his money is necessary; Because the boy is blamed for his actions.

The Jordanian legislator has taken the rule of Islamic jurisprudence in a general, clear and concise phrase that sums it up, that whoever harms others with his money or himself by a positive or negative action is obligated to compensate for his money, whether he is distinguished or not, and this article (256) of the Jordanian Civil Code corresponds to the articles (163) and (164) Egyptian, and (165) Syrian, while both the French and the Syrian legislators built the basis on which liability is based on the idea of fault . The corner fault requires cognition.

Hence, the liability of the undistinguished does not arise except in exceptional, permissive and precautionary cases (165/2), and we find that the laws that apply the fault theory have been transformed into the idea of the harm recently in some cases, which were found to be more just for the affected. Despite that, it appeared in practical applications and cases that the legislator did not pay attention to, so the basic principle is that a person is asked about his harmful act, but that he is asked about the act of someone else that is unimaginable.

In the absence of the person responsible for the injurious act, or the inability to demand compensation from him, there should have been one responsible; to compensate the person who is harmed. At that time, the idea of liability for the work of others arose, and it was established on the basis of the notion of a hypothetical fault that can be proved to the contrary or cannot be proven in other cases.

TheProblem of the study:

The problem of the study is to clarify the position of the Jordanian legislator and judiciary regarding the establishment of tortuous liability for the one who assumes oversight therein as an exception on the basis of the assumed fault, in violation of that the legislator is based on the tort of personal action, which he established as a general rule on harm, and between the position of the Syrian law, which established liability on the basis of fault , and established it as an exception on the basis of the presumed fault, and a statement of the adequacy of legal texts in dealing with the matter; In order to arrive at a sound legal basis for the tort liability for the assumed fault.

Elements of the problem: The elements of the problem can be summarized in answering the following questions:

1. What is meant by assumed fault?

2. Is the liability of the supervisor always based on the fault assumed in the two laws: Jordanian and Syrian?

3. Does the “controller” who has assumed liability based on the supposed fault have the right to recourse to the controlled person?

4. Is the fault attributed to the person responsible for the actions of others a personal fault, or a fault of others?

Procedural definitions:

1. Fault : A fault is a “deviation in behavior.” The Syrian Court of Cassation defined it as a faulty behavior that a discerning person who was found in the same external circumstances that surrounded the responsible person does not engage in, which is considered an illegal act that entails tortious liability (Syrian civil veto dated 5/27 1958, Journal of Law 1958, No. 5, p. 307.

2. Guarantee: The Journal of Judicial Judgments in Article (416) defines it as giving the like of a thing if it is one of the homosexuals and its value if it is one of the values, and Professor Al-Zarqa defined it by saying: Guarantee: “A commitment to financial compensation for the harm of others (Al-Zarqa, p. 1017, p. 648) .

3. Al-Harm: In Islamic jurisprudence, the truth of the Harm according to the Sunnis is that every pain is of no benefit (Ahkam al-Qur'an by Ibn Arabi, vol. 1, pg. 49), and contemporary jurists have defined it as a corrupting attachment to others (Al-Zuhaili, Theory of Guarantee, pg. 53).

limits of the study:

1. Spatial limits: Within the borders of the Hashemite Kingdom of Jordan, this study dealt with the statement of the assumed fault in the liability of the supervisory authority in Jordanian legislation compared to the Syrian legislation, citing the views of legal jurisprudence, and in accordance with the decisions of the Jordanian Court of Cassation.

2. Temporal limits: The time limit is specified in the Jordanian Civil Law No (24) for the year (1988), and the Syrian Civil Law No (13) for the year (1986).

Previous studies:

The researcher reviewed many previous studies in the Arabic language, and reached a number of studies related to some variables of the title, and some research axes, including:

The study of Hamoudi, Bakr Hamoudi (2020) The act of others and its impact on tort provisions, a comparative study, Al-Mansour magazine, issue 34 of the year 2020, and the study dealt with the consideration that the foreign cause is one of the factors that negate the causal link, which represents one of the pillars of civil liability that is denied by its absence. Among the forms of the foreign cause is what is known as the act of others or the fault of others, the focus of our research, whose concept was not adequately explained, which prompted jurisprudence to determine its legal nature in terms of its definition, identification, and clarification of its characteristics and what it did not achieve by what distinguishes it from other forms of foreign cause, and this is what the research deals with in The first topic. On the other hand, there are effects accompanying the act of others that cast a shadow on the position of the defendant in the civil liability lawsuit in the event that he was able to prove that what was achieved from Harm was the result of the act of others enabling him to get rid of liability in whole or in part, which is what the research deals with in a second topic, and in conclusion The research talked about the detriment of the essential results that emerged from the research, which are: that the term "others" is one of the legal terms that are vague and not specific to a subject, but its meaning varies according to what it refers to for each case, and the ability of the defendant to deny himself civil liability in the lawsuit in whole or in part if proven The harm occurred as a result of the intervention of a person or the multiplicity of reasons in its rhythm.

The study of aggression, Saleh Fayez (2019) liability for dangerous objects and machines, master's thesis, Middle East University, Amman, Jordan. This study deals with the statement of default on dangerous

objects and machines. The problem of the study is to show the adequacy of the rules of the Jordanian civil law to guarantee the harm arising from machines and dangerous things, as well as the problem of the study appears in the problems arising from the use of machines and dangerous things and the burden of proving the harm resulting from them and the appropriate compensation for them. The researcher indicated that the problem of the study lies in clarifying the adequacy of the Jordanian civil law rules; to show the extent to which the harm arising from machines and dangerous objects is guaranteed in the legal texts that deal with the liability of guarding dangerous objects and machines in the Jordanian Civil Code. The most important findings of this study were as follows:

1- The necessity of establishing custody over the thing, which means that the burden of proof falls on the person who is harmed in proving that the harm that befalls him, was caused by a certain thing, and that this thing is in the custody of a particular person.

2- The researcher also concluded that the liability of the custodian is assumed in Jordanian law, an assumption that can be proven otherwise.

This study differed from the previous studies in that the previous study examined the corner of liability related to harm without looking at the fault as a basis for liability in terms of its conditions and legal basis. The research was limited to liability, which is based on guarding dangerous objects and machines, and did not address the liability of the controller of the controlled person, which is based on the assumed fault. Also, the previous studies did not show the difference in the scope of liability for the guarding of things, the difference in liability, which is based on a presumed fault that is demonstrable to the contrary and the supposed fault. It is not possible to prove the opposite, as the legislation differed in its adoption. This study was distinguished from previous studies by a statement of the liability of the supervisor in accordance with the position of the Jordanian legislator, which took the principle of supposed fault as an exception to the general rule established by the legislator in the Jordanian civil law on the basis of harm in accordance with the text of Article (256). Also, the Jordanian law did not take the theory of fault that must be proven as indicated in the previous study, and therefore if the legislator establishes liability on the basis of the supposed fault, this does not mean in any way deviation from the general rule in which he established liability on the basis of harm, as the exception may not be expanded or measured on him.

Study Methodology: Studying the extent of the assumption of fault in tort dictates that the researchers adopt an integrated methodology to find a clear and comprehensive framework for the analysis, the most prominent of which are:

1. The analytical descriptive approach: This is done through the

explanation and analysis of legal texts, the opinions of jurists and jurisprudence, and the analysis and description of these texts with an accurate description, clarifying the relevant aspects of the variables of this study and their criticism.

2. The Comparative Approach: The subject of the study will deal with the texts of Jordanian law, compared to the Syrian law and other Arab laws, the opinions of jurists, and jurisprudence whenever possible.

The researcher decided that the study should be divided into two sections

The first topic: the definition of the fault and its types

The second topic: the extent of the assumption of the fault of the default on the work of others.

The first topic

Fault as one of the pillars of tort and a statement of its types

The study of tortuous liability for the custodian of oversight necessitates the study of fault as one of the pillars of liability, given that it represents the legal basis on which liability is built, especially in those legislations that have liability over fault,the supposed, which undoubtedly calls for the study of the fault and familiarity with its provisions. Researching the supposed fault in the tort requires the study of the fault, its legal meaning, and a statement of its types. The researcher will work on dividing this chapter into two demands:

The first requirement: the definition of the fault.

The second requirement: identify the types of fault.

The first requirement: the definition of the fault

We can say that the third party is every person other than the person who is harmed, other than the person who is harmed, and other than the persons who are legally questioned by the guardian, and they are subject to supervision, including children, boys, students and followers (Sultan, 2005, p. 196) ,as for the act of a third party, where the act of a person interfering in an incident that the plaintiff complained of is known in the face of the defendant who litigated him, seeking compensation for his harm, without participating in the litigation, the third party who did that act.

And the liability of tort is based on the fault in Syrian law, which is (personal theory) and its content is based on liability based on negligence or the duty to prove it. In which the obligation to exercise care, or to prove a fault to be entitled to compensation for the penalty clause (consensual compensation), including the decision issued by the Jordanian Court of Cassation in Case No. 6738/2019, which stated:

1. The punitive condition of the contract is a consensual compensation (i.e. a penal condition) in accordance with the provisions of Article (364) of the Civil Code, and this requires that the pillars of contractual liability be established from fault, harm, causal relationship, and excuse, in accordance

with the provisions of Article (361) of the same law.

2. She also did not prove Harm so that she could claim compensation from him; Evidence must be established for it, according to the Cassation Rights Decision (3410/2017).

He bases both legislation on the presumed fault of the act of others, and things generally with some variation. The Jordanian legislator also established an exception on the fault, and it was necessary to prove it and did not consider the liability of the culprit to be based on an assumed fault; As Article 89 of the Labor Law stipulates, taking into account what is stated in any other law or legislation. The injured person or the person entitled on his behalf is not entitled to claim any compensation from the employer not mentioned in this law, in relation to work injuries, unless the injury resulted from the fault of the employer. The same thing made the car owner liable without fault and title deed, according to the compulsory vehicle insurance system to cover third party damages. Article 9 of it states the following:

A- The insurance company and the owner and driver of the vehicle are jointly responsible for compensation for harm incurred by third parties under this Law.

B- Non-Harm has the right to refer directly to the insurance company with whom the insured is responsible for the vehicle that caused the Harm, and the defenses that the insurance company may hold against the insured shall not apply to him.

The definition of fault differs among the jurists, according to the opinion that the fault is the unlawful harmful act, that is, the harmful act that violates the law. This opinion does not change the matter in determining the meaning of the fault. It remains to be known what actions harm inflicts on others and are forbidden by law. And if there are texts that show some of these actions, the majority of them do not contain texts about (the harmful act violating the law), and as a result it is impossible to explain these actions; because there is no control over it, it is not possible and it is impossible to limit it.

And the most correct in jurisprudence tends to define a fault as: a breach of a general legal obligation not to harm others, or it is a person's deviation in his harmful behavior from the usual behavior of a man, and fault in the scope of contractual liability is a breach of a contractual obligation that may be an obligation to exercise care or achieve an end.

Under this tendency there is an obligation for each individual to behave as an ordinary man. The obligation whose breach leads to the realization of the negligent liability is an obligation to exercise care, and the care required in this regard is to take precaution, vigilance and caution in one's behavior; so as not to harm others, which is the care of the usual man.

From the above, the question arises, what is the definition of an assumed fault? The researcher can define the assumed fault, according to

the legislation that took fault as a basis for tort liability (Article 164 of the Syrian Civil Code) as the presumed breach of whom the law imposes a general legal obligation to not to harm the persons for whom he is responsible, or the things he guards when they are realized Their liability towards others, which is based on a demonstrable fault , or on the existence of actual authority over those things that he is responsible for guarding.

And in the legislation that takes the theory of harm, Article 256 of the Jordanian Civil Code as a basis for liability. It can be defined as the presumed breach by whom the law imposes a general legal obligation to not harm others from the persons for whom he is responsible, or the things he guards when their liability towards others is realized, which is based on harm or on the existence of actual authority over those things that he is responsible for guarding whenever Harm causes harm to a third party.

The second requirement: types of fault

And the fault may be a deliberate fault, which is the breach of a legal duty with the intention of inflicting the harm on others, that is, the direction of the will must be directed to creating the harm, and the direction of the will is not sufficient to commit the act in itself. If that will does not lead to its harmful results or is not intentional. It may be a fault caused by negligence, negligence or lack of caution.

As for the fault of negligence, i.e. other than intentional: it is the breach of a previous legal duty associated with the awareness of the breacher by his breach of that duty without the intention of inflicting the harm on others.

The fault may be positive or it may be negative. A positive fault is a positive action such as cursing, cursing, shooting and unfair competition.

A negative fault is by refraining from an action, or taking a passive attitude, such as if the driver does not turn on his car headlights while he is driving at night, which leads to a crash and a Harm. An example of this is also the contractor leaving a hole dug in a public road without putting a reflector or a red light at night to warn of its presence. A question comes to mind, is it possible that not doing an action here is a mistake for which the perpetrator will be held accountable?

Abstention may occur during the exercise of a specific activity, or on the occasion of performing an act, or it may occur in isolation from any work, and independent of any other activity, as follows:

1- Refraining from doing an act or during the practice of a specific activity.

Such as refraining from taking preventive measures to prevent the spread of infection in places required by law or defense orders to be taken, or the driver continuing to walk at night despite the drowsiness that overcame him, or driving his car at night without turning on its lights, or giving the nurse an injection to the patient without sterilizing the needle. In such forms of

refusal, a fault occurs when a person performs an act without taking the necessary measures to prevent the accompanying risks or risks that he may bear, for example, the lawyer submits the answer sheet without attaching with it the list of evidence delivered to him by the client, which causes him to be deprived of providing evidence for the missed deadline. .

2- Abstaining from self-contained work and independent of any other activity:

For example, whoever throws the remains of his cigarette that he thought was extinguished, then it falls on dry weeds or leaves, and it catches fire, and it spreads to the property of others, then he must hurry to put it out. If it was easy to extinguish it, and if he did not do it, he would have breached a duty that the usual person would not have been able to deviate from and ask, and this situation is about all the consequences that followed his refusal. A sharp controversy arose in the jurisprudence about the liability of a person who refrains from performing an act not stipulated in the law. For example, if a person sees a child approaching a deep pit and does not hurry to divert it from it, then the child falls into the pit and Harm hits him as a result of falling into it.

To answer the question, can failure to do an act be considered a mistake for which the perpetrator is held accountable? It is necessary to refer to the various jurisprudential currents, which addressed it, some of which stem from the idea of not obligating a person, except as dictated and required by law. A person's refusal to do an act that is not imposed by law is not an accountable fault.

Another jurisprudential current goes to say that the one who abstains from action is denied, arguing that the resulting result (the harm) is due to the liability of the first factor that led to its occurrence without the abstention having entered into itthat the harm falls to the victim.

The French Court of Cassation has taken an explicit position on the subject of negative fault (abstention); it said in one of its decisions: (If he is being asked about his negligence, abstaining does not entail liability, unless the person to whom the refusal is attributed has an obligation that obliges him to do the work that he refrained from).

In another decision, the French Court of Cassation opposed the liability of a person who had refrained from a duty not imposed by law on him.

The second topic

The extent of assuming fault in tort liability for the work of others

Liability is defined as the case of the person who has committed something that requires blame, and tort liability is defined as the case of the person who has committed something that requires him to compensate for what he caused of harm to others. There is no disagreement between the laws that the individual is only civilly responsible for the mistakes he personally commits that are harmful to others. However, the expansion of

legislation in the concept of liability was not vain, but rather due to the necessity of making it the practical reality in keeping with social and economic development. Liability no longer requires the occurrence of the fault of the person who is to be held personally accountable. Rather, it exempts the person who is harmed from the burden of proving the fault of the civil official in cases where the person directly responsible for the occurrence of the harm is the one whom the civil official uses in the exercise of his various activities, or who was responsible for them. In legal control or agreement, this is what is known as (liability about the actions of others) (Al-Tai, 1999, p. 7). As well as the things in which the liability is based on guarding.

The researcher chose the laws affecting the emergence and development of liability; As French law is issued to address these cases. as well as the Egyptian Civil Code; Because it is the reference for Arab laws and the most affected by French law,then the Jordanian civil law, which relied in particular on (the Code of Judicial Provisions), then the Syrian civil law, which combined French law and Islamic jurisprudence.

And for the purpose of clarifying the extent of the assumption of the fault, the researcher worked on dividing this topic into the following demands:

The first requirement: the tort liability to default on the work of others

Civil liability constitutes one of the pillars of the legal and social system. Every sane person is responsible for his actions, that is, he is bound by certain obligations towards others, the most important of which is not to be harmed. If he breaches these obligations, he is obligated to repair the harm and compensate the harm,as contemporary life advances in the fields of professional, technical, industrial and commercial activity. The more the citizen becomes able to use the machine, the car, the means of industrial and agricultural production, transportation, and communication, the more he becomes exposed to the risks of their use, which raises the issue of compensation for him.

As a result, civil liability is a system that aims to redress the harm that occurs to a person as a result of an act committed by another person. Its goal is merely to remove the effect of the harmful act or illegal act without aiming to reprimand and punish the perpetrator. Therefore, it is a civil liability and not a penal one (Al Bayat, 2015-2016, p. 53).

In practice, the large number of accidents, physical harm, and other things made it imperative to search for a way to compensate the person who is harmed, and it was compulsory, voluntary, social and professional solidarity funds. As well as compensation funds for damages caused by violent crimes, murder, theft, and car accidents, the cause of which was unknown, and the effect of this was so clear that one of the fault s, which

represents the basis of liability, became extinct, and compensation for the victim became the goal pursued by the legislator.

At the end of this introduction, we conclude that laws regulate tort provisions, and divide them into liability over personal action and liability over the actions of others (the liability of the subordinate, the liability of the custodian of control, the liability of living and non-living things, and the liability of the building guard). Its provisions do not differ from the provisions in French law, except in small parts. The Jordanian law had a position that violated the Egyptian, French and Syrian legislators in building tortuous liability on the basis of harm to others, which may occur without the presence of a fault or an unlawful act. Exceeding or deviating, but in the Syrian, Egyptian and French laws, it is based on a personal fault that the person who is harmed must establish evidence of fault, harm and causation. Nevertheless, in some cases, the urgency established that it be based on the assumption of a fault, and the legislator made special provisions for that, expressly expressing his will to do so, and exempting the person who is harmed from providing proof of the existence of the fault, and gradually taking the jurisprudence and the judiciary to consider the supposed fault as the basis for liability for many harmful acts. There is no discussion about some of these responsibilities initially, as they are based on an assumed fault, and in some responsibilities there are those who see that they are based on an assumed fault. Another group considers that the fault is not the assumption, but rather the assumption is based on a link of causation, and a third party believes that liability in the aforementioned cases is built on the basis of assuming liability, except that in modern law it is established: that tortuous liability is of two types, either it is based on the fault or on the basis of bear the liability.

The difference in the source of the laws in the rules and foundations was the main reason for the discrepancy in the texts mentioned by those laws; those texts differed in defining the conditions for this liability, their adaptation, and thus its legal basis.

In the French Civil Code, Article 1384 of it stipulates the state of liability for the action of others; I decided that a person is asked not only about the harm that afflicts others by his personal action, but also about the harm that occurs by the action of others, including the servant in relation to the actions of his servant and the subordinate in relation to the actions of his subordinate. as well as Article 174 of the Egyptian Civil Code; It stipulated that (the subordinate shall be responsible for the harm caused by his subordinate's illegal act, whenever it occurred from him, in the event that he performs his duty or because of it). The same applies to Article 288 of the Jordanian Civil Code, which stipulates that (1) No one is responsible for the action of another. Nevertheless, the court may, upon the request of the

person who is harmed, if it considers it justified, to oblige the performance of the guarantee awarded to the person who signed the harm.

In practice, preparing modern legislation stemming from Islamic jurisprudence and keeping it in line with the requirements of modern man-made laws is a very complex matter. Sometimes the legislator has to differentiate between them and give precedence over the other.

It is worth mentioning that the Jordanian legislator found that acknowledging negligent liability for the actions of others represents a development and keeping pace with the status quo dictated by practical life. But that is not equal except by finding solutions whose origin is derived from the Sharia to follow its guidance in setting the legal basis for the implant to bear fruit.

It is this approach that distinguishes liability from the actions of others in terms of its conditions and characteristics and the basis upon which this liability rests.

Article 288 of the Jordanian Civil Code stipulates the following:

1- No one shall be questioned about the act of another. Nevertheless, the court, upon the request of the person who is harmed, may, if it considers it justified, oblige him to pay the bond awarded to the person who signed the harm:

(a) Whoever obliged by law or agreement to supervise a person in need of supervision because of his shortness or his mental or physical condition, unless he proves that he performed the duty of supervision, or that the harm had to be in place even if he performed this duty with the necessary supervision.

b- A person who has actual authority over the person from whom harm is committed to supervise and direct him, even if he is not free to choose him, if the harmful act was carried out by his subordinate in the performance of his job or because of it.

2- The person who paid the guarantee shall have the right to return what he paid to the convicted person.

Through the formulation of the text, it goes without saying that the Jordanian legislator, under the weight of these special cases that necessitated liability, formulated it in what he believed to be consistent with the nature of this liability, and at the same time not to violate what was decided by Islamic jurisprudence. He has also imitated texts in French, Egyptian and Syrian law; the majority of Muslim jurists do not want to admit tortuous liability for the actions of others. However, this Article 288 is not without any legal basis. In addition to the position of some Hanafi jurists, the text approved by the Jordanian legislator we can find supporting arguments in the same year; It came in the hadith of our Master Muhammad -may God’s prayers and peace be upon him-: (All of you are shepherds, and all of you are responsible for your flock. His master and responsible for his flock - he said: I thought he had said: The man is a shepherd of his father's money and responsible for his flock - and all of

you are shepherds and responsible for his flock).

We also find in another hadith on the authority of our Master Muhammad - may God's prayers and peace be upon him - that he condemned the killing of a Muslim who was killed during the war and was residing among the infidels and decided to pay compensation (blood money) to his family from the Muslim treasury. The same opinion was taken by the Rashidi Caliph Abu Bakr, may God be pleased with him, in the wars of apostasy, when the commander Khalid bin Al-Walid killed one of the Muslims who were residing among the apostates, and his killing was a mistake.

Article 288, then, is not without an origin in Islamic law. This text combines the two types of liability stipulated in Articles 173 and 174 of the Egyptian Civil Code, the liability of the subordinate's actions and the general liability of the censor.

The mere fact that a person is legally or by agreement bound by the supervision of another person in need of supervision is sufficient to achieve the status of a civil official. There is no other condition for establishing this capacity: it may be a parent, a teacher in schools, a trade teacher, and members of the medical team in hospitals...etc. Likewise, the character of the direct subject of the harm is not difficult to define: every defect in mental or physical abilities can enter the sufferer in the list of persons in need of care: minors, insane, handicapped can therefore fall into this category.

The privacy of negligent liability over the act of others is the liability of the person responsible for the control, and the liability of the subordinate in Jordanian law is concerned with how to establish this liability. In order for this liability to be established, Article 288 dictates the meeting of three conditions:

First: The special conditions for the liability of the supervisor or the subordinate must be fulfilled.

Second: The person who is harmed must request the judge to oblige the supervisor or subordinate to pay the amount of compensation instead of the harmed person.

Third: The judge's use of his discretion to compel the civil official to pay compensation or not, taking into account the circumstances of each case.

The second requirement: Liability and payment of supervision:

Section one: Liability of the supervisor:

The basic principle is that a person is only asked about his personal work, but it is possible, on an exception, that the law places on a person the liability for an act that others have done, and in this case there is no liability except for the number of persons

Following up, we find that the law mentioned three forms of liability:

1. Liability for the act of others based on the assumption of a fault that must be proven, such as the case of the teacher's liability when instructing one of his students while teaching.

2. Liability for the act of others based on the assumption of a fault that can be proven to the contrary if it deals

with the case of the liability of fathers and mothers for their minor children.

3. The tort liability for the act of others based on an assumed fault that cannot be proven otherwise, which is the case of the dependent's liability for the actions of his subordinates.

In order to realize the liability of the supervisor for the Harm signed by those under his control, two conditions must be met, except for the two essential conditions in Jordanian law, according to the text of (Article 288), which is the discretionary power of the court to oblige the supervisor to compensate for the harm signed by those under his control unless it finds justification Therefore, such as the poverty of the Harm and his inability to pay the necessary compensation, and there is no such condition in the Syrian law according to the text of Article (174) of the Civil Code, similar to the text of the Egyptian Civil Code Article (173) as well as the condition that requires the person who is harmed from The court has to obligate the supervisor.

The researcher found that it is necessary to present the position of what was stated in the explanatory note to the Jordanian civil law in a comprehensive way so that the view in analyzing texts and theories is according to fixed data related to the same legislation and because of its importance and according to the text. Accordingly, in order for the person charged with supervision to be obligated to pay the compensation to be imposed on the person under his supervision if he commits a harmful act:

A- That this supervision is obligatory for him by law or by agreement. As for its legal necessity, the basic principle is that the provisions of the Personal Status Law show that, and they place the burden of supervision on the father, mother, or guardian, according to the circumstances. As for it being obligatory according to agreement, as is the case in the case of a patient in a mental hospital, for example,it is not enough for a person to actually take over the control of another person to be responsible for him, but there must be a legal or consensual obligation to take over this control. Actual oversight without legal or agreement is not considered such.

b- That the person placed under the supervision of others needs this oversight, either because of his shortness, or because of his mental state, such as an insane person, or his physical condition, such as a seated man.

The law detailed this, stating that "a minor is considered in need of supervision if he has not reached fifteen years of age or has reached and was in the custody of the person responsible for his upbringing, and supervision of the minor is transferred to his teacher in the school or the supervisor of the trade, as long as the minor is under the supervision of the teacher Or the supervisor, and the supervision of the minor wife is transferred to her husband or to the one who takes charge of the husband." It was seen that no such text

was mentioned; because these cases were mentioned by way of example but not limited to, they and the like are included in this provision.

C- The person in charge of control does not prove that he fulfilled the duty of supervision, or that the harm had to be true, even if he had performed this duty with due diligence (Journal of Judicial Judgments, Bar Association 2015, p. 329).

First: The basis of the liability of the supervisor.

In this research, we present the basis of liability and the method of paying it in two separate paragraphs:

- Basis of liability: The basis of the liability of the person under his care is the infringement, which is represented by his failure to fulfill the duty of care and supervision over the person under supervision. This is in accordance with Article 288 and in the context of the provisions of Articles (256, 257, and 258) of the Jordanian Civil Code, and this infringement is a negative infringement represented by the failure of the supervisor to carry out his duty of care and care. Failure on the part of the supervisor to prove the contrary is an obligation. There is no need for the person who is harmed to establish the evidence of the fault of the person who has control over this minor; The Civil Code has assumed this fault on its part (Al-Jubouri Yassin, 2011, p. 637).

According to the Jordanian law, the text of Article (288) clarifies that the liability of the person under supervision is a precautionary one, meaning that when it is not possible to obtain the guarantee from the one who is under supervision (the original actor), the court may oblige the supervisor to guarantee the guarantee, and on the contrary, if the original actor is well off, the judge will rule on him by compensation; Because he is the direct culprit of the Harm and not the one in charge of censorship. It is clear and evident that Jordanian law made it a precaution; As he affirmed in the explicit text and at its beginning (no one is asked about the act of another), and then he included a statement indicating the exception (however) and indicated that it is possible for the court to oblige the person who is harmed when requested by the person who is harmed, and the court permits that.

And when the liability for oversight, as we have presented, is realized, his liability is based on an assumed error. The assumption here is able to prove the opposite, so the supervisor can remove liability from him by denying the error, and he can also raise liability by denying the causal relationship by proving the foreign cause, if he does not deny the causal relationship and he does not deny the fault, his liability is realized, but this liability does not necessitate the liability of the person under control, who is the one from whom the action was issued the project, but its liability remains.

The basic principle is that a person is only asked about his personal mistake, as God Almighty says in the tightly revealed revelation: (And bear the burden of another. And because a

fault is a breach of a legal duty coupled with the breacher's awareness of it, one is not responsible for the consequence of another's fault, unless he has a duty to monitor that third party, and to prevent him from committing errors that are harmful to others. In this case, the person is asked if he fails to perform this duty, the duty of supervising others and preventing him from harming others, and his liability is according to that general principle, that is, it is liability for the personal negligence that occurred on the part of the official himself in the performance of the duty of supervision by whom he is obliged to supervise. The injured must establish the evidence for the availability of the three pillars of liability, which are: the harm, the fault of the official, and the causal relationship between them, so the fault of the minor is the reason for the liability of the custodian of control, and this fault must be proven by the Harm, while we find that the decision of the French Court of Cassation issued by the In general, he assesses the guardian's liability on the basis of the action of the most recent harm of others without being characterized by the wrong character. The lesson, then, is that the act caused the harm and not its wrong capacity, but it seems that the second chamber of the Court of Cassation remained clinging to the presumption of the absence of censorship and the failure in education as a basis for the liability of the father and mother (Al-Auji, 2009 Margin 1 + 2, pg. 406).

As a result, the legislator considered in most countries to ease the burden of proof for the injured in this case, so he took the occurrence of the harmful act on the part of some people who are in the care of others as a presumption of the shepherd's failure in his duty to monitor him, and made the liability of the sponsor assume in these cases a presumption as soon as the conditions of application of these conditions are met The presumption, however, that the legislator's text on this assumed liability for the actions of others in certain cases does not prevent one from being held accountable for the actions of others in other cases, if it is proven that a mistake occurred on his part in the supervision of that third party.

The French legalization stipulates in Article (1384) of it the liability of certain persons exclusively for other persons who are in their care (father and mother for the actions of their minor son residing with them, teachers and educators for the actions of their students, masters of crafts for the actions of their children, and masters and followers for the actions of their servants and their followers). In French law, the provision of the assumed liability for the actions of others does not apply to other than these persons, such as the husband in relation to the actions of his minor wife, and the guardian in relation to the acts of the minor under his guardianship...etc.

The same applies to the Lebanese legalization of obligations and contracts, but he added the guardians to the statement of those who are asked

about the actions of others as an assumed liability (in Article 126 of it).

We find that the articles (Article 288 Jordanian, 174 Syrian, and Egyptian 173) established a general principle that makes everyone who must monitor a person in need of supervision obligated to compensate the harm that that person creates for others with his illegal act. Accordingly, these laws impose the liability of the persons listed by Article (1384) civil French, namely the father, mother, educators, teachers and masters of crafts, and impose on top of that the liability of others for the actions of those who are in their care, such as the husband, the guardian and the relative, and even every person who is obligated by contract to take care of others who are in their care need oversight.

For example, if a minor commits an illegal act, and the one who supervises him and is responsible for his upbringing is his father, then the father is supposed to either have failed in supervising his son, or he has abused his upbringing, or he has committed two mistakes together: he has failed in supervision and bad upbringing.

It is noted that the assumption of this fault can only be established in the relationship between the person who is harmed and the person who is harmed. Hence, neither the injured nor the person in charge of the audit may invoke it before the person under control, but in order to refer to this, an error must be established on his part.

He also notes that there is no objection to meeting this based on the fault of the duty of proof, for the party may not rely on the supposed fault on the part of the controller and come forward to prove fault on his part, thus preventing him from denying the supposed fault.

Second: Conditions for verifying the liability of the supervisory authority.

The text of Article 174 of the Syrian Civil Code sets out the conditions for achieving the liability of the supervisor; The Jordanian Civil Code, according to the text of Article (288/b), shared with him the same conditions and added two conditions that we discuss at the end of the requirement; the article stated:

1- Whoever is required by law, or by agreement, to supervise a person in need of supervision, because of his shortness or because of his mental or physical condition, shall be obligated to compensate the harm caused by that person to others with his illegal act. This obligation shall result even if the person who committed the harmful act is not distinguished.

2- A minor is considered in need of supervision if he has not reached fifteen years of age, or has reached her and was in the custody of the person responsible for his upbringing. The supervision of the minor is transferred to his teacher in the school, or the supervisor in the craft, as long as the minor is under the supervision of the teacher or supervisor. Oversight of the minor wife shall be transferred to her husband or to the person who supervises the husband.

3- The supervisor can get rid of the liability if he proves that he fulfilled the duty of supervision, or proves that the Harm had to be true, even if he performed this duty with due care. Thus, the liability of the person in charge of the oversight is fulfilled, according to Article (174), a Syrian civilian if two conditions are met:

The first condition: one person assumes control over another person.

This condition presupposes an obligation to monitor. The source of this obligation is either the law or the agreement. A father, for example, is legally obligated to take over supervision of his minor son. The master of the trade for which the minor works is obligated by agreement to take over the supervision of the minor. It follows that if there is no legal or consensual obligation on a person to take over control of another person, then the liability of the person in charge of control does not arise, as if a person actually took over the control of another person without being legally or by agreement bound to do so. The reason for this obligation is the auditor's need for this control; He cannot run his affairs on his own, and the person needs supervision either because of his short age, or because of his mental condition, or because of his physical condition. But if the supervision is based on a reason other than those reasons, such as the prisoner's control over the prisoners, then the liability of the person in charge of supervision is not realized, and therefore the warden is not responsible for the prisoner's work as a watchdog. What is meant by supervision, in the field of this liability, is to supervise, guide, and raise the subject well, and to take reasonable precautions to prevent him from harming others. Therefore, in order for the person charged with supervision to be ordered to pay the compensation to be imposed on the person under his supervision, if he commits a harmful act:

A- That this supervision is obligatory for him by law or by agreement. As for its legal necessity, the principle is that the provisions of the Personal Status Law show that, and they place the burden of supervision on the father, mother, or guardian, according to the circumstances, according to Article (171) of the Syrian Personal Status Law and Article (223) of the Jordanian Personal Status Law, which made it to the father and then the father's guardian Then his true grandfather..., or it is obligatory according to agreement, as is the case in placing a patient in a mental hospital, for example. It is not enough for a person to actually take over the supervision of another person in order for him to be responsible for him, but there must be a legal or consensual obligation to undertake this oversight (Explanatory Notes, Jordanian Bar Association 2015, p. 328).

Censorship due to minors: Censorship is legally established for minors who are legal guardians. The control can be transferred from the guardian over the soul to the mother by agreement. Therefore, she is responsible in such a case for the harm that the minor inflicts on others while he is

under her agreement control. The supervision of the mother may be legally imposed on the minor if the minor is still at the age of custody. Supervision may also be transferred from the guardian over the soul by agreement to another person, such as a hospital director in which a minor is treated for a disease he suffers based on an agreement between the guardian over the soul and this director. The control of the guardian over oneself also passes over his daughter to her husband if she is a minor. If the husband is a minor, the control over the husband and wife is transferred to the one who takes over the husband. If the minor is in the education stage, supervision is transferred from his guardian to the school or to the class teacher, depending on whether he is in the school or in the class, during his time at the school. If the school is government, the state asks about the actions of the teacher and principal on the basis of the liability of the subordinate for the actions of the subordinate. If the minor is learning a profession, the supervision is transferred by agreement from his guardian to the profession teacher during his time at work, bearing in mind that the transfer of supervision to the school, the teacher or the profession teacher does not necessarily absolve the father of liability. As a breach of the duty of good upbringing may be a reason for taking liability and sharing it with the teacher or the school.

The minor is in need of supervision if he has not reached fifteen years of age, or has reached the age of fifteen and was in the custody of the person responsible for his upbringing. And a minor, by definition: It is anyone who has not reached the age of majority, which is eighteen full years, according to what was stated in Article (162) of the Syrian Personal Status Law. For his illegal actions, whether he is a resident with him or a non-resident. But if the minor reaches fifteen years of age, and if he is not in the care of the person responsible for his upbringing, then the obligation to supervise ends, and no one is asked about his illegal actions, but he is personally asked about this unless there is a need to continue supervision after reaching the age of majority, as if the child was injured Insanity or dementia, and it is sufficient here for the minor to be independent in his livelihood from his guardian. He is thus free from the constraints of censorship, even if he is not independent in his home. But if the minor is not independent in his living, his guardian remains responsible for his actions even if the minor does not reside with him in the same dwelling.

- Censorship due to mental state: The principle is that supervision of a minor ends when he reaches the age of majority, which in Syrian and Jordanian law is the completion of eighteen years of age,in Egyptian lawthe completion of twenty-one years. However, a minor may reach the age of majority and he does not enjoy his mental powers as a result of having a symptom of eligibility, such as insanity, for example, so he remains in need of supervision not because of his

shortness, but because of his mental state. It is legally supervised by the guardian. This control may be transferred from him to third parties by agreement, as has been indicated.

Supervision because of the physical condition: If the minor has reached the age of majority, but he suffers from a disease that affects his physical condition and therefore needs supervision, as if he is paralyzed or blind due to his physical condition, and supervision in such a case is often an agreement as if his mother is the one who takes care of him in agreement with his separated wife.

B- That the person placed under the supervision of others needs this oversight, either because of his shortness, or because of his mental state, such as the insane, or his physical condition, such as the seat, so this liability does not entail over control that is not based on one of these reasons, such as the prison guard's oversight of the prisoners. The law has detailed this, stating that "a minor is considered in need of supervision, if he has not reached fifteen years of age or has reached and was in the care of the person responsible for his upbringing, and supervision of the minor is transferred to his teacher in the school or the supervisor of the trade as long as the minor is under the supervision of the teacher The supervision of the minor wife shall be transferred to her husband or to the one who supervises the husband. Because these cases were mentioned by way of example but not limited to, they and the like are included in this provision (explanatory notes referred to above).

Second condition: The person being monitored committed an unlawful or harmful act:

If the obligation to monitor a person is established by law or by agreement, the supervisor in such a case is only liable if the person under control has committed an unlawful or harmful act. But if the harm has caught up with the person subject to the supervision himself, the liability of the person in charge of the control does not arise. As if a third party attached Harm to the minor in the school, or the minor attached the Harm himself to the school, the school's liability in these two cases is not based on the liability of the supervisor, but rather its liability is based on the general rules of liability. In principle, the unlawful act committed by the person subject to control is a personal act. But there is nothing to prevent this action from doing something under the guardianship of the minor, as if the minor ran over a person with a car he was driving, then his liability is in such a case as a guardian of the thing, and the person in charge of supervision is responsible in such a case for the harm that befalls others. Illegal work falls from privileged. However, if the subject to control is not distinguished, then Article (171) M.S. He did something harmful, and therefore, in such a case, the fault can be attributed to him by proving his material corner, in order to establish the liability of the supervisor, not for the sake of his personal liability.

If these two conditions are met, the liability of the supervisor is established. His liability is considered original if the controlled subject is not distinguished, while the liability of the undistinguished controlled subject is considered in such an exceptional case. But if the person who is subject to supervision is distinguished, then the person who is harmed has two officials, namely the supervisor and the discriminator himself, and his liability is primarily Article 165/2 of the Syrian Civil Code.

The third condition: The person in charge of supervision should not prove that he fulfilled the duty of supervision, or that the harm had to be true, even if he had performed this duty with due diligence. As stated in the (Explanatory Notes) in the Jordanian Law; He established it on the basis of a presumption that can prove the opposite, as did the Syrian legislator.

Section Two: Paying the Liability of the Supervisor:

The custodian can pay the liability and get rid of it; as the liability of the person in charge of control is based on the supposed default, which can be proven to the contrary.

1- Paying the obligation to prove non-negligence and negation of error.

2- Paying liability by excluding the link of causation.

In the discussion of the two means, we refer to the third requirement devoted to ways of paying the liability of the supervisory authority. In addition to the general conditions shared by the Syrian and Jordanian legislation, the Jordanian legislator was singled out for two additional conditions resulting from the fact that liability is a precautionary liability:

The first condition: that the person who is harmed should ask the court to oblige the culprit.

The second condition: that the judge uses his discretionary authority to assign liability to the subordinate;

This system is explained by the fact that in Jordanian law, which is derived from Islamic law, the guarantor of control is a special kind of guarantor. Thus, the judge may not rule on him for compensation and may resort to this decision, for example, when it appears to him that the supervisor is full and that the money of the young is not sufficient and that the Jordanian legislator has made the undistinguished responsible for his actions and because the rules of guarantee in Islamic jurisprudence are not aware of the liability of others (Al-Jubouri, 2011, p. 637).

The third requirement: the supposed fault as a basis for the liability of the tort supervisor in Jordanian and Syrian law

After clarifying the extent of the assumption of fault in the tort in the civil law, the researcher found it necessary to draw up a summary of the position of the Jordanian and Syrian laws on the responsibilities that are based on the assumed fault clearly and explicitly.

The first section: the position of Jordanian law on the basis of the liability of the supervisor.

The position of the Jordanian legislator is clarified in accordance with the text of Article (288/1/a), where the law establishes the default of the supervisory oversight on a presumption that can prove the opposite, when the failure on the part of the supervisor of control assumed a presumption that can be proven to the contrary; He must prove that he was not negligent and that he took the necessary care in supervision, or at least prove that the harm is inevitably true and cannot be avoided even if he performs the duty of care and control.

The second section: the position of the Syrian law on the basis of the liability of the supervisory authority

The liability of the supervisory supervisor according to Article (174) is a Syrian civilian. The liability of the supervisor is assessed on the basis of a presumed error, which is a breach of the duty of supervision, and this means that if the person subject to the supervision commits an illegal act or a harmful act, and the person who is harmed proves that, it is assumed that the taxpayer By controlling him, by law or by agreement, he has breached the duty of oversight. Thus he is liable to compensate the harm caused to the person who is harmed without the latter being obligated to prove the fault on his part. Assuming a fault on the custodian side entails an assumption of causation as well, since it is based on assumed default and presumed causation. And this whole hypothesis can be proven to the contrary because it is an assumption based on a simple and not conclusive presumption, so he can prove that he carried out the duty of supervision to deny the fault or deny the causal link.

Findings and Recommendations

Results

1. It is inconceivable to establish liability on the basis of the assumed fault in legislation that did not take the fault theory as the basis for liability.

2. Although some legislation takes the theory of error, and the supposed fault, they differ in application in terms of whether it is considered capable or unprovable to the contrary.

3. The Jordanian legislator was not successful in taking the theory of the supposed fault because there are rules in Islamic jurisprudence those deals with responsibilities in detail.

4. A presumed fault becomes presumed liability if the opposite cannot be proven.

5. The theory of the assumed fault did not succeed, and this is confirmed by the constant need to find exceptions that are produced by the judicial application.

6. The assumed fault is more often the personal fault than the fault of others.

Recommendations:

In light of the findings, the researcher recommends the following:

1. Cancel all legal provisions based on the assumed fault; because it contradicts the general rules in the civil law and the rules that do not conflict with the civil law in the Code of Judicial Provisions.

2. Finding funds based on social solidarity that can quickly and immediately compensate the person who is harmed.

3. Legislating provisions based on the principle of guarantee in Islamic jurisprudence for responsibility for the work of others.

4. Spreading awareness in the community to support the person who is harmed, and establishing centers that promote the idea of solidarity and solidarity in society.

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