

## THE LEGAL BASIS FOR GUARANTEEING THE WRONGFUL ACT ON FUNDS IN THE JORDANIAN CIVIL LAW

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**Abstract:** *The Jordanian civil law was distinguished by drawing its provisions from Islamic jurisprudence<sup>1</sup>. This was evident when it merged between absolute objective liability and restricted personal liability in its organization of tort liability, thus distinguishing it from the majority of comparative Arab legislation. Damage in the Jordanian civil law is the basis for tort liability. If the damage is direct, such as destruction and usurpation, the guarantee of the harmful act is based on the damage or the rule of fining the spoils/profits. And if it was by causing, vanity and misuse of the public right, for example, the guarantee is based on infringement or intentionality.*

**Keywords:** *Guarantee, act, harm, assault, intentionality.*

### INTRODUCTION

The act which gives rise to the injury and the causal relationship between them is a matter of fault in Jordanian civil law. The damage is caused by a breach of the general legal obligation which imposes on everyone not to harm others. By doing so, it is meant to "exceed the limit" to be observed or to "depart from the limit" to which the act or omission is to be reached. It deals with the negative act and the positive act, as it denotes both the act and the mere negligence. The text of Article (256) is absolute and general, and includes every harm to others, whoever the perpetrator is, whether he is a natural or legal person, a citizen or a foreigner.

The legal basis for guaranteeing a harmful act in the Jordanian Civil Law differs according to the method of causing damage. It may be direct or causative. Damage is direct if the act is focused on the same thing and the one who did it is said to be a "direct perpetrator." Damage is caused by causing if the action leads to damage or destruction of something else. If it was direct, the guarantee is necessary and there is no condition for it, and if it occurred by causing, then trespass or intentional is required

The reference for the differentiation in the ruling between direct action and causation is that direct action is an independent and a self-contained cause of harm, so it is not permissible to drop its ruling on the grounds of non-intentional or non-infringement. The ruling by guarantee here is a positive ruling, in which the establishment of the cause is sufficient for its ruling to follow directly, so the guarantee or responsibility here is an objective and absolute responsibility that is not restricted. But the cause is not an independent one, so it is necessary that the work in it is accompanied by the quality of intentionality or transgression to be necessitated by the guarantee, so the rule of guarantee here is such as mandated Judgments, it is not enough for the act to occur, but the act must be attributed to the person who did it, so the responsibility or guarantee here is a restricted personal liability.

However, the necessity of guaranteeing direct action without condition does not mean that there is no requirement for a causal relationship between the direct action and the damage. If there is no causation link between the action and the wrongful act, the person from which the act is committed is not liable and the causation relationship is denied. The act is one issue and the

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<sup>1</sup> The Judicial Judgments Journal was the Ottoman Civil Code applied in Jordan until the issuance of the Jordanian Civil Code in 1976. The Judicial Judgments Journal is an attempt to codify the rules of Hanafi jurisprudence. See: Dr. Samer Mazen Al-Qabaj, The Judicial Judgments Journal, Its Sources and Impact on the Laws of the Islamic East, Dar Al-Fateh Studies and Publishing House, Amman, Jordan, I1, 2008, p47-49

causation relationship is another. The point of the matter is that as long as there is damage related to the action of a person, the causation link is presumed unless he establishes evidence to the contrary. In other words, direct causation is achieved once the material causal relationship is established, regardless of the attribution between the damage and the defendant, while the causation relationship in causing is more obvious, and more independent of the act, and there must be a legal causation in which the damage is attributed to the direct perpetrator <sup>2</sup>.

#### RESEARCH PLAN:

The study is divided into two sections: the first topic is damage as an objective basis for the direct guarantee, while the second topic deals with infringement or intentionality as a personal basis for guaranteeing the cause.

#### The First Topic

##### Legal Basis For Guaranteeing Direct Harm

In this section, this research deals with tort liability as a financial liability we deal with tort liability as a financial liability that is not based on error but rather on damage, as it is based on reparation for the damage caused, whoever the person who caused it, as the guarantor is not required to be sinful, and therefore the guarantee is prescribed for the non-discerning person, considering that the guarantee performs the function of reparation the damage actually caused as the guarantee performs the function of reparation or rewards for damage actually caused, unlike reprehension <sup>3</sup>, which requires discernment and the person's eligibility for assignment (the first requirement). In the second requirement, the most important form of direct damage as stated in Jordanian Civil Law.

#### First Requirement

##### Substantial Basis For Direct Harm

The liability of those who harm others in Islamic jurisprudence and Jordanian Civil Law is a financial responsibility based not on fault but on damage. Therefore, financial liability does not require the perpetrator of the damage act to be discerning (sect. I). The liability of a guardian of objects requiring special attention and mechanical machinery can be established on the basis of the rule of fining the spoils (sect. II).

#### Section I

##### Damage

##### First: The direct causer is a guarantor, even if he is not an infringer:

Since the legal permissibility contradicts the guarantee, the act of causation as a reason for implication is an illegitimate act because its causation is related to itself and its effects, not to the intent and awareness of the causer, so the perpetrator is a guarantor, even if he is not infringed<sup>4</sup>. One of the applications of this in the Journal of Legal Judgments is that if someone slips and falls on the property of another and destroys it, he is liable <sup>5</sup>. In one of the decisions of the Jordanian Court of Cassation, it was stated: "It is not necessary to have bad faith on the part of the one who initiated the harm in order to guarantee the damage that resulted from his action, pursuant to Articles 256 and 257 of the Civil Code, and there is no consideration for good or bad faith"<sup>6</sup>

##### Second: Responsibility for the Act of Others

Comparative laws, such as French law and the laws affected by it such as Egyptian law, have established responsibility for personal action on the basis of error; and error presupposes discernment, which results in the absence of non-discernment responsibility. In order to compensate the harmed person for the harm caused by non-discernment, the ploy of responsibility

<sup>2</sup> Explanatory Notes to the Jordanian Civil Code, Part One, Jordanian Bar Association, 2015, p. 287, p. 293, p. 294, p. 299

<sup>3</sup> Jaguars and Zawares are the terms of Islamic jurisprudence which denote civil and criminal responsibility.

<sup>4</sup> Article 912 of the Code of Judicial Judgments

<sup>5</sup> See the following articles of the Journal of Judgment: (92, 910, 912, 913, 914, 1510).

<sup>6</sup> Court of Cassation No. 1198/1993, 15/02/1994.

for the act of others was resorted to, by assuming the error in supervision and guidance on the part of the person charged with oversight from those under his supervision and who is superior followed by his subordinate, and it is a mistake that can be proved to the contrary, by proving that the liable has exerted the required effort in oversight and guidance<sup>7</sup>.

We do not find such a theoretical need in Islamic jurisprudence where liability is based on damage, which results in the responsibility of the perpetrator of the harmful act, even if he is the non-discerning person. If a boy, whether discerning or not, whether authorized or not, destroys the property of another, whether it is a boy or an adult, without order from the other, or causes some deficiency in it, the guarantee is necessary from his money, because the boy is held accountable, so his actions are for him even if he is interdicted<sup>8</sup>.

The practical need can be filled as a result of the poverty of subordinate or the subject under supervision, without deviating from the original principle established by the Shari'ah, which is that a person should not be asked about the act of others, even with his money, by giving the court the right, if it finds justification from the circumstances, to rule, based on the request of the harmed party, to oblige the person assigned to require the supervisor or or the subordinate to pay what was originally ordered against the official, provided that he has the right to return to him for what he paid for him, and that is caring for the harmed party.<sup>9</sup>

And the trend in modern civil laws, such as German law, is towards adopting the rule of Islamic jurisprudence in terms of not linking responsibility to discernment and basing it on the damage, not the error that presumes discernment<sup>10</sup>.

## Section II

### The Rule Of Fining The Spoils/Profits/

Unlike comparative law, which resorted to a hypothetical error to determine the responsibility of the guardian of objects in need of special attention and mechanical machinery<sup>11</sup>, the damage caused by objects in Islamic jurisprudence and Jordanian Civil Law is considered as direct damages, as the machine has no movement other than by the movement of its owner, so the damage caused by it adds to the damage done to the person at his disposal<sup>12</sup>, with the exception of the unavoidable, the guardian of the object or machine cannot deny his obligation to guarantee except by proving the external cause, such as force majeure, the sudden accident or the intervention mistake of a third person, which cannot be predicted, and which cannot be paid to both<sup>13</sup>.

In addition to the damage, the responsibility of the guardian of objects in need of special attention and mechanical machinery can be established on the basis of the rule of fining the spoils/profits, i.e. that whoever obtains the benefit of something must bear its harm. Just as the guardian of the machine takes its yield, he fines the damage it causes. French jurisprudence is considered the basis in a theory of responsibility or the idea of taking risks<sup>14</sup>.

### Second Requirement

#### Direct Damage Forms

The guarantee of material damages and usurpation of property are among the most important forms or reasons for direct guarantee:

<sup>7</sup> Dr. Galal Mohamed Ibrahim, *Civil Liability for Non-Discrimination (a comparative study of French, Egyptian and Islamic law)*, University of Mansoura, 1982, p. 189, p. 196 et seq

<sup>8</sup> Article 278 of the Jordanian Civil Code.

<sup>9</sup> See article 288 of the Jordanian Civil Code.

<sup>10</sup> Dr. Mohamed Nasr Rifai, *Damage as a basis for civic responsibility in contemporary society*, Dar Al-Nahdah Al-Arabiyya, Cairo, Egypt, 1978, p. 693 and beyond.

<sup>11</sup> Dr. Mohamed Nasr Rifai, *Damage as a Basis for Civic Responsibility in Contemporary Society*, op. cit., pp. 67-68

<sup>12</sup> Court of Cassation No. 135/1992, 1/6/1992.

<sup>13</sup> Dr. Wahba Mustafa Al-Zuhaili, *Responsibility Arising from Things*, Journal of the Islamic Fiqh Academy, Mecca, Saudi Arabia, 1995, p. 127, see: Court of Cassation No. 123/2002, 30/1/2002

<sup>14</sup> Dr. Yahya Ahmed Mowafi, *Responsible for Things in the Light of Jurisprudence*, Knowledge Facility, Alexandria, Egypt, 1992, p. 111.



## Section I

### Direct Destruction

Destruction is the total or partial loss of money, and it is equal in terms of financial security if the person who destroyed it is discerning person or not, because the non- discerning person is held accountable for his actions with regard to his money. And it is required to guarantee the destruction if the damaged money be owned by someone other than the person who destroyed it, or owned by the person who destroyed it, but the right of others is attached to it, such as a mortgage, and that the destruction is without the owner's permission. If the money was destroyed with the permission of its owner, then there is no guarantee, and this permission may be explicit or it may be an indication.<sup>15</sup>

Among the examples of damage cited by the Journal of Justice Judgements is if someone demolishes a house without the permission of its owner due to the occurrence of a fire. If it has been destroyed by the permission of the guardian, no guarantee is required, and if it has been destroyed by him, the guarantee is required.<sup>16</sup>

## Section II

### Usurpation

Usurpation, as defined by the Journal of Justice Judgements, is "taking someone's money and seizing it without their permission." It is equal for the usurped money to be fungible goods / interchangeable item or capital , whether it is movable or real estate, and it is also equal for the usurper to be aware that it is the money of others or not knowing, so the ruling is one, so the usurper must return it in kind if it exists, and capital if it is consumed, if it is one of the values, the usurper is obliged to value it in the time and place of usurpation, and if it is interchangeable item, he must give the same<sup>17</sup>.

And usurpation harms us directly, so mere usurpation is a reason for the guarantee, and the evidence for the fact that the reason for the guarantee is mere usurpation is that its value is necessary at the time of in-kind usurpation, not on the day of litigation.<sup>18</sup> The hand of the usurper on the usurped money is the hand of guarantee<sup>19</sup> . From the foregoing, it is necessary for the usurper to be a guarantor if the usurped money is consumed, destroyed, or lost due to his transgression, such as the usurped perishing or the loss of its value as a result of the usurper's act of transgression, such as hitting the usurped animal, or by doing something else without any transgression from him, such as the destruction of the usurped money by a heavenly damage.

And the case that is equal to usurpation in removing disposal is governed by the rule of usurpation, so whoever stole money must return it to its owner if it exists and return a similar amount or its value if it is consumed even if a penalty is imposed on it. Criminal liability does not prejudice civil liability, nor does civil liability relate to criminal liability.<sup>20</sup> The Jordanian Court of Cassation ruled that: "The purchaser's hand over the thing sold is considered a void sale because it is without guaranteeing the benefits, and it is not considered a usurpation unless the purchaser refuses to return the thing sold after making a claim."<sup>21</sup>

### The Second Topic

### Personal Basis For Guaranteeing The Cause

<sup>15</sup> Article 275 of the Jordanian Civil Code, articles 912-921 of the Code and its commentary to Ali Haidar.

<sup>16</sup> Article (919) of the Journal.

<sup>17</sup> Article (891) of the Code of Criminal Procedure, article (279/3) of the Jordanian Civil Code.

<sup>18</sup> Article (891) of the Code of Criminal Procedure, article (279/2)

<sup>19</sup> The Guarantor Hand, i.e., the acquisition of money by a person without legitimate authorization, see: Dr. Mohamed Abdel Hamid El Sayed Metwalli, Financial Security and Its Notions in Islamic Jurisprudence, Journal of Theological and Legal Research, Al-Azhar University, Egypt, vol. 10, No. 10, p. 31-35

<sup>20</sup> Article 271 of the Jordanian Civil Code.

<sup>21</sup> Law Discrimination Tribunal No. 1248/1991 (Public Body), 7/2/1993.



Damage occurs by causing an action in something that leads to the destruction of another thing, such as someone digging a well on the public road without the permission of the guardian and another horse falls into it and is destroyed. And since the cause is not an independent cause, so it is necessary that the work in it be associated with the quality of transgression to be necessitated by the guarantee (the first requirement), and there are many forms of damage by causing, as the damage may occur by the personal act of the one who caused it, and it may also occur by the thing that is under his guard (the second requirement).<sup>22</sup>.

### **First requirement**

#### **Intentionality And Transgression**

##### **As The Basis For The Guarantee Of Causing.**

It is required to guarantee the causer that he be transgressor or intentional (Section I), and the initiative - as we mentioned - is the one whose action causes damage without interspersing between him and the damage the act of another causer. If the initiative and the causer meet, the ruling is added to the initiative (Section II).

#### **Section I**

##### **The Cause Can Only Be Guaranteed By “Intentionality” And “Transgression”**

The words “intentionality” and “transgression” are not synonymous, as what is meant by intentionally is the intentional harm, not the intentional act, and what is meant by transgression is that the perpetrator does not have the right to perform the act from which the damage occurred. Error in law is synonymous with transgression in Islamic jurisprudence. That is, the transgression that occurs from a person in his behavior by exceeding the limits that he must adhere to in his behavior, legally, is a deviation in behavior that is achieved by harming others intentionally or through negligence to the extent that it led to harm to others.

Therefore, the importance of intentionality or transgression is not reflected in the estimation of compensation, but in the included act. If it is direct damage, intentionality or transgression of the guarantee is not required, but if it is causing, intentionality or transgression is required.<sup>23</sup>

It was stated in one of the decisions of the Court of Cassation: “The tort liability has three pillars, which are the error and the damage, and the causal relationship between the error and the damage, and since the legal obligation whose breach is considered an error in the tort is always an obligation to exercise care, which is for the person to take vigilance and foresight in his behavior so that he does not harm others, and if he deviates from this obligatory behavior and has the ability to discern so that he realizes that he has deviated, then this deviation necessitates the tort liability.”<sup>24</sup>.

#### **Section II**

##### **The Initiative And The Causer Coming Together**

If the initiative and the causer come together, the judgement is added to the initiative. If someone digs a well on the public road, and an animal of a third party is thrown into the well by another person and it is damaged, the guarantee must be on the thrower not the well digger.<sup>25</sup> And if two causers come together, for example, if a person puts his horse tied in his stable, then two people come, and one of them unties the horse and the other opens the door of the stable, then the guarantee is on the one who opens the door.<sup>26</sup>

Research into the meeting of the initiative and the causer requires us to address the hypotheses in which those responsible for the damage may multiply:

##### **First - Obedience of a subordinate to the orders of the superior**

The damage act is added to the perpetrator<sup>27</sup> rather than to the commander. The guarantee is not returned to the one who commanded unless the commanded was coerced with considerable

<sup>22</sup> Article (888) of the Code of Criminal Procedure.

<sup>23</sup> Explanatory notes to the Jordanian Civil Code, op. cit., pp. 308-293

<sup>24</sup> 380/1988, 28/05/1988.

<sup>25</sup> Article 258 of the Jordanian Civil Code.

<sup>26</sup> Article (93) of the Code of Judicial Judgments and its commentary for Ali Haidar.

<sup>27</sup> Article 263/1 of the Jordanian Civil Code.



coercion, so the guarantee is required on the one who is coerced only because the coercion is a tool for the coerced. So the compulsion descends into the status of the direct, and the coerced into the status of the machine,<sup>28</sup> and the considered coercion is the coercion that resorts to verbal actions such as buying, selling, and giving, and actual actions such as destroying the money of others. As for non-recourse coercion, it is considered in verbal actions only, and is not considered in actual actions<sup>29</sup>

Accordingly, the public officer shall not be liable if he performs an action in implementation of an order issued to him by his superior when obedience to this order is obligatory for him or he believes that it is obligatory. The wisdom in that is not to disrupt the public office, and so that the public servant does not refrain from carrying out the orders of his superiors, when they are at least outwardly correct and sound.<sup>30</sup> It is not enough that obedience to the superior is obligatory for the subordinate, or that the latter believes that it is obligatory, but rather the act commanded must be legitimate. If it is not legitimate, the employee is not relieved of responsibility. And the employee must prove that he believed that the work he did was legitimate. While proving that, if he proved that he took care when performing the work and that he had reasonable reasons that lead him to believe that the work is legitimate, and the assessment of these reasons rests with the trial court<sup>31</sup>.

### **Second- Multiple responsibility for a harmful act**

If there are multiple causes of damage, the person who causes the damage is brought forward when they come together, if they are all direct or causative, and their actions do not differ in strength and weakness in causing the damage or do not differ in its occurrence, they are equally required to guarantee. If there is a person who is not fit to commit the act, it is wasted<sup>32</sup>. The court may judge be a joint liability if it deems the circumstances to justify that, but if it becomes clear that each partner has a share in the destruction, then every causer is bound to follow the consequences of his action.<sup>33</sup>

The one who is harmed by his action may participate in causing or increasing the harm, as the harmful act may result in successive episodes of harm, and he does not know which one should stop.<sup>34</sup> The harmed person has a duty to take reasonable precautions to limit this damage to its narrowest limits, and if he fails or refrains from doing so, his refusal is in the status of damages that entails a deduction of compensation and sometimes even the forfeiture of the right to it. If the harmed person is not rationally able to prevent the harm from occurring, then the harm is a natural or usual consequence for which the harmed person must be fully compensated<sup>35</sup>.

And it was stated in one of the decisions of the Jordanian Court of Cassation: "It is established in jurisprudence in determining the effect of the action of the victim on the responsibility of the defendant that if one of the two actions involved the other, then the act involved is not counted, whether it was the act of the harmed person or the action of the defendant, and one of the two actions involves the other if one of them exceeds the gravity of the other, for example, if one of the two actions is intentional, in this case the intentional action involves the other<sup>36</sup>."

<sup>28</sup> Explanatory Notes to the Jordanian Civil Code, op. cit., p. 327

<sup>29</sup> Article 136 of the Jordanian Civil Code.

<sup>30</sup> 799/1998, 9/6/1998.

<sup>31</sup> Article 263/2 of the Jordanian Civil Code.

<sup>32</sup> Dr. Mohammad Fawzi Faizullah, *Theory of Assurance in Contemporary Islamic Jurisprudence*, Heritage House Library, Kuwait, I1, 1983, pp. 98-102

<sup>33</sup> Article 265 of the Jordanian Civil Code.

<sup>34</sup> Article 264 of the Jordanian Civil Code.

<sup>35</sup> Court of Cassation, No. 2325/1997, 1/3/1998.

<sup>36</sup> Dr. Sulaiman Mohamed Ahmed, *Guaranteeing the Archives in Islamic Jurisprudence*, Library of the Arabic Volume, Cairo, Egypt, 1985, p. 82





## Second Requirement

### Forms Of Damage By Causing

There are many forms of damage by causing, as the damage may occur by the personal act of the perpetrator (section I), as it may occur by the thing under his custody (section II).

#### Section I

##### Personal Act Guarantee

##### I. Deception in Actions

Jurisprudents use deception or delusion in actions to accept what is not good in it by a false and misleading means that shows the matter contrary to its truth.<sup>37</sup> Delusion may be in words, or it may be in actions. If delusion is in action, then delusion is the guarantor of causation, and the conditions stipulated in the causation are taken into account at that time<sup>38</sup>. And if the delusion is in the saying, then the deceiver is a guarantor if he guarantees and commits, then the guarantee in it is like a commitment to the condition, not like guaranteeing because of pure delusion, and if the condition is not included, then it does not entail an inclusion according to the majority of jurists, because the deceived does not have to believe him, but rather he must deliberate and consider<sup>39</sup>

##### Second - Trust

Trust is a name for unsecured money, so the trust is not guaranteed by the trustee, so if it perishes, is lost, or there is a decrease in its value in the hands of the trustee without his transgression, and his failure to preserve or changing it, the guarantee is not required<sup>40</sup>.

Therefore, the deposit is a trust in the hand of the depositor; if all or part of the deposit is destroyed or lost without the warehouse being made and counted, and if the deposit is stolen all or part of it, the deposit is not required to be guaranteed<sup>41</sup>. The thing borrowed (loan) is a trust in the hands of the borrower, so if the thing borrowed is damaged in the hands of the borrower without transgression or negligence, or is lost or its value decreases from his use of it as usual and in the conditional manner, in the event of use or not in the case of use, he is not obligated to guarantee<sup>42</sup>.

#### Section I

##### Personal Act Guarantee

##### Section II

##### Guaranteeing Causing Harm

##### First: Animal crime:

Comparative laws, such as French law and German law, take the presumption of supposed error as the basis for the responsibility of the animal keeper.<sup>43</sup> What is meant by guard is the actual control of the animal, not guard in the legal sense. The responsible person is the one who has a hand over it, i.e., the guardian of the animal, even if he is not the owner of it, as if he is borrowing, renting, or usurping.<sup>44</sup>

<sup>37</sup> Article 259 of the Jordanian Civil Code.

<sup>38</sup> Dr. Sulaiman Mohamed Ahmed, *The Guarantee of Scholarships in Islamic Jurisprudence*, op. cit., p. 82

<sup>39</sup> Dr. Sulaiman Mohamed Ahmed, *The Guarantee of Scholarships in Islamic Jurisprudence*, op. cit., p. 82.

<sup>40</sup> Article 768 of the Code of Judicial Judgments.

<sup>41</sup> Article 777 of the Code of Criminal Procedure.

<sup>42</sup> Articles (813), (826), and (881) of the Code of Judicial Judgments and its commentary for Ali Haidar.

<sup>43</sup> Article 81 of the French Civil Code, article 834 of the German Civil Code.

<sup>44</sup> Explanatory notes to the Jordanian Civil Code, op. cit., p. 332

In Islamic jurisprudence, the animal's action and the harm that results from it is not a guarantee for its owner, unless it results from transgression or negligence on his part.<sup>45</sup>

## **Second - Collapse of all or part of the building**

Comparative law establishes responsibility for the collapse of the building in whole or in part and the damage that may result from that to others based on the supposed fault of the building guard <sup>46</sup>

In the Jordanian civil law, the owner of the building or the one in charge of it does not guarantee the damage caused to others by the collapse of the building, in whole or in part, unless it is proven that it was his trespass or negligence, and he can deny his responsibility by proving the foreign cause. And the Jordanian Civil Code establishes that whoever is threatened with damage from the building may demand the owner to take the necessary measures to avert the danger, and if the owner does not do so, the court may authorize him to take these measures at the expense of the owner.<sup>47</sup>

## **Third- Abuse of public right or license**

What is meant by the license here or the general right is what is permissible in common and is not specific to a specific person, such as walking on the public road, litigation, and so on. The use of a public right or a license is conditional on not harming others, so recourse to the judiciary is a license that does not entail compensation unless it is used in bad faith or is similar to a serious mistake that brings it down to the level of malicious action <sup>48</sup>. If the damage was caused by an act in which the perpetrator did not go beyond the usual threshold in which there is no default, it is not guaranteed<sup>49</sup>.

And the legal defense can be attached as a license within this framework, if the principle is that the person whose money was damaged by a person does not have the right to destroy that person's money, otherwise each of them will guarantee what he destroyed, <sup>50</sup> except that, in derogation from this principle, the law allows a person to pay the damage for himself and his money or for the same person or his money with an equal harm without including it, as long as the defender commits to the extent necessary to pay the damage. If he exceeds it, he is obliged to compensate by the amount of the violation<sup>51</sup>.

In such cases, the damage to be paid must be material and immediate and cannot be paid by resorting to the courts before it occurs. It is sufficient to think that the human being does not wait until the damage is actually done. The abuse of licenses is not called arbitrary. Abuse of rights alone is a response. Abuse of public rights and public licenses are subject to the rules of guaranteeing the harmful act <sup>52</sup>.

## **CONCLUSION**

### **Results:**

The main results of the study can be summarized as follows:

1. The Jordanian civil legislator combined the absolute objective liability based on the damage and the restricted personal liability in the context of its regulation of the provisions of

<sup>45</sup> Dr. Wahba Al-Zhili, Theory of Security or Provisions of Civil and Criminal Responsibility in Islamic Jurisprudence Comparative study, Dar Al-Fikr, Damascus, Syria, T9, 2012, p. 222

<sup>46</sup> Article 177 of the Egyptian Civil Code.

<sup>47</sup> Article 290 of the Jordanian Civil Code.

<sup>48</sup> 2988/1999 No. 22/05/2000.

<sup>49</sup> Explanatory Notes to the Jordanian Civil Code, op. cit., p. 339

<sup>50</sup> Article 260 of the Jordanian Civil Code.

<sup>51</sup> Article 262 of the Jordanian Civil Code.

<sup>52</sup> Dr. Mohamed Hussein El-Shami, Error in Civil Liability Study comparing Egyptian and Yemeni civil law and Islamic jurisprudence, Arab Renaissance House in Cairo, Egypt, 1990, pp. 261-262





guaranteeing the harmful act or the tort liability, influenced by the provisions of Islamic jurisprudence.

2. The guarantee of the direct action is based on the damage, while the guarantee of the causer is based on the infringement or intentionality.
3. Destruction of funds and usurpation are among the most important forms of direct damage, while the trust, deceit and felony of something such as animals and building, and abuse of a public right or license are the most important forms of damage by causing.
4. Some decisions of the Jordanian Court of Cassation are still affected by comparative legislation that evaluates tort liability on the basis of established error and presumed error.
5. The approach followed by the Jordanian legislature in its determination of absolute objective liability is a praiseworthy approach, as it proved civil liability to have a compulsory or corrective function that is based on reparation for the actual damage, without regard to the behavior of the perpetrator for whom criminal liability is assumed, and this is in contrast to what is in force in comparative legislation that it still assesses civil liability on the basis of fault and proves to it the fixed punitive function of criminal liability.

### RECOMMENDATIONS:

The study recommends the following:

1. The experience of codifying the provisions of Islamic jurisprudence in the Jordanian civil law is a pioneering and unique experience, and it is not surprising that the Jordanian legislator remained influenced by comparative legal legislation, especially the legislation that follows the Latin legal system, so the Jordanian civil law was as we indicated at the beginning of the study; Islamic in heart, Latin in form, so the study recommends unifying the material or historical source of the texts of the Jordanian Civil Law in order to prevent duplication and conflict, especially since the Jordanian Civil Code was issued in 1976 AD and is still unmodified until this moment.
2. In accordance with the above, the study finds no reason to maintain the so-called responsibility for the act of others, especially since the Jordanian legislator has dealt with the lack of non-discerning person, the subordinate who committed the harmful act, by giving the harmed person the right to claim the guardian and the subordinate to pay compensation, provided that he goes to them if they are well-off.

### REFERENCES

#### Legislation:

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