

RESPONSIBILITY OF THE ACTION OF THIRD PARTY TRUTH OR IMAGINARY: A STUDY IN THE JORDANIAN CIVIL CODE

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ABSTRACT

Civil responsibility of the act of third party is considered one of the main issues in the provisions of civil responsibility of the damage act in the Jordanian civil code and in the other laws affected by it, such as Omani, Emirati laws and the Kuwaiti Document. This research stems from the legal question about the fact of civil responsibility for the act of third party. Is this designation scientifically and legally correct in the light of the legal forming and drafting of the articles governing the provisions of this issue? This article presents a central legal result in denying the validity of the statement: "The civil responsibility of the act of third party" with providing legal proofs and arguments.

Key words: Civil Responsibility, Legal Subordination, Control, Civil Responsibility of Personal Act.

INTRODUCTION

Article (288) of the Jordanian civil code states that:

1. No one is asked about the act of third party; however, the court may obligate the party who caused the damage to perform the guarantee imposed on upon the request of the victim if the court deems it justified.
 1. Whoever is required by law or by an agreement to control a person who needs to be controlled because he/she is minor or because of his/her mental or physical condition unless the controller proves that he/she performed the duty of control or that the damage was imperative even if he/she performed the duty in the best way.
 2. Those who have effective control and guidance over the one who is the source of damage even he/she is not free to choose if the damage act is made by the worker in case of performance a task or because of it.
2. And whoever performs the guarantee shall return what was paid from the convicted (Kuwait Document, 2011; Law, 2013; Law, 1951; Law, 1987).

So, what is the definition of responsibility from legal point of view? According to the explanatory notes of the Jordanian civil code, the responsibility is defined as: "*the obligation to compensate...*"

From this definition we note the following: first, this definition confuses between responsibility and sources of obligation. Saying that responsibility is the obligation to compensate makes sources of obligation-at least-six sources according to the legislative division of the sources of obligation, which is not true. This leads me to say that this definition of responsibility is not accurate. Second, I believe that responsibility may arise without the

obligation to compensate, because compensation is correlated with damage. A person may be committing the act of damage, but his/her act does not cause any damage, therefore, no compensation is arranged despite arising responsibility due to damage act.

On the other hand, I note that jurisprudence, in general, has provided different definitions of responsibility according to different disciplines.

For example, there is a definition of criminal responsibility, a definition of administrative responsibility and a definition of international responsibility (Marqus, 1992; Al-Saud, 2002; Hussein, 1979; Berwall, 2013; Musa, 2010; Hosni, 1989; Hussein, 2015; Al-Tai, 1999).

In this study, I have excluded from its scope all what is related to the provisions of responsibility for the act of third party within the framework of contractual responsibility, international law or penal code. The research is limited to the provisions of responsibility of damage act in the Jordanian civil code and other legislations impacted by it (Hussein, 2015; Berwall, 2013; Omar, 2013; Al-Farajani, 2015; Hatem, 2018).

Based on the above, I believe that responsibility definition included in some legal dictionaries as "*a breach of legal obligation*" (Guillien & Vincent, 1998; Malkawi, 2016) is the definition to which I scientifically inclined and believe it to be true.

As for the scientific reasons to which I rely on to consider this definition is true are different. First, I believe that the concept of breach is consistent with different legislative trends. Countries like France, Egypt, Iraq, Bahrain and others rely on fault as the basis of responsibility. Therefore, the concept of breach is realized when fault is occurred (Al-Saud, 2002; Al-Sanhouri, 1968; Faraj, 1979; Al-Hiyari, 2003).

The same applies to countries that have taken damage as the basis of responsibility such as Jordan, Oman, and the United Arab Emirates, in addition to the Kuwait Document of the Gulf Cooperation Council where breach is achieved by negligence, deliberate, infringement or dereliction.

The other party of the definition is the legal obligation, which includes all sources of obligation and on the other hand extends to the different branches of law. If the legal obligation is regulated in accordance with the types of civil law, then it is civil responsibility. If it is penal code, then it is criminal responsibility and so on the responsibility is administrative, international, etc.

Regarding civil responsibility of the act of third party, some doctrines point out that these images of civil responsibility are exception to the general principle and a violation of the general rules because responsibility lies on the one's actions.

"The one is not responsible for a damage act he/she did not commit; he/she is only responsible of his/her personal acts. But in some cases, a person is asked about a damage act committed by a third party, and this occurs in two cases: the responsibility of the person for those who are under his control and the responsibility of employer for the actions of the worker" (Al-Fadil, 2012).

Dr. Al-Sharqawi points out that:

"As an exception from the previous principle, responsibility can be assigned to verify the control of a person if he/she committed the fault of control" (Al-Sharqawi, 2016; Marqus, 1983; Siwar, 1983).

Others state that:

“A person is not responsible for the act of third party only with an exception and if the law explicitly states that” (Al-Kandari, 2014).

And most jurisprudence tends to same idea about *“arising responsibility for the act of third party”* (Al-Sanhouri, 1968).

This is not only limited to jurisprudence, but judicial decisions are also tending to the same direction by adopting *“responsibility for the act of third party”* (Adalah Center for Legal Information, 2004; Saudi Ministry of Justice, 2009; Saudi Ministry of Justice, 2015; Adalah Center for Legal Information, 2014; Adalah Center for Legal Information, 1999).

Based on the above discussion and on the basis that legal concept of responsibility is *“breaching of a legal obligation”* and in accordance with the original principle that *“no one is responsible about the act of third party”*, a legal question arises in this study: Is there really any responsibility for the act of third party? Is this responsibility a legal reality or an imaginary?

To answer this question, I will examine the two images stipulated in the laws in question under this study namely, the Jordanian civil code and those which have been impacted by it or their legal formulations are consistent with it. These two images will be discussed in two chapters respectively. Chapter one will discuss the controller’s breach of his obligation of control, and chapter two will discuss the employer breach of his commitment.

LITERATURE REVIEW

In his study of the relationship between French civil code and Jordanian civil code with regards to the provisions of the delictual responsibility for the act of third party, (Al-Hiyari, 2003) concludes that there is harmony or disharmony among legal provisions between the two laws.

In his explanation of the civil responsibility of the damageable act, (Marqus, 1983) did not discuss the issue of responsibility for the act of third party from a philosophical point of view, as I did in this research, but he examined it through a statement of its concept and legal provisions in a traditional way.

METHODOLOGY

This research is based on the descriptive analytical approach as it deals with the legal texts related to the subject in accordance with the provisions of the Jordanian civil code. The same applies to most laws that have been adopted in French civil code, such as the Egyptian, Lebanese, Syrian, and Iraqi laws in the Arab world. It can also be said in the Latin direction in European countries.

FINDINGS AND DISCUSSION

Breaching Obligation by the Controller

Article 288 of the Jordanian civil code stipulates the provisions of responsibility of the act of third party with the reservations of naming this responsibility like this way. Some believe that the basis of this responsibility is the presumed fault (Abu-Hassan, 2008; Al-Farr, 2015). As for my discussion, I will not start an argument about the basis of this responsibility because I

deny arising responsibility for the act of third party, and I uphold the general principle that everyone is responsible for his actions believing that there are no any exceptions to this principle.

The legal evidence on which I rely on is stipulated in article 288 of the Jordanian civil code or various legislations who adopted same legal drafting. The legal provisions included in article 288 do not contain at all any provisions of responsibility for the act of third party; and that is for the following reasons:

First, article 288 emphasizes that no one is responsible about the actions of third party, and I believe that the purpose of emphasizing this general principle is neither to confirm that it is not a deviation from this principle nor to refer to it as an exception.

Second, what is stated in the text “*yet the court shall...*” in my opinion, does not create an exception, instead we must examine the text accurately; the legal language does not use the term responsibility as it came as follows:

“However, the court may obligate the party who caused the damage to perform the guarantee imposed on upon the request of the victim if the court deems it justified”.

This legal drafting emphasizes that the responsibility is personal and emphasizes the general principle and does not make an exception. This can be illustrated as follow:

1. *“The court may”* means that the issue is optional and refers to the estimation of the court.
2. The victim must have applied a request to the court.
3. The article confirms that the responsibility remains on the party who caused the damage where it states “... *the court may obligate the party who caused the damage to perform the guarantee imposed on*”.

Therefore, the provision contained here is the possibility of “*performance of the guarantee*”, in other words, the “*compensation*”. Thus, there is a difference between the performance of the guarantee and arise of responsibility.

Third, the second paragraph of the same article states: “*whoever performs the guarantee shall return what was paid from the convicted*”. Accordingly, where is his/her responsibility of the act of third party? How can it be concluded that responsibility here is for the act of third party?

Arising of controller responsibility

Article (288) of the Jordanian civil code stipulates the provisions of the responsibility of control in paragraph (a):

“Whoever is required by law or by an agreement to control a person who needs to be controlled because he/she is minor or because of his/her mental or physical condition unless the controller proves that he/she performed the duty of control or that the damage was imperative even if he/she performed the duty in the best way.”

Based on this text, the controller here is responsible for his own actions and not responsible for the actions of third party. The text confirms that there is an inherent obligation on the controller either from the contract or the law. So, we are facing a situation in which a person who is under control has done something that has caused damage to third party.

Contractual responsibility of the controller arises from the act of breaching his/her contractual obligation represented in controlling the child or the insane as appropriate, for example, if this child does an act caused damage to third party, the contractual responsibility of the controller arises because of negligence or dereliction of duty.

Pretext controller's responsibility

The controller can pretext his responsibility of control in three forms. First, the lack of need for control. Second, fulfilling his/her duty of control. Third, it is proved that the damage had to be accrued even if the controller had done his/her best.

If we look closely at these pretexts, we will find that they directly related to the responsibility of the controller, where the first pretext is related to the source of obligation, the second and third ones are related to the nature of its obligation.

That means we are talking about the actual arise of his/her personal responsibility. If it proves that his personal responsibility does not exist, then the court cannot sentence him/her to perform the guarantee to the victim.

Since we discuss arising and not arising the responsibility of the controller against his/her personal act, therefore, I believe that it is not true to say that responsibility is established on the basis of the supposed fault or bearing responsibility to perform guarantee in the Jordanian civil code or the laws that have been impacted by it (Malkawi and Al-Omari, 2006; Al-Dinasauri & Al-Shwarbi, 1998; Hijazi, 1959; Adalah Center for Legal Information, 2004 & 1999). As a result, building civil responsibility is based on damage not fault.

It is also believe that the Jordanian legislature provided legal protection for the victim without overriding the controller or the employer in the possibility to request them for compensation. If the conditions stipulated in the text are realized, the controller's civil responsibility of his/her personal act is established. So, the victim receives compensation and comes out of this matter, while the controller requests the one who is under his control and the employer requests his workers as much as the responsibility of each of them.

Besides, we must distinguish between arising responsibility and the performance of the guarantee of damage. For example, if someone promises to fulfil the obligation of another person who is unable to perform compensation for damage that he/she caused to a third party, this will not make the one who promises responsible for the damage. It is only personal responsibility subject to provisions of promise not a responsibility of third party acts. In this case, the controller has breached his inherent obligation of control. Breaching here is either contractual and subject to the provisions of the contract, and he/she is responsible in front the one who assigned him/her, or non-contractual responsibility where if its source is the law, it will subject to the provisions of responsibility of the damage act, and this may be direct or causative pursuant to the provisions of article (257) of the Jordanian civil code, and in this case, the controller shall be responsible for his/her personal act.

Although the estimative authority and the ability to choose stipulated in this article allows the court to oblige controller to perform the guarantee, they-the estimative authority and the ability to choose- are not absolute but are limited by the text that stipulates an obligation on the controller to control whether it comes from the contract or the law.

Placing one under control makes him/her able to ask the controller to pay when the later breaches his/her obligation. When the victim receives compensation from the controller, this is

due to arising the controller's responsibility. What confirms my point of view is that the text authorizes the controller to pretext his responsibility. This entails to pretext the possibility of performing the guarantee for the victim as a legal effect.

If the controller violates his obligation, this will arrange compensation, such compensation is entitled to third party because of the obligation that arises from to the controller, which its sources either the contract or the law. Therefore, it is a personal responsibility and not a responsibility for the act of third party.

In all cases, if the court rules the controller to provide the victim with guarantee, it is due to what controller has done to the convicted. It is not true to saying it is responsibility of the act of third party but rather it is a performance of compensation for third party, which they are two different issues. It also should be noted that the court's decision to determine the value of the guarantee is sentenced on the person who caused the damage, even if the performance of the guarantee is set on the controller who is responsible for the breach of his obligation.

In conclusion, responsibility in all its possibilities is personal responsibility, and it is not for the acts of third party.

Breaching Obligation by the Employer

This case appears in the terms of the employment contract through the relationship between the worker and the employer. This legal relationship shall be based on the element of legal subsidiarity, and work must be private, subordinate and paid (Malkawi, 2014; Karam, 1990; Ramadan, 2004; Adalah Center for Legal Information, 2001 & 2000).

Actual legal subsidiarity sometimes is achieved in the case of a null employment contract, where the worker believes that he/she is subject to the orders and instructions of the employer and bound by them, the worker in both cases is considered subordinator.

This case shows two legal relationships. The relationship between the employer and the dependent, and the relationship of the chief with a third party, which it could be a contractual relationship such as a contract of enterprise, or a non-contractual relationship such as the relationship between the victim and the worker that resulted from acts of the later.

In this case, civil responsibility is based on one of two assumptions. First, damage resulted from the act of the dependent where the dependent has carried out the chief's legal instructions. The second assumption is damage resulted from the dependent's personal actions or damage resulted because the dependent violates chief's legal orders and instructions.

To discuss the legal provisions of these assumptions, I will examine arising employer's responsibility and pretext employer's responsibility.

Arising employer's responsibility

Chief's responsibility arises for his acts whether he/she carried out by himself or by the dependent. In this assumption, chief is subject to the provisions of civil responsibility for his personal act, so long as the dependent has carried out orders and instructions of the chief in the manner that he/she is assigned to, the responsibility for the damage caused by these orders is borne by the chief (Malkawi, 2009 & 2013).

For example, if the employer orders the worker to demolish a wall and specifies it for him, and the worker correctly implements the employer's orders, and it is discovered that the

wall to be demolished is in another location. In this case, the worker-the dependent-does not guarantee the damage but rather the employer will bear it in the face of the project owner if it is a contract of enterprise.

It can be assumed that the act of the worker-dependent- caused damage to third party, knowing that he had executed a legal order issued to him by the employer (Adalah Center for Legal Information, 1999, 1984 & 2000). For example, if the worker demolishes a wall and damages the waterway of the neighbours-who are not party of the contract but third party-knowing that the employer did not warn the worker about the waterway and the worker could not know about it, then the responsibility in this case lies upon the employer-the chief-as the worker only fulfilled chief's legal orders.

In all these cases there is no responsibility of the act of third party, but it is a responsibility of personal act, and this responsibility may be contractual if it arises from breaching contractual obligation with the employer and may be a delictual responsibility-for the damage act- but in all cases remains personal responsibility.

Pretext the employer's responsibility

I believe that there are two assumptions that the employer can pretext responsibility for himself. The first assumption is that the worker did not abide by the orders of the employer. The second assumption is that the worker did the damage act on his own without any orders being issued to him.

Worker breaches employer's orders

In this case, it is assumed that the worker caused damage to third party during doing his duty knowing that he did not comply with the employer's orders, in which case the employer can pretext the responsibility for himself by proving that the worker violated the employer's orders, and it is not his/her responsibility, but the legal text allowed the victim to claim the employer with compensation or just to claim the worker (Ajaj, 2003).

This is a definitive indication that claiming the employer of compensation is an optional not because he/she is responsible in in front of the victim, but rather an option for the victim to face the independent possibility of non-financial solvency or to face problems of proof or lack of proof whether the worker violates the employer orders or not. In this case, the employer claims the worker for compensation.

In summary, this situation does not represent responsibility of acts of third party, as the employer claims the worker/dependent for what he/she performs.

Damage caused by the worker without giving orders from the employer

The worker is committed to perform the work assigned to him/her by the employer, and the employer may not specify how that work is performed in detail and leaves a margin of freedom to carry out the work to the worker. What I assume in this case is that the worker is doing the work and resulting in damage; however, this damage is not due to obedience of the orders of the employer where he/she has not issued any orders.

To examine the legal provisions of this assumption, I distinguish between different situations. In addition, I will exclude from this assumption the case of the worker's assault against third party, our discussion here is related to implement the work related to the employer.

In the first case, I assume that the worker has performed the work according to the principles of the profession and to the norm of carrying out the works; nevertheless his/her act caused damaged. The general rule in this case is that it does not guarantee the damage that resulted from (Malkawi, 2014).

The assumption in the second case is that the worker has not adhered to what is customary in the performance of his/her work and has resulted in damage to third party, so the victim in this case has the choice to claim the worker directly or to claim the employer for compensation (Malkawi, 2014).

We must note that claiming the chief's/employer for compensation is not because he/she is responsible for the damage; rather it is because of the option that legislator has granted to the victim to claim compensation, and it remains an optional issue not compulsory for the court to rule on.

In summary, there is nothing called responsibility of act of third party, rather it is the possibility of claiming compensation from someone else other than the one who does the damage act. Moreover, this compensation is restricted to the victim's claim and the approval of the court. And whoever performs compensation claim the one responsible about what he did for him.

FINDINGS

1. Currently there is no case in law in which we are responsible for the act of third party. Remain in fact before the provisions of responsibility for personal actions in all forms.
2. Compensation for third party is completely different from arising of responsibility for the act of third party. They are two different things.
3. The name contained in the civil legislation in the Latin direction shall be amended and in the jurisprudence in general which use the term responsibility for the act of third party to become the claim for compensation for the act of third party.

CONCLUSION

Civil legislation uses what is called responsibility of the act of third party. And when legal jurisprudence explains this issue uses the same name without examining its validity or accuracy.

This present article is based on the legal question: is there any responsibility of act of third party? Is there any violation of the legal rule that everyone is responsible for his/her acts?

The article concluded that there is nothing can be called responsibility of act of third party.

The difference between sayings that compensation can be claimed from someone other than the one who produced the damaged act is fundamental. We are not in a state of solidarity, but a restrictive imposition of conditions provided by the legal text, which are the claim of the victim and the approval of the court. Regarding the legal effect, the one who caused the damage remains responsible and obliged to compensate either the victim or to the one who represents.

Based on the above, we must correct responsibility designation provided by legislative authority from responsibility of the act of third party to "*claiming compensation from third*

party”. In fact, the victim is claiming a foreign party for a damage fact. The doctrine also must correct this designation.

And I affirm that there is no deviation or violation for the general rule that “no one is responsible for others act”.

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