THE LEGAL REGULATION OF AFFILIATION IN THE JORDANIAN CIVIL LAW: THE ACTIONS OF THE AFFILIATED PERSON AS A CASE STUDY

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ABSTRACT

Objective: This study investigates the adequacy of the legal provisions of this responsibility to protect the injured. This happens by investigating the ability of the injured party to claim affiliate person the full compensation resulting from the affiliated's harmful act.

Theoretical Framework: The interest of the injured is an interest that led legislation to deviate from personal responsibility for the harmful act, and added multiple responsibilities, whether for things, or for third parties when certain conditions are met in each responsibility, including the responsibility of the affiliate for the actions of the affiliated person. The judicial rulings tended to take this responsibility based on the legal regulations, but these provisions adhere with the literal legal text.

Method: To achieve the aims of the study; the researchers apply the descriptive analytical method, by exposing and analyzing the relevant texts of the law, deducing the contents of the legal texts, and extrapolating the relevant judicial rulings.

Results and conclusion: The current research indicates that the solidarity responsibility of the affiliated is considered one of the most important elements of responsibility for the act of others organized by the Jordanian legislator. The main axis in this responsibility is the injured person, that is, as long as there is harm and injured person, there must be a cause of it.

Originality/value: This research recommends to encourage key policy makers to amend some articles and rules in the Jordanian civil law to fulfill the legislations gaps that displayed in the current research.

Keywords: affiliate, affiliated person, control authority, direction authority, bearing responsibility.

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A REGULAMENTAÇÃO LEGAL DA FILIAÇÃO NO DIREITO CIVIL JORDANIANO: AS AÇÕES DA PESSOA AFILIADA COMO UM ESTUDO DE CASO

RESUMO

Objetivo: Este estudo analisa a adequação das disposições legais desta responsabilidade para proteger os feridos. Isso acontece investigando a capacidade da parte lesada de reivindicar à afiliada a indenização total resultante do ato prejudicial da afiliada.

Quadro teórico: O interesse do lesado é um interesse que leva a legislação a desviar-se da responsabilidade pessoal pelo ato prejudicial, e acrescentou múltiplas responsabilidades, seja para as coisas, ou para terceiros quando certas condições são cumpridas em cada responsabilidade, incluindo a responsabilidade do afiliado para as ações da pessoa afiliada. As decisões judiciais tendiam a assumir esta responsabilidade com base nos regulamentos legais, mas estas disposições aderem ao texto legal literal.

Método: Para atingir os objetivos do estudo, os pesquisadores aplicam o método analítico descritivo, expondo e analisando os textos relevantes da lei, deduzindo o conteúdo dos textos legais e extrapolando as decisões judiciais relevantes.

Resultados e conclusão: A pesquisa atual indica que a responsabilidade solidária dos filiados é considerada um dos elementos mais importantes de responsabilidade pelo ato de outros organizado pelo legislador jordaniano. O eixo principal desta responsabilidade é a pessoa lesada, ou seja, enquanto houver dano e pessoa lesada, deve haver uma causa para isso.

Originalidade/valor: Esta pesquisa recomenda incentivar os principais formuladores de políticas a alterar alguns artigos e regras no direito civil jordaniano para preencher as lacunas legislativas que exibidas na pesquisa atual.

Palavras-chave: afiliado, pessoa afiliada, autoridade de controle, autoridade de direção, responsabilidade.

1 INTRODUCTION

The legislation is regulated the provisions of the two civil responsibilities, contractual responsibility that stands on the grounds of breaching a contractual obligation where the will is the origin of this obligation. Based on the will, the limits of breach and damage are clear; so, it is possible to determine it in the matter this responsibility is achieved.

Another kind of the responsibility is a tort responsibility or harmful act responsibility where it is not possible to limit its causes, results, persons, and means. This obliges the legislator to provide general rules for responsibility of torts a result of the harmful act. It is a guarantor of reparation for the harm caused to the injured, starting with personal responsibility for the harmful act, extending to the person with his responsibility...
for things, and ending with the responsibility of the person for the actions of others, as in the responsibility of the affiliate for the actions of the affiliated person.\(^5\)

Nowadays, in view of the expansion and spread of the matter of dependency, whether its basis is legal or material, as well as the development of the means of committing the harmful act that leads to responsibility. For example, in the era of technology the use of ICT means would lead to the wrong exploitation or use of these means causing harm to others, so the cases of harm did not remain within the traditional means of committing them.

The ultimate goal pursued by any legislation to regulate responsibility for the harmful act is to protect the injured, and to form a shield of safety for him/her. Besides, it is aimed to grant the injured a fair compensation to redress the damage, which made the legislator organize provisions for liability as an exception. This is by extending responsibility to third parties, and considering third parties as guarantors, not for the harmful act itself, but rather for fair compensation for the harmful act committed by a specific person, because of the relationship between this person who caused the harmful act and others.

In order for this responsibility to be established against a third party, and for the injured person to have the right to sue a third party to claim a compensation for the harmful act, conditions must be met in each of the third party, the cause of the damage, and the harmful act, which are objective and not personal conditions. At this point, when the responsibility’s conditions of this third party met. In addition, whether the third party is a natural or legal person and a certain conditions met in the material element of the harmful act committed by the one who caused the harm. Furthermore, when the damage resulted from this fabrication, then this third party is directly responsible to confront the injured person, and the harmed person has the right to return to the third party and claim the value of compensation for harmful act of it.

Accordingly, the Jordanian Civil Code stated in Article (288/1/b) that “a- No one shall be liable for the act of another. Nevertheless, the court may, based on the request of the injured party, if it deems justified, obligate the payment of the adjudged guarantee to the person did the damage. b- Whoever has actual authority over the one from whom the damage has occurred in controlling and directing him, even if he is not free to choose

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\(^5\) Where it was stated in Article 256 of the Jordanian Civil Code: “All damages to others are obligated by the doer, even if he is not discerning, to guarantee the damage”.

him, if the act was made by the affiliate in the event of performing his job or because of it”.

Based on the above article, in order for liability to be realize; the case assumes the presence of two persons, the affiliate and his affiliated, and the affiliate commits a harmful act to another person. If this happens and within the legal conditions inspired by the article, so the harmed person has the right to sue the affiliated and obtain compensation equal to the damage.

The importance of the current study stands on the fact of increasing cases of harmful act, causing damage to money, and the difficulty of the injured person in many cases to claim his right because of the harmful act. This makes this responsibility of a degree of importance, and that it has become not an exceptional responsibility, but rather a major responsibility

Moreover; the multiplicity and expansion of dependency matters, and the occurrence of the harmful act of the follower, the entry of technological systems into the work of the follower, or the performance of his work by technological means require reviewing the legal texts and the extent to which they cover this responsibility.

Consequently, for protecting the interest of the injured and obtaining compensation equal to the damage release the importance of the current study.

To follow the problematic of this study appears in the extent to which the legal texts cover matters of damages committed by the subordinate, if the function performed by the subordinate has a role in inflicting the damage. In addition, the sub-problematic of this study investigates to what legal extent the injured person's capacity to install himself as a plaintiff and litigant in confronting the affiliated person to claim compensation for the damage caused by his subordinate. Finally, this study is aiming to determine the role of the judicial rulings applied on this responsibility, and determine whether applied in a narrow scope or need expanded when its conditions met.

2 THEORETICAL FRAMEWORK

The responsibility of the affiliated for the actions of the affiliate action is of great importance due to the large number of cases of damage that occurs to others. The one who caused the damage is affiliated with others, so that the injured person may receive compensation for the injury he suffered as a result of the damage. Thus, for fear of the
inability of the one who caused the damage to pay the value of the damage he caused to others; this extraordinary responsibility is existed.

This responsibility is one of the most common forms of responsibility for the actions of others, and this could be deduced from the large number of rulings issued by the Jordanian Court of Cassation in this regard. Thus, the responsibility of the affiliated for his affiliate person's illegal acts is a consequential liability established by law for the benefit of the injured and based on the idea of legal guarantee. So, the subordinate is considered under the rule of the joint sponsor as a guarantee originating in the law.

Some scholars indicated that the responsibility of an affiliated for his affiliate person acts means, “the affiliated is responsible for the harmful and illegal acts of his affiliate during or because of his performance of the job when these actions cause harm to others. Therefore, the affiliated; whether a natural person or a legal person, is responsible about harmful acts, and his responsibility is about all harmful acts of others emanating from the affiliate within the limits of affiliated authority over the affiliate.”

Whereas, civil liability is a penalty of breaching a legal obligation; contractual or harmful act. The breach of the contractual obligation occurred in the matter of the debtor's contractual error, and the breach of liability for the harmful act represented in the matter of committing a material element, represented by the harmful act.

While the affiliated in his legal responsibility does not commit any act that is considered a breach towards others, but his responsibility extends to the actions of his affiliates when they breach their legal responsibility towards others. However, without the existence of legal regulation, this responsibility would not exist, and the affiliated is not responsible for the actions of his affiliate that are harmful to others. Accordingly; the responsibility of the affiliated for the actions of his affiliate is defined as the civil legal responsibility of the affiliated for the actions of his affiliate that are harmful to others, if these actions occurred during or because of the job. In addition, it is defined as a legal obligation on the affiliated to guarantee a damage, when the civil liability of the subordinate for damages to others is established; if the damage is caused by or during the job and the return of the injured person to claim compensation for the affiliated.

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To follow, this responsibility stands out by virtue of the law that entails on the affiliated when its conditions are fulfilled, represented in the fact that there is a link between the function that the affiliate performs in the interest of the affiliated, and when this affiliate is subject to the supervision and direction of the affiliated. Therefore, this responsibility is an additional responsibility established for the benefit of the injured, but to make the affiliated responsible about the actions of affiliate; some conditions should be achieved. These conditions are either related to the one who caused the damage, or the harmful act. These conditions are outlined as follows:

1- The existence of a dependency relationship: The dependency relationship between the affiliate and the affiliated person is a prerequisite for achieving this accountability, and this relationship is established through the authority granted to the superior over the subordinate.

In order for the affiliation relationship to be achieved, the affiliated must have actual authority to control and direct his affiliate person, and this actual authority is available to the affiliated to issue orders and instructions that his affiliate person must abide by when carrying out the required work. It follows that there is no need for this authority to be determined by virtue of a contract between the affiliate and the affiliated person, because its basis is according to the rules of the Jordanian Civil Law. Article (288/1-b) requires the existence of the actual authority in directing and controlling even if the affiliated is not free to choose the affiliate who commits the harmful act.

The actual authority in supervision and direction is sufficient for the establishment of a subordination relationship. But this authority is usually due to the existence of a work contract between the affiliated and the affiliate person, such as in the case with regard to the worker, the servant, the driver, the employee. Likewise, it is not necessary for the subordinate relationship to be established that the affiliate be free to choose the affiliated. At this regards, the employees of the local or municipal councils who are

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10 This was confirmed by the Court of Cassation in its decision No. (2935/2022) dated 9/7/2022. It is stated that: “As the owner of the vehicle that caused the accident is the subject of the lawsuit that led to the injury of the plaintiffs, causing them harm, and causing harm to them. Which makes its responsibility achieved by confronting the plaintiffs, based on the provisions of Article (291) of the Civil Code and Article (288/1/b) of the same law related to the responsibility of the superior for the actions of the subordinate. and that the responsibility of the subordinate for the actions of his subordinate is realized if there is a relationship of subordination between them with its two elements (the element of actual authority and the element of control and guidance). In that the subordinate has the authority to issue orders to his subordinate that he directs him with in his work, even if it is a general direction, and that he has control over him in the implementation of these orders, and where if these elements are available in this case, the responsibility of the appellant will exist even if it did not have it”.
appointed by the government ask these councils even if they have no hand in choosing them, nor is it required for them that the affiliate receive a salary or not. He is paid for his work until the dependency relationship is established, whether he works free or for a fee, and whatever the type of wage is by period or by piece, or the type of work is permanent or casual. The subordination relationship is established if the affiliated has actual authority to supervise and direct\(^{11}\).

It is not necessary for the affiliated to be able to supervise and direct from a technical point of view, rather it is sufficient for him to be able to supervise and direct from the administrative point of view. For example, the owner of the car, even if he does not know how to drive, is affiliated to its driver, and the owner of the hospital is affiliated to his doctors who work for him in the hospital, even if he is not a doctor himself\(^{12}\). Moreover, since the basis of the relationship between the affiliated and the affiliate is the actual authority of the affiliated over the affiliate in directing and controlling him, it is sufficient for its realization that another affiliate performs it on his behalf and for his account\(^{13}\).

In addition, a distinction must be made between the original affiliated and the accidental affiliated, such as in the matter that a person lends his car with its driver to one of his friends. In this case, the lender remains responsible as an affiliated if he continues to supervise and direct. If this authority transferred to the borrower, as in the case of a long-term loan, the borrower becomes in the position of the subordinate, and this called the accidental affiliated\(^{14}\).

It appears from above that the subordination relationship consists of two elements: actual authority, control and direction. When these two elements are available then the subordination relationship exists, and it does not matter whether this relationship is existed from a contract or not. Furthermore, this relationship exists even if the affiliated had usurped power deliberately. Besides, it does not matter whether the establishment of the subordination relationship is paid or free, permanent or temporary. But rather that the mere existence of a moral subordination is sufficient to establish subordination on the meaning that we want it here, and then it is possible for subordination to be established


\(^{13}\) Muhammad, Al-Sayed Khalaf, Compensation Claim for Tort Liability, previous reference, p. 214.

between a person and his friend, husband and wife, father and son, as long as there is authority on the one hand and submission on the other.\(^{\text{15}}\)

It is not necessary for the authority to be legitimate; rather it is sufficient for it to be an actual authority. The affiliated may not have the right to this authority, but as long as he actually uses it, rather as long as he can use it even if he is not able to do so, this is sufficient for the establishment of the subordination relationship.\(^{\text{16}}\)

Accordingly, the axis of responsibility is the presence of supervision and guidance, and it is added in some cases that the affiliate acts a legitimate act for the benefit of the affiliated. So, as long as the elements of control and guidance are available, and that the affiliate committed his harmful act while doing an act for the benefit of the affiliated, then the affiliated is responsible for the damage caused by the affiliate to others. This responsibility achieved even there is independence of the legal personality of the affiliate person from the affiliated person.\(^{\text{17}}\)

2- Occurrence of a harmful act by the affiliate during or because of the performance of his job. In order for the affiliated to be liable according to the text of Article (288/1-b) of the Jordanian Civil Code, the harmful act must have been committed by the affiliate in the course of performing his job or because of it. Here are two pictures of the damage, as follows:

On the one side, the first picture could be seen in the occurrence of the harmful act in the course of performing the job. The mistake is considered to have occurred from the affiliate during the performance of his job if he committed it while performing one of the duties of his job. For example, if a servant is doing cleaning work in the house of his employer and he accidentally throws a solid object on the road and hits a passer-by, then the employer is considered responsible for the mistake of the servant because it occurred from him during perform his job.\(^{\text{18}}\) Thus, it is achieved regardless of whether the affiliate committed it based on an order from his superior or without an order from him, with or

\(^{\text{15}}\) Abu Steit, Ahmed. Sources of Commitment, p. 479.

\(^{\text{16}}\) Al-Sanhouri, Abdul-Razzaq, Sources of Commitment, previous reference, p. 1016.

\(^{\text{17}}\) This is what the Court of Cassation referred to in its Decision No. (3328/2022) dated 4/8/2022, in which it stated: “It is established in the jurisprudence of the Court of Cassation and according to Article (288) of the Civil Code that the basis for the responsibility of the superior is the establishment of responsibility as long as it is established in the case papers. And its evidence the responsibility of the contractor (the first defendant) for the damage suffered by the plaintiff (the discriminated one). It is also established that the first defendant (the subordinate) works for the owner of the project and she is the second defendant (the one against whom the lawsuit is filed) and under her supervision in accordance with the law of the authority water. It is proven that the one who is discriminating against it is the owner of the project and that the contractor is the one who implements it for the benefit of the one who is discriminating against it; which does not negate the responsibility of the one discriminating against it for compensation for the damage caused by the contractor (affiliate) in accordance with Article (288) referred to”.

without his knowledge, just as it is known that the affiliate performs his job or work at a specific time and place.

Consequently, this question could be risen: Does it mean that the percussion of the harmful act at the time or place of the work of the affiliate achieves the responsibility of the affiliated directly? In other words, does the responsibility entail on the affiliated directly? To approve such responsibility a causal relationship between time, place, and the harmful act should be approved. So, the affiliate person is considered responsible about the affiliated person if a link between the illegal act and the job is approved, and this happens by achieving a link related to the time specified for performing that job or the means or goals for its implementation. The Jordanian Court of Cassation confirms this through its decision in which it stated that:

“1. If the defendants are employees of the Drivers and Vehicles Licensing Department and that what they did of issuing a false (forged) possession license for the Mercedes (300S) car with the number (287921) private/Jordan was done during the performance of their job and that they work under its supervision and control. Whereas, the responsibility of the Drivers and Vehicles Licensing Department is the responsibility of the affiliated for the work of a affiliate in accordance with the provisions of Article (288) of the Civil Code, which requires the following conditions to be imposed on the superior for compensation for the damage caused by the affiliate. A- That the one who caused the damage is an affiliate, B- That the affiliated has authority over the affiliate in controlling and directing him, even if he is not free to choose. And that the act is issued by the affiliate in the course of performing his job or because of it. Whereas it is sufficient for the affiliated to be held liable for the harm caused by the affiliate by his unlawful act, that there be a causal relationship existing between this action or error and the function of the follower. At this regard, the affiliated is responsible if the mistake of the affiliate was ordered by the affiliated or not, whether he knew about it or not, as long as that the affiliate would not have been able to commit this act or mistake without his dependency relationship with the affiliated.

To conclude, the responsibility of the Drivers and Vehicles Licensing Department with the rest of the defendants, because the actions of its employees which caused harm to the plaintiff, turned out to be while they were performing the job that enabled them to do that...........”

It should also be noted with regard to this type of responsibility that the affiliated is responsible about the harmful actions that the affiliate has committed, if he issues clear orders and explicit instructions but the subordinate passes these instructions or executing

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19 Malkawi, Bashar, and others, Sources of Commitment, previous reference, p. 131.
20 Decision of the Jordanian Court of Cassation No. 604/2007 (a five-member panel) on 9/11/2007.
them in violation or even mis-executing them. This does not absolve the affiliated from responsibility as long as the affiliate causes harm to others while performing the job\(^\text{21}\).

Finally, it is sufficient to establish the responsibility of the affiliated for the harm caused by the affiliate’s illegal work that there is a causal relationship existing between the mistake and the job of the affiliate. The mistake of the affiliate may or may not be issued by the affiliated, whether he knows it or not\(^\text{22}\).

On the other side, the second picture could be seen in the occurrence of the harmful act due to the job. The responsibility of the affiliated for a dependent act is established if the latter caused harm to others while performing his job. It also exists if the action was issued by him because of this job, and the act is a reality of the affiliate because of the job, if there is a close causal link between the act and the job. So, the affiliate would not have been able to do that if he had not been present with this job\(^\text{23}\).

This is what the Court of Cassation ruled in one of its rulings, where it stated that:

> The affiliated is liable for the damage caused by his affiliate by his illegal work, if it occurred from him in the event of performing his job or because of it, pursuant to the provisions of Article 288/1/b of the Civil law. It stipulates the availability of an actual authority for the affiliated to supervise and direct the follower, the occurrence of an error on the part of the affiliated that caused harm to others, and the follower committing a harmful error in the event of performing his job or because of it\(^\text{24}\).

The error that occurs from the affiliate because of the job is the error that occurs while he does not perform an action of the job; but it is considered as such, if the affiliate uses tools related to the work assigned to him. Therefore, the use of work tools creates a causal relationship between the job and the damage, and it can be considered that the error occurs because of the job that the affiliate aims to achieve. The interest of the affiliated

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\(^\text{21}\) This is what the esteemed Court of Cassation referred to in Decision No. 2342/2022 dated 6/10/2022, regarding the implementation of the expropriation decision, which does not absolve the responsibility of the Ministry of Public Works from the responsibility of causing harm to the neighbors when the contractor implements the expropriated street. It was stated in the decision “We find that from the registration deed for plot No. 165, Basin 10, Khallet Qatami, from the lands of Jedita affiliated to the Directorate of Lands Registration of Deir Abi Said, the subject of the case, that the defendant has the right to dispose of the entire plot, and that the defendant reconstructed and paved the public works road, the entrance to Jedita, which is located along the facade of the northern piece, the subject of the lawsuit under Bid No. (SH/61/2013) and completed on 12/18/2013, and as a result of carrying out the necessary technical works of excavation and filling in order to obtain a regular level for the road body, this led to a lower level of the surface of the piece than that of the road. The surface of the street at a rate of 3 m, which led to damage to the northern part of the plot, so the defendant’s act has fulfilled all the elements and elements of tort liability and the responsibility of the superior for the actions of his subordinates, which necessitates compelling her to compensate in accordance with the provisions of the damage resulting from the illegal act.

\(^\text{22}\) Muhammad, Al-Sayyed Khalaf, The Compensation Claim for Tort Liability, previous reference, p. 238.


or his benefit is the criterion that must be taken into account when assigning or denying the responsibility to him. The interest may be material or moral, such as an affiliate who enters into a quarrel with an affiliate with another person and the affiliate hits the other person and assaults him and causes harming him. But, if it was the interest of the affiliate that prompted him to do the illegal act, then it is not considered that it was committed because of the position

To follow, the job is a cause of committing a mistake if the job is necessary so that without it he would not have been able to commit the mistake or did not think of committing it. That is, the error due to the job achieved in one of two ways: The job is necessary for committing the error so that without it he would not have been able to commit it. The second is that the job is an invitation to think about committing a mistake, so that if it were not for the job, the affiliate would not have thought of committing a mistake.

The rule is that the act that causes harm occurs from the affiliate while he is doing an act that is typical of the actions of his job, or that the act that causes harm occurs from the affiliate because of this function. The criterion here is that it should be proved that the affiliate would not committing the error or that he would not thought of committing that error without the job, and it is equivalent to that the act is achieved by exceeding the limits of the job or by misusing the job or even by exploiting it.

It must also be noted that the Jordanian legislator has ruled out the affiliate's harmful act that occurs on the occasion of the job from the scope of the affiliated responsibility. However, despite the lack of it is stipulated in the Jordanian Civil Code within Article (288/b), but the Court of Cassation ruled in some of its rulings when the harmful act occurred on the occasion of the job. It states in one of its ruling that:

The Directorate of Civil Status in Aqaba is responsible for the mistakes of its employees, because they did not verify the registration number and the national number of the owner of the identity. In addition, it is responsible because they did not verify the validity of the data and the image affixed to the application for obtaining a damaged allowance. The errors led to harm to the plaintiff through the first defendant using the forged card, selling him the plaintiff’s plot of land, and

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27 Al-Far, Abdul-Qader, Malkawi, Bashar (2015), Sources of Obligation (Sources of Personal Right in Jordanian Law), Amman: Dar Al-Thaqafa, p. 217.
receiving its price. So, the Civil Status Department as a government department is responsible by guarantee for the mistakes of its employees that they commit during the job and that the civil attorney general's litigation in the case is a valid litigation.

3 METHODOLOGY

To achieve the aims of the study; the researchers apply the descriptive analytical method, by exposing and analyzing the relevant texts of the law, deducing the contents of the legal texts, and extrapolating the relevant judicial rulings. This approach is known as library or document method. This research stands on the normative juridical approach that support-doing research based on primary resources.

The basis of the responsibility of the affiliated for the actions of the affiliate person and its special provisions will be discussed in the following part. This achieved by discussing the basis of the affiliated responsibility for the actions of the affiliate person, and the special provisions regarding the responsibility of the affiliated for the actions of the affiliate person.

4 DISCUSSION

4.1 THE BASIS OF THE RESPONSIBILITY OF THE AFFILIATED FOR THE ACTIONS OF THE AFFILIATE AND ITS SPECIAL PROVISIONS

When the legislator issuing any legal regulation, it is necessary to clarify the purposes inspired by this legislation, and the legal basis on which it is based. Likewise, when the judge applying these texts, he/she applies the spirit and content of the text according to the case presented to it. In addition, it is necessary to clarify the role of legal jurisprudence in analyzing and studying the legal text to clarify the purpose and the basis on which this text was built.

The legal text in the Jordanian Civil Code considers it as a fixed and verified liability against the affiliated; and does not accept proof of the opposite, as long as the damage is achieved as a result of the affiliate committing the harmful act in accordance

with the conditions that were previously stated. But the difference in jurisprudential opinions regarding determining the basis on which the responsibility of the affiliated for affiliate actions is based makes this responsibility capable of proving the opposite in some of these opinions, and several opinions were said to determine the nature of that responsibility, including:

4.1.1 The supposed error

The affiliated is responsible about the error of affiliate in the matter of mistake in choosing, controlling, directing, or in all of these matters, and it is an imposed mistake that does not accept proof of the opposite. But the affiliated could get rid of including of responsibility if he proves that the damage must have occurred; even if, he fulfills his duty of selection, supervision and guidance. In other words, if he can deny the causal relationship between the damage that occurred and the supposed error on his part. That is, the affiliated can deny this responsibility by denying the existence of a causal relationship between the harmful act and the act of the affiliate, by arguing that there is a foreign cause in accordance with the text of Article (261) of the Jordanian Civil Code.

4.1.2 Risk-Bearing the liability

This opinion evaluates the responsibility of the affiliated for affiliate actions on the theory of risk bearing liability, because the affiliated benefits from the activity of the affiliate, so he must bear the damages that this affiliate commits. This opinion criticized by the fact the affiliated will be responsible about the actions of affiliate in all matters; even in the matters that affiliate make a wrong action.

4.1.3 Representation

This view goes to establish the responsibility of the affiliated on the basis of representation, as the affiliate is a legal representative for the affiliated, and therefore the affiliated is considered responsible for his actions. Therefore, the affiliated is responsible

32 As stated in Article 261 of the Jordanian Civil Code: “If a person proves that the damage arose from a foreign cause that he had no control over, a heavenly calamity, a sudden accident, force majeure, the act of a third party, or the act of the injured person; he is not bound by the guarantee unless the law requires or agreement otherwise”.
for the actions of affiliate in the matters that entered in the borders of his deputy, and the other actions considered as a material actions and the affiliate is responsible about it\textsuperscript{34}.

4.1.4 Substitution

Some scholars considered that the basis of responsibility is the concept of substitution; given that, the personality of the affiliate is nothing but an extension of the personality of the affiliated, so what happens from the affiliate is as if it occurred from the affiliated. However, this opinion is based on an assumption that contradicts reality that the mistake must be personal\textsuperscript{35}.

He adds that the concept of substitution assumes that the affiliated is legally replaced by the affiliate by compensating for the damages caused by him to others as a result of or because of his exercise of his job. But this opinion is not correct; in the fact, because the substitution are either legal or consensual, and this is not available to be considered substitution in the matter of affiliation. This attributes to the fact that there is no legal text states that the affiliated replaces the affiliate, nor there shall be a prior agreement between the affiliate and the affiliated that the affiliated shall replace the affiliate to pay compensation instead of him. This is because if such agreement happens it is invalid and irrelevant according to the general rules of liability for the harmful act.

4.1.5 Warranty or guarantee

The basis of this opinion is that the affiliated guarantees his affiliate for what he committed of a mistake that causes harm to others if this error occurred during the performance of the job or because of it. It is a liability for others based on the idea of guarantee. One of the advantages of this opinion is that it makes the affiliated responsible and he cannot get rid of this responsibility if he proves that it was impossible to prevent the illegal action that caused the damage. Therefore, the obligation of the affiliated is an obligation to achieve a result and not to exert care, and this consideration allows the retention of the responsibility of the affiliated even if he is not distinguished. In other words, the source of responsibility is not the agreement but the law\textsuperscript{36}.


\textsuperscript{35} Sultan, Anwar, Sources of Commitment, previous reference, p. 371.

\textsuperscript{36} Abu Al-Saud, Ramadan, Sources of Commitment, previous reference, p. 425.
In addition, the idea of guarantee; which considers the affiliated as a joint guarantor in the face of others for the actions of the affiliate, explains the permissibility of the injured person's recourse against the affiliated, because the joint guarantor does not have the right to be stripped. It also explains the permissibility of the affiliated's recourse against the affiliate with the compensation he paid even if he makes the affiliated a guarantor and solidary against his will.

To conclude, the researchers argue that the basis of liability is a legal process compounded from the idea of assuming fault on the part of the affiliated with the idea of guarantee, since the fault is assumed on the side of the affiliated and it is not possible to prove the opposite unless there is a foreign reason. Thus, after the occurrence of the damage, the idea of guarantee becomes active, as the relationship is direct between the injured person and the affiliated, and this relationship necessitates the affiliated to be a guarantor of the damage caused by the affiliate to others. Therefore, the affiliated takes the judgment of the sponsor, and the source of this sponsorship is the law.

4.2 SPECIAL PROVISIONS REGARDING THE RESPONSIBILITY OF THE AFFILIATED FOR THE ACTIONS OF THE AFFILIATE

After explaining the responsibility for the act of others in terms of the availability of its conditions and in terms of the basis on which it is based; it is necessary to search in the matters that the affiliated can prove to disclaim his responsibility about the affiliate's actions. Finally, this sub-section will search in the legal mechanisms that the affiliated can use to claim the affiliate in the case that the affiliated paid the compensation to the injured person.

4.2.1 Removal of the affiliated responsibility for the affiliate actions

The Jordanian Civil Law did not grant the affiliated the right to disclaim responsibility for himself, because it is established the responsibility of the affiliated for the actions of his affiliate based on an assumed mistake that cannot be proven otherwise. However, the general rules in the civil law enable the affiliated to disclaim his

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37 The right of abstraction means that the creditor may not have recourse against the guarantor except after recourse to the debtor and execution on his money, and the guarantor can defend this right when recourse to him by the creditor. Article 788/2 of the Civil Code: (It is not permissible for him (the creditor) to implement the money of the guarantor except after stripping the debtor of his money, and the guarantor in this case must adhere to this right).

38 Sultan, Anwar, Sources of Commitment, previous reference, p. 371.
responsibility if he proves a foreign cause, which includes (Force Majeure, A Sudden Accident, Same Injured Act, and The Act of Others).\(^{39}\)

These matters express that there is no error on the part of the affiliate or that the error is a result of the mentioned cases and thus the lack of responsibility of the affiliated, which necessitates denying the causal relationship between the damage caused and the act of the affiliated. However, there are matters where an error actually occurred on the part of the affiliate and caused harm to others but the responsibility of the affiliated does not occur. This is in the case of proven that the act of the subordinate is foreign to the job that leads to denying the responsibility of the affiliated if his connection to it is severed and the act did not occur due to the execution of orders issued by the superior and for his benefit.\(^{40}\)

This was confirmed by the Court of Cassation where in its decision ruled that:

“the conditions for the responsibility of the appellant against him in his capacity as responsible for the actions of his affiliates are not met by their assault on the plaintiff and the material and moral damage he suffered as a result of this assault. This is because; firstly, it took place in the public street and outside the hotel. secondly, because of the plaintiff beating the defendant Samir starting when he did not enable him to use the phone, and therefore the job was not the reason for the quarrel that occurred later, nor was it necessary for it to occur in accordance with the provisions of Article 288/b of the Jordanian Civil Code\(^{41}\)”.

Accordingly, there are two ways for the affiliated to deny responsibility. The first is by denying the causal relationship between the act of the affiliate and the damage, in accordance with the text of Article 261 of the Civil Code. The second is by denying the role of the position in inflicting the damage, by proving that the harmful act leading to the damage was not during or because of the job.

4.2.2 The damaged person claiming the party causing the damage

The text of Article 288/2 states the right of the affiliated person recourse against the affiliate for what he paid in terms of compensation to others for the harmful act.

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\(^{39}\) Where it was stated in Article 261 of the Jordanian Civil Code: “If the person proves that the damage arose from a foreign cause that he had no control over, a heavenly calamity, a sudden accident, force majeure, the act of a third party, or the act of the injured person; he is not obligated to guarantee unless the law requires or agreement otherwise”.


committed by the follower. So that if the injured person claims the affiliated and receives the amount of compensation from him, the latter has the right to return what he paid to the follower because the affiliated is a guarantor and is not personally liable. However, the return of the affiliated to the affiliate is considered a rare matter, because the personal fault of the affiliated often prevents this return, and assuming the return of the affiliated to the affiliate. However, this claim is considered acceptable if the harm occurred due to the affiliated non-compliance with the orders imposed on him, or because of his abuse of his position, but if the affiliated proves that he adheres to the instructions of the follower, so the fate of this claim is rejected.

To follow, it should also be noted in this regard that the claim of the affiliated to the affiliate is not permissible for the injured party to return directly on the affiliated, but rather it is necessary to refer first to the affiliate. Then, the judge; if applicable, could command the affiliated or the guarantor to pay a compensation for the injured person, and after that the affiliated has the right to claim what he paid from the affiliate.

To conclude, there is no need for the affiliated, in the event of his claim to the affiliate, to recover the amount of the guarantee that he paid to the injured party, to prove the responsibility of the affiliated. This attributes to the fact that the responsibility of the affiliated is considered as a backup responsibility based on the idea of the affiliated guarantee of the affiliate, and the affiliated claim to the affiliate is also to the extent of what he guaranteed of responsibility. So, if the court is unable to determine the share of each of them in the responsibility, the compensation shall be distributed to them equally or the court has ruled that they are jointly liable, in accordance with the text of Article 265 of the Jordanian Civil Code.

5 CONCLUSION AND RECOMMENDATIONS

The solidarity responsibility of the affiliated is considered one of the most important elements of responsibility for the act of others organized by the Jordanian legislator. The main axis in this responsibility is the injured person, that is, as long as there is harm and injured person, there must be a cause of it. The problem arises if it is

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42 Abdul-Daem, Ahmed, for the general theory of commitment, previous reference, p. 358.
43 Malkawi, Bashar, and others, Sources of Commitment, previous reference, p. 134.
44 Article 265 of the Civil Code states that “If there are several persons responsible for an act that has become incurred, each of them is responsible in proportion to his share in it. The court may rule equally or jointly and severally among them.”
not easy to require the guarantee to redress the damage, as was mentioned in the problem of the study, such as the affiliate is not financially full and harm occurs to others, which leads to the lack of financial disclosure for the injured unjustly. So, it was necessary for the legislator to go along and keep pace with the legal changes, and for the right of the injured party to reparation for the damage he sustained, and that there be a guarantor for this damage so that he can be held accountable.

Further; to achieve the public protection where the legislator appoints himself as a representative for it; it was necessary for him to cover this responsibility so that there is a legal combination in which he holds a person responsible directly towards the injured person. So, the injured person claims this person to cover the value of the damage that he suffered, but certain conditions must be met in each type of liability, and these conditions must be combined.

To conclude, the researchers of the current study recommend the following Recommendations; as follow:

1- The need to amend the text of Article 288/1 by deleting the phrase (no one is responsible for the act of another).

2- The necessity of amending the text of Article 288/1 by obliging the court to pay the guarantee for the one who caused the damage so that it is consistent with the text of Article (256) of the same law. Thus, by obliging the court to perform the guarantee in solidarity with others if the conditions for responsibility for the act of others are met and not only for whoever inflicted the damage. Therefore, the researchers recommend amending this article to be as follows: “A- The court shall, upon the request of the injured party, obligate the payment of the warranted guarantee to the one who caused the damage and/or to whom. B- Whoever has it against the one who caused the damage.... ..........” So, the court’s ruling on the one who caused the damage must be obligatory, and the one responsible for the one who caused the damage is permissible, as long as the court is sure that its conditions are met, in the event that the injured party sues the affiliated.

3- Amending the text of Article 288/2 “and whoever pays the guarantee may claim what he paid to the person against whom the judgment was passed”. This article does not define “the person whom the judgment was passed”. Therefore, it must be amended so that it reads “And the one who paid the guarantee has the
right to claim what he paid, against the one who caused the damage or caused the damage”.

4- When it is not clear whether the damage is caused by the job or in connection with the job, we hope that the legislator will add the phrase “on the occasion of the job”. Since there is a relation, whatever it is the relativity and simple between the harmful act and the job, the job shall be responsible, in proportion to its contribution for causing the harmful event. So that Paragraph (b) of Article 288 becomes as follows “Whoever has ....... in the event of performing his job, because of it, or on its occasion”.
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