

Responsibility of Objects in Jordanian Civil Law

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Abstract

In this research, we will talk about clarifying the nature of the responsibility of dangerous objects and machines for the damage incurred by them, determining the responsibility of the guardian of the thing that caused the damage, and according to the law, guarding means actual control over the thing in terms of its control, use and care, such as the right of ownership of the thing or the right to use it or Not based on a legitimate right.

The point in determining the guardian of the thing is by what he possesses from the actual control over this thing, whether he is the owner, beneficiary, or the lessee of the thing, or the thief of it, Although his possession of the thing was not based on a legitimate reason.

This research is based on the descriptive-analytical approach, where the legal materials that dealt with the provisions of civil liability for guarding dangerous objects and machines will be reviewed, and this is through analyzes of legal texts and judicial applications, in particular, the decisions of the Jordanian Court of Cassation related to this topic.

It was also reviewed how the Jordanian legislator dealt with this responsibility in its clear and explicit texts such as the text of Article (291), which spoke of the responsibility of the custodian of objects for the damage incurred by him or because of him. According to the law, guarding the thing requires actual control over the thing by moral and material authority, because only one of them is not enough.

Keywords: objects, responsibility for objects, guarding, civil law.

I. INTRODUCTION

Objects were created in general to achieve human well-being, however, these objects may result in their use causing harm to money or people, and the necessary social needs that resulted from economic progress and the subsequent finding of dangerous means, tools, and machines that resulted in injury to money and lives. With many damages and risks, without the injured being able, in most cases, to find evidence of the guard's mistake, and then obtain compensation, this raises the legislator's desire to enact legislation and laws through which citizens' obligations and rights are clarified to support the status of the victim.

And if that responsibility is based on the cause of damages on the one who had the thing under his control or guard, then it is important to clarify the meaning of guarding over the thing that caused the damage and to designate the individual who will be responsible for compensating the injured person who was harmed by this thing. (Abu Shanab, 2010, p. 114).

And the main idea in this field is that the mere occurrence of damages due to objects is considered evidence of the error of the guardian of the thing in preserving it and not allowing harm to others, and this error is assumed assuming that it is not allowed to prove it's

opposite except through the proof of the foreign cause, for this reason, legislators tried to reduce the burden of proof that It is the responsibility of the injured party to ensure that he obtains his rights in compensation for the damage. (Sultan, 2005, p. 8).

We believe that the issue of custody over the thing that caused damages included strict terms and foundations concerning the defendant, and this is a desire to reduce the burden of proof that falls on the affected persons to ensure that he obtains his right to compensation and access to it. The responsibility resulting from doing objects is embodied if The individual was obliged to redress the damage caused by the objects in his custody, so this study comes to know the civil responsibility for the actions of machines and dangerous objects in the Jordanian civil law.

1.1. Research problem:

The problem of the research appears in clarifying the level of sufficiency of the Jordanian civil law texts as a guarantee for compensation for damages resulting from dangerous objects and machines, and the lack of legal articles dealing with the responsibility of guarding dangerous objects and machines in the Jordanian Civil Law, as we see that the Jordanian Civil Law has dealt with this matter in Articles (291). and 292) only despite the great danger resulting from the use of dangerous objects and machines, and the responsibility to prove such damages and to provide appropriate compensation for them.

1.2. Research importance:

The importance of the research is the importance of civic responsibility for the use of dangerous objects and machines, the close relationship between these and members of groups, and the extent to which they use the objects that make them a subject of civil responsibility.

As well as presenting the conditions of civil liability that the Jordanian civil law arranges for the custodian of these objects, and this matter requires the presentation of the concept

of guarding the thing and the occurrence of damage by doing this thing.

And also research based on the legal responsibility of the custodian of objects in Jordanian law, citing some of the jurisprudence of the Court of Cassation in this regard.

1.3. Research Aims:

The objectives of this research are the following:

- Defining responsibility for doing objects.
- Defining the concept of legal guardianship
- Knowing how the Jordanian Civil Law dealt with the responsibility of the custodian of objects for the damage caused by them

1.4. Research Questions:

The study problem is related to the main question of the research: What is the responsibility of objects in Jordanian civil law?

These sub-questions are derived from the main question:

- What is meant by responsibility to do objects?
- Who is responsible for the damage done by doing object?
- What is the legal basis for the responsibility of the custodian of objects in the Jordanian civil law?

1.5. Research terms:

The objects: it is everything that exists in nature or any part of the outside world that is suitable for achieving an individual or collective human interest, economic or moral, provided that the law considers it valid to be a subject of rights.

Guardian: He is the person who has the right to use the thing and has the authority to monitor and direct it, and he is also obligated to prevent it from harming others. Therefore, the law imposes responsibility on him in case he causes damage.

Custody: It is putting money in the hands of a trustee who is responsible for its preservation, management, and return.

2. Research Methodology:

This research is based on the analytical descriptive approach, where the legal materials that dealt with the provisions of civil liability for guarding dangerous objects and machines will be reviewed, and this is through analyzes of legal texts and judicial applications, especially the decisions of the Jordanian Court of Cassation related to this topic.

Previous studies:

Al-Zoubi, Ahmed Bashir, (2005), a study entitled "Civil responsibility for guarding objects and machines in Islamic jurisprudence". This study reviewed what is meant by guarding in Islamic jurisprudence, and the author of this study did not turn to Jordanian civil law except in a very brief manner. The meaning of guarding according to Islamic jurisprudence and clarification of some other concepts, as Islamic Sharia is one of the most important sources of legal legislation.

Mathan, Nayef Fadel (2006 AD) "Civil Liability for Environmental Damage in Jordanian and Comparative Law"; This study aimed to address the environmental damage in detail and did not reach a comprehensive study on guarding, but only mentioned simple points and did not give them their right and importance.

Kamal, Kehel (2006 AD) "The objective trend in civil liability for car accidents", Algeria; This study aimed to identify liability and solidarity if the custody is for more than one person, in addition to shedding light on insurance companies and their role in this context.

Abu Hazeem, Abdel Halim, Abdel Qader, (1995 AD) a study entitled "Responsibility for inanimate objects in the Jordanian Civil Law). This study talked about man-made legislation, that is, the comparison, and did not deal mainly with the issue of guarding in the Jordanian civil

law, and this study was taken advantage of. In knowing the aspects of civil liability for damage caused to objects in general.

3. Theoretical framework:

According to the foregoing, we will address the theoretical framework of the research according to the following topics:

3.1. What is the guard's responsibility for dangerous machines and objects?

The issue of the responsibility of the custodian of dangerous objects and machines is one of the issues that has received clear importance and interest, in the field of tort liability from a legal point of view, because dangerous objects and machines can result in damage to others, and in this case, there arises the responsibility of the custodian of the thing for the damage that resulted For the action of a person or for the actions of the thing that is under his custody and protection, as the general principles in determining the liability of a person for damage resulting from objects under his custody were beyond the need of the aggrieved to prove the damage inflicted according to the general rules. (Al-Nimr, 2015, p. 17).

3.1.1. Guarding the objects

Jordanian law established the provisions of civil liability in civil law from the principles of Islamic jurisprudence, and the Jordanian law has dealt with the issue of civil liability for the guard of dangerous objects and equipment through the text of Article (291) of the Jordanian Civil Law, which decided that "everyone who has at his disposal objects that need special care for prevention Of its damages or mechanical machines, he shall be liable for the harm these objects cause, except for what cannot be avoided, without prejudice to the special provisions that are mentioned in that."

We see a clear and noticeable match between the opinion of the Jordanian law and the Egyptian law, where the legislators tended concerning the responsibility of the guard for doing dangerous objects, and machines to

assuming that responsibility on the person who has actual authority over these objects.

The issue of responsibility for doing dangerous objects and machines has been presented over time periods, wherein its beginning was based on the need to prove error on the part of the guard, and with the advancement of technology and the increase of industries and what resulted from the possession of objects. This exposed money and lives to renewed risks and increased at the same time the feeling related to the reality of the dangers that occur through doing those objects that are under the guardianship of human beings. (Badr, 2014, pg. 13).

Jordanian law did not address the term guard, but the Jordanian Court of Cassation used this term, and accordingly, it appears that Jordanian law has followed the approach of Islamic jurisprudence, which determines who is responsible for doing dangerous objects and machines. (Al-Naqeeb, 2019, p. 84).

And guarding in language: it is a source of the triple verb guard, and guard something, that is, to preserve it, or in the sense of guarding it and preserving it. (Ibn Manzur, 1994, p. 126).

It is the placement of money about which there is a dispute or the right to which is not established, and is threatened by urgent danger at the hands of a trustee who will take care of its preservation and management, and return it with submitting an account on it to the one who has the right to it. The custody is an agreement, or by a court ruling, it is a judicial guard. (Al-Sanhouri, 1968 AD, p. 781).

What is meant by guarding is the actual independent control over objects that allow their owner to dispose of, control, and direct the thing to his account.

Actual control means the independent uses of the advantages that objects contain, for example, the employer uses his authority over the factory machines, not the worker, because the business owner gives orders to stop and operate them, and thus he has independent authority over these machines.

Actual control over objects requires the individual to have moral authority over them,

material power alone is not sufficient, i.e. the guardian of objects is under his control all the elements of the thing, including his internal secrets, and supervision over them, for example, the driver of a car has physical power over it, but he does not have the authority. The morale is on that car, and therefore the guard is for the owner, but if the driver exceeds the limits of his work and drives the car to achieve a personal benefit for him without the owner's knowledge, then he is considered a thief and the guard turns to him. morale on it.

3.1.2. Objects that require special care

The Jordanian law dealt with the issue of civil liability for objects that need special care by inferring this in the text of Article (291): Whoever has at his disposal objects that require special care to prevent their damage or mechanical machines, is liable for the harm these objects cause, except for what is not it can be avoided, without prejudice to the special provisions contained therein.

Where the issue of civil liability for dangerous objects and machines received the attention of the Jordanian law due to the progress and development that the industry witnessed and society was not far from, the legislators were not able to ignore these developments, and progress for this reason the text of Article (291) of the Civil Law was drawn up, as the rules The non-traditional public is not enough, and therefore Jordanian law is required to address this shortcoming.

When delving into comparative legislation, we note that Article 178 of the Egyptian Civil Law stipulates, "Anyone who guards objects whose guard requires special care or guards mechanical machines shall be responsible for the damage caused by these objects, unless it is proven that the damage was caused by a foreign cause." The guard entered into it, without contradicting the special provisions that appear in that matter.

When we return to the Jordanian civil law and comparative law, we see that there is a clear agreement between what the Jordanian law and the Egyptian law have adopted; Because they decided, when talking about civil liability for

dangerous objects and machines, that it is assumed that it is the responsibility of the one who has the actual authority over these objects, through the express phrase (whoever was at his disposal), which expresses the actual control over the objects, and this phrase is contained in the legal texts of each of Egyptian and Jordanian law. (Alrho, 2011, p. 75).

Dangerous objects may be dangerous either according to their nature or according to the circumstances surrounding them, such as explosives, chemicals, and weapons. There are also dangerous objects in normal circumstances that turn into dangerous objects in unusual circumstances. For example, if the wind uproots a tree and throws it on the public road, it becomes dangerous. (Al-Nimr, 2015, p. 81).

And we measure on this that the interest requires us to assume the infringement of the person guarding the mechanical machine and the guard of dangerous objects, whether in the direct situation of the damage or the situation of the one who caused it, but it is an assumption that can be proven to be reversed, and this is what the Jordanian law embraced in Article (291) that we assume the guard's infringement of mechanical machines And the guard of dangerous objects that need special care, except for what cannot be guarded against. The meaning is that the Jordanian law has considered it a hypothesis that can be proven otherwise, either by denying the guard's infringement or by denying the causal link.

By examining the decisions and rulings of the Jordanian Court of Cassation, we see that it has embraced the legal basis, which assumes that the fault occurred on the part of the guard of dangerous objects and machines, and made it a presumption to prove the opposite. (Decision of the Court of Cassation, 1989, p. 248).

3.2. The responsibility of objects in the Jordanian civil law

The idea of liability for damages caused by the vehicle while it is standing is based on the principle of responsibility for doing objects, which considers the individual responsible for any damages caused to others because of the thing he is guarding, without the injured being

obligated to prove the fault of the guard, who can only deny his responsibility to a limited extent. The very fact that those damages occurred as a result of the injured person or by force majeure, and car accidents that occur frequently and that cause damage to others without being able to prove the perpetrators' mistake have led to the emergence of special rules for this responsibility in the various laws that evaluate them not based on error, but as Assuming liability that the receiver cannot deny by proving that he is not at fault. Rather, he must prove that the damages were caused by force majeure or by the fault of the injured party.

3.2.1. The basis of the responsibility of the guardian of objects

This responsibility arises in the Jordanian civil law on the principle of bearing the consequences, and this is clear from the explanatory memorandum of the civil law, which states that this responsibility arises on the basis of the rule of fines for spoils, and provides a justification for this that the vehicle can only move through its owner, and that what is produced It is considered as direct damage in which there are no conditions.

And if the damage caused to the car is considered direct damage and the one who guards it is also considered direct if the car is in motion, then the matter is not equal if the damage results from it in the event of parking because the damage and this case did not produce a direct effect for the guard but because of him, and this is proven That the Jordanian legislator did not need special texts, such as the text of Article 291 of the Civil Law, if the damage in the event of standing was considered to direct, since directness has no condition; Because it caused the damage and surrounded it, and according to the civil law, the direct person is responsible and he cannot deny responsibility for it except by proving the foreign cause and not merely by denying the mistake on his part. (Abu Al-Saud, 2018, p. 44).

And when Article 257/2 of the Jordanian Civil Law stipulates that the offender until his

responsibility is proven to be infringing, or willful, or his behavior leads to the occurrence of damage, this is the justification for finding special texts for objects that need special care so that the guard is responsible for damages. Those objects, even if they are not infringing or deliberate, are a responsibility based on the principle of bearing the consequences, meaning that whoever benefits from something must bear his burden. (Saad, 2017, p. 434)

And the car, as it is a mechanical machine, like other objects that need special care, considers its keeper responsible for the resulting damage to others, as its keeper can deny responsibility if it is proven that his role was negative in causing damage, meaning that the damage arose according to a foreign cause. (Swar, Part Two, p. 170).

Guarding is intended for the person to control the thing for his account and not for others, and the actual control means that that person has the authority represented in use, directions, and control, and therefore guarding the machine is intended for the guard to have these three powers, and it is self-evident that the appointment of the vehicle guard is of great importance; Because it is based on him being responsible for the damage he caused to others when they fell under his guard.

Theories have emerged to determine the issue of guarding. The first theory is the theory of legal custody, which considers the guard who has legal authority over the objects in his custody that he takes from a right, whether it is a right in kind of a personal right, and based on that theory the owner of the car is still a guard even if it goes out of Possession of it either by theft or by force.

The second theory considers the guard who has actual control over the car and uses it himself, even if this use is not based on a specific right, and guarding in this sense is established on two pillars: the physical pillar represented by actual control, and the moral pillar represented by the guard taking control of the vehicle for himself. (Marcos, Volume One, pg. 491).

3.2.2. Some of the jurisprudence of the Jordanian Court of Cassation regarding responsibility for doing objects and machines.

In this requirement, we will deal with the issue of the responsibility of objects practically by presenting some of the provisions and jurisprudence of the Jordanian Court of Cassation in this aspect.

- The ruling of the Court of Cassation in its capacity as a human rights advocate No. 4363 of 2021 stated the following:

And since it is established through the lawsuit papers and the evidence presented therein, whether written or personal, that while the plaintiff was a member of the Public Security Directorate on 03/02/2019, he and his other colleagues were assigned to join the shooting range of the Ma'an Security Directorate to launch shooting training, and there Before the shooting, the trainers or those in charge of the training field did not hand over the distinguished ear protection so that he was not exposed to any damage, and he submitted a medical report after the termination of his services issued by the medical committees for one month. The percentage of the disability resulting from hearing loss in the left ear is 43 decibels, and this constitutes a partial disability. permanent, estimated at 25% of his total public forces, which constitutes a serious mistake by the defendants due to the lack of public safety means for the plaintiff during the training period, which makes the defendants liable for a presumed and guarantor responsible for the damage incurred by the plaintiff based on the responsibility of guarding objects, and a claim is subject to provisions The civil law and that the defendant did not inform the Social Security Institution of the plaintiff's injury, as the Court of Appeal concluded in its contested decision to the contrary, its decision is misplaced and the reasons for discrimination respond to the decision and require its reversal.

- The ruling of the Court of Cassation in its capacity as a human rights advocate No. 4631 of 2021 stated the following:

And since Article (291) of the Civil Law stipulates that whoever has at his disposal

objects that require special care to prevent their damage or mechanical machines, shall be liable for the harm these objects cause unless it is not possible to avoid it, without prejudice to what he finds in that. From special provisions, and since mines are very dangerous objects for people and property and need special attention from the guard and those responsible for them, as the armed forces are the guardian of these mines and are responsible for them, and accordingly, the defendant party shall be responsible for the occurrence of the accident and be responsible for material and moral damage. The appeals court went against the conclusion that it reached, so it has violated the correct law, and these two reasons become relevant to its contested judgment, which must be overturned.

- The ruling of the Court of Cassation in its capacity as a human rights advocate No. 4286 of 2021 stated the following:

In this, we find that what is legally stipulated in Article 291 of the Jordanian Civil Law is that whoever has at his disposal objects that require special care to prevent their damage or mechanical machines is liable for the harm these objects cause, except for what cannot be spoken of. This is one of the special provisions in Article 261 of the Civil Law that if a person proves that the damage arose from a foreign cause in which he has no control, such as a heavenly pest, a sudden accident, a force majeure, the act of a third party, or the act of the aggrieved party, he is not bound by the guarantee unless the law or an agreement requires otherwise that.

When that was the case, the plaintiff was claiming compensation for the damage he sustained as a result of the fact that on 10/1/2013, as a result of heavy rain and as a result of the rush of water in the streets, the sewage was flooded and the plaintiff's house was raided due to heavy rains, where the house was completely submerged and since it is clear from the evidence presented and from the experience report before the Court of First Instance in its appellate capacity, the expert committee indicated that the apartment is a settlement that is lower than the level of the

land surrounding the building by one meter and 60 cm, and it is 2 meters and 60 cm high from the inside. Meteorology, on the date of the accident, showed that heavy rain had fallen, which led to a rise in the water level through the main streets and had obstructed traffic and pedestrians.

Accordingly, the rainstorm, as explained previously, constitutes an exceptional circumstance and a foreign cause, which is what is fulfilled by the conditions of the heavenly blight that make the defendant not obligated to compensate the plaintiff and the defendant has no control over it according to what is stipulated in Article 261 of the Civil Law and what has been settled. It has to be judged by the Court of Cassation in its General Assembly No. 238/2015 and No. 3264/2018.

4. Conclusion:

At the end of this research, we recall what was talked about on the subject of the responsibility of objects in the Jordanian civil law, and how the responsibility of the guardian of these objects is embodied for the damage resulting from them, which falls on the damaged thing and bears the burden of proof.

5. Results:

After completing this research, we reach several results that can be presented in the following points:

- Guarding was the realistic and real beginning in the text on civil liability for dangerous objects and machines and its progress, which made it able to keep pace with industrial and technological development and modern inventions, and attempts to compensate the affected in a just manner for the damages they suffered.

The issue of guarding is based on two elements, the first is the material element, which relates to three powers, namely, control, use, and direction, and it includes the actual control of the guard over objects, and the second element is the moral element, which is intended to use

the thing for the benefit of the guard and himself.

- The need to prove custody of objects, and this means that the issue of proof rests with the aggrieved in proving that the damages that befell him were caused by a certain thing and that this thing was under the custody of a particular guard, and the responsibility of the guard in Jordanian law is an assumption that accepts the opposite to be proven.

6. Recommendations:

The recommendations that we can offer based on this research are as follows:

- We present our recommendations to the legislator that the provision of Article (291) of the Jordanian Civil Law should not be restricted to those objects that need special attention and work to make this article comprehensive of various objects so that the law fits with the general rules because it is difficult to find high-accuracy standards to distinguish between the objects that require special care that does not require that special care and we leave this matter to the judges' discretion.

We present our recommendations that the text of Article (291) of the Jordanian Civil Law should be amended to become as follows:

Whoever falls under his guard something that needs special care to prevent its damage or a mechanical machine, this person is liable for the damage caused by this thing or machine, unless he proves that he is not infringing and that it is not possible to guard against it.

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