



## Article

# Principal's Liability under Jordanian Civil Law

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## Abstract

*According to Article 288 of the Jordanian Civil Law, the legislator allows holding a person responsible for the actions of others. This study examines whether the theory of subordinated responsibility provides a sound basis for the principal's liability for the acts of their subordinate, or whether another foundation is more appropriate. Using descriptive and analytical methodologies, the study reviews relevant legal texts, jurisprudential opinions, and judicial decisions to identify the most coherent justification for such liability. The findings indicate that subordinated responsibility is inadequate as a foundation, as it treats the subordinate's liability as self-responsibility rather than liability for the actions of others. Instead, the guaranteed principle provides a more consistent basis, in line with Jordanian Civil Law and the jurisprudence of the Court of Cassation. This principle ensures that the principal, as the guarantor, bears responsibility for the wrongful acts of subordinates under their supervision and direction, while preserving the principal's right of recourse against the subordinate. The study concludes that liability should be grounded in the guarantee concept and recommends amending Article 288 of the Jordanian Civil Law to clarify this position explicitly. Such an amendment would strengthen legal certainty, balance justice between the harmed party and the responsible parties and align Jordanian legislation with prevailing jurisprudential principles.*

**Keywords:** Tort Liability, Guarantee, Vicarious Liability, Presumed Fault, Civil Law

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## Introduction

The legislator in Jordanian Civil Law has decided to take responsibility for harmful acts, stating that every harm caused to others imposes a guarantee on the actor, even if they are indistinct. Therefore, whoever commits a dangerous act and causes harm to others is financially responsible for this harm, guaranteeing damages incurred by the other party. Furthermore, this damage can occur directly, meaning the injury results immediately from the harmful act, with no other action intervening between the harmful act and the injury. In such cases, the perpetrator - and no one else - is undoubtedly responsible for guaranteeing that no further conditions or restrictions apply after the injured party proves both the harmful act and the resulting injury.

This damage may occur by causation, meaning another action intervenes between the harmful act and the damage, regardless of the nature of that action. Hence, trespassing or intent is required, or the act must lead to harm. If both the direct and indirect causes are involved, the responsibility stipulated to the direct cause is the state of the law in the Jordanian Civil Code.

Moreover, this responsibility for a harmful act is fundamentally individual responsibility, meaning responsibility for the personal act, not for the actions of others - in principle - so the guarantee of the harm is incumbent upon the doer of the harmful act, not someone else, in the application of the Almighty's saying in His Noble Book *"No soul burdened with sin will bear the burden of another"* (1), His saying *"Every soul will be detained for what it has done"* (2).

However, the Jordanian legislator did not stop there. In addition to holding responsibility for actions (living and non-living), this is evident in the context of responsibility for the actions of animals (animal guardians), as well as the responsibility of the building owner or the custodian for damages resulting from the collapse of the building, in whole or in part. There is also responsibility for keeping machines and items that require special care. Furthermore, the Jordanian legislator recognized an exception regarding responsibility for the actions of others, establishing the responsibility of anyone in charge of supervision (who is legally or contractually required to supervise a person in need of oversight due to their age, mental, or physical condition). Also, the subordinated responsibility (the one who has actual authority over the actions of the person who caused the damage). It is evident that the legislator, in the Jordanian Civil Code, recognizes the principal's responsibility for the acts of the subordinate, establishing an exception to the general principle that no individual is held responsible for the actions of another. Hence, the principal's responsibility may arise for acts of the subordinate that cause harm to third parties, provided these acts occur in performing their duties or as a direct consequence thereof. Moreover, the

principal has absolute authority to oversee the subordinate's actions, enabling the court to impose responsibility on the principal for indemnification when deemed justified. The court's authority in this context is discretionary, allowing it to assess the necessity of holding the principal liable for indemnification based on the case's specific circumstances. This legal framework underscores the accountability inherent in subordinate relationships under Jordanian civil law.

Further, one may investigate the foundation upon which the principal's responsibility for the acts of the subordinate is based, particularly considering the various opinions and theories that propose different bases for this responsibility. Some argue that it is founded on the presumption of faults attributed to the principal, which includes errors in the selection, supervision, or direction. Others contend that it is based on the theory of vicarious liability, positing that the benefits reaped by the superordinate from the subordinate's activities necessitate corresponding responsibility for any resulting harm.

These two opinions consider the principal's responsibility for the actions of his subordinate to be an individual responsibility. A third opinion has emerged stating that the principal's responsibility for the actions of his subordinate is a responsibility for the actions of others. This opinion is divided into three directions: The first is based on solutions, the second on representation, and the third on guarantee. Others wonder about the possibility of adopting the theory of bearing responsibility as a basis for the principal's responsibility for the actions of his subordinate, and from here this study begins, to show the extent to which this theory is suitable to be a basis for this responsibility, or not.

## **Methodology**

The researchers followed the descriptive and analytical methods by describing the situation and legal texts related to the subject of this thesis, along with the jurisprudential opinions and judicial decisions related to it and analyzing them comprehensively and studying them in a way that achieves the purpose of this study.

## **Results**

The study demonstrates that the theory of subordinated responsibility does not provide a sufficient legal foundation for holding the principal liable for the acts of the subordinate, as it treats liability as if it were personal rather than liability for the acts of others. This approach conflicts with the provisions of Jordanian Civil Law, which require the proof of fault by the subordinate. In contrast, the guaranteed principle

offers a more coherent and justifiable basis. It ensures that the principal bears liability as a guarantor for the subordinate's wrongful acts under his supervision and direction while preserving the principal's right of recourse against the subordinate. The findings confirm that the guaranteed theory is the most consistent with Article 288 of the Jordanian Civil Code and with the jurisprudence of the Court of Cassation, making it the most appropriate legal basis for establishing the principal's liability.

## Discussion

### *Concept of the Theory of Vicarious Liability*

Following the significant developments in industrial and economic activities, it became essential for civil liability to align with the financial benefits individuals gain from their economic activities. It means that the beneficiary of such activities must be held responsible for any harm caused to others by these activities, without considering whether there was any fault on the part of the activity owner or the beneficiary (3). It is the essence of the theory of vicarious liability, which emerged during the Industrial Revolution due to the numerous damages affecting workers and others. Given the burden of proof required to establish the employer's obligation (the principal), obtaining compensation for these damages was hard for them. To elaborate on this theory in detail, it is necessary to discuss its definition and address its legal basis.

### *Definition of the Theory of Vicarious Liability*

The theory of vicarious liability means that anyone who benefits from a particular thing or activity is responsible for compensating any harm caused to others by that thing or activity, even if they are not its guardian (4). Further, this definition indicates that the theory places liability on the person who benefits from an activity or an activity of their subordinate to compensate for damages that may result to others from this benefit. It considers this liability to be personal rather than liability for the acts of others, based on their benefit from this activity and the activity of their subordinate. Just as they gain benefits and profits from it, they must bear the associated risks and losses, embodying the principle of "*Al Ghurm bi-Al-Ghunm*" (4). Implies that everyone who benefits from something must endure its related consequences (5). This principle is at the core of Islamic law, and its meaning is found in Article (87) of the Journal of Justice judgments, which states that "*loss and gain means that whoever gains the benefit of something bears its harm*" (6).

Accordingly, this theory indicates that the necessity of civil liability is consistent with the economic benefit that the individual derives from their activities. It is unjust for a person to benefit from their property and monopolize its advantages while

leaving others to bear its harm and risks. Whoever enjoys the benefit is obligated to bear the responsibility.

Researchers argue that under the general principle that no one is held responsible for the actions of another, the legislator established the principal's liability for the actions of their subordinate, meaning liability for the actions of another, regardless of the underlying rationale. considered a form of preference, which means "Waiving from an evident analogy to a hidden analogy, or excluding a partial issue from a quantitative origin for evidence that the jurist finds compelling for this exception or deviation." We can also say that "deviating from the ruling in a matter, as it is ruled in similar cases, to another ruling for a reason that requires this deviation."

It means that the principle established by the legislator states that no one (The Principal) is held responsible for the actions of another (The Subordinate), according to the saying of Allah: *"No soul burdened with sin will bear the burden of another"* (1). Additionally, Allah says, *"God does not burden a soul beyond its ability. It has [the good] it has earned, and [the bad] it has incurred"* (7) and *"Every soul will be detained for what it has done"* (2). However, if a person coerces another in a way that reduces them to the status of a tool in the hands of the coercer, this is considered compulsion. In such a case, the coerced person would be responsible, as they are treated as the direct actor, and the direct actor is treated as a mere tool.

In other words, according to the general principle, the subordinate is responsible, not the principal, because he is the one who committed the harmful act and carried it out, not the principal. Furthermore, the legislator provides an exception based on preference, which is that the principal assumes responsibility for the actions of the subordinate instead of the subordinate (the one who caused the harm), for a reason that requires deviating from the original ruling on this issue, which is that the causer of the harm (The Subordinate) assumes responsibility, to another ruling, which is that the principal assumes responsibility.

This reason is rooted in the need to serve the interests of the harmed party. It may be impossible to obtain compensation from the subordinate, so a subordinate responsible party (The Principal) who is more solvent than the original responsible party (the subordinate who caused the harm) so that the injured party can refer to him for the guarantee to facilitate his obtaining compensation and this served as the rationale that enables the court to impose liability on the principal for compensation. It provides the rationale that allows the court to impose liability on the principal for compensation.

It is worth noting that this is what is called the idea of unstable guarantee, meaning the creation of another responsible person, who is a subsidiary responsible

person (The Principal) who is initially obligated to guarantee from his account but this, guarantee is not stable for him, so what he paid as a guarantee returns to the original responsible person (The Subordinate). After defining the theory of bearing responsibility and explaining its concept more broadly, it is necessary to clarify the legal basis on which this theory is based.

#### *The Legal Basis of The Theory of Liability*

The theory of bearing responsibility is based on the principle of “*Loss and Gain*”, which means that whoever reaps the benefits of something must bear its burdens if it causes harm to others. In other words, a person who benefits from a thing or activity must, in turn, bear its associated harm (5). Thus, whoever enjoys the benefit must accept the responsibility.

This theory establishes the liability of the individual benefiting from an object or activity as being “*Personally*” responsible for any damages that occur to others due to that benefit. According to this theory, the beneficiary’s liability is not considered liability for the actions of others but rather personal responsibility for the individual action.

Additionally, this theory does not consider fault on the part of the beneficiary as a prerequisite for establishing their liability; intent and negligence are treated equally.

Therefore, according to this theory, the beneficiary does not need to be aware or capable of distinguishing right from wrong; the presence or absence of discernment is irrelevant. Since this theory considers that the damage was directly caused by the beneficiary, not the guardian, and disregards the element of fault on their part, such that it is the same whether the subordinate is discerning or not, it is acceptable to assert that the beneficiary is the one who caused the damage. It aligns with the general principle of compensation for harmful acts in Jordanian civil law. Stated that every damage to another obligates its perpetrator, even if he is not discerning, to compensate (8).

It is important to note that the emergence of this theory is attributed to industrial and economic development across various activities and fields, especially following the Industrial Revolution. That era brought major transformations in lifestyles, resulting in a greater dependence on sophisticated and varied machinery. Consequently, this resulted in a significant increase in work risks and the emergence of damage, including that affecting the workers. The extent to which the theory of liability is applied under the principal’s liability for the subordinate action

It is established that liability for harmful acts in Jordanian civil law is a personal liability, whereby a person is held liable for their act, not for the act of another. However, the legislator has provided an exception to this rule and allowed the injured party to claim compensation from someone other than the one who caused the damage. The legislator has authorized the court to rule on compensation from the supervisor, as well as the principal who has actual authority to supervise and direct his subordinate, and obliges him to guarantee damages incurred by others because of the subordinate's actions that occur during or because of the performance of the job.

Here, a question arises about the legal basis on which the principal's liability for the act of their subordinate is founded, as various differing opinions have emerged on this matter. Accordingly, the researchers present in this requirement the legal opinions that seek to define the basis for this liability and then clarify the prevailing view regarding this foundation.

#### *The Legal Basis for the Principal's Liability for the Acts of the Subordinate*

We stated that the legislator had established the principal's liability for the actions of their subordinate, as the Jordanian civil law stipulates that: *"No one is liable for the actions of others; however, the court may, upon the request of the injured party, require compensation from the one who caused the harm if it finds justification for doing so."*

- A. "Anyone who has actual authority over the one who caused the harm, in terms of supervision and direction, even if they do not have freedom of choice, is responsible if the harmful act was carried out by the subordinate in the course of their duties or as a consequence of them."  
(8).

The legislator had enforced limitations on the injured party's ability to seek compensation from the principal. The injured party must request the court to claim compensation, which has the discretionary power to grant it if it finds justification. In this matter, it is necessary to point out the necessity of the availability of specific conditions for the principal's liability to be established, which are:

1. The subordinate must commit the harmful act.
2. The harmful act must be committed while performing the job or because of it.
3. The principal must have actual authority to supervise and direct their subordinate.

(Even if the subordinate is not free in their choice) Therefore, for the principal to be obligated to pay the compensation awarded against the subordinate, the harmful act that caused harm to others must have occurred while the subordinate was

performing their duties or because of them. Additionally, a subordinate relationship is founded on absolute authority, the capacity to guide, and the subordinate to oversee (9). The principal's liability remains in effect regardless of whether they are free to choose their subordinate, such as when the subordinate is compelled to take on the role, or if the principal's predecessor is the one who chose them, for example (10, 11).

The phrase "*the occurrence of the harmful act while performing duties*" refers to the act taking place during the execution of a task related to the subordinate's job. On the other hand, it means that the subordinate would not have been able to commit or even contemplate the harmful act if it were not for their position. It applies equally whether the harmful act occurred through the subordinate exceeding the limits of their role, misusing it, or exploiting it. It does not matter whether the principal ordered the act to take place, whether they were aware of it or not, or whether they opposed it (12). It is worth noting that the legislator's intention in allowing the injured party to seek compensation from the principal is to pursue a financially responsible party, that is, the principal, to serve the injured party's interests.

This interest is considered within Islamic law and Jordanian civil law's provisions. To take precedence over the interests of both the subordinate and the principal. It is in the public interest, given that the infringement on the injured party's property is also an infringement on the property of the entire community, since this property is invested in their interest and achieves social and economic benefits. The harm suffered by the injured party (which affects the whole community) is considered general and serious damage.

According to the legal principle, "*Preventing mischief is better than bringing benefit*" (13), if a situation presents both an equal benefit and a harm, the harm will inevitably take precedence. Therefore, preventing the damage suffered by the injured party is prioritized over bringing benefit to the principal; thus, there should be no harm or retaliation, and harm must be removed (14).

Opinions vary about the basis on which the principal's liability for the subordinate's action is founded, and legal scholars have not agreed on a single basis. Some argue that this liability is based on presumed fault, which refers to the principal's error in choosing, supervising, or directing the subordinate. Others establish it on the idea of assuming liability. These two views consider the principal's liability for the actions of their subordinate to be a personal "*subjective*" responsibility (14).

A third opinion has also suggested that this liability is vicarious, rather than personal liability, "*in contrast to the first and second opinions*". However, those who hold this view disagree based on this responsibility. Some argue that it is based on the concept of warranty or guarantee, while others support the idea of agency, and a third



group grounds it in the concept of substitution (4). One who considers can be traced back to two primary pillars by the observer. While the second views the superior's responsibility as a responsibility for the acts of another, the first views it as a personal responsibility. It is because, whether we think of it as personal responsibility or not, it is based on the follower's alleged mistake or a benefit he receives for himself, which is known as suffering the consequences.

On the other hand, if we consider this responsibility as one for the actions of another, it is tied to the relationship between the superior and the subordinate. Here, the responsibility could either be based on the concept of guarantee, considering the superior as a guarantor for the subordinate, or on the idea of agency, where the subordinate is seen as the superior's agent. Alternatively, it could be based on the concept of substitution, given that the subordinate's personality is regarded as an extension of the superior's personality. These views will be discussed below (15).

One of the oldest opinions is the theory of presumed fault, which argues that the principal's liability arises from an assumed error in supervision, direction, or choice. Under this view, the principal is considered responsible for the subordinate's wrongful acts because a fault on the principal's part is presumed; it cannot be disproved. This presumed fault may stem from mistakes in selecting subordinates, overseeing their actions, or providing them with instructions. If a subordinate commits an error, the principal's liability is established based on this assumed fault (4).

In this case, for the injured party (plaintiff) to obtain compensation, it is sufficient to prove the subordinate's fault. There is no need to prove the error of the principle since it is a presumed error, and what is proven is not. It is also not acceptable for the principal to prove the opposite and provide evidence of his lack of negligence. Accordingly, the principal may not be absolved of responsibility by proving that he took all reasonable precautions to direct his subordinate and supervise his actions.

It is worth noting that the superior can be absolved of responsibility if they deny the responsibility of their subordinate. If the subordinate's responsibility is negated, the superior's responsibility is also negated. The subordinate's liability is primary, and the responsibility of the superior follows from it. If the primary responsibility is eliminated, the secondary responsibility also falls away (14). Similarly, the subordinate's liability ceases with the liability of the superior, as the subordinate's existence and liability are tied to that of the principal (16). Also, what applies to the subordinate's responsibility extends to the principal's responsibility (4).

This opinion has been subject to several criticisms, which are as follows:

1. The principal's liability based on the presumed error does not accept proof to the contrary. However, the rules of justice require

giving the principal responsible the right to deny the causal relationship between the errors presumed and the damage to escape liability, since the absence of this relationship means the absence of liability.

2. The principal's responsibility remains in place even if he is not free to choose his subordinate according to Jordanian civil law, such as if he is forced to choose his subordinate or if his inheritor chooses him, for example. This theory establishes his responsibility based on the assumed error in the choice, so how can he be held accountable based on a poor choice when he did not choose the seller in the first place? (4).
3. The principal's responsibility remains in place even if he is not discerning. If we consider that this responsibility is based on the assumed error, this responsibility would be dropped if the principal is not discerning. Fault requires discernment, and it is inconceivable that someone who lacks discernment would commit the fault, so how can it be imagined that the fault is assumed on his part? (4).

In conclusion, it can be said that the theory of presumed fault is not a suitable foundation for holding the principal liable for the actions of their subordinate, this is because it does not allow the principal to refute their responsibility by denying the causal link between the damage and the presumed fault on their part, even though doing so would effectively negate their liability, which contradicts justice and logic. Moreover, the theory of presumed fault requires the principal to be capable of distinguishing, meaning that the principal's liability should fall if they can determine. However, according to this theory, liability persists despite this. Finally, the theory bases the principal's responsibility on a presumed fault in the subordinate selection. Nevertheless, the Jordanian legislator retains this liability even if the principal was not free to choose their subordinate. Accordingly, this implies that the principal is held accountable for a presumed fault in the selection, even though they did not select the subordinate, which is illogical.

Another opinion is the theory of bearing responsibility, which considers the principal's liability for the subordinate's actions as an individual responsibility arising from the benefits he gains from their activities. According to this view, because the principal profits from his economic activity and his subordinates' work, he must also bear the costs and consequences of these activities, including any harm caused to others. Thus, liability is not based on fault, but on the principle that loss should

accompany gain. Consequently, he bears responsibility for the damage caused to others by this benefit. This theory does not consider the fault on the part of the principal. Instead, it establishes the principal's liability based on the benefit derived from the actions of his subordinates and reaping the fruits of it. Hence, this implies that the principal must bear the consequences of this activity, as the loss is proportionate to the gain (4).

Accordingly, this opinion has many advantages, as it avoids the flaws of the theory of presumed fault, which are:

1. This theory does not allow the principal to be relieved of responsibility, even if it has been proven that preventing the act that caused the damage was impossible. It does not assume his fault or negligence, and the liability based on bearing the consequences does not cease due to this impossibility. The principal remains responsible since he bears the consequences of his subordinate's actions, considering the benefit of this activity.
2. This theory holds the principal responsible even if he is not distinguishable. While it may not be possible to establish the responsibility of an undistinguished principal based on presumed fault, it can be established based on bearing the consequences (4).
3. Considering the criterion of bearing the consequences and not focusing on fault on the part of the principal avoids the injustice that befalls the principal when he is held responsible for the actions of his subordinate, who was not free to make his choice. The principal's lack of choice in the subordinate does not alter the matter, as responsibility does not fundamentally arise from a fault in selection, so there is no need to dismiss responsibility based on the non-selection of the subordinate.

However, this theory has not escaped criticism, as it leads to conclusions that cannot be accepted, which are:

- A. This theory establishes the principal's responsibility based on bearing the consequences of his subordinate's actions, not on bearing the consequences of his own fault. It does not align with the legislator's requirement that the subordinate's fault could be proven. This theory holds the principal liability for damage caused to others based on the consequences of the subordinate's actions, whether these actions involved fault. So, what is the purpose of the legislator requiring the subordinate's fault in this case?

- B. The claim that the basis for the principal's liability is bearing the consequences of the subordinate's actions that benefit the principal contradicts the idea of holding the principal responsible when the subordinate's actions involve fault. It is considered an unusual and irregular activity from which the principal does not benefit. How can the principal bear the consequences of an activity he did not conduct? It is more appropriate for the principal to bear the consequences of an activity from which he does benefit. Furthermore, the Jordanian legislator requires the subordinate's fault to be proven for the principal's responsibility to arise, meaning that the principal bears the consequences of his subordinate's actions that do not exclusively benefit him.
- C. Since this theory establishes the principal's responsibility based on bearing the consequences, it means that the responsibility is in return for the consequences of the activity. Therefore, if this responsibility is established and the principal compensates the harmed party for what is deserved, he has given in return for what he received, meaning the loss is to the gain. In this case, why should the principal seek recourse against the subordinate? Since the Jordanian legislator has allowed the principal to seek reimbursement from the subordinate for what was paid.
- D. The theory of bearing the consequences considers the principal's responsibility personally, whereas it is not. It is the responsibility of the actions of others, as the legislator establishes. In this theory, the principal assumes responsibility for the subordinates' actions who commit an act involving fault that causes harm to others."

It can be concluded from the above that the theory of bearing the consequences is not suitable as the basis for the principal's liability for the actions of his subordinate. It is because the legislator requires the subordinate's fault to be proven. Additionally, it views the principal's liability as a return for benefiting from the subordinate's activity, meaning the principal gives in exchange for what he receives. It implies that the principal should not seek recourse from the subordinate for indemnity, even though the legislator grants him the right to do so. Finally, this theory considers the principal's liability personal, whereas it is in fact liability for the actions of others.

A further approach is the theory of guarantee, which holds the principal liable for the actions of a subordinate by considering the principal as a guarantor for any fault that causes harm to others. Since the principal has the authority to supervise and

guide the subordinate, and the wrongful act occurs during or because of the subordinate's duties, the principal bears responsibility as a guarantor. In this view, the guarantee arises from the law rather than from any agreement, meaning that the principal cannot avoid liability toward the harmed party by first seeking recourse against the subordinate, who is considered the primary actor. Instead, the harmed party is to claim compensation either from the principal, "*the guarantor*", or the subordinate, "*the principal actor*", or both together, without the principal having the right to defend by first stripping the original party (17).

After the principal provides the guarantee and compensates the harmed party, the principal can seek reimbursement from the subordinate for what was paid. The principal initially provides the guarantee and compensates the harmed party; the principal can seek reimbursement from the subordinate. The subordinate cannot defend against the guarantee or the principal's responsibility for him. The guarantee does not affect the relationship between the principal and the subordinate; rather, it exists only between the principal and the harmed party. Therefore, the guarantee should be established on the subordinate's account and remain with him. The principal is responsible for the subordinate, not with him (4). Following this fact, the Court of Cassation has established in many of its rulings that the basis for the principal's liability for the actions of his subordinate is the legal guarantee, meaning the principal is a guarantor for his subordinate. If the subordinate commits a fault that causes harm to others, the principal has the authority to supervise and guide them. The principal is held responsible for the actions of his subordinates. The Court of Cassation has affirmed that the principal is a guarantor for his subordinate and that the source of this guarantee is the law.

Some scholars support the concept of representation, which establishes the principal's liability for the actions of their subordinates based on the idea that the subordinate acts as the principal's legal representative. In this view, the principal is responsible because the subordinate's actions directly reflect the principal's authority. The actions of the subordinate "*his faults*" bind the principal within the scope of the subordinate's duties, just as the actions of a representative bind the principal within the scope of the representation. The boundaries that define the scope of the principal's responsibility also explain and justify the idea of representation, provided that this concept encompasses legal and physical actions (4).

Finally, another view is the theory of substitution, which regards the subordinate as an extension of the principal's personality. Under this perspective, the principal is held liable for the subordinate's actions because the subordinate essentially acts in place of the principal, carrying out duties and decisions to represent the

principal's authority directly. The subordinate takes the place of the principal, and the two people become one. If the subordinate commits a fault within the known boundaries, it is as if the principal himself has committed it. In other words, the subordinate is an extension of the principal's personality. If the subordinate commits a fault, it is considered as if the principal has committed it (4). It should be noted that the subordinate also replaces the principal in distinguishing between actions. If the subordinate commits a fault and is distinguishable, but the principal is not, the distinction shifts from the subordinate to the principal through substitution. Thus, the principal becomes responsible even though he is not distinguishable.

Another opinion argues that the principal's liability is presumed fault if the subordinate commits a fault while performing their duties; the basis is the concept of substitution, guarantee, or bearing the consequences if the fault exceeds the boundaries of the mission (18).

It can be inferred from all these views that they all provide different foundations for the principal's liability for the actions of his subordinate, some of which have been criticized and questioned. It raises the question of which of these foundations is the most accurate and closest to the truth in establishing the principal's liability for the actions of his subordinate in compensating for the harm caused to others.

### ***The Prevalent Opinion on the Legal Basis for the Principal's Liability for the Actions of the Subordinate***

The correct basis for the principal's liability for the actions of his subordinate is the guarantee (14), for the following reasons:

The principal's liability, based on the idea of guarantees, makes him responsible for his subordinates' being liable for the actions of others from start to finish. It aligns with the provisions of the Jordanian Civil Code (19).

According to the concept of guarantee, the principal cannot be relieved of this responsibility, even if it is proven that he could not prevent the unlawful act that caused the harm. His obligation is an obligation to achieve a goal, not an obligation to exercise care. This consideration allows the principal's liability to remain, even if he is not distinguishable. His responsibility originates from the law, whether based on guarantee, representation, or substitution, and not from an agreement that would require distinction in that regard. Hence, liability for the acts of others falls under two primary forms:

*Original liability:* In this, a person is held liable for the fault of another and must pay out of his pocket, without any right of recourse against the erring subordinate.

*Vicarious liability:* A person is held primarily liable for the act of another against the victim and is to be compensated for the amount. However, liability does not belong to them as they are also entitled to indemnification from the immediate offender or the interior who caused the harm (20).

Considering the superior (employer) is vicariously liable for serving behind liability for the act of another, i.e., to protect the interest of the aggrieved party where compensation cannot be obtained from the subordinate (employee). It is achieved by having a financially capable party (the superior) liable, which is the rationale behind the court's jurisdiction to award compensation from the superior (20).

Therefore, it is possible to conclude that the superior's responsibility for the subordinate's actions is based on the guaranteed principle. It appears to be the better basis, the superior being the surety for the wrongful act of the subordinate to injure another if the superior has the right of direction and supervision over the subordinate, and the wrongful act was done in or through the course of job responsibilities (21).

It must be noted that the superior's liability for his subordinate's actions is only incurred when there exists a relation of subordination between the two, and this comprises two elements: actual authority and the power of supervision and direction. It would mean that the superior is entitled to issue directions to the subordinate regarding their work. However, such directions are general, and should be able to supervise the subordinate in carrying out such directions. Therefore, the superior's liability does not arise where proper supervisory and directive authority is absent. A relaxation of supervision and direction signifies a relaxation of the subordination relationship; if there is no such relationship, the superior's liability is excluded (22).

The superior is also not entitled to invoke the defense of excursion (prior recovery from the debtor) against the victim; they are duty-bound to fulfill the compensation first. Only after the aggrieved has been fully compensated can the superior recover what he has paid from the subordinate. It is expressly stated in Article 288, Paragraph 3 of the Jordanian Civil Code: "*The party who pays the compensation has the right to recover from the party held liable.*" Thus, the responsibility of the superior does not excuse the subordinate from liability for the damage caused to others (23).

The superior can, in theory, demand full indemnity from the subordinate for compensation paid out on their behalf. The superior can recover only a share of that if they were both concurrently at fault for having caused the injury. In that case, the compensation is shared between them in proportion to their comparative degrees of fault and contribution to the injurious act. The court may divide their liability equally or hold them jointly and severally liable. The Jordanian Civil Code upholds it: "*If*

*several parties are liable for an act causing damage, each shall be liable in proportion to his share of fault. The court may, however, rule for equal or joint and several liability among them (4)."*

Besides the superior's liability being derivative of the subordinate's liability, the subordinate's responsibility is the principal's. Thus, the injured party must first establish the subordinate's liability by proving its elements, which are the harmful act on the part of the subordinate, the damage, and the causal link. The subordinate's liability co-exists with the superior's, and the subordinate's is the original (4).

Thus, the victim may get redress from the subordinate, the superior, or both, as they are jointly and severally liable. Further, the subordinate may have an accomplice in the wrongful act, and in such a situation, the victim may get redress from the superior, the subordinate, and the accomplice, and all of them are jointly liable. The injured party may also sue the superior alone, and the superior may then recover what they have paid from the subordinate and the co-perpetrator. The injured party may also sue the superior and the subordinate alone, or the superior and the co-perpetrator, excluding the subordinate. In effect, the injured party can choose any defendant they prefer in their action and demand full compensation because they are all jointly liable (4). It is to be observed that the superior's liability could exist alongside a different type of liability, under which the superior is liable in both capacities - as a superior and otherwise, at the same time. To illustrate, if a car owner hires a driver, the driver's superior would be the owner. Suppose the driver (the subordinate) injures a third party during or because of their work, and the car owner (the superior) possesses sufficient authority to supervise and direct the driver. In that case, the car owner will be liable as the superior.

Additionally, the car's owner is also liable as the car keeper if the care of the car is not his or her responsibility. In this case, the injured person can sue for compensation against the car's owner as the superior or the car keeper, depending on which is best for him or her (4). Likewise, when lending a vehicle and its driver, the lender usually remains liable for the car. Hence, the lender is liable for any harm caused by the driver (the subordinate) while performing his job or, as a result, as the superior and being entitled to supervise and instruct. As the owner of the vehicle, in case the driver is not held responsible for its maintenance, the owner (the lender) is (4). Finally, the Jordanian Court of Cassation has consistently held that the basis of the superior's liability for the actions of his subordinate is the theory of guarantee, where the superior acts as a juristic guarantor for his subordinate. Thus, if the subordinate performs an unlawful act that harms a third party in the exercise of the superior's supervision and direction, the superior shall be liable, assuming responsibility for the act of the subordinate. The Court of Cassation has also upheld that the origin of this guarantee



is the law and not an agreement. This means the superior's liability will still be attached, regardless of whether the superior was negligent (24).

As mentioned above, the superior would settle with the aggrieved party, but the superior is not solely liable. The superior can recover what he paid for them from the subordinate. The subordinate cannot invoke the defense of the superior's guarantee, since the guarantee is solely between the superior and the injured party, not between the superior and the subordinate. The superior is subsequently responsible for the subordinate's actions, not jointly with the subordinate. The subordinate must repay what the superior has paid on their behalf since the guarantee is now settled as the subordinate's liability (25).

## **Conclusion**

The theory of vicarious liability is not an appropriate foundation for the principal's liability for the actions of their subordinate, as it frames liability for the harmful acts of others as if it were personal. This approach has been criticized for treating the principal's liability as direct and primary, whereas in reality, it pertains to the actions of another. Notably, the theory grounds the principal's liability in the assumption of the consequences of the subordinate's activities, rather than in the subordinate's fault, which contradicts the legislator's requirement to prove the subordinate's wrongdoing. It further imposes liability on the principal regardless of whether the subordinate's acts involve fault, whereas the legislator requires fault to be present. In addition, this theory links liability to the benefit derived from the subordinate's actions, even if the principal did not benefit, thereby raising the question of how a party can be held accountable for harm caused by activities from which they gained nothing. Moreover, it implies that the principal's liability is a counterbalance to the benefit received, which undermines the principle of recourse, whereby the principal should be able to recover compensation from the subordinate for any liability borne.

In contrast, the proper foundation for the principal's liability is the concept of guarantee, which is widely accepted as the prevailing legal opinion. The Jordanian Court of Cassation has affirmed in multiple decisions that the principal acts as a guarantor for the subordinate, meaning that if the subordinate commits a harmful error under the principal's authority and supervision, the principal bears responsibility. Significantly, the court has clarified that this guarantee arises from the law rather than from a contract and thus applies even if the subordinate lacks mental capacity. This guarantee-based liability means the principal bears responsibility for another's actions at the outset. Consequently, they cannot escape liability by claiming

they could not prevent the harmful act. Their obligation is result-oriented rather than effort-based, which justifies the continuity of liability regardless of the subordinate's mental state.

Furthermore, the guarantee positions the principal as a secondary, rather than primary, liable party. The principal must compensate the injured party but retains the right to recourse against the actual wrongdoer (the subordinate or agent) by the "unstable guarantee" principle under Jordanian civil law. This secondary liability aims to protect the injured party's interest when the direct wrongdoer is insolvent or incapable of compensation. The law recognizes that the principal is typically more financially capable and therefore a more practical source of redress. Accordingly, the court may rule against the principal to fulfill the legislator's intent.

Nevertheless, the principal's liability only arises when a dependency relationship exists between them and the subordinate, defined by actual authority and supervisory power. It means the principal must be able to issue directives, even general ones, and oversee their execution. Without such oversight and direction, the dependency relationship weakens, and the principal's liability may be negated. Moreover, the principal may not assert abstract defenses to avoid liability; they must first compensate the injured party and may then seek recovery from the subordinate. The subordinate remains primarily liable, and the principal's liability does not absolve them. If the principal contributed to the harm, courts may apportion liability based on the degree of each party's involvement, which can result in equal or joint and several liability. Ultimately, the principal's liability depends on establishing the subordinate's fault. Therefore, the injured party must first prove that the subordinate committed a harmful act, that damage occurred, and that a causal link exists. The subordinate's liability remains the foundation, with the principal's liability standing as a secondary measure to preserve the injured party's right to compensation.

## **Recommendations**

At the end of this study, the researchers propose the following: We hope that the Jordanian legislator will amend Article 288 of the Jordanian Civil Code to read as follows:

- 1) No one shall be liable for the acts of another; however, the court may, at the request of the injured party and if it sees justification, oblige the person who caused the harm to pay the awarded compensation:
  - a) To those legally or contractually required to supervise a person in need of supervision due to their minority or mental or physical condition, unless it is proven that they fulfilled their duty of supervision, or that the harm would have occurred even if they had acted with the necessary care.

- b) To those who have actual authority over the person who caused the harm for their supervision and direction, even if they were not free to choose their subordinate, if the harmful act was committed by the subordinate while performing their duties, or because of them.
  - c) The principal has the right to deny liability if they prove that the subordinate intended to cause harm to others or to harm the principal maliciously.”
- 2) Those who paid the compensation may seek recourse against the party liable for the judgment.

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## **Conflict of Interest**

There is no conflict of interest with the content of this article.

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Not applicable.

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Not applicable.

## **Abbreviations**

Not applicable.

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