

Research Article

OBJECTIVE LIABILITY IN THE JORDANIAN CIVIL CODE AND ISLAMIC JURISPRUDENCE: A COMPARATIVE STUDY

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ABSTRACT

Background: This study examines the position of the Jordanian Civil Code (JCC) regarding the adoption of objective liability in the context of non-contractual liability, and the extent to which this legal regulation has been influenced by the provisions of Islamic jurisprudence and contemporary Western legislation, with the French Civil Code (FCC) as a model.

Method: The research adopted descriptive, analytical, and comparative methodologies, analyzing the provisions of the JCC and comparing them with those of the FCC to determine the extent to which the concept of objective liability is embodied in both legal systems.

Results and Conclusions: The research demonstrated that liability in tort in Jordanian law has an objective character that focuses on compensating for the damage suffered by the injured party rather than evaluating the conduct of the person causing the act (the element of fault), and that the JCC has consolidated

this characteristic through the concept of “causing harm” and the liability of the direct perpetrator and the person causing the harm. Objective liability also takes multiple forms, such as the liability of the keeper of things and the principal for the acts of his subordinates. This legal regulation approximates the FCC’s approach in some respects and differs from it in others, particularly regarding liability forms. The research recommends developing judicial jurisprudence to address damages arising from the use of modern technological means, such as artificial intelligence tools, and amending legal provisions to address the objective character of liability and expand the scope of compensatory protection.

1 INTRODUCTION

Objective liability, also called “liability by operation of law” and “presumed liability”¹ is a term used recently to indicate cases in which the existence of fault on the part of the person causing the harm is not required to establish their liability.² Liability is determined by objective questions regarding the search for a causal link, without assessing the conduct of the person causing the harm. Thus, objective liability differs from tortious liability in its traditional concept, as established in French law, which is based on fault.³ For personal fault-based liability to arise, three conditions must be fulfilled: fault, damage, and a causal link.⁴ The strictness of objective liability is not limited to the absence of a fault requirement on the part of the person causing the harm; it is also reflected in the defenses against such liability.⁵ This liability, in all its forms, cannot be avoided except by proving a foreign cause that satisfies the conditions of force majeure.⁶

The emergence of the concept of objective liability in French law and in some European laws is regarded as a means of addressing the many shortcomings resulting from the establishment of tortious liability on the basis of fault, in light of the complexity of contemporary economic and technological activities and the risks they have produced,

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- 1 Mauro Bussani and Anthony James Sebok (eds), *Comparative Tort Law: Global Perspectives* (2nd edn, Edward Elgar Publishing 2021) 469, doi:10.4337/9781789905984.
 - 2 Raphaël Briguët-Lamarre, ‘La responsabilité de plein droit (ou “objective”)’ (*Aide-aux TD*, 9 March 2026) <<https://aideauxtd.com/responsabilite-de-plein-droit/>> accessed 12 March 2026.
 - 3 *ibid*
 - 4 Mahmoud I Fayyad and Ahmad M Hayajneh, ‘Reconsidering the Special Rules of Mitigation of Damages for Breach of Contract for the Sale of Goods in UAE Law’ (2022) 38(1-2) *Arab Law Quarterly* 80, doi:10.1163/15730255-bja10101.
 - 5 Mona Munir Mohammed Ali Al-Sharida, ‘The Limits of Recompense in the Contractual Liability in Jordanian Civil Law’ (2024) 18(4) *Revista de Gestão Social e Ambiental* e06462, doi:10.24857/rgsa.v18n4-111; Mahmoud M Dodeen, ‘Compensability of Moral Damage in Islamic Contract Law: A Comparative Analysis of the Palestinian, Jordanian and Qatari Civil Codes’ (2019) 34(2) *Arab Law Quarterly* 167, doi:10.1163/15730255-12341041.
 - 6 Briguët-Lamarre (n 2).

which are often difficult to attribute to specific personal fault.⁷ Moreover, placing the burden of proving fault on the injured party effectively undermines his right to compensation, in a manner inconsistent with the requirements of corrective justice and the protection of the weaker party in the legal relationship.⁸

The Jordanian Civil Code (JCC)⁹ addressed non-contractual (tortious) liability in the part devoted to sources of obligation, under the title 'harmful act' (Arts. 256 to 292). With regard to the nature and basis of this liability, it is noted that the JCC adopted an objective concept similar to the concept generally established by Islamic jurisprudence.¹⁰ Although the JCC did not use the term "objective liability," the idea of this liability has been embodied in it since its enactment, in a clearer and more precise manner than in French law.

This can be attributed to the fact that the law, passed in 1976, did not use the term 'fault' or treat it as a basis for non-contractual liability. It explicitly provided for the possibility of such liability even where the person causing the damage lacks discernment (Art. 256). This position can be explained by the fact that it draws primarily on Islamic jurisprudence and the principles of Islamic Sharia, under which non-contractual liability aims, in the first place, to ensure that every injured party obtains compensation that repairs the damage inflicted upon him without lawful justification.

This study examines the extent to which the JCC adopts the objective concept of non-contractual liability developed by French jurisprudence and legislation, or whether it embodies a distinct concept of this liability and, if so, what its scope is. To answer this question, the study examines the relevant legislative provisions in the JCC and compares them with those in the French Civil Code (FCC),¹¹ which serves as a model of European legislation. In contrast, the study will not address cases of objective liability covered by special legislation or by French case law, with the aim of contributing to the improvement and development of the relevant provisions of the JCC.

Achieving the objectives of this research first requires analyzing the position of French law as a model of European legislation for regulating this liability (Section One). The research then proceeds to examine the JCC to determine the extent to which it adopts the objective concept of non-contractual liability, which is reflected in the foundation of liability on the

7 Ahmet Akman, 'Ücret İle Tazminat Sorumluluğu Birlikteliği' (2022) 26(1) Cumhuriyet İlahiyat Dergisi 45, doi:10.18505/cuid.1058871.

8 Philippe Pierre, 'La Place De La Responsabilité: Notion Et Rôle De La Faute En Droit Français' (2010) 23(4) Revue Juridique de l'Ouest 403, doi:10.3406/juro.2010.4149

9 Jordanian Law No 43 of 1976 'Jordanian Civil Code (JCC)' (adopted 1 January 1977) <<https://www.eastlaws.com/legislation-full-text/ar/jordan/law/01-08-1976/no-43?type=1&id=74782>> accessed 10 December 2025.

10 *Explanatory Memorandum of the Jordanian Civil Code, Law No 43 of 1976* (Jordan Bar Association 2000) 75.

11 French Civil Code of 1804 'Code civil' (FCC) (amended 1 December 2025) <https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/> accessed 10 December 2025.

idea of damage (Section Two), and the incorporation of this concept in the legislator's regulation of personal liability in both direct liability and liability for causing damage, as well as certain forms of liability for non-personal acts (Section Three).

2 OBJECTIVE LIABILITY IN EUROPEAN LEGISLATION: THE FRENCH MODEL

Historically, liability in tort in the Latin legal system, represented by the FCC of 1804 as amended by Decree No. 131 of 2016, and by the legislation of Arab states that derived their provisions from this Code, was founded on fault in its personal sense, whether intentional or merely negligent, and lack of due care. This approach was justified primarily by considerations of justice and societal values, on the basis that whoever commits a fault must bear its consequences by paying compensation.¹² Thus, this legislation gave precedence to the individual's interest in acting freely over his interest in living in security, and prioritized sanctioning the person at fault over ensuring that the injured party obtains compensation that makes good the damage suffered. The idea of fault as the basis of tortious liability, although initially widely accepted, did not retain the position it had long enjoyed. One began to witness its retreat, and this decline is attributed to the lack of harmony between the standard upon which this liability was based and to doubts regarding the necessity of such a standard, particularly where it is impossible to determine the fault of the person causing the harm.¹³

2.1. Fault as the Basis of Tortious Liability

From a theoretical perspective, jurists have differed in their definitions of fault. Previously, French jurist Planiol defined fault as "the breach of a pre-existing obligation," while French jurist Carbonnier defined it as an unlawful act.¹⁴ However, both definitions were criticized for conflating civil liability and criminal liability, which is based on the principle that "there is no crime and no punishment except by law." Consequently, the prevailing view in jurisprudence has held that the concept of fault should not be limited to the violation of obligations; it must be defined by a general standard, leaving the judge with the authority to assess whether the harmful act amounts to fault.¹⁵

The material element of fault includes any illegal behavior that constitutes a violation of a duty owed or an infringement of others' rights. In general, it encompasses any deviation from the conduct of the average person, whether by exceeding the limits of what the actor

12 Briguet-Lamarre (n 2).

13 Husayn Amir, *Civil Liability, Tortious and Contractual* (Misr Press 1956) 168 [in Arabic].

14 Pierre (n 8) 403.

15 Yvonne Lambert-Faivre, 'L'évolution De La Responsabilité Civile, D'une Dette De Responsabilité À Une Créance D'indemnisation' (1987) 1 *Revue trimestrielle de droit civil*.

was obliged to observe or by failing to perform an act they were required to perform.¹⁶ The moral element refers to conscious intent or awareness; it requires that the person causing the harm possess awareness and discernment,¹⁷ which is necessary to achieve the punitive function of fault-based liability.¹⁸ Although this concept of fault initially seemed clear, its practical application yielded illogical results, particularly concerning the moral element of fault.¹⁹ Consequently, jurisprudence began referring to the movement of “civil liability localization”, indicating the abandonment of the fault element, which represents a fundamental change in the philosophy and objectives of establishing this liability.²⁰

The early signs of this movement emerged when leading French jurists, most notably the eminent jurist Starck, adopted the idea of ‘objective fault,’²¹ developed by Professors H and L Mazeaud in the 1960s.²² Starck also laid the foundation for the theory of guarantee (*La théorie de la garantie*), according to which non-contractual liability is not based on the idea of punishment or sanction, as in the fault theory, but rather on ensuring the protection of individuals’ fundamental rights, particularly their right to the integrity of their bodies and property. Every person has a right to safety and security, and any infringement of this right gives rise to a legal obligation to guarantee compensation for the damage, regardless of whether fault is established. The French legislator also codified this idea, albeit as an exception and with limited scope, when establishing liability for the mentally impaired under Article 414/3 of the Civil Code. Furthermore, the French Court of Cassation embraced this idea when it ruled that the trial court is not obliged to investigate whether a minor is capable of discernment to determine the liability of the minor's parents for the minor’s harmful acts.²³ Subsequently, the jurisprudence of the French Court of Cassation expanded to establish the objective character of objective liability under existing provisions, particularly paragraph one of Article 1242 of the Civil Code, which governs liability for acts of others, and several special laws were enacted to regulate certain forms of objective liability.²⁴

16 Jacques Flour, Jean-Louis Aubert and Eric Savaux, *Droit Civil: Les Obligations*, t 2: *Le Fait Juridique* (7th edn, Armand Colin 1997) 84.

17 Ahmad M Al-Badawi, ‘Scope of Civil Liability for Environmental Damage in Jordanian Legislation’ in Haitham M Alzoubi, Yuvaraj Ganesan and Daher R Alqurashi (eds), *Strategies for Environmental Risk Management: Challenges and Solutions (SERM)* (Springer 2025) 141, doi:10.1007/978-3-031-90534-6_16.

18 Abd al-Razzaq Al-Sanhuri, *Al-Wasit in the Explanation of Civil Law: The Theory of Obligations and the Sources of Obligations*, vol 1 (3rd edn, Manshurat al-Halabi al-Huquqiyyah 1993) 796 [in Arabic].

19 Hassan Ali Al-Dhanoun, *Al-Mabsut on Civil Liability: Fault* (Without Publisher 2001) 143 [in Arabic].

20 Boris Starck, *Essai D’une Théorie Générale de la Responsabilité Civile Considérée en sa Double Fonction de Garantie et de Peine Privée* (Librairie Rudesienne 1947) 7.

21 *ibid*

22 Henri Mazeaud, Léon Mazeaud and André Tunc, *Traité Théorique et Pratique de la Responsabilité Civile Délictuelle et Contractuelle*, t 3 (3e éd, Montchrestien 1998) 416.

23 *Arrêt Fullenwarth* No 83-12.235 (Cour de Cassation, 2e civ, 14 Déc 1984).

24 Pierre (n 8) 403-4.

2.2. Objective Liability in Civil Law Systems

French civil law is currently preparing substantial reforms to the rules of civil liability, aimed at completing the broader process of its fundamental modernization. This modernization movement began with Decree No. 131/2016 and the law confirming it, issued in 2018, both of which relate to contract law and the rules of evidence. However, this reform did not affect the core principles governing civil liability and was limited to certain formal amendments. The most notable of these is that, since 2016, the French legislator has abandoned the term ‘tort liability’ in favor of ‘non-contractual liability,’ thereby ending the confusion between its criminal and civil dimensions and giving precedence to the latter.²⁵ Several draft reforms have been prepared to amend the provisions on non-contractual liability in French civil law, with the aim of achieving a clearer, more predictable law, improving the handling of victims’ situations, and preventing unlawful conduct, thereby enhancing legal certainty and developing the functions of civil liability. The most recent of these initiatives was the draft amending law on the civil liability system and the improvement of compensation for victims, No. 1829 of 2025,²⁶ which is considered an extension of the Civil Liability Reform Bill (PLRRC Urvoas) submitted to the French government in 2017. This draft is referred to in the study as one of the most significant proposed aspects of modernizing the traditional rules of civil liability, and it reflects the accumulated doctrinal and judicial efforts to analyze and refine French civil law over more than two centuries.

The FCC’s position in establishing the objective character of non-contractual liability is consistent with modern European trends. The theory of civil liability in European legal thought has undergone a profound structural transformation, marked by a shift from a traditional model based on the centrality of fault to a modern model grounded in the “theory of risk” as an independent basis of liability alongside fault. This is clearly reflected in the general European systems of civil liability, which have influenced certain national legislations.²⁷ By virtue of this transformation, fault is no longer a necessary condition for liability in all its forms.

Instead, multiple models of objective liability have been recognized that arise solely from the occurrence of damage and the existence of a causal relationship, without requiring proof of wrongful conduct by the person held liable.²⁸

25 Muhammad Al-Khatib, ‘Future Prospects for the Principle of the Unity of Civil Liability in Modern French Civil Law: A Reading of the Philosophy of the Draft Law on Reforming the Theory of Liability (PLRRC Urvoas 2017): An In-Depth Analytical Study’ (2020) 31(3) Kuwait International Law School Journal 304 [in Arabic].

26 Assemblée nationale, Proposition de Loi no 1829 ‘Réformer le régime de la responsabilité civile et à améliorer l’indemnisation des victimes’ (16 September 2025) <https://www.assemblee-nationale.fr/dyn/17/textes/117b1829_proposition-loi> accessed 10 December 2025.

27 Pierre (n 8) 405.

28 Christian von Bar and others, *Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR)* (Sellier 2009) 292.

The theory of objective liability has resulted in several forms of tortious liability, such as liability for damage attributed to a source of risk under the control of a particular person; liability for damages caused by materials or emissions of special risk; objective liability for damages arising from motor vehicles; liability for damages caused by animals; and liability arising from buildings and structures.²⁹ These forms exist in the theory of risk and include a person's liability for damages arising from persons or things under his actual authority or control, without requiring proof of personal fault. The primary objective of civil liability under this framework is to repair the damage and restore social balance, not to punish the person causing the harm.³⁰ This trend also appeared in the Principles of European Tort Law (PETL),³¹ where objective liability is based on bearing the consequences of damage resulting from an abnormal risk, regardless of proof of fault. The principles emphasize that the injured party need not always prove fault.³² Also, these principles recognized several forms of objective liability, including liability for activities of an abnormally dangerous nature and liability for inherently dangerous things and activities

On the other hand, the Council of Europe played a pivotal role in formulating influential European standards through the interpretation and application of the European Convention on Human Rights³³ by the European Court of Human Rights (ECtHR). According to ECtHR case law (2021),³⁴ these standards led to a reorientation of the concept of civil liability from its traditional fault-based logic toward a functional logic focused on repairing damage and ensuring effective compensation for victims. The shift prioritizes effective compensation and fairness to the victim, especially when fault-based liability is difficult to establish. The standards of the Council of Europe favor objective liability to enhance compensatory justice and protect rights, ensuring appropriate redress, particularly where risks are high or proof is complex.³⁵

Also, the ECtHR has adopted a functional standard for attributing liability, based on control, regulation, or supervision of the source of risk. In cases involving serious risks or regulatory failures, liability is attributed to the entity that possesses actual authority over the activity or the relevant field, even in the absence of proof of individual fault.³⁶ The Court's jurisprudence has also established that compensation aims to repair actual harm, not to punish or award punitive damages.³⁷ This is also reflected in the European Court of Human

29 *ibid* 205.

30 *ibid* 120-3.

31 Francesco D Busnelli and others, *Principles of European Tort Law: Text and Commentary* (Springer 2005) doi:10.1007/3-211-27751-X.

32 *ibid* 120.

33 Council of Europe, *European Convention on Human Rights: as amended by Protocols Nos 11, 14 and 15; supplemented by Protocols Nos 1, 4, 6, 7, 12, 13 and 16* (ECtHR 2013).

34 ECtHR, *Overview of the Court's Case-Law 2021* (Council of Europe 2022).

35 Veronika Fikfak, 'Changing State Behavior: Damages Before the European Court of Human Rights' (2018) 29(4) *European Journal of International Law* 1091, doi:10.1093/ejil/chy064.

36 ECtHR, *Case-Law Overview 2024* (Council of Europe 2025).

37 *ibid*

Rights' interpretation and application of Article 41 of the European Convention on Human Rights concerning "just satisfaction".

At the level of European national legislation, non-contractual liability under the German Civil Code (BGB)³⁸ is generally based on fault, unlike in French law. Under German law, unlawfulness is considered an independent element of liability rather than a constituent of fault. The German legislator grants the judge less discretionary power in determining fault, as it did not establish a general principle of non-contractual liability comparable to Article 1242 of the FCC; instead, it specified certain forms of this liability through particular provisions (Sections 823 et seq. BGB). However, the German legislator departed from this rule and regulated certain special forms of objective liability, such as the liability of the keeper of an animal not used for a profession or economic activity, which is based on the theory of risk. Several forms of objective liability also appear in other special laws, such as the Railway Law, the Road Traffic Law, the Aviation Law, the Environmental Liability Law, and the Nuclear Energy Law (Sections 833 et seq. BGB).

3 THE OBJECTIVE NATURE OF LIABILITY IN JORDANIAN LAW

Unlike some Arab legislation derived from French law, the JCC established non-contractual liability for "harm" (Idrar) rather than for fault (Art. 256), thus reflecting the philosophy of Islamic jurisprudence. What, however, is the meaning and notion of the harm as the basis of liability for a harmful act in the JCC, and when does this description not apply?

3.1. Harm (Idrar) as the Basis of Liability in the JCC

Scholars of Jordanian civil law differ regarding the legal basis of liability for a harmful act. Some commentators considered damage (Darar) as the basis of this liability,³⁹ while others considered fault as the basis of this liability.⁴⁰ Although the Jordanian Court of Cassation has affirmed the second view in some of its decisions,⁴¹ the prevailing opinion considers

38 German Civil Code 'Bürgerliches Gesetzbuch' (BGB) (amended 1 December 2025) <<https://www.gesetze-im-internet.de/bgb/>> accessed 10 December 2025.

39 'Abd al-'Aziz Al-Lassasmeh, *Non-Contractual Civil Liability: The Harmful Act* (Dar al-Thaqafah 2002) 55-7 [in Arabic]; Muhammad Suwwar, *General Trends in the Jordanian Civil Law: A Comparative Study with Islamic Jurisprudence and Arab Legal Codes* (Dar al-Thaqafah lil-Nashr wa al-Tawzi' 1996) 133 [in Arabic].

40 Israa Mustafa Muhammad Bani Mustafa and Muhammad Awad Ayed Al-Sukkar, 'The Study's Savior: The basis of Responsibility for the Harmful Act between Islamic Jurisprudence and Jordanian Civil Law' (2021) 8(1) *Journal of the Al-Mizan Institute of Legal Studies* 426 [in Arabic]; Muhammad Siraj, *Liability for Unlawful Aggression in Islamic Jurisprudence: A Comparative Juristic Study with the Rules of Non-Contractual Liability in Law* (Dar al-Thaqafah lil-Nashr wa al-Tawzi' 1990) 47 [in Arabic].

41 Civil Appeal No 1696 [1999] Court of Cassation (Jordan); Civil Appeal No 619 [2004] Court of Cassation (Jordan); Civil Appeal No 263 [2010] Court of Cassation (Jordan).

harm (Idrar) as the basis of this liability.⁴² This view aligns with the wording of the JCC, its explanatory memoranda, its origins in Islamic jurisprudence, and the principles of Sharia.

Harm is an objective element, not linked to the behavior of the person causing it, unlike the FCC, which established non-contractual liability on fault (Art. 1240), thereby founding the personal theory. It is noted that the Jordanian legislator did not define this term. Nor did it define what is meant by the term 'harm.' The philosophy of civil liability in Islamic jurisprudence and the JCC provisions indicate that harm refers to unlawful acts and omissions, as inferred from the JCC's explanatory memoranda and its commentators.

3.1.1. Harm in the Explanatory Memoranda of the JCC

The explanatory memoranda of the JCC began their commentary on Article 256 by noting that any act causing harm to others demands compensation, and the source of this rule is the Majalla al-Ahkam al-Adliya (the Majalla) (Arts. 19, 20, & 53).⁴³ These memoranda defined the elements of liability for a harmful act as harm, damage, and the causal link, indicating that harm refers to the act or omission that causes the damage.⁴⁴ This explanatory memorandum also emphasized that using the word "harm" is due to the legislator's preference for this term over other terms used in some legislation and by some jurists, such as "unlawful act," "act contrary to the law," or "act prohibited by law," because it is impossible to exhaustively specify the acts that meet this description. This approach leaves matters of harm to the judiciary, given the general obligation on all persons not to cause harm to others.

After establishing this rule, the explanatory memoranda indicated that harm means either exceeding the limit that should have been observed or falling short of the limit that should

42 Ahmad Al-Hayari, *Non-Contractual Liability for the Acts of Others: A Critical, Analytical, and Historical Comparative Study with the Jordanian Civil Code and the French Civil Code* (Dar Wa'il 2003) 40-4 [in Arabic]; Yasin Al-Juburi, *The General Theory of Obligations and Personal Rights*, vol 1 (Dar al-Thaqafah lil-Nashr wa al-Tawzi' 2023) 322 [in Arabic]; Adnan Al-Sarhan and Nuri Khater, *Commentary on the Civil Law: Sources of Personal Rights (Obligations): A Comparative Study* (6th edn, Dar al-Thaqafah lil-Nashr wa al-Tawzi' 2006) 357-66 [in Arabic]; Sulayman Marqus, *Al-Wafi in the Explanation of the Civil Law: On Obligations, Tortious Acts, and Civil Liability* (Without Publisher 1992) 103 [in Arabic]; Yusuf 'Ubaydat, *Sources of Obligation in Civil Law* (Dar al-Thaqafah lil-Nashr wa al-Tawzi' 2021) 277 [in Arabic].

43 The *Majalla al-Ahkam al-Adliyyah* is a collection of legal rules comprising sixteen books, the first of which concerns sales and the last judicial matters. The final edition was issued during the Ottoman Caliphate in Sha'ban 1293 AH (1876 CE). Alongside its function as a codification of Islamic jurisprudence, it also regulated civil and personal status matters for all religions and sects within the Ottoman Empire. It remains in force in some Arab countries, such as Palestine and Jordan, provided it does not conflict with the Jordanian Civil Code, and continues to serve as a reference for jurists, lawyers, and judges.

44 Omar Erekat, 'The Legal Regulation of the Civil Liability Insurance Contract for the Arbitrator in Palestinian Legislation' (2025) 39(7) An-Najah University Journal for Research - B (Humanities) 493, doi:10.35552/0247.39.7.2397.

have been reached, whether by action or omission, resulting in damage regardless of the nature of the act or the intention of the person who committed it. In explaining the requirement of the connection between the harmful act and the object of harm, the memoranda described the harmful act as an “unlawful act”, citing the Prophetic hadith: “No harm and no reciprocating harm.”

3.1.2. Harm According to JCC Commentators

Some jurists⁴⁵ inferred from the explanatory memoranda that, by “harm,” the lawmaker intended the concept of transgression. This view does not align with the provisions of the JCC, as Article 256 of this Code considers harm as the basis of liability in all cases. Also, Article 257 distinguished two types of harm: direct (Mubashir) and causative (Mutasabbib), and considered transgression as one form of causative harm.⁴⁶ On the other hand, some jurists defined harm as “causing damage as a result of an unlawful act or causing it in a manner contrary to the law.”⁴⁷ The Court of Cassation also adopted this view, relying in its judgments on the wording of the explanatory memoranda.⁴⁸ The authors believe that this view is consistent with the philosophy of liability for a harmful act and the principles underlying it in Islamic jurisprudence. However, it has been criticized for failing to clarify what is meant by the unlawfulness of harm; that is, whether this description applies to the act or omission of the person causing the harm by violating a general rule or statutory provision, or whether unlawfulness refers to the result arising from that act or omission.

Some jurists hold that the unlawfulness of harm is linked to the act or omission causing the damage being a transgression. Consequently, they define harm as “any act that constitutes a transgression beyond the limits of the right assigned, whether by law, custom, or usage, resulting in damage to another’s body, feelings, or property.”⁴⁹ However, this view can be criticized. It began with the act’s unlawfulness in origin and equated custom and usage, so that violating either renders the act unlawful, despite their differences in meaning and scope of obligation. Also, the definition does not include acts that are lawful in their origin but whose results are unlawful, ignoring Article 257, which establishes the liability of the direct doer (Mubashir) without condition, merely for causing damage to others, unless the act is based on a right or permission. The legislator focused on the unlawfulness of the result

45 Muhammad Al-Jundi, *Non-Contractual Liability for Harmful Acts: A Study in Western Jurisprudence, Islamic Jurisprudence, and the Jordanian Civil Law* (Dar al-Thaqafah lil-Nashr wa al-Tawzi’ 2015) 111-21 [in Arabic]; Mustafa Al-Zarqa, *The Harmful Act and the Resulting Liability Thereof* (Dar al-Qalam 1988) 71 [in Arabic].

46 Khudayr Al-‘Isawi, *The Objective Nature of Liability for Harmful Acts in the Jordanian Civil Law* (Master Thesis, Yarmouk University 2016) 11 [in Arabic].

47 Al-Sarhan and Khater (n 42) 18; ‘Ubaydat (n 42) 277.

48 Civil Appeal No 4250 [2004] Court of Cassation (Jordan); Civil Appeal No 321 [1999] Court of Cassation (Jordan).

49 Al-‘Isawi (n 46) 139.

rather than the act itself, as Islamic jurisprudence considers any infringement of others' rights unlawful. Therefore, harm as intended by Article 256 of the JCC is not limited to an inherently unlawful harmful act, but also includes any act that results in damage to others, provided the actor is not exercising a right or permission.⁵⁰

Thus, the JCC resembles the FCC in considering the unlawfulness of the act as the material element of fault on which non-contractual liability is based, while the difference between the two laws lies in the moral element of fault, namely awareness and discernment. However, the gap between the two systems has begun to narrow with recent developments in French civil law and anticipated amendments to its civil liability provisions. French jurisprudence has recognized objective fault, and the French legislator has consolidated this concept in regulating the liability of mentally incapacitated persons. Moreover, the jurisprudence of the French Court of Cassation has affirmed the liability of a minor as a condition for establishing the liability of the parents, regardless of the minor's level of discernment, thereby stripping fault of its moral element.⁵¹ It appears that the French legislator is moving towards consolidating this principle and introducing substantial changes to the role of fault in establishing non-contractual liability, as well as modernizing its concept. The draft law amending the civil liability system and improving compensation for victims (2025) does not restrict the forms of conduct giving rise to non-contractual liability to fault alone.⁵² It also broadened the concept of fault to include any violation of a specific legal obligation or breach of the general duty of care and caution (Art. 1242 of the 2017 draft reform of the liability provisions of the French Civil Code), in a manner similar to the concept of causing harm in the JCC.

3.2. Absence of the Description of Harm

The concept of harm encompasses all harmful acts and omissions that are unlawful. If this characteristic is absent, the harmful act cannot serve as a basis for establishing non-contractual liability under Jordanian law. In this regard, Islamic jurisprudence summarized the cases in which liability does not arise despite damage into three situations: destruction for the repair of bodies and preservation of lives, self-defense, and deterrence.⁵³ Accordingly, the actor's liability does not arise when exercising a right, when the harmful act is permitted, or when it is performed in execution of an order; civil liability also does not arise in cases of legitimate defense, even when there is a dispute over necessity.⁵⁴ Fundamentally, it can be

50 Ali Al-Khafif, *Liability in Islamic Jurisprudence* (Dar al-Fiqh al-Qawmi 2000) 38 [in Arabic]; Wahbah Al-Zuhayli, *The Theory of Liability, or the Rules of Civil and Criminal Responsibility: A Comparative Study* (Dar al-Fikr 2003) 23 [in Arabic].

51 *Arrêt Fullenwarth* (n 23).

52 *Assemblée nationale* (n 26).

53 Al-Zarqa (n 45).

54 'Ubaydat (n 42) 285-7.

said that the act does not constitute harm in the sense intended by Article 256 of the JCC if it does not involve an infringement on the rights of others or if the act is justified by preventing harm to the actor.

3.2.1. Absence of Infringement on the Rights of Others

Infringement of others' rights is considered one of the most prominent forms of unlawful harm; a harmful act does not give rise to liability if it occurs in the exercise of a right or with the authority's or the harmed party's permission.

First: Exercise of a Right: A right is a privilege granted specifically to a person. Based on the Sharia ruling "lawful permissibility negates liability," if the exercise of the right is accompanied by this power within the limits set by law and without abuse, liability does not arise even if the exercise of this right causes damage to others (Art. 91 of the Majalla and Art. 61 of the JCC).⁵⁵ The JCC applies this principle in provisions regulating harmful acts concerning the "right to public safety":⁵⁶ Article 292 provides that exercising a right must not harm the safety of others. A person who exercises their right and causes avoidable damage is liable, establishing a legal principle inspired by Islamic jurisprudence underpinning objective liability.

Second: Permission from the Authority or the Right Holder: A person's disposition of another's property is prohibited by law and Sharia, as it constitutes an infringement on the rights of others. However, an exception to this rule occurs when the disposition is authorized by the right holder or the competent authority.

1) Permission from the Right Holder: A person's inviolability makes infringement on the property or rights of others a basis for liability. However, this rule does not apply when the right holder or owner grants permission, as such permission constitutes a waiver of this inviolability, making the destruction of property or harm to the body lawful,⁵⁷ whether the permission is express or implied, provided that the will of the person granting it is verified (Art. 771 and 772 of the Majalla and Art. 277 of the JCC).⁵⁸ This rule is also justified by the absence of a benefit to imposing liability in such cases,⁵⁹ since the authorized person causing harm may seek reimbursement from the right holder for any payments made under the liability, whether the permission was express or implied.

55 Subhi Al-Mahmassani, *The General Theory of Obligations and Contracts* (3rd edn, Dar al-'Ilm lil-Malayin 1983) 35 [in Arabic].

56 Al-Jundi (n 45) 517-8.

57 Al-Khafif (n 50) 296-7; Al-Mahmassani (n 55) 36; Ahmad Sulayman, *Liability for Destroyed Property in Islamic Jurisprudence* (Matba'at al-Sa'adah 1992) 303 [in Arabic].

58 Al-Jundi (n 45) 521.

59 'Ala' al-Din Al-Kasani, *The Masterpieces of Legal Art in the Arrangement of Islamic Laws* (3rd edn, Dar al-Kutub al-'Ilmiyyah 1986) 168 [in Arabic].

2) The Authority Permission (Wali al-Amr): Permission granted by the competent authority (Wali al-Amr) prevents liability, as the authority has general guardianship over the interests and rights of individuals.⁶⁰ Permission issued by someone without such authority does not remove the harmful character of the act performed under that permission. This principle is reflected in Article 919 of the Majalla, which provides that a person who destroys another's property without the owner's permission due to a fire in the area is liable for the damage caused, unless the destruction occurs pursuant to an order from the competent authority, in which case liability is nullified. This indicates that liability is linked to the lawfulness of the act and the existence of a justification. The JCC does not provide a similar provision: it relies on the rule established in the Majalla, which remains in force in Jordan so long as it does not conflict with the JCC.

3.2.1. Defense of Necessity (Daf' al-Darar)

Liability of the actor does not arise in Islamic and legal jurisprudence in certain cases where the indirect causer (Mutasabbib) is compelled to commit the harmful act to prevent damage (Daf' al-Darar) to themselves or due to the constraint of their will. This scenario applies in the following cases:

First: Execution of an Order Issued by Another: This case includes orders issued by the authority (Wali al-Amr) and orders issued by a coercer. Obedience to authority is mandatory in Islamic jurisprudence unless the order involves committing a sin; if this obedience causes harm to others, the person giving the order is liable. Similarly, if a person is coerced to cause harm to others, the coercer is liable (Daman), provided that the coercion was unavoidable (Art. 1007 of the Majalla and Art. 263 of the JCC).

Second: Legitimate Defense: The Qur'an and the Prophetic Sunnah permit legitimate defense of oneself, one's property, and honor. Allah Almighty said: "So whoever attacks you, then attack him in the same way he attacked you."⁶¹ The Prophet (ﷺ) also said: "Whoever enters a person's house without their permission, it is lawful for them to gouge out his eye". Islamic jurisprudence obliges a person to protect their body, property, religion, mind, and honor and to defend them by means that prevent damage (Daf' al-Darar), to the extent necessary without excess or exaggeration.⁶² However, the JCC emphasizes this right in its Article 262.

Third: State of Necessity: Article 33 of the Majalla established a general rule that the state of necessity does not nullify others' rights. This Article allows the destruction of another's property in cases of necessity without considering the actor a usurper, yet it does not exempt them from liability for the destruction, as permission cannot justify the loss of rights. For

60 Al-Mahmassani (n 55) 177; Sulayman (n 57) 340

61 The Holy Quran, Surah Al-Baqarah: 194.

62 Sulayman (n 57) 343.

example, a person compelled to consume another's property must bear liability for what is consumed, or if one kills a raging camel that threatens their life.⁶³ It is noteworthy that Article 63 of the JCC adopted the principle stated in Article 33 of the Majalla when providing that "compulsion does not nullify the rights of others". Also, Article 222 of the JCC states that "necessities permit what is otherwise prohibited". Therefore, the JCC implicitly recognized the state of necessity, since the tortfeasor is not fully exempt from compensation, but only to the extent of necessity, subject to the discretion of the trial judge.⁶⁴

The above shows the similarity between the JCC and the FCC; the latter has enshrined the inviolability of human beings in Articles 9 to 16, prohibiting any assault on human life or bodily integrity, and any infringement of rights inherent to personality. Similarly, non-contractual liability for causing harm does not arise in French civil law, as in Jordanian civil law, if the act occurs in one of the situations considered by law to justify the act, as provided in Articles 122-4 to 122-7 of the French Penal Code, such as the lawful exercise of a right, an act committed by a subordinate in execution of an order issued by a superior whose orders must be obeyed, a state of necessity, or legitimate self-defense of person or property.⁶⁵

4 CONSOLIDATION OF THE OBJECTIVE CONCEPT OF LIABILITY FOR HARMFUL ACTS

Article 257 of the JCC regulates the forms of harm that give rise to non-contractual liability and the conditions under which such liability arises, and adopts the distinction established by Islamic jurisprudence and the Mejlle between the direct perpetrator of the harm and the person who merely causes it. It states: "1- Harm may occur by direct action or by causation. 2- If it occurs by direct action, liability is established without any additional condition; and if it occurs by causation, liability is conditioned upon transgression or intent, or that the act be conducive to the harm." Thus, unlike the French legislator, who did not distinguish between types of fault as a condition for non-contractual liability, the Jordanian legislator distinguished between several forms of causing harm, which are predominantly objective in nature, as set out in the Majalla (Arts. 887 and 888).⁶⁶ The liability of the direct perpetrator of the harm represents the application of the objective character of liability for the harmful act in the JCC. Likewise, the liability of the person who causes the harm is objective.

63 Ali Haydar, *Durar al-Hukkam: Commentary on the Majalla al-Ahkam al-'Adliyyah*, vol 2 (Dar 'Ilm al-Kutub lil-Tiba'ah wa al-Nashr wa al-Tawzi' 2003) 34 [in Arabic].

64 Al-Sarhan and Khater (n 42) 388-9.

65 Hajer Roudi, 'Une Notion Pénale À L'épreuve De La Responsabilité Civile: Les Faits Justificatifs' (2016) 1(1) *Revue de science criminelle et de droit pénal comparé* 17, doi:10.3917/rsc.1601.0017.

66 Al-Kasani (n 59) 165; Muhammad Al-Tuwaijri, *Encyclopedia of Islamic Jurisprudence*, vol 3 (2nd edn, 1985) 740 [in Arabic].

4.1. Liability of the Direct Doer (Mubashir) for Damage

The liability of the direct doer (Mubashir) for damage illustrates the objective nature of liability for harmful acts in the JCC. This is evident from how the Jordanian legislator organizes this liability. However, before discussing this, it is necessary to clarify the meaning of the direct doer and explain why it is the most prominent application of objective liability in the JCC.

4.1.1. Directness as the Most Prominent Application of Objective Liability

The JCC adopted the objective liability in Article 257, which distinguishes between “direct harm (Idrar bil-Mubasharah)” and “harm by indirect causation (Idrar bi-al-Tasabbub)”; it facilitated establishing the liability of the direct doer (Mubashir) by requiring only the unlawfulness of the act in light of its result, without any other condition.⁶⁷ This rule is derived from the principle “the direct doer is liable even if not intentional or excessive”, as stated in the explanatory memorandum of the Civil Code.

In defining the term “directness (Mubasharah)” in Article 887 of the Majalla, the direct doer of harm is the one who causes the harm directly and personally, with the destructive instrument in direct contact with its object;⁶⁸ the harm is incorporated into the act of the direct doer (Mubashir) and becomes inseparable from it.⁶⁹ Therefore, anyone who causes harm to a person’s body, property, or feelings is considered a direct doer. The direct link between the actor and the harm is sufficient to establish liability, as jurists considered the harmful act itself sufficient. This principle is based on the tradition: “Every Muslim’s life, property, and honor are inviolable” (Sahih Muslim (Muslim), 1991, p. 233).⁷⁰

Regarding the nature of this liability, Article 912 of the Majalla provides that “anyone who damages another’s property, intentionally or unintentionally...is obligated to compensate for the loss,” and Article 92 establishes the liability of the direct doer even if there is no intent. Therefore, liability of the direct doer in Islamic jurisprudence is objective in the sense intended by positive law; once the act causes harm, the direct doer becomes liable for the damage unless this act is based on a legal right.

67 Civil Appeal No 1488 [2005] Court of Cassation (Jordan).

68 Sulayman (n 57) 343.

69 Emile Tyan, ‘Le système de responsabilité délictuelle en droit musulman’ (Thèses, Université de Lyon, Faculté de Droit 1926) 203.

70 Muslim ibn al-Hajjaj, *Sahih Muslim: The Book of Virtue, Enjoining Good Manners, and Joining of the Ties of Kinship*, Hadith 2564 <<https://sunnah.com/muslim:2564a>> accessed 12 March 2026.

4.1.2. Legal Regime of the Direct Doer's (Mubashir) Liability

Establishing the liability of the direct doer for harmful acts in Islamic jurisprudence and the JCC maintains the principle of human dignity and the protection of one's body and property.⁷¹ A person is not permitted to infringe upon another's life or property except in cases of legitimate defense, as the Qur'an and the Prophetic Sunnah emphasize. A violation of this principle gives rise to liability without requiring any mental element related to the intent of the direct doer or their mental capacity (Article 257/1 of the JCC). The occurrence of damage establishes the liability of the direct doer (Mubashir), unless a legitimate legal or religious justification applies; no mental element is considered, as neither the intent nor the level of awareness is required to establish the liability.⁷² Thus, anyone who stumbles and damages another's property is liable (Article 913 of the Majalla). Also, anyone who damages another's property is liable even if they believe it to be their own (Article 914).

In this regard, Art. 278 of the JCC provides that any damage caused to another's property by a minor, whether discerning or not, or a person treated as a child, gives rise to liability. The damage caused by an insane person is subject to the same rule (Article 128). Thus, the JCC is similar to the FCC in this respect, albeit as an exception: Article 414/3 of the FCC established liability for the mentally impaired, and this principle can also be applied to minors and all persons with diminished capacity. Also, the liability of the keeper of things that require special care to prevent their harm is considered a form of direct liability for harm in the JCC, and this position aligns with the FCC (Art. 1242/1). Likewise, the JCC (Art. 288/1) and the FCC (Art. 1242/5) agreed to treat the principal's liability for his subordinate's acts as objective liability. It is not required to prove the principal's fault for such liability to arise, and the principal cannot evade it except by proving a foreign cause that meets the conditions of force majeure.⁷³ By contrast, it is noted that the German Civil Code establishes the liability of a principal for the acts of his subordinate on the basis of presumed fault (Art. 831 BGB).

4.2. Liability of the Indirect Causer (Mutasabbib)

The main rules governing liability for harmful acts in Jordanian law are based on the distinction established by the Majalla between the liability of the direct doer and that of the indirect cause of harm. While Article 92 of the Majalla provides that "the direct doer, even if acting without intent, is obliged to compensate," Article 93 does not hold the indirect causer liable for damages except for those intended to be caused. The Jordanian legislator

71 Explanatory Memoranda of the JCC (n 10).

72 Chafik Chehata, 'La théorie de la responsabilité civile dans les systèmes juridiques des pays du Proche-Orient' (1967) 19(4) *Revue internationale de droit comparé* 883.

73 Al-Hayari (n 42) 324; Anwar Sultan, *Sources of Obligation in the Jordanian Civil Law: Comparative Study with Islamic Jurisprudence* (14th edn, Dar al-Thaqafah lil-Nashr wa al-Tawzi') 371 [in Arabic].

enshrined these provisions in Articles 257 and 258 of the JCC.⁷⁴ The explanatory memoranda of the JCC indicate that the distinction between directness and causation is based on the principle that the former constitutes an independent cause of damage and does not require intent or excess, whereas the latter is not considered an independent cause and requires intent or transgression to give rise to liability.⁷⁵

This is to say that the act of the indirect causer does not always result in damage, but rather makes the occurrence of such damage possible, as another act must intervene for the damage to materialize.⁷⁶ For example, a person who cuts the rope from which a lamp hangs is an indirect cause of the damage that subsequently occurs to the lamp. For indirect causation to create liability, it must be characterized by unlawfulness, which occurs in three cases: intent (Ta'ammud), transgression (Ta'addi), or the act leading to harm. Therefore, for the indirect causer to be liable, the act must involve intent, transgression, or result in harm.⁷⁷

4.2.1. Conditions of Indirect Liability in Islamic and Jordanian Law

Both the JCC and Islamic jurisprudence consider the indirect cause liable for the damage they cause in cases of transgression (Ta'addi) and intent (Ta'ammud). Both affirmed the objective nature of liability for the harmful act in cases of causation, while the JCC, like French law, which bases non-contractual liability on fault, considered the condition of intent.

First: Transgression (Ta'addi): The term transgression (Ta'addi) is linguistically used to mean unlawfulness or injustice (Zulm). Among Muslim jurists, it carries two distinct meanings. Some define it as any infringement of others' rights,⁷⁸ while others emphasize the unlawfulness of the act itself.⁷⁹ According to this view, transgression occurs when a person exceeds a lawful right or commits an unlawful act; using one's right without intent to cause harm does not render the person liable. Liability arises only when the consequences exceed the lawful bounds of exercising the right. Transgression refers to acting without a right, and the indirect cause is not liable unless the act is impermissible.⁸⁰ The Explanatory Memorandum states that the JCC follows the second approach: it considers transgression to occur when the actor lacks the right to perform the act that causes the damage, thereby constituting the material element of fault, or objective fault.⁸¹

74 Al-Hayari (n 42) 40-4.

75 Explanatory Memoranda of the JCC (n 10) 282.

76 El-Hassan (n 68) 35.

77 Civil Appeal No 658 [1991] Court of Cassation (Jordan).

78 Al-Zarqa (n 45) 78.

79 Muhammad Fadlallah, *The Theory of Liability in Islamic Law*, (Matba'at al-Sadah 1983) 92 [in Arabic]; Fakhri Mahna, *The Basis of Civil Liability and the Liability of a Person Lacking Legal Capacity* (Maktabat al-Sha'b 1974) 44 [in Arabic]; Sulayman (n 57) 227.

80 Al-Zarqa (n 45) 78.

81 Khalil Al-Jama'in, 'The Legal Basis of Liability for Harmful Acts between the Provisions of the Jordanian Civil Code and the Decisions of the Jordanian Court of Cassation' (PhD Thesis, Aman Arab University 2008) 178 [in Arabic].

This interpretation is supported by Article 924 of the Majalla,⁸² closely resembling the concept of objective fault in French law.⁸³

Second: Intent (Ta'ammud): The term intent refers to preparation and deliberate purpose; it denotes intending the harm, not merely performing the act (Explanatory Memorandum of the JCC). It does not refer to a hidden motive, but rather that the act itself is unlawful (even if only in its consequence). In other words, the act performed by the indirect causer is done to cause harm, such as poisoning another's food or digging a hidden pit in someone's path.⁸⁴ This condition is grounded in Article 93 of the Majalla; it moves beyond strict liability and approaches the concept of personal fault, on which tortious liability in the FCC and its derivative legislation is founded. When a harmful act is accompanied by the intent to cause damage to another, both elements of fault in French law are met: the material element is satisfied by the act itself. On the other hand, in Islamic jurisprudence, merely causing harm without right suffices for the material element, and the mental element is satisfied by the intention to cause harm, which is a personal (psychological) requirement that necessitates the perpetrator's awareness.⁸⁵

The liability of the keeper of an animal is considered one of the applications of liability for causing harm through an act of trespass, given that an animal possesses autonomous movement. However, the Jordanian legislator has based this liability on proven fault (Art. 289), whereas it has established the liability of the person responsible for supervision and liability for the collapse of a building on presumed fault, which may be rebutted by evidence to the contrary (Arts. 288 and 290), while the French legislator has treated both of these liabilities as forms of strict liability (Arts. 1243 and 1244). As for the German legislator, its position is similar to that of Jordanian law with regard to the liability of the supervisor (Art. 832 BGB) and liability for building collapse (Art. 836 BGB), as both are based on presumed fault, while it considers the liability of the keeper of an animal to be, as a general rule, strict. However, it excludes from this rule damage caused by an animal used for professional purposes, in which case the keeper's liability is based on presumed fault (Art. 833 BGB).

It should be noted that the JCC's liability for the supervisor of a person under guardianship extends to anyone legally or contractually obliged to supervise a person in need of supervision due to their minority or mental or physical condition. This liability includes the parents' liability for the acts of their minor children (Art. 1242/4 of the FCC), although the FCC has regarded it as objective liability. Moreover, the liability of the guardian under Article 288/1/a of the JCC encompasses most forms of liability for the acts of others developed by French case law and attributed to Article 1242, and subsequently consolidated

82 Al-Jundi (n 45) 115-6; Mustafa Halilu, 'Elements of Civil Liability in Jordanian and Algerian Law: Comparative Study' (Master Thesis, University of Jordan 1991) 21 [in Arabic].

83 Al-Hayari (n 42) 42.

84 Al-Sarhan and Khater (n 42) 373; Al-Zarqa (n 45) 79.

85 Mahna (n 79) 93-4.

by the 2017 draft reform of civil liability. This draft reorganized the forms of liability for acts of others in Article 1242, assigning each form a separate provision, and added the forms introduced by the French Court of Cassation starting with the *Blieck* decision of 1991.⁸⁶ It also considered non-contractual liability for the acts of others as objective liability

4.2.2. The Particularity of the Jordanian Civil Code

The third scenario of the indirect actor's liability appears ambiguous. Article 257 of the JCC, in the context of the indirect actor's responsibility, provides for the scenario in which the act leads to harm. However, the fact that harm results from the actor's conduct is not new, as it is connected to the existence of a causal link, which is an independent requirement for liability. This has generated disagreement among scholars regarding this condition. In this regard, a clear jurisprudential disagreement has arisen regarding the significance of this legal provision. Many scholars⁸⁷ consider this condition redundant and, therefore, suggest its removal. The authors believe that the Jordanian legislator's adoption of the form of causing harm constitutes an addition to the two forms of transgression and intent; it appears that the civil code added this case to ensure the liability of the actor even when the two forms of transgression and intent are not realized, when the damage is an inevitable and unavoidable consequence of the act. The judge will not search for any subjective element in the perpetrator of the harmful act; therefore, legal liability is considered objective liability.⁸⁸ Also, this interpretation helps the judge in addressing liability for damages caused by artificial intelligence, pending the legislator's enactment of new provisions governing such liability.

Showing the legal framework of direct and contributory liability demonstrates that the scope of objective liability for personal acts under the JCC is broader than that of objective liability for non-personal acts in the same Code. Conversely, the scope of objective liability for non-personal acts is broader in the FCC, while fault remains the basis of liability for personal acts in that Code. The FCC also organizes other forms of objective liability not found in the JCC, such as liability for defective products (Art. 1245) and environmental damage (Art. 1246), or addressed elsewhere in the Jordanian Civil Code, such as liability for unusual neighborhood harms, which the FCC regulates under tortious liability (Art. 1253), whereas the JCC regulates it under property restrictions (Arts. 1024 to 1027).

86 *Arrêt Blieck* No 89-15.231 (Cour de cassation, Ass Plén, 29 Mars 1991).

87 Al-Jama'in (n 81) 178; Al-Zarqa (n 45) 73-4; Halilu (n 82) 21; Ubaydat (n 42) 282.

88 Al-Hayari (n 42) 43-4.

5 CONCLUSIONS

This research examined the JCC's position on regulating objective liability provisions and compared it with Islamic jurisprudence and the FCC. Objective liability arises merely from the commission of a harmful act that caused the damage, even if that act is lawful in origin, and it contradicts the philosophy of traditional civil liability under the FCC. Tortious liability in French law, as a general principle, is based on the idea of personal fault with its material and moral elements. A section of jurisprudence has sought to mitigate the negative consequences of adhering to the moral element of fault by proposing the idea of objective fault, which does not require the person causing the damage to possess awareness and discernment. The proposed amendments to reform the provisions on civil liability in the FCC (Draft of 2017) pave the way for recognizing a broader scope of objective liability, in line with the principles of European tort law and the Council of Europe's standards on compensatory justice.

Conversely, the JCC, since its issuance, has established the objective character of liability for the harmful act in several respects: (1) establishing this liability on harm represented by any unlawful act or omission resulting in causing damage to others, unless such infringement is lawful. (2) sufficing with the occurrence of a harmful act by the direct actor for the establishment of his liability without any other condition, such as discernment or the possession of mental capacity. (3) establishing the liability of the contributory party in cases of transgression, intent, or when the act, by its nature, leads to damage. Within the framework of liability for non-personal acts, the Jordanian legislator considered both the liability of the guardian of mechanical machines and things that require special care to prevent harm, and the liability of the principal for the acts of his subordinate, as forms of objective liability.

This study recommended the following: (A) amending Article 256 of the JCC to remove any confusion between damage and harm, and to clarify the concept of harm to include any act or omission that results in causing damage to others without right or legal justification. The proposed Article shall read as follows: "1- Any act causing harm to others shall obligate its perpetrator, even if he is not discerning, to compensate for the damage. 2- Harm is established merely by causing damage to another, provided that the act of the perpetrator is not based on a right or legal justification." (B) amending Article 257 of the JCC by limiting the concept of transgression to an act or omission that is unlawful in its origin; and abolishing the state of intent as a condition for the liability of the contributory party. The proposed Article shall read as follows: "1- Harm may be caused directly or indirectly. 2- If it is direct, liability for compensation arises without condition. If it is indirect, liability arises when the act of the person causing the harm constitutes a transgression, either by violating a statutory provision, public order, or public morals, or by being likely to lead to harm".(C) The Jordanian judiciary's consolidation of the provisions on objective liability in the JCC and their use to address liability for new damages arising from innovations in scientific progress, particularly in artificial intelligence, until special legislation is enacted to regulate this liability.

REFERENCES

1. Akman A, 'Ücret İle Tazminat Sorumluluğu Birlikteliği' (2022) 26(1) Cumhuriyet İlahiyat Dergisi 45, doi:10.18505/cuid.1058871
2. Al-Badawi AM, 'Scope of Civil Liability for Environmental Damage in Jordanian Legislation' in Alzoubi HM, Ganesan Y and Alqurashi DR (eds), *Strategies for Environmental Risk Management: Challenges and Solutions (SERM)* (Springer 2025) 141, doi:10.1007/978-3-031-90534-6_16
3. Al-Dhanoun HA, *Al-Mabsut on Civil Liability: Fault* (Without Publisher 2001) [in Arabic]
4. Al-Hayari A, *Non-Contractual Liability for the Acts of Others: A Critical, Analytical, and Historical Comparative Study with the Jordanian Civil Code and the French Civil Code* (Dar Wa'il 2003) [in Arabic]
5. Al-'Isawi K, *The Objective Nature of Liability for Harmful Acts in the Jordanian Civil Law* (Master Thesis, Yarmouk University 2016) [in Arabic]
6. Al-Jama'in K, 'The Legal Basis of Liability for Harmful Acts between the Provisions of the Jordanian Civil Code and the Decisions of the Jordanian Court of Cassation' (PhD Thesis, Aman Arab University 2008) [in Arabic]
7. Al-Juburi Y, *Al-Nazariyyah al-'Ammah Lil-Iltizamat Wa al-Huquq al-Shakhsiyyah*, vol 1 (Dar al-Thaqafah lil-Nashr wa al-Tawzi' 2023) [in Arabic]
8. Al-Jundi M, *Non-Contractual Liability for Harmful Acts: A Study in Western Jurisprudence, Islamic Jurisprudence, and the Jordanian Civil Law* (Dar al-Thaqafah lil-Nashr wa al-Tawzi' 2015) [in Arabic]
9. Al-Kasani AD, *The Masterpieces of Legal Art in the Arrangement of Islamic Laws* (3rd edn, Dar al-Kutub al-'Ilmiyyah 1986) [in Arabic]
10. Al-Khafif A, *Liability in Islamic Jurisprudence* (Dar al-Fiqh al-Qawmi 2000) [in Arabic];
11. Al-Khatib M, 'Future Prospects for the Principle of the Unity of Civil Liability in Modern French Civil Law: A Reading of the Philosophy of the Draft Law on Reforming the Theory of Liability (PLRRC Urvoas 2017): An In-Depth Analytical Study' (2020) 31(3) Kuwait International Law School Journal 269 [in Arabic]
12. Al-Lassasmeh AA, *Non-Contractual Civil Liability: The Harmful Act* (Dar al-Thaqafah 2002) [in Arabic]
13. Al-Mahmassani S, *The General Theory of Obligations and Contracts* (3rd edn, Dar al-'Ilm lil-Malayin 1983) [in Arabic]
14. Al-Sanhuri AR, *Al-Wasit in the Explanation of Civil Law: The Theory of Obligations and the Sources of Obligations* (3rd edn, Manshurat al-Halabi al-Huquqiyyah 1993) [in Arabic]

15. Al-Sarhan A and Khater N, *Commentary on the Civil Law: Sources of Personal Rights (Obligations): A Comparative Study* (6th edn, Dar al-Thaqafah lil-Nashr wa al-Tawzi' 2006) [in Arabic]
16. Al-Sharida MMMA, 'The Limits of Recompense in the Contractual Liability in Jordanian Civil Law' (2024) 18(4) *Revista de Gestão Social e Ambiental* e06462, doi:10.24857/rgsa.v18n4-111
17. Al-Tuwaijri M, *Encyclopedia of Islamic Jurisprudence*, vol 3 (2nd edn, 1985) [in Arabic]
18. Al-Zarqa M, *The Harmful Act and the Resulting Liability Thereof* (Dar al-Qalam 1988) [in Arabic]
19. Al-Zuhayli W, *The Theory of Liability, or the Rules of Civil and Criminal Responsibility: A Comparative Study* (Dar al-Fikr 2003) [in Arabic]
20. Amir H, *Civil Liability, Tortious and Contractual* (Misr Press 1956) [in Arabic]
21. Bani Mustafa IMM and Al-Sukkar MAA, 'The Study's Savior: The basis of Responsibility for the Harmful Act between Islamic Jurisprudence and Jordanian Civil Law' (2021) 8(1) *Journal of the Al-Mizan Institute of Legal Studies* 407 [in Arabic]
22. Briguet-Lamarre R, 'La responsabilité de plein droit (ou "objective")' (*Aide-aux TD*, 9 March 2026) <<https://aideauxtd.com/responsabilite-de-plein-droit/>> accessed 12 March 2026
23. Busnelli FD and others, *Principles of European Tort Law: Text and Commentary* (Springer 2005) doi:10.1007/3-211-27751-X
24. Bussani M and Sebok AJ (eds), *Comparative Tort Law: Global Perspectives* (2nd edn, Edward Elgar Publishing 2021) doi:10.4337/9781789905984
25. Chehata C, 'La théorie de la responsabilité civile dans les systèmes juridiques des pays du Proche-Orient' (1967) 19(4) *Revue internationale de droit comparé* 883
26. Dodeen MM, 'Compensability of Moral Damage in Islamic Contract Law: A Comparative Analysis of the Palestinian, Jordanian and Qatari Civil Codes' (2019) 34(2) *Arab Law Quarterly* 167, doi:10.1163/15730255-12341041
27. Erekat O, 'The Legal Regulation of the Civil Liability Insurance Contract for the Arbitrator in Palestinian Legislation' (2025) 39(7) *An-Najah University Journal for Research - B (Humanities)* 493, doi:10.35552/0247.39.7.2397
28. Fadlallah M, *The Theory of Liability in Islamic Law* (Matba'at al-Sadah 1983) [in Arabic]
29. Fayyad MI and Hayajneh AM, 'Reconsidering the Special Rules of Mitigation of Damages for Breach of Contract for the Sale of Goods in UAE Law' (2022) 38(1-2) *Arab Law Quarterly* 80, doi:10.1163/15730255-bja10101

30. Fikfak V, 'Changing State Behavior: Damages Before the European Court of Human Rights' (2018) 29(4) *European Journal of International Law* 1091, doi:10.1093/ejil/chy064
31. Flour J, Aubert JL and Savaux E, *Droit Civil: Les Obligations, t 2: Le Fait Juridique* (7th edn, Armand Colin 1997)
32. Halilu M, 'Elements of Civil Liability in Jordanian and Algerian Law: Comparative Study' (Master Thesis, University of Jordan 1991) [in Arabic]
33. Haydar A, *Durar al-Hukkam: Commentary on the Majalla al-Ahkam al-'Adliyyah*, vol 2 (Dar 'Ilm al-Kutub lil-Tiba'ah wa al-Nashr wa al-Tawzi' 2003) [in Arabic]
34. Imām Muslim, *Sahih Muslim: The Book of Virtue, Enjoining Good Manners, and Joining of the Ties of Kinship*, Hadith 2564 <<https://sunnah.com/muslim:2564a>> accessed 12 March 2026
35. Lambert-Faivre Y, 'L'évolution De La Responsabilité Civile, D'une Dette De Responsabilité À Une Créance D'indemnisation' (1987) 1 *Revue trimestrielle de droit civil*
36. Mahna F, *The Basis of Civil Liability and the Liability of a Person Lacking Legal Capacity* (Maktabat al-Sha'b 1974) [in Arabic]
37. Marqus S, *Al-Wafi in the Explanation of the Civil Law: On Obligations, Tortious Acts, and Civil Liability* (Without Publisher 1992) [in Arabic]
38. Mazeaud H, Mazeaud L and Tunc A, *Traité Théorique Et Pratique De La Responsabilité Civile Délictuelle Et Contractuelle*, t 3 (3e éd, Montchrestien 1998)
39. Pierre P, 'La Place De La Responsabilité: Notion Et Rôle De La Faute En Droit Français' (2010) 23(4) *Revue Juridique de l'Ouest* 403, doi:10.3406/juro.2010.4149
40. Rouidi H, 'Une Notion Pénale À L'épreuve De La Responsabilité Civile: Les Faits Justificatifs' (2016) 1(1) *Revue de science criminelle et de droit pénal comparé* 17, doi:10.3917/rsc.1601.0017
41. Siraj M, *Liability for Unlawful Aggression in Islamic Jurisprudence: A Comparative Juristic Study with the Rules of Non-Contractual Liability in Law* (Dar al-Thaqafah lil-Nashr wa al-Tawzi' 1990) [in Arabic]
42. Starck B, *Essai D'une Théorie Générale de la Responsabilité Civile Considérée en sa Double Fonction de Garantie et de Peine Privée* (Librairie Rudesienne 1947)
43. Sulayman A, *Liability for Destroyed Property in Islamic Jurisprudence* (Matba'at al-Sa'adah 1992) [in Arabic]
44. Sultan A, *Sources of Obligation in the Jordanian Civil Law: Comparative Study with Islamic Jurisprudence* (14th edn, Dar al-Thaqafah lil-Nashr wa al-Tawzi') [in Arabic]

45. Suwwar M, *General Trends in the Jordanian Civil Law: A Comparative Study with Islamic Jurisprudence and Arab Legal* (Dar al-Thaqafah lil-Nashr wa al-Tawzi‘ 1996) [in Arabic]
46. Tyan E, ‘Le système de responsabilité délictuelle en droit musulman’ (Thèses, Université de Lyon Faculté de Droit 1926)
47. Ubaydat Y, *Sources of Obligation in Civil Law* (Dar al-Thaqafah lil-Nashr wa al-Tawzi‘ 2021) [in Arabic]
48. Von Bar C and others, *Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR)* (Sellier 2009)

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ОБ'ЄКТИВНА ВІДПОВІДАЛЬНІСТЬ У ЦИВІЛЬНОМУ КОДЕКСІ ЙОРДАНІЇ ТА ІСЛАМСЬКІЙ ЮРИСПРЕДУКЦІЇ – ПОРІВНЯЛЬНЕ ДОСЛІДЖЕННЯ

**Ахмед Ібрагім Аль-Хіарі, Махмуд Файяд, Башар Талал Момані*,
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АНОТАЦІЯ

Вступ. У цьому дослідженні розглядається позиція Цивільного кодексу Йорданії (JCC) щодо утвердження об'єктивної відповідальності в контексті позадоговірної відповідальності, а також ступінь, до якого на це правове регулювання вплинули положення ісламської правової системи та сучасного західного законодавства, де за взірця було взято Цивільний кодекс Франції (FCC).

Методи. У дослідженні було використано описову, аналітичну та порівняльну методологію для аналізу положень JCC та порівняння їх з положеннями FCC, щоб визначити, якою мірою концепція об'єктивної відповідальності втілена в обох правових системах.

Результати та висновки. Дослідження показало, що деліктна відповідальність у системі права Йорданії має об'єктивний характер, який зосереджений на відшкодуванні шкоди, завданої потерпілою стороною, а не на оцінці поведінки особи, яка спричинила діяння (елемент вини), і що йорданський Суд закріпив цей характер через концепцію «заподіяння шкоди» та відповідальність безпосереднього винуватця та особи, яка спричинила шкоду. Об'єктивна відповідальність також має кілька форм, таких як відповідальність зберігача речей та відповідальність довірителя за дії його підлеглих. Це правове регулювання наближається до підходу FCC у деяких аспектах та відрізняється від нього в інших, зокрема щодо форм відповідальності. Дослідження рекомендує розробити судову практику для вирішення питань шкоди, що виникла внаслідок використання сучасних технологічних засобів, таких як інструменти штучного інтелекту, та внести зміни до законодавчих положень, щоб врахувати об'єктивний характер відповідальності та розширити сферу компенсаційного захисту.

Ключові слова. Об'єктивна відповідальність, ісламське право, деліктне право, правова система Йорданії, європейське право, правова система Франції, порівняльне правознавство.

ABSTRACT IN ARABIC*

مقال بحثي

المسؤولية الموضوعية في القانون المدني الأردني والفقہ الإسلامي: دراسة مقارنة

أحمد إبراهيم الحباري، محمود فياض، بشار طلال مومني*، زيد محمود العقابلة، خلدون سعيد صالح قطيشات

المخلص:

الخلفية:

بحثت هذه الدراسة في موقف القانون المدني الأردني من تبني نظرية المسؤولية الموضوعية في نطاق المسؤولية غير العقدية، ومدى تأثير هذا التنظيم القانوني بأحكام الفقه الإسلامي والتشريعات الغربية المعاصرة (مع اتخاذ القانون الفرنسي نموذجاً).

المنهجية:

لتحقيق أهداف البحث، استخدم المؤلفون المنهج الوصفي والتحليلي والمقارن، من خلال تحليل أحكام القانون المدني الأردني ومقارنتها بأحكام الفقه الإسلامي والقانون المدني الفرنسي، وذلك لتحديد مدى تجسيد مفهوم المسؤولية الموضوعية في هذه النظم القانونية محل البحث.

النتائج والاستنتاجات:

النتائج والاستنتاجات خلصت البحث إلى أن المسؤولية عن الفعل الضار في القانون الأردني تتسم بطابع موضوعي، يعتمد على تعويض الضرر الذي يلحق بالمضرور أكثر من اهتمامه بتقييم سلوك مرتكب الفعل (عنصر الخطأ)، كما أن القانون المدني الأردني قد عزز هذا الطابع من خلال الأخذ بمفهوم "التسبب في الضرر" ومسؤولية الفاعل المباشر والمتسبب. كما تتخذ المسؤولية الموضوعية في القانون

*. The publication metadata in Arabic is presented as submitted by the authors.

المدني الأردني صوراً متعددة، مثل مسؤولية حارس الأشياء ومسؤولية المتبوع عن أعمال تابعيه، ويقترب هذا التنظيم القانوني من منهج القانون المدني الفرنسي في بعض الجوانب، ويختلف عنه في جوانب أخرى، خاصة فيما يتعلق بصور المسؤولية غير العقدية. في الختام، أوصت هذه الدراسة بضرورة تطوير الاجتهاد القضائي لمعالجة الأضرار الناشئة عن استخدام الوسائل التكنولوجية الحديثة، مثل أدوات الذكاء الاصطناعي، وتعديل النصوص القانونية بما يعزز الطابع الموضوعي للمسؤولية ويوسع نطاق الحماية التعويضية.

:الكلمات المفتاحية

المسؤولية الموضوعية، الفقه الإسلامي، المسؤولية التقصيرية، القانون الأردني، القانون الأوروبي، القانون الفرنسي، القانون المقارن