

## Responsibility of a perpetrator and a causer in Omani civil transactions law a comparative study with Jordanian civil law and Islamic jurisprudence

 Ahmad Abdul Karim Mousa Al-Sarayrah\*

<sup>1</sup>Ajloun National University, Jordan; Dr.ahmad60sarayrah@yahoo.com (A.A.K.M.A.S.)

**Abstract:** The current study aims to explain the responsibility of a perpetrator and a causer in Omani Transactions Law, and compare it with Jordanian Civil Law and Islamic jurisprudence, as Omani legislator imposed guarantee on a perpetrator in case there is harm to others without a condition, even he has to require infringement, since it is familiar in our life that harm occurs while a person practicing his legal right without infringement. The study also aims to explain the extent of possibility of adding the word infringement to the text of the Article (176/2) of Omani Transact Law and the Article (285) of Jordanian Civil Law in case the act of a perpetrator and a causer meet to achieve justice, and explain how to prove the perpetrator's infringement. It is clear that a perpetrator's act whether the actor uses a sharp tool or a living thing like one part of his body or another person's body is positive which causes harm to others, as it is considered a perpetrator and commits guarantee without a condition, provided that the tool's act or thing used is independent form it. Omani Civil Transactions Law does not require infringement during a perpetrator's practice of his act, which does not agree with the rules of justice, as it is common in our daily life that harm is resulted from a person's use of his legal right while practicing his act. The researcher adopted the descriptive and analytical method to describe legal texts related to the responsibility of a perpetrator and a causer in Omani Transactions Law, and compare it with Jordanian Civil Law and Islamic jurisprudence. The study reached a number of results including the perpetrator's act is positive which causes harm to others, as it is considered a perpetrator and commits guarantee without a condition whether the actor uses a sharp tool or a living thing like one part of his body or another person's body, the responsibility of a causer is throughout the condition of infringement by a causer, as this condition is sufficient since it includes intention, the causative relationship between an act and harm is present in both of a perpetrator and a causative, where it is in a perpetrator is more clear than in a causer and Omani Civil Transactions Law does not require infringement during a perpetrator's practice of his act, which does not agree with the rules of justice.

**Keywords:** *Causer, Compensation, Harm, Infringement, Perpetrator, Responsibility, The majeure force, Unpredictability.*

### 1. Introduction

The Articles (176) in the first item of Omani Transacts Law has cased: "Every harm to others' property obligates its doer even if he is not subject to compensation", and the same Article (176) in the second item has cased: "If harm is caused directly, compensation is required even if it is not negligent, and if it is occurred by causing it, then negligence is required". Accordingly, harm caused by any object such as a machine or a car that require special care by law, the person responsible for it shall be held responsible for his personal act, as he is a perpetrator and asked about this based on this harm act according to the Articles provisions. These provisions in Omani Transact Law will be compared to the provisions of the text of Article (258) of Jordanian Civil Law relating to a perpetrator and a causer.

## 2. Problem of Study

Throughout the texts of the Article (176) Omani Transact Law and the Article (285) of Jordanian Law relating to the responsibility of a perpetrator and a causer, the problem of the study emerged in explaining the extent of justice of the second item of the Article (176) of Omani Transacts Law, and the Article (285) of Jordanian Civil Law that consider a perpetrator guarantor even if he does not infringe.

## 3. Study Objectives

The study aims to explain the extent of possibility of adding the word infringement to the text of the Article (176/2) of Omani Transact Law and the Article (285) of Jordanian Civil Law in case the act of a perpetrator and a causer meet to achieve justice, and explain how to prove the perpetrator's infringement. The study also aims to explain the responsibility of a perpetrator and a causer in Omani Transactions Law, and compare it with Jordanian Civil Law and Islamic jurisprudence.

## 4. Importance of the Study

The importance of this study lies in shedding light on amending the second item of the Article (176) of Omani Transactions Law and the Article (285) of Jordanian Civil Law.

### 4.1. First Topic

#### 4.1.1. Responsibility of a Perpetrator

This topic will be divided into three requirements: the first deals with the meaning of a perpetrator, the second is about limit of responsibility of a perpetrator and the third deals with how to push the responsibility of a perpetrator.

### 4.2. First Requirement

#### 4.2.1. What is Meant by a Perpetrator?

A perpetrator is the one who causes harm to others by his act without intermediary or intervention of another's person act [1, 2], as the won who fires bullets during shooting training and wounding a man that led to his death. Some of law explainers defined a perpetrator as: "the one who does an act by himself" [3] and this is what Article (176) in the first item of Omani Transacts Law has cased: "Every harm to others' property obligates its doer even if he is not subject to compensation".

Accordingly, a perpetrator is the one who implements an act which resulted in harm to others without intervention of others' act [4]. So, if a person dug a well in his houses' backyard near to the main street, and a child fell in it while playing, then the owner of the well is not a perpetrator but causer, or when a person hits a car that is parked in the designated parking space which led to death, where death is not due to the car parking, so obstacle of the car parking is not a perpetrator but a perpetrator. In addition, a person is considered a perpetrator whether he does an act by himself or one of his body part, whether this thing is a living being or an inanimate object [1]. Directing is achieved even if there is no perpetrator communication, where the act itself brings harm like someone who shoots in the air causing a pregnant woman to miscarry out of fear [2] like someone who drives a car and damaged a merchant's goods in front of his market, then the driver is considered the one who damaged it and he is perpetrator; since harm happened to shopkeeper resulted from the car crash driven by the driver which carries goods [3]. Act is also considered perpetrator if harm is resulted from a sharp tool such as a knife or scissors in the hands of a barber, a machine in a factory used by a worker or a gun, where harm is caused by these tools under responsibility and guard of its owner, or the one who uses them. This is stated by the text of Article (176) in the second item that "If harm is caused directly, compensation is required even if it is not negligent, and if it is occurred by causing it, then negligence is required."

Whereas Omani legislator considered a keeper of an animal, even if he is not his owner, responsible for what it causes and if it strays. Accordingly, Omani law does not adopt the presumed fault from the

side of an animal's keeper that does not accept the opposite; rather, the owner or keeper must have negligent or failed<sup>1</sup>. As for self or auto act done by mechanical and electric machines like a car, where any harm caused by them is considered presumed because it needs special care to avoid their harms, and thus, their owner or the one they are under his guard is the guarantor for any harm happens, and he can defend his responsibility by proving an external reason, as this is stated by Article (199) of Omani Civil Transacts Law that “ Anyone has things under his control which require special care to avoid their harm or mechanical machines must compensate for the damage they cause unless it is proven that the occurrence of the damage was caused by an external reason, where he has nothing to do with it<sup>2</sup>.”

Based on these texts, harm resulted from a machine or a car that require special care by law, the person responsible for it shall be held responsible for his personal act, as he is a perpetrator and is asked about this based on this harm act according to the Article provisions (176) of Omani Civil Transacts Law, as the first item cased that” 1. Every harm to others' property even if he is not distinguished, compensation is required”, the second item cases that: 2.If harm is direct, compensation is required even if there is no infringement, and if it is by causation, infringement is a condition”. Based on this, a person can be a perpetrator although an act did not result from him, but he is responsible for the thing that harm resulted from it” [1]. In order that directness is achieved, an act resulted from the responsible person should be positive, but if the act is negative such as when a doctor refuses to treat a patient, or a mother refuses to feed her child. It is not considered directness [1]. There should also be a causal relationship between the perpetrator act and resulted harm, and the harm is caused by the perpetrator act. Causal relationship means that if an act does not happen, harm will not happen, and all conditions of the fact indicate this<sup>3</sup>, and availability of causal relationship between an act and harm is a condition even if the act resulted from one harm or several harms with various forms when it influenced many properties, like when somebody drives his car quickly and hit an electric pole, as the electric pole fell and injured a child on a pavement and damaged goods, so the owner of the car is a perpetrator of harm occurred to the pole, goods and child [5]. To achieve directness it is a must that harm resulted from an act, and there should not be another act to prevent that, i.e. the tool of harm is connected to act [6] as when a person shoots another in his hand and he is taken to hospital by ambulance, and on the way the ambulance deteriorates where the incident led to death of the injured, so the one who shot him is not a perpetrator but a causer since death resulted from another act that prevented it from a gunshot which was the ambulance where the driver is the perpetrator. In summary, as usual, if an act is sufficient to cause harm, so its actor is a perpetrator even another act intervenes, but if the original act as usual is insufficient to cause harm even if another act intervenes, and the latter is sufficient, the latter is considered a perpetrator and the first act is a perpetrator.

### 4.3. Second Requirement

#### 4.3.1. Limits of a Perpetrator's Responsibility

Article (2/176) of Omani Civil Transacts Law cased that: “2. If harm is direct, If harm is direct, compensation is required even if there is no infringement, and if it is by causation, infringement is a condition”.

Throughout this text, we find that Omani legislator's will is clear and frank in distinguishing between a perpetrator and indirect concerning the condition of infringement in order that responsibility occurs, and he does not stipulate it to a perpetrator. So, a perpetrator requires compensation even if

<sup>1</sup> The Egyptian Civil Law, Article (176), and the Syrian Civil Law, Article (177), took into consideration the presumed fault, and it could only be resisted by a foreign cause, while the Jordanian Civil Law, Article (289), cased that: “The damage of a brute is not guarantee by its owner or keeper ,” and brute means an animal. It made the harmful act of the animal responsible for the person who has control over it, whether the owner or otherwise, if he neglects or fails. Likewise, the Iraqi Civil Code, Article No. (213), follows the same rule as the Jordanian and Omani law.

<sup>2</sup> The Jordanian Civil Law adopts the presumed fault, but responsibility can be resisted if the person responsible proves that it is not possible to avoid the mistake. See the text of Article No. (291).

<sup>3</sup> Concluding whether the harm hapenned by causing or directly is a matter of fact that the trial court is independent in its assessment, and this is what the Dubai Court of Cassation concluded, October 16, 1999, Collection of Rulings, issue ten, December 2000, p. 873.

there is no infringement, as Omani legislator adopted the objective responsibility “resumed fault” even if there is no infringement, and defendant is able to defend responsibility through proving the external reason [2]. Among results of differentiation between a perpetrator and indirect in Islamic jurisprudence is that a perpetrator is a guarantor even if there is no infringement, and this is what Omani legislator has adopted, where differentiation between them, according to Emirati explanatory memorandum of the Emirates Transacts Law which says: directness is an independent reason and a cause to harm by itself, so it is not permitted to drop their ruling with intention or infringement to constitute a guarantee <sup>4</sup>. In fact, what Omani legislator has frankly adopted in differentiating between a perpetrator and indirect conflicts with the principle that says” “Legal permission contradicts with guarantee<sup>5</sup>, as everyone who uses his right legally without abuse is not responsible for what resulted from his act including harm, and this is what Article (59) of Omani Transacts Law has cased that “Guarantee is required to anyone who uses his right illegally, and it is in the following cases: 1. If the intention of infringement is available. 2. On the hand, the saying that guarantee of a perpetrator without infringement occurrence of harm is an exception of the rule, since in most cases harm occurs.”

Therefore, the researcher thinks that the criterion for distinguishing between a perpetrator and indirect is through causal relationship between an act and harm based on the condition of presence in directness more than a perpetrator, and if it exists there will be a directness and guarantee is required where estimation refers to a judge. The infringement is a condition for compensation in both of them “directness and indirect”, but infringement in directness is resumed and able to prove the opposite, as a perpetrator can defend his responsibility by proving an external reason in addition to defense means decided by law, and a harmed person is exempted from proof, but to causer, he should prove infringement until the harmed person to be awarded compensation. It is also necessary for there to be infringement or deviation in behavior, and the criterion for this is the behavior of an ordinary man who exists in the same circumstances. If the infringement or deviation is proven while the person is exercising his legal right, compensation must be made, so the perpetrator party is not responsible for the harm due to the use of his legal right unless he infringed [1]. Accordingly we confirm that infringement is a condition in directness in order that he is responsible for guarantee, and it is not possible to accept what was cased in the text of Article (167) of Omani Civil Transacts Law which does not stipulate infringement in directness.

#### 4.4. Third Requirement

##### 4.4.1. How to Defend a Perpetrator’s Responsibility

Omani legislator adopted the subjective responsibility of a perpetrator: resumed fault”, so when harm occurred, responsibility of directness is achieved even if it infringed. In addition, Omani Civil Transacts Law explained cases of responsibility defense in general including responsibility of a perpetrator as follows:

1. The case of external reason
2. The case of legal defense
3. The case of implantation of president’s order

Accordingly, we are going to study these cases respectively:

##### 4.5. First: the Case of External Reason

Article (177) of Omani Civil Transacts Law cased that: “If a person proved that harm is resulted from an external reason where he has nothing to do with it such as such as a heavenly disaster, a sudden incident, force majeure, the act of a third party, or the act of the injured person, he was not obligated to

<sup>4</sup> Emirati explanatory memorandum, Emirati Law, p 279.

<sup>5</sup> Article (61) of the Jordanian Civil Law cases that: “Legal permission contradicts with guaranty. Whoever uses his right in a legitimate manner is not responsible for the harm that results from that,” and it corresponds to the text of Article (59) of Omani Civil Transacts Law, which cases that “Guarantee must be made.” Whoever uses his right unlawfully, and the use is unlawful in the following conditions. . . etc. ”

compensate unless the law or agreement cases otherwise<sup>6</sup>. This article explains negation of causal relationship between an act and harm, whether this act caused by a perpetrator or Indirect, as a defendant, in order that he is able to defend his responsibility, must prove that the external reason, which he has nothing to do with it, is the cause of harm, and therefore he can defend his responsibility. A part of jurisprudence thinks that [7] an external reason negates harm on an act, describes fault or causal relationship. Another part of jurisprudence thinks that [2] an external reason does not negate causal relationship but the description of fault from an act attributed to it, i.e. the act happened without realization or distinction, as the criterion of this is the normal man behavior, but some Islamic jurisprudence relied on linking between responsibility with the qualification of a wrongdoer and his will to say that the idea of an external reason in general does not agree with theory of guarantee in Islamic jurisprudence, since it adopted the subjective or materialistic aspect, so responsibility is occurred for infringement only regardless the qualification and will of the infringed person [8] where Omani legislator adopted the subjective responsibility, and this is stated by Article (176) of Omani Transactions Law. The researcher thinks that negation of causal relationship is on the defendant as he negates that harm did not occur because of the act he did, but it was due to external intervention “external reason”, and therefore it led to occurrence of partial or complete harm. Among applications of an external reason in Omani Transactions Law are heavenly calamity, sudden incident, force majeure, the act of a third party, and the act of the injured person, and we will explain each case in turn.

Heavenly calamity, sudden incident, force majeure:

Much of jurisprudence does not distinguish between heavenly calamities, sudden incident, force majeure [9] as in fact they are synonyms to one concept which leads to-if its conditions are available – negation of causal relationship between an act and harm. Islamic jurisprudence also expresses these terms by heavenly calamity when incident is beyond human control [10]. Force majeure means an incident caused harm as a defendant’s fault hasn’t any role<sup>7</sup>. Force majeure includes winds, hurricanes, sea roaring and heavy rains, like when somebody parked his car in the designated spot, then a strong torrent came, displaced it and hit a person near it, so the car driver was not asked or guaranteed [11].

Force majeure can be defined as: “Unexpected sudden incident which is impossible to avoid it and it cannot be defended”.

The following conditions are required for force majeure:

#### 4.6. First: Unpredictability

Unpredictability means that when a matter cannot be predicted, but if it is predicted, the condition does not apply to it, for example: a car tire exploded in the Gulf countries due to high summer temperature can be expected and will happen. As for floods, torrents, and heavy rain in the Gulf countries, for example, it is something unexpected, and a general assessment of the possibility is based on the behavior of an ordinary man and the lesson at the time of the incident [1].

#### 4.7. Second: Irresistibility

In order that force majeure can be achieved, it is insufficient to be unpredicted, but it should be irresistible, i.e. a person cannot avoid this incident which means it is impossible to be resisted. Impossibility means absolutely itself to an ordinary man in the apparent conditions of defendant [1, 2] for example, blackouts during surgery is predicted and can be resisted. Third: The incident must be external to the thing by not being attributed to the debtor, which means that the actor has nothing to do with it, and the caused harm did not result from his act, like a natural phenomenon [12] as judiciary

<sup>6</sup>These cases are the same ones that Jordanian Civi\*1 Law has adopted in the texts of Articles (261, 262, 263).

<sup>7</sup>This is what the Dubai Court of Cassation summarized by saying: “The expression “act of God” is a type of force majeure that falls within the category of sea risks.” See its ruling issued on February 22, 1992, Journal of Judiciary and Legislation, Issue Three, November 1995, No. 25, p. 172

in Egypt ruled that when a car tire explodes or one of its engines is not considered an external thing “force majeure”<sup>8</sup>.

Fourth: The incident must be the main reason in harm.

Harm must be a result of force majeure without intervention of any other reason, but if the defendant’s fault contributed in occurring of harm alongside the force majeure, so the defendant is responsible for complete compensation and a part of it, and this is was confirmed by Dubai Court of Cassation by saying: “Since the defense that the trial court must examine and respond to is the fundamental defense and to be exempt from liability due to force majeure, it was required that the force be the sole cause of the damage. Since that was the position, it was confirmed in the report that the rough sea case on the day of the accident and the accompanying weather conditions were not the primary cause of the goods falling from the deck of the barge, but rather its poor stacking is the main reason in lowering it into the sea, and therefore the appellants’ defense regarding force majeure is an opinion in which the degree of opinion in it is apparent corruption and not based on the contested ruling if it neglected to respond...[2].

#### 4.7.1. *The Act of a Harmed Person*

A plaintiff may commit a fault at the same time of the defendant’s fault [13] which contributes in occurring of harm, so what is the effect of a harmed person’s act on a compensation lawsuit. A part of jurisprudence thinks that a harmed person’s fault is considered an external reason if conditions of force majeure are available in it which are irresistibility and impossibility of prediction, so a harmed person himself bear alone results of his act, and no compensation is ruled to him<sup>9</sup> even if the harmed person’s act is fault, and this what the French judiciary has settled <sup>10</sup>, while a part of jurisprudence think that there should be better protection for the harmed person if he does not commit a mistake, and so no ruling to compensate him. The only one who owns this matter is a legislator [2] but if a harmed person’s act meets with responsible person’s act, the ruling is different, but it will be included within these possibilities:

First: Exceeding of one fault over the other

It means that if one of the two faults is larger; if the harmed person’s fault is larger, i.e. exceeded responsible person fault, the principle says that the exceeded fault has no effect and the person who committed it is not responsible, where responsibility lies with the person who committed the larger act, that is the harmed person. Whereas if the opposite happens that the responsible person fault is larger, and it exceeded the harmed person’s fault, so the person responsible is the one who bears the fault and at the end he is obligated to pay compensation [14].

Second: Non-exceeding of one fault over the other

This means that both of a harmed person and defendant committed a mistake contributed in occurrence of harm, but none of their faults exceeded the other, and without determining an independent effect of each fault. In such a case, each of them is responsible with his fault percentage [2] and this is cased in Article (180) of Omani Civil Transactions Law which says: “If there are several responsible people for harm act, so every one of them is responsible for the percentage of each person’s share without solidarity among them, unless the court estimates otherwise.

#### 4.8. *Third: Act of Others*

If the act of the defendant responsible for the accident was accompanied by an act committed by another person - at the same time - and this fault contributed to causing the harm, then what is the effect of this act committed by others on the defendant’s responsibility?

<sup>8</sup>Civil Cassation, June 11, 1996, Collection of Cassation Rulings, Year 47, December 1996, No. 177, p. 940

<sup>9</sup> Civil cassation 50/June 1994, Set of cassation provisions, June –December, No.193, p1013.

<sup>10</sup>Civ.2e2janv.1975.1/Rp.66.Civ.23.Ler.Fex.1957.J.e.p.1977.11.17810;Civ.2e.10 non. 1977.Jep.1971.4.P.293.

What is meant by others here is: “every person for whom the defendant is not legally accountable.” In such an assumption, if the act of others meets the conditions for an external reason, which are the impossibility of resistance and the expectation of occurrence, and this act involves the action of the defendant, then the defendant will not be responsible, since his act exceeded over the others’ act, and it is sufficient to prove availability of external act in others’ act even if it is not his fault. Whereas if others’ act does not give conditions of external reason, the defendant must prove that others’ act is fault so as to require compensation and deny responsibility for himself [2, 15]. While if the opposite happens as others’ act did not exceed the defendant’s act, so he is responsible, and this is confirmed by The Federal Supreme Court in the United Arab Emirates which said: “As negation is not right; since derivation of a fault causing responsibility and the causal relationship between it and harm is what the court of the matter is independent with ... as well as the external reason or others’ fault exempted from responsibility provided that it is not possible to avoid or expect it, and it is the Indirect of harm for this, even the primary ruling is gone ...<sup>11</sup>, and this is what Omani legislator has adopted, as Article (180) of Civil Transactions Law cased that: “If there are several responsible people for a harm act, every one of them is responsible for his share percentage without solidarity, unless the court estimates otherwise”<sup>12</sup>.

This means that compensation is distributed to responsible people based on fault share of each of them in harm, as the judge of the matter commits to distribute the share of each of them in compensation, and he has an estimated authority in ruling in responsible people solidarity before a harmed person. Solidarity among responsible people means the right of a harmed person in referring with the amount of complete compensation on one or the responsible people, and he has the right to select anyone of them, and the one who fulfilled has to refer to the rest according to the share of each one.

Second: The case of legal defense

In Islamic jurisprudence legal defense is called defense of aggressor, which can be either a human being or animal and with any mean that led to killing [10] if an aggressor is a human being and he was killed to defend his evil, no guarantee to his killer [10]. In terminology it is called legal defense which means “defending self, property honor and others with any mean, and it should be used”.

Omani Civil Transactions Law took into consideration the opinion of the majority of jurists, where Article (178) stated that: “ Anyone who caused harm to aggressor of his property while he is in a case of legal defense to self, property honor and others, he is not responsible for this harm provided it does not exceed extent of necessity, otherwise he is obliged to compensate for the harm to the extent he exceeds”, as the base of this is necessity of choosing the lesser of two evils and the lesser of two harms; because necessities allow forbidden things and estimated according to their value [2]. So if a person defended his property, honor, self or others, he is not considered responsible for harm he caused and no compensation is required. Whereas the case of legal defense should include a set of conditions such as presence of risk that justifies the case of legal defense, his personal criterion considering the threatened personality of the risk itself, it should be direct and cannot be defended by anything, a balance between a risk and a defender act and the usual criterion of this man; as the goal of a legal defense is to prevent and remove danger, and therefore, an act should be suitable with a risk and does not exceed the amount of permitted necessity. If the opposite occurred, a defender is responsible and compensation is required, so if these conditions are available, the consequences are elimination of infringement, and then the defender’s responsibility. Third: The case of implantation of president’s order. Article (2/197) of Civil Transactions Law stated that: “1... 2. A public employee is not responsible for his act that harmed others if he does this to implement an order issued by his president when obeying this order is an obligation to him, or he thinks that it is an obligation and he proves his belief about legality of the act he

<sup>11</sup>See the ruling of the Federal Court in the United Arab Emirates, issued on November 16, 1993, Supreme Federal Rulings Collection, Year 15, third issue, 1995, No. 240, p. 1429 - Supreme Federal Court, same collection, Year 15, second issue, 1995, No. 103, p. 662, and the Dubai Court of Cassation cased that the act of others that negates the guard’s responsibility be the perpetrator cause of the harm. See its ruling issued on November 8, 1997, Journal of Judiciary and Legislation, issue eight, April 1999 No. 133, p. 923.

<sup>12</sup> It corresponds to the text of Article (26) of Jordanian Civil Law.

performed and it is based on reasonable reasons as he took into consideration awareness and caution. In this case, the court orders compensation for whoever is found responsible for the harm.”

This case is different from coercion as it eliminates satisfaction and spoils choice if it is a resort, where it is a request to do something with coercion. In a case of a resorted coercion, responsibility is for the order not the actor, and to eliminate responsibility of the implementer of the order issued by a president, the source and implementer of the order must be a public employee, as a public employee is “Every person who is employed by the state to perform an act or implement one of its order whether paid or unpaid<sup>13</sup>. Therefore, a public employee must be assigned by the public authority in Sultanate of Oman, whether he works inside or outside Oman such as ambassadors and consuls. He also must be appointed by the state to perform one of its acts related to it or implement one of its orders anywhere in the Sultanate whether paid or unpaid, while a volunteer is not considered an employee such as traffic or environmental agents. It is also a condition for the absence of a public employee’s responsibility that obedience to the source of the order be obligatory, or believed to be a duty. A perpetrator’s responsibility Studying of responsibility of a causer in Omani law requires explanation of the concept of a causer and extent of his responsibility, so this topic is divided into three requirements: the first requirement deals with the concept of a causer, the second requirement deals with the extent of responsibility of a causer and the last one deals with meeting of a perpetrator and a causer.

#### 4.9. First Requirement

##### 4.9.1. Concept of a Causer

A causer can be defined as: “Every harm or loss occurred by his act which led to another act, as the act resulted in harm or loss to something which is not caused by the indirect act”.

A part of jurisprudence defined it as someone because of whom harm or loss occurred after a perpetrator found the cause of harm [2] for example, when a person digs a well in front of his house someone and violates the setback of the public street, and another person threw an animal in it, so in this case the person who threw the animal is guaranteed, and the edge of the well has no responsibility [3]. The criterion of differentiation between a perpetrator and a causer is the causative relationship between an act and harm, as for a perpetrator it is strong between an act and harm, while for a causer the causative relationship is not direct since there is a mediator that separates between an act and harm [2, 4].

#### 4.10. Second Requirement

##### 4.10.1. Extent of a Causer’s Responsibility

The second item of Article (2/176) of Omani Civil Transactions Law stated that: “1. ...., 2. If harm is by directness, compensation is required even if there is no infringement, but if is by causation infringement is a condition”.

Throughout studying the text, we observe that Omani legislator stipulated causer responsibility only, and he did not stipulate it in a perpetrator. Whereas Jordanian legislator stipulated infringement, intention or an act that leads to harm<sup>14</sup>. So this requirement will be divided into two sections: the first section deals with what is meant by infringement and its criterion, and the second deals with the meeting of a perpetrator and a causer.

#### 4.11. First Section

What is meant by infringement and its criterion?

First: What is meant by infringement?

<sup>13</sup> See definition of the first Article of Omani Civil Service Law.

<sup>14</sup>Article (257) of Jordanian Civil Law stated that: “Harm is occurred by directness or a causer, as it occurred by an causer, infringement or intention is a condition, or an act leads to harm”



Omani legislator confirmed the presence of infringement a causer responsibility and to be awarded compensation in the text of second item of Article (176) of Civil Transactions Law which states: “1. ... 2. If harm is occurred by directness, compensation is required, but if there is no infringement and it is by directness, infringement is a condition”.

So, infringement is violating a legitimate right or interest, and this is achieved legally by exceeding the limit that must be reached or falling short of the limit that must be reached by law or habit [2].

Some defined it as exceeding what should be restricted to legally and customarily [1, 16] which means that when a person deviates from what is permitted by law, custom, and habit, i.e. the actor has no right to do the act which results in harm [1].

Second: Criterion of infringement

A criterion means the legal controller that must be referred to define whether an act is violation to the law or customary. In order to define the criterion of infringement of the causer’s responsibility, it must be referred to the specific legal duties, and the public criterion which is violation of norm as follows:

#### 4.11.1. Definite legal duties

They are acts defined by Sharia and law and they are obligatory to be done, or to be avoided, as there is a legal duty on a man to do the act in the case of order, and avoidance in the case of prohibition [2]; so if he does an act where he is ordered to do and avoids one he is prohibited to do, there is no infringement, and if it resulted in harm, he is not responsible for it. In order to define legal duties, one must refer to law and Islamic jurisprudence provisions and public principles of Islamic Sharia; thus, if an act exceeds legal duty, it is considered infringement, for example when a person exceeds the limit speed, as it is considered infringement in the traffic law.

#### 2. Public criterion: Violation of norm

The criterion of doing an act or leaving it is what law or Sharia has imposed, as the criterion to know if there is infringement or no is a man’s normal behavior; so if a behavior of the person who does or leaves an act agrees with a normal person’s behavior, it is not considered infringement, and so there is no guarantee for resulting in harm, and this represents the normal person’s behavior. Therefore, if person violates this behavior in a society where he lives in, so he is an aggressor and guarantor [2] where it I an estimated authority for the judge of the matter.

#### 4.12. Second Section

Meeting of a perpetrator and a causer The criterion of differentiation between a perpetrator and a causer lies in the way of causing harm, or the degree of a causative relationship between them and the harm, as the relationship is strong and direct between an act and harm, whereas it is indirect to a causer since there is a mediator which separates between an act and harm [2]. In addition, a legislator also requires infringement in a causer in order that he is responsible and guarantor, whereas he does not require that this in directness, as it contradicts the principle which states that: “Legal permission contradicts guarantee”.

Accordingly, if a perpetrator and a causer meet, ruling is added to the perpetrator even if he does not infringe, as this is the clear and frank will of Omani legislator in differentiating between a perpetrator on the one hand, and a causer from the other hand in terms of requirement of infringement regarding a causer, and no requirement of infringement regarding a perpetrator, as the latter requires compensation even if there is no infringement, where this is what is called the subjective or absolute responsibility, and a defendant can resist responsibility on his own behalf by proving the external reason [2]. An aspect of jurisprudence thinks that [1] when a perpetrator and a causer meet, ruling may be added to a causer contrary to the public rule, as this is when a perpetrator is irresponsible, like when a child is given a knife to hold it and it fell and injured him, so guarantee is on the one who gave the knife, where causation here includes the meaning of infringement, and if he dies, the perpetrator is the harmed

person, he is irresponsible, and since he is unknown, like when a person stumbles over a stone and falls into a hole, so the owner of a hole guarantees harm and he is considered a perpetrator.

## 5. Conclusion

Throughout studying the responsibility of a perpetrator and a causer in Omani Transactions Law, it is clear that a perpetrator's act whether the actor uses a sharp tool or a living thing like one part of his body or another person's body, and the act is positive which resulted in harm to others, it is considered a perpetrator and commits guarantee without a condition, provided that the tool's act or thing used is independent from it. In addition, Article (176) of Omani Civil Transactions Law does not require infringement during a perpetrator's practice of his act, which does not agree with the rules of justice, as it is common in our daily life that harm is resulted from a person's use of his legal right while practicing his act, so we hope that Omani legislator amend this article and requires infringement for a perpetrator in order that he commits to guarantee. If a perpetrator is able to resist his responsibility through proving an external reason and other means of resisting responsibility decided by law. It is also clear that responsibility of a causer is throughout the condition of infringement by a causer, as this condition is sufficient since it includes intention, and the causative relationship between an act and harm is present in both of a perpetrator and a causative, where it is in a perpetrator is more clear than in a causer, but this is not an accurate criterion to differentiate between a perpetrator and a causative. In case a perpetrator and a causer meet, an act is added to a perpetrator and he commits to guarantee unless the causer's act is clear, therefore in this case, a perpetrator and a causer share responsibility according to the discretion of the judge of a matter.

## Transparency:

The authors confirm that the manuscript is an honest, accurate, and transparent account of the study; that no vital features of the study have been omitted; and that any discrepancies from the study as planned have been explained. This study followed all ethical practices during writing.

## Copyright:

© 2025 by the authors. This open-access article is distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<https://creativecommons.org/licenses/by/4.0/>).

## References

- [1] M. Al-Zoubi, "Responsibility of a perpetrator and a causer in Jordanian civil law," *Mutah Journal of Research and Studies*, vol. 2, no. 1, 1998.
- [2] M. Zahra, *Involuntary sources of commitment, Harmful and beneficial action*. United Arab Emirates: Dar Al-Kitab Al-Jami'i: Al Ain, 2014.
- [3] S. Baz, *Explanation of ruling provisions journal*, 3rd ed. Beirut, Lebanon: Revival of Arab Heritage, 1305AH.
- [4] I. Abu Al-Lail, *Civil responsibility between restriction and release*. Cairo: Dar Al-Nahda Al-Arabiya, 1980.
- [5] J. a.-D. Mahmoud, *The brief in the theory of commitment. Part 1, sources of commitment*, 2nd ed. Cairo University Press, 1976.
- [6] A. Al-Khafif, *Guarantee in Islamic jurisprudence*, 1st ed. Cairo: Institute of Arab Research and Studies, 1971.
- [7] J. Mahmoud, "Problems of civil liability. Part 1, Duality or unity of civil liability and the issue of news," 1978.
- [8] M. Al-Zarqa, *Introduction to the theory of commitment in islamic jurisprudence*. Damascus University Press, 1961.
- [9] A. R. Al-Sanhouri, *The theory of the contract*. Beirut, Lebanon: Publications of the Arab Islamic Scientific Academy, w.d.
- [10] M. Faydallah, *The theory of guarantee in general islamic jurisprudence*, 1st ed. Islamic Heritage Library Kuwait, 1983.
- [11] A. M. Al-Baghdadi, *Complex of guarantees in the doctrine of the greatest Imam Abu Hanifa Al-Numan*, 1st ed. Egypt: Al-Khairiyah Press, 1308.
- [12] R. Mabrouk, "Force majeure in the law of obligations," Doctoral Dissertation, France, 1986.
- [13] M. A. M. Albeih, "The harmed person's fault in traffic accidents," pp. 9, 27, 1988.
- [14] A. Yusuf, "Resisting responsibility by the harmed person's fault, a comparative study," Doctoral Dissertation, Cairo University, 1991.
- [15] M. Bani-Meqdad, "Broker's responsibility for violating his obligations under the insurance contract," *Russian Law Journal*, vol. 9, no. 3, p. 1654—1663, 2023. <https://doi.org/10.52783/rlj.v11i3.1822>
- [16] W. Al-Zuhaili, *The theory of guarantee and the provisions of civil and criminal liability in Islamic jurisprudence, a comparative study*. Damascus: Dar Al-Fikr, 1982.