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Between European and Muslim-Majority Civil Law Systems: Comparative Supervisory Liability in France, Iraq, and Egypt

Hozan Abdulmohsin Abdullah Atroshi

Department of Law, Salahaddin University, Erbil, Iraq
hozan.abdullah@su.edu.krd

Abstract

This study examines the legal foundations of supervisory liability under French civil law through a comparative analysis with Iraqi and Egyptian legislation. It centers on the evolution of liability for the actions of others, with particular emphasis on Article 1242 of the French Civil Code, and assesses the shift in French jurisprudence from a restrictive interpretation toward the acknowledgment of a general principle of liability, especially following the seminal Blieck decision of 1991. The research explores whether supervisory liability is predicated on presumed fault, risk theory, guarantee, representation, or substitution, and juxtaposes these bases with Articles 218, 219, and 191 of the Iraqi Civil Code and Article 173 of the Egyptian Civil Code. Employing a doctrinal and analytical methodology, the study examines statutory provisions, judicial rulings, and prominent juristic opinions across the three legal systems. The findings reveal that French and Egyptian law primarily adopt a rebuttable presumption of fault as the foundation of supervisory liability, whereas Iraqi law integrates presumed fault with aspects of guarantee-based responsibility derived from Islamic jurisprudence.

Keywords

Supervisory Liability; Comparative Civil Law; Hanafi Jurisprudence; France; Iraq; Egypt

Introduction

Tort liability represents a highly dynamic and practically significant domain within civil law. Its significance derives from its direct relevance to everyday social interactions and its role in ensuring compensation for harm resulting from unlawful conduct. Among its various aspects, liability for the actions of others—especially supervisory liability—holds a central position, as it delineates the extent to which individuals or institutions are accountable for damages caused by minors or persons under their authority. The regulation of such liability reflects broader societal values related to family structure, institutional responsibility, and victim protection. This article examines supervisory liability under Iraqi law, characterized as a hybrid system that combines presumed fault with the Islamic concept of guarantee (*ḍamān*) rooted in Hanafi jurisprudence. In contrast to the French civil law model, Iraqi law incorporates Sharia-based principles that extend liability beyond fault, emphasizing risk allocation and enhanced protection for injured parties.

The development of supervisory liability has been closely associated with social and economic transformations. The expansion of educational institutions, social care organizations, and rehabilitation centers has transformed traditional models of authority and supervision. Consequently, the question arises as to whether liability should remain limited to parents and legal guardians or be extended to institutions exercising permanent authority over vulnerable individuals. Modern legal systems have responded variably to these changes, particularly

concerning the legal foundation of liability—whether based on presumed fault, risk, or statutory guarantee.

French civil law, particularly Article 1242 of the Civil Code, has experienced substantial judicial evolution in this domain. Initially subject to a restrictive interpretation, French jurisprudence gradually established a general principle of liability for the actions of others, culminating in the seminal Blieck decision of 1991. In contrast, Iraqi and Egyptian civil law—both influenced to varying extents by Islamic jurisprudence—maintain more traditional frameworks primarily grounded in rebuttable presumptions of fault. Additionally, Iraqi law incorporates elements of guarantee-based liability in specific contexts. Moreover, Iraqi legislation does not explicitly address the transfer of supervisory responsibility as developed by French courts. Although supervisory liability has been extensively examined doctrinally within each legal system, comparative analyses between French law and the Iraqi and Egyptian civil codes remain limited, particularly concerning the judicial development of the general principle under Article 1242 and its ramifications for institutional and parental responsibility. This lacuna underscores the necessity for a systematic comparative study.

This study addresses the following research questions: What constitutes the legal basis of supervisory liability under French civil law? In what ways has French jurisprudence contributed to the establishment of a general principle of liability for the actions of others? To what extent do Iraqi and Egyptian civil law systems adopt similar or divergent approaches, especially regarding the transfer of supervisory authority? How is the dialectic between the principles of responsibility in classical fiqh and the imperative of victim protection manifested within the contemporary civil law frameworks of Iraq and Egypt? The primary objective of this research is to analyze the doctrinal and judicial foundations of supervisory liability in French law and to compare these with the relevant provisions in Iraqi and Egyptian civil legislation. Employing a comparative methodology, the study aims to elucidate the theoretical underpinnings of liability, assess its practical implications, and evaluate prospects for legislative reform, with particular emphasis on the Iraqi legal system.

Literature Review

Liability for the actions of others has historically provoked significant doctrinal debate within civil law systems, especially regarding its conceptual basis and normative justification. Traditional civil liability theory is primarily grounded in personal fault as the fundamental source of obligation. Nevertheless, doctrines such as supervisory and employer liability challenge this framework by attributing responsibility to individuals who did not personally commit the harmful act. This doctrinal tension has led to the development of competing theoretical interpretations in both French and comparative legal scholarship.

The first theory is that of presumed fault (*La faute présumée*), which is the oldest among the five theories and was traditionally predominant in France. Early French jurisprudence frequently applied this approach in numerous rulings. The drafters of the French Civil Code of 1804 were notably influenced by the writings of the jurist Robert-Joseph Pothier. According to this theory, the employer's liability is founded on a presumed fault attributable to the employer—whether in the selection, supervision, or direction of the employee, or in all three aspects. This presumed fault is conclusive and cannot be rebutted. Consequently, if the employee commits a wrongful act, the employer is held liable by virtue of an assumed fault in his own conduct and is not permitted to

demonstrate that he exercised due diligence in selecting, supervising, or directing the employee.[1] This theory has faced considerable criticism. Firstly, if liability were predicated on an irrebuttable presumption of fault, the employer should be able to avoid liability by disproving the causal connection between their fault and the damage; however, French legal doctrine does not allow for this. Secondly, if liability were based on presumed fault, it would not apply when the employer lacks discernment (capacity), since an individual without discernment cannot be held at fault. Nonetheless, the employer's lack of discernment does not preclude liability, as their legal representative (such as a guardian or trustee) may act on their behalf in matters of supervision and direction.

Second, the theory of risk (*L'idée de risque*) has its origins in Roman law. The Roman jurist Ulpian grounded the shipowner's liability for the actions of his crew on the principle of risk-bearing. According to this theory, the employer assumes liability because he benefits from the employee's activities; consequently, he must also bear the associated burdens, in line with the maxim "liability accompanies benefit" (*al-ghurm bil-ghunm*).[2] Key characteristics of this theory include the employer's inability to evade liability even if it is demonstrated that preventing the harmful act was impossible, as liability is predicated on risk rather than fault.[3] Furthermore, the employer remains liable regardless of any lack of discernment, since liability is detached from fault and instead founded on the concept of bearing the enterprise's risk. A significant critique of this theory arises from Iraqi law, which permits the employer, after compensating the injured party, to seek recourse against the employee. If liability were exclusively risk-based, such recourse would be contradictory, as the employer would be solely responsible for the consequences of an activity from which he benefits. The allowance of recourse under the law indicates that liability is not founded solely on the principle of risk.[4]

Third, the theory of guarantee (*L'idée de la garantie*) posits that the employer functions as a legal guarantor for wrongful acts committed by the employee during the course of employment, provided that the employer exercises supervisory and directive authority. This guarantee originates from statutory law rather than from contractual agreements. Consequently, the injured party may initiate legal action directly against the employer without first pursuing the employee.[5] The Iraqi jurist Abdul-Majeed Al-Hakim contended that the basis of the employer's liability lies in the legal provision itself, as legislation constitutes an independent source of obligations. The legislator imposes this liability on grounds of justice and social solidarity, with the objective of facilitating the injured party's access to compensation. Although the employer is generally more financially

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1 Abdul-Razzaq Al-Sanhuri, *Al-Wasīṭ fī sharḥ al-Qānūn al-Madanī* (Al-Halabi Publications, 2009), 1178-1179. In this regard, paragraph 353 of the summary states: "The liability of the employer for his employee, within the limits we have outlined, is based on a fault in direction and supervision. This fault is presumed on the part of the employer, and the plaintiff is not required to prove it. The plaintiff must prove the employee's fault, thus presuming that the employer failed to properly direct or supervise his employee, leading to this error. The presumed fault on the part of the employer is irrefutable. The employer cannot escape liability by proving that he took all reasonable precautions to direct and supervise his employee's actions, as can someone who is responsible for the care of another person, as we have previously explained." Talal Al-Hajj, *Liability of the Employer for the Actions of the Employee in Lebanese and Jordanian Civil Law* (Tripoli: Modern Book Foundation, 2003), 88.

2 Mahmoud Jalal Hamza, *Unlawful Act as a Source of Obligation* (1985), 196; Khalil Jarih, *The General Theory of Obligations,* Vol. 1, 2nd ed., (1962), 241.

3 Abdul Razzaq Al-Sanhuri, *The Mediator in Explaining Civil Law*, 1182-1183.

4 Abdulmajid Al-Hakim, *A Summary of the Explanation of Civil Law, Sources of Obligation* (Baghdad Legal Library, 2007), 582.

5 Abdul-Razzaq Al-Sanhuri, *The Mediator in Explaining Civil Law*, paragraph 691, 1184; Riper, *The Moral Rule in Civil Obligations,* 4th edition, 232-233.

capable than the employee, the employer is not ultimately responsible for the compensation, as the right of recourse against the employee is preserved.

Fourth, the theory of representation (*L'idée de la représentation*) posits that the employee functions as a legal representative of the employer. Analogous to how a representative binds the principal through legal acts performed within the scope of their authority, the employee binds the employer through material acts—including wrongful acts—committed within the scope of employment. Consequently, the boundaries of the employer's liability are delineated by the scope of representation. For this theory to maintain coherence, representation must encompass not only legal acts but also material acts.

Fifth, the theory of substitution (*L'idée de la substitution*) is based on the premise that the employee substitutes for the employer in the execution of work, effectively constituting a single legal entity.[6] If the employee commits a fault within the prescribed limits, it is as if the employer committed the fault personally. The employee is thus regarded as an extension of the employer's legal personality. Jurist Abd El-Razzak El-Sanhuri further asserted that substitution extends to discernment: if the employee possesses discernment while the employer does not, the employee's discernment is attributed to the employer through substitution, thereby rendering the employer liable.

The Iraqi Civil Code adopts the theory of presumed fault as the foundation for employer liability concerning the actions of employees; however, this presumption does not allow the employer to evade liability solely by denying fault. The employer may seek to rebut the presumption or challenge the causal connection between the presumed fault and the damage caused by the employee. In contrast, French and Egyptian jurisprudence generally reject the possibility of avoiding liability by disputing causation once the conditions for liability are established. Moreover, proposed reforms to the Iraqi legal system have recommended basing liability primarily on the element of damage and the principle of legal guarantee, whereby the employer would be held liable for the harmful acts of the employee while retaining the right of recourse in cases of intentional misconduct or gross negligence. This approach more closely aligns with the legal frameworks adopted in French and Egyptian law.

Article 220 of the Iraqi Civil Code stipulates that "the person responsible for the act of another has the right of recourse against him for any amount paid." Consequently, if the employer compensates the injured party, the employer may seek reimbursement from the employee. However, when liability arises from a presumption of fault favoring the injured party, this presumption applies solely to the relationship between the employee and the injured party, and does not extend to the relationship between the employee and the employer. Therefore, in recourse proceedings, the employer may be required to demonstrate the employee's fault if it has not been previously established by law.

Although extensive doctrinal discussions exist within each national legal system, comparative analyses of the theoretical foundations of supervisory liability—particularly concerning the transition from fault-based to more objective models—remain limited. Few studies systematically investigate the interaction between French judicial innovations and the more codified frameworks of Iraqi and Egyptian civil law. Furthermore, the implications of these differing theoretical bases for institutional responsibility and legislative reform have not been adequately examined. This study contributes to the literature by situating the evolution of French jurisprudence within a

[6] Khalil Greig, *General Theory of Obligations,* Part 1, 2nd ed., (1962), 242.

broader comparative and theoretical context. It assesses whether Iraqi and Egyptian law continue to adhere to classical fault theory or demonstrate a shift toward more objective or guarantee-based constructs, thereby enhancing the scholarship on comparative civil liability. Additionally, it explores how Iraq is developing a modern model of responsibility that aligns coherently with the principles of justice (*'adl*) embedded in its own legal tradition.

Research Methodology

This study employs a socio-legal and conceptual framework to investigate the interaction between Sharia principles, particularly those derived from Hanafi jurisprudence, and the civil law systems of Iraq and Egypt. The comparative analysis is functional in nature, emphasizing how both legal systems address supervisory liability rather than focusing solely on the textual organization of statutes. Sources are classified into primary (civil codes and judicial decisions), secondary (classical Fiqh texts and contemporary commentaries), and tertiary (legal dictionaries and encyclopedias) categories. Particular attention is paid to the editions and publication dates to support historical and doctrinal analyses. The research is grounded in doctrinal analysis of statutory provisions, including the French Civil Code, the Iraqi Civil Code No. 40 of 1951, and the Egyptian Civil Code No. 131 of 1948. Additionally, it examines leading judicial rulings from the French Court of Cassation, the Egyptian Court of Cassation, and pertinent Iraqi jurisprudence. The comparative approach facilitates the identification of both convergences and divergences in the legal foundations of supervisory liability.

Result

The principle of supervisory liability in French, Egyptian, and Iraqi civil law is founded upon a rebuttable presumption of fault, whereby an individual is held accountable for the actions of others or for objects under their control, unless an external cause, such as force majeure, is established. France articulates a broad general principle under Article 1242, while Egypt, pursuant to Article 173, and Iraq, under Article 218, similarly permit exoneration if proper supervision is demonstrated or if the harm was unavoidable. However, distinctions emerge concerning the liable parties and their relationships, particularly in cases involving parents, employers, and minors, within the context of contemporary legal practice and evolving doctrinal frameworks.

The General Principle of the Supervisor's Liability in French Civil Law

Article 1242 (formerly Article 1384) of the French Civil Code, as amended in 2016, stipulates in its first paragraph that: "A person is liable not only for the damage caused by his own act, but also for that which is caused by the acts of persons for whom he is responsible or by things which he has under his custody."[7] Since 1930, the Court of Cassation has interpreted this provision as establishing two fundamental principles of tort liability: liability for things and liability for the acts of others.[8] Legal scholarship has similarly maintained that the presumption of fault created by the

[7] Article 1242 of the French Civil Code (formerly Article 1384) establishes a principle of strict liability for damages caused by things in one's custody, as well as vicarious liability for the actions of people, animals, or buildings under one's responsibility. It requires no fault to hold the custodian liable, only a causal link between the object/person and the damage.

[8] G. Viney. Traité de Droit civil. Les conditions de la responsabilité LG.D.J. 3éd 2006, n°789, p. 926 et s. DP. 1930, p. 57, Pal. 1930.1.393.

first paragraph of Article 1242 can only be rebutted by demonstrating force majeure or a fortuitous event. Accordingly, the defendant is not exonerated from liability unless he proves the existence of an external cause. This interpretation was reaffirmed by the Court of Cassation in the landmark *Jean Heur* decision.[9] The jurist René Savatier contended that the custodian of a thing ceases to be its guardian if he entrusts it to another person who uses it for his own benefit. In his authoritative treatise on civil liability, Savatier asserted that it is not necessary for the person responsible for damage caused by a thing to use it directly; rather, liability rests with the individual who exercises ultimate control over the thing and derives benefit from its use.[10] Consequently, liability for damage caused by a thing may be attributed to the employer even if the immediate user is an employee, since the thing remains under the employer's authority and supervision.

Savatier noted that the language of Article 1242 demonstrates a close relationship between liability for the actions of others and liability for things. This interpretation is further corroborated by Article 1244 of the French Civil Code, which holds the owner of a building liable for damage caused by its collapse due to inadequate maintenance or structural defects, as well as Article 1243, which imposes liability on the owner or user of an animal for harm caused by the animal, regardless of whether it was under their control or had strayed. Similarly, the jurist Henri Mazeaud,[11] in his treatise *Traité de la Responsabilité Civile*, contended that the concepts of "things under custody" and "persons for whom one is responsible" are intrinsically linked, constituting a unified provision within Article 1242.[12] From this analysis, it can be inferred that, since 1930, French jurisprudence has regarded the first paragraph of Article 1242 as a general principle governing liability for things and, by extension, liability for the acts of others. Although the original drafters may not have intended such a broad scope, social developments and the rise in civil liability disputes have necessitated the evolution of a general legal foundation for this form of responsibility. Nonetheless, some jurists have expressed concern that recognizing a general principle of liability for the acts of others may pose challenges, given that the specific cases enumerated in paragraph four of Article 1242 are subject to distinct rules, complicating the identification of a unifying principle among them.[13]

Despite these concerns, French jurisprudence ultimately interprets the first paragraph of Article 1242 as establishing a general principle of liability for the actions of others,[14] whereby the supervisor can only avoid liability by demonstrating the existence of a foreign cause. Paragraph four of Article 1242 specifically addresses parental liability, imposing joint responsibility on both the father and mother for damages caused by their minor children. This contrasts with Iraqi law, which primarily assigns responsibility to the father and, following his death, to the grandfather. Under French law, parental liability is founded on a presumption of fault in both upbringing and supervision (*faute de surveillance et d'éducation*). When a minor commits a harmful act, the law

9 Cass ci, Chambres réunies, du 13 février 1930, Publié au bulletin.

10 R. Savatier, La responsabilité générale du fait des choses que l'on a sous sa garde a-t—elle pour pendant une responsabilité générale du fait des personnes dont on doit répondre ? DH. 1933, ch, p. 81.

11 V. notamment, P. Esmein in Planiol et Ripert, t, VI, n° 626- G.Marty et Raynaud, les obligations, n° 420.

12 L article 1242 de cose civil francais dispose que "On est responsable non seulement du dommage que l'on cause par son propre fait, mais encore de celui qui est causé par le fait des personnes dont on doit répondre, ou des choses que l'on a sous sa garde".

13 V. notamment M. Puech, L'illicéité dans la responsabilité civile extracontractuelle, LGDJ, 1973, n° 121 à 128- P. Robert, Traité du droit des mineurs, n° 265 et s.- D. Layre, et la responsabilité du fait des mineurs, th. Dacty1. Paris I, 1983, p. 170 et s.- J.M. Lhuillier, et médico-sociaux, thèse dacty1. Poitiers, 1996, n° 109 et s.

14 Article (218) of the Iraqi Civil Code states that: 1 - The father and then the grandfather shall be obligated to compensate for the damage caused by the minor.

presumes that the parents have failed in their supervisory and educational duties. Regarding exoneration, parents may avoid liability by proving either that they properly fulfilled their supervisory obligations or that the damage would have occurred even if they had exercised due care. This framework raises several doctrinal questions: Can the injured party base a claim on negligent upbringing? Is such fault presumed in the same manner as supervisory fault, or must the injured party prove it in accordance with general principles of liability?

Traditional legal doctrine[15] and the majority of French judicial decisions have consistently held that parental liability is based on a dual presumption of fault—namely, fault in supervision and fault in education—deriving from parental authority. A further issue pertains to whether parental liability endures when the child is temporarily entrusted to another individual (for instance, during holidays or while the parents are at work). French jurisprudence has determined that temporary absence does not absolve parents of liability, as such absence does not constitute a genuine change of residence. Similarly, an amicable or de facto separation between parents does not terminate parental authority under the French Civil Code.[16] Consequently, both parents remain jointly liable under Article 1242, regardless of the child's residence with either parent. Should one parent compensate the injured party, that parent may seek recourse against the other in accordance with the rules governing joint and several liability. In contrast, Islamic law adopts a singular, clear criterion for compensation: *maḍarrah* (actual harm or damage). Whereas French law grapples with multiple notions of fault and liability, Islamic law's emphasis on tangible harm renders liability more predictable and directly connected to the injured party, reflecting the Sharia principles of *ʿadl* (justice) and social stability.

The General Principle of the Supervisor's Liability in Egyptian Civil Law

Article 173 of the Egyptian Civil Code addresses supervisory liability. The first paragraph establishes liability for any individual who is legally or contractually obligated to supervise another person requiring oversight due to minority or mental or physical incapacity. The third paragraph stipulates that the supervisor may be exempted from liability if they demonstrate that they fulfilled their supervisory duties or that the damage would have occurred despite exercising the requisite care. Consequently, under Egyptian law, supervisory liability is founded on a rebuttable presumption of fault. The injured party must prove that the damage resulted from the unlawful act of the minor, while the supervisor may avoid liability by establishing either the absence of fault or the inevitability of the damage.[17] It can therefore be concluded that the basis of supervisory liability in both French and Egyptian law is a rebuttable presumption of fault. The supervisor—whether the father or mother under French law, or any legally obligated custodian under Egyptian law—may avoid liability by demonstrating that they fulfilled their supervisory and educational duties or that the damage was caused by an external factor beyond their control.

The General Principle of the Supervisor's Liability in Iraqi Civil Law

Article 218 of the Iraqi Civil Code stipulates that: "The father, and then the grandfather, shall be

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15 Mireille Bacache, Traité de droit civil: les obligations, la responsabilité civile extracontractuelle, Tome 5, Economica, 4e edition, 2021, p45.

16 Article 37 de code civil francais dispose que" Aucune renonciation, aucune cession portant sur l'autorité parentale, ne peut avoir d'effet, si ce n'est en vertu d'un jugement dans les cas déterminés ci-dessous.

17 Abdul-Razzaq Al-Sanhuri, *The Mediator in Explaining the New Civil Law, Part One, Sources of Obligation* (Al-Halabi Publications, 2009), 1136.

obliged to compensate for the damage caused by the minor. The father or grandfather may be relieved from liability if he proves that he fulfilled his duty of supervision or that the damage would inevitably have occurred even if he had performed this duty." According to this provision, Iraqi law establishes the supervisor's liability based on a rebuttable presumption of fault, which entails a breach of the supervisory duty incumbent upon the responsible party. When a minor under supervision commits an unlawful act resulting in harm to another, the law presumes that the supervisor failed in their duty and that this failure contributed to the minor's harmful conduct. Generally, this presumed fault is attributed to the supervisor and is characterized as supervisory negligence. Specifically, in the case of the father—or the grandfather following the father's death—if the minor resides under their care, the presumed fault may arise from negligence in supervision, improper upbringing, or a combination of both.[18]

It is important to emphasize that this presumption applies exclusively to the relationship between the supervisor and the injured party. It constitutes a legal presumption established for the benefit of the injured party against the supervisor and cannot be invoked against the minor.[19] Accordingly, neither the injured party nor the supervisor may rely on this presumption in claims against the minor; instead, fault on the part of the minor must be independently demonstrated. The coexistence of liability based on presumed fault and liability based on proven fault is not precluded. The injured party may elect not to invoke the presumption and instead prove actual fault on the part of the supervisor, thereby preventing the supervisor from rebutting the presumption. Nonetheless, because the presumption of fault is a rebuttable presumption, the supervisor may exonerate himself by demonstrating that he fulfilled his supervisory duties, took all necessary precautions to prevent harm, and—if he is the father or grandfather—exercised appropriate care in upbringing. Furthermore, the determination of whether the duty of supervision was fulfilled constitutes a factual matter within the discretion of the trial court and is not subject to review by the Court of Cassation. The supervisor may also avoid liability by disproving the causal connection between the alleged fault and the damage, for instance, by demonstrating the presence of an intervening cause such as force majeure, the fault of the injured party, or the fault of a third party. For example, the supervisor may establish that the damage occurred suddenly and in a manner that was neither foreseeable nor preventable.

The eminent jurist Abd El-Razzak El-Sanhuri noted that, under Iraqi law and pursuant to Articles 218 and 219 of the Iraqi Civil Code, there is no impediment to the simultaneous application of supervisory liability and the employer's liability for the actions of an employee. In instances where a minor is employed by another and commits a wrongful act causing harm to a third party, three forms of liability may arise: the minor's personal liability, contingent upon established fault; the liability of the father (or grandfather), founded on a rebuttable presumption of fault; and the employer's liability, which some scholars consider to be based on an irrebuttable presumption of fault. In such circumstances, the injured party may seek full compensation from either the supervisor or the employer. The party who compensates the injured may subsequently claim contribution from the other party for half of the amount paid, without prejudice to their

[18] Abdulmajid Al-Hakim, *A Summary of the Explanation of Civil Law, Sources of Obligation* (Baghdad Legal Library, 2007), 571. It is clear from this that the responsibility of the supervisor is based on a personal error on his part. It is not a responsibility for others like the responsibility of the employer for the employee, but rather a personal responsibility based on a personal error that we assume the supervisor actually committed.

[19] This is unless the person under surveillance committed another presumed error, such as if he was driving a car and ran over a pedestrian.

right of recourse against the minor in accordance with Article 220 of the Iraqi Civil Code,[20] which stipulates: "The person responsible for the act of another has the right of recourse against him for what he has paid."

If compensation is recovered from the minor—whether discerning or non-discerning—out of the minor's own property, the minor is precluded from seeking reimbursement from the supervisor, as the liability arises from the minor's own fault rather than that of the supervisor. However, in cases where the minor is non-discerning and adequate compensation cannot be obtained from the minor's assets, the court may mandate that the guardian (such as the father or grandfather) pay compensation pursuant to Article 191 of the Iraqi Civil Code,[21] while preserving the guardian's right of recourse against the minor. This legal framework is similarly reflected in Egyptian legislation. Consequently, it can be inferred that the basis of the supervisor's liability under Iraqi civil law is a rebuttable presumption of fault attributed to the father, the grandfather following the father's death, or any individual appointed by the court after the grandfather's death. This presumption may be rebutted by demonstrating either due supervision or the presence of a foreign cause that negates liability.

Discussion

Judicial Development in France and the Position of Egyptian and Iraqi Judiciary

Until 1991, the Court of Cassation maintained its longstanding position, originally established in 1901,[22] by interpreting Article 1242 of the French Civil Code in a restrictive manner concerning liability for the actions of others. The Court consistently declined to recognize a general principle of liability under the first paragraph of Article 1242 and refrained from broadening the scope of such liability. For example, in a decision rendered on 24 December 1976,[23] the Court rejected the establishment of a general liability principle. In that case, a mother entrusted her minor child to a social childcare institution. The child absconded from supervision, stole a vehicle, and caused damage to it. The trial court held the institution liable under the first paragraph of Article 1242, reasoning that the institution had failed to demonstrate that the damage was unavoidable. However, the Court of Cassation overturned this judgment, reaffirming that, at that time, no general principle of liability for the acts of others could be derived from the provision.

The Court adhered to a restrictive interpretation, viewing liability for the actions of others as an exceptional civil sanction aimed at individuals who fail to fulfill their duty of care toward

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[20] This corresponds to the ruling of Article (175) of the Egyptian Civil Code, which states: "The person responsible for the actions of another has the right to seek recourse against him to the extent that this other person is responsible for compensating for the damage."

[21] Preparatory Works Collection, Vol. 2, 421-422. Hassan Ali Dhunoun, 231. Abdul-Razzaq Al-Sanhuri, *Al-Wasīṭ fī sharḥ al-Qānūn al-Madanī* (The Intermediate Treatise on the Explanation of Civil Law), previous source. Abdul-Baqi Al-Bakri, *Lectures on Liability for the Actions of Others*, Delivered to Postgraduate Students in Civil Law in 1979, mimeographed, 128.

[22] Req., 21 oct. 1901, 1, p. 32. V. également, Crim., 15 juin 1934, S., 1935.I.397, Gaz. Pal., 1934.2.477.- Civ 2e, févr. 1956, D, p, 410, note Blanc, JCP, 1956.II.9654, note R.Rodière.

[23] "A person's liability is not limited to compensating for damage caused by their own actions, but also extends to damage arising from the actions of those for whom they are responsible or from things that may be in their custody. However, a person who possesses—in whatever capacity—real estate, part of real estate, or movable property that catches fire is not liable to third parties for such damage resulting from their own fault or the fault of those for whom they are responsible. This provision does not apply to the relationship between landlord and tenant, which remains governed by Articles 1733 and 1734 of the French Civil Code." Civ 2e, 24 Nov. 1976, D, 1977, p. 595, note C. Larroumett.

vulnerable persons under their authority.[24] Any effort to extrapolate a general principle beyond the specific instances enumerated in Article 1242 was deemed inconsistent with legislative intent. Notably, prior to its amendment by the Law of 4 June 1970, paragraph four of Article 1242 imposed liability exclusively on the father (and subsequently on the mother following the father's death) for damages caused by minor children residing with him. Following the amendment, parental liability became joint, reflecting a modernization of parental authority.

In 1990, the Council of State (*Conseil d'État*) initiated the adoption of innovative approaches concerning administrative liability, notably recognizing presumed-fault liability of public authorities for harm caused by minors placed in foster or social care. This development garnered significant scholarly attention and marked a gradual evolution in French jurisprudence.[25] A pivotal moment occurred with the landmark *Blieck* decision on 29 March 1991. In this case, a mentally disabled individual, Blieck,[26] was placed in a rehabilitation center operated by a private association. While participating in forestry work, he negligently caused a forest fire that resulted in extensive damage. The victims brought suit against the association before the Tribunal of Tulle. The association contended that residents were granted freedom of movement during the day and that it was therefore unable to provide constant supervision.[27]

The Court of Appeal of Limoges held the association liable pursuant to the first paragraph of Article 1242, interpreting it as a general principle of liability for the actions of others. Although prior jurisprudence had confined this provision to liability for things, the Court of Cassation, sitting in plenary assembly (*Assemblée plénière*), affirmed the decision.[28] The Court reasoned that the association had assumed permanent responsibility for organizing, directing, and controlling the lifestyle (*organisation et contrôle du mode de vie*) of the disabled resident. By undertaking such comprehensive authority—comparable in certain respects to parental authority—the association was held liable for damages caused by the resident. This ruling represented a significant development in French law. For the first time, the Court of Cassation explicitly recognized that the first paragraph of Article 1242[29] embodies a general principle of liability for the acts of others, extending beyond the specific categories enumerated in the Code. The Court's criteria emphasized the acceptance of a permanent mission to organize and control another person's life.

It can be concluded that the presence of these conditions warrants the application of the first paragraph of Article 1242 of the Civil Code. This novel concept, which originated in French law, is grounded in the "organization, control, and management of the affairs of disabled persons" by

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24 V. par exemple, Crim., 11 juin 1970, Gaz. Pal., 1970, Gaz. 1970.2.146.-Civ 2e, 9 nov. 1971, D, 1972. J. 75; RTD civ., 1972, p.400, obs G.Durry.- Crim., 9 mars 1972, D, 1972, p. 342. – Civ 2e, 29 avr. 1976, JCP, 1978. II. 18793, note N. Dejean de la Battie. Civ 2e, 24 Nov. 1976, D, 1977, p. 595, note C. Larroumett.

25 L alena 3 de l article 1242 de code civil francais dispose que" Les maîtres et les commettants, du dommage causé par leurs domestiques et préposés dans les fonctions auxquelles ils les ont employés.

26 Cour de Limoges, 23 mars 1989, Resp. civ. Et assur., nov. 1989, Com., n°361, obs. H.G.

27 G. Viney, op. cit., n°790, p. 938 et s.

28 Attendu que cette pratique (travail en milieu libre des handicapé manteaux) génératrice de risque, tant pour les biens que les personnes, se saurait avoir conséquence des dommages non réparables alors que le principe de l'indemnisation des victimes s'inscrit désormais dans l'éthique politique et sociale; Attendu que c'est donc à bon droit que les victimes … invoquent à titre principal les disposions de l'art. 1384. al. 1er qui énoncent le principe d'une présomption de responsabilité du fait des personnes dont on doit répondre; ce qui correspond à la situation de l'appelante par rapport à l'auteur du dommage… ; qui aussi bien l'association concernée avait souscrit une assurance couvrant les risques inhérents à son activité.

29 V. J.B. Donnier, th. Préc., n°354.

rehabilitation centers specializing in this area (*L'organisation et le controle du mode de vie*).[30] The term "Organisation du mode de vie" refers to the care and social rehabilitation of individuals with mental illnesses, aiming to reintegrate them as productive members of society. These centers exercise an authority over their residents analogous to parental authority (*autorité parentale*).[31] The concept of "*Controle mode de vie*" pertains to the direct management, care, and supervision of the residents' affairs and activities.[32] Consequently, the centers assume full responsibility for controlling and managing these disabled individuals throughout the rehabilitation process. Furthermore, commentators on this ruling have highlighted the necessity of establishing exceptions to this principle, thereby exempting certain individuals from the associated burdens of responsibility.

Examples include caregivers for infants or friends[33] of family members who may be entrusted with the care of a child or patient for a few hours or several days. These clarifications concerning the roles of associations involved with individuals with mental illnesses serve as genuine safeguards. A "legal obligation" arises from a voluntary[34] commitment to accept the lifestyle of these individuals on a permanent basis throughout their residence at the center. Another significant conclusion reached by the Court of Cassation played a crucial role in interpreting this case: although these disabled and mentally ill individuals reside in a center under a protective system, they simultaneously enjoy a degree of freedom and mobility during the day. The French Court of Cassation stated, "After review, scrutiny, and deliberation, the center's objective is to house disabled and mentally ill individuals, providing them with a protected environment. Blake was subject to this system while enjoying complete freedom during the day." This apparent contradiction between the concept of protection and the enjoyment of a degree of freedom influenced, at least in part, the Court's decision. It is important to note that the concept of protection applies to these individuals due to their specific mental and physical conditions, which necessitate such protection.[35]

In both France and Egypt, legal doctrine and jurisprudence concur that supervisory liability for the actions of individuals under one's care is founded upon a rebuttable presumption of fault.[36] Article 173(3) of the Egyptian Civil Code explicitly stipulates that the supervisor may avoid liability by demonstrating that they exercised due care or that the harm would have occurred notwithstanding proper supervision. The preparatory works of the Egyptian Civil Code further affirm that supervisory liability is based on a simple presumption of fault. The injured party is required to establish the wrongful act committed by the minor, after which fault in supervision is presumed against the guardian. Nevertheless, the guardian may rebut this presumption either by disproving the existence of fault or by contesting the causal connection between the presumed fault and the resulting damage.[37] Egyptian Court of Cassation has likewise affirmed that parental liability under Article 173 is based on presumed fault, which may be rebutted by evidence

30 The relationship of dependency arises because these institutions assume the role of the parents and are accepted as responsible for supervision and guidance.
31 V. J.B. Donnier, th. Préc., n°349 et 352.
32 V. J.B. Donnier, th. Préc., n°349 et 350.
33 V. G. Viney, Vers un élargissement de la catégorie des personnes dont répondre : la perte entrouverte sur une nouvelle interprétation de l'art. 1384 al, 1er D., 1991, ch., p. 157, spécialement, p. 160, 161.
34 V. J.B. Donnier, th. Préc., n°354.
35 V. J.B. Donnier, th. Préc., n°356.
36 Hassan Ali Dhunoun, *Al-Mabsūṭ fī Sharḥ al-Qānūn al-Madanī*, Vol. 4, previous source, p. 186
37 Criminal Court of Cassation, 14/5/1956, Collection of Criminal Court of Cassation Judgments 7, No. 202, p. 718. Abdul-Razzaq Al-Sanhuri. Al-Wasit. p. 1138.

demonstrating due care.[38] Concerning employer liability, Article 174 of the Egyptian Civil Code has been interpreted by the Court as establishing an irrebuttable presumption of fault in specific instances, thereby underscoring the protective role of liability in favor of the injured party.

In Iraq, the legal framework is characterized by the presence of two distinct provisions that govern liability for the actions of others: Articles 191 and 218 of the Iraqi Civil Code.[39] Article 218 establishes the primary liability of the father, followed by that of the grandfather, based on a rebuttable presumption of supervisory fault. The guardian may exonerate himself by disproving either fault or causation. Article 191, in contrast, establishes a subsidiary guarantee-based liability that applies when compensation cannot be secured from the minor's assets. This form of liability is not predicated on fault but is instead based on a guarantee concept derived from Islamic jurisprudence. Unlike the liability under Article 218, it is not subject to rebuttal.[40]

Regarding employer liability under Article 219 of the Iraqi Civil Code, it is similarly founded on a rebuttable presumption of fault. The employer may avoid liability by demonstrating that due care was exercised to prevent the damage, that the damage would have occurred despite such care, or by establishing the presence of an external cause (such as force majeure, the fault of the injured party, or the fault of a third party). The determination of whether the employer exercised the requisite degree of care is a factual matter entrusted to the discretion of the trial court. French jurisprudence has evolved from a restrictive interpretation of Article 1242 to the recognition of a general principle of liability for the acts of others, as exemplified in the *Blieck* decision, which is grounded in the acceptance of a permanent duty to organize and control another person's life. In contrast, Egyptian and Iraqi law primarily maintain supervisory and employer liability on the basis of presumed fault—generally rebuttable—although Iraqi law also incorporates elements of guarantee-based liability in certain contexts. This comparative development reflects a broader shift from strict fault-based conceptions toward more objective and socially oriented foundations of liability for the acts of others.

Liability of Educational, Rehabilitation Associations, and Court-Appointed Services

The principal category potentially encompassed by the liability provisions of the first paragraph of Article 1242 of the French Civil Code includes educational associations[41] as well as institutional and social rehabilitation services established or appointed by criminal or civil courts to provide

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38 Abdul-Moein Lotfi Juma, Encyclopedia of the Judiciary in Civil Liability, Tort and Contractual, Book One, Vol. 3, Liability for the Actions of Others, Egyptian General Book Authority, 1977, p. 107, Rule No. 1460.

39 Article 191 states: (1) If a minor, whether discerning or not, or someone considered as such, damages another's property, he shall be liable for compensation from his own funds. (2) If it is impossible to obtain compensation from the funds of the person who caused the damage, whether a minor or someone deemed insane, the court may order the guardian, custodian, or trustee to pay the compensation, provided that the latter can then seek reimbursement from the person who caused the damage. (3) When assessing fair compensation for the damage, the court must consider the circumstances of the parties. Article 218 states: (1) The father, then the grandfather, is obligated to compensate for the damage caused by the minor. (2) The father or grandfather may be relieved of liability if he proves that he fulfilled his duty of supervision or that the damage would have occurred even if he had fulfilled this duty.

40 In Iraqi law, Articles 218 and 191 distinguish fault-based from guarantee-based liability, including nuanced rules for minors: they have primary liability (from their own wealth), mandatory liability (the court must award compensation), and mitigated liability (compensation is fair and proportional). This reflects the Sharia principle "*al-kharāj bi al-ḍamān*" gain comes with the risk of loss. Iraqi law modernizes classical fiqh by requiring intent/transgression, holding indirect actors liable, and allowing joint liability, adapting Sharia concepts to a civil law framework.

41 G. Viney, op.cit., n° 789-16, p. 949 et s.

educational support and exercise supervisory functions over minors or individuals experiencing disabilities or social maladjustment. Although judicial rulings in this domain remain relatively scarce, it is significant that the Council of State, invoking the first paragraph of Article 1242,[42] reached a comparable conclusion in a decision dated 11 February 2005. The Council determined that when a minor is placed under the care of the Judicial Protection Service for Youth pursuant to Articles 375 et seq.[43] of the French Civil Code, the State may be subject to strict (no-fault) liability for harm caused by that minor to third parties. This liability does not stem from the actual exercise of daily supervision or effective control but rather from the judicial decision entrusting the minor to the service and from the institutional framework governing the minor's lifestyle. Accordingly, liability is attributed to the judicial authority responsible for assigning and structuring the supervisory mandate.

Generally, the entities held liable are legal persons, such as associations or public bodies. However, a judge may also place a child under the care of a natural person or a host family. In this context, the Criminal Chamber and the Second Civil Chamber of the Court of Cassation have adopted a broader interpretation, equating legal and natural persons when they are entrusted, on a continuous and permanent basis, with the responsibility of care and supervision. Any harm caused by minors or individuals placed under the authority of such entities results in the liability of these entities toward third parties. From the foregoing, it is clear that the French Court of Cassation has clarified its stance regarding educational associations and rehabilitation bodies appointed by judicial decision. It has held them liable under the first paragraph of Article 1242 of the French Civil Code whenever they assume a permanent role in organizing and overseeing the life of the minor.

In contrast, Article 120 of the Iraqi Civil Code stipulates that the guardian of a minor is determined by the following order of priority: the father, the father's testamentary guardian, the paternal grandfather, the grandfather's testamentary guardian, and, finally, the court or a guardian appointed by the court. Similarly, Article 27 of the Iraqi Law on the Care of Minors (1980) establishes that the guardian of a minor is the father, or, in his absence, the court. Article 34 of the same law defines a testamentary guardian as the individual designated by the father to manage the affairs of his minor child or unborn offspring; if no such designation exists, the court appoints a guardian, prioritizing the mother when it serves the best interests of the child. In the absence of any suitable candidate, guardianship is entrusted to the State Institution for the Care of Minors until the court appoints a guardian.

The Institution for the Care of Minors is thereby entrusted with a continuous and permanent duty of care and supervision over minors by virtue of judicial appointment. Consequently, when minors under its guardianship cause damage to third parties, the liability of this social institution is determined in accordance with Article 191 of the Iraqi Civil Code,[44] as it functions as a court-

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42 A person's responsibility is not limited to compensating for the damage caused by his own actions, but he is also responsible for the damage caused by the actions of those persons for whom he is responsible or things that may be in his custody.

43 *Si la santé ou la sécurité ou la moralité d'un mineur non émancipé sont en danger, ou si les conditions de son éduction sont gravement compromises, des mesures d'assistance éducative peuvent être ordonnées par la justice à la requête des père ou mère conjointement, ou de l'un d'eux, de la personne ou du service à qui l'enfant a été confier, ou du tuteur, du mineur lui-même ou du ministère public le juge peut se saisir d'office à tire exceptionnel.*

44 If it is impossible to obtain compensation from the funds of the person who suffered the harm, whether a minor or someone deemed legally incompetent, the court may order the guardian, custodian, or trustee to pay the compensation amount, with the possibility of recourse against the person who suffered the harm for the amount paid.

appointed guardian responsible for the supervision and protection of the minor. While French law bases the liability of educational and rehabilitation institutions on the general principle established in Article 1242(1) of the Civil Code, Iraqi law addresses analogous situations through statutory provisions related to guardianship and guarantee-based liability, reflecting a distinct doctrinal and legislative framework.

Supervisory Liability Based on an Irrebuttable Presumption of Fault

French jurisprudence, French jurisprudence, particularly Professor G. Viney in her work *Introduction à la responsabilité civile*, emphasizes that the authority to supervise individuals does not derive from a rigid or universally applicable legal rule.[45] She notes that situations often arise in which a minor is placed under the care and supervision of someone other than their parents on a voluntary and temporary basis, without judicial intervention. In practice, grandparents frequently assume voluntary care of their grandchildren for limited periods, such as during school holidays, and other relatives may similarly undertake such responsibilities. However, the Court of Cassation has consistently declined to hold such individuals liable under paragraph (1) of Article 1242 of the French Civil Code when third parties suffer damage caused by the minor. This position was affirmed by the Civil Chamber of the Court of Cassation in a judgment rendered on 18 September 1996.[46]

In a separate case, a child residing with his grandmother and aunt during school holidays caused a traffic accident while riding his bicycle. The injured party initiated two legal actions: one against the parents pursuant to paragraph (4) of Article 1242 (parental liability), and another against the grandmother and aunt under paragraph (1) of the same article. The parents successfully avoided liability by contending that the cohabitation requirement (condition de cohabitation) was not fulfilled at the time of the accident, as the child was under the care of his grandmother and aunt. The trial court initially found the grandmother and aunt liable; however, this ruling was overturned on appeal due to the absence of the necessary conditions for the application of paragraph (1). Ultimately, the Court of Cassation annulled the appellate decision and held the parents liable under paragraph (4), reasoning that the child's stay with his grandmother and aunt was temporary and that the criteria for applying paragraph (1)—notably the permanent organization and control of the minor's lifestyle—were not met. These rulings suggest that the duration and stability of the child's placement are critical factors. When a minor's residence with a third party is long-term and accompanied by continuous organization, direction, and supervision of the child's life, courts may consider applying paragraph (1) of Article 1242. A fundamental condition for such application is that the custodian exercises permanent and daily authority over the minor's lifestyle.[47]

This principle was reaffirmed in a decision dated 8 February 2005 concerning a thirteen-year-old child who had resided with his grandmother for twelve years, despite the absence of formal parental authority or a judicial appointment conferring legal custody upon her. The Court of Appeal held the grandmother liable rather than the parents. However, the Criminal Chamber of the Court of Cassation overturned this ruling, asserting that "the circumstances which led to the placement of the minor under the care of his grandmother did not interrupt the condition of

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45 G. Viney, op. cit., n° 789-18, p. 951 et s.

46 Bull. civ., n° 217, Resp. civ et assur., 1996, com. 376, JCP, 1996, IV, 2208, obs. M.-C. Lebreton, LPA, 24 févr. 1997, Vers une interprétation restrictive de la jurisprudence Blieck? P. Jourdain, obs. RTD civ.,1997, p.436, D., 1998, p. 118, note M. Rebourg. V. également, de façon plus implicite, Civ. 2, 25 janv. 1995, Bull. civ., II, n° 29.

47 CA Montpellier, 7 déc. 1995, inédit, Jurisdata, n°034284; Civ. 2, 5 janvier 2004, Bull. civ., II, n° 50.

cohabitation with his parents." Consequently, the action was upheld against the parents pursuant to paragraph (4) of Article 1242. These decisions illustrate the Court's restrictive interpretation of paragraph (1) concerning individuals who voluntarily and informally care for minors. In most instances, particularly when the child's stay with third parties is temporary, liability remains with the parents under paragraph (4) of Article 1242.

Under Iraqi law, cohabitation is not regarded as a prerequisite for establishing the liability of a father or grandfather for the actions of a minor, as stipulated in Article 218(1) of the Iraqi Civil Code.[48] Similarly, cohabitation is not a condition for the liability of a guardian, curator, or trustee concerning the acts of a discerning or non-discerning minor under Article 219 of the same Code.[49] The Iraqi legislature thus associates liability with the legal duty of supervision rather than with physical co-residence. In a comparable manner, Egyptian law reflects a broad consensus that cohabitation is not a necessary condition for presumed supervisory liability. Article 173 of the Egyptian Civil Code does not mandate cohabitation;[50] rather, it links liability to the duty of care owed to a minor under fifteen years of age, or to one who has reached that age but remains under the effective care and authority of the person responsible for their upbringing. Consequently, whereas French jurisprudence places particular emphasis on cohabitation as a condition for parental liability under Article 1242(4), Iraqi and Egyptian law adopt a more expansive criterion based on the existence of a legal duty of supervision, irrespective of the minor's physical residence.

Conclusion

This study examines supervisory liability under the French Civil Code and comparative law, highlighting that the Court of Cassation has established the first paragraph of Article 1242 of the French Civil Code as a general principle of liability for the acts of others. This principle applies specifically to institutions responsible for the care and custody of minors, provided they possess sufficient authority and control. Such institutions include centers and associations tasked with supervising and caring for minors who are dangerous or delinquent. French jurisprudence has increasingly favored strict institutional liability, whereby the institution itself may be held liable for damages without the necessity of proving fault. Conversely, Egyptian law traditionally grounds supervisory liability on a rebuttable presumption of fault, allowing any individual legally entrusted with a minor's supervision to avoid liability by demonstrating that they fulfilled their supervisory

48 "The father and then the grandfather are obligated to compensate for the damage caused by the minor."

49 Article 219 of the Iraqi Civil Code states: "The government, municipalities, and other institutions that provide a public service, and every person who operates an industrial or commercial establishment, are responsible for damages arising from a transgression committed by them while performing their services." The person being served can be relieved of responsibility if he proves that he made the necessary efforts to prevent the damage, or that the damage would have occurred even if he had made such efforts.

50 Article 173 of the Egyptian Civil Code states: (1) Anyone legally or contractually obligated to supervise a person in need of supervision due to their minority or mental or physical condition is liable to compensate for any harm caused by that person to another through their unlawful act. This obligation applies even if the perpetrator of the harmful act lacks legal capacity. (2) A minor is considered to be in need of supervision if they have not reached the age of fifteen, or if they have reached fifteen but are under the care of their guardian. Supervision of the minor then transfers to their teacher at school or supervisor in their trade, as long as the minor remains under the teacher's or guardian's supervision. Supervision also transfers to the spouse. The person responsible for supervision can be relieved of liability if they prove that they fulfilled their supervisory duty or that the harm would have occurred even if they had exercised due diligence in this duty. The phrase "or have reached the age of fifteen but are under the care of their guardian" means that a person who has reached the age of fifteen but has not yet attained the age of majority, or who has attained it but whose mental or physical condition requires them to be placed under the supervision of another person, remains under the care and supervision of that other person.

and educational duties without negligence. It is crucial to distinguish between parental and institutional responsibility. In both legal systems, parental responsibility generally relies on a presumption of fault, requiring parents to prove the absence of fault. In contrast, institutional responsibility, particularly in France, has evolved toward a stricter standard, reflecting the greater control and authority institutions exercise over minors in their care. Consequently, conflating these two forms of liability may result in inaccurate legal analyses.

Under the Iraqi Civil Code, supervisory liability is predicated on a presumed fault attributed to the father, or, following the father's death, to the grandfather, or subsequently to a person appointed by the court after the grandfather's death. This presumption is rebuttable. The Juvenile Care Institution (*Dār Ri'āyah al-Qāṣirīn*) assumes a continuous and permanent duty of care and supervision over minors when appointed by judicial authority. Any harm caused by such minors to third parties results in the institution's liability pursuant to Article 191 of the Iraqi Civil Code, insofar as the institution functions as a judicially appointed guardian responsible for the minor's supervision. French courts have generally declined to impose liability on individuals who voluntarily and temporarily undertake the care of minors under paragraph (4) of Article 1242 of the French Civil Code. In most cases, parental liability (both father and mother) persists under paragraph (4), particularly when the minor's stay with third parties is of short duration. Within Islamic Sharia, while the father bears the financial obligation of *nafaqah*, the moral and physical supervision of the child constitutes a joint responsibility of both parents. This is reflected in the principles of *ḥaḍānah* (custody) and *mushārakah* (partnership in upbringing), which acknowledge that both parents share responsibility for the child's well-being, guidance, and moral development.

It is advisable for the Iraqi legislature to reconsider and reform Article 218 of the Iraqi Civil Code by adopting a contemporary liability framework for individuals responsible for minors under their care, consistent with the approach employed in numerous Arab jurisdictions. Such reform should establish joint parental liability—encompassing both father and mother—for harm caused by their cohabiting minor children, modeled on Article 1242 of the French Civil Code, as reflected in the Algerian, Egyptian, and Moroccan legal systems. Furthermore, Iraqi law should explicitly require the condition of cohabitation and delineate a specific age threshold at which supervisory liability applies. Liability should not be limited to the father and grandfather but should primarily be attributed to both parents, as recognized in French legislation. Lastly, it is recommended that employer liability for employees' actions be grounded in the principles of damage and guarantee, thereby enhancing protection for injured parties while preserving the employer's right of recourse against employees in cases of intentional or gross negligence.

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