

# Refusal to apply the original judgment (applied study in the field of tort in the Iraqi civil law)

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## ABSTRACT

The application of the original rule in the field of tort is refrained in the Iraqi civil law in three cases (necessity, legitimate defense and the implementation of the order of the President must be obeyed). For them, these three cases can be counted as applications to prevent the reason on the grounds that the error, which is the cause of tort was available in them, but nonetheless refrained from its impact.

## INTRODUCTION

### First: Definition of the subject of research

Therefore, the existence of a legitimate reason for the ruling is not sufficient to apply it, but it is therefore necessary to have all the conditions of the ruling and the absence of all its barriers, and on this basis, the existence of a barrier to rule makes its application abstention, Whether this impediment to the ruling itself so as to prevent the order of the ruling on the cause, or found in the cause of the ruling so as to prevent its impact, the impediment by nature either mind to prevent or prevent the cause, and both prevent the application of the ruling, and this situation is not specific to the legitimate rule, but also includes the legal provision, and level of Iraqi civil law in default, there are three cases where the refusal to apply the rule (legal defense, necessity, the implementation of the order of the President must be obeyed).

**Second: The problem of research:** The problem of research is reflected in two main points:

1 - Since the rules of the principles of jurisprudence important in the application of legal provisions is that the refusal to apply the provision in the cases mentioned by the Iraqi civil law is an application of the known barrier in the assets of jurisprudence in a way that shows the complementary relationship between the assets of jurisprudence and the law, and if so, is that inhibitor These cases have been judged in itself and prevented the order of the cause of the cause or did in the cause of the rule made the cause ineffective.

2 - The Iraqi legislator prevented the application of the original rule in certain cases and found a provision contrary to the original rule Is his treatment derived from these cases of Islamic jurisprudence or violated it? Was the Iraqi

legislator successful in dealing with these cases or was it flawed with some defects? .

**Scope of the research:** The research includes the study of the inhibitor fundamentalist study in theory with the statement of some legitimate applications in addition to the cases cited by the Iraqi legislator in the civil law in the area of tort liability, which can be considered legal applications to refrain from the application of the original rule.

**Research plan:** The study of the subject requires distribution to two researchers: the first topic in the concept of inhibitor where we will divide it into three demands: the first in the definition of the inhibitor and the second in its types and the third in some legitimate applications on it, and the second in cases of refusal to apply the original rule in the Iraqi civil law, and so on There are also three demands: one in the case of necessity, the second in the case of legitimate defense and the third in the case of the implementation of an order from the President must be obeyed.

### The first topic: the inhibitor and its impact on the application of the Islamic ruling

It is known that the source of the ruling is Islamic legislation, and that Islamic legislation did not enact a ruling without a reason to be added to it in that it is defined as evidence of its existence or influential in itself as in killing it is a reason for retribution, or a contract of sale it caused the transfer of ownership to the buyer and the price of the seller, or influential In it, God willing, as in the sun movement to establish prayer or the month of Ramadan for the obligatory fasting, and the reason is one of the sections of the positive legitimacy (reason, condition, inhibitor, health

and corruption). The usurped place prevents prayer and so on.

Therefore, the fundamentalists defined the reason as: the description that the evidence indicates that it is identifiable to prove a legitimate rule for itself, and knew the reason for the rule: what is the way to reach the rule, is not influential in it, that is, what is the result of the judgment, which does not realize the impact of the mind, and is not making like prayer time. It was also known as a clear and disciplined description of which the street arranges a verifiable verdict and negates its absence, or is a disciplined apparent meaning that the street has made it the emirate of government. However, in spite of the existence of a legitimate reason with all its conditions, it is forbidden to apply the ruling in some matters due to the existence of an obstacle and an obstacle from its application, which is called a barrier, which is one of the sections of the positive legal rule. And the second to its types, and the third for some models Vetch legitimacy of mind.

#### **The first requirement: the definition of inhibitor**

**Inhibitor in the language:** Prevention against giving, impunity inhibiting any is in the highest and prevented from his tribe, inhibitor, prevent, prevent the transformation between the man and the thing he wants, which is contrary to giving, inhibitor: one of the attributes of God Almighty as stated in the Hadith It is narrated from the Prophet (PBUH) (O Allah, I do not mind what I have been given or what I give to what I have banned).

**Inhibitor idiom:** defined several definitions almost identical in meaning, including:

Inhibitor: is what made the street prevent the verification of the cause or judgment, it is necessary of his lack of reason or lack of judgment, or is a disciplined apparent description of the existence of the lack of verification of judgment.

He also knew: what is necessary for his existence is nothing, and there is no necessity or no existence, such as murder, it is necessary to prevent the inheritance of the murderer, but there is no need not to kill the existence of inheritance between the two people, it may not be the inheritance of another inhibitor, such as the presence of religion on the inheritance takes all the estate, The lack of inhibitor does not need anything to say jurists religion mind zakat, if it is not a religion does not have to pay zakaah on the possibility of being poor with non-religion and so on.

Perhaps the best definition of it is the definition of Al-Zalmi where the impediment is defined as: voluntary or involuntary description if he met with the cause of the ruling invalidated it and make it

a graphic reason or prevent the arrangement of the cause despite the fact that he remains a real cause, for example, voluntary description of murder, it is voluntary and is an inhibitor of inheritance, for example The involuntary description of insanity is an objection to the validity of human beings and prevents criminal matters if he commits a crime, where the previous definitions did not say whether the impediment occurs because of the human will or will it happen without his intervention and will.

#### **The second requirement: types of inhibitor**

Divide the fundamentalists inhibitor with different considerations and reasons into several types, some of which we will address in this section and defer others to the second demand:

**First:** inhibitor in relation to either the reason blocker or the reason blocker:

The impediment of the ruling is something whose existence necessitated the absence of a judgment on its cause, with the realization of the reason, for a wisdom requiring the opposite of the ruling, such as the youth who prevented the establishment of the sanction, such as murder that prevents the inheritance, and the different religion that prevents the inheritance.

The reason why it is not necessary to achieve the reason, or what necessitates wisdom prejudice the wisdom of the reason does not result in judgment, such as religion in zakat, the reason is the richness of any quorum king, consoling the poor because of the wealth of the rich and religion is not owned by the debtor on the truth, to suspend rights If its creditors are as much as one or more quorum, then the quorum shall be deemed fictitious.

**Second:** Inhibitor in terms of being an excuse, either mind Muscat or responsibility for diluted:

This type of barrier is concerned with criminal responsibility, when some of the conditions and pillars to be met in the criminal responsibility, the failure of its successor is a barrier of barriers does not have a full or partial impact on these pillars are:

1. If the act is a crime when committed, but if the act is permissible for the perpetrator when it is committed for one of the reasons of permissibility, there is no need for the objector to raise or mitigate the responsibility here because the act is permissible originally, such as the right of legitimate defense and payment of the liquid.
2. Discrimination: The discriminatory does not exempt from liability, but if there is no discrimination, criminal liability is only lifted or reduced, but civil liability cannot be removed because it is based on the damage done to others.

3. Choice: When it lags behind, and in the case of coercion shelter, as in the need to protect the self and the offer of serious danger and reality inevitably here fall criminal responsibility, and cut off a member of the body of a person infected with the disease, or abortion of the pregnant and drop the fetus to protect his mother and others.
  4. Criminal intent: If the intent behind the intent here and committed the prohibited act wrongly counted contraindications of liability or diluted them.
  5. Knowledge of the prohibition of the act: If the defaulter and the actor was ignorant of the prohibition was not able to know fell or eased responsibility.
4. Inhibitor of necessity: as options in the sale, and trickery with injustice in the sale, and exploitation is called here mind completely. These types of inhibitors do not work in one place only, some of them are solved by the actor, such as young and insanity, and some already exist prohibited punishable by law, if the act to use a certain right, such as in military or sports training, or amputation of an organ of a sick human body, or the act performance The duty of the execution of retribution and others, and may return to the means of proof, such as the retreat of witnesses from their testimony, and may return to the right holder, as in the waiver of his right.

#### **The third requirement: Applied examples of inhibitor**

**Third:** inhibitor in terms of extent: divided into:

1. Objection to the beginning and continuation of the ruling taboo marriage sanctity forever, whether due to descent or because of breastfeeding.
2. Mind prevent the continuation of the beginning: as divorce which prevent the continuation of marital life, but both parties can marry according to new contract if the divorce is a minor Baynouna, and symptoms of eligibility that affects the adult sane they prevent the continuity of the correctness of his actions

There may be a barrier in all legal provisions, whether acts of worship or transactions or felonies, and we knew that the barrier is a voluntary or involuntary description if he met with the cause of the verdict invalidated and make it a formal reason, ie, the impact on that reason, even if the conditions are available, On this basis, the fundamentalists put a rule saying (if the inhibitor contradicts with the provision of the impediment) and the meaning of this rule that if the impediment contradicts with the requirement, which is why the street of his existence and the absence of judgment, the impediment to the impediment.

**Fourth:** Inhibitor considering its effect on contract status:

1. inhibitor of the convening: Kkam not match the positive and acceptance in the contract is called the reason for the holding of the reason, and as endowment, it is prevented from the sale of funds suspended by the detainee except for necessity, because it has the benefit only.
2. inhibitor of correctness: such as the inability to deliver the sale is called the reason completely prevented, and money lending with interest rate (sale or loan) contract is corrupt according to Al-Hanafia, it must either nullifying the contract, or removing the cause of nullifying, but when the majority of scholars, usury contract is invalid and cannot be corrected and does not result in impac.t It must be re-established.
3. Inhibitor of validation: such as lack of jurisdiction to act for incompetence, and inquisitive and commandment contract more than one-third, and donations of the disease sickness death by more than one-third, these actions are subject to the authorization of the concerned and here is called the prevention of the beginning of judgment.

Because in every mind is a special wisdom and philosophy, if not taken into account, that wisdom would be lost.

In worship, fasting is a duty for women as it is for men, but in some times this worship is prohibited for women, such as in the case of menstruation and puerperium, ablution with water stolen or a dress or a land stolen all that prevents her health, and the existence of religion on those who have money Ruling on the nisaab (the amount of money required for paying Zakaah) , which is the reason for the obligation of zakaah, mind

In transactions, the smallness and madness, dementia and fools are influential and prevent the validity of many of the actions, if the incomplete disbursement of funds without the permission of the guardian Vtzkm on the leave of the guardian, as hunting is one of the reasons for gaining property is permissible, but it is forbidden at the time of ihram to perform the rituals of Hajj Others in the place of the contract, such as inquisitive contract, it depends on the owner's leave, donations of the patient sickness of death by more than a third, it depends on the leave of the heirs, deceit, injustice and exploitation prevented from the need for the contract, stopping the sale of funds suspended except for necessity if the estate owed debt prevented from running out The

heirs acted in this Before hip debt repayment or allow them to act by creditors, selling eye mortgaged by the current is not implemented only after the approval of the mortgagee because the eye is locked to ensure the right.

In personal cases, ihraam in Hajj is prohibited from establishing the marriage contract, and menstruation is prevented from approaching the wife only after (clearing and washing), divorce and apostasy are prevented from continuing the marriage, killing the heir to his heir, preventing the inheritance, and apostasy and the difference of religion, preventing the inheritance and killing his recommended for the guardian of the commandment.

In felonies, paternity is prohibited from retribution, because the father is the reason for the existence of the son. It is not permissible for the child to be the cause of the execution of his father, not to discriminate for a small or madness that loses sub-civil criminal responsibility that requires compensation for the damage caused, as well as coercive coercion, error and ignorance of the provisions reduces criminal responsibility.

#### **The second topic: cases of failure to apply the original provision in the Iraqi civil law**

Since the error in the Iraqi civil law breach is issued by the realization is thus composed of two physical elements, an act of infringement and moral perception or discrimination, and therefore, the availability of these two elements means the verification of the error and the responsibility of the wrong, but nonetheless there are cases in which this responsibility for the absence of error. Despite the availability of these two elements of the existence of a barrier to prevent the impact of the error that is the cause of responsibility, and thus decide the irresponsibility of the actor according to the fact that the act is not considered a positive error of responsibility, and in this context has organized the Iraqi law in the Civil Code three cases can be counted applications to prevent the reason we talked about in The first topic, and these cases are (the case of necessity, forensic defense, the implementation of an order from the President must be obeyed) and thus we will distribute this topic to three demands speak in the first demand about the state of necessity and address in the second requirement for legitimate defense and allocate the third requirement to talk about the status of the implementation of an order. The head must be obeyed.

#### **The first requirement: the case of necessity**

The Iraqi legislator regulated the necessity in Article (213) of the Civil Code, according to the rule of compulsion does not invalidate the right of third parties known in Islamic jurisprudence, but

he made some modification in its provisions, and for the purpose of familiarity with the concept of the state of necessity and its provisions, we have two branches, we devote the first to the concept of necessity and address In the second necessary provisions.

#### **Subchapter I: The Concept of Necessity**

In this regard, it is necessarily intended that a person finds himself in a situation in which he is threatened by a grave danger against him or another and does not find a way to escape from this danger or to avoid it except by an act that causes harm to others, and the danger to be avoided either to be equal to or without harm to others. In this case it is not possible to adhere to the state of necessity and ask the perpetrator for his damaging act in full, or that the danger is much greater than the damage done so that the damage is not a small thing in exchange for danger, such as uprooting a tree owned by others for the purpose of saving himself, the damage is caused by force majeure. Where there is full responsibility for the lack of deviation from the person's behavior. The risk is more severe than damage, but does not reach the limit of force majeure or the extent of urgency, such as destroying the money of others to avoid collision with a car, this forced does not invalidate the rights of others, but the responsibility of the perpetrator is a mitigating responsibility, or the risk is so severe that it is a necessity but does not inform. The status of force majeure, which is the usual imposition of the state of necessity, in which case the compensation is easier and lighter than usual conditions, although the victim has no hand in the establishment of danger, because the damage caused the perpetrator to commit the harmful act to protect himself or other severe and more severe damage. Of the damage to the injured. Another case of necessity is the case of carrying private damage to ward off public damage as if the demolition of a house without the authorization of its owner to prevent a fire in the whole locality, and in this case it is assumed that the perpetrator of the harmful act does not bear the responsibility of the harmful act because it has done a service to the State and society is to prevent. Public damage has occurred, but the Iraqi legislator has distinguished here between two cases as we will show when talking about the provisions of the state of necessity.

The case of necessity differs from both the force majeure and the case of legitimate defense. In case of necessity, the cause of the damage can make it possible to prevent the occurrence of the error, but to bear the danger it was threatening. In force majeure, there is no way for the actor to guard against the events of the harmful act. The victim is the one who caused the danger that

caused the recourse of the perpetrator to commit the harmful act, contrary to the case of necessity where the injured does not have a hand in causing the danger that the harmful act has created.

However, the state of necessity cannot be fulfilled unless its conditions are fulfilled. The danger which caused the harmful act shall be a threat that threatens the same compulsory or the same as others, or the compulsory money or other money. If a car driver is mistakenly forced to destroy money in order to avoid run over a person, he will be fully responsible and sentenced to full compensation. It can avoid collision if it is reasonably fast then doing it is a positive mistake Responsibility for violating the rules of traffic and must be from the cause of damage has been intended to avoid greater harm, whether such damage to the self or on the money, and thus achieved the case of necessity in the case of a person entering the land of others planted and damaged some crops in order to save his money from A fire is imminent.

In summary, the state of necessity means that a person is obliged to commit a detrimental act against others, for himself or for any other danger, which exceeds the harm caused, whether this risk is on the same person, the same person, the person 's money or money.

### **Subchapter II: Provisions of Necessity**

The ethnic legislator distinguishes between two forms of state of necessity: to commit lighter damage to avoid more severe damage, to bear private damage to ward off public damage.

First picture commit lighter damage to avoid more severe damage

The Iraqi legislator has organized this picture in Article (13), where he decided that if two conflicts contradict the greatest harm and the most severe damage is still removed, but the compulsion does not completely invalidate the rights of others, if a person is forced to cause harm to others to avoid greater damage is not required full compensation, But rather an appropriate compensation to be assessed by the Court.

It is noted that the Iraqi legislator has quoted to address this case of necessity Islamic jurisprudence rule in violation of its decision to exempt the perpetrator of the harmful act from part of the compensation and bear the responsibility of the person who suffered the damage, although the rule in Islamic jurisprudence that forced does not invalidate the right of others, and accordingly compensation The Iraqi legislator has not dealt with the case of the destruction of something owned by others to ward off the threat to him or others because of this thing, the damage here emanates from

something owned by the victim. Causing damage from a road owned by something that is the source of danger, it is On the other hand, it cannot be said that the perpetrator of the damage was in the case of a legitimate defense because the owner is not aggressor just because the possession of the thing is the source of danger. We believe that the Iraqi legislator has been successful in not dealing with this case within the provisions of necessity because this case can be sought within the provisions of tort liability, which provides for the responsibility of the person for what is under his actual control of the animal or construction or other non-living things.

Second image (carrying special damage to ward off general damage)

The Iraqi legislator has decided on this picture to distinguish between the act that actually caused the damage to the first order and the actor to do it on his own, where the actor obliged to guarantee in the second case without the first, but with appropriate compensation and not full compensation

Some jurisprudence is criticized for this treatment by the Iraqi legislator, because the person who paid the public damage has done a public service, it would be unfair to be obliged to be compensated appropriately, but should be decided to such a person rewarded by the state, and if there is a need to compensate The private damage is the responsibility of the state, and we do not agree with those who see it, obliging the beneficiary party to prevent the public damage to compensate because the latter did not commit what should be obligated to indemnify it. It can be said that the source of their obligation to compensation is due to Ath Beyond no reason because the payment of unexpected damage is not enriched.

Second requirement: legitimate defense

The right of legitimate defense is a right dealt with by Islamic jurisprudence and termed the payment of the questioner, which is the other case of the absence of error for the harmful act has been dealt with by the Iraqi legislator in Article 212 of the Iraqi Civil Code, where the terms and provisions, and accordingly we will address this requirement through two sections shown in the first request The concept of legitimate defense In section II we talk about the provisions of legitimate defense.

### **Section 1: The concept of legitimate defense**

The law permits a person to respond to an attack in certain circumstances, and the act is not considered to be an error requiring responsibility, based on the balance between the interests of the defender and the aggressor and the preference of the former over the second because the defender

does not do more than the authorities do if they can intervene to respond in a timely manner. The defender himself replaces the public authority in the response to this attack, where the question of legitimate defense assumes that the injured person has initiated the damage caused by the unlawful attack. He is not considered an aggressor, as he wanted to pay for himself or others an unlawful danger that he could not pay by other means. , The legislator notes that the nudity The right of legitimate defense has been limited to the danger to the reality of self without actually risk money unlike Egyptian law and the Iraqi Penal Code, he expanded the right of self-defense to make it actually includes the attack on the same defender or the same as others.

In fact, the Iraqi legislator in the civil law was not successful in limiting the right of legitimate defense to self-assault because the payment of the assault on money is of great importance, although less important than the payment of self-assault, and the Iraqi legislator in this position has taken A course that contradicts the purpose of Islamic law in keeping money, which is one of the five main purposes of Islamic law, and the determination of the civil responsibility of the defender of money leads to weakening the protection of public money, which is not without risk, and it was better for the Iraqi lawmaker to avoid, especially as extending the right Shara Defense To defend money is not dangerous as long as the legislator has the right to defend by not exceeding the necessity to pay the risk and is sufficient to make the defender adhere to certain limits in the defense so that he cannot commit a substantial act for a small amount or exceed the limits of necessity.

In general, it is required for the exercise of the right of legitimate defense the availability of a number of conditions, it must be the threat to the self or money immediately so that it is feared, it is not required to have already occurred, and leave the assessment of fear to fall to the person who was in a state of defense, and accordingly The Egyptian Court of Cassation ruled that it is not stipulated in the law for the state of legitimate defense to have already committed an attack on oneself or money, but it is sufficient that there has been an act feared for such an attack, and to assess the motive that the act requires the defense to be sufficient on the grounds Reasonable that would justify it.

We believe that as long as the lesson in the appreciation of what the motive sees in the circumstances in which it is, the court hearing the case must take into account the defender 's own judgment to judge the existence of a case of legitimate defense or not.

In order to exercise the right of legitimate defense, the danger posed to the defender is unlawful. Accordingly, the arrest of a thief by the police is not considered an unlawful assault. Therefore, resisting this arrest is not a legitimate defense. To push the attack and to be able to resort to the public authorities to prevent the danger in time

**Finally**, it is necessary to have the defense to the extent necessary to push the assault without exceeding or exaggeration, otherwise the defender is considered an aggressor and the assailant shares the responsibility on the basis of a common danger issued by both.

#### Subchapter II: Judicial Defense Provisions

The Iraqi legislator distinguishes between two cases of legitimate defense, which we show successively:

#### **The first case: not exceeding the amount necessary to respond to the attack**

If the defender does not exceed the amount necessary to respond to the attack, he is considered in a state of legitimate defense and the act issued by him is not permissible and does not entail responsibility. The Iraqi legislator has established this provision on the basis of necessities permissible prohibitions, where he started the text of the article by saying (necessities allow prohibitions, but estimated as much) In this regard, the fact that the defender has exceeded the limits of the right of defense or did not exceed it is a matter due to the same rules and regulations established by the jurists of the criminal law in this regard, on the other hand does not require the symmetry between the means of defense and the attack, and thus the Egyptian Court of Cassation that the symmetry Ba Assault is not a requirement of legitimate defense conditions, but that the defender to defend himself by means of its response it deems necessary aggression, which vary according to circumstances.

#### The second case: exceeding the amount necessary to respond to the attack

If the defender exceeds the limits of the defense, he shall be obliged to compensate, taking into account the requirements of justice. This means that the compensation is not complete and is not measured in harm because the defender himself or for others does not have himself so that he is required to accurately estimate what the situation requires, taking into account the proportionality of the risk. Threatening him and the means by which this danger, if exceeded in good faith the limits of legitimate defense, it is appropriate to be sentenced to incomplete compensation.

The third requirement: the implementation of the order of the President must be obeyed

The Iraqi legislator dealt with the provisions of this case, starting with a doctrinal rule that the harmful act is added to the perpetrator and not to the matter. The perpetrator shall bear the security unless the coercion is a refuge in the actual conduct of the matter. Then we show the responsibility of the subordinate for orders issued by the President must be obeyed.

**Subchapter I:** The original responsibility of the perpetrator and the order

Al-Qaeda in Islamic jurisprudence that the direct guarantor of all the damage, whether the availability of error or not available Valjnun and boy non-discriminatory and people and the wrong and their ilk civilly responsible for their differences for the money of others and this is taken by the Iraqi lawmaker in the Civil Code Or cause a guarantor if such damage has been deliberate or infringed, and if a special or non-discriminatory boy is damaged or anyone else's money is required for the security of his property, the damage may be direct and may be the cause of the damage directly is what is achieved without being separated Between the damage and the direct act of another event, either If the Iraqi legislator has quoted the provisions of the destruction of Islamic jurisprudence and mentioned the terminology of the damage directly and the damage caused, but it violated Islamic jurisprudence by not distinguishing between them in terms of the rule where the infringer or deliberate guarantee This means that the Iraqi civil law has made deliberate or infringing the basis of security in cases of direct and cause, as it added the security to the infringer of them in the event of their meeting, the Iraqi lawmaker and tried to keep up with Islamic jurisprudence in his conduct regarding the rules to ensure the act Enter a customization On the basis of the Islamic jurisprudence of the rules and that of three aspects, the first is that the Iraqi legislator stipulated deliberate or infringement of the security contrary to Islamic jurisprudence, which did not require either of them for the direct and secondly that the Iraqi legislator committed deliberate or infringer of the guarantee, whether direct or harmful to the cause of events Damage contrary to the Islamic jurisprudence, which made the direct guarantor without the culprit and the third that the Iraqi lawmaker approved direct meeting and the culprit and ruled solidarity in the responsibility and obliged to ensure together contrary to Islamic jurisprudence, which recognizes their meeting.

After that the Iraqi legislator between the provisions of the guarantee for both the direct and the cause of the rule of those who have already done on the order of others decided to add the verb to the perpetrator, not to the matter

unless the perpetrator is obliged, and then showed that the compulsion considered in the actual actions is coercion alone shelter, and this provision is consistent With the Hanafi school, where the scholars of Hanaf divided coercion into two types of shelter and non-shelter, if the coercion is threatened with death or amputation of one of the organs or beatings, which is afraid of damage to the soul or organ, it is coercion refuge and the impact of the execution of dissatisfaction and spoil the choice, but if the threat of imprisonment is conducive to damage it is a shelter, it executes satisfaction but does not spoil the choice because the impeller can bear the harm endangered.

It is clear from the foregoing that in cases where the perpetrator commits harmful acts on the order of others, the responsibility for such acts lies with the perpetrator and not on the matter unless the act is the result of coercion as a refuge. It is the responsibility, or whether the implementation of the order of the President must be obeyed is an exception to the general rules in this area, this is what we will show in the next paragraph.

**Subchapter II: Responsibility of the subordinate for orders issued by a president who must be obeyed.**

If an employee conferred by his superior's command, he did an unlawful act that harmed others in himself or in his money. Although the general rule is that the act is added to the actor, not to the matter unless the first is forced to coerce a shelter, the law permits this act to the public official if it is issued to him. The order of the President must obey him, and I believe the legitimacy of the work done and his belief was based on reasonable reasons, and took into account the caution and caution in the implementation, but notes that it is required to relieve the perpetrator of responsibility in this case that the order and the sheriff public servant, and follows So that it is not permissible for the user in the shop or for the worker or the son or The wife may rely on the exemption prescribed in this case to get rid of responsibility for their harmful acts issued by them on the order of the employer or father or husband.

The person who caused the damage must prove that he believed the legitimacy of the work he gave to establish the evidence that he took care of that aspect of caution and that his belief was based on reasonable reasons, and this is the case if it is aimed at achieving a public interest within the limits established by law, but if the matter is issued for a personal purpose or outside the limits of the law, there is no legalization and the responsibility of the sheriff is committed when he commits the harmful act.

If the health inspector, for example, instructs employees with whom to destroy some of the foods on the market for corruption and danger to public health, there is no responsibility for those who have destroyed them, as well as if the municipal engineer ordered workers to demolish a wall. The reason for the employee's irresponsibility in such cases is due to the objective criterion which is the standard of the usual person, because if the usual person is found in such circumstances and according to the above conditions, he does not find the execution of the order of the boss, the employee shall not be Deviant from the behavior The usual person when executed orders his subordinate when advanced conditions are fulfilled and then not be determined responsibility

On the other hand, obedience to the law is one of the reasons for permissibility in which the act is not considered (wrong) and therefore does not rise criminal or civil liability (55) (Dr. Hassan Ali Al-Thanoun 243)

However, if the president's mistake is proved to be illegal, the government is responsible for his work. Issued by him

We conclude from the foregoing that the Iraqi legislator has singled out the case of the implementation of an order from the President must be obeyed special provisions, after the act is added to the actor, not to the order unless coercion is a refuge in the Department of Financial Transactions ruled that the subordinate is not responsible for acts harmful to others Acts was the implementation of the orders of the President must obey him if the conditions specified for it, and this means that the Iraqi legislator did not regulate this situation within the provisions of direct and cause, although the subordinate is direct to the act and the president is a cause.

## CONCLUSION

The main findings and some recommendations include:

First: the results

1 - The cases where the application of the original provision in the field of tort in the Iraqi civil law can be considered applications to prevent the reason on the grounds that the error, which is the cause of tort liability was available in these cases, but nonetheless refrained from its impact.

2 - The Iraqi legislator and to quote the absence of the status of error on the harmful act of Islamic jurisprudence, but he carried out some of the provisions of the modification, in the case of necessity caused damage causing appropriate compensation even if forced to commit the harmful act to prevent public damage, as

exempted damage from part of the damage Compensation if it is obliged to pay special harm more severely than the harm inflicted on the victim, even though the legal rule that compulsion does not invalidate the right of others, and in the case of legitimate defense limited the right of defense to self-aggression without money, although the preservation of money is a main purposes of Islamic law In the case of the implementation of the order of the President must be obeyed did not regulate him This case within the provisions of direct and cause even singled out special provisions, although the actor and the subordinate can be counted directly and it is the president can be counted cause.

## RECOMMENDATIONS

1. We call on the Iraqi legislator to reconsider the provisions of the state of necessity in its form, so that the victim of the act of compulsion shall be fully compensated if having to pay special harm, and exempt the compulsory to commit the harmful act from compensation if the need to pay is harmful.

2 - We recommend that the Iraqi legislator to make the case of legitimate defense includes the defense of money in addition to self - defense, the importance of protecting private money on the one hand, and because the lack of civil protection of the defender of money leads to weakening the protection of public money, which is not without risk.

## REFERENCES

1. Mr. Mohammed Baqir al-Sadr, lessons in the science of assets, c 1, i 1, Center for Research and Specialized Studies of the martyr Sadr, 1424,, p. 2009, p. 46, FadelSaffar, polite in the fundamentals of jurisprudence, i 1, Islamic thought Beirut Lebanon, 2010, p. 35.
2. Dr. Ahmed Fathallah, Dictionary of Jurisprudence, JafariFiqh, 1st Floor, Al-Mawkhil Press Dammam, 1995, p. 223
3. Dr . Mustafa Ibrahim al-Zalmi, the origins of jurisprudence in its new fabric, c 1, i 5, Atat book industry Cairo,, 2009,, p. 236. Sheikh Hassan KarimMajid al-Rubaie, the science of Islamic jurisprudence, i 1, Sunrise Press Najaf, 2008, p. 253.
4. Mohammed bin AbiBakr bin Abdul Qader Al-Razi, Mukhtar al-Sahah, Dar al-Resala Kuwait, p. 636
5. IbnManzoor, the tongue of the Arabs, c 8, Dar al-Hadith Cairo, 2003, p. 374.
6. Badran Abu al-AinainBadran, Principles of jurisprudence, Dar al-Maaref, without a place printed, 1966, p. 544.
7. Sheikh Hassan KarimMajid al-Rubaie, a previous source, p. 266.



8. Dr., Yousef Hassan Al-Sharrah, the hope in the science of assets, the Council of Scientific Publishing, Kuwait University, 2003, p. 21. Sheikh Montazeri, the end of assets, i 1, Jerusalem - Holy Qom, 1415 e, p 159.
9. Dr. Mustafa Ibrahim al-Zalami, previous source, p. 255.
10. WahbaZuhaili, brief in the fundamentals of jurisprudence, i 2, Dar contemporary thought Beirut, 1995, p 139.
11. Dr. Mustafa Ibrahim Al-Zalami, semantics of texts and ways to derive judgments in the light of the principles of Islamic jurisprudence, i 1, without place of printing, 2014, p. 39 and beyond
12. The previous source, p. 44
13. Hassan KarimMajid, a previous source, p. 267.
14. Zalmi, the origins of jurisprudence, c 2, previous source, p. 263.
15. Dr. Mustafa Ibrahim al-Zalami, clarification of the benefits in explaining the rules on a new pattern, i 1, Iran Tehran, 2014, p. 82.
16. AmadiSaif al-Din Ali bin Mohammed, the provisions in the assets of the realization of Abdul RazzaqAfifi, c 1, i 2 Islamic Office,, 1402 e without printing place, p. 130, Wahba al-Zuhaili, previous source, p.
17. Dr. Hassan Ali Zunoun The General Theory of Obligations, Mustansiriya University, 1976, p. 238.
18. This division is attributed to the late Dr. Munther Al-Fadl, The General Theory of Obligations in Civil Law, 1st Floor, Dar Al-Kutub and Al-Rawaqat, Al-Rowad Office for Printing, Al-WazeeriyaAbiTaleb Street, 1991, p. 316.
19. Dr. Mahmoud Saad al-Din al-Sharif, explain the Iraqi civil law, the theory of compliance, c 1, Ani Press, Baghdad, 1955, p. 383.
20. Dr. Abdul Majeed Al-Hakim, Sources of Commitment, 2nd Floor, Al-Ahliya Publishing Company, 1963, p. 440.
21. FaridFityan, Sources of Commitment, Ani Press, Baghdad, 1956 - 1957, p. 303.
22. Dr. Hassan Ali Dannoun, previous source, p. 239.
23. Dr. Abdul Majeed al-Hakim, a previous source p. 439
24. Dr. Tawfiq Hassan Faraj, d. Mustafa Jamal, sources and provisions of the commitment, I 1, Halabi publications, Beirut, Lebanon, 2008, p.
25. Dr. Tawfiq Hassan Faraj and d. Mustafa Jamal, a previous source, p. 378.
26. Dr. Abdul Majid al-Hakim and others, the theory of compliance in the Iraqi civil law, the legal library, Baghdad, without printing year, p 226
27. Dr. 383 See Article 214 of the Iraqi Civil Code.
28. Abdul Majeed al-Hakim, a previous source, p. 440.The same source, p. 439.
29. Abdul Majid al-Hakim and others, previous source, pp. 222, 223.
30. Dr. Mahmoud Saeed al-Din, previous source, p. 381.
31. Dr. Hassan Ali Al-Thanon, previous source, pp. 240, 241.
32. Dr. Tawfiq Hassan Faraj, d. Mustafa Jamal, a previous source, p. 376.
33. Fred Fetian, previous source, pp. 301, 302.
34. -Dr. Hassan Ali Al-Thanon, previous source, p. 241
35. Dr. MuntherFadl, previous source, p. 306
36. Abdul Majid al-Hakim and others, a previous source p.
37. Abdul Majeed al-Hakim, a previous source, p. 435 See Article 212/1.
38. Dr. Hassan Ali Dannoun, previous source, p. 241. See Article 212/2.
39. Dr. Mahmoud SaadEddin, a previous source, p. 381.
40. Dr. Mustafa al-Zalami, The Origins of Jurisprudence in its New Text, Ibid., P. 245. See Article 186/1. See Article 191/1.
41. Abdul Majid al-Hakim and others, a previous source p. See 186/1.
42. M., MedhatSalehGhaib, direct and cause in the law and Sharia, research published in the Journal of the University of Tikrit for Humanities, Volume 16, Number 2, 2009, p 61.
43. Abdul Majeed al-Hakim and others, a previous source p. 220.
44. See Article 215/1.
45. Dr. Mustafa Al-Zalami, Professor Abdul Baqi al-Bakri, the entrance to the study of Sharia, 1st floor, Dar Al Sanhoury, Beirut, Lebanon, 2015, p. 277.
46. Dr. Mahmoud Saad al-Din al-Sharif, previous source, pp. 381, 382.
47. Dr. Hassan Zannoun, previous source, p. 243. See Article 215/2.
48. Abdul Majid al-Hakim and others, a previous source, p. 228.
49. Abdul Majeed al-Hakim, a previous source, pp. 436, 437, 438.
50. Dr. Hassan Ali Al-Thanon, previous source, p. 243.
51. Article 219 stipulates that (the government, municipalities and other institutions that provide public service and every person who exploits an industrial or commercial establishment shall be liable for the damage caused by their employers if the damage arises from the infringement of their duties while serving them).
52. Abd al-Majid al-Hakim et al., Previous source, p. 228.

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