

The personal scope of the mother's responsibility and ways to get rid of it

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Abstract

The guardian, represented by the father or grandfather, is responsible for the care of the young child and for his actions and behavior, and therefore they are civilly responsible for every harmful act committed by the youngster. to the appointment of a guardian and the imposition that the mother takes precedence over others, and what is meant here is responsibility; The person to whom the authority of care and supervision has been transferred may be held accountable for compensation when the person under the care commits a harmful act that causes harm to others. As Article (102) of the Iraqi Civil Code No. 40 of 1951 states: "The guardian of the young child is his father, then his father's guardian, then his true grandfather, then the guardian of the grandfather, then the court or the guardian appointed by the court," as it becomes clear from this article that the term (guardian) In this article, it is related to the guardians of the young's money from a natural guardian and a guardian, as Article (34) of the Minors' Care Law No. 78 of 1980 states that "the guardian is the one whom the father chooses to take care of the affairs of his young son or the fetus, and then whom the court appoints that the mother takes precedence over others. According to the interest of the little one.

Guardianship in the case of the mother is like the father. She has supervision and care over the young, in the event of the father's absence or an impediment to him, the mother replaces him not in the position of guardianship, but rather as a judicial agency in carrying out matters related to the care of the children. He was entrusted with custody of the children and she is the mother; Thus, according to these two articles above, the mother is legally obligated by virtue of her guardianship to supervise and care for their children as long as she is alive and the guardianship has been assigned to her, and therefore she is responsible for every harmful act committed by their minor children.

Keywords: mother, civilly responsible, Law,

INTRODUCTION

First: the importance of research

The basic principle is that a person who is legally seen is not obligated to compensate except for his harmful actions, and for the aggrieved person to be entitled to this compensation, he must prove the wrongdoer of this act. However, in consideration of the aggrieved party, a person may be obliged to compensate for every harmful act committed by another person; This is what is called in the Iraqi civil law responsibility for others. In accordance with scientific necessities, practical reality, the

large number of widows and the absence of both the father and grandfather, we find that it is important to determine the scope of the person who is legally obligated to compensate for the act of the young child. Because this relates to our daily life, even if the responsibility for the actions of others is considered an exceptional and secondary responsibility that the legislator established on a presumed mistake in order to alleviate the burdens of those affected and at the same time to save the young person who may find himself accused of it while he is unaware of what he has done; The responsibility of the person charged with the supervision of the

young person for the actions of the person covered by the supervision and care. If the youngster commits a harmful act, he must be compensated, so that the person in charge of supervision cannot absolve himself of responsibility unless he denies the mistake on his part by proving that the care and control on his part has been achieved in the most complete way, or by denying the causal relationship by proving the interference of the foreign cause, and such a matter requires research because of its importance for the young and the affected alike.

Second: the research problem

The identification of the research problem is related to the statement of the legal texts that dealt with the responsibility of the minor and which are not in accordance with Arab legislation; As the latter expanded the scope of both the person in charge of oversight and the one covered by the oversight, which requires following up on the texts involved in defining the scope of the person charged with care and oversight. Therefore, this study came to determine the areas of accountability of the mother; Examining the legal texts related to them to study the problems of their application, as there are many sources of error in these areas that require an explanation of how to treat them; One of them is what harms the father towards the children after the divorce, where custody is transferred to the mother, yet he is responsible for the harmful act committed by the youngster; Also, what harms the mother when she is the guardian of the young, and that is if the school neglects the care of the little one, then the mother is responsible, which requires scrutiny of these areas as problems that require treatment.

Third: Scope of Research

This research included the personal scope of the mother's responsibility in the event of illegal acts committed by the young, to find out the legislative shortcomings in both the Iraqi Civil Code No. 40 of 1951, the Personal Status Law No. 188 of 1959, the Minors' Care Law No. 78 of 1980 and the Juvenile Welfare Law No. 76 of 1983, to clarify the texts that allow the responsibility of the mother and cover it with the law. The research did not discuss all the legal provisions concerned with the responsibility of the young, but only those related to determining the scope of the mother's responsibility; Others

require careful and specialized research, which we cannot address.

Fourth: Research Methodology

This research follows the analytical method by clarifying the rules of law that explain the responsibility of the mother, the provisions of the judiciary (if any), and the directions of legal jurisprudence. whereby we explain the issues of this liability and ways to pay it; In addition to the researcher's weighting of everything that agrees with the legal logic and not what he sees personally, with an attempt to refer to the legal provisions that decide the equality of the father and mother in caring for the young; From all of the foregoing, we set an officer for the beginning of the study in order to achieve fairness to the responsible and the injured in order to reach a sound legal opinion.

Fifth: Research plan

The behavior of this methodology requires that we divide the research into two sections. In the first section, we deal with cases of transfer of the authority of care and control, and we will explain in it the reasons for the transfer of control to the mother in order to stand the conditions of the mother's responsibility, and then we explain in the second topic ways to rid the mother of her responsibility, and we will discuss in it how to deny each of her fault and denied a causal relationship.

The first topic

Cases of Transfer of Care and Oversight Authority to the Mother

The authority to care and supervise the minor is a characteristic that the legislator gives to the father, according to which he is authorized to supervise the minors in a way that allows him legally to follow the actions of others, whether with regard to himself or money, by virtue of his authority over the actions of others and the management of his money. He must supervise in order to protect his family and to empower his children with knowledge and education(); The authority of care, although it is an authority available to the father, it can be transferred to the mother, but in certain cases and conditions. This was clarified by the Minors' Care Law No. 78 of

1980 in Article (34) of it, stating that “the guardian is the one whom the father chooses to take care of the affairs of his young son or the two young children.” Then whoever the court appoints that the mother should take precedence over others in accordance with the interests of the young child. For the public order, so it is necessary, and knowing what is required, to explain the reasons for the transfer of control to the mother (first requirement) to clarify in (second requirement) the conditions of the mother’s responsibility.

The first requirement

Reasons for the transfer of censorship to the mother

There is no doubt that researching the responsibility of the mother means studying the cases in which she is responsible for others, i.e. for her minor children, if they cause harm to others. Such reasons are limited to a narrow scope, restricted by the absence of a legal guardian and as follows:

First: the absence of state conditions

The first paragraph of Article (218) of the Iraqi Civil Code states that “1- The father and then the grandfather are obligated to compensate the harm caused by the minor.” However, either the father or the grandfather may not fulfill one of the conditions of the legal guardian, or he may lose it entirely after it has been proven. At that time, and at the request of each interested party, the court decides to take the guardianship from him and transfer it to the one who comes after him in rank from the guardians or custodians, as the guardian may lose his capacity by going insane, or if he abandons Islam to another religion and thus causes him to differ from the

religion covered by the supervision and the same ruling if the youngster abandons the religion of Islam, and the guardian loses the conditions of guardianship if he is unable to carry out the affairs of guardianship because of his illness or his preoccupation with work that requires him to move from one country to another (); Or in sentencing him to a penalty restricting his freedom, then the authority of oversight must pass to whoever follows him in this authority. The absence of a legal guardian refers control to the mother, and there is no way for her to refuse, as the Iraqi Juvenile Welfare Law No. 76 of the year stipulates regarding the reference to the

guardian; This is stated in Paragraph V of Article (3) of it as “Fifth - The father and mother, or any person who has joined a young child or juvenile or who is entrusted with the upbringing of one of them, is considered the guardian of one of them by a court decision.” We find that the above text extends the scope of the supervision and guardianship authority to include the mother, but rather everyone who takes care of him by a court decision, whether he is a relative of the young child or a non-relative. Its meeting at the same time for multiple guardians” ().

Second: The expiry of the legal guardian’s period of time

Also, one of the reasons why supervision is transferred to the mother and her bearing responsibility for the actions of the person under care is the expiration of the guardianship period; That is, with the death of the father and the absence of the grandfather, it is automatically transferred to the mother according to the legal text “then who is appointed by the court, provided that the mother takes precedence over others in accordance with the interests of others,” and whether the person under the care is young or adult, but he was insane or a lunatic, as guardianship extends over the latter because each of the insane and the lunatic are considered self-quarantine, without the need for a court ruling. This is in contrast to the foolish and the adult heedless of, where each of them is considered an adult unless a judicial ruling is issued against each of them to be stoned, then each of them is under guardianship. Death is an obvious place where the authority of the father as a legal guardian expires, and the authority of the assignment is transferred to the mother, who begins her guardianship over the person under care.

Third: Absence or loss of the guardian

Every person who has not had a known place in Iraq or has left Iraq for more than a year, but he has not been informed of the matter, which would prejudice the legitimate interests of him and others(), shall be considered absent. Article 33 of the Minors’ Care Law No. 78 of 1980 states that “the court decides to stop guardianship when it considers the guardian absent or if he has been sentenced to a freedom-restricting penalty for a period of more than one year.” We note from the previous text that it is possible to transfer the authority to control

children Judgment to the mother in the absence of the guardian, of course, in her capacity as the first guardian over other guardians, according to the interests of the young child. The absence of the guardian does not lead to the removal of guardianship from him. Rather, it stops due to the possibility of returning. Otherwise, it will pass to the one after him in rank, which is the grandfather, and assuming that the grandfather does not exist, then the mother will have the actual authority over the young(); The fact that the transfer of guardianship after the father is for the next of kin to follow up on the harmful actions of the youngster, and the confirmation of this right in the authority to supervise the young is only after the absence of the next of kin. With regard to the missing; He is every person who is absent and no news has been lost from him, and it is not possible to ascertain whether he is alive or dead(); If the Iraqi legislator has suspended the guardianship of the absent, whose news has not been interrupted, and transmitted it to the next in rank; It is a fortiori that the guardianship of the missing person whose news has been cut off, and this is confirmed by the legislator, as Article (93) of the same law states that “the court may rule the death of the missing person in one of the following cases: First: if there is conclusive evidence of his death, second: if it passes Four years after the announcement of his loss, third: if he was lost in circumstances that presumed his death, and two years have passed since the announcement of his loss. In this case, the missing guardian loses the actual authority over the minor and does not have the status of the guardian in law, and therefore it is difficult to reach him. The court must establish someone to take charge of the minor’s affairs and supervise him, which makes backbiting and loss, both of which are valid as a reason to transfer responsibility for the harmful act committed by the minor to The mother provides the reasons for guardianship.

Fourth: The misbehavior of the guardian

Guardianship takes precedence over tutelage and has a higher degree in two respects; If it comes to contractual dispositions where guardians can perform them without contingent upon permission from the court, this is in contrast to the custodians who have the right to do any disposition related to the administration’s work without implementing the disposition as the latter requires permission from the court (

),this is on the one hand, and on the other hand, this preference appears when the guardian is not related to the child and is not directly related to the child by blood. The guardian has a direct blood relationship with the younger one, except that if the best guardianship over guardianship is from these two aspects, However, we find that in the area of responsibility for the harmful act committed by a young child, there is no preference between whether the person with control and supervision is a guardian or a trustee; Each of them is obligated to compensate the aggrieved party from his money if the youngster does not have money, and this preference is denied from the other side if the guardian is the mother, so the blood relationship with the mother is the same as with the father; In addition to the law restricting the care of minors, the actions of the guardian and the guardian with the approval of the Minors’ Care Department (),the judge has the right to take away the guardianship of the father or grandfather if it is proven to him the misconduct of either of them, as the case may be, as if he squandered the money of the youngster or disposed of it in a way that endangers it without the consent of the care of minors; Whereas Article (32) of the Minors’ Care Law No. 78 of 1980 indicated that by stating that “the court may take away the guardianship of the guardian whenever it is proven that he has misbehaved.” As it is clear from the foregoing that the court has a discretionary power to take away the guardian’s guardianship or not, when an abuse is proven The guardian in carrying out the affairs of the person under the care and knowing whether the behavior of the guardian is considered misbehavior or not is a matter that leaves his discretion to the subject judge, and the Iraqi legislator also permitted the possibility of dismissal of the guardian based on recommendations by the Accounting Committee when this is in the interest of the youngster ().

It is clear from the foregoing that the authority of supervision and supervision over a young child can expire in law, either permanently or non-permanently, as the permanent expiration of the authority of supervision and supervision of the father or grandfather is achieved upon their death and also when the young child reaches the age of sound mental strength, i.e. without madness or dementia.

As for the non-permanent termination, it may be achieved in specific situations and facts that result in the termination of the guardianship of the father and the transfer of his authority by supervision to the next in rank, which is the grandfather. If he is not present, then the mother according to the interest of the young. From here it is clear that the father or the grandfather can have any of them the natural authority and authority over the soul of the young child and take responsibility for his actions, hence, this authority can be transferred and the mother may replace either of them to bear this responsibility in specific situations. Therefore, she has the authority to supervise the young child, giving her the responsibility to take care of him, monitor him, and bear his actions; When a child commits an act that is harmful to others; The responsibility of the mother as the guardian is to be his custodian; It will be responsible for any damage caused to others and bear the burden of compensating it. Therefore, we note, especially in the present time, the large number of widows due to terrorist acts; mother enjoys in her guardianship over the same young one as a guardian the right of custody and care of the young, but at the same time she has to pay the fine as she has the sheep, but with conditions, she is obligated to supervise their actions and carry out the duty of care and control to prevent their breach of the previous legal obligation not to harm others, otherwise she will be responsible on conditions that we will explain in the second section.

The second requirement

Conditions for verifying the mother's responsibility

The first paragraph of Article (218) of the Iraqi Civil Code states that “the father and then the grandfather are obligated to compensate the harm caused by the young person,” meaning that the Iraqi legislator is under the responsibility for the harmful act of the young person to the father and grandfather and no one else. But what if one of the reasons for the expiration of the guardianship is realized, then who can the aggrieved party return for compensation? To answer this question, we refer to some legal texts scattered in several legislations, through which it is possible to identify the person responsible after the father and grandfather of this young child. First, Article (34) of the Law on the Care of Minors No. 78 of 1980 specified who the

guardian is, stating that “the guardian is the one he chooses.” The father takes care of the affairs of his young son or the two fetuses, then the court appoints him to give the mother precedence over others according to the interests of the young child. It is clear from this text that the mother comes at the forefront of guardians with the loss of the father or grandfather, and as long as she fulfills the conditions of guardianship, she cannot leave guardianship, and in the area of determining who is responsible for the care of the young, Article (13) of the same law stipulates that “Social research for the purposes of this law is the collection of information On the minor, his environment, his relationship with his family, and the investigation of the extent to which the person charged with the care of the minor performs the duties he is legally obligated to, and there is no doubt that the one who must perform these legal duties after the father and grandfather is the mother (), especially compensating those affected by the harmful act of the young child, and her failure to perform this duty as well as the Taking care of the minor exposes it to accountability, as Article (18) of the previous law stipulates that “the Directorate of the Care of Minors may request to initiate a criminal case against the person charged with the care of the minor if he mistreats him and puts him at risk.” In the area of the mother’s guardianship over the same young child after the father and grandfather, Juvenile Welfare Law No. 76 indicated For the year 1983 in Article (3) of it that “he is considered the guardian of the father and the mother, or any person who has joined him a child or a juvenile, or who is entrusted with the upbringing of one of them by a court decision.”

Based on the foregoing legal rules, it becomes clear that the one who undertakes the care of the young child, especially the mother, is the one who is legally charged with his protection and care on the one hand, and who is legally responsible for compensating the aggrieved by the act of the young child if the conditions for this responsibility are fulfilled, which are as follows:

The first condition: a small presence that needs care and supervision

It is clear from the previous legal texts that in order for the responsibility of the caretaker, especially the mother, to be realized, there must be a legal duty towards the young child, which, in addition to taking care of him, obliges him to monitor his actions; The fact that this young child needs this supervision because of his shortness, whether he is mentally sound or otherwise.

Hence, it is clear from the one side that the legislator used the term (young) in an absolute manner without differentiating between the discerning and the indistinguishable child, which means that the mother's responsibility for the child's illegal actions remains until he reaches the age of majority, which is the completion of eighteen years; on the other hand, the legislator has restricted this responsibility to a minor state, excluding other cases that require care and oversight. In the sense that the mother is not responsible for the harmful act of an insane or demented adult, and such behavior of the Iraqi legislator agrees in part with the behavior of the French legislator; Article (1242) of the French Civil Code stipulates that "4- The father and mother, as long as they exercise parental authority, are jointly and severally liable for the damages caused by their young children residing with them...; that teachers and craftsmen are responsible for the harm caused by their students and apprentices during the period in which they are under their supervision. Recognizing the principle of the transfer of oversight authority, which the Iraqi legislator did not adhere to, of course, this is in contrast to the behavior of the Egyptian legislator, who distinguished himself from both the Iraqi and French legislators, as it stipulated in Article (172) of his Civil Code that "everyone who is legally or by agreement obligated to supervise a person in need of supervision because of his shortness or because of his mental or physical condition shall be bound. compensation for the harm caused by that person to others by his unlawful act." With this text, the Egyptian legislator would be best at making the responsibility extend to every person in need of care, whether because of minors or his mental or physical condition. The Iraqi legislator also referred to the right of the one responsible for the harmful actions of the minor; Refer to the latter with the compensation paid (), and thus the Iraqi legislator has confirmed the precautionary role of the responsibility of the

person charged with the care of the young; As the responsibility of the minor remains an original one, as Article (191) of the Iraqi Civil Code states that:

1- If a privileged or non-distinguished boy, or the like, destroys the property of others, he is obligated to guarantee his property.

2- If it is not possible to obtain compensation from the money of the person from whom the damage occurred, if he is an indistinguishable boy or insane, the court may obligate the guardian, custodian or trustee of the amount of compensation, provided that this return is what he paid on the person from whom the damage occurred.

In light of the foregoing, it is clear that the position of the Iraqi legislator regarding the responsibility of the person in charge of care came as an aid to the victim and does not have any regard for the young; Meaning that the purpose of deciding this responsibility is for the aggrieved to find someone who requires prompt compensation, with evidence that the legislator gave the compensation payer the right to refer to the one who caused the damage to meet what he paid, thus avoiding any default that may have occurred from the person charged with the care. We are talking about the harm of the minor and not requiring discrimination in the occurrence of the act, other than the seizure, in which the intent is stipulated

The second condition: the occurrence of a harmful act by the child

The Iraqi legislator did not stipulate in Article 218 of the Civil Code; discrimination in those subject to oversight

Hence, the responsibility of the mother is established, whether the harmful act originates from a distinct or indistinguishable minor, so the responsibility of these persons in the legal logic is an original responsibility for any illegal act they commit, that is, their responsibility is realized for every harmful act that occurred on their part, as it was not required that there be awareness, as it is sufficient for the violation of the limits set by the law after harming others. Hence, it does not require the availability of awareness to say that the error occurred; Therefore, the legislator sufficed with the verification of the responsibility of the supervisory over the occurrence of a harmful act

on the part of the minor, since the perpetrator of the harmful act may be a minor and indistinguishable person; although the responsibility is personal, the mother here is responsible for the actions of others, with her duty of supervision, but her responsibility is based on a supposed error that can be proven to the contrary, which is her breach of her obligation to control, which led the child to commit a harmful act. And the wrongful act is the essence of the realization of tort liability, so it requires that the wrongful act cause harm to others. It is not required for the harmful act of the child to occur during the latter's submission to the mother's supervision. As the mother's responsibility for the actions of the child requires that he cause a harmful act that causes harm to others, whether the harm occurred during the mother's supervision or not, the Iraqi legislator did not require cohabitation for the establishment of responsibility.

By extrapolating the texts of the previous Iraqi laws related to the responsibility of the person in charge of supervision, we note that it follows the responsibility of the father and grandfather on the young, and when they are not present, the mother replaces them in the responsibility. Thus, it can be said that the guardianship of the mother over the soul of the young one imposes on her the duty of care and supervision, even if cohabitation with the young is not achieved, and even if the young child does not commit a mistake. By proving the foreign cause that led to the occurrence of the damage, and this is what we will explain in the next requirement.

The second topic

Ways to rid the mother of responsibility

The mother's responsibility for the harmful act of her young child is established when her conditions are fulfilled, and therefore the mother cannot pay this responsibility except in some cases specified by Article (218) of the Iraqi Civil Code, the fact that the Iraqi legislator assumed the presence of the error and the causal relationship on the part of the person charged with caring for the young and exempted the victim from proving them. As for the harm committed by the youngster, it was a reason for the existence of responsibility, but it is an assumption that accepts the proof of the opposite; Therefore, the mother can get rid of the responsibility in two cases, either by denying the

error or the causal relationship, each of which has an independent requirement.

The first requirement

Denying the mother's mistake

By negating the error, what is meant is that the mother, after establishing her authority to supervise the young, and the latter committing a harmful act; It is able to pay its responsibility, if it proves that it has taken the necessary precautionary measures and measures to prevent the minor from committing acts that are harmful to others; That is, in the sense that the owner of the supervisory authority can get rid of the responsibility if he refutes the assumption of error on his part, since the burden of proof falls on the mother, she must prove that she performs the duty of supervising the young with what this requires of the care of the usual person, that she has taken precautions to prevent any harm to others(). The person charged with oversight is not obligated to prove the wrongdoing of the aggrieved in order to deny the wrongdoing on his part; rather, he must deny his supposed mistake by the legislator as soon as the minor intervenes in the occurrence of the harm.

In France, and in view of the continuous development in amending the provisions of the person responsible for others, after the father had the supreme authority over the son; The French legislator then made it a joint authority between both the father and the mother, making their responsibility for the harm caused by the young one a joint responsibility. However, the French legislator did not settle on this, but rather restricted the authority of supervision over the young to those who were entrusted with custody of the youngster. That is, whoever was transferred to guarding the young, of course, this is in contrast to the behavior of the Iraqi legislator, who did not take the transfer of guarding, but the responsibility remains with the one assigned to it even if the guarding is transferred to the young to others, and whatever the time and place of the transfer, whereas the holder of power has control over the minor in French law; Several pictures may be in the form of guarding, so the guard over the little one is responsible, whether he is a father, a mother, or a teacher. The control authority may take the form of managing the money of the youngster, as well as being responsible for every illegal act committed by the youngster (). With reference

to the second paragraph of Article (218) of the Iraqi Civil Code; We find that the mother is relieved of responsibility when she denies the mistake that the legislator has assumed. In the sense of proving that she brought up the little one in a good and flawless manner by guiding them to the right behavior in the practice of their actions, and at the same time, she proves that she monitors the little one in the extent of his commitment to those directives. As the assumption of error on its part, even if it is a simple presumption, can prove its opposite, except that denying this presumption requires it to negate the failure to care for the young on the one hand, deny breaching the duty of supervision; Because proving one without the other does not deflect responsibility from it, so what is the benefit of having supervision if education and care are bad, and what is the benefit of good care if there is no oversight, in both cases the harm is expected from the young, so care and control one of them is complementary to the other, because when the legislator enjoined on the taxpayer caring, taking care of the little one, its aim was to discipline the caregiver as a normal, fit individual in society; Hence, the act of the minor is considered an unlawful act that harms others. It makes such an act a presumption that this young child did not receive a good upbringing and did not have the supervision and follow-up of the one who is responsible for them, because this youngster is not guided by the result of his actions and does not know whether it is harmful to him or to others. It should be noted here that the care that the legislator requires from the mother is a general term that does not have a clear control and standard by which it is possible to define its requirements. Is the term "care" limited to disciplining the soul of the young child and working on the necessity of raising him and receiving his knowledge, or are there other elements that interfere in this education? For the answer, we point out emphasizing the presence of other elements that have an impact on the upbringing of the youngster and therefore have a role in the good or the bad of his upbringing, as well as in the social environment in which the youngster resides, such as housing and studies, as well as social networking sites that have an effective and direct influence on the behavior of youngsters. Perhaps such elements are intertwined with the upbringing of the young by the mother, although they are elements that do not have a specific standard, but it is possible to

confront them through supervision. Supervising the young is the second factor that complements the mother's authority over the young. Care alone is not enough to negate the mother's mistake in raising her young son; because we found more than one element that can interfere with the achievement of raising the young, here comes the role of supervision. The mother, in addition to demonstrating the care of her young son, has to take care of her. To prove that it performs the duty of supervision in order to refute the presumed compound presumption against it, however, the term control, on the other hand, does not have a regulated standard, so what is its scope in order for the mother to be able to prove that she did it? At first glance, it may seem that what is meant by supervision is for the mother to follow her little one as he moves between home and school, and to refrain from leaving him alone from leaving the house. Other than that, what is meant is otherwise. It is sufficient to negate the mother's failure to supervise, to prove that she has taken the precautions that will ensure that no harm occurs to others, as if the hurtful and flaming tools were removed from him, and to prove his distance from bad friends. The assessment of this remains for the judiciary, which remains subject to the oversight of the Court of Cassation, even if it is a matter of fact (),

Undoubtedly, the presumption of the Iraqi legislator's assumption of the error on the part of the person charged with the care is a relief from the aggrieved party's responsibility to prove the error on the part of the taxpayer. What makes the refutation of this presumption by the mother's proof that she has fulfilled the duty of supervision is a refutation and denial that cannot be accepted. It lacks transparency as long as the damage has already occurred to the person covered by the care , therefore, we find that the Iraqi judiciary evaluates the responsibility of the supervisor when the harmful act occurs from the minor; Unless it is proven that the damage was incurred even if he performed the duty of supervision, and the judge remains with the discretionary authority regarding the facts presented before him that prove the existence or non-existence of supervision.

From the foregoing, it is clear that the mother's obligation within the framework of the illegal acts of the young child is an obligation to exercise care. If she fails and does not exercise

in her control over the actions of the young, what the mother usually does, who is keen in her own affairs, who is careful in her care and supervision of the young; Its responsibility will be. Such responsibility shall be rescinded if she proves her assistance in carrying out her supervisory duty by all the usual means, as in the follow-up of the situation of the young by specialized doctors, in addition to proving his follow-up at school and knowing his friends and his whereabouts when leaving the house, and in all of the foregoing, she must take caution to prevent the young from harming others.

The second requirement

negation of causation

The mother can pay the responsibility arising from the harmful act of the child in a way other than denying the supposed fault on her part, and by it we mean the method of denying the causal relationship by proving the foreign cause that led to the severing of the causal relationship between the harm that befallen the aggrieved party and the mistake committed by the mother by her negligence in her duty of care and control. The latter can absolve himself of liability by proving that the harm inflicted on others was due to a foreign cause; Hence, the mother cannot be held accountable for the harm, as it is not related to her. Looking at the second part of the second paragraph of Article (218), which states that “or the harm must have occurred even if he performed this duty.” Hence, it is clear that the causal relationship between the harm that befalls the victim and the mother’s fault; The legislator may have assumed it as in error, consequently, the mother can get rid of her responsibility for the wrongful act of the young child if she denies this relationship, as if she proves that the harmful act took place on the part of the young against her will, with the presence of a foreign cause that has no control over her. The foreign cause is defined as “every act or accident that is not attributed to the defendant and made it impossible to prevent the occurrence of the harmful act” (), and it is also known as “every matter that makes the thing subject to the infliction of harm definitively and is outside the actual control of the holder of the legal authority” (), and for the reason The foreigner who cuts off the causal relationship has several forms referred to by the Iraqi Civil Code (), which we address in turn:

First: Heavenly blight, force majeure, and sudden accident

Despite the different terms above, each of them flows into one valley, and each of them is synonymous with an accident that cannot be avoided, as it is a force majeure; And then the mother is forced to breach the obligation imposed on her to supervise the young, and most of the jurisprudence went not to distinguish between the terms (), therefore, a force majeure is considered every event that is expected to occur and that cannot be avoided, that subdues the debtor by committing to its breach (), hence, in order to be confronted with a force majeure that absolves the mother from her responsibility for the harmful act of the young child, the accident should be exceptional and general, not related to the person of the mother or the young person causing the harm, in the sense that it is not attributed to the will of either of them, that is, the person of the mother or the young person does not return, so it happened without their will. Also, the occurrence of the accident must be sudden and unpredictable or prevented by any person charged with monitoring if it was in the same exceptional circumstances for the taxpayer (), more importantly, the exceptional event must be something that cannot be warded off, whether by the mother or others, i.e. it is impossible to ward off it; If the accident is something that can be dealt with, but it causes a loss to the taxpayer, then it is considered an emergency situation, not force majeure. If the distinguished youngster steals the keys to the mother’s car and causes some damage to others as a result of the car skidding due to heavy rain; This is not considered force majeure, because the mother could have avoided that if she had exercised the required care. So to say that there is a force majeure requires that all of these conditions are met, and when one of them is absent, we are not facing a force majeure, and when all of them are available and alone in the occurrence of harm to others, then it is considered the productive cause of harm to others, and then the mother gets rid of her responsibility to control.

Second: the act of a third person

An act committed by a third party that causes the occurrence of the accident is considered one of the forms of a foreign cause that denies responsibility for the mother, because the debtor is not responsible for an act caused by another, but is only responsible for his personal action.

As the act of others is intended as a foreign cause that it is every person other than the creditor and the debtor to be bound, i.e. foreign to them, so some see that the third party is every person who is not related to the aggrieved or the one charged with supervision (); the third person here is every person who is not related to the defendant, whether he is a guardian, trustee or trustee. The mother, even if she is responsible for others, is that this third party was under her control, and this is in contrast to the third party, which is considered a foreign reason, since the latter is not related to the mother, neither from near nor from afar. When the previous conditions that we found by force majeure are fulfilled as well in the act of the third person; Then this act is considered a foreign cause that could absolve the mother of her responsibility. With reference to the fact that the person in charge of control abstains from his responsibility, it is not necessary to identify the third party who committed the harmful act. Rather, it is sufficient to prove that the harm was achieved by a third person other than the plaintiff and the defendant, as if a foreign person puts a firearm in the hand of a young child, which resulted in harm to others, the harm caused is not the mother's fault, but rather the cause of a foreigner.

Third: The error was issued by the victim

In the sense that the direct cause of the occurrence of the damage is the fault of the injured party himself, he does not have the right to claim compensation if this error is proven (), it is possible to count the injured person at fault if he did not take precautions and caution to avoid harm, and deliberately caused him to cause harm. Hence, it cannot be said that the fault is assumed by the aggrieved person himself; The fact that the simple presumption assumed by the legislator in the area of responsibility is to relieve the aggrieved parties of the burden of proof, no to relieve the person in charge of oversight (), this is when the fault of the mother is combined with the fault of the victim in the occurrence of the damage, the responsibility will be divided according to the fault of the assembled in the realization of the damage. As if the victim rides with a car driver who knows that he is young and does not have a driver's license, and an accident has occurred, in this case, the fault is shared between the mother and the aggrieved party, and it is required to

count the fault of the aggrieved as an external cause that his fault has comprehended and exceeded the fault of the mother. As in the case of the mother who gives the car keys to the little one to lock them, and he fails to do so, and a thief comes and steals them and runs over a passerby with them. Here the act of the thief is considered the other, and he took the mother's action, so he is solely responsible for the damage.

Conclusion:

After studying the personal scope of the mother's responsibility and ways to get rid of it, and in light of the various opinions of jurisprudence and the conduct of Iraqi and comparative legislation, we stand at the end of this path to clarify some of the results and recommendations that we reached, as follows:

First: the results

- 1- The mother's responsibility for the harmful act of the young child is not realized except in some cases in which the guardianship of the father and grandfather ceases, because the Iraqi legislator in Article (218) has limited the responsibility to the mother and the grandfather only.
- 2- The one who is covered by care and supervision and the mother who is responsible for his illegal work is the young one only, and the responsibility does not extend to the insane and the lunatic who have reached the age of majority, as the responsibility of the latter two is personal.
- 3- If the Iraqi legislator did not consider the transfer of supervision and care from the father and grandfather to others, as in the case of the youngster moving to school or transferring to the mother's nursery, this does not mean that it does not transfer to the next of them in supervision, which is the mother or any other person who is charged with supervision. After them when the reasons for the end of the mandate are available.
- 4- The mother can absolve herself of responsibility for the act of the young child in two cases; When denying the error that the legislator assumed on her side, and also about her proof of the foreign cause represented by force majeure, the act of others and the mistake of the aggrieved person himself.

Second: recommendations

1- We call on the legislator to amend the text of Article (218) of the Iraqi Civil Code to be in the following form: “

A. The person charged with care and control is obligated to compensate the harm caused by the person covered by the care from a young person or an adult who has one of the symptoms of eligibility

B. The person charged with care and control can absolve himself of responsibility if he proves that he fulfilled the duty of care and control, or if he proves the existence of a foreign cause

C. He shall be charged with the care and supervision of whoever finds the person under care in his custody.

2- We call on the legislator to specify the reasons for the termination of guardianship, whether it is guardianship over oneself or money, and the effect of this termination so that the issue is not left to multiple interpretations.

3- We suggest referring, in explicit legal texts, to the mother's responsibility for the act of the person under the care when he is in her custody due to divorce or any other reason.

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