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Establishing Objective Liability Based on the Principle of Legal Prevention in Iraqi Civil Law

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ABSTRACT: In our current era, it is no longer acceptable to establish legal liability solely within its traditional framework, which is based on the elements of mistake, damage, and the causal relationship between Parties. Instead, the role of civil liability has expanded to encompass not only the assessment of risks and compensation for damages but also the prevention of harm before it occurs. This study aims to present and analyze the developments in the elements of civil liability and legislative changes, comparing them with their compatibility with Iraqi civil law. This leads us to explore the various doctrines and opinions surrounding the principle of prevention and its applicability in establishing civil liability. We will analyze these perspectives and present their practical applications.

It is recognized that legal liability manifests in various forms and differs in nature. For instance, liability under criminal law is referred to as criminal liability, whereas liability under civil law is termed civil liability, which is further categorized into contractual liability, and tort liability. In this context, we will focus on the establishment of civil liability based on the principle of prevention. Given the importance of practical applications, efforts are being made to broaden the scope of civil liability beyond its traditional boundaries, to strengthen its foundations, and to solidify its concepts within modern legislation. This expansion aims to provide greater protection for the rights of individuals in society. Consequently, the role of civil liability has evolved from merely addressing risks and compensating the injured party to actively preventing harm before it occurs.

KEYWORDS: Civil liability, mistake, Damage, Causal Relationship, Prevention Principle.

INTRODUCTION

Importance of the Topic: Liability, widely recognized in legal contexts, refers to the state of accountability for actions taken. Extensive studies have explored this concept as it applies to individuals, groups, and corporations, illustrating that people are constrained by legal regulations. Violating these regulations results in liability, compelling offenders to compensate those harmed. Legislators, acknowledging this reality, collaborate with researchers to broaden the scope of civil liability, aiming to strengthen protections for individual rights. Today, civil liability emphasizes not only compensation but also the prevention of harm, signaling a shift from traditional principles of mistake, damage, and causation. This evolution has the potential to reshape the foundations of civil liability significantly.

Research Questions: The primary research questions are: To what extent can the principle of prevention be applied within the elements of civil liability? How do the absence of certain elements and the insufficiency of the element of assumption affect the establishment of this type of liability, which may or may not be realized? Additionally, what is the potential for developing the basis of civil liability, particularly in jurisdictions that have historically grounded liability in the aforementioned three foundations? This study will also examine the stance of the Iraqi legislator under Civil Law No (40) of 1951, specifically regarding the recognition of the principle of prevention in establishing objective liability.

Research Methodology: This study employs a comparative analytical legal research method, focusing on the analysis and comparison of legal texts to assess their applicability in practical situations involving the principle of prevention in establishing objective liability.

Research Plan: This research plan is structured around two main topics. The first topic discusses the role of prevention in establishing legal responsibility, which is further divided into five subtopics. The second topic examines the application of the principle of prevention to the components of legal responsibility, focusing on its relevance to mistake, damage, and causation. In conclusion, we will present a set of findings and recommendations derived from our study.

1: The role of prevention in establishing liability:

1.1. The Concept of Preventive Liability;
1.2. Types of Preventive Liability;
1.3. The Historical Roots of the Prevention Principle;
1.4. Applications of the Prevention Principle in Iraqi Civil Law;
1.5. The Principle of Prevention in Islamic Law;

2: Application Prevention in the elements of Liability:

2.1. Prevention in the element of mistakes in the legal liability;
2.2. Prevention in the element of damage in the legal liability;
2.3. Prevention in the element of causation in the legal liability;
2.4. The Evolution of the Causal Relationship in Civil Liability.

1. THE ROLE OF PREVENTION IN ESTABLISHING LIABILITY:

The study of the role of the preventive principle in establishing liability necessitates an examination of several key aspects, including: defining the concept of preventive liability, exploring the various types of liability and their preventive measures, elucidating the historical roots of this principle, assessing the stance of Iraqi civil law on its application, and finally, considering the perspective of Islamic law on this subject as follows:

1.1. The Concept of Preventive Liability;

Legal liability is a topic of significant interest in legal studies, having been examined from various perspectives. Despite the extensive research on this subject, there remains a need to explore modern discussions surrounding it. In this study, we will focus on the principle of prevention and its role in establishing objective liability, also referred to as preventive liability.

While numerous studies have addressed the concept of legal responsibility and its types, clarifying these concepts is essential for any exploration of liability. Therefore, we will provide a concise overview of the concept of liability and preventive liability, emphasize their types while avoiding traditional details that do not contribute to the core of the discussion.

In life, individuals engage in various activities to satisfy their needs and desires. During these activities, they may inadvertently cause harm to others, whether through their own actions, the actions of those under their supervision, or through objects in their custody. Harm may also result from a failure to perform a legally required act. In such cases, the law intervenes to impose penalties on those who cause harm, which is referred to as legal responsibility. (1)

From this perspective, legal responsibility is a legal obligation imposed on individuals due to their actions or inactions, requiring them to bear the consequences of their conduct and to compensate the injured parties. However, in this study, the concept of responsibility diverges from traditional definitions. It emphasizes the obligations of individuals or institutions to prevent harm, including the necessity of taking appropriate precautions and implementing safety standards.

Legal liability can be understood from two perspectives: before and after harm occurs. This distinction underscores the significance of prevention. In terms of legal implications, preventive liability mandates adherence to precautionary measures, while compensatory liability entails providing restitution for financial or moral damages. Therefore, there is a need to reevaluate the concept of legal liability in light of modern legislation, which increasingly focuses on prevention. The goal is to enhance societal safety and improve quality of life by actively preventing harm rather than merely responding to its aftermath.

1.2. Types of Preventive Liability;

The liability manifests in various forms and differs in nature. When liability is determined by penal law, it is referred to as criminal liability. This type of liability arises when an individual commits an act that constitutes a crime punishable by law. Criminal liability is grounded in the principle that harm has occurred to society due to the individual's violation of general legal norms, which results in a specified criminal penalty as established by law (the principle of "no crime or punishment except by law)(2).

Conversely, civil liability arises under civil law when a debtor fails to fulfill an obligation, resulting in harm to others. It can be defined as the obligation of an individual to compensate another for the harm caused. Civil liability is further divided into two categories: contractual liability and tort liability. (3).

Contractual Liability: This type is based on a breach of a contractual obligation, which varies according to the specific terms of the contract. If the breach arises from a valid contract, it is termed contractual liability. In this context, the creditor and debtor are bound by their contract, and any breach by either party incurs liability. (4).

(1) - Al-Hakim ,Abdul Majeed & Abdul Baqi Al-Bakri and Muhammad Taha Bashir.(2010) *The summary of Theory of Obligation in Iraqi Civil Law*, Part One, Sources of Obligation, Fourth Edition, P.198.

Tort Liability: This liability arises from a breach of a general legal obligation not to harm others, or from violating an obligation imposed by law that results in an unlawful act. In tort liability, the creditor and debtor are not bound by a contract; rather, the debtor is considered a stranger to the creditor until liability is established. [(5)]

Regarding the application of the preventive principle in both types of civil liability, it serves as a precautionary measure to prevent harm before it occurs. In contractual liability, the principle is integrated through contractual terms that establish preventive measures, such as safety standards and guarantees in cases of damage. For example, in construction, health, or production contracts, contractors are obligated to adhere to specific procedures and standards designed to mitigate risks.

In the case of tort liability, objective responsibility is imposed on individuals or entities engaged in hazardous activities, such as companies dealing with chemicals, public transportation, or those involved in the extraction of natural resources that produce waste. These entities are required to implement stringent preventive measures to minimize the risk of harm, which may include providing insurance to ensure compensation in the event of damage.

In summary, the preventive principle emphasizes the need for proactive measures to reduce the likelihood of harm, enhancing safety and stability in legal and economic relations. Its application across both contractual and tortious liabilities aims to create a safer environment by minimizing the potential for damages.

1.3. The Historical Roots of the Prevention Principle;

The emergence of the prevention principle can be traced back to the positivist school, which significantly contributed to its development by formulating preventive measures that prioritize implementing a system of punishment and, in some cases, seeking to replace it. This initiative led to successful solutions that deter individuals from engaging in illegal behavior, ultimately crystallizing in state legislation designed to protect individuals' interests from prohibited actions and to impose legal consequences for such actions.[(6)]

Historically, the prevention principle is not a contemporary concept; it has existed since ancient times. However, there is some debate regarding its origins and application in early societies, particularly in Greek and Roman cultures. For instance, Greek philosophers discussed precautionary measures, with Aristotle notably asserting that the purpose of punishment is not solely to penalize the perpetrator but also to protect society from future crimes. Similarly, some scholars argue that the concept of prevention originated from Roman legal thought. An illustrative example is an incident involving Emperor Marcus Aurelius, who, when asked how to handle a person who killed his mother in a state of madness, replied that if it were certain the individual acted out of madness, punishment could not be applied. Instead, he emphasized the need for careful monitoring and, if necessary, arresting the individual to ensure protection and provide the required safeguards.[(7)]

The Romans also recognized the need for special treatment of young offenders, taking their age into account. The Caroline Law, enacted by Charles V in 1532, included provisions stating that if it became evident from a first offense that an individual's behavior posed a risk of reoffending, the judge could order their preventive detention until they demonstrated good behavior.[(8)]

1.4. Applications of the Prevention Principle in Iraqi Civil Law;

In light of the ongoing damages stemming from illegal activities within society, the law plays a critical role in regulating behavior and imposing penalties on offenders. While traditional philosophies of legal responsibility focused on punitive measures, contemporary legal thought has evolved to emphasize preventive approaches. Modern legislations increasingly advocate for the idea that "prevention is better than cure," shifting the focus of liability from merely compensating for damages to actively preventing them.

This evolution raises important questions about the extent to which objective liability is based on the prevention principle. Specifically, what is the feasibility of applying this principle within Iraqi civil law, and how does Islamic law view it? This is what we will discuss in the last two sections of this chapter.

(2)- Article (1) of Iraqi criminal law no.(111) of 1969.

(3)- Abdul Majeed, Ismat.(2012) *The General Theory of Obligations*, Part One, Cihan University Publications, Second edition, Erbil, p. 514.

(4)- Al-Sultan, Anwar.(1983) *The Summary of General Theory of Obligation*, A Comparative Study in Egyptian and Lebanese Law, Al-Nahda Al-Arabiya, Beirut, p.291.

(5)-Marqus, Suleiman.(1971) *Civil Liability in the Codifications of Arab Countries*, defined it as (the state of a person who committed an act that requires him to be held accountable, 2nd Edition, Al-Bajlawi Press, P.1

(6)- Hosni, Mahmoud Najib.(1989) *Explanation of the Penal Code*, 1stEdition, P.936.

(7)-Tharwat, Jalal.(1996) *the Criminal Phenomenon, A Study in Penology*, Uni. Cultural Foundation, 1st Edition, Eskandaria, p54.

(8)- Qarni, Mahmoud Sami,(1989) Precautionary Measures, Cairo, pp. 13-14.

(9)- Article (223) of Iraqi civil law No. (40) of 1951.

Iraqi Civil Law No. 40 of 1951 outlines provisions related to liability for the acts of others in Articles 218, 219, and 220, as well as liability for things in Articles 221 to 231. Throughout these articles, the Iraqi legislator emphasizes the necessity of taking precautions and exercising caution as preventive measures to avoid the occurrence of foreseeable damages.

In Article 218, concerning liability for the acts of others, the legislator exempts a father or grandfather from liability if they can prove they fulfilled their duty of supervision. Here, "supervision" entails exercising due caution and care regarding those under their guardianship, as well as holding a principal responsible for the actions of their subordinates. Article 219, paragraph two, further illustrates this by stating that an employer can evade liability if they demonstrate that they took necessary precautions to prevent harm or that the harm would have occurred regardless of such precautions.

In the Iraqi Civil Code, in the section on responsibility for animals stipulating that if a person introduces an animal onto property without permission, they are liable for any damage caused by that animal, regardless of whether they were present. [9]

However, if the animal moves of its own accord and causes harm on another's property, the owner is only liable if they cannot prove they took sufficient precautions to prevent the animal from escaping. This approach is echoed in Article 229, which allows individuals threatened by potential damage from a building to demand necessary preventive measures from the owner. If the owner fails to comply, the court may authorize the affected party to take such measures at the owner's expense. Additionally, Article 231 states that anyone possessing mechanical equipment or other items requiring special care is responsible for any resulting damage unless they can demonstrate that they took adequate precautions to prevent it.

From these articles, we can conclude that the legislator has embraced the principle of caution and prudence in determining liability in the specified cases. Thus, there is a reasonable basis for establishing objective liability on this principle to exclude and prevent damages. However, a challenge arises in applying this idea during the actual occurrence of damages, as liability cannot be established prior to the damage or harmful act. This leads to questions of hypothetical or absolute liability. Nonetheless, if it can be shown that the individual was negligent in adhering to the preventive measures outlined in the law, then there is a basis for establishing objective liability based on the prevention principle.

Given the failure of a perpetrator to comply with the preventive measures mandated by Iraqi Civil Law, it becomes evident that the principle of prevention holds greater weight than negligence or dereliction, which has long been associated with tort liability. Therefore, what is the issue in labeling it as preventive liability? This would allow us to place greater emphasis on the principle of prevention in establishing objective liability. In our view, the Iraqi legislator has effectively instituted precautionary measures and procedures as a means of exemption from legal liability. Nevertheless, jurisprudence must play a complementary role alongside legislative efforts by adopting the principle of prevention in establishing liability, despite the challenges of practical application. This idea is closely related to the concepts of assumption and probability; however, it is not impossible to implement.

The Civil Law has also adopted the idea of assuming error concerning deposits in Article 92, which states:

a. Paying the deposit is considered evidence that the contract has become final and may not be withdrawn from unless otherwise agreed.

b. If the contracting parties agree that the deposit serves as a penalty for withdrawal from the contract, each party has the right to withdraw, and if the party who paid the deposit withdraws.

The notion of assuming error is evident in the aforementioned article as well as in Article 170 of the Iraqi Civil Code regarding penalty clauses. This article allows contracting parties to determine in advance the value of compensation, either in the contract itself or in a subsequent agreement, while also referencing provisions regarding entitlement to compensation and notice requirements.

Based on these articles, we can assert that these applications extend beyond tort liability to include contractual relationships. The establishment of penalty clauses and deposits in agreements between creditors and debtors is designed to protect the interests of the injured party in the event of withdrawal, delay in performance, or non-fulfillment of obligations. The concept of subsidiary obligations arises as a scientific and legal application of the principle of prevention, whereby a party that fails to meet their obligations whether through withdrawal, non-implementation, or delay—is held liable and required to pay the deposit or the penalty stipulated in the agreement.

1.5. The Principle of Prevention in Islamic Law;

Islamic law aims to achieve social justice and equality among individuals while organizing matters of transactions and worship. These principles are derived from both primary and secondary sources. There is a consensus among Muslims that the Holy Quran is a fundamental source of legislation and a guiding argument for all people, as it is from God and must be adhered to by everyone. [10]

Allah commands believers in the Holy Quran to exercise caution and vigilance in various contexts. He warns them about the deceit of hypocrites, stating: “And when you see them, their bodies impress you, and if they speak, you listen to their words. They think that every shout is against them. They are the enemy, so beware of them. May God destroy them? How are they deluded? [11]

In another verse, He commands: “And judge between them by what God has revealed, and do not follow their desires, and beware of them lest they tempt you away from some of what Allah has revealed to you. But if they turn away, then know that Allah only wants to afflict them for some of their sins. And indeed, many among the people are wicked” [12]. Furthermore, He advises: “Do not make the calling of the Messenger among you like the calling of some of you to others. Allah knows those among you who slip away in secret. So let those who oppose his command beware, lest a trial befalls them or a painful punishment will befall them". (13)

The Quran also prescribes strict punishments for certain offenses, which are intended to maintain societal order. For instance, regarding theft, it states: "As for the male and female thief, cut off their hands. It is the recompense for what they have earned, an exemplary punishment from God". (14)

Regarding adultery, it commands: "As for the female adulterer and the male adulterer, flog each of them with a hundred lashes. Let not pity for them deter you in the matter of God's religion"
(15). Similarly, for slander, it states: "And those who accuse chaste women and do not bring four witnesses flog them with eighty lashes". (16)

These warnings and punishments are not merely for retribution; they are established to protect society and the interests of individuals. The prohibition of crimes such as murder, adultery, theft, and slander is based on the potential dangers they pose to individuals and society. For instance, theft is forbidden to preserve property, while retaliation for murder upholds the sanctity of life. Adultery is prohibited to protect individuals from the spread of diseases and to prevent the mixing of lineages, as God has honored the children of Adam and preferred them over all creation.

Thus, it is clear that Islamic law recognizes the significance of these threats to society and imposes these punishments to prevent their occurrence and mitigate their harm. By anticipating the potential consequences of such illegal actions, Islamic law distinguishes them from other wrongful

2. APPLICATION PREVENTION IN THE ELEMENTS OF LIABILITY:

Civil law jurists unanimously agree that the elements of legal liability whether contractual or tortious are threefold: error, damage, and causal relationship. However, they differ in their interpretation of how liability is established. Some argue that error or the harmful act is the primary element of liability, positing that without it, damage cannot exist. Others contend that damage is the catalyst for liability, asserting that, in its absence, there is no basis for compensation claims.

In this chapter, we will examine the concept of the elements of civil liability. Additionally, we will explore the challenges of applying the principle of prevention as a foundation for establishing objective liability, particularly in jurisdictions that rely on the aforementioned elements. Nevertheless, it is not impossible for jurists and legal commentators to adapt the principle of prevention within civil law texts, thereby creating a framework aimed at mitigating the damages society incurs. Therefore, in this chapter, we will examine the application of this distinction across all three elements as follows:

2.1. Prevention in the element of mistake in the legal liability;

Civil legislation and laws differ in how they define and apply the concepts of error, harmful act, and unlawful act as elements of civil liability. For example, Iraqi civil law does not use the term error as part of its description of an unlawful act, a concept that is influenced by Islamic law. According to this approach, any error that causes harm to others requires the responsible party to compensate the injured party. In contrast, Egyptian and French civil law include error as a key element of civil liability. Therefore, it is essential to examine this concept across the different legal frameworks mentioned and then apply the principle of prevention in this context.

Mistake in Egyptian Law: Article 163 of the Egyptian Civil Code stipulates that "any error that causes harm to others obligates the person who committed it to compensate." However, the Egyptian legislator did not rely solely on this provision. Article 164 further clarifies that a person is liable for their unlawful acts only if committed while they are discerning. Thus, in Egyptian law, error must arise from discernment and awareness. It is a necessary condition for civil liability and forms the foundation upon which such liability is based. (17)

behaviors. Violating these principles can lead to breaches of established rules in Sharia, resulting in responsibility and punishment for the perpetrator.

Elements of mistake in Egyptian Law: Mistake in Egyptian law is seen as a violation of a general legal duty, where the person at fault is aware of their breach. It consists of two elements: the material element and the moral element.

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(10)- Zidane, Abdul Karim.(2006) *A Concise Introduction to the Principles of Jurisprudence*, Al-Risala Foundation, 15th Edition, p.152.

(11)- Holly Quran Verse (4) Surah Al-Munafiqun. (12)- Verse (49) Surah Al-Ma'idah.

(13)- Verse (63) Surah An-Nur.

(14)- Verse (38) Surah Al-Ma'idah.

(15)- Verse (2) Surah An-Nur.

(16)- Verse (4) Surah An-Nur.

(17)- Abdul Majeed, Ismat.(2016) *Tort Liability in Arab Civil Laws*, Zain Legal Publications, Beirut, Lebanon, 1st Edition, P560.

The Material Element: The law explicitly mandates certain duties, either through specific legal provisions or general principles that require individuals to perform specific actions or refrain from others. If a person complies with these duties, they are not at fault. If they fail to do so, however, and cause harm, they are liable for the damages. For example, traffic law requires drivers to stay on the right side of the road, turn on their headlights at night, and avoid driving in one-way streets in the wrong direction. A violation of these duties constitutes an error, and the driver may be held responsible for any resulting damages. (18)

The Moral Element: Duties may also arise from general ethical principles or established standards of care. In some legal systems, this is referred to as the duty not to harm others. Some legal scholars argue that there exists a general standard of error, obligating individuals to act as a "reasonable person" or, at the very least, as a "regular person." However, determining when a person has exceeded the bounds of acceptable behavior or failed in their duties especially in cases of negligence requires further legal analysis. This leads to questions regarding whether a person has neglected to perform an act that they were legally required to, and whether this omission constitutes a breach. (19)

Regarding Applying the Principle of Prevention in the mistake element in applying the principle of prevention within the framework of civil liability based on error, it is evident that recent legal scholarship has focused on identifying the shortcomings of the civil liability system that relies on error. One of the primary criticisms is the burden placed on the injured party to prove the causal relationship between the error and the damage sustained. This is often a significant challenge, as the injured party may struggle to meet the complex legal and technical requirements necessary to establish proof and evidence.

The idea of separating the establishment of civil liability from the concept of error has gradually gained traction, both through legislative reforms and judicial practices. However, this separation does not imply a complete abandonment or reduction of the concept of error within the civil liability framework. The concept continues to play a role, albeit in a more limited capacity, within the system.

In France, the legislature has intervened to redefine the scope of fault through several key pieces of legislation. Notably, the law of 9th April, 1898, was concerning compensation for work-related accidents, the law of 5th July, 1985, which deals with compensation for road accident victims, and the law of 31st December, 1991, addressing compensation for those infected with (HIV) through blood transfusions. In these laws, the French legislator has moved away from requiring proof of fault in order to compensate the injured party. This flexibility has encouraged judges to abandon fault as a prerequisite for establishing liability, allowing the presumption of fault in cases where responsibility is clear. By doing so, the legal system aims to facilitate compensation for the injured party and ensure the protection of their rights (20).

In line with this shift, French courts have increasingly adopted decisive judicial solutions. In many cases, they have held the owner of a thing (such as a vehicle or equipment) responsible for any damage caused by that thing, regardless of whether the owner was at fault. A landmark decision in this judicial trend was the ruling of the Court of Cassation on 13th February 1930, which established that the owner of an object could be held liable for damages; even if they could prove that no fault or error was committed in the management or use of the object.

Also in French Judicial Approach to Parental Liability and the Role of mistake in Civil Liability Currently, the French judiciary has adopted a solution in which parents are held absolutely and entirely responsible for the actions of their minor children. This means that even if parents can provide evidence proving that they did not commit any errors in raising, caring for, or supervising their children nor in preventing the harm their children may cause to others liability still rests with the parents. This was affirmed by the French Court of Cassation in its decision in 17thFebruary of 1997. (21)

However, it should be noted that despite legislative and judicial efforts to reduce the role of error in the civil liability system, the concept of error remains prominent, both in relation to the injured party and the responsible party (such as the owner of the object or the parent of a minor). The judiciary continues to use error in various ways, often describing it in terms such as "inexcusable error," "serious error," or "single error." This increasing tendency to categorize error serves either as a condition for establishing civil liability or as a potential defense for the responsible party, particularly when the party (e.g., the owner of the object) can demonstrate that they did not commit an error in their management or care of the thing in question. Such developments are not limited to the concept of mistake alone but extend to other principles within the civil liability system.

2.2. Prevention in the element of damage in the legal liability;

Damage is the second fundamental element of civil liability and forms the basis upon which compensation is built. It refers to any injury or damage that affects a person's right or legitimate interest. Damage is the central element among the elements of an unlawful act; without damage, there can be no liability, and compensation is only granted to the extent of the suffered damage which can be classified as material, physical, or moral:

(18)- Al-Sanhouri, Abdul Razzaq. (1958) *The Medium Explaining Civil Law*, Theory of Obligations, Cairo, p. 779.

(19)– Abdul Majeed,Ismat.(2012) *The General Theory of Obligations*, Part One, Cihan University Publications, 2nd edition, Erbil, p. 539.

(20)- Marcos, Suleiman.(2019) *Al-Wafi in Explaining Civil Law*, Al- Huquqia Publications,, Volume One, p. 188.

Material damage: This refers to any damage to a person's property or financial interests. It includes financial losses resulting from injuries that impair a person's ability to earn a living, or that necessitate costly medical treatment. Material damage also extends to any damage to a right associated with a person's individuality, such as personal freedom, freedom to work, or freedom of opinion, if such damage leads to financial loss. For instance, if a person is unjustly imprisoned or prevented from traveling to pursue gainful employment, this constitutes material damage. It is not necessary for the material damage to affect a legally protected right through a private lawsuit; it suffices that the damage impacts a legitimate interest, even if the law does not specifically protect it through a private claim. (22)

Moral damage: This refers to damage affecting non-financial values, such as the loss of reputation or honor through insult, defamation, slander, or unjust assault. It also encompasses damage to emotions and feelings, as seen in cases of wrongful death where the deceased's closest relatives (e.g., parents, children, or spouse) suffer moral damage. In certain cases, moral damage can also arise from other types of assaults, such as kidnapping, physical abuse, or wounding. Additionally, some physical injuries, such as pain or disfigurement resulting from an assault, may be categorized as moral damage if they significantly affect a person's dignity or emotional well-being. Furthermore, moral damage may arise from public offenses that violate societal norms, damage public morals, or infringe upon personal freedoms guaranteed by the constitution or law. (23)

While material and moral damage are well-established concepts, the application of the principle of prevention in the context of civil liability raises unique questions, particularly regarding future or potential damage. Unlike real damage, which is immediately tangible and can be directly linked to objective liability, the situation becomes more complex when we consider potential or future damage. In such cases, the principle of prevention must be applied to prevent the damage from occurring in the first place. The key question, therefore, is how liability can be assessed for anticipated or future damage. To answer this, we first need to explore the concept of potential damage and examine the position of the Iraqi legislator on this matter.

Potential damage refers to harm that has not yet occurred but could happen in the future, though its occurrence is uncertain. It differs from actual future damage, as civil liability does not apply to potential damage until the likelihood of its occurrence becomes certain. Compensation for potential damage is not granted unless it materializes. For example, if a person causes a defect in their neighbor's house, the immediate harm is the damage to the property, which the responsible party must repair. However, if the defect leads to a future collapse of the house, this is considered potential damage, and there is no compensation for it unless the collapse actually happens as a result of the defect. (24)

Paragraph three of Article 169 of the Iraqi Civil Code states: "If the debtor did not commit fraud or a serious mistake, then compensation shall not exceed what is usually expected at the time of contracting in terms of loss that occurs or gain that is lost." There are differing legal opinions on compensating potential damages. Some argue that fraud transforms contractual liability into tort liability, meaning compensation should not be limited to foreseeable damage but also cover unexpected damage. However, it is also noted that the actual realization of potential damage grants the injured party the right to seek compensation for the damage that has been concretely realized.

These considerations are made with the aim of protecting the rights of the injured party before the damage occurs i.e., preventing those responsible from engaging in any act or behavior that could cause damage in the future. The benefits of this preventive approach include greater accuracy, caution, and diligence in actions that could lead to future damage.

When we refer to damage, we generally think of material, physical, or moral harm suffered by a specific individual, as previously discussed. However, with the development of the concept of risk and damage within the scope of preventive applications, the nature of damage has evolved. The causes of damage have become more complex and harder to identify. In summary, the concept of damage has expanded both in scope (quantity) and in terms of the different types of damage it encompasses (nature).

When we refer to the "increased scope of risk or damage," we mean that, in addition to damage affecting an individual, modern society is witnessing an expansion of damage that can impact a specific and defined group of people. The technical, social, and economic conditions of contemporary society have contributed to the emergence of specialized damage.

(21)- Belmaalem, Mohamed.(2015) *Major Decisions of the French Criminal Court*, 1st edition, Paris, Publications of the French Judiciary Website, Paris, p. 84.

(22)- SINTEZ, Cyril.(2009) *La sanction preventive en droit de la responsabilité civile Contribution à la théorie de l'interprétation et de la mise en effet des normes*, Thèse présentée à la Faculté des études supérieures en vue de l'obtention du grade de docteur en droit Faculté de droit (LL.D.) Décembre, P.369.

(23) – Hamid Abdullah Abdul Razzaq, The Summary of Introduction to Civil Damages, 1st Edition, Baghdad, Iraq, 2006, p139.

(24)- Abdul Razzaq, Hamid Abdullah.(2006) *The summary of Introduction to Civil Damages*, 1st Edition, Baghdad, Iraq, pp.180-185.

(25)- Larousse,Archive.(2020) - dossier - L'affaire du sang contaminé : trois ministres en accusation, La question de la responsabilité politique (archive). *Journal de l'année Édition 2000 Larousse.fr. Consulté le 4 juin*. https://www.larousse.fr last visit 6th July 2025.

For example, in the early 1980s, as HIV began to spread globally, health authorities in France and in many other countries lacked sufficient knowledge about the virus, as well as the methods to properly test donated blood for the presence of HIV or hepatitis. Due to this knowledge gap and delays in implementing accurate testing procedures for blood donations, contaminated blood was transfused into patients who were urgently in need of blood, including hemophiliacs and others undergoing blood transfusions. Between 1985 and 1987, several patients in French hospitals were transfused with blood contaminated with HIV, resulting in many contracting AIDS. Others became infected with hepatitis C. Among the victims, five individuals died from the infection, while others were left with permanent infections that required ongoing medical treatment. There was a significant delay in the implementation of policies for rigorous screening and testing of blood before it was used for transfusions. Furthermore, the distribution of contaminated blood continued for an extended period, highlighting the administrative and political negligence in managing the crisis. The scandal prompted major reforms in France's public health system. It became part of a broader investigation into how this public health crisis was mishandled (Georges Vallin) the health minister at that time, was found guilty of gross negligence but was not imprisoned, as his sentence was suspended. Nonetheless, the contaminated blood scandal marked a turning point in French public health history, leading to the adoption of stricter blood testing standards and contributing to global improvements in blood safety protocols.(25)

Such incidents have naturally contributed to the establishment of compensation funds for the injured, as well as the development of various insurance mechanisms. They have also played a significant role in shaping new concepts of civil liability that focus on preventing risks and avoiding damage. Furthermore, the technical, social, and economic conditions of society have led to changes in the nature of harm itself. This change is evident in the increasing variety and specificity of harms.

Beyond material damages, which can be relatively straightforward to compensate, the judiciary has shown a growing willingness to compensate for a range of moral harms, such as aesthetic damages or the deprivation of personal pleasures like sports, swimming, or horse riding. In these cases, the injured party experiences a loss of joy in life, this cannot always be compensated in the traditional sense.

The shift in the nature of harm also includes the growing scope of risk. Today, risks are no longer confined to technical damages alone; they encompass a broad range of technical, environmental, and health-related risks. These risks no longer affect only individuals but can lead to disasters that threaten entire communities or even society as a whole, such as environmental or health crises.

Thus, in the contemporary world, we observe a fundamental change in the concept and scope of risk. Risk is no longer merely an individual concern but has become a collective and global challenge. It is complex, multifaceted, and can manifest as environmental, technical, or health risks. The cumulative damages arising from these risks are often irreparable, collective in nature, and without clear boundaries. These developments highlight the increasing importance of the principle of prevention and the role of the law in addressing damages before they occur. They also call for a reassessment of civil liability, necessitating the creation of new concepts and frameworks to better address these evolving risks.

2.3. Prevention in the element of causation in the legal liability;

The causal relationship between the harmful act and the damage refers to the principle that the damage is a direct and natural consequence of the breach of a legal duty, that is, the commission of the harmful act. The element of causality is independent of both the harmful act and the damage itself. Damage may occur, and the causal relationship may be established, even if the harmful act lacks characteristics such as intent or aggression. Conversely, the harmful act and the damage may be present, but the causal relationship between them may not be established. For instance, if a person drives a car without a driver's license and accidentally runs over someone on the road without being able to avoid the incident, the harm occurs, but the causal link may not be immediately clear.(26)

From this, we understand that the causal relationship involves two concepts: direct causality, meaning the connection between the person's act and another event, and causal causality, meaning the connection between the effect of the person's act and the resulting harm. In order for liability to be established, a clear causal link must exist between the act committed and the result that follows, for which the perpetrator will be held accountable. This applies whether the liability is criminal, civil, or moral in nature. The concept of causality is a logical one, indicating a necessary succession between two incidents. If the first event (the cause) does not occur, the second event (the result) cannot follow. This relationship is not merely temporal; it must also be material (objective), meaning that the cause must precede and lead to the result.

The application of the principle of prevention in this context is a challenging and complex issue, particularly when compared to traditional liability. This is because liability in such cases does not depend on the occurrence of the harmful act or error, but rather on the potential for damage that has not yet materialized. As a result, proving the causal relationship becomes more difficult, though not impossible.

(26)- Al-Hakim,Abdul Majeed.(2007) *The summary of explaining Iraqi civil law*, Part One, Sources of Obligation, Legal library, Bagdad, 2007, p 415.

2.4. The Evolution of the Causal Relationship in Civil Liability;

The changes and developments in civil liability are not limited to the concepts of mistake and damage, as we have discussed, but also extend to the concept of the causal relationship between them. Compensation for certain types of damage, such as those resulting from environmental pollution or health issues, cannot be adequately addressed under the traditional principles of civil liability namely fault, damage, and the existence of a causal relationship. The real challenge lies in proving this causal relationship, which, according to the traditional concept of civil liability, must be direct (i.e., the damage must be the direct result of the fault).

As a result, the French judiciary has begun to move away from strictly requiring proof of the causal relationship between fault and damage. This shift is reflected not only in judicial practice but also in legislative changes. For instance, the French legislator enacted several laws in which compensation for damages is not contingent upon proving the causal link between fault and damage. A notable example is the law passed in 1985 regarding compensation for damages arising from car accidents. According to this law, a person harmed in a motor vehicle accident can claim and receive compensation for physical injuries without needing to prove the causal connection between the driver's fault and the damages sustained. As stipulated in Article 1 of the 1985 law, it is sufficient that the motor vehicle contributed in some way to the accident.

This change in the application of the principle of causality is not limited to relaxing the requirements for proving its existence. In some modern French laws, the judiciary has begun to assume the existence of a causal relationship between fault and damage. This simplification of the proof process has been particularly helpful in cases where it is technically impossible to establish a direct causal link. For example, the assumption of a causal relationship was incorporated in the 1968 law addressing diseases contracted by individuals living near nuclear plants, as well as in cases involving HIV infections linked to blood transfusions.

Furthermore, the concept of creating a risk, which is similar to the idea of losing an opportunity, has facilitated the process of establishing a link between a dangerous act or event and the resulting damage. When an individual intentionally or negligently creates a hazardous situation, the courts are more likely to accept responsibility based on the probability or foreseeable risk of harm, rather than requiring proof of an explicit causal relationship. For example, in a ruling by the Nanterre Court on May 6, 1998, the laboratory producing the hepatitis vaccine was held liable for skin spots, based on sufficient evidence to conclude that the vaccine caused the condition.

From the foregoing, it is evident that the application of the principle of prevention in the context of the causal relationship element extends beyond merely proving the existence of a causal link between fault and damage, as was traditionally required. Instead, the assumption of such a relationship can be based on scientific certainty rather than legal certainty. As a result, damages may be addressed before they occur, eliminating the need to prove the causal relationship in advance. Additionally, the occurrence of potential risks leads to inevitable damages, and thus the possibility of a causal relationship is considered hypothetical and does not need to be proven by the injured party.

3. CONCLUSION:

The conclusion encompasses the following findings and recommendations:

3.1. Findings;

a. The principle of prevention is one of the most significant contemporary principles that jurists and commentators on civil law can rely on to establish objective liability. Its aim is to exclude the occurrence of damages, mitigate dangers, and prevent their emergence, despite the challenges of practical application.

b. The scope of objective liability has expanded beyond its traditional foundations namely, the pillars of fault, harm, and the causal relationship between them. Today, the role of liability is not limited to addressing dangers and compensating for damages; it now focuses on avoiding and preventing them. Thus, our study concludes that this principle can serve as a new foundation for establishing objective liability.

c. There is a possibility of applying the principle of prevention in both contractual and tort liability.

3.2. Recommendations;

a. We believe it is essential for legal scholars to recognize the importance of this principle and consider it when establishing objective responsibility. They should complement legislative efforts by highlighting key aspects that facilitate the practical application of this principle. We also suggest that legislators give more attention to this principle and extend its scope beyond traditional views on liability.

b. It is crucial to foster scientific interest in this area through studies and in-depth discussions, as well as to engage in seminars and academic publications.

c. It is essential to develop a legal framework that aligns with social and technological changes and to encourage academic research focused on the principle of prevention and its applications. Such efforts will enhance the knowledge base and contribute to the development of best practices, facilitating the application of the principle of prevention in the legal field. Additionally, raising community awareness about the importance of this principle and its role in protecting rights will further enhance the effectiveness of its practical application.

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