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الإهداء

" قد إنَّ صلاتي ونسكي ومحياي ومماتي لله

رب العالمين، لا شريك له وبذلك أمرت وأنا أول

المسلمين " سورة الأنعام آية / 163,162

إلى من لا أستطيع أن أضيف لهم وصفاً

أو أوفيهم حقاً... إلى والديّ.

إلى الأعمام والأخوات والأشقاء وعائلاتهم.

إلى أخواتي في الله.

الشكر والتقدير

الشكر لله الذي منّ عليّ بكلّ من عليّ شكرهم

من جاؤوا بعلمهم ومعرفتهم كأساترة

وبتسامحهم وتعاونهم كأخوة أعضاء الهيئة التدريسية في جامعة النجاح الوطنية

وأخص الفاضل الدكتور علي السراطوي المشرف على الرسالة، والذي بفضل توجيهاته

القيّمة، والأناة التي أبرأها استطعتُ إنجاز هذا البحث.

كما أتقدم بجزيل الشكر والعرفان للدكتور أنور أبو عيشة والدكتور غسان خالد لتفضلهم

بقبول مناقشة هذه الرسالة

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**An-Najah National University
Faculty of Graduate Studies**

**Pillar Fault of Omissive Responsibility
Comparative Study of Egyptian and Jordanian
Civil Laws**

**Prepared by
Asma' Musa As'ad Abu Sroor**

**Supervised by
Dr. Ali Sartawi**

**Submitted in Partial Fulfillment of the Requirements for the Degree of
Master of Private Law, Development, Faculty of Graduate Studies, at
An-Najah National University, Nablus, Palestine.**

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Abstract

This study researched and analyzed fault on which all topics have dwelt. First, the study researched into responsibility as a method which considers fault as its basis. Then the study moved to identify the concept and nature which necessitate a blame for breaching one of the regulations. The study also examined the diversity of regulations which eventually lead to the emergence of diversity in responsibility, legal responsibility and omissive responsibility in particular given the fact that the fault is its basis in the majority of laws. In this context, the researcher surveyed the historical stages which responsibility has passed through and compared between responsibility and security in terms of the latter's concept, elements of difference and similarity with responsibility as a method very close in its objectives to those of omissive responsibility, albeit outwardly.

In chapter two, the researcher elaborated on fault as an abstract concept in language and in law. The researcher provided an analysis of some juristic terms which sought to control and specify the concept of fault in order to control its legal status, pertinent to it, and determine its presence or lack of it and the difficulty if not the impossibility of so doing. The abstract concept of fault, by its nature, was intended to form as a basis or foundation for a legal status requiring accuracy which no definition can succeed in describing a concept of an abstract nature. The researcher also investigated the effect of difference in the shape of act, positive or negative, which the fault is based on as well as the impact of difference in

descriptions pertinent to the fault, serious or trivial, deliberate or not, on the role of fault in responsibility.

Through investigation of the types of fault (civil and criminal) it was found that there was an inevitable link between civil responsibility and criminal responsibility. That is, every criminal fault is necessarily a civil fault but the other way is not true. It should be maintained that the basis of discrimination or differentiation between the two responsibilities was not the act and its description. The differentiation, rather, was based on harm and its difference from both responsibilities. The researcher also found that the fabrication of a new type of fault neglects the abstract pillar and focuses on fault and holds the responsibility on the physical/material pillar. It also failed, according to the concept of responsibility, in finding it a necessity to assign it rationality by overcoming the lack of justice resulting from the assumption of rationality as a non-material pillar in the fault. Accordingly, there was failure to account irrationality for harm inflicted on others.

The second half of the study examined the pillars of the fault. Chapter three investigated the material pillar, on the assumption of its realization of aggression on the normal person's behavior in the same circumstances which surrounded the perpetrator at the time of committing the act, in order to be considered an aggressive person if he/she deviates from the social control to whom the judiciary was granted wide powers, to determine its presence or lack of it, than it should, particularly given the ambiguity and disagreement over the circumstances taken to describe the act as aggressive from other circumstances which can be taken but accompanied the act and impacted it. Those accompanying the perpetrator have been marginalized and even neutralized on the basis of objective necessity of argument as if the average person, in his carefulness, intelligence and wit were enough to explain who the ordinary person

is and how he is expected to behave, thus achieving objectivity and neutrality in the legal text. The researcher, at the end of the chapter, analyzed the argument in the Jordanian civil law and Islamic Sharia concerning the concept of aggression, its appropriateness or lack of it with effective system in both of them.

Chapter four was devoted to the psychological or non-material pillar in terms of its concept, nature and the truth of its presence in the fault and in the responsibility as a condition of assigning the responsibility or a condition to attribute the fault to the perpetrator. The researcher held a comparison between systems followed in the Jordanian and Egyptian civil laws- and the Islamic Sharia necessarily –for each of them follows a different system.

In the light of the research into the validity of the fault as a pillar to establish responsibility, it was found that such establishment was not valid, pertinent to the fault and its nature, thus preventing it from becoming a legal basis, in the accurate and abstract sense, required in any legal foundation.

Considering the fault as a basis for making the responsibility a civil one, at the beginning of its separation from the criminal responsibility, didn't emerge as different from the criminal. Rather, it was a case that extends to criminal responsibility assumed by the emergence of the legal principle. However, the difference of assumed purpose from both of them necessitates flexibility in the foundation of the omissive responsibility, hence the fault. The nature of responsibility and omissive responsibility in particular, and assumption of coercion and compensation as an end for it has revealed more clearly the non-validity of the fault as a basis for responsibility and even the non-validity of responsibility as a method that

aims at rectifying the harm, bringing back the balance to financial reliabilities coupled with what the responsibility holds of appropriateness of nature which assumes that a deviant act is a basis for it regardless of its description and the necessity for differentiation of perpetrators when it comes to accountability.

