Journal of Law, Policy and Globalization
ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online)
Vol.75, 2018

The rules of tort liability as a basis for the product's manufacturer Liability.

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Abstract- *The subject of this research revolves around the rules of tort liability as a basis for the manufacturer's Liability which is one of the topics that hardly any person can disregard, whether a manufacturer or a consumer, because people need to deal with the goods in their lives as it is a necessity of life. Accordingly, there must be a legislation that protects the consumer from the manufacturer in case of defect in the goods which is caused by the producer divertive behavior of what is considered proper or is a breach of the general legal obligation of not harming others.*

Keywords: tort liability , the product ,consumer ,goods , detriment the consumers.

I. Introduction.

The technological and scientific progress was accompanied by industrial and commercial development in all fields, which led to a doubling of the human needs for products and commodities of all kinds, whether in their practical or personal life. These products have two impacts on human life. a positive impact that facilitate their needs and giving them a sense of well-being, and the negative impact of damage that may be caused by these products.

The damages which is caused by defective or hazardous products are not limited to the contractor himself but also to other persons who have a contractual relationship with the manufacturer. However, these products may cause harm to them because of their connection with the consumer for example, his family members or his friends so the protection should not be limited to the consumer or buyer only but it must be extended to others that may not have a contractual relationship with the manufacturer.

The recipient also loses his ability to hold the product contractually if the product or goods reaches him after a series of successive sales because he does not have the right to direct claim on the manufacturer. Therefore, there must be a way to seek compensation for the damage caused by the defective product.

The manufacturer 's liability in this case is subject to the provisions of Article 256 of the Jordanian Civil Code and Articles 1382-1383 of the French Civil Code on the responsibility of the person for his actions that cause harm to others. The (French) legislation requires proving the person's tort liability for the damage that harm other parties in order to be charged as the responsible of this fault. This is based on the legislation that established responsibility due to the personal theory (error).

As for the Jordanian law, the objective theory was adopted in principle as a legal basis for liability it was not based on error as a basis for liability but rather on the basis of damages. Therefore, it is not necessary to prove the fault of the tortfeasor. However, the Jordanian legislator did not take the theory of objectivity in absolute terms, but also took the theory of personal exceptionally in some places.

II. The problem of the research:

The problem of research lies on setting special provisions for the liability of damages caused by products, and whether if the provisions of contract liability and default are effective as a basis for raising the responsibility of the manufacturer and pay compensation for the damages caused by his defective products.

III. The importance of the research

The importance of the research lies on the challenge posed by the nature of the damages of these products to the general rules, especially the rules of liability for the contract, since these damages are not caused by the contract between the contractors but rather the defect in the products under contract ,the differences in the nature of the damages created a legislative gap, the French judiciary attempted to decrease the gap by developing and adapting general rules of civil liability to suit with the nature of these damages.

IV. The objective of the research

The main objective of this research is to clarify the rules of tort liability for the manufacturer responsibility of the products, in addition to the following objectives:

1-Clarifying the liability of the product's manufacturer for his personal actions.

2- Clarifying the fault of the tort liability of the product's manufacturer.

V. Research methodology:

The researcher used a comparative approach in this research by comparing Jordanian law and French legislation with regards to the rules of tort liability as a basis for the liability of the product manufacturer.

VI. The first Chapter

Tort of negligence as a basis for manufacturer's liability

The responsibility for personal behavior is based on a fault which must be proved, as required by article 1382 of the French Civil Code: "Any act that causes harm to others requires that the person who commits such an act should compensate the harmed person."

In accordance to the previous text, it is noticed that the legislator has imposed the need to establish an evidence of the manufacturer's fault to compensate the plaintiff as the manufacturer failed to abide to customary behaviors and breaches the general obligation imposed by the law which is not harm to others. The plaintiff is responsible for suing a claim and proving that the harm that he suffered from is due to the fault of the manufacturer negligence.

It is known that, responsibility for the acts based on three elements, so the affected party must prove the fault, the harm and the reasonable relation since the fault caused by the deviation of the manufacturer from the customary behavior or the breach of the general legal obligation of not harming others. As for the damage, it includes the harm caused to the victim by his money or body, whether material or moral at the present or in future as long as the occurrence of the damage is definite, and even the damages of the original damage. Finally, the plaintiff must prove the causal relation between the error and damage, which is the connection between the cause and the result, which indicates the damage was the result of the manufacturer's error, the evidence in this case is all

methods of proof for being physical facts [1]

The Jordanian legislator stated in Article (256) of the Civil Code that: "Any damage to third parties is necessary, even if it is not exposed by warranty." This article asserts that the Jordanian legislator established liability for tort rather than fault, which means that the legislator adopted the objective theory not the personal theory, and the responsibility lies on tortfeasor, whether he is mentally capable or not [2]

However, the provisions of article 257 of the Civil Code, states: "Damage shall be caused by direct or causing injury." Thus, in case the damage occurs directly, it requires guarantee and without any condition. but if it is caused intentionally, it involves infringement, intention or the act is conducive to damage.

According to the previous Act, It is clear that if the damage occurred directly[3] no condition is required , but if it is caused intentionally, it must involve intent or infringement, which in Islamic jurisprudence means injustice , aggression and breach of rights[4]

Some argue that infringement has one concept with the concept of the physical element of error that is acting out of the ordinary behavior of the prudent person[5] whereas intentional negligence means that the behavior is done deliberately and intentionally, the person willingly and directly commits the act and its consequences. Then intention or deliberate in warranty is to carry out the act with intent to harm the other parties.[6]

Therefore, the responsibility or guarantee of the tortfeasor, in the Jordanian Civil Code which is taken from the Code of Judgments ,should be met by the availability of the challenge, intent or negligence, ie, either the intent to cause harm to others or to negligent in the sense of error

Both intent and neglect judgment require recognition of the tortfeasor

From this we conclude that the Jordanian Civil Code has taken the idea of error (infringement or deliberate) exceptionally with respect to the responsibility of the tortfeasor, when required to the infringement and intentional damage.

Moreover, what confirms the validity of the above is what has been mentioned by the court of cassation in many of its decisions. The Jordanian legislator also implement the personal theory which is based on exceptional error, in addition to the objective theory. As stated in one of its decisions that "Wrong is the strength of civil responsibility, and its existence depends on it, and if this error is denied, there is no responsibility or guarantee."

And because most cases that affect the consumer are considered as a reason not a direct cause, consequently, there must be infringement or intent to establish the responsibility of the manufacturer or the professional seller in accordance with the circumstances of the case, the consumer must prove the infringement ,negligence and the error of the manufacturer. From this we conclude that the Jordanian Civil Code required that the fault for liability for a harmful act in the field of product liability be proven to be a cause of injury in most cases

[1] Adnan Ibrahim Al-Sarhan and Nouri Hamad Khater (2008), Explanation of Civil Law, Sources of Personal Rights, Dar Al-Thaqafa, Amman.

[2] Amer Mahmoud Al-Junaidi (2010), Civil Liability for Harmful Industrial Products Damages, Comparative Study, Master Thesis, Birzeit University, Palestine, p. 111.

[3] The direct means of what was the direct result of the aggressor initiated an act without mediating between them another act causing the damage, and this is the opposite of the cause that needs to do other action independent of the act of causing the contribution contributes to the result.

[4] Rana Najah Taha Dawas (2010), Civil Liability of the Researcher, Comparative Study, Master Thesis, An-Najah National University, Nablus, Palestine, pp. 25-26.

[5] Asma Mousa As'ad Abu Sror (2006), The Wrong Corner in Tort Liability, Comparative Study between Egyptian and Jordanian Law, Master Thesis, An-Najah National University, Nablus, Palestine, p.

[6] Amer Mahmoud Al-Junaidi, Civil Liability for Damages of Damaged Industrial Products, p. 113.

In order to say that there is an error, it is necessary to prove that the manufacturer‘s behavior or negligence caused damage to others, and thus this is considered an abnormal behavior of the ordinary prudent person from the same community to which the manufacturer belongs to, what the manufacturers do must be considered as breach of the duty of care and caution this behavior could not be committed by any producer or seller of the community to which the person to whom the claim for compensation has been filed. The plaintiff must establish the evidence of the act performed by the manufacturer or his refusal of accomplishing his responsibility which is considered as abnormal behavior [1]

Nevertheless, it is difficult for the plaintiff to find proof, especially with the progress of the mechanism and the development of production methods and the complexity of the composition of the products. It is possible that there is a defect in the product which leads to harm to others, not due to the behavior of the manufacturer or distributor that is considered an abnormal behavior, It may also be difficult for the plaintiff to establish a proof in cases where the proof of error requires tracking the commodity at different stages of its preparation to identify the manufacturer behaviors and his conformity with the customary behavior of another manufacturer of the same community.[2]

Practically, some cases show that the plaintiff loses his right for compensation because he could not prove the fault of the manufacturer, resulting in the loss of liability for defective and hazardous products.

VII. Chapter Two

The means provided by the judiciary to reduce the burden of proof of error

A. Section 1: Conducting the error from the surrounding incidents.

The French judiciary sought to assist the victim in proving the fault of the manufacturer and to reduce the difficulty of the proof. by determining the error of the manufacturer through investigating the surrounding circumstances of the case, when some incidents in these cases indicate the occurred error . For example,In one of the cases which was about a defect in a tap or a gas pipe. The French Court of Cassation considered the pipe manufacturer to have made a mistake because it had proved that the risks of these faucets had been known for a long time and caused several accidents during the previous eight years, all due to the same reason.

Although, the company was ordered to withdraw these defective faucets ,they didn’t respond, so the French Court of Cassation decided that since the company realize by its knowledge the risks of its production which was directed to customers , they should conduct the necessary review of this production and to take the actions required to ensure repair products[3]

In this case, we recognize that the court based its judgment on the error of the manufacturer on depending on the previous facts, as it was found that this defect had a precedent in causing the damage, and the manufacturer did not take any action of withdrawing or re-reviewing the product As a result, the court imposed to compensate the victim for the damage caused by the defective products after proving the error of the manufacturer by using the relevant facts , the court in this case has enabled the plaintiff to prove the error.

[1] Zuhair bin Zakaria Hareh, (1999) The fault in civil responsibility, comparative study, PhD thesis, Ain Shams University, p. 265.
[2] Muhammad Sabri al-Jundi (2015), in tort liability for the harmful act - study in the Western jurisprudence and Islamic jurisprudence and civil law, Dar Al-Thaqafa, Amman, p. 91.
[3] Zahia Houria Si Yousef (2009), Civil Responsibility of the Product, Dar Al-Homa, Algeria, p. 214.

B. Section Two : The manufacturer's violation of code of conduct and breaching contractual responsibility

- **Firstly: The manufacturer's violation of code of conduct.**

The legal rules, regardless of their source, whether the text of the law, a decree or professional associations, require persons to be subjected to certain behavior such as the rules governing the production and distribution operations, so that the violation of this behavior is considered an error of responsibility. Thus the liability of the manufacturer is judge in the case of not respecting the rules when exercising his profession. Such violation shall be a penalty of error allowing the injured party to seek compensation from the producer or distributor.[1]

It proves the manufacturer tort of liability as a result of violating either the rules of law allied with his professional activity, or in violation of professional codes .

we will try to provide a statement of manufacturer's violations, and how to be considered a mistake in short.

1- The manufacturer's violation of legislative rules

Several specialized legislation regulates the rules that a professional must abide by. These rules include the specific rules for mandatory data that the manufacturer must provide on the product or on its cover, or the rules relating to the control and safety of the raw materials involved in the manufacturing process.[2]

Accordingly, the manufacturer must follow these rules and do not deviate from them, because not applying the required behaviors by the legislative rules is considered a mistake of negligence, and in this case , the manufacturer assumes the responsibility to compensate for the damage caused to the victim. and the victim must prove the violation of the manufacturer to the legislative rules, by this he could prove the manufacturer error.

2- Manufacturer's violation of professional code

Professional codes are another source of rules that a manufacturer must follow and respect, that is, every professional is subject to these codes and is fully aware of them and this leads to their application without any restriction, the product must adhere to the professional behavior used by the same members of the profession to which it belongs [3]

French jurisprudence stressed the need to meet the necessary conditions for attributing the customary rule to the professional codes, so that it can be considered as a source of the obligation of the manufacturer and thus to prove his liability of the damage due to misfeasance when it fails to perform this obligation. Which should be a common practice among them, and if possible, the penalty can be imposed on those who violate it[4]

However, the question arises as to whether the follow-up of the manufacturer to professional codes prevents him from committing the fault, and if he does not always follow the codes of the profession leads to error ?

The Paris Court of Appeal replied to this question in one of its decisions that it was not sufficient for a professional to follow the professional codes in order to avoid the description of the error. The Court had absolute freedom to assess the extent to which the conduct of a professional was considered to be contrary to the rules of caution .Because professional codes represent only a minimum amount of safety precautions and should be included in the commodity, it is necessity , but this is not sufficient to avoid error, and therefore the question

[1] Abdul Hamid Al-Diasti Abdul Hamid (2010), Consumer Protection in light of the Legal Rules of Product Liability, Dar Al-Fikr wa al-Lawun, Mansoura, Egypt, p. 320.
[2] Zahia Houria Si Youssef, Civil Liability of the Product, p. 217.
[3] Abdel Hamid Diaasti Abdel Hamid, Consumer Protection in Light of the Legal Rules of Product Liability, p. 320.
[4] Hassan Abdel Basset Ghali (2000), Product Liability for Damage Caused by Damaged Products, Dar al-Nahda al-Arabiya, Cairo, p. 110.

whether the manufacturer violates the professional codes is a mistake or not, the decision of this issue refer to the in charge judge[1]

As for the second question, the manufacturer is mistaken if he does not adhere to the scientific and technical assets known in the field of industrial production, so he should not stop at the known-traditional means and does not seek to develop them, but it is obvious that whenever technological develops new ways of prevention and safety from the risk of the products that he produces, he should seek the development of his products to cope with these new means, provided that these modern means provide better protection against the risks contrary to the old methods, although the opposite should not be abandoned by the manufacturer.[2]

- **Secondly :Producer violation of contractual obligations**

Under the traditional rules of contractual liability, the contractual fault is separated from the torts liability, because the contracting service is a closed circuit on its parties in accordance with the principle of proportionality of the effect of the contract.[3]

However, the desire of the French judiciary to provide protection to non-contractual stakeholders and to protect them from contractual errors has changed this traditional view

Where the French judiciary considered that not allowing the injured party to establish his claim in tort liability for breach of the producer by one of its contractual obligations leads to the unfairness of the third party to the contract, because the defects of the thing or its risks may not only cause harm to the contractor but also to other persons, For example, a car with defect in its brakes will not only harm its buyers but it also threatens the safety of those traveling in this car from the family or friends of the buyer and sometimes even pedestrians on the road, as well as corrupt food that may cause damage to non-buyer

For this reason, the French judiciary expanded the definition of the obligations of the producer towards third parties, and derived from its contractual error a default error based on the liability of the producer of tort .Consequently, the French courts have tended to regard breach of contractual obligation as a fault to assess the liability of the tortfeasor, and therefore the breach of the producer liabilities which aim to ensure safety from damage caused by the defects of the commodity, and to insure if the product matches what it is produced for.

Obligations aimed at ensuring the safety of damage resulting from the inherent danger of the commodity and processing it to ensure the safety of those who possess and use it is a contract, but if it causes harm to others, the latter may rely on it to prove the producer's tort of liability.[4]

As a concrete example of the above, in a case involving the use of an adhesive by a person to install an industrial floor in one of his rooms with the help of his son, it led to a fire in the house, following the son's ignition of sulfur in the next room, These two persons were seriously injured and the French Court of Cassation considered that the lack of precautionary statements regarding that article (and therefore the breach of information) resulted in the liability of the producer against the father as a buyer and its tortfeasor responsibility towards the son to whom he has no contractual relationship[5]

Despite the attempts done by the French judiciary to reduce the difficulty of proving the error of the product, it

[1]Zahia Houria Si Youssef, Civil Liability of the Product, p. 219.
[2] Abdul Hamid Al-Diasti Abdul Hamid, consumer in the light of the legal rules of product liability, p. 321.
[3] M. Jacques Ghestin, 1, applicationdesregles specifiques de La vents ala responsabilit des fabricants et distributeurs deproduits en droit francais. Rapport presents, en colloque organize Les 30 et 31 Janvier 1975. P. 66. n. 87..

[4] Abdul Hamid Al-Diasti Abdul Hamid, consumer in the light of the legal rules of product liability, p. 321.
[5] Decision of the Civil Chamber of the French Court of Cassation 31 January 1973.

remains impossible for the victim to prove the error of the product in some cases, especially when many elements interfered in the production process, such as people or machines and as preceded it is not easy to prove the producer's omission of ordinary behavior, and in all cases the burden of proof is always relies on the victim

Therefore, the French judiciary sought to make this responsibility more objective by using theoretical provisions that bear liability or risks and do not require the error of responsibility. It stripped it of the idea of error and placed it on the idea of guarding (product error is presumed)

The producer remains in the custody of his products despite the transfer of ownership to others, because he is the only one who remains able to monitor all the elements and composition[1]. Although French law has used the theory of objectivity in some places, this theory has not formally adopted as a basis for responsibility, but based on error

VIII. Conclusion

In this paper, I discussed the rules of tort liability as a basis for the responsibility of the producer of the goods. I divided it into two sections, the first of which was the torte of liability as a basis for the responsibility of the producer in the second section, I clarified the means provided by the judiciary to alleviate the burden of proving the error were clarified and included a set of conclusions and recommendations

- **Results**

1-The Jordanian Civil Code has taken the idea of error (infringement or intentional) in an exceptional manner with respect to the responsibility of the tortfeasor, when it requires the infringement and intentional damage.

2-The Jordanian Civil Code requires that the fault for liability for a harmful act in the field of product liability be proven to be a cause of injury in most cases.

3- Under the traditional rules of contractual liability, the contractual error is separated from the fault of tort, because the contractual service is a closed circuit on its parties in accordance with the principle of proportionality of the effect of the contract.

- **Recommendations**

1-We hope the Jordanian legislator to expand the definition of the obligations of the producer towards third parties, to consider a contractual fault a tort fault based on the responsibility of the manufacturer liability, as did the French judiciary.

2-The manufacturer must cope with technological development and invent new means of prevention and safety from the risk of the products he manufactures, and seek to develop his products in accordance with the modern means.

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[1] Zahia Houria Si Youssef, Civil Responsibility of the Product, p. 231.

(3).Amer Mahmoud Al-Junaidi (2010), Civil Liability for Harmful Industrial Products Damages, Comparative Study, Master Thesis, Birzeit University, Palestine.

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