


Analysis of the Economic Effects of Civil Liability Arising from the Acts of Others: A Comparative Study of Iranian and Iraqi Law

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Abstract

The concept of civil liability, meaning the obligation to compensate for damages, has evolved over time from simple personal relationships into a subject with broad economic and social dimensions. One of its most complex manifestations is liability arising from the acts of others, where a person is held accountable for the harmful conduct of another. This form of liability, which transcends the principle of personal accountability, appears in cases such as the liability of guardians, employers, and the state. The rules governing this liability, grounded in theories such as fault and risk, directly influence the distribution of financial risks within society and the protection of injured parties. The objective of this descriptive-analytical study is to compare the approaches of Iran and Iraq in this area and to examine the differing economic implications of Iran's contradictory and fragmented legal provisions versus Iraq's more complex yet functionally effective legal solutions. The findings reveal a fundamental divergence between the two systems regarding liability for the acts of others. Iran's scattered laws have produced a dual system that ambiguously shifts the burden of loss between the incapacitated person and the guardian, often neglecting the rights of the injured party. In contrast, Iraq, by adopting the risk theory and imposing strict parental liability, distributes risk more equitably. This fundamental difference in risk allocation and compensation efficiency highlights the weaker performance of Iran's legal system.

Keywords: Economic effects, civil liability for the acts of others, comparative study, Iranian law, Iraqi law

Received: 04 June 2025

Revised: 23 September 2025

Accepted: 28 September 2025

Initial Publish: 05 October 2025

Final Publish: 01 January 2026



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Citation: Abdulhadi Najm, M., Ghorbanifar, M., Al Adilee, A. N. A., & Teimoori, M. S. (2026). Analysis of the Economic Effects of Civil Liability Arising from the Acts of Others: A Comparative Study of Iranian and Iraqi Law. *Legal Studies in Digital Age*, 5(1), 1-9.

1. Introduction

Civil liability, as one of the most important topics in private law, has long attracted the attention of jurists and legal scholars (Katouzian, 2014; Yazdanian, 2017). This concept, which is fundamentally based on the obligation to compensate harm caused to others, is founded on different bases and rules in various legal systems (Yazdanian, 2014). In the traditional view,

civil liability is a legal phenomenon that regulates the relationship between the injured party and the injurer; however, in a modern perspective, this liability encompasses broader dimensions, especially economic and social implications (Safaei & Ghasemzadeh, 2003). Liability arising from the acts of others is a key branch of this subject, in which a person is held responsible for compensating damage caused by another (Al-Miyahi, 2016; Doroudian, 1997). This form of liability, which deviates from the principle of “personal accountability,” is manifested in situations such as the liability of guardians for the acts of the incapacitated (minor, insane, prodigal), the employer’s liability for the acts of employees, and the state’s liability for the acts of its officials (Vahdati Shobeiri & Samani, 2016). The complexity and importance of this type of liability have led legal systems to regulate its rules using various foundations, including presumed fault theory, risk theory, and even the theory of social guarantee (Al-Dhanun, 1976).

Although Iranian and Iraqi civil law share deep commonalities, particularly through their roots in Islamic jurisprudence, there are significant differences regarding civil liability (Al-Awji, 2009). These differences are not only legally important but also economically impactful. The question of who must compensate for damage and how compensation should be carried out goes beyond a purely legal debate; it directly relates to how the financial burden of damages is distributed, how resources are optimally allocated, and how economic stability is preserved (Mustafa Mahmoud, 2013). For example, when a minor or an insane person causes harm, if the law places liability directly on the guardian, the guardian bears the financial burden. But if compensation is paid from the incapacitated person’s assets, this burden transfers to their economic future and family. Such legal choices directly influence social welfare and individuals’ incentives to supervise and care for others (Safaei, 1977).

Accordingly, this study aims to provide an in-depth comparative analysis of the economic effects of the rules governing civil liability for the acts of others in the legal systems of Iran and Iraq. This analysis addresses questions such as: which of these two systems provides better protection for the injured party? Which leads to fairer and more efficient allocation of economic risks? And ultimately, which provides a stronger legal foundation for emerging liabilities, such as the liability of legal entities? In Iranian law, Article 1216 of the Civil Code and Article 7 of the Civil Liability Act are two principal provisions regarding the liability of incapacitated persons, yet they appear to conflict. This tension, which is also observed to some extent in Iraqi law, provides a valuable ground for comparative and in-depth analysis.

The main research question is: what are the differences and similarities between the rules and foundations of civil liability for the acts of others in Iranian and Iraqi law, and how do these differences affect compensation of damages, risk distribution, and restorative justice?

The core hypothesis of this study is that although there are structural similarities in the jurisprudential foundations, Iranian law, due to reliance on scattered and sometimes contradictory provisions and the lack of explicit clarification for new liabilities (such as contractual caretakers’ liability and liability of legal entities), has paid less attention to the economic and social aspects of civil liability for the acts of others compared with Iraqi law. Consequently, Iranian law sometimes provides less efficient mechanisms for compensation and fair risk allocation. This research attempts, through a precise comparative examination, to test this hypothesis and propose strategies to strengthen the economic and social dimensions of civil liability in Iranian law.

The novelty of this study lies in several key areas. First, the research is not purely legal but employs economic analysis of law to examine the financial and social consequences of legal rules. Second, it adopts a comparative and interdisciplinary perspective by analyzing the rules governing liability for the acts of others not only in relation to the incapacitated but also in three main categories: guardian liability, vicarious liability, and liability of legal entities, thus providing greater comprehensiveness. Finally, by identifying the strengths and weaknesses of the Iranian and Iraqi legal systems, this research offers recommendations to reform Iranian laws and judicial practice, potentially enhancing the efficiency of damage compensation and creating a sound legal framework for liability for the acts of others in contemporary society. Such analysis, especially concerning modern liabilities like governmental and corporate responsibility, can help outline a roadmap for the future of civil liability law in Iran.

2. Foundations of Liability Arising from the Acts of Others in Iranian and Iraqi Law

2.1. *Foundations of Liability Arising from the Acts of Others in Iranian Law*

In contemporary legal systems, the principle of personal liability is generally accepted as a foundational rule; however, the doctrines governing liability for the acts of others have significantly modified and expanded this principle (Doroudian, 1997; Yazdanian, 2017). The Iranian legislature has adopted a scattered approach, addressing this type of liability in various provisions, including Articles 7 and 12 of the Civil Liability Act and Article 1216 of the Civil Code (Yazdanian, 2012a). This multiplicity has led Iranian law to encompass numerous instances of liability arising from the acts of others (Yazdanian, 2012b). Such liability is not limited to domestic law; it is also emphasized in certain international conventions to which Iran has acceded (Katouzian, 2014).

In Iranian law, the liability of a guardian for the acts of minors and the insane is particularly complex. According to Article 1216 of the Civil Code, minors—whether discerning or non-discerning—and insane persons are personally responsible for the damages they cause. Such liability is satisfied from their own property, unless the injured party has voluntarily entrusted property to the incapacitated person; in that case, due to the “causation rule,” the injured party bears responsibility (Safaei & Ghasemzadeh, 2003). This indicates that primary liability rests with the incapacitated person rather than with the guardian (wali, executor, or curator). Accordingly, a guardian or curator is obliged to compensate from personal assets only if negligent in fulfilling the duty of supervision and care; otherwise, compensation is made from the assets of the incapacitated (Safaei, 1977).

This legal framework can sometimes disadvantage the injured party. For example, when a minor student causes damage, under Article 7 of the Civil Liability Act, the teacher is held liable; yet once the student reaches the age of majority, this liability ceases, and if the now-adult student lacks financial capacity, the damage remains uncompensated (Yazdanian, 2012b).

Regarding the insane, two different perspectives exist in Iranian law. The Civil Code considers the insane personally liable, whereas the Civil Liability Act, built on the principle of personal fault, conditions their liability on the presence of a guardian (Doroudian, 1997). Therefore, an insane person’s act can ground liability only if inherently unlawful and blameworthy (Safaei, 1977). Liability of the prodigal (safih) is also accepted since they, like discerning persons, possess a degree of understanding. However, Article 7 of the Civil Liability Act is insufficient for educational settings because the teacher’s liability is confined to minors and the insane, excluding students who have reached legal capacity; this legal gap shows the necessity of drafting new regulations (Yazdanian, 2012a).

By adding the requirement of guardian negligence, Article 7 of the Civil Liability Act effectively transforms the incapacitated person’s liability into a conditional and secondary one (Katouzian, 2014). In other words, the guardian’s liability is not truly vicarious but is rather a form of personal liability arising from failure in care and supervision (Doroudian, 1997). Thus, if the guardian is not negligent, the incapacitated person remains liable—even if their assets are insufficient to cover the damage (Safaei & Ghasemzadeh, 2003). Some scholars argue that Article 7 of the Civil Liability Act implicitly repeals Article 1216 of the Civil Code because it subjects the incapacitated person’s liability to additional conditions such as guardian negligence and the wrongful nature of the act (Yazdanian, 2017). However, overall, Iranian law treats incapacitated persons as liable under the general doctrines of “destruction” (itlaf) and “causation” (tasbib), while the Civil Liability Act adds a qualification: if the injured party cannot recover due to the incapacitated person’s insolvency, the guardian may become liable, but only if negligence can be established (Katouzian, 2014). If no negligence is proven, the guardian bears no liability, even if the incapacitated person’s assets are insufficient (Safaei, 1977).

2.2. *Foundations of Liability for the Acts of Others in Iraqi Law*

In Iraqi law, the liability of a non-discerning minor is based on the risk theory rather than fault because such a person lacks understanding (Al-Dhanun, 1976). This liability is conditional and accompanied by mitigation. Iraqi legislation is inconsistent

regarding liability for a child's acts; one provision holds the guardian, trustee, and curator liable, while another refers only to the father and grandfather (Al-Awji, 2009). Regarding insane persons, Paragraph 2 of Article 191 of the Iraqi Civil Code allows the injured party to claim compensation from the guardian or curator if the insane person does not have sufficient assets. This liability functions as the primary mechanism (Paragraph 2, Article 191) (Al-Miyahi, 2016).

In the field of vicarious liability, Iranian and Iraqi laws diverge. In Iranian law, employer liability for the acts of employees is only briefly mentioned in Article 12 of the Civil Liability Act and lacks a comprehensive definition (Yazdanian, 2017). This liability is not limited to the employer–employee relationship and could include other situations; yet the law fails to address employer responsibility for trainees, although trainees are neither regular employees nor minors — leaving a legislative gap (Mustafa Mahmoud, 2013). In contrast, Iraqi law does not recognize the worker as bearing liability while performing duties and formally acknowledges the principle of employer responsibility (Al-Awji, 2009). Meanwhile, in Iranian law, the teacher's liability for adult students is undefined, and under Article 11 of the Civil Liability Act, the state itself is generally not recognized as liable for damages caused by public employees. This omission leads to the injured party being deprived of compensation (Vahdati Shobeiri & Samani, 2016). Teacher liability, when based on failure in supervision and care, is in reality personal rather than strict vicarious liability. Additionally, state liability as the largest employer faces unjustified exceptions compared with other employers (Vahdati Shobeiri & Samani, 2016). Islamic jurisprudence also recognizes state liability for employees' actions, with historical examples such as compensation paid from the public treasury (Bayt al-Mal) during the governance of Abu Bakr and Umar ibn Abd al-Aziz (Mustafa Mahmoud, 2013).

Iraqi law accepts employer liability despite certain limitations. Article 127 of the Law of Obligations and Contracts sets three conditions: (1) a relationship of subordination, (2) the principal's ability to supervise, and (3) the commission of a harmful act by the subordinate in the course of duty (Al-Awji, 2009). However, Iraqi civil law confines this liability to the public sector, municipalities, and industrial and commercial institutions, excluding noncommercial and nonindustrial companies (Al-Miyahi, 2016).

3. Economic Effects of Guardians' Liability for the Acts of the Incapacitated in Iranian and Iraqi Law

3.1. Economic Effects in Iranian Law

Analyzing the liability of guardians for the acts of the incapacitated from an economic perspective allows evaluation of its consequences for financial burden distribution, optimal resource allocation, and victim protection (Safaei, 1977). Legally, Article 1216 of the Iranian Civil Code provides that compensation for damage caused by a minor or insane person is paid from the incapacitated person's own assets (Yazdanian, 2012a). This rule has direct economic implications: the financial burden of damage falls on the incapacitated individual and consequently their family. While consistent with the principle of personal liability, in practice it may deprive the victim of compensation if the incapacitated person lacks sufficient assets. By contrast, Article 7 of the Civil Liability Act adopts a different approach by imposing liability on the guardian (such as a teacher or curator) but only if the guardian is at fault (Yazdanian, 2012b). These two provisions, apparently contradictory, have created a dual compensation system.

The economic consequences of this duality are considerable. When the guardian is found liable due to fault, compensation comes from the guardian's assets. This legal mechanism creates incentives for guardians to supervise and monitor incapacitated persons more carefully, reducing the likelihood of harm at the outset (Katouzian, 2014). In economic terms, risk is shifted to the party most capable of controlling it. However, even here, Iranian law — following the principle of preventing undue hardship (Article 7 of the Civil Liability Act) — conditions the guardian's liability on their financial capacity (Safaei & Ghasemzadeh, 2003). While ethically justifiable, this can lead to incomplete compensation for the victim, effectively shifting the economic burden back onto the injured party and undermining restorative justice, which seeks to restore the injured party to their pre-damage position. For instance, if an adult student causes harm, the case falls outside Article 7, and the victim must directly claim from the student; if the student lacks resources, the harm remains uncompensated (Yazdanian, 2017).

3.2. *Economic Effects in Iraqi Law*

Conversely, Iraqi law bases the liability of a non-discerning minor on the risk theory because the child lacks the element of fault (Al-Dhanun, 1976). This means the mere harmful act creates liability, though mitigated and conditional. Regarding guardian liability, Articles 191 and 218 of the Iraqi Civil Code adopt approaches that directly affect the financial risk distribution. Paragraph 1 of Article 218 places liability on the father or, in his absence, the grandfather, thereby protecting the injured party by allowing recovery from someone presumably with assets rather than the incapacitated person (Al-Awji, 2009). This enhances risk distribution and avoids concentrating the financial burden on a vulnerable individual.

However, Paragraph 2 of Article 191 also permits the injured party to seek compensation from the guardian or curator but only if the incapacitated person lacks sufficient property (Al-Miyahi, 2016). This creates a form of secondary or precautionary liability for guardians. Such a framework benefits the victim by providing multiple avenues for recovery while still allowing the guardian to avoid unfair burden if they prove no personal fault (Mustafa Mahmoud, 2013). This mechanism balances victim protection with fairness to the guardian.

Ultimately, the key economic difference between the two systems lies in financial burden allocation. Iran's contradictory statutes sometimes place the burden on the incapacitated person, sometimes on the guardian, and occasionally leave it with the injured party — producing economic inefficiency and uncertainty in compensation (Yazdanian, 2012b). Iraq, though not free of complexity, offers more consistent victim support and risk-sharing mechanisms. These contrasts underscore the importance of using economic analysis of law to evaluate and reform civil liability frameworks (Yazdanian, 2017).

4. **Vicarious Liability in the Distribution of Economic Risk in Iranian and Iraqi Law**

4.1. *Vicarious Liability in the Distribution of Economic Risk in Iranian Law*

Vicarious liability denotes the accountability of a person or entity (the principal) for losses caused by another (the subordinate), even though the principal has committed no personal fault. This concept, which departs from the traditional principle of the personal nature of liability, is one of the most important legal tools for the equitable distribution of economic risk in society. In modern legal systems, this form of liability has expanded with the aim of protecting injured parties and ensuring compensation for losses—particularly where the primary tortfeasor lacks sufficient financial capacity. Examining this subject in Iranian and Iraqi law reveals differing approaches and system-specific challenges.

In Iranian law, there is no comprehensive, unified statute that generally governs liability for the acts of others. Nonetheless, numerous provisions address the subject. Among the most significant instances of vicarious liability in Iran are the liability of guardians for minors and insane persons, as well as employer liability. Article 7 of the Iranian Civil Liability Act makes a guardian's liability for the acts of incapacitated persons (minors and the insane) contingent upon the guardian's fault in supervision and care, thereby initially placing responsibility on the party with the most control over the risk source (Safaei & Ghasemzadeh, 2003). However, if the guardian lacks the financial capacity to compensate, the loss is paid from the incapacitated person's assets. This legal mechanism shifts risk from the guardian to the incapacitated person and, ultimately—if the incapacitated person is indigent—to the injured party, which conflicts with the primary objective of vicarious liability (victim protection) (Safaei, 1977). By contrast, with respect to employer liability, Article 12 of the Civil Liability Act holds the employer responsible for loss caused by employees in the course of employment unless the employer proves that all necessary precautions were exercised; this presumed-fault approach operates as an efficient risk-distribution tool by assuring the injured party recourse against the employer, who typically has greater solvency (Katouzian, 2014).

4.2. *Vicarious Liability in the Distribution of Economic Risk in Iraqi Law*

In Iraqi law, vicarious liability likewise plays a special role in distributing economic risk. Regarding guardian liability, Article 218 of the Iraqi Civil Code expressly imposes liability on the father—and, in his absence, the grandfather—for losses arising from the acts of a minor child. This rule places strict liability on the parents, enabling the injured party to claim directly against them and thereby shifting the financial burden from the vulnerable child to the guardian (Al-Awji, 2009). Conversely,

Paragraph 1 of Article 191 of the Iraqi Civil Code also recognizes the minor's own liability, but conditions it on the guardian's lack of financial capacity and provides mitigation. Although these two provisions may appear contradictory, they in fact furnish multiple avenues of recovery for the injured party and help prevent uncompensated loss (Al-Dhanun, 1976).

With respect to employer liability, Iraqi law, similar to Iran, accepts the principle. Article 127 of the Law of Obligations and Contracts conditions the principal's liability for unlawful acts of the subordinate on three elements: (1) a relationship of subordination; (2) the principal's effective ability to manage and supervise; and (3) commission of the harmful act in the course of employment (Al-Awji, 2009). The scope of employer liability in Iraq is, however, narrower than in some Western legal systems and extends only to industrial or commercial institutions; this limitation prevents injured parties from seeking compensation from non-industrial or non-commercial employers and constitutes a shortcoming in Iraq's economic risk-distribution scheme (Al-Miyahi, 2016).

Vicarious liability—whether in Iranian or Iraqi law—functions as a legal instrument for distributing economic risk and protecting injured parties. In Iran, it appears in specific provisions and sometimes seemingly contradictory approaches, and faces challenges concerning the liability of teachers and trainees due to the absence of a general rule (Yazdanian, 2017). In contrast, Iraqi law adopts a stronger protective stance toward victims in the context of parental liability but applies a more limited coverage with respect to employer liability (Al-Awji, 2009).

The economic effects of these approaches include:

Encouragement of care and supervision: assigning liability to the guardian or employer incentivizes closer oversight to prevent harm, reducing aggregate losses in society (Mustafa Mahmoud, 2013).

Effective compensation: shifting the financial burden to a party with greater resources (guardian, employer, or the state) increases the likelihood of full compensation for the injured party (Vahdati Shobeiri & Samani, 2016).

Equitable distribution of financial burdens: vicarious liability removes the heavy burden of loss from vulnerable individuals (such as minors or low-income workers) and places it on economically stronger parties (Katouzian, 2014).

Social guarantee: in contexts such as state liability for its employees, vicarious liability functions as a social guarantee, assuring society that losses arising from public activities will not remain uncompensated (Vahdati Shobeiri & Samani, 2016).

Ultimately, both Iranian and Iraqi legal systems—despite their differences—have progressed toward recognizing and developing vicarious liability. These developments reflect a growing understanding that economic justice is not achieved solely by holding the immediate tortfeasor liable; rather, it must be complemented by a distribution of risk that benefits society, especially injured parties (Yazdanian, 2017).

5. Legal and Economic Efficiency of Rules Governing Compensation for Harm Caused by the Acts of Others in Iranian and Iraqi Legal Systems

5.1. Legal and Economic Efficiency in the Iranian Legal System

In Iranian law, dispersed provisions across multiple statutes address this subject, evidencing broad acceptance of such liability and exposing the personal-liability principle to numerous qualifications. International conventions to which Iran is a party also support this outlook (Yazdanian, 2012a).

(a) Liability of the guardian for a minor: for minors—discerning and non-discerning—Article 1216 of the Civil Code provides that the minor is responsible for compensating the loss, which is to be paid from the minor's assets. This rule is conditioned by two constraints: first, that the injured party did not deliver their property to the minor (in which case the injured party is liable as a stronger cause), and second, that the guardian did not commit fault in supervision. As for guardian liability, Article 1216 of the Civil Code and Article 7 of the Civil Liability Act are determinative: the guardian (natural or court-appointed) is personally liable from their own assets if negligent in protecting the minor; if the incapacitated person has no guardian, compensation is taken from the minor's property (Safaei & Ghasemzadeh, 2003).

A salient practical question concerns adult students. While a teacher bears responsibility under Article 7 of the Civil Liability Act for a minor student, that responsibility ceases once the student reaches majority. In such cases, compensating the injured

party becomes problematic, particularly since Article 11 of the Civil Liability Act generally declines to assign liability to the state (Vahdati Shobeiri & Samani, 2016).

(b) Liability of the guardian for an insane person: Article 7 of the Civil Liability Act refers to the guardian's responsibility for an insane person. Although the Iranian Civil Code accepts liability of the insane on the basis of a type-based (objective) notion of fault, the Civil Liability Act—which is grounded in personal fault—does not recognize the insane person's liability where there is no guardian; thus, liability arises only when the act is inherently and typically blameworthy (Al-Dhanun, 1976; Safaei, 1977). In the case of a discerning minor, unlawfulness aligns with fault; for a non-discerning minor and an insane person, unlawfulness inheres in the act itself (Safaei, 1977).

(c) Liability of the guardian for a prodigal (safih): the liability of a prodigal, due to possessing the faculty of discernment, is accepted under general rules. Nevertheless, reliance on Article 7 of the Civil Liability Act alone is insufficient for educational accidents, because a teacher's civil liability can extend to adult, competent students. Moreover, advanced legal systems recognize the state as guarantor of compensation for such losses (Vahdati Shobeiri & Samani, 2016).

Article 1216 of the Civil Code generally deems incapacitated persons liable for losses they cause, whereas Article 7 of the Civil Liability Act holds the guardian liable upon proof of fault, and, if the guardian lacks the ability to compensate, the loss is paid from the minor's or insane person's assets. Together, these provisions place guardian liability on proven (not presumed) fault; in truth, the guardian's liability stems from their own negligent supervision, not merely from another's act (Safaei & Ghasemzadeh, 2003).

From the combination of these two provisions, two hypotheses can be inferred:

First hypothesis: if the act of the minor or insane person is not culpable—for example, a minor's bicycle accidentally colliding with an unlicensed street vendor—neither the guardian nor the minor bears liability, unless strict causal liability (such as direct destruction of property) applies; in that case, the minor is liable under Article 1216, provided this does not result in hardship or indigence (Katouzian, 2014).

Second hypothesis: if the act of the minor or insane person is culpable, liability is borne by the guardian, provided the guardian was at fault in supervision; otherwise, the liability rests with the minor or insane person, again subject to the constraint that indemnification not cause hardship. Some argue that Article 7 of the Civil Liability Act has abrogated Article 1216 of the Civil Code; the sounder view, however, is that the liability of a non-discerning incapacitated person materializes only when the act is inherently and typically blameworthy—that is, it would constitute fault if committed by a person of sound mind (Katouzian, 2014; Yazdanian, 2012b).

5.2. *Legal and Economic Efficiency of Rules Governing Compensation for Harm Caused by the Acts of Others in the Iraqi Legal System*

In Iraqi law, the upbringing and care of children form part of the concept of custody (ḥaḍānah). The liability of non-discerning minors is not grounded in fault because they lack understanding; rather, it is justified only by the risk theory (Al-Dhanun, 1976). Two statutory provisions in this area conflict: Article 191 provides a detailed regulation, while Article 218 refers only to the father and grandfather (Al-Awji, 2009).

Regarding insane persons, Paragraph 2 of Article 191 of the Iraqi Civil Code allows the injured party to claim damages from the guardian or curator, provided the insane person lacks sufficient property. This is not a primary liability but a form of secondary or vicarious responsibility for the guardian (Al-Miyahi, 2016). Iraqi law remains silent about the liability of the prodigal (safih); however, some jurists advocate recognizing guardian responsibility to ensure full compensation (Mustafa Mahmoud, 2013).

6. **Challenges in the Liability of Legal Entities for the Acts of Their Managing Organs**

One of the most critical challenges in the area of the liability of legal entities—especially regarding the acts of their managing organs—is the absence of codified, comprehensive legislation. In Iranian law, although Article 12 of the Civil Liability Act recognizes employer liability, the liability of a legal entity for the acts of its managing organs, as a distinct and modern

responsibility, has not yet been fully identified and defined (Yazdanian, 2017). A similar situation exists in Iraqi law, where the scope and specific instances of such liability remain unclear (Al-Awji, 2009).

A central economic effect of recognizing this type of liability is to ensure full compensation for victims. In contemporary civil law, “loss” includes not only property destruction or diminution but also lost profits and material consequential damages (Article 207 of the Iraqi Civil Code) (Al-Miyahi, 2016). This approach, by prioritizing the injured party’s interests, saves them from facing an insolvent wrongdoer and enables direct claims against the true responsible party. Although Iranian and Iraqi law initially permit recourse to the person responsible for another’s act, both systems also recognize the victim’s right to sue the direct tortfeasor if necessary (Doroudian, 1997).

For example, under Iranian law, if a guardian is financially unable to compensate, the loss is covered from the incapacitated person’s assets (Safaei, 1977). Consistent with the principle of preventing undue hardship, courts may grant payment extensions or installment plans but cannot reduce the amount of damages; the presumption remains full indemnification (Safaei & Ghasemzadeh, 2003).

Ultimately, the liability of legal entities for the acts of their managing organs is an evolving doctrine aimed at aligning legal systems with social and economic realities. It seeks to strike a fair balance between protecting injured parties and holding responsible those who benefit from and control risk-generating activities (Yazdanian, 2012a).

7. Conclusion

The legal systems of Iran and Iraq, though both inspired by Islamic principles and civil law traditions, adopt markedly different approaches to liability for the acts of others. These differences manifest not only in their legal foundations but also in their economic and social effects, shaping how risk is distributed and how restorative justice is achieved. In both countries, the traditional principle of personal liability — holding individuals responsible only for their own acts — has been reshaped by the introduction of vicarious liability. Yet, the manner of recognition and implementation differs significantly.

In Iranian law, liability for the acts of others appears scattered and inconsistent across various statutes, primarily the Civil Code and the Civil Liability Act. This fragmented framework produces a dual and sometimes contradictory system. For example, Article 1216 of the Civil Code places responsibility for compensation directly on the incapacitated person, whereas Article 7 of the Civil Liability Act makes the guardian liable based on fault in supervision. In practice, this creates a conditional system: the guardian bears primary liability, but if financially unable, compensation is taken from the incapacitated person’s assets. This uncertainty is particularly problematic for cases involving adult students, who fall outside the scope of Article 7, leaving victims without effective recourse.

By contrast, Iraqi law follows a more coherent structure. For non-discerning minors, liability is based on risk rather than fault — a logical approach given the child’s lack of understanding. Regarding guardians, Article 218 imposes strict liability on the father and grandfather, while Article 191 provides secondary liability for the guardian or curator if the incapacitated person lacks sufficient assets. These provisions, though complex, offer victims more avenues to claim compensation.

The divergence in legal foundations results in different economic outcomes for risk allocation and restorative justice. In Iran, fragmented and contradictory statutes lead to economic inefficiency in compensation. The financial burden of damage moves unpredictably between the incapacitated person, the guardian, and ultimately the injured party. For example, if the guardian lacks financial capacity, the burden shifts to the incapacitated person (under the principle of avoiding undue hardship). If the incapacitated person also lacks resources, the victim remains uncompensated. This mechanism conflicts with the goal of fair risk distribution — assigning liability to the party with the greatest control and financial ability.

In Iraq, the legislator’s approach to parental liability is stronger and more protective of victims. The strict liability of fathers and grandfathers assures victims that they can claim against financially capable individuals rather than those without means, promoting more effective social risk distribution. Although liability of guardians under Article 191 remains conditional on the incapacitated person’s financial insufficiency, the overall framework still provides meaningful support to victims.

In terms of restorative justice — restoring the injured party to their pre-damage state — both systems face challenges. Iran’s legal gaps regarding teacher and state liability for harm caused by adult students reveal an inability to fully achieve restorative justice. The state’s non-liability under Article 11 of the Civil Liability Act shifts heavy financial burdens away from a

resourceful institution onto weaker individuals, contradicting both economic fairness and Islamic principles that historically recognized state responsibility for the acts of its agents. Iraq, while better structured in some respects, also limits state liability to industrial and commercial institutions, restricting recovery for victims harmed in non-industrial or non-commercial contexts.

Consequently, the study's hypothesis — that Iran's legal system, due to its scattered and contradictory rules, provides less efficient mechanisms for compensation and risk distribution — is supported. Although both countries aim to protect victims, Iran's reliance on fragmented and sometimes conflicting provisions has failed to create an integrated and effective system. This leads to uncertainty in compensation and unjust shifting of financial burdens onto weaker parties. In contrast, Iraq, particularly through stronger parental liability rules, offers solutions that promote fairer risk distribution and better economic outcomes. These differences highlight the critical importance of applying economic analysis of law when assessing and reforming civil liability frameworks to achieve both fairness and efficiency.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

Acknowledgments

Authors thank all who helped us through this study.

Conflict of Interest

The authors report no conflict of interest.

Funding/Financial Support

According to the authors, this article has no financial support.

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