

Criminal Liability for the Act of others in Economic Crimes under Jordanian Legislation

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Abstract

Criminal liability is the cornerstone of criminal policy, grounded on the principles of personal accountability and punishment. Individuals are not held accountable or punished for crimes committed by others. However, in light of significant economic and industrial transformations witnessed globally, including the emergence of economic projects affecting the state's economic center, and the rise of serious economic crimes constituting an assault on public funds, there arises a necessity to expand the criminal responsibility system. This expansion, rooted in the principle of personal accountability, encompasses other individuals to align with these evolving circumstances and reduce economic crimes. The primary question addressed in this research is to establish the legal foundation for penalizing an individual who did not commit the crime themselves. The study concludes the necessity of holding establishment owners accountable for the actions of their subordinates, given their supervisory responsibilities. This concept, known as criminal liability for the acts of others in economic crimes, diverges from the principle of personal criminal responsibility delineated in most criminal laws, including Jordanian law.

Keywords: Economic offences, third party acts, criminal policy, individualization of punishment, criminal liability.

Introduction

Criminal law is a pivotal element of a country's legal system, serving to achieve broader societal objectives. Its aims encompass not only safeguarding individual and societal interests but also fostering societal development and advancement through the establishment of conduct norms. Given the limitations of traditional criminal law in prosecuting emerging crimes, the Jordanian legislature recognized the necessity for reforms to adapt to evolving criminal activities and changes in criminal policy. By looking for the best and the latest ways to confront and deter criminals by developing special laws that ensure and limit their gravity. The economic offense is defined as a violation of criminal and economic

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legislation and laws regulating various economic activities, thereby posing a threat to both public and private interests, leading to potential harm and danger. (Abu Baker et al, 2019, p.35)

Criminal liability for the actions of a third party is a significant principle that drives legislative efforts to establish such accountability. This responsibility is evident in various legislations, particularly in economic crime laws. It entails holding individuals accountable for the actions of others, such as observers or supervisors. (Khalifa and Zaidan, 2019, p.13) This research address a critical and intricate topic: the punishment of individuals for economic crimes they did not commit, arising from economic advancements. It aims to offer recommendations to the Jordanian legislator to address potential deficiencies in the legislation.

Originally, criminal liability resulting from economic crime was not derogated from general provisions. And perhaps the most important principle is the Individualization of responsibility, and the principle of legality. On the one hand, the breadth of the legislative mandate on the economic side may contradict this principle of legitimacy. On the other hand, a person is criminally liable for acts he has not committed directly, such as the liability of businessmen for the actions of employees, and the legal person can also be criminally accountable and even punished if one of his employees commits an economic crime.

Research Objectives

- Identification of criminal liability for the acts of others in economic crimes
- Explanation of the doctrines that have emerged to justify criminal liability for the actions of others and the rationales behind them.
- Explanation of the Jordanian legislator's stance on establishing criminal liability for the actions of others

Research Questions

- What are the justifications for the introduction of criminal liability for the act of a third party in economic crimes?
- Is there any provision in the Penal Code that refers to cases of attribution of criminal responsibility as in the Civil Code?
- What is the Jordanian legislator's position on criminal liability for the act of a third party?
- Is attribution of responsibility to others for economic crimes compatible with the principle of the individualization of punishment?

Research Methodology

The research methodology relies on a descriptive-analytical approach, wherein an examination is conducted on the position adopted by the Jordanian legislature to elucidate the attribution of criminal liability for third-party actions within the practical legal framework. Furthermore, the study incorporates perspectives from legal scholars and judicial precedents to enrich the analysis.

a: Attribution of criminal responsibility to others for economic offenses

In Criminal Code jurisprudence, liability is solely tied to consciousness, discernment, and voluntary action, compelling the natural person subject to Penal Code provisions towards the criminal act (Saleh, 1990, p. 144). Attribution of criminal responsibility requires a person's ability to distinguish and choose, as well as his ability to assess his affairs, under the motives and purpose to which he feels. And if there is no will and choice, the attribution is denied, and the penalty shall not be imposed, as stipulated in the article (74/1) of the Jordanian Penal Code of 1960, provided that no one shall be sentenced to punishment, unless he has consciously and willingly done so (Al-Masa'adah, 2007, p. 326). Since the law protects the lawful legal entities that it performs, he has every right to take it for a violation of the law. So, it is necessary to establish liability for a criminal offender to protect the national economy and ensure the effectiveness of the economic criminal law. But this necessity was not the subject of the totality of jurisprudence and the judiciary about establishing the criminal liability of others. There is still a doctrinal controversy between deniers and supporters of the attribution of criminal responsibility to others. This is what we will show in this study through the following:

First requirement: Verification of the principle of third-party liability

For a leader to be held accountable, the subordinate must err in executing their duties. Consequently, for an employer to be liable for the actions of their employees, said actions must occur within the scope of their duties related to the project. The project manager cannot be held responsible for offenses committed by their subordinates outside the workplace (Mahmoud, 1979, p. 127) Criminal liability as a public asset is governed by the principle of individualization, and most of the comparative legislation adopts this principle. However, there are specific cases in which the legislator has invoked this principle in certain economic crimes, and a recent trend towards the need to broaden the scope of criminal responsibility for the act of a third party, especially in the field of economic crimes. Which led to the issuance of his recommendation in this regard. If the worker or employee commits an economic crime, he shall not be

asked for it alone. It rather extends to the owner or manager of the business, that is, the person responsible for implementing economic laws and for such responsibility is justified. If the enterprise owner or manager announces their potential criminal liability for any economic offense committed by a worker or employee, they can mitigate this risk by selecting employees carefully and issuing directives to ensure compliance with economic regulations (Sharif, 1997, p. 6).

If an error is legally presumed to fall within the realm of economic crimes, this expands criminal liability to encompass individuals who have not directly participated in the offense, but rather facilitated its commission by another party. This exception removes the third party from the scope of criminal liability, which otherwise would have been attributed to the primary offender or those directly involved in the commission of the offense. (Al-Hetti, 2005, p. 251). Thus, to verify the principle of attribution of responsibility to others within the scope of economic offences, there must be an explicit legislative provision establishing the responsibility of others, particularly in the scope of economic offences. This provision is found in Article 5 of the Jordanian Economic Offences Act No. 11 of 1993, as amended by the Economic Offences Act No. 20 of 2004, which includes the following:

- a. " If the director or officer of any legal entity or any of the members of its governing body or its governing body, including the chairman of the board or entity or any of the staff of the entities listed in paragraph (b) of article 2 of this Act, commits any offence contrary to its provisions which is found to have been intentionally committed is punishable by the penalties provided for in the Penal Code and this Act.
- b. If any of the persons mentioned in paragraph (a) of this article commits that offence because of a serious error, the penalty shall be two years' imprisonment max. The Economic Offences Act No. 11 of 1993 has been amended in Act No. 20 of 2004, published in the Jordanian Official Gazette issue 4662 on page 2677 of 01-06-2004 and in force on 01-06-2004.

In principle, the judiciary establishes criminal liability for the act of a third party only in organized industries and occupations. The head of the Foundation should ensure that certain regulations are respected. As can be seen from French jurisprudence, the employer can only be held responsible for acts committed by his subordinates if the offence is unintentional. However, the French Court of Cassation sometimes did not hesitate to hold the head of the institution criminally liable for an intentional crime committed by his subordinate. This has been the case, for example, with the crime of fraud in

the substantive characteristics of marketed goods. The French legislature stipulates the principle in Article 1-121 of the Penal Code.

The subordinate relationship between the Director and the follower is based on two main elements: Actual authority, supervision, and direction. Actual authority means that there is sufficient authority for the affiliate, regardless of the source of such authority, whether by contract or not nor is such authority required to be based on a test (Samir, 2012, p. 154). The element of dependence is one of the distinctive elements of an employment contract. Such dependence is that the employee is subject to the employer and his supervision. Therefore, the work performed by the person on his own account and not for another person under the supervision of the latter is not subject to the Labor Code. (Al-Bora'i, 2003, p. 128)

b. Third-Party Liability Applications

If, in the criminal sphere, there is no criminal liability for the act of a third party, some legislation has taken such criminal liability, asking a person for an offence that he or she did not commit or contribute to the commission of a criminal offence. It means attribution in the field of economic offences: the ratio of the offence to the perpetrator of the offence by its physical and legal factions. Although jurisprudence differs in the attribution of criminal responsibility to others and agrees that the sanction must be imposed on the person to whom the attribution is obtained. However, the attribution of economic offences takes a more expansive curve in terms of penalties for other persons who have not been found guilty. Responsibility for economic crimes is assigned to an individual who did not directly commit the offense but is linked to the actions of another person due to their relationship, necessitating accountability for the former's actions in this context. (Masa'adah, Anwar, 2007, p. 342)

The penal legislator determines that any act or omission contrary to legislative decisions warrants appropriate punishment or precautionary measures. Acts against society and its interests merit punishment, achieving both special and public deterrence, with penalties applicable to individuals, whether natural or legal persons (Al-Ahmad, 2022, p. 141).

First requirement: Legislative applications in economic crimes

Many Jordanian economic legislations establish the employer's responsibility for offences committed by his employees. It explicitly establishes criminal liability for the acts of others, such as the Jordanian Economic Offences Act. Article 5 of Act No. 11 of 1993 stipulates that: "If any legal person commits

an offence contrary to the provisions of this Act and it is established that the offence was committed with the consent or complicity of any director or employee of that person or because of his negligence, the director or official and the legal person shall be deemed to have committed an offence and shall be punished for that offence." However, this article has been amended by the promulgation of Act No. 20 of 2004, which stipulates that: "a. If the director or officer of any legal person or any of the members of its governing entity or its governing body, including the chairman of the board or entity or any of the employees of the bodies listed in paragraph (b) of Article (2) of this Act commits any offence contrary to its provisions and it has been committed intentionally, then it is punishable by the penalties provided for in the Penal Code and this Act.

b. If any of the persons mentioned in paragraph (a) of this article commits that offence because of a serious error, the penalty shall be a term of up to two years imprisonment."

Article 46 of the Jordanian Customs Act No. 20 of 1998 stipulates that: The master, representative or agent of the ship shall be responsible for the shortage of the number of parts, packages, contents or quantity of excessive, bulk and packed goods pending receipt of the goods in stores or warehouses or by the owners thereof when permitted to do so, subject to the provisions of article 71 of this Law. The Director may issue instructions specifying the tolerance rate of excessive, bulk and packed goods increased or decreased, as well as the partial shortage of goods caused by natural factors or because of weak cover and flow of contents. These instructions are published in the Official Gazette and Article 218 of the Jordanian Customs Act No. 20 of 1998, which stipulates that the customs broker shall be responsible for offences committed by him or any of his employees authorized by him in the customs statements. If such offences lead to smuggling offences, the court may adjudicate them and determine responsibility. The undertakings made in the customs statements shall not be forgiven unless they are pledged by the broker, or he retained his contractors.

First requirement: Third-party liability controls

The principle of legality is understood to mean that there is no crime and no punishment except by stipulation and that no analogy may be applied to crimes. Moreover, the decriminalization of the legislator is an act that implies the lawmaker's acquiescence (Al-Ahmad, 2021, 13p).

If criminal liability for the act of a third party is contrary to the general principles according to which a person is liable only for an act that is directly demonstrated to have been committed, and which has been considered a deviation from the principle of individualization of criminal responsibility, jurisprudence disagrees

on the legal basis for such deviation despite the many factors that have helped this anomaly (Ateeqa, 2005, p. 109).

Section I: Objective theories.

Criminal liability is only the other aspect of the economic entrepreneur's powers. Those who accept the powers have assumed in advance the criminal liability inherent in them in the event of a breach of the regulations, laws, and duties imposed on them. Thus, criminal responsibility has become synonymous with a person's capabilities and leadership power. One of the most important foundations and underpinnings of these theories is the lack of attention to the legal element of the person on whom the responsibility for the act of others will be based. It merely seeks a legal basis on which responsibility can be attributed to the materially unaccounted for.

- A- The theory of voluntary subordination to the risks of the profession.
- B- Risk theory
- C- Theory of direct legal obligation

Section II: Subjective theories.

In the view of the proponents of this doctrine, the will of material activity alone is insufficient for the legal element of the crime, even if its existence results in actual harm. Offence in criminal law is not a pure physical entity, even in the context of physical crime, error remains the basis of criminal responsibility. Accordingly, these theories have the advantage of seeking more effective attribution of responsibility than physical or legal attribution. (Al-Shawa, 1999, p. 132)

- A- Legal entity theory
- B- Theory of criminal participation
- C- Theory of personal error

In the view of the proponents of this trend, the legal person has a special will, namely the unanimous wishes of his members of natural persons who commit work together for the benefit of the legal person and not for their benefit. They are members of a single entity. Thus, their actions are considered personal acts, and the law obliges a person to monitor another person's activity and to surround him with circumstances that prevent such activity from leading to an offence. If this obligation is breached, refrain from censorship, the offence of its physical element is to refrain. The legal element of the obligation may be the intention if the employer is to breach this obligation and the fault may be if there is no criminal intent and he can direct it to fulfill this obligation.

Second requirement: Judicial applications

In its capacity as a jurist, the Jordanian Court of Cassation ruled that: "The responsibility of the Ministry of Works shall remain, even though the contractor carried out the expansion if the work is carried out under the observation and supervision of the Ministry based on the responsibility of the sponsor for the work of the affiliate provided for in article 288 of the Jordanian Civil Code" (Court of Cassation, 2130/2002).

The Jordanian Court of Cassation, in its criminal jurisdiction, ruled that an employee who gains personal benefits from a transaction within their administrative capacity shall be prosecuted, whether directly or through a proxy, or by utilizing fraudulent means, under Article 176/2 of the Penal Code. Therefore, the fact that the complainant, as an employee of the Ministry of Agriculture, planted his land for the forestry trees he took from his department and by the machinery and workers of the Ministry of Agriculture, which returned to him for personal benefit is the value of the work done on his farm, whether the wages of the workers, the wages of government vehicles or the tools used to dig or the prices for the hundreds of trees which have been planted. This provides an element of the offence of investing the job against him. The conviction for this offence is under the law and it is not stated that the landowner does not receive a personal benefit because of planting forestry trees and that such cultivation is in the public interest. The personal benefit is the financial and non-financial benefit, in addition to the fact that forestry trees are monetary and are considered cultivated in the land of addition to the value of the land. Nor is it said that the Ministry of Agriculture gives forestry trees to those requesting them free of charge. It is conditional on the approval of the Ministry of Agriculture or one of its departments. Moreover, on the imposition of the approval of the Ministry of Agriculture, it has not been shown that the Ministry allows its workers and employees to cultivate citizens' lands. (Court of Cassation, 309/1996) In analyzing this decision, we find that the Jordanian Court of Cassation has adopted the concept of criminal liability for the act of a third party. In this application, the court took the idea of the legal actor more by taking the idea of the physical error that was committed by the manager and constituted an intentional offence in this case. It also considered the workers who farmed to be interventionists and denied them the crime if their goodwill was established, and they were not aware of the illegality of the manager's action.

Results

Jordanian legislation in the Economic Offences Act departs from the general rules of the Penal Code, equating the penalties between the original perpetrator, the accomplice, the follower and the followed in economic offences.

The Jordanian legislator presumed the leader to be aware of the law and the acts of his subordinates and to hold him liable for criminal liability. The decision to impose punishment requires the presence of a hierarchical relationship and the exercise of authority and supervision by the leader, with the subordinate committing the wrongful act within the scope of their employment or under it. This indicates that criminal liability for the actions of a third party arises in conjunction with and because of the hierarchical relationship.

The researcher determined that third-party liability is a unique concept that encompasses elements of civil, criminal, and administrative law. This indicates that legal, jurisprudential, and criminal justice frameworks have incorporated theories and conditions from civil and administrative law.

Conclusion

Numerous economic statutes have safeguarded national economic policies, thereby holding employers and economic stakeholders accountable for offenses committed by their employees. Our research explores various theories developed to justify criminal liability for third-party actions. The researcher then gave his opinion on these theories and then addressed the rationale for the introduction of this responsibility in the economic sphere and mitigating the principle of attribution of criminal responsibility to a third party. He does not always criminalize the subordinate for the act he commits. Sometimes he criminalizes the leader, sometimes the subordinate and his leader, and sometimes the subordinate alone. Then we discussed the judicial and legislative applications of criminal liability for the act of a third party.

It's crucial to underscore that attributing criminal responsibility to a third party for economic offenses deviates from the principle of individualized punishment, justified by the gravity of economic crimes and their impact on public funds and the national economy. The Jordanian legislature therefore decided to depart from the original and to determine liability for the act of a third party within the scope of economic crimes. Article 5 of the Economic Offences Act No. 11 of 1993, as amended. Thus, the application of this liability is based on the explicit provisions of these provisions. This was confirmed by the decisions of the Jordanian courts in many of their rulings. At the end of the research, the researcher reached several conclusions and recommendations.

Recommendations

- Imposing liability for economic offenses requires explicit limitations and conditions to avoid ambiguity. Therefore, we suggest that the legislator defines clear parameters within the Economic Offences Act regarding

employer liability for employee actions, ensuring specificity and avoiding broad interpretation.

- We recommend that the legislator should introduce a provision in the Economic Crimes Act that refers to the conditions for criminal liability for the acts of others. If these conditions are met, the liability shall be based on the company and the employer. If not available, there is no liability.
- We recommend to the Jordanian legislator that punishment should be expressly stipulated if the employer participates in the company with the workers if it is established that they are aware and if the fault is shared, the responsibility shall be doubled to the employer and the worker unless the worker's goodwill is established.
- We recommend to the Jordanian legislator that the provisions of Article VI, paragraph (b), of the Economic Offences Act should be repealed so that jurisdiction over economic offences is limited to the formal judiciary.

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