

## **Joint And Solidarity Obligation In The Jordanian Legislation**

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### **Abstract**

*This study aimed to shed light on the multilateral obligation that makes debtors solidarity or jointly liable among themselves to fulfill the debt towards the creditor. The analytical descriptive approach was used, and the results showed that solidarity is not assumed and does not occur except by a provision in the law or by agreement. Moreover, the results showed that solidarity arises to fill the void in cases where there are many people responsible for one debt for different reasons. Therefore, solidarity becomes a solution imposed by the legislator when there are many links and sources between the debtors and the debt. Despite the absence of this term from civil law, the judicial and legislative entity allows its application and it will remain one of the most prominent legal topics full of theoretical problems.*

**Keywords:** Joint Obligation, Solidarity Obligation, Jordanian Legislation, law.

### **1. Introduction:**

The origin of the obligation is that it arises simply between one debtor and one creditor. However, incidental matters may occur to this commitment and modifies its effects so that it becomes suspended on a condition or added to a term. Furthermore, its place may be multiple and the obligation turns into an optional or substitute obligation, in addition to the possibility of multiple parties to the obligation. On the positive side, there are many creditors, while on the negative side, there are many debtors. This is what this study will address.

Solidarity between debtors in civil obligations is not presumed, unlike commercial obligations, and does not occur between them except by agreement or according to a text in the law. In this regard, the creditor shall have the right of recourse against any of them for the entire debt, and he shall collect it from the debtor. Besides, the payer shall have the right to recourse against the rest of the debtors for what he has paid on their behalf from their share in the debt. The idea of solidarity is based on the unity of debt and the unity of its cause or source.

Thus, it cannot be said that there is solidarity between the debtors when the source of the obligation differs, even if the creditor is one. However, economic developments and social transformations imposed the emergence of the idea of solidarity next to joint obligation. This term is not stipulated by the Jordanian legislator though it arises in cases where there are many persons responsible for one debt for various reasons without the presence of solidarity among them. This means that there are many links and sources, and the religion is one. Therefore, a commitment arises between them, and this type of commitment is called the joint commitment,

not the solidarity one. Although this system is not stipulated in the Jordanian legislation, the judicial and legislative entity allows for its application.

This topic raises many questions that form the focus of the study. Some of these questions include: What is the content of both solidarity and solidarity commitment? What are the conditions for its application? What is the difference between Solidarity and Joint obligations? Was the Jordanian legislator able to control the solidarity and joint relations? What is the position of the Egyptian legislator on this subject as part of this study? These and other questions that may be raised will be the focus of our study in the future. We find answers to them that benefit those interested in this aspect.

Therefore, the current study is limited to the idea of commitment between solidarity and joint in the Jordanian civil law and the Egyptian civil law. In this respect, the commercial law will not be addressed except to the necessary extent required by this study.

The analytical descriptive approach was used for describing and analyzing the relevant legal texts in the Jordanian and Egyptian laws, as part of this study. The same applies to the relevant judicial rulings. The opinions of scholars in this field were analyzed and criticized.

In order to shed light on this topic, the provisions of the joint obligation and the solidarity obligation were studied.

## **2. Provisions of Solidarity Obligation:**

It is agreed upon that a bond of obligation is established between one debtor and one creditor, but there may be multiple persons in this bond, whether on the debtor's side, the creditor's side, or both sides together.

This study sheds light on the situation in which there are several debtors in the face of one creditor, which was dealt with in the Jordanian Civil Code in Articles (426-440) and Articles (284) to (299) of the Egyptian Civil Code. The point is that a kind of solidarity arises between the debtors. This solidarity gives the creditor the right to demand that any of them pay the full value of the debt. This case is called negative solidarity because it leads to a decrease in financial disclosure.

Solidarity has been defined by jurisprudence as "a description that prevents the division of the right in the case of multiple creditors or the division of the obligation in the case of multiple debtors" (Sultan, 1994, p. 260; Al-Adawi, 1993, p. 259). Accordingly, the sources of solidarity between debtors and the effects and applications of solidarity will be discussed in the following.

### **2.1. Sources of Solidarity between Debtors:**

Article (426) of the Jordanian Civil Code stipulates that "there is no solidarity between debtors except by agreement or stipulated in the law". This is also the case in Article (279) of the Egyptian Civil Code. Accordingly, solidarity in Jordanian civil law does not exist except by a text in the law or by agreement of the contracting parties. Therefore, it is not permissible to measure these texts (Decision of the Court of Cassation Public Authority No. 872/2022). An example of this is what was stated in the Commercial Law in Article (53/1) that "both debtors in a commercial obligation are considered jointly liable in this obligation", corresponding to the text of Article (74) of the Egyptian Commercial Law. Among the cases in which the Jordanian legislator also decided the existence of solidarity between debtors is what is stated in Article (26) of the Companies Law, which stipulates that "a partner in a joint-liability

company is considered jointly and severally responsible with the rest of his partners for the debts and obligations incurred by the company while he is a partner in it, and he shall be a guarantor with his personal funds for those debts.” (Jordanian Companies Law No. (22) of 1997 and its amendments).

In this regard, Article (788) of the Jordanian Civil Code stipulates solidarity between the contractor and the engineer if the contracting contract is based on accepting a building that the engineer puts his design on to be implemented by the contractor under his supervision. Thus, they are jointly liable to compensate the employer for what happens within ten years of the total or partial demolition of the buildings and facilities they built. This includes any defect that threatens the durability and safety of the building if the contract does not include a longer period. Added to this is the text of Article (265) “If there are multiple persons responsible for a harmful act, each of them is responsible according to his share in it, and the court may rule equally or jointly and interdependently among them.” Article (976) of the Jordanian Civil Code stipulates that “guaranty, by the text of the law or by the court’s judgment when it is issued, requires the solidarity of the guarantors.”

As for solidarity by agreement between the debtors, it may be mentioned in the contract or in a subsequent agreement. We notice this in the text of Article (426) of the Jordanian Civil Code, corresponding to the text of Article (279) of the Egyptian Civil Code and the Jordanian Court of Cassation Decision No. 1203/1993 issued on 3/3/1994. In both cases, it must be concluded clearly and frankly, without ambiguity. If there is no explicit agreement regarding it, then each debtor will be asked about his share of the debt. According to the text of Article (240/1) of the Jordanian Civil Code, whoever claims solidarity must prove it, and that any doubt about the existence of solidarity is explained by its absence. When ruling on solidarity, the judge must specify its source. Otherwise, his ruling will be subject to appeal by the Court of Cassation.

## **2.2. Effects of solidarity between debtors:**

The presence of solidarity facilitates the procedures for claiming debt. It also protects the creditor from the risks that may arise from the inability of one of the debtors, as these risks are placed on the debtors and not on the creditor. In this respect, solidarity results in two types of relationships, the first is the debtors’ relationship with the creditor, and the second is their relationship with each other.

The first relationship: the relationship between the joint debtors and the creditor:

This relationship is governed by a set of principles represented in the unity of the debt and mutual representation between the debtors in what is beneficial and not in what is harmful, in addition to the multiplicity of ties:

- 1- Unity of the debt: Each debtor is fully responsible for the entire debt in the face of the creditor, and if he repays the debt, this releases the remaining debtors (Jordanian Court of Cassation Decision No. 5367 of 2020). Any of the debtors also has the right to assert, before the creditor, all common defenses that lead to the extinguishment of the debt, whether the defense is related to the illegality of the debt or the reason for the obligation. On the other hand, the existence of solidarity entails that the creditor has the right to demand the full value of the debt from the debtors, whether individually or jointly. The Jordanian Court of Cassation ruled that “It appears from Article (428/1) of the Civil Code that it gave the creditor the right to claim his debt from all or some of the joint debtors, taking into account the description attached to his relationship with

each debtor that affects the debt, and that the matter is left to his choice in that” (Jordanian Court of Cassation Decision No. 8079 of 2019). In the same context, the Egyptian Court of Cassation ruled, “The permissibility of the creditor’s claim to the joint debtors for the debt, jointly or individually, in accordance with the provisions of Article 285 of the Civil Code, is that each of them must be obligated to the creditor for the debt in full and undivided. The creditor may direct his claim to whomever he chooses among them individually, or to all of them.” If it is addressed to one of them and the creditor does not succeed in obtaining the debt from him, in whole or in part, he has the right to demand the entire debt or what remains of it from the other debtors or any one of them he chooses, as the case may be.” (Decision of the Egyptian Court of Cassation No. 10450 of 76).

- 2- Reciprocal representation between the debtors in what is beneficial, not in what is harmful: The existence of solidarity among the debtors means the existence of a common interest among them, which entails that everyone benefits from any action taken by one of them, if this behavior benefits the rest only. But if one of them performs an act that harms the rest of the debtors, then the disposition applies to him alone and does not apply to them. For example, one of them reconciled with the creditor in part of the disputed debt. This is stipulated in Article (436) of the Jordanian Civil Code: “The reconciliation concluded by one of the debtors in solidarity with the creditor is not implemented if he arranges a new obligation for them or increases their obligation unless they accept it...” (Article (294) of the Egyptian Civil Code).

This is what the Jordanian Court of Cassation ruled in its decision: “Article (436) of the Civil Code examines the settlement concluded by one of the joint debtors with the creditor and arranges for them a new obligation or increases their obligation, and since what was done in this case is that the creditor was the one who waived it has the right to demand from the treasury, represented by the Civil Attorney General, fees, expenses, and attorney’s fees, and it is not the debtor who concluded a settlement with one of the creditors, and since this cancellation did not create a new obligation for the rest of the debtors and did not increase their obligation, the provisions of Article (432) are the ones that must be applied” (Jordanian Court of Cassation Decision No. 2376/1999 issued on 3/20/2000).

Significantly, the acknowledgment of a debt by one of the joint debtors only applies to him and is not effective against the other debtors and they are not bound by it. This means that the reciprocal representation between the joint debtors is only for what is beneficial, as it is stated in Decision of the Jordanian Court of Cassation, Public Authority No. 872/2022, and any behavior issued by one of them and leads to harming their legal position, it only applies to him because the acknowledging debtor is not considered their representative in what is harmful to them. Therefore, acknowledgment is an argument limited to the acknowledging debtor (Al-Fatlawi, 2022, p. 218).

In the same context, if the creditor obtains a ruling against one of the joint debtors without the rest of the debtors being defendants in this case, this does not enable him to invoke this ruling against the rest, and vice versa. If the ruling is issued in favor of one of the joint debtors without the rest of the debtors being a party to the lawsuit, then they benefit from the fruits of this ruling. Besides, if the judgment is issued in favor of one of the joint debtors without the rest of the debtors being a party to the lawsuit, then they will benefit from the fruits of this judgment (Al-Halalsha, 2006, p. 240).

This was ruled by the Jordanian Court of Cassation in its decision, where it openly stipulates that “If several people were convicted and there was a legal connection between them

that prevents the judgment against one of them and the acquittal of the other, then they all benefit from the ruling issued to acquit the debt in the objection case, appeal, or cassation, even if the objector or the appellant is just one of them” (Decision of the Jordanian Court of Cassation No. 199/1976).

- 3- Multiple ties: The unity of the business does not prevent the existence of multiple ties between creditors that differ from one another. This means that although solidarity between the debtors gives any of them the right to assert against the creditor all common defenses, as we mentioned previously, none of them has the right to assert against the creditor the defenses of another debtor, such as a decrease in capacity, in addition to the expiration of the bond of obligation. This is stipulated in Article (480) of the Jordanian Civil Code, “If the share of one of the joint debtors in the debt expires by way of set-off, union of the two debts, or discharge, then the debt does not expire with respect to the rest of the debtors except to the extent of the share of this debtor”, Corresponding to the text of Article (287) of the Egyptian Civil Code.

This also applies to the statute of limitation. If the debt of one of the joint debtors expires, this does not lead to the expiration of the entire debt in relation to the other debtors, but rather the debtor’s share of the debt that occupies them is deducted. This is stipulated in Article (434) of the Jordanian Civil Law: “Not hearing the lawsuit due to the passage of time for one of the joint debtors does not benefit the rest of the debtors except to the extent of that debtor’s share.” It is stated in the explanatory memorandum to the Civil Law that if one of the joint debtors fulfills the entire debt, he has the right of recourse against the rest, even those whose obligation has expired over time, because recourse is based on the personal lawsuit and not the subrogation lawsuit. Finally, it follows from the multiplicity of bonds between the debtors that if the creditor's will is directed towards exonerating one of the joint debtors from the debt, the effect of the release is limited to this debtor only and does not extend to the rest of the debtors.

This is stipulated in Article (432) of the Civil Code: “If one of the joint debtors is acquitted of solidarity, his right remains to claim recourse against the rest of the debtors for the entire debt unless otherwise agreed upon.” This is what the Jordanian Court of Cassation ruled: “The debt shall not extinguish with respect to the remaining joint debtors when the creditor releases one of them except to the extent of that debtor’s share of the debt in accordance with the provisions of Articles (430, 431, 432) of the Civil Code” (Decision of the Jordanian Court of Cassation No. 958/1990).

The second relationship: The relationship between the joint debtors and each other:

Article (439) of the Jordanian Civil Code regulated the relationship of debtors among themselves, as it stipulated that “those who pay the debt from among the joint debtors have the right to return to any of the rest of their share”. Accordingly, if the joint debtor fulfills the debt or part of it, he can recourse against the rest of the joint debtors for what he paid in addition to what is obligatory upon him, and this recourse is to the extent of the share of each joint debtor in the debt.

This share is determined either by a text in the law or by agreement, as is the case in the text of Article (279) of the Egyptian Civil Code, and this is the opinion of the Jordanian Court of Cassation. The same court also went on to say in a recent decision, “It is understood from the provisions of Article 439 of the Civil Code that whoever pays the debt on behalf of the joint debtor has the right to claim any of the rest in proportion to his share, and that in the absence of an agreement on specifying the share, the liability is considered equally between

them.” Whereas, Judgment in case No. 579/2008 decided against the plaintiff and the defendants jointly and solidarily, without stating the share of each of them, and the amount adjudged was collected from the plaintiff. Therefore, the plaintiff has the right to return to the defendants for their share of the amount adjudged and on the basis that each one of them bears “one third of the debt”.

### **2.3. Provisions of solidarity:**

The Jordanian legislation does not explicitly mention the term solidarity, although there are several applications for it in the Jordanian Civil Law, the Labor Law, and the compulsory vehicle insurance system. Significantly, the origin of the use of this term goes back to the French judiciary and jurisprudence when referring to the multiplicity of officials facing the creditor with the absence of solidarity among them. Some jurists call this obligation the term collective responsibility. What is meant by this is the obligation that takes place in one place and in which there are multiple obligated debtors with multiple sources according to which each of them committed and without them having a relationship of solidarity. This is what is suggested by the text of Article (792/2) of the Egyptian Civil Code, which stipulates the permissibility of multiple guarantors of a single debt and punishes them with different contracts, which makes the source of their obligation towards the creditor multiple, not single.

### **2.4. Provisions of solidarity:**

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Some believe that the obligation is joint if the court is unable to determine a quorum for each of the debtors when causing damage in a way that would oblige them to compensate the affected party, who has the right to demand full compensation from any of them (Jad, 2003, p.103). It is noted that this definition is mixed with the concept of solidarity obligation, as it looks at solidarity from the perspective of the multiplicity of debtors, without focusing, as a result of this multiplicity, on the obligation of the debtors towards the creditor. It is worth noting that solidarity does not affect the legal nature of the obligation, since the obligation preserves its source, characteristics, and scope.

When there are multiple persons liable for compensation, the debtor with a contractual obligation remains liable for the direct and expected damage, while the debtor in a tort obligation is in solidarity with the debtor in the contractual obligation for the expected and unexpected direct damage.

Despite the silence of the Jordanian legislator with regard to explicitly mentioning the solidarity obligation, this does not negate the fact that there are many legal texts in the Jordanian legislation that define the solidarity hypothesis implicitly. Those texts mentioned the

multiplicity of debtors with different source of debt towards the creditor and obligating them to fulfill all the debt. The legislation included several applications of solidarity, for example, the return of the injured person in the vehicle accident to the one who caused the accident, as a basis for the provisions of civil liability, whether contractual or tort.

Depending on the nature of the relationship between them, the affected person also has the right to have recourse against the insurer as a basis for the stipulation established in his favor in the insurance contract, or according to the direct claim granted to him by the compulsory insurance system, as it is stipulated in Article (13) of the Compulsory Vehicle Insurance Regulation No. 12 of 2010. Therefore, in this case, the person injured in the vehicle accident has two debtors whose source of obligation is different. He has the right to recourse against either of them for compensation for any damage he has suffered. If one of them repays the debt, his liability and the other's liability towards the injured party will be discharged. This is a good example of the idea of solidarity.

Other examples of solidarity applications are what is stated in Article 15/H of the Jordanian Labor Law, which gives contractor workers the right to have direct recourse against the employer to demand the wages owed by their debtor (the contractor), despite the lack of a contractual relationship between the workers and the employer.

In this respect, the workers who are entitled to their wages have the right to return to the employer to demand the wages or to return to the contractor. If one of them pays the wages, his liability towards the workers is exonerated and the joint debtor's obligation towards them is extinguished.

We also find space for the application of solidarity when those responsible for the harmful act are many. If one of them secures his house from fire with an insurance company, and the insured danger is realized by an active act, then the injured person (the insured) has two claims. The first comes from the insurance contract and the defendant is the insurance company, so that the claim is within the limits of the agreed-upon insurance coverage, while the second lawsuit comes from the harmful act and the defendant is the one who caused the fire, who is obligated to compensate the injured person based on the principle of full compensation for damage (Al-Sarhan & Khater, 2009, p. 595).

Referring to the rulings of the judiciary, we find that the French judiciary, as usual, was proactive in acknowledging the existence of solidarity, since it used the term solidarity explicitly in one of its decisions when building the responsibility of the participants in one mistake for the performance of compensation in full to the harmed person and on the basis of solidarity between them. In this regard, each of them is obligated to pay his share of compensation according to the degree of his participation in the wrongdoing, and their solidarity towards the injured person is not based on dividing responsibility among them, and without their multiplicity affecting the bilateral relationship of each of them with the injured person or the extent to which he describes their commitment to confronting him, as it is stipulated in French Court of Cassation ruling issued on 4/12/1934. This decision was a precursor to many subsequent judicial decisions that recognized solidarity as a means of building up debtors' collective liability to their joint creditor, without having a relationship of solidarity.

Significantly, the Egyptian judiciary knew the idea of solidarity commitment and applied it in many of its decisions. It considered that one of the conditions for solidarity is that the sources of the same debt be multiple. In this respect, solidarity between debtors disappears. This happens when there are multiple sources of obligation to compensate the injured person,

such as one's contractual obligation and another's negligent obligation. Therefore, the solidarity obligation steps aside to give place to the solidarity obligation (Saad, 2017, p. 60). In this regard, the Egyptian Court of Cassation stipulated in one of its decisions that "the obligation is joint if there are multiple sources of obligation to compensate the affected person, such as when one of the officials is contractually obligated and the other is negligent" (Court of Cassation Decision No. 1003 of 47 session 27/2/1983).

The same court ruled in another decision that "if the source of the obligation for compensation is multiple, such that one of the two errors is contractual and the other is negligent, then they are committed to one debt that has two different sources (Court of Cassation Decision No. 2020, session 3/25/1990)."

The same court also went on to say, "If the obligation to compensate has multiple sources, such that one of the two faults was contractual and the other was negligent, then they will be obligated to one debt that has two different sources. Then their liabilities will be joined in this debt without being jointly liable. It was also decided that the joint obligation, even if agreed with the commitment that the creditor may demand the entire debt from any debtor. The first obligation differs from the second obligation in that the debtor who paid the debt may not recourse against another debtor for the same debt unless the nature of the relationship between them allows this, as it is stipulated in Court of Cassation Decision No. 5622 of 48 BC issued in session 1/4/.

As for the rulings of the Jordanian judiciary, the word solidarity has been repeated in many Jordanian court rulings to address the assumptions of collective responsibility when there are multiple debtors towards one creditor with a different source of obligation for each of them. In this regard, the Jordanian judiciary used the term solidarity to justify the judgment of debtors to pay the entire debt in the absence of a legal text or agreement (Amman Court of Appeal Decision No. 19823/2016). Therefore, the facts of the case were represented by the liability of two insurance companies towards one victim of a traffic accident, as more than one vehicle was involved in causing the accident.

The percentage of each vehicle causing this accident was determined, so the court ruled that the companies insuring the two vehicles should join forces to pay the amount of compensation towards the injured people, despite the different sources of commitment of each of them towards the injured people. The same court also went on to say in another decision, "The main objective of the joint venture is to ensure that compensation is not paid to the creditor twice for the same debt (Amman Court of Appeal Decision No. 35700/2018).

Accordingly, we find that despite the absence of an explicit legal text that links debtors to a bond of solidarity and creates it between them, the legislator has built this relationship upon the multiple ties, their independence, and the multiple sources of debt. The judiciary applied what the text imposed, since the solidarity was created by the legislator and not judicial jurisprudence. Therefore, the judiciary does not rule only as approved by the text.

Significantly, solidarity needs a legal document that determines its provisions in every case in which there is multiple sources of debt and debtors towards one creditor. In this respect, the Jordanian and Egyptian judiciary applied the idea of solidarity between debtors, distinguishing it from joint obligation between them, and explicitly used the term solidarity in order to distinguish it from joint, since each of the two systems arranges different effects from the other. There are also a set of conditions that must be met in order for us to have a solidarity commitment, which we will discuss below.



## 2.5. Terms of the joint obligation:

It is noted from the above that a joint obligation requires a set of conditions to exist, represented by the multiplicity of debtors, the multiplicity of sources of their obligation towards one creditor in addition to the unity of the debt. It also requires the lack or absence of solidarity among them, which we will discuss later.

1- Multiple debtors and multiple sources of their obligation towards the creditor:

A joint obligation is considered a described obligation because it is linked to a description that is incidental to the original, as it has become a pluralistic obligation in its parties (Al-Adwan & Al-Shawabkeh, 2022, p. 25). In this regard, it is assumed in the joint obligation that there are several debtors, and each of them is responsible for the full value of the debt against one creditor. It is not required that the debtors know each other (Mohammad, p.112), and the creditor has the right to demand that any of them pay the entire debt, and the fulfillment of the debt by one of them clears the liabilities of the others towards their creditor.

The main difference that distinguishes solidarity from joint obligation is the multiplicity of sources of the debtor's obligation towards one creditor. In this regard, solidarity requires the unity of the source of the debt, while joint requires multiple and different sources of obligation despite the unity of the creditor. We mentioned previously that the source of one debtor's obligation may be the contract or the law, while the source of the other debtor's obligation may be the harmful act. This justifies the absence of a common interest between the debtors, and thus the secondary effects of the multiplicity of joint debtors are excluded (Al-Mamouri, 2008, p. 123).

Unity of debt:

This means that the subject of the obligation is one, meaning that multiple debtors are obligated to the creditor with one debt. It is not required that the object of each debtor's obligation be the same as the object of the other debtor's obligation. It may be similar or identical, such that each debtor is bound by an obligation that is distinct and different from the obligation of the other debtor, even though these obligations aim to achieve one goal, which is to make amends (Sultan, p.265). This is the case when the insurance company and the insured compensate the injured person from the vehicle accident, as the responsibility of the first is based on the contractual liability, while the insured is liable in tort and both aim to compensate the injured person for the damage he sustained.

3. Absence of solidarity:

This condition is considered a given for the establishment of a joint obligation, as joint does not exist except when solidarity is absent. One of the conditions and requirements for the establishment of solidarity is the unity of debt and the source of its origin. In this regard, if the sources of debtors' obligation towards their creditor are multiple, it cannot be said that solidarity exists or is perceived. In this respect, joint liability was found mainly due to the lack of solidarity, as solidarity is not assumed but must be stipulated by law or agreed upon by the debtors (Mohammad, p.133). Therefore, the solidarity system is considered a backup system to prevent the assumption of joint. This is all to protect the creditor. Accordingly, the joint obligation appears when the legislator neglects to stipulate solidarity in the described obligation. The debtors do not agree on it, provided that their obligation is towards one creditor and that it has multiple sources and does not arise from one reason.

## 2.6. Effects of Joint Obligation between Debtors:

The joint obligation has several effects in terms of the creditor's relationship with the joint debtors and the relationship of the joint debtors among themselves. Below we will examine this topic.

The first relationship: the creditor's relationship with the debtors:

Under the joint agreement, the creditor has the right to seek recourse against the joint debtors to fulfill the entire debt, despite the independence of the source of each of one's obligations. He may claim any of them for the total amount of the debt and not just his share. Therefore, the creditor has no recourse against the rest of the debtors as long as he pays his debt in full. In the event of partial payment by one of the debtors, the creditor has the right of recourse against the rest of the debtors or the most capable of paying to obtain the remainder of his debt (Al-Sanhouri, p.287).

Based on the condition of the unity of the debt assumed in the joint settlement, each debtor may assert, before the creditor, all the common defenses of the debtors, which would ward off the creditor's demand to fulfill the debt, such as the defense that the object of the obligation or its cause is invalid, or the defense that there is a deadline that has not yet arrived, or that the obligation is suspended. On a suspended condition that has not been fulfilled or is impossible to achieve, and given the independence of the source of each debtor's obligation from the other, this means the lack of common interest between them. Therefore, the debt of each of them differs from the other in its origin and its descriptions (Al-Adwan & Al-Shawabkeh, 2022, p. 57). This gives the joint debtor the right to cling to the defenses related to his obligation towards the creditor, which means that the debtor has the right to pay his creditor's claim and refrain from paying the entire debt in support of the distinction between his relationship with the creditor and other relationships.

Therefore, it is permissible for him to adhere to a description that affects his obligation only, such as being added for a time that has not yet been resolved. He also has the right to pay by fulfilling or forfeiting the debt for any of the reasons of expiration.

Given the multiplicity of ties that bind the creditor to the joint debtors, and the independence of each tie in its source, a difference in the limits of the creditor's recourse against each debtor is made. For example, in the hypothesis of a vehicle accident, the injured person (the creditor) has the right to refer to the insurance company (joint debtor) for compensation for the entire damage according to the ceiling specified in the compulsory vehicle insurance system, while the driver of the vehicle (joint debtor) has the right to pay compensation for the damage according to the rules of tort liability. It is possible for the two amounts to be equal, and it is possible for the injured person to return to the driver of the vehicle for an amount greater than what the insurance company will claim.

The second relationship: the relationship of joint debtors:

Due to the lack of common interest between the debtors, and one of them may not know the other, as we stated previously, the only link between them is the joint creditor only. Therefore, we cannot say that there is a reciprocal prosecution among them, as is the case between joint debtors. Although solidarity is a bond that is no less than joint, it is not possible to apply reciprocal representation between the joint debtors due to the independence of the source of obligation of each of them from the other in a way that it is not possible to justify any of them benefiting from the idea of solidarity. This leads to a multiplicity of legal ties with the creditor in a way that prevents the association of any co-dependent debtor with other debtors, not in any way, in contrast to solidarity, which is based on the idea of joint agency between joint debtors.

This is because the obligations in solidarity are independent and this return cannot be justified (Ibrahim, 1993, p.78). On the other hand, the view of the other side is that the recourse of the joint debtor against the joint debtors is possible, but it is not absolute (Al-Sanhouri, p.289). An example of this is when the guarantor returns the debtor's debt in the event of multiple guarantors and their succession, as the paying guarantor has the right to claim back the debtor for what he has paid for him. The jurisprudence differed in this and conflicted opinions (Jad, p.255; Markus, p. 147).

On our part, we see that revocation of the joint liability is possible, not as a general rule, but rather according to the nature of the relationship between the joint debtors. For example, when there are multiple guarantors for one debt, the nature of the debt makes it fair to divide them among them before returning to the debtor the entire debt.

On the other hand, in the responsibility of the followed for the actions of the follower, if the follower pays compensation to the injured person, he has no recourse against the followed for what he paid because he has paid a debt on his behalf. However, the subordinate has the right to claim back the compensation he paid to the injured person.

### **3. Conclusion:**

At the conclusion of this study, which addressed the topic of “Joint Obligation and Solidarity Obligation in the Jordanian Legislation,” we review the most prominent findings and recommendations as follows:

#### **3.1. Findings:**

- 1- Although there are similarities between joint and solidarity obligations, there is a difference between the two systems.
- 2- The Jordanian legislator did not regulate the provisions of solidarity, but the judge resorted to the ruling of solidarity to acknowledge the debtor’s responsibility to fulfill the entire debt in the event of multiple debtors and the unity of the debt despite the independence of the sources of this debt.
- 3- The recourse of the joint debtor against the rest of the joint debtors is possible, but it is not a general rule in solidarity. Rather, it is due to the nature of the legal relationship, as the principle is that there is no recourse in joint, unlike solidarity.

#### **3.2. Recommendation:**

We hope that the Jordanian legislator will regulate the provisions of the joint obligation in an explicit legal manner and specify its conditions and implications. It should also specify the cases in which the satisfied debtor has the right to recourse against the rest of the debtors for what he has settled on their behalf in order to achieve the main purpose of joint and without violating the rules of justice or confusing it with solidarity.

### **References:**

- Adalah Program, Jordan Bar Association.
- Al-Adawy, J. (1993). Provisions of Obligation, University House for Printing and Publishing, Beirut.
- Al-Adwan, M., and Al-Shawabkeh, M. (2022). Solidarity Commitment between the Absence of Legal Text and the Presence of Judicial Application, research published in the International Journal of Law, Part 11, No. 1, Qatar University.
- Al-Dhanoun, H.A. (2006). The Simplified in Civil Responsibility, Damage, Dar Wael, Amman.
- Al-Fakahani, H. (2000). The Golden Encyclopedia of Legal Rules Decided by the Court of Cassation, Al-Maaref.

- Al-Fatlawi, S. (2022). Provisions of Obligation in Civil Law, House of Culture, Amman.
- Al-Halalsha, A. (2006). The rules of commitment, Dar Wael, Amman.
- Al-Maamouri, D. (2008). Joint Obligation, Journal of the University of Babylon, Volume 10, Issue 1, Iraq.
- Al-Sanhouri, A. R. (2004). The Mediator in Explanation of Civil Law, Part 3, Heritage Revival House, Beirut.
- Decisions of the Egyptian Court of Cassation website.
- Ibrahim, J. M. (1993). Return among Multiple Officials, Comparative Study, Kuwait University.
- Jad, M. J. (2003). Provisions of Joint Commitment in the French and Egyptian Civil Laws, Alexandria Knowledge Foundation.
- Morcos, S. The Complete in Explaining Civil Law in Obligations, Harmful Action and Civil Liability, Volume 3, 5<sup>th</sup> Edition, Sader Library, Beirut.
- Muhammad, J. M. (2003). Provisions of Joint Commitment in the French and Egyptian Civil Laws, Alexandria Knowledge Foundation.
- Saad, N. I. (2017). Solidarity and the Principle of Not Assuming Solidarity, New University House, Alexandria.
- Sultan, A. (1994). Summary of Provisions of Commitment in the General Theory of Commitment, ID facility, Alexandria.