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The Effect of Contributory Negligence on Damage Awards: A Comparative Study

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Abstract

This article analyses the effect of the fault of the injured party on damage awards. There is still much debate on some of the factors that affect the estimation of compensation particularly those related to the injured party including the fault of the injured party. In this article, the author undertook a comparative analysis of the rules of contributory negligence by comparing the laws of Iraq, the UK, and the USA. The comparative analysis revealed that the way of dealing with this issue has changed from the rule 'all or nothing' to the apportionment rule in both laws of the UK and the USA, although the way of dealing with the apportionment rule in the USA (in some states) is somehow different from that of the UK. However, in Iraq the rule 'all or nothing' is still operative.

Keywords: Damage, contributory negligence, liability, comparative negligence, fault of the injured party

Introduction

Civil liability is considered as the most important subject in civil law and it is also the most contentious subject. Generally, there are two types of liability in civil law which are contractual liability and tort liability. Life is naturally continuing and developing; therefore, conflicts will continue and vary. Thus, it is natural that the provisions and rules of civil liability face this development.

If there is civil liability for regulating social relations and stipulating disciplines for human behaviour, it tries to accomplish its objectives by imposing compensation on those who cause damage to others. An award of damages may serve a number of purposes. In the vast majority of cases in tort, the object of damages is to compensate the plaintiff for his loss, so far as money is able to do so, by giving him as nearly as possible that sum of money which will put him in the same position as he would have been in if he had not sustained the wrong for which he is now getting compensation (Tilbury 2006).

An award of damages is a sum of money payable by a defendant to a successful plaintiff. Since damage is violating a right or an interest of the injured party, compensation is the elimination of the effects of violating the right and interest of the injured party.

Moreover, there are many factors affecting judges in determining compensation, pecuniary factors, and non-pecuniary factors, some of these factors are determined by the law, and some of them are determined by jurists whose views are different on this subject. On the other hand, judicial cases have indicated that although some factors in principle do not affect the estimation of compensation according to law, judges cannot ignore them in reality and they are affected by these factors (AL-Masari 2008).

Civil legislation has provided judges with wide discretion and power to estimate compensation in order to reach a fair compensation. Nevertheless, this cannot be done except by getting help from experts whose job is to determine the factors and subjects relating to the parties in conflict and personal consideration which shall be taken into account, such as the fault of the injured party, the fault of the tortfeasor and the health conditions of the injured party (Taais 2008).

Legislations have paid special attention to factors related to the injured party in the estimation of compensation particularly the fault of the injured person as it cuts the causal relationship between the fault and damage (Taais 2008). If we accurately look at the relationship between compensation and damage by considering that the first aim of compensation is to repair damages that have caused to the injured party, it is natural that we shall take factors related to the injured party into consideration in order to determine the actual loss suffered by the injured person (AL-Masari 2008).

Therefore, this research attempts to find out and compare the effect of contributory negligence on the estimation of compensation under different legal systems.

The Concept of Contributory Negligence

The concept of contributory negligence used to operate as a stark, 'all or nothing' defence which means that if the defendant can prove the contributory negligence of the claimant, he/she would be totally exempted from liability, otherwise the claimant would be able to recover all the damage that he/she had suffered. However, in the middle of the twentieth century, the principle 'all or nothing' of contributory negligence was viewed as unsatisfactory. Numerous amendments were made to it by the judges in order to avoid the harsh operation of the doctrine. In an attempt to address this problem, the United Kingdom was the first country to solve this issue through legislative reform followed by Australia which amended the doctrine in a way that allows apportionment of damage between the claimant and the defendant (Cooney 2022).

In addition, due to the harshness of 'all or nothing' defence, judges invented new supplementary principles which enable the claimant to gain full damage despite his/her contributory negligence. The most notorious of this principle was the last clear chance doctrine under which the claimant was enabled to recover if the defendant had the last clear chance to preclude the damage. In the case of establishing this doctrine, the contributory of the claimant is ignored and the whole liability lies with the defendant (Klar 2016). Nevertheless, the application of this doctrine was difficult and unpredictable. This doctrine was unable to solve the basic problem which was casting the entire liability on one party only, despite the contribution of both parties. Therefore, juries sometimes sidestepped them and apportioned damages informally (Fleming 1998).

Moreover, in order to gain equity and justice various exceptions were invented (Field 2018) and then most jurisdictions attempted to change this rule by statutes in the first of the twentieth century in a way that contributory negligence would not lead to depriving the plaintiff of the whole damage, but rather reducing the damage. These could be done through apportionment provisions. Enacting the apportionment legislation is considered as one of the significant changes in the history of tort law which has affected numerous cases and will continue to do so (Klar 2016).

It shall be borne in mind that if the claimant's negligence is the sole and only cause of his/her own injury, it would not be considered as contributory negligence at all, but rather the source of self-inflicted injury. For contributory negligence the negligence of the plaintiff shall be only one of the causes, because it is clear that the word 'contributory' requires participation of at least two persons (Green 1927).

It is noteworthy that the court is not entitled to raise the issue of contributory negligence, but the defendant shall ask for contributory negligence at his/her own initiative. Where the defendant pleaded for contributory negligence, the court is

required to take two stage-analysis into consideration. The first stage is to establish whether the plaintiff has been contributorily negligent. If the contributory negligence of the plaintiff is established, the second stage comes to play which is the apportionment provision (Nolan 2016). Finally, regard has to be made that when the defendant's wrongdoing is intentional, he\she is not entitled to plead to the defence of contributory negligence. However, it is important to rethink this rule in some circumstances such as in the case of provocation which could be the main driver of the defendant's intentional fault, as the plea of contributory negligence has been accepted in the UK's common law in the cases of battery and assault, although the court's views somewhat unstable in this regard (Fordham 2012).

Analysis of the Fault of the claimant

The fault of the injured person means his/her deviation from the habitual behaviour of the reasonable person, a deviation that leads to causing damage to him/her and that when putting the injured person in the same external circumstances as the reasonable person with the knowledge about it (Bakir 2016). In physical injury actions, the defence of contributory negligence is one of the most frequently pleaded and so the impact which a finding of contributory negligence has on the damages award is significant. The rationale behind the doctrine is that by denying recovery, in whole or in part, to a victim who has been contributorily negligent, the law can discourage people from engaging in conduct that involves an unreasonable risk to their own safety (Devane 2009). The philosophy underlying contributory negligence is that a claimant who has participated partially in producing harm to himself should not be entitled to recover his full damages from a defendant who has also participated partially in producing that harm. Rather, equity requires that the claimants' recovery be reduced in proportion to the relation between his own fault and the defendant's fault (Fische 1978). The faults of the injured party can be divided into two types:

The Fault of the claimant in Causing Damages

It could happen that the injured party sometimes participate in causing damages to some extent. The rule of justice requires that the fault of the injured party shall be taken into account in reducing the damage or exonerating the tortfeasor from liability. The fault of the injured party can often be sufficient for the occurrence of damage or associate with fault of others, but the fault of the injured party dominates (covers) the other fault. A fault dominates the other fault, if its gravity and effect is more than the other (Al-Fadhl 2006). For example, if someone stop in front of a speeding car in order to commit suicide, the intention of the injured person and his/her fault dominates the fault of the driver. Thus, the fault of the injured person is considered as a reason to exonerate the driver from liability due to the lack of causation (Taais 2008).

Moreover, there can be a shared fault where both the injured party and the tortfeasor participate in causing damage to an extent where none of their faults dominate the other and both faults can be distinguished from each other. Thus, there are two causes of damage which are the fault of the tortfeasor and the fault of the injured person, therefore, both parties are equally liable for the damage. It means that the tortfeasor is liable for half of the damage and the injured party is liable for the other half. However, if the judge can determine the gravity of the fault of each then each party is proportionally liable to the harm caused to the injured party (Bakir 2016).

The Fault of the claimant in Neglecting the Damage

Social, moral and healthy duty imposes an obligation on the injured party to take all necessary measures to prevent damage from being increased (Taais 2008). The concept of mitigation of damages is concerned with the conduct of the plaintiff subsequent to his injuries. It is a corollary of the compensation principle that the plaintiff should take reasonable steps either to reduce the original loss or to avert further loss. The reasons for this are not difficult to appreciate: it would obviously be unjust if an 'unreasonable' plaintiff who does not mitigate his loss were to receive more damages than the 'reasonable' plaintiff who does; further, the mitigation requirement is one method by which the overall cost to society of legally compensatable injuries can be reduced. However, it must be pointed out that the defendant has no legally enforceable right against the plaintiff to demand that the plaintiff mitigate his loss, and the plaintiff who fails to mitigate in effect merely runs the risk of a lower damage award (Tilbury 2006).

McGregor has pointed out that the plaintiff cannot recover for loss that could have been reasonably avoided. It is established that no more is required of the plaintiff than that he should act reasonably in the circumstances, and the standard of reasonableness is not high in view of the fact that the defendant is an admitted wrongdoer. Furthermore, the onus is upon the defendant to establish that the plaintiff failed to take reasonable steps to mitigate his loss (Watts v. Rake 1960).

The question whether the plaintiff has acted reasonably in the circumstances is not always capable of an easy answer. Thus, while it can be said that the plaintiff's failure to follow medical advice and submit to an operation that will alleviate his condition will, in the normal case, be unreasonable (Srnajic v. Bonic l968).

In summary, it could be said that the attitude of the injured party in causing damage to himself is negative which includes negligence or fault without healthy or financial justification. This attitude shall be taken into account in reducing compensation imposed on the wrongdoer. However, courts are not obliged to do so, but it is at the discretion of the courts.

Elements of contributory negligence

There are three elements that must be met for the establishment of contributory negligence which is explained below:

1. Duty

In most cases, each person is under a duty to take care of himself in order to avoid injury to himself or his property. Laws usually require reasonable care to be exercised by individuals. The measure of deciding whether an individual has exercised reasonable care is a reasonable person. In order to find out whether an individual has acted as a reasonable person, judges have the right to use their common sense and observations and experience of the affairs of their life. However, there are exceptions under which a person is not held responsible for contributory negligence except if he is found reckless or rash, such as in the case of rescue. This denotes that the rescuer is not under the duty to take reasonable care for his own safety. The courts have exempted persons who expose themselves to a danger for the sake of rescuing another person from liability. The reason for exempting the rescuer is that because he benefits others in his conduct not himself and it is considered as an incentive for other persons to rescue others when they are in danger. That is socially preferable for the law to provide the actor with a subsidy (Shapo 2017).

Nevertheless, in the case of rescue, the rescuer shall not be totally unconcerned for his own safety, he is still under the duty to take care for his own safety, because in the case of being reckless or rash, he could be held liable (Shapo 2017).

2. Breach

The second element of contributory negligence is the breach of self-care. In determining this breach courts apply the reasonable man test into consideration similar to the primary negligence setting. Nevertheless, the application of this test is somehow different, as the courts are more lenient in the application of contributory negligence test than the application of primary negligence test (Shapo 2017).

3. Causation

After the establishment of the plaintiff's failure to take reasonable care, it must be proved that the plaintiff's loss was partly due to his/her failure to use reasonable care. Thus, if it is established that the plaintiff's failure to take reasonable care was causally related to his/her loss, the apportionment between claimant and defendant shall be made (Cooney 2022).

The Attitude of Iraqi Legal System Towards Contributory Negligence

According to Article (210) of the Iraqi Civil Code, 'a court is entitled to reduce the amount of compensation or refuse to order any compensation in circumstances where the plaintiff has contributed through his or her own fault to the injury or aggravated the injury'. Moreover, Article (211) of this law states that

'if a person proves that the damage caused due to a reason to which he/she is not related such as …… the fault of the injured party, then he/she is not liable, if there is not any Article or agreement contrary to that'.

If we look at the Iraqi Civil Code, the above two Articles can be found that directly mention the effect of the fault of the injured party on damage awards. However, regard has to be made that only Article 210 is related to contributory negligence, because it mentions cases where both defendant and claimant have fault and participated in causing damages. In contrast, Article 211 is related to a case where the defendant party does not have any fault in the case, but the damage was caused due to the fault of the injured party solely.

If we analyse the attitude of the Iraqi legislator in Article 210, it can be noticed that it has not succeeded in formulating the context of the Article, because of two reasons: firstly, the legislator provides full discretion with the court to reduce the amount of compensation or not which means that the court is entitled to provide the plaintiff with the whole damage award even if, for example, the plaintiff is at fault 50%. Secondly, it does not designate the method of apportionment if it decided that the damage shall be reduced based on the contributory negligence of the plaintiff.

In terms of the view of legal scholars, courts make their decision based on the gravity of the faults. They state that if the fault of the plaintiff is dominant, the defendant would be totally exempted from liability and the liability would lie with the plaintiff himself. However, if the fault of the defendant is dominant, the plaintiff would be fully compensated (Bakir 2016). In addition, it is worth mentioning that even if courts adhere to the notion of dominant fault, they would face the problem of when the fault is dominant, because it is not clear when a fault is considered dominant whether it requires 50% or more, or even less than 50% per cent can be considered as a dominant fault.

Moreover, it is worth noticing that in Article 217 of Iraqi Civil Code, the legislator considers all wrongdoers liable for the damage caused in the case of multiple wrongdoers without taking dominance of the fault of wrongdoers into account, but each of them is liable based on the gravity of their fault, it does not matter how grave their fault is. In addition, the court would make them equally liable, if it is not possible for the court to determine the gravity of their fault. If we compare the attitude of the Iraqi legislator in both Articles 210 and 217, two contradict views can be noticed, because in both Article there are more than one person took part in causing damage, the only difference is that in Article 210 one person is the claimant himself, while in Article 217 all participants are defendant. It is important to ask why in Article 210 the court is given discretion to exempt the claimant who is also wrongdoer, but in Article 217 all wrongdoers are liable?

In a case, the court of cassation in Iraq held that 'the fault committed by the claimant in driving motorcycle in opposite direction dominates the simple fault attributed to the defendant that he/she must have slowed down his/her speed' (Unknown Parties 1981). The court also held that 'if the defendant takes part in committing the fault which caused damage to the claimant, he/she must be liable for compensation to an amount that is commensurate with the scope of his/her

participation in the fault' (Unknown parties 1983). It seems that in the second case dominance is not condition.

Thus, it could be construed from the above cases and judicial cases that the fault of the injured party in causing damage plays a significant role in reducing damages or in exempting the tortfeasor partly or wholly according to the type of the fault whether it is dominance or not.

Finally, It is believed that the Iraqi judicial system and Iraqi judges are not deserved to be given such discretion, because of the lack of impartiality in the judicial system. Another reason is because it could be said that most judge are not elected based on their merit.

The Attitude of UK's Legal System Towards Contributory Negligence

Contributory negligence has a long history in the UK's common law; however, we just focus on the Law Reform (Contributory Negligence) Act of 1945. In accordance to this Act once contributory negligence of the claimant is established, the apportionment provisions will be relevant that determines what to be done once contributory negligence is proved by the defendant (Klar 2016).

Section (1/1) stipulates that:

> (1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.

If we look at the wording of this provision, it can be interpreted that contributory negligence does not enable the defendant to be wholly exempted from liability, but the court is provided with the discretion of reducing the damage based on the fault of the plaintiff. However, it shall be borne in mind that it is a must for the court to reduce the damage, but only the amount of the reduction is at the discretionary court as the court thinks just and equitable. Moreover, the phrase 'just and equitable' is quite nebulous which requires elaboration by the courts.

The way that judges work in the case of finding contributory negligence is that they are required to evaluate the parties' respective share of liability for the damage as two percentages. In determining the parties' share of responsibility, the parties' comparative blameworthiness and the relative causative potency of their faulty are taken into account. After that the court must reduce the plaintiff's damage by the percentage of liability assigned to him or her (Nolan 2016).

Contributory negligence has been repeatedly pleaded by the defendant in the UK. In a study conducted by James Goudkamp and Donal Nolan 368 contributory negligence claims investigated, out of these claims the claim of contributory negligence was successful in 221 cases which equals to 60 percent and did not succeed in 147 claims which equal to 40 percent (Nolan 2016). In the 221 cases in

which the plaintiff was found guilty of contributory negligence, the average amount of damage reduction was 40.5 percent. In another study in which 572 cases were taken as a sample, the plea of contributory negligence was successful in 331 cases (58 percent) and failed in 241 cases (42 percent) (Nolan, Contributory Negligence in the Twenty First Century 2019). Thus, it could be noticed that in the UK contributory negligence plays a significant role in reducing damages and is an important weapon at the hands of defendants for escaping liability partly which is frequently pleaded.

In a road accident where the claimant suffered catastrophic damage crossing four-lane road while wearing dark close at dark and rainy weather. The defendant was found primary liable due to driving too fast in dark and on wet road as the claimant in sight and failed to properly look around before crossing. In this case, the defendant was successful to plead to the defence of contributory negligence and the damage reduced by 20 percent (Bruma (A Protected Party) V Hassan & Esure Services Limited 2017).

In another case where the claimant suffered severe brain injury while crossing road between pubs. The defendant was driving at 20 mph failed to see the claimant wearing dark clothing, although the claimant was on the road for 6 seconds before stepping in front of the car. The claimant was found 30 percent of contributory negligence because he had been drinking and he had possibly misjudged the speed and location of defendant's car. He had some liability but he had already been on the road as the defendant approached and the greater blame fell on defendant as she had somehow failed to recognise what was before her (Woolridge v George 2017).

Nevertheless, in a case where a car hit a child of eight years old crossing road close to zebra crossing and children were allowed to use playground without any supervision, no contributory negligence was found. The claimant saw the car approaching, but continued to cross the road, while the defendant driving too fast. In judging the actions of a child, a reasonable child of the same age, intelligence and experience was measured. The claimant's previous experience showed that the crossing was the safe place to cross because when previously encountering cars approaching it, they would have stopped. It was a great misfortune that the first time he found himself unaccompanied on a road; he had encountered a car driven in a way wholly outside his experience. The only reasonable inference was that he thought the car would stop at the crossing for him. It was difficult for a child of eight to judge the stopping distance so as to understand that while the car should stop for the crossing it might be traveling at such a speed that it was unable to do so in time. There had been momentary misjudgement by claimant balanced against reckless conduct by defendant, whose driving had been outside claimant's expectation based on his understanding and experience. It would not be just and equitable to find contributory negligence in those circumstances (Ellis (A Child) v Kelly & Ellis 2018).

Finally, it could be observed that the Law Reform Act has regulated the issue of contributory negligence in a manner that just and equitable and that is how it shall be as equity requires that any fault taking part in causing damage shall be taken

into consideration. In addition, judicial cases in the UK have indicated that contributory negligence plays a significant role in the reduction of damage.

The Attitude of The USA Legal System Towards Contributory Negligence

Similar to other common law countries, the United States used to embrace the "all or nothing" rule to contributory negligence. However, this approach was gradually rejected by most states either by legislations or judicial cases in favour of apportionment. The apportionment regime is known as comparative negligence or comparative fault instead of contributory negligence in the United States (Klar 2016). Comparative negligence system is subdivided into pure comparative negligence and modified comparative fault. Under the first type, the plaintiff's damage is reduced due to his\her contributory negligence irrespective of whether the plaintiff's share of responsibility for the damage is greater than that of the defendant. However, under the latter type the apportionment of damage is permitted only when the plaintiff's responsibility is not greater than a specified percentage, often 50 per cent. For example, suppose that in an accident the claimant suffers an injury of $100, and the claimant's share of responsibility is $70, while the defendant's share of responsibility is $30. In accordance to the pure comparative negligence regime, the claimant would be granted $30 damage award. Nonetheless, in accordance to the modified comparative negligence regime the claimant would be awarded nothing (Hylton 2016). It is worth mentioning that the model of modified comparative fault has been adopted by Arab jurisdictions such as Iraq, Egypt and Jordan, but the doctrine in Arab jurisdiction is known as dominant fault.

In addition, nine states adopt pure comparative negligence regime which are Alaska, California, Florida, Louisiana, Michigan, Mississippi, New York, Rhode Island, and Washington. However, there are thirteen states adopts the form of modified comparative fault regime which allows recovery when the claimant's fault is not greater than that of the defendant and these states are Connecticut, Hawaii, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, Oregon, Pennsylvania, Texas, Vermont, and Wisconsin. Moreover, there are eleven states that adopt the form of modified comparative negligence which requires that the fault of the plaintiff shall be less than that of the defendant which are Arkansas, Colorado, Georgia, Idaho, Kansas, Maine, North Dakota, Oklahoma, Utah, West Virginia, and Wyoming (Wade 1980) (Fischer 1978).

In terms of the case law in the United States, in a recent case in 2020 the US Court of Appeals for the Fifth Circuit made a decision which affirms the assessment of contributory negligence. In *Andrew Lee Knight v. Kirby Offshore Marine Pacific, LLC*, the claimant seaman had an ankle injury at the time of working on board a tugboat which was owned and operated by his employer. On the day of the accident, the captain of the vessel ordered the plaintiff to replace the stern line with a new one, because the older one was worn or chafed. At the time of the captain's order the weather was in a bad condition due to strong wind. The claimant and his crewmate removed the chafed line and they left it next to themselves. While they

were working in order to install the new stern line, the claimant stepped on the chafed line and as a result of that his ankle was injured. Consequently, the plaintiff brings an action before the court and asked for the damage, because he said that his injury was as a result of losing his balance due to bad weather.

The defendant relied on the defence of contributory negligence and asked for the reduction of the damage. The court ruled that 'the employer was negligent for issuing an order to change the stern line during rough weather conditions and that plaintiff was contributorily negligent for failing to watch his footing while replacing the chafed stern line and for failing to move the chafed stern line to a location on the boat where he would not have stepped on it'.

The plaintiff appealed the decision of the court, but the appellate court affirmed the decision of the district court for the reduction of the damage. In making its decision the court of appeal made difference between two types of orders. It stated that if the order is specific which obliges the workers to follow specific measures and instructions and they are left with no other choices, the plaintiff would not be considered as contributory negligent. However, if the order is general as it was the case, the workers are free to choose the way they work without being obliged to follow specific instructions, they would be considered contributory negligent if the they do not take prudent care into consideration (Andrew Lee Knight v. Kirby Offshore Marine Pacific, LLC, Case No. (5th Cir. Dec. 17,). 2020).

In *R.J. Reynolds Tobacco Co. v. Schoeff* case where Joan Schoeff Spolzino as Representative of the estate of her deceased husband (James Schoeff) filed a suit against a tobacco company (RJR) claiming that her husband died from lung cancer as a result of being addicted to cigarettes. After taking the evidence presented into consideration, the jury found that Mr. Schoeff was addicted to nicotine and it was considered as a legal cause of his lung cancer and death, and the defendant's culpability as well as the defective and unreasonably dangerous cigarettes produced by defendant were considered as a legal cause of Mr. Schoeff's lung cancer and death. However, the jury found that Mr. Schoeff shared some fault for his smoking-related injuries which amounted to 25% based on comparative fault doctrine. Moreover, in the trial court, the court approved the jury's reduction based on comparative fault. Although, the plaintiff cross-appealed the case claiming that reducing the damage based on comparative fault rule was not incompliance with section 768.81(4), Florida Statutes, because the jury found that the defendant had committed the intentional tort of fraudulent concealment, thus section 768.81(4) barred the applicability of comparative fault. However, the court of appeal rejected the motion of the claimant and approved the trial court's decision regarding the reduction of compensatory damages based on comparative fault rule (R.J. Reynolds Tobacco Co. v. Schoeff 2015).

Finally, it could be noticed that the way of dealing with contributory negligence in the USA varies from state to state, but it would be more equitable to take pure comparative fault into account in all states.

Conclusion and Discussion

This research focused on the effect of the fault of the injured party on damage awards by comparing the three legal systems of Iraq, the UK and the USA. It was found that in the common law countries the principle "all or nothing" rule was relied upon under which no reduction of compensation was permitted, but the claimant would either get the whole compensation or nothing based on the gravity of the fault. However, the abovementioned rule has been changed.

In the UK, after the enactment of the Law Reform (Contributory Negligence) Act, the abovementioned rule was changed as in accordance with the Reform Act, if the claimant takes part in causing damage, he/she would be liable based on his/her fault without taking the gravity of the fault into consideration. In the UK, in the case of proving contributory negligence, it is a must for the court to take it into consideration and reduce the damage, but the amount of damage would be reduced based on the estimation of the judge, provided that the reduction is just and equitable.

Moreover, the USA also used to embrace "all or nothing" rule, however, this rule was rejected in favour of apportionment. The apportionment regime is known as comparative negligence or comparative fault instead of contributory negligence in the United States. Comparative negligence system is subdivided into pure comparative negligence and modified comparative fault. Under the first type, the plaintiff's damage is reduced due to his\her contributory negligence irrespective of whether the plaintiff's share of responsibility for the damage is greater than that of the defendant. However, under the latter type the apportionment of damage is permitted only when the plaintiff's responsibility is not greater than a specified percentage, often 50 per cent. In the USA, there are States that adopts pure comparative negligence and there are states that adopt modified comparative negligence. Thus, it could be construed that in the USA in some states "all or nothing" rule is still adopted with the difference of determining the percentage, while some states totally reject the rule.

Finally, Iraq has taken mixed approaches into consideration, but the discretion is left with the judge to take the decision as the judge can reduce the damage or not in the case of proving contributory negligence. It is believed that judges usually evaluate the faults of both parties and the dominant fault would bear the whole liability (i.e., the all or nothing rule is taken into account). However, if the gravity of the faults is equal then the damage award is apportioned and each party shall be liable for 50 per cent of the damage award.

I believe that equity requires that the amount of damage awards shall be reduced in the case of contributory negligence irrespective of the gravity of the fault, because fault is fault it does not matter how trivial it is, as long as it has affected the damage. Therefore, the attitude of the UK's Reform Act is preferable and more justice. However, the attitude of the Iraqi Civil Code is not fair, because a person's responsibility may be equal to 48 per cent, but he/she would be totally

exempted from liability. Moreover, the judicial system of Iraq is not strong and independent enough to give such discretion to judges.***

Bibliography

Al-Fadhl, Munthir. Analysis of Civil Law. Erbil, 2006.

AL-Masari, Jamal. "Factors Affecting the Estimation of Compensation Negligence ." Abdelmalek Essaâdi University, Master dissertation, 2008: 6.

Andrew Lee Knight v. Kirby Offshore Marine Pacific, LLC, Case No. (5th Cir. Dec. 17,). 19-30756 (United States Court of Apealss ffor the Fifth Circuit, 17 December 2020).

Bakir, Ismat Abdulmajid. Negligent Liability in Arabic Civil Laws. Beirut: Publication of Zain Al-Huquqyah, 2016.

Bruma (A Protected Party) V Hassan & Esure Services Limited. 3209 (EWHC , 2017).

Cooney, Henry. "Causation and Contributory Negligence: the Use and Misuse of Causal Concepts in Cases of Misleading Conducts." University of Western Australia Law Review, 2022: 266-267.

Devane, Margaret. "A Comparative Assessment of Personal Injuries Compensation Schemes: Lessons for Tort Reform?" Electronic Journal of Comparative Law, 2009: 7.

Ellis (A Child) v Kelly & Ellis. 2031 (EWHC , 2018).

Field, Iain D. "contributory Negligence and the Rule of Avoidable Losses." Oxford Journal of Legal Studies , 2018: 1-25.

Fische, David A. " Products Liability-Applicability of Comparative Negligence." University of Missouri School of Law Scholarship Repository, 1978: 431.

Fischer, David A. "Products Liability--Applicability of Comparative Negligence." Missouri Law Review , 1978: 432.

Fleming, John G. The Law of Torts. Sydney: LBC Information Services, 1998.

Fordham, Margaret. " The Role of Contributory Negligence in Claims or Assault and Battery." Singapore Journal of Legal Studies, 2012: 21.

Green, Leon. "Contributory Negligence and Proximate Cause." North Carolina Law Revie, 1927: 12.

Hylton, Keith N. Tort Law: A Modern Perspective. Cambridge University Press, 2016.

Klar, James Goudkamp and Lewis. "Apportionment of Damages for Contributory Negligence: The Causal Potency Criterion." Alberta Law Review, 2016: 849.

Nolan, James Goudkamp and Donal. Contributory Negligence in the Twenty First Century. London: Oxford University Press, 2019.

Nolan, James Goudkamp and Donal. "Contributory Negligence in the Twenty-First Century: An Empirical Study of First Instance Decisions." The Modern Law Review Limited, 2016: 575.

R.J. Reynolds Tobacco Co. v. Schoeff. 4D13–1765. (District Court of Appeal of Florida, Fourth District., 11 April 2015).

Shapo, Marshall S. Shapo on The Law of Products Liability: Contributory Negligence and Assumption of Risk . Eddwardd Elgar Pubishing, 2017.

Srnajic v. Bonic. 88 (N.S.W, l968).

Taais, Mohammed Abd. Compensating moral damage in negligent liability: comparative practical study. Baghdad, 2008.

Tilbury, Michael. “Damages for Personal Inuries: A Statement of the Modern Australian Law.” Western Australian Law Review, 2006: 260.
Unknown Parties . 1130\1981 (Baghdad Court of Cassation, 1981).
Unknown parties. 81\M4\1983 (Baghdad Court of Cassation, 1983).
Wade, John W. “Comparative Negligence - Its Development in the United States and Its Present Status in Louisiana.” Louisiana Law Review, 1980: 300.
Watts v. Rake . 108 (C.L.R., 1960).
Woolridge v George. 332 (EWHC , 2017).