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Damage is one of the pillars of civil liability

Prepared By



**Nada Abdul Jabbar Jamil
Faculty of Law & Political Science – Law
Northern Europe Academy - Denmark**

naaa64@hotmail.com

Abstract

Damage is considered a necessary element for the emergence of civil liability, whether it is a tort or contractual liability. Both require compensation for damages in order to confront the perpetrator. The damage was material or moral, both of which are obligatory for compensation, even if the legislation differs in compensation for moral damage, but some of them permitted the punishment for that. As for the damage The material penalty is financial compensation for the aggrieved, the injured and the apostate and those who are related to the aggrieved party. The damage is considered to be compensation in tort responsibility in the event of a crime, so the victim has the right to claim compensation for material and moral damage. He himself may be an apostate, and he is the one who affects the relatives of the victim and who are covered by compensation in the event that the victim remains alive. As for compensation for moral damage, it remains a personal right claimed by whoever is related to the damage, i.e. the aggrieved. Islamic Sharia took into account human sanctity and did not make the matter in vain, but rather The reinforcing penalties for this harmful act were placed in the moral damage, and the authority granted to the judge empowered him to assess the harm and inflict the right penalty. He was imprisoned or beaten according to the felony and the nature of the offender, and all of this is the principle of reform to make society sound and pure by realizing the right.

key words :

Damage - recurring damage - civil liability - tort liability.

Introduction

Civil Responsibility is considered of the most important one of the pillars of the legal and social order, responsibility is the secretariat in the necks of the people God has characterized the Almighty man and the Almighty With the mind and awareness from the rest of the creatures and the mind can distinguish between good and evil in the verse (I'm offered the Secretariat on the heavens and the earth and the mountains Vopin to carry it Ohafqn them and carry Indeed, man was unjust, ignorant) Surah Al-Ahzab verse 72 ,Honesty is the responsibility and obligation that God assigned to man and forbade him to breach and not fulfill in his daily dealings. Consequently, laws were derived from those heavenly teachings, which include a person's relationship with his Lord, himself and other people, and this legal responsibility links this relationship and its source is the law. Civil responsibility is a person's obligation to compensate For damage caused to others, whether in contractual liability (breach of the contract or one of its conditions) or tortious liability (breach of a general legal obligation), whether this breach was intentional or not, civil liability arises whether the act was intended or unintended, for every material or moral

damage The perpetrator is obligated to compensate if he proves that the act and mistake is the direct cause of the damage. (Faik , 2017)

The study Problem

Dealing with damage caused by third parties in civil liability and how to ensure its removal through compensation, especially moral and moral damage, and because of the importance of this case and the problem it represents in the real life of many life problems in which the personal right may be wasted and thus have a material and moral return on the life of the individual, which is reflected Negatively on his family and society in general is one of the daily cases that the courts consider.

Objectives

The objectives of the current study can be defined in the following points:

- . 1. A statement of the meaning of the damage and the extent of its impact on persons
- . 2. Clarify the types of damage
- . 3. A statement of the character of responsibility at the time of error and its consequences

Study Approach

The researcher used the descriptive approach to prepare this study, through which she was able to analyze the legal texts related to damages in civil liability.

Search terms

1. Civil liability

Civil liability is defined as:

It is the responsibility that aims to redress the harm suffered by the victim when the debtor breaches the contractual obligation or the person breaches a legal obligation imposed on him

Civil responsibility is also defined as holding a person accountable for doing or abstaining from doing an act, that is, it is a penalty for a person's violation of one of the duties entrusted to him, and the source of these duties is either the law or compliance with his will.

Definition of damage idiomatically:

It is all harm inflicted on a person, whether on his money, body, honor or affection.

The theoretical side

The law divides civil liability into two types of liability:

A. Contractual liability.

B. tort

The subject of our study of civil responsibility is related to man's actions, actions and obligations towards others, as he is responsible for these actions, as stated in the noble Prophet's hadith, as the Prophet, peace and blessings be upon him, said: "All of you are shepherds and all of you are responsible for his flock."

Responsibility does not exclude any sane individual who performs illegal acts and harms others, as commitment is one of the obligations of responsibility, and otherwise the perpetrator is absolutely bound by his responsibility.

Because of the development of contemporary life, which occurred on professional, industrial and commercial activity, and with the use of modern technologies, tools, means of production and cars, all of this led to an increase in harmful and illegal acts and mistakes that cause harm to others because these means carry risks and expose many accidents and waste money resulting from mistakes or negligence. Which causes harm, the source of responsibility is the act by which the perpetrator violates his obligation to respect the rules.

Civil liability is the obligation of a person to compensate for the harm inflicted on others, whether this obligation is specified in texts or not. It is a contractual responsibility if the breach of an existing contract occurred between the wrongdoer and the injured party, and negligence if the breach occurred in a general legal obligation that requires the harm not to be inflicted on others. People throw a stone at a person and injure him unintentionally, such as when a car deviates from its lane to break the front of a store, in order to avoid running over a person. (Dagher, 1997)

Contractual liability

Which arise as a result of a contractual obligation between two parties such as sales contracts, according to which the buyer is obligated to pay the price to the seller and that his failure to comply exposes him to loss and consequently the damage caused to the seller from not implementing an obligation in the contract, and it is also known as a liability incurred by those who breach the contract between the creditor and the debtor and the penalty incurred by the party in breach of the contract, the contract is the law of the contracting parties, and the content and the terms of the contract must be respected and not violated. The debtor shall implement the obligation, and the creditor shall have the right to claim compensation before the court for any damage caused by the debtor's breach of his obligation, even if there is no bad faith on the part of the debtor.

1. The existence of a contract binding the two parties

2. Referring the damage to a breach of the contractual obligation, as the existence of a valid contract is not sufficient to establish the liability, as it is required 3. The existence of a legal relationship or link between the harmful act and the failure to fulfill the contractual obligation.

4. Error, damage and causation.

The first corner is a nodal error

It is the failure to perform an obligation arising in the contract or its improper implementation or delaying its implementation if it was intentional or due to negligence.

The first. A commitment to achieve a goal, such as the commitment of a bus driver to deliver passengers and maintain their safety, and this commitment achieves a goal and a goal, which is the safety of passengers. Otherwise, the mistake is made, which is not to implement.

The second. An obligation to take care is the same as the doctor's obligation to treat the patient. The doctor is obligated to the patient according to the work contract, to maintain the patient's safety and to take care, whether the result is achieved or not. He did not take sufficient care and prove his fault, unless it is proven that the failure to achieve the result and the damage he caused are due to a force majeure in which he has no hand, and thus the contractual liability is paid from him. (Al-Zanoun and Raho, 2002)

The second corner damage

Which occurs as a natural result of the error, which is an injury to the person as a result of the error or harmful act, and therefore compensation must be paid, which we will talk about later.

The third pillar is the causal relationship between error and damage

In order to achieve contractual liability, the damage caused to the creditor contracting must be due to the fault of the other debtor contracting party, meaning that there is a relationship between the error and the damage, so the causal relationship is not created and does not arise if there is a foreign cause that interferes between the debtor's failure to implement his obligation and the damage that befalls the creditor such as force majeure, accident or mistake Others and the error remains

Existing due to non-performance, but with the presence of a foreign reason, the debtor is not liable if proven, and thus the causal relationship between the error and damage is negated, and the contractual liability for that is nullified. (Abedin, 2002)

Tort liability

It is the second type of civil liability, which arises from breaching the duties imposed by law and not causing harm to others, and the offender does not incur liability and thus compensation to the injured. Supposedly, the latter can be proven otherwise by proving a foreign cause. Otherwise, every mistake that causes damage requires its owner to be compensated.

The illegal act is an important source of obligation in the law, and this act arising from this source is called tort liability, and the person is the responsible person who performs the unlawful act. For others, the person who committed it must pay compensation, except in exceptional cases, such as force majeure in which a person has no control

The pillars of tort liability are fault, damage and causation

The error

It is the basis of tort responsibility, which is the person's breach of a legal obligation while being aware of this breach, which is a deviation in behavior that causes harm to others, and the error in tort responsibility is based on two pillars, namely, the material error, which is infringement and deviation, and the second is psychological and psychological, which is awareness and discrimination.

If a person violates the laws that he must drive a car at great speed and run over a person and endanger his life and cause him damage and does not abide by the rules of traffic, and this is an infringement and the error here was intentionally or unintentionally, the driver shall bear the responsibility unless it is proven that there is a force majeure in which he has no hand.

As for the other element of error, it is awareness and the person is aware of the acts of infringement that he has committed, whether intentionally or unintentionally, where the infringer is required to compensate, whether the harmful act was direct or causing the damage, and thus the Iraqi civil law went in that the default error is a breach of a legal obligation that requires taking Caution and caution in behavior to avoid harm to others, as every person is responsible for the harm he causes, not only by his actions, but by his neglect and lack of awareness, such as the need to respect the rights of the neighbor such as not disturbing the neighbor with loud noises or loud music and other rights of the neighbor over his neighbor or as the responsibility of the driver when driving Injures a person or causes damage to a person's money and damages, and he does not have to compensate for any damage

Errors are generally types, and thus the perpetrator's responsibility is excluded, as it may stem from

The fault of the victim himself, provided that the fault of the victim was intentional, and therefore the fault of the offender was unintentional, and the injured person is solely responsible for his mistake by throwing himself in front of a speeding car with the intention of committing suicide

2. The fault of a third party, if the fault was made by a third party, the causal relationship between the defendant's fault and the damage is negated, if it was the fault of the third party, where the fault is deliberately borne alone, and the unintentional fault is not asked, such as if a person deliberately pushed his colleague in front of a speeding car, which inflicted fractures on the man, then the driver is not asked about this mistake

4. In cases of legitimate defense and necessity, the character of the wrongful act is precluded

5. A person who is not discriminated against in civil liability, which is seven years old, shall not be charged unless the law recognizes liability in exceptional cases, and if the injured was unable to obtain compensation from the person charged with it.

Harm

It is the harm that afflicts a person from the error that one person causes to another and inflicts on him one of his rights or interests, and this harm must be compensated through the assessment of the court in proportion to the extent of the damage. It is not expected that there is a contract that both parties are bound by

Causal relationship between error and damage

It is not sufficient for liability to be fault and damage, but the fault must be the reason for the occurrence of the damage.

Poisoning a person, and before the poison entered his body, another person came and killed him. He died, not because of the poison, but because he was shot. The mistake is the person who planted the poison, but it did not cause his death, but the other person. Thus, we avoid the causal relationship between this mistake and the damage, which is death.

The difference between contractual liability and tort liability

1. In terms of capacity, where the capacity of the contracting person is required, other than tort liability, in which discrimination and awareness of the person and the consequences of his actions

2. The error in the contractual responsibility is to achieve a goal and take care. If the commitment is to achieve an end, the responsibility for not achieving the result is achieved except by the occurrence of a foreign cause. But if the obligation is to exercise care, then the error is measured by the standard of the common man that responsibility for a simple mistake is not based on the opposite of tort liability

3. Notification: Contractual liability is not realized until after the debtor is notified or warned by the creditor, in contrast to the tort liability that does not require notification to claim compensation

The financial person is a material harm, such as the rights of the author and the inventor, as this infringement results in a decrease in the financial benefits that these rights confer on their owners.

And the damage resulting from violating one of the rights related to human freedom, such as personal freedom, freedom of work and freedom of opinion, which results in financial loss such as imprisonment of a person and preventing him from performing his work.

The physical damage consists of 3 pictures

1. Physical damage resulting from the assault on the person himself and his body, such as cuts and fractures

2. The material damage caused to the person's physical entity, such as charging the injured the costs of treatment resulting from a physical assault on him or the disability caused by permanent disability as a result of the assault or missing the opportunity to earn

An example of missing a profit: a trader contracted to supply materials, and the supplier breaches his obligation so that the trader is forced to buy them from another supplier at a higher price, and here the merchant bears the loss of the price difference and the deals that he missed if the materials were supplied to him on time, which is a missed profit.

3. Material damage resulting from assaulting a person's money, such as burning one of his private properties, such as a car or a house.

Physical damage types

1. Direct and indirect material damage

As it is known, if a breach occurred by one of the debtor contracting parties and he did not commit himself to the implementation, nor was the creditor able to avoid by exerting diligence, this breach would be harm and loss for the creditor.

For example, if a person sold spoiled grain to the farmer and planted it, and the cultivation did not succeed due to the damage of the wheat, and thus the farmer incurred a loss for not obtaining the agricultural output and selling it, and was unable to pay his debts, and the creditors seized his land and sold it at a low price. The farmer prevented this from happening by making a reasonable effort. As for the creditors' seizure of his land and selling it, this is an indirect harm.

2. Foreseeable damage and unexpected damage

It is the harm that a person expects in its cause and in its amount. For example, if a carrier undertakes to transport valuable items in a package and does not inform the carrier about its content and the carrier loses the package, the loss of the package is an expected harm for which the carrier is responsible. The carrier does not expect valuables in the package and is not responsible for them.

As for the indirect material damages, they are not compensated for the absence of a causal link between them and the error causing the direct damage caused by indirect damages, but it is compensated for the direct damage expected only in the contractual liability on the

The basis for the existence of the contract between the contracting parties, unless there is fraud or a serious error. As for tort, the expected and unexpected direct damage is compensated if it results from a legal breach.

Potential harm and damage done

Possible damage is the one that is based on possibilities and speculations that are not inevitable, and the conditions for compensation do not apply to it and are not compensated. Examples of potential damage are

For a person to file a lawsuit against an electricity company for setting up an electricity pole near his house, which raises the fear that an electrical short circuit may occur to burn his house in the future, and this is a possibility that may or may not happen. This is not compensated because it is a potential unrealized damage.

Moral damage

It is the harm inflicted on a person in his feelings, feelings, dignity or reputation, and the pain suffered by a person as a result of grief lies within himself as a result of the death of a dear person. There are many definitions

And he defined: It is also the harm that does not affect a person with his money, but rather in his honor, reputation, dignity or social position.

He also defined non-economic damage as it includes everything that affects a person in his emotional and emotional life

It is the damage that does not affect the financial disclosure.

Others defined it: it is the moral damage that is based on all human pain that is not caused by financial loss, and it covers the pain of the aggrieved in his body, honor or affection.

It is also every infringement of his right or a legitimate interest that causes harm to his owner in his social position, affection or feeling, even if it does not cause him a financial loss.

Damage to a person's reputation, such as the author, which is harmed by the publisher, and whose reputation is exposed to failure, which requires compensation for this damage, such as publishing an apology in the Official Gazette or something else.

As for the moral damage that affects a person in his feelings and honor, such as violating the honor of his family, or slandering him and insulting him with obscene words that lead to hurting his feelings and insulting his dignity by speaking or assault

And moral damage that affects emotion, feeling and tenderness, and the actions that afflict a person in his religious beliefs and feelings.

As for the bodily harm, it is a mixture of material and moral harm. If the injury caused the injured person to be prevented from carrying out his work and held him due to the bodily harm, and this injury affected his income, the harm was material.

The injury has no effect on the income of the injured, and his injury was in the psychological pain, such as deformation and burns, so the harm here is moral damage, and it can be material and moral damage at the same time, such as the injury of a singer by mutilation in his face or voice so that this harm affects his earnings and thus is harmed financially and morally, and he has the right to claim With compensation, each case is evaluated separately and the judiciary will decide that compensation

As the Iraqi Court of Cassation defined moral damage:

It is the harm that befalls the victim in his feelings, emotions, dignity, honor, or any of the meanings that people are keen on. (Madani, 1979)

And the French Court of Cassation defined him in 1955:

It is the harm caused to a person other than his financial rights or in a non-financial interest.

The Egyptian Court of Cassation in 1995 knew him:

So I knew that it is every harm that harms a person in his honor or affects his emotions and feelings.

Kinds of moral damage

Direct damage and indirect damage

For example, if a person beats a young man and leaves him with permanent disability or paralysis in part of his body, and this young man suffers from pain, aches and depression to disrupt his life as a result of his injury, and thus his mother grieves for him and suffers for his injury and suffered until she died, then this assault on the young man direct harm and the perpetrator is asked for this harmful act, but The death of the mother is indirect harm

Expected damage and unexpected damage

It is the damage that is expected to occur

For example, if the tenant is forced to leave the house he rented due to the landlord's failure to carry out the necessary maintenance work and rent another house, but it is more expensive than the first house, so the tenant's furniture will be damaged during transportation. Then the tenant's family will be exposed to a disease that was a microbe present in the second house that he rented. The expected direct damage is the difference in The price is between the two houses. As for furniture damage, it is the direct and unexpected damage, and what is caused by the disease is the indirect damage. In tort, the lessor is responsible for the direct, expected and unexpected damages.

Actual damage and future damage

The damage inflicted is the damage that is compensated, and the injured has the right to resort to the court to request compensation because it is a harm that affects the interest of the injured in the actual situation, or that this prejudice will occur in the future, but it is inevitable and certain

Example

The worker sustains several injuries in his body and his inability to perform his work, so he deserves compensation in reality, which are represented by the injuries he sustained and the future and which prevented him from working. The future damage is inevitable and may be compensated for.

Compensation principle

Define compensation language

It is the consideration in the sense of the substitute and the plural substitutes instead. He gave it to him in exchange for what he had gone from, and he was reimbursed. He took the consideration, and so and so, meaning he asked for consideration

Define it idiomatically

It is the obligation to compensate others for damage to money or loss of benefits, or for partial or total damage to the human soul

The term “compensation” in the law has replaced the term “determined by Islamic jurisprudents” with “warranty” for reparation, as the guarantee bears what is meant by the terminology of compensation in civil law.

Perhaps the most important place of civil liability that has sparked controversy among legal jurists is the moral damage, as they differed over the recognition of compensation for moral damage, which causes serious damage to the person in himself, his reputation and his feeling, so it is necessary to stand on this issue and take compensation in proportion to the size of the damage. Since ancient times, where tribes and families were without laws governing the behavior of people, due to their dependence on the official of the clan or tribe to which he belongs, to resolve disputes between individuals. Individuals are often in constant conflicts and because of underdevelopment and the existence of norms that govern individuals and that the strong take their right by force and thus conflicts arose and the intolerant system and revenge And chaos, there was no justice and fairness in that era until laws appeared that dealt with the system of responsibility and approved the principle of compensation for damages resulting from aggression or the mistake of others, the law of Hammurabi and Arnamo appeared in ancient Iraq and those legislation established principles that would preserve societies and reduce conflicts, and after that several peoples appeared Others, such as the Romans, established laws that provide for justice, and the French law also went and created a law for compensation for moral damage after it was unknown to the peoples, and opinions differed about the nature of compensation for damage.

The Islamic Sharia has been proactive in preserving the rights and the right to life and the campus of the damage to others and punished all abusing the need to compensate for the act harmful interpretation of the meaning (and what was a believer to kill a believer except a line and killed a believer line Freeing locked neck and a friendly Muslim to his family but believe it was enemy of the people you a believer freeing secured the neck, although some among you and from whom a ransom Charter Muslim to his family and freeing the neck of it is locked fast for two consecutive months did not find repentance from Allah, and Allah is Knower, the wise) Nisa any 92.

Iraqi law defines compensation for moral damage and permits it (the right to compensation for moral damage. Every infringement on others in their freedom, honor, honor, reputation, social status, or financial consideration makes the aggressor responsible for compensation). (Iraqi Civil Code 205)

Legislators differed between supporters and opponents of the idea of compensation for moral damage, but compensation for moral damage is of great importance and

necessity that cannot be ignored, nor does it ignore the moral damage that the victim suffers from pain, sadness, and tragedy, and what these damages leave behind from psychological manifestations that affect his life and affect the feelings and feelings of the victim as a result of the criminal act Honor and consideration are inflicted on the injured, and accordingly some laws have approved that compensation for moral damage is determined by judges and judged by the judge according to the extent of the harm, the situation and the harmful act, which as long as it affects the person's life and psyche as a result of damage to his reputation and honor or defamation of him and his family, he feels repulsion and contempt. Society has it or what it leaves behind, such as physical deformity or permanent disability that accompanies it throughout life.

Conditions for compensation for damage

The purpose of compensation is not to replace money with another, but rather the goal is sympathy and rehabilitation. Compensation for moral damage does not include money and does not redress the harm, so whoever has hurt his feelings and honor will not return to its condition by mere compensation, and the situation does not return to its nature as it was before the assault, and that reprimand and punishment are like legal reprimand. The jurists' disdain for those who cause a person to suffer as a result of being slandered against his reputation and honor, as well as what the French jurisprudence demands regarding moral damage and assault on a person's body or his honor, that the victim asks for punishment for the aggressor and not compensation and that the idea of compensation for him is incompatible with values and morals, moral damage is not accepted Evaluation and repair If the material damage accepts this for several criteria, there is no suitable criterion for compensation to be equal to the moral damage. Also, any amount does not compensate the damage whatsoever and is not sufficient to redress the damage from prejudice to reputation and affection. Therefore, the French jurisprudence demanded that the punishment for moral damage be a punishment of a special kind. She refused financial compensation for moral reparation.

Thus, the law can limit the harm caused by others to others.

But some went to the contrary and said that it is possible for financial compensation to compensate for moral damage.

Several conditions must be met in order for the injured person to be able to claim compensation

1. The damage must be direct

This arises from the direct harmful act, that is, the occurrence of the harmful act is a condition for the occurrence of the harm, meaning that the direct harm is closely related to the harmful act, and this is compensable, whether the harm is material or

moral. The expected harm is direct harm, but not every direct harm is expected harm. Direct damage cannot be foreseen, and direct damage is a natural consequence of the error and the affected person cannot avoid it.

For example, a speeding car driver ran over a person on the road, injuring him with fractures and severe injuries. This is direct damage arising from the driver's recklessness and error, and the injured here could not avoid it.

2. The damage must be real

The damage must have actually occurred or will inevitably occur and that its occurrence is certain or was in the future if its existence is certain and that it will occur at a later time.

An example of the damage done is to miss the opportunity to earn, such as the delay of a taxi to transport a university student to discuss the master's thesis on the day of discussion and the loss of his opportunity to obtain it.

3. To injure a right or a legitimate interest to him

Here, this right must enjoy legal protection, such as the rights related to human life, safety, and freedom, and what is related to his status, reputation and dignity.

4. The damage is personal

It falls on the person himself, and he is entitled to compensation, provided that the injured person has not filed a previous lawsuit for the same damage.

Present harm and future harm

The current damage is the actual and tangible damage and that it actually occurred or will inevitably occur in the future and compensates for the actual and confirmed damage and the future damage is compensated according to the judge's assessment until the future damages are certain to occur in the future. The judge has the authority to assess the injury if it is serious, such as death or disability that affects him in the future to preserve his right to final compensation, or moral compensation. Psychological. There is no way to calculate the extent of the damage and estimate it. It is up to the judge for moral damage. What is the measure of compensation for this feeling? Therefore, there is no obligation for a person to pay compensation based on the individual's feelings. Most cases refuse to claim compensation for psychological damage. Therefore, some legislators have argued that the injured person has the right to moral and psychological damage to file an independent lawsuit in a criminal court, considering this act as a felony. The topic has become a subject of discussion even in Islamic law, especially in our time, with the spread of social media and opening the way for abusers to speak. With harmful actions and its reflection on reality, there is an urgent need to find a law that deters abusive persons.

The idea of compensation for moral damage in civil liability came after the conflicting opinions of some jurists on how to compensate for moral or moral damage, and some found that damage of this kind can only be estimated with money.

It can be erased and the situation returned to what it was, as in the case of material damage that returns to its nature by simply compensating for it with money, because the moral damage is more severe and deeper because of the negative effects it leaves on the person that may not go away for life, and since the rules of civil liability are aimed at removing and repairing the damage as the rule that says damage is removed This does not apply to moral damage, and it cannot be repaired with money, as some jurists went, as they defined it as non-economic and non-material harm, and it is not compensated by money.

Example

There is a story that caught my attention and shocked me. It happened in Iraq months ago. I did not forget that child Muhammad, who was subjected to the worst and most severe types of material and moral damage in all its forms when he was severely beaten by the Iraqi police forces. He stole a bicycle because he is an orphan, the father is trying to help his mother and younger brothers. He was subjected to the most severe forms of extortion and cruelty. They forced him to strip naked and photograph him with his mobile phone and laugh at him. They are a corrupt group of the security services who occupied positions without merit and shaved his hair with a sharp tool used by the policeman in his pocket (the blade). This child is subjected to all kinds of material and moral harm, including harm to the body and the feeling of outrage on dignity and honor, and they were not satisfied with this, but we called him with obscene words that outrage modesty and stab at his mother and her honor. He is twelve years old, stunned and crying, so he cannot respond to all the injustice he has been subjected to. What injustice in this world And what kind of people are these people who have nothing to do with humanity or mercy for exploiting their positions to harm this poor sect and kill their childhood in this hideous way? These children are the future generation. Rather, any generation like this child, who grew up tied to harm due to psychological pressure and a deep wound to his feelings, dignity and psyche, grows up a person who hates society and is criminal for not being treated fairly by the state. He cannot forget the abuse he suffered throughout his life.

The words of the representative will remain in his imagination, in addition to the physical effects of severe beatings, so what law and any legislation obliges them in a non-state state.

I find the punishment should be an eye for an eye and tooth for a tooth, as commanded us God in the verse (we wrote them in which the self-confidence and eye for an eye, nose, nose, ear ear, and tooth for tooth, and wounds the punishment it

believe it is the expiation for him and who did not judge by what Allah has revealed, they are the wrong-doers) Surat The table - verse 45.

Moral or moral damages are much more difficult and greater than material damages that remove their effects only if they are compensated and their effect is erased, but the damages that affect honor, dignity and feeling, who removes them and how? .

This is an example from reality that includes all kinds of harm. There must be a law that stresses such attacks.

There is another harm that causes harm to others, such as

Bounce damage

It is everything that affects the person in the right or legitimate interest of the aggrieved party as a result of prejudice to the right or legitimate interest of the original aggrieved party by apostasy, and it is every prejudice that affects the feelings and feelings of the aggrieved party as a result of the injury of the original aggrieved and that the compensation may be in kind or monetary compensation in return, and since the compensation does not require that it be monetary except It is the dominant one, and compensation in kind may be better than others in cases to erase the effects of the harmful act

The effect of the damage may extend not to the direct injured, but to others who have a relationship with the injured, as the original damage is generated by other individuals other than the original damaged, and this requires the existence of a moral or material link between the original aggrieved and these individuals, so the damage in general must be personal and direct, and the damage An apostate is a harm that is reflected on the uninjured, such as relatives, wife and children, when they lose their breadwinner, the father. It is natural that the harm will come back to them, which is the loss of the breadwinner, the father of this family, in addition to the moral damage and the pain and sorrow that they inflict after the death of their father.

The direct victim or the apostate can claim compensation and the perpetrator of the harmful act must pay compensation, but in the event of death, the family has the right to file a claim for compensation for the damages they sustained from killing their father and depriving them of maintenance. This apostate damage is a right or legitimate interest of the aggrieved by the existence of the link Between the father and his family, which made the damage to the original aggrieved party befall the apostate. The relationship between the apostate damage and the harmful act exists despite the fact that the act does not occur directly on the aggrieved party, and this happens when the damages that befall the direct aggrieved and the apostate aggrieved, and these are not considered indirect damages, here the matter is different where the right is transferred Relatives and families may claim compensation as a result of killing the breadwinner or even if the breadwinner did not die, and that the

harm sustained by him was a bodily harm that prevented him from earning a living, the claimants deserve compensation.

Recurring damage is like other damages that require some conditions. If the recurring damage combines the characteristics that must be met in each compensable damage within the framework of civil liability, its emergence requires special conditions for the recurring damage, and these conditions focus on another damage that affects other people and links them to the aggrieved. Anyway, the occurrence of damage to the original aggrieved party is a condition for the harm to be recurring to others by the existence of the link between the original aggrieved party and the aggrieved party, and that the harm is real and affects a legitimate interest, and the causal relationship between the harmful act and the recurring harm.

Example

When a person is killed in an accident and another person demands compensation for the damage he personally sustained as a result of depriving him of the aid that he was accustomed to receiving from that person.

They were deprived of his support, and either a person proves that the dead man was helping him or that there was harm inflicted on him as a result of the death of the injured who lost an opportunity that was lost to him if the injured was living as a profit or interest for him.

In sum, the apostate damage is not only directed to the one who is subject to the harmful act, but rather it is a regressive harm resulting from the result of that act that affects other people, and it is either material or moral, and the apostate damage is the state of deprivation of maintenance for heirs or others. (Iraqi Civil Law 205).

Example of physical damage back

Burning and destroying a gas station and depriving workers of work and earning money. The damages are reflected on the workers, in addition to the material damages that are reflected on the family of the owner of the station due to its cessation of work, so they have the right to claim compensation for the damages returned to them.

An example of moral damage rebound

A person was subjected to burns by another person and thus led to a disfigurement of his face and parts of his body that prevents him from doing his job and his job as it was before the burning at the same level and thus he loses his job.

Likewise, when the parents lose their son and what causes them grief and pain, this apostasy with harm requires them to compensate.

Who has the right to claim compensation for material and moral damage?

1. The jurists and some Arab laws, including the Iraqi law, stated that the condition of the death of the injured permits compensation for a recurring damage to the family that was harmed, and some legislations stated that compensation is not transferred to the family as a result of the death of the injured or the breadwinner, except by a court ruling or a lawsuit filed by the deceased before his death,

And some legislations permitted compensation for relatives of the second degree for apostasy damage, and the judge decides this, and this is what the Egyptian judiciary has taken, allowing the right of spouses and relatives of the second degree to compensate for the damage to the deceased.

2. Anyone who has financial relations with the original aggrieved person shall be entitled to claim compensation for recurring damage.

This was shown by some courts, such as the Jordanian Court of Cassation from the Civil Code, where it determined the victims who are entitled to the damage in the event of the victim's death, who are spouses and close relatives of the family. The incident on the person, such as the damage caused to the father by the loss of his son, is different from the rest of the damage that befalls other relatives, and this is estimated by the court, each according to the case, and the relatives must clarify and prove the moral damage that occurred to them as a result of the harmful act and prove the causal relationship between the harmful act and the damage.

The statute of limitations for damages

One of the pillars of civil liability, and when conditions are met, namely, error, damage, and the causal relationship between them, compensation is required. The Iraqi law has set a period for filing a claim for compensation for damage, and its duration is 3 years from the time the victim became aware of the occurrence of the damage, and it falls by 15 years from the date of the occurrence.

Iraqi law gave the right to compensation for damages resulting from prejudice to a person's name, surname and family, as well as emotional and physical pain.

Personal opinion

Compensation in general for material damage is to repair the thing that was damaged due to the harmful act from the mistakes of others and to satisfy and console the injured who was subjected to the harmful act. We say here that the balance can be restored to what it was before the damage was sustained, but this cannot be done by compensation with any money in the case of moral and moral damage What affects a person in his body, reputation, honor, dignity and social position, and since material damage can be returned with money, but it does not return to the injury of a person and stab him in his honor and dignity, I do not see that from justice, and no

compensation for the pain caused by stabbing or slander or exposure to a person's reputation By means of insults and obscene words, and the money is not sufficient and does not compensate for the simplest feelings, pain and sorrows caused by the assault on the reputation or murder of a person who supports a large family that does not have an income to live on, the punishment must be obtained from him such as imprisonment because money cannot compensate for the loss of a loved one, and in the case of assault Reputation and honor also cannot be compensated with any financial value. Imprisonment is the best punishment for those who attack the reputation and honor of people. This imprisonment is discipline and reform to be an example for others, and that the offender does not even repeat the damage once again. There are many charges because it compensates the victim with money without taking into account the feelings or grief it causes to the victim.

Islamic Sharia has established punitive penalties for moral damage in proportion to the damage caused and determined by the judge because compensation with money for moral damage does not remove the damage or remove it, so taking money in it for wounding feelings or polluting reputation and honor does not return to what it was safe (Yusuf, 2009).

The Rightly-Guided Caliphs Umar and Uthman, may God be pleased with him, punished him for his spelling, and they punished him for words that contained immorality and hurt feelings.

Recommendations

Through the study, the researcher sees that harm is one of the problems of the age, which leads to the disintegration and disintegration of society instead of social cohesion. An attack by one person on another results in a human catastrophe. Man was born free, generous, and bloodshed and that God created him in the best form and commanded him to live in peace and non-aggression. One person over another and prevents him from harm of all kinds. Therefore, the Muslim in particular must follow the teachings of Islamic Sharia and the Sunnah of the Prophet, may God bless him and grant him peace, by not.

Not to harm people in word or deed. Islamic law respected the sanctity of the human being and did not make the matter in vain and instituted deterrent penalties for the harmful act. Among these recommendations are the following:

1. Amending or creating a law that provides for a severe punishment for the one who causes moral damage in order to not allow the corrupt to attack and harm others.
2. Expanding the scope of the moral damage to include the right of the injured person who suffers psychological pain because of the physical harm inflicted on him.

3. Taking into account the compensation for the heirs and a financial guarantee for the children of the aggrieved deceased.

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