

**The Compensation for Repulsive Harm
(Comparative Study)**

Prepared by



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Abstract

The study aimed at clarifying the importance of compensation for the repugnant damage and clarifying the legal texts related to this matter, and to highlight the position of jurisprudence and the jurisprudence of the judiciary on the principle of the objectivity of compensation and the implications thereof, by invoking the provisions of Jordanian and Iraqi civil law. The researcher followed the comparative descriptive analytical method through analysis And interpretation of legal texts in the subject of the study, as well as through the extrapolation of the views of jurists and the development of the provisions relating to the subject under study, and the comparison between the Jordanian and Iraqi legislation .

The results of the study indicated that the impact of the damage could extend not only to the direct victim but also to others associated with it with certain links, which is called repulsive damage. Repetitive damage is a direct harm to the victim affected by the rebound, and the return or damage is harm The original damage is caused, where it is inflicted on other persons not affected by the original, and there is therefore a physical or moral link between the original victim and those that justify the rebound and the reflection of the original damage on them. Conditions relating to the to be personal and direct, and the repugnant damage is the damage reflected on the injured and not on the injured person.

The study also showed that the repugnant injury is all that a person has in the right or legitimate interest of the victim to return as a result of a right or legitimate interest of the original victim. This is any prejudice to the feelings and feelings of the victim of the return due to the injury of the original victim. In some cases, compensation in kind may be better than others in order to erase the effects of the harmful act, so compensation may be in kind or in cash (in other words, In return) .

Among the recommendations of the study:

- 1- There must be a text that makes the intimate friend among those who deserve compensation. Here, the Jordanian legislator must amend article (267) and set special conditions for adding the friend within the kin as if he resides within the family for a fixed period of time in one dwelling.
- 2 - There is no objection to adding the fiancée to have the right to compensation in return for the rest of the affected in the text of Article (267) of the Jordanian Civil Code.
- 3.- Amend article 205 of the Iraqi Civil Code and specify the nature and degree of kinship required to compensate for the repugnant damage and not remain open to jurisprudence or jurisprudence.

4 - Add the fiancée and intimate friend who deserve compensation for the repugnant damage in the provisions of Iraqi civil law, especially in Article 205 and Article 203

Key words: legal regulation - compensation - rebound damage

Study problem:

The study tries to answer the following questions

What is the return damage and what are its conditions and types?

Who are the persons to whom the harm that has been inflicted may directly affect the affected?

What is the difference between damage known as original and damage known as apostate?

Study objectives

This study aimed to clarify the importance of compensation for the returned damage and to clarify the legal texts related to this matter, and to highlight the position of jurisprudence and the jurisprudence of the judiciary on the principle of objectivity of compensation and the consequences thereof, by inference from the provisions of the Jordanian and Iraqi civil law.

Study importance

It addresses a legal topic of great importance in civil law in general, And compensation for tort in particular, The study has scientific importance in highlighting the restored damage as a damage independent of the original damage, There are reasons that prompted the researcher to address the subject of the study, including the large number of questions raised through working life and the lack of studies on this topic, And due to the lack of knowledge of the majority of persons in

terms of distinguishing between original harm and rebound harm and distinguishing between them.

Study methodology

Following the descriptive comparative analytical approach through the analysis and interpretation of legal texts on the subject of study, As well as by extrapolating the opinions of jurists and extrapolating judgments related to the subject under study, and a comparison between Jordanian and Iraqi legislation.

Study limits:

The study was limited to dealing with the system's applications in Jordan and Iraq.

Previous studies

Rashdan study, Fahad Bin Hamdan Bin Rashid, titled, Damage the apostate in the responsibility for the harmful act analytical study in the Jordanian Civil Law and Islamic Jurisprudence, unpublished Master Thesis, Yarmouk University 2014.

Basil Muhammad Yusuf's study entitled: Compensation for Literary Damage, a Comparative Study, Unpublished Master Thesis, An-Najah National University, Nablus, 2009.

Our study will clarify the relationship in comparison between both law and civil Jordanian and Iraqi.

What is feedback damage?

We talk about the ways of damaging the apostate in several branches in which we talk about those affected by the apostasy of relatives, and those affected by the apostasy of those with a financial relationship with the affected.

Damage is one of the most important sources of commitment and the most applied in practical life after the contract, and the damage is the foundation pillar in the civil liability.

Civil liability must meet three conditions, which are:

Error, damage, and the existence and verify the causal relationship between them, and the error is either contractual or default, and the error is considered contractual when it is due to the contractor's breach of his contractual obligations through failure to implement them or delay in their implementation.

The damage is the second pillar of civil liability, which is the main pillar of its establishment, and without it there is no place for its establishment, whether it is a contract or a default.

The first requirement - the concept of apostate harm and its conditions

Section I: Definition of damage apostate

Damage in the language is: "Unlike benefit, and harmful otherwise beneficial, that the harm: is the decrease that is included in the thing.

The harm is also: "Harm inflicted on a person in money, body, honor, or reputation."
(Al-Sarraj, 1993: 155)

The legal doctrine defines harm as "harm to the person, as a result of prejudice to the right of his rights.

First: the original damage

Jurists define the original harm within the scope of one concept, which is the harm that affects a person's body, honor, money, reputation, or feelings.

Second, the damage of the apostate

That: a personal injury that has an entity independent of the original damage without being mixed with it or being a subsidiary of it or an offshoot of it.

Section II: Conditions for damage to the apostate

First: Harming the right

The truth is what is protected by law; the law gives the right holder to resort to the judiciary in order to claim compensation as a result of the damage he suffered as a result of the assault on him.

Second: Breach of interest

The damage does not lead to a breach of the right of the injured, but rather a financial interest, there is a difference between right and financial interest.

Third: Considering the damage as achieved

The damage is the investigator who has already occurred or will occur later, but no doubt will fall.

Conditions of literary harm

First: immediate and future damage

Second: potential harm

Third: miss an opportunity

Second Requirement - Scope of Reverse Damage

We will talk in this demand for those affected forsakes kin in the first section, and in section II of the affected forsakes financial stakeholders

The first branch: Those affected by the apostasy of a close relative.

The second branch: Those affected by apostasy among those who have financial ties to the original victim.

Types of rebound damage

1. Physical damage of the apostate

It is the damage that affects money or financial liability, Material damage to the injured original, may boomerang and infect other people material damage, this is the economic material damage, Of the physical damage of the apostate is the damage caused by an attack on the body.

2. Recurrent moral damage

It is the opposite of material harm, as it does not affect the financial interest of the injured, but it affects the non-financial interest, such as: defaming the body, scratching the honor, defaming the reputation.

Recommendations

1. The Jordanian Court of Cassation should base itself on the text of Article (256) of the Civil Code in compensation for all reversible damages, material or moral.
2. The Jordanian legislator should amend Article (267) and set special conditions for adding a close friend among relatives, provided that he resides within the family for a specified period of time in one residence.
3. Amendment of Article 205 of the Civil Code of the Iraqi and the statement of the nature and degree of kinship due to compensate for the damage to the apostate.
4. The Iraqi civil law must include legal texts that clarify the mechanism for compensation for material damage.
5. I propose to add the fiancée and close friend who deserve compensation for reversal damage in the texts of the Iraqi civil law, especially in Article 205 and 203.

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