

# Civil Liability for Compensation of Non-Material Damage in the Law of Jordan

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## Abstract

This study aims to explore the possibility of compensation of non-material damage in detail, as in the other laws, through define the relationship between the non-material damage and material damage. This study includes two chapters; the first one discussed the nature of non-material damage, and the second one discussed the compensation of non-material damage.

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## Introduction

The non-material damage is considered one of recent legal issues, that emerged in modern times, as the community in long ago do not recognize the non-material damage; on the contrary, it gives the victim the right to take his right by punishing the offender and members of his tribe.

The material damage affects the individual directly, whether the damage is to the individual's body or to his property, but sometimes the effect of this harm extends to a person morally, and harm may extend to other people, as is the case that the harm may be inflicted on the family of the deceased and his relatives, which is represented by the great sadness that they suffer as a result of the death of this person dear to them.

In this regard, we note that the harmful act results in two results that are related to each other. The first result is the damage that affects the victim directly.

The second result is the harm that affects others as a result of this act that caused the harm.

These two results, although they are related, but each of them is self-contained, so both the direct victim and the one who was harmed by rebound, can claim the person responsible for the harmful act to compensate for the damage he sustained<sup>(1)</sup>.

Whether the damage occurred on the person or the damage was rebound to others, it gives the right to the person who was harmed to claim compensation for moral damage in addition to the material damage, provided that there are certain factors that prove the right of the affected to claim compensation.

Accordingly, this study will be divided into two chapters; in the first chapter, we talk about the nature of non-material damage, and the second chapter is about compensation for damage.

## Study Problem:

The non-material damage occurs in the presence and absence with the original damage, which is no less important, and hence the problem of this study lies in answering the following questions:

- Are the provisions for non-material damage the same as the provisions for original damage? Or is it independent of it?
- Who are the people who may be affected by non-material damage?
- Is the compensation in favour of adults for non-material damage the same as the compensation for minors?
- What are the bases on which the value of non-material damage is determined?
- What are the limits of the court's authority to assess the non-material damage?

## Significance of the Study

The significance of this study lies in determining the nature of the damage in general and the non-material damage in particular, and how to estimate the value of compensation for non-material damage. The need to protect the right of those affected to be compensated for non-material damage, not only material damage, appears by showing how to compensate for non-material damage, since the non-material damage is directly related to the actual damage.

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(1) The Court of Appeal of Egypt ruled in one of its decisions (that the ruling and compensation for the mother against the death of her son does not prevent the father from claiming compensation for another for him, if each of them has an independent personality and follows an independent right to claim compensation for the damage caused to the person (Egyptian cassation judgement on 05-28-1934) Journal Lawyer Issue 2, Q15, Vol. 1, p. 68.

## Study Objective

This study aims to determine the legal status of the affected party and his right to claim a fair compensation for non-material damage. In addition, this study also aims to distinguish the idea of non-material damage, its specificity, and its independence from material damage.

## Study Methodology

This study adopts the analytical method.

### Chapter one : The nature of Non-material Damage

People live within a society, and linked to this society by various relationships, family relationships, economic relationships and many other relationships, so there must be a control governing these relationships, which is the law that protects the individual in the event of any assault on his rights, and this assault entails responsibility on the aggressor and this responsibility is called Tort Liability, and Islamic jurisprudence defines it a harmful act<sup>(1)</sup>.

We will divide this chapter into two topics; the first topic, we discuss the material damage and its conditions, and in the second topic, we will discuss about non-material damage and its conditions:

#### First topic : The Material Damage and its Conditions

Damage is considered the cornerstone of civil liability, in addition to the other two elements, which are the fault and the causal relationship between the fault and the damage.

Undoubtedly, civil liability is based only on the availability of its three elements, which are (the existence of a fault, damage, and the causal relationship between them)<sup>(2)</sup>. The fault is either contractual or tortuous, as the fault is considered contractual, and then liability is contractual when it is due to the contractor's breach of his contractual obligations through his failure to implement them or delay in their implementation, as well as his partial or defective implementation of them<sup>(3)</sup>. As for the default error in tort responsibility, it is represented in the association of a person's behavior with a deviation with his awareness of it that led to harming others, in violation of a general obligation prescribed by civil law to everyone, which is not to harm others<sup>(4)</sup>.

Damage is considered the second element of civil liability, and it is the basis for its establishment, and without it there is no place for its establishment, whether it is contractual or tort<sup>(5)</sup>.

And when the material damage occurs, it affects the affected person in his property, his body, or his moral entity, in practice, we find that the original harm is not limited to the person himself, but this harm can extend and affect other people who may be relatives of the affected person, his wife, or his children, which is called apostasy damage, in other words, the damage rebounded and injured others.

Thus, the apostasy damage is consequential damage resulting from the original damage.

The apostasy damage, like the original damage, may occur in the form of material damage and may occur in the form of non-material damage, as it turns out, the apostasy damage is a damage that is reflected on the unaffected person, not on the affected person, so there are those who hold the view that it is a personal harm by consequential realization in the case that it is not confined to a particular person, but extends to include others<sup>(6)</sup>(1).

Also, the damage is "the harm that befalls a person in property, body, dignity or reputation"<sup>(7)</sup>.

One of the civil law scholars defined harm as: "*Is the harm that a person suffers as a result of violating one of his rights or following a legitimate interest for him, whether that right or that interest is related to the safety of his body, his affection, his money, his consideration, or otherwise*"<sup>(8)</sup>.

In the Jordanian law: Civil liability is not based on the element of fault only, but the result of this fault is harm, which is the basis for questioning the culprit who inflicted this harmful act, whether to a person, others, or to things and animals<sup>(9)</sup>.

Several conditions must be met in order for material damage to occur, including:

- 1. Damage to the right:** Right: is the right protected by law, for example, ownership is a right that is protected by law, if there is an assault on sovereignty, it is an assault on the right of the car owner, if the car owner can prove material damage, then compensation for the damage will be achieved.

(1) Dr. Hasan Ali Al-Thaoun, Al-Mabsout in Civil Liability, Ch.1, Damage, Dar Wael for Publishing, Amman, Vol.1, 2006. P11.

(2) This is what proponents of the personal theory consider in tort liability, unlike what proponents of the materialist theory see

(3) Abu Mallouh, Musa (2002/2003), Explanation of the Palestinian Civil Law Draft, Sources of Obligation, Voluntary Sources and Involuntary Confiscation, First Edition, p. 246-247.

(4) Muhammad Ahmad (2002), Compensation between material, moral and inherited damage, p. 30

(5) Al-Sanhoury, Abdul Razzaq Ahmed (2003), Alwaseet in explaining the civil law, part one, the theory of commitment in general, sources of commitment "contract, illegal work, enrichment without cause, law", p. 556.

(6) Lotfi, Mohammed Hosam Mahmoud (1999-2000), The general theory of commitment, sources of commitment, Cairo, p296.

(7) Al-Seraj, Mohammed (1993), Protection from aggression, a jurisprudential study compared to tort responsibility, Beirut, p155.

(8) Abdeen, Mohammed Ahmad (1995), Compensation between non-material, material, and inherited damage, Monsha'at Al-Ma'arif, Alexandria, p55.

(9) Sultan, Anwar (1983), Summary in the sources of commitment, Dar Al-Nahdah Al-Arabia, Beirut, P305.

2. Breach of interest: the mean of interest here is the interest that is protected by law, and this interest may be a financial interest, or it may be a moral interest, and this interest must be legitimate and consistent with public order and morality, and if the interest is illegitimate, it does not require compensation.

For example, depriving who was illegally coexisting with the injured person from supporting her is considered a violation of an illegal interest for its violation of public order and morals, therefore it is not considered a harm that necessitates compensation, and she does not have the right to claim compensation for what she lost in supporting that affected person<sup>(1)</sup>.

3. **Damage must be occurred:** The damage that has occurred is the harm that has actually occurred or will definitely occur and not as a possibility, because the potential harm does not deserve compensation, if a person hits a pregnant woman on her abdomen with a possible abortion, she is not allowed to demand compensation for the abortion as long as the fetus is still in her abdomen, but if she aborted, the harm has been realized and compensation must be paid<sup>(2)</sup>.

### Second Topic : Non-Material Damage and its Conditions

The material damage is what affects the affected person by his feelings or his dignity and similar matters that are considered as non-material damage. In this regard, the Court of Cassation considers that compensation for material and non-material damage shall be paid to those entitled to it, according to the expert's estimation, and his percentage in this shall be on the legal division of the deceased. The apostasy damage is of two types: material and non-material; material damage is what affects the affected person in a financial interest or damage to the affected person's health, as for non-material damage, which is what affects the affected with his feelings, emotions, dignity and other meanings that he is keen on, the non-material damage also considered if the heir is personally harmed as a result of undermining the reputation of his inheritance, provided that there is a direct relationship between the affected person and the direct affected person, as the non-material damage may occur combined with material damage to deprive the affected individuals of the maintenance amount as a result of the death of the affected person<sup>(3)</sup>.

Accordingly, the scope of non-material damage extends to wide areas, and includes assault on honor and reputation, assault on feelings that make the affected grieve and sorrow, and many other non-material damages for which the affected person deserves compensation.

Non-material damages also includes the organic pain felt by the affected, present and future, and psychological pain felt by affected, such as the pain of deformation and the pain of deprivation of the pleasures of life through the impossibility of performing their activities, as is the case in sports and artistic activities, and the pain felt by others due to the death of the injured or what he was harmed<sup>(4)</sup>, and this is illustrated by what the Court of Cassation said about compensation for non-material damages resulting from physical injuries, it was stated in a decision of the Court of Cassation that "the meaning of non-material damage according to the concept of the law is the harm resulting from the infringement of others in their freedom, honor, reputation, social status or financial consideration, according to the provisions of Articles (266 & 67) of the Civil Code. Therefore, his claim by the appealed plaintiff for compensation for non-material damage based on the psychological pain he suffered as a result of his traumatic injury, is a departure from the concept of non-material damage because feelings of pain from wounds do not enter into consideration of non-material damage<sup>(5)</sup>.

Referring to the Article (267/2) of the Jordanian Civil Code, we find that the legislator has ruled insurance for spouses and those close to the family for moral damage that they suffer due to the death of the affected, and didn't rule for insurance to his psychological pain in the event of a non-fatal injury<sup>(6)</sup>.

In order for non-material damage to be achieved in the legal sense, certain conditions must be met, which are:

- 1) The damage is likely to occur so that it has actually occurred or is imminent, definite and not probable, because the damage based on the possibility of occurrence does not deserve any compensation.

Examples of damage that actually occurred include causing death or wounding, destroying property or defaming a merchant with the intent of harming his reputation and distracting customers from him.

- 2) Assault on a right that has a non-material value, i.e., that assault on a right other than the direct money or material of the affected person, but it may affect his reputation or dignity or hurt his feelings and other non-material rights that affect the injured person, representing the assault on the reputation of a particular merchant that may weaken his financial position, so he deserves compensation for the non-material damage he has incurred.

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(1) Sultan, Anwar, Prior Reference, p329.

(2) Alhakeem, Abdulmajeed (1963), Brief explanation of civil law, National Printing and Publishing Company, Bagdad, p528. Althanon, Hasan walraho, Mohammed (2002), The brief in the general theory of commitment, ch.1, Commitment sources, Dar Wael for publishing, Amman-Jordan, p268.

(3) Jordanian Court of Cassation decision (Rights) No 1584/2010 (quinary body) date: 01-08-2010, Adalah Center publications.

(4) Adawi, Jalal Ali (1997), The assets of the obligations, Commitment sources, Monsha'at Al-Ma'arif, Alexandria, p426.

(5) Cassation Rights Lawsuit (126/93), Bar Association journal, 1995, p54.

(6) Al-Sarhan, Adnan, Khatri, Nouri (2021), Explanation of civil law, sources of personal rights and obligations - a comparative study, Dar Al-Thaqafah for publishing & Distribution, Amman, p425.

## Chapter two: Compensation for non-material damage

The issue of compensation for non-material damage is a contentious issue among legal scholars.

From the point of view of one side of jurisprudence<sup>(1)</sup>, the permissibility of compensation for non-material damage in contractual liability in Jordanian law, and another side rejects this. In this regards, Dr. Mahasneh says: *“This lighter is closer to what happened in France, where the French law was silent about mentioning the permissibility of compensation for moral damage in contractual liability, but compensation for this damage is now accepted and the French jurisprudence promotes the arguments presented to expand the circle of compensation. On the damage in contractual liability to include the non-material damage”*<sup>(2)</sup>, as is the case in tort liability, and the French jurisprudence when it is based on the law in deciding compensation for non-material damage, it is sometimes based on Article (1382), which was stipulated in the field of tort liability

Compensation Linguistically: is exchange or substitute, it is said: He compensated and he substitute it, meaning he took the consideration and he took the compensation and he took it and replaced it: the consideration asked him<sup>(3)</sup>.

Compensation Idiomatically: It is all that is required to be performed by the person responsible for the damage to the affected person in order to return it, whenever possible, to the condition it was in before sustaining the damage<sup>(4)</sup>.

This chapter will be divided into two topics: First Topic: Compensation for non-material damage under the contractual liability. Second Topic: Compensation for non-material damage under the tort liability.

### First Topic: Compensation for non-material damage under the contractual liability

Most of the legislations have recognized compensation for non-material damage, as is the case in French legislation, as well as Egyptian legislation and others, and in Jordanian legislation, then the principle of compensation for non-material damage was introduced, especially in the field of contractual liability, despite the jurisprudential difference between the various legislations, but the Jordanian Court of Cassation, despite this dispute, has compensated non-material damages within the framework of contractual liability<sup>(5)</sup>, where it ruled: *“It is not ruled to be compensated for the lost profit and moral compensation in the contractual liability except in the cases of fraud and grave mistake”* It is inspired by this ruling that the judiciary placed the ruling between two scales; the punishment scale and scale of the corrective function within the framework of the contract, whenever there are cases of fraud and grave mistake, compensation for non-material damage is made under the contractual liability.

The Jordanian legislator has discussed the compensation for non-material damage in Article (267) of the Jordanian Civil Code, which addressed the harmful act, this means that the legislator limited compensation for moral damage only in the framework of tort responsibility without contractual liability, this leads us to ask, does he really want to Jordanian legislator to limit compensation only to tort liability?

The Jordanian legislator mentions in the explanatory notes in the civil law in the course of his interpretation and comment on the text of Article (267), which explicitly deals with compensation for damage, as follows: *“It has been considered that the introduction of compensation for non-material damage.”*

It is noted that the Jordanian legislator, in more than one site, talked about that Article (267) of a Jordanian civil law corresponds to Article (222) of the Egyptian Civil Code, this means that the Jordanian legislator acknowledges his will not to limit compensation for non-material damage within the framework of tort liability, this is because he is aware that Article (222) of the Egyptian Civil Code includes compensation for non-material damage within the framework of tort and contractual liability.

In commenting on Article (360) in the explanatory notes, the Jordanian legislator stated that: *“If the specific implementation is carried out as required, or the debtor insists on refusing the specific implementation, the court must determine the amount of compensation that the debtor is obliged, taking into account the amount of damage that the creditor has suffered. And the intransigence that appeared from the debtor, in accordance with the legal rules - the necessities are estimated as much<sup>(6)</sup>h, and the damage is paid as much as possible<sup>(7)</sup>, and the review of Article (267) of this project<sup>(8)</sup>.*

However, the Jordanian Court of Cassation decided not to compensate for non-material damage within the

(1) Markas, Sulieman, Al-Wafi Explanation of Civil Law, Prior Reference, p159.

(2) Al-Mahasneh, Mohammed Yahya (2000), Article 360, Jordanian civil and compensation for moral damage in contractual liability, Published in the Kuwaiti Law Journal, 3<sup>rd</sup> Vol., p267.

(3) Ibn manzour, Mohammed bin Mokrem Bin Ali, Abo Alfadel, Jmal Aldeen Alansari (711 H), Lesan Al-Arab, Vol.3, Dar Sader, Beirut, 1414 H, p474.

(4) Ibrahim, Taha AbdulMawla (2000), Problems of compensation for Physical Damages in civil law in the light of jurisprudence, Dar Al-Feker Wa Alqanoun, 1<sup>st</sup> Edition, p32.

(5) Jordanian Bar Association Journal: See: Jordanian cassation decision (650/90), Published in the Journal of the Jordanian Bar Association, p2175, of 1991.

(6) Article 22 of the Code of Judicial Provisions.

(7) Article 23 of the Code of Judicial Provisions.

(8) Explanatory notes for the Jordanian Civil Law, Part 1, prepared by the Technical Office of the Jordanian Bar Association, p. 297, 299.

framework of contractual liability in some of its decisions. The Jordanian Court of Cassation ruled that “the right to claim for non-material Torts is unentitled, because the right of guarantee deals with non-material damage in the event of an infringement of the victim’s freedom, dignity, honor, reputation, or social status, and this is not available in the responsibility of the committer, it is a contractual responsibility resulting from the failure to implement what he was committed to in the contrac<sup>(1)</sup>”

We note here that the Court of Cassation approves compensation for non-material damage under the contractual liability, and this is disadvantage from the Jordanian legislator, for the following reasons:

- 1- Lack of an explicit provision in Jordanian law prohibiting compensation for non-material damage within the framework of contractual liability.
- 2- If one of the two contracting parties stipulates that there be compensation for non-material damage, will the court take this condition and rule on compensation?

It is clear that the non-material damage that affects the emotion and feeling, such as assaulting the children, the mother, the father or the husband, all of these damages affect the affected person’s emotions and feelings and enter his heart grief, sorrow, and non-material damage in this way that is compensable with money and accordingly conforms to the provisions of Article (267) of the Civil Code, however, this does not mean that the realization of moral damages is limited to what is stated in the text of Article (267), because the conception of moral damage is easier in the scope of tort liability for it in the field of contract liability, and that in the event that the parties to the contract agree to compensate for the non-material damages expected to occur, then the judge has to rule in accordance with the principle of *pacta sunt servanda*.

The damage may be - and this is rare in the contractual liability –non-material that affects the creditor in his feelings, emotions, dignity or honor. There is nothing to prevent moral interest of the contracting party in executing the contract, if the debtor breaches his obligation, the creditor suffers moral damage as a result of that.

The lack of clear texts in the Jordanian law on compensation for non-material damage in the field of contractual liability has made the judgments of the Court of Cassation conflicting, sometimes ruling compensation for non-material damage in the field of contractual liability, and other times it does not recognize this or rule it. So, we find that court of cassation rulings did not take a specific position on compensation for non-material damage in the field of contractual liability, as they did not approve it, nor did they deny this form of compensation.

### **Second Topic : Compensation for Non-Material Damage Under the Tort Liability**

The Jordanian legislator has settled on the introduction of compensation for non-material damage under the tort liability, as it expressly stipulates this in Article (1/267) by stating: “*The right to guarantee deals with non-material damage as well, every infringement upon others in their freedom, dignity, honor, reputation, social position, or financial consideration makes the aggressor responsible for the guarantee.*”

It is noted that the Jordanian legislator considered that some crimes constitute non-material damage and deserve compensation, and among these crimes there is an assault on a person’s private life, honor and others, and the method of crimes of slander, and insult, as Article (48/Jordanian civil law) states: “*An unlawful assault on one of the rights inherent in his personality may demand the cessation of this assault with compensation for the damage he has suffered*”.

This position on compensation for non-material damages in the field of tort liability affected the judgments of the Court of Cassation. In the Court of Cassation, we find that some non-material damages were removed from the scope of compensation in its definition of the concept of non-material damage, where the court went by saying<sup>(2)</sup>: “*The text of Article (1/267) From the Civil Code, it is inferred that what is meant by non-material damage is the harm that afflicts a person to his freedom, dignity, honor, reputation, social status, or financial consideration, therefore does not include psychological and physical pain if it does not cause a handicap that is not included in the concept of non-material damage.*”

By extrapolating the aforementioned court decision, we find that the principle of non-compensation for psychological and physical pain results from the absence of a disability, and this is what the Court of Cassation considered in its decision, but the question: What about the psychological and physical pain that accompanied the injured during his injury and before its recovery? Believing that the court was not right in its judgment, it should have ordered compensation for the psychological and physical pain he suffered.

In another decision, the same court ruled, “*Organic and psychological pains are excluded from the concept of non-material damage acceptable to the guarantee, because non-material damage is the harm resulting from the assault the others in their freedom or dignity...*”<sup>(3)</sup>.

In principle, the claim for compensation is for the person who has been sustained to non-material damage personally, but sometimes the right to compensation may extend to the relatives of the injured person, as is the

(1) Jordanian Bar Association journal, cassation rights lawsuit No 1095/1997.

(2) Cassation rights lawsuit No. (530/990) Published in the Judicial Journal issued by the Jordanian Judicial Institute, Vol.1, Edition 9, P563.

(3) Jordanian Bar Association journal, decision No (878/90), Published in the Journal of the Jordanian Bar Association, edit.3,1992,p935, cassation criminal (418/95), p2010/1993.



case in the case of the death of the person, as the relatives of his wife and children have the right to claim compensation for non-material damage.

Provisions of Article (267/1) did not specify the concept of relatives from the family, nor did it specify the degree of relative that must be compensated, and the husband includes the husband and wife, and the relatives leave their determination to the judge, as there may be among the distant relatives who are more painful, and sadder at his death<sup>(1)</sup>.

The matter of determining which relatives deserve compensation for non-material damage was left to the discretion of the judge, and the position of the Jordanian legislator was not desirable, as some believe that it would have been desirable for the legislator to specify precisely the degree of relationship - as the Egyptian legislator did - as this would open the way to every plaintiff from the relatives who claims to be affected by the death of the injured<sup>(2)</sup>.

The Jordanian legislator gave the right to the relatives of the victim to demand compensation for moral damage caused to them due to death, as Article (276) stipulates that: "*It may be ordered to guarantee the spouses and those close to the family for the non-material damage they suffer as a result of the death of the victim*"

It is noted from the text of Article (276) that legislator has made the right to compensation for non-material damage only under the tort liability, and the legislator also did not clearly and explicitly specify who are the relatives mentioned in this period, but left the matter to the discretion of the judge to determine who are the relatives entitled to compensation cause of death, it is also understood from this article that the legislator stipulated the death of the injured so that the relatives of the dead benefit from compensation and he left an important matter, which is sometimes the injured suffers severe injuries and cause of a disability to the person that may be more painful than death, so what is the fate of the relatives who will support this casualty?

#### **Results:**

- 1) Compensation for non-material damage has become a reality and is not in dispute as it was in the past
- 2) The difference in legislative texts regarding the regulation of compensation for non-material damage has led to the existence of contradictory provisions of the Court of Cassation.
- 3) The Jordanian legislator has left some of the terms mentioned in the regulation of the right to compensation for non-material damage absolutely undefined, as is the case in the term (relatives).

#### **Recommendations:**

- 1) Identifying the persons who are entitled to compensation after the death of the deceased, including those affected, especially the fiancée
- 2) Set legal texts clarifying the right to compensation for non-material damage in the field of contractual liability and not make this right only in the field of tort liability.
- 3) Expand non-material damage of tort to include the close friend

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