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CONSEQUENTIAL DAMAGE AND THE POSSIBILITY OF COMPENSATION UNDER THE PALESTINIAN CIVIL CODE

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ABSTRACT

This research aims to clarify the concept and scope of consequential damages, identify the provisions governing consequential damages within the framework of tort liability, and explore the possibility of compensation for them according to the provisions of the Palestinian Civil Code. It also aims to define the concept, scope, types, and essential conditions of consequential damages, determine the methods for assessing compensation for consequential damages, and identify the most significant factors influencing this assessment. To achieve this objective, the research employs a descriptive and analytical approach, utilizing a critical methodology through the study and analysis of legal texts. This involves consulting the Palestinian Civil Code, drawing upon various court decisions, and utilizing other legislation, such as Jordanian and Egyptian law, to the extent necessary to present a comprehensive range of legal and jurisprudential opinions on consequential damages and how to compensate for them, as required by the nature of this research. In conclusion, the study reached several key findings, most notably: Civil compensation is a penalty imposed on the perpetrator, and its primary purpose is to redress the harm suffered by the injured party, whether directly or indirectly. Thus, compensation transcends being merely a punishment levied on the responsible party for committing an act prohibited by law. Furthermore, the Ottoman Judicial Journal and the Civil Offenses Law No. 36 of 1944 lack any clear legal framework for indirect harm. The researcher recommends several measures, the most important of which is for the Palestinian legislator, in the draft Civil Code, to move beyond the Jordanian approach of simply listing forms of moral damages without providing a specific definition. In response, the researcher suggests replacing this enumeration with a general formulation stating that "whoever inflicts moral damage on another is liable for compensation." This proposed formulation aims to ensure that compensation encompasses all forms of moral damages, particularly physical and psychological pain, which Article 187 fails to explicitly mention.

KEYWORDS: Compensation, Damage, Consequential Damage, Indirect Harm.

الملخص

يهدف هذا البحث إلى بيان مفهوم الضرر المرتد ونطاقه، والتعرف على أحكام الضرر المرتد في نطاق المسؤولية التقصيرية، وإمكانية التعويض عنه وفقاً لأحكام القانون المدني النافذ في فلسطين، وكذلك بيان مفهوم الضرر المرتد ونطاقه وأنواعه وأهم شروطه، وتحديد طرق تقدير التعويض عن الضرر المرتد، وأهم العوامل المؤثرة في ذلك، وأيضاً التعرف على العوامل المؤثرة في تقدير التعويض عن الضرر المرتد. ولتحقيق هذا الهدف يتبع هذا البحث المنهج الوصفي والمنهج التحليلي، وإتباع الأسلوب النقدي، عبر دراسة وتحليل النصوص القانونية، وذلك من خلال الرجوع إلى القانون المدني النافذ في فلسطين، وأيضاً الاستفادة من بعض قرارات المحاكم المختلفة، بالإضافة إلى بعض التشريعات الأخرى مثل القانون الأردني والمصري بالقدر اللازم لبيان القدر الأكبر من الآراء العلمية القانونية والفقهية الواردة في الضرر المرتد وكيفية التعويض عنه وفقاً لما تقتضيه طبيعة هذا البحث.

وختاماً فقد توصلت الدراسة إلى العديد من النتائج أهمها: إن التعويض المدني ما هو إلا جزء يقع على عاتق مرتكب الفعل، والغاية الأساسية منه تتمثل في جبر الضرر الذي أصاب المتضرر، سواء كان ذلك المتضرر متضرراً مباشراً أو متضرراً بالارتداد، وبهذا فإن التعويض يخرج عن كونه مجرد عقوبة تفرض على المسؤول نتيجة اقترافه عملاً حرمه القانون. وكذلك تخلق مجلة الأحكام العدلية العثمانية وقانون المخالفات المدنية رقم 36 لسنة 1944 من أي تنظيم قانوني واضح للضرر المرتد. ويوصي الباحث بمجموعة من التوصيات، أهمها: تبني المشرع الفلسطيني في مشروع القانون المدني المسلك الأردني الذي يكتفي بتعداد صور الضرر الأدبي دون وضع تعريف محدد له، وتعقيباً على ذلك، يقترح الباحث استبدال هذا التعداد بصياغة عامة تنص على أن "كل من ألحق الضرر الأدبي بغيره يكون مسؤولاً عن التعويض"، وتهدف هذه الصياغة المقترحة إلى ضمان شمولية التعويض لكافة أشكال الضرر المعنوي، وخاصة الآلام الجسدية والنفسية التي أغفلت المادة 187 ذكرها صراحةً.

الكلمات المفتاحية: التعويض، الضرر، الضرر المرتد.

1. INTRODUCTION

The reparation of damage and compensation for it is a legislative goal in itself, for which the rules of civil liability were established. These rules exist or cease to exist in tandem with the damage. The effects of a harmful act are often not limited to the direct victim but extend to others who are connected to them by a certain bond, causing the damage to extend or "rebound" to them. This is what is known as consequential damage (Al-Jundi, 2015, p. 552). The harm inflicted upon the direct victim produces two types of damage. The first is primary damage, which affects the original victim and can be material or moral. The second is consequential or reflected damage, which is also of two types: material consequential damage and moral consequential damage. In essence, the harm that befalls the direct victim is reflected upon other individuals. For instance, when a wife and children lose the head of the family, it is natural that they suffer consequential damage in the form of losing the man who provided for the family, in addition to the pain and grief they experience. Therefore, two claims will be brought before the judiciary: the claim of the direct victim and

the claim of the victim of consequential damage (Al-Sarairah, 2014, p. 301).

In light of modern changes and the tremendous progress in diverse and widespread means of transportation, the need to re-examine the rules of compensation has become more pressing than ever before, due to the material and moral, primary and consequential damages these incidents represent. However, in most cases, due to a legislative deficiency regarding compensation for consequential damage, the public is generally unaware of the nature of this type of harm. We find that many are ignorant of the grounds and obligations for compensation for this damage. Indeed, the families of victims, when claiming compensation for the harm they suffered from losing a relative, often do not realize they are claiming a personal right, because the harmful act has caused them damages no less severe, if not more so, than the primary damage (Al-Rashed, 2014, p. 1).

While the legal status of the primary or direct victim has become exceedingly clear in jurisprudence, judiciary, and legislation – whether in terms of the scope of their right to compensation, its basis, the type and procedures for claiming it, or the

factors affecting it—the determination of the legal status of the victim of moral consequential damage still raises many problems that require significant effort in all these areas. This research, titled "Consequential Damage and the Possibility of Compensation Under the Palestinian Civil Code in Force," is an attempt to contribute, even in a small way, to solving these problems and providing clarification regarding compensation for this type of damage.

1.1. Research Problem

Damage is the cornerstone of civil liability; on its basis, civil liability is established and compensation is assessed. Hence, the purpose of the current research is to address compensation for consequential damage and to identify who benefits from compensation for consequential damage in civil liability. Accordingly, the problem of this research is raised in the following main question: What are the provisions for consequential damage within the scope of tort liability and the possibility of compensation for it according to the Palestinian Civil Code in force? This main problem gives rise to a set of sub-questions,

The most important of which are:

1. What is the concept of consequential damage? What is its scope?
2. What are the types of consequential damage? What are its most important conditions?
3. What is the legal basis for compensation for consequential damage in Palestinian legislation?
4. What are the methods for assessing compensation for consequential damage?
5. What are the factors affecting the assessment of compensation for consequential damage?

1.2. Importance Of the Research

– Scientific Importance:

This research is important for highlighting consequential damage as an independent harm, distinct from the primary damage, and for attempting to eliminate the confusion between them, especially since jurisprudence and the judiciary in Arab countries have not treated this damage with clear independence and uniqueness from the primary damage.

– Practical Importance:

This study has practical importance for those interested in the fields of justice and individual rights, by helping them understand this type of damage, the mechanism for its compensation, and who is entitled to it. It also serves as a nucleus and

reference for researchers who wish to explore this topic in the future.

1.3. Research Objectives

This research aims to achieve the following objectives:

1. To clarify the concept and scope of consequential damage.
2. To identify the provisions for consequential damage within the scope of tort liability and the possibility of compensation for it under the Palestinian Civil Code in force.
3. To define the concept, scope, types, and most important conditions of consequential damage.
4. To determine the methods for assessing compensation for consequential damage and the most important factors influencing it.
5. To identify the factors affecting the assessment of compensation for consequential damage.

2. RESEARCH METHODOLOGY

This research will follow a descriptive and analytical methodology, adopting a critical approach through the study and analysis of legal texts. This will be done by referring to the Palestinian Civil Code in force, as well as benefiting from various court decisions and other legislation, such as Jordanian and Egyptian law, to the extent necessary to present the broadest possible range of scientific, legal, and jurisprudential opinions on consequential damage and how to compensate for it, as required by the nature of this research.

2.1. Research Structure

The research is structured as follows:

1. The Nature of Consequential Damage
 - 1.1 The Concept of Consequential Damage
 - 1.2 The Scope of Consequential Damage
 - 1.3 Types and Conditions of Consequential Damage
2. Compensation for Consequential Damage
 - 2.1 The Legal Basis for Compensation for Consequential Damage in Palestinian Legislation
 - 2.2 Assessment of Compensation for Consequential Damage
 - 2.3 Factors Affecting the Assessment of Compensation for Consequential Damage

2.2. The Nature of Consequential Damage

Civil legislations agree on the existence of damage as a second primary pillar for the establishment of civil liability. Its existence is necessary; otherwise,

there is no liability, because liability revolves around damage, existing with it and ceasing without it. Damage is of various types: in terms of its subject, it is material and moral damage; in terms of its scope, it is personal damage and consequential damage (Al-Khawaldeh, 2020, p. 7).

To understand consequential damage, it is necessary to explain its concept, its scope, and to clarify its types and most important conditions for it to be considered compensable damage before the civil judiciary.

2.3. The Concept of Consequential Damage

The Ottoman Law Journal and the Civil Offenses Law No. 36 of 1944 are devoid of any clear legal regulation of consequential damage. This is in contrast to the draft Palestinian Civil Code of 2003, which addressed the issue of consequential damage in Article 187, stating: "1- Anyone who infringes upon another's freedom, honor, reputation, social standing, or financial credibility shall be responsible for the moral damage caused to the other. 2- Compensation may be awarded to the spouse and relatives up to the second degree for the moral damage they suffer due to the death of the injured person. 3- The right to claim compensation for moral damage is not transferable to others, unless its value has been determined by agreement or by a final judicial ruling."

Civil jurisprudence has provided numerous definitions of consequential damage. It has been defined as "the damage reflected from the harmful act" (Morcos, 1991, p. 287). In another description related to traffic accidents, consequential damage is what results from the injury or death of the victim, affecting their relatives or friends. However, not every material or moral harm that befalls another is considered consequential damage warranting compensation, nor does every grief over the death of a friend, relative, or loved one entitle the person to compensation (Al-Sakarnah, 2012, p. 27). Consequential damage is also defined as "the damage suffered by a person without being connected to the event that the unlawful act contributed to realizing" (Abd Al-Hamid, 2008, p. 150). It is also defined as "a personal damage with an independent existence from the primary damage, without being mixed with it, subsidiary to it, or a branch of it" (Salim, 2007, p. 17). Thus, consequential damage is considered damage that affects someone other than the person directly subjected to the harmful act (Al-Khawaldeh, 2020, p. 10).

The Palestinian Court of Appeal had defined consequential damage in the context of traffic

accidents as "compensation for incapacitation, known as consequential damage, which is a dependent, not independent, damage" (Palestinian Court of Appeal, Civil Appeal No. 357/2011).

Accordingly, the researcher can offer the following definition of consequential damage: It is a direct damage resulting from a harmful act, but it affects a person other than the one upon whom the act was inflicted, and it is a damage that gives the affected person an independent right to claim compensation for it.

2.4. The Scope of Consequential Damage

After clarifying the meaning of consequential damage, it is now appropriate to identify its scope. It may affect the material interest of the victim of consequential damage, or it may affect their moral interest. If the death or injury of the direct victim causes moral damage to relatives, each of them can personally be surrounded by close individuals who may suffer pain from seeing them in this state (Al-Rashed, 2014).

Undoubtedly, one of the conditions for consequential damage is the existence of a relationship between the direct victim and the victim of consequential damage. This relationship can be either a kinship tie or a financial relationship. Therefore, those entitled to compensation will be classified according to the type of bond they have with the direct victim into two categories: relatives of the direct victim and those with financial relationships, as follows:

2.5. Consequentially Harmed Relatives

It is not possible to allow any relative of the direct victim to claim compensation for consequential damage, as this would overburden the perpetrator of the harm, who may not be able to afford it and could lead to their insolvency or bankruptcy (Morcos, 1991, p. 147). Here, certain conditions must be met by the consequentially harmed person who has a kinship tie with the direct victim.

These conditions are as follows:

Condition One: Personal Support as a Prerequisite for Claiming Compensation for Consequential Damage for Relatives or Others. In this context, Article 274 of the Jordanian Civil Code No. 43 of 1976 states: "Whoever commits a harmful act against a person, such as killing, injuring, or causing harm, is obliged to compensate for the damage caused to the victim, their legal heirs, or those whom they were supporting and who were deprived of that support due to the harmful act."

This means that anyone who was supported by

the victim—whether an heir or not—and lost this support due to the victim's death, acquires a right to compensation for the material damage they suffered as a result of the cessation of support. It is not required that the deceased was legally obligated to support the harmed person; it is sufficient that the latter was materially dependent on the victim and the assistance they provided (Al-Sarhan & Khater, 2009, p. 415). This is what the Jordanian legislator established in the aforementioned article of the Civil Code.

The Palestinian legislator, in Article 187/2 of the draft Palestinian Civil Code of 2003, permitted compensation for consequential damage suffered by spouses and first-degree relatives only in the case of the victim's death. This means that spouses and relatives are not entitled to compensation in the case of non-fatal injury, even if the physical disability reaches 100%, which is a position that lacks fairness. Therefore, we see the necessity of amending this article, following the example of the Jordanian legislator in the Jordanian Civil Code, by allowing for consequential damage to be recognized in cases of both the death and physical injury of the victim.

Condition Two: In the event of the direct victim's death, their relatives are entitled to two types of compensation. The first is for inherited damage, and the second is for the consequential damage that affected them, whether material or moral. The court must rule on both types of compensation and not overlook one when they are claimed (Al-Jundi, 2002, p. 190). Regarding the condition of the victim's death for compensating moral consequential damage, it is worth noting that Arab laws, including the Jordanian law and the draft Palestinian Civil Code, have moved towards compensating moral damage based on the general principles of Islamic jurisprudence, (no harm and no reprisal). It is strange that the general texts in Islamic jurisprudence do not differentiate between the case where the victim dies or remains alive. Legislations have distinguished, in the case of the victim's death, between the damage that befell the deceased and the consequential damage that affected their relatives. The former is not transferred to the heirs unless it is determined by agreement or a judicial ruling is issued, which is the approach taken by the Jordanian legislator Article 176/2 of the Jordanian Civil Code and the draft Palestinian Civil Code In Article 187/2, or if a lawsuit was filed by the deceased before their death (Sultan, 2005, p. 322).

2.6. Consequentially Harmed Parties with Financial Relationships to the Direct Victim

If first-degree relatives of the direct victim are

harmed materially or morally, their damage will often be material because the nature of the relationship for compensation for their consequential damage is purely financial. If the victim of consequential damage proves the harm done to them and its conditions, they are entitled to compensation, taking into account the nature and circumstances of each relationship. For example, in a debtor-creditor relationship, not every creditor can claim compensation for consequential damage due to a harmful act suffered by their debtor. The debtor must be of a special standing, such that no one else can perform the obligation incumbent upon them (Aziz, 1998, p. 108).

If an important employee with exceptional ability and competence is involved in an accident that leads to their death or inability to perform their work, the company is not entitled to compensation for consequential damage suffered due to the loss of its employee, as long as it could hire someone else. However, if the search for and hiring of a replacement takes a period of time, such as requesting one from abroad, the company is entitled to compensation for the damage it suffered during the period it took to appoint a new expert (Al-Dulaimi, 2018, p. 31).

From the foregoing, the researcher believes that the circumstances of each financial relationship should be considered separately, and that the trial judge has the discretion to determine whether damage has occurred. Financial relationships also include support for non-relatives.

2.7. Types And Conditions of Consequential Damage

In this topic, we will discuss the types of consequential damage and its conditions, as follows:

2.8. Types Of Consequential Damage

2.8.1. Material Consequential Damage

This refers to harm inflicted upon a financial value or a legitimate interest of financial value. Infringing upon the financial value of the harmed person can result from an attack on their physical integrity or life. Any assault on a person's life or an injury that results in a financial loss for that person, whether in the form of medical expenses or a weakening or complete loss of earning capacity, is considered material damage (Suleiman & Qandah, 2017). Article 186 of the draft Palestinian Civil Code of 2003 states: "In all cases, compensation shall be assessed according to the damage suffered by the injured party and the loss of profit, provided that this is a

natural result of the harmful act." In this regard, the Jordanian Court of Cassation ruled that "one of the principles established by jurisprudence is that a Christian husband who divorces his Christian wife after converting to Islam is obliged to compensate her for the damage she suffered as a result, if it was due to the husband's abuse of rights, because the divorced Christian wife is deprived of her husband's support and maintenance. This is because the marriage contract between Christians establishes an eternal bond. This is derived from the rules of personal status for the Christian community and the principles of justice and equity, and is supported by the text of Article 134 of the Personal Status Law for Muslims No. 61 of 1976" (Jordanian Court of Cassation, Cassation of Rights No. 496/1992).

2.8.2. Moral (Non-Pecuniary) Consequential Damage

This refers to damage that affects non-material aspects of a person, such as their feelings, emotions, or status, whether familial, professional, or social, causing psychological pain and a sense of diminished worth. This is the opposite of material damage. Moral damage, like material damage, is often not limited to the person directly affected but extends to other harmed individuals who are connected to the direct victim by a certain bond, allowing them to claim compensation for the harm they suffered as a result of the damage inflicted on the original victim. For example, slandering a person's honor; when a husband accuses his wife on their wedding night of not being a virgin, the moral damage is not limited to the wife alone but extends to her family (Obeid, 2020, p. 29). Article 187/2 of the draft Palestinian Civil Code of 2003 states: "Compensation may be awarded to the spouse and relatives up to the second degree for the moral damage they suffer due to the death of the injured person." The researcher believes that most cases of this damage relate to feelings of grief and pain resulting from the loss or injury of a loved one, or from slander against them.

2.8.3. Physical Consequential Damage

This refers to the harm resulting from an attack on the sanctity and integrity of the human body, whether by death, injury, battery, or illness. An assault on a person's life and the integrity of their limbs, such as a wound, fracture, or amputation of any limb, or any harm that affects their body, can negatively impact that person's ability to earn a living. The damage may also be directed at the costs of treatment for the injury, or it may deprive them of what they enjoyed before the harmful act that led to

the injury. All of this is considered physical damage that is compensable (Al-Amawi, 2012).

2.8.4. Conditions For Consequential Damage

Consequential damage must meet the general conditions required for any damage, without which the liability of the perpetrator and their obligation to compensate are not established. These conditions are:

2.8.5. The Damage Must Be Certain (Realized)

It must have actually occurred, be present, and proven, supported by evidence and circumstances that leave no room for doubt, reaching a level of strong probability. This means the damage should not be hypothetical. Future damage is considered certain if there is conclusive evidence of its occurrence, even if its actualization is delayed. Researchers consider realized damage to be that whose cause has occurred in the present and whose effects have followed immediately. Future certain damage is that whose cause has occurred in the present, but its effects have not yet followed, being delayed to a future time (Al-Jalal, 2006, p. 23). In law, it is required that moral damage be certain, not probabilistic. Certain damage is compensated, while probabilistic damage is not (Qabha, 2009, p. 32). The Jordanian Court of Cassation, in its decision of March 29, 1982, held a lawyer liable for damages equal to the actual damage at the time of its occurrence, in accordance with Article 363 of the Civil Code (Jordanian Court of Cassation, Cassation of Rights No. 768/1982).

2.8.6. The Damage Must Be Personal to the Claimant

It is self-evident that the person claiming compensation for damage must be the person who suffered the damage. Therefore, the claim is limited to them and no one else. No one can claim compensation if the harmed person refrains from suing the responsible party. The harmed person alone has the right to claim compensation (Al-Jalal, 2006, p. 26).

2.8.7. The Damage Must Be Direct

Direct damage in law is the connection of a person's act with another, causing destruction, as when one person injures or strikes another, causing death (Abu Shanab, 2008, p. 27). Article 887 of the Ottoman Law Journal defined it as "the destruction of a thing by oneself." Thus, directness means that the damage results from the act without an intermediary between them, whether intentionally or negligently. As for causation, it is "that from which destruction

occurs through another cause, if the cause is what necessitates the occurrence of the act through that cause." Article 888 of the Journal defined it as "to cause something to happen that usually leads to the destruction of another thing." Causation, therefore, is an act that leads to damage with the intervention of an intermediary between the act and the damage.

2.9. Compensation For Consequential Damage

Civil compensation is nothing but a sanction imposed on the perpetrator of the act, and its primary purpose is to repair the damage suffered by the injured party, whether that party is a direct victim or a victim of consequential damage. Thus, compensation transcends being merely a penalty imposed on the responsible party for committing an act prohibited by law. The perpetrator of the harm is obliged to compensate regardless of the degree of their fault (Morcos, 1991, p. 507). The Palestinian legislator stated in the draft Palestinian Civil Code that "The right to claim compensation for moral damage is not transferable to others, unless its value has been determined by agreement or by a final judicial ruling." From this text, we find that the Palestinian legislator has specified the ways for the right to be transferred to the victims of consequential damage: through an agreement with the perpetrator or by obtaining a final judicial ruling that determines the value of the compensation to which the victims of consequential damage are entitled, based on the court's discretionary power. Compensating for consequential damage has various aspects, some of which must be detailed due to their great importance in repairing the harm. These include the legal basis for compensation for consequential damage in Palestinian legislation, in addition to explaining the elements of assessing compensation.

2.9.1. The Legal Basis for Compensation for Consequential Damage in Palestinian Legislation

Regarding compensation for moral damage in Palestinian law, it is evident that Article 19 of the Ottoman Law Journal established the principle of (no harm and no reprisal), while Article 20 affirmed that "damage shall be removed." From these two texts, it can be inferred that the scope of compensation extends to include both material and moral damage alike.

However, the prevailing opinion among the

majority of Muslim jurists is to limit compensation to material damage only, excluding moral damage. This is based on the premise that compensation involves substituting property for property, i.e., restoring the situation to its previous state, which is not achievable in the case of moral damage if this view is adopted (Dawas, 2012, p91).

The position of the Palestinian legislator has been marked by some hesitation regarding moral damage under the Palestinian Civil Offenses Law No. 36 of 1944. It did not provide a specific definition for it, unlike what it did for material damage. Instead, it merely referred to it implicitly when defining damage in general in Article 2(2), where it was defined as "loss or damage to property, or deprivation of comfort, or harm to bodily welfare, or reputation, or the like." The researcher believes that this definition reveals that the legislator addressed the concept of damage by listing some forms in which the element of damage is realized. The inclusion of the term "reputation" among these forms is a clear indication of the legislator's approval of compensation for moral damage. Furthermore, the legislator's use of the phrase "or the like" implies that it did not intend to limit the mentioned cases but provided them as examples. Accordingly, the researcher believes there is nothing to prevent awarding compensation for moral damage when its conditions are met, especially in the absence of a specific text restricting or explicitly prohibiting such compensation.

Article (2/2) of the Palestinian Civil Offenses Law states: "death, or loss of or damage to property, and includes the deprivation of comfort or the impairment of bodily welfare or of reputation or other like damage or loss."

This is confirmed by the Palestinian legislator's adherence to the provisions of the Civil Offenses Law. Article 23 thereof stipulates that in cases of malicious falsehood, compensation is limited to the material damages suffered by the injured party, even though this type of assault may also affect moral values.¹ In contrast, the Palestinian legislator did not impose this restriction when regulating the provisions on defamation in Articles 16-21 of the same law. This implies that the person harmed by defamation, whether the originally assaulted person or the consequentially harmed person, is entitled to compensation for moral damage, unlike the person harmed by malicious falsehood, whose right to

¹ See Article 23 of the Palestinian Civil Offenses Law, which states: "Malicious falsehood is the publication by any person, in bad faith, whether orally or in any other form, of a false statement concerning: (a) the trade, craft, or profession of any person; (b) the

goods of any person; (c) the title of any person to any property: Provided that no person shall obtain compensation in respect thereof unless he has been materially damaged."

compensation is limited to material damage only.

From this, it can be inferred that the Palestinian legislator, in the Civil Offenses Law, acknowledges compensation for moral damage within a framework of great reservation and caution. This is evident from its restriction of this type of compensation to specific cases explicitly mentioned, without expanding its application.

Under the Insurance Law No. 20 of 2005, the Palestinian legislator recognized the right of a person injured in a road accident to receive moral compensation, but stipulated that the total compensation for this should not exceed a certain limit (as per the Palestinian Insurance Law).

According to the draft Palestinian Civil Code, specifically in Article 187, the scope of legal protection has been expanded to include non-material damages. The legislator considered that infringing upon a person's dignity, freedom, or social and financial standing constitutes moral damage that necessitates accountability. This text aims to protect human value and the social status of individuals from any violation that may affect them.

The Palestinian legislator, in the draft Civil Code, adopted the Jordanian approach of simply listing forms of moral damage without providing a specific definition. In response, the researcher suggests replacing this enumeration with a general formulation stating that "whoever inflicts moral damage on another is liable for compensation." This proposed formulation aims to ensure that compensation encompasses all forms of moral damage, particularly physical and psychological pain, which Article 187 fails to explicitly mention among the provided examples. From a procedural standpoint, the legislator did not leave this right absolute but surrounded it with specific restrictions and controls related to how the right to compensation is transferred to others, in addition to regulating the provisions for compensating those consequentially harmed morally (Dawas, 2012, pp. 472-473).

As for the position of the Palestinian judiciary, the judicial system in Palestine has recognized the principle of compensation for "moral consequential damage." The Palestinian Court of Cassation established a principle affirming the right of the family of the injured or deceased to claim compensation for the pain, psychological suffering, and deep grief they endured as a result of losing their relatives in accidents (Palestinian Court of Cassation, Cassation of Rights No. 168/2005).

Following the same approach, the Jordanian judiciary, through a series of rulings by the Court of Cassation, has affirmed the entitlement to

compensation for moral consequential damage. The court has provided a comprehensive definition of moral damage as "any assault on another that affects their freedom, honor, reputation, social standing, or financial credibility" (Jordanian Court of Cassation, Cassation of Rights No. 3244/2006).

Looking at Jordanian judicial precedents, we find that they have primarily relied on Article 267 to establish the principle of compensation for moral damage. The concept of this damage is summarized as anything that harms human emotion and feeling, such as an assault affecting children or parents; anything that causes grief and sadness to the soul is considered moral damage that must be redressed through material compensation.

The Egyptian judiciary initially showed hesitation in recognizing compensation for moral consequential damage. This reservation was due to several fundamental reasons: the difficulty of material assessment, i.e., the difficulty of placing an accurate monetary value on non-material human values such as honor, dignity, grief, and sorrow, as they are not tangible material things. There was also a fear of exploitation: the judiciary feared that compensation for feelings would become a means of unjust enrichment at the expense of others, or that grief would become a subject of unacceptable trade. Subsequently, the Egyptian judiciary reversed its previous position and recognized the principle of compensation for moral consequential damage, based on humanitarian and legal objectives. It considered compensation a means of offering solace to the victim of consequential damage, contributing to alleviating the anguish of grief and pain, even if the compensation does not completely erase the effect of the damage. Consequently, judicial rulings later consistently affirmed this right and established it as a stable rule (Al-Masri, 2019, p. 42).

The Egyptian Court of Cassation has set clear controls for entitlement to this compensation, ruling that moral damage can be compensated for materially, as material compensation helps to alleviate the suffering and pain of the harmed person. In one of its decisions, it stated that "The criterion for the realization of moral damage is that a person is harmed in their honor and reputation, and is affected in their feelings, emotions, and sentiments. If none of this is realized, the basis for compensation is negated" (Egyptian Court of Cassation, Cassation of Rights No. 107 of 1998).

Therefore, the Egyptian judiciary went through an initial phase of hesitation in recognizing compensation for moral consequential damage due to the difficulty of materially assessing non-material

values like honor and grief, and for fear of turning emotions into a means of unjust enrichment. However, it quickly reversed this position. The rulings of the Court of Cassation have consistently affirmed compensation as a form of solace and satisfaction aimed at alleviating the victim's suffering and pain, conditional on the occurrence of real harm affecting a person's honor, reputation, or emotions. Despite this progress, the Egyptian judiciary still tends to narrow the scope of this compensation by limiting the forms that warrant it, relying, in the absence of an explicit text in the Egyptian Civil Code, on the approach adopted by the Jordanian legislator and judiciary in dealing with forms of moral damage.

2.9.2. *Assessment Of Compensation for Consequential Damage*

The most modern method to compensate the harmed person for the consequential damage they suffered is to erase the harm that befell them. The judiciary, with its authority and expertise, is the body capable of determining the appropriate method of compensation to repair the damage. This has led various legislations to adopt this idea and explicitly state it in their texts, to avoid the numerous problems that could arise if the legislator had mandated the judge to follow one method over another for each type of damage. Although this is difficult, and indeed seems impossible because the damages that can occur in practical life are countless and no legislator can fully encompass them, even if this were to happen, it would not achieve justice in all cases (Aziz, 1998, p. 149). The Palestinian legislator, in Article 189/3 of the draft Palestinian Civil Code, stated: "Compensation may be in installments, or a periodic payment, and in these two cases, the debtor may be obliged to provide security as estimated by the court."

The researcher believes that compensation can take various forms; it can be in-kind or monetary. Since compensation is not required to be monetary, although monetary compensation is prevalent in tort liability, in-kind compensation may be better in some cases to erase the effects of the harmful act. Thus, compensation can be in-kind or monetary. In this topic, we will discuss compensation for consequential damage, namely in-kind compensation and monetary compensation.

2.9.3. *In-Kind Compensation (Restitutio in Integrum)*

This means removing the damage in-kind and compensating for it, i.e., restoring the harmed person to the state they were in before the harmful act

occurred. In-kind compensation means the harmed person receives a substitute for the very right that was violated by the harmful act, whereas specific performance means the creditor obtains their exact right, not a substitute for it (Al-Dulaimi, 2018, p. 49). Some differentiate between in-kind compensation and specific performance known in contractual liability, which means the debtor performs exactly what they committed to. In-kind compensation means the harmed person receives a substitute for their right violated by the harmful act, while specific performance means the creditor receives their exact right, not a substitute (Al-Khawaldeh, 2020, p. 58).

In light of this, the draft Palestinian Civil Code indicated this in Article 225/1, which states: "The debtor shall be compelled, after being given notice, to perform their obligation in-kind whenever possible."

In general, in-kind compensation is more suitable for cases of material damage than for moral damage, as the nature of the latter makes this type of compensation difficult and often impossible. In material damage, the responsible party can be ordered to provide a similar item to the one they destroyed, which may be a means of compensation. Whatever the case with in-kind compensation, in the context of tort liability, its scope is almost limited to compensating for damages that affect the direct victim, not those that affect the victim of consequential damage. That is, in-kind compensation is not suitable for the nature of consequential damage due to the specificity of this type of damage and the elements it is based on, perhaps most prominently its reliance on another damage that directly affects the victim. In such cases, we can imagine that the perpetrator of the harm can be forced to compensate the direct victim in-kind (Aziz, 1998, p. 154). For example, someone who damages a car that a driver uses for hire can be obliged to provide a similar car to the owner, who is the direct victim. However, the driver cannot be compensated for their lost wages as a victim of consequential damage, if the conditions for consequential damage are met, except through monetary compensation. The same applies to other cases (Al-Dulaimi, 2018, p. 53).

2.9.4. *Monetary Compensation*

In most cases of tort liability, monetary compensation is the last and only resort to repair the damage, especially when it is impossible to rule otherwise. This is the predominant feature of compensation in this field, which has prompted legislators to provide for it as if it were the general rule for compensation in tort liability (Al-Lasasmeh, 2009, p. 190). The Palestinian legislator, in the first

paragraph of Article 189 of the draft Palestinian Civil Code, states: "Compensation shall be assessed in cash."

In this regard, the Jordanian Court of Cassation ruled: "It is established in jurisprudence and case law that compensation for physical injuries in non-fatal cases includes compensation for treatment costs, loss of earnings for the period required for recovery, and loss of financial opportunities that the victim could have seized during this time but for the disabling injury, and various forms of moral damage suffered by the injured from the time of injury until recovery. If the injury is fatal, it opens two distinct legal claims for those entitled to compensation: The first is brought to claim compensation for the damage suffered by the victim themselves from the time of injury until their death. This compensation becomes part of the deceased's estate and can only be claimed by the heirs and must be distributed among them according to their shares in the estate. The second is brought to claim compensation for the damage personally suffered by the entitled parties due to the death from the accident. This claim can generally be brought by anyone who was personally harmed and upon whom the damage was reflected" (Jordanian Court of Cassation, Cassation of Rights No. 8851/2018).

2.10. Factors Affecting the Assessment of Compensation for Consequential Damage

The assessment of compensation for consequential damage is influenced by a set of factors, which are:

2.10.1. The Effect of an Extraneous Cause

Jurisprudence agrees that an extraneous cause severs the causal link between the perpetrator's act and the victim's damage. This demolishes a pillar of liability for the harmful act, which ultimately leads to the impossibility of holding the actor liable or obliging them to compensate for damage that was not a result of the act attributed to them (Fatlawi, 2020, p. 426). Article 181 of the draft Palestinian Civil Code states: "If a person proves that the damage arose from an extraneous cause in which they had no hand, such as force majeure, the fault of the injured party, or the fault of a third party, they shall not be obliged to compensate for this damage, unless there is a text or agreement to the contrary."

The researcher finds that an extraneous cause includes four situations: force majeure, unforeseen accident, fault of the injured party, or fault of a third party. If any of these situations is present, it is sufficient to establish an extraneous cause, and consequently, it is sufficient to negate liability.

As for the fault of the direct victim that may contribute with the fault of the responsible party in causing the claimed damage, if this fault is the sole cause of the damage, its consequence is that liability is confined to the victim themselves, meaning they bear the consequences of their fault without anyone sharing it, a situation that is universally agreed upon. The Jordanian Court of Cassation, regarding the right of those entitled to compensation for consequential damage, affirmed the effect of the direct victim's act in causing the damage by not awarding compensation, stating: "If the deceased was the one who caused the accident, he is excluded from entitlement to compensation, because he is not considered a 'third party' according to the explicit wording of paragraph (d) of Article (3) of the Compulsory Insurance Regulations, as he is the one who caused the accident and is not covered by the comprehensive insurance contract. Therefore, the driver's heirs are not entitled to any compensation as a result of his death because he was the one who caused the accident" (Jordanian Court of Cassation, Cassation of Rights No. 1247/2002).

2.10.2. The Effect of the Gravity of the Responsible Party's Fault on Compensation for Consequential Damage

In this context, we are discussing the extent to which the gravity of the fault attributed by the court to the perpetrator should be considered when awarding compensation.

On this issue, jurisprudence is divided into two main schools of thought. The first argues that the court should take into account the gravity of the responsible party's fault when ruling on the claimed compensation, because not doing so would strip civil liability of its moral aspect, which is unacceptable. The second school opposes this view and considers that taking the gravity of the fault into account is contrary to justice. What matters in civil matters is compensating the victim for the damages they suffered due to the harmful act. Repairing the damage in this way should not be affected by the gravity of the responsible party's fault. If it were, it would mean that the victim either receives less than their due, if the responsible party's fault was minor, or more than their due, if the fault was grave. Both situations are unacceptable. The first unjustly burdens the victim with part of the consequence of an act they did not cause, and the second unjustly enriches them at the expense of the perpetrator of the harm (Aziz, 1998, p. 218). Although the researcher is inclined to favor the second opinion for the logical reasons it is based on, the first opinion is not entirely

excluded from court applications.

3. CONCLUSION

In conclusion, we have found that the effect of a harmful act may be limited to the direct victim and not extend to others, or its effects may extend to affect other persons connected to that victim by a certain bond, causing them to be affected materially, morally, or both, by the damages that befell the original victim. Consequential damage is a direct damage to the victim of consequential damage, and for it to be compensated, certain conditions must be met. Therefore, the damage must occur to the original victim, and there must be a relationship between the original victim and the victim of consequential damage. Accordingly, the harmful act in this case produces two interconnected results. The first is the damage that befell the direct victim, while the second represents the damages that rebounded onto others. Although these two results are interconnected, each is independent. Both the direct victim and the victim of consequential damage can claim compensation from the party responsible for the harmful act for the damage they suffered.

4. RESEARCH FINDINGS

- Civil compensation is a sanction imposed on the perpetrator of the act, and its primary purpose is to repair the damage suffered by the injured party, whether that party is a direct victim or a victim of consequential damage. Thus, compensation transcends being merely a penalty imposed on the responsible party for committing an act prohibited by law.
- The Ottoman Civil Code (Mejelle) and the Civil Offenses Law No. 36 of 1944 lack any clear legal regulation of consequential damage.
- Consequential damage may affect the material interest of the victim of consequential damage, or it may affect their moral interest. If the death or injury of the direct victim causes moral damage to relatives, each of them can personally be surrounded by close individuals who may suffer pain from seeing them in this state.
- The position of the Palestinian legislator was marked by some hesitation regarding moral damage under the Palestinian Civil Offenses Law No. 36 of 1944; it did not provide a specific definition for it as it did for material damage,

but merely referred to it implicitly when defining damage in general in Article 2(2).

- The Palestinian legislator, in the Civil Offenses Law, acknowledges compensation for moral damage within a framework of great reservation and caution, which is evident from its restriction of this type of compensation to specific cases explicitly mentioned, without expanding its application.
- Since compensation is not required to be monetary, although monetary compensation is prevalent in tort liability, in-kind compensation may be better in some cases to erase the effects of the harmful act. Thus, compensation can be in-kind or monetary (in equivalent value).

5. RESEARCH RECOMMENDATIONS

- The Palestinian legislator, in the draft Civil Code, adopted the Jordanian approach of simply listing forms of moral damage without providing a specific definition. In response, the researcher suggests replacing this enumeration with a general formulation stating that "whoever inflicts moral damage on another is liable for compensation." This proposed formulation aims to ensure that compensation encompasses all forms of moral damage, particularly physical and psychological pain, which Article 187 fails to explicitly mention.
- We hope that the Palestinian legislator will move beyond the scope of restriction and limitation, especially regarding the authorization of compensation for moral consequential damage in cases of non-fatal injury, as some injuries have a greater impact on the heart than death, such as when the original victim becomes disfigured, paralyzed, or suffers a permanent disability or impairment.
- It is necessary to limit the persons entitled to claim this compensation to provide balanced legal protection for both the harmed person and the person responsible for the damage.
- Enact explicit provisions that grant the victim of consequential damage the right to claim compensation independently, regardless of whether the original victim claims their right or not.

REFERENCES

Abd Al-Hamid, Tharwat. (2008). *Consequential Damage Resulting from Infringement of Life or Physical Integrity*.

- Egypt: Faculty of Law, Mansoura University.
- Abu Shanab, Ahmed. (2008). "The Legal Basis for Liability for the Act of a Thing in Jordanian Civil Law and Islamic Jurisprudence - A Comparative Study." *Mu'tah Journal for Research and Studies*, Issue No. 4.
- Al-Amawi, Mohammed. (2012). *Compensation for Physical Injuries and Associated Damages*. 1st ed. Jordan: Dar Al-Thaqafa for Publishing and Distribution.
- Al-Dulaimi, Husam Hussein Ali. (2018). *Compensation for Consequential Damage: A Comparative Study*. Master's Thesis, Al al-Bayt University, Jordan.
- Al-Fatlawi, Sahib Obeid. (2020). *Sources of Obligation in Civil Law*. Amman: Dar Al-Thaqafa for Publishing and Distribution.
- Al-Jalal, Mohammed Sinan. (2006). *Material Compensation for Moral or Indirect Material Damage Resulting from a Felony or Malicious Complaint*, The Twenty-Second Session of the Islamic Fiqh Academy, held in Mecca, 2006.
- Al-Jundi, Mohammed Sabri. (2002). "Guarantee for Physical Damage Resulting from a Harmful Act." *Journal of Law*, First Issue, Cairo.
- Al-Jundi, Mohammed Sabri. (2015). *Liability for Wrongful Acts: A Study in Western Jurisprudence*. 1st ed. Amman: Dar Al-Thaqafa for Publishing and Distribution.
- Al-Khawaldeh, Saif Al-Din. (2020). *The Extent of Compensation for Moral Consequential Damage in Jordanian Legislation and Comparative Legislations: A Comparative Study*. Master's Thesis, Mutah University, Jordan.
- Al-Lasasmeh, Abdul Aziz. (2009). *Civil Tort Liability*. Dar Al-Ilm wal-Thaqafa for Publishing and Distribution.
- Al-Masri, Manar Samer. (2019). *The Legal Regulation of Consequential Damage: A Comparative Study*. Master's Thesis, An-Najah National University, Nablus.
- Al-Rashed, Fahd bin Hamdan bin Rashed. (2014). *Consequential Damage in Liability for Wrongful Acts: An Analytical Study in Jordanian Civil Law and Islamic Jurisprudence*. Master's Thesis, University of Jordan.
- Al-Sakarnah, Nour Al-Din Qutaish. (2012). *The Legal Nature of Consequential Damage*. Master's Thesis, Middle East University, Amman.
- Al-Sarairah, Ibrahim Saleh. (2014). "The Legal Regulation of Compensation for Consequential Damage According to the Jordanian Civil Code." *Journal of Arts and Social Sciences - Sultan Qaboos University*, Issue 7, Sultanate of Oman.
- Al-Sarhan, Adnan & Khater, Nuri. (2009). *Explanation of the Civil Law: Sources of Personal Rights*. Amman: Dar Al-Thaqafa for Publishing and Distribution.
- Aziz, Kazem. (1998). *Consequential Damage and its Compensation in Tort Liability*. Amman: Dar Al-Thaqafa.
- Civil Offenses Law No. (36) of 1944 and its amendments.
- Dawas, Amin. (2012). *The Mejelle and the Civil Offenses Law*. 1st ed. Palestine: Palestinian Judicial Institute.
- Draft Palestinian Civil Code of 2003.
- Egyptian Court of Cassation, Appeal No. 107, Cairo, dated 29/4/1998.
- Insurance Law No. (20) of 2005.
- Jordanian Civil Code No. 43 of 1976.
- Jordanian Court of Cassation (in its capacity as a court of rights), Cassation of Rights No. 1247/2002, Amman - Jordan, 27/5/2022.
- Jordanian Court of Cassation (in its capacity as a court of rights), Cassation of Rights No. 8851/2018, Amman - Jordan, 9/4/2019.
- Jordanian Court of Cassation, Cassation No. 496/1992, Amman - Jordan, 31 August 1992.
- Jordanian Court of Cassation, Cassation of Rights No. 3244/2006, Jordan, dated 25/3/2007.
- Jordanian Court of Cassation, Cassation of Rights No. 768/1982, Jordan, dated 29/3/1983.
- Morcos, Suleiman. (1991). *Al-Wafi in the Explanation of Civil Law: Sources of Obligation*, Part One. Cairo: Matabi' Misr Al-Jadida.
- Obeid, Nader Mohammed. (2020). *The Beneficiary of Compensation for Consequential Damage in Civil Liability*. Master's Thesis, Amman Arab University, Jordan.
- Palestinian Court of Appeal, Appeal No. 357/2011, Ramallah, 28/11/2011.
- Palestinian Court of Cassation, Cassation of Rights No. 168/2005, Ramallah, dated 20/6/2007.
- Qabha, Basil Mohammed. (2009). *Compensation for Moral Damage - A Comparative Study*. Master's Thesis, An-Najah National University, Nablus.
- Qandah, Khalil Suleiman Abdullah. (2017). *Consequential Damage within the Scope of Tort Liability and the Possibility of its Compensation According to the Jordanian Civil Code*. Master's Thesis, Amman Al-Ahliyya

University, Jordan.

Salim, Mohammed Mohiuddin. (2007). *The Scope of Consequential Damage*. Alexandria: Dar Al-Matbouat Al-Jami'iyah.

Sultan, Anwar. (2005). *A Summary of the General Theory of Obligation: Sources of Obligation*. Egypt: Dar Al-Jami'a Al-Jadida for Publishing and Distribution.

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