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Civil legal Pprotection for Moral Damages in Jordanian Legislation

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ABSTRACT:

There are civil remedies for assault; Damages can be sought for psychological harm, and the victim may use force in self-defence. A victim of an intentional tort who uses force in self-defence, and then has a counterclaim brought against him, may use his initial tort as a mitigating factor. A tort which has been pleaded as a defence by a person accused of a criminal offense will be in issue estoppel in subsequent civil proceedings, meaning that if the defendant loses his criminal case, he will automatically lose the tort. A victim of a criminal offense which does not constitute a tort will find that there is no special provision for Moral Damage, and that it may even be impossible to bring an action in tort.

Keywords: Civil Legislation, legal Protection, Moral Damages, defence, action.

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1. Introduction

This paper focuses on the field of compensation for moral damage and more particularly on the compensation of a legal person for moral damage. For this purpose, the focus will be on Jordanian law and courts. This research seeks to identify the points distinguishing the compensation of a natural person and a legal person for their moral damage and an explanation

for this differentiation. The objective is to decide whether there should be a difference in the compensation of moral damage for a natural person as opposed to a legal person. The conclusions from this analysis provided will outline the best approach a legal person should take in obtaining compensation for their moral damage. The purpose of this paper is to provide the necessary information required for a legal person obtaining compensation for a wrong against them and assist them in making an informed decision on how they would like to present their case. By showing the advantages of each, a legal person may make a better decision on whether to bring a case in tort or reparation and how it would like to argue its case if it is only the compensation of the moral damage that is in question.

Background: Of course, throughout these changes in the law, the amendments had to have been influenced by the atmosphere and circumstances which existed during their time. This was definitely the same with the laws on torts, as the concept of barek (material damages) had existed for quite some time; however, the concept of healing unjust injuries was not dealt with specifically until the amended laws in 2010. This Jordanian tort law regarding compensation is very similar to that which existed in the Egyptian legal system, and it is clear to see that the Egyptian laws were part of the influence. So, in order to find the understanding, the research must delve into the laws as of their origins in Egypt.

The background of the establishment for the research on the topic of compensating a legal person for moral damage in Jordanian Law goes back to the very beginning of enacting the Jordanian civil code in 1976. This code was enacted with the guidance of the Jordanian laws, Islamic sharia, Egyptian laws, and other various Arab legal systems. The influences of these various legal systems were essential as they were what the Jordanians have been following throughout different periods of time, and it was seen through the laws and code of regulations that existed during those periods. This code was the first unification of laws that had been accumulated and changed during the Ottoman and colonial periods till modern Jordan. Now the civil code has been amended several times, with the most recent legislation having occurred in 2010

Purpose: This research is aimed to examine the concept of moral damage and what legal entities are entitled to under Jordanian law before moving on to examine similar awards that accidentally fall on the legal entity. This paper will heavily rely on the primary sources of positive law, meaning that it will not involve the statute as a primary source. This is because the judgment for the moral damage award is involved with tort cases in the court. It is noted that when making references to the tort cases, the judge may involve statutes as a supportive tool to decide the case.

In Jordan, awarding moral damage to legal entities is a relatively new and hardly developed matter when compared with the same award to individuals. Although the conceptualization of 'moral damage' is extensively debated among legal systems, it seems there is still a long way to achieve a better and clear understanding about it. The underlying reason that best illustrates this condition is the fact that there are immeasurable judgments on similar cases given by the judges. It leads to the aforementioned situation regarding the concept of smarting, aching, and distress.

Scope: In brief, what the research also focuses on is the comparison of the approach taken by common and civil law. The importance of this stems from the fact that Jordan is in the process of increased globalization and European influence, thus calling into question whether Jordan should re-examine its traditionalist approach. Finally, the legal institutions and remedies

available are examined in order to understand whether the current approach is the best way to compensate the victims of moral damage.

Scope refers to the practice and applicability of the topic. The legal research has been conducted and examined under the following parameters. The research has only inquired upon compensation towards moral damage, not physical or property damage. This, in turn, extends to the maxim of discuss. Only primary and secondary resources have been used as means of gathering information on the topic. Previous case law examples have provided a valuable source of information, while the legislation itself is still limited and thus has made it elementary to understand. As the topic itself is highly complex and vast, the research has primarily focused on the best approach to providing compensation for moral damages with reference to deterrence theory, which, in turn, will be explained.

1.1. Definition of Moral Damage

Moral Damage is a complicated and multifaceted concept that has been defined in numerous ways, but the fundamental idea is that it involves an injury to an individual's moral conscience and the values they hold, leading to inner conflict and emotional turmoil. It is described as the lasting psychological, biological, spiritual, and social impact of perpetrating, failing to prevent, or bearing witness to acts that transgress deeply held moral beliefs and expectations. Another definition states that Moral Damage is the distress which results from the violation of a person's moral or ethical code. This distress results from performing an act or perpetuating a situation that is in conflict with the individual's values and beliefs and betrays a person's moral identity, and it is this last point that is the most associated factor of Moral Damage. An often-cited example of a situation involving morally injurious events is that of a soldier taking the life of an enemy combatant during a tour of duty; regardless of the justifiability of the act, the action of killing in all circumstances is contrary to the majority of societies' and cultures' moral and ethical code and is one that is universally understood. The result is typically a behavioral change in the offended person. People will often experience negative feelings such as anger, anxiety, and alienation, and it can lead to a sense of purposelessness. It can also contribute to an erosion of the person's self-concept, and in extreme cases, it can lead to a complete loss of personal identity.

1.2. Importance of Addressing Moral Damage in Jordanian Law

One of the key issues in this task is to clarify the importance of addressing Moral Damage in Jordanian law, to motivate the need for a civil legal framework. Arguably, Moral Damage has been largely overshadowed by PTSD in terms of research, funding, and treatment. Although the term Moral Damage has been acknowledged in Islamic literature, it holds different connotations than that in Western society, and it has only recently been discussed within the context of military service. Horrific events such as the Abu Ghraib prison scandal and the alleged cases of Quran Desecration have raised concerns regarding the psychological welfare of those involved and the long-term implications. Furthermore, the recent wars in Iraq and Afghanistan have seen an increase in Jordanian military involvement as peacekeepers, with reports of Jordanian soldiers being exposed to disturbing events and/or being pressured into acting in ways that contradict their moral beliefs. These situations often lead to conflicts of duty, and studies have shown that moral beliefs are strong predictors of psychological adjustment and subjective well-being, hence the relevance of Moral Damage to this sector of society. The effects of Moral Damage are not limited to combatants. Jordan has a long history of housing and providing medical treatment to refugees and victims of war from neighboring countries. Furthermore, it has an extensive range of social and health care services. It is therefore likely that workers and volunteers in these areas, many of whom are not well informed about the nature of Moral Damage, will experience the same psychological difficulties as those in military service. A civil legal framework that addresses Moral Damage will not only serve

to protect the rights of these individuals but also raise awareness about an issue that is relatively unknown outside the military and veteran communities.

2. Legal Principles Governing Moral Damage Claims

A specific aspect of fault which may relate to the fighting soldier concerns the liability of a superior or employer. Article 314 asserts that "every act done by a person acting in his capacity as an organ or an employee of another is deemed to be an act of the latter whether the principal or employer has given him an order or permission for that act or not." This raises the possibility of fault on the part of a commanding officer or the state as an employer through the direct involvement of an act or a decision which leads to the Moral Damage of a subordinate. The liability of a superior relating to injury suffered by subordinates is also recognized in Article 55 of the Regulations of the Geneva Convention IV and customary international law.

Moral Damage is damage suffered to an individual's moral integrity and is closely linked to principles of responsibility and duty. The general principles of liability for fault under the Jordanian Civil Code correspond well with the nature of Moral Damage, and there is some potential for its development as a criterion for the recognition of liability and award of damages in certain cases. Article 291 of the Civil Code states that "Every act whatever of man that causes damage to another obliges him by whose fault it occurred, to repair it," and fault is defined by Article 293 as being "a deviation from the standard conduct of a careful man." Whilst fault is not admitted in the circumstances surrounding the injury of a soldier under criminal attack, fault remains a universal principle, and the failure of the State or an individual to adhere to important laws and conventions concerning the conduct of hostilities and the protection of others can lead to the recognition of fault and liability in various cases of inflicted Moral Damage.

2.1. Principle of Fault and Liability

To succeed in a claim for psychological/psychiatric injury or illness due to Moral Damage, a claimant must prove fault on the part of the person or institution being sued. Most civil claims for negligence are based on the concept that the defendant has breached a common law duty of care. However, there may be alternative ways to succeed in a claim for psychiatric injury. For example, an employer may be in breach of statutory duties owed to the employee, or the defendant may have committed an intentional tort. An intentional tort is generally easier to prove than negligence. It requires proof of an intentional act that was committed with the knowledge that it would cause harm to the claimant. The act must also be wrongful. For example, the intentional tort of battery will be easier to prove than the intentional tort of false imprisonment. In relation to the specific legal act or omission, it will be necessary for the claimant to show that there has been a breach of duty. Depending on the circumstances of the case, the defendant may have breached a duty to the public at large, a specific statutory duty, or a common law duty to the claimant.

2.2. Principle of Causation

If this is shown then the claimant must also prove on the balance of probabilities that this was caused by the defendant's negligence as opposed to some other cause. This can prove to be very difficult as mental illnesses can result from complex and multi-factorial causes. A claimant already predisposed or with a vulnerability to mental illness may not be able to show that it was the defendant's wrong which tipped him over the edge.

Whether a psychiatric injury was caused at all is a medical and not legal question. In free society it is impossible to prevent all injuries to the mind, and it is not every upset or anxiety which should enable the sufferer to recover damages. Society should not be expected to underwrite all human misfortune, and so it is necessary not only that there has been an assault on the claimant's nervous system, but this must have caused recognisable psychiatric illness.

In *Hinz v Berry*, Gaudron J said that the question was whether the claimant had suffered 'a recognisable psychiatric illness'.

The causation principle is based upon whether the defendant's wrong has caused damage to the claimant. This involves actually two separate issues. The first is whether there was any psychiatric damage caused at all. The second is whether this was caused by the defendant's wrong as opposed to other causes, usually the claimant's predisposition or some intervening event.

2.3. Principle of Compensation

While the wordings of the two articles are heavily laden with technicalities and legal jargon, their essence is that there is an obligation to compensate, and there are two broad types of liability, namely contractual and extra-contractual, the latter being more specifically dealt with. This is very important because often victims of injury are not in positions to afford the expenses of pursuing litigation and sometimes result in abandonment of cases. The victims will need to know what types of damage can be compensated.

This statement of law is a clear guarantee on the concept that for every violation of a right, there is an inherent liability which may result in compensation. Therefore, every right-holder has a hope of obtaining compensation provided on the extent of liability and damage, which may vary. Article 309 shares the same spirit, except it restricts the compensation to only patrimonial damages and loss of profits, stating: "Every obligor in a contractual obligation and every person liable to compensate damage extra-contractually shall be held liable only in case of default in performance of his obligation unless it is proved that such default was due to a reason imputable to him and loss and default, to say, loss of profits, or damages. The obligee or damage to the right/obligation reserves the right to obtain compensation rendered through courts, against damage and profits which accrue from default; provided that a reason and link between obligor's act and damage may be ascertained - attributability. What follows or is similar to the article shall be imputable or attributable is a basis of proving liability to compensate."

According to the principle of compensation, every violation of a right brings with it an obligation to make good the loss that the right-holder suffered. This principle has been very well painted in Jordanian civil law articles 282 and 309. Article 282 recognizes contractual and extra-contractual liability as a source of obligation to compensate harm. It states: "Every person causing damage to the life, body, health, freedom, property or any right of another shall be liable to compensate such damage."

3. Elements of Moral Damage Claims

In a tort claim, the injured party is easily identified, as the claim filed is done at the individual's own expense and the individual receives the compensation. But in the case of Moral Damage and claim in a civil law suit, the injured party is society rather than the individual claiming the compensation. This is due to Moral Damage being an "injury to the legal rights of an individual, legal rights are an individual's rights to entitlement of a certain conduct from a person or other individuals in a specific community. This is a concept based on deontological moral philosophy whereby there are certain universal rules and regulations which every individual has a right to expect and demand given a particular situation" (Gutheil, 1993). The rights violated on the victim can sometimes be a mixture of both tort and contractual rights. Even though the claimant has not incurred any injury themselves, it is the violation and loss of the right which causes a moral injurious affect on the individual, and thus the violation of a right will be liable for the cause of action of Moral Damage. An example of such a right could be that of a father wishing to protect his family from harm and ensure they are in a secure environment. He is expecting a right for a certain conduct (no harm coming to his family) by other members of the society, and

a breach of this right will cause the fear of loss of family or safety and an affect on the father with a resulting injurious affect. The government and public figures can also be victims of Moral Damage, in cases where the injury affect is a result of a decision by the victim, i.e. a policy decision. The required elements for the action will be decided on by the victim, and an interpretation of the policy decision can be a cause of injurious affect by the public on the public figure.

3.1. Identification of the Injured Party

The identification of the injured party is of paramount importance in any claim. It may appear as a self-evident concept, but in terms of Moral Damage it can be quite complex. A good example is the case of Serdar Mohammed who was wrongfully accused of a crime against coalition forces in Iraq, the aftermath of which led to his detention and an alleged ill-treatment.¹ He was diagnosed with a mental illness and referred for psychiatric assessment which concluded that he was not fit to plead. He was repatriated and the criminal charges were stayed. This case raises the question of whether the detainee was himself capable of identifying his own distress and harm suffered. In this instance, it was his family who brought the claim and it is likely that in many cases, those suffering from mental disorders or those considering themselves to be of weak character will not believe that they have been wronged. This is reiterated by the Hippocratic tradition and it is an essential requirement for the practice of forensic medicine on psychiatric patients, for the doctor to gain informed consent from the patient's legal guardian. There must exist some evidence or a reliable witness to confirm harm done to another, if claims are to be supported by psychiatric or medical assessment. The final instance is when the injured party has died, the action can be brought by those representing the deceased. This entails the need for provisions as to the time limits for claims in relation to how long after the death an action can be brought. In short, identifying the injured party involves careful consideration of the capability and desire to recognize the harm which has been suffered.

3.2. Determination of the Perpetrator

For an individual plaintiff pursuing a claim against another individual, the process is relatively straightforward. It is usual for legal proceedings to be initiated with a letter of demand from the plaintiff's lawyer to the alleged perpetrator, in which it is outlined that the plaintiff is seeking compensation for harm suffered as a result of the alleged wrongful act of the recipient. Prior to the commencement of proceedings, legal action can often be avoided as the defendant may concede to avoiding court by agreeing to an out of court settlement. Should the defendant refute the claims, legal proceedings will initiate. At this stage, the defendant will be named as the alleged perpetrator and it is crucial that the plaintiff can prove that the harm suffered was a direct result of a specific act or a failure to act by the defendant. This is often achieved through obtaining evidence based on the plaintiff's psychiatric records and/or expert testimonies. If it can be shown that the harm was due to the defendant's actions and was not coincidental, the courts will find that the defendant is liable for the harm and the plaintiff's claim is substantiated. The determination of the perpetrator is a crucial element of Moral Damage claims in identifying who was responsible for inflicting the harm. It may be that the alleged perpetrator is an individual, a collective body or an organization, and the onus on the plaintiff will vary depending on the nature of the alleged perpetrator. Identifying and pursuing a claim against a State or organizations can often provide additional challenges for the plaintiff and as such, it is beyond the scope of this essay to cover determination of the perpetrator for anything other than claims against individuals.

3.3. Assessment of the Harm Suffered

This is a concept that is vitally important in Roman-Dutch delictual law, and to that end the concept of patrimonial loss or an impairment to a pecuniary interest was necessary to ground a cause of action. The importance of this cannot be doubted, even public policy decisions for instance the exclusion of compensation for normal grief and sorrow in fatal claims under the Compensation for Occupational Injuries and Diseases Act in South Africa, demonstrate that moral damages claims will never take preference over pecuniary claims. As Roman-Dutch law is not codified it is difficult to predict how the idea of Moral Damage fits into the current legal framework existing in South Africa, what is necessary to assess is the development in the Roman-Dutch principles of delict and requirements for non-patrimonial damages including the Additional Expenses and Loss of Earning Capacity. The adoption of coal-face value theory and the requirement of a genuine subjective condition. Whilst the primary facet to Moral Damage claims themselves will be the development of a value judgement by the judiciary between acceptable and unacceptable conduct, and the extent of liability in delict. Assessment of the harm suffered is a multi-staged process, not dissimilar to the assessment of psychiatric injury. This will be facilitated by the identification of the injured party, and a consideration of affected interests bringing us closer to a clear idea of how the harm is evaluated in the context of the full cause of action for the claim.

4. Procedural Aspects of Moral Damage Cases

In an article of the Jordanian Civil Code, a claim "an act of declaration whereby a right is determined or kept alive" it mentions that lifelong claim has no effect and will be null and void after 30 years from the time it was made effective. Continuing claims are effective for 10 years and transient claims may be lost after a year has passed. This is important for Moral Damage cases, since the victim may not realize the full extent of the damage caused by the wrongdoer until much later. The near impossibility of early detection of delayed post-traumatic stress disorder that occurs after a stressful event that involves threat to life or physical integrity and its potential lasting over for years can be considered a continuing claim, but under this article, they would have no claim to the damages caused. Evidence submitted by both defendant and plaintiff is made effective for proving which party's case it supports under Article 2 of the Jordanian Civil Evidence Law.

Procedural point of view is very important in considering Moral Damage cases from its outset at the time of filing a claim "Civil Legal Framework for Moral Damage in Jordanian Law". There is no different procedure for the trial or arbitration of Moral Damage cases, rather the outcome of the case would depend on the nature and standard of proof required for Moral Damage which is mentioned under Articles 72, 69 of JC whereby the victim of Moral Damage would have to prove the act of the wrongdoer caused him physical harm or mental anguish in order to claim compensation, and in doing so the wrongdoer would have to defend himself by proving there was no wrongdoing.

4.1. Filing a Claim and Statute of Limitations

Statute of limitations refers to a time limitation for initiating a claim and is a procedural defence that may be taken by the defendant. The basic statute of limitations for personal injury claims is 3 years as stated in article 149 of the Limitation law 1966. Any claim filed after the expiration of this period will be time barred and the injured party will be unable to claim compensation. Claims for mental injury caused by another tortious act are also subject to a 3-year limitation period as per personal injury claims, provided that the claim is filed when the injury was first sustained. The difficulty lies in identifying when the injury was first sustained in cases involving delayed psychological reactions or a series of events causing further mental harm. The general date of completion will be used as a guideline in such cases. This limitation period

will pose significant problems for victims of mental injury inflicted during childhood. An action for compensation in such cases must be brought within 3 years of the injured party reaching the age of majority, as minors are also subject to the 3-year rule, or within 3 years of the date of the last event in a series of events causing continuing injury.

The injured party initiates a claim by filing a civil lawsuit against the party believed to have caused the injury. A claim for Moral Damage can be brought as an independent cause of action or in conjunction with a claim for compensation for material losses arising from the same event. Damages for mental pain and suffering cannot be claimed through the criminal courts, therefore the injured party must go through the process of filing a civil claim. The burden of proof will be explained further on in section 6.2, however it is important to mention here that the lower standard of proof in civil cases makes it easier for an injured party to substantiate a claim for compensation for mental suffering than the strict criminal standard.

4.2. Burden of Proof and Evidence

In cases of Moral Damage, however, the rule can be said to be somewhat different; although what that rule is, it is difficult to determine from the case law. It is submitted that in practice, the claimant is required to prove his case on the balance of probabilities but if he cannot do so, it will not necessarily mean that the claim fails. This is because most judges and lawyers will apply what is effectively a higher burden or degree of proof when assessing any conduct, decision or policy of a public authority. This is especially true in the modern human rights era. If it is concluded that the claimant has raised an arguable case that the authority acted unlawfully and in breach of duty, in circumstances where such a breach could entail serious legal consequences, a judge may well consider that the issue should be tested at a full trial where the authority has to answer for its actions. In the context of deciding a strike out application under what is now CO19r3, Maurice Kay LJ (as he then was) said that the question is ultimately whether the case should be summarily disposed of on the basis that it is inconceivable that the claimant could prove its case at trial. This suggests that a claimant can have an arguable case without being able to prove it on the balance of probabilities. Success at trial still requires proof on the balance of probabilities but for the reasons stated, a claimant who fails at the interlocutory stage may not necessarily be ordered to pay costs. This is important in light of the fact that Moral Damage cases can be decided on a preliminary issue. Defining the burden and degree of proof is of significance and peculiar importance when it comes to Moral Damage cases. In general, ordinary civil cases are decided on the balance of probabilities and the claimant is required to prove his case, or the necessary parts of it, according to that standard. Failure to do so means the claim will fail and the defendant will be awarded his costs. If the claimant is successful in reaching the standard of proof, it simply means that the scales tip in his favour and he is entitled to judgment.

4.3. Role of Expert Witnesses

Demonstrative plainly this sort of observer is expected to be of incredible utility to the appointed authority who is frequently not suitable to the extraordinary learning identifying with a specialized matter up for a choice. The appointed authority isn't committed to utilize the proof of expert witnesses and resultantly they are regularly alluded to all things being equal or command as right of point of reference guidance. If he chooses to concede such proof, the issue is consequently arrived by they chose are of various master observers who are to affirm the realities identifying with a supposition and discover the genuine concerns of the case may frequently become tangled.

Witnesses are a basic segment of the civil lawful cycle in Jordan. They are called to affirm realities pertinent to the case and are normally lay witnesses unaffiliated with one or the other gathering. To be sure, there is an expansive prudence given to some other class of observer, called the master observer, who is considered as having uncommon information identifying with the matter in the suit inferable from their extraordinary training, preparing, or experience.

The contribution of expert witnesses is determined by and large by Article 187, which gives that when a reality is to be demonstrated upon the feeling of people having a unique information in regards to it, the assessment of such people should be given. This verse has been deciphered by the court as meaning it is required that supposition proof should emerge from master observers to be acceptable in court. This has the impact of Sales turning into a two briefly on the off chance that one side produces a master to express an assessment depending on a given certainty, the opposite side should deliver a contending master with an alternate assessment on that reality.

5. Conclusion:

Infringement of personal rights is a complicated issue in the legal sense, and there is no doubt that moral damage causes suffering to an individual. Nevertheless, the infringements are sometimes too small to make the law of torts a satisfactory means for providing redress. This is particularly true in the case of defamation. However, the Law Commission's proposals on damages for non-pecuniary loss provide a clear rationalization of that whole area of law in terms of the amount of compensation awarded in mental suffering cases. This approach should ultimately lead to clarity and a more predictable result for litigants in tort cases involving moral damage. With the time of more than 20 years having passed since federation, it is indeed arguable that the loss is irreparable. Many individuals had only one chance to obtain a given professional qualification and have provided the basis for exemption by alleging that the direct or indirect cost of increased educational requirements cannot be compensated by an award of money. It is a difficult question but one which may have to be assessed by the courts judiciary on a case-by-case basis.

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