

SCOPE OF COMPENSATION FOR MORAL DAMAGE IN CONTRACTUAL LIABILITY ACCORDING TO THE PROVISIONS OF JORDANIAN LAW

ÂMBITO DA COMPENSAÇÃO POR DANOS MORAIS NA RESPONSABILIDADE CONTRATUAL DE ACORDO COM AS DISPOSIÇÕES DA LEI JORDANIANA

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ABSTRACT

Objective: This article examines the concept of moral damage within the context of Jordanian contractual liability, focusing on the legal frameworks governing compensation for non-material harm. It aims to analyze how Jordanian law addresses moral damage, particularly in cases involving fraud or gross negligence, and explores potential legislative reforms to broaden the scope of compensability.

Methodology: The study employs a qualitative, descriptive, and analytical approach, examining Jordanian legal texts, judicial rulings, and comparative insights from foreign legal systems such as France and Germany. It investigates the limited recognition of moral damage in Jordanian courts and identifies key areas for reform, particularly concerning Article 363 of the Jordanian Civil Code.

Results: The findings reveal that Jordanian law compensates moral damage only in specific cases of gross negligence or fraud, limiting the protection available to injured parties. The study highlights the need for legislative amendments to broaden the compensability of moral damage in contractual liability cases.

Conclusions: This research proposes reforms to Jordanian legislation to better address moral damage in contractual liability, aligning the legal framework with



international standards to provide more comprehensive protection for non-material harm.

Keywords: Moral damage; Contractual liability; Jordanian law; Compensation; Legal reform.

RESUMO

Objetivo: Este artigo examina o conceito de dano moral no contexto da responsabilidade contratual jordaniana, com foco nas estruturas legais que regem a compensação por danos não materiais. O objetivo é analisar como a lei jordaniana trata o dano moral, particularmente em casos de fraude ou negligência grave, e explorar possíveis reformas legislativas para ampliar o escopo da compensabilidade.

Metodologia: O estudo emprega uma abordagem qualitativa, descritiva e analítica, examinando textos legais jordanianos, decisões judiciais e comparações com sistemas jurídicos estrangeiros, como os da França e Alemanha. Investiga o reconhecimento limitado do dano moral nos tribunais jordanianos e identifica áreas-chave para reforma, especialmente em relação ao Artigo 363 do Código Civil da Jordânia.

Resultados: Os resultados revelam que a lei jordaniana compensa o dano moral apenas em casos específicos de negligência grave ou fraude, limitando a proteção disponível para as partes lesadas. O estudo destaca a necessidade de emendas legislativas para ampliar a compensabilidade do dano moral em casos de responsabilidade contratual.

Conclusões: Esta pesquisa propõe reformas à legislação jordaniana para tratar melhor o dano moral na responsabilidade contratual, alinhando o quadro jurídico com os padrões internacionais para proporcionar uma proteção mais abrangente para danos não materiais.

Palavras-chave: Dano moral; Responsabilidade contratual; Lei jordaniana; Compensação; Reforma legal

1 INTRODUCTION

This study delves into the concept of moral damage and its legal significance within the framework of Jordanian contractual liability. Moral damage, unlike material damage, pertains to the psychological, emotional, and social well-being of individuals and is an increasingly relevant factor in legal disputes arising from breaches of contractual obligations. In Jordanian law, contractual liability refers to a party's



obligation to compensate for damage caused by failing to fulfill a contractual commitment. However, the inclusion of moral damage as part of compensatory mechanisms in contractual liability remains a complex and often contested issue.

The Jordanian Civil Code, particularly Article 266, stipulates that compensation should include monetary amounts or guarantees equivalent to the harm suffered, with tort liability and evident wrongdoing serving as the basis for such compensation. However, moral damage is not always comprehensively addressed, particularly in cases where breaches of contract cause harm beyond mere financial losses. This study seeks to explore the current legal frameworks, analyze judicial rulings, and assess the position of the Jordanian legislator concerning the compensation of moral damage in the context of contractual liability.

The objectives of the study are:

- Analyzing existing legal frameworks and judicial rulings in Jordan related to moral damage.
- Identifying challenges and issues related to compensating moral damage in the context of contractual liability.
- Examining judicial cases to ascertain the stance of the Jordanian legislator on this matter (Al-Arabi, 2009).

The significance of this research lies in its potential to contribute to achieving a more balanced justice system by addressing the gap between the recognition of moral damage and the compensation awarded for it. Just as physical damage impacts the body and health, moral damage affects the psychological well-being of the injured party. Yet, the failure to adequately compensate for moral damage often results in an imbalance where the harm suffered is not fully addressed by existing legal frameworks. This imbalance not only undermines the injured party's rights but also raises questions about the fairness and completeness of the Jordanian contractual liability system.

Furthermore, the study addresses the scarcity of judicial rulings in Jordan on the issue of moral damage, a gap that complicates the establishment of consistent legal precedents. Given the limited number of rulings, the study relies on both Jordanian judicial decisions and comparative analyses with foreign legal systems to enrich the discussion and draw meaningful conclusions (Al-Habbabseh, 2020). Comparative analysis, especially with countries such as France and Germany, which have well-developed legal frameworks for compensating moral damage, provides valuable insights into how Jordanian legislation might evolve to accommodate more



comprehensive compensation mechanisms (Khawaldeh, 2007). By learning from these foreign systems, this research hopes to propose reforms that could enhance the treatment of moral damage within Jordanian contractual law.

Ultimately, this study aims to offer recommendations for improving Jordanian legislation concerning the compensation of moral damage in contractual liability. Emphasis is placed on the need for clearer guidelines and standards for determining when and how moral damage should be compensated. It is hoped that this research will inform future legislative reforms and judicial decisions, ensuring that the Jordanian legal system becomes more equitable, addressing both material and moral harms with a fair and just approach.

2 METHODS

The methodology employed in this study is rooted in a qualitative descriptive and analytical approach, carefully designed to explore the legal implications of contractual liability and moral damage in Jordanian law. Several key methods were integrated to provide a comprehensive understanding of the subject:

Descriptive and Analytical Method:

This method forms the backbone of the research, allowing for an in-depth description and analysis of Jordanian laws and judicial rulings related to contractual liability and moral harm. Through a detailed examination of legal texts, including Articles 355/1, 267, and 363 of the Jordanian Civil Code, this approach facilitated the breakdown and interpretation of the legal provisions, identifying the scope and limitations of compensation for moral damage in contractual breaches.

Judicial and Foreign Legal Analysis:

Given the scarcity of relevant rulings in Jordanian courts, this study relied on a comparative analysis of both Jordanian and foreign legal systems. The comparative legal analysis drew on examples from common law jurisdictions such as the United Kingdom and civil law jurisdictions like France, which provided broader insights into how other legal systems address moral damage in contractual contexts. This method enriched the research by bringing in examples from other jurisdictions, highlighting differences, and drawing parallels that can inform the evolution of Jordanian law in this area.



Scarcity of Judicial Rulings:

The limited availability of judicial precedents in Jordanian courts regarding compensation for moral damage presented a unique challenge. This required the research to focus heavily on analyzing statutory laws and explanatory notes within the Jordanian Civil Code. The method also involved consulting legal doctrines and foreign judicial applications to draw inferences that could guide the interpretation and application of Jordanian law in future cases. By examining legal principles from other jurisdictions, the study provides a foundation for proposing reforms to Jordanian law, particularly in the areas of moral damage and contractual liability.

Through the integration of these methods, the study provides a multidimensional analysis of how moral damage is addressed in Jordanian contractual liability, offering both a legal critique and practical recommendations for legislative reform, such as amending Article 363 and establishing standards to differentiate between minor and gross negligence.

3 LITERATURE REVIEW

The Nature of Contractual Liability and Moral Damage

Contractual Liability: Contractual liability is an essential component of civil law that governs the obligations of parties in contractual agreements. It arises when one party to a contract fails to perform their obligations as agreed, causing harm to the other party. The purpose of contractual liability is to ensure that the aggrieved party receives compensation or performance, thereby maintaining the balance and fairness of contractual relationships (Far, 2021). In the Jordanian legal system, as in most civil law countries, contractual liability emphasizes the binding nature of agreements. The principle of *pacta sunt servanda* (agreements must be kept) underpins this concept, reflecting the legal obligation of parties to fulfill their contractual commitments.

In Jordanian law, contractual liability is governed by several provisions in the Jordanian Civil Code, most notably Article 355/1, which mandates that the debtor must fulfill their obligations if specific performance is possible. However, if specific performance is not feasible, the creditor has the right to seek compensation for damages. This establishes a framework that prioritizes the performance of contracts, ensuring that breaches are addressed through remedies such as compensation or



enforcement (Jordanian Civil Code, Article 355/1).

What distinguishes contractual liability from tort liability is its basis in pre-existing agreements. While tort liability arises from breaches of general duties (e.g., negligence), contractual liability is concerned with breaches of obligations that are explicitly agreed upon between the parties (Khawaldeh, 2007). In this way, contractual liability focuses on protecting the rights and expectations that arise from the contractual relationship itself, rather than general duties imposed by law.

Establishing Contractual Liability: For contractual liability to be established, three primary conditions must be satisfied: (1) the existence of a valid, enforceable contract, (2) a breach of that contract, and (3) the resulting damage. These elements are crucial for determining when compensation is appropriate under Jordanian law, as they define the circumstances under which a party may be held liable for damages (Far, 2021).

The Jordanian Civil Code emphasizes the need for a valid contract as the foundation of contractual liability. This includes mutual consent, lawful purpose, and the capacity of the parties to enter into a contract. Once these elements are established, any breach of the agreed-upon obligations may result in legal consequences (Jordanian Civil Code, Article 355/1). Courts in Jordan have consistently upheld the principle that contractual obligations must be respected, and parties who fail to meet their commitments may be held accountable for any harm caused by their breach (Jabouri, 2011).

In addition to the breach, damage must also be proven. The Jordanian Civil Code limits compensation to actual damage, as stated in Article 263, which excludes potential or hypothetical losses unless fraud or gross negligence is involved (Far, 2021). Furthermore, the creditor must establish a direct causal relationship between the breach and the damage, ensuring that compensation is awarded only for harm directly resulting from the breach.

Elements of Contractual Liability: The three critical elements of contractual liability—breach, damage, and causation—are interrelated and must all be present for liability to be established. Each element plays a specific role in determining the outcome of contractual disputes.

Breach of Contract: A breach occurs when one party fails to perform their obligations as outlined in the contract. Breaches can be intentional, due to negligence, or involve partial performance that does not meet the terms of the contract (Khawaldeh,



2007). Jordanian law categorizes breaches based on the severity of the failure, with more serious breaches potentially leading to greater compensation or penalties.

Damage: Damage is a crucial factor in determining liability, as compensation is generally awarded only for actual harm caused by the breach. Article 263 of the Jordanian Civil Code specifies that compensation must reflect the actual damage at the time it occurred, excluding potential or future harm unless fraud or gross negligence is involved (Far, 2021). This provision ensures that compensation is based on real, measurable losses, maintaining fairness in contractual disputes.

Causation: The causal relationship between the breach and the damage must be established for liability to be imposed. Jordanian law presumes causation if a breach has occurred and damage is evident, but the debtor can contest this by proving that their breach did not cause the damage (Jordanian Civil Code, Article 263). This presumption simplifies the legal process for the injured party while ensuring that the burden of proof lies with the debtor in cases of contested causality.

Moral Damage in Contractual Liability

Concept of Moral Damage: Moral damage, in contrast to material damage, refers to harm that affects an individual's non-financial interests, such as their dignity, reputation, or emotional well-being. In legal terms, moral damage encompasses harm to personal feelings, emotions, honor, and social status, which do not directly impact an individual's financial assets but can have profound personal consequences (Fuda, 1998). In Jordanian law, Article 267 of the Civil Code explicitly recognizes moral damage and provides for compensation in cases where personal freedoms, honor, or reputation have been harmed (Jordanian Civil Code, Article 267).

The recognition of moral damage is significant because it addresses the intangible harms that individuals may suffer in the course of contractual breaches. For example, a breach that results in slander, defamation, or a violation of privacy can cause significant emotional distress or reputational harm, which deserves recognition and compensation even if no financial loss is involved (Marcus, 1992). While material damages are easier to quantify, moral damages require a deeper analysis of the non-financial impact on the injured party.

In many cases, the recognition of moral damage in Jordanian law aligns with international legal standards, which also provide compensation for non-financial harms in certain circumstances. However, the scope of moral damage compensation in Jordan is somewhat limited, as it is generally restricted to cases involving gross



negligence or fraud, as discussed below.

Conditions for Compensation of Moral Damage: To receive compensation for moral damage, several conditions must be met. The damage must be directly caused by the breach of contract, personal to the injured party, and certain or inevitable in the future (Far, 2021). These conditions ensure that compensation is awarded only for real and verifiable harm, preventing frivolous claims for moral damage. Moreover, the damage must not have been previously compensated, as this would lead to unjust enrichment (Al-Habbabseh, 2020).

The requirement for certainty is particularly important in the context of moral damage. Unlike material damage, which can often be quantified with relative ease, moral damage involves subjective experiences that may be more difficult to prove. Courts must carefully consider the evidence presented to determine whether the moral damage is legitimate and deserving of compensation. Additionally, the direct link between the breach and the harm must be established, ensuring that the moral damage is a natural result of the contractual failure (Far, 2021).

Forms of Moral Damage: Jordanian law does not provide an exhaustive list of all forms of moral damage, but Article 267 offers several examples, including harm to personal freedom, honor, and reputation. Judicial rulings in Jordan have expanded on these examples, recognizing that moral damage can take various forms, such as emotional distress, psychological pain, or social stigmatization (Al-Sanhouri, 1968). Compensation for these forms of harm acknowledges the broader impact of contractual breaches on individuals' lives beyond mere financial loss.

For example, slander or defamation that results from a breach of contract can lead to reputational harm, which may be compensated if the injured party can demonstrate the emotional or psychological toll it has taken. Similarly, violations of privacy or personal rights may lead to compensation for the emotional distress caused by such breaches (Far, 2021). In these cases, the courts must balance the need to provide fair compensation with the challenges of quantifying non-financial harm.

The Position of the Jordanian Legislator on Compensation for Moral Damage

Prohibition and Permission of Compensation: In Jordan, compensation for moral damage in cases of contractual liability is generally prohibited unless the breach involves fraud or gross negligence. Article 363 of the Jordanian Civil Code restricts compensation to actual financial losses, reflecting the legal system's emphasis on measurable harm (Jordanian Civil Code, Article 363). This limitation stems from a



reluctance to award compensation for subjective, non-financial harm in the absence of clear evidence of wrongdoing. However, if the breach involves gross negligence or fraud, Article 358 permits compensation for both material and moral damage (Nouri, 2001).

The distinction between ordinary breaches of contract and those involving gross negligence or fraud is critical. While most breaches do not lead to compensation for moral damage, the presence of intentional wrongdoing or extreme carelessness transforms the contractual liability into tort liability, making the offending party responsible for both financial and non-financial harm (Fouda, 1998). This legal framework ensures that egregious breaches of contract are addressed more comprehensively, protecting the injured party's non-material interests.

Challenges in Compensating for Moral Damage: One of the key challenges in compensating for moral damage is the difficulty of quantifying non-financial harm. Unlike material damage, which can be calculated based on financial losses or physical harm, moral damage involves subjective experiences that are harder to measure. Courts must consider various factors, such as the extent of the emotional harm, the circumstances of the breach, and the impact on the injured party's life, when determining the appropriate level of compensation (Far, 2021).

In addition, there is a need for clearer definitions and standards for moral damage in Jordanian law. While Article 267 provides some guidance on what constitutes moral damage, the lack of detailed criteria for assessing compensation creates uncertainty in legal disputes (Al-Habbabseh, 2020). Judicial discretion plays a significant role in determining the outcome of these cases, but greater clarity in the law could help ensure more consistent and fair rulings.

4 RESULTS

In connection with the treatment of moral damage under Jordanian contractual liability, ongoing debates focus on its compensability, particularly in cases involving fraud or gross negligence. As revealed by this study, compensation for moral damage is permitted only under strict conditions. The Jordanian legislator has clearly limited the instances in which moral harm can be compensated, favoring compensation for tangible, material damage in most cases. The distinction between moral and material



damage remains a key point of contention in legal discussions surrounding contractual breaches.

According to the Jordanian Civil Code, moral damage can be recognized when the injury impacts non-financial interests, such as reputation or emotional distress. This study has shown that, under Article 267 of the Civil Code, moral damage can arise from harm to a person's dignity, honor, or social standing. However, Article 363 restricts compensation to actual financial loss, thereby excluding moral damage unless the breach involves fraud or gross negligence (Nouri, 2001). From a practical standpoint, this creates limitations in addressing the emotional or psychological harm that an injured party may suffer in contractual disputes.

Based on the existing legal frameworks and judicial rulings, it is evident that moral damage is undercompensated in Jordanian contractual disputes compared to material damage. In cases involving gross negligence or fraud, Jordanian law allows for a shift from contractual liability to tort liability, opening the possibility for compensating both material and moral harm. However, this shift occurs only under very specific circumstances, leaving most cases of contractual breach without compensation for moral damage. This conservative approach aligns with other civil law jurisdictions but differs from common law systems, where non-material harm such as emotional distress is more widely recognized (Al-Habbabseh, 2020).

From a comparative perspective, the treatment of moral damage in France and Germany provides useful insights into how Jordanian law might evolve. In these legal systems, courts are more inclined to compensate for emotional distress or reputational harm, especially when it directly results from a contractual breach. In contrast, the Jordanian judicial system exercises caution, focusing primarily on measurable financial losses and leaving moral damage under-explored in legal precedents.

Summarizing the analysis of moral damage in Jordanian contractual liability, it becomes clear that while the law recognizes the concept of moral harm, its compensation remains largely restricted. This study supports the position that further legislative development is required to clarify the scope of moral damage in cases of contractual breach. Specifically, there is a need to amend Article 363 to provide explicit provisions for compensating moral damage in cases involving gross negligence or fraud. This would align Jordanian law with international best practices and provide more comprehensive protection for non-material interests.



5 DISCUSSION

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6 CONCLUSIONS

In light of the foregoing, we can conclude that moral damage in Jordanian law is not fully developed as a compensable aspect of contractual liability. While the Jordanian Civil Code, particularly Article 267, acknowledges moral harm, its compensability is highly restricted to cases of fraud or gross negligence. This study has shown that these strict limitations have led to an imbalance in the compensation system, where emotional and psychological harms are often overlooked unless the breach reaches a certain level of severity.

Although the Jordanian legislator has recognized the possibility of compensating for non-material harm, the absence of clear provisions for moral damage in cases of contractual breach without fraud or gross negligence limits the scope of protection available to injured parties. This narrow interpretation leaves many forms of emotional harm and reputational damage unaddressed, in contrast to the more developed frameworks seen in foreign legal systems, such as France and Germany.

Further, Article 363 of the Jordanian Civil Code remains a key legislative gap that requires amendment. Currently, this article restricts compensation to actual financial loss, which excludes the broader recognition of moral damage except in exceptional cases. Amending this article to explicitly provide for compensation in instances of moral damage would mark a significant step toward achieving a more equitable legal framework.

Additionally, this study suggests that clear criteria should be developed to help differentiate between minor and gross negligence, as this distinction plays a crucial role in determining whether moral damage is compensable. By establishing such guidelines, Jordanian courts would have a stronger foundation for making consistent



rulings on moral harm and ensuring justice for injured parties.

Finally, the comparative legal analysis provided by this study shows that Jordanian law can benefit from adopting more comprehensive standards for compensating moral damage. Aligning with international practices could lead to a more balanced system that adequately addresses both material and moral harms in contractual disputes. Overall, the need for legislative reforms, particularly regarding Article 363, is essential for improving the Jordanian legal system's approach to moral damage and ensuring more just outcomes in future cases.

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