

Direct damage and factors affecting compensation

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Abstract

This study aims to clarify the nature of the damage within the scope of civil liability, and the consequences of the damage from the provisions borne by the cause of the damage, and what is the relationship of direct and indirect damage in this aspect, and the matter does not stop at this point, so the position of Islamic jurisprudence has a share in that. The study also aims to indicate the factors that would change the value of compensation, whether by increase or decrease.

Introduction

Civil liability is based on three pillars (error and damage and the causal relationship between error and damage (1). It harms one member of the community or a group of individuals and does not harm the entire community

Neglecting the destruction of others' money, selling someone else's property, unfair competition, and the doctor's mistreatment of his patient as a result of negligence, negligence and the lawyer's slowness in submitting the appeal on time, which caused the loss of his client's opportunity to benefit from it, and the buyer's procrastination in paying the price of what he bought does not harm the entire community, but rather specific individuals. Therefore, civil liability arises

And that the act that is issued by the person and that results in harm requires compensation, but in this case we will verify the type of harm that befalls the injured person and that requires compensation Islamic from it. This problem is related to the clarification of the concept of damages, since there may be confusion and ambiguity in damages in this regard, and this confusion may relate to distinguishing damages from absolute damage and the legal effects that it entails and the extent of its impact on compensation issues.

Terminology of damage

There were several definitions of harm that differed as a result of the differing opinions of jurists, so we list some of them, as Dr. Al-Sanhouri defined it as a breach of a right or an interest (2)

While Dr. Hassan al-Zhanun defined it as: it is an expression of harm that inflicts on others, which is either material or moral, and the material damage is meant that harm that inflicts financial loss on the injured person and leads to a decrease in his financial liability, for example, the infringement of his financial rights such as the right to property through usurpation or destruction, and for example, prejudice the human body and its health.

As for the moral damage that affects a person's honor, reputation, consideration, and social status, such as the harm inflicted on the victim in the crime of insult, slander, or indecent assault, for example (3)

That is why we find Dr. Suleiman Marcos, who gave a definition that is limited to civil liability, saying: The harm that entails civil liability and compensation is the harm that a person suffers as a result of violating one of his rights or his legitimate interest.

Whether that right or that interest is related to the safety of his body, his affection, his money, his honor, his dignity, or otherwise (2) the right is an authority granted by law to a specific person and guarantees his protection, while the interest is a material or moral benefit that an individual derives from his work and does not contain the element of obligation per person

Then Dr. Marks clarified that it is not required that the right that is being violated be a financial right, but rather it is more general, and it is sufficient for his opinion that the interest is not in violation of the law.

And the definition that I mentioned here is in conformity with what was advocated by the traditional theory of civil liability, which states (that compensation is required if the damage was the result of a mistake, and this is what we do not adhere to, and it is narrower in its significance than what we aim at (4).

Direct damage and its effects

Civil liability, whether contractual or tortuous, is based on three pillars: error, damage, and the causal relationship between the error and the damage.

Since damage is one of the pillars of this responsibility, and its proof is a necessary condition for its establishment, so that responsibility becomes existing and non-existent with it, there is no responsibility without harm, so the damage must be the result of the debtor's mistake, meaning that the debtor caused by his mistake in causing the damage. It is possible that the damage is not a result of the debtor's mistake, but rather due to a foreign cause that he has no control over, such as force majeure, or the fault of the creditor himself, or the act of others. The causal relationship is interrupted by the intervention of the foreign cause.

Therefore, the damage is divided into several sections:

- 1- Physical and moral damage
- 2- Direct damage and indirect damage
- 3- Foreseeable damage and unexpected damage

Therefore, the focus of our research will be the direct damage and the factors affecting compensation, which is the inevitable and necessary result of the wrong act, so that if the error had not occurred, the damage would not have occurred because it revolves around the existence and non-existence of the error.

Therefore, events may follow one another, so that the first event is the cause of the second event, and the second event is the cause of the third event, and thus the damages follow and the results are sequenced. Can the first event be considered the cause of the third or fifth event?

The truth is that the last event in this successive series is the result of all the events that preceded it, but is it permissible to consider the perpetrator of the first event responsible for all the damages resulting from these successive events, and what are the damages that must be considered as direct damages that require compensation?

Boett set his classic example of distinguishing between direct and indirect damage, which is an example in contractual liability, but it applies to tort liability as well.

He said, a livestock dealer sold a cow with a contagious disease, and the infection was transmitted to the buyer's livestock, so those livestock spent, and he was unable to cultivate his land, so he lacked money and could not pay his debts, so the creditors seized his money and sold it.

Potet, who gave an exemplary example of the problem of indirect damage, limited the issue to the case of the succession of events that caused a series of damages that affected the plaintiff alone (5).

While other jurists see the problem presented from another side, when the last event is the harmful act for the plaintiff, for example:

When a car owner leaves his car on the street without locking its doors with a key, then a thief steals it and a passer-by runs over it, is the car's owner's negligence considered a reason for the death of this person?

Here, some considered that this issue is accurate, so it is difficult to set a criterion for distinguishing between direct and indirect harm. Therefore, they said that it is a matter of taste and intelligence rather than a matter of law and jurisprudence (5)

However, Dr. Suleiman Marks considered it a matter of facts in which the judge decides the case according to what he sees as the circumstances of each issue individually and is not subject to the oversight of the Court of Cassation (6)

The Iraqi legislator took the opinion that was settled by the courts in France and Egypt, where it stipulated in Article 207, the first paragraph of the Iraqi Civil Code (the court estimates compensation in all cases as much as the harm suffered by the aggrieved party and the loss of earnings, provided that this is a natural result of the work But what is meant by the natural result? The Iraqi legislator did not clarify what is considered a natural or unnatural result, unlike what the Egyptian legislator did, which considered the damage to be a natural result if the creditor was not able to prevent it by making a reasonable effort.

Professor Al-Sanhoury, who extracted this criterion from the judiciary of the Mixed Court of Appeals and adopted it and worked to stipulate it in the Egyptian Civil Code, says that it is a criterion that combines accuracy and flexibility (7)

If we apply this criterion to the example given by Poté, we can consider the death of the sold cow and the livestock to which the infection was transmitted as a natural or direct result of the seller's mistake (8)

But if that is followed by successive damages, it is considered indirect damages or an unnatural result, because the buyer could have avoided them by exerting a reasonable effort if he was able to use other livestock to buy or rent them to cultivate his land, thus stopping the chain of damages that he sustained as a result of the death of the livestock.

In application of this criterion, the owner of the car is not considered responsible for the run-over incident, because this incident is not considered a natural result of his negligence in not closing the doors of his car. It seems that the Egyptian courts were applying this criterion despite the absence of a provision for it in the old civil law (9)

The purpose of requiring direct damage

Note part of the jurisprudence that the purpose of the requirement that the damage be direct is to exclude claims for compensation brought by those who have indirectly sustained the damage.

On this basis, a creditor whose debtor did not pay him the debt that he owed cannot demand compensation from the one responsible for the death of this debtor on the grounds that his debtor would have paid him his debt if he had remained alive because the damage claimed by the creditor is very far in this matter

The Egyptian judiciary took this direction, as the Mixed Court of Appeal ruled in this sense that (if the administration refused to renew the license of one of the transport companies, or was mistaken in not renewing the license, it was responsible for the damage caused to this company, but it is not responsible for compensating the seller of transport vehicles if he was injured Damage as a result of not renewing the license by missing deals that were expected to be concluded with the company that did not renew its license) and it is noted that the defendant has injured two people, not one

The company and the damage sustained by it directly and the seller of the transport vehicles and the damage sustained by it indirectly (10)

Therefore, we see that the majority of legislation has expanded the scope of tort liability, which prompted some courts to rule that if the injured person was harmed because of his voluntarily to ward off the consequences of a harmful act that endangered the life of others, then the damage inflicted on him is considered a direct result of that harmful act, and the perpetrator will be questioned about it (11)

It is noted that the French courts have begun to place the problem of direct and indirect harm in its true scope, which is the causal relationship between the error and the damage, and they judge that the damage is direct in every case, it becomes clear to them that it is the natural result of the error and does not rule that if this fact is absent in front of them. The French Court of Cassation has confirmed in many Its civil decisions that the existence of a causal link and a direct character is but one thing

It is also noted that the Iraqi legislator in Article 207 F1 of the Civil Code, which states (the court estimates compensation in all cases to the extent that the aggrieved party sustained damage and lost earnings, provided that this is a natural result of the illegal act) that he has taken the criterion of discrimination between Direct and indirect damage, and this is consistent with the effect that the legislator has arranged on the wrongdoing of the aggrieved party, which is stipulated in Article / 210 of the Civil Code (the court may reduce the amount of compensation or not award compensation if the aggrieved party participated in the damage, increased it, or worsened his position by mistake. Debtor (10)

The reason for reducing or cancelling compensation in these cases is that the aggrieved party has committed a mistake or participated in it, and therefore he must bear the consequences of what he has done (12)

Civil Liability Provisions

In this requirement, we will refer to the responsibility incurred as a result of direct damage in the first section, while the second is devoted to indicating the extent of the link between direct and indirect damage.

liability arising from direct damage

Material damage is divided into direct and indirect damage and direct into expected and unexpected.

He is not responsible for the direct, unexpected damage, unless he commits fraud or a grave mistake, in which case he is asked for all direct damage, whether it was expected or unexpected, and his responsibility at that time falls to the liability of tort.

This is what the Iraqi legislator has taken in, as the third paragraph of Article / 169 of the Iraqi Civil Code stipulates that (if the debtor has not committed fraud or a serious mistake, the compensation shall not exceed what is usually expected at the time of contracting in terms of loss or gain that is missed) (13)

For example: the tenant may be forced to vacate the house before the expiry of the lease term, because the landlord has not fulfilled his obligation to maintain the property, so he moves to another house equal to the first house, but it is higher in rent, and some furniture is damaged during the transfer, then in the new house there is a contagious disease that is transmitted to him

It is clear from this example: -

- 1- The difference in the rent between the two houses is the expected direct damage that the debtor (the lessor) is obliged to compensate the creditor in this case.
- 2- The damaged furniture is the direct, unexpected damage. The debtor is not asked for his compensation unless he commits fraud or a serious mistake, then he is responsible for his compensation, and his responsibility in this case also falls to the tort liability.

And based on what was mentioned that compensation for damage in contractual liability is limited to the expected direct damage, except in the case of fraud or serious error, as in that case it compensates for all direct damage, whether it was expected or unexpected, but in tort liability compensates for all direct damage being the natural consequence of the error made by the subject (14)

Another aspect of jurisprudence sees that the principle in liability, whether contractual or tortious, is the obligation to compensate for the direct damage in its entirety, even if it is unexpected.

Because the debtor is responsible for all the damage, he is the one who caused it directly by his mistake, but the contractual liability is distinguished by the fact that its source is the contract. The will of the debtor determines its extent, and the law has assumed that this will has been devoted to making the responsibility for the damage limited to the amount expected by the debtor.

This is the amount that can reasonably be assumed that the debtor has consented to, and this assumption serves as an agreement condition that modifies the amount of liability. Which modifies the amount of responsibility.

While others believe that the will of the legislator was directed to the fact that the responsibility of the one who committed fraud or a grave mistake would be more severe than his responsibility, and that is a punishment for him (15)

The extent of the relationship between direct and indirect damage

If the harm that directly affects the person does not cause any difficulty, as long as the causal link exists between the wrong act and the harm, and thus it became a natural consequence of it.

However, the difficulty that arises in the question of verifying the causal relationship and defining its concept and its effects on persons who are not the direct victims of the wrong act.

Where some jurists see that direct damage is what was a natural result of the mistake he made, but to determine what is considered a natural result, Professor Al-Sanhoury uses the text of Article 221 of the Egyptian Civil Code and says: "The damage is considered a natural result if the creditor was not able to avoid it by making an effort. Reasonable)) He comments on that as an expression that combines accuracy and flexibility, and adds that these damages alone maintain a causal relationship between them and the error from a legal point of view. The defendant is liable for it (16)

Others believe that there is no relationship between the natural result of a contractual error and the possibility of avoiding it by the creditor, since the natural result is a material event that is formed by the error that occurred, whether contractual or tortuous, and is transferred from any other cause. It is normal if it can be prevented and how can it be

The same applies to the injury of a person in his body as a result of hitting him. How can the injury be unnatural if he can pay it off from him, as it will not happen in the first place if he was able to prevent it, and therefore it is not permissible to say that the natural result is the one that cannot be prevented by the creditor, whether it is within the framework of responsibility Contractual or tortuous, direct damage is the one that affects the victim and is a direct result of the error, while indirect damage is the one that occurs and is not usually a result of the normal error, whether the error is contractual or tortuous. or cancel a sermon

The criterion that was mentioned is not sufficient to determine direct and indirect damage, which requires setting another criterion

Where Dr. Al-Naqeeb says: The indirect harm is the one that occurs as a result of the original harmful act without being directly related to it, so it is due to its contact with it through another cause, meaning that the original act remains a necessary factor for the occurrence of that harm, but it is not a sufficient factor to cause it, because a cause or Other independent causes are those which, by joining the original act or by its sequence after it and in its circumstance, have provided the damage with the opportunity of its occurrence.

Dr. Mustafa Al-Auji comments on this definition that indirect damage does not see that its occurrence presupposes the intervention of another cause, but rather that its cause is the injury that resulted from the original act and he distinguished between two cases:

The first case / is the case of a person who is injured in his body as a result of a harmful act, which prevents him from performing a contractual obligation towards others, so he loses

what he expected from the profit, here he has suffered an original harm (harm) and a secondary harm (loss of profit)

The second case / is the damage sustained by the contracting party and the beneficiary of the obligee as a result of the failure to implement the contract by the injured person, and consequently he was exposed to loss, so his damage is apostate

The damage here is the result of the non-performance of the contract by the obligated person due to his injury that prevented him from implementing, so this sub-damage is sequentially linked to the original act that resulted in an original damage to the injured and a secondary damage also to the person contracting with him and the beneficiary of the obligator in a rebound manner.

So, the apostate harm is nothing but harm inflicted on someone other than the one who is directly affected by the harmful act. Whoever shoots a bullet at someone and inflicts an injury on him that causes him a certain disability that results in a decrease in his ability to work, there is no doubt that this inability and that lack of ability and the consequent material loss All the costs arising from the injury from the treatment expenses and all the pain and aches that the victim feels are compensable.

As for the apostasy damage, it is the one that does not inflict the person who was shot, but rather inflicts on other people, such as the dependent of the victim with fixed support, if the accident and the consequent lack of ability to earn a livelihood deprive him of his support. Thus, apostasy damage is a direct harm that results as a result of the harmful act, but it affects a person other than the one on whom that act occurred, and it is a harm that gives the person who was injured an independent right to claim compensation for him. (17)

Based on the foregoing, some jurists went to consider that the issue of direct and indirect harm and recurring harm is raised from the angle of the causal link.

Others were of the view that describing direct and indirect damage is useless because it is difficult to differentiate between them when there is a definite causal link between the accident and the indirect damage. Granting compensation for the damage that is linked to the wrong act with a definite causal link, and that the confirmation of the existence of a definite causal link may sometimes be achieved in circumstances and circumstances in which the relationship of damage to the wrong act appears as an indirect relationship, and because jurists are accustomed to consider that a sure causal link results only from direct damage, What is in fact indirect harm is considered by the aforementioned jurists as direct harm, and the adoption of the principle that compensation is required in all cases in which it is certain that the harm is the result of the wrong act (18)

Dr. Mustafa Al-Auji prefers to use the word subsidiary damage to express the indirect damage and the original damage to express direct damage, because in fact, both are directly related to the wrong act.

The singer who was prevented by a shock event from presenting his concert and thus suffered personal harm as a result of losing the proceeds of the concert is a direct victim of the original act, i.e., the shock. It is not a natural result of the original act, but rather a result of the bodily injury that occurred to the victim. This injury, which constitutes direct damage, is a natural result of the traumatic event.

As for the damage caused to the party organizer, it is an indirect result of the accident due to the singer's inability to present the concert. It is between the harm and the wrong act, which puts this harm from the direct results of the wrong act, but it is an act that is a branch of the original act, and this analysis meets what Dr. Al-Naqib said

Thus, if we accept that direct harm is every harm that is a necessary result, then the apostate harm is characterized as direct whenever the act in its circumstance would inevitably entail after the one who inflicted it with a harmful result on a person who is linked to the aggrieved by a link that makes this apostasy happen obligatory, and as we explained in the analysis of the apostate harm on The light of its constituents leads, with its logic, to the opinion that this harm is adapted to direct harm as a description whenever it brings in its reality a necessary result of the original act, so its connection with it is apparent between it.

In sum, the damage is direct, that is, original when it is within the normal and natural sequence of things, and therefore it is a natural result of the original act and is directly and clearly linked to it.

As for the indirect or secondary damage, it is outside the natural sequence of results that usually occur from this act, provided that there is a clear causal link between them. The causal link between it and the original act and the other circumstances surrounding its occurrence or that reflected on the aggrieved, as seen if mediated by other reasons that surrounded the original act and the damage shown to have occurred, so they obscured the results of the original act and that alone would bring about the final result (19)

The position of Islamic jurisprudence on direct harm

The criterion for the necessity of inclusion is the realization of the damage, whatever the type of damage to the victim, and this damage may occur as a direct result of an act committed by the aggressor, or as an indirect result.

Accordingly, we will list some general rules regarding responsibility for the illegal act in Islamic jurisprudence, and then explain the effects of direct damage:

The hadith of the Prophet Muhammad (peace be upon him) There is neither harm nor harm

The word harm has been interpreted in this rule to mean harming others without a right. As for harm, it is an affirmation of the meaning of harm or the meaning of harming others without right

The direct is a guarantor, even if he is not intentional

Article / 92 of the Code of Judicial Provisions, meaning that whoever destroys another person's money shall guarantee it absolutely, whether he intends it or not, because he was directly involved in doing so himself, and also if he destroys a person's life because his incursion is due to him and the damage is caused, then he is guaranteed (18)

The culprit is not liable unless he deliberately

This rule came in Article / 93 of the magazine, which stipulates the availability of intent or intentionality in the event of causing liability for the guarantee.

If the damage is a direct result of the act, the person who caused it must guarantee, whether the person who did it was an aggressor or not, and this is the subject of an agreement between the jurists, so the insane person is guaranteed in his money what he damaged by doing

Likewise, the child, even if, on the day of his birth, he falls on something and damages it, then he is guarantor of his money () and this is due to the general meaning of his saying (peace be upon him) that there is no harm or harm. The implication of the guarantee is the realization of the harm. So, whoever causes financial harm to another is obligated to guarantee, whether he was an aggressor or not an aggressor.

And if the damage was caused by causing, then there is no guarantee for the person who did the causative act, and it is the first act that directly results in the damage, if he was not trespassing in it. Drilled and on the projector the warranty in the second picture for inflicting the damages

But if the offender of the first act is transgressive in that he does not have the right to do it, then he is liable if the act separating him from the harm does not prevent him from attributing that harm to him, and he is not guaranteed if he is prevented from attributing it to him. But if a person deliberately drops an animal into that hole, the damage does not guarantee the hoof, but rather the drop, because of what prevents the proportion of damage to the hoof, which is dropping the drop (20)

And if this animal fell into a well dug on the highway and died in it of starvation or thirst, there is no guarantee on the hoof according to Abu Hanifa, because it died for a meaning in itself, and the guarantee must be if it died by falling, so the damage was attributed to him, while Abu Yusuf and Muhammad went to include it because that happened to him because of Falling and joining him, and the percentage of damage to him did not go away, even if he carried a bad person and walked with him on the road, and he fell on luggage, so he damaged it within, because carrying luggage on the road, even if it is permissible, but it is restricted to the condition of safety and considered trespassing with that, and this indicates the need to observe the aspect of caution and not neglect

If a person cuts a debt document and rips it or burns it, the debt is lost by the debtor's denial of it, and there is no evidence against him within the debt according to Malik and Ahmad, in contrast to the Hanafis and Shafi'is, as they held that its loss was only by denying the debtor, which prevents the percentage of damage and its addition to the burning of the document. Two actions lead to him, and if the first act leads to him without retardation, the guarantee shall be on the one who did the two actions, because the level of the causative act rises to the level of directness and their becoming as one act due to their coexistence (21)

In summary, Islamic Sharia jurists in the branches related to warranty mention the terms damage, damage, usurpation, assault, direct and cause when clarifying the provisions related to liability, and they mean the pillars of warranty or civil liability in Islamic jurisprudence.

Al-Kasani summarized all these expressions and said (every aggression and damage that resulted in damage to others directly or as a cause necessitating the guarantee) (20)

When comparing the pillars of civil responsibility in man-made laws with its pillars in Islamic jurisprudence, it becomes clear to us the following:-

- 1- The element of infringement / which is the cause or reason for damage and damage, corresponding to the material element of the element of error in man-made laws
- 2- Damage and damage / and they correspond to the element of damage in man-made laws, which is the reason for the guarantee

- 3- Directness and causation / they are opposite to the pillar of the causal relationship between the act and the harm, and they are a condition of transgression and its causation according to the jurists (22)

Factors affecting compensation estimation

The factors affecting the estimation of compensation is one of the most important issues of tort liability because it represents the arrangement of the final effect on the commission of the harmful act. In addition, the assessment of these factors belongs to the judge, as the authority to assess the factors affecting the estimation of compensation is entrusted to the courts, which must, above all, accept all a completed case is submitted to it. Otherwise, the judge will be considered abstaining from realizing the right, which is represented in the realization of the right, which we find in civil liability represented by compensation, as it is the penalty of civil liability and the effective judicial means in erasing the damage or mitigating its impact, so the dealing and initiating the application of these factors within the courts. The requirements for estimating compensation, whether the damage is material or moral, are that the judge must take into consideration the circumstances of the aggrieved party that cover the fact of the harmful act and those of the harmed person or those related to the cause of the harm in two demands.

The health status of the victim

The health status of the injured person has a prominent role in the process of estimating compensation, as it is among the factors that are taken into account during the initiation of compensation. It is often called the personal readiness of the injured person, and we mean here the condition of the victim prior to the accident. The health condition plays a role in the process of the judge's handling of compensation. Weak as a result of a disease that differs from a healthy person who has been exposed to a specific accident, this may lead to a shortening of his life years or to an exacerbation of the harm that he suffers from even aggravation of his physical and psychological abilities. The extent of his entitlement to compensation and his heirs or those who support them after him in the event of apostasy damage, so this requirement will discuss what the doctrines of Islamic jurisprudence have said in determining this type of factors affecting compensation, as well as the orientation of legal jurists and the judiciary as being the first concerned with this issue and then addressing the legislation and the extent to which it is considered this factor. The most important factor in the estimation of compensation is all of that will be discussed in the folds of this requirement. What is the importance of the health status that is reflected in the judge's decision to compensate for the damage to both sides? The damage that results from the harmful act and it is up to the judiciary to compensate, so the judge has to take into account this important factor among the factors that affect compensation. Therefore, we find it important that this topic is carefully discussed, through which the jurisprudential opinions in this regard are discussed in addition to the origin and idea of adopting the health status of the injured, as well as the point of view of the judiciary in laws such as Iraqi, French and Egyptian laws, and we are looking for what Islamic jurisprudence has taken in regard to the health status of the injured or not, and the provisions that have been adopted in the provisions approved by jurisprudence. During his neglect and lack of attention, the focus is placed on the legal jurisprudential opinions that discussed this topic, then the opinions that have been settled by the legislation and approved by the judiciary in those countries are addressed and included within the paragraphs of the laws approved in them and how the judiciary used to deal with such a case. In the end, the research will discuss the viewpoint of Islamic jurisprudence with reference to the provisions adopted by Islam in considering the condition of the aggrieved party, let us see whether Islamic jurisprudence has

given weight to this factor in assessing compensation or not. Does Islamic jurisprudence include cases in which the health condition of the affected person is taken into account?

The position of legal, judicial and legislative jurisprudence on the health status of the victim

Most of the French jurists consider the previous health condition of the injured when estimating compensation, and this case shows its images in compensation for bodily harm, whether moral or material. Diseases also that the death of a healthy person is more complicated than a sick person in relation to his family. If a person was sick and then had an accident, its consequences would not have been formed or its effect would have occurred had it not been for his previous illness, so opinions differed in that, so Professor Mazo and the opinions and those who supported him in this direction went to the necessity of full responsibility for his action regardless of the previous illness and this trend leads to the disease being for the injured. It was not the only reason for the damage. The accident is the basis for that which resulted in the harm that led to death and not the disease. As for the other trend, which tends to reduce liability, because the harmful act did not have anything to do with causing that disease, and because that disease had a main cause that led to the death of the injured person, and this is what was mentioned by the jurist Demoges in France. As for the Arab legal jurisprudence, Prof. Dr. Al-Sanhouri held that the state of health has a significant impact on the estimation of compensation for fatal or non-fatal damages. The human health safety, psychological condition and structural composition play a major role in this and other jurisprudential opinions with him in that and this also went to some. (22)

For a person who lost one of his eyes, the consideration of his compensation is different from the one who loses both eyes, or to be exposed to another damage that leads to the injury of the other eye. He has been harmed, so the lesson here is with the injured person, not with a mere person. With all that, the victim's previous condition of the accident that resulted in the damage cannot be a foreign cause that denies the responsibility of the harmful act, so the harmful act remains responsible despite the disease or injury that affected him (.). From saying that the patient's health condition led to the occurrence of the harm, but it is not the only one that would have achieved the harm had it not been for the accident, and that was divided jurisprudence from the impact of the injurer's health condition on the estimation of compensation. It must be done with a subjective and not objective criterion. As for the factors that are considered as phenomena in which the health status of the injured person is determined, there are many factors through which the health status of the injured person emerges, such as the age factor, the degree of tolerance of the injured, and the injured organ in Those who hold this view assert that if a person is injured and loses some of his toes, then he has a disability of 5%, and then suffers the damage of amputation of his leg, then this leads to damage by 50%, so the final compensation rate will be the value of the damage that resulted from the accident minus the percentage of 5 % of the previous injury. As for the other opinion, it is that the previous health condition of the injured person is not taken into account when estimating compensation for the harmful act. I decided to limit these factors to the scope of the physical injury only, without other types of damage. Dr. Saadoun Al-Amiri stated that the damage must be complete if the injury will result in the emergence of a new disease other than the one in the injured. These circumstances are when the judge makes the assessment. Dr. Abdul Majeed Al-Hakim believes that the health condition of the injured cannot be considered a force majeure, and there must be some kind of control in such cases (24).

The position of the judiciary and legislation on it

The variation of the Arab countries in estimating compensation and taking into account the conditions and factors affecting it came as a result of the division of the countries that referred to the Code of Judicial Provisions that were enacted during the Ottoman rule and

explained their impact in Jordan, Palestine, Iraq and other countries such as Egypt, Algeria and Libya that were affected by French law. The French judiciary was reluctant to consider the circumstances surrounding the assessment of the damage, especially the health conditions, as it was previously that the compensation should be full regardless of the health condition. For the work's damages in full despite his willingness to work, because the damage was not caused except through the fault of the official, and the worker's ability to work is determined by his wages, which is the basis for estimating the amount of compensation, where the health condition was initially taken into consideration (25) As for the Egyptian legislator, he took and expanded The Egyptian legislator often took into account the circumstances of the injured, including the health condition when he was injured, before estimating compensation. The Egyptian legislator was not satisfied with mentioning the material damage, but expanded to the moral damage as well. The ruling of the Mixed Court of Appeal came in its decision (the person who lost one eye and then lost the other eye in an accident is the harm that he suffers loses the other eye and his becoming blind is much more severe than the harm that befalls a healthy person who loses one eye). Only me. The decision here was made taking into account health conditions (), and Article 170 of the Egyptian Civil Code stipulates (The judge shall estimate the extent of compensation for the damage incurred by the injured in accordance with the provisions of Articles 221 and 222, taking into account the present circumstances. That the injured person reserves the right to demand, within a certain period, a reconsideration of the assessment.

As for the judiciary in Iraq, it agrees with the jurisprudence that the health condition of the injured person must be taken into account when estimating compensation, because the death of a healthy person causes more harm than the harm suffered by his relatives if he is an elderly person. In estimating compensation and its actions, provided that there is a direct relationship between the injury and death (the heirs of the injured in a car accident are not entitled to compensation for his death if he gains full recovery after the accident and then died after that of old age and heart failure) (26) the Iraqi law did not clearly mention the health status of the injured, but Ford in the text of Article 191 F3 (when estimating fair compensation for damage, the court must take into account the position of the litigants), as well as Article 212 stipulates in observing the requirements of justice in compensation. The primary health condition leads, in reality, to unfairness in terms of the fairness of compensation for the patient's recovery according to the initial health report, which is not recognized to be with the required accuracy. A of that injury, the judiciary did not compensate for that on the grounds that the initial health report referred to the safety of the body and this contradicts justice, as well as that the medical diagnosis itself may indicate a worsening of the injurer's condition after issuing the initial report as a result of a change in health status and the effects of the first injury that results in new damage (27) The research tends to the view of our professor, Dr. Aziz Al-Khafaji, regarding the necessity of finding a real treatment for this case, by taking into account the health condition, the aggravation of the injury and its consequences in the future.

The position of Islamic jurisprudence on the health status of the victim

It is common to talk about Islamic jurisprudence, and when it comes to the issue of compensation, most of the jurisprudential opinions say that Islamic jurisprudence only compensates for material damage, and this is what raises the difference, according to those who pay in this direction that Western jurisprudence on the harm was material or moral until the situation reached the English legislator to compensation for moral damage resulting from shortening the life of the injured. As for Islamic jurisprudence, there is no compensation except for damages that are received on the money, where the guarantee must be made, and the stipulation in which was stipulated that the insured should be movable money and that there is

similarity between it and the money that is given in place of it. This trend was considered, which is known that Islamic Sharia did not recognize compensation for moral damage and the support of Islamic Sharia jurists in that is that compensation is only made with money on the basis of exchange or similar, and the damage in return must be financial damage, while the non-financial is not based on money and no compensation for it (28) The opinions of the Islamic jurisprudence schools varied in this regard, as it was reported from the Hanafi school, which was attributed to Abu Hanifa (in the standing eye, the paralyzed hand, the lame man, and the dumb tongue, a government of justice) (29) and in Molar doors Each molar has five camels, and the front and back of the mouth are equal. As for the Shafi'is, they said about the one-eyed when he puts out the eye of the Sahih and the Sahih, the eye of the one-eyed pops out, both of them are equal. Fifty, if the correct one hits the eye of the one-eyed, he hits one or two eyes, and if he says an eye, we say, then he made the Messenger of God, peace and blessings of God be upon him, and whoever put in it more than fifty has disobeyed the Messenger of God, may God's prayers and peace be upon him and his family, and came in the innovations of trades. There is a trace, in which is the government of justice, and here it must be about the thing and missing the beauty. As for what is mentioned in the small mosque, and everything that is included in the passenger includes the driver and the leader. Because they are caused by their directness.

The condition of damage, which is to bring the animal closer to the place of the crime. It was also said that if two horsemen collide and they die, the sane of each of them must pay the ransom of the other, and here al-Shafi'i said that the wise ones of each must pay the ransom of the other (). As for the Malikis, they said that there is no retribution in the blow, and it was also said that the blow of the sick is not like the right one, nor the strong blow like that of the weak, and the word in it is to make diligence for ignorance in determining the amount of the blow. Then the periosteum, which scrapes the skin, then the slit, which cuts the flesh, and then the joint, which cuts the flesh and the lining, and it is the thin covering that remains between it and the exposure of the bone. It was a mistake, and there is no retribution, but the blood money is included in it. It was said in *mamma* and *al-jafa'ah*, one third of the blood money, and they say that in injuries in which death is expected, such as *al-Hashimah* and *al-Jafa'ah*, it is necessary to wait until the victim's condition ends. In detailing damage, imprisonment, and guarantee, there are several resources. So, whoever hires himself to work with someone else's money, he spoils that money within it, even if it was unintentionally, but even if he was a skilled professor and he worked with perfect consideration, accuracy and caution in his work. Like sewing and spoiling, and if a wall collapses and falls on a neighbor, animal, or passerby and injures him, the owner of the wall is liable if the wall is in the process of collapsing and he knows the situation and does not repair it (30) or demolishes it and leaves it until it collapses, and the guarantee here is from his money and not from his family.

Aggrieved error

The idea of error was not taken into account in most of the old legislations, even Islamic law, and the countries that dominate the philosophy of responsibility have the materialistic tendency. As for the error that appeared in the late Roman era, then the French jurisprudential thought seized this idea to go beyond description and discussion, but to include it in the law and this actually happened in the 1804 law (text of Articles 1383/1382). The effect of the injured person's mistake on the formation of tort liability and therefore its effect on compensation is that one of the two mistakes has taken over the other's mistake, or that each of the two mistakes is independent of one from the other, as often happens in medical errors From the wrong pointing to the doctor and the mistake made by the patient in treating himself, so it occurs here that he is absorbed in the mistake that is no more than the fact that one of the

mistakes exceeds the severity of the other mistake a lot, or if one of the two mistakes is the result of the other mistake, which is clearly embodied in the fact that one of the mistakes is a deliberate mistake or The aggrieved party's satisfaction with the damage he has suffered, and that considering the harm done by the harmed person in the legislation as a foreign cause whose existence negates responsibility, the harmed party's error will be studied in this requirement in dividing it into two branches. Intention to harm, and the second section will discuss the error of the aggrieved party and its impact on the recurring harm. It should be noted that the legislator's use of the term (the aggrieved party's fault) in Article 211 is not appropriate and it would have been better to use it to resolve the act harmful to the aggrieved person, because the Iraqi legislation did not base responsibility for the illegal act on the mistake, but rather established it The Egyptian legislator has used the word "mistaken" on the premeditated infringement, as well as the Syrian law, following the example of the Egyptian legislator, and this rejection was also mentioned in both Bahraini and Palestinian legislation (31).

Victim's fault in tort

The consensus at the level of legal jurisprudence and legislation is that the foreign cause cuts off the causal relationship between the act of the offender and the harm of the aggrieved, and consequently, there is no element of tort responsibility, and this ultimately leads to the impossibility of holding the offender accountable or obligating him to compensate the harm. Most of the legislation, and this is what was stated in the Iraqi Civil Code, Article 211, which states: "If a person proves that the damage arose from a foreign cause in which there is no divine hand, a sudden accident, force majeure, the act of a third party, or the fault of the injured party, he is not bound by the guarantee unless there is a text Or an agreement to the contrary) as well as the text of the Egyptian Civil Code in Article 165 that (if a person proves that the damage arose from a foreign cause in which he has no control, such as a sudden accident, force majeure, a mistake from the injured or a mistake from a third party, he is not obligated to compensate for this damage unless There is a text or agreement to the contrary) It should be noted here that what is mentioned in the above articles of force majeure and a sudden cause, the distinction between them is correct because force majeure is impossible to pay, unlike the sudden cause, its impossibility is relative. Considering that both force majeure and the sudden cause that each of them is unexpected and not payable, and that the distinction between them is unfounded, but this applies to the error that must be proven. The important effects are that the fault of the injured party, which he shares with the fault of the injured to any degree whatsoever stipulated in Article (210) of the Iraqi Civil Code (the court may reduce the amount of compensation or not award compensation if the aggrieved party has participated by his own fault in causing the damage or increased it, or was The debtor's position has worsened) If the subject court here has wide authority, it may decrease compensation or rule in full compensation or not award compensation at all. However, the Iraqi judiciary holds the plaintiff responsible for his participation in the error. The judge's authority is restricted in this without reference to the text of the aforementioned article, and the law participated The Iraqi law agrees with German, Egyptian, and Lebanese law. As for the French law, it did not provide a text in this regard that the nature of the error attributed to the victim deviated in the behaviour resulting from the awareness, so that this error must have its material and moral pillars, so some of the arguments went Opinions point out that the indistinguishable minor does not consider his actions a mistake that entails responsibility. If he participates with the defendant in the formation of the damage, he is not responsible for bearing the consequences, and he asks the perpetrator of the harmful act for all compensation (). When he clearly indicated that non-discrimination is not considered an impediment to not bearing responsibility, and that his participation here in causing damage, he bears part of the responsibility, and the assessment of this remains an authority for the court (32)

It should be noted that the role of the injured person in stopping or limiting the damage can be considered a mistake that the judiciary can consider when assessing compensation. The damage that can be avoided simply by making a reasonable effort on the part of the injured party, and if he does not make that effort to reduce the damage, then he is mistaken because the harmful act (responsible) is not responsible for compensating the indirect damages, so by compensating the direct damages, it means that the injured party in the event of his failure to make a reasonable effort in order to limit the harm and aggravate it, he is obligated to limit the harm. In spite of that, he can compel the harm and return the harm to the offender with this compensation. But in the event that the reasonable effort is not sufficient to prevent the aggravation of the harm, rather the matter requires greater effort on the part of the aggrieved to achieve this end, the failure to prevent the aggrieved party to limit the damage is not considered a fault for the injured party, in which compensation must be reduced. The responsible person is obligated to compensate the entire harm. The aggrieved party has cases that differ according to their facts. If a person wanted to commit suicide and took advantage of the fact that the driver of the car was driving at speed and threw himself in front of the car in order to commit suicide, he is not allowed to protest and file a lawsuit if he escapes, claiming His heirs may also not claim that even those who were dependent on them () and the injured person may have consented to the damage, meaning that the damage is a middle ground between his will to harm himself and his mere knowledge of the damage. He is inflicted with harm, but he does not want it, as in the fencing. Each of the fencers has consented to die or to injure him, but he is not satisfied with it, or as a sportsman knows the damage that results from games, or that the injured ride a car knowing that its driver is in a state of drunkenness, then his mistake is a common mistake. The consent of the injured does not remove from the act the liability as a mistake, but remains responsible for the damage caused by his mistake of bodily harm, but taking into account the consent of the injured with the damage, the responsibility is mitigated in this case, provided that the consent of the aggrieved by the damage does not remove the responsibility for the harm if the harm is related the life and safety of the human being because they are from the public order. As for Islamic jurisprudence, it considers crimes that occur on the soul, and the acceptance of the victim does not matter, because the infallibility of the human soul is something that cannot be permitted. To kill a human being is a sanctity stipulated in the laws and laws. We ask whether the consent of the injured is considered or not in all rights, including personal or financial rights. The answer to this question is that among the rights that should not be waived, which are personal rights and financial rights that may be waived, so the demand for the latter Compensation cannot be complete because there is an error on the part of the injured party that reduces the size of the compensation. If she desires to have intercourse with her boyfriend, she does not return him to compensation (33), so we conclude from this that consent in these cases cannot be considered if it is issued by a person who does not have the capacity or a young man whose will is a defect of consent, or if the consent is against something contrary to public order and public morals, then the doctor He must obtain the consent of the patient, whose will must be consciously issued. The English and German law considered the fault of the aggrieved to be a condition of exemption from responsibility, provided that it does not violate public order and morals. The fault of the defendant, it takes it and does not lead to the responsibility of the defendant due to the lack of a causal link, as if a person was exposed to bodily harm as a result of being run over by a car during his sudden crossing of the public road without paying attention to the movement of the car, then the driver's responsibility here is negated (34) But if the two faults are independent of Here we are in front of the multiplicity of officials, so the text of Article (217) of the Iraqi Civil Code is applied to them, which states: b) It must be distinguished here between whether the fault of the injured was caused by the plaintiff's fault, that is, he caused it, as if a person drove his car at a great speed and there was a person next to him who wanted to drive him, and the passenger panicked with him and an

attempt to avoid the danger that may result from the collision, he is forced to throw himself out of the car. In this case, we see that the responsibility here is fully borne by the driver (35), but in the event that it is not possible to know the amount of error for both the victim and the defendant, compensation is distributed to them equally, and this is what the French jurisprudence went to. For cassation (36) Article 217 of the Iraqi Civil Code clearly indicated that (if there are several persons responsible for an unlawful act, they are jointly liable in their obligation to compensate the damage without distinguishing between the original perpetrator and the causative partner. 2- The compensation paid in full shall return to each of the rest with a share determined by the court according to the circumstances and the extent of the gravity of the infringement committed by each of them, and if it is not possible to determine the share of each of them in the responsibility, the distribution among them shall be equal. For the distribution to be equal, unlike the Egyptian law, which distributes compensation equally, but the judge can determine the share of each of them when it is possible to determine this magnitude. In addition to that, provided that the aggrieved party may recourse against any one of the two components of the harmful act, and the one who paid the compensation can recourse against the rest of those who caused the harm with him (21). Compensation If his position was not negligent or wrong, he deserves full compensation.

Victim's fault in rebound damage

One of the matters that was and still is a point of disagreement between legal scholars, and France had a lead and a fertile field in it. Its impact was reflected on the courts, whose decisions varied between taking the wrongdoer's fault in the recurring damage or not, and that raising the dispute here was not resolved directly as it was resolved in the invalidation of the agreement of any mediator with the parties. The right to compensation for apostasy damage, provided that they entrust him to claim their right in return for dropping a specific part of the compensation (30) and with reference to the compensation that results from the averted damage and the actions of the aggrieved party's fault. It is also decided to reduce the original aggrieved party when the latter caused by his mistake to cause the damage, but the criminal circuit took from 1960 to 1964 that the fault of the original aggrieved has no effect in the claim for compensation for the apostasy damage, and that the aggrieved party may be ordered to pay full compensation, noting that the apostate damage It is considered as a result of two mistakes, one of them is the fault of the original responsible perpetrator who contributed to the original harm, so both the doer and the original aggrieved party are jointly liable for the recurring damage. The person who has suffered a recurring damage may claim full compensation from each of them. She insisted on her opinion and has collectively supported two rulings issued by the circuits (35) that the compensation requested for a recurring damage should be reduced by the same percentage in which the compensation for the original damage is reduced due to the fault of the original victim. He does not receive low compensation for this reason. The judge may seek the assistance of experts and specialists, especially those related to technical aspects, to determine this. As for what our professor, Dr. Aziz Al-Khafaji, said in that he did not renew the equality between the direct victim and the one who was harmed by apostasy in taking into account the fault of the original aggrieved party when ruling for compensation is justified. An act that he was not the cause of, and therefore the aggrieved party must obtain full compensation regardless of the fault of the original victim who caused his participation in the formation of the damage, despite the statements that go to consider the fault in which the original aggrieved participated, he must pay compensation for his fault. The one who caused him harm, then our professor, the doctor, explained that this is not enough to be an excuse to impede the person who was harmed by apostasy from obtaining his full right.

Distinguishing between the two cases. The first is the compensation for the personal damage that the aggrieved party suffered as a result of the injury to the direct victim. In this case, the fault of the direct victim may not be invoked. As for the second case, it is the aggrieved party's claim to apostasy for the damages that befell the direct aggrieved party and the claim is transferred to him as an heir. The occurrence of the damage because what he bears here as a result of his contribution to the occurrence of the damage. The person harmed by apostasy in compensation is only affected by his mistake, which is in the part of the compensation for the damages he sustained, and is affected by the direct harm's fault with regard to the compensation acquired by the direct harm and then moved to the harmed by apostasy by inheritance.

Conclusion

After we finished our research, we reached a number of conclusions and recommendations.

Results

1. The harm that entails civil liability and compensation is the harm inflicted on a person as a result of prejudice to one of his rights or his legitimate interest, whether that right or that interest is related to the safety of his body, his feelings, his money, his honor, his dignity, or otherwise.
2. The jurisprudential discrepancy about taking the wrongdoer into the apostate damage.
3. Doctrinal controversy about whether or not the privileged child should be compensated as a result of his mistake.
4. The state of health plays a greater role than most legal scholars in estimating and changing the value of compensation.
5. If the harm that directly affects the human being does not cause any difficulty as long as the causal link exists between the wrong act and the harm and thus became a natural result of it, but the difficulty that arises in the question of realizing the causal relationship and defining its concept and its effects on people who are not the direct victims of the wrong act.

Recommendations

1. We call upon the Iraqi legislator to pay great attention to harm, whether direct or indirect, within the provisions of civil liability because his statement has a great legal effect, and therefore this would block the door of ijthad or legal scholars in the diversity of opinions.
2. We also recommend that there be a large share within the folds of the law regarding the judgment of the injured party in the apostate damage.

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