The Value of Compensation and Its Timing in Contractual Liability

1. Zainab Sultan Hussein Al-Hameed: Department of Private Law, Isf.C., Islamic Azad University, Isfahan, Iran
2. Mojtabi Nikdosti*: Department of Law, Isf.C., Islamic Azad University, Isfahan, Iran
3. Samah Hussein Ali: Department of Law, Faculty of Law, University of Babylon, Babylon, Iraq
4. Mohammad Javad Abdollahi: Department of Law, Kho.C., Islamic Azad University, Isfahan, Iran

*Correspondence: m.nikdoosti@iau.ac.ir

Abstract

The principle of good faith generally requires the execution of the contract by both parties, provided that the contract has been validly, definitively, and conclusively concluded. Therefore, if one of the parties fails to adhere to the obligations stipulated in the contract, they are considered liable toward the other party, and such liability is referred to as contractual liability, since a contract or agreement, in general, constitutes a source of obligation and commitment that has not been fully performed. This type of liability arises only when three elements—fault, damage, and a causal relationship between the fault and the damage—are present. The meaning of this liability is that each individual must bear the consequences of conduct contrary to their duties, as determined by the nature of the duty and its characteristics. Furthermore, the type of damage incurred by the contractual party is only eligible for compensation if it is real and direct. Similarly, for a judgment requiring payment of compensation to the injured party and redress of the incurred harm, certain conditions must be satisfied. However, the payment of full compensation is not the only necessary form of reparation, as legislators and the judiciary have introduced other forms of remedies that do not reach the level of full compensation. The criterion for such remedies is not limited to the extent of the loss but also includes other considerations connected to justice.

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1. Introduction

Civil liability is one of the main pillars of the legal and social system, and as we know, a rational person is responsible for all of their actions and conduct, meaning that they have obligations and commitments toward others, the most important of which is to refrain from causing harm. Therefore, if they exceed these obligations, they must be bound to repair the damage and compensate the injured party. As modern life advanced in industrial, professional, commercial, and technological fields, human beings in the present era became increasingly exposed to causing harm to others as a result of the risks associated with advanced tools and equipment, which raised the issue of compensation (Katouzian, 2017; Laylan, 2017).

The importance of examining the concept of contractual liability, which is considered a highly significant issue, lies in its substantial impact on clarifying the real core of responsibility and in identifying the element that currently constitutes the basis of liability. Given this importance, we conducted research based on a descriptive-analytical method to clarify the issue of the value of compensation and its timing in contractual liability. Referring to the Iraqi Civil Code No. 40 of 1951, particularly Article 204, it is evident that any act of transgression causing harm to another requires compensation. Thus, the mentioned provisions implicitly recognize the general rules of contractual liability arising from the breach of obligations by either party to a contract (Abd al-Razzaq, 1981; Al-Hakim).

Due to the progress witnessed globally on all levels, the element of harm has become one of the most critical issues. Moreover, it plays a fundamental role in assessing compensation, as contractual liability cannot exist without harm. The principle of compensation requires it to be real and objective, and if this condition is absent, the harm is to be rectified through countervailing compensation. It makes no difference whether compensation is monetary or otherwise, as the judge has absolute discretion in choosing the form and method of redress. In contractual matters, compensation is usually limited to foreseeable damages during the contract period, unless the harm is linked to fraud or gross error by the debtor, in which case they must compensate for all foreseeable and unforeseeable damages. Islamic jurisprudence, within the framework of civil liability, does not recognize contractual liability in the same manner as positive law, even though the term "contractual guarantee" appears in their works. The meaning of this is that compensation in Islamic jurisprudence is limited to material harm that has actually occurred. In Islamic law, compensation arises only if material harm is inflicted on an injured party, whether contractual or non-contractual, such as when an individual destroys another's property, thereby diminishing its value (Abu Surour, 2007; Munir, 2004).

Despite the expansion of the term civil liability and its codification in Iraqi law, vital and important questions remain about the conformity of this liability with its concept. Accordingly, the rules concerning material and personal harm in law and jurisprudence differ from those related to the principle of damages, blood money, and other similar concepts. The conditions and effects of liability in each of these matters are distinct and independent. In fact, civil liability law, as an independent legal institution, systematically addresses all matters of compensation and its examples, including issues such as compensation for moral damages, which hold limited status in law (Ascoune, 2018; Ismail, 2013).

Regarding civil liability, Islamic jurisprudence does not fully recognize contractual liability to the extent that positive law does. However, the concept of contractual guarantee exists in their texts, with the clarification that compensation in Islamic jurisprudence is limited to actual material harm. In Islamic law, there is no basis for compensation unless the injured party suffers material damage, whether or not they are a contracting party, such as when someone destroys the property of another, thereby diminishing its value. Despite the adoption of the concept of civil liability in Iraqi law, serious questions remain about its scope and framework, since the rules and principles concerning personal and financial harm in jurisprudence and law differ from those pertaining to damages, blood money, and similar concepts, with each regime maintaining distinct and independent conditions and effects (Al-Dhanun; Al-Tabbakh, 2010).

However, civil liability law in its modern, coherent sense is governed by consistent and comprehensive principles and rules. Indeed, civil liability law, as an independent legal institution, examines all forms of compensation in an organized and integrated manner, extending even to matters such as moral damages, which are rarely emphasized in law (Abd al-Hamid Omar, 2008; Souad, 1972).

2. The Concept of Contractual Liability

Civil liability is of great importance from both a scientific and theoretical perspective. Across legal systems, there is no rule more useful or enriched than civil liability, owing to its diversity of forms and wide range of applications. The increasing significance of civil liability is a natural and inevitable result of the era in which we live. As described, it represents a factor of cultural advancement and development. Accordingly, civil liability has expanded comprehensively and beyond expectations, enhancing its importance and strengthening its role in practical implementation. This is reflected in what is called collective human consciousness today, embodied in the endeavor to impose liability for any harm that might be inflicted upon victims, with due regard to social guarantees that sometimes exempt the individual from compensation.

Human use of steam, electricity, and other essential energies, though generating overall benefits, has also exposed people to accidents, dangers, and damages. Consequently, incidents linked to these energies have multiplied, along with victims increasingly resorting to courts to seek compensation. Harm is the most essential element of contractual liability. Not only is it impossible to finalize liability without it, but proving its occurrence is indispensable (Ismail, 2013; Rif'at, 2024).

To better understand the legal nature of civil liability, this discussion is divided into two parts: first, the definition of civil liability and its types; and second, the nature of the harm resulting from contractual liability.

2.1. Definition of Civil Liability and Its Types

Since civil liability is centered on the notion of transgression that causes harm to others and necessitates compensation, it is necessary to define civil liability and identify its types. Accordingly, this section is divided into two parts: the first defines civil liability, and the second explains its types.

2.1.1. The Definition of Civil Liability

The term "liability" linguistically derives from the Arabic verb *sa'ala* (to ask, to question), and the plural of liability is *mas'uliyyat*. As mentioned in the Qur'anic verse: "Indeed, the hearing, the sight, and the heart—about all those [one] will be questioned" (Qur'an 17:36). Hence, *mas'ul* means the one held accountable (Al-Zabidi, 1987; Ibn Manzur, 2010).

Liability is an abstract noun from *mas'ul* and signifies accountability. A responsible person is one capable of bearing major responsibilities. For instance, it is said that a person was assigned a great responsibility, meaning it was entrusted to them. Moral responsibility refers to obligation in speech or conduct, while collective responsibility signifies obligations borne by a group. Legal responsibility, in turn, refers to the obligation to remedy a wrong committed against another under the law (Abd al-Hamid Omar, 2008).

Civil liability, therefore, is liability aimed at compensating the harm suffered by a victim as a result of a debtor's breach of contractual obligations or of a breach of a legally mandated obligation. It has been described as the accountability of an individual for performing an act or refraining from it. Thus, civil liability constitutes a penalty for violating one's duties, whether those duties originate in law or in voluntary commitments (Jamil, 2021).

The Iraqi Civil Code No. 40 of 1951 defines civil liability in Article 204 as follows: "Any transgression that causes harm to another necessitates compensation." Accordingly, this provision implicitly refers to the general principles of contractual liability arising from the breach of obligations by either party to the contract (Abd al-Razzaq, 1981; Al-Awji).

Civil liability has also been defined as follows: "Any person who causes intentional or unintentional harm to the life, property, health, dignity, freedom, commercial reputation, or any other legal right of another is responsible for compensating the resulting damages." According to the risk theory, fault is not a condition for liability; it suffices that the act caused harm. The injured party need only prove that harm occurred due to an act related to an object under the custody of the defendant, without the need to prove fault on the part of the custodian. The custodian cannot escape liability by denying fault, as liability is established regardless. To be exempt, they must prove one of the conditions is lacking, such as showing that they were not the custodian at the time of the harm or that there was no causal connection. The absence of causation may be demonstrated by proving that the object played no role in the damage, or that its role was not positive and that the harm was due to an external cause, such as force, the victim's own fault, or the fault of another.

Therefore, the person responsible for compensating for damage caused by an object is either the custodian who exercises control over it or the person who benefits from it. According to the rule *man lahu al-ghunm fa-'alayhi al-ghurm* (whoever enjoys the benefits must also bear the burdens), whoever reaps the benefits of an object must also bear its risks (Abidin, 2002; Hassan, 1984).

2.1.2. Types of Civil Liability

Examining civil liability in order to complete its constituent elements requires studying the types of liability that arise from breaches of the system that seeks to organize collective human relations. This system is highly complex and composed of

several subsystems differing in foundations and principles, although they converge in direction and purpose. There are legal and moral systems, among others, and among them a central system endeavors to establish order and harmony in relations among beings. Any contravention of one of these systems' principles triggers a form of liability that may differ depending on the nature of the source violated: if the rule is moral, the liability is ethical; if the rule is legal, the liability is legal. (Abu Surour, 2007)

Accordingly, civil liability is the obligation to repair harm arising from the breach of any duty or commitment that rests on the obligor. Sometimes the source of this duty is a contract relating to the injured party; in that case, the liability is contractual, with the contract both delineating and governing its scope on the one hand, and with specific rules of contractual liability on the other. At other times the source of the duty is statutory and applies generally, such as the obligation not to exceed a specified speed while driving; in this case, liability is tortious and is governed and delimited by independent rules. On this basis, civil liability is of two types: contractual liability and tort liability. (Al-Tabbakh, 2010)

A. Contractual Liability

Contractual liability is the consequence attached to the breach of contractual obligations. As noted, the contract is the "law" of the parties, and respect for its content and non-interference with it is necessary. Liability must therefore attach to the party who breaches the contractual terms, leading to compensation for non-performance. In such cases, the contract has binding force upon the parties, and the debtor must make good all obligations arising from it. Likewise, the creditor has the right to claim compensation before the courts to redress the damage resulting from the debtor's breach, provided that all elements of contractual liability are established so the creditor becomes entitled to damages. (Al-Khafif, 1972)

Contractual liability is the sanction for breaching an obligation arising from a contract. Some jurists have termed the breach of a contractual obligation "contractual guarantee," to which the word "liability" has been added—a relatively new expression in legal language. Classical Muslim scholars did not speak in terms of "contractual liability," but of "contractual guarantee." The Iraqi Civil Code, when addressing contractual liability, employs this expression and places "contractual guarantee" in parentheses. (Al-Hakim)

The framework of contractual liability has two principal conditions:

1. The existence of a valid contract resulting in an obligation between the injured party and the obligor; thus, a valid contract binding both the obligor and the injured party is required.
2. Damage arising from the breach of that obligation. (Al-Hakim)

B. Tort Liability

Tort liability concerns situations outside the framework of a legal contract between two or more persons, and the law serves as the source of the obligation in such cases. If one party commits an act that results in harm to another, the person who caused the injury must compensate for it. Tort liability is therefore founded on the principle of the duty not to harm others. Liability here stems from the breach of a legally imposed duty—such as the duty to respect neighborhood rights—or from conduct such as careless driving that destroys property, or from a general legal rule prohibiting harm to others and imposing compensation upon the injurer. (Al-Bouchouari)

The aim of tort liability is to compensate the victim's losses, subject to the conditions that the act occurred due to wrongful behavior by a person, that there is a causal connection between that behavior and the harm, and that no legal impediment to liability exists. A brief look at the history of tort liability reveals a continuous development: from the laws of vengeance and retaliation—where civil and criminal liability intertwined—to systems of blood-money where punishment and compensation coexisted, then to the separation of criminal from civil liability and the articulation of liability in specific cases, and finally to the formulation of a general rule of liability grounded in the notion of fault demonstrable by proof. (Al-Awji)

2.2. The Nature of Harm Resulting from Contractual Liability

Contractual liability is one form of civil liability, and the principle of obligation in contractual civil liability is that the existence of a valid contract is the foundation of duty and responsibility; a person becomes liable upon breaching the obligation arising from the contract. In this regard, and as a consequence of non-performance, whoever fails to fulfill a contractual promise or obligation and thereby causes damage to the counterparty must bear the harm they have caused. This is termed a "guarantee"

borne by the party who acted contrary to the contractual obligation; ultimately, contractual liability is primary with respect to the source obligation. Contractual liability thus reflects an obligation imposed on those who have transgressed the provisions of a specific contract. The obligation breached by virtue of the contract is called the principal obligation, whereas the obligation imposed on the debtor due to their breach is termed a secondary or accessory obligation, to distinguish it from the principal obligation. Hence, if a person fails to adhere to their contractual obligation and is deemed liable, then—in addition to the need to continue performing the principal obligation—they must also compensate the other party for the harm caused by non-performance; this compensatory duty is the secondary obligation. (Katouzian, 2017)

Accordingly, "harm" is the injury arising from a contractual obligation, whereby the creditor suffers loss due to the debtor's breach; it makes no difference whether the harm is moral, material, or bodily. Harm is the most essential element of contractual liability: without harm, there is no liability. The burden of proving harm rests on the creditor as claimant; mere breach by the debtor is insufficient to establish that harm has occurred—the breach must have caused loss to the creditor. (Al-Dhanun)

An exception concerns contracts whose object of performance is the payment of a sum of money: the law presumes the existence of harm by an irrebuttable presumption. As stated in Article 173(1) of the Iraqi Civil Code: "The entitlement to statutory or agreed interest for delay is not contingent on proving that the creditor suffered harm from the delay." The harm compensable to the creditor must thus result from a breach of the contractual obligation; if the loss is due to an external cause, compensation is not due and contractual liability does not arise. Therefore, contractual liability only arises when the harm stems from the debtor's breach of their contractual obligation—meaning there must be a causal link between the breach and the loss. If causation is broken, contractual liability does not materialize. The causal link is severed by the intervention of an external factor, and the burden of proving the break in causation rests on the debtor, pursuant to the maxim "the proof is upon the claimant, and the oath upon the denier." (Bakr, 2011)

3. Compensation for Damage Arising from Contractual Liability

Before, in defining liability, we stated that it consists of imposing the consequences of a person's actions upon themself when those actions contravene a duty imposed upon them. On this basis—and according to the nature of the duty—the most important form of liability is civil liability, of which contractual liability is a type. Article 204 of the Iraqi Civil Code provides: "Any transgression that causes harm to another warrants compensation." Since the harm resulting from a wrongful act is the basis of compensation, two elements are required: first, the existence of a wrongful act; and second, a causal relationship between the harm and the fault. As long as the harm is not real, direct, and personal, neither material nor moral compensation is warranted; these are the constituent elements from which the rule of compensation is formed. (Rif'at, 2024)

3.1. Rules of Compensation in Iraqi Legislation

For a judgment to award compensation to the injured party and to redress the harm caused by delay, breach by the party responsible for performance, or non-performance of the obligation in kind, certain conditions must be satisfied. When these conditions are met, the judge assesses compensation and determines its amount and manner of payment.

"Future harm" is harm whose causes already exist but all or part of its effects are deferred to the future. Determining the value of future harm with certainty before it occurs may be difficult; however, that difficulty does not prevent the injured party from bringing an action seeking compensation. If assessment of compensation for future harm—when its occurrence is certain—is possible, the creditor may request it directly. If assessment is not yet possible, the judge may award provisional compensation for the harm already suffered, while preserving the injured party's right to seek full compensation once the future harm materializes. Some statutes contain no express text on future harm; for example, the Iraqi Code does not, and Article 111 does not mandate compensation for such loss. Nonetheless, courts of appeal have awarded compensation for future moral harm, reasoning that, for example, children will feel the bitterness of loss in the future while orphaned. (Jalil, 2002) Illustrations include injury to a worker rendering them unable to work in the future; preventing a person from constructing a building; cutting off irrigation to farmland causing the loss of trees that require water; nuisance from construction noise; and expropriation of farmland before harvest causing the destruction of crops—each a species of future harm compensable because its occurrence is certain. (Ibrahim, 2003)

Regarding cumulation of compensations, the settled point is that compensable harm not be previously repaired: an injured party may not receive compensation more than once for the same harm. If one party voluntarily repairs the damage, that counts as fulfillment of the obligation, precluding a further claim for the same harm. Likewise, an injured party who has obtained a judgment for compensation cannot bring a new action for the same harm, because the purpose of the first action—reparation—has been achieved. Accordingly, a second award for the same injury within civil liability is impermissible, and any new action seeking duplicate compensation must be dismissed. (Hassan, 2004)

In jurisprudence, scholars disagree. Proponents of the first view (permitting cumulation) maintain that the injured party may pursue two avenues of reparation—for example, where they are insured: one right lies against the injurer grounded in the injurer's fault (a "personal" theory that applies classical tort rules premised on fault), allowing the harm to be attributed to the injurer's wrongdoing; yet they note that many losses arise without fault under traditional rules. (Jabbar, 1984) Article 202 of the Iraqi Civil Code ("Any act causing harm…") indicates that liability is founded on the element of harm, and that the State's commitment to compensate has become a social necessity. Compensation here is not paid because of fault per se but to help individuals confront social risks arising from wrongful acts.

The second view concerns the insurer: the source of the insurer's obligation is the insurance contract concluded between the company and the injured party. After receiving indemnity from the insurer, the injured party may still claim against the injurer; thus, two rights coexist. Adherents argue that objections based on "double recovery" fail because the insurance payment is not a substitute for damages paid by the injurer; rather, it represents the insurer's performance of its contractual obligation funded by premiums. However, Iraqi law—under Article 11 of the Insurance Law—does not permit such cumulation, and Iraqi courts have followed this approach. For example, the Court of Appeal (11/01/1757) held: "An heir has no right to claim material compensation from the insurer if, prior thereto, they have already received full compensation from the driver who destroyed the property." (Abd al-Razzaq, 1981) Insurance payments are among other methods of compensating losses. While this accelerates relief to victims, it must not embolden wrongdoers; and in any event, this modality remains relatively limited and recently developed. (Ascoune, 2018)

Concerning the State's liability to compensate, Iraqi jurists and experts are divided. Some ground it in fault; others make the element of harm the foundation for compensation, a view several commentators support. (Al-Dhanun; Hassan, 1984) In the same vein, Iraqi legislators have enacted statutes such as the Retirement and Social Security Law No. 39 of 1971 and the Compulsory Insurance against Road Traffic Accidents Law No. 52 of 1980, whose rationales support making the risk-based responsibility of the insurer the basis of its obligation to pay compensation, rather than presuming fault that might be rebutted. Given the rapid transformations worldwide, the element of harm is of paramount importance: beyond its central role in assessing compensation, contractual liability cannot be established without it. In the modern era, full compensation is no longer the only necessary form of reparation; the judiciary and the legislature recognize other remedial forms that do not always reach full indemnity. Their measure is not confined to the quantum of loss but extends to other justice-related considerations. The modalities of compensation vary with the nature and forms of harm, and the legislator often entrusts courts with valuing the award to determine the injured party's loss and what has been taken from them.

The best method of reparation is erasure or elimination of the harm, where possible, restoring the injured party to the position they occupied before the injury. Principal modes include in-kind compensation (specific restitution) and countervailing (substitute) compensation. In-kind compensation restores the status quo ante by reversing the wrongful act that caused the damage. On this understanding, in-kind reparation is preferable to substitute compensation because it extinguishes the harm entirely rather than leaving it in place and awarding money as a surrogate. In-kind compensation thus affords the injured party satisfaction of the same nature as the injury suffered and can be implemented directly without limiting the remedy to a monetary sum. (Sa'doun, 1981)

Iraqi law adopts this path for both material and moral harm. Article 209(2) of the Civil Code provides: "The court may, according to the circumstances and at the request of the injured party, order restoration of the prior condition." (Al-Khafif, 1972) In practice, in-kind reparation is often accompanied by monetary damages: the former may eliminate future effects but cannot remedy past consequences. If the harm consists of the demolition of a house or the destruction of property, full in-kind restoration may be impossible. In Iraq, measures approximating in-kind compensation exist, such as the State's grant of residential apartments or plots to victims. Where in-kind reparation is impossible, broader space remains for substitute

compensation, which may be in kind or in money. Non-monetary substitute compensation includes orders directing specific acts to achieve a sense of fairness for the injured party. (Souad, 1972)

This type of remedy is thus neither pure in-kind compensation nor purely monetary; it is tailored to the circumstances and aligns with certain forms of moral harm. Iraqi legislation authorizes such remedies: "The court may, in view of the circumstances and at the request of the injured party, order the performance of a particular act or the return in kind of fungible property, and these are deemed forms of compensation." (Al-Tabbakh, 2010)

3.2. The Value of Compensation and Its Timing

Harm constitutes the foundation of compensation. It is not required that it remain constant from the time of its occurrence until the issuance of the judgment by the court, especially in cases where courts delay in concluding proceedings and issuing judgments. The aim of civil liability is to grant full compensation to the injured party for the losses suffered, thereby covering any future changes that may occur.

One of the most significant practical matters in this respect is the evaluation of compensation by the judge, who is vested with discretion in assessing compensation, examining the harm, and choosing the best method of redress. This principle is emphasized in various legislations and is not exclusive to Iraqi law. According to Iraqi law, the key point is the date of judgment, as stressed in Article 208 of the Iraqi Civil Code. If the court cannot adequately determine the amount of compensation, it has the right to preserve the creditor's ability to request re-evaluation within a reasonable period. This demonstrates that the decisive factor is the time of the judgment, which reflects contemporary legal developments and affirms the Iraqi jurisprudential stance on the matter. (Hassan, 2004)

Compensation, therefore, is regarded as redress for the injured party in Iraqi law, and where uncertainty arises, the court evaluates and estimates it. It should be noted that in tort liability, compensation is essentially judicial, and the court retains discretion in assessing damages not stipulated in the contract or expressly fixed by law. Thus, the form of compensation is determined according to the circumstances, with the court selecting the appropriate mode of redress. It is not unusual for compensation to be ordered in installments or as periodic payments, accompanied by insurance guarantees. Accordingly, unlike the conventional practice, compensation need not always be monetary; at times, in-kind compensation is preferable—particularly where it is possible to restore the injured party to the status quo ante. (Munir, 2004)

Another form of substitute compensation is monetary damages, which constitute the most flexible method for addressing harm caused by unlawful acts. Money, as a medium of exchange and a standard of valuation, enables the court to order financial compensation where in-kind reparation is impractical. The Iraqi legislature expressly affirms this principle in Article 209(2) of the Civil Code, stipulating that monetary damages may be awarded. The general rule governing monetary compensation is that a fixed sum is granted to the injured party in a single installment, though nothing prevents installment-based or periodic payments. Ultimately, the decision rests with the judge, who evaluates the circumstances and may require the debtor to provide insurance. (Al-Tabbakh, 2010)

As for the timing of compensation, the older principle of assessing damages at the moment of occurrence is limited and outdated, failing to reflect the injured party's right to full indemnification. Instead, the doctrine of full compensation—on which civil liability rests—ensures that the injured party is entitled to redress for all losses suffered and, where possible, to restoration of the pre-damage condition by preventing or erasing its effects. A new principle has thus emerged: safeguarding the injured party's rights and ensuring legal protection to secure their full entitlement, even when the harm evolves over time, particularly given the transformations in modern industries and the increasing complexity of liabilities. (Abd al-Razzaq, 1981)

This principle necessitates the evolution of legal rules to align with modernity and organize it within a legal framework. Consequently, jurisprudence and case law tend to emphasize the need to base compensation on the status and value of harm at the time of judgment, not at any earlier point. This approach is evident in decisions of appellate courts that endorse assessment of compensation at judgment, taking into account economic developments such as price fluctuations, thereby aligning with the principle of full compensation. (Sa'doun, 1981)

Some jurists and scholars contend that anchoring the principle in the judgment itself is more accurate, on the grounds that the injured party's right to compensation arises at the very moment of harm. Hence, the judgment awarding damages is

declaratory, not constitutive. In this view, the judge, by exercising their discretion and issuing the award, merely recognizes an existing right rather than creating a new one. (Jalal, 1997)

4. Conclusion

Civil liability is defined as the liability that aims to compensate for damage arising from the debtor's breach of a contractual obligation or a person's breach of a legal duty imposed upon them, to the detriment of another party. It has also been described as the accountability of an individual for performing an act or abstaining from one. In this sense, civil liability constitutes a sanction for violating duties that stem either from law or from voluntary commitments.

Contractual liability is the branch that arises specifically from breaches of contractual obligations. The contract serves as the binding framework for the parties, and respect for its terms, non-interference with them, and the imposition of liability upon the party who breaches are essential. The result of such breach is compensation, typically due to non-performance of obligations.

Harm is the most fundamental element of contractual liability, for without harm there can be no liability. The burden of proving harm rests on the creditor, since they are the claimant. Mere breach of obligation by the debtor is insufficient; the creditor must demonstrate that actual damage has been suffered as a result of the breach.

Naturally, unless the harm is real, personal, and direct, neither material nor moral compensation is warranted. These conditions constitute the essential elements of the compensation rule.

Determining the amount of compensation refers to the stage where the judge may specify the value and extent of harm at the time of judgment. Thus, the benchmark and standard for evaluation is the time of the ruling.

It is essential that the compensable harm has not already been remedied in the past. Consequently, the injured party cannot seek reparation for the same damage more than once. If one party voluntarily repairs the damage, this is deemed full performance of the obligation, leaving no room for another claim for compensation for the same injury.

According to the Iraqi Civil Code, harm includes any transgression against another's existence, reputation, or freedom. It would have been more appropriate if Article 205 had elaborated on additional forms of transgression, particularly those manifesting as moral harm, thereby clarifying the nature of harm more precisely.

It is recommended that judges be granted authority to determine the manner of compensation without conditioning it upon a request from the injured party, given that the judge is better positioned to identify the most suitable remedy for redressing the damage.

Expanding studies and legal research on the various types of civil liability—especially contractual liability—is essential, considering the significance of the subject and the multiplicity of acts from which civil liability arises.

Ethical Considerations

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Conflict of Interest

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