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# The Jurisprudence of the Court of Cassation in Jordan: Interpreting Judicial Decisions and Case Law

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**Abstract:** In this paper, we study the role of case law as a source for legal rules, particularly in cases of ambiguity or deficiency of legislative provisions. The Jordanian Court of Cassation's use of discretion to interpret or complete provisions in various cases serves as the focus of this study. Three topics are addressed: deducting blood-money from the compensation amount, nullification of a real estate sale contract after fifteen years and granting compensation for moral damage in cases of contractual liability.

**Keywords:** Court of Cassation; Blood Money; Compensation; Void Contract; Real Estate Property.

## 1 Introduction

Case-law system requires the lower courts to follow verdicts issued by higher courts to resolve a certain dispute. These verdicts establish legal rules to be followed in future similar cases; this is known as the Common Law System. This system is supposed to facilitate the role of lower courts in solving similar disputes, for they are provided with verdicts that were analyzed and studied by higher courts and more experienced judges. This, in turn, reflects on unifying the issued verdicts regarding a certain matter, which achieves juridical security leading to legal security.

This is unlike the legislation-based systems – as the case in Jordan – where Case-law has no role considering the existence of codified legal rules that should be followed to resolve the presented disputes. However, while applying these provisions, judges may have to use Case-law in cases of ambiguity, several interpretations, or deficiency of provisions as legislators may address some cases over others, for whatever reason, or when new cases result from recent developments of life events appear, so Case-law is required to bridge the legislative gap. Case-law may also arise to resolve contradictions between different provisions that apply to the subject of dispute. In all cases, judges shall resort to the interpretation and diligently apply the law in a correct and fair manner. Otherwise, the court shall commit to what is legislated by the legislative authority in the law.

There is no doubt that Case-law is a productive source for the competent legislative authority uses to set legal rules, which, in turn, set abstract general rules to be applied by various judicial authorities. Moreover, the Jordanian legislature allows in article 2/4 of the Jordanian Civil Code using what is judicially approved (Case-law) as guidance, provided that it shall not contradict the formal sources, especially the legal provisions. Usually, these Case-laws are issued in Jordan by the Supreme Court which is called the Jordanian Court of Cassation [1], the highest juridical body, and is exercising – as a court of law – a monitoring role over the verdicts issued by lower judicial entities. It simultaneously aims to unify the juridical resolutions for similar cases.

Doubtfully, judicial interpretation of legal provisions is a process necessary for the correct application of the law, and courts execute this mission on its own, for ignoring interpretation and not figuring out resolutions for presented disputes shall be deemed as denial of justice. However, court Case-laws are not always correct.

This study aims at providing some explanations on some jurisprudence made by the Jordanian Court of Cassation in various cases where the court used its discretion to interpret or complete a provision that covers a certain issue on which the law has no definite verdict. Therefore, it does not address the theoretical aspects of the topics under discussion, but rather the extent to which the study agrees with the approach of the judiciary therein.

The present research adopted the descriptive method due to its appropriateness for the research and its objectives. The present paper is organized as follows. Section 2 deals with the significance of case law in civil law systems and common law systems. Section 3 is about deducting blood money from the compensation amount. Section 4 deals with confirming the nullification of a real estate sale contract after fifteen years, while section 5 is about granting the right of compensation for moral damage in cases of contractual liability. Finally, we summarize our results in section 6.

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## 2 The significance of case law in civil law systems and common law systems.

The common law system and the civil law system have a fundamental distinction. In the civil law system, the primary principles and rules are established by legislative authorities through laws and legislation. On the other hand, the common law system develops laws through judicial rulings, which stems from the differing roles of legislators in civil law and common law.

A significant contrast between civil law and common law lies in the binding force of precedents. In the civil law system, courts primarily decide specific cases by applying and interpreting legal rules. In the common law system, however, courts not only adjudicate disputes between parties but also provide guidance on resolving similar disputes in the future.

In civil law systems, case law does not hold binding authority. The doctrine of stare, which mandates following precedent, does not apply to civil law courts. As a result, court decisions are not binding on lower courts or even the same courts. It is not uncommon for courts to reach contradictory conclusions in similar cases. In civil law, courts have the duty to interpret the law as outlined in legislation without being obligated to follow the interpretation provided by higher courts. Therefore, under civil law, courts do not create laws but rather apply and interpret them.

### *2.1 The role of the Court of Cassation in establishing judicial principles that lower courts must abide by.*

The general principle in the civil law system is that the role of the Court of Cassation is limited to applying the law only, and its mission is not to enact laws. Also, the judgments are not binding except within the limits of the same dispute in which they were issued, and it is not permissible to invoke them by analogy even by the same judge who issued them. The judge may change his jurisprudence whenever he wants, and a fortiori, his judgment is not binding on any other judge or court. The reason for this trend in Jordanian law is the principle of separation of powers advocated by the Jordanian constitution and made it a basic principle [2]. Therefore, the judicial authority may not interfere in the work of the legislative authority by issuing general judgments that have a regulatory character to be applied in similar cases in the future.

Despite this, the Court of Cassation plays a creative role in filling legislative gaps or lack of clarity in texts when drafting laws. In these cases, the Court of Cassation may be asked to interpret the law and provide guidance on how to apply it in practice. The Court fulfills this role by including terms or meanings not expressly provided for in the legislation. It may also include interpreting the law considering changing social, economic or technological conditions [3]. In doing so, the Court of Cassation can help ensure that the law remains relevant and effective in a rapidly changing world.

Accordingly, it can be said that the Court of Cassation plays a decisive role in establishing the judicial principles that the lower courts must abide by. The Court of Cassation also has the power to overturn decisions of lower courts if it is found to be inconsistent with the law or principles established by the court. This ensures that the lower courts abide by the principles established by the Court of Cassation and maintain justice and legal security when making their decisions in general, and accordingly it is expected that the lower courts follow the principles established by the Court of Cassation when making their own decisions so that the courts do the same way as the Court of Cassation. cassation and take into account its jurisprudence in similar cases.

### *2.2 The importance of case law in the common law system and the civil law system.*

Case law plays an important role in both the common law system and the civil law system, although its use and importance differ in these two legal systems. In the common law system, judicial precedents are considered a first and essential source of law, as all judicial rulings are codified and recorded in order to take the place of legal texts, and therefore it is necessary to refer to them in the event of a recurrence of the incident and the issuance of the same ruling in it, as there is no nature of the situation or the existence of any ambiguity or different circumstances where Such precedents provide consistency and predictability in the legal system, where judges have to follow the decisions of higher courts [4].

On the other hand, in the civil law system, precedents are considered less important, as the civil law system relies on legislation, which is the legal texts that the legislator sets according to their nature and divides them into specialized codes that set provisions to solve or deal with certain assumptions that include certain circumstances and problems. This is the first and main reference for all cases before the court. On the other hand, judicial decisions are not binding in the same way as they are in common law systems, although they may be compelling in some cases.

However, judges in civil law systems may interpret the law and apply it to individual cases, which may create a body of jurisprudence that can guide future decisions. In short, while case law is essential in the common law system and forms the backbone of the legal system, it plays a less important role in the civil law system, where the primary source of law is statutory law [5].

The binding force of case law differs in the two systems. While the main task of courts in the civil law system is to adjudicate certain cases through the application and interpretation of legal rules, in the common law system, courts are not only supposed to adjudicate disputes between certain parties. it also provides guidance on how similar disputes can occur [6]. It is settled in the future. The interpretation of legislation given by a court in a particular case is binding on lower courts, so that, under common law, court decisions remain the basis for the interpretation of legislation.

Accordingly, the Court of Cassation does not make the legal basis in the civil law system, but only applies and interprets the law. However, in practice, the decisions of the Supreme Court have an impact on the lower courts because the lower courts take into account the possibility of overturning their decisions that are inconsistent with the decisions of the Supreme Court, and the judges try to avoid this matter because it may negatively affect their promotion and progress in work. Hence, although case law in civil law systems does not have formally binding force, it is generally accepted that courts must take into account past decisions, particularly when established case law shows the development of a series of cases.

In sum, we find that the case law in the Anglo-Saxon countries occupies the second source of legislation after the law, especially in some cases it is the first plant of the legal rule, especially in matters about which the legislator in those countries remained silent. As for the case law in the civil law system, which are considered as general legal principles on which to rely The judge if the need arises, in addition to that this system deals with judicial precedents as guidance and enlightenment for the judge to resort to it if necessary without obligation and not as an applicable law and the witness in the matter is that the judiciary or the court is only limited to litigation and not an innovation of judgments and the creation of new precedents.

### 3 Deduction of blood money from compensation amount.

Blood money means money that is legally estimated for the victims or their legal heirs, and it is a punishment for the person responsible for the harmful act, and simultaneously, it is compensation for the victims or their legal heirs in the event of a loss. Blood money is imposed as an original penalty in the case of wrongful death [7]. God says: *“Never should a believer kill another believer, unless by error. Anyone who kills a believer by error must set free a believing slave, and pay compensation to the victim’s family, unless they remit it as charity. If the victim belonged to the people who are hostile to you, but is a believer, then the compensation is to free a believing slave. If he belonged to a people with whom you have a treaty, then compensation should be handed over to his family, and a believing slave set free. Anyone who lacks the means must fast for two consecutive months, by way of repentance to God. God is All-Knowing, Most Wise”* [8].

Blood money is also imposed as an original punishment as a result of killing a human being or as a result of damage to an organ of the human body. blood money is imposed on the act that causes loss of a unique organ of the human body such as the nose and tongue, and the loss of bilateral organs such as the hands, feet, ears and lips [9]. It is also imposed in cases of loss of mind, sight, smell, hearing, taste, and the ability to walk and speak. But if one of the body parts, such as one of the hands, eyes and legs, is lost, then the injured person is entitled to half of the blood money [10].

This paper is concerned with the jurisprudent of the Court of cassation regarding combining the amount of blood money and that of compensation. A ruling was issued by it as follows: **“Combining two compensations for an injurious act under the Civil Code does not agree with the general principles of civil liability, and since the right of the affected person is a financial compensation for the damage incurred as a result of an injurious act, and there was more than one compensation for the same act, so the affected is entitled to the most value and it is not permissible to combine them, that is, the value of the blood money must be deducted from the value of the compensation estimated by the experts, annulling any previous Case-law”**[11].

Then the court confirmed its jurisprudent in a subsequent ruling, and annulled any previous jurisprudent as well [12]. It appears from this resolution that the Court of cassation in Jordan supposed that obtaining the amount of blood money and that of compensation for the affected party leads to double compensation. The rule is that such person is not entitled to obtain two compensations for the same damage, because this is not consistent with the general principles of civil liability. However, the court granted the injured the right to obtain the highest value compensation. The court jurisprudence is criticized for that it did not indicate the type of damage from which the amount of blood money is deducted, is it from the value of the moral or material damage, or from both? It seems that the court meant all kinds of damage, notably since the plenary of the court affirmed in its retraction from any previous jurisprudent. In a previous jurisprudent, the court held that the amount of blood money adjudicated for the plaintiff heirs must be deducted from the amount of compensation for moral damage [13].

#### 3.1 The position according to Jordanian Civil Code

Article 273 of the Jordanian Civil Code states that: “Whatever money is due on account of a crime on the person or lesser

than that shall even though the criminal is a non-discerning person be the liability of al-akila [14] or the criminal for the benefit of the victim or his lawful heirs according to the law". Article 274 of the Jordanian Civil Code states that: "Notwithstanding the provisions of the preceding Section, whoever commits an act injurious to the person whether it is murder or the infliction of a wound or injury shall be liable for compensation for the damage he has caused to the victim, his heirs or his dependents who were deprived of support because of the injurious act".

It is clear from the previous provisions allow the victim or the heirs to combine the amount of blood money with civil compensation for damages that are not covered by blood money. There is no religious or legal violation in this. On the contrary, not giving the right to combine the same is a violation and breach of the principles of justice, because the law requires compensation for the damage suffered by the affected person. Any damage to someone obligates the perpetrator, even if with diminished legal capacity, to guarantee the damage. Therefore, in support of the principle of full compensation for the damage, the affected party must be compensated for damages that are not covered by blood money [15]. Therefore, the Court of cassation in Jordan has departed a conclusive legal provision through its new position, and it has worked hard in the provision context and this is contrary to the legal system in Jordan, when it considered in its ruling under study that the amount of blood money shall be deducted from the amount of compensation in general, which led to the cancellation of legal provisions regulating the legal blood money contained in the Civil Code. There is no doubt that the judicial interpretation is considered an essential element for the application of legal provisions to the facts brought before the court, but this is restricted by the absence of the applicable legislation from a conclusive legal provision with clear words and meanings. Having a clear provision and expressions included, the legislator elucidates the goal of legislation, and therefore the court has only to apply the ruling without resorting to interpretation or explanation.

What makes matters more complicated is that lower court judges are obligated to follow the Case-law issued by the Court of cassation, otherwise their rulings are subject to appeal. This obligation came as a basis for the provisions of Article 28 of the Judicial Conduct Code of 2017, which established the principle of case law when it stipulated that: "The judge must correspond with the updated legislation, and every Case-law issued by the higher courts, and note the Case-law established regarding controversial cases." This ruling is accepted if the Court of cassation has exercised its authority to interpret the provisions when they are ambiguous or missing addressing some cases in order to obtain from the legislative provisions or the rules of justice the most appropriate resolution. The adherence and commitment of lower courts to Case-law is merely a natural matter that achieves the judicial security leading to stability in society. Nonetheless, it is not right when the Case-law of the Court of cassation violates a conclusive and clear legal provision, and then obliges lower courts judges to adopt this Case-law, because the matter - here - went beyond the actual application of legal provisions, and established a legal rule contrary to the explicit provision. The principle of separation of powers prevents Case-law in the provision context and does not render Case-law binding except with regard to the dispute for which it was issued. It is assumed that the violation of the Case-law of the higher courts by the lower courts should not be defamatory, as long as it is in violation so that their ruling is a sound and just execution of the law.

### 3.2 Evaluation of the jurisprudence of the Court of Cassation

The Court of cassation has confronted deviation from the legal provision that, in turn generates the following criticisms:

**First:** The judicial authority encroaches the legislative one and the violation of the principle of separation of powers in the state. This principle means that each of the three authorities (executive, legislative, and judicial) is separate, having independent powers in the state. The legislative authority is responsible for enacting laws and monitoring the government, the executive authority represented by the government is responsible for implementing laws and managing state affairs, and the judicial authority represented by the courts is responsible for resolving various disputes in the state according to the laws issued by the legislative authority. Therefore, the Jordanian judiciary's deviation from this principle constitutes a violation of the applicable legal system in Jordan, in which the judiciary role is supposed to be limited to applying the legal rules stipulated in the legislation issued by the legislature. Since the judges have clear and explicit legal provisions, they have no room for personal interpretation, as Article 1/2 of the Jordanian Civil Code states that: (Legislative provisions shall be applicable to all matters dealt therein, in letter and context. In the presence of an absolutely unambiguous text, there is no room for personal interpretation).

However, this does not mean annulling the roles of the discretionary power of the judiciary in the field of interpretation, and resolving disputes related to emerging events within society that are not provided for in the law. Some legal provisions may be solid, unable to rule on issues that arise in a constantly evolving situation. "When the legal provisions are set, this occurs in a state of stillness, and only the judiciary set them in motion" [16]. However, turning stillness to movement, or giving life to the body, is not included in the provision. When there is a provision in the law, the judge must rule on what is stated therein. But when an issue is presented to the judiciary that the legislator could not expect and set a ruling for it in the legal provisions when enacting the law, then the judge shall bridge the gap in such provisions, and strive to reach a just resolution.

Thus, the Court of cassation plays a fundamental role in setting the judicial rules that courts follow in similar future cases, through the court's exercise of its role in interpreting legal rules. It has an effective role in adapting the legal rules to be more favorable to achieve justice, in particular if the legal rules are solid against constantly changing and developing. When the court's judiciary settles on a certain principle, the issue will be settled from a legal standpoint, and it is rare to dispute it, leading to the judiciary unification and stability on certain rules that the lower courts follow due to the moral value of the rulings issued by the Court of cassation [17]. It is genuine that the unification of court rulings in similar cases achieves justice and equality, and thus the feeling of reassurance among society individuals.

**Second:** The court's jurisprudence in the situations of the existence of codified legal rules leads to deviating from the path of the legal system applied in Jordan, to the path of the Anglo-Saxon system, which gives the judiciary the task of setting legal provisions. Although the legal system in Jordan does not see the case law, the judicial approaches in the cases that have been presented herein made the Jordanian judiciary go in the opposite direction. The court's continuation to follow a certain Case-law for a period led to the constancy and stability of the court itself, and prompted the lower courts to abide by these directions as if they were legislated legal provisions.

Although the lower courts can legally contradict the stable approaches of Court of cassation, practically, it is shown that these courts judges review and search for the case law issued by this court to follow in its footsteps in similar cases, more than their review of the written legal rules. Perhaps the reason for this is the moral standing enjoyed by the principles that the Court of cassation settled on, and on the other hand, these judges know that going against the rulings issued is deemed the end of their issued rulings. In the end, this will negatively affect the judge's promotion and work.

**Third:** The court jurisprudence in the situations of the existence of codified legal rules collides the provisions of civil code which states that the judiciary in Jordan as an explanatory source of law according to Article 2. The explanatory memorandum of this law has commented on this as follows: (The law was not limited to stating the formal sources, but rather specified for the judges what they can be inspired by in deriving judgments from all these sources. It presented the explanatory sources, and the sources of guide, so it mentioned the judiciary and Case-law, meaning the Jordanian, the Arab, and the foreign. Being guided by the same, it chooses what is more consistent with the legislation).

This confirms that the role of the judiciary is to resolve the disputes brought before it in accordance with the provisions of the law derived from the formal sources stipulated in Article 2 of the Civil Code. Resorting to explanatory sources is only for guidance, and this prevents the judiciary from setting legal rules.

#### 4 Nullification of contracts after fifteen years

A void contract does not have any effects because it is null from the beginning, therefore it cannot be corrected through the permission of one of its contractual parties nor over time. Consequently, logic indicates that it is possible to file a nullification lawsuit at any given time. However, article 168/3 of the Jordanian Civil Code states that "a lawsuit for nullification shall not be heard after the lapse of fifteen years from the time of contract" [18]. This means that the Jordanian legislature allows the concerned person to file a nullification lawsuit within fifteen years from the date of contract, thereafter they lose the right to do so. The reason behind defining a limitation period for a nullification lawsuit is to protect rights that have been settled over time. In this case, if a seller handed over the product to the purchaser under a void sale contract, and fifteen years have passed since the contract was concluded, the seller shall have no right to file a nullification lawsuit to recover the product after such period, and if the seller actually files such a lawsuit, the purchaser shall have the right to recover the sale by prescription.

However, it is almost unanimous that the forfeiture of the nullification lawsuit over the legally specified period does not turn a void contract into valid, for the void contract shall have no implications. However, this means the lawsuit shall not be heard after fifteen years from the date of contract [19]. On the other hand, the contract shall be effective in case of execution by the contractual parties. For example, in a sale contract, if the seller handed the product to the purchaser who pays the price for it, the contract (albeit void) shall have legal implications. Consequently, if the seller files a nullification lawsuit after fifteen years, the court shall reject the lawsuit pursuant to article (168/3) of the Civil Code, which leads to proving the purchaser's right in the product, and the seller's right in the price. So, how can legally describe such contract? Should one consider it a void contract with full force and effect? There are two cases:

**1 In case of execution of the contract:** saying that a void contract is of full force and effect is legally and logically incorrect for a void contract is null, and nullification does not generate implications. Therefore, it was logical for the law to allow filing a nullification lawsuit against such contracts regardless of the period, instead of determining a period of 15 years for that end. Since the law determined such period for the prescription of the nullification lawsuit, the legal description of a contract executed by its parties is preferred to be a 'legal overturn of a void contract into a correct one over time'. The court of cassation ruled the following: "if the lawsuit parties agree to reconcile, this does not cause the void contract to become effective, for it shall never be valid. Nullity in this case is a part of the public order which shall

not be affected by the validity. Therefore, if validity was allowed for the void contract, the contract shall be effective regardless of it violating the public order. By then, the nullity shall have no deterrent penal power and both nullity and validity shall follow the will of the party to contract, not the legislator. However, this is the logic of revocability, not nullity.” This ruling confirms that a void contract shall not be effective by the will of the contracting parties, for confirming that will shall cause nullification to lose its deterrent penal power, therefore there is a possibility of correcting the contract through means other than the will of the contracting party, such as the legislator’s will. Consequently, a question is raised: why cannot time pass become a reason for correcting a void contract by the force of law?

**2 In case of non-execution of the contract:** in this case, the contract shall remain void and ineffective, for there were no actual conditions or contractual obligations executed to be requiring maintenance and stability. Therefore, claiming nullity, which is a means for the contracting party to counterpart the other party’s claim of executing the void contract, does not forfeit over time. The reason is that the non-prescription of claiming the nullification of the contract over time does not threaten the acquired rights, for the contract was not originally executed by the contracting parties.

#### 4.1 The position in Jordanian legislation.

Referring to the rulings of the Court of Cassation, it is clear that the court indicated that it was allowed to file a lawsuit for the nullification of a contract on real estate property, even after fifteen years from the date of concluding the contract, which is an exception to Article 168/3 that requires filing a lawsuit within Fifteen years from the date of the contract.

The jurisprudence of the court of cassation showed that the court allowed the filing of nullification lawsuits for such contracts after the passing of thirty or forty years, which will be discussed later. These exceptions are related to the confirmation of invalidity, due to either impersonation of the real contracting party or ineligibility [20], based on the fact that time passing does not grant legitimacy to a contract forged or concluded by an ineligible person, nor does it grant ownership.

Rulings issued by the Jordanian Court of Cassation Decision recurred in confirmation of claiming a contract nullification after proving the death of one of its parties before its conclusion date, regardless of the passing of fifteen years. In one of its rulings in a case where contracts were concluded two years after the real owner’s death, the court ruled: **“proving the forging of the fingerprints of one of the sale contract parties causes the contract to be void, and things to be restored to their previous condition before contracting”** [21]. In another issue, the plaintiff owned inherited shares in a land and these shares were sold to her brother through forging her fingerprints. Comparison showed that the fingerprints on the contract do not belong to the plaintiff, and that the sale was forged, which made the court – after the passing of thirty-seven years – rule the following: **“this sale does not grant ownership to whom the ownership was transferred, for it was based on an illegal cause, and prescription does not grant legitimacy to the contract”** [22].

In another case, the seller was a four-year-old girl at the contract conclusion date, and the Court of Cassation Decision issued its ruling after forty-six years of the contract date and thirty-two years after the girl reached the age of capacity without any opposition from the girl’s side to the contract– and the ruling was as follows: **“prescription does not grant legitimacy to the contract according to the general rule, therefore nullity, in this case, is absolute for ineligibility reasons, according to article 117 of the Civil Code stating that (minors with diminished legal capacity shall have no right to dispose of their money and all their acts are void)”** [23].

The frequent jurisprudence of the Jordanian Court of Cassation in this regard is a real reason for issuing the real estate property law which states in Article 13: “Regardless of any other legislation: the statute of limitations does not apply to real estate that has been entered in the property register.” Accordingly, Article 168/3 does not apply to real estate property in Jordan and considered exception to the main principles in Jordanian civil code.

#### 4.2 Evaluation of the jurisprudence of the Court of Cassation

By reviewing the jurisprudence of the Court of Cassation, it can be said that the court was correct in its rulings for the following reasons:

**First:** This approach fulfills the principle of justice in terms of returning rights to their owners and not unjustly robbing others of their own property. Applying article 168/3 of the Civil Code violates another principle thereof. Islam sets the rule that property and its gains are rightful to their owner, and no part thereof shall be deducted without a legitimate reason, otherwise, it shall be regarded as taking property through falsehood, which Islamic Law does not approve of, for it forbade the believers from taking property through falsehood in any type of illegitimate profits. This transcendent principle is regarded as a part of the justice Islam calls for. Allah the Almighty said: *(O believers! Do not devour one another’s wealth illegally, but rather trade by mutual consent. And do not kill “each other or” yourselves. Surely Allah is ever Merciful to you)* [24], *(Give women “you wed” their due dowries graciously. But if they waive some of it willingly, then you may enjoy it freely with a clear conscience)* [25], in addition to the Messenger (PBUH) saying: *(You must not act oppressively, and a man’s property may not be taken except with his goodwill.)*. [26] Holding someone responsible

for others' actions are nothing but an unjust expropriation. Sharia does not permit expropriation except as compensation, a donation made with goodwill, or compensation for direct damage [27].

**Second:** Acknowledging the prescription effect – more than fifteen years – on dismissal of lawsuits regarding invalid contracts allows unlawful expropriation. Therefore, ruling of nullification in such exceptional cases prevents circumventing the law, whether through impersonating the real owner or due to ineligibility, for the law forbids unlawful expropriation, as well as forbidding expropriation except for public utility, that is, in exchange for a fair compensation determined by the law [28]. No claim shall be made in these exceptional cases regarding the existence of a legitimate reason or goodwill behind the transfer of property under a forged, illegal contract” [29].

**Third:** This approach confirms permanence embodied in the right of ownership, and the following consequences in terms of not forfeiting through non-use, or with the passage of time, whatever the reasons. Article 1018 of the Civil Code stipulates that: “1- The right of ownership is the owner’s authority to dispose of their property in an absolute manner, in terms of benefit and usage. 2- The owner of a thing has solely the right to benefit from the owned property, its revenue, fruits, and its products, and to dispose of it in all lawful dispositions.” This allows us to say that there is no logical justification to sojourn the fact that the owner has solely the right to dispose of their property, and not to allow the advancement of an illegal disposition to the level of legitimacy however long it takes, particularly if there is an impersonation of the real owner by forgery [30]. Is the passage of time sufficient to expropriate ownership of immovable property from the real owner due to forgery or exploitation of the real owner with diminished legal capacity, who has no right to dispose of their money, just for the law renders all their actions void?

**Fourth:** Not to mention the social role, it aims to prevent such law-violating actions, in order to face the dangers that the victim or the affected person may suffer as a result of these illegal actions. So, the law has worked to provide eligible protection for those who lost and are losing their properties due to forgery and impersonation. It also has achieved social stability and spread a feeling among society that law and judiciary, and thus the state, are all cooperating to achieve social justice among all segments of society. Eventually, this is reflected in reassurance and peace for all individuals that impersonation, forgery, or lack of capacity will not work for whoever resorts to the same, reaching a goal of legitimizing the void contract according to the general rule, however long it takes. Supporting article 117 of the Civil Code “minors with diminished legal capacity have no right to dispose of their money and all their actions are void”, which implies that the passage of time, however long, does not give the contract the status of legitimacy.

## 5 Compensation for moral damage within the scope of contractual liability

The court of cassation verdicts regarding compensation for moral damage have been various and undetermined. In the beginning, the court interpreted the Civil Code provisions to allow compensations for moral damages [31]. Article 267/1 of the Jordanian Civil Code on liability for injurious act states that compensation also includes moral damage, for every trespass of one's freedom, honor, reputation, social status, or financial considerations render the person who commits the trespass liable for compensation. Even though this article does not address the extent of compensations for moral damage in the scope of contractual liability, the party to contract shall not lose their right of claiming a compensation, as confirmed by the court of cassation in Jordan [32].

For example, article 814 of Civil Code obliges workers to have decency and morals in their actions, as ditching them shall be deemed – as the court of cassation resolves – a violation of the employee’s contractual obligations that is subject to compensation for damages incurred by the employer, that is, according to the contractual liability rules [33]. The same applies to the case of damage occurring to an author’s reputation as a result of changes made by the publisher to the author’s work. The liability for compensating for moral damages applies even when not stipulated in the contract. For example, insurer is regarded as a compensator for the moral damage, even if it is not stipulated in the insurance contract [34]. The same applies to the damage a patient suffers when the doctor reveals their own confidential information in a breach of the medical contract.

However, in recent years, the court has expressed different opinion regarding that issue, as it states that compensations shall not include moral damages, therefore it considers the verdict of the appeal court – which stated the validity of granting the plaintiff compensation for moral damage – to be illegal. The court ruled the following: “**judicial jurisprudence has been set, and according to article no. (363) of the Civil Code , the liability that is borne by the contracting party that causes damages to the other party as a result of not executing their obligations shall be governed by the contractual liability, and the violating party shall be obliged to compensate the other for the damage at the time of its occurrence, and that does not include moral damage**” [35]. The court then ruled in 2017 that **the compensation shall not include moral damage unless in case of fraud and gross fault, subject to article no. (358) of the Civil Code** [36].

It is clear from the last ruling the Court of cassation decided that the debtor shall remain liable in case of fraud and gross



fault, subject to article 358/2 of the Jordanian Civil cod which states the same. Through this provision, the Jordanian legislator hints at the inadmissibility of exempting the debtor from contractual liability when their violation of the contract arises from fraud or gross fault.

A debtor commits fraud when he intends to not execute his contractual obligations in conjunction with the intention of causing harm to the creditor, and this is called “intentional fault” [37]. gross fault, however, is usually not committed even by the most negligent people, therefore it implies huge negligence by the debtor without the intention of causing harm to the creditor [38]. Therefore, one can say that fraud includes gross fault, but not vice versa.

Nevertheless, the court ruled in its latest decision issued on 23-8-2017 that compensation for moral damage shall not be allowed without referring to the inadmissibility of exemption from contractual liability in case of fraud and gross fault. The court ruled the following: **“if the claim was based on a memorandum of understanding between two parties, their relationship shall be contractual, and claiming acknowledgment shall be subject to the contractual liability, given that the source of obligation between them is the contract, and that the claimed guarantee is limited to the actual damages so that it does not include lost profits and moral damage, that is, subject to articles 360 and 364 of the Civil code.”**[39] Does that mean that the court retracted its previous ruling and returned to denial of compensation for moral damage in the scope of contractual liability? It can be believed that the answer is “no”, for article 358/2 of the Civil Code expressly states that the debtor is always liable in case of fraud and gross fault. This was confirmed by a later verdict [40], as inductions of the Court of Cassation Decision Case-laws proved that compensation does not include moral damage as long as fraud or gross fault is not proven, otherwise, the liability becomes non-contractual.

### 5.1 Evaluation of the jurisprudence of the Court of Cassation

Even though the court decision seems undetermined as for the compensation for moral damage, it can be said that this compensation shall have a place in the scope of contractual liability for the following reasons:

**First:** Jurists regard the basis of compensation to be compensation for money with equal consideration as a form of replacement, for compensation shall be made from existing money, actual and legal, and that moral damage does not represent actual money that the affected party lost. However, the Islamic rules include levitating embarrassment, mitigating damage, and securing interests, and they grant judges the discretion of compensating the affected party for the moral damage in the contractual liability. [41]

**Second:** Compensation does not only aim to replace lost money with money, but it may also relieve the affected party. One application to that is the legislature following the blood money system which aims to mitigate the harm that befell the victim, that is, the loss of a benefit or the death of a victim, in addition to mitigating the anger and emotional pain that afflicted them all. This shall be considered in both types of liability, albeit more obvious in non-contractual liability. Here is a call for the Court of Cassation Decision in its mission of interpretation to use inference of similarities as means of dispute resolution, since logical similarities appear with the legal reason for granting compensation for moral damage in both types of civil liability.

**Third:** Compensation for moral damage was mentioned in article 267 on liability for injurious act, however, the contents of the explanatory memorandum for the Jordanian Civil Code indicate that such compensation was taken into consideration at the time of drafting the legal provisions, [42] for it mentioned that it was decided to take into consideration the opinion permitting compensation for moral damage. This article (267) matches article 205 of the Iraqi Civil Code which allows compensation for moral damage in contractual liability, and article 222 of the Egyptian Civil Code that addresses the permissibility of such compensation in both contractual and in-tort liability. [43]

**Fourth:** Justice rules suggest there should be no differentiation for granting compensation for moral damage between both types of civil liability, since achieving contractual balance between the parties’ obligations is seen to be extremely important and a main element of justice. Achieving this balance can resolve faults appearing in contractual obligation, therefore a party breaches contract may cause moral damage as much as physical damage, which requires a rebalance by compensating the affected party for the moral damage in order to fix the damage and achieve justice [44].

## 6 Conclusion

In conclusion, we found that the existence of various judicial references for claiming compensation has led to uncertainty regarding the permissibility of combining blood money and compensation. While Article 274 of the Civil Code permits compensation for damages not covered by blood money, the Court of Cassation's opinion to deduct the blood money value from the compensation estimated by experts contradicts legal provisions. Thus, the Court of Cassation is advised to return to its previous position, which is consistent with legal provisions. The Court of Cassation has addressed the issue of fraud in concluding real estate sale contracts through its Case-law, invalidating contracts after 15 years of their conclusion and obliging the violator to pay fair compensation to the victim. This stability has led to the regulation of the

issue under Article 13 of the Property of Real Estate Law, preserving the principle of legal security. Finally, the Jordanian legislator's silence on compensation for moral damage within the scope of contractual liability has led to judicial decisions that were turbulent. The Court of Cassation has recently settled that compensation for moral damage is granted only in cases of fraud and gross fault, which is not justified. The judiciary's interpretation should aim to achieve non-discriminating justice that grants compensation for moral damage in civil liability of any kind.

## Conflict of Interest

The authors certify that they have NO affiliations with or involvement in any organization or entity with any financial interest (such as honoraria; educational grants; participation in speakers' bureaus; membership, employment, consultancies, stock ownership, or other equity interest; and expert testimony or patent-licensing arrangements), or non-financial interest (such as personal or professional relationships, affiliations, knowledge or beliefs) in the subject matter or materials discussed in this manuscript.

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