

Publishing Via Social Media Sites and The Civil Liability of the Publisher in The Jordanian Legislation

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Abstract: This study showed the adequacy of the legal regulation of civil liability resulting from publishing via social media sites, and it also showed the lack of legal texts that dealt with this subject, which raises many problems. Then the study dealt with the issue of civil liability for publishing via social media sites in the Jordanian law: the concept of civil liability, whether contractual or tort, the provisions of this responsibility, and then the pillars of civil liability (error, damage, and causal relationship). This study discussed the legal protection for electronic publishing and the compensation due, with the obligation to pay compensation and the consequences of it. The study concluded that it is necessary to conclude an international agreement that regulates the relationship to solve the problems that occur when the actual location of the data that led to electronic violations is in one country and the victim is in another. The Jordanian legislator is responsible for clearly and explicitly regulating the procedures affecting the sanctity of private life, by enacting a law regulating electronic publishing through social media sites. The law must regulate the amount of fair compensation commensurate with the electronic damage.

Keywords: Civil Liability, Electronic Publishing, Social Media, Jordanian Legislator, Private Life.

Operational Definitions

- **Civil Liability:** is a system that leads to reparation for damage as a result of an act committed by one person against another, and it removes the effect of the harmful act or illegal act without punishing the perpetrator.
- **Electronic Publishing:** It is the use of a computer to create a document produced by the sender with the possibility of displaying it in paper or electronic form through written text, images and graphics.
- **Social Media Sites:** It is a group of electronic networks that operate through the Internet and allow to the user to create his own website and through an electronic gathering system with the sites of other members who have the same interests and hobbies.

1.INTRODUCTION

Social networking sites on the Internet are the most widespread because of the characteristics that distinguish them from other websites, and this is what made Internet surfers increasingly demand them despite criticism of the negative impact on the family community. There are those who see it as an important means of rapprochement between societies, and learning about the cultures of peoples in different countries.

Civil liability requires that a person be responsible for his act, as stated in Article (256) of the Jordanian Civil Code stating that whoever is harmed by the actions of others obligates the person who caused the damage to guarantee the damage. Here, the elements of civil liability, which are represented by the error mentioned in the Egyptian Civil Code in Article (163) and the Syrian in Article (164), must be available. And the Jordanian civil law adopted the idea of damage as a reason for tort liability, and provided a causal relationship between the error and

the result¹, that is, the damage was the cause that led to the occurrence of the damage, and in many cases it is difficult to estimate the causal relationship as a result of the multiplicity of circumstances and their overlaps².

And with the widespread spread of technology, the process of publishing via the Internet and through websites has become superior to other newspapers, magazines and television. Civil responsibility for publishing on websites is achieved due to the publication of what offends people and exposes their privacy, which causes damage that requires compensation³.

1.1. THE FIRST TOPIC

1.1.1. Publication On Social Media Sites and The Legal Responsibility of The Publisher

Modern science has come up with techniques and devices that can track a person's privacy and obtain all his secrets and privacy without him realizing what is going on around him. In the past, private life was separate from public life, as it was easier to protect the secrets that relate to it. In past centuries, the individual embraced the doctrine of "my home is my castle"⁴

Legal protection, especially civil protection, is one of the most important judicial means that individuals resort to, to protect their private lives from any infringement or violation by others. The judicial protection of private life appeared by the courts before it was enacted in the legislation with the aim of claiming compensation for the abuse they suffered, and accordingly we will discuss this issue through the following two requirements:

The First Requirement: The Legality of Electronic Publishing Through Social Media Sites.

The Second Requirement: The Reasons for the Legal Protection of Electronic Publishing On Social Media.

1.1.2. The First Requirement: The Legality of Electronic Publishing Through Social Media Sites.

Jurists differed on the legal nature of protection for publishing on social media, on the grounds that it is a protection for private life. Some of them argued that it is an intellectual property right, and others considered it a personal right. This will be explained through the following items:

First: The individual's right to private life is one of the property rights

Traditional jurisprudence recognized that some rights, including the right to personal freedom, are intellectual property rights. This appeared through the right to the integrity of the body and then it was extended to include private rights, and then it was generalized to include other elements involved in the right to privacy⁵.

Accordingly, the ordinary person possesses the three rights, which are to dispose, use, and exploit, and these are the rights that the right of ownership entitles. The rights that relate to the human personality of the body, image and soul, are considered the personal aspects of the human being, and they are rights branching from the property right. The proponents of this approach justified this by saying that the property right is the ideal model that gives its owner absolute powers of (use, exploitation and disposal), and that these requirements are a sure guarantee to achieve broad protection and great powers for the owner of this right.

¹ Mohammad Al-Bayat (2018) The General Theory of Commitment, Damascus, Damascus University Publications, p. 34.

² Sabrina Ben Said, (2019) Protecting the Right to the Sanctity of Private Life in the Age of Technology - Media and Communication, Ph.D. Thesis, Faculty of Law and Political Science, Haj Lakhdar University-Batna, Algeria, p. 12

³ Ashraf Al-Ra'i (2020) Press and Publication Crimes, Amman, Dar Al-Thaqafa for Publishing and Distribution, p. 25

⁴ Abdel-Wahhab Ashmawi, (1984) The sanctity of the home and its immunity, Public Security Magazine, Issue 106, Issue 27, July, p. 3

⁵ Hossam El-Din Kamel Al-Ahwany (1978), The Right to Respect for Private Life, Cairo, Dar Al-Nahda for Printing and Publishing, p. 141

Second: The right to private life is one of the individual's personal rights.

The rights that constitute the right to private life are considered as personal rights, which are defined as the set of rights that constitute the constituents and elements of an individual's personality in its various natural aspects, and his will over those constituents and elements with the aim of developing this personality and protecting it from any attack.

And that these protected rights include rights related to the physical entity of a person, such as his right to life and his right to body integrity, and some of them are rights related to the moral foundations of a person, which includes his right to respect the sanctity of his home and its privacy. These include rights related to a person's business, including freedom of movement and the right to choose his place of residence.

Third: The right to private life for an individual from systematic centers

This jurisprudential view showed that the nature of personal freedom is represented in substituting the idea of legal order centers for the idea of right in general, and by it the idea of duty replaces the idea of individual monopoly on which the right is based⁶. Proponents of this trend defined the systemic center as "the set of mutual rights and duties recognized by the law in the face of the mutual interests of persons", which means that the legal systemic center takes on the nature of freedoms and duties.

1.1.3. The Second Requirement

Reasons for the Legal Protection of Electronic Publishing on Social Media

The development of electronic means of communication is one of the reasons for violating the right to affect the sanctity of private life, and it carries many risks to this right. Individuals, young or old, put their private information, photos, and videos on social media sites such as Facebook, Twitter, YouTube, and Instagram. Snapchat, etc.⁷

This act exposes the personal data of people to violation, and the individual's right to electronic publishing through social media, which is considered part of the rights attached to it, expands and develops in light of the urban era. The protection of any right requires the presence of a legal text that gives protection, and this protection of not violating the individuals' rights includes international, regional and national legal and judicial guarantees⁸.

Although there are laws that grant the right to electronic publishing in social networks, including the Jordanian law, they do not rise to effective protection, in light of the technical development. It is difficult for us to obtain physical evidence that shows us the ability and effectiveness of these devices, which leads to the violation of the sanctity of individuals. If these devices are used without legal restrictions by the state authorities, their danger increases, and that is through psychological control that aims to spy on the mind of the individual and know his thoughts through measures ranging from "lie detectors" to "knowing the truth".

We are now living in a digital revolution with the explosion of information, leakage of documents, the spread of cybercrime and cyberterrorism, in addition to the violation of individuals' privacy and rights via the Internet.

In light of the above, there has become an urgent need to keep pace with legislation, which emphasizes the preservation and protection of freedom of expression for individuals and the fight against rumors and false news. Accordingly, these are strong justifications for protecting the right to private life in the face of technological progress.

⁶ Abdel-Azim Wazir Morsi (1983), *The Presumed Conditions in the Crime*, Cairo, Dar Al-Nahda Al-Arabiya, p. 130. .

⁷ Ghani Hassoun Taha, (1971) *A Brief in the General Theory of Commitment, Sources of Commitment*, Baghdad, p. 313.

⁸ Susan Adnan (2014) *Violation of the sanctity of private life via the Internet*, Damascus University Journal of Economic and Legal Sciences, Volume 29, Number Three, p. 423.

The Second Topic

2.THE BASIS OF RESPONSIBILITY FOR PUBLISHING ON SOCIAL MEDIA

Civil liability is the position of a person when he commits something contrary to the rules of the law that requires accountability. This situation arises when the employer breaches a specific obligation that results in harm to others. Article (256) of the Jordanian Civil Code stipulates this, as well as the text of Article (1382) of the French Civil Code⁹.

The basis of civil liability is the damage around which the obligations arising from civil liability revolve. It is represented in compensation, where there is no compensation without harm as a basic element of compensation that affects a legitimate interest of a person. The harm may have arisen from a breach of an obligation imposed by law, so the tort liability is established. And it may arise as a result of a breach of a contractual obligation, such as failure to fulfill the obligation or delay in implementation, so the contractual liability is fulfilled in all its aspects."¹⁰

The issue of civil liability for posting on social media sites is that it causes harm to others, so the person is only asked about the damages that may arise from his personal action or from the actions of the people for whose actions he must perform an account.

The forms of harming others in the field of using computers and the Internet actually take on various dimensions, either by entering illegal or legal information but it is used for other than what it was prepared for. Accordingly, we will address the elements of civil liability to indicate the extent to which they apply to the violation of privacy via the Internet, through the following requirements:

The First Requirement: The Error Pillar (Electronic Damage).

The Second Requirement: The Harm Pillar (Electronic Harm).

The Third Requirement: The Causal Relationship Between Harm and Electronic Damage.

2.1. The First Requirement: The Error Pillar (Electronic Damage).

Damage is considered one of the pillars of civil liability when the liability is tort, regardless of the basis adopted for considering the damages. And jurisprudence defines damages in different forms according to the circumstances of the situation, the environment, and the social reality. The idea of damages is unlimited and undisciplined¹¹. The definition is supposed to be flexible and consistent with the events that occur.

The considered opinion¹² corresponds to the meaning of damage in tort liability from its meaning in contractual liability. In the first case, the error is a breach of a legal obligation, and the second is a breach of a contractual obligation, and the legal obligation that was violated in the tort liability is mostly an obligation to exercise care. If he deviates from the obligatory behavior, so that he realizes that he has deviated - then this deviation is a mistake that requires responsibility.

It is clear from the texts of the Jordanian civil law and the opinions of jurists that the damage due to tort responsibility is based on two elements: the first element is material, which is the infringement, and the second element is moral, which is perception:

⁹ (Text of Article 1382 of the French Civil Code)

¹⁰ Awni Obeidat (1998). Explanation of the Social Security Law, Amman: Wael Publishing House, p. 129.

¹¹ Hassan Ali Al-Dhanoun, (1984) Material Responsibility (theory of bearing the liability), a research published in the Journal of Legal and Political Sciences, special issue, Iraq, Mays, p. 25.

¹² Ahmed Heshmat Abu Steit (1954) The Theory of Commitment in the New Civil Law, Misr Press, Cairo, p. 417.

First: Infringement, when it deviates from the usual behavior of a person, and the deviation is measured by the standard of the average man in such circumstances.

Second: Perception, which means the moral element of the error, and this element is available if the person from whom the act occurred is liable or discerning person only.

Due to the nature of dealing with information through computer networks, the following rules can be set:

1. If the data of the act is not subject to the oversight and control of the information producer, then the responsibility lies with the one who performed the act only, if it resulted in damages to others.

For example, a person may surreptitiously enter an information research center and seize destructive viruses and take them without the knowledge of those in charge of the center and then release them through computer networks, resulting in severe damage.

2. If correct programs belonging to a software product are used incorrectly, he will be liable when damage arises as a result of his failure to maintain the proper guarantee of the safe use of information within a network, unless he proves otherwise.

3. When entering data that includes abuse or harm to others even if these data were entered by a person other than the producer and he knows that they might cause harm to others, then here we are in front of joint liability for negligence towards the harmed party. The tortuous error resulting from the person in the first place is a reflection of the financial responsibility of others, by bearing part of the obligation incumbent upon others¹³.

The act of damage itself must have two elements, material, which is represented by infringement, and moral, which is the knowledge and will of the material element when dealing with information through a computer network, in which legal matters are characterized by ambiguity and instability, due to the novelty of the network and its ramifications.

The importance of proving a breach of legal duty in the field of computers and their networks by the plaintiff faces obstacles, including:

1. There is no custom when dealing with computer-related information, due to the relatively recent existence of the network, and it leads to courts refraining from relying in a way on custom and commercial customs in determining whether or not there is a breach of duty.

2. It is difficult to determine the defect in order to know whether it is a result of an act of negligence when entering the data, or it is due to the abuse that the entered data carries in itself.

The Jordanian Court of Cassation approved and agreed with legal jurisprudence in defining the elements of the contract with these three elements, and settled its jurisprudence considering damage as a pillar of civil liability¹⁴.

The general legal rule specified that if the initiative and the causer come together, the judgement is added to the initiative and this is what Article (258) of the Jordanian Civil Code stipulates. Damage is the basic pillar of tort liability, and the act must cause damage, and the harmed party proves that the damage has occurred, and this damage to the person may be material damage or moral damage¹⁵.

¹³ Ahmed Shawky Mohamed Abdel Rahman, (1980) The Solidarity Commitment of Negligious Officials in Confronting the Damaged, The Arab Press, p. 3.
¹⁴ (Jordanian rights cassation dated 24/2/2009 444/2002, Adalah Center publications).

¹⁵ (Jordanian Law Cassation No. (98/2584) ' 2247 of 2000, Bar Association Magazine)

The Second Requirement

2.2. Harm Pillar (Electronic Harm)

Damage is a pillar of civil liability, regardless of its source, and it is the most important pillar in it, because damage is the motive for the harmed person to file a lawsuit to claim compensation from the person responsible for the damage, which justifies the judicial ruling. Civil liability revolves around the presence and absence of the extent of the damage suffered by the victim.

And for civil liability, an error must be issued by the perpetrator, and this error must lead to harm to others, as the damage is a prerequisite for the establishment of civil liability.

The intended harm is the harm that may befall a person's right or legitimate interest, whether it touches his body, money, affection, reputation or honor, and the resulting penalty does not go beyond compensating or removing this harm¹⁶.

And that Islamic Fiqh and jurisprudence are unanimous that direct damages are the only ones that can be compensated for because of the presumption of (the natural result) contained in Article (207) of the Iraqi Civil Law. The natural result is when it is synonymous with direct damage in terms of meaning¹⁷.

General rules require that the plaintiff is charged with proving what he claims: "The onus of proof lies with the plaintiff and denial shall be supported by oath." He uses all methods of proof to prove his claims, and there is no control over them by the Court of Cassation. The assessment of damage and compensation for it are subject to the oversight of the Court of Cassation, and the plaintiff must prove that the damage he claims is due to the fault of the defendant.

And when this damage is achieved as a result of a tortious error by the defendant by affecting aspects of his private life through communication sites, and as a result of this error, a violation of a legally protected right that gives the right to file a civil lawsuit independently in accordance with the general rules of civil liability. The damage here is achieved through the fear and panic that afflicts the victim and influences his will¹⁸.

The Third Requirement

2.3. The Causal Relationship Between Damage and Electronic Harm

For the establishment of civil liability, it is not enough for the occurrence of damage and the occurrence of the harm, but rather a causal link must be established between them, which necessarily shows that the harmful act is the one that caused the harm to others, and the availability of this relationship is the first condition for the obligation to compensate due to its importance.

Causation is a logical relationship that indicates a necessary succession between two events, which means that the absence of the first necessarily leads to the failure of the second, and the occurrence of the first event inevitably leads to the realization of the second event. The first is called the cause and the second is called the result, but it must also be a material succession, as the cause precedes the result and leads to its realization.

Determining the causal relationship in civil liability is due to two factors: The first is that the damage may not usually be occurred from a single cause, but may occur from multiple reasons, one of which is the fault of the defendant. The second is that the damage may be followed by other damages, so when the damages are

¹⁶ Hassan Ali Al-Dhanoun, Material Responsibility (The Theory of Bearing the Liability), *ibid*, p. 227

¹⁷ Abdul Majeed Al-Hakim (1986) A Brief in the Theory of Commitment, co-authored, Part 1, Sources of Commitment, Baghdad, p. 214.

¹⁸ Ahmed Heshmat Abu Steit, The Theory of Commitment in the New Civil Law, p. 455.

successive, the multiplicity of causes may lead to the severance of the link between it and the damage, and then there is no causal relationship between the error and this damage¹⁹.

In order for the responsibility of the perpetrator - the one who caused the damage and he is bound by the guarantee- to be established, his act must be the cause that led to the damage, and this is what is meant by the causal relationship. This is what came in the text of Article (266) of the Jordanian Civil Code, whereby no one is asked about the guarantee of compensating the damage except for the one whose act was the one that led to this damage. And if the damage arose from a foreign cause, he was not bound by the guarantee, and also if the causes that led to the damage were multiple, then the cause that we rely on is the cause of the damage, and this is closer to achieving justice in defining the idea of causation between the act and the damage, when the causes that led to the damage are multiple²⁰.

The Third Topic

3.REPARATION FOR DAMAGE RESULTING FROM ELECTRONIC PUBLISHING ON SOCIAL MEDIA NETWORKS

When the elements of civil liability are available, the harmed person has the right to claim the removal of all damages and compensation for the harmful act, as civil liability is established when a person breaches what he is obligated to do towards others by law or agreement. The penalty resulting from that is the removal of the damage and compensation for it, and in order to redress the damage, the aggressor must be obligated to pay compensation.²¹

The damage is represented by an assault on the right or interest of the victim that is protected by law. Compensation is represented in removing the impact of the assault on a right or interest. Sometimes the harmed person may not find a way through which he can obtain compensation for the damage he suffered, when he is unable to assign responsibility to the perpetrator. The aggressor may be unknown, which prompts us to find effective means that serve as a guarantee of obtaining the right to compensation.

The First Requirement: The Obligation to Compensate for The Damage

The Second Requirement: The Value of Compensation for Damage

3.1. The First Requirement: The Obligation to Compensate For The Damage

The person responsible for the harmful act must compensate the victim for the material or moral damage he suffered due to the existence of the elements of responsibility for the damage. Compensation is defined as: "an amount of money equivalent to the loss suffered by the harmed person and the lost gain, and the compensation must be equivalent to the damage."

Compensation is often monetary, and in other cases it is in kind by restoring the situation to what it was before the error was committed, by completely reforming it. This is achieved when the error committed by the debtor is in a form that can be removed or amended. It is defined as the ruling to restore the situation to what it was before the one responsible for the error that led to the damage was committed²². In-kind compensation is considered the best method of compensation, as it restores the harmed to its condition before the damage occurred.

¹⁹ Ghani Hassoun Taha, A Brief in the General Theory of Commitment, *ibid* , p. 45.

²⁰ Abdul Qadir Al-Far and Malkawi, Bashar, (2016), Sources of Personal Right in Civil Law, Amman, Dar Al-Thaqafa, p. 197.

²¹ Yassin Al-Jubouri, (2010) A Brief in explaining the Jordanian Civil Law, Part One, Dar Al-Thaqafa for Distribution and Publishing, Amman, p. 115.

²² Adnan Al-Sarhan and Nuri Khater, (2016), Sources of personal rights and obligations, a comparative study, Dar Al-Thaqafa for Publishing and Distribution, Amman, p. 59

3.2. The Second Requirement: The Value of Compensation for Damage

Estimating the value of compensation for direct damage includes lost profits and subsequent losses as a result of this damage, which are the two elements that can be evaluated in money, as well as compensation for direct damage in the event that the damage resulted from the harmful act, that is, in the case of tort liability. While it includes expected direct damage only in the event that the damage resulted from a breach of a contractual obligation, that is, in the case of contractual liability²³.

When estimating compensation, the judge must take into account the circumstances of the harm and the victim, and the judge must not stop at what the injured party claims or what caused the damage, because the victim may exaggerate in compensating the damage he suffered while the one who caused the damage may underestimate its value or try to deny it. Likewise, the victim may be in a situation where he cannot reveal the truth about the harm that befell him, as if he was young or sick, which means that the judge must investigate himself or through experts by searching for the truth about the damage that actually occurred and the circumstances surrounding it that can affect it with severity or mitigation.²⁴

Likewise, the judge must take into account the income level of the victim, which was cut off due to the act of the one who caused the harm. The judge must also keep in mind the age and gender of the victim when assessing the damage.

Article (266) of the Jordanian Civil Code stipulates that: "In all cases, the guarantee shall be assessed according to the amount of damage sustained by the harmed party and the gain lost, provided that this is a natural result of the harmful act."

The compensation estimated by the court must be commensurate with the damage actually caused, and it must be equal to the damage suffered by the victim. The court, when estimating the compensation, must take into account the amount of damage in order to be proportional to the amount of compensation during the time period in which the delay caused damage. In a decision of the Jordanian Court of Cassation, it was stated that: "The amount of compensation resulting from the damage must be commensurate with the degree of the harm suffered by the victim"²⁵

The error in the tort for the assault on the right to privacy through social media networks is the infringement by a person of a legal obligation not to harm the rights of others electronically, and the penalty resulting from the right to privacy is in the form of monetary compensation for the inability to be non-monetary due to the impossibility of returning the situation to what it was before the occurrence of the damage, and this is stipulated in Article (48) of the Jordanian Civil Code.

CONCLUSION, RESULTS AND RECOMMENDATIONS

First: Conclusion

In this study, we examined the issue of civil liability for publishing via social media networks in the Jordanian law, and we clarified in it the concept of civil liability, whether contractual or tortious. In this research, we also dealt with the definition of social media networks, and the preservation of individuals' private lives from electronic publishing, as well as the legal basis that entails civil liability for publishing through social networking sites, then we discussed the elements of civil liability (error, damage, and causal relationship) and the legal protection for electronic publishing and compensation due with the obligation to pay compensation.

²³ Ramadan Abu Al-Saud, (2003) Sources of Commitment, New University Publishing House, Alexandria, S395.

²⁴ Ghani Hassoun Taha, A Brief in the General Theory of Commitment, *ibid*, p. 34

²⁵ (Jordanian Rights Cassation No. 648/2012, Adalah Center Publications)

Second: Results

The Jordanian legislator, like most Arab legislation, did not intervene to put in place a special legislation to prevent the infringement of the sanctity of the private life of electronic publishing, and left the field open to the infringement of the privacy of individuals. And when damage resulting from an error is achieved, affecting a legally protected right, this gives the right to practice civil action independently in accordance with the general rules of civil liability. The tort liability for violating the private life of individuals is achieved by the occurrence of damage from the aggressor resulting from his mistake, and he has the right to return to the aggressor on the claim of tort liability when the element of the causal relationship between the act and the result is available.

The Jordanian legislator adopted the idea of stopping the harm or stopping the illegal act, as stipulated in Article (48) of the Jordanian Civil Code (for everyone who has been subjected to an unlawful assault on one of the rights inherent to his personality, to request the cessation of this assault with compensation for the damage he may have suffered). It appears from this text that the damage in violating the right to privacy through social media networks is an infringement and breach of the legal duty not to harm others electronically, and this is the tort liability, which entails monetary compensation for the impossibility of restoring the situation to what it was in this type of damage.

Third: Recommendations

The researcher recommends concluding an international agreement that regulates the relationship to solve the problems that occur when the actual location of the data that led to electronic violations is in one country and the affected person is in another. We also recommend that the Jordanian legislator clearly and explicitly regulate the procedures affecting the sanctity of private life, by enacting a law regulating electronic publishing through social networking sites. The researcher also recommends that the law regulates the amount of fair compensation in proportion to the electronic damage. Finally, the researcher recommends the Jordanian legislator to form specialized courts in electronic publishing cases.

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