

Loss of Life Expectancy Damage in Organ Transplantation: Reconsidering Its Legal Classification in Civil Medical Liability – A Comparative Study–

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لعناصر المسؤولية المدنية الطبية -دراسة مقارنة-

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ABSTRACT:

ملخص باللغة العربية:

Rapid scientific advances in organ transplantation have necessitated a re-examination of traditional medical liability concepts within both the Anglo-American and Latin systems. This study identifies "loss of life expectancy" as a unique, independent harm that traditional legal classifications fail to accommodate. Consequently, it is essential to analyze the substance of the right to the integrity of life to establish robust legal protections against evolving risks. By distinguishing this right from similar concepts and exploring its intricate

فرضت التطورات المتسارعة في جراحة زرع الأعضاء إعادة النظر في بعض المفاهيم التقليدية للمسؤولية المدنية الطبية بالنظامين الأنجلو سكسوني واللاتيني، حيث أثبتت الدراسة أن ضرر فقد توقع الحياة يمتلك طبيعة مستقلة لا تستوعبها التصنيفات التقليدية للضرر. لذا توجب تحديد مضمون الحق في تكامل الحياة لتكريس حمايته القانونية ضد المخاطر المتعددة، مع تمييزه عن المفاهيم المشابهة لضبط حقيقة العلاقة بينهما. إن تحديد هذا المضمون يرتبط

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relationship with the right to bodily integrity, the legal framework can more accurately define infringements occurring during the transplantation process. This conceptual clarity is vital for determining legally fair compensation and ensuring that such injuries are properly integrated into the established system of compensable damages under medical civil liability. Ultimately, modernizing these frameworks ensures that the law keeps pace with medical progress while safeguarding the fundamental right to life.

Keywords: independent head of damage ؛ loss of life expectancy ؛ Legal adaptation ؛ Human organ transplantation.

جوهرياً بالحق في سلامة الجسد، لما له من انعكاس مباشر على توصيف الضرر الناتج عن المساس بتكامل الحياة في سياق عمليات الزرع. فيهدف هذا التأصيل المنهجي للوصول إلى التقدير العادل قانوناً، عبر إدماج هذا النوع من الأضرار ضمن منظومة الأضرار القابلة للتعويض في إطار المسؤولية المدنية الطبية، بما يضمن حماية قانونية شاملة لكافة عناصر الحق في الحياة.

كلمات مفتاحية: ضرر مستقل، فقد توقع الحياة، التكييف القانوني، زرع الأعضاء البشرية.

Introduction:

Human organ transplants are among the most important therapeutic solutions for incurable diseases that affect people, impacting the course of their lives and rendering them incapacitated; they thus offer great hope of a cure to thousands of patients worldwide every year, which explains the long waiting lists for such procedures. However, they also involve the issue of a doctor's civil liability across various fields and specialisms, which warrants extensive study due to the high risks and complex, precise techniques involved. These pose legal challenges, primarily concerning cases of medical malpractice, particularly those that result in the loss of the patient's life, whether the patient is the recipient or the donor, by eliminating all chances of survival due to medical error. Hence arose the concept and issue of loss of life expectancy, which may occur in any of the three possible forms. The first includes injuries causing immediate death within a few minutes or hours; the second includes relatively non-immediate injuries occurring over a few days or weeks; and the third includes injuries that do not cause death but hasten it by ending life, It has thus become commonplace in the courts to raise questions regarding it, owing to the historical development of this specific category of damage as independent of other forms of harm, which sparked a wide-

ranging legal, judicial and legislative debate regarding the extent of its independence, a debate that concluded with its recognition by the two global legal systems the Roman and Anglo-American through the latest rulings of the courts, such as the historic decision marking a radical legal shift in compensation regarding the loss of life expectancy that occurred a few days ago, on 18 February 2026, in England in the case of CCC v Sheffield Teaching Hospitals NHS Foundation Trust, as the most recent global precedent recognising the value and autonomy of the loss of life expectancy.¹

Even within the rigid Athenian legal system, there is a general recognition of this principle, owing to differing perspectives in civil law regarding the assessment of compensation. This is reflected in the prevailing trend towards recognising such claims in cases of medical malpractice and violent crimes in France, as evidenced by recent developments in the judiciary. The French Court of Cassation, in its Second Chamber, in its decision No. 17-80.812 of 2018 that a victim who realises the inevitability of their death and the shortening of their life as a result of their injury is entitled to compensation for what is known as *Angoisse de mort imminente* (anxiety of imminent death), which is separate from physical injury and may be transferred to the heirs, whereas the Civil Chamber had previously considered it to be part of the physical injury. This was followed by the landmark decision issued by the Joint Chamber of the Court of Cassation regarding the complete independence of this damage from physical pain, as compensation for it on the basis of inevitable death is covered by Decision No. 20-15.624 of 2022, which is considered one of the most significant shifts in civil liability, up to the most recent

1 CCC v Sheffield Teaching Hospitals NHS Foundation Trust [2026] EWHC 312 (KB). <https://www.judiciary.uk/judgments/ccc-v-sheffield-teaching-hospitals-2026/>

decision on the famous Nice accidents, No. 21-86.079 of 2023 who acknowledges the nature of this damage.¹

This highlight and underscores the importance of examining the legal nature of this form of harm, which distinguishes it from traditional forms of harm—including those that are similar, such as physical injury—namely, whether it constitutes an independent head of damage warranting separate compensation in its own right, or merely a variant of traditional harm under the rules of medical civil liability.

In light of these facts, we are led to raise the following question: to what extent can loss of life expectancy in organ transplants be classified as an independent head of damage for which compensation may be awarded under the system of medical civil liability?

In light of the nature of the subject, we have adopted a comparative legal approach by analysing the various judicial rulings and jurisprudential opinions governing the nature of damage under the Anglo-American and Latin legal systems, and comparing the extent to which they recognise this concept, with a view to assessing the possibility of acknowledging the independence of this type of damage in the context of medical liability for organ transplantation, within an integrated methodological framework, To address the issues raised by this topic, we have decided to proceed as follows:

In the first section, the study examined the distinction between the right to the integrity of life in relation to human

1 Cour de cassation, Chambre criminelle. (2018, 15 février). Arrêt n° 17-80.812 et 17-80.813. Légifrance. <https://www.legifrance.gouv.fr/>
Cour de cassation, Chambre mixte. (2022, 25 mars). Arrêt n° 20-15.624. Légifrance. <https://www.legifrance.gouv.fr/juri/id/JURITEXT0000454313>
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Cour de cassation, Chambre criminelle. (2023, 8 février). Arrêt n° 21-86.079. Légifrance. <https://www.legifrance.gouv.fr/>

organ transplants and the right to bodily integrity; the second section addressed the elements of loss of life expectancy arising from human organ transplants, The study then concluded with a summary of its findings.

Section I: Distinguishing the right to the integrity of life from human organ transplants and the right to bodily integrity.

A good introduction paves the way for defining the nature of the loss of life expectancy as an independent head of damage deserving of compensation in the context of human organ transplantation and transfer; It is necessary to begin by defining the nature of the harm in the case of loss of life expectancy, comparing it with physical bodily harm, in order to derive its nature from the reality of the relationship between the two harms, given the specific points they share and their similarities **(firstly)**, and then to distinguish them by considering their differences **(secondly)**, in order to identify what is unique to each right and what distinguishes it, thereby necessitating compensation for it should it occur as an independent head of damage.

A) Similarities:

Legal doctrine defines the right to bodily integrity as the interest protected by law, whereby an individual's body must remain intact and capable of performing all its physiological functions at the normal level of health available to them, whether for the donor or the recipient during the process of human organ transfer and transplantation, without any interference with it in the normal, natural manner, so that it is not diminished by the actions of a doctor, the surgical team, or even a public or private hospital.¹

1 Mahmoud Naguib Hosni, The Right to Safety and Life as Guaranteed by the Penal Code, Journal of Law and Economics, Cairo, Volume and number (Not specified); 1959, p. 537.

Consequently, any infringement that diminishes this share whether it causes disability, pain, financial loss or loss of earnings, or does not cause any of these to the recipient patient in relation to their capacity, the perpetrator cannot escape liability on the grounds that financial loss or physical pain has not been proven in the event of the amputation of a limb or any error relating to the technical aspects of the procedure for the transfer and transplantation of a human organ into the body of a recipient who is insane or unconscious,¹ Any act resulting from medical negligence that reduces this natural level of health is deemed to have occurred, as established by a forensic doctor, who determines this by comparing the manner in which the vital functions of the individual's body operate with the normal standard set by the laws of nature, where applicable; if the discrepancy between the two is small, the individual's level of health is increased, but if the discrepancy widens, that share is lost.

Whereas the right to the integrity of life refers to the interest protected by law for the individual whether as a donor or recipient in the process of human organ donation and transplantation in ensuring that their body continues to perform all its physiological functions in the normal manner, in addition to preserving the integrity of his life by not being deprived of any of the specific and normally expected periods of time that would naturally be part of his life, as is the case for people of his kind, and which are determined by the natural laws of life.²

1 The importance of this becomes apparent in cases where a limb is amputated from an unconscious or mentally incapacitated person, or where a person who is unable to work is unable to utilise their capacity for work; in such cases, the doctor at fault cannot evade liability on the grounds of no financial loss or no serious harm, **Look:** Mohammad Naji Yaqout, *Compensation for Loss of Life Expectancy – A Comparative Study of Civil Liability in Anglo-American, Egyptian and French Law*, first edition, Egypt; 1980, p. 35.

2 Mohammed Naji Yaqout, op. cit., p. 39.

Accordingly, both the right to bodily integrity and the right to the integrity of life or what is known as ‘vital harm’ in relation to human organ transplantation and transplantation procedures are consistent in that each constitutes a legal interest ensuring that the patient’s body, whether that of the donor or the recipient, is not interfered with in such procedures in the normal, natural course of events, regardless of their state of health or the expected duration of their natural life, by the actions of the doctor, their medical team or the medical facility. They also agree that both have an absolute objective aspect centred on a specific subject possessing independent value, which is not viewed from a personal or subjective perspective and in which all people are equal regardless of their overall circumstances, and a personal subjective aspect represented by the value attributed to the subject by the person holding the right.

B) Differences:

However, they differ in terms of their constituent elements or aspects. Whilst it is true that each has both an objective and an aspect of autonomy, their substance differs; For the right to bodily integrity in relation to the transplantation and transplantation of human organs, in its objective aspect, its inherent value is founded on the idea of bodily integrity from a quantitative perspective, in which all people are equal, regardless of their circumstances, with regard to the right to bodily integrity, such that this right has no objective value unless all its parts remain intact, retaining the natural share of health available to the individual; if any part is diminished, this value is diminished, and consequently, any infringement upon it constitutes an independent head of damage,¹ As for the

1 Mc Gregor ‘Damages, 13edition, United Kingdom; 1972, n.o 1181, Street, Principles of Damages, United Kingdom; 1962, P. 62. Kemp & Kemp, Damages, 4 th edition, United Kingdom; 1975, P. 177. Ogus, The Law of Damages, United Kingdom; 197310.4 Damages for lost amenities, M.L.R. (Modern Law Review), United Kingdom; 1972, 1 . English law has likewise recognised this intrinsic value of the right to physical integrity and protected it by awarding compensation under civil liability; indeed, there are several established judicial precedents regarding the enjoyment of life’s pleasures, as these are regarded possessing a worldly

objective aspect of the right to the integrity of life in the context of human organ transplantation and transplantation procedures, it embodies the same principle as the objective aspect of the right to physical integrity, namely that all people are equal regardless of their personal circumstances; moreover, it goes beyond this in that it has no objective value unless every natural unit of time is preserved, thereby ensuring its integrity. However, if a person loses any part of that natural lifespan, the value is diminished and this is considered an infringement upon the integrity of life, constituting an independent head of damage. Thus, the deprivation of an unspecified number of years of the patient's life years which he would naturally or reasonably have been expected to live, as is customary for people of his kind, had there been no infringement upon his organs and bodily tissues constitutes an independent head of damage.¹

value for the individual that surpasses the value of all their possessions, whether real estate or movable property and is therefore not beyond monetary valuation. The British House of Lords, speaking through Lord Roche in the case of *Rose v Ford* in 1937, stated: I regard impaired health and vitality not merely as a cause of pain.... but as a loss of a good thing in itself; A.C. p.829, 859.

- 1 **Look:** Jean-Luc Aubert, *Introduction to Law and Fundamental Themes of Civil Law*, 7th edition, France; 1998, p. 28, Furthermore, English law has recognised the existence of this value in its objective sense, as evidenced by a number of established judicial precedents which hold that the patient's full enjoyment of the natural expectancy of life and its continuation until its full natural duration is a great good whose value exceeds that of money; thus, a monetary valuation is accepted, despite its difficulty, For each unit of time comprising that natural lifespan has an intrinsic value, independent of its outcomes such as happiness, enjoyment and earnings during those years. Consequently, these values apply to every human being, and all people are equal in this respect, regardless of whether they are rich or poor, old or young, and this is the objective aspect of this matter. Among the most important and earliest of these precedents is the principle established in the case of *Flint v. Lovell* in 1935, which was decided by the Court of Appeal and has been adhered to by the English judiciary ever since: *Flint v. Lovel* (1935) 1 KB 354. For further details, **Look:** Mohammed Naji Yaqout, op. cit., p. 41.

As for the personal aspect of the right to physical integrity, this is represented by the harm caused to the patient as a result of being deprived of the enjoyment of purely personal and autonomous matters from a qualitative perspective whilst suffering physical injury; this varies according to the financial, social and health circumstances of the injured parties and other factors. Comparative civil law has recognised the existence of this value and its protection, whether in its financial aspect represented by the benefits derived from the ability to work or its non-financial aspect represented by happiness, freedom from pain and depression, and the loss of the ability to enjoy life's pleasures.¹

The English common law distinguishes between two elements of financial loss: one is actual loss, which has already occurred during the period from the time of the injury until the filing of the claim, and the assessment of this element is not usually disputed; whereas future loss, which includes loss of earnings and consequential loss, is usually a matter of dispute.²

As for the French civil courts, a new trend has emerged calling for the separation of the elements of non-pecuniary and physical harm, with each element being allocated a specific portion of the total compensation; these are categorised as harm to appearance, loss of enjoyment and happiness, physical and emotional pain, and harm to children,³ The logic behind this idea is that every person has a right to health, beauty and freedom from pain; for a person's financial obligations are matched by moral obligations.

1 For further reading on the relevant case law, **Look:** Mohammad Naji Yaqout, op. cit., p. 37.

2 Mohamed Naji Yaqout, Compensation for Bodily Injury in English Law ' Journal of Law and Economics for Legal and Economic Research, Faculty of Law, Cairo University, Egypt, Vol. 45, No. 02, June; 1976, p. 21.

3 Max Le Roy, The Assessment of Personal Injury, 7th edition, 1977, p. 76.
Max Le Roy, The Assessment of Personal Injury, 7th edition 'France; 1977, p. 76.

As for the personal aspect of the right to the integrity of life in the context of human organ transplantation and transplantation procedures, its basis lies in the fact that the continuation of human life in its qualitative aspect is what enables a person to derive the benefits both material and moral from the exercise of their normal physical and mental capacities,¹ Given that any activity undertaken by a person requires that they devote a specific portion of their time to carrying it out or deriving benefit from it, both materially and morally, Consequently, the personal value of the right to the integrity of life in relation to human organ transplants and transplants is represented by the happiness and expected gain over a period equivalent to the full natural lifespan of his peers, with every specific component necessary to benefit from this right; as its substance lies in deriving benefit from matters of a purely personal nature, the value of which varies from one individual to another depending on their personal circumstances, such as the nature of their work and their social and financial status, amongst others. In turn, it comprises two elements: a material element, represented by the value of the expected gain over a period equivalent to the full natural life expectancy of the patient and the deceased; it cannot be argued that the patient may not suffer personal harm from being deprived of his wages during the lost period, as he would presumably be dead by then; for the harm befell the patient from the moment the harmful act occurred and prior to death, manifested in the loss of something currently in his possession, and the act in question is the integrity of his ability to work and its consequences during the natural life the patient was expected to live. Under French law, there is no objection to the patient's right to compensation for damages resulting from such injuries, whether they led to his death or resulted in partial or total disability. As for English law,

1 Smith H.W. 'Psychic interest in continuation of one's own life: legal recognition and protection (spectrum of personality interests legally protectible in tort actions for personal injury), University of Pennsylvania Law Review, United Kingdom; (1950) 98 'P. 789.

it has recognised this material damage resulting from the personal loss suffered by the patient in the form of loss of enjoyment of life and physical injury, and has termed it 'personal loss'; its factors have been clarified in all nineteenth-century and modern cases.¹

As for the second element, it is characterised by physical harm, which takes the form of the physical pain suffered by the patient as a result of the removal of an organ, or by the recipient following a botched operation that has deprived them of the enjoyment of the integrity of their body and their life; these are of two kinds: one physical and the other psychological.

They are both different and similar at the same time, given that the loss of life, insofar as it infringes upon the right to the integrity of life in the context of human organ transplants and transplants, is nothing less than severe physical harm of the utmost gravity.²

Section II: Components of harm resulting from the loss of life expectancy in connection with the transport and transplantation of human organs.

It is clear from the foregoing that the loss of life expectancy, considered as an independent head of damage that affects the integrity of life, has two aspects and two elements: one is objective and quantitative, whilst the other is subjective and qualitative, each having its own distinct character.

1 Hilal Ibrahim Mohamed Ibrahim, *Civil Liability in the Field of Human Organ Transplantation and Transplantation – A Comparative Study*, PhD thesis in Law, Mansoura University, Egypt; 2014, p. 405.

2 Mohammad Naji Yaqout, *op. cit.*, p. 33.

A) The objective aspect of the loss of life expectancy resulting from the transport and transplantation of human organs:

This consists of the deprivation of an unspecified number of years of life which the victim would naturally or ordinarily have been expected to live had there been no infringement of the right to the integrity of his or her bodily organs and tissues, and had he or she not lost his or her life.¹

The principle is based on the premise that all people are equal, regardless of their personal circumstances, from a quantitative perspective regarding the human right to retain all their organs and bodily tissues intact and their right to life; If any part of this is diminished or lost, this right is thereby diminished; consequently, this is considered a serious harm to the objective value of the injured party in human organ transplantation and transplant procedures, for which they are entitled to compensation.

However, a significant aspect of Latin law and jurisprudence,² And part of the Anglo-Saxon tradition, due to its adherence to and confinement within the traditional classifications of harm in its material and moral forms, failed to accept and disregarded, or even taken into account, that the deprivation of life constitutes an independent head of damage in its objective aspect for the person deprived of life, provided that it does not entail financial, moral or psychological loss, because the general rule and legal principle is that harm is personal; it is assessed in light of the specific circumstances of the injured

1 **Look:** Jean-Luc Aubert, Introduction to Civil Law and Fundamental Themes, 7 th edition, France; 1998, p. 28.

2 A judgment was handed down by the French Court of Cassation on 9 October 1957, Vol. C, p. 163, ruling that deprivation of life does not constitute harm, on the grounds that the fatal incident immediately brought to an end a brief state of unconsciousness followed by death; and also: French Court of Cassation, 21 December 1965, p. 181; commentary by Asman; Civil Code, No. 1068, p. 754.

party surrounding the harm, in terms of its existence, substance and extent, Thus affecting its extent through increase or decrease, which usually varies from person to person depending on their subjective assessment, making it variable or fluid from one person to another. Consequently, harm is categorically considered an essential element that cannot be presumed; if the injured party is unable to prove it, their claim is dismissed due to the absence of the element upon which civil liability is based.¹

It is generally accepted in legal theory that there are two types of damage: material damage, which consists of financial loss, and non-material damage, which consists of emotional and reputational harm resulting from a breach of a legitimate right or interest of the injured party in relation to the removal and transplantation of human organs; This has made it difficult to classify the objective aspect of the damage caused by the loss of life expectancy and to include it among the recognised types of damage in the general legal concept, which has led to its existence being overlooked, as it has been necessary to accept that the loss of life expectancy does not constitute an independent head of damage in its objective aspect, However, there is another aspect to this, in his efforts to overcome the obstacles, which he regards as material damage, consisting of the victim's loss of the most precious material possession they have namely, life and another aspect which he regards as non-material damage, consisting of the shattering of the victim's hopes in relation to life and the suffering caused by the taking of a life.²

1 Lau, Civil Liability, 6th ed., p. 177, R.W. Dios, B.S. Markesinis : the English Law of torts, a comparative introduction, United Kingdom, 1976, p21.

2 since it (life) is the asset without which all others are nothing'. Life is an asset in itself. Whoever destroys this asset must make amends.... "In the context of inheritance, one might assess a man's life at a flat rate of, say, one million francs" (in 1956), J. Braud, 'Compensation for bodily injury: rigour and updating', J.C.P. 1976, No. 2796.
Mayrand, What is life worth?', Journal of the Bar of the Province of

However, what is notable about these attempts is their adherence to the traditional classification of damage in general legal theory and the inclusion of this type of damage the right to the integrity of life within that framework; by disregarding the primary value of this right, which necessitates protection in every aspect of its existence, it follows a fortiori that compensation for vital damage should be considered independently. For, referring to case law and legal doctrine, we find that they have not ruled out the possibility of compensation for bodily harm as a specific category on the grounds that it cannot be subsumed under the traditional categories of material and non-material damage; consequently, the same principle applies a fortiori to the infringement of the right to life, constituting an independent head of damage separate from the non-material suffering and financial loss resulting therefrom.¹

This type of harm may thus be regarded as having a specific nature linked to the value of the life that has been infringed upon and the harm resulting from its loss, justifying the need to depart from the general principle governing the classification of recognised harm with regard to the autonomy or personal nature of the harm; For whilst the mere expectation of life is personal harm in the sense that it necessarily affects a living human being, the nature of this harm is characterised by an objective aspect, namely the mere fact of being deprived of the natural expectation of life, in whole or in part, as evidenced by medical expertise, without the need to prove any other harm.²

Quebec, 1962, p. 1: “Your money or your life” the bandit who imposes this choice knows full well that his victim will prefer to hand over his money...’, Approximation in Anglo-American jurisprudence: “Everything can be given a Value in terms of money is not inherent in any thing, value but is acquired by a social process by market price where possible, if not then by estimation and comparison and analogy. All these processes have the common factor that you visualise a maximum and minimum and feel your way to a fair point in between”, **Look:** Munkman J. ‘Damages for Personal Injuries and Death, 5 th edition, U K; 1973, at P. 20 (h).

1 Smith H.W, op. cit., P 790.

2 Mohammed Yaqout, op. cit., p. 45.

It is worth noting that Anglo-Saxon law and jurisprudence particularly English jurisprudence as well as French law have recognised this value through legislation and case law, This objective aspect addresses the shortening of the injured party's life in human organ transplantation and transplantation procedures, represented by the loss of their natural right to a certain number of years they would have lived naturally for their age, which was not fulfilled due to the wrongful act of the party responsible for the harm, leading to the acceleration or premature hastening of their death, This damage occurs in the moments when the victim was clinging to life before his death, due to the harm caused by the negligent surgery, comprising both moral and material damage, and an assault on his life, which is the source of his strength, activity and intellect; for it is the most precious of all things of true value that a human being possesses, For without it, all other elements and damages are worth nothing, because this objective element is essential; consequently, its loss due to a surgical error necessitates compensation *a fortiori*.¹

As regards the loss of life in its objective sense that is, the actual shortening of the number of years of life the House of Lords in England has ruled that compensation for this element is transferable to the patient's heirs upon his death, basing this on a series of recent judgments by Lord (Atkin), on the basis that the enjoyment of life during the lost years was of real value; if the shortening of life was caused by the negligence of the responsible doctor and the patient was aware of this, then the assessment is not limited to pain alone but takes into account any suffering endured as a result of the surgery, even if the

1 **Look:** H. L. Mazeaud 'Civil Liability: Tort and Contract, Andre Tunc, France; Vol. 2 (1912) Transferability of the action to heirs, p. 1032–1033, and Look: Jean-Paul Doucet, Criminal Protection of the Human Person, Vol. 1 Protection of Life and Physical Integrity, 2nd edition 'France; 1993 'p. 19.

period between the surgery and the patient's death was shortened due to the organ transfer and transplantation.¹

B) The personal aspect of the loss of life expectancy in human organ transplantation and transfer procedures:

Given the specific nature of the loss of life expectancy, we find that its impact is not limited to the objective, quantitative aspect, but also has a personal, qualitative dimension that considers the loss in terms of the reasonable opportunities the injured patient could have been expected to have had in relation to organ transplantation procedures over a period equivalent to the full number of years lost from his life. To determine the nature of this aspect, a distinction must be made between two constituent elements: one in which the conditions of material financial loss are present, and the other in which the characteristics and conditions of non-financial moral damage prevail:

1. Financial aspect:

This consists of the value of the financial earnings that would have been earned and are now lost over the patient's full natural life expectancy that is, the earnings that would naturally have been expected prior to the shortening of life that occurred to the patient, It cannot be argued that the patient suffers no personal harm from being deprived of his wages during that period, on the grounds that he would presumably have died during that time, or that this harm is merely a consequence of his death which affects his heirs subsequently by virtue of succession, because the harm occurred to the patient between two periods, from the time it occurred until just before his death; it consists of the loss of something that was in his possession at the time of the harmful act, namely the impairment of his ability to work and the consequences thereof during the period

1 Look: John Munkman, LLB, Damages for personal injuries and death, loss of the pleasures or amenities of life, United Kingdom, chapter, 4, 2, p. 127.

naturally expected for him; As for the consequential damage, its classification on this basis is not applicable, since it only materialises after death, and the damage here occurred between the two periods; furthermore, its assessment covers only a small proportion of the original damage.¹

The injured patient is thus compensated for the financial loss resulting from medical negligence during the transport and transplantation of human organs; The injured party or their heirs are entitled to bring legal proceedings against the medical team responsible to obtain compensation for the material damages that resulted in the patient's death or left them with total or partial disability. Furthermore, in the event of serious burns, they are entitled to compensation for medical expenses such as medication and other costs, loss of income and wages, or permanent disability; all of these are damages for which the responsible party is obliged to provide full compensation, provided that it is certain or possible that the harm will occur in the future to the injured party, provided that it does not occur without medical negligence resulting from the organ transfer and transplantation procedure, in which case it is considered direct harm,² Or, if such an act results in criminal harm caused by wilful misconduct, he may bring a claim before the relevant French criminal court and, by extension, a civil claim for compensation for bodily injury of the most serious nature, namely vital injury.³

2. The literary element:

The patient's suffering, resulting from the botched surgery involving the transplantation of the organ in question, affects the

1 Look: the judgment of the House of Lords in the case of *Beckett v. B.R.O.* (1979), First England Report, p. 676.

2 Damage must have two characteristics: it must be certain and direct. The damage must be a direct consequence of a fault committed or of the harmful event; **Look:** Liliane Daligand, Dominique Loriferne, Charles-André Reynaud, Louis Roche, *Forensic Medicine, Medicine and Society series, France, Vol. 1, No. 7, "Compensable Damage", pp. 22–23.

3 **Look:** Jean-Paul Doucet, *The Criminal Protection of the Human Person*, Vol. 2; *The Protection of Life and Physical Integrity*, France; 1993, pp. 8–9.

integrity of his life and his organs; this suffering takes two forms: one physical and sensory, the other psychological and emotional.¹

2.1. The sensory-physical type:

This includes severe physical pain, however brief, caused by the taking of a human life,² Given that such serious injuries are likely to hasten death, and are characterised by the severity of the neurological trauma and the extreme brutality of the physical assault which inflict the most intense physical pain on the injured patient, causing them to suffer throughout the period leading up to their death during the surgical procedure,³ The severity of the situation is exacerbated by the accelerated pace of the dying process; it is a scientifically established fact that death is a phased phenomenon occurring in specific stages, and the loss of life due to medical error during the process of transporting and transplanting human organs cannot occur without the patient suffering physically as they gradually approach death during the surgical procedure.⁴

As for the jury's view of him in England,⁵ In determining compensation for the term 'personal loss' as applied in this context resulting from physical injuries such as pain and loss of

1 Mahmoud Jamal al-Din Zaki, "A Concise Treatise on the Theory of Obligation", Vol. 1, Egypt; 1976, p. 494,

2 Braud, Nate, op. cit., J.C.P. 1958, 10417.

3 **Look:** John Munkman, op. cit, p. 119.

4 Charaf el dine, Law on Organ Transplantation (thesis), Paris, France; 1975, no. 700, p. 537, no. 720, p. 557.

5 Lord Pearce comments on a case in which the facts are summarised as follows: the claimant had lost a limb in an accident, and the court had assessed that he had suffered serious physical injury likely to result in future financial loss; this is factored into the assessment of total damages, and the amount of compensation increases in proportion to the extent to which the deprivation of that limb has a significant on the body and his inability to enjoy his interests in the normal way; for example, if the claimant's main interest in life was a particular sport or hobby, the court would take into account his future deprivation of this when determining the final amount of compensation, **Look:** Jennings (V) Cronsbery (1965 50 DLR (24) 385. and **Look:** John Munkman, op. cit, p118-119.

enjoyment of life reference is made to all forms of physical harm other than loss of money or property, all permanent physical injuries and pain suffered and endured as a result of the impact on his physical health, whether temporary or permanent, as well as emergency medical expenses incurred to treat and alleviate the injury; the location of this injury may be any part of the body or the whole body, and it is expected to leave him incapacitated for a period of his life or may lead to his death.¹

As for the French perspective, some legal scholars, notably Mazeaud, have put forward a specific theory. The essence of this theory is that the loss of life expectancy suffered by the injured party prior to death given the brevity of the interval between the two events, during which the injured party had not yet died but was still alive it necessarily follows that the patient, whilst still of sound mind, suffered shocks and physical pain prior to his death; thus, the heirs are entitled to claim compensation for the harm suffered by their deceased relative in this physical respect.²

2.2 Psychological type:

This consists of the psychological and emotional distress suffered by the injured patient as a result of his feeling that his days are numbered and his growing fear of the approaching moments of an untimely death, occurring before the natural end of life, due to a medical error during the organ transfer and transplant procedure, and his depression resulting from seeing all the legitimate hopes associated with life vanish, along with life's joys,³ It is also unacceptable to argue that this pain is insignificant simply because it is fleeting lasting only a few

1 **Look:** Fair (V) London and North Western Rly co (1869 21 Lt 326, and **look:** John Munkman, op. cit., p. 116.

2 L. Mazeaud, André Tunc, *Traité théorique et pratique «responsabilité civile «délictuelle et contractuelle* Paris, France; Vol. 2 «p. 1035, and **Look:** Max le Roy, *L'évaluation du préjudice corporel*, 7th edition, France; p. 123.

3 Mohammed Naji Yaqout, op. cit., p. 53, and Suleiman Markos, *Al-Wafi fi Sharh al-Qanun al-Madani fi al-Faal al-Dharri wa al-Mas'uliyya al-Madani*, Part I, Vol. 2 «Al-Salam Press, Cairo, Egypt; 1988, p. 179.

minutes before subsiding with the loss of consciousness or death since it is not measured by the passage of time but by a crucial and indispensable factor: the severity of the patient's psychological and emotional trauma resulting from the error in the organ transplant procedure,¹ Furthermore, in cases of psychological harm, where the injured patient has suffered the most severe forms of psychological distress, the party responsible for the medical error is, in principle, obliged to compensate for the total harm caused, including all its elements. Since the suffering inflicted upon the patient whether physical or psychological cannot be equated with that of a deceased person, simply because they are unconscious; this is because, in principle, loss of consciousness does not preclude the possibility of moments of lucidity prior to death, however brief, during which the patient may feel pain. The burden of proof does not lie with the injured party to demonstrate that they suffered pain, but rather with those who claim that the patient did not suffer, and it is they who must prove the contrary.²

Conclusion:

In concluding our examination of this research paper, we can state from the foregoing that the rapid scientific advances in the field of human organ transplantation, in particular, necessitate a re-examination of certain traditional concepts in the law of medical liability. With regard to the concept of compensable harm, the study has shown that harm resulting in loss of life expectancy requires an examination of its specific nature, which cannot be accommodated within traditional classifications of harm given the medical circumstances in which it arose. On this basis, we have reached the following conclusions:

Since the substance of the right to the integrity of life in human organ transplants differs from the right to bodily

1 **Look:** John Munkman, op. cit., 4- nervous shock and neurosis, nervous shock, p. 121-122.

2 Mohammed Naji Yaqout, op. cit., p. 55.

integrity—as evidenced by the distinction drawn between them—limiting compensation for medical negligence to physical harm constitutes a legislative and judicial shortcoming that disregards the most precious loss a person can suffer: the loss of the full natural life expectancy that they should have enjoyed, which outweighs any other loss a person may suffer; it is therefore an independent head of damage, characterised by its own autonomy and independence, which necessitates that it be afforded legal protection as a matter of priority, encompassing all its elements, just as is the case with compensation for bodily harm.

By comparing the right to the integrity of life with the right to physical safety in order to ascertain the true nature of its content, we find that it is described as severe physical harm of the utmost gravity, and that its protection, in all that its elements entail, constitutes a broader protection than the right to physical integrity, as it adds to it, through its concept, a quantitative temporal value not encompassed by the general concept of the latter; thus, it extends for a duration equivalent to the natural lifespan of a human being in years a person is expected to live.

The loss of life expectancy in the context of human organ transplantation comprises two constituent elements that form the essence of its specific legal nature, which is distinct from other forms of damage according to the traditional conception; It comprises an objective aspect, which consists of the deprivation of an unspecified number of years of life that a person would naturally or customarily have been expected to live had there been no infringement upon the right to the integrity of his life, organs and bodily tissues, and had he not lost his life. The essence of this is based on the principle that all people are equal, regardless of their personal circumstances, from a quantitative perspective regarding the human right to retain all their organs and bodily tissues intact and their right to life; If any part of this is diminished or lost, this right is impaired; consequently, this is considered damage affecting the objective value of the injured party in human organ transfer and transplantation procedures, for which they are entitled to compensation.

A qualitative, subjective aspect that considers the harm in terms of the reasonable opportunities the injured patient could reasonably have been expected to seize in relation to organ transplants over a period equivalent to the total number of years lost from his life; To determine the nature of this aspect, a distinction must be made between its two constituent elements: one in which the conditions of material and financial damage are present, and the other in which the characteristics and conditions of non-material damage prevail.

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