

Crimes of Assaulting Privacy and Violating Public Morals via Smart Phones. According to the Information Technology Crime Law and the Telecommunications Regulatory Law; A comparative Analytical Study.

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Abstract: *The present study is concerned with the issue of crimes of assaulting privacy and violating public morals via smart phones according to the Information Technology Crime Law and the UAE Telecommunications Regulatory Law in comparison to the Jordanian legislation. The present study deals with the topic by clarifying the concept of smart phones and crimes committed via smart phones and the information network. The study shows how the UAE and Jordanian legislators handle these crimes according to the law of combating information technology crimes and the law of regulating the communications sector. The present study also clarifies the right of the aggrieved party to claim compensation Due to these crimes being committed. It is noticed that there is a slight difference between the UAE and Jordanian legislations, which is shown in the results and recommendations.*

Keywords: *Smartphone, IT Crime Law, Telecommunications Regulatory Law, Crime of violating privacy, violation of public morals, compensation.*

Introduction

There is no doubt that the development in the field of communications and information has resulted in the invention of many modern means of communication that have made it easy for mankind to communicate rapidly and to follow all the events of the world. Among the important means is the Smartphone. It is used in multiple forms in making calls, sending and receiving text messages and pictures as well, taking pictures, browsing websites, and using E-mail. It is more like a laptop and minicomputer². This development in the means of communication has brought both positive and negative changes. Communication between members of society has become fast and easy, whether by sending messages, pictures, or videos, allowing to browse social networking sites, log in to e-mail, and reply messages, which are all considered the positive aspects of Smart phones³. The negative aspects of Smart phones depend mainly on the way of using, which may negatively affect the life of the individual and society as a whole. Smart phones may be used to commit many different

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² Dr. Tariq Afifi Sadiq Ahmed, Electronic crimes and smart phones crimes; a comparative study between the Egyptian, Emiratis, and Saudi legislations, National center for legal publications, Cairo, 1st edition, 2015, pp. 14-15.
Dr. Muaath Sulaiman Rashid Muhammad Almulla, legal responsibility of misusing mobile phones, a comparative study, a Ph.D dissertation, faculty of law, Ain Shams university, 2013, p. 22.

³ <https://ar.wikipedia.org/wiki/>.

criminal acts; money crimes, persons, privacy, sectarian, or intellectual property⁴. Therefore, it is necessary for legislators to keep pace with this development to take suitable penal measures to address new criminal acts. Crimes committed via Smart phones are many. They include assaulting privacy for individuals and violating public morals. Hence, they are addressed in accordance with the Law of Combating Information Technology Crimes and the UAE Telecommunications Regulatory Law and compared with the Jordanian legislations. Legislative response to such crimes ensures the safety of society from collapse and the spread of the immoral side among its people. Attacking the privacy system of individuals and infringing public morals through the information network and communications has become more widespread, especially with the expansion of some telephone services and the development of its applications⁵. Users of smart phones can easily and quickly commit crimes of assaulting the privacy of individuals and violating public morals.

The concept of privacy is clearly influenced by the technological revolution in contemporary world. The individual feels that his/her own circle is eroding before the technological revolution. Therefore, penal legislations must be kept abreast with the technological revolution that has become invading privacy. The Jordanian constitution, in Article 7, provision 2, and the Emirati Constitution, in Article 26, affirm the right of the individual to inviolate private life.

The problem of study.

The present study is an attempt to indicate the adequacy of the penal provisions to protect the right of privacy and public morals through the laws against information technology crimes and the Telecommunications Regulatory Law. Therefore, the attempt is to show how the Emirati and Jordanian legislators deal with these crimes, is this treatment sufficient so that this type of crime faces a strong confrontation?, as this type of crime occurs through a modern means of rapid communication between the world, are there special legal texts dealing with such crimes, especially since these crimes have received the attention of legislators and criminal jurisprudence recently?, and are legislators ready to issue laws combating such crimes, whether in the law against information technology crimes⁶, the law regulating the communications sector or the penal code?.

The significance of study

The present study identifies the concept of smart phones, the effects of committing such crimes, and crime of violating privacy and public morals, and the right to demand compensation for the damage caused to the victim as a result of committing such crimes.

The comparative analysis method is adopted in the present study to compare the legal texts in the UAE and Jordanian legislations to obtain the best results and recommendations for the present study.

⁴ La notion de vie privée :- Le contenu de la vie privée est variable selon les circonstances, les personnes concernées et les valeurs d'une société ou d'une communauté. Généralement, on inclut dans la vie privée les informations relatives à la vie sentimentale ou sexuelle, l'état de santé, la vie familiale, le domicile et même les opinions religieuses, politiques ou philosophiques. On peut également y inclure l'orientation sexuelle d'une personne, son anatomie ou son intimité corporelle. La vie privée se présente comme étant la «zone d'activité» qui est propre à une personne et qu'elle est maître d'interdire à autrui . On admet aussi généralement que le domaine de la vie privée d'une personnalité publique puisse, en certaines circonstances, être plus restreint que celui d'un simple citoyen. C'est le volet contextuel de la vie privée. DR. Pierre TRUDEL. Droit de l'information et de la communication> DRT- 3805. Université de Montréal. Et pour plus d'information voir :- Jean-Pierre GRIDEL, "Protection de la vie privée: rupture ou continuité?, *Gazette du Palais*, 18 et 19 mai 2007, 127^e année, no. 138, 4-8. :- Pierre KAYSER, *La protection de la vie privée par le droit- Protection du secret de la vie privée*, 3^e édition, Paris, Economica, 1995. :- Raymond LINDON, "La protection de la vie privée : champ d'application", (1971) 2 *J.C.P.* 6734; Jean MALHERBE, *La vie privée et le droit moderne*, Paris, Librairie du Journal des notaires et des avocats, 1968;

⁵ Dr. Abdulfattah Bayomi Hijazi, Principles of penal procedures in internet and computer crimes, Legal books house, Egypt, 2007, p. 386.

⁶ Mahmoud Omar Mahmoud, penal responsibility resulting from mobile phones crimes, a comparative study between the earthly and Islamic laws, a Ph.d dissertation, faculty of law, Ain Shams university, 2011, p. 13.

The present study is divided into four main points: the concept of Smart phones, the crime of violating privacy, the crime of violating public morals, and the right of claiming compensation.

First; The concept of smart phones

Mobile phone crimes are defined as every act that results from the unlawful use of mobile phone information technology with the aim of attacking the interest of others⁷. It can also be considered as any unlawful criminal behavior through the cyberspace using one of the information services of the smart phone or the communication capabilities available; the ability to connect to the Internet or to the telephone network, that causes harm to others' money or body. Smart phones provide many services beyond the voice communication service; watching television, following the weather conditions, and communicating via text or multimedia messages. The crime can be committed by sending text messages, video clips or messages via social networks such as SMS⁸, MMS⁹, and EMS¹⁰. The Bluetooth service can be used to help with Committing these crimes, as it is one of the modern technologies that helps in transferring data within short distances, through which information and data can be exchanged over radio waves as long as these devices are in the broadcast range¹¹.

Likewise, due to the availability of the digital camera service in smart phone devices, it is easy to take pictures and store them in the memory of the Smartphone¹². These cameras may be used to take inappropriate photos for people and publish them without informing those people which may cause a huge social harm¹³. As smart phones are provided with internet services, the user is able to benefit from various digital services at anytime and anywhere¹⁴.

Crimes committed via a Smartphone differ from some other traditional crimes in that these crimes are new. The UAE and Jordanian legislators have handled them with a special law to be able to deal with them firmly and strongly.

Crimes committed via Smart phones or the information network are characterized by:

1. Ease and speed of performance.

The crime committed by smart phones or the information network does not need much preparation¹⁵. The crime may be committed while sitting at home, sending a nuisance message, publishing a pornographic content, or violating the privacy of individuals. For these crimes, the need is just a click on the submit button. It is the strain of the commission, but it is dangerous in its consequences. Smart phones are mobile offices, means of accessing the Internet, and making electronic deals. This has resulted in multiple forms of misuse. Smart phones crimes include: assaulting on money, electronic fraud, threats and extortion, assaulting on the sanctity of private life, insulting and defamation, and crimes of public morals¹⁶.

⁷ Mahmoud Omar Mahmoud, penal responsibility resulting from mobile phones crimes, a comparative study between the earthly and Islamic laws, a Ph.d dissertation, faculty of law, Ain Shams university, 2011, p. 13.

⁸ SMS service enables sending text messages via mobile phones only.

⁹ MMS service enables sending a larger content via mobile phones.

[showthread.php?t=8219/vb/www.qk.org.sa//http:](http://showthread.php?t=8219/vb/www.qk.org.sa/)

¹⁰ [showthread.php?t=176836/vb/www.mobile4arab.com//http:](http://showthread.php?t=176836/vb/www.mobile4arab.com/)

¹¹ Hala Muhammad Anba, guide of applications of mobile phones, computers, and internet in administration and marketing, Arabic organization for administrative development, Cairo, 2009, p. 50.

¹² [digicam/15/06/2010/lightfragrance.wordpress.com//http:](http://digicam/15/06/2010/lightfragrance.wordpress.com/)

¹³ Dr. Tariq Afifi Sadiq Ahmed, Electronic crimes and smart phones crimes; a comparative study between the Egyptian, Emiratis, and Saudi legislations, National center for legal publications, Cairo, 1st edition, 2015, p. 23.

¹⁴ Dr. Tariq Afifi Sadiq Ahmed, Electronic crimes and smart phones crimes; a comparative study between the Egyptian, Emiratis, and Saudi legislations, National center for legal publications, Cairo, 1st edition, 2015, p. 23.

¹⁵ Dr. Tariq Afifi Sadiq Ahmed, Electronic crimes and smart phones crimes; a comparative study between the Egyptian, Emiratis, and Saudi legislations, National center for legal publications, Cairo, 1st edition, 2015, p. 34.

¹⁶ Sarbaz Nidham Othman, Crimes arising from misusing smart phones, pp. 8-9.

2. They are not restricted to specific place or time.

Such crimes can be committed remotely. The perpetrator may be within the geographical boundaries of the region or even outside it. Many crimes are committed by the perpetrator from outside the region and are directed at another person in another region. As this crime does not need the presence of the perpetrator and the victim in one place, the perpetrator can commit the crime of blackmailing, threatening, insulting or even disturbing a person by contacting via mobile phone late at night, for nothing but inconvenience. The perpetrator may be in a region or place far from the victim. It can be said that the crime of misuse of a Smartphone takes on a transnational nature. Thus, the act is committed in a country, but its effects appear in another country¹⁷.

3. Such crimes are calmly committed.

In such crimes, there is no violence. For such crimes to be committed, regardless of the purpose, violence is not required. Physical effort by the perpetrator while committing the crime is also not required¹⁸. Comparing these crimes with other crimes, such as murder, rape, theft and kidnapping shows that all these crimes require violence in order to commit them except the crimes of misuse of the Smartphone.

4. Such crimes are criminalized with a special law.

These crimes are new in the UAE and Jordanian legislations. Legislators have made a special law for combating them. The UAE legislators have issued a special law to combat information technology crimes No. 5 of 2012, as well as the Telecommunications Regulatory Law No. 3 of 2003. Likewise, the Jordanian legislators have issued a special law to combat cybercrime for 2015 and Communications Law No. 13 of 1995. These two legislations are the result of growing risks of Misusing the Smartphone in all its forms; threatening via phone, extortion, publishing pornographic material, insulting or attacking the privacy of individuals.

Despite the fact that these crimes are modern and related to modern technology, they take various forms that may exceed many other crimes. The prominent forms of these crimes are the violation of privacy and violation of public morals.

Second; The crime of violating privacy

Privacy is the essential right of any individual¹⁹. The right of private life is defined as the right of an individual to exclude others from the scope of his/her private life, respect, and his/her own affairs²⁰. The right of a private life means the right of privacy²¹. It also means the activities that the individual has the right to enjoy peacefully and quietly²². Protecting private life is not related to the death of the person, as the body of the deceased person is part of the private life. The French Court of Cassation concluded that the constant and frequent judiciary indicates that the attack on the private life is by taking a

¹⁷ Nawfal Ali Alsafoo, and Dr. Muhammad Izzat Fadhil, The crime of violating public morals using modern technology, a comparative study, a paper published in future researches journal, Nos. 29-30, 2010, p. 72.

Dr. Muhammad Abdulraheem Sultan, Globalization; Internet crimes and their penalties, a paper published in the Arabic journal for security studies and training, vol. 18, no. 36, p. 28.

¹⁸ Ibid.

Dr. Nawfal Ali Alsafoo, and Dr. Muhammad Izzat Fadhil, The crime of violating public morals using modern technology, Alsanhoori library, Beirut, Lebanon, 1st edition, 2017, p. 37.

¹⁹ Dr. Mamdooh Khalil Albahr, protecting private life in the criminal law, a comparative study, a Ph.D dissertation, Arab renaissance house, 1983, pp. 96- 103.

JO. Debats Assamble Nationale. Not 2em séance mai 1970, p. 2074.

²⁰ Carbonnier. Droit civil. Dalloz. Tom. I. p. 239; Martin. Les secret de la vie privée. Rev. tr. Droit civil. 1959. p. 230.

²¹ CHAVANNE. A. La atteintes à l'intimité de la vie privée au sens de l'article 368 du code pénale. In le droit criminel face aux nouvelles technologie. Actes du 8em congrès de l'association française de droit pénal. 1985. p. 23

²² RAVANAS. J. La protection des personnes contre la réalisation et la publication de leur image. 1978 . p. 518.

picture of a living or dead person²³. The right of private life has more than one form; the right of the individual's sanctity of his/her home, the inviolability of his/her correspondence, contacts, and private data represented by the secrets of his/her private life and his/her private information, which he/she tries to hide²⁴. The right of an individual to protect his/her private data may be related to a person's family, marital, emotional, health status, financial, psychological, mental, religious, philosophical and spiritual edema²⁵. The French Court of Cassation ruled that it is not permissible to publish the emotional adventures of a young girl²⁶. It also ruled that it is not permissible to publish real, alleged or related news related to marital life issues²⁷. It also ruled that if disclosure of financial disclosure data includes matters of a personal or private nature, it is considered a violation of the right of privacy. For the landlord to send a written notification that includes the late rent to the tenant who does not fulfill the rent on time to the tenant's employer is a violation of his/her right of private life²⁸. The health status of a person is also considered to be one of the elements of the right of the sanctity of private life. It is not permissible to publish what is related to human health except with permission. It is not correct to depict the person while he/she is on the bed of sickness. It is not permissible to publish it²⁹. It is decided that photographing the sick child lying on his/her hospital bed is not only an assault on the child's right of private life, but it also includes the private life of his/her family. For one of the photographers to enter the sick child's room and take a picture of him/her while lying in bed in the hospital and publish this picture in one of the magazines violates the private life of the family³⁰. The assault of the right of privacy is embodied through information systems, including smart phone systems, by disclosing information on phones and personal computer devices, eavesdropping on them, attacking the privacy and confidentiality of communications and phone conversations, and penetrating personal pages on social networking sites³¹. The UAE constitution, in Article 31, affirms that "the freedom and confidentiality of postal, telegraphic and other means of communication are guaranteed in accordance with the law." Therefore, taking pictures of others or photographing them with a video camera using a Smartphone without obtaining their permission is a misuse of Smartphone as an attack on the right of privacy³². The UAE legislators criminalize this act in the penal law, the law against information technology crimes and the law regulating the telecommunications sector. Reviewing the legal articles in these laws shows that the UAE legislators impose a deterrent punishment for such crime in the law of combating information technology crimes. Article 21 of the same law states that; a penalty of imprisonment for a period of no less than six months and a fine of no less than one hundred and fifty thousand dirhams and not exceeding five hundred thousand dirhams or one of these two penalties shall be imposed on anyone who uses an information network, an electronic information system, or any of the technical means, or information in assaulting the privacy of a person other than the legally authorized cases in one of the following ways:

1. Hearing, intercepting, recording, transmitting, broadcasting, or disclosing conversations, communications, or audio or video materials.

²³ Dalloz. 1997. I. p. 256, note BERRAD BEIGNIER. Ch. Crim. 20 October 1998. D. 1999. p.107. note Berrard BEIGNIER.

²⁴ Dr. Ahmed Muhammad Hassan, Towards a general theory to protect the right of private life in the state individual relationship, Arab renaissance house, 2001, pp. 36- 38.

²⁵ SAVATIER. Le droit de l'art et des lettres de 1953. les travaux des muses dans les balances de la justice, L.G.D.J. paris 1953. n281.

²⁶ Civil. 6 janvier 1971. J.C.P. 1971. 2- 76723:- paris. 26 mars. 1987. J.C.P. 1987. 2- 20904. note agostini. :- tribunal. Paris. 2 juin. 1976. dalloz . et sirey. 1977. 365 note lindon.

²⁷ Cass. Crim. Chamber criminelle. Dalloz. 1982. J.P. 579. note. R. Lindon.

²⁸ Cass. Civil. 12. October. 1976. J.C.P. 1978- 2- 18989. note Rickevaux. :- Cass. Civil. 31. mai. 1988. Bull.Civil. 1. n 167.

²⁹ Voir Cour d'appel de paris 1965. 13 mars 1965, dalloz. 1965. II. 24223. :- Cour d'appel de paris. 21 octobre. 1980. rev de Science criminelle. 1981. p. 878. observation Lavasseur. :- Cour d'appel de paris. 13 janvier. 1997. Dalloz. 1997. 256. note Beignier.

²⁹ Voir Cour d'appel de paris 1965. 13 mars 1965, dalloz. 1965. II. 24223. :- Cour d'appel de paris. 21 octobre. 1980. rev de Science criminelle. 1981. p. 878. observation Lavasseur. :- Cour d'appel de paris. 13 janvier. 1997. Dalloz. 1997. 256. note Beignier.

³⁰ Tribunal. Paris. 17 mars. 1965. J.C.P. 1965. Dalloz. 1967. p. 18.

³¹ Dr. Mahmood Omar Mahmood, previous source.

³² Dr. Muaath Sulaiman Rashid Almulla, previous source, pp. 105.

2. Taking pictures of others or preparing electronic pictures that transfer, reveal, copy or keep them.
3. Publishing news, electronic pictures, photographs, scenes, comments, data or information even if they are true. Anyone who uses an electronic information system, or one of the information technology means, to make any amendment or treatment to a record or photo Or a scene, with the intention of defaming or offending another person, or assaulting or violating privacy.

Provision 2 of Article 72 of the law regulating communications sector no. 3 of the year 2003 states that a penalty of imprisonment for a period of no more than a year and a fine of no less than fifty thousand dirhams and not exceeding one million dirhams or one of these two penalties shall be imposed on anyone copies, reveals, or distributes, without legal authorization, any call, text message, or electronic services regardless of the position off that person. The Article 72 requires judiciary authorization to allow such acts.

The Jordanian legislators refer to provision 3 of Article 3 of the E-Crime Law No. 27 of 2015 that if the entry stipulated in provision (A) of this Article were to cancel, delete, add, destroy, disclose, amend, change, Transfer, copy data or information, stop or disrupt the work of the information network, the perpetrator shall be punished by imprisonment for a period of no less than three months and not exceeding a year and a fine of no less than (200) two hundred dinars and not exceeding (1,000) thousand dinars. Article 4 of the above law also punishes anyone who intends, publishes or intends to use a program through the information network or by using an information system to divulge, transmit, copy, capture or enable others to view data or information by imprisonment for a period of not less than three months and not exceeding One year and a fine of no less than (200) two hundred dinars and not more than (1,000) one thousand dinars. The Jordanian legislators are also devoted to Article 5 of the same law to criminalize acts of capture, objection, eavesdropping, obstruction, or deletion of contents on what is sent through the information network or any information system by imprisonment for a period of not less than three months and not more than a year and a fine of no less than (200) Two hundred dinars and not more than (1000) thousand dinars. Likewise, through the Jordanian Communications Law and its amendments No. 13 of 1995, the Jordanian legislators try to protect privacy. Article 71 of the same law stipulates that whoever publishes or disseminates the content of any communication through a public or private communication network or a phone message viewed by virtue of job or registered it without a legal document is punishable by imprisonment for a period of no less than a month and not exceeding a year or a fine not Less than (100) dinars and not more than (300) dinars, or both penalties. Article 77: Anyone who has muted a message has to transmit it through the communication networks to another person, or refuses to transmit messages, whether by the licensee or the authority, or copies or divulged a message, or messes with data related to one of the subscribers, including undeclared phone numbers and messages Sent or received is punishable by imprisonment for a period not exceeding six months or by a fine not exceeding (1,000) dinars, or both. Likewise, the Jordanian legislators punish anyone who unlawfully uses a public or private telecommunications network, or unlawfully links a network with another telecommunications network, or impedes services provided by other telecommunications networks or endangers the national interest, would be punished by imprisonment for a period of no less than One month and not more than six months or a fine of no less than (2000) dinars and not more than (5000) dinars, or both penalties.

In comparison between the UAE and Jordanian telecommunications laws, it is noticed that the UAE legislators, in the law regulating the telecommunications sector, are more precise than the Jordanian telecommunications law. Article 71 of the Jordanian Communications Law and its amendments No. 13 of 1995 punishes those who view the content of the call or the phone message by virtue of job, and not any other person. However, by reviewing Article 79 of the Jordanian Communications Law No. 13 of 1995, it is observed that the Jordanian legislators use a broad and general phrase that can be applied to those who eavesdrop on third-party calls or disclose the data of others through telecommunications networks. Therefore, it is better to add the text of a new article to the Jordanian Communications Law that includes (a penalty of imprisonment and a fine, or one of these two penalties, for anyone who listens to the content of calls or accesses to third-party information without prior permission from the competent judicial authorities).

Third; The crime of violating public morals

The technological revolution in the field of communications has contributed to the rapid transfer of information, data, pictures and videos between individuals. This contribution can be counter to society. Smart phones may be used to offend public morals in publishing materials that contradict the prevailing morals and norms in society and disturb its public life³³. All acts and things that are outside the virtue and values of a society, and spreading it offends the modesty and feelings of the public, fall within the violation of public morals through modern technological means. The Emirati and Jordanian legislators criminalize these acts in order to protect public morals and values of society.

Publishing pictures, audiovisual clips, novels, and other materials with a gross content of modesty and public decency constitutes the crime of violating public morals. Referring to the UAE and Jordanian legislations, there is no legislative definition of public morals, but judiciary defines them³⁴. The UAE and Jordanian legislators have singled out a number of articles in the Information Technology Crime Law and the Communications Law, in addition to the penal code that penalizes violation of public morals and ethics.

The Emirati legislator stated in Article 17 of the Decree Law No. 5 of 2012 that it “shall be punished by imprisonment and a fine of not less than 250 thousand dirhams and not exceeding 500 thousand dirhams or one of these two penalties whoever establishes or runs a website or supervises it or broadcasts or sends or sends , Or published or republished through the information network pornographic materials or gambling activities and everything that might affect public morals, and the same penalty shall be imposed on anyone who produces, prepares, sends or stores with the intention to exploit, distribute or display to others through an information network, Pornography or gambling activities, and everything that might violate public morals. If the content of pornography is designed for under eighteen years or such content is designed to seduce under 18, it shall be punished with imprisonment for a period not less than one year and a fine of not less than 50 thousand dirhams and not more than 150 thousand dirhams³⁵. Likewise, the Emirati legislators have gone further; punishing with imprisonment and a fine of no less than two hundred and fifty thousand dirhams and not exceeding one million dirhams or one of the two penalties whoever incites or seduces another to commit prostitution or debauchery or helps in this, using an information network or one of the IT means. The penalty shall be imprisonment for a period of no less than five years and a fine not exceeding one million dirhams if the victim is an juvenile who has not completed eighteen years. The Emirati legislators consider incitement to prostitution and debauchery through the use of the information network as an aggravating factor in crime. Thus, it is considered a felony with a minimum penalty of three years imprisonment. The UAE legislators are the first to protect juvenile who is under eighteen years. The punishment becomes imprisonment for a period of no less than five years and a fine of up to one million dirhams. The Emirati legislator has also indicated in provision 1 of Article 72 of the Telecommunications Regulatory Law No. 3 of 2003 and its amendments that it is punishable by imprisonment for a period not exceeding one year and by a fine of no less than (50,000) fifty thousand dirhams and not more than (1,000,000) million dirhams or One of these two penalties, whoever exploits telecommunications devices to offend or inconvenience or harm the feelings of others or for another unlawful purpose. Whereas the UAE legislator indicated in Article 72 provision 3 of the same law to punish anyone who exploited or used telecommunications services to offend or annoy or harm the feelings of others or for another unlawful purpose, by imprisonment for a period not exceeding one year and by a fine not exceeding 50000 dirhams, or one of these two penalties³⁶. The communication devices cannot be used to annoy or hurt the feelings of others without the availability of a communication service. Therefore, it is better to merge the two texts into one article. Hence, provision 1 of Article 72 of this law becomes; Whoever exploits telecommunications equipment or telecommunications services to offend, annoy, or harm other people's feelings, or for another unlawful purpose shall be punished by imprisonment for a period not exceeding one year and by a fine of no less than (50,000) fifty thousand dirhams and not more than (1,000,000) million dirhams or one of these two penalties.

It should be noted that the Emirati legislators are not satisfied with the traditional punishment of imprisonment or a fine, but rather, in Article 42 of the Information Technology Crime Law, a measure of expulsion for a foreigner who is

³³ <http://www.mohamoon-uae.com.uaeu.idm.oclc.org/uaeu/ViewPrincipleText.aspx?PID=90513>.

³⁴ <http://www.mohamoon-uae.com.uaeu.idm.oclc.org/uaeu/ViewPrincipleText.aspx?PID=90513>.

³⁵ www.mohamoon-uae.com.uaeu.idm.oclc.org/uaeu/ViewPrincipleText.aspx?PID=95938

³⁶ www.mohamoon-uae.com.uaeu.idm.oclc.org/uaeu/ViewPrincipleText.aspx?PID=95938.

sentenced to conviction for committing any of the crimes stipulated in this law due to the seriousness posed by such crimes and the speed of their spread Among all members of society and the world is adopted³⁷. The UAE legislators in Article 43 of the same law also permit the court to order that the convicted person be placed under supervision, or be deprived of the use of any information network or electronic information system, or any other information technology means or placed in a medical shelter or rehabilitation center for the period deemed appropriate by the court.

The Jordanian legislation in the Cybercrime Law No. 27 of 2015, Article 9 states that:

A. Any person who sends or publishes through an information system or the information network intentionally punishes all that is heard, read, or visible that includes pornographic acts and relates to sexual exploitation for those who have not completed the eighth Ten years of age by imprisonment for a period of no less than three months and not exceeding a year, and a fine no less than (300) three hundred dinars and not exceeding (5000) five thousand dinars.

B. Whoever intentionally uses an information system or information network to create, prepare, save, process, display, print, publish or promote pornographic activities or actions for the purposes of affecting those who are not yet eighteen years old or mentally handicapped shall be punished. Or, directing or inciting him to commit a crime, by imprisonment for a period of no less than two years and a fine of no less than (1,000) thousand dinars and no more than (5000) five thousand dinars.

C. Whoever intentionally uses an information system or information network for the purpose of exploiting those who are under eighteen years or mentally disabled, in prostitution or pornography with temporary hard labor and a fine of no less than (5000) five thousand dinars and not more than On (15,000) fifteen thousand dinars. Whereas, Article 10 of the same law refers to the crime of promoting prostitution and stipulates that anyone who uses the information network or any information system or creates a website to facilitate or promote prostitution is punished by imprisonment for a period of no less than six months and a fine of no less than (300) three hundred dinars or In excess of (5000) five thousand dinars.

Likewise, the Jordanian legislators are not satisfied with the provisions in the Electronic Crime Law to protect public morals. Rather, in Article 75 of the Communications Law, it is stated that the punishment of anyone who, by any means of communication, sent messages against public morals by imprisonment for a period of no less than a month and not exceeding A year or a fine of no less than (300) dinars and not more than (2000) dinars, or with both of these two penalties. Also, anyone who engages in or contributes to communication services in violation of public order or public morals is punished with the same penalties referred to above.

By reviewing the articles referred to in the Jordanian e-crime law and comparing them with the UAE legislation, it is noticed that the Jordanian legislators limit the criminalization in Article 9 of the electronic crime law to the sexual exploitation of a juvenile who has not completed eighteen years or mentally disabled. The Jordanian legislators have not criminalized establishing Or managing a pornographic website. Therefore, the Jordanian legislators must make criminalization an absolute as stated in the UAE legislation and add a provision to Article 9 of the Jordanian Electronic Crime Law to become (punished by imprisonment for a period of no less than three months and not exceeding a year and a fine of no less than (300) three hundred dinars and not exceeding (3000) (Three thousand dinars anyone who creates or runs a website or supervises it or publishes or republishes through the information network pornographic materials or gambling activities and everything that may affect public morals). Likewise, the Jordanian legislators should adopt a measure of expulsion for a foreigner convicted of any electronic crime, and also authorize the court to order that the convicted person be placed under supervision or control or be deprived of the use of any information network or electronic information system, or any other technical information means or put in a shelter Therapeutic or rehabilitation center for as long as the court deems appropriate.

Fourth; The right to claim compensation

³⁷www.mohamoon-uae.com.uaeu.idm.oclc.org/uaeu/ViewPrincipleText.aspx?PID=95938.

Compensation is left to jurisprudence and the judiciary. Jurisprudence defines it as the duty to return something, replace it with the same, or its value³⁸. It is also defined as reparation resulting from the error³⁹. The right to compensation comes as a result of a harmful act⁴⁰. It is the right to obtain what compels the harm suffered by the individual⁴¹. It also represents the result of any material or moral damages⁴². The person affected by the crime of violating privacy or sexual exploitation through information networks or telecommunications services has the right to claim compensation for damage resulting from the wrongful act of the crime through the harmful act and the damage⁴³.

A. Elements of establishing compensation.

In order to achieve compensation, there must be three main elements represented in the harming, damage, and causal relationship.

1. Harming.

Based on the text of Article 256 of the Jordanian Civil Code and Article 283 of the UAE Civil Code, everyone harming others is obligated to compensate. Harming is considered the first condition for the fulfillment of tort liability. Harming is the wrongful act that leads to harm⁴⁴. The tort liability is not based on harming the third party at all. Rather, harming others is unlawful and direct⁴⁵. This is embodied in the crime committed by the person in the field of information technology or communication; infringing on a person's secrets, violating his/her privacy, publishing it through the information network, sexual exploitation of individuals, violating their privacy, and directly and obviously harming them entitles them to claim compensation.

2. Damage.

Damage is considered one of the main elements of negligence liability. As it is not sufficient to achieve tort liability, the plaintiff must be hurt by the damage. Many judicial provisions have indicated that the award of compensation requires breaching the financial interest of the injured and that the damage be done if it actually occurs or that its occurrence in the future is inevitable⁴⁶. In the event that the damage is likely to occur, that is to say, unrealized damage, then the original principle does not call for the responsibility of the defendant and does not commit to compensate. As compensation does not include the potential effects that were possible in themselves, but their occurrence remains unlikely. The injured party may claim compensation when he/she is sure of the damage he/she has suffered. As for future damage, it is of two types: - The first is future damage that is likely to occur, and this is covered by compensation⁴⁷. The second, future damage is not realized, as this cannot be covered by compensation. The harm must also be in person and in violation of a right protected by law. The damage must have occurred to the

³⁸ Hatem Albakar, Protecting the right of justice for the accused, Almaarif institution, Alexandria, 1997, p. 530.

Wahba Alzuhaili, Theory of warranty and principles of criminal and civil responsibility in the Islamic jurisprudence, Alfikr alislami house, Damascus, 1402A.H, 1982, p. 15.

³⁹ Shareef Altabbakh, Contractual and defective responsibility, Alfikr and Alqanoon house, Mansura, 2009, vol 2, p. 11.

⁴⁰ G. VINEY. Traite de droit civil. Les obligations, la responsablite:- conditions. L.G.D.J- 1982- n 166.p197 et s :- Cass,Civil. 2em 12 fevrier. 1955. Dalloz. 1965. p. 17. note. P. ESMEIN.

⁴¹ Muhammad Abu Saq, Compensating harms in Islam, Eshbilia press house, 1998, p. 155.

⁴² Dr. Ali Khafeef, Warranty in Islam, Alfikr Alarabi house, Cairo, 1997, p. 46.

Dr. Abdulrazzaq Alsanhoori, Alwasset in interpretation of law, vol 1, Arab renaissance house, Cairo, 1981, p. 930.

⁴³ Ibid.

⁴⁴ Dr. Muhammad Mursi Zahra, Useful and harmful acts in the UAE law, 2003, p. 131.

Dr. Adnan Alsarhan and Dr. Noori Khatir, Interpretation of civil law, sources of personal rights, and commitments, Culture press house, 2008, p. 367.

⁴⁵ Muhammad Mursi Zahra, previous source.

⁴⁶ Court's decision.

⁴⁷ Muhammad Mursi Zahra, previous source.

person seeking compensation, whether it is a natural or a legal person. The damage remains personal in relation to the one who sustained it by apostasy. The damage to a person in his/her body or his/her money is considered a personal harm because it affects the injured person. Therefore, this condition is not considered to be in relation to the relative of the victim as long as he/she is not personally affected by the injury to his/her body or his/her financial liability. The damage should also involve a breach of a legitimate right or financial interest. It is equal that the right relates to the material or human entity. Infringement of a person's confidentiality and privacy, tapping on the phone, recording calls and publishing private photos of individuals is considered an attack on a right protected by the law. The perpetrator is obliged to compensate for the harm suffered by the victim in the manner specified by law.

2. The causal relationship.

In addition to the act that harms a person, the condition of the causal relationship must be fulfilled between the act of damage and the harm done to the affected person. It is not sufficient for a judgment to award compensation to the plaintiff to prove his/her injury and that the defendant has committed it. Rather, the damage caused to the victim must have resulted from the defendant's act⁴⁸. The damage is a natural consequence of the wrongful act; the causal relationship between it and the infringement. However, if the damage is not caused by the defendant's transgression, it is not permissible to compel compensation⁴⁹.

B. The effect of compensation.

The UAE and Jordanian legislators decided that compensation is the means to eliminate reparation⁵⁰. It clearly differs from punishment, as the purpose of punishment is to repulse and discipline the sinner, while compensation is to replace and repair the damage. Therefore, the severity of the error has a great impact on the amount of the penalty and not on compensation. Compensation is with the damage and no effect on the amount of the error. The court's decision means that compensation is equal to the damage, neither less nor more⁵¹.

Article 85 of the Jordanian Communications Law indicates that the previous articles do not preclude the victim's right to claim compensation and personal right for any violation of the provisions of these articles. Compensation in the lawsuit filed by the person affected by the crime of infringement of privacy or sexual exploitation may take the form of in-kind compensation and a copy of compensation. On the other hand, as there is some damage that is difficult to compensate in kind, such as physical harm in the narrow sense and moral damage.

1. Compensation in kind.

It is permissible, according to the circumstances and at the request of the injured, that the compensation be in kind, i.e. the ruling to restore the situation to what it was before the damage occurred, such as withdrawing the publication or video from the information network or removing the image that was taken without the permission of its owner⁵². However, it is often not possible to judge in-kind compensation for tort liability, as it is inconceivable that the judge issued a ruling for compensation in kind by returning the child's condition. A car shocked him and caused him permanent impairment to what it was before the damage occurred, as was the case for the person whose privacy was violated or sexually exploited through Informational networks.

2. Compensation for consideration.

This compensation can be in cash. Or non-monetary compensation. Monetary compensation: - It is the principal of compensation, which is a sum of money given in one payment, and the judge has the right to rule in installments of

⁴⁸ P. BENOIT. , essai sur les conditions de la responsabilite civil en droit public et prive. Problemes de causalite et d'imputabilite. J.C.P. 1957. I.1351.

⁴⁹ The French Court, 1975, p. 182.

⁵⁰ Article 282 of transactions law and Article 256 of the Jordanian civil law.

⁵¹ Ibid.

⁵² Articles 295 and 269 of the Jordanian law.

monetary compensation in installments, as he has to decide on the basis of a salary income for the life of the injured person, and this depends on the disability that affects the injured⁵³. The monetary compensation, according to the general rule of tort liability, is in one payment, but its copies according to the texts may differ, so it may be a total amount, or a revenue for a specific period or for life⁵⁴. In the event of violating the privacy of individuals, violating confidentiality and sexual exploitation, and causing moral harm to them as a result of unlawful damage that caused them to their consideration, reputation, and honor, the court can award them a fair monetary compensation. The legislator has indicated that anyone who infringes on others in their freedom, honor, reputation, social status, or financial consideration is obligated to compensation. Courts can also decide non-monetary compensation appropriate to the case of harm suffered by the person. In assessing compensation, the court must take into account several considerations:

- A. Reparation is the goal of compensation, by returning the victim to the position he/she was in before the damage occurred.
- B. Compensation must contain the damage and compel it with all its dimensions. Therefore, it must include all the losses suffered and the lost profits, in addition to compensation for moral damage.
- C. The court's decisions must indicate the elements of the harm for which compensation is decided. Otherwise, these decisions are tainted by deficiencies.

Conclusions:

The present study has reviewed the crimes of violating privacy and public morals committed via Smart phones in the law of combating information technology crimes and the law of regulating the communications sector in the UAE and Jordanian legislations. It has also clarified the concept of Smartphone. The study has discussed the characteristics of the crimes committed via Smartphone and the information network. Then, it has shown How the UAE and Jordanian legislators handled these two crimes in accordance with the Law of Combating Information Technology Crimes and the Telecommunications Regulatory Law. The study has also demonstrated the right of the victim to claim compensation for the damages resulting from these crimes. It is noticed that there is a slight difference between the UAE and Jordanian legislations, which is shown in the results and recommendations as follows:

The results

1. Crimes committed via Smartphone and information networks are distinguished from other crimes in that they do not require violence and preparation in advance. They are also not related to a specific place; they can be committed in a specific region and the impact is on another region. The legislators have made a special law to combat these crimes. The UAE legislators have issued a special law to combat information technology crimes No. 5 of 2012 and the Telecommunications Regulatory Law No. 3 of 2003. Likewise, the Jordanian legislators have issued a special law to combat cybercrime in 2015 and Communications Law No. 13 of 1995. These two legislations are the result of growing risks of Misusing Smartphone in all its forms; threatening via phone, extortion, publishing pornographic material, insulting or attacking the privacy of individuals.
2. Comparing the UAE and Jordanian telecommunications laws, it is noticed that the UAE legislators are more precise than the Jordanian legislators in the telecommunications law. Article 72 of the UAE law regulating the telecommunications sector states that anyone who violates the confidentiality of a content without prior permission from the competent judicial authorities is punished. This is not found in the Jordanian legislations.
3. There is a close correlation between Article 72, Provision 1 and Article 72 Provision 3 of the UAE Telecommunications Regulatory Law No. 3 of 2003. Telecommunications equipment cannot be used without the availability of the

⁵³ UAE Civil law, p. 257.

⁵⁴ Article 293 of the UAE Civil Law and Article 267 of the Jordanian Law.

telecommunications service. At the same time, the telecommunications service cannot be used without telecommunications equipment.

4. The Emirati legislators are not satisfied with the traditional punishment of imprisonment or a fine for the perpetrator of an IT crime. Rather, they adopt the expulsion measure for the foreigner in accordance with Article 42 of the Information Technology Crime Law. Likewise, the perpetrator is placed under supervision, prevented from using any information network, electronic information system, any other information technical means, or placed in a medical shelter or rehabilitation center for the period deemed appropriate by the court in accordance with Article 43 of the same law.

5. The Jordanian legislators do not criminalize the establishment or management of a pornographic website in contrary to the Emirati legislators. The criminalization in Article 9 of the Electronic Crimes Law is limited to the sexual exploitation of a juvenile who is under 18 or mentally disabled.

The recommendations

1. The Jordanian legislators are recommended to add a new article to the Jordanian Communications Law. The text of the Article should be; Whoever listens to the content of calls or accesses to the information of others without prior permission from the competent judicial authorities shall be punished by imprisonment and a fine or one of these two penalties.

2. The Emirati legislators are recommended to merge Articles 72, provision 1 and Article 72 provision 3 of the Law regulating the communication sector into one article to become; Whoever exploits telecommunications equipment or telecommunications services to offend, inconvenience, or harm the feelings of others or for another unlawful purpose shall be punished by imprisonment for a period not exceeding one year and by a fine of no less than (50,000) fifty thousand dirhams and not exceeding (1,000. 000) Million dirhams, or one of these two penalties.

3. The Jordanian legislators are recommended to adopt the expulsion measure for a foreigner convicted of any electronic crime. They are also recommended to allow the court to order that the convicted person be placed under supervision, deprived of the use of any information network or electronic information system, any other technical means of information or put in A therapeutic shelter or rehabilitation center for as long as the court deems appropriate.

4. The Jordanian legislators are recommended to add a provision to Article 9 of the Jordanian Electronic Crime Law to become; Whoever creates or manages a website, supervises it, publishes or republishes through the information network pornographic materials or gambling activities and everything that might affect public morals is punished by imprisonment for a period of no less than three months and not exceeding a year and a fine of no less than (300) three hundred dinars and not more than (3000) three thousand dinars.

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