

Material Damages Arising From Owner's Unintentional Loss of Possession On Moveable Property

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1- Title of the Dissertation: Material Damages Arising From Owner's Unintentional Loss of Possession On Moveable Property

2- Subject of the Dissertation: In the dissertation, it's aimed to assess whether there is a patrimonial damage arising from solely loss of possession of a moveable, particularly which has no proceeds or no economic value of use, e.g. jewels, or not. In Turkish Property Law, ownership is the fullest and most comprehensive real right as in Roman Law and apart of some exceptional situations, it is not lost by the owner unintentionally. Moreover it is a imprescriptible right. On the other hand according to liability rules, damage is unintentional diminution of patrimony. So the research question of the dissertation lies on the intersection point of the property law and obligation law.

3- General Overview of the Dissertation: The dominant theory in Continental Law, which determines damage is the "Difference Theory". According to this theory, damage is the difference between the present (damaged) state of the victim's sphere and that state that would have presently existed if the action causing the damage had not occurred. So, in case of unintentional loss of possession on moveables (in order to emphasize problem, especially moveables which have no proceeds or no economic value of use) without losing ownership (e.g. theft) and when there is no actual harm on moveables, can it be said that there is a diminution of victim's patrimony? Can victim claim damage?

By sticking to "Difference Theory", it can be asserted that there is no damage which can be claimed, because the stolen moveable is still a part of victim's patrimony and there is no diminution of the victim's patrimony. In such a situation if we accept the damage and compensate it, will the victim's retention of ownership on property still exist? If not, will it be a forced sale of the claimant's property at a price fixed by the court?

By retention of ownership along with compensation, does unjust enrichment occur? What if the victim regains his/her property's possession by his/her vindication right after the compensation award?

If we don't assert damage in such a case, the solely way to protect victim's ownership rights and compensate his/her damage will be rei vindicatio. This would be no doubt in favor of tortfeasor.

All these problems will be in the scope of my research. As mentioned below these problems will be discussed with a comparative perspective to reach a comprehensive solution form my country's legal system.

4- Aim and Importance of the Dissertation: With this dissertation, it will be analysed if there is a contradiction in Turkish Law between the rules of property law which protect ownership right and the rules of obligation law which determine patrimonial damage. At the end of the research, if it appears to be a contradiction, the alternative approaches will be discussed to resolve the problem.

5- Methodology: It's aimed with this dissertation, to assess the legal problems that arise from this research with historical and comparative perspective. So the issue will be discussed at first with its roots in Roman Law. Then with both theoretical and jurisprudential aspects in different jurisdictions. Thus, the research will mostly depends on a theoretical study, which will use descriptive methodology and textual analysis.

In such a research having the opportunity of studying legal history and legal systems of different European countries and making comparison with Turkish Civil Law will be of great use for me.