澳門大學
UNIVERSIDADE DE MACAU
UNIVERSITY OF MACAU

碩士研究生學位論文

題目：論離婚非財產損害賠償

——以其法律性質以及在澳門法律實踐中的狀況為中心

(Discussion of Compensation for Non-pecuniary Damage in Divorce --- Based on its Legal Nature and Implementation Status in Macao)

姓　　名：張穎彤

學　　號：M-A4-6111-2

院　　系：法學院

專　　業：中文法學碩士

研究方向：民法方向

導師姓名：唐曉晴教授

二 O 一三年七月

UNIVERSIDADE DE MACAU
仁義禮知信
澳門大學

學位論文獨創性聲明

本人聲明：所呈交的學位論文是本人在導師指導下進行的研究工作及取得的研究成果。除了文中特別加以標注和致謝的地方以外，本論文中不包含其他個人或者集體已經發表或者撰寫過的研究成果，也不包含為獲得澳門大學或者其他教育機構的學位或者證書所使用過的材料。如有違反學術道德、學術規範的行為，本人願意承擔由此而產生的法律責任和法律後果。

聲明人：

日期：二 O 一三年七月十六日

UNIVERSIDADE DE MACAU
仁義禮知信
澳門大學

論離婚非財產損害賠償

——以其法律性質以及在澳門法律實踐中的狀況為中心

中文摘要

對於離婚非財產損害賠償，儘管多國及地區已有其在法例上的存在依據，但是，由於立法例對這種損害賠償的規定往往很概括及簡單，容易令人忽略其背後的理論基礎、目的及意義，這往往會影響在實踐中對離婚非財產損害賠償的請求及對有關數額裁定的效果。然而，我們知道，在離婚越趨普遍的今天，離婚非財產損害賠償的重要性及實效性卻更為突出及應予重視，故此有必要了解及探討這種損害賠償確立的基礎及在實踐中所遇到的問題並作出反思，這樣才能真正及有效落實離婚非財產賠償對離婚中的受害方配偶的法律保護，以達至維護家庭和諧及社會穩定的真正價值。

因此，本文主要藉由法國、葡萄牙、中國、台灣、澳門等國家或地區關於離婚非財產損害賠償在不同時期的立法例、理論與案例的探討、比較及整理，結合羅馬法中對離婚損害賠償的規定，重點在於分析離婚非財產損害賠償的法律性質、構成要件，並輔以探討這種賠害賠償範圍、其在訴訟程序中的適用範圍以及其他相關的若干問題。同時，本文也會闡述澳門離婚非財產損害賠償本身的特性及改革可能性，及歸納出在澳門司法實踐中確定有關損害賠償數額所面對的問題和挑戰，並對此作出數額確定方面的一些建議標準，以及指出引致有關數額在司法實踐中存在請求與裁定之間較大差距的原因及應予以完善之處。

為此，本文會分八章進行有關研究及探討。第一章首先會探討作為離婚非財產損害賠償的上位概念的離婚損害賠償的一般概述及範圍（尤其離婚損害賠償與離因損害賠償之間的關係），從而帶出本文的重點：離婚非財產損害賠償。

第二章是對離婚非財產損害賠償責任的各種不同法律性質的理論爭議進行分析，而此部份亦為本文的重點部份。

第三章是在前章的基礎下，對因違反夫妻義務而導致離婚的侵權責任，及因配偶精神能力發生變化而導致離婚的因合法事實所生責任此兩者的構成要件進行分析及闡述。

第四章及第五章分別是對離婚非財產損害賠償的具體範圍以及在訴訟程序中的適用範圍的進行探討。

第六章是關於離婚非財產損害賠償的其他若干問題（預先透過婚姻協定或婚前協定設定有關損害賠償、第三人承擔有關損害賠償責任及有關損害賠償請求權的讓與及繼承的可能性）的研究。

第七章則會重點探討澳門離婚非財產損害賠償現行的法律規定、特性、改革可能性，以及在實踐中確定有關損害賠償數額的具體狀況，並作出一些建議標準及加以完善的看法。作為最後部份的第八章將就文中所作的分析及研究結果和見解作出歸納，以突出理解離婚非財產損害賠償的重要性及現實意義。

關鍵字：離婚　非財產損害　法律性質　構成要件　賠償數額

Discussion of Compensation for Non-Pecuniary Damage in Divorce --- Based on its Legal Nature and Implementation Status in Macao

Cheong Weng Tong, Master of Law in Chinese Language
Directed by Professor Tong Io Cheng

Abstract

About the compensation for non-pecuniary damage in divorce, though many countries and regions have listed out in their own legislation, the legislation for that compensation are often very general and simple. Thus it is easy to let people ignore its theoretical basis, purpose and meaning behind, and this often affects the practical ruling results of the request of compensation for non-pecuniary damage in divorce and the actual amount determinated. However, as we know that, divorce is becoming more common in nowadays, and the importance and effectiveness of this compensation is becoming more prominent and must be paid more attention. Therefore, it is necessary to understand and explore the basis for establishing compensation for non-pecuniary damage in divorce and the problems encountered in practice and then rethink profoundly, so that such compensation can provide a true and effective implementation of law protection to the injured party spouse, in order to achieve the true value of family harmony and social stability.

Therefore, this thesis is mainly based on the different time legislation, theory, case study, comparison and arrangement of materials about those compensations of non-pecuniary damage in divorce between France, Portugal, China, Taiwan, Macao and other countries or regions. Combined with the Roman law about the requirements of compensation of damage in divorce, this thesis mainly focuses on the analysis of its law nature, elements, and also discusses the scope of compensation, scope of application in litigant process as well as other related issues of the compensation for non-pecuniary damage in divorce. Meanwhile, the thesis also describes the characteristics and the possibility of reform of the

compensation for non-pecuniary damage in divorce in Macao, summarizes the problems and challenges faced when ruling the amount of such compensation in the judicial practice in Macao, and provides some recommended standards for the amount determination. Moreover, the reasons for the big difference between the requested amount and the ruled amount in the judicial practice will be discussed, and improvement points of view will be provided.

This thesis will be divided into 8 chapters for study and discussion. The first chapter will initially explore the general overview and scope of compensation for damage in divorce, especially the relationship between this compensation and the compensation for damage caused by the reasons of divorce, in order to bring out the key point of this thesis: compensation for non-pecuniary damage in divorce.

Chapter 2 analyzes the different theoretic points of view of the legal nature of compensation for non-pecuniary damage in divorce with its related and applicable feasibility, and this part is actually the main part of this thesis.

Based on the fundamental information of the previous chapter, chapter 3 analyzes and elaborates the constituent elements of: divorce's tort liability due to the violation of marital obligations, and divorce's liability of legal facts due to the changes in mental abilities of spouse.

Chapter 4 and chapter 5 discuss the specific scope and scope of application in litigant process for compensation for non-pecuniary damage in divorce respectively.

Chapter 6 discusses the other related issues of the compensation for non-pecuniary damage in divorce, such as: compensation for non-pecuniary damage in divorce through marital or pre-marital agreement, liability of this compensation bared by the third person, and possibility of alienability and succession of this compensation.

Chapter 7 will focus on the existing law provisions, characteristics, possibility of reform, as well as the actual situation in determining the amount of compensation for non-pecuniary damage in divorce in practice in Macao. Also, recommended standards and improvement points of view are also provided.

As the last part of this thesis, chapter 8 presents the final and overall conclusion remarks of the results analyzed and opinions made from the research, so as to show the importance and practical significance of understanding the compensation for non-pecuniary damage in divorce.

Keywords: divorce, non-pecuniary damage, legal nature, constituent elements, amount of compensation.

UNIVERSIDADE DE MACAU
仁義禮知信
澳門大學

目錄