

Exemption from liability arising from the harms of corona vaccine vaccination

By

Anwar Mohameed Hadi

Mazaya university college, Iraq

Email: Law.anwarmohameed@mpu.edu.iq

Akram Hayawi Touma

Mazaya university college, Iraq

Email: la.akram@mpu.edu.iq

Abstract

According to the general rules, the rules of contractual liability constitute a wide field for the parties' agreements amending the responsibility in terms of stress or exemption because they are not related to public order, in contrast to the rules of tort, which are related to public order, so individuals do not find a way to agree to amend them. Within the scope of our research, it is possible to determine the nature of The relationship between the state and the vaccine manufacturing company is contractual, but this description does not apply to the company's relationship with the natural persons who receive the vaccine. Thus, exempting the company from compensating the damages resulting from the vaccine is a violation of the general rules, especially since this issue constitutes a direct impact on the human body. Responsibility, including the Iraqi legislator, but the exemption does not include the manufacturing company only, but also the supplier and the medical personnel involved in the vaccination process. It is necessary, then, to define the parameters of the exemption condition and limit its scope to the narrowest scope so that it is not measured against it in similar cases.

Keywords: Exemption from liability. Liability insurance. General system. Commitment to conformity Media. Commitment insight.

Introduction

The effectiveness of the condition of exemption from civil liability arising from the harms of vaccination with the Corona vaccine.

The work of the companies producing the vaccine is part of the medical business, which directly affects the human body and health, and the origin is that the human body is far from any financial dealing, but what gives legitimacy to the medical intervention is the goal of this intervention, the medical intervention must aim to treat the patient from a particular disease or mitigate its severity and detect its causes, or prevent a particular disease or epidemic, and in fact medical interventions are not free from risk in general, and if the risks are realized As a result of medical intervention, the right of the injured person to compensation must be proved.

The jurisprudential and judicial orientation has settled on the recognition of the responsibility of the medically intervening party for the harms of medical intervention, but at the present time, in light of the exceptional circumstances by all standards and the paralysis experienced by the population of the globe in all joints of life, the spirit returned to the direction that responsibility for medical damages is not achieved, after the majority of countries tended to approve the immunity of the companies producing the vaccine, its providers, the medical

cadres in charge of the vaccination process and the departments of the Ministry of Health, After the epidemic killed the population of the earth, some companies took upon themselves the task of discovering a vaccine, and in order to provide these companies with support, whether material or legal, countries enacted legislation exempting companies and persons who fall within the personal scope of these laws from responsibility.

The problem of research

The problem of the research is to consider the exemption from liability as a departure from the general rules that require the cause of the damage to bear responsibility for his harmful acts by compensating the affected, and in the field of risks resulting from vaccination with the Corona vaccine, despite what it constitutes of direct prejudice to the human body, but most countries have exempted companies producing the vaccine and other parties from responsibility, as this exemption must have its justifications that necessitated a departure from the general rules, and another problem is also raised with regard to determining the nature of responsibility The authorities concerned with exemption before receiving the vaccine, as determining them is one of the thorny issues that require a long pause for the purpose of examining the extent to which the exemption clause extends to it, in addition to that, there is a problem to the extent to which the affected person can obtain fair compensation, especially since the exemption from liability deprives the affected party of his right to return compensation to the cause of the damage.

Research objectives

The goal that we seek to achieve through this research is to answer the following questions:

- 1- Is the condition of exemption from liability arising from the harms of vaccination with the Corona vaccine approved or contrary to public order because the vaccine harms the safety of the human body?
- 2- The scope of exemption from liability arising from the harms of vaccination with the Corona vaccine, does it include civil liability of both types (contractual and tort)?

Research Methodology

Through our presentation of the topic of "the condition of exemption from liability arising from the harms of vaccination with the Corona vaccine", we will follow the analytical approach, as we will analyze the rules governing the condition of exemption from liability under the Iraqi Civil Code in force, and show the extent to which both (the Law on the Supply and Use of Corona Pandemic Vaccines No. 9 of 2021 is consistent with it.

The first topic

The concept of the condition of exemption from liability arising from the harms of vaccination with the Corona vaccine

For the purpose of familiarity with the subject, especially the characteristic of the condition of exemption from liability for manufacturers of the Corona virus vaccine, which makes it distinct from the condition of exemption from liability with respect to other contracts, we will divide this section into two requirements, the first of which deals with the nature of the condition of exemption from liability arising from the harms of vaccination with the Corona

vaccine , while the second requirement is devoted to research on the legal basis for the condition of exemption from liability arising from the harms of vaccination with the Corona vaccine.

First Requirement

What is the condition of exemption from liability arising from the harms of vaccination with the Corona vaccine?

The obligation to compensate is the direct effect of the realization of the elements of responsibility, but the debtor may exempt himself from this obligation through the condition of exemption from liability, and for the purpose of indicating what the latter is, it must be determined what is meant by it in the first section, and its requirements in the second branch.

First branch

What is meant by the condition of exemption from liability arising from the harms of vaccination with the Corona vaccine

To determine what is meant by the exemption clause from liability, it must be defined first and its characteristics second.

Definition of the condition of exemption from liability arising from vaccination with the Corona vaccine.

With regard to the condition of exemption from liability arising from vaccination with the Corona vaccine, despite its departure from the general rules in the legal texts regulating the condition of exemption from responsibility, most countries have exempted vaccine manufacturers or people working in them, and some countries have gone further by exempting the distributors, the Ministry of Health, its formations and workers, and the cadres that take it upon themselves to give the vaccine to citizens, and from countries that Approved the condition of exemption from responsibility Iraq under Law No. (9) of 2021.

Hence, it can be defined as "a condition that exempts vaccine manufacturers and employees, suppliers, the Ministry of Health and its cadres or persons carrying out vaccination, from compensation for damages arising from receiving the vaccine, whether such damages arise from intentional or unintentional error."

Characteristics of the exemption clause from liability arising from the harms of vaccination in the bottom of Corona

The condition of exemption from liability with regard to liability arising from vaccination with the Corona vaccine has a number of characteristics that distinguish it from the condition of exemption from civil liability in its other forms, and we mention the most important characteristics of this condition, which are: -

- 1- The personal scope of the exemption clause is not limited to the vaccine manufacturer, but extends to include employees of these companies, processing companies, the Ministry of Health in the country that has committed itself to this condition, and its cadres, in addition to any entity or person who performs the vaccination process. As for the Lebanese legislator, the exemption included damages resulting from production, packaging and storage, in addition to doctors and specialists .
2. With regard to the time frame of this exemption, as it is absolute, its provisions could be suspended if it is proved in the future that one of the vaccines has failed

- 3- The immunity granted to the aforementioned companies is not limited to exemption from civil liability, but also included criminal prosecution, for unintentional damages that lead to death, and this is understood from Article (3), which excludes intentional acts that lead to death. The Lebanese legislator has used the term "non-prosecution" in respect of unintentional and intentional damages that do not amount to death or serious injury, and has expressed intentional "intentional misconduct".
4. The condition extends to intentional errors that do not reach a level of gravity that lead to death or physical injury to the vaccine recipients, as expressed in paragraph VII of Article I, "or lead to permanent disability or require medical procedures to address them that prevent disruption or cessation of one of the functions of the body", or rebound damage to the families of the vaccine recipients.

Section II

Requirements of the condition of exemption from liability arising from the harms of vaccination with the Corona vaccine

The general rules in the Civil Code allow individuals to agree to amend the provisions of contractual liability, but they do not release their freedom with regard to these agreements, in order to implement the condition of exemption from liability and its effects, several requirements must be available, including:

The condition of exemption from liability should not be contrary to public order and morals.

When referring to Article (131) of the Iraqi Civil Code, we find that it referred in its second paragraph to the permissibility of the contracting parties to guarantee their contract a condition that benefits one or the parties, but taking into account the restriction, which is not to violate public order and morals. With regard to public order and its impact on the condition of exemption from responsibility, the Iraqi legislator mentioned two applications in which the condition of exemption from responsibility was abolished for violating public order:

- 1- Invalidity of the arbitrary exemption clause contained in compliance contracts.
- 2- The condition of exemption from liability for damages that occur to persons: This type of damage cannot be subject to agreement on exemption from liability, because the human body is outside the circle of transactions, and any condition that affects the human body and its safety is invalid for violating public order, as the sanctity of the human body makes it immune from financial transactions. In application of this, the clause of exemption from contractual liability required by the carrier, hospitals, tour operators or any contract that is the subject of The obligation of one of its parties is prejudicial to the human body and its integrity.

Legislation has enshrined this prohibition with explicit texts, including Article (202) of the Iraqi Civil Code, which invites us to reflect for a long time on the consistency of the Iraqi Law on the Provision and Use of Corona Pandemic Vaccines No. 9 of 2021.

The condition of exemption from liability shall not be contrary to the terms of the contract or its requirements.

The rule of binding the contracting parties under the contract and its requirements enshrined in Article (150) of the Iraqi Civil Code in its second paragraph, which states, "The contract is not limited to obliging the contractor to what is stated in it, but also deals with what is one of its requirements in accordance with the law, custom and justice according to the nature of the obligation", as this article is an application of the rule of the *pacta sunt servanda*, and therefore the parties to guarantee it whatever conditions they want as long as they do not

expressly violate the text of Article (131), which stated in its paragraph First, "the contract may be accompanied by a clause according to which it confirms or is appropriate or is in force by custom and custom." In the sense of violation, any condition that is incompatible with the requirements of the contract by excluding a substantial obligation therein is considered void.

The non-performance shall not be due to the fraud of the contractor or his serious error.

Article (259/2) of the Iraqi Civil Code stipulates that "it is also permissible to agree to exempt the debtor from any liability resulting from the non-performance of his contractual obligation except those arising from his fraud or gross negligence....." , that the general principle is to allow the debtor to be exempted from liability resulting from his breach of the performance of his obligation, but this principle is restricted that the breach in the performance of the obligation is not due to his fraud or gross error. Thus, the condition of exemption from liability does not produce its effect if the damage caused to the vaccine recipient resulted from fraud or serious error by the companies producing the vaccine or by the Ministry of Health or the persons who vaccinate or provide medical services, and this is what is explicitly included in the laws that include exempting the concerned authorities from responsibility for the harms of vaccination, which we will explain at the time.

Second Requirement

The legal basis for the exemption clause from liability arising from the harms of vaccination with the Corona vaccine

In this requirement, we decided to research the legal basis for the exemption clause, and thus we will divide it into two branches, showing the jurisprudential basis in the first and the legislative basis in the second.

First branch

Jurisprudential basis

With regard to the condition of exemption from liability for damages arising from vaccination with the Corona vaccine, the matter beats a little, as the vaccine contract falls within the medical contracts in which the dispute was raised regarding the exemption from liability in its framework, most jurisprudence went to the invalidity of the agreement to exclude liability concluded by the medical worker with the patient or the reviewer, even if the vaccine or treatment was given at the request of the patient, and thus both (Mazo and Shabas) go to "Agreements for exemption from liability are not permissible, even if they focus on petty fault, when the damage is related to the integrity of the human body, since the person may not be the subject of contract, and therefore the agreement concluded by the patient with the doctor containing exemption from contractual liability is of no value, because the human body enjoys a special sanctity, which is outside the scope of commercial dealings.

A more accurate trend has emerged in jurisprudence with regard to exempting the drug producer from liability with regard to the risks of development, considering that the manufacturers of the drug seek to develop and make a profit, and that any drug produced may include future risks, especially if the producing companies themselves fear its future risks to people, especially those with chronic diseases, not knowing the defect in the drug at the time of putting it into circulation will lead to harm to users, and as long as the realization of these damages is likely, not It is fair that drug manufacturers are exempted, especially since the consumer is part of the experiment, so how can a drug product be exempted when the user has suffered harm as a result of trying a chemical product

Section II

Legislative basis

The condition of exemption from liability finds its legislative basis in Article (259/2) of the Iraqi Civil Code, which stipulates that "the agreement to exempt the debtor from all liability resulting from the non-performance of his contractual obligation except that arising from his fraud or gross error, however, the debtor may stipulate that he is not responsible for fraud or serious error that occurs from persons used in the implementation of his obligation", as well as can rely on Article (131/2) with regard to the validity of the conditions associated with the contract, which It states that "it may also be accompanied by a condition of benefit for one of the contracting parties or for others if it is not prohibited by law or contrary to public order or morals, otherwise the condition is canceled and the contract is valid, unless the condition motivates the contract, the contract is also invalidated."

While the Iraqi legislator decided to exempt the aforementioned parties from responsibility, but they transferred the responsibility of bearing compensation to the state through the text of (4) Article of the law, and this in turn leads to confusion between the condition of exemption from liability and the agreement synonymous with insurance, as the latter is defined as "an agreement that a person is not as a professional insurer nor by a real contract for insurance, but by a condition attached to a contract that has nothing to do with insurance, under which this person undertakes to ensure The other party to the contract has liability for damages caused to third parties for which such other contracting party is normally liable to pay compensation under the general rules."

Within the framework of the condition of exemption from liability arising from vaccination with the Corona vaccine, it finds its basis in Article (2) of the Law on the Supply and Use of Corona Pandemic Vaccines No. 9 of 2021, which stipulates that "international companies manufacturing and supplying vaccines for the Corona virus, the Ministry of Health and Environment, its formations and employees are exempted from civil and criminal liability from damages resulting from the provision or use of medical materials necessary to prevent the Corona virus", and Article (3) of the provisions of the law "intentional acts that lead to death or bodily injuries by using one of the special medical materials to confront the Corona pandemic."

The second topic

The provisions of the condition of exemption from civil liability arising from the harms of vaccination with the Corona vaccine

We must clarify the nature of the liability arising from the harms of vaccination with the Corona vaccine, whether it is contractual or tort liability, and the extent to which the two can be achieved together, and this will be the subject of our study in the first requirement, and then we show the extent to which the company producing the vaccine can be exempted from liability arising from the harms of vaccination with the Corona vaccine, whether it is contractual or tort liability, and this is the subject of our study of the second requirement.

First Requirement

The legal nature of civil liability arising from the harms of vaccination with the Corona vaccine

To determine the nature of the liability arising from vaccination with the Corona vaccine, we will divide the requirement into two branches, dealing with contractual civil liability in the first, and dealing with civil tort liability in the second.

First branch

Contractual liability arising from the harms of vaccination with the Corona vaccine

First of all, it is not possible to talk about contractual civil liability unless we are in the process of breaching the obligations arising from the contractual bond, and thus the research in this type of liability is limited to the contractual bond that arises between the parties to the contract, namely the government and the vaccine manufacturer, based on the relativity of the impact of the contract and the limitation of its effects to its parties and not to go to others from the contract, so the recipient of the vaccine can only adhere to the provisions of tort liability to claim compensation for the damage caused by vaccination with the vaccine, This is what we will show at the time, but with regard to the government's relationship with the producing company, it is governed by the contract concluded between the two parties, and the realization of contractual responsibility requires the availability of three conditions, which are that there be a contract, and that the contract is valid and fulfills its pillars and conditions, and that one of the parties violates the obligations incurred by him under the contract, and this is what we will show sold.

First: Rooting the contract.

The contract concluded between the Iraqi Government and the companies producing the vaccine falls within the concept of processing contracts, which are defined as "a contract concluded by an administrative body with a person of public or private law, under which the provider undertakes to transfer ownership of a movable property or supply a specific service to it in the form of a payment or certain payments for a price agreed upon in advance

The Public Contracts Law No. 87 of 2004 did not define the processing contract, but it included a definition of the processing process as "obtaining goods and reconstruction services with contracts of public funding by or for the government or through purchase or lease", As for the instructions for the implementation of government contracts No. (2) for the year 2014, they also did not include a definition of the processing contract, but rather specified in its first article the scope of government contracts to include ministries, including the Ministry of Health, which is the body that undertook the contracting process with vaccine manufacturers, by following the method of direct procurement from the manufacturers, whose provisions were regulated by Article (3/VIII), and in this case the contract is subject to the approval of the company's board of directors.

Second: Vaccine manufacturer's obligations

Since one of the parties to the contract is a vaccine manufacturer and therefore it is considered a professional professional who is committed to the other contractor to the obligations of the product, which is considered a commitment to safety, a commitment to information and insight. and the obligation to conformity.

First: - Commitment to ensure safety.

As a result of the inadequacy of the general rules relating to the guarantee of hidden defects and the producer's responsibility for the damages caused by his defective products, some of the jurisprudence and the judiciary have adopted a more appropriate method, obliging every professional producer within the scope of products within the limits of his professional activity to bear the results of his products that include a defect in their safety, which makes them dangerous to the consumer, regardless of the nature of the contract under which the producer provided the consumer with the dangerous product

Although the jurisprudence did not agree on a uniform definition of the obligation to ensure safety, one side defined it as "a situation in which the physical and health entity of the contractor is protected from any infringement caused by the performance of contractual obligations that bind it to the professional contractor", while another defined it as "the exercise by the debtor of effective control over all elements which may cause harm to the creditor benefiting from the good or service and is an obligation to achieve an end rather than to exercise care".

In the context of the pharmaceutical industry, the pharmaceutical product must not have undesirable effects, as the basis of the obligation to ensure safety is due to the dangerous character of the pharmaceutical product and one of the manifestations of the implementation of this obligation is to disclose this dangerous nature of the pharmaceutical product, and that the product is free from any defect in its components or defect in its manufacture, which results in harm to persons receiving this drug.

Second: - Commitment to the media and insight

The obligation to inform pre-contract is defined as "the obligation to inform the other contractor of all the circumstances of the contract is only a new means added to the traditional means aimed at protecting consent so that the contract is not based on the consent of one of its parties, since consent is free only if it is based on complete freedom of the contractor to assess the circumstances of the contract".

Thus, the producer is legally bound as a professional specialist who knows the origins of his profession and all the details related to the product towards the other contractor by informing him of all information related to the product, without which the consumer cannot recognize the mechanism of using the thing, especially dangerous products, and that the producer's obligation does not stop there, but he must also enlighten the other contractor about the risks of using the product or that are expected to be realized if the product is used. This obligation requires its availability prior to contracting, in order to assist the other contractor in the formation of free and informed consent.

Second: - Commitment to conformity.

The obligation to ensure conformity is defined as "the seller's undertaking that at the time of delivery the sale will comply with the terms expressly or implicitly agreed in the contract and contain specifications that make it usable according to its nature and in accordance with the purpose of the buyer in a manner that ensures its proper use and prevents its damage.

This obligation has been regulated by both the Civil Code and the Consumer Protection Law, but its scope under the Consumer Protection Law is broader than it is under the Civil Codes, which is one of the requirements of the contract and that the contractor must abide by, even if it is not required by the other party, as Article (150/1) of the Iraqi Civil Code stipulates that "the contract must be implemented according to what it contains and in a manner consistent with what is required by good faith." The second paragraph of the same article stipulates that "the contract is not limited to bind the contractor to what is stated therein, but also deals with what is one of its requirements in accordance with the law, custom and justice according to the nature of the obligation", and therefore the extent of this obligation in the civil law is limited to the contractual framework, if the seller does not deliver to the buyer something identical to what has been agreed upon, the buyer may request rescission with compensation, as in sales by sample, either. The concept of compliance obligation under consumer protection laws expands to include standard specifications and therefore the obligation to ensure conformity is considered a legal obligation even if it is not guaranteed by the parties in their contracts. As the

Iraqi Consumer Protection Law is not devoid of provisions regulating this obligation, we find that the second paragraph of Article (7) of the Consumer Protection Law No. 1 of 2010 has indicated that the obligation of the provider or advertiser must be obligated. of the Iraqi standard specifications to determine the quality of imported or locally manufactured goods, and the Central Organization for Standardization and Quality Control shall be the reference for this purpose."

What is the penalty for breach of the guarantee of conformity under consumer protection laws hesitates between the right to replace the product, or return the sale and recover the price without the consumer incurring any additional expenses, and this penalty may take the form of a claim to repair the sale, or keep the sale with a claim to reduce the price, meaning that the consumer has the right within a certain period from the date of delivery to choose between returning the non-conforming sale and replacing it with another identical or returning it and recovering the price.

Section II

Tort liability arising from the harms of vaccination with the Corona vaccine

Despite the importance of the vaccine in light of the crisis of the outbreak of the Corona epidemic, and the dedication of international efforts to confront it, the organization called on governments to take urgent and stricter steps to stop the spread of the virus. Where the dominant companies in the production of medicines had a major role in confronting this epidemic, as the World Health Organization and the international community as a whole led to the need to find a vaccine that limits the spread of this epidemic, but it can cause serious harm to its users, which requires the responsibility of the party that produced the vaccine, and the responsibility of the party that provided the vaccine.

Because the companies producing the vaccine do not have a contractual bond with the consumer, because the damage that takes for contractual liability entails a breach of a contractual obligation, the consumer has no choice but to refer to them under the rules of tort, arising from a breach of a legal obligation not to harm others, in addition to that, the state's duty to protect individuals and preserve their health, and because it is the party that contracted with manufacturers to provide the vaccine is also responsible before the consumer.

In order to be in front of a tort liability for both the producer and the country providing the vaccine, there must be three pillars, namely (error, damage, causal link), and this is the element of error achieved by the company producing the vaccine as soon as it offers a defective vaccine, the defect in this case may affect the benefit of the vaccine, making it unfit to achieve the desired purpose, and it may be unsafe for the physical safety of the people receiving the vaccine. The judicial approach has determined the legal basis on which State responsibility is based, especially if the vaccination process is of a compulsory nature and the individual does not have the option not to receive the vaccine. Although tort liability requiring compensation requires proof of fault, the judicial approach has tended to presume fault with regard to liability arising from the harms of compulsory mass vaccine, as the judiciary has only found strong evidence to establish State responsibility.

With regard to damage, the damages that fall within the field of compensation for tort liability are bodily damages, which are intended for damage that affects the physical integrity of persons such as injuries or disability or what leads to his death, as this type of damage is the best model for the damages to be compensated within the framework of the protection to be achieved for the injured. Especially with regard to the harms of pharmaceutical products and

vaccines, and it is required to establish liability that the damage is directly caused by the vaccine, that is, the existence of a causal link between the vaccine and the damage that hit the recipient of the vaccine, and the burden of proving the causal link falls on the plaintiff, who has to prove it by all means of proof, and in the event that the causal link cannot be proved, to complicate the composition of the human body, and the causes of injury may be multiple, or there are multiple damages resulting from one cause, or because scientific development has been unable to prove the causal link, it must The judge shall establish a presumption capable of proving the contrary in favour of the injured party.

Second Requirement

The extent to which it is possible to exempt from civil liability arising from the harms of vaccination with the Corona vaccine

We will divide this requirement into two sections, showing the extent to which it is possible to exempt from contractual liability in the first of them, and the extent to which it is possible to exempt from tort liability in the second.

First branch

The extent to which it is possible to exempt from contractual liability arising from the harms of vaccination with the Corona vaccine

The condition of exemption from liability for the manufacturers of the Corona vaccine, even if it is contrary, is void in accordance with the general rules, but the Iraqi Law No. 9 of 2021 has been legislated to organize a special case and to face exceptional circumstances, which necessitated departures from the general rules with special texts, to confront a danger that affected the population of the planet and affected all joints of life, and according to the principle of the special restricts the year, as the legislation on exemption from liability arising from the harms of the vaccine is considered special rules compared to the rules of civil law. Thus, the Iraqi legislator, when defining the pandemic in the second paragraph of the first article, we find that he did not mean any pandemic, but limited it only to the Corona pandemic and the advanced or mutated strains of this virus, which are likely to appear in the future, and this is a commendable position from the Iraqi legislator, because it is a forerunner of the development that the virus is witnessing today and the emergence of mutated strains of it.

With regard to the scope of exemption from liability regulated by the aforementioned law, we find that vaccine manufacturers have stipulated their exemption from the risks that may result from receiving the vaccine by consumers, and therefore the scope of exemption is determined by the obligation to ensure safety, as a result of the presence of the element of urgency and urgency that accompanied the stages of vaccine production and its non-inclusion of all the stages it goes through. The production of the Corona vaccine is different from the process of making vaccines or other medicines, as the companies that took upon themselves the task of making the vaccine were allowed to speed up the production and distribution of the vaccine, taking into account the parallel arrangement of the stages that the treatment goes through, as taking into account the exceptional circumstances, these companies were allowed to carry out all stages at the same time, which provoked the anger of these companies about the possibility of negative results resulting from the drug in the future, and because these companies did not want to risk the financial capabilities that they exhausted In order to produce this vaccine, pay compensation to consumers, and avoid compensation claims that may be filed by vaccine recipients in the event of damages, these companies before starting vaccination campaigns immunized themselves from liability by requiring them to be exempted from

liability for the risks of receiving the vaccine, whether expected or unexpected, which they could not predict at the production stage.

Section II

The extent to which it is possible to exempt from tort liability for the harms of vaccination with the Corona vaccine

With regard to the extent to which it is possible to exempt from tort liability, we find that Article (259) of the Iraqi Civil Code has deprived the condition of exemption from liability for harmful acts that occur on the soul, because it is from public order, and despite the fact that the appearance of Article (2) of the Law on the Supply and Use of Corona Pandemic Vaccines has included the exemption of vaccine manufacturers from civil liability, both contractual and tort, in addition to exemption from criminal liability, but the right of the injured party to compensation is not affected by any exemption, under Article (4) of the law, which states that "the state bears compensation for those affected by the work or activities necessary for the vaccination process", we find that the state has committed itself to compensation, and this is what is known as the agreement synonymous with insurance, as these agreements aim to ensure the secured person against his mistakes and the mistakes of his followers, as such agreements guarantee the rights of persons affected by the contract that they are considered absent from, such agreements retain the appearance of the agreement synonymous with insurance and involve a condition of exemption from liability. This agreement can be considered as a compromise between exemption from liability and insurance from liability.

Despite the fact that the company exempted itself from responsibility, the affected by the vaccine is not deprived of compensation, as the state through the formation of specialized committees in the Ministry of Health and Environment to study the damages resulting from the vaccine and the amount of compensation and determine the method of financing compensation for damages, and thus the state committed itself to compensate for the damages arising from the vaccine, so it replaced the vaccine manufacturer with regard to the payment of compensation.

It is noted that the condition of exemption from liability under Article (3) of the law does not include damages resulting from intentional errors, which amount to death or serious injury resulting from the use of medical materials to confront the Corona pandemic, as the legislator limited the scope of exemption from liability to non-serious and unintentional errors, while intentional or serious errors are not covered by the condition of exemption from liability, and it is also noted that the article did not limit this exception to the harms of the vaccine only, but also includes the harms arising from the use of any treatment or medical substance we use to prevent the epidemic.

Conclusion

Through our study of the topic "The condition of exemption from liability arising from the harms of vaccination with the Corona vaccine", we reached several results and recommendations, which we summarize as follows:

Results

- 1- The condition of exemption from liability does not negate the error and does not exclude responsibility, but rather exempts the responsible for the damage from paying

compensation, and in the framework of our research affected by the vaccine is not deprived of compensation, as the state is the one who is committed to paying compensation through specialized committees that were established for this purpose, and thus we are in front of an exemption from responsibility for manufacturers and suppliers of the vaccine and health personnel, so we are in front of an agreement synonymous with insurance.

- 2- The condition of exemption from liability, although it includes exemption from failure to ensure safety, but it does not exempt the company producing or processing the vaccine from the obligation to inform and commit to ensuring conformity, as the mentioned companies remain obligated to enlighten countries with all information related to the product, its potential risks and the way to use it, in addition to that, companies are obligated to deliver a vaccine that conforms to the agreed specifications, is fit for legitimate use and compatible with the land for which it was allocated.
3. The substantive scope of the exemption clause shall be determined by simple unintentional errors, as intentional or serious error resulting in death or serious damage shall not be covered by the exemption.
- 4- The condition of exemption from liability for the categories covered by the personal scope includes civil liability in both parts (contractual and tort), and in this matter the legislator also departed from the general rules that it is not permissible to agree on exemption from liability for illegal acts harmful to oneself.

Recommendations

- 1- We propose to the Iraqi legislator to amend the Law on the Supply and Use of Corona Pandemic Vaccines No. 9 of 2021 to remove the medical authorities and the Ministry of Health from the scope of exemption from responsibility, in order to avoid any negligence or negligence on the part of the people in charge of the vaccination process.
- 2- Determining the period of time for the entry into force of the said law, as the Lebanese legislator did when setting the time frame of the law at twenty-four months from the date of entry into force of the law.
- 3- We suggest that judges and jurists be included in the membership of the technical committees formed under the law to receive compensation requests, determine the damages resulting from vaccination, and determine the amount of compensation because they are more experienced and competent with regard to estimating compensation.
- 4- Amending Article (2) of the Law by removing the Ministry of Environment and its formations from the scope of the exemption, as its inclusion in the exemption has no reasonable justification.

References

- 1- Dr. Ahmed Hassan Al-Hiyari, *The Civil Responsibility of the Doctor in the Light of the Jordanian Legal System and the Algerian Legal System*, 1st Edition, Second Edition, Dar Al-Thaqafa, Amman, 2008.
- 2- Dr. Ahmed Mufleh Khawaldeh, *The Condition of Exemption from Contractual Liability (A Comparative Study)*, Dar Al-Thaqafa, Jordan, 2011.
- 3- Dr. Hassan Ali Al-Dhanoun, *The General Theory of Commitment, Part One*, Al-Atak for the Book Industry, Baghdad, 1941.
- 4- Hassan Ali Al-Dhanoun, *Al-Mabsoot in Civil Liability, Damage*, Times Publishing, 1991.

- 5- Dr. Hassan Ali Al-Dhanoun and Dr. Muhammad Saeed Al-Rahho, Al-Wajeez in the General Theory of Commitment, Part One (Sources of Commitment), 1st Edition, Wael Publishing House, 2002.
- 6- Dr. Hassan Ali Al-Dhanoun, Al-Mabsoot fi Sharh Al-Qanoun Al-Madani, Causal Association, First Edition, Wael Publishing House, Amman, 2006.
- 7- Dr. Hassan Abdel Rahman Quddous, The extent of the product's commitment to ensuring safety in the face of the risks of scientific development, Dar Al-Nahda Al-Arabiya, Cairo.
- 8- Dr. Raad Hashem Amin Al-Tamimi, The Legal System of the Processing Contract, 1st Edition, Dar Al-Sanhouri, Baghdad, 2012.
- 9- Dr. Saadi Al-Barzanji, Conditions for Exemption from Contractual Liability in Iraqi and French Laws, Directorate of Salahaddin University Press, Erbil, 2003.
- 10- Dr. Suleiman Markus, Al-Wafi fi Sharh Al-Qalun Al-Madani, Part Two, 5th Edition, Al-Salam Press, Cairo, 1988.
- 11- Dr. Abdul Razzaq Al-Sanhouri, The Mediator in Explaining the New Civil Code, Part One, Volume Two, Third Edition, Al-Halabi Human Rights Publications, Beirut, 1998.
- 12- Dr. Abdul Razzaq Al-Sanhouri, The Mediator in Explaining the Civil Law, Part VII, Volume One (Contracts Received on Work), Knowledge Foundation, Alexandria, 2004.
- 13- Dr. Abdul Majeed Al-Hakim and Dr. Abdul Baqi Al-Bakri and Dr. Taha Al-Bashir, Al-Wajeez in the General Theory of Obligation, Part One, Sources of Commitment, Legal Library, Baghdad.
- 14- Dr. Abdul Majeed Al-Hakim, Al-Mukhtasar fi Sharh Al-Iraqi Civil Code, Part One (Sources of Commitment), 3rd Edition, Al-Ahlia Printing and Publishing Company, Baghdad, 1969.
- 15- Dr. Esmat Abdul Majeed Bakr, Sources of Obligation in Civil Law (A Comparative Study), First Edition, Legal Library, Baghdad, 2007.
- 16- Dr. Ali Najida, The General Theory of Commitment, Book One (Sources of Commitment), Dar Al-Nahda Al-Arabiya, Cairo, 2005.
- 17- Dr. Omar Abdel Fattah El-Sayed Abdel Latif, Knowledge Balance in Civil Contracts, New University House, Alexandria, 2019.
- 18- Dr. Mohammed Hassan Kassem, Civil Law - Named Contracts, Al-Halabi Human Rights Publications, Beirut, Lebanon, 2008.
- 19- Dr. Mahmoud Gamal El-Din Zaki, Liability Agreements, Modern Cairo Library, 1961.
- 20- Dr. Mamdouh Mohamed Ali Mabrouk, Ensuring the Conformity of Sales within the Scope of Consumer Protection, Dar Al-Nahda Al-Arabiya, Cairo, 2008.
- 21- Dr. Munther Al-Fadl, The General Theory of Obligations in Civil Law (A Comparative Study), Part One (Sources of Obligation), First Edition, 1991.
- 22- Dr. Maurice Nakhleh, Al-Kamil fi Sharh Al-Civil Law (A Comparative Study), Part III, Al-Halabi Human Rights Publications, Lebanon, 2007.
- 23- Dr. Yassin Muhammad Al-Jubouri, Al-Mabsoot fi Sharh Al-Qanoun Al-Madani, Part One (Sources of Personal Rights), Volume One (Contract Theory), Section III (Effects and Dissolution of the Contract), First Edition, Dar Wael, Amman, 2002.
- 24- Ahmed Sami Abbas, Material Responsibility and its Applications in Private Law (A Comparative Study), Master's Thesis, Imam Al-Kazim College, Iraq, 2018.
- 25- Bou Samaha Amina, The effects of patient satisfaction on the responsibility of the plastic surgeon (a comparative study), PhD thesis, University of Djilali Liabes, Algeria. 2019
- 26- Boumediene Fatima Zahra, Growth risks as a reason for exemption from liability for defective products, University of Djilali Yabis - Sidi Bel Abbas, Algeria, 2017.

- 27- Hassani Ali, The Legal Framework for Commitment to Guarantee in Products (A Comparative Study), PhD Thesis, University of Abou Bakr Belkaid, Tlemcen, Algeria, 2012
- 28- Chaabani Haneen Nawal, The Intervener's Commitment to Ensure Consumer Safety in the Light of the Consumer Protection and Suppression of Fraud Law, Master's Thesis, Mouloud Mammeri University, Algeria, 2012.
- 29- Ali Fatak, The Impact of Competition on Commitment to Ensure Product Safety, PhD thesis, University of Oran, Algeria, 2007.
- 30- Kantara Sarah, The Civil Responsibility of the Product and its Impact on Consumer Protection, Master's Thesis, University of Mohamed Lamine Dabbaghine - Setif -2, 2017.
- 31- Karouda Iman, The Legal System of Civil Liability of the Doctor, Master's Thesis, Abdelhamid Ibn Badis University Mostaganem, Algeria, 2020.
- 32- Mohammed Raed Mahmoud Abdel Dalala, The Civil Liability of Drug Producers for Defects Appearing in Pharmaceutical Products (A Comparative Study), Master's Thesis, Middle East University, Jordan, 2011.
- 33- Mashrouk Rachida, Civil Responsibility in the Field of Plastic Surgery, Master's Thesis submitted to the University of Akli Mohand Oulhaj, Algeria, 2015.
34. Dr. Ayman Mohammed Zain, Amended Agreements for Medical Liability: A Comparative Study between Emirati and English Laws, Journal of Legal Sciences, College of Law, University of Baghdad, First Issue, 2018.
- 35- Hammadi Saliha, The State's Responsibility for the Damages Resulting from Compulsory Vaccination, Academic Journal of Legal and Political Research, Third Issue, 2021.
36. Dr. Dana Hama Baqi Abdelkader, Dr. Bimo Pervez Khan Al-Dalawi, Amended Agreements for the Commitment of the Surgeon in Plastic Surgery: An Analytical Study in the Iraqi Civil Code, Scientific Journal of Cihan University, Sulaymaniyah, Volume 3, Issue 2, 2019.
- 37- Dr. Riad Ahmed Abdel Ghafour, Civil Liability Charters in the Field of Vaccination against Diseases, Al-Qadisiyah Journal of Law and Political Science, Volume 12, Issue 1, 2021.
- 38- Siham Al-Murr, Civil Liability for Unforeseen Adverse Effects of Vaccines, Journal of Research in Contracts and Business Law, Volume 6, Issue1, 2021.
39. Dr. Mona Abu Bakr Al-Siddiq, Commitment to Conformity in the Sales Contract: An Analytical Study in the Light of Civil Law and Consumer Protection Legislation in the Egyptian and French Laws, Journal of Legal and Economic Research, Issue 63, 2017.
40. Dr. And the age of Al-Khafaji and Nour Al-Ghazi, the effect of the plastic surgeon's breach of the safety guarantee, Al-Muhaqiq Al-Hilli Journal of Legal and Political Sciences, first issue, ninth year, 2017.
41. Iraqi Civil Code No. 40 of 1951
- 42- Public Contracts Law No. 87 of 2004
- 43- Instructions for the Implementation of Government Contracts No. (2) of 2014
- 44- Iraqi Corona Pandemic Vaccines Law No. 9 of 2021
- 45- Judgment issued by the Federal Court No. 127/Federal/2021, unpublished.
- 46- Bassem Mohammed Al-Fadhli, Legal Liability Resulting from the Provision and Use of Corona Pandemic Vaccines, article published in Al-Sabah newspaper on the website <https://alsabaah.iq> visit date 18/11/2021.
- 47- Houcine Farhi, The Civil Responsibility of the Producer, Master's Thesis, University of Larbi Ben M'hidi - Oum El Bouaghi, Algeria, 2014, p. 11. Available on the website <http://bib-univ-ueb.dz> visit date 12/12/2021.

48. M. Eng. Ali Hussein Manhal, Interpretation of the Clause of Exemption from Contractual Liability, A Study in English Law, p. 364, research published on the website <http://librarycatalog.bau.edu.lb> visit date 17/11/2021.
- 49- Karen Al-Ghazzawi, Mirim Muhanna, Law Exempting Covid-19 Vaccine Manufacturers from Liability Risks to Spreading Non-Liability and Depriving Those Affected of Fair Compensation, article published on the website <https://legal-agenda.com> visit date 17/11/2021.
50. Dr. Kazem Karim Ali and Dr. Roaa Abdul Sattar Saleh, The Condition of Exemption from Contractual Liability in English and Iraqi Jurists, p. 244. Search available on the website <https://iasj.net> visit date 17/11/2021.
- 51- Garwash Radwan, Conformity of products and services to legal specifications and standards as a guarantee of consumer protection in Algerian law, p. 234, available on [the website https://www.asjp.cerist.dz](https://www.asjp.cerist.dz) visit date 20/11/2021.
- 52- Lalouche Samira, Commitment to Ensure Safety in the Medical Field, p.179, available on the website <https://www.asjp.cerist.dz> visit date 24/12/2021.
53. Dr. Murad Badran, The basis of responsibility for damages resulting from compulsory vaccinations, available on the website <https://www.asjp.cerist.dz> visit date 22/12/2021.