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### OBLIGATIONS OF FERTILITY CENTERS IN CONTRACTS CONCLUDED

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#### **ABSTRACT:**

The application of modern medical techniques for the treatment of infertility and fertility weakness in fertility centers, through multiple relationships between those centers and beneficiaries that may be replaced by artificial fertilization operations, or preservation of samples for the purpose of future use, which raises some differences due to the breach of the implementation of the obligations arising from them, especially in The lack of legal regulation of these centers, moreover, although these techniques are legitimate to achieve their therapeutic purpose, they may sometimes turn to the unknown to conduct experiments that may lead to the mixing of genealogy through manipulation of sperm and frozen eggs, Lei control the sex of the newborn

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#### **INTRODUCTION**

First: the essence of the research

The progress in the field of medical and biological sciences is the reason for the emergence of a realistic situation, namely, modern medical technologies to help conceive and treat poor fertility, which have spread widely and have become a hope for those who suffer infertility, and these technologies have multiple images, the most important of which are: treatment of infertility mediated by artificial fertilization, preservation The sperm is in their own banks by freezing, and the use of these technologies has created new legal relationships between them and their beneficiaries, represented by the contracts of freezing and industrial fertilization.

Second: The research problem

The multiplicity of medical work carried out by fertility centers will lead to a multiplicity of the legal effects of each of them, and the implementation of industrial fertilization operations by applying modern medical technologies to treat infertility and impairment of fertility, and the preservation of samples in the preservation banks by freezing technique, can only be done through the establishment of legal relations. There are many between fertility centers and clients. These centers have multiple obligations towards dealers, and this requires clarifying these obligations, especially in the absence of the legal regulation for the work of these centers to organize these relationships and develop solutions to their legal problems that may be related to the implementation of obligations or unlawful actions that take place on the preserved samples, all of this raised many questions that lie in the following:

1-What are the obligations of fertility centers upon the conclusion of the freezing contract?

2- What are the obligations of fertility centers for concluding an industrial fertilization contract?

Third: the objectives of search

The research aims to:

1- Answer the questions raised about the research problem, and try to find solutions to them.

2- Familiarizing yourself with the legal provisions mentioned in the comparable legislation, in order to extract the most important legal principles and procedural regulations regarding the work of fertility centers.

Fourth: Research methodology

In our study of the research topic, we will follow the following:

1- The analytical approach in topics for which no legal text is provided, or for which modern legal texts have not been explained by the jurisprudence, as well as some texts mentioned in Islamic jurisprudence.

2- The comparative approach between Iraqi law in general, which did not regulate the provisions of this subject by special legislation, and the Egyptian law, which did not regulate the work of these centers in a special law, but it drafted a law regulating artificial insemination and IVF operations, and the French law that referred to these centers in some of its provisions, and the UAE law that regulated this issue by Federal Law No. (11) of 2008 regarding licensing fertility centers, Federal Law No. (10) of 2008 regarding medical liability, and the Saudi Law that regulated the system of fertility units, embryos and infertility treatment No. (76) for the year 1424 AH. As well as comparing legislation, judiciary, and legal jurisprudence with Islamic jurisprudence, which can be referred to in many legal issues to view its rulings, through a comparison between the jurisprudence of the five schools of thought (Imami, Hanafi, Maliki, Shafi'i, and Hanbali).

Fifth: the research plan

In order to achieve the goals of the research, we will divide the discussion into two requirements: In the first of them we will discuss the obligations of fertility centers in the freezing contract, and that in two branches: we will deal in the first with commitment to the information, and in the second we will discuss the obligation to preserve samples, and the second requirement we will

discuss in it the obligations of fertility centers in the fertilization contract, and that is on Three branches: In the first we will deal with adherence to the media, the second of which will be devoted to the commitment to conduct the fertilization process, and in the third to the commitment to confidentiality. Then we reach all of this with a conclusion explaining the most important findings and recommendations ... ..

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The first requirement-

Obligations of fertility centers in the freezing contract

The purpose of the freezing contract is to preserve the samples, which were contracted between the fertility center and the recipient in order to freeze them in accordance with the scientific controls and principles that the beneficiary was informed of, and this means that the most important obligations that the contract entails on the fertility center is the obligation to inform, preserve samples, and in order to determine these Obligations We will use the general rules contained in the contract theory in the Iraqi civil law, and the legal provisions mentioned in the laws in question, and in order to shed light on the obligations of fertility centers in the freezing contract, we will divide the words in this requirement into two branches: We will discuss in the first of them, the commitment to the information, and we will single out the second of the commitment Save samples.

- First branch-

Adhere to the media

Commitment to the media is considered one of the recent issues that has received the attention of legal jurisprudence in that it is influenced by the French judiciary (1), given the protection it provides to the weak party in the contract, after the failure of the theory of will defects to provide it to obtain enlightened satisfaction, especially with regard to contracts that do not tolerate their nature Discussing the clauses that it contains, as is the case of compliance contracts, which makes this commitment one of the principles established for the protection of the contractor, starting from the stage preceding the conclusion of the contract and as an extension to the phase following its conclusion (2), and its importance in the freezing contract is evident through the beneficiary's envisioning and introducing him to the aspects of the technological development of the technology Freezing, especially with regard to methods of freezing that differ according to the different samples subject to the contract in terms of how the preservation will be carried out properly to avoid the risk of spoilage and to prevent their mixing, and the obligation to the information that falls on the responsibility of fertility centers is of two types: the obligation to inform prior to the conclusion of the contract, and the obligation to inform The subsequent, which occurs during the execution of the contract and differs from each other in several aspects, as follows:

First: Basically

The media prior to the conclusion of the contract finds its basis in the theory of the validity and safety of consent to envision the will of the beneficiary and obtain an informed satisfaction from him about the content and details of the contract, and to protect the principle of good faith and mutual trust between the contracting parties in the conclusion stage (3), and this is achieved by not concealing the information necessary to conclude the contract. Defining it as (a pre-contract obligation related to the obligation of one of the contracting parties to provide to the other contractor upon the formation of the contract the necessary data to find a complete, sound and informed consent in all the details of this contract) (4), and its content is in the freezing contract informing the fertility center of the beneficiary of the details related to the place of the contract in terms of The fee, period, type of samples that will be preserved, and the necessary procedures regarding them, to be fully aware of the obligations that the contract will entail for each of them, in order to obtain after that the enlightened satisfaction of the beneficiary. Although there is no explicit legal text determining its presence in the organization of each contract, the French judiciary established this obligation based on the text of Article (1135) of the French Civil Code on Considering that it is one of the requirements of the contract (5), and the content of this obligation in the freezing contract is to inform the fertility center of the beneficiary with information about the freezing process in terms of the medical controls and assets that are exhausted during the preservation of samples.

Second: In terms of time

The previous commitment arises in the responsibility of the fertility center in the period prior to the conclusion of the contract, so its goal is evidenced by enlightening the beneficiary of all the details of the formation of the contract, which helps him to make his decision to conclude the contract or not, as for the subsequent information, it arises in the responsibility of the center when the contract is executed (6).

Third: In terms of the penalty

Both of them differ in terms of penalties, as a breach of the media during the implementation of the contract will lead to the application of general provisions for contractual liability, as it relates to the implementation of the contract's content. As for the previous media breach, it raises the negligent liability of the fertility center, the purpose of which is the safety of the beneficiary's satisfaction. Fertility explicitly refers to this obligation, as indicated by Article (12) of the UAE Fertility Centers Licensing Law, which stipulates that (the center must inform the spouses with a detailed explanation of the different techniques to assist in childbearing and the negative repercussions or potential complications from various techniques in addition to costs. Materiality ...), it becomes clear to us from this that this obligation is not limited to the freezing process only, but rather includes all operations that take place in the center, and here the legislator referred to the commitment to the information prior to the conclusion of the contract, so that the beneficiary is aware enough of everything related to the contract The freeze, and also referred to the obligation to inform subsequent information during the implementation of the contract in Article (15) of the same law, which stipulates that (... with written permission from the spouses, the center may be

allowed By conducting a genetic diagnosis process before implantation for the purpose of identifying hereditary diseases ...), and this means that the center may need to conduct some tests on frozen samples before using them in performing the artificial implantation process in the womb, which imposes on it commitment to the media, as the purpose of Freezing is not only preservation, but rather a preparation for the process of artificial fertilization for pregnancy and childbearing. As for the Iraqi legislator, this obligation did not refer to the law establishing private health institutions or the public health law, but on its basis it can be inferred from what is stated in paragraph (a) of the clause (First) of Article (6) of the Iraqi Consumer Protection Law No. (1) of 2010 (7), which stipulates that (the consumer has the right to obtain the following: A- All information related to the protection of his legitimate rights and interests), as well as the case for the legislator Al-Masry, who did not refer to this obligation in the draft law regulating artificial insemination and IVF, or in Chapter Three on medical interventions of a special nature from the list of ethics for the Egyptian medical profession, but it can be inferred by what is stated in Article (21) of the regulation, and Which stipulated that (the doctor must provide his patient with information related to his disease in a simple and understandable manner .....), while the Saudi legislator did not refer to this obligation in the freezing contract, but rather referred to it in the industrial fertilization contract, considering that the freezing process Affiliated to the fertilization process (8), in contrast to the French legislator who referred to adherence to the previous information in Article (1111-11) of the French Health Code, which obligated the doctor to obtain the patient's informed consent before every medical intervention he takes, after informing him of the necessary information ( 9).

The second branch

Commitment to preserving samples

The essence of the freezing contract is the preservation of the sperm and the fertilized eggs, and according to its light, the fertility centers' commitment to preserving the samples is one of the most important obligations incumbent upon them, and this prompts us to ask many questions in this regard, the most prominent of which is: How is the preservation process? What is the nature of the hand of fertility centers on samples? Can fertility centers destroy samples? In order to answer that, we have to explain the method by which the samples delivered from the beneficiary are preserved, so that we can then determine the nature of the centers' hand on those samples, and how it deals with the surplus of them, as follows:

First: How to store the samples

The process of preserving samples in fertility centers is carried out by specialists in the techniques of biological and medical sciences, and with careful regulation using the freezing technique according to established scientific and medical principles that prevent damage and mixing of frozen samples, and this is what the UAE legislator referred to in Article (19) of the Fertilization Centers Licensing Law , Which stipulated that (the center must adhere to the careful regulation of sperm and unfertilized, fertilized eggs and embryos and to provide utmost care, precaution and caution to prevent their use, exploitation or replacement in a way that leads to mixing of lineages), and

this is what the Saudi legislator also indicated (10), and he did not mention The Iraqi legislator has to this, and the same applies to the Egyptian legislator, who did not establish banks to store samples in fertility centers (11). Preservation takes place through banks equipped with the latest medical incubators designated for this purpose, and this technology differs according to the type of samples. If the sperm is male and female, it is Preservation in one way, as it is mixed with the freezing liquid in their own laboratory bottles on which are written the name of the owner of the sample, his number in the medical file for which he was opened, the date of preservation and the number of the vial, and placed In the private banks of each of them under a certain temperature of 196 below zero in nitrogen gas (12), but if the samples are fertilized eggs, then preserving them by freezing technique is to be done slowly by mixing the fertilized eggs with a special liquid that protects them from damage during cooling, In glass tubes, they are placed in a cooling device that is programmed gradually for an hour, to be placed after that in the nitrogen container at a temperature of 196 below zero (13), or they are stored quickly, which does not take time to freeze, and then to be placed in liquid nitrogen with the same previous mechanism or preserved using a laser (14) The freezing is required to be temporary and ends with the end of the reason for which it was kept, and the usual period for that is five years, which can be extended with the written consent of the spouses and after notifying the Ministry of Health, provided that this does not pose a danger to the frozen samples (15). The UAE legislator in Clauses (2-3) of Article (13) of the Fertilization Centers Licensing Law, which stipulates that (2- Preserving unfertilized ova and frozen sperm for future childbearing for the benefit of the spouses for a period not exceeding five years ... 3- Obtaining the consent of the spouses They must be written annually and recorded in the laboratory records regarding their desire to preserve the preservation of unfertilized eggs and sperm ...), and this is also indicated by the French legislator (16), in addition to that, the freezing is required for legitimate reasons, represented by performing artificial fertilization operations. For pregnancy and childbearing, or conducting medical experiments to diagnose infertility treatment in a manner that does not conflict with the rules and objectives of Islamic law (17). Second: The nature of fertility centers' hand on samples

We will show its nature and is it a trust or a guarantee, according to what the comparable legislation has indicated, as follows:

1- Iraqi law: The Iraqi legislator did not refer to the nature of the hand of fertility centers because he did not regulate them under a special law. However, by referring to the general rules in Iraqi civil law, we find that he defined the hand of trust and the hand of guarantee in Clause (1) of Article (427), which It stipulated that (the hand is a security hand if the owner of the hand possesses the thing with the intention of possessing it, and it is a trust hand if he possesses the thing not with the intention of possessing it, but as a proxy for the owner), and this means that every hand over the property of others is a trust if the owner does not have the intention to own it, and its ruling Lack of security even with damage, except in the event of transgression and default in the duty of preservation, other than the guarantor hand that seizes the property of others with the intention of owning a self-interest and its

judgment is the guarantee of infringement (18), and as inferring what is stated in the text of Article (427) of the aforementioned Iraqi Civil Code And the extent of its applicability to the work of fertility centers, it can be said that the nature of her hand over the samples is a trust, because her basic obligation from the freezing contract is limited to preserving samples only without having them and realizing their interest, as she is a trust she has, according to the freezing contract and with the permission of the beneficiary.

2- Egyptian law: The nature of the centers 'hand on the samples is not mentioned, because it is not permissible to establish preservation banks in fertility centers (19), and this means that there are no preserved samples and therefore the artificial fertilization operations are carried out immediately after fertilization of the ova withdrawn from the wife's womb with the husband's sperm In the case of external artificial fertilization, by injecting the semen taken from the husband into the wife's womb after ovulation has occurred, in the process of internal industrial fertilization.

1- The UAE and Saudi legislators: unlike the Iraqi and Egyptian legislators, as the UAE legislator explained the nature of the custody bank's hand when he indicated that the primary obligation of the preservation banks in fertility centers is to preserve samples for the benefit of the beneficiary (the two spouses), which indicates that the center's hand on the samples is a trust hand. That we infer to that what is stated in Article (14) of the UAE Fertility Centers Licensing Law, which stipulates that (It is prohibited for the center or any other party, regardless of its capacity, to use unfertilized or fertilized eggs or sperm for commercial purposes, to conduct research or introduce genetic modifications. Regarding birth attributes or disposing of them to others), and the Saudi legislator did not refer to that.

2- The French legislator: The French legislator showed that the samples delivered by the spouses in order to implement their parental project at a later time, are trust in its custody bank, which means that the center's hand is a trust only on the samples delivered for that purpose and after the written consent of the spouses (20) .

We conclude from the foregoing that the nature of the fertility centers' hand on the samples is a hand of trust, but the center may refrain from returning them to the beneficiary upon request or after the end of the contract that the latter stipulated to return the samples as soon as the freezing period ends or upon request, in order to fulfill what the beneficiary owes from the fee The preservation process or the fertilization process, in this case is the center's hand turning from a trust to a surety even if it does not have the intention of owning it, and then it is obliged to guarantee for every damage that may befall the samples, even if that is without infringement or negligence? The center's hand remains a trustworthy hand over the samples, using its right to imprisonment for a guarantee as inferred to what is stated in Clause (1) of Article (282) of the Iraqi Civil Code, which stipulates that (everyone who is obligated to do something must refrain from fulfilling it as long as the creditor He was not reconciled with a liability that arose due to the debtor's commitment and was related to him).

We may ask about the case in which the beneficiary did not require returning samples after the contract expires. Will the center turn from trust to guarantee?

The center must notify the beneficiary of the end of the contract period, to express his desire to receive the samples or renew the preservation period, otherwise the center may destroy the samples according to the scientific rules and principles followed in this regard, their written desire to continue preserving the frozen samples or not (21), and this means that the center is not Responsible for any damage that may affect the samples once the spouses are informed of the end of the contract, and the Emirati legislator referred to this indirectly in Clause (3) of Article (13) of the UAE Fertility Centers Licensing Law, which obliges fertility centers to inform the spouses annually with a statement, otherwise it is His hand over the specimens is a guarantee and he is obliged to guarantee, unlike the French legislator who explicitly explained this in Clause (4) of Article (2141) of the French Health Code, which authorized fertility centers to destroy samples after the end of the preservation period if they were not received by the beneficiary after being notified of that (22) This means that the center's hand remains a trust once notified.

Third: The ruling on destroying surplus samples

The purpose of the freezing process is to preserve the sperm and fertilized eggs for the purpose of artificial fertilization operations with the aim of conceiving instantaneously or in the future when the beneficiary wishes to do so, as the treating doctor is not limited to one sample, but rather fertilizes more than one sample as a precaution to avoid failure of the fertilization process, and the process of retrieving the eggs from For a woman to fertilize her again because of the exhaustion that that entails for her, which raises the question about the case in which the center destroys the surplus samples from the fertilized eggs after performing the artificial fertilization process, so is it considered a transgressor and is committed to the guarantee ?

To answer that, we will explain the Sharia and legal ruling on destroying fertilized eggs, as follows:

1-The Sharia ruling on destroying the fertilized eggs: The jurists of Islamic schools differed in the ruling on this between the prohibition and the permissible, and they divided into two directions: The first of them went to the permissibility of destroying the fertilized eggs because they are not considered embryos, but rather represent the first stages of embryo formation, which start from the moment of fertilization until the attachment to the uterine wall Because human life begins after the soul is breathed in, and before the clot there is no human life but biological life (23), and this is what some of the Imamate jurists confirmed in response to the question that was raised regarding the destruction of the surplus of fertilized eggs after the procedure of artificial fertilization by saying (the egg fertilized by the uterus) According to the testimony, it is not necessary to implant it in the uterus, so in the assumption of the question it is permissible to select one of them and destroy the rest (24), and this is also the view of the Hanafi (25), Shafi'i (26) and Hanbali (27), so it becomes clear to us from this that it is permissible to destroy the surplus fertilized eggs. As long as it has not been implanted in the wife's womb, while the second of them believes that it is not permissible to destroy the fertilized eggs, because destroying them is considered a murder that requires blood money, as it represents the first stages of the fetus's life, and this is what some of the Imamiyyah scholars have said, who see the



forbidden Miscarriage of pregnancy, whether before or after entering the soul (28), according to what was stated in the narration of Ishaq bin Ammar, he said (I said to Abi Al-Hassan (peace be upon him): The woman is afraid of pregnancy, so she drinks medicine and receives what is in her stomach? He said no, so I said, because it is a sperm. He said: The first thing that creates a sperm. (29) And approximating the inference that the sperm is not only the water of the man, but rather it is the fertilized egg from the water of the man and the woman together, and the imam (peace be upon him) said (The first thing that creates Sperm) This is evidence of preventing its destruction, and this is what the Malikis (30) said, and it was mentioned in the recommendations of the Islamic Organization for Medical Sciences in Kuwait in its symposium held on 4/12/1987 entitled (Islamic vision of some medical practices) regarding the surplus of fertilized eggs. But if there is a surplus, then the majority thinks that the fertilized eggs have no legal sanctity of any kind, and that they are not respected before they are implanted in the uterine wall, and that this is why their execution is not prevented by any means), as well as the decision issued by the Islamic Fiqh Academy in its sixth session held in Jeddah on March 14-20 of 1990, after reviewing the recommendations of the sixth medical symposium held in Kuwait on October 26, 1990, regarding the fate of fertilized eggs, and the recommendations of the Islamic Organization for Medical Sciences, in which it came (1- In light of the scientifically achieved possibility of preserving eggs To withdraw from them, it is necessary when fertilizing eggs to be limited to the treatment Determine what is required for implantation each time in order to avoid the presence of an excess of fertilized eggs, 2- If there is an excess of fertilized eggs in any way, they are left without medical attention until the life of that surplus ends up on the normal face (31) . After this review of the sayings of the jurists and their evidence, we find the preponderance of what has gone to the first direction which sees that it is not forbidden to destroy the fertilized eggs, because they are not considered embryos, but are merely cells formed from the contracting of man's water and the woman's water, in preparation for the formation of the embryo after implanting it in the uterus and its attachment to it. Which may occur if it is tampered with, whether by illegal pregnancy or carrying out experiments contrary to the purposes and provisions of Islamic law.

2- The legal rule for destroying fertilized eggs: The legal ruling does not differ from the Sharia regarding the destruction of fertilized eggs, as the UAE legislator indicated in Clause (1) of Article (11) of the Law on Licensing Fertilization Centers, which stipulated that (... must be done when Fertilization of eggs is limited to the number required for implantation each time in order to avoid the presence of an excess of fertilized eggs), this text obliged the center to fertilize the number it only needs to perform industrial fertilization operations to avoid the presence of the surplus, and then returned after that to confirm the need to destroy the surplus, if any, by following the medical principles in That is when she left her without care and her life ends naturally, and this is what was indicated in Clause (2) of the same article, which states that (If an excess of fertilized eggs occurs in any way, then they

are left without medical attention until the life of that surplus on the face ends. Natural).

As for the Saudi legislator, this did not refer to this, but rather imposed on fertility centers to adhere to the provisions of Islamic law and every fatwa when they performed everything related to the conduct of industrial fertilization operations (32), while we find that the French legislator did not make the destruction of fertilized eggs an obligation for fertility centers, but rather commented on that On the desire of the spouses to agree in writing to destroy specimens that are no longer suitable for implantation or no longer have a desire to complete their parental project by following established medical principles in this regard (33), however, fertility centers are permitted to use them for medical experiments and for therapeutic purposes only, and after obtaining With the consent of the spouses (34).

As for the Iraqi and Egyptian legislators, this was not regulated, but it is possible to take into account the provisions of Islamic law and the legal fatwas issued in this regard (35).

The second requirement -

Obligations of fertility centers in the industrial fertilization contract

Under the contract concluded with the spouses, the center is obligated to treat infertility through one of the reproductive assistance operations, but to do this it must implement several obligations related to the main purpose of the contract, and these obligations are: commitment to the information, the fertilization process, the commitment to confidentiality when implementing the obligations, and to determine These obligations we will use the general rules contained in the contract theory in the Iraqi civil law, and the legal provisions mentioned in the laws subject to comparison, and for its sake we will divide this requirement into three branches: we will deal with the first of them commitment to the media, and we will allocate the second of them to conduct the fertilization process, and we will single out the third of them for the commitment to confidentiality

-First branch-

Adhere to the media

It is a contractual obligation that falls on the responsibility of the fertility center towards the spouses after the conclusion of the contract, which is in the form of advice and advice according to each stage of the contract implementation. The breach of it will result in an error requiring contractual responsibility (36), and accordingly we must explain the content of this obligation and its basis as follows:

First: The content of the obligation to inform the fertilization contract

The media has great importance in the fertilization contract, given the role it plays in enlightening and enlightening the spouses, including essential information related to the fertilization process that affects their consent to accept or reject treatment, as it is a continuous dialogue between the fertility center and the spouses during the contract period, starting with the examination and diagnosis phase, in order to Identify infertility that one or both spouses suffer from, by subjecting them to a series of medical examinations such as x-rays, sonar and laboratory analyzes, and this requires the center to inform the spouses about the percentage and nature of infertility,

after identifying and diagnosing it in light of the tests that both spouses underwent, and introducing them. The nature of the treatment that is commensurate with that (37), to begin after that the stage of treatment, which can be defined as (that stage in which all possible means are followed in order to reach the patient for recovery as much as possible) (38), and thus the center must enlighten the spouses with everything related to its method. The treatment and its nature, risks and potential side effects, the center cannot impose treatment on the spouses, but rather they must take the appropriate decision accordingly according to a free and enlightened will, so that the final stage of treatment begins. It is subsequent to the fertilization process, in which the center is committed to informing the spouses about the outcome of the process in terms of success or failure, and the instructions and instructions that must be adhered to, and the aim of the media at this stage is to preserve the health of the spouses by informing them of all the implications of the process and what should be taken. Precautions to avoid any side effects that affect the wife's health in the future (39). Second: The basis for adherence to the information in the fertilization contract

The basis for the fertility centers' commitment to the media is the laws regulating their work and other relevant laws, and this is what we will discuss as follows:

1- Iraqi law: The Iraqi legislator did not refer to a commitment to the media, neither in the public health law nor in the law of the practice of health professions, but by referring to the general rules in the civil law, we find that this commitment is one of the requirements of the contract and it is related to its implementation, that is, it is related to the obligations arising from it. And our support for that is what the Iraqi legislator went to in Clause (2) of Article (150) of the Iraqi Civil Code, which stipulated that (The contract is not limited to bind the contractor to what is stated in it, but also deals with what is of his requirements in accordance with law and custom. And justice according to the nature of the commitment) (40), and this means that this commitment does not derive its binding character from the text in which it is mentioned in so far as that is from its nature, and the natural scope of this obligation is contracts in which the contracting parties do not have an equal degree of knowledge and experience (41). Thus, we find that the purpose of this commitment is to achieve a kind of protection for the less knowledgeable and experienced contractor in the contract, and accordingly the fertility centers must adhere to it towards the spouses and throughout all stages of the contract, starting with the examination and diagnosis until the next stage of the operation. Informing the spouses of all the information reached through examinations and early diagnosis on pregnancy, the expected risks in the event of its continuation, deformities and diseases that may affect the fetus, and enlightening them with appropriate treatment methods to choose the best ones, and this is what the Iraqi judiciary went to in one of the decisions of the Iraqi Court of Cassation, which I consider the failure to inform the pregnant woman of her medical condition that may affect the fetus and give birth to a deformed mistake that bears civil liability for the doctor (42).

2- Egyptian law: The Egyptian legislator referred to this obligation in general, considering it one of the doctor's obligations towards his patients, in Article

(27) of the Medical Ethics Regulations, which stipulates that (the doctor must alert the patient and his companions to take preventive reasons, guide them and warn them about what is possible. That results in failure to observe them, and he may request their signature on a written declaration from them of their knowledge of this in some cases that require this). It is clear to us from this text that this obligation is subsequent to the conclusion of the contract, and it can be inferred from its necessity in the fertilization contract. UAE and Saudi law: The Emirati legislator did not indicate a commitment to the information in the stage following the conclusion of the contract, but only referred to the media prior to the conclusion of the contract, in Article (12) of the UAE Fertilization Centers Licensing Law (43), and this is what he also went to The Saudi legislator (44), however, he referred to this obligation in the UAE Medical Liability Law No. (4) for the year 2016, where the doctor is required to inform the patient of a sick nature and the extent of its severity, based on what was diagnosed and determined in the results of the examinations, and his insight into the treatment methods and alternatives available for that. And this is what was stipulated in clauses (5-7) of Article (4) of the law, in which it says (..... in particular, the doctor must adhere to the following: .... 5- Enlightening the patient with options Available treatment, 7 - informing the patient of the nature of his illness and the degree of its risk ....), and this is what the Saudi legislator also went to (45).

We conclude from the above that fertility centers have the obligation to inform the spouses of all stages of treatment after the conclusion of the IVF contract, starting with the examination and diagnosis stage and ending with the subsequent stage of the treatment procedure.

4- French law: The French legislator indicated the necessity of this commitment in all medical work, and considered it a duty of every health professional and within the framework of his specialization, towards every patient and in all stages of treatment (46), and thus fertility centers must commit themselves to enlightening the spouses in everything related to operations Artificial fertilization and in all stages of the contract.

The second branch

Conducting fertilization

There are several controls that fertility centers must adhere to when performing fertilization, including:

1-That assisted conception and childbearing technology is the way to conceive after the reports of the medical examinations prove that it was not possible for him to have poor fertility, so it is not permissible to perform these operations to treat complete sterility that leads to the victim's inability to conceive at all, and this can be inferred from what is mentioned in Article (2) of the Saudi Fertilization and Embryo Units and Infertility Treatment Units System, which stipulates that (.... and it is absolutely impermissible to perform fertilization operations to treat infertility that proves the inability of the patient to conceive), that is, artificial fertilization is a backup method that is not used. Except after exhausting all methods of treating infertility, the spouses do not have a choice between natural and artificial fertilization (47), and this can be inferred from what is stated in Clause (1) of Article (9) of the UAE Fertility Centers Licensing Law, which stipulates that (to be Assisted reproductive

technology is the only method for childbearing after it has been proven inability to conceive by natural contact .....), and this is what the French law also went to (48).

1-Adherence to the ethical controls aimed at preserving the offspring. It is not permissible to conclude the fertilization contract with the spouses except after confirming the existence of an existing marital relationship through the marriage document that will be attached to the contract. The difference in fertilization method does not affect the need for a legal framework for pregnancy and childbearing, which is represented by marriage, and not The Iraqi legislator refers to this, unlike the Egyptian legislator who referred to this in Article (44) of the Code of Ethics for the Medical Profession, which stipulates that: (Assisted fertilization operations are subject to the wife's egg from the husband's sperm inside or outside the wife's body (IVF techniques or ICSI) (For the ethical controls aimed at preserving human offspring and treating infertility .....), and this is what the Emirati and Saudi legislators also went to (49), and then excludes from the scope of industrial fertilization operations the virgin and divorced woman and the widow, and in this regard no one is raised. Problematic if the artificial fertilization is internal, there is no time lag between obtaining the husband's semen and injecting it into the wife's womb, except that in the case of external artificial fertilization that takes place in the test tube, which may take some time, the question may arise about Ruling on fertilization contract in the event of the separation of the spouses or the death of the husband after concluding it?

In order to answer that, we must address several assumptions, as follows:

The first assumption: In the event that the wife is asked to retrieve the samples of her deceased husband before the fertilization and implantation process in her womb, on the basis that she was not delivered to the center with the intention of donating, but rather with the intention of preserving it for the fertilization process, then if we consider it as a deposit, this means that the fertility center must return it to the heirs to be subject to the rules Regarding inheritance, this is not possible with regard to samples (50). The rules related to the deposit cannot be applied to frozen samples, as we referred to that previously. Rather, the center must, in the event of the death of the husband or wife, destroy the frozen samples according to the scientific principles related to this, and this can be inferred by It is mentioned in Clause (4) of Article (13) of the UAE Fertility Centers Licensing Law, which stipulates that (the center must destroy... frozen sperms upon the death of one of the spouses or divorce by leaving them without medical attention). This ruling is also in the case of irrevocable divorce.

The second assumption: In the event that the wife requests the fertility center to implement the contract and perform the fertilization process with the sperm of her divorced woman or her deceased husband, does the center abide by that? The ruling for this differs in two cases:

A - If the husband divorced his wife or died before the fertilization process: in order for the contract to be valid and arranged for its legal effects, he must have a legitimate reason when concluding and continuing until its implementation (51), and the reason for concluding the fertilization contract is to obtain the child within the framework of a legitimate marital relationship

And a list, and this means that the reason for the center's commitment to the implementation of the contract is present and correct at the conclusion and before the divorce or death, but after that the reason for the contract becomes unlawful for the end of the marital relationship, and then the center has the right to adhere to the illegality of the reason and not to implement its commitment to the fertilization and implantation process, and to work to destroy The eggs if fertilized according to the scientific principles followed in that, because one of the conditions for conducting this process is that it be in the presence of the husband, and this is what the Egyptian legislator referred to in Article (45) of the medical ethics regulation, which stipulates that (assisted fertilization may not be performed Inside or outside the wife's body except by using her husband's sperm when the legal marital relationship between them is established), and to this the Emirati and Saudi legislators (52) went, unlike the French legislator, he did not make marriage a condition for performing the artificial fertilization operations, but rather permitted the man And women, whether married or not, have the right to resort to fertility centers to treat infertility and impaired fertility through assisted reproduction techniques (53).

B - If the husband divorced his wife or died after the fertilization process: Some of the jurisprudence believe that if the husband divorces his wife or dies after the fertilization process, even if the implantation has not been completed in the wife's womb, the center must implement its commitment in kind to perform the implantation process, because pregnancy has occurred Before the death of the husband and the parentage of the resulting child, he will join his deceased father, and if he does not do that, his contractual responsibility will be established and he is obligated to compensate for the damage he caused to the wife (54), but this contradicts what is stipulated in the laws governing the work of these centers, the UAE legislator obligated fertility centers to destroy Fertilized eggs as soon as divorce or death (55). As for the Saudi legislator, the Saudi legislator has prohibited fertilization units from performing fertilization after divorce or death, and obliges the treating physician when this happens to stop the fertilization process (56), and the French legislator did not indicate that.

However, the question may arise about the ruling on fertilization if it is carried out..

The third branch

Confidentiality commitment

The obligation to preserve the medical secret is a professional and ethical duty that falls on the shoulders of the workers in fertility centers, which are obliged to keep the secrets of the beneficiary, as some of the jurisprudence knew it as (all information that reaches the knowledge of the one entrusted to him of information of whatever nature related to the patient's condition and treatment, whether He obtained it from the patient himself or revealed it himself, requires him to remain silent about everything related to this secret except in cases in which he is authorized to disclose or divulge) (61), and some others defined him as (the obligation imposed on all members of the medical staff not to divulge what Read about it and what they learned while practicing their profession (62), it is clear from this that this commitment includes all workers in fertility centers, including doctors who specialize in conducting fertilization

operations, anesthesiologists, workers in the laboratory of analyzes, radiologists and sonarians, assistant doctors and nurses, and the jurisprudence differed about the legal basis for this Commitment, some of them argued that its basis is the contract concluded between the contracting parties, and accordingly, the basis of this commitment is the contractual relationship between the beneficiary and the center (63), while others went to the fact that the basis of this is only An obligation that is public order, it is an absolute obligation that the will has no role in it, so its disclosure represents an assault on the personal rights of the beneficiary and a breach of the obligation imposed by law on the center under the peremptory legal rules, which prohibit every treating physician from disclosing the secrets of the person treating him (64), and the Iraqi legislator did not refer In addition to that in the Public Health Law, but it can be inferred by what is stated in Article (437) of the Iraqi Penal Code, which stipulates that (... Whoever knows about the judgment of his job, profession, industry, art, or the nature of his work in secret and discloses it in other than Conditions authorized by law ....) (65), as indicated by the Egyptian legislator in Article (30) of the medical ethics regulation, which stipulates that (the doctor is not permitted to divulge the secrets of his patient that he learned about by virtue of his profession), which is what went To him also the Emirati and French legislator (66), in contrast to the Saudi legislator who explicitly stated this commitment in Article (12) of the Saudi Fertilization and Fertility Units and Infertility Treatment System, which stipulates that (The unit of fertilization, embryology and infertility treatment must take into account the absolute confidentiality of information. Of patients ...), and this commitment is of great importance in holding hands D) Fertilization, which includes, in addition to the fertilization process, everything related to it from conducting analyzes and examinations for the purpose of diagnosis, it is not permissible to mention the names of the spouses who were contracted with them or to publish pictures showing how the operation was carried out, and this obligation may not be violated except in the cases specified by the law Among the most important of these cases:

1 Disclosure of medical secrets with the permission of the spouses: as if they asked the center to issue medical certificates organized about treatment, and this is what the Emirati legislator referred to in Clause (5) of Article (5) of the UAE Medical Liability Law, which stipulated that the secret may be disclosed. Medical (if the disclosure of the secret was at the request of the patient).

2 Disclosure of secrets for a necessity necessitated by the public interest of society: This means that the state of necessity is considered an obstacle to the responsibility of the center for breaching its commitment, and we directly infer for this according to what is stated in the second part of Article (12) of the Saudi Fertilization, Embryology and Treatment Units System, which stipulates (..... except in cases where necessity necessitates based on the approval of the supervisory committee or the judicial authorities), and the spread of an infectious disease infected by one of the spouses, such as AIDS, for example, which the center learned about through examinations and analyzes, is considered a case of necessity that requires reporting. (67), and this is what the Iraqi legislator referred to in Article (50) of the amended Iraqi Public Health Law, which stipulated that (the treating physician and the explainer and every

citizen suspected of having a disease that is subject to the international health regulations, the news of the nearest state health institution Immediately with that ...), and this is what the Egyptian and Emirati legislators also went to (68).  
 3 reporting the occurrence of a crime: Fertility centers may divulge a medical secret in the event of a crime that requires informing the competent authorities of the information received by them when practicing their medical work (69), and this can be inferred by what the Iraqi legislator referred to in Article (48) of the Law Iraqi Evidence No. (107) for the year 1979 (70), which stipulates that (it is not permissible for any lawyer, doctors, agents or others to know through his profession of an incident or information to divulge it even after the completion of his mission ... or that would lead To prevent the commission of a crime), as well as what the UAE legislator indicated in Paragraph (c) of Clause (5) of Article (5) of the Medical Liability Law, which stipulates that (if the purpose of divulging the secret is to prevent the occurrence of a crime or to report it)..... ..

## CONCLUSION

Through our study of the topic (the obligations of fertility centers in the contracts they enter into), we reached several conclusions that called us to make a number of recommendations, which we hope will be taken by the Iraqi legislator.

### *First: the results*

1 Despite the importance of adherence to the media, whether in the freezing contract or industrial fertilization, to achieve a contractual balance between the fertility center and the beneficiary, the Iraqi legislator did not refer to it either in the health law or in the Iraqi health professions law.

2 Violation of the media during the implementation of the contract will lead to the application of the general provisions of contractual liability, as it relates to the implementation of the contract's content, as for the breach of the previous media, it raises the negligent liability of the fertility center.

3 The nature of fertility centers' hand on specimens is a trustworthy hand, and there is no guarantee that it will be damaged if it is damaged unless it is due to the fault of the center or its subordinates.

4 It is not permissible to conclude a fertilization contract with the spouses except after confirming the existence of an existing marital relationship through the marriage document that will be attached to the contract. The difference in fertilization method does not affect the necessity of a legal framework for pregnancy and childbearing, which is represented by marriage.

1 The commitment to confidentiality includes all workers in fertility centers, including doctors specialized in conducting fertilization operations, anesthesiologists, laboratory personnel, radiologists, sonar specialists, assistant doctors and nurses.

### *Second: Recommendations*

2 We wish our legislator to reconsider health laws, and add legal texts that oblige fertility centers to inform the media in all medical work.



3 The Iraqi legislator did not refer to a commitment to confidentiality in the Public Health Law, so we suggest to our legislator to add a legal text that obliges all workers in health institutions to do so.

4 We call on the Iraqi legislator to include legal provisions in the Public Health Law that oblige public and private fertility centers alike to adhere to certain controls when performing medical techniques to assist pregnancy and childbirth.

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