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CIVIL LIABILITY FOR CARRIERS OF CORONAVIRUS INFECTION

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Abstract:

The study is based on research into the civil liability for the transmission of covid-19 in Iraqi law, by identifying the definition of infection and the definition of the disease, what is covid-19, what methods of propagation and transmission, and what symptoms cause the patient, all we addressed in the first research. The second research is devoted to the provisions of civil responsibility for the CORONA virus, and the search for its pillars, namely error and damage, and this causal relationship and what is wrong, what damage is done to the victim of mers-co777 transmission, what is the damage caused, the causal relationship between the offender's fault and the damage, and whether the transmission is intentional or unintentional. The study concluded with the legal implications of that liability, which was limited to in-kind implementation and compensation. Finally, we concluded the research with a number of findings and recommendations, which may be a basis for the legislator to address this modern problem.

Introduction:

Corona viruses are a wide group of viruses that include viruses that can cause a group of illnesses in humans, and these days have become widespread in countries of the world and pose a real danger to humanity in light of the rapid spread and transmission of infection to others and the increase in the number of deaths in it, and several countries have taken a set of precautionary measures to prevent and eliminate the spread of this epidemic .. Where the Iraqi government decided to activate the defense law to confront this epidemic and to announce a ban on movement and curfew, and it

has taken a number of strict measures to limit the spread of this virus, and the most important of these measures are the suspension of schools and universities, the closure of malls, shops, entertainment places, restaurants and all public places, and the Ministry of Health has also adopted health reservation procedures. For people coming from outside Iraq, especially from the affected countries, and obligating people to quarantine in places designated for this and isolate themselves from others for a period of 14 days, and it has recently been found that the incubation period of the virus may last for a period of up to 28 days. Quarantine is one of the preventive means to limit the spread of the epidemic among people, and it is a place where people who bear the risk of infection are isolated. The period of quarantine depends on the time necessary to provide protection, in the face of the risk of spreading certain diseases. Quarantine in the context of health care refers to the various medical procedures used to control the spread of infection. Where there are different forms of quarantine that are used depending on the type of infection and the factors involved in its spread, with the aim of confronting this epidemic that is transmitted through direct or indirect contact or by air particles or drops, or through skin-to-skin contact, or through contact Through body fluids, the Public Health Law defined quarantine as restricting the activities of people who are not sick but suspected of being infected, or luggage, means of transport, or goods suspected of contamination, and separating these people from others or separating luggage, containers, means of transport or goods from others In a way that leads to preventing the spread of infection or contamination.

The question that arises here is whether failure to comply with the procedures of quarantine or isolation by the infected or suspected of having the virus is considered a legal violation that requires arranging civil liability on the shoulders of the refrained or the one who transmits the infection to others? What is the nature and legal basis of this responsibility? What are the provisions for it? We will address all of this in two sections and as follows

The first topic: What is Corona virus infection and the nature of responsibility arising from it.

The second topic: Civil liability provisions arising from the transmission of Corona virus infection.

The study Problem: The main motive behind discussing the issue of civil liability for transmitting Corona virus infection lies in the seriousness of this disease and the material and moral damages resulting from infection with it, and the reason for this is due to the expansion in its spread and the failure of legal rules to address this problem, especially the Iraqi Health Law No. 89 of 1981 Despite his treatment of the punitive provisions resulting from violating the provisions of this law, we find that the provisions relating to concealment of the patient with the disease are ignored, and in light of these problems, a number of main questions can be identified, the most important of which are the general rules sufficient to protect the affected person from transmitting this infection by relying on them to address this problem? What is the nature and basis of liability for transmitting Coronavirus infection. Noting that this question will be answered more complicated in the event that the patient is not aware of his infection and who is the person obligated not to transmit the virus infection to others, and what are the most important consequences of not observing this commitment.

All of this prompted us to discuss this issue, including the answer to all those questions that raised a file in an attempt to reach a clear legal picture that provides legal protection for those affected by infection with this disease.

The first topic:

What are Corona virus infection and the nature of responsibility arising from it there is no doubt that Corona virus infection has a specificity that distinguishes it from other infectious diseases. It is also transmitted in a number of ways, which are a direct cause of injury to others as a result of this transmission. Accordingly, civil liability arises from the carrier of that infection, whether that act was intentional or not. That responsibility, which does not deviate from two types, is either contractual liability or tort liability. All of this will be discussed and addressed in this topic, which is divided into two requirements. We address in the first requirement what this infection is and the causes of its transmission. As for the second requirement, we deal with the nature of responsibility arising from its transfer.

The first requirement what is Corona virus infection and the reasons for its transmission To find out what the Coronavirus infection is and the reasons for its transmission, we divide this requirement into two branches. In the first we address the definition of Corona virus infection and focus in the second of it on the symptoms of this infection and the causes of its transmission, as follows:

First branch:

What is a Corona virus infection? Infection is generally defined as: "The use of a host organism by a foreign parasitic organism that seeks to use the host's materials in order to multiply the foreign organism at the expense of the host" (1). It seems that infection has a specificity in this definition, and that peculiarity lies in that the infection in this definition has a meaning that lies in its exploitation of host organisms in the human body in order to spread in it, and thus it is considered an infectious disease and the infectious disease is defined as (an emergency that affects the body, with which it cannot practice its various activities) (2). It is a disease that displays the human body or the body of a living organism and is characterized by danger because it is capable of rapid transmission from one person to another and therefore it is called an infectious disease and the virus or microorganism is the cause of the disease that is transmissible from one organism to another of the same species or another (3) In recent times, a new type of infectious disease has emerged that afflicts humanity and has a painful reality on human health. It is a corona virus infection. That disease, which was discovered in 1960, which descended into the first virus discovered, which is the contagious bronchitis virus in chickens, and then transmitted to humans, which on its impact were infected with a cold and the disease was called Corona virus humans oc43 and since then other elements of this family have been identified, the most important of which is Corona virus SARS and human corona virus NL63 in 2004 and Corona virus in 2012, the latest of which is the new Corona virus, COVID-19. (Which is known as a group of viruses that cause diseases in mammals and birds as it infects humans with respiratory infections that cause colds and are usually slight and may be fatal in other cases. Such as severe acute respiratory syndrome, Middle East syndrome, and the new Corona virus (4), which is the subject of our research. All of these viruses have an important role in the events of the organ infection.

Respiratory injury and damage. The name COVONAVIRUS is derived from the abbreviation of the word COVANA in Latin, meaning wreath of flowers, as it means crown or aura, and the name refers to the distinctive appearance of this virus, which appears through an electron microscope, as it has large onion-shaped tooth fluffs, making it appear in the form of a king's crown or solar corona (5). The virus first appeared in December 2019 at a seafood market in Wuhan, China. It was mysteriously spread at first. However, it later became a global epidemic and was called a pandemic by the World Health Organization, and the symptoms of Corona virus are similar to those of the previous diseases because it is of the same strain, but it may have some of its own symptoms.

The second branch Its symptoms and causes of transmission This disease is unique with some symptoms, and there are certain reasons for its transmission. We will divide this branch into two paragraphs, as follows.

First:. Coronavirus symptoms Coronavirus disease has certain symptoms that are unique to it from other infectious diseases, and the most important of these symptoms is high body temperature, and this rise is often severe. It is accompanied by severe fatigue and a dry cough. Some patients may suffer from general pain in the body, congestion in the nose, runny nose, pain in the throat and diarrhea at other times (6). These symptoms are usually mild and gradual and vary from person to person, as well as from one body to another

Some people become infected with this disease without showing any of the signs of the disease mentioned previously (7).

Second:. The reasons for his move this disease can be transmitted in a number of ways, the most important of which are sneezing and coughing. This occurs through the transmission of small droplets from the nose and mouth that spread when a person is infected with this disease. These drops land on the bodies and surfaces surrounding people and then infect other people by touching these things or those surfaces, especially Surfaces used by infected people periodically. This spray is transmitted to a healthy person through the nose, mouth, or eyes (8). It can also transmit that infection by inhaling those droplets from an infected person to a healthy person who is not infected. There are other ways that this disease can be transmitted, namely faeces. According to recent research from the Chinese Center for Disease Control and Prevention (CCDC), it proved that people who have confirmed cases of infection with the emerging corona virus. They have virus in the stool samples, which means that there is a possible fecal route for the virus, especially in the absence of washing hands after using the toilet by an infected person (9). The infection can also be transmitted through contact, and this occurs when a healthy person has contact with another person infected with the disease, in contact with a vehicle within a distance of less than one meter.

The second requirement:

The nature of the civil liability arising from the transmission of Coronavirus infection Civil liability is defined as: It is a person's obligation to compensate the harm he caused to another person. (Civil liability is divided into two types, it is either contractual liability or tort liability (10). For undertaking civil liability, both of its contractual and default types, there are three elements, which are error and damage and the causal relationship between them. In the field of our research, the civil

liability arising from the vector of Coronavirus infection may be contractual liability and may be tort. Therefore, we will divide this requirement into two branches. In the first, we deal with the contractual liability of carriers of the Coronavirus infection, while the second branch deals with the tort liability of transmitting that infection.

First branch Contractual liability:

As mentioned previously, contractual liability arises as a result of breaching a contractual obligation. When the contract is valid, it must be executed in accordance with what is included in it and in a manner that is consistent with what is required of good faith. If the opposite happens, contractual liability arises (11). That responsibility, for its fulfillment, requires that there be a valid contract between the two parties that creates obligations for both parties. In the field of our research, it can be imagined that the contractual liability for transmitting Coronavirus infection may be arranged in the medical treatment contract and the health insurance contract. The health treatment contract is defined as the contract concluded between the patient and the treating physician, whose strength is to provide normal medical services to the patient while he is in the clinic of the treating doctor or in the hospital in which the doctor is treated (12) and therefore the doctor is affiliated with the hospital. Accordingly, the patient concludes two contracts at the same time, the first contract with the treating doctor, while the second contract with the hospital is called the hospitalization contract, according to which the hospital is committed to medical work with all the medical art it carries (13) .. This responsibility is raised in the event that the person infected with Coronavirus deliberately conceals this information from the second party, which may lead to the infection of the treating doctor or medical staff and harm them from this act during their treatment of the infected patient. Consequently, the virus carrier is considered ill-intentioned and asks contractual responsibility for transmitting that infection. The contractual liability of the person infected with the Coronavirus may entail in the health insurance contract towards the insurance company, and this occurs in the event that the company does not disclose the disease afflicted with him, as the insurance contracts are good-faith contracts and one of the requirements of good faith is that the insured must disclose to the insurance company all the information related to it. The risk to be insured from. That is, he must inform him of the insurer fully and completely of all necessary data that enable him to assess this risk and all the circumstances that lead to its increase (14). In order for the insurer to form a complete idea of the reality and gravity of the insured risk, and thus he can decide whether or not he will accept insurance, and in the case of accepting insurance, this idea helps him in determining the installment to be paid on a realistic and sound basis consistent with the degree of risk and its severity (15) . At other times, the insured may be of good faith, meaning that he does not know that he is infected with the virus, so is it possible on the basis of that the issue of the contractually sick carrier towards the insurance company as he concealed this information from the insurance company? At other times, a person may become infected with the virus after entering into the insurance contract, so what is the responsibility that he entails towards the company? Particularly

If his failure to disclose the disease resulted in transmitting that infection to the workers of the insurance company, which are those affiliated with that company? In order to answer this issue, it can be said that the insured is obligated to provide this information as soon as he becomes aware of it even if he became ill after the insurance contract was concluded. Every change that occurs after the conclusion of

the insurance contract and during its validity and would increase the likelihood of realizing the risk or the degree of its severity, so that if the risk was present at the moment of the contract conclusion, the insurer would refuse to cover it fully or before the guarantee except for a large premium (16). This is what was indicated in Article (986 / c) of the Iraqi Civil Code (17). With reference to the subject of the research, if the insured does not know that he is infected with the Coronavirus disease, then he is of good faith, and this contractual liability does not entail him at the stage of the conclusion of the contract. If, after that, symptoms of this disease appear on him, then he is bound to inform the insurance company. In the event that he refuses, his contractual liability is raised as he breached his contractual obligation, which was the cause of the insured injury as a result of that.

The second branch Tort liability resulting from the transmission of corona virus infection:

Negative liability finds its basis in the text of Article 202 of the Iraqi Civil Code, which states that (every self-injurious act, such as killing, wounding, beating, or any other type of harm, is required to pay compensation from the cause of harm) Article (204) of the same law also stipulated that (every infringement that infects others with any harm other than what was mentioned in the previous articles requires compensation)

It is known that tort liability is a condition that arises outside the scope of the contract and the source of commitment to it is the law. If a person behaves in a behavior that causes harm to others, compensation is required. Therefore, it is based on the breach of one legal obligation that does not change, which is the obligation not to harm others. With reference to the source of the legal obligation, it is present, which is exemplified by the decisions of the Crisis Cell formed according to the Diwaniya Order No. 5 of 2020 to attend roaming throughout the country and obligate people to quarantine home in order to control this disease or global epidemic (18). As quarantine is one of the preventive means to limit the spread of this epidemic and prevent its spread among people, especially quarantine in hospitals and state health institutions, as quarantine is the place where people are isolated who may carry the risk of infection. In the event of non-compliance with these orders, whether intentionally or unintentionally, the responsibility of the carrier of the incidence of infection arises, and among the cases of intentional breach is the intention of the patient directing his will to carry out actions that would expand the spread of the epidemic as his rise despite his knowledge of the infection by using a group of masks and distributing them to other people. Usually using it, taking advantage of the gullibility and youth of some people (19). Or deliberately spitting or sneezing in the face of others, all of these actions may be a cause of transmission and injury to others. Negative responsibility may result from a person by refraining from a specific act whenever there is a legal duty on the person to perform this act and there are several examples for that, the most important of which are: Abstaining from adhering to the procedures of stone or attendance (20).

The opposite may happen, so health institutions will be a cause of transmission of infection, and this will happen if the treating doctor or workers in health centers or hospitals are the ones who transmit the infection to others, or the patient lying in those institutions, especially people with chronic diseases, what is the nature of responsibility for them. Is the health institution responsible for transmitting this infection? Despite the rare occurrence of such cases, if any, then they are

unintentional most of the time, so a person may be injured in those institutions without knowing about it, but this does not prevent them from questioning them on the basis of tort, as the hospital or health institution is considered responsible for any harm that befalls the people in it. When this is proven based on the liability of the follower for the actions of his subordinates.

The second topic Civil liability provisions arising from the transmission of Coronavirus infection According to the provisions of civil law, civil liability, whether contractual or negligent, rests on three pillars, which are error, damage and the causal relationship between each of the perpetrator's mistake (the carrier of the virus) and the harm that occurred to others as a result of that. Hence, the availability of these elements calls for requiring the person who has been harmed to claim his right through filing a civil lawsuit and requiring his right in kind if it is possible or through a compensation lawsuit if the real implementation is not possible. Therefore, we will divide this topic into two requirements, **the first requirement** we allocate to discuss the elements of civil liability for the vector of Coronavirus infection, or **the second requirement** for the penalty imposed for the realization of that responsibility. The first requirement Pillars of civil liability for the vector of Coronavirus infection Several pillars are required for the establishment of this responsibility, the first of which is the error, as the responsibility is only based on its availability, and the error is considered a deviation in the person's behavior with awareness of this deviation.

First branch:

The error:

The error is defined as (a deviation in behavior that is not committed by a vigilant person if he is surrounded by the same external circumstances that surrounded the perpetrator) (21). There are two types of error: either

The mistake is intentional and that occurs by committing the wrongdoer to do it with bad intention and with the intent to harm others, or the mistake is unintentional and which It is committed by the perpetrator without intending to harm others. Rather, it is issued because of the perpetrator's negligence, frivolity, or lack of insight. However, the rule of these two types is the same, that is, full compensation for every harm that results from it (22). The error consists of two pillars, one of which is physical and is represented by transgression and the second is moral and is represented by perception (23). The mistake that leads to harm to others may take the form of a positive action, and it may take the form of a negative action by simply refraining from a certain action when there is a legal duty on the person to perform this act. Examples of positive actions issued by the virus carrier are distributing masks that carry the virus and used by a person and giving them to others, or contaminating some places by touching, especially crowded places, or deliberately sneezing in the face of others or kissing them while leaving remnants of saliva loaded with the virus on the face of the affected by this virus or Putting saliva in the tools that he usually uses, so it is not necessary to touch it, as it is sufficient to transmit that infection that the disease carrier has prepared the means of transmission and its causes (24). The error issued by the virus carrier may be a negative act, such as intentionally refraining from adhering to quarantine procedures and deliberately leaving the hospital without the knowledge of others, which leads to transmitting the virus to others and causing harm. The act may

be unintentional, and this occurs in the event of negligence and neglect of the carrier of the disease or infection or lack of knowledge of infection with the virus (25).

The second branch Harm Harm is the harm that afflicts a person in one of his rights or a legitimate interest for him (26) and there must be harm that afflicted others, any inalienable right protected by law. In light of this, it is not sufficient for the virus carrier to breach an obligation. Rather, there must be harm to the right of others as a result of a breach of this obligation (27). The damage is an essential pillar for the responsibility of the carrier of Coronavirus infection, and it cannot be questioned unless his mistake results in harm to others either in his life or body or moral damage to his feeling, emotion and dignity, the damage is either material harm or moral harm (moral) and the material damage means breaching the right or a financial interest of the injured, so harming the patient's life and body and losing the ability to earn and bear the expenses of treatment by himself is material damage and does not stop to this extent. It may cause material harm to the patient's family to whom the infection was transmitted if they prove that the infected patient was helping them and the opportunity for support was lost due to death from the virus (28) as well. The damage must be immediate and fulfilled, that it has actually occurred or will actually occur at the time of the compensation claim (29) As for moral damage, it is the damage that is inflicted on the non-financial rights of the injured, which is not considered a component of the financial liability (30). Such as the pain and psychological harm that he suffers as a result of transmitting a virus infection to him or a distortion that I heard that he was rumored to be infected with a dangerous or contagious virus, which would bring him harm, sadness and social aversion to it or in the form of psychological harm resulting from some measures, such as isolating him in places designated for infectious diseases, or isolating him in a place of their own in Schools, public parks, public places and transportation or preventing him from entering some public places to eat and drink, which creates an uncomfortable psychological feeling and a sense of isolation and alienation from society, and in all cases it is required that moral harm, such as material harm, be a non-probable real harm (31).

The third branch Causation:

The third pillar of liability is the causal relationship between error and damage, which is a necessary and independent pillar of error and damage. It is evident that the perpetrator is only responsible for damages that are considered as a result of his mistake (32). The causal relationship at the present time is of great importance, as it is the link that links the breach of the virus carrier to the damage that has befallen others, a cause-to-effect link, meaning that it makes the damage the result of the breach. However, the causal relationship may be interrupted by the foreign cause, and in that case, the foreign cause does not eliminate the causal relationship alone, but rather ends the legal obligation that requires not to harm others. What is considered a breach is error, since this obligation has become impossible by the foreign cause, and therefore the foreign cause does not nullify the causal relationship alone, but negates the characteristic of error as well (33) As mentioned previously, the obligation not to harm others with regard to the carrier of the Coronavirus is an obligation to exert care, and therefore his responsibility is raised when the affected person proves that he has not taken the required care from the virus carrier (Covid-19) and the judge shall seek the help of people with experience in the medical field to prove the failure From the carrier of that infection, the evidence must be clear that the disease that was transmitted to the affected person was due to the carrier of the virus. The medical

report and medical examinations may prove that the infection that infected the patient is due to other factors that have nothing to do with the error issued by the virus carrier, and thus the causal relationship is interrupted and it cannot be asked about this infection. Time also plays an important role in determining the time of infection with the virus, and it has a role in proving and denying the causal relationship. If it appears that the patient was what happened before contacting the carrier of the intended virus, then this is considered evidence of denying the causal relationship and the judiciary generally goes towards placing the burden of proof on the victim (34), who must prove that the fault of the virus carrier caused the damage and divide the evidence for that in order to claim compensation (35). As far as the subject of our research is concerned, we see that force majeure and a sudden accident cannot contribute to severing the causal relationship except in rare cases, as force majeure cannot have a fundamental role in transmitting Corona virus from the pregnant woman to the other (affected). And thus lead to his death, infection or disease. But if the fault of the affected person is the cause of the damage, then he will deny the responsibility of the virus carrier because it will sever the causal relationship between the error and the damage. This is if the injured person is the only cause of the damage. If the error is common, then it is necessary to distinguish between two cases, as either the mistake of the virus carrier (Covid-19) takes the fault of the affected and thus the responsibility is entirely on the virus carrier, and if the opposite happens, the error of the affected person takes the error of the virus carrier, the responsibility of the latter is raised due to the lack of causal link (36). The causal relationship may be interrupted by the fault of others, so there is no responsibility for the carrier of the virus when it is proven that the harm that afflicted the patient was due to the action of others.

If his action constitutes a mistake, but if it did not constitute a mistake, as if it was a force majeure or a sudden accident, then no responsibility shall arise on him (37)

The second requirement Penalty verification of liability for the vector of Coronavirus infection After we discussed the pillars of civil liability for carriers of Coronavirus infection, we must address the penalty entailed by this responsibility. That penalty, which does not deviate from two types, either the liability penalty is in-kind execution or it is compensation. In the field of our research, it is inconceivable to ask the carrier of Corona virus infection to implement in kind (38). The reason for this is the impossibility of implementing this obligation, as the latter's obligation relates to the obligation to refrain from doing anything other than not to do any action that would infect others with the virus and thus harm others from it. Due to debtor's fault (vector). As for the second type of penalty, it is compensation. Compensation in general is either in-kind compensation or monetary compensation, and it may be compensation for failure to implement the commitment or for delay in implementing a commitment (39) not to transmit Coronavirus infection, since this commitment is considered a negative obligation, it is a commitment to refrain from work that continues as long as the person has refrained from any an act that would transmit the infection, and in the event that the opposite occurred, the affected person would have no choice but to claim compensation. For the material or moral damage caused to him, and compensation for material damage includes the loss suffered by the injured and the gains he lost. As for compensation for moral damage, it does not include these two

The two elements are to be determined by the judiciary according to the discretionary authority (40). It is not worth compensation unless the action of the virus carrier results in harm that is represented by the transmission of the virus infection, which

may be a cause of the death of the infected person and may not be the same, so the effects of the disease disappear after a certain period on which the compensation can be treated. In two branches, we deal in the first branch with compensation for the case of infection, while the second branch deals with compensation for death due to that infection. First branch Compensation in the event of infection with Corona virus the damage to the affected person from the virus infection may be limited to infection without death. Medical studies have shown that the death rate in this disease does not exceed 2% of the total number of infected people, but this does not mean that the injured person is not harmed as a result of that, as this injury may have material or moral effects on Those affected by this virus are all due to the error issued by the disease carrier, which was a reason for arranging civil liability for the affected person. Therefore, we find that the general rules dealt with the issue of compensation for the damage of that injury. Article 202 of the Iraqi Civil Code stipulated that (every self-injurious act, such as killing, wounding, beating, or any other type of harm, is required to compensate for the harm caused). Article (204) of the same law stipulates that (every infringement that infects others with any harm other than what was mentioned in the previous articles requires compensation) Thus, any act issued by the virus carrier that harms others requires compensation, whether intentionally or not. As the transmission of that infection is considered a kind of harm to others according to the aforementioned articles, because inflicting harm to others is a forbidden act carried out by the perpetrator's responsibility unit. Whenever the act of the virus carrier leads to harm to others, he is obligated to compensate him without the condition of infringement or intentional, whenever the conditions of civil liability are fulfilled. That compensation, which includes what happened to the injured from his loss

As for the missed gain, it is represented in the missed opportunity for the affected person due to infection, then the infringement on the body due to the transmission of the virus to him may result in a permanent disability that affects the lung in which the affected person is unable to work and gain, and then consequently harm has occurred. My future realized is the loss that results from the victim's inability to earn and profit, and to engage in work that requires physical skill, and then a bad situation may lead to a loss of work. Compensation is not limited to material damage, as infection with the Coronavirus may result in moral damage, which is the damage to the reputation of the infected person and his position in the surroundings the previous elements set by the legislator include material and moral damage as a result of the legislator's handling of harm in general without any discrimination. However, the element of loss and lost gain does not help in estimating compensation for damage except in the field of financial harm, and for this reason, the only element that helps in estimating compensation for moral damage is the circumstances of circumstances, which mean the circumstances of the victim of that infection. The second branch Compensation in the event of death from corona virus infection The transmission of a virus infection may cause the death of the person infected with it, and the responsibility of the carrier of that infection is raised (41) since the special nature of the damage caused by this virus has characteristics that distinguish it from others, as it may be a cause of loss of life in addition to personal damage represented by bodily harm. Are the heirs or those who were supported by the deceased have the right to claim compensation?

To answer that, it can be said that the Iraqi legislator addressed this issue, especially compensation for the material and moral damage that afflicted the deceased's relatives due to the transmission of the virus to him and subjected him to general rules in this regard. As we find that the right to claim compensation for material damages

caused to the injured as a result of death (42) was restricted to the persons whom the deceased supported and were deprived of support due to murder or death in accordance with the provisions of Article (203) of the Iraqi Civil Code which stipulated that (in the case of murder and in the case of death) Because of the wound or any other harmful act, the person who caused the damage shall be responsible for compensating the persons who were dependent on the injured and were deprived of support due to murder or death). As for compensation for moral damage, the Iraqi legislator restricted it to spouses and relatives of the victim's family only in the event of death due to the virus (Corona), then the legislator defined it more precisely by Resolution No. (815) issued by the dissolved Revolutionary Command Council on 6/20/1982 and its second amendment No. (106) On February 11/1985, which stipulated that (the deceased husband and his first-degree relatives who were afflicted with pain are not entitled to compensation for moral damage, a profound truth). Finally, we must address a very important note related to the statute of limitations of the compensation lawsuit filed by the aggrieved person in the event of his infection with the Corona virus and his family in the event of his death, as the law specified a specific period that cannot be exceeded, nor to institute a compensation lawsuit in accordance with the provisions of tort, which is three years from the time he is informed. The injured (transmitted to him) by the occurrence of the damage and the person who caused it. Because the passage of that period is sufficient to claim his right, but in the event that the case is not filed before the court, it is implicitly understood that the victim has reconciled with the person responsible for the damage and that he has obtained his rights without going through the court and filing the lawsuit. The lawsuit shall also be dropped in all cases after the passage of five

Conclusion After completing our research entitled (Civil Liability for Transmitting Coronavirus Infection), we must explain the following to our findings and proposals: First:

Results:

- 1- Coronavirus infection is a group of viruses that cause diseases of the respiratory system, and its most important symptoms are high body temperature, cold and pharyngeal pain, and it is also considered a fatal disease, especially for elderly people who are over 60 years of age and over. There is no vaccine or treatment for this disease, despite the keen efforts to do so. As for the causes of its transmission, it may be directly through contact or indirectly through touching surfaces in the immediate surrounding environment or using the tools of the infected person.
- 2- The issue of a carrier of Coronavirus infection can be nodal, and it is imagined that this will happen in the medical treatment contract, the insurance contract, and all contracts concluded according to the principle of the contract, the Shari'a of the contractors, whenever the carrier of the virus deliberately conceals his infection and if the lack of disclosure would result in damage to the other contractor. In the event that he is not aware of the injury, liability cannot be arranged against him based on the principle of good faith in contracts.
- 3- The issue of a vector of Coronavirus infection can be negligent in the event that there is no nodal link between the carrier of that infection and the one affected by it, and in this regard, not the provisions of the general rules of the Iraqi civil law are subject to this.
- 4- The tort liability of the carrier of the Coronavirus infection is based on the assumption of error, and for proof of it the availability of damage without error.

- 5- The transmission of Coronavirus infection may be in bad faith through deliberate harm to others, or the opposite may occur and be unintentional, and the person causing the damage in both cases is asked whether it is contractual liability or tort.
- 6- The impossibility of requiring the person responsible for transmitting the Coronavirus infection to implement in-kind implementation. The reason for this is the impossibility of implementing this commitment, since the obligation not to transmit the Coronavirus infection is one of the negative obligations, it is a commitment to refrain from work and from the concept of violation, any positive action that would transmit that infection makes In-kind implementation is impossible, just as most of the negative obligations do not accept in-kind implementation, unlike financial compensation as a penalty for the liability of carriers of Coronavirus infection.

Proposals:

The position of the Iraqi law must be reconsidered and the need to include provisions on the obligation to report infectious diseases, especially rapidly transmissible viral diseases, from the method of commitment of the patient and the patient to report disease so that the various parties can play their role and limit the spread of Corona virus infection.

- The Iraqi legislature has issued a special law to confront dangerous infectious diseases and have implications for society and the need to include detailed provisions, especially for rapidly spreading infectious diseases, foremost of which is Corona virus infection.

- The Iraqi legislator issued a special text arranging the liability for the patient with the virus in the event that he refuses to disclose the infection, not to family members or public authorities.

Compensation for those infected with Coronavirus by the state as their first sponsor, especially if their infection with this disease came through error or negligence issued by public health institutions.

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- 14- Abdel Moneim Faraj Al-Odah, Sources of Commitment, Dar Al-Nahda Al-Arabiya, for the year 1987.
- 15- Afif Shams El-Din, The Physician's Civil Liability, A Comparative Study, 1st Edition, Modern Book Foundation, Tripoli, Lebanon, 2004.
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Margins:

- 1- See the text of Article (52) of the Iraqi Public Health Law No. (89) issued on 10/16/1981.
- 2- look: www.wikipedia.org/wiki Visited date 23/3/2020.
- 3- For more, see: Youssef Salah El-Din Youssef, The implications of infectious diseases, House of Thought University Alexandria, 2008, p.62
- 4- See the website www.org/wiki/com
- 5- The website www.mayoclinic.org will see the date of the visit on 3/22/2020
- 6- For more, see the website www.chla.org.com, the date of the visit is 3/24/2020
- 7- For more, see the website www.wikipedia.org.com, the date of the visit is 3/22/2020
- 8- See: Khaled Hajj Salman, Criminal Liability for People Living with the Coronavirus Emerging in Syrian Law, research published on the website www.jamahiri.alwehad.com
- 9- (See the website www.who.int.com, the date of the visit is 3/22/2020)
- 10- For more, see Dr. Inas Ali Rashid, Coronavirus, an article published on the website www.researchgate.net Date of visit 3/28/2020
- 11- The website www.youn7.com looks at the date of the visit on 1/4/2020
- 12- It should be noted: that this virus contains a large amount of genetic information, and every time it reproduces itself inside the host cell, slight genetic errors occur that make it more capable of infecting humans and cloning itself inside human cells and lead to the creation of new strains that are more able to survive and transmit easily Among humans, the duration of its stay inside the human body ranges from 2-14 days, as humans become contagious after seven days after the virus was transmitted to the body. 13- For more, see: the website www.researchgate.net, the date of the visit is 4/12/2020.
- 13- See: Dr.Salah Ajmaj, Civil Liability and Its Provisions, The Modern Foundation for Book, Tripoli, 2001, p. 8.
- 14- See: Dr.Hassan Ali Al-Dhanoun, d.Muhammad Saeed Rahho, Al Wajeez in the General Theory of Commitment, Sources of Commitment, A Comparative Study of Islamic Jurisprudence, Part 1, Wael Publishing House, Amman, Jordan, 2002, p. 205
- 15- There are some who have excluded the contractual liability of the carrier of Coronavirus infection and limited it to criminal and tort liability based on this

- on the element of error and infringement intended by the carrier of this disease, and this will be addressed in the second section of this requirement.
- 16- See: Afif Shams El-Din, *The Physician's Civil Liability, A Comparative Study*, Edition 1, The Modern Foundation for the Book, Tripoli, Lebanon, 2004, p. 121
 - 17- See: Dr. Ahmed Sami Al-Mamouri, *Responsibility Resulting from the Error Issued by the Blood Transfusion Center*, a research published in the *Journal of the Center for Studies of Kufa*, No. 26, 2012, p.
 - 18- See: Farqad Zuhair Khalil, Muhammad Adnan Baqer, *The Insured's Commitment to Performance with Information in the Insurance Contract*, a research published in *Al-Mohaqqiq Al-Hilli Journal for Political and Legal Sciences*, Issue Two, Seventh Year, 2015, p. 450
 - 19- See: Dr. Ramadan Abu Saud, *Fundamentals of Insurance*, second edition, University Press, Alexandria, 2002, p. 446
 - 20- See: Dr. Ahmed Sharaf Al-Din, *Provisions of Insurance*, Dar Al-Nahda Al-Arabiya, Cairo, 1991, p. 220. Also Zuhair Muhammad Khalil, Muhammad Adnan Baqer, the previous source, p. 470
 - 21- Article (986 / c) of the Iraqi Civil Code stipulates that he is the insured (c - to inform the insurer of any conditions that will occur during the contract that may lead to an increase in these risks).
 - 22- This cell was formed by the Diwaniya Order issued by the General Secretariat of the Council of Ministers No. 55 of 2020 dealing with the Corona epidemic and one of the most urgent decisions taken by this cell is to impose a curfew throughout Iraq and it excluded some people from this ban, the most important of whom are the owners of pharmacies, doctors, security services and institutions the service.
 - 23- See: Lawyer Abdullah Jaradat, *legal liability resulting from the transmission of Coronavirus infection*, an article published on the website www.layer.com, the date of the visit is 1/4/2020
 - 24- It is also possible to ask whoever does not comply with these procedures in accordance with the provisions of Article (99 / First) of Public Health Law No. 89 of 1981 which states that (Whoever violates the provisions of this law or the regulations, instructions, or statements issued pursuant thereto, shall be punished with a fine of no less than One hundred dinars and not more than three thousand dinars, or with imprisonment for a period of not less than one month and not more than two years, or with both penalties)
 - 25- See: Dr. Ali Hasan Al-Thanun, *Al-Mabsoot fi Explaining Civil Liability*, Part 2, The False, First Edition, Wael Publishing, Amman, 2006, p. 119
 - 26- See: Amal Al-Morshedy, *The Error in Negligence*, a research published on the website www.mohamah.net, the date of the visit on 2/4/2020.
 - 27- See: Abdel Moneim Faraj Al-Odah, the previous source, p.537
 - 28- See: Ammar Al-Khidatat, *Criminal Responsibility for Exposing Others to the Danger of Coronavirus*, a research published on the website www.memfn.com, the date of the visit is 3/26/2020.
 - 29- See: www.makkhnewsper.com website, the date of the visit is 3/29/2020.
 - 30- Seen: Dr. Abdul Majeed Al-Hakam, Abdul-Baqi Al-Bakri, Muhammad Taha Al-Bashir, the previous source, p. 229

- 31- See: Dr. Fathi Tawfiq Al-Faouri, the medical error of the body in the civil liability of the doctor, a research published on the website [www.jasj \ iasg \ com](http://www.jasj.com), the date of the visit is 4/5/2020.
- 32- See: Dr. Abdul Majeed Al-Hakam, Abdul-Baqi Al-Bakri, Muhammad Taha Al-Bashir, the previous source, p. 212
- 33-30- In addition, the damage is required to afflict an acquired right or a legitimate interest of the injured, and the legitimate interest here is represented by an assault on the life, health, and physical integrity of the victim. It is also required for the damage to be personal and not to have been compensated for. Judiciary in contractual and tort liability, The Egyptian General Book Authority, 1989, p. 339
- 34- See: Dr. Hussein Ali Al-Dhanun, the previous source, p. 279
- 35- See: Ahmad Sami Al-Maamouri, Muhammad Hasnawi Shuwaih, the previous source, p. 193
- 36- See: Dr. Abdul Majeed Al-Hakim, Abdul-Baqi Al-Bakri, Muhammad Taha Al-Bashir, the previous source, p. 239.
- 37- Among the most important of these legislations are the Iraqi legislator in Article (186/1) of the Iraqi Civil Code, the French legislator in Article (1382 and Article 1386), the Egyptian legislator in Articles (163-165) of the Egyptian Civil Code and the Lebanese legislator in Article (122) From the Lebanese Code of Obligations and Contracts.
- 38-)See: Dr. Abdul-Razzaq Al-Sanhouri, Mediator in Explaining Civil Law, Part 3, House Revival Heritage, Cairo, 1964, p. 1220 There are many judicial decisions that affirm the assignment of proving the causal relationship and make it a burden on the victim who must prove the causal relationship.
- 39- For more, see the Iraqi Court of Cassation Decision No. 613 on 7/4/2008. Posted on the website [www.hjc iq](http://www.hjc.iq).
- 40- See: Afif Shams al-Din, previous source, p. 392
- 41- See: Ahmad Sami Al-Maamouri, Muhammad Hasnawi Shweih, the previous source, p. 198.
- 42- See: Hasan Ali Al-Dhanun, the previous source, p. 279, as well as Dr. Mounir Riad Hanna, the previous source, p.529.
- 43- Execution in kind is defined as: the execution carried out by the creditor with the assistance of the judicial authority to compel the debtor and oppress him by not making excuses for the implementation of what he committed himself to if he abandons voluntary real execution. Among its conditions is that it is not possible and impossible, that the creditor requests it, and that it does not burden the debtor. For more on this topic, see: Dr. Abdul Majeed Al-Hakim, Abdul-Baqi Al-Bakri, Muhammad Taha Al-Bashir, Civil Law and Provisions of Commitment, Part 2, Provisions of Commitment, Al-Sanhouri Library, Baghdad, 2012, p.9 and beyond.
- 44- Usually, compensation is resorted to after several conditions are met, the most important of which are: that the implementation of the obligation is impossible, or in the case in which the implementation of the obligation is not feasible, or in the event that the creditor is not required to implement in-kind execution and the debtor does not object to this. For more see: Dr. Ayman Saad, Provisions of commitment, a comparative study, Dar Al-Nahda Al-Arabiya, Cairo, 2016, p. 151 and beyond.

- 45- For more, see Article (3/191), Article (213 / P2), and Article (207) of the Iraqi Civil Code.
- 46- For more information about the compensation elements, see: Dr. Burke Faris Hassan, Manar Abdul-Mohsen Abdul-Ghani, Compensation, Fines and Their Legal Nature, Comparative Study, Research published in Tikrit University Journal of Legal and Political Sciences, Issue 6, Year 2, pg.
- 47- The responsibility of the criminal contagion carrier may arise based on premeditated murder in case of intentional killing, manslaughter in case of unintentional killing, and he may be asked about attempted murder. For more on this topic, see: Dr. Ammar al-Hanafiyat, Criminal Responsibility for Transmitting Coronavirus, an article published on the website www.alrai.com
- 48- The material damages to the heirs and those who were supported by the deceased include the expenses of burying the deceased, the condolence, the expenses of transporting him to the place of burial and other expenses incurred by them until the completion of the burial process, in addition to all the expenses and expenses that were disbursed to them and spent on them in the life of the deceased from this disease.
- 49- This decision was published in the Iraqi magazine Al-Waqi'a issue 2891 on 7/5/1982, p. 473
- 50- Consideration of paragraph (1,2) of the aforementioned decision, published in Al-Waqi'i Al-Iraqiya No. 3032 on February 11, 1985, p. 81.
- 51- Article (232) of the Iraqi Civil Code stipulates that: (The compensation lawsuit arising from the unlawful act is not permitted after the lapse of three years from the day in which the victim learns that the harm occurred, and the person who caused it, and the lawsuit is not heard in all cases after the lapse of fifteen years from The occurrence of the illegal act).