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Health Legal Ramifications of Force Majeure in the Commercial Issues

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Abstract

The new Covid-19 pandemic has affected all economic sectors around the world and caused losses exceeding thousands of billions of dollars, according to a report by the Asian Development Bank. The rapid spread of this pandemic has contributed to the cessation of companies and individuals from fulfilling their contractual obligations. This cessation included the majority of the commercial and construction sectors and the industrial, transportation, import and export sectors. To other sectors, the reason for this is the inability of debtors to fulfill their contractual obligations and the failure to implement contracts, which resulted in creditors filing lawsuits to demand compensation for failure to implement the obligation or to demand the imposition of late fines. Some countries, such as China, have considered the spread of this epidemic as a force majeure that requires the debtor's contractual liability not to be fulfilled, and have given certificates and documents supporting this to the companies working for them.

The spread of this virus and the accompanying imposition of the curfew led to the cessation of the implementation of many contracts in Iraq, Iraqi legal jurisprudence differed on whether this pandemic is considered a force majeure that makes it impossible to implement the obligation and requires termination of the contract, or whether it is considered an emergency circumstance that requires lifting the burden on the debtor and restoring balance to the contract. What deepened this dispute was the issuance of a statement by the Crisis Management Cell formed pursuant to Official Letter No. 55 of 2020 in which it affirmed that the virus is considered a force majeure that requires the implementation of the obligation to be postponed until after the end of the pandemic, and it did not address termination of the contract as it is the result arranged by the law regarding the presence

.of force majeure

The study aims to address the theory of force majeure and research the extent of its application to the pandemic. Is this pandemic considered one of the applications of force majeure stipulated in the Iraqi Civil Law, the effect of which is the termination of the contract, as well as researching the court committee's decision issued on March 22, 2020, which stipulated: Considering this pandemic a force majeure that leads to stopping the implementation of the obligation during the period of the spread of the epidemic and the accompanying ban measures and resuming the implementation of the obligation after the end of the epidemic, which sparked controversy about the scope of application of this decision in terms of its application to public law contracts or private law contracts, especially .since the pandemic was considered a force majeure, but It has effects other than annulment

The research concluded with a number of results, the most important of which is that this pandemic is considered a temporary force majeure that does not require canceling the contract or terminating the obligation, but rather halting its implementation until it disappears, by analogy to some legal applications such as those contained in Articles (112) and (171) of the Iraqi Trade Law, as well as the text of Article (26). From the Iraqi Implementation Law, we made some recommendations, the most important of which is that the legislator reconsider the wording of Article (425) to amend it .in accordance with the results we reached

Key words

Force Majeure

the pandemic

Legal transactions

a communicable disease

financial impact

introduction

First: Research idea

Legal transactions, whether they take the form of individual legal actions or are in the form of multilateral contracts, are considered one of the important issues that all countries address through legal regulation and legislative renewal of new matters that occur, especially those whose impact is related to a wide spectrum of people or businesses, and their economic repercussions are considered .among the determinants that require emergencies treatment to put things right and appropriate It raised issue of the spread of the Covid-19 pandemic, which is also known as (Coronavirus), and the resulting imposition of a curfew by many countries, forcing people to remain in their homes for fear of transmitting the infection, and the cessation of various sectors of industry and trade as a result of the imposition of quarantine and social distancing(1) . The resulting inability to fulfill obligations arising from commercial contracts for commercial or industrial companies or banks, as

well as for carriers in the transportation sectors and contracting companies, according to their agreed-upon timings and conditions, which resulted in their creditor partners resorting to demanding the necessity of implementation and imposing late fines or demanding compensation for the delay in implementing the obligation or Failure to implement it as agreed upon.

Second: The importance of research

It can be said that the importance of the research, which was the reason behind its selection, is several points that can be summarized as follows

- 1-The novelty of the topic and the speed of its development and spread in all different parts of the world, including Iraq
- 2-The difference in jurisprudential opinions that address the issue of considering the virus (Covid 19) as a foreign reason for extinguishing Legal transactions arising under the commercial contract concluded on the basis of it being force majeure or considering it an emergency circumstance that requires postponing the implementation of the obligation without extinguishing it
- 3-The huge losses suffered by the commercial and industrial sectors, as well as the banking, transportation, sports, and other sectors, which are estimated at billions, and the country's economic and financial system has been affected due to the loss of billions of dollars due to non-implementation of contracts

Third: Research problem

The problem is mainly represented by the lack of agreement between jurists regarding whether the virus (Covid 19) is considered one of the forms that require the application of the provisions of foreign cause on the implementation of contracts by commercial companies and merchants, whether it is considered a force majeure or whether it is considered an exceptional event representing an emergency circumstance, and then the resulting differences in provisions, in addition to the presence of... Another problem that arises is the case when merchants or commercial companies agree with their partners not to consider force majeure as a reason for terminating the contract. In application of the principle of the contract, the law of the contracting parties, the two parties to the contract have the right to agree that the provisions related to force majeure do not apply to the contract, and this is permissible because it is not related to public order. Is it Will the contract remain as it is

Fourth: Scope of research

The scope of our research will be in light of the Iraqi laws, legislation and instructions that dealt with the concept of force majeure or those that dealt with health concepts and the procedures that result from them, for example the amended Iraqi Civil Law No. (40) of 1951 and the amended Iraqi Trade Law No. (30) of 1984. The Implementation Law No. (45) of 1980, amended, the Iraqi Health Law No. (89) of 1981, and the Iraqi Transport Law No. (80) of 1983, as amended, in addition to the decision

of the Crisis Cell formed by court Order No. (55) of 2020, and other legislation, which we will discuss below.

Fifth: Research Objective

The research aims to shed light on the disputes surrounding whether the Corona pandemic is considered a reason for waiving the obligation and terminating the commercial contract, which may be a contract of transportation, insurance, or a banking contract, or a reason that requires granting the merchant debtor another opportunity and postponing the implementation of the contract until the injustice is lifted and renegotiated to distribute the burden in an appropriate manner. Fair again, and our attempt is to reach the correct opinion or the closest to the correct opinion by presenting the legal texts, discussing them, measuring the situation against them, determining the extent to which the terms and conditions apply to this disease, and thus coming up with a ruling that suits the results drawn from that.

Sixth: Research methodology and division

In this study, we followed the method of the descriptive and inductive analytical approach to the applicable Iraqi legislation that is directly related to the topic under study, as well as other relevant legislation. The research will be divided into two sections. In the first section we address the nature of force majeure, while the second section will be about evaluating the applicability of the concepts of force majeure. On the pandemic, we conclude our research with a conclusion that includes the results we have reached and the recommendations we propose, asking God Almighty for success for all.

Research plan

The first topic: What is force majeure

The first requirement: what is meant by force majeure

The second requirement: conditions of force majeure

The second section: Evaluating the application of force majeure concepts to the pandemic

The first requirement: the traditional concept of force majeure in Iraqi legislation

The second requirement: The modern concept of force majeure in Iraqi legislation

The third requirement: An appropriate, understandable guess about the pandemic and its effects

Conclusion: results and recommendations

The first topic

What is force majeure

The principle in contracts is that they must be implemented in good faith, and both parties must do what they are required to do in the contract and according to the agreement, and adherence to the

clauses included in it specify the rights and obligations of both the creditor and the debtor, who must implement it in accordance with what they agreed upon and in good faith and in a way that achieves stability and trust between them. (2) If it is agreed to implement a deal and this is documented in the contract, neither party has the right to refrain from implementing it, to be lax in doing so, to withdraw, or to amend it. Otherwise, it will be considered a breach requiring compensation (3), as the purpose of concluding the contract is to achieve the agreed-upon effect, which represents the essence of the deal. The agreement between the parties to the contract, as legal action is the manifestation of the .will of the contracting parties, and the source of the strength of their obligations is the contract However, the legislator allowed in limited cases for the debtor not to implement and resort to terminating the contract if the implementation of the obligation became impossible for an external reason (4), but if the implementation of the obligation had become burdensome for the debtor for an exceptional reason, which is what the legislator called emergency circumstances, then in this case the legislator allowed it to be reduced. The debtor's obligation to the extent that would achieve justice and restore balance to the contract but does not nullify it (5

For the purpose of shedding light on the extent to which the descriptions of force majeure apply to the virus (Covid 19), we must first define what force majeure is, and this will be done through two requirements that address the first requirement that is meant by force majeure, and the second requirement deals with the conditions of force majeure

The first requirement

What is meant by force majeure

According to the World Health Organization, the new Corona virus (Covid-19) is considered a global pandemic, which prompted the Iraqi government to form a cell to manage the crisis of the spread of the virus and try to prevent it from invading the lands and take the necessary measures for that, and in accordance with the Iraqi law that requires the Ministry of Health to "combat, monitor and prevent communicable diseases." "Its leakage from outside the country to inside it and vice versa, or from one place to another within it, and to limit its spread on Iraqi lands, waters, and airspace" (6). The Ministry of Health has taken a set of measures for the purpose of containing the pandemic and .fighting it

The Iraqi Health Law No. (89) of 1981 defined a communicable disease as "a communicable disease is a disease resulting from infection with an infectious agent or the toxins generated from it, which results from the transmission of that agent from the source to the host, directly or indirectly." (7) Contagious diseases, according to the definition of specialists, "are those that occur as a result of infection with infectious organisms or their toxins, which are transmitted directly or indirectly from sources of infection to a healthy person susceptible to infection by one of the transmission methods specific to the cause of each disease" (8), and therefore they can be transmitted through contact or Swallowing, breathing, or blood transfusion, examples of which include viral hepatitis, cholera,

Rubella, (Covid-19), and others, without the will of the contracting debtor playing a role in their occurrence

At the present time, the world is living in a state of anxiety and frustration caused by the spread of the Corona virus, or what is known as (Covid 19), and its variants, which has been described as a pandemic by the World Health Organization because it crossed borders and because it has become transcontinental. Today, there is hardly a country devoid of this. The virus affected all aspects and sectors of different countries, especially the economic sectors, and this resulted in a breach in the implementation of contractual obligations for many commercial deals. This resulted in the cancellation of sports matches, the closure of factories, the aviation sector stopped almost completely, tourism was banned, flights and reservations were cancelled, and production and other activities related to it stopped. Such as marketing, export and import, which resulted in the inability to implement contractual obligations, breach of which results in the loss of billions of dollars as compensation for failure to implement the obligation or in the form of late fines, causing a massive breach of contracts at the global and local levels

According to Iraqi law, Force majeure, is considered a foreign cause that has nothing to do with the debtor's will in its occurrence, and would sever the causal relationship between the harm that befalls the creditor and the result, which is the debtor's failure to implement his obligation stipulated in the contract, meaning that the debtor did not commit an act that made the implementation of the obligation impossible, so force majeure is a reality. A person cannot, with the energy he possesses, repel it or prevent its effects from occurring (9)

The Iraqi Civil Code stipulates in Article (168) of it: "If it is impossible for the person obligated to the contract to perform the obligation in kind, he will be sentenced to compensation for not fulfilling his obligation unless it is proven that the impossibility of implementation has arisen from a foreign cause in which he has no control. The same ruling applies if the obligor delays in implementing his obligation." The law also stipulates in Article (211) of the foreign cause and the number of its forms, including force majeure, by saying: "If the person proves that the damage arose from a foreign cause in which he had no control, such as a celestial calamity, a sudden accident, force majeure, the act of others, or The fault of the injured person is not bound by the guarantee, unless there is a stipulation or agreement to the contrary

It can be said that the images mentioned by the Iraqi legislator for the foreign cause are force majeure, the sudden accident, the act of the creditor, and the act of others. There are several images of force majeure. The heavenly calamity is an image of force majeure. They agree in terms of the meaning and the resultant result (10). Therefore, earthquakes, volcanoes, and hurricanes are all force majeure. This is also the case with a sudden accident, where some see it as a form of force majeure (11), so it is nothing more than another name for force majeure, and this is clear from the unity of the effect that the Iraqi legislator stressed, which is that the debtor is exempted from paying compensation for the damage, which is what he meant by the word Guarantee, but some jurisprudence may differentiate

between force majeure and a sudden accident and give a special meaning for each term (12), where some jurisprudence establishes the distinction between the two on the basis of the external nature of the matter that cannot be paid or expected. If it is outside the debtor's activity, such as earthquakes or floods, it is considered Force majeure, but if the matter is within the debtor's scope of activity, such as a fire that occurs in the merchant's factory,(13) it is considered a sudden accident. According to this opinion, the debtor cannot pay the force majeure, but he can pay the sudden accident if he took exceptional measures, which is what a normal man is not expected to do. Some jurisprudence says that there is no distinction between the two, as an accident is considered a force majeure if it is not possible to prevent it, and it is considered a sudden accident if it is not possible to anticipate it. (14 Force majeure must be something that cannot be attributed to the debtor (defendant), such as war, legislation issued by a higher authority, strike, disease, or invasion.(15

If force majeure is the only reason that led to the impossibility of implementation, then the resulting effect will be to cancel the contract and return the two parties to what they were before the contract (except for what was implemented in the contract), and the debtor will lose the guarantee due to the expiration of his obligation due to the impossibility of implementation, and therefore no contractual liability will arise. What remains is to cancel the contract(16). However, if the debtor participates in his mistake with the force majeure, then he is required to pay the full compensation. In this case, there is no room for distributing responsibility here (because the force majeure is not a person who can be held responsible for part of the compensation

Noting that the provision contained in Article (211) is not part of the public order, and therefore the contracting parties may agree that the debtor shall bear the consequences of force majeure, in accordance with what we will explain later.(17

The second requirement

Force majeure conditions

In order for the spread of the Corona virus to be considered a foreign cause that results in the termination of the contract and thus the debtor's release from his obligations towards the creditor, the conditions for force majeure stipulated by law must be met, which are represented by two important conditions, which are that it cannot be expected and that its payment is impossible, which leads to an impossibility in implementation, and the impossibility may be Legal, such as the issuance of a decision by the competent authority that makes the implementation of the obligation impossible (18), and the impossibility may be physical, such as the destruction of the contracted item before delivering it. If these two conditions are met in the event of the spread of the virus, it is considered a force majeure that requires the cancellation of obligations through termination of the contract due to the impossibility of implementation for the foreign reason. However, if it is not met With these two conditions, we are not faced with force majeure, so the two conditions must be explained, and we will explain them as follows

First: the condition of unpredictability

The availability of one of the two conditions without the other is not considered a justification for applying the provisions of force majeure. The two conditions must be coupled together, and therefore force majeure must be unforeseen, not only by the ordinary person, but also by the careful or alert person, that is, a person who is accustomed to being careful and alert is placed in the same circumstances. However, if it was possible for the debtor to expect it and did not take the necessary precautions, he is considered negligent and must guarantee, as the standard is objective and not personal (19)

The meaning of unpredictability does not mean that the accident did not occur previously, as such a matter is not possible. Even if the accident is known and occurs from time to time, such as war, it must not be expected in the circumstances of this particular case in order for it to be considered force majeure (20), so if its occurrence is periodic on periodic dates If it is unstable and distant, it is not considered a force majeure, such as cotton worms and floods, if it is possible to anticipate its occurrence (21), but if it is not possible to anticipate it, it falls within the concept of force majeure The unexpectedness must be absolute and not relative, and force majeure is required to occur rarely, as there is no special reason to expect it. As for the time of the required unexpectedness, the event must be unexpected to occur at the time of contracting and not after it or before the time of implementation

Second: The condition that paying it is impossible

Force majeure must be impossible to pay, so it is not considered force majeure if the debtor can pay it, even if that is by making high sacrifices (22) otherwise, it cannot be considered a reason for canceling the contract and forfeiting obligations whose implementation has become impossible. The issue of lack of expectation and non-payment is an important issue whose goal is to penetrate into... The debtor's will for the purpose of ensuring that he has not committed a mistake (23), and the required impossibility is absolute impossibility, whether it is a moral or material impossibility, and it is not a relative impossibility, that is, it is not specific to the debtor only, but rather it is an impossibility for anyone who is in the same position as the debtor, and the required standard is the standard of the alert man.(24)

Some may add a third condition to force majeure, which is that the force majeure must be external and has nothing to do with the will of the debtor for its occurrence, and Article (211) of the Iraqi Civil Code has referred to this condition indirectly by saying: "If the person proves that the damage arose from a foreign cause beyond "If the debtor was the cause of this accident, it is considered a violation of the principle of good faith that must be present in contracts. Therefore, the debtor is not entitled to the protection of the law and to be exempted from implementing the contract. On the contrary, the creditor is the one who deserves the protection of the law from the bad faith debtor as

a matter of Achieving justice and fairness, and thus the obligation does not expire, and because it is no longer possible to implement the obligation in kind, he must implement the obligation by paying compensation to the creditor (performance in return

Some jurisprudence holds that before examining the conditions for the impossibility of implementation due to a communicable disease, the impossibility must have occurred after the emergence of the obligation. Therefore, it must first be confirmed that the resulting obligation was possible to implement from the beginning, because the impossibility does not apply to something that is not possible to implement in the first place, and the contract that It is considered invalid due to the absence of a place, so it is not permissible to say that it is impossible to implement an obligation that was not created in the first place.(25

Based on the explanation of force majeure that we have reviewed, can the spread of the Covid-19 virus be considered one of its applications

With reference to the conditions of force majeure, which are, in short, that they are unexpected and cannot be paid, and are the reason for the impossibility of implementing the obligation, and in view of the incident of the spread of the virus, which has turned into a pandemic that has spread throughout the country, the infection with the virus is no longer limited to a certain number of people, but rather has affected the human race in most cases. Countries of the world, if not all of them The issue of anticipating the emergence of a virus or epidemic, as we mentioned previously, is not limited to the fact that it has not occurred previously. Many epidemics have occurred, especially in previous years. The appearance of the SARS virus in 2003 was a source of concern in various countries, in addition to the emergence of the H1n1 virus and finally in 2003. 2014, when the Ebola virus appeared. However, the emergence of the (Covid 19) virus had a peculiarity not only in that it was not expected and that the accompanying results were not expected, which is essentially the imposition of a curfew and forced physical social distancing, which led to workers in various fields being confined to their homes and thus disrupting... Many commercial and industrial sectors, and this was reflected in the implementation of contractual obligations.(26

Force majeure provisions cannot be applied except in places where this pandemic has spread and been actually affected by it, as it cannot be argued that there is an impossibility in implementing the obligation due to the outbreak of the pandemic in neighboring countries unless it actually affects the implementation of the contractual obligations of the debtor due to their connection to it in some way(27)And it is required that the force majeure be something that cannot be returned or paid, and this is what we see clearly in the spread of (Covid 19), as scientists have not yet found an effective treatment or vaccine that would eliminate the disease or limit its spread or its mutant strains, Any treatment can only be introduced in accordance with World Health Organization protocols and after it has completed the laboratory and clinical trial stages

From the above, we can say that the spread of the Covid-19 virus can be considered a force majeure that would release the debtor from his obligation if its implementation becomes impossible and is

beyond his control because the conditions of force majeure apply to the incident according to the prevailing circumstances, and this theory may succeed in exempting the debtor from implementing his obligation due to its becoming. Impossible, a permanent impossibility, but some may wonder what the ruling is if the spread of the virus has led to the implementation of the obligation becoming impossible for a certain period of time, as was the case with the period of time in which the virus began to spread and was accompanied by a general cessation of all aspects of life, including transportation, trade, and work, but it receded after that or Reduce the effects accompanying it, such as the partial lifting of the curfew or something else

We will try to answer this question through our evaluation of the effectiveness of the force majeure theory in responding to the spread of the virus later in this research

The second topic

Evaluating the applicability of force majeure concepts to the pandemic

The spread of this virus in Iraq resulted in the disruption of many important projects internally and externally. As a result, the Crisis Management Cell issued an order deeming this pandemic a force majeure with regard to contractual obligations, which raised jurisprudential differences on this issue between those who support the pandemic being a force majeure and those who oppose the order. He considers it an emergency circumstance. (28)

This decision considered the spread of the virus to be a force majeure for all contracts and projects starting from 2/20/2020 until the Crisis Cell issued another decision declaring the end of the Corona disease. (29)

The contracts that may be subject to force majeure may be international contracts, and these are subject in their provisions to the international agreements approved by the World Trade Organization and the general and model conditions agreed upon globally, as well as commercial customs for the purpose of unifying the effects and making the provisions clear to foreign contractors, and that the adoption of this legislation is the result of the extension of this Contracts to include more than one country (30), and contracts may be internal, meaning that all their elements are available within the framework of the state in terms of conclusion, implementation and parties, and therefore they are subject to internal laws, which is what we are talking about

The Iraqi legislator referred to the foreign reason as a reason that leads to the impossibility of implementing the obligation and extinguishes the responsibility of the debtor (31), and it had an important effect, which is to terminate the contract and return the two parties to what they were before the contract was concluded. One of the most important types of foreign reason is that which was due to force majeure, and we find that the legislator has This was stipulated in a number of legal articles within various laws, such as the Iraqi Civil Code, the Trade Law, the Transportation Law, the Implementation Law, and others, as well as the Crisis Cell decision that was issued on the occasion of the spread of the virus

The Iraqi legislator dealt with force majeure as one of the forms of foreign cause that requires termination of the contract in many legal texts included in various laws. This is what is known as the traditional concept, which the legislator explicitly adopted in contractual obligations. We find that the legislator has stipulated force majeure in other places, but it did not its occurrence results in the contract being terminated and the debtor being released from his obligation, which leads us to believe that the Iraqi legislator has adopted another additional concept of force majeure without explicitly declaring it, and this is what we will address successively through the following three demands

The first requirement

The traditional concept of force majeure and Iraqi legislation

There are many texts in Iraqi legislation that confirm that the Iraqi legislator has adopted the traditional concept of interpreting force majeure, and it shares this position with many Arab legislations, whose scope of application is to internal or local contractual obligations, all of whose elements are within the country, and the content of this It is understood that the effect that results from the occurrence of force majeure under its conditions (lack of expectation and inability to pay) is the termination of the contract by law and the debtor's release from carrying out his obligation if he proves that the failure to implement the obligation was due to an external cause that he has no control over, whether his obligation was to achieve an objective or to exercise care, and it must be an absolute impossibility. According to this concept of force majeure, it is described as a permanent force majeure that cannot be eliminated in the future, that is, it remains permanently and thus leads to a permanent impossibility in implementing the obligation, which results in the cancellation of the contract and the absence of the debtor's responsibility

Texts contained in the Iraqi Civil Code

Among those texts is the text of Article (168), which stipulates: "If it becomes impossible for the person obligated to the contract to implement the obligation in kind, he will be sentenced to compensation for not fulfilling his obligation unless it is proven that the impossibility of implementation has arisen from a foreign cause in which he has no hand. The same ruling applies if the obligor delays in fulfilling his obligation." implementation of his commitment

Article (179/1) of it stipulates: "If the contractual matter dies in the negotiations while it is in the hands of its owner, the contract is annulled whether the loss occurred due to his action or by force majeure, and he must return the consideration he received to its owner

Article (211) also stipulates that "if a person proves that the damage arose from a foreign cause in which he had no control, such as a celestial calamity, a sudden accident, force majeure, the act of a third party, or the fault of the injured person, he is not obligated to provide insurance unless there is a text or agreement to the contrary

Article 204 also stipulates: "First: The depositary shall be responsible for the goods deposited in a manner not exceeding the value estimated by the depositor

Second: The depositary shall not be liable for the loss or damage that befalls the goods if this arises from force majeure or from the nature of the goods or how they are packed

As for Article (259/1), it indicates the possibility of agreeing that the debtor will bear responsibility even if force majeure occurs, as it states: "It is permissible to agree that the debtor will bear the consequences...and force majeure

The second paragraph of Article (290) came to clarify that the condition present in the contract does not have "...a retroactive effect if the implementation of the obligation becomes impossible before the condition is fulfilled due to a foreign cause that the debtor has no control over

The legislator cut off the debate that the debtor's obligation is terminated if it becomes impossible, in Article (425), which stipulates: "The obligation is terminated if the debtor proves that fulfilling it has become impossible for him for a foreign reason in which he has no control

The legislator considered that one of the impediments to revoking a gift is the destruction of the gifted item in the hands of the donee for a foreign reason, which is what is stipulated in Article (623/F), where it states: "It is prohibited to revoke a gift: and - that the gifted item perishes in the hands of the donee, whether the destruction was due to his act or Because of a foreign cause or because of use, if some of it is destroyed, it is permissible to take back the rest. Likewise, if the donee changes the gifted item in a way that changes its name, like wheat if it is ground into fine flour

Within the scope of the obligation to enable the obligor to reap the fruits, it is waived if the fruits are destroyed before they are harvested by a force majeure, as indicated in Article (837), which states: "If the orchard does not bear fruit, or the fruit is damaged by a force majeure before it is harvested, the obligation is waived

The legislator permitted the obligor to pay his responsibility for any malfunction or defect that befalls the facility if it is due to force majeure, as stipulated in Article (899/2) by saying, "The obligor may pay his responsibility for any malfunction or defect that befalls the facility that exceeds the normal duration or its seriousness if it is proven." This is due to a force majeure outside the administration of the facility, or to a sudden accident that occurred in this administration without any vigilant, "...incapable administration being able to anticipate its occurrence or ward off its consequences

The law also gives the mortgagee the right to pay his responsibility for the destruction of the mortgaged property if that is due to a foreign cause, and this is clear from Article (1338/1) which stipulates: "1- The mortgagee must exert himself in preserving the mortgaged property...and he is responsible for its destruction in whole or in part. Unless it is proven that this is due to a foreign cause in which he had no hand

Texts contained in Transport Law No. (80) of 1983

The Transport Law contains several articles that confirm that force majeure leads to the expiration of the obligation to ensure the safety of the passenger, which is considered an obligation as a result of

(32). If the carrier proves that the damage to the passenger is a result of force majeure, as is the case when a passenger is exposed to some damage, then the carrier can To get rid of responsibility if he proves that force majeure, which he could not anticipate or prevent, was the cause of that damage. ((33

The legislator also required that the debtor's obligation to pay the fare be dropped if the transported items were destroyed by force majeure. If transportation was disrupted due to force majeure, (34) this would be a reason for terminating the transportation contract, with the carrier retaining his right to the expenses he spent on shipping and unloading the item. (35

In addition, the legislator allowed the carrier or agent to pay his responsibility for the thing that was destroyed by force majeure, and therefore there is no warranty on him. (36) By reviewing these legal texts contained in Iraqi law, we can say that the debtor's release from his obligation in accordance with what the law stipulated is subject to the realization of force majeure on its terms, and the applications stated in the texts mentioned above are an explicit permit for the legislator to adopt the idea of extinguishing the obligation due to the impossibility of its permanent implementation outside of The will of the debtor, which he did not expect or expect to pay

The second requirement

The modern concept of force majeure in Iraqi legislation

The content of this concept is that the type of force majeure must be determined in view of the type of impossibility it causes. If the impossibility of implementing the obligation continues for a certain period of time, and it is possible to resume the implementation of the contract when it disappears, as the date of its disappearance is looked at. If there are signs indicating that it will disappear in the future, the resulting effect will be Suspending the implementation of the contract and then resuming its effectiveness after the return of normal conditions and the disappearance of the temporary force majeure. However, if the impossibility continues permanently and there is no hope of its disappearance, and therefore the implementation of the obligation is permanently impossible, which results in rescission of the contract and the debtor being exempted from paying compensation. Accordingly, there are two types of force. Cairo and not just one type, they are permanent force majeure and temporary force majeure

If the debtor is unable to implement his obligation for a foreign reason beyond his control and this is proven and the impossibility of implementation is for a specific period of time, the resulting effect is to grant the debtor an additional period to implement his obligation and the period of validity of the impossibility due to the foreign reason is considered a period of cessation, and despite the fact that the Iraqi legislator has adopted the traditional concept of effect The consequence of the occurrence of force majeure, which is the termination of the contract in accordance with the law and the debtor being exempted from bearing the consequences of failure to implement the obligation is clearly stated in Articles (168) and (425) of the Iraqi Civil Code. However, we find that the Iraqi

legislator has established other provisions in some special texts in which they are adopted. The -concept of temporary force majeure, as we will see

Iraqi Trade Law No. (30) of 1984, amended

The provisions regarding force majeure were mentioned in several articles, including Article (112), which states: "First: If a force majeure prevents the submission of the transfer or the filing of the protest within the dates specified for that, then these dates shall be extended

Second: The bearer must notify, without delay, the person to whom the transfer is made of force majeure, and must record this notification dated and signed by him in the transfer or in the paper attached to it, and the notifications shall be sequenced in accordance with Article (104) of this law

Third: After the disappearance of force majeure, the bearer must submit the transfer for acceptance or payment without delay, and then file a protest when necessary

Fourth: If force majeure continues for more than thirty days, calculated from the due date, recourse may be made to the obligors without the need to submit a transfer or file a protest, unless the right of recourse is suspended for a period longer than that by law

Fifth: If the transfer is due for payment upon sight or after a certain period of sight, the thirty-day period shall apply from the date on which the bearer notified the person to whom the transfer was endorsed of force majeure, if this date occurred before the end of the deadlines for submitting the transfer. The period of sighting shall be increased to the thirty-day period if the transfer is due for payment after a certain period of sighting

Sixth: Matters related to the person carrying the transfer, the person assigned to submit it, or making a protest are not considered force majeure

Article (171) of it states: "First: If a force majeure prevents the presentation of the check or making a protest or anything that takes its place on the specified dates, then it shall extend until the end of the force majeureSecond: The bearer must notify without delay the person to whom the check is endorsed of the force majeure and must record this notification, dated and signed by him, on the check or on the paper attached to it. The notifications shall be sequenced in accordance with Article (104) of this law

Third: After the disappearance of force majeure, the bearer must present the check for payment without delay, then file a protest or something that takes its place if necessary

Fourth: If the force majeure continues for more than fifteen days, calculated from the date on which the bearer notified the person to whom the check was endorsed of the occurrence of the force majeure, and if this date occurred before the expiration of the deadline for presenting the check, it is permissible to revert to the obligors without the need to present the check or file a protest or anything like that. It takes its place unless the right of recourse is suspended for a longer period than that in accordance with a law

Fifth: Matters related to the person holding the check, the person who appointed him to present

it, or the filing of a protest are not considered force majeure

Implementation Law No. (45) of 1980

The law requires extending the period for objection if a force majeure occurs that would prevent the debtor from objecting within the legally prescribed period, as the law stipulates: "If what is required to be executed is a negotiable commercial paper or a bond containing an acknowledgment of a debt mentioned in Article 14 of this law, it shall be taken into account after serving a memorandum."

News of implementation: -..... Fifth - The debtor who was unable to object to implementation within the prescribed period due to force majeure, a sudden accident, or emergency circumstances, may submit his objection to the notary executor until the day the debt is collected, and then the notary executor may decide to accept or reject the objection. ". (37

We notice from the text above that the Iraqi legislator has provided another effect for the impossibility of implementing an obligation for a foreign reason that the debtor has no control over, which is granting the debtor an additional period to implement the obligation if the impossibility of implementation continues for a specific period of time and this does not affect the implementation of the obligation and the resumption of its implementation after the expiration of the period. Stopping and after the disappearance of the foreign reason that led to this stoppage, the judicial executor has discretionary authority to consider the reason for stopping as force majeure that requires granting the debtor a deadline for implementation. (38

Controls of government contracts implementation instructions No. 2 of 2014

It is noted that the Iraqi legislator has adopted the modern concept of force majeure in contracts concluded by the state with investors or contractors, and this is clear through the controls of the Government Contracts Implementation Instructions No. 2 of 2014

Controls No. (6) came to address the issue of stopping contracts due to the occurrence of force majeure. The contracts covered by these controls were defined as contracting contracts, supply contracts, consulting services contracts, and non-consulting services contracts. These controls clearly stated that one of the reasons for stopping contracts is the imposition of a curfew. (39), The order to stop the implementation of contracts is issued based on a specific mechanism represented by a request submitted by one of the contracting parties. Either the beneficiary party or the other contractor, it is submitted to the contracting party for a decision on it. The contractor must submit a written request within (7) of the date the reason for stopping arose, and it must The contracting authority issues its decision within 14 days, considering it an urgent matter, and the contractor must begin implementing the contract as soon as the reason for the stoppage (40) disappears. The legislator has stipulated that if the reason for the stoppage is force majeure, the contracting party must pay the contractor his financial dues for the contractual obligations that have been accomplished. Work will resume after the disappearance of the force majeure, if that is possible. However, if that is not possible, the contract will be terminated by agreement of both parties due to the impossibility of implementation due to the force majeure. The stoppage period is considered a conclusive period for

the original contract period and not an extension period. On this basis, late fines and extension of letters of guarantee will be calculated. (41

Based on what was mentioned above, the imposition of a curfew due to the outbreak of the Corona epidemic is considered one of the reasons for stopping, considering it a force majeure. This was confirmed by the decision issued by the Court Order Committee No. 55 of 2020, which considered the Corona pandemic a force majeure for all projects and contracts without exception from 2/2020. /20 Until the Iraqi Ministry of Health announced the elimination of the epidemic, the decision did not require submitting a request to stop the contract, which in our opinion is a sound approach, as the legislator in the instructions for implementing government contracts did not require the request to be submitted from the contractor only, but rather the one requesting the stop could be the beneficiary party and the contracting party is Whoever decides on the matter, and there is nothing in the law that prevents the competent authority from issuing a stop order when there are serious reasons for doing so. The Supreme Committee for Health and National Safety issued its Resolution No. 117 of 2020 in its first session of the year 2021, which amended its previous decision to explicitly stipulate that: The Coronavirus pandemic is considered a temporary force majeure for supply and contracting contracts that were affected by the pandemic, starting from 2/20/2020 until 12/5/2020, provided that no financial impact results on both parties to the contract. It is noted in these instructions that the legislator has adopted a new meaning for force majeure that complements the following. In civil .law, it is temporary force majeure, according to what we saw previously

The third requirement

Evaluating the application of the concept of force majeure to the pandemic and its effects

Through our review of the concept of force majeure in Iraqi law, from the definition and conditions represented by the fact that force majeure is unexpected and not possible to pay, and if we want to investigate the extent to which these matters apply to the pandemic (virus), which was distinguished by the fact that it was unexpected and not possible to pay, whether in itself or with what accompanied it Of special effects, such as the imposition of the curfew, which led to a comprehensive halt in all sectors, including strict measures that prevent gatherings between individuals and movement, and forced people to remain in their homes, which resulted in a halt in all industrial, commercial, and other sectors, and it was not expected and the debtor could not pay it, in addition to the fact that It was not due to his action. In addition, it was general and not specific, and it led to the impossibility of implementing the obligation during the period of its spread due to the authorities imposing a curfew to prevent the spread of the virus. Whether the reason for the impossibility of implementation was the spread of the virus or its effect by imposing the curfew, it did not lead to the impossibility of implementing the obligation. Permanently for all contracts, and here we must differentiate between two assumptions. The first assumption is that force majeure is permanent in the event that the spread of the virus has led to the absolute impossibility of implementing contractual obligations in terms of

time, because they are among the contracts whose implementation is not useful, as is the case in immediate implementation contracts. In which the obligation is linked to a specific time, if it is not implemented at this time, the implementation becomes useless and useless, as is the case in the case of the wholesaler being unable to implement his contract with the retail sellers to equip them with clothes for the holiday season on the specified date, and the date is missed due to the pandemic and the imposition of the curfew, here it is. The provisions of force majeure are applied as stipulated in Articles (168), (211) and (425). Accordingly, the effects that result from considering the Corona pandemic as force majeure according to the traditional concept are

1-The first effect that results from the absolute impossibility of implementing the obligation in terms of time due to the spread of the pandemic is the expiration of the implementation of the obligation and the termination of the contract by law (42), and thus the expiration of all its consequences of real or personal insurances such as mortgages and guarantees in a consequential manner, and this also entails the debtor's discharge. Completely, meaning that no compensation will be paid for failure to implement the obligation. (43)

2-With regard to bearing the responsibility, here we must look at the contract. If the contract is binding on one side, such as a deposit contract without payment, then the one who bears the consequences of the impossibility is the creditor. However, if the contract is one of the contracts binding on two sides, such as a contract of sale or transportation, then the impossibility of implementing the debtor's obligation to fulfill his obligation due to the spread of the virus. This leads to the debtor bearing the consequences because he will not be able to ask the creditor to fulfill his obligation since he was unable to carry out what he pledged to do, so the creditor is automatically released from his obligation of legal rescission (44)

As for the other imposition (temporary force majeure), which may result due to the spread of the pandemic and the accompanying imposition of the curfew, it is the impossibility of implementing contracts and commercial and civil obligations, a partial impossibility in terms of the time of implementation, that is, a temporary impossibility, as if the agricultural land was flooded due to an unexpected flood season, resulting in the inability to The debtor must temporarily fulfill his obligations. Here, the contract is not annulled on its own, but rather it is subject to rescission. However, in contracts in which the impossibility is complete, the contract is annulled by law without the need to refer the matter to a judge or to agree between the two parties to annul the contract because there is no choice between solving the contract or Maintaining it, (45) meaning that the debtor's cessation of implementing the obligation does not affect the concluded contract, and it can be resumed at any time later after the disappearance of the force majeure. Here, the provisions of the modern theory of force majeure can be applied, which mean not canceling the contract, but rather postponing its implementation until the force majeure disappears and the normal conditions that The contract was concluded under it, as some jurisprudence says that force majeure may not, in most cases, lead to the absolute absence of the debtor's responsibility, but rather waits until the force

majeure disappears for the debtor's obligation to return.(46)

The Iraqi legislator did not stipulate this approach in the civil law despite its necessity and its adoption by many other legislations (47), although it can be said that the texts we mentioned previously are evidence of the legislator's adoption of the modern concept of undeclared force majeure contained in the commercial law and the Implementation, which included giving an additional period for the purpose of enabling the obligor to implement his obligation as another effect of force majeure, which is an effect different from the effect that results from the absolute impossibility of implementing the obligation mentioned in Articles (168) and (425), for which the legislator's direct approach is explicit in adopting the traditional concept of it. Is the legislator's approach here to establish a new meaning for force majeure

In our opinion, the Iraqi legislator has adopted the modern concept of force majeure, but he has limited it to certain forms such as those we mentioned previously, and this concept has not been generalized to contracts concluded under civil law, as they are special texts that govern certain facts, so they cannot be generalized to similar cases, and what reinforces this opinion is The Iraqi legislator adopted this modern concept when regulating the contracts concluded by the state with others, which are governed by the instructions for implementing government contracts for the year 2014, as we saw previously, and this is the same effect that was intended by the Crisis Management Cell formed by Court Order No. 55 of 2020, which issued its decision on 3/21. /2020 in paragraph (12) considering the spread of the (Covid 19) virus as a force majeure, as stated in paragraph 12 of it (considering the period of the Corona virus crisis as a force majeure for all projects and contracts starting from February 20, 2020 until the Ministry of Health announces the end of the Corona epidemic

In fact, we see that by issuing this decision, the administration intended government projects and contracts, not private law contracts, and that it did not intend the usual effect of force majeure (the impossibility of implementing the obligation), which entails cancellation of the contract, but rather considering force majeure as conclusive of the duration of the contract, and this facilitates the debtor for the purpose of implementing it. His commitment is a procedure followed when concluding government contracts, as we said, and according to the decision, it will not include contracts that were concluded after 2/20/2020, but only those that were concluded before this date and their implementation was subsequent to it or part of it was implemented before 2/20/2020, and the implementation extends until After this date, contracts concluded after this date will not be included in the decision, given that during this period the virus had spread and become expected, which negates the condition of unpredictability required to apply the provisions of force majeure

This approach, which was adopted by the Crisis Management Cell, was based on what was stated in the instructions for implementing government contracts, which stipulate that in the event of a halt in the implementation of supply contracts and consulting and non-consulting services contracts, the contractor's dues for the completed work will be paid and the possibility of resuming work will be considered after the end of the crisis. Force majeure. The suspension period is considered a

conclusive period for the agreed upon contract period and is not an additional period. If the force majeure continues, leading to the impossibility of implementation, this will be a reason for canceling the contract.(48)

Based on the above, the effect of the spread of the virus (Covid 19) is considered a force majeure, which results in the suspension period being considered a conclusive period for the original contract period, and work is resumed as soon as it ends, or the contract is terminated if the force majeure continues and causes the impossibility of implementation

As for contracts that fall within the scope of private law, we do not see anything preventing the legislator from explicitly adopting the previous solution in civil law, especially since the legislator in some private texts previously considered force majeure that led to the loss of deadlines for some cases - Articles (112) and (171) of the Iraqi Trade Law referred to previously, as well as the text of Article (26) of the Iraqi Implementation Law - a reason to grant the debtor an additional period to perform his obligation, if that is possible. However, if the implementation of the obligation becomes impossible, there is no escape from canceling the contract, taking into consideration Taking into account the specificity of what has been accomplished with regard to ongoing contracts

The Federal Court of Cassation considered the spread of the Corona virus to be a force majeure, and the resulting effect was to stop the legal periods, as it stated in the decision: (49)(...One of the examples of force majeure is the spread of the Corona virus epidemic in all the world, including Iraq, and this was coupled with the lack of a vaccine. Or a medication designated for it, which has created a state of terror, fear, and panic. This has necessitated the countries of the world, including Iraq, to take a set of preventive measures to limit its spread, and one of these measures is the imposition of a comprehensive ban, as the imposition of a comprehensive ban and the resulting suspension of official working hours is considered In the world, as a result of the spread of the Corona virus, there is force majeure, and one of the effects that resulted from it is the suspension of the legal periods, .(including the period for appealing judgments and decisions, including the discriminatory appeal

The Supreme Committee for National Health and Safety agreed, in the twenty-first session held on December 2, 2020, to consider the period of the Corona virus crisis as force majeure for all projects .and contracts, starting from February 20, 2020 until the date of issuance of this decision

The Supreme Committee granted the Minister of Planning the authority to make exceptions for special cases, provided that requests for exceptions must be submitted until the end of official working hours on Sunday, February 28, 2021.(50

We mentioned previously that the Supreme Committee has amended its decision to include only supply and contracting contracts, and the exception is based on a request submitted by one of the contractors to a specialized committee formed in the Ministry of Planning whose task is to decide on the submitted requests

The bottom line is that the Iraqi legislator has relied primarily on the traditional concept of force majeure as a general rule governing contracts that fall within the scope of private law, and adopted

the modern concept in special cases of transactions that fall within the scope of private law, in addition to adopting it in government contracts, as we have seen

Conclusion

Through our review of the legal texts contained in the Iraqi legislation related to the subject and comparing the resulting effects, we can state a set of results and recommendations according to the following

1-There is no comprehensive definition of force majeure that covers all forms and situations that occur in practical life. The Iraqi legislator did not set a clear meaning for it, and perhaps this approach of the legislator is due to not considering its provisions as part of the public order, so it is permissible for both parties to agree to violate it, and therefore the will of the contracting parties plays a role. A significant impact on the arrangement of the effects of force majeure or not, so both parties may agree not to apply the legal text and move towards demarcating their contractual relationship consensually with regard to force majeure. The judge does not decide to terminate the contract unless one of the parties resorts to him requesting that

2-The occurrence of force majeure would sever the causal relationship between the error and the damage incurred, as the contractor did not intervene in its occurrence, and it is a reason for his right to request to be exempted from bearing the resulting responsibility, and thus the contract is terminated according to the law without the contractor being obligated to pay compensation to the other party

3-Force majeure must lead to an absolute and permanent impossibility in order for the contract to be terminated, meaning that the implementation of the obligation has become permanently impossible

4-The Iraqi Civil Law adopted the traditional concept of force majeure, which is that legal rescission results in the impossibility of implementation without distinguishing between whether this impossibility is temporary or permanent

5-The Iraqi legislator took into account the modern concept of force majeure in the instructions for implementing government contracts, which results in the temporary impossibility of implementing the contract that the implementation of the contract is suspended until the force majeure disappears, and then the contract is resumed after that

6-The Crisis Cell's directive is to consider the Corona pandemic as a force majeure that would halt the implementation of contracts until they are eliminated

7-The Iraqi legislator should amend Article 425 of the Iraqi Civil Code, which is related to force majeure, to include all forms that could occur, such as those that occurred due to the pandemic, which include the form of permanent force majeure and temporary force majeure. It is possible to propose an amendment to this article as follows

The obligation shall be extinguished if the debtor proves that fulfilling it has become impossible"

for a foreign reason in which he has no control. The implementation of the obligation shall be suspended if the impossibility is temporary until the reason for the impossibility disappears, if “stopping is feasible

8-We can define the cessation of the contract due to temporary force majeure as (it is the interruption of the contract’s validity for a specific period of time due to a foreign cause beyond the control of the two parties to the contract that makes its implementation impossible for a specific period such that it is impossible to claim the rights resulting from the contract. The cessation period is not counted from the original term of the contract, but is The period that is calculated is the period before the cessation and the period after it, and the implementation of the contract resumes as soon as the foreign cause disappears

Research margins

- 1-Some may consider that the word social distancing is an inappropriate word and that the appropriate word is physical or .physical distancing
- 2-See the text of Article (150) of the amended Iraqi Civil Law No. 40 of 1951, which states: “The contract must be implemented “in accordance with what it contains and in a manner consistent with what good faith requires
- 3-See the text of Article (145/1) of the amended Iraqi Civil Law No. 40 of 1951, which states: “If the contract is executed, it is “binding. Neither contracting party may revoke it or amend it except by virtue of a text in the law or by mutual consent
- 4-See the text of Articles (168), (211) and (425) of the amended Iraqi Civil Law No. (40) of 1951
- 5-See the text of Article (145/2) of the amended Iraqi Civil Law No. (4) of 1951
- 6-See the text of Paragraph (Second) of Article (3) of the Iraqi Health Law No. 89 of 1981
- 7-See the text of Article (44) of the Iraqi Health Law No. 89 of 1981
- 8-See, Abbas Hussein Mughir Al-Rubaie, communicable diseases, article published on the website uobabylon.edu.iq
- 9-See, Counselor Ezzedine Al-Dinassouri and Dr. Abdul Hamid Al-Shawarbi, Civil Liability in the Light of Jurisprudence and- Judiciary, Part 1, Mansha’at Al-Ma’arif, Alexandria, 2004, p. 288
- 10-See, Dr. Abdul Majeed Al-Hakim, Abdul Baqi Al-Bakri, and Muhammad Taha Al-Bashir, Al-Wajeez in the Theory of Commitment in Iraqi Civil Law, Part One, Sources of Commitment, Legal Library, Baghdad, without year, p. 241
- 11-Some may distinguish between heavenly calamity and force majeure, and consider that heavenly calamity is an external and not an internal incident, and humans have nothing to do with its occurrence or occurrence, whether he expected it or not. For more details, see, Dr. Yassin Muhammad Al-Jubouri, Al-Mabsoot in Explanation of Civil Law, Part 1, Volume One, Section Three, Wael Publishing House, Amman, 2002, p. 376
- 12-See, Dr. Abdul Majeed Al-Hakim, Abdul Baqi Al-Bakri, and Muhammad Taha Al-Bashir, previous source, p. 241
- Some jurisprudence may mention other differences between force majeure and a sudden accident on the basis that force
- 13-majeure makes the impossibility absolute, while a sudden accident makes the impossibility relative. Some say that force majeure is what cannot be paid, while a sudden accident is what cannot be expected. For more For details, see Dr. Samir Abdel-Sayed Tanago, Sources of Commitment, Manashet Al-Maaref, Alexandria, 2005, p. 252
- 14-See, Ismat Abdel Majeed Bakr, previous source, p. 223. Also see, Dr. Muhammad Sabri Al-Saadi, Sources of Commitment, First Section, Dar Al-Kitab Al-Hadith, Cairo, 2003, p. 117
- 15-See in the same sense, Dr. Anwar Sultan, Sources of Commitment in Jordanian Civil Law, a Comparative Study with Islamic Jurisprudence, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2007, p. 338
- 16-See, Dr. Abdul Razzaq Ahmed Al-Sanhouri, Al-Wajeez in the General Theory of Commitment, edited by Counselor Ahmed Medhat Al-Marghani, Mansha’at Al-Ma’arif, Alexandria, 2004, p. 297
- 17-See the text of Article (146/1), which stipulates: “If the contract is executed, it shall be binding, and neither party may withdraw from it nor amend it except in accordance with a provision of the law or by mutual consent.” Article (211) also stipulates

that "if the person proves that harm has occurred It arises from a foreign cause that he has no control over, such as a celestial disaster, a sudden accident, force majeure, the act of a third party, or the fault of the injured party. The injured person is not obligated to guarantee unless there is a stipulation or agreement to the contrary

18-See, Prof. Dr. Hassan Ali Al-Dhanoun and Dr. Muhammad Saeed Al-Rahu, *Al-Wajiz in the General Theory of Commitment*, Part 2, Provisions of Commitment, Wael Publishing House, Amman, 2004, p. 292

19-See, Abdel-Razzaq Ahmed Al-Sanhouri, *Al-Wasit fi Sharh Al-Nawi Civil Law*, Volume Two, Part One, 3rd Edition, Nahdet Misr Press, Egypt, 2011, p. 878

20-See Dr. Samir Abdel Sayed Tanago, previous source, p. 252

21-See, Dr. Ismat Abdel Majeed Bakr, previous source, p. 223

22-See the previous source, p. 223

23-See, Dr. Adel Jabri Muhammad Habib, the legal concept of the causal link and its implications in distributing the burden of civil liability, *Dar Al-Fikr Al-Jami'i*, Alexandria, 2005, p. 388

24-See, Dr. Anwar Sultan, previous source, p. 339

25-See, Dr. Abdul Qadir Al-Far, *Ahkam Al-Iltizam*, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2005, p. 213. Also see, Prof. Dr. Hassan Ali Al-Dhanoun and Dr. Muhammad Saeed Al-Rahu, previous source, p. 291

26-It is worth noting that China considered this event a force majeure and issued certificates to that effect to companies operating in China as a result of creditors filing lawsuits to demand compensation for failure to implement obligations, which caused huge losses

27-See, Makar Sanaa, The impact of the Covid-19 pandemic on the stability of transactions, research published in the *Journal of Masarat in Legal Research and Studies*, Issue (11), Morocco, 2020, p. 271

28-See, the decisions of the Crisis Cell formed pursuant to Diwani Order (55) of 2020 issued on March 21, 2020

29-We will discuss this decision elsewhere in the research

30-See, Olidi Moussa and Kadri Abdel-Razzaq, *The Impact of Force Majeure on International Contracts*, Master's thesis submitted to the Council of the Faculty of Law and Political Science at Ouarqal Merbah Kasdi University, Algeria, 2017-2018, p. 2

31-See, Ismat Abdel Majeed Bakr, *Sources of Commitment in Civil Law*, Baghdad Legal Library, 2007, p. 219

32-See, Dr. Hassan Ali Al-Dhanoun, *Al-Mabsoot in Contractual Liability*, The Times Printing and Publishing Company, Baghdad, without year of publication, p. 118

33-See the text of Article (11) of the Iraqi Transport Law No. (80) of 1983, which states: "The carrier may not pay his responsibility for compensation for damage that befalls the passenger unless he proves that this damage is due to the passenger's fault or to force majeure resulting from factors." External factors that did not emanate from the carrier's circle of activity and whose "effects could not have been expected or avoided

Consider the text of Article (40) of the Iraqi Transport Law, which states: "The carrier is not entitled to the fee for transporting "34-any of the items he transports that are destroyed by force majeure

35-See the text of Article (42) of the same law, which states: "If force majeure prevents the commencement or continuation of "transportation, the carrier may claim the expenses of shipping and unloading the item and other necessary expenses

36-See the text of Article (46/First) of the Iraqi Transport Law: "The carrier guarantees the safety of the thing during the implementation of the transport contract and is responsible for the damages that befall it. He may not deny his responsibility for the loss or damage of the thing or the delay in delivering it except by proving force majeure or the defect." In the matter itself, or the mistake of the sender or the recipient," as well as the text (79/Second), which states, "Secondly - the agent shall be responsible from the time he receives the thing to be transported about its total or partial loss, damage, or delay in delivering it. It is not permissible to deny this responsibility except by proving force majeure, an intrinsic defect in the thing, or the fault of the principal or the "addressee

37-See the text of Article (26) of the Iraqi Implementation Law No. (45) of 1980

38-The decision of the justice executor is subject to appeal through grievance and cassation. For more details, see Dr. Saeed .Mubarak, *Provisions of Execution Law No. 45 of 1980*, Baghdad University Publications - College of Law, Baghdad, 1989, p. 81

39-See (First / 2 / C) of Controls No. (6) regarding instructions for implementing government contracts No. 2 of 2014 issued by the Ministry of Planning, revised edition, July 2017, published in the Iraqi Gazette, Issue (4325

40-Suspension in government contracts is defined as "the measures taken by the contracting entity to oblige its contractors, by

a written order, to stop the implementation of contractual obligations for a specific period, based on the request of the concerned party in the contracting entity or the contracting party with it, for reasons that require this, taking into account the mechanism "approved in these controls

41-See (First /4/B,C,D) of the legislation referred to above

42-Legally annulling the contract means dissolving the contractual bond without the need for the intervention of the judiciary to obtain a ruling of annulment or an agreement to annul it. If the contract is annulled, no compensation will result from the debtor. For more details, see, Muwaffaq Al-Bayati, Sharh Al-Mutun, First Section, Al-Sanhouri Library, Baghdad, 2012, p. 220

43-See, Abdul Qadir Al-Far, previous source, p. 214

44-An example of this is in the sales contract. If the sold item is destroyed before delivery by force majeure, the debtor bears the consequences of that, and the creditor (buyer) does not pay the cash consideration. If he pays it, he has the right to recover it. Unless the seller excuses the buyer to come to receive it and he does not show up at the specified time, and then the sold item is destroyed, the creditor (buyer) bears the consequences of the loss

45-See, Dr. Adnan Ibrahim Al-Sarhan and Dr. Nouri Hamad Khater, Explanation of Civil Law, Sources of Personal Rights (Obligations), Dar Al-Thaqafa for Publishing and Distribution, Amman, 2000, p. 310

46-See, Dr. Muhammad Abdullah Al-Dulaimi, The General Theory of Commitment, Part One, Sources of Commitment, Open - University Publications, Tripoli, 1998, p. 222

47-See Article 247 of the Jordanian Civil Law No. 43 of 1976, which states: "In contracts binding on two parties, if a force majeure occurs that makes the implementation of the obligation impossible, the corresponding obligation shall expire and the contract shall be canceled on its own. If the impossibility is partial, what corresponds to the impossible part shall expire, and such impossibility shall expire." Partial and temporary impossibility in continuous contracts, and in both, the creditor may terminate the "contract provided that the debtor knows

48-See, Controls No. (6) Stopping and Extending Contracting Works, Equipment Contracts, Consulting Services Contracts, and Non-Consulting Services Contracts issued by the Ministry of Planning, The Iraqi Gazette - Issue No. 4325, Controls Instructions for (Implementing Government Contracts No. 2 of 2014 (revised edition - July 2017

49-Decision of the General Authority of the Federal Court of Cassation No. 14/General Authority/2020

50-Statement by the General Secretariat of the Council of Ministers, on December 5, 2020

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2-Dr. Hassan Ali Al-Dhanoun, Al-Mabsoot in Contractual Liability, The Times Printing and Publishing Company, Baghdad, without a year of publication

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8-Dr. Abdel Razzaq Ahmed Al-Sanhouri, Al-Wasit fi Explanation of the New Civil Law, First Volume 1, The Theory of Commitment in General, Sources of Commitment, 3rd edition, Nahdet Misr Press, 2011

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