

Tort Liability Resulted from Negligence in Infectious Diseases under the Iraqi Legal System, Coronavirus (COVID-19) as an Example

Arez Mohammed Sediq Othman

Department of Law, College of Law, University of Sulaimani, Sulaimaniya, Iraq

Email: arez.sediq@univsul.edu.iq

Abstract

Despite the fact that the issue of Coronavirus pandemic is quite new to Iraq and the emergency response of public authorities might be inefficient in many ways, the application of legal rules is vital to prevent further spread of the virus and to provide a legal basis for compensation based on a tort liability of the infected patient toward others. States are undergone difficult circumstances and crises but priority will remain for the rule of law and public well-being should always be prevailed. Given the fact that public authorities are in a state of shock and trial procedures against the infected patient who transmit the disease to other might be challenging or even inadmissible at this stage, the paper argues that in response to the widespread suffering and death that Coronavirus has caused to many, the court should allow the victim to held the person who transmitted the disease responsible with tort liability and be able to seek fair compensation. Further, it would also argue that awareness raising is not the only solution to prevent the spread of the virus, infected patients shall be held responsible as a way to enhance precaution mechanisms. The paper will focus on tort liability of the infected negligent person in case he or she transmit the virus to others and caused physical or moral injuries under the Iraqi legal system.

المخلص:

على الرغم من حقيقة أن قضية الفيروس كورونا جديدة تمامًا على العراق وأن الاستجابة الطارئة للسلطات العامة قد تكون غير فعالة في نواح كثيرة ، فإن تطبيق القواعد القانونية أمر حيوي لمنع المزيد من انتشار الفيروس ولتوفير أساس قانوني للتعويض على أساس المسؤولية التقصيرية للمريض المصاب تجاه الآخرين. تمر الدول بظروف وأزمات صعبة ولكن الأولوية ستبقى لسيادة القانون ويجب أن تسود الرفاهية العامة. بالنظر إلى حقيقة أن السلطات العامة في حالة صدمة وإجراءات المحاكمة ضد المريض المصاب الذي ينقل المرض إلى الآخر قد يكون تحديًا أو حتى غير مقبول في هذه المرحلة ، تناقش هذا البحث بأنه استجابة للمعاناة والموت الواسع النطاق الذي يعاني منه فيروس كورونا تسبب للكثيرين ، يجب أن تسمح المحكمة للضحية بحمل الشخص الذي نقل المرض المسؤول عن المسؤولية التقصيرية وتكون قادرة على تعويض عادل. بالإضافة إلى ذلك، قد يناقش أيضًا بأن رفع الوعي ليس الحل الوحيد لمنع انتشار الفيروس ، حيث يتحمل المرضى المصابون المسؤولية كآلية احترازية. ستركز البحث على المسؤولية التقصيرية للشخص المهمل المصاب في حالة نقل الفيروس إلى الآخرين وتسبب في إصابات جسدية أو معنوية في ظل النظام القانوني العراقي.

پوخته :

سەر‌م‌رای ئه‌وه‌ی که ب‌لا‌وب‌ونه‌وه‌ی په‌ت‌ای جیهانی کۆرۆنا بابه‌تیک‌ی نوێیه‌ بۆ عێراق و وه‌لام‌دانه‌وه‌ی ده‌سه‌لاتی په‌یوه‌نده‌دار له‌ بارودۆخیک‌ی له‌ نا‌کاو‌ی لهم‌ جو‌رده‌ له‌ ئانه‌یه‌ له‌ ئاستی پێوستدا نه‌بێت، به‌لام‌ جیه‌جیک‌ردنی به‌نده‌ یاساییه‌کان هۆکاری سەر‌م‌کین بۆ رینگ‌گرتن له‌ زیاتر ب‌لا‌وب‌ونه‌وه‌ی په‌ت‌اکه‌ و خستنه‌رووی بنه‌ما سەر‌م‌ک‌یه‌کانی پێدانی قهره‌بوو به‌گۆڕه‌ی به‌نده‌کانی به‌رپر‌سیاریتی مه‌مه‌نی که سەر‌چاوه‌ده‌گریت له‌ که‌مه‌ترخه‌می که‌سی توش‌بوو به‌ فایروسی گوازاراوه‌ بۆ که‌سانی به‌رامبه‌ر. سەر‌باری ئه‌وه‌ی که ده‌وله‌ت له‌ بارودۆخیک‌ی ئاوه‌هادا به‌ کاتیک‌ی سه‌ختدا تێپه‌ر ده‌بێت، جیه‌جیک‌ردنی یاسا و پاراستنی به‌رژم‌وه‌ندی گشتی پێوسته‌ کاری له‌پێشینه‌ی ده‌زگا په‌یوه‌نده‌داره‌کان بێت. سەر‌م‌رای سەر‌قالب‌ونی ده‌وله‌ت به‌ رینگ‌گرتن له‌ تهنه‌مه‌کردنی فایروسی کۆرۆنا که واده‌کات لێپێچینه‌وه‌ له‌و که‌سانه‌ی که هه‌ل‌گری فایروسه‌که‌ن و هۆکارن بۆ گواستنه‌وه‌ی کاریکی نه‌سته‌م بێت له‌لایه‌ن دادگا‌کانه‌وه‌، ئهم‌ توێژینه‌وه‌یه‌ تیشک ده‌خاته‌ سەر‌ ئه‌وه‌ی که وه‌ک وه‌لام‌ دانومه‌یه‌ک بۆ ئه‌و زیانه‌ ماددی و مه‌عه‌وه‌ی و گیانیانه‌ی که به‌هۆی فایروسی کۆرۆناوه‌ دروست ده‌بن بۆ که‌سی نه‌خۆش و کومه‌لگا به‌ گشتی، دادگا پێوسته‌ رینگ‌ ب‌دات به‌ که‌سی زه‌رم‌مه‌ند که دا‌وی قهره‌بوو بکات له‌و که‌سه‌ی که هۆکار بووه‌ بۆ گواستنه‌وه‌ی فایروسه‌که‌ له‌ ژێر به‌رپر‌سیاریتی که‌مه‌ترخه‌می و ناچار‌کردنی به‌ پێدانی قهره‌بوو. هه‌وه‌ها ئهم‌ توێژینه‌وه‌یه‌ ئه‌وه‌ دو‌یات ئه‌کاته‌وه‌ که تهنه‌ا ب‌لا‌و‌کردنه‌وه‌ی هۆشیاری تهن‌دروستی به‌س نیه‌ بۆ رینگ‌گرتن لهم‌ فایروسه‌، به‌ل‌کو ئه‌و که‌سانه‌ی که هۆکارن بۆ گواستنه‌وه‌ی پێوسته‌ به‌رپر‌سیاریتی یاسایی له‌ نه‌ستو بگرن. توێژینه‌وه‌که‌ باس له‌ وه‌ده‌کات که ئه‌و که‌سانه‌ی هۆکارن بۆ گواستنه‌وه‌ی نه‌خۆشیه‌ گوازاراوه‌کان له‌ده‌رنج‌امی که‌مه‌ترخه‌مییه‌وه‌ پێوسته‌ به‌رپر‌سیارین به‌رامبه‌ر که‌سی قوربانی و کومه‌لگاش بۆ هه‌موو زیانه‌ گیانی و مه‌عه‌ویه‌کان له‌ ژێر سایه‌ی سیسته‌می یاسایی عێراقیدا.

I. Introduction

On 12 December, 2019, the 2019 novel Coronavirus (2019-nCoV) emerged in Wuhan, Hubei province, China. It caused a worldwide epidemic, corona virus disease 2019 (COVID-19), in humans mainly through respiratory transmission. Within 77 days, the virus had spread to all China's 34 provinces and municipalities, infected 78,064 Chinese residents and killed 2715 of them (by 26 February, 2020). [1] The spreading of new and remerging infectious diseases has been described by the World Health Organization as a global threat that need global response. [2]. International Human Rights laws have imposed obligations on states to take necessary measures to prevent the spread of pandemic diseases. In this regard, International Covenant on Economic, Social and Cultural Rights articulates that state members shall take all the required steps to "prevention, treatment and control of epidemic, endemic, occupational and other diseases". [3] The risk of Coronavirus infection and the consequences of the spread of this disease are just now becoming apparent to everyone. Protecting public health has always been number one priority in every legal system. This fact has been stated in the Iraqi Public Health Law No.89 of 1981 when it states "Full health, physically, mentally and socially, is a right guaranteed by society to every citizen. The state must provide the requirements for every citizen to enjoy this right and to take part in building and developing society." [4] The idea of imposing tort liability of individuals who cause the transmission of infectious (contagion) diseases is new to many legal systems. For example, by looking at legal precedents under the Iraqi legal system, no cases can be seen when someone is charged or held liable for tort liability because of transmitting infectious viruses. Civil liability is established either as a result of violating the terms and conditions of contracts or as a result of a wrongful act toward other individual without having prior legal relationship. Accordingly, the Iraqi Civil Code has provided provisions on tort liability and it can be applied on the act of transmitting infectious diseases such as what we have it with Coronavirus outbreak.

Research importance

In addition to the medical consequences of Coronavirus outbreak, it is also having growing economical, legal and social implications. From the legal perspective, despite the fact that the virus is not created by human, they are main actors in transmitting and spreading the virus. Causing harm to public or certain individuals by any means would be the legal basis for civil and criminal liabilities. In this context, the paper focuses on how to hold someone liable when they are positively infected with the virus and cause transmitting it to others on purpose or as a result of negligence. While tort liability on other transmittable diseases was a focus by many researchers, no such research on tort liability resulted from transmitting Coronavirus has been done before. Conducting such research will support public authorities a better control of the outbreak of the infectious virus and the right to victims to seek compensation for the damages resulted from the infection. Tort law has been regulated within the Iraqi Civil Code No.51 of 1940; the paper would argue that provisions on tort law can be applied on any kinds of damages resulted from transmitting Coronavirus from an infected person to the victim (injured).

Research problem

Many infected patients with Coronavirus act without proper care, they do not realize that their negligent acts might hold them liable toward others; the careless behaviors of infected patients might cause a great harm to individuals or society as a whole. Establishing a link between the act of infecting others and damages resulting from such act needs a legal analysis under the light of tort liability within the Iraqi legal system.

Research outline

The paper has been divided into five sections. In the Introduction, an overview on infectious diseases and Coronavirus has been addressed. In the following part, tort liability for infectious diseases has been discussed. Followed by the issue of compensation for the damages that cause to the victim. In the fourth part, contractual liability has been explained followed by criminal liability under the Iraqi Criminal Code No.111 of 1969 in the fifth part.

Keywords: Tort liability, Coronavirus, Infectious diseases, Compensation, Criminal Liability

Infectious diseases and Coronavirus: An Overview

Infectious diseases are disorders caused by organisms like bacteria, viruses, fungi or parasites. Many organisms sleep in and on our bodies. They're normally harmless or perhaps helpful. But under certain circumstances, some organisms may cause disease. Some infectious diseases will be passed from person to person. Some are transmitted by insects or other animals. And you'll get others by consuming contaminated food or water or being exposed to organisms within the environment. Signs and symptoms vary reckoning on the organism causing the infection, but often include fever and fatigue. Mild infections may reply to rest and residential remedies, while some life-threatening infections might have hospitalization. [5] Coronaviruses are an outsized family of viruses that cause illness starting from the respiratory disease to more severe diseases like geographical region Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS). Coronavirus disease (COVID-19) could be a new strain that was revealed in 2019 and has not been previously identified in humans. it's zoonotic, meaning they're transmitted between animals and

folks. Detailed inquiries suggested that SARS was transmitted from civet cats to humans and MERS from dromedary camels to humans. Several known coronaviruses are circulating in animals that haven't yet infected humans. Common signs of infection include respiratory symptoms, cough, fever, breathing difficulties and shortness of breath. In additional severe cases, infection can cause pneumonia, severe acute respiratory syndrome, renal failure and even death. [6] According to World Health Organization, until the writing of this research, the number of infected people around the world has reached to 1133758 in 208 different countries and territories with the death number of 62784. On 11th of March 2020, World Health Organization declared coronavirus a pandemic as it spread on over 114 countries at that time. In Iraq, there are 878 cases with 56 of death (including the Kurdistan Region of Iraq with 277 cases and 3 cases of death). [7]

II. Tort liability for infectious diseases (COVID-19)

Speaking about tort liability of the infected patient with Coronavirus, we should differentiate between two situations. First, tort liability of the individual who is not positively infected with Coronavirus for not being negligent in socializing with other people in order to prevent future infection which is also aligned with obeying public authorities' instructions not to go public. Second, tort liability of individual who is positively infected with the virus. In the first case, when someone does not have the disease, the individual does not subject to any kind of civil liability as there is no damage and there is no proof that the person is infected; as a result, there is not any threat to the life of others. However, the person has legal obligation toward the instructions of public authorities to stay at home (if there is any) and an ethical obligation not to take part to any gatherings as a precaution to stop spreading the virus; one of the effective mechanisms to protect public against the spread of the virus is self-isolation and quarantine. Public authorities have to enforce this measure and, in many countries, it is backed legally. In the United States, imposing such measure is one of the duties of the government in combating communicable diseases. Under the US Federal regulations, section 361 of the Public Health Service Act (42 U.S. Code § 264), the U.S. Secretary of Health and Human Services is allowed to take necessary measures to prevent the entrance and blowout of contagious diseases from foreign countries into the United States and between states. In the Kurdistan Region of Iraq, for instance, on 15th of March 2020, the KRG's Ministry of Interior has issued statement No.18 [8] for travel ban between cities and inside cities, asking people to stay at home (self-isolation) without mentioning any punishment for disobeying it; therefore, individual has ethical obligation to stay at home and it is an obvious indication that the possibility of spreading the disease is certain and can cause harm to others. The second case is when someone is positively infected with the virus.

Tort liability of patient who is positively infected with Coronavirus

Despite the recentness of discovering the infectious Coronavirus, medical laboratories can diagnose the infected individual with it. Meaning that, whenever any individual takes the test, the result is accurate and reliable; the infected person is considered as a patient and there is a certain risk that the virus is transmitting from one to another. The legal question here is how can this person be legally responsible toward others when there is a real and certain danger to transmit the same virus to others and there is a possibility of death? In this part, the tort liability of the infected patient toward other will be discussed under the Iraqi Legal System, in particular, the Iraqi Civil Code No. 40 of 1951.

Under the Iraqi Civil Code, there are two main types of liability: tort liability and contractual liability. If parties of any contract violate the terms and condition of contract, there will be a violation to a legal obligation created under a valid contract and it will give right to the other party to ask the court to terminate the contract. [9] Contractual liability will be discoursed later with regard to contract parties' obligation when coronavirus has caused delay or violation in terms and condition of contracts. In this part, tort liability of infected person will be discussed in details.

Concerning tort liability, Iraqi legislator has dedicated 47 articles within Civil Code for tort liability under the title of unlawful acts, responsibility for personal acts (articles 186 to 232). It differentiated between tort liability (unlawful acts) against property, a person who wilfully or by trespassing has directly or indirectly caused damage to or decreased the value of the property of another person shall be liable. [10] and tort liability for personal acts. In this part, only tort liability for personal act will be discussed as Coronavirus is a disease which affects only individuals or a group of people not properties.

Article 202 of the Iraqi Civil Code provides a general provision on tort liability for personal acts and states that "Every act which is injurious to persons of killing, injuring, beating, or any other type of abuse, entails payment of damages by the perpetrator." Under the light of this article, it can be said that according to the Iraqi Civil Code, to hold someone responsible with tort liability, three main elements should be fulfilled: wrongful act, damage and causation.

First: Wrongful act

No definition of wrongful act can be found in the Iraqi Civil law; legal scholars such as Sanhoury has defined the wrongful act as a violation of an existing legal obligation; this act can be either intentional or unintentional. [11] There is no doubt that if one infected person try to transmit the virus to another person or a group of person with intention to harm them, the perpetrator will be held accountable for their wrongful act; not just civil liability but he or she might also be subject to criminal liability which will be addressed later. The main question here is that if the infected patient causes the transmission of the virus out of his or her negligence (despite certainty that he or she is infected with the virus but they do not take precautions to not cause others), would they be liable for damaging or killing the victim?

Negligence has been defined by Louis Alexander as "conduct that falls below the standard established by law for the protection of others against unreasonable risk of harm". [12] The definition of negligence or tort action cannot be found in the Iraqi Civil Code. However, legal scholars have

defined it as violating a legal duty with intention and this duty is the obligation not to cause harm to others and requiring a person to maintain a certain standard of care or due diligence; failure by that person to maintain that duty of care (therefore breaching that duty) will result in hurting the injured and cause damages to the victim. [13] In this context, Henry T. Terry has set some factors to decide whether certain acts constitute negligence or not, the factors include:

- 1) The magnitude of the danger. A risk is more likely to be unreasonable the greater it's.
- 2) The value or importance of that which is exposed to the danger, which is that the object that the law desires to safeguard, and will be called the principal object. The reasonableness of a risk means its reasonableness with regard to the principal object.
- 3) Someone who takes a risk of injuring the principal object usually does so because he has some reason of his own for such conduct, is pursuing some object of his own. this could be called the collateral object. In some cases, at least, the worth or importance of the collateral object is correctly to be considered when making a decision upon the reasonableness of the danger.
- 4) The probability that the collateral object is going to be attained by the conduct which involves risk to the principal; the utility of the danger.
- 5) The probability that the collateral object wouldn't be attained without taking the danger; the requirement of the risk. [14]

By applying these factors, transmitting Coronavirus is considered negligent act which will endanger the health of whole society. The French Civil Code has held negligent person liable for the damage he causes even without intention, it states that “Everyone is liable for the damage he causes not only by his intentional act, but also by his negligent conduct or by his imprudence”. [15] Similarly, the Supreme Court of California in *Rowland v. Christian* states that “All persons are required to use ordinary care to prevent others being injured as the result of their conduct”. [16] Further, The California Supreme Court in *John B* emphasized that: “it is a well-settled proposition of law that a person is liable if he negligently exposes another to a contagious or infectious disease. [17]

The Iraqi Civil Law provides “Every assault which causes damage other than damage expressly detailed in other articles also requires compensation”. [18] This article provides an inclusive rule for all kinds of wrongful act that causes harm to others without indicating whether the accused person has intention or not. In regard to the wrongful act by infected patient with Coronavirus is when the patient is socializing with other people with the intention to transmit the virus or not. It is worth mentioning that, here if the individual does not know whether he or she is infected or not, he does not have to be held accountable unless he or she is suspected (mostly quarantined) and instructed not to mix with other people, in this situation, there is a liability resulted from violating an obligation which is not mixing with others. Thus, for the infected patient with Coronavirus should practice the due care which an ordinary reasonable person exercises or accustomed to exercise under same or similar circumstances. [19] The hypothetical reasonable person provides an objective by which the conduct of others is judged. In law, the reasonable person is not an average person or a typical person but a composite of the community's judgment on how the standard community member should behave in situations which may pose a threat of harm to the general public. [20]

In some legal systems, negligent cannot be tolerated and even if the victim disclaims its right for compensation, the authorities shall sue perpetrators. In the context of US laws for instance, the court sometimes goes beyond compensating individuals in tort cases and considers more broadly, the interests and goals of society at large; these interests are often referred to by the courts as public policy concerns. [21] Moreover, in dealing with committing a gross negligent act, Hagstrom argued that “the responsibility for gross negligence can be compared with the non-statutory strict liability and that there are very strong constraints on where the responsibility should be placed when the party was found to be grossly negligent”. [22] In *Berner v Caldwell* case which was related to Sexual Transmitted Diseases, the Supreme Court of Alabama held that “one who knows, or should know, that he or she is infected with genital herpes is under a obligation to either abstain from sexual contact with others or, at least, to warn others of the infection before having contact with them”. [23] Moreover, within the context of the French Civil law, this liability extends to liability of wrongful acts by those who are under your supervision or custody “A person is liable not just for the damages he causes by his own act, but also for that which is caused by the acts of persons for whom he's responsible, or by things which are in his custody”. [24] In addition to that, the nature of the relationship between the infected person and the victim does not affect the liability. For example, in *State v Lankford* case in the US, a woman filed a lawsuit against her husband for the unlawful transmission of syphilis. The court responded and indicated that marital immunity from tort liability do not apply in a circumstance where a defendant is mindful of her or his infection. It states that “if the accused knew he was infected with syphilis, and his infection was unknown to his wife, the intent to communicate the disease to her by having sexual intercourse with her, may be inferred from the actual results”. [25]

Regarding the wrongful acts by officials who deal with the infected people, Article 6 of the Iraqi Civil Code provide a general principle applicable on liability in general and states that “The lawful permissibility negates liability: he who exercises his right lawfully shall not be liable on the damages resulting therefrom.” Thus, any infected doctors, nurses or any other medical or security personnel who deal with suspected people of Coronavirus will not be held liable if they cause transmitting the virus to peoples who are examined or cared by the official team unless it is proven that they knew they were infected and had intention to spread the virus.

In discussing the wrongful act resulted from negligence, the concept of “comparative negligence” is very relevant in this context. The person who will get infected with Coronavirus as a result of behaving or mixing with other individuals cannot be fully exempted from legal responsibility as his or her act might contribute to the result or even directly caused the same result paralleled with the acts of defendant.

Comparative Negligence

Both contributory and comparative negligence is quite relevant in discussing tort liability in transmitting or spreading Coronavirus. Sulaiman Marqas has defined comparative negligence as the situation when the injured party has contributed to the damage, as the result, the damage has two causes and the responsibilities will be mutually borne. [26] Engaging in high-risk behaviour, especially behaviour that could eventually lead to being infected with a dangerous, and even deadly, disease requires a certain level of care. A victim whose own act falls below the standard to protect his or her health can be partially responsible to the outcome of their contribution. There is an assumption that everyone is responsible for their own wellbeing and to take necessary measures to protect their health and safety. The plaintiff might have prior knowledge that the patient has diagnosed with Coronavirus or might be infected with the virus due to the nature of defendant's work. If a reasonable person will not conduct the same acts, then the plaintiff behaviour is negligence and he will be partially responsible. [27] If the plaintiff whose act is partially a direct cause of the infection of the virus, he or she would bear responsibility with the defendant and the defendant is not fully responsible for infecting the plaintiff with the virus. [28]

Article 217/first of the Iraqi Civil Code acknowledges that "if there are multiple persons responsible for an unlawful act, they are jointly committed to compensating the damage without differentiating between the original actor, partner, and causer". Further, article 216 of the Egyptian Civil Code insisted on the same content and states that the judge has right to reduce the amount of compensation if the plaintiff has contributed to the damage.

Second: Damages (get infected by Coronavirus – COVID-19)

Damage refers to the result of an unlawful act, its negative effect on another person. This negative effect must be present so as for a civil obligation to exist. [29] It is considered a vital element in tort liability, without damage, we cannot talk about liability. Damage is the result of a wrongful act which can be the infection by Coronavirus or in serious situation, the virus leads to death. This is considered a physical damage to the victim (plaintiff). Damage can be a non-physical injury to the victim which is known as (moral injury) in the Iraqi Civil Law and it is defined as "any encroachment (assault) on the morality, freedom, reputation, honour, social standing, or financial position (credibility) of a third party". (Article 205(1) of the Iraqi Civil Code) The victim's social status or reputation in Coronavirus case (who get the disease from the perpetrator) might be injured. For example, people will not deal with this person as he or she hold the virus and they might not get work due to that. The families of the victim might also get morally harmed particularly in the sociable society like Iraq when people are too close and the family of the victim maybe pointed as a family of the infected person. The Civil Law provides that "family members may suffer moral injuries caused by the disease of a spouse or other close family member". [31] The infected person may also suffer from psychological damages alongside physical injuries. Regarding the psychological impact of the virus, the Centres for Disease Control and Prevention known as CDC has indicated the devastating social and psychological impact of Corona Virus on the infected. It states that the outbreak of coronavirus disease 2019 (COVID-19) could also be stressful for people. Fear and anxiety around a disease may be overwhelming and cause strong emotions in adults and kids. [32] There are also damages that causes property of the victim. [33] However, in case of infection with Coronavirus, there is not any damage to property as the virus

infect individuals not their properties. Generally, there are two main conditions for a damage to be accounted and legally acknowledged: inevitability and directiveness. [34] The infection with Corona shall have been inevitably occurred and be a direct result from some infected person's action. If these conditions fulfilled, the victim has right to seek compensation if he or she proved that their infection is resulted from perpetrators act; this is called causation.

Third: Causation

The linkage between the wrongful act and the damage is a complicated issue in transmittable diseases due to the complex nature of human body and the extend of which the diseases would leave impact on the injured. [35] Causation relates to the connection between an action (or inaction) and harm. [36] It might be the hardest element of prove in case of Coronavirus infection. For an infected patient to be considered injured and hold the perpetrator liable, he or she should be infected as a direct result of perpetrators wrongful act which is transmitting Coronavirus from perpetrator to the victim. Due to the wide world media coverage to provide information about Coronavirus, it is not that challenging to realize that a person, with knowledge about the virus, did not take reasonable precautions to prevent spreading of the virus. According to Mohammed Jalal in his book of Civil Liability resulted from Blood Transmission, in infectious diseases, apart from legal attribution, medical attribution is also essential. Meaning that, there should be a medical examination proving that the diseases has been transmitted to the infected person (victim). [37]

In the case of an alleged Coronavirus transmission, the plaintiff would bear the burden of proving that the particular defendant (or defendants) was (or were) the source of the transmission. Proving this would likely need experts, with the defendant(s) likely having no difficulty finding an expert to discourse that it is not possible to determine the exact source of the infection.

Another difficulty in linking cause with effect in case of Coronavirus transmission is related to the extensive contact many persons have with others. How we certainly determine the perpetrator while we might not be sure that the whole virus was transmitted from that particular person (the accused)? Furthermore, what if there are more than one individual cause transmitting the virus to the victim? How can we be sure that the direct cause of the death of victim is Corona while the victim might have other medical conditions?

To answer this question, there are three main approaches:

First: But-for-test

This approach is a widely used method by many legislations to determine the link between the act and the damage. It states that an act (omission, condition, etc.) was a cause of a damage if and only if, but for the act, the damage would not have taken place. That is, the act must have been a necessary condition for the occurrence of the damage. [38] By taking this approach, the only situation we have causation when the act of transmitting the virus directly lead to the infection to others and it should be the only factor causing damage or death to the victim. If there are other factors contribute to the damage, such as prior diseases, the perpetrator cannot be charged with Coronavirus transmission.

Second: Substantial-Factor

The content of this approach which was developed by Jeremiah Smith, is that "Defendant's tort must have been a substantial factor in producing the damage complained". [39] Meaning that the Coronavirus must be the main factor in causing someone injury or death even if the victim has other symptoms or medical conditions, the perpetrator can be held liable for transmitting the disease. Thus, prior diseases of the victim will not prevent the liability of the perpetrator if it has been proved that Coronavirus is the main cause of damage or death. In some cases, the victim might have prior illnesses, but the virus will deteriorate the health condition of the victim or cause death.

Third: Undefined, Directly Observable Causal Contribution

This method has been provided by Becht and Miller, they pointed to the determination of if a causal relationship exists between the act and injury by "breaking down the sequence of events to the appropriate level of detail to see if we can "perceive" a causal connection. If we can, the act is deemed to be a cause of the injury even if the injury can also be traced back to another act event through a different causal sequence as in the merged-fires cases". [40] To establish causation in transmitting Coronavirus from the defendant to the plaintiff, we need to examine all the factors and if Coronavirus is the main direct observable factor contributed to the damage, then the defendant will be held liable for transmitting the virus.

The Iraqi Legal System has adopted the second approach; even if the victim has many other medical conditions, if the main cause of death is Coronavirus, the defendant can be charged with tort liability. [41] The nature of the virus, as reports claimed, is mostly hit elderly people and those who have other illnesses. [42] Furthermore, concerning the situation where more than one person caused the transmission of the virus to one individual, it is the plaintiff's duty to attribute the act of transmitting the virus to a specific defendant or a group of them and the burden of proof is on the plaintiff. However, the defendant can deny liability if he or she can prove that the wrongful act has a foreign cause outside of his or her control such as force majeure, act of others or wrongfulness of the plaintiff. [43] In the United States, The Ohio Supreme Court adopted an even broader approach pursuant to a very liberal statute and indicated that "no person, knowing or having reasonable cause to believe that he is suffering from a dangerous, contagious disease, shall knowingly fail to take reasonable measures to prevent exposing himself to other persons. "The statute might also apply to more common diseases, such as influenza, which can be deadly to the elderly. It means that causation can be created even in less severe pandemic such as seasonal flu. Thus, this rule can be also applied on coronavirus as the scale of COVID-19 is much more severe than seasonal flu. [44]

If the causation between the wrongful act and the damage has been proved by the victim, the defendant will be held responsible with civil liability and subject to pay compensation to the victim.

III. Compensation

Generally, the scale of damages caused someone is calculated in monetary amount which is known as monetary compensation for physical injury or compensation for moral injury which caused the social status of the victim such as freedom, reputation, honour or social standing of the injured person. [45] The Iraqi Civil Code has given right to the injured party to ask for compensation for both physical. [46] and moral injuries. [47] In a non-monetary compensation, there are three types of redress; the court either order the defendant to restore the situation to status quo or perform certain conduct or return of what has been damaged by the defendant. [48] In case of infectious diseases, both compensations can be requested by the victim; monetary and moral compensations and the court will decide the amount of the compensation based on the situation surrounding the case. Despite the fact that, as stated by CDC, the complete clinical picture with regard to COVID-19 is not fully known and reported illnesses have ranged from very mild (including some with no reported symptoms) to severe, including illness resulting in death, [49] according to medical reports by medical professionals, when someone is infected with the disease, they should stay an average of 8 to 16 days at hospital or self-quarantined to recover the damage caused by the virus. [50] Pursuant to the Iraqi Civil Law, the victim could seek damages commensurately with the injury and the loss sustained by the victim, provided the loss was result of the unlawful act. [51] The virus might have caused the victim to lose his job and have difficulty in finding a new job. The court shall hold the defendant liable to pay compensation for all of these costs. It is worth mentioning that as long as coronavirus is a lethal virus, the right to seek compensation will transfer to the families of the victim in case the victim died as a result of the disease. Article 203 of the Iraqi Civil Code states that “In cases of murder or injuries resulting in death, the perpetrator is obligated to pay compensation to dependants of the victim who were deprived of sustenance because of the wrongful act.” Therefore, it can be realized that in case of death, tort liability of the defendant will not terminate, family of the victim can file a lawsuit on behalf.

Agreement to defy tort liability

The agreement to amend the impact of tort liabilities either by mitigating, defying or aggravating might take place. Under the Iraqi Civil Code, agreement on aggravation is allowed; if two individuals agree on aggravating the tort liability of the defendant even if the damage caused due to the reason outside of the defendant's control such as acts of others, the defendant will be liable for tort. For example, if someone told his friend to visit a country where Coronavirus is very wide spread such as Iran and held himself liable if his friend gets infected with corona, then he is liable toward his friend even if the reason on his friend's infection is someone else in Iran. Article 211 is clearly stating that force majeure; act of others or wrongfulness of the plaintiff can be reasons for defying liability unless there is an agreement otherwise. [52] However, agreement on defying tort liability for wrongful act is void under the Iraqi Civil Code as it is considered matters related to public order. [53] On the other hand, agreement on mitigating tort liability is controversial and Abdulmajid Hakim believes that the rules of banning the removal of liability also includes any agreement on mitigating it. [54] Therefore, transmitting Coronavirus to others will create tort liability and cannot be dismissed or mitigated under any circumstances.

IV. Contractual Liability and Coronavirus

Another area of civil liability is related to the liability of contracting parties in not fulfilling their obligation toward other contractors due to Coronavirus that caused halting their operation and implementation of their duties. This pandemic is producing unprecedented disruptions to business operations on a global scale. Business enterprises and employers need to assess their contractors or employees' rights and obligations as their performance has delayed or became impossible or difficult. Violating the terms of any contract will raise the question of civil liability to the party who infringed their obligations under the valid contract and gives right to seek for compensation. In many legislations, force majeure is considered a legal excuse for delay or not fulfilling contractual obligations. The question here is can we consider the spread of Coronavirus as force majeure to defy civil liability under the Iraqi legal system? When unforeseeable situation makes the implementation of a legal obligation very difficult, it will give right to contractual parties to seek neutral solution by the court. Article 146 of the Iraqi Civil Code states "where however as the result of exceptional and unpredictable events of a general nature the performance of a contractual obligation has not become impossible but onerous on the debtor such as will threaten him with exorbitant loss the court after balancing the interests of the parties may if it would be equitable reduce the onerous obligation to a reasonable limit...". Coronavirus outbreak is considered exceptional and it was not predicted by anyone; it has also general nature. Depending on this provision, parties' liabilities can be limited to the scale of hardship. Further, the obligation lapses if the debtor proves that fulfilling it has become impossible for a foreign cause in which it has no hand. [55] Thus, if the spread of the virus has directly affected the performance of one of the contracting parties by making it impossible, the obligation will end and there will be no contractual liability.

V. Criminal Liability in Transmitting Coronavirus

Alongside civil liability, the defendant in Coronavirus transmission might have criminal liability. Its act might constitute crime if proved that the infected patient has intention to spread the virus to public or toward specific individual. Homicide offenses are among the most serious which might be invoked in response to coronavirus contagion. In circumstances where the transmission of the virus has caused in the death of the transmittee, murder might be suitably charged, not only in the occasional situations where transmission of the infection was purposeful or knowing, but also where the actor behaved with extreme recklessness. [56] The Iraqi Criminal Code No.111 of 1969 under the protection of public health has clearly criminalized any act that lead to spread of dangerous diseases. It provides that "Any person who deliberately commits an act which spreads a dangerous, disease that threatens the lives of others is punishable by a period of detention not exceeding 3 years. If the offence ends up in the death of others or permanent disability the offender will, in keeping with the circumstances, be punishable by the penalty prescribed for the offence of assault resulting in death or that of permanent disabling". [57] The perpetrator is additionally criminally liable if he or she accidentally cause the outbreak of the virus which endanger public health. [58] Under the application of these two articles, any person who is infected by Coronavirus and they cause, intentionally or accidentally, transmitting the virus to others is considered a criminal offence and they might face criminal charges determined in the above-mentioned articles. It is worth mentioning that criminal liability will be established even if no one get harmed by this act. The only act of endangering public per se will subject the perpetrator to criminal liability. Public authorities in the Kurdistan Region of

Iraq can rely on this article as a legal basis for preventing the spread of the virus. The application of these two articles requires the fulfilment of general elements of crime which are: The physical element and mental element (act and intention). [59] Further, on 22 of March 2020, the Office of Public Prosecution in Sulaimaniyah Governorate has issued a statement emphasizing the content of these two articles and states that any one get infected by the virus and cause harm to public intentionally or unintentionally, they will be held accountable. [60] In other countries like the United States, the act of transmitting infectious diseases has been criminalized. For example, the Supreme Court of Alabama in *Berner v. Caldwell* states that “(c) Any person afflicted with a sexually transmitted disease who shall knowingly transmit, or assume the chance of transmitting, or do any act which is able to probably or likely transmit such disease to a different person shall be guilty of a Class C misdemeanor”. [61]

Similarly, the Jordanian Public Health Law No47 of 2008 has clearly held responsible anyone who cause spreading transmittable diseases by emphasizing that anyone who intentionally conceals an infected person or exposed a person to an epidemic disease or intentionally caused the transmission of infection to others or refrained from carrying out any measure requested to prevent the spread of infection is considered to have committed a crime punishable under the provisions of this law. [62] Thus, it can be said that an act of transmitting infectious diseases constitute a gross violation of the right of public and it will jeopardize public health. Moreover, in attempting to protect public health, under international law, more specifically the regulations by World Health Organization, states have obligation when it comes to communicable diseases. International Health Regulations adopted by WHO imposes obligations on all state members to ensure “maximum security against the international spread of diseases with a minimum interference with world traffic”. [63] Every state has duty to notify WHO of any outbreaks of communicable diseases in their territories. The WHO then transmits this information to all the other Member States as part of its mandate on control and response to global outbreak and spread of infectious diseases. [64] Internally, public authorities have also obligation to protect the patient’s privacy and confidentiality by not sharing their details to public.

VI. Conclusion

The outbreak of Coronavirus has infected hundreds of thousands of people and causing huge number of casualties. In addition to public health and humanitarian dimensions of the epidemic, the coronavirus crisis presents complex legal issues for companies, including employment-law, contract, tort, insurance, disclosure and other considerations. Despite the fact that liability for spreading the virus is difficult to prove as duty, breach and causation could be hard to establish in particular with Coronavirus when it spread before emerging any symptoms with the infected person, during pandemics, there is a set of sophisticated technology to track the virus and increased public awareness of the risks and proper preventative measures by public authorities. The paper has fused on how an infected person with a transmittable coronavirus can be held liable for spreading the virus to other and cause great dangers under the rules of tort liability under the Iraqi Civil Code No.51 of 1940, in particular the acts resulted from negligence. According to the Iraqi Civil code, civil liability will be created either by violating terms of a valid contract between two parties or as a result of a wrongful act by one individual against others; contractual liability and tort liability. Contractual liability has been briefly discussed in the paper which is related to delay or refrain from fulfilling a legal obligation due to coronavirus outbreak. The Iraqi Civil code, in this situation, gives right to parties to seek a proper solution by the court and not held them liable. Regarding tort liability resulted from negligence in transmitting the virus, the paper suggests that the act of causing others with corona disease even with negligence is considered a wrongful act and if directly or indirectly causes harm or death to others, the defendant will be liable with tort liability. However, there are some difficulties in deciding whether a particular person caused the spread of the virus such as when there are more than one infected person causes transmitting the disease to one individual. Further, as long as the virus is not tangible and it will transmit through air, creating the link between the wrongful act and damage is challenging. Nonetheless, for civil liability, as long as the plaintiff can prove the link, the defendant will be held responsible and shall pay compensation to the victim; compensation could be paid for both physical and moral injuries caused to the victim or its social standing. Many other legislations such as French Civil Code and Judicial Precedents from US courts support tort liability for transmitting infectious diseases. Transmitting infectious diseases would not only harm the plaintiff, it also causes damage to public health that is why agreement to defy such liability is void and it is considered as public order. Moreover, alongside civil liability, the defendant might be criminally liable for causing danger to life of public. Under the Iraqi Criminal Law No.111 of 1969, any person who intentionally or out negligence commits an act which spreads a dangerous, disease that endangers the lives of others is punishable. Thus, it can be said that based on the valid provisions of both Iraqi Civil Code and Criminal Code, transmitting coronavirus is considered a prohibited wrongful act which will gives right to the victim to hold the defendant civilly and criminally liable.

Findings

- In Iraq, there are no cases on tort liability resulted from contagion diseases which will indicate that judicial authorities do not recognize the fear of spreading pandemics such as what occurred with Coronavirus.
- There are not clear legislative provisions within Iraqi Civil Code No. 51 of 1940 on holding individuals with civil liability if they cause spreading pandemic viruses.
- There is a need for a having a clear legislation on dealing with pandemics.
- Public in not aware of precaution measures and there is a need to raise awareness in order to prevent the spread of pandemic viruses.
- The Executive Authority in Iraq shall take advantage from contemporary states such as United States where they took vital steps in this regard.

Recommendations

- Parliament shall enact a particular legislation to criminalize the act of transmitting the infectious diseases. Elements of both criminal and civil liabilities should be clearly discoursed.
- The Kurdistan Region of Iraq shall establish an effective legal basis to back all the preventive procedures recommended and imposed by relevant authorities. By conducting this, a clear set of policy will be created in order to be followed in case of spreading any infectious diseases in the future and could guide public on how to behave in certain situation.
- The spread of coronavirus has proved that awareness of public regarding the infectious diseases and respecting legal and administrative procedures can play vital role in controlling the virus. Thus, alongside legal obligations, public shall be aware of ethical obligations to prevent harm to others in the society.
- The relevant authorities shall illustrate for public that transmitting infectious diseases will create both tort and criminal liabilities.
- The Iraqi legislator shall amend the Iraqi Public Health Law No.89 of 1981 similar to the Jordanian Public Health Law No.47 of 2008 which dedicates a section for transmittable diseases and provided details of prosecuting those who cause spreading viruses to others or public.

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