

The Fate of Contractual Obligations Amidst COVID-19 An Analytical Legal Study

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Abstract— The Covid-19 crisis, known as Corona, has a negative effect on contractual obligations at the national and international levels. Many problems have occurred in the world after Corona various invaded countries of the world. Which necessitated studying it and coming up with a jurisprudential legal opinion about the problems that occurred in the contracts concluded before Covid-19, whose implementation postponed until his time. This research comes to answer a set of questions that concerns the legal problems of developments in contractual obligations in the time of Covid-19 that make contractual obligations negatively affected by Covid-19. The scientific material for this study divided into two chapter. The first chapter was devoted to the definition of COVID-19 and its legal framework. The second chapter deals with the consequences of COVID-19 along with jurisprudential-legal opinions about the problems that occurred, and the research followed by mentioning the most important outcomes and recommendations.

Keywords— Covid-19 crisis, contractual obligations, the national and international levels

I. INTRODUCTION:

Contractual relationships are the basis for financial transactions and economic activities of all kinds. The market, in its economic sense, translated into legal rules within the framework of civil law and the laws subordinated to it. It follows that any defect facing the market, which appears in the form of an economic crisis that inevitably has a legal repercussion. The legislator aims, through the legal rules, for a smooth organization and proper contractual relations occasionally, and facing the occurrences that occur in these relationships that threaten them with their unnatural demise and termination, at other times.

The COVID-19 crisis has a negative impact on contractual obligations at the internal and international levels. Contracts that consider being the linking point between individuals in financial transactions threatened with extinction because of the difficulty of implementing the resulting obligations since it become in usual unnatural frame. This

requires intervention through legal rules that are appropriate to the emerging circumstances and crises in light of Covid-19.

II. THE SIGNIFICANCE OF STUDY:

The significance of present study lies in studying COVID-19 from a legal perspective. In particular, its impact on the market movement represented in financial transactions through regulated contracts. In addition, how the contractual relationship parties deal with it considering it as sudden accident. As well as correcting the course of some topics on which jurisprudence is unanimous nowadays.

III. THE PROBLEM OF STUDY:

The problem of the study is lying in defining the legal framework for COVID-19, as the contractual obligations, events and circumstances arise, that should addressed according to different unusual contexts, and each one of them distinguished from the other in terms of effect and result.

IV. THE QUESTIONS OF STUDY:

This study seeks to answer the following questions:

1. What is covid-19?
2. Is COVID-19 a pandemic?
3. What is the legal framework for COVID-19?
4. What is the consequence of COVID-19 related to contractual obligations?
5. What is the impact of COVID-19 on contractual obligations?
6. How contractual obligations handled that affected by COVID-19?

V. THE METHODOLOGY OF STUDY:

The style adopted in this study is the analytical approach since describing COVID-19 as a case of contractual obligations. This requires adapting it to reach a solution to the dilemmas that result from it through the rules concerned with it in the context of civil law.

VI. THE STRUCTURE OF STUDY:

This study consists of two chapters. The first chapter is devoted to the introducing of COVID-19 and divided into two sections. The first section dealt with the definition of COVID-19 and its relationship to the pandemic. The second section present the legal Framework of COVID-19. Chapter two,

presents the consequences of COVID-19, and divided into two sections. The first section dealt with the impossibility. The second section present exhaustion concerning the implementation of contractual obligations. The study concluded with the most important results and recommendations that came out through this study.

VII. CHAPTER ONE

Introducing COVID-19 and its legal framework

COVID-19 has suddenly appeared in the world. The speed of its spread and the inability to confront it are among its most important characteristics. It resulted in death in frightening numbers. This led to individuals being negligent in carrying out their activities along with isolating them from each other. Therefore, it is necessary to identify the nature of COVID-19 in addition to defining the legal framework for it, with regard to transactions in general, and contracts in particular. This chapter divided into two sections. The first section dealt with the definition of COVID-19 and its relationship to the pandemic. The second section present the legal framework of COVID-19.

SECTION ONE: DEFINING COVID-19 AND ITS RELATIONSHIP TO THE PANDEMIC

This section address the definition of COVID-19 and its relationship to the pandemic through the followings:

1) DEFINITION OF COVID-19:

COVID-19 is a strain of corona virus. Corona is a Latin word that meaning crown. As for COVID-19, it is an abbreviation of three English terms, the first two letters (CO) stand for corona, and (Vi) stand for virus, and the letter (D) stands for disease. Which is covid-19 is an infectious disease. It is the latest virus related to the same family of viruses that cause Middle East Syndrome and Severe Acute Respiratory Syndrome (SARS).

Studies have shown that the size of Covid-19 genomics ranges from 26,000 to 35,000 bases or letters in length. The coronavirus particles surrounded by a fatty outer layer called the envelope. It usually appears in a circular shape and the crown shows screws. The most prominent feature of the virus is the presence of pop-up shapes that resemble spikes on the outside that reflects the image of the solar corona, or crown and accordingly, they called coronaviruses. According to those studies, coronaviruses replicate their RNA genomes through enzymes called (Poly Meroses Rna). However, genomic analyzes nowadays indicate that Covid-19 is changing slowly. It means that it reduces the chance of self-changing, which has to become the most lethal.

The area where the Covid-19 virus discovered is East Asia. It appeared in the Chinese city of Yuhan, in December 2019, and from there it spread throughout the world. According to the classification of the World Health Organization (WHO), it considered a global epidemic based on that the virus has spread to all countries of the world. Currently, there is no country that has recorded cases of Covid-19 virus. The World Health Organization is working to tackle COVID-19 continuously. Over time, WHO issuing data, addressing countries, people and alert to the need to prevent and beware of the virus. The organization also announced how the disease spread, so it is stable so far. The COVID-19 virus not transmitted through the air. However, this does not mean that its occurrence absolutely excluded. The presence of microbes inside the nuclei of

droplets, which considered particles, it can remain in the air for long periods, and then transmitted from one person to another. The Covid-19 virus transmitted through small droplets that are scattered from the nose or mouth when sneezing and coughing. The droplets fall on clothing, surfaces, and objects around a person. The virus remains on surfaces and objects for a period. Moreover, The Covid-19 virus survival varies depending on the quality of objects and surfaces, the temperature and humidity of the environment. It follows that the virus that causes Covid-19 disease can be transmitted either through direct contact with infected persons. The infection transmitted through droplets when a person meets another person who has respiratory symptoms (coughing or sneezing). This makes risk of exposure (nose, mouth and eyes) to infectious respiratory droplets or by touching surfaces, objects and materials contaminated with the virus.

2) THE RELATIONSHIP OF COVID-19 TO THE PANDEMIC:

The World Health Organization has described COVID-19 as a pandemic. As a result, the pandemic has now become the term that describes the disease. Which requires standing on the pandemic at the linguistic and idiomatic meaning levels, in order to recognize the extent of the accuracy between the description and the described

- a) Linguistic meaning: The pandemic is the distress that sweeps money. It been said that: the pandemic has overwhelmed them, may God bless them wealth and grant him/her success, and that the pandemic causes perdition. It is an active noun, feminine, pandemic, pandemic, and calamity. Moreover, the plural is plagues, money swept, and the swept is extirpation, it is said: a thing will go astray, if uproot it, and from it, the pandemic is derived.
- b) Idiomatic meaning: The pandemic is every scourge that has nothing to do with humans being, which destroys fruits and money that spoil it.

From the foregoing, it is evident that the pandemic concerns the infestation of the fruits of cultivation and plantings with a pest caused by nature. Its nature varies according to its source that may be drought, fire, frost, insects and floods it leads to damage and harm to its owner. Its ruling in transactions is that if the damage amounted to one third or more of the total value contracted for, the buyer exempted from the price of this percentage. Although he/she became the owner of the fruits, because he/she had not yet received them, by plucking them or picking them, if he/she had not delayed them deliberately or recklessly.

Designation of COVID-19 as a pandemic by the World Health Organization based on language level only. This is due to the severity of the disease, the speed of its spread, the wide scope of its spread, and the almost complete inability to control and reduce it. As it swept the world in a large way, there is no country that does not have the disease that caused the death of large numbers and activities have almost completely stopped, both internally and externally. Objectively speaking, there is no comparison between Covid-19 and the pandemic. The pandemic means destroy the fruits of cultivation and plantings of all kinds. In addition, it is a multi-source. However, COVID-19 is a contagious disease that infects humans. Moreover, the one who may or may not be cured of it will perish and die. In addition, this disease has one source, which is the virus. What

confirmed so far is that the source of this disease is a new infectious virus called Covid-19.

SECTION TWO: COVID-19 LEGAL FRAMEWORK

It said that COVID-19 is a dangerous infectious disease that has rapidly swept the world. Its spread is increasing because of people mixing with each other and dealing with each other. In addition, the countries and the concerned health authorities have not yet been able to reach a treatment that eliminates the virus that causes this disease. All advice and suggestions require taking preventive measures represented in isolation and not mixing between individuals. As a result, the governments declared a state of emergency, according to which individuals were obligated to stay home and they prevented from going out, which defined as quarantine. Transportation flights and other kinds of transportation been suspended in all aspects and levels. All this led to the deterioration of production and marketing. In addition to the imbalance in supply and demand. Most important of all is the great decline and extreme confusion in dealings of all kinds and at all levels that has resulted in reluctance to contract in general. The movement of the market has become in its narrowest scope, as it is limited only to securing basic life needs of goods and services.

There is no doubt that Covid-19 negatively affected the global economy, but its negative impact on the Iraqi economy was and still is in great ways. Due to Iraq's dependence on financial returns from oil exports, the price of oil has fallen to the lowest levels in the world. The economic situation in the Kurdistan Region-Iraq has tended to get worse, due to COVID-19. Simultaneously with this disease, the region characterized by the absence of planning in the management and the spread of corruption of all kinds, which has caused an increase in the financial insolvency of the Kurdish individual. Before the emergence of Covid-19, society was suffering from unfairness as it was, and subjected to looting and theft of their material dues by the ruling authority under various pretexts. At present, the regional government is unable to secure the salaries of employees. The purchasing power of the citizen become greatly diminished, which has resulted in a significant decline in the movement of trade within the markets of the region. Where employers in the region suffer from the economic downturn. The public and private sectors in the region are witnessing a terrible economic recession, the consequences of which will be very dangerous if the authorities are not able to address them. The negative consequences caused by Covid-19 closely related to the decades and their effects. All financial transactions embodied in the framework of contracts, including those related to the production process in factories and companies, as well as contracts of sale and purchase, supply, rent, contracting and work. Contractual obligations face difficulty in implementation, as the parties fail to fulfill their obligations.

The question is, is it possible to proceed with the implementation of contractual obligations in conjunction with the spread of Covid-19 or is it allowed to deviate from it? It is

known that the implementation of contractual obligations is obligatory in normal circumstances. There is no justification for reversing and violating it, but with the presence of Covid-19 and its effects, the matter is fundamentally different. As it is necessary to reconsider the contracts concluded that followed Covid-19, even if its results affect fixed principles related to the implementation of obligations according to what agreed in advance by the contractors.

Studying the effects of Covid-19 disease on contractual obligations requires finding a legal framework for this disease, and rooting it in accordance with appropriate legal rules for it, which represented in force majeure and emergency circumstances we talk about in the two points below.

A. THE FORCE MAJEURE:

The Iraqi legislator dealt with force majeure in contractual responsibility within the foreign cause through the text of Article (168) of the amended Iraqi Civil Code: "If it is impossible for the obligor to carry out the obligations in kind, he shall be ordered to pay compensation for non-fulfillment of his obligation, unless he proves that the impossibility of implementation arose from a cause outside of his control".

It is clear from the above text that force majeure is one of the reasons for exempting the contracting parties from contractual obligations. It is one of the necessary postulates that taken into account for the requirements of justice. It considered among the applications of the foreign cause based on Article (211) of the Civil Code, which stipulates that "If a person proves that the damage arose from a foreign cause that he/she had no control over, such as a celestial calamity, a sudden accident, or a force majeure..... he/she is not bound by the guarantee.

This article confirms that force majeure as an application of a foreign cause and absolve the obligor, whether contractually or in default, from liability. What concerns us through this study is the force majeure in the doctrinal framework, and the extent to which COVID-19 considered an application.

The Iraqi legislator did not mention in the civil law a definition of force majeure. However, jurisprudence guarantees this by saying that it is a sudden matter, in which it is impossible to prevent it⁽¹⁾. Alternatively, it is an unexpected, irreversible event that causes damage⁽²⁾. It also said in its definition that it is every incident that cannot be attributed to a responsible person and it is impossible for him/her to repay the damage that has occurred⁽³⁾.

It is clear from the previous definitions that it applies to every fact or incident that is not considered by the contracting party so that it cannot be cured avoiding its effects of damage to the other contracting party. The implication of this is that any circumstance facing the debtor in the contract that he did not enter into its occurrence, did not expect it, and would not be able to pay it except with damage, and then it is a force majeure. Whether this circumstance originates from nature, such as diseases, earthquakes, volcanoes, and floods. Or, the action of

⁽¹⁾Muhammad Hussein Mansour, the General Theory of Commitment, New University House, Alexandria, 2006, pg. 608.

⁽²⁾Abdul Majeed Al-Hakim, the Brief Explanation of Civil Law, Part 1, the Legal Library, Baghdad, 2007, pg. 539.

⁽³⁾Anwar Tolba, The Extended Explanation of Civil Law, Part 3, The Modern University Office, Alexandria, p. 383.

people, such as wars, revolutions, riots, demonstrations, armed conflicts, laws and decisions.

The Iraqi legislator adopted the force majeure theory in the context of the causal relationship in the two responsibilities both contractual and tort liability. Which means that the contractor who did not fulfill his obligations before the other he/she may absolve himself/herself of responsibility by negating causation between his breaches that reflects the contractual wrong that the damage claimed by the other contracting party on the grounds of force majeure.

There is no doubt that the disease caused by Covid-19 is an application of force majeure⁽⁴⁾. Being a global epidemic, whether its source is nature or human action, it has resulted in negative effects that exceeded expectations and disrupted activities of all kinds. Contracts, in all their forms, had a large share of disruption and breaches because of them. In order to ascertain that COVID-19 is one of the applications of force majeure, we briefly review the conditions that met in it in order to confer on the circumstance the character of force majeure.

1. **It should be an external issue:** It means that the contracting party does not have a hand in the occurrence of the circumstance that constitutes force majeure. This condition is specified by the Iraqi legislator in the context of Article (168) of the Civil Code by saying: "If it is impossible for the one who is obligated to the contract..... unless it is proven that the impossibility of implementation arose from a cause outside of his control". To say that the matter or circumstance that occurs is external does not necessarily mean that it falls outside the affairs and affairs of the debtor. It is not limited to the material externality of the project owned by the debtor, all that is in the matter is that he has no part in its occurrence⁽⁵⁾.
2. **It should not be expected:** In order for the incident to help the debtor as a force majeure, it must be outside his calculations. The standard followed in this regard is not personal, but rather objective. The accident is something that cannot be expected by the usual person in terms of care. In all cases, the accident must occur without the possibility of foreseeing it after the conclusion of the contract or during its implementation.
3. **Impossibility to push accident:** The accident must result in the debtor's inability to avoid it with his capabilities. So that it is on a degree of severity, with which it is not possible to carry out its obligations in a normal manner according to what is usual, as it is inevitable that it breached.

When the above conditions fulfilled, we are going to see the result. If it was impossibility, then force majeure achieved. Accidents that fall within the framework of force majeure should result in the impossibility of implementing contractual obligations. So that it is not limited to the debtor's capabilities, but rather exceeds it and is impossible for all persons if they found in the same circumstances facing the debtor. This means that simply facing the difficulty in carrying out contractual

obligations, and regardless of the extent of those difficulties, is not sufficient to invoke force majeure.

Since COVID-19, it is not a debtor's creation and it was not expected to appear, it was hidden from the whole world. In addition to the inability to pay it by not only the contracting parties, but also even now major countries and specialized international organizations are unable to confront it. It also caused the impossibility of implementing contractual obligations in many cases in a clear and explicit manner at the internal and external levels. It becomes obvious that force majeure applied and the consequences arising from it.

B. EMERGENCY CONDITIONS

The principle that governs all contracts is that the contract is the law of the contracting parties. Any terms and conditions included in the contract by the contracting parties and with their consent considered. They adhered to as long as they do not conflict with laws, public order and principles. What agreed upon requires its maintenance as long as it developed with a free and sound will. This is due to considerations of good faith in the implementation of obligations and the stability of transactions. Each party must abide by what issued by him/her at the time of concluding the contract. This adherence is required at all stages of the contract, as none of the contracting parties has the authority to amend the contract by him/her by adding or decreasing. As well as canceling, or refraining from implementing it unilaterally, and otherwise the contractual liability shall arise. The original saying also presented that the parties to the contract not allowed to unilaterally amending it, and the same is true with regard to the judge. However, as an exception to this principle, the legislator has decreed that the contract may be amended whenever there are circumstances considered emergency. Therefore, it makes the implementation of the obligations very cumbersome for one of the contracting parties. It is necessary that these obligations returned to a reasonable extent. All this is based on the second paragraph of Article (146) of the Iraqi Civil Code Which states "that if exceptional, general incidents occur that could not have been foreseen, and as a consequence of their occurrence, the implementation of the contractual obligation, even if it does not become impossible, become burdensome to the debtor so that he threatens him with heavy loss, the court may, after balancing the interests of the two parties, reduce the burdensome obligation to a reasonable extent if justice so requires, and any agreement to the contrary shall be null and void".

The above text presents the emergency circumstances through its conditions that meet the conditions of force majeure, which previously mentioned and it differs from it in the result that represented in fatigue because of commitment without the impossibility of its implementation. About the contract that must be a continuous contract or immediate contracts with deferred execution, in accordance with what civil jurisprudence unanimously approves of, as one of the conditions for the application of emergency conditions, we believe that this

ultrairaq.ultrasawt.com.15/8/2020.

⁽⁴⁾ The Crisis committee of the federal government in Iraq announced in its decision that the period of the Corona virus crisis is a force majeure for all projects and contracts, starting from February 20, 2020 until the Ministry of Health announces the end of this epidemic ..

⁽⁵⁾ Hassan Ali Al-Thnoon, The General Theory of Obligation, Legal Library, Baghdad, without a date of publication, p. 58.

statement is not accurate. It assumed that the nature of the contract does not contribute to the formation of emergency conditions, but rather comes in its context. Contracts precede emergency conditions in terms of time, and this means that it is not correct to say that one of the conditions of emergency conditions has been fulfilled in advance and individually which is the existence of the contract. Then other conditions come later as the temporal confluence of the conditions is the fulcrum on which the emergency conditions are based on, and cannot separated from each other and divided into different time stages. Consequently, there is no any possibility to talk about emergency conditions, except when all of their conditions fulfilled at one time. Contracts, whether they are continuous or immediate, fall under emergency circumstances. This is despite the fact that the continuous and immediate contracts with deferred execution affected by emergency conditions. However, spot contracts that are not deferred affected by and fall within its framework as well. This is because of the obligations arising from it, which are not all fulfilled immediately after the conclusion of the contract. It is sufficient that emergency circumstances occur between the period of concluding the contract and the implementation of the obligations arising from it, even if those obligations were not continuous in nature or it agreed to delay them . All contracts are immediate, it is sufficient to fulfill their essentials, whether it is consensual, formal, or rights in rem. However, the obligations arising from it divided into continuous and immediate. As a result, it affected by exceptional and unexpected circumstances. In other words, contingent circumstances pertain to the obligations that constitute the effects of the contract, and not the contract itself. It follows that all contracts are included in and affected by emergency circumstances, even if they are a possibility. In fact, Covid-19 considered an application of emergency conditions in itself, or it is the source of emergency conditions. The effects of contracts due to this disease require treatment through special provisions for emergency circumstances, which we are looking at through the next chapter

VIII. CHAPTER TWO: CONSEQUENCES OF COVID-19

The fate of the contract between survival and dissolution depends on the outcome caused by Covid-19. This disease is either a cause of force majeure, emergency circumstances or not. The parties of the contract are not able to attribute any character to COVID-19. Since the criterion is what results in the disease, it determines the context of which of the two issues the results will be, that is the impossibility or exhaustion in contractual obligations. Based on that, we divide this topic into two demands, in the first one we deal with impossibility, and in the second, we look at exhaustion.

A. IMPOSSIBILITY:

If COVID-19 results in the debtor's impossibility to fulfill his contractual obligations, law shall terminate the contract. That is, dissection, so that this disease becomes covered by the provisions of force majeure based on the second part of the aforementioned article (168).

Despite the provision in the above article. However, relying on it in the sense of disintegration depends on the type of impossibility. Is it a permanent or temporary impossibility?

The implication of this is that not every impossibility resulting from Covid-19 as an application of force majeure has the effect of disintegration. Unless the impossibility is permanent, the following is a statement of the two types of impossibility:

1. **Permanent impossibility:** impossibility is permanent if it eliminates the essence of the concluded contract, so that it has no practical significance. Undoubtedly, COVID-19 results in the impossibility of carrying out the obligation not only for the debtor, but also for any other person in his/her position. Pushing or demanding the termination of the contract due to Covid-19 as a force majeure requires that the result of the impossibility be permanent. In the sense that this epidemic does not end before it makes the implementation of the contract useless so that it obstructs the performance of obligations and it continues for a period that leads to the loss of the motive for concluding the contract. If this is achieved, the debtor's obligation lapses, due to the impossibility of its final implementation, and the contract is terminated by law, without the debtor becoming liable because he/she did not issue a contractual error that leads to responsibility. Furthermore, if the carrier was obligated to transport things or people to a certain area during a specific period of time, and Covid-19 prevented that. Or if the contract was to supply materials for a certain occasion, and the disease resulted in the suspension of transactions and the closure of markets as well as the measures taken to limit the spread of the epidemic and its impact, prevent the holding of parties, reviving events, trips and trips that were contracted in advance.
2. **Temporary Impossibility:** the meant of temporary impossibility within the scope of contractual obligations is the possibility of the debtor fulfilling his obligations despite the realization of a force majeure that prevents this at the agreed time. As the implementation takes place at a later time, and this achieved by granting the term, if it does not result in missing the purpose of the deal. This is after ascertaining the new circumstances and balancing them with the nature and purpose of the contract. The discretionary power that the case judge enjoys has a role in maintaining the contract, and implementing its obligations later. The events that followed the COVID-19 disease resulted in the temporary impossibility. It has become impossible for the contractor to implement his obligations on time, and it has already happened that the worker was not able to join his/her work and his/her performance is fine. The seller was also unable to deliver the thing sold, the buyer was unable to inspect the thing sold, and the contractor stopped carrying out the contracting work. Projects and construction and building operations have also been completely halted. The same is true for tenants of residential real estate, including employees, employers and professionals who became insolvent because of the decline in transactions, the loss of their financial dues and the non-payment of salaries to them, which resulted in their inability to pay the wages due to them. Logic and justice require maintaining these contracts instead of rescinding them, in line with the principle of stability of transactions and limiting the termination of contracts. Which requires dealing with this type of

impossibility by granting the term as long as it fulfills the intended purpose of the contract.

In line with what said above, it noted that the Iraqi legislator has approved this matter as he addressed it with a special rule through Article (65/First) of the amended Iraqi Labor Law No. (71) Of 1987, which states that: "If the work is partially or completely stopped due to an emergency or force majeure. The employer must pay the worker's wages for the period of suspension, not exceeding sixty days and assign the worker to a similar work, or assign him to make up for lost time with additional work without pay, not exceeding two hours per day and for a period not exceeding thirty days per year".

The above text leaves no chance for doubt that not all force majeure results in the termination of the contract despite the realization of impossibility unless it eliminates the essence of the contract. Since the disease of Covid-19 differs as a force majeure according to the difference in the outcome of the contract. It is often made to stop it instead of dissolving it as in the previous example, until it is removed or reduced, taking into account, the time period specified by the legislator, or that which aid contracts each according to its nature.

The legislator's reference to the suspension of the contract in the context of the Labor Law should not be taken as being exclusively. Although it is a special rule command that takes into account the human aspect of the worker is living conditions and taking his hand, but it means staying on the contract despite the fact that the impossibility achieved as long as it is temporary. The temporary impossibility resulting from Covid-19 does not affect the existence of the contract, as the nodal bond between the parties remains in place throughout the disease period. The matter is limited to suspending the implementation of obligations until the risks of the disease recede, and it may happen that the suspension is limited to some obligations and not others. As if Covid-19 prevents the worker from going to work, although this results in the temporary suspension of his obligation to perform the work, he remains committed not to compete with the employer. Likewise, if the contractor stops completing the work, yet he remains a guarantor of the works he accomplished in the past. It also happens that the suspension includes the corresponding obligations as well, when the contractor stops working for the employer to refrain from paying the wage unless there is an agreement to the contrary. Similarly, the right of the buyer not to pay the price when the seller is unable to deliver the thing sold to him, and in the supply contract if the supplier stops supplying the goods or services, the supplier's obligation to pay the price suspended.

In all cases, contractual obligations, whether unilaterally or on both sides, shall be resumed when COVID-19 ends or when its impact is mitigated. Thus, the reason for the suspension will be removed, and the impossibility that was preventing the implementation of the obligations ends. Because of this, the contract will enter into force again and on the same conditions that the contract was on before the suspension and without any modification to it. If the debtor refuses to pay after that, the creditor must warn him of the necessity of appealing his previous obligations before suspending them; otherwise, his/her contractual responsibility will be realized.

If the disease results in a temporary impossibility, the obligations in the continuous and immediate contracts

suspended as long as it is possible to be feasible for the contract until the time of the dangers of the disease no longer exists. Annulment not made based on the binding force of force majeure, of which COVID-19 is one of its applications. In addition, either this suspension or suspension based on a special legal basis or the judge undertakes his statement and disclosure through his discretionary power. Furthermore, the agreement of the contracting parties to the subject is valid as long as it found with sound consent and a reasonable will.

The conclusion is that COVID-19 as a force majeure results in two types of Impossibility. The first is the material impossibility, which represented in the debtor contracting Covid-19 disease and the resulting effects of deteriorating his health and staying in quarantine. The second type is legal impossibility, because Covid-19 disease in itself is a force majeure and results in impossibility, such as the imposition of a state of emergency and the issuance of legislation and enforceable decisions to confront the disease, such as decisions that prohibit sales, speculation and the operation of laboratories. As well as preventing trade exchange, import and export, travel and movement inside and outside the country and disrupting markets, which prevents the implementation of contractual obligations in most contracts, and the effect of all of this is either to suspend the contract or to terminate it by law.

B. EXHAUSTION:

Exhaustion is the hardship facing the debtor in carrying out his contractual obligations due to COVID-19. After the debtor was in a fixed position enabling him to carry out his obligations at the time of the conclusion of the contract, he became unable to do so due to the emergence of that disease. Therefore, he/she cannot be compelled to fulfill his obligations in the circumstances that have arisen, and otherwise, he/she burdened unbearable.

The adoption of the debtor's hand in the circumstances produced by Covid-19 has justifications that are consistent with justice and legal bases regulating contractual relations. Justice requires that when the debtor's obligation due to the epidemic has reached the point of exhaustion, there is no justification for compelling him to implement it as if nothing had happened. Besides, Justice necessitates that the obligations arising from him be amended by mitigating and reducing them to the extent that is compatible with his immediate capabilities that occurred to him due to the changes that he caused due to Covid-19. In addition, the modification of the debtor's obligations to mitigate will prevent him from falling into the scope of the creditor's abuse and enrichment. This is because if the debtor's obligations remain as they were in the past, and the creditor insists on their implementation without modification in conjunction with the realized exhaustion, then he/she will be arbitrarily using his right before the debtor. In addition, it gets rich at the expense of the debtor, as it obtain goals from the transaction in accordance with the previous conditions and standards that were prevalent in market transactions. Consequently, it completely overlooked and overlooked the events that resulted in the breach of the financial balance, so it amended by mitigation to avoid enriching the creditor at the expense of the debtor.

The exhaustion because of emergency circumstances is not limited to the financial aspect only. It achieved whenever there are difficulties that prevent the debtor from fulfilling his obligations and hinder his abilities and movements. The

debtor's refusal to work, receive the goods, or transfer them at the time specified in the contract and according to what is customary in transactions due to the difficulties it faces in movement and movement in light of the epidemic, considered as exhaustion, even if it is outside the financial aspect of the contract. Because the favorable circumstances related to the contract as long as they are general, exceptional and unforeseen at the time of the conclusion of the contract. Therefore, it is not possible to avoid the circumstances that hinder the debtor's implementation of his obligations. Consequently, it is wrong to limit the exhaustion to the financial losses that the debtor incurs when emergency circumstances occur.

As for the financial exhaustion, that befalls the debtor, and that the standard agreed upon in this regard is an objective standard and not a personal one. What meant by this is that the loss that the debtor suffers when executing the obligation is measured according to the subjectivity of the contract. In other words, it mean looks at the deal contained in the contract without taking into account the financial capabilities of the debtor. Based on that, if the debtor is financially able, and the harm that he suffers due to the new fatigue does not affect his financial position and is not comparable to anything compared to his wealth, the exhaustion realized. Because what is taken into consideration in this context are the economic effects resulting from the contract that was signed within the framework of the emergency circumstance, and not the debtor's total financial liability .

Based on the above, the confusion in civil jurisprudence is the issue that if the capabilities available to the obligor enable him to fulfill his obligations, however, emergency circumstances have arisen that achieve fatigue. Even if these possibilities precede the emergency circumstance, and their example is, if the supplier contracts to supply a commodity and he/she has sufficient quantities of it to carry out his/her obligation. Then there was an outrageous rise in their prices, the contract is subject to the rules of emergency circumstances, given that the obligation has become burdensome for him, on the pretext that if he did not have the commodity, he/she would have been forced to buy it in the market at the new high prices .

The aforementioned statement is inaccurate and cannot be accepted, especially in the current situation in which the world is facing the Covid-19 disease. As its acceptance has negative effects on the economic, social and political levels, it encourages inaction and recklessness in the implementation of obligations on the one hand, and on the other hand it permits exploitation, as there are several drawbacks to what the jurisprudence has approved in this regard, including:

1. When the supplier already possesses the sufficient commodity to complete the contract, and then contract, accidents occur that raise prices. There is no doubt that what was the main motive for contracting, the possibilities available to him at the time of contracting should not be excluded. The intent here is not his/her financial capabilities, we agree that the criterion for determining fatigue is objective and does not concern his financial liability as a whole, but rather we mean the capabilities that pertain to the contract and that he previously owned (goods). Accordingly, he/she contracted it, and it is

available to him/her. Thus, it has entered into the calculation and economics of the contract that he concluded. It is not as if he/she did not have any of it. For the last case that it affected by the rise in prices and constitutes a burden on the supplier. While in the first case, he/she prepared for the contract in a normal way, and he/she is safe from any surprises that may occur.

2. The origin is that what was not will remain, so the supplier does not resort to a producer or the market to secure the agreed upon commodity. It follows that he/she is not affected by emergency conditions, so what he/she has of the commodity makes him/her safe from exhaustion, since he already owned it, it is not correct to assume that he/she does not own it.
3. Subjecting the supplier to the rules of emergency circumstances contradicts good faith in the implementation of obligations. Good faith requires the implementation of the obligation according to what is existing and possible. Moreover, since the economic capabilities of the deal have not changed and there has been no disruption in it, so that the debtor can benefit from the emergency circumstances. Otherwise, emergency circumstances become a means of fraud, which represents the bad faith of the supplier.
4. In the event of crises and the spread of epidemics, human and religious values urge people to the need for solidarity, to reduce the burdens on members of society, and not to exploit them economically in order to avoid raising prices. However, adopting the opinion approved by the aforementioned jurists is completely incompatible with those values. Because subjecting the supplier to the provisions of emergency conditions enables him/her to demand a change in the price agreed upon in advance under the pretext of restoring the economic balance that has not been disturbed yet which leads to raising prices and increasing burdens on the consumer. In addition, the resource has not yet reached the state of necessity that allows him/her to do this, as it is well known that necessities are valued since the resource did not enter into harm, it is not possible for him to take advantage of its advantages under emergency circumstances.
5. The foundations, on which the theory of emergency conditions based, such as justice and gain without cause and arbitrariness, do not fit with what most civil law jurists have adopted in this regard.

In general, the fatigue that affects the debtor in contractual obligations due to Covid-19 requires an amendment by mitigating them to the extent that he/she is able to fulfill them if consideration given to the effects of this mitigation on the interests of the creditor. When the legislator decided to amend the contract due to emergency circumstances through Article (146/2) of the aforementioned Civil Code, he/she stipulated that it be in accordance with justice. In addition, justice requires the preservation of the rights of the creditor in the contract as well, and therefore the modification of obligations must be in a way that does not put the creditor in a bad position from a financial perspective. Just as the creditor may not be arbitrarily and enriched at the expense of the debtor, as has been said, the debtor must also not be arbitrarily and enriched at the expense of the creditor through the right granted to him by the legislator.

The criterion used to determine whether the amendment does not harm the creditor is serious damage. If the modification of the debtor's obligations results in serious harm, the creditor incurred by this modification and not be considered definitively. In this case, the judge shall order the termination of the contract. As for the beneficial amendment to maintain the contract, it is to restore balance to it, by distributing the loss to the two parties to the contract. In addition, that this stage reached by adding the expected loss from the deal due to Covid-19 disease to the debtor and what is more than it is divided between him and the creditor.

The subject judge has a wide discretionary authority to restore balance to the contract, and there is no control over him/her in choosing the type of amendment to return the burdensome obligation to a reasonable extent. He/she may order a decrease in the debtor's obligation, or an increase in the creditor's obligations, despite the apparent text of Article (146/2) of the aforementioned Civil Code suggests amending the contract by reducing obligations ".....after balancing the interests of both parties to reduce the burdensome obligation to a reasonable extent.....". However, the text in its general framework extends to an increase in obligations, given that it deals with the fatigue of the obligation, and its treatment is to reduce the fatigue, and this achieved by decreasing the obligations of the debtor or increasing the obligations of the creditor. In both cases, he/she must not raise the entire loss to the debtor, as it entails a heavy loss for the creditor, as the latter can refuse to bear the loss, and request the termination of the contract. Then the judge must respond to the request for rescission, which means that the judge does not have the right to terminate the contract on his own or at the request of the debtor, as the request for rescission is limited to the creditor alone. Otherwise, the judgment is subject to discrimination, not because of the judge's misjudgment of the amendment, because, as previously said, there is no oversight for it in this regard, but rather because of the error in applying the law. The judge may also choose to suspend the execution of the contract for a temporary period in order to restore balance, if there is a possibility that the risks of Covid-19 will decrease. In which the debtor is able to resume the implementation of his/her obligations in a normal manner, while the purpose of the contract remains. In addition to the foregoing, the judge may postpone the implementation of the obligation until after the end of the emergency circumstance, if the purpose of the transaction is not missed.

The debtor's adherence to the results of Covid-19 causing fatigue is in two ways, first and also through payment, he/she may initially resort to the court and request intervention to restore balance to the fatigue that has fallen on him before the creditor asks him/he to implement his/her obligations. As for the payment, it is after the creditor files the lawsuit against the debtor, for the latter has the right to plead not to perform as previously agreed upon, and to adhere to the occurrence of emergency circumstances caused by the Covid-19 disease, which exhausts him/her when proceeding with the fulfillment. This has several important results, which are:

1. The judge does not have the right to consider COVID-19 as an emergency circumstance on his own, as this matter is limited to the debtor's request. Even if the judge is certain that the emergency circumstances due to Covid-19

fulfilled, and the debtor does not adhere to them, he does not have the right to trigger them. Otherwise, his judgment is distinguishable, as he/she has departed from the principle of impartiality in litigation, because, despite the fact that Article (146/2) of the Civil Code represents a peremptory rule as it represents the public order. However, this characteristic means that it is not permissible for people to agree to disagree with it. As for the issue of adhering to it and raising it, it is not from the public order.

2. The debtor's fulfillment of his/her contractual obligations at the time of COVID-19 entails the expiration of his/her obligations, which means that he/she cannot reverse his/her obligations and demand a rebalancing. Because the fulfillment that took place indicates one of the two things, either that he/she was not overburdened, or that he/she waived his/her right to amend obligations after he was overburdened. Thus, he/she has forfeited his/her right of his/her own free will, and the rule is that the forfeited shall not return, unless it is proven that he was under compulsion to pay.
3. If the debtor delays the implementation of his/her obligations until the time of the emergence of Covid-19, he/she cannot benefit from the emergency circumstances, because by his/she delay it will be considered mistaken. In addition, our opinion is that it is not possible to take into account multiple reasons in emergency circumstances, because they mean contractual obligations and not legal obligations.
4. Every contract concluded at the time of Covid-19 cannot be paid to emergency circumstances, no matter how exhausting they are because what happens after that and measures to confront the disease lack the element of surprise and are predictable so that the contractors should anticipate it.

IX. CONCLUSION:

In the conclusion of this research, we reached conclusions and recommendations that we summarize in the following paragraphs:-

A. RESULTS:

1. Covid-19 is a deadly contagious disease spreading worldwide, affecting humans, and health authorities at various levels have been unable to treat it definitively so far.
2. Objectively, the pandemic has nothing to do with Covid-19 disease, and the designation of the pandemic on the latter is limited to the linguistic aspect and the situational verbal convergence.
3. The legal framework of COVID-19 consists of force majeure at times, and emergency circumstances at other times, depending on the outcome it creates.
4. Contractual obligations negatively affected by Covid-19, once they synchronized with the disease, regardless of the nature of those obligations, and all contracts affected by it.
5. Although the result of force majeure is the impossibility, the economic motive for the deal in question is the decisive factor in rescinding the contract or not.
6. Granting COVID-19 causes exhaustion or impossibility in contractual obligations, the coercive measures taken by the relevant authorities and the decisions to implement also have the same result.

7. The effects of Covid-19 in the context of force majeure and emergency circumstances do not exceed one of the three things, suspension, modification or termination of the contract.
8. After the spread of Covid-19 and its announcement, it may not be invoked as a force majeure or as an emergency circumstance or justification by the measures taken in this regard.

B. RECOMMENDATIONS:

1. We recommend to the Iraqi legislator the necessity of explicitly distinguishing between temporary impossibility and permanent impossibility, based on the criterion of economic motive for the deal subject of the contract.
2. It is necessary that the temporal coexistence between illness and contractual obligations is the criterion for the enforcement of the provisions of force majeure or emergency circumstances without regard to whether the contract is immediate or continuous.
3. In view of the significant financial losses caused by the Covid-19 disease, we recommend that the legislator stipulate the invalidity of any agreement excluding force majeure within the framework of contractual obligations, at least in relation to this epidemic.
4. In order to avoid interpretations that do not fit with the text of Article (146/2), specifically the part related to amending contractual obligations to relieve fatigue, we recommend the legislator to amend what concerns this part to become ".....", instead of reducing burdensome commitment.
5. It is necessary to count cases involving Covid-19 disease among urgent cases.

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