

## The impact of the Corona pandemic on the rules of civil liability

تأثير جائحة كورونا على قواعد المسؤولية المدنية

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### Abstract:

The world is witnessing today a real disaster due to the Corona pandemic, as it affected all areas of life, including the field of legality, it has raised several legal problems, the most important of which is regarding civil responsibility and specifically the responsibility of the product in view of the development of the law, in the sense that the debtor is relieved of his responsibility with some exceptions, but there is a new proposition representing the risks of scientific development.

**Keywords:** Corona pandemic, civil liability, force majeure, emergency situation, risks of scientific development.

### المخلص:

يشهد العالم اليوم كارثة حقيقية بسبب جائحة كورونا حيث أنها أثرت على جميع مجالات الحياة ومن بينها المجال القانوني فقد طرحت عدة إشكالات قانونية أهمها ما يتعلق بالمسؤولية المدنية وبالتحديد المسؤولية العقدية و مسؤولية المنتج بالنظر للتطور الذي شهده القانون، ولتجنب حدوث أزمة المسؤولية كيف الفقهاء هذه الجائحة على أساس قوة قاهرة

من اجل التحلل من التزاماتها التعاقدية وعدم أداء غرامات التأخير أو التعويض عن التأخير في التنفيذ أو عن استحالتة، إلا أنه هناك طرح جديد يتمثل في مخاطر التطور العلمي ، والتي قد أثارت عدة إشكالات قانونية أهمها خطر التقدم العلمي الذي جاء كدفع خاص لإعفاء المنتج من مسؤوليته .

الكلمات المفتاحية: جائحة كورونا، المسؤولية المدنية، القوة القاهرة، الظروف الطارئ، مخاطر التطور العلمي.

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### **Introduction:**

Scientific and technological development in various fields has had a beneficial effect on humanity, but on the other hand, science is a double-edged weapon, scientific experiments have produced a virus called the Coronavirus (Coved 19), which swept the whole world from east to west, no country has been spared.

The Corona pandemic is now the subject of the era, because it has raised many problems that affected various fields, closed the borders, and the adoption of quarantine to ensure the safety of citizens, in addition to the cessation of trade, which reflected negatively on the wheel of economic development, and what concerns us in this regard is its violation of the legal field, because fulfilling contractual obligations has become impossible, on the other hand, led to a lack of financial liquidity, which will result in disputes between the parties at the national level and The first responsibility to be put forward in this regard is undoubtedly the civil responsibility that will be the subject of our study.

According to the above, The Coronavirus raises several legal problems, the most important of which is the extent to which the epidemic affects the rules of civil liability? What are the solutions proposed to prevent a legal crisis for this kind of responsibility?.

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That's what we've tried to answer by dividing our study into two topics:

**1-Title I: The effects of the Coronavirus on the rules of traditional civil liability.**

**2-Title II: the effects of the Coronavirus on modern civil liability rules.**

In order to study the subject, we decided to take the descriptive-analytical method, and he must analyze the topic:

**1-Tilte I: the effects of the Corona virus on the rules of civil responsibility traditional**

Traditional civil liability means contract liability and default liability, and what concerns us in the field of study is the impact of the corona virus on the rules of responsibility, the latter of which we will study in two demands:

The first requirement: the impact of the Corona pandemic on contractual obligations

The second requirement: exceptions to the impact of the Corona pandemic on contractual obligations.

### **1.1- First Subtitle: the impact of the Corona pandemic on contractual obligations**

The contract is based on an important principle, which is the principle of satisfaction, as stated in Article 106 of the C.C., the contract may not be revoked, and cannot be amended except by the agreement of the parties or for reasons established by law," article 107 of the same law adds that the contract must be executed in accordance with its provisions and in good faith, and also adds article 164, which also includes forcing the debtor to carry out its obligations in kind after its excuses in accordance with articles 180-181 C.C. where ever possible, Accordingly, according to these texts, the contract has binding power, in which each party is obliged to carry out its contractual obligations in accordance with its provisions and in good faith.

Failure to comply or violate a contract clause entails contractual liability, in addition to the fact that there may be a reason beyond the control of one of the parties that prevent the implementation of the obligation as a corona pandemic, and the question in this regard is what legal basis can be pushed to

reduce the corona pandemic to de-liability? This is what we will answer in two branches:

Section 1: Adapting the Corona pandemic on the basis of force majeure

Section 2: The Effects of the Corona Pandemic on Contractual Obligations

**Section 1: Adapting the Corona pandemic on the basis of force majeure**

Contractual liability is not done except when the in-kind execution is impossible, so the debtor is liable for damages to the creditor as a result of non-fulfillment of the obligations arising from the contract, and for doing so, the contract must be valid and the non-execution is due to the debtor's fault.

However, it may happen that the debtor does not fulfill its obligation for a foreign reason, as stated in article 176 C.C, which states that "if the debtor cannot fulfill the obligation in kind, it is sentenced to compensate for the damage caused by the implementation of its obligation unless it is established that the impossibility of implementation arose from an unnecessary cause of the Corona pandemic.

Based on the above, for the existence of the contract liability, the error, damage and causal relationship between them must be made, and in the absence of the latter, the damage is for a foreign reason, even if the error is the cause of the damage.

Article 127 C.C states that "if a person proves that the injury is the result of an unnecessary cause as a sudden accident, force majeure, fault of the injured or a fault of others, he is not obliged to compensate for such damage unless there is a legal provision or agreement otherwise".

It is concluded from the text of the article that the debtor dissociates from its obligation if it is caused by a sudden circumstance or force majeure, which is of interest to us in our study and the question is whether the Corona pandemic is an emergency or a force majeure.

-First hypothesis: Adaptation of the Corona pandemic on the basis of an emergency

The assumption of the Corona pandemic is an emergency that requires a definition of the latter first and then we see the extent of its applicability with the pandemic ii, where the incident is meant to occur sudden phenomena that were not expected, and

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we commend the mention that the Algerian legislator did not know this term, and from that can be said that the Corona pandemic can be considered an emergency circumstance, it was not expected, but it can be implemented after it has occurred, so the adaptation of the emergency situation does not apply to the Corona pandemic, and in the next part we will see if it is The latter is a force majeure.

-Assumption 2: Adapting the Corona pandemic on the basis of force majeure

If we look at it as unexpected, it is a sudden accident, and if we look at it in terms that it cannot be pushed, it is a force majeure, and therefore it can be defined: "it is unexpected and unplayable to make the implementation of the obligation impossible, without any error on the debtor's side, which is what the jurisprudence considered in this regard.

The incident, in order to be a force majeure or a sudden incident is required to be unpredictable and unpayable and to make the implementation of the obligation impossible.

A-The accident cannot be expected to happen

So that it is impossible for a person to expect it no matter how alert it is, if it can be expected, then it is no force major if it is impossible to pay it.

The unpredictability of the usual man's standard is measured by the subjective and subjective criterion and the non-expectation of contractual liability at the time of the conclusion of the contract.

B- The accident is not possible to pay:

Force majeure or sudden accident must also be unprofitable, if the accident can be pushed even if it is impossible to predict, it was not forced Majeure or a sudden accident. Because that makes the debtor in front of the impossibility of implementation, if it is proven that a set of measures, whether prior or subsequent to the accident, were sufficient to pay its effects, then the debtor is not facing a situation of force majeure.

From this standpoint, a distinction must be made between the impossibility of implementation and the difficulty in

implementation. The contracting debtor is not entitled to fulfill his obligation, simply because it has become difficult for him from the situation that he expected, especially if it becomes more costly to him, but an absolute impossibility is required.

So long as the debtor has the means to fulfill its obligation and whatever sacrifices it will incur for that, it remains obligated to implement because the causal relationship does not stop between failure to implement the obligation and the damage to the creditor, but the damage remains to arise from the debtor not fulfilling his obligation, and On the other hand, the contractor cannot This pandemic has to pay even governments and developed countries could not find a cure for the virus, which means that the condition of the possibility of payment available is the other.

C- Make the implementation of the commitment impossible  
The situation in the region is not a matter of concern.

## **Section 2: Effects of the Corona pandemic on contractual obligations**

The contract is based on the principles of the first principle of the authority of will and secondly, the moral principle of respecting covenants and covenants and the third of a social and economic nature translated by the necessity of stability of transactions, the health epidemics, such as the pandemic of Corona, a material reality that has negative effects on contractual relations, especially the investment sector, may make implementation difficult or difficult.

If we consider the Corona pandemic to be a force majeure because of the impossibility of the damage caused by it, and therefore the impossibility of implementing Contractual obligation, which leads to the expiry of the original obligations, for example in the sponsorship contracts, the guarantor's liability, Especially investment contracts here may arise disputes between two different companies, and there are problems about the law of duty.

### **1.2- Second Subtitle: exceptions to the impact of corona on contractual obligations**

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The adaptation agreed so far by the legal legislation on the Corona pandemic is a force of force, and this necessarily arranges the application of the rules of the latter, and we have seen in the previous part the impact of the epidemic on contractual obligations, but nevertheless, for a foreign reason the obligation of the debtor may remain in place and if it is not implemented is held accountable contractually and this is called force majeure that we will study in two branches are:

Section 1: Partial Impossibility

Section 2: Coronavirus does not affect compliance

### **Section 1: Partial Impossibility**

We mean the partial impossibility that the obligation in part of it can be implemented and therefore the debtor's disclaimer in fulfilling, but the second part remains responsible and does not ask for it because of the force majeure as the Corona pandemic, but here it poses problems with regard to the obligations that are breakable as well as that do not accept it? Here the legislator gave the judge the discretion to estimate this because it is a defect in modifying the terms of the contract in accordance with the new circumstances and especially with the coronavirus, so he adjusts its value or duration, the judgment here acts as a contract because the role of the judge lies in maintaining the continuity of the contract.

### **Section 2: Coronavirus does not affect compliance**

Although the Coronavirus is a case in force, it may not affect contractual obligations and remains in place and if the debtor does not implement it remains responsible, this is in the following cases:

First: The debtor's inaction in implementing his commitment

The prevailing principle in contract law is to execute the contract in good faith in accordance with Article 107 C.C., but the debtor may be delayed in fulfilling its obligation, so he cannot invoke emergency circumstances or force majeure and remains a contractual liability.

Second: The status of the stipulation in the terms of the contract that the debtor bears the force majeure

As we have said earlier, the contract is the law of the contractors, and the parties may agree in one of the terms of the contract that the debtor shall bear the effects of force majeure on the contract, and if the dispute reaches the judge to apply the contract, and the debtor remains responsible if the terms of the contract are clear, may not interpret the contract in a manner that departs from the will of the contractors, as stated in article 111 C.C.

The first is that force majeure or sudden accident has had an impact since there must be a distinction here between two assumptions: first, that force majeure is the only cause of the damage, and in this assumption, there is no responsibility for the lack of causality. The second is that force majeure is involved with the debtor's fault in inflicting damage, and the latter asks entirely about the damage and commits to full compensation because force majeure cannot be attributed to another person until it is shared with the debtor in the responsibility.

If force is permanently prevented from implementing the obligation, the debtor is permanently absolved of its obligation, but if it is temporary, it suspends the implementation of the obligation until the incident is over and the obligation is due to be executed.

There is no doubt that each of the above-mentioned conditions differed on its application of comparative and doctrinal theories, but in principle, we can conclude that a health epidemic - such as the CORONA virus - as a material reality may be a force majeure, whenever it has a direct impact on the non-implementation of the debtor's contractual obligation, especially if it has two basic conditions, namely, non-expectation and impossibility of payment in the manner previously explained, in this case, in particular the case of the CORONA virus. It is not logically required, but the circumstances surrounding the spread of the virus or those generated directly or indirectly may, in turn, be force majeure, such as stopping the importation of some raw materials or raising the prices of others.

The force is, in fact, no longer limited to specific facts, each fact on which the conditions have been met and has made implementation impossible, except for the promise of a case of



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force majeure, and of course, the debtor remains obliged to prove the availability of these conditions, which is certainly not doubtable and unlikely. The project is expected to be completed in 2012. Coronavirus is considered to be a force majeure.

These were the effects of the coronavirus on the rules of traditional civil responsibility, especially the nodding ones because the epidemic is a force that the debtor can pay to deny its nodal responsibility or today and by the development of technology and science in various fields emerged a modern responsibility with special rules, has the impact of the coronavirus on it as well? This is what we will answer in the next part.

### **2-Title II: the effects of the coronavirus on the rules of modern civil responsibility.**

The development of technology and science in various fields has led to the development of legal rules, especially liability in its sense, which has become insufficient to address the problems raised, especially in the field of consumption, as a result of which a modern responsibility has emerged, the responsibility of the Algerian legislator has accompanied the development of the law and took it in the art 140 bis and 140 bis 1 when amending the Civil Code law no. 05-10 and derived from French Law No. 98-389 of 19 May 1998 concerning responsibility for the act of defective products, which came in the application of European Education No. 85-37 4 Dated July 25, 1985, concerning the responsibility for the act of defective products modified and complementary, this responsibility has raised several legal problems, the most important of which is the risk of progressing to my knowledge, which came as a special payment to relieve the product of its responsibility and since the coronavirus is the product of scientific developments, and the question is this pandemic just a matter of time before the development of my science, such as exempting the product from its liability? This is what we will answer through two demands:  
The first requirement: adapting the Corona pandemic on the basis of the risk of scientific progress  
The second requirement: the impact of the Corona pandemic as a threat to scientific progress on the rules of responsibility.

## **2.1- First Subtitle: adapting the Corona pandemic based on the risk of scientific progress**

In previous research, we have seen that the Corona pandemic is a force majeure by conventional rules, but in the face of the emergence of modern rules such as the risks of scientific development, can the CORONA virus be considered some kind of risk. The answer requires us to study:

Section 1: The Concept of the Dangers of Scientific Progress

Section 2: The extent to which the concept of the risks of scientific development conforms to the Corona pandemic

### **Section 1: The Concept of the Dangers of Scientific Progress**

The dangers of scientific development are the name of jurisprudence that was introduced by the jurisprudence, which was defined by Professor Mohammed Al-Qutb as all the defects that the product does not detect because of the state of scientific knowledge and technology that did not allow it at the time of the introduction of the product for celebration.

In another definition of Professor Guy Raymond: “We are at risk of scientific advancement when the market contains products whose effects cannot be known over time”.

It is concluded from these definitions that the risks of scientific advances relate to future risks that neither science nor the product can predict in advance at the time of the product's introduction to the practice.

### **Section 2: The extent to which the concept of the risks of scientific development on the Corona pandemic is matched**

The Algerian legislator did not take the risks of scientific development as a reason to pay for the product, and if we consider that the Corona pandemic is a risk of development science, here the producer remains responsible for its obligations, and in the absence of an explicit text in this regard, its adaptation is only a force under Algerian legislation and the product can dissociate from its responsibility based on this payment, but if it does not respect the health and preventive measures taken to prevent the epidemic, this is a proposal to adopt the Corona pandemic on the basis of the risks of scientific progress. The question is if we adopt this adaptation, what are

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the implications of the rules of responsibility, and what will be studied in the next part.

### **2.2- Second Subtitle: the impact of the Corona pandemic as a threat to scientific progress on the rules of responsibility.**

Adapting the Corona pandemic as a threat to scientific progress poses several legal problems with the rules of responsibility and we will allocate two branches to study it:

First: The difficulty of proving the Corona pandemic as a threat to scientific progress

Second: Exceptions to the risks of scientific progress.

First: The difficulty of proving the Corona pandemic as a threat to scientific progress

The concept of the danger of scientific progress as described above, it is difficult to determine its scope, and as long as it is, here the product cannot prove to decompose its responsibility, knowing that all sides have not yet been able to cope with this epidemic, how can the product be held responsible for it.

#### **Second: Exceptions to the risks of scientific progress**

The exemption of the product from liability has never been made in French law and European education, but there are two exceptions:

Article 15, paragraph 2 of European Directive 85-374, states that the En countries are free to take the risks of scientific development as a reason to exempt the product from its liability, so we find that the articles of what they have taken, it was Germany that made exceptions, and Germany was the first to make the exception in a famous decision of the Federal Court of Justice BGH called Hühnerpest, and perhaps the reason behind the exceptions is consumer protection, especially when it comes to sensitive products, as we will see in the following points through our study of the exception for the human body or products derived from it:

The exception to the human body or the products derived from it:

(Un élément du corps humain ou par les produits issus de celui-ci)

Both the French and German legislators have excluded the human body and the products derived from it from the scope of the exemption, and Germany is considered the first to develop this exception, especially medicines that are subject to a special system and impose supposition on their producer's compulsory liability for their risks, as evidenced by the issue of medicine. Contergan has caused the latter to distort the embryos and children born, they were born with incomplete organs, the pregnant women at the beginning when they tried this medicine did not show its seriousness, but with the passage of time showed that and considered the product responsible He has to compensate those affected.

As for French law, the legislature introduced this exception under article 1386-12 of the French Civil Code amended by law 2004-1343 of 09 December 2004, which was made in accordance with article 2 of the Convention on Human Rights and Bio-Medicine held under the Council of Europe and the European Commission on 04 April 1997.

Here the questions about the exception, because the producers of the drug are today in front of many scientific experiments to find the drug and if this is excluded from the payment will be the producers of the drug will be accountable, and this will affect the aspect of innovation and invention, especially that it will not be easy for the producers of the drug in the face of their fear, and therefore there will be no solution to the crisis, but if the corona epidemic is adapted on the basis of the risk of scientific progress will be absolute without the introduction of exceptions.

### **Conclusion:**

The bottom line is that today's Corona pandemic is a real crisis affecting the rules of responsibility, which will negatively affect transactions between individuals, especially that it will raise cases of exemption and compensation, whether on the basis of force majeure or on the basis of the risks of progress, resulting in pressure on judges, both circumstances apply to certain situations while in other cases it is difficult, which requires the judge sufficient flexibility to apply the law and take into account all aspects, and based on As of the above

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There fore, we conclude the following results:

1 -Adaptation of the Corona pandemic or Covid 19 virus on the basis of force majeure as a rule and some exceptions are made.

2 - In light of the health crisis of Covid 19, fulfilling the contractual obligations became impossible.

3 - The health crisis caused by the Covid 19 virus led to a lack of financial liquidity, which will result in disputes between the parties. The first responsibility in this regard is undoubtedly civil liability.

4 - Lack of legal rules related to civil liability in the face of crises, especially health epidemics.

5 - Corona pandemic is considered one of the risks of scientific development in the concept of modern civil responsibility.

6 - Although Coronavirus is based on a force majeure, it may not affect contractual obligations and remains valid and if the debtor does not implement it, he remains responsible, and this is especially in cases such as the debtor's inaction in the implementation of his commitment and as in the terms of the contract that the debtor bears force majeure...

7 - The Algerian legislator did not take the dangers of scientific development as a reason to push civil responsibility.

We have proposed a number of recommendations, including:

1- Issued the certificates of force majeure to exonerate the debtor from his contractual responsibility for fulfilling the conditions of the legal basis of the Corona pandemic as china and America did.

2- The formation of a qualified and competent committee to assess the applicability of the conditions of force to the Corona pandemic.

3- Framing a special legal system for crisis management besides streptococcal responsibility.

4- Establishing a special fund for insurance for health epidemics.

5- Establish an electronic court to resolve disputes in crises such as the Corona crisis.

6- Encourage e-commerce so that there is no problem in implementation.

7- The continuation of the Corona pandemic will create a real crisis for civil responsibility, so quick solutions must be found to this situation.

8- Legal rules relating to civil liability must be legislated and prepared in the face of crises, especially health epidemics.

9- Finding legal protection for drug producers who are today in front of many scientific experiments to find the drug, and if this excludes it from payment, the drug producers will be accountable, and this will affect the aspect of innovation and innovation, especially as it will not be easy for drug producers to fear them, and therefore There will be no solution to the crisis.

10- The Corona epidemic (Covid 19) must be adapted on the basis of the risk of scientific progress to be absolute without introducing exceptions.

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