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APPLICABLE LAW OF INSURANCE CONTRACT ACTIONS

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ABSTRACT. The insurance contract is a legal agreement in which the insured agrees to pay the insured or the beneficiary a sum of money, salary, or other financial compensation in the case of an insured accident, in exchange for installments or other payments to the insured. In case of the insurance contract for the injured person from the insured accident, against the insured responsible for covering this incident in insurance. The law granted a claim known as direct litigation. The believer determined the right to replace the insured before the person responsible for the accident and to demand the insured's rights through the suite of solutions, which we will attempt to clarify in our research. The distinction in the law that determines the availability of the conditions for accepting direct action and the case for solutions, whether they are subject to the law governing this contract or are a privilege granted to the creditor against the debtor's debtor, and whether the law governing the debtor's performance otherwise applies to the solutions? In the subject of law, we relied on the insurance contract claims in the comparative study curriculum to ascertain the nature of the problem and review pertinent legal rules to determine the appropriateness of their application to the subject at hand and to illustrate the Iraqi legislator's position in detail in comparison to the Egyptian, French, and American law.

JEL Classification: K12,
K13, K20

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Introduction

To put it another way, an insurance contract binds the insured party to pay the beneficiary, in the case of an insured occurrence, a certain amount of money or income, such as salary or commission, in exchange for regular payments to the insured party. During the insurance contract for the injured person from the insured accident, the law granted a claim known as direct litigation, as the believer decided the right to replace the insured before the person responsible for covering this incident in insurance and demanded the rights of the insured through solutions, and this is what we will try to clarify in our research. Whether or if the law controlling this contract applies to the requirements for accepting direct action and the case for solutions, and if so, does the law on the fulfillment of the debtor otherwise apply to the keys is a question that must be answered. For our comparative study of the law topic, we relied

on the claims of an insurance contract to identify the problem and review the relevant legal rules to determine whether they were appropriate for this topic and to compare the Iraqi, Egyptian, and French positions on this issue.

1. The law is applicable to direct action in the insurance contract

The Iraqi legislator defined the insurance contract in the text of the article (983/1) of the civil code.¹

"Insurance, a contract in which the insured is obliged to lead to the insured or the beneficiary a sum of money or income in salary or any other financial compensation, in the event of an accident insured against him, in exchange for installments or any other payment he makes to the insured."

The Iraqi legislator prohibited the insurance company from fulfilling its obligations by paying the amount of insurance to anyone who was not affected as long as the victim did not compensate for the damage caused by accident, which is insured and covered by the provisions of the insurance contract.

Article 1006 of the Iraqi Civil Code contained a general provision that "the insured may not pay the victim the amount of insurance agreed upon in all or some of it as long as the victim is not compensated."

Under this provision, the Iraqi legislator gave the victim an excellent and direct right to compensation so that, when the insurance company fails to pay him, he can pursue it directly before the competent courts for sentencing her and obliging her to pay compensation to him to cover the insurer's civil² liability.

On the contrary, we find otherwise in the Egyptian law, whose legislator did not come up with any general provision that decides the injured person a direct right to claim the insurer (insurance company) for compensation for the damage he suffers and which he asks for before the insured as the Iraqi legislator did. The Egyptian courts had stood from this negative attitude when they refused to grant the injured person the said right. Still, she returned and amended this diligence to keep pace with foreign jurisprudence by giving the victim the right to sue the insurance company directly^{0.3}

In French law, the situation is no different from Iraqi law in giving the injured the right to direct action against the insurance company, as adopted through the article (53) of the French Insurance Act of 1930, which corresponds to the article (1006) of the Iraqi Civil⁴ Code.

As for U.S. law, we have not seen a provision that determines such a right, but we have found that the injured have a choice (in the area of direct advocacy towards the insurance company) in some types of insurance contracts that are considered to be compulsory insurance

⁽¹⁾Article (983) of the Iraqi Civil Code No. (41) of 1951.

⁽²⁾ Dr. Fernan Bali, Direct Injured Suit against the Insurance Company and the Reference for Its Vision, Al-Asra Publishing and Distribution House, Amman, Jordan, 1998, p. 5.

⁽³⁾ A mixed Egyptian appeal is heard on March 27, 1930, Mixtes Gazette des Tribuneux On April 15, 188/172, on April 18, 1935 On June 15, 1922/ 276/322, the beginning of Cairo was ruled mixed on 8 January 1936. C. T.M 26 / 324 / 234 . He referred to these provisions.. Dr. Fernan Bali, Former sourceP8.

⁽⁴⁾ Article (53) of the French Insurance Act 1930 stipulates that (the insured may not pay the insured what is due in his or her liability, as long as the injured person is not compensated beyond this amount for damages arising from the harmful acts that resulted in the liability of the insured).

in the United States of America, such as insurance from pollution risks or what is known as technological¹⁵ hazards.

As for the law governing the conditions for accepting this case, some consider that direct action affects the⁶ insurance contract between the (insured) and the insurance company (the insured). Therefore it is subject to the law governing this contract. This trend confirms its opinion by saying that if the insurance contract does not have the right to direct action, as if the insurance contract is the basis of this case. Therefore it should be subject to the law governing the agreement. According to this opinion, since the debt, as moral funds are subject to the debtor's home's direction, the debtor's privilege is also subject to this law. As such, the direct action is subject to the order of the⁷ debtor's home (the insured).⁸ However, this opinion cannot be approved because the debt is usually subject to the law governing the origin of any relationship between the parties⁹. In our subject in question, it is the insurance contract. Therefore, the insurance contract law is supposed to govern this case. This is in line with the first opinion that we cannot recognize. Because if it is true that the direct action is aimed at implementing the insurance contract and that this contract includes its subject matter and limits, but this means that the insurance contract is the basis of the direct action, this case derives the origin of its existence from the provisions of the law, the law determines the right of the injured to direct action before the insured. All that matter is that the legislator has authorized the injured this right on the occasion of the insurance contract. This last fact does not change the reality. The situation is something, as the law remains the basis of the case and not the contract. As long as this is the case, the direct action must be subject to domestic law (the law of the place of accident) as a guarantee of the injured right to compensation, and this is what the most likely conclusion has been.

It should be said that the application of domestic law is considered to be a matter of civil security, i.e., one of the rules of direct application, which in itself determines its area of spatial¹⁰ validity.

The French judiciary confirmed this consideration as it goes to the application of French law as the law of the scene of the accident by saying (that if the insured damage is achieved in French territory, even if the insurance contract is subject to foreign law, does not give this case to the injured, but if the damage insured is achieved in the non-French territory and the insurance contract is subject to foreign law does not give the impaired direct action, the injured person would not have this claim even if the competent court The case is being heard by a^{French}¹¹ court.

However, it is necessary to refer directly to the insured even if the local law does not include a general provision for which this right shall be established, as is the case in Egyptian

(⁵) Quoting Dr. Mohammed Shukri Srour, Insurance against Technological Hazards, Arab Thought House, Cairo, 1987, p. 132.

(⁶) Dr. Hisham Ali Sadiq, Conflict of Laws, Comparative Study in General Principles and Status Solutions Established in Egyptian Legislation, Third Edition, MenschKnowledge in Alexandria, 1974 P. 172.

(⁷) Dr. Abdul Razzaq Ahmed Al-Sanhouri, Mediator in Civil Law, Al-Ghurr contracts, gambling contracts, betting, salary for life and insurance contract, Part VII, Volume II, Dar al-NahdaRebiyeh, Cairo, 1964, p. 1674 P. 1673.

(⁸) A court ruling is being heard. Rouen French on 8 January 1930 published in Clunet P. 363, with a comment Perroud. Dr. Hasha pointed to him. M Ali Sadiq, conflict of laws, source Previous, p. 772, margin 1.

(⁹) Dr. Hassan Al-Hadawi, Special International Law, Section II, Conflict of Laws, Conflict of Judicial Competence and Implementation of Foreign Sentences, First Edition, Ibn al-Atheer House of PrintingPublishing, Mosul University, 2005, P. 143.

(¹⁰) Dr. HashM Ali Sadiq, Conflict of Laws, Source Previous, p. 773, margin (1).

(¹¹) The ruling of the French Court of Cassation is heard on February 24, 1936, and the same court ruled on July 13, 1948. He referred to these provisions. 63- Dr. Abdul Razzaq Ahmed Al-Sanhouri, Former source P. 1674.

law, if the insurance policy contains a requirement in the interest of the injured entitled him to refer directly to the insured, as long as this requirement is signed correctly following the law governing the insurance contract. The obligation to require the validity of the condition in the interest of others following the law governing the agreement is based on the fact that this law is Reference in assessing the validity of the requirements listed in the contract under the general rules¹²

The Egyptian judiciary confirmed this by basing its jurisprudence on the right of the victim's direct claim to the insurance company on the theory of requirement for the benefit of others Stipulation pour autroi, and this was expressly stated in the ruling of the Alexandria Mixed Court of March 1, 1928 (the direct action of those who suffered harm from a particular incident towards the insured of the perpetrator of the damage can be based on the theory of requirement for the benefit of others because the purpose of the insurance is to contact the insurer for the benefit of others if there was a specific incident 13.

Finally, we note that if the origin is subject to direct action under domestic law, however, it is necessary to refer to the law governing the insurance contract to reveal the limits of the insurer's obligations and the extent to which he is exempted, for example, from paying the amount of insurance if he (the injured) makes a mistake that goes beyond the limits of the expected risk and the return of the injured person to the insurer in direct action, under domestic law assumes the validity of the insurance contract, which is subject to the law governing the agreement¹⁴.

(¹²) Dr. HashM Ali Sadiq, Conflict of Laws, Source Previous, p. 775.

(¹³) This judgment is considered published in G. T.M No , 887 . Referred to by Dr. Fernán Bali, source Previous, p. 9.

(¹⁴) Dr. Hisham Ali Sadiq, Conflict of Laws, Previous Source, p. 775. If the direct action brought by the injured person against the insured is not the source of the insurance contract but rather the law, then there is a special statute of limitations decided by law and is therefore subject to general rules and has a statute of limitations of 15 years. Dr. Abdul Razzaq looks Ahmed Sanhouri, For a mediator in the explanation of civil law, source Previous, p. 1686.

2. *The Law applicable to suit solutions in the insurance contract*

The suit for solutions means that the¹⁵insured replaces the insured in returning to the person not responsible for the accident

Solutions are usually based on two types: agreement solutions and legal solutions, and if we limit ourselves to the scope of the contract, then what is meant is unique solutions, without in kind, which is a kind of loyalty that leads to the creditor fulfilling his right but with the keys of the insured in his return to the debtor, and subject to the legal solutions to the law of the state that decides it, including what is determined by a set of laws on the solutions of the Social Insurance Authority to replace the insured in the face of the employer, and the state replaces the state's solution to the law of the state that decides it. Its citizens, in obtaining compensation, replace the foreign official for the damage (which is outside the scope of our research). Still, the agreement solutions Subrogation Conventionnelle is a contract made either by the agreement of the deceased with the creditor or by its agreement with the debtor^{0. 16}

Concerning the law governing such solutions, some apply the direction of the place of fulfillment of debt because the essence of the solutions is fulfillment and is concentrated in such satisfaction. The place of fulfillment is usually the place of complete agreement of¹⁷ solutions.

But this doctrine is payoff because it builds the law that governs the solutions of the believer on the provisions of fulfillment with explanations when it is not fulfilling solutions. Because the conditions of satisfaction with solutions require that the deceased be in debt to the creditor to replace him in his rights before the debtor as if the dead are obliged to meet with the debtor or to meet him. When the insured meets compensation to the insured as a result of the realization of the danger insured from him, he fulfills the debt himself, not the obligation of the official. As he is not obliged to meet with the latter or is obliged to fulfill it, the believer is not compelled to owe with the official because he is not obliged to meet with the official or meet with the latter. Therefore, by fulfilling the debt of liability, he did not make a mistake or participate with the official in committing it, nor did he share with the official and independent of him in his source, which is the insurance contract other than the debt of the official, whose source lies in the contract between him and the insured or may be due to the provisions of default liability^{0. 18 19}

(¹⁵) Abdul Ali Reza Jaafar, Return of the Believer to the Irresponsible, Master's Letter submitted to the Council of the Faculty of Law and Politics at Baghdad University, 1983, p. 210. The Jordanian Court of Cassation has ruled by the Iraqi Insurance Company to replace the insured (General Food Trading Company) by claiming the cause of the damage (the ship St. George belonging to the defendant Gypsy Xing Company) to compensate for the shortage and damage caused by the dispatch of the insured consisting of (28,000) shawl sugar on board the ship upon its arrival at the port of Aqaba. Jordan's Court of Cassation's decision, discrimination of rights no.

1515/94 on April 15, 1995, (published decision) by Ayman Mohammed Al-Moufi, insurance and the judiciary in the decisions of the Court of Cassation, first edition, Scientific House of Publishing and Distribution, Amman, Jordan, 2001, p. 279-281.

(¹⁶)10- Dr. Ahmed Abdul Karim Salameh, International Contract Law, Arab Renaissance House, Cairo, 2000 P. 237-238.

(¹⁷) The same source, p. 238.

(¹⁸)Abd Ali Reza Jaafar, Former source P. 112-113. For more detail on the provisions of loyalty with solutions, Dr. Ahmed Shawky Mohammed Abdul Rahman, The General Theory of Commitment, Commitment and Proof Provisions in The Jurisprudence and The Judiciary, Knowledge Facility in Alexandria, 2004, p. 260.

(¹⁹) Dr. Ahmed Abdul Karim Safety, International Contract Act, Source Previous, p. 238.

The Rome Convention on Law has adopted the applicable obligations to contractual obligations (Rome I) through the article (13), which states that the rights of the creditor before a debtor are subject to the law applicable to the creditor's relationship with his city, i.e., the law governing the original relationship between the creditor and the debtor that entails this²⁰ debt.

The same solution is taken in non-contractual obligations, as stipulated in the regulation issued by the European Council, which relates to the applicable law in the area of non-contractual obligations referred to as the Agreement (Rome II).²¹

In our view, this is the best solution because the suit of solutions directly impacts the effects of the insurance contract that it arranges in the hands of others. Therefore, it is necessary to submit to the law governing this contract other than in the case of direct action, which we find its legal basis in the right of the injured to claim the insured compensation for the damage he has suffered. The unit of law applicable to the insurance contract requires the application of this law so that the laws applicable to the matters related to this contract do not branch out.

However, domestic law's decision must be respected to protect others, and the domestic law here means the direction of the state to be fulfilled. Therefore, if the fulfillment is in a particular state, then the requirements of the law of this state must be respected before the complete satisfaction and be done with a fixed-date paper and formally so that there is no collusion between the original creditor and the deceased who replaced it by submitting the date of the documents to gain precedence over the rest of the creditors.²²

In American law, there is what is known as the Factoring system under the English term, or affacturage in the french phrase, which is called in Arabic as the term "contract for the collection of rights referred of a special nature," as the right holder transfers it to the victor, who is obliged to guarantee a payment or even in the case where the debtor defaults and the victor can pay all or some of the amount of the right referred in²³ advance.

The system was organized internationally in an international convention known as the Ottawa Convention in 1988. It came into force on May 1, 1995, and France was one of the countries to ratify it on September 23, 1991.^{24 25}

Conclusion

We have reached a set of findings and recommendations in our research marked by the applicable law on insurance contract claims.

(²⁰) Consider Article (13) of the Rome Convention 'Especially By law applicable to contractual obligations For 2008 Posted on a network. Only Internet The following website:

<http://www.rome-convention.org/instrumentsII-conv-origen.htm/>

(²¹) List Rome II related The law is applicable in the area of non-contractual obligations For 2007, posted on the Internet and on the following website:

<https://eurlex.europa.eu/legalcontent/en/ALL/?uri=CELEX%3A32007R0864>

(²²) Dr. Ashraf Wafa Mohammed, Hawala Al-Haq in International Special Relations, Arab Renaissance House, Cairo A, 2005 P. 200-2001.

(²³) Zeina Hazem Khalaf al-Jubouri, International Att for The Collection of Referred Rights, Research published in Al-Mansour Magazine, published by Al-Mansour University College, Issue 15, Baghdad, 2011, p. 101 and beyond.

(²⁴) Quoting the same source, p. 188-189.

(²⁵) The United Nations Convention on International Finance through Hawala al-Haq, published on the Internet and on the following website:

[http://www. UNIDROIT Convention on International Financial Leasing \(Ottawa, 1988\).htm](http://www.UNIDROIT.org/convention/Convention%20on%20International%20Financial%20Leasing%20(Ottawa%201988).htm)

First: Results:

1. Insurance is a contract in which the insured is obliged to lead to the insured or the beneficiary a sum of money or income in salary or any other financial compensation, in the event of the accident insured against him, in exchange for installments or another payment made by the insured.

2. The direct claim of the insurance contract governs the local law (the law of the place of accident) as a guarantee of the injured right to compensation. Still, suppose the origin is subject to the direct action of domestic law. In that case, however, it is necessary to refer to the law governing the insurance contract to reveal the limits of the insurer's obligations and the extent to which he is exempted from them.

3. The suite of solutions governs the law governing the insurance contract because it is a direct effect of the insurance contract that it arranges in the hands of others. Therefore, it is necessary to submit to the law governing this contract while respecting what is decided by local law to protect others. The local law here means the law of the state that is fulfilled. Therefore, if the fulfillment in a particular state must be respected as stipulated in the law of this state, the solutions must be before full completion.

Second: recommendations:

1. We call on Iraqi legislator A.L. to join the Ottawa Agreement to standardize the provisions on the contract for the collection of rights referred to its countries.

2. We appeal to the Iraqi legislator to regulate the law, which applies to the insurance contract explicitly, because of the importance of this limitation and to know the law that governs its implications, such as the lawsuits arising from it, such (direct action and suit of solutions), as well as other branches of private law to make it easier for the judge and the researcher instead of distributing them between the various components of the laws, which makes the problem more difficult.

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