

The Responsibility of the tourism and travel agency toward the third-party faults through perform the contract of tourist trip "comparative Study between Bahraini and Jordanian legislation"

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Abstract

The civil liability of the tourism and travel agency is characterized by a dual responsibility, and it arises as a result of the agency's breach of its obligations towards the tourist, and this is the same as whether this obligation is legal or contractual, as it is responsible for its personal fault for every harm caused to the tourist on comprehensive tourist trips and for the misorganization of these trips. This is on the one hand, and on the other hand, it asks for contractual responsibility for the actions of third-party service providers that it seeks assistance in implementing the trip program organized by it, as well as the nature of the role it plays in organizing the tourist trip. The scope of this study is the tourism agency's responsibility for the actions of third-party service providers that it seeks assistance. They are involved in implementing the tourist trip contract, such as hotels, domestic tour operators, tour guides, land and air transport companies, and others.

Keywords: tourism and travel agency, tourist, tourist trip contract, liability for personal error, contractual liability for the actions of others.

Introduction :

Tourism has now become one of the economic activities that has a significant impact on the national economy. It constitutes an important resource for the state in providing hard currencies that contribute significantly to supporting the economy and its recovery. It has come to represent the third source of income in the world. This is in addition to the importance of tourism from The social, cultural and media aspects, and being a tool for getting people to know each other and spreading love and peace.

Tourism and travel agencies are considered one of the most important pillars of tourism activity. They carry out their activity by concluding tourist trip contracts with the parties that benefit from it, namely tourists. It is important that there is a legal regulation specific to the contract concluded between travel and tourism companies and their clients, given the importance this contract represents. Defining its concept acquires special importance, which is not limited only to the importance of the process when the aforementioned agency organizes the tourist trip without causing any harm to the tourist, but also extends to the legal problems raised by this contract, represented by the obligations of its parties vis-à-vis each other, and the agency is responsible for a range of duties. Obligations, which are her obligation to ensure the safety of the tourist from all harm, in addition to the tourist's dissatisfaction with the implementation of the tourist trip program or its implementation in a flawed manner, which results in her personal mistake. Her responsibility arises for the actions of others, especially when she seeks the assistance of tourism service providers in implementing all or part of the tourist trip program, and this This would lead us to ask the following question: To what extent is the tourism and travel agency's responsibility for its personal and contractual errors based on the actions of third-party in the face of its clients?

the importance of studying :

Despite the great importance of the phenomenon of tourism and the tourist trip contract in all aspects of life - especially the economic aspect - there is no legal regulation of the tourist trip contract in the Jordanian and Bahraini laws, as the Jordanian Tourism Law No. 20 of 1988 and the Bahraini Tourism Regulation Law No. 15

of the year did not include it. 1986 and any provisions related to the tourist trip contract. Article 12 of the Jordanian Tourism and Travel Offices and Companies Regulations No. 114 of 2016 included some obligations that the tourism and travel agency must undertake towards the tourist contracting with it, but it did not include regulation of the tourist trip contract. As for Ministerial Resolution No. 36 of 2019 issued by the Bahraini Minister of Tourism regarding regulating the practice of the activities of tourism and travel offices and companies. It was limited to specifying the conditions and procedures for licensing tourism and travel offices in the Kingdom of Bahrain without affecting the obligations of the tourism and travel company and its responsibility towards the tourist.

In view of the fact that the tourist trip contract is not regulated by the legislation of Jordan and Bahrain, it is important to study this contract, and in particular to be exposed to the civil liability that accrues to the tourism and travel agency in the event of its breach of its contractual obligations towards the tourist, especially for the errors of the tourism service providers whom it seeks to implement. The tourist trip contract, pointing out this legislative deficiency, and alerting the legislator in both countries to the necessity of giving the tourist trip contract the importance it deserves, regulating its provisions, and stating the obligations of its parties and the responsibility that accrues in the event of a breach of these obligations.

The problem of the study:

The problem of the study relates to the extent of the adequacy of the rules contained in the Jordanian Civil Law, the Bahraini Civil Law, the Jordanian Trade Law, and the Bahraini Trade Law to address the provisions of civil liability for the travel and tourism agency arising from the errors of third parties whom it seeks assistance in implementing the tourist trip contract, and the extent of the need for legislation that addresses the provisions of the tourist trip contract, A statement of the obligations of its parties and the liability resulting from breach of these obligations.

Study methodology:

The researcher relied on the descriptive analytical approach to the texts of legislation related to the civil liability of tourism and travel companies in Jordan and Bahrain, and comparison when necessary with the legislation of some other countries, to reach results and recommendations to address the shortcomings and defects in this legislation.

Division of the study:

We will examine the scope of the civil liability of the tourism and travel agency based on the multiplicity of its tasks in organizing tourist trips and the different services that it undertakes to provide to tourists. Therefore, it is personally asked about its bearing the obligations resulting from the tourist trip contract, and it is asked about contractual responsibility for the actions of others when it entrusts others to implement what it committed to in the contract. The subject of our study is the responsibility of the tourism and travel agency for the error of third-party in implementing its obligations arising from the tourist trip contract. I have divide this study into two researchers :

The first search : What is meant by the contractual responsibility of the tourism and travel agency for the actions of third-party.

The second search : The scope of the contractual responsibility of the tourism and travel agency for the actions of third-party.

First Search: What is meant by the contractual responsibility of the tourism and travel agency for the actions of the third-party

The tourist agency is responsible for any personal error in implementing its obligations arising from the contract in the face of the tourist. Often, other people intervene in the implementation of these obligations to provide means of transportation, accommodation, or tour guides. Naturally, these people may commit mistakes while performing the tasks assigned to them, which leads to... Because the agency is responsible for the actions of third-party (the first requirement), and its responsibility for the actions of third-party to whom it has entrusted the implementation of the contractual obligation in the comprehensive tourist trip is only achieved if certain conditions are met (the second requirement).

The first requirement: Definition of the contractual responsibility of the tourism and travel agency for the actions of third-party:

Tourist service providers often interfere in implementing the obligations of the travel and tourism agency on tourist trips, due to the agency's inability to implement these services alone. They entrust them to others, such as the carrier, hotelier, tour guide, translator, and others, and they replace them in performing all or part of the services. Tourism (1), and they may commit mistakes while performing the tasks assigned to them that cause harm to the tourist-customer. We find the reference for this responsibility in the general rules of the civil law, and the tourism legislation in Jordan and Bahrain did not include a special regulation of the liability of the tourism and travel company for the actions of others that it uses in implementing its obligations, and that is left to the rules. General in civil law.

While we find that other legislation, such as the Algerian legislator, has regulated the provisions of this responsibility in Law No. 99/06, which specifies the general rules governing the activity of the tourism and travel agency, and Article 21 of it was considered a legislative application of the principle of contractual liability for the actions of others, as it stipulated the following: "It shall be The travel and tourism agency is responsible for any damage suffered by the customer resulting from complete or partial non-performance of its obligations, as well as any other damage resulting from any service provider that the agency resorts to when completing the agreed-upon services."

It is noted that the responsibility of the travel and tourism agency for the actions of third parties providing tourism services did not remain limited to national laws, but rather took on a regional dimension. In European legislation, we find that the French Civil Code stipulated in Article 1994 of the debtor's contractual liability for the mistakes of the people he employs. In implementing its obligations arising from the contract in specific cases, the most important of which is the contractor's responsibility before the employer for the work of the subcontractor, and the agent's responsibility for the error of someone else who delegated him to carry out the agency's work without authorization from the principal. In another development in French law, the decision dated 14/06 was issued. /1982 regarding the general conditions governing the relations between tourism and travel agencies and customers, including the stipulation that tourism and travel agencies guarantee the organization of the trip and the proper implementation of the contract, except in the event of force majeure, a sudden accident, or the fault of a "foreign" third party, and are obligated to provide all services resulting from a contract. Trip (2), in addition to the issuance of European Directive No. 90/314 of 06/13/1990 relating to travel, vacations and comprehensive trips, which stipulated in Article 05/01 that "Member States are obligated to take the necessary measures that make tourism and travel agencies responsible towards the tourist for the proper implementation of obligations." arising from the contract, whether it implemented them personally or through other persons to whom it entrusted these obligations, and this is without prejudice to the agency's right to have recourse against them (3) It can be understood from the text that it established a general rule for the responsibility of the tourism and travel agency for the actions of the persons to whom it is entrusted to implement all or part of its obligations resulting from the contract.

In implementation of the provisions of the European Directive, the French legislator issued Law No. 92/645 of 03/17/1992, which includes the conditions for practicing activities related to the organization and sale of trips and stays, enshrining in Article 23 what Article 05/01 stated regarding the contractual liability of the tourism and travel agency for the actions of others. Making it a responsibility by the force of law against the tourist for the proper implementation of the agreed upon trip program. Thus, the French legislator established the responsibility of the tourism agency for the actions of the tourism providers whom it resorts to to implement its commitment, without the need to prove the error committed by them. Rather, it is sufficient for the tourist only to provide evidence that the Implementation of the obligation or its implementation is defective.(4)

Through the aforementioned texts, it becomes clear to us that approving the principle of the responsibility of the tourism and travel agency for the actions of third parties providing tourism services is of great importance, represented by the injured tourist's recourse directly to the tourism agency. It also spares him the hassle of returning to the service providers with a claim of tort liability or through an indirect lawsuit filed by him. The tourist uses the name of the tourist agency, and also avoids the issue of conflict of jurisdiction that he may encounter in the event of a foreign service provider, as the agency is thus closer to him in terms of jurisdiction. In addition, he avoids the problem of conflict of laws in the international tourist trip.

The second requirement: Conditions for verifying the contractual liability of the tourism and travel agency for the actions of third-party :

The contractual liability of the tourism and travel agency for the actions of third-party service providers, to whom it has entrusted the implementation of all or part of the obligations resulting from the tourism contract, which only applies to comprehensive trips. However, this responsibility will not be fulfilled unless the following conditions are met:

First: The existence of a valid tourism and travel contract that fulfills all the pillars and conditions. However, if it is invalid, then the realization of liability does not arise from the contract, but rather it is a tort liability, because one of the conditions for the establishment of contractual liability is that a contract be linked between the tourist (the creditor) and the tourism and travel agency (the debtor). correct.

Second: That there be no provision in the tourism contract that prevents the tourism and travel agency from seeking the assistance of others in implementing its obligations. This is because if the debtor of a contractual obligation is prevented from bringing in others to implement his obligations and violates this prohibition, he will be considered responsible for a personal error, not for an error committed by others. (5) Thus, the The relationship between the tourist and the agency is direct, while the relationship between the tourist and the hotelier, tour guide, or other service providers is indirect. The tourist may not ask them to carry out their obligations, but rather the agent organizing the trip is responsible for that as a contractor responsible for the work of the subcontractor towards the employer, if it is possible to say so. When the aforementioned agency entrusts a third party with the implementation of some obligations arising from the trip, it enters into a stipulation in the interest of the third-

party, “the tourist,” such that the latter may demand that the contractor be fulfilled in accordance with the provisions of the stipulation in the interest of the third-party. (6)

Third: The tourism and travel agency entrusts the implementation of its obligations arising from the tourism contract to one or more people who are not subject to its supervision, because the intervention of people subject to and affiliated with the tourism and travel agency makes it responsible for implementation and not others. However, if people intervene without being responsible for that, then the tourism and travel agency In this case, you become personally responsible. (7)

Fourth: That tourism service providers cause harm to the tourist during the implementation of the obligations entrusted to them by the tourism and travel agency or because of their implementation.

Fifth: That the tourist or his legal guardians - in the event of his death - must prove the damage caused to him by those entrusted by the tourism and travel agency to implement the tourist trip program, and this includes whether this damage was physical, such as his injury or even his death, or financial, such as the theft, loss, or damage of his luggage. It may be proven by all means of proof. In the case of financial damage, it is sufficient for the tourist to prove, for example, his previous possession of lost or stolen items during the trip without obligating him to prove his ownership of these funds. In the case of physical damage, it is sufficient for the tourist or his legal guardians to prove that the injury was sustained during the trip. Or residence. (8)

The agency can get rid of this responsibility if it proves that the harm caused to the tourist is due to a foreign cause in which it has no hand. The tourism and travel agency has been ruled liable for the actions of third party tourism service providers in several cases, including a case whose facts are that the tourism and travel agency I concluded a contract to organize a comprehensive trip to Greece with one of the clients, who lost her bags during the transportation process, so she filed a lawsuit against the travel and tourism agency organizing the trip to demand compensation for the financial damages she suffered. The French Court of Cassation confirmed the agency’s responsibility for compensation based on the contractual liability provisions for The act of the persons entrusted to carry out the obligations assumed in organizing the trip . (9)

The second search: The scope of the contractual responsibility of the tourism and travel agency for the actions of third-party :

The issue of the scope of the tourism and travel agency’s responsibility for the actions of third-party arises in the event that the tourist claims that he did not obtain the type of service agreed upon with the tourism and travel agency or did not obtain in general the rights that he expected from the trip. Is it permissible for him to file a claim for compensation for damages against the agency as it is responsible? On the actions of the hotel owner, the carrier and the tour guide? Is it permissible for her to argue that there is no contractual relationship between her and these people?

Answering these questions requires us to determine the nature of the role assigned to the tourist agency, whether it plays the role of an intermediary in providing tourism services (the first requirement), or whether it takes the initiative in organizing the comprehensive tourist trip with the tourist services it contains (the second requirement). This will be discussed in the following two sections:

The first requirement: The tourism and travel agency plays the role of an intermediary in providing tourism services:

The tourism and travel agency is considered an agent on behalf of the tourist, as its actions are in his name and on his account, which makes it not responsible for the actions of tourism service providers. Rather, its role is limited to mediation between him and the carrier or hotel owner, so it is responsible for its personal error in accordance with Article 62 of the Bahraini Civil Code, which stipulates that “if The representative, within the limits of his representation, concludes a contract in the name of the principal, and all the effects resulting from this contract go directly to the principal.” This is the same ruling as Article 112 of the Jordanian Civil Code, and its equivalent is 1994 of the French Civil Code.

In this regard, Dr. Abdul Razzaq Al-Sanhouri believes that “agency is one of the legislative applications of the principle of contractual responsibility for the actions of others, and the reason for this is that the agent does not have permission to appoint a third-party to implement the agency. If he violates this condition and appoints someone else, he is considered responsible for his personal mistake, or it is The principal has authorized the agent and authorized him to appoint a third party, but he made a mistake in making the choice, so he is responsible for a personal error represented by the poor choice. That is, the agent’s mistake in both cases is a personal error that leads to contractual liability.”(10) If the principal - the tourist - authorizes the tourism and travel agency to appoint third parties who provide tourism services and do not She commits any mistake in choosing them, but if she chooses well, then her responsibility does not arise at all, neither for her personal mistake nor for the mistake of others.

Accordingly, if the relationship between the tourism and travel agency and the tourist is described as an agency contract, the former will only be responsible for her personal error in carrying out the agency’s work only. If the tourist requests a reservation through a reservation agency or a hotel, and he leaves her the freedom of choice, and

the tourist suffers damage as a result during transportation or accommodation, The tourism and travel agency is responsible, and if the tourist wants to return to it, he must prove its fault, represented by the poor choice of the carrier or the hotel, and prove the mistake made by them. However, the matter is different if the tourist asks the tourist agency to book a specific means of transportation or a specific hotel, and it is implemented. The agency gives its instructions (i.e. the tourist), and the tourism and travel agency is not responsible after that. However, if it violates the instructions stipulated by the tourist or given to it, it will be held liable in a contractual manner based on personal error. (11)

In sum, the tourism and travel agency, when it is considered an agent for the tourist, does not apply to it the provisions of contractual liability for the actions of third-party, because its role is limited to merely mediating in booking tickets for a tourist trip, or staying in a hotel, and therefore it is not considered responsible for the financial or physical damages that befall the tourist during the course of the trip. Transportation or accommodation.

The second requirement: The tourism and travel agency plays the role of the actual provider in providing tourism services:

If the tourism and travel agency neglects to choose the hotel or tour guide, then it is considered responsible for the poor selection of those it entrusted to implement some of the obligations generated by the tourism contract in accordance with the general rules of contractual liability for personal error (negligence and lack of foresight), and whether the agency is considered an agent, carrier or As a contractor, the mistake in choosing those entrusted to carry out part of the trip's obligations is a personal mistake on the part of the agency itself, which is responsible for it in accordance with the provisions of the contractual liability for personal error. (12) It can be understood from this that if the tourist agency mis-selects the tourism service providers out of negligence or lack of foresight, it is considered responsible vis-à-vis the tourist. The affected person.

If the aforementioned agency is considered a carrier in its relationship with the tourist or customer, it will be responsible for breaching the obligations arising from the contract of transport, the most important of which is ensuring the safety of travelers. However, if it entrusts a third party to carry out the transport obligations, it is considered a commission agent for transport, and it will be liable to the tourist or customer for breach of the obligations arising from the contract of transport. The most important of which is ensuring the safety of travelers, and if it entrusts a third party to carry out transportation obligations, it is a commission agent for transportation. It is responsible for facing the tourist or customer with the same obligations as the carrier, and the original commission agent is considered a guarantor of the commission agent who brokered it, unless he is the sender. The agent appointed the broker in his agreement with the original agent. (13) Therefore, the tourism agency, as a carrier, is responsible for any error, whether made by it or by persons affiliated with it.

The tourism and travel agency, in organizing comprehensive trips, can also play the role of a tourism contractor in its relationship with the client tourist, and since comprehensive tourist trips often require the assistance of third parties to implement some of the obligations required by implementing the trip contract, such as accommodation, tourist guidance, and other services, it is therefore considered responsible. The responsibility of the original contractor towards the employer for every error committed by the persons entrusted with the implementation of all or part of the obligations resulting from the tourism contract, including errors committed by the owner of the hotel, restaurant, or tour guide, so that the relationship between the agency and the tourist is directly governed by the contract. While the relationship between the tourist and the hotel or restaurant owner or tour guide can be adapted as an indirect relationship that passes through the agency organizing the trip.

In this case, and in accordance with the general rules contained in the Civil Code, the contractor may entrust the implementation of the work in its entirety or in part to a subcontractor - represented by the tourism service provider - if no condition in the contract prevents him from doing so or if the nature of the work does not require reliance on his personal competence. However, he remains responsible for the subcontractor towards the employer represented by the tourist³⁸.

The responsibility of the original contractor for the work of the subcontractor is considered a contractual responsibility for the actions of others and not the responsibility of a subordinate for his subordinate because the subcontractor works independently of the original contractor, and the relationship between them is the relationship between the employer and a contractor regulated by the subcontracting or subcontracting contract. Accordingly, if the subcontractor breaches For any of the obligations resulting from the contract, he is responsible towards the original contractor, who in turn is responsible towards the employer. In application of this, the tourism and travel agency, whenever it takes the capacity of a contractor in comprehensive tourist trips, will be responsible in its relationship with the tourist to the original contractor before the employer, if an error occurs on the part of the people it has hired. To provide services, they are subject to contractual responsibility in the face of the employer - the tourist - for the actions of third-party. (14)

It should be noted that the tourist has the right to seek recourse against service providers directly, but not on the basis of contractual liability, due to the absence of a direct relationship between him and them and the absence of a contractual relationship, but rather on the basis of tort liability or through an indirect lawsuit. However, the possibility of his recourse against them through an indirect lawsuit depends on the availability of conditions. The

most important of which is the failure of the debtor (the travel and tourism agency) to use its rights before those to whom it has entrusted the implementation, and that the non-use is due to error, negligence, or bad faith, and that this results in the insolvency of the agency, in addition to making it a party to the lawsuit. What is wrong with this lawsuit is that every benefit results from the use of The agency's aforementioned rights are within its funds, which are considered a guarantee for the fulfillment of all its debts to its creditors. (15)

In general, we find that the tourist who is harmed by the actions and mistakes of tourism service providers prefers to seek recourse against the tourism agency in accordance with the provisions of contractual liability for the actions of others, because his recourse to tourism service providers may sometimes be futile due to their inability to fulfill the compensation amount while the agency possesses financial capacity. It enables the tourist to claim the amount of compensation. In addition, the agency secures its civil responsibility to protect and cover any damage that befalls him and ensures that he obtains compensation with ease, without going through complex judicial procedures and filing compensation claims against the tourist agency.

Conclusion

From the above, it is clear to us that the tourism and travel agency carries out many activities and provides various services to the public in comprehensive group trips, and provides them either directly or through other tourism service providers such as transportation, hotels, tourist guidance, etc. We wondered about the problem of the study about the adequacy of the study. Legislation in Jordan and Bahrain to address the provisions of civil liability of the tourism and travel company towards the tourist, especially for the errors of third party service providers whom it uses in implementing the tourism and travel contract. After studying the provisions of this liability in the Jordanian and Bahraini laws, we reach the following results:

- 1- The tourism and travel agency for comprehensive group trips is considered responsible for every personal error made by it during the implementation of its obligations resulting from the tourism contract. It is responsible for the physical and financial damages suffered by the tourist, as well as for canceling the trip or modifying its program. It is also considered contractually responsible for the errors of all Who do you seek assistance in implementing all or part of the obligations generated by the contract, which is completely compatible with the nature of the tourism contract as it is one of the contracts in which many people intervene in its implementation, in order to provide the necessary protection to the tourist-client and protect his right to request compensation.
- 2- The legislation in Jordan and Bahrain focused on regulating tourism companies in terms of defining them, determining their work, conditions for their licensing, and the penalties imposed on them, but they did not care about regulating the tourism and travel contract, and therefore this contract is considered one of the unnamed contracts in Jordanian and Bahraini law.
- 3- Since the tourist trip contract is an indefinite contract and there are many activities carried out by tourism companies, including transportation, accommodation, tourist tours, and other operations, this leads to it not being given a single precise description in the event that it is adapted by the judge, which makes it difficult to determine the company's obligations. Tourism and then the contractual liability arising from its breach depends on adapting the nature of the relationship between the tourism company and the tourist.
- 4- The tourism company is asked about the physical damages that befall the tourist during the trip whenever it is an actual provider of tourism services, whether it is described as a contractor or a carrier. However, if the role of the tourism company is limited to mediation, it is not asked about the physical damages. Rather, the person responsible here is the tourist service provider that occurred. The injury is at its stage.
- 5- The tourism company is not responsible for damages that befall the tourist's luggage if the luggage is in the possession of the tourist. However, if the luggage is not in the possession of the tourist, the tourism company will be responsible for it as long as it is an actual provider of tourist services, because in this case the luggage is delivered to the tourist company. If the role of the tourism company is an intermediary in providing tourism services, then the luggage is in the possession of the tourism service provider (the carrier or the hotel owner), and then the latter is responsible for it.
- 6- The tourism company may cancel the trip of its own volition if its role is limited to mediation between the tourist and the tourism service providers, because the trip contract in this case is classified as an agency contract, and the provisions of this contract allow the agent to step down from the agency provided that this is at an appropriate time and for an acceptable reason. If the tourism company is an actual provider of tourism services, whether described as a contractor or a carrier, it is not permissible to cancel the trip, unless it is responsible for the tourist, unless the cancellation is for a legitimate reason such as a foreign reason.
- 7- The tourism company may not modify the tourist trip program on its own volition, whether it is described as a contractor, carrier, or agent.

Recommendations

In light of the fact that Jordanian law and Bahraini law do not regulate the tourist trip contract, the courts in both countries have no choice but to apply the general provisions in the civil law and commercial law. However, these rules are not sufficient to cover all the rules related to the tourist trip contract and the obligations and

responsibilities it entails in the matter. In the event of a breach of these obligations, the researcher therefore recommends that the legislator in both countries regulate the tourist trip contract either in civil or commercial law or in an independent law, taking into account that this law includes the following provisions:

- 1- Obliging the tourism company to provide all necessary information related to the tourist trip before concluding the contract and during its implementation, and this obligation must be done with due diligence.
- 2- Obliging the tourism company to carefully select the tourism service providers it uses to implement its obligations and follow up on them while they carry out their work, provided that this obligation is a commitment to exercise care.
- 3- A stipulation of the tourism company's contractual responsibility for the errors of the tourism service providers it uses to implement its obligations.
- 4- Insurance must be the compulsory responsibility of the tourism company.
- 5- Every condition that exempts the tourism company from its responsibility for breach of its obligations arising from the tourist trip contract is invalid.

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