



## Research Article

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## Means of Paying Contractual Responsibility in Automatic Contracts

Farah Karim Fartos\*<sup>1</sup>, Dr. Hassan Fadala Musa<sup>1</sup><sup>1</sup>Faculty of Law and Political Science, Iraqia University, Iraq

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**Abstract:** The emergence of the contract is based on the will that is the contractual basis between the parties, and therefore that will has the freedom to pay the rules of contractual responsibility, whether exempt or dilution, in the context of the general rules of contract responsibility in terms of agreements to modify the extent of responsibility on automatic contracts in the absence of legal rules on contractual responsibility for automatic contracts, as the law allowed contractors to agree to amend the provisions of contractual responsibility, when the provisions of this responsibility were removed from the public order, on the basis of the principle (contract is the legal of the Contractors).

The original is that the automatic contract, whether automatic and executed or only automatic, is due in its source to the "will of the contractors", and therefore this common will has the right to amend the contractual liability provisions resulting from the breach of this contract. And it is noticeable that this relationship is interrupted by the foreign reason.

**Keywords:** Contract Responsibility, Foreign Reason, Total Payment of Responsibility, Partial Payment of Responsibility, Force Majeure.

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## INTRODUCTION

The contract is the law of the contractors, whether it is a traditional contract or automatic contract, and may not be revoked or amended except by agreement between the parties or for the reasons determined by law. The contract is the result of the contractors' will and therefore it is their will that determines the content and implications of the contract, since contractual responsibility is the penalty for breach of the obligations of the contract, which means that if the debtor violates all or some of its contractual obligations or if it delays the implementation of its obligations and the resulting damage to the creditor The causal relationship between the nodal error and the damage was then realized, as there was no contract responsibility and the creditor, i.e. the injured, was entitled to claim compensation for the damage it had suffered.

However, contractors may regulate and modify the provisions of this contractual responsibility within the nature of the contract, public order and public morals. It is permissible to agree to pay contractual liability through mitigation or exemption from its provisions, i.e., any responsibility arising from the implementation of its contractual obligation. This relationship is broken down by foreign reason, so it is necessary to divide this research into two demands, the first will be to show the means of paying contract responsibility in automatic contracts, and the second requirement will address the foreign reason.

## The First Requirement: Contract Responsibility Adjustment Agreements Resulting From Automatic Contracts

It may be difficult to adopt a collective terminology of the term automatic contracts, perhaps due to the recent emergence of this type of contract in terms of origin, as the emergence of this type of contract was the result of significant information progress in digital technology, automatic contracts were defined in Nevada law as they were defined by the 2017 Amended Electronic Transactions Act (UETA) in article 9/2 as "electronic contracts", and referring to American jurisprudence, it was lost. Known as the American Jurist (Nick Szabo) (Nevada Senate Bill 398; & Fransiska, 2020)

Automatic contracts as contractual clauses included in the hardware and programs in such a way as to make their penetration very costly and therefore liability adjustment agreements are represented in this type of contract through the total payment of contractual liability, which is exempt from them, or through the partial payment of contractual liability and this is mitigated, which we will show in the following paragraphs (Raskin, 2016).

## Section One: Exemption from Streptococcal Liability Resulting From Automatic Contracts (Total Payment)

Article 2/259 of the Iraqi Civil law stipulates the requirement of exemption from liability, stating that (it is also permissible to agree to exempt the debtor from any liability arising from the failure to implement his contractual obligation.....) the question that arises

here is whether the debtor's exemption is absolute or restricted?

The answer to this is that this is restricted to the fact that it is not the result of fraud and serious error, as stipulated in article (2/259) of the Iraqi Civil law that (it is also permissible to agree to exempt the debtor from any liability arising from the failure to implement his contractual obligation, which arises from his fraud or serious mistake) (Iraqi Civil law No. (40) of 1951). We note that this is restricted by the fact that the exemption is not the result of fraud or serious error issued by the debtor because it is recognized as a suspension of the implementation of the obligation on a purely voluntary condition, but the question raised here is does this apply to all forms of automatic contracts? (Khawalda, 2007; & Sayed & Ahmed, 2018).

The answer is to distinguish between automatic contracts made through electronic platforms and those carried out through machines, applicable to the first under the second, and we note this through the case, *Thornton v. Shaws Lane* (parking garage), before the Court of Appeal in England and Wales, Thornton stopped his car in the shoe lane parking lot, after concluding the automatic contract of the conclusion and execution through the automatic ticketing machine, which includes conditions of exemption from responsibility for injuries to which he is subjected Customers while in the garage, as mentioned in the ticket are subject to the conditions declared in the parking lot showing the exemption from responsibility through a sign in the garage, and on the wall opposite the ticket machine, but the poster was not very prominent, and when Thornton returned he was injured as a result of an accident inside the garage, and during the hearing of the case the judge found that Thornton was (50%) responsible for the act as a result, but he was awarded (50%) damages from the garage owner, and where the case was appealed due to the presence of the condition of exemption from responsibility, but then the appeal was rejected because the judge stated that this case is different from the traditional cases, because the ticket is issued automatically through the machine and therefore there is no opportunity to consider the terms and then accept them or reject them and recover the money, when the driver puts money in the machine the contract is done and this contract cannot be subject to the conditions that are provided after this time, writing on the ticket that states that it is subject to the conditions was not visible. Only after the conclusion of the contract, and therefore the contract is not really subject to the terms of the ticket, because in cases involving an automated ticket machine there is something clear and irreversible about the offer made by the company that owns the parking lot in cases of automatic ticket dispensers, the contract is formed when the other party enters the money into the machine and receives the ticket, the conditions that have not been seen until after this time are not binding because the

contract has already been agreed unconditionally (Rohr, 2019).

We note from the above that the decision is correct because the existence of the requirement of exemption from responsibility through the ticket card and not to see that card until the contract has been made, and at the same time, and if placed in front of the machine, it was placed in a non-striking manner, and therefore the general rules allowing exemption from responsibility agreed in the contract do not apply in this case as mentioned above.

As for reference to automatic contracts and executions that are through electronic platforms, and contracts are automatic implementation only, we note that the general rules can apply to them because in automatic contracts the conclusions and implementation of the contract conditions are available through electronic platforms, whether open or closed, and the other contractor to ascertain all the conditions before the contract is completed, as well as the contracts are automatic implementation may also be agreed whether it is exemption, mitigation or tightening because they are contracts concluded between contractors and then encrypted, as mentioned In advance, since the debtor cannot exempt itself from responsibility arising from its fraud or serious sin, the latter may require that he be exempted from the nodal responsibility resulting from the persons he uses to conclude and execute the contracts (Ali *et al.*, 2022).

However, the debtor may require that he or she not be held liable for fraud or serious error by persons he uses to carry out his obligation (Cour de cassation, Chambre civile 1.). For example, the contractor in automatic contracts through electronic platforms may be relieved of responsibility in accordance with the idea of the streptococcal group, i.e. not to refer to it even if it is the result of fraud or serious error issued by others, i.e. in the event that the programmer makes a serious error during the encryption of the contract, the debtor is not responsible. In the end, the contract is created by him, and the above may conform to a general rule that the administrator of that means or tool (electronic platforms) is responsible for the results obtained using that tool, since the tool does not have a special independent will but works according to what was programmed, so the debtor here can exempt himself through automatic contracts made through electronic platforms, unlike in contracts conducted through machines Automatic (Čerka *et al.*, 2015).

## **Section Two: Reduction of Streptococcal Responsibility Resulting From Automatic Contracts (Partial Payment)**

By authorizing the agreement on exemption from responsibility in automatic contracts that are through electronic platforms, it is a matter of first place that it may also be agreed to mitigate responsibility, for

example, the debtor's agreement with its creditor in an automatic contract, either automatic compensation predetermined by the code code when not implemented with a certain amount of damage, and that such agreements are valid unless there is fraud or serious error committed by the debtor, and the agreement to mitigate liability for the persons involved Those used by the debtor to carry out their obligation to commit fraud or serious error are also permissible (Hammad, 2016).

### **The Second Requirement: Foreign cause**

The foreign reason is one of the most important and powerful means to pay responsibility, under which the causality is completely interrupted, and there is no room for the plaintiff to claim compensation, since the existence of the foreign cause means a lack of a pillar of responsibility (causal relationship), as the foreign reason is defined as "any act or incident that is not attributed to the debtor entails the impossibility of preventing damages."(Moat, 2016).

Through this definition above, the foreign cause has two pillars:

- First, it is impossible to pay the damage, as the debtor has not been able to resist the damage caused, and the judge has discretion to do so.
- Secondly, the absence of attribution, as it is outside the debtor's will and cannot be assigned to him in any way, and in reference to the United States Unified Trade Act (UCC), we have not found provisions dealing with the foreign reason, but it is state laws, particularly the State of Louisiana, which indicates the foreign reason by mentioning the incident (Al-Fadl, 2016).

Article 1/1231 of the amended French Civil Code also stipulates that (the debtor is sentenced to pay compensation if it has the necessary, either because of the failure to implement the obligation, or because of delays in implementation, unless it is established that force majeure was the prohibition of implementation), and, as mentioned in the French law in the article above, referred to force majeure as one of the images of the foreign cause.

As for the Civil Transactions Act of the United Arab Emirates, article (386) stipulates that (if it is impossible for the debtor to carry out the obligation in kind, he will be awarded compensation for failing to fulfil his obligation unless it is established that the impossibility of implementation arose from a foreign reason in which he had no hand, and the provision shall be so if the debtor delays in implementing his obligation); this corresponds to article (168) of the Iraqi Civil law, which states that (if it is impossible for the obligation to comply with the contract, the obligation shall be carried out in kind by a judge). Compensation for failure to fulfil its obligation unless it is proved impossible to implement has arisen from a foreign

reason in which it has no hand, as well as the provision if the obligation is delayed in fulfilling its obligation)

The images of the foreign cause, according to (Iraqi Civil law No. (40) of 1951), of the Iraqi Civil law, are force majeure or sudden accident, the error of the injured, and the act of others, and these images are contained to name but a few, and therefore can be added to any other reason that meets the conditions of the foreign reason, especially the inability to expect and pay.

### **Section One: Force Majeure**

The force majeure and the tragic incident and the heavenly scourge, three synonymous expressions of force majeure expressed by the Iraqi legislator in article (211), meaning by force Cairo(15) "Every unexpected incident beyond the debtor's will is impossible to pay makes the implementation of the commitment absolutely impossible, and in this sense includes wars and epidemics... Etc" (Cour de cassation, civile, Chambre civile 2).

For example, in automatic contracts, on the one hand, all terms of the contract must be encrypted, predicted and specified at the time of its encryption, however, compelling conditions are more complex than can be achieved in the current encryption environment, as not all disasters can be expected, for example covid-19 appears as a force majeure after the encryption of an automatic contract (as it is not expected at the time of coding - contract encryption -), and we note that this situation when contracts do not rely on data from outside Platforms but all conditions are encrypted.

On the other hand, automatic contracts that are through electronic platforms that are provided with information from outside those platforms through Oracle to receive data from the real world and of course, such a situation could become the application of the concept of force majeure through automatic contracts, as in the case of COVID-19, once done the contractor will be relieved of liability, as oracles will provide platforms with confirmation of the existence of a pandemic and the inability of parties to execute the contract on a given date, or Inability to execute at all, and accordingly the contract will be terminated automatically and funds returned to the depositor and not to the corresponding person, as automatic contracts may face problems requiring real-world verification outside those (electronic platforms) (Al-Manara for Legal and Administrative Studies, 2020; & Hafter & Post, 2020).

We note that the above is not applied in all cases, i.e., except in certain cases where the implementation of the automatic contract depends on information from outside the platforms, i.e., not to encrypt all the terms of the contract, and as required by force Majeure, which denies liability three conditions:

### First Condition: Concept of Unpredictability

The facts that make contract commitment in automatic contracts impossible to implement must be the result of force majeure or sudden accident, unexpected to the general public, in order to exempt those who have been decided in his favor.

### Second Condition: Inability to Pay

According to this requirement, the incident must be impossible to pay by the debtor, who invokes the force to disavow the implementation of the contract obligation, in order to ward off the nodal liability for him (Kashpur, 1993).

### Third Condition: External Event

The external event means circumstances beyond the debtor's control that have no role in not achieving the desired result of the contractual relationship where the causal relationship between the incident and the debtor's act is denied, and here the debtor must prove that this incident resulted beyond his control and did not err in the implementation of his contractual obligations, for example the seller cannot dispose of the responsibility to ensure hidden defects by invoking force majeure as an event beyond his control because the seller deliberately conceals Defects and played a role in not disclosing it to the creditor buyer (Cour de Cassation, Assemblée plénière; & Abdullah, 2021).

### Section Two: Creditor error

The creditor's error may be through its contract relationship with its city, which is the only reason why it was finally unable to implement the obligation as intended, for example, in automatic contracts at the conclusion of a contract through electronic platforms, if the creditor (employer) delays the payment of the wage due to the contractor by transferring through electronic wallets, for example, the contractor is not responsible for the delay in handing over the work assigned to him, but the delay was due to the owner of the electronic portfolios, the contractor is not responsible for the delay in the delivery of the work assigned to him, but the delay was due to the owner of the Work.

So it may promote a lack of cooperation in contracts requiring cooperation between the creditor and the debtor, as if the creditor refrained from submitting designs and drawings in employment contracts at a time when those designs and fees are necessary to execute, requiring the debtor to clear the obligation to complete the transaction as long as the reason for the non-execution is attributable to the creditor, which either increases the creditor's liability entirely, exempting the debtor from the obligation, or in part if the debtor's line of execution is involved with creditor error (Saher, 2013)

### Section Three: The Act of Others

Al Azzawi (2016), It means a third (completely foreign from the contract), and here it is necessary to distinguish between two cases:

- **The First Case:** if the cause is proven to be caused by third parties alone, and here the debtor is not responsible for breach of the obligation arranged by the contract in his or her community, and the creditor cannot claim compensation, as the foreign reason entails, for example, between both A and B if the failure to send the designated ship from B to load the goods from A is due to the act of a third person (non-foreigner for the contract), not because of B.
- **The Second Case:** If the act of the creditor or the act of others with the debtor's breach contributes to the damage, here is not a foreign reason that denies contract liability, but is a common mistake. Thus, the impossibility of implementing the obligation because of a foreigner leads to the expiry of the debtor's obligation, whether in traditional or automatic contracts, which we can say applies to general rules in most respects, although in other respects they can be applied, but it is no longer prohibited from applying to them until such contracts are regulated (Al Bakri, 2017).

## CONCLUSION

At the end of our research topic (means of paying contract responsibility in automatic contracts), we reached a number of Results and proposals:

### First: Result

- It became clear to us that there is no uniform definition of automatic contracts, if legislation and jurisprudence differ by establishing a common definition of them, and we end up developing a comprehensive definition, as we define them as (contracts between two or more parties encrypted through various electronic means, whether through automated machines, electronic platforms or any other means).
- Nick Szabo is the first to refer to this type of contract represented by the vending machine, but although its first image is a vending machine, it has other types, it may be through electronic platforms (the most famous of which is the blockchain platform and the Ethereum platform).
- The requirement of exemption from liability in contracts concluded through mechanical machinery is insignificant and insignificant, in order to know the conditions after the execution of the contract and not before, which is the opposite of the traditional contracts that are known to the parties prior to the conclusion of the contract
- Automatic contracts in some forms do not respond to circumstances (such as Cairo conditions) that are outside those electronic platforms as contracts are made in the virtual world

## Second: Proposals

- We propose to the Iraqi legislator to amend the law on signature and electronic transactions to accommodate all modern methods of contracting, in order to keep up with this progress in the digital field, or to adopt new rules on automatic contracts in the theory of contract in civil law.
- Based on the shortcomings of some rules of streptococcal responsibility, we recommend that the Iraqi legislator establish special legal rules, through which responsibility for automatic contracts is regulated.
- The need to hold various scientific conferences and seminars, as well as development courses for different categories, and therefore to introduce the kind of contracts that have become very little experience of practice from their employees.

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