

The Direct Lawsuit as an Application for the "Obligation of Solidum" in Jordanian Legislation

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Abstract

The Jordanian Legislator aimed in all laws and legislations that he enacted to achieve stability and mutual trust among the people of society. one of the most important means that participating in achieving is that the one which keeps the individuals rights These means were considered in multiple shapes the most common means concerns us in this context of this study is that legislator has included under the name of personal insurances. Such as solidarity, surety. the evolution and development in all means of life has led the emergence of new means within the framework of the protection of individuals rights so the obligation of Solidum was considered the most significant and important means for the protection of individuals rights. This obligation has been made to create multiplicity in one side of the legal relationship and it will be the source of obligation for each and every person on their part that is different from another source of obligation despite their commitment to the same subject-matter. despite the importance that this obligation represents, to this date, however it has not received the support of Jordan's legislator. For this sake, this study is applied and came to highlight the most important applications of this Commitment, which are contained in the legal provisions of the Jordanian legislation. In order to deal with this, the descriptive and analytical approaches.

Keywords: Obligation of Solidum, Obligation of Solidarity, Multiplicity of obligation resources, Direct Lawsuit, Subject-matter.

Introduction

The Jordanian Legislator expressed about the personal right in article (68) of the Jordanian Civil law who identified it as "legal relation in which the creditor claims his in debited person to transfer a real right or to do a work or abstaining from work". In the light of this legal bond, the legislator came with so-called the personal insurances, which guarantees the right for the creditor in a general guarantee effective method in which it mayn't be enough to repay all debtor's depts. That

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made this insurance a good thing for both creditor and debtor that make the debtor has the means of trust and credit to provide to the creditor, through which he will get the money he needs. These insurances are known as joining one or more debts to debtor.

Manifest through the above that the legislator has put a general rule or a general origin for the obligation, where the obligation is determined to be between the creditor and the debtor, and the obligation has to be in one subject-matter. However, except for this principle the obligation may be probably modified, the amendment may be in the parties to the obligation, and this may be through the multilateralism without dividing the subject-matter. multilateralism may be on the creditors side which is called positive multiplicity or on the debtor's side which is called negative multiplicity. Therefore, if the debt is divided when the debtors are multiple and because of its negative consequences, The Legislator and for the protection of creditor permits him to require and in agreement with debtors to return to any of them with all the debts with the right to return to the rest of all debtors. This is known as the debtor's solidarity; The legislator fully regulated this issue.

Through what has already been put forward, we notice that the obligation theory has witnessed many developments from time to time and it is still developed. As a result of this development the so-called obligation of solidum has appeared to add in turn new means of protection to the creditor and for the first time the proverbial of the term obligation of solidum, his mind goes directly to the term obligation of solidarity because they are similar in their exterior shape. but there is a big difference in content. in order to demonstrate this, the existence of the obligation of solidum appears when two or more people commit to all debt against the creditor in which the creditor returns to any one of each debtor of solidum unlike obligation of solidarity which is based on multilateralism. With a single source of commitment and subject-matter. in addition to this, there is a common interest between debtors of solidarity which in turn creates mutual prosecution between them. within the framework of that it is in scattered text the obligation of more than one debtor in the whole debt with explicitly stipulating their solidarity.

Some of the issues that arise features of obligation of solidum, situations of direct lawsuits (cases). Where the latter is known as a legal tool in which the legislator enabled creditor to assert his right before debtor's debtor a legal way, so the right to which creditor is entitled shall be transferred from the debtor's debtor, without the debtor's passage originally. and in so doing, the creditor acquires new position which gives him preference in crowding out the debtor's creditor and get priority towards the attainment of his right from debtor's debtor. This case is different from the indirect case in that

the creditor in the direct case asks his debtor's debtor in his personal name , whereas the creditor in the indirect case asks his debtor's debtor in his debtor's name. Through this it shows that the direct case represents a direct guarantee for creditor to attain his right whereas in the indirect case its purpose is to keep the general guarantee. at the end all the creditors are profited in that .

In addition to this, the Jordanian Legislator brought with many different cases that requires the creditor's possibility to use the direct case. Some of these cases can include feature of obligation of solidum, through which the creditor can have two debtors and refers to any one of them in the whole debt, although there is no solidarity between them.

The problem of the study

The issue that this study concerns with the legislative vacuum which marred the legal texts to organize the obligation of solidum mainly with clear connotations on the parameters of this obligation Jordanian in legal texts of legislation which needs to declare the applications that rise in the parameters of the obligation of solidum in the direct case. The study problem can be formulated in the following question:

- Did the legislator endorse in the obligation of solidum in the directs cases of the lawsuit?

The importance of the study:

The importance of this study is reflected that the obligation of solidum and its applications are a subject that has some of default and shortcoming from the side of the Jordanian jurisprudence. a matter which finds that it is obligatory to embody one of the most important cases (images) in which the obligation of solidum is existed in a detailed legal study. It is shown through a clear picture a majority of the sides of the obligatory in general and show the attitude of Jordanian legislator specifically from the obligation of Solidum.

The Purposes (aims) of the study.

This study aims to:

- Analyze legal context, and Jordanian Judicial decision to show the extent of the idea of the obligation of solidum if it is existed in the direct lawsuit (case) in the Jordanian Legislation.
- Showing the regulatory frameworks governing of the obligatory of solidum in the direct lawsuit cases.

The plan of the study

chapter one: The concept of the obligatory of solidum.

chapter Two: The existence of the obligation of solidum in compulsory vehicles insurance

Chapter Three: The existence of obligation of solidum in Sub rent.

Chapter Four: The existence of obligation of solidum in subcontracting contract.

1. The Concept of the obligation of solidum.

To illustrate the meaning of this obligation legally The jurisprudence and judiciary must be invoked in this regard where the opinions were different to show a comprehensive definition covers all aspects of this commitment, some of them focus on one of the elements of the obligation of solidum, and some go directly to the Purpose of Solidum.

As a part of that, one of the significant jurists sees it as " The source of the commitment may be multiple, with one subject-matter remaining". To explain this, he based on a legislative status provided for by the Egyptian Legislator in the Egyptian Civil law . That is multiple sponsors on consecutive contracts that appears in the text of the article (792) in which many sponsors are bound under independent contracts from each other towards the creditor to the same debt. According to plurality (Multiplicity) of links (bonds) can be formed and multiplicity of resource to the same debt in this case the obligation must be solidum not solidarity. All sponsors are joined through solidum without solidarity .

In the same context, some consider that the obligation of solidum is an image in which the debtors are multiplied in one commitment despite the difference in the source of commitment of each debtor from other debtors. each debtor is responsible for personal responsibility for the whole debt according to the source of his commitment . Some say that: " the obligation of solidum is sometimes when debtors are varied or multiplied, and the source of debt is multiplied or different if the debt is only one" .

When extrapolating previous jurisprudence views, we notice that it came to give an illustration about the idea of this obligation without giving a direct definition to this obligation, so we find these opinions in the folds of the writings of these scholars when they show the difference between the obligation of solidum and the obligation of solidarity. They stated their opinions in general image which is not sufficient to depend on to give a definition of this obligation.

On the contrary to the previous views some jurists give a direct definition to the obligation of Solidum, depending on the elements that this obligation is underlying. They say that the:" obligation of solidum is multilateralism of one part of the obligation with multiplicity of its resources without solidarity or inability for division". This definition is described with its inclusiveness for all elements of the obligation of solidum that are represented as: 1- bond's multiplicity ,2- Unity of subject-matter, 3- resources multiplicity, 4- absence of Solidarity, 5- absence of inability for division.

On the other side, looking at the views of Judgement of both Jordanian and Egyptian Judiciaries we notice that they go into a definition of the obligation of solidum. it was given in a direct way to give a direct and indirect definition of the obligation, that means to distinguish between obligation of solidum and the obligation of solidarity.

In the Egyptian Judiciary the cassation court Identified the obligation of solidum in a direct way as: "The obligation of solidum happens when the resources of obligation are multiplied by compensation of the affected person as one of the defaulting party becomes liable contractually and the other must be culpable" .

In another judgement within the same context, it identifies it as. "When the resource of obligation is multiplied in restitution when one of the two mistakes is contractual and the other is, tort so they are both committed to one debt that has two different resources then their repayment is attached in solidum rather than in solidarity" .

Whereas in Jordanian Judiciary, A definition of the obligation of solidum was reported in one of the judgements of Jordanian Court of appeal and in was in an indirect way. It judges it as: "Solidum occurs when the resource of obligation is different for each debtor and joining the repayment of all debtors together to help creditor get his right from any debtor who is responsible as solidum from other" .

From the previous judgements, it becomes clear that both Jordanian and Egyptian Judiciary don't give definition for the obligation of solidum in a complementary manner. Egyptian Judiciary concentrated on multiplicity in the resources of obligation as in gathering the contractual responsibility and the responsibility about harmful act also Jordanian Judiciary we see that the honorable court concentrated basically on the aim of obligation while defining the obligation of solidum in its report (which is the ability of creditor to get his right) in which it dedicated the elements of this obligation to reach to its purpose. Reaching this purpose is considered as a natural conclusion to form this obligation and there is no need to write the aim in the definition of this obligation.

We infer that a comprehensive and integrated definition of the obligation of solidum has not come neither in jurisprudence nor judiciary except the opinion that says that "obligation of solidum is the multiplicity of one side of obligation in one position within multiplicity of its resources without solidarity or inability for division", and this opinion we tend to it from other opinions we discussed before but we refrain an essential point in this definition. where it states the possibility of experience in the formation of the obligation of solidum between the absence of solidarity or the absence of inability for division , which was inadequate to require the establishment of the obligation of solidum which is based on eliminating both system

because of the similarities between them. The existence of one of these two systems prevents the formation of obligation of solidum.

According to the previous data, we can define the obligation of solidum as: "The obligation in which one of the parties is multiplied when the two parties commit in the same subject-matter with regard to the other party and the resources of obligation are different from each other in the party which has multiplicity provided that the absence of solidarity and the inability to behave in a divisible way.

In the context of the concept statement of the obligation of solidum, this obligation is characterized with certain conditions that make it different from those which are similar to other obligations, one of these conditions is the multiplicity in the resources of this obligation for solidum debtors, this is the basic condition which distinguishes solidum from other obligations. This condition means the independence of the source of obligation for each debtor from other debtors in solidum. multiplicity increases with the increasing in number of debtors, this is unlike the obligation of solidum which requires the unity of resource between all debtors of solidum.

Multiplicity happens when the resources of obligation are varied for the debtors in solidum, When one debtors obligation is contractual whereas the obligation of other debtor happens as a result of harmful act, This multiplicity can be achieved as a result of repetition of obligations between debtors in solidum while each of them is independent from other despite their commitment to the same resource an example of that is the obligation of debtors through successive contracts in the surety contracts.

Many statements of applications of obligation of solidum fall under each one of the images of multiplicity, which we can't talk about in this section in order to allocate a separate section of this study to discuss these applications in detail, so we delay it to its position in order to avoid repetition.

This obligation is characterized with another condition which is represented by the absence of solidarity and the inability for division. The absence of solidarity happens when there is no agreement between the parties of legal relationship or a provision in law ensures the solidarity between them otherwise it is impossible to say that the solidum exists. By referring to the origin of the obligation of solidum we find that without the absence of solidarity, this system of solidum will not exist, so the absence of solidarity for multiplicity for persons in charge of the harmful act paves the way to report and decide this system. Through this it is found many effects are embodied for solidarity to be the strongest signatory on debtor in solidarity contrary to those, arranged by the obligation of solidum. According to this it is

impossible to mix these obligations together, so that no one obligation, can exist except for the absence of the other.

To emphasize that it is forbidden to mix between the two obligations, the court of cassation of Jordan has a decisive position so that it judges in one of its rulings and in its reply to second reason of cassation by saying "According to the second reason, so the word (solidarity) that appears in the first line of the contested resolution instead of the right word (solidum) which is considered to be a material mistakes that the law has defined ways of correcting especially the correct phrase (solidum) was contained in the draft resolution. This correct phrase was mentioned at the end of the page of the contested resolution and such a material error does not affect the result.... " . in doing so, it is clear that the court takes into account the lack of confusion between the two obligations in clear way through correcting errors in the draft of resolution, so it acknowledged that such errors don't lead to confusion between solidum and solidarity as long as facts of the case refer to one of the two systems, it is through the word "The material error doesn't affect the result".

As for the avoidance of an indivisible obligation, when considering cases in which the obligation is fulfilled of the indivisible obligation and through the projecting for the obligation of solidum we find that the indivisibility of the obligation because of the natural position is available and the obligation of solidum because the essence of the obligation of solidum based on the indivisibility of debt in the position of obligation not to envisage a debtor of solidum with performance of part of the debt under obligation. This refers to multiplicity in resources of obligation in the opposition of the obligation of inability to divisible, Furthermore, the indivisible obligation depends basically on behaving in the position of obligation contrary to the obligation of solidum which depends basically on multiplicity in one side of commitment and different resources between them. The second case to achieve the indivisible obligation which is represented in agreement it is not existed in the obligation of solidum. persons who are committed in the obligation of solidum have no relationship to agree between them. This shows the extent of the difference between the two systems, it is not possible to mix the two systems together. Here, as solidarity, whenever one system is existed, the obligation of solidum must be absent.

Based on the above included statement of the concept of the obligation of solidum and special conditions of it, it shows the extent difference between the obligation of solidum and the obligation of solidarity. The first obligation is imposed by the nature of things or the nature of transactions whereas solidarity requires agreement or provision of law. Furthermore, the obligation of solidum requires special conditions to do it despite subscribing to certain terms, with

compliance with other term of obligation of solidarity. These conditions Were multiplicity of sources of parties Commitment who are bound by solidum contrary to the solidarity which requires that the source of obligation is united among those committed to solidarity. Whereas the second conditions of the obligation of solidum by the absence of solidarity and the indivisible obligation, the purpose of this condition is to avoid confusion between these obligations, and through these two conditions, they show us how impossible it to combine these two obligations, (Solidum and Solidarity) Also it is impossible to endow provision of the rules of the obligation of solidarity on the obligation of solidum.

Finally, after showing the concept of the obligation of solidum, and the conditions which is characterized to other obligations We will discuss the following claimants that will address the cases where the obligation of solidum is available in the direct case (lawsuit) in the Jordanian legal contexts, this will be addressed as follows.

2. The existence of the obligation of solidum in Compulsory vehicle Insurance

Although the compulsory insurance system that is not hidden from law readers, but that doesn't stop you from giving a brief look towards the system, so that the reader can understand the subject matter in question in a simple way and uncomplicated manner for that reason, this system will be summarized in this branch in this branch and then we address the existence of the obligation of solidum in it.

The Compulsory insurance system is characterized in modernity relatively, as a result of the increasing in number of vehicles that the society use for transportation from one subject-matter to another and all these vehicles are under the control of human. in the light of that persons are making mistakes, The legislators are alerted to this, and they decided this system, The main purpose of that is to save the optimal protection for those affected from these vehicles and finding a full Ounce that ensures that he receives compensation that covers all the damages he has suffered. The aggrieved person receives compensation under the insurance contract to which he or she owns the vehicle with one of the insurance companies working in the country where it registered.

The Jordanian Legislator has identified the contract of insurance more than once. He identified it in the article (920) from the Jordanian Civil law as: "Contract in which the insurer is adhered it leading to the insured one or the beneficiary for whom insurance is required a sum of money or financial income or other financial substitution in the event of accident which is insured against it or achieve the risk set forth in the contract that is up for amount of money or monthly installment performed by the insure person to the insured one" . It is

clear from definition that Jordan's legislator has first set its sights on the interests of injured person. So that he gets a sum of money to compel the affect that is caused to him.

In the context of the Jordanian Legislature's concern to protect the injured and finding new ways that enable him to get his right in compensation, Jordan's Legislature has approved a legal mechanism of the direct litigation that is stipulated in the article (13/B) from the compulsory insurance system , in which it judges that "subject to the provisions of the article (10) of this regulation (system), The aggrieved person is entitled to claim directly the insurance company for the damage in accordance with the instructions under the provision of this regulation and the defenses that the insurance company may maintain in respect of its insurance are not applicable".

Through this, we believe that the legislator has given the injured the possibility of claiming the insurance company (insurer) directly without referring to the injured (person who makes the harm) we also note that the legislator has restricted the insured person's rights in the face of harm. which the insured has the right to uphold in the face of the injured. This is the evident through the tail of the a forementioned text in which it is prohibited for the injured to maintain the defenses of the latter before the insured when the injured is encountered.

From Another side, and before the issue of compulsory insurance system that is mentioned before, the legislator and in accordance of the compulsory insurance system number 32 for the year 2001 which was cancelled (dispensed) under the latter system, stipulates that the injurer, the injured and the driver of the vehicle are in solidarity with each other in compensating the injured, It is contained in the context of the article (15/A) which judges that: "Both the insurance company, the insured person and the driver are jointly responsible for the damage caused to others in accordance with the provision of the article (10) from this System" .

In this connection, we note that the legislature's legislation under this provision doesn't adhere the framework of the general rules established for solidarity which requires that the source of debt for all those committed is one and not multiple. However, the legislator and in accordance of the compulsory insurance system number 12 for the year 2010 has reversed and changed his previous position that Solidarity was limited to the owner of the vehicle causing the accident and its driver, This is understood by the meaning of the article (13/b) of the same system. which paves the way for the obligation of solidum to let be in the relationship between the owner of the vehicle and its driver and the insurance Company.

The Jordanian Legislator, when amending the aforementioned text, upon confirmation of the direct claim for injury in return to the

insurance company (insured), The debtor's multiplicity was recognized, making the harm person two debtors in one debt one of them is the owner of the vehicle and the driver the other debtor is the insurance company (insured), so each debtor is bound by a different source of obligation. The source of the insured person's obligation derives from the provision of liability for the injurious act resulting from the injury, The source of the injured's obligation (insurance company) stems from the provisions of the law by which the claim was approved, thus both the insured and the insurer shall be liable in Conjunction in solidum before the injury for the amount of compensation.

The obligation of solidum is not existed in this case in absolute and full compensation in which the court judges in favor of the injured. but this obligation is existed within the insurance limits of the insured (insurance company) so that debtors will join within this amount, so when the amount of compensation increases above this limit, the injured person refers this increase to the insured person (driver of the vehicle) himself or upon him and the driver in solidarity if it is existed. This is understood from the article (13/b)

As a consequence, if the injured Person returns to the insured parson to fulfil his right from him, he will lose his right legally established which is represented in the direct lawsuit for the insured person, This means that the insured doesn't fulfil his ful1 right and the amount met was more or less equal to the insurance cap (limit) to which the insurance company was committed, Thus in this case the insured person is exonerated and the injured person has no right of recourse but the insured has the right to satisfy what he paid for the injured or harm one from the insurer under the insurance contract .

On the other hand, some explainers see the availability of the obligation of solidum in another part of compulsory insurance this part is included in the article (11) from the compulsory insurance it was indicated in the paragraph (1/1) that:" The insured person or the driver of the vehicle causing the accident or the injured person all are obliged to inform the insurance company of the accident in an acceptable period of time, they must take all necessary precautions and measures and procedures to avoid aggravating the damage caused by the accident or increase it in the event of a breach, the insurance company has the right to invoke the damages Suffered". Under this text the legislator has made obligation on three persons, this is the obligation to declare the incident to the insurance company, and if anyone of these people makes this obligation, then that obligation falls out of others. While noting that legislature did not require solidarity of these persons when imposing this obligation. Thus, as a result of the different origin of each of these individuals' obligation so it is applied and this is the obligation of solidum, and the failure of one or all of

them to comply with this obligation and not to inform the insurer (company of insurance) of the accident, this resulted in an aggravation of the damage caused. The insurer has the right to protest against all of them and to claim the damage suffered as a result of their failure and breach of this obligation. Such claim shall be in accordance with the obligation of solidum.

From the other hand, The insurance company's right to claim against the insured or the driver of the vehicle which causes the accident or the affected in solidum as a result of the breach of the obligation to report the incident This does not give it the right to refuse compensation provided to it be the harm person, and that is what the article (11/a/2) says from the compulsory obligation system .

3. The existence of the obligation of Solidum in the Sub-lease agreement

Starting with the case in question, The justification of its demonstration (appearance) in this subject-matter as a case of other cases of the direct lawsuit (Cases) which meets the parameters of the obligation of solidum, It is due to what some jurisprudence has gone into establishing a reference into sub-rent where he sees this aspect of jurisprudence that the listing of the solution system brought by the Jordanian's Legislator is the basis for the lessor's return to the sub-tenant in the article (705) of the Jordan's Civil laws, what is nothing but a weakness of the dignified legislator. It would have been more appropriate to provide for the direct proceeding as abasis for such reversal. Contrary to this the Egyptian legislature came in harmony with the previous opinion where it came in the text of article (596) of the Egyptian Civil law that: "1- The sub-tenant shall be obliged to perform directly to the lessor what is fixed at the time of the original lessee". This is reflected in the Egyptian legislator's recognition of the lessor's right to use the direct action of case to return the sub-lessee. This gives him a preference in advancing over the rest of the creditors, This Prompted us to include this situation in the direct proceedings and to emphasize the need to provide. for it in this section.

Speaking of the existence of the obligation of solidum in sub-rent, we have to start by talking and looking with a brief overview at sub-rent in general, that is just before defining the features of the obligation of solidum in it.

subleasing is defined as that tenant rent out part of the dwelling or whole to another person under a new lease, this would mean that the second contract would be in conformity with the term and conditions of the first lease or different from it.

In the context of this, we note that the position of Jordanian Legislature is different from what the Egyptian Legislature went to, Through the texts governing this subject in the Jordanian Civil law. It

appears that the legislator has confused the sub-rent with the rent waiver, while each system is independent of the other.

However, another aspect of the doctrine considers that the existence of sub-rent which will be achieved by reading all relevant provisions in one sentence and linking the provisions together Jordan's legislature has ruled in the article (703) from Jordan's civil law that: " The Tenant may not rent the entire thing or some of it from another person, without lessor's permission". Also, in the article (5/C/3) of the owners and tenants act which ruled that: "the lessor may vacate the waged thing in the event of lessee hire part of it to another person or let him occupy it without the written owner's permission or give it to someone else without that consent" , It is understood from these texts that Jordan's Legislator acknowledged the existence of sub-rent but provided of the owner's written permission if this permission is available the Sub-rent is located true and in force, and effective against the lesser and doesn't have the right to terminate the contract. accordingly, the presence of agreement from the lessor on the sub-rent makes the sub-tenant one of the substitutes of the original tenant, this confirms the Jordanian Legislator's acknowledgement of the existence of the sub-rent, But in away different from the Egyptian Legislation.

The features of the obligation of solidum are shown clearly in one of the sub-rent statements, when the head-tenant rent-out the property to another person, so he comes out of the bilateral legal relationship to enter into a new party to the relationship, to become eligible for the lessor to return to more than one debtor under various sources of obligation, and vice versa is true, So that the sub-lessee may refer to both the lessor and the original lessee requiring them to fulfil the contractual obligations arising from the sub- lease . However, under a provision of the law, the lessor or the sub-lessee shall be entitled to the direct claim that enables either of them can go back to the other.

Accordingly, the lessor can claim the sub-lessee for the original tenant of what he owed; Thus, the original tenant was acquitted of the debt. The lessor does not have to return to the original tenant to claim the debt again, so that the lessor is not entitled to meet the debt twice which makes the solidum a strong personal insurance for creditor.

In the framework of that, the debt incurred, by the original and the sub-tenant not only one but a debt that is distinct from one another but identical, accordingly, where the lessee's debt to the original lessee is greater than to which the sub-lessee is obligated, so the contractor cannot refer to the sub-tenant except for the original lessee of what he owed, the lessor returns the remainder to what the original tenant . But we see otherwise that the unity of the position is a prerequisite for the performance of the obligation of solidum and to say that there is solidum according to premium debts contradicts the

essence of solidum, in the case of question, we see that solidum is performed in the amount of money of the sub-tenant's disclosure so if the amount is less than the lessor in the original-tenant's name the lessor doesn't have the sub-lessee's claim to the original lessee within this mount and sufficiently to combine in solidum and the remainder is due to the original tenant but if the amount of money in the sub-tenant's disclosure is more than the original's tenant one there is no disagreement. The lessor may only meet his debt from this amount and what goes more must be met by the subtenant to the original tenant, through this, the unity of position is achieved and realized within the amount of money of the subs-tenant because the lessor's claim only claims the right of the original lessee this is consistent with the logic of the direct lawsuit (case) which requires the creditor to claim the debtor's indemnity in favor of the debtor not in any amount to the creditors debtor. Also, to say that debts are distinct, this means that creditor has a right to the original lessee and a right from the sub-tenant.

Contrary to the above, The Jordanian Legislature's provision in the article (705) from the Jordanian Civil law in a situation where the relationship between the lessor and sub-tenant is direct , where the article ruled that "if the hired lessee is authorized by the lessor, the new lessee replaces the first lessee in all right and obligations that are under the first contract". In the light of this provision, it is understood that the legislator has approved the waiver of rent under which the first tenant waives his right to benefit from the wages of property for a new tenant. Such conduct was deemed to constitute a right or a debt transfer so that a transfer is a right transfer in the lessee's rights over the lessor. but it can be a debt transfer when it is under obligation that is incurred by the new lessee before the lessor . Accordingly, the first tenant's waiver of the lease contract to the new tenant results in the first tenant to exist from the contractual relationship, and consequently, the lessor's non- entitlement to return to the first lessee. In such case he can't have right but only by reference to the new tenant. In the light of these data, the availability of the obligation of solidum is absent when there is rent waiver. This is due to the absence of multiplicity in one of the parties to the obligation other than sub-rent.

This clearly demonstrates the availability of the obligation of solidum in the case where the law determines direct action in the lease contract, which we hope that Jordan's Legislature will include a provision in the law about it from which we move to another case of direct litigation which can be met in the availability of the obligation of solidum.

4. The existence of the obligation of solidum in the sub-contracting Contract.

Article (798) of the Jordanian Legislature from the Jordan's Civil law says that: " 1- The contractor may entrust all or some of the work to another contractor if this is not prevented by the requirements in the contract or the nature of the work didn't require him to do it himself. 2-The responsibility of the first contractor remains before the employer". Through this text we find that the legislator has expressly acknowledged the subcontracting. There are three legal relationships emerged from this business. The first is the relationship between the employer and the original contractor which is governed by contractual liability as a result of including contract between them. The second relationship is between the original contractor and the subcontractor which is also governed by contractual liability under the contract. The third relationship is between the employer and the subcontractor that is not governed by contractual liability, but the employer has the right to return to the original contractor according to the contractual responsibility for the act of others.

In the light of the foregoing, contractual liability for the act of other requires Several conditions: 1- The existence of a valid contract between the employer and the original contractor. 2- contractor's use of others in the performance of the contract or part thereof. 3- Breach of Contracting contract terms by others. In order to clarify the overall idea, we shall proceed to outline these requirements briefly, this is in accordance with the following:

- The first condition: The existence of a valid contract between the employer and the original Contractor.

This condition is considered as a basis for contractual liability for the act of a third party, the existence or non-existence of the contract is the determination of liability, whether it was contractual or malicious acts if this condition requires the employer's contract with the original contractor to be valid, there is no defect that makes it invalid, if it is invalid, it has no effect. Thus, the contractual liability as a whole is not established in this case. Accordingly, the responsibility for the injurious act or the responsibility of the follower for the affiliate's business shall be as appropriate.

- The second condition: Contractor's use of others in the performance of the contract or part.

The requirement of this condition is that the original contractor contracted with the employer may hire another contractor to implement the obligations under this contract, an example of that, when the original contractor hires another contractor to conduct electrical extension; the necessity of requiring this condition (requirement) for contractual liability for the act of the third party is

to distinguish between responsibility performance and its absence. So that the general rules imposed on the intervention of third parties perform the obligation without debtor's order, the exemption of debtor from liability to the effect that the third parties in this regard is regarded as alienating from the contract. If the act of a third party here constitutes a breach of the contract execution, the debtor avoids the liability for the presence of the foreign cause, while under this requirement it is the original contractor who uses the third party and consequently, he will shoulder the liability when a breach is made from this third party.

- The third Condition: Breach of contracting contract terms by other.

The above terms make the original contractor a contractor contractually liable for the third parties that he used to perform the contract before the employer therefore, one of the errors issued during the performance of the original was the original contractor's power of attorney that may be entitled to damage to the employer or the implementation is contrary to what is agreed. This requires the original contractor's contractual liability for this act against the employer. Thus, the original contractor's contractual liability for the act of the third parties requires that it perform the breach issued from others to injury to the employers, this liability is not incurred if this damage is not done to the employer.

In the light of the statement of liability in the relationship between the employer and the original contractor and its determination of the liability for the act of the third party, so the question is raised about the relationship between original contractor's workers and the subcontractor with the employer and they have no contract bond with him? Did the Jordanian Legislature guarantee these workers right with the employer?

Jordanian Legislature guaranteed the right of original contractor workers and the workers of the subcontractor through his confirmation of their direct lawsuit. He ruled of that in the provision of article (15/e) of the Jordanian Labor code . Which ruled that: "1- For contractor's workers who are engaged in the implementing of, contractor, they have a right to initiate a direct lawsuit against the entrepreneur to claim what they are entitled to before the contractor, and this is within the limits of the contractor's entitlement to the entrepreneur at the time of filling lawsuit. 2-The sub-contractor's workers may raise a direct lawsuit against both the original contractor and the project owner within the maturity limits entitled on the owner of the project for the original contractor and that entitled on the sub-contractor at the time of filling lawsuit. 3-For workers mentioned in preceding two paragraphs may fulfil their right by concession over amounts owed to the original contractor or the sub-contractor, and

they fulfil their rights when they compete on the average of each one's right".

Through the text we find that the Legislator has given this instrument so that the original contractor's worker returns to the employer directly and they fulfil their right under the employer's original contractor. However, the legislator restricted their return to the employer as to original contractor in the employer's possession. So that if the amount of workers towards the original contractor's more than the original contractor towards the employer, so they shall claim only the amount of the original contractor in the employer's possession, and this amount is apportioned in proportion to their respective shares.

This applies to the case of the sub-contractor's workers returning to the original contractor and the employer. However, the worker's return is on the original contractor including what is in the possession of the latter towards the sub-contractor and their returning to employer is of what in the possession of the original contractor. The Jordanian Legislator Has proved and upheld this right, despite the privilege that the direct lawsuit achieved to them so their right must be concessionaire and they become more priority and privileged than the employer and the original contractor.

Based on this, and following the statement of the complexity of relationships under the subcontract, it shows the magnitude of the multilateralism of these relationships, in the light of this multiplicity and the legislator's acknowledgement of the sub-contractor's liability for the act of others and also his recognition for the right original contractor's workers to return to the employer and the sub-contractor's workers returned to the original contractor and the employer in accordance with the direct litigation.

So, question arises to whether the obligation of solidum has been fulfilled in this case and to answer this, we will follow the following theses:

The existence of the obligation of solidum entails several conditions such as: Multilateralism, unity of the subject-matter, multilateralism of bonds, multi-sources of obligation, the absence of solidarity and the indivisible obligation. In a view of the previous cases, we note that all conditions are compatible with these cases. so that multilateralism is at a meeting of more than one debtor to the creditor Also as if the original contractor's workers return to the original contractor and the employer and multilateralism in bonds is represented in the bonds that link debtors to the creditor. So that the employer is obliged to perform the obligation that is in his possession of the original contractor to the original contractor's workers. While the original contractor is committed to fulfilling the obligation in his possession to

his workers. Whereas the condition related to the unity of position is represented in the debt claimed by workers which is involved by what the employer has in his possession for the original contractor, so, their claim for this portion of the debt for both the original contractor and the employer reflects the unity of the subject-matter. As far as the multiplicity of sources is concerned, there is no disagreement, The original contractor is committed to his workers in the debt under their contract. whereas the employer's obligation arises from the law that approved the direct lawsuit. Finally, the requirement of non-solidarity and the indivisibility is a reality in this case -on the assumption of disagreement on solidarity- the Legislature's earlier text of the article (15/e) didn't provide for solidarity in any way. A matter in which this system is not valid and also applies to the second case that has also been explained.

In the light of this, the existence of the obligation of solidum is a reality in these cases. The sources of the obligation have been varied and solidarity has been disappeared by not stipulating them in regulatory text to this matter. where these two conditions are the distinction of the obligation of solidum when available in any case in addition to other conditions, there is nothing to prevent the obligation of solidum from taking subject-matter within these relationships along with other means of techniques approved by legislature.

The fulfilment of the obligation of solidum is not limited it the proceeding two cases, but also to the fulfilment of that obligation in the context of the employer's return to the original contractor and the subcontractor, so the assertion of the original contractor's liability for the breach by the subcontractor does not make the latter away from responsibility where the employer has to refer to him in accordance with the terms of the liability for the Injurious act. The requirement of the multiple sources is thus met in this case, in addition to the absence of solidarity as a result of the failure to provide it in the text of the article (798) from the Jordan's Civil law.

Conclusion:

This study dealt with the applications of the obligation of solidum in the direct case of the Jordan's Legislation, A review of these applications shows how important this obligation is Which is represented in keeping Protection of the legal relationship in addition to avoiding the loss of rights in this regard, also this obligation fosters mutual trust among the parties to the relationship So that the creditor is Safe about his right within his debtor, This is based on increasing the creditors contribution to the conduct of these transactions which has positive impact on society, both in economic or social terms.

In Conclusion of this study and in the light of the details of the applications of the obligation of solidum particularly in the direct Case, A number of conclusions and recommendations have been produced and we will set them as follows:

1- Jordan's Legislator has shown in many scattered provisions in Jordan's Legislation many cases, which are considered as applications of the obligation of solidum, one such case was the direct case under which several issues arose, the subcontracting contract indicates solidum through the text of article (798) of the Jordan's Civil law and the article (15/e) of the Jordan's Labor code. Jordan's Legislator didn't rule on both these two texts by solidarity despite multiplicity from aside of the parties, it is also clear from the text that there is multiplicity of sources of the parties commitment to multilateralism side by side with difference of these resources. some of them were bound by the law others, their source of their obligation was the contractual responsibility.

2- Jordan's Legislator implicitly approved sublease in the article (703) of the Jordan's Civil law, and this is considered as an application of contractual liability of doing a third party, and in the light of this responsibility, multilateralism is a reality. Also, the multiplicity and diversity of sources of the obligation are realistic as well as present, so that someone is bound by contractual liability for the act of another, while the other is bound by the responsibility for harmful act, Thus, Under the absence of solidarity here, there is an opportunity to overthrow the obligation of solidum to this situation to be considered as an application of this obligation.

3- The Jordanian Legislator came up with another case of the direct case that rules clearly in the obligation of solidum. This situation is reflected in the article (13/b) of the compulsory vehicle insurance scheme, according to which the legislator gave the injured person a right to return to the insurance company (insurer) and perpetrator of the damage (insured) together with no solidarity between them. And with multiple sources of obligation and different sources of each other, This is therefore an application of the obligation of solidum.

This study recommends reviewing the provisions governing personal insurances and including the obligation of solidum in these provisions as a result of its positive outcomes in relationships as well as its beneficial effects on the economy of country and Society of course.

Bibliography

1. Abu AL-Hayjaa, Lu'ay, 2005, Insurance against vehicles accidents (comparative study), culture house for publishing and distribution, Jordan, Amman.

2. AL- Ahmed, Mohammad Sulieman, Haytham Hamed, 2000, Solidum responsibility (Comparative study), Journal of Jordanian Bar Association, Jordan – Amman, No 11,12.
3. Al Bayh, Mohsen Abdel-Hameed, 1989, Solidarity and Solidum in the judgement of Kuwait's supreme court (The Cassation chamber) compared to the two judiciaries French and Egyptian, first section, Journal of Laws, Kuwait University, Vol. 13, No 4.
4. Al Erman, Abdel-Haleem, 2013, the impact of compulsory insurance on civil liability resulting from vehicles use (comparative study), doctoral thesis, Arab University in Amman, faculty of Law, Jordan.
5. Al- Jahni, Ibrahim Ibn Salem, 2018, Collaborative commitment in the Saudi system (comparative applied study), Journal of Islamic university, Saudi Arabia, AL-Maddina AL-Munawarah, year 56, No 196, second section.
6. AL jarrah, Mahmoud Mefleh, 2021, direct action in lease contract (Comparative study between Jordanian legislation and the Egyptian one), master thesis, Yarmouk University, Faculty of Law, Jordan.
7. AL- Sanhoury, Abdel Razzaq, Mediator in Civil Law commentary (lease and purely unfounded (Al Arian), Vol. 1, section 6, Arab heritage revival house, Lebanon- Beirut, without a year.
8. Al Sanhoury, Abdel-Razzaq, 1964, Mediator in the civil law, (Tender contract and insurance contract), Vol. 2, section 7, Arab heritage revival house, Beirut -Lebanon.
9. AL- Zubaidi, Abdullah, 2006, Legal basis for the lessor's return to the lessee in sub-rent in the Jordan's Law, Yarmouk research "Humanities and social sciences series", Yarmouk University, Jordan, Vol 22, No.3.
10. AL-Amrousi, Anwar and AL- Amrousi, Amjad Anwar, 2007, Solidum, Solidarity and sponsorship in the civil law, Dar AL-adallah, Egypt, First edition.
11. Alrabadi, Najem Ryad, 2018, Contractual Responsibility for the actions of another in the Jordanian Civil Law, Jordanian journal of law and political sciences, Mut'ah University- The Deanship for scientific research, Jordan, Vol 10, No 3.
12. Al-Sanhoury, Abdel-Razzaq, Mediator in Civil Law Commentary (Descriptions - Transfer -Expiration), The Third Section, Arab Heritage Revival House, Lebanon – Beirut, with no Publish year.
13. AL-Sanhoury, Abdel-Razzaq, Mediator in the Civil Law commentary (sources of obligation), section one, Arab Heritage Revival House, Lebanon, Beirut, with no publishment year.
14. Al-Sarraf, Abbass, 1954, the contractual liability for the act of the third party in comparative law, Doctorate thesis, Cairo University Faculty of law, Dar AL-Kitab AL Arabi publisher, Egypt.
15. AL-Tabakh, Sharif Ahmed, 2009, Tort and contractual Civil Liability, section one, house of thought and law, first version, Egypt.
16. Azhari, Mohammad, 2014, Solidum and Solidarity in Morocco Legislation (Study in the light of Law on Obligations and contracts), Journal of Civilian Justice, Morocco, year 5, No 10.

17. Bandari, Mohammed Ibrahim, 2001, The Direct case of lessor against sub-rent lessee, *Journal of Sharia and Laws*, United Arab Emirates University, No 15.
18. Bani Taha, Amjad, 2019, Contractual liability for the act of a third party under lease contract, Master-thesis, Yarmouk University, Faculty of law, Jordan.
19. Hanon, Mohammad Ja'far, 2011, The responsibility of contractual contractor for the act of the third party (Comparative Study), Modern Corporation for book, Lebanon, First Edition.
20. Insurance obligatory system, no 12 for the year 2010, *Official Gazette*, no. 2192, issued in 15/4/2010.
21. Jad, Mohammad, 2002, The Idea of the Obligation of Solidum (PHD thesis), Faculty of Law- Ain Shams University, Egypt.
22. Jaradat, Ruwaida Ali, 2013, The liability of insurance companies under the new compulsory insurance regulation no 12 for the year 2010, master's thesis, Yarmouk University - faculty of law, Jordan.
23. Khattab, Tulbah Wahba, 1977, Compliance provisions (between Islamic Law and Law), Dar AL-Fiker AL Arabi, Egypt- Cairo, First edition.
24. Nahla, Bu-Al Barda'ah, 2018, The responsibility off contractual contractor for the act of the third party, *The Journal of Islamic Sciences*, University of Brothers, Montori Constantinople faculty of Law, Algeria, Vol B, No 49.
25. Obeidat, Yusuf Mohammad, 2008, An assessment of the direct case in the Jordanian law "comparative Study", *Research Journal of Yarmouk (Humanities and social Sciences Series)*, Yarmouk University, Jordans, volume 24, No4.
26. Obeidat, Y. M. G. (2016). The Efficient Breach Theory under Jordanian Civil Law, *Arab Law Quarterly*, 30(4), 336-356. doi: <https://doi.org/10.1163/15730255-12341328>
27. Saad, Nabeel Ibrahim, 2000, Solidum and principle of non-presumption of Solidarity, Monsha'at AL Maaref, Egypt- Alexandria, second edition.
28. Shakour, Safaa', 2015, The solidum responsibility about illegal work In the Iraqi Civil Law (Comparative Analytic Study), *Journal of the Faculty of Law and political sciences*, Karkouk University, Iraq, vol.4, No-13.
29. Shatnawi, Nabeel, 2017, the obligation to report a risk in the light compulsory insurance system for vehicles, no. 12, for the year 2010 (Comparative Study), *Journal of legal Science*, Baghdad University, Faculty of law, Iraq, Vol.32, No.1.
30. The employment insurance Regulatory Act No. 12 for the year 2021, *Official Gazette*, no. 5718, page 1753, date 16/5/2021.
31. The Jordanian Labor Law, No.8, Year 1996, *Official Gazette*, no 4113, page 1173, issued in 16/4/1996.
32. The law of owners and tenants No. 14 for the year 2013, *Official Gazette*, no 5253, page 4936, issued in 17/11/2013.
33. Tulbah, Anwar, 2001, Mediator in the Civil Law, Second section, Modern University Office, Egypt.