

The Legal Implications of a Food Service Provider's Breach of Obligations a Comparative Study

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Abstract

When a food service provider breaches their obligations towards the recipient of the food service, and the elements of contractual liability are established, this gives the recipient the right to seek redress for all damages arising from such a breach. Contractual liability of the food service provider generally arises when they fail to fulfill their obligations as stipulated by law or agreement. The resulting legal effect of this breach, naturally, is compensation.

Keywords: *Legal Implications, Legal Obligations, Compensation, Lawsuit.*

Introduction

We will address the introduction as follows:

First - The Importance of the Research Topic

It can be said that the initial emergence of the food service contract stems from humanity's constant and limitless endeavor to meet its various needs, as well as the diverse services obtained from others through food service contracts. The traditional contracts used in the past no longer suffice, as people today increasingly require expansion and exploration in numerous fields. Thus, the food service contract has significantly contributed to this expansion, both in terms of its provisions and the resulting implications.

This rapid spread of food service contracts has opened the door for jurists, in general, to adopt a distinctive legal perspective on this contract. This approach has uncovered an important aspect of the contract that was previously unknown.

The importance of our study lies, from an academic perspective, in filling the existing gap caused by the lack of studies and research addressing the legal implications arising from the breach of obligations by food service providers. This significance is reinforced by the fact that, throughout our research into various references, we did not encounter even a single work specifically dedicated to these implications.

Second - Reasons for Choosing the Research Topic

A number of reasons have motivated me to select the topic of the legal implications arising from the breach of obligations by food service providers. This contract, due to its significance, is worthy of research and study, similar to other contracts addressed by legislators through specific provisions that apply when any issues arise concerning them. Simple examples include contracts such as sale and lease agreements, which have been extensively studied in numerous research papers and theses, in my opinion, the importance of this topic lies in its central role in commerce, especially in light of the evolution of trade and the shift from traditional commerce to e-commerce. I believe this type of commerce significantly relies on food service contracts, as does traditional commerce to a large extent.

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Third - Research Methodology

This study represents a modest effort to examine the legal implications resulting from the breach of obligations by food service providers. The study's methodology involves analyzing legal opinions and rulings, applying general legal principles relevant to certain aspects of the topic, and establishing a comprehensive framework addressing various dimensions of the issue, in our approach, we heavily relied on French and Egyptian legal systems, as they represent exemplary methodologies in legal studies and serve as reliable references for diverse legal research. Accordingly, the study primarily adopts a comparative analytical approach. This methodology was utilized extensively to analyze and interpret the various provisions pertinent to the research topic, additionally, we incorporated certain provisions from legislation such as the Iraqi Civil Code and comparable laws to highlight points of divergence and convergence among these legal systems.

Fourth - Scope of the Research Topic

The scope of this research is limited to studying the legal implications arising from the breach of obligations by food service providers. This focus is due to the prevalence of food service contracts in contemporary practice and the legal rules applicable to them. The research specifically addresses the parties to the dispute, namely the food service provider and the recipient of the food service, without delving into other relationships that may arise from the fooding contract.

Fifth - The Research Problem

The research problem lies in the absence of specific legislative regulation addressing the legal implications arising from the breach of obligations by food service providers. This gives rise to another issue: determining the adequacy of traditional legal principles in covering the subject of this research.

Sixth - Structure of the Research

This challenging yet rewarding intellectual journey, which has by God's will become easier after initially seeming daunting, allowed the researcher to achieve clarity of thought and fluidity of expression while striving to avoid redundancy and maintain focus on objectivity and scientific rigor. The study included two requirements, the first of which dealt with the types of compensation arising from the breach of the catering provider's obligations and the second of which dealt with the claim for compensation arising from the breach of the food contract.

The research will address the topic as follows:

- Section One: Types of compensation arising from the breach of obligations by food service providers.
- Subsection One: Specific performance compensation for breach of obligations by food service providers.
- Subsection Two: Monetary compensation for breach of obligations by food service providers.
- Section Two: The lawsuit for compensation arising from the breach of food contracts.
- Subsection One: Parties to the civil lawsuit arising from the breach of food contracts.
- Subsection Two: Conditions for the acceptance of contractual liability lawsuits resulting from the breach of food service contracts.

*Section One**Types of Compensation Arising from the Breach of Obligations by Food Service Providers*

People often enter into agreements with one another to facilitate their commercial transactions, support ongoing business activities, and exchange goods and services. This has led to a diversification of contracts and agreements based on the goals and purposes intended by the contracting parties. Over time, these contracts have evolved and occasionally overlapped to promote mutual interest and justice among the parties.

One such contract is the food service contract. However, breaches of such contracts may lead to legal claims aimed at obtaining compensation for the failure to fulfill obligations.

In this section, we will address two types of compensation: specific performance and substituted compensation, which includes both monetary and non-monetary forms:

- Subsection One: Specific performance compensation for breach of obligations by food service providers.
- Subsection Two: Substituted compensation for breach of obligations by food service providers.

*Subsection One**Specific Performance Compensation Arising from the Breach of Obligations by Food Service Providers*

If the elements of contractual liability are established, and the competent judge determines the liability of the defendant (the food service provider) towards the plaintiff (the injured party, represented by the food service recipient), the court will award appropriate compensation. This compensation may take one of two forms: the judge may issue a decision to restore the situation to its previous state, i.e., returning the injured party to the position they were in before the defendant's fault occurred. This is referred to as specific performance compensation. However, if it is not possible to eliminate the damage entirely, the judge must mitigate its impact by compensating the injured party, usually in monetary form, though occasionally in non-monetary form. This is referred to as substituted compensation ().

This principle is reflected in Article 209 of the Iraqi Civil Code, which states:

- The court shall determine the method of compensation depending on the circumstances, and compensation may take the form of installments or an annuity. In such cases, the debtor may be required to provide security.
- Compensation shall be assessed in monetary terms; however, the court, depending on the circumstances and at the request of the injured party, may order the restoration of the status quo or mandate the performance of a specific obligation or the return of an equivalent in kind as compensation.

According to the provisions of this article, compensation may either be specific performance or substituted compensation (monetary or non-monetary).

Specific performance is defined as “fulfillment of the obligation in kind, and this occurs frequently in contractual obligations” (). It is also described as “a judgment restoring the status quo to what it was before the responsible party committed the fault that caused the damage” (). In this sense, specific performance is considered the best method of compensation, as it restores the injured party to the position they were in before the damage occurred ().

As Dr. Hassan Al-Zanoun expressed, “specific performance represents the ideal outcome of a judgment of liability in contractual disputes.” A judgment awarding specific performance removes the damage and erases its effects, which is preferable to allowing the damage to persist while merely granting the injured party a sum of money as compensation, as is the case with monetary compensation () .

A simple review of the provisions of Article 209 of the Iraqi Civil Code reveals the possibility of awarding specific performance. Paragraph (1) grants the court the discretion to determine the method of compensation depending on the circumstances. Paragraph (2) further allows the court to order the restoration of the status quo, based on the request of the injured party () .

Thus, Article 209 explicitly establishes the principle of specific performance compensation, which also applies to food service contracts. Moreover, the article gives specific performance precedence over monetary compensation, subject to the judge’s discretion, this prioritization has led some to argue that the scope of specific performance is primarily within contractual liability. The general rule for monetary compensation is that it should be awarded as a lump sum to the injured party. However, there is nothing to prevent the party responsible for the damage from being required to pay it in installments or as a lifetime annuity.

Subsection Two

Compensation For the Breach of Obligations by A Food Service Provider

In principle, the compensation aimed at removing or repairing damage resulting from the breach of obligations by a food service provider is usually monetary. However, compensation may sometimes be non-monetary, requiring the liable party to perform a specific act for the benefit of the injured party. Below is an explanation of these two types of compensation:

First: Non-Monetary Compensation

Non-monetary compensation refers to a court ruling that requires a specific performance as a form of compensation. This type of compensation serves to satisfy the injured recipient of the food service by giving them the sense of having been fairly compensated. Some jurists describe this type of compensation as moral compensation. The compensation ordered by the court may not require the liable party to pay a sum of money, nor does it restore the situation to its original state prior to the breach. Non-monetary compensation can thus be considered a special form of compensation dictated by the circumstances of certain moral damages, depending on the type of harm caused () .

The Iraqi Civil Code permits this type of compensation under Article 209/2, which states: (2– Compensation is to be assessed in monetary terms. However, the court may, depending on the circumstances and at the request of the injured party, order the restoration of the previous state, the performance of a specific act, or the restitution of a like-kind substitute as compensation).

Accordingly, a recipient of food service, as an injured party, can request non-monetary compensation, which they may find more beneficial than monetary compensation. This type of compensation serves as a middle ground between specific performance and monetary compensation. It neither restores the situation to its original state nor involves a monetary award determined by the court proportionate to the damage. Instead, it entails a specific performance deemed appropriate under the circumstances. An example is an order to publish the judgment convicting the party responsible for the harm in newspapers () . This is explicitly referenced in Article 209/2 of the Iraqi Civil Code and similarly in Article 171/2 of the Egyptian Civil Code, which states: (2– Compensation is to be assessed in monetary terms. However, the court may, depending on the circumstances and at the request of the injured party, order the restoration of the previous state or the performance of a specific act connected to the unlawful act as compensation).

For financial damages involving valuable items, compensation through equivalent valuable items of the same type constitutes non-monetary compensation. On the other hand, for fungible items, compensating the injured party with like-kind items of the same type and quantity is undoubtedly specific performance.

Resorting to this form of compensation falls within the discretionary authority of the judge when hearing the case. Neither Article 209 of the Iraqi Civil Code nor Article 171 of the Egyptian Civil Code mandates monetary compensation. Examples of non-monetary compensation include ordering the defendant to cover litigation expenses, which may serve as satisfaction for moral damage. Another example is awarding a symbolic amount, not as an equivalent to the harm, but as an acknowledgment by the court of the injured party's right. Such symbolic compensation does not make the compensation monetary; rather, it expresses the court's disapproval of the liable party's breach and its recognition of the injured party's right, allowing the latter to mitigate any potential harm to their reputation, especially if they have a commercial reputation to protect and are not seeking profit from the compensation.

Second: Monetary Compensation

Monetary compensation is defined as the obligation of the food service provider, being the party responsible for the harm, to pay a monetary sum to the injured recipient proportionate to the damage resulting from the provider's breach of obligations. Typically, monetary compensation involves a lump sum payment. However, nothing prevents the court from ordering compensation in installments or as a life annuity, depending on the circumstances, the distinction between the two forms lies in the payment structure: Installment compensation is paid in predetermined installments over a set period, with the compensation being fully discharged upon the payment of the last installment, life annuity compensation is paid in installments for the duration of the recipient's life, without a predetermined total, as payments continue until the recipient's death ().

Most jurists agree that monetary compensation is the default and most common method of compensation in contractual liability cases, whether the damage is material or moral, particularly when specific performance is not feasible ().

Section Two

The Claim for Compensation Arising from the Breach of a Catering Contract

The recipient of a catering service who suffers harm as a result of the service provider's breach of obligations has the right to resort to the competent civil courts to obtain appropriate compensation to remedy the harm suffered. Compensation can only be secured through a civil claim, which falls under the jurisdiction of the civil courts.

For the injured recipient of the catering service to pursue this remedy, represented by a civil claim, certain conditions must be met. These conditions include legal capacity, standing, and interest, as the absence of any of these conditions would result in the dismissal of the claim by the trial judge.

Accordingly, the topic will be addressed as follows:

- The first section: The parties to the civil claim arising from the breach of catering contracts.
- The second section: Conditions for accepting a contractual liability claim arising from the breach of a catering service contract.

The First Section

The Parties to The Civil Claim Arising from The Breach of Catering Contracts

A civil claim is defined as the legal mechanism granted to every individual by law to obtain their right when it is denied or disputed by the opposing party (). Thus, the contractual liability claim against the catering service provider involves two parties: the plaintiff (the injured party), who claims to have suffered harm and seeks compensation, and the defendant, the catering service provider, who is held responsible for the harm caused to the recipient of the catering service. Below, we will explain both parties to the civil claim in the following subsections:

First: The Plaintiff (the injured party), whether the catering service provider or recipient

The Iraqi legislator defines the plaintiff in Article 7/Second of the Iraqi Evidence Law No. (107) of (1979), as amended, as follows: (The plaintiff is the party who claims against the apparent situation, while the denier is the party who claims to maintain the original state). Similarly, the Egyptian legislator defines the plaintiff in the Evidence Law in Civil and Commercial Matters No. (25) of (1968), as amended, in Article 1: (The creditor must prove the obligation, and the debtor must prove its discharge).

Legal scholars have provided various definitions for the plaintiff, including: (Any person who files a claim against another to demand a specific right) (). Another definition states: (A plaintiff is anyone who submits a request to the court to protect one of their rights)(). A further definition describes the plaintiff as: (Any person who files a claim, whether a natural or legal person, and whether an individual or a group of individuals) ().

In a contractual liability claim arising from the breach of a catering contract, the plaintiff is the injured party, whether the catering service provider or the recipient. They are entitled to seek compensation for the harm they have suffered as a result of the other party's breach of a legitimate interest. The plaintiff must demonstrate that they hold the right in question and that they have suffered harm, whether material or moral ().

If, as a general rule, the injured party, whether the recipient or the provider of the catering service, files a claim against the party causing the harm to seek compensation for material or moral damage, the situation differs if the injured party dies before obtaining their right to compensation. Here, it is necessary to distinguish between material and moral harm.

In the case of material harm suffered by the deceased during their lifetime, compensation for such harm cannot be denied. This means that the right to compensation for material harm transfers to the heirs of the injured party, each according to their share of the inheritance, as it constitutes an element of the estate, provided that the injured party did not waive their right to compensation during their lifetime. The injured party's death prior to filing the claim cannot be interpreted as a waiver of their right to compensation for material harm.

In contrast, for moral harm suffered by the deceased during their lifetime, Article 205/3 of the Iraqi Civil Code states: (3– Compensation for moral harm does not transfer to others unless its amount was determined by agreement or final judgment). This provision prohibits the transfer of the right to claim compensation for moral harm to the heirs, except in one case: if the value of the moral harm was determined by agreement or final judgment, the Egyptian legislator has adopted a similar approach, but with a notable distinction: under Article 222 of the Egyptian Civil Code, filing the claim itself is sufficient to transfer the right to compensation for moral harm to the heirs, without requiring a final judgment, as the Iraqi legislator does. Article 222 states: (1– Compensation also includes moral harm; however, in such cases, it may not transfer to others unless determined by agreement or claimed by the creditor in court, 2– Nonetheless, compensation may only be awarded to spouses and relatives up to the second degree for the pain they suffer as a result of the injured party's death).

If the injured plaintiff lacks legal capacity or has limited capacity, the civil claim must be filed by their guardian or custodian, or by a legal representative if the plaintiff is under legal guardianship ().

Within the scope of our study, any injured party in a catering service contract can act as a plaintiff and has the right to file a civil claim. A civil claim is only admissible if filed by the party who suffered the harm (). Any individual claiming the right to compensation may file a contractual liability claim before the court in whose jurisdiction the contract was concluded or where the performance of any or all principal obligations under the contract was stipulated ().

Second: The Defendant (the party causing the harm), whether the catering service provider or recipient

The Iraqi Evidence Law defines the defendant in Article 7/2 as follows: (The plaintiff is the party who claims against the apparent situation, while the denier is the party who claims to maintain the original state) (). Furthermore, the Iraqi Civil Procedure Law No. (83) of (1969) explains the defendant in Article 4 as follows: (It is required that the defendant be a party whose acknowledgment would result in a judgment on the assumption of such acknowledgment, and that they would be held accountable or obligated in case the claim is proven. Nonetheless, the guardian, custodian, or legal representative can act as the defendant concerning the property of minors, individuals under guardianship, or the absent, as well as the trustee for endowment property, or anyone deemed by law as a party, even in cases where their acknowledgment has no binding effect.)

The defendant in a contractual liability claim is the party from whom the harm originated (or the party responsible for the harm, such as a guardian, custodian, or legal representative). If there are multiple defendants, the plaintiff may file the claim against all of them collectively or against any one of them individually to claim full compensation, as they are jointly liable. This is stipulated in Article 217 of the Iraqi Civil Code, which states: (1– If multiple parties are responsible for an unlawful act, they are jointly liable for compensating the damage without distinction between the primary perpetrator, accomplice, or instigator. 2– The party who pays full compensation has the right to seek contribution from the remaining parties, with the court determining each party's share based on the circumstances and the degree of fault committed by each. If it is not possible to determine each party's share of liability, the compensation will be distributed equally among them.)

Regarding the liability relevant to this study, the defendant in a contractual liability claim is the indebted party whose fault caused harm to the injured plaintiff. The injured party may be a natural or legal person, such as the Ministry of Defense or the Ministry of Interior.

In this regard, Article 8 of the Iraqi Consumer Protection Law No. (1) of (2010) stipulates: (The supplier is fully responsible for the rights of consumers regarding their goods, products, or services, and their responsibility remains in effect throughout the agreed warranty period...). As for the supplier, Article 1/Sixth of the same law defines them as: (Any natural or legal person who produces, imports, exports, distributes, sells goods, or provides services, whether acting as a principal, intermediary, or agent.)

Section Two

Conditions for Accepting the Contractual Liability Claim Resulting from Breach of a Catering Service Contract

Filing a civil lawsuit requires specific conditions to be met, without which the court will not hear the case or issue a judgment. The acceptance of the civil lawsuit, in its form, depends on the fulfillment of these conditions. The trial judge ensures the validity of these conditions in the first session of the proceedings. Some of these conditions are related to the litigants themselves, while others pertain to the nature of the claim filed by one of the parties. If any of these conditions are not met, the court must dismiss the plaintiff's case in form, regardless of whether the plaintiff has a legitimate right to their claim ().

The most important formal conditions for accepting a civil lawsuit are legal capacity, standing, and interest (). Each condition will be addressed in a separate subsection, as follows:

First: Legal Capacity to Litigate

Legal capacity to litigate is similar to any legal capacity required for legal actions. A person must reach the age of majority and be free from legal incapacities () .

Legal capacity is defined as: (The eligibility of every individual to have rights and obligations, referred to as legal capacity. The eligibility of an individual to perform legal actions that are legally recognized is called capacity to act) () .

The basis of legal capacity is the individual's legal patrimony, which is defined as a legal characteristic granted to every person from birth until death. This is addressed in Article 34 of the Iraqi Civil Code, which states: (1– A person's legal personality begins at the moment of birth alive and ends at death. 2– However, the rights of the fetus are determined by the Personal Status Law).

The foundation of capacity to act is discernment, as it exists or ceases to exist based on the presence or absence of discernment. It is fully established with full discernment, diminished if discernment is partial, and nullified if discernment is absent () . This is addressed in Article 106 of the Iraqi Civil Code, which states: (The age of majority is eighteen full years).

Upon reaching the age of 18, an individual becomes fully capable of discernment and is therefore eligible to perform all types of legal actions, whether those actions are purely beneficial, purely harmful, or fall between benefit and harm, provided the individual is not subject to any legal incapacity. Such incapacities include insanity, idiocy, prodigality, or negligence, as outlined by the Iraqi Civil Code in Articles 110–117.

The capacity required to bring a lawsuit is the same as the capacity required to enter into a contract. Article 93 of the Iraqi Civil Code stipulates that: (Every person is eligible to contract unless the law declares them incompetent or limits their capacity.)

Most legal provisions require both parties to a lawsuit to possess the necessary capacity to file the claim and exercise the rights related to it. Otherwise, a legal or contractual representative must act on behalf of the person who lacks capacity. This is stipulated in the Iraqi Civil Procedure Law, which requires both the plaintiff to have the capacity to claim and the defendant to have the capacity to be sued. Article 3 of the Iraqi Civil Procedure Law states: (Both parties to the lawsuit must possess the necessary capacity to exercise the rights related to the claim; otherwise, someone legally authorized to act on their behalf must do so.)

As for legal persons, the law grants them the right to file lawsuits or to have lawsuits filed against them, provided they have a legal representative who can express their will in litigation and all legal matters. Article 48 of the Iraqi Civil Code specifies the characteristics of a legal person, stating: (1– Every legal person shall have a representative to express its will. 2– A legal person enjoys all rights except those inherently applicable only to natural persons, within the limits prescribed by law. 3– A legal person has a separate financial patrimony. 4– A legal person has the capacity to act, within the limits specified by its establishment document or as mandated by law. 5– A legal person has the right to litigate. 6– A legal person has a domicile, which is considered to be the location of its administrative center. For companies with a headquarters abroad but operating in Iraq, their legal domicile for domestic law purposes is the location of their operations in Iraq.)

Regarding the capacity to litigate in the context of a debtor in a contractual liability claim arising from a breach of a catering service contract, it is subject to the conditions set by law, whether the debtor is a natural or legal person. Accordingly, if the debtor's actions result in harm to the consumer, the injured party has the right to file a civil lawsuit against them under the rules of liability arising from such harmful actions.

Second: Standing

Standing refers to the legal status that arises when a dispute is brought before the judiciary. It also refers to the dispute itself. It can be defined as a series of distinct actions required by law to be undertaken until the matter is resolved ().

Accordingly, based on the above, standing can be understood as a set of interconnected actions aimed at enforcing the law in a specific situation for the benefit of a claimant seeking legal protection through ordinary judicial authorities. Standing is a legal entity that begins with the plaintiff submitting their request to the judiciary and concludes with the attainment of its objective—issuing a judgment that resolves the existing dispute. It may, however, terminate before a judgment is issued for any reason that leads to the conclusion of the case. A judicial claim commences prior to the resolution of its subject matter, as it represents a state of uncertainty during which it is not known whether the plaintiff is entitled to their claim or not ().

It is worth noting that the Iraqi legislator addressed standing in the amended Iraqi Civil Procedure Law No. (83) of 1969, specifically in Article 4, which states: (The defendant must be a party whose admission would result in a judgment, on the condition that such an admission is valid and binding upon the defendant. Furthermore, standing is valid for a guardian, custodian, or executor concerning the property of minors, interdicted persons, and absentees, as well as for trustees regarding endowment properties, and for anyone whom the law deems as having standing, even in cases where their admission would not be enforceable.)

Additionally, Article 5 of the same law stipulates: (One of the heirs may be a party in a lawsuit filed against or on behalf of the deceased, but the party in a claim concerning a specific item of the estate shall be the heir in possession of that item.)

Referring back to the provisions of Article 4 mentioned above, it is evident that standing refers to the capacity of the parties to the lawsuit. If this capacity exists in both parties—the plaintiff, represented by the party harmed by the catering contract, and the defendant, represented by the party who caused the harm, whether directly or indirectly—then the standing of both parties is valid. Standing, therefore, requires that the party bringing the lawsuit is the rightful claimant of the alleged right or their legal representative. Thus, anyone with standing has the right to file a lawsuit. This capacity applies to all parties to the case, not just the plaintiff. The plaintiff must be the rightful owner of the claim and file the lawsuit to protect their right from an actual or anticipated violation, while the defendant must be the party whose right is the subject of the claim ().

Based on the aforementioned provisions, it becomes clear that any error in identifying the proper standing necessitates the dismissal of the plaintiff's lawsuit. If the plaintiff or their representative makes a mistake in the petition by directing the lawsuit against a party that does not have standing, the lawsuit must then be dismissed.

Third: Interest

The most important condition for accepting a civil lawsuit is the condition of interest, based on the provisions of Article 6 of the Iraqi Civil Procedure Law, which states: (It is required in the lawsuit that the claimed interest must be specific, present, possible, and established. However, a potential interest is sufficient if there is a reason to fear harm to those concerned. It is also permissible to claim a deferred right, provided that the due date is considered when issuing the judgment, and in this case, the plaintiff shall bear the costs of the lawsuit.)

The plaintiff must have an interest based on a right to have their claim against the liable party accepted, whether this right involves performing an act or refraining from one. Interest is defined as the practical and legitimate benefit recognized and protected by law, whether material or moral, which the plaintiff seeks to obtain by resorting to the judiciary. This may involve confirming the plaintiff's right, their legal standing, or compensating them for the harm they have suffered ().

Doctrine has defined interest as (the need for legal protection of a right that has been violated or is under threat of violation, and the benefit the plaintiff gains by achieving such protection () . It has also been described as (any benefit or advantage the plaintiff gains from being granted what they are claiming). However, this does not necessarily mean that the ruling will always be in their favor, as it is possible for the court to rule in favor of the opposing party. Nonetheless, interest must still be present, as the matter of accepting the lawsuit precedes its adjudication. Thus, interest is a condition for accepting a lawsuit before the courts, and it is only realized when there is a violation of the plaintiff's right or a threat to their legal standing. Some view interest as the most important condition for a lawsuit to be accepted, while others consider it the sole condition. Consequently, a lawsuit lacking interest will not be accepted () .

In this regard, the Egyptian legislator, in Article 3 of the amended Egyptian Civil and Commercial Procedure Law No. (13) of 1968, also considers interest as a condition for accepting a lawsuit. Article 3 states: (No claim or defense shall be accepted unless its proponent has an existing interest recognized by the law. However, a potential interest is sufficient if the purpose of the claim is to prevent imminent harm or to secure evidence of a right that may lose its proof in case of a dispute.)

The text of the above article indicates that interest is not only a condition for accepting a lawsuit but also a condition for accepting any claim or defense. Even when appealing a judgment, the condition of interest must be fulfilled.

Referring to the provisions of Article 6 of the effective Iraqi Civil Procedure Law, which states: (It is required in the lawsuit that the claimed interest must be specific, present, possible, and established. However, a potential interest is sufficient if there is a reason to fear harm to those concerned. It is also permissible to claim a deferred right, provided that the due date is considered when issuing the judgment, and in this case, the plaintiff shall bear the costs of the lawsuit.) we note that it specifies the legal conditions that interest must meet for the lawsuit to be accepted:

Interest must be specific: This means that the interest must not be vague, as it is not permissible to issue a judgment on an unknown matter. Interest determines the value of the lawsuit and the judicial fee that must be paid. Specificity is achieved through a precise determination that eliminates uncertainty, which varies depending on the nature of the claimed property or right. This is addressed in Article 128/1 of the Iraqi Civil Code, which states: (1 – The subject matter of the obligation must be determined with sufficient precision to eliminate gross uncertainty, whether by pointing to it or its specific location if it exists at the time of the contract, or by describing its distinguishing characteristics and mentioning its quantity if it is quantifiable, or by any other means that eliminates gross uncertainty. Simply stating the type without specifying the quantity and description is insufficient.)

Interest must be present: This means that the claimed right must not be conditional or subject to a specific future date. If it is, the lawsuit cannot be accepted until that date arrives or the condition is met () .

Interest must be possible: This means that the interest must not be impossible to achieve or realize. Impossibility here is of two types:

Legal impossibility: This occurs when a legal basis exists to protect the right or legal standing claimed by the plaintiff or when it does not exist. If such a legal basis exists, the lawsuit is deemed acceptable, as the interest is legally valid and legitimate. Otherwise, the judge must rule the lawsuit inadmissible due to the absence of legal validity for the interest without examining the merits of the case () .

Material impossibility: An example of this would be a claim seeking to establish the parentage of a person from another person who is older than them.

To be a realized interest: This condition means that an actual violation must have occurred against the right or legal status sought to be protected () . For example, when claiming compensation for harm, the harm must have already occurred, not merely a perceived or anticipated harm. There is no need for the claimant to resort to the judiciary if no one disputes their right or legal status. Furthermore, the judiciary's role is

limited to resolving disputes. If there is no conflict over the right or legal status, there is no need to burden the judiciary with conflicts that have not yet materialized. As a general principle, a lawsuit is a remedial means aimed at addressing an actual violation against the aggrieved party () .

To be a potential interest: Referring to Article 6 of the Iraqi Civil Procedure Law, this article allows a lawsuit to be based on potential interest. Courts apply this provision whenever such a possibility is apparent. For instance, there may be a risk of harm to the plaintiff, such as the loss of the right to file a claim in the event of judicial proceedings. This principle has been affirmed by the Court of Cassation in many of its rulings. Among the most notable applications of potential interest mentioned in legislation are claims to affirm a denied right, even if there is no obstacle to exercising it. Other examples include claims to establish a right, resolve disputes, and maintain a specific state () .

Based on the above, it is clear that the plaintiff in a civil lawsuit within the scope of this study is anyone harmed due to the other party's failure to fulfill their obligations under a catering contract. The harmed party must have an interest they seek to achieve through filing a civil lawsuit.

Finally, we ask: what are the methods for resolving disputes arising from breaches of catering contracts?

Disputes may arise from catering contracts, necessitating the determination of jurisdiction to address them. Under Iraqi legislation, civil courts have jurisdiction over disputes involving catering contracts. Several methods and approaches can be used to resolve disputes arising from breaches of catering contracts, including recourse to judicial proceedings and arbitration.

Judicial Proceedings as a Means of Resolving Disputes Arising from Breaches of a food Contract

The judiciary is the authority of the state responsible for resolving disputes between parties and protecting public rights (). The judiciary's tool for resolving disputes among individuals is the lawsuit. A lawsuit is the authority to resort to the judiciary to confirm or protect a right. It is the legal means established to determine or safeguard a right ().

Civil courts, being courts of general jurisdiction, are competent to hear all compensation claims. The obligation to provide compensation falls under the category of financial rights or obligations regulated by civil law. Generally, compensation claims are civil lawsuits and are subject to the jurisdiction of civil courts at all levels.

Therefore, contractual liability lawsuits arising from breaches of catering contracts consist of a set of claims and defenses. The aggrieved plaintiff bases their claims on the breach of the catering contract by the defendant. Conversely, the defendant defends against the establishment of contractual liability. The core issue of such lawsuits revolves around the aggrieved party's demand for compensation.

Arbitration as a Means of Resolving Disputes Arising from Breaches of a food Contracts

Arbitration refers to resolving disputes between parties and settling them through one or more arbitrators chosen by the disputing parties at their discretion, without referring to the competent court () .

Arbitration has been defined as (the parties' agreement to forgo judicial proceedings and instead submit their dispute to one or more arbitrators, who will issue a binding decision for the parties)() .

It is worth noting that arbitration proceeds through three stages:

- First Stage: This consists of agreeing to arbitration instead of judicial proceedings, either before or after a dispute arises.
- Second Stage: This involves the agreement between the disputing parties and the individual who will resolve the dispute, granting them the authority to adjudicate the matter.

- Third Stage: This begins with the arbitration process and ends with a binding decision for all parties involved () .

Arbitration is an innovative and specialized method for addressing and resolving disputes by referring them to arbitrators mutually agreed upon by the parties, without resorting to judicial authorities, whether regular courts or administrative tribunals. The dispute concludes with a decision that resolves the matter between the parties, which they are obligated to comply with voluntarily; otherwise, enforcement can be compelled () .

Arbitration is based on three elements:

- First Element: The agreement between the parties, including the provider of catering services and the recipient, to resolve any dispute arising from the catering contract through arbitration. This is referred to as the arbitration clause. Alternatively, the parties may agree to resolve a specific dispute that has already arisen through arbitration, referred to as a submission agreement.
- Second Element: The freedom to choose the arbitrator, who is granted the authority to resolve the dispute under the arbitration agreement and whose decision is binding on the parties.
- Third Element: The existence of an actual dispute or the possibility of a future dispute between the parties.

Arbitration is thus the agreement between the contracting parties in a catering service contract to submit disputes to one or more arbitrators for resolution. If this agreement is made before a dispute arises, it is referred to as an "arbitration clause." The parties may also agree to arbitration in the event of a dispute during the execution of the catering service contract and before filing a lawsuit. Alternatively, the parties may resort to arbitration while the case is being reviewed by the court, which is referred to as a "submission agreement".

Conclusion

After completing our study on the subject of this research, we conclude with final remarks to highlight the most important findings and recommendations reached, which we wish to present as follows:

First: Conclusions

- The catering contract is one of the private law contracts; however, its parties are not always natural persons. One of the parties could be a public entity, such as a ministry of defense, interior, or health. Alternatively, the parties may be companies, institutions, or individuals, and the contract may be concluded between a public entity and an institution.
- Due to the legal organizational challenges of catering contracts, we can define the catering contract as "(a contract under which a natural or legal person, or a public entity, commits to providing catering services to the second party in exchange for a monetary amount agreed upon between them)".
- One of the obligations of the catering service provider is to ensure safety. This safety obligation aims to guarantee the recipient of the catering service (the consumer) receives a service free from defects or potential harm to them or those around them.
- The primary obligation of the catering service provider is to achieve a specific result. The provider is not exempt from liability unless they prove the occurrence of a foreign cause that prevented the provision of the catering service. This is in addition to their contractual disclosure obligations and other commitments.

- The effect of the catering service recipient's breach of obligations includes terminating the catering contract, despite deviating from general rules on termination in some respects, suspending or halting catering services, and establishing contractual liability if its elements are fulfilled. Additionally, the catering service recipient's contractual liability arises when they fail to meet their contractual obligations.
- Ensuring safety is a critical obligation of the catering service provider, aiming to provide the consumer with a safe service free from defects or potential harm to them or others around them.

Second: Recommendations

- We propose that the Iraqi legislator regulate catering contracts with specific provisions due to their prevalence and importance, equating them to other named contracts recognized by the legislator. This ensures that both parties understand their rights and obligations.
- We urge the Iraqi legislator to activate the role of the draft Consumer Rights and Protection Law, contributing to enacting legislation for consumer protection. This has become a pressing necessity to provide maximum protection for catering service recipients, especially since general legal provisions may not suffice for adequate consumer protection.
- We propose that the Iraqi legislator consider the following issues when implementing a consumer protection policy: (a) Service conditions between catering service providers and recipients. (b) Setting and developing quality standards for services provided by catering service providers. (c) Monitoring unfair and deceptive commercial practices. (d) Issuing specific regulations and instructions to protect consumers, aimed at establishing rules for organizing, developing, and implementing consumer protection policies. This includes practices by catering service providers concerning issued invoices, record-keeping of documents related to provided services, terms of service, publication and advertisement requirements, dispute resolution and complaint handling procedures, quality requirements for catering services, and other relevant matters).
- We suggest that the Iraqi legislator include a specific provision in the draft Iraqi Consumer Protection Law obligating service providers to provide information about their identity. Catering service providers should ensure that all correspondence, documents, and records issued in their dealings with the consumer (service recipient) contain clear and unambiguous identification details, such as their registration details in their activity register, the company name, type, address, main headquarters, and other identifying information.
- We recommend that the Iraqi legislator adopt the following definition for a catering service provider: "(Any natural or legal person licensed to provide catering services under a contract concluded between them and the catering service recipient, determining the rights and obligations of each party)."
- We suggest that the Iraqi legislator adopt the term "catering service recipient" and define it as follows: "(Any natural or legal person who receives catering services through a contract concluded between them and the catering service provider, determining the rights and obligations of each party)."
- We propose that the Iraqi legislator include a provision in the Consumer Protection Law obligating the catering service provider to provide comprehensive information about their identity and activities. We suggest the following provision: "The catering service provider must include on all correspondence, documents, and records issued in their dealings with the consumer (service recipient) information that unequivocally identifies their identity, including their registration details in the relevant activity register."

- We propose that the Iraqi legislator include a provision in the Consumer Protection Law requiring the catering service provider to disclose the risks associated with using the service. We suggest the following provision: "The catering service provider must provide the consumer (service recipient) with essential information regarding the assessment of risks and hazards associated with using the catering service during the expected period of use, and explain the best method of use while warning them about the risks of misuse."
- We call on the Iraqi legislator to narrow the scope of "foreign cause" as a defense for contractual liability in the relationship between the catering service provider and the consumer, particularly excluding the concept of "force majeure" from this defense.
- The civil consequences for the catering service provider's breach of contractual obligations are insufficient to provide adequate protection for the catering service recipient, especially if they approach the court individually. Therefore, we advocate for the establishment of provisions for consumer protection associations and the activation of their role, particularly the provisions allowing these associations to represent consumers and defend their rights before official bodies and judicial authorities. Additionally, we propose the creation of a special fund to compensate consumers and protect their rights in case of harm, as this would have a positive impact on catering services, catering contracts, and the protection of service recipients.
- We urge the Iraqi legislator to include a specific provision for catering contracts in the Civil Code, similar to the approach of the English legislator.

And our final invocation is that all praise be to Allah, the Lord of all worlds.

References

First - Legal Sources:

- Dr. Hassan Ali Al-Zinoun, Al-Mabsut in Civil Liability, Vol. 1, Harm, Dar Al-Nahda Al-Arabiya, Egypt, 1998.
 Dr. Abdel-Razzaq Ahmed Al-Sanhouri, Vol. 2, Al-Waseet in Civil Law, Dar Al-Nahda Al-Arabiya, Egypt, 1964.
 Naseer Sabbar Al-Jubouri, Material Compensation: A Comparative Study, 1st edition, Dar Qandeel for Publishing and Distribution, Amman, no publication year.
 Mohamed Abdul Qadi, Compensation for Moral Damage in Tort Liability, 1st edition, Baghdad University Press, Baghdad, 2008.
 Dr. Abdel-Majid Al-Hakeem, Vol. 1, Al-Wujayz in the Theory of Obligation in Iraqi Civil Law, Al-Sanhouri Library, Baghdad, no publication year.
 Dr. Abdel-Monem Farag Al-Sada, Contracts of Adhesion in Egyptian Law, Fouad I Press, Cairo, 1946.
 Dr. Ibrahim Al-Dusouki Abu Al-Layl, Compensation for Damage in Civil Liability, Kuwait University Press, Kuwait, 1995.
 Dr. Abdel-Rahman Al-Alam, Explanation of the Civil Procedures Law No. (83) of (1969), Vol. 1, 1st edition, The Legal Library, Baghdad, 2008.
 Judge Abbas Al-Saadi, Vol. 1, Al-Nafe' in Civil Procedures Judgement, Al-Sabah Library, Baghdad, 2016.
 Dr. Abdel-Monem Al-Sharkawi, Al-Wujayz in Civil and Commercial Procedures, University Publications for Egyptian Universities, Cairo, 1951.
 Dr. Ahmed Said Al-Sawi, Al-Waseet in the Explanation of the Civil and Commercial Procedures Law, 1st edition, Dar Al-Nahda Al-Arabiya, Cairo, 1988.
 Dr. Abdel-Razzaq Ahmed Al-Sanhouri, Al-Waseet in Explaining Civil Law, Vol. 1, Sources of Obligations, same source.
 Samaan Fawzi Omar, Civil Liability of Journalists: A Comparative Study, 1st edition, Dar Wael for Publishing and Distribution, Amman, 2007.
 Dr. Sidqi Mohamed Amin Issa, Compensation for Harm and its Transferability to Heirs, 1st edition, National Center for Legal Publications, Cairo, 2014.
 Mustafa Al-Awji, Civil Law, Vol. 2, Civil Liability, Halabi Legal Publications, Beirut, 2009.
 Dr. Diyaa Sheit Khattab, Studies in the Iraqi Civil Procedures Law No. 83 of 1999, Publications of the Institute for Research and Arab Studies, Cairo, 1970.
 Dr. Diyaa Sheit Khattab, Al-Wujayz in Explaining the Civil Procedures Law, Al-Aani Press, Baghdad, 1973.
 Dr. Adam Waheeb Al-Nadawi, Civil Procedures, Al-Atak for Book Manufacturing, Cairo, 2011.
 Abdel-Wahab Arfa, Civil Liability in Light of Jurisprudence and Cassation Judgments, Vol. 1, Technical Office for Legal Encyclopedias, no publication year.

- Dr. Hassan Ali Al-Zinoun, Mohamed Said Al-Rahou, Al-Wujayz in General Theory of Obligation, Sources of Obligation: A Comparative Study with Islamic and Comparative Jurisprudence, Vol. 1, Dar Wael for Publishing, Amman, Jordan, 2002.
- Judge Abbas Ziad Al-Saadi, Litigation in Civil Cases, no publication place, Baghdad, 2012.
- Dr. Asmat Abdel-Majid, Principles of Civil Procedures, 1st edition, University of Cihan Publications, Erbil, 2013.
- Dr. Raouf Obeid, Practical Problems in Criminal Procedures, Vol. 1, 3rd edition, Dar Fikr University, Alexandria, 1980.
- Abdel-Monem Al-Sharkawi, Theory of Interest in Lawsuits, PhD Dissertation, Cairo University, Faculty of Law, 1947.
- Dr. Mohamed Kamel Abdel-Aziz, Codification of Procedures in Light of Jurisprudence and Case Law, 3rd edition, Dar Al-Nahda Al-Arabiya, Cairo, 1995.
- Dr. Talaat Mohamed Dowidar, Al-Waseet in Explaining the Procedures Law, 1st edition, Dar Al-Jamia Al-Jadida, Alexandria, 2016.
- Dr. Ahmed Abu Al-Wafa, Theory of Defenses in Procedures Law, 4th edition, Dar Al-Ma'arif, Cairo, 1967.
- Dr. Fathi Wali, Principles of Civil Judicial Law, Dar Al-Nahda Al-Arabiya, Cairo, 1970.
- Mohamed Bin Nasser Al-Bajad, Arbitration in the Kingdom of Saudi Arabia, 1st edition, Center for Research and Administrative Studies Publications, Riyadh, 1999.
- Mohamed Nasr Al-Din Kamel, Lawsuits and Procedures in Ordinary and Administrative Courts, Egypt, Dar Al-Nahda Al-Arabiya, 1989.
- Eid Mohamed Al-Qasas, Arbitration Award: An Analytical Study in the Egyptian and Comparative Arbitration Law, Dar Al-Nahda Al-Arabiya, Cairo, 2004.
- Ahmed Abu Al-Wafa, Voluntary and Mandatory Arbitration, University Publications, Alexandria, 2007.
- Ahmed Abdel-Fattah Saqr, Dispute Resolution through International Arbitration, 1st edition, Al-Wafa Legal Library, Alexandria, 2019.
- Mohamed Walid Al-Abadi, The Importance of Arbitration and the Possibility of Resorting to It in Administrative Contract Disputes, Journal of Islamic and Legal Studies, Vol. 34, No. 2, 2007.
- Dr. Osama Ahmed Al-Melh, Optional Arbitration Tribunal, Dar Al-Nahda Al-Arabiya, Cairo, 2004.
- Dr. Adam Waheeb Al-Nadawi, Civil Procedures, Al-Atak for Book Manufacturing, Cairo, no publication year.

Second - Laws:

- Iraqi Civil Code No. (40) of (1951).
- Egyptian Civil Code No. (131) of (1984).
- Egyptian Evidence Law in Civil and Commercial Matters No. (25) of (1968).
- Iraqi Civil Procedures Law No. (83) of (1969).
- Egyptian Civil and Commercial Procedures Law No. (13) of (1968), as amended.
- Iraqi Evidence Law No. (107) of (1979).
- Iraqi Consumer Protection Law No. (1) of (2010).