

CIVIL LIABILITY OF BLOOD BANKS

Basira Abdullah Ahmad Mahmood

Mohammed Sameen Ebrahim Mahdi

University of Kirkuk

Email: baseraabdullah@uokirkuk.edu.iq

Annotation

Blood banks are stores for preserving blood and its components, which are collected from their blood donors, for later use in operations that require blood transfusion. All people can donate blood if they are in good health. Various relationships arise between blood banks and donors, between blood banks and hospitals, or between the donor and the patient receiving blood. The relationship may be selling blood, a blood donation contract, or a unilateral will. The donor must provide formal consent to donate blood. The official consent should include knowledge of all known risks associated with the donation and the subsequent legal use of the donation, and that the donor's information will be treated confidentially. As a result of the absence of the legislative text regarding blood transfusions in blood banks, jurisprudence prompted the search for a legal basis for blood transfusions, which is a case of necessity and social interest. Determining the civil liability of blood banks requires determining the error committed by the blood banks with the availability of damage and the causal relationship between them as they are two main pillars for determining the features of this responsibility.

Keywords: blood, donor, receiver, contract, law.

Introduction

Blood banks are one of the main departments in medical laboratories, where blood is collected from donors to be stored for later transmission to recipients after the necessary tests are performed to reduce the risks related to transfusion. Blood transfusions represent one of the forms of scientific progress in the field of medicine and doctors resort to Blood transfusion in the surgical treatment of patients and their treatment of injuries resulting from accidents. The responsibility of the blood banks is realized when these banks make a mistake by the transfusion of blood contaminated with diseases and viruses, or in the violation of the recipient's blood type, and the latter is harmed.

Reasons for Choosing this Study

The emergence of the tragic facts that caused blood transfusions, and the scope of the damage resulting from the attacks in their field may constitute health disasters in many cases.

The Problem of the Study

The system of civil liability rules related to blood transfusions, according to the traditional rules of Iraqi law, failed to meet the needs of victims of blood transfusions. These victims are not compensated according to the damage they sustained.

Research Methodology

In our study, we relied on the analytical approach, which is based on the analysis of partial phenomena to reach a holistic phenomenon, and to collect and analyze the necessary data about it.

Research Structure

The first part: This part includes the concept of the blood bank, the conditions that must be provided to donors, the bans to donation, the relationship between the blood bank and the donors, and the legal basis for blood transfusions. This section also includes:

The first section / the concept of the blood bank.

The second section / conditions and contraindications to donating blood.

The third section / the relationship between the blood bank and the donor.

Fourth section / legal basis for blood transfusion.

The second part: this part includes the conditions of civil liability for blood transfusion banks and the impact of liability

The first section / error

The second section / damage

The third section: causation

Fourth section: compensation.

The first part

This part discusses the concept of the blood bank, the conditions that must be met by donors, the bans to donation, the relationship between the blood bank and donors, and the legal basis for blood transfusions

In hospitals, there is a place to collect blood from donors, store it and give it to those who need it. There are procedures for taking blood. Donors must adhere to conditions for giving blood, and there are cases where it is forbidden to donate blood, so we will divide this part into four demands. In the third section, we show the relationship between the blood bank and the donor. In the fourth section, we address the legal basis for blood transfusions.

The First Section

blood bank concept

First: - Defining the blood bank.

A blood bank is the location where blood is collected from donors, separated into components, stored, and prepared for transfer to recipients (people who need blood). A blood bank may be a stand-alone facility or part of a larger laboratory in a hospital (An article, dated 15/2/2021, available online at the following website: <https://e3arabi.com/?p=49146>). It is a public or private institution that collects blood, preserves it and supplies it to patients when needed (An article, dated 15/2/2021, available online at the following website <https://ontology.birzeit.edu/term/>). It is one of the main departments in medical laboratories, where blood is collected from donors, its type is determined, and then it is separated into its basic components: red blood cells, plasma, and platelets, to be stored for later transport to two receptors (Soha Dhamshi, on 16/2/2021, an article available online at the following website: <https://sotor.com>). Each component of whole blood is usually separated into several components. Red blood cells can be stored under refrigeration for a maximum of 42 days, or they may be frozen for up to 10 years. Red cells carry oxygen and are used to treat anemia. Platelets are important in controlling bleeding. It is generally used in patients with leukemia. Platelets are stored at room temperature and can be kept for five days. Fresh frozen plasma is usually kept, which is used to control bleeding due to low levels of certain clotting factors (An article, 15/2/2021, available online at the following website: <https://alamshabaab.yoo7.com/t9-part>).

For our part, the blood bank as a storehouse for preserving blood and its components, which are collected from their blood donors, as blood. Its components are collected and stored and preserved for later use in operations that require blood transfusion following the necessary tests to reduce the risks related to blood transfusion.

Second: The basic sections for donating blood

1-Age: The donor must be at least 18 years old and not older than 60 years old. A medical examination is conducted to the donors, especially people aged between 45-60, in order to avoid any heart or vascular diseases (Article dated 10/2/2021 available online at the following website:

<https://www.moh.gov.sa/HealthAwareness/EducationalContent/Diseases/Hematology/Pages/007.aspx>).

Weight: For people whose weight is (50-60 kg), 250 ml should be taken (Abd al-Rahman al-Basha, date 1/1/2021, an article available online at the following website: <https://mawdoo3.com>).

Good health: It is necessary to delay the blood donation process until the fever or cough accompanied by sputum is gone if the donor suffers from either of them. It is necessary to complete and finish the antibiotic treatment if the donor has sinus, lungs, or throat infections, as it is essential that the donor is healthy on the day of donating blood (Abd al-Rahman al-Basha, previous source).

Third: - Procedures and policy for sampling.

The personal data is filled out in a form in the blood bank department, and the donor must be honest in this data because s/he could be rejected as a donor if it appears that the answers were incorrect. Then an official in the laboratory checks the validity of the data and matches it with the donor, and then moves to donate blood. In addition, blood samples are drawn in test tubes to perform a set of tests on them. Data is recorded on the blood unit and tubes. Tests are conducted to determine the blood type of the donor, in addition to an examination for infectious diseases. As for the blood units, they are separated into their components inside a centrifuge and then stored (Soha Dhamshi, previous source).

The blood bank prepares a data form to ask the donor before taking blood to ensure that illegibility to donate blood.

The second section

Terms and prohibitions of donating blood

The Health Organization confirms that an individual is unable to donate blood in the event of a cold, flu, abdominal pain, or any other infection (An article on 18/2/2021 is available online at the following website:- <https://www.trtarabi.com/explainers/>).

The person undergoing a minor dental operation must wait 24 hours before donating blood and a full month in the case of non-simple operations (Ziad Abdullah, on 18/2/2021, an article available on the internet on the following website: <https://mawdoo3.com/>).

A pregnant woman should not donate blood after giving birth for a period equal to the duration of pregnancy, and it is advised not to donate blood during breastfeeding as well (An article, on 18/2/2021, available online at the following website:- <https://www.elconsolto.com/medical-advice/advice-news/details/2019/6/14/1583418/>).

3-A traveler to endemic areas with infections transmitted by mosquitoes, such as malaria infection and others, should temporarily stop donating blood (An article on 19/2/202, available online at the following website:- <https://www.trtarabi.com/explainers>).

4-A person with AIDS or anyone who has previously used drugs is prohibited from donating blood permanently) Walid Shahran, , 2015, Legal protection of the human body from the risks of infection when transfusion,p136).

A recent tattoo or throat could prevent blood transfusion.

Recent tattoos, recent body shaving or newly applied semi-permanent makeups are among the reasons that may prevent donating blood for a period of time, up to about four months. The main reason for this is to prevent or reduce the transmission of hepatitis virus infection to the person who underwent tattoos etc. such as the needles used (Hammadi Trawer, 2004-2005, Hematology in French,p12).

One of the most important reasons that may prevent donating blood, especially in specific cases, is the incompatibility of your blood type with the affected person.

Medicines

Medicines do not prevent people from donating blood at all, yet there are some types that may require waiting for a period of time until their effect expires in order to donate blood. Among the most important medicines that may prevent blood donation temporarily are antibiotics, aspirin or any medicine that contains aspirin. In the latter case, donation of blood can happen after two days following taking the medicine(Hammadi Traver,previous source,p15).

Another cause for prevention blood donation is cancer or acute lung disease and heart disease.

The Third Section

The relationship between the blood bank and the donor

All people can donate blood if they are in good health. Various relationships arise between blood banks and donors, between blood banks and hospitals, or between the donor and the patient receiving blood. The relationship may be selling blood, a blood donation contract, or a unilateral will.

First: - the blood sale contract

Article 506 of the Iraqi Civil Code defines the sale contract as (exchange of money for money). In the old days, and before the emergence of blood transfusion, the relationship was direct between the blood donor and the recipient who could be member of the same family. The donor could be a professional person who gives blood in return for a price agreed upon by the parties. The jurist "Lachaise" stated the possibility the existence of a blood transfusion contract (le contrat de transfusion sanguine)(Bin Hadi Yassin,2014-2015,Civil Responsibility for Blood Transfusions,p26).It turns out that Lachaise adapted the blood transfusion contract as a contract of sale and that the contract of sale is one of the binding contracts for both sides. The donor delivers part of the blood in exchange for the price.

Second: - Donation Contract

It is a contract in which the contracting party does not take a return for what they give, unlike a compensation contract, each contracting takes a return for what they give. So the responsibility of the donor is less than that of the compensated person(Dr. Abdul-Majid Al-Hakim, Dr. Abdul-Baqi Al-Bakri, Muhammad Taha Al-Bashir,2018, Al-Wajeez in the Theory of Commitment,p34).

The donor must provide formal and express consent to donate blood. The formal consent should include knowledge of all known risks associated with the donation and the subsequent legal use of the donation and that the donor information will be treated confidentially. The consent should include information about potential trading in products derived from the donation and whether the donation will be used for

research, quality control or any other purpose. With the emergence of blood transfusion banks, the blood donor did not know the recipient of the blood, as well as the decline in the idea of financial compensation for the donor to be replaced by volunteering (aparagraph 1.1.3, The Code of Ethics for Transfusion Medicine, on June 20, 2017, adopted at the Copenhagen Assembly, p30). It became impossible to adapt the relationship between the donor and the blood center as a contract of sale, so it was necessary to search for another adaptation that is more appropriate and consistent with the true nature of this relationship. The judiciary left the scope for jurisprudence in this field and did not engage in adapting this relationship. The judiciary contented with deciding the existence of a contract between the blood center and its donors. The center through it is obligated to take all measures and precautions that would ensure the safety of the donor from any harm that might be caused as a result of this process. The judiciary considered the center's responsibility in This is a contractual responsibility (Bin Hadi Yassin, previous source, p30).

Third: The unilateral will: a legal act issued by one side (Abd al-Razzaq Ahmad al-Sanhouri, the mediator in explaining the civil law, 1937, p906). The unilateral will can have a legal effect, such as a binding offer and the approval of the suspended contract. It can also be a reason for the acquisition of the right in kind as in the will, or the forfeiture of the right in kind as in relinquishing the right of easement. Many jurists such as "Damiuge" and "Jossran" have advocated that a unilateral will is capable of creating obligations, while the majority of jurisprudence in France, headed by Mark Baniol, refused to take this opinion (Ali Suleiman, 2007, The General Theory of Commitment, p315). Yet, some banks, the banks obligate the exchanged of blood for the patient with the blood of a different group of the family of the patient.

In light of the foregoing, we see from our side that the relationship of the donor with blood banks is a voluntary relationship, because when the blood donor donates, s/he does not receive compensation with a responsibility not fulfilled. The responsibility is that the blood banks ensures that the donor is free of diseases or viruses and to ensure the blood type.

Fourth Section

Legal basis for blood transfusion

As a result of the absence of the legislative text regarding blood transfusions in blood banks, the jurisprudence prompted the search for a legal basis for blood transfusions.

First Branch

Case of necessity

Article 213 of the Iraqi Civil Code states that (one chooses the lesser of two evils, and if two evils contradict each other, the greater of them is taken into consideration, and the greater harm is substituted with the lesser harm). This article takes this harmful act for protection from harm that is greater than the harm that befalls the victim. In

blood transfusions, a large part of jurisprudence sees a state of necessity as the basis for the legality of blood transfusion, as Professor Savatyi defined it as the condition of the transfused blood in a continuous deterioration of health and the transfusion saves the patient's life i.e. the transfusion of blood from another human being. This means the transfusion of blood is the only means of avoiding greater harm that cause less harm to others (Bashir Saad Zaghloul, 2003, Legal Removal and Transplantation of Human Organs, p36). Another aspect of jurisprudence holds that the state of necessity exists if the blood transfusion is the only means of treatment and that the resulting harm is less than the harm to be avoided (Barbah Yamina, 2016, Blood transfusion between therapeutic necessity and legal accountability, p147). Also, the medical technology has been able to make blood transfusions a real thing in saving the lives of patients, as well as "there is little danger to which they are exposed." Also, the blood donor bears harm, with the aim of avoiding greater harm to others (Wael Mahmoud Abu Al-Fotouh Al-Azizi, 2009, Civil Liability for Blood Transfusions, p117).

Second Branch

Social Interest

The right to the integrity of the body is considered one of the rights inherent to the human being, which at the same time carries a social dimension. The right to the integrity of the body is the interest recognized by the law for each individual to have the members of the body perform their functions normally, and to be free from physical pain. Any aggression that prevents the normal and the natural functioning of one of the functions of the body is considered a violation of the right to the integrity of the body (Dr. Idris Abdel-Gawad Abdullah, 2009, Criminal rulings related to the transfer and transplantation of human organs between neighborhoods, p76). The social interest in the basis of the blood transfusion process is based on the fact that the right to the integrity of the body has an individual aspect that pertains to the individual whose interest is not to disrupt the life functions in the body. The interest is to preserve the integrity of this body too, and a social aspect because every individual is required to perform the job is not only towards her/himself, but also towards her/his society. Also, a person cannot fulfill their duty towards the society unless they are healthy (Barbah Yamina, previous source, p47). The reason for legalizing the social interest as a legal basis for blood transfusion lies in the social benefit that this medical work brings to increasing the social benefit, because the donor's blood quantity is not affected by his ability to perform his functions. social function (Muhammad Jalal Al-Atrushi, 2008, Civil Liability Resulting from Blood Transfusions, p47-48).

Here, we believe that the basis of the blood transfusion process in blood banks is the will of the donor, and this will must be free and informed by the consequences of the donation.

The Second Topic

Conditions of civil liability for blood transfusion banks and the impact of liability
Civil liability is every act, regardless of what a person commits by mistake and that causes harm to others, obligating the person who caused it to pay compensation (Genevieve Fini, translated by Abdul Amir Ibrahim Shams Al-Din, Introduction to Responsibility, 2011, Glory of the University Foundation for Studies, Publishing and Distribution, 1st Edition). Determining the civil liability of blood banks requires determining the error committed by blood banks with the existence of a damage and the causal relationship between them as they are two basic pillars for determining the features of this responsibility.

Therefore, we will divide this topic into four sections. The first will deal with the error, the second with the harm. In the third, we will show the causal relationship. In the fourth, we will address compensation.

The first section

Errors of blood banks in the transfusion process

In general, an error is defined as a breach of a previous commitment, as every error presupposes the previous existence of a clear and specific rule of conduct, where this rule imposes the individuals to regulate their behavior in a certain way (Dr. Mohsen Abd al-Hamid Ibrahim al-Bunya, 1993, a modern look at the physician's error that necessitates civil liability under traditional legal rules, Al-Jalaa New Library, p29). If one of them deviates from this rule, s/he is considered mistaken. Medical error in the field of blood transfusion is defined as a deviation in the behavior of a person who practices medical work in which a person deviates from the principles, customs, and stable and contemporary scientific data in the medical field whether this deviation is negative or positive (Anas Mohamed Abdel Ghaffar, 2010, Civil Responsibility in the Medical Field (A Comparative Study between Law and Islamic Law), House of Legal Books, Egypt, p30). The identification of the mistake in blood transfusion centers requires defining the nature of the obligation that falls on the center in the blood transfusion process. Is the obligation to achieve a goal or an obligation to take care?

To answer this question, in the beginning, jurisprudence and the judiciary went to consider the commitment of blood transfusion centers as an obligation to take care of the patient (Barbah Yamina, previous source, p31). Then, the jurisprudence and the judiciary settled on considering the commitment of the blood transfusion centers as a commitment to achieve a result towards the patient, which is to provide blood free from diseases and viruses and of the blood type consistent with the blood type of the patient to whom the blood is transfused. This is due to scientific progress in the field of blood analysis. These techniques enabled specialized doctors to analyze blood, its components. Many problems occur as a result of the spread of infection due to blood transfusions (Wael Tayseer Muhammad Assaf, 2008, The Civil Responsibility of the Physician, A Comparative Study, Master's Thesis, An-Najah National University, Palestine, p53). When collecting and storing blood, blood centers must take caution,

take blood from donors, conduct the necessary examinations and analyses to ensure that they are free of diseases, and use sterile medical devices to preserve blood and preserve it from contamination. The error includes the fact that the blood transfusion centers do not preserve the blood in a way that ensures that it is not contaminated, spoiled or coagulated during the storage period that is technically determined by specialists so that its validity in treatment does not expire until it is presented to the patient, which is estimated for a period of 21 days(Khaled Moussa Tony, Criminal Responsibility in Blood Transfusions, Dar Al-Nahda Al-Arabiya, Egypt, without publication year,p386). The center is also considered erroneous, as soon as the patient whose blood is transfused is infected with the AIDS virus, for example, because he breached his obligation to take the duty of caution. With the AIDS virus from transfused blood, this evidence is simple and can prove the opposite showing no conclusive legal presumption that the center can deny by proving the opposite(Yahya Bakouche,1983, Evidence of Evidence in the Algerian Civil Law, 1st Edition, Diwan of University Publications, Algeria,p55). The center can prove that the infection of the disease is due to a foreign cause if the center proves that the disease was infected by injecting the patient with a needle contaminated with the virus(Muhammad Abdel-Zahir Hussein,1995, The Problems of Civil Liability in the Field of Blood Transfusions, 2nd Edition, Dar Al-Nahda Al-Arabiya, Cairo,p87). The center is obligated to ensure that the amount of donated blood does not adversely affect the health of the donor. The centers can not deny responsibility of the presumption of error on his/her part by claiming the existence of an event not to carry out examination or inspection of the transfused blood to ensure that it is free of diseases except at intervals of time(bn Hadi yassen, previous source,p51).

Here, the question arises: can the blood bank error be considered a tortuous error or a contractual error? What is the nature of the relationship between blood banks and the treating physician?

In order to answer this question, and in the absence of a contractual relationship between the patient, blood banks and the doctor, there were many jurisprudential opinions regarding the nature of the relationship between blood banks and the treating physician. Some considered it a subordinate relationship. The relationship of a person charged with a public service is a citizen who has the right to benefit from the services of a public utility (Sherif Al-Tabbakh,2005, Crimes of Medical Error and Compensation for It, Dar Al-Fikr Al-Jamii, Egypt,p135). On this basis, the mistake committed by the blood center is a tortuous error, and therefore the responsibility of the blood banks is tortuous. Another opinion considered it a tortuous responsibility on the basis of a commitment to ensure safety in the field of medical work, and this was indicated by the French judiciary in many of its rulings, where it stressed the obligation not to endanger the patient's life as a result of using devices and medicines. When the patient goes to the doctor, s/he expects to get treatment, alleviate the disease or stop the exacerbation, so he has the right to expect that s/he will not suffer from any

disease other than the disease from which he is being treated(Naglaa Tawfiq Falih, Abdul Rahman Abdul Razzaq Al-Ta'an, , 2010, Legal Aspects of Harmful Drugs, Resala Law Journal, College of Law, University of Karbala, Iraq, Issue One, p. 100).

We see from our side that the mistake of blood banks towards the patient when transfusion of contaminated blood to him/her is a tortuous error on the basis that it entails an obligation not to violate the law to transfer healthy blood free of diseases and thus his responsibility is tortuous.

The second section

Harm

Damage is the most important element of civil liability, whether it is contractual or tortuous, and it is happened by its occurrence and is dispensed with by its dispense even if it is proven that there was a fault (Dr. Abdel Wahab Arafa, Criminal and Civil Liability in the Light of Law 72 of 2008,p61). Harm is defined as damage inflicted on a person in one of the rights or a legitimate interest, whether this right or that interest is related to the safety of the body, affection, money, honor, or otherwise(Muhammad Ahmad Abdeen,1997, Compensation for Material Damage,p146). There is material harm and moral harm, so the material harm that affects a person in their body or money is represented in the financial loss that results from prejudice to a right or interest(Dr. Balah Al-Arabi,2007, The General Theory of Obligation in the Algerian Civil Law,p147). whether the right is financial or non-financial. Also, the harm, material or moral, must be immediate, real and “confirmed”. This means that it has actually occurred, in addition to being the direct effect of the mistake committed in the blood transfusion process, which explains why the person affected is personally injured (Hamad Suleiman Zayoud,2009, Civil Liability for the Transfusion of Contaminated Blood,p508).

The damage in the field of blood transfusions may be “material”, if the damage affects the person in their body or money. Also, the physical harm is the one that affects the life or safety of the person, such as blood infection such as AIDS, syphilis, loss of the soul, disability or disruption of work, which affects two types of blood donors: those who have taken blood from them under unhealthy conditions and the receiver of the blood and those who have been injected with blood that is corrupt or carrying viruses or does not agree with their blood type. However, the financial damage is everything related to the financial liability of the person affected by the defective blood transfusion such as treatment expenses and medicines or both. A defect in the financial liability of the injured person results from the damage sustained and the expenses incurred by the victim to find out the type of virus or to miss an opportunity. It is also to gain legitimate profits, such as being a merchant “missing a deal on which they relied and its profits or a student” who misses the opportunity to enter the exam. In this regard, the Paris Court ruled Compensation for the injured person for losing the chance of AIDS as a result of a blood transfusion(Bin Hadi Yassin, previous

source,p58-59). It is also considered “material” harm caused by the disease in terms of damage to the patient’s relatives, as these may suffer indirect harm from the injury, such as the husband, wife or children, the father or the mother. If infection with viruses due to blood transfusion leads to death, this means there is a material damage to the family of the deceased because they lost their breadwinner due to changes in their lives as a result of this death (Mohamed Hussein Mansour, Medical Responsibility,2001,p109).

The harm may be moral, “affecting a person in emotions and feelings, or the harm that causes psychological pain because it affects the person’s feelings and emotions, honor, dignity, reputation, or social status(Dr. Hamad Suleiman Suleiman Al-Zayoud,2009, Civil Liability for the Transfusion of Contaminated Blood,p506). In the field of blood transfusion, contracting a contagious disease makes the victim exposed to various manifestations of denial.” The society and the family and the daughter and son deny their mother who is pregnant with the disease and the husband abandons his wife, who was transmitted to him by the virus as a result of a caesarean section. For the damage caused by transfusion of contaminated blood for people with AIDS and to a lesser extent for people with viral hepatitis or those people who die instantly as a result of transfusion of blood that does not match their blood type(Ahmed Al-Saeed Al-Zagard,1994, Compensation for Victims of AIDS and Hepatitis C due to Contaminated Blood Transfusion in Egyptian and Comparative Law,p61). Perhaps the moral damage to the injured is one of the most severe degrees of harm that a person can suffer because it threatens the dearest possession, which is his life, as s/he becomes a prisoner of disease, pain, fear, shock and society’s rejection of her/him, such as an AIDS patient, for example, which prevents him from living a normal life as all people(Wael Mahmoud Abu Al-Fotouh Al-Azizi,2009, Civil Liability for Blood Transfusions,p652).

The third section
causation

The causal relationship is a third pillar of civil liability. It is not enough just for the harm to occur to the injured and to prove the mistake on the part of the blood banks. Rather, the injured must, according to the general rules, prove the existence of a direct link between the error and the damage, that is, there must be a direct relationship between the error committed(Amir Faraj Youssef,2006, Responsibility and Compensation,p9). The responsibility and the damage sustained by the injured are known as the causal relationship. There are many circumstances that it is difficult to determine the causal relationship between the error and the damage and to find appropriate solutions. The jurisprudence put two theories, the theory of equivalence of causes and the theory of the productive cause, the theory of equivalence of causes means the multiplicity of causes that interfere in causing damage. One reason is a group of reasons, and the German jurist von Berry proves this. In the theory of the productive cause, they distinguish between the productive cause and the accidental

cause, and they consider the productive cause of the damage advocated by the jurist von Kress (Abd al-Razzaq Ahmad al-Sanhouri, previous source, 1027).

Determining the causal relationship in the field of blood transfusion is difficult and difficult, due to the complexity of the human body, changing its conditions and characteristics. Also, the lack of clarity of the reasons led to the emergence of apparent complications between the incident of blood transfusion and the appearance of damage (Mohamed Hussein Mansour, previous source, p33). The problem of the multiplicity of officials in the injuries resulting from blood transfusion is the presence of several parties that contributed to causing the damage. A driver who hits a person with his car causes a serious injury and requires the injured to be taken to the hospital. The treating doctor decides that the injured needs extensive amounts of blood that exceed the needs of the injured. Here, the car accident is a cause of damage. Here, the injured would not have needed to transfuse the corrupt or contaminated blood to her/him. Also, it is the doctor's mistake who decided to inject the patient in large quantities that exceeded the need that caused the harm, and the hospital was careless in ensuring the safety of the blood that was transferred to the patient. The harm would not have been caused if the blood center performed its duty and ensured the validity of the blood transfusion and its being free of viruses does not harm the victim." Thus, all of these reasons can lead to the same harm to varying degrees (Bin Hadi Yassin, previous source, p66). In order to determine the causal relationship in the responsibility for blood transfusions, there are two types of attribution, medical attribution, which is proving the presence of the disease in the blood of the affected patient from the blood transfusion through a set of comprehensive examinations by specialized medical bodies that reveal the state of blood contamination and injury of the injured. The second is the legal attribution, which is basically adopted. "On the attribution of blood contamination as a result of the blood transfusion process according to legal means, which is determined on a number of theories, such as the theory of the productive cause, which is the case in which one of the causes is likely to be strong in causing the result (Ahmed Al-Saeed Al-Zagard, , previous source, p76). Also, according to the theory of equivalence of causes when the source of the damage is an unspecified person among a group of specified persons, everyone is obligated to compensate equally (Dr. Hamad Suleiman Suleiman Al-Zayoud, previous source, p548).

The harm that befalls the injured may not occur as a result of the doctor's mistake, but rather other factors contribute to it, meaning the harm occurs by a foreign act. It states that if a person proves that the damage arose from a foreign cause that has no control over him as a celestial pest, a sudden accident, a force majeure, the act of a third party, or the fault of the aggrieved party, s/he is not bound by the guarantee unless there is a text or agreement to the contrary (article 165 of the Egyptian civil code corresponds to Article 1147 of the French civil code). The foreign cause denies the relationship. Causality is between the error issued by the official and the damage caused to the

victim, and the absence of liability is required to be unexpected and impossible to pay. Viruses are not considered a foreign cause because blood centers can detect them by devices, and the responsibility of the blood center is excluded when the damage was done by the doctor supervising the treatment as a result of a difference in blood group that was injected into the injured person. Also the responsibility of the blood center is negated if the damage was caused by the injured when it is proven that the injury from which the patient complains is not due to the transfused blood, but rather to other reasons such as the victim's belonging to the category of homosexuals, prostitutes, drug addicts, or any other reason, such as if the husband or wife suffers from the same disease for a reason other than blood (Bin Hadi Yassin, previous source, p69). If the center was unable to prove the foreign cause, it was fully responsible and obligated to compensate the injured for all the damages caused.

Fourth section Compensation

Article 168 of the Iraqi Civil Code states that if it is impossible for the obligor of the contract to perform the obligation in kind, s/he will be ordered to pay compensation for non-fulfillment of his obligation unless it is proven that the impossibility of implementation arose from a foreign cause in which s/he was not responsible for, and the judgment shall also be made if the obligor delays the implementation of the obligation) (Mohamed Hussein Mansour, previous source, p191). Compensation is considered the effect of convening civil liability for blood transfusions, and compensation is based on the principle that compensation cannot be a source of enrichment for the aggrieved person, as it is estimated according to the extent of the damage, neither more nor less. Compensation may be in kind, by restoring the financial position of the injured person to what it was before the damage occurred, or in return, which takes the form of monetary compensation because every damage, even moral damage, can be evaluated with cash (Mohamed Hussein Mansour, previous source, p192). In blood transfusions, forms of compensation in kind cannot be applied, in cases of infection Hepatitis and AIDS cannot return the injured person to the former normal condition. The compensation will be limited to monetary compensation, and the first person entitled to compensation is the one directly affected by the contaminated blood transfusion, and the compensation must be equal to the damage incurred, not more nor less, including the loss and what the victim sustained such as missing out on earning. Here, the damage is estimated according to the severity of the error, not according to the financial position of the official, whether he is rich or poor (article 169/2 of the Iraqi civil law). The general rule in compensation is the expected direct damage, which is compensated for in contractual liability, except in the two cases of fraud and gross error, and indirect damages are never compensated, whether contractual or tortious liability, and compensation includes expected and unexpected damages (article 169/2,3 of the Iraqi civil law). In cases of disease infection through

contaminated blood, it is subject to the wide authority of the judges in determining the compensation resulting from the moral damage, which requires taking into consideration the profession of the victim and the aspect of the damage caused by personality. The person could be aggrieved, injured or deserting family, losing hope in marriage and childbearing, losing enjoyment of life, and infected with AIDS(Dr. Hamad Suleiman Suleiman Al-Zayoud, previous source,p595). The French judiciary decided to compensate the victims with sums ranging between one and two million French francs for moral damages only, in addition to the material damages, which were estimated at much higher compensation amounts. The judge takes into consideration the financial condition of the injured person and enters into consideration the extent of the loss that the injured party loses as a result of the injury he sustained. In assessing compensation(Dr. Ahmed Mohamed Lotfy Ahmed,2011, AIDS and its Legitimate and Legal Effects,p334). a judge should take into account the personal circumstances surrounding the injured person, not the person responsible, because compensation is measured on a subjective, not objective, basis(Abd al-Razzaq Ahmad al-Sanhouri, previous source,p1098-1099).

Here the question arises, how does the judge estimate compensation in the field of blood transfusions?

To answer this question, since an infection with the disease as a result of transfusion of contaminated blood may start and then take time to complete or the appearance of its symptoms and the court is in a state of confusion. Thus, the compensation is estimated in part, and the injured retains the right to obtain full compensation after the completion of the disease. The court issues its ruling for compensation in a detailed manner identifying the demands of the injured that were responded to and those that were excluded. This method is more in agreement with justice, as the compensation is precisely equal to the damage(Bin Hadi Yassin,previous source,p76). The court moves away from the arbitrary and total assessment of the damages that have appeared or will appear in the future, which leaves the injured in ignorance who ordered(Ahmed Al-Saeed Al-Zagard, previous source,p160).

Conclusions

1-Blood banks are a public or private institution that collects blood, preserves it and supplies it to patients when needed. Blood is taken from donors, separated into components, stored, and prepared for transfer to the recipients who are the people who need blood.

2-One of the basic sections for donating blood is the age, weight, and health status of the donor. The donor must be at least 18 years old and not more than 60 years old. Donors whose ages range from 45 to 60 must be medically examined in order to avoid heart and vascular diseases.

3-The donor gives the personal data in the blood bank department and must be honest in these data because s/he may be rejected as a donor, and the blood is drawn in test tubes and the data is recorded on the blood unit and tubes.

4- Individuals with cold, flu, abdominal pain, or any other infection cannot donate blood.

5-Pregnant women, people with AIDS, cancer, severe lung disease, heart disease, or those who have a tattoo, are not allowed to donate blood.

6-All people can donate blood if they are in good health. So there are various relationships arise between blood banks and donors, between blood banks and hospitals, or between the donor and the patient receiving blood. The relationship may be the sale of blood, the contract of blood donation, or a single will.

7-As a result of the absence of the text regarding blood transfusions in blood banks, jurisprudence has prompted a search for a state of necessity and unilateral will as a legal basis for blood transfusions.

8-Jurisprudence and the judiciary are settled on considering the commitment of blood transfusion centers as a commitment to towards the patient in providing blood that is free of diseases and viruses and of the blood type consistent with the blood type of the patient to whom the blood is transfused.

9-The mistake committed by the blood center is a tortuous one. Accordingly, the responsibility of the blood banks is tortuous.

10- The damage in the field of blood transfusions may be "material" , if the damage is inflicted on the person in his body or in his money. The bodily harm is the one that affects the life or safety of the person, such as blood infection including AIDS, syphilis, loss of the soul, disability or disruption of work. Also, the damage may be moral affecting a person's feelings, and emotions, or harm that causes psychological pain because it affects a person's feelings, emotions, honor, dignity, reputation, or social status.

11- Determining the causal relationship in the field of blood transfusion is a difficult and complex, due to the complexity of the human body changing its conditions and characteristics, and the lack of clarity of the reasons that led to the emergence of apparent complications and time interval between the occurrence of a blood transfusion and the onset of damage.

12- Compensation is considered the effect of convening civil liability for blood transfusions, and compensation is based on the principle that compensation cannot be a source of enrichment for the aggrieved person. Rather, it is estimated by the extent of the damage, neither more nor less than it.

Recommendations:

1- A blood bank is a storehouse for preserving blood and its components, which are collected from their blood donors. Blood and its components are collected and stored

and preserved for later use in operations that require blood transfusion, after the necessary tests are performed to reduce the risks related to blood transfusion.

2- We see on our part that the blood bank prepares a data form to ask the donor before taking blood to ensure that he is able to donate blood.

3- We see from our side that the relationship of the donor to blood banks is a voluntary relationship because when the blood donor donates, s/he does not receive any compensation when donating blood and her/his responsibility is not fulfilled. The responsibility of the blood banks falls to ensure that the donor is free of diseases or viruses and to ensure the blood type.

4- From our side, we believe that the basis of the blood transfusion process in blood banks is the will of the donor, and this will must be free and informed by the consequences of the donation process.

5- We believe that the mistake of blood banks towards the patient when the transfusion of contaminated blood is a tortuous error because it entails obligations not to violate the law by transfusion of healthy blood free of diseases.

References

1. Dr. Abdul-Majid Al-Hakim, Dr. Abdul-Baqi Al-Bakri, Muhammad Taha Al-Bashir, Al-Wajeez in the Theory of Commitment, Sources of Commitment, Part One, Legal Library, Baghdad, 2018.
2. Abd al-Razzaq Ahmad al-Sanhouri, the mediator in explaining the civil law, sources of commitment, part 1, i 2, Dar Al Arabi Heritage Revival, Beirut, Lebanon, 1937.
3. Ali Ali Suleiman, The General Theory of Commitment, Diwan of University Publications, 7th edition, Algeria, 2007.
4. Bashir Saad Zaghloul, Legal Removal and Transplantation of Human Organs, Dar Al-Nahda Al-Arabiya, 1st Edition, Egypt, 2003.
5. Wael Mahmoud Aboul Fotouh, Civil Responsibility for Blood Transfusions, Dar Al Fikr and Law, Egypt, 2009.
6. Dr. Idris Abdel-Gawad Abdullah, Criminal rulings related to the transfer and transplantation of human organs between neighborhoods, New University House for Publishing and Distribution, Alexandria, 2009.
7. Muhammad Jalal Al-Atrushi, Civil Liability Resulting from Blood Transfusions (Comparative Study), 1st Edition, Dar Al-Hamid, Jordan, 2008.
8. Genevieve Fini, translated by Abdul Amir Ibrahim Shams Al-Din, Introduction to Responsibility, Glory of the University Foundation for Studies, Publishing and Distribution, 1st Edition, 2011.
9. Dr. Mohsen Abd al-Hamid Ibrahim al-Bunya, a modern look at the physician's error that necessitates civil liability under traditional legal rules, Al-Jalaa New Library, 1993 edition.

10. Anas Mohamed Abdel Ghaffar, Civil Responsibility in the Medical Field (A Comparative Study between Law and Islamic Law), House of Legal Books, Egypt 2010.
11. Wael Tayseer Muhammad Assaf, The Civil Responsibility of the Physician, A Comparative Study, Master's Thesis, An-Najah National University, Palestine, 2008.
12. Khaled Moussa Tony, Criminal Responsibility in Blood Transfusions, Dar Al-Nahda Al-Arabiya, Egypt, without publication year.
13. Yahya Bakouche, Evidence of Evidence in the Algerian Civil Law, 1st Edition, Diwan of University Publications, Algeria, 1983.
14. Muhammad Abdel-Zahir Hussein, The Problems of Civil Liability in the Field of Blood Transfusions, 2nd Edition, Dar Al-Nahda Al-Arabiya, Cairo, 1995.
15. Sherif Al-Tabbakh, Crimes of Medical Error and Compensation for It, Dar Al-Fikr Al-Jamii, Egypt, 2005.
16. Dr. Abdel Wahab Arafa, Criminal and Civil Liability in the Light of Law 72 of 2008 Concerning Commercial Insurance, Volume Three, Compensation for Car Accidents, without the year of publication, Technical Office of Legal Encyclopedias, Alexandria, Egypt.
17. Muhammad Ahmad Abdeen, Compensation for Material Damage, Literary Inheritance, Dar Al-Fikr Al-Jami`, Alexandria, 1997.
18. Dr. Balah Al-Arabi, The General Theory of Obligation in the Algerian Civil Law, Volume 2, 4th Edition, 2007, Diwan of University Publications, Algeria.
19. Hamad Suleiman Zayoud, Civil Liability for the Transfusion of Contaminated Blood, Dar Al-Nahda Al-Arabiya, 2009.
20. Mohamed Hussein Mansour, Medical Responsibility, 2001, New University House, Alexandria, Egypt.
21. Dr. Hamad Suleiman Suleiman Al-Zayoud, Civil Liability for the Transfusion of Contaminated Blood, A Comparative Study in Islamic Jurisprudence and Positive Law, 2009, Dar Al-Nahda Al-Arabiya, Cairo, Egypt.
22. Ahmed Al-Saeed Al-Zagard, Compensation for Victims of AIDS and Hepatitis C due to Contaminated Blood Transfusion in Egyptian and Comparative Law, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 1994.
23. Wael Mahmoud Abu Al-Fotouh Al-Azizi, Civil Liability for Blood Transfusions, Dar Al-Fikr and Law, Egypt, 2009.
24. Amir Faraj Youssef, Responsibility and Compensation, University Press, Alexandria, Egypt, 2006.
25. Dr. Ahmed Mohamed Lotfy Ahmed, AIDS and its Legitimate and Legal Effects, 2nd Edition, 2011, Dar Al Fikr Al Jamia, Alexandria, Egypt.
26. Naglaa Tawfiq Falih, Abdul Rahman Abdul Razzaq Al-Ta'an, Legal Aspects of Harmful Drugs, Resala Law Journal, College of Law, University of Karbala, Iraq, Issue One, 2010, p. 100.

27. Bin Hadi Yassin, Civil Responsibility for Blood Transfusions, Master's Thesis submitted to the Faculty of Law, Abdel Hamid Bin Badis University, Mostaganem, 2014-2015.
28. Walid Shahran, Legal protection of the human body from the risks of infection when transfusion, research published in the Journal of Legal and Sharia Sciences, Faculty of Law, Zawiya University, No. 6, 2015.
29. Barbah Yamina, Blood transfusion between therapeutic necessity and legal accountability (a fundamental study in civil law), research submitted to the Academy Journal of Social and Human Studies, Department of Economic and Legal Sciences, Issue 15, January 2016
30. An article available online at the following website: <https://e3arabi.com/?p=49146> dated 2/15/2021.
31. An article available online at the following website <https://ontology.birzeit.edu/term/> dated 15/2/2021.
32. Soha Dhamshi, an article available online at the following website: <https://sotor.com> on 16/2/2021
33. An article available online at the following website: <https://alamshabaab.yoo7.com/t9-part> 15/2/2021
34. Article available online at the following website: <https://www.moh.gov.sa/HealthAwareness/EducationalContent/Diseases/Hematology/Pages/007.aspx> dated 10/2/2021.
35. Abd al-Rahman al-Basha, an article available online at the following website: <https://mawdoo3.com>
36. An article is available online at the following website:- on 18/2/2021 <https://www.trtarabi.com/explainers/>
37. Ziad Abdullah, an article available on the internet on the following website on 18/2/2021: <https://mawdoo3.com/>.
38. An article available online at the following website:- on 18/2/2021 <https://www.elconsolto.com/medical-advice/advice-news/details/2019/6/14/1583418/>
39. An article available online at the following website:- on 19/2/2021 <https://www.trtarabi.com/explainers>
40. Hammadi Trawer, Hematology in French, Bamko University, 2004-2005.
41. The Code of Ethics for Transfusion Medicine, adopted at the Copenhagen Assembly June 20, 2017.
42. Iraqi Civil Code No. 40 of 1951.
43. Egyptian Civil Law No. 131 of 1948.
44. French Civil Code