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ARTICLE

The contractual liability of travel and tourism agencies for the acts of third-party service providers: a comparative legal study

A responsabilidade contratual das agências de viagens e turismo pelos atos de prestadores de serviços terceiros: um estudo jurídico comparado

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Abstract

The rules governing the contractual liability of travel and tourism agencies traditionally centered on their obligation to execute the tourism program agreed upon with the tourist-client, holding them accountable primarily for personal fault causing harm to the tourist. However, this framework has evolved significantly. In the contemporary era of technological advancement, specialization, division of labor, and sophisticated tourism services, travel agencies—as specialized professionals—increasingly rely on third-party service providers (hoteliers, carriers, restaurant operators) to ensure the safety and quality of tourism services delivered to the tourist-consumer. This development has given rise to a new legal concept: the contractual liability of travel and tourism agencies for the acts of third-party service providers who execute contractual obligations, particularly in package tours. Once this liability is established, it enables the client to seek compensation directly from the agency rather than pursuing the service provider, given the agency's proximity to the client, their direct contractual relationship, and the client's familiarity with the agency.

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Resumo
As regras que disciplinam a responsabilidade contratual das agências de viagens e turismo centraram-se, tradicionalmente, na sua obrigação de executar o programa turístico acordado com o turista-cliente, responsabilizando-as sobretudo pela culpa própria causadora de dano ao turista. Todavia, este quadro conheceu uma evolução significativa. Na era contemporânea, marcada pelo progresso tecnológico, pela especialização, pela divisão do trabalho e pela sofisticação dos serviços turísticos, as agências de viagens—enquanto profissionais especializados—dependem cada vez mais de prestadores de serviços terceiros (hoteleiros, transportadores, operadores de restauração) para assegurar a segurança e a qualidade dos serviços turísticos prestados ao turista-consumidor. Este desenvolvimento deu origem a um novo conceito jurídico: a responsabilidade contratual das agências de viagens e turismo pelos atos dos prestadores de serviços terceiros encarregados da execução das obrigações contratuais, em particular no âmbito das viagens organizadas. Uma vez estabelecida esta responsabilidade, faculta-se ao cliente a possibilidade de exigir diretamente da agência a reparação dos danos sofridos, em vez de demandar o prestador de serviços, atendendo à proximidade da agência em relação ao cliente, à existência de um vínculo contratual direto entre ambos e ao facto de o cliente conhecer e identificar a agência como a sua contraparte contratual.

INTRODUCTION

Civil liability, in both its contractual and tortious dimensions, has received considerable attention from legal scholarship. With continued scientific and technological progress and increased cultural awareness, new forms of liability have emerged—including medical malpractice liability, electronic service provider liability, and liability of sports activity organizers. Among these emerging liability regimes stands the liability of travel and tourism agencies as professional service providers. The role of these agencies is no longer confined to intermediary functions as in individual tourism arrangements; rather, they have become tourism contractors offering numerous, increasingly complex and interconnected services. They organize comprehensive tourism packages from the initial advertisement of the tourism program through the journey's conclusion, ensuring the safe return of the tourist-client to their homeland. These packages encompass integrated components including booking, transportation, accommodation, catering, entertainment, and various ancillary services.

Typically, agencies do not provide and execute these services themselves, as doing so would require substantial economic capacity allowing them to own transportation means, hotels, resorts, and entertainment venues—a scenario undoubtedly improbable. Consequently, travel and tourism agencies generally engage specialized professionals and coordinate with them to execute comprehensive tourism packages, aiming to achieve tourist satisfaction as consumers of tourism services and to deliver optimal tourism services.

However, this satisfaction may not always be achieved. The client may complain about substandard services provided during transportation or accommodation in hotels, for example. In this context, the importance of travel agency liability for damage suffered by the tourist resulting from these intermediaries' breach of their contractual obligations becomes apparent.

Although some legal systems explicitly recognize this liability through specific statutory provisions—such as Algerian, Moroccan, and French law—it remains subject to scholarly debate regarding its nature and the extent to which it should be recognized.

Accordingly, we inquire: **To what extent can the liability of travel and tourism agencies be established for damage resulting from third-party service providers'**

breach of their contractual obligations under Algerian legislation compared to Moroccan and French legislation? In other words, must the tourist-client first prove fault on the part of service providers and subsequently prove fault on the part of the agency for poor selection of service providers? What if the client cannot prove the agency's fault at all? Does agency liability arise for service provider errors, and on what basis?

To address this problematic, we have divided this research into two principal sections. The first section examines the conceptual framework of travel and tourism agencies' contractual liability for third-party acts, while the second section addresses the rules governing travel and tourism agencies' contractual liability for third-party acts.

SECTION ONE: THE CONCEPTUAL FRAMEWORK OF TRAVEL AND TOURISM AGENCIES' CONTRACTUAL LIABILITY FOR THIRD-PARTY ACTS

Travel and tourism agencies undertake a set of obligations to execute all components of the tourism journey. They seek to implement their diverse tourism programs by engaging others—specialized professionals—such as carriers, hoteliers, tour guides, translators, event organizers, natural treatment centers, trainers and supervisors for relevant sports activities such as skiing, water skiing, or underwater diving, and other specialists depending on the tourism program. As previously mentioned, these professionals possess expertise and qualifications in relevant fields that travel agencies certainly lack, compelling agencies to engage third parties to execute all or part of the services contained in the tourism program, aiming to provide optimal services and achieve tourist-client satisfaction.

However, the tourist-client may complain about substandard services and failure to receive quality service, giving rise to the agency's contractual liability for the acts of these third parties (Suleiman, 1984). To comprehensively address this study's subject, we must examine the meaning of travel and tourism agencies' contractual liability for third-party acts (Subsection One) and the conditions for this liability (Subsection Two), as detailed below:

SUBSECTION ONE: DEFINING TRAVEL AND TOURISM AGENCIES' CONTRACTUAL LIABILITY FOR THIRD-PARTY ACTS

Contractual liability for third-party acts has been defined as the debtor's liability in a contractual obligation for the acts of persons who substitute for them in executing this obligation or who assist in its execution, or for the acts of persons who exercise jointly with the debtor a right acquired by the latter through contract (Capitant et al., 2013; Al-Mas'oudi, 2018).

Consequently, the debtor (travel and tourism agency) must not have committed fault attributable to them; otherwise, we would face contractual liability for personal acts (Al-Sharqawi, 2012). Therefore, the debtor cannot escape the burden of liability for third-party acts by proving absence of personal fault, as fault is a condition of third-party acts.

It should be noted that "third party" here does not mean a stranger having no connection with the travel and tourism agency, as what emanates from such a person constitutes foreign cause negating liability. Nor does it mean persons working as employees or subordinates of the tourism agency, as liability arising from their errors would be contractual liability for personal fault, not contractual liability for third-party acts. Rather, "third party" in this context means any person the travel and tourism agency employs in executing obligations contained in the tourism contract, such as carriers, hotel owners, tour guides, restaurant owners, and others (Ahmad, n.d.; Jaber Sayed, 2001; Al-Nu'man, 2014).

Accordingly, the travel and tourism agency is held liable for the acts of service providers it engages to execute the contract (Guyot, 2004). The importance of this liability particularly manifests in granting the tourist recourse against the travel and tourism agency, sparing them the difficulty of pursuing service providers through tortious liability claims or through indirect action filed by the tourist in the agency's name to claim its rights. Additionally, the tourist would face difficulties such as conflict of laws issues if resorting to the judiciary, encountering differences in judicial systems and language barriers if the tourism journey is outside their country's borders. Moreover, they may be unable to obtain appropriate compensation (Ali al-Din, 2010; Al-Ubaidi & Al-Ubaidi, 2010).

Furthermore, when the tourist contracts with the travel and tourism agency, it is not always feasible for them to know the persons who will execute the journey program; the tourist is like one purchasing a product—a tourism service remotely (Al-Mas'oudi, 2018; Jaber Sayed, 2001).

It should be noted that this liability arises only in package tours, i.e., when the travel and tourism agency prepares and organizes the tourism journey program (Karkouri & Hemisi, 2017).

Theoretical Foundations of Contractual Liability for Third-Party Acts

Scholars have disagreed about the basis upon which contractual liability for third-party acts rests (Al-Nu'man, 2014). Several competing theories have been advanced:

1. Theory of Presumed Fault (*Culpa in Eligendo*): Some consider it based on presumed fault of the debtor in selecting the assistant or substitute, on the basis that they failed to exercise due care in selection. Thus, the debtor would have committed fault for which they are liable toward the creditor. If the assistant or substitute commits fault causing harm to the creditor, this constitutes irrebuttable fault; once third-party fault is proven, debtor fault is presumed, as the debtor may not negate fault on their part. However, this theory has been criticized on the basis that presumed fault does not properly serve as the foundation for contractual liability for third-party acts, since this theory rests on presumed fault in supervision and selection. If the debtor can negate their fault in supervision and selection, this does not lead to escaping this liability (Al-Shamri, 2020).

2. Theory of Vicarious Representation (*Niyaba*): Another opinion bases it on the concept of representation, as advocated by Professors Henri and Léon Mazeaud, that the general rule or general principle dictates that generally when one person represents another, they legally substitute for them. Representation is merely establishing one person in place of another in transactions or matters. The principal's personality and the representative's personality merge, such that acts or transactions issued by the representative are considered as if issued by the principal themselves (Al-Thunun, 2006).

3. Theory of Obligation of Result: Others base it on the theory of obligation of result, whereby the debtor's contractual obligations are always to achieve a result rather than exercise diligence. Since the debtor undertook to achieve this result, they must accomplish what they undertook. Consequently, if the debtor fails to execute their obligation, whether due to their direct fault or fault of those engaged to execute their obligation, they are liable to the creditor (Al-Mas'oudi, 2018).

4. Theory of Bearing Consequences (*Al-Ghurm bi-l-Ghanm*): Some base it on the theory of bearing consequences, influenced by the ancient principle stating "gain follows burden." The debtor is liable based on the benefit they derive from the assistant's work, which correspondingly requires the debtor to bear the consequences of errors the assistant commits in executing their contractual obligation (Al-Shamri, 2020).

5. Theory of Implicit Warranty: Another opinion holds that the basis is implicit warranty. Within the scope of contractual obligations, the debtor implicitly promises their creditor to warrant the acts of assistants or aides who intervene in executing their obligations (Al-Thunun, 2006).

6. Theory of Legal Warranty: Finally, it has been said that the basis for this type of liability is legal warranty, which is among the most widely accepted theories. It rests on considerations of justice and public interest, whereby the law itself renders the debtor liable for acts of persons they engage to execute their obligations. Proponents of this theory view that achieving justice requires establishing this warranty, because persons the debtor engages in executing obligations are generally insolvent and thus unable to pay compensation for damages they cause to the creditor. Moreover, warranting the rights of those injured by these persons' acts is required by public interest (Al-Mas'oudi, 2018; Al-Nu'man, 2014).

Statutory Recognition in Comparative Legislation

However, doctrinal debate is futile in the presence of legislative text establishing the principle of contractual liability for third-party acts.

Algerian Law: Examining the Algerian Civil Code, we find it recognized contractual liability for third-party acts indirectly in the second paragraph of Article 178:

Likewise, it is permissible to agree to exempt the debtor from any liability arising from non-performance of their contractual obligation except what arises from their fraud or gross fault. However, the debtor may stipulate exemption from liability arising from fraud or gross fault committed by persons they employ in executing their obligation. (Algerian Civil Code, 1975, art. 178)

The Algerian legislator established a general rule in contractual liability permitting agreement to exempt therefrom, except if arising from fraud or gross fault, then established another rule permitting agreement not to hold the debtor liable even for fraud or gross fault of persons the original debtor employs in executing their contractual obligation (Suleiman, 1984). This text constitutes the general principle for contractual liability for third-party acts. There is no impediment to applying it to tourism contracts, whereby the travel and tourism agency is considered liable for fault of persons to whom they entrust execution of all or part of their obligations vis-à-vis the tourist.

The Algerian legislator recognized this since issuing Law No. 90-05 concerning travel and tourism agencies (repealed), which stipulated in Article 10:

Travel and tourism agencies are liable for all damage suffered by the tourist due to total or partial non-performance of their obligations, and liable for all damage inflicted on the tourist by any service provider the agency engaged on the occasion of organizing the journey.

This is the same substance provided in Article 21 of Law No. 99-06:

Travel and tourism agencies are liable for all damage to which the client is exposed resulting from total or partial non-performance of their obligations, as well as any other damage resulting from any service provider to which the agency resorts for accomplishing agreed-upon services. (Algerian Law No. 99-06, 1999, art. 21)

From these two texts, it is understood that travel and tourism agencies' liability does not stop at personal fault but extends to their liability for service providers to whom the agency entrusted executing its contractual obligations with the tourist-client. Accordingly, Article 21 of Law No. 99-06 constitutes the legal basis for tourism agencies' contractual liability for third-party acts, particularly in package tours.

However, if the tourism agency's role is limited to intermediary functions such as booking transportation tickets, hotel rooms, or tickets for entertainment venues, or cultural or sporting events in the client's name and on their account, Article 21 does not serve as a basis for holding service providers liable, necessitating recourse to general rules in civil law. Consequently, contracts the tourism agency concludes with carriers, hoteliers, tour guides, restaurant owners, entertainment venues, and others directly bind the tourist-client regarding rights and obligations contained therein, pursuant to Article 74 of the Algerian Civil Code, which provides:

If the representative concludes a contract in the principal's name within limits of representation, rights and obligations arising from this contract are attributed to the principal. (Algerian Civil Code, 1975, art. 74)

Moroccan Law: Similarly, the Moroccan legislator followed comparative legislation and recognized contractual liability for third-party acts to establish protection for tourism services consumers in Law No. 16-11 concerning organization of travel agent profession. Article 20 provides:

Every natural or legal person undertaking operations stipulated in Article One above is liable toward their clients for proper execution of obligations arising from contract whether they must execute personally or through other service providers, without prejudice to their right of recourse against them. However, they may be exonerated from liability if they prove that non-performance of contract wholly or partially is attributable either to the client or to an unforeseen element that cannot be overcome resulting from a person unrelated to providing services stipulated in contract, or to force majeure. (Moroccan Law No. 16-11, 2011, art. 20)

This provision mirrors Article 14 of the repealed Moroccan Law No. 96-31 (1997). This liability has also been derived from general rules of contractual liability contained in Articles 232 and 233 of the Moroccan Obligations and Contracts Code (Dahir, 1913, as amended 2020; Anwi, 2012).

Egyptian Law: Regarding Egyptian Civil Code, no explicit text establishes existence of contractual liability for third-party acts. However, examining the second paragraph of Article 217, which provides:

It is permissible to agree to exempt the debtor from any liability arising from non-performance of their contractual obligation except what arises from their fraud or gross fault. Nevertheless, the debtor may stipulate non-liability for fraud or gross fault committed by persons they employ in executing their obligation. (Egyptian Civil Code, 1948, art. 217)

Prevailing scholarly opinion holds that this article's text confirmed indirectly and implicitly a general principle for contractual liability for third-party acts (Al-Sanhuri, n.d.). The legislator stipulated permissibility of exempting the debtor from liability for fraud or gross fault committed by persons they engage, implicitly meaning they are liable for these persons' fault; otherwise there would be no occasion for permitting stipulation of debtor non-liability—how can one stipulate non-liability for what one is not originally liable for?

Moreover, Egyptian Tourism Companies Organization Law No. 38 of 1977 (as amended) lacks provisions specifying travel and tourism agencies' contractual liability for third-party acts of those engaged to execute some or all tourism program components. Consequently, recourse must be made to general rules in civil law.

French Law: French Civil Code contains no explicit or implicit text establishing a general rule for contractual liability for third-party acts. Rather, scattered texts appear regarding debtor's contractual liability for fault of persons employed in executing some obligations generated by contract in certain cases, including principal contractor's liability to employer for subcontractor acts (French Civil Code, art. 1792-4-2), agent's liability for fault of another they appointed to execute agency without authorization from principal (French Civil Code, art. 1994), and subletting, whereby lessee's liability for damage caused by sublessee was established (French Civil Code, arts. 1717, 1735).

Therefore, some scholarship holds that French legislator did not establish a general rule for contractual liability for third-party acts; consequently, these texts should not be expansively interpreted nor analogized (Al-Nu'man, 2014). Conversely, other French scholarship holds that a general principle exists for debtor's contractual liability for third-party acts, and applications provided by French law serve as a general principle applicable in every case where application conditions are met (Al-Zaqrd, 1998).

It should be noted that French law specifically regulating travel and tourism agencies, until issuance of the decree of June 14, 1982 concerning general conditions governing relations between travel and tourism agencies and clients, stipulated in Article 15, third paragraph, that the travel and tourism agency warrants journey or stay organization and is liable for proper execution of services arising from the journey contract except in cases of force majeure, sudden accident, or foreign third-party act (Py, 1996).

Subsequently, French Tourism Code was issued, stipulating in Article L211-16 that the travel agency is liable by operation of law vis-à-vis the tourist for proper execution of the tourism journey and program agreed upon in contract whether the journey was executed by themselves or through other persons (Code du Tourisme, art. L211-16; Jaber Sayed, 2001; Al-Zaqrd, 2008; Adib, n.d.).

This text applies EU Directive No. 314 of 1990 concerning travel, vacations, and package tours, which did not confine travel and tourism agency liability for third-party acts within national laws but gave it regional dimension throughout Europe. Article 5, paragraph 1 provides:

Member States shall take the necessary measures to ensure that the organizer and/or the retailer party to the contract is liable to the consumer for the proper performance of the obligations arising from the contract, irrespective of whether such obligations are to be performed by that organizer and/or retailer or by other suppliers of services without prejudice to the right of the organizer and/or retailer to pursue those other suppliers of services. (Council Directive 90/314/EEC, 1990, art. 5(1))

Judicial Application

Among judicial precedents ruling on travel and tourism agencies' contractual liability for third-party acts, the French Court of Cassation ruled in *Thalassa Quertour* (Cour de Cassation, 2015) in a case whose facts involved Thalassa Quertour travel agency entrusting Quertour Transport transportation company with executing transport operation. One tourist's luggage was completely burned and destroyed when traveling to the hotel due to carrier's fault in failing to monitor the vehicle, leading to electrical spark. The Court of Cassation ruled the tourism agency liable for acts of the carrier to whom it entrusted executing transport operation.

SUBSECTION TWO: CONDITIONS FOR TRAVEL AND TOURISM AGENCIES' CONTRACTUAL LIABILITY FOR THIRD-PARTY ACTS

As a general rule, travel and tourism agencies' contractual liability arises only upon availability of general elements of this liability: contractual fault issued by the travel and tourism agency, damage suffered by the tourist, and causal relationship between fault and damage. However, this concerns the relationship between travel and tourism agency and tourist in case of direct contractual liability.

Regarding tourism agency's contractual liability for third-party acts, a set of conditions must be added to contractual liability's general elements. In truth, these conditions or characteristics distinguish travel and tourism agencies' contractual liability for third-party acts from direct contractual liability on one hand and tortious liability for third-party acts on the other (Algerian Civil Code, 1975, arts. 124-140).

Having discussed travel and tourism agencies' civil liability for personal fault obligating their contractual liability, we will address that travel and tourism agencies' contractual liability for acts of persons to whom they entrust executing part of obligations generated by the tourism contract program, which occurs only in package tours, requires availability of special conditions as follows:

1. Existence of Valid Contract between Travel and Tourism Agency and Tourist

There must exist a valid contract fulfilling its elements and conditions (Al-Shamri, 2020; Al-Farjani, 2015). Third parties intervene in executing obligations arising between debtor and creditor when this third party has legal relationship linking them to the debtor specifically concerning the obligation's subject, whereby the debtor entrusts this third party with executing obligations generated by the contract binding them to the creditor.

Accordingly, persons who inject themselves into the relationship existing between creditor and debtor without the latter summoning intervention and without having any legal relationship linking them to the debtor concerning obligation execution are not considered third parties for whom the debtor is contractually liable (Al-Sharqawi, 2012). Rather, conversely, third-party intervention may constitute foreign cause preventing debtor liability whenever it meets force majeure requirements of being unforeseeable and irresistible (Aqsasi, 2010). Therefore, contractual liability for third-party acts is realized if the debtor employs persons other than themselves in executing their obligation, rendering them contractually liable for these persons' fault (Al-Nu'man, 2014).

Applying this to tourism contracts, we find that the contractual relationship between travel and tourism agency here means existence of valid contract between them and the tourist, which justifies the travel and tourism agency's contractual liability for acts of persons providing tourism services (Abd al-Bari, n.d.).

This condition is considered necessary not only for travel and tourism agencies' contractual liability for third-party acts but also for travel agencies' contractual liability for personal fault, as the latter has no existence without contractual relationship between tourist and tourism agency (Adib, n.d.).

Regarding travel and tourism agencies' liability for third-party acts, it plays an important role in distinguishing it from tortious liability for third-party acts, as the latter does not require existence of contractual relationship between the liable party and injured party but suffices that the damage perpetrator be subordinate to the liable party or under their supervision, pursuant to Article 134(1) of the Algerian Civil Code:

Every person legally or contractually obligated to supervise a person needing supervision due to minority or mental or physical condition is obligated to compensate damage that person causes to others by their harmful act. (Algerian Civil Code, 1975, art. 134; Al-Mas'oudi, 2018)

2. Existence of Legal Relationship between Third Party and Travel and Tourism Agency

Contractual liability for third-party acts arises when third parties intervene in executing one or more obligations arising from the tourism contract. Professor Al-Sanhuri (n.d.) views that third parties must have been entrusted with executing this contract. If third parties were not so entrusted, their intervention in breaching contract execution may establish debtor liability, but this liability would be personal liability, not liability for third party (Al-Sanhuri, n.d.; Abd al-Bari, n.d.). Therefore, for contractual liability for third-party acts to arise, third parties must be commissioned by the debtor to execute the contract, thereby rendering them liable for third party contractually.

The agency commits in executing its obligations to exercise prudent person's diligence in properly selecting third parties to provide services and supervising them, based on imbalance and adhesion characterizing tourism contracts. Nevertheless, third parties entrusted with service execution may perform poorly, causing harm to the tourist. In this case, travel and tourism agency's personal liability arises for poor selection (Ben Saghir, 2019).

Consequently, third-party intervention constitutes a fundamental condition for establishing travel and tourism agencies' contractual liability for third-party acts. When the travel and tourism agency has not entrusted anyone with executing its obligations, there is no contractual liability for third-party acts; rather, contractual liability in this case rests on the tourism agency's personal fault (Ja'far, 2011).

Likewise, if persons to whom the travel and tourism agency entrusted executing part of obligations imposed by the tourism contract are subordinates of the agency itself, the latter is liable vis-à-vis the injured tourist and obligated to compensate pursuant to rules of superior's liability for subordinate's acts (Dalal, 2014).

It should be noted that the matter differs between individual journeys and package tourism journeys. In individual journeys, the tourist plays a role in establishing the journey program, or the journey program was established entirely according to the tourist's desire, and tourism service providers were selected by them. If these persons committed fault harming them, in this scenario the sole liability arising from third-party breach falls on the creditor (tourist), not the debtor (travel and tourism agency). However, from another perspective, this statement should not be taken absolutely regarding tourism contracts; rather, one must examine the role third parties perform—whether substitute (*badil*) or assistant (*musa'id*) in executing obligations (Al-Thunun, 2006; Aqsasi, 2010).

Therefore, if the role of third party selected by the tourist is to substitute for the travel and tourism agency in executing all or some of its obligations independently without their work being subject to tourism agency supervision or monitoring, the tourist here bears liability alone. However, if the role third parties perform is to provide assistance and aid to the tourism agency to execute the journey as required, the tourism agency in this case remains liable for third-party acts because they work under its supervision and monitoring (Al-Mas'oudi, 2018).

As for those who inject themselves into existing legal relationships between tourism agency and tourist, they are strangers to the debtor, and their spontaneous intervention in executing tourism contract obligations constitutes foreign cause negating debtor (travel and tourism agency) liability (Al-Shamri, 2020; Damana, 2011).

3. Travel and Tourism Agency Not Being Prohibited by Law, Contract, or Obligation's Nature from Engaging Third Parties

That is, there should be no legal text or condition in the tourism contract concluded between tourist and travel and tourism agency prohibiting the tourism agency from resorting to third parties to execute obligations derived from contract (Al-Sharqawi, 2012). If prohibition exists from introducing third parties in obligation execution and they violate this prohibition, they are considered liable in this case for personal fault, not fault committed by third party (Al-Zaqrd, 2008; Al-Nu'man, 2014).

In this regard, scholarly opinion holds that in all contracts wherein the contracting debtor commits to executing their obligation directly, there is no occasion to speak of contractual liability for third-party acts. The reason is that when the debtor resorts to third parties to execute their obligation, they are considered to have departed from the contract, consequently being liable for this breach according to direct contractual liability—i.e., we face liability for personal acts, not contractual liability for third-party acts (Al-Thunun, 2006).

Given absence of specific text in Law No. 99-06 determining rules governing travel and tourism agency activity, recourse must be made to general rules in civil law, which permitted the agency, as tourism contractor in package tours, to entrust work execution wholly or partially to subcontractor—service providers—if no contract condition prevents this, pursuant to Article 564(1) of the Algerian Civil Code. Nevertheless, it remains liable for subcontractor acts toward the tourist (employer), pursuant to Article 564(2) of the Algerian Civil Code.

4. Fault Committed by Third Party Breaching Obligations Arising from Tourism Contract

This condition represents the distinguishing feature of contractual liability for third-party acts because it arises despite debtor's lack of personal fault, but based on fault committed by third party in executing the obligation the debtor undertook, causing harm to creditor (Al-Shamri, 2020).

It should be noted here that breach issued by third party leading to establishing travel and tourism agencies' contractual liability for third-party acts must relate to obligations contained in the tourism contract. If relating to legal relationships outside the tourism contract, here travel and tourism agencies' liability for third-party acts does not arise, nor is the agency liable based on contractual liability for personal fault. The reason is clear—no breach exists of obligations imposed by tourism contract on the travel and tourism agency (Ja'far, 2011).

It follows that if breach issued by third party relates to contractual obligations other than those contained in tourism contract concluded between tourism agency and tourist but rather contained in contract concluded between third party and travel and tourism agency, in this case the travel and tourism agency is not contractually liable for third-party acts nor even contractually liable for personal fault. Rather, conversely, the third party is contractually liable before the travel and tourism agency (Al-Mas'oudi, 2018).

Therefore, for travel and tourism agencies' contractual liability for acts of tourism service providers engaged to execute the journey to arise, breach of obligations arising from tourism contract must have issued from them; otherwise, rules of contractual liability for third-party acts are excluded.

Consequently, to determine travel and tourism agencies' liability for third-party acts, the scope of obligations contained in tourism contract must first be determined. Then, if breach by third party engaged by travel and tourism agency occurred regarding these obligations, the agency here is contractually liable for third-party acts. However, if breach issued by third party occurred outside these obligations, we face tourism agency's tortious liability for third-party acts if conditions are met (Tanagho, 2009).

Finally, for travel and tourism agencies' liability for third-party acts to arise, third-party breach of contractual obligations arising from tourism contract must cause harm to tourist (Ali al-Din, 2010). Upon availability of these conditions, travel and tourism agencies' contractual liability arises for third-party acts, enabling the tourist to seek compensation from the debtor on the basis that they are the person with whom they contracted instead of pursuing service providers through tortious liability claims. However, there is no occasion for contractual liability for third-party acts if third-party breach caused no harm to tourist at all, or caused harm but to someone other than tourist, such as harming another person unrelated to tourism contract. In this latter case, the travel and tourism agency is liable toward injured party based on tortious liability for third-party acts (Ja'far, 2011).

Judicial Applications

French judiciary confirmed travel and tourism agency liability—*Tourisme Verny*—following an incident of tourist falling on hotel stairs where she was staying, whereby duty to ensure proper execution of hotel stay—service provider—falls on it, rendering the agency liable by operation of law for damage suffered by tourist (Cour de Cassation, 2005).

Egyptian judiciary, in a ruling issued by North Cairo Primary Court, defined hotel contract as agreement whereby hotel provides guest with shelter and other services for specified amount; thus, it is mixture of several contracts generating successive obligations by both guest and hotel owner (cited in Al-Zaqrd, 1998). Since obligation to warrant safety encompasses tourism contract, and since hotel stay represents only one stage of journey, consequently the travel and tourism agency is considered liable if failing to verify reviewing security procedures or safety conditions at hotel facility (Al-Ubaidi & Al-Ubaidi, 2010).

If persons to whom the travel and tourism agency entrusted executing part of obligations imposed by tourism contract are subordinates of the tourism agency, the latter is liable vis-à-vis tourist pursuant to rules of superior's liability for subordinate's acts (Ali al-Din, 2010).

SECTION TWO: RULES GOVERNING TRAVEL AND TOURISM AGENCIES' CONTRACTUAL LIABILITY FOR THIRD-PARTY ACTS

Travel and tourism agencies' contractual liability for third-party acts—tourism service providers—engaged to execute obligations contained in tourism contract arises because during their journey, tourists may not receive service level agreed upon in contract or may suffer physical, financial, or moral harm, enabling them to file compensation claim. The travel and tourism agency is liable for service providers' acts; however, this principle does not apply to tourism agencies in all cases but differs according to the role assigned to the travel and tourism agency—from intermediary role in providing tourism services to potentially performing as actual provider of these services. Accordingly, rules governing travel and tourism agencies' contractual liability for errors of those engaged can be discussed by studying the scope of travel and tourism agencies' contractual liability for third-party acts, which differs according to tourism contract characterization in Subsection One, then addressing effects of this liability in Subsection Two.

SUBSECTION ONE: SCOPE OF TRAVEL AND TOURISM AGENCIES' CONTRACTUAL LIABILITY FOR THIRD-PARTY ACTS

This can be determined according to the following scenarios:

First Scenario: Individual Tourism Journeys—Agency as Agent

In individual tourism journeys, the travel and tourism agency acts as agent for the tourist-client. Its actions are in the client's name and on their account, rendering it non-liable for service providers' acts pursuant to Article 74 of Algerian Civil Code:

If the representative concludes a contract in the principal's name within limits of representation, rights and obligations arising from this contract are attributed to the principal. (Algerian Civil Code, 1975, art. 74)

Rather, it is liable only for personal fault, and rules of contractual liability for these persons' acts do not apply (Al-Nu'man, 2014; Al-Mas'oudi, 2018).

Either the principal authorized the agent and delegated them to engage third parties but erred in selecting third party or erred in instructions issued, rendering them liable for personal fault represented by poor selection (Al-Farjani, 2015; Aqsasi, 2010; Ahmad, n.d.)—i.e., agent fault in both cases is personal fault leading to contractual liability. However, if the agent was authorized to engage third parties but committed no error in selecting third party but rather selected well, their liability does not arise at all, neither for personal fault nor third-party fault, pursuant to Article 580 of the Algerian Civil Code:

If the agent appoints another in their stead to execute agency without being authorized to do so, they are liable for the appointee's act as if this act issued from them, and the agent and their appointee are jointly liable in this case. However, if the agent was authorized to appoint another in their stead without designating the appointee's person, the agent is liable only for fault in selecting their appointee and for fault in instructions issued to them. (Algerian Civil Code, 1975, art. 580)

Second Scenario: Service Providers as Subordinates

If persons to whom the travel and tourism agency entrusted executing all or part of obligations imposed by tourism contract are subordinates of it, the latter is liable vis-à-vis injured tourist and obligated to compensate pursuant to rules of superior's liability for subordinate's acts (Al-Zaqrd, 1998).

Third Scenario: Poor Selection—Personal Fault

If the travel and tourism agency neglected selecting hotel, carrier, or tour guide, it is considered liable for poor selection of those entrusted with executing some obligations generated by tourism contract according to general rules in contractual liability for personal fault—negligence and lack of foresight—whether the agency is considered agent, carrier, or contractor. Fault in selecting those entrusted with executing part of journey obligations constitutes personal fault by the agency itself for which it is liable according to rules of contractual liability for personal fault (Al-Zaqrd, 2008).

Fourth Scenario: Agency as Contractor—Subcontracting Liability

If the tourism contract is characterized as contracting agreement, the contractor may according to general rules engage third parties to execute work subject of contracting wholly or partially unless prevented by contract condition or work nature. Principal contractor's liability for subcontractor acts constitutes contractual liability for third-party acts, not superior's liability for subordinate, because the subcontractor works independently from principal contractor (Al-Mas'oudi, 2018; Ja'far, 2011; Dalal, 2014).

Applying this, when the tourism agency assumes contractor capacity in package tours, it is liable in its relationship with tourist—contractor liability before employer. Since package tours generally require engaging third parties to execute some obligations such as carrier, hotel owner, tour guide, restaurant owner, or others, if fault occurs from them, it constitutes fault issued by subcontractor. The principal contractor (travel and tourism agency) is liable before employer (tourist) based on contractual liability for third-party acts, pursuant to Article 564 of the Algerian Civil Code (Al-Ubaidi & Al-Ubaidi, 2010).

Similarly, if we consider the travel and tourism agency as carrier in its relationship with tourist, in this case the tourist may seek recourse against travel and tourism agency (carrier) according to rules of contractual liability for third-party acts (Al-Farjani, 2015), because transportation contract permits carrier to engage third parties to execute transport unless prohibited by condition or agreement. Applying this, in circumstances where tourism contract is characterized as transportation contract and travel and tourism agency engaged third parties to execute its obligations, any breach issued by persons the agency engaged leads to establishing travel and tourism agencies' contractual liability for third-party acts (Al-Nu'man, 2014; Ahmad, n.d.).

It should be noted that contracts resulting from maritime tourism journeys (Py, 1996), wherein tourist does not contract directly with carrier but rather with journey organizer who undertakes to conclude transportation contract with carrier and execute journey including other services not naturally relating to transportation contract but to tourism generally—such as visiting archaeological sites in ports where ship docks, booking places in entertainment venues, theaters, hotels, and others—the journey-organizing agency undertakes performing this work and consequently is liable toward tourist for compensating damage personally affecting them physically or financially during maritime tourism journey execution, whether fault occurred from them personally or from third party such as maritime carrier or others to whom journey execution was entrusted (Abbadi, 2012).

In summary, when the travel and tourism agency assumes agent description, rules of contractual liability for third-party acts do not apply to it. A debtor prohibited from substituting others in executing obligation would have erred if substituting others, and their liability is contractual for personal fault, not third-party fault (Sarhan, 2013; Adib, n.d.). Conversely, in package tours requiring journey execution including transport, accommodation, catering, tourism guidance, and others, where the travel and tourism agency performs as actual provider of tourism services whether assuming carrier capacity or contractor capacity, if fault occurs from these persons, it constitutes fault issued by subcontracting. The travel and tourism agency (principal contractor) is liable before tourist (employer) for contractual liability for third-party acts (Sarhan, 2013; Al-Ubaidi & Al-Ubaidi, 2010). Once travel and tourism agencies' liability for third-party acts arises, it enables tourist recourse for compensation.

SUBSECTION TWO: EFFECTS OF TRAVEL AND TOURISM AGENCIES' CONTRACTUAL LIABILITY FOR THIRD-PARTY ACTS

Generally, travel and tourism agencies' contractual liability for third-party acts produces effects not differing from effects resulting from contractual liability for personal fault regarding compensation type, assessment method, and execution means (Al-Thunun, 2006).

It should be noted that once liability arises, the tourist may not seek recourse against tourism service providers based on contractual liability because there is no direct relationship between them; rather, recourse is through tortious liability rules or through indirect action (Ali al-Din, 2010; Al-Jamal, 2000). It is preferable for them to resort to the travel and tourism agency to obtain compensation based on its liability for third-party acts, because if the tourist wished to seek recourse against tourism service providers according to indirect action rules, necessary conditions for establishing this action must be met, pursuant to Article 189 of the Algerian Civil Code:

Every creditor, even if their debt has not matured, may exercise in their debtor's name all rights of this debtor except those specific to person or not subject to seizure. Creditor's exercise of debtor's rights is not acceptable unless proving debtor refrained from exercising these rights and this refraining would cause their insolvency or increase it. Creditor need not summon debtor to claim their right, but must join them in litigation. (Algerian Civil Code, 1975, art. 189)

Additionally, among indirect action defects is that every benefit resulting from exercising debtor's (travel and tourism agency's) rights falls within its assets constituting guarantee for fulfilling all its debts, not specifically benefiting creditor (tourist) raising action alone regarding results (Al-Sanhuri, 1968; Al-Thunun, 2006; Al-Jamal, 2000).

Moreover, raising this action raises conflict of laws issues because most tourism service providers relative to tourist are foreigners, and recourse against them may be futile sometimes because the debtor cannot fulfill compensation amount (Al-Zaqrd, 2008; Ali al-Din, 2010).

In this regard, some scholars question this view because if we contemplated service providers' financial capacity—they are institutions and companies specializing in tourism and hotel activity—this enables injured party to obtain compensation. Perhaps the scenario conceivable in this area is the case of engaging a tour guide unaffiliated with specialized institution or company. Indeed, predominant in travel and tourism agencies' activity, especially those organizing package tours, is that they engage persons each in their specialization field, meaning their financial capacity enables tourist to obtain compensation (Abbadi, 2012).

Despite this opinion's validity, tourists generally prefer seeking recourse against travel and tourism agency based on contractual liability rules for third-party acts because recourse against it spares them numerous problems, most importantly conflict of laws problem, additionally that they contracted directly with travel and tourism agency, which is closest to them and they know well (Al-Zaqrd, 2008). Thus, it guarantees compensation because it insures its civil liability in protecting tourist and covers all damage befalling them, obtaining compensation easily without delving into complex judicial procedures and filing compensation claims against travel and tourism agency (Karkouri & Hemisi, 2017).

Indeed, the debtor (travel and tourism agency) is liable for acts of persons (service providers) engaged in executing contractual obligation by compensating creditor (tourist) for damage resulting from non-performance of contractual obligation. Professor Al-Sanhuri views that compensation is not alternative obligation nor substitute obligation—obligation has only one object, namely exactly what the debtor (travel and tourism agency) committed to. The principle is performance. Consequently, if the debtor fails to execute contractual obligation due to third-party acts engaged in this execution, and execution became impossible by this third party's (service providers') acts, the debtor (travel and tourism agency) is liable for compensating damage. Despite the debtor not committing any fault as party to this contract and that the one committing fault is third party who is not contract party, the debtor pays compensation to creditor (tourist) for damage suffered. The debtor (travel and tourism agency) has right to seek recourse against this third party to recover the amount paid to creditor, because the reason relates to contractual liability type that created a form of warranty for injured creditor (tourist). The debtor (travel and tourism agency) warrants toward their creditor every unlawful act issued by person commissioned with obligation instead of them. The reason for debtor's recourse against third party engaged in executing their obligation is that the debtor is liable for them, not liable with them (Al-Shamri, 2020).

Notably, if the travel and tourism agency is considered carrier in its relationship with tourist, it is considered liable for breaching obligations arising from transportation contract, most importantly passengers' safety. Consequently, it is liable for damage befalling tourist if resulting from fault of contracting carrier themselves or their subordinates. Liability in this case is contractual liability based on personal fault. Since transportation contract rules permit carrier to engage third parties to execute transport, the travel and tourism agency (contracting carrier) is liable toward tourist even if no fault occurred in selecting actual carrier based on contractual liability for third-party acts (Al-Nu'man, 2014).

CONCLUSION

In conclusion, travel and tourism agencies' contractual liability for third-party acts constitutes one of the most important topics raising numerous questions and subject of multiple jurisprudential opinions and interpretations. It does not arise due to contractual obligation breach issued by agency directly but due to breach issued by third party—tourism service providers. Regardless, this liability is established legal reality requiring availability of necessary conditions for establishing this liability: that the travel and tourism agency entrusts third parties with executing all or some tourism journey obligations; that the travel and tourism agency has authorization to entrust third-party service providers with executing these obligations without impediment by text in law, tourism contract, or obligation's nature from resorting to third parties; additionally, service providers' fault in executing contractual obligations results in harm to tourist. This is what comparative legislation under study agreed upon and applicable rules.

We propose adding explicit, clear text mandating travel and tourism agencies' contractual liability for tourism service providers engaged to execute their obligations, considering the agency warrants proper contract execution even if no personal fault issues from it. Consequently, the tourist-client may seek recourse against agency to claim compensation instead of pursuing tourism service provider in whose stage damage occurred.

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