

**The Civil liability of the Hotel owner in English law:
A comparative analytical study**
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Received:13/01/2024

Accepted: 07/05/2024

Published: 17/09/2024

Abstract:

The civil liability of the hotel owner in English law is his obligation to compensate for damage caused by breach of his duties or obligations as a hotel manager" which arises as a contractual liability for breach of contract concluded between him and the inmate» or as tort liability for his civil faults such as negligence or negligence» , or even

As a strict liability based on damage and without the need to prove and identify the hotel owner . Has this type of liability in English law arose from the customs and jurisprudence of the English courts » and within its own legal system known as hospitality law, which is part from the general rules of English law. However, its scope expanded later and was organized by many English sects.

As for the Comparative law represented in our study of the UAE Civil Transactions Law No. (5) for the year 1985 and the Iraqi law No.(40) for the year 1951 , The hotel contract was not originally organized within the named contracts and was based on the General rules in these two laws to regulate its provisions, including the civil liability of the hotel owner. Except the issue of the hotel deposit regulated by these two Iraqi and UAE laws

Keywords: Civil liability, Hotel owner, General rules of English law, Hotel contract

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1. Introduction:

The general rules of English law included unwritten customary origin whose principles were derived firstly from the jurisprudence of the English courts¹, and from the rules of justice and fairness², then from the legislation issued later³, Many types of civil liability, such as the responsibility of the owner of the property, followed by the actions of his subordinate, but the civil liability of the hotel owner is one of the broadest types of liability under this law, it is a liability of customary origin, like all the rules of English Common law of customary origin, and it has been established by the General rules of English law (Common Law) on a contractual basis in origin

As the contractual liability of the hotel owner arises as a result of the violation of an implied clause in the hotel contract under which he is obliged to exercise reasonable care in maintaining the safety of the guest. It then expanded to be influenced by three prominent legal systems: Hospitality Law, Contract Law and Civil Faults Law, which led to the hotel owner's tort liability for his civil mistakes, most notably negligence, as well as his liability as a follower for the actions of his subordinate, as well as his⁴ objective liability on the basis of the element of damage alone, and without the need to prove the fault. The English legislator has taken into consideration the hotel contract and issued the English Hoteliers Legislation "The Hotel Proprietors' Act for the year (1956)" Which played a major role in determining the civil liability of the hotel owner¹.

As for the comparative law represented in our study by the Emirati Civil Transactions Law No.(5) for the year 1985 and the Iraqi Civil Code No.(40) for the year 1951, The hotel contract was not originally regulated within the named contracts, and was based on the general rules to regulate its provisions, including the civil liability of the hotel owner, except for the issue of the hotel deposit regulated by these two laws. The problem of the research is evident in the shortcomings of the position of comparative law, due to the lack of an integrated legal organization for the hotel contract within the contracts named in these Iraqi and Emirati laws and back to the general rules on its organization and its legal implications, as well as special provisions with the civil liability incurred, except for the hotel deposit. This makes the cases of the rise of civil liability of the hotel owner limited, insufficient and unclear in these two comparative laws, Due to the frequent reference to the general rules in it at a time when the importance of the

The Civil liability of the Hotel owner in English law:
A comparative analytical study

hotel contract is increasing in legal and economic terms, which is reflected in the increasing interest in the civil liability of the hotel owner.

The importance of the research is evident in benefiting from the orientation of English law in the application of some provisions on the civil liability of the hotel owner in English law, to provide full protection for hotel guests, and other individuals who enter it legally and with the permission of the hotel owner and even to some other individuals who enter the hotel illegally, in certain cases.

And to reach the desired goals, the study has adopted a comparative analytical legal research method, Conducting a legal analysis of the subject of the hotel's civil liability in English law and comparing it with the comparative law position represented in this study with the UAE and Iraqi laws.

In light of the foregoing, the study plan was distributed over two Researches, as follows :

The first Research : What is the civil responsibility of the hotel owner in the English and comparative laws.

The second Research: The provisions of the responsibility of the hotel owner in the English and comparative laws

The first topic: The nature of the civil responsibility of the hotel owner in English and comparative laws

where the civil liability of the hotel owner is considered one of the broadest types of civil liability under the general rules of English law (Common Law) , Although it is originally based on a contractual basis, it is also based on tort in many cases, as well as the hotelier's objective responsibility, which is based on the element of damage and without the need to prove fault. On the other hand, the compared law represented in this study of the UAE Civil Transactions Law, and the Iraqi Civil Law , The hotel contract was not regulated and the provisions of civil liability of the hotel owner were left to the general rules . So we will discuss what the hotel's civil liability is ¹.By studying its concept in the English and comparative laws as follows:

The first requirement: the concept of civil liability of the hotel owner in English law.

The study of the concept of civil liability of the hotel owner in English law requires us to research its definition and statement of its characteristics in the following two sections as follows:

2. **Subchapter I:** Definition of the civil liability of the hotel owner in English law defines part of English jurisprudence ² civil liability as the penalty for breach of contract or obligation imposed by the contract ,

Another jurist defines it as³ the penalty for breaching an obligation imposed by law, and it is based on civil error, whose moral pillar is three

Images of **Negligence, Intention and Malice** , which should provide at least one of them to advance Tortious Liability ,It also includes **Strict liability** which is based on the element of damage alone, and without the need to prove the error ⁵. And on this basis, part of English jurisprudence has defined the (Hoteliers civil liability) ⁶

(Hoteliers civil liability)

It is the penalty resulting from the hotel owner's breach of his duties or obligations as a hotel manager, which arises either from the contract concluded between him and the guest or from his civil mistakes such as negligence or recklessness . It appears from these definitions that the liability of the hotel owner in English law is originally an application of the rules of civil liability of customary origin, under the English (Common law), And based on judicial precedents and then regulating some of its provisions under the legislation of the English hotel owners (**Hotel Proprietors Act of 1956**), whereby the liability of the hotel keeper arises by describing him as (**The proprietor of the Hotel**) As well as some other English legislation¹ , particular, the legislative liability of the owner of the property for the year 1957 (**Occupier's Liability Act of 1957**) and for the year 1984 (**Occupier's Liability Act of 1984**) whereby the hotel owner's responsibility as the owner of the property is assumed (**Occupier's of the Hotels Permits**)², And so the English hoteliers legislation for the year 1956 (**Hotel Proprietors Act of 1956**) has called the hotel owner or hotel keeper the term : (**Inn Keeper**) and wanted by it (**The proprietor of an Inn**)³, It is originally a natural person, but it may be a company in many cases⁴

3. **Subchapter II:: Characteristics of the Hotel owner's Civil Liability in English Law**

The civil liability of the hotel owner in English law is characterized by the following two characteristics:

First: The responsibility of the hotel owner in English law is characterized by its customary origin, which belongs to its own legal system known as

The Civil liability of the Hotel owner in English law:
A comparative analytical study

hospitality law, which is part of the general rules of English law, which regulates the rights and obligations of hotel and restaurant owners, travel and tourism agents or contractors⁵. However, the English hospitality law was not later limited to customs and case law, but expanded its scope to include many to include

..many English legislations. And the civil liability of the hotel owner in general and the civil liability of the hotel owner in particular. Therefore, the English hospitality law was influenced by two other prominent legal systems, the English Contract law and the civil Torts law, which is parallel to the tort system in countries that have adopted the law system, such as Iraq, France and Egypt.

Second: The civil liability of the hotel owner in English law is also characterized by the fact that its scope varies according to the character of the person who goes to the hotel, and whether he is a guest or a traveler, the traveler is not necessarily a guest, and the criterion for distinguishing between them is staying in the hotel for nights for the purpose of sleeping (**Sleeping Accommodation**) , as the guest is the one who sleeps nights in the hotel for the purpose of sleeping , Unlike the traveler who may not stay overnight at the hotel.

Therefore, the liability of the hotel owner arising from his breach of his obligation to provide overnight stay shall take place towards the guest and not to the traveler. However, the traveler may turn into a guest, if he stays for a night at the hotel ¹. The term «traveler» is also characterized by its broad concept in English law, it includes every person who is on his way from one place to another, and the need to stop at the hotel or hostel to benefit from the services available there from food, drink or overnight and depends on the determination of the status of the traveler on the facts of each case, which is what the English court took in its judgment issued in the case of (Williams 278Linnitt1951.1.AILER) Which is summarized in the facts of a farmer entering a hotel on his way home, He had no intention of staying the night at that hotel. So the court had to adjust whether the farmer was traveling and ruled in its judgment that the status of a traveler should be granted to every person who enters a specific hotel or hostel to benefit from the available services and his intention is not to stay overnight there for the purpose of sleeping. (**Sleeping Accommodation**) .On this basis, the farmer is considered a traveler, even if he has benefited from the temporarily (**Temporary Refreshments**).

Second requirement: the concept of civil liability of the hotel owner in comparative law

As is the case with English law, the study of the concept of civil liability of the hotel owner in comparative law requires us to research its definition and statement of its characteristics in the following two sections, as follows:

Subchapter I: Definition of the civil liability of the hotel owner in comparative law

As for the comparative law represented in our study of this Federal Civil Transactions Law No. 5 of 1985¹ and the Iraqi Civil Law No. 40 of 1951², part of the jurisprudence³ has defined civil liability as the obligation of a person to compensate for the damage caused to another person as a result of his breach of an obligation that falls on him, if the obligation originated from the contract, the liability was contractual, and if it came from the illegal act, the liability was in tort⁴, the contractual liability is the penalty for breaching a contractual⁵ obligation after the contract was acquired⁶. His binding power, then the specific implementation of the obligation became impossible by a contractual error after the contract gained its binding force, then the specific implementation of the obligation became impossible by the debtor's error, or delay in its implementation at least⁷ and the consequent damage to the creditor in one of his rights or legitimate interest for him⁸, while tort liability is the penalty of breach of obligation, that is, a duty imposed by law on everyone not to harm others⁹.

The basis of liability for the harmful act in the UAE Civil Transactions Law is based on the idea of damages¹⁰, while in the Iraqi Civil Code it is based on infringement¹¹ and the Federal Supreme Court in the United Arab Emirates has taken this basis

One of its rulings stated that any injury to third parties obliges the perpetrator to guarantee the damage, and that the court must examine the three elements of liability.

Subchapter II: Characteristics of the hotelier's civil liability in comparative law.

The civil liability of the hotel owner in comparative law is characterized by the following two characteristics:

First: The responsibility of the hotel owner in the comparative law represented in this study in the UAE and Iraqi laws, is characterized by a contractual responsibility, in terms of origin, on the basis of the contract concluded between the hotel owner and the guest. It can also be liable for

The Civil liability of the Hotel owner in English law:
A comparative analytical study

the harmful act or unlawful act, such as the liability of the inmate followed by the actions of his subordinate, if the latter causes harm to the inmate². And so he is responsible for the actions of his followers of the staff of the hotel, which is a tourist establishment that provides rooms or suites to guests, without being a permanent residence for their accommodation³. Or liability for things that require special attention for prevention of damage, such as electricity wires, water pipes, etc⁴.

Second: The civil liability of the hotel owner in comparative law is characterized as a legislative responsibility, although it is based on the general rules in these laws because it did not regulate the hotel contract within the named contracts and left it to the general rules, with the exception of the hotel deposit regulated by the two articles (993) and (994) of the Emirati Civil Transactions Law, which corresponds to the two articles (972) and (973) of the Iraqi Civil Code. These articles have been imposed on hoteliers or similar...

or similar liability for deposits brought by guests to the hotel¹. It is worth mentioning that the hotel contract is characterized by its complex nature, as it is a complex contract that includes many contracts named such as the hotel room lease contract, the food and drink sale contract, a deposit contract to save guests' things, and a work contract to provide services to hotel guests².

The second topic: the provisions of the hotel's civil liability in the English and comparative laws.

We have pointed to the breadth of the hotelier's civil liability in English law compared to other types of civil officials included in the general rules of English law, which led to the multiplicity of types of that liability, but the origin of this liability is that it is contractual. It has defined the General rules of English customary law and based on judicial precedents, The contractual responsibility of the hotel owner as a result of the breach of three types of obligations that arise from the hotel contract concluded between him and the guest, and on the other hand, the comparative law adopted in this study, represented by the UAE and Iraqi laws, did not regulate the hotel contract within the named contracts, so it should refer to the general rules of civil liability regarding them with some exceptions. On this basis, we will discuss the provisions of the civil liability of the hotel owner in the English and comparative laws as follows:

The first requirement: the provisions of the hotel's civil liability in English law The study of the provisions of the hotel's civil liability in English law requires research into three types of his liability in this law, namely his contractual liability, his liability resulting from the fault of civil negligence towards visitors or trespassers, and his objective liability. We will look at these three types of hotel owner's civil liability in English law as follows:

Subchapter I: The contractual liability of the hotel owner in English law.

The contractual liability of the hotel owner is classified in English law into three types: his contractual liability resulting from the breach of the obligation to ensure the safety of persons, his contractual liability resulting from the breach of the obligation to provide food and drink, and his contractual liability resulting from the breach of the obligation to provide accommodation or residence . We will look at the provisions of these three types of contractual liability of the hotel owner as follows:

The first purpose : the contractual liability of the hotel owner resulting from the breach of the obligation to ensure the safety of persons

The obligation to ensure the safety of persons is one of the most important obligations imposed on the hotel owner, and it is a contractual obligation¹ that entails the breach of his contractual responsibility under the general rules of English law. The basis of this liability is an implicit clause in the hotel contract **(Implied Term of Contract)** whereby the hotel owner undertakes to exercise reasonable care in maintaining the safety of the contracting party entering the hotel under the contract **(Reasonable Care for Safety)**² (that is the guest)³, And this clause is one of the implicit clauses that the court implicitly assumes in the contract **(Term Implied by the Court)**⁴ . This obligation is part of the obligation to ensure the safety of persons who may be injured while being in the premises **(Reasonable Care for the Safety of people who may be injured in the premises)** which is a duty imposed by the common law , The obligation to ensure the safety of the guest is a duty established by these General Rules, and falls outside the scope of the Property Owner's Liability Legislation 1957⁵ and is based on another obligation to exercise reasonable care in ensuring the safety of its premises. **(Reasonable care for the safety of the premises)** Which also arises from an implicit clause in the hotel contract, or what is known as **(Booking Contract)** . The Court concludes from this clause that the hotel building must be reasonably sound and secure because the function of the Court is not to create the contract between the parties, but to

The Civil liability of the Hotel owner in English law:
A comparative analytical study

trace or derive implicit clauses from the contract between them in accordance with the circumstances of....

...of each case¹ known as the clauses deduced by the Court². Or implicitly assume it from the facts of the case under consideration ³ (**Terms Implied by the Court**) whenever it deems it reasonable and necessary ⁴, so the court relies on the criteria of necessity and reasonableness when assuming such clauses⁵ and regardless of the desire of the contracting parties⁶. The English Court of First Instance adopted this trend in its judgment in the case of **Meclenan Segar 1917.2KB.325.KB** Which is summarized in the fact that the hotel guest was taken to her room by elevator immediately after her arrival at the hotel, and during her stay that night a huge fire broke out in the hotel. The inmate panicked and tried to get out of her room on the second floor but couldn't. So she made a rope out of bed linen and jumped out of the window, but fell on a glass surface that stretched from the ceiling of the first floor and suffered severe physical damage. And she filed a lawsuit against the hotel, and the trial judge ruled for a compensation on the basis of the defendant's contractual liability, and stated in its judgment that the cause of the fire was the negligence of the defendant who did not guarantee the safety of his buildings in a reasonable manner, and left them in an unsafe position. The ruling of the trial judge resulted in a precedent that laid two foundations for the contractual liability of the hotel owner:

The first is that when the owner (**occupier of the premises**) of any property agrees with any person to allow him to enter that property and use it in accordance with the purposes specified in the contract concluded between them, that contract includes an implicit clause guaranteeing the safety of that property (**Implied Warranty that the Premises are Safe**) It constitutes a condition guaranteeing this fact or incident⁷ and hence the safety of the Contracting Party entering it.

As it implies the meaning of the second guarantee ¹ is the defendant's negligence in not taking the necessary steps in order to identify the defects suffered by his building, which increased the risk of fire and it is worth noting that the guest of the guest who does not have a contractual relationship with the hotel owner does not benefit from this type of liability if he is injured, and can rely on the property owner's liability legislation of 1957 as a visitor to the hotel and not a contracting guest²..

The second purpose: the contractual liability of the hotel owner resulting from the breach of the obligation to provide food and drink

The obligation of the hotel owner to provide food and drink **(Refreshments)** to the guest is one of the contractual obligations arising from the hotel contract as well, and it is an obligation similar to the obligation to ensure the safety of persons in that it was decided under the general rules of English law **(Common Law)** and is outside the scope of the hoteliers' legislation for the year 1956 (Hotel Proprietors Act 1956) . On this basis, the civil liability resulting from the breach of this obligation is a contractual liability and not a tort arising from the civil fault. In order for the owner of the hotel or hostel to fulfill this obligation, and to avoid the advancement of his contractual responsibility, he should provide a measure of food and drink known as reasonable food and drink during mealtimes day or night ³, and if the hotel's food resources of food and drink are limited or about to run out, in such a case the general rules of English law **(Common Law)** have allowed him to prefer the interest of the guest over the traveler and allocate those scarce and limited resources to the guest only. This principle in its judgment in the case of : 165.V. Higgins 1948.1KB .. The facts of which are summarized when a traveling family arrived at the defendant's hotel on Saturday evening at dinner time, and the defendant refused to offer them a full dinner, despite that the dining table was still standing in the restaurant. And he gave them instead a small meal of sandwich on the basis that there are not enough resources to eat and drink in the restaurant and that what he has of resources allocated that dining is only available on Sunday mornings and afternoons, which is a public holiday. The family sued him for breaching his obligation to provide food and drink to passengers, as well as overnight.....

...If necessary, which is the duty imposed on him by customary general rules, but the trial judge did not rule on the contractual responsibility of the hotel owner, and the Court of Appeal upheld his ruling, stating in its judgment that the refusal of the hotel owner was legitimate because it was based on legitimate and reasonable justifications².

Third Purpose: The contractual liability of the hotel owner resulting from the breach of the obligation to provide overnight stay or lodging

The owner of the hotel or hostel is also generally obligated to provide accommodation or lodging to the hotel guests, and his contractual responsibility shall be assumed if he violates this obligation¹. However, although the obligation of the hotel owner to provide accommodation or lodging to the guest is one of the contractual obligations arising from the hotel contract, his obligation to provide accommodation or accommodation

The Civil liability of the Hotel owner in English law:
A comparative analytical study

to a traveler entering the hotel arises even without a previous contract between him and the hotel owner. But the obligation to provide accommodation or lodging towards the traveler is not an absolute obligation, but rather a prescribed obligation or duty whose implementation is attached to the status of the traveler and his eligibility for reception in the hotel.)

Subchapter II: The liability of the hotel owner resulting from the negligence error towards visitors or trespassers on the property.

Civil error in English law is a civil offence committed by one person against the interests of another person it is protected by law ³ and is considered a breach of a duty specified by law ⁴ (**Tort of Negligence**) , the commission of which leads to the injured party obtaining compensation for the damage ⁵. The hotelier's liability arising from the fault of civil negligence often arises from his personal actions. The hotel owner's tort liability is a form of the property owner's liability (**Occupier's Liability**) . Which is the penalty imposed on him due to his negligence that leads to the exposure of those individuals who enter his property lawfully to damage ... or injury ¹. Or some of the trespassers of the property have also been harmed, if they enter it illegally. As follows:

First: The responsibility of the hotel owner as the owner of the property towards visitors who enter legally: The hotel owner's tort liability towards visitors who enter the hotel legally is an application of civil liability resulting from negligence ² and is subject to the property owner's liability legislation of 1957 (**Occupier's liability Act 1957**) , Which set the rules that regulate the responsibility of the owner of the property and impose a duty on him towards other persons who enter the property with his permission ³, and this legislation has been influenced by the general rules of English law (**Common Law**) that are not written and based on unwritten judicial precedents and based on judicial precedents, and derived from them many legal concepts. The English courts have imposed on the hotel owner his liability arising from negligence except for breach of the duty to exercise reasonable care, and to take care or diligence towards all his guests to ensure the safety of the hotel premises That is what it ruled in the judgment issued in the case of Campbell v. Shelbourne Hotel Ltd 1939.2KB.534.CA : The facts of which are summarized in the fact that the plaintiff frequented the defendant's hotel in London many times, but did not get a room on the ground floor all those times. During his last visit, he returned to his room at eleven o'clock at night and went to the lavatory

facilities that are located at the end of a dark corridor extending from the door of his room, so he groped his way through the dark corridor, because he did not find the key switches to the light and entered through one of the doors, thinking that it leads to the lavatory facilities, so he found a deep basement door and fell into it and suffered injuries and severe damage and filed a lawsuit against the defendant, the owner of the hotel ,Claiming compensation, the court ruled in its judgment that the defendant owes the plaintiff the duty to take all necessary care or diligence to ensure the safety of the hotel premises , and that his failure to provide lighting is a breach of this duty that resulted in the rise of his tort liability for the negligence that caused the guest plaintiff to suffer damage. In particular, the latter has not been proven to have committed **(Contributory Negligence.)** . He is therefore entitled to compensation on the basis of negligence liability.

Second : The responsibility of the hotel owner as the owner of the property towards the trespassers As for the hotel owner's tort liability towards the trespassers of the property, it is also an application of civil liability resulting from negligence, but it is subject to the property owner's liability legislation of 1984 (**Occupiers Liability Act 1984**), which regulated the duties of the holder towards individuals who enter the property without the permission of its owner ¹, and the owner of the property was not a debtor before the issuance of this legislation towards the trespasser of the property with the duty to take precaution or care under the general rules of common law . However, this position changed after the promulgation of the Owner's Liability Legislation of **1984** and **under subparagraph (A)** of the first paragraph, the first article thereof, which stipulated that the rules set forth in this article should apply in place of the general rules of English law Common law to determine the duties incurred by the person who is considered to be in possession of the property, structures and other structures towards persons other than his visitors, with regard to the risk of injury to such property or other structures and structures. caused by the state of those things or their status or by Or resulting from the state of these things or their status or from any actions that have been done or refrained from doing towards them, and the (**Trespasser**) of the property means every person who enters the property of others without his permission or without an invitation and his presence in that property is either without the knowledge of the owner of the property, or with his knowledge but with his opposition ².

4. Subchapter III: The hotelier's substantive liability resulting from the breach of the obligation to keep the guest's money and luggage in English law

Strict liability in English law is that negative aspect of civil liability that arises on the basis of the element of damage alone ³ and without the need to prove the fault ⁴ of bad faith, intentional or negligence ⁵, unlike fault liability, which represents the positive side of civil liability, and rises on the basis of the moral element of error, which represents a state of mind consisting of three prominent aspects: Intention , Malice and Negligence. The hotelier's objective responsibility in English law for his responsibility resulting from the breach of the obligation to preserve the guest's money and luggage, as the hotelier's obligation to preserve the guest's money and luggage is an obligation or **strict duty** in English law, because the hotel owner plays the role of the insurer.

Because **the Innkeeper is the insurer of the property of the guest** in the implementation of the obligation, in the event that they are lost or stolen from the safe guard that the owner of the hostel should prepare, and exert due care in preserving the guest's money as soon as it enters it, and he is responsible for it. The concept of the safe guard is not limited to the hotel itself, but extends to other parts attached to the hotel such as garages, parking spaces, swimming pools and hotel gardens ¹. The standard followed in English law to determine the scope of a inn or hotel is the suitability of any particular location in the hotel or its ancillary parts for the execution of the hotel profession (**Hospitium of the Inn**).

If the hotel owner, for example, asks the guest to leave his money at the entrance of the hotel or inn , he is responsible for it, even if it is outside the hotel or hostel in the real sense of the term, because it is within the scope of the hostel or hotel (**Hospitium of the Inn**). And that is what the English court adopted in its judgment issued in the case of *Watson v 318 People's Refreshment Association Ltd* 1952 KB1 : Which is summarized in the fact that the owner of the hotel placed the guest's money and luggage on the sidewalk of the hotel entrance waiting for the taxi that the guest was going to take to leave the hotel, which led to theft. The court ruled the hotel owner liable. Its judgment stated that although the plaintiff's funds were outside the hotel, they were still within the hotel's safe custody.

The hotel owner's breach of his strict duty to preserve the guest's property entails the fulfilment of his objective responsibility, which is not based on

proving the element of fault represented by negligence on the part of the owner of the hostel, but on the basis of proving the element of damage alone ², which is represented by the loss or damage of the guest's property. The first paragraph of Article II of the legislation English Hoteliers 1956 (**Hotel's Proprietor's Act of 1956**) with the principle of strict liability of the hotel owner, (A) The accommodation is occupied by the traveller at the time of loss or damage. (B) Loss or damage occurs during the period beginning at midnight immediately preceding and ending at midnight immediately following the period during which the passenger is a guest at the hotel and is entitled to use this accommodation.

It follows from this text that the strict liability of the hotel owner is not based on proof of fault, but on the basis of proof of damage alone and in order for the hotel owner's objective responsibility for loss or damage to the guest's property to arise, the latter must prove:

1 - Admission to the hotel , 2 - That one of the accommodations at the time of loss or damage was actually occupied , 3 - The place of funds shall be of such a type that falls within the scope of the hotel owner's duty (Hospitium of the hotel) to maintain them, and therefore the breach of that duty shall be a condition for the performance of the hotel's objective responsibility ¹ .

The second requirement: the provisions of the hotel's civil liability in comparative law are not regulated by comparative law.

In this study, represented by the UAE and Iraqi laws, the hotel contract is adopted within the named contracts, so it should refer to the general rules of civil liability to establish the civil liability of the hotel owner, with some exceptions related to the hotel deposit in these two laws. Although these two laws did not take into account the hotel owner's objective responsibility, because they did not regulate the hotel contract in the first place. However, the UAE Civil Transactions Law is closer to this type of liability. He adopted the idea of strict liability influenced by Islamic jurisprudence, which is concerned with protecting the injured person and ensuring compensation for the damage suffered, regardless of the behavior of the perpetrator of the harmful act, which is only incidentally concerned with it ².

Subchapter I: The contractual liability of the hotel owner resulting from the breach of the obligation to ensure the safety of persons.

The obligation to ensure the safety of persons finds its legal basis in the first paragraph of Article 246 of the UAE Civil Transactions Law No. 5 of 1985,

The Civil liability of the Hotel owner in English law:
A comparative analytical study

which came in conformity with the first paragraph of Article 150 of the Iraqi Civil Code, which stipulated that the contract must be executed in accordance with what it contained and in a manner consistent with what is required by good faith. Good faith is a general principle that establishes the execution of all types of contracts as agreed upon by the parties ³, as the contractor must be in good faith, vigilant and discreet in exerting the care required of him by law ⁴. And the importance of the principle of good faith in the performance of contracts is highlighted in that it establishes the arrangement of a contractual obligation whose breach leads to the rise of contractual liability, rather than resorting to arbitrariness....

.. resorting to arbitrariness to abuse of the right that lays the foundation for the rise of tort liability ¹. And the hotel owner's obligation to ensure the safety of the guest is an obligation to protect the guest during his stay at the hotel from bodily harm. to which he may be exposed, and take the necessary measures to prevent him from being harmed .

Subchapter II: The contractual liability of the hotel owner resulting from the breach of the obligation to preserve the guest's belongings

This obligation arises on the hotel owner under the first paragraph of Article 993 of the UAE Civil Transactions Law, which stipulates that the deposit of guests' things in hotels or the like is considered a guarantee clause and the owners of these places must ensure every loss or deficiency that resolves out to it . . The owner of the hotel, as a depositary, should maintain the deposit ². However, it is clear from this paragraph that the obligation of hotel owners or similar to preserve the things of the guests is an obligation as a result because he is a guarantor of every loss or deficiency that occurs to them ³. Therefore, the hotel owner's breach of this obligation, which is represented in the failure to achieve the result, shall result in the performance of his contractual liability. As for the position of the Iraqi Civil Code of breach of this obligation, it also entails the emergence of the contractual liability of the hotel owner⁴, but it is considered an obligation , However, the hotel owner's obligation to keep guests' belongings was considered an obligation to exercise care under Article 972 of the....

....the Iraqi Civil Code ¹, And he is responsible for the actions of all those who frequent the hotel, that is, for the actions of every smell or smell, as the Iraqi legislator called them, who are not followers of the owner of the hotel, nor those who are under his care or supervision ². . As well as its

responsibility for mistakes made by its workers and employees ³. In all these cases, his contractual responsibility for damages caused to the inmate shall arise ⁴. The hotel deposit in this case is a paid deposit, which puts the risk of loss on the debtor by committing to custody, because it is a binding contract for both sides ⁵, as the tightening of the level of responsibility and its gravity by expanding the meaning of the deposit as well, anything that the hotel guest brings is considered a deposit on behalf of the hotel owner, even if it has not been delivered to him personally ⁶.

Finale ..

After completing the study of the research topic in the body of this study, we have devoted the conclusion to the statement of the most important results we have reached as well as some recommendations that we deem necessary, as follows:

First: Results The study reached the following results:

1 Civil liability is classified in English law, as in comparative law, into contractual and tort liability, as it is either a penalty for breach of contract, that is, an obligation imposed by the contract, and is based on the contract, and is known as contractual liability or it is a penalty for breach of an obligation imposed by law, and is based on civil fault, and is known as tort liability.

2 The civil liability of the hotel owner in English law is the penalty resulting from the hotel owner's breach of his duties or obligations as a hotel manager, which arises either from the contract concluded between him and the guest, or from his civil faults such as his negligence or negligence.

3 The civil liability of the hotel owner is one of the widest types of civil liability under the general rules of English (Common law), although it is originally based on a contractual basis, but it also arises on a tort basis in many other cases. As well as the hotelier's objective responsibility, which is based on the damage element alone, without the need to prove the error.

4 The responsibility of the hotel owner was based in its beginnings on a set of customs and judicial precedents that formed what is known as hospitality law, which is part of the general rules of English law. However, the English hospitality law was not later limited to clairvoyant and case law, but expanded its scope to include many English legislations that regulated the hotel contract in general. And the civil liability of the hotel owner in particular. The civil liability of the hotel owner has been distributed in English law on three legal systems: Hospitality law, English contract law and the law of civil faults, i.e. the tort system.

The Civil liability of the Hotel owner in English law:
A comparative analytical study

5. The contractual liability of the hotel owner arising from the breach of the obligation to ensure the safety of persons, which is one of the most important obligations imposed on the hotel owner and under the general rules of English law common law, shall be based on an implicit clause in the hotel contract whereby the hotel owner undertakes to exercise reasonable care in maintaining the safety of the contracting party entering the hotel under the contract and by which the guest is meant.

6 The liability of the hotel owner arising from civil fault, either for his personal acts, shall be a tort liability resulting from negligence or the actions of others, and shall be his liability as a follower of the acts of his subordinates.

7 The hotel owner's tort liability resulting from negligence is a form of the owner's responsibility, which is the penalty imposed on him due to his negligence, which leads to the exposure of those persons who enter his property legally to damage or injury or the exposure of some trespassers to the property, if they enter it illegally.

8 Although the owner of the hotel is responsible for his civil mistakes that cause damage to the guest, he is sometimes responsible for civil errors committed by his followers, and his responsibility assumes as a follower for the actions of his follower. The first is the existence of a relationship of dependency between the owner of the hotel and his followers or workers under his control, supervision and guidance, and the second is the occurrence of a mistake by the subordinate during work for the account of the principal'.

9 The hotelier's objective liability in English law is based on the element of damage alone, and without the need to prove fault in two cases, the first is his responsibility resulting from a breach of the obligation to preserve the guest's money and luggage, and the second is his liability resulting from defective products.

10 The hotel owner's substantive liability for defective products is limited to food and drink provided by the hotel, and the aggrieved guest must prove that the food or drink provided by the hotel owner is unsafe or unfit and that any guest claiming to be harmed, and that there is a causal link between the damage and the defect or unsuitability of food or drink.

11. The UAE and Iraqi laws did not regulate the hotel contract within the named contracts, so it is necessary to refer to the general rules of civil liability to establish the civil liability of the hotel owner.

Second : Recommendations After completing the presentation of the results of the study, we propose the following recommendations:

1 We recommend that UAE and Iraqi legislators make the hotel owner's liability for breach of the obligation to ensure safety contractually a contractual liability for breach of the obligation to exercise due diligence, which is measured by the standard of a normal person who exercises reasonable care in taking the necessary measures to ensure the safety of the guest. Therefore, we propose the following text: (The hotel owner is obligated to exert reasonable care in maintaining the personal safety of the guest, and he shall be responsible if the injured party proves the negligence of the hotel owner and his failure to exercise due care)

2- We also suggest to the legislators of the UAE and Iraqi laws also to determine the responsibility of the hotel owner for the food and drink he provides to the guest, by breaching the obligation of a result that he cannot get rid of unless the foreign reason is proved. Accordingly, we propose the following text: (The hotel owner is obligated to provide reasonable food and drink to the guest, during mealtimes day or night, and shall be responsible if it is impossible for him to implement this contractual obligation, unless it is proven that the impossibility of implementation has arisen from a foreign reason that does not belong to him).

3 We also suggest to the legislators of the UAE and Iraqi laws to determine the responsibility of the hotel owner for the accommodation or accommodation he provides to the guest, by breaching the obligation of a result, which he cannot get rid of unless the foreign reason is proved. Accordingly, we propose the following text: (The hotel owner is obligated to accommodate the guest, house him and provide him with accommodation. He shall be responsible if it is impossible for him to implement this contractual obligation, unless it is proved that the impossibility of implementation has arisen from a foreign cause that he has no control of)

4 We recommend that the legislators of the UAE and Iraqi laws impose responsibility on the hotel owner for breaching the obligation to ensure the safety of visitors and guests who enter the hotel legally. Therefore, we propose the following text: (The hotel owner is obligated to exercise reasonable care in maintaining the safety of hotel visitors and guests of guests who enter the hotel illegally, and shall be responsible if the injured party proves the negligence of the hotel owner and his failure to exercise the necessary care to prevent damage, Unless the visitor loses the status of

The Civil liability of the Hotel owner in English law:
A comparative analytical study

legality by entering other parts of the hotel to which he is not allowed to enter.

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