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Obligation In Solidum In Comparative Analytical Study

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Abstract:.The intertwined relations and interdependence between peoples and civilizations, made contracts an urgent necessity for the preservation and protection of rights. As well as fulfilling the obligations imposed on the contracting parties under those contracts, whether for the benefit of the creditor or the debtor alike.The principle of the obligation is that it be simple between one creditor and one debtor, and the subject of the obligation is one, so its effects are the performance of the debtor subject of the obligation to the creditor, but this is not the case in the reality of business and trade, or transactions in general. As the two parties to the obligation may be attached to another party, or other parties, and it is multilateral either on the part of the creditor, and here we are talking about the existence of several creditors and one debtor who can pay the debt to any of the creditors without the right of the other creditor to claim it. Or on the part of the debtor, and here we are talking about one creditor and multiple debtors, as whichever one leads, the debt falls from the other debtor to the creditor's account. Solidarity between debtors or creditors was stipulated by the legislator from chapters 153 to 180 of the Moroccan Code of Obligations and Contracts, while the Libyan legislator allocated articles 266 to 289 of the Libyan Civil Code. Solidarity represents a legal status and is considered one of the strongest personal guarantees, and there is a solidarity obligation when there are two or more persons who are committed to all religion in the face of the creditor or vice versa so that it aims at the common interest[1]. As for the solidarity between creditors, which is called the positive guarantor, the Moroccan legislator organized it in chapters 153 to 163 of the Law of Obligations and Contracts. According to Chapter 154, positive solidarity is if each creditor has the right to receive the debt in full and the debtor is not obligated to pay the debt. Except once for one of them, and the obligation may be jointly between the creditors, even if the right of one of them differs from the right of the other if it is accompanied by a term or dependent on a condition, if the right of the other is now fulfilled. In this context, the Libyan legislator stipulated in Article 267, the first paragraph of the Libyan Civil Code, as follows: "If the solidarity is between the creditors, the debtor may repay the debt to any of them, unless one of them objects to that." It is an explicit acknowledgment by the Libyan legislator of the positive solidarity between the creditors. The point is that this type of solidarity is rare in practice because its motive is few, and that negative solidarity is the common effect because it expresses an explicit expression of solidarity and a package of guarantees from debtors to religion. Therefore, solidarity between debtors is considered the strongest form of personal guarantee. Chapter 166 of the Moroccan Law of Obligations and Contracts defines negative solidarity by saying, "Solidarity is established between debtors if each of them is personally obligated to the debt in full, and then the creditor has the right to compel any of them to pay this debt in whole or in part, but he is not entitled to repay it only once. One}. As for the Libyan legislator, he discussed the solidarity of debtors

in Article 271 of the Libyan Civil Code, which states: "If the solidarity is between debtors, then the fulfillment of the debt by one of them clears the liability of the others." In addition to solidarity, there is a set of legal terms aimed at and pouring into the same human rights stream[2], and perhaps the most important of these terms is the term solidarity or the idea of solidarity obligation, which the Moroccan legislator did not expressly stipulate in the Law of Obligations and Contracts. In order to know this type of contract descriptions, we will try in this research to expose the nature of the joint obligation, then we will look at the effects produced by the joint obligation between creditors and debtors, as well as among debtors who are jointly bound among them. Taking into account the comparative legislation in this aspect..

Keywords: Law, OBLIGATIONIN SOLIDUM , Creditor, Debtor, Relationships , Peoples , Civilizations.

1. Introduction.

Responding to a problem:
What is the extent of guaranteeing the obligation of consolidation for the damage sustained by the aggrieved or creditor?
In which I will employ the comparative analytical method, between Moroccan, Libyan, Egyptian, French and some other laws.
Therefore, this research will be divided into two sections, the first topic (what is the combinatorial commitment) and the second topic (the effects of the combinatorial commitment).

2. Topics.

The first topic: What is the cohesive commitment?
We said that the Moroccan legislator did not explicitly stipulate the solidarity obligation as he did with the solidarity obligation, so we will try in this section to identify the nature of this obligation by addressing its concept in the first paragraph, to make the second paragraph its conditions.

*The first paragraph: the concept of the joint obligation

- In this paragraph, we will get acquainted with the concept of mutual obligation from the linguistic side, then the doctrinal side, and finally the judicial side.
- Linguistic aspect:
  IN SOLIDUM is a word of Latin origin, meaning AU TOUT, and is used to describe religion. And if combined with the word OBLIGATION COMMITMENT. And it has become an OBLIGATIONIN SOLIDUM obligation, as it means a form of commitment to the whole, i.e. the obligation of all debtors to fulfill the debt without referring to others[3].The origin of the word tadaam in the Arabic language is from the word tadaam, which is derived from the joining of one thing to another[4]. It is clear and evident that there is a difference between solidarity and solidarity at the linguistic level. The meaning of inclusion is completely different from the meaning of guarantee.
- Doctrinal aspect:
  Legislation and law-making systems have not been exposed to the definition of the unitary obligation in one of the civil texts, to leave the field for jurisprudence to indicate its role in this field, and from this some jurisprudence defines the unitary obligation as being the cases in which several people are responsible for one religion for different reasons, without solidarity among them such as the case of If the debtor's liability is combined with a breach of contractual obligations with a third party who has committed a default and contributed to causing damage to the creditor. And as if a person incited another person to carry out actions that harm a third person, and as if a worker breached his pledge with the owner of the factory and left before the expiry of the period to work with another factory competing with the first at the instigation of the owner of the second factory, here the owner of the first

factory has suffered damage resulting from the two actions With, the act of leaving before the legal time for which the worker is responsible for contractual liability, while the instigator is responsible for tort. Thus we have a responsibility bound to another, or we say a combined responsibility. Dr. Abd al-Razzaq al-Sanhouri[5] adopted this term, i.e., the combined responsibility, citing French jurisprudence and judiciary, but he changed this label and was the first to launch the inclusive commitment in Arab jurisprudence, which is what the vast majority of jurisprudence has followed so far.

- Judicial aspect: In order to capture a definition that is closer to the legislative definition, we will address here the judiciary's vision of the joint obligation. The French Court of Cassation ruled on December 04, 1939 that {participants in causing the same damage resulting from their own mistakes must jointly pay compensation for the damage in full....} The French Court, when it came to this issue, stipulated that the debtors be obligated to the creditor for compensation that the subject of compensation be one, That all of them cause the same damage so that the creditor is entitled to full compensation. But the French jurists differed on the basis of full compensation, and for the narrowness of the space, I will present the recent and contemporary trend, which its owners believe that the rooting of the basis of collective responsibility is based on the idea of guarantee mainly and not annexation. According to this theory, it is considered that each debtor is personally responsible for the amount of his share of the damage and a guarantor of the shares of others for the unity of the damage, and thus the creditor avoids filing multiple lawsuits with multiple debtors[5].

  Referring to the previous ruling under study, each debtor is liable to the extent of the damage caused to the creditor, but because the damage is one, it joins the other debtors and is their guarantor for the rest of the damage. While the Egyptian Court of Cassation was explicitly exposed in its rulings to the definition of the joint obligation, it was stated in the ruling of the Egyptian Court of Cassation dated February 27, 1983 that "the obligation is joint if there are multiple sources of obligation to compensate the injured, as if one of the officials is contractually obligated and the other is in default." Then another ruling of the same Egyptian court dated March 25, 1990, which stated: {... But if the source of the obligation for compensation is multiple, if one of the two mistakes is contractual and the other is tortuous, then they are bound by one debt that has two different sources, and then their liability in this debt is combined without solidarity. ..}[6] . What the two Egyptian arbiters brought is what we were exposed to in the jurisprudential aspect when we mentioned the example of the worker and the two manufacturers' owners, when the worker was asked a contractual responsibility, and the drawer of the second factory was asked the instigator of a tort liability, so they were considered together as bound and combined responsibility. The Libyan Court of Appeal in Tripoli, in its decision issued on Shaaban 19 1440 corresponding to April 24, 2019[7] in Case No. 268/64, had jointly ruled the health insurance company and the doctor supervising the delivery in compensation for the psychological and physical harm that a woman sustained during childbirth in a government hospital when she did not receive care The crisis from the obstetrician. The court here, in my opinion, erred in the qualification when it considered a joint obligation between the health insurance company and the supervising doctor. The case is that this is a consolidating obligation, because the doctor is contractually responsible for leaving the pregnant woman in the custody of the nurse despite her bad condition, which needs direct medical supervision, and the insurance company is responsible for tort, and therefore the Libyan judiciary itself was subjected to the consolidation obligation, even if it erred in the adaptation as we have shown.

*The second paragraph: the conditions of the joint obligation

From the foregoing, it can be said that the consolidation obligation is that obligation in which there are multiple debtors, and in which there are multiple sources of obligation, with the unity of the place and the indivisibility of division. From this simple definition it is possible to derive the terms of the joint obligation.

- The first condition: multiple sources[8]:
  Previously in the jurisprudential definition and the definition of the Egyptian Court of Cassation, we talked about the contractual obligation and the default commitment. In the previous definitions, we touched on the most important condition of the joint obligation related to the multiplicity of debtors. The multiplicity of debtors here is motivated by the multiplicity of sources of obligation. The joint obligation includes multiple links, because each debtor is obligated according to his own reason. We find that each debtor is obligated by a reason of his own that is different from the reason for the obligation of other debtors. But this case is not the unique case of the multiplicity of sources. The multiplicity of sources may be motivated by the multiplicity of negligent officials, which the Moroccan legislator included in articles 99[9] and 100[10] of the Law of Obligations and Contracts. So that it arises as a result of the repetition of one source of obligation, such as the repetition of contractual obligations, for example, the multiplicity of guarantors in successive contracts[11]. or individually, and the description of each debtor's association that modifies the effect of the debt is taken into account, which is what the Algerian legislator stipulates in Article 664, the second paragraph of the Algerian Civil Code, which goes with or corresponds to Article 792 of the Egyptian Civil Code, as well as Article 320 of the Law Iraqi civil No. 40 of 1951. So we have several guarantors who are committed to the same debt with different sponsorship contracts, which is the case of the joint sponsorship. And other cases of consolidation, the consolidation excludes the case of only one debtor before the creditor.

- The second condition: the absence of solidarity and indivisibility:
  Article 266 of the Libyan Civil Code states that "solidarity between creditors or debtors is not presumed, but is based on an agreement or a provision in the law." Article 279 of the Egyptian Civil Code stipulates the same requirement that solidarity is not presumed, but rather a legal text or an express agreement from the two parties to the obligation, which is the same as what the French legislator went to in Article 1202 of the French Civil Code, which states that {Solidarity is not assumed, but It must be expressly agreed upon, and this rule does not apply in the event that solidarity is decided by force of law based on a provision in the law. The existence of a legal text or an agreement requiring solidarity completely negates the existence of the solidarity obligation, and the legislators' requirement for the existence of this previous agreement or the legal text for solidarity is a restriction of the judge's authority, and to talk here about the aforementioned legislation, the Iraqi[12] Civil Code is added to them in Article 320 No. 40 of 1951, which Corresponding to Article 217 of the Algerian Civil Code. In Morocco, it is practically impossible to talk about the joint obligation because of the existence of Chapter 164 of the Moroccan Code of Obligations and Contracts, which is considered as a reference basis restricting the authority of the civil judge in the work of the joint obligation, unlike the aforementioned legislation that does not have in its legislative arsenal such a chapter, and on it the text of the chapter 164 of the Moroccan Code of Obligations and Contracts states that "solidarity between debtors is not assumed, and must result explicitly from the deed establishing the obligation or from the law, or be the inevitable result of the nature of the transaction." When the Moroccan legislator employed the phrase "the nature of the transaction," he spared the judiciary from

delving into the labyrinths of this distinction, and it was more qualitative and more supportive of legal stability.

As for excluding the indivisibility from the scope of integration, the matter is mainly due to the nature of the place or to the will represented in the requirement that the fulfillment not be divided, due to the presence of explicit texts in the legislation regulating the indivisible obligation, and accordingly, the amalgamating obligation has its own scope that does not mix with another[13].

Among those texts, we mention Article 287 of the Libyan Civil Code, which states that "the obligation shall be indivisible, if it comes to a place that is not divisible by its nature, if it appears from the purpose to which the contracting parties intended that the obligation may not be executed divided, or the intention of the contracting parties is to that}.

As for the effects of this, Article 288 of the Libyan Civil Code stipulates that "If there are multiple debtors in an indivisible obligation, each of them is obligated to pay the debt in full, and the debtor who has paid the debt has the right to recourse against the rest, each according to his share, unless it becomes clear from the circumstances otherwise." From the foregoing, it can be said that consolidation is when there are two or more persons who are committed to all the debt with different ties in the face of the creditor, and the latter can claim any of them for the entire debt without division, despite the absence of solidarity between them under a legal text or a previous agreement.[14].

But what is the legal effect of this type of obligation (**OBLIGATIONIN SOLIDUM**)?

*The second topic: the effects of the cohesive commitment

The combined obligation is governed by two ties and its effects are arranged on this basis. The first link brings together the creditor with the debtors, and it arranges its effects in it between the creditor and the debtors who are obligated to pay the debt, which we will address in the first paragraph. As for the second paragraph, we will make it for the second bond that arises between debtors among themselves in the event that one of them fulfills the debt.

- The first paragraph: the association of the creditor with the consolidated debtors

In this legal bond there are two obligations. The first obligation is the obligation of each combined debtor to pay the debt in full, and the second obligation is the failure of the creditor to demand from the rest of the combined debtors to pay the debt again if one of them pays.

- First Commitment: Fulfilling the Debt: Due to the different source of the obligation of each combined debtor towards the creditor, each debtor is obligated to pay the amount of the debt that is imposed on him when the creditor claims it and within the limits of this amount, and the creditor may not exceed this amount. The first paragraph of Article 272 of the Libyan Civil Code stipulates that {the creditor may claim Debtors who are jointly liable for the debt, jointly or individually, taking into account the description of each debtor that modifies the effect of the debt. The amount of the obligation of one of the combined debtors may be less or more than the other debtor in view of the difference in the source of the obligation of each of them, as in the case of the combination of contractual and tort liability, for example, the liability of the insurance company before the insured is the source of the contractual obligation, that is, it is obligated to pay the insurance amount for the expected damage only, while the cause of the damage is a source His liability is tort, that is, he is obligated to pay for the expected and unexpected damage[15].
  - From the foregoing, it appears that the creditor is not entitled to recover only to the extent of what each debtor has caused the damage, and here we ask two questions:
  - First, what if it is difficult to determine the percentage of each debtor's contribution to the damage caused to the creditor?

- And the second, what if one of the compact debtors is insolvent?

As for the first question, the answer to it is found in Chapter 100 of the Moroccan Law of Obligations and Contracts, which states that "the provision set forth in Chapter 99 shall be applied if there are multiple persons responsible for the damage and it is not possible to determine the original perpetrator among them, or it is not possible to determine the percentage in which they contributed to the damage." When the aforementioned Chapter 99 stipulates that "if the harm is caused by multiple persons who acted as accomplices, each of them shall be jointly responsible for the consequences, without distinguishing between those among them who were an instigator, a partner, or an original actor." Hence, their responsibility shall be joint liability, without discrimination.

As for the answer to the second question, we will return to the judicial aspect and to the French judiciary in particular, when contemporary jurisprudence considered that the basis of solidarity among debtors is based on the basis of guarantee. damage, and therefore the creditor avoids filing multiple lawsuits with multiple debtors.

The absence of reciprocal representation between debtors towards the creditor entitles him to repay his debt smoothly, due to the independence of the sources of responsibility and the absence of a common interest among debtors. It has secondary effects with regard to excuses, validity of interest, prescription, conciliation, oath, validity of judgments, and effects of appea[16].

With regard to the French civil code and according to Articles 1205-1206-1207, the reciprocal prosecution still exists among the debtors, and accordingly, if the thing perishes because of a foreign cause after the excuses, all the joint debtors are obligated to pay its value. The recognition of the debt by one of the joint debtors results in the interruption of the statute of limitations for all debtors. As for the Libyan, Moroccan, Algerian and Egyptian civil legalization, it excluded the reciprocal prosecution when it resulted in damages to the status of the solidarity debtors by extrapolating the texts of the Libyan, Moroccan, Algerian and Egyptian civil legalizations related to the effects of solidarity {Article 278 and its aftermath of the Libyan Civil Code, Chapter 164 and what follows from the Moroccan Law of Obligations and Contracts, Article 231 et seq. of the Algerian Civil Code, and 292 of the Egyptian Civil Code et seq.}

* The second obligation: the creditor's conviction

The total fulfillment by one of the debtors leads to the discharge of all other debtors, then the creditor may not recourse to the rest of the debtors as long as he fulfills his debt in full, and this is what Article 271 of the Libyan Civil Code stipulates by saying: acquittal of the rest}

In the event of partial payment by one of the debtors, the creditor has the right to recourse against the remaining debtors or most of them in order to recover the remainder of his debt.

The total fulfillment of one of the solidary debtors has a terminating effect against the fulfilling creditor, which means that he may not claim any of the other debtors, as long as he fulfills his right once, he has no claim against any of the other debtors, and here we point out that only total fulfillment produces this effect. finisher. If the creditor does not pay the full amount of his debt, he has the right to claim the rest of the combined debtors for the remainder of his, and here we point out that the fulfillment must be actually done, for the creditor to obtain a judgment for full payment against one of the debtors without implementing this provision does not prevent him from claiming others,

even if this provision is partially implemented. As for partial payment, it has no effect other than partial discharge, and therefore the creditor can claim any or all of the other debtors in order to be able to repay the entirety of his debt.

In the event that the joint debtors agree among themselves to divide the debt, each according to its share, this agreement is not obscured by the creditor, and it only affects their relationship among them.

- The second paragraph: the association of allied debtors among themselves:

The origin of the joint obligation is that there is no relationship between the combined debtors, as neither of them knows the other, due to the multiplicity of sources of commitment of each of them and the absence of a common interest that unites them.

* The question posed here is what is the right of the debtor who pays all the debt to have recourse against the remaining consolidated debtors?

To answer this question, we put forward several hypotheses:

- The civil liability hypothesis

This hypothesis says that when the debtor pays all the debt, he has the right to recourse to the rest of the combined debtors, because by paying all the debt, he is also harmed because of the actions of others[1].

- Virtue Hypothesis

Here the one who pays the full debt is considered as one who takes care of the affairs of the remaining debtors who are jointly liable, and therefore he is like the curious and returns to them according to the claim of virtue[2].

- Unreasonable enrichment hypothesis

The meaning of this hypothesis is that enrichment occurs if a person performs necessary services for others without a bond to this third party obligating him to provide these services, and enriching others by fulfilling a debt they owed[1], which made them enriched without reason at the expense of those who paid the debt in full, and he has the right to return to them then.

- Hypothesis Solutions

It is the hypothesis supported by the French judiciary in many of its rulings[2], as the payer replaces the creditor with legal solutions to recover the remainder of the debt he has paid, which exceeds the share of the damage he caused, through a personal lawsuit granted to him by the French Civil Code through Article 1251 of it.

- The hypothesis of the nature of the relationship

According to this hypothesis, whoever repays the entire debt or some of the debt over the other depends on the relationship that may be between them, which is the position adopted by the Egyptian judiciary and concludes that it has settled the matter that the return depends on the relationship between the joint debtors.

Perhaps the Libyan legislator approached the same hypothesis of the Egyptian judiciary, when it stipulated in Article 272, the first paragraph of the Libyan Civil Code that:

{The creditor may claim the joint debtors for the debt, jointly or individually, taking into account the description of each debtor that modifies the effect of the debt}

The assumptions, reasons and foundations differed, but they agreed that it is the right of the joint debtor to return to the rest of the joint debtors for what he has done in excess of his share in the damage suffered by the creditor.

3. Results.

- Through this simple study, it became clear that the solidarity commitment is another type of commitment description, just like the solidarity commitment
- Legislation of all kinds and culture did not stipulate in its civil legal arsenal the joint obligation, as is the case with the solidarity obligation.
- It is the civil judiciary and jurisprudence that have worked to address the joint obligation

and clarify its rulings, through judicial studies and academic studies.

- 4. The provisions and effects of the joint obligation differ from the provisions and effects of the solidarity obligation, which necessitates making some recommendations that we include as follows

4. CONCLUSIONS

1. It is in dire need of legislative intervention to tighten its legal effects, not the same among the combined debtors, nor the same between them and the creditor.
2. That this legislative gap must be bridged in order to unify judicial rulings and to ensure legal security in the nodal.
3. The need for the Libyan judiciary to remedy in its future decisions the issue of solidarity as well as solidarity in ruling civil compensation.

5. summary

The joint obligation is a civil legislative mechanism whose purpose is to secure the debt of the creditor in the face of debtors who are not linked by any interest, contract or law. This is because the damage to the aggrieved person or the creditor resulting from the debtors' act, even without their unanimous intent to cause the damage. It is a reason to combine their financial liabilities in order to be a guarantee for the creditor. The creditor here has the right to return, knowing each according to his share of the damage, and he is also entitled to return to one of them for all the damage. With the right of the latter to replace the creditor and have recourse to the joint debtors for what he has paid in excess of his share.

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It was mentioned in the hadith of the Messenger of God, may God's prayers and peace be upon him, "Do not be joined together in seeing Him," meaning seeing God the Mighty and Sublime. The meaning of the hadith is that some people do not join others for the sake of seeing God, just as Muslims escape in seeing the crescent.

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Chapter 100 of the Moroccan Law of Obligations and Contracts states that "the provision set forth in Chapter 99 shall be applied if there are multiple persons responsible for the damage and it is not possible to determine the original perpetrator, including them, or the percentage in which they

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