

Tort Liability Of Novel Coronavirus (COVID-19) Transmission, A Comparative Study Between Civil Law And Rulings Of Islamic Jurisprudence

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Abstract:

Amidst this terrible spread of the Coronavirus pandemic, it has been observed that one person has transmitted the disease and infected millions of people all over the world, causing human damage to lives, material damages to funds, assets and property, and other moral injuries that are represented in psychological and moral pains suffered by families as a result, particularly when they loss a family member. Here, an important question arises, does a person, who suffered a damage as a result of an infection transmitted to him by a person with corona virus, have the right to claim liability and compensation?

This study highlights the definition of liability concerning the transmission of an infection, as well as the definition of an infection and the elements of tort liability related to the transmission of COVID 19 pandemic infection, and how such infection is transmitted and its effect on tort liability.

The study also deals with the legal and legitimate basis for the responsibility for the transmission of infection, and how compensation for damage resulting from an infection can be estimated, and the Islamic point of view on determining the responsibility for transmitting the infection and claiming a compensation for. The study also looks at the case of abstaining from receiving treatment medical doses and vaccinations and its impact on the tort liability and compensation claim by the infected person.

Keywords: Coronavirus Transmission, Tort Liability.

Introduction

All praise be to God, who created man and taught him eloquence. Allah says in chapter 5 Verse 32 “whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely. (Surah Al-Maida, verse 32) Narrated Abu Huraira: The Prophet pbuh said, "There is no disease that Allah has created, except that He also has created its treatment except the old age."(Abu Dawood 2015, 3855) .

In the narrations of Al-Bukhari, Muslim, Ahmad, Abi Dawud, Al-Tirmidhi, Al-Nisa'i and Al-Bayhaqi, preserving the human soul is one of the basic purposes of the Islamic law and legislation “Sharia”, which includes, in addition to self-preservation: religion

preservation, safety of mind, preserving of offspring, posterity, and preserving funds and property as well as sources conservation.

also, the law forbids causing harm to others and such acts are criminalized by law within the framework of criminal liability, in addition to the civil liability decreed for that, so whoever commits a wrong act or mistakes that affects others is obligated to compensate.

Based on these Islamic laws and legal rules, the carrier of the virus is considered a source of infection transmission, and the fault is attributed to him/her in committing such failure due to noncompliance with the preventive measures and precautions that are necessary to be taken.

Such procedures consist of precautionary and preventive measures contain the articles of tort liability of doing such error and damage. In addition, it is a causal relationship, whether the injured person or another person has caused the transmission of infection to others, directly or indirectly, intentionally or unintentionally, which requires both criminal and civil accountability. Therefore, it was necessary for us to study and review the legal and legitimate basis for proving the occurrence of liability and the possibility of claim compensation for such incurred damage.

Objectives of the Study

The study meant to meet several results, the key important as follows:

- Explaining the legal and legitimate basis for determining the tortious liability of transmission of an infection.
- Identifying the articles of the tortious liability of the infectious carrier, and clarifying the legal and legitimate description of that liability.
- Legal and legitimate liability for the transmission of an infection and its effect on forms of infection transmission.
- Explaining the legal and legitimate views of receiving medical doses and vaccinations and the impact of that on tort liability and claim for compensation.
- Clarifying the views of Islamic jurisprudence on the liability of infection transmission and the legality of compensation for such damages resulting from that liability.

Research Literature (Past Studies)

It was observed when referring to the research literature that there were studies dealt timidly with this issue due to the novelty of the pandemic. Some have tried to take advantage and catch it, but with a hasty and rapid study without even waiting for the effects of this pandemic, and the advent of facts based on the damages reality resulting from this pandemic. Some others dealt with the subject via writing an articles only due to the scarcity of sources, an example for that:

First: “Legal liability arising from the transmission of the novel coronavirus infection, a comparative study with the Egyptian civil law.” By Majid Qadri Ibrahim Muhammad, Journal of Economic, Administrative and Legal Sciences, Volume 5, Issue, March 30, 2021 .

Second: The tort liability of the carrier of the Corona virus infection in Jordanian law, a comparative study. An article by the writer Bani Hamad Abdel Salam. It is not a scientific study research but an article. It is noted that the study is specific to Jordanian law, and it is closer to the article than the scientific study.

Third: Legal Liability and the Corona Virus. An article written by Noah Feldman, in which he mentioned about the ruling of full release of liability and the establishment of accurate prevention rules. In fact, it was it differs from the subject of the research, rather than by being an article.

By reviewing past studies, it was evident that the issue needs a profound and deeper study that complements the previous effort, so that everyone can be familiar with the jurisprudential and legal rulings through stating of tort liability in legal legislation. Therefore, this study is characterized by dealing with the tortious liability of the carrier of infection from a comparative perspective between Islamic jurisprudence and civil law according to a scientific method.

Problematic Feature of the Study:

As the COVID 19 / Corona pandemic has multiple legal effects and raises many issues, therefore, the study addresses important points represented in answering a number of questions, which are:

- What is the legal and legitimate definition of the liability of the Corona infection carrier?
- What are the elements of tort liability for the transmission of Corona infection?
- What is the legal basis of tortious liability resulting from the transmission of infection?

- The Islamic jurisprudence point of view on the issue of the infection transmission?
- Ruling on abstaining and stopping of receiving medical doses and vaccinations and its consequences on liability? -

Research Methodology

This study built on two approaches: the comparative approach, and the deductive approach

First: The Comparative Approach

This is made via introducing the views of comparative jurisprudence and judiciary, as well as the Islamic jurisprudence in implementing its rules, legal texts and applications of jurisprudential theories in terms of damage, liability and indemnifying for the determining of the liability of the carrier of infection

Second: Deductive Method

The goals of the deductive approach is to study the problem entirely by moving from the whole to the part, as well as through proceeding from basic postulates, theories or general knowledge, then toward the the particles via the concluded, and through exposure to legal texts related to the issue of compensation for the damage that befalls the person as a result of transmitting infection. Add to that the suitability and appropriate of civil texts to solve legal problems when approving compensation for such damages, analysing these texts and drawing conclusions.

The study is not devoid of clarifying the researcher's opinion on some controversial topics or issues that need interpretation or support, and weighting the right opinion according to established scientific foundations and perspective.

Study structure

This study was divided into:

An Introduction and four themes:

Theme 1: defining the responsibility for the transmission of corona infection

Theme 2: nature of tort liability of transmission of infection

Theme 3: articles and elements of tort liability of transmission of infection

Theme4: responsibility for the transmission of infection

A conclusion included the important findings and recommendations, and an index of the most important sources and references.

Theme (1):

Definition of liability of transmission of infection

Introduction and Partitioning:

Defining the responsibility for transmitting the corona virus infection requires determining the tort liability of the infection carrier, definition of infection that causes damage, and the definition of Corona virus and types of infection.

First Requirement

Definition of the tort liability of the carrier of the corona virus infection in Islamic jurisprudence and law.

Islamic law set forth and defines the responsibility through the concept of liability /indemnifying or fine, and they agree in meaning with the concept of responsibility. Ibn Manzoor says, "I made him the carer /guardian, so, he charged it on my behalf. which caused him a fine

The liability or guarantee in the language is an obligation on others, and it is derived from the guarantee, because the protective care and financial obligations are within the person in the meaning of the guardianship and care. It is said a person is cared by another person, it means made him attached and connected to him, as the Almighty Allah said in the Quran: {Put her in the care of Zakariyya . (From verse 37 of Surah Al- Imran) i.e. became responsible for her and managing her affairs: .

Moreover, the compensation or liability is defined linguistically as the liability or an obligation, and in the terminology of the

jurists: it is given several meanings, including bond, guarantee, liability and commitment etc (Al-Hamwi. 1985 p311) .

which will be toward the right of a harmful act. It was also defined as a liability duty with a demand to fulfil it if the conditions are met .(Al-Khaifif '1971 p3) As it is said, I guaranteed him the money, i.e. so I am liable for and made him obligated to it and committed with it, and I guaranteed him the thing, i.e. I am responsible for and committed to it and made him responsible for it..(Al-Misbah Al-Munir1322)

Imam Sheikh Shaltut has mentioned that “to make a person as a carer or responsible is a ruling to compensate for the damage or harm that befell others from his part”.(Shaltut 1960.p20)

It was recently defined as: a commitment or an obligation to financial compensation for the damage committed against others.(Al-Zarqa 1968 p1032)

and the guarantee or liability was legislated for reparation, not for punishment, and therefore the jurists did not differentiate in the compensation between the discerning ones and others ordinary. (AL Shawkani 1971 p. 229).

The Journal of Judicial Rulings defines the guarantee or liability in Article 416 as: giving the same thing if it is the same type and its value if it is of valuable matters. Al-Shawkani defined it as a fine for damage, and Al-Hamwi defined it as a compensation for damage arising from a harmful act.

it was said that” it is an obligation to compensate others for damage to money or loss of benefits, or for partial or total damage” Al-Zuhaili p22)

Ibn 'Umar (May Allah be pleased with them) reported:

The Prophet (ﷺ) said, "All of you are guardians and are responsible for your subjects. The ruler is a guardian of his subjects, the man is a guardian of his family, the woman is a guardian and is responsible for her husband's house and

his offspring; and so all of you are guardians and are responsible for your subjects." .(Al-Bukhari 1422 p104 & Muslim,1459)

[Al-Bukhari and Muslim]

It was said that: it is an obligation of financial compensation for damage to others. . (Al-Zarqa 1998 p 107)

The matter that Sharia scholars used liability in two senses: the first: in the sense of guarantee, which is a fine. Al-Shawkani says, “The commitment or liability is a fine for damage.”

Ibn Hazm says, “It is not permissible to oblige anyone to fine money without a text or consensus.” . (Ibn Hazm 1353)

Second: in the sense of commitment or liability, and this is what the majority of Maliki, Shafi'i, and Hanbali say. The Maliki say: (Al-Sawy's 1996 -p 272)

A guarantee is an obligation that is costly, a debt owed by others..(Al-Ansari 2000)

and the Shafi'i say, “It is an obligation of an established right in the responsibility of others. And the Hanbali say, “It is the joining of the guarantor’s responsibility to the debtor on his behalf.” (Ibn Qudamah 2004 p313)

.The jurists and legal experts define tort liability as: it is based on a breach of one legal obligation.(al-Sanhouri:1971 p747).It is clear from these definitions that they do not prevent or conflict with determining the liability and responsibility of the carrier of infection and obliging him to pay compensation in accordance with the concept of compensation in Islamic jurisprudence or in accordance with the rules of tort liability.

Second Requirement

Definition of Infection

Infection: It is a transmission of a disease from a disease carrier to another person, i.e. transmission of the disease, as it transmits the disease from its carrier to someone else (Ghunaiman 2022)

Transmission of the disease from one person to another through the carrying of the germ, or the organism that causes the disease to another person. French Ministerial Circular No. 263-88 of October 13, 1988 defined infection as “every infection caused by particulate matter that a patient may contract in a treatment entity after his admission to it, whether from ospitalization or in order to receive therapeutic examinations ... and that this infection must be known at the clinical, microbiological, or haematological data, or both..

Third Requirement

Definition of Corona Virus and Types of Infection

The International Islamic Fiqh Academy (IIFA) which is a universal scholarly organization and a subsidiary of the Organization of Islamic Cooperation (OIC) defined the recommendations of the second medical-jurisprudential symposium of this year, which was held via video conference technology on April 16, 2020, under the title “The Novel Coronavirus (Covid-19), defining the coronavirus disease 2019 known as Covid-19 as A respiratory infection due to a new coronavirus, and the World Health Organization officially declared this epidemic a global pandemic on March 11, 2020.

It is thought that the virus is of animal origin, but the animal carrying the virus is not yet known with certainty, and there are suspicions about bats and anteaters. As for its transmission from one person to another, it has been proven to be widespread, and the infection ranges between the carrier of the virus without symptoms to severe symptoms, including fever, cough, and shortness and difficulty of breath (in moderate to severe cases).

Infection spreads in several different ways, including direct exposure to microbes, inhalation of air contaminated with germs, and the infection multiplies according to its causes, including fungal infection, bacterial infection, and viral infection. Viral infection occurs when a person is infected with a virus. Viruses invade the host and stick to the cell, so they enter the cell and release its genetic material,

and this material forces the cell to copy the virus and multiply. when the cell dies, it releases new viruses that infect new cells, and so on.

The fungal infection can be transmitted through direct contact with the infected or the ill people, including infection with leprosy and the plague. As for infection with leprosy, the leper smells intense when he gets sick, and infecting who sitting with him for a long time. it is narrated that Abu Salamah. 'Abd al-Rahman b. 'Auf reported Allah's Messenger pbuh as saying: “There is no transitive disease, but he is also reported to have said: A sick person should not be taken to one who is healthy.

Also narrated that Umar “may Allah pleased with him” went out to the land of Sham “the Levant land), and when he reached, he hurriedly informed that the epidemic had arisen and spread in the Levant land (Sham land) . Abd al-Rahman ibn Awf..(Imam Malik 1985)

informed Umar that the Messenger of God, may God bless him and grant him peace, said: "If you get wind of the outbreak of plague in a land, do not enter it; and if it breaks out in a land in which you are, do not leave it." [**Al-Bukhari and Muslim**]. So Umar ibn al-Khattab returned immediately after he heard the hadith of Abd al-Rahman bin Awf.

There is a ḥadīth attributed to the Prophet ﷺ pbuh which states, “Do not look continuously at those who have leprosy.,(Ibn Dawood 1999 p736)

and when you speak to them, there should be the distance of a spear between you and them”.

Negligence and lack of attention: It is a negative behaviour that is represented in refusing to take the necessary precautions) . Hosni 1963p783)

The legal rule in the honourable hadith is “there is no injury nor return of injury” .(Imam Malik 1985 p784)

So Preserving people's money from every attack and reparation and redressing what was

lost of by compensation. Al-Kasani says.(Al-Kasani1982 p165)

"If it is not possible to deny the damage in terms of the image, then it must be denied in terms of the meaning, so that the compensation / liability takes the place of the damaged one. As the Failure to observe the regulations, laws, and decisions made by the government authority to take precautions to deal with the Corona pandemic results in the occurrence of the damage that requires the compensation and liability."

Second Theme

Nature of the Tort Liability for the Transmission of an Infection

Introduction and Division

The nature of the tort liability for the transmission of Corona virus infection is reviewed through two requirements, in which we learn about the types of tortious liability for the transmission of infection, and the second we learn about the methods of transmitting infection:

First requirement: types of tort liability for the transmission of corona infection (COVID-19).

Second requirement: ways of transmitting the Corona virus infection (COVID-19).

First Requirement

Types of Tort Liability of Corona Virus Infection Transmission

The responsibility of the carrier of the infection varies according to the method and means of transmitting the infection. perhaps the transmission of that infection have been made intentionally from his part. It also differs according to the condition of the infected person to whom the infection is transmitted. It may be a complete tort, or it may be a joint tort. The infection may be transmitted, but liability is not established due to the existence of one of the reasons for release. Therefore, Responsibility varies between full liability, joint responsibility, and release from liability.

accordingly, I will divide this theme into three branches:

First branch

Full Tort Responsibility of Corona Virus Infection Transmission

Full responsibility lies with the carrier of the infection if he is the only one responsible for his wrong action without there being a case of release from liability, provided that every action, whatever it may be, is done by a person and causes harm to others. It is obligatory for the one who caused this harmful act through his own fault to compensate for this damage). (Mazeaud(H.J.) & CHabas(F.) 1998, p.423)

as the compensation system in tort liability is the obligation of the debtor to compensate for the direct damage, whether it was expected or unexpected. (al-Sanhouri:1987 p1027).

In the event that the compensation for the full responsibility for the transmission of the infection is assessed in total, without specifying its elements, the judgment is subject to appeal in Egyptian court of cassation, and that is what the Egyptian Court of Cassation decided by stating "If the challenged judgment had decided compensation in a comprehensive manner without indicating the elements of damage, then it would have rendered invalid due to the lack of its reasons, which necessitates its appeal.

. As the court when clarifies the elements of damage, it can estimate compensation as it deems appropriate, and it may order compensation to the plaintiff in total for the damages that befell him, and it may judge temporary compensation, whether because it is unable to estimate the compensation permanently or because the plaintiff had demanded before the criminal courts for temporary compensation for the damages incurred by him, rather than claiming all of them by filing a civil lawsuit so that to avoid the limitation of action of his civil lawsuit.

Section Two

Joint Tort Responsibility of Corona Virus Infection Transmission

The person infected with the disease, if he has a fault in the occurrence of such infection, his capacity does not change to be responsible, but he remains as the victim, and then the effect of the error caused by the injured party is limited to depriving him of part of the compensation to the extent of his fault that caused the infection. (Mazeaud 1956)

Thus, we are not before 2 persons responsible for the incident, but one only responsible and two injured. The rule is that if the person liable caused only some of the damage and not all of it, while the fault of the original victim caused in the occurrence of the rest of the damage, then the person liable is only responsible for the damage that he caused which has a causal relationship with his fault. (Tharwat without a print date 101)

The Article 150 has approved this rule, stated that the French civil legalization stipulates that “the debtor is only liable for compensation for the damages that were expected or that could have been foreseen at the time of the contract, when the non-performance of the obligation was not due to the debtor’s fraud, as stipulated in the second paragraph of Article 221 of the Egyptian civil legalization.” which states that “However, if the obligation arisen from the contract, then the debtor who did not commit fraud or gross error is only obligated to compensate the damage that could have been normally expected at the time of the contract.”

Jurisprudence opinions varied in interpreting the debtor’s obligation to compensate the expected damage within the scope of contractual liability. (Desouki 1972. p. 310)

The rule in Islamic jurisprudence is that the person is not asked except for guaranteeing the damages that he caused. Allah said in the quran, **“And no bearer of burdens will bear the burden of another.”**

This is because Islamic law and legislation is an integrated law that follows a general approach in the obligation to remove the damage, as the occurrence of damage in Islamic jurisprudence necessitates the removal of this damage or compensation for it, whatever its degree, in the manner in which the

responsible person is a guarantor to return the situation to the way it was before the occurrence of this damage. (Shaltut 1960 p.20,)

While the majority of jurists incline to the fact that the basis for compensation in tort liability is the amount of damage and not the size of the error, and another aspect requires the verification of the illegality of the act causing the damage as a basis for the determining of tort liability. (Siwar, 2010, p. 133)

If the injured person also made a mistake and he also shared by his mistake to the damage that befell him, then this must be taken into account in estimating the compensation due to him.

The judgment should be to the extent appropriate to the fault committed, because the fact that the harm suffered by the injured person resulted from two mistakes requires that the amount of compensation be distributed between them in proportion of the fault of each of them, and based on a process similar to the set-off process, and the third party is not obligated except by the amount of compensation for all the damage minus what must be borne by the injured person because of the error that occurred from him.

If the appealed verdict violates this consideration and turns away from what decided in its causes of the victim’s mistake and showing its effect on the amount of compensation and ruling that the civil official be obligated to pay it in full without detracting from it what is equivalent to the victim’s share in this mistake, then there is a violation of the law that requires an appeal to this ruling and to what was decided in the civil lawsuit.

By applying this to the responsibility for the transmission of infection, we find that the degree of damage determines whether the responsibility is complete or incomplete. Also, those responsible for transmitting the infection may multiply, so the responsibility is distributed among them, as if there is a responsibility that falls on the carrier and on the hospital, provided that every act, whatever it is, occurs from the person and causes harm to

others, the one who committed this harmful act by his own fault is required to compensate for this damage. (Mazeaud(H.J.) & CHabas(F) 1998, p.423)

Section III

Release of Liability of Corona Virus Infection Transmission

The infection may be transmitted by a person infected with a disease-causing infection, but without showing any signs or symptoms, and here we ask about the degree of tort liability of his cause in transmitting the infection?

Here comes out the importance of the theory that determines responsibility without error. The hospital that receives patients is responsible for transmitting the infection, even if it did not show an error, because its responsibility is to maintain safety. Nevertheless, there are cases where the responsibility for the infection carrier releases, which is represented in:

First case: if the act was legitimate: such as the infected person being in a state of defense of himself, his honour, or his money. This is shown if the infected person in a state of self-defence, for example, if a thief entered the home of the infected person to steal it, and the infected person caught the thief as a reaction, which caused this to transmit the infection to the thief, here the infected person is not asked to compensate the injured person (the thief) because he is in a state of self-defence, provided that he does not exceed in his defense what is necessary to ward off the damage and that the conditions of legitimate defense are met.

Second case, if there is a case of necessity: such as the intervention of the infected person is necessary, and his failure to intervene would cause him greater harm, such as the fact that the child is born from a virus-carrying mother, and such as the intervention of the infected treating physician, for whom there is no alternative.

Third case: implementing an order issued by the chief, and this is not achieved unless the carrier of the infection who carried out the order of his boss is a public employee, and he believed in good faith that his act will not transmit of infection, and the responsibility here falls on his chief, and this is a case of release from responsibility for the carrier of the infection, but his boss who ordered him to do the act that resulted in the transmission of the infection is to bear the compensation for the damages resulting from this act, unless he had received this order from a senior chief to him, in which case he bears the result of the order issued by him.

Second Requirement

Ways of Transmission of Corona virus Infection (COVID-19)

There are many ways in which the virus is transmitted from the infected person to the healthy one. Respiratory disease infection can be transmitted through droplets of different sizes as follows:

If the particles are more than five to ten micrometres in diameter, they are referred to as respiratory droplets. Those with a diameter of five micrometres or less are referred to as droplet nuclei.

According to the current available evidence, infection with the virus that causes COVID-19 disease is mainly transmitted from person to person through respiratory droplets and contact. 2-7 In an analysis of a total of 75,465 cases of COVID-19 disease in China, no airborne transmission was reported. However, in all cases, the infection is transmitted through several methods, which are:

Section One: Intentional transmission of infection

Deliberate and Intentional transfer takes place through direct contact with the injured person, where the injured person is questioned on the basis of intentional contact, and responsibility arises when he does not refrain from harming others, and that is what has been decided by Sharia and law jurists, because a person is commanded to abstain from harming others in

application of the rule of no harm and no return harm.(Al-Darini, 1998 p 95)

Narrated Abu Hurairah, on the authority of the Prophet, may God's prayers and peace be upon him, said, " one should run away from the leper as one runs away from a lion." (Al-Bukhari: 5707)

In other words, it is not permissible for him to believe that he is infected, but it is prescribed for him to deal with the causes, by keeping away from those who contracted the disease so that it does not pass on to him..(Ibn Baz (6/27)

Here, criminal liability takes place if the infection results in a crime such as the death of the infected person, in addition to the tort liability for the damages that befell the victim and his family as a result of the infection.

Direct transmission of infection: It is when a person's action comes into contact with another person and damage occurs, as if a person hit another person and injured him or hit him so he died or burned his crops. The Malikis defined it as: what is usually said that the destruction occurred without mediation. (al-Qarafi1346 p. 27)

Shafi'is defined it as: finding the cause of damage),. (Al-Ghazali 1317- p 205) and the Hanafis defined it as the connection between the tool and place of damage and destruction., (Al-Kasani 1982 Page 165)and the Hanbali defined it as: it is when a person initiates destruction for a reason that he follows, such as killing and burning.(ibn Rajab 1972 - p 281). A majority of the Shafi'i, Hanafi and Maliki jurists believe that direct action or initiation is only by a positive action on the basis that the liability is the destruction , and the damage can only be by causing something that results in damage.

Second section: the unintentional transmission of infection

This is done unintentionally by the carrier through droplets from the patient during coughing or sneezing, or by any other means. The infection is transmitted through droplets when a person comes into close contact with another person who has respiratory symptoms

(such as coughing or sneezing) (within a distance of one meter), which puts this person at risk of exposing his mucous membranes (mouth and nose) or conjunctiva (eyes) to respiratory droplets, potentially to be contagious. The infection may also be transmitted through contaminated tools found in the immediate environment surrounding the infected person.

Therefore, infection with the virus that causes Covid-19 disease can be transmitted either through direct contact with infected people or indirect contact with surfaces in the immediate surrounding environment or tools used for the person infected with the infection (such as a stethoscope or a thermometer) and this is considered an unintentional act made by the infected person, for whom he is obligated to compensate and liability, even if he adheres to the precautionary measures. This is according to the provisions and rulings of Islamic jurisprudence that mistakes and deliberate action are equal to people's rights, while the law requires that the conditions for unintentional error be met.

Third Section: Indirect Transmission

This is represented by touching contaminated surfaces and tools, such as the mouth, nose, or eyes, the areas of infection transmission. Air transmission differs from transmission by droplets because air transmission indicates the presence of microbes within the nuclei of droplets, which are generally considered particles equal to five micrometres in diameter or less, and it can remain in the air for long periods of time and be transmitted from one person to another at distances of more than one meter, and it may also settle on surfaces.

Airborne transmission may be possible under certain circumstances and contexts in which aerosol-generating supportive therapies or procedures are applied, i.e. tracheal intubation, bronchoscopy, open sucking, administration of inhaling therapy, manual ventilation prior to intubation, supine position, separation from mechanical ventilation, positive pressure ventilation, and cardiopulmonary resuscitation.

There are some signs and symptoms that infection with Covid-19 disease may lead to an intestinal infection and are present in the stool. However, there is so far only one study in which the virus that causes COVID-19 disease was cultured from a single stool sample. Faecal-oral transmission of this virus has not been reported to date. (World Health Organization on October 15, 2022)All of these means are considered harmful acts that establish the tort liability, and I believe that they are considered evidence that the carrier of the infection committed the harmful act, especially if he neglected to transfer his infected waste that is susceptible to transmitting harmful infection.

Third Theme

Elements of Tort Responsibility of Corona Virus Infection Transmission

Introduction and Division:

Responsibility for the act of transmission of infection does not exist unless the elements of tort liability are fulfilled, and in order for the elements of liability to be fulfilled for the act of the transmitting of infection, there must be error, damage, and a causal relationship between the error of the transmission and the damage resulting from that infection. Therefore, I will divide the research into three demands as follows:

The First Requirement: the error made by the one who caused the infection

An error is the harmful act made by the person causing the infection, and it is the physical act that constitutes the first pillar in the liability that causes the damage.

The Egyptian Court of Cassation defines the error that necessitates responsibility as deviating from normal, familiar behaviour and the vigilance and foresight required so as not to harm others. or transgression or deviation in behaviour. The prevailing opinion in jurisprudence is that it is not sufficient to establish civil liability, but it should be accompanied by awareness on the part of the transgressor.

A mistake is defined as: deviating from the usual behaviour of an ordinary person. (Zaki1978, p. 476)compared with a person of average intelligence if he finds in the same external circumstances the perpetrator of the harm to commit it.(Nuri Khater, 2012, p. 356)

As per the aforementioned, we can define the error of the transmitting of infection as: the behaviour of the infected person or a third party that results in the transmission of infection to a healthy person. The Egyptian legislator adopted the idea of error as a basis for tortious responsibility, then differentiated between tortious responsibility for a personal act, as it based it on the idea of error that must be proven, and between tortious responsibility for the act of others and for animals and things, as it based on the idea of supposed error.

The transmission of infection may be intentional or unintentional, and the concept of intentionality or unintentional in Islamic jurisprudence has no significance in approving the liability (Compensation), so the liability replaces the error.

Islamic jurisprudence has taken the objective concept of error. it does not require the realization of the moral pillar (perception), as it suffices to have the error, which is what the majority of jurists. (Ajzi al-Kalbi 2013 p. 218)go to, unlike the Malikis . (al-Dardiri volume 3, p. 296) As If someone infected another person with the Corona virus and he was taking all precautionary measures and he did not expect or imagine that he would infect another, and in application of that, if the harm was caused by a young child, such child is responsible for the damage, and likewise the insane if he wasted someone else's money, then he is obligated for compensation. (Al-Khafif 1997 p. 48)and (" Viney 1985, 1-3189)

a person's refusal from performing a certain act is considered a sufficient deviation and transgression due to the presence of the material element of the fault, although there is no answer in the Egyptian civil law, but the Islamic jurisprudence, which held that the violation is equivalent to a positive matter:

such as burning, drowning, or destruction, or a negative matter: Such as refraining from providing food to the one in need or to the prisoner until he died, as this is considered a condition for liability. (al-Zuhaili2008, pg. 667)

The error is divided into two components:

Material: It is the assault of a carrier of the Corona virus infection, and it deviated from the behaviour of the ordinary person who, if he was found in the same circumstances as the carrier of the infection, he would not have committed the error.

This is made when the limits of vigilance and foresight are legally assumed are exceeded. In order for a person to be at fault, he must exceed the limits of care and insight in his behaviour, and the transgression or violation may occur with the intent of harming others, and the occurrence of damage is sufficient for the determination of liability. If there are many people responsible for an illegal act, they are jointly liable in their obligation to compensate for the damage without discrimination between the original perpetrator, the accomplice (Tanagua. 2009 p. 220-221), and the culprit. In liability, the compensation shall be paid to each of the rest with a share to be determined by the court according to the circumstances and according to the seriousness of the infringement committed by each of them and the distribution of compensation shall be equally among them. Islamic jurisprudence has defined this case as it differentiated between two cases to include the responsibility of liability in the case of plurality. If their work is united in type and strength, then the responsibility is distributed among them by equality. As for the second case: If their work is united in type but different in strength, then the standard according to the Hanafia, is to take the effective cause, and it is better to take all the reasons.. (Al-Zarqa 1998 p107)

Types of errors on the transmission of Corona virus (COVID 19)

1- Violation of laws and precautionary measures

The carrier of the virus must avoid contact with people, stay at home, and adhere to social distancing from his family and those who come into contact with him from members of society, and he may not hide his illness from them so as not to be a cause of harm to them. Narrated `Aisha:(the wife of the Prophet) that she asked Allah's Messenger (ﷺ pbuh) about plague, and Allah's Messenger (ﷺ pbuh) informed her saying, "Plague was a punishment which Allah used to send on whom He wished, but Allah made it a blessing for the believers. None (among the believers) remains patient in a land in which plague has broken out and considers that nothing will befall him except what Allah has ordained for him, but that Allah will grant him a reward similar to that of a martyr. (Al-Bukhari with No. (3474)

2- Recklessness

Recklessness means misjudgement and careless, and it is embodied in a material incident involving misbehaviour, just as it is embodied in a moral incident involving ignorance and incompetence, and this is achieved in many forms.

3- Negligence

Negligence may occur on the part of the patient, such as the patient leaving his infected tools and belongings and infecting others, or the nurse leaving her patient without treatment, and it may occur from the hospital and infect others. Pursuant to this, the French Court of Cassation decided on July 29, 1999 that the person in charge of the medical work is committed to ensuring the safety of his place in order to avoid infection that afflicts the patient inside the hospital institution, which was confirmed in another ruling in 2005.

The French Council of State decided that the hospital is responsible for compensating for infection damages on the basis of fault and without fault. The French Court of Cassation also recognized the responsibility of the hospital for the infection, except for the case of foreign cause. Although the Colmar Court of Appeal ruled that infection with the Corona virus is considered a case of force majeure,

with which the hospital is not responsible for compensation in the event of infection.

4- Lack of precaution

Lack of reservation, lack of precaution, or both, which causes the infection carrier to be liable as a result of his behaviour; Because he could have prevented the occurrence of the infection if he had acted with caution and prudence.

5- No attention

It is recklessness or acting that is not excused by the carrier of the infection, and it is similar to negligence as it is negative behaviour, and its example is the case of a person who does not pay attention to the seriousness of his act. Check for inattention which is negative behaviour.

As if the carrier of the infection carries virus test tools in a narrow way and walks with them in a crowded place among people, which leads to the infection of some people, so here his mistake occurred due to his lack of attention, which is negative behaviour.

5- No attention

It is recklessness or acting that is not excused by the carrier of the infection, and it is similar to negligence as it is negative behaviour, and its example is the case of a person who does not pay attention to the seriousness of his act. Check for inattention which is negative behaviour. As if the carrier of the infection carries virus test tools in a narrow way and walks with them in a crowded place among people, which leads to the infection of some people, so here his mistake occurred due to his lack of attention, which is negative behaviour.

6- Abstaining from doing so

As is the case when the business owner refuses to take the necessary preventive measures, then the error in that case consists of a positive act represented in refraining from carrying out an obligation imposed by the law and not a negative act, and it is considered violating if the ordinary man does not refrain from doing the work even if that work is imposed by the rules of ethics or courtesies. Abstaining and refusal in this case is considered an

infringement if there is an error in it, and the tort liability of the abstainer is based; whenever its other pillars are proven, but according to the controls represented in it which is as follows:

First - Determining the controls for abstention that constitutes an infringement exclusively.

Second: The existence of the intention to harm others to be considered an infringer.

Second Requirement

Damages Resulted from the Infection

What is meant by damage: everything that is against the benefit, which is emaciation and bad condition, hence the harmfulness, which is contrary to the benefit. Damage is also mentioned and included in the sense of distress and deficiency. (Ibn Daqeeq Al-Eid - 2003p106)

The damage resulting from the infection may be the result of a positive action when the patient mingles with the public, transmitting the infection, and this may be done by mistake or with intention.

The Egyptian Civil Law stipulates that: A person shall be responsible for his illegal actions when they are made by him while he is discerning. However, if the damage occurred from an undiscerned person and there was no one responsible for him, or it was not possible to obtain compensation from the person responsible, the judge may oblige the person from whom the damage occurred to pay fair compensation, taking into account the position of the litigants, and the conditions for damage in Islamic jurisprudence are as follows:

First condition: that the damage resulting from the infection is due to the property being assessed.

Second condition: that this damage be realised and made.

Third condition: that the damage be direct and personal.

These conditions are the same as those stipulated by jurists other than the first condition, which is under consideration. As the condition of legality in Islamic jurisprudence is

subject to the meaning of the concept of legality established in jurisprudence in a way that does not contradict the provisions of the Sharia. Allah the Almighty says in Quran: **“Every soul, for what it has earned, will be retained.”**

It is natural for the act of infection to result in a harm to others, and based on the position of Islamic jurisprudence that the person is obligated to compensate for the damage arising from his wrong action, regardless of his condition, and accordingly, the application of responsibility to the person liable for transmitting the infection. Even if he was undiscerned, as the word harm was mentioned in the Sunnah of the Prophet with the aim of liability and compensation, and from that the saying of the Prophet, may Allah’s prayers and peace be upon him, “There is injury nor return of injury” (bin Hunail, 2008 p. 327) and there is no evidence for that more than his saying: “The sanctity of a Muslim’s money is like the sanctity of his blood. (bin Hunail, 2008 p. 446)

The prophetic hadith denies in its first paragraph the harm before and after it occurs, and in the second paragraph of it denies the harm in return for the harm, by compensating the injured in reparation for the loss of the right to harm in return. (Madkour 1954, p. 275)

Abu Sirmah (RAA) narrated that the Messenger of Allah (ﷺ) said: “He who causes harm to a Muslim will be harmed by Allah, and he who acts in a hostile manner against a Muslim, will be punished in the same way by Allah.” Related by Abu Dawud and At-Tirmidhi who graded it to be Hasan (good). (Abu Dawood (3635). Al-Tirmidhi (1940).)

And if we drop the provisions of Islamic jurisprudence on the damage resulting from the infection, we see that it goes to the responsible person who is obligated to compensate the damage arising from his wrongful act, even if he was undiscerned, and accordingly the responsibility is applied to the carrier of the infection, and then the affected person has the right to assess the civil liability for those damages. There is no disagreement between jurisprudence and law regarding the

permissibility of compensation for damage, whether it is in tort liability - the harmful act, or in contractual liability. (Al-Khaifif, 1971, p2)

Third Requirement

Causal Relationship between the Action of the Infection Carrier and the Resulting Damage

The causal relationship is one of the pillars of responsibility, and it is a condition for its establishment and the judgment of compensation once it is done, and it requires that the error be related to injury or death, i.e. the cause is connected to the effect, so that neither of them can be imagined without the occurrence of this error, and coming out and deducting the error that leads to liability and the causal relationship between it and the damage to the carrier of corona infection, which falls within the limits of the discretionary authority of the trial court, as long as this deduction is plausible and is derived from facts that lead to it.

The principle is that there is no liability unless there is a causal relationship between the error of the Corona virus carrier and the damage resulting from it, with the need to prove the relationship of the damage to the act that caused it, and it is the responsibility of the person affected by the infection to prove the causal relationship between the damage and the act in order to deserve compensation. For every mistake that is committed and causes harm to others, compensation must be paid to the one who committed it. Therefore, it is decided that if there are many persons responsible for any unlawful harmful act that caused the damage resulting from the infection, then those responsible for the damage are considered jointly responsible for compensating the damage.

This is what is decided by the Sharia rules, as well as Article 163 of Egyptian civil law (everyone who commits a mistake that causes harm to others is obligated to compensate). Therefore, there is no compensation without the presence of damage arising from a mistake, and there is a causal relationship between this

mistake and that damage, and the result is the compensation that is given to the injured person in compensation for this damage, and the damage is the breach a legitimate right or interest for the injured person, and it is in all its forms and conditions that require compensation as long as it is realized, personal, and direct,

The harmful act may have its effect limited to the direct victim and not extend to others. Also, its effects may extend to infect other people who have a connection with the injured person that makes them affected by his injury financially or morally, or both. Accordingly, both the direct victim and those affected who have lost their breadwinner can claim the person responsible for the harmful act for the damage he has suffered, and the non-claiming of one of them has no effect on the claim of the other, as the causal relationship exists here without separation.

However, the causal relationship between the indirect damage and the harmful act of transmitting the infection is interrupted if the infected victim does not take the reasonable precautions and measures while he is able to do so to avoid the serial consequences of the harmful act. As this is considered a negligence on his part, with consequences of which he alone bears them.

Fourth Theme

Responsibility for Transmitting Corona Virus Infection

Introduction and Division:

Talking about the nature of the liability of an infection carrier requires defining the legal basis on which the responsibility of the infection carrier is based, the ruling on refraining from taking the vaccine and its impact on establishing tortious liability, the opinion of Islamic jurisprudence on taking precautionary measures, which requires dividing the theme into three requirements:

First requirement

Basis on which liability for the transmission of the Corona virus infection is established

since the responsibility for transmitting the infection varies into a contractual liability if the patient or a worker in a medical agency or health care contracts, the contractual nature is based on the existence of a contract between the two parties, if one of them breaches his contractual obligations, the contractual liability arises. According to the rules of tort liability, then the person infected with the Corona virus has the right to claim compensation without the need to release or notify the person responsible for transmitting the infection, and he may claim joint liability by virtue of the law if others participated to this damage, and it is not permissible to be released from the tort liability for transmitting the infection.

As the determining of tort liability is more extensive and comprehensive for every violation that results in harm to others, because there is a general obligation that falls on each person, which is not to cause harm to others. Every mistake that causes harm to a third party requires a compensation from the person who committed the damage, and the mistake of the person responsible may be contractual if it represents a breach of a contractual obligation that harms the other with damage, and the same error may be tortious if the heirs of the directly injured person suffer a return or recurring damage, so the first lawsuit is a contractual case, and the heirs' lawsuit is a tort liability case for the personal harm they suffered by restitution (Sharaf Al-Din 1986 p. 98) because of the damage that befell them.

It is their personal claim and they rely on an independent right that does not mix with the right of their inheritance. (Mansour 2000, p. 309)

A person shall be responsible for his illegal actions as long as they are committed by him while he is in a state of discerning. However, if the damage occurred from an undiscerned person and there was no one responsible for it, or it was not possible to obtain compensation from the responsible person, the judge may oblige the person from whom the damage occurred to pay fair compensation, taking into account the position of the litigants.

This concept does not contradict with Islamic jurisprudence, which determines responsibility based on the rule that every harm to a third party obliges its perpetrator, even if he is not undiscerned, to pay compensation for the damage for the assault as a purely material incident that entails liability, i.e. the need to compensate the injured whenever it occurs, regardless of the type of capacity in the assault person and his intent. In compensation and liability for money, there is no difference between intentional and unintentional act, nor between old and young. (Ibn Rushd 1333, p. 81)

This paves the way for an extended interpretation of the concept of liability for damage resulting from the transmission of infection. In one of these cases, a person died after he was infected with the HIV virus after receiving contaminated blood from a specialized blood transfusion centre. His minor daughter filed a lawsuit against the aforementioned centre and the insurance company demanded them for compensation for the material and moral damages that she personally suffered as a result of her father's death, based on the centre's breach of the commitment to the safety assurance resulting from the contract that linked it to the original victim "the father."

The Court of Appeal refused to answer her request, pointing out Indicating that she cannot benefit from this obligation because she is not a party to this contract, and appealed to this provision by way of cassation, so the court ruled to cancel it, stating that the blood transfusion centre is committed to ensuring the safety of the blood provided by it, as an obligation to achieve a result, and that adhering to this obligation can be done not only by the original victim, but also by the aggrieved through restitution. (Bull. 19981. N 221 – p.144)

The rules of Islamic jurisprudence say that if the damage of people's money and souls is based on an act and a reason, then the liability is related to such act without the cause, unless the direct action is based on and arising from the cause, and with the direct action, the cause

alone is obligatory for the compensation, and if there is an aggression in it, the reason itself is involved with the liability (bin Rajab 1352 AH): p. 285)

The person infected with the virus may claim compensation for damage, the damage that befalls people who have been harmed as a result of infection with the novel coronavirus, such as the wife, children, father or mother. Infection with the novel coronavirus may cause an attack on the same person as an individual, and the attack may be on a group, here we need to clarify the view of Islamic jurisprudence on these precautions.

Second Requirement

Ruling of Abstaining from taking the Vaccines and its Impact on Determining the Extent of Tort Liability.

The competent authorities have the right to abide people to certain treatments, and they have the right to carry out first aid and specific medical interventions to the pandemic, because "what is required by the Muslim's creed is that disease and healing are in the hands of Allah the Almighty, and that treatment and medication are taken with the reasons that God Almighty placed in the universe and that it is not permissible to despair of God's spirit." Or despair of his mercy, but rather hope for recovery, God willing." (See: Decision of the Academy No.: 67 (5/7) regarding medical treatment, in its seventh session that was held in the city of Jeddah in the Kingdom of Saudi Arabia).

Therefore, Islam rejects and denounce what is called herd or public immunity, which calls for leaving the spread of pandemic in the beginning and by which those who deserve to die will die whether the elderly and those with chronic and multiple diseases. Islam considers that as a failure to provide the treatment required and it is an explicit violation of the true Shari'a that ordered medication and treatment. It also violates the obligation to adhere to the precautionary measures.

The International Islamic Fiqh Academy (IIFA) which is a universal scholarly

organization and a subsidiary of the Organization of Islamic Cooperation (OIC) defined the recommendations of the second fiqh medical symposium for this year which was held via video conferencing technology on April 16, 2020, under the title "The Novel Coronavirus (Covid-19) and related medical treatments and Sharia rulings." The recommendations stated that governments and the concerned authorities must secure a sufficient number of

Respiratory medical devices to treat cases that require the use of these devices, and doctors must adhere to medical and ethical standards, and those who are hoped for recovery should be given priority and precedence over those who are hopeless cases when distributing respiratory devices when there are many patients and devices are less.

This is because treatment in the matter of the pandemic is entrusted to a medical team, or to a doctor, if there is no team, and the matter of treating the patient is subject to medical interest and top priorities, according to the rule: "Disposition and acting for the subjects depends on the interest"; The doctor's behaviour toward patients is also based on the interest.

As the rule is "no one takes precedence in competing over rights except by top priority and weightings ; The doctor must work, based on his experience and in accordance with the ethics of his profession, in probabilities, including: "testing the ability to benefit quickly" to know the degree of danger among patients, and who is affected positively by the aid more than others, and who is more entitled to provide him with resuscitation, taking into account the desire of the patient, so the doctor provides the respiratory device for the patient based on these weightings and priorities, but if they are equal in the weightings of preference when crowded, and he proceeds with drawing of lots between them.

Therefore, the one with social status does not take precedence over others, and the young one does not take precedence over the old. so they are all equal in humanity. Therefore, the device

is to be removed from the patient whose recovery is not hoped for, and if it becomes clear that the patient's condition is getting worse, or he did not respond to the device, or that after removing his life will not continue a normal, stable life, so there is no objection of removing him from the artificial respiratory device. (The International Islamic Fiqh Academy, 2020)

Accordingly, if the carrier of the infection refuses to take the preventive doses of the virus, and this has a negative effect, in this case, the liability is taken in a broad sense, which is not limited to the concept of civil liability only, but extends to criminal liability, and the rule of liability and compensation shall be applied and payment of blood money in case of death or compensation in case of damage is taken into account.

The basis on which liability is based in Islamic jurisprudence is to ask the one who initiated the harm even if he did not transgress, just as the one who caused the harm is questioned if he was a deliberate transgressor.

It stated also that if the damage of people's money and souls is based on an act and a reason, then the liability is related to the conduct of the act without the cause, unless the direct action is based on and arising from the cause, then with the direct action, the cause alone is obligatory for the compensation, and if there is aggression in it, the reason itself is involved with the liability. (Abi Faraj (1352 AH): p. 285) The person to whom the error is attributed may deny it for a reason, whereby the person to whom the error is attributed may deny it either by proving that he has exercised the necessary care or by proving another reason. (Nabil, &, Muhammad, , 2010, p. 202)

Third Requirement

View of Islamic jurisprudence on Taking Precautionary Measures

In accordance with the provisions of Sharia policy, the state, represented by the guardian or ruler, may take precautionary measures and impose a ban on movement or gatherings in times of disasters and widespread diseases or

the like, which was approved by the recommendation of the International Islamic Fiqh Academy (IIFA) which is a universal scholarly organization and a subsidiary of the Organization of Islamic Cooperation (OIC) in the fourth recommendation stating that: States and governments may impose restrictions on the movement of Individuals in a way that achieves the interest, whether in terms of preventing entry to and exit from cities, curfews or quarantines on specific neighbourhoods, or banning travel, or preventing dealing with paper and metal money and imposing the necessary procedures for dealing with them, suspending business and studying and closing markets.

Moreover, it must be adhered to the decisions of states and governments with what is called social distancing and so on, which would help to contain the virus and prevent its spread, because the actions taken by the ruler are dependent on the interest, in accordance with the Sharia rule that states that “the actions and procedures of the ruler (Imam) toward his subjects is dependent on the interest.”

As it was stated in the fatwa of the Emirates Council for Sharia Fatwa (Fatwa of the Emirates Council for Sharia Fatwa, Ruling, 2022) that medication in some cases and environments is governed by obligation, and the jurists preferred in the past as indicated in their books that it is recommended matter. It might be this was due to the presumption of benefit in the drug, and the weakness of the possibility. As for contemporary medicines that have become beneficial definitely or mostly, which gives it consideration that the medication has becomes like all other means of saving the human soul, which a person must do in order to preserve his life, so the difference is of the same kind as the difference in the situation, and the change of time and place, and not a difference in argument and proof as narrated in the prophetic Hadith, Usamah bin Sharik said: "Some Bedouins asked: 'O Messenger of Allah (s.a.w) shall we treat (our ill)?' He said: 'Yes, O worshipers of Allah! Use remedies. For indeed Allah did not make a disease but He made a cure for it' - or - 'a remedy.

The recommendation of the International Islamic Fiqh Academy (IIFA) a subsidiary of the Organization of Islamic Cooperation (OIC) ,No. 6, stated: The isolation of a patient infected with the virus is a religious obligation, as is known, and as for a person suspected of carrying the virus or showing symptoms of the disease during the home quarantine, he must adhere to what is called social distancing from his family at home and those who are in contact with him among the general public.

It is also not permissible for those who have symptoms of the disease to hide this from the competent medical authorities, as well as from those who are in contact with him, and whoever knows an infected person who does not care about the disease should inform the health authorities about him as this leads to the spread of this disease and the seriousness of its danger. So he must implement everything that is issued by the competent medical authorities, and it is necessary for it to punish the one who suffers from this disease and conceal it.

The Almighty Allah says in the Quran “ do not throw [yourselves] with your [own] hands into destruction [by refraining]. And do good; indeed, Allah loves the doers of good.”

“ And do not kill yourselves [or one another].

Indeed, Allah is to you ever Merciful.” And the prophet pbuh said “ No harm nor harm in return”. (bin Hanbal – 2001)

As for the plague, narrated `Aisha:(the wife of the Prophet) that she asked Allah's Messenger (ﷺ pbuh) about plague, and Allah's Messenger (ﷺ pbuh) informed her saying, "Plague was a punishment which Allah used to send on whom He wished, but Allah made it a blessing for the believers. None (among the believers) remains patient in a land in which plague has broken out and considers that nothing will befall him except what Allah has ordained for him, but that Allah will grant him a reward similar to that of a martyr.

Conclusion, Key Findings and recommendations

It is evident that this study dealt with the tort liability for the damage caused by the Corona

infection carrier, as an applied model for the transmission of infection in particular. This study resulted in a number of findings and recommendations represented as follows:

- The act of infection transmission by an infected individual deserves to be described as a wrong act on which the tort liability is based.
- The legal and legitimate basis for determining the extent of liability for the transmission of infection is the tort and contractual liability, and criminal liability can be based on it if its elements are existed, and Islamic jurisprudence builds it on solid legal rules based on the concept of compensation and liability, the rule of reparation for damage, and the rule of no harm nor harm in return.
- The elements of tort liability for transmission of infection are represented in error, damage, and causative relationship, and it is made in transmitting infection intentionally or in a wrong way and is not based on the concept of the supposed error.
- The legal and Shari'a (legitimate) position for receiving doses and vaccinations are agreed in terms of their permissibility and obligation.
- Taking precautionary measures is consistent with the legal rules and provisions of Islamic jurisprudence, in accordance with what is legally prescribed represented in self-preservation and maintaining money, property etc.
- Islamic jurisprudence permits a request for compensation for damages resulting from the transmission of infection.

Research Recommendations

First: enact a law called (the Law of Infection Transmission) relating to the liability for the transmission of an infection, and to be applied especially in hospitals and assembly areas that are more vulnerable to infection transmission.

Second: Urging the judiciary to apply the rules of Islamic jurisprudence related to compensation and liability, and the rule of reparation for damage because it is more surely

and guarantee for maintaining the rights of those affected than the rules of tort liability

Third: Obliging the judiciary to compensate the moral damage to the foetus who lost his/her father due to the infection being transmitted to him, and stating the fact that the foetus is not aware of the horror of the catastrophe and the tragedy cannot be considered as a justification for refusing compensation for moral damage, because even if the foetus is not aware of the tragedy at the moment of loss, he/she will inevitably be exposed to the feeling of loss and orphan-hood after that.

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Abbreviations:

D. Recevil dalloz
 Gaz.Pal Gazette des Palais
 J.C.P. Juris-Classeur Periodique (la semaine juridique).
 Bull. Bulletin des arrest du la cour de cassation
 Bull. Civ. Bulletin Civil
 Cass. Civ. Cour de Cassation, chambre Civile
 Cass. Cim.. Cour de Cassation, chamber Criminelle
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