

# دولية عقد السياحة واثره في تحديد الاختصاص القانوني

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مدرس، قسم القانون، كلية الحلة الجامعة، بابل، العراق

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## ملخص الدراسة :

هناك ضوابط اساسية حددها الدولة بالنسبة لمنح سمة الدخول للعراق ومنها منح سمة الدخول عند وصول الاجنبي الى داخل المطار اذا كان من دول الخليج ، اما اذا كان من خارج دول الخليج فأعطت منح السمة للمجاميع ( الخمس اشخاص ) واكثر على المنافسين بضمانة احد شركات السياحة فالأخيرة هي المسؤولة عن وضعها للبرنامج في حال اظهار اي مشكلة ، وفي حال كان عدد الزائرين الاجانب اقل من خمسة ولديهم حجز مباشر مدفوع الاجر لدى الفنادق الدرجة الاولى او الممتازة فالأخيرة تتعهد لدى هيئة السياحة او الشركة تكون مسؤولة لمتابعة سمة الدخول لتسهيل الاجراءات داخل العراق مع الالتزام بإخراجهم في حال انتهاء الفترة الزمنية لأقامتهم .

**الكلمات المفتاحية:** السياحة الدولية ، الاختصاص القانوني ، تأثيرات الدخول.

## International Tourism Contract and Its Impact on Determining Legal Jurisdiction

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### Abstract

There are basic controls set by the state regarding granting entry visas to Iraq, including granting entry visas when a foreigner arrives at the airport if he is from the Gulf countries, but if he is from outside the Gulf countries, it granted granting the visa to groups (five people) and more to competitors with the guarantee of one of the tourism companies, the latter is Responsible for putting it into the program in case any problem appears, and if the number of foreign visitors is less than five and they have a direct paid reservation at the first or premium hotels, the latter undertakes with the Tourism Authority or the company is responsible for following up the entry visa to facilitate procedures inside Iraq with the obligation to remove them in Upon the expiration of the period of time for their stay.

**Keywords:** International tourism, legal jurisdiction, entry visas

## Introduction

### Topic idea

Tourism is one of the contemporary social phenomena that enjoys a special importance in the lives of individuals as it has an international dimension. individuals and their behavior of an international character.

### Importance of the topic

The need to reconcile the requirements of the state's right to secure its safety and preserve its entity and the interests of its nationals, and what requires observance of the rules of international law and international covenants.

### Reasons for choosing the topic

1. Increasing the movement of people across international borders.
2. The shortage under private international law for this study
3. The difference in the legal status of a tourist under this contract.

### Problem research

The most important basic problem is to address the tourism contract by defining the jurisdiction and the state's authority when concluding it between the tourism company and the tourist, and the most serious problem is the procedures related to dimensions through the issuance of forced decisions and methods of control over them.

### Methodology Research

Relying on the analytical approach to find out the phenomenon of tourism and the extent to which the laws respond to that by addressing the Iraqi law and comparative laws and referring to some international conventions.

### Structure Research

The study will be in two sections, the first is to know the tourism contract and its international character, and the second is to determine the legal jurisdiction (legislative and judicial) for that contract.

### The first topic

#### Introducing the tourism contract

To clarify the meaning of the tourism contract, it is necessary to know what is meant by it and does it have an international character? Therefore, we will divide the topic into two requirements, the first to define the tourism contract and the second to show its international character, as follows.

## The first requirement

### Tourism contract definition

It is the contract concluded between two parties, one of whom is a professional tourism agency and the other is a non-professional, the tourist, and the first party is obligated to provide tourism services in return for a return from the second party, whether based on a prior organization by the agency or based on the client's proposal through general elements like other contracts of satisfaction A place and a reason with the presence of pillars related to the personality of the tourist and pillars related to the subject of the tourism contract by highlighting the motive for the tourism contract, which means the tourism contract is every agreement concluded between the agent and the customer that includes a description of the nature of the services provided and the rights and obligations of the parties, especially with regard to the price, payment procedures, price review, schedule and terms of invalidity Termination of contract (Bashina,2019).

It was defined in the first paragraph of the International Convention relating to the Contract of Flight, held in Brussels on April 23, 1970 (Agreement text, 1970).

The third paragraph of the same article defines it as “a contract under which a person undertakes in his name to provide another person, for a total price, with a set of services consisting of transportation, accommodation separate from transportation or other services related to them”.

The third paragraph of the same article, the trip mediation contract as “a contract under which a person undertakes to provide the other in return for a price, either to organize a trip or a separate service or services that allow the completion of any trip or accommodation”.

It is clear from this definition that the tourism contract includes two types of contracts

Trip organization contract, which means representing the role of the travel and tourism agency in organizing a comprehensive trip for individuals and groups with the provision of related services inside and outside the country, starting from the first stages and ending with arrival in the country of origin - the starting point - as the tourist contracts a comprehensive contract not on separate parts of Contract (Fadel, 2009).

Mediation contract in flight: In which the role of the travel and tourism agency is to sell the trip organized by the tourism agency or provide a separate service or services without transportation and accommodation, but allowing the completion of the trip program (Abadi, 2012).

The error in this definition is that if the definition of the contract of the organized trip is in line with the role of the current travel and tourism agency, and the mediation contract in the trip is in line with the role of the second class travel and tourism agency, then the task of providing a service or services separate from transportation and accommodation is included in the itinerary Therefore, it does not express any mediation (Al-Numan, 2014).

Through all of the above, it is clear that the travel and tourism agency performs these services on its own behalf and not on behalf of another agency as in the case of selling the trip organized by the first agency in advance, and the role of the second is to mediate for its sale.

## **The second requirement**

### **International character of the tourism contract**

Since the tourism contract is characterized by an international character, and since the contractual relationship raises the problem of determining the applicable law for the internationally competent court, but it directly affects in the event that the tourist suffers damage resulting from the breach of the obligations arising from the tourism contract, then he can recourse from the tourism and travel agency in terms of filing a lawsuit And obtaining compensation according to the rules of conflict adopted in this field, and since the contract is the most important means for conducting legal transactions or actions, whether at the international or internal level (Al-Sharqawi, 2002).

It is established that the international contract extends its effects to more than one country, so it requires that the rules governing it be appropriate to its nature for the purpose of determining the most appropriate laws for it among the conflicting laws (Shi'an, 2007), and this takes place according to the conflict technique in which the dispute judge is guided by the rules of attribution or the substantive rules according to The subject of the tourism contract, if it relates to interpreted rules, in which the jurisdiction is determined by the rules of attribution, but if it includes imperative rules, the ruling will be for the objective rules of necessary application (Yaqout, 2004), meaning that the international character in the tourism contract triggers the conflict of legal jurisdiction at the legislative and judicial levels, which requires the settlement of that conflict The most conflicting laws in this case are the law of the nationality of the tourist and the law of the tourism company and each party that enters into a deal with the tourist, and thus the conflicting laws will be enumerated by the number of parties to the tourism contract and who contracted or dealt with the parties. Fire, damage or loss.

## **The second topic**

### **Legal jurisdiction of the tourism contract**

Determining the legal jurisdiction requires controlling the legislative jurisdiction by defining the applicable law in the tourism contract, as well as controlling the jurisdiction by defining the competent court.

## **The first requirement**

### **Legislative competence in the tourism contract**

The international tourism contract, like other international contracts, has the parties to choose the applicable law in the tourism contract in terms of its composition, conditions and effects. The international tourism contract has to adopt in determining the applicable law the same method that it adopts in any other international contract (Al-Muqaddam,1981), so it must first conduct the

process of adapting the relationship within the tourism contract as it relates to eligibility or formality, and it is conducting an adaptation process according to Iraqi law (Article 17, the first paragraph of the Iraqi Civil Code, 1951).

And according to the adaptation process, he will determine the rule of attribution in question. If it is proven to him that the dispute is related to the terms of the tourism contract or its effects, i.e. regarding the breach of contractual obligations, the applicable law shall be determined according to Article 25/1 Civil, which stipulates that “contractual obligations shall apply to the law of the country in which it is located.” The common domicile of the two contracting parties if they unite domiciles, and if they differ, the law of the country in which this contract was concluded shall apply unless the contracting parties agree or it becomes clear from the circumstances that another law is to be applied”.

It is clear from this text that the Iraqi civil law has subjected the contractual obligations or the obligations arising from the tourism contract to the law chosen by the contracting parties in the contract with their express will if it was announced in the contract or the implicit will if it was not announced in the contract, meaning that the judge first determines the expressly agreed law Or implicitly, but if there is no express or implicit will, then the relevant law is the law of their common domicile, if they are united as domicile, but if they differ, the competent law is the law of the state in which the contract is concluded (Al-Masoudi, 2018).

## **The second requirement**

### **Jurisdiction in the tourism contract**

The Iraqi law regulating companies, offices and travel and tourism agencies is devoid of mechanisms for settling the dispute that occurs on the occasion of the tourism contract and determining the competent judicial authorities regarding the claims submitted by the tourists as a result of the tourism companies' breach of obligations towards the matter, as the matter is limited to the formation of a committee by the Tourism Authority to consider complaints submitted by Before tourists or travelers against companies, offices, and travel and tourism agencies, and the status of determining the compensation he is entitled to, which was determined by Article 7 of the said law. The court of the travel and tourism agency's domicile or its dealing center, or before the court of the place in which the obligation arose, or the court of the place of execution, or the court of the place chosen by the two parties. The court of first instance is competent.

Based on the foregoing, we find that the Iraqi legislator has determined the organization of judicial jurisdiction, whether it is internal or international, which is tainted by the foreign element in the civil law in Articles 14 and 15 thereof and Article 7 of the Law No. 30 of 1928 as amended. A lawsuit against a foreign tourist company before the Iraqi courts, and this company was not based in Iraq, and the trip contract was not concluded or implemented in Iraq. Iraq, explicitly or implicitly.

## **Epilogue**

After completing an international study, the tourism contract and its impact on determining legal jurisdiction, we draw a set of results and recommendations.

1. Tourism contract is an agreement concluded between two parties, one of them is a professional (tourism and travel agency) and the other (the tourist). The first is obligated to provide services in return for a sum of money by the second party.
2. It is considered a composite contract as it is subject to the provisions of more than one contract.
3. We suggest that the Iraqi legislator amend the text of Article 7 in its first paragraph for the purpose of adding the entry visa for work.
4. We call on the legislator to include the condition of reciprocity when requesting the extension of the entry visa that the legislator has permitted to extend.

## References

1. Samiha Bashina, PhD thesis, Faculty of Law and Tourism Sciences, Larbi Ben M'hidi University, Algeria, 2019.
2. Shorouq Abbas Fadel, Cancellation of the Tourist Trip, Journal of Law, College of Law, Al-Mustansiriyah University, Volume 2, Issues 6 and 7, Year 4, 2009.
3. Batoul Sarawa Abadi, The Tourist Contract (A Comparative Legal Study), 1st Edition, Al-Halabi Human Rights Publications, Beirut, Lebanon, 2012.
4. Duha Muhammad Saeed Al-Noman, Civil Responsibility of Travel and Tourism Operators, 2nd Edition, House of Legal Books, Egypt, 2014.
5. Dr. Mahmoud Samir Al-Sharqawi, International Commercial Contracts, A Special Study of the Contract for the International Sale of Goods, 2nd Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2002.
6. Firas Karim Shi'an, The Impact of International Trade Agreements in Developing Conflict of Laws Rules, PhD thesis, College of Law, University of Mosul, 2007.
7. Dr. Mahmoud Muhammad Yaqout, The Freedom of Contractors to Choose International Contract Law between Theory and Practice, Analytical and Comparative Study in the Light of Modern Trends, Maarif Foundation, Alexandria, 2004.
8. Dr. Salah Al-Muqaddam, Conflict of Laws in Bills of Lading and Ship Charters, A Comparative Study in Maritime Law, University House, Alexandria.
9. Article 17, the first paragraph of the Iraqi Civil Code stipulates that "Iraqi law is the reference in the adaptation of relations when it is requested to determine the type of these relations in a case in which the laws are in conflict to know the law to be applied among them." The same is true in the Egyptian Civil Code, where it made the issue of adaptation one of The jurisdiction of the Egyptian judiciary, in Article 10 of it.
10. Ahmed Hassan Kazem Al-Masoudi, Contractual Responsibility of Tourist Companies, New University Publishing House, 2018.