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THE SPECIFICITY OF THE HIDDEN DEFECT IN THE HUMAN BIO ELEMENT

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Abstract

A hidden defect in its simple sense is a defect that is not apparent, but its definition in the technical sense is a defect that cannot be detected through simple examination or examination that requires careful scientific examination.

The scientific examination of hidden defects is closely intertwined with the legal interpretation of human biological components. Is it determined by functional organs such as the kidneys and the heart, or is it restricted to cellular components and other structures such as blood, plasma, and stem cells? This is the scientific reality of judicial rulings for all the human components of the human body, which are linked to therapeutic, preventive, and even aesthetic and improvement interventions in the human body. Cosmetic and reconstructive procedures fall under this category, as they are assessed based on their medical purpose – whether for treatment, prevention, or enhancement. A notable distinction exists between the concept of hidden defects in tangible goods and biological defects in human organs, tissues, and cellular structures. This difference is crucial in the legal and medical evaluation of medical interventions.

The research relied on the applied aspect of studying the judicial approach in dealing with relevant judicial disputes in relationships and contractual transactions related to medical interventions that are classified on biological components of organs, tissues, and cells. In practice, the idea of a hidden defect can be studied medically to compare it with the legal concept.

The other method in the research methodology is to identify medical cases that can be used to determine the presence of a hidden defect and its medical effects on the body on which the transplant or surgery was caused or performed.

The research was self-funded, with support from statistical authorities that provided essential data for verifying the presence of hidden defects. The study seeks to define the scientific and legal parameters of hidden defects, examine their characteristics, and determine whether they meet the established criteria for classification.

Keywords: Hidden defect, simple examination, scientific examination, human organs, biological component, medical intervention, medical purposes.

Introduction

The hidden defect in human components and organs within the scope of medical interventions acquires great importance, as performing surgeries for therapeutic purposes, such as organ or tissue transplantation, or prevention, such as prophylactic serums, cosmetics, or orthodontics.

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The elements that are related to the performance of garage work of the above type are necessary when the work in the medical field reaches the hidden defect in the descriptions of trade and the performance of large institutions specialized in stem cells and embryo preservation, which are used in multiple therapeutic and preventive methods so that the defect achieved in them is related to a wide area of individual and collective contracts, as well as the mixing The center of commercial action with the civil contractual relationship in cases of medical contracts related to human components and organs that include hidden defects (Rockman, 2012).

The Specificity of the Hidden Defect in Terms of Human Personality

Dealing with the human body differs in the concept of a hidden defect from dealing with a property in a sales contract, as the physical nature of the property, such as a movable property, in terms of its control and identification, is evident in the possibility of discovering it, and in the final result, it does not pose a threat to human life (Eichler, et al, 2010).

As for the hidden defect that occurs in a human organ that has been transplanted into the human body in a specific surgery, such as kidney or heart transplantation, or other things, the person is vulnerable to death or disability because of this defect. Here, the specificity of the hidden defect appears due to its direct connection to human life, negatively, with damage or partial disability at a minimum, or death at a maximum (Wray, et al., 2013).

Balance in Dealing with Human Organs

The peculiarity of the balance between the authenticity of the human body, with all its members and components, being exempt from financial dealings and compensation within its scope, is in violation of public order and morals in light of the provisions of the general rules of the Iraqi Civil Law No. 40 of 1951 and most other civil laws. This is on the first hand (Manolio, et al., 2009).

On the other side of the balance, it is the realization of cases of donation (hiba), which is a legal act of a contractual nature based on moral and legal considerations, such as a mother donating to her child and a husband to his wife. However, making the human being's body an object of financial evaluation makes the possibility of transgressing against it socially acceptable due to the possibility of entering into profitable speculation. With human organs when dealing with surgical transactions and any medical dealings related to the human body, its biological components, and all components of the human body (McCarthy et al., 2008).

From this standpoint, the application of the concept of hidden defect is related to the partial approach of that concept to dealing with human organs in light of their donation, while enforcing the idea of responsibility for the hidden defect within the contractual scope of the human organ donation contract within the system of donors of organs for humanitarian purposes or religious values (Emerson et al., 2008).

In this context, contractual liability will be discussed in terms of its effects on the appearance of a hidden defect in a human organ (the site of the donation), with a study of possible forms of tort liability in the context of the appearance of a hidden defect in an organ that underwent surgical intervention (outside of the contract) and was transplanted into a human body (Alkan, et al., 2011).

The Financial Value of the Scientific Necessity in Organ Transplantation

The idea of the power of the will is based on giving the will the leading role and basis in concluding contracts and arranging the effects on them.

The personal standard regarding the infallibility of the body is matched by the idea of the right to safety, so the contractual framework such as donation is a balance between that infallibility of the body and the artistic form of the contract (Frazer, et al., 2009)

Thus, the authority of the will is determined as a result of the subject of the acquired right.

In the usual manner, the financial compensation as an exchange value for human organs embodies a practical necessity that includes the following elements (Alkan et al., 2011; King, et al., 2012):

1. The practical necessity of the right to the safety of the body, stems from the right to get rid of pain, seek healing, or get rid of a damaged organ and replace it with a healthy organ.

2. The personal standard based on individuals' choices regarding the motives for donating establishes the idea of a legitimate reason based on the legal aspect.

3. The correct reason for the donation, even in its contractual appearance or the contract in its real state, which is the sale, is considered a financial relationship in terms of the technical form.

In all of this, the standard (organic necessity in contracting) appeared, which means that there is a practical correlation between the personal standard in the authority of administration and the right to request physical safety from the person holding the human organ during transplantation or surgery (Chakraborty, et al., 2016).

There is a complementary center that gives added legitimacy to dealing with human organs, which is all the costs and compensation for medical work, from the transplantation of organs or biological components and stem cells. It is not reasonable to give legitimacy to the work and prevent its necessary elements, which are the human organs being dealt with (Hoskins, et al., 2015)

Here, the issue of the hidden defect is of importance and necessity at a level that reaches the importance of the life essence of the recipient of the human organ.

Table 1

**Statistics table for the donation and sale of human organs for five years
(Formal reports, 2021)**

Year	No. of ungal grazing for animals	No. of correction of the actual situation
2018	1	75
2019	2	102
2020	0	300
2021	1	275
2022	0	466

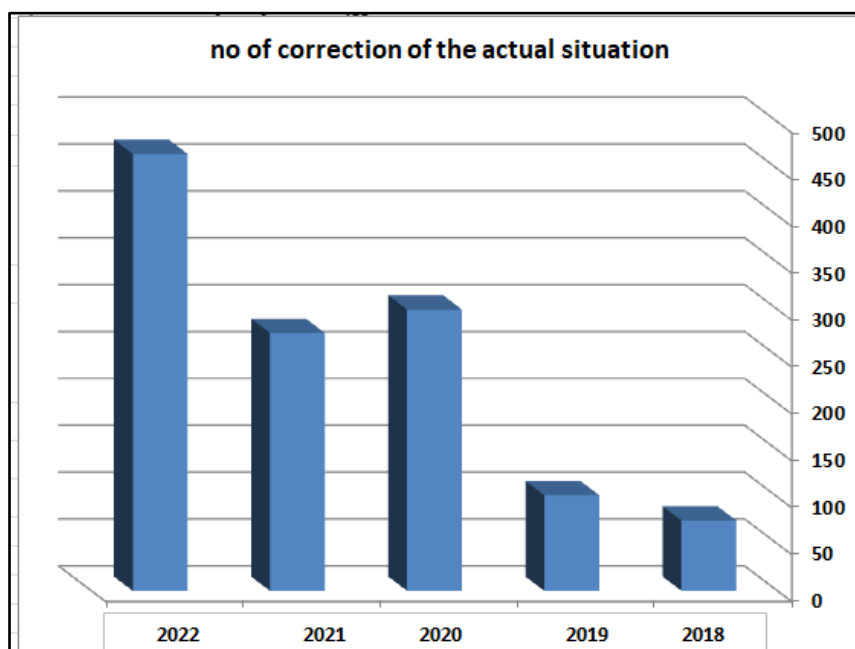


Fig. 1. Statistics table for the donation and sale of human organs for five years

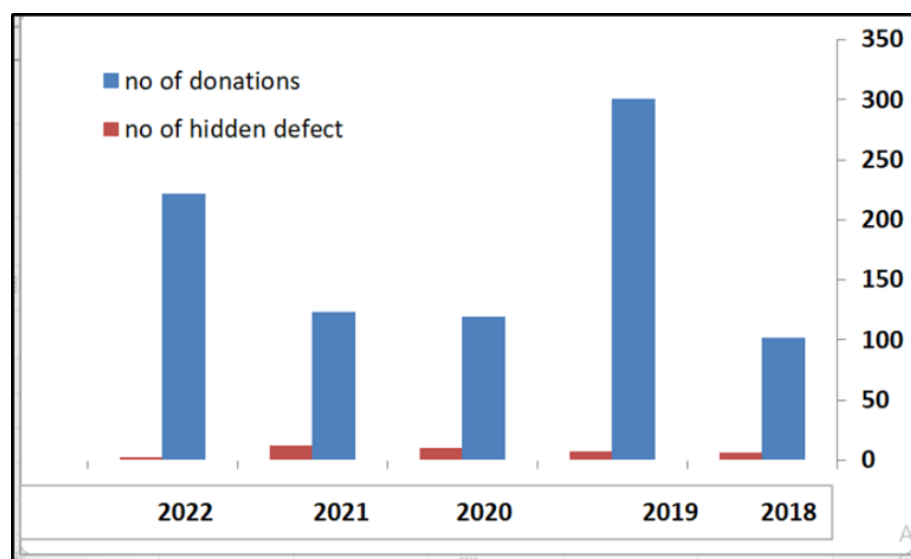
Source: Formal reports, 2021

Table 2

**Statistics on cases of hidden defects in human organs under the heading
of the donation contract for five years**

Year	No. of donations	No. of hidden defect
2018	102	6
2019	301	7
2020	119	10
2021	123	12
2022	222	2

Source: Formal reports, 2021



**Fig. 2. Statistics on cases of hidden defects in human organs under the heading
of the donation contract for five years**

Source: Formal reports, 2021

There was a dispute between the discovery of a hidden defect and the presence of a medical error during the human organ transplantation process, which led to a legal dispute lasting five years (Formal Reports, 2021)

Table 3

Statistics

Year	No. of donations	No. of law suit
2018	102	75
2019	301	66
2020	119	52
2021	123	53
2022	222	41

Source: Formal reports, 2021

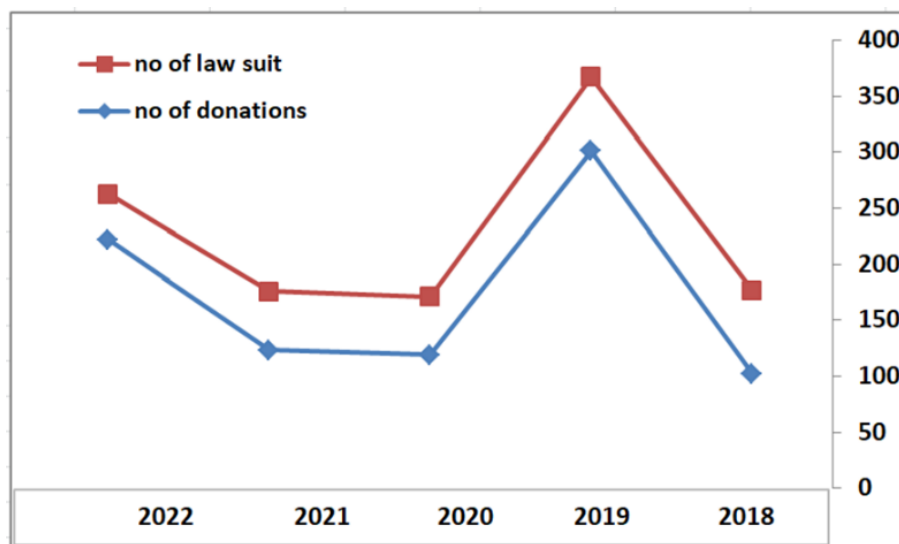


Fig. 3. Statistics

Source: Formal reports, 2021

The Criterion of Denying Possibilities in Members

The specificity of verifying the hidden defect in the arrangement of liability in its contractual or tortious scope is based on the criterion of requiring scientific quality by abstract scientific standards that deny the conceivable possibilities of the existence of a hidden defect in the preparatory examination stage of the organ or biological component nominated for transplantation or medical intervention (Dos Santos, et al., 2015).

In this context, the phrase (zeroing harms) appeared in the scope related to general donations of human organs in an understanding that makes the obligation of the inspection body a commitment to a result that conclusively determines the safety of the organ from any hidden defects by describing the functional defect, the pattern of biological quality in the work, or medical failures (Simão, et al., 2015).

Article 558 of the Iraqi Civil Code stipulates: "If an old defect appears, the buyer has the choice, whether he wishes, to return it or to accept it at its price."

This ruling regarding the organ's rejection and acceptance is preoccupied and devoid of the scientific examination of the nominated organ, just as the discussion about the foot is covered by the state of medical performance at the stage of examining and examining the human organ (Khost, et al., 2016).

The practical aspect, along with the examination and precautionary work procedures, does not preclude the possibility of transplanting an organ containing a hidden defect, at least within the scope of tort liability. Here, the relevant ruling in civil law must be known after the condition that the defect is effective and hidden is fulfilled, in addition to imagining its origin or fraud in the sale of a defective organ. We find that the Iraqi Civil Code stipulates in Article 561 of it: "No sale can be made in one transaction if some of it appears defective. If there is no harm in separating it, the buyer has the right to return the defective item and demand his share of the price. He does not have the right to return all of it unless the seller is satisfied. However, if separating it causes harm, he must return all of it." Or before everyone at all costs) (Cridland et al., 2013).

This text constitutes the following difference from an organizational and doctrinal standpoint (King, et al., 2014).

1. The return or acceptance of a defective item is subject to the buyer's option, and in the sale of organs or donation, the possibility of fulfilling the option along with the damage that may lead to death makes this issue relatively not always feasible.

2. Establishing the possibility of separating the defective part of the merchandise. Although it is possible to imagine it in practice regarding the contamination of some vials of blood inserted into a human body and the safety of the remainder, the human organ in its condition, linked to its biological function, does not occur in practice, so the damage resulting from the defect is inherited in such a way that talking about separating the merchandise between its defective parts and its sound parts are practically not achieved (Stapleton, et al., 2002).

The hidden flaw in the aforementioned ruling does not respond to the specificity of the human organ and the biological components of the human being in cases of dealing with them as donation or sale (Cridland, et al., 2015).

Therefore, the arrangement of liability by combining the ease of proof in contractual liability with the capacity for compensation for material and moral damages, and between direct and indirect damages, actual and future damages, is necessary for placing the human organ in a circle and orbit that raises the description of obligation to the chapter of purpose and result in the examination stage in light of this aforementioned criterion. About the subject of the transaction, whether a human member or another (Swinburne & Silver, 2008).

The Idea of Absolute Solidarity Is the Obligation to Guarantee Hidden Defects

This obligation is linked to the concept of proactive guarantee, which is defined as (the guarantee applies within its period during the stage of preparing the organ and the human component for candidacy for medical intervention), regardless of the purpose of that therapeutic, preventive, or cosmetic intervention (Long, et al., 2000).

This falls within the line of commitment that is open to the parties of all individuals and entities involved in this interference.

The doctor's commitment to a subsequent outcome is this absolute commitment.

There is a European approach to the civil courts and an American judicial approach to the federal courts specialized in civil lawsuits to determine solidarity and solidarity between the subsequent obligation of the doctor and the previous obligation.

The nature of this obligation is precautionary or preventive, as some call it, and the meaning of prevention is not to avoid harm, but rather to ensure the quality of the organ being dealt with, and that quality has purely medical and scientific standards and is not subject to the personal discretion of the parties to the contractual relationship or dealing with the human organ in tort.

There is a principle called (double review), which requires reviewing the initial examination and considering it non-existent to conduct the scientific examination of the human organ or biological component according to the usual standard of man, which is achieved by exerting technical effort to lead to the result that is known in similar situations as a result, and not by exerting care to the point of usual (Petrov, et al., 2011).

Agreements to Exempt From Liability for Hidden Organ Defects

From the standpoint of exemption from contractual or tortious liability associated with a contract, it is related to strengthening the financial position of the person who decided on the exemption condition for his benefit, so he gets rid of the guarantee or compensation by the aforementioned condition related to the exemption.

In conclusion, the exemption is financially managed and linked to the financial position, and this in civil obligations is possible considering that the subject of the civil obligation is of a purely financial nature as a valid reason and purpose, whether in compensation in the event of damage or breach of the contract or terms of the financial position in real estate holdings and others (Lohmueller, et al., 2013).

Determined from the following advanced offer (King, et al., 2011):

1. The financial nature of the civil obligation, the basis for the exemption is to maintain that position.
2. Agreements for exemption from liability do not relate to topics that violate public order and public morals, such as exemption from the damages of crimes.
3. The exemption has a contractual origin, even if it is linked to the exemption from the damages of the negligent act (unlawful act).

All three advanced characteristics differ within the scope of human organs or biological components and elements, as the subject of the medical contract is to achieve a positive result in recovery without the consequences of harm such as permanent disability, organ damage, or death in the event of a hidden defect associated with human organs or other components of the human body that are implanted or It enters the body of an injured person, a patient, or someone seeking protection with a vaccine or medical serums.

The defect is connected to a danger surrounding the person that is contrary to public order and public morals, such that strengthening the financial position is not achieved by the appearance of eliminating the guarantee or compensation.

Contractual or tortious liability related to human organs or biological components and elements is required to tighten liability, so the doctor's obligations are obligations with a result distributed as follows (MacMillan, et al., 2016; Ye, et al., 2009).

1. Complete and complete guarantee of the safety of the human organ and biological component such as blood or plasma regarding the quality of its functional work and its freedom from all defects diagnosed medically and scientifically. The criterion for this is objective, scientific, linked to medical sciences and not personally linked to the parties to the medical treatment contract or their public or private background.

2. Guaranteeing the result of transplanting an organ inserting a biological component into the body of a patient or injured person or requesting ameliorative, cosmetic or preventive surgery.

In conclusion, exemption from medical liability within the scope of a hidden defect associated with human organs or biological components is excluded to preserve the human being and make the infallibility of the body applicable not to protecting it while it is healthy, but rather to all forms of attempting to protect it if protection is needed due to damage to an organ or biological component, and that the obligation The doctor is committed to an outcome.

Results

1. The peculiarity of the hidden defect in the human organs and the biological component of the human being is that it is directly related to the life of the human being, whose level of harm may reach the point of death or permanent disability at a minimum.

2. The hidden defect in human organs and biological components is always revealed through careful, specialized scientific examination.

3. The criterion of organic necessity means achieving a correlation between human will and the right to request the physical safety of the person receiving the human organ or biological component.

4. The quality of the human organ and biological component is verified through the zero-harm standard, which requires that the organ must be functionally safe and of good quality with absolute certainty.

5. Separating the defective part of an organ or biological component is practically inconceivable to differentiate in the price between the share of the defective part of the price and the share of the defective part, or return it in full or take it for the full price when it is not possible to differentiate, as we are faced with a human being whose defect may result in the human's life, and thus the discussion is The differentiation and price are unacceptable from a practical standpoint.

6. The hidden defect in the human organs and the biological component of the human being is not linked to the contract of sale and the financial compensation therein, because the human body is inherently beyond dealing. Therefore, dealing was limited only to cases of gift and donation in order not to turn the human body and its organs into financial speculation and cases of trafficking.

7. Statistical data indicate the popularity of the sham donation and donation of human organs and the biological component of the human being, and the realization of sales and financial speculation in reality. Thus, the intersection occurred between the apparent sham contract, which is (the donation contract), and the real subcontract, which is (the sale).

8. The description of a tortious act has been achieved in many cases of medical contracts in organ transplantation as a result of trafficking and illegal endeavours to deceive to achieve a financial profit from dealing in human organs and the biological component of humans.

9. One of the manifestations of the infallibility and protection of the human being and his body is the inclusion of all dealings with human organs and the biological component in cases of cultivation with the idea of the infallibility of the body, not in the preventive aspect, but rather in the complementary, therapeutic and preventive aspects, and cosmetic, corrective and improvement operations for the human body and appearance.

10. Agreements to exempt from contractual liability and the effects of tortious acts for hidden defects are considered a violation of public order.

11. The necessity of tightening the contractual responsibility regarding the issue of hidden defects in human organs and the biological components of humans.

12. Protecting the person receiving the human organ and biological component by combining the ease of proof in contractual liability with the breadth of the scope of compensation and the type of material and moral damages in tort liability.

Suggestions

1. Establishing a bank of human organs, elements of valid biological components, medical intervention in the processes of transplantation and reception in the human body, according to the scientific classification thereof, on the national and global scale.

2. The necessity of adopting a specialized sectoral body that combines precise scientific specializations in medical sciences with legal expertise to formulate model contracts with a global framework to cover the possibility of transferring human organs and the biological component of humans at the world level so that there is a vision in addressing potential conflict situations as well as combating cases of human organ trafficking. The biological component of man.

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Conflict of Interest. None.

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