

The Legal Basis for the Class Action Lawsuit

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Abstract

The civil judiciary is a required judiciary and not an automatic judiciary, that is, the civil judge does not take an act except based on a request submitted to it, and this request must be submitted in a written form called (the case), and in that the second article of the Iraqi Civil Procedure Law stipulates that: "A lawsuit is a person's request for his right from another before the judiciary." A class action lawsuit is a form of litigation, as it is a mechanism that allows a group of individuals who suffer from the same damage or harm to file a joint lawsuit against the responsible party, with one petition before the judiciary, where they can join the lawsuit, class action lawsuit automatically, without the need to obtain approval from the court or the responsible party.

This procedure is important in achieving a fair and prompt judgment, in addition to reducing expenses and avoiding issuance of different judgments against the defendant in the same case, and thus ensuring the smooth functioning of the judiciary, as the class action lawsuit is applied in many countries, and the application varies from one country to another.

Keywords: *Class action, Class litigation, Class Members, The lead plaintiff, Consolidation, Joinder, Class Action Prerequisites.*

Introduction

The development of life in its various political, economic, social and scientific aspects has cast a shadow on the legal aspect regulating that development, and the harm that results from the use of the necessary means to keep pace with development has become not limited to a specific person or persons in particular, but rather extends widely to affect a group of consumers or workers, or it may extend to include the entire community or lead to pollution of the environment in which people live.

First - the importance of research:

Technological and industrial development led to the increase and development of production, distribution, and multilateral relations, and as a result new legal relations emerged. Therefore, it was necessary to search for appropriate means to provide protection for people who deal with these entities and large companies.

Since resorting to the judiciary with a traditional lawsuit (ordinary, individual or personal) does not achieve effective protection for these people in obtaining their rights, for several reasons related to the futility of the traditional lawsuit, given its long procedures and high costs, there was talk about a more effective method that guarantees the rights of those affected, as Many pieces of legislation have approved so-called class actions.

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Second - the research problem:

Modern legislation has come to provide for a class action lawsuit mechanism. In the United States of America, this lawsuit, which is called in American law the term (Class Action), is filed in the form of group or group lawsuits. It means that one of the plaintiffs, or a group of them, represents the interests of those affected without any Agency before the courts. When the legal and factual issues of each victim are common to the whole group, then compensation can be obtained for all members of the group.

These lawsuits have achieved some positive results in many countries, but nevertheless, there are still many challenges and obstacles facing the application of class action lawsuits in Iraq, including the lack of legal awareness among citizens and lawyers about this legal mechanism, as well as the lack of Clear and specific legislation to implement class action lawsuits in Iraq.

Third - Research Methodology:

The goal of this study is to reach a legal organization that governs the issue of class action lawsuits in the Iraqi Civil Procedure Law, through a descriptive analytical study that provides practical solutions and answers the many questions regarding the issue of multiple plaintiffs as a result of their common collective harm. The theoretical study does not highlight its importance unless It was ultimately coupled with practical solutions, which are represented in the results and recommendations that this study will reach.

Fourth - Research plan:

We divided the research plan on the topic (the legal basis of the class action lawsuit) into an introduction, two requirements, and a conclusion. We explained in the introduction the importance of the topic and the problem it raises, as well as the methodology used in the research and the research plan. In the first requirement, we dealt with the topic (definition of the class action lawsuit), while the second requirement was Titled (The Class Action Suit and the Rules of Intervention and Entry), and at the end we included the conclusion of the research, the most important results and recommendations.

The first Section

Introduction to the class action lawsuit

The idea of a class action lawsuit was born in the United States of America, as a result of a group of historical, political and social influences that reflected different aspects of the civil litigation scene in the United States of America, which made its litigation system unique and different from litigation systems in other countries.

The class action lawsuit in the United States of America went through several stages, some of which were almost abandoned, but it later survived thanks to the influence of the Supreme Court judge in the United States of America (Joseph Story) (1), who introduced it into American law through brief discussions in his treatise on equality and fairness. It was then adopted in the Federal Rule of Civil Procedure No. 23, and the US Congress enacted the Class Action Fairness Act (CAFA) in 2005.

The class action lawsuit was defined by several definitions, including: It is a procedural means that allows one or more plaintiffs to file a lawsuit and sue the defendant on behalf of a larger group or class, while the Class Action Fairness Act (CAFA) defines the class action lawsuit as: “Any civil suit filed under Rule 23 of The Federal Rules of Civil Procedure or a similar state law or judicial procedure rule that permits an action to be brought by one or more representative persons as a class action” (2).

It is also defined as a procedure by which a large group of entities known as a “class” can challenge a defendant’s alleged illegal conduct in a single lawsuit, rather than through several separate lawsuits brought by individual plaintiffs (3).

In a class action, a plaintiff, known as a class representative, named representative, or lead plaintiff, may sue the defendant not only on behalf of himself, but also on behalf of other entities (called class members or class members) who exist similarly to the class representative in order to resolve any legal or factual issue common to the class or the entire class.

For example, a group of consumers or a single consumer could file a single class action lawsuit against a manufacturer on his own behalf as well as on behalf of all other consumers who purchased a particular product and were harmed by it, eliminating the need for other plaintiffs to actually join the lawsuit.

Class action lawsuits have also been known as the tool that gives American workers and consumers power and the ability to level the playing field, even when the class (the group of plaintiffs) faces the most powerful corporations in the world (4).

Class action litigation has also been defined as a means for a large number of victims to collectively obtain justice for their misbehaviour, when individual lawsuits are economically impractical (5).

For example, a large number of people may suffer damages that are small in size, but on the other hand, the compensation for them can be very large in the event that a collective lawsuit is filed, unlike an individual lawsuit in which the expenses and fees for filing are greater than the amount of compensation that could be received. It is obtained by the individual plaintiff, as in the case of small deductions made unlawfully by telecommunications companies.

The class action lawsuit is also defined as a popular procedure, which includes the right of the injured party or parties to a specific request to which compensation applies, under the conditions and circumstances stipulated by the law, where popular measures can be taken to prevent, stop or enhance the prosecution of crimes against: public health, rights Consumer, human rights or environmental and cultural heritage preservation. In addition, the right to popular action can also be exercised to protect state property, and a collective (popular) lawsuit can be filed before administrative or civil courts, and here the competent court is determined depending on the type of interest involved., and whether the interest or right and damage resulting from the illegal behaviour are related to a public or private entity, and to initiate a class action lawsuit, the plaintiff must file the lawsuit before the competent court (6).

What is noted in the subject of class action lawsuits is the multiple attempts to define it. This lawsuit has also been defined as: "A lawsuit that allows an individual to represent a group of plaintiffs whose identity is unknown, and it remains that way until a ruling is issued in the case" (7).

We note from this definition that it does not indicate that the plaintiffs in this lawsuit must have a single interest, and that they suffer common harm, which is the most important condition for exercising this lawsuit, as it is a gathering of a group of individuals, or consumers, in order to defend precisely defined collective interests.

A class action lawsuit has also been defined as: "A case brought by one or more representatives against defendants on behalf of themselves and people in a similar position. The represented plaintiffs, the court, and the advisor appointed to represent the group have the responsibility to ensure that the interests of all members of the group are adequately represented." (8).

We note that this definition is distinguished from the previous one by being more comprehensive, and it focused on the role of the representatives of the affected people in this lawsuit. This role, in addition to the role of the court in the class action lawsuit, is what distinguishes the American and British model of the class action lawsuit, as this lawsuit is directed primarily to a group of individuals who are in a position of weakness

such as consumers and workers, once a group is established its members benefit from the possibility of forming a greater power, and obtaining better compensation for collective harm at once, for all members of the group.

A class action lawsuit is also defined as: “a procedure that allows plaintiffs to come together to collectively seek compensation from the perpetrator of a common tortious act” (9).

Through this definition, it is noted that this lawsuit allows the plaintiff, on behalf of a group of people, and without obtaining prior authorization from the members of the group, to exercise a lawsuit before the judiciary, so that this lawsuit allows, once the ruling is issued, to have the authority of the *res judicata* against all members of the group.

The group in whose name the lawsuit is filed is defined as: “a group of members, or unspecified persons, represented by a natural or legal person before the court” (10).

It is noted that this definition indicated the possibility of plaintiffs being represented by a legal or natural person. It did not limit the task of representation to natural persons only, but this definition did not address the participation of the group in common damage resulting from a common harmful act and from the same person.

Through the advanced definitions, we find that there are several common and important elements in order for a class action lawsuit to constitute an effective and useful procedure. These elements are speed, the presence of common damage, the distribution of compensation among those affected, and a lower cost of litigation. Therefore, this lawsuit can be defined as: the lawsuit filed by a representative. A group of affected individuals to claim compensation for the common harm resulting from a common harmful act committed by the same person, or to demand the cessation of illegal behavior and the treatment of certain cases related to a public or common interest.

Procedural laws have witnessed an important development, represented by the collective nature of lawsuit filing procedures in the name of all those affected in the case of joint harm, as the pace of experiments by many countries with the collective or representative litigation mechanism has increased significantly in recent years, and this has resulted in studies and proposals in These countries are likely to provide a new legal system for litigation, similar to what exists in the United States of America, from which the idea of class action began, noting that those countries that have moved towards class action litigation or representative actions deal with aspects of class action in different ways to suit the system. The law of each country, and here it can no longer be said that the class action lawsuit is an exclusively American tool.

All over the world, individuals, non-governmental organizations, and what are known in some countries as “public officials” resort to the courts to recover compensation for mass damages, such as mass injuries caused by defective products or environmental exposure to toxic chemicals, and mass financial losses resulting from violations of the law. Antitrust (anti-competition), as well as securities law, consumer protection laws, and historical and contemporary civil rights and human rights violations. The United States of America led these developments when it created the “Civil Rights Revolution” in the 1970s in the United States, which became the legal framework for asserting civil rights. , demanding protection from environmental damage, and demanding compensation for losses resulting from anti-consumer business practices, by adopting the revised Federal Class Action Rule No. (23) in 1966, which made it easier for individuals to collectively apply for compensation, including financial damages on behalf of Large groups of individuals in the same situation. Public interest lawyers have also used class action lawsuits to obtain injunctive relief from the government to eliminate racist and other discriminatory practices, education, prison reform, and social welfare. Private attorneys have also used class action lawsuits to obtain monetary compensation for victims of

fraud. Consumer, security regulation violations, product-related injuries and environmental damage (11).

It should be noted that the mass culture based on the media has created a suitable environment for the flourishing of class actions in those countries, especially the United States of America. Class actions are not only a technical issue that concerns lawyers, but rather the social, economic and political consequences of allowing class actions may be widespread, given that the type Class action procedures adopted by the United States federal judiciary in 1966 and covered in detail since then enable individuals with relatively modest claims that would be impractical to litigate individually to join forces and seek compensation. Their availability within a legal system dramatically changes the balance of power. There is a significant difference between the “haves” and the “have-nots”, because this type of class action allows one aggrieved person or a small number of individuals or entities to litigate on behalf of people who may not be aware that they have viable legal claims. A legal system can significantly increase the opportunities for litigation, and because the type of class action procedure adopted by the United States allows class representatives to seek financial damages on behalf of all those who meet the definition of the class, organizing it within a legal framework can significantly increase the breadth of the scope of the lawsuit of civil litigation.

These consequences also have enormous potential to deter institutional and corporate wrongdoing and shift the balance of power between citizens and their governments, employees and employers, consumers, manufacturers and service providers, since private (individual) litigation may be widely dispersed – especially in federal and decentralized systems like the United States. American – It may be very difficult for powerful groups within society to constrain, compared to the executive and legislative branches, which are highly vulnerable to pressure from those seeking to protect and expand their own interests (12).

In less than a decade, the number of countries allowing class actions has doubled, including: Germany, Japan, Switzerland, Argentina, Australia, Brazil, Canada, Chile, China, Denmark, Finland, Indonesia, Israel, the Netherlands, Norway, Portugal, Africa. , Spain, Sweden, Taiwan, Austria, England, France, and Poland, in addition to the European Union. Italy also adopted the class action law in early 2008, and one of the Arab countries that adopted the class action lawsuit is the Kingdom of Saudi Arabia, and it has adopted it clearly and explicitly in the field of the stock market. Finance.

It should be noted that each of these countries has adopted a specific form of class action suit in accordance with its internal laws, but they nevertheless share the broad application of the class action rule in the United States of America, and some countries that have already adopted a form of class action suit The collective is discussing changing or supplementing this procedure that would arguably provide greater access to the courts for consumers, investors or other groups of citizens.

It is clear that the importance of access to justice, as a basic human right that must be available to everyone, is a consideration that stimulates new thinking towards collective litigation. The collective lawsuit aims to compensate for collective damages, that is, those that affect a large number of people, without everyone having the right to do so. Someone has the ability to file a traditional lawsuit and confront major companies or entities on his own.

In Iraq, there is no explicit provision for taking a class action lawsuit, and there is no similar procedure other than the legal rules related to the incident case (the rules of intervention and entry), and these rules do not rise to the importance of the class action suit.

We believe that it is strange to Iraqi legal thought to allow a person to exercise rights and file a lawsuit on behalf of a large number of people without these same people

participating as parties to the lawsuit, or there being no authorization from them or the absence of a specific legal relationship between them that justifies filing the lawsuit, as in Credit and debt relationships.

The ordinary civil lawsuit usually includes one plaintiff filing the lawsuit to claim compensation for the personal injury caused by the defendant. The injured party is considered to have the original right or the capacity to seek compensation for damages to his person or property. To do so, the plaintiff files an individual lawsuit and includes the requests that it aims to protect or obtain it.

As for the lawsuit that aims to protect common interests or claim compensation for common damages resulting from a defective product or common damages, such as environmental damage or general accidents, this lawsuit takes on a broader meaning according to the different interests violated by the responsible person.

The collective lawsuit is not an individual (personal) lawsuit related to the harm that befalls the injured party alone, or to those who come after him who have rights. Rather, it is related to illegal behavior or damage to the total public interests of citizens. It is a lawsuit that includes a group of people who have suffered similar injuries as a result of a defective product made by the defendant or as a result of an action taken by the defendant.

It is noted that there are many applications of class actions, and here we mention them, for example: Residents of a residential project suffer property damage due to the leakage of toxic materials by a negligent company, or any other damage that may be caused by the company operating the residential project, damage that befalls Consumers due to a defective product, loss to fund company investors due to fraud committed by securities companies, patients suffering an injury due to a dangerous medication or drug, employees who feel they have been discriminated against or not properly paid the overtime wages they deserve.

These are just a few examples of why people band together to file a class action lawsuit, rather than filing individual lawsuits. In these cases mentioned above, the affected people band together to take action. This often saves time and costs, as well as leads to less frustration and delays in pursuing individual lawsuits.

It should be noted that the primary goal of the traditional judiciary in general is how to deliver the disputed right for which the lawsuit is being brought to its real owner, and that as the judge undertakes this dangerous task, there must be fixed rules that constitute the means that determine for him how to claim the right if an evil person denies it. Or he was assaulted by a usurper, and organizing his work when considering the disputes brought before him. It is not enough for the rulings to be fair, but in addition to that, they must be quick, complete, low-cost, fulfilling the guarantees and the court of procedures. Therefore, the procedural laws regulate the methods of litigation, and the most important rules that Included in achieving this goal are the rules that regulate the manner of filing a lawsuit and submitting it to the court. These rules are the rules that the courts cannot do without enforcing and applying them in most general cases, especially when there are multiple lawsuits and opponents in a single petition submitted to the court.

There is no doubt that the goal that the judiciary seeks is to reach the truth, and to issue rulings and decisions that reflect this truth, and the means of moving the judiciary to achieve its goal and to intervene to resolve individual disputes is (the lawsuit). This is because the civil judiciary is a required judiciary, as the judge does not have the right to look into matters. Disputes on his own without a request from the concerned parties, and this request is called a lawsuit or judicial claim, so the Iraqi legislator defined it in Article 2 of the effective Civil Procedure Law No. 83 of 1969 as amended, as: "A person's request for his rights from another before the judiciary," and the reality is The lawsuit is nothing but a legal action by a unilateral will, which - like all legal actions - must take

place in accordance with the provisions of the law, so the procedural laws set conditions for its acceptance (13). If one of these conditions is failed, the claim for the result is invalid and incorrect, with which a legal relationship cannot be proven. It is valid between the opponents themselves and not between them and the court required to resolve the dispute.

Since the lawsuit is considered an important procedure, procedural laws - including the Iraqi Civil Procedure Code - regulated its procedures and how to submit it to the court, and this is what was made clear in Article 44 (14) of the Iraqi Civil Procedure Code. Legal scholars (15) have called these rules (the principle of the unity of the civil lawsuit petition) These rules included the contents of the request (the petition of claim), which is considered the first procedure of litigation and according to it the scope of the case, its cause, or the opponents in it are determined. It is written by the plaintiff himself or through his agent. Since it is of this importance, the legislator also regulated it and required that it include important data. It stresses its observance with the aim of achieving sound litigation and protecting the rights of disputing parties, and sets a penalty in the event that there is a deficiency or error in that data that makes it impossible to report.

Legal jurisprudence has defined the lawsuit as: “a legal means by which a person turns to the judiciary to obtain the determination of his right, or to protect it, or to enable him to benefit from it, or to compensate him for this benefit” (16), and it has also been defined as: “the legal means by which the individual resorts to the judiciary to determine A right or protecting it from denial or deficiency in its content” (17), and it is defined as: “the power to resort to the judiciary to obtain the determination of a right or its protection” or it is the right granted to every human being to review the judicial authority to obtain a denied or usurped right (18).

We believe that the above definitions focus on one meaning of the lawsuit, even if they differ in wording, which is the right granted to every person, whether a natural or legal person, to request in writing from the judiciary to establish his right or to protect him from the denial of the opponent or to compensate him for damages he suffered due to illegal behaviour, whether The defendant is a natural or legal person, and thus exercising this right is a written, voluntary act that must be submitted to the civil judiciary in order to be able to provide judicial protection to the applicant, because the activity of the civil judiciary is required and not automatic.

Through the text of Article (44) of the Iraqi Civil Procedure Law, we find that the principle is the unity of the civil lawsuit petition, and the exception is the multiplicity of parties and their requests in one lawsuit, and based on the legal rule that stipulates that the exception may not be expanded upon, it cannot be said that The original multiplicity of parties to the civil lawsuit, stipulated in the fifth and sixth paragraphs of Article (44), constitutes a general rule for the collective lawsuit, because these two paragraphs are an exception, and the exception cannot be expanded upon. As for the collective lawsuit, it is a distinct legal system, with its own requirements and objectives. Private.

As we mentioned at the beginning, a traditional or individual lawsuit is usually filed by one plaintiff against one defendant as well, and the plaintiff provides specific evidence of how the defendant harmed or harmed him illegally. An individual lawsuit is an effective means of resolving the dispute because it It allows each party to the lawsuit to present all relevant evidence that supports its claims or defences, which enables the court to rule, when necessary, on the legal sufficiency of these allegations, and the court has the right to find the facts that lead to a ruling in Favor of the plaintiff or defendant, and in the United States of America, This is done by following the so-called “American rule”, where each party to the lawsuit bears the fees for individual litigation (19).

From the practical aspect of the individual lawsuit, despite its many advantages, the plaintiff’s individual lawsuits may be insufficient to deal with situations in which the defendant engaged in illegal behaviour that harms a large number of people to a modest

or simple degree, as each lawsuit must be filed separately. It must end with a separate legal ruling.

These separate claims can also lead to inconsistent results or contradictory rulings, when a court finds that a defendant's conduct was unlawful in one case, but lawful in another. These inconsistencies can undermine public respect for the judicial system, which - in principle - The legal adjustment to a defendant's actions must be reliably and factually determined, and it also raises fairness concerns, given the possibility of a coincidence that could result in two similar plaintiffs obtaining different outcomes from litigation against the same defendant.

In addition, filing an individual lawsuit may cost a lot of money, as the plaintiff must hire a lawyer in the lawsuit, and therefore, money must be spent on developing the facts and facts of the case, by researching the elements of the plaintiff's claims, as well as by assigning experts, Review documents and other things to ensure their authenticity. If the plaintiff's claim is proven and he is entitled to compensation, the compensation here may be a small amount compared to the amounts spent by the plaintiff for this lawsuit. Therefore, people who are exposed to joint damages resort to filing a class action lawsuit, which leads to reducing effort and expenses, and thus The award may be very large and may involve punitive damages in certain cases provided by US law (20).

The Second Section

Class action lawsuits and rules of intervention and entry

Many procedural laws, including the Iraqi Civil Procedure Code, know special rules related to the multiplicity of parties to a civil lawsuit, whether on the part of the plaintiff or the defendant, and they are called (the rules of intervention and entry).

Most Arab legislation, such as Egyptian, Qatari, Jordanian, Kuwaiti and Emirati legislation, has called the system of allowing others to be involved in a lawsuit by another person "intervention" if it is optional for him, and called it "litigation or intervention" if it is compulsory for him. Jurisprudence and jurisprudence have followed suit. Naming the person outside the dispute if he intervenes in the case or is involved in it as (the intervenor) or (the litigant) (21).

The Iraqi legislator chose to call this system "intervention and entry," and to call the intervenor and litigant "the third person." The Iraqi legislator had adopted that designation in the repealed Civil and Commercial Procedures Law No. 88 of 1956, which stipulated in Article (13/2): "Entry shall be considered A third person in an accident lawsuit."

Article (14) of it also stipulates: "1- Every person who was not called to trial as one of the parties and the lawsuit affects his rights and who seeks to prove or protect these rights against the two parties or one of them in the original lawsuit or to support the requests of one of them if its success is in his interest may request his entry into the court." The lawsuit may be filed by a third person via a petition. 2- Each party may request the inclusion of someone who is validly litigated in the lawsuit when it is filed as a third person in the lawsuit. The request to include a third person in this manner may be verbal. 3- The court may decide to include a third person in the lawsuit if it deems it appropriate. That this facilitates the ruling or preserves the rights of the two parties or one of them...) Articles 15 and 16 thereof included a reference to this term as well.

This designation was approved in the Ottoman Civil Procedure Code for the system of involving others in lawsuits and for the intervention of others in appeals. It was included in Articles 151 and 193 thereof, and the effective Iraqi Law No. 83 of 1969 took the same designation in Paragraph (1) of Article (69) of the applicable Civil Procedure Code.

How do the rules of intervention and entry - which is a form of the incident lawsuit - differ from the class action suit,(22) and can they be relied upon to file a class action suit?

The first paragraph of Article (69) of the Iraqi Civil Procedure Law stipulates that: “Any interested party may request that a third person joining one of its parties be included in the case, or request a ruling for himself in it, if he has a relationship with the case or is linked to one of the opponents by a bond of solidarity or An indivisible obligation, or it would be harmful to rule therein.”

Looking at the previous text, we find that there are two forms of third-party intervention in a case brought before the court. The first form represents accessory intervention, which means that the third person intervenes in the case on his own initiative, and of his own will. He is not forced to do so by the text of the law, the will of the opponents, or the court order. (23), which is what the Iraqi legislator expressed by saying: “joined to one of its two parties.”

This intervention is aimed at preserving the interests and rights of the intervenor, and not claiming a special right for him, such as a joint guarantor who requests entry on the side of the defendant debtor, and the creditor requests entry on the side of his plaintiff debtor, to help him win the lawsuit filed by him against (the defendant), because in It earned an increase in the general guarantee on the funds of the third-person debtor plaintiff in the lawsuit (24).

If we assume a case of collective damage, such as a bus accident, for example, that caused damage to a group of people, and one of them filed a lawsuit to demand compensation, then the other affected people will not have the right to request accessory intervention, as it is preventive and with the aim of monitoring matters closely, while in this case everyone is harmed. He has an original right, and it is of no use for him to intervene in a lawsuit filed by another aggrieved person. His role in this type of intervention is limited to standing by one of the parties to the lawsuit and supporting his position, and he does not have a lawsuit or demands of his own (25).

As for the second form of third-party intervention, it is one in which he independently requests a ruling for himself with a personal right related to the lawsuit and is facing both or one of its parties. This intervention is known as (adversarial or offensive intervention) (26).

According to German and Italian jurisprudence, it is the intervention whereby others claim their right to confront one of the parties to the dispute and not to confront the two opponents together. For example, a union intervenes to defend a collective interest alongside one of its members who is defending his private interest before a person who committed an act that is considered an attack on both private interests and the collective interest (27).

This picture differs from the first picture in that the right claimed by the intervenor in the first picture is the same right demanded by the opponent on whose side he intervened. However, in the second picture, the intervenor may demand the same right or demand another right, but in the face of one or both parties (28).

An example of this intervention is when a lawsuit is filed between a seller and a buyer regarding a sales contract, and the broker intervenes demanding his fees, and the seller and the buyer dispute over it, as these fees are linked to the original lawsuit, because they are based on the cause of the lawsuit itself, which is the sales contract (29).

In order to achieve the court’s acceptance of this intervention, several conditions must be met, including that the request for intervention be for the purpose of claiming a special right for the intervenor, but it is linked to the lawsuit, and that the intervenor is in the position of the plaintiff with respect to the two original parties to the lawsuit, and that the intervenor must have an interest in this intervention, and it is considered so if he will be affected by the outcome of the ruling issued in the original lawsuit (30).

Would the previous conditions be met if an aggrieved person requested to be included in a compensation claim filed by another aggrieved person? In terms of the first condition, the second injured party is claiming a pure right, but is it related to the original lawsuit? Connection is defined as the existence of a close connection between the lawsuit of the first and second injured party, such that the requirements of justice require that the court consider them as one lawsuit, to ensure that the rulings do not conflict. This connection is achieved when one of the following elements is united in the two lawsuits: the opponents, the subject matter, or the cause.

In adversarial intervention, the intervenor (the third person) disputes with both parties to the lawsuit to demand all or part of what the plaintiff demands. In doing so, he competes with the plaintiff in the right he claimed, in whole or in part. The intervention lawsuit is always influential in the outcome of the original lawsuit. If the third person's claim is proven to be valid This inevitably leads to dismissal of the plaintiff's claim, in whole or in part, and if it is proven that the plaintiff is entitled to the entire claim, the ruling will be dismissal of the intervenor's claim (the incident lawsuit), while in a class action lawsuit the plaintiff is a representative of the class, and therefore he sues the defendant on behalf of the group of people. Those affected by the same illegal behavior or incident that caused the harm, and the defendant will be faced with obtaining a judgment that includes everyone who chose to join the class action lawsuit.

It is also noted that the Iraqi legislator has stipulated other conditions for intervention in the case, which are that the adversarial intervention should not delay the decision of the original case, provided that the intervenor's request for compensation in a case brought by another aggrieved party will inevitably result in delaying the decision of the case. Because the court will examine the request as an independent lawsuit to request compensation for a person other than the injured party who filed the lawsuit, to determine the elements of responsibility, including error, damage, and a causal relationship. The court must hear the witnesses again, even if they are the same ones in the lawsuit of the injured party filing the lawsuit, and request new expertise, not to mention if a number interveners due to a single cause of damage are as large as fifty people who were involved in an accident, one of them filed a claim for compensation, and the others intervened to claim their own compensation.

As a result, we say that in practice it is not possible to rely on the rules of accessory and adversarial intervention in a class action lawsuit, and the reason for this is that in accessory intervention, the intervenor does not claim a special right for him, but rather supports the position of one of the parties.

As for adversarial intervention, the intervenor requests compensation for damage he has suffered, which amounts to a new lawsuit, which is not a suitable ground for intervention. The intervenor here is also required to pay the legal fee to enter the lawsuit, and there is no legal text that gives the court the right to make an analogy with the lawsuit of the first aggrieved person who filed. The lawsuit uses the same evidence and suffices with the testimony of the witnesses and experience that it previously requested from the first aggrieved party filing the lawsuit. Indeed, the court will deal with every request to intervene in claiming compensation as a completely new lawsuit, and this will inevitably result in a delay in adjudicating the first aggrieved party's lawsuit.

It must also be noted that requests for intervention are not accepted without the interest of the intervenor. This interest exists if the intervenor wants to monitor the progress of the case in a way that does not prejudice his rights. It also occurs when one of the parties to the original case disputes a right that is the subject of the existing case. As for the aggrieved party who requests intervention, it does not An interest for him, as he is asking for a new right that is exclusive to him and is not linked to the right of the other injured person (31).

It should be noted that the civil lawsuit in general may be subject to multiple pluralities during its consideration by the court, and this is called incidental pluralism, which represents the incidental lawsuit, and the pluralism may be original, and here the civil lawsuit is multi-party, and this is stipulated in Article (44) of the Civil Law. The Iraqi Code of Civil Procedure, with its fifth and sixth paragraphs, can distinguish a class action lawsuit from an incidental lawsuit and a multi-party civil lawsuit, in terms of the presence and non-attendance of the parties to the lawsuit before the court. In a collective lawsuit, there are absent parties, while there is someone who represents them before the judiciary, who is the representative of the class, whether it is one person or a specific group of people representing all members of the category.

As for an incidental lawsuit or a multi-party civil lawsuit with multiple original parties, it is required that all parties themselves or their appointed lawyers appear before the court. Otherwise, the ruling is issued in absentia for the parties who did not appear before the court, while this is not required in a class action lawsuit, as the main plaintiff is Or the representative in the class action represents all members of the group without requiring the presence of the members of the group themselves, so that he represents them without any agency on their part, unlike other civil lawsuits, in which no one can act on behalf of others except based on an agency, whether public or private. (32)

Conclusion:

The class action lawsuit is an integrated system that differs in terms of its content, conditions, and objectives, as well as the method of filing the class action lawsuit and its effects, from the forms of compiling other civil lawsuits. Therefore, it is not possible, in any way, to rely on the incident lawsuit (the rules of intervention and entry) to establish The class action lawsuit, as it may be the closest lawsuit to the class action lawsuit system, but it is different in many of the aspects that we referred to through this research.

The class action lawsuit is not the only form of collecting civil lawsuits, but it is the most distinctive form, which achieves certain goals. Class actions have been legislated in most foreign and Arab countries in order to achieve them. The class action lawsuit is a legal process carried out by a single plaintiff or a group of people harmed by the same thing. The defendant, in order to claim their legal rights as a group and not individually, and the class action lawsuit can be applied in many areas such as the environment, public health, civil rights, compensation resulting from accidents or injuries, etc.

After we finished examining the issue of the legal basis of the class action lawsuit, we arrived at a set of results and recommendations that we will explain below:

First - results:

1. The definition of the class action lawsuit was mentioned in many foreign references and some Arab references that dealt with the subject of the class action lawsuit, and through the definitions that we mentioned in the research, we found that there are several common and important elements so that the class action suit constitutes an effective and useful procedure, and these elements are speed, and the presence of Common damage, distributing compensation to the victims, and lower litigation costs. Therefore, we have come to define a class action lawsuit as: "A lawsuit filed by a representative of a group of affected individuals to demand compensation for the common damage resulting from a common harmful act committed by the same person, or to demand the cessation of inappropriate behavior." Legal and dealing with certain cases related to public or common interest.
2. We found it strange to Iraqi legal thought to allow a person to exercise rights and file a lawsuit on behalf of a large number of people, without these same people participating as parties to the lawsuit, or there being no authorization from them or the absence of a

specific legal relationship between them that justifies filing. The lawsuit is as in the relationship of creditors and debts.

3. The class action lawsuit is not the only form of collecting civil lawsuits, but it is the most distinctive form, which achieves certain goals. Class actions have been legislated in most foreign and Arab countries in order to achieve them. The class action lawsuit is a legal process carried out by a single plaintiff or a group of harmed persons. From the same defendant, in order to claim their legal rights as a group and not individually. The class action lawsuit can be applied in many areas such as the environment, public health, civil rights, compensation resulting from accidents or injuries, etc.

4. The class action lawsuit is an integrated system that differs - in terms of its content, conditions, and objectives, as well as the method of filing the class action lawsuit and its consequences - from other forms of compiling civil lawsuits, and therefore it is not possible, in any way, to rely on the incident lawsuit (rules Intervention and entry) to file a class action lawsuit, as it may be the case closest to the class action system, but it is different in many of the aspects that we have indicated through this research.

Second - Recommendations:

1. Through what we have achieved in this research, we call on the Iraqi legislator to adopt the class action system, as it is a distinct legal system that leads to achieving the public good, by preserving common rights and interests.

2. We recommend that the Iraqi legislator establish clear and explicit texts regulating class actions in Iraqi law.

3. We call on the Iraqi legislator to set a clear and explicit definition of the class action suit, and we propose the following definition for that: "A class action suit is a suit filed by a representative of a group of affected individuals to demand compensation for the joint damage resulting from a common harmful act committed by the same person or the claim." To stop illegal behavior and address specific cases related to public or common interest."

4. Organizing the class action lawsuit procedures in detail in the Iraqi Civil Procedure Code so as to ensure that the injured person has access to his right to compensation in the quickest way, and the safest way away from the complex procedures in the compensation claim subject to general rules. We also call for the formation of a competent court to consider class actions, headed by a judge. Qualified and experienced.

Footnotes

1- Through our research on the history of class action lawsuits, we found that they emerged during the last century and spread greatly in most foreign countries and some Arab countries in recent years, but what is surprising is that such lawsuits have been part of the American legal system for hundreds of years. Many class actions have involved relatively minor disputes, while some class actions have had major impacts on American law and society. We have found that the origins of class actions, or "class litigation", are rooted in the Anglo-Saxon and Scandinavian legal traditions of the so-called "Dark Ages" (indeed, alongside plunder and plunder, class action litigation was a favorite activity of the Vikings). English common law in Anglo-Saxon society had long recognized the right of a plaintiff to bring a claim on behalf of a large group and by the time of King John of England (1199-1216), lawsuits involving villages, towns and merchant guilds were very common. Between 1400 and the mid-19th century, changes in the economic system and political turmoil led to the decline of class action litigation, and it virtually ceased to exist in England by 1850. In the United States, Supreme Court Justice Joseph Story (1779-1845) wrote an opinion in *West v. Randall*, which laid the foundation for the modern class action by limiting who could participate in a class action by saying: "It is a general rule in equity, that all persons materially interested, whether plaintiffs or defendants in the

subject matter of the bill, shall be parties to the suit, regardless of their number.” This concept was established in United States law through the Federal Equity Rules, which governed civil suits from 1822 until 1938. In 1842 the Supreme Court issued Rule 48, which states: “In the event of multiple Parties on either side, and the action cannot without evident inconvenience and unjust delays be brought before it all, the court may in its discretion dispense with making them all parties, and may proceed with the action when there are a sufficient number of parties before it to represent all the conflicting interests of the plaintiffs and defendants. In the case properly before it. But in such cases, the ruling does not prejudice the rights and claims of all absent parties.” Thus, this rule allowed one individual to represent a large group, which led to the establishment of the basic condition for a class action lawsuit, which is (a large number of plaintiffs). In 1938, Rule 48 was replaced by Rule 23. Since then, class actions have become subject to Rule 23 of the US Federal Rules of Civil Procedure, and in 1966, Rule 23 was revised, and an amendment was added to it that gives class members the ability to withdraw from the class action, thus retaining their right to file an individual lawsuit. For more details on the topic of class action history see: David Marcus, *The History of the Modern Class Action, Part II: Litigation and Legitimacy*, University of Arizona Rogers College of Law, 2018; Suzanne Chiodo, *The Class Actions Controversy The Origins and Development of the Ontario Class Proceedings Act.*: Osgoode Society for Canadian Legal History by Irwin Law; Michael A Eizenga and Emrys Davis, *A History of Class Actions: Modern Lessons From Deep Roots*, Hannah Pereira Alff, 2021.

2 - See: Brian Anderson O Andrew Trask, *The Class Action Playbook*, Oxford University Press; Pap/Cdr edition October 7, 2010, p. 35-36; *History of Class Action Lawsuits*, Article, Available at the following link: <https://www.levinlaw.com/History-class-actions>.

3 -See: David J. Lender, Jared R. Friedmann and Jodi Barrow, Weil, Gotshal & Manges LLP and Jason B. Bonk, Kleinberg, Kaplan, Wolff & Cohen, P.C., *Class Action Fairness Act of 2005 (CAFA)*, p 1 .

4- See: Kevin M. Lewis Legal Attorney. Wilson C. Freeman Legislative Attorney, *Class Action Lawsuits: A Legal Overview for the 115th Congress*, Publication Place Bookmark this section Washington D.C. (Library of Congress. Congressional Research Service.), United States, April 11, 2018, p 2.

5- See: Douglas G. Smith, *The Intersection of Constitutional Law and Civil Procedure: Review of Wholesale Justice – Constitutional Democracy and the Problem of the Class Action Lawsuit*, *Northwestern University law review* 104(2), March 31, 2010, p 67.

6 -See: Andrew Faisman, *THE GOALS OF CLASS ACTIONS*, Vol. 121, No. 7, Published By: Columbia Law Review Association, Inc, NOVEMBER 2021, p 46.

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11- Deborah Hensler, *The Globalization of Class Actions: An Overview*, *The Annals of the American Academy of Political and Social Sciences* 622(1):7-29, March 2009, p7.

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13 - With regard to Iraqi law, Articles (3, 5, 4, 6) of the Iraqi Civil Procedure Law No. 83 of 1969 stipulate the conditions for the lawsuit, which are as follows: “Article - 3 - It is required that both parties to the lawsuit have the necessary capacity to exercise the rights related to Otherwise, someone who takes his legal place must act on his behalf in exercising these rights. Article - 4 - It is required that the defendant be a litigant whose acknowledgment results in a ruling approving the issuance of an acknowledgment from him, and that he must be convicted or obligated to do something based on the fact that the lawsuit is proven. However, it is valid to dispute the guardian. The guardian and the trustee with regard to the property of a minor, the seized or the absent person, the dispute of the guardian of the endowment property, and the dispute of whoever the law considers an adversary even in cases where his declaration is not enforced. Article - E - It is permissible for one of the heirs to be an adversary in the lawsuit that is brought against the dead person or for him, but the adversary is in a specific person among the notables. The estate is the heir in possession of that property. Article - 6 - In the lawsuit, it is required that the plaintiff have a known, current, possible and realized interest. However, the potential interest is sufficient if there is reason to fear harm to the concerned parties. It is also permissible to claim a deferred right, provided that the deadline is taken into account when A ruling is issued, and in this case the plaintiff shall bear the costs of the lawsuit.”

14 - Article 44 of the Iraqi Civil Procedure Code stipulates that: “1- Every lawsuit must be filed with a petition. 2- It is permissible to claim in one petition a right in rem over several properties if the cause and the litigants are united. 3- It is permissible to claim in one petition several personal and real movable rights. 4 - The petition may include requests that complement the lawsuit or result from it or emanate from it. 5- If there are multiple plaintiffs and there is a connection or connection in their claim, they may file the lawsuit with one petition. 6- If there are multiple defendants and the reason for the claim is united or the claim is related, the lawsuit may be filed against them. With one petition.”

15 - See: Dr. Adam Wahib Al-Nadawi, *Civil Procedures*, National Library, Baghdad, 1989, p. 128; Dr.. Abbas Al-Aboudi, *Explanation of the Provisions of the Civil Procedure Code*, previous source, p. 130; Dr.. Ismat Abdel Majeed Bakr, *Principles of Civil Procedure*, first edition, Erbil - Iraq, 2013, p. 283; Dr.. Ahmed Abu Al-Wafa, *Civil and Commercial Litigation*, Dar Al-Fikr Al-Arabi, Cairo, 2012, p. 108.

16 - Abdul Rahman Al-Allam, *Explanation of the Civil Procedure Law No. 83 of 1969*, Part One, First Edition, Al-Atak Book Industry, Cairo, 2008, p. 33.

17 - Dr. Ahmed Abu Al-Wafa, previous source, p. 108.

18 - Medhat Al-Mahmoud, *Explanation of the Civil Procedure Law No. 83 of 1969 and its Practical Applications*, Part One, First Edition, Baghdad, 2005, pp. 10-11.

19 - See: Brian Anderson O Andrew Trask, *Ibid*, p. 183.

20 -See: David Marcus, *The History of the Modern Class Action*, Part II: Litigation and Legitimacy, University of Arizona Rogers College of Law, 2018, p1799.

21 - Rahim Hassan Al-Ukaili, *Intervention, Entry, and Summons of Others in Civil Suits*, first edition, Baghdad, 2008, p. 26.

22 - The incident lawsuit has three forms: (the joined lawsuit - if it is by the plaintiff - and the counter lawsuit - if it is by the defendant - and intervention in the lawsuit or what is known as the entry of a third person, which is the system of intervention and entry regulated by special rules). See: Articles (66-72) of the Iraqi Civil Procedure Code in force.

23 - See: Rahim Hassan Al-Ukaili, previous source, p. 13.

24 - See: Dr. Ahmed Abu Al-Wafa, *Civil and Commercial Procedures*, 15th edition, Manshaet Al-Maaref, Alexandria, 1990, p. 203; Medhat Al-Mahmoud, previous source, p. 109; Abdul Rahman Al-Allam, *Explanation of the Civil Procedure Law No. 83 of 1969 with the Legal Principles of the Decisions of the Iraq Court of Cassation Arranged on the Articles of the Law, Part Two*, Office

25- Bashar Malkawi and others, *Explanation of the Jordanian Code of Civil Procedure*, Dar Wael, Amman, Jordan, 2008, p. 154; Referred to by Dr. Nisreen Salama Mahasneh, *The Liability Case for Mass Tort in Comparative Law*, research published in the *Journal of the Kuwait International College of Law*, eighth year, issue 1, 2020, p. 220.

26- See: Abdel Wahab Arafa, *Principles and Procedures of Civil Procedures*, International Library for Publishing, Alexandria, 2013, p. 155; See also: Youssef Ahmed Al-Zaman, *Commentary on the Law of Procedures: A Comparative Study* (Qatari, Kuwaiti, Egyptian), Al-Zaman Law Firm, Doha, 2007, p. 251. Examples of adversarial (offensive) intervention include the intervention of a person in a real estate ownership lawsuit, to claim ownership of this property himself, as well as the intervention of a person in a lawsuit filed between two adversaries, to demand compensation for the damage he suffered as a result of defamation of him and damage to his reputation by the parties to the lawsuit. Likewise, interference is achieved. Litigation in the case in which the party intervening in a suit for the validity of a contract requests a ruling invalidating the contract of sale= =See: Ahmed Hindi, *The Code of Civil and Commercial Procedure and its newly introduced amendments*, New University Press, Alexandria, 2014, p. 243; Referred to by Dr. Nisreen Salama Mahasneh, previous source, p. 221.

27 - Unions and associations have the right to file lawsuits to protect and defend the common interests they represent, and they have the right to intervene in existing lawsuits to achieve this goal. Abd al-Rahman al-Alam, previous source, Part Two, p. 248; Dr. Ibrahim Naguib Saad, *Private Judicial Law, Mansha'at Al-Ma'arif*, Alexandria, 1973, footnote (3) of pp. 630-631; Rahim Hassan Al-Ukaili, previous source, pp. 53-54.

28- See: Rahim Hassan Al-Ukaili, same source, pp. 54-56.

29 - See: Dr. Adam Wahib Al-Nadawi, *The Extent of the Civil Court's Authority to Amend the Scope of a Case*, Dar Al-Thaqafa Publishing House, Amman, Jordan, 1997, p. 283; Abd al-Rahman al-Alam, previous source, Part Two, pp. 245-246.

30 - See: Rahim Hassan Al-Ukaili, *Studies in the Law of Civil Procedure, Part One*, First Edition, Sabah Library, Baghdad, 2006, p. 294; Dr. Nisreen Salama Mahasneh, previous source, p. 221; Talal Al-Issa and Soha Sabaheen, previous source, pp. 204-205.

31- Dr. Nisreen Salama Mahasneh, previous source, p. 223.

32 - See: Article (51) of the Iraqi Civil Procedure Code.

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