

Amendment of Contract Obligations in Light of the Corona Pandemic

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Article History: Received: 10 January 2021; Revised: 12 February 2021; Accepted: 27 March 2021; Published online: 4 June 2021

Abstract:

There is no doubt that the law is entrusted with regulating relations of all kinds between people in all circumstances and conditions, including times of disasters and crises.

There is no doubt that contractual obligations are affected by these crises and disasters that may afflict societies such as the Corona pandemic, where the law regulates how to protect the interests of contracting individuals based on the legal principle "the contract is the law of the contracting parties." The wisdom of this is that the contract is a common desire between two parties whose wills meet on its terms, and therefore it is not fair for one of them to unilaterally modify or cancel it. In violation of this principle, the legislator made the judiciary a way to amend contractual obligations.

We will discuss this issue in two sections, the first of which we present to amend contractual obligations according to the theory of emergency conditions, and in the second topic the amendment of contractual obligations according to the concept of force majeure.

Keywords: Corona pandemic, Contract Obligations, Law.

INTRODUCTION

The First Topic

Amending Contractual Obligations According to The Theory of Emergency Conditions

We will divide this topic into two demands, in the first of which we present the definition of the theory of emergency conditions and the conditions for its application, and in the second requirement, the adaptation of the Corona pandemic and the extent to which it is subject to the theory of emergency conditions.

The First Requirement

Definition Of Force Majeure And the Conditions for Its Application

Article 130 of the Bahraini Civil Code stipulates that "If after the contract and before its completion, exceptional general circumstances arise that could not have been foreseen at the time of its conclusion, and their occurrence resulted in the implementation of the obligation arising from it, even if it did not become impossible, then became burdensome to the debtor so as to threaten him with heavy loss, the judge may After balancing the interests of the two parties, he should reduce the burdensome obligation to a reasonable limit, by narrowing its scope or increasing in return for it, and any agreement to the contrary shall be null and void."⁽¹⁾

Undoubtedly, the theory of emergency circumstances is an exception to the binding force of the contract and the effect of this theory as it is understood from the previous text that after the conclusion of the contract, general exceptional incidents occurred, which the contracting parties did not expect at the time of their contract, and they were not able to pay them. These exceptional incidents do not make the implementation of the obligation impossible, but it is still possible to implement it, but this implementation entails severe fatigue for the debtor.

If this happens, the legislator has permitted the judge, at the request of the debtor, to intervene to restore the burdensome obligation to a reasonable level."⁽²⁾

Conditions For Applying the Theory of Emergency Conditions

In order to implement this theory as stated in the aforementioned text, the following conditions are required:

First: The occurrence of a general exceptional accident that cannot be foreseen and prevented.

The application of the theory of emergency conditions should happen after the conclusion of the contract, an exceptional, general event, the like of which usually does not occur, and people are not accustomed to it. As a result of the issuance of some laws that were not taken into account by individuals."⁽³⁾

This exceptional accident should be general, and it should not be specific to the debtor, such as his bankruptcy, illness, or the strike of his factory workers. A specific category, such as the category of merchants, manufacturers, or farmers, or a specific place.

It is also necessary for the application of the provisions of this theory that the exceptional event should be unexpected, and this matter is measured by an objective criterion for the usual person of the people, whether he could have expected that event or is it outside the scope of his thinking and expectation.⁽⁴⁾

It is also necessary that this exceptional event is not possible to pay, if the debtor is able to pay this accident and avoid the dangers arising from it by making a reasonable effort, then the provisions of the theory are not applied, and the matter is also measured by an objective standard according to the usual person, and the matter afterwards falls within the discretion of the judge as a matter of fact.

Second: That we are in the process of a lax contract

In order for the provisions of the theory of emergency conditions to apply, we must be in the process of a contract of lax execution, that is, there was a time interval between its conclusion and implementation⁽⁵⁾ and this is true of continuous contracts or term contracts as a contract

The lease and work contract are also ratified on periodic contracts such as the supply contract. The theory of emergency conditions can be applied in the case of the immediate contract as long as its implementation is slack due to a reason that is not due to the debtor, as in the sales contract that pays the price in installments by the buyer, or the delivery of the sold thing is deferred by the seller. He can expect it then, the provisions of the theory apply in this case. As for contingent contracts and the extent to which the provisions of the theory of emergency conditions apply to them, the jurisprudence differed regarding them.⁽⁶⁾

Although the text of the article we referred to earlier was an absolute general in stipulating that the contract is lax in implementation.

Third: That this exceptional incident makes the implementation of the obligation stressful for the debtor: it threatens him with a heavy loss. If the implementation of the obligation becomes impossible, then the theory of emergency circumstances is not applied, even if it applies the force majeure theory, and according to it the obligation lapses.

The lesson in estimating this fatigue is seen according to the circumstances of the ordinary debtor or the average person.⁽⁷⁾

The effect of the availability of the theoretical conditions

If the conditions that we have set out are met, the legislator has permitted the judge to intervene in returning the burdensome obligation to a reasonable extent in light of the balance between the interests of the parties to the contract and the judge in his way to achieve this end may decide to reduce the burden of obligation on the debtor, if the latter is committed to supplying food to the internal department for university students At a certain price and the emergency circumstance occurred and the prices increased accordingly, the judge may decide to reduce the quantity that the debtor was obligated by.

The judge may decide to increase the obligations corresponding to the debtor's obligation, which will eventually reduce the burden placed on him.

In applying the provisions of the theory when its conditions are met, the judge may resort to suspending the implementation of the obligation, which has become burdensome - for a certain time - the judge expects that the effects of the emergency circumstance during which, such as war conditions or a specific epidemic, will disappear, and of course the suspension of implementation should not lead to serious harm to the creditor.⁽⁸⁾

The legislator considered that the judge's authority to amend the contract according to the theory of emergency circumstances is a matter of public order and therefore individuals may not agree to the contrary.

The second requirement

The adaptation of the Corona pandemic and its subjection to the theory of emergency conditions

There is no doubt that the Corona pandemic represents an exceptional event that has occurred in the whole world and its impact has been reflected on all societies socially, economically and healthily. A general exception that cannot be foreseen and cannot be paid in a contract concluded between the two parties and the effect of this on the debtor, which made the implementation of his obligation burdensome to him. No doubt it is.

This theory can be applied to the Corona pandemic, as this pandemic represents an exceptional, general, unexpected event that cannot be pushed, and constitutes an emergency circumstance in relation to contractual obligations.

The debtor has the burden of proving that this pandemic has affected the contractual balance for him, so that his implementation of his contractual obligation threatens him with a heavy loss, all due to this pandemic without fault on his part, negligence or negligence.

The Second Topic

Amending Contractual Obligations According To The Concept Of Force Majeure

The real goal behind the conclusion of the contract is for the two parties to exchange benefits for the benefit of each of them, and this naturally assumes that the implementation of the contract is possible and not impossible. Therefore, the law makes the obligation void when it is an impossible act, whether this impossibility is prior to or subsequent to the establishment of the contract.

Therefore, the debtor is exempted from liability when it is impossible for him to carry out the obligation, as the impossibility is incompatible with the debtor's fault, which should be available to hold his responsibility.

Article 165 of a Bahraini civilian stipulates that "If a person proves that the damage arose from a foreign cause beyond his control, such as a sudden accident, force majeure, or a mistake on the part of the aggrieved party, or an error on the part of a third party, he is not obligated to compensate for this damage, unless there is a provision to the contrary".⁽⁹⁾

We will present this subject in two demands, in the first of which we explain the conditions for applying force majeure theory, and in the second, the extent to which the Corona pandemic is subject to the concept of force majeure.

The First Requirement

Conditions Of Application Of Force Majeure

Force majeure and sudden accident are synonymous expressions, as concluded by jurisprudence and the judiciary in this regard, so it is considered that they aim at one meaning, which is the matter that is not expected to happen.

It cannot be repelled⁽¹⁰⁾, and sudden accidents or force majeure examples are many, such as wars, earthquakes, epidemics, fires, unexpected strikes, economic crises and so on.

Two necessary conditions for force majeure or sudden accident:

1- Unpredictability:

What is meant here is not the impossibility of foreseeability on the part of the one causing the harm, but rather the matter is looked at by an objective standard, not by a personal one. Rather, the matter does not stop at the usual person, but is measured by the standard of non-expectancy, as our professor Al-Sanhouri sees it as "a person who is one of the most vigilant and foresighted in matters." So that it is absolute and not relative, and the unpredictability is seen at the time of the occurrence of the incident, and depending on the existing circumstances, the character of unpredictability may be proven at one time but not at another time. War and epidemics may be unexpected at one time, but they are expected at another time, and so on. In all matters that are like force majeure or a sudden accident, as long as it is not possible to foresee the matter at the moment of its occurrence, according to the criteria of a vigilant and discerning person.⁽¹¹⁾

2- Impossibility of payment:

What is meant by Istihala here is absolute Istihala, that is, that does not refer to the defendant⁽¹²⁾, rather the matter is measured according to the usual person of the people. If it is possible for such a person to avoid the harm resulting from the accident, it is not considered a force majeure or a sudden accident. And if he was not able to do so, the accident would have this characteristic.

Therefore, the two conditions must be met for the impossibility of foresight and impossibility of payment in order for the act to be described as a force majeure or a sudden event, and the availability of one of the two conditions does not replace the other, but rather they must come together to form the required description.

If there is an act in which the impossibility of foreseeability and the impossibility of payment is realized, it will have the effect of exempting the debtor from his contractual obligation or delaying its implementation.

The Second Requirement

The Adaptation Of The Corona Pandemic And The Extent To Which It Is Subject To Force Majeure Theory

There is no doubt that all of humanity has been severely afflicted by the occurrence of this pandemic, which upended the economic and health balances and contractual obligations, a crisis that was not expected and impossible to pay.

And since the Corona pandemic is an unexpected matter and cannot be paid, it can then be adapted as a force majeure, and since it is a material fact, the debtor does not need to prove it before the judiciary, because the judge is supposed to know about it and the debtor has to prove the effect that this pandemic has had on his commitment and whether it was completely or partially impossible, and this impossibility is due to this pandemic without fault or negligence on his part in fulfilling his contractual obligations. We say that despite our adaptation to the Corona pandemic as a force majeure, as its conditions (the impossibility of foresight and the impossibility of payment) were met, the debtor must prove that the impossibility of implementing his contractual obligation is due to this pandemic.⁽¹³⁾

CONCLUSION

Previously, we presented the topic of “Amendment of contractual obligations in light of the Corona pandemic” and we saw that the effects of the theory of emergency conditions could apply to this pandemic as a general exceptional event that cannot be expected and cannot be paid, making the implementation of the obligation burdensome for the debtor and not impossible, and then the debtor can prove. The court may provide these conditions, and the judge must intervene to restore the debtor’s burdensome obligation to a reasonable extent in its three forms, either to reduce the burden of obligation on the debtor or increase the creditor’s obligation, or to suspend the implementation of the obligation for some time in the expectation of the demise of this pandemic during that.

Also, this pandemic can be considered as a force majeure if its conditions are met (impossibility to foresee and impossibility of payment).

In summary, if the impact of the Corona pandemic on contractual obligations is limited and within the usual framework or is due to the debtor’s error, then his obligation remains unchanged.

But if this effect amounts to threatening the debtor with a heavy and burdensome loss without his intervention, then this debtor can ask the judge to return his burdensome obligation to a reasonable extent according to the theory of emergency circumstances.

If the impact of the pandemic reaches such a large amount that it makes the debtor’s obligation to be completely impossible to implement without his intervention, then the debtor is exempted from implementing his obligation or delaying it according to the concept of force majeure.

References

1. This text corresponds to Article 147 Egyptian civilians and Article 205 Jordanian civilians.
2. It is noted that the theory of emergency circumstances was not applied by the Romans but was applied by the churchmen after that while they were on their way to achieving the justice that prevailed in their ideas. This role of the church did not have an impact on the French civil law, as the latter did not embrace the theory of emergency circumstances, although it had been accepted by the French administrative judiciary, who used it in its rulings to ensure the proper functioning of public utilities. We point out that the ancient Egyptian civil law had followed the pattern of the French civil law issued in 1804, and there was no text stating that it took the theory of emergency conditions as a general principle, and the Egyptian judiciary followed the same path at that time.
3. The Egyptian Deficiency Court considered the issuance of the Agricultural Reform Law as an exceptional incident that justifies the judge’s application of the theory of emergency conditions (Collection of Cassation Judgments, Appeal No. 263/26 BC, Q. 14, p. 37, No. 3).
4. Dr. Mohsen Abdel Hamid, *The General Theory of Obligations, Sources of Commitment, Part One*, Al-Galaa New Library in Mansoura - undated - page 355 and beyond. See also Dr. Amjad Muhammad Mansour, *The General Theory of Obligations, Sources of Commitment*, House of Culture for Publishing and Distribution, Amman, p. 172 and beyond.
5. The Egyptian Court of Deficiency has held in this regard that this time interval should be achieved with respect to the debtor, whether it is long or short. An Egyptian civilian shortage, February 21, 1993, the official collection, p. 14, p. 347. The Jordanian Court of Cassation also says, “If the obligation has been implemented, there is no room to say that the theory of exceptional circumstances is applicable. Therefore, the provision of Article (205) civil, if the obligation is implemented before filing a claim for compensation

for the loss incurred by the contractor as a result of emergency circumstances...” Discrimination of Rights No. 1013/92, Bar Association Journal 1993, p. 413.

6. Dr. Abdel-Fattah Abdel-Baqi indicated in his book *Theory of Contract*, pp. 558, 559. To say that the theory of emergency conditions does not apply to contingent contracts is a matter under consideration, and has no basis in the law, as it says (it is true that these contracts involve risk and the possibility of gain and loss, but that risk is determined in itself and in its extent by the circumstances under which the contract was concluded. Exceptional new ones that were not taken into account and made the performance of the obligation extremely hard on the debtor in a manner that greatly exceeds what the ordinary person would have expected at the time of the conclusion of the contract, there is no legal basis for the theory to be separated from the application). In this direction Dr. Mohsen Abdel Hamid, *The General Theory of Obligations*, previous reference, p. 258 and beyond, and this trend was reversed by Dr. Anwar Sultan, *Sources of Obligation in the Jordanian Civil Law Second Edition 1998*, University of Jordan Press, p. 258 and beyond, and also Dr. Ibrahim Al-Desouki Abu Al-Layl, *Theory of Commitment, Voluntary Sources of Commitment*, Kuwait University Press 1995, pp. 281-282.
7. See an Egyptian Civil Cassation on 12/24/1995, Technical Office Group, No. 36, Q243, p. 1178, d. Muhammad Abdul-Jawad Muhammad, *The Condition of Fatigue in the Theory of Emergency Conditions*, published research in the *Journal of Law and Economics*, Q. 33, No. 4, and the same author has another research in the field of application of emergency conditions, *Law Journal Q. 39*, p. 188 and beyond.
8. see d. Al-Sanhoury, *Explanation of Civil Law, The General Theory of Obligations, Theory of Contract*, Heritage Revival House, 1964, Brief 421, d. Mansour Mustafa Mansour, *The role of the will in the formation of legal behavior, lessons for doctoral students: Kuwait University 1972, 1973*, p. 172 and beyond, d. Mohsen Abdel Hamid, previous reference p. 361 and beyond, d. Ibrahim Desouki Abu Al-Layl, *Theory of Contract*, previous reference, pg. 285.... See the opposite of this trend, d. Abdel-Fattah Abdel-Baqi, *Theory of Contract*, p. 563, as God’s mercy believes that it is not justified for the judge to order a stay of execution.
9. This text corresponds to Article 165 of the Egyptian Civil Code.
10. There are jurisprudential trends that had gone to the differentiation between force majeure and sudden accident, although their supporters differed about the criterion on which this distinction is based. They said that force majeure is an event that is not related to human activity, but rather comes from outside, such as storms and earthquakes. As for the sudden event, it is related to the activity of the debtor. Like a machine that explodes due to the lack of necessary maintenance, and therefore they considered that the foreign cause is force majeure only without the sudden accident.... See in this regard d. Muhammad Sheta Abu al-Saad, *The Concept of Force Majeure*, an article published in the *Modern Egypt Magazine*, p. 74, p. 393, 394, July, October 1983. See the exemption from civil liability d. Ibrahim El-Desouky Abu El-Leil, his Ph.D. thesis 1975, Ain Shams University.
11. In this sense d. Abdul Razzaq Al-Sanhoury, *Al-Wasat*, previous reference, Profile 586, and also Dr. Mahmoud Gamal El-Din Zaki, *Problems of Civil Liability*, Cairo 1978, p. 185 and beyond, and Dr. Wahid al-Din Siwar, *Explanation of the Civil Law, The General Theory of Obligations, Sources of Obligation* 1976, p. 108 and beyond, and see the Egyptian Civil Deficiency on 16/5/1985, *Collection of Cassation Judgments*, Appeal No. 646 in the year 51 BC, and also an Egyptian Civil Cassation on December 12 1986, *Collection of Cassation Provisions* 17-188, p. 273.
12. In the theory of impossibility see d. Abdul Hai Hegazy, *Research published in the Journal of Governmental Issues Management*, Q7, No. 2, April 1963 F, Dr. Abd al-Wahab al-Roumi, *Istihala and its Impact on Doctrinal Compliance*, Ph.D. thesis, Cairo 1974, d. Muhammad Ali Othman Al-Fiqi, *The Impossibility of Commitment and Its Effects*, Dar Al-Nahda Al-Arabiya, 1995.
13. We point out that the chambers of commerce in some countries, such as China and Italy, have issued force majeure certificates to some companies to hold them in the face of creditors who have not fulfilled their obligations due to this pandemic. Because of this pandemic and without shortening them.