

The Legal Adaptation of the Corona Pandemic and its Impact on the Lease Contract

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Abstract

Contracts are subject to the principle of the contract, the sharia of contractors, and among these contracts is the lease contract, but an exceptional event (the Corona pandemic) that occurred during the implementation of the lease contract made the continuation of its implementation cumbersome or impossible for one of the parties. The burdensome commitment to the reasonable limit or force majeure that permits the termination of the contract and the exemption from liability, and the research ended with the difficulty of establishing a single provision for all contracts due to the variation in the impact of the pandemic on them, and with regard to the lease contract, the Saudi system has set specific provisions, including the reduction of the rent by the amount that is less than the usual intended benefit

Keywords: Legal adaptation pandemic - Corona emergency conditions, Force Majeure lease contract

1. INTRODUCTION

Most of the laws approved the contract rule the Sharia of the contracting parties, such as the Egyptian civil legalization and the French civil regulation, meaning the commitment of the parties to the contract with what was agreed upon, and this commitment is dependent on the survival of the circumstances under which the contract was concluded, but an exceptional event has occurred in the recent period that made continuing the implementation of the contract cumbersome Or impossible, and this incident is the spread of the Coronavirus (COVID 19) that began of 2019 and then spread all over the world.

This research seeks to clarify the difference between the theory of force majeure and the theory of emergency conditions in order to study the legal effects of the pandemic on the lease contract and try to extract the legal adaptation for the pandemic (COVID 19).

2. RESEARCH PROBLEM

The problem of research lies in most countries taking precautionary measures to confront the Corona pandemic, which resulted in changing the circumstances in which the contract was concluded, leading to a lack of equality between the obligations of the parties to the contract by making it impossible for one of the parties to obtain the benefit or

increase the costs of obtaining it to the point of exhaustion, Accordingly, the current study discusses answering the following questions:

1. Is the Corona pandemic a force majeure or an emergency circumstance?
2. What is the impact of the legal adaptation of the Corona pandemic on the lease contract?
3. What is the extent of the judicial discretion to amend or cancel the contract?

3. IMPORTANCE OF RESEARCH

A statement of the legal adaptation of the Corona pandemic and the impact of this adaptation on the lease contract and the implementation of the contractual obligations in accordance with what has been agreed

4. RESEARCH OBJECTIVES

- Clarifying the availability of conditions for applying force majeure theory in continuous contracts.
- Clarify the possibility of the judge modifying contractual obligations that meet the conditions for applying the theory of contingent circumstances.
- Providing legal and practical solutions to the problems arising from the pandemic.

5. LITERATURE REVIEW

By reviewing the intellectual production published in the various databases of information related to the legal adaptation of the Corona pandemic and its impact on lease contracts and its impact on emergency circumstances and force majeure, it was found that there are (50) research papers and by the researcher's knowledge of them, it was found that the researches are closely related to the research topic. The researcher classified them into two parts as follows:

5/1 Force Majeure as a reason to cancel the lease:

There is a close correlation between the impossibility of implementing the contractual obligation and the termination

of the contract (Ali, 2018). (Qala, 2020), (Sami and Azzouz, 2020), (Boukmash and Saida, 2017) agreed that the excuse that leads to the impossibility of implementing the lease contract A reason to terminate the contract if it is impossible to use the leased property, while (Ahmed, 2005) believes that there are similarities between the theory of force majeure and the theory of emergency conditions in Islamic jurisprudence and positive law, and differences in their relationship to the idea of public order, the condition of generality, evidence and the field of application, and the penalty entailed by Both of them, and some have considered the Corona pandemic to be a force majeure (Haddad and Delaunay, 2020).

5/2 Emergency circumstances the reason for the judge's intervention to amend the contract:

(Issa, 2018), (Bouchachi, 2019), (Al-Hakami, 2020) agreed that the judge may violate the principle of the contract, the Shari'a of the contractors, and amend the contract that by returning the burdensome obligation to the reasonable extent if the conditions of the theory of emergency conditions are fulfilled.

By analyzing previous studies, the researcher finds that there are similarities and differences between the pandemic theory in Islamic law, the theory of emergency conditions, and the theory of force majeure. The theories agreed on the condition of the general nature of the sudden event, its unpredictability, its impossibility, and that the emergency is general, while it differed in its impact on the contract. And the penalty incurred by both of them, if the accident resulted in severe fatigue for the debtor that exceeds the usual limit in dealing, the judge may amend the obligation to return it to the usual limit, and if it is impossible to implement the obligation due to the impossibility of collecting the benefit, the contract shall be terminated.

6. RESEARCH HYPOTHESES

The research questions were received through the following hypotheses:

6.1 The first hypothesis: The force majeure attribute of the Corona pandemic is provided as a justification for the termination of the contract.

6.2 The second assumption: the availability of the emergency circumstance of the Corona pandemic as a reason for amending the contract to return the burdensome commitment to a reasonable extent.

7. RESEARCH METHODOLOGY

The descriptive, and comparative analytical approach, in order to analyze legal texts and compare them with the provisions of Islamic law and some laws, such as French law and Egyptian law.

8. RESEARCH LIMITS

Spatial boundary: Saudi Arabia.

Time limit: 2020/2021.

9. THE CONCEPT OF PANDEMIC IN ISLAMIC JURISPRUDENCE

According to the majority of jurists, the pandemic is considered one of the legitimate reasons that affect contractual obligations, some restricting it to heavenly pests such as the faucet, and including some heavenly and earthly ones such as Shafi'i (Awadat, 2003).

10. THE THEORY OF CONTINGENCIES

An emergency circumstance is a general accident that occurs after the conclusion of the contract, and it was not possible to anticipate it at the time of the contract, resulting in a defect in the obligations of the subject of the lax contract implementation, which makes the implementation of one of the contracting parties of his commitment severely exhausting (Maskow, 1992) threatening him with great losses than the usual limit in losses (Al-Sanhouri) The Egyptian legislation is considered one of the best Arab legislations that dealt with emergency conditions with a specific definition in the second paragraph of Article 147 of the Egyptian Civil Law No. (131) for the year 1948, which stipulated that: "If general exceptional incidents occurred, it was not possible to anticipate and arrange them. Given that they happen, the implementation of the contractual obligation, even if it does not become impossible, has become so burdensome to the debtor that it threatens him with a heavy loss. According to the circumstances and after balancing the interests of the two parties, the judge may return the burdensome commitment to a reasonable extent, and every agreement to the contrary shall be null and void. A specific definition of emergency conditions, but rather it was satisfied with setting examples of emergency conditions such as war and epidemic (Al-Mansouri, 2017)

10/1 Conditions of application of the theory of contingent conditions:

- 1- That the circumstance is subsequent to the conclusion of the contract and before the completion of the implementation.
- 2- That the circumstance is exceptional and general such as war (Bouchachi, 2019), while the circumstances of the contractor only are not considered an emergency circumstance that is taken into account to amend his obligations (Issa, 2018.)
- 3- That the circumstance is unexpected, such as an earthquake or an epidemic (Bashir, 2016.)
- 4- That the circumstance cannot be prevented or avoided (Bashir, 2016), and the assessment of whether to be expected or not is subject to the judge's discretion (Al-Ahwani, 1995.)
- 5- Executing the obligation in the manner agreed upon in the contract shall result in severe exhaustion for the debtor.

10/2 The implications of emergency conditions:

Restitution of the burdensome commitment to the usual

extent: Most of the legislation allows the judge to maintain the commitment and distribute the consequence of the accident by decreasing, increasing or stopping the implementation of the burdensome obligation to the usual extent: Most of the legislation allows the judge to bear the consequences of the accident. The Egyptian Court of Cassation ruled that the second paragraph of Article 147 of the Egyptian Civil Law No. 131 of 1948 granted the judge the authority to amend the obligation without terminating the contract.

11. FORCE MAJEURE THEORY

The term force majeure is used for the exceptional event that cannot be faced, and the legal systems differed in determining what is meant by force majeure and the conditions for its availability compared to the emergency situation, and the French jurisprudence adheres to the term force majeure to denote that there is an impossibility to implement the obligation as contained in the contract, and the French law regulated force majeure in Article (1218) of the French Civil Code which stipulates that: The presence of force majeure in contractual matters preventing the debtor from carrying out his obligation agreed upon in the contract is achieved when there is an accident outside the debtor's control (Pool, Devenny, and Mellors, Concentrate contract law), 2017), is unpredictable at the time of the conclusion of the contract (Cartwright, 2013) and its effects cannot be nullified with appropriate measures, and if the impediment is temporary suspends the performance of the obligation unless the resulting delay justifies the settlement of the contract, if the impediment is final then the contract is dissolved and the parties free Among their obligations under the provisions of Article (1351) of the aforementioned Law.

11/1 Conditions of application of force majeure theory (Denague, 1931):

1- The accident should not be due to the debtor's act, otherwise it will be considered negligent and obligated to implement the contract or compensation.

2- Not anticipating the accident at the time of the conclusion of the contract, and if it can be expected, then this is not considered force majeure, and the lack of expectation is measured by an objective, not personal criterion, that is, a normal person cannot expect it (Al-Sanhouri, 2015). By applying this to the Corona pandemic, we find that this condition is available as it was not taken into account by any person or country that expected the existence of the virus.

3- It is not possible to pay it, and that it is beyond the debtor's control. But if it can be paid but at a high cost that causes severe fatigue to the debtor, this is not considered a force majeure.

4- That the accident makes the implementation of the commitment impossible (Cartwright, 2013) an absolute, not a relative, impossibility, and by applying this condition to the Corona pandemic, we do not assure that the Corona pandemic is a force majeure because the impossibility may be relative and not absolute.

11/2 The implications of force majeure theory:

1- Dissolution of the contract due to the impossibility of its implementation and the expiry of the obligations arising therefrom.

2- Exemption from liability or mitigation of it, as force majeure is considered a foreign cause that interrupts the causal relationship between the injury and the debtor's breach of his contractual obligation according to the opinion of one aspect of the jurisprudence in French civil law (Ali, 2018), while the debtor bears responsibility for the damage if the impossibility of execution is due to his mistake and not Force Majeure only.

12. LEGAL ADAPTATION OF THE CORONA PANDEMIC

The legal logic requires a comparison between the two theories of emergency conditions and force majeure, stating the similarities and differences between them, in order to extract the legal conditioning for the pandemic as follows:

12/1 Similarities.

-The terms of application of both force majeure and emergency circumstances are identical, as the nature of the accident in both is unexpected at the time of the contract and cannot be paid when it occurs (Ahmed, 2005).

The effect of each of them is on the implementation of the commitment.

-That both of them do not arrange their effect until after the conclusion of the contract (Pool, Textbook on Contract Law, 2016) and before the completion of its implementation.

22-2differences:

-The law considered the theory of emergency conditions of public order that it is not permissible to agree on violating, while the contracting parties agreed to exclude the judgment of force majeure.

Evidence in the theory of emergency conditions rests with the debtor, unlike force majeure.

-That the jurisdiction of the administrative judiciary includes the theory of emergency conditions, as it is in the position of French law, while force majeure falls within the scope of the civil and administrative judiciary (Ahmed, 2005).

-The implementation of the contractual commitment in emergency circumstances is cumbersome and not impossible, while in force majeure, the implementation of the contractual commitment is impossible.

-The effect of emergency circumstances is a temporary effect that ends with the end of the effect of those circumstances, but in force majeure, the implementation of the obligation is absolutely impossible, and the contract expires by the force of law, since the effect of force majeure is final.

-The penalty for force majeure is the termination of the contract for the impossibility of carrying out the obligation absolute impossibility, while the penalty in emergency

circumstances is to restore parity in obligations by returning the burdensome obligation to the usual extent with the continuation of the contract's implementation (Bouchachi, 2019).

-The application of contingent conditions theory is limited to fixed-term contracts, while the application of force majeure includes all types of contracts.

Force majeure ends the obligation, exempts the debtor from execution, and revokes the contract with the force of law, while emergency circumstances do not exempt the debtor from implementation, but rather grant him the right to demand modification of the obligation or to suspend or postpone the implementation until the emergency ceases to exist.

By reviewing the similarities and differences between the two theories, we conclude that the correct legal conditioning of the Corona pandemic from the researcher's point of view is a matter of emergency conditions, as the Corona pandemic that befell the world at the end of 2019 meets all the conditions stipulated for the theory of emergency conditions. It is an exceptional and unexpected general circumstance that cannot be His payment makes the implementation of some contracts cumbersome for one of his parties and creates an imbalance in the principle of the contract's balance.

13. LEGAL IMPLICATIONS OF THE CORONA PANDEMIC ON THE LEASE CONTRACT

The lease contract is considered a *lax* contract, according to which the lessor is obligated to enable the lessee to benefit from a certain thing for a specific period in return for a known fee (Article 558 of the Egyptian Civil Law), and the lessee is obligated to pay the rent and may not refrain from paying the rent if he is unable to use the leased property or The use of it was deficient if it was due to his mistake, but if it was due to a reason outside of his control, then we search here for the availability of the terms of the emergency or force majeure (Al-Sanhouri, 2015) and the legal conditioning of the Corona pandemic and considering it an emergency circumstance on the lease contract, we find that there are still similarities Confusingly in applying the theory of emergency conditions and force majeure to the lease contract, the pandemic may affect the same contract by making its implementation impossible, and in this case the contract will be annulled according to the force majeure theory, as if a person rents a hall for a birthday party and because of the curfew and banning gatherings, implementation has become impossible. The pandemic is based on the contract allowance, so implementation is possible, but at costs exceeding the usual limit in dealing with it, so it takes the judgment of the emergency situation (Bashir, 2016).

14. THE POSITION OF THE SAUDI JUDICIARY

The judiciary in the Kingdom of Saudi Arabia considers epidemics and diseases as emergency conditions for what scholars have decided that the general fear that prevents the use of real estate is an emergency that prevents the payment of rent, as stated in the end of the wills with its explanation

(2/267). And in Al-Iqna 'with his explanation (4/30), "If a general fear occurs that prevents him from residing in the place in which the leased is located or confining the country, then he refuses (4/30), then he may annul it." There are some judicial rulings that dealt with the meaning of force majeure, including the administrative ruling in Case No. (3493/3 / s for the year 1437 AH). The Sharia standards issued by the Accounting and Auditing Organization for Islamic Financial Institutions stipulated that the principle of setting pandemics be taken into account in some types of leasing contracts.

Judicial jurisprudence in the Kingdom of Saudi Arabia looks at the circumstances and nature of each contract separately in terms of the nature of precautionary measures and their impact on the implementation of the contract, and from this standpoint it becomes clear that the Corona pandemic is not independent by a specific ruling, sometimes it has no effect on the contract and the contract becomes enforceable according to what was agreed upon. Therefore, without any modification, and sometimes it makes the implementation of the obligation cumbersome, the commitment must be modified to a reasonable extent without the lapse of the contract according to the theory of contingent conditions, and sometimes it makes the implementation of the contract impossible and descends into force majeure, then the contract expires according to the theory of force majeure.

The Fiqh Academy acknowledged that the judge has the right to endeavor to decide what is fairer for the parties, either by annulment, amendment, or postponement of implementation, and an example of that is the administrative ruling in the administrative case No. (2594/3 / s for the year 1432 AH) which included the assertion that the force majeure that makes the impossibility It is temporary that does not lull the obligation to lapse, but is limited to suspending it until it becomes enforceable and enforced.

In order to unify the judicial jurisprudence, control the discretionary authority and stabilize the legal situations and positions, the General Authority of the Supreme Court in the Kingdom of Saudi Arabia Decision No. (45 / M) dated 5/8/1442 AH has recently been issued stating that the Coronavirus pandemic is an emergency situation if the commitment cannot be implemented or A contract except with an unusual loss, and it is considered force majeure if implementation becomes impossible. The Supreme Court's decision to apply this principle to affected contracts and obligations stipulated several conditions, including that the contract be concluded before the start of the precautionary measures for the pandemic, and that its implementation continues after its occurrence, and that the impact of the pandemic is Directly on the contract and cannot be avoided, and the impact of the pandemic on the contract is independent without the participation of another reason, and the affected person has not waived his right or reconciled with it, and the effects of the pandemic and its damage should not be treated by a special system or by a decision of the competent authority. The decision also included that the following provisions shall be applied in the rental contracts of real estate and movable property affected by the pandemic:

-1If, due to the pandemic, the tenant is unable to fully or

partially use the leased property, the court shall reduce the fee to the extent that it has decreased from the usual intended benefit.

2- The lessor does not prove the right to rescind the contract if the tenant was late in paying the rent for the period during which it was impossible to fully or partly use because of the pandemic.

15. CONCLUSION

The Corona pandemic affected many contracts and led to an imbalance between contractual obligations, and pushed many contracting parties to search for a way out to restore balance to these contracts, and this is why our study came as an attempt to search for an adaptation to the pandemic in light of the two theories of emergency conditions and force majeure, whose rulings differ, and we reached a conclusion. Several results can be summarized as follows:

RESULTS

- 1-The Saudi system has settled the jurisprudence in adapting the pandemic by setting specific controls and provisions in Resolution (45 / M) of 5/8/1442 AH, which was recently issued.
- 2-It is not justified to rule on all contracts with one ruling due to the varied impact of the pandemic on them.
- 3-That there is a similarity between the theories of force majeure and emergency circumstances.
- 4-Work has been carried out in the French judiciary to apply the provisions of each of the two theories according to their effect on each contract separately, thus proving the validity of the first and second assumptions.
- 5-The provisions of Islamic Sharia preceded the man-made laws and gave the option to the party harmed by the contract to terminate or reduce and amend the obligation.
- 6-The Saudi system recently decided to nullify the force majeure clause in relation to the Corona pandemic, according to Supreme Court Resolution No. (45 / M) dated 5/8/1442 AH, which includes that if the contract includes a clause to exempt from liability for one of the parties to the contract when the emergency or force majeure occurs There is no effect of that condition.

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