

**TERMINATION OF CONTRACTS AND FORCE MAJEURE UNDER QATARI LAW AND ITS ISLAMIC LAW INFLUENCES:
Emergence of a Transnational Gulf Private Law**

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ABSTRACT

There is a growing interest in the private laws of Gulf states, and particularly Qatar, because of the applicability of such laws in transnational and local contracts that account for a significant volume of global trade, energy and construction. Islamic law has a negligible, if any, impact on the law relating to termination of contracts, including hardship and force majeure. Termination of contracts in Qatar is chiefly regulated by the Qatari Civil Code and other specialist legislation, as well as significantly the country’s Court of Cassation, which has produced a consistent flow of case law that is binding on lower courts. The Civil Code generally follows the rule that the parties may not unilaterally terminate contracts and that in any event sufficient notice is required. As regards unforeseen circumstances, the Civil Code distinguishes between general hardship and circumstances that render performance impossible. The former may be amenable to adaptation by the courts, whereas the latter effectively serves to terminate the parties’ respective obligations. Qatari law allows the parties to waive force majeure claims in their contracts.

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INTRODUCTION¹

There are several reasons why an exposition of the contract law of Gulf states is important to the Western professional legal audience. Firstly, Qatar is the biggest liquefied natural gas (LNG) producer and along with its Gulf neighbors account for most of the globe's upstream carbon-based energy.² A big part of the contractual framework of such energy production is governed by local law, even if the financing and other elements are governed by a variety of other laws.³ Second, Qatar and its Gulf Cooperation Council (GCC) allies own some of the largest sovereign wealth funds (in terms of dispensable assets), all of which engage in outward investment, both portfolio and otherwise.⁴ Again, several

1. Where the country of origin of a court is missing readers should presume that the author is referring to Qatar. Judgments from other courts are clearly designated.

2. See Rania Al-Gamal, *Qatar Petroleum Signs Deal for Mega-LNG Expansion*, REUTERS (Feb. 8, 2021), <https://www.reuters.com/article/qatar-petroleum-lng-int-idUSKBN2A81ST>.

3. See Ruchdi Maalouf, *International LNG Contracts*, OGEL (2018, <https://www.ogel.org/article.asp?key=3767>).

4. For Qatar its investment vehicle is the Qatar Investment Authority (QIA). Although financial data is missing from its website, its estimated assets are 300 billion USD, which ranks it 11th among all sovereign wealth funds according to the Sovereign Wealth Fund

components of such agreements are governed by local private law. Third, Qatar, as well as all GCC states, have set up special economic zones (SEZ) with a view to attracting high-end financial services multinationals and high-technology innovators.⁵ These sophisticated SEZ, as analyzed further below, are equipped with impressive transnational commercial courts and are even viewed as better alternatives to arbitration.⁶ Although the private law of the mother state is less significant there, its general principles, including public policy, are mandatory in the SEZ. Fourth, Qatar and other Gulf countries have generated a considerable volume of trade and commerce, as well as mega-construction projects,⁷ in addition to being the leaders in the emerging field of Islamic finance. These activities are very much governed by local private law in tandem with other foreign laws⁸ and local courts have generated a significant amount of world-acclaimed case law, becoming legal hubs in their own right.⁹ Finally, as a result of the above considerations it is no accident that a consistent body of private law peculiar to the GCC—Qatar as a major player in the region with an investment in education that overshadows all its GCC neighbors—seeks to become the law of choice in transnational commercial contracts.¹⁰

Institute. *Qatar Investment Authority (QIA)*, SWFI (n.d.), <https://www.swfinstitute.org/profile/598cdaa60124e9fd2d05bc5a>.

5. See Douglas Z Zeng, *The Past, Present, and Future of Special Economic Zones and their Impact*, 24 J. INT'L ECON. L. 1; Lan Cao, *Charter Cities*, 27 WILLIAM AND MARY BILL OF RTS. J. 717 (2019).

6. See Zain Al Abdin Sharar & Mohammed Al Khulaifi, *The Courts in Qatar Financial Center and Dubai International Financial Center*, 46 HONG KONG L.J. 529 (2016); Ilias Bantekas, *The Rise of International Commercial Courts: The Astana International Financial Center Court* 33 PACE INT'L L.R. 1 (2020); see generally, INTERNATIONAL COMMERCIAL COURTS: THE FUTURE OF TRANSNATIONAL ADJUDICATION (Georgios Dimitropoulos & Stavros Brekoulakis eds., 2021).

7. It is estimated that construction contracts in the Gulf in 2021 and 2022 are set to be worth 115 billion USD and 112 billion USD respectively. *Gulf construction sector tipped to rebound following Covid impact*, ARABIAN BUS. (Sept. 25, 2021), <https://www.arabianbusiness.com/industries-construction/468768-gulf-construction-sector-tipped-to-rebound-following-covid-impact>.

8. See Ilias Bantekas, *Transnational Islamic Finance Disputes: Towards a Convergence with English Contract Law and International Arbitration*, 12 J. INT'L DISP. SETTLEMENT 1 (2021). In *The Investment Dar Co KSSC v Blom Development Bank S.A.L.*, [2009] All ER (D) 145, the English High Court was able to override the designation of English law as the governing law of a *Wakala* agreement, on the ground that it was not Sharia-compliant with the underlying investment, which the parties had expressly agreed should be so compliant. In a similar manner, the English High Court in *Sanghi Polyesters Ltd India v The International Investor KCFE (Kuwait)* [2000] 1 Lloyd's Rep 480, had no trouble finding in the event of a conflict between English and Islamic law that the more pressing law to the issue at hand (in the present instance an Islamic finance transaction) would prevail.

9. This is true for the DIFC, which is the leader among its rivals in the Gulf. See DIFC COURTS PRACTICE (Rupert Reed & Tom Montagu-Smith eds., 2020).

10. At present, this can only be achieved through GCC courts. See Jayanth K. Krishnan & Priya Purohit, *A Common Law Court in an Uncommon Environment: The DIFC Judiciary*

It is not easy to precisely define the nature of Qatar's legal system and particularly its private law dimension. The following paragraphs will demonstrate that while it is grounded in the civil law tradition, there are several elements that render it distinguishable. Moreover, in addition to codified private laws, at the apex of which sits the Civil Code, the Qatar Financial Center (QFC) has promulgated its own Contract Regulations and in addition there is a very small space for the operation of Islamic (contract) law.

Qatar Law No. 22 of 2004 is effectively the country's civil code (hereafter the "Civil Code," the "Code," or, when cited in footnotes, "CC"). Just like its counterparts in Europe and elsewhere, contracts comprise part of the law of obligations and are found in Articles 64 to 198 of the Civil Code. The regulation of contracts is also found in other parts of the Code (e.g., leases, employment, etc.), as well as other specialized laws, such as Law No. 8 of 2002 on Organization of Business of Commercial Agents and Law No. 27 of 2006, Promulgating the Trading Regulation Law.¹¹ Unlike other civil law jurisdictions, and very much in the tradition of the English Precedent Act, the judgments of the Qatari Court of Cassation constitute *stare decisis* (binding precedent) on lower courts.¹² This endows Qatari private law with an aura of consistency and continuity that is typically missing from most Arab jurisdictions.¹³ Moreover, there is anecdotal evidence that English law is prevalent in transnational commercial transactions, particularly (but by no means exclusively) where the contract's dispute resolution clause provides for foreign-seated arbitration or a foreign court.¹⁴ This has given rise to a popular sentiment among lawyers, mostly foreign, that Qatar's private law is common law-based, or certainly mixed.¹⁵ This in fact is not the

and Global Commercial Dispute Resolution, 25 AM. REV. INT'L ARB. 497 (2015).

11. The literature is scarce, even in Arabic. See ILIAS BANTEKAS & AHMED AL-AHMED, *THE CONTRACT LAW OF QATAR* (forthcoming 2023).

12. Art. 22(3) of Law 12 of 2005 pertaining to Procedures in Non-Penal Cassation Appeals.

13. Reliance on the case law of Egypt for any progressive legal system is far from an ideal choice, not only because of the difference in culture (broadly understood) but also because of the erratic nature of the Egyptian higher courts. By way of illustration, the Cairo Court of Appeal ruled in 1997 that an arbitral tribunal was allowed to apply interest above the maximum rate set by statute because the parties had come to a mutual agreement and thus the award did not contravene Egyptian public policy. Cairo Court of Appeal Case No. 41/114, judgment (Oct. 2, 1997). In 2020, however, the Egyptian Court of Cassation in *Legal Representative of Interfood Co v The Legal Representative of RCMA Asia Pte Ltd Singapore*, Ruling 282/89 (Jan. 9, 2020), overturned the long-standing practice of the Court of Appeal.

14. Ilias Bantekas, *The Globalisation of English Contract Law: Three Salient Illustrations* 137 L. Q.R. 130 (2021).

15. Foreign law firms operating in Qatar regularly refer to it as 'mixed'. See Matthew Walker & Leanie van de Merwe, *Qatar Court of Cassation Confirms Conditions for the Enforcement of ICC Awards in Qatar*, K&L GATES (Oct. 17, 2016), <https://www.klconstructionlawblog.com/tag/qatari-court-of-cassation>.

case.¹⁶ English law, including the common law, merely appear as governing law in contracts, but in no way constitute part of the country's legal system.

The QFC It was set up under Law No. 7 (2005) [QFC Law], which is both its founding law and its Basic Law (effectively its internal constitution). There are two significant incentives for incorporating in the QFC as opposed in the State of Qatar. Firstly, QFC-regulated entities are not susceptible to the regulation of the Qatar Central Bank. Secondly, QFC entities may have 100 per cent foreign ownership, which is not the case under the Qatari Law No. 13 of 2000, establishing the Foreign Capital Investment Law. Regulation No. 4 (2005), known as the QFC Contract Regulations is the equivalent of the Qatari Civil Code in the QFC. The Contract Regulations were predicated (almost verbatim) in large part on the UNIDROIT Principles of International Commercial Contracts (hereafter "PICC").¹⁷ In theory, the Qatari Civil Code, including its interpretation by the Court of Appeals and Cassation, could supplement the Regulations where the latter are silent on a particular issue, but such a likelihood seems to have been excluded. There is no indication in the Regulations suggesting such a supplementary role for the Civil Code, whether directly or indirectly. The QFC Court is not expressly directed to exclude judgments by the ordinary Qatari courts and in fact it is not uncommon for the QFC Court to refer to the case law of the higher Qatari courts.¹⁸ This is tune with the QFC Court's practice of considering common law judgments as authority. Nonetheless, the application of most, if not all, QFC regulations, as is the case with the QFC Employment Regulations, entails the exclusion of ordinary Qatari law on the same matter, but not other QFC regulations, including the QFC Contract Regulations.¹⁹ This article will

16. There are few truly mixed systems, in the sense of overlapping and mutually binding systems applicable in a single jurisdiction, other than states where Islam constitutes the grundnorm. See Nikitas Hatzimihail, *Cyprus as a Mixed Legal System*, 6 J. CIV. L. STUD. 37 (2013); Ignazio Castellucci, *Legal Hybridity in Hong Kong and Macau*, 57 MCGILL L.J. 665 (2012).

17. See, in particular, COMMENTARY ON THE UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS (Stefan Vogenauer ed., 2015).

18. Several QFC Court judgments refer in substance or in passing to judgments of Qatari courts in order to aid their interpretation of provisions in the QFC Contract Regulations. See *Nasco Qatar LLC v Misr Insurance (Qatar Branch)* [2020] QIC (F) 17, para 32. In a comprehensive study carried out on 68 judgments issued by the QFC Court between 2009 and 2018, it was found that 166 sources of law were cited by the Court. Of these, 114 were Qatari (chiefly legislation), 57 from England and Wales (both common law and legislation), 2 from the DIFC Court, and 1 was an Australian judgment. The common law background of many of the judges, indeed the most senior ones, is no doubt a major factor in the prevalence of common law over other legal traditions (save for Qatari law). See Andrew Dahdal & Francis Botchway, *A Decade of Development: The Civil and Commercial Court of the Qatar Financial Center*, 34 ARAB L.Q. 1, 13 (2019).

19. Art. 2(5) of the QFC Employment Regulations excludes the application of any other labour law. In *Chedid and Associates Qatar LLC v Said Bou Sayad*, Judgment Concerning the Applicable Law, [2014] QIC (F) 2, while the QFC Court determined that the dispute was

not discuss the QFC Contract Regulations any further, but it is important to say that since the Qatari Civil Code is very much consistent with the PICC, so too the Regulations are consistent with the Code.

This article deals with a single, yet complex and over-arching topic: termination of the life of a contract. Given the importance of Qatari law in global business transactions, a deep knowledge of this body of law becomes indispensable. When a contract is terminated it no longer demands obligations from the parties, although the parties may be liable for damages or restitution. As will be shown, the Civil Code distinguishes between two types of termination: termination proper and rescission. Given that termination produces significant consequences for the parties, the Code sets out general and subject-specific rules. General rules include those on *force majeure*, impossibility of fulfilment, discharge, set-off, novation and the effects of the death of one of the parties to a contract (among others). Subject-specific rules concern the likelihood of termination in respect to particular contracts, such as leases, deposits, employment and others. The article goes on to show that, exceptionally, termination or rescission is automatic, while in most cases one of the parties, typically the debtor, must apply to the courts for termination or rescission. More specifically, Part I deals with the Islamic law influences of termination, whereas Part II discusses the regulation of rescission and termination in the Qatari civil code. This is followed by Part III which sets out the contours of unilateral disposition, which encompasses a section on the effects of discharge (Part IV) and another on the termination of contracts following the death of the obligor (Part V). Part VI discusses the issue of limitations. Part VII explains specific forms and requirements of termination on the basis of the nature of the contract, such as leases, agency and labor. Part VIII goes on to discuss the effect of various types of settlement on the life of contracts, such as novation and set-off, among others. Finally, Part IX sets out the regulation of force majeure in the Civil Code, with an emphasis on the case law of the Qatari Court of Cassation.

I. THE ISLAMIC LAW INFLUENCES OF TERMINATION

As far as Islamic law is concerned, it has a very limited application, if any, in the Qatari legal order.²⁰ This may appear odd to non-experts given the overriding importance of Islam in the very existence of Qatar. Islamic law regulates family and inheritance law,²¹ as well as some elements of criminal law. Ordi-

governed by the QFC Employment Regulations, it had no hesitation directing the respondent to Art. 36 of the QFC Contract Regulations, following an allegation of threat against the employer in order to agree to a no-competition clause.

20. The truth is that this body of law is scattered and disparate and is mostly used nowadays as a means of construing Islamic finance instruments. See ILIAS BANTEKAS, JONATHAN ERCANBRACK, UMAR OSENI, & IKRAM ULLAH, *ISLAMIC CONTRACT LAW* (2023).

21. Law No. 22 of 2006, Promulgating the Family Law [Family Code], stipulates Art. 3

nary Qatari courts are bound to construe a contract in accordance with the Sharia where the subject matter is not regulated by statute.²² The parties may not exclude the Sharia where their contract is governed by Qatari law and the latter lacks a statutory provision regulating a particular issue under the contract.²³ This is not an easy venture nor is it free from contention. Article 1(2) of the Qatari Civil Code provides a hierarchy, with statute at the apex, followed by the Sharia (“if any”), customary practices and finally “rules of justice.”²⁴ This contrasts with Article 169(2) of the Code, which allows the courts to infer the parties’ common intention by reference to commercial custom. While it seems that the two provisions serve distinct purposes, namely that: Article 1(2) merely attempts to posit the Sharia as a secondary source of law, whereas Article 169(2) refers to commercial custom as an interpretative tool,²⁵ Article 1(2) is effectively transformed into an interpretative tool where a statutory provision is deemed to be lacking.

It would be an oversight if the introduction failed to offer a glimpse into the recent historical influences of the Qatari Civil Code and how Islamic law was fused or replaced with codifications based on international best practices. Just like all Arab private law codifications, so too the Qatari Civil Code was influenced by the 1948 Egyptian Civil Code, which was drafted by the great Egyptian scholar Abd al Razzaq Al-Sanhuri.²⁶ His thinking influenced his students and

thereof that it is predicated on the Hanbali school of Islam.

22. CC Art. 1(2). *See* Court of Cassation Judgment 323/2014.

23. In practice, it seems that several issues in the Qatari Civil Code are regulated by the Sharia and the Code in tandem, especially where it is deemed that the Sharia is more elaborate. The Court of Cassation in Judgment 21/2008 accepted the applicability of the Sharia concerning the acquisition of property by prescription, despite the existence of a relevant provision in the Civil Code (Art. 404). While ultimately the Court did not agree with the lower court’s interpretation of Islamic law, neither the Court nor the parties expressed any concern about the use of Sharia despite the existence of express provisions in the Code. Hence, it is evident that the courts will apply the Sharia not only where the Code is silent on a particular issue, but also where the Sharia is more elaborate.

24. *See* Court of Cassation Judgment 122/2013 on the limitations of justice as a rule that is trumped by the mutual intention of the parties; *see equally* Court of Cassation Judgment 26/2015.

25. The Court of Cassation does not shy away from identifying business custom through standard phraseology. For example, in Court of Cassation Judgment 148/2010, the Court held that the bank’s exposure to the lender is significant and hence compensation for late payments (delay interest) is justified by reference to banking custom, which is moreover “common knowledge” that does not require proof; *equally* Court of Cassation Judgment 220/2011; to the same effect *see also* Court of Cassation Judgment 40/2013; *see also* Court of Cassation Judgment 107/2013, where it was stated that where a special commercial/trade law is silent “commercial custom shall be applied, with the special custom or local custom being given precedence over the general custom. If there is no commercial custom, the provisions of the civil law shall apply. This was also reiterated in Court of Cassation Judgment 66/2014; *see equally* Court of Cassation Judgment 371/2014; Court of Cassation Judgment 208/2014.

26. Sanhuri’s students later drafted other MENA and GCC civil codes on the basis of his philosophy and ideals. *See* Nabil Saleh, *Civil Laws of Arab Countries: The Sanhuri Codes*, 8 ARAB L.Q. 165 (1993).

associates who went on to draft the newer generation of civil codes in the GCC and MENA.²⁷ As concerns the subject matter of this article, for example, the impact of unforeseen circumstances in the private law of Arab states has gone through two distinct stages, namely: the pre-Sanhuri codes era and the post-Sanhuri era. In the former, the courts emphasized that they were absolutely prevented from intervening in the parties' contract, whereas following the enactment of the Sanhuri-inspired Egyptian civil code, this stance vanished.²⁸ In attempting to find the historical origins of fundamental change of circumstances, Sanhuri made use of the Islamic theory of legal necessity as well as justice.²⁹ The Egyptian Explanatory Memorandum of the Civil Code, notes that the force majeure provision in Article 608 of the Egyptian Civil Code is predicated on the doctrine of intervening contingencies as originally developed in Islamic law.³⁰

Under Islamic law contracts cannot be unilaterally terminated, save where both parties so consent. Such unilateral termination is known as *iqālah*, which literally means lifting something and its removal.³¹ The prohibition of unilateral termination applies even to irregular contracts (*'uqūd fāsidah*), whereby termination is regulated by the Sharī'a rather than the conduct of the parties. Nevertheless, there are certain contracts that can be unilaterally repudiated by a party. This concerns contracts initiated unilaterally such as waqf (endowment) and *waṣīyyah* (bequest). Abu Hanifa was of the view that a person setting up a waqf can rescind as its declaration is not binding. This view contrasts with Abu Hanifa's contemporaries who claimed that the ownership of the assets of the waqf is affected by the declaration setting it up. A narration to Imam Ahmad states that a waqf is only binding if the possession of its assets is transferred to the beneficiary.³²

The obligation of *waṣīyyah* (bequest) can also be repudiated unilaterally at any time by its offeror. This is because its effect only takes place after the offeror's death. Therefore, the offerree shall have no right over the bequest prior to this. The offeror will have the right to either allow his declaration or repudiate it. This is based on a narration from Ibn Umar, whereby: 'a man can change whatever he wants in his bequest.' This is also consistent with the teaching of the

27. See particularly ABD AL-RAZZAQ AL-SANHURI, *MAS}ĀDIR AL-HAQQ FĪ AL-FIQH AL-ISLĀMĪ, DIRĀSAH MUĀRANAH BI AL-FIQH AL-GHARBĪ* (Cairo University Press 1954–59).

28. See GUY BENCHOR, *THE SANHURI CODE AND THE EMERGENCE OF MODERN ARAB CIVIL LAW 177–78 (1932–1949)* (2007).

29. SANHURI, *supra* note 26, at 96–8.

30. Mhd. Syahnan, *Force Majeure in the Islamic Law of Transactions: A Comparative Study of the Civil Codes of Islamic Countries*, 9 *JURNAL TSAQAFAH* 1, 8 (2013).

31. MAHMUD BIN ABDURRAHMAN ABDULMUN'IM, *MU'JAM AL-MUṢTALAHĀT WA AL-ALFĀZ AL-FIQHIYYAH* 256 (Dar al-FAḍīlah, Madinah, n.d.).

32. MUHAMAD BIN AHMAD BIN ABI SAHAL SHAMS AL-A'IMMAH AL-SARAKHSĪ, *AL-MABSŪT* 12:27 (Dar al-Ma'rifāh, Beirut, 1414H/1993); ABDULLAH BIN AHMAD BIN MUHAMMAD BIN QUDAMAH, *AL-MUGHNĪ* 6:5 (Maktabat al-Qāhirah, Cairo, n.d.).

Hanafis, Malikis, Shafi'is and Hanbalis.³³ The offeror can repudiate his bequest by withdrawing it through express statement or implied conduct.³⁴

In the event of suspending contracts (*uqūd mauqūfah*), which are contracts entered into by a self-appointed agent (*al-fuḍūlī*), the contract can only be validated if the party that has power to enter into the contract ratifies it. Such party can, therefore, unilaterally choose to end the contract and as a result the contract cannot go ahead.³⁵

The majority of jurists, with the exception of the Malikis, are of the view that either party to a non-binding contract has the right to repudiate the contract, irrespective of whether the other party has consented or not. The Hanafis maintain, however, that such rescission can only be effective if the other party is aware of it. The Shafi'is and Hanbalis did not stipulate such condition as in the case of dismissing an agent where his knowledge of the dismissal is not a requirement.³⁶

The contract of *muzāra'ah* crop sharing can also be repudiated by the worker either expressly or impliedly. Thus, he can expressly state that he is no longer interested in the contract or that he has repudiated it. An implied repudiation arises can by a refusal to work before planting the seeds and without any justification. According to the Hanafis, such refusal to work is a repudiation of the contract.³⁷ The contract of *wadī'ah* is equally non-binding upon its parties and thus, either of them can repudiate and annul the contract whenever they choose.³⁸ The same applies in other non-°contracts (*'uqūd jā'izah*) where either

33. AL-KĀSĀNĪ, *BADĀ'Ī' AL-ŞANĀ'Ī'* 7:378 (Dar al-Kutub al-Ilmiyah, 1986); MUHAMMAD BIN AHMAD AL-KHAṬĪB AL-SHIRBĪNĪ AL-ŞĤĀFĪ'Ī, *MUGHNĪ AL-MUḤTĀJ ILĀ MA'RAFAT MA'ĀNĪ AL-MINHĀJ* 4:112 (Dar al-Kutub al-Ilmiyah, 1415H/1994); SHAMSUDDĪN MUHAMMAD BIN ABI AL-'ABBĀS AHMAD BIN HAMZA SHIHĀBUDDĪN AL-RAMLĪ, *NIHĀYAT AL-MUḤTĀJ ILĀ SHARĤ AL-MINHĀJ* 6:94 (Dar al-Fikr, Beirut, 1404H/1984); AL-ḤAṬṬĀB, *MAWĀHĪB AL-JALĪL* 6:639 (Dar al-Fikr, Beirut, 1412H/1992); AL-FATĀWĀ AL-HINDIYYAH 6:92 (Dar al-Fikr, 1310H).

34. MUSTAFA BIN SA'AD BIN ABDUH AL-SUYŪṬĪ AL-RAHAIBANĪ, *MATĀLIB UL AL-NUHĀ FĪ SHARĤ GHĀYAT AL-MUNTAHĀ* 4:460 (Al-Maktab al-Islāmī, 1415H/1994); AL-Fatāwā al-Hindiyyah, *supra* note 33, at 6:92; MUHAMMAD BIN MUHAMMAD AL-KHARSHĪ, *SHARĤ MUKHTAŞAR KĤALĪL* 8:172 (Dar al-Fikr, Beirut, n.d.); AL-Shirbīnī, *Mughnī al-Muhtāj*, *supra* note 33, at 3:71; ZAKARIYYA BIN MUHAMMAD ZAKARIYYA AL-ANŞĀRĪ, *ASNĀ AL-MATĀLIB FĪ SHARĤ RAUD AL-TĀLIB* 3:63 (Dar al-Kitāb al-Islāmī, n.d.).

35. AL-KĀSĀNĪ, *supra* note 33, at 5:151.

36. IBN 'ABIDĪN, *ḤĀSHIYAH* 4:426 (1252H); AL-Shirbīnī, *Mughnī al-Muhtāj*, *supra* note 33, at 3:624; AL-RAHAIBANĪ, *MATĀLIB UL AL-NUHĀ* 3:502 (Al-Maktab al-Islāmī, 1415H/1994); IBN RAJAB, *AL-QAWĀ'ID* 115 (Dar al-Kutub al-Ilmiyah, n.d.).

37. AL-KĀSĀNĪ, *supra* note 33, at 6:184; AL-SĀRAKĤSĪ, *AL-MABSŪṬ* 23:25–26 (Dar al-Ma'rifah, Beirut, n.d.).

38. QUDAMAH, *supra* note 32, at 6:436; MANŞŪR AL-BUHŪTĪ, *KASHSHĀF AL-QINĀ' 'AN MATN AL-IQNĀ'* (Dar al-Kutub al-Ilmiyyah, n.d.).

, *ibid* 4:167; ABU ZAKARIYYA MUḤYIDDĪN YAḤYA BIN SHARAF AL-NAWAWĪ, *RAUDAT AL-TĀLIBĪN WA 'UMDAT AL-MUFTĪN* 6:326 (Al-Maktab al-Islāmī, 1412H/1991); ZAKARIYYA AL-ANSĀRĪ, *ASNĀ AL-MATĀLIB FĪ SHARĤ RAUD AL-TĀLIB* 3:76 (Dar al-Kitāb al-Islām, n.d.); AL-ZARQĀNĪ 'ALĀ KĤALĪL 6:125 (n.d.); MOHAMED BIN AHMED IBN JUZĀI, *AL-QAWĀNĪN AL-FĪQHĪYYAH*

of the parties can unilaterally repudiate the contract and terminate it without the need for the other party's consent. These include, partnership, agency, *qirād* or *muḍārabah* (entrepreneurial partnership), *waṣīyyah*, 'āriyyah, *wadī'ah*, *qarḍ* (loan), *ju'āla* (placing a reward for specific task), judgeship, etc.³⁹

II. RESCISSION AND TERMINATION IN THE CIVIL CODE

A. *The General Rule*

The termination of a contract by one of the parties is a remedy afforded by the law, in addition to other remedies, such as damages or specific performance.⁴⁰ Termination arises as a result of three possible grounds: a) convenience of one of the parties;⁴¹ b) breach (or default),⁴² or; c) impossibility to perform.⁴³ Termination is a unilateral act, save where it is mutually agreed, whose purpose is to release the terminating party from its own obligations under the contract. In most cases,⁴⁴ it is clearly an extreme act and hence the civil law typically sets strict conditions for its exercise by any of the parties or the courts,⁴⁵ as well as alternative or additional remedies.⁴⁶ As will be shown in the next Part, notice is a *sine qua non* requirement of the law relating to termination.

An important distinction is necessary from the outset. The Civil Code distinguishes between *rescission* and *termination* in respect of how the obligations in certain contracts may be extinguished; this might be confusing. Rescission is not the same as termination. It is largely equivalent to the notion of rescission at common law, which is a self-help remedy whose effect is to void the contract *ab initio* (i.e. discharge of obligations retrospectively),⁴⁷ whereas termination [or

397 (trans., Diwan Press, 2019); ALI HAIDAR KHAWAJAH AMĪN AFANDI, *DURAR AL-ḤUKKĀM FĪ SHARH MAJALLAT AL-AḤKĀM* 2:228 (Fahmi Husan trans., Dar al-Jīl, Beirut, 1411H/1991).

39. ABDURRAHMAN AL-SUYŪṬĪ, *AL-ASHBĀH WA AL-NAZĀ'IR* 275, 276 (Dar al-Kutub al-'Ilmiyyah, 1990).

40. Specific performance is rare, but it is stipulated in CC Art. 468, concerning the failure of the purchase to pay by the agreed date. Termination is conjunctive to the remedy of specific performance in this case.

41. See e.g. CC Art. 707, in which case, however, the terminating party will compensate the other party for any expenses incurred until such time, anticipated profit or other.

42. As contemplated in CC Art. 183, discussed in more detail below.

43. CC Arts. 187 and 188.

44. But not always. Art. 291 CC refers to situations whereby "an obligation shall persist for a fixed time if its validity or termination depends on a definite future event." See Court of Cassation Judgment 154/2012.

45. See Court of Cassation Judgment 122/2013, where it was emphasized that "it is not permissible for a judge to rescind or amend a valid contract on the grounds that the revocation or modification is required by the rules of justice. Justice completes the will of the contracting parties, but does not abrogate it."

46. E.g., mutual or unilateral withholding of performance until performance is made by the other party. See CC Art. 191.

47. *Long v Lloyd* [1958] EWCA Civ 3 (Eng.).

rescission as termination] serves to discharge the parties' obligations prospectively. The general rule concerning termination is found in Article 183 of the Code. This provision, however, is concerned only with termination sought by the innocent party for the breach of contract by its counterpart.⁴⁸ Article 183(1) stipulates that breach of contract by one of the parties entitles the other party to demand performance or rescission.⁴⁹ Rescission under such circumstances is automatic.⁵⁰ Equally, as will be shown in a subsequent Part, *force majeure* under Article 188 serves to rescind the contract between the parties.

Another type of termination is recognized by Civil Code Article 189. This is known as *ekalah* and refers to the mutual termination of the contract by the parties.⁵¹ Hence, the difference between Articles 183 and 189 is that under Article 189, the parties may decide to amicably put an end to their contract even if there is no breach by one of them. This mutual termination is considered an agreement that is distinct from the contract which the parties seek to terminate. For this new agreement (i.e. the termination agreement) to come into force, fresh offer and acceptance are necessary, as well as a fresh subject-matter. Indeed, the subject-matter of such an agreement is the termination itself. However, if any of the contracting parties have received a benefit from a third party relating to the contract which the parties are seeking to terminate, the mutual termination shall be considered a new contract for this third party. This is because of restitution. For example, if one party sells the subject-matter of the contract to a third party, while the original contract is terminated by a mutual agreement, the termination is considered a new contract for the third party. As a result, the price must be paid to the original owner if it has not so been paid. But if the price is already paid, the party who received payment must return it back to the other party to fulfill his restitution obligation. Yet, the contract with the third party remains valid in accordance with Civil Code Article 190. The Code does not differentiate between termination under the terms of articles 184 and 189 when determining the retrospective discharge of the parties from their obligations. Moreover, Articles 183 and 189 apply equally to all types of bilateral agreements.

48. Court of Cassation Judgment 219/2011, noting that Art. 183 is not a preemptory norm.

49. See Court of Cassation Judgment 8/2012, which stated that in addition to rescission the claimant may also demand compensation; see also Court of Cassation Judgment 371/2014, where it held that: "The contract is considered to include the rescinding condition, even if it is free of it."

50. CC Art. 184(1).

51. A specific application of *ekalah* is illustrated by explicit or implicit automatic termination clauses in contracts. The Court of Cassation, for example, has decreed that if a company is subject to a fixed term mentioned in its contract and that term has expired, then the company must be terminated by the force of law starting from the date of the expiry of the term fixed in the contract. This does not prevent any of the partners from obtaining a judgment ordering the termination of the company for the renaming partners. Court of Cassation Judgment 114/2012.

It should be emphasized that restitution is always required⁵² whether termination takes place through the court (Article 183) or by mutual agreement (Article 185). In both cases the parties are discharged from their obligations retroactively.⁵³ Article 190 distinguishes between rescission and termination by providing that: “in terms of its correlative effects, rescission shall be deemed termination of the contract between the contracting parties and a new contract in favour of third parties.” Article 185, which departs from the civil law tradition,⁵⁴ stipulates that upon rescission the parties shall be:

Reinstated to the position they were prior to the date of the conclusion of the contract . . . [and] if reinstatement is impossible the courts may grant indemnity.

The Court of Cassation has made a notable exception to the general rule in Article 185. It has emphasized that a term contract or a continuous and periodic contract of implementation is inherently unamenable to the idea of retroactive effect; rather, the retroactive effect of the annulment does not apply to the past except in respect of immediate contracts.⁵⁵

According to paragraph 2 of Civil Code Article 183 the courts may determine an appropriate period of grace for the obligor to perform its obligations and will reject an application for termination if the impugned obligation is relatively insignificant compared to the overall corpus of obligations incumbent on the obligor (fundamental non-performance). The parties may mutually agree, in express language, that failure to perform automatically terminates the contract, without the need to seek approval from the courts.⁵⁶

Party autonomy generally confers upon the parties the right to terminate the contract upon its conclusion, provided that the subject matter of the contract still exists and is in the possession of either party.⁵⁷ Where the subject matter is lost, damaged, or otherwise disposed of in part in favor of a third party, the contract may be rescinded to the extent of the remaining part, in accordance with

52. Court of Cassation Judgment 219/2011.

53. *See* Court of Cassation Judgment 91/2015. The Court noted that the effect of termination is that the “contracting parties return to the state they were in before the contract, so the buyer returns the sold object and its fruits if he has received it, and the seller returns the price and interest he received”; the Court of Cassation has held in the event of that time-based contracts or regularly renewable contracts, such as lease contracts, that they cannot be subjected to retroactive effect because of their nature and by taking into consideration that the time, and the reciprocity of obligations is made on payments which makes it impossible to turn back the part executed thereof. Court of Cassation Judgment 28/1010.

54. *See* Art. 7.3.5 and Art. 7.3.7 of the UNIDROIT PICC. Restitution “of whatever has been supplied under the contract” is possible under the PICC, in accordance with Art. 7.3.6, but in respect of contracts to be performed at only one time; hence excluding contracts to be performed over a period of time.

55. Court of Cassation Judgment 53/2012.

56. CC Arts. 184(1)–(2). Such an eventuality was expressly stated in the contract in Court of Cassation Judgment 219/2011.

57. CC Art. 189(1).

Civil Code Article 189(2). Moreover, *bona fide* special successors to a contract susceptible to rescission remain unaffected.⁵⁸

When a contract is terminated, it ceases to be a valid basis upon which to make a request for compensation. This is quite apart from claims arising out of breach of contract. The absence of a contract upon termination excludes the possibility of a contractual breach. If the basis of the pertinent claim is a fault of the debtor's, the correct legal basis for any post-termination claim is tort.⁵⁹

B. *Notice to Terminate*

Civil Code Article 183(1) requires that formal notice be given to the non-performing party (obligor) to fulfil its performance before going on to terminate or rescind the contract. Notice is a quintessential element of the civil law tradition concerning termination⁶⁰ because of the co-operative nature of contracts and the prevalence of good faith therein. Article 184(3) rightly specifies that a formal notice is always required, even if the parties agree otherwise, save for commercial transactions where it is assumed that the parties possess sufficient experience and are operating at arm's length. Exceptionally, notice is *not* required in the sale of movables where the buyer fails to make payment by the agreed date and unless the parties have agreed otherwise.⁶¹ The Court of Cassation has equally iterated that the parties to a lease may validly agree that no notice is required in the event of persistent non-payment of the agreed fee.⁶²

What is not *prima facie* clear from the reading of Civil Code articles 183 and 184 is whether automatic termination clauses in contracts governed under Qatari law are binding as such, or whether further application to the courts is required. The case law of the Court of Cassation concurs in favor of party autonomy on this issue and the Court does not demand further recourse to the courts.⁶³ In a notable case decided by the English High Court, where the contract was governed by Qatari law, appropriate notice was the key issue.⁶⁴ The High Court delved deep into, among others, the legislative history of the notice requirements underlying the Civil Code. The parties had agreed that in the event of default on the part of the contractor, QF would issue a notice of default with details of

58. CC Art. 186.

59. Court of Cassation Judgment 100/2016.

60. Notice requirements apply in respect of all types of contractual terminations, as explained in this article. *See, e.g.*, CC Arts. 744 and 746 regarding deposit contracts; Art. 778 concerning insurance.

61. CC Art. 471.

62. Court of Cassation Judgment 110/2007. *But see* Court of Cassation Judgment 86/2009 and the discussion below in the Subpart dealing with the termination of lease agreements.

63. Court of Cassation Judgment 219/2011, noting, however, that a prerequisite for automatic termination clauses is that they be clearly and unequivocally stated in the parties' agreement.

64. *Obrascon Huarte Lain SA et al v Qatar Foundation*, [2019] EWHC 2539 (Comm).

such default. If the contractor did not commence work in a manner consistent with the terms of the agreement, QF could then issue a notice of termination.⁶⁵ The contractor argued that Qatari law required application to the courts for termination on the ground of breach. The High Court did not find anything in Civil Code articles 183 and 184, or the judgments of the Court of Cassation, that specifically precludes the parties from agreeing to automatic termination clauses without recourse to the courts.⁶⁶

C. *Termination on the Basis of Anticipated Breach*

The Civil Code does not specifically address the legality of termination on the basis of an anticipated breach. Such a right should be deemed and exercised *mutatis mutandis* in accordance with articles 183–84 and 187. There are several reasons for this. Firstly, the obligor's impossibility to perform must certainly also operate in the interests of the obligee. If the obligor does not seek to terminate a work that is impossible to conclude, then surely the obligee has the right to terminate before the scheduled delivery. Secondly, there is nothing in the Civil Code that expressly or implicitly prevents the parties from agreeing to terminate in the event of an anticipated breach. Thirdly, termination on this basis is a general principle of the law of contracts.

III. UNILATERAL DISPOSITION

Civil Code Article 192 regulates so-called unilateral disposition. It recognizes that as a general rule, unilateral acts do not create, amend or terminate an existing obligation, save if the law provides otherwise. There are several instances in this article whereby the Civil Code recognizes that certain unilateral acts either justify termination by the other party (e.g., non-payment of debt upon the agreed date), or otherwise (in limited circumstances) terminate a contract in and by themselves.

IV. DISCHARGE

Civil Code Article 400 regulates when the debtor may be discharged from its obligation by a unilateral act of the creditor. It enunciates that an obligation expires where the debtor fulfills or performs its obligation to the creditor (obligor). Discharge shall be effective when the creditor becomes aware of the performance. In the event that the obligation is only partially or poorly performed the creditor may reject that such performance shall discharge the debtor from its obligation. In this case, the original obligation and all its terms, securities and remedies shall become effective once again.⁶⁷ In many cases, however,

65. *Id.*, para. 5.

66. *Id.*, paras. 73–75.

67. CC Art. 400(2).

the creditor may refuse discharging the debtor on arbitrary grounds. In case 152/2018, an employee argued that his employer refused to pay the lawful end-of-service gratuity in respect of the period from 1979–2006. The employer had apparently secured a signed statement from the employee that end-of-service gratuity had been paid, but the employee provided sufficient proof that the employer withheld its performance (i.e., to pay the end-of-service gratuity) until the employee signed the statement. The Court of Cassation was satisfied that discharge was not evident from the employee's signed statement and was thus entitled to his end-of-service gratuity.⁶⁸

V. TERMINATION BY REASON OF DEATH

The admonition in Civil Code Article 39(1) whereby legal personality ceases upon death is not particularly useful. As a general rule, although the death of the offeror terminates the offer,⁶⁹ once the contract has been made the death of one of the parties thereto does not automatically terminate said contract. In some cases, the Civil Code specifically articulates automatic termination, subject to the parties' approval, in the event of the death of one of the parties,⁷⁰ but not in others.⁷¹ The death of the landlord or the trustee (of a *waqf*) does not terminate the contract, as the contract can clearly be inherited by its heir. In the case of a lease agreement, neither the death of the tenant or the landlord terminates the contract, save where the tenant's heirs can demonstrate that continuation of the lease has "become more burdensome than their resources can bear or that the lease exceeds their needs."⁷² Where the deceased tenant leased the property for his personal or business affairs, his heirs or the landlord may seek to terminate the lease.⁷³

With respect to employment contracts, these terminate upon the death of the contractor if "his personal qualifications or capabilities are taken into consideration upon making the contract," otherwise the contract shall not terminate automatically.⁷⁴ This no doubt covers situations where the contractor was an employee of a corporation or other legal person, in which case his or her death does not terminate the contract. Civil Code Article 705 goes on to say that the employer may demand termination of the contract where the contractor's personal skills are significant, and the employer has no desire to see the work

68. Court of Cassation Judgment 152/2018.

69. CC Art. 71. Equally, in accordance with CC Art. 74, acceptance shall be terminated by the offeree's death if this occurs before the acceptance reaches the notice of the offeror.

70. CC Art. 681, according to which lending shall terminate on the death of the borrower.

71. *E.g.*, in accordance with Art. 98(2) CC, the promisor's death shall not preclude the conclusion of the promised contract if accepted by the promisee and his acceptance reaches the promisor within the time limit prescribed by the promise.

72. CC Art. 633. *See also* CC Arts. 659 and 668.

73. CC Art. 634.

74. CC Art. 705.

incomplete in the event of the contractor's death. In this case, termination is possible "if no adequate securities to perform the work properly are available in the heirs of the contractor."

The law views several types of agreements as being capable of survival well after the original parties' demise. This is, however, only possible if the original parties so agreed and provided that their heirs or surviving third parties have equally agreed to substitute the rights and obligations of the deceased.⁷⁵ In this sense, the death of the insured (person) does not automatically terminate the insurance agreement. The rights and obligations arising from such contract pass to the insured person's heirs, subject to the consent of the insurer.⁷⁶ Alternatively, either the insurer or the heir may terminate the agreement by notice to the other party.⁷⁷

VI. LIMITATIONS

Limitation or prescription is a definitive period of time stipulated in the law upon the expiration of which the creditor's right to claim performance of an outstanding obligation is deemed to have expired. The general prescription period is fifteen years in accordance with Civil Code Article 403.⁷⁸ A five-year prescription period applies to claims by certain classes of professionals, such as doctors,⁷⁹ tax claims,⁸⁰ certain insurance claims⁸¹ and guarantees.⁸² One-year prescription periods apply to claims of traders, craftsmen and those in the hospitality industry against their clients.⁸³

The period of prescription shall commence from the date the aforementioned creditors supplied their initial (first) service or delivery,⁸⁴ or the date the debt matured.⁸⁵ The calculation of prescription periods shall be in days and not hours in accordance with Civil Code Article 409. Where a reason exists to

75. *E.g.*, CC Art. 681 concerning lending; CC Art. 705 (contractors); CC Art. 747 (deposits).

76. CC Art. 795(1).

77. CC Art. 795(2) and (3).

78. *See* Court of Cassation Judgment 63/2016, relating to a loan agreement entered into by a bank.

79. CC Art. 405. *See* Court of Cassation Judgment 225/2011.

80. CC Art. 406(1).

81. CC Art. 800. *See* in this connection Court of Cassation Judgment 145/2013; equally, Court of Cassation Judgment 181/2014. It has been emphasized that claims under Art. 800 CC are subject to a "special tripartite statute of limitations." Court of Cassation Judgment 141/2015. The statute of limitation begins when the debt becomes payable. *See* Court of Cassation Judgment 36/2005.

82. Court of Cassation Judgment 2/2010.

83. CC Art. 407(1).

84. CC Art. 408(1). Paragraph 2 stipulates that where the claims in CC Arts. 405 and 407 were incorporated in a deed, the claim arising thereof shall prescribe after fifteen years.

85. CC Art. 410(1).

suspend the calculation of a period of limitation (e.g. in accordance with Article 413) for certain heirs, such suspension shall not apply to other heirs in respect of whom the suspensive reason does not apply.⁸⁶

Prescription is not deemed to have commenced where the creditor lacks capacity, unless represented by a competent agent.⁸⁷ Prescription shall not apply where a creditor is prevented from claiming his right, even if such prevention is moral; and equally does not apply to the relationship between agent and principal.⁸⁸ An interesting case concerning Article 411 arose in a case that reached the Court of Cassation in 2017.⁸⁹ There, an employee claimed end-of-service gratuity and damages against his employer for unfair dismissal. More than a year had elapsed since the termination of the employment contract, however, and according to Article 10 of the Labour Law, such claims are admissible only if brought within a year from termination. The employee argued that his late claim was the result of his fear that he would forfeit his residency (moral claim) were he to bring a suit and hence he waited until finding new employment. The Court of Cassation dismissed the employee's claim, arguing that the moral reasons offered by him were insufficient to justify delaying the suit against the employer.

Prescription may be suspended in several ways. The first is articulated in Civil Code Article 413, whereby this may be achieved by requesting the courts to accept one's right in bankruptcy or distribution, and any other procedure available to the creditor. The second is enunciated in Civil Code Article 414(1), which allows suspension if the debtor expressly or implicitly acknowledges the creditor's right.⁹⁰ Where the period of prescription is interrupted, a new period shall begin from "the time of expiry of the effect arising from the cause of such interruption and such new period shall be the same as the original period." Where the right has become *res judicata* and the prescription has been interrupted by acknowledgment of the debtor, the new period of prescription shall be fifteen years unless the pertinent judgment provides otherwise.⁹¹

Civil Code Article 418 makes an important departure from general party autonomy. It provides that prescription may not be waived before the pertinent right is established, nor are the parties free to mutually agree their own prescription periods, nor waive statutory prescriptions in respect of an established right.⁹²

86. CC Art. 412.

87. CC Art. 411(2).

88. CC Art. 411(1). *See* Court of Cassation Judgment 167/2012.

89. Court of Cassation Judgment 86/2017.

90. Para. 2 of CC Art. 414 explains when this is implicit.

91. CC Art. 415(1)–(2).

92. *See* Court of Cassation Judgment 284/2014. The judgment cemented this approach as in the case at hand the parties had opted in their contract to set out their own prescription periods. The Court made clear that prescription in this context is not subject to party autonomy.

VII. TERMINATION BASED ON THE TYPE OF CONTRACT

The Civil Code, while providing a general framework for termination/rescission, introduces special provisions for the termination of particular types of contracts, in respect of which there is a desire to distinguish from general contracts. Some, but not all, of these will be analyzed in the following Subparts.

A. *Termination of Lease Contracts*

The lease shall terminate upon the expiry of its term without notice to vacate,⁹³ unless it is agreed to extend the lease for a fixed or other term if no specific date is stated.⁹⁴ Notice is generally required even where the lessor is the State.⁹⁵ The Court of Cassation has emphasized that notice to evict is a legal act unilaterally issued which includes a desire by its issuer, based on his intention to terminate the contract. “It shall include an unequivocal expression of such desire. For the effect of such notice to be realized it is sufficient that it generally indicates the intention behind it, being an expression of the desire to consider the contract terminated at a specific date.”⁹⁶ The right not to be evicted and by extension the prohibition against the termination of a residential lease constitutes a rule of public policy.⁹⁷ It has further been established that the sub-tenancy contract shall inevitably end upon terminating the principal lease contract, even if it is grounded on the conditions stipulated therein.⁹⁸

The Civil Code and Law No. 4 of 2008 Regarding Property Leasing spell out certain instances which entitle the tenant to terminate or demand the reduction in rent, in addition to a claim for damages. This occurs where: a) the condition of the leased property does not meet its intended use, in which case the tenant may also demand repairs;⁹⁹ b) the repairs cause any breach, partially or in whole, to the intended use, in which case the tenant may demand termination or a reduction in the rent.¹⁰⁰ If the tenant chooses to remain in the leased property

93. Court of Cassation Judgment 19/2011; Court of Cassation Judgment 113/2012; Court of Cassation Judgment 58/2012, in accordance with Art. 15 of Law No. 4 of 2008 Regarding Property Leases; equally Court of Cassation Judgment 42/2013; Court of Cassation Judgment 258/2016.

94. CC Art. 625. CC Art. 588 spells out the period of notice required under the CC in order to make termination effective.

95. Court of Cassation Judgment 28/2010.

96. Court of Cassation Judgment 86/2009.

97. Court of Cassation Judgment 32/2015.

98. Court of Cassation Judgment 138/2010.

99. CC Art. 591(1). *See also* CC Art. 594(1) giving rise to a claim of repairs in conjunction with a right to terminate; Art. 5 of Law No. 4 of 2008 Regarding Property Leasing empowers the tenant to terminate the contract when the lessor (landlord) fails to provide the tenant’s leased premise in a useable condition. However, the lessee is required to notify the lessor. Law No. 4 provides an option to the tenant to either terminate the lease contract or decrease the rent to such an amount that would provide a benefit.

100. CC Art. 595(2).

until the repairs are completed the right to termination is extinguished;¹⁰¹ c) If the condition of the leased property endangers health the tenant may demand termination even if such right was mutually waived.¹⁰² The same applies in respect of leased property that is demolished;¹⁰³ d) where a third party claims a right that is in conflict with the rights of the tenant under the lease contract and the tenant is deprived of using the property, the tenant is entitled to terminate or seek a reduction in the rent, as well as indemnity;¹⁰⁴ e) termination is also possible in the event of considerable material interference by a third party, such that prevents the tenant from using the property;¹⁰⁵ f) the tenant is equally permitted to terminate where considerable deficiency in the use of the property is caused by the acts of a public authority, save if otherwise agreed between him and the landlord;¹⁰⁶ g) latent defects which the landlord knew or should have known give rise to a claim for repairs, termination or reduction of the fee [as well as damages];¹⁰⁷ h) the same is true where the leased property lacks the agreed specifications.¹⁰⁸

The extinction effect of a termination ceases where the terminating tenant continues to occupy the leased property without objection by the landlord.¹⁰⁹ Moreover, where it has been agreed that the landlord may terminate the lease for personal reasons, he shall so notify the tenant.¹¹⁰

The Civil Code recognizes an exceptional right of termination for the tenant where the lease is meaningless for him, other than unforeseen circumstances under Civil Code Article 632.¹¹¹ Civil Code Article 635 allows the tenant to terminate the lease contract where he is required to change his place of residence. In equal measure, where a land tenant fails to cultivate the land due to illness or for any other reason it is not possible that he be substituted by any family members, either party may demand termination.¹¹²

The Court of Cassation has maintained that expropriation of leased property for the public benefit is considered a total destruction that results in the termination of the lease contract by virtue of the operation of law, specifically Law 13 of 1988.¹¹³

101. CC Art. 595(3).

102. CC Art. 591(2).

103. CC Art. 596.

104. CC Art. 599.

105. CC Art. 600.

106. CC Art. 602.

107. CC Art. 604. *See also* CC Art. 608 to this effect.

108. CC Art. 606.

109. CC Art. 626(1). *See* Court of Cassation Judgment 134/2013, referring also to CC Art. 588.

110. CC Art. 631.

111. Court of Cassation Judgment 180/2011.

112. CC Art. 658.

113. Court of Cassation Judgment 34/2011; *see also*, Court of Cassation Judgment 15/2012.

No doubt, the landlord (lessor) equally has a right to terminate the lease agreement. Article 19 of Law No. 8/2008 states that the lessor may terminate the lease contract during the term of the contract if the lessee fails to pay rents on due dates without an excuse, as accepted by the Ministerial Committee for the Settlement of Rental Disputes. The parties may validly agree that in the event of persistent non-payment that termination by the landlord/lessor shall be automatic without a notice or obtaining a court ruling.¹¹⁴ The lessor equally enjoys the right to terminate where he or she intends to make structural changes to the building, subject to obtaining the required permits in accordance with Article 19(6) of the Lease Law.¹¹⁵

B. *Termination of Employment Contracts*

Employment law is only briefly addressed by the Civil Code, as is usual in the civil law tradition. The Code effectively addresses only the strictly contractual underpinnings of the employment relationship. It is Law No. 14 of 2004, On the Promulgation of Labour Law, which constitutes the more detailed legislation on employment. Under no circumstances does the Civil Code allow the employer to unilaterally terminate its contract with the contractor¹¹⁶ and as a general rule, an employment agreement expires where the parties have agreed a specific period for performance and such period has elapsed.¹¹⁷

There are, no doubt, situations where the contractor's (employee) performance falls below the parties' agreed expectations, which gives right to a breach of the employment contract. Civil Code Article 688(1) enunciates the general principle whereby the employer may terminate its contract with the contractor in the event of defective performance, subject to a strict condition. The employer must notify the contractor to correct its performance (which is effectively a breach of the parties' contract) within a reasonable time.¹¹⁸ Article 16 of the Labour Law provides that the employer may terminate the training contract before the end of its period where the trainee is proven to be unfit to learn the profession or breaches an essential obligation expressed in the contract. Article 39 of the Labour Law further provides that during the probation period the employer may terminate the contract by giving a notice of one month where the employee

114. Court of Cassation Judgment 110/2007.

115. Court of Cassation 401/2015.

116. There are a number of special circumstances where termination is never permitted, e.g. following a labor accident whereby the employee has not fully recovered. *See* Court of Cassation Judgment 24/2010; *see equally* Court of Cassation Judgment 2/2011, discussing Art. 51 of the Labour Law.

117. CC Art. 703.

118. Failure to observe notice periods leads to an obligation to offer compensation for the periods where such notice was due, in accordance with Art. 49 of the Labour Law. *See* Court of Cassation Judgment 38/2010.

breached the employment contract. The employee may also terminate the contract by giving a minimum of two months written notice to the employer.¹¹⁹

Termination of employment requires sufficient notice under 61 of the Labour Law,¹²⁰ otherwise the terminating party is liable to compensation and disciplinary action.¹²¹ Exceptionally, the employer may demand termination without notice or time limits if the correction or remedy (of the breach by the contractor) is impossible.¹²² The same right to terminate arises where the contractor either delays the commencement or conclusion of the work to such a degree that this cannot possibly be delivered in the agreed period, or where his actions indicate his intention not to perform or otherwise make the performance impossible.¹²³ A notice is equally required where performance requires specific action within a prescribed timeframe and the employer has failed to act therein. Following the lapse of the prescribed timeframe the employer may terminate the contract.¹²⁴ However, termination shall not be permitted where the contractor's defective performance has not significantly decreased the value of the work or its intended utility.¹²⁵

C. *Termination of Insurance Contracts*

The Court of Appeal has iterated that in case of doubt insurance contracts must be viewed as adhesion agreements under the terms of Civil Code Article 107.¹²⁶ The Code distinguishes between termination and suspension of insurance contracts. Suspension exists where the insured person fails to pay the agreed premium despite notified to do so.¹²⁷ Upon expiry of the suspension the insurer may demand termination under paragraph 2 of Article 789. If during the suspension and prior to the termination the insured person pays in full the outstanding premiums and any accrued expenses the insurance is reinstated.¹²⁸ Insurance contracts (regulated by law) whose duration exceeds five years terminate at the end of every five years by notifying the other party six months prior to its expiration.¹²⁹ Termination is also possible where the insurance premium involves

119. See Art. 51 of the Labour Law for an enumeration of reasons under which the employer is entitled to terminate the contract.

120. Court of Cassation Judgment 18/2010.

121. Court of Cassation Judgment 212/2012.

122. CC Art. 688(2).

123. CC Art. 689. See Court of Cassation Judgment 36/2010.

124. CC Art. 692(2).

125. CC Art. 688(3).

126. Court of Appeal Judgment 1272/2015. See also CC Arts. 775 and 775, which address void terms and conditions in insurance contracts, as well as a variation of the *contra preferentum* rule.

127. CC Art. 789(1).

128. CC Art. 789 (4).

129. CC Art. 778.

considerations that increase the insured risk and these considerations cease to exist or are impaired.¹³⁰

D. *Agency Contracts*

Under Qatari law, the establishment of an agency relationship is not a unilateral act and hence must be predicated on the same criteria underlying contracts, namely offer, acceptance and an intention to be bound.¹³¹ Moreover, the agent must possess sufficient capacity to act on behalf of the principal.¹³² The agreement establishing an agency relationship requires some degree of formality under Qatari law.¹³³ It must be made in writing, signed by the principal, the agent and a witness, as well as be duly authenticated by the authentication department of the Ministry of Justice.¹³⁴

Here it only suffices to state that an agency contract may be terminated unilaterally by either of its parties, unless the agency is decided in favor of the agent, or if a third party has an interest in it. However, the termination of the agency at an inappropriate time or without an acceptable excuse gives rise to an obligation to compensate as one of the forms of abuse of right.¹³⁵ This is in accordance with Civil Code Article 735. Article 735 indicates that although the principal has the right to dismiss his agent at any time before the completion of the work, the agency ends with the agent's dismissal. However, as already stated, the legislator restricted this right in the event that the agency was issued for the benefit of the agent. It is forbidden for the principal to terminate or restrict the agency without the consent of the one in whose favor the agency was issued, and the dismissal of the agent is not *valid*.¹³⁶

VIII. SETTLEMENT

The notion of settlement envisaged in Civil Code Article 354 aims to terminate an existing obligation. This may amount to the payment of an outstanding debt or performance of a due obligation. When such performance or payment is made to the creditor, the obligation is deemed terminated. It is usual in the civil law of Qatar for the provisions on settlement to be encompassed within the

130. CC Art. 758.

131. CC Art. 716. Hence, the beginning and termination of an agency on the basis of an agreement is crucial, because absent a valid agreement the agent may compete against the principal and act in his own name. *See* Court of Cassation Judgment 84/2009.

132. CC Art. 717.

133. CC Art. 718. *See also* Court of Cassation Judgment 18/2010, where it was held that a lawyer may not be challenged on the ground that his power of attorney has not been not authenticated before the procedure was carried out, unless otherwise stipulated by law.

134. *See* Court of Cassation Judgment 64/2011, spelling out some formalities; *see also* Court of Cassation Judgment 236/2011.

135. Court of Cassation Judgment 163/2016.

136. Court of Cassation Judgment 51/2013.

broader category of termination because the settlement of a debt serves to terminate the contract.

A. *Parties to the Settlement*

This may seem straightforward, but it is not. Civil Code Article 250 expresses the general position that where the terms of an agreement require performance by the obligor himself, the obligee may validly reject performance by a third party. Article 354 is mindful of this general rule and stipulates that a debt may be satisfied by a third party against the will of the obligor only if such payment/performance meets the approval of the obligee. Where a third party pays a debt, it may have recourse against the debtor for reimbursement.¹³⁷ Even so, where a debt is paid against the will of the debtor/obligor, the latter may prevent recourse by the payer if he is able to demonstrate that the payer has an interest in objecting to such payment.¹³⁸ The third party (payer) substitutes the creditor, in accordance with Civil Code Article 357, where: (a) he was obliged to pay; (b) he is a creditor himself; (c) the payer pays the debt to retrieve a thing held as security; (d) the payer has a special right of subrogation.¹³⁹

Subrogation in the rights of the creditor is generally permitted under Civil Code articles 359 and 360(2) but is naturally limited to the payment expected by the debtor. The rights of the new creditor following subrogation are only effective against third parties if the date of the agreement with the debtor, the loan agreement and the settlement are fixed.¹⁴⁰ Payment of a debt may be made to a person other than the creditor (and hence the debt is discharged), so long as the latter consents, or such payment is in the interests of the creditor.¹⁴¹ This is a species of set-off, in the sense that the debtor sets off its debt to the creditor by paying another entity to which the creditor has a debt, or against which it expects to incur a debt or some other kind of financial relationship.

Payment is deemed to have been made where the debtor validly deposits the outstanding amount, provided he has offered to make such deposit and the creditor has accepted. If the latter has not so consented the debtor may approach the courts for a judgment validating his deposit.¹⁴² Where payment is in the form of an asset the debtor must notify the creditor of delivery thereof and apply to the court for permission to deposit the asset.¹⁴³ If the value of the asset while in deposit risks depreciation the debtor may seek approval from the court to sell it, in which case he is discharged from his obligation upon depositing the proceeds

137. CC Art. 356(1).

138. CC Art. 356(2).

139. *See also* CC Art. 358.

140. CC Art. 358(1).

141. CC Art. 363.

142. CC Art. 365. *See also* CC Art. 366, which allows unilateral deposit under particular circumstances, such as where the identity and domicile of the creditor is not known.

143. CC Art. 368.

of the sale.¹⁴⁴ Where the debtor makes payment or performance and the creditor rejects or declares its intent to reject these, the debtor shall notify the creditor. Upon notification, “the creditor shall bear the consequences of loss or damage to the relevant asset. In such event, the debtor shall be entitled to deposit such asset at the expense of the creditor and demand indemnity, as applicable.”¹⁴⁵

B. *Object of Settlement*

The parties are free to resolve how to settle the debt of the debtor, but the general rule is that it must be paid immediately upon becoming final, unless the courts or the law determine otherwise through periodic installments.¹⁴⁶ Payment of the debt may not be higher than its value, nor lower, and neither the debtor nor the creditor may be coerced into accepting alternative (or partial) payment, even if higher to the value of the debt.¹⁴⁷ Where an outstanding debt has incurred further expenses and compensation (for delay or other lawful reasons), and payment by the debtor is not sufficient to cover all three, Civil Code Article 372 provides that payment shall first be applied to expenses, next to compensation and finally to the debt itself. In the event of multiple debts by the same debtor to the same creditor, the debtor may designate which debt he wishes to settle unless the parties have agreed otherwise.¹⁴⁸ Any expenses associated with performance are borne by the debtor, unless otherwise provided.¹⁴⁹

C. *Settlement with Agreed Consideration*

Discharge from an existing obligation may be achieved by the creditor’s consent to be paid by a thing other than what was originally agreed. Such a settlement is accepted by Civil Code Article 379 and is known as settlement with agreed consideration. This is because the new thing is given in consideration for the debt. Article 380 emphasizes that the qualities of the transfer of the new thing apply to the settlement. If the title of the new thing was transferred to the creditor, the provisions of sale apply, including those concerning defects and guarantees.

D. *Novation*

An assignment of rights consists of a bilateral agreement between the assignor and the assignee, with sufficient notification given to the debtor. Assignment of obligations (also known as novation) clearly requires the approval of the creditor and hence the assignment of a debt necessarily encompasses an agreement between all three parties. The Qatari Civil Code envisages both types of

144. CC Art. 369.

145. CC Art. 364.

146. CC Art. 375.

147. CC Arts. 370–71.

148. CC Art. 373.

149. CC Art. 377.

assignment; assignment of rights is regulated under articles 324–336 Civil Code, while assignment of obligations is regulated by articles 337–353 Civil Code. Civil Code Article 381 recognizes the notion of novation as a form of consensual agreement¹⁵⁰ under which the debtor and its obligations under the original contract are replaced by a third party at the instigation of the creditor. The third party assumes the obligations of the original debtor and in this manner releases the original debtor from any obligation to perform. As a result, novation terminates the original contract, as well as any associated securities.¹⁵¹ No guarantee or consolidation associated with the obligation shall be transferred to the new debtor without the express consent of the guarantors or the consolidating debtors.¹⁵² Given the importance of novation for the debtor, Civil Code Article 383 makes it clear that the release of the debtor and the termination of the original contract should be made in express terms that leave no doubt. The renewal of an obligation through novation is only possible where both the original and the new obligation are free from invalidity.¹⁵³

E. *Assignment*

Assignment consists in the transfer of existing contractual rights by one party (assignor) to another (assignee). This is achieved through a bilateral agreement between assignor and assignee under article 387 CC. In order to prevent harm to bona fide parties, the assignment is invalid if the assignee is insolvent at the time of the assignment.¹⁵⁴ Some commercial transactions can only be completed by assignment. Article 470 of Law No 27 of 2006 (Commercial Law) stipulates that when the drawer has inserted in a bill of exchange the words “not to order” or an equivalent expression, the instrument can only be transferred according to the form, and with the effects, of an ordinary assignment.¹⁵⁵ Certain assets cannot be made the object of assignment, namely: real estate, movables subject to a mortgage or pledge and business enterprises.¹⁵⁶ It is suggested that while the Civil Code does not permit the use of assignment as security, assign-

150. Although under CC Art. 381(2) the original debtor need not agree.

151. CC Art. 384. Any securities placed by the original debtor to the obligation may be transferred to the new contract under the conditions specified in CC Art. 385.

152. CC Art. 386.

153. CC Art. 382(1).

154. Art 388 CC.

155. See equally Art 471 of the Commercial Law regarding endorsements on bills of exchange; in the event of bankruptcy, the group of creditors mentioned in Art 742 of the Commercial Law must assign their debts to a third party (assignee). The assignee may not participate in the company’s deliberations on composition, nor vote thereon. Under Art 743 Commercial Law, such assignment may encompass a part of the securities, provided that it is equivalent to no less than half of the debt.

156. S El-Serafy, ‘Qatar: Assignment of Rights and Obligations under the Qatar Civil Code’, available at: <https://www.tamimi.com/law-update-articles/qatar-assignment-of-rights-and-obligations-under-the-qatari-civil-code/>

ment of rights is often used as security, particularly where banks have no right to enforce the assigned rights, save in the event of default by the creditor.¹⁵⁷

The Qatari Civil Code generally allows such substitution, or subrogation (of rights) subject to several limitations.¹⁵⁸ In accordance with article 324 Civil Code (assignment of rights) an obligee may transfer to a third party its rights against the obligor, unless the law, the agreement or the nature of the obligation otherwise requires. Where there is no applicable limitation on the transfer the consent of the obligor is not required, provided that the creditor's right/claim has been fully discharged by the third party, in accordance with article 358(1) Civil Code. The assignment of the right whereby a third party is entitled to collect damages or a debt, is recognized in article 356(1) Civil Code. Paragraph 2 of this provision goes on to say that where a payment is made against the debtor's will, the latter may prevent recourse by the payer in connection with the debt, in full or in part, 'if the debtor proves that it has an interest in objecting to such payment'. As already stated, assignment of rights does not require consent of the debtor, save where the assignment agreement is made after the date of the payment of the debt.¹⁵⁹ The Qatari Court of Cassation has clarified that assignment of a right does not impose or create a new obligation on the assignee.¹⁶⁰

Assignment does not usually terminate the original contract. Assignment requires the clear consent of the creditor. Unlike novation, assignment does not terminate the original contract; nonetheless, it does release the assignor from its own obligations, provided that the assignee is not insolvent. Article 388(2) Civil Code emphasizes the need for setting out expressly the terms of the assignment. Where this is not clear, the old obligation shall exist side by side with the new obligation. Unless otherwise agreed, Article 389 Civil Code provides that the assignee shall have a right of recourse only against the assignor.

F. *Set Off*

Set-off is a mechanism whereby the debtor may discharge his debt to the creditor by offsetting it against a debt owed by the creditor to the debtor. Civil Code Article 390 stipulates that off-set is possible even where the basis of each debt is different,¹⁶¹ provided, however, that the subject matter of each debt is

157. *Ibid.*

158. Limitations against transferring rights to third parties is not confined to contracts. Art 203 CC, for example, forbids the transfer of indemnity rights for moral damages to third parties, 'unless their value is fixed by law or by agreement, or if the obligee claims such indemnity before the court'.

159. Art 358(1) CC.

160. Court of Cassation Judgment 49/2016. In the case at hand the question was whether the assignment encompassed also the arbitration clause in the original contract. The Court was adamant that under the particular circumstances it was not so encompassed.

161. *See* Court of Cassation Judgment 236/2013; Court of Appeal Judgment 450/2017.

cash or fungible¹⁶² things of the same quality and quantity and that both debts are free from any outstanding legal dispute. In many cases the creditor will not accept the debtor's set-off offer and hence the debtor will apply to the courts for a judgment to this effect. In this manner set-off is a right prescribed by the Civil Code. The courts, however, may not under any circumstances set-off a limited number of assets. These include, in accordance with Article 392, the following: (a) a thing dispossessed without any right from its owner; (b) a deposited or lent thing; (c) a non-attachable right; or (d) an alimony debt.

It is also quite possible that the debtor's debt is larger than the debt of the creditor to the debtor, in which case discharge is partial.¹⁶³ While it is crucial that the asset destined for set-off is actually in the ownership of the debtor, if the debtor's ownership is conditional on the rights of third parties, such as where it is attached, then set-off is not possible.¹⁶⁴ Where the debt is prescribed at the time of set-off, such debt may still be set-off, "provided that prescription shall not be effective at the time when set-off becomes possible."¹⁶⁵

The subrogation of the rights of the creditor to a transferee with the consent of the debtor should not be overlooked. In this case, if a set-off was possible prior to the transfer, such set-off may not be invoked against the transferee. If the debtor had simply been notified of the transfer by the creditor, but had not assented, he may invoke the set-off against the transferee.¹⁶⁶

G. *Combined Obligations*

Civil Code articles 398 and 399 contemplate the scenario of combined obligations. This arises where the same person is simultaneously both creditor and debtor in respect of a single debt. In such exceptional circumstances and to the extent of the overlap the debt expires. Where the grounds for the unity of the liability cease to exist, the debt and its attachments shall be renewed in respect of all the concerned parties.

IX. FORCE MAJEURE

The Qatari Civil Code distinguishes between various types of hardship, yet not all of these allow the debtor to terminate or rescind the contract or its effects.¹⁶⁷ Article 258 makes it clear that the parties may well agree that the

162. Fungible things are defined in CC Art. 60(1).

163. CC Art. 393.

164. CC Art. 395.

165. CC Art. 394.

166. CC Art. 396.

167. A poignant example that does not neatly fall into the following Subparts arose in a case where the parties had inserted an arbitration clause in their contract that designated as its seat a place that did not exist at the time of the contract. The Court of Appeal held that the possibility of its existence in the future is sufficient as long as it is not an absolute impossibility, and relative impossibility does not prevent the obligation from being established

obligor shall be liable for performance or indemnity in the event of *force majeure* or unforeseen incidents. Hence, in the first instance, the regulation of *force majeure* is a matter of agreement.¹⁶⁸ Nonetheless, even though rescission under Civil Code articles 187 and 188 may be waived by the parties, this is not possible in the context of adhesion contracts.¹⁶⁹

The Civil Code distinguishes between *force majeure* arising in contracts binding on one party and in respect of contracts binding on both parties. *Force majeure* in contracts where an obligation burdens one party only is defined in Article 187(1) as *impossibility* of performance “beyond the control” of the obligor. Unlike the civil law tradition, this provision stipulates that *force majeure* in contracts imposing performance obligations on only one party serves to automatically terminate the contract and hence the obligation is deemed extinguished. Where the impossibility is partial, the debtor may enforce those part(s) of the obligation that can be performed by the obligor.¹⁷⁰

In the event of contracts imposing obligations on both parties, where the obligor’s obligation (but not also the obligee’s) is extinguished by reason of *force majeure* (impossibility to perform critical obligations beyond the obligor’s control) the contract is considered rescinded *ipso facto* for both parties. This is clearly stipulated in Civil Code Article 188(1).¹⁷¹ The Court of Cassation has held that the rescission of a contract by virtue of Article 188(1) is possible only where the external cause has resulted in ‘absolute impossibility to perform’, in which case the burden of proof falls on the debtor.¹⁷² It is for these reasons that the classical position on *force majeure* under Islamic law (*qūwa qāhira*) cannot, and in fact is not, sustained in the Civil Code. The *Sharia* recognizes any act of

under CC Arts. 148 and 149. See Court of Appeal Judgment 523/2018.

168. The Court of Cassation in its Judgment 114/2009 emphasized the sanctity of party autonomy in consonance with the parties’ agreement. This clearly applies to the contractual regulation of *force majeure*.

169. In one case involving a real estate transaction, the Court of Cassation (Judgment 74/2011) noted that consumers may not reject unfair and unjust conditions in adhesion contracts. This seems an aberration and does not count as good law. See also Nisreen Mahasneh, *Standard Terms Contracts: The Approaches of the Qatari Civil Law and the UNIDROIT Principles 2016*, 32 ARAB L.Q. 462 (2018).

170. CC Art. 187(2).

171. This was duly noted by Court of the Cassation Judgment 257/2018. See also Court of Cassation Judgment 449/2017 where *force majeure* was referred to *obiter dicta* without much elaboration. In the case at hand, the Court argued that if the hacking of bank accounts was beyond the control of the bank (while at the same time not compounded by the account holder’s negligence) then the unlawful removal of funds from bank accounts could amount to *force majeure*.

172. Court of Cassation Judgment 257/2018. See also Court of Cassation Judgment 13/2010, where it was held impossibility beyond the control of the obligor arises where the event in question is unpredictable and impossible to avoid and the implementation of the commitment under the contract was impossible for everyone in the debtor’s position. See also Court of Cassation Judgment 51/2008 regarding the burden of proof.

God or unforeseen condition as a ground for terminating the conduct,¹⁷³ which is not the case with the strict application of *force majeure*. Although it is not evident if *qûwa qâhira* was the inspiration behind Article 171(2) (unforeseen circumstances), it is certainly compatible with that provision.¹⁷⁴

In a case decided in 2018 by the Court of Cassation, the parties entered into a purchase contract of five units located on the 79th floor of a tower under construction in 2007. Delivery was due in 2010. In 2008 construction was suspended due to the economic crisis. Additionally, in 2015, the Civil Aviation Authority issued a decision by which to restrict the height of new buildings. Subsequently, the construction of floor 79 was halted and so delivery became impossible. The appellant sought remedy for both the delay and the non-performance. More specifically, the appellant requested the substitution of the contracted units by others on a different floor for a lower price. As regards the non-performance claim, the Court of Cassation held that the appellee had no obligation to substitute and since non-delivery was caused by an external event (i.e., the 2015 regulation), construction was beyond the appellee's control. This was thus a clear case of *force majeure* and there was no obligation to compensate.¹⁷⁵ The Court distinguished between the Civil Aviation Authority's sudden regulation and the economic crisis. The latter was deemed to be foreseeable and hence delay based on the economic crisis was held to constitute a breach of the contract warranting appropriate compensation.¹⁷⁶

An event may be unforeseeable, yet not beyond the control of the obligor. In a case where a fire spread from one building to another in the presence of the fire brigade, the Court of Cassation held that while the destruction of the adjacent building was unforeseeable the prevention of the spread of the fire was avoidable.¹⁷⁷ The Court of Appeal has held that the basis of business is risk and speculation, and as a result high prices and economic stagnation are not considered a sudden accident.¹⁷⁸

Rescission, which is the consequence of *force majeure* is different to the termination stipulated in Civil Code Article 187(1). Where the impossibility is partial the obligee may either enforce the contract to the extent of such part of the obligation that can be performed or demand termination of the contract.¹⁷⁹ This

173. See SE Rayner, *A Note on Force Majeure in Islamic Law*, 6 ARAB L.Q. 86 (1991).

174. See Ilias Bantekas, *The Regulation of Force Majeure in the Contract Law of Gulf States: Private Law as Investment*, 30 TULANE J INT'L & COMPL forthcoming (2022).

175. *Id.* See also A.A. Abdullah, *Coronavirus Pandemic and Contractual Justice: Legal Solutions and Realistic Approaches: A Study in Qatari Civil Law and Comparative Practices*, 35 ARAB L.Q. 1–20 (2020).

176. Court of Cassation Judgment 257/2018.

177. Court of Cassation Judgment 134/2015.

178. Court of Appeal Judgment 257/2018.

179. CC Art. 188(2).

is true also in respect of unilateral obligations that are susceptible to partial fulfilment under Article 187(2).

At least one commentator has rightly argued that while Article 188(1) refers to *force majeure*, the circumstances in which it is applied, and its consequences are more akin to the English (and common law) concept of frustration.¹⁸⁰

A. *Impossibility of Fulfilment*

The notion articulated in Civil Code articles 187 and 188 is iterated in Article 402. This provision is known as impossibility of fulfilment. It states that obligations shall cease if the debtor can demonstrate that their fulfilment “has become impossible due to a foreign cause beyond the control of the debtor.” The impossibility must have arisen only after the obligation was assumed and that its effects are either permanent or at least indefinite. A similar provision regulating impossible fulfilment is found in Article 704, concerning construction contracts. It stipulates that where the agreed work is impossible to perform “due to a foreign cause beyond the control of either party,” the agreement shall terminate. In this case, the contractor is entitled to any costs incurred or wages, “commensurate with the benefit obtained by the employer of such work. In one case, the applicant had sought to reduce the lease price because of the global financial crisis. The Court of Cassation, in overturning the judgment of the lower court, emphasized that the applicant was required to show specifically how the crisis specifically affected him and his business.¹⁸¹

The difference between Civil Code articles 187–188 and 402 seems to be their consequences. Whereas *force majeure* culminates in the rescission of the contract, impossibility of fulfilment does not expressly do so. As a result, the word “cease” in Article 402 must be construed as terminating the contract.

B. *Unforeseen Circumstances*

The Civil Code takes into account the likelihood of “unforeseen circumstances” as a factor for mitigating the parties’ obligations. Article 171(2) specifically states that:

Where, however, as a result of exceptional and unforeseeable events, the fulfilment of the contractual obligation, though not impossible, becomes excessively onerous in such a way as to threaten the obligor with exorbitant loss, the judge may, according to the circumstances and after taking into consideration the interests of both parties, reduce the excessive obligation to a reasonable level.

Article 171(2) is clearly less drastic than Article 188. The event need only be unforeseen, but not beyond the control of the obligor. The Court of Cassation

180. QUINN EMMANUEL, COVID-19: A COMPARISON OF THE ISSUES AFFECTING PERFORMANCE UNDER ENGLISH AND QATARI LAW 10 (n.d.), https://www.quinnemanuel.com/media/wxl23wu/client-alert-covid-19-issues-affecting-performance-of-contractual-obligations-in-construction-contracts-a-comparison-between_1-1.pdf.

181. Court of Cassation Judgment 61/2011.

has held that the unforeseen event must arise once the fulfilment of the obligation becomes more exhausting. Once the unforeseen event takes place, the judge may balance between the parties' interests taking into consideration the current circumstances to reduce the gross imbalance of the debtor.¹⁸² The event in question must be exceptional and unforeseen for the general public and not just for the obligor.¹⁸³ The Qatari Court of Cassation has emphasized that as businesses are required to anticipate and mitigate risk, they are presumed to anticipate future events¹⁸⁴ and as a result the range of events classified as unforeseen are gradually decreasing. More significantly, the obligation under Civil Code Article 171(2) need not be impossible, but excessively onerous (so-called hardship). As a result, the courts are justified in adapting the parties' obligations to a reasonable level in order to alleviate the resultant hardship. These may include an adaptation to the value of obligations yet to be performed; granting additional time to the obligor, or even suspending certain obligations. Article 171(2) is a mandatory provision and may not be excluded even by agreement of the parties.

Particular manifestations of Article 171(2) are scattered throughout the Code. One of these is articulated in Article 632, which concerns unforeseen circumstances in lease agreements. It stipulates that in the event of unforeseen circumstances making the continuation of a lease burdensome to one party, the courts may "upon comparison of the interests of both parties, terminate the lease and fairly indemnify the other party."¹⁸⁵ In one case where the lessee was unable to pay rent for a period of three years, the Court of Cassation relied on Civil Code Article 632 and released the lessee from an obligation to pay an entire year's worth of rental fees.¹⁸⁶ The Court of Cassation has demanded that where lower courts rely on Article 632 they must clarify and specify the precise nature and causes of the underlying unforeseen circumstances in accordance with Article 126. Otherwise pertinent judgments will be set aside.¹⁸⁷ Where the landlord demands termination of the lease, the tenant shall not be forced to return the leased property until indemnity is paid in full or until a sufficient security is provided, in accordance with paragraph 2 of Article 632. In one case where the Court of Cassation did not specifically refer to any particular provision in the Civil Code, it went on to say that where an employee was ordinarily entitled by contract to a bonus, the employer is free from disbursing such bonus where there was a stagnation in its business that led to severe losses.¹⁸⁸

182. Court of Cassation Judgment 257/2018.

183. QUINN EMMANUEL, *supra* note 180, at 11.

184. Court of Cassation Judgment 257/2018.

185. CC Art. 632(1).

186. Court of Cassation Judgment 180/2011. The Court did not elaborate on the unforeseen circumstance applicable in the case at hand.

187. Court of Cassation Judgment 180/2011.

188. Court of Cassation Judgment 246/2014.

Exceptionally, unforeseen circumstances may demand the termination of the contract. Article 680(1) states that the lender may terminate a contract, among others, in the event of an “urgent unforeseen need at any time” during the life of the agreement.

CONCLUSION

It may have come as a surprise to those with little, or no, expertise in Middle Eastern laws that a country whose constitution elevates Islam to the primary source¹⁸⁹ of law would effectively eliminate Islamic law from its private law regulation. This is no accident, and it is not because Islamic contract law is backward or not progressive.¹⁹⁰ Quite the contrary, this body of law has proven itself to serve the merchants of the Arab world for 1500 years and has survived to this day.¹⁹¹ In fact, Islamic finance is thriving precisely because it is predicated on Islamic contract law.¹⁹² The realization from the outset has been that an aspiring commercial and financial hub must apply laws that are consistent with international best practices, while at the same time rendering such laws compatible with prevailing cultural and religious norms. Hence, Qatari businesspeople and lawyers find no incompatibility between modern codifications of private law and their religious or cultural beliefs. It is telling that during the three-year blockade of Qatar by some of its GCC neighbors¹⁹³ the Qatari economy strengthened, the country achieved food security, and began to export surplus food supplies.¹⁹⁴ This is certainly in line with Qatar’s key role in regional and Asian diplomacy, earning the title of ‘norm entrepreneur’ in international affairs.¹⁹⁵

The Qatari regulation of contract termination is certainly consistent with pertinent regulation in the GCC, but also with civil law and common law jurisdictions. This is not surprising, given that the Civil Code was originally predicated on the Egyptian Civil Code of 1948, which itself was the product of

189. Indeed, Art. 1 of the 2003 Permanent Constitution stipulates that: “Qatar is an independent sovereign Arab State. Its religion is Islam and the Sharia Law shall be the principal source of its legislation.”

190. See Hussein Hassan, *Contracts in Islamic Law: The Principles of Commutative Justice and Liberality*, 13 J. ISLAMIC STUD. 257 (2002).

191. See P. Nicholas Kourides, *The Influence of Islamic Law on Contemporary Middle Eastern Legal Systems: The Formation and Binding Force of Contracts*, 9 COLUM. J. TRANSNAT’L L. 384; Noor Mohammed, *Principles of Islamic Contract Law*, 6 J.L. AND REL. 115 (1988).

192. See ISLAMIC FINANCE: LAW AND PRACTICE (Craig Nethercott & David Eisenberg eds., 2012). It is notable that this major treatise was edited and authored by two London-based lawyers, neither of which is Muslim.

193. See Ilias Bantekas, *Engaging the UN Security Council in Zero Intensity Conflicts: The Case of the Embargo against Qatar*, 23 MAX PLANCK YEARBOOK OF U.N. L. 145 (2020).

194. KRISTIAN COATES ULRICHSEN, *QATAR AND THE GULF CRISIS: A STUDY OF RESILIENCE* (2020).

195. See NICOLAS FROMM, *CONSTRUCTIVIST NICHE DIPLOMACY: QATAR’S MIDDLE EAST DIPLOMACY AS AN ILLUSTRATION OF SMALL STATE NORM CRAFTING* (2019).

civil law influences and codifications. No wonder, therefore, that there are very few, and largely unimportant, inconsistencies with Western notions of contract termination and in the one instance known to this author where an English court determined the applicability of Qatari termination law, it had no difficulty in its interpretation and application.

The most vexing manifestation of termination concerns the application of *force majeure*, whether by contract or statute. Qatari courts have shown reluctance to allow the parties to terminate their obligations other than in extreme cases that were wholly unpredictable and performance becomes impossible as opposed to very difficult. It is emblematic that despite the blockade imposed against Qatar between 2017 to 2021, Qatari courts declined to use this as universal justification for termination of contracts based on *force majeure*. During this period, termination of contracts, at least as sanctioned by the courts, was orderly and the economy was not interrupted. No doubt, such a judicial stance was in the interests of the State of Qatar, as would be the case with any jurisdiction acting under similar circumstances. It is fair to say that the law of termination of contracts as this arises from the Qatari Civil Code and the judgments of the higher Qatari courts does not differ in any meaningful way from the regulation of termination under the UNIDROIT PICC, nor indeed its codification in other progressive legislations.

While civil codes in the GCC (with the exception of Saudi Arabia, which does not have one) describe termination and *force majeure* in similar terms, there are some differences. They distinguish between two types of circumstances, namely: (a) impossibility of performance and (b) situations where performance places a significant burden on the obligor. While the former results in contract termination (partially, or entirely), the latter, results in the court's interference to restore the financial imbalance between the parties. At a strict textual level, one is able to observe the language used in the various codes referring to *force majeure*. More specifically, while the Civil Code of the UAE, Oman, and Bahrain explicitly use the expression *force majeure*, their Qatari and Kuwaiti counterparts refer to it by employing its various definitional elements (i.e., external cause beyond his control). The various codifications further exhibit a distinction related to the consequence of 'partial impossibility'. This is because while the UAE and Omani civil codes provide that partial impossibility entitle the aggrieved party to cancel the specific, impossible part of the contractual obligation, the Qatari and Kuwaiti civil codes (Article 188 and Article 215, respectively) suggest that partial impossibility to perform may produce two legal impacts, namely: (a) performance to the extent possible and (b) a demand that the contract be terminated. The latter alternative raises the question of whether termination refers only to the impossible part of the obligation to the contract, or the contract in its entirety. A further distinction is evident from the analysis. The Qatari, Kuwaiti,

and Bahraini civil codes introduce a rather controversial provision that allows the parties to agree to waive the force majeure exception.¹⁹⁶ This development is in sharp contrast with the case law of higher Omani courts,¹⁹⁷ which have rejected the parties' agreement to define *force majeure* in a way that is inconsistent with Omani Law.¹⁹⁸

196. Art. 204 Qatari Civil Code; Art. 233 Kuwaiti Civil Code; Art. 165 Bahraini Civil Code.

197. Particularly, Omani Administrative Appeal Court Judgment 51/2016.

198. See Bantekas, *supra* note 174.