The Effect of Change in Circumstances in Arab Contract Law

by

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In most legal systems, change in circumstances is a juridical fact which, under certain conditions, engenders a number of defined legal principles and rules; and it is normally the case that these principles and rules are subsumed under broader legal doctrines (e.g., frustration, imprévision, clausula rebus sic stantibus, impracticability, Wegfall der Geschäftsgrundlage, Unmöglichkeit, hardship, excessiva onerosita and Nazariyyat al-Hawadith al-Tari'iah, etc.)

In modern Arab contract law Nazariyyat al-Hawadith al-Tari'iah or Nazariyyat al-Zuruf al-'Istithna'iyyah (hereinafter referred to as "the doctrine of intervening contingencies") refers to occurrences that radically disturb the equilibrium of a contractual obligation, making the performance excessively onerous for one of the contracting parties.

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2 This description is similar to that of the French administrative law concept of imprévision. For a brief exposition of this concept see Isabelle de Lamberterie, 'The Effect of Changes in Circumstances (the French Report)', in Contract Law Today, (Harris and Tallon, ed.), ibid., p. 220 at p. 228 et seq. It may also be noted that the other analogous concept of international commercial contracts is "hardship clauses". These clauses have been held to mean 'a change in economic, financial, legal or technological factors that causes serious adverse economic consequences to a contracting party, thereby rendering more difficult the performance of his contractual obligations'. See, UNICITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works, (1988), p. 241 at p. 242.