



# 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'ah*, etc.)<sup>1</sup>.

In modern Arab contract law *Nazariyyat al-Hawadith al-Tari'ah* 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.<sup>2</sup>

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<sup>1</sup> For comparative literature see, for example, Zweigert and Kötz, *An Introduction to Comparative Law*, (1987, 2<sup>nd</sup> rev. ed.), pp. 554-574; Norbert Horn, ed., *Adaptation and Renegotiation of Contracts in International Trade and Finance*, (1985), part. I pp. 13-107; Forte, 'Economic Frustration of Commercial Contracts: a Comparative Analysis With Particular Reference to the United Kingdom', 31 *Juridical Review*, (1986), pp. 1-24; Dawson, 'Judicial Revision of Frustrated Contracts: Germany', 63 *Boston University Law Review*, (1983), pp. 1039-1098; Puelinckx, 'Frustration, Hardship, Force Majeure, Imprévision, Wegfall der Geschäftsgrundlage, Unmöglichkeit, Changed Circumstances', 3 *Journal of International Arbitration*, (1987), p. 47; Harris and Tallon, *Contract Law Today: Anglo French Comparisons*, (1989), pp. 195-241; Von Mehren and Gordley, *The Civil Law Systems*, (1977), pp. 1038-1103; Smit, 'Frustration of Contract: a Comparative Attempt at Consolidation', 58 *Columbia Law Review*, (1958), pp. 286-315; Mackendrick, E., (ed.), *Force Majeure and Frustration of Contract*, (1991).

<sup>2</sup> 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, *UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works*, (1988), p. 241 at p. 242.