

SUSPENSION OF CONTRACT AND ITS IMPACT ON CONTRACT OBLIGATIONS

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***Abstract** - This purpose of this research is to examine the impact of suspending the execution of a contract on obligations in bilateral contracts. Suspension is a legal means based on judicial and practical applications and insurance custom. The importance of this research is clear given the changing economic conditions of the world today, and their consequences based on traditional solutions of termination and annulment of contracts. These are at odds with the contract suspension system that helps to overcome any difficulties or obstacles out of the control of the contracting parties that prevent its execution and to continue its existence with the aim of preserving the contractual bond and preventing it from disappearing for a certain period of time. Once the difficulties have ended the contract shall come back into force with the same terms and conditions that were agreed upon in advance. Due to the failure of Jordanian law to address this topic, we have tried through this research to show what the system of suspending the execution of a contract is and its impact on the obligations of contractors during the suspension period and after the resumption of the execution of the contract.*

***Keywords:** contract suspension; temporary impossibility of execution; original obligation; secondary obligation; good faith principle.*

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INTRODUCTION

When a contract is the result of the affirmative engagement issued by one of the contractors with the acceptance of the other and their agreement to create a specific legal effect either by its establishing an obligation, or by transferring, amending or terminating it, each of them shall be bound by the terms of the contract and shall only have the right to amend or terminate it with mutual agreement, litigation or in accordance with a legal text.

That is, unless unforeseen circumstances or events occur during the period during which the contract takes effect that temporarily do not allow its execution, such as wars, natural disasters and epidemics, as happened with the coronavirus pandemic. Since these conditions make it difficult to execute some contracts in a way that affects the obligations of the contractors or the duration of the contract without this leading to the expiry of the contractual bond, it becomes a temporary, rather

than a final, non-execution and there remains scope to resume the contract based on the principle that "retaining a contract is better than its demise."

From this standpoint, the need arose to create a legal system that both protects contracts from termination due to circumstances out of the contractors' control, and which make it temporarily impossible to execute the contract that works to maintain the continuity of the contract for the duration of the period during which its execution is not possible. That should be without prejudice to its content, whether objectively or materially, provided that the contract shall be resumed after the end of these circumstances and shall return to its binding force and be executed as initially agreed upon. This is known as the suspension of the contract.

Despite the multiplicity of cases of suspension of contracts and its multiple and scattered applications in the law, Jordanian law has not explicitly provided for suspension of contract, has not directly addressed it and has not referred to the suspension of the contract as an effect of it being temporarily impossible to execute a contract. However, there are many practical applications where the judiciary and arbitral tribunals resort to ruling that contracts should be suspended until the reason for the suspension ends, instead of terminating them or reducing or increasing the corresponding obligation in order to maintain the contractual relationship if it is only temporarily impossible to execute the contract.

This topic raises many questions that altogether constitute the whole issue of this study, including, for example: what is meant by execution of a contract? When will a court rule to suspend the execution of the contract? What are the implications for the obligations of contractors during suspended status? Do these obligations expire? Does the suspension of the contract impose new obligations on contractors? What is the basis of these obligations? Does the breach of these obligations entail any penalty?

These questions and others that may be raised in this study will be a focal point for our future studies and we must find answers to them that are of use to those interested in this aspect.

In our study, we will focus on what the system of suspension of contract is within the framework of the general principles of private law while addressing the applications of this system in public law only to the extent necessary and incidentally required by this study.

In our study, we will follow a comparative analytical approach in which we will address legal texts related to Jordanian law and comparative law through analysis and discharge to determine their contents and objectives. Similarly, we will analyse and critique the opinions of the scholars in judicial rulings.

To shed light on this subject, we will divide this study into two topics. In the first topic, we discuss what suspension of the execution of a contract is. As for the second topic, we will dedicate it to indicating the scope of the suspension of the execution of contracts.


1. The first topic: What is suspension of the execution of a contract?

The contract suspension system is considered a legal means to address any difficulties that prevent the execution of the contract in a temporary manner, such as wars, natural disasters, epidemics, and other causes¹. To shed light on this topic, we will divide this part into two issues: the first of which is devoted to the content of contract suspension. In the second we will address the concept of contract suspension.

2. The first issue: the content of contract suspension

There are many cases of contract suspension and, as they are heterogeneous, so this system seen in employment contracts, insurance contracts and FIDIC contracts. However, Jordanian law has not directly or explicitly addressed the idea of contract suspension. If we refer to the text of Article 247 of the Jordanian Civil Code, it says: "in bilateral contracts, if force majeure occurs which makes the

¹ See Articles 66, 67, 68 and 70, 71, 50 of the Jordanian Labour Law no. 8 of 1996.



execution of the obligation impossible, then the corresponding obligation is terminated, and the contract has been terminated on its own. If the impossibility is partial, then what has expired is that which corresponds to the impossible part. Just as with the partial impossibility, the same is the case for temporary impossibility in ongoing contracts, and in both cases the creditor may terminate the contract on the condition that the debtor is made aware.”² It is clear to us from the previous text that Jordanian law has mentioned two kinds of impossibility, in addition to absolute impossibility, with which the obligation expires in bilateral contracts, namely: First, partial impossibility in which the impossible part of the obligation is terminated but the possibility of executing the other part remains. The debtor is discharged from the part affected by force majeure. Second, temporary impossibility, which does not lead to the impossibility of executing the obligation but leads to the suspension of its execution. However, the law has given the creditor the right to terminate the contract upon the occurrence of any kind of impossibility, whether temporary or partial on the condition of informing the debtor.

One school of jurisprudence considers that in bilateral contracts if it is impossible for the debtor to execute his obligation due to an external reason beyond his control, then he is relieved of his obligation and the corresponding obligation is terminated accordingly, if the impossibility is absolute. However, if the impossibility is temporary or partial, it does not lead to the termination of the contract, but rather to the suspension of its execution. So, the effect is to prevent the execution of the obligations arising from the contract, so the debtor is not exempted from his obligation. Rather, the fulfilment of the contract is suspended and the contract resumes after the reason for impossibility if the obligation ends. Therefore, this school of jurists considered that suspension of the execution of a contract is just one of the reasons for temporary impossibility to execute the contract. Therefore, it is considered an extension of the effects of temporary force majeure, provided that it is caused by an external incident out of the hands of the contracting parties, exceptional and that could not have been expected when the contract was concluded, and it cannot be prevented. The force must be temporary, not absolute or complete, and it is usually in ongoing contracts such as rental contracts, supply contracts or others.³

The suspension of the execution of a contract shall not affect its existence or content, as its effect is limited only to postponing the execution of the obligations that were affected by the occurrence of force majeure. In other words, the suspension does not extend to the basis of the obligation or to its existence, where it remains productive in all its effects. Rather, it simply means that these effects are not executed during the period of suspension of the contract.⁴ Some jurists believe that it is not possible to define the duration of the period of temporary impossibility as a certain period. However, it can be defined within a certain limit, taking into account the intention of the contractors in determining the timing of this impossibility. So, if this intention is the exemption from obligation if the duration of the impossibility is prolonged, this leads to the termination of the contract. However, if this period is secondary and has no impact on the obligation, there is no scope to say that the contract is terminated, but rather its execution is suspended until the cause of the impossibility is removed.⁵


It is worth mentioning that the type and nature of the impossibility is an subjective matter subject to the discretion of the trial judge, who takes into account in his assessment the nature of the obligation, whether original or secondary, and the extent of its importance in the formation of the contract. Also taken into account is not invalidating the will of the parties and their intention when contracting. In this context, the Jordanian Court of Cassation said "... An external cause that is out of the hands of the contractor and is beyond his control, then he receives the judgment of force majeure, even if it does not result in impossibility of execution, but rather results in the suspension of the contract during the duration of the ship's malfunction and towing, which constitutes a temporary

² Jordanian Civil Code no. 43 of 1976.

³ Hussam Al-Din Al-Ahwani, *General Theory of Obligation*, Part 1, Willing Resources, 3rd edition, 2000, p. 564.

⁴ Ridha Mohammad Ibrahim Abid, *Delivery Commitment in the Uniform Law for the International Sale of Goods*, PhD Thesis, Faculty of Law, Cairo University, 1979, p. 481.

⁵ Hussein Amer, *Termination of Contract – Binding Force of the Contract*, Egypt Press, Cairo, 1948, p. 443.



impossibility in the execution of the contract within the meaning of Article 247 of the Civil Code... It is not necessary in order to apply the provisions of force majeure that the execution of the obligation becomes impossible. Since the malfunction that happened to the ship constitutes an external cause that is beyond the control of the contractor and since the execution of the contract requires time and it was impossible for the supplier to continue to execute the contract during the period of disruption arising from the external cause, so the execution of the contract is suspended "6

The same court also ruled in another decision that "what is learned from the text of Article 448 of the Civil Code is that, if it is impossible for the debtor to perform his obligation because of something external, like a force majeure or something else, the obligation has been terminated and cannot be claimed as there is no obligation when execution is impossible. The impossibility of execution must be final and not temporary in nature as, if it was temporary then it results in temporary non-execution only. That is, the obligation is not terminated, but is only suspended during the period of that impossibility and shall resume as soon as the temporary impossibility has ended. That unforeseen event shall not have an effect on the execution of the contract during the period of impossibility and where the defendants are obligated towards the plaintiff to pay a certain amount of money in Kuwaiti currency and it has not been proven that the payment of it has become impossible because of the circumstances that have occurred, the obligation does not lapse and remains in place and must be fulfilled."7

It is worth mentioning that the French judiciary was a pioneer in establishing the theory of contract suspension when the French Court of Cassation ruled for the suspension of the execution of some ongoing contracts, most of which were supply contracts suspended during the war of 1870, after the Court found that the impossibility caused by serious events during the period of war is temporary and not permanent. This is also what the same court ruled in the aftermath of the First World War in 1914, where it said in its decision: "in the case of temporary impossibility, the debtor is not free from the execution of his obligation, but this execution is only suspended until such time as the impossibility ends."8 The French judiciary also applied the system of suspension of contract to sale contracts including the condition of delivery of the seller in the event that an intervention of force majeure prevents the execution of the contract temporarily. This system was also applied to rent contracts. A norm emerged judging that every temporary disruption of the use of the leased property entails the possibility of reducing the lease or cancelling it throughout the period in which it is impossible to occupy the leased property without the need to terminate the lease contract. This is the decision that the French Court of Cassation reached to suspend the lease contract in the event of confiscation for a short period of time or the closure of a shop for several weeks when a temporary defect occurs in the use of the leased property.9

In the same context, the Kuwaiti Court of Cassation considered the Iraqi invasion of Kuwait force majeure, resulting in temporary impossibility. It concluded that the Iraqi invasion was nothing more than an unforeseen incident and a temporary impediment resulting in the temporary suspension of the execution of contracts and not leading to their termination.10

At the level of international trade, the principles of international trade (Elendro) have taken on the system of contract suspension, such that the Article 2/306 states: "The request for renegotiation

⁶ See the decision of the Court of Cassation No. 825/1996 issued on 19/6/1996, "Programme of your Decision", Jordanian Bar Association.

⁷ See Court of Cassation decision No. 416/2000 issued 29/8/2000, "Programme of your Decision", Jordanian Bar Association.

⁸ See the decision of the French Court of Cassation, referred to in Jacques Ghestin, *Civil Law Treatise, Obligations, Contract Effects*, Paris, 1992, p. 382.

⁹ Abdul Wahab Ali Al-Roumi, *The Theory of Impossibility and its Effect on Contractual Obligations*, PhD Thesis, Cairo University, 1994, p. 789.

¹⁰ See Kuwaiti Court of Cassation decision no. 330/1995 and decision no. 334/1995 published on the website www.eastlaws.com "East Laws".

does not in itself entitle the party who was deficient in his commitment to the action to the right to suspend the execution but rather, this must be regulated in an explicit text." So, the injured contractor does not have the right to stop the execution of his obligations, unless there is an explicit text granting him this right, as soon as the incident causing the suspension occurs. The standard terms issued by the International Chamber of Commerce regarding the system of suspending the performance of the contract when renegotiated are similar.¹¹

We find that arbitral tribunals in the field of international trade tend to adopt a system of suspension of international trade contracts to maintain these contracts regardless of the difficulties or obstacles that prevent their execution. This is because international arbitral tribunals believe in the seriousness of and importance of international trade contracts and the severity of the losses that may result from the termination of these contracts before the completion of their execution.¹² The decision of the arbitral tribunal to suspend the execution of a contract comes from the will of the contractors rather than a ruling and finds its basis in the express agreement of the two parties to suspend the execution of the contract in specific cases. The arbitral tribunal shall also intervene to rule on the suspension of execution of the contract in a case where one of the contracting parties requests a suspension of contract and the other party objects, or in the case where neither party requests the suspension of the contract, in which case the arbitral tribunal shall rule by itself if the contract contains a condition to that effect.¹³

3. The second issue: the concept of contract suspension

Jurists have struggled to find a common definition of the system of contract suspension and opinions and definitions are numerous. Some have defined it as "an expansion of the effects of temporary force majeure that would exclude the right to terminate the contract. It gives the debtor the right not to perform the contract as long as the impossibility exists without being subject to a ruling to terminate the contract."¹⁴

It is noteworthy that this definition limited the reasons for contract suspension to force majeure only, even though the reason for contract suspension may not be related to force majeure. For example, the conscription of an employee for military service during the effective period of an employment contract or his arrest or a female employee giving birth. The failure of the insured party to pay the premium payable may also be one of the reasons for the suspension of the execution of an insurance contract, in addition to many other cases that lead to contract suspension and that do not constitute force majeure.

Another tendency has been to define contract suspension as a "temporary termination that occurs while a contract is ongoing without affecting the previous effects of the contract or effects subsequent to the period of suspension. It then leads to partial and final erasure of the effects of the ongoing contract that shall eventually result in the partial performance of the contract."¹⁵

It seems to us that this definition confuses the concept of termination of the contract with contract suspension despite the wide differences between the two concepts. Contract suspension cannot be a temporary termination as it does not end the contractual bond. Rather it aims to continue the effects of the contract during the period of the suspension, contrary to termination which leads to the end of this bond and the disappearance of the effects of the contract.

¹¹ See Articles 1 and 2/19 and 3/10 of CIF and 3 and 2 of FOB and other conditions referred to by Hamza Haddad, *Model Contracts in International Trade Law*, PhD thesis, Faculty of Law, Cairo University, 1975, p374.

¹² Sharif Mohammad Ghannam, *The Effect of Changing Circumstances in International Trade Contracts*, PhD Thesis, Dar Al-Nahda Al-Arabiya, Cairo, 2000, p328.

¹³ Mohiuddin Ismail Almuiddin, *International Commercial Arbitration Platform*, Part 1, Dar Al-Nahda Al-Arabiya, Cairo, 1998, p. 114.

¹⁴ Hussam Al-Din Kamel Al-Ahwany, *Explanation of Labour Law*, 1st Edition, Dar Al-Nahda Al-Arabia, Cairo, 1996, p. 263.

¹⁵ Leberet, *Suspension and Resolution of Contracts*, Paris, 1924, p. 581.

There are those who have considered that "contract suspension is a legal means by which any temporary disturbance that arises *de facto* or *de jure* can be avoided, or by which any shortcomings that occur in the execution of a contract for a specific period of time can be addressed. This is to ensure the continuation of this contract and its direct and correct execution whenever possible and to serve the interests of both parties in the future."¹⁶

Despite the importance of this definition, it does not indicate the characteristics of contract suspension and does not demonstrate what distinguishes it from other similar legal systems. Meanwhile some believe that contract suspension is an intermediate stage between the execution of the contract and its termination. That is, the contract shall be in place during the suspension period, but its execution is what is temporarily suspended for a specific reason. So, the execution is stopped without being terminated and either of the two parties is entitled, during the suspension period, to suspend the execution of its contractual obligations without it entailing any contractual liability.¹⁷ We, in turn, support this view and emphasize it. Once the state of contract suspension is achieved, the effects of this contract will be suspended, and this includes some of the obligations of contractors for a period of time that may be prolonged or shortened depending on how long the reason for the suspension continues. As such, the contract continues to exist between the contractors in a state of suspension without this leading to its termination except in specific cases.¹⁸

Accordingly, the suspension of the contract does not extend to all the obligations of the contractors, as some of these obligations remain valid and binding while the contractors are exempted from performing other obligations temporarily and the contractual bond survives and continues. Meanwhile, new obligations are imposed by the state of suspension, and jurists have differed regarding the standard of determining these obligations. Three perspectives have emerged in this regard, each of them attempting to indicate the impact of contract suspension on the obligations of contractors, according to the nature of the obligation. Those of the first perspective consider¹⁹ that the suspension of the contract does not affect the conservatory obligations, which remain valid and binding while all the other obligations cease. This perspective has been criticised as it assumes that the contract will be executed in future and forgets that the suspension may terminate some contracts. Also, there are some contractual obligations that are not affected by the suspension altogether, such as the employee's obligation not to disclose work secrets in an employment contract²⁰, the obligation not to compete with the owner and the obligation of the consultant engineer to keep project secrets. This is because this obligation arises from the contract itself and not the suspension²¹ and it shall remain valid and binding during the period of the suspension.

On the other hand, those who hold the second perspective²² advocate for the need to distinguish between continuous obligations and non-continuous obligations. The former remains binding and effective despite the state of suspension, such as the employee's commitment not to compete with the employer. This is due to the consideration that this type of obligation is tied to the contract and remains for the whole lifespan of the contract regardless of the existence of the dependency bond or not, in contrast to non-continuous obligations, which are related to the existence of dependency bond, such as the employee's obligation to do the work or the employer's obligation to pay the wage.

¹⁶ Khalid Jassim Al-Hindabani, *Suspension of Employment Contracts*, Law Journal, Kuwait, 2000, p. 182 and p. 183. See also Saad Nabil, *Suspension of the Execution of the Contract, A Comparative Study of French and Egyptian Civil Law*, PhD Thesis, Dijon, 1981, p. 185.

¹⁷ Jaafar Al-Maghrabi, *Cases of Suspension of Employment Contracts Contained in Jordanian Labour Law*, Mutah Journal for Research and Studies, Volume 20, No. 4, 2005, p. 283.

¹⁸ Sharif Mohammad Ghannam, *The Effect of Changing Circumstances on International Trade Contracts*, *ibid.*, p. 343.

¹⁹ Wafaa Helmy Abu Jamil, *Work Contract Suspension*, Dar Al-Nahda, Cairo, 1990, p. 70.

²⁰ See Article 19/b of Jordanian Labour Law no. 88 of 1996 and Article 814/5 of the Jordanian Civil Code no. 43 of 1976.

²¹ Wafaa Helmy Abu Jamil, *ibid.*, p. 71.

²² Ramadan Abdullah Saber, *Suspension of Employment Contracts*, PhD Thesis, Cairo University, 1997, p. 85.

This perspective has been criticised²³ as it is seen as confusing between the characteristics of the contract and the contract itself, as the obligations of the contractors, whether continuous or not, arise from the contract itself. For example, the dependency bond in the employment contract is only one element of the employment contract, and the linking of non-continuous obligations to the dependency bond and their disappearance during the period of contract suspension is an incorrect statement, as the dependency bond does not disappear, but the employer's powers are restricted and limited. So, suspension does not lead to the demise of the dependency bond.

Those who hold the third perspective²⁴ have another opinion, which is that the impact of suspension extends to the main or original obligations, which are the obligations whose achievement was the goal of the contract. The parties to the contract are exempted from them in the case of suspension and they disappear completely without any contractual liability. However, the secondary obligations are not subject to the suspension and remain binding and enforceable in application of the principle of good faith²⁵. So, in an employment contract, the employee remains committed not to disclose the secrets of the employer throughout the period of the suspension of the work contract. Equally, he is committed not to compete with the employer. In a lease contract, the tenant remains responsible for maintaining the leased property and using it according to the purpose for which it was prepared. The parties are also obliged to abide by the bounds of decency and tactfulness and to refrain from any action that would disrespect the other party²⁶.

Based on the above, we find that the last perspective is the most correct, which is what most scholars agree on. So, in bilateral contracts, if one contractor refuses to perform its obligation, the other party has the right to also refrain from executing the obligation, which is known as the payment for non-execution. This is the case during the state of suspension, where the parties are exempted from the execution of the main obligations throughout the period of suspension without it leading to the termination of any of these obligations and the contract remains in place. The main objective of the suspension is to maintain the contractual relationship, and we must point out here that the main or essential obligation is the original obligation in the contract, which is the obligation without which the contract is not concluded. For example, the obligation of the seller to deliver the sold item in the sale contract, and the obligation of the lessor to enable the lessee to benefit from the leased property in the lease contract. Also, the employee's obligation to perform the work and the employer's obligation to pay the wage in the work contract. As for the secondary obligations, they are all non-original obligations that do not affect the essence and content of the contract and attached to the original obligation. When contract suspension is executed in bilateral contracts it leads to the continuation of these obligations as required by the principle of good faith. The contract is not limited to obliging the contractor to what is stated in it but also addresses all its requirements in accordance with the law, custom and the nature of the contract.²⁷

It is worth mentioning that the issue of determining the nature of obligations in contracts - i.e., whether they are original or secondary - is a subjective issue. It is subject to the discretion of the trial judge according to the circumstances of the case. According to the jurisprudence of the Jordanian Court of Cassation if force majeure occurred making the execution of the obligation impossible, then with it the corresponding obligation is terminated, and the contract is terminated by the force of law. However, if the impossibility is temporary, the debtor responsible for an essential obligation is exempted from it throughout the period of impossibility and without being held accountable for the execution of this legally binding obligation, where the execution of the contract is suspended out of his

²³ Khalid Al-Hindabani, *Suspension of Employment Contracts*, *ibid.*, p. 213.

²⁴ Sayed Eid Nayel, *The Intermediary in Explaining the Labour and Insurance Systems in Saudi Arabia*, King Saud University Publications, 1st Edition, 1996, p. 199.

²⁵ Khalid Al-Hindabani, *Suspension of Employment Contracts*, *ibid.*, p. 223.

²⁶ Ramadan Saber, *Suspension of Employment Contracts*, *ibid.*, P. 120.

²⁷ See the text of Article 202 of the Jordanian Civil Code.

control. 28 For example, if it was becoming impossible to move goods, because of the closure of ports or airports, as happened during the period of the coronavirus pandemic. This is what was stated in a decision by the Court of Cassation: "We find that the suspension of a lease contract from achieving its purpose, which is the benefit and fulfilment of the tenant, for the duration of the closure of the shop due to the defence order, is considered a temporary impossibility to which is applied the provision stipulated in Article 247 of the Civil Code. Which is that the tenant shall be excused from the amount of rent that corresponds to the period for which it is impossible for him to obtain the benefit from his rented property."²⁹ The suspension of the performance of the contract shall result in the suspension of the performance of the obligations resulting from the contract and the goal as we have shown previously is to preserve bilateral contracts and avoid their termination.³⁰ As for secondary obligations, if they were affected by the suspension, that does not affect the continuation of the contract and does not prevent the contractor from obtaining compensation for failure to perform the secondary obligation and this does not lead to the suspension or termination of the contract.³¹ Since that is the case, that leads to the emergence of other obligations besides the original and secondary ones, which are the obligations imposed by the suspension on the contractors where the goal is to preserve the contract and re-execute the suspended obligations and resume the contract again.³² This is what we will discuss in the second topic.

4. The second topic: The scope of the suspension of the execution of a contract

We will address the scope of the suspension of the contract through two issues. The first issue is dedicated to discussing the impact on the obligations. As for the second issue, it is dedicated to the obligations arising from the suspension of the contract.

5. The first issue: The impact on the obligations arising from the contract

We have previously indicated that the original obligations are the obligations for the purpose of which the contract was concluded, and since the suspension of the contract aims to address any difficulties that temporarily prevent the execution of this contract in order to maintain the contractual bond instead of its termination, we find that the suspension will affect the reciprocal contractual obligations and paralyze them temporarily until the reason for the suspension ends. The debtor is relieved of the execution of his obligation temporarily without being held accountable throughout the period of the state of suspension.³³ On the other hand, since the suspension of the contract is necessary and obligatory, and since the debtor's obligation is closely linked to the creditor's obligation, in order to avoid overburdening in the case that the execution of the obligation was continued from just one party, it is safe to stop the execution of this obligation. This means that "the suspension supplements the reciprocal obligations imposed on the parties by the contract."³⁴ This means that if the state of suspension is achieved or one of its reasons occurs, it will lead to the exemption of the two parties of the contract from their original obligations, and this is what the Egyptian Court of Cassation ruled in its decision: "Suspension of the contract means stopping the execution of the main mutual obligations imposed by the contract on both parties when a force majeure occurs which leads

²⁸ See the decision of the Jordanian Court of Cassation no. 416/2000 issued on 29/8/2000, "Programme of Your Decision".

²⁹ See the decision of the Jordanian Court of Cassation No. 2021/5725 issued on 30/12/2021 and decision no. 2683/2022 issued on 24/5/2022 "Programme of Your Decision", Jordanian Bar Association.

³⁰ Saleh Nasser Al-Otaibi, *The Role of Substantive and Secondary Conditions on Contractual Relationships*, PhD Thesis, Ain Shams University, 2001, p221.

³¹ *ibid.*, p.222.

³² Hussam Al-Din Al-Ahwani, *General Theory of Obligation*, *ibid.*, p.530.

³³ Khalid Al-Hindabani, *Suspension of Contract*, *ibid.*, p. 214.

³⁴ Hussam Al-Din Al-Ahwani, *General Theory of Obligation*, *ibid.*, p. 530.

to the temporary impossibility of execution."³⁵ For example, in a rental contract if force majeure or an emergency situation prevents the lessor from enabling the lessee to benefit from the rented property meaning that the original obligation is suspended, it results in the suspension of the original obligation corresponding to it, which is the tenant's payment of the rent agreed in the lease contract. This is what happened during the coronavirus pandemic. Also, in supply contracts, the exemption from delivery of the goods as a result of one of the reasons for the suspension shall result in exemption from payment of the price. In an employment contract, the employee shall, during the period of the suspension of the contract, be released from the performance of the work agreed upon as an original obligation in this contract without being subject to contractual liability. Consequently, he is exempted from the execution of the employer's orders related to carrying out the work and is also exempted from attending the workplace and from wearing the uniform allocated to work in application of the rule that if "the roots have fallen, the branch has fallen". That is, these obligations are obligations resulting from the original obligation, which is the obligation of the employee to carry out the work.³⁶ Some have added that if the employee is entitled to his wage on the basis of piece or production, it is calculated on the basis of what he has produced only, and if he does not produce anything then he is not entitled to any wage for it.³⁷

It should be noted that the above is the general rule in the theory of contract suspension, as there is an exception to it. It takes the form of not stopping the main obligation corresponding to the suspended obligation, either in application of a provision in the law, a condition in the contract, or according to a court ruling. One of the most important applications of this exception, is that the employee is entitled to a full wage, despite not performing the work, if this is because of the employer. This is as the jurisprudence of the Jordanian Court of Cassation has established that the employee deserves his wage if he is suspended from work at the request of the employer. It said in its decision: "Article 821 of the Civil Code required the employer must pay the employee his agreed wages when he performs his work or if he prepares himself and makes himself available to work but is not assigned to work, or if the employer suspends the employee from work, he is entitled to his wage for the period of suspension from work, as ceasing to work does not mean stopping the wages for as long as the contract remains in force."³⁸ Jordanian law has also stressed the employee's entitlement to full pay³⁹ if the impossibility of carrying out the work is due to a mistake by the employer, but if the impossibility is not due to the employer and he is not able to pay it, then the employee is entitled to in this case to be paid in full for the first ten days of work stoppage and is entitled to half of the wage for the rest of the period provided that the total paid disruption shall not exceed sixty days. This takes into account the interest of the employee as the weaker party in this relationship and that the wage may constitute his only source of income. Given the social and humanitarian importance of the wage, we find that the law has obligated the employer to pay the employee's wage in full, despite him not performing the work throughout the period of his annual and sick leave, maternity leave for female employees and work injuries. He also keeps his bonus and promotions in violation of the principle of reciprocity between wages and work, and this is what the Egyptian Court of Cassation ruled in its decision "suspension of an employment contract resulting from the arrest of an employee does not result in all effects of suspension. Rather one of the main obligations arising from the contract remains, despite its suspension. That is, the obligation of the employer to pay the employee's wage for


³⁵ Civil Cassation Session 6/3/1977 Appeal no. 339 of the 41st Judicial Year, Technical Office Rulings Group, Year 28, p. 612.

³⁶ Yousef Elias Hou, Legal Protection for Renumeration in Labour and Egyptian Law, PhD thesis, Ain Shams University, 1977, p. 189.

³⁷ Sayed Eid Nayel, Explanation of Labour Law, Dar Al-Nahda Al-Arabiya, Cairo, 2005, p. 368.

³⁸ See decision of the Court of Cassation No. 252/2021 issued on 22/2/2021, and decision no. 1632/2004 issued on 19/10/2004 and decision No. 7100/2018 issued on 24/12/2018, "Programme of Your Decision".

³⁹ See the text of Article 50 of the Jordanian Labour Law.



the period of detention, as long as the wage is essential for his subsistence, and to not deprive him of it because of his arrest which has suspended his contract and is beyond his control."⁴⁰

One of the other exceptions to stopping the corresponding obligation to the suspended obligation is what is known as partial suspension in an insurance contract. In this case the obligation of the insurer is suspended but not the obligation of the insured party in the case where the latter fails to pay the insurance premium on the specified date, so the insurance company stops covering risks during this period, but this does not exempt the insured party from paying the premium, as he remains obligated to pay for the insurance for the period of the suspension and can only escape this obligation if the contract is terminated. Therefore, only one part of the insurance contract is suspended, where the obligation of the insurer to provide a guarantee is suspended without suspending the obligation of the insured party to pay the insurance premium⁴¹ This was devised by insurance companies who considered that the nature of the insurance contract requires the existence of this type of suspension, which is either determined under the insurance contract or may be prescribed by law.⁴² The failure of the insured party to pay the premium is considered a fault that results in damage to the insurer. So, in order to compensate for this damage, the insurer shall cease to cover the risk while there remains the obligation of the insured to pay the due premium. This has serious consequences, the most important of which is to deprive the insured party of the insurance amount, in addition to his obligation to pay the premium, and the effect of this type of suspension extends to others, like the heirs of the insured party, the pledge holder and the designated successor. It is worth mentioning that this case is only specific to the insurance contract, and its terms and effects differ from the terms and effects of suspension as a general concept.

In short, it turns out that there may be some cases in which only one obligation for one contracting party in a bilateral contract is suspended, especially in employment contracts and insurance contracts. The difference between the cases of the suspension of these two contracts are due to the different reasons for the suspension and the purpose of it. In the employment contract, the reason for the suspension may be either a circumstance outside the control of the parties or due to the fault of one of the contractors. As for insurance contracts, the reason for the suspension is the fault and the falling behind of the insured party and he is the first to lose in this case.

It should be noted that the not stopping the corresponding obligation in an employment contract, especially for social, humanitarian and economic reasons, takes into account the need of the employee for the wage as his only source of livelihood. However, in the insurance contract, the suspension arises as a penalty for the insured party's failure to pay premiums on time.

Therefore, the state of suspension leads to the temporary release of the contractors from the execution of the obligations of the contract. However, there is an exception to this rule which is the continued execution by one of the contractors despite the suspension of the obligation corresponding to it. In return, we find that the suspension delays the execution of the obligations without affecting the existence of the contract, as it remains productive in all of its effects.

As for secondary obligations, they are an extension of each original obligation and are mainly aimed at achieving practical results from the contract according to the nature of the contract and the intention of the parties. Their performance does not depend on the performance of any of the original obligations in the contract, so these obligations are not affected by the suspension, and they remain in place, producing their effects, and remain binding to the contracting parties, as they do not constitute a threat to the continuity of the contract and its existence unless they are linked to an original

⁴⁰ The decision of the Court of Cassation issued at the session of 6/3/1977 and referred to by Ahmed Ali Al-Saadi, *Contract Suspension*, Master's Thesis, Dubai Police Academy, College of Law and Police Sciences, 2008, p. 314.

⁴¹ Abdul Razaq Al-Sanhouri, *Intermediary, "Gharar" and Insurance Contracts*, 3rd Edition, Al-Halabi Publications, 2000, Article 642, p. 1314.

⁴² See the text of Article 975 of the Lebanese Code of Obligations and Contracts and the text of Articles 797 and 798 of Kuwaiti Law and Article 16 of French Insurance Law referred to by Abdul Moneim Al-Badrawi, *Insurance Contracts*, 1999, p. 208.

suspended obligation or if the impossibility has affected these obligations directly. One of the most important examples of the secondary obligations that jurisprudence⁴³ has provided is the commitment to keeping secrets in an employment contract. This is one of the most prominent direct legal obligations that stipulates the obligation of the employee to keep the secrets of the industrial or commercial employer, even after the expiry of the employment contract, as required by agreement or custom.⁴⁴ This includes all the secrets that the employee has learned due to his work such as: production lines, raw materials and manufacturing methods in addition to company accounts and other secrets related to the workplace.⁴⁵

We also find that a consultant engineer is committed to keeping secret information gained during the exercise of his profession where he has the most accurate details and information related to the work of the beneficiary in order to provide engineering consultancy and that is the case whether the beneficiary has stipulated confidentiality or not. This is also the case in the agency contract where the agent is committed in the agency contract to maintain the confidentiality of the information obtained from his client even if the contract is suspended or ended. Jurisprudence is in agreement that the obligation to confidentiality in professional contracts in general is characterised by its permanence and is not limited to the duration of the contract concluded between the parties. This obligation finds its source outside the contract and on the basis of the notion of public order, and therefore its existence precedes the existence of the contract and is binding at all its stages.⁴⁶

Therefore, if any of the reasons for the suspension of the contract occur, this does not affect any of the secondary obligations, So, the law allows the employer to agree with the employee that the latter shall not compete with him or participate in work that competes with him after the end of his contract, if the nature of the work he does allows him to be briefed on the secrets of work and identify clients and customers, provided that this agreement is a condition within the terms of the work contract.⁴⁷ However, this condition is not absolute, rather it is restricted in terms of time, place, nature of work, and the penalty clause in a way that does not restrict the freedom of the employee and at the same time protects the interests of the employer. This obligation remains in place and binding on the employee throughout the period of suspension of the employment contract. It is not possible to dispose of it under the pretext of suspending the contract, as the source of this obligation is the employment contract, and this contract continues to exist throughout the period of the suspension.⁴⁸

An example of secondary obligations, which remain binding during the suspension of the contract and are not affected by it, is the obligation to make aware in engineering consultancy contracts. Jurisprudence has established that the obligation of preserving is a secondary obligation which is not part of the original obligations in the contract of the architect or construction contractor. It is an obligation that is additional to the main obligations arising from the contract. It differs from the contracts that have recently appeared in the scope of construction, in which advice becomes subject to the main obligation arising from it, such as contracts concluded for feasibility studies and contracts concluded with engineering consultancy offices and others.⁴⁹

Accordingly, secondary obligations in a contract remain ongoing and binding on the contractors and are not affected by the idea of suspension the contract, as these obligations are considered a requirement of the principle of good faith, which requires the parties to any contract to continue to execute these obligations despite the suspension of the contract. They must also refrain from any

⁴³ Hussam Al-Din Al-Ahwani, Sources of Obligation, *ibid.*, p. 721 and see also Ramadan Abdullah Saber, Suspension of Employment Contracts, *ibid.*, p. 118.

⁴⁴ See the text of Article 5/814 of the Jordanian Civil Code.

⁴⁵ Muhammad Labib Shanab, Explanation of Labour Law, 4th Edition, Dar Al-Nahda Al-Arabiya, Cairo, 1983, p. 201.

⁴⁶ Suleiman Murcus, Al-wafi in Explaining Civil Law in Contracts and Individual Will, 1st Edition, Cairo, 1987, p. 547.

⁴⁷ See the text of Article 818 of the Jordanian Civil Code.

⁴⁸ Ramadan Abdullah Saber, Suspension of Employment Contract, *ibid.*, p. 128.

⁴⁹ Suheir Muntasser, Obligation to Inform in Civil Contracts, Dar Al-Nahda, Cairo, 1990, pp. 180-181.

action that would prejudice the interest of the other party or his rights to protect his financial and moral interests.⁵⁰

It goes without saying that the scope of the suspension of execution of a contract includes only the original obligations that were affected by the suspension and secondary obligations associated with them. As for the other obligations whose execution is not related to the execution of the suspended obligations, they remain in force and are not included in the suspension. The suspension of the contract results in some new obligations on the contracting parties, which we will discuss in the second issue.

6. The Second Issue: Obligations Arising from the Suspension of the Contract

Since the suspension of the contract does not lead to its termination, but rather the contract continues to produce all of its effects during the period of the suspension, this will impose new obligations on the contractors during this period. Some believe that the entrusting of parties with obligations is limited during the period of the suspension of the contract. This contradicts the nature of the suspension system, which requires the parties not to execute their contractual obligations. However, this assumption includes only the obligations arising from the contract, while the continuation of the contract during the suspension period imposes on the contractors some new obligations, either positive or negative, the aim of which is to maintain the contract and work to remove the reason for the suspension and resume the execution of the contract again. This may be agreed explicitly or by implication.⁵¹ Among the most prominent of these obligations are:

7. First, the commitment of contractors to do all the necessary work to maintain the contract

This obligation is considered a reciprocal obligation between the parties to the contract. Each of them has an interest in maintaining the contract and it is often found that this commitment is based on the principle of good faith and contractual honesty, which requires contractors to do everything necessary to maintain the contract and ensure its return after the period of interruption. In international trade contracts, the parties agree on the nature of the work and necessary procedures to maintain the contract.⁵² This commitment may come in a positive form, represented by the undertaking of a collection of procedures such as the debtor's commitment to take all necessary measures to preserve and store the goods to protect them from damage or the tenant's obligation to carry out the necessary conservation and repairs to preserve the rented property. Equally, the employer's commitment to submit applications and renew licenses for foreign employees.⁵³ In technology transfer contracts, the supplier is obligated to do all the necessary works to develop the technology so that they do not lose their value during the period of the suspension, and the contractors are also obligated to provide all information and data necessary to enable the other party to remove the reason for the suspension of the obligation that led to the contract suspension.⁵⁴

This obligation also comes in a negative form represented by the obligation of the contracting parties to refrain from carrying out any work or procedure that affects negatively on the existence of the contract or the obligations of the parties, threatens the material and moral interests, or removes the benefit that the other party desires from the execution of the contract. So, the creditor must refrain from undertaking any act that may harm the interest of the debtor. As such, the creditor does not have the right to terminate the contract and use of this right would be arbitrary.

⁵⁰ Abdul Aziz Al-Mursi Hammoud, *Explanation of the Provisions of Labour Law*, Dar Al-Nahda Al-Arabiya, Cairo, 1998, p. 241.

⁵¹ Sharif Muhammad Ghannam, *The Effect of Changing Circumstances on International Trade Contracts*, *ibid.*, p. 352.

⁵² Salama Fares Arab, *Means to Address the Imbalance of Contractual Relations in the Law of International Trade*, PhD thesis, Faculty of Law, Cairo University, 1988, p. 168.

⁵³ Hussam Al-Din Al-Ahwani, *Explanation of Labour Law*, *ibid.*, p. 535.

⁵⁴ Sharif Muhammad Ghannam, *ibid.*, p. 353.

Some believe that it is possible for the injured party in the suspension to conclude a temporary contract with another contractor to perform the work that was impossible for the contracting party to perform because of the suspension. So, the employer may, for example, enter into a contract with another employee while one of his employees has maternity leave, which benefits him and will achieve his interest from the contract without causing him any harm. At the same time, the employee retains her right to return to her job after the end of her maternity leave. Meanwhile, others believe that that in the event of an explicit or implicit agreement between the parties, one of them must refrain from taking any action that threatens interests of the other party or gives him such authority. If there is such an agreement, the parties must abide by it taking into account that this agreement does not have any effect on the legal status of the contractor or the return of the original contract into effect.⁵⁵

8. Second: Obligation to Seek the Return of the Contract into Effect

The success of the contract suspension system depends on the success of the parties in returning the contract into effect once again. The contracting parties shall work to remove the reason for the suspension and take all necessary measures to expedite the return of the contract. Each of them must execute his obligations as soon as possible. The suspension is an exception to the original, and therefore the resumption of this contract depends on the efforts exerted by the contractors to remove the reason for the suspension. Laxity in this regard will take the contract out of the sphere on temporary suspension and the parties may agree within the terms of the contract on the type and nature of work which each of them is committed to in order to execute this obligation. Otherwise, the parties must make appropriate and necessary efforts to return the contract into effect, according to its nature.

An example of this obligation is that, if the reason for the suspension is due to the employee's illness, then he must see a doctor and receive appropriate treatment until he recovers and is able to return to work and resume his contract. If the suspension is due to breakdown of the factory machinery or a fire in the store, the employer must repair the damage as soon as possible in order to get the factory or store up and running and resume work.⁵⁶ In a contractual agreement, if the reason for the suspension was circumstances that prevented the provision of materials or machines that are necessary and required to complete the work, so alternative materials must be sought to execute the obligation. This is because the contractor is obligated to make the maximum effort possible to end the period of suspension.

As for international trade, we find that most international trade contracts include many conditions related to removing the reason for the suspension, which is one of the most important principles governing the execution of international trade contracts.⁵⁷ The contract terms in international contracts have not indicated a specific standard to measure the degree of these efforts. However, some have used vocabulary to indicate the amount of effort such as "efforts that are in line with the circumstances, necessary efforts, reasonable efforts, and this the term most often used."⁵⁸ As a matter of fact, these efforts, their description and their nature as necessary or reasonable varies from contract to contract and from case to case, but it must suit the type and nature of impossibility that has prevented the execution of the contract and the size of this impact on its execution, in addition to the nature of the contract and how important it is for the contractors. This must take into account that the conditions of each contract differ from the other, and the required effort varies from

⁵⁵ Muhammad Nasr al-Din Mansour, *Towards a Legal System for the Suspension of Employment Contracts if the Work in the Facilities Stops*, Dar Al-Nahda, Cairo, 1950, p. 150.

(2) Hussam Al-Din Abdul Ghani Al-Saghir, *Interpretation of the United Nations Convention on Contracts for the International Sale of Goods*, Dar Al-Nahda Al-Arabiya, Cairo, 2001, p. 151.

⁵⁶ Mahmoud Jamal al-Din Zaki, *Labour Law*, 3rd Edition, no publishing house, 1983, p.509.

⁵⁷ Abdul Monim Ali, *Protection of the Seller in the Sale of Merchandise*, International Trade Law, PhD Thesis, Rennes, 1991, p.378.

⁵⁸ Sharif Ghannam, *The Effect of Changing Circumstances on International Trade Contracts*, *ibid.*, p. 358.

case to case and from person to person.⁵⁹ This matter is subject to the discretion of the trial judge or the arbitral tribunal that considers the dispute.

Within the terms of the contract, the parties may agree on a penalty for a breach of the obligation to seek to return the contract into effect, and this is what has been included in some international trade contracts. In the event that one of the contracting parties breaches this obligation, the other party has the right to terminate the contract or to reduce its own obligation that corresponds to this obligation at a rate equal to the effect of the breach of contract of the other contractor.⁶⁰ Jurisprudence has established that in the event of a failure to agree on a penalty for a breach of this obligation, the other party is entitled to compensation for the damage he has suffered. Compensation in this case is the appropriate procedure, without which the injured party has the right to terminate the contract which would produce dangerous and undesirable results, particularly in the field of international contracts.⁶¹ Otherwise, all of the advantages enjoyed in the system of contract suspension, established mainly with the aim of maintaining the contractual relationship and keeping it during the period of the suspension, will be removed.

CONCLUSION

Now that we have reached the end of this paper, in which we dealt with contract suspension and its impact on contractual obligations, we have reached a set of conclusions and recommendations as follows:

- 1- In order for an obligation to become impossible it does not require the application of the provisions of the theory of force majeure.
- 2 -The idea of contract suspension is a legal means to address temporary obstacles and circumstances that prevent the execution of contracts and are beyond the control of the parties.
- 3- The contract shall remain valid during the period of the suspension and the impact of the suspension shall extend to some obligations but not others, as well as imposing new obligations on the contractors.

RECOMMENDATIONS

1- We hope that Jordanian law will explicitly provide for the suspension of contracts when any of the reasons for temporary impossibility occur instead of leaving it to the general rules or ruling to terminate contracts. This, by amending the text of Article 247 of the Jordanian Civil Code as follows: "1- In bilateral contracts, if a force majeure occurs that makes the execution of the obligation impossible, then the corresponding obligation has been terminated and the contract has been terminated on its own. If the impossibility is partial, what has been terminated is the obligation corresponding to the impossible one. But if the impossibility is temporary, the debtor has the right to insist on suspending the contract, provided that it returns into effect after the reason for the impossibility ends."

2- We hope that the Jordanian legislator will add an explicit text that allows the agreement of the contractors to suspend the contract and postpone the execution of the obligations arising from it until the reason for the impossibility ends, or the extension of the period necessary to execute these obligations.

⁵⁹ Salem bin Salam Al-Faliti, *The Impact of Changing Circumstances on International Trade Contracts*, Spirit of Laws Journal, Faculty of Law, Tanta University, m2, a88, 2019, p.32.

⁶⁰ Annex No. 7, referred to in LE ROY (D), *Force Majeure in International Trade*, PhD thesis, Paris, 1992.p. 757.

⁶¹ Sherif Ghannam, *The Effect of Changing Circumstances on International Trade Contracts*, *ibid.*, p. 358.

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