

Abstract

A Comparison between the Theory and Practice of Breach of Contractual Obligations Defense under Jordanian Law

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This thesis examined the principal of breach of contractual obligations defense under Jordanian Law by extrapolating the Arab legislation governing this principal such as the Egyptian Syrian Iraqi and Jordanian Civil Laws. The Thesis also followed a comprehensive and thorough study of the extent to which this rule is applied in contracts binding on both parties under Jordanian Law. With that said it is only normal that the definition of breach of obligations defense is addressed in terms of language and terminology its characteristics and that we draw a distinction between this type of similar defenses such as clearing the right of retention stopping the execution of the

contract and the theory of emergency conditions. The Thesis also discussed extensively the principal on which this defense is built factors which render it void its effect on the parties the successors of the parties lenders and others considered as third parties.

I have concluded that most Arab legislation has addressed this principal in its laws due to its extreme importance in contracts as a mechanism of pressuring the non-complying party in a contractual relationship to comply with the terms of the agreement. Some legislators such as under Egyptian Law went further to consider breach of contract an action warranting imprisonment – the origin is imprisonment (retention) except that Jordanian Law addressed it under Article (203) in the second section which tackles the effects of a contract on the relation on the contracting parties. If anything this indicates that the Jordanian legislation considers this rule to be one of the effects a contract has on its parties in the event that one of the parties breaches their obligations.

I have also concluded in the thesis that the defense of non-performance of contractual obligations even if stipulated in law still

carries a moral obligation more than a legal one especially if the contract did not specify a monetary or criminal penalty. In many instances the contract does not include criminal clauses in mutually binding contracts especially if such are of a direct implementation nature such as a sale or trade contract however most contracts do require a penalty clause for non-compliance in performance such as service contracts since delivery of work comes in milestones and phases which renders the principle of breach of contractual obligations defense more important in such contracts.

Additionally I have concluded that the investable termination of a contract in the event that the breaching party refuses to perform their obligations results in the annulment of the contract and therefore using the defense of breach of contract is only one method to pressure the non-complying party to perform however it also poses a problem since with such defense the parties are restored to their original state pre signing the contract. This principle also contradicts other principles governed by special laws which is also problematic

given that such practice questions the trust of the parties in the contractual relationship that governs them.

To that end the aim of this thesis was to find solutions or recommendations to better position and support this principal in contracts through penalty and criminal clauses and the provision of a guarantor as well as other guarantees which could provide greater protection.

The Researcher