11

Termination and Rescission of Contracts

11.1 INTRODUCTION

This chapter deals with a single, yet complex and over-arching topic, namely termination of the life of a contract. 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 CC distinguishes between two types of termination: termination proper and rescission. Given that termination produces significant consequences for the parties, the CC 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 of particular contracts, such as leases, deposits, employment and others. The chapter goes on to show that, exceptionally, termination or rescission is automatic, while in the majority of cases one of the parties, typically the debtor, must apply to the courts for termination or rescission.

11.2 RESCISSION AND TERMINATION IN THE CIVIL CODE

11.2.1 *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.[1] Termination arises as a result of three possible grounds: a) convenience of

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

https://doi.org/10.1017/9781009052009.012 Published online by Cambridge University Press

one of the parties;[2] b) breach (or default)[3] or c) impossibility to perform.[4] 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,[5] 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,[6] as well as alternative or additional remedies.[7] As will be shown in the next section, notice is a *sine qua non* requirement of the law relating to termination.

An important distinction is necessary from the outset. The CC 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),[8] whereas termination [or rescission as termination] serves to discharge the parties' obligations prospectively. The general rule concerning termination is found in article 183 CC. This provision, however, is concerned only with termination sought by the innocent party for the breach of contract by its counterpart.[9] Article 183(1) CC stipulates that breach of contract by one of the parties entitles the other party to demand performance or rescission.[10] Rescission under such circumstances is automatic.[11] Equally, as will be shown in a subsequent section, *force majeure* under article 188 CC serves to rescind the contract between the parties.

[2] See, for example, Art 707 CC (known also as 'termination at will, or termination of convenience'), in which case, however, the terminating party will compensate the other party for any expenses incurred until such time, anticipated profit or other. See Court of Cassation Judgment 222/2016, which relied on Art 707 CC, recognizing the employer's right to terminate the contract, subject to payment of compensation for work accomplished, damages for losses as well as moral damages, where applicable.

[3] As contemplated in Art 183 CC, discussed in more detail below.

[4] Arts 187 and 188 CC.

[5] 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.

[6] 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 ground that the revocation or modification is required by rules of justice. Justice completes the will of the contracting parties, but does not abrogate it'.

[7] For example, mutual, or unilateral withholding of performance until performance is made by the other party. See Art 191 CC.

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

[9] Court of Cassation Judgment 219/2011, noting that Art 183 CC is not a peremptory norm.

[10] See Court of Cassation Judgment 8/2012, which stated that in addition to rescission the claimant may also demand compensation; equally 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'.

[11] Art 184(1) CC.

Another type of termination is recognised by article 189 CC. This is known as *ekalah* and refers to the mutual termination of the contract by the parties.[12] Hence, the difference between articles 183 and 189 CC is that under article 189 CC, 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 that the parties seek to terminate. In order for this new agreement (i.e. the termination agreement) to come into force, fresh offer and acceptance are necessary, as well a fresh subject-matter Indeed, the subject-matter of such an agreement is the termination itself. However, if any of the contracting parties has 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 fulfil its restitution obligation. Yet, the contract with the third party remains valid in accordance with article 190 CC. The CC does not differentiate between termination under the terms of articles 184 and 189 CC when determining the retrospective discharge of the parties from their obligations. Moreover, articles 183 and 189 CC apply equally to all types of bilateral agreements.

It should be emphasised that restitution is always required[13] whether termination takes place through the court (article 183 CC) or by mutual agreement (article 185 CC). In both cases, the parties are discharged from their obligations retrospectively.[14] Article 190 CC 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

[12] 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. Judgment 114/2012.

[13] Court of Cassation Judgment 219/2011.

[14] 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 it has received it, and the seller returns the price and interest received'; the Court of Cassation has held in the event of time-based contracts or regularly renewable contracts, such as lease contracts, that they cannot be subjected to retroactive effect. This is because of their nature as well as because of the reciprocity of obligations, which makes it impossible to turn back the part executed thereof. Court of Cassation Judgment 28/2010.

contract in favour of third parties'. Article 185 CC, which departs from the civil law tradition,[15] 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 CC. It has emphasised 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.[16]

According to paragraph 2 of article 183 CC, 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.[17]

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.[18] Where the subject matter is lost, damaged, or otherwise disposed of in part in favour of a third party, the contract may be rescinded to the extent of the remaining part, in accordance with article 189(2) CC. Moreover, *bona fide* special successors to a contract susceptible to rescission remain unaffected.[19]

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 debtors, the correct legal basis for any post-termination claim is tort.[20]

[15] See Art 7.3.5 and Art 7.3.7 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.

[16] Court of Cassation Judgment 53/2012.

[17] Art 184(1) and (2) CC. Such an eventuality was expressly stated in the contract in Court of Cassation Judgment 219/2011.

[18] Art 189(1) CC.

[19] Art 186 CC.

[20] Court of Cassation Judgment 100/2016.

11.2.2 *Notice to Terminate*

Article 183(1) CC requires that formal notice be given to the non-performing party (obligor) in order to fulfil its performance before going on to terminate or rescind the contract. Notice is a quintessential element of the civil law tradition concerning termination[21] because of the cooperative nature of contracts and the prevalence of good faith therein. Article 184(3) CC 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.[22] 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.[23]

What is not *prima facie* clear from a reading of articles 183 and 184 CC is whether automatic termination clauses in contracts governed under Qatari law are binding as such, or whether a further application to the courts is required. The case law of the Court of Cassation concurs in favour of party autonomy on this issue and the Court does not demand further recourse to the courts.[24] In a notable case decided by the English High Court, where the contract was governed by Qatari law, appropriate notice was the key issue.[25] The High Court delved deep into, among others, the legislative history of the notice requirements underlying the CC. The parties had agreed that in the event of default on the part of the contractor, Qatar Foundation (QF) would issue a notice of default with details of 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.[26] The contractor argued that Qatari law required an application to the courts for termination on the ground of breach. The High Court did not find anything in articles 183 and 184 CC, or the judgments of the Court of Cassation, that specifically precludes the parties from agreeing to automatic termination clauses without recourse to the courts.[27]

[21] Notice requirements apply in respect of all types of contractual terminations, as explained in this chapter. See, for example, Arts 744 and 746 CC regarding deposit contracts; Art 778 CC concerning insurance.

[22] Art 471 CC.

[23] Court of Cassation Judgment 110/2007. But see Court of Cassation Judgment 86/2009 and the discussion below in the sub-section dealing with the termination of lease agreements.

[24] 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.

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

[26] Ibid, para 5.

[27] Ibid, paras 73–75.

11.2.3 *Termination on the Basis of Anticipated Breach*

The CC 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 CC. 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 CC 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.

11.3 UNILATERAL DISPOSITION

Article 192 CC regulates the so-called unilateral disposition. It recognises 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 chapter whereby the CC recognises 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.

11.4 DISCHARGE

Article 400 CC regulates when the debtor may be discharged from its obligation by a unilateral act of the creditor. It enunciates that an obligation expires when the debtor fulfils 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.[28] In many cases, however, 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 to 2006. The employer had apparently secured a signed statement from the employee that the 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)

[28] Art 400(2) CC.

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.[29]

11.5 TERMINATION BY REASON OF DEATH

The admonition in article 39(1) CC whereby legal personality ceases upon death is not particularly useful. As a general rule, although the death of the offeror terminates the offer,[30] once the contract has been made the death of one of the parties thereto does not automatically terminate the said contract. In some cases, the CC specifically articulates automatic termination, subject to the parties' approval, in the event of the death of one of the parties,[31] but not in others.[32] 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 nor 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'.[33] Where the deceased tenant leased the property for its personal or business affairs, its heirs or the landlord may seek to terminate the lease.[34]

With respect to employment contracts, these terminate upon the death of the contractor if 'its personal qualifications or capabilities are taken into consideration upon making the contract', otherwise the contract shall not terminate automatically.[35] This no doubt covers situations where the contractor was an employee of a corporation or other legal person, in which case its death does not terminate the contract. Article 705 CC 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 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'.

[29] Court of Cassation Judgment 152/2018.
[30] Art 71 CC. Equally, in accordance with Art 74 CC, acceptance shall be terminated by the offeree's death if this occurs before the acceptance reaches the notice of the offeror.
[31] Art 681 CC, according to which lending shall terminate on the death of the borrower.
[32] For example, 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 its acceptance reaches the promisor within the time limit prescribed by the promise.
[33] Art 633CC. See also Arts 659 and 668 CC.
[34] Art 634 CC.
[35] Art 705 CC.

It is clear that 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.[36] 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.[37] Alternatively, either the insurer or the heir may terminate the agreement by notice to the other party.[38]

11.6 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 article 403 CC.[39] A five-year prescription period applies to claims by certain classes of professionals, such as doctors,[40] tax claims,[41] certain insurance claims[42] and guarantees.[43] One-year prescription periods apply to claims of traders, craftsmen and those in the hospitality industry against their clients.[44]

The period of prescription shall commence from the date the aforementioned creditors supplied their initial (first) service or delivery,[45] or the date the debt matured.[46] The calculation of prescription periods shall be in days and not hours in accordance with article 409 CC. Where a reason exists to suspend the calculation of a period of limitation (e.g. in accordance with article 413 CC) for certain heirs, such suspension shall not apply to other heirs in respect of whom the suspensive reason does not apply.[47]

[36] For example, Art 681 CC concerning lending; Art 705 CC (contractors); Art 747 CC (deposits).
[37] Art 795(1) CC.
[38] Art 795(2) and (3) CC.
[39] See Court of Cassation Judgment 63/2016, relating to a loan agreement entered into by a bank.
[40] Art 405 CC. See Court of Cassation Judgment 225/2011.
[41] Art 406(1) CC.
[42] Art 800 CC. See in this connection Cassation Court Judgments 145/2013 and 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.
[43] Court of Cassation Judgment 2/2010.
[44] Art 407(1) CC.
[45] Art 408(1). Paragraph 2 stipulates that where the claims in Arts 405 and 407 CC were incorporated in a deed, the claim arising thereof shall prescribe after fifteen years.
[46] Art 410(1) CC.
[47] Art 412 CC.

Prescription is not deemed to have commenced where the creditor lacks capacity unless represented by a competent agent.[48] 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.[49] An interesting case concerning article 411 CC arose in a case that reached the Court of Cassation in 2017.[50] 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) 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 article 413 CC, 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 article 414(1) CC, which allows suspension if the debtor expressly or implicitly acknowledges the creditor's right.[51] 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 acknowledgement of the debtor, the new period of prescription shall be fifteen years unless the pertinent judgment provides otherwise.[52]

Article 418 CC 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 on their own prescription periods, nor waive statutory prescriptions in respect of an established right.[53]

[48] Art 411(2) CC.
[49] Art 411(1) CC. See Court of Cassation Judgment 167/2012.
[50] Court of Cassation Judgment 86/2017.
[51] Para 2 of Art 414 CC explains when this is implicit.
[52] Art 415(1) and (2) CC.
[53] See Court of Cassation Judgment 284/2014.

11.7 TERMINATION BASED ON THE TYPE OF CONTRACT

The CC, 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 analysed in the following subsections.

11.7.1 *Termination of Lease Contracts*

The lease shall terminate upon the expiry of its term without notice to vacate[54] unless it is agreed to extend the lease for a fixed or other terms if no specific date is stated.[55] Notice is generally required even where the lessor is the State.[56] The Court of Cassation has emphasised that notice to evict is a legal act unilaterally issued which includes a desire by its issuer, based on its 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'.[57] The right not to be evicted and by extension, the prohibition against the termination of a residential lease constitutes a rule of public policy.[58] It has further been established that the sub-tenancy contract shall inevitably end upon termination of the principal lease contract, even if it is grounded on the conditions stipulated therein.[59]

The CC 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;[60] b) the repairs cause any breach, partially

[54] 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 Judgments 42/2013 and 258/2016.

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

[56] Court of Cassation Judgment 28/2010.

[57] Court of Cassation Judgment 86/2009.

[58] Court of Cassation Judgment 32/2015.

[59] Court of Cassation Judgment 138/2010.

[60] Art 591(1) CC. See also Art 594(1) CC 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.

or in whole, to the intended use, in which case the tenant may demand termination or a reduction in the rent.[61] If the tenant chooses to remain in the leased property until the repairs are completed, the right to termination is extinguished;[62] c) if the condition of the leased property endangers health, the tenant may demand termination even if such right was mutually waived.[63] The same applies in respect of leased property that is demolished;[64] 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;[65] 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;[66] 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;[67] 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];[68] h) the same is true where the leased property lacks the agreed specifications.[69]

The extinction effect of a termination ceases when the terminating tenant continues to occupy the leased property without objection by the landlord.[70] Moreover, where it has been agreed that the landlord may terminate the lease for personal reasons, the landlord shall so notify the tenant.[71]

The CC recognises an exceptional right of termination for the tenant where the lease is meaningless for the tenant, other than unforeseen circumstances under article 632 CC.[72] Article 635 CC allows the tenant to terminate the lease contract when required to change its place of residence. In equal measure, where a land tenant fails to cultivate the land due to illness or for any other reason, and if it is not possible that he or she be substituted by family members, either party may demand termination.[73]

[61] Art 595(2) CC.
[62] Art 595(3) CC.
[63] Art 591(2) CC.
[64] Art 596 CC.
[65] Art 599 CC.
[66] Art 600 CC.
[67] Art 602 CC.
[68] Art 604 CC. See also Art 608 CC to this effect.
[69] Art 606 CC.
[70] Art 626(1) CC. See Court of Cassation Judgment 134/2013, referring also to Art 588 CC.
[71] Art 631 CC.
[72] Court of Cassation Judgment 180/2011.
[73] Art 658 CC.

The Court of Cassation has maintained that expropriation of the 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.[74]

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 rent 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.[75] The lessor equally enjoys the right to terminate where it intends to elevate the building, subject to obtaining the required permits in accordance with article 19(6) of the Lease Law.[76]

11.7.2 *Termination of Employment Contracts*

Employment law is only briefly addressed by the CC, as is usual in the civil law tradition. The CC 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 CC allow the employer to unilaterally terminate its contract with the contractor[77] and as a general rule an employment agreement expires where the parties have agreed to a specific period of performance and such period has elapsed.[78]

There are, no doubt, situations where the contractor's (employee) performance falls below the parties' agreed expectations, which entails a breach of the employment contract. Article 688(1) CC enunciates the general principle whereby the employer may terminate its contract with the contractor in the event that the contractor's performance is defective, 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

[74] Court of Cassation Judgment 34/2011; equally, Court of Cassation Judgment 15/2012.
[75] Court of Cassation Judgment 110/2007.
[76] Court of Cassation Judgment 401/2015.
[77] There are a number of special circumstances where termination is never permitted, for example, 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.
[78] Art 703 CC.

time.[79] 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 breached the employment contract. The employee may also terminate the contract by giving a minimum of two months' written notice to the employer.[80]

Termination of employment requires sufficient notice under article 61 of the Labour Law;[81] otherwise, the terminating party is liable to compensation and disciplinary action.[82] Exceptionally, the employer may demand termination without notice or time limits if the correction or remedy (of the breach by the contractor) is impossible.[83] 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 its actions indicate its intention not to perform or otherwise make the performance impossible.[84] 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.[85] 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.[86]

11.7.3 *Termination of Insurance Contracts*

It should be pointed out that the Court of Appeal has iterated that in case of doubt, insurance contracts must be viewed as adhesion agreements under the terms of article 107 CC.[87] The CC distinguishes between termination and

[79] 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.

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

[81] Court of Cassation Judgment 18/2010.

[82] Court of Cassation Judgment 212/2012.

[83] Art 688(2) CC.

[84] Art 689 CC. See Court of Cassation Judgment 36/2010.

[85] Art 692(2) CC.

[86] Art 688(3) CC.

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

suspension of insurance contracts. Suspension exists where the insured person fails to pay the agreed premium despite being notified to do so.[88] Upon expiry of the suspension, the insurer may demand termination under paragraph 2 of article 789 CC. 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.[89] 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.[90] Termination is also possible where the insurance premium involves considerations that increase the insured risk and these considerations cease to exist or are impaired.[91]

11.7.4 *Agency Contracts*

Agency and all forms of contracting through other entities are specifically discussed in detail in Chapter 4. Here it only suffices to state that an agency contract may be terminated unilaterally by either party, unless the agency is decided in favour 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 rights.[92] This is in accordance with article 735 CC. Article 735 CC indicates that although the principal has the right to dismiss its 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 where 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 favour the agency was issued, and the dismissal of the agent is not valid.[93]

11.8 SETTLEMENT

The notion of settlement envisaged in articles 354 ff CC aims to terminate an existing obligation. This may amount to the payment of an outstanding debt or the 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 of a settlement to be encompassed within

[88] Art 789(1) CC.
[89] Art 789 (4) CC.
[90] Art 778 CC.
[91] Art 758 CC.
[92] Court of Cassation Judgment 163/2016.
[93] Court of Cassation Judgment 51/2013.

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

11.8.1 *Parties to the Settlement*

This may seem straightforward, but it is not. Article 250 CC expresses the general position that where the terms of an agreement require performance by the obligor itself, the obligee may validly reject performance by a third party. Article 354 CC 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.[94] Even so, where a debt is paid against the will of the debtor/obligor, the latter may prevent recourse by the payer if it is able to demonstrate that the payer has an interest in objecting to such payment.[95] The third party (payer) substitutes the creditor, in accordance with article 357 CC, where: a) it was obliged to pay; b) it is a creditor itself; c) the payer pays the debt to retrieve a thing held as security and d) the payer has a special right of subrogation.[96]

Subrogation in the rights of the creditor is generally permitted under articles 359 and 360(2) CC 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.[97] 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.[98] 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 it 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 its deposit.[99] Where payment is in the form of an asset the debtor must notify the creditor of delivery thereof

[94] Art 356(1) CC.
[95] Art 356(2) CC.
[96] See also Art 358 CC.
[97] Art 358(1) CC.
[98] Art 363 CC.
[99] Art 365 CC. See also Art 366 CC, which allows unilateral deposit under particular circumstances, such as where the identity and domicile of the creditor is not known.

and apply to the court for permission to deposit the asset.[100] 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 it is discharged from its obligation upon depositing the proceeds of the sale.[101] 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'.[102]

11.8.2 *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 instalments.[103] 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 than the value of the debt.[104] 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, article 372 CC 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.[105] Any expenses associated with performance are borne by the debtor, unless otherwise provided.[106]

11.8.3 *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 article 379 CC and is known as a settlement with agreed consideration. This is because the new thing is given in consideration for the debt. Article 380 CC emphasises that the qualities of the transfer of the new

[100] Art 368 CC.
[101] Art 369 CC.
[102] Art 364 CC.
[103] Art 375 CC.
[104] Arts 370 and 371 CC.
[105] Art 373 CC.
[106] Art 377 CC.

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.

11.8.4 *Novation*

The subject matter of novation is examined in detail in Chapter 13, to which the readers are directed. Novation is effectively the transfer of a debt by the debtor (novator) to a new creditor (novate), subject to the consent of the original creditor. The new 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.[107]

11.8.5 *Assignment*

It should be pointed out that novation is different in its operation and effects as compared to the assignment. The Qatari CC distinguishes between a) the assignment of contractual rights by the assignor (rights holder) to a third party (assignee) and b) the assignment of debts by the debtor (assignor) to a new lender/creditor (assignee). Assignment of debt generally requires the consent of the original creditor, whereas assignment of rights simply warrants a notification to the debtor.[108] Chapter 13 of this book provides a fuller analysis of third parties to contracts.

11.8.6 *Set-Off*

Set-off is a mechanism whereby the debtor may discharge its debt to the creditor by offsetting it against a debt owed by the creditor to the debtor.[109] Article 390 CC stipulates that offset is possible even where the basis of each debt is different,[110] provided, however, that the subject matter of each debt is cash or fungible[111] 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

[107] Art 384 CC. Any securities placed by the original debtor to the obligation may be transferred to the new contract under the conditions specified in Art 385 CC.
[108] Court of Cassation Judgment 79/2012.
[109] See Court of Cassation Judgment 181/2011, where set off was construed as a competition of opposing civil obligations.
[110] See Court of Cassation Judgment 236/2013; Court of Appeal Judgment 450/2017.
[111] Fungible things are defined in Art 60(1) CC.

for a judgment to this effect. In this manner, set-off is a right prescribed by the CC. The courts, however, may not under any circumstances set-off a limited number of assets. These include, in accordance with article 392 CC, 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.[112] 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.[113] 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'.[114]

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. In the event that the debtor had simply been notified of the transfer by the creditor, but had not assented, it may invoke the set-off against the transferee.[115]

11.8.7 *Combined Obligations*

Articles 398 and 399 CC 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.

11.9 FORCE MAJEURE

The Qatari CC distinguishes between various types of hardship, yet not all of these allow the debtor to terminate or rescind the contract or its effects.[116]

[112] Art 393 CC.
[113] Art 395 CC.
[114] Art 394 CC.
[115] Art 396 CC.
[116] A poignant example that does not neatly fall into the following subsections 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 under Arts 148 and 149 CC. See Court of Appeal Judgment 523/2018.

Article 258 CC makes it clear that the parties may well agree that the 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.[117] Nonetheless, even though rescission under articles 187 and 188 CC may be waived by the parties, this is not possible in the context of adhesion contracts.[118]

The CC 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) CC 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.[119]

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 article 188(1) CC.[120] The Court of Cassation has held that the rescission of a contract by virtue of article 188(1) CC 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.[121] It is for these reasons that the classical position on *force majeure* under Islamic law (qûwa qãhira) cannot, and in fact is not, sustained in the CC. The *Sharia* recognises any act of God or unforeseen condition as a ground for terminating the conduct,[122]

[117] 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*.

[118] See Chapter 7.

[119] Art 187(2) CC.

[120] 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*.

[121] Court of Cassation Judgment 257/2018. See also Court of Cassation Judgment 13/2010, where it was held that 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.

[122] See S E Rayner, 'A Note on Force Majeure in Islamic Law' (1991) 6 Arab LQ 86.

which is not the case with the strict application of *force majeure*. Although it is not evident if qûwa qãhira was the inspiration behind article 171(2) CC (unforeseen circumstances), it is certainly compatible with that provision.

In 2007 the parties entered into a purchase contract of five units located on the 79th floor of a tower under construction. 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.[123] 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.[124]

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.[125] 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.[126]

Rescission, which is the consequence of *force majeure* is different to the termination stipulated in article 187(1) CC. 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.[127] This is true also in respect of unilateral obligations that are susceptible to partial fulfilment under article 187(2) CC.

[123] Ibid. See also A A Abdullah, 'Coronavirus Pandemic and Contractual Justice: Legal Solutions and Realistic Approaches: A Study in Qatari Civil Law and Comparative Practices' (2020) 35 Arab LQ 1–20.
[124] Court of Cassation Judgment 257/2018.
[125] Court of Cassation Judgment 134/2015.
[126] Court of Appeal Judgment 257/2018.
[127] Art 188(2) CC.

At least one commentator has rightly argued that while article 188(1) CC 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.[128]

11.9.1 *Impossibility of Fulfilment*

The notion articulated in articles 187 and 188 CC is iterated in article 402 CC. 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'. It is clear that 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 CC, 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 particular 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, emphasised that the applicant was required to show specifically how the crisis specifically affected him and his business.[129]

The difference between articles 187/188 CC and 402 CC 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 CC must be construed as terminating the contract.

11.9.2 *Unforeseen Circumstances*

The CC takes into account the likelihood of 'unforeseen circumstances' as a factor for mitigating the parties' obligations. Article 171(2) CC specifically states that:

> Where, however, as a result of exceptional and unforeseeable events, the fulfilment of the contractual obligation, though not impossible, becomes

[128] Quinn Emmanuel LLP, 'Covid-19. A Comparison of the Issues Affecting Performance of Contractual Obligations under English and Qatari Law', available at: www.quinnemanuel.com/media/wxln23wu/client-alert-covid-19-issues-affecting-performance-of-contractual-obligations-in-construction-contracts-a-comparison-betwe_1-1.pdf, p 10.

[129] Court of Cassation Judgment 61/2011.

https://doi.org/10.1017/9781009052009.012 Published online by Cambridge University Press

> 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) CC is clearly less drastic than article 188 CC. The event need only be unforeseen, but not beyond the control of the obligor. The Court of Cassation 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.[130] The event in question must be exceptional and unforeseen for the general public and not just for the obligor.[131] The Qatari Court of Cassation has emphasised that as businesses are required to anticipate and mitigate risk, they are presumed to anticipate future events[132] and as a result, the range of events classified as unforeseen are gradually decreasing. More significantly, the obligation under article 171(2) CC 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) CC is a mandatory provision and may not be excluded even by agreement of the parties.

Particular manifestations of article 171(2) CC are scattered around the CC. One of these is articulated in article 632 CC, 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'.[133] In one case where the lessee was unable to pay rent for a period of three years, the Court of Cassation relied on article 632 CC and released the lessee from an obligation to pay an entire year's worth of rental fees.[134] The Court of Cassation has demanded that where lower courts rely on article 632 CC, they must clarify and specify the precise nature and causes of the underlying unforeseen circumstances in

[130] Court of Cassation Judgment 257/2018.
[131] Quinn Emmanuel (n 128), at 11.
[132] Court of Cassation Judgment 257/2018.
[133] Art 632(1) CC.
[134] Court of Cassation Judgment 180/2011. The Court did not elaborate on the unforeseen circumstance applicable in the case at hand.

accordance with article 126 CCP, otherwise pertinent judgments will be set aside.[135] 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 sufficient security is provided, in accordance with paragraph 2 of article 632 CC. In one case where the Court of Cassation did not specifically refer to any particular provision in the CC, 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.[136]

Exceptionally, unforeseen circumstances may demand the termination of the contract. Article 680(1) CC 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.

[135] Court of Cassation Judgment 180/2011.
[136] Court of Cassation Judgment 246/2014.