2

Contract Formation

2.1 INTRODUCTION

Among Arab legal scholars, the Latin principle 'pacta sunt servanda' plays a fundamental role in dealing with contracts. The English translation is 'agreements must be kept'. The Arabic equivalent of the same principle is (العقد شريعة المتعاقدين) and is pronounced 'al-aa'quid sharee'aat al-mota'aquideen'. Qatari legislators did not deviate from the civil law tradition, which Qatari laws are derived from. Thus, contracts are considered as the main source of obligation under private law, which regulates the relationship between natural and legal persons. As a rule of thumb, whenever an obligation arises, rights appear on the other side of the 'fence'; therefore, when one private party is obligated to perform a promise under a binding contract, the other party(ies) will have a right that such obligation be fulfilled. Contractual rights vested in natural and/or legal persons are characterised as economic rights.[1] Under the civil law tradition, economic rights comprise: (i) rights *in personam* and (ii) rights *in rem*. Rights *in personam* (otherwise known as 'personal rights') are positive rights against specific person(s), which are derived from statutory obligations or contractual obligations, such as the right to receive a rent from the lessee under the lease agreement or the right to receive compensation in tort for false imprisonment. Conversely, rights *in rem* (otherwise known as 'real rights') are negative rights against unspecified persons and are equally derived from statutory or contractual obligations, such as the right to possess and utilise property to its full potential without interference. Thus, a right *in rem* can be exercisable against society at large.

[1] There is a consistent line of Islamic scholarship whereby contracts are deemed agreements for the mutual exchange of property. Kasani, *Bada'i', Al-Sana'i' fi Tartif al-Shara'i'* (Dar Al-Kotob al-Ilmiyah, Cairo, 1990), vol 5, at 133; Ibn Qudama, *Al-Mughni* (Dar al Kutub al Ilmiya, Beirut) vol 3, at 560.

The Qatari Civil Code (CC) is detailed but not comprehensive. Specialised legislation has been enacted to complement the CC and regulate additional issues affecting contractual relations. Qatari courts have entertained an extensive array of civil and commercial disputes and have interpreted the relevant statutes where there was ambiguity.[2]

2.2 OBLIGATIONS IN GENERAL

The main source of obligations under Qatari contract law arises from the following: (i) the contract itself; (ii) the intention of the parties at the time of forming the contract; and lastly (iii) the relevant laws enacted by the legislators to regulate contractual matters. Although the terms 'contract' and 'agreement' are used interchangeably to refer to the same legal instrument, it is very important to note that 'every contact is an agreement but not every agreement constitutes a legally binding contract'.

2.2.1 *Definition of Contract*

Article 64 CC elucidates the necessary elements that are required for a contract to be validly formed. It goes on to say that

> Without prejudice to any special formalities that may be required by law for the conclusion of certain contracts, a contract shall be concluded from the moment an offer and its subsequent acceptance have been exchanged if the subject-matter and cause of such contract are deemed legal.

The CC defines the contract as an exchange of promises between an offeror (the party who makes an offer) and an offeree (the party who declares acceptance) for a subject-matter that is deemed legal in its substance and cause. The Qatari legislator emphasised the importance of both substance and cause of the subject-matter of an agreement on the basis of which offer and acceptance are transformed into a legally binding agreement.[3] Thus, the parties'

[2] Qatari legislators adopted the Latin concept of *stare decisis*, which means 'to stand by things decided'. According to Art 22(3) of Law 12 of 2005 pertaining to Procedures in Non-Penal Cassation Appeals, lower courts (i.e. the Court of First Instance and the Court of Appeal) are obliged to comply with the judgments of the Court of Cassation as mandatory authority (i.e. precedents). The Court of Cassation is not obligated to uphold its previous judgments; thus, it can overrule itself. Thus, the concept of *stare decisis* works vertically but not horizontally. The Court of Cassation has the role of establishing legal principles in the Qatari legal system.

[3] This is consistent with the emphasis on the subject-matter of contracts under classic Islamic law, known as *mahal al-aqd*. According to Islamic jurists (*fuqaha*), the determinants of the 'thing' allowed to become a subject-matter of a valid contract are the following: (i) it should

agreement may not encompass an illegal act, or conduct that violates public policy. These include, among others: labour rights, particularly the restricted right to termination by the employer;[4] commercial activities in violation of the requirement that a Qatari partner hold at least 51% of shares;[5] exercising a profession without proper licence and registration;[6] rental value and eviction from leased properties;[7] and not bypassing the proper jurisdiction of Qatari courts.[8] Agreements encompassing illegal subject-matters are considered null and void and are not enforceable by the courts.

2.2.2 *Expression of Intention*

It is crucial that the law recognises in advance in what manner the offer or acceptance are to be manifested and expressed in order that they become binding. Article 65 CC states that

1. An intention shall be expressed orally or in writing, by a commonly used sign, by actual consensual exchange, and also by conduct that, in the circumstances, leaves no doubt as to its true meaning.
2. A declaration of intention may be implied when neither the law, nor the agreement, nor the nature of the transaction requires that such declaration be expressed.

Qatari legislators did not deviate from the civil law tradition. The parties may express their intention to enter into a legally binding contract under a variety of methods as long as the chosen means of expression reflect their true intention without ambiguity.[9] These expressions could be verbal, written or

be mal *mutaqawam* (legal); (ii) existent; (iii) owned by the seller; (iv) in the possession of the seller; (v) able to be delivered; and (vi) precisely determined (*malom*). See Ibn Abideen, *Radd ul Muhtar Sharah Tanveer al Absar* (Dar ul Fikr, Beirut, 1979) vol 4, at 505. See also E Rayner, *The Theory of Contracts in Islamic Law: A Comparative Analysis with Particular Reference to the Modern Legislation in Kuwait, Bahrain and the United Arab Emirates* (Graham & Trotman, 1991) 157; *Al Mughni* (n 1) vol 4, at 260; Kasani (n 1) vol 5, at 138–140.

4 Court of Cassation Judgments 44/2010 and 73/2010.

5 Court of Cassation Judgments 74/2010 and 102/2010; see also Court of Cassation Judgment 73/2016 on a similar employment issue.

6 Court of Cassation Judgment 226/2011.

7 Court of Cassation Judgment 19/2011; Court of Cassation Judgment 32/2015.

8 Court of Cassation Judgment 62/2011.

9 This is consistent with classic Islamic law, whereby the communication of an offer may typically be achieved in five forms (*namat*): verbally, written, through a messenger, signs or gestures, and conduct that 'is evidence of an offer'. See Majalla, Arts 173–175; see also I. Abdur Rahman Doi, *Shari'ah: The Islamic Law*, (A.S. Noordeen Publisher, Kuala Lumpur, 1992) 356.

predicated on the conduct of the parties pursuant to a commonly accepted industry practice (custom),[10] or a pattern of consistent past commercial transactions. Furthermore, the expression of intention could be explicit or implicit as long as the law or the nature of the commercial transaction does not prohibit a certain form of expression. No doubt, some transactions will require a particular form of expressing intention and this must be followed.[11] However, given that many transactions are concluded by way of email exchanges, the mere payment of the requested fee by the buyer to the seller,[12] or by conduct,[13] intention is clearly presumed upon crucial moments in the lifecycle of the exchange. The buyer is deemed to have agreed to the seller's offer, as well as its terms and conditions, upon emailing his acceptance to the offer, or upon receipt of the goods at his premises, and in more trivial transactions, the offeree's intention is presumed upon payment of the agreed fee. It is equally taken for granted that neither party may unilaterally alter or amend the conditions in the agreement, as this requires the mutual will of all parties.[14] The Court of Cassation, relying on article 4(1) of the Electronic Commerce Law,[15] has emphasised that an offer or acceptance of an offer may be expressed, in whole or in part, by means of electronic communications.[16]

[10] Art 169(2) CC allows the courts to infer the parties' common intention by reference to prevailing commercial custom. Art 172(2) CC expands the good faith requirement by stating that obligations arising from a contract encompass, in addition to what the parties have agreed, whatever 'is required by law, customary practice and justice'. By way of illustration, the Court of Cassation has consistently held that interest rates shall be upheld in accordance with prevailing business custom. See Court of Cassation Judgments 66/2014 and 40/2013; equally Court of Cassation Judgment 208/2014. Ibn Taymiyya, a Hanbali scholar, emphasised the importance of customary conduct in contractual transactions. Ibn Taymiyya, *Al-Fatawa al-Kubra* (Dar al Kotob al-Ilmiyah, Beiruit, 1966), vol 3, at 411.

[11] See, for example, Court of Cassation Judgment 123/2010, concerning the registration of real estate transactions.

[12] See Court of Cassation Judgment 76/2011, where it was held that unless otherwise agreed payment of the deposit means confirmation of continuation of the contract.

[13] For example, Arts 588 and 626 CC specify that if the lease contract expires and the lessee continues to benefit from the leased property with the knowledge of the lessor and without objection, the contract shall be deemed to have been renewed with its first conditions. See Court of Cassation Judgment 134/2013.

[14] Court of Cassation Judgment 35/2014. By extension, neither party may unilaterally terminate the contract. The Court of Cassation refers to the contract as 'the law of the parties' and developed its 'two wills' theory. See Court of Cassation Judgment 67/2014; equally, Court of Cassation Judgment 109/2015.

[15] Law No. 16 of 2010 Promulgation of the Electronic Commerce and Transactions Law (Electronic Commerce Law).

[16] Contracting through electronic means is recognised in the case law of the Court of Cassation. See Judgment 275/2016; equally Court of Appeal Judgments 483/2018 and 526/2018.

2.2.3 *Expression and Manifestation of the Offer*

In Chapter 3 we go on to demonstrate that an intention to be bound to one's offer or acceptance is *a sine qua non* condition for the formation of a contract. Article 66 CC exemplifies in what manner such intention to make an offer is expressed and manifested, as follows:

1. An expression of intention shall become effective once uttered. However, the expression shall have no effect unless it comes to the notice of the intended recipient.
2. Subject to proof to the contrary, the intended recipient shall be deemed to have notice of the declaration of intention from the time that it reaches him.

As a result, revocation is possible until such time as the offer or acceptance has not yet reached the intended recipient. Paragraph 2 of article 66 CC introduces a rebuttable presumption concerning the precise point in time at which the addressee received its counterparty's intent. It stipulates that 'the intended recipient shall be deemed to have notice of the declaration of intention from the time that it reaches him'. Consequently, secure methods of receipt, such as email correspondence[17] and recorded delivery, will constitute significant evidence of receipt.

Article 67 CC goes on to say that

> 'The expression of intention shall have no effect if a retraction thereof reaches the intended recipient before or at the same time as the expression reaches him'.

The expression of intention is legally valid when the offeror expresses his/her intent to enter into a binding contract. However, this valid expression of intention does not become binding until the offeree becomes aware of it. Thus, the sole expression of intention by the offeror is not sufficient to make it legally binding for bilateral and multilateral agreements. The only exception here applies to unilateral agreements, which are known under the civil law tradition as 'unilateral dispositions'. Unilateral dispositions will be discussed at a later stage of this chapter. As a general rule, two factors are required for a valid expression of an offer: (i) the expression of intention by the offeror and (ii) the receipt of the expression of intention by the offeree.

[17] In order for electronic evidence to be admissible before the court, it must take the form of a data message which, according to Art 1(4) of the Electronic Commerce Law, is any type of information that was sent, received, displayed or stored by any means of electronic communications, and moreover comply with the requirements of Art 26 of the Electronic Commerce Law. Article 26 generally demands certainty of the origin of the data message and the identity of its receiver to ensure that the data message was not manipulated by the parties or that it was not a counterfeit.

Furthermore, the law stipulates that when the expression of intention reaches the offeree, it is deemed as proof of his or her knowledge of such intention. That is the reason why offerors in practice require a receipt of delivery (time stamped) either through registered mail or electronic receipt by the email server. The exception here applies to face-to-face or telephone negotiations where the expression of intention and the receipt of such intention is instantaneous. We will discuss this matter in more detail when we go on to examine the concept of 'contract session' at a later stage of this chapter. It suffices to say, however, that the Qatari CCP does not ascribe to the so-called parole evidence rule, whereby evidence that is extrinsic to the contract, such as draft contracts, statements and emails exchanged during the negotiation of the contract, travaux or witness statements are inadmissible.[18] The CCP implicitly allows all such evidence in order to allow the judge to ascertain the parties' common intention and excludes nothing that has probative value, subject to the requirements demanded of each evidence.[19]

Moreover, the law allows the offeror to revoke his or her expression of intention if the notice of such revocation reaches the offeree on, or before, the time the original expression of intention reaches the offeree. If this event materialises, then the original expression of intention becomes null and void. The law here provides flexibility to the offeror in case there is a change of heart about the transaction, or where the transaction itself is no longer deemed worthwhile before the expression of intention reaches the offeree.

2.3 OFFER

Article 69 CC aptly captures the fine line between an offer[20] and an invitation to treat or negotiate that is central to the discussion on the formation of contracts and the deference typically afforded to businesses as being offerees to offers made by their clients. It stipulates that

1. An offer may be addressed to unidentified persons, as long as the identity of the desired offeree is not deemed essential to the contract.

[18] See Art 4.3 UNIDROIT PICC, which refers to a list of five extrinsic factors as relevant circumstances in interpretating a contract. This is consistent with the Qatari CC, save for the fact that extrinsic factors are expressly permitted in the PICC but not the CC.

[19] It is established that photocopies of originals, whether written documents or photographs have no probative effect except to the extent they lead to the signed originals, if any. See Court of Cassation Judgment 9/2010.

[20] Art 101 of the Majalla defines an offer (*ijab*) as a proposal or 'the first word spoken for making a disposition of property and the disposition is proved by it'.

2. The offer of goods accompanied by an indication of their prices shall be regarded as an offer subject to the rules of trade.
3. Save where the conditions of the situation show otherwise, publications, advertisements, sending or distributing price lists used in current trading, as well as any other statement connected with offers or orders addressed to the public or particular individuals, shall not be regarded as an offer.

The first paragraph of article 69 CC states that where the identity of the offeree is not essential to the offeror, the offer may be addressed to persons not identified in any meaningful way. Even so, it is important that an offer is made in such a way that where an unidentified person fulfils the criteria of the offer, a contract is deemed to have been formed. For example, an employment offer advertisement in a local newspaper for recruitment of manpower does not constitute a legally binding offer on the offeror because the identity of the potential employee is an essential element to a contract of employment. Unilateral disposition is the best means of illustrating a legally binding offer made to the general public, as a supplement to paragraphs 2 and 3 of article 69 CC. Article 193 CC reads as follows:

> Any person who makes a promise to the public of a reward in consideration for the performance of a job, such party shall be bound to deliver the reward to the person who performs such job according to the agreed conditions, even where such person performed the job prior to receiving the promise, or without thought of the promise of reward, or without knowledge thereof.

Where an offeror makes a promise to the public through an advertisement by which he or she promises to pay a sum of money or grant an economic reward in exchange for a specific performance, the offeror will be obligated to fulfil such promise to the offeree performing such act irrespective of its identity. In the case at hand, the identity of the offeree is not essential to the contract. The CC does not require that the offeree had prior knowledge of the offeror's promise in order to be entitled to the reward; mere performance suffices.

The second paragraph of Article 69 CC sheds light on another type of legally binding offer that is made to the public, that is, public display of products with their price tags in retail stores. This type of offer is very common in business practice. Here the law does not obligate the offeror to sell the exact good or service that is displayed; yet, the offeror is bound to sell identical or similar goods from its available stock or equivalent services for the same displayed price.

The last paragraph of article 69 CC makes it clear that mere advertisements for goods and services in publications, in addition to the distribution of price lists to the public as part of customary business practice, do not amount to legally binding offers. Such advertisements to the general public constitute invitations to negotiate, or treat, as long as they do not fall within the ambit of the first paragraph of article 69 CC.

2.3.1 *Retraction of Offer*

Article 70 CC deals with the point in time at which the offeror may validly retract its offer from the offeree. It goes on to say that

1. The offeror shall have the option to retract his offer as long as it is not accepted.
2. Where, however, the offeror has fixed a time limit for acceptance, or such time limit is required by the circumstances or the nature of the transaction, the offer shall remain open throughout such time limit and lapse upon its expiry.

The key in these circumstances is reasonableness. The CC does not provide any indication what constitutes reasonable time for acceptance of an offer, absent stipulation in the offer itself. Readers should consult Chapters 3 and 6, which discuss the various principles enunciated by the Court of Cassation in ascertaining the parties' intention and the construction of contracts. In addition to the expiration of an offer's time limit, or its non-acceptance by the offeree, the validity of the offer is deemed expired and thus retractable, where under article 71 CC the offeror dies or loses its legal capacity.[21]

Qatari law permits the offeror to revoke its offer as long as this was not accepted by the offeree. This is in alignment with article 67 CC. Moreover, the offeror is free to express the time period within which the offer remains valid, following which the offer expires. Thus, if the offeree does not accept the offer within the specified time, the offeror is not bound by its offer. However, if the offeree accepts the offer after its expiration, such 'after-the-expiration' acceptance will be deemed a new binding offer or 'counter-offer' by the offeree to the offeror. The offeror in this case is free to accept or reject the counter-offer.[22] The practice of assigning specified time limits for accepting offers is very common in Qatari commercial transactions, such as tender bids and auctions. Under classic Islamic law an offer may validly be revoked

[21] See chapter 12.5 concerning termination on account of a party's death.
[22] Equally an intrinsic part of classic Islamic law, as reflected in Arts 184–185 Majalla.

if it is not subject to a fixed time limit (*khiyarat syarat*) and provided it is not met with acceptance. The Malikis object to this argument.[23] All scholars are in general agreement that an offer may be terminated by revocation, lapse of time, failure of condition subject to which the offer was made, or death of the offeror.[24]

2.4 ACCEPTANCE

The Qatari CC follows well established principles concerning the requirements for the valid acceptance of an offer. Article 72 CC states that

> The acceptance must be in conformity with the offer for concluding the contract.
>
> An acceptance that goes beyond the offer, or that is accompanied by a restriction or modification, shall be deemed to be a rejection comprising a new offer.

Article 72 CC expresses the notion that in order for a contract to be formed the acceptance must be a mirror image of the offer. Any amendment to the offer will be considered a counter-offer. Unlike other civil codes which fail to address the issue of silence, article 73(1) CC makes it clear that although no statement shall be attributed to a person remaining silent, silence in circumstances requiring a statement shall be deemed as expressing acceptance. This rebuttable presumption will no doubt arise in the context of very particular contractual relationships governed by business custom or past and uniform conduct. Paragraphs 2 and 3 of article 73 CC make the point that

2. Silence in particular shall be deemed an acceptance where there have been previous dealings between the two contracting parties and the offer is related to such dealings or if it appears to benefit the offeree.
3. A buyer's silence after receiving purchased goods shall be regarded as acceptance of the terms of a sale.

Article 73 CC sheds light on a very important legal principle under the civil law tradition, which is that 'silence may not be deemed as acceptance'. This general rule is derived from the Arabic phrase in article 73 CC which reads: 'لا ينسب لساكت قول'. The English translation of the above phrase is 'No statement shall be attributed to a person who remains silent'. Thus, the law here

[23] Abd al-Razzaq al-Sanhuri, *Masadir al-Haqq fil-Fiqh al-Islami* (Cairo University 1954–59) vol 2, at 18.

[24] L A Khan Niazi, *Islamic Law of Contract* (Research Cell Dyal Singh Trust Library 1990) 71.

wants to draw a distinction between (i) silence as a negative response to an offer and (ii) silence as a *positive response* to an offer in the shape of an implicit expression of intention by the offeree. As discussed earlier, the true (common) intent prevails over the expressed intention.[25] So, if the true intent of the offeree matches the implicit expression of intention, then silence in this particular scenario may be deemed as acceptance.[26] Furthermore, the law makes it a crystal clear that if the circumstances of a commercial transaction dictate that the offeree must explicitly express its intent (the norms) but the offeree remains silent, then silence shall be deemed as acceptance. This approach is influenced by the Islamic legal tradition,[27] whereby the Al-Hanafi school of thought opined that silence in situations where a person is expected to declare its rejection shall be deemed an acceptance because such person had the opportunity to say so but did not.[28] Article 73 CC provides a real life example about a pattern of commercial transactions between an offeror and an offeree where silence by the offeree shall be deemed an acceptance because (i) the conduct of the parties is consistent with past transactions; or (ii) the transaction benefits the offeree who did not object to the offer in the first place; or (iii) the collection of the promised goods/service by the offeree is deemed as acceptance to the offeror's terms and conditions.

Just like the situation with offers, an acceptance is terminated by the death or loss of capacity by the offeree, if this occurs before the acceptance reaches the notice of the offeror.[29] Thus, the knowledge of the offeror of the acceptance plays a crucial role for the validity of a binding acceptance.

2.5 CORRESPONDENCE OF OFFER AND ACCEPTANCE

2.5.1 *Contract Session*

In order to explain how the 'correspondence of offer and acceptance forms a binding contract', it is imperative to discuss the legal concept of the so-called 'contract session'. The Qatari legislator derived this legal principle from the Islamic legal tradition, which uses the Arabic term (مجلس العقد) pronounced

[25] See Chapter 3.
[26] A Faraj Yousef, *Restatement and Commentary of the Kuwaiti Civil Code: Comparative Law Study with the Egyptian Civil Code, supported by case law and jurisprudence* (Modern Academic Office 2014) vol 1, at 219.
[27] See Arts 175 and 177 Majalla.
[28] Yousef (n 26) at 219.
[29] Art 74 CC.

as (*majlis ala'aquid*). A contract session is defined as the session where the parties meet in person to negotiate the terms and conditions of the contract at the same (i) location and (ii) time.[30] The parties shall use their *best endeavour* to *negotiate directly* without being occupied with any other matter alongside this potential agreement. Their responses to any potential offer or acceptance shall take place within the contract session. The contract session expires when the parties either: (i) make a valid offer and a matching acceptance that result in a binding contract; or (ii) the offeree explicitly rejects an offer made by the offeror without making a counter-offer, and then walks away; or (iii) when one or all of the parties become occupied with a matter other than the subject-matter of the contract.[31] The accepted structure of a sale or any other contract or unilateral obligation should be considered 'simple'. Therefore, the creation of a contract cannot be supposed through a gradual period of time. The structure of a contract is either created immediately or not formed at all.[32]

According to the narration by Hakim bin Hizam, Allah's Apostle said: 'The seller and buyer have the right to keep or return goods as long as they have not parted or till they part and if both parties spoke the truth and described the defects and qualities (of the goods), then they would be blessed in their transaction, and if they told lies or hid something, then the blessings of their transaction would be lost'.[33] 'The *majilis* therefore begins when the parties so come together and ends only when they separate physically or constructively'.[34]

The Hanbali school of thought, which the State of Qatar has adopted, expands the duration of the contract session until the expiration of the validity of an offer made by one of the parties, even if they physically leave the contract session. The response to this timely valid offer can be made either directly or through post. This approach is more flexible and reflects a practical scenario of commercial transactions compared with the rigid approach adopted by the Hanafi school of thought. Moreover, the Hanbalis adopt the rule that the offeree is not obligated to accept an offer instantaneously during the contract session, as long as the offeror did not revoke the offer. This is done in order for the offeree to respond at the time it suits him or her. Once the contract session expires without forming a binding contract, the parties can move away without any legal obligations towards each other.

[30] TP Hughes, *Dictionary of Islam*, (W. H. Allen & Co 1885) 32.
[31] Yousef (n 26) at 223.
[32] M Khansary, *Monieyat-al-taleb fe Sharhe-el-Makaseb* (Nashre Eslami Publ. 1418 H) 240.
[33] Bukhari, Hadith 293.
[34] N Saleh, 'Definition and Formation of Contract under Islamic and Arab Laws' (1990) 5 Arab LQ 101, at 115.

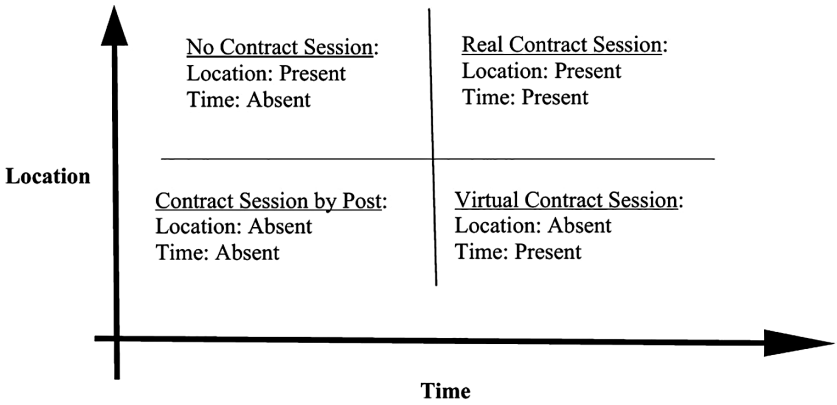

FIGURE 2.1 Contract sessions matrix

2.5.2 *Types of Contract Sessions*

The contract session adopted by the Islamic tradition is known by scholars as the 'real contact session' because the parties to the negotiation are present at the same place and time as explained above.[35] However, the Qatari legislator adopted other types/forms of contract sessions to accommodate real life scenarios, which the law must regulate. If we pay attention to the matrix illustrated in Figure 2.1, one comes to the conclusion that there exist two additional types of contract sessions, namely, (i) 'virtual' contract sessions whereby the parties engaging into contract negotiations are present in time but absent in location; for example, when the parties negotiate using a video teleconference platform, such as Microsoft Teams, Zoom, or through a conventional telephone; (ii) contract sessions by post whereby the parties engaging into contract negotiations are absent in both time and location, as is the case with communication by email or registered mail. Last, but not least, there is no valid contract session if the parties that intend to negotiate a contract are present in a location but absent in time because they cannot communicate during the session.

It is now pertinent to examine the relevant articles of the Civil Code in order to determine how the law regulates each type of contract session. Article 75 CC states that

[35] Without wishing to simplify the issue, Islamic scholars, such as Ibn al-Jawzī, speak of the option of meeting session (*khiyar al-majilis*). He establishes the legal elements of a binding sale according to the principle of *khiyār al-majlis* (option of the meeting), which dictates that a sale can be revoked at will until the parties decide to end the session. Abū al-Faraj Ibn al-Jawzī, *Ṣayd al-khāṭir*, (eds.) *Abd al-Qādir Aḥmad 'Aṭā* (Dār al-Kutub al-'Ilmīya 1992) 228–29.

> Where the offer is made during the contract session without containing a time limit for acceptance, both parties shall retain the option until the session ends. Where the offeror retracts its offer or the session ends without acceptance, the offer shall be considered terminated.

Article 76 CC goes on to say that

> Notwithstanding anything to the contrary, (i) an agreement between the parties; (ii) [or subject to any] requirements by law or customary usage, the contract shall be deemed to have been concluded if the offer is accepted.

It is clear that articles 75 and 76 CC allow both the offeror and offeree to retain their decision until the end of the contract session. If an offer is made by the offeror during the session without time limit, then the offeree can accept or reject the offer on, or before, the end of the session. Moreover, the offeror may revoke or retract its offer, if the offeree does not make an unconditional acceptance before the revocation reaches him or her. If the contract session expires naturally as per the rules governing the real contract session as explained above, the offer becomes invalid and non-binding. If the offer meets the unconditional acceptance during the contract session, then the contract is binding by virtue of the law and customary usage.

Article 77 CC addresses promises made by the offeror and offeree concluded by correspondence. Contracts concluded in this manner 'shall be deemed to have been made at the time and place when and where acceptance reaches the offeror's notice, unless otherwise agreed or required by law or usage'. The law here regulates the contract session by post under article 77 CC, where the contract formed by this type of contract session is concluded when the acceptance made by the offeree reaches the offeror's notice; that is, requiring knowledge and awareness.[36] It is worth mentioning that the above approach adopted by the Qatari legislator is much simpler than the postal rule of acceptance under the common law tradition.

Article 78 CC effectively renders contracts made by telephone and over the internet,[37] or by any other similar means as being made in real contract sessions. Article 78 CC stipulates that 'such contract shall, in respect of place, be regarded as having been concluded between absent contracting parties'. While the law regulates the 'virtual' contract session under article 78 CC,

[36] See Court of Cassation Judgment 4/2008, where the claimant argued that while he had sent a signed copy of a contract to the Ministry of Municipalities, the Ministry's countersignature which arrived a month later was no longer valid because of a time lapse. The Court of Cassation held that the original offer by the claimant was still effective, arguing that the meeting of offer and acceptance is a factual situation dependent on context. An offer can only be revoked if it reaches the offeree before the latter dispatched its acceptance.

[37] Not explicitly mentioned in the Arabic original text of Art 77 CC.

the contract between the offeror and offeree is formed when the offer meets acceptance and as long as the parties are negotiating over a video teleconference platform or the telephone. The parties are considered present in respect of time but absent in respect of place.

2.5.3 *Essential and Non-essential Elements*

It is common practice in all legal systems to exclude non-essential elements from the factors inhibiting the formation of contract. Article 79 CC emulates this approach, stating that

1. Where the contracting parties have agreed on all the essential terms of the contract and have left certain details to be agreed at a later date without stipulating that, failing agreement on these details, the contract shall not be concluded, the contract shall be deemed to have been concluded.
2. In the event of a dispute regarding those details not yet agreed upon, the court shall resolve the dispute according to the nature of the transaction, the provisions of the law and custom, and the rules of justice.

Article 79 CC stipulates that a binding contract is formed where the parties reach an agreement concerning all essential terms and conditions. The law grants the parties some latitude to postpone discussions on marginal or auxiliary terms and conditions to a later stage (effectively after the contract has been formed), instead of forcing the parties either to accept all terms and conditions. This approach respects the true intent of the parties and facilitates the conclusion of commercial transactions, which are necessary to keep the economy going. If a dispute arises between the parties before all pertinent terms and conditions are settled, then the court will have the discretion to adjudicate the matter by (i) construing the true intent of the parties and (ii) filling the gaps in the agreement as necessary.[38] If the parties during the contact session mutually agree, explicitly or implicitly, to withhold the conclusion of the commercial transaction until all elements, including the marginal/auxiliary elements, are settled, then the law will respect the will of the parties and the contract will be deemed as not having been formed until that condition is met.

2.5.4 *Contracting by Standard Terms*

Standard terms and conditions are common in Qatari contract law, whether adhesive or commercial in nature. An offer may be made in such a manner

[38] See Chapter 6.

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that incorporates standard terms. This is aptly recognised in article 80(1) CC, save where 'a party proves that they had no notice of such provisions or had no opportunity to discover them at the time of the agreement'.[39] Article 105 CC underscores the inherent imbalance of power in adhesion contracts, acknowledging in the process that the absence of negotiations as a result of the stronger party's (effective imposition of) standard terms does not entail that the other party has not expressed its acceptance of the offer.[40] An arbitrary term may be expunged under article 106 CC even where the adhering party was aware that the term was arbitrary. Arbitrary contractual terms in adhesion contracts are prohibited as a matter of public policy and the adhering party's knowledge is not considered an abuse of right.[41] Article 80(2) CC goes on to say that

> Where such provisions of which no notice has been taken are essential, the contract shall be invalid. If the provisions are auxiliary, the judge shall resolve any dispute arising therefrom in accordance with the nature of the transaction, current usage and the rules of justice.

This provision aims to regulate a common practice within the commercial and financial sectors, in situations where the parties entering into a contract use an industry-developed 'contract model' as a template for the agreement. Standard terms are useful tools to facilitate negotiations in commercial transactions because they contain detailed provisions regulating matters that the law itself does not regulate in the same level of depth. However, standard terms may pose a risk on the parties' autonomy to draft their contract. The biggest risk here is that the parties most likely accept terms and conditions they do not understand fully. Any adopted provisions from contract models should be redrafted for the specific transaction to avoid overlooking matters that may arise in a potential dispute. Article 80 CC regulates the use of contract models, subject to the full knowledge of the parties during the contract session. If a party challenges these terms before the courts and proves 'no notice of such provisions or no opportunity to discover them at the time of the agreement', then the disputed provisions produce no legal effect. Furthermore, if the disputed standard terms are considered 'essential' to the agreement, then the court will deem the contract null and void. However, if the disputed provisions are considered 'secondary'/'supplemental'/'auxiliary', the contract is deemed to have been formed.

[39] See also Art 106 CC.

[40] See Court of Appeal Judgment 241/2010; Court of Cassation Judgment 74/2011.

[41] See Court of Cassation Judgment 17/2012, where it was held that a guarantee for a future obligation under Art 1812 CC is invalid, unless the two parties specify in advance in the guarantee contract the amount of the debt guaranteed by the guarantor.

2.6 OBLIGATIONS IN SPECIFIC CONTRACTUAL TYPES

In addition to the general rules prescribed by the Civil Code for generic contracts, Qatari law has set out special rules for a number of specific contracts outlined in the Civil Code and other special laws. These specific contractual types are commonly used by the public and their regulation is a matter of public interest. The elements required to form such contracts are mandatory, in addition to offer, acceptance and intention to be bound. If there is an overlap between certain elements between the CC and the special laws, then the elements prescribed by special laws supersede. Even so, the courts have discretion to decide which law applies to a specific contract. For example, a lease contract could be regulated by either the Civil Code or the Property Leasing Law.[42] According to the Court of Cassation, if leased premises are transformed into a hotel, then the lease contract falls outside the ambit of the Property Leasing Law and is encompassed under the Civil Code.[43] This is an interpretation of the exemption list as stipulated in article 2 of the Property Leasing Law.

2.6.1 *Sales Contracts*

As stipulated in article 88 of the Commercial Law, two elements are required to form a sales contract, namely, (i) the sale item and (ii) the price. The Qatari legislator emphasised that the buyer must exercise due diligence over the sale item; however, if the seller provides a statement and basic description of the sale item in the sale contract, then the buyer's due diligence is deemed sufficient. Furthermore, article 89 of the Commercial Law echoes the general rule in article 69 CC, which states that the seller's announced sale prices for goods and services to the public shall not be deemed as constituting a binding offer. The announcement is a non-binding invitation to negotiate.

If the sale contract is made conditional to the buyer's acceptance of a trial sample of goods or services, the seller shall facilitate the trial for the buyer as stipulated in article 91 of the Commercial Law. The buyer has the right to either accept or reject the sale within a specified period of time as agreed between the parties. If the sale contract does not specify the trial period for the goods or services, then the buyer shall inform the seller of its decision within a 'reasonable time' decided by the seller. It is worth noting that the law deems the buyer's silence after the expiry of the trial period as acceptance of the sale transaction, thus binding the buyer to the sale contract. Another type of trial condition is mentioned in the law due to its importance in the sale of food

[42] Law No. 10 of 2008, as amended by Law No. 20 of 2009.
[43] Court of Cassation Judgment 113/2012.

merchandise; this is the so-called 'taste trial'. Here, the buyer has the right to accept or reject a taste sample within a trial period specified in the sale contract, or in accordance with 'customary tradition'. The sale contract is formed only after the buyer announces its acceptance of the taste sample according to article 92 of the Commercial Law.

Moreover, articles 97, 98 and 99 of the Commercial Law provide the general rule for setting the price of the sale item. The price in sale contracts shall be based on the market price for such commodity at the time and place in which the sale item must be delivered to the buyer. If no market price is available, then the market price shall be determined by 'customary tradition'. If the sale contract does not specify a sale price, then the sale transaction shall be concluded on the basis of the price at which the parties are used to doing business. If there is no previous commercial transaction between the parties, then the sale will be held at the market price unless it becomes clear from the circumstances or from business customary practice that another price should be adopted. The law also allows a third party in the form of a 'referee' or 'market expert' to determine the price of the sale item in question, where the market price shall be adopted on the 'day' of occurrence of the sale transaction.[44] As a last resort, if the third party fails to determine the market price for the sale item, then the competent court will have the discretion to determine the price.

2.6.2 *Lease Contracts*

Pursuant to article 3 of the Property Leasing Law, lease contracts must be written, and thus, oral agreements for leasing property are not acceptable. The law here obligates the lessee to register the lease contract with the Real Estate Lease Registration Office (the 'Office') that is part of the Ministry of Municipality and Urban Planning.[45] In the case of a dispute between lessor and lessee, the competent court will only admit as evidence lease contracts registered at the Office.[46] The Property Leasing Law is applicable to all lease contracts, save for those listed in article 2 thereof, namely, public property, agricultural land, vacant land, industrial service areas, apartments, hotels and tourist accommodation and residential units reserved by the state or the private sector for their employees.

[44] See Court of Cassation Judgment 8/2016, where it held that although the price in a sale contract is a cornerstone of the contract, Arts 425 and 426 CC allow for this to be later inserted and/or decided by a third party.

[45] See Court of Cassation Judgment 123/2010, concerning the registration of real estate transactions; equally, Court of Cassation Judgment 221/2014.

[46] Exceptionally, there is an exemption for lease contracts entered into on or before 15 December 2008.

Other general elements for lease contracts are regulated by articles 582 to 589 of the Civil Code. However, unlike offer, acceptance and intention, which are *sine qua non* elements of contracts, the existence of these other elements does not inhibit the formation of the contract. In summary, lease contracts must include details concerning (i) the leased premise(s); (ii) the amount of rent for a specified period; and (iii) the duration of the lease agreement in its entirety.[47] The lessee may pay the rent to the lessor in the form of cash or other financial considerations. If the parties fail to fix the rent amount in the lease contract, then the competent court will assess and determine the rent on the basis of a comparative rent of similar properties. Furthermore, if the parties fail to agree on the actual commencement date of the lease, then the commencement date that is written in the lease contract shall be deemed as the effective date. Moreover, if the parties fail to agree on the duration of the lease contract, then the lease is deemed expired when either party notifies the other of its intention to vacate the premises. The notification must be served to the other party prior to the commencement of the second half of such period, provided that such notice shall not exceed three months.

2.6.3 *Employment/Labour Contracts*

One of the distinct elements of employment/labour contracts is that they must be 'bilateral'. The identity of both the employer and employee must be clear from the outset. Thus, unilateral agreements as described earlier in this chapter cannot be used to create binding employment/labour contracts. Other required elements include (i) the scope of work; (ii) the duration of the contract, that is, definite or indefinite;[48] and (iii) the wage or payment in exchange of the work performed. Employment/labour contracts are regulated by the Civil Code in addition to special laws, such as Law No. 15 of 2016 (the 'Human Resources Law'), Law No. 14 of 2004 ('Labour Law') as amended by Law No. 3 of 2014 and Law No. 15 of 2017 ('Domestic Workers Law'). It is worth highlighting that the Human Resources Law regulates employment in the government sector, whereas the Labour Law was enacted to regulate employment in the private sector. The Domestic Workers Law is self-explanatory as it is meant to regulate employment between individuals and their domestic workers.

[47] See Court of Cassation Judgment 159/2012.

[48] Arts 40 and 41 of Labour Law No. 14 of 2004 indicate that the extension of the work relationship, even with successive contracts, is in fact a single employment contract, and its continuity requires that the worker not be deprived of any advantage or benefit derived from the employer for any period during the related service. Hence, offer and acceptance are presumed unless specifically rejected. See Court of Cassation Judgment 98/2014.

2.6.4 *Public or Administrative Contracts*

Contracts between a public and a private entity are known as administrative contracts[49] and are typically regulated by administrative law, with jurisdiction conferred to the administrative circuit of the court of first instance.[50] Qatari law has endowed public contracts with a special consideration compared to civil and commercial contracts due to their overriding public interest. Public contracts require the following additional elements in order to be validly formed, namely, (ii) a public authority (i.e. governmental entity) must be a party to the contract; (ii) the contract must serve a public interest; and (iii) the contract must operate or facilitate a public facility, where the public will have free access to it, such as streets and petrol stations.

[49] Administrative contracts are regulated by Law No 24/2015 on the Regulation of Tenders and Auctions, known as the Procurement Law.

The Court of Cassation in Judgment 49/2008 defined administrative contracts as 'contracts concluded between a legal person of public law and which relate to the operation of a public service and which include exceptional and unusual conditions [clause *exorbitante*] that are distinct from the ambit of private law', iterated in Court of Cassation Judgment 118/2008. See also Court of Cassation Judgment 100/2016, which further stipulated that a contract is not of an administrative nature, unless related to the management or organisation of a public facility, and the administration has demonstrated its intention to adopt public law by including in the contract exceptional and unusual conditions.

[50] Disputes arising from administrative contracts confer jurisdiction upon the administrative circuit, in accordance with Art 3(5) of Law No 7/2007 on the Settlement of Administrative Disputes; public housing disputes are not considered administrative disputes. See Court of Cassation Judgment 28/2010.