

Prohibited Contracts

9.1 INTRODUCTION

In Chapter 8, we discussed the defects of consent, whereas here we shall dive deeper into the effects of defects in general. Before doing so, we need to lay the foundations by which to evaluate the legal impact of each defect on civil and commercial contracts. It will be recalled that under the civil law tradition, contracts are predicated on three general pillars, namely: (i) consent, consisting of offer, acceptance and intention to be legally bound; (ii) subject-matter and (iii) cause. In addition, there might, but not necessarily, exist two further requirements (special pillars), namely: (iv) form¹ and (v) delivery.²

¹ According to the Court of Cassation Judgment 20/2007, form is a fundamental pillar for the formation of any sale contract concerning retail stores. Thus, the law requires such sale contract to be notarised in an official document and issued by the concerned public body, that is, the Documentation Department under the Ministry of Justice. The contracting parties are prohibited from agreeing to circumvent this pillar and any contrary agreement is deemed null and void (absolute nullity). Moreover, contracting parties cannot elect to authorise (affirm) the sale contract because it is invalid. However, once the contracting parties complete the statutory requirement of ‘form’, then the sale contract becomes legally binding because all its pillars have otherwise materialised.

² According to the Court of Cassation Judgment 274/2015, delivery is a fundamental pillar for the formation of any sale contract concerning the sale of real-estate (immovable properties). The registration of conveyed property with the concerned public body, that is, the Real-Estate Registration Department under the Ministry of Justice, is a regulatory requirement for the finalisation of the conveyance but *is not* a pillar for the formation of the sale contract. This means that any sale contract of real-estate whereby the seller *does not* deliver the property to the buyer is invalid (absolute nullity) and the mere formality of completing the registration process *does not* authorise (affirm) this void contract. Thus, the seller is obligated by law to deliver the sold real-estate to the buyer and the buyer is obligated to make payment to the seller. Once this has materialised the sale contract becomes valid and produces full legal effects; see also G Mahgoub Ali, *The General Theory of Obligation: Part One – Sources of Obligation in Qatari Law* (Doha Modern Printing Press, 2016) 302.

As a rule of thumb, when one of these pillars is tainted with a defect, then the contract will be at risk of being challenged on any of the following grounds: (i) absolute nullity or (ii) relative nullity. Absolute nullity indicates that the contract is invalid from its inception and henceforth does not produce any civil obligations on the parties³ (in common law jurisdictions, this is known as voidity). Relative nullity, on the other hand, indicates that the contract is valid from its inception but contains a defect that enables the innocent party to either revoke (rescind) or authorise (affirm) the contract (in common law jurisdictions, this is known as voidability). In this particular scenario, if the innocent party elects to revoke a voidable contract, then nullity will cast its shadow on the contract from its inception and not the day it was deemed invalid, that is retroactive impact.

9.2 ABSOLUTE NULLITY (VOID CONTRACTS)

According to article 163 CC:⁴

An invalid contract shall have no effect, and every concerned party may hold to such invalidity. The court may *ex officio* rule on such invalidity. An invalid contract may not be corrected by authorisation thereof or by lapse of time. An invalidity suit shall prescribe after a period of 15 years has elapsed from the date of the conclusion of the contract.

The Qatari legislator posits the general rule that void contracts are invalid from their inception and do not give rise to civil obligations or liabilities. The party⁵ that acknowledges or upholds such absolute nullity does not require a court order to establish that its void contract is invalid, because absolute nullity manifests itself automatically. Moreover, courts may declare a contract null and void without any pertinent claim by the parties.⁶ Unlike relative nullity (voidable contracts) where the innocent party may revoke or authorise the

³ Court of Cassation Judgment 221/2014, where it was held that void contracts invalidated by absolute nullity *do not* exist from their inception and the act of authorisation does not rectify them.

⁴ Qatar Law No. 22 of 2004.

⁵ We have to pay attention to the term ‘concerned party’ in Art 163 CC, which refers to (i) the contractual parties themselves; (ii) their general successors, that is, heirs through inheritance and donees; and (iii) their special successors, that is, individuals who gain either personal rights or rights in rem or both through an assignment agreement. For general successors, one should refer to Art 175 CC, whereas for special successors Art 176 CC.

⁶ According to the Court of Cassation Judgment 74/2010, a void contract cannot be relied on as a legal ground for any civil obligation. It is not legally binding and cannot be authorised by any party. Every concerned party is entitled to uphold its nullity, and the courts are under obligation to make such declaration without a nullity lawsuit.

contract's defect, absolute nullity (void contracts) cannot be authorised by the innocent party; equally, it does not arise simply because of the 'lapse of time'.⁷ The statute of limitations for contractual disputes is fifteen years from the contract's effective date, thus any nullity claim filed after the lapse of fifteen years will automatically fail.

9.2.1 Defective Effects on Consent

In general, contracts tainted with an obstacle error⁸ are deemed void and absolutely null. As discussed in Chapter 8, articles 130–133 CC shed light on two types of obstacle errors, namely: (i) common or identical errors and (ii) unilateral errors. Common or identical errors materialise when both parties were under the same errant belief, for example error about the mere existence of the subject-matter. Unilateral errors exist where only one of the parties was acting under an errant belief and the other was aware of the error (bad faith) or could have easily detected such error prior to concluding the contract. The existence of an errant belief is a matter of fact that negates an intention to be bound; it does not encompass therefore misspelling or typing errors, that is indifferent errors.

The only exception to the general rule whereby an obstacle error invalidates consent is 'good faith', because even though errant consent may invalidate the contract, the other party retains the right to substitute the errant subject-matter with one that meets the errant party's intention.⁹

9.2.2 The Effect of a Defect on the Contract's Subject-Matter

Defective subject-matters are chiefly concerned with illegality and/or contravention of public policy. In the civil law tradition, the subject-matter is composed of two elements: (i) the subject of the contract¹⁰ and (ii) the subject of the obligation.¹¹ The subject of the contract encompasses the underlying

⁷ Lapse of time means the time granted by law to the innocent party to either revoke or authorise a 'voidable contract', which is not applicable to 'void contracts'. Readers should consult Section 3 of this chapter.

⁸ According to the Court of Cassation Judgment 87/2011, an obstacle error as stipulated in Art 130 CC allows the concerned party to seek a declaration of absolute nullity from the court either because (i) of common error; or (ii) a unilateral error where one party was aware of the error or could easily detect it. Courts of substance, namely the court of first instance and the court of appeal have sole jurisdiction to adjudicate on errors of error.

⁹ A Faraj Yousef, *Restatement and Commentary of the Kuwaiti Civil Code: Comparative Law Study with the Egyptian Civil Code* (Modern Academic Office 2014) vol 1, at 386.

¹⁰ Arts 149 and 154 CC regulate the subject of the contract.

¹¹ Arts 148, 150, 151, 152 and 153 CC regulate the subject of the obligation.

transaction that is central to the parties' agreement. The subject of the obligation, on the other hand, means the specific actions or omissions required to perform the underlying obligations. Examples of the 'subject of the contract' include but are not limited to: (i) sales contracts, where the transaction consists in the transfer of ownership of the sold goods or services in exchange for a fee (price) and (ii) lease contracts, entailing the right to use specific property in exchange for a rental fee. The two elements of the subject-matter complement each other in relation to a potential defect in the contract.¹²

A defect in the subject-matter renders the contract void (absolute nullity). It can be construed from the CC that a three-step test in order to establish a defect in the subject-matter is as follows: (i) is the subject-matter in existence or likely to exist in the future? (ii) is the subject-matter identified in the contract or past commercial practices? (iii) is the subject-matter permitted by law?¹³

9.2.2.1 Existence of Subject-Matter

The Qatari legislator permitted agreements concerning a subject-matter that either exists or which is likely to exist at some point in the future. However, the law prohibits agreement on a subject-matter that is impossible to exist at any time (absolute impossibility). If the subject-matter perishes following the conclusion of the contract, the ensuing absolute nullity will impact the contract and render it invalid. Furthermore, if the cause of perish was the result of *force majeure*, the contract will be terminated from the day the intervening event occurred and not from the contract's effective date. Moreover, if the obligor has caused or contributed to the perish of sold goods, then the obligee is entitled to a remedy, that is compensatory performance. The law strictly prohibits agreement on a subject-matter involving hereditary wills because it contravenes Qatar's public policy.¹⁴

9.2.2.2 Identification of Subject-Matter

The subject-matter must be identifiable either explicitly in the contract or construed from the contract itself, in addition to the intention of the contracting parties or their past commercial practices. For example, a sale must

¹² Mahgoub (n 2) 268–269.

¹³ Mahgoub (n 2) 270.

¹⁴ Qatar applies Islamic inheritance law as stipulated in the Family Law (Qatar Law No. 22 of 2006), where the gross inheritance must be divided among all heirs after deducting (i) the deceased person's debts; and (ii) gifts to non-heirs up-to one-third of the net inheritance if there is a will (donation agreement) to prove such gifts. There are certain exceptions and conditions, but this will not be discussed here as it falls outside the scope of this book.

contain a description of the goods, quantity, quality, price per item and delivery details (incoterms). If any of the above elements is missing, the court may adapt the contract through a construction based on the parties' prior commercial conduct. If subject-matter cannot be identified, the contract is invalid.¹⁵

9.2.2.3 Legality of Subject-Matter

The legality of the subject-matter is straightforward. Contracts must not be illicit or attempt to contravene public policy.¹⁶ If such a defect materialises, then no civil obligation is established and thus the contract becomes null and void. This outcome is consistent with article 151 CC whereby: 'a contract shall be void if the subject matter of the obligation breaches public order¹⁷ or morality'.

9.2.3 *The Impact of Defects on Cause*

A simple method to differentiate between the contract's subject-matter and its cause is by using the 'what' and 'why' questions; the subject-matter is the answer to 'what is the civil obligation which the obligor has to perform?' The

¹⁵ According to the Court of Cassation Judgment 163/2011, subject-matter must not be explicitly identifiable in a contract as long as there is sufficient information allowing its identification from the parties' intention at the time of concluding the contract.

¹⁶ According to the Court of Cassation Judgment 348/2015, any civil obligation contravening public policy is strictly invalid (absolute nullity) pursuant to Arts 151 and 155 CC. The Court of Cassation has the jurisdiction to define the legal principle of public policy. Henceforth, public policy is defined as a collection of essential principles which fosters the political system [as established by the constitution], social fabric, economic rules and moral values, and thus collectively create the main pillars of society and achieve public interest. Even if the legal principle of public policy is codified in any legislation, its meaning must not be limited to the legislative text because it has a wider implication that makes it independent of any legislative text. If any legislation contains a general rule that either commands or prohibits a certain action (or omission of action) due to its association with public policy, compliance with this general rule is mandatory to protect public interest and any deviation contrary to the general rule is strictly prohibited. Thus, any contractual agreement that contravenes public policy is invalid and the nullity in this regard is absolute and the parties must be reinstated to the position they were before the void contract was concluded. If restoration of the contracting parties' condition is impossible, then courts have discretion to award damages (i.e. compensation) to the concerned party.

¹⁷ Public order is synonymous with 'public policy'. According to Mahgoub (n 2) 281, public order is defined as a collection of rules, which serves as a societal pillar in the fields of politics, economy and social issues. Public morality, on the other hand, is a set of rules that reflects the acceptable mainstream morals in a society at a specific point in time. Public morality serves as a pillar to protect society from corruption and differs from one society to another. As a result, it is best described as a set of relative rules not absolute.

cause is the answer to ‘why is the obligor liable to perform a civil obligation?’¹⁸ Qatari law has adopted the modern theory of cause under the civil law tradition, which requires the assessment of two factors, namely: (i) direct cause and (ii) impulsive motive. Direct cause deals with intrinsic matters, which can be derived directly from the contract itself. Thus, ‘direct cause’ is considered an objective assessment by legal scholars. On the other hand, impulsive motive deals with extrinsic matters, which although not stated in the contract could be derived from either the intention of the parties at the time of concluding the contract or the foreseeability of an unlawful cause. Unlike direct cause, the impulsive motive is considered a subjective assessment because it looks at the behaviour of the contracting parties.¹⁹

Article 155 CC dictates that:

A contract shall be revoked where the obligation of a contracting party is *without good cause*²⁰ or *unlawful*.

In the determination of good cause, the motive for concluding the contract shall be taken into account if the other contracting party was aware or must have been aware thereof.

The Qatari legislator aims to cast absolute nullity on all contracts which: (i) do not have a ‘good cause’, that is the existence of direct cause and/or (ii) ‘unlawful’ cause, that is illegal impulsive motive. The main objective here is that ‘good cause’ serves as a protection for innocent parties concluding a contract lacking a valid cause. On the other hand, the strict prohibition of ‘unlawful cause’ is meant to protect society at large from contracts which are unlawful or contravene public policy.²¹

According to the Court of Cassation, the general rule for ‘will’ (الإرادة) is legality.²² The contracting parties’ will is respected by law and is not nullified

¹⁸ Mahgoub (n 2) 288.

¹⁹ Mahgoub (n 2) 296.

²⁰ See Court of Cassation Judgment 107/2008, where it was held that if a contract includes an explicit provision on its cause, this does not necessarily mean that the written cause is true. The cause may be challenged before the courts, where claimants have the burden to show that a civil obligation is *without good cause*. In general, only *written* evidence is admissible in order to challenge the cause of a *written* contract. However, an exception was granted to commercial contracts, where non-written evidence is admissible (e.g. testimonies on accepted commercial practices).

²¹ According to the Court of Cassation Judgment 40/2009, when a contract is nullified because it contravened public policy, then the respondent cannot acquire good title (i.e. ownership) of properties received as contractual damages because the sale contract in dispute does not legally exist. Thus, granting compensation for the loss of ownership of those properties, which the defendants never owned in the first place, is impermissible.

²² Court of Cassation Judgments 87/2010 and 32/2014.

unless the civil obligation that arises from such will is either illicit or in conflict with public policy (this is applicable for both the subject-matter and cause of the contract in question). Also, the contracting parties' will must not conflict with a statutory requirement (whether commanding or prohibitive).

9.3 RELATIVE NULLITY (VOIDABLE CONTRACTS)

As discussed earlier, most of the defects which tarnish consent will cast relative nullity on a contract in order to protect the innocent party and allow it to either authorise or revoke the contract. That is the contract was valid from its inception and legally binding on the parties but its defect rendered it voidable. Such defects include threat or coercion, exploitation, fraud²³ and injustice.²⁴ Article 158 of CC states that:

'A voidable contract shall be effective unless revoked. Where revoked, such contract shall be deemed void ab initio'.

Article 159 of the CC goes on to explain that:

'Where the law recognises the right of one of the contracting parties to revoke the contract, the other party cannot avail himself of this right. Where the right of revocation is available and the holder thereof requests its enforcement, the court shall so enforce it, unless the law provides otherwise'.

The law stipulates that voidable contracts are binding and have full legal effect until the innocent party elects to either authorise or revoke the contract in question. If the voidable contract is revoked, nullity will be deemed from the contract's effective date. The courts do not have the discretion to revoke or authorise a voidable contract without a request from the innocent party; unlike void contracts, where the courts possess such discretion to annul.

²³ Court of Cassation Judgment 112/2008, holding that pursuant to Arts 134 & 135 CC deceit that leads an innocent party to fraud can be manifested with either positive or negative action from the counter-party. Positive action exists when the counter-party or its representative intentionally deceives the innocent party to induce it to enter into a contract, whereas the negative action (i.e. omission of action) arises where the counter-party or its representative hides an essential fact that the innocent party was unaware of at the time of concluding the contract. Henceforth, the innocent party is legally entitled to authorise or revoke the voidable contract following a declaration that it would not have concluded it had it been aware of the fraudulent action.

²⁴ Court of Cassation Judgment 46/2009, where the court concluded that fraud tarnishing consent must arise from deceitful actions and means, which mislead the innocent party that subsequently becomes unable to make an informed decision. A mere lie does not amount to fraud unless it is proven that the innocent party could not *reasonably* figure out the truth. If the innocent party could figure it out, then there is no fraud.

Moreover, the obligees and special successors cannot file a claim to revoke or authorise a voidable contract.²⁵

Article 160 CC further states that:

‘Where a voidable contract is authorised by the party holding the right of revocation, whether express or implied, such right shall not be applicable to the defect, the cause of such authorisation’.

The law makes it crystal clear that once the innocent party authorises a voidable contract, whether explicitly or implicitly, the contract is rectified for good and any future claim on the same grounds (i.e. defect) will not be admissible. Furthermore, the authorisation of a voidable contract by the innocent party is considered a waiver of its right to uphold relative nullity that can be exercised unilaterally in bilateral agreements.

Article 161 C goes on to emphasise that:

‘Unless the law provides otherwise, the right to demand the revocation of a contract shall be prescribed if not invoked within three years from the date on which the right arose.

Prescription shall run: in the case of legal incapacity, from the date of the cessation of such incapacity; in the case of error or fraudulent misrepresentation, from the date on which the error or misrepresentation is discovered; in the case of coercion, from the date it has ceased.

In all cases, the right to demand the revocation of a contract as a result of error, fraudulent representation or coercion shall lapse after a period of fifteen years has elapsed from the date of the conclusion of the contract’.

The law here regulates statutory limitations for voidable contracts. The innocent party may elect to authorise or revoke a voidable contract within three years from the date on which: (i) legal capacity is either gained in case of a minor that reaches the age of consent (i.e. eighteen years old in most jurisdictions) or recovered in the case of an intoxicated adult; (ii) fraud is discovered and (iii) coercion or exploitation ceases to exist. However, a claim will not be admissible after the lapse of fifteen years from the date of concluding the voidable contract. Thus, the statutory limitation materialises when the due date of one of the above periods elapses first (either 3 or 15 years).

Article 162 CC states that:

‘Any concerned party may notify the party holding the right of revocation to declare its intention to authorise or revoke such contract no later than three months from the date of such notice.

²⁵ Faraj Yousef (n 9) 482.

A notice shall not be effective unless given during the time limit before the right of revocation lapses.

Where the period of the notice expires without a declaration of authorisation or revocation of the contract having been made, such omission shall be deemed authorisation of the contract, provided that the notice is given to such party in person'.

As mentioned earlier, voidable contracts are vulnerable to revocation and thus the law permits any concerned party to notify the innocent party in writing to seek a declaration of its stance on the defect. The innocent party may declare its intention to either authorise or revoke the contract within three months from the date of serving the written notice. If no declaration is made by the innocent party within the prescribed period, its silence will be deemed an authorisation of the voidable contract and henceforth the risk of annulment is lifted. The law here emphasises that the written notice must be delivered *in person* to the innocent party as a prerequisite for the commencement of the three-month period.

9.4 EFFECTS OF NULLITY

Article 164 CC makes it clear that:

Where a contract is void or annulled, the contracting parties shall be reinstated to the position they were in prior to the conclusion of the contract. Where such reinstatement is impossible, damages equivalent to any loss incurred may be awarded.

Where, however, a contract concluded by a person without legal capacity or with deficient capacity is invalid or annulled by reason of such lack of capacity or deficient capacity, such person shall only be liable to refund any profits he realised from the performance of the contract'.

The effect of nullity on void contracts and 'revoked' voidable contracts is the same. These contracts *do not* have any binding effect on the parties and thus cease to exist. The law aims here to reinstate the contracting parties to the position they were in prior to concluding the annulled contract (the legal principle of restitution). As a result, each contracting party is liable to return to its counter-party(ies) any money owed in relation to the annulled contract. However, when such reinstatement is impossible or the counter-party(ies) have acted in 'good faith', the concerned parties are entitled to seek damages (i.e. compensation) for the loss suffered.

The second paragraph of article 164 CC sheds light on an important issue related to minors and other individuals who lacked legal capacity at

the time of concluding the contract due to illness, intoxication, etc. These innocent parties have the right to either authorise or revoke a voidable contract to which they previously consented once the legal capacity is gained or restored. Nevertheless, the law requires the implementation of the rules of 'unjust enrichment'.²⁶ Hence, the innocent party should refund its counterparty(ies) in order to achieve restitution. Minors and individuals who lacked legal capacity are liable to refund only the money they used and which *added value* to their life. Thus, any wasted money spent foolishly/recklessly prior to gaining legal capacity is exempted by law from liability to refund one's counterparty(ies). The law intends to protect and *not punish* individuals who lacked the legal capacity for their past actions.

Article 165 CC makes it clear that:

'The invalidity of title-transferring contracts shall not be effective against a special successor that may receive a right in kind from either contracting party, provided that such successor received such right as indemnity in good faith.

A special successor shall be considered a bona fide party if, at the time of transfer thereto, this successor was not aware of the reason for revoking the contract of its predecessor, and could not have known of such reason if the successor exercised prudent and reasonable judgement'.

The law protects third parties acquiring a good title of property (applicable for both real-estate and chattels) through a sales agreement or donation (i.e. gift) concluded with a party to an annulled contract. The third party must have acted in 'good faith' at the time of concluding the deal and must not have been aware or could not reasonably foresee that the property in question was not owned by such party. Thus, the test of 'good faith' and 'reasonableness' will be applied to verify if the third party is eligible for legal protection. Article 166 CC states that:

'Where any provision of the contract is invalid or voidable, such provision only shall be revoked, unless it is evident that the contract would not have been concluded without such provision, in which event the contract shall be revoked in full'.

The Qatari legislator has adopted the legal principle of 'reduction of contract'²⁷ to avoid nullifying the whole contract if only a specific provision/clause is voidable or invalid. However, if the voidable or invalid clause is fundamental to the contract as a whole, then the contract cannot be saved and the inevitable fate of absolute nullity will materialise. The claimants in any contractual dispute have

²⁶ Faraj Yousef (n 9) 497.

²⁷ A reduction of contracts operates in a similar manner to severability clauses in common law contracts.

the burden to show that the offending provisions/clauses are indivisible from the whole contract; otherwise, the court will rule in favour of invalidating the offending provisions/clauses and thus retain the remaining provisions of the contract. It is worth noting that the court is not permitted to save the contract from absolute nullity if the parties collectively *did not intend* to save it; an exception is possible if there is *an explicit statutory requirement* to do otherwise. Henceforth, the court will reinforce the application of the law.²⁸

Article 167 CC states that:

‘Where a void or voidable contract contains the elements of another contract, the contract shall be deemed valid to the extent of the other contract, whose elements are available if the intention of the contracting parties indicates that they wish to conclude such other contract’.

The Qatari legislator has adopted the legal principle of ‘conversion of contract’, whereby the remaining enforceable provisions of an annulled contract may create a new valid contract. There are certain conditions which must be met for the conversion to take place. The first is that conversion is only available to void contracts (absolute nullity) but not voidable contracts (relative nullity) because the latter may be reduced by the courts rather than converted. The second condition demands that annulled contracts must include all the elements of the newly converted contract without adding new elements. The third and last condition is related to the will and intention of the contracting parties, that is the court must determine the willingness of the parties to enter into the newly converted contract if they were aware of the defect that annulled their original contract. If the parties collectively insisted that they *did not* intend to enter into the converted contract, the courts cannot force such conversion.²⁹

Article 168 CC states that:

‘Where a contract is invalid or revoked due to an error committed by either party; the other party or any third party may claim indemnity for any damage that may arise from such invalidity or revocation.

Indemnity shall not be applicable if the party suffering damage due to such invalidity or revocation may have contributed to such damage, or knew or should have known of the cause of such damage.

The provisions of this Article shall be subject to the provisions of Article 117 of this Law’.

The law permits any concerned party that was negatively impacted by the annulment of a contract to have recourse to damages (indemnity/compensation) for

²⁸ Mahgoub (n 2) 327–329.

²⁹ Mahgoub (n 2) 329–331.

any loss sustained. However, it is worth highlighting that these damages cannot be sought under the contract because once the contract is annulled it has no legal effect. Such damages can be sought under the law of delict (i.e. torts in the common law tradition).³⁰ The courts will apply the rules of negligence to determine damages. Paragraph 2 of article 168 CC prohibits the claimant from receiving any damages if it contributed to the defect that caused the annulment of the original contract. This is contrary to the general rule of ‘contributory negligence’ whereby the party entitled to damages will receive a reduced compensation that reflects its contribution to the negligence.

9.5 NULLITY OF SPECIAL CONTRACTS

9.5.1 *Sales Contract*

Article 95 CL³¹ states that:

‘Where at the time of contract the two contracting parties note the possibility of damage to an item, the item may be sold and the Buyer shall not get his money back if the sale item is in fact damaged. The sale shall be void if the Seller was confident that such damage would definitely occur’.

The contracting parties are permitted under the Commercial Law to conclude a sales contract where the subject-matter (i.e. sold goods) is foreseen to be damaged; however, if such probability materialises after concluding the deal, then the buyer is not entitled to seek refund from the seller because it was aware of such risk and accepted it from the outset. Nevertheless, if the seller was confident that the subject-matter would become damaged, then it is prohibited from proceeding with such a sale transaction and any sales contract that results from such action will be deemed invalid (absolute nullity) due to unilateral error.

Article 247 CL states that:

‘Any agreement concluded at the time of the mortgage decision or after the decision shall be invalid. In the event of failure to pay the debt at maturity, the mortgagee shall have the right to own the mortgaged property or sell the same without reference to the procedures set out in Articles 241 to 243 herein.

³⁰ See Court of Cassation Judgment 125/2008, granting damages to a concerned party who suffered loss due to nullification of a contract. Such damages are governed by the law of delict. Equally, Court of Cassation Judgment 60/2012, awarding damages to be awarded to the counterparty negatively impacted due to nullifying the contract must be determined in accordance to the rules of ‘enrichment without cause’; that is, the calculation of damages must take into account two factors, namely (i) the profit gained from the invalid contract; and (ii) the loss suffered from the such contract, with the lesser value of the two granted by the court.

³¹ Qatar Law No 27 of 2006.

However, after the debt or an instalment thereof becomes payable the creditor may agree with his debtor that the mortgaged property or part thereof may be credited against the debt, and the court may order that the mortgagee owns the mortgaged property or part thereof in payment of the debt provided that its market value is estimated by an expert’.

Article 247 CL prohibits property owners (real-estate or chattels) from selling their property if such property was used as collateral to secure the payment of a debt, namely a mortgage transaction. The Qatari legislator aims to protect creditors and maintain a legal stability of transactions. Thus, any attempt to sell one’s encumbered estate is invalid due to the defect of illegality on both subject-matter and cause (i.e. absolute nullity of the sales contract).³²

Article 459 CL goes on to emphasise that:

‘Obligations of minors and their equivalent, who are not authorised to transfer, arising from their signatures on bills of exchange as drawers, endorsers or in any other capacity, shall be null and void for them only.

They may adhere to this nullification in respect of any holder of a bill of exchange, even where the latter has acted in good faith’.

The law here sheds light on the consent of minors or individuals who lack legal capacity to authorise commercial instruments such as cheques. As discussed earlier, relative nullity is an inevitable outcome of this defect and the commercial instrument in question will become voidable. Once the legal capacity is gained or restored, the issuer of this commercial instrument may authorise or revoke it against the holder, even if the latter has acted in good faith.

³² Another example of strict prohibition of selling a property under mortgage is stipulated in Qatar Court of Cassation Judgment 221/2014, where the court held that Art 10 of the Housing Law (Qatar Law no. 2 of 2007), which replaced the obsolete Public Housing Law (Qatar Law no. 1 of 1964), obligates the beneficiary to abstain from selling the block of land or the residential property granted by the government for a period of fifteen (15) years from the date of handing the property to the beneficiary, in addition to making a full payment of the housing loan. This prohibition includes, but not limited, to the conveyance of all rights in rem of the property to third-party(ies). The exception to this general rule is where the beneficiary after the lapse of fifteen (15) years has submitted sufficient guarantee to Qatar Development Bank (creditor for the housing loan) and sought its consent to proceed with such conveyance. Any contrary agreement is invalid (absolute nullity) and the effect of such defect applies not only to the beneficiary but also to its general and special successors. The prohibition contained in this general rule is aimed to protect public interest, where the government intends to (i) provide housing to citizens with limited income; and (ii) prevent [misusing/abusing] the housing system for trading purposes. Void contracts cannot be affirmed because absolute nullity tames them from their inception, even if the contracting parties agree to proceed with the real-estate registration requirements at a later stage after meeting all statutory conditions. The real-estate registration requirements are essential elements for a valid conveyance not a pending condition that can wait. In Judgment 62/2013, the Court of Cassation held that selling a mortgaged real-estate is strictly prohibited by law in accordance with Arts 1085 and 1080 CC. Any contrary agreement concluded contravenes public policy and thus is null and void (absolute nullity).

The Court of Cassation has ruled that sales contracts contravening public policy are null and void. In the case at hand the appellant was a foreign broker who practised brokerage (a regulated commercial activity) in Qatar without a Qatari partner holding 51% equity ownership, which is strictly prohibited.³³ The Court stipulated that the appellant cannot rely on an invalid contract to seek damages. A similar case concluded that a commercial contract between a foreign national who operated a private school in Qatar (school principal) and the Qatari partner was invalid because it violated public policy in accordance with paragraph 9 of article 5 CL.³⁴ The law requires any foreign national who intends to operate any authorised commercial activity in Qatar to meet two main criteria, namely: (i) involve a Qatari partner who owns 51% of the business equity and (ii) obtain a valid licence from the competent public authority. The appellant in this particular case concluded a contract with a Qatari national who acted as a ‘sham’ partner in the business. The foreign school principal received the full revenue of the business and was liable for all its losses, whereas the Qatari partner received a lump sum of QAR 400,000 per annum in exchange for this partnership. The Qatari partner did not get involved in the business and had no role in managing the venture. Even though the foreign school principal had a valid licence issued by the Ministry of Education to manage the private school, the mere fact of the ‘sham’ partnership violated Qatar’s public policy. Thus, the contract was deemed void from its inception and produced no legally binding effects.

9.5.2 *Lease Contracts*

Lease contracts and their associated defects are regulated, in addition to the CC, by specialised legislation. Article 12 of the Property Leasing Law³⁵ states that:

‘The existing lease shall form part of the title of a new owner even if such lease is not specifically dated on a date preceding the conveyance of such title, unless it is proven that the lease is null or void’.

If a real-estate owner decides to sell rented property to a third party, the lease becomes a right in *rem* that is attached to the sold property in favour of the lessee, who has a valid lease contract that goes beyond the conveyance effective date. Unless the lease contract is void or revoked by an innocent party (voidable contract), the existing lease at the time of conveyance of such title has no effect.

³³ Court of Cassation Judgment 102/2010.

³⁴ Court of Cassation Judgment 60/2012.

³⁵ Qatar Law No. 4 of 2008.

9.5.3 Labour Contracts

Just like leases, labour agreements are subject to specialised legislation. Article 4 of the Labour Law (LL)³⁶ states that:

‘The rights prescribed by this Law represent the minimum rights of workers. Therefore, any conditions contrary to the provisions of this Law, even if made prior to its effectiveness, shall be [null] and void unless they are more advantageous to the worker. Any release, compromise or waiver of the entitlements prescribed herein for the worker shall be deemed [as null]³⁷ and void’.

In addition, article 43 LL stipulates that:

‘Any condition stipulated in the employment contract, even if the employment contract precedes the enforcement date of this Law, shall be considered [as null] and void if it included an undertaking from the worker to work for life with the employer, or abstain from carrying out for life any other craft or profession that could be practised after leaving the employment.

If the nature of the work allows the worker to know the clients of the employer or the secrets of the business of the establishment, the employer may stipulate a condition that the worker shall not compete with him or participate in any competing project after expiry of the employment contract. Such stipulation shall be confined in its duration and place and type of the work to the extent necessary for protection of the lawful interests of the employer, and shall not exceed two years’.

The Labour Law emphasises that the prescribed rights granted to workers establish minimum rights, that is the ‘floor’. Thus, any agreement between the parties aiming to circumvent these minimum rights, even if waived by the worker, is unlawful.³⁸ The defect here is related to illegality that tarnishes both subject-matter and the cause of the labour contract. For example, a worker who signs a contract subjecting him or her to life-time employment is unenforceable because ‘life-time employment’ is deemed slavery and servitude, both of which infringe international law and the Qatari constitutional order.

³⁶ Qatar Law No. 14 of 2004 as amended by Decree-Law No. 22 of 2007, Law No. 6 of 2009, Law No. 3 of 2014, Law No. 1 of 2015, Law No. 13 of 2017 and Decree-Law No. 18 of 2020.

³⁷ Missing words from the English translation of Art 4 LL as provided by Al Meezan online portal.

³⁸ According to the Court of Cassation’s Judgment 92/2011, employees are prohibited from waiving their minimum statutory rights in accordance with Art 4 LL. The employee in this particular case signed a final settlement on 22 February 2007, waiving all occupational benefits. However, facts presented before the court showed that the worker continued to work for its employer many months after the signatory date. Thus, this final settlement was found to be unlawful and invalid (absolute nullity).

Such defect of illegality will render the contract null and void. that is absolute nullity. Furthermore, the law prohibits employers from attempting to *prevent* their workers from trading in the same profession after the expiration or termination of the labour contract *for life*. The law takes into consideration the employer's concern for protecting its trade secrets and hence allows them to restrict former employees from using knowledge acquired from their employment for a period that does not exceed two years from the expiry or termination of the labour contract. Furthermore, the employer must define in the same provision the place where the worker is prevented to trade against the former employer during the limited period of time. The law aims to strike a balance between the employers' legitimate concern while protecting the worker's rights from potential abuse.

Article 81 LL states that:

'The worker may not waive his right to annual leave. Any agreement to the contrary shall be [null] and void. If the employment contract ended, for any reason, before taking such leave, the worker shall be entitled to a cash alternative equivalent to his payment for the due leave days'.

Another example related to the defect of illegality on both subject-matter and cause in labour contracts arises when the contract is subjected to a term that deprives employees of the entitlement to a paid annual leave. Such deprivation may amount to modern-day slavery and servitude. Thus, the law prohibits any agreement in this regard and deems it null and void, i.e. absolute nullity. Employees are entitled to claim for a compensation for any unutilised paid annual leave.

The Court of Cassation held that workers who practice a profession without obtaining the proper licence from the competent public body may not file a claim for contractual breach because such worker has violated Qatar's public policy, and thus the labour contract in question is null and void from its inception (absolute nullity).³⁹ The contracting parties cannot elect to authorise or settle it by themselves. The appellant in this particular case was a nurse who practised nursing in Qatar without obtaining a proper licence from the Ministry of Public Health. This illegality tarnished the cause and/or subject-matter of the labour contract and no associated claim for contractual damages was available.

³⁹ Court of Cassation Judgment 22/2011.