

The Impossibility of Implementing Employment Contract and Consequential Impacts in the Bahraini Labor Law "Comparative Study"

Mohammad Abdalhafid Al-Khamaiseh

*Assistant Professor of Civil Law
Faculty of Law - Department of Private Law
Applied Science University, Kingdom of Bahrain*

Murad Ali Al-Tarawneh

*Assistant Professor of Civil Law
Faculty of Law - Department of Private Law
Applied Science University, Kingdom of Bahrain*

Abstract

The Bahraini legislator made the impossibility of implementing the employment contract one of the cases of the termination of the employment contract, but within legislative controls aimed at protecting the employee as the legislator specified the cases of such impossibility exclusively, along with ensuring the employee's right to obtain the end-of-service remuneration and the certificate of experience.

This study concluded with developing several suggestions and recommendations to provide better legislative protection for the employee.

Introduction

The employer's commitment shall expire if such commitment is impossible to implement for a foreign reason which is not related to him. In the contracts that are binding on both parties, it will result in the expiry of the mutual obligations and the contract expiry by itself or by termination, where such impossibility should be permanent and not temporary. The expiration of the legal relations shall not have retroactive effect on the employment contract since it is a time contract. The impossibility of implementation might be achieved in the event of disability, illness, or closure of the facility. In the event that the employment contract is terminated due to the impossibility of implementation, the employee is entitled, according to the Bahraini Labor Law, the end of service remuneration and certificate of experience.

This research constitutes a contribution to highlighting the impossibility of implementing the contract and its consequential effects in the Bahraini Labor Law. The following is demonstration of the significance of the topic, the reasons for electing the topic, goals, the problematic and plan of the research.

The Research Significance and the Reasons for Electing the Topic

The significance of this study stems out from the issue of the impossibility of implementing the employment contract and its consequential effects according to the Bahraini Labor Law. This importance also emerges out by making reference to some comparative legislation along with demonstrating some of the judicial rulings related to the subject matter of the study.

In view of the lack of research on this topic, especially in the Bahraini Law, we have been led to elect the subject matter of this study, because the lack of research provides fertile material for those wishing to conduct legal scientific studies.

Objectives of the Study

This study aims to identify the reasons of impossible implementation of the employment contract and the guarantees resulting from the same in accordance with the Bahraini Labor Law along with making reference to some other laws. The most significant goals could be summarized as follows:

1. It aims to identify the reasons for the impossibility of implementing the employment contract in the Bahraini Labor Law.
2. It aims to identify the guarantees arising from the impossibility of implementing the employment contract.

The Study Problem

The research problematic lies in the misunderstanding of some of the impossibility cases related to the employment contract, So, this study came to shed light on the cases of the impossibility of implementing the employment contract and its consequences in the Bahraini Labor Law and in the comparative legislation. Therefore, this problematic leads us to raise the following questions, which shall be the course of our study in the employment contract in particular.

- Has the Bahraini Labor Law specifically mentioned the reasons for the impossibility of the employment contract?
- Has the Bahraini Labor Law referred to the guarantees resulting from the impossibility of implementing the labor contract?

Study Approach

In this study, we followed the comparative criticism analytical approach by referring to the mothers of books and legal references related to the impossibility of implementation in general and the Labor Law in particular.

Study Plan

The study plan included an introduction, two chapters and a conclusion, as follows:

- Introduction: Includes the research topic, its significance, the reasons for topic election, the method followed, and an indication of the study problematic.
- First chapter: The impossibility of implementing the employment contract.
- Second chapter: Consequences of the impossibility of implementing the employment contract.
- Conclusion: Showing the most important conclusions, recommendations and proposals that we reached through this study.

First Chapter

The Impossibility of Implementing the Employment Contract

To investigate the impossibility of implementing the employment contract, we see to divide this chapter into two parts, where we shall allocate the first part to demonstrate the essential essence of the impossibility of implementing the employment contract in accordance with the general rules in the Civil Law, and the second part shall be allocated for studying the applications of the impossibility of implementing the employment contract.

First Part

Essence of the Impossibility of Implementing the Employment Contract

We should examine the essence of the impossibility of implementing the employment contract in the Civil Law, and then showing the essence of the impossibility of implementing the employment contract in the following two sections:

First Section

Essence of the Impossibility of Implementation According to the General Rules

Article (145) of the Bahraini Decree by Law No. (19) for 2001 states the following: "In the contracts binding on both parties, if the implementation of the commitment of one of the two parties becomes impossible due to a foreign reason not related to him, the obligation ends, and the mutual obligations on the other party end and the contract is terminated automatically"⁽¹⁾.

This is considered an application of the rule that "No one is asked to do the impossible"⁽²⁾, where the impossibility of implementation is considered one of the cases of obligation expiry without completion⁽³⁾.

The impossibility of execution leads to the termination of the contract by the force of law without the need for a court ruling, but it is conceivable that the creditor disputes his debtor whether such termination is achieved or not, which requires going to the court of law and issuing ruling for termination of the contract post to verification of the same; then it is necessary for the judge to rule for the termination of the contract when it is proved to him that it is impossible to implement the obligations contained in the contract due to a foreigner not related to the debtor such as force majeure event, the creditor's fault, or the fault of others⁽⁴⁾. The judge order for termination shall be determination or a revealing of such termination, given that the contract, once it is proven that it is impossible to implement because of foreign cause, is considered automatically terminated by the force of law⁽⁵⁾.

We should show that if the contract is binding on only one party, the text of the article (145) mentioned above could not be applied, because the impact of the impossibility in this type of contracts means the impossibility of implementing the contract in its entirety, as long as this commitment is the only effect that the contract arranges to the debtor and not to the other party. However, if the matter is related to a contract binding on both parties, such as the employment contract, then the matter is not free from complications, as the obligations determined by this contract depend and based on each other, just according to the idea of mutual obligations with respect to contracts binding on both parties⁽⁶⁾.

It is worth noting here that the impossibility of implementation by the debtor fault does not lead to the expiry of the obligation, whether it is a legal impossibility or a physical impossibility, but the in-kind implementation is replaced by implementation by way of compensation, where Article (216) of the Bahrain Civil Code stipulates that: (If the obligation cannot be implemented in-kind or the debtor delays in its implementation, he should compensate the damage caused to the creditor due to the same unless the debtor proves that the failure to implement or delay was due to a foreign cause not related to him). The impossibility is either an actual impossibility, as in the case of destruction of the thing, damaging and making it as if is destructed, or if lost so that its location cannot be known. However, it

should be pointed out here that if the obligation occurred on something that is not specific by itself, but is determined by its type, then the right does not vanish. The impossibility might be legal, such as the debtor is obligated to transfer ownership of a land and removed its ownership prior to implementation for the public interest, so the implementation of the obligation could not lawfully be made. This also includes that the debtor is obliged to supply something and then the law makes it illegal, so the implementation of the obligation becomes legally impossible⁽⁷⁾.

But if the implementation impossibility is for the fault of the debtor, the obligation does not expire, but the implementation of the obligation becomes through the compensation method, where the compensation is usually monetary, as the best means of compensation, but this does not prevent a compensation to be in kind by making the debtor to remove or eradicate the violation committed by him provided that he shall be committed to the terms of his contractual obligation⁽⁸⁾, such as if the neighbor built a wall on his land after he committed himself to the neighbor not to build that wall.

In order for the implementation impossibility for which the obligation (right) expires, to be achieved, the following conditions should be met:

1. The implementation of the obligation becomes impossible.
2. That this impossibility is due to a foreign cause which the debtor is not related to.

The first condition: means that the implementation of the obligation has become impossible, an actual impossibility or a legal impossibility after the obligation has arisen. The violation concept is if the obligation was impossible from the beginning, such obligation is not created originally. It is not sufficient here that the implementation of the obligation becomes encumbering, as long as it is still possible. If the obligation is possible, but it is encumbering on the debtor, there is no place for applying the text of Article (145) of the Bahraini Civil Code; this is because the concept of impossibility is different from encumbering. So, if the obligation implementation becomes encumbering on the debtor, he may request the court of law to replace the in kind implementation by implementation by the way of compensation, which is a discretionary issue of the trial judge. This is what has been provided by Article (206/b) of the Bahraini Civil Law: "if the in-kind implementation is encumbering on the debtor, the court is permitted, upon his request, to limit the creditor's right to requiring compensation if that does not cause him serious damage".

We here note here that the legislator has permitted the judge to rule for the creditor by compensation in lieu of in-kind implementation, provided that implementation by way of compensation does not cause to the creditor seriously damaging, which is a discretionary of the trial court judge.

The second condition: the impossibility is due to a foreign cause in which the debtor is not related to.

If the debtor does not prove that the impossibility is due to a foreign cause, then the obligation does not expire, even if its implementation in kind becomes impossible, as we indicated earlier, the implementation takes place by way of compensation⁽⁹⁾.

Therefore, it cannot be said that the original obligation has expired and is replaced by a new obligation by means of compensation, but rather that the obligation remains itself, but rather the implementation has been transformed to implementation by way of compensation, and this transformation takes place by of law in line with the requirement of the two parties will, and not in contradiction with their will⁽¹⁰⁾.

Accordingly, if it is impossible for the debtor to satisfy his obligation for a foreign reason not related to him, such as force majeure or a heavenly pest, the debtor cannot be demanded to perform in kind implementation or by way of compensation⁽¹¹⁾.

The question arises here about the elements of estimating compensation, if the implementation of the obligation becomes impossible due to the debtor's fault. By referring to the text of Article (223 / A) of the Bahraini Civil Law, we find the following: "If the compensation is not estimated in the

contract or by a text in the law, the court estimates such compensation, where the compensation includes the losses suffered by the creditor and lost profit ...".

In implementation of this, if the place of the obligation is to deliver goods on a specified date, and the debtor has not delivered it or delayed in delivery at the time specified in the agreement, the creditor has the right to claim compensation for his losses which is the value of the goods and lost profit which is the amount of profit which the creditor lost because he did not receive the goods where here the compensation is in the place of the in-kind implementation⁽¹²⁾.

However, the Jordanian Civil Law, and because of influence by the Islamic jurisprudence, provided that compensation does not include only but the subsequent loss without lost profit, where Article (363) of such Law provided that: "If the guarantee is not assessed in the law or in the contract, then the court shall estimate it in an amount equal to the damage that actually occurred at the time of occurrence."

The explanatory note of the Jordanian Civil Law says in justifying this position: ... and obliging the debtor to pay money as compensation for the damage he caused, by refrain, that was not represented in the loss of money not permitted by the jurisprudence rules and legitimate principles, which provide that taking money is only done through donation or in exchange for property was taken or damaged, otherwise, such act is illegal, because the basis of compensation in the opinion of the jurists is money in exchange for money, and compensation is not due in the (Islamic jurisprudence) in return for the creditor lost profit⁽¹³⁾.

However, the Jordanian legislator did not continue in this logic which he drew from the Islamic jurisprudence, but rather departed from it in the special chapter on the damaging act⁽¹⁴⁾, where Article (266) of the Jordanian Civil Code provided that: "there is a multiplicity of guarantees in all cases to the extent of the damage caused to the effected party and in his lost profit provided that it is a natural result of the damaging act".

Second Section

Essence of Implementation Impossibility of Employment Contract

The employment contract is considered a contract binding on both parties, as it is a contract that creates mutual obligations on both the employee and the employer, where each party has to implement the obligations imposed on him under that contract, but certain circumstances may arise post to the conclusion of the contract that makes its implementation impossible, where such circumstances might arise during the contract implementation. In the concept of violation, the impossibility of implementation that arises before the conclusion of the contract leads to the obligation non-existence in the first place.

By reviewing the provisions of the Bahraini Labor Law, we find that it did not define the implementation impossibility of the employment contract, which is a path welcomed by the legislator. The impossibility in the employment contract could be defined as the employee inability to perform the work assigned to him or the employer inability to enable the employee to do the work, as a result of a force majeure that occurred post to the conclusion of the contract and prior to the completion of its implementation.

We would like to point out here, that what is meant by force majeure is the foreign cause, which is an event or incident to which the debtor relates the occurrence of the damage in whole or in part, in a manner intended to deny responsibility of his person for all or part of the damage, and as such, it is a means of defense that the debtor stands behind.⁽¹⁵⁾

What concerns us in the context of this study is absolute impossibility, not relative impossibility⁽¹⁶⁾.

The impossibility that prevents the implementation of the employment contract, its most prominent images is found in the force majeure if the following conditions are met:

First condition: force majeure is an external accident.

Force majeure is necessarily a foreign cause, and therefore must be an event outside the control of the debtor will and activity⁽¹⁷⁾, as in the case of the death of an employee, for example.

Second condition: Force Majeure is an event that cannot be prevented, such as the total disability that was caused to the employee or the closure of the business facility because of an administrative decision.

It is noted that the Jordanian legislator did not regulate the absolute impossibility to implement the employment contract, and therefore we have to refer to the general rules for dealing with this issue, given that the Civil Law is the general law that addresses issues which were not covered in the special laws, while we find that such law has addressed the relative impossibility in Article (50) of the Labor Law, as follows: "If the employer is forced to stop work temporarily due to a reason not attributable to him which he cannot prevent, the employee shall be entitled to the full payment for a period not exceeding the first ten days of the work interruption during the year and to pay the employee half of his wages for the period which exceeds that so that the total unemployment paid does not exceed sixty days per year⁽¹⁸⁾."

Second Part

Implementation Impossibility of the Employment Contract Applications

The Bahraini employment contract dealt with several applications for the impossibility of implementation that are referred to a foreign cause. We shall present those applications in three sections. We will address in the first section, the death of the employee, the second section will be assigned to total disability and disease and the third section will deal with the issue of closing the facility.

First Section

Death of the Employee

The contract of employment ends with the actual death of the employee, as this is considered - as has been said - a force majeure that results in the termination of the employment contract⁽¹⁹⁾, whereas, the employment contract is based on personal consideration from the employee's side, because the employee's personality is a consideration in the implementation of the employment contract and it is characterized by a personal nature. The heirs of the employee are not included in the contract, but the contractual bond is dissolved automatically upon his death⁽²⁰⁾. Article (113) of the Bahraini Labor Law stipulates the following: "a- The contract of employment ends with the death of the employee. If the employee dies during the validity of the contract, the employer shall pay to the family of the employee the equivalent of a full two-month wage, provided that the employee has spent at least one year in the service of the employer. b - The employment contract does not end by the death of the employer unless the contract has been concluded for considerations related to the person of the employer or his professional activity that is ceased off by his death".

As confirmation of the personal nature of the employment contract from the employee's side, Article (1/71) of the Bahraini Labor Law stipulates in Chapter Ten under the title of employees duties and their accountability that: He should personally perform the duties entrusted to him accurately and honestly in accordance with the employment contract, provisions of the law, decisions issued in implementation thereof and systems of work in the facility, and to exert in that the care of the average person"⁽²¹⁾.

There is no doubt that the death of the employee is considered one of the most prominent forms of impossibility facing the implementation of the contract, which results in the automatic termination of the employment contract, whether a fixed-term or unlimited-term contract⁽²²⁾.

The Bahraini Court of Cassation confirmed in its ruling issued on February 9, 2009 - Appeal No. (161, 198) for the year 2008 – that the employment contract expires due to the death of the employee and that his rights, which he did not collect, are transmitted to the heirs.

It must be pointed out here, that the employee's legal death - the case of the missing – is like the real death leading to the expiry of the employment contract whenever the death is proven by a judicial ruling⁽²³⁾.

A juristic dispute has arisen over the expiration of the contract during the period prior to the ruling on the death of the employee, where some believe that the contract remains suspended on the period prior to the ruling and is not terminated but by a final ruling of the death of the employee⁽²⁴⁾.

Others see that the termination of the contract by death by force of fact, does not preclude the termination of the contract as long as the period of absence is prolonged, in a manner compatible with working conditions and the necessity of using another factor. Accordingly, there is no objection to terminating the contract in accordance with the general rules⁽²⁵⁾. We support this view as being closer to logic and reality. We do not see that the period prior to the issuance of a verdict proving the death is a form of suspension of the employment contract and is not considered one of its cases, as suspending the employment contract is an intermediate stage between the implementation of the contract and its expiry, meaning that the employment contract at the suspension stage remains in place, but the implementation of the contract is the one that stops temporarily due to the presence of a specific reason, so the contract is suspended without expiring, and that in the stage of the suspension of the employment contract, one of the two parties can stop the implementation of his contractual obligations without assuming contractual responsibility⁽²⁶⁾.

However, does the death of the employer lead to the termination of the employment contract?

To answer this question, we find that the Bahraini legislator stipulated in Article (113 / b) of the Labor Law that: "The employment contract does not end with the death of the employer unless the contract was concluded for considerations related to the person of the employer or his professional activity that is interrupted by his death⁽²⁷⁾."

The general rule is that the employment contract does not end with the death of the employer, but rather the relationship continues with his heirs, since the employer is not considered originally a matter of consideration when concluding the employment contract, which means that the possibility of transferring that contract and the resulting obligations to the heirs is possible, and moreover is an imperative matter as provided by the law as long as the facility exists. However, the employment contract ends, also with the death of the employer if his personality is the subject matter in that contract, as in the case for the doctor who concludes an employment contract with a secretary or nurse, and I believe that this opinion is consistent with what was stated in the text of Article (113 / b) of the Labor Law.

However, there is an opinion - which we do not support - that the basic principle is that the employer is a place of consideration because the employer has direct authority over the employee, except that the legislator did not consider the death of the employer a cause for termination of the employment contract for the purpose of preserving the employee opportunity in the work, if he could work With the employers' heirs⁽²⁸⁾.

Second Section

Total Disability and Disease

First: Total Disability

The employment contract ends because of the employee disability to perform his work totally whatever the reason for this disability. This is what is stipulated in Article (114 / a) of the Bahraini Labor Law, which states: "Employment contract expires by the employee total disability to perform his duties, whatever the reason of such disability. Article (21 / c) of the Jordanian Labor Law provides the following: "If the employee dies or a disease or disability prevented him from work, and this is proven by a medical report issued by the medical reference."

Article (114 / c) of the Bahraini Labor Law, provided the following: "The proof of disability and determining its percentage shall be with a medical certificate issued by the medical committee as stipulated in Article (89) of this law ⁽²⁹⁾.

In the concept of violation, the partial disability, which means that the employee is not fit to perform his original job, while remaining fit to perform another work in the same facility or project, does not lead to the expiration of the employment contract because the implementation of the employment contract by the employee is not impossible ⁽³⁰⁾.

This is what is provided in Article (114 / b) of the Bahraini Labor Law, which states: "The contract of employment does not partially expires due the employee's inability to perform his work duties, unless it is proven that there is no other suitable job with the employer that the employee can do in a satisfactory manners. In the event of the existence of this work, the employer shall notify the employee thereof, and, upon his request, transfer him to this work without prejudice to the provisions of the Social Security Law.

For obliging the employer to engage the employee, with partial disability, in another work, he must prove this with a medical certificate approved by the medical committee appointed by the Minister of Health. In the event it was proven that the employee suffers from partial disability, the employer is obliged to transfer him to such work as per the wage determined for such work without violating obtaining his other entitlements resulting from injury according to the Labor Law and the Social Security Law ⁽³¹⁾.

Second: Employee Disease

The mere fact of the employee disease is not considered one of the reasons for the termination of the employment contract, but it is one of the legislative applications for the suspension of the employment contract ⁽³²⁾.

But when the disease is considered one of the reasons for the termination of the employment contract for the impossibility of enabling the employee to carry out his work?

To answer this question, we must show that the Bahraini legislator has regulated the provisions for sick leave in Articles (65-66) ⁽³²⁾, as well as the termination of the employment contract due to the employee's illness in Article (117) of the Labor Law ⁽³³⁾.

Article (65) of the Labor Law provide the following: "The employee who has spent three continuing years in service with his employer and proves his illness and entitlement of sick leave according to a certificate from one of the government health centers or one of the clinics approved by the employer, the right to the following sick leaves during one year:

1. Fifteen paid days.
2. Twenty days with half payment.
3. Twenty days without pay.

If there is a disagreement over determining the duration of the treatment, the medical committee as stipulated in Article (89) of this law takes over the renewal of this period.

The balance of sick leave accrued to the employee may be accumulated for a full or half wage for a period not exceeding two hundred and forty days.

We conclude the following from this text:

1. Who deserves this leave is the employee who proves that he is sick according to a medical report issued by a government health center.
2. The duration of the leave is fifteen days with paid wage, twenty days with half pay and twenty days without pay.
3. If there is a medical dispute regarding the period of treatment to which the employee is entitled, the medical committee formed by the Minister of Health shall, in accordance with Article (89) of the Labor Law, determine the duration of the leave.

It is noted that the legislator has made the total disability and partial disability determination is within the jurisdiction of the medical committee as provided in Article (89), while made the issue of proving disease is the jurisdiction of the approved medical centers, unless there is a disagreement about the duration of treatment where the matter is referred to the medical committee for determination of the disagreement where the reason for that is due to the gross effect of diagnosing the patient's condition as having suffered a total disability and may lead to the expiration of the employment contract if he is partially disabled.

The Bahraini legislator did well when gave the employee the right to take advantage of the annual leave in addition to the sick leave he deserves in order to avoid terminating his contract due to his illness, as Article (66) of the Labor Law provides the following: "The sick employee may benefit from the balance of his annual leaves in addition to the sick leaves he is entitled to".

Concerning the Jordanian legislator position regarding allowing the sick employee to benefit from his annual leave during his illness period, we find that he did not regulate this issue as the Bahraini legislator did, and we hope that the Jordanian legislator takes the approach of the Bahraini legislator in this matter.

Based on the foregoing, the employee's illness may lead to the termination of the employment contract due to the impossibility of implementation for a foreign cause outside his control and the will of the employer. Article (117) of the Bahrain Labor Law provides the following: "The employer may not terminate the employment contract for the employee's illness unless the employee has exhausted his sick and annual leaves balance.

The employer should notify the employee of his desire to terminate the contract fifteen days prior to the date the employee exhausts his leaves. So, if the employee recovers before this period ends, the employer shall refrain from terminating the contract because of the employee's illness.

We find that the Bahraini legislator restricted the employer's right to terminate the employment contract due to the employee's illness by two restrictions:

1. That the employee exhausts the sick and annual leaves he is entitled to.
2. The employer shall notify the employee of his desire to terminate the contract of employment with the employee due to the illness of the latter, fifteen days prior to the date of the employee exhausting his leaves.
3. The law also stipulated that the employee shall not return to work within the notice period⁽³⁴⁾.

Third: Closing the Facility

Certain circumstances might rise out that lead to the closure of the facility completely, because partial closure does not make it impossible to implement the contract of employment. The Bahraini legislator has addressed the state of the facility's closure and explained the impact of this closure on the rights of employees, where Article (7) of the Labor Law provides the following: "the facility dissolving, e, liquidation or closure, in whole or in part, shall not prevent the fulfillment of all obligations determined by law, reduce its activity size or declaring bankruptcy.

The merging of the facility into other firms or its transmit by inheritance, will, gift, or sale - even if it is by public auction - or lease or other acts, does not result in the termination of the employment contracts in the firms. The successor shall be responsible, in solidarity with the previous business owners, for the implementation of all obligations arising from these contracts⁽³⁵⁾.

Through the previous text, we find that the closure of the facility may be due to a foreign reason, as the employment contract is immediately terminated by the force of law, whether it is a fixed-term or unlimited-term contract. The reason may be related to the employer, as there is no contract termination but rather ending it⁽³⁶⁾.

a- Closing the Facility for Foreign Reason

If it is impossible for the employer to implement the contract as a result of force majeure, state of necessity or emergency circumstances, the contract is terminated by the force of law, and the

employer's obligations ends without assuming the responsibility of that when the impossibility of implementation is final⁽³⁷⁾.

Therefore, the closure of the facility as a result of force majeure or foreign cause as a natural disaster due to an earthquake, fire or flood, and the non-availability of the raw material due to the occupation, war or the issuance of legislation prohibiting the production of the product produced by the facility are considered forms of impossibility due to foreign cause⁽³⁸⁾.

It must be noted here, that the question of the cause of the contract terminations and legitimacy is assessed by the trial judge. This is what the Bahraini Court of Cassation ruled: "assessment of the legitimacy of the annulment of the employment contract or its unlawfulness due to the illegal use is a terminating cause of the indefinite period contract, which is an objective assessment by the authority of the trial judge"⁽³⁹⁾.

b - Closing the Facility for Reason attributable to the Employer:

The ruling to close the facility is final as a reason due to the employer differs from the closure for a foreign reason. As we have mentioned, the closure of the facility for a foreign reason leads to the termination of the contract of employment automatically, by the force of law, while we find that closing the facility for a reason related to the employer leads to the termination of the employment contract in accordance with the relevant rules of the same, where the employer is obligated to notify the Ministry of Labor with the reason for the termination within thirty days prior to the date of notifying the employee of the termination⁽⁴⁰⁾.

In the event of termination of the contract due to the closure of the firm, the employee shall be entitled to compensation equal to half of the compensation referred to in Article (111) of the Labor Law⁽⁴¹⁾.

Among the applications of closing the facility reasons that are attributable to the employer, are his desire to quit the trade due to depression of business, bankruptcy, his desire to retire due to illness or old age, or because of bad financial conditions of the facility, which makes it non-useful to continue its work. This is considered legitimate and is not considered illegal usage of the right⁽⁴²⁾.

Second Chapter

Consequences of the Impossibility of Implementing Employment Contract

The expiration of the employment contract due to the impossibility of implementation in particular and other common reasons in general result in the liquidation of legal and financial centers for both parties. This was confirmed by the Bahraini legislator in the Labor Law, where he approved a number of guarantees aimed at helping the employee to manage his affairs.

Therefore, we will shed light on these guarantees, which are represented in the right of the employee to receive an end-of-service remuneration in certain cases and certificate of experience as well as we will also address the time limitation of rights arising from the employment contract.

Based on the above, we divide this topic into three parts:

First Part: Effect of the Impossibility on the End of Service Remuneration

Second Part: Effect of the Impossibility on the Employee Obtaining Certificate of Experience

Third Part: Time limitations of the Rights Resulting from the Employment Contract

First Part

Effect of the Impossibility on the End of Service Remuneration

In the event that it is impossible to implement the employment contract in accordance with the Bahraini Labor Law, the employer must pay the employee a reward at the end of his contract in appreciation of the time he spent in his service. The employee, who shared by his long service in the

development and expansion of the firm, deserves a reward amount of which shall increase depending on his service period, especially at the end of his contract, because after that his opportunity to get another job is weakened after passing a long period of time in the service of the employer.

Due to the practical and legal importance of the end of service remuneration, we will address it as follows:

First: Concept of end of service remuneration.

Second: Legislative regulation of the end of service remuneration.

Third: Legal adoption to the end of service remuneration.

Fourth: The period based on which the remuneration is calculated.

First: the Concept of End of Service Remuneration

The commentators of the law differed in setting a juristic definition to the end of service remuneration, but the majority of jurisprudence settled that the end of service remuneration is an amount of money paid by the employer to the employee at the end of his employment contract in appropriation with the period of his service in the project⁽⁴³⁾.

The end of service remuneration aims to encourage the employee to continue to work as long as possible, and to give him an amount of cash upon the end of his work that enables him to face the demands of life and its difficulties.

That is, the end-of-service remuneration is mainly aimed at mitigating the damages the employee suffers as a result of the expiry of his contract, especially if he is old. This is confirmed by the laws in our present time⁽⁴⁴⁾.

Second: Legislative Regulation for the End of Service Remuneration

This remuneration was organized according to the text of Article (119) Bahraini Labor Law⁽⁴⁵⁾, by saying: "The employee who is not subject to the provisions of the Social Security Law provisions at the end of his employment contract deserves a remuneration at the rate of half month pay for each of the first three years of work, one month pay for each of the subsequent years, where the employee deserves the remuneration for the fractions of the year in proportion to the period spent in service with the employer.

According to Article (116) of Bahraini Labor Law, the employee's end-of-service remuneration is calculated on the basis of half-month pay for each year of service for the first three years, and one month pay for each of the following years, where the employee is entitled to remuneration for fractions of the year in proportion to the period spent in service, and the employer may by agreement with his employees to give them remuneration that exceeds the maximum amount provided by law, and this was confirmed by the Bahraini Court of Cassation⁽⁴⁶⁾.

The remuneration is estimated on the basis of the last wage (the basic salary) that the employee was receiving before the end of the contract or before the employee joined the social security umbrella.⁽⁴⁷⁾

We find that the new labor law, unlike the previous one, does not provide for depriving the employee completely and partially of the remuneration⁽⁴⁸⁾, where the Bahraini legislator did well in this regard.

Third: Legal Adaptation of the End of Service Remuneration

It is agreed that the end-of-service remuneration is not a kind of compensation⁽⁴⁹⁾, because its payment is not linked to the wrong act committed by the employer, nor to the occurrence of damage to the employee as a result of the expiration of his contract, where the employee deserves it even if there is no mistake made by the employer, as if the contract ended with the end of his term or the death of the employee, even the employee may join a better job opportunity, however he deserves the remuneration at the end of the contract.

Opinions differed as to the legal nature of the end of service remuneration:

The first opinion stated that the end of service remuneration ⁽⁵⁰⁾ is compensation for the material and moral damage caused to the employee as a result of the end of his service with the employer, but this opinion faced several criticisms, the most important of which is that if the remuneration was compensation, it must be proven that there was damage caused to the employee, and compensation is given equal to the amount of damage caused to him ⁽⁵¹⁾.

The second opinion was that the end-of-service remuneration is insurance for the employee against the risk of terminating the contract ⁽⁵²⁾. The holders of this opinion assert that it is not permissible to combine the end-of-service remuneration with an old-age, disability or death pension. We see that the end-of-service remuneration, based on the relationship between the employee and the employer, is not considered insurance, because the insurance premium is considered a substantial pillar, but the employee deserves a remuneration without being required to do anything in return ⁽⁵³⁾.

While a third opinion went to consider that the end-of-service remuneration is a deferred wage for the employee, meaning that the reward is considered a type of extra pay which the law requires the employer to pay at the end of the contract. This is what the judiciary ⁽⁵⁴⁾ and jurisprudence confirmed. We support what the judiciary and jurisprudence went by considering the end-of-service remuneration as a deferred pay for the employee, that is, an extra pay that the employee deserves at the end of the contract without regard to the reasons for the expiry of the contract.

The end-of-service remuneration is due to the employee without the existence of any damage as a result of the end of the contract, as if the contract ended with the end of its term or the death of the employee, moreover the employee may join a better job opportunity where he deserves remuneration. This adaptation is consistent with the provisions of the new Bahraini Labor Law unlike the old labor law ⁽⁵⁵⁾.

Fourth: The Period based on which the Remuneration is Calculated

What is meant by the period of service here: the period that begins from the date of the employee ⁽⁵⁶⁾ taking over his work according to the employment contract and ends with the end of the contract, and this is confirmed by the judiciary. ⁽⁵⁷⁾

The probation period is calculated within the service period, because the contract under probation becomes an indefinite employment contract once the employee passes the probation period and retroactively from the date of concluding the contract. The notice period also enters into the service period, if the employer has terminated the employment contract, but if the employee is the one who terminated the contract for a reason not related to the employer, the only period which is counted is the period in which he stayed during the notice time.

Further, every stoppage or interruption of work due to a reason from the employer side is included within the service period, where the legislator obligated the employer to pay the employee his full wages for this period, since the employee is considered on the top of his duties by the force of law as long as he was willing and able to do the work. ⁽⁵⁸⁾

The period the employee spends in the graduation or training contract is not counted within the period of service, because at that time he was not linked to an employment contract. ⁽⁵⁹⁾

The term of service ends with the expiry of the contract, whether due to a legitimate or unlawful reason. If a fixed-term contract expires before the end of the period agreed upon, the remainder period of it does not enter in to calculate the period of service. The contract expires from the date the employer terminates it. ⁽⁶⁰⁾ The period of service is considered continuous if the contract ends with the end of its term, then it is renewed explicitly or implicitly, as long as the employee did not stop his work in the period before renewal and after the end of the first contract. However, if there was work interruption for more one month period, meaning the contract ended, then the employer and the employee enter into a new contract, the service period in that case is not a continuous period, unless the employer intends to waste the employee's right to remuneration or reduce it, then his intention is to return back to him, and the service period is considered continuous. The legislator assumed that the

conclusion of a new employment contract with the employee during 30 days from the end of his old contract is deemed an extension of the first contract, and therefore it is not correct to deprive him of the benefits and gains he was getting under the first contract.

Second Part

Effect of Impossibility on Employee Obtaining Certificate of Experience

Most of the legislations in the Labor Law were keen to oblige the employer to give the employee certificate of experience (end-of-service certificate) upon the expiry of the contractual relationship with the employee, due to the impossibility of implementing the employment contract, because of the importance of the experience certificate in enabling the employee to reenter into the labor market.

We will address the certificate of experience in terms of indicating its objectives and the data it contains.

First: The legislative objective from the employee obtaining certificate of experience.

Second: Certificate of Experience.

Third: Conditions for obtaining the certificate of experience.

First: The Legislative Objective for the Employee Obtaining Certificate of Experience

Article (13) of the Bahraini Labor Law states that: "The employer must give the employee - during the validity of the employment contract or upon its expiry and without charge - certificate including the data he requires regarding the date of joining the work, the type of work he performed, the wage, other benefits that he obtained and his professional experience and qualification, the date and reason for the end of the employment contract."

It appears from the above text that the legislator has made an obligation on the employer towards the employee by giving him a certificate of experience during the validity of the employment contract or after the end of employment contract for whatever reason⁽⁶¹⁾, even if the contract of employment was terminated due to the employee's fault, where this certificate is granted whether the contract is of limited or unlimited period. This is confirmed by the Jordanian legislator in Article (30)⁽⁶²⁾ of the Labor Law, which stipulates that "the employer must give the employee in the end of his service, upon his request, a service certificate stating the name of the employee, the type of his work and the dates of joining and leaving service. The employer is obligated to return back the papers, certificates or tools deposited by the employee". This was also confirmed by the Egyptian legislator⁽⁶³⁾ Article (130)⁽⁶⁴⁾ of the Egyptian Labor Law No. (12) For the year 2003.

We see that labor legislations obliged the employer to give the employee a certificate of experience in order to facilitate the way for the employee to join another job. When the employee applies for another job, the employer often asks him for experience certificate to verify his competence and prove his capabilities.

The experience certificate is considered as a declaration issued by the employer with respect to the employee, proving that the employee is discharged from everything towards the old employer.

Second: Experience Certificate Data

The certificate of experience must include the following data (date of joining work, date of the work ending, reason for the end of the work, type of work, benefits that the employee was receiving, wage and experience).

We note that the majority of labor legislation⁽⁶⁵⁾ did not give the will of the employer to determine the content of this certificate, but rather restricted it to the data specified in the legal text in order to achieve the objective and purpose of giving this certificate. Also, this certificate may not include a statement of the employee qualification or honesty, because that would be an obstacle in the way the employee joining a new job if the employer stated in the certificate of experience any derogation in the employee's ability or competency. In the concept of violation, the employer shall not

prevent the addition of any data that is in the interest of the employee or that the experience certificate to include recommendation in the favor of the employee due to his competence and sincerity.

Third: Conditions for Obtaining Experience Certificate

According to what most labor legislations indicated, especially the Bahraini legislation in Article (113) of the Labor Law, we find that the employer is obligated to give a certificate of experience, whatever the reason for the contract termination, because the text came in general, and must be applied in general.

The employer's commitment to give the experience certificate is restricted to several conditions:

First Condition: Request made by the employee to obtain the certificate.

The Bahraini legislator made the right of the employee to obtain certificate of experience dependent on his request, because the employee alone is the one who appreciates the extent of his need for the certificate, meaning that the employer is not obligated to give the certificate except at the request of the employee, and this is confirmed by both the Egyptian and Jordanian legislators,⁽⁶⁶⁾ where they made the right to give the employee a certificate of experience dependent on his request. This is in contrast to what the Libyan legislator went to, where he made the right to obtain a certificate of experience related to the expiry of the contract only and without the employee's request, and this is confirmed by Article (45) of the Libyan Labor Relations Law⁽⁶⁷⁾.

Second condition: Data included in the certificate

The certificate of experience must include the data specified by the legislator, which is the name of the employee, the type of work, the date of joining the service, the date of separation, the financial benefits and wages he was receiving.⁽⁶⁸⁾

Third condition: Time for obtaining the certificate

We find that Article (13) of the Bahrain Labor Law referred to the employee's entitlement to obtain the certificate of experience during the validity of the employment contract or at the end of the contract, and the commitment by the employer to give the certificate to the employee determined for the sake of the employee. So, the employer is not considered in default concerning the obligation to give the certificate if was not requested by the employee.

The base in giving the certificate is linked to the person of the employee⁽⁶⁹⁾, except that the public successor is entitled to request this certificate, because the interest is available which is obtaining the financial dues of the employee, whether with the insurance agency or with the employer.

If the employee requests experience certificate, and the employer refuses to give or delay this certificate, the employee has the burden of proving his request. However, in the event that he succeeds in proving this, he has the right to ask the employer to compensate him for the damage he suffered on the condition of proving that damage⁽⁷⁰⁾.

Third Part

Time Limitation Arising from the Employment Contract

The Bahraini legislator has set out time limitation period of claims arising out of the employment contract in article (136) of the Labor Law, which stipulates that: "Labor claims shall be dropped out for time limitation by passage of one year starting from the date of the expiration of the labor contract. This time limitation shall not apply to the cases related to the violation the trade or industrial secrets or to the implementation of the provisions of the employment contract that aim to ensure that these secrets are respected".

We note through this text that the Bahraini legislator has adopted the one year time limitation⁽⁷¹⁾ for the employees cases⁽⁷²⁾. This includes all cases arising from the employment contract, whether the claim was filed by the employer or the employee or the heirs of either of them, including

the employee claim for the benefits of his service, his rights to the savings fund, claims for illegal dismissal, or claims for wages. However, in the case of the employer's denial of wages, the employee has the right to claim for it within five years from the date of the wage entitlement ⁽⁷³⁾, and by reconciling between the five-year time limitation and the one year time limitation. Moreover, if the employee, during the validity of the contract, claims for wages that the employer denies, this should be within five years from the date of entitlement to the wage by considering it a renewed periodic right, where Article (A / 366) of the Bahraini Civil Code states: "The case, when declined, is not heard upon passing five years from the date of pay maturity being renewable periodic rights, such as rent of buildings, agricultural lands, salaries, wages and pensions, unless there is a provision otherwise." But if the claim is after the end of the employment contract, he must file the claim within one year of the end of the contract. This is confirmed by the Bahraini Court of Cassation.⁽⁷⁴⁾

We see that time limitation (short term time limitation) which was adopted by the Bahraini legislator aims to stabilize the conditions arising from the employment contract and expediting the liquidation of the legal centers arising there from for both the employer and the employee.

We find that the Bahraini legislator has not included the claims related to violating the commercial secrets or to implementing the provisions of the employment contract that aim to protect these secrets from the short time limitations (one year time limitation), and this is confirmed by Article (639) of the Bahraini Civil Code.⁽⁷⁵⁾

As these above claims are subject to the general rules, and are dismissed after passage of (15) years due to the importance of the rights that protect it, where the claim initiated from illegal employment contract are not subject to one year time limitation.

The time limitation period starts from the date of the end of the employment contract, whatever the reason for the termination. We find that the lesson in that knowledge of the end of the contract, where such knowledge is realized from the date of notifying the employee of the dismissal decision or confirmed knowledge of the same. The fact of work is considered one of the issues that the trial court has jurisdiction on.⁽⁷⁶⁾

It is worth noting that the time limitation defense is not related to public order and is one of the substantive defenses. It is not permissible to adhere to it for the first time before the Court of Cassation ⁽⁷⁷⁾, it is also permissible to use time limitation defense in any claim even if before the Court of Appeal, and that the waiver of adherence to time limitation as an legal act could not be done but after the right has been proven explicitly or implicitly. This was confirmed by the Egyptian Court of Cassation ⁽⁷⁸⁾.

We find that the period prescribed in Article (136) of a Bahraini Law is time limitation period and not a period for claim dropping. Therefore, this period is interrupted by general reasons that interrupt the time limitation, so the definitive judicial claim before the court of law, such employee's claim for compensation, is interrupted. However, the time or preservative claims before summary procedures court, are not interrupted by the time, i.e. the time limitation is not interrupted in the substantive lawsuit once the employee has filed a lawsuit stopping the execution of the dismissal decision. Further, time limitation is interrupted by the employer's declaration of the employee's debt after the end of the contract. However, if the declaration is made prior to the end of the contract or after the passage of time limitation period, the time is not interrupted, too. The time limitation shall be interrupted by the filing of the labor claim suit, even before if before a non-competent court, i.e. if time limitation is interrupted, its effect shall cease to exist, and a new time limitation similar to the first time limitation in duration and nature shall start.⁽⁷⁹⁾

The time limitation also is stopped if there is a material, moral or legal impediment in which the creditor is unable to claim his right, where an example for material impediment is a sudden war, interruption of transportation or strikes. An example of the moral impediment is a critical occurrence of the employee in case he wishes to claim the right from his relative employer because of the relationship of kinship. The fact that the person did not reach the legal age is also considered a legal impediment that prevents him from being able to claim the illegality of the contract, and is does not considered an impediment interrupting time limitation once the employee is accused and referred to the criminal courts.⁽⁸⁰⁾

Conclusion

The employment contract is considered a contract binding on both parties, as it is a contract creating mutual obligations for both the employee and the employer, where each party has to implement the obligations imposed on him under the contract. However, circumstances might arise that make the implementation of the employment contract impossible, and thus the contractual relationship between the employee and the employer ends. So, the Bahraini legislator created guarantees for the employee which he deserves in the event of the termination of the contractual relationship due to the impossibility, and these guarantees are the end of service remuneration and the certificate of experience.

We have reached through this research to the following results:

1. The Bahraini legislator has organized the issue of the impossibility of implementing the employment contract in separate provisions in the Labor Law.
2. The impossibility of executing the contract because of a foreign reasons leads to the termination of the employment contract by the force of law, but if the impossibility is due to the employer, this leads to the expiry of the labor contract.
3. Absolute impossibility leads to the end of the employment contract, while temporary impossibility leads to the suspension of the employment contract.
4. The Bahraini legislator gave special attention to the total disability, where he made determining this disability within the powers of a committee formed by the Minister of Health according to the text of Article (89) of the Labor Law. However, in the event of determining the employee's illness, he a medical report issued by a health center is sufficient.
5. Article (116) of the Bahraini Labor Law organizes the right to obtain an end-of-service remuneration, whereby the employee who is not subject to the provisions of the Social Security Law deserves remuneration at the rate of half month wage for each of the first three years of work, one month wages for each of the subsequent years on them, and the employee deserves remuneration for fractions of the year in proportion to the time spent in service.
6. At his request, the employee deserves a certificate of experience and which includes the following data (date of joining work, date of work ending, reason for termination of work, type of work, wages and experience).
7. The Bahraini legislator has made time limitation as one of the reasons for the expiration of the right in the claim without leading to the loss of the right itself.

Recommendations

Through this research, we recommend the following:

1. The call made by the Bahraini legislator to amend the text of Article (136) of the Labor Law to make time limitation for the claim arising from the employment contract to be two years and not one year in order to provide better legislative protection for the employee to become as follows: "Labor claims shall be dropped out by two years time limitation, starting from the date of the expiration of the employment contract....".
2. Calling on the Bahraini legislator, like the Libyan legislator, to oblige the employer to give the employee a certificate of experience once the contractual relationship ends, and without the need to be requested by the employee.
3. Calling on labor legislation to provide more guarantees to protect the rights of the employee without prejudice to the rights of the employer, because protecting the rights of both parties to the employment contract leads to encouraging, moving the economy wheel and attracting foreign investment.

Margins

- 1) See also the text of Article (159) of the Egyptian Civil Code in which it says: "In contracts binding on both sides, if the obligation lapses due to the impossibility of its implementation, the corresponding obligations are terminated, and the contract is terminated on its own. Article (247) of the Jordanian Civil Code stipulates that The following: "In contracts binding on both sides, if a force majeure emerges that makes the implementation of the obligation impossible, the corresponding obligation with him has expired, and the contract is annulled on its own ..." Article 341 of the Lebanese Code of Obligations and Contracts stipulates that: After its formation, its subject has become impossible from the natural or legal face, and without the act or error of the debtor.
- 2) Muhammad Ahmad Abdeen, *The Decade of the Contract Ended*, Without Edition, Faculty of Knowledge, Alexandria, 2013, page 28.
- 3) The cases where the obligation lapses without fulfillment, in addition to the impossibility of implementation, are debt relief and lapse of time
- 4) Dr. Khalid Jamal Ahmed Hassan, *Sources of Obligation and its Provisions in Bahraini Civil Law*, First Edition, University of Applied Sciences Bahrain, 2011, page 222.
- 5) Jurisprudence almost unanimously divides the rulings in terms of their content (their place) into three types: the established rulings, which are rulings issued with the aim of establishing a right or legal status that did not exist before the ruling, such as a pre-emption verdict for the pre-emption applicant and a ruling declaring the merchant's bankruptcy, as may Includes an amendment of a legal right or legal status that existed before its issuance, such as a ruling to amend the contractor's commitment to apply the theory of emergency conditions or injustice, or a ruling to cancel a legal right or status or legal link that existed before the ruling, such as a ruling to annul a contract or a ruling that a husband divorces his wife.
 Obligation provisions: These are the decisive judgments issued by the competent court in a substantive dispute in accordance with legal procedures that include obligating the convict to pay a certain financial performance, whether it includes proof of the debtor's concern with a financial sum of the creditor, or obliging him to pay and pay it to him, or the judgment of the debtor to hand him over to a specific creditor.
 Prescribed provisions: These are the judgments that are issued in confirmation of a specific right or a specific legal center that exists before the ruling, such as the validity of the contract or the divorce that occurred abroad. Mohammed Saeed Al-Rahho, *Forced Implementation in the Bahrain Civil and Commercial Procedures Law*, a comparative study, without a print, without a publishing house, Bahrain, 2011, page 70 and beyond.
- 6) Dr. Adnan Ibrahim Al-Sarhan, d. Nuri Muhammad Khater, *Civil Law Explanation, Sources of Personal Rights, Obligations, A Comparative Study of the Fifth Edition*, Dar Al Thaqafa for Publishing and Distribution, Amman, 2002, page 229, See about limiting the impossibility to contracts binding on both sides to the Judgment of the Jordanian Court of Cassation in its legal capacity No. 1999/1121, Five-Year Commission, and dated 24/1/2000, published on page 190 of the Judicial Magazine on 1/3/2000.
- 7) Dr. Abdel-Razzaq Ahmed Al-Senhouri, *Mediator in Explaining Civil Law, Part Three, Theory of Commitment in General, Descriptions, Transfer, Expiration*, Without Printing, Establishment of Knowledge, Alexandria, 2004, page 88
- 8) Dr. Adnan Ibrahim Al-Sarhan, d. Nuri Muhammad Khater, previous reference, page 317.
- 9) Dr. Anwar Sultan, *Rulings of Commitment*, without edition, Arab Renaissance House, Cairo, 1983, page 451
- 10) Dr. Abdul-Razzaq Al-Sanhouri, *Theory of Commitment in General, Part Three*, previous reference, page 883
- 11) See the Judgment of the Jordanian Court of Cassation, *Discrimination Rights 2000/406*, issued on 29/12/2000, published in the Judicial Magazine of the year 2000, page 189.

- 12) Dr. Khalid Jamal Ahmad, Sources of Obligation and its Provisions in Bahraini Civil Law, previous reference, page 318;
- 13) Dr. Adnan Ibrahim Al-Sarhan, d. Nuri Muhammad Khater, Explaining Jordan's Civil Law, previous reference, page 318.
- 14) The previous reference, same page.
- 15) Dr. Hamdi Abdel-Rahman, Mediator in the General Theory of Commitments, Book One, Voluntary Resources for Commitment, Second Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2010, page 538.
- 16) Provisions of temporary impossibility are regulated by the Civil Law, whereby the judge authorized asylum to implement the obligation or relieve fatigue to a reasonable extent, in accordance with the provisions of Article (130) of the Bahraini Civil Code and Article (205) of the Jordanian Civil Law.

And considering the employment contract as a time contract, as it was executed during a period of time that is long or short. It is possible that the contract of employment may encounter obstacles preventing its implementation in some periods while it is in force. As if the employee suffers a disease that temporarily impedes him from performing his work, or the outbreak of war, as happened during the First World War, these barriers sometimes lead to the termination of the employment contract, and this approach has very serious consequences and has negative social and economic dimensions. Therefore, the urgent need appeared before the French judiciary to create a system that protects the intended from expiry in the event that it imposes temporary prohibitions that lead to the impossibility of implementing the contract temporarily. The French judiciary adopted the non-implementation payment system and the temporary force majeure system. And based on the system of non-enforcement, the judiciary allowed the creditor to refrain from fulfilling its obligation whenever the debtor breached its role in implementing its obligation, and based on the temporary force majeure system, which had no basis in the French civil law, but rather was the creation of the judiciary, if the barrier was temporary And not final, as this does not lead to the annulment of the contract, but rather the suspension of its implementation for a period of time until the barrier is removed. The French Court of Cassation ruled in one of its rulings that "force majeure does not prevent the implementation of the commitment unless it prevents the debtor from giving or doing what is obligated to give or work, and then the debtor is not discharged if the barrier is temporary, but the implementation of the commitment is suspended until The disappearance of force majeure." French denunciation November 15, 1921, Daluz, 5, page 14, referred to by my father, Dr. Wafa Helmy Abu Jameel, termination of the contract of employment, Arab Renaissance House, Cairo, page 5.

However, this judicial approach was not convincing to jurisprudence, despite the fact that it provides protection for the employee, and a lot of criticism was exposed, which led the French legislator to intervene and adopt several applications to stop the employment contract, not to terminate it. See close to this meaning d. Khaled Jassem Al-Hindabani, "The Contract of Employment Was Suspended" A Comparative and Compelling Study", Law Journal of Kuwait University, Volume 24, No. 2, 2000, page 73 and beyond.

- 17) Dr. Hamdi Abdel-Rahman, Mediator in the General Theory of Commitment, previous reference, page 541.
- 18) We did not find a text in the Bahraini Labor Law corresponding to this text.
- 19) Dr. Tawfiq Hassan Faraj, and Amal Anwar Bondoq, The New Labor Law, Third Edition, Ibrahim Legal Foundation, Alexandria, Third Edition, 2007, page 348.
- 20) Dr. Mohamed Hussein Mansour, The Law of Labor, without edition, New University House, Alexandria, page 386. Article (A / 213) of the Bahraini Civil Code stipulates that: "In the obligation to act in accordance with the agreement, or if the nature of the debt required that the

debtor perform the obligation himself, the creditor may refuse to fulfill the obligation of the non-debtor as stipulated in Article (1/356)) Of the Jordanian Civil Code stipulating that: “If the subject of the right is an act and its nature or the agreement stipulates that the debtor performs it in person, the creditor may refuse to fulfill it from others.” Examples of the obligations that require the debtor’s intervention include the obligation to provide an account or documents. , Or the obligation to provide a specific service such as the services that the monopoly companies perform to the public, the obligation to do the work or to abstain from a work in which the debtor’s personality is shown, such as a pledge such as participating in a certain act, or by refraining from appearing in a specific theatrical performance. For more details see Dr. Anwar Sultan, *Obligation Provisions*, previous reference, page 59 and beyond.

- 21) See close to this text, Article (56 / A) of the Egyptian Unified Labor Law No. 12 of 2003, as well as Article (19) of the Jordanian Labor Law.
- 22) Dr. Ahmad Rashad Al-Hawari, *Explanation of Bahrain Labor Law*, first edition, Publications of the University of Applied Sciences, Bahrain, 2010, page 421.
- 23) Dr. Ahmad Al-Saeed Al-Zaqrud, *Labor Law, Explanation of New Law No. 12/2003*, The Egyptian Library, Mansourah, 2007, page 421
- 24) Dr. Gamal El-Din Zaki, *Individual Employment contract*, Without Edition, Egyptian General Book Organization Press, Cairo, 1982, page 920.
- 25) Dr. Ahmad Rashad Al-Hawari, *Explanation of Bahraini Labor Law*, previous reference, page 422.
- 26) Dr. Jaafar al-Mughrabi, *Cases of Termination of Employment Contracts Cited in the Jordanian Labor Law*, Research published in *Mutah Journal for Research and Studies*, Volume 20, Fourth Issue, 2005, Jordan, page 283.
- 27) Article (22) of the Jordanian Labor Law stipulates that: “The contract of employment shall not expire due to the death of the employer unless it is taken into account in the contract the personality of the employer.”
- 28) Dr. Ja`far Mahmoud al-Mughrabi, *Explaining the provisions of the Labor Law according to the latest amendments and the jurisprudence of the Court of Cassation*, First Edition, Dar al-Thaqafa for Publishing and Distribution, Amman, 2006, page 125.
- 29) Article (89) of the Bahraini Labor Law stipulates the following: “The Minister of Health shall, in agreement with the Minister, issue a decision to form a medical committee to decide on the following: 1- Injury or non-affliction of an occupational disease. 2- The disability of the injured employee and estimating the percentage of disability. 3 - The treatment of the injured employee has ended.4- Resolving the dispute over determining the costs of treating the employee. The decision to form this committee shall determine the procedures and its regulations. A employee has the right to file a grievance against any decision issued by this committee before the Appeal Medical Committee stipulated in Article (90) of this law, within fifteen days from the date of notifying him in writing of the decision.
- 30) See close to this meaning, d. Ahmad Al-Saeed Al-Zaqrud, *Labor Law*, previous reference, page 433.
- 31) Dr. Ahmad Rashad Al-Hawari, *Explanation of Bahraini Labor Law*, previous reference, page 423.
- 32) Dr. Ja`far al-Mughrabi, *Cases of Termination of the Employment Contract contained in the Jordanian Labor Law*, previous reference, page 295
- 33) The Jordanian legislator has organized the provisions for sick leave in Article (65) of the Labor Law.
- 34) See close to this meaning, Dr. Salah Diab, *Al-Wajeez in Explaining the Provisions of the Labor and Social Insurance Law in the Kingdom of Bahrain*, First Edition, Publications of the University of Applied Sciences, Bahrain, 2015, page 362.
- 35) See also the text of Article (91) of the Egyptian Labor Law.
- 36) Dr. Ahmad Rashad Al-Hawari, *Explanation of Bahraini Labor Law*, previous reference, page 425.
- 37) Dr. Muhammad Husayn Mansur, *Labor Law*, previous reference, page 390. And on that temporary impossibility to implement the employment contract, it does not lead to the

annulment of the contract, but to its suspension. If the circumstance is removed and the facility returns to work, then the state of the suspension ends, and from the forms of temporary impossibility the economic conditions that the establishment is going through or the technical reasons that prevent the resumption of work. For more detail. See Dr. Abdulaziz Al-Morsi Hammoud, Determining the Scope of the Employer's Authority in Unilaterally by Amending the Elements of an Unlimited-Term Employment Contract, without Edition, Arab Renaissance House, Cairo, 1998, page 38 and beyond. See also d. Ja`far Mahmoud al-Mughrabi, Cases of Cessation of the Employment Contract contained in the Jordanian Civil Law, previous reference, page 298 and later.

- 38) Dr. Muhammad Husayn Mansur, Labor Law, previous reference, page 390.
- 39) Bahrain Court of Cassation ruling, May 23 session, 2017, sees also its ruling of March 31, 2008.
- 40) See Article (10) of the Bahrain Labor Law
- 41) See Article (110 / b) of the Bahrain Labor Law.
- 42) Dr. Ahmad Rashad Al-Hawari, Explanation of Bahraini Labor Law, page 426; And beyond.
- 43) Dr. Salah Diab, previous reference, page 329
- 44) Dr. Tawfiq Hassan Faraj, Amal Anwar Bondoq, The New Labor Law, previous reference, p. 293.
- 45) Labor Law in the Private Sector No. (36) of 2012, published in the Official Gazette, No. 3063, Thursday, August 2, 2012.
- 46) Bahrain Court of Cassation Judgments, Appeal No. 259, Rule No. 21 of 2018,
- 47) Judgment of the Court of Cassation in Appeal No. 10 of 2001.
- 48) Bonus deprivations: 1- If the termination is on the part of the employee and his service period is less than 3 years. 2 - If the employee resigned from work to avoid the dismissal penalty prescribed in accordance with the provisions of Article (113) work.3 - If the employee is fired from a disciplinary decision.
Partial deprivation: The Bahraini legislator deprived the employee of two thirds of the reward if he resigned from work after a period of no less than 3 years and not more than 5 years.
- 49) Dr. Abdel Basset Abdel Mohsen, Provisions for the End of Service Benefit in the Labor Law, A Comparative Study of the Egyptian and Jordanian), Arab Renaissance House, Cairo, 1998, page 70.
- 50) Dr. Mr. Eid Nile, The New Labor Law, Arab Renaissance House, Cairo, 2008, page 445.
- 51) Dr. Khaled Jamal Ahmed Hassan, The General Theory of Obligations in Bahraini Law, University of Bahrain Publications, 2004, page 150.
- 52) Dr. Syed Ramadan, The Mediator in Explaining the Law of Labor, First Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2004, page 458.
- 53) We find that the Libyan jurisprudence took the opinion that the end-of-service remuneration is considered insurance for the employee not a wage, that is, not to subject the end-of-service remuneration to the remuneration system and its provisions unless the law explicitly provides for that. See in detail: Dr. Abd al-Ghani al-Roumid, Social Law, Part One, Individual Work Relations, Without a Publishing House, Tripoli, 2012, page 287.
- 54) (Appeal No. 158 of 27 BC, Session 11/29, MFF, page 725.
- 55) Dr. Salah Diab, previous reference, page 372.
- 56) Read in detail, d. Ahmed Shawky Mohamed, Explanation of Good Labor Law in Egyptian and French Jurisprudence and Judgment, Monshaat Al-Maaref, Alexandria, 2005, page 355.
- 57) Cairo Elementary on 6/27, Al-Hawari Encyclopedia, Part 4, page 345.
- 58) Read in detail about this: Dr. Muhammad Labib Shanab, Explanation of the Provisions of the Labor Law, Revision of Wael Bandak, Al-Wafa Legal Library, First Edition, 2010, pages 610-614.
- 59) Dr. Salah Diab, previous reference, page 372.

- 60) Dr. Mohamed Ahmed, Resignation in the Light of the New Labor Law, Arab Renaissance House, Cairo, 2008, page 127.
- 61) Dr. Syed Ramadan, previous reference, page 460.
- 62) Jordanian Labor Law and its Amendments No. (8) of 1996, published on page 1173 of the Official Gazette No. 4113, dated 4/16/1996.
- 63) Ahmed Mohamed Radwan, The Legal Expiration of the Contract for Individual Duration of Time in the Egyptian Labor Law, Master Thesis, Cairo University, 2010, page 159.
- 64) Article (130) of the Egyptian Labor Law stipulates that: "The employer is obligated to give the employee without compensation at the end of his contract and upon the request of a certificate stating the date of joining the service and the date of its end, the type of work that he performed, and the benefits that he was getting The employee may obtain from the employer without charge a certificate determining his experience and professional competence during the validity of the contract and at the end of it. At the request of the employee, the certificate may include the amount of the wages he was receiving and the reason for the termination of the work relationship. The employer is obliged to return to the employee at the end of his contract what he was He may deposit it with him from papers, certificates or tools upon his request. "
- 65) D. Sayed Ramadan, Previous Reference, page 461, D. Salah Diab, previous reference, page 375.
- 66) See the text of Article (130) of the Egyptian Labor Law, and Article (30) of the Jordanian Labor Law.
- 67) Article (45) of the Libyan Labor Relations Law stipulates that: "The employer must give the employee or employee free of charge at the end of his service a certificate stating the date of his commencement of work, the date of the end of his service, and the type of work he was performing, and it was also indicated - At his request - the value of the financial consideration he was receiving and any other concessions, if any.
See this in detail: Dr. Abd al-Ghani al-Saru, previous reference, page 224.
- 68) Dr. Salah Diab, previous reference, page 374
- 69) Dr . Med Ramadan, previous reference, page 460.
- 70) Abd al-Ghani al-Ruwaimid, previous reference, page 225.
- 71) The Egyptian legislator has also taken into account the statute of limitations in disputes arising from the employment contract: see in this Article (698/1) of the Egyptian Civil Code.
- 72) Dr. pointed out. Abdul-Razzaq Al-Sanhouri indicated that the period of limitation on the rights of employees, servants and employees in the rights they deserve with employers is one year, as he indicated in his book that employees are factories, stores and farms.
See in detail: Dr. Abdul-Razzaq Al-Sanhouri, Mediator in Explaining the Civil Law - Theory of Commitment - Part Three, Attributed by Counselor Ahmed Al-Maraghi, pages 946-948.
- 73) See in detail, d. Salah Diab, previous reference, page 376.
- 74) Bahrain Court of Cassation, Appeal No. 507 of 2015, Rule No. 136, see the rulings of the Court of Cassation, The Supreme Judicial Council, Bahrain.
- 75) Article (639) of the Bahraini Civil Law No. (19) for the year 2001 stipulates that: "Cases arising from the employment contract shall not be heard with the lapse of a year beginning from the time of the end of the contract, except with regard to participation in profits and percentages in the total revenue, for the period in which it begins only From the time the employer knows to the employee a statement of what he deserves according to Akherdd, the ruling stipulated in the previous paragraph does not apply to cases related to the violation of the sanctity of commercial secrets or the implementation of the provisions of the employment contract aimed at ensuring that these secrets are respected.
- 76) Dr. Ahmed Shawky, Previous Reference, page 361
- 77) Dr. Ahmad Rashad al-Hawari, previous reference, page 371.
- 78) Egyptian Court of Cassation, 27/6/1988, Salah Group, page 465, No. 84.

79) See in detail: Dr. Muhammad Labib Shanab, previous reference, page 620.

80) See in detail, d. Ahmad Rashad al-Hawari, previous reference, page 466

References

- [1] Dr. Muhammad Ahmad Abdin, the Decade of the Contract, Without Edition, Faculty of Knowledge, Alexandria, 2013
- [2] Dr. Khalid Jamal Ahmad Hassan, Sources of Obligation and its Provisions in Bahraini Civil Law, First Edition, University of Applied Sciences, Bahrain, 2011.
- [3] Dr. Muhammad Sa'id al-Rahu, Forced Implementation in the Bahrain Civil and Commercial Procedures Law, a comparative study, without a print, without a publishing house, Bahrain, 2011.
- [4] Dr. Adnan Ibrahim Al-Sarhan, d. Nuri Muhammad Khater, Civil Law Explanation, Sources of Personal Rights, Obligations, A Comparative Study, Fifth Edition, and Dar Al Thaqafa for Publishing and Distribution, Amman, 2002.
- [5] Dr. Abdel-Razzaq Ahmed Al-Senhouri, Mediator in Explaining Civil Law, Part Three, Theory of Commitment in General, Descriptions, Transfer, Expiry, Without Printing, Establishment of Knowledge, Alexandria, 2004.
- [6] Dr. Anwar Sultan, Provisions of Commitment, without edition, Arab Renaissance House, Cairo, 1983.
- [7] Dr. Hamdi Abdel-Rahman, Mediator in the General Theory of Commitments, Book One, Voluntary Resources for Commitment, Second Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2010.
- [8] Dr. Wafa Hilmi Abu Jameel, end the employment contract, Arab Renaissance House, Cairo.
- [9] Dr. Khaled Jassem Al-Hindabani, The Employment Contract, "An Comparative and Compelling Study", Law Journal, Kuwait University, Volume 24, No. 2, 2000.
- [10] Dr. Tawfiq Hassan Faraj, and Amal Anwar Bandak, the New Labor Law, Third Edition, Ibrahim Legal Foundation, Alexandria, Third Edition, 2007.
- [11] Dr. Mohamed Hussein Mansour, Labor Law, without edition, New University House, Alexandria.
- [12] Dr. Ahmad Rashad Al-Hawari, Explanation of Bahrain Labor Law, First Edition, Publications of the University of Applied Sciences, Bahrain, 2010.
- [13] Dr. Ahmed Al-Saeed Al-Zaqrud, Labor Law, Explanation of New Law No. 12/2003, The Egyptian Library, Mansoura, 2007
- [14] Dr. Gamal El-Din Zaki, Individual Employment contract, Without Edition, Egyptian General Book Organization Press, Cairo, 1982.
- [15] Dr. Jaafar al-Mughrabi, Cases of Termination of the Employment Contract Contained in the Jordanian Labor Law, Research published in Mu'tah Journal for Research and Studies, Volume 20, Fourth Issue, 2005, Jordan.
- [16] Dr. Ja'far Mahmoud al-Mughrabi, Explaining the provisions of the Labor Law according to the latest amendments and the jurisprudence of the Court of Cassation, First Edition, Dar al-Thaqafa for Publishing and Distribution, Amman, 2006.
- [17] Dr. Salah Diab, Al-Wajeez in Explaining the Provisions of the Labor and Social Insurance Law in the Kingdom of Bahrain, First Edition, Publications of the University of Applied Sciences, Bahrain, 2015.
- [18] Dr. Abdulaziz Al-Morsi Hammoud, Determining the Scope of the Employer's Authority in Unilaterally by Amending the Elements of an Unlimited-Term Employment Contract, without Edition, Arab Renaissance House, Cairo, 1998.
- [19] Dr. Abdel Basset Abdel Mohsen, Provisions for the End of Service Benefit in the Labor Law, A Comparative Study (Egyptian and Jordanian), Arab Renaissance House, Cairo, 1998.
- [20] Dr. Mr. Eid Nail, New Labor Law, Arab Renaissance House, Cairo, 2008.

- [21] Dr. Khalid Jamal Ahmed Hassan, the General Theory of Obligations in Bahraini Law, University of Bahrain Publications, 2004
- [22] Dr. Sayed Ramadan, Mediator on Explaining the Labor Law, First Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2004.
- [23] Dr. Abdel-Ghani El-Roumid, Social Law, Part One, Individual Labor Relations, Without a Publishing House, Tripoli, 2012
- [24] Dr. Ahmed Shawky Mohamed, Explanation of Good Labor Law in Egyptian and French Jurisprudence and Judgment, Al-Maaref Establishment, Alexandria, 2005.
- [25] Dr. Muhammad Labib Shanab, Explanation of Labor Law Provisions, Wael Bandaqq Revision, Al-Wafa Legal Library, First Edition, 2010.
- [26] Dr. Mohamed Ahmed, Resignation in the Light of the New Labor Law, Arab Renaissance House, Cairo, 2008.
- [27] Ahmed Mohamed Radwan, Project Lapse, Individual Duration Contract in Egyptian Labor Law, Master Thesis, Cairo University, 2010.
- [28] Dr. Abdul-Razzaq Al-Sanhouri, Mediator in Explaining the Civil Law - Theory of Commitment - Part Three, Tafeeh Advisor Ahmad Al-Maraghi.