INTRODUCTION

The fulfilment of a contractual undertaking may be hindered or permanently frustrated either by the direct failure of one of the contracting parties to honour his promise (breach), or as a result of events or occurrences for which none of the contracting parties is responsible. A legal concept which deals with events of the latter kind is force majeure.

Force majeure has been defined as "circumstances outside one's control". Others refer to it as signifying "superior force".

As a modern legal doctrine, the term was first adopted by the French Civil Code of 1804. Today, force majeure is a legal term of art which is familiar in one form or another to courts and lawyers of various legal jurisdictions, particularly in areas involving transnational commercial transactions.

Comparatively speaking, the civil law doctrine of force majeure is not found in the general English common law. Although the term does tend to occur in certain contracts governed by common law, its recognition and application has been limited to instances where contracting parties have expressly agreed on its application to their relationship. The definition and extent of application of force majeure is therefore entirely dependent on the construction of the clause providing for it. The absence of a

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1 Harrap’s Standard French and English Dictionary, Part I, p.375. The comparable Latin phrase is vis major, which has been defined by the Oxford English Dictionary (1933), vol. 12, p.243, as "such a degree of superior force that no effective resistance can be made to it".


3 In Makoulis v. Priestman & Co 1 KB 681 at pp.686-7, Bailhache J stated that: "[t]he words 'force majeure' are not words which we generally find in an English contract. They are taken from the Code Napoleon."

In particular, see Articles 1147 and 1148 of the French Civil Code. For those interested in the historical origin of the concept of force majeure, its underpinning idea may be found in most families of law. Thus, for example, it has been observed that in the Hammurabi laws "[t]he general rule is that the hirer of an ox is bound to return it safe and undamaged but he is excused from his liability for its death in two cases: the first is in §. 244 where the ox has been devoured by a lion 'in the open country'; the second is in §. 249 when a god has struck it ..."; Driver and Miles, The Babylonian Laws (1952), pp.438-40; also p.194.

For the development of the concept of impossibility emanating from supervening events in the Canon and Roman law see, for example, Feenstra, "Impossibilitas and Clausula Rebus sic Stantibus", in Daube Noster: Essays in History for David Daube (Watson, ed.) (1974), pp.77-80.

4 It is common to include in commercial contracts what one might call risk allocation clauses, which quite often include reference to force majeure.
general principle of *force majeure* in English law does not, however, conceal the fact that the common law doctrines of frustration and impossibility of performance (although conceptually different), are analogous to *force majeure* and indeed bear many similarities to it. Therefore, one may conclude that the general idea of the legal doctrine of *force majeure* has been recognised, in one form or another, by the majority of the world legal systems.  

The aim of this article is to cast some light on the nature, scope and consequences of *force majeure* and its relevant legal principles as applied in contract laws of a selected number of Arab legal jurisdictions.

**FORCE MAJEURE IN ARAB CONTRACT LAW**

Although this article is mainly concerned with modern Arab contract law, a word is first in order on whether the concept of *force majeure*, or a similar concept, was known to traditional Islamic law.

**Islamic Law**

Traditional Islamic law did not provide for a unified legal doctrine which might be regarded as analogous to *force majeure* as applied, as we shall see, in modern Arab legal systems. It has been observed, however, that in a number of nominate contracts (contracts of sale of crops and leases), certain rules were identified by Muslim jurists which may be considered akin to the doctrine of *force majeure*. Thus, concepts such

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5 For a stimulating analysis of the conceptual differences between the civil concept of *force majeure* and the common law doctrine of frustration see Nicholas, “Force Majeure and Frustration”, 27 American Journal of Comparative Law (1979), pp.231–42.


7 The legal systems considered in this article are the Egyptian, Syrian, Kuwaiti, Iraqi, Sudanese, Algerian, Jordanian, Libyan, Yemeni and the United Arab Emirates. It is to be noted, however, that the legal systems which are not specifically mentioned are not much different from the ones which are.
