



## RESEARCH ARTICLE

## Amended Requirement for Contractual Liability in the Egyptian Civil Code

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ARTICLE INFO	ABSTRACT
Received: Aug 27, 2024 Accepted: Oct 19, 2024	If contractual liability is the penalty for breach of my contract obligation. If the contract itself originated from the contractors' will; This common will possesses the amendment of the liability provisions resulting from the breach of this contract. Whether by maximizing the debtor's liability, or mitigating liability to the point of exemption. Only the technical nature of the formation of the contract or the notion of public order was constrained by the will in this regard. Contractors may agree to regulate the effects of liability arising from breach of contract, other than as regulated by law. refouler of the debtor and refrain from arranging its effects against the debtor despite the availability of all its elements, thereby not being bound by the creditor's compensation. By reducing them while remaining indebted to the debtor, the debtor's impact is diminished before the debtor and it is therefore only obliged to pay partial compensation.
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### INTRODUCTION

Contractual liability is the penalty for breach of my contract obligation. If the contract itself originates from the contractors' will, this common will possesses the amendment from the liability provisions of the breach of this contract. Whether by maximizing the debtor's liability or mitigating liability to the point of exemption. Only the technical nature of the formation of the contract or the notion of public order was constrained by the will in this regard. Contractors may agree to regulate the effects of liability arising from a breach of contract, other than as regulated by law. Either by removing it from the debtor and refraining from having its effects imposed on the debtor despite the availability of all its elements, and hence not being liable to compensation before the creditor. By reducing them while remaining on the debtor's shoulders, their impact before the debtor has diminished. The requirement of exemption from liability for the debtor's errors in the performance of its obligation is limited to the minor error. The requirement is void if the debtor's breach of its obligation is due to fraud or serious error. If the legislator has authorized the agreement in the contractual relations service, to lift the debtor's liability for its minor error, and for all the errors of its assistants, even if intentional, there is no doubt as to the validity of the contract liability mitigation agreement at the same limit. Because the mitigation agreement as a partial exemption, less serious than the liability agreement, hence its validity.

### Importance of the study

The importance of research is to highlight the role of modified liability agreements that are a departure from the general provisions of contractual liability. If the basis for contractual liability is the failure of individuals to fulfil their obligations arising from the contract and it is therefore logical for the debtor to be contractually liable for its failure to fulfil the obligation arising from the contract.

However, contractors may agree to amend the liability rules by relaxing or tightening them. It may be agreed that the debtor shall also be liable for a sudden incident or force majeure. It may be agreed that the debtor may be relieved of any liability arising from the performance of its obligation only from its fraud or serious error.

### **Problem of the study**

The problem with the research is the examination of modified contractual liability agreements, which are a departure from the general rules of contractual liability, which provide that the debtor is liable for its own fault in the event of a breach of obligations arising from its contract with the creditor. How far can it be agreed to amend the provisions civil liability and whether it may be mitigated or emphasized.

## **METHODOLOGY**

In this study, the researcher relied on the descriptive analytical method, as the most appropriate way of examining the nature of this topic, in addressing the reality of modified agreements on contractual liability, and analysing the legal texts governing them, which are contained in Egypt's Civil Code.

### **Plan of the study**

We address the subject of the study through the following plan.

1. Concept of modified requirement of liability.
2. Types of modified conditions for contractual liability.
  - 1/2. Condition exempted from contractual liability
  - 2/2. Strict requirement for contractual liability.
3. Scope of the modified clause for contractual liability.
4. Implications of the modified requirement of contractual liability.

### **1. Concept of modified requirement of liability**

The asset is that the contractual liability is realized if the debtor breaches all or some of its obligations arising out of the contract. The breach results in damage to the creditor. The causal link between the breach and the damage is realized, but the contractor and the strong party to the contract seeks to improve its conditions for its benefit. They may include in their contracts clauses that contravene these rules and amend their liability (Gomaei 1993, p. 23, 26). The explanatory memorandum of the preliminary draft of the Egyptian Civil Code states: "The debtor may modify the extent of its liability by special agreement. It may intensify its provisions and accept the liability of sudden incidents. It may mitigate these provisions by requiring exemption from contractual error. However, the requirement is invalidated if such an error is fraudulent or gross error (Zaki 1983, p. 200) and the Agreement may not be waived from omission, in both cases liability is considered public order. However, liability arising from error may be insured even if it is gross without liability arising from fraud (Zaki 1990, p. 10).

The modified conditions for liability may therefore be defined as agreements intended to modify the effects of liability arising out of a breach of contract, or arising out of a wrongful act by either exempting the debtor's liability (Zaki 1990, p. 10) or by removing or reducing part of the debtor's liability and limiting or stricting its liability for the remaining portion by agreeing that the debtor is responsible for the sudden incident and force majeure (Marks 1987, p. 637). The requirement of exemption from liability for the debtor's errors in the performance of its obligation is limited to the minor error. The requirement is void if the debtor's breach of its obligation is due to fraud or serious error. Accordingly, article 217 provides that "1. It may be agreed that the debtor shall bear the responsibility for the sudden incident and force majeure. The debtor may also be agreed to be exempted from any liability arising from the failure to perform its contractual obligation except as a result of its fraud or serious error. However, the debtor may require that it not be liable for fraud or serious error by persons it employs in the performance of its obligation. Any requirement to exempt from liability for wrongful act is null and void. The explanatory memorandum of the preliminary draft states: "The provisions of article 295 are only a codification of the rules that have been eradicated by Egypt in this regard. It may make the burden of liability even stronger by agreeing to bear the liability

of the sudden incident, thereby making the debtor insured to the creditor. Liability may, by contrast, be reduced by requiring exemption from the liability of a contractual error, except on the basis of fraud or serious error.

The agreement is valid for the errors of the debtor's assistants and assistants, regardless of their gravity, even if they have fraudulent performance of the obligation. It may also be agreed that the debtor will be liable for the sudden incident and force majeure. It has been held that there is no legal prohibition against requiring the contractor to be held liable for the failure to fulfil arising from force majeure, as it is not contrary to public order in this Agreement. If the legislator has authorized the agreement in the contractual relations service, to lift the debtor's liability for its minor error, and for all the errors of its assistants, albeit intentional, there is no doubt as to the validity of the contract liability mitigation agreement within the same limits. Because the mitigation agreement as a partial exemption, less serious than the liability liability liability agreement, hence its validity (Zaki 1983, p. 206).

If the law establishes responsibility for wrongful act, its provisions relate to public order and, accordingly, it is not possible to agree to exempt it or to amend its provisions. Thus, any requirement to exempt the debtor from the default liability arising from his personal act, and from the act of persons for whom the law is responsible, is null and void. According to the explanatory memorandum of the preliminary project, individuals have no absolute freedom to agree to amend the liability provisions. As agreement to exempt from serious error and fraud may not be granted in contractual liability. The requirement of exemption from default, regardless of the degree of error, is also prohibited. Such a requirement is invalid for violation of public order.

## **2. Types of modified conditions for contractual liability.**

Since the provisions of contractual liability are not public order, contractors may therefore agree to waive or stricter such liability.

### **2.1 Condition exempted from contractual liability**

The exempt clause is an agreement intended to lift the entire liability of the perpetrator of the wrongful act or contract and to prevent the claim for compensation under general rules (Marks, *op. cit.*, p. 636). The validity of the exemption clause requires agreement between or on behalf of contractors. It must meet the general substantive requirements required in all legal acts, namely, consent, convenience and cause, as well as not infringing public order and morality.

### **2.2 Strict requirement for contractual liability**

The strict requirement of contractual liability is an agreement that requires the debtor's liability in the event that its liability does not exist under general rules by making the debtor liable even for foreign cause (Abu Sa 'ud 2006, p. 239). The contract may contain a requirement that liability arising from a breach or delay in execution should not be exempted even if such delay or breach is the result of force majeure or a sudden accident And there is no doubt that these agreements are valid because they are not about public order, The parties are therefore free to determine the scope of the risks and the person they bear (Al-Awji 2007, p. 118). Article 217 of the Egyptian Civil Code states: "It may be agreed that the debtor shall bear the responsibility for the sudden incident and force majeure. It may also be agreed to exempt the debtor from any liability arising from the performance of the debtor's contractual obligation only as a result of fraud or serious error. However, the debtor may require that it not be liable for fraud or serious error by persons it employs in the performance of its obligation. Any requirement to exempt from liability for wrongful act is null and void. According to the explanatory memorandum of the preliminary draft of the Civil Code, "the provisions of article 217 are only a codification of the rules that have been eradicated by Egypt in this regard, which may make the burden of liability even stronger by agreeing to bear the liability of the sudden incident, thereby securing the creditor's face. Liability may, by contrast, be reduced by requiring exemption from the liability of a contractual error, except on the basis of fraud or serious error.

## **3. Scope of the modified clause for contractual liability.**

Liability adjustment agreements are closely linked to the amount of care required of the debtor in the performance of its contract obligation. This care is gradually graded. In the obligation to achieve

a result, where the debtor is required to achieve the contracted result, the amount of care required to achieve that result is the maximum. In this case, the debtor's liability is raised only in the case of foreign cause. The debtor is liable for the intentional act, for any serious, minor or petty error, and even for the act deprived of any error. As a consequence of this step, we can envisage an agreement to tighten contractual liability to include liability for foreign cause, which is a form of insurance that the debtor commits to the creditor (Sanhouri 2010, p. 588). We can also envisage agreement to mitigate contractual liability in the slightest way, when the debtor is not liable for its fault-free act. The obligation to investigate is then reversed as a result of an obligation of diligence, and the debtor is liable only if the creditor proves that it has made an error, albeit frivolous (Yahya 1992, p. 55). The burden of proof in diluted contractual liability falls on the creditor.

The debtor may gradually mitigate liability, requiring it to be exempt from liability for a petty error, and then for a minor error. If this is achieved, it shall be liable only if the creditor proves on its part the intentional or serious error. However, the debtor may not require that the debtor be relieved of liability for his or her intentional act or for his or her grave error unless the liability is the consequence of the act of a third party. In application, the legislator provided for the guarantee of entitlement, allowing contractors to agree to increase, diminish or cancel such security. However, the loss of security is null and void if the seller deliberately conceals the third party's right - the cause of the benefit - it thus commits fraud and then requires that it not be liable for such fraud. However, the agreement is valid if the buyer is a scientist because of the entitlement, and even the mere seller's and buyer's knowledge may amount to an implicit agreement to decrease the security, provided that such knowledge is accompanied by circumstances and circumstances that are conclusive in deriving the requirement to decrease the security, such as taking into account the alien's right to estimate the price or other conditions of sale. Article 445 provides that "1. Contractors may by special agreement increase, diminish or waive the entitlement guarantee. In the easement right, it is assumed that the seller required no security if that right was apparent or the seller had been shown by the buyer. Any condition that extinguishes or lacks security if the seller has deliberately concealed the alien's right is null and void.

The introductory draft explanatory memorandum stated that these articles shall be subject to agreement on the amendment of the guarantee and it is clear that the previous provisions in the entitlement security are not public regulations, and contractors may agree on others. They may further guarantee entitlement, for example by requiring the buyer to reimburse the seller for all expenses, even if they are luxury and even if the seller is in good faith. They may lack security, for example, by requiring the buyer not to be liable for the reimbursement of the price even if the value of the sale increases, and the validity of the agreement to decrease the security must not have been deliberately concealed by the seller.

As well as in securing hidden defects in the sale (Shinab, 1975, p. 219), the legislator authorized contractors to agree to waive the defect's security by mitigating, tightening or dropping the security. Whatever picture the requirement may take, it must be noted that the requirement is invalid and ineffective if the seller deliberately conceals the defect. This means that the buyer retains the defective seller without being able to refer to the seller for any compensation, including the seller's value or part thereof (Tanagu 2009, p. 332); that is why it would be better if the seller knew of the defect. The impairment or omission of its liability is intended to inform the buyer of this defect so that it buys only with knowledge and knowledge of the defect. Article 453 provides that "contractors may, by special agreement, increase, and decrease or waive the security, provided that any condition that extinguishes or lacks security is null and void if the seller deliberately conceals the defect in the sale of a fraud". The introductory project explanatory note stated: "The above provisions of the guarantee are not public order. An increase in the guarantee may be agreed upon as if it required a period longer than one year to file the claim, or to reduce it as long as it required less than one year or the requirement to limit the guarantee to defects that do not appear until after the technical examination, or to waive the guarantee at all. However, agreement to lose or drop is void if combined with the seller's deliberate concealment of the defect.

Unlike the general asset that allows for an agreement to exempt or mitigate liability. The legislator in the contractor's contract made it impermissible to agree to modify or mitigate the guarantee of the contractor and the 10-year engineer relating to the durability of the construction. The provisions of

this guarantee are deemed to be public order, and therefore no exemption or limitation may be agreed in advance. The contractor or engineer may not require that once the employer receives the construction, the employer is discharged from the guarantee for all both apparent and hidden defects. Similarly, a five-year guarantee may not be required from the time of receipt of the work instead of ten years, or a requirement that the guarantee be limited to certain defects, or that the guarantee does not include certain defects. All these agreements are invalid for breach of public order and the employer is fully guaranteed for all defects for each 10-year period notwithstanding any contrary agreement. However, there is nothing to prevent the guarantee from being tightened, since the guarantee is intended to protect the employer and there is nothing to prevent it. Security for defects may be required to remain for a period of more than ten years depending on the size and accuracy of the enterprises' work. It may also be agreed that the guarantee includes apparent defects for 10 years, less or more, and that the guarantee of force majeure may be agreed upon by the contractor or engineer. Article 653 of the Code stipulates that: "Any condition intended to exempt the architect and the contractor from the guarantee shall be null and void. The introductory project explanatory note stated that "the category of contractors and engineers is always the most experienced and powerful in imposing their terms. If the legislator were silent on the invalidity of pre-exemption agreements, contractors and engineers could impose their preconditions in the contract and renounce liability".

In the obligation to take care, the degree of care required is that of the habitual person. The debtor is therefore not liable for the foreign cause, for the act free of error, or for the petty error. He is solely responsible for his wilful act, for his grave mistake and for his lesser mistake. A special agreement may be tightened from this liability so that the debtor becomes liable for the petty error, and then for the fault-free act. Here, the obligation to pay attention reverses into an obligation to achieve a result, as the debtor becomes responsible for achieving an outcome for which liability is discarded only by establishing the foreign cause. He may tighten his responsibility further and become even responsible for the foreign cause. This is also as much insurance as we have provided. He may mitigate his liability, not being responsible for the minor error, but only for the intentional act, and for the serious error. He cannot relieve himself on special condition of liability unless the liability is the consequence of the act of another. Accordingly, the carrier may not exempt itself from liability for incidents involving travellers in their own person, and the doctor cannot require that he not be liable for damage sustained during treatment, or by surgery if damage is caused by his fault or negligence, albeit minor (Saad 2004, p. 307).

#### **4. Implications of the modified requirement for contractual liability**

If the exemption clause from contractual liability is valid as separated by us, the debtor is exempted from liability to the extent of the requirement. The debtor remains liable beyond this. A debtor that maintains the exemption clause must prove the existence of this clause. In many cases, it is difficult for the debtor to prove that the creditor is before the exemption clause, particularly if this clause is impartial in a paper printed as a bill of lading, for example, a ticket ", or in a paper placed in an unexpected location in a hotel, restaurant or so. Two difficulties arise in such cases in accepting the exemption clause: first, the possibility that the creditor did not see this clause as being inadmissible under the theory of subconscious will, and secondly, that the clause -- presuming that the creditor saw it and did not object to it -- might be considered arbitrary by the judge to invalidate it.

### **CONCLUSION**

Modified conditions in contractual liability may be exempt or aggravated. The Egyptian legislator has authorized these conditions with respect to contractual liability without limitations. The scope of the modified terms of contractual liability is limited to liability alone. The Egyptian Civil Code authorized the exemption clause under article 217, but the Civil Code made two exceptions, namely, cases of fraud and serious error. The same law also authorized the exempt clause even in these cases in respect of the error of those used by the debtor in the performance of the debtor's obligation.

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