

Contractual Freedom and Restrictions Included Therein in The Saudi Civil Transactions Law

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Abstract

The Saudi Civil Transactions Law-2023 (SCT Law-2023) was issued with the aim of expanding contractual freedom in a manner that keeps pace with the evolution witnessed by the Kingdom of Saudi Arabia (KSA) in all fields and the required flexibility in concluding contracts. The article aims to assess the status of the SCT Law-2023 on the issue of contractual freedom, by representing its manifestations and restrictions contained therein, by relying on the descriptive and analytical methodologies of the law provisions, and addressing the concept of contractual freedom in comparative law and Islamic Fiqh, where it is concluded that the SCT Law-2023 has a moderate status of the autonomy of the will principle. The main point is that the person's freedom is to contract or not, the freedom to express his will and the obligation or liability to implement the contract. On the other hand, it does not let the will dictate so it is dominated by the establishment of legal relations, and determine their effects without regard to public interest. This means that the guarantee of contractual freedom does not imply immunity from restrictions required by public interests and stability of dealings.

Keywords: *The autonomy of the will, Saudi Transaction Civil Law, Adhesion contracts, Public policy, Extraordinary Events, Contract Binding Force*

INTRODUCTION

The development of the legislative environment is one of the most important pillars of the KSA's Vision 2030. This is manifested in the updating and reform of laws that preserve rights and entrench the principles of justice and transparency. (WAS, 2021) In this context, the Saudi Civil Transactions Law-2023 (SCT Law-2023) was issued by Royal Decree No. (M/191) dated 18/6/2023 and entered into force on 17/12/2023⁽²⁾, in which it aims to enhance the stability of dealings, expand contractual freedom, and emphasize that the contracts and conditions shall be presumed valid and binding in line with the rapid evolution witnessed by the Kingdom in all fields, this requires flexibility in concluding contracts in a way that contributes to enhancing the stability of judicial rulings and enhancing trust in the investment environment in the Kingdom (Ministry of Justice, 2023).

An open market economy with free competition can only be achieved if contractual freedom in connection with regulations ensures effective competition within a guaranteed internal market (Basedow, 2008). Contractual freedom means that everyone has full freedom to contract or not, to choose the other contracting party in the way of expressing his will, and the sufficiency of consent to conduct legal action or disposition, and the objective effects of contractual freedom; Contract binding force, meaning that the contract must be implemented according to the conditions it contains, and that it may not be amended or revoked except by agreement between the parties. There is no doubt that contractual freedom - as such - cannot be accepted without restrictions, especially as economic and social circumstances and factors change, because it will become a tool in the strong party's hands dictating its terms to the weak party, and exploiting it under the guise of the parties' free will, which will result in unbalanced relations marred by injustice.

Importance

This article is characterized by its importance based on the SCT law's interest in keeping pace with economic and social transformations and the extent of their impact in the legal field, as the expansion of contractual freedom is one of the most important goals of the SCT Law-2023. For both parties, it has ensured the freedom

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(2) "SCT Law-2023" is an abbreviation of "The Saudi Civil Transactions Law-2023"

to determine the contract's content and the freedom to determine the consequences thereof. However, it imposed a number of restrictions aimed at either alerting contracting parties to the seriousness of the conduct, protecting the weak party in the contract, working on the supremacy of justice idea in contracts, whether at the time of their conclusion or implementation, or preserving the contract and desire to continue the relationship between the two parties.

Objectives

Since the expansion of contractual freedom is one of the most important objectives of the SCT Law-2023, the issue that requires its analysis is to identify the manifestations of contractual freedom stipulated, the restrictions set on this freedom, the desired purpose of these restrictions and the extent of their impact on contractual freedom.

METHODOLOGY AND PLAN

The article relied on descriptive and analytical methodologies, by extrapolating the provisions of the SCT Law-2023 and analyzing them legally, to identify the manifestations of contractual freedom and the restrictions mentioned by the law, to reach the article objectives. It is divided into an introduction, two chapters and a conclusion section. The first chapter presents the concept of contractual freedom in comparative law and Islamic Fiqh and the second chapter addresses the position of the SCT Law-2023 on contractual freedom by outlining the manifestations of contractual freedom, both at the contract formation phase and with regard to its binding force, then presenting restrictions contained therein. Finally, a conclusion to the most important results and recommendations.

The Concept of Contractual Freedom in Comparative Law And Islamic Fiqh

A contract is defined as the consent of two or more wills to establish a certain legal effect, represented by the creation, transfer, modification or termination of an obligation (Sanhoury,2004). The contract is the result of the parties' will. In legal thought, "contractual freedom" has been linked to the principle of "autonomy of will" that has passed with varied transformations; between denial, spread and regression, until its idea stabilized.

The Emergence of the Principle of The Autonomy of The Will and Its Influenced by The Individualistic Doctrine.

Contracts in Roman law were dominated by formalism, which is controlled by certain situations, discernible signs, words and writing, but the mere agreement of the two wills does not conclude a contract and does not generate an obligation. The debtor is only obligated if he has fulfilled the forms drawn, and his obligation is valid even if the real reason for which he committed was not exist or not materialize or was illegal or was violation of morals. The contract derives its validity from its form not from its subject matter. Thus, Roman law did not mention the principle of the autonomy of the will in contracts at any stage in general, but formalism - after it was legalized- remained the basis of the contract, where the verbal contract remained until the last epoch of Roman law, the template in which the need for unknown agreements seems to be emptied until it becomes binding (Al-Arabi, 2017).

In the Middle Ages, formalism did not cease, and the will to form contracts did not become independent except gradually, as formalism continued in its aforementioned conditions until the end of the twelfth century, and the will began to gradually strengthen its impact on contract formation. The Church called for respecting covenants and charters, stressing that every agreement was binding, even if it was stripped of formality (Hamad, 1980).

The Autonomy of Will has had a great impact on the legalization after the spread of the individualistic doctrine that sanctifies individual freedom, which prevailed in the seventeenth century, and reached its peak in the eighteenth century to the late nineteenth century, where economic, philosophical, and political theories saturated with the spread of the spirit of individualism stipulated that there is a natural law based on the person's freedom and the necessity of his will independence and the ease of this will for all economic and social laws in life, and that free will is the source of all contractual obligations. In addition, this will determine the legal consequences of the obligation (Al-Arabi, 2017).

The principle of the autonomy of will has been established and has become a pillar on which legal theories are built; it includes two concepts. The first is that all obligations are due to free will, and the second is that the will is not limited to being the source of obligations; it is also the supreme reference in the consequences of these obligations (Al-Arabi, 2017). It is the will that creates legal rights and standing just as the law does, but the contract, according to the proponents of the principle of the autonomy of the will, transcends the law itself (Al-Ashmawy, 2016).

The principle of autonomy of the will has two vital results: contractual freedom and contract binding force. As for contractual freedom, according to the principle of the autonomy of the will, it means that everyone has full freedom to contract, choose the other contracting party, and determine the content and form of the contract. Formally, it means the contracting party's freedom to express his will and the sufficiency of consent to conduct legal acts in addition to updating or concluding as many contracts as they want without being bound by the types of named contracts that are approved and regulated by the law. The objective consequence of the freedom to contract is the contract binding force, which means that the contract must be implemented according to the conditions contained therein, and it may not be modified or revoked except by agreement between its parties (Shahab, 1987).

Decline of the Principle of The Autonomy of The Will Influenced by Social Doctrine

If the principle of the autonomy of the will was based on an economic basis in the eighteenth and nineteenth centuries; however, it was also affected by economic factors as a result of the establishment of large industries and the emergence of large companies; the imbalance between the two parties of the contractual relationship: companies on the one hand, and workers on the other, which led to the emergence of socialist ideas embodied in social doctrine, which stood in the face of individualism doctrine in a way that led to a derogation from the principle of the autonomy of the will, where the proponents of the social doctrine consider that the contractual obligations themselves - which are based on the agreement of two wills-are not based purely on the will of the two parties. There are social considerations due to the stability that must be provided in dealings and the trust generated by the contract in the contracting parties' intentions, which are the basis of the contracts' binding force. The contract is only a law of social laws intended to achieve social solidarity and direct the will for this purpose, not aiming to achieve something to the autonomy of the will (Al-Arabi, 2017).

Evaluation of the Principle of The Autonomy of Will

Setting things in perspective requires that the basis of the contract binding force is no longer the autonomy of the will to release it, but that there are restrictions on it derived from the law. If free will can conclude as many contracts under the conditions it pleases, but this is within the limits of the restrictions prescribed by the law, these boundaries drawn by the law at the present time are considered the field of the autonomy of the will, as it recognizes this autonomy, but confines it to a reasonable boundary, in which the will is balanced with justice and public interest (Sanhoury,2004).

The freedom of contracting does not mean that the autonomy of the will has a full and final role in forming contracts and determining their effects, as the law may set restrictions on contracts - within the scope of private law - of which he observes limits to public policy that may not be infringement and may subject them to the rules of documentation or formality stipulated in them. In addition, it may restore to some contracts the economic balance that is imbalanced among their parties. It positively intervenes in contracts as a focus of their obligations to redress those who enter them from weak people.

This means that the law may draw limits to the will that may not be exceeded by its autonomy, so that its role remains within a logical boundary, in which the will is balanced on the grounds of justice and facts of the public interest; therefore, Freedom of Contract is a qualified and not an absolute right. There is no absolute freedom to do as one will or contract as one chooses (Sccourt, 1995).

Modern civil legislation stands on the principle of the autonomy of the will in a moderate position, as the Egyptian Civil Code explicitly stipulates that *pacta sunt servanda*⁽³⁾; it may not be revoked or altered only by mutual consent of the parties or for reasons provided by law (Egyptian Civil Code, 1948, Article: 147/1).

Considering the French Civil Code of 1804, which was established after the French Revolution on the basis of sanctioning the person's freedom and continuing respect for his will, even if the principle is not explicitly stated, the French Court of Cassation called it a general principle, as it stipulated that private law contracts are subject to the principle of contractual freedom unless restricted by law (Cour de Cassation, 1987). The French Constitutional Council also described the principle of freedom of contract as its own constitutional principle (JORF, 2013), and with the issuance of the amended French Contract Law 2016, the moderate position on contractual freedom crystallized. Article (1102) affirms that everyone has freedom to contract or not, to choose who to contract with, and to determine the content and form of the contract within the limits determined by law, and that contractual freedom does not allow the violation of rules related to public policy. Additionally, as stressed in Article (1103), the most significant effect of contractual freedom is that the contract is a *pacta sunt servanda*, stating that contracts concluded legally are lawful for its parties. Moreover, Article (1193) of the same decree affirms that contracts may not be amended or revoked, except for the mutual consent of the parties or for the reasons mentioned (Ordonnance n° 2016-131).

The Position of Islamic Fiqh on Contractual Freedom

In view of Islamic Fiqh, whose formation was completed in the seventh and eighth centuries AD, it was found that individual thought adopts manifestations resulting from the principle of the autonomy of the will (Qutb, 1989). It is stipulated that consent is the basis of contracts, as Allah Almighty said in the Holy Quran regarding financial dealings: {O you who believe (who are âmenû)! Do not eat up your property among yourselves falsely (unjustly) except that it be trading by your mutual consent}(Surat An-Nisa: Verse 29), the Prophet (PBUH) says: {But selling by consent}(Al-Qazwini, 2009, NO: 2185), accordingly, it is the mere consent that generates the contract and its obligations, without the need to practice a certain formality, and the free will to conclude the contract without being subject to any kind of contractual coercion, except as required by the rules of justice and group interest, such as the judge selling the stalling debtor's property to pay his debts as security for its payment, the sale of monopolized properties for the benefit of the group, and acquisition of land for public interests (Hamad, 1980).

As for contractual freedom, the prevailing opinion in Islamic Fiqh is that the origin in contracts and the related conditions of permissibility unless prohibited by Sharia or violation to its provisions, the Almighty said {O you who believed, fulfill contracts}(Surat Al-Ma'idah: Verse 1), this dignified verse stipulated the principle of the contract binding force, and obligated the party to fulfill contract which he concluded with his own free will, so the contract becomes binding on him, in order to preserve the principle of dealing stability. In the absence of a provision indicating any restriction on the types of contracts, every subject is not prohibited by Sharia; it may be contracted (Al-Sarkhasi, 1989; Al-Zarqani, 2002; Al-Shafi'i, 1983; Qudamah, 1968).

THE POSITION OF THE SCT LAW 2023 ON CONTRACTUAL FREEDOM

It is presented as following the position of SCT Law 2023 from contractual freedom, to represent its manifestations of release and restriction, as follows:

The Manifestations of Contractual Freedom in The SCT Law 2023

The manifestations of contractual freedom are manifested in person freedom to contract or not, freedom to express one's will, and consent in the formation of contracts (Skhab-Buchynska, 2017), and shed light on the extrapolation of the provisions of the SCT Law, as follows:

(3) "Pacta sunt servanda" is a Latin phrase that means "agreements must be kept" or "promises must be fulfilled". The phrase is a fundamental principle of contract law and refers to that the contract obligations must be fulfilled. (Wehberg, 1959).

Persons Freedom To Contract or Not

One manifestation of contractual freedom is the person's freedom to engage or refrain from a lawful act, and that person cannot be forced to enter into a contractual relationship that he does not intend (Al-Khatib, 2019).

By extrapolating the SCT Law, the origin in it, is freedom to contract, where the first pillar of the contract is "consent" as Consent is attained when the mutual intent of two or more parties who have the legal capacity to conclude contracts is expressed by any means indicating such intent (SCT LAW- 2023, Article 32). For the contract to be valid, the consent must be valid, and this is issued initially by a competent person (Skhab-Buchynska, 2017); as every person is entitled to act, unless he is fully or partially incompetent or as prescribed by legal provisions (SCT LAW- 2023, Articles 31:69).

The SCT Law has also expanded on contractual freedom, as it has retained it in some assumptions in which it results in an effect other than the effect originally intended, and this is shown in contract derogation. If a part of the contract becomes null and void or may be nullified, nullity shall be limited to such part, unless it is established that the contracting party would not have consented to the contract without such part. In such a case, he may demand nullification of the contract (SCT LAW- 2023, Article 84), as also shown in the contract conversion. If a null contract contains the elements of another contract, the other contract shall be deemed concluded if the contracting parties seem to have intended to enter into such contract (SCT LAW- 2023, Article 85).

Thus, it can be said that the SCT Law reflects the most important aspects of contractual freedom at the stage of contract formation; as consent is the basis of the contractual obligation, persons have full freedom to contract or not.

Freedom To Express One's Will

Will is the essence of a contract. It is the cornerstone of consent, so one does not contract as he does not intend (Shahab, 1987). Legal disposition is the tendency of the will to produce a legal effect determined by the law pursuant to the will. Therefore, according to contractual freedom, the will can establish a legal disposition and determine its effects. Therefore, this is a two-pronged principle. The first part relates to the form, which is the principle of consent that makes the will alone devoid of any formality sufficient to create the conduct. All what is required is an expression of will, and there is no external manifestation to be taken by the expression of will because it is not subject to a specific form. This is a requirement for consent in the contracts. The contractor discloses his will as he pleases, and it does not matter after that its form, as long as it expresses the will. Hence, the expression of will may be explicit and implicit (Al-Sada, 1997).

The provisions of expressing the will are included in SCT Law 2023, which stresses that intent may be expressed verbally, in writing, by a discernible sign, or by exchange, and it may be expressed explicitly or implicitly, unless otherwise required by legal provisions, agreement, or the nature of the dealing (SCT LAW- 2023, Article 33).

Consent In Contract Formation

Contracts are divided in terms of their formation into consensual, pro forma, and in-kind contracts. A consensual contract is sufficient to be concluded by mere consent of the contracting parties, that is, the concurrence of an offer and acceptance, unless the law stipulates or the agreement between the parties is otherwise (Shahab, 1987). This is the essence of contractual freedom in terms of form, as the consent two wills are completely sufficient for the conclusion of a contract without the need to have such consent in a particular form, as contractual freedom requires consent that releases the contract from restrictions and obstacles and facilitates the conclusion of contracts (Al-Ashmawy, 2016).

By extrapolating the SCT LAW 2023 provisions, it was found that the main point is that contracts are consensual, so consent is sufficient for their conclusion. It is stipulated that a contract is concluded by the concurrence of an offer and acceptance to create a legal effect, subject to the legal provisions governing the conclusion of contracts (SCT LAW 2023, Article 31).

Contract Binding Force

Referring to SCT Law-2023, it is found that the application of the substantive part of the freedom of contract does not require a statement. It is stipulated that contracts and conditions shall be presumed valid and binding (SCT Law-2023, Article 720, Rule 10) and that a valid contract may not be terminated or amended except by agreement or pursuant to a legal provision. The rights created under a contract shall become effective immediately upon conclusion thereof and shall not be contingent on payment or otherwise, unless a legal provision stipulates otherwise. The contracting parties must perform their obligations under the contract (SCT Law-2023, Article 94), and contract shall be implemented as per its provisions and in a manner consistent with good faith practices. The contract shall be binding on a contracting party not only in terms of its provisions but also in relation to other requirements as prescribed by legal provisions, customs, and the nature of the contract (SCT Law-2023, Article 95). This undoubtedly reflects the most important substantive effect of contractual freedom, namely, the contract binding force.

Persons' Freedom to Create Or Conclude As Many Contracts

Contracts are divided in terms of the legislator's handling into nominate and innominate contracts, where the legislation establishes a general regulation of contracts, followed by a special regulation for a number of contracts, with each contract under a given name. The nominate contract is the contract that was designated by the law in a particular name and was regulated by special provisions, and the contract in other than the special provisions that took over its regulation, is subject to the general rules governing all other contracts (Sanhoury,2004). As SCT Law-2023; Part two is devoted to the provisions of the nominate contracts, and it is divided into five chapters: it addresses contracts relating to ownership, usufruct contracts, work contracts, and Partnership Contracts, then Suretyship and Insurance Contracts (SCT Law-2023, Articles 307:607).

As for the innominate contract, it is the contract that was not specified by the SCT Law-2023 in a specific name and did not set a special or independent regulation for it, so it is subject to its composition and its implications to the general rules of the contract theory. As these contracts are less common in practical life - than the nominate contracts- the SCT Law-2023 does not elaborate special provisions for them (Al-Arabi, 2017), and as such the first section of the SCT Law-2023 provisions was devoted in general to obligations (SCT Law-2023, Articles 30:306), as it stipulated that the provisions of this Section shall apply to nominate and innominate contracts, without prejudice to the legal provisions governing specific contracts (SCT Law-2023, Article 30).

Accordingly, it can be said that one of the manifestations of contractual freedom at the contract formation phase in the SCT Law-2023 is that people may create or conclude as many contracts, without being bound by the types of nominate contracts, and only public policy and jus cogens legal rules limit their freedom.

Contractual Freedom In Determining The Content Of The Contract And Its Effects

One of the effects of contractual freedom is the contracting parties' freedom to determine the content and effects of the contract whether for nominate and innominate contracts, as by extrapolating the SCT Law-2023 provisions, it was found that the phrase "unless agreed otherwise" has been repeated about (60) times, including what is stipulated in Article (38) of the Law that If the contracting parties are in the same place or are in two different places communicating through live communication means, the contract shall be deemed concluded at the time and place where the acceptance is made, unless agreed otherwise. If the contracting parties are not in each other's presence, the contract shall be deemed concluded at the time and place where the offeror becomes aware of the acceptance unless agreed otherwise (SCT Law-2023, Article 38).

This means, beyond any doubt, that the contracting parties may, by their agreement, breach the law, whether for nominate or innominate contracts, because the concept in those rules is that they are complementary to the will of the parties, and then it is permissible to agree on what is a violation to them, taking into account the jus cogens rules in which the contracting parties cannot agree on what is a violation to them. Thus, the freedom to set conditions cannot be restricted unless there is respect for public policy and jus cogens legal provisions.

Manifestations of Will Restriction In The SCT Law 2023

The restrictions provided by the law on contractual freedom, whether at the stage of forming the legal disposition, or with regard to the binding force of the contract, will be presented as follows:

The Breadth of Public Policy Idea

There is no doubt that each society has a cultural, moral, political, and economic heritage that has been formed over many years, forming in its entirety a public policy on which this society is based, and the contract falls under this policy as one of the most important means of dealing with members of society. Public policy is defined, in general, as a set of fundamental rules on which society is based in its foundation, whether politically, socially, or economically (Mansour, 2006), and in SCT Law 2023, Royal Decree No. 44982 dated 4/10/1433 AH defined public policy as the overall rules in Sharia based on the provisions of the Holy Quran and the Sunnah, and by extrapolating the SCT Law 2023 provisions, it is found that the law restricts from the scope of contractual freedom by not violating the provisions of the public policy. In which it is obliged that the subject shall not be in violation of public policy (SCT Law-2023, Article 72/1/b), and there is no doubt that this restriction, in light of its general definition, may affect contractual freedom, we call on SCT Law 2023 to develop an inclusive definition of the idea of public policy, in line with the legislative development experienced by the Kingdom, in a way that contributes to the achievement of the SCT Law 2023 objectives, which comes on top of contractual freedom.

Restriction of A Person's Freedom To Contract Or Not

The concept of contractual freedom requires a person's freedom to proceed or refrain from lawful conduct (legal disposition), as prescribed in SCT Law 2023, but has placed restrictions on a person's freedom to contract or not, including the binding offer, the right of first refusal, and easement rights, as follows:

Binding Offer

An offer is defined as the offer by which the offeror expresses his will to conclude a specific contract. If it is accompanied by identical acceptance, the contract is concluded (Al-Ahwani, 1998), and the concept is in accordance with contractual freedom that the offeror may revoke his offer before the issuance of the acceptance. However, an exception to this, SCT Law 2023, stipulates cases in which the offer is binding on the offeror and he cannot withdraw from it. Rather, he is liable if he refrains from completing the contract, as stipulated, that an offeror may withdraw his offer before an acceptance is made, unless such an offer is for a specified period. (SCT Law 2023, Article 35) Therefore, the offer is binding if it is accompanied by a date, and if the offeror sets an acceptance date, he is obligated to remain positive until the expiry of this date, as the person is at fault and is liable for failure to complete the contract, for example, that the display of goods and services and the indication of their prices shall be deemed an offer, unless proven otherwise. An advertisement indicating prices shall not be deemed an offer unless evidence that it is intended as an offer exists (SCT Law 2023, Article 34/1).

Undoubtedly, this restriction imposed by the law on contractual freedom aims to protect the consumer from fake offers, which will reflect the stability of transactions in society.

Right Of First Refusal

As an exception to the principle of contractual freedom, the law should intervene to restrict the other contracting party's freedom of choice, meaning that the person remains free to conclude the contract or not, but if he decides to contract, he must contract with a specific person. Contractual freedom is limited (Al-Ashmawy, 2016), including the right of first refusal, which is the right of a partner to own a sold real property at the price for which it was sold along with the sale expenses (SCT Law 2023, Article 658). If the owner of the property decides to sell it, so the buyer is free to choose, but the law has set a restriction on this: the owner must inform the holder of the right of first refusal of this, and in this case, the holder of the right of first refusal can buy the property within the period specified by the law. The provisions of the right of first refusal are included in Articles (658:672) of SCT Law 2023. In this case, we find that the law has set a restriction on the

property owner's freedom to choose the buyer, where the priority of the partner is buying the property from his other partner in accordance with the rules determined by the law, as the partner in this case has priority in buying from others.

Restrictions on the Right Of Ownership (Easements)

The right of ownership is defined as the right confers on the owner of a thing to solely use, exploit, and dispose of such things (SCT Law 2023, Article 608), which is an absolute right in the sense that it collects all the benefits that can be derived from the property, without denying its social function that limits the owner's dispositions in favor of the group and individuals (Al-Qahtani . Al-Alaili, 2021), including what mentioned by the law on the easement rights; which is a right in rem that is established for the benefit of a real property owned by a person over a real property owned by another person (SCT Law 2023, Article 699), and examples of easements mentioned by the law are: the right of passage right of way over, the right of drainage, and the right to use a watercourse (irrigation water channel). The provisions of easement rights are included in Article (699:718) of SCT Law 2023. As the provisions regulating the right of easement represent restrictions on the right of ownership, the law set it in favor of the easement right owner, either because of the necessity arising from the retention of land from the water supply, bank, or public road.

Formality Contracts

It was mentioned that the concept in SCT Law 2023 is that the contracts are consensual (based on consent); it is sufficient to be concluded only with the consent of the contracting parties. However, the law may subject it to the notarization rules or to the formality stipulated by it. The formal contract is a contract that needs to be concluded - in addition to the consent - following a special form specified by the law (Sanhoury,2004), as SCT Law 2023 obligates the notarization of a number of contracts, including the real estate gift contract. If the gift is a real property, the gift contract shall be deemed concluded only if it is notarized in accordance with legal provisions (SCT Law 2023, Article 368). There are contracts that must be in writing; this includes Partnership Contracts, where the law obligates that Partnership, contracts provided for in this Chapter shall be made in writing; otherwise, they shall be deemed null and void (SCT Law 2023, Article 528).

The purpose of retaining formality in some contracts is to alert the disposer to the danger of the disposition that he undertakes. The purpose of the formality here is to protect the will if it undertakes a serious legal disposition that affects the financial liability of the person, including gift contracts that result in the transfer of the gift from custody of the donor to the donee. The purpose of retaining formality may be to protect the other person in good faith who wishes to deal with the property, so the sale contract does not transfer real estate ownership from the seller to the buyer as soon as it is concluded, but it must be notarized, as Article (657) of the SCT Law 2023 stipulates that: "If a legal provision stipulates a procedure for the transfer of ownership and other rights in rem, such transfer shall not take effect except upon completion of said procedure" and by reference to the law of ownership, sorting, and management of real estate units issued by Royal Decree No. (M/85) dated 15/3/2002, we find that Article (11) of it stipulates that: The procedures for transferring property in front of the competent authorities shall be conducted by notarizing contracts, endorsements and issuing the instruments relating thereto, in accordance with the ordinary statutory procedures or the applicable legal procedures ". This is considered a restriction imposed by the law on the contractual will to provide third parties in good faith with the trust and credit necessary to deal with real estate.

Adhesion Contracts

The contractual binding force is the most important objective effect of contractual freedom. A valid contract may not be terminated or amended, except by agreement or pursuant to a legal provision, and a contract shall be implemented as per its provisions and in a manner consistent with good faith practices. The concept in contracts, in general, is that they are subject to bargaining between the contracting parties, in which each contracting party has full freedom to discuss the terms of the contract and determine its effects in a manner that achieves equality between both parties, but there is a range of contracts, which are adhesion contracts, in which the strong party can impose its will on the adhering party without its will becoming defective with any defect of consent (Al-Dakkak, 2019), SCT Law 2023 has defined them as contracts that shall be deemed made

upon the acknowledgment of the offeror's non-negotiable conditions (SCT Law 2023, Article 40), and in violation of contract binding force, the law has taken the adhering party into account, as it has imposed legal protection against the arbitrariness of the other party, which is represented as:

- Amending arbitrary conditions or exempting the adhering party therefrom: This was considered a peremptory norm of public policy, the breach of which cannot be agreed upon. If a contract is concluded by way of adhesion and contains arbitrary conditions, the court may amend such conditions or exempt the adhering party therefrom, as required by equity. Any agreement to the contrary should be deemed null and void (SCT Law 2023, Article 96).
- Interpretation of the doubt in the contract in for the benefit of the adhering party: If a statement in a contract is unambiguous and in need of interpretation. Thus, the meaning thereof may not be altered on the grounds of interpretation to meet the intentions of the contracting parties. If a contract is subject to interpretation, the mutual intent of the contracting parties must be met rather than relying solely on the literal meaning of the text. Therefore, in case of doubt in interpretation, the doubt shall be interpreted in favor of the party bearing the burden of the obligation or stipulation. In adhesion contracts, the doubt shall be interpreted in favor of the adhering party (SCT Law 2023, Article 104/3).

With regard to this restriction, and with full support for the desired goal, which is to protect the weak party from arbitrary conditions, the law's definition of adhesion contracts is characterized by expansion. The majority of sales contracts from stores are contracts that shall be deemed based on the acknowledgment of the offeror's non-negotiable conditions, especially with regard to price. Therefore, according to this definition, they fall within the scope of adhesion contracts, which may open the way for challenging many contracts to include arbitrary conditions. This calls for limiting adhesion contracts to private contracts that relate to a necessary commodity or facility that is the subject to a legal or actual monopoly, or in which competition is limited in scope (Al-Sada, 1996).

Extraordinary Events Theory

The implementation of the contract -although it is concluded valid- may interfere with a change in the events under which it was concluded, in violation of the economic balance at the time of its conclusion, in a way that the debtor's obligations at the time of implementation are different in scope and extent from his obligations at the time of conclusion; there are two possibilities: either adhere to the literal implementation of the contract despite the change in events pursuant to the contract binding force, or change the content of the contractual obligation if the events under which the contract was concluded change, which means departing from the concept of the contract binding force, that is, the issue that the theory of Extraordinary Events was developed to address (Awwad, 2022).

The SCT Law 2023 adopted the theory of extraordinary events. It is stipulated that in the case of extraordinary events that were unforeseeable at the time of contracting, which made the fulfillment of a contractual obligation excessively onerous on the part of the debtor in such a way that it may cause heavy losses, the debtor may invite the other party to negotiate without undue delay. The request for negotiation shall not grant the debtor the right to not perform contractual obligations. If no agreement is reached within a reasonable period, the court may, after taking into consideration the relevant circumstances and interests of both parties, reduce the onerous obligation to a reasonable level. Any agreement contrary to the provisions of this article shall be deemed null and void (SCT Law 2023, Article 97).

Moreover, the law provides applications for extraordinary events theory, including the contracting contract; if there is any disruption to the balance of contractual obligations of both the client and the contractor due to general exceptional circumstances that could not have been anticipated at the time of concluding the contract, and the basis upon which the estimate was determined becomes no longer valid, the court may, upon consideration of the circumstances and the interests of the parties, order restoration of the contractual balance, including extending the execution period or increasing or decreasing the fees, or it may order termination of the contract (SCT Law 2023, Article 471/3).

The benefit of this restriction was manifested in which the law intervened to restore to the contract the place of the extraordinary events- its economic balance, which was imbalanced between its two parties.

Defense of Non-Performance

It is stipulated that the rights created under a contract shall become effective immediately upon conclusion and shall not be contingent on payment or otherwise, unless a legal provision stipulates otherwise. The contracting parties must perform their obligations under the contract (SCT Law 2023, Article 94/2), but a restriction is imposed on this, is represented in the Defense of Non-performance of the contract, that each contracting party has the right in bilateral contracts to fail to perform his obligation; if the other contracting party in the same contract does not perform his obligation, it paves the way for either the implementation (performance) of the contract or for termination. Therefore, it is a means for one contracting party to resort to stress on the other and force him to perform without resorting to the judiciary (Sultan, 2007).

Where the SCT Law approves for bilateral contracts, If the corresponding obligations are due, a contracting party may refuse to perform his obligations if the other contracting party fails to perform his corresponding obligation (SCT Law 2023, Article 114) .

Modification of the Penalty Clause

As mentioned above, the contracts and conditions shall be presumed valid and binding (SCT Law 2023, Article 720, Rule 10), and that a valid contract may not be terminated or amended except by agreement or pursuant to a legal provision (SCT Law 2023, Article 94), one of these requirements is what is stipulated by SCT Law 2023 in regard to the court's authority relating to the amendment of the penalty clause amount, as the law stipulated that the court may, upon a petition by the debtor, reduce the compensation if the debtor establishes that the agreed-upon compensation was excessive or that the original obligation was partially performed. The court may, upon petition by the creditor, increase the amount of compensation to the extent necessary to cover the harm if the creditor establishes that an act of fraud or gross negligence by the debtor is what causes the harm to exceed the agreed-upon compensation (SCT Law 2023, Article 179). Therefore, the purpose of imposing this restriction is to achieve a balance between the amount of compensation and the damage, such that this condition is a reason for unjustified enrichment for the creditor if it is excessive or for the debtor if he commits fraud or gross negligence.

There are many restrictions imposed by the law on contract binding force, due to various considerations, including: Nullity of exemption from the contractual liability in case of fraud or gross negligence (SCT Law 2023, Article 173/1,2), the demand nullification of the contract on the basis of unconscionability, except in relation to the property of a fully or partially incompetent person (SCT Law 2023, Article 164/2) and in case of subjecting the minority of owners in common of the property owned thereby to the majority management (SCT Law 2023, Article 622), as well as the court may, in certain circumstances, grant the debtor a grace period to perform his obligation if his circumstances so require and such deferment does not cause severe harm to the creditor (SCT Law 2023, Article 275).

CONCLUSION

At the end of this article, it is addressed that one of the most important objectives of issuing the SCT Law 2023 is to expand contractual freedom and to emphasize that the concept in contracts and conditions shall be presumed valid and binding, which is in line with the rapid development witnessed by the Kingdom (KSA) in all fields, which requires flexibility in concluding contracts.

Through this article, several results are reached, foremost of which are that the manifestations of contractual freedom that are manifested at the contract formation phase are represented by the person's freedom to embark on legal disposition or refrain from it, and that the person cannot be forced to enter into a contractual relationship that he does not want. Moreover, it is affirmed that a person's freedom may be expressed verbally, in writing, by a discernible sign, or by exchange, and it may be expressed explicitly or implicitly, unless otherwise required by legal provisions, agreements, or the nature of the dealings. The concept in the formation of contracts is consensual; Consent is sufficient for them to be held, but these manifestations are not absolute, as

the subject of an obligation shall not be in violation of public policy. Additionally, it also sets restrictions on the person's freedom to contract or not, including that binding offer, the right of first refusal, and easement rights. In addition, it subjects contracts to the rules of notarization, to a form provided for the protection of others, or to the protection of the contracting party himself.

The law has also been keen to emphasize the contract binding force, which is the most important objective effect of contractual freedom. It is mentioned that the main point in contracts and conditions is valid and binding, and that if the contract is valid, it may not be terminated or amended, except by agreement or pursuant to a legal provision. In addition, individuals may create or conclude as many contracts without being bound by the types of nominate contracts, where there is a positive intervention in certain contracts to protect the weak party, as is the case of adhesion contracts, or intervention to return to some contracts, an economic balance that has been imbalanced among the parties, as in the case of extraordinary events (and the defense of non-performance. In addition, the law emphasizing that contracts must be implemented in a manner consistent with what is required by good faith stipulates that the exemption from contractual obligation is null and void in the event of fraud or gross negligence.

Accordingly, it can be said that SCT Law 2023 has a moderate status based on the principle of autonomy of the will. On the one hand, the law does not affect the aforementioned principle to an extent that makes it non-existent, facing the law or the judge's authority. The concept is that the will is free to perform the legal effects that it tends to perform. On the other hand, it does not let the will dictate, so it is dominated by the establishment of legal relations, and determines their effects without regard to the public interest, as it has placed restrictions on the autonomy of the will in line with the evolution of modern legislation in this regard.

In conclusion, guaranteeing contractual freedom does not mean restraining the law from interfering with its rulings, as freedom necessarily requires its exercising without arbitrary restraints and not granting it immunity from those restrictions required by group interests and the stability of transactions. Therefore, the law may draw limits to the will that cannot be exceeded by autonomy. Therefore, contractual freedom is not an absolute right, but rather restricted. It is not permitted legally to release or exempt this freedom from every restriction; otherwise, it will fall into mirage or ruin.

RECOMMENDATIONS

In conclusion, to achieve one of the objectives of issuing SCT Law 2023, which is to expand contractual freedom, the followings are recommended:

Developing an inclusive definition of the term public policy, to keep pace with the legislative development in the KSA, and it is suggested to be as follows: "Provisions related to personal status such as marriage, inheritance, and descent, and provisions related to governing rules, freedom of trade, circulation of wealth, contractual freedom, individual property rules, and other rules and regulations on which public is based shall be considered public policy, in a manner that does not violate the overall rules of Sharia based on the texts of the Holy Quran and the Sunnah."

Modify Article (40) of the SCT Law and limit adhesion contracts to those related to necessary goods, services, and facilities. In the current era, the majority of sales contracts are from stores in which the acceptor is delivered with prescribed conditions set by the offeror and not accepted to be discussed, especially those related to price. According to this definition, they fall within the scope of adhesion contracts, which may open the way to challenge many contracts to claim that they include arbitrary conditions.

Standardization of dealings resulting from the breakdown of the contractual balance as a result of the emergence of general extraordinary events, whether those stipulated in general for contracts (Article 97) of the SCT Law 2023, or those of the contracting contract stipulated by (Article 471/2) of the same law, either inviting the other party to negotiate to rebalance the contract and then resort to the court, or resorting to the court directly, which depending on the circumstances and after balancing the parties interests that may require the restoration of the contractual balance, including the extension of the implementation period, increasing or decreasing the wage, or ruling to terminate the contract, and this is what we support.

Ethical Approval

This article does not contain any studies with human participants performed by any of the authors. Instead, this work is based exclusively on desk-based research, relying on commentary from legal texts and scholarly documents that are freely available in the public domain. As such, it presupposes no activity for which an ethical approval would be needed at the Author academic institution.

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