



Research Article

## Commercial Contracts Balance Restoring After Coronavirus Pandemic and Its Variants

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**Abstract:** The Covid-19 pandemic, as reported by the Asian Development Bank, has globally impacted economic sectors, causing losses over \$4 trillion. The rapid spread led to widespread disruptions in fulfilling contractual obligations, prompting legal actions by creditors for compensation or delay fines due to debtors' inability to meet obligations. Some individuals posit that the virus or its variants represent an emergent circumstance causing contractual imbalance, necessitating judicial intervention to rectify obligations if the criteria of the emergency circumstances theory are met. Conversely, there are dissenting opinions rejecting this assertion, extending their scepticism to viruses or novel phenomena. The anticipation of future viruses sharing similar characteristics is acknowledged. Within the scope of our investigation, we will explore the feasibility of categorizing the current virus as an emergency circumstance. This examination involves scrutinizing the theoretical framework and evaluating its applicability to the virus, necessitating potential judicial intervention to reinstate equilibrium within commercial contracts. The research is structured into two segments: the first delineates the definition of the emergency circumstances theory, while the second delves into the pertinent legal provisions governing it.

**Keywords:** Commercial Contracts, Coronavirus Pandemic, Emergency Circumstance, Restore Balance, Implementation, variants.

### Introduction

Certain perspectives have inclined towards regarding the Covid-19 pandemic as constituting an emergency circumstance that may lead to a lenient execution of contractual obligations. This influence is characterized not by rendering the obligation impossible but rather by imposing a significant burden on the debtor during implementation. Consequently, legal provisions permit the adjustment of the obligation to a reasonable extent to reinstate equilibrium within the contract. This may involve augmenting the creditor's obligation or mitigating the debtor's obligation, ensuring the creditor remains unharmed, thereby rectifying economic imbalances and fortifying the weaker contractual party [1, 2]. The foundation of this theory can be rooted in the necessity for economic equivalence in reciprocal obligations within exchange contracts, or it may stem from the presumed intention of contracting parties to condition contract implementation on the perpetuation of the factual situation existing at the time of contracting throughout all contract stages. In light of critiques directed at these perspectives, an alternative argument posits justice as the underlying principle, asserting the equality of contracts with no inherent superiority of one over another [3]. For the sake of clarity and expediency, this study is structured into three sections. The initial section provides an introductory overview of the Coronavirus and its

The research seeks to scrutinize the ramifications arising from the COVID-19 pandemic and its various iterations, particularly in their influence on commercial contracts. Additionally, the investigation aims to delve into the challenges confronting businesses as they endeavour to maintain equilibrium within contractual relationships. The ultimate objective is to delineate definitive strategies and solutions for enterprises to navigate and overcome these challenges in the post-pandemic era.

The study aims to achieve the following objectives:

- To determine the extent of the impact inflicted by COVID-19 and its variants on commercial contracts across diverse sectors and geographic regions.
- To identify the principal legal and regulatory measures implemented by governments and legal frameworks in addressing contractual challenges arising from the pandemic.
- To assess the strategies employed by businesses to mitigate the impact of COVID-19 on contracts, including strategic renegotiations, appropriate procedural measures, and innovative technological solutions.
- To explore the influence of technology, with a specific focus on digital contracts and blockchain, in enhancing the resilience and efficiency of commercial contract management in the face of potential future pandemics.
- To offer recommendations to businesses, policymakers,

and legal practitioners on establishing resilient contractual frameworks and maintaining equilibrium in commercial contracts in the aftermath of the COVID-19 pandemic and its variants.

This research is motivated by the urgent need to address unprecedented disruptions to global commercial contracts caused by the Covid-19 pandemic. Businesses grapple with intricate issues related to contractual commitments amid evolving public health measures and fiscal uncertainties. A comprehensive understanding and guidance are imperative. Hence, this study aims to investigate the pandemic's impact on commercial contracts globally, analyse legal and regulatory responses to mitigate these effects, and propose business strategies to navigate challenges associated with ongoing contractual issues. Additionally, the research examines the influence of technology on contract management in the post-pandemic era and its associated new norms.

## Literature Review

### *Coronavirus and Its Variants*

In this section, we will endeavour to illuminate the new coronavirus from both a scientific and historical standpoint relevant to the scope of our research, while refraining from delving into intricate details that may extend beyond the research's intended boundaries. As reported by the World Health Organization, coronaviruses constitute a substantial viral family known for inducing diverse respiratory illnesses in humans. The severity of these diseases varies based on the specific type of virus, encompassing conditions ranging from common colds to severe acute respiratory syndrome caused by the SARS virus [4]. In recent findings, medical professionals have identified a novel variant of the virus, designated as Covid-19. Notably, this strain is deemed more perilous than its precursors due to its accelerated rate of transmission [4], which prompted the World Health Organization to designate it a global pandemic, necessitating vigilance from nations and the implementation of requisite precautions.

Across the Arab world, Middle East Respiratory Syndrome (MERS), the initial coronavirus to impact Arab nations prior to Covid-19, is recognized as a coronavirus-induced ailment, identified as Middle East Syndrome Coronavirus. Camels are considered potential animal intermediaries for this virus, which first emerged in Saudi Arabia in 2012. The transmission of this virus among humans occurs through infection. According to a report from the World Health Organization, the precise nature of this virus remains incompletely understood, yet it poses significant risks, particularly for individuals afflicted with diabetes, kidney failure, and chronic lung conditions such as tuberculosis. Additionally, individuals with compromised immunity, high blood pressure, or cardiac ailments face heightened vulnerability to this virus [4]. While belonging to the family of coronaviruses, this strain does not pose a comparable threat to humanity as witnessed with the Covid-19 virus.

The Covid-19 virus, a member of the coronavirus family, exhibits similarities with the Middle East Respiratory Syndrome virus, affecting the respiratory system and posing a heightened risk to individuals with compromised immunity, diabetes, as well as respiratory and kidney ailments. The specific parameters of this disease remain indistinct, as ongoing scientific investigations seek to comprehend its distinct behaviour in contrast to other coronaviruses like SARS and Middle East Syndrome. According to the World Health Organization report, the virus was first officially reported in Wuhan, China, on December 31, 2019, with the possibility of

earlier occurrences going undocumented or without appropriate action being taken [4].

The heightened risk associated with the virus is attributed to its facile transmission both from animals to humans and among humans, facilitated by modes such as sneezing or contact with contaminated surfaces. Importantly, carriers of the infection may remain asymptomatic, making detection challenging. Furthermore, there is currently no identified treatment or vaccine that provides conclusive protection against the disease. Consequently, numerous countries have instituted measures like home isolation and social distancing to curb its spread. This has reverberated globally, impacting the economic and commercial landscapes of diverse nations, even those unaffected directly by the virus due to its linkage with international contracts.

Initially categorized as an epidemic, the disease was subsequently designated a pandemic by the World Health Organization. What distinctions exist between these two classifications? "Epidemic" is the singular form, and "epidemics" is the plural form.

**Epidemic:** Any rapidly spreading, highly contagious ailment that affects both humans and animals, often resulting in fatalities, exemplified by diseases like cholera and the plague [5].

**Pandemic:** A singular term encompassing both singular and plural instances of pandemics is "juh," representing a cunning calamity that befalls individuals in their wealth, sweeping it away entirely. The term "pandemic" denotes distress leading to the eradication and destruction of wealth, derived from "juh," signifying the annihilation and devastation caused by the pandemic. It is expressed that the pandemic infiltrated and overtook, resulting in God rendering wealth unsuccessful, signifying its destruction by the pandemic [6].

Alternatively, "calamity" is synonymous with "pandemic," with the latter serving as the plural form. The term "pandemic" is derived from "juh," encompassing years of drought and the success of money, where success signifies its destruction [7].

As documented in Mu'jam al-Ghani, reference is made to a locust infestation, with remarks indicating that the infestation led to the destruction of vegetation, crops, and trees [8].

Concerning the distinction between an epidemic and a pandemic in terminological terms, an epidemic, as per the United Nations' definition, is characterized as a disease that spreads across numerous individuals and communities concurrently [9].

A pandemic signifies the official spread of an epidemic across extensive geographic regions, spanning multiple continents and the entire globe. It doesn't imply increased lethality but rather heightened geographical dispersion. Diseases like cancer, although global, are not contagious and thus not pandemics. Similarly, Ebola, being contagious but regionally limited, doesn't qualify as a pandemic.

According to the World Health Organization, the new coronavirus (Covid-19) is officially recognized as a global pandemic. In response, the Iraqi government established a crisis management cell to prevent the virus's spread, as mandated by Iraqi law requiring the Ministry of Health to combat communicable diseases and restrict their transmission across borders. The Ministry of Health has implemented measures to contain and combat the pandemic within Iraqi

territories.<sup>1</sup>

The Iraqi Health Law No. 89 of 1981 delineates a communicable disease as "a condition arising from infection with an infectious agent or its toxins, stemming from the transmission of said agent from the source to the host, either directly or indirectly".<sup>2</sup>

Contagious diseases, as per specialists' definition, are ailments that manifest due to infection with infectious organisms or their toxins, transmitted directly or indirectly from sources of infection to a susceptible individual, through methods specific to the causative agent of each disease.<sup>3</sup> Hence, these diseases can be transmitted via contact, ingestion, inhalation, or blood transfusion. Illustrative examples encompass viral hepatitis, cholera, German measles, Covid-19, among others.

Based on reports disseminated by the World Health Organization, which detail escalating figures of infections and fatalities, along with research investigating the virus's behaviour and the demographics most susceptible to infection and mortality, it can be asserted that the Covid-19 virus and its subsequent variants exhibit the following characteristics:

This ailment remains enigmatic, with ongoing scientific research yet to reach completion. Precise details regarding its transmission methods and incubation period remain elusive. Furthermore, the virus is prone to constant genetic mutations, perplexing scientists and prompting authorities to implement measures such as curfews and mandatory social distancing. Forced social<sup>4</sup> as of the current writing, an effective treatment or vaccine for this disease has not been identified due to its persistent evolution and the emergence of new strains, each with varying symptoms and affecting distinct population groups. Certain governments advocate multiple doses of the vaccine to combat the disease, yet the efficacy in preventing infection among those who have received the recommended doses is yet to be conclusively determined.

This disease poses a significant risk to individuals with respiratory, kidney, and heart conditions, as well as those afflicted with high blood pressure, diabetes, and immunodeficiency disorders, heightening the likelihood of mortality among this demographic.

### *Emergency Circumstances*

Certain perspectives assert that the concept of emergency circumstances pertains to "a collection of rules and provisions addressing the detrimental impacts on one of the contracting parties arising from a modification in the circumstances under which the contract was established."<sup>5</sup> Moreover, the theory of emergency circumstances is not novel, as canon law jurists believed in the implicit condition within all contracts, signifying that contracts should endure in their original state as at the time of their inception [10]. The Church did not exert a distinct influence on French civil law; instead, the purview of this theory extended to administrative law, where it was applied to govern the operation of public institutions [11]. As demonstrated in the Bordeaux gas case, the French Council of State ruled that in instances where circumstances undergo abrupt and

unforeseen changes, causing financial strain on a debtor engaged in a contract with an administrative entity due to an increase in prices, the contractor has the entitlement to seek assistance from the administration to mitigate part of the financial loss incurred due to the contractual imbalance arising from these circumstances [12].

Jurisprudence distinguishes contracts falling under the theory of emergency circumstances from those outside its scope. Contracts with time as a crucial element, such as the *Istisna* contract or those with continuous or periodic implementation, fall under this theory. Contracts postponed by the debtor's facilitation are excluded from the emergency circumstances theory [13].

The prevailing jurisprudential perspective suggests that the theory of emergency circumstances applies to all contracts experiencing economic imbalance due to an exceptional event post-contract conclusion, regardless of ongoing or postponed implementation [13].

The implementation of the theory of emergency circumstances by the Iraqi legislator deviates from the conventional contract law principle of the autonomy of contracting parties. This departure is motivated by the intention to alleviate the injustice faced by a vulnerable contractor who finds themselves burdened by circumstances beyond their control, rendering the contract implementation onerous. From the legislator's standpoint, the application of this theory serves the principles of justice by mitigating harm and distributing the burden equitably between the contracting parties. The contract is not nullified, and the parties are not reverted to their pre-contractual state; instead, the obligation is diminished to a degree that aligns with the principles of justice [1]. The Iraqi legislator mandates that in cases of unforeseen and impactful exceptional incidents, even if they don't render contractual obligations impossible but make them excessively burdensome for the debtor, the court may, after balancing interests, reasonably reduce the obligation if justice demands. Any agreement contradicting this provision is deemed void [14], and the theory of emergency circumstances is regarded as an manifestation of the excuse theory endorsed by the Journal of Judicial Provisions in Article 443, wherein it is stipulated that the lease shall be annulled if an impediment to a contractually mandated procedure arises.<sup>6</sup>

The Iraqi legislator characterizes emergency circumstances as broad, unforeseeable events. If these events render the contractual obligation burdensome and unjust for the debtor, any agreement compelling the debtor to fulfil the obligation despite such challenging circumstances is deemed invalid, contrary to the provisions of Article 146/2.

### **Methods**

This study adopts a primarily qualitative and descriptive methodology, conducting an analysis of current literature and documents pertaining to commercial contracts in the context of COVID-19 and its variants. It involves a thorough review and synthesis of academic journals, scientific papers, legal literature, law texts, government regulations, industry reports,

whether this is a new infection or if the virus is reactivating after a period of recovery.

<sup>5</sup> See, Mansour, the change in the value of money and this was affected by the theory of emergency circumstances in Islamic jurisprudence, p. 153, quoted from Ayman Al-Sabbagh, a previous source, p. 1667.

<sup>6</sup> Article (146/2) of the Iraqi Civil Code in force

<sup>1</sup> See the text of Paragraph (Second) of Article (3) of the Iraqi Health Law No. 89 of 1981.

<sup>2</sup> See the text of Article (44) of the Iraqi Health Law No. 89 of 1981.

<sup>3</sup> See, Abbas Hussein Mughir Al-Rubaie, communicable diseases, article published on the website uobabylon.edu.iq

<sup>4</sup> Reports recently showed that the virus has reappeared in people who were previously infected with it, and specialists have not determined

and other relevant sources to explore the challenges posed by the pandemic on contractual relationships and the strategies employed by affected businesses to address these challenges.

The literature review involved systematic searches on databases like Google Scholar, PubMed, and legal databases, using key terms such as commercial contracts, Covid-19, legal responses, technological solutions, coronavirus pandemic, emergency circumstances, and implementation. The selected literature was critically analysed to extract key themes, trends, and findings, employing a qualitative method characterized by an analytical and interpretive approach. This approach involved classification, coding, highlighting, and interpretation to derive meaning, describe phenomena, identify patterns, discover relationships, and generate theoretical insights from the data.

## Results

### *Terms of Emergency Circumstances*

The application of this theory is contingent upon specific conditions, with paramount significance placed on the contractual nature being temporary, where time constitutes an essential element. Additionally, the exceptional event must be of a general nature, unforeseeable, and result in the contractual obligation becoming unduly burdensome for the debtor, as elucidated below:

First: The contract must be a temporary contract.

The theory applies to contracts where time is crucial, such as immediate contracts or ongoing supply contracts. Time is a significant factor in both cases. Unforeseen circumstances during contract conclusion should also be considered. Some argue against applying this theory in contingent contracts, known for potential ambiguity and significant potential loss. There are divergent opinions on the applicability of the theory of contingent circumstances. Some argue that substantial profits are highly significant [15], while others contend that certain commercial contracts, like insurance contracts, inherently involve risk and the potential for gain or loss. These factors are carefully considered at the time of contract formation under specific prevailing circumstances. Consequently, the alteration of such circumstances and the emergence of an exceptional event, beyond the ordinary person's foresight, bring these contracts within the purview of the theory of contingent circumstances [11].

Second: The accident must be public.

In the event of a general exceptional occurrence arising after the contract's conclusion, rendering the debtor's implementation burdensome, and even if partial fulfilment of the obligation has transpired, the theory is applicable to the unfulfilled portion. It is imperative that the exceptional circumstance not be specific to the debtor alone, as the criterion is objective rather than subjective. Therefore, an unforeseen health issue affecting the debtor abruptly would not qualify as an emergency; rather, it necessitates being a general incident, such as a flood or locust infestation.

Third: It must be unexpected and cannot be paid

The emergency circumstance should be unforeseeable by an average person under the same conditions as the debtor. While the event itself may be anticipated, its outcomes must be unexpected. Moreover, the circumstance should render payment impossible and surpass the debtor's capability. Both

criteria, lack of expectation and payment impossibility, are requisite, and one cannot substitute for the other.

Fourth: The obligation becomes burdensome for the debtor

The emergence of the emergency circumstance should result in the contractual obligation becoming unduly burdensome for the debtor, posing a substantial risk of significant loss, but not rendering it entirely impossible, as is the case with force majeure [16]. Consequently, the burden on the debtor signifies that the obligation is still feasible for implementation, albeit at an increased hardship for the debtor. Alleviating this burden becomes imperative to uphold principles of justice within the contract while preserving the debtor's obligation. This distinction is paramount between force majeure and emergency circumstances, despite their shared attributes of inevitability and surprise [17].

The intended burden is assessed objectively, with the judge examining the transaction rather than the debtor's personal circumstances and financial condition. The debtor benefits from the transaction, irrespective of their wealth, even if it rivals that of the state itself [15]. The alleviation of the burden entails either diminishing the debtor's obligations or augmenting the creditor's commitments, contingent upon the circumstances. Alternatively, the implementation of the contract may be temporarily halted. The validity of the contract persists until the resolution of the exceptional event [18]. If the debtor is incapable of delivering the stipulated quantity due to financial constraints, it does not qualify as an emergency circumstance warranting the alleviation of the burden. However, if the inability to supply the required quantity stems from a temporary halt in importation mandated by administrative authorities, it constitutes an emergency circumstance necessitating a reasonable reduction in the obligation. This could involve extending the timeframe for the debtor to furnish the agreed-upon quantity, ensuring no detriment to the creditor as a consequence.

The Iraqi judiciary introduces a fifth condition, stipulating that the debtor should not have completely fulfilled the agreed-upon obligation before resorting to the judiciary to request a modification of the contract. The judiciary deems full implementation of the obligation as indicative that it is not burdensome for the debtor <sup>(7)</sup>.

Certain individuals posit that the primary distinction between force majeure and an emergency event lies in the impossibility of fulfilling the obligation in the former, whereas in the latter, the obligation becomes burdensome for the debtor, posing a threat of loss beyond conventional limits. Consequently, the obligation does not become void; rather, the judge endeavours to alleviate the burden from the debtor, enabling the fulfilment of the obligation, albeit with some difficulty [19]. Apart from the distinction in terms of penalties, force majeure places the onus of the obligation's non-fulfilment on the creditor, aiming to absolve the debtor from implementing the obligation. Conversely, in emergency circumstances, the obligation persists but is curtailed to a reasonable extent. Both the creditor and the debtor share the consequences arising from the emergence of the emergency circumstance [18]. The methods to alleviate the burden arising from an emergency circumstance involve augmenting the creditor's obligation, diminishing the debtor's obligation, or a combination of both through an increase in one part and a decrease in another <sup>(8)</sup>.

<sup>7</sup> See, Court of Cassation Decision No., issued on 8/31/1988, quoting Dr. Adnan Ibrahim Al-Sarhan and Dr. Nouri Hamad Khater, previous source, p. 266.

<sup>8</sup> See, Dr. Abdul Hay Hijazi, previous source, p. 201.

## *Legal Provisions Regulating Emergency Circumstances*

The Iraqi legislator has enacted various legal provisions addressing the conversion of a regular obligation into a burdensome one for the debtor by embracing the theory of emergency circumstances, particularly outlined in Article 146/Second. Preceding the COVID-19 pandemic, several instances of applying emergency circumstances were observed in Iraqi legislation, systematically organized by the legislator within the framework of the Civil Law. This review will be elucidated in the first section of this requirement. The second section will be dedicated to elucidating the ramifications of applying this theory and evaluating the extent to which its provisions are applicable to the COVID-19 pandemic.

### *Applications of the Theory of Emergency Circumstances in Iraqi Legislation*

The Iraqi legislator not only introduced a general theory but also implemented it in specific contexts such as lease contracts, contractual agreements, and easement rights. Article 783/2 of the Iraqi Civil Code states, "However, if the tenant dies, his heirs may request cancellation of the contract if they prove that due to the death of their legator, the burdens of the contract have become too heavy for their resources to bear, or the rent has become beyond the limits of their need. In this case, the notice dates for eviction in Article 741 must be taken into account, and the cancellation request must be made within a period of six months at most from the time of the tenant's death."

Additionally, the provision outlined in Article 784 of the same law is noteworthy, stating: "If the lease was not concluded except because of the tenant's profession or for other considerations related to his person and then he died, his heirs or the lessor may request cancellation of the contract."

One of the notable applications is articulated in the contracting contract, recognized as a commercial contract in accordance with Iraqi legislation under Article 878. It mandates that "if the prices of raw materials and labour wages rise, the contractor has no right to rely on that to request an increase in the wage, even if this rise reaches a point that makes implementation of the contract difficult. However, if the economic balance between the obligations of both the employer and the contractor collapses completely due to incidents that were not taken into account at the time of the contract and the basis on which the financial estimate for the contract was based is lost, the court may order an increase in the wage or terminate the contract."

The legislator has extended the application of this theory to easement rights, as indicated in the Civil Code, emphasizing the imperative need to alleviate the burden from the servient property, whether utilized for commercial or civil purposes, as stipulated in the code <sup>(9)</sup>.

- 1 - If the servient property is divided, the easement persists for each part, ensuring it does not impose additional burden on the connected property.
- 2 - Yet, if the actual benefit of the easement only applies to certain portions, the owner of the servient property has the right to request the removal of this right from the other parts.

Similarly, the law mandates that the persistence of the easement right is contingent upon the survival of the property itself. It specifies that "the easement right ceases if the

circumstances change to the extent that exercising this right becomes impractical, and it is reinstated if the circumstances revert to a state where the exercise of the right is possible." <sup>(10)</sup>.

The Iraqi judiciary has implemented the theory of emergency circumstances in numerous instances. Of particular interest are cases where the judiciary deemed cholera, the prevalence of foot-and-mouth disease among sheep, and the occurrence of diseases among workers in a factory as emergency circumstances [20]. In these cases, judges concluded that the issues fell within the realm of emergency circumstances rather than force majeure. The distinction arises from the circumstances making implementation burdensome for the debtor, not rendering it impossible. For instance, in the scenario of a disease outbreak among workers in a factory, the employer can fulfil obligations to merchant clients by laying off affected workers and replacing them, albeit incurring additional financial burdens.

### *The effects of applying this theory and the extent to which its provisions apply to the Corona pandemic*

If the outlined conditions of the emergency circumstances theory are satisfied—specifically applying to ongoing contracts, representing a general unforeseeable event, and rendering the debtor's obligation burdensome rather than impossible—legal intervention occurs. This aims to address the requisite effects and alleviate injustice and unfairness for the debtor, irrespective of their merchant status or otherwise. Merchant and these antiquities are:

The judge, vested with discretionary authority as per legal provisions, mitigates the burdensome nature of the debtor's obligation when it exceeds the anticipated expenses at the contract's inception. The reduction is enacted to a level where the obligation ceases to be burdensome for the debtor. Should the creditor decline, termination of the contract without compensation is an option. The debtor lacks the right to reject the judge-mandated amendment, emphasizing that this modification is applicable solely during the emergency circumstances period.

The jurist adjusts the creditor's duty by augmenting the obligation tied to the burdensome commitment, aiming to restore economic equilibrium between the involved parties. The creditor retains the prerogative to petition contract termination should they decline to enhance their obligation. Conversely, the debtor lacks such entitlement, being confined to petitioning the restitution of the burdensome obligation within reasonable bounds exclusively [2].

The judicial authority possesses the prerogative to suspend the execution of the obligation until the cessation of the emergency circumstance, particularly when the circumstance is anticipated to dissipate promptly and the creditor is not poised to incur substantial detriment consequent to the suspension.

The judicial authority lacks the jurisdiction to decree contract annulment, but possesses the authority solely to mitigate the obligation to a reasonable threshold; nevertheless, the judicial authority is empowered to adjudicate contract annulment upon the creditor's petition.

The Iraqi legislature allows parties to agree that the debtor bears the guarantee, compensating for obligation failure due to force majeure. However, this isn't permissible during emergencies, despite force majeure's more severe impact on implementation impossibility compared to emergencies.

<sup>9</sup> See the text of Article (1279) of the Amended Iraqi Civil Code.

<sup>10</sup> See the text of Article (1283) of the Amended Iraqi Civil Code.

Henceforth, should both contractual parties mutually consent to the debtor assuming liability for compensation arising from the contractual impossibility attributable to the proliferation of the virus (Covid-19) as a force majeure event, such an agreement is deemed valid and enforceable <sup>(11)</sup>.

The pertinent inquiry pertains to whether the dissemination of the Corona pandemic qualifies as an emergency circumstance or not. To address this inquiry, it's imperative to assess whether the criteria for the theory of emergency circumstances were satisfied during the spread of the virus (Covid-19) or its variants. This assessment involves determining if the spread rendered the obligation onerous for the debtor unexpectedly, and whether the circumstances were unforeseeable. Moreover, it must be evaluated if fulfilling the obligation became impracticable. Should these conditions be met, especially in the context of a term contract, the situation may qualify as an emergency circumstance warranting a reduction in the debtor's obligation to restore contractual balance and uphold the principle of justice. One approach to achieving justice might involve granting the debtor an extension for fulfilling the obligation, recognizing the period of the pandemic spread as an extraordinary and permissible interruption.

Upon examination of the pandemic's circumstances and its repercussions on contracts, it becomes evident that its principal effect manifested in the comprehensive cessation of commercial, industrial, and economic operations. The transportation, sports, and laboratory sectors were all non-operational. Consequently, the most significant impact was the halt of the economic machinery rather than merely an economic imbalance. Merchants found themselves unable to fulfil supply obligations not due to price escalations but primarily due to factory closures and transportation standstills. Despite incurring additional costs, viable alternatives remained elusive. Thus, categorizing the Corona pandemic as an emergency circumstance proves challenging, particularly when contracts in force continue their execution.

## Discussion and Conclusion

### *The merchant or his contracting partner is infected with the virus*

In scenarios where the merchant or their contracting party contracts the virus, thereby encountering health challenges that hinder the fulfilment of contractual obligations, compounded by the pervasive cessation of activities stemming from the pandemic's spread and associated curfews, an inquiry arises as to whether the debtor can seek relief. In such instances, the judiciary may, under the auspices of a broad emergency, exercise discretion to mitigate contractual obligations [21]. Considering its widespread prevalence across societies, it is noteworthy that this disease does not align with

those expected to abate over time due to its severity. Certain demographic groups face heightened mortality risks, attributable either to age-related factors, such as the elderly, or specific health conditions, including respiratory, kidney, and heart ailments, alongside individuals with hypertension, diabetes, and compromised immune systems <sup>(12)</sup>. It is strongly probable that the determination rests within the purview of the judge's discretion, prompting a further inquiry. Can their conduct during illness be likened to that of a terminally ill patient?

In addressing this inquiry, it becomes imperative to scrutinize the degree to which the terminal illness criterion applies to the disease (Covid-19) or its variants. Juridical authorities establish various conditions, compliance with which designates a disease as terminal, thereby dictating the arrangement of related provisions in accordance with the detailed parameters outlined. As delineated in the Journal of Judicial Rulings, a terminal illness encompasses a state where the spectre of death predominates, rendering the patient incapable of meeting their customary needs, ultimately succumbing within the confines of the ailment <sup>(13)</sup>. The rationale behind establishing distinct regulations concerning the conduct of a terminally ill patient, and whether to recognize their obligations, stems from the amalgamation of fear of impending death and the patient's incapacity to fulfil their customary needs. This confluence engenders a psychological state wherein the patient perceives their demise as imminent, thereby imbuing their actions with testamentary significance. Jurisprudence contends that discerning a person's intentions and uncovering the depths of their psyche is unnecessary, deeming the presence of these conditions as indicative of the terminal illness [22]. Subsequently, we will succinctly examine these conditions.

The ailment obstructs the patient's pursuit of their interests, exemplified by instances where contracting the virus or any of its mutations impedes a merchant from conducting routine business activities. Such hindrances encompass customary trade practices, interactions with clients or suppliers, overseeing goods transportation, and engaging in other routine tasks, albeit of minimal exertion. This phenomenon is notably observable among virus-infected individuals, particularly those in advanced disease stages with compromised health status or among the elderly population.

The malady instils a fear of mortality, as it predominantly tends towards fatality owing to its severity or the patient's incapacity to recuperate. This instigates a sense of impending demise. Certain perspectives posit that this circumstance supplants the primary condition [22]. This prevalence is underscored by the particular demographic segments delineated earlier, particularly accentuated by the absence of a definitive treatment or vaccine, along with insufficient essential medical equipment such as ventilators vis-à-vis the infection rates, exacerbated by successive waves of the virus and the emergence of novel mutant variants.

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<sup>11</sup> Indeed, some commercial companies have begun to include in their contracts the condition that the debtor will not be exempted when force majeure occurs, one of which is the spread of epidemic diseases and their accompanying effects.

<sup>12</sup> It is worth noting that some countries, such as Italy, due to the increase in the number of infections, followed a policy of health measures during wars, which includes providing health care, the necessary first aid, and providing artificial respirators. This policy would have excluded the elderly from obtaining the necessary care and favored those who were younger.

<sup>13</sup> See the text of Article (1595) of the Journal of Judicial Provisions: "Death disease is a disease in which the patient is unable to see his

interests outside his home if he is a male and has He is prevented from seeing the interests entering his home if he is a female, which causes the fear of death in most cases and he dies. He is in this state before the passage of a year, whether he is confined to bed or not, and if his illness extends and he is always in one state and If a year has passed, he will be in the same ruling as a healthy person, and his behavior will be the same as that of a healthy person, unless his illness extends and his condition changes. However, if his illness becomes severe and He changed He died one year ago, so his illness from the time of the change until death is considered a death illness."

Should the malady culminate in fatality, it is asserted that the disease must invariably lead to death as its ultimate consequence. Certain jurisprudential viewpoints advocate that the duration during which the patient remains under the spectre of death should not surpass one year; in other words, the patient endures this malady for a year or less. This aligns with the temporal trajectory observed in the context of the Covid-19 virus, as per scientific statistical data ( <sup>14</sup>).

Consequently, should these conditions manifest in a Covid-19 patient or any of its mutations, and should the merchant, during the course of their illness, undertake actions that entail legal obligations, such as executing contracts for property transfer, making donations, or assuming sponsorship responsibilities, then the provisions pertaining to terminal illness, as addressed by the Iraqi legislator in the revised articles of the Civil Code, would apply.

In the event that a merchant, afflicted with the virus and facing a probable demise, engages in actions such as transferring ownership with the intent of donation or favouritism, any portion attributable to favouritism is deemed posthumous conduct, subject to testamentary provisions. Such a judgment extends to absolving the debtor, whether an heir or not, of their obligations pertaining to the warranty.

While ailing, he may settle the price of purchased goods or loans obtained, but settling a debt to one creditor to the exclusion of others is impermissible. If he acknowledges a debt by transferring ownership, it assumes the legal status of a will according to our prevailing civil law. Should the acknowledgment pertain to entrusted funds received or expended without formal acknowledgment, it extends to all his assets, even if it's against the interests of the heirs, and their approval during his lifetime is binding. Health-related debts, acknowledged during illness without formal acknowledgment, take precedence over other debts ( <sup>15</sup>).

Similarly, if the patient attests to the discharge of a debt, its enforceability hinges on whether the debt was verified during health or illness, a principle affirmed by the Iraqi legislator ( <sup>16</sup>).

1. During the terminal illness, if an individual acknowledges the settlement of a debt owed by another, its enforcement depends on whether the debt was confirmed during the debtor's liability period while the creditor was healthy. In such cases, the acknowledgment is enforceable against health debtors. However, if the debt was established during the debtor's obligation period while the creditor was ill, the acknowledgment is not enforceable against these debtors.

2. If he acknowledges that he pledged his health as a debt to someone, his acknowledgment shall encompass all of his assets. However, after his demise, he incurred health-related debts and similar liabilities.

From the preceding discussion, it can be deduced that the contractor's contraction of the virus cannot be deemed an emergency circumstance. Despite being an unforeseeable and uncontrollable event, it constitutes a general circumstance. Nonetheless, it does not render the contractor incapable of fulfilling the obligation due to economic imbalance but rather due to physical incapacitation to personally perform the work. Thus, this aspect does not meet the criteria for invoking the theory of emergency circumstances.

We incline towards regarding the contractor's contraction of the virus as a force majeure event, particularly if the illness confines the contractor to their home or hospital for quarantine

and recuperation. This scenario significantly impacts transactions necessitating the contractor's personal involvement, where both physical and mental exertion are essential components of the contract. However, if the contractor can fulfil their contractual duties through proxies or agents, they cannot invoke force majeure provisions since fulfilling the obligation remains feasible. Nevertheless, the judge retains discretionary authority in each case, assessing individual circumstances comprehensively.

## Conclusion

In summary, this comprehensive examination of COVID-19 and its strains' impact on commercial contracts reveals the significant challenges faced by businesses worldwide. The study offers effective strategies and recommendations to navigate these obstacles. Through analysing pandemic disruptions across industries, legal responses, business strategies, and technological interventions, several conclusions emerge: COVID-19 and its strains profoundly affect commercial contracts, introducing unprecedented challenges in contractual relationships, business operations, and supply chains [23].

Governments have implemented crisis mitigation measures, such as interpreting force majeure clauses liberally to alleviate companies from contractual complexities, enacting emergency legislation, and advocating for alternative dispute resolution mechanisms [24]. While these measures have partially addressed contract equilibrium, additional interventions seem necessary in various realms to comprehensively restore contractual balance. Companies have adopted diverse strategies to navigate contract challenges, ranging from renegotiation tactics and collaborative approaches with counterparts for contract amendments to leveraging technology for contract integration with internal processes [25]. Effective strategies implemented involve flexibilities, transparency, and communication, facilitating adaptation to evolving circumstances to foster the preservation of robust, long-term business relationships [26].

An additional fundamental component contributing to the resilience of commercial contracts is technology, which has emerged as a crucial facilitator in commercial contract management [27]. Several avenues exist through which technology can bolster resilience and mitigate emerging risks, encompassing big data analytics, machine learning, and artificial intelligence. Furthermore, emerging technologies like digitizing contracts, developing smart contracts, and implementing blockchain technologies contribute to enhancing contract management autonomy within the supply chain. However, they also entail drawbacks such as concerns regarding data privacy, cybersecurity, and interoperability [28]. The paper concludes by emphasizing the necessity of meaningful collaboration among businesses, politicians, lawyers, and technologists to enhance contract frameworks, resilience, and innovation within the global commercial contract community.

By scrutinizing the legal provisions delineated in Iraqi legislation pertinent to the subject matter and juxtaposing the resultant impacts, we can delineate several findings and recommendations as follows:

The emergence of emergency circumstances disrupts the

<sup>14</sup> The Egyptian judiciary adopted this opinion, as tuberculosis or cancer are not considered death if it lasts more than a year) quoted by Dr. Abdel Razzaq Ahmed Al-Sanhouri, previous source, 319 and p. 320.

<sup>15</sup> See the text of Article 1111 of the Iraqi Civil Code 40 of 1951, as amended.

<sup>16</sup> See the text of Article 1112 of the same law.

causal link between the error and ensuing damages, as the contractor did not contribute to its occurrence, thereby justifying their entitlement to request exemption from liability. Consequently, contractual equilibrium is reinstated in accordance with legal provisions, relieving the contractor from the obligation to compensate the other party.

It is imperative that the emergency circumstances result in an imbalance within the contractual equilibrium, signifying that the fulfilment of the obligation has become onerous for the debtor due to external factors beyond their control.

The theory of emergency circumstances does not universally apply to all contracts during the Corona pandemic. Its applicability extends to contracts that are still in force, presupposing an imbalance in the economic equilibrium of the contract. However, this rationale does not fully justify the cessation of all contracts during the pandemic period.

The merchant's or contractor's virus infection may render their contractual obligations unenforceable, akin to actions of a terminally ill patient.

## Implications

### *Practical Implications*

The study offers practical insights for businesses navigating commercial contracts during the COVID-19 pandemic and its new variants. It explores mitigation strategies such as renegotiation and alternative dispute resolution, providing actionable advice for global businesses facing similar challenges. Policymakers can leverage the analysis of legal and regulatory responses, identifying effective measures worldwide to restore contractual balance. Empirical evidence informs policy frameworks, fostering business resilience and preparedness for future crises. Technology, including digital contract management platforms and blockchain integration, enhances efficiency and transparency in commercial contracts, reducing dispute risks. Insights from the study aid business continuity planners in addressing contract failure amid various crises, including pandemics.

### *Theoretical Implications*

The paper enriches contract theory through its examination of the impact of external disruptions, such as pandemics, on contractual dynamics. By analysing how contract law addresses equilibrium and restores balance following external shocks, the paper extends theoretical boundaries of contract law into novel domains. It advances theoretical comprehension of risk management in commercial contract management by delineating key influences on business strategy efficacy in pandemic scenarios. The study underscores the importance of proactive risk identification, mitigation, and response to contract disruptions in mitigating business impact. Thus, the research augments existing theoretical understanding of contract risk mitigation strategies, elucidating their efficacy in managing contractual risks amidst dynamic and uncertain environments. Furthermore, the study contributes to theoretical deliberations on the integration of technology in commercial contract management requirements.

### *Limitations of the Study*

While this study offers a comprehensive analysis, it is pertinent to acknowledge several limitations. Firstly, the analysis predominantly relies on existing literature and documents, potentially impeding real-time insights or the

identification of emerging trends. Secondly, the research adopts a qualitative approach, which may restrict the generalizability of findings to diverse contexts or industries. Thirdly, the study primarily focuses on the repercussions of the COVID-19 pandemic and its variants, neglecting other potential factors and crises that could impact contractual relationships. Lastly, the study's scope may be constrained by the unavailability of pertinent and accessible data and information, particularly from certain geographical regions or sectors.

## Future Research Directions

Numerous avenues for future research emerge from our findings. Longitudinal studies offer a primary avenue to observe the evolution of contractual relationships and business strategies over time. Such studies could retrospectively compare the measures implemented by companies during the COVID-19 crisis with those anticipated in the event of a shutdown. Additionally, empirical investigations could assess the implementation and effectiveness of specific legal and regulatory measures, along with the adoption of technology-driven solutions, offering practical insights crucial for policymaking. Qualitative research, exploring the experiences and perspectives of businesses, policymakers, and legal professionals, will enrich the understanding of commercial contracting dynamics, facilitating the development of targeted strategies and intervention initiatives. Moreover, future studies may employ quantitative methods to gather real-time data.

## Suggestions

The COVID-19 pandemic can be construed as an "emergency" circumstance that disrupts the commercial contract equilibrium between parties, rendering the debtor's fulfilment of obligations arduous. It falls upon the court to rectify this contractual imbalance utilizing the theory of emergency circumstances as a safeguard measure. In instances where obligation fulfilment necessitates a "specific" timeframe that cannot be extended due to the obligation's inherent nature, and where extending it holds no benefit, the provisions of force majeure theory come into play, albeit with distinct provisions. There is a pressing need for explicit legal provisions addressing the intricate imbalance caused by the propagation of a particular virus, such as the Corona virus or any of its variants.

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