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RESEARCH ARTICLE

Attribution clause as a tool for addressing contractual imbalances and applicability in civil contracts

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Abstract

Abstract*

Attribution rules act as a tool to modify the terms of a contract by accepting pre-specified terms and conditions. This methodology ensures that the contractual relationship is protected while addressing potentially complex scenarios that may arise during contract execution due to evolving circumstances. To maintain the binding force of the contract, Parties expedite dispute resolution and protect the integrity of their contracts by choosing recourse and prior agreeing to remedies, which encourages continuity in enforcement. These clauses are intended to automatically amend the terms of the contract without requiring the parties to participate in the amendment process. These items adjust the amount of funds subject to the obligation according to changes observed by external indicators associated with the obligation. This is done by comparing the price of a particular currency with the price of a different commodity. In the case of payment in gold or foreign currency, it represents an assault on the binding legal force of the national currency by competing with it as a means of payment and considering it as one of them. Terms of payment in gold and foreign currency are excluded from the attribution requirement, which replaces legal means of payment with new means of payment. It does not constitute a basis for determining the extent of fulfillment of the obligation, and we conclude that the attribution clause is a distinct legal system that deals with amending contractual terms and the contractual imbalance they cause. Amendment is permitted in the event of circumstances occurring that would upset the balance throughout the contract implementation period, and we recommend adopting the attribution clause as an automatic adjustment tool.

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Keywords

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Introduction

Entering into a binding contract that effectively produces its legal effects is typically based on the parties' freedom of will. This implies that the contracting parties are free to define their contractual relationships to best serve their purposes and interests. Therefore, including an amendment clause pertaining to contractual obligations in the contract can be regarded as a helpful tool for protecting the parties' interest, particularly when confronting any change in circumstances during the implementation stage.

This approach typically creates a state of balance in the performances of the contractual parties. However, implementing the amendment of the obligations is not so easy, as several obstacles may arise that affect the result that the contracting parties hope to reach. Nevertheless, this approach has been found helpful because having the ability to review the terms of a contract maintains its continuity. These contract mechanisms are gaining increasing prominence for their influential role in providing swift and radical solutions to disputes that may arise between contracting parties, in addition to providing a guarantee of optimal implementation of obligations and achieving the contractual goal (Khater, 1998).

Some circumstances surrounding the implementation of the terms of the contract may potentially change in the future, jeopardizing the contract's economic viability. These conditions come within the framework of the parties to the contract, protecting against the financial and monetary fluctuations that may hinder the implementation of the contract, which is an objective condition in the contract that includes linking the value of the contractual obligations to an indicator, element, or an external economic or monetary standard characterized by relative consistency and stability, which allows predicting the value of contractual performances in terms of this agreed-upon indicator, and then distributing the consequences of financial risks between the parties to the contract by including automatic amendment clauses (La Clauses de Variation Automatique) for the value of the obligation if circumstances arise. Exceptionally, in a way that reduces the possibility of a dispute arising between the parties to the contract over how to deal with a change in the circumstances of contract implementation, one of whose applications is the attribution clause.

The general norms of the contract's amendment were the only things covered by the Jordanian Civil Law in Article 164 and Article 147 of the Egyptian Civil Code, which did not touch its specifics or forms. To the best of our knowledge, no studies have addressed this problem in-depth in the Jordanian legislation, so we attempted to clarify the attribution provision. As a result, this topic did not acquire a significant position. And the civil legislator's stance on it. Our research aims to provide insight into the civil legislator's stance regarding the attribution clause and the degree to which it is utilized to amend contracts to fulfill obligations.

In this paper, we have adopted the comparative approach by analyzing the legal texts directly related to the subject, comparing provisions with Egyptian and Jordanian legislation, guided in particular by the rulings of the French judiciary, and attempting to present a legislative model that can be relied upon to solve the problem of this research. (DALLOZ, 2009) The attribution clause is a new, widespread, pronounced mechanism regulating agreement. It enables the contracting parties to freely enter contracts and choose the provisions that best fit their interests. Furthermore, they gained increasing importance because they provide a rapid and radical solution to disputes, ensure the optimal implementation of obligations, and achieve the goal of the contract. The next chapter presents the subject of attributions in detail.

Methods

Scientific analysis methods were used in this study in the form of document analysis and analysis of legal studies. Data were obtained using the Boolean search engine to comb through the Scopus database between the years 1951 and 2023. The search was conducted on May 1, 2023. The researcher used R, R-Studio, VoSviewer, and Microsoft Excel tools to analyze the documents and data. networks. The steps taken by the researcher are as follows:

First, the researcher will conduct a literature review on relevant topics to ensure that research relevant to the scientific topics is being conducted. In addition, a literature review is useful for identifying appropriate keywords and is considered to represent the scope of the research.

In the second stage, the researcher used analysis and criticism through inductive and deductive methods, which is necessary for a correct understanding of the attribution clause as a tool for addressing contractual imbalances and applicability in civil contracts. A search in Scopus resulted in several documents. Furthermore, filtering was performed using the Boolean operators (LIMIT-TO (DOCTYPE, "ar")) and (LIMIT-TO (LANGUAGE, "English")) to limit the use of English documents and articles as document types, which narrowed the result For final documents.

In the third stage, the final documents were analyzed using Scopus, R, and R-Studio analyzer to determine the number of documents per year and the number of documents by journal, author, affiliation, country, and topic/field. Furthermore, analysis was performed at the document network level through visualization.

Policy outcomes and implications

The attribution clause is a distinct legal system addressing the amendment of contractual conditions and the contractual imbalance they cause. It permits amendment in the event of circumstances that would disturb the balance throughout contract implementation. The attribution clause typically echoes the desire of the contractual parties to maintain the contract. It is a good and effective method for amendment that is far from traditional methods. It combines the pursuit and confirmation of contractual justice with cooperation between the parties to the contract.

Even though the attribution clause with a specific text is not included in the French Civil Code, it is adopted by the French judicial and jurisprudential tendency. Its success in achieving its established purpose depends on its excellent structuring to ensure the ease of carrying out the amendment process without the parties intervening.

Actionable recommendations

Based on the results above, we suggest adopting the attribution clause as an automatic amendment tool. We propose that the chambers of industry and commerce and the appropriate professional unions work together to establish guidelines for the most significant standards the contracting parties may use to amend their agreement automatically. This approach avoids court intervention and promotes and supports the automatic agreement method for contract amendment.

The Concept of Attribution

The attribution clause is included in the form of automatic amendment conditions (La Clauses de Variation) to adapt to changing circumstances threatening the financial balance and dynamically respond to changes in the market, such as fluctuations in market conditions during the implementation of the contract. The attribution clause simply provides flexible automatic amendments to the original contract terms and conditions previously agreed upon (Ghannam, 1982; Sentence, 1985) without the intervention of the contracting parties or constant renegotiation of the entire contract. Generally, the amended conditions must be enforceable, not violate the public order, or be unlawful. Otherwise, the contract becomes invalid or voidable.

This clause upholds a value external to the contract as an indicator or standard for the obligation's genuine content. Generally, individuals resort to amending their contracts by including amendment conditions (Al-Basha, 1992; Al-Najjar, Badawi, & Shalala, 1983; Ommeslagehe, 2020) based on a moving average indicator which was adopted in 1957 (Benabent, 2004) to maintain the continuity of their agreement (Al-Shawabkeh, 2005; Benabent, 2004).

This amendment strategy, also known as mobile scale (l'échelle mobile), is based on connecting the value of contractual obligations to an external economic or fiscal indicator, element, or standard that is characterized by relative consistency and stability, allowing the value of contractual performances to be expected in terms of this agreed-upon indicator. This leads to the distribution of the consequences of financial risks between the two parties to the contract through automatic adjustment of the value of the obligation if exceptional circumstances arise and in a way that reduces the possibility of a dispute arising between the parties to the contract over how to deal with changing circumstances of contract implementation.

However, when including the attribution clause, the contracting parties maintain a contractual balance by achieving equality in mutual obligations and establishing justice to satisfy their interests. Furthermore, these kinds of clauses typically deepen trust between individuals by avoiding currency smuggling, protecting the national economy from inflation, and leading to the maintenance of the contractual balance despite the decline in the value of the currency by anticipating the value of the contractual payments in terms of an economic or monetary standard (Doucet, 1965, Sultan, 1963). It addresses the impact of the conditions that can be expected upon concluding the contract by distributing the consequences of financial risks between parties to the contract based on anticipating in advance through a contractual condition that a debt, which is generally monetary, increases automatically and is proportional to an element chosen by the parties, called an indicator, controlling the effects of changing circumstances by the parties when concluding the contract, they can include it; To approve the amendments they must make upon its implementation, then this mechanism is suspended (Alachkar, 2010).

This element is described as an objective, quantitative component used as a guide to adjust the increase or decrease of the obligation's value. It also measures the impact of changing circumstances on the subject matter of the contract in a way

that ends disputes between parties regarding the actual value of obligations under the contract owing to shifting economic conditions without the need for a new agreement to deal with new contractual data and conditions.

There are two steps involved in adding an attribution clause. Firstly, when the contract is being finalized, it is necessary to decide on an external indicator, which is the basis for calculating the rate of inflation or deflation and the amount of the contractual obligation that will increase or decrease. The second step is deciding how this indicator will be applied, which is done on predetermined periodic dates yearly, every two or three years, or the amendment is linked whenever a crisis or modification in the contractual terms occurs. This will determine the price level for the modified contractual obligation.

An automatic nature characterizes this amendment method, and parties are prohibited from intervening after the expected events occur. This is represented by replacing a new contractual obligation or performance with the original performance stipulated in the contract, reducing the possibility of a dispute arising between the parties to the contract over how to deal with the change in the circumstances of contract implementation. (Lambertrie, 1987; Chavance, 2013).

This method of amendment has been criticized for only responding to the risks associated with the anticipated economic conditions related to price and exchange rates, which limits its efficacy in confronting the development of obligations and eliminates the circumstances surrounding the contract upon implementation from the two parties' circle of expectations because of unrelated political and legal circumstances. Directly related to the contract's topic, and while it is not anticipated, it might impact it (Alachkar, 2010; Al-Jamal, 2002; Marraud & Akyurek, 2009).

The attribution clause can be defined as an objective condition included in the contract to link the value of contractual obligations to an indicator or external element that is usually characterized by consistency and stability, such as a price index, the cost of living, or the average price of a specific commodity during a particular period, such as oil, gold, or any of the precious metals (Chavance, 2013).

It is also known as the indexation clause (clause d'indexation) or the variable scale clause (clause d'échelle mobile). These clauses, as mentioned previously, deal with any change that may result from a change in the situations under which the contract was concluded, which threatens the financial stability of the contract. Additionally, it can be adopted to protect both the creditor and debtor; therefore, the contracting parties tend to link their obligations to another element characterized by relative stability (Muhammad, 2008).

Terre' Simler and Lequette (1993) confirmed that these clauses aim to automatically modify the contract terms without the parties intervening during the modification procedure. These clauses adjust the amount of money subject to the obligation according to the changes recorded by the external indicators to which the obligation is linked, as stated by the decision of the French Court Cassation DP 1920.1.137. The indicator is the basis for inferring, through the calculation method and rules, the amount of obligation imposed on the contractor by measuring the price of a specific currency or a specific commodity or other commodity (Muhammad, 2008; Rashwan, 1994). By incorporating a clause in the contract that links the obligations emanating from it to a specific index that mitigates the impacts of economic inflation, it counteracts the damage caused by changes in the currency's value.

These requirements fall under the contracting parties' protection framework against challenges and monetary and economic fluctuations (Terre', Simler & Lequette, 1993) that might make it more challenging to carry out the terms of the agreement and look for ways to deal with them. This method works well for selecting the contracting parties, aligning their interests with the agreement (Doucet, 1965; Tallon, 1986), keeping the contractual balance, and allowing the contractual payments to be expected in terms of a predetermined monetary or economic standard (Alachkar, 2010; Lambertrie, 1987).

The attribution clause does not apply to payments made in gold or foreign currencies because their values can fluctuate significantly concerning local currency. Nonetheless, the contractual parties may try to keep their payment arrangements stable and avoid the risks related to changes in currency exchange rates. Furthermore, in particular countries or for specific transactions, the usage of gold and foreign currencies may be subject to regulatory prohibitions or regulations. Hence, including them in the attribution clause may constitute an assault on the binding and legal force of the national currency (Muhammad, 2008; Madani, 1952; Rashwan, 1994).

The conditions of the attribution clause have been criticized for their rigidity. Given their relationship to price and exchange rates, it is predicted to react to risks and economic situations. However, its efficacy in tackling developments and broad changes surrounding the contract's implementation is limited by political and legal variables unrelated to the contract's subject and yet has the potential to impact it (Accaoui, 2008; Alachkar, 2010; Camelbeke, 1984).

Conditions For the Application of Attribution Clause

Articles L112-1 to L112-4 of the French Monetary and Financial Law Code "monétaire et financier" (Cornu, 1988) contained the rules for automatic amendment. It should be noted that, in contrast to the laws of Egypt and Jordan, the French Monetary and Exchange Law regulated the amendment process. It should be noted that the French legislator prohibited dealing with some indicators because they do not reduce the burden of the obligation on the debtor and are not suitable as a basis for amendment.

The connection between the external indicator and the parties' activity

The external indicator is linked to the activity or performance of one of the parties to the contract by linking the percentage of change to this activity, but what activity can be linked? Is it a professional activity or related to another activity?

The nature of the activity does not matter as long as it ensures the continuation of the contractual relationship between its parties (Fadel, 2001; Abdel Rahman, 2000). The French Legislative Decree of 1958, Article 79, stipulates that the chosen indicator must be directly associated with an activity carried out by one of the parties, even if it is not their primary job. Estimating the existing link between the indicator's nature and the contract's subject is considered a matter of fact. For instance, the court ruled that since the free will contract for a commercial establishment deals with intangible movable property. Not built real estate, the judges of the matter cannot declare without violating the text of Article 79 of the Legislative Decree of 1958 amended by the Law of July 9, 1970, Monetary and Financial Law, Article 112-2, the validity of the clause that it stipulates the adoption of an index for the royalty payable by the managing tenant, linking it to the national building cost index. Also, all clauses stipulating the adoption of index clauses based on the French progressive minimum wage among professions (SMIC) are prohibited, except for what is related to alimony debts, and it is not permissible.

The employer may automatically approve the employee's request to reconsider the wage based on the French minimum wage. It ruled that choosing a wage index for a specific occupational category is not prohibited, as it is not considered a reference to the general level of wages. It also ruled the validity of adopting a particular index based on the general level of wages in France, which includes all activities practiced in France, - while in "the Brothers" decision, it was considered that the indicator adopted on the general level of inflation is illegal based on Article 79 of the Legislative Decree (Social Cassation December 13, 2006: Civil Bulletin V, No. 374). Estimating the validity of the indicator approved at the time of concluding the contract cannot be affected by a subsequent modification of the activity practiced by the debtor.

One of the contractors' primary professional activities is directly tied to the external indicator. Only those professional components directly related to and necessary for the primary activity are considered for something to be deemed effective. The professional activity practiced at the contract conclusion and initially regarded must be considered in the event of a change in professional activity. However, the professional activity performed throughout the contract's conclusion may alter; thus, we wonder if the condition is still in place or has been changed.

The parties must carefully consider their options when finalizing the terms of the contract, even if they are allowed to include any condition that best serves their interests. Suppose the attribution condition is necessary and constitutes a fundamental component of the contract structure. In that case, the contract is considered void entirely because this condition constitutes an essential component. On the other hand, if the condition is not crucial to the contract and the entirety of the agreement is not contingent upon it, the result is to effectively suspend or maintain this condition without any active influence on the contract.

It is crucial that this condition represents the parties' intents and is the basis of their mutual agreement; removing it would disrupt the delicate balance of the contract. However, if the condition is judged non-essential and its nullification does not affect the balance of the contract—as long as the contractor can still examine the condition—then the nullification only relates to the condition attached to the contract. It should be noted that French civil law considered the fraudulent nature of the illegal clause a decisive clause.

If the professional activity is altered, the condition is frozen instead of void along with the contract. The main goal of the revision is to preserve the contract, not to make it void. It is unimaginable that the contract and this paragraph would become void automatically due to a change in professional activity. Therefore, the condition is frozen to guarantee contract stability. Although there are obstacles to modifying the phrase and attempts to protect against currency depreciation, the selected external indicator's function in validating the clause is still linked to the professional activity of one party.

The relationship between the external indicator and the subject of the contract

The subject of a contract, the obligation, and the goal of the contractual procedure are all considered part of the subject matter of the contract. The selected external indicator is regarded as a part of the contract if there is a clear relationship between it and the contract's subject matter and if it is an effective tool for protecting the stability of the contractual obligations (Benabent, 2004; Qasim, 2018).

Furthermore, to be valid, the external indicator must have a direct link to the contract subject as required by the interests of the contracting parties. In the loan contract agreed upon for building or purchasing a house, the external indicator of the building price included in the loan contract must directly relate to the subject of the loan. Its scope can be expanded if there is a proportionality between the value of the thing subject to the condition and the external indicator if the agreement relates to professional requirements, such as a restaurant owner.

However, if it is related to personal needs, it is difficult to find a relationship between it and the subject of the contract. Finding a direct relationship between the rent, the price of the raw construction materials, and the construction wage is complex. There is no direct relationship between rent and building rent (Tallon, 1986).

At the very least, the external indicator must be related to one of the contracting parties' activities. The contractor's professional activity is the intended activity; however, the professional activity need not be the primary activity of the contractor. Any component of this activity is legitimate so long as it is connected to the selected basis in a way that guarantees the change clause's effectiveness.

The French judiciary provided further details regarding the attribution conditions and the connection between the external indicator, the contract's subject matter, and individual activity. The contract is not deemed invalid; the condition is considered invalid and non-existent. This is because the activity was not required to be particular or significant, and flexibility was required in addressing the amount of the invalidity resulting from it.

Complications facing the implementation of the attribution clause

Multiple complications may face the implementation of the attribution clause; namely, the parties fail to choose the suitable external indicator, replace the existing indicator with an ineffective one, or remove it, which leads to obstructing its application as the basis relied upon to address the balance of contractual performances. This typically limits its effectiveness in considering the interests of the contracting parties and threatens the stability of transactions and fairness.

Irregularity and variation of the external indicator

The structure of the attribution clause and the linked external indicator considerably affect the contract. The external indicator can be simple and be applied quickly and clearly, or it can be complex, containing multiple elements, such as the cost of raw materials locally compared to the cost of raw materials and their international prices.

The external indicator is approved by resorting to standards based on the standards of professional and commercial institutions and norms, statistics and metrology institutions, such as the Jordanian Standards and Metrology Institution, the National Statistics Organization in France, the Egyptian General Authority for Standardization and Quality and the Chambers of Commerce and Industry in these countries, without specifying the basis on which these organizations publish them. (Fabre, 1983)

However, in some cases, the indicator is adopted as a criterion for alteration. It is changed periodically, given that the value is variable and not fixed, which leads to difficulty in calculating the value of the subject of the contract, especially when compared to the first automatic amendment if the approved external indicator is multiple and repetitive. In the event of a second automatic amendment to the contract, the first reference number is not used, but the new reference number that has changed is relied upon. Therefore, both parties to the contract must stipulate that the last value of the subject matter of the contract has been fulfilled so that it can be used to make the new amendment.

Based on Article 112-1 of the French Monetary and Exchange Code, frequent amendment of the attribution condition is unnecessary. Otherwise, the condition is invalid due to the refusal of French law to have a discrepancy or irregularity in adopting the calculation of the external indicator in repeated amendments.

Amendment based on reciprocity

Reciprocity is a term adopted by the French Court of Cassation to amend the terms of the contract in a way that achieves the interests of both parties to the contract to prevent the enrichment of one party at the expense of another.

But what is the solution if the two parties to the contract agree to exclude the attribution clause if the value decreases, and it cannot be amended except if the value increases?

This problem was raised before the French judiciary, and the amendment that limited its effect to increasing the obligation was considered invalid, as it does not provide for reciprocity and stipulates an amendment to the higher value, as it relates to the basic rules of lease contracts. Because it conflicts with these rules, which are part of the public order, and because it will enable the beneficiary to evade the decrease in rent, it conflicts with the purposes of the Monetary and Exchange Law in France regulating these conditions (Desouki, 1995).

Amendment for parties' reciprocity

Reciprocity is a term adopted by the French Court of Cassation in Cass.3e civ.,14 janv.2016, to amend the terms of the contract in a way that achieves the interests of both parties to the contract to prevent the enrichment of one party at the expense of another. However, what is the solution if the two parties to the contract agree to exclude the attribution clause if the value decreases, and it can not be amended except if the value increases?

This problem was raised before the French judiciary, and the amendment that limited its effect to increasing the obligation was considered invalid, as it does not provide for reciprocity and stipulates an amendment to the higher value, as it relates to the basic rules of lease contracts. Because it conflicts with these rules, which are part of the public order, and because it will enable the beneficiary to evade the decrease in rent, it conflicts with the purposes of the Monetary and Exchange Law in France regulating these conditions.

However, in 2010, the Douai Court of Appeal held that adopting the annual standard for rent in the event of a rise was a legal loss and consistent with contractual freedom. Given the disparity in judicial rulings concerning the terms of exchange for amendments under the automatic amendment clause, I believe the French Court of Cassation's decision to be valid. This is because the exchange ensures that the creditor party doesn't arbitrarily use the automatic amendment in the contract, which states that the amendment can only be made for its benefit.

Invalidity of the External Indicator

Even when the contracting parties have agreed to use an external indicator, this figure may change illegally while the contract is executed. In this case, the attribution condition is nullified if the state suspends trading or limits the use of this indication and it does not meet the legal requirements to be valid (Arabi, 1999; Al-Otaibi, 2009). This is taken into account with the intention behind this condition. The criterion is entirely void if legislative limitations on the external indicator are intended to safeguard national currency for reasons of public interest. Any interested party may defend it, and the court may bring it up on its own if it violates public policy because it is illegal, as in the case of this external indicator on minimum wages or the general price level, which is one instance where it is forbidden by law. French Civil Code specifies that the legally prohibited indicator is invalid and cannot be supported or ratified.

On the other hand, we encounter relative invalidity unrelated to public purpose if legislative limitations seek to balance contractual performances, which results in outlawing such conditions. Contracting parties may agree to continue utilizing the external indicator concerning their interests if it does not relate to public policy.

For instance, the Court of Appeal, which clarified the parties' mutual intention, ruled by its absolute authority that the parties' intent fundamentally leaned towards adopting the indicator principle. This decision was made based on the interpretation of the parties' intent by the subject judges, based on one party's initiative at the contract's inception to propose the indicator, which was adopted as an alternative indicator (Oppet, 1979; Sama'ah, 2015). Since the indicator choice provision translated this intention, replacing the invalidated indicator with one that complies with the law is necessary.

However, does the condition's invalidity render the contract entirely void, or does it just render the condition invalid?

The French judiciary resolved this issue by considering that the contractual obligation was null and void because it was impacted by the stated condition driving the contract. Eliminating the condition also invalidates the contract's rationale, making it completely void. The contract is void due to the specific and essential condition impacting the agreement. It is possible to isolate the contract's illegal element, symbolized by the external indicator leading to nullity. If this unlawful section, a secondary and ambiguous clause, is not the agreement's primary purpose and is not necessary as specified in Article 143 of The Egyptian Civil Law and the Jordanian Civil Code in Article 169. However, what recourse does one have if the purpose of the non-severability is to evade legal requirements?

This can be explained by the fact that violating the law ruins everything. If the non-severability clause is meant to evade legal requirements, the clause is null and void, and the contract is still in effect. As long as the contract is in effect, the reference condition is void since it is deemed unwritten. Considering the potential benefits the contracting parties may receive from the unlawful condition, what would happen if they said nothing about it?

The French Civil Code states that the invalidation must only address the clause adopting the indicator related to a commercial lease since it is a secondary clause whose invalidation does not disturb the balance of the contract as long as the owner reserves the right to legal reconsideration, even if a description such as This clause in the contract is considered a decisive clause. At the same time, there is nothing in it that makes it essential; it does not give the lessor the right to waive the tenant's rights by completely nullifying the contract, and in the same sense, another decision came that the nature of fraud that characterizes the clause that declares the illegal clause is decisive (Al-Khasawneh, 2014).

Even if the condition helps the contracting parties, it must not contradict the public interest. If it is, the condition should be void for illegality. The private interests of the contracting parties are subordinated to the public interest attained by nullifying the requirement (Fadel, 2001). Finding an alternative method to prevent nullity can be accomplished by swapping out the external indication.

Since both parties to the contract are free to choose any indicator or more, we suggest selecting a reserve indicator as a solution to the nullity of the external indicator. This will help the parties overcome any obstacles preventing the amendment's implementation. When the contract is concluded, and the initial external indicator is determined, there should be agreement on the indicator. The validity of the external indicator is unaffected, and its impact is restricted to the future and does not go back into the past should an agreement on the indicator not be achieved at the end of the contract (Brik & Faisal, 2008; Qandil, 2009).

Replacing the External Indicator

In two situations, the external indicator is typically changed: first, when the parties agree upon a reserve indicator number, and second, when a reserve indicator number is not agreed upon. The parties may or may not agree on a reference number if a reserve indicator number is not agreed upon in advance. What should be done in these situations?

Contracting parties utilize the procedure of replacing the external indicator to protect the contract during drafting in case of issues that could prevent it from being carried out. This allows for automatic modifications by rearranging the contract in response to changes in the external indicator (Abdel Latif, 2016; Fadel, 2001).

The parties may address the issues brought about by the original external indicator's nullity by pre-agreement on its automatic replacement with the reserve external indicator. In that case, the reserve indicator replaces the void one retroactively following the requirements of the contracting parties. Contracting parties might use it to keep the contract in place and continue with it. The parties may select a new external indicator if they cannot agree on a reserve indicator, but it will not automatically replace the void one (Doucet, 1965; Aradimus, 1988). If the parties to the contract cannot agree upon a reserve external indicator in advance or cannot agree upon an indicator, may they ask the court to step in and replace the void indicator? If so, does the judge have the power to act in place of the parties?

With the assumption that the parties' will was essentially focused on adopting an indicator, the court, in this case, can substitute it based on his absolute assessment of the parties' joint intention. A legally permissible indicator must be used in its place; hence, the void indicator must be changed. The rate of the indicator to be applied when required can also be determined by knowledge (Jassim, 2011). The accomplishment of the contract's goal and its continuation is reflected in the interpretation of the contracting parties' intention to achieve the true purpose and their understanding of the intended standard in conformity with the referral requirement and their shared intention (Doucet, 1958). Consequently, the contract may be terminated, and the imbalance in the contract may not be addressed if the judge finds that the external index is null and void without the parties' consent.

It should be noted that in French Civil Law, judges could exclude the application of the indicator specified in the contract if they considered, in their absolute appreciation of the common intention of the parties, that the inclusion of this indicator in the contract was the result of an error resulting from hasty and reckless writing. In another decision, it was stated that the subject judges could decide regarding the mere application of the clause Approval of the indicator stipulated in the contract (Mansour, 1987). It may be resolved, in the event of non-publication to which this indicator is referred, not to determine the rate of the indicator to be applied utilizing expertise when necessary.

Contract state during the implementation of the attribution clause

Some contend that examining a contract's provisions using the attribution clause does not require halting the contract's execution (Gustan, Jaman, & Pino, 2008). However, this point of view is challenged because it contradicts the idea of contract review, which holds that suspension of contract execution is a necessary consequence of review commitment. This trend is supported by Article 1135 of the French Civil Code (Abdelal, 1998).

The parties' agreement determines the contract's continuity decision when its terms fail to be revised. The parties may decide to execute the original contract under the same terms, or they may choose to cease contract execution for a while before deciding how to proceed. This could include ending the contract thoroughly, going back to regular execution, terminating automatically, or using another strategy to help each party overcome their current struggles (Al-Salmani, 2010; Hammoud, 2001; Toulemon, 1951). The contract must be upheld without an agreement regarding what will happen to it in the event of failure; only the clause that does not relate to a core component of the original contract should be canceled (Abu Zaid, 1995).

However, if the review is successful and results in an amendment that covers every aspect of the original contract, it will be considered a renewal. The new agreement is considered a modification to the previous agreement in this scenario and not a renewal if the amendment simply resolves a few of the contract's supporting issues.

The attribution clause cannot be exhaustively defined, but examples can be cited from practical applications such as the Clause of Renegotiation, Hardship Clause, and Safeguard Clause. The parties should outline the circumstances that give rise to these clauses, the degree of instability in the relationship between the parties, and what happens to the contract when these events occur (Al-Khasawneh, 2014). These are contract terms whose contents are determined by the agreements reached by the parties. These comprise the parties' obligations to restructure the contract in light of any imbalance in its economic stability (Gustan et al., 2008; Reinecher, 1982). The parties may include in their contracts any terms they think fit to distribute and share risks between them through review provisions that can be reviewed in whole or in part when specific events specified in the contract or clause occur.

Notably, Article 1134 is a French civil, and Articles 88, 213, and 214 of a Jordanian civil include clauses on the hardship clause, a most favorable customer clause, and a force majeure clause that allows the financial terms of the contract to be reviewed in the event of changes in raw material costs.

The basis for applying the attribution clause in the Jordanian Civil Law

Numerous civil laws and the Jordanian Civil Law stipulate the attribution clause in general rules without addressing its details. All contracts are subject to the principle of contractual freedom, so the contract has its effect and becomes binding on the contracting parties. They must adhere to what is stated in the contract in application of the principle of 'Pacta sunt servanda.' The attribution clause is subject to the same rule, which also aims to resolve any dispute expected by the parties that may arise due to changing circumstances.

The Jordanian lawmaker has provided an explicit text in Articles 87-102, considering the contract a private law whose provisions are bound by the parties out of their own free will, and neither of them can alone dissolve or amend it (the Jordanian Court of Cassation No. 6337/2018 and Decision of the Jordanian Court of Cassation. No. 5534/2016).

It has been emphasized through these texts that the contract is considered the binding law for the contracting parties' *Pacta sunt servanda*, so it is not permissible. It can be annulled or amended except by agreement of both parties and for reasons determined by law. The Jordanian Court of Cassation confirmed this in its decision, "The contract is as a binding the law of the contracting parties "*Pacta sunt servanda*," and its parties must abide by the terms of this contract and the rights it entails for the two parties unless they are prohibited by law or in violation of public order." The judge does not have the power to amend the contract terms, and his role is limited to determining the rights arising from it. Additionally, he has no authority to amend the rights and obligations except in the cases determined by the law. This is also the case with the attribution clause. Once the parties agree on this, the contract becomes a binding law, and no party can amend or dissolve its conditions because it becomes an integral part of the contract (Raad, 1993).

Article 164 of the Jordanian Civil Code declares the permissibility of a contract being associated with a condition or contractual clause that benefits one of the contracting parties or a third party unless the law prohibits it or violates public order or public morals. The Article permitted the parties to the contract to include any conditions as long as they didn't violate public order and morals. These conditions, as stated by the decisions of the Jordanian Court of Cassation in its legal capacity No. 1102/1999, on 2000 No. 2141/1999, are conditions that alter the effects of the contract and are related to the contracted party. They often come in the form of contractual clauses.

Individuals are considered legislators within the scope of their contract, but they have the power to regulate their contractual relationship without prejudice to the freedom of others. Therefore, it is not permissible for a judge or legislator to act based on the sanctity of this bond if these agreements are compatible with the law. Consequently, it is said that the contract is the binding law of contracting parties (Shanab, 1977; Malkawi, 2003).

Given that the conditions are limitless and unbounded, it is noteworthy that the Jordanian lawmakers have categorized these conditions rather than identifying each one. But since the lawmaker permitted the inclusion of certain situations in the contract for the contract, its suitability, or customary conditions, it can be said that he has established standards for the validity of the condition, and the clause (attribution) is subject to them.

A few of the amendment's terms and conditions clarify the agreement's subject matter and forbid its cancellation by severing the potential dispute from the altered contractual circumstances. From a different perspective, the condition is also appropriate for the contract. Some contracts, such as deferment periods, incorporate conditions to maintain the parties' financial balances intact.

Specific attribution clauses are customary, mainly when part of an international contract or a commercial agreement where the parties employ the provision frequently. Insofar as they don't break the rules, the parties can be considered legislators for themselves regarding the attribution clause. Insofar as they don't break the rules, the parties can be regarded as legislators regarding the attribution clause: public law and the violation of other people's rights. The judge doesn't have the power to intervene in the amendment of conditions the parties agreed upon since what the parties agree to is regarded as binding on them and the judiciary as long as it is within the limits of the law.

Conclusion

The primary goal of this research is to clarify the nature of the attribution clause and offer a practical model that the parties to a contract may use to organize their contractual obligations and govern their agreements.

Data availability statement

All data underlying the results are available as part of the article and no additional source data are required.

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Radosveta Vassileva 

Middlesex University, London, England, UK

The article focuses on the feasibility of what it calls an "attribution clause" - a provision in the contract that prescribes certain modifications when a change of circumstances takes place. Such clauses may promote efficiency by helping parties to avoid lengthy disputes and litigation while respecting the principles of freedom of contract and the binding force of contract. After surveying some of the available literature and offering some insights into how French law approaches the question, the article analyses if and how such clauses can be recognized under Jordanian law.

The article makes a scholarly contribution - its discussion on Jordanian law is particularly interesting since this is a jurisdiction that is often ignored in foreign literature. Since the article is written in English, it is accessible to a wider audience that can learn more about Jordanian law.

There are some areas, however, that could be improved.

1. The scope of the paper can be defined better, so that its contribution is more distinct. Namely, in the introduction, the authors mention a provision from Jordanian law and a provision from the Egyptian Civil Code, without quoting them and without clarifying why they are interested in these two jurisdictions (why they put them together to begin with). Subsequently, the relevant discussion at the end of the article concerns only Jordanian law, which creates the impression that something is missing (where is the discussion on Egyptian law?).
2. It is recommended that the authors explain better why they analyse French law in such detail before discussing the developments in Jordan - is there a connection between French law and Jordanian law that the foreign reader should know in advance? Any reference to literature on this question will be helpful.
3. At multiple places, the article refers to 'the balance of the contract' without defining what this means in the jurisdictions they discuss. It should be noted that not only this notion does not exist everywhere, but its definition varies.
4. Sadly, at several places, the article is thin on references.
 - a. For instance, in the section titled 'The connection between the external indicator and the parties' activity', the authors refer to court rulings without referencing them properly. The reader

would expect to see the name of the court, the date on which the decision was handed down, the number of the court decision, the number of proceedings, etc., so that he/she can find this decision.

b. In the section titled 'The relationship between the external indicator and the subject of the contract', the authors discuss the approach of the 'French judiciary' without including a proper reference - either court decisions or at least a reference to an academic article/book is necessary.

c. In the section titled 'Amendment for parties' reciprocity', the decision by the French Court of Cassation is not referenced properly. Idem for the decision by the court of appeal.

d. In the section titled 'Invalidity of the External Indicator', the claim that 'French Civil Code specifies that the legally prohibited indicator is invalid and cannot be supported or ratified' is not supported by any literature. One expects at least a reference to the concrete article/articles from the civil code that have been taken into consideration to make this claim. In the same section the authors refer to 'the Court of Appeal', without specifying which one and without giving any details about the court decision/decisions they have in mind. In the same section, the sentence starting with 'The French Civil Code states that the invalidation must only address the clause adopting...' does not refer to the relevant articles.

e. Overall, it is recommended that the authors make sure that each court decision they discuss is referenced properly and that each time they make claims about the approach of the French judiciary/French law, they cite a proper source.

4. In the bibliography at the end, many of the references in French have been misspelled. It is recommended that this be remedied.

Is the work clearly and accurately presented and does it cite the current literature?

Partly

Is the study design appropriate and is the work technically sound?

Yes

Are sufficient details of methods and analysis provided to allow replication by others?

Yes

If applicable, is the statistical analysis and its interpretation appropriate?

Not applicable

Are all the source data underlying the results available to ensure full reproducibility?

Yes

Are the conclusions drawn adequately supported by the results?

Partly

Competing Interests: No competing interests were disclosed.

Reviewer Expertise: Comparative Private Law (with a focus on obligations); Legal History; EU Law; Constitutional Law

I confirm that I have read this submission and believe that I have an appropriate level of expertise to confirm that it is of an acceptable scientific standard, however I have

significant reservations, as outlined above.

Reviewer Report 03 September 2024

<https://doi.org/10.5256/f1000research.165830.r313451>

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Tze Chin Ong 

Universiti Malaya, Kuala Lumpur, Federal Territory of Kuala Lumpur, Malaysia

The article discussed the attribution clause in civil contracts which means it applies to all contracts. However, the attribution clause can only apply to insurance contracts or certain financial contracts under the law. There are no clear examples of how the attribution clause is used and the implication of contract certainty is reversing. The attribution clause can only be applied in the circumstances that one of the parties to the contract breaches the obligations of the contract. The suggestion of using such an attribution clause altered the contractual nature and sanctity of the contract. The attribution clause could not be applied to all civil contracts, it is only of limited use for specific contracts such as insurance, financial services, investments, etc. Hence the findings of the research are problematic. Besides, the methodology used for the paper is unclear whether it is qualitative or quantitative research, and how the method is used to achieve the finding. There is no clear problem statement, no clear objectives and literature reviews are inadequate.

Is the work clearly and accurately presented and does it cite the current literature?

No

Is the study design appropriate and is the work technically sound?

No

Are sufficient details of methods and analysis provided to allow replication by others?

No

If applicable, is the statistical analysis and its interpretation appropriate?

No

Are all the source data underlying the results available to ensure full reproducibility?

Partly

Are the conclusions drawn adequately supported by the results?

No

Competing Interests: No competing interests were disclosed.

Reviewer Expertise: Commercial law, Consumer Protection Law and International commercial law.

I confirm that I have read this submission and believe that I have an appropriate level of expertise to state that I do not consider it to be of an acceptable scientific standard, for reasons outlined above.

Reviewer Report 26 August 2024

<https://doi.org/10.5256/f1000research.165830.r316148>

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Xavier Nugraha 

University of Airlangga, Surabaya, Indonesia

1. This research idea is very interesting and provides a breakthrough in the event that there are parties to the contract who cannot sign changes to the contract, then the attribution clause can automatically modify the existing contract. This is very useful especially associated with smart contracts that are developing today.
2. In the background of this research can be described real case examples related to the importance of the Attribution clause.
3. In the background of this research, the formulation of problems and differences with several related studies can be described (even though the researcher has said that this research is new research).
4. In the recommendation, the form of regulation (law) related to attribution clause can be added.
5. The existence of regulatory descriptions and case examples in several countries regarding attribution clauses makes the analysis of the author varied
6. It could be described in a table of concrete examples of automatic contract changes based on attribution clauses, so that readers can understand more easily the urgency and examples of attribution clauses.
7. Examples of circumstances can be outlined, so that this attribution clause can occur, so that the contract is changed automatically

Is the work clearly and accurately presented and does it cite the current literature?

Yes

Is the study design appropriate and is the work technically sound?

Yes

Are sufficient details of methods and analysis provided to allow replication by others?

Yes

If applicable, is the statistical analysis and its interpretation appropriate?

Partly

Are all the source data underlying the results available to ensure full reproducibility?

Partly

Are the conclusions drawn adequately supported by the results?

Partly

Competing Interests: No competing interests were disclosed.

Reviewer Expertise: Civil Law, Criminal Law

I confirm that I have read this submission and believe that I have an appropriate level of expertise to confirm that it is of an acceptable scientific standard.

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