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Rights and Obligations of Publishers and Creators of Literary and Artistic Works, and the Manner in Which Others May Utilize Such Works in Islamic Jurisprudence, Law, Judicial Practice, and the Legal Systems of Egypt and France

1. Akbar. Monfared[1] : Department of Jurisprudence and Fundamentals of Law, CT.C., Islamic Azad University, Tehran, Iran
2. Majid. Vaziri[2*]: Department of Jurisprudence and Fundamentals of Law, CT.C., Islamic Azad University, Tehran, Iran
3. Amrolah. Nikoomanesh[3]: Department of Jurisprudence and Fundamentals of Law, CT.C., Islamic Azad University, Tehran, Iran

*corresponding author's email: maj.vaziri@iauctb.ac.ir

ABSTRACT

The purpose of this study is to examine the rights and obligations of publishers and creators of literary and artistic works, as well as the manner in which others may utilize such works in Islamic jurisprudence, law, judicial practice, and the legal systems of Egypt and France. The research method is descriptive-analytical and is based on library sources. The findings indicate that imprévision, or "unforeseen contingencies," is the most significant concept related to the effects of unexpected circumstances on contractual obligations in French law. Although, as a general rule, intervention in a contract on the basis of changed circumstances has traditionally not been accepted in French statutory law or judicial practice, there has been a legislative tendency toward recognizing the possibility of contract modification in specific, exceptional circumstances—though not as a general principle—through the enactment of temporary and special statutes (e.g., see imprévision doctrine discussions in French scholarship; Dupont, 2016). Moreover, in the Egyptian legal system, judicial adjustment of contracts—including publishing contracts—has been explicitly recognized by the legislature, and the legal scholars and judicial practice of that country, following the legislator, have acknowledged judicial modification on the basis of the aforementioned theories (see comparative analyses in Egyptian civil law; Al-Sanhouri, 1990).

Keywords: *publisher's rights, literary and artistic works, judicial practice and law, Egypt, France*

Introduction

For the protection of moral rights, there is no temporal or territorial limitation, and this right is protected perpetually, even outside the territorial jurisdiction of the state in which the work was created, as some jurists have stated (1). Moral rights, unlike economic rights, are not confined to a specific time or period and persist forever, even after the death of the creator, continuing in the creator's name. In other words, they are permanent, and the passage of time does not diminish their validity. Moreover, they are not restricted geographically. This means that it does not matter in which country the work has been published or presented. Based on this principle, the State,

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as the embodiment of public authority, considers it its duty to provide necessary protection for the moral rights of the creator if a work belonging to one of its nationals is altered or distorted abroad.

In French law, it is stipulated that the moral rights of the creator, after his or her death, transfer to the person designated by testament to exercise these rights and, in effect, to safeguard the dignity of the creator and the integrity of the work. If no one is designated by will, these rights transfer to the creator's heirs (2). According to the French authors' rights system (Article 6 of the 1957 French Law), moral rights are not limited in time or place and cannot be transferred. The same rule is provided in Article 4 of the Iranian Law of 1969, which states: "The moral rights of the creator are not limited by time or place and are non-transferable."

While the Berne Convention—according to Article 6bis (Paragraph 1 of Article 7)—recognizes the duration of moral rights up to the creator's death and for the period during which economic rights remain valid, moral rights in Iranian law are perpetual and do not expire with the passage of time. Moreover, moral rights are not territorially limited; that is, the place of residence of the creator or the place of publication has no impact on them. Accordingly, the Iranian government, as the embodiment of public authority, considers it its duty to fully protect the moral rights of a creator if a work belonging to one of its nationals is distorted or altered abroad. Some jurists have identified attributes such as "invocability" and "non-materiality" as inherent characteristics of moral rights (2).

The importance of literary and artistic works and the protection of the economic and moral rights of their creators is evident. Nonetheless, providing a logical and comprehensive definition for identifying these works and their examples is difficult, if not impossible. According to Paragraph 1 of Article 2 of the Berne Convention, the term "literary and artistic works" includes all literary, scientific, and artistic creations, whatever their mode or form of expression: books or pamphlets, written works related to conferences, addresses, lectures, dramatic works, musical dramas, choreography, pantomimes, compositions with or without words, cinematographic activities and their related works, paintings, designs, architecture, sculpture, engraving, lithography, photographic works, images, applied arts, illustrations, maps, three-dimensional works related to geography, topography, architectural or scientific works, and similar examples.

Considering that the general rule for contracts is that they are consensual and that any formalistic requirement must be expressly provided by the legislature, publishing contracts—being innominate contracts—must also follow this rule. Although there is a tendency to require written form to provide greater protection for authors, the question arises as to whether writing is a condition of validity or merely a condition of proof. Accepting either view carries consequences. If writing is a condition of validity, publishing contracts become formalistic, and if the requirement is not observed, the contract does not come into legal existence—even if both parties admit to its formation—and such an agreement does not constitute a "publishing contract" in the sense intended by the legislature and falls instead under Article 11 of the Civil Code. However, if we accept that requiring written form for publishing contracts is an excessive and unnecessary burden—as we believe—then (particularly if included in the draft of a comprehensive law), similar to the French legislator, it should be considered a condition of proof, meaning that in case of dispute between author and publisher regarding whether a contract was concluded, the claim of the party who provides a written document will be accepted (3). In French law, however, due to increased protection for authors, the author may also rely on an oral agreement, provided he or she can prove it. Based on these considerations, the purpose of the present study is to examine the rights and obligations of publishers and creators of literary and artistic works, as well as how others may use them in Islamic jurisprudence, law, judicial practice, and the legal systems of Egypt and France.

Characteristics of Economic and Moral Rights

Intellectual property rights possess distinct characteristics that distinguish them from other types of property. Having both material and moral aspects and the limited scope of protection are among these features. Intellectual property is the product of human intellect and creativity, and this reality has endowed such property with a dimension linking it to the personality of its creator. This dimension is referred to as the moral or ethical aspect of intellectual property rights. Thus, intellectual creations possess both material and moral attributes.

One of the rights of the owner of an intellectual work is the ability to transfer ownership of this intellectual property to another, and the most notable feature of such transfer is its voluntary nature. However, transfer does not always occur voluntarily, and sometimes it is imposed outside the will of the owner. In Iranian law, involuntary transfer refers to the transfer of movable or immovable property or claims of a person to another without the parties' mutual consent, such as the transfer of a deceased person's property to the heirs (4). Accordingly, in the field of intellectual property, it may be said that since intellectual property rights are exchangeable for monetary value and possess economic benefit, they qualify as property and form part of the owner's assets. They are generally transferable and may pass from one estate to another—for example, to heirs—or assist creditors in satisfying their claims through seizure and sale.

Today, legislators have granted creators of literary and artistic works specific economic and moral rights, and the Iranian legal system is no exception. Given the exclusive right of creators to exploit their works, the issue of assigning all or part of their economic rights and the contracts associated with such transfers has become particularly important. Some of the relevant rules are general and apply to all contracts transferring rights of exploitation of literary and artistic works. Others are specific and apply only to certain contracts. In some legal systems, the legislature has addressed both dimensions: on one hand enacting general provisions regarding contracts for transferring exploitation rights, and on the other establishing special rules for contracts such as publishing contracts (*Le contrat d'édition*), performance contracts (*Le contrat de représentation*), and audiovisual production contracts (*Le contrat de production audiovisuelle*), among others (5).

Types of Economic and Moral Rights

Reproduction of any work for use within a specific spatial domain—such as personal or family use—is permissible. However, when the reproduced work is used in digital form or in video broadcasting, permission must be obtained from the person holding the author's rights. Likewise, reproduction of the work for use in companies, even if used by a single person, constitutes reproduction for professional or commercial purposes and cannot be carried out freely. Similarly, using a work as a tool in video stores or compact disc distribution centers, for the purpose of reproducing works, is not regarded as personal use, because such devices are placed in stores for public use and reproduction of works without authorization would occur.

The right of display includes the exhibition of artistic works as well as their printing. It is the exclusive right of the creator to publicly exhibit his or her work. This right includes sending original works to an art exhibition for public display. It also applies to public media. According to the preamble of the Constitution, media programs and productions must have an instructive character, reinforcing the foundational ideals of the Islamic society, including obligatory and recommended values. Second, from an informational standpoint, they must promote accurate understanding of events by reflecting domestic and international developments and analyzing the news to enhance

public awareness. Third, through useful and effective education in scientific, cultural, and artistic fields, they must provide viewers with free and easily accessible education to increase capabilities and ultimately elevate public culture. Finally, through designing entertaining programs, they must provide pleasant hours for viewers (6).

Whenever members do not grant distribution and broadcasting rights to broadcasting organizations, such organizations must establish copyright ownership over the subject of broadcasts with the ability to prevent such acts, in accordance with the Berne Convention (1971). In this context, only the right to prevent has been stated, and specific examples of exclusive rights have not been elaborated. The rights of prevention under this provision include: preventing the recording of broadcast programs, preventing the reproduction of recorded programs, preventing the rebroadcast of programs via wireless means, and preventing the transmission of television programs (but not radio audio programs) to the public, whether through wireless or wired means. However, the above-mentioned rights are not absolute, and states may choose not to adopt them. In such a case, Article 11 of the Berne Convention shall apply, meaning that creators have the right to prevent or authorize the use. Furthermore, member states may refuse to recognize broadcasting organizations' rights only if they grant copyright protection to broadcast programs under their domestic laws. In addition, under Article 122 of the Rome Convention, if an audio work is produced and reproduced for commercial purposes and broadcast directly to the people, fair remuneration must be granted to performers and producers.

Among other matters classified as economic rights of creators is the right of pursuit (droit de suite), addressed in Article 12, Paragraph 3. The article states: "Imports and recordings carried out pursuant to Paragraphs 1 and 2 of this Article, without authorization of the interested parties in states where such acts are not permitted, shall be subject to seizure." Article 14ter also concerns the right of pursuit in artistic works and manuscripts. Paragraph 1 provides: "The creator, or after his death, the persons or institutions authorized by national laws, shall enjoy the right to participate in the proceeds of any sale of an original work of art or original manuscript made after the first transfer by the creator."

The "right to present and perform the work" is one of the moral rights of the creators of literary and artistic works. Based on this right, the creator may decide whether or not to make the work available to the public. This right, explicitly recognized in the French legal system for the protection of the creator's personality, can also be inferred from Iranian legal texts (1). The exercise of the right to present and perform the work is a unilateral legal act, requiring the existence and expression of will, and generally necessitates the creator's personal consent.

Paragraph 5 of Article 5 of the Law on the Protection of Authors, Composers, and Artists refers to the transfer of economic rights concerning translation. Therefore, given the importance of this type of work, Article 1 of the Law on the Translation and Reproduction of Books, Periodicals, and Audio Works expressly recognizes the right of reproduction, reprinting, exploitation, publication, and broadcasting of any translation as belonging to the Iranian translator or his or her legal heirs, and it is transferable to others.

Adaptation, meaning taking or borrowing material from a book or newspaper, is addressed in Paragraphs 6 and 7 of Article 5 of the same law. In adaptation, all economic and moral rights of the original creator must be respected. Adaptation (*iqtibās*)—as described in legal doctrine (7)—or drawing upon the works of others, which may occur through quotation, being inspired by a book to write a play or produce a film, or other similar forms, is permissible so long as the rights of the original creator are respected. According to Paragraphs 6 and 7 of Article 5 of the Law, "the use of the work in scientific, literary, industrial, artistic, and advertising works" or "employing the work in

producing or creating other works mentioned in Article 2 of this Law" constitutes part of the economic rights of the owner.

Types of moral rights include the right of publication, the right to the integrity of the work, and the right of withdrawal or modification.

Article 3 of the 1969 Law references the right of publication, stating: "The creator's right includes: the exclusive right of publication, distribution, presentation, and performance of the work, as well as the right to economic and moral exploitation of the name and work." This means that the author exclusively decides whether to publish the work, and this authority lies solely within the creator's judgment. In French law, under Article 19 of the 1975 law, not only does the author retain the right to decide on the publication or non-publication of the work—even if publication rights have been transferred—but he or she may even refuse to deliver the work despite having contracted to do so.

Although the Iranian Copyright Law does not explicitly mention this right, it is implied in the 1969 law. Under this right, no one may alter the work without the creator's consent, because any alteration is considered an infringement of the work and, therefore, an infringement upon the creator's personality. These matters appear in various provisions of the Iranian copyright law—for example: Article 3 on the name and title of the work; Article 4, which declares moral rights unlimited by time or place and non-transferable; Article 7, which permits quotation with citation; Article 17, which again addresses the name, title, and distinctive mark identifying the work and prohibits their misleading use; and Articles 18 and 19, which prohibit any alteration or distortion of protected works without the creator's permission.

The right of withdrawal (right of repentance) refers to the creator's right to retract the work after transferring it. For example, if the producer and creator contract for delivery of the work, the creator may later refuse delivery even after transferring the right to exploit the work. Thus, the creator may reclaim the work from the transferee, but must compensate the transferee for losses arising from the withdrawal because the contract created expenses attributable to the creator. Article 32 of the French Law (1957) provides: "After transferring exploitation rights and even after publication and presentation of the work, the creator retains the right to correct or withdraw the work from the transferee. However, this right is enforceable only if the creator compensates the transferee for losses resulting from correction or withdrawal." This right exists because the creator's personality is embedded in the work. Respect for that personality requires that when the creator no longer wishes the work to be presented, he or she cannot be compelled to publish or deliver it. This right is personal and tied exclusively to the creator; therefore, it does not transfer to heirs after the creator's death (7). It is advisable that this right also be expressly recognized in the Iranian Copyright Law to avoid any deficiency in the legislation.

Obligations of the Creator

The creator of a literary and artistic work, by producing the work, acquires a bundle of rights. Some of these rights are non-pecuniary in nature and are known as moral or ethical rights, such as the right to have the work attributed to the creator. Some of these rights, however, have a pecuniary character and are referred to as economic or financial rights, such as the right of reproduction. The right to decide on the publication of a work is one of the most important rights of the creator and can be regarded as the starting point of all his or her other rights. Publication of a work reflects the creator's personality and is a wholly personal matter; therefore, this decision must lie

exclusively with the creator and cannot be exercised by others. For this reason, due to its non-pecuniary and non-transferable character, this right must necessarily be classified among moral rights.

Publishing contracts are considered innominate contracts, because they are not expressly mentioned in the Civil Code, nor does the 1961 Law on the Protection of Authors, Composers, and Artists provide a definition of them. Therefore, to identify their nature, conditions of formation, effects, and governing rules, one must, in addition to the 1961 statute, refer to the general rules of contracts.

After publication and once the work acquires economic value, multiple rights arise for the creator, the most important of which is the right of reproduction. This is an exclusive right vested in the author, who alone may reproduce the work directly or authorize others to do so. The vast majority of authors lack the financial capacity to reproduce their works; accordingly, in view of the publishers' ability to print and produce copies, authors usually seek the assistance of publishers. At this point, a contract known as a publishing contract is concluded between the publisher and the creator, which constitutes the most common mechanism through which authors exercise their economic rights. In publishing contracts, transfer of the distribution right to the publisher is presumed unless expressly agreed otherwise, because to say that the publisher owns the copies of the work but does not have the right to distribute them would defeat the purpose of the arrangement. On this basis, even if the contract is silent, the jurisprudential rule that "permission regarding a thing entails permission regarding its necessary accessories" applies, and necessarily includes the distribution right as one of the inherent consequences of the publishing contract. Publishing contracts are among synallagmatic (bilateral) contracts, meaning that each party assumes obligations toward the other from the moment the contract comes into force, and both are bound to perform them. These obligations are framed as obligations to perform (conditions of act), so that in case of non-performance by the obligor, the obligee may invoke the legal remedies provided in the Civil Code from Article 233 onward, such as compelling performance or rescinding (terminating) the contract.

Another obligation of the creator toward the publisher is delivery of the subject matter of publication to the publisher within the agreed period. However, delivery of the work does not mean transfer of ownership of the work to the publisher; rather, the subject of publication remains the property of the creator, and the publisher is responsible in this regard for one year after the completion of publication (Article 132-9).

Since, after the conclusion of the contract, the publisher's obligations do not commence until the work has been delivered, the creator must be considered the first obligor under this contract. If the creator fails to fulfill this obligation, the publisher will be unable to perform his own obligations. If the creator refuses to deliver the work, the question arises: can he or she be compelled to deliver it, or may the creator, by relying on the right to decide whether or not to disclose the work, refuse delivery? The answer is that, as stated earlier, contracts for exploiting the author's economic rights—including publishing contracts—are among the clearest indications that the author has decided to publish the work. We also noted that once this right has been exercised, it is extinguished permanently. Accordingly, the publisher may rely on the contract to require the creator to deliver the work. In practice, it is customary in contracts to stipulate a specific time for delivery; thus, before the expiry of this period, the publisher may not compel the creator to perform. Once the agreed period has expired, if the publisher cannot compel delivery, he may rescind the contract and, provided that the failure to deliver is not due to force majeure, claim damages for non-performance.

The author is also under an obligation to ensure that the work is original, the product of his or her own mind, and not a copy of others' works. If the work is based on a pre-existing work that is protected by law, the creator must

have obtained permission from the rights holder of that earlier work. The obligations of the creator are reflected in Articles 132-8 and 132-9 of the law under discussion, which set out the creator's duties toward the publisher. Under Article 132-8, unless otherwise agreed, the creator is bound by these obligations.

Obligations of the Publisher

Once the work has been delivered to the publisher, the publisher's obligations commence. Reproduction of the work is the principal subject of the publishing contract. Therefore, if the publisher fails to act within the stipulated period and if performance within that period was a condition essential to the creator—for example, where the creator does not wish the work to be published at any other time—the creator may rescind the contract and claim damages for non-performance. However, if reproduction within the specified time is not an essential condition, the creator must first seek compulsory performance of reproduction by the publisher and, if the publisher persists in refusal, may then terminate the contract. Given that reproduction is the main subject of the contract, the publisher's obligation in this regard is an obligation of result: he is in all cases bound to reproduce the work unless he proves that, due to force majeure beyond his control, reproduction has become impossible. In fact, only proof of force majeure can relieve him of liability.

After reproduction, the publisher's next obligation is distribution and making the work available to the public. Mere preparation of copies does not exhaust the publisher's obligation; he is also obliged to distribute those copies and put them at the public's disposal. Under Iranian law, the publisher may be compelled to distribute the work, or distribution can be carried out at the publisher's expense by a third party, and if neither is possible, the contract may be rescinded and damages claimed. Furthermore, since publishing contracts are conveyancing contracts, and where the duration of transfer is not specified, the maximum term is 31 or 51 years, the publisher is obliged throughout this period, as long as he holds the rights, to exploit the work by reproducing and distributing it. He may not suffice with a single print run but must keep the work alive in the market.

Another obligation of the publisher is payment of royalties. Royalties may be agreed in the contract as a lump sum or as a proportional share. Once the creator has delivered the work, the publisher is bound to pay the agreed amount unless a specific time for payment is stipulated in the contract. If the royalty is calculated proportionally, a percentage of the final price of the book—usually determined by the publisher in the final stages of preparing the work for publication—is paid, and if payment is not made, the creator may compel the publisher to pay and also claim interest for delay. If performance of the royalty clause becomes impossible, the creator has the right to rescind the contract (8).

The publisher is also obliged to respect the creator's moral rights. First, any alteration to the work without the creator's consent is prohibited. Second, the publisher must print the name, pseudonym, or mark of the creator on each copy of the work (Paragraphs 2 and 3 of Article 132-11). Under Article 132-12, the publisher must ensure continuous and permanent exploitation of the work and distribute it commercially in accordance with professional practice. Finally, under Article 132-13, the publisher is obliged to report his actions to the creator.

Rights of the Creator and the Publisher

In publishing contracts, the creator's obligation is to deliver the work in such a condition that the publisher can benefit from it. If the creator delivers the work within the agreed time but the publisher considers it unfit for publication and asks for certain revisions that do not harm the creator's moral rights, then the creator must carry out those

revisions within the agreed period and deliver the revised work for publication. Until this occurs, the creator remains bound to deliver the work. If the creator fails to deliver the revised work within the stipulated period, the publisher may, after attempting compulsion (if possible—and this may not be feasible when the obligation is closely linked to the person of the obligor), rescind the contract and claim damages for non-performance.

Sometimes the publisher, without reasonable justification, repeatedly deems the work in need of revision and, under this pretext, every time the author revises and resubmits the work, asserts again that it requires revision, so as to postpone the time for fulfilling his own obligations. If reproduction and publication of the work at a specific time is essential to the creator—for example, where the work must be available for a book fair—and the parties have agreed on this basis, and the publisher's repeated objections prevent that objective from being achieved, then the creator, after failing to compel the publisher to accept the work and by proving the publisher's abuse of rights, may rescind the contract. The creator is also under an obligation to ensure that the work is original, the product of his or her own mind, and belongs to him or her, not a copy of others' works. If the work is based on another person's work that is protected by law, the creator must have obtained permission from the rights holder. If, after publication, someone claims that the work belongs to him and has been plagiarized by the creator, then, in addition to the possible application of the rules on unauthorized (non-owner) transactions to the dispute, the true creator may bring an action against the purported creator for infringement of both economic and moral rights. If the creator has incorporated another person's protected work into his or her own without permission, the creator—not the publisher—will be responsible and liable, and if the creator fails to obtain permission from the claimant in such a case, he or she may be prosecuted for infringement, and the publisher may also rescind the contract on the basis of breach of contractual obligations.

Other causes of termination of the contract include rescission and mutual dissolution (mutual discharge). In rescission, the contract is terminated by the will of one party; in mutual dissolution (iqāla), the contract is extinguished by the agreement of both parties (9). Sometimes automatic termination (infiṣākh) results from the parties' agreement, as in the case of a resolutory condition; sometimes it is imposed by law, as in the destruction of the transferred property or destruction of the object of sale before delivery (Article 387 Civil Code), or destruction of the leased property before delivery, or destruction of the object of a loan before delivery, or loss of the possibility of use, or destruction of the object of a usufruct.

The possibility of adjusting the price in contracts for the transfer of economic rights has been recognized in some legal systems. For example, Article 1315 of the French Intellectual Property Code provides that, where exploitation rights have been transferred and the creator suffers a loss greater than seven-twelfths of the value due to lesion or failure to accurately foresee the financial results of the work, the creator may request a revision of the contractual price. This request is possible where the work has been transferred for a lump-sum remuneration. The existence of lesion is determined by considering the totality of the works exploited by the transferee in which the creator claims lesion. In Iranian law, given the silence of the rules on authors' rights regarding contract adjustment due to lesion or unforeseen financial results, it must be said that lesion, where it is gross, gives rise to a right of rescission (khiyār al-ghabn) for the creator, in accordance with Article 316 of the Civil Code. Lesion is considered gross when it is not ordinarily tolerable (Article 417), and in addition, the aggrieved party must have been unaware of the fair price at the time of the transaction (Article 418 of the same law). Finally, in determining the extent of lesion, the circumstances of the transaction must be taken into account; Article 419 of the same law provides that external conditions and the circumstances in which the transaction was concluded play a role in this assessment. In any

case, in Iranian law the judge may not adjust the price of the contract on the basis of lesion, even if the lesion is gross, and may only rule on rescission. Likewise, where the financial results of transferring exploitation rights have not been accurately foreseen, even rescission will not be possible unless the creator proves abnormal harm. It therefore appears necessary to provide for the adjustment of contracts relating to the transfer of economic rights in a manner that secures the legitimate interests of the creator.

Principles Governing Contract Adjustment in French Law

1. The Theory of Unforeseeability in French Judicial Practice

Until 1916, judicial adjustment of contracts was not permitted, and the doctrine of force majeure was ineffective in resolving the problem of disturbance of contractual equilibrium (3). The event that led to the recognition of the doctrine of unforeseen circumstances (*imprévision*) concerned the case of the "Bordeaux city gas." The mayor of Bordeaux had granted a concession for the production and distribution of city gas to a private company. Determining gas prices was assigned to the municipality as the authority responsible for public services. With the outbreak of World War I, the price of coal—the raw material for producing gas—increased drastically, exposing the concessionaire to an unforeseen event and causing significant loss. The company requested an increase in the sale price of gas, which the Bordeaux municipality rejected, also refusing to pay compensation. The French Council of State, in its ruling dated 13 March 1916, held the municipality liable for compensating the company (10). Acceptance of unforeseeability in administrative contracts stemmed from this judgment and has remained valid in the French legal system.

2. Adjustment and Termination of Contract Under Article 1195 of the 2016 French Civil Code Amendment in Cases of Fundamental Economic Change

Under Article 1195 of the 2016 amendment to the French Civil Code, judicial adjustment or termination of a contract in cases of changed economic circumstances and drastic increases in performance costs—especially in long-term contracts—is explicitly recognized when the parties fail to resolve the matter through renegotiation. Judicial modification or dissolution is permitted when the contractual equilibrium is disrupted due to changes that are unforeseeable, unavoidable, and render performance excessively onerous (11).

3. The Principle of Non-Modification of Penalty Clauses and Its Exceptions

According to Article 1229 of the French Civil Code, the penalty clause represents compensation for the loss suffered by the obligee resulting from non-performance. This provision implies that when the penalty is stipulated as compensation, the judge may modify its amount. However, the French Court of Cassation, based on Article 1152 of the Civil Code—which states that when a specific amount is agreed as damages for non-performance, the obligee may not claim more or less—traditionally adhered to the principle of non-intervention by the judge.

In 1957, however, the penalty clause lost its purely punitive character and came to be regarded as a presumption of damages that may be rebutted in court. Under Article 1 of Law No. 85-1097 dated 11 October 1985, courts may reduce or increase the agreed penalty when it is excessive or grossly inadequate, and any contrary agreement is void (11).

4. The Doctrine of *Imprévision*

Imprévision—or "unforeseen circumstances"—is the most significant concept regarding the effects of unexpected events on contractual obligations in French law. In this section, the traditional position of French law toward judicial

intervention and contract modification, and the evolution of this approach in legislation and case law—distinguishing between administrative and private law—are examined.

The doctrine of *imprévision* generally applies to situations where unforeseen economic conditions arise after the conclusion of the contract, making performance exceedingly difficult or costly, though not impossible. Despite the classical influence of the principle *rebus sic stantibus* in 17th- and 18th-century French doctrine, it was not incorporated into the Civil Code. Instead, Article 1134 reaffirmed the principle of the binding force of contracts, illustrating the strong influence of party autonomy on French law (1).

Thus, *imprévision* was not recognized in the Civil Code. Scholars later endorsed the concept, but the traditional stance of the legislator and judiciary—upholding the sanctity of contracts—meant that unexpected circumstances were acknowledged only when they amounted to force majeure (rendering performance impossible), while unforeseen hardship (rendering performance merely difficult) was accepted only in limited situations, such as those addressed in Articles 1769 to 1773.

Over time, however, French legislation and jurisprudence increasingly acknowledged the effects of unexpected events that did not reach the level of impossibility.

5. Statutory Examples

Although, as a general rule, contract modification due to changed circumstances has traditionally been rejected in French legislation and judicial practice, temporary and special statutes have demonstrated a legislative inclination to accept modification in specific, exceptional cases. Temporary laws on hardship were enacted in response to world wars and economic crises, followed by legislation aimed at protecting the “weaker parties” in contracts, many of which were directly connected to the doctrine of *imprévision*.

6. Judicial Examples

Judicial developments may be divided into administrative law and private law (civil and commercial rulings). In French law, the well-known doctrine of *imprévision*—which allows renegotiation to adjust a contract when circumstances change—was traditionally applied only in administrative contracts (i.e., contracts involving public services). This doctrine originated in the famous *Bordeaux Gas* case. The case concerned a public-service concession for supplying gas to Bordeaux. The contract, concluded in 1904 for a thirty-year period, became economically imbalanced when, after ten years, the cost of coal increased nearly fourfold due to the outbreak of war. The concessionaire sought adjustment and an increased tariff. The municipality and the trial court rejected the request, but the court of appeal reversed the decision. On 13 March 1916, the Council of State allowed renegotiation and, upon failure of agreement, judicially adjusted the contract under the principle of “continuity of public service” (12).

Principles Governing Contract Adjustment in Egyptian Law

1. The Doctrine of *al-ḥawādith al-ṭāri’ah* (Supervening Events), Article 147 of the Egyptian Civil Code, and the Enforcement Mechanism of Contract Adjustment

In the judicial and legislative system of Egypt, the doctrine of *al-ḥawādith al-ṭāri’ah* (“supervening events”) as a basis for contract adjustment, with the aim of restoring the economic equilibrium of the contract, has been expressly recognized by the legislator in Article 147 of the Egyptian Civil Code and other related provisions. Under this legal system, the judge is not permitted, under the pretext of the disappearance of contractual equilibrium, to dissolve

the contract, because the primary objective in such a situation is the fair distribution of loss and damage between the parties, which can only be achieved through adjustment, not termination (7).

Under the doctrine of unforeseen events—unlike force majeure—the judge, taking into account the interests of both parties and the new circumstances, proceeds to adjust the contract. Thus, the court distributes the resulting loss between the parties, and the debtor bears part of the consequences of the supervening event affecting the contract. In this regard, studies indicate that the former Egyptian Civil Code and the case law based on it did not recognize this doctrine in civil matters, such that even where performance of contractual obligations became difficult and onerous, the courts would still rule in favor of enforcing the contract (7).

It is important to note that, in Egyptian law, besides Article 147 of the Civil Code—where the legislator has expressly and specifically addressed the doctrine of unforeseen events and its effect, namely contractual adjustment—there are other statutory provisions that are consistent with this doctrine and also lead to adjustment of contractual obligations. These include Paragraph 4 of Article 658, Paragraph 2 of Article 346, Paragraph 2 of Article 709, and Paragraph 2 of Article 616 of the Civil Code, whose detailed texts and explanations are omitted here to avoid unnecessary prolixity. Another Egyptian jurist also believes that, in addition to the aforementioned provisions, there are further articles in the law that align with this doctrine.

2. Contract Adjustment Based on the Doctrine of Exploitation (*istighlāl*), Article 129 of the Egyptian Civil Code, and the Enforcement Mechanism of Adjustment

In addition to the doctrine of *al-ḥawādith al-ṭāri'ah*, exploitation (*istighlāl*) is also regarded as one of the foundations of judicial contract adjustment in the Egyptian legal system. Before examining *istighlāl* as a basis for judicial adjustment, it is necessary to clarify its meaning. Referring to Persian lexicography, *istighlāl* is defined as "seeking yield, taking harvest, or collecting rent or produce" (13). However, when considered as a doctrinal basis for judicial adjustment in Egyptian law, *istighlāl* signifies unjust exploitation, abusive advantage-taking, or inequitable profiteering.

In legal theory, jurists maintain that whenever a contract involves *ghabn* (lesion), and one party derives significantly greater benefit than the other, *istighlāl* is realized. In this context, one jurist holds that the prohibition of exploitation is founded on the *lā ḍarar* ("no harm") principle (14). Moreover, it can be inferred that the ethical basis of *istighlāl* is nothing other than the preservation of balance and equality. Thus, from the standpoint of Islamic law and, in particular, the law of Islamic contracts, the rationale for the doctrine of *istighlāl* is that contracts, at the moment of formation, must be concluded on the basis of equilibrium.

In the Egyptian legal system, alongside the doctrine of unforeseen events, the doctrine of exploitation also functions as a tool for adjusting contracts. The difference, however, lies in their temporal scope: *istighlāl* operates at the time of contract formation, whereas *al-ḥawādith al-ṭāri'ah* operates at the time of performance. Article 129 of the Egyptian Civil Code, in Paragraph 1, provides: "If the obligations of one of the parties are not commensurate with the benefits obtained from the contract or with the obligations of the other party, and it is established that the disadvantaged party concluded the contract as a result of the other party's abuse of his light-mindedness or intense need, the judge may, at the request of the aggrieved party, rescind the contract or reduce his obligations." The doctrinal foundation of this theory is Article 129 of the Egyptian Civil Code. This doctrine is fundamentally different from the doctrine of unforeseen events or changed circumstances, because in the theory of exploitation, mere imbalance of obligations is not sufficient; that imbalance must result from the exploiting party's abuse of the other party's lack of insight.

3. Adhesion Contracts and Protection of the Weaker Party Through Contract Interpretation in Egyptian Law

Egyptian law, without expressly defining adhesion contracts in the Civil Code, discusses them as valid and binding contracts in three contexts: the conditions for contract formation, acceptance, and interpretation. In the section on acceptance, separate provisions are dedicated to acceptance in adhesion contracts, stipulating that: "Acceptance in adhesion contracts is limited to submission to the terms proposed by the offeror and is not subject to negotiation." The placement of this article in the general part of contract law and immediately after the formation requirements indicates that the Egyptian legislator has recognized adhesion contracts as valid.

Article 149 of the same Code further provides that where a contract of adhesion contains oppressive or unjust terms, the judge may adjust those terms or exempt the weaker party from performing them, and any agreement to the contrary shall be void.

4. Adjustment or Deletion of Unfair Terms

The Egyptian legislator, in Article 149, has vested the judicial authority with the power to delete or adjust unfair terms in adhesion contracts. In fact, the legislator has deemed it necessary to depart from the general rules of contract and has authorized the court to modify or strike out unfair terms in such contracts.

5. The Rule of Interpreting the Contract in Favor of the Debtor

Contract interpretation is a judicial mechanism for determining the actual intention of the parties. In light of Article 150 and Paragraph 1 of Article 151, which lay down the general rules of interpretation, and Paragraph 2 of Article 151, which provides a special rule for adhesion contracts, interpretive rules must be analyzed in two parts: general and specific.

The rule of "interpretation in favor of the debtor in case of doubt" has been accepted as a general principle in contract interpretation. In Arab legal systems, this is expressed as *tafsīr al-iltizām ʻind al-shakk li-maṣlaḥat al-multazim*, and the Egyptian legislator has formulated it in Paragraph 1 of Article 151 of the Civil Code as follows: "Doubt shall be interpreted in favor of the debtor."

In Paragraph 2 of Article 151, the Egyptian Civil Code establishes a special rule concerning adhesion contracts: "However, the interpretation of ambiguous clauses in adhesion contracts may not be to the detriment of the adhering party." Thus, the general interpretive rule laid down in Paragraph 1 is modified in Paragraph 2 to protect the weaker party: in adhesion contracts, even where the weaker party is not technically the debtor, ambiguous terms must still be interpreted in his favor. In this respect, the general rule is effectively inverted when the weaker party is not the debtor.

6. Validity Control of Adhesive Terms under Article 149 of the Egyptian Civil Code

The Egyptian legislator, in Article 149, has conferred upon the judiciary the authority to delete or adjust unfair terms in adhesion contracts. In reality, the legislator has found it necessary to deviate from the general rules of contract and has empowered the judge to modify or strike out unfair conditions in such contracts (12).

7. The Doctrine of "Unforeseen Events" in Egyptian Law (*al-ḥawādith al-ṭāri'ah*)

The doctrine of unforeseen events in Egyptian law, with some differences, is essentially the same as the doctrine of unforeseen events in French administrative law. The Egyptian Civil Code of 1949 has, in certain articles, adopted the core of this doctrine and some of its legal consequences, and Egyptian courts have issued judgments accordingly. Article 147 of the Egyptian Civil Code provides that when exceptional, general events—unforeseeable to the parties—occur and render performance for the debtor onerous to the extent that significant loss would result,

without making performance impossible, the judge may, taking into account the interests of both parties and the new circumstances, adjust the contractual obligation to a reasonable level (7).

Conclusion

The purpose of the present study was to examine the rights and obligations of publishers and creators of literary and artistic works, as well as the manner in which others may use such works in jurisprudence, law, judicial practice, and the legal systems of Egypt and France. The findings showed that, according to Article 1195 of the 2016 amendment to the French Civil Code, judicial adjustment or termination of a contract in cases of fundamentally changed economic circumstances and a significant increase in the cost of performance in long-term contracts is expressly recognized when the parties fail to resolve the matter through renewed negotiation. Judicial adjustment or dissolution is permitted when the contractual equilibrium has been disrupted due to changes that are unforeseeable, unavoidable, and render performance excessively burdensome. The doctrine of *imprévision*, or unforeseen events, is one of the most important concepts concerning the effects of unexpected circumstances on contractual obligations in French law. This part of the study explains the traditional position of French law regarding the possibility of judicial intervention and contract modification after its formation, and the evolution of this stance in legislation and case law, distinguishing between administrative and private law.

In the judicial and legislative system of Egypt, the doctrine of *al-ḥawādith al-ṭāri'ah* (supervening events) has been explicitly accepted by the legislator in Article 147 of the Civil Code and related provisions as a basis for contract adjustment aimed at restoring economic balance. Under this legal system, the judge may not dissolve the contract merely on the grounds that its economic balance has been disturbed, because the primary objective of the doctrine is the equitable distribution of loss and damage, achievable only through adjustment and not through termination. In addition to the doctrine of supervening events, the doctrine of exploitation (*istighlāl*) is also regarded as a foundation of judicial adjustment in the Egyptian legal system. Before examining the doctrine of exploitation as a basis for judicial adjustment, it is necessary to clarify the meaning of the term *istighlāl*. According to Persian lexicography, the term denotes seeking or taking produce or rent.

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Authors' Contributions

All authors equally contributed to this study.

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The authors of this article declared no conflict of interest.

Ethical Considerations

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Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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