

Dahir on Obligations and Contracts (DOC)

Reference: Dahir of 9 Ramadan 1331 (12 August 1913) forming the Code of Obligations and Contracts, as amended and supplemented

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Practice areas: Civil law, Business law, Real estate and land law

The Code of Obligations and Contracts (DOC) is the cornerstone of Moroccan private law. It defines the sources of obligations (contract, quasi-contract, tort, quasi-tort), the conditions of validity and the effects of contracts, civil liability, the ways in which obligations are extinguished, limitation periods and specific contracts (sale, lease, loan, agency, suretyship, civil partnership).

Formation and validity of the contract

- Four elements are required: capacity, a valid declaration of intent, a definite subject matter and a lawful cause (Art. 2).
- Defects of consent: mistake (Arts. 40 to 45), duress (Arts. 46 to 51), fraud (Arts. 52 and 53), lesion (Arts. 54 to 56). They give rise to an action for rescission within one year (Art. 311).
- Proof of agreements exceeding 10,000 dirhams requires a written document (Art. 443), except in commercial matters.

Effects and non-performance

- Binding force (Art. 230) and performance in good faith (Art. 231).
- A debtor in default owes damages covering the loss suffered and the profit lost (Arts. 263 and 264); the judge may reduce a manifestly excessive penalty clause (Art. 264, as amended in 1995).
- Termination for non-performance (Art. 259): the creditor may seek specific performance or termination, together with damages.

Civil liability

- Liability for one's own acts, for intentional fault (Art. 77) or negligence (Art. 78).
- Vicarious liability: parents, masters and employers (Art. 85), teachers and craftsmen (Art. 85 bis).
- Liability for animals (Art. 86) and for things (Art. 88): the keeper must prove an external cause.
- Liability of the State and municipalities for damage caused by the operation of their services (Art. 79).

Limitation periods

- General limitation period of fifteen years (Art. 387).

- Shorter periods: two years for claims of doctors, lawyers, suppliers and employees (Art. 388); one year for certain actions (Art. 389).
- Limitation is interrupted by any legal claim, formal demand or attachment (Art. 381) and by the debtor's acknowledgement (Art. 382).

Key articles

ART. 77

Any act whatsoever by a person which, without the authority of the law, knowingly and wilfully causes material or moral damage to another, obliges its author to make good that damage, where it is established that the act is its direct cause.

ART. 78

Everyone is liable for the moral or material damage they have caused, not only by their act, but by their fault, where it is established that this fault is its direct cause.

ART. 230

Contractual obligations validly formed take the place of law for those who made them, and may only be revoked by their mutual consent or in the cases provided for by law.

ART. 231

Every undertaking must be performed in good faith and obliges not only to what is expressed therein, but also to all the consequences that the law, custom or equity give to the obligation according to its nature.

ART. 387

All actions arising from an obligation are time-barred after fifteen years, subject to the exceptions below and those laid down by law in particular cases.

Points to watch

- Date your important contracts and have the signatures certified: a certain date determines whether the contract can be relied on against third parties.
- A handwritten, dated and signed acknowledgement of debt remains the most effective means of proof between private individuals.
- Penalty clauses are valid but may be revised by the judge; provide for proportionate amounts.

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