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General rules prevail over negligent contracts

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Abstract:

In this article, we seek to express and examine the effects that negligent contracts have on the relations between the parties, and we mention some important and common effects between this group of contracts. In fact, with more familiarity with the effects that these contracts have on transactions and exchanges, they can be entered with more ease and desire. The effects of negligent contracts on the relations between the parties are specific to the same contract; But due to the tolerance and negligence of the legislator and the friendliness and tolerance of individuals, what is observed in most of these contracts is the lack of choice of cheating and option, which is the governing principle in relationships and for the sake of supposed benevolence between people, a concise knowledge is sufficient. Does not have to be aware of all the terms and conditions in detail. The method used in this article is a descriptive-analytical method using the library method.

Keywords: Contract - negligence - cheating - arrogance - general knowledg

Introduction:

One of the divisions of contracts that has been widely used in Imami jurisprudence is the division of contracts into false and negligent. The nature and philosophy of different contracts require that they be not the same in degree of accuracy or certainty; In contractual contracts, which are based on economic gain and material benefits, the parties try to know the components of the contract, especially the object of the transaction, accurately and in detail; Otherwise, the contract is exposed to loss, danger and " Gharr " and the legislator does not allow such a contract to be concluded. However, in negligent contracts, the main purpose of which is to conclude benevolence and altruism, and the parties are based on benefiting each other, there is no grievance or harm despite the brief knowledge. In the field of jurisprudence of transactions, which deals with the general rules and conditions of the contract in a scattered manner and in addition to the issues related to the sale, there is a reference gap that deals exclusively with the general rules and contracts in general, especially negligent contracts; Therefore, we decided to extract the general rules and rules of these contracts by following the authoritative jurisprudential sources. In this regard, there is no independent chapter in jurisprudential books, but they can be found among the topics related to contracts. Articles "The concept of arrogance in the contract of sale: a study in Iranian law and jurisprudence; Javad Jalwani, Mohsen Jalwani - Master of Private Law "and" Jurisprudential Legal Study of Gharr in Non-Sale Transactions; Reyhaneh Hassanpour "and" The flow of cheating in negligent contracts; "Mohammad Ali Saeedi, Mohsen Farrokhzad" can help us clarify the issue.
In this article, we seek to examine the effects of the division of contracts into deception and negligence, and we want to obtain the rules that

have been created based on these effects in the relations between the parties. And separated them. The method used in this article is a descriptive-analytical method using the library method.

1. Lack of flow of cheating option in negligent contracts:

Cheating in the word means deception and in the term of jurists, selling goods in exchange for a price that is different from the real price [1].

According to the well-known jurists, the option of cheating is proven for each seller and customer, provided that: Firstly, the deceived person is ignorant of the real price (fair market price). Secondly, cheating, that is, buying at more than the market price or selling at less than the market price, should be in a quantity that is not usually negligible (ie, cheating is obvious) [1].

The option of cheating has been proven among famous scholars [2] and even consensus has been claimed on it [3] , [4]. It should be noted that in superstitious contracts, the majority of people rely on accuracy and do not allow negligence in it [5]. The purpose of such contracts is to achieve economic benefits and material benefits, and therefore the parties have tried to make the money they gain as a result of the contract more in terms of economic value or the financial equivalent that they lose as a result of the contract. As a result, by using the option of cheating, the person seeks to compensate the damage caused to him as a result of the exchange; Therefore, it can be concluded that this option is for reciprocal contracts, not negligent contracts, whose main purpose is benevolence and altruism.

In fact, it should be noted that it is not necessary in negligent contracts, which are sometimes called "Samah contract" or "Arfaqi contract", to be accompanied by financial forgiveness [6] Whether its subject matter is not property at all, such as bail, or if it is property, its possession is accompanied by a condition of guarantee, such as a loan agreement and Exchange guarantee, or if money is given, this forgiveness is accompanied by a condition in favor of the creditor. Like a exchange for forgiveness.

If the problem is that: The proofs of the option of cheating are not suspended by the word cheating until we look for its examples and say that a contract based on not paying attention to more or less does not flow into the option and a contract based on it flows into the option; Rather, taking advantage of the fatwa entered in the option, it is dedicated to fraud in the sale and there is no opportunity to look for its examples; And the hadith of harmlessness is general and includes all instances of cheating, except what is harmful with knowledge, and the fatwa does not differentiate between negligent and other contracts, so the hadith of harmlessness also includes negligent contracts. It should be said that if the reason for proving the option of cheating is the verse: 29) to know; The verse is dedicated to transactions that have been done with the consent of the parties (negligent contracts) and the harmless hadith, in addition to requiring Jabir [7], does not include negligent contracts; Because, assuming that the transaction is based on the lack of attention of the parties to more or less, the damage is caused by the action of the parties themselves and the hadith denying the loss does not include such a case; As a result, the cucumber option in exchanges based on the accuracy of "false contracts"; However, in the contracts of negligence to which a person has been bound with the intention of benevolence and benefit, and with knowledge and awareness of the situation, and there has been no deception or harm, the option of cheating does not apply; Such as peace, which is a possible obligation to resolve conflict or eliminate employment, provided that the exchange is based on absolute tolerance [8] , [5].

2. Lack of flow of Gharr in negligent contracts:

Gharr means danger [1], deception and ignorance of affairs and negligence [9].

Regarding the jurisprudential term Gharr, it can be said that it is a contract that the condition and conditions of its conclusion - which is due to ignorance in the existence of the transaction of "seller and price" or ignorance of the attributes

or doubt about its acquisition - Financial risk is in the transaction [10].

There are two possible grounds for forbidding Gharr:

A- The principle of "having without reason" and preventing loss: In Islam, according to the fairness of the transactions that exist, it is opposed to Gharr transactions and contracts, which are in fact transactions on the unknown and are examples of consumption of property in vain;Because the result of the transaction, which is the possession of an object equal to the price, is not achieved in a Gharr transaction, and the other loses money without direction and without exchange, and this is a loss that Islam has forbidden. The Prophet (PBUH) declared the existence of harm in the environment of extinct legislation with the phrase "no harm and no harm in Islam" [11]; In the implementation stages, ie in the special stages of people's social relations with each other, if an action leads to personal harm to another, it will not be signed by the legislator [6].

B- The principle of "steadfastness in action" and the prevention of conflict: Individuals must build their transactions firmly and firmly and avoid sluggishness and negligence in work; Because this negligence leads to Gharr and risk in the transaction. The Almighty God mentions this principle by mentioning its examples: "O you who believe, if you are indebted to the religion until the appointed time, it is a fact ..." (O you who believe! If you are indebted to one another, you must write it). Baqara, 282) It is inferred from the Shari'a method that the Shari'a is based on eliminating differences and conflicts and cutting off attraction between people, and without a doubt, it is Gharr from matters that cause differences and disputes; Therefore, the wise method requires that the root of this conflict be eliminated [12] and its elimination is to create solid and reliable transactions.

It should be said that Gharr is definitely mentioned in the sale, and the most important reason is the famous hadith of the Prophet (PBUH): , [13] (Indeed, the Prophet (PBUH) forbade the sale of Gharri.) whose weakness is compensated by the actions of the companions. But Gharr is not limited to sale, but also applies to other contracts; Because, first of all, Gharr in this hadith refers to the fact that Gharr itself is the cause of invalidity and the word sale has no character. In other words, the Prophet (PBUH) forbade the sale of Gharr only because of its Gharr, not because it was a Gharri sale; Therefore, in any contract that is Gharr, it invalidates it, except in cases such as: peace over the unknown, which is permissible for a specific reason; Secondly, Allamah in Al-Muttalib has quoted the hadith without the word "sale" in the form of "forbidding the Prophet (PBUH) from al-Gharr", which is also the reason for the lack of specificity of sale in the hadith and its generalization to other contracts [12]. Gharr is therefore current in all exchange contracts; But in free and benevolent contracts, such as: forgiveness, since the goal is pure goodness and the parties to the contract have entered into a transaction with satisfaction and awareness of the circumstances, Gharr in them does not lead to conflict and the consumption of property is void. They are not and no harm is done to the person so that the hadith does not deny its harm.

3. Adequacy of concise knowledge in negligent contracts:

Concise science as opposed to detailed science, and means science that is mixed with a kind of doubt and ambiguity; In other words, it is a science that is hesitant between two or more things, and in one case there is certainty and in the other there is conciseness and ambiguity [14]. The word "concise" in the combination of "concise knowledge" of the adjective belongs to the person in question, that is, it is known, not to the person himself; Because conciseness has no meaning in knowledge and certainty. What is conceivable is the conciseness of science. In contrast to general science, there is detailed science, which is the certainty of something definite.

The principle in transactions is to have detailed knowledge. Contracts that require detailed knowledge for their validity are called erroneous contracts, and in contrast to

negligence contracts are contracts for which a brief knowledge is sufficient for their validity.
In order to prevent the occurrence of disputes in contractual relations, the Shari'a has annulled the contracts whose subject matter is unknown and has not given them any legal effect; Thus, the principle of the need to remove ambiguity is a rule that is related to public order and the guarantee of its implementation is the invalidity of the contract [15].
However, since in negligent contracts, the parties enter into this type of transaction with full discretion and knowledge, as a result, there is no conflict between individuals and the order of society is not disturbed. The religion of Islam has many moral precepts regarding kindness, compromise and tolerance with others; And in order to promote benevolence, has reduced the dryness of the basic rules; For example, it has somewhat ignored the ambiguity of the object traded in benevolent contracts. In fact, the Shari'a respects the will of both parties and regulates legal organizations according to their wishes [6]. Where the subject of the contract is pure benevolence, such as: gift, charity and forgiveness; Ignorance of the object of the transaction does not harm, and the person to whom they have given something and the recipient of the alms do not give anything in return for the money they receive; But in pure exchange, it is inevitable to know the exchanges, and ignorance in it causes the gifted property to be lost in exchange for another exchange [16]. And in contrast to the hadiths that have been introduced to prove the principle of the need to remove ambiguity in the object of the transaction; There are other hadiths; Who, despite the fact that the object of the transaction is unknown, consider the contract valid; Among them: the story of a dead man who was in debt and the Prophet (PBUH) refused to pray for him, and Abu Qatadah and Imam Ali (AS) accepted his debt, despite the fact that the amount is unknown, and the Prophet (PBUH) also accepted the guarantee of the two [17].
It should be noted, however, that it is true that social interests and changing needs have led legislators to be less strict in enforcing the basic rules and to consider exceptions; But the exceptional case also has a special rule and includes certain limits. Therefore, as in the implementation of the basic rules, we should not be too strict, and as an exception, we should not go too far. Therefore, we give up the main rules only in a place that does not have a corruptor and its goodness requires it [15].

Conclusion :

In a general conclusion, we can name a type of division of contracts and exchanges that the purpose of entering into it, determines the rules, regulations and even naming them: If a person's goal is to make an economic profit, then he should be very careful in it and any ambiguity, loss and deception can disrupt the formation of that contract; But if the goal of the person is not to make a profit, but the goal is kindness and benevolence, then it does not have the rigidity and sensitivity of the first contract, but many ambiguities are ignored and the contract is concluded more easily. The first type is called a false contract and the second type is called a negligent contract. By examining and comparing these two contracts, it is possible to understand the rules of negligence and the degree of negligence of the legislator in negligence contracts; First, the indisputable value of proving the option of cheating is contracts based on cheating, and in negligent contracts, according to the verse,
(O you who believe, do not eat each other's property unjustly, unless it is a business that you have done
willingly) There is no cheating; Because the person himself has done harm with knowledge, so the hadith of harmlessness is not included, and that without the implementation of the option, there is a compromise and the consumption of property is not void. The second is the lack of complacency in negligent contracts; Because the goal is kindness and carelessness, and arrogance in them does not lead to conflict, and again, the use of property is not invalidated. And third, the sufficiency of concise knowledge in these contracts; Since the person seeks good, so it is not necessary to be aware of all aspects of the contract in detail, but as soon as he was briefly aware of the contract,

it is enough, and this ignorance and ambiguity to the transaction and the contract , Does not cause harm.

References :

1. The Holy Quran; Translated by Hossein Ansarian.
2. Shahid Thani, Zayn al-Din ibn Ali, 1410 AH, Al-Rawdha al-Bahiyya fi Sharh al-Lama'a al-Damashqiyah (Al-Mahshi-Kalantar), first edition, Qom, Davari Bookstore.
3. Allama Hali, Hassan Ibn Yusuf ,1414 AH, Tazkerat al-Fiqh (I-Hadith), first edition, Qom, Al-Bayt Foundation, peace be upon them.
4. Allama Hali, Hassan Ibn Yusuf, 1413 AH, various Shiites in the rules of Sharia, second edition, Islamic Publications Office affiliated with the Society of Teachers of the Seminary of Qom.
5. Ibn Zohra, Hamza Ibn Ali Husseini, 1417 AH, The Richness of Development to the Science of Principles and Subjects, First Edition, Qom, Imam Sadiq (as) Institute.
6. Khomeini, Ruhollah Al-Musawi, 1421 AH, Kitab al-Bay '(for Imam Khomeini), first edition, Tehran, Imam Khomeini Publishing House.
7. Mohaghegh Damad, Seyed Mostafa, 2004, Rules of Jurisprudence: Civil Section (Ownership / Responsibility), 27th Edition, Tehran, Islamic Sciences Publishing Center.
8. Akhund Khorasani, Mohammad Kazem Ibn Hussein, 1406 AH, Margin of Gains (for Akhund), first edition, Tehran, Ministry of Culture and Islamic Guidance.
9. Naini, Mirza Mohammad Hussein Gharavi, 1373 AH, Minya al-Talib in the margins of gains, first edition, Tehran, Muhammadan Library.
10. Ibn Manzoor, Muhammad ibn Makram, 1414 AH, Arabic language, Beirut-Lebanon, Dar al-Fikr.
11. Rafiei, Mohammad Taghi, 1999, A Comparative Study of Gharr in Islamic and Iranian Law and the International Sale Convention, First Edition, Qom, Islamic Propaganda Office Publishing Center.
12. Har Ameli, Muhammad ibn Hassan, 1409 AH, detail of Shiite means to study Sharia issues, first edition, Qom, Al-Bayt Institute, peace be upon them.
13. Hosseini Maraghi, Sayyid Mir Abd al-Fattah ibn Ali, 1417 AH, Al-Anawin al-Fiqhiyyah, first edition, Qom, Islamic Publications Office affiliated with the Society of Teachers of the Seminary of Qom.
14. Ibn Hayyun, Nu'man ibn Muhammad, 1385 AH, Du'aim al-Islam, second edition, Qom, Al-Bayt Institute, peace be upon them.
15. Jafari Langroudi, Mohammad Jafar, 2002, Extensive in Legal Terminology, Second Edition, Tehran, Ganj-e-Danesh.
16. Vahdati Shabbiri, Seyed Hassan, 1379, the anonymity of the transaction, first edition, Qom, Qom seminary propagandaoffice.
17. Hassani, Hashem Maroof, Bita, Theory of Contract in Al-Jafari Fiqh, First Edition, Beirut-Lebanon, Publications of Hashem School.
18. Ahmad ibn Hanbal, 1420 AH, Musnad of Imam Ahmad Hanbal, second edition, Al-Risalah Foundation.