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Applying the condition that the conditions are known and certain in the contract and comparing it with the laws of England and Iraq

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Abstract:
For any transaction to be correct, it is necessary that the object of the transaction has conditions that the absence of one of those conditions will invalidate the contract. The certainty of the seller means that the seller is not certain of two or more things. That is, the merchandise that is being sold must have an example and it must be clear which merchandise is intended by the parties. In jurisprudence, transactions in which the seller is ambiguous or uncertain are invalid. For example, it is well known that an animal cannot be sold, although it is possible to find that the civil law also followed this rule. We know that everything that is traded must have characteristics, for example, it can be surrendered, it has a rational benefit, it has wealth, etc.
In English law, Article 16 of the Sale of Goods Law refers to the definiteness and clarity of the transaction, which is similar to Iran's law, and in the laws of Iraq, definiteness and uncertainty are also mentioned in the law of that country, which is specifically mentioned in this article. It has been addressed.

Key words: known, Moin, Iranian law, English law, Iraqi law

Introduction:

We know that everything that is traded must have certain characteristics, for example, it must be known and certain, and it can be surrendered, it has a rational benefit, and it has value. And it is the foundation of reason, so violating it will invalidate the contract. In this article, the transaction is examined in a comparative way.

Topic 1: Comparison of known and certain conditions in the contract

Clear means not to be vague and uncertain. The meaning of certainty of the seller is that the seller of one of two or more things is not known. That is, the merchandise that is being sold must have an example and it must be clear which merchandise is intended by the parties. In jurisprudence, transactions in which the seller is ambiguous or uncertain are invalid. For example, it is well known that an animal cannot be sold, although it is possible to find that the civil law also followed this rule. If the seller is hesitant, such as the sale of a refrigerator and a carpet for 50 thousand tomans, the sale is void, and this transaction is called a fraudulent transaction because there is ignorance in it, and the meaning of being known is that if the seller is completely liable, that transaction is temporary. It is correct that the general characteristics, i.e. quantity, type and description, must be mentioned in the transaction. The meaning of gender is the nature and nature of which the object of the transaction has come into existence and the meaning of attribute is something that has an effect on the motivation of the parties and if the examples of the total sale are different in terms of value, the seller must surrender an individual that is usually not defective and if If the subject is certain, the transaction is correct when it is clear between the parties and there is no need to mention its characteristics in the contract of sale.

The word "certain" in the dictionary means specific, known, special, prescribed, etc.

In civil law, this word is used in different meanings, some of which are mentioned below

1- Sometimes the word "certain" is used in the article as an unknown word and in the sense of being known; So that Article 342 of the Civil Code has:

<<The amount, type, and description of the item must be known, and its amount can be

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determined by weight, kilo, number, particle, or area, or observation of the customary function>>.

2- Sometimes the word Moin is used against the concept of "not hesitating"; In this case, being definite means that the object of the transaction is certain among different objects and should not be in the form of one of two things. For example, a person pledges to deliver a carpet board or one million Rials in cash as a price.

3- Sometimes the word "certain" is used in the sense of both known and certain, which Article 190 and Article 472 paragraph 3 confirm this meaning. As Article 472 states: The object of the lease must be definite, and the lease of an unknown or uncertain object is invalid.

For example, in the discussion of the certainty of the transaction, the word "certainty" is used instead of "certainty". In the sense that the transaction is between different objects. So, if the price of the uncertain transaction is between two or more different things, the price of the transaction is considered uncertain.

The first paragraph: Comparison of the role of certainty and legitimacy of direction

We know that everything that is traded must have characteristics, for example, it must be surrendered, it has a rational benefit, it has wealth, etc., now the question is that the necessity of not being ambiguous about the transaction, which according to Article 216 of the Civil Code is one of the conditions for the validity of any transaction. Is it related to the fact that the seller is known or is it certain? On the one hand, Article 216 and the first part of Article 342 of the Civil Code indicate that the non-ambiguity of the transaction is related to the necessity of its being known, as the first part of Article 242 stipulates: "The amount, nature and description must be known" or in Article 216, it is considered correct with the phrase "brief knowledge" of transactions in which detailed knowledge of the transaction is not necessary. Therefore, it can be said that the word "science" indicates that the non-ambiguity of the transaction, which was stated before mentioning the exception, is related to the necessity of the transaction being known. On the other hand, the last part of Article 242 of the Civil Code may lead to the mistake of using the word "definite" as opposed to vague, as well as the word "definite" which is more compatible with definiteness than being known. However, it should be said that using the word certain instead of known requires that the word "known" is also used instead of "certain". Therefore, when it is said, the seller should not be hesitant, it is necessary to be able to use the word "known" instead of hesitant, which certainly cannot be correct. For the following reasons, it should be said that in the civil law, being known and not being vague are placed together as one of the terms of the transaction, and there are differences between being known and certain as follows:

1- In paragraph 3 of Article 190 of the Civil Law, a certain subject that is being traded. It is considered one of the basic conditions for the authenticity of the transaction, which means that the seller should not hesitate between two or more things, while the lack of ambiguity in the transaction is absolutely not a basic condition for the authenticity of all transactions. Because as mentioned in the last part of Article 216 of the Civil Law, in transactions, the object of the transaction may not be known and at the same time the transaction is considered

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correct, as Article 563 of the Civil Law stipulates that:

"In Jaalah, beyond the necessity of determining the agent, the action may be hesitant and its qualities unknown". Here, the word "uncertain" refers to the possibility of the transaction being ambiguous in the Jaala contract.

2- From the point of view of lexicology, the known is placed against the unknown and the definite against the uncertain or uncertain.

3- The jurists, in the explanation of "certainty", which is one of the conditions of the transaction for the validity of the contract, consider it to be known in terms of quantity, nature and description. Therefore, the meaning of the fact of the transaction, lack of ambiguity regarding the type, description of its amount; While certainty is not to hesitate between two things.

The second paragraph: Comparison of the role of the condition in the durability of known and certain

Will doubt about any object cause the transaction to be doubtful and invalidate it, or should it be detailed and limit the scope of doubt effective in invalidating the contract?

In the introduction of the discussion, it should be said that the property being traded can be divided into general, general in specific, and specific object in terms of concept. "General" means a concept that applies to many people; Such as wheat, barley and bills. The general concept has no external existence, and what exists outside the mind is examples and general individuals.

"General in Moin" is a concept that can be applied to many people confined and specific, like a set of arrow cars in a certain exhibition. "Foreign property" means money that is available abroad during the contract and can be referred to; Like a table or a car.

On the other hand, the traded property is also divided into tangible and valuable property in terms of its important characteristics. According to Article 950 of the Civil Code, property is a type of money that has a lot of counterfeits, such as sugar, money. Therefore, since two apartments or two horse rides cannot be found that are similar in every respect, it is valuable property. Considering the above, we come to this general rule that a similar property can be transacted in the form of a general obligation or a general obligation in a specific or definite form, but valuable property must be traded exclusively in a specific form, otherwise the transaction is void.

In other words, if the price of the transaction is similar, the doubt in the general and general price in Moin will not lead to confusion and invalidity. Because it is assumed that all the mentioned properties are equal in terms of characteristics and price, but if the price is valuable property, it should be transacted in the same form, and if it is transacted in the form of a general obligation or a general obligation, there is doubt in the transaction. does Because it is assumed that custodial properties are unique and different from other similar properties and should only be traded in a specific manner. This ruling has caused the legislator to leave the determination of the general case to the obligor. As stated in Article 279 of the Civil Code: If the subject of the obligation is not personal and general, the obligee is not obliged to perform it from superior persons, but he cannot perform it from a person who is considered to be morally defective.

The second topic: the rulings and effects are known and definite

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In this topic, the effects of being known and definite have been examined in the articles of the Civil Law, which are as follows, Article 342 of the Civil Law states: "The amount, type, and description of the thing sold must be known, and its amount must be determined by total weight or number or The measure or the area or observation is the function of common sense. According to Article 351 of the mentioned law: if it is a general sale (honest sale to many people), the sale is valid when the amount, type and description of the sale is mentioned. The transaction is a piece of land or a building, mansion, apartment, shop, etc.

Also, it is necessary to determine the exact amount of the area and the size of the transaction and important characteristics, including the type of use and the exact area of the commercial and administrative building, etc., and it prevents the filing of numerous lawsuits, as described by the third branch of the Supreme Court of the country in its decision No. 247-1/ 1319/12 has stipulated that if it is stated in the deed that (the seller transferred all his share of the land and grass, etc., without exception to something with definite and specific limits) to the buyer, because this sentence indicates that the limits and specifications of the seller were not It has been known to the parties, the decision to invalidate the sale due to ambiguity and ignorance in the sale will be against the deed.

The first paragraph: The reasons for the inclusion are certain and known

As Mir Fattah Maraghi has stated: There is no doubt that transactions are things that are necessary for life and are not considered to be the beginning of inventions, and it is not a problem that the transfer of nobles and interests of property, whether for exchange or without exchange, It is needed by the people. People need participation and fulfillment of interests, entrustment and representation of each other, marriage and the like, and among these things, beh, peace, rent, gift, loan, attorney, partnership, mudaraba, marriage, farm, masakat, jaala and contracts. It also arises and it is also clear that these contracts are common matters between people that different people perform in different ways, even among people there are common transactions that are not included in any of the specified contracts of fiqh. They do these transactions according to their needs.

Some of these transactions can be placed under one of the specific contracts and others cannot. And since this matter was also common during the time of Sharia, whenever it was forbidden or suspicious, the Sharia should have prohibited them; While the translation of the Shariah implies its correctness and the members of the Shariah and...

As mentioned by these famous jurists of late, the needs and necessities of the society have been the reason for the formation and evolution of transaction law. In this regard, the principle of correctness, the principle of necessity, and the legal principles of various jurisprudence, which are widely used in transactions, have been accepted. If some later jurists also come to the position of justifying the above-mentioned situation and consider the allocation of the verse "Ufwa al-Aqud" to conventional contracts and obligations in the time of Sharia to be pointless.

1- Obtaining correctness or necessity

According to what we saw in the historical competition of the emergence of conditions in the contract, one of the

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reasons for including the condition in the contract was to obtain validity with the necessity for contracts that were considered as the initial condition (indefinite contract) and permissible contract. Contracts have elements and performance that constitute the contract, for example, in the case of sale, the subject of transaction and the obligation to surrender are part of the contract, and if there is an attribute condition in the contract of sale, it is related to a part of the contract that is the subject of the transaction. The condition of coloring the transaction, which is an active condition, is effective in the components of the contract, but for example, the condition of the fulfillment of the power of attorney in the contract of sale has nothing to do with any of the elements of the contract. Therefore, some of the conditions contained in the contract had nothing to do with the elements of the contract and were independent of the contract, and only creating a connection between the contract and the condition (in some of the conditions of the result and the conditions of the verb) was intended by them in the way that was said. On the other hand, the relationship created between the condition and the contract (result condition) for the condition included in the contract creates a special enforceable guarantee (conditional provision). It was a guarantee of the right of termination in case of non-fulfillment of the condition. In fact, when the parties include a condition of a result in the contract, they intend to benefit from this condition and the relationship with the contract, and to ensure that the condition is not violated, they include it in a contract that is important for the other party, the survival of the contract. In a way that does not agree to violate the condition and create the right of termination for the other party. Therefore, if the condition of the result in which the effect of a certain legal act is demanded is not possible in some way; The beneficiary can break the contract. In fact, in order to access the principle of freedom of will in the strict forms of its time, custom resorted to initiatives that could be used from existing institutions.

What was said was related to the reason for inserting the condition of the result and to some extent the condition of the verb; Because when the obligation was considered a basic condition, it became a mandatory condition during the contract, because it was accepted and accepted as part of the contract, and it was considered mandatory according to the contract. Especially since one-sided obligations (Iqaat) have been unnecessary in Imami jurisprudence. Iqaats, if they were included in the contract, would have a different ruling, because they were considered to be required to be fulfilled just like contractual obligations.

2- Changing the effects of marriage

Legal writers have included the terms of the contract in the chapter on the works of the contract, because they consider the discussion of the terms of the contract to be related to "determining the provisions of the contract".

By making a condition, the parties intend to change the effects of the contract, and even though they want to achieve the goals of a contract for which the form of the contract is not sufficient, for example, a contract is signed for the design and implementation of a dam building. In order for the employer to benefit from the expertise and efficiency of the work stoppage, at the same time, the main contract gives him the power of attorney to buy the suitable land for the

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establishment of the workshop and to procure the necessary raw materials. The work stoppage also accepts the power of attorney to get more wages. In this way, the parties will have a wide range to change the effects of the contract. Of course, one of the conditions for the validity of the condition is that the condition is not conventional with the main effect of the contract, which is required by it.

The obligations resulting from the inclusion of verb clauses that change the effects of the contract are of two categories, the obligations that complement the effects of the contract and are also related to the contract itself, for example, the clause related to the division of profits and losses in the company contract with the current condition that He wants to remove a description from the transaction. On the other hand, sometimes these obligations have no relationship with the contract, for example, the obligation to buy a specific item in a sales contract. Some legal writers consider the condition of the verb to be divided into two types due to its effect on the balance of variables; The current condition that does not affect the balance of exchange and the current condition that is effective in the balance of exchange. In this way, if the condition of the included verb does not affect the value of the substitute and it is related to the contract, some consider it as the initial condition. For example; The buyer of a car stipulates with the seller that the seller will return to his father's house. This condition has nothing to do with the characteristics of the contract, including the subject of the transaction, the place of delivery of the car, the price of the car, and other characteristics of the transaction. This condition is not related to the contract. The relationship between the condition and the contract can be obtained from the condition that is effective in the exchange. Despite this, it seems that even conditions that do not have an effect on the price balance, have this effect indirectly according to the intention of the parties.

In this case, the intention of the parties is based on the fact that if it were not for that condition, the contract would have a different face in its simple form, and the effects of the contract have been changed according to these conditions. For example, in an unconditional contract, the contract is concluded with a different price. The result is that the condition, whatever it is, is a tool for realizing the desired intention of the parties; Whether this condition is directly effective in the exchange rate balance or indirectly

3- Description of the transaction

Adjective condition is the oldest condition in a contract, which cannot have an objective without a contract. The description of the contract is the desired intention of the parties, without changing the effects of the contract. This desirable is basically a secondary desirable. It seems that the conditions during the marriage, despite the accepted narrations, have been developed with the model of the adjective condition, as stated at the beginning of this speech; Necessities can cause changes in transaction rights. With this description of the conditions included in the contract, it is the result of an initiative that the jurists have accepted as a special institution and defined its rules and limits. In fact, the jurists have accepted what was customary in transaction law and adapted it to the legal foundations, and in this way the customary rules have become legal rules. In general, the reason for including the condition in the contract, according to the intention of the parties, can be considered

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to be the creation of a good that increases the compliance of the contract with the wishes of the parties with their other wishes by means of the contract (as a form of woven order). It makes a researcher.

Second paragraph: performance guarantee

In this paragraph, the guarantee of execution in the laws of Iran and other countries is discussed, which is as follows:

1- Guarantee of non-deterministic execution in Iranian law

Some dubious obligations do not affect the validity of the contract, that is, when the choice of the example is the responsibility of the obligee in the case of general or specific with the obligee, the choice of dubious obligations is also the responsibility of the obligee in the first way. If the obligation is one of two or more things and a part of it is wasted or excused, what is the obligation?

It seems that in this case, the obligation to implement the remaining issue becomes a simple obligation, unless it is a false (optional) obligation, in which case the remaining obligation is also canceled because in a false obligation, the obligation of one more issue It doesn't exist, but it has given the obligee the option to implement another issue instead of the main issue, so if the main obligation is extinguished, there is no reason for it. It is inviolable.

2-Guarantee of non-deterministic performance in English law

In the law of England, the guarantee of non-specific performance is presented in the form of an example, if someone in the contract of a ship undertakes to deliver certain and certain goods to the port, the effect of the existence of the ship, in other words, the condition of the existence of the ship at the time and place is effective for the fulfillment of the contract, which in If the condition is not met, the parties have the right to terminate

In English law, based on Article 1585 of the Civil Code of that country, this sale is completed when the seller identifies and separates the seller.

Ownership transfer and property damage guarantee also takes place after its identification.

The parties to the transaction or the third party are among the people who, depending on the case, may have seen the transaction before and recount the attributes and characteristics of the transaction during the drafting of the contract.

When the object of the transaction is the same thing as a foreign person, in order to avoid arrogance and ignorance, the type or form, as well as the characteristics affecting its value, whether quantitative or qualitative, are stated in the contract in the form of adverbs or descriptions. The transaction can be expressed in different ways. Sometimes the seller is mentioned along with its description in the contract, and the goods are mentioned with the desired description in the form of adjectives and adverbs. For example, it is said that I bought this Chinese vase with this Kashan carpet. Description is like selling news, but it is really news.

Sometimes the seller or a third party informs about the quantity to be traded, be it kilo or weight, number or area. If the customer is sure of this news, the transaction is correct. All these ways of expressing attributes have the same rulings and effects, and in fact, the meaning is that the attributes effective in the value are known to the parties, and the reasonable ways of expressing attributes do not cause its rulings to be confused. In other words, it removes the rational ways

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of selling from being arrogant and dangerous.

Nowadays, most of the products are sold in different packaging according to the type of each product in order to protect them from contamination and damage and perhaps to attract the attention of customers. The information related to the quantitative and qualitative characteristics of the products is transferred to the consumer in the form of labels or engravings on the container containing the product or through manuals. Sometimes the producer and distributor of the product is a single person, in which case it is important to rely on the seller's word.

Sometimes the provider of information related to the product is the manufacturer, and the distributor or seller is an intermediary between the manufacturer and the consumer.

Because of this, most of the time, getting the customer's information about the quality and quantity of the goods is limited to this way of informing, and custom also considers trusting the statements and news and information provided by the sellers and with the manufacturers to be sufficient for the correctness of the transactions and most of the transactions are based on The same circuit is concluded. Some researchers have considered the seller's news as rafi gharr if what he said to the customer gives him confidence and trust in the transaction. Therefore, if the seller is a famous liar, and there is no certainty about his statement, they do not consider his statement to be trustworthy.

Undoubtedly, Bai's news is not objective, because if Bai's news is objective, it means that whether it is useful for science or not, it should be considered as rafi ghar. According to this analysis, gharar, which is a common thing, cannot be solved by simply following the news that is not useful for science. Therefore, it should be said that Akhbar Bai' has a method, and it is a way of verifying the characteristics of Ahadin. With this situation, the method of Akhbar Bai' is complete if knowledge and certainty are obtained from it. A criterion obtained from some narrations indicates the characteristic of tariqat for the news of Bai'.

This criterion can be understood from the phrase "Wadha etmank fla bas" which is mentioned in the hadiths. If perfect qualities are mentioned in the contract and the contract is conditional on the subject being perfected, there is no obstacle. It is well-known in jurisprudence that sighting is regarded as a requirement, and in the discussion of knowledge of alternations, sighting is considered as the authority of sighting. The requirement of this statement is to consider the description as a requirement. Therefore, the quantity of each object can be determined by the seller's or third party's declaration. This method is enough to correct the transaction and free it from the risk of cancellation even if this specified quantity does not match the reality.

If none of the parties has seen the transaction, but a third party has seen it and wants to describe it to the parties, his description is full of ignorance and arrogance. Most of the people have considered the third description as rafi gharr. Nowadays, distribution networks are the parties to the transaction with the final consumers independently of the producers. Buying and selling is done by relying on the description and information provided by the manufacturers that are engraved on the product or provided in the manuals. However, it must be said that the

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description of the third party is valid if it is part of the common intention of the parties and includes the commitment and adherence of the seller to him. The termination option is fixed.

For example, major oil companies mention features for their products, including oils and other petroleum derivatives, through extensive advertising. The question that is raised is that the customer who buys these products from the distributors, in case of lack of description, against whom should he file a lawsuit, the distributor, the manufacturer or both? In jurisprudence, the third description is often considered valid. Some authors have accepted the existence of the option to see for the customer even without the obligation and condition of the seller regarding third-party attributes.

Our civil law is silent about the effect of descriptions of third parties, but the authors of civil law believe that if neither the seller nor the customer has seen the seller, and based on what the third parties have told them, they will make a transaction, and after the transaction, it becomes clear to the parties that the item The transaction with him is clear, other than what the third parties have stated, each of the seller and the customer can cancel the sale in terms of his violation.

If the merchandise is decorated in such a way that the customer is deceived about having the attributes and makes a false impression and, as a result, makes a transaction, such a contract will be subject to the provisions related to embellishment.

It should also be said about quantitative attributes, keel, weight, counting and measuring are all methods and tools to gain awareness of the amount of objects and have no cause or object. Therefore, the news of the seller or the third party is also sufficient for the authenticity of the transaction.

3- Guarantee of non-deterministic execution in Iraqi law:

In Iraqi law, similar to Iranian law, if the subject of the transaction is not known, the said transaction is invalid.

The third issue: the condition is known and determined independently (English and Iraqi law)

The condition independently has different meanings in the word. In some dictionary books, condition has been changed to imperative. And some have extended it to obligation. These two meanings are closer to the legal meaning of the condition.

In the basic term, a condition is something from the absence of which the non-conditionality is necessary without its existence being necessary for the existence of the condition. But in legal terminology, the condition has one of the following two meanings:

1- Something that depends on the effect of a specific legal act or event. (Article 190 of the Civil Code)

2- It is an agreement which, according to the special nature of its subject matter, has become a subsidiary of another contract with the consent of the parties. Or in another definition, a condition is a matter that is included in a legal act to complete or change its effects, or the decline and occurrence of a right is subject to a future and probable event.

According to the degree of connection between the condition in the contract and the basic contract, the agreements in the contract are divided into independent and dependent types. Dependent terms are terms that are subordinate and related to the contract, which, in case of being removed from the contract, become subject to selection. In fact, if the condition of identity does not have a

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binding nature and becomes meaningful by depending on the contract, it is called a dependent condition, such as the description of the transaction, which is agreed upon by the two main parties of the contract in the form of an adjective condition, by granting power of attorney to the wife. marriage contract It is obvious that such conditions are invalid by selecting the subject of the contract.

For example, in Decree No. 9209970908900489 dated 8/8/1392 issued by the Fifth Branch of the Supreme Court, it is stated that if there is a condition in the contract, in case of termination of the contract, one of the parties shall pay twenty percent of the contract price to the other party, if the transaction is dissolved A condition that was entered into during the contract will be destroyed as a result of the contract.

But the independent condition refers to the cases where an independent legal act, such as attorney, is concluded as a condition included in the contract. While it can be an independent contract and it is not necessary to agree on it in another contract, but both parties, for reasons such as necessity, agree on it in the contract. Such as the condition of representation in the sale of a car, in addition to the contract of sale of an apartment, or that according to the law of the legislator, the deterioration of the main contract does not have an effect on the related condition, such as the arbitration condition of Article 16 of the International Commercial Arbitration Law, in addition to that, sometimes it is even possible It is created for other reasons or the news is made in the form of a condition in the contract. In such a way that, along with the contract of sale, the existence of Dishi is acknowledged. In this case, since a right has been proven for another, the invalidity of the legal act has no effect on the existing rights, and the court cannot withdraw from its acknowledgment, which also falls under the independent condition. It is evident that in the stated assumption, there is no purely secondary relationship between the contract and the condition, in such a way that by choosing the contract, the survival of the condition is useless.

In this way, it is clear that the independent condition has a broader concept than the contract and any composition (one-sided or two-sided) or news that is included in the form of a condition included in the contract and based on the will of the parties to the contract with the nature of the condition of ability It includes survival. Whereas contract has a narrower meaning and according to Article 183 of the Civil Code, it refers to a situation where one or more people commit to something in front of one or more other people and it is accepted by them.

The validity of the degree of connection of the conditions in the contract with the basic contract, the agreements in the contract are divided into two types, independent and dependent.

Dependent terms are terms that are subordinate and related to the contract, and if they are removed from the contract, they become null and void. In fact, if the identity condition does not have a binding identity and becomes meaningful by depending on the contract, it is called a dependent condition, such as the description of the transaction, which is agreed upon by the two main parties of the contract in the form of an attribute condition, by granting power of attorney to the wife. In addition to the marriage contract. It is obvious that such conditions are invalid when the subject of the contract is terminated.

For example, in Decree No. 920997090890.489 dated 8/8/1392

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issued by the Fifth Branch of the Supreme Court, it is stated that if there is a condition in the contract, in case of termination of the contract, one of the parties shall pay twenty percent of the contract price to the other party, if If the transaction is dissolved, the condition that was entered into the contract will be destroyed according to the contract.

But the independent condition refers to the cases where an independent legal act, such as attorney, is concluded as a condition included in the contract. While it can be an independent contract and it is not necessary to agree on it in another contract, but both parties, for reasons such as necessity, agree on it in the contract. Like the condition of attorney in the sale of a car, as well as the contract of sale of an apartment. Although according to the law of the legislator, the deterioration of the main contract does not have an effect on the provision in it, such as the arbitration clause of Article 16 of the International Commercial Arbitration Law.

In addition to that, sometimes it may even be created for others, even though the news is made in the form of conditions included in the contract. In such a way that, along with the contract of sale, the existence of Dishi is acknowledged. In this case, since a right has been proven for another, the invalidity of the legal act has no effect on the existing rights, and the court cannot withdraw from its acknowledgment, which also falls under the independent condition. It is obvious that in the stated assumption, the purely subordinate relationship between the contract and the condition is not established, so that with the composition of the contract, the survival of the condition is useless.

In this way, it is clear that the independent condition has a wider concept than the contract and any composition (one-sided and two-sided) or news that is included in the form of a condition in the contract and based on the will of the parties to the contract with the law's nature as a condition It includes the ability to be present. Whereas contract has a narrower meaning and according to Article 183 of the Civil Code, it refers to a situation where one or more people commit to something in front of one or more other people and it is accepted by them.

In common law, based on Article 1581 of the Civil Code of that country, if the traded goods are sold without weighing or counting, the sale is valid, even though it has not yet been counted or measured. However, in the case of objects that are bought by tasting and smelling, such as perfume, oil, etc., the sale will not be realized until the seller's examination and approval. Therefore, in such objects, whose attributes cannot be known except through examination, their examination is a condition for the authenticity of the sale.

The first paragraph: the condition of the unknown and the ignorance of Awadin

The civil law does not explicitly state that the subject of the condition must be known absolutely, but in the second paragraph of Article 233, the unknown condition that causes ignorance to the parties is considered null and void of the contract. Imami jurists have also differed on the necessity of knowing the subject of the condition. It means an unknown condition whose ignorance spreads to other people. For example, while selling a 10,000-meter piece of land, it is stipulated in favor of the seller that after dividing the land into ten pieces, one of the said pieces of land will become his property at the choice of the seller. The great jurists are unanimous about the corruption of an unknown condition, the

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ignorance of which spreads to the parties to the contract. Therefore, according to the jurisprudence, which is also followed by the civil law, the condition of the unknown, whose ignorance does not spread to the parties to the contract, is valid and binding.

Second paragraph: The condition of the contract itself must be clear and definite

Sometimes the parties intend to exchange the whole group of unknown amount and sometimes they intend to trade a part of it. In the latter case, they either suspect and know that the collection is involved in the transaction amount or they don't. This transaction is known in jurisprudence as sale of sabra.

Sometimes, the whole transaction is the desired set, which is unknown in terms of amount, the validity of such a transaction is doubtful. For example, if someone says that I bought the rice in this warehouse for 500 tomans per kilo. It is also the same if the hirer says that I will transport this mass of soil, the total amount of which is unknown, at a price of 1000 Tomans per ton. In these examples, the total contents of the warehouse or the total weight of the soil mass are not known. In all cases, some believe that the sale is valid for one unit of measurement, such as a kilogram or a ton, and invalid for the rest. Some believe that because the total amount of the collection is unknown, the transaction is completely invalid. Some jurists are also of the opinion that this sale is invalid due to the fact that the object of the transaction is not known. In jurisprudence, there is a tendency towards the authenticity of this sale, and in its justification, it is said that observation is sufficient for the knowledge of the sale, and for the knowledge of the price, the possibility of determining it in the future is sufficient. Some jurists have also considered this sale as correct.

In common law, based on Article 1581 of the Civil Code of that country, this type of transaction means a sale whereby a stock of goods such as rice is purchased for a certain amount per ton.

1- Sometimes the amount of the whole object is known, but the traded amount is not known, for example, from a warehouse that contains one hundred tons of wheat, if it is decided that whatever amount of wheat the customer wants, he will give the seller four thousand Rials per ton. In this assumption, since the amount of the sale is not known, the sale is invalid. Because it is not known how much the customer wants from the whole collection.

In fact, it is forbidden to give the client the option to determine the amount of the transaction from an unknown set of quantities.

2- Sometimes the amount of the transaction is known, but the total amount of the collection is not known.

Some have made a difference between the knowledge and ignorance of the parties regarding the inclusion of the set on the traded amount and said: If the parties know that the set includes the traded amount, for example, they know that the wheat in the warehouse is more than the traded amount, in this case , even if they do not know the exact amount of the collection, the transaction is correct. However, if the parties do not know whether the entire set includes the amount of the transaction or not, the validity of this transaction is disputed. But it must be said, this deal is right. The emergence and application of Article 343 B.C. This opinion is confirmed

Conclusion:

According to Paragraph 3 of Article 190 of the Civil Code in Iranian law, one of

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the basic conditions for the validity of any transaction is that the object of the transaction is "certain". Therefore, the subject of the transaction should not be confused between several issues and the parties to the contract should focus on a single issue. For example, if someone sells one of several devices in his apartment without specifying it, the transaction has no influence and legal validity. The meaning of "definiteness" is that the characteristics of the traded property are clear and in such a way that there is no doubt in distinguishing it from other property. In the legal terminology, it has become popular as the concept of not being hesitant. In principle, it is necessary to observe the basic conditions of validity of contracts, apart from detailed knowledge of the subject, regarding the conditions included in the contract. In fact, in the case of the condition of intention and satisfaction, since the nature of the condition, like a contract, is voluntary, its realization is based on the agreement of the compositional wills. The principle of consent of the condition is also acceptable, and for this reason collusive conditions are acceptable. It is natural to fulfill the condition of agreement, the will is also necessary. In the laws of common law countries, if the intention of the parties to carry out a transaction is clear, but the price of the transaction has been kept silent for any reason, the conventional or reasonable price or reasonable or fair price can be paid. Today, contracts in the world It is common that an initial agreement is made in them and other contracts are to be agreed upon in the future as secondary and subsidiary contracts. These contracts are known as staff contracts or main contracts.

At the end of the analysis of this article, it should be pointed out that in English law, if the condition is not met, the parties have the right to terminate. In Iraqi law, similar to Iranian law, if the subject of the transaction is not known, the said transaction is invalid.

Suggestions:

1- The necessity of being known about the transaction is not an established rule, but a customary rule that has been emphasized according to the signing of the transactions by the Shariah, therefore, if in some cases the custom of the society considers a transaction to be known, this customary determination is sufficient for the validity of the transaction. Therefore, in providing rules such as referring to the price of the contract at the time of the conclusion or giving the authority to determine the price to one of the parties or a third party with the condition that the limits of the conventional and fair price are observed, such a transaction is legally correct. We accept that it can be reflected in our rules

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