The impossibility of implementing the contract and modifying the contract

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Abstract: In spite of the acceptance of the principle of the necessity of contracts in all legal systems and the necessity of respecting the mutual interests of the parties, the impact of social and economic events is indisputable between the time of conclusion of the contract and the conclusion of the contract. In fact, the parties to the contract are contracting in accordance with the foreseeable situation. This statement is reasonable and reasonable for normal circumstances, but the occurrence of events that make it impossible to enforce the contract, according to the laws of the other countries, including Iran, exempts the pledged person from fulfilling the obligation. But if, due to the occurrence of events and changes in the circumstances of the time of the conclusion of the contract, the implementation of the contract for the obligated causes excessive or unusual losses and, at the same time, the implementation of the obligation is impossible, the law of our country does not provide a clear solution in this case. It can be arranged according to the jurisprudential principle "denial of hardship" or "principle of no Harm", it is possible to modify and revise the contract to the parties or the judge or grant the right to terminate the contract to the contractor.

[Samiyeh Sardarkelari. **The impossibility of implementing the contract and modifying the contract.** *World Rural Observ* 2018;10(2):25-30]. ISSN: 1944-6543 (Print); ISSN: 1944-6551 (Online). http://www.sciencepub.net/rural. 5. doi:10.7537/marswro100218.05.

Keywords: Necessity of Contract, Implementation, Obligations of Parties, Force majeure, Adjustment

1. Introduction

Contracts that individuals make on various occasions leads to a series of works. These works may include the transfer of ownership, the creation of the right to profit, the profitability of another property, and so on. But the important and common effect in all contracts is to create a commitment between the parties. Even in the deal, even though the direct effect is the "transfer of ownership" contract, they also assume obligations alongside both parties, such as a commitment to a substantial surrender.

These obligations have a binding force, and principles such as the principle of devotion and the principle of sanctity and sanctity of contracts require that the constraints always be respected and necessary. But these basic principles govern the effects of contracts under normal circumstances. It is not the case that the principle of vindication is an absolute and indispensable principle, and in each situation it would be possible to expect the oblige to comply with its obligations and, in the absence of these obligations, be required to pay damages arising from it.

One of these exceptional cases is that without any fault committed by the person concerned (both parties to the contract or one of them, as the case may be) an unplanned incident will put the obligation to work into practice. These events can be natural events such as floods and earthquakes, or the occurrence of war, revolution, strike, death and disease, severe economic fluctuations, and so on. Logic and fairness on the one hand, and attention to the common intention of the parties, on the other hand, create a secondary rule under which the contractor is obligated to be exempted.

Of course, the way legal systems are treated is not the same. Each of them has come up with some ideas about their legal structure and their legal principles. Among these are the English and US lawyers who have argued that there are no detailed theories about the impossibility of the implementation of the law. The legal system of "common law" based on legal precedent and therefore this theory is also being investigated by the Court and in the course of their claims has emerged. Eventually, these scholars have been in charge of criticizing these doctrines and justifying their legal basis, but, besides examining the notion of impossibility to enforce contracts in these two countries, their footprint in Iranian law is also based on the existing legal material and legal writings will be studied.

Theoretical basis of the exempted obligation in cases where the provisions of the contract cannot be implemented

The analysis of the arguments presented in justifying the theory of the impossibility of implementing the provisions of the contract can explain the evolution of the opinions and analyzes of lawyers in order to reduce the damage caused by an

unfair and unfair obligation committed by the "absolute contractual doctrine", and the process of knowledge movement Clarifies the right to a more proximity to justice and fairness, which can be found in the context of these analyzes. So let's look at each of these bases.

Section I: The theory implied term

The parties to the contract may, at the time of the conclusion of the contract, consider the terms and conditions, and specify these terms as stipulated in the contract. In this case, the terms or conditions mentioned under the title "Terms or Conditions" are mentioned, and may also exclude a clause in the contract, and basically no provision is made on condition, but the condition of the implied sign is the provisions of the contract and the necessity of nature The contract will be appreciated. In this case, the condition is considered an "implicit condition". In other words, the term implied condition is used for the case where the subjective sign is the terms of the contract, and the wording or law or custom is required by the terms of the agreement or the nature of the contract. Detection of subjectivity is sometimes difficult. The implicit condition is a means of interpreting and completing the contract. On this condition, since the terms of the clause are the implicit sign of the words of the parties to the contract and are acquired in a certain way (common sense or law), no attention is required. The two sides will adhere to their words if they do not disagree. Dr. Shahidi, in another word relying on the existence of customary actions, is required to be implied by a condition, has defined the implicit condition as follows: "A condition that is not stated explicitly or implicitly in the necessity and acceptance, but in terms of the society, the existence of a condition is determined by the custom and in such a way that if the contract is created in absolute terms, the existence of the condition The aforementioned marriage is reflected in the custom of the custom."

Section II: Theory of destroying the foundations of contract

Based on the theory that is implied by the implicit conditional theory, the impossibility of implementing the provisions of the contract would override the basis and agreement of the parties to the agreement and leave no room for the contract. It is true that at the time of the conclusion of the contract, its implementation was intended by the parties to the contract, and if they knew that the contract was not applicable, they would never conclude the contract. In the course of execution of the contract, if the possibility of execution is canceled, it means that the basis of the contract has been canceled.

This theory was first introduced in 1916 by Judge Lord Haledin in a lawsuit called Templin's lawsuit. Referring to the disappearance of the basis and the basis of the contract, he denounced the implementation of the contract and expressed: "When people started to contract, and the contract Nyztnha when applicable where access is maintained, if this access because of the circumstances that control the disposal of the parties outside, wiped contract in the wind, the law is deemed to be dissolved." He dismissed the contract and, accordingly, declared that the obligations arising from such a contract would be terminated.

Section III: Fair solution theory

In this theory, without considering the intention of the parties to the contract, and without the prosecutor seeking a ruling on the transfer of the contract by referring to the decline of the basis of the contract, it merely seeks to be required, knowing the impossibility of implementing the provisions of the contract. Committing to execute the contract is considered unfair and provides a fair solution. This solution does not come from the previous party's request, but because the current terms of the contract in cases of impossibility to enforce the contract require a fair and just solution to the parties to the contract. Indeed, on the basis of this theory, the judge will have the right, for the sake of justice and fairness, to do whatever he considers to be impossible in the implementation of the provisions of the contract, although the parties to the contract have not reached the expected result of the contract, it may be closer to justice and fairness with the judge's decision. This theory has been more prominent in Comenius Law, which is based on unwritten law and relies more heavily on judge discretion.

Section IV: Makes a commitment theory

In reviewing this theory, first of all, it is necessary to examine the concept of the obligation to pay and to clarify the causes, direction and subject of the obligation. The obligation to commit is an affair that, in order to achieve it, enshrines one's person and is limited to the consideration of the reciprocity and the provision in each contract. As in the deal, the seller pledges to transfer the property, to reach the price, and the buyer pledges to pay the fine, having a large amount. In fact, on the subject of the commitment of each of the parties to the bargain, there is another commitment. For this reason, they call for an obligation to privilege "cause": Whenever asked what the commitment is, its response is related to the subject of the commitment, but if asked why it is committed, its response is called "a commitment".

Commitment is a far-reaching and immediate commitment, and therefore it is an out of place contract and does not affect the future that does not affect the contract. According to this theory, when the implementation of the provisions of an agreement becomes impossible, it means that one party's

obligation is impossible because of the impossibility of the execution of the contract, and this causes the other party to collapse because the other party's obligation remains without cause and dissolved. In other words, the reason for the recuperation of each contracting party to conclude a contract is to obtain what the other party receives in return for the receipt of the contract. When the implementation of the contract is impossible, the concept is that one party's commitment cannot be fulfilled. The impossibility of fulfilling one party's obligation alone is sufficient to cause the counterparty to fall, because the other party's commitment is deemed unreasonable. In Iranian law, the cause or purpose of a pledge is not mentioned as one of the essential conditions for the authentication of the contract, and in this regard, the French civil law has not been followed. But at the same time, the results of this theory have been identified in materials 377 and 387 of the Iranian Civil Code.

Of course, it should be noted that in Iran's law and in cases of impossibility to enforce the provisions of the contract, the reason for the collapse of the other party's obligation when the obligation of one side is void is the same principle of solidarity of the parties in the contract, and not the theory of cause, intention and intention of the parties when concluding the contract, the basics Such is the main thing. Therefore, the impossibility of implementing the terms of the contract before the documentary gives rise to the doctrine must be documented with the intentional will of the parties to the contract.

Principles of contract modification in Imamieh jurisprudence

Here, the legal origins of the modification of the contract are examined and explained:

Section I: principle of no Harm

Principle of no Harm is one of the most important and most applicable jurisprudential rules that are documented by the Qur'an and hadiths. The documentary is a narrative that Fakhr al-Mohgheghin has claimed to be its frequent: “You are the man who is harming the existence, and nobody should harm the believer.” The jurisprudents have discussed the jurisprudential issues in detail about the jurisprudential issues, and whether it is possible to deduct from the execution of an obligation that is due to the implementation of an obligation that is out of the ordinary, and now this rule is an obstacle to the implementation. There are four important theories about the implications of this hadith and how it is guided by legal issues:

A: negation of losses is in fact the negation of harmful sentences. It is true that the cause has been mentioned, but it has caused the will. Some kind of disadvantage has been denied that the purpose of denying the permit has been. In other words, in this sense, we must believe in the negation of the injunction. Therefore, no injunction has been issued by the taxpayer, so if a verdict is issued that requires harm, it will be ruled out in accordance with the rule of law.

B: The purpose of principle of no harm is to deny the verdict in the language of the negation of the subject. That is, the subjects that have ordinances, if their initial condition causes harm, their sentence is ruled out. Like a neglected transaction that, because of the fact that the issue is causing loss, the necessary ruling is removed. Contrary to the first theory that the injunction is destroyed, in this assumption the subject or property of the sentence is destroyed.

C: The purpose of principle of no harm is to deny the damage that remains unprotected and not compensated. Accordingly, no harm should be left without compensation, and everyone is obliged to compensate for the damage sustained by others and there is no compensation in Islam.

D: The purpose of principle of no harm in this rule has been to prohibit harm from others, and the legislator has denied any harm to others. So nobody should harm another. Among the above views, the opinion of Sheikh Ansari on the rejection of the injunction was further welcomed. Additionally, a point to be made in rejecting harmful sentences is both conditional judgments and litigation rulings.

Section II: Denial of hardship

Among the important points that could be the basis for judicial review in accepting a revision and the prohibition of the fulfillment of the initial commitment, the doctrinal doctrine is based on the jurisprudential principle of Denial of hardship. According to this rule, if the outcome of the execution of a judgment is the creation of uncommon hardship, then the secondary judgment of the void and the individual shall be exempted from the execution of the assignment. Denial of hardship in terms of jurisprudence has been synonymous with limitations, difficulties and difficulties. In the surah of Mobarakeh Maedeh, verse 6 is also in the same sense (Holy Quran, Maedeh, 6). And the jurists have taken account of the meaning of the harsh and the news in the traditions and news, and they have said that the hijah is a stage more intense than that of the accusation, and said that if the duty is more difficult than the burden and would cause the human being to be overwhelmed and maltreated without making the task impossible,

The rule of negation of 'Asar and Haraj is a documentary of the Qur'an and hadiths, including verse 78 of the surah al-Sharifa Hajj, or 185 verse of al-Sharifa al-Baqarah, which makes it difficult for the passenger and the sick to take away the sentence of fasting for the sick person. Apart from the Qur'an,

which is the primary source of the rule, many traditions are also emphasized in the negation of the harm judgment. As an example, Imam Sadegh (PBUH) has been referred to the lack of forgiveness of the mediation order in religion.

Despite numerous verses and narratives regarding the negation of denial of hardship, there is no doubt about the existence of independent bases that imply the negation of the sentence and the collapse of the duty when it was translated, and the only important point is the identification of the realm and rule and the recognition of its ability to pass on the implementation of the obligation it's hurtful. It can be seen from the verses and traditions that they are mostly observers of religious duties. Even the phrases used in the words of many jurists are based on the rule of law, but the monopoly of this rule to rational decisions does not preclude a conclusion from the rule of law, with the exception of hypocrites, as some of the great scholars of jurisprudence explicitly refer to the rule of law have confirmed.

"In short, the meaning of the denial of hatred and disappointment in this religion, Hanif, is all that is in the face of anxiety. The Lord in this religion, which is the totality of sentences belonging to the commandments, or foreign subjects, such as the provisions of the situation Provincial government, freedom and paired people and so on, have not issued a verdict that would cause foolishness.

Modification of Contract in Iranian Law

Modifications to the contract

Modification of the contract has the following categories: 1. Contract modification (agreement) 2. Legal modification. Judicial adjustment. Among other things, legal and contractual adjustments are accepted by most countries. But there is plenty of debate about judicial moderation. The rights of some countries, such as Egypt, have explicitly accepted judicial modifications by the law. Some countries, like Germany, have accepted judicial modalities, in spite of the lack of clarification in legal texts, by judicial procedures and based on theories such as good faith and etc. judicial modalities. In Iran's law, the law is silent in this regard, and the judicial process has not been adequately addressed due to lack of dynamism in this regard.

Contract modification (agreement); Contract modification is possible in two modifications based on agreement in the contract text and adjustment based on the post-contractual agreement. Adjustment is based on an agreement in the text of the contract; this adjustment, in turn, has two forms: a) the modification on which the basis is specified; such as that the contract for construction participation is expected to occur in case of occurrence, Or landowner, to a certain percentage, increase or decrease should. In this assumption, the modification of the contract has been made in one condition as well. Therefore, the moderation should be considered considering its condition. It is said that the clause contains a kind of "suspension", because its contents are "to make adjustments in the event of the occurrence of the desired thing (such as the occurrence of unexpected incidents, etc.). So, should it be clear that, despite the suspension, is there a clear change that is required in the event of a pending suspension? And what is the basic rule for the suspended condition? Referring to the public, the reasons for the validity of the terms, such as " Muslims and believers promise to be committed ", and the additions which in particular prove the validity of the suspended condition, the agreement on the agreement is based on the facts, is correct and is inconclusive from the point of view of religious law.

B) an adjustment based on which it is not applicable, as in the example above, only a "revision of the amount of the parties brought into effect and adjusting it to the new conditions in the event of the occurrence" would be foreseen without the change being known. In this case, the modification of the contract is subject to a condition not applicable, since the modification of the contract is conditional upon the occurrence of the incident without a well-grounded modification, given that the condition of modifying the contract without specifying the basis for the adjustment is a null and void condition, because the reason for the moderation is not clear on the ground of moderation, in addition, by virtue of Article 233 of the Civil Code, the unconditional condition which leads to ignorance in the situation is null and void. Do you need to see the contract status with such a condition, in terms of validity and void?

It should be said that the termination of the contract due to the fact that the condition is unavailable depends on the difference in the cases and the opinion of the custom; if the condition that is unavailable leads to the conclusion of the contract, the contract will also be married, and since the unconditional condition (modification of the contract without determining its basis) It causes the marriage to be married and is called a relationship, and it also led to the cancellation of the contract.

Adjustment based on an agreement after the contract; Adjustment made after the contract also has several assumptions:

A) Make changes to the subject of the contract by reducing the amount of revenues and expenses (equally), such as after the termination of the contract, the parties agree on a specific amount of the contract and its equivalent. This assumption is, in fact, the nature of the contract to some of them and should be interpreted in this area.

B) Creating a change in the subject of the contract by reducing the reciprocity (s) is unequally; the nature of this practice, an affirmation of some contracts, is accompanied by an increase or a deficiency that is raised in jurisprudential and law books as titles with a great deal or a diminution; however If this is an unlimited condition, it is condemned to void, and if there is an increase or a shortcoming in the form of evil, we will be faced with extreme disagreement; the ruling majority will bet on the contrary, and in front of some writers in the direction Proof of this condition have been tried. If we accept the majority opinion too.

What will happen to the dilemma of what happened or to 1 commentary? In this regard, the opinion of the majority is also based on the argument that the above condition is contrary to the principle of rigor. The invalidation is (moderation), and therefore, if there is a lot of deficiencies and deficiencies, there is no way to correct the adjustment (moderation) unless the parties, through the creation of another contract, will result in the increase or decrease of their share of the contract, which is no longer subject to modification of the previous contract. It's a new contract.

Legal modification; Legal modification is a correction that is made by the legislator in contracts. The modification of the rent in the Code of Property Act 4 of the Owner and Tenant, approved in 1356; The Uniform Article of the Rental Rate for Residential Units approved on 1979, which states: "All rental payments for leased houses leased out as residential premises and used by the tenants of the same tenancy as housing, shall be reduced by 20% from the date of 1979". Article 1 of the Law on the relations between landlord and tenant of 1983; determining the minimum wage of workers according to the annual percentage rate of inflation specified in Article 41 of the labor law of 1990, which is a kind of modification in determining the amount of wages, are examples of adjustments that are prescribed by law and are based on legal modifications.

Conclusion and suggestions:

The contract entrusted to the contractor is an exception to the essential principle under which the parties to the contract can relieve the effects of failure to comply with their contractual obligations. Some vicegerents, without the will of the parties, and some others, are created by the will of one side or both.

Civil law does not address the issue of cucumbers and has not made it one of the rumors. Iranian jurists have pointed to this cucumber, and cucumbers have been canceled if they have been temporarily suspended for binding. Some of the conditions for the exclusion of cucumbers are not due to the opposition to the requirements of the contract, the necessity of the solidarity of the obligations, the prohibition of abuse of rights, the prohibition of the summoning of the monitors to one side and, ultimately, the opposition to the general and correct order. The important effect of running cucumber is to dissolve the marriage. The liquidation of a contract is only a matter for the future and does not make any effect from the beginning.

According to the rule of neglect, denial of hardship, the duty imposed on him should not put him in a harshness, so if he undertakes a duty to owe a great deal of difficulty, he can ask for a modification of the contract. According to the rule of lawlessness, there is no harm in Islam and therefore, if the obligation to contract is borne indefinitely, the ruling will be lifted. It should be noted that the aforementioned cases are proposed following the discussion "in the course of transactions" following Article 222 of the Civil Code.

In voluntary accountability, the parties shall, by the inclusion of a "limited or non-binding obligation", stipulate that they will not be held liable to the other party or be liable if they encounter obstacles to the implementation of the contract. This possibility, as outlined in Iranian law, is generally foreseen in the principles of international commercial contracts and the principles of European contract law, and has been exempted, under specific provisions, for airline and commercial vendors.

Also, in accordance with the rule of "the right to refuse to fulfill obligations", the principle of "solidarity in contracts" and "the right to imprisonment" in the systems of common law, Romany and Islam, one party to the contract cannot fulfill its obligation if the other party refuses to fulfill its obligation; The fact that in civil law of Iran, despite the stipulation of two marriages and leases, it is necessary to be stated as general provisions in the contract.

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5/10/2018