



Research Paper

Evaluating the Viewpoint of the Effect of Invalid Condition (*Shart-i Bāṭil*) in Establishing the Right of Termination for the Conditioned Party (*Mashrūtun lah*) in Imamiyyah Jurisprudence and Iranian Law with a Glance at Foreign Legal Systems.

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Abstract

The contract, sometimes it causes ignorance of the other parties, and sometimes it is not like these last two types. In the first two cases, it causes the nullity of the contract, but in the third case, according to popular opinion, it does not cause the nullity of the contract, but whether it can affect the contract or not? There is a serious difference of opinion among experts. According to popular opinion, the effect of such conditions on the contract has appeared in the form of granting the right of termination for constitutional law. This research, with analytical-descriptive method and referring to library sources, seeks to answer the question whether the conditions in question give rise to the right to terminate the contract. What views or views have jurists and jurists put forward in this field? Is the granting of the right of termination for a conditional agreement compatible with the standards of transaction jurisprudence? What is the position of contemporary legal systems in this field? The result of the research shows that although the point of view of absolute proof of the right of termination without following a condition according to the foundations and documentation is the option of violation of the condition; However, the principle of establishing the contract and the principle of adherence to the illegal matter provides the conditions leading to the detailed view of the knowledge and ignorance of the constitutional law regarding corruption, and in this respect, it is more compatible with jurisprudential and legal logic.

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Extended Abstract

1- Introduction

The generally accepted jurists of Imamiyya categorize invalid conditions into two groups: non-invalidating invalid conditions, which are null but do not void the contract; and invalidating invalid conditions, which not only are null but also invalidate the contract, such as conditions that contradict the intent of the contract and conditions that cause ignorance of the counterparties. Among these two categories, the effect of invalidating invalid conditions is clear in that they invalidate the contract. However, there is disagreement on whether non-invalidating invalid conditions have any contractual effect or not.

In response to this question, Imamiyya jurists have not followed a unified approach; instead, they have presented two viewpoints: a significant number of jurists have stated that non- invalidating invalid conditions (according to the prevalent opinion) also invalidate the contract, similar to invalidating invalid conditions (according to the prevalent opinion). On the contrary, many Shi'a jurists have expressed a different view. They believe that an invalid condition does not affect the validity of the contract. However, these jurists have not limited their disagreement to this extent but have expanded it to question whether such an invalid condition has absolutely no effect or if the contract is still vulnerable due to the right to rescind arising from a breach of an invalid condition. This research examines the recent disagreement to determine whether an invalid condition can provide a right of rescission to the conditioned party.

2- Method

This research is based on library sources including books, articles, and other relevant documents such as content available on websites. It has been conducted using an analytical-descriptive method with a comparative approach to Shi'a jurisprudence systems, Iranian law, and foreign laws such as French law.

3- Results

The result of the research shows that because the failure to apply the right of rescission in case of ignorance of the invalidity of the conditions leads to disturbance in the satisfaction of the conditioned party (*man lahū al-sharf*) and as a result it will be consuming property wrongfully, it is necessary that by granting the right of rescission to the conditioned party, his consent to be secured, but if the conditioned party is aware that the condition is invalid, because he is aware of the invalidity, therefore the disturbance in consent will not be realized and he will not have the right of rescission.

4- Conclusion

Experts have resorted to various viewpoints and arguments in assessing the possibility of rescission. Some jurists have defended the lack of a right to rescind by referring to hadiths on marriage which suggest that an invalid condition does not affect the contract and that the contract is independent of the condition. Meanwhile, some legal scholars have defended the lack of a right to rescind by appealing to the principle 'in favor of the contract' and the principle 'law should not be a shelter for illegal actions'; others have defended the absolute existence of a right to rescind by citing the documentation of the option of



condition (*khiyār al-sharṭ*) such as the assumed conditions, and yet others have differentiated between different types of conditions by appealing to the rule 'no harm' (*lā ḍarar*) and the principle 'act between knowledge and ignorance.' Ultimately, the arguments and analyses presented are flawed in multiple respects; some arguments fail to prove their point, such as appealing to hadiths about marriage - due to their possibly ritualistic nature - to business transactions, the principles 'in favor of the contract' and 'law should not be a shelter for illegal actions' cannot undermine the rights of the ignorant, and reasoning cannot be used to avoid ensuring the consent of the contracting parties. Arguing that the contract is suspended upon condition and the assumed nature of conditions also fails in proving the absolute right to rescind; if the parties are aware of the invalidity, the assumed right to rescind is not clearly established in their minds, and finally, reasoning based on the rule 'no harm' also results in the emergence of new jurisprudence, which jurists do not adhere to.

Evaluating previous viewpoints and arguments indicates that the issue should be analyzed from another perspective, namely the disruption of the contractors' consent. This means that if a person is unaware of the invalidity of a condition, since the ignorant person is excused, the lack of a right to rescind results in the defectiveness of their consent. On the other hand, if the person is aware of the condition's invalidity, one cannot claim that the consent of the conditioned party is defective; because the conditioned party was aware of the invalidity, what defect can then be discussed? Accordingly, differentiating between knowledge and ignorance is a realistic approach, but not by reasoning with the rule 'no harm', rather it is based on the defectiveness of consent.

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6- Authors' contribution

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7- Conflict of Interest

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