



## Research Paper

# Investigating the Situation of "Sale without a Price" from the Perspective of Islamic Jurisprudence and Iranian law and Comparing it with Similar Institutions

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### Abstract

The existence of recompense in a sale contract is necessary for the sale in itself, and its lack would, in principle, make the contract invalid. On the other hand, if it is possible to transfer the "no-price sale" to another valid contract, e.g. the gift contract, some believe that based on preferring the internal volition to the external volition it can be accepted that such contract is not a void sale; rather, it is regarded as another correct contract such as the gift one. As a result, the valid gift rulings would be implemented on such a contract. In a similar situation, the seller may sign the price receipt without receiving it or may accept that the price has been received in cash. There is no disagreement regarding the preference of the internal or external volition in the latter case, but it is debatable whether it is disputed that it is possible to accept "the false acknowledgment of receiving the price" as the debtor's acquittal or the creditor is entitled to his acknowledgment by proving his false confession? Using the descriptive-analytical method, this article, first, separates between these two situations and then studies and evaluates the various opinions regarding "sale without price". It shows that it is different from the "sale with a price" and the false acknowledgment of receiving it. In the first situation, we fall in doubt whether to consider the concluded contract as invalid or transfer it to a valid contract, that if the latter would be a certain contract, we can consider it valid, relying on the real internal volition. In the second situation, the false acknowledgment or giving a formal receipt cannot be considered as a reason for invalidating the contract, unless the claimant can prove that the contract is formal.

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## Extended Abstract

### 1- Introduction

In the sale contract, we are faced with two special situations: the first situation is the sale without a price, it means a contract in which the price has not been determined and the parties have not disputed the price at all, or they have clearly stated that this contract lacks a price. The second situation is a case that the amount of the price is determined in the contract, but the seller falsely admits to receiving it, or gives a fictitious receipt, or it is stated that "the price was received in cash" and the like. In this case, the seller unrealistically accepts that he has received the price. Sale without a price is also different from fictitious transaction in the sense that in the second there is no real intention to conclude a contract (paragraph 1 of article 190 civil law), while sale without a price is flawed in another way (Paragraph 3 of Article 190 civil law). On the other hand, the procedure of the courts in dealing with these cases is fragmented and different, and different opinions can be seen regarding the theoretical discussion. By searching in jurisprudential sources, it turns out that the jurists did not specifically talk about this issue, but references to this matter were made on various occasions, and for this reason, the different situations of sale without a price have not been separated from each other and the necessary summation of different opinions has not been done. In the historical background, in Sunni sources of jurisprudence, there is a rule entitled: "Does the wording of contracts or their meanings matter?" in which some related topics are discussed. In the current legal situation, this question has occupied the minds of lawyers, whether it is possible to ignore some of the mandatory rules of certain contracts in the light of Article 10 or not? And this is another question, the answer to which is effective in reaching the hypothesis of the current research. On

the other hand, it should be noted that "Sale with an unknown price" is different from "Selling without mentioning the price" in the sense that sometimes the parties determine the price in oral negotiations and take it into consideration in their offer and assent; but at the same time, they do not state it in the contract and do not write it in the contract' in this case, the contract cannot be considered invalid; however, there might be a difference in the amount of the price. In this case, the amount of price can be proven with other evidence, including the testimony of witnesses.

Based on what was said, this research seeks to find answers to two basic questions and the difference between them. The first question is about the legal status of the sale without a price, and the second, is about the legal status of an act, in which the reception of price is falsely admitted.

### 2- Method

There are several similar issues in the subject under discussion, and the lack of separation between them has caused differences in the conclusions of the courts. In this research, while comparing the mentioned cases with each other, their differences are stated in order to avoid confusing them with each other.

### 3- Result

A contract in which the amount of the price is not specified has two forms: either the parties have not mentioned the price at all, or they have clearly stated that this contract has no price.

In case there is doubt between whether to consider the contract as invalid or as valid, if the second contract is a definite contract, the established contract can be implied as the real contract over the second one and considered as a correct contract and the internal volition can be preferred over the



appearance of the words, in case the will of the parties is inferred and contrary to the appearance of the words that have been expressed. However, where the second contract is an indefinite contract, one cannot ignore the specific rules and mandates of definite contracts and apply what happened to an indefinite contract, because these rules are the boundaries of the principle of contractual freedom and private contracts will not be effectual and valid if they contradict these mandatory rules.

When the creditor falsely admits to receiving the price, if no price is determined in the text of the contract, it is connected to the assumption of "Circulation between the invalidity of one contract and the validity of another contract" and if the price is determined in the text of the contract this false confession may be considered as a debtor's acquittal and the contract will be valid.

A fictitious contract is invalid in any case, and the contract should be ruled as void at any time and in any of the cases discussed, if it turns out that the parties did not have a serious intention to complete the transaction.

When someone seizes someone else's property by selling it without a price or renting it without payment based on the preference of the internal volition over the

external volition of the contract, the gift or loan or permission of usufruct is valid; therefore, the seizer will not be the accountable

#### **4- Conclusion**

Although ignoring the rules of certain contracts complies with the principle of contractual freedom, it is not absolutely correct. A false acknowledgment of receiving the price is considered as acquittal of the debtor.

If the internal volition is preferred over the external volition, it is possible, subject to the existence of certain conditions, to imply a contract in which the basic conditions of a given contract do not exist, according to the internal volition, to another valid contract.

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#### **7- Conflict of Interest**

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