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Analysing The Conditions and Effects of The Excuse of Surrender in Creating Obligations and Contracts

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ABSTRACT

In contracts concluded between the parties, sometimes due to conditions or circumstances such as loss, lack of access to the subject of the obligation, the expiration of its basic purpose legal or personal obstacles, etc., the fulfilment of the obligation is impossible. One of the options that can be used as a reason to terminate contracts is the thorn of excuse, which is not explicitly stated in civil law, but in addition to jurisprudential sources such as some great jurists, including martyrs, can be done in this regard. He cited Articles 239, 240, 380, 476 and 534 of the Civil Code. Based on this option, if it becomes impossible to fulfil the obligation for either party to the contract, the other party acquires the right to terminate the contract. The meaning of excuse option is an option that is created for the other party due to the incapacity of the party and the loss of the power of surrender or the power to fulfil the obligation and condition of one party, and the excuse of incapacity and loss of power. The purpose of this study, which was carried out in a descriptive-analytical way and with a library method, is to analyze the conditions and effects of the option of surrender in the creation of commitments and contracts.

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1. Introduction

The period of execution of the contract is a legal matter in which the execution of its provisions continues for some time and generally how it ends is related to the type and subject of the contract and other different reasons These factors significantly contribute to the implementation of that aid. does the most important reason for the formation of a contract for the parties of any transaction is to reach and reach its subject, hence the existence of the subject as one of the basic elements of the formation of a contract in civil laws and the rights of obligations in jurisprudence Q has also been proposed. Undoubtedly, the implementation of a commitment is the simplest way to complete any contract, but this is not always possible, sometimes due to reasons beyond the control of the parties, it is not possible to perform for a temporary or permanent period It is inexcusable that It is called Tāzir al-Salim to Wafa (it is called Tāzīr in the case of unforgivable contracts, that upon the occurrence of Tāzir, the conditions and execution of the contract and the fulfilment of obligations) are mentioned. First of all, the obligations of the parties and the status of the contract will change, and it may lead to compulsory or voluntary termination of the contract.

Therefore, if a commitment becomes impossible, the legislator has provided a performance guarantee in some cases, including cancellation and in cases of cancellation of the transaction, in which there is a difference of opinion. However, regarding the contractor's refusal to perform the guarantee of the contract, such as the right of arrest, the execution of the contract at the cost of the contractor and by another means, the use of the obligation to perform the contract and the termination of the contract He has shown his nose, sometimes the last case in terms of nature. The transaction, the subject of the transaction or the personality and bad intention of the obligee, is the most suitable way to prevent the continuation of the problem caused by the non-execution of the contract and to stop the damage to the obligee and to do justice. At the same time, the opinion of civil lawyers is that in Iranian law, this right will exist in such a way that other ways, especially the obligation to perform the obligation through the courts, are not possible. (Articles 238, 237, 367, 239) Badingone, the reviewer considers questions such as what are the terms and conditions for the execution of contracts? What are the forms of failure to execute contracts and their causes? And how is the guarantee of implementation of the exemption and limitations of the implementation of the rule in Iran's rights? Answered many questions on the present topic.

2. Conceptology

For a better and deeper understanding of the research topic, in this part, the concept of some important and main terms used in the research and some topics related to these concepts are discussed.

1.2. Conceptualization of the excuse of submission and some topics related to it

The option of non-delivery is one of the types of cancellation options, based on which, if one of the parties can't fulfil the commitment, the other party gets the right to cancel the contract. The meaning of incapacity is the loss of power and the meaning of the choice of incapacity is the choice that due to the incapacity and the loss of the power of submission or the power of one party to perform the obligation and condition, for the other party D is created.

In Iran's subject law, waiver of surrender is defined as "failure to perform an obligation" from the rule of waiver of loyalty to the contract, which means the obligation arising from the contract. This rule is applied when due to the existence of an external cause, the power to perform the obligation is taken away from the obligee; Whether it is a pledge of a foreign object or not, regardless of whether the foreign object is lost or not. As a result, the issue of failure to perform the obligation is a general topic of the issue of "loss of sales before foreclosure". Sometimes this rule is expressed as "inability to perform the contract". This interpretation of the meaning of the rule "cancellation of the contract for the excuse of loyalty" or "cancellation of the whole contract for the excuse of loyalty" better explains the topic of our current speech.

1.1.2. The excuse of surrender in jurisprudence and law

The first form: Whenever the inability to deliver the goods is absolute and the possibility of its removal is not given, in this case, the transaction is void.

The second form: whenever it is possible to deliver the object at the time of the contract, but later it becomes impossible and this inability is permanent, in this case, the transaction will be cancelled.

The third form: Whenever the delivery of the object was possible at the time of the contract, but later it is impossible for a reason, but this impossibility is temporary in the form that the delivery was required at the specified time, it is assumed that one is the sale of the object It should be foreign that is in this the form of sale is cancelled if it is a general sale, in this form of sale, it is invalid from the point of view of lack of reason. However, in the case that the delivery of the seller is desired in the specified time, the commitment will not be cancelled, and the defect will be compensated by the right of cancellation (option of delivery excuse).

2.1.2. Proof of Surrender Option

Dr. Langroudi considers the evidence of the option of surrender in jurisprudence to be the "harm" rule, which in his opinion, the scope of the damage causes a point to be taken away from it. According to him, there is a special reason for this choice, and if there is a special reason, there is no need to resort to the general reason. In explaining the specific reason that it is an innovation on their part, they say: "Each sale has three balances: in possession, in the value of compensation, and surrender versus surrender." The excuse for submission is the last part. The one who does not observe this balance should not have the right and expectation of submission from the other side. The feature of this particular reason is that it is a rational and reliable reason, while the reason of "harm" is a reason and a Sharia text. (Jaafari Langroudi, 1381).

3.1.2. Effective elements in the formation of the option of forgiveness and surrender

The elements that are effective in creating an excuse for surrender are as follows:

The first is that the compensation contract has been formed. It doesn't matter whether the contract is for a specific person or not.

Second, if there is the power to surrender, which is one of the general elements of the contract, then the contract in which the power to surrender does not exist from the beginning, and there is no knowledge of obtaining this power in the future, is void. The choice of excuse of surrender is specific to a valid contract and not a void contract.

The third is that there is an obstacle to surrender after the conclusion of the contract. There are two types of obstacles to surrender, an obstacle that is outside of the will of Aqed, like a heavenly disaster. There is another obstacle that is caused by the verb or the omission of the verb.

The fourth is that it should not be a temporary obstacle.

The fifth is that there is a reasonable possibility for the obligee to arrive. Otherwise, the subject of mutual surrender will be eliminated and as a result, the decision to terminate the contract must be made. In such a case, the possibility of the contract's survival is unreasonable, and despite the dissolution of the contract, there is no more time to discuss the existence of a cucumber.

Sixth, the origin of the excuse is in the surrender, not the obligation, so if the government employee rents a house and changes his/her assignment during the lease, he/she cannot resort to the excuse in handing over the benefits of the remaining period Cucumber is excused.

4.1.2. The option of not giving up on the rights of the subject of Iran

The provision of Article 240 of Q.M. In jurisprudence, it is known as "cucumber of an excuse to surrender". This article states: "If the condition is refused after the conclusion of the contract or it is known that the person on whose benefit the condition was made is refused, he will have the option of cancelling the transaction, unless there is a documented refusal to act." " It seems that the lawmaker would have mentioned this option in Article 396 of the Civil Code among other options.

The point about the option of surrender is that this option is contrary to the other rules and cannot be waived under the terms of the contract, so it is covered by Article 448 of the Islamic Civil Code, which states: From cucumbers, It cannot be stipulated in the contract. That is, it cannot be stipulated in this way that the option of excused delivery is dropped and the other party does not have the right to cancel in case of non-delivery of the transaction. According to one of the lawyers, the condition of rescinding the option of failure to surrender is a condition that is contrary to the requirements of the contract. In explaining his opinion, he says: that the balance between delivery and delivery is one of the essential conditions of the sales contract, and no condition is acceptable against that balance.

2.2. The concept of commitment and contract and some topics related to it

Ahadh is derived from the root of "Ahad" in the dictionary, meaning to renew a contract, to accept a condition or an obligation (Alsari, 1384). Nahd (Ibn Manzoor , 1414).

In terms of obligation, it is a legal relationship that obligates another person to transfer and hand over property or to do something, whether the reason for creating that relationship is a contract an event or coercion. A person who is bound and forced to another is called a debtor or a debtor, and a person who has found the right to demand and compel the debtor is called a creditor or demander. (Katouzian, 1374)

Obligation is one of the terms used in the science of law and refers to a legal relationship, and based on that, a person is obliged to transfer and hand over property or do or not do something, in this case, there are reasons for creating such a relationship It does not have to be a contract, occurrence, or forced obligation.

The subject of commitments, whether arising from the contract or outside of the contract, and any kind of coercive guarantees, includes the transfer of foreign objects, the performance of an action, or the omission

of an action. The commitment is divided into two primary and implicit parts.
The primary commitment is a direct commitment that is included in the contract in terms of terms and conditions, but the implied commitment is indirect and included in the primary commitments, and they are often examined under the title of conditions.
In the legal analysis of the commitment, the jurists described it. A. The legal relationship of commitment; B. to be mandatory; In the permissible contract, the commitment is also mandatory. This means that until the time when the contract is valid, the commitment is also mandatory. C. Specializing in financial rights and committing; non-financial matters, concrete rights and legal duties are not called commitments, the commitments are from religious rights and against concrete rights.
Commitment and contract in civil law: The word commitment comes from different articles of civil law. Tahadeh has the meaning of an infinitive and an active noun. In articles 183 and 221 of the civil law, it means the source; which means: undertaking to perform or abandon an action against another.
In Article 140, which is in the form of "commitments" in the plural form, and again in the singular form in Article 183, which is included in the definition of the contract in the second case. In this article, it is stated that "a contract means that one or more people commit to something in exchange for one or more other people and it is accepted by them." In this definition of the contract, without the definition of commitment, it is mentioned only as one word.
Based on this, it should be said that Iranian civil law first deals with the contract and the obligation resulting from it, and then discusses the second part of the obligations such as usurpation, loss, justification and termination. From a general view, it is known that in the civil law of Iran, there is no distinction between a crime, a quasi-crime, and a quasi-contract, but this law, like its first definition, considers the obligation to be divided into two parts: the part that originates from the contract and the part that originates from the contract unless in It comes out of the contract. In recent years, the globalization movement has been prominent in all legal periods.
The difference between commitment and contract: although some thinkers consider the contract to be the same, even if it is a firm contract, a difference should be made between them.
The word 'Aqd' is used by the linguists to mean: to make a covenant, to guarantee, to guarantee, to make a covenant. The master of the Arabic language says: Aqd means a covenant, and it is a sum of covenants, and it is the strongest of covenants, and if it is said that I made a covenant in such and such a way, it means that I am bound by it, and if you said This is what I made a contract with To which we were bound by a contract. The owner of "Taj Al-Aros" also defined the contract as a promise and a guarantee. (Wasti Zabeidi, 1414)
Mirza Hasan Bojunordi says in the following rule: "Contracts subject to intent" means that the contract is a matter of the heart, as some linguists have said It is confirmed from the contract and the contract is a matter of the heart, if What is an external sign, such as the fact that they show it in the pledge of allegiance and put their hand in the other's hand and pledge to remain in peace and fight at the command of the one with whom the pledge of allegiance is given. They show up " (Bojnordi, 1419; Khoeini, 1386)
Also, the author of the jurisprudence approach in differentiating between contract and covenant believes that the contract has more enthusiasm and emphasis than the contract. In addition, the contract is valid between two people, while the contract may be one-sided; Therefore, it has been said that every contract is a contract, but not every contract is a contract (Hakim, 1371). Our commentators have defined the contract in the following verse of Surah Ma'idah: A contract is any action or speech that has meaning Dictionary of contract tying and closing), and it is a type of relationship that connects one thing to another in such a way that it is not necessary, such as a sales contract that relates the sale to a customer (from the point of view of ownership). don't that he can dispose of it in any way he wants, and the seller does not have the right to dispose of it after the contract. (Tababatabayi, 1374, 344)
But in the literal sense, it should be said that there is no definition of the contract in the legal texts of the predecessors, and only the parts and elements of the contract have been examined. For example, the author of Jawahar al-Kalam said: In the Shariah, a contract is the word of the contracting parties or the word of one party (the obligee) and the action of the other party (the acceptor) on which the Shariah has determined the intended effect (Najfi, 1407).
The attention of the ancients to the essence and the elements of the contract, instead of its definition, was mainly due to the clarity of the concept of the contract, but some of the recent ones, in the position of explaining the meaning of the contract in terms of the laws of Sharia, say: D. It is a personal commitment with another in a matter of matters, whether it is a matter of financial matters, such as compensation, or a non-financial matter, such as marriage. Because the wife commits to be a wife. If the spouse accepts it, the contract is completed and it becomes valid in the world and becomes effective for him, then the result of the contract will be about what the contract was made on. The effect will increase. (Bajnoordi, 1419) but the civil law (Article 183) states in the definition of the contract: "A contract means that one or more people

make a commitment to one or more other people for something that is accepted by them".
Based on this, as stated earlier, the contract is an internal intention that comes to the fore through external barriers. This intention can be a commitment to financial transfer an act or an act of abandonment. Although words, gestures, writing, etc. are used to express this inner intention, they all imply that inner intention (Khoeini, 1386).

1.2.2. Conditions for contract execution

To achieve the concept of "inability to perform the contract", the following conditions are necessary:
1. When entering into a contract that is related to a certain object, the contractor must have the ability to submit and in other words, the ability to be faithful to the content of the contract; Or that the obligee has the power of collection and so-called "surrender".
2. The state of impossibility to perform the contract or the obligation arising from the contract is created after the conclusion of the contract; Whether the time to perform the obligation of the subject of the contract has arrived or not.
4. The failure to perform the terms of the contract should be permanent.
4. Failure to implement the terms of the contract is due to an external cause and the parties to the contract did not interfere in its creation. Regarding this, Article 227 of the Civil Code of Iran says: "A person who violates an obligation is sentenced to pay damages when he cannot prove that the non-performance was due to an external cause that cannot be attributed to him."

2.2.2. Conditions for achieving the concept of "inability to perform the contract"

The inability to perform the terms of the contract may be due to the loss of the transaction or due to its cancellation, and sometimes it is also possible that the delivery of the item may be impossible due to the reasons related to the contractor. In the first case of loss, according to the rule of loss of sale before receipt, the contract is terminated, in the second case of failure to deliver, due to the option of failure to deliver, the right of cancellation is created for the obligee, and in the third case, the authority or the representative A substitute for the invoice and they surrender. But the conditions for the realization of the concept of "inability to perform the contract" are as follows:
First - When entering into a contract that is related to a specific object, the promisor must have the power to surrender, in other words, the ability to fulfil the content of the contract, or at least the promisor must have the power to accept and surrender.
Second - the state of inability to perform the contract or the obligation arising from the contract, is created after the conclusion of the contract. Whether the time to perform the obligation of the subject of the contract has arrived or not. Because we assume that the contract has been properly executed, and in the case where the execution of the contract and the fulfilment of the commitment is impossible from the beginning, then the contract has not been formed.
Third - the failure to implement the terms of the contract should be permanent.
Fourth - the failure to implement the terms of the contract is due to an external cause and the parties to the contract did not interfere in its creation.

3.2.2. Failure to comply with the content of the agreement on Iran's rights

In Iranian law, this rule is interpreted as "failure to perform an obligation" which means an obligation arising from a contract. Article 227 Q.M. Iran is aiming to express the fourth condition of verification of "inability to perform the contract". This article states: "A person who fails to fulfil an obligation is sentenced to pay damages when he cannot prove that the non-fulfilment was due to an external cause that cannot be attributed to him." Article 229 of the Civil Code also says; "If the obligee is unable to fulfil his obligation due to an incident that is beyond his control, he will not be ordered to pay damages." About these two legal articles, it should be said that the impossibility of performing the contract is established when the contract is concluded correctly and the performance of the entire obligation or a part of it is impossible due to the occurrence of an external cause.
Among the examples of the implementation of this rule in the laws of Iran, we can refer to Article 683 of the Civil Code as an example. Regarding the agency contract and article 587 Q.M. He referred to the company's contract.
In article 683 of Q.M. Amed: "Whenever the representative of the power of attorney disappears or the power of attorney is terminated." In Article 587 of Q.M. The legislator states: "The company is raised in one of the following ways: 1) in the form of division." 2) In case of loss of all the property of the company.
Also, articles 481, 471 and 496 of the Civil Code and other articles that have been established in terms of lease - such as farming, etc At first usable If it becomes unusable within a period, the lease will be cancelled

from that time.
In a general summary, it can be concluded that in Iranian law, based on the analytical mechanism of the contract, when the performance of the contractual obligation is prevented, the aforementioned obligation and the related contract are cancelled Of course, you should know the time of the occurrence of the obstacle of the contract correctly. (Shahidi, 2003)
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2.3. The conditions of surrendering the rights of the subject of Iran

The equivalent of the word "excuse" in the case of Iran is the word "refrain". Article 240 of Q.M. says: "If a condition is refused after the contract or it is known that it was refused during the contract, "... you should know that the lawgiver uses excuse in the sense that excuse is beyond the discretion of the person. force majeure). Therefore, the concept of "excuse" is more limited than the concept of "non-fulfillment of an obligation".
Also, the purpose of forgiveness is after the contract. If during the contract, there is an inability to surrender - which means the lack of power to surrender, that is, the ability to surrender at the time of surrender - the contract is void. The effect of non-excuse is also the creation of the right of cancellation for the obligee.

In French law, failure to deliver after the contract does not lead to the option of failure to deliver, it is only one of the cases of exemption of the obligee from the performance of the obligation. That is the failure to deliver after the contract invalidates the contractor's commitment without causing the contract to be dissolved.

3.3. The relationship between forgiveness and loss

As mentioned, "forgiveness" refers to "loss"; Because the excuse can have other causes besides loss, for example, where there is an obligation, but due to unavailability, the obligee is unable to fulfil his obligation, the obligation is valid even though the loss has not occurred it is

The effects of these two concepts are also different from each other. Absence creates a right for the obligee without terminating the contract, but the loss of the obligation causes the contract to be void and the obligations to be cancelled. (Jaafari Langroudi, 1372)

It seems that the rules that the government has on the issue of commitment due to loss are enforceable in case where the commitment becomes impossible.

4.3. The reasons for the impossibility of executing the contract

The issue of the impossibility of execution is raised when, after the conclusion of the contract, its execution is a result of the occurrence of factors that cannot be attributed to the contractor and at the same time it is irresistible from a financial or credit or personal point of view or in terms of benefiting the main purpose of the parties, Or it will be useless. These causes are discussed below under the headings of material causes, personal causes, legal causes and other causes.

1.4.3. Material causes of loss

According to the term "loss" which means destruction and damage in anything (Ibn Manzoor, 1414), it means the destruction of something. The loss of commitment is the most obvious example of the material reasons for the impossibility of executing the decision. The main effect of loss to the subject and case of commitment is to destroy and destroy the commitment. Of course, the failure of an obligation is a special case when its subject is a specific object and the object is lost. It's like if the owner of a car makes a commitment to sell it and before fulfilling the commitment, the car is destroyed in an accident.

The loss of the existing example in general does not eliminate the issue of commitment and only reduces the possibility of choosing the debtor. Despite this, the assumption that the "whole" depreciates and is removed from the market or its possession becomes a monopoly of the government or is confiscated should be considered as a loss of the subject of the commitment, such loss sometimes causes failure There is no commitment and the last price of the goods It replaces the worthless.

The civil law does not mention the loss of the commitment subject in the chapter on the failure of commitments. However, in several cases, he has explicitly stated the loss of the objective right as the reason for its decline: such as the loss of the right of usufruct (paragraph 2, article 51) and the loss of the lease (article 483), there are many rulings that he shows Loss of commitment It destroys: such as forced destruction of the trust property, which causes the failure of the commitment to deliver it to the owner (Articles 614 and 640) and the loss of the seller, which is the reason for the failure of the seller's commitment to deliver it to the buyer (Article 387).

Article 312 of the Civil Code In this context, he states: "Whenever the expropriated property is similar and cannot be found, the usurper must pay the price at the time of delivery, and if the same exists and is subject to taxation, he must pay the last price." However, in cases where general items are confiscated or collected by a public authority and the purpose of the pledge is to hand over the general item, not its price (such as a pledge to sell and hand over a quantity of opium for medicinal use), the pledge is void the loss is certain.

2.4.3. Loss of a part of the subject of commitment

The loss of a part of the subject of commitment should be studied in two cases:

1. Indecipherable subject: the loss of a part of the subject of the obligation sometimes causes the whole thing to fall or destroys the description of the subject of the obligation (such as a china bowl whose rim is broken or a spy plane that crashes). Its release has failed and cannot be repaired) in this case, the destruction of a part of the subject of the commitment is the judgment of the destruction of all of it. However, in the case that the subject of the undertaking is considered to be incomplete or defective by the loss of a part of it, the undertaking is not lost, and the claimant can request the execution of the undertaking in the same condition or cancel the contract related to its purchase.

2. Decomposable subject: (such as 10 tons of rice or a car device) In this case, the demander can ask the obligee to perform the obligation in the remaining part. But he also has the right to refuse to accept that part.

Or cancel the contract related to its purchase.
Article 277 of the Civil Code says: "The promisor cannot force the obligee to accept a part of the subject of the undertaking..." but in any case, the loss of a part of the subject of the undertaking does not cause the obligation to be forfeited.

3.4.3. Loss of the obligee by the obligee

If the loss is the subject of the obligation on the part of the debtor, such as if the seller intentionally or due to his fault, loses the specified sale, the contract will not be cancelled, because of Article 387 of the Civil Code. The rescission is limited to the loss without fault and negligence on the part of the seller: in this case, according to the general rules, the seller is responsible for the compensation of his actions (not compensatory). He has lost the buyer and he must give him the same item or its price.
The legislator has not proposed the assumption of loss of sale and left it to general rules. It should be accepted that the loss of the subject, regardless of who is responsible for it, is one of the cases of "failure to deliver" which cancels the right of the contract and does not destroy the seller's guarantee of this right. The possibility of the right of cancellation for the buyer in case of failure to deliver is another result of the transaction link between the two parties and is more compatible with compensation justice. For this reason, the majority of Umayyad jurists also followed this path. It should be added that terminating the contract or relying on the obligee's compulsory guarantee does not conflict with seeking damages for non-fulfilment of the obligation.

4.4.3. Loss by the party

So, what kind of damage can be done by Ain from the committed area, can be divided into two parts in terms of his condition:
1) At the time of the loss, it was known that the above-mentioned item was the obligee.
2) At the time of the loss, the scientist did not know that the above-mentioned obligation was binding.
There are two points in the first part:
1) The above damage will be charged by the contractor.
2) The above-mentioned loss has the rule of loss before receipt, which is subject to the rule "all the loss before receipt is considered my property". Therefore, he will find the same ruling as stated in Taalf. The contract is cancelled and the compensation is returned to the obligee and the obligee pays the damage of the lost obligation.
In the second part, three situations are depicted:
1) The third person has deceived the obligee and he has lost the property.
2) The principal has deceived the promisee and has lost the property.
3) Without the intervention of a third party, he has lost it out of ignorance that the lost item belongs to his responsibility.
In the first case that a third person has deceived him, according to the rule of his pride, he returns to the person who deceived him and takes the compensation from him.
In the second case, even though the obligee intends to fulfil the obligation, because it is presented as a deception, therefore, the obligee is obliged to compensate for the loss of the object and he must provide it again.
In the third assumption that without any other intervention, the undertaker did the work on his own out of ignorance, the Qol-e-Qab that Sheikh Ansari puts forward is the correct theory. If we put it in the provision of the rule of "total loss of sales before the receipt", a clause is necessary, and the clause is a judgment against the obligee because the obligee may be harmed by the termination of the contract.
With reasonable accuracy, we can say that we are sure that the contract has been concluded and there is no doubt about this, and the promisor is responsible for the provision of the promissory note, and the receipt is also a ruling There is a tin in it The transaction is subject to the discretion of the other party, and there is no need to create a new contract, therefore, in the above-mentioned case, the receipt has been completed and the obligor's liability is removed.

4.1.4.3. Damage by a third party

In cases where the loss of the obligation belongs to a third party, the ruling is strong; Because the intervention of the third party in the relationship between the buyer and the seller is an external event and the possibility of taking it from him does not change this decision. Despite this popularity, the opposing view in jurisprudence that makes the buyer independent in referring to the third party and cancelling the transaction is to the extent that the possibility of following the civil law writers from
It strengthens unless the loser is known (such as stolen money). There is also a third word in the question that deserves to be explained. According to this opinion, if there was a special obligation that was mentioned

in the contract, in this case, it is one of the cases that the customer's right is not violated. He will have a preference. But if the obligation is not exclusive to an individual, but of similar titles, such as a factory that has mass production, such as passenger cars, refrigerators, etc., in this case, the promise of non-discontinuance is more reasonable It arrives. 1.4.1.4.3. Inaccessibility

Losing the pledged item in such a way that it is usually impossible to get it, such as if the property is stolen, is considered a loss. In the explanation of the above, it can be stated in this way that: leaving the subject of commitment can be discussed separately in two ways:

The first form - the case where there is no hope of return. In this case, the mentioned property is subject to damage.

The second form - the case where there is hope for the return of the property. This case is divided into two parts:

First) the return of the goods will be made in a short (and reasonable) period. In this case, the obligee must wait and has no choice. Article 157 of Iran's Maritime Law says: "If the captain is forced to repair the ship during the voyage, the charterer is obliged to wait..." and also the criterion of Article 150 of the same law is a document that says: In the event that the ship cannot leave the port due to force majeure, the lease contract will remain in effect for the agreed period..."

2) There is no hope of its return in the short term. In this case, the contract will not be dissolved, and this case is definitely considered as a loss of commitment from the third party. Since the subject of the pledge is null and void, the obligee's pledge is void unless the obligee does not perform the pledge after the expiration of the pledge's execution period (or after an official request), in which case the obligee is jointly with him and the usurper will refer did.

2.4.1.4.3. Impossibility of committed action

It is impossible to impose a personal obligation and create pressure on the contractor in this way, it is a futile and irrational practice. The impossibility of performing an obligation is customary and therefore, any obligation that is customarily and habitually impossible to perform is void and the contract related to this obligation is void, even though the execution of the obligation is logically impossible Don't be stupid.

According to our laws, the contract cannot be cancelled based on the refusal to perform the obligation, but this rule has many exceptions, the most obvious of which is the "delay option" in the sale. The claimant must ask the court to compel the contractor and if he is disappointed with the performance of the contract through other means and as a last resort, cancel the contract.

Whenever a contractual obligation is simply and usually impossible, that obligation is legally invalid and the obligee cannot be forced to bear the burdensome and intolerable hardship to fulfill the obligation.

The absolute impossibility of performing the obligation is necessary for ruling its invalidity in Iranian law. Therefore, an agreement that cannot be performed by a committed person, but can be performed by other persons, is not invalid. And the obligation related to it must be performed at the expense of the obligee and using those other persons. In this regard, Article 238 Q.M. declares: "Whenever the party is stipulated in the contract and the obligee cannot be forced to perform it, but it is possible to do it through another person, the ruler can provide the obligation to perform the act at the expense of the obligee " In any case, it should be accepted that the impossibility of carrying out the obligation is the judgment of its loss.

5.3. Personal reasons

1.5.3. The promised death

The cause of the impossibility of the committed action may be the death of the committee or his inability to perform the act, in which case the commitment is void if the performance of the act is bound to the consent of the committed person; For example, if there is a commitment to write a book using excellent calligraphy, otherwise, the commitment will not be cancelled due to incapacity or the death of the promisee. Because the work may be done by another means and the cost of it will be paid from the property or his estate after the death, for example, if it is the case of construction of a building or paving the road, it can be done by a non-monetary means It will be possible.

Article 529 of the Civil Code In this regard, he says: "A farm contract is not invalidated by the death of the parties or one of them unless the consent of the agent is stipulated." In this case, it will be cancelled upon his death. which is in the different ways of the expiration of the power of attorney, the death of the attorney or the client is the reason for the termination of the power of attorney contract. It is obvious that the person of the attorney for individuals has objectivity and it is as if the intention to do the work by his person has been mentioned as an implicit condition.

2.5.3. stone

The promised stone can also be canceled due to the impossibility of performing the promise. Being small, stupid and crazy prevents the committed action from being effective. Of course, as stated in the previous discussion regarding the death of the contractor, if the contractor's consent is stipulated in the contract, these issues can be raised, but if this is not the case, it can be verified by another person at the contractor's expense Ver, he should not act according to the terms of the contract He made a speech about the fall of the pledge.

3.5.3. The legal impossibility of performing the obligation

The illegality of the obligee is one of the obstacles to the execution of the obligation, which includes the case that the said act is illegal from the beginning, as well as the case that becomes illegal after the creation of the obligation, so if after the conclusion of the decision Dad, legally, the issue of commitment is illegal Declares an undertaking whose subject is declared illegal; Because it is forbidden by Shari'a in the judgment of the mind (Shari'a's prohibition is completely forbidden by reason). In this situation, there is no difference between the obligee's knowledge and non-information of the prohibition of the obligation, because ignorance of the practical legal ruling does not affect the legal status of that action and the law's ruling regarding the prohibition of that action has the legal prohibition of the undertaking sometimes depends on the subject of the undertaking, such as the undertaking of the hirer and agent in the contract of lease and contract. In the case of hitting and injuring a third person, against a certain salary and sometimes related to the description and conditions, it is an obligation, like an obligation to give property to the winner in gambling.

Article 6 And Article 975 of Q.M. In the direction of expressing the impossibility of executing the contract, it is through legal prohibition.

From a jurisprudential point of view, a legal obstacle makes it impossible to perform the pledge, and as a result, the said pledge will be invalid. An example that the jurists mention in their books in this regard is the cleaning of the mosque by a tenant's wife who is not able to fulfil the obligation due to her monthly period (Shaheed Thani, 1382).

6.3. Other causes

1.6.3. Expiration of the main purpose of the contract

Whenever the conditions of the commitment are changed in such a way that the main goal and purpose of the commitment and contract are eliminated, it cannot be recognized as a binding commitment for its survival. Article 481 of the Civil Code says in this regard: "Whenever the tenant is deprived of the ability to use due to a defect and unable to remove the defect, the lease is void." Similarly, Article 527 of Q.M. In farming, he states: "Whenever the land becomes unusable due to lack of water or other such reasons, and it is not possible to remove the obstacle, the farming contract is canceled." There are other articles in the laws of Iran in this regard, which we refrain from mentioning in order not to be too long.

Of course, as stated in the above-mentioned article, if the conditions of the contract can be returned to normal, this task should not be canceled. In this regard, one should not go beyond the road of moderation, so for example, in the first case, which was related to the rental item being defective, the lessor is obligated to carry out the necessary repairs to maintain the rental item, as long as he can bear it Common ornaments for Intifah kept ready (Katozian, 1376)

2.6.3. The objective impossibility of performing the obligation

For example, the occurrence of an earthquake or a wildfire makes it impossible or pointless to carry goods to a place, or the change of political boundaries makes it impossible to build a dam across a river. In this case, the commitment will be invalid. In this ruling, there is no difference between the knowledge and ignorance of the parties or one of them regarding the impossibility of performing the obligation. What is meant by the impossibility of performing an obligation is a customary impossibility and not an intellectual possibility. Of course, if the obstacle created is temporary, the commitment remains, and sometimes the contracting party can cancel the commitment, but in the case that it is not possible, the commitment should be considered terminated, even though the contractee has the right M contract, in consideration Obligation or damage is also required.

One of the lawyers, while stating this point that there is no specific ruling in the civil law regarding the impossibility of the execution of the contractual obligation, says: "In the case that the temporary period is due to the effect of the delay in the execution of the obligation and the subject of commitment is usually a forgivable contract. The obligation arising from it remains and there is no risk to its credit; However, if the delay in the execution of the commitment is the reason for the loss of the main results of the contract or a part of it, or if the effect of the said delay cannot be overcome, the contract and the resulting commitment

will conflict with the intention D, committed at the time of construction of the contract, invalid or if it becomes impossible after forming the contract, it will be cancelled."
Two types of arguments can be made about the creation of the right of cancellation for the party;
First: considering the principle of necessity in the contract and considering the number of options, it should be said: the contract cannot be canceled except in certain cases mentioned in the law.
Second: In the case of discussion of the right to cancel the contract for the obligee, it should be known that the possibility of performing the obligation is also an implicit condition in the contract according to Article 235 of the Civil Code. For the violation of the quality condition, there is also the option of cancellation according to article 456 of Q.M. Violation of the description condition is also possible in practical contracts.

3.6.3. The occurrence of difficult and unforeseeable conditions
In difficult and unforeseeable conditions at the time of forming the contract, it is sometimes possible to perform the obligation, however, due to the unpredictability of these conditions, the obligee cannot be obliged to perform the obligation; In the case that the customary impossibility of performing the obligation, the obligee is exempted from performing the obligation, if it was not foreseeable for the obligee at the time of its formation, otherwise the obligee is obliged to perform it was
The contract is not cancelled automatically with an unforeseeable change of conditions. On the other hand, it cannot be accepted that the contract remains binding in the event of an unforeseeable event, such as the normal conditions existing at the time of the creation of the contract; But in terms of rules and principles, it should be considered as cancellable by the contractor, unless the contractor accepts to compensate for the difficult circumstances of the incident. (The option of violating the implied condition) (Shahidi, Pishin, 143)
4.6.3. Impossibility of implementation in foreign laws
In common law, there is a rule called "frustration" which is translated as "impossibility of execution" in Persian. According to this rule, the English courts have accepted the following cases as examples of "impossibility of execution":
Later law. This is the case when a law is passed after a contract is concluded and makes the contract impossible. For example, whenever a contract is concluded for the delivery of wheat and then, according to the law that is approved before the delivery of the wheat, all the wheat is confiscated for the benefit of the government, the said contract will be unenforceable.
The destruction of something that is necessary for the execution of the contract. For example, if a contract is signed for the rent of a music hall, the contract becomes unenforceable due to the destruction of the hall in a fire. Inability of the contractor in contracts related to personal services. It's like a piano player getting sick on the day of a concert and not being able to perform his program according to the contract.
Non-occurrence of the event that is the basis of the contract. If a contract is based on the occurrence of a specific event and it does not happen, the said contract will be unenforceable. For example, during the coronation of Edward VII, a person rented a room overlooking the king's passage, but the coronation ceremony was cancelled due to the king's illness. In this case, the court decided that the contract was "unenforceable"; Because the king's passage was the basis of the contract.
In the common law system, when a contract becomes unenforceable as a result of an event, it is automatically terminated.

4.Provisions of excuse in Iranian law
1.4. The verdict of failure to perform a contractual obligation
The ruling on the change of contract execution conditions: Whenever the contract conditions change compared to the current situation, its implementation is difficult and expensive, which the contractor could not have foreseen Qi is known for his obligation to fulfil his commitment.
There are three possible ways to get rid of the situation: liquidation of the contract due to the impossibility of implementing its subject under the conditions that existed at the time of the contract, amendment of the contract and termination of the contract.
Among the mentioned ways, the termination of the contract cannot be accepted without the intervention of the parties, because although it is impossible to perform the contract with the conditions set at the time of the contract, it can be performed with the acceptance of the new conditions Silela Mutahed is possible.
It is a matter of fact that you have to do so. The reason for the third way is the termination of the contract by the obligee citing an unforeseeable change in the terms of the contract to his detriment, in the form that the obligee is not ready to compensate for the incident. Despite this, there is an opposing opinion at this time that the increase in the price in the market at any rate, even if it causes the contractor to not be able to fulfil the obligation due to the reasons of the impossibility of the obligation, is not taken into account.
The verdict of non-performance or non-performance of a part of the contract in Iranian law and international

convention: the non-performance or impossibility of the performance of the contract, may refer to a part of it. In this case, the applicant can refuse to accept a part of the subject of the commitment. In this case, Article 277 of Q.M. He says: "The promisor cannot force the promisor to accept a part of the subject of the commitment..."

Whenever the subject of the obligation is decomposable (such as payment of money), the debtor's responsibility for the part that has been performed disappears and remains for the part that has not been performed. However, whenever the obligation cannot be broken down (such as the operation of a factory with all the technical equipment), the performance of a part of it will not benefit the obligee and he can claim damages from the non-fulfilment of the obligation In other words, the implementation of the indecomposable part The contract is a rule of abstinence from its entire implementation.

Improper and defective execution of the contract is considered as non-execution of the contract and makes the contractor responsible for compensation. In all cases, the proof of the apparent contradiction is with the claimant (plaintiff) and he must prove that what has been done is different from the contractual requirement. In the case of non-fulfilment of the terms of the contract, it must be said that the debtor is not responsible for the performance of the original obligations It should be compensated, in addition, if the required condition is not fulfilled. If there is a contract, it depends on the case that the whole contract has not been executed.

In the convention (Article 79), the non-responsibility that it refers to is related to the non-performance of the contract for a limited period that is prevented by force majeure and that all or part of the contractual obligations is not fulfilled It does not have a mark. But the meaning of all or part of the obligations can be taken from Article 79 K. But if due to the conditions of Article 79 k. In case it is not applicable, it can be done by referring to the first paragraph of Article 51 K. The provisions of articles 46 to 50 of this convention applied to the unenforced section. According to Article 51 K. If only a part of the goods subject to the contract was delivered by the seller, or if only a part of the goods delivered by him were by the specifications mentioned in the contract, the buyer will be entitled to, based on the provisions of Article 4 6 to 50 convention requests for substitute goods or reduce the price, or if the seller commits a fundamental breach of the contract, cancel the contract.

The buyer also has this right in this case, referring to paragraph 1 of Article 46 K. He will ask the seller to fulfil the part of his obligations that there is no obstacle to its implementation, and if he refrains from doing this, the buyer will have the right in the event of a fundamental breach by the seller Cancel the gift and also demand it does damage.

The difference between the impossibility of performing an obligation and the impossibility of an obligation: an obligation that is impossible when it is created, i.e., it seems impossible to perform it, is invalid: even if both parties are aware of the impossibility of performing the obligation Or ignorant of it. However, a temporary impossibility in its strongest form, which is permanent and absolute, suspends or dissolves the existing obligation. As a rule, it should be said that temporary impossibility stops the obligation from the moment an external obstacle appears, and it does not completely disappear, because whenever the external obstacle and impossibility are removed, the obligation is activated again It opens and can be requested He wants its implementation from the court. Only in the case that the occurrence of an external event destroys the possibility of its implementation in the future, the liquidation of the commitment should be accepted. And this inability must be absolute and related to the subject of commitment and the type of obligation. While the inability to perform, even if it is relative, destroys the commitment. However, the contract is still pending until the moment of the accident. In the case that the debtor is at fault, he is obliged to pay damages and he is responsible for the contract, and in the case that he is unable to fulfil the obligation, he is exempted from responsibility.

The provision of temporary impossible contract in Iranian law and international convention: the impossibility of the undertaking will be the reason for the failure of the undertaking when it is usually impossible to perform the undertaking temporarily, the obligation remains and the obligee is obligated after it becomes possible Doing the act fulfils one's commitment, unless the time to fulfil the commitment is outside of the mentioned time, it is as if it has become impossible forever. For example, if there is an obligation to transport passengers by air to participate in a conference that will be held for three days, and during this period due to the closure of the airlines, the obligation will not be fulfilled.

According to Article 79, Clause 5 of the Convention, after the occurrence of force majeure, the parties can exercise any other rights given to them by the provisions of the Convention, apart from claiming damages. Based on this, if the buyer does not want to continue the contract after the occurrence of force majeure and the failure of the seller to fulfil his obligations, he does not have to wait to receive the goods and can cancel it, provided that you the termination of the contract is considered a fundamental breach.

5. Effects of force majeure on the contract

The effect of force majeure on contracts is not always the same. And according to the existing conditions in each case, it may be different from another case. But in total, it is not excluded from the two situations, which are the failure of the commitment and the liquidation of the contract, or the suspension of the contract.

1.5. Collapse of commitment and dissolution of the contract

If force majeure causes the non-performance of the contract permanently, in this case, the force majeure will cause the contract to be dissolved and the commitment will be cancelled. The promissory note cannot be released from the promissory note due to non-performance of the contract. Damage claim. Article 229 of the Civil Code refers to this meaning.

But there are some exceptions to this general rule, which are:

In the contract, the contractor has explicitly accepted the risks arising from Cairo's power.

B. The deadline for fulfilling the obligation has arrived before the occurrence of a force majeure event. In Iranian law, the time required for the performance of an obligation must be specified in the contract (Article 226 of the Civil Code). Otherwise, the request will not be necessary.

C. It is not possible to perform a partial obligation. If it is not possible to perform an obligation in a part of the obligation, it will not be prevented from performing it in general, unless that part interferes with the performance of other parts Do not ensure the obligee from the contract In Iran's rights, it is discussed in the option of splitting the deal.

d. The power of Cairo is one of the reasons for not fulfilling the commitment. That is, if there are other causes, including the fault of the obligee, besides the power of Cairo, there is no reason for the non-fulfilment of the obligation, the general rule of force majeure will not apply. 2.5. Contract suspension

If an event called force majeure causes the impossibility of carrying out the commitment for a temporary period, in this case, force majeure will cause the contract to be suspended and not terminated. Therefore, after removing the obstacle, the obligee is obliged to perform the obligation based on the contract.

Of course, this ruling is in the form that the performance of the obligation has not lost its existential philosophy over time. But if the contract has lost its usefulness with time the nature of the contract has been completely changed and it will be the reason for its dissolution.

3.5. The relationship between the contractor and the contractor after the impossibility of executing the contract

From what has been said about the dissolution of the contract, which has become impossible, it is clear that the said contract and the obligations arising from it will be cancelled and as a result, the liability of each of the two parties will be void F against the other side, compared to It is an obligation arising from a contract.

Regarding the contract, the subject of which is the same action or benefit, the impossibility of performing the contract frees each of the parties from fulfilling their obligations to the other party, and this matter takes into account the nature of the contract. It is obvious and there is no ambiguity. Because the contract is mutually exclusive, it means that when one of the two parties is cancelled, the commitment to the other one will also be cancelled. In the case that the object of the contract is a specific object and the owner is committed to handing it over to the other party (transferee), whenever the object mentioned before

If it is lost, according to the transferor's rule, the transferor will be required to hand over its replacement to the transferor. Except in exceptional cases where the law exempts the transferor from the delivery of compensation, such as the loss of the goods before delivery, which will be the reason for the dissolution of the contract and consideration of the loss to the seller. (Article 387 of the Civil Code).

6. Ruling of non-contractual obligation

1.6. Instead of a trick

Badal: In the dictionary, Badal means substitute, replacement, or anything that happens in place of another, and it has come to mean a vicegerent position.

Hilolah: Hilolah in the dictionary means to get between two things, and to get between two things. The meaning of the term "Bad al-Hilulah" is compensation that, under special conditions, provides a guarantee to the owner of the barrier between him and his interests.

Another definition that one of the jurists has suggested is more accurate. According to this definition, whenever someone aggressively prevents the owner from taking possession of the same property and is unable to return the property to the owner, he must pay it back to the owner If it is not destroyed.

In further explanation, it should be said: that whenever the object of usurpation is available, it is the responsibility of the owner to return it, and when the object is lost, the object or price is determined by the usurper. However, when the same is available, but it is not possible due to reasons, the guarantor is obliged

to pay the price of the property to the owner.
Article 311 of the Civil Code refers to the same meaning: "And if it is not possible to reject the contract for any other reason, he must pay for it." There are many opinions on what the terms and evidence of the guarantee of "Badel Hiluleh" are. Some consider it as the "harm" rule. Others argue that it is based on the rule of ``Ali Al-eed" and Sheikh Ansari (may Allah be pleased with them) based on the rule of ``Tasleet" (al-Nas sultan over their property). It does not have any Shariah.
Some jurists consider the reason for the trick to be the rule of guarantee. In explaining their reason, they say: that the rule that the user of Rasul Akram's (pbuh) command is ``Ali al-eed Maakhzat Heti Today" indicates that the same property is under the control of another without the permission and consent of the owner It has been decided in the world Legislation is based on the promise and its responsibility with all the characteristics, qualities and types of complications. Because every foreign existence has a responsibility on its usurper. Of course, the judge's ruling in this matter is subjective and not constitutional, because it was the same with Aqla, and they also believe that the property belongs to the usurper.
Therefore, it is obligatory for the owner to return the object in the form that it exists, and in the case that the object is lost, to pay the same or its price. However, where the object is not lost and is available, but it is impossible to reach, the obligation to take the object is removed because of the excuse, but the payment of the same or its price is still an obligation on the contract It is strong. But this example or price is not the real replacement of the same item, but it is necessary to combine the replacement and the replacement. Our discussion is where the object exists and as long as it exists, there is no reason to leave it out of the owner's possession.
On the other hand, the meaning of real exchange in exchange is something that replaces what has been removed from another property. From this place, it becomes clear that there is a distinction between a trick and a real one. They have given this name to Badal Hilolah for this purpose, which acts as a barrier between the owner and the owner.
The point that should be noted about the excuse and impossibility of rejecting the usurper's property is that if this excuse and impossibility are for a short period, which is forgivable, then the task of the usurper is to reject the object of the expropriation yes and no Giving in exchange for tricks; However, in a place where forgiveness is for a long period, it can be checked in two ways: First, there is usually no hope of reaching that goal, just like when money is found at the bottom of the sea; Here, even though the property is there, it is considered as a loss and the usurper must pay the real price for it. Secondly, there is usually the hope of reaching the property, which is the case of our word; that the usurper must pay the owner of the trick until the time when he can give the same property to the usurper.
For those who accept Badal al-Hilula, depending on the criterion and proof they consider for it, different rulings can be predicted for them. For example, according to the criterion of the "harm" rule, if the item is delivered for a very short period, there should be no need to replace it, because in this case, no damage has occurred to the owner.
In this regard, what is the relationship with the owner of Ain Moghsoub, some people believe that the ownership has been changed, and some have expressed the shaky ownership of the owner of Ain Moghsoob, and others have said that he is completely wrong. The problem that is included in the first sentence and maybe the reason for the jurists to refer to the second and third sentences is also the same problem. In the case of the question that the usurper is excusable, it has not been removed from the owner's property, and what the owner has been deprived of is the power and usurpation of his property, and this is the defect that must be compensated for by giving it to the owner that any treatment performs the right thing, and on the other hand, such a ruling on ownership does not stop in exchange for trickery (Imam Khomeini, 1379).
They have answered these questions in this way there is no compensation and the money that the guarantor gives to the owner is for the compensation and damage that has come to the owner.
It should also be mentioned that if the same item is in the possession of the guarantor, it is obligatory to hand it over to the owner and it will be returned to the guarantor instead of a trick. But the debate that exists is whether the usurper has the right to oblige the owner to accept in return or not.
Some jurists strengthen the first opinion. From their point of view, the usurper has the right to oblige the owner to accept the trick and the owner has the right to demand his property from the usurper. In the explanation of his opinion, it has been said that every money has three directions, which are: financial direction, kind direction and personal direction.
When money is embezzled and then unreachable, the personal direction of the property is lost, but the other two directions remain intact. Therefore, the owner has the right to demand the remaining amount using a trick and, of course, he has the right to ignore his right.
But the usurper also has the right to compel the owner to receive compensation because his property has been occupied in three ways and he must be released from it. In the assumption of our discussion, one direction is

inexcusable, and there is no obligation on it, but there is a burden on the usurpers, and they will not remove that burden using a trick and there is weight. Of course, there is no interest in the debt because the expropriated property remains in the ownership of the owner, therefore, whenever the fault is removed, the usurper must come out of this personal obligation by giving the property The stove is obtained.
On the other hand, this guarantee is like other guarantees and has no difference from them, so in the same way as in other guarantees, the guarantor has the right to demand the deduction of his deposit from the subject, here the guarantor has the same right. And if the owner insists on receiving his property with all three directions and does not give satisfaction without it, this word will not be accepted by him. Because for the personal purpose of the said property, it cannot be claimed for the sake of excuse, because the usurper will not be obliged to give it at this time. So it seems that this case we are discussing is similar to a place where two separate objects have been usurped, and then it is temporarily impossible to return one of them, in that case, the owner cannot avoid taking back one of the two usurped objects under the pretext that I want both goods together. Therefore, even though the privacy and personal purpose of the property of the usurper is the property of the usurper, this does not conflict with his right based on deducting the property to any extent possible.

Conclusion

From all the questions stated in this research, we can be guided to the following results:
Although some of the thinkers consider the contract to be the same contract, but a difference should be made between them. A covenant is a matter of the heart, even if it has an external sign. In addition, the contract is valid between two people, while the contract may be one-sided. The contract is also one of the reasons for the creation of a commitment, and the event can also be the reason for the creation of a commitment between individuals since the contract is the reason for the creation of a group of commitments. Sometimes the effect of events, such as civil liability, can be committed due to the causes of creation. Pledge is a religious and personal relationship that exists between the borrower and the debtor. The word "contract" is also used in civil law in the same sense as "contract". It will be invalidated. The lawgiver's intention of invalidity here is the same concept used by "infusate". The rule of "invalidation of the entire contract for failure to fulfil its content" is intended to state that any contract that is unable to fulfil its content will be void. In Iranian law, this rule is interpreted as "impossibility to perform an obligation", which means an obligation arising from a contract.
- The ability to deliver is one of the conditions of the substitutes in the transaction. According to many jurists, the power to surrender at the time of the client's right is valid. The ability to surrender is a scientific condition, not a real condition. The criterion for obtaining power is trust and confidence and not absolute wisdom. The legal nature of surrender is a legal fact and the fulfilment of the obligation to surrender has a legal and shari'a ruling and must be carried out according to the law or shari'a. According to the civil laws of Iran, as well as the international sales convention, delivery is both actual and judicial in such a way that he can manage transactions in it Also, the customer's awareness of the decision to take possession of the sale. But the legal delivery is an agreement on the change of title of the seller without changing the actual possession of the seller, while the delivery of the goods is the most basic obligation of the seller It has not been submitted. Also, from the point of view of the convention, the concept of delivery does not include the conformity of the goods with the contract and the necessity of conformity cannot be considered from the obligation to deliver. There is no provision in Iran's laws regarding whether the conformity of the goods is necessary for the obligation to deliver or not. It seems that in Iran's law, the conformity of the goods with the contract is an independent obligation that is separate from the obligation to surrender.
- If the delivery of substitutes does not comply with the terms of the contract, in this case, the option of failure to deliver is separated from the option of breaching the condition, and it becomes an independent option. The provision of Article 240 of Q.M. In jurisprudence, it is known as the "cucumber of excuse to surrender". This option is contrary to the other options of the rules and it cannot be dropped with the condition of the contract.

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