

Violation of fulfilling the condition in jurisprudence and law

Forough Mirparsa

Master of Jurisprudence and Fundamentals of Islamic Law, Islamic Azad University, Zahedan Branch, Iran

Corresponding author: Forough Mirparsa

ABSTRACT: The purpose of this study is to investigate the violation of fulfilling the condition in jurisprudence and law, which according to Article 234 of the Civil Code: From the condition regarding the quality or quantity of the transaction. The condition of the result is that the realization of something outside is conditioned. And the condition of the action is that the current action is conditioned on one of the interlocutors or on an outsider. "Therefore, according to this article, To violate the obligation mentioned in the contract and to violate their obligation on the condition stated in the contract, the option to violate the condition for the person in whose favor the condition has been made. That is, the option to violate the condition. The right of termination arises from the condition and concurrence of the will. Violation of the condition of adjective means attributes and attributes that have a secondary and non-essential aspect. According to the famous say of jurists, violation of basic and substantive conditions invalidates the contract, not sub-conditions. We can say that the well-known saying of the jurists about violating the condition of the deed is that in case of violation and conditional refusal of the conditional fulfillment, the conditional has the right to ask him to fulfill the condition and in case of non-compliance with the condition, If the condition contained in the contract is the condition of the act and the obligated person does not fulfill his obligation, he must first be required to fulfill the obligation. If the obligated person does not fulfill the obligation again, the obligor is (the person in whose favor the obligation is). It can fulfill the obligation in person or through another person and receive the costs from the obligor. Finally, if it is not possible to fulfill the obligation at all, the obligor can use his right to terminate the contract.

Keywords: Violation, Condition Fulfillment, Jurisprudence, Law.

INTRODUCTION

Article 234 of the Civil Code states the types of conditions as follows: "There are three types of conditions":

- 1- Adjective condition
2. The condition of the result
- 3- The condition of the act of proving or denying

The condition of an adjective is the condition of the quality or quantity of the transaction. The condition of the result is that the realization of something outside the condition is conditioned. The guarantee of violation is different from the three conditions:

In case of violation of the "condition of attribute", according to Articles 235 and 410 of the Civil Code, the person in whose favor the condition is terminated; Article 235 of the Civil Code: "Whenever the condition that is included in the contract is the condition of the attribute and it is known that That attribute does not exist. The person in whose favor the condition is placed will have the option to terminate. And Article 410 of the Civil Code also provides: "Whenever someone does not see the money and buys it only as described, after seeing if it does not have the above-mentioned characteristics, he is free to cancel the sale or the same Accept the way it is. Article 236 of the Civil Code stipulates the fulfillment of the "condition of the result" as follows: "The condition of the result, if the achievement of that result is not suspended due to a specific reason, that result is achieved by the condition itself. In other words, the condition of the result is fulfilled either immediately after the agreement of the parties - and if it

depends on a specific reason, as soon as that reason is realized, or otherwise the achievement of the result is excluded and there is no need to declare termination. The "condition of the verb" has a long and sometimes complex process. Articles 237 to 239 of the Civil Code provide in this regard:

Article 237: "Whenever the condition in the contract is a condition of proof or denial, the person who is obliged to fulfill the condition must fulfill it and in case of violation, the party to the transaction can refer to the ruler and demand the fulfillment of the condition. »

Article 238: Whenever the present is stipulated during the contract and it is possible to perform it by another person; The sentence can provide the reasons for committing that act at the obligatory expense. »

Article 238: "When the conditional coercion against the conditional act is not possible and the conditional act is not among the acts that another can perform on his behalf, the other party will have the right to terminate the transaction. »

Therefore, in case of violation of the condition of the act, the person whose condition was in his favor must first ask the court to oblige the obligor to fulfill the condition. After proving the impossibility of the obligation of the obligor, the person who has the condition in his favor, can fulfill the condition by a person other than the obligor and demand the cost from the obligor. If these two solutions are not possible (obligation of the obligor - fulfillment of the obligation at the expense of the obligor), then the person whose condition was violated will have the right to terminate the contract. This termination option is the "option to violate the condition". Article 444 of the Civil Code refers the provisions of the option to violate the condition to Articles 234 to 245 of this law.

Now, in addition to the option of violating the condition, it is necessary to mention a few other legal terms in this regard; The first is "conditional option", which is the subject of Article 399 of the Civil Code. This article defines "conditional option" as follows: "In a contract of sale, it may be stipulated that the seller or the customer or both or a foreign person has the authority to terminate the transaction within a certain period of time. »

Second: Termination or termination condition: The parties to the contract can guarantee the performance or non-performance of a thing, as a condition of the result, the termination of the transaction and the dissolution of the contract, as soon as that thing is realized; For example, it should be stated in the contract that if one of the price checks is not received on time, the transaction will be terminated. In this case, there is no need to declare a conditional will, and as soon as the check arrives and the bank issues a certificate of non-payment, the transaction will be canceled without a conditional termination. This condition, which is conditional on the result, is called the termination condition or the termination condition, but if it is stated in the contract that the seller has the right to terminate if the check is not received at the receipt, this condition is an act and, contrary to the result condition it needs to announce the will of the seller to determine the obligation to dissolve or bind the contract.

According to this preamble, the question arises that: if on the basis of the rule of will, according to Article 10 of the Civil Code, the guarantee of violation of the condition of the act, the creation of a right of termination for the conditional, as a condition of the act, is considered, what right? Created for conditional crush? As it has been said, if the guarantee of execution of the violation of the condition of the act is as a condition of result (dissolution of the contract) ↵, it is called termination or termination condition, and by committing a violation of the condition, the result is the termination of the contract. Be. But if the guarantee of the violation of the condition of the act is the creation of the right of termination for the conditional and the conditional has the right to maintain or terminate the contract by announcing the will, what is the nature of this condition and how is it optional?

If it is declared that "the option is to violate the condition", then the right of termination will not be created by committing the violation, and as it was said, the obligee must first be required to fulfill the obligation, ie the right to terminate the option of violating the condition, if possible. Lack of obligation is created not by violating the condition and not fulfilling the obligation

If it is said that such an option is a "conditional option", then we are faced with the challenge that the exercise of a conditional option does not depend on the fulfillment or non-fulfillment of an obligation (action condition) but the conditional option is a right based on the rule of will for the parties. Or one of them is created.

If we consider this termination option as a "suspended condition option", the creation of which depends on the non-fulfillment of the obligation (action condition), although this theory is defensible to some extent, but with the philosophy of creating a condition option, which gives it constitutional authority. It is inconsistent to terminate the contract without any conditions.

Article 400 of the Civil Code stipulates: "If the beginning of the option period is not mentioned, its beginning is considered from the date of the contract and is subject to the contract of the parties." Two points can be deduced from this article: First, that: in the contract of origin, the time of the rule of will is involved; For example, the term of the right of termination is one month, but the beginning of one month is ten days after the date of the contract. Second: The parties can start the term of the option from the realization or non-realization of something outside or

the current performance or non-performance by the parties. According to the second point, it can be said: if the guarantee of non-fulfillment of the condition of the act or violation of the condition of the act is the creation of the right of termination, the right of termination is the same as the option of the condition bound or suspended to achieve the violation.

Problem Statement:

In another interpretation, it can be said that if the guarantee of the violation of the condition of the act is to create the right of termination for the conditional, then it is "optional violation of the condition" and not "optional condition"; However, the option is a conditional violation, which according to the rule of will and Article 10 of the Civil Code, as soon as the condition is violated, the right of termination is created and there is no need for a conditional obligation. In any case, such a thing is not very compatible with the option of violating the condition, which is explained in Articles 444, 234 and 245 of the Civil Code.

From a practical point of view, if the option that is considered conditional to terminate the contract without fulfilling the condition of the act or violating the condition without considering the obligation of the obligor is considered as a condition option, then it is subject to the provisions of this option. Is ; For example: If its duration is not known, both the contract and the condition are void. If this authority is considered an "option to violate the condition", we have practically disregarded the rule of will. In addition, in case of violation of the condition, if the right of termination is not provided, after the conditional against refuses to fulfill the condition; Such a right will be created. Also, according to the civil law, there is no term for the option of violating the condition. On the other hand, the basis of the option to violate the rule is the rule of will, and the basis of the option of violating the condition is the no-harm rule.

Therefore, it is better not to limit myself to certain options, and if the guarantee of violation of the condition of the act was directly created for the conditional termination (without the need for a conditional obligation to fulfill the obligation), this right of termination is contractual. Pursuant to Article 10 of the Civil Code, the rule of will is to know that because it is not against the law and public order, it is binding and valid for the parties and does not have the restrictions of the option and the option of violating the condition.

Condition

Regarding the definition of condition, several definitions have been presented: 1- Condition in the word means to oblige something. Conditions are the sum of conditions and conditions are the sum of conditions. And in the term condition has been used in the meaning of poetry. (Seyyed Mehdi Shahidi. Conditions during the contract. P. 17) In literary terms, condition is the first sentence of the subject of two conditional sentences, the second sentence is called punishment.

A condition in the specialized legal sense is a direct or indirect obligation related to a conditional contract. An agreement that, depending on the specific nature of its subject matter or the agreement of the parties, is included in the functions of another contract that can be agreed as an independent contract, but the two parties have made it a function of another contract to be called a condition. The condition is obligation and some jurists have used the same thing to prove that the initial conditions are obligatory, but separate obligation is an independent contract, not exile. In philosophical terms, condition is something that is involved in creating another object so that it does not have the necessary object. You are, but you do not need it. Part Two: Types of Conditions of the Iranian Civil Code Introduced the three conditions of the contract (Article 234 of the Civil Code)

1- Adjective condition 2- Verb condition 3- Result condition

Types of conditions

The amount condition for a transaction is one of three types.

- 1- The description of the transaction and its violation causes it to be terminated conditionally (Article 355 BC)
- 2- It is the subject of exchange and represents the amount of obligation in return (Article 149 AH (Registration Law))
- 3- It has both faces: the credit of the subject of the transaction and the credit of the description of its continuity (Article 384 BC) Article 384 provides the assumption that the seller is a solvable set whose price for each component of the set is determined on The opposite of Article 355 refers to the case where the whole transaction is indivisible. The price is placed in front of this total and the value of its description is total. But there is another common assumption that is determined by the proportion of the components. Suppose a piece of land is fenced and sold with certain dimensions. The subject is a foreign transaction, the sum of which is within the specific scope of the subject of the transaction, but the price of the land is determined in proportion to the amount of its square meter, not in a definite and conditional manner. In this case, if the land is less than a certain amount, the buyer does not have the right to terminate, because the description of the purpose is with specified dimensions and not with the amount. But it can reduce the price of traffic as much as the land has a small area, and also if the land is more, it can not be claimed that the deal was done and a lot of liquid property because all the enclosed land has been sold with certain

dimensions, so it must be accepted. The price of a part of the traded land is calculated based on the traffic in determining the price and the buyer must pay it.

Article 149 of the Registration Law provides for the latter premise: "In respect of a property that has been traded with a certain area and it is later determined that it has an additional area, the beneficiary may transfer the surplus based on the value stated in the first transfer document and other legal costs." Submit your document to the Registry and request the amendment of this document, and this rule must be observed in similar transactions. Another example. The gold bracelet is sold for ten thousand rials, and in this transaction, the bracelet is considered as a foreign object and an integral part of the common intention, and at the same time, the price of the bracelet is determined in proportion to the amount of gold. The amount of gold bracelet is not traded in normal cases, so if the amount of gold is less, the buyer has no right to cancel and can only reduce the price (unless the condition is otherwise). In case of excess, it can not be claimed that the seller's excess. Is because all bracelets are sold and can only claim the part of the price that is included in the price of the bracelet. Therefore, Article 149 AH puts a predicted presumption next to Articles 355 and 384 BC as the subject of the sentence and does not conflict with them, so that you too can terminate the civil law.

Relationship of the condition with the contract

The condition does not have an independent credit nature, but has a nature related to the contract. Therefore, its legal status is basically dependent on the conditional contract, and in addition to the conditions it has for legal validity, the existence and non-conditionality of the validity and validity of the contract. It has no effect on the circumstances. Another result of the conditional citizenship of the contract is that if the conditional contract does not have one of its valid conditions and is void from the beginning, the contract is void and the condition is void accordingly. Because the condition relies on the existence of a contract and it may not have the principle of legal existence but its branch has a legal existence. However, the above photo may be fulfilled. Some conditions are void, but a conditional contract is valid because the contract does not rely on the condition, but is directly dependent on its composition. Regarding the relationship between the contract and the condition in relation to the basic conditions of the contract, it must be accepted that the state of existence and non-intention, consent and competence in the contract and the condition are the same, but in the case of the known condition and the condition of legitimacy for the transaction, there is a need for detailed clarity. There is no condition and legitimacy for the condition.

Conditions for the validity of the condition stated in the contract

In order for the condition in the contract to be valid, there must be conditions. The absence of some of these conditions will only invalidate the condition and the non-fulfillment of some other conditions will result in the annulment of the conditional contract and the condition. Condition One knew that some conditions of the validity of the contract can not be considered a condition of validity of the condition, that is, a condition without those conditions can not be declared invalid, such as knowing the detailed condition of the condition that there is no reason for its necessity in the condition. For example, in a lease contract, the tenant of the garden should be required to plant new trees instead of the dried ones during the lease period. It is not known in detail what damage and defect will be caused to the same tenant, how many trees will be dried in the future. It cannot be considered invalid due to the lack of details, nor can it be inferred from the relevant regulations that if the condition of the condition is illegitimate and this direction is specified, the condition is invalid because the illegitimacy of the transaction invalidates the contract and gives a reason to extend it. There is no condition for this sentence to be illegitimate.

Conditions that are invalid but not invalid

According to the above, the conditions for the validity of the condition should be divided into two groups: "One is the condition whose absence invalidates the condition exclusively, and the other is the condition whose non-fulfillment of the contract and consequently invalidates the condition." The independence of the contract from the condition and the dependence of the condition on the contract, in the composition indicates that in principle the corruption of the condition does not spread to the contract and the corrupt condition does not corrupt the contract. This situation is in accordance with the rule and principle because the validity of the contract is not conditional. In Article 232 BC, he mentioned three conditions that are void but are not void, which are:

- 1- The condition that it is impossible to do
- 2- A condition in which there is no benefit
3. A condition that is illegitimate.

In jurisprudence, other conditions have been added to the conditions of the validity of the condition of the contract, or returning to it is the same triple condition or its condition is eliminated. Sheikh Ansari in Makaseb considered eight conditions as conditions for the validity of the condition during the contract: 1- Possibility 2-

Permissibility 3- Benefit 4- Not disagreeing with the book of Sunnah 5- Not being contrary to the law of the contract 6- Not spreading ignorance towards it in exchange for the contract 7- Not requiring impossibility 8- Obliging to be in the contract and not outside the contract It. Section 7: Conditions that are void and void The contract Article 233: stipulates that the following detailed conditions are void and cause the contract to be void:

1- Condition contrary to the requirements of the contract

2. The unknown condition to which ignorance causes ignorance of the recipients. These conditions are exceptional conditions and their effect on the contract is contrary to the rule because the condition does not have an independent credit nature and its existence is doubtful. Liability, but any condition that conflicts with its nature or one of its pillars and destroys it, invalidates the contract.

Obligation of the condition of the contract in the stage of concluding and continuing legal credit: The condition arises as a credit nature with the written will of the parties, although its fulfillment, like the contract, requires the intention of the parties and whenever in the will of one of the two parties Provided that the condition is written in another intention, not only is the condition void due to lack of intention, but the contract is also annulled due to differences in the intentions of the parties. The existence of a condition is not conditional apart from the contract. Therefore, the scope of the intention to sign a contract is also implicitly extended to the condition. Also, the distinction in the movement of the will between the contract and the condition is not realized, so that the discussion of the necessity or non-necessity of the existence of the intention to write in relation to the condition during the contract is the subject of the plan. Regarding the consent of the parties to the condition, it should be said that if Reza belongs to the conditional contract, the consent to the condition will be fulfilled according to the contract, but if it is not to the condition, the conditional contract does not belong to Reza, ie other. Effective Therefore, it cannot be assumed that the conditional contract is not valid but the condition contained in it is missing, just as it cannot be accepted that the condition is valid and the conditional contract is ineffective. The above situation regarding the condition-eligibility of the parties to the contract is also fixed. That is, if the parties are qualified for the contract, they are also qualified for the condition, and vice versa. Just as in the stage of creation, the condition is dependent on the contract and it can not be imagined for the condition of existence of rights independent of the contract, in the continuation of legal life, this dependence also exists.

Adjective condition

An attribute condition is a condition related to an attribute of the attribute being traded. This attribute may be related to how it is traded, such as the flatness of the car, or it may be related to the quantity and quantity being traded, such as four hundred meters of land.

Adjective condition clauses

The condition of the adjective may sometimes be related to the nature of the transaction, which in some different substantive cases, such as violation of the condition of the adjective, causes the right to terminate in some other cases, causes the contract to be annulled (in case of intent). The quantity and quantity that is considered as an traded attribute may at the same time have components that are traded against the components. But the sold components may not be included in the will and intention of the parties against the price components. The difference between a transaction whose quantity and quantity is merely a description of the transaction and a transaction in which the components are against the price components is that in the second type the buyer can terminate the contract due to the lack of this attribute or this Hold the contract and return the part of the price that is against the amount of shortage of the seller. Article 355 of the Civil Code deals with the case of a transaction, the quantity of which constitutes only the description of the transaction, and Article 384 of the Civil Code deals with the case of a transaction whose components are opposite to the components of the price.

Invalid adjective condition

The condition of the adjective cannot be adjusted because the abrogation of the condition means the abrogation of the obligation arising from the condition and because the condition of the adjective does not create an obligation, it cannot be abrogated. For example, if the carpet seller says I will sell this carpet provided it is from Tabriz. There is no obligation on the seller because the seller is not obliged to do anything and everything is related to the same carpet, so if the buyer wants to cancel the condition, how is this possible? What if the subject of the transaction has a conditional description that the condition is obtained and its abrogation does not make sense, and if the object of the transaction does not have the above description, it turns out that the fulfillment of the condition was abstinent and something that is abstinent and does not exist can not be abrogated. Lack of conditional description creates a right for the buyer to terminate the transaction, which is called a violation of the condition of the attribute. Although the condition of the adjective cannot be revoked, the conditional can cancel the right of termination due to the violation

of the condition of the adjective, and it is obvious that the revocation of the right of termination is different from the revocation of the condition. Abrogation considered itself a condition because there is no right of termination before the condition is violated so that it can be abrogated. In the possibility or impossibility of abrogation of the adjective condition, Dr. Shahid says: The generality is determined solely by the description and must be submitted to the buyer according to what is described, and the parties can not change the type of goods they intended in the contract after the contract, so after the contract, the type of goods in the contract. The contract is intended to change, so after the contract and agreement on whether, for example, the buyer is the same or not at all, the buyer can request another type of buyer, and the seller can not submit another sale. But Dr. Katozian believes The condition of the adjective related to the object can be abrogated because the condition goes back to the fact that the obligor is obliged to deliver the goods to the party with that description. It is conditional on the validity of the verb and the conditional can pass it.

The subject of the transaction is the adjective condition

The case of a transaction in which the condition of quantity or quality constitutes the condition of the adjective is the same definite or general in the definite, and the expression of the adjective in the case of the general transaction is necessarily a condition of the adjective subject to the condition in the relation contract. This adjective is about the transaction at the time of signing the contract. The attributes that are necessarily expressed for the general transaction at the time of the contract are the subject of the conditional attribute condition but also a means of limiting the general to a particular type. Therefore, if the seller, after the contract, hands over a person to the buyer who does not have the above-mentioned attributes and the time of the contract, the buyer has no right to terminate it, but must return it to the seller and remove one of the general types of attributes from the seller. Asked.

Time of proving the attribute of the subject of the condition for the subject of the transaction

If the existence of an adjective is a condition for the subject of the transaction in the past or future tense, can this condition be considered as one of the types of adjective condition and the provisions of the adjective condition for it to be fulfilled? For example, whenever it is stipulated in the purchase of land that the said land was the residence of Ibn Sina in the past, can the condition be considered as one of the types of condition of the adjective that the buyer has the right to terminate in case of violation of this description? It seems that the condition of proving a certain adjective in the past tense can also be considered as one of the types of adjective condition for the transaction. And the condition of the future adjective is the same as the condition of the past adjective. For example, the condition that the traded animal becomes pregnant after the next year. The theory of invalidity of this condition does not seem to be correct due to its impossibility, because the condition of the adjective subject to the transaction is not the condition of the conditional action against it, so that its predestination or impossibility is raised, but the condition of the adjective of the adjective is.

Comparison of adjective condition and contract suspension on the description of the transaction

If a contract is conditional on the adjective about the contract, if it is known that it does not have this description, the conditional has only the right to terminate it (335 BC), but if the researcher has suspended the nature of the contract, if the attribute is missing, the suspended contract is canceled.

The word "cucumber" is the name of the source of discretion or infinitive, which means discretion and the meaning of discretion that a person has in terminating a transaction. Therefore, it comes with the word termination and is called "termination option". The civil law, following the jurists, contains a general theory of authority that is unparalleled in the laws of other countries. The word "recourse" is used to correct the option, and the nature and effect of these two terms are very similar. Both are rites, both are used to disrupt a legal act, both look to the future and have no effect on the past. However, these two words are not synonymous and each is used in its own place.

An option is a right that gives both parties to one or one of them and sometimes a third party the right to terminate the contract. The exercise of this right is a legal act that is done with a will and requires the intention of drafting, and is among the obligations, unlike the aqala, which occurs by compromise. The esoteric will and the terminating desire have no effect on the marriage. His decision must be announced to find an external and material face, even if it is not made known to the party to the transaction. Termination of a contract, like any other exercise of law, is effective if the will is sound and the person is conscious. The mistake of drunkenness and anesthesia renders the declaration of intent meaningless. In addition, laws sometimes deprive a person of the right to seize in order to prove to others, such as the bankruptcy that a trader remains, that he prevents him from financial activities. Such legal obstacles, like Hajj, neutralize the effect of the will.

The basis of violation of the adjective condition

The presence of cucumber in the necessary contracts has an exceptional face. (Contrary to the principle of the necessity of contracts) After this question, what comes to the mind that causes the exception and overcomes the necessity of the contract? Why does the emphatic contract falter and the authority sit in place of the obligation? In response to this question, several different justifications have been mentioned, which are divided into 2 groups: 1- Opinions that justify the option of termination based on the rule of will and the provisions of the contract. 2. Opinions that the basis of the option to compensate for his unjust loss is the implementation of social justice. Knows.

First opinion: All the options for termination of the contract go back to the explicit or implicit will of both parties to the contract, and the rule of will is the real basis of the commitment to the contract and its limits. The law has provisions on the number of options and the effects of each, but they have an interpretive and complementary face, so both parties can increase or decrease the traffic on the territory of their legal authority to terminate the contract, or even condition the fall of all options in the contract (Article 448 BC) This case shows signs of approval of this opinion in the civil law. Apart from the possibility of falling and transferring the cucumber, which is the reason for the rule of will, in some cucumbers, there are rulings that are difficult to justify except on the basis of the explicit or implicit will of both parties. For example, why is a defective cucumber created if the defect is hidden from the buyer? Is the component because only in this case can the implicit condition of the seller's health be attributed to both parties? (Article 423 BC) and the important objection to these cases can be summarized in the fact that if the health of the goods and equal to the exchange and retention of these conditions and characteristics are the basis and restrictions of traffic, violation of them should make Reza ineffective from the beginning And the contract is non-cash or void while the option is to terminate the contract for the future. And what is generally accepted is that relying on the option of termination is not a comprehensive change and does not include all types of options, especially since some of them occur after the contract and can not be a traffic defect before, like cucumbers. Delay or Tbilisi.

The second view: In contrast to the views of the first group, where everyone is more or less based on the rule of will and the face of individualism is visible, some interpretations speak of the boundaries of this rule and the limits of the influence of the will. In this group, the option of termination is the result of dealing with the obligation arising from the contract with justice and social interests. Compensation for unjust loss is one of the traditional and long-standing principles of the option of termination, and the abuse of the inability and ignorance of the contracting party and the imbalance of the two exchanges are among the new principles that the authors have tended to.

Compensation for unjust loss: The implementation of the "no harm" rule causes the ordinary and first rulings to be replaced by the secondary and exceptional rulings in such a way that no damage is caused by it and no irreparable damage is caused. Thus, wherever there is a conflict between the implementation of this rule and another ruling, compensation is the priority, which is interpreted as the rule of harmless rule, as in the position of conflict, the rule of surrender of the owner and prevention of damage to the neighbor must be reduced. Unjust loss due to the contract causes the necessary sentence to be removed and the arbitrary authority to sit down and the injured party can terminate the contract. The authors of the civil law also consider the basis of some options as compensation for the loss of the party who is given the right to terminate. Dr. Katami (Dr. Katouzian).

Therefore, there should be no doubt that compensation is an important part of the options of the legislator in motivating the legislators. However, two points should be noted. First, the harmless rule can not justify the existence of all types of options in the contract because some of them are alien based on request. The parties are like cucumber bets or originate from social customs and historical monuments or the rule of law. Like parliamentary cucumber or compensation. Secondly, in the case of the application of the no-harm rule, in order to clean the damage that is based on cucumber, we must pay attention to the traffic provisions, and citing the damage resulting from the contract does not make us need other principles. Conclusion: The options collected in the Civil Code do not have a common basis: the termination clause may be due to the explicit or implicit will of both parties or compensation for the unjust loss caused by the contract may motivate the legislator to grant the right of termination. Or historical habits and customs justify the existence of cucumber. However, from the induction on the basis of various cucumbers, it is concluded that the main basis is cucumber. Based on dominance, one of the two principles is "rule of will" or "harmless" unless another basis is established.

If the option of violating the condition is a means of compensating the loss, if the damage caused by violating the condition is not compensated in any way, it loses the right to terminate its basis. The loss must be present when exercising the option, otherwise there is no reason to break the contract, so if the subject of the transaction does not have a conditional attribute at the time of the contract, but at the time of submission or before the termination spontaneously or as a result of the action, the party finds the right to terminate. Disappears. And if the basis of the option is the breach of contract of consent or implicit condition or the rule of will, it can be said that the option of termination is based on respect for the will and is associated with the contract, and now that there is doubt in its survival is accepted. And it seems that the main basis of the option is to violate the condition of the rule of will,

because the parties enter into a contract with a condition that the absence of that condition is not compatible with the will of the parties. Section 3: Time to create an option Violation of the ground condition and appropriate to create the right of termination in all options is provided by the contract because the sentence related to the option is associated with the contract. The conditions for fulfillment and perfection are sometimes present at the time of concluding the contract, even if the owner of the option or both are not aware of it, such as the option of defects, the conditions are provided after the contract and create the right, such as the option of delaying the price and the option of Tbilisi. They can be divided into two groups on the basis of their safety.

1- An option that exists from the beginning of the contract, even if the owner is not aware of it.

2. An option that belongs to the conditions that occur after the contract and during its implementation. And the option of violating the condition is realized due to not fulfilling the condition and the impossibility of abstaining.

Deadline for violation of the condition

The purpose of most cucumbers is to eliminate or compensate for the loss, but if the enforcement of the right is prolonged and the contract is kept in limbo for a long time, it will cause damage, so the administration of justice requires that in return for granting the option, the owner be asked. He should not suspend the other and use the right as a shield of defense, not because the legislature announced the implementation of some options immediately. For example, in Article 435, the option of defect and description is considered as immediate and the option of deception is considered as urgent, and in Article 440, it is emphasized that the option of trawling is urgent. As we read at the end of Article 1131 about a group of immediate cucumbers (marriage), "it is customary to recognize the time required to be able to use cucumber." Cucumber Violation of the condition is one of the options that the law does not specify for its validity, and the holder of the cucumber right can delay the exercise of his right and take the cucumber at any time because there is no reason to cancel the cucumber due to delay.

Cucumbers that have a deadline. Against the cucumbers that should be used immediately, some of the cucumbers can be applied within a certain period of time and disappear spontaneously after the deadline. These cucumbers are:

Cucumber of the parliament, the deadline of which is until the end of the parliament and disappears after the separation of buyer and seller (397)

Compensation cucumbers that are up to 3 days old (398)

Cucumber Betting with Traffic for a Period (399)

Section 5: Effects of Cucumber Violation

The important effect of the option of dissolving the contract is necessary. The breaking of the bond resulting from the contract takes place in relation to the future and does not eliminate the existence of the contract from the beginning. After the termination of the contract, it creates its effect and its existence cannot be denied. Therefore, if the party who has become the owner of the property by virtue of the contract, does not invalidate its termination, and the civil law has given 2 common assumptions of these seizures:

Whenever the customer has leased the seller and the sale is terminated, the lease will not be void unless the non-possession of the carrier is explicitly or implicitly stipulated to the benefit of the customer, in which case the lease is void. "Article 454"

If after the contract of sale, the customer assigns all or part of the seller to another right, the form of mortgaging with someone "Termination of the transaction will not cause the deterioration of the said personal right unless the condition is violated" Article 455 "The provisions of these two articles can be the rule Extracted that according to which the possession of the party who is the owner of the property in the matter of acquisition as a result of the contract and the subsequent termination does not harm it, unless otherwise implicitly or explicitly trafficked. However, Article 460, which deals with the conditional sale, states that in the conditional sale, the customer cannot seize the seller, which is contrary to the option, and Article 500, which nullifies the lease contrary to the seller's right, seems to be in accordance with this rule. It is a conflict. But with a little reflection, it can be seen that there is a condition of traffic in the cucumber that the buyer keeps the property ready to return to the seller, and the requirement of the traffic provisions is to avoid taking possession contrary to the exercise of the cucumber. The effect of termination is not limited to the dissolution of the contract. It restores the effects left by it to the extent that it does not harm the rights of others. The purpose of termination is to restore the status quo of both parties and if an exchange has taken place .

Transfer of violation of the condition

The termination option may be voluntarily transferred or inherited through a contract with others, and the survivors of the option may be forcibly replaced.

Voluntary: Cucumber is a financial right and, like other financial rights, can be transferred. In case one of the two parties to the transaction has the right to break the contract and wants to transfer it to the other party, the influence of the contract will not face any obstacle. In relation to the two, the cucumber undoubtedly has a financial value, stabilizes the situation of one and saves the other from loss, so it has all the features and characteristics of a financial right, and its transfer is also beneficial.

Coercion: The Civil Code stipulates in 445 that "each option is transferred to the heir after death." The option is among the financial rights and is inherited among other property, and the Civil Code declares it as a rule.

Section 7: Does the wife inherit from the option of violating the condition that belongs to her land?

There is a difference of opinion as to whether a woman inherits or is deprived of the right to choose in the land transaction. Dr. Emami says that a woman inherits because the option is an independent financial right in which all heirs share in the amount of their inheritance.

And Dr. Katozian also says that from the application of Article 445, it follows that the right of choice goes to the wife.

Fall of violation of the adjective condition

1- According to Article 448 BC, all or some of the options can be stipulated during the contract. This condition exists in cases where the option arises as a result of the contract and the reason for its name lies in the compromise, meaning that the right of the option is revoked, such as cheating, but in the case of options that are created after the contract, such as the option of violating the condition. Dr. Emami believes that in the case of these cucumbers, the condition for the fall of the cucumber is that it arises after the contract and that the contract will be valid. This condition is the condition of the result and due to the condition of the fall of the cucumber during the contract, if there is a cucumber or after a while Dr. Katozian says that it is appropriate to create cucumber in the sense of abortion, because the condition of abortion of cucumber destroys the ground for its creation and there is no right to abort it, and in fact the condition of falling of cucumber in this field is the presumption of prevention. It is from the creation of the right, not the fall of the right after creation. It seems that Katozian's view is more compatible with the right. The abolition of the right of choice is a legal act and the will governs it. The waiver of the right may be explicit, as if the buyer had forged a deed in the contract. Or be implicit, like selling the same thing to someone else after marriage.

The options provided in the Civil Code have two main bases:

Respect for compromise (rule of will)

Compensation for unjust loss (no harm rule)

The first group loses its basis if either the cancellation of the cucumber is stipulated in the contract or the owner of the cucumber waives his right, but in the case of the second group, it remains to be seen whether the cucumber will be revoked if the unjust loss is eliminated before the cucumber is applied. It seems that in any case where it is established that the option is a means of compensation, its provision by another means makes the existence of the option useless, especially since the principle is necessary in contracts and giving the right to terminate is exceptional and contrary to the principle. For example, Article 421, in which the fraudulent option is more in line with the implicit violation of the implicit condition, because if the fraud also compensates the loss, the option remains, but in Article 478, the main basis of the lease is to eliminate the loss and its termination is revoked. And considering that the main basis of the option is to violate the condition of the attribute of the government of will, then if the obligor compensates for the loss, the option remains. Because the parties wanted the contract to be made with this description and adjective.

Relationship Betting and Ted Licking

In cucumber, violation of the condition of an adjective, the lack of which causes cucumber, explicitly or implicitly belongs to the common intention and there is traffic about its necessity, but in trawling, traffic is not necessary for the necessity and effect of the pretended description, and it is enough to deceive Be aware of the motivation of his party and try to mislead him. For example, the seller knows that the buyer is looking for Kashan carpet and sells the carpet, which is the fabric of Tabriz, to Kashan as Kashan.

Conclusion:

The discussion is about the difference between the rulings of the two articles 355 and 384 BC. In fact, it is related to clean cucumber, discrimination from cucumber is a violation of the adjective condition. Article 384 "Whenever the seller is in a transaction in terms of a certain amount and at the time of delivery is less than that amount, the customer has the right to cancel the seller or accept the existing price by paying a share of the price in proportion to the existing. It is related to the exercise of the option of trade discrimination and Article 355 BC which states: "If a property is sold on condition that it has a certain area and then it turns out that it is less than that amount, the customer will have the

right to terminate the transaction if it turns out that more He can terminate it from the seller ... »Observes the option of violating the condition of the adjective. Part 3: Violation of the condition of the adjective and the option Violation of the condition of the adjective Whenever the condition inserted in the contract is an adjective and it is found that the adjective does not exist, the so-called violation of the condition of the adjective is realized. The condition of the adjective is either related to the quality and manner of the transaction or related to its quantity, or it may sometimes be related to the nature of the transaction, in which case the absence of a conditional description will create the option to violate the condition of the adjective. Violation of the condition of an attribute occurs when the subject of the transaction does not have a quantitative or qualitative description, and otherwise, if the condition is related to the nature of the transaction, violation of it will invalidate the contract. In the ordinary case, the difference in the description of the transaction does not invalidate the contract or create a right of termination. That is, if the seller goes against his attributes that the trader thought the transaction had those attributes, the contract will be valid, but if these attributes are stipulated in the contract and in case of conditional violation, he will have the exclusive right to terminate the transaction. Whenever the subject of the transaction is contrary to the description of the substitute of the essence, in principle, the contract will be void due to ignorance or error in the transaction, and such a case is not called a violation of the condition of the adjective. For example, if a person buys a brass container with the description of being antique, then it becomes clear that the container is not antique. The transaction is void due to a mistake or lack of description of the substitute. In this case, we can not believe in the validity of the transaction and the existence of the right of termination for the buyer because although being antique is a description of a complication on the essence and the natural essence of the transaction may be brass or pottery, but its customary nature is antiquity that is natural in nature. It is different. Here, the description of the traded item is more important than its nature and material, so that if it is not known later that the traded item is antique, the contract is basically void, and in the above example, whenever it is stipulated that the antique container is made of silver. The mentioned brass is a violation of the condition of the adjective has been realized. The effect of violating the condition of the adjective, both quantitatively and qualitatively, is to create the right of termination for the conditional, and in the absence of a conditional description, the conditional object can never be required to create the said description.

In case of violation of the condition, the conditional adjective is conditional on the buyer accepting the transaction with no conditional description or terminating the transaction, but he can never force the conditional opponent to hand over the traded item according to the conditional description because he has the option of violating the description. The buyer is conceivable as a specific or general buyer and in the general buyer the description does not necessarily make sense, because in the case of a general transaction, the said attribute is in fact an obligation and the seller is obliged to surrender the general condition to the buyer according to the conditions. However, when the specific or general seller is not conditional according to the description, because the subject of the transaction is definite and it is not possible to surrender another person instead, when there is no conditional description, the condition of the attribute is violated and there is no way to terminate it. In Article 355 BC, the amount of property has a descriptive aspect for the transaction and its components are not equal to the price components, but its total is equal to the total price. Violation of the condition of a small adjective, ie less for the buyer and more for the buyer The seller has the right to cancel, so if the amount of the buyer is less, he can not return part of the price for a deficit, because nothing of the price is against the deficit and can not force the seller to increase the amount of the deficit to the seller, for example. The seller can not force the buyer to pay extra if there are more buyers. But if the quantity and quantity has a fundamental aspect, such as Article 384 BC, considering that the sold components are in front of the price components and the quantity is not only a descriptive aspect but is inherent in the nature of the transaction, whenever the transaction is less than the prescribed amount Both parties to the contract have been void for the amount of the deficit and the amount valid is valid, in which case the buyer can terminate or accept the transaction and only the part of the transaction price that is equal to the actual amount sold. Takes back from the seller. In the case of Article 385 BC, where the seller is not objectively applicable but the components of the seller are opposite to the components of the price, if the transaction is less than the transaction, the buyer has the right to terminate if the transaction is more than conditional.

The option is a breach of the right of termination, which arises as a result of the breach of the obligor to fulfill the condition and the impossibility of his obligation to fulfill the condition for the conditional, or in circumstances where a special description is provided for the traded property and the seller lacks it. Cucumber condition is a condition that creates the right to terminate the contract with the traffic and agreement of the parties in the form of a condition during the contract. In the unconditional option option, the parties provide for the right of termination for themselves within the stipulated period, but in the option option, the violation of the conditions is subject to the occurrence of the violation and the refusal of the obligee to fulfill the condition. Section 5: Comparing the option of violating the condition of adjective and the option of violating the description of the two should not be confused. Cucumber is a violation of the

description of one of the ten cucumbers mentioned in the month of 306 BC and is related to a case in which the transaction is described, as someone says, a garden plot with an area of 1000 meters has a water well and .. to I will sell it at a certain price and the buyer will buy the garden with confidence in this description, and then it will be found out that the seller does not have the mentioned description, in which case there will be a violation of the description for buying the cucumber. However, the option to violate the condition of the adjective is that the subject of the transaction has no description, which is stipulated in the contract. In other words, whenever the subject of the transaction does not have the conditional condition of the contract, it can terminate the transaction based on the option of violating the condition of the adjective. (Article 234 BC) But the option of violating the description, as stated in Article 410 BC, is the authority to terminate the transaction by a party who has not seen the money and bought it as described and then found the seller without those characteristics.

REFERENCES

1. Seyed Mehdi Shahidi. 2017. Civil rights .Volume 4 .Conditions under the contract .Majd Publications.
2. Seyed Mehdi Shahidi. Civil Law .Conciliation of Contracts and Obligations .Shird Edition .Majd Publications.
3. Seyed Mehdi Shahidi. 2017. Civil Law .Civil Law 3. Commitments .Majd Publications.
4. Hamid Bahrami Ahmadi. 2011. General Contracts and Contracts .Civil Rights 3 .Publish Published.
5. Javad Fakhar Tusi. 2016. Title: In the presence of Sheikh Ansari. Description of options. Q. Published by Morteza.
6. Mohammad Jafar Jafari Langroudi. 2011. Legal Terminology .The Treasure of Knowledge .Fifth Edition.
7. Seyed Mohammad Mousavi Bojnourdi. 2012. Rules of jurisprudence. Publisher Miad. Tehran.
8. Hassan Emami. 2018. Civil Truth .Volume Four .Islamic Bookstore.
9. Habibollah Taheri. 2016. Civil Law .Volume Four .Office of Islamic Publications.
11. Hassan Emami. 2016. Civil Law .Volume II .Islamic Publications.
12. Habibollah Taheri. 2016. Civil Law .Volume II .Office of Islamic Publications.
13. Nasser Katozian. 2017. General rules of contracts .Volume III. Publishing Company.
14. Sheikh Abdullah Ansari. Options: Discussion of conditions.
15. Nasser Katozian .Moin contracts .Volume one. First edition .Sahafi Iran.
16. Nasser Katozian. 2017. General Rules of Contracts .Volume Five .Publishing Company.
17. Mostafa Adl .Civil Law. 2015. Volume One .Eighth Edition .Golshan Printing House Tehran.