

Common principles governing on revocable contracts Jurisprudential and legal analysis

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Abstract

Purpose: In this article, we will examine the obligation that the parties to the revocable contract are permitted to fulfill their obligations to this contract until the contract is continued and not terminated, as well as study the rules governing the formation and rules governing the dissolution of the revocable contracts. **Methodology:** The present research is applied in terms of purpose and content analysis method. In the organization of research, the documentary and library methods have been used and the information analysis has been obtained qualitatively and based on the inference of the researcher on the sources and texts. **Findings:** One of the most important legal institutions and organizations in all legal systems is contract and agreement so that today it is considered as the main means of legal and economic construction of human societies and is the cornerstone of many socio-economic relations of people in the society. The stability and security of the socio-economic relations of the society and the maintenance of public order depend on the credit of contracts and the adherence of individuals to their duty and responsibility and obligation to the contract and the implementation of its provisions. Article 184 of the Civil Code of Iran refers only indistinctly to the two divisions and without specifying the divider of each type and direction of division. It's as though the aforementioned types are one of the divider. Article 184 stipulates that contracts and transactions shall be divided into the following categories: binding contract, revocable contract, optional contract, unconditional contract and conditional contract. **Conclusion:** Regardless of the fact that people such as Mirza Naini Sheikh Mousa Khansari in Manieh al-Taleb are not considered revocable contract as a valid contract, nevertheless, the division of contracts into binding and revocable has two practical uses. In the binding contract, the two parties to the contract or one of them are committed to their covenant and cannot arbitrarily break the covenant, but, in the revocable contract, they can terminate the contract without any impediment. The revocable contract is dissolved for the death and madness and imbecility of a party.

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1. Introduction

The contract is one of the most important legal institutions and organizations in all legal systems, including the legal system of our country, and the relations of the people of the society are organized in the form of this legal entity, and an important and very practical category of contracts in our legal system is revocable contracts that are discussed in detail in civil law and are often analyzed individually in legal books and jurisprudential texts, but as far as the author of the research is concerned, so far any independent and coherent book has been written on the study of common collection and principles governing them. To a large extent, to find the answer to the question of whether the parties have an obligatory bargaining power in relation to their obligations, and where this binding force comes from, and whether it is possible to establish common principles for revocable contracts, this study was conducted. In addition to its scientific and theoretical significance, the discussion also has scientific results and can be practically effective and provides little help in knowing more of the revocable contracts required by the society.

2. Literature Review

In the context of the discussion of revocable contracts and the common principles governing the contracts, several studies were conducted by great jurists such as Sheikh-al-Taefeh Muhammad ibn Hasan Tusi (d. 460/1067), Mohaghegh Helli (d. 676/1277), Shahid Sani (d. 966/1559), Mir Fattah Maraghei (d. 1175/1761) particularly Mohammad Hassan Najafi (d. 1266/1850) and so forth having produced on the subject of the discussion and rules governing on formation, including the existence of the element of permission and the discussion of safekeeping and element of honesty and new jurists and thinkers have provided works on this issue in sparse ways in the form of jurisprudential rules regarding the rules governing formation and the rules governing the dissolution of the contract, and also the element of the permission of the element of trusteeship, works of Ayatollah Naser Makarem Shirazi, Professor Habibollah Taheri and specially Imam Khomeini (RA) and have been examined and some legal articles have been published in journals on the subject of this topic, but a book or study in writing about The subject matter of the thesis has not been provided that can examine all aspects of the subject, namely, jurisprudential and legal analysis of the common principles governing the revocable contracts. Therefore, due to the lack of research in this field, this study addresses the issue of the common principles governing revocable contracts in particular and with a comprehensive look at the matter.

3. Methodology

The present research is applied in terms of purpose and content analysis method. In the organization of research, the documentary and library methods have been used and the information analysis has been obtained qualitatively and based on the inference of the researcher on the sources and texts.

4. Finding

Obligations of the parties to the commitments arising from revocable contract: Obligation in the word and in infinitive sense means the acceptance of responsibility, duty, and obligation, and inevitability, and in gerund sense means inevitable, obligatory, commitment and responsibility. In short, commitment is opposed to requirement. If we consider the requirement as to force a person to perform or refrain from doing anything, obligation is a commitment to accept this and to take it, and sometimes the obligation of the person and to force him to do something that he himself already cares for and he has made himself to do the work. In our legal and jurisprudential literature, the term engagement is commonly used in synonyms with obligation and sometimes legal assignment or duty. As in the legal texts of the Arab

countries, as a rule, instead of the terms of obligation, the term "obligation" is used, the Persian legal texts also sometimes consider commitment as obligation in credit of obligor and necessity in credit of oblige. In any case, we mean the word "commitment" here in its general and lexical meaning, although it includes an idiomatic meaning. The purpose of an obligation to enter into a contract is to be bound by the provisions of the legal agreement of a person to perform contractual assignments and to observe the provisions of the contract and to adhere to it. Although for certain legal or contractual reasons, some contracts can be terminated. In other words, the obligation to sign a contract does not necessarily mean the need for a contract in the meaning of the term or the necessity of contract.

Obligation to enter into a general and universal principle that is in all contracts and we will say that every contract, unless legally terminated, the two parties are obliged to comply with its provisions and must act on their contractual duties, but the necessity of the contract, although accepted as a principle in contracts, is not public, and in terms of legal or contractual terms, a category of revocable contracts may be canceled. Rules governing voluntary dissolution (termination).

One of the reasons for cancelling obligations is its termination under articles 188, 219 and 266 of the Civil Code and civil law for the parties. The scope of legal acts has spread so easily that it cannot be counted, and also social relations and the advancement of technology and the economy each day require the trading of which the commitments given before did not have any precedent. The Civil Code states a contract that has been public since long ago and submits them under the title the specified contracts and some of the legitimate collections also sometimes give a specific name and gives it a certain number of contracts, and as the insurance contracts and transportation contracts are examples of developing variety of contracts. But it can never be argued that the legal forms cover all the governing manifestations of the will and it does not require us to classify them. Therefore, we can better understand these contracts and the rules governing them, and it is necessary to cover the circumstances of the transactions and the effects of contracts for the classification of contracts, because this can be attributed to the characteristics and privileges of each of these contracts. Arranging and categorizing the dispersed existing rules, so the contracts are divided according to the terms of conclusion and the type of commitment and influence of the will of one or the parties to the contract. Rules governing coercive dissolution (annulment):

It does not have a broad, independent legal definition, since it gives the proprietor of an agent the right to trade his owner and to the agent of the capital and the principles is provided to the agent. In addition, if some benefit is obtained from trading, which is shared by the owner and mudarib, it is possible to consider mudaraba as a contract for the establishment of the company. Mudaraba is a revocable contract. As is customary in the definition of mudaraba, the contract is a combination of three contracts of agency, trusteeship and company, because at the beginning the owner gives the agent the right to trade in his property and deposits him the property to work and shares in the benefits that comes with these legal acts all of which are revocable contract, and maybe that's why the mudaraba is also allowed. Under article 550 of the Civil Code mudaraba is a revocable contract, and at any time, one of the parties may want to disassociate it. Whenever in mudaraba contract time is specified for a business, according to Article 552 of the Civil Code, the determination of the term does not require the conclusion of a contract, and each one can disassociate it at any time he likes because it is not necessary to determine the duration of the contract.

The annulment of the contract is raised in two important assumptions: the annulment of the contract is permitted. In article 945 of the Civil Code, insanity is not mentioned, but it can be deduced from the precedence by analogy, because when imbecility caused disturbance in the inner permit, insanity leads to the dissolution of the contract. Low-working, selling in an expensive rate, salaried and unemployed, and so forth all are treacherous to the people. Persons who are engaged in military and political affairs are in fact a trustee of the people, and the secrets of the organization are in their hands. They need to be careful and aware that the life and destruction of a nation depends on the preservation and disclosure of the political, military, and economic secrets of that country. Sometimes the disclosure of a political or military

issue, especially the secrets of war, can be such a blow to the country which can never be compensated. The honor and secrets of the people are as respected as their property, and if they are in the hands of others, they are to be trusted to be kept at its best. Cursed eyes on the people's honor and offending is a betrayal for them. It is also a betrayal for them to reveal the secrets of the people. It is also treason to disclose the contents of the cases and letters of the people, to inform the internal state of the people, to know about their weaknesses and their weak points, and to disclose them.

The legal basis for the annulment of revocable contract due to the death and non-competence Regarding the fact that the revocable contracts are annulled due to the death and non-competence of one of the two parties and the contract is dissolved, the same views are not expressed. We know that being alive is an essential condition for the conclusion or influence of any contract because the dead are not legal persons, nor can they manage the non-competent or the power to decide because of the deprivation of perception, or their protection entail that their decisions do not have legal influence, but when an agreement is made, its effects will come to the past, and is psychologically and physically sound from revolution's damage. What it is related to it, and from the same place is being implemented, therefore, the death and insanity of the two parties of the contract is not effective in its past treaties unless the pertinent content of such a consent and the implementation of the contract is subject to the stewardship committed person. Mohammad Jafar Jafari Langroudi in second volume of philosophy of civil laws regarding general principles of the permit and lettings pages 39 and 40 has considered letting contract including five contracts such as agency, borrowed, trusteeship, civil partnership and mudaraba and expressed a consensus theory on this basis that death, insanity and imbecility and to some extent coma cause to annul revocable contract and stated reasons that pair of revocable contract is possession and deputization and these two are subject to the permit of issuer, because permit in letting contract is continuing after contract, so it has competency with itself, thus if he dies, they do not have fulfill rights.

Legitimate documents of annulment in revocable contract due to death and non-competence according to article 954 of civil code, all optional contracts (jaiz) are cancelled by the death of one of the parties; similarly they are cancelled by imbecility, in matters where adolescence is a necessary condition. This article is in general annulment of optional contracts and in each contract, in particular, explicitly or implicitly, refers to the annulment of the contract due to death and non-competence. For example, section 1 of article 551 of mudaraba contract and section 2 of article 588 of partnership contract and article 626 of the trusteeship and article 638 of borrowed contract. In sum, it can be realized that annulment theory is due to the aforementioned elements.

As previously stated, tools of non-competence are six things from the point of view of the jurists: 1-Minority, 2-Insolvency 3-Imbecility 4-Slavery 5-Disease attached to death, 6-Insanity.

However, the Civil Code refers in article 1207 solely to minority and insubordination, and insanity and in article 213 has been used non-competent as a insolvent. The question here is that in Article 954, imbecility is referred solely and the rest has not been mentioned. The silence about the minority is logical because the childhood is not affected after the contract and during its implementation, and if the child enters into contract, it is void and there is no room for annulment of the contract.

The effect of death and non-competence in the most suitable contracts from jurisprudential and legal viewpoint in this section, according to article 954 of civil code, all optional contracts (jaiz) are cancelled by the death of one of the parties and since most jurists consider insanity as a tool for contract annulment and believe that insanity has been omitted from this article, in the following we briefly explain some contract annulled for this reason and the effect of the death of one parties will be examined from the perspective of jurists as well as civil law:

The effect of the death of both parties on the agency contract .The first part: The effect of the death and non-competence of one parties in the agency contract according to the jurisprudents, the agency of the

contract is necessary, or at least on the one hand, necessary from the kafil, and although the jurists have mentioned it as revocable contract, but immediately in terminating the agency to

The effect of the death and non-competence of makful parties points out that this implies the enactment of agency contract. However, if we arrive at the fact that the jurists are licensed by makful lah, death and non-competence will also be effective in the agency. But the question is, on what party's death and non-competence, the kafil, makful or makfulun lah.

kafil's death: The Imamieh's jurists believe that the death of the kafil will be void because the obligation is due to kafil's agency and the summons of makful require requisite information necessary to identify its location and characteristics, and, moreover, to create the financial right is not directly paid for by kafil to be subjected to the heirs for the death in accordance with the inheritance rules.

makful's death: makful is the one to be summoned, and when he dies, it is no longer possible to summon him, and it is useless, and on the other hand, the kafil has no other duty than summoning, while the subject of the summons is canceled, his obligation comes to an end makful lah's death: in this case, agency is not cancelled before the summon and in the event of his death, heirs will be his deputy. About insanity, imbecility, insolvency, no material has been suggested.

Second part: Effect of death and non-competence of the parties in civil law does not explicitly refer to the necessity or permission of agency, but according to section 4, article 746, it can be said that the agency contract is required by Kafil and makfulun lah, therefore:

In the event of kafil's death: There is no provision in civil code for achieving kafil's acquittal in the event of his death, and vice versa, in accordance with article 748 the death of the makfulun lah will not involve the discharge of the kafil and the necessity of a agency contract is resulted from this article. Otherwise, the death of the makfulun lah must involve the discharge of the kafil. And since the agency contract is a binding contract, it is necessary to say that the death of the kafil is not contract and the dead is not discharged. However, while we have stated the reverse, although the agency contract is obligatory, however, the contract depends on kafil and in the event of his death will be removed without makfulun lah's right to demand fulfillment of his obligation from his heirs. The summons of makful, although is not his own obligations, he can get a lawyer, or a third party can summon him, but this commitment will not fall on his or her heir to the kafil's death, and the notion of opposition to article 748 of civil code is the same. And its concept is that the death of the kafil causes his obligation to fall, and this concept must be mentioned explicitly and without obsession in the rows of article 746 of the Civil Code.

the effect of the death and non-competence of one of the parties in the borrowed contract
The first part: The effect of death of one parties in the borrowed contract from jurists point of view, the jurists are entitled to a consensual contract, and there is no contrary view in the Imamieh's jurisprudence, but in relation to the termination of the contract, they have not referred, but in general it can be said that the annulment of the borrowed contract is accepted by them. But the debate is whether the borrowed contract annuls on the death of lender and borrower, or to the death of each of them?

Imam Khomeini has referred explicitly to the annulment of borrowing to lender's death, and some of jurisprudents have been said nothing regarding the fact that the borrowed contract annuls to lender's death. Undoubtedly, because the contract is a letting contract, and with his death, the permission is discontinued, and his property is transferred to the heirs, and in the non-competence, insanity, etc is forbidden to seize his property, but how is borrower?

Apparently, in a borrowed contract, considering that the contract is non-commutative, the personality of the party to the contract is being considered and in the event of his death, lending will be given to the heirs and lender may not be satisfied with this matter, and in the case of insanity, such as the insane In order to prevent the loss of the property, it is better to annul borrower insane, but his incapacity and imbecility may not be annulled because the incapable is forbidden to seize his property, not to seize the property of others. The second clause: the effect of the death of one parties on the lending contract in the

civil law article 638 of the Civil Code lending is a revocable contract, and is cancelled by the death of either of the parties. The civil law in this article explicitly refers to cancelling contract by the death of either of the parties, but whether lending contract cancels by the death and insanity of either of the parties?

Civil law does not have a specific decree, but in answering this question, we use the generality of article 954 of the Civil Code, which states all optional contracts (jaiz) are cancelled by the death of one of the parties; similarly they are cancelled by imbecility, in matters where adolescence is a necessary condition. contract is cancelled due to the death and insanity of each of the parties, as well as by imbecility, because lender cannot seize his own finances without his authority permission, but by imbecility of borrower, the contract cannot be canceled because, as he can accept peace and hiba without compensation, it is possible to accept lending, because lending is not in your finances, as a result contract is cancelled due to the death and insanity of each of the parties, as well as by imbecility.

aa Agency contract is revocable contract and at any time, agent and client can disassociate it, and the determination of the term for the agency does not necessitate it, and the only effective determination in this matter is that agency after that contract expires and the practice of agent will then be an officiousness. According to article 678 of the Civil Law, the agency can be dissolved in the following ways: By dismissal by the principal- By resignation of the agent.

After a contract has been made, the parties may cancel and terminate it by mutual agreement and one way for extinguishing the obligations which is mentioned in article 264 of the Civil Code after the fulfillment of the obligations, and, unlike the other cases mentioned in article 264 of the Civil Code, not only extinguishes obligations and dissolves contract, but it may also be a means of interrupting the effects of a contractual obligation that has been enforced and fulfilled.

Tafasokh means to open, which has not disappeared from the legal term. There is no definition in civil law. But what is certain is that the fulfillment of the eqaleh is subject to, firstly, the consent of the two parties to intend for creation, but given the aforementioned principles, it is not confused with contract, but it is merely a means of breaking down the obligations. The effect of this discussion would also appear in article 190 of the Civil Code and other articles. If we consider it as contract, in order to realize it, all the general condition of eqaleh will be necessary, otherwise there will be no reason for the need to gather all these conditions in eqaleh. For example, if a seller of a home in a transaction order stipulates that the house will be used to establish a gambler, if we consider it as a contract, according to article 217 of the Civil Code, in a contract it is not necessary to explain the reason for making it, but if this is done the reason must be a legitimate; otherwise the contract will be null and void.

Some Imamieh scholars have briefly considered eqaleh as contracts without analyzing the nature and expression of their terms and conditions as compared to other contracts. They also stated elsewhere that eqaleh is termination not buying, which is believed to contract without eqaleh.

What seems to be in relation to the totality of relevant regulations and analytical directions is that although it may be called a contract (in the general sense of these laws) in the sense that the emergence of eqaleh requires mutual consent. But it cannot be considered a contract in the special sense of the word, and it expands all the general terms and conditions of the contract, but it is necessary to recognize for that specific legal nature that the effects and its terms and conditions are separately discussed in the civil law and in the cases of silence of the law, it has been inferred with the help of the principles and general rules of law, and it is also unreasonable to consider that a legal entity whose subject matter is always the abolition of the contract and its effects is exclusively established for this feature become in the line of other contracts, and since it is impossible to cancel eqaleh, it is a reason for its difference with the contract.

Eqaleh like all other contracts and legal acts have consequences that are expressed as follows: Liquidation of the contract or exclusively the elimination of the effects of the contract: that is, it does not dissolve the essence of the contract from the time of formation and does not rule out its effects from the

beginning, but this situation is realized in relation to the time after eqaleh and the contract of lawful effects will be valid for the time before eqaleh.

Effects related to the interests and trade faces: Under article 287 of the Civil Code, separable accretion and usufruct with accrues under a contract between the time of its being made and its cancellation shall belong to the party who under the contract has become the owner. But usufruct which is an integral part of the property dealt with under a contract belong to the party who owns the property after the cancellation of the contract.

Relevant trades that cause price changes may occur between the contracts between contract and cancellation of the contract after the bargain on the deal, which will increase and decrease its price, and whenever the price has dropped, it is necessary to pay the reduced amount if the price is increased, and the price increase is due only to the amount of the buyer's work, it will belong to the property after the contract, and if the increase is the result of conventional change and the importance of the transaction, because such a change of situation is considered kind of wasting a transaction. Therefore, after the price is given to the owner before the contract is submitted, and the increase of the portion due to the mixing of the transaction with the property after the contract, if decomposition is possible can be separated after eqaleh transaction and give the owner before the contract if decomposition is not possible, the parties agree to share on the value of each transaction and the owner's property after the contract is made.

In the difference between dissolution (Enfesakh) and cancellation, it can be said that dissolution occurs in a properly concluded contract, that is, the contract is formed with all elements and conditions, but later, the contract is broken up. Therefore, the main elements in dissolution are that it affects the proper contract and one can say that one of proper effects of dissolution, while void contract is a contract that is not essentially formed because it does not have the necessary conditions for correctness and according to article 265 of the Civil Code does not have any effect in possession, consequently, if a contract appears to be supposedly correct, but later it becomes void, this void is always from the time of the contract. Since it is clear that the contract from the first is not true, while at the time of dissolution, the contract was essentially disturbed since the dissolution of the contract. However, in jurists' books, there have been many instances of using the void, which meant dissolution, and even in some articles of civil law also find that have used the term invalid, which indicates that the words are not used in their own right, and definition of each of the words is given below. A void and nullification is other than falsehood. If a contract does not meet the requirements of article 190 of the Civil Code, in the absence of correctness elements it is null and void, and the validity of the sentence is such that the contract has not been generated, but the circumstances in which the contract was created but the parties or third parties have the right to refer to the court for applying reversal of the contract in respect of those grounds.

5. Discussion

By precisely defining the contract and recognizing the contract, in particular revocable contracts and the examination of the examples of the contracts, the following principles can be considered as common principles of the contract. Revocable contracts have common principles. In terms of the rules governing formation, namely, the rules of the public and the conditions of their accuracy and correctness (intent and consent), the definite issue and capacity and parties to the contract and the letting and existence of the element of trusteeship, as well as the rules governing the dissolution of revocable contracts, including voluntary dissolution (cancellation) and coercive dissolution (Enfesakh).

Also, due to the direct relationship between contract binding and the provisions of the contract, and the obligation of the contract depends on the nature of the effects of the contract, and the relationship between the necessity and the license of the contract and the obligation of the contract does not mean that the contract is necessary too, as long as it has not been terminated, observance of its provisions is necessary on the parties. On the basis of the necessity and the license of the contract, various opinions have been presented that necessity and the license of the contract is directly related to the nature of the source and the main effects of the contract.

The effect of issuing permits in letting contracts such as trusteeship, borrowed, agency, mudarabah and more is in taking over financial affairs. The famous view is that letting contracts are cancelled by death and insanity and coma and civil law has followed it. This sentence is subject to the effect of deputy, which include all the contracts and article 954 of the Civil Code. Death, insanity and imbecility make it possible to annul revocable contract, and in article 954 of civil code, insanity is not mentioned, but it can be deduced from the analogy because when it comes to disrupting inner permit, the contract is dissolved, also insanity leads to the dissolution of the contract.

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