



The cases of nullity of suspended obligation with respect to jurisprudence and Iranian law

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Abstract

The jurists of Imamiyyah jurisprudence and Islamic lawyers believe that the suspension caused to null the contract. Imamiyyah jurists have not spoken about the suspension, and have just provided some examples, and how often they have sufficed to state in the sentence (suspended contract is one which is not unconditional). Civil law also has not spoken about the suspended obligation in general. Other contracts are occurer with requirement and acceptance, and in this aspect, it dosen not have a difference with unconditional contract. What has subjcted to a condition is obligation, not a contract, and one only canthis reason put against suspended and unconditional contracts together. There is an actual suspension if the fate of the contract effects not be clear at least between the parties. Because if they know the realization of the condition as certainty in the future, the suspension is formal also due to the creation provisions, and it shows that the parties only demanded that creating debt be delayed for a while. Transactions and contracts are necessities of life; hense, each section of the jurisprudence need to devote a particular attention to it so that the Islamic law not expose to the charge due to some ambiguities and misunderstandings. So, this research reviewed the cases of nullity suspension to provide scholars with the functions of Islamic jurisprudence.

Kywords: Nullity of contract, suspended contract, Unconditional contract, Imamiyyah jurisprudence, Suspension.



Problem statement

The most of Islam jurists have not spoken about defining the suspension that the suspension and have just provided some examples, and how often they have sufficed to state in the sentence (suspended contract is one which is not unconditional). Civil law also has not spoken about the suspended obligation in general, **but states about unconditional contract: the unconditional contract** is one that its effect is not according to related creation with the other man, otherwise well be suspended (Article 189), then, whenever the parties of contract create the effect from it without any condition, the contract is called unconditional and if the effect postpone to another condition, the contract is called suspended. Despite achieving agreement in the suspended contract, its provisions require that the parties' obligations be realized after occurring the condition. Therefore, using the term "suspended contract" is not without negligent. The suspended contract is occurred with requirement and acceptance as in other contracts, and in this respect, it does not differ with the unconditional contracts. What has subjected to a condition is obligation, not a contract, and one only can this reason put against suspended and unconditional contracts together.

Research objectives

a) main objectives:

- 1- reviewing different segmentations of contracts
- 2- reviewing the conditions of suspended contracts

b) sub-objectives:

- 1- reviewing the Civil law, Article 222

Research background

So far, an independent book has not been established in this area; we try to examine all the effects and examples of this contract with legal jurisprudential analysis in one place. The most of Islam jurists have not spoken about defining the suspension that the suspension and have just provided some examples, and how often they have sufficed to state in the sentence (suspended contract is one which is not unconditional). There is not an independent research about the subject of the nullity of suspension among conducted studies in the country¹. However, some have briefly investigated in this area, including: in his study entitled "suspended condition on the recognition of the suspended condition and its effects, Mohammad Velaei has discussed. Maryam Rezazadeh: A Comparative

¹ Paniagua. W. G. C. & Dulio Oseda Gago. D. O. (2017), p 557-576



Study of the suspended contract in five-fold Religions. Mahla Mehdizadeh Ghanat Garmi: A Study of the sentence of the Suspension's reasons in contracts.

The importance of research subject and the motivation of choosing it

In the Civil Law, Article 189, in the discussion of the sorts of contracts and transactions, suspended and unconditional contracts have been defined in summary, and Mangas, but Article 190, which mentions the essential conditions for the validity of transactions [49], has not been mentioned on unconditionality condition; Contrary to the great jurists' method in the expression of contracts and transactions condition that they believe that the unconditionality is one of the general conditions of contracts and unilateral acts and it has claimed to consensus in principle of its stipulation-it can be observed that there is a significant disagreement in its limits and inclusion of its interpretation. Nevertheless, civil rights have not paid attention to this important point that it may possibly cause serious damage to the contract, and therefore it can be claimed that: Civil Law has an obvious defect, and lawyers should try to remove it. However, by expressing the terms of the contract, the Civil Law, Article 222, proposes the corrupt conditions, and review the nullifier terms of the contract in Article 223. [50] With this assumption, even if we do not consider as the reason of nullity of the contract, the suspended contract will be null if the contract is suspended on a corruption condition.

Research question

Main question: Is creation of contract suspend in a suspended contract?

Sub-question: Do Imamiyah jurists consider suspension as the reason of null of ontract and suspended unilateral acts?

Research Realm

Investigating the cases of nullity of suspension in jurisprudence and Iranian law and Civil Law, Articles 189 -700 - Articles 699 and 1068.

Definition of contract in jurisprudence terminology

Between Shi'a jurists, the contract is the special words used by parties in each of the specific titles of transactions such as sale, compromise, lease, etc. with observing the rules and systems, whether each party is a single person or both are multiple sides or one side is one person and the other is multiple. These sorts do not have conflicts with its literal meaning but it is the same.

Suspension conceptology

a) suspension in the word:



The term of "suspension", infinitive from the root (علق يعلق علماً وعلوفاً), in the word has multiple meanings, including: bonding something to something else, bonding, interest and attachment.¹

b) suspension in jurisprudence terminology

The word of "suspension" in jurisprudence terminology is pegging to a condition or description that the parties create in the contract (origin), for example: the seller, in the sale contract, relates the ownership and alienation to come one from traveling, so that if one comes, the customer will be the owner of the object of sale and otherwise it will not own it.

c) suspension in law terminology

The Civil Law of the Islamic Republic of Iran has defined the terms of suspended and unconditional contracts to follow the great Islamic jurists' valuable opinions as follows: The unconditional contract is one that its effect, in terms of creation, is not related to another thing, and otherwise it will be suspended (Article 189 Ah). On the basis of the above definition, if the two parties of contract create the effect of it without any condition, the contract is called unconditional contract, and if its effect depends on occurring another condition, the contract is called suspended contract².

The types of suspension

Based on different considerations, the suspension can be divided to multiple types that some jurists have reviewed its sorts and rulings in a scattered way. In this section, we take into account some of the types of suspension and investigate the ruling of each one:

First division: descriptive suspension, conditional suspension. suspension is two types based on the validity of the event as follows:

1. Descriptive suspension: If the event is commonly realized and created on the outside, it is called "suspend to the description", and as the saying goes: it is certain to happen, such as: suspension of the sale contract on the rising sun, for example, that the seller says: "I sold you with sunrise", it is commonly realized outside and is certain to happen, and it is commonly impossible to not rise."

2- Conditional Suspension: If the event is commonly realized on outside or it never occurred, it is called "suspend to the condition", as if the seller says: (I wil sell when Mohammad comes) In this example, coming of Mohammed can be realized outside and for this reason, in this example the coming of Mohammad can be considered as contingent, contrary to the first one that the sunrise is certain to happen.

¹ Dehkhoda, Ali Akbar (1998), p 1353

² Sandoval. E. M. L. (2017), p 504-535



Second division: definitive and attainable suspension in the present and future. The event, whether it is involved in the concept of contract or in its validity, or vice versa, is consists of following types based on the validity of its realization or non-realization in the present or future:

- 1- the event, is definitive in the present, like that the seller, who knows today is Friday, says: if today is Friday, I sold my book to you, we would name this type as (present definitive suspension).
2. the event, is definitive in the future and certainly is realized, although it is not definitive in the present, like that the seller says: (I sold it if I entered the month of Ramadan) or the client says on Saturday: "You are my attorney on Thursday. We called this type as (future definitive Suspension).
3. the event, is attainable in the present, like that client says: (you are my lawyer if now Mohammad is in the house). 104 We called this type as (present attainable suspension).
4. the event, is attainable in the future, but no doubt it is not realize in the present.¹

Comparising the suspension with the condition

There is a difference between a suspended contract and a conditional contract. This difference arises from the request of the contracting parties in the realm of obligations and its implementation. In the contract that the contracting parties have requested to not being an effect on agreement, unless the contract is named (the event) after realizing a thing.

However, in the event that the parties have requested that the time of the agreement of the will (author) be the legal effects thereof, and in addition, subject to the condition of the conditional, against another obligation, the contract must be made conditional, so the obligations and effects of the contract are subject to and subject to nothing Since the signing of the treaty, monotheistic actors are obligated to fulfill their main obligations and obligations (conditions). However, in suspended void, there is no obligation to do so unless it is suspended.

But, in a contract that the contracting parties have requested that the will (creation of contract) of its legal effects from the time of the agreement, and in addition, according to the condition type, person who is responsible to perform a condition, acts an another obligation , the contract must be caled conditional; so, the obligations and effects of the conditional contract are not subject to and suspend to nothing and since the time of cotract, the contracting parties are obligated to fulfill their main obligations and sub-obligations (condition). However, in the suspended contract, there is no obligation unless the event is realized. Determining whether the contract is suspended or conditional

¹ Shahid sani, Zain al-abedin Ebn Ali Ebn Ahmad Ameli (1413 Ah), Masalik al-Afham to revise the laws of Islam, Qom, Islamic Knowledge institution



is a matter of fact and judge, in cases of controversy, must discover it by interpreting the contract. Some lawyers have said that if the contracting parties' mean is suspension, they use "if" and if their mean is condition that they use "provided that".¹

Conclusion

Transactions and contracts are necessities of life; hence, each section of the jurisprudence need to devote a particular attention to it so that the Islamic law not expose to the charge due to some ambiguities and misunderstandings. So, this research reviewed the cases of nullity suspension to provide scholars with the functions of Islamic jurisprudence.

1. The jurists and Islamic lawyers believe that the suspension caused to null the contract. The unconditionality is one of the general conditions of contracts and unilateral acts. On such contracts and unilateral acts, the legal works are not loaded the proper contract and unilateral act.

2. The Civil Law of the Islamic Republic of Iran has defined the terms of suspended and unconditional contracts to follow the great islamic jurists' valuable opinions as follows: The unconditional contract is one that its effect, in terms of creation, is not related to another thing, and otherwise it will be suspended (Article 189 Ah).

3. Whenever the parties of contract create the effect from it without any condition, the contract is called unconditional and if the effect postpone to another condition, the contract is called suspended.

4. In suspended contract, the origin and effect of contract is dependend on realizing another thing, otherwise the contract itself is not dependend to another thing and for this reason it is similar to unconditional contract.

5. Many lawyers find it impossible to suspend in creation and believe that: as long as the suspension is not possible in the material world, it can not be created in credit affairs and it is impossible to subject the effect of the contract to another.

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¹ Borujerdi Abdeh, Mohammad (1950), Civil Law, Tehran, bookstore of Mohammad Ali Elmi, p 245



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