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Research Article

Indemnity Clause in the Judicial System of Iran

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Abstract: Indemnity clause enjoys special position in industrial contracts considering its importance and application. According to the studies, this structure has been originated from the tradition among businessmen which has been identified in the laws of England and other judicial systems throughout the time. Identifying the type of pre-contractual commitments and considering responsibility for the violator party have so many effects; such as: punishing the violator and preventing denying aggrieved party's rights have been compensated in good will, helping judicial and juridical referents recognize how to punish the pre-contractual violators, filling legal gaps in the mentioned problem which prevents the abuse and exploitation of some people who are aware of such gaps in private contracts concluded with those with good will, expanding law theoretical knowledge about the mentioned problem and finally evolving and promoting the level of internal law and matching it with today's problems of contracts laws. The current study aimed at investigating indemnity clause in the judicial system of Iran using analytical-descriptive method that the results demonstrate that the process of compensation highly determines the destination of the final contract, especially when there is signature of agreements in many cases which is not definitely devoid of judicial effect and may cause losing important concessions for each of contract parties.

Keywords: contract losses, judicial system of Iran, responsibility

1. Introduction

The period before concluding the final contract is a period when the parties familiarize with each other's opinions by announcing primary request and accepting initial conditions and try to announce and document their final and supplementary requests maintaining existing conditions. The length of pre-contract period that is the period when the parties try to progress towards their final goal maintaining existing conditions that is concluding the contract depends on the condition of both parties and it is conventional, pre-contract period or its related sessions does not always terminate with concluding the final contract and there are so many cases that the parties have refused from their agreements even after initial agreements and the final contract has never been concluded. For example, in economic laws which is mainly consisted of having right to enjoy the least welfare and accommodation in life, business freedom and the right of ownership (Darvishi, 2009: 301).

In this type of laws and in other words jurisprudential rules and the instructions used to regulate economic relations; for example rules related to revitalization dead lands, possession, lease agreement, trading, participation and bailment of a capital that although they are judicial, they may show general directions and lines that the society has to push towards them and be completely considered in social-economic relationships. According to what mentioned before, when producing and distributing a hierarchy of commodities in "forbidden businesses" is forbidden it may demonstrates a general line that only demand is not matter for supply in Islamic society in standard Islam or different limitations and rules in "revitalization of dead lands and possession" show that initial ownership has different limitations and there is no absolute freedom in that. Also contract termination right in some contracts demonstrates that balance in exchanging and maintaining parties' rights are important in Islamic jurisprudence that exploring these general lines is sometimes certain and sometimes suspicious. Therefore, it is impossible to recognize Islamic economics without investigating jurisprudential rights and regulations related to economic relationships (Enhesari, 2009: 5).

Also there are disagreements in interpreting contracts about how to deal with pre-contractual commitments and violating them. Some considered them contractual commitments and maintain that violating them will follow contractual responsibility. Some others believe that this type of contracts is among instances of necessities outside contract or the same as automatic guarantee that violating them is subject to civil responsibility public rules. Some minor others also maintain that violating pre-contractual commitments is not subject to contractual responsibility and automatic civil responsibility but it is subject to special type of responsibility which is between two mentioned responsibilities (Bayer, 2006).

In Iran's Civil Law, conclusion and contract is among important issues whose rules have been concentrated in civil law. But there is a fine differentiation between these two. According to jurisprudential opinions in Iran's civil law, conclusion has been used to explain those contracts have been mentioned specifically and clearly and in specific titles in Islamic jurisprudence which are called definite contracts like: sale and rent while, contract as a general term includes the recent group and any other conclusions which are not mentioned in law but do not disagree with law which are called indefinite contracts.

Indemnity clause enjoys special position in industrial contracts considering its importance and application. According to the studies, this structure has been originated from the tradition among businessmen which has been identified in the laws of England and other judicial systems throughout the time. Its feature in the Common Law and adapting it with written judicial systems such as basics existing in Imamiyyah jurisprudence and Iran's positive law is among problems which has not been considered so far. Contractual conditions do not always generate commitment for the opposite party, but there are cases when a party is willing to make his obligation free from responsibility by inserting them in contract and increase the responsibility of the opposite party. This group of conditions called indemnity clause (sometimes known as exemption clause) has caused disagreements theoretically among lawyers; so that some limitations considered to limit its expansion which are not acceptable in exemption clause. This matter is also important in complex industrial contracts and is considered as one of the most original contractual conditions which takes the most time during contract compensation period to itself (Ebrahimpour et al. 2016).

The researcher is going to investigate indemnity clause in judicial system of Iran.

Concepts & Expressions

a- Loss Compensation

Loss compensation has been defined differently; but the most important of them is Merriam-Webster Dictionary has defined loss compensation as an act or process of conversing with another one to agree on an issue. According to American Heritage Dictionary loss compensation has been defined as act or process of conversing with another one to agree on an issue or obtain an agreement. A conversation aiming at achieving an agreement, this is a definition provided by Oxford Dictionary. In another point of view, loss compensation is the process of agreed decision making between interdependent individuals with different preferences. In other words, loss compensation is common decision making when the parties have different preferences. One of the commentators considers loss compensation as obvious and voluntarily trading and exchanging between two parties that each of them demands one thing from another one, so each part may not accept opposite party's suggestion (Lauren, 2015).

In fact, loss compensation is a process that each involved party is trying to make profit for himself at the end of the compensation. Loss compensation aims at achieving compromise. Loss compensation happens in business, non-profit organizations, governmental offices, judicial precedent and between nations and during personal life like marriage, divorce, having child or daily life. Studying this issue is called "loss compensation theory". Compensating professional losers who are experienced in this field; like compensating union losers, compensating leverage buyout, compensating peace losers, compensating conflict losers or any other one under titled like diplomacy, legislator or broker (Shahidi, 2008).

b- Pre-contract

Pre-contract refers to e type of contract which prevents contract party entering the contract equal to another party. This expression has only been used in relation to engagement in the past; so that when a person concludes a pre-contract with another one, that person may not marry another one. In other words, pre-contract commitment is a commitment that both parties are responsible for that during loss compensation stage and before contract conclusion to conclude contract and take the responsibility of contractual commitments relying on that. According to the general laws and normally parties have no commitment before contract conclusion and they become obliged and committed after concluding contract (Khazaei, 2016).

c- Contract

According to article 183 in the civil law, contract or conclusion refers to the commitment of one or some people against one or some others and accept it. A new judicial relationship is created after concluding contract between two parties and the parties have to do some commitments for each other considering the subject of contract. Generally, conclusion and contract are the same; but judicially, conclusion means definite contracts (that group of contracts in civil law that their conditions have been mentioned; like sale contract, rent contract, mortgagee contract, attorney contract, bailment of a capital contract and etc.) while contract refers to all conclusions (whether definite or indefinite).

Agreement between two or more people is the main part of contract definition. For example, two people agree on buying a land or a flat to one of them (seller) gives his land to another one (buyer) and another one pays a sum of money for that to seller. Both parties' inner purpose and intention to transfer property or doing a work to create a contract is enough and when two parties agree on a subject in free will, they have to consider it and it is effective on parties' rights and their substituents (legal deputy) and no

ceremonies needed; but the important point is that legislator has added some conditions to the above items considering social interests that sometimes legal authorities will refuse that contract regardless of the conditions and ceremonies (Dehghan Abdolmajid et al. 2018).

Commerciale Contracts Conditions & Criteria

1) **Buying and selling (contract of sale):** generally, the legitimacy of commercial profit must be searched in two things: first, business is a useful economic work and any useful economic work which is the origin of income. Second, the set of verses and narratives have encouraged business and obtaining profit through its way. The object of sale and its price have some conditions, such as: valuableness, specific type, value and power of delivery. Sale is an irrevocable contract and is not revoked unilaterally in normal conditions. But in some case it is permissible to revoke it unilaterally; such as: in the session of contract and in the case of lesion, defect and stipulation of termination right, delaying in paying price, buying animal, the absence of conditioned features in commodity and subreption.
2) **Lease:** it refers to the ownership of commodity profit or human force efficiency against exchange. The correctness of lease depends on both parties' conditions, the thing hired and its interest; such as: recognized features of leased commodity and it duration and the permissibility of the leased profit. The lessee who leases the thing hired to another person lower than how much he has leased or in the same price with the owners' satisfaction; but there are disagreements among jurisprudents about leasing license higher than how much he has leased.
3) **Reward:** it refers to "being committed to pay specified wage against doing determined work" which is divided into two general and specific types. Despite so many similarities, there are some differences between lease and reward such as lease is an irrevocable contract and the work of the hired and its duration must be specified; but reward is a permissible contract that there is no need to determine work in it, but the result is considered.
4) **Bailment of Capital:** it is a contract that one of the parties provides capital and another party do the work and the resulted profit will be divided according to what has been agreed upon.
5) **Partnership:** according to this conclusion, two or more people are committed to provide a part of economic activity capital and each of them share in its profit according to his capital. Except this partnership which is called properties partnership, there other partnerships have been mentioned in jurisprudential texts which are not legitimized: the partnership of labor, negotiation and reputation (Hosseinzadeh et al. 2014).
6) **Farm Letting:** this is an irrevocable contract between land owner and farmer that the land owner provides his land to the framer and the framer commits to do work and divide the products according to what they agreed upon.
7) **Sharecropping:** according to this contract, the gardener is committed to grow and water trees and divide the products according to what they have agreed upon.
8) **Lending:** according to this contract, the lender gives a property to the borrower and the borrower takes the responsibility to repay the exact property or its price. Lending is among religious means and all regions have some rules in common; such as: the necessity to pay the deadline debt in the case of creditor' demand, debt imprisonment license until insolvency is proved, confiscating his property in creditor' interest except "religion exceptions" (house, furniture and personal things), getting free from imprisonment in the case of insolvency is proved and the necessity to do remunerative work to repay the debt.
9) **Peace:** peace refers to both parties agreement on owning the substance or profit or debt instalments or right and things that that against receiving substituent or without receiving substituent.

Besides the mentioned items, some other commercial contracts are considered in jurisprudence called: borrowing-loan, deposit, mortgage and gift (ibid).

Pre-Contract Loss Compensation Judicial Analysis

Compensating pre-contract is a process which is flowing to obtain agreement, sometimes it is judicial and consequently with judicial effects. Initial conversation sometimes reaches the degree of (condition) and is considered a part of contract and sometimes it has specific legal effects; like when it deviates or encourages the opposite party to conclude contract. The most important effects are these requirements which are imposed to the one violating the rules dominating compensation and violator without good will according to the general rule, the task has contractual root when it is going to presenting general and simple information about the probable risks of using a commodity related to specific submission and it has compulsory root until where the tradition considers refusing from teaching how to use the commodity a fault.

When naked trust between parties and or severe inequality of information pushes the opposite party to receive consultative and descriptive information, violating this task is an implicit commitment with contractual root and when tradition imposes a task based on keeping them confidential considering thee specific function of exchanged information it is possible to consider an implicit conventional commitment for information receiver. Compensation

interrupter is responsible to compensate for losses as a result of interrupting compensation. Among the costs spent on future contract trust are compensation for losing the opportunity to conclude contract with another one and the compensation for other opportunities like job opportunity as a result of trusting future contract. But there is no basis for loss compensation of losing contract interests (Lauren, 2015).

International Contracts

International contracts refers to contracts with at least one foreign element in them, like both parties nationality, the place of contract conclusion, the place of contract execution and etc. There is one judicial definition and one economic definition for international contracts (Khodabakhshi, 2012). So many people deal with international trades and face problems in relation to such trades. It is important to know what judicial rules and principles must be used in regulating international contracts to prevent probable damages during conflicts.

The text of contract will be international when both parties live in two different countries and the contract be concluded outside where two parties live. Also the parties have to discuss about quality, type, value and when to deliver commodity or service, paying cost and contractual guarantees and other issues related to loss compensation before regulating international contracts (Shiroudi, 2012).

Loss Compensation in Civil Law Viewpoint

Although civil law has not clearly referred to the contractual effects of parties loss compensation in contract; inducing this law shows that the legislator has not ignored it, too. Although initial compensation may differently influence contract and or deflect the created agreement, finally it makes the opposite party to terminate the contract (Shavell Steven, 2018).

- If parties do not agree on the type and the subject of contract in their compensation, although they have apparently conclude a contract, no agreement is achieved (articles 194 and 352 of the civil law).
- Jokingly compensating loss does not lead to concluding contract and such contract is cancelled (article 195 of the civil law).

The parties are compensating loss for a long time in commercial contracts and maybe the initial compensation takes years. After this long compensation, the parties conclude an informal agreement which is called Memorandum of Understanding (MoU) and then they sign another document which will be the main contract and the initial MoU is pre-contract of the main contract (Shiravi, 2012).

Naturally, the main contract won't be appeared before agreeing on elementary issues. According to articles 2-13 of commercial contracts: "if one of the parties maintains that no contract is concluded until agreeing upon specific subjects, no contract will be concluded until achieving those specific subject in their specific forms".

Articles 2-15 of commercial contracts have emphasized on the principle of contracts freedom and applying it in initial compensation and therefore, each party is free for loss compensation and if the rest of loss compensation is interrupted, he won't be responsible to achieve agreement; because it is natural that both parties discuss on general and specific issues to achieve agreement and ask their demands; because the result of these agreements will be contract conclusion. Otherwise, no contract will be concluded and the parties cannot select their opposite party freely; because they have to continue compensating for loss as soon as they start it and conclude the considered contract. Therefore, not only the parties are free to decide about concluding and not- concluding, but also they can decide about the time, place and their loss compensation party and even decide about contenting achieving agreement, how to achieve it and its duration. This is originated from the principle of freedom of contract in article 1-1 of commercial contracts (Kramer et al. 2012).

The principle of freedom of contract is the most important in international business and the businessmen are free to decide to whom they offer their commodities and service to provide them from whom; because the parties are free to conclude a contract and determine its content. However, some principles of this rule also considers initial compensation effective on concluding and not concluding contracts which faces the principle of freedom with some exception (Lauren, 2015).

The Irrevocable Items of Contracts

Generally, any contract must at least have the following items:

1) Contract parties characteristics: according to the first article of contract, the characteristics of contract parties must be mentioned including name and surname (about juridical person and businesses, the name of company, the name of CEO and registration code) and also the exact address (or code/ postal code), the organizational title of contract agent, telephone (mobile phone) number and email address.
2) Contract subject: the subject of contract has to be completely and accurately specified (including project subject/ buying product/ buying service as well as expected technical, qualitative and quantitative features); because it implicitly determines your responsibility as a seller.

3) Contract execution place: the place of delivering commodity or service which may be in the place of seller, buyer and…
4) Contract duration and contract delivery time: contract duration means a period of time that the subject of contract is constantly flowing through out it (for example: supplying the raw materials of a factory for one year). Contract delivery time means the maximum time provided to deliver product/ service of contract subject to the customers perfectly.
5) Contract sum: the total sum (price) of contract is written here.
6) Payment: if the concluded contract has had prepayment or it has to be paid in installments (in check, promissory notes or other securities), the details of sums and the deadline of each instalment/ check/ other payment methods must be exactly mentioned.
7) Contract parties' commitments: all commitments of contract party (seller and buyer) exactly mentioned in the form of an article of contract or in separate articles. This part is the most important part of contract; because it specifies the framework of parties' responsibilities that each of them has no commitment to each other and judicial referents outside the contract.
8) Contract cancellation: the conditions will be cancelled with parties' agreement or according to the law of contract cancellation are specified here. For example: not adhering to contract provisions, delaying contract execution so much and…
9) Dispute resolution: accepted ways to resolute the disputes during executing contracts are mentioned in the final part of contract. Generally, the arbitrator accepted by both parties is referred to and is the case of not achieving agreement on disputes, the beneficiary juridical referents will be referred to (Ahmadi, 2013).
10) Contract versions: the number of articles and notes of contract will be mentioned in this article as well as the number of contract credited versions.

Investigating Indemnity in Civil and Contractual Responsibility

According to Dr. Hassan Imami, basically indemnity between loser and the one committed harmful action is considered invalid and ineffective in relation to all or a part of loss before the creation of action and or loss in civil responsibility (or non-contractual) which is against public order and says: "morally and socially, it is not possible to consider the violator innocent as a result of such contract; because the mentioned contract is done with bad will and or carelessness in doing an action and if the person does not care about necessary cautions and be carless, he will refuse it whether he knows the results of the action committed or considers the importance and value of loss as a result of his careless ness and ignorance and is it far from mind that any one exposes himself to harmful accidents physically, mentally, healthily, personally and financially". According to Dr. Seyyed Hossein Safaei in his book Civil Responsibility, indemnity as loss compensation exceptions has been divided into legal, juridical and contractual exceptions and says: "agreement between agent and loser may prevent applying the principle of complete loss compensation and the loser's satisfaction may be expressed as indemnity contract and at least the harmful action does not make responsibility at least in contract. However, although indemnity contracts are not effective and influential about financial losses due to the principle of the rule of will (article 10 of the Constitutional Law), first they are ineffective considering losses resulted from intentional and heavy faults and second, these contracts do not prevent achieving responsibility when loss happens to a person. In other words, indemnity contracts face with public order obstacle in two mentioned cases and so they will be ineffective. Therefore, in indemnity contract in contractual responsibility field has been concluded between loser and the agent of loss except two mentioned cases, the country will put it into effect and will decide accruing to that. Article 515 maintains that: "…when specific contract has been concluded between parties about loss, it will be behaved according to the contract." (Hosseinzadeh, 2014).

It seems that indemnity contracts in the field of outside-contract-responsibility except violating public order has another problem which is being contractually uncertain; because it is unknown before loss happens and the subject of indemnity contract is unknown and this contract may be cancelled for this reason.

But some lawyers like Nasser Katouzian in the Requirements outside Contract has considered these contracts credited unlike the above opinion even in the field of compulsory responsibility and it is only ineffective in intentional losses and tin the losses happened to persons. Investigating indemnity in obligation means and obligation to achieve in an article by Dr. Seyyed Hasan Imami in the Faculty of Law of Shahid Beheshti University mentioned another classification about cancellation and the correctness of indemnity and maintains that indemnity clause is only correct in obligation to achieve and explains that: "obligation means is committing to doing certain action to achieve the result"; like the commitment of physic and surgeon to cure and operate surgery on patient and or the contract of surgery or surgeon is that the physician improves the patients using necessary measures committed to them. Therefore the committed has to do the committed action carefully and if the oblige claims loss from the action of physician or surgeon, as well as proving loss and its relation to the committed action, the careless ness of physician or surgeon has to be proved. The indemnity contract of physician or surgeon about a part or all of the loss is invalid and ineffective as a result of his carelessness. So if the disclaim contract concluded between

physician and surgeon on one hand and patient and his relatives on another hand and physician and surgeon fault be disclaimed, the mentioned contract is canceled and ineffective according to French lawyers. Although indemnity contract is against public order, it is not also judicially correct; because the reason of loss creation is practically carelessness and segregation between cause and effect is still impossible in material world and it is also impossible in judicial world. Therefore, it is impossible to accept that the harmful factor exists but loss is not found or found; but it is not demanded from the loser. But if after the creation of loss and the right to demined it be released from the loser, the release will be correct and before the creation of release, it is not yet existing and is cancelled (Ahmadi, 2013).

Rules Dominating Contract in Iran's Law

Considering disagreements among lawyers, obeying the principle of the rule of will is still considered with special conditions and it seems that it is not possible to doubt about interactors' right to determine competent law. But according to the law, the parties cannot rule over all issues related to contract; because some subjects of a contract like the competence of contracting parties necessarily follows another competent law that legislator has determined (Mohaghegh Damad, 2012).

Moreover, logically, conflict resolution rule (international law) imperativeness or optionality is a branch of the related substantial law (internal law) imperativeness or optionality. Because the laws are divided into imperative and optional rules in judicial system, so conflict rule which has been legislated for each of judicial relations groups, have to follow the related substantial law considering being imperative or optional. For example, since rules related to individual's competence is among imperative rules, conflict rule which considers competence subject to the law of the subordinate government is an imperative principle and so the strangers may not agree that their competence obey Iran's law. Reversely, since Iran's Civil Law is optional considering commitments resulted from sale contract, conflict principle must be considered an optional principle which considers contractual commitments obeying the rule of contract place and so the contracting parties have to consider this matter that the commitments resulted from their sale contract obey Iran's law, but contract has been concluded outside Iran. Therefore, the principle of conflict resolution rule obeying substantial rule must be considered in contractual contracts (Mohaghegh Damad, 2012).

Now, considering what has been explained about the principle of conflict resolution rule obeying substitutive law, the law dominating contracts and law dominating contractual commitments have to be investigated.

The Law Dominating Contractual Commitments

Considering article 968 of Iran's Civil Law about rules dominating contractual commitments: "commitments resulted from contracts obey the rule of the place where contract has been concluded; unless the contracting parties be foreign citizens and consider it obeying another rule explicitly or implicitly". It seems that this article which guarantees one of the known rules of international law has been adapted from French International Law; because according to one old rule, French laws conflict obeys the rule of conclusion place; unless the contracting parties consider it obeying another rule. Instead of the statement inserted in French Law conflict rule, "unless the contracting parties be foreign citizens and consider it obeying another rule explicitly or implicitly" has been included in the above article that as a result of this apparent manipulation, the mentioned article has become imperative and now it is clear that according to conflict resolution principle obeying substantive law, the contracting parties can determine the commitments resulted from sale contract and consider any condition against imperative laws the subject of their contract, so legislating imperative rule about commitments resulted from sale contract and considering Iran's law necessary to be executed, it may cause problems in international relations; because if contracting parties want to dominate on foreign rule over their contractual commitments, they can insert that provisions of that rule as a stipulation.

However, considering rule inserted in article 968 of the Civil Law imperative is against judicial logic and will cause problems in international interactions, for example that conflict resolution rule will be only executed in contracts concluded in Iran. Furthermore, since contracts concluded outside will obey the law of the country where contract is concluded, so Iranian citizens won't be able to consider their commitments resulted from contracts obeying Iran's Law. To overcome such problems there is no way except considering the principle inserted in article 968 of civil law which is optional; that is the contracting parties can select the law dominating their contractual commitments (about imperative rules). In other words, this article means that principally, the commitments resulted from contract obey the law where the contract is concluded and if the contracting parties be citizens of another county, they can explicitly and implicitly consider it obeying another law. Also Iranian citizens may dominate non-Iranian rules on contract in regulating contract with non-Iranians outside Iran (Hosseinzadeh, 2014).

To correctly determine loss evaluation method, first it must be determined that due to which factor it violates contracts to clarify the type of responsibility and determine the territory of its responsibility based on that. If the responsibility of contracts be resulted from non-lost property-what can be considered the basis of responsibility in many civil law non-contractual cases- it is possible to consider contract violator responsible where property has

been lost and what has been lost has not instance whether lost or not or there is no practical subject to be lost so no responsibility is subject to contract violator. Although his violation from the commitment that legislator has imposed according to the agreement existing in contract is definite and has no independent and another guaranty; but it is wasting other's property which imposes the responsibility to compensate for loss on the body of contract violator according to the rule of negation of harm and things like that not for violating contract but from good will. But, if commitment resulted from contract be independent from whether violating it may waste the property or not be guaranteed, it may possible to consider contract violator responsible above wasted property resulted from contractual commitment violation and responsible to pay something which although it doesn't compensate for the wasted property-supposing no property is wasted-violation compensator is a commitment has created right for the opposite party. Even this responsibility may be considered a means to reinforce transactional order that regularization is needed here (Hosseinzadeh, 2014).

Considering what has been mentioned so far, before presenting rules related to how to evaluate contractual contracts correctly, contractual responsibility will be investigated from different viewpoints and various probabilities and according to the results of this investigation, the content and basis of this contractual responsibility will be explained. Then, according to this rule, different examples which contract violator is responsible to them are investigated. Finally, the study is reviewed considering economic efficiency.

Contractual Loss

The necessity to pay compensation resulted from not doing commitment is a social and judicial matter which has been established to maintain order and balance in society and respecting promises between contract parties. When someone is committed to do something, doing it is considered is a legal, social, moral and even religious duty. This has been an accepted work in all societies and nations and violating it is regarded as a kind of antisocial mistake and act. Therefore, most countries have predicted guarantees which are mostly financial to prevent such violations in their laws (non-guilty loss compensation). This has been clearly predicted in Iran's Law. To do this, Civil Law has first separated contractual and non-contractual losses from each other and has discussed each of the separately. According to this law "contracts have been concluded according to the law, are imperative between interactors and their deputies. Unless it is cancelled or terminated legally by the satisfaction of both parties" (Shah Pari et al. 2016).

Based on this article, any imperative contract with legal basis or without illegal creation has been irrevocable and the parties have to do all commitments inserted. Otherwise, the violator will be responsible to compensate for the opposite' party loss, on the condition that this compensation has been expressed in contract or law or commitment means affirmation conventionally. The exception is not executing due to an unpredictable or non-repulsive accident by the committed (force majeure). Except agreed loss case, paying compensation means placing the loser in a condition that if contract was executed, he would be in that contract. However, loss compensation won't make the loser party not to demand for executing commitment at the same time with demanding for compensation when deadline has not passed or compensation has not been determined as a substituent for execution.

Loss Compensation in Iran's Law

All rules and regulations have to be according to Islamic rules and conclusion and contract is among important discussions whose rules have been focused in the Civil Law. According to this law, conclusion and contract have been used synonymously but there is a fine differentiation between these two (Parvin, 2013). In Iran's Civil Law and according to jurisprudential views, "conclusion" has been used to explain those contracts have been mentioned specifically and clearly and in specific titles in Islamic jurisprudence which are called "definite contracts" like: sale and rent while, "contract" as a general term includes the recent group and any other conclusions which are not mentioned in law but do not disagree with law which are called "indefinite contracts". Another part of civil law refers to contractual conditions which is originated from Islamic jurisprudence like previous discussions and has been included into Iran's Civil Law classified. Condition verbally means: contract, promise and agreement of an act to another one. It is a commitment that someone takes and included in contractual text (Katouzian, 1997).

Judicial Basis of Agreeing on Loss Principle

The basis of accepting agreed loss condition is various. In another words, these bases inspired French Judicial System and do not conflict with Islamic laws. The following principles are among the most important bases of agreed loss compensation condition credit in Iran's Law:

1. **Law (article 230 of the Civil Law):** the first basis of right is determining loss by the parties of a legal contract. Article 230 is the first legal text in this regard in Iran's Law. The above articles maintains that: "if violator has been conditioned to pay a sum as compensation in the contract, the ruler is not able to condemn him more or less than what has been obliged". Although it is the translation of first article of French Civil Law: "when it is conditioned that if one party does not do his commitment has to pay a determined sum as compensation, it is not possible to arbitrate less or more than that sum to him", it agrees with Iran's Law and

confirms Islamic rules. Moreover, no discussion against it has been considered by lawyers in none of judicial texts and no attention has been paid to the second part of article 1152 of French Civil Law added to the first part in 1975 which expresses: "however, court judge may increase or decrease the agreed loss with his competence and recognition if it is obviously so much or it is unsuitably low. Any decision made against this matter, is supposed not to be existed" (Katouzain, 1997).

2. **The principle of domination:** according to this principle, people have dominated their property and assets and they can interfered and spend it as they wish but not against the law. Therefore, they can conclude any legal contract and include any correct condition in it such as agreed loss conditions.
3. **Agreements must be kept:** the content of the article 10 of the Civil Law is another important basis for this condition. According to the concept of this article, contract parties are bale to insert any condition they wish to compensate for their probable losses in the future and so they have to do it, on the condition that it does not disagree with law, otherwise the condition (not contract) is invalid. Also according to article 219 of the Civil Law if a contract guarantees such a condition, it is imperative between both parties and it may be cancelled with their satisfaction or due to legal reasons. Agreements must be kept is also an important matter in Islam and religious recommendations have highlighted it more than a moral duty and have considered it a religious and judicial duty. In this regard, the verse "يا ايها الذين آمنوا اوفوا بالعقود" orders the believers to do their commitments. Also, Ja'far al-Sadiq's hadith also encourages the believers to adhere to their commitments; unless there is a condition which has been against God's order and legitimizes the illegal and legal and vice versa. Therefore, there is no excuse for believers in doing their commitments; unless the condition is illegal and against law which must be violated.
4. **The necessity to compensate faultless loser:** another rational and judicial rule supports this condition. When someone causes loss for someone else intentionally or unintentionally, social and judicial system and also rational procedure and manner makes that loss be compensated and the violator be responsible to compensate for that loss as the nearest one or agent who committed loss. Individuals' contractual responsibility for payment has been also under this rule and considered a branch commitment to the main contract which becomes imperative while abjuration and loss happening. Therefore, any agreement and condition guaranties doing this rule has been respected and accepted by the society and law and will be influential. Rule of the prohibition of detriment in Islam which has prohibited any irrevocable rule and or any loss without compensation in Islam and the violator has been considered to compensate for the loss also demonstrate this matter.
5. **Effectiveness principle:** there is a principle is Iran's Law which is originated in Islamic jurisprudence and helps lawyers interpret and inference the rules in different judicial discussions. This principle which supports agreed loss condition is called "effective principle". According to this principle, any contract or condition which is correct and valid in one side and is not correct and valid in another side, it is considered correct and right. In fact, it confirms legitimacy and agreed loss condition credit when its disagreement with law or judicial procedure be doubted. Another effect of this principle is that it obliges the one who claims corruption of the contract or condition to bring evidences to prove it (Katouzian, 1997).

2. Recommendations

1) Direct commitments are those commitments that have been explicitly compensated and agreed by both parties and have ben regulated in contract, these commitments have been explicitly mentioned and probably the consequences of ignoring them have been also specified. Therefore, it is recommended to compensate for the main demands explicitly.
2) Indirect commitments have not been explicitly mentioned in concluded contracts and maybe contract parties do not compensate or agree upon them and basically they may not be aware of such commitments but they are demanded and ruled in the position of judicial lawsuit for legal regulations clarity.

3. Conclusion

Before final agreement and concluding contract, the parties comment on the conditions of future contract and commitments limits of each party to compensate for losses. This initial compensation and conversations may lead to "final agreement". But in some cases, both parties are not inclined to conclude contract at the moment due to doing some ceremonies and preparations, but they want to execute it in the future. In such cases, the parties after achieving "initial agreement" conclude a pre-contract to conclude the final contract in the future to be committed to conclude their contract and so provide the initial preparations being sure of forming the main contract in the future.

Although it is popular to conclude definite contracts by law among people, people may discuss on concluding it before concluding contract and these conversations lead their contract be concluded in the future. These agreements are called pre-contract or contract promise. Although article 10 of the civil law have generally

legitimized concluding private contracts, no discussion has been allocated to this subject in law and only two articles 339 and 1035 show this agreement.

Economic trades of each society are based on contract and there is few days when people do not deal with contract. These contracts begin from buying daily supplies like milk, yogurt, fruit, bread and meat to concluding more important and more complicated contracts like registration in language institutes, renting a house, selling land, work contract, contracting contracts and heavy development contracts of oil and gas fields: contracts like a wide and complex network expands and distributes wealth in society. Although, each contract is independent from other contracts in appearance, all of them are interconnected in this social network and any problem in one of them may influence other contracts and interrupts producing and distributing wealth in society. Contract as a social institution is supported legally to make people conclude contract with each other to live and define and regulate their relationships with others.

Contracts law is one of the most fundamental issues in law and mastering them shows the scientific ability of lawyers. A lawyer who does not know the contract and does not master its contents, he has superficial information about law and has only understood law in appearance and crust and is unable to understand it deeply. Contracts law is a bed for lawyers to familiarize with judicial details and learn how to interpret law and contract and find judicial understating. The one who is escaping from contracts law, is not inclined to understand law correctly and remains superficial and is deprived of the depth.

The importance of compensation is so clear. Sometime mistakes may happen which are the result of unskillful compensating team to progress compensation to provide the maximum interest. Therefore, the process of compensation determines the final destination of contract highly; especially when there are many cases with agreements signs which are devoid of judicial effect and may lose important points from contract parties.

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