

## The Position of Transaction Cause in the Iranian Law

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### Abstract

In the Iranian law, commitment cause has not been mentioned as one of the main conditions of contract and instead it has referred to "transaction cause" in Article 190 of Civil Law and has regarded legitimacy of transaction cause as among main conditions of contract accuracy. This paper aimed at studying commitment cause in bilateral contracts that justifies commitments correlation principle, and in the unilateral or consent contracts. Finally by focusing on "legitimacy of transaction cause", it explains different states and suggests a logical path with a legal approach for the conflict of will sovereignty and contracts' stability principles with the legitimacy of the transaction cause.

**Key words:** legitimacy of transaction cause, commitment cause, motivation of transaction, illegitimate cause

### Introduction

Cause is something that each transactor imagines before transaction. Cause stimulates transactors to conclude transaction so as to reach their intent. So, cause is imagined before transaction and is created after transaction in the physical world (Emami, 2011: 265).

Willful acts are not done causeless, a wise human conclude a contract to reach its pre-determined goal. In analysis of will and mental trend of its evolution, it was mentioned that advantages and disadvantages of a legal act are measured in the "reflection" stage which leads to enthusiasm and determination. Then the decision is made and reflected in the outside world. Mind selection is not accidental, there are various motivations. Advantages and disadvantages are relative and take a particular face depending upon motivation. Ultimately, a motivation is dominant that is criterion of advantage-orientation. This attractive motivation is called cause in the law (Katuzian, 2009: 225).

Cause is the personal goal of each party and differs in different persons and different circumstances. For example, a person sells a land because he needs its money, another person sells a land to buy a house by its money, and the third one sells it to buy a better land (Jafari Langrudi, 2011: 32, 33).

In the Islamic jurisprudence, helping to do sin is forbidden; whether by trading goods that are forbidden due to violation of law, or selling lawful products that are applied illegitimately like selling woods for making idol or selling grapes for making wine or renting house or ship for creating casino and corruption centers. However, this question is raised that whether this prohibition leads to contract invalidity or not. It seems that a contract is invalid that its goal helps to sin. So, motivation of both parties must be investigated so that persons cannot use contract to violate law and ethics (Katuzian, 2009: 226, 227).

Article 217 of Civil Law provides that "it is not necessary to stipulate cause in the transaction, but if it is stipulated, it must be legitimate; otherwise transaction is void". The interpretation based on which this legal article has been formulated is that whenever there is an illegitimate cause in the contract, it makes contract void. Now, the main question is that what are the starting point and ending point of the contract territory; whether thoughts in the mind of contract parties are regarded in the contract territory or not. In the conflict of "pacta sunt servanda" principle with the illegitimate cause that exists in the contract but has not been stipulated in it, which one governs the contract? To answer these questions, there are several hypotheses:

- 1) Stability and security of contract is preferred to the illegitimate cause that has not been stipulated in the contract.
- 2) Invalidity due to illegitimate cause not stipulated in the contract is preferred to the contract stability.
- 3) It is better to integrate contract stability and invalidity due to not stipulated illegitimate cause.

This paper is aimed at studying the situation in which illegitimate cause has not been stipulated in the contract but it is the main motivation of one of the parties and the other party has signed the contract consciously or unconsciously.

### **Transaction cause**

The person who signs a contract is not required to say his motivation for signing the contract because it does not have an effect on the nature of the contract. However, if the transactor states his motivation in the contract, the motivation must be legitimate according to article 217 of Civil Law. For example, a person can buy gasoline from the store and does not state his motivation to the store. But if he states his motivation, it must be legitimate. If he states that he wants to pour it in his automobile, this transaction is valid; and if he states that I buy it to fire a certain firm, the transaction will be void, though he does not fire it later due to some reason. On the contrary, if the transactor does not state his illegitimate motivation but the store knows it, the transaction will be valid. This is understood from article 217 of Civil Law (Emami, 2011: 265, 266).

Apparently this article is not rational because this is highly unlikely that a person states his illegitimate cause when transacting. This situation is consistent with no legal system including Islamic law and French Law by which authors of Civil Law have been inspired. However, the fact that finding out the transactor motivation that is not normally possible unless he confesses has this benefit that the court is released from investigating the transactor intent (Shahidi, 2010: 95).

If a thing that can be used legitimately is sold to be consumed illegally, for example when grape is sold for preparing wine, the transaction is void and illegitimate (Musavi al-Khomeini, 2008: 782).

A willful act has normally various goals and motivations that affect each other. But finally, a particular motivation dominates the competitors, and other goals fade away or become secondary. Law calls the main stimulator as "cause" which is necessary for transaction. For example, when a transportation company buys a bus, its main cause is to transfer passengers, but it is probable that possibility of its simpler sale or family journeys or temptation of a bad act has strengthened the main motivation. These probable motivations do not affect legal value of the transaction. Law only considers the main cause (Katuzian, 2009: 230, 231).

So it seems that cause means a motivation that 1) is considered directly by the transactor and 2) is the main and direct stimulator for that person. And if there is one illegitimate motivation among different motivations with an identical degree of importance, the contract will be invalid.

Now, what does "illegitimate motivation" mean? Can we regard all illegal motivations as illegitimate motivation?

Illegitimate means being in conflict with the country current laws, and a certain explicit evidence is required for interpreting this term as being in conflict with "religious laws" (Jafari Langrudi, 2011: 708).

Selling weapon like swords and spears and bows to the enemies and renting house and vehicle for forbidden acts, selling grapes and date for making wine and selling woods for making idol or other forbidden things are prohibited. But selling these things to a person, whose profession is doing such acts but it is done without such intents, is disapproved (Sadri, 2011: 79).

Selling grapes and date (and other products) for making wine and selling woods for making idol and other forbidden things is prohibited and it makes no difference that seller stipulates it in the sale contract or the parties agree upon it and then sale contract is concluded (Masjed Saraei, 2006: 207).

There is disagreement that to prove illegitimate cause in the contract, all reasons can be applied or only internal reasons stipulated in the contract can be used (Katuzian, 2008: 207).

### **Commitment cause**

In the laws of some countries, to observe economic balance in the contract structure and give rational justification for creation of commitment inside it, more analyses have been conducted. They have studied commitment separate from contract and have wanted to deem goal as one of the commitment elements besides agreement, competence and subject. This measure is not aimed at making contract consistent with social and ethical necessities; rather it seeks to meet economic benefit of the contract and observe "contractual fairness". Proponents of this theory pay a particular attention to a relation that is created between two mutual commitments in the mutual interests contracts. For example, a book is bought, buyer is bound to give the price and seller is committed to deliver the book. These two commitments cannot be considered regardless of their ultimate cause and the situation that each commitment has in this contractual arena. What makes buyer committed to give the price is to obtain the book, and the direct goal of the seller is to gain the price. So the reason of creation and survival of each commitment lies in the attractiveness of the other party commitment. So it is stated that the motivation of each party for commitment is to gain the other party commitment, a causeless commitment or a commitment that is based on mistake is void and reason must be considered as one of the main elements of commitment effectiveness (Katuzian, 2009: 228, 229).

Transaction cause is divided into two types:

a. A cause that is agreed by the contract parties explicitly or implicitly and is not in conflict with public morals: for example, a person buys a land to build a high school in it or a person buys a commodity to exhibit in the exhibition of a city held in a certain day. The land does not have the area required for building a high school or the commodity is not delivered to the buyer in the certain day, the buyer may cancel the contract due to lack of consistency with the cause. Because land and commodity have not purchased absolutely; rather a land that is suitable for building high school and commodity that can be exhibited in a certain day have been purchased. The right to cancel the contract is contrary to what was mentioned; that is, when the reason does not exist, commitment is void automatically.

b. A cause that is agreed by the contract parties explicitly and implicitly is illegitimate and in conflict with public morals: judicial decisions have been deviated from legal policy and have considered illegitimate cause like illegitimate reason that makes the contract void in many cases and they have faced with criticism of lawyers. The mentioned judicial decisions are based on the fact

that by stipulating illegitimate motivation in the contract, a close relationship is created between motivation and commitment which influences the transaction. For example, in a case that a person rented his house to another person and stipulated explicitly that rent is for gambling, the court voted that it is void (Emami, 2011: 272, 273).

The parties' agreement must not be in conflict with imperative law and public order. Such agreement is either void or will be realized in a certain condition. In the sale contract, limitation caused by law and public order is raised. For example, by prohibiting weapon sale contracts, law restricts will of individuals in these contracts. Or by determining exclusive products for the government or legislating regulations for ownership of some properties by the government authorities that the owner gets obliged to sell it, will is confined in the sale contract (PirHadi, 2013: 87, 88).

When a commitment cause to the benefit of a third person is illegitimate and it is stipulated in the contract, is it void? For example, when there is a condition in a contract that the contractor must sell the truck to the client friend that wants to transport smuggled goods, the mentioned condition cannot be regarded void by virtue of article 217 of Civil Law; because the territory of article 217 relates to a bilateral legal act. It is evident that if this illegitimate condition is stipulated explicitly, truck sale will be void due to illegitimate cause (Shahidi, 2007: 333).

#### **Conflict of will sovereignty and public order**

Distinction of imperative and complementary laws is highly important for recognizing validity and invalidity of transactions; because when a contract is in conflict with the provisions of a law, this question is raised that whether this law is imperative or complementary. If the related law is imperative, the contract is void; otherwise it is valid. Differentiation of these two types of laws is not a simple task and the judge must find out the legislator intent by considering political and economic situation and public ethics of the society, and since these factors are always changing, a stable and clear criterion cannot be achieved in this regard (Katuzian, 2010: 160).

It seems that Iran statutes have been more inclined to sovereignty of private persons' will and so the role of public order has been disregarded to some extent. In the other words, will sovereignty principle has been preferred to public order in different cases. And it might be stated that at the time of statutes legislation, the effect of private persons' rights on the public order and public morals was not as important as today.

On the other hand, "illegitimate cause" does not have time and location stability. For example, trading video players was forbidden in the early 1360s and transactions whose subject or cause was focused on these systems were regarded in contradiction to public order and so they were void. But after several years, this limitation was removed and it was no longer regarded as forbidden goods in the late 1370s and next decades. So, public morals and public order may change in some periods and they are dependent upon social, economic, cultural, religious systems; these changes reveal instability of interest borders in the society.

An example of judicial precedent clarifies separation of two "non-ethical" and "illegitimate" concepts. We know that making alcoholic drinks is no doubt forbidden and we saw that in jurisprudence, when a person sells grapes to another person for making wine, transaction is void due to having an "illegitimate cause ". In an action for demanding benefits of stocks of one of the partners of Malayer Union Beverage Company, second and fifth branches of fifth province court ordered that it is void due to illegitimacy of transaction cause. After issuance of the first order, branch 4 of the Supreme Court writes that "since partnership contract is correct for the parties, this case is not included into articles cited by the court" (Katuzian, 2009: 244, 245).

After repeated protests to this verdict, finally General Board of the Supreme Court ordered that "since transaction cause has not been stipulated in the contract and conclusion of such a contract is not beyond law limitations and this case is not included into the articles cited by the court, so the court argument is not correct..." now it is not clear that if again such a problem is raised in the Supreme Court today, the same verdict will be issued. It shows that how the concept of "public morals" is changing (Katuzian, 2009: 245).

As regards matters related to rent issue, if doing a forbidden act is the main motivation for rent, cause is illegitimate. The subject is the house benefits that is delivered in consideration for the named rental and has no problem (Rah Peik, 1997: 76).

To clarify this issue, we must first recognize its position in the Islamic jurisprudence and see that where jurists have investigated "cause". Jurists have mainly discussed in three axes:

a. Where "illegitimate cause" has been stipulated in the contract text. In this case, there is no disagreement in the contract invalidity, but this issue has no relation with "cause" issue (Sheikh Ansari, 1999: 155).

b. Where "illegitimate cause" is stipulated in the contract but it is under the title of condition. Here, the condition is void. But as regards the contract, some believe that contract is void too and some believe that it is not so (Korki, 1990: 17).

However it seems that the above mentioned case is outside the cause issue.

c. Where "illegitimate cause" is not stipulated in the contract. This is the issue raised by the jurists under the title of "selling grapes for making wine" or "selling woods for making idol" in which there is disagreement like differences existed in the western law (al-Hosseini al-Ha'eri, 2000: 358).

Some believe that it is forbidden and some believe that it is not forbidden and some have differentiated between intent for doing a forbidden act and lack of intent for doing a forbidden act (al-Tohidi al-Tabrizi, 1996: 171).

According to the contract accuracy principle, any transaction signed by the parties must be regarded accurate, unless otherwise is proved. The mentioned principle that is relied upon will sovereignty in the legal acts and simplifying and stabilizing transactions can never be disregarded unless it is in conflict with a legal reason. Proving invalidity of a transaction relates to two causes: subject and order. In the subject, the objective situation of the transaction must be proved; and in the order, it is necessary that the legal text has declared invalidity of the transaction. For example, for proving invalidity of a rent contract for a farm, it must be proved that this contract has had a particular situation at the time of conclusion, e.g. the tenant has stipulated at the time of contract conclusion that he intends to plant poppies in the field and then it is necessary to prove that there is a legal text for invalidity of such a contract (like article 217 of Civil Law providing that the transaction in which an illegitimate cause has been stipulated is void). If any of these two causes is not proved, contract accuracy principle is resulted (Shahidi, 2012: 57, 58).

When it is proved that the rent contract is void, the lessor cannot demand the named rental, but he can demand the rental value of the benefits used by the lessee. But if the lessor is aware that the rent is void, he cannot demand the rental value, according to many jurists. Among them, Seyed Tabatabaei Yazdi argues that it is because the lessor has violated the honor of this own property (Mohaqeq Damad, 2010: 222)

### **Conditions of the Effect of Illegitimate Cause**

a. Real existence of an illegitimate motivation in one of the parties

Illegitimate cause is in contradiction to the preventive legal rules; whether the mentioned rules have determined a punishment for the doer or commitment of that act is merely in conflict with the spirit of law. So cause must be in contradiction to public morals or public order.

b. Immediacy of illegitimate motivations

To do an act, a person may have a series of motivations each of which is a means for achieving the next motivation. So such a transaction cannot be regarded void because these hierarchical motivations tarnish the unique relation between illegitimate cause and the main motivation.

c. Illegitimate cause as the main motivation

A person may have multiple motivations in signing a contract, for example he may rent a house for both teaching and gambling which is his secondary motivation. In this case, the rent contract cannot be regarded void due to the secondary illegitimate cause; because there is no legal evidence for the effect of secondary illegitimate motivation.

d. Stipulation of illegitimate cause

When a concluding a contract, the illegitimate motivation must be stipulate; otherwise it is correct, though the transactor intends to reach that motivation. If rules, customs, and religion want to enter into the territory of the transactors' intent, stability and accuracy of most transactions will be influenced.

e. Concurrency of illegitimate cause stipulation and contract conclusion

Stipulation of the illegitimate cause has effect on the transaction accuracy neither before nor after the contract conclusion; because it must be concurrent with the contract conclusion.

When a party has an illegitimate cause and the other party is aware of it without having agreement upon it, for example when renting a house for an illegitimate act, the lessor is aware of this illegitimate motivation, there is disagreement between Shia and Sunni jurists. Jurists of the Hanafi and Shafi'i and Zaidi believe that illegitimate intent that has not been stipulated in the contract has no effect. So the mere awareness of one party about the illegitimate intent of the other party cannot void the contract. In the other words, they have considered the apparent will and disregarded the motivation that has not appeared in the contract, though the other party is aware of it. Among Shia jurists, it is popular that if the seller is aware of the illegitimate intent of the buyer, the contract is correct but it is disapproved (Safaei, 1971: 77, 78).

If a person hires another person for pulling his painful tooth but his tooth heals, does the rent remain or not? This is outside our discussion because here, the transaction subject has been removed not the personal intent. So according to the general principles, this contract is canceled (Khoei, 1986: 174, 196).

Legal obstacle is like a natural obstacle; so when law prohibits a contract directly or indirectly, that contract is not realized due to the existence of that obstacle:

a. A person who has a credit for winning the gamble, the third person cannot commit his summon.

b. Two Nazarenes trade pork and alcohol and one of them becomes debtor, a Muslim cannot stand surety for that debtor to the benefit of the creditor.

c. If the oppressors imprison a man unjustly and accept to release him temporarily on bail, acting as surety for his summon is not permitted (Jafari Langrudi, 2011: 212).

## Conclusions

1- In the Iranian law that has been derived from Islamic law, when an illegitimate cause is entered into the territory of the transactors' agreement, it makes the contract void whether it is stipulated in the contract or it is a fundamental condition upon which parties have agreed implicitly.

2- When the motivation of the parties is entered into the contract territory or both parties have an implicit agreement upon that illegitimate cause, the contract is void, but the motivation of one party cannot make the contract invalid by itself.

3- When the illegitimate motivation of one party is accompanied by the awareness of another party, it seems that the society interest and public order are preferred to the contract freedom principle of and contract accuracy principle and so it is better to void the contract. If despite this awareness, the other party signs the contract, he has acted against himself and must incur losses, i.e. contract invalidity, caused by his act. In fact, the society interest is preferred to the interest of a person who does not have full good faith.

4- If one party is not aware of the illegitimate cause of the other party, he must enjoy his contractual benefits due to having good faith according to the contract stability and security principle.

5- With respect to the above mentioned points, it is suggested that observing a combination of social interests and will sovereignty principle for contract validity provides the stage for creating legal justice in the society.

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