The need for balance of the exchanged things in the Iranian legal system and Kamen

Mehrnoush Ghanbarpoor Hooshangi
Department of Law, Payame Noor University, Iran

Abstract

In commutative contracts where there is a sort of common equilibrium between the exchanged things, failure to do or inability to fulfill the obligation by one party for the other party creates rights. Commutative justice or the same balance of in contracts means the rule of will; prohibit government intervention in private contracts and fairness of the terms of any agreement. The base of stability and necessity of contracts demands that bilateral harmony and balance rule be implemented with orthogonal, balance of the exchanged things is in fact one of the inevitable results of base of freedom of contracts. Contracting parties are the best judge of their own interests and their decisions are applicable and lawful because on the one hand, the parties are free to choose the terms and conditions of the contract and , on the other hand this principle has been tried with threaten to prevent irregular and unbalanced consequences of contracts. With this explanation we can say that acceptance of the principle of freedom of contract involve a commitment to the rule of the commutative justice.

Keywords: Autonomy, Balance in the bilateral, Contract law, Commutative justice, option of fraud.
Introduction

In the contract of sale, the parties would expect the traded thing that from the other party has received, be equivalent value of what they give to him. Although may one of the parties due to lack of knowledge of the market price sells less than the actual price of the goods or buys more than the its actual price that it would be the imbalance of trades and cause harm to them. All individuals in their transactions are seeking of higher profits and in the face of what they give, want to gain something valuable. The bilateral imbalance will cause for Option of Fraud. In exchanged contract, imbalance of the transaction things' value does not cause in invalidity of the transaction but gives to the injured person terminates a right of dissolution of contract. In Kamen la law system If because of the incident situation, balance of agreements be confused and the traded thing's value , that in time of trade had equality common, be changed , causes heavy damage tolerance and non-conventional to committed that this imbalance causes harm to the initial state that is the balance between the traded things. One of the conditions of validity of contract in accordance with Article 190 of the Civil Code is about certainty of subject of the transaction. Science of the parties to amount of transaction and the value of the traded things in our legislation is one of the basic conditions of contract. And lack of knowledge of this issue and remain obscure, this element of the contract will cause the nullity of the contract.

Legal review of the traded things harmony and balance
The first discuss - the legal nature of balance of the traded things
According to article 338 BC " the selling is same the ownership to the known traded thing" , about the price not seen any adverbial definition ,because law refers to the price as the traded thing that it can be contain interests and actions, for example, we can sell a car instead of two - year interests of a garden, so that vehicle is the traded thing and profit of garden is the price of contract.
The contract of sale is one of the types of contracts that has been introduced in Jurisprudence in any case, sale is as making and acceptance of contract of sale to the traded things ownership with the known benefit.

A) The balance in the traded things and the need to maintain this balance in contract
One of the principles of law that today is considered as a general and certain rule in ongoing and a long time contracts, according to the necessary principle of contracts is not transformable. The parties are not so much disrelish to destroy the balance of contracts because the purpose of such contracts is the profit maximizing and the possibility of minimizing losses, so in fact the balance between the value of exchanged things and the agreed sales and the price to be performed as agreed.

B) Changes in balance of the traded things
Economic circumstances of contracts do not stay without a change and are not stand. And may be caused by sudden and unexpected events that occur during the course of the contract, maybe be completely transformed. Accordingly, if under changes in conditions mentioned, the balance of the things' trading was disrupted and the scope and obligations be increased, as a result on the one hand contract execution will be difficult and unbearable and the mentioned
party has right to compensate the new conditions, so unexpected events cause to make disrupt financial balance bilateral trade or the balance of rights.

C) The imbalance in the bilateral traded things
The parties before makes contracts, with measure of profit and loss and the level of commitment and effort for the fulfill to obligation in the contract, takes actions, and attempts to coagulation its and each of them tries to earn profit further. Sometimes there is not balance between the values of the transacted things. And this price occurs for failing to notify the parties of a fair market price. If the parties are aware of fair market prices and according to different motivations for such a contract be satisfied, does not materialize any loss that the transaction may be rescinded under the pretext that loss.

First topic, extent and adequacy of bilateral trade in rights of Iran
Existence of a balance between return and compensation of deal, in other words existence a contract's justice is among the issues that have been considered by law professors and in this regard, and were made specific measures have been taken for it. Design of options, creating various methods of compensation, to deprecate the possess disaster, caused to involving the intention of the parties to the interpretation of contracts and ... including ways in which the design is applied.

The second topic - the theory of fraud occurred
A. In theory the concept of fraud occurred (loss compensation inadmissible)
What of the law and jurisprudence on the basis of these materials comes is associated with a need to compensate of that loss for victims' right to terminate the transaction that is called option of fraud, according to the legal validity "option of fraud" special bilateral imbalances and inequalities is that any one of them when a "fraud occurred," have not accepted. As that the imbalance of two dealing side at the time of consent can make option of fraud for loser, If happen events unpredictable at the time of contract also customary obligations impaired balance, there is possible for modify or terminate the contract.

B) Enforcement of fraud occurred
Believers of the fraud occurred search several reasons in the choice between two enforcement guarantee possible, means changing the terms of the contract by the court or identifying for loser's right of terminate of contract.

First topic, compromise on relative balance of the traded things' value
When sides are negotiating together, a compromise is accomplished and contract is constituted, one of tradition obligations in contracts is moonward of financial commitment balance between the values of the traded things. In Mouawad transactions, each of the parties gives up the financial contract to another to get the balance valuable traded case, and on this basis does compromise with his side, relative equality foundation of value and universal is very new and popular and that can't consider this belief as personal motivation. Basically, a Mouawad contracts, the traded things regardless of their type, have a balanced economic value so that between value of traded case and the value of Mouawad there is balance.

Second topic: factors affecting the decrease or increase the value of the traded things.
Typically a value of bilateral trade has typical and public figures, and one of the factors that affect value of bilateral trade, has constructive role in balancing of value of the traded things.
is description the traded property, although the price is paid against described but described without description certainly has value less than described description, this description is an important factor in raising value of described.

The third topic - reviews the disruption responsibility for a breach of the bilateral trade
The parties of a contract must be committed to their contract that were agreed with its provisions in when of making contract, also make commitment themselves for balance between return and Mouawad value and this commitment exists in time run of contract. If the traded thing in sale contract is defective and the client isn't aware of it, the first right that is conceived in her mind is right of cancellation because each sales contract must be healthy, and violation of sales as a violation of the implied condition causes that the buyer earns the right to terminate, so healthy sales is one of the factors that is effective on the value of sales and, consequently, on the principle of balance between value of return and Mouawad.

View of the importance of balance bilateral trade on kamen la law legal system
First topic - the nature of deal case in the kamen la law system
In kamen la law for that in force promise to be considered, should be valued against it the deal case, or such commitment and contracts is undertaken pursuant to official document otherwise committed considered primitive, and will be null and void.

Attitude of the importance of balance bilateral trade on kamen la law legal system
First topic - the nature of deal case in the kamen la law system
In kamen la law for that the necessary promises to be considered should be valued against it the deal case, or such commitment and contracts is undertaken pursuant to official document otherwise committed is considered primitive, and will be void. What is the traded thing in terms of the kamen la law? What are the historical - theory roots of its emergence? Despite position of the deal case doctrine on kamen la law on recent decade, we are witnessing the emergence of new competing theories such reliance reasonable as an alternative criterion to determine whether or not the commitment is binding. With a general look we can division agreements and arrangements and promises between people in terms binding or not binding commitments in two categories (enforceable promise) and non-binding (unenforceable promise) that the latter is of the commitment primitive or elementary (Nudumpactum).

A) The definition of the traded things
There are generally two defined for the traded thing, the first way to definition of the traded thing is based on concepts of interest (benefit) and losses (detriment), especially habit of lawyers and writers of the nineteenth century was that explain "the traded thing" in the light of the concept of profit and loss. The other way for explaining the concept and methods of price is related with concept of buy and sell (exchange), in the sense that (price) commitment definition in the book Principles was devised by the famous English jurist pollok.

B) Is it always necessary to price and balance is?
In kamen la law, judges have tried to distinguish price (deal case) from some of the same concepts. The result of this distinction that is, whenever an obligation is gave for price, is liable to be a binding contract. Otherwise is primary commitment and is not binding. Price is part of the motivation and obtaining the price is always the motivation and commitment, but not vice versa.

The first topic- check of balances customary bilateral in kamen la law legal system
In kamen la law rights, especially in England, the lack determination of price does not have any effect on the validity of the contract and when they intend to buy and sell be revealed,
will suffice pursuant to paragraph 1 of section 8 of the Law Sale of British goods, the amount of the contract of sale may be specified in the contract or in the future be calculated on the basis of an agreed approach, or may be determined based on negotiation and in accordance with the second paragraph of the same Regulation if the value of contract can't be determined on the basis of cases mentioned, the buyer must pay the normal price.

In the second paragraph is prescribed, reasonable amount is a question of the issue, a number of courts accepted the referencing to the market price or determining the price by an independent appraiser.

In America law under Article 305-2 of the Uniform Code of Commerce, parties may attempt to conclude the contracts without specifying the price, so the normal price in time of delivery is considered.

**Conclusion**

About need for bilateral balance in Iran's rights can be deduced, each of the parties must be make Mouawad contracts on the basis of relative equality value of the deal case and Mouawad. Then proceed to the conclusion of the contract and if this obligation to balance out be breached, must be implemented in a manner painted this pledge, commitment agreed the parties in relation to the relative balance between the value of bilateral sometimes be re-run due to a fault in sales was violated.

In fact, the obligation to establish a balance between value of Mouawad and the deal case, means, sales and the price initially be agreed and In fact description of health, as implied term and commitment to balance between value of bilateral, both as the provisions of the contracts entered into by mutual consent through common law and they can find credibility, with the explanation that implies convention is not limited to the stipulation and what that proves implications of common law in contracts, the provisions of contracts implied contract and have without explicit words and mention shall be agreed. So sales must be equal to the value of with the deal case because contracts with the determined price against the certain sales must be concluded. So the possibility of switching sales, general like yours, is not available and the price can't be low and high. Because one of the pillars of the contract and the only way we can restore the lost balance is value. In kamen la law does not stipulate the need to balance bilateral value but expressed backcountry House of Lords, that even if there is no set price, the buyer must give reasonable prices for the goods, because in terms of them the contract parties must be express their intention. And when they intend to buy and sell can be detected, which will suffice.
References

Azarnoush, Azartash contemporary culture Arab-Persian, Tehran, Reed Publishing, 1379

Ahmadi, Abdul Ghani and Asnany, Description of statements from Algerian authorities to resolve disputes between Iran and America, Page 153

Bigdeli Saeed, modification of the contract, the rate Law Foundation, Second Edition, Fall, 1388

Consistory, Nasser, general rules of contracts, Volume V, p. 236

Consistory, Nasser, general rules of contracts, Vol. II, p. 87


Jafar Langroodi, MJ, terminology rights, print knowledge treasure, twenty-fourth edition, 1391

J. Langroodi, MJ, hundreds of articles on the methodology of law, Tehran, Treasure of Knowledge, 1382

J. Langroodi, MJ, equilibrium theory (general legal philosophy based on the primacy of practice) Tehran, Treasure of Knowledge, 1381

Mousavi, Seyed Mehdi, analysis and critique of the law of contracts in the UK, the rate publishing, printing, 1386

Shahidi, Mehdi, a certain contracts, Scientific and Cultural Majd Assembly, Tenth Edition, 1388


Shahidi, Mehdi, the Principles and commitments, Tehran, Majd Publications, Fourth Edition, 1385