The Place of Guarantee to Indemnity in the Statute Laws of Iran

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Abstract

The contract of sale is a reciprocal possessory contract which contains two parts, one of which is called the object of sale and the other part is called the purchase money or price. Considering civil code 338 and 350, it is apparent that the property which is under a legal act because of being the object of sale should have a number of conditions so that the legal act has legal consequences. For example, the property should belong to the vendor. Civil code 362 states that if the sale contract is done following the assigned legal conditions between the contractants, it is valid and has the consequences predicted in the civil code 362. Imitating the civil law of France, the legislators consider guarantee to indemnify as a consequence of a valid sale and consider it originally contractual. The vendor is the guarantor to indemnify the object of sale; that is, if the object of sale belongs to another person, the vendor should give back the purchase money to the purchaser. Guarantee to indemnity is the vendor’s responsibility which is caused because of the fact that the object of sale belonged to another person.

Keywords: Guarantee, Indemnity, Statute Laws of Iran, legislators.
Introduction
According to civil code 365, invalid sale has no effect on ownership and based on the rule mentioned in civil code 366, “if a person possesses a property through an invalid sale, he/she should repay the property to its owner”. Civil code 390 states that if after possessing the purchase money, it is revealed that the object of sale belonged totally or partially to another person, the vendor is the guarantor, even if this is not stipulated in the contract. The above-mentioned civil code has recognized the vendor’s responsibility for guaranteeing indemnification as a direct consequence of the fact that the object of sale belonged to another person; therefore, it has not considered its stipulation as an integral part of the contract. As a result, the stipulation of guarantee to indemnity in the sale contract has only the role of stating a legal rule and does not have a value more than a simple notice (Shahidi, 2003). According to civil code 391, if the whole object of sale or a part of it belonged to another person, the vendor must restitute the purchase money, and if the customer was ignorant of the invalidity, the vendor must undertake the compensation for the damages imposed on the customer. However, the main issue is that according to which conditions this compensation would be paid. (Emami, 2005 and (Ghasemzade, 2007)

The Concept of Guarantee to Indemnity
According to civil code 362, guarantee to indemnity is one of the obligations that the vendor and the customer are faced with because of the sale contract. This civil code states that “one of the consequences of a valid sale is that the sale contract makes the vendor guarantor to indemnify the object of sale, and the customer guarantor to indemnify the purchase money”. Therefore, if the object of sale or the purchase money belonged to another person, every person involved in transaction is guarantor to what has taken and must restitute it to the other person. The issue of guarantee to indemnify the object of sale is discussed a lot in religious books. Most of religious experts have discussed this issue, without introducing the term ‘guarantee to indemnity’, during their analyses of the rules of unauthorized sale, according to which the proprietor does not authorize the sale, and this lack of authorization results in the annulment of the contract, obligation to restitute the purchase money, and the payment of compensation (Al-ameli, 1989).

The civil law of Iran has discussed about guarantee to indemnity in civil codes 390 to 393. These discussions and analyses are mainly adapted from religious rules. The term ‘guarantee’ has the meanings of undertaking, bailing, and obligation (Firouzabadi, n.d, Dehkhoda, 1994). The term ‘indemnify’ has been used with different meanings such as delivery of something to something else (Al-johari, 1986). The religious experts have used it with the meaning of compensation (Mohaghegh Helli, 1988) and recover (Al-ameli, 1989). In the discussion of the option for delay of the purchase money, Sheikh Ansari (as cited in Katozian, 2008) presented the issue of the consistence of growth and indemnity, where growth means the profits of the property and the indemnity is the compensation. However, some other experts believe that “the word indemnity literally means substitution and it has idiomatically a vaster range of meaning and it is even used with the meaning of corruption, too” (Adl, 1999).

Some religious experts have considered guarantee to indemnity equal to guarantee to undertake and have expressed that:
Whenever a person sells something, and the object of sale belongs to another person, the vendor is obliged to repay the purchase money to the customer, and in this case there is no need for penalty clause in the contract. On the other hand, whenever a person guarantees from the purchase money, so that if the object of sale belongs to another person, the customer refers to him/her to receive the purchase money, this guarantee is valid and is called guarantee to undertake, also known as guarantee to indemnity. (Al-ameli, 1993)

In this discussion, guarantee is the reciprocal guarantee which is opposite to actual guarantee. Guarantee to indemnify the object of sale idiomatically means the vendor’s responsibility and obligation to compensate for the damages imposed on the customer by the indemnification of the object of sale and leaves the customer’s purchase money with no substitution. Therefore, the sale contract is a reciprocal contract, so that the customer has paid the purchase money to the vendor to complete the sale and guarantee the fact that the object of sale is under his/her control. In addition, guarantee to indemnity is the customer’s responsibility and obligation to compensate for the damages that are imposed on the vendor for the purchase money being belonged to another person, because when the vendor transferred the object of sale to the customer, he/she concluded the sale contract on condition that he/she gained ownership of the purchase money (Bagheri, 2005). The civil law has presented the issue of guarantee to indemnity in civil codes 390 to 393. Civil code 390 states that “if after possessing the purchase money, it is revealed that the object of sale belonged totally or partially to another person, the vendor is the guarantor, even if this is not stipulated in the contract”. Then it is stated in civil code 391 that “if the whole object of sale or a part of it belonged to another person, the vendor must restitute the purchase money, and if the customer was ignorant of the invalidity, the vendor must undertake the compensation for the damages imposed on the customer”. According to the above-mentioned civil codes, the concept of guarantee to indemnify the object of sale has the following meaning in civil law: “the vendor’s commitment and obligation to pay the purchase money and the damages that he is responsible for, if the object of sale belonged to another person” (Alavie Ghazvini, 1996). In other words, guarantee to indemnify the object of sale means that if the object of sale is another person’s property, the vendor is guarantor and should pay the purchase money, and in case of the customer’s ignorance, should pay the damages imposed on the customer. On the other hand, guarantee to indemnify the purchase money means that if the purchase money is another person’s property, the customer is guarantor and should pay the object of sale, and in case of the vendor’s ignorance, should pay the damages imposed on the vendor.

As it is mentioned, some religious experts use guarantee to undertake instead of guarantee to indemnity and consider them synonymous while these two are very different. In sale contract, the vendor is the guarantor to indemnify the object of sale, and whenever the object of sale belongs to another person or the transaction is null and void because of any reason, the vendor is obliged to repay the purchase money to the purchaser. On the other hand, when a person guarantees the vendor, if the object of sale belongs to another person or the transaction is null and void for any reason, that person is responsible for repaying the purchase money to the purchaser. This guarantee is called guarantee to undertake the purchase money (Helli, 1999). In addition, the purchaser is guarantor to indemnify the purchase money; that is, if a defect is caused to the purchase money after the transaction or it belonged to another person at the time of
transaction, the purchaser is responsible to repay the object of sale to the vendor. Now, if a person guarantees to be responsible for repaying the object of sale to the vendor in case of invalidity of the transaction, that person is guarantor to undertake for the purchaser (Mohaghegh Damad, 1989). The civil law has accepted guarantee to undertake in civil code 697. This civil code states that “guarantee to undertake is allowed from the customer or the vendor about the indemnification of the object of sale or the purchase money if they belong to another person”. However, it should be mentioned that the enforcement of this civil code is not only for the object of sale or the purchase money belonging to another person, but guarantee to undertake is also valid in all cases that result in the nullification of the sale contract.

Through presenting the definitions of guarantee to indemnity and guarantee to undertake, the differences between them are specified, too. The first difference is that guarantee to indemnity is obligatory and is realized with the nullification of the sale contract because of being unauthorized, while guarantee to undertake is a contractual guarantee that needs the intention of the guarantor and the guaranteed person. In addition, in guarantee to undertake the purchase money, the guarantor may be the vendor or a third party, but the guaranteed person is always the customer. On the other hand, in guarantee to indemnify the object of sale, the guarantor may be the customer or a third party, but the guaranteed person is certainly the vendor. Another difference is that in guarantee to indemnity, the guarantor and the guaranteed person are only responsible for the purchase money and the object of sale, but in guarantee to undertake, in addition to the purchase money and the object of sale, they can also pass judgment for the damage and compensation or the sum of these factors (Bagheri and Javadi, 2009).

The Vendor’s Responsibility against the Purchaser
According to civil code 391, if the whole object of sale or a part of it belonged to another person, the vendor must restitute the purchase money, and if the customer was ignorant of the invalidity, the vendor must undertake the compensation for the damages imposed on the customer. Therefore, in the relationship between the purchaser and the vendor, the issue of repayment of the object of sale and payment of the damages imposed on the customer includes all the consequences of the vendor’s guarantee of the other’s property.

Repayment of the Object of Sale to the Purchaser
In the Statute Laws of Iran, according to civil code 391, “if the whole object of sale or a part of it belonged to another person, the vendor must restitute the purchase money, and if the customer was ignorant of the invalidity, the vendor must undertake the compensation for the damages imposed on the customer”. The reason for the rule presented in this civil code was discussed above in the discussion of the principles of guarantee to indemnity and it was stated that with the lack of authorization which happens in unauthorized sale, the object of sale obligatorily belongs to another person. As a result, the object of sale and the purchase money become an example of possessing by invalid contract, and since neither the vendor nor the purchaser are rightful to maintain other’s property, they are obliged to repay it to the real owner of the property because possessing by an invalid contract is an example of an unlawful ownership of the other’s property and undue utilization of it. Civil code 366, as a general law that also includes guarantee to
indemnity, expresses that “whenever a person possesses a property by an invalid contract, he/she is obliged to repay it to its owner, and if the property is destroyed or damaged, the person is guarantor to the property itself or its profits”.

Considering civil code 391, it is revealed that the legislator is allegiant to the principle that the purchaser’s ignorance is a required condition for the right to receive compensation and there is no need for the purchaser’s ignorance for the restitution of the purchase money. Therefore, the civil law, putting aside the other ideas, follows the above-mentioned principle and, with no detailed discussion, considers the fact that the object of sale belongs to another person as something which makes the vendor guarantor to repay the purchase money. However, regarding the vendor’s guarantee, it is worth to mention a number of points that are discussed below.

The first point is that there is the possibility that the whole object of sale does not belong to another person and the proprietor transacts another person’s property together with his/her own property in one contract. In this case, as it is accepted in religious studies, one contract is divided to several ones. In other words, the sale of the vendor’s property is valid; however, the sale of another person’s property, which the vendor has sold with no authority, is null and void, and because of this one contract is divided to a valid and an invalid contract (Bojnoudi, n.d.). This point is included in civil code 390 which declares that “if after possessing the purchase money, it is revealed that the object of sale belonged totally or partially to another person…” therefore; the purchaser can use the authority given to him/her in civil code 441. According to this civil code, “‘option in sales unfulfilled in part’ is realized when because of some reasons, the sale contract is null and void regarding some parts of the object of sale. In this case the customer is allowed to revoke the sale or to accept the contract for the valid parts of the object of sale and restitute the purchase money for the parts that the sale is invalid”. In order to compensate for the damages imposed on the purchaser because of another person’s right in the object of sale, the legislators have given the purchaser the authority to nullify the whole transaction and, as a consequence, restitute the whole purchase money. In addition, the purchaser can avoid revoking the transaction and be satisfied with the part of the object of sale that is transferred by a valid contract. However, in this case the purchaser is allowed to claim the price of the sale that is invalid. The proper way to calculate the purchase money that should be restituted is given in civil code 442. It should be added that based on civil code 443, the right to revoke the sale is only for the purchaser that was ignorant of another person’s right in the object of sale, and a purchaser, who was aware of this fact, is obliged to accept the valid part of the sale, and the purchase money of the invalid part is obligatorily restituted to him/her. Therefore, the rule presented in civil code 391, which states “if the whole object of sale or a part of it belonged to another person, the vendor must restitute the purchase money”, does not mean that with the appearance of another person’s right to a part of the object of sale, the whole purchase money must be restituted to the purchaser, because the rule in this civil code is very brief and, in fact, it only emphasizes on the vendor’s guarantee to repay the purchase money. However, about the amount of the vendor’s guarantee, it is presented in civil code 392 that “about the previous civil code, the vendor should undertake to repay the whole purchase money that he/she has received for the whole object of sale or a part of it”.

The second point is that the decrease or increase of the value of object of sale after the sale and receiving the purchase money does not make any changes to the vendor’s obligation. In
other words, if after the sale, for any reason such as the decrease of the trading value of the object of sale, its price decreases in the market, the vendor cannot restitute some purchase money equal to the present trading price to the purchaser, but he/she is obliged to pay the whole of what he/she has received. Regarding this issue, civil code 392 states that “about the previous civil code, the vendor must undertake the whole purchase money that he/she has received for the whole object of sale or a part of it, even if after the sale there is a decrease of price in the object of sale for any reason”. This is also true if there is an increase of price after the sale. Therefore, after it is revealed that the object of sale belonged to another person, the purchaser cannot demand purchase money more than what he/she has paid, with the excuse that the price of the object of sale has increased in the market, and the vendor is obliged to restitute the paid purchase money, not more than that because there is no obligation for paying more. In decree 22/6/19 – 231 branch 7, the Supreme Court has confirmed this issue and stated that “according to civil code 391, if the object of sale belonged to another person, the customer is allowed to restitute the purchase money and demand for compensation, but he/she cannot demand for the present transactional value of the object of sale” (Nikfar, 1992).

The third point is the supposition that the purchase money is destroyed after possessing and it is not possible for the vendor to restitute the purchase money. According to the civil code 311, “the usurper must repay the actual usurped property to its owner, and if the actual property is destroyed, he/she is obliged to repay something equivalent to it or to repay its price”. Therefore, if the thing which is received for giving the object of sale is destroyed, the vendor must either pay its equivalent, in case the thing which is received is not money, or pay the equivalent money, in case the thing which is received is money. However, in addition to the issue of destruction of purchase money, there are other issues to be discussed about the obligation to repay the purchase money such as the changes in its qualifications, its defect or deficiency, its confusion with other’s property etc. These issues must be discussed in the discussion about possessing through invalid contract and usurpation.

The Vendor’s Obligation to Pay Compensation
According to civil code 391, “if the whole object of sale or a part of it belonged to another person, the vendor must restitute the purchase money, and if the customer was ignorant of the invalidity, the vendor must undertake the compensation for the damages imposed on the customer”. The important point about receiving compensation is that contrary to the purchase money whose restitution does not depend on the purchaser’s ignorance of belonging to another person and it is demandable in any case, receiving compensation from the proprietor depends on the purchaser’s ignorance of the fact that the sale is unauthorized. This judgment, which is adapted from religious rules, is justified using reliable rules. Decision 733 of general council of justices of Supreme Court, which is regarded as a unified judicial precedent, describes the way of paying compensation to the customer for the fact that the object of sale belonged to another person in the following way: according to civil code 365, invalid sale has no effect on possessing; that is, the object of sale and the purchase money are still possessed by the vendor and the customer, and based on the civil code 390 and 391, if after possessing the purchase money, it is revealed that the object of sale totally or partially belonged to another person, the
vendor is guarantor and must restitute the purchase money, and if the customer is ignorant of invalidity, the vendor must undertake the compensation for the damages imposed on the customer, and since the purchase money was under the vendor’s control, if the value of the purchase money is decreased and this fact is verified, considering the compensation mentioned in civil code 391, the vendor is legally obliged to compensate for the decrease of value. Therefore, judgment 360 of the eleventh branch of the provincial court of appeal of West Azerbaijan Province, which was presented in 20 June, 2010, is recognized valid and legal with the majority of votes and to the amount that it adapts with the above-mentioned idea. According to the civil code 270 of the rules of procedure in the public court and the revolutionary court which was presented in a criminal decision in 1999, this judgment is binding for all the branches of the Supreme Court in similar cases.

Conclusion
Sale is considered as one of the common contracts in society; however, the development of trade activities has caused many legal problems and issues related to it. One of these controversial issues, either at home or abroad, is the obligations on the vendor and the purchaser and also the issue of guarantee to compensate for infraction of the obligation. One of the vendor’s obligations is to deliver the goods that are free from a third party’s claim or right, and one of the issues related to sale is guarantee to indemnity. According to civil codes 390 to 393, guarantee to indemnify the object of sale means that if after the conclusion of the sale and the transaction of the object of sale and the purchase money, it is revealed that the vendor was not the real owner of the object of sale and, therefore, did not have the authority to sell it, this vendor must restitute the purchase money that has received through transaction to the customer, and he/she must also pay compensation for the damages that has been imposed on the purchaser who has been ignorant of the fact that the object of sale belonged to another person. This responsibility is on the vendor without being needed to be explicitly mentioned in the contract. For the first time, Supreme Court decision 733 as a unified judicial precedent stipulated the right of demanding the purchase money based on its current value, and considered it as an example of compensation. This decision is consistent with Islamic rules and it is compatible with justice and equity. If a person bought a property many years ago with complete good faith and lack of awareness of the fact that the transacted property belonged to another person, and now the transaction has become null and void by the real owner of the property, the purchaser is allowed to demand the purchase money and compensation from the vendor, and according to justice, the purchaser is also allowed to ask for the purchase money of the transaction based on its current value. In fact, the difference between the purchase money and the current value or the current purchasing power of the purchase money is a kind of compensation for the transaction which is

1However, it is supposed that the purchase money is a specified object, otherwise in the current custom that the purchase money is usually cash, there is no need for this amount of detail.
mentioned in civil code 391. This price difference, which is caused by inflation, is, in fact, the destruction of a part of property or the decrease of purchasing power of the money, and it is completely consistent with legal and religious rules and justice and equity for the purchaser to ask for this money. Even it can be said that receiving the purchase money based on the current value, which is the same as purchasing power at the time of transaction, cannot completely compensate for the damages imposed on the purchaser because if the purchase money was under the purchaser’s control, he/she could utilize it or at least deposit it in a time bank account and utilize its interest. Therefore, after substantiation of damage by the court, the customer is allowed to demand compensation for destruction of his/her certain profit, which is itself a kind of damage. However, the general council of justice of Supreme Court has not come to this point, even though there has been no request for this, too, and the general council has just accepted receiving purchase money based on the current value of money, which is itself a satisfactory change in the judicial precedent of Iran. The Supreme Court decision as a unified judicial precedent is quiet about the issue of the way to calculate the decrease in the value of purchase money, and this issue is considered to be dependent on the civil code 522 of the rules of civil procedure; that is, “based on the changes in the annual index of prices which is determined by the Central Bank of Islamic Republic of Iran”, the court must calculate the amount of money that can be restituted and present a judgment for it.
References