

## Attempts jurisprudence about the role of bets on transactions and treaties

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### Abstract:

*Research paper attempts to explore the role of the legal requirement in trades and treaties, The authors of these lines are efforts according to legal arguments and by referring to the rule of*

*المؤمنون عند شروطهم*

*Pay to the conditions, the correction and completion of contracts, emphasized the need to talk about the influence of conditions, including primary conditions, conditions collusion, stipulation, condition, quality, condition, therefore, be enforceable condition of the act and whether the terms of the opinion. The rule reflects provisions depending on the type of contract and the will of the parties fulfilling and true commitment provides its implications for Muslims, believers must be faithful to the condition that the commitment transactions, and They try to realization of its as far as possible .However, the terms of the deal should be rejected with the rules and law. Primary conditions of the issue terms, , to come out and really applied even in the name of the condition on such a commitment, it is doubtful. Such as tacit collusion clauses are clauses. When the contract is located to the extreme and the reference obligation implies it does, it is enforceable, Although celebrity Shiite clerics are not binding, condition or foundation collusion. and the condition of the contract considered as a condition for its authenticity.*

**Keywords:** conditions - contracts - faithful - Health and invalidity

**Introduction (The Statement of Problem):**

A Comparative Study of jurisprudential issues is the important achievements in the field of religion and it has strategic and valuable role in solving theoretical and scientific issues in theology, philosophy, jurisprudence, principles and other knowledge and sciences are related to religion. and it can provide the field of view of the similarities and differences views of jurists. One of the issues within the scope and range of Islamic sciences has particular importance, and it has attracted the minds of the jurists and scholars of believers, discussing the role bets on transactions and treaties. To explain the role bets on transactions and agreements by Shiite thinkers and scholars of intellectual evidence and numerous traditions are presented. It should be noted that the condition is intimately related to transactions and agreements. In view of this position, the religion of Islam has from the beginning special attention to contracts and treaties signed and established people, and to correct and complete the commitments people have been efforts but the revelation of the kor'an and the sayings and traditions to express the necessity of adhering to commitments issued in the form of words and phrases such as:

(( المومنون عند شروطهم )) and (( اوفوا بالعقود ))

And so on, to explain the circumstances and consequences of the condition in the contracts, the Muslims commitment has insisted . moreover, in the history of Islamic scholars in their books of jurisprudence and Hadith have written a lot of research work in this field, and each to his own book, and their views not only your contacts, but also to the community of faith and Islam have supplied.

**The main questions of this paper are:**

- 1 - What is the implication of the provisions of rule conditions and whether we can prove the rule according to the search of traditions on?
- 2 - What if the rule is applied if there is any conditional?
- 3 – Do contrary provisions to the requirements of the contract, , the implication rule is correct or cause to be invalid?
- 4 - Opposed to the condition of the koran lack of commitment or obligation oneself?

Questions mainly Related to legal issues in the field of jurisprudence, principles of Jurisprudence. And in the sciences, it can be achieved complete response and authors have referred in this respect to question and efforts were on it that Find an appropriate response and they Pay to plan their opinions of the scholars of jurisprudence and Shia jurisprudence and explain it by presenting and reviewing legal opinions on the validity and justification, at a precise intellectual content and sources of Islamic law texts, The

Shiite scholars to answer these questions and gather comments from multiple angles as evidence in koran and Hadith and Shia jurists are exploring jurisprudence.

### Indicate the provisions of Rule provisions

The content of the rule Mirza Hasan Mousavi Boroujerdi said in the Alqavaedol feqhiyeh book: According to this rule, the believers shall provided that the transactions are committed, loyal and as far as possible in the realization of the work, of course, the terms of the transaction should have no objection to the rules and provisions of Islamic law. (Mousavi Boroujerdi, 1419, vol. 3, 251)According to verse

(( اوفوا بالعقود ))

Fulfillment of all contracts, the contracts also mean the conventions and divine order is placed. Since, the term ((condition)) is used in the sense of absolute testament to the subject of the verse, it is necessary to fulfill it. Prophetic Hadith

المؤمنون عند شروطهم. Is a statement.

And it requires some analysis and explaining the derivation notion somehow. ((A ) and (L)) in the word Almomenon is sex not imply Testament, , Because it can be picked up and replaced it with the word ((total)) placed after the word expression of the public's submergence the word ((And))

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is container for beginner's and can not be alone, rather, it found that the word belongs to ((Sabeton)) is also the word ((shorotom)) with respect to the total addition, the expression of the general public, and therefore, the meaning is the same; all Collection are firm believers in their own terms. (Mousavi Boroujerdi, 1419, vol. 3, 220) Sheikh Ansari believes that the law will be directly levied and counterfeiting is withholding judgment and state laws, such as property, conditioning and causation of the suspension provisions of abstraction ,This means that when you start acquiring licenses and financial permissible for anyone to forge, It is dominated by abstraction and thus the verse ((Fulfil))) is trying to express is withholding judgment and order situation should warrant it derived from homework. (Sheikh Ansari, 1419, vol. 3, 20) Late Naini believes that state laws are directly applicable forge a verse ((fulfill))

(( اوفوا بالعقود ))

expression is religious restraining order, In other words, the purpose and necessity of contracts and conditions verse influence but Seyyed Yazdi believes that provisions such as

(( اوفوا بالعقود ))

قاعده المومنون عند شروطهم, Whereby is a withholding judgment, in other words, Believers have a duty and obligation to fulfill the contract and its terms, but the situation warrants the need for contracts to be abstracted from the penalty duty. Some others have pledged to oppose including the late Naini and the pretext Mostamsakol orvah belief that fulfill the precepts of uncertainty about the true condition. abuse is necessary because if you keep it absolutely is a forbidden act, Or whether the stipulation would be scrapped, While it is not and if it is allowed to waive the stipulation Abuse, So as the situation warrants indicate that the provisions of influence and thus create the right conditions for the stipulation is necessary.

Sum, based on the rule of Islamic jurists have said: Every Muslim person with faith is obligatory, the obligations and commitments of others takes over, fulfills and Infallible Imam said the law is clear and general Cobras, in the composition sentence, not in trying to report from a foreign affair.

## Documentation and rule legal documents

### 1. Book (the Quran)

Quranic verses related to the covenant Including ;

1- O you who have believed, fulfill your covenant. (مائده / 1)

2- Believers are those who fulfill their covenant. (الموفون بعهدهم اذا عاهدوا... / بقره 177)

3- Those who pay their respect honesty, trustworthiness. These verses imply the necessity of the fulfillment of the covenant between the Muslims. (والذين هم لاماناتهم وعهدهم راعون / مومنون / 8)

### 2-Tradition

News and many narrations from the Imams (PBUH) has been quoted that implies the necessity to fulfill the covenant between Muslims including;

المومنون عند شروطهم

Abdullah ibn Sinan narrated from Imam Sadiq (AS):

المسلمون عند شروطهم الا كل خالف كتاب الله عزوجل فلايجوز.

Muslims if they are committed against God, unless it is provided that the requirement does not permissible.

Narrated Abdullah ibn Sinan from Imam Sadeq (PBUH) has been quoted:

من اشترط شرطا مخالفا لكتاب الله فلايجوز له ولايجوز على الذي اشترط عليه و المسلمون عند شروطهم فيما وافق كتاب الله عزوجل.

If someone does not disagree with the Book of Allah on him and not on the person who has bet against him, It is not permissible if it fulfills the conditions that agrees with the Book of Allah and the Muslims are committed.

Other traditions in this field,for exampl Eshagh Ben Ammar them from Imam Jafar Sadeq (PBUH) and Imam Baqir (PBUH) and Imam Ali (peace be upon him) narrates that Imam Ali (PBUH) said:

... فان المسلمون عند شروطهم الا شرطا حرم حلالا او احل حراما.

Ali Ben Raab of Imam Musa Kazem (PBUH) was asked about a woman who will marry the man her with a hundred dinars on condition that she go with him to the city of her husband, otherwise her dowry fifty dinars Imam said: If you're husband is the land of infidelity and polytheism. In this case, there is not any conditions from man for womans responsible., woman who was to become the owner Hundred dinars as a dowry.another batch of such narratives is the theme of the concept of matching rule there.

From the standpoint of traditions

اوفوا بالشروط يعنى ال

We are very much in the tradition, And in Wasael shiieh Sheikh Hurr Ameli quoted authority discussions about transactions in the books of fiqh and hadith and many scholars have brought it to say:

المؤمنون عند شروطهم

It has a frequency that is the frequency of words if there is a brief sequence. Surely this is the Prophet, the blessings of Allah (pbuh) and infallible imams have been issued, but regardless of this, traditions and appearance Aldlalh Spring is correct. Thus, the rule is reasonable terms and validity of the arguments of Shiite clerics to act over the content of these traditions have issued.

**3 - consensus**, scholars have consensus on the necessity to fulfill the covenant between Muslims.

#### **4-The wise structure**

Therefore, the provisions of rule is reasonable evidence in Quran and Hadith and Shia scholars worked on the theme of the traditions that have issued ratio and also it is also wise.

Is it possible to prove the rule traditions according to the search terms? One of the reasons that prove the rule

المؤمنون عند شروطهم،

news and traditions are that quoted the text of the rule as well as the narrative itself Including :

1 - Abdullah ibn Sinans narrated from Imam Sadiq (as):

المسلمون عند شروطهم الا كل خالف كتاب الله عزوجل فلا يجوز

Muslims are committed unless it against God, unless it is provided that the requirement does not permissible.

2 - Abdullah ibn Sinan from Imam Sadeq (PBUH) has been quoted

من اشترط شرطاً مخالفاً لكتاب الله فلا يجوز له ولا يجوز على الذي اشترط عليه و المسلمون عند شروطهم فيما وافق كتاب الله عزوجل.

The person who provided the opposition with God book

Neither he nor the person who has bet against him, It is not permissible if it fulfills the conditions that agrees with the Book of Allah and the Muslims are committed.

Other traditions in this field, including Eshaq Ben Ammar them from Imam Ja'far al-Sadiq (AS) and Imam Baqir (AS) and Imam Ali (PBUH) tells

.. فان المسلمون عند شروطهم الا شرطاً حرم حلالاً او احل حراماً.

Ali Ben Raab of Imam Musa Kazem (PBUH) was asked about a woman who will marry the man her with a hundred dinars on condition that she go with him to the city of her husband, otherwise her dowry fifty dinars Imam said: If you're husband is the land of infidelity and polytheism. In this case, there is not any conditions from man for womans responsible., woman who was to become the owner Hundred dinars as a dowry.another batch of such narratives is the theme of the concept of matching rule there, Believers have a duty and obligation to fulfill the contract and its terms, but the situation warrants the need for contracts to be abstracted from the penalty duty. Some others have pledged to oppose including the late Naini and the pretext Mostamsakol orvah belief that fulfill the precepts of uncertainty about the true condition. abuse is necessary because if you keep it absolutely is a forbidden act, Or whether the stipulation would be scrapped, While it is not and if it is allowed to waive the stipulation Abuse, So as the situation warrants indicate that the provisions of influence and thus create the right conditions for the stipulation is necessary.

**What if the rule is applied if there is any?**

Is the basic terms and conditions are correct collusion? Condition of communication and lack of connection with the contract are divided into three categories: basic terms, provisions and conditions of the contract collusion. The initial terms of the contract clauses not mentioned before marriage and it becomes independent. It said the terms of explicit and primary conditions. Obligatory primary conditions is not fulfilled because

المؤمنون عند شروطهم

Since the contract to be withdrawn, They said that the obligation is not fulfilled if we say that the primary conditions must be fulfilled it is necessary to assign this rule, , The allocation of pornographic comes and it is also bad. So it is not permissible If Weaver on the assumption that this is not all, It can be said consensus on the exclusion of the primary conditions is the evidence. Primary conditions of issue conditions, to take place outside and Even in the name refers, provided that such commitment is really debatable and Sheikh Ansari believes that evidence of conditions, including primary conditions is also of the opinion referred to the Immediacy, traditions and consensus. (Sheikh Ansari, 1419, vol. 3, 20)

While other scholars do not accept it as Mirza Hassan Mousavi Boroujerdi has ruled that the lack of commitment to primary conditions. (Mousavi Boroujerdi, 1419, vol. 3, 252)

Jurists talk about collusion is a major requirement. Conspiracy provisions of the contract clauses mentioned composition and parties during the marriage, there has been provided to it. Late Boroujerd said the definition of collusion provisions: Reservations are taken before signing for collusion and conspiracy, but when the contract has been no mention of this condition. In terms of accuracy and inaccuracy of these conditions collusion between the jurists there are different opinions. Some consider the validity of the provisions of collusion and the others are allowed to adopt its invalidity and the third has been promised.

**scholars Comments about the authenticity of the provisions of collusion**

Sheikh Tusi in contrast, has said: If the two sides before the contract after contract cucumber condition that there is not such a contract of sale is valid if and only willing, offer and acceptance will be required. (Shaykh Tusi, 1417, vol. 2, 21)

He has said in various Shia: I bet that in the context of marriage will be valid if yes, if the condition before the contract is agreed upon, it is correct bet. (Hilli, 1413, vol. 5, 63)

Late Naraqī revenues in Al Avayedol -Ayyam said: what is appropriate, it is the general practice in any form is obligatory. Absolutely either before or after the conclusion of the contract but not if the contract also provided action is necessary. (Naraqī, 1408, 47)

Javahero l kalam Holder has said:

Review of the provisions, clauses in the contract is valid and not a condition of the contract to contract, provided that the contract is not based on it's condition before the contract if the contract will be based on their binding nature is very strong condition. (Najafi, 1981, vol. 23, 198)

Late Mousavi Boroujerdi said conditions like the conditions implicit collusion when the contract is based on fact and not intended to imply implicit signified, it is enforceable. (Mousavi Boroujerdi, 1419, vol. 3, 254) Attributes coherentism resorted to prove the authenticity of the conditions for structural reasons:

1. The validity of intellectual constraints, Sheikh Ansari and Syed Yazdi believe that if the parties have agreed on the condition. It is considered a condition indicating a spiritual marriage because it is the fulfillment of certain contract, without the constructive condition is not possible.

2 following the conclusion of the intent, belief deceased Naraqī is that if there is a constructive condition, when marriage was considered and the contract is based and if that condition prior contract would probably contract have not been and if there is a connection between the constructive condition or signing accordance with rule

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It should be constructive condition to be considered valid.

3- Implied term credit, according to the late Bojnordi constructive condition is such implied term When the contract is base fact.

4- المومنون عند شروطهم

4-Hadith according to al-Ansari, and Mirza Hassan Mousavi, Bojnordi The only condition is out of the whole tradition,. So the conclusion is that it is based on the hadith of the condition in question that conclusion is based were effected.

### **Jurists Comments on the invalidity of the provisions of collusion**

The first martyr in jurisprudential Alghavaed and Alfavaid said: any condition that before marriage or after marriage, and if the condition is not noted for its work and agree collusion

Helli Researcher in Islam sharahello has said: In marriage should be provided that any offer and acceptance coincide, and if the condition does not warrant the contract mentioned. (Helli researcher, 1405, vol. 2, 531)

korki Researcher in Almqased jameh said : condition is fulfilled, If valid and necessary ,Which is located between the offer and acceptance contract is to be set each of offer and acceptance on the run. If the condition is ignored after the front or later in the contract and provided it is not part of the contract and what is necessary to fulfillr is contract. ( heli Researcher, 1411, vol. 13, 31)

The second martyr in masalek Alafham had this to say: It is only if that condition is fulfilled with offer and acceptance to be part of contract that It is the fulfillment of it and it is set the offer and acceptance contract and what is conjoined with them. So long as it is prior to the contract and no credit or later. because what is necessary to fulfill the contract is not what comes before or after it. (SecondlMartyr y, Bitā, vol. 7, 457)

Mirza Qomi in javameol Alshtat had this to say: When a sale contract, not a condition of the offer and acceptance between, so this requirement is not valid and that the offer and acceptance conditions, it is true. (Mirza Qomi, Bitā, Vol. 2, 221)

Fazel indi in the kashefol Allsam said : the condition is not necessary if the contract is not enforceable. (Fazel Hindi, without date, Vol. 2, 56)

Attributes coherentism resorted for some reason, to invalidity Building condition:

1 - consensus, the owner of Riyadh stated from some great, out-of-contract claim of consensus that condition, Do not fulfill.

2 - invalidity primary conditions, It is stipulated in the contract provided that, For example, the primary requirement is not fulfilled the necessary basic conditions.

3- traditions, Some traditions collusion on the duration of the contract is not sufficient and they must be mentioned in the contract, otherwise the contract becomes permanent, temporary Contract. Otherwise the marriage contract becomes permanent, Such as Ibn Bakirs Mosqhe Imam Sadiq (peace be upon him) narrates that he said:

ان سمي الاجل فهو متعه وان لم يسم الاجل فهو نكاح بات.

If a name is mentioned, marriage is marriage, if not definitive and permanent.

### **Detailed theory of constructive condition**

Detailed theory jurists express constructive condition is attributable to the Naini researcher. In his opinion, the conditions and attributes that are not mentioned in the

contract, but the contract will be awarded based on the implied term of three types of materials is part of the condition.

1 - provided that it implies implicit contract with the implied condition that the building of institutions and atypical habit is on it . Such as a tax on marriage equality and disability and violation of the implied term of the contract that it would be available to victims. The Naini researcher Such is valid.

2 - stop the contract provided that it is true as a condition of the contract related to important traits In the absence of that condition and unaware that the contract is terminated virtue of the authority. The Naini researcher of this type are also valid. Such as information and sales In terms of Weight.

3 out of the contract if its subject matter and objectives related to personal and private purposes if the contract is not mentioned within the contract context of it is invalid. Like its earlier offer and acceptance home sale, the parties agree that the seller within two months after contract signing, home repair, and then offer and acceptance contract without mentioning the actual repair the condition. . But the Naini researcher this kind of requirement is not valid.

Shi'a jurists do not know necessary Collusion or the foundation condition and the condition of the contract considered as a condition for its authenticity. In the late Mousavi Boroujerdi says: That the parties to a contract Party argue that it heart that is not willing to stage. (Mousavi Boroujerdi, 1419, vol. 3, 282)

Some scholars are listed also collusion on the condition that clause in the contract in order, and as mentioned in the contract provisions have been made to the need to fulfill it. But the stipulation in terms of their effect and content validity can be divided into three categories act condition,ajective condition and condition as a result.

The condition is an act of the Implementation of the commitment made to it by the parties to the contract. The parties agree that the inclusion of a condition for conditional verb to be committed to do something against And if you did not keep his pledge, the stipulation has the right to terminate the contract. It seems that in addition to a contract of sale, provided the customer as the vendor is fenced.

The result is that the result of a contractual requirement for a party to be sure to spend a tradition, As if in a contract, the seller provided a condition I bet if I sell this land to the customer that a certain item be my client acquisition.

Described conditions is that the result of a bilateral agreement for the property in a transaction placed bets and it is where the transaction has QUALIFICATIONS. A total of at stimulating both sides of the transaction and the balance between the two change is rather strong effect. For example, in the sales contract land, provided that the customer will buy the land if that land was already such and such.

I say, if the condition such as the condition is a verb like to say that I will sell my land to you as long as you sew my clothes. It Should have provided the power to do it if the condition does not convert Khark to dates or agriculture to make crops , The bet is void. Because this condition is not against the power provided, because this requirement is not here much power can be provided against waiving their constitutional right to be crushed. because the right is qualified to scrap. If such condition is a condition resulting in that condition in achieving that result is enough, and acquisitions and thus does not need specific cause of the condition is the result if the condition of purpose.

The product is the steward of the need for special causes In this case, if the transaction has been made in the tradition of self in the deal has been achieved. The residual condition is such that the achievement of this result is not only income but also due to the special condition. For instance, the contract be provided if the result is a divorced woman, The bet is void because it provided the strength and power to do so is conditional. Because what the outcome of such property is specified by the condition To waive the relevant person or any other person entitled to possession of the property shall not go out of hand, various toys, so it is tradition stipulation could contingent obligation to release against, but because the condition of the property, researchers can not be the scrapping . As a condition for the existence of stiffness in sales in condition to condition, the creation of the characters on the condition possible, so if in the future if the animal is pregnant. Such as pregnant animal, don't disposal the human, so the condition is void. (Mousavi Boroujerdi, 1419, vol. 3, 226)

We say: Since power is applied if the condition, the condition is a verb then described the power and lack of power, But that does not result in the condition of property and the property, while the condition described by the power and the lack of explanatory power but also the reference condition, give such and such sales are described. The result stopped due to it is not a specific condition, Although these conditions are correct result, but not attributed to power and lack of power.

**Do provisions contrary to the requirements of the contract, the implication rule is correct or cause to be invalid?**

Is incompatible with the requirements of the contract, provided the contract is invalid or not? There are two words:

1. The promise is made, the bet is not void the contract. 2 - Quote is famous Is made the bet is void and void contract.

But the rule is that the conditions should not contradict the requirements of the contract. What is the meaning of the requirements of the contract? Offensive requirements of the contract are two types: (1) the requirements applicable contract 2 - requirements of the contract itself.

Applicable requirements of the contract work that according to his means, it is appropriate, in other words, the contract is considered integral parts. Not the contract, such as criticism of the price condition referred to pent-retractable and is like the condition of the transaction rather than rials, the dollar is so contrary to the requirements of applicable contract provision, is correct. but the appropriate nature of the contract means any contract which cannot be achieved without it. So that, if appropriate be ruled out, Contract cancellations or mystics and religiously dies. Such as the sale of property to others the change is commonly quoted. Therefore, if the sale of the seller to the customer to be transported or the price from the customer to the vendor conveyed not, mystics Selling not occurred. (Late Naraq, 1408, 49) So bet is against the requirements of the contract itself, Provided that appropriate and is in contradiction of the original contract. Provided that appropriate and is in contradiction of the original contract And practice it, is incompatible with the identity and purpose of the original contract and the sum they might not like the condition of ownership in sale contract because of the absurdity of this type of contract:

A. Although it is not required because the act requires such a condition, requirement latest contract is ineffective.

B - Consensus, due to which there told this requirement is consensus.

C - contrary to Scripture and tradition, but because of opposition from the Book and the Sunnah of Sheikh Ansari also has added .

D - because of inconsistency between the terms and provisions of the contract if there is a contradiction and is not retractable.

### **The Koran does not oppose condition is related to commitment or obligation breath?**

In the opposite case is not books or bound or bound by a condition that is both. Sheikh Ansari's view is that this condition applies to both bound and not bound by any ie not be contrary to the Quran and Sunnah. and standard diagnostic criteria worshipping book is the opposite condition.

Late Naraq believes is required against book. But the book is not opposed to self-commitment.

Naini researcher said that by accepting the possibility that self-commitment and commitment is also qualified to oppose Gods book. Uncertain and likely conditions of influence in the narrative, is another cause that might result if it is suspended.

### **Conclusion:**

Since the beginning, in relation to their contracts, and society cannot be found that there is no need contracts and obligations between In view of this position, the religion of Islam from the beginning special attention to contracts and treaties signed

and established people, and to correct and complete the commitments people have been efforts. but the verses and hadiths and sayings to express the necessity of adhering to commitments issued in the form of words and phrases such as

(( المومنون عند شروطهم )) and (( اوفوا بالعقود ))

And so on, to explain the terms and conditions in contracts and works according to the legal arguments on the provisions, , Which is important in correcting and completing transactions and treaties .In addition, it has insisted on adherence Muslims throughout history different Islamic scholars of fiqh and hadith Drktb themselves in this field have written many scholarly works and any Scholars have had in place an independent book. And their views not only your contacts, but also to the community of faith and Islam have supplied. It must be admitted under this rule, provided that the transactions and agreements faithful to their commitment, it is necessary to adhere as far as possible and be as far as provisions dealing with rules and regulations does not object to try to realize it. Infallible Imam said this law and general cobras, positions composition of the sentence, not in trying to report from a foreign affair.

Of the Word: primary conditions of issue conditions, to take place outside, even in the name of the condition actually be applied on such a commitment, it is doubtful .Such as tacit collusion clauses are clauses, When the contract is located to the extreme and the reference obligation implies, it is necessary to fulfill. Although Shi'a jurists, condition or foundation collusion binding do not know the condition of the contract considered as a condition for its authenticity. and if that is contrary to the requirements of the contract itself, and provided with appropriate and effective action that contradicts the original contract, the original contract is incompatible with identity and purpose

And together they may not like the condition of acquiring the necessary action in such a condition, requirement latest contract is ineffective. Because the rule is that The condition should be incompatible with the requirements of the contract.

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