Distinction between exception clause and exemption clause

Adel Abbasi
Ph.D. Private Law, Mofid university, and Deputy of prosecuting attorney, General and Enghelab public prosecutor’s office, Nazar Abad, Karaj, Iran. E-mail: Adelabbasi23@yahoo.com.
Phone number: 009809123779306
Office: 0002645383762

Hamid Bazrpach
PhD student Private Law, scientific board member Azad Islamic University Hashtgerd. E-mail: Hamid.bazrpach@gmail.com.
Phone number: 009809127678751

Abstract

Obligation as a result of legal relation is undertaking of performance by obligor in favor of oblige, and responsibility results from breach and failure to fulfill the former valid obligation. The obligation is eliminated in exception clause and the obligor is not bound, but in exemption clause, just the responsibility which results from the breach and failure to fulfill the obligation is discharged while the obligation itself remains and the obligor is bound. These clauses are sorts of stipulation and obey its regulations. Exemption clause can be seen in the form of condition of performance or corollary condition, but exception clause is generally used in the form of condition of description which describes quality or quantity of obligation(s) arising from contract. The exemption clause and exception clause may have different forms.

Keywords: obligation, responsibility, clause, exemption clause, exclusion clause.
Introduction

One of the important parts of the civil law which is closely related to the lives of individuals is the law of contracts and obligations. People, in order to supply their needs, have to establish economic relations with others via bilateral contracts and obligations. The sense of profiteering drives each of the parties to the contract to take less obligations and responsibilities, or completely eliminate or limit responsibilities and obligations in order to prevent and evade the future consequences which result from contract and its breach, this need is provided by condition. Therefore, parties to the contract, through inserting exception clause and exemption clause¹, can predict their obligations, duties and responsibilities that result from contract, as they want except in certain conditions where the freedom of contract is faced with restrictions and prohibitions. In this paper, in order to investigate and diagnose the exception and exemption clauses and their different forms, we will present the following three topics:

1. The concepts of obligation, responsibility and clause
2. The exception clause
3. The exemption clause

First topic: The concepts of obligation, responsibility and clause

The concept of obligation

Obligation (Ta’ahod) is an Arabic word derived from the term Obligate (A’hd), and literally it has many meanings such as: will, promise, compel something, commitment, care, oath, alliance, mercy (Zobeidi, 1444 reckoned from the hegira). In addition, obligation (Ta’ahod) literally means renewing an agreement, revisiting, refreshing something, undertaking someone’s action, condition, contract, bail, warranty, nursing and saving something (Moeen, v1, p 1105). Ta’ahod is the synonym of obligation in English language, and it is derived from the word obligate, which means duty, oath and the compelling power in the contract. In Fiqh, jurisprudents used the term Iltizam instead of obligation (Shahid Sani, p 153, 1376) In the Arab countries, the word “Iltizam” is being used instead of obligation (Ta’ahod) (Mohaghegh Damad, 68:1388). In Iranian law, there is no definition about Ta’ahod (obligation) and it only mentioned some of its samples and effects. In the civil law, articles 699 and 723, the term Iltizam is used instead of obligation (Mousavi Bojnordi, 1380: 244). This term, more than others, is used in jurisprudence and civil law at the topics of transfer contract and bail contract and is equal to the words of obligation, condition, responsibility, liability and undertaking (Iltizam) (Jaffari Langroodi, 28:1378). The term "obligation" has no special place in the jurisprudence and the authors of civil law first have included the term “obligations” in plural form in Article 140 and the single form (obligation) in Article 183 while defining the contract without defining the obligation,

¹ Since the agreements about the extent of responsibility such as excluding total responsibility, is included in the contract, and parties to the contract rarely agree with each other on the extent of responsibility by constructing(writing) another independent contract. Therefore, in this paper, the terms Exclusion clause and Exemption clause are used instead of Exclusion contract and Exemption contract. Even when such a contract is agreed independently, it is considered as an attachment to the main contract and obey it.
apparently, the legislator had gotten help from part 103 of Tahrir-ol-majalla. The term Ta`ahod in article 221 has this meaning (Mohaghegh Damad, 1388: 67 and 68).

Every contract is obligation but not every obligation is contract. In Imamiah jurisprudence (Shiite Fiqh) there is a tradition (Hadith) as “the contract is obligation”. The general theory of obligations in contracts has been resulted from this Hadith and Shiite Fiqh is strongly committed to it (Jaffari Langroodi, 1389: 34).

In Article 183 of the Civil Code, contract is an accepted obligation between parties while obligation is the effect of the contract not the contract itself. This error is caused by the mixing between the concepts of "contract" and "obligation" in the minds of legislator which sometimes led them astray (Katouzian, 1376: 16).

In Fiqh and the Quran, obligation has a broad meaning including the agreement that results in obligation and is synonymous with contract (Baqrah, verse 26 and Nahl, verse 91). Article 565 of the Civil Code states that: "Ji’alah is a voidable obligation with same meaning (Katouzian, 1364, p 18). However, the specific meaning of obligation that is considered as a source is synonymous with "debt". Moreover, these general and specific meanings of the obligation are the causes of errors (Katouzian, 1364: 16).

Words synonymous with the obligation that are being used in Fiqh are as follows: condition, duty, commitment, pledge, charge, undertaking (Jaffari Langroodi, 1390, pp. 1303). Right in personam, in respect of against whom this right is exercised, is called obligation (Ta’ahod), also debt and undertaking are used with this meaning (Jaffari Langroodi, 1374: 166). Right in personam or "obligation" is the legal relationship between the parties (Katouzian, 1389: 65). Owner of the right, since he can demand something from another, is called obligee (Da’en) and the other party is called obligor (Madyoun) (especially where the obligation is money) (Katouzian, 1389: 65).

Ilzam(commitment) and Iltizam(undertaking) in Fiqh and civil law are frequently uses as obligation. Obligation is a bilateral relationship between obligee (Ilzam side) and obligor (Iltizam side). Ilzam represents the obligee’s rights to demand (Jafary Langroodi, 1389 31). The purpose of obligation, in particular, is an engagement on transferring property or doing performing something related to financial relationships (Articles 214 and 285 of the Civil Code) (Katouzian, 1389: 69).

In terms of the legal meanings of obligation, the law scholars have provided different definitions:

1. Obligation is a legal relationship whereby specific person or persons, by the end necessity of the contract or quasi-contract, crime or quasi-crime, or by law, are obliged to act or omission of the certain practice in favor of a person or persons (Jaffari Langroodi, 1374: 166).

2 See pages 6 and 7 of this article, difference between debt, undertaking and obligation.
2. Obligation is a legal relationship that results in transfer of property (money or goods) performance or omission of a specific act, or discharge of legal effect (Jaffari Langroodi, 1388: 759).

3. Obligation has an infinitive meaning and a gerund meaning. In infinitive meaning, obligation means the relationship between two persons whereby one of the two should give money to another or do a specific job for him or refrain from doing a particular job. In gerund meaning, obligation means a legal obligation that legally obliged to the obligor (Mohaghegh Damad, 1390: 67 and 68).

4. Obligation, in legal meaning, has to infinitive and participle meanings. In infinitive meaning, it means undertaking to do or omission of something in favor of the other party. In participle meaning, it means a legal task which is obliged by the law (Shahidi, Mehdi; 1390: 41, 42).

5. Obligation is a legal relationship whereby the obligee undertakes to deliver money or goods, perform or omission of a specific act or omission, or discharge of a legal effect (Moussavi Bojnordi, 1380: 244).

6. Obligation is a legal relationship³ whereby a person can demand another to do something or refrain from doing something (Safayi, 1385: 12).

Considering the above-mentioned ambiguities in the works of scholars and jurists, we can distinguish the concept of obligation and debt as follows.

Right in the civil code as a requirement supported by the legislator that can be terminated, is a feature privilege connected with things or against specific individuals. Regardless of its classification into the financial and non-financial rights and intellectual property rights, normally the right is known to have both two types: real right (right in rem) and personal (right in personam, jus in personam) right that sometimes wrongly entitled as debt right.⁴ The dominance and power of someone on a certain object creates real right. For example, the ownership of the physical (corporeal) thing creates a right for the owner and the binding relationship between two persons creates personal right. In another example, owing some money to someone creates personal right for the creditor whereby the creditor can force the debtor to fulfill his/her debt. Moreover, personal obligation toward another one to do something specific creates personal right for the promisee whereby the promisor undertakes to carry out perform this obligation. As the last examples indicates, personal right or undertaking may be of two types: undertaking the debt means liability and this is synonymous with responsibility and Mashghoul-al-zimma and requiring of performing an action means obligation which is synonymous with Mashghoul-al-Ohdeh. If the subject of personal rights is an "action", the undertaking to act will be realized and the purpose of act is to do or not to do a physical or legal action in favor of someone else, thus it

³ Obligation is the result and consequence of the legal relationship, not the relationship itself.
⁴ "Right under obligation" and "Chose in action" are two types of personal right, and personal right is in opposition to real right, therefore, dividing right into personal right and real right seems incorrect.
is called obligation. Therefore, personal right or undertaking include obligation which is one of the element of personal right, therefore, it is not correct to use obligation and undertaking interchangeably. The parties of engagement are obligor and obligee and its subject is action, the place of it settlement is "Ohdeh", the action which is the subject of undertaking, is not owned by the obligee.

Obligation and consequently responsibility is a commanding duty and in order to establish obligation and realization of responsibility, the capacity and the conditions of responsibility (such as maturity, wisdom and rationality) are essential. Therefore, undertaking an action is not possible about them. However, undertaking a debt means being indebted and therefore if the subject of personal right is debt, the undertaking to the debt is realized and the parties are obligee (Da’en) and the obligor (Madyoun) and the subject of the undertaking is debt (Dein). In the above-mentioned money debt example, the subject of the personal right is the debt and regarding the realization of the indebtedness and undertaking the debt by obligee and obligor, one can say that, "debt" is non-physical (non-corporeal) property that appears in the form of a sum of money or the fungible property which is placed in the of someone in favor of someone else and the debt is the property of Da’en (Obligee) and the obligee can possess the debt and the ownership. The ownership is the result of declaratory law, and the cause of undertaking a debt or being liable is capacity to acquire rights, and there is no need to exercise rights. Because of this, the liability of the persons under guardianship is accepted (Saghiri, p5).

Therefore, we can say that, the obligation, Mashghoul-al-Ohdeh, liability and responsibility are completely different from debt and Mashgoul-al-Dhimma which is evident in the law.5

The concept of Responsibility

Mas’oul (responsible) is a participle derived from the infinitive noun of So’al (ask). Ma’soul (responsible) means someone whom is asked. Mas’ouliyyat (Responsibility) is derived from the artificial infinitive of Ma’soul meaning guarantees, obligations, punishment, being responsible, being obliged to do an obligation (Dehkhoda, p 448).

Literally, responsibility means whatever undertaken by human being, such as actions, duties and performances. Responsible is someone subject to being asked (amid, Hasan, page 950). In Fiqh (jurisprudence), the term Zaman conveys this meaning, and it covers both criminal responsibility and financial responsibility (Jaffari Langroodi, 1374: 642). The term Zaman has the same meaning in Iranian Civil Law (Jaffari Langroodi, 1390: 3223).

In law terminology, law scholars have provided definitions for responsibility as the following:

5 Articles 267,266, 221, 218, 1216, 1206, 723, 699, 318, 302, 310, Civil Code. Articles 272, 403, 404, Commercial Code.
1. Responsibility is the legal obligation of an individual to compensate the loss he/she has posed to another one, whether the loss is due to his/her own fault or due to the activity of he/she (Jaffari Langroodi, 1374: 642).

2. Responsibility is a legal relationship due to perform or refrain of an act. This relationship will be terminated by performing the obligation or the punishment (Jaffari Langroodi, 1390: 3325).

3. In any case where someone is forced to compensate a loss, we say he/she has civil responsibility against the other party (Katouzian, 1378: 46).

4. Based on this responsibility, a particular relationship will be established among losser and the responsible. The injured is creditor and the responsible is debtor and the subject of the debt is compensation which is normally done with money (Katouzian, 1378: 46).

5. If the subject of personal right is an action, the undertaking an action or responsibility is raised and the responsibility is equivalent with obligation (Saghiri, p. 4).

In consideration of the concept of responsibility in the works of scholars, the following explains the concept of the responsibility.

After the realization of the personal right from the "obligation" type, the obligor undertakes to perform the obligation, because the main goal of the parties from making of an obligation is fulfilling the obligation which is called fulfillment and is the most common way to end the obligation (Article 264, Civil Code). Therefore, fulfillment is the voluntary and intentional performing of the obligation which is in contrast with mandatory fulfillment where the obligor refuses to fulfill the obligation so the obligee uses judiciary enforcement. However, in both cases, whether the obligor performs the obligation compellingly by the force of court or the obligation is performed by the permission of court through someone other than the obligor (Shahidi, 1373: 25). Nevertheless, breach and failing to perform an obligation creates the responsibility for the obligor in favor of obligee. The obligation to perform or refrain a certain action is suggested where there is no damage, but in responsibility, the damage is the main element and by Article 221 of the Civil Code: "If someone is obliged to perform or refrain certain action, in case of violation, he/she is responsible to compensate the damage ...".

The emergence of contractual responsibility requires valid contract and it is caused by the breach and violation of the contractual obligation. The obligation may have a certain time for performance. If the type of obligation is so that, by not performing in the deadline it would be impossible, then the responsibility resulted by that failure is called responsibility of failure of perform and if it will not be impossible after the deadline and be fulfilled with delay, then responsibility resulted by that failure is called responsibility of the delay in fulfilling the obligation. If the time of fulfilling the obligation is up to the obligee' (on demand), then if the

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6 Article 226, Civil Code.
7 Article 226, Civil Code.
obligee demands the fulfillment of the obligation and the obligor refuses to perform, the resulted responsibility is the violation of the obligation. If there is no deadline to fulfill the obligation, it is on time for obligation and the obligor should fulfill it in the customary emergence. After the expiration of customary emergence and failure to fulfill the obligation, the refrain responsibility is realized.  

The concept of Clause

Clause (Shart) in infinitive meaning is the undertaking an action (Naraghi, 1408, 1: 128 - Haeri, 1376, 2: 95). Clause (shart) in substantive meaning is something that it’s lack leads to lack of something else, whether the existence of the Shart is it’s cause or not (Sheikh Ansari, 2: 39). Clause is highly likely action in the future where the parties of the contract suspend or postpone the happening of a legal effect to the emergence of that highly likely action (Jaffari Langroodi, 1374: 380). Clause is a description which one of the parties of the contract obliged it while it is not impending. This clause is called descriptive clause (Jaffari Langroodi, 1374: 380). Clause is an agreement between parties on the main elements of the contract or subsidiary undertaking which has changed the contract effects (Katouzian, 1346, 1: 386).

Clause is an obligation that included in another contract, which means undertaking a task or making somebody to undertake a task. (Emami, 1375, 1: 268). In jurisprudence and civil code, clause means obligation whether it is stipulated or not (Jaffari Langroodi, 1378: 32).

Therefore, clause in terms of suspension, dependence and restriction is what the contract is suspended on it, therefore, the producing and undertaking is suspended on the realization of the clause.

Clause, in terms of the relation between two things, is an undertaking related to the contract and its violation will not violate the validity of the contract but the other party can terminate the contract by the right of rescission. This clause does not result in suspension, continuance or requisite of the contract.

According to Article 232 of the Civil Code which discussed non-invalidating and null clauses, therefore, the relevant issue is the relationship between the clause and the contract not the suspension and restriction. Moreover, Article 233 declares that, nullity of the contract is due to the ignorance of considerations and ambiguity of the subject of the contract and the lack of essential elements of the contract not due to the suspension and restriction. Therefore, one can say that, also in the civil code, clause means the relationship between two things.

The exception and exemption clauses are among the stipulation type and follow the conditions have been set in the contract so, the relationship between clause and the contract is the relationship between the origin and the ancillary. In the case of nullity of the contract, the clause is null too, but the reverse is not valid unless the condition is contrary to the requirement of the

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8 Articles 227 and 229, Civil Code.

9 Articles 24 _246, 4th section of Civil Code.
contract or is an ignored condition where the condition and subsequently the contract is null and the reason is the lack of essential elements of the validity of the contract not the suspension and restriction.

If the exception clause is contrary to the requirement of the contract or eliminates its primary obligation, is null and invalidates the contract unless the clause and the contract are considered together and interpreted by the consensus ad idem. In this case, if it will be discovered that, the parties have intended another legally enforceable contract, then the exception clause changes the nature of the contract and transforms the claimed contract to another valid contract (Katouzian, 1364: 199 - Izanlou, 1386: 30). However, if the exemption clause is contrary to the requirement of contract contract, since obligation remains solid and just the responsibility caused by the violation of the obligation is terminated, therefore, the elimination of the responsibility does not mean the elimination of principle effect, compelling force and the requirement of the contract because, by the presence of the exemption clause, the obligee can ask for the enforcement of the judicial force in order to demand the fulfillment of the contract. And the obligee will be entitled to breach the contract when it is not enforceable, not only by compelling the obligor, but also by someone else. Therefore, the exemption clause do not exempt the obligor to fulfill the obligation but it just exempt the obligor from compensating the damages resulted by the violation of the obligation and just where the obligor has not committed a serious and willful negligence. Therefore, the exemption clause that violates the primary obligation and is against the nature of the contract is valid in Iranian law (Katouzian, 1364: 325 - Izanlou, 1386: 214 and 215). The exemption clause can be included in the contract both in terms of condition of corollary and condition of action. In the case of condition of corollary, the exemption clause is a result of the stipulation and the other party will be exempted but in the case of condition of action, he/she is obliged to avoid claiming for compensation.

The exception clause is generally stipulated as condition of description and describes the quantity or quality of the obligation(s) resulted from contract. For example, if parties to the contract, agree on an obligation (usually in which the result and consequence is important) to be

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\[10 \text{ Article 232, Civil Code.}\]
\[11 \text{ Article 233, Civil Code.}\]
\[12 \text{ See relinquishing certain obligation(s), this paper.}\]
\[13 \text{ Article 237, Civil Code.}\]
\[14 \text{ Article 238, Civil Code.}\]
\[15 \text{ Article 222, Civil Code.}\]
\[16 \text{ Article 377, Civil Code.}\]
\[17 \text{ Article 239, Civil Code.}\]
\[18 \text{ See relinquishing certain obligation(s), this paper.}\]
\[19 \text{ Article 236, Civil Code.}\]
\[20 \text{ The last part of Article 234, and the first part of Article 237, Civil Code.}\]
\[21 \text{ Article 234, Civil Code.}\]
another obligation (in which the endeavor of obligor is important), in fact, the quality of the obligation is described in addition to its quantity. When the delivery of the subject of hire (in a state that makes it possible for the lessee to procure the temporary use of it) is the obligation of the lesser, if the lessee contract with lesser to undertake to do the repairs which are necessary to obtain use, and the obligation of the lesser be is terminated by the delivery of the subject of hire, here, the quantity of the obligation is described.

Second topic: The Exception Clause

Parties to the contract, based on the principle of freedom of contract, can determine their rights and obligations against each other through inserting the clause of refusing a certain contractual obligation or relieving contractual obligations. If one of the parties to the contract asks the other party to fulfill an obligation, and the other party refuses to fulfill the obligation, it is possible for the plaintiff to take action in order to compel the obligor to fulfill the obligation, and if the compulsion is impossible, the obligee can ask for the compensation resulted from the violation and failure. In this case, the defendant by proving that, he/she has not undertaken to fulfill the claimed obligation can discharge him/herself from the fulfillment of the obligation. Therefore, in exception clause, the obligation is terminated and the man is under no obligation.

The exception clauses may be in various forms, some of which are discussed in the following:

1. Relinquishing certain obligation(s): it is possible to include a clause in the contract relinquishment and rejection of certain contractual obligations that expressly indicate the relief of specific obligations. For example, the warehouse operator declares that, he/she has no obligation for maintaining the product in the cold storage. Therefore, in case of damages to the products, the owner cannot demand for compensation since there is no obligation in this case and consequently no breach can be stated (the warehouse operator is no mashghoul-al-ohdeh). It is evident that, the parties cannot accept or reject an obligation in contract, because no obligation results from such a contract which includes exception clause and such a clause is useless.

It should be noted that, an obligation that its absence and lack of presence is included in the contract, if will be the requirement of the contract, can nullify the contract or change its nature. In the sales contract, if the seller rejects any obligation indicating the ownership and transfer of the ownership to the seller by a clause, such a sales contract and clause is null. However, in a debt contract where the debtor included a clause indicating that, the subject property belongs to the debtor, although this clause is against the nature of the debt contract, but it does not invalidate the contract and just transforms the debt contract to loan contract. Therefore, the clause which is contrary to the requirement of the contract is null when the other parties to the contract have not intended any other enforceable contract.

2. An obligation Suspended to an Action: it is possible to include a clause indicating the suspension of an obligation to performance of certain action in the contract. In this clause, unlike the first type where the subject of the clause is stipulated to removal, relinquishment and abandonment of a certain contractual obligation, the party, by accepting the obligation, postpone
the effectiveness and efficiency of the obligation to performing a certain action by the obligee. For example, the operator of a gym or a swimming pool includes a clause in the contract with the athletes indicating that, he/she is just responsible for maintaining the properties he/she signed the receipt. Therefore, the athletes are obligees if they received a receipt for their properties and otherwise the operator is not responsible for their properties. Thus, if objects belonging to the athletes will be stolen or lost and they demand the compensation, the operator can defend him/herself so that, the realization of the obligation is suspended to the action (delivery of the objects to the operator) of the plaintiffs and since this obligation is not realized and he/she is not responsible for the objects he/she has not gave the receipt, therefore, there is no violated obligation, and the athletes are responsible for the object they have not received the receipt.

In fact, we can say that, "an obligation suspended to an action" is essentially a variant of the suspension because in the suspension, the parties to the contract and obligation, postpone the creation or dissolution of a relationship and the legal effect to a possible future event.

In the obligation suspended to an action, the emerge of legal effect is suspended to a possible event (here, delivery of objects and to the operator by the athletes).

3. **The obligation Bound to the time**: Parties may include a clause in the contract upon the fulfillment of the obligation that bound to passing of a certain time, i.e. instead of suspending the beginning of the obligation to fulfilling a certain action; it is bound to passing of the time.

For example, the parties to the contract of sales stipulate that, the price will be delivered after a few days or a few months from the date of the contract. In this case, until the expiration date, the buyer has no obligation to transfer the money and after the passing of the determined time, the obligation will be realized and the undertaking to perform an action or transferring the money will be initiated. Therefore, before the passing of this time, there is no obligation to deliver, consequently, the violation of the obligation and liability cannot be claimed.

It should be noted that, the passing of time and the emergence of the imminent future is an inevitable event. However, in the suspension, the creation or dissolution of the obligation is suspended upon a likely event in the future, therefore, if an obligation is bound to passing of a certain time then, the realization and the creation of obligation is an imminent event, but the obligation which is suspended to an action is a matter of probability that depends on the action of the other party.

In this type of obligation the parties voluntarily postpone the implementation of the obligations and in fact, it will be bound to an inevitable event in the future but in the suspension, they suspend the happening of obligation and in fact, they postpone the emerge of legal effect to a possible event in the future. Therefore, if we postpone an obligation by bounding it to an inevitable imminent act, then the fulfillment of the obligation will not be suspended but its occurrence is suspended. From the other hand, what the occurrence of the obligation is

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22 Article 189, Civil Code.
suspended to it is the passing of a certain time which is an inevitable event not likely to happen (Katouzian, 1389: 128).

**Third topic: The Exemption Clause**

The exemption clause is the agreement between the parties to the contract indicating that, total potential future responsibilities, resulting from failure to perform or delay in performing or abuse to fulfill certain obligations are exempted from the potential causers before the occurrence of the violation and breach of the obligation or obligations and the potential responsible completely exempted from all charges. Therefore, in exemption clause, solely the responsibilities of the violation and breach of the obligation is relinquished and the obligation itself remains in place while in the exception clause, as mentioned earlier, the obligation is eliminated and there is no obligation.

The exemption clause can have various forms some of which are as the following.

1. **Breaching all of Obligations**

It may be provided in the contract that, all responsibilities arising from not fulfilling the contract, the delay in contract, or the abuse will be eliminated and relinquished. In this case, if all the contractual obligations will be breached by the obligor, he/she is not responsible to payment of the compensation and the other party has no rights to bring an action for compensation. Here, not fulfilling the contract has a general form (meaning) whether one obligation has been resulted from the contract or more. In addition, exemptions from responsibility and compensation have general meaning too, i.e. the other party has no responsibilities against violating the contract and has no responsibility to pay for any damages. For example, in the contract for goods transport, the operator stipulates to not to be responsible for failure of delivery of the goods.

2. **Violation of a certain or specific obligations**

It may be provided in the contract that, in the event of a breach of a certain obligation or obligations, the contractor is not responsible. In this case, if he/she violates other customary and legal obligations then he/she is responsible and must compensate the damage. For example, if in the transportation contract, it will be stipulated that the operator is not responsible just for the delay then the operator is exempted from one of the obligations (delay) but is responsible for defective shipping of product, the waste of product and failure to deliver the product.

3. **Development of Act of God (in terms of realization)**

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23 Article 341, Civil Code.
24 The clause limiting the responsibility, as opposed to the exemption clause, limits the responsibility of the person who brings about the damages, without any regard to the actual damages. Therefore, the responsible person is partially exempted from paying the compensation, not totally.
25 Unless he commits a heavy or intentional negligence.
Proof of the Act of God\(^26\) (External\(^27\), unpredictable and unavoidable events)\(^28\) is one of the means of exemption of the obligor from the responsibilities raised from not fulfilling the obligation\(^29\). However, if the parties to the contract agree that, in case of their contract, the unpredictable or unavoidable events are not the conditions of the occurrence of the Act of God, the contractor is responsible for non-fulfillment of obligations and the subsequent responsibilities. For example, the contract for the construction of a dam on a river, they stipulate that the obligor is not responsible for the possible delays raised from the turbulence and increase of the water levels. Now, in the case of overflow, despite the fact that, this issue was customarily (reasonably) predictable for the obligor or even the obligor was able to prevent the accident by technical means, according to the exemption clause included in the contract, he/she is exempted from responsibilities caused by the delay in fulfillment of obligation.

4. **The Increase of the Instances of the Act of God (force majeure)**

The parties can stipulate in the contract that, certain events are instances of the Act of God. Although these events may not have the conditions of the Act of God, but the effect of Act of God (exemption from responsibility) is considered in such way. For example, the obligor is committed to deliver a product on certain time and they stipulated that, in the case of illness of obligor or absence of some of workers, these are considered as Act of God. Therefore, in the case of not fulfilling of the obligation in the determined time and proving of the realization of the stipulated clauses (illness of obligor and absence of obliged workers), the obligor is exempted from responsibilities.

5. **Time Limitation of the Responsibility (Clause of Short-Term Responsibility)**

Clause of short-term responsibility is a clause which reduces the time within which the aggrieved party must take action or if there is no prescribed time limit, it determines a time limit. Therefore, this clause limits and reduces the adjudication time. The validity of such a clause is confirmed unless the law forbids it. Because if we accept that, the obligor can exempt the responsibility caused by breach of obligation through including this clause, we should accept in the first time that, he/she can ask the obligee to take action within a certain or shorter time. If the parties stipulate the clause of time limitation in their contract, after expiration of the determined time limit when the obligee has not litigated then the obligor completely exempt from all responsibilities indicating that, this clause is a kind of exemption clause while the authors considered it as the responsibility limiting clauses (Izanlou, 1386: 65).

\(^{26}\) The Act of God, in it’s more general meaning, in addition to natural and compulsory adventures such as flood , earthquake, storm, covers war, strike and so on.

\(^{27}\) Article 227, Civil Code.

\(^{28}\) Article 239, Civil Code.

\(^{29}\) If the clause (agreement) contains just the descriptions and conditions about realization of the Act of God, it cannot be considered as an exemption clause. It is just repetition (of) or emphasis on the general rules of responsibility.
6. **Limitation of the Type of Responsibility**

It is possible for parties to exempt some types of responsibilities for damages by stipulating the exemption clause, i.e. they include a clause indicating that, the obligor is not responsible for specific types of damages. For example, stipulating that, the obligor is not responsible for the damages of no benefit, reduced benefit, discretionary damages, indirect losses or unforeseeable damages. Therefore, it is possible for the owner of cargo to stipulate with transport operator that, the operator is not responsible for no-benefit loss caused from the delay in loading and unloading of the cargo.

**Conclusion**

1. In the exception clause, the obligation is eliminated but in exemption clause the obligation remains and just the responsibility is eliminated.

2. The type of clause condition in exemption clause can be of an action clause or result clause condition of action or condition of corollary, but in exception clause the type of clause condition is usually condition about description.

3. The exemption clause which governs the principal obligations and the requirements of the contract is valid but the exception clause which governs the principal obligations and the requirements of the contract is null.

4. The validity of the exemption clauses, in terms of eliminating the non-existent right, is debate-full, but there is no question on the validity of exception clause since the parties of the contract eliminate the obligation by mutual agreement. Therefore, if legislator, in a case, revoked the exemption clause, the parties, through stipulating the exception clause, can avoid legal restrictions.

5. The exception clause, if be valid in the stipulating phase, will result in an effect and its implementation follows no restrictions, but the exemption clause, not only should be valid in contracting phase but its fulfillment depend on not committing intentional or heavy negligence. Therefore, the exemption clause is null if an intentional or serious negligence is committed since that, the fulfillment of the obligation is delegated to the free will of the obligor. However, the exception clause will not be terminated in such circumstances because no one can have fault in fulfilling the obligation which is not undertaken.

6. The effect of exemption clause is private to the contracting parties, i.e. if in terms of violation of the obligation; damage occurred to the third party, in spite of the presence of exemption clause, the obligor is responsible for the damages incurred to the third party. However, the obligor in exception clause, is not responsible the other party nor for anyone else.
References

Emami, Seyyed Hassan, Civil Law, Tehran, Eslamiyya Bookshop, 1375

Izanlou, Mohsen; restricting and terminating clauses of responsibilities in contracts, second edition, Sherkate Sahami Publishing, 1386


Haeri (Shahbagh) Seyyed Ali, Description of Civil Law, Tehran, Ganje Danesh Publications, 1376

Khonsari, Musa Ibn Mohammad, Maniyeh Al-Taleb, Al-Mortazaviyyah Publications, 1357

Dehkhoda Dictionary, University Tehran Publications

Zobeidi, Mohammad bib Mohammad Mortaza, Taj al-Arous min Javahi al-Ghamous, Beirut, Dar al-Fikr, 1414

Sanhudi, Abdul Razzagh, Transfer and fall of Obligation, Tehran, Book Translation and Publication Center, 1372, Volume 4

Shahid Sani, Zein al-Din Bin Ali, Masalik Al-Afham Fi Sharhe Sharaye al-Islam, Tehran, Stone Printing, Volume 1

Sheikh Ansari, Mortaza, Makasib, Qom, Majma Tafakkor al-Islami; 1420 BC

Shahidi, Mehdi; Civil Law, First Volume, Formation of Contracts and Obligations, Majd Publications, eighth edition, 1390

Shahidi, Mehdi; termination of obligation, Publication of Lawyers Circle, Third Edition, 1373


Saghiri Ismail, Article on Analysis of Ingredients of Commitment, Difference of Madyuniyyat and Masouliyyat, Booklet of Civil Responsibility, School of Law, Azad Islamic University of Tabriz, 1390
Tabatabai Yazdi, Seyyed Mohammad Kazem, Question and Answer, Tehran, Center of Publishing Islamic Sciences, 1376, Volume 1

Amid; Hassan, Dictionary; Amir Kabir Publications, Tehran

Katouzian, Nasser, Civil Law, Public Rules of Contracts, Volume 1, Behnashr Publications, 1364


Katouzian, Nasser, Foundation of Civil Rights (assets - contracts), Volume I, Tehran University, 1346


Moin, Mohammad, Dictionary; Issue 102, the letter "D"

Moin, Mohammad, Dictionary, First Volume

Mohaghegh Damad, Seyyed Mostafa, Public Theory of clauses and Obligations, Islamic Law, Tehran, Center of Publication of Islamic Sciences, 1388

Mousavi Bojnordi, Seyyed Mohammad, Legal, Philosophical, Community and Jurisprudential Articles, "the need to fulfill the obligation, Oruj Publications, First Editin, summer 1380

Naraghi, Mullah Ahmad, Ava’ed Al-Ayyam, Qom, Maktabateh Basirati, 1408

doJ.S.M. Oxford English Dictionary, Lonn.,OBLIGATION