Studying the Theoretical Principle of Foreseeable Contract Breach

Alireza Mohammadzadeh
Islamic Azad University, Kermanshah Branch, Kermanshah, Iran

Nahidossadat Fatemi ghomshe
Islamic Azad University, Kermanshah Branch, Kermanshah, Iran

Abstract

If before the date of contract performance related to the explicit behavior based on lack of commitment or an inability to fulfill the obligation for warrantee be considered and observed that the warrantor cannot or will not commit due to its commitment to act. In this case, the theory of predictable breach of contract arises. In fact, a, there is predictable breach of contract opposite if the actual breach of contract. In support of the "predictable breach of contract" theory, many cases argued as a legal basis of theory that some subjects discussed in this field in the article.

Keywords: contract, contractual obligations, breach of contract, predictable breach.
1. Introduction
Breach of contract or violation means the refusal and the restrain of the contract parties due performance of the contract. In fact, a violation of the time of contract performance is breach of contract (Shahid 2003, 62).
The position of foreseeable breach rooted in English law. This position was raised at first in 1853 in England and in accordance with Hachester’s action against Dolarter. Before arguing this action, the court opinion was that the breach of contract occurs only when the time of implementation of commitment has come and warrantor refuse to act obligation because it was believed that before the beginning of the fulfillment of obligation, breach does not a matter (Kazemi, 2009, 95). The time of performance is the time when warrantor should do warranty and as soon as the arrival date, warrantee at the head of the deadline has the right to charge warranty (Jafari Langroodi, 1975, 230). The deadline has different types that determines the time of breach of contract with respect to the time of performance of the contract. If the time is specified in the contract comply, in this case the non-fulfillment of the warranty in the specific time treated as the breach of contract (Mehrani, 2011, 618).
Also, when the parties have agreed that the time of commitment is available to the warrantee, action is required under the agreement and warrantor obligated to fulfil the commitment at the same time that the warrantee has requested. Finally, if the contract does not specify a time for execution of the contract and determination of the contract did not transfer to warrantee, in this time, performance depending on the custom and habit. Use the custom and habit to determine the date of implementation of commitment, like many uncertain points of contract due to the clearness in willing of the parties and do not have feature any more that may require it to have follow (Shahidi, 2007, 46). In this assumption, if the contractual obligation in the proper time and common time with the subject of commitment, does not occur in a reasonable time, violation occur (Barikloo, 2006, 26). Abuse of acting may be complete or refraining from performance of the contract is related to a part of it (Barikloo, 2006, 26). Moreover, not only partial or incomplete execution of the contract was considered breach of contract but carry out the execution faulty is breach of the contract and its violation (cotozian, 43).

1. predictable breach of the contract
In contrast of the actual breach of contract is predictable breach of contract. In predictable breach of contract, unlike an actual breach, time of commitment performance has not come. In the legal term, predictable breach is that "if before the deadlines for implementation of the contract, warrantor show an inability behavior or lack of willingness or unwillingness to fulfill the contract, if this lack of willingness or desire to be close to reality so serious that any reasonable person believe that breach of contract will occur on time ... " any reasonable person to believe that a breach of contract will occur on time…” (Olfat, 2012, 75). Predictable breach of contract has occurred. In another definition, predictable breach of contract is: "the fulfillment of a commitment made aware of that prior to the arrival date one party, the other part is committed to the conclusion that the contract will not be performed from warrantor. In other words, after
signing the contract, but before it turns out to be early to reach that one of the parties - vendor or customer- will not doing the bulk of its obligations in a timely manner or without a license will be committed a fundamental breach of contract "(Rafee, 44).

Finally, with regard to definitions of predictable breach of contract by lawyers, in inclusive definition of the term in the law can be said: "when after the singing of the contract and before the arrival of the deadline for its implementation, warrantor explicitly or implicitly pledged their intention not to declare the contract execution or the lack of willingness, ability or readiness to undertake commitments with regard to behavior and way of preparation on the basis of a reasonable standard have been predictable and is an expression of lack of performance of the contract by the deadline, the foreseeable breach of contract is fulfilled. In support of the theory "predictable breach of contract" theory often cited by lawyers as a legal basis which is saying something in this area will be discussed below.

1-2 no loss rule
Under the rule of no loss, loss is not legitimate in Islam and the illegitimacy of losses, including both the legislative and law enforcement stages (Mohaghegh Damad, 2008, 150). In this regard can be refer to different traditions and laws including the article 40 of the constitution law. The no loss rule can be seen in many legal texts. Among the most important is article 40 of the constitution law that no one can exercise his rights as a device to losses others. The necessity of probable losses (with the wisdom and the no loss rule) can be considered as legal grounds of the probability breach of contract theory. 'Commitment and adherence of the one party that breach by the other party in the near future will require a disadvantage to the both parties or at low warrantee "(Kazemi, 2012, 106). Rule and hadith of no loss argue to the fragility of any contract that making it caused losses. This arguing helps us easily to distinguish the breach of contract are accordance with the provisions of the theory of jurisprudence transactions; as required by the buyer or committed to maintaining the maturity date of the contract to fulfill the obligation, in the event that the warrantee give reasonable probability that the opposite side will not perform to its commitment or where warrantor explicitly or by their behavior is announced does not run its obligations in due course to the warrantee and undoubtedly for warrantor and warrantee it is a loss and in no loss rule, this requirement has been removed (Olfat, 2016).

2-2 common law and habit
"Costume in this respect to practice is important that a reliable source for defining the terms of contracts and obligations of the parties, especially in commercial contracts. Based on the common law and habit that the parties explicitly or implicitly refer to it or imposed on them (Article 356 of civil law), eliminate contract gaps and complements the intention of the parties "(Kazemi, 1391, 106). However in our jurisdiction law, written and explained law has many respects and is the main source of law, the common law has an important role in building legal rules ... were cited in cases such as Article 132, 220, 280, 344, 358, 375, 382 486 of the civil law. As well as civil law in some materials, including 35, 167, 277 and 975 of the same law, convention is tacitly accepted the arbitration. So the role of common law in interpreting and implementing of the subjects and adaptation of the topics on our rights is an undeniable role.
In the case that a contract party gives an almost certain and reasonable probability that the other party will not fulfill its contractual obligations, common law of the society does not rule to carry out a unilateral commitment and waiting for the arrival of further harm to the victim and rationalists of community in such circumstances, seems necessary to use the mechanisms for respecting the right of the warrantee and prevent damage to him.

Also, convention on the international sale of goods in Article 9, considered common law as a source of rights and obligations of the parties and we can certainly said that major part of this Convention originated from the trading common law.

3-2 Justice and Fairness
The time before the date of commitment, there is a reasonable and conventional probability that arguing the other side will not be able to honor its commitment to act or in cases where warrantor, explicitly or implicitly declares that will not do your obligations, justice and fairness dictates that warrantee committed to breaking a contract and or requirements governing the obligation was committed to implementing and he was right that do not act contractual obligations in contrary and by using some remedies to prevent the entry or spread of loss. Lack of belief in this right and fulfill the obligation by one party to the contract while the other party has done nothing about it clearly is incompatible with justice and fairness. It is not justice while breach of contract of one party from commitments is predictable reasonably " to be satisfied to harm other party and requires him to perform the contract and do not attention to this important issue that ensure about the implementation of obligations, is an incentive for signing contract and if any of the parties known that this ensures is damaged even at the moment after the contract, they did not sign the contract "(Kazemi, 107).

4-2 Judgment of the wisdom
In Islamic jurisprudence and law, reason and intellect of wise always to consider is invoked. Authority of wisdom are broadly accepted by all scholars, jurists and legal scholars and legal system (Olfat, 113). In Iranian law, wise is not mentioned among the sources of law. But it must be added that, general principles of law are listed as sources of law in Iran. This principle is rational principle and therefore respected in all legal systems and as Rene David has said about said Germanic Roman military, it must admit Iran's rights that wisdom of rights and rights is anything before wise (Shekarchi, 2012, 176).

In Jurisprudence and consequently Iran's rights, many principles and rules of wisdom, no permission to leave the object in its parts, no action, the presumption of innocence, the principle of evil expressed Eagle Bella (the principle of legality of crime and punishment), the principle of non-retroactive rules, the prohibition of unjust enrichment, no waste, etc. are all rational judgments derived from reason.

The human intellect, has economic potential analyst. Human reason after the contract signing, commitment by one of the parties, if they have doubts about the implementation of the mutual commitment on the other hand, does not approve intend or cannot carry out its obligations in a timely manner, wise consider waiting vain and warrants to extradition what has submitted, also
when there is certainty, when one of the parties had the commitments will not be able to do it, the obligations of such contract by the other party, is not rationalization. This rational judgments are the provisions of predictable breach of contract theory (Olfat, 117). Articles of the breach of the contract of the theory exactly the reason that prevention is always better than cure.

5-2 Adaptive ending of the contract
Including those who can prove that theory of predictable breach of contract is not contrary or conflict to the law and our rights, is the adaptive ending of the contract (annulment). Some believe that when one of the parties of the contract, express explicitly or implied to the other party that will not do the obligations under the contract, in fact, his exigency for an end to contract and the exigency is when opposed to the acceptance of the annulment of the contract. As a result of the annulment of the provisions of breach of contract theory that is the same as the prediction of the future.

Although, there are differences between annulment and predictable breach of contract and criticized the analogy of the two institutions have been compiled, but "in some instances, the result of annulment of the contract and terminate acts of predicts of infringement theory is same and it means that the provisions of the contract theory does not conflict with the principles and structure of our contract law and jurisprudence; as an example that after signing contract, warrantor rejected contract and announced that he will not fulfill the provisions of the contract and warrantee in order to compensation of probably breach, accept the rejection. The result of the act is the result of annulment "(Olfat, 96).

6- Damage reduction rule
Every reasonable human, in the face of loss and tries to respond effectively prevents damage from development. The theme of this task is now under the rule of "damage reduction" that lost cannot just watching damaging occur, but as much as possible, do all reasonable measures to reduce the damage that is necessary, and compared to the damage that could be prevented by reasonable measures cannot claim because according to the rule action, in such circumstances the person actually worked to their detriment, so cannot demand the damage due to their sloth suffered operating losses also require (Shaariyan, 2011, 146). The most common example that used in this case, is a case that another person do anything and he do nothing despite he was able to exit and dies (the same ref., 147). Regarding predictable breach of contract due to a violation of the sanctions foreseen by the warrantee after the clear lack of authority, ability or demand of warrantor to perform future tasks provide more less recompense compare to waiting to arrival date of obligations and abuse he is required to use these sanctions (which will be detailed in Part III) and if necessary, replacement of the contract in order to avoid further losses.

3. Results
Theory of "predictable breach of contract" expressly in any of the legal articles in the Iranian legal system does not exist and this has led researchers to investigate the theory of "predictable breach of contract" in Iranian law with the default the provisions of the Iranian legal system,
there is no theory to explain the basics and some have that explains and confirms the acceptance of the theory of "predictable breach of contract".
References
[10] Rafiee, Mohammad Taghi and Mansoreh Hosseini, Pishbin P 44.
[28] Olfat, Nematollah, "using reason and wise approach on sanctions for breach of contract", Page 113
[16] Shekari, Roshanali and Venus Afshar Quchani, "established religious order with wisdom and reviews examples" Law Quarterly Journal of Law and Political Sciences of Tehran, No. 26, Summer 2012, page 167 to page 186
[18] For studying feedback please refer to Kazemi, Mahmoud and Marzieh Rabaie, former, p. 106.