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JUDICIAL INTERPRETATION OF FINANCIAL CONTRACTS IN IRAN'S STATUTORY PROVISIONS

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ABSTRACT

Obligations and contracts are amongst the most important legal topics in Iran's statutory provisions, especially in private law domain. Since the objective of every contract is the enforcement of its content and requiring the parties to the effects resulting of them, the foundation of the contracts can be realized as the intentions and wills common between the parties. But, with the progress of the communities' legal system and the daily increasing growth of the economical transactions and complication of the financial contracts, it is sometimes difficult to infer the common intention of the parties through investigating the contract text and discrepancies come about between them. In between, each party to the contract defines the common intention based on its own interests and a judge is finally required to resolve the hostility and interpret the contract. However, the judge's scope of authorities should not be considered so vast that s/he can be allowed entering the interpretation contract unduly and unlawfully and bestow the contract a meaning other than what the contract parties have willed. In other words, the debates on the contract interpretation are envisaged necessary and essential where a flaw comes about in the contract content implementation as a result of which the effectiveness of the individual and social relationship between the parties suffers.

Keywords: Judicial Interpretation, Financial Contract, Statutory Provision.

INTRODUCTION

The obligations, particularly the contracts, laws are enumerated amongst the most important and most essential private law discussions and the importance of such a topic of private law is well evident from its diversity, application and vastness as well as its direct relationship with the economical system of the society. Undoubtedly, the thing forming the quintessence and the basis of the contract is the will and intention of the parties. In fact, these elements are the main axis and generator of all contracts.

Therefore, in order to discover the parties' will and intention in signing and enforcing a contract, it is first necessary to interpret the contract and this is per se in need of tools and methods that can contribute to the court in accomplishing such a target (Rezanejad Y., 2011).

The judge's role, in between, is determinative and fundamental; because s/he can select any interpretation s/he deems in compliance with the legislator's volition and the law spirit (Gholamali S., et al., 2016).

Therefore, in contracts wherein there is a need for interpretation, such as the contracts that have shortfalls, ambiguity, silence or conflict in their content in implementation stage, the judge, as the person in charge and obliged to resolve the disputes, should pay attention to the entire

instruments and tools in interpreting the contracts because no solution to the conflict can be devised unless these contracts are interpreted. So, there remains no solution for the judge but to interpret such contracts. But, such an interpretation should be carried out scientifically and controllably in performing which the contract system spirit should be held governing (Kamal H., Judicial procedure & contract interpretation).

So, based on the definition presented in article (183) of the civil law: “contract includes the obligation of one or several individuals before one or several others agreed upon by all”; moreover, contract can be classified to various classes amongst which one can point to the contract categorization based on financial and nonfinancial subjects. So, the financial contract is the one the subject of which is certain properties and it features various aspects. Based thereon, the financial contract can be grouped into profit and nonprofit. The profit contracts can be further classified to transactional and participatory.

Nonprofit financial contracts are the set of financial contracts the primary goal of which is not acquisition of wealth and for-profit set of contracts are the ones that are signed for the acquisition of wealth and they are further divided into substantial transactional and participatory contracts.

The transactional financial contracts are the ones wherein certain properties and interests are exchanged for money or another property. Sales and lease contracts are examples of this latter branch of the financial contracts.

Participatory financial contracts are those in which the parties share the ownerships, profits and losses stemming from the economical ventures. Civil and legal partnerships are but two examples thereof (Mousaviyan S. A., Types of financial contracts from the perspective of Islam). Now that we have acquainted with the definition and classification of the financial contracts, articles and hints are provided to clarify the ambiguities of the contracts, particularly the financial contracts.

Definitions, parties’ specifications, subjects, duration, sums, payment terms, style and method of goods carriage, clearance method, insurance, guaranty, tax, transferability, governing laws, force majeure cases, revocation cases, contract language, writing method, discrepancy resolution, number of copies and attachments and, finally, signature position, seal and the position of the individuals signing a contract are dealt with next as parts that have to be inserted in the contracts (Bahrami, B., 2015).

NECESSITY CASES OF CONTRACTS’ INTERPRETATIONS

The necessity cases of contract interpretation have not been clearly elucidated in Iran’s legal system. But, in an investigation of the principles and regulations governing the international contracts and exploration of the legal sources and doctrine, on the one hand, and the requirement for filling the extant legal gaps by taking advantage of the aforementioned sources, on the other hand, the followings can be recounted as the most important and the most prominent causes of the necessity to interpret contracts.

A) *Contracts’ Ambiguity:*

In the area of contract laws, a contract can be said ambiguous when the parties’ intentions are not clear and specified. In fact, numerous reasonable interpretations can be deduced from the ambiguous contracts. The parties’ lack of clear expression of their intention assuming the ambiguity of the contracts can stem from various reasons the



most important of which are the vagueness of the contract in its entirety, the dilemma of the contents and ambiguousness of the contract enforcement.

B) *Silence:*

One underlying premise giving rise to the contract interpretation is the presumption speaking of the silent position adopted by the parties to a contract in regard of the affairs that should be commonly clearly elaborated therein. Now, the question is raised as to how the resolving authority should interpret the parties' silence (Habibi, 2013).

With the existence of the jurisprudential sources in Iran's law, it can be stated that the silence of the contract can be interpreted where it is accompanied by cues and clues. In other words, such a situation is not by any means considered as silence rather the value and the credibility of each of the extant clues should be taken into account and the suitable verdict has to be figured out case specifically (for example, a defendant's silence when fulfilling an oath and lack of claimant's disavowal can be pointed out in this regard (Ghasemzadeh, 2008).

C) *Conflict:*

Surely, the most common case of contract interpretation necessity originates from conflicts such as the case wherein the expressions and conditions of a contract cannot be summed. The investigation and analysis of these cases enjoys its special complicity and delicacy and the issue, in every case, should be resolved through principles and regulations on contract interpretation as well as the tools and instruments of discovering the parties' intentions (Habibi, M., 2013, p. 304).

After the necessary and compulsory cases of interpretation were verified and determined, there is a need for adopting an approach based on which interpretation can be conducted. Based thereon, two approaches are generally adopted: contract interpretation based on the parties' common intentions and contract interpretation based on the social norms and expediencies.

A) *Contract Interpretation based on Parties' Common Intentions:*

According to this theory, the underlying base of every contract's formation is the volition of the contract composers and the principle of volition governance and contract freedom entails the interpretation of contracts based on the parties' common intentions (Habibi M., 2013, p. 63).

It has to be stated in this regard that if the contract expressions and phrases are found vague and the common intentions of the parties are explicitly reflected therein, the common intentions of the parties have to be verified using well-recognized legal criteria. The extraction of such criteria begins first of all from the context of the contracts and the contracts' appendices and attachments. Resorting to the extra-contract criteria is not permitted as long as the parties' wills and intentions can be discovered through exploring the context. The investigation of the contract paragraphs and the surface structure of the phrases and expressions can be realized as one the most important internal factors in such a manner that the interpretation task is rendered easier through referring to the contract text and determination of a clear-cut meaning for the contract terms in respect to the legal regulations and common law; the analytical source of the issue is the necessary nature of fulfilling the contractual obligations. In fact, the primary and ultimate goal in every agreement is the enforcement of its content and this, in case discrepancies arise, is suspended on the contract interpretation and determination of the



rights and obligations of the contract composers. Furthermore, serving justice and the regulation of the social, economical and legal relationships of the individuals are more important than the precise and unquestioned enforcement of the contract and the legal dos and don'ts when it comes to trial. In some cases, the conditions, situations and statuses take forms that there is left no other choice but resort to the judicial authorities, spirit governing the regulations and the sublime legal principles in serving the justice (Hosseinifard, A. A., 1998).

It can be stated in sum that the governance of volition is laid on the foundation that the same way that the contract is originally created with the parties' wills the contents thereof are composed according to their wills, as well. Essentially, the composition, fulfilment and conclusion of the contract depend on the parties' volitions (Shahidi M., 1998). In this regard, contract interpretation based on freedom of will necessitates the following results:

- 1) Contracts take place through agreement (Katouziyan N., 1995) and the parties are capable of signing a contract under any title and in any format they will and specify the contract's results and effects arbitrarily (Langerudi M. J., 2000, p. 8).
- 2) The real intentions of the parties have to be taken into consideration when interpreting a contract and the contract wording should be valued to the extent it elaborates the real volitions of the parties and the judge should do his or her best to unravel the real volition of the parties and consider each contract of the same effect willed by the contract parties.
- 3) The contract effect is relative and it is limited to the parties and no other person gains profits or suffers losses thereof. The freedom of every individual is respectable to the extent it does not cause flaw in another's freedom and, essentially, nobody can impose an obligation on another person or create a right in his or her favor (Langerudi M. J., 2000, p. 8).
- 4) After the contract was signed, the individual's will has to be venerated and the general authorities do not have any right to change the contract effects and parties' obligations (Safa'ei S. H., 2005, p.28).

B) Interpretation Based on Social Norms and Expediencies:

Corresponding to this theory, the foundation and axis of the contract interpretation is not solely the common intention of the parties because a contract, after being signed, becomes an agreement-based social institute.

Such an agreement possesses a social life and it finds its specific meaning inside the society. Based thereon, the contract interpretation revolves about the social culture, civilization, ethics and expediencies.

It means that the common intentions of the parties have to be taken into consideration case-specifically and at the same time the social expediencies should also be given an equal value. The proponents of the foresaid theory express reasons why it has to be accepted in cases that the contract terms and wording are envisaged ambiguous. The most important of these reasons are:

- A) Delegating the entire transactions to the private initiative of the individuals can no longer guaranty the preservation of freedom because the dominance of the mighty party over the weak party takes the place of the parties' common intentions.



- B) In cases that the contract enforcement reaches a point of discrepancy due to a silent position of the contract articles, there is no point in making efforts in line with winning the case.
- C) In supplementary contracts wherein the content is exclusively pended over the volitions of a party and the other party accepts it without even having a role in the structure, the content and even the identification of it, the presumptive nature of the common will is more vivid. Thus, when the common will of the two parties is not clear and vivid, the contract takes the form of a means for preserving the social expediencies hence it is not given an existence independent from the composer's will and interpretation measures should be inspired by justice, norms, fairness, good will and public interests (Habibi M., 2013, p. 67).

With such an approach, a group deals with the administration of the contract and thinks that the contract is an agreement-based social institute after taking place. Such an agreement possesses a social life and finds its specific meaning insider the society and it is assumed that it has been signed in good will. It is also presumed that the ethical rules have been observed in its composition; but, if it is failed to do so, the judge cannot take an impartial position in respect to abuses to the ethics and the contract has to be interpreted in such a way that it is envisioned consistent with the premises of rights created and privileges given to the individuals. The underlying foundation of such an interpretation is in fact the culture, civilization, ethics and social expediencies so the common intentions are interpreted and evaluated in respect thereto (Katouziyan N., 2008).

As it was mentioned before, contract interpretation occurs based on the real volition of the parties in Iran's legal system. But, in cases that the common intentions of the parties cannot be understood from the wording of the contract, the judge is to interpret the contract based on such an axiom as good will.

Based thereon, it can be stated that the interpretation principles are based on discovering the real volitions of the parties and the axiom of good will.

Contract Interpretation Based on the Discovery of the Parties' Volitions:

A) *Inter-Party Common Procedures:*

One method of expressing will is performing behaviors and activities that signify the consent and want of the parties due to their continuance and persistence. The collection of such behaviors as "the inter-party procedure" can be recognized as the important source of interpretation based on which the ambiguities of a contract's text can be dismissed. The transactional procedure is formed wherein the parties' relationships have persisted for a relatively long time. Based thereon, the credibility of this procedure depends on the association of the parties' intentions thereto and the implicit agreement thereon (Ghashgha'ei H., 1999).

There is no independent article in Iran's law regarding the authentication of the common procedure between the parties and its effect on the contract interpretation. But, according to the fact that the transactional procedure's credibility lies in the parties' implicit will and want and Iran's law accepts the will as the most genuine source of contract formation, the aforementioned procedure can be realized as an interpretation source (Seasonal journal of private law, 2012).



B) Subsequent Behaviors of the Parties:

By subsequent behavior, the contract parties' interaction after it was signed is intended and it serves removing the ambiguity residing in the contract. Of course, it has to be noted that the credibility of the aforesaid behavior should not be mistaken with the disagreement and the breach of the contract contents.

C) The Validity of the Parties' Silence:

Silence here means lack of explicit or implicit expression. Nothing can be understood from the silent status of a person and such an ambiguous mood conveys neither acceptance nor rejection. Therefore, the silence, in itself, has no implication of the volition of a silent person hence it is devoid of effect (Ghasemzadeh M., 2000).

Another assumption comes about when silence signifies the acceptance in which case there is no doubt in the formation and signing of the contract. But, when it comes to the enforcement of the contract articles, the problem will appear as to what would be the situation of the issues for which the parties held a silent position consciously or unconsciously (Sahebi M., 2000)?

Therefore, it can be stated that accepting the credibility of silence depends on the existence of the following conditions:

- 1) Silence as Expression of Will: when, in specific positions, an individual's volition is determinative and effective, his or her silence along with the cues can somehow be an implicit expression of the will. The reasoning is laid upon the foundation of the principle that the individuals point out all their wants and details thereof when expressing the conditions of the contract upon the emergence of necessity.
- 2) The Absence of Barriers to Expression: another valid condition signifying the silence is an individual's possibility for expressing his or her ideas. In case that the parties both or either of them finds no chance for any reason to express their ideas then their silence cannot be considered as implicative. That is because there has not been any possibility of selecting another option so that his or her silence could be attributed to his or her will (Ghashgha'ei H., 2008, p. 60).

LEGAL PRINCIPLES BASED ON GOOD WILL IN CONTRACT INTERPRETATION:

Despite the stipulation of the good will axiom in Iran's law and considering the great many of the jurisprudential ideas and AYAT and Narratives attributable to the issue of interest to the present research paper, it can be stated that reference to good will in the aforementioned sources is to the extent that it cannot be rejected. Besides, the foresaid provision is also effective on many of the jurisprudential regulations so it has been asserted based thereon that the benevolence axiom is an important example of good will.

So, articles, like (220) and (225), of the civil law have been formulated based on good will in such a way that the authentication principle (article 223 of the civil law) can be employed to prove it. That is because the parties behave based on honesty and mutual trustworthiness and they refrain from mentioning many of the conditions in the contract for such a reason as relying on the other party's good will (Ghashgha'ei H., 2008, p. 199).

Now that we have been made familiar with the concept and stance of good will the following parts deal with expressing the interpretation principles that are in consistency with the good will.



A) The Principle of Interpretation to at the Expense of the Contract Drafter:

The principle of interpretation at the expense of the drafter, as exercised in Iran's law, has to be basically examined and investigated according to the jurisprudential and principled foundations. The first analysis is that the drafter of the contract is only in seek of satisfying his or her own interests in lieu of taking care of the shared interests and now that s/he has used ambiguous and double entendre instead of clearly understandable words and expressions, s/he has in fact acted at his or her own expense and the person is to be held liable for improper and incorrect offering of the expressions and phrases as mentioned in the principle.

Another principle is the enforcement of an omission disapproval principle meaning that it is not made clear in a vague and double-sided expression that whether there is one benefit has been created for the drafter or two.

The principle here is the lack of actualizing more than one benefit. Due to the same reason, the ambiguous expressions are interpreted at expense of the drafter so there is inferred only one benefit thereof.

B) Interpretation in Favor of the Obligated Party:

In Iran's legal system, the principle of interpretation in favor of the obliged person not only enjoys strong jurisprudential foundations it also possesses analytical and intellectual birthplace. From the perspective of the jurisprudents and jurists, the principle originates from the lack of liability and exoneration foundations and the following results are inferred thereof:

- 1) In cases of doubtfulness in creation of obligation, the principle is lack of the commitment actualization.
- 2) In case that there is created an obligation but discrepancies have come about in regard of its extent or limit, the principle is lack of additionally obliging a party and the sure amount and limit is sufficient.
- 3) When the explicit or apparent signification of the words and expressions in a contract is unclear, the contract and the conditions set therein have to be interpreted in favor of the obliged.

If none of the parties have any reason to prove their claim, the principle is interpretation in favor of the obliged party and principle of exemption makes it expedient to exonerate the obliged party from any debt extra to the sure amount because there is no good in obliging a party to more than what has been agreed (Habibi M., 2013, p. 325).

C) The Principle of Interpretation in the Light of the Whole Contract:

Therefore, the entire contract components should be taken into account in the enforcement and interpretation of it because it is quite likely for the conditions and constituents of the contract to be independently different from the overall concept of the contract. That is because the use of the expressions have been used in respect to certain grounds influencing the overall conceptualization of the contract and the contract cannot be interpreted and removed of its dilemmas disregarding them; in addition, it is most often the case that the ambiguities of a contract can be dismissed by referring to the other components and according to the peripheral proofs provided in the contract. Also, the principle is that the parties should avoid using conflicting components in a single



contract because attention is paid to the entire components when composing a contract (Seasonal journal of private law research, 2012).

INSTRUMENTS OF CONTRACT INTERPRETATION:

By the instruments of contract interpretation, those of the affairs are intended that are utilized to interpret a contract, including the words, clues, legal, fundamental and common law regulations as well as procedural unity, recommended procedures and judicial thoughts and jurists' notions and enjoyment of the other clues and cues that somehow help the judge recognize and discover the common volition of the contract composers (Bahrami B., 2015, p. 429).

Generally, it can be stated that the most important instruments of contract interpretation can be examined in the following three titles:

A) *Words and Clues:*

Words are enumerated amongst the most seminal means of expressing will and discovering wills of the contract parties. So, the contract wording has to be considered as the revealer of the will because it is assumed that the parties' common intention and will has been casted in the form of words and phrases.

When it is made clear that the parties' real volitions are other than what has been specified in the contract or if it is proved that the contract is a nominal one, it has to be disregarded and the case's verdict is determined corresponding to the real volition and the nominal contracts are condemned to invalidity.

In the majority of the financial contracts that are signed in the form of pre-printed conditions, the parties are quite likely to express their agreements without paying attention to some of these conditions while indeed being disagreed to some others.

In such cases, though the entire content of the contract, the printed ones included, becomes the subject of the parties' common intention hence enumerated as articles of the contract, in case that there is a conflict between the group of printed conditions, on the one hand, and the new agreements on the handwritten conditions, on the other hand, the recent agreements should be considered as superior to the printed conditions in the contract interpretation; also, in the supplementary contracts and unilateral legal acts in case of which a party has no role but to join to and fulfil the contract, the real and internal will of the other party has to be sought and the words and expressions have to be explored in search of his or her intention and not the volition of the obliged party who has no role but to accept.

The following interpretational instruments are inferred from the necessity to pay attention to the words and clues in contract interpretation each of which can be applied in its place as an independent tool and means for discovering the parties' common volition considering the contract text.

1) *Paying Attention to the Real Volition of the Parties:*

As it is the case in Iran's law that there is no special procedure or expression of word to be taken in the majority of the cases for a contract to take place, it can also be actualized through transaction and exchange of things (articles 193 and 339 of the civil law).



The deeds and the cues of a party to a contract can also be a means of contract interpretation. It is sometimes necessary to make use of lexicological principles in interpreting a contract based on words and expressions. In fact, the words have no special feature and topicality in contract interpretation and they are only used as interpretation means in regard of discovering the common intention of the parties.

Therefore, if it is made clear in a contract that the parties' intention contradicts the apparent meaning of the words used, the words and expressions' implications are discarded and the parties' intentions are obtained corresponding to the jurisprudential and legal regulations' proofs and principles as well as clues and cues.

2) *Paying Attention to the Overall Contract and Avoiding Interpretation that Leads to the Omission of a Part of Contract:*

The words and expressions of a contract are means of expressing will and the two parties most often transform their common wants into written form (ordinary or formal) in important contracts, especially in financial contracts.

Therefore, the contract has to be considered as a single collection that has been agreed upon by the parties as a whole and any part of this collection, though being transformed into a condition, has become the subject of the common intention of the two parties apparently and dominantly and the judge has to look at the collection of the expressions as a single and independent and relevant unit in contract interpretation and s/he has to avoid eliminating part of the contract and rendering it useless to the maximum extent possible. So, if an expression is found having two meanings based on one of which the contract is rendered devoid of effect or become of a trivial effect, the other meaning has to be taken into consideration. As a specimen, if an individual signs a life insurance contract for his or her child and then s/he is found having no immediate children but grandchildren, then the term child has to be interpreted in such a manner that the insurance contract can include the grandchildren of the policyholder (Bahrami B., 2015, p. 431).

3) *Taking the Equivalent of a Word:*

When discrepancy arises in the meaning of the contract expressions and every party gives it a certain meaning, the judge prefers the Arabic meaning to the other meanings and asks the other person claiming a meaning other than the common meaning to present his or her reasons. Article (224) of the civil law that is devoted to this interpretational axiom states that "the wording of a contract conveys the common meaning".

The credibility and the influence of this axiom are not in opposition to the influence of the internal will of the parties because it is presumed that the parties have willed the common meaning and in fact it is the common meaning that unravels the internal will unless it is proved that the parties have willed another meaning in case of which this same meaning forms the base of action in such a way that when an obliged party is found explicitly or implicitly accepting the



business norm or a certain contract form then s/he has to stay bound to the conditions therein.

4) Taking the Real Meaning of a Word:

Corresponding to the criteria accepted in the science of principles (fundamentalism), the real meanings of the words have to be taken into account, so when a word is found in a contract document featuring two meanings, one real and one virtual, the real meaning has to be considered unless there is a clue indicating that the virtual meaning is intended in a given contract text. That is because the intellectuals do not neglect the real meaning baselessly and for no clue and they usually write and speak based on the common methods and styles.

5) Removal of Apparent Conflicts:

The apparent conflicts have to be removed in interpretation and the real intention has to be revealed because the reasonable and norm-bound person does not speak contradictorily upon entering a contract and has a sensible want so his or her intention of an apparently conflicting contract should be extracted.

To do so, the special expressions are preferred to the general expressions, the limited ones are considered superior to the absolute ones, the elucidative expressions are given more value than the brief ones, the handwritten conditions are taken as superior to the printed ones and the words and expressions that have been written are generally considered more valuable than the general stages; in general, the most recent expressions, as the latest volitions of the parties, outperform the oldest ones.

Although Iran's legislator has not codified these criteria as the general criteria in any place, they can be accepted using a group of scattered verdicts and through basing the sentence issuance on them as well as by making use of the ideas and notions of the expert scholars and legal professors hence they can be employed as means of interpreting the parties' wills. For example, in arranging a testament, it is apparently held that the testator of a second testament has retracted from the first testament conditions.

6) Interpreting a Contract by its Own Means:

As it was mentioned, contract is a single collection which has become the subject of the two parties' common intention so it cannot be separated into parts rather every condition set in a contract has to be considered in respect to other parts because it is not possible to understand a part of contract by disregard the others. The general words and expressions are rendered in connection with special words and the absolute concepts are considered inferior to the limited concepts whether they precede or come after (Ghasemzadeh M., 2008, p. 362).

B) Legal Regulations and Practical Principles:

By the legal regulations used in the interpretation, the interpretational complementary rules are intended that are enacted to fill the gap resulting from the contract parties' silence. It can be stated in regard of the relationship between the complementary regulations and the parties' common volitions that when the parties, aware of the existence of such regulations, adopt silent positions then it is generally held that they



have accepted the governance of them. The practical principles should also be utilized in the interpretation of the contracts.

These principles, in their general sense, are the legal regulations, like the authenticity axiom as well as the provisions of the science of principles to wit the principles governing the doubtful cases, applied to overcome the confusion and indetermination in cases where the legal verdict or subject is not straightforward such as in seeking the company of another person, exoneration principle and principle of omission disapproval (Shahidi M., 2000). Within such an interpretation, the interpretation in favor of the obliged can be concluded in such a manner that it is sometimes the case that the two parties reach disagreement after signing a contract in the existence or realm of the obligation shouldered by the committed party.

Disregarding the cases that the parties intentionally refrain from mentioning some obligations or forget to do so, the use of brief and vague words causes the emergence of discrepancies. If a party claims agreement on an issue or existence of an obligation and the other party denies it or believes in the existence of a rather lighter obligation, it means that there is a disagreement on the contract in whole or its domain. In this case, the principle is the exoneration of the obliged party from the obligation rather than imposing additional obligations on him or her (article 117 of the civil procedure) and the obligee has to prove the obliger's indebtedness. In interpreting such contracts, the sure amount and limit is deemed sufficient and the obligee (claimant) has to be demanded to prove extra obligation (Ghasemzadeh M., 2008).

C) *Norms:*

Norm means recognition and identification literally; it also means the thing that is well-known and accustomed to and accepted by the wise (Langerudi M. J., 2009).

In legal terms, norms are the only indispensable legal tradition that is enumerated as the second source of law in the legal knowledge; they are also recounted as one of the mobile and discoverer sources in the Islamic jurisprudence after the holy Quran and the prophetic tradition. It is made clear from the previous statements that the "scholars' norms" are outside the present discussion's scope.

That is because the scholars' norms, sometimes called the judicial norms, are derived of the scholars' traditions and habits and possess an inferential aspect, meaning that they are deductions by specialists of certain principles while the norms, in their special sense, are the traditions and styles exercised and practiced by the mass of people. As for the norms' justification limits in respect to contract interpretation, they can be classified to peremptory norms and interpretational norms.

By peremptory norms, the common practices are intended that feature indispensability and generality like the legal axioms and, in the meantime, they should have specific legal mandates.

Such norms are termed law-independent mores, meaning that these norms have been transformed into indispensable legal axioms not by the power of law rather based on practices that have been formed in the social needs with no intervention of the legislator. These norms are known to have stemmed from the general conscience of the society without them being required to undergo certain formalities.



On the contrary, the topical norms are the practices clarifying the limits and orders of a subject matter.

In fact, this type of norms is applied to recognize the examples and subject matters of the verdicts. Therefore, it can be considered as law-leaning norms because there is a need for referring to the legal texts for recognizing the examples of topical norms (Hayati A. A., 2014).

It can be stated in a general look that the credibility of norms essentially stems from its indirect implications of the wills and intentions of the individuals signing a contract.

The contract composers who are essentially familiar with the transactional methods exercised in their own specific communities and by certain groups implicitly take into consideration this familiar method when forming a contract. In fact, the thing that implies the subject of the norms is not the words exchanged between the parties rather it is the familiarity with and mental tendency resulting from the reflections of the method continuously practiced by the society.

In another classification, norms are classified into general and special in terms of the majority or minority nature of the individuals practicing them. The general contractual norms are the mental tendencies to which the majority of the individuals living in a society have accustomed to and the special norms include the mental tendencies to which a certain group residing a given region or district and with common profession and occupation are accustomed to (Shahidi M., p.305).



CONCLUSION

- 1) The contract interpretation is carried out based on the theory of verifying the parties' common intention in Iran's law and the judge is obliged to firstly investigate the context of the contract and its appendices and attachments to discover the common will of the parties at the time the contract was being signed and if the common will can be discovered through investigation and exploration in the contract text then resorting to the extra-contract criteria is not permissible. But, in case that the common intention cannot be inferred, the judge has to incumbently refer to other methods of contract interpretation so that the hostilities can be dismissed.
- 2) Since the need for interpretation is felt in a more accentuated manner in the financial contracts and each of the parties, in case of financial loss, might attempt to interpret the contract in favor of themselves and dodge the fulfilment of the contract conditions, there is a more tangible need for the definition and recognition of such contracts than the other types of the contracts.
- 3) To deduce the parties' common intention in the course of their signing of a contract, besides the direct reference to the contract text, there are other solutions open to the judge. One such a solution is referring to the contract interpretation methods, including the investigation of the inter-party common procedures, post-contract common procedures and paying attention to the validity of the parties' silent stances. Also, in cases which the parties' wills cannot be recognized, the judge is incumbently to resort to such other regulations as good will to resolve the discrepancies and interpret the contracts and in doing so, s/he has to base his or her interventions on such principles as contract

interpretation at the expense of the drafter, interpretation in favor of the obliged party and interpretation considering the overall status of the contract.

- 4) One should not think in interpreting a contract that the judge's scope of authorities is so vast that s/he can interpret contracts under any circumstances. In other words, when the contract articles have been stated clearly and explicitly as a result of which there is no doubt, ambiguity, conflict and silence along with clues found therein, the judge is obliged to order the fulfilment of the contract conditions.
- 5) After investigating the existence of contract interpretation conditions and their domain, the judge has to enter the nature of the contract and perform interpretation so as to resolve the discrepancies. But, in doing so, s/he needs tools that can be utilized as interpretation means and these instruments substantially are the general titles of the words, clues, legal regulations and practical principles and norms.

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