2528-9705

Örgütsel Davranış Araştırmaları Dergisi
Journal Of Organizational Behavior Research
Cilt / Vol.: 4, Sayı / Is.: S2, Yıl/Year: 2019, Kod/ID: 91S2485

THE RELATIONSHIP BETWEEN THE TRANSFER OF OWNERSHIP AND THE GUARANTOR WITH THE RULE OF "PREMATURE BRIBES"

Ali AGHAJANI[1]*, Ali SHARAF AL-DIN[2]

[1] Master of Science in Islamic Law and Law
[2] Master's degree in Islamic Law and Law.

*Corresponding Author

ABSTRACT

In the legal system of Iran and Imamieh jurisprudence, the marriage contract is customary, and its most important effect is the transfer of ownership, principally at the same time and with the conclusion of the contract. However, the guarantee may be left to the seller (in the surrender) and the buyer (in the surrender). This guaranty is the same guarantor. Compulsory bond is an obligation to pay a certain remuneration in exchange for a deductible payment and vice versa, which is only made in a negotiated agreement. This rule does not apply to the plaintiffs, and can be extended to the case of Thaman and other exchanges other than Bāyī. The obligatory guarantor and its relation to the concept of surrender and acceptance or commitment by a committed person is one of the most important issues regarding the rights of obligations. The transfer of ownership in a custom-made contract, the main purpose of which is an agreement, is, in fact, when it is possible to realize that the seller is in a position where the acquisition of ownership and the exercise of the owner's right by it is possible by the buyer. Among these issues, the jurisprudential rule of "wasting before the bill" has long been one of the challenges and differences between jurists and jurisprudents, and sometimes it has been confused between these concepts and their effect on each other. In this paper, we first look at and analyze the relationship between submissive submission and transfer of ownership, and in this passage we will become acquainted with the concept of collateral warranties, and then we will examine the rule of "premature debt before the bill" and its attribute in various assumptions. We try to do this. We explain the narrative so that scientific analysis of concepts such as submission and transfer of curfew can be better done.

Keywords: *Submission, Transfer of Ownership, Compulsory Warranty, Risk Transfer, Pre-Bid Payment.*

INTRODUCTION

The moment of transfer of responsibility (risk) to wasting money in Iran's law is one of the most important discussions about contractual liability and is one of the most important contractual obligations, which often has a timely symmetry with a massive surrender, as well as this very transfer of routine duties and in various legal systems it was discussed. The effect of these criteria and obligations is due to the principle of consistency and the durability of the obligations and the effects of the contracts. By assuming the prevailing preemption of goods to the customer, the identification of the criteria and criteria for the risk of the goods is very important and effective in our legal system as well. A serious challenge is known. Conceptualization, definition and explanation of the concept of submission, bill, and warranty must be carefully reviewed and according to the assumptions and realities in the field of routine trading and in accordance with the rules of trading. One of the main issues in this research is the jurisprudential study of "the total amount of money spent before Al-Qabz

Geliş tarihi/Recieved: 28.11.2018 – Kabul tarihi/Accepted: 10.03.2019 – Yayın tarihi/Published: 21.05.2019

Fahvm Mala Baiya" from the point of view of jurisprudence in order to examine the document and the narrative meaning. In the writings of most contemporary lawyers as well as jurisprudents, it is pointed out that lawyers have paid more attention to paying for religion or contract. The contract is a reciprocal and arbitrary agreement, so the determination of the time of transfer of ownership has a significant effect on the recognition of the collateral security, in other words, the two issues of the transfer of ownership and collateral are so interdependent that it is assumed that the collateral is in a contract of ownership. The prevailing rule of premature bribes in his writings has a special position, and in this case two general points are often presented; most of them have analyzed the rule under the theory of compensated guaranty and they believe that this rule is contrary to general rules of contracts However, another group considers this rule uncontroversial as the general rules of contracts and treaties and constitutes an exception. The main questions of this research are the concept of the transfer of responsibility for the loss of goods and the preponderance rule. In this passage, we will examine the documentary evidence and examine the implications of this narrative based on the science of al-Hadith, and we will use it to analyze the current concepts of civil rights in order to ascertain how this principle can be analyzed in the framework of the general principles of transactions and contracts. In the first part of the study, we will examine and explain the concepts of transfer of responsibility and publishing the history of jurisprudential jurisprudence in this regard. In the second part of the research, we study the "pre-billing wage" principle and present a new argument regarding the implications of this rule we will pay (Ansari and Taheri, 2005).

Key concepts

- ***Wash***

Wasting in the word means to perish and destroy. In repairing lost money means the loss of the property without the direct or indirect involvement of the owner or another person. Waste is also used in the form of definitions and titles such as wasting money, wasting money, wasting money and wasting the same tribute. Others regard the loss as "the object of being both in terms of development and in terms of finance and, in a nutshell, every transformation of an object so as to perceive the wisdom of the truth" 2. So what disappears with natural factors or loses its taxes is not the same. Dr. Emami considers the cases in which he is wasting subject to the rule of thumb, such as: drowning and robbery, if it is not possible to find it. 3 Some others, citing the fact that the backing and value of anything depends on the credit for the rationality, so that Properties and complications are also eliminated. 4. But this does not sound right, because if it remains the same, but some of its features do not go away from the mistakes of the prophecy, it is to use corrections such as flawed and non-existent, and it should be used that requires its own bob (Jafari Langroudi, 1993)

- ***bills***

The bill is word for word: 1. Getting to the hands and getting with all the hands. For example, the soothsayer's bill means getting John. 2. Collapse and closure in front of the expansion. As they say, bills and extensions, shrinkage and expansion. 3. The document and the letter that is exchanged between the committed and the committed. As they say, give it something and get a bill that is the sum of the bills. 4. Capturing and staying on something. The word bill is used in the legal term and jurisprudence in a single concept, which is a customary rule over property. The word "bill" has no legal and legal meaning, and it remains in the customary sense. The so-

called bill is the receipt and receipt of the subject belonging to the party to the transaction by the person to whom it is provided.

- *Great*

Mabie has been bought and sold locally and sold, sold, purchased and offered for sale. The so-called Mibia is said to be the same as the one outside or in general, in Dermat, which is said to be awaiting the expected change. The customer's bill and customer bill are referred to as being simply provided to the customer. Article 367 of the Criminal Code states: "The surrender is to give the customer a graceful possession, in such a way that he is able to enjoy the use of the possessions, and the bill is the use of the customer on the mob." Thus, the bill and the surrender of two different aspects of the truth: The seller's role in mastering the buyer is usually called the surrender, and the buyer's title is called the bribe (Jafari Langroudi, 2004).

Legal nature of the bill

Considering the role of bills in various legal phenomena, it has a different, different nature, as follows.

- *Bills as a condition of correctness, necessity*

In actions where the bill is a condition of validity, such as waqf, life, competition, residence, imprisonment, mere sale, mortgagement, and so on, and in the acts that the bill is a condition of necessity, such as a willful will, and where the bill as a distinct factor and determination Is a general tax exemption and a determination of a commitment, such as the sale of a general lawyer in a specified manner, is a legal and voluntary act that, for the purpose of realization, requires the permission of the repentant (the trader and the carrier) or his representative, so that his permission for the purpose of taxation It will be traded and otherwise no bills will be received. Therefore, in such cases, the bill is an independent, unilateral legal act, ie, the law. The Verdict No. 2661 dated 4/12/1316 of the Branch of the Supreme Court of the Islamic Republic of Iran, which provides: "In a general or restricted bill for a limited number of persons, the permission and determination of the seller is a condition and, in the event of his refusal to determine, the court must require To be determined "(Jafari Langroudi, 1999).

- *Bills as the Effect of Legal Execution*

In actions where the bill and the amount is not a condition of their accuracy or necessity, they do not play a role in the realization and deployment of them, and the determinant factor is not a factor, but as one of the works and accessories of the contract, such as the contract of sale, the subject of which is the same as that which follows From the conclusion of the "ownership of the movable property, and the customer and the seller have a commitment to the bill of exchange" (Article 3 and 4 of Article 362 of the Criminal Code) to distinguish the legal nature of the bill should be distinguished as follows:

1. If the conditions for the exercise of the right of imprisonment are provided, the bill is an unilateral independent legal act, namely, that the action of the bill is enforced by the permission of the lawyer or his representative.
2. If the conditions of the right of imprisonment are not present, the bill is an involuntary material action, that is, a legal event, which is obtained without the permission of the seller, and the buyer can check the invoice anywhere (even with the seller's prohibition). Therefore, it seems that the Article (374 BC), which provides that the receipt of a bill is not a conditional requirement, and the client can accept the invoice

without permission, shall be deemed to have a right in which there is no right of imprisonment, for example, Whether it is either motility and the expiry of the deadline, or that the seller has rescinded his imprisonment or that he has been liable to pay a fine, if he considers the provision of this article absolute, he will ignore the right to imprisonment and the violation of his rights. It was not justified by any means. In jurisprudence, this is also considered by the great jurists; if Sheikh Mortazai Ansari says in an appropriate manner: "If the abstainer accepts a transaction without the consent of his side, the bill is not correct ..." Article 378 of the Qom also confirms this Content is. Therefore, the views of the authors who are not obliged to accept the bill in their entirety are not required to accept the permission, and it is unlikely that they will be able to seize the buyer without permission from the seller, even with his permission (Katouzian, 2005).

- *Wait before the bill*

One of the guarantors (before the bill), this rule has basically been poured out because the famous narrative is that (if the money has been lost before the bill is wasted in the property) and, as the jurists have stated, this A consensual ruling is also given, but since the narrative has been worded as "redundant", there are some people in the verdict that the customer has been stopped before the payday is guaranteed, and this is where the forms of the other transaction are also issued It can be like peace and rents, and the quarantine and practice of the farm, the sacrament and the sacrament of the match, the punishment and the property of the book and the dispensation or divorce, in exchange for some They considered it to be correct that it must also appear to be correct. (The total amount of money spent before the death penalty) Article 387 of the Criminal Code stipulates: If a person submits to the client before surrender without fault and negligence, a lump sum payment must be returned to the client unless it is in order to surrender to the ruler or His vice president has referred to the loss of the client's property. "(Rasouq, 2013)

In this material, the material must be of the same or definite kind; and it is assumed from the material that if a person is brought about by action or fault, the marriage contract is not inferior, but it is obligatory, according to the rule of wasting and supplication If the loss is due to a third party's fault, it will not be losing money, but a third party, against the customer, will be responsible for the rejection of the bad thing, if the loss is due to the third party's fault (Fissihizadeh, 1998).

- *Basic Provisions*

Regarding the fact that the provisions of this rule are in accordance with the principle or contrary to the rule, most of the jurists have said that the abovementioned judgment is contrary to the principles and rules of the original, and the exception to the principle of ownership, the customer is obligated to accept and agree, because the financially sold and by The buyer, taken in the event of loss, should be owned by the customer and, according to this rule, is the owner of the previous one. And Lee, in our opinion, accepts and acts contrary to the principle, and the cases must be limited to what is certain. Regarding whether the provisions of the rule are in place in all accounts or only in cucumber animals? There are several theories that are as follows:

A. That its judgment is valid in all accounts.
B. Only the cucumber is dedicated. Since traditions are the only cucumber of the animal.
C. There are two theories about the fact that the rule is specific to a client's cucumber or includes a cucumber, and these two theories are based on the implications of this rule as contrary to the principle or in accordance with the principle (Oloumi Yazdi, 2001)

Forces and forms of wiping before the bill

In the present article, the basic assumptions as well as the various forms of the prevalence of pre-Islamic law have been investigated in Islamic law and jurisprudence (Khoyi, Abolqasem, 2018).

- ***Fundamental assumptions***

The pre-billing rule has been discussed with various assumptions, including: wasting everything before the bill, wasting a part of the debt before the bill, and wiping out the welfare benefits, which, according to this rule, is wiped out to the buyer before delivery, Neglected contracts are returned to the buyer. (Khoyi, Abolqasem, 2018)

✓ ***Waste all the money***

In the first hypothesis, the jurists of the Imami claim that if the mābi is identical to the one that caused the heavenly pest or his verb to die (in cases where it is the animal of the animal), it will be blamed and the seller will be the guarantor of the wise. If the dealer has received the price from the customer, it should return it, but if the customer refuses to get the goods or if he has agreed to stay with the seller, he is the guarantor. Hanafi and Shafi'i jurisprudents also have lost their goods before bills due to their heavenly pests or their common verb, but the Maleki only in certain cases are responsible to the seller before the bribe, including for the corrupt deceased. The Hanbilians only guarantee that if the goods are of kili or weighed goods or counted (small, medium or small). (Khoyi, Abolqasem, 2018)

✓ ***Sometimes miserable***

In the assumption of taking part of the goods before taking the customer, in the opinion of the jurists of the Imami, if, in contrast to the lost part, a part of Thaman is placed in a way that can be traded alone (such as that one of the two sold sheep is wasted), the marriage contract Particularly the wastes are lost and the price is returned to the customer. The buyer may, in the case of the remainder of the goods, cancel the whole contract by using the cucumber, or accept the goods in the same state, but if the part of the lost item is not part of the balance, the customer will agree to the contract with the same incomplete state Or terminate the marriage contract .

The same is true of the marriage contract in the event that it is wiped out due to its verb. The benefits of the goods are in the order of trust until they are in order and not delivered to the customer by the usurper, and if, without being damaged, he or she is wasted, the guarantor is not the guarantor, since the guarantee of wasting before the bill consists only of the commodity's principal And it does not flow about its benefits. Of course, if the fruit is the fruit of one thing, it will be the case if it is wasted. In the opinion of the jurists of the Imami, the customer is the guarantor whenever the goods are taken after the customer's bill and after the time of the cucumber is expired. Also, if the goods have been wasted after the customer's bill (without his violation or violation) and at the time of the seller's termination, because the customer is the owner of the goods in this case, and the pre-billing rule does not include these.

But if the loss occurs after the bill and at the time of the discretion of the customer, the seller will be the guarantor (Khoyi, Abolqasem, 2018)

Waste in cucumber time

Another rule that is used in a mooring contract is the wiping rule at the time of cucumber ("Al-Talafi time al-Qiar mhmn lakhirra" or "Al-Talif al-Qiyar mn al-Baiqi". The documentary of this rule is anadhadith that compensates for the loss of goods after the customer's bill And it is at the time of the discretion that it is due to be terminated, and the rule is also liable to the original principle, which is basically to compensate the owner for the loss of property. Article 453 of the Civil Code of Iran regards the rule as the parliamentary cucumber, animal and current condition. , Most Sunni jurisprudents in the event of the bulk of the goods after the bill and at the time of the customer's cucumber, basically cucumber and the contract L Time (deterministic), but it was a seller of the product Nmyshmarnd guarantee. (Rasouq, 2013)

- ***Moby Bug Before Billing***

The loss of money before the bill in Iran's jurisprudence and the Iranian law can be reviewed in the form of: Waste by the consumer, wasted by a third party .

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✓ *Waste Bleed*

According to Article 387 of the Criminal Code, the termination of a marriage is carried out in the event that the plaintiff is washed without any omission or fault, that is to say, foreign accidents. Therefore, the matter is considered to be excessive and not wasteful. That the incident should be external, there is a consensus among the lawyers, each of which is the reasoning Have their own. Dr. Emami says that the premature death sentence is unconventional and does not include loss and loss cases. But some have objected that the discretion to terminate the contract is necessary and the right to terminate it is to prevent the loss, and in this case the buyer's loss is compensated by referring to the parable or the price of the seller, there is no other reason for the termination.

✓ *Waste by a third party*

In this case, there is a consensus among the jurists that the guarantor will be liable to the buyer. Imami's doctor says that if the client is killed by the customer, although he does not know that he is his own, it is the current seizure, because in the case of a blank permission As if Mbai was in possession of the customer, he did not need to pay a bill, according to Article 389 of the Criminal Code, which states that if the two articles above (Articles 387 and 388) are grossly lost or defective due to customer action, the customer does not have a right to pay and must pay the penalty. . Dr. Emami and Dr. Shahidi believe that the customer will be liable for this.

✓ *Waste by the buyer*

There are three points in jurisprudence in this regard: 1. Guaranty for the exchange - 2. Discontinuance of the marriage as the case is for wasting because of the loss of sharp loss. 3. The customer's discretion in claiming the price or the price, or canceled the claim. They accept the first comment, the guarantor for the exchange, and their argument is that Article 387 of the Criminal Code does not include it and should be an external event.

The pre-billing pre-billing terms include:

1. The currency is the same as the foreign one, because the general in Dhmh is owned by the customer due to its non-assignment to the bill with the customer.
2. Wait until delivery to the customer.
3. It is commonplace to waive without blame (excesses), but if it is disputed by a third party, it will be debated in a separate discussion.
4. It has never been referred to the client or the ruler and his vicegerent to surrender. (Najashi, 2010)

- *Superficial defeat before surrender*

If the seller is defective before submission, according to Article 388 of the Criminal Code, the seller will not be liable, but the customer will be able to terminate the transaction. If a defect is

committed by a third party, the third party is liable for the compensation to the customer (Oloumi Yazdi, 2011).

Second clause: Great disadvantage

According to Article 425 of the Criminal Code, the defect which occurs after the bill is filed before the bill is in default is a defect in the former, that is, the client will be able to either terminate the transaction or take it out of the ordinary. If the defect is from a third party, the third party is liable for compensation against the customer. The pre-surrendered pre-surrender is not subject to the pre-surrendering rule; this damage is not in vain, and Idihay is not in vain, as opposed to the supposed principle, nor a recipe. Finally, it should be noted that in an object that has the right to be non-existent or that the object is so devoid of belonging to the non-sticking or blended property that can not be separated, the bill is not correct by the client, and if the asset is shared, Unless otherwise agreed upon by a joint transfer of funds.

- *Wait before the bill*

If after the marriage and before the bill, an attribute of the attributes of one of the two alternatives was lost, whether or not that attribute is considered to be a defect; 18 is the rule of loss included in this case? If the document is the rule of narratives or consensus, then the rule will not be descriptive, since the rule refers to the total and identical loss before the bill, not an attribute of its attributes.

Concept and types of guaranty

- *Definition and nature of the guarantee*

The guaranty in the word means "to take charge of bail." "From a legal point of view, a guarantor can be considered as an obligation to assume or assume the responsibility for placing something or thing, and since the guarantor can be left to the discretion of the individual and in accordance with the law of the law, Definition of suretyship It can be said that a guarantee consists of an obligation and obligation of a person, whether arbitrarily or arbitrarily, against another person, with the explanation that the voluntary guarantee is due to voluntary discretion of individuals in the form of a contract and obligation, such as a guarantee arising from the conclusion of a pledge or Remittances or bail and indemnity are due to the rule of law and without the influence and interference of the will, such as the guarantee of loss, loss or disdain . Regarding the legal nature of the voluntary guaranty, which is named as a pledgor or contractor, Article 684 of the Civil Code regarding the conclusion of the pledges and articles 724 and 727 of that law in connection with the contract of treasure may be mentioned. (Najashi, 2010)

- *Definition of Momentary Warranty*

In Iran's law, although the contract is for a custom-made contract, the seller will be the seller before the bill is surrendered to the buyer in the event of an accident and he must repay the payment received by the buyer to the buyer. This responsibility is called "wiping". According to Professor Jafari Langroudi, in the terminology of law, "Whenever a moderate contract for wasting or wasting the subject of the transaction is warranted by law, and the guarantor's guarantee is deducted from the same amount of money, this guarantee is considered as a monopoly guarantee, such as a surety against the gross loss before the bill. In this sense, the swap warranties, transaction warranties and the same applies to the change.

- *Legal and Legal Nature of the Compulsory Warranty*
  - ✓ *The legal basis of the customary compensation*

Since the Iranian civil code has complied with the hypothetical guaranty of Imamieh's jurisprudence, the reasons for justifying the grave and bad guaranty before the bill are expressed in the well-known jurisprudence of the Imamiyah as follows.

1) Traditions

According to the Prophet's hadith, "The total amount of money spent before the death of my husband is due", every money laundered before the bill is wasted from the property. "Also, in a narration from Imam Sadiq (AS), quoted in response to a question about a man who has a commodity He bought a man from another man to buy the goods, except he left the goods in his bosom, and then he was stolen from the property. He said that "he would have the property of the owner of the goods remaining in his house until he handed that property to the customer and dispatched it out of the house, and when he had thrown it out, the other guarantor would be entitled to him until he returned the property to him.

2) The Consensus of the Faqihs and Islamic Sirs

Since the validity of these reasons ultimately ends in the Prophetic hadith, it is not an isolated cause because some time comes to the consensus of the Islamic Sira that the discoverer is innocent and in the place where before the consensus is invoked innocent narrative is no longer The power of consensus is considered as an independent reason, for this reason, the detailed explanation of this argument is avoided.

3) The custom and the foundation of the intellect

According to the custom and reasonable habit of the interlocutors in the marriage contract, which is a pledged contract, each of its respective goods puts up against and replaces the other, and in fact the parties are satisfied with some kind of trade, so until When there are alternates and there is the possibility of delivery of the opposite, there is the adherence of the other party to the marriage, and if, after the loss of one of the two goods, it is not possible to deliver it as a replacement, the marriage is definitely overthrown and, as a result, It remains to its owner and the wreckage caused by the loss of property before the surrender to the opposite party will be the owner of the property.

- ✓ *Military Warranties Legal Basis*

In connection with the legal basis of the Compensated Guarantee and Article 387 of the Civil Code of Iran, various analyzes have been made by the scholars and scholars of the science of law, which are referred to below.

1. In general, after the conclusion of the contract, before the surrender, the property is seized in a non-authorized and unauthorized property and is in a usurpation manner, the responsibility for the loss and damage sustained by the victim will be at the expense of the usurper during this interval.
2. The obligatory guarantor is an exceptional exception to the principle of the lawfulness of a marriage contract and is due to submission to a court order.
3. In the event of a significant loss before the bill, the bet is to be instantly charged before being wasted and the casualty will be casualty.
4. The interest is temporary and shaky after the bid is made and continues to stop on the bills.

5. Due to the fact that the contract is concluded, the obligatory guarantee is due to the prevailing interest in the bill with the common intention of the parties and in accordance with the legal principles governing arbitrary transactions. (Najashi, 2010)

✓ *Conditions for the implementation of the guaranty and the basis of this guarantee*

In the marriage contract, the ownership of Mbae and Saman will be transferred only once the marriage takes place. This is one of the most important effects of marriage. The other effect of the contract is to oblige the client to pay a fair amount of money and the customer's commitment to the payment. Submissive submission is a basic and basic commitment, but where a winner is lost, another commitment replaces the main obligation, which is a commitment to a Thames recovery to the customer. Also, the loss must be before surrender, and this condition, both in the context of the narrative and the narrative based on it as well as in Article 387 of the Civil Code, has been stipulated. Therefore, it can be said that the conclusion of the contract itself is a prerequisite for the creation of a coupon guarantee which This property is referred to in Article 362 of the Civil Code. Article 362- The works of the right to be found are as follows:

1) Once the customer has arrived, he will be the owner of the owner and the owner of the company.
2) A rigorous contract makes sure that the customer understands the client and the customer understands.
3) The obligatory marriage contract is obligatory for surrender.
4) A contract for a customer is required to pay Tahman. "

From the other terms of the realization of the guarantee, reference is made to the transfer of ownership; that is, the guarantee is created when the main effect of the bond is the transfer of ownership. Most Shiite jurisprudents believe in the transfer of ownership by contract. Ownership transfer is sometimes done with a contract, like the same one, and sometimes it is subject to the choice and submission of surrender, such as in the general assumption of a general or definitive term. In addition, if the seller is in the general form, the seller is obliged to determine its suitability and surrender to the customer and, until such an assignment is performed, he has not acted against his buyer's obligation.

As well as Article 387 of the Civil Code: "If a person submits to him before his submission without fault and negligence, a lump sum payment shall be returned to the client, unless he has referred to the ruler or his deputy in a manner which is in order to surrender. In this case, the customer will be wasted. "

Some lawyers in the definition of the guarantor have stated that: "In a marriage contract, if Mabyi is wasted before the customer surrendered to the accident, he is losing money from the bag and must return the lost amount of money to the customer, , The guarantor is called

The arbitrary safeguards clause in Iran's civil code derives from jurisprudence and hadiths, "The total amount of money lost before the death of my husband," which led to the effect of the rule of "premature death".

This paragraph is one of the rules of jurisprudence in all trades and is based on a narration that is known in jurisprudential books and narratives based on the principle of "the total wiped out before the enmity of my fellow man." The provisions of this rule, contained in Article 387

of the Criminal Code, are that if a claimant is found to be lost before the customer reaches the customer without any abuse, he or she must suffer damage. In the opinion of the jurists, before the transfer of the guaranty to the customer, it will be liable for the damage.

The late Imam Khomeini, in the book of al-Bayba, states that if a person is never killed before the bill, it can not be claimed that the construction of the rationale is that the transaction can not be returned to the customer. The fulfillment of the waiver provided for in Article 387 is that the guarantee is indemnifiable as to the amount of money secured before the bill. The reason for this is that the loyal commitment has come about with a massive surrender to the customer. So that his commitment to the transfer of ownership has taken place only once the contract has been made and the vow to surrender, which is in fact the complement of the first commitment, is also carried out and if the wise payment after the bill is made by the individual person with the desire of the parties to the contract and the rules of the public Contractual contracts will be in conflict. Also, the late Imam Khomeini has pronounced the bill for the transfer of the guarantee. (Moosavi Khomeini, 2012)

The relationship of submissiveness and ownership transfer

- ### *Surrender and time of ownership transfer*

The time of transfer of ownership in a contract to a buyer varies from one legal entity to another, and criteria such as the time of the contract, the moment of surrender, the time of the completion of the contract or the time of the parties to the bargain is introduced.

In Iranian law, the transfer of ownership is subject to the essence of the marriage contract. Article 338 of the Civil Code defines the law as a "lawful act". In Iran's law, high-value property is transferred to a contract that is reasonably available to accept this transfer. This means that ownership before the contract and before the assignment of the contract subject to the contract can not be transferred, and the agreement between the parties can only be considered in the framework of these rules. Meanwhile, the concept of surrender is known as one of the marriages, and it seems to have its own nature and characteristics. Submission, whether physical or real, or hypothetical, must ultimately be held at the disposal of the buyer and enable him to exercise his own property rights. On the other hand, the transfer of ownership to a buyer, which is the main purpose of the contract in all legal systems, can be fulfilled at a time when the seller is in a position where it is possible for the buyer to exercise ownership of the property. Therefore, although it is not appropriate to consider the transferability of a property subject to a substantial surrender due to the nature of the suitability of the purchase agreement, it can be argued that the transfer of ownership has taken place when the seller has surrendered to the buyer or is in a state of surrender. Submission in its original form has been a direct transfer of such domination and authority from the outside to the customer. Since the definition of submission to Iran's civil law has been adapted from ancient Islamic texts and sources of jurisprudence, in this definition, submission to the transfer of super-control to the buyer is defined by the seller. This concept is also emphasized in Article 367. Surrender of a verdict or hypothesis is accomplished when the means of controlling and mastering the material are transferred to the buyer. Submission of the key to the home or the place where the subject of the transaction or commitment is held is a great surrender because this is the case that the seller has been seized by the buyer. It should be assumed that the surrender of the key to the warehouse is considered to be a surrender, in which the true and proper access to the rich and all its components can be achieved (Ansari and Taheri, 2005)

Surrender Effect on Movable Warranty Transfers

Submissive submission of the Supreme Court and its related rulings in the jurisprudential texts have different rules, directly or indirectly. The manner and quality of the transfer of the guarantor of warranties or the risk of loss is one of the important effects of submission, which refers to this issue in the Iranian Civil Code. A verbal guarantee is a Arabic term used in the word to attach, harbor, bail, accept, and use.

The concept of the term warranties in the science of law is that what is owed to it is that after the guarantee has been made, another person will be liable to the guarantee, and he will assume all the obligations and obligations that he has committed.

This term of the term "guarantee" means an individual or individual obligation to pay to another person or an obligation to pay financial assistance to another person, whether in his sole discretion or by law. Therefore, the origin of this obligation is either from the contract or by the law. The warranty is a voluntary and voluntary agreement, termed "warrantee", such as a guarantee from a warranty contract, but if the intention is not to provide an effective guarantee and is the basis for the guarantee of the law, then the guarantor is a surety of indemnity, Losing, collecting and guaranteeing.

Compensated guarantor is a kind of guaranty that originates from the conclusion of the marriage and therefore has the same effect with the guarantor of the marriage (the guarantor's contract); however, it should be noted that in the contract of pledge the obligation to pay and pay the religion is a direct effect of the contract, while in the contract A paid title such as a marriage contract is an obligation to surrender the indirect and consequential effects of the marriage. In a custom contract, the transfer of ownership is the direct effect of the contract, which is realized with the occurrence of the contract without intermediation, but the surrender is an obligation to be fulfilled. For example, the right to buy and sell interest in a rental contract is a direct effect of the contract, and the obligation to surrender to the public by the general, as well as the obligation to surrender the same tenancy for the benefit of the lender, indirectly and indirectly. In the contract, The obligation of any party to receive the same is a commitment to give a given change, and this obligation is called "concurrent warranty." (Moosavi Khomeini, 2012)

- ***The relationship between transfer of ownership and collateral warranties***

In the relationship between transfer of ownership and hypothecation, four modes can be imagined.

First case: By concluding a swap agreement and a mortgage, both are transferred to the customer, in other words, when purchasing the goods, the owner of the owner is sold and the guarantor is transferred to him.

Second state: the time of the transfer of the ownership and the guarantor of the bond with the submission and the large bills are realized to the buyer, and from this time the buyer is the definite owner of the goods and the guarantor of the goods.

Third Mode: In this case, after the conclusion of the purchase agreement, the property is transferred from the seller to the buyer, but the waiver remains until the time the seller surrenders to the buyer.

Fourth mode: In this case, in contrast to the previous state of ownership, the property is transferred from the time of delivery to the buyer, but the waiver guarantee is realized from the time of the contract.

1. The relationship between surrender and ownership

Regardless of the time of transfer of ownership, control over the sold property is a common element between the concepts of surrender and ownership. Ownership and exercise of such control that the buyer can not acquire before giving up actual or contingent surrender and surrendering the transfer of that control. Surrender allows the buyer to apply aspects of property rights that are not possible without physical control, such as changes in the status and use of property in construction. Control and domination can be physical and material or hypothetical. The concept of controlling a verdict enables the seller to surrender his material or physical possessions and, on the other hand, provide the buyer with the possibility of exercising his own property at a time when he does not possess material possessions (Khoyi, Abolqasem, 2018)

2. Reviewing the rule of "the total wages of Al-Qa'ad Fahmoun Mala'iyat" and its relationship with the interim guarantee and transfer of ownership

In this section, we will first examine the narrative and text of the relevant Hadith, and then we will examine the relation between this rule and the hypothetical guilty and critique of the ideas expressed in this case, in order to give a new insight into the meaning of this narrative.

Sindh: Muhammad bin Yahya ibn Muhammad ibn al-Hussein Muhammad ibn Abdullah ibn Hilal ibn al-Khalid al-'Abb Abdullah (as):

The text: "I am the one who sent me a letter to me, and I will send it to you, and I will send it to you, and I will send it to you," he said. "I am one of them, and I am the owner of the land, and I will give it to you." It's just a matter of guessing even the right one. "

This prophet's hadith narrates the book of Mustardak al-Wasael from the book of Alawi Allali. Some jurisprudents have considered this narrative as saying that the back of bin Khalid is not known to the Mu'dadtsin and the people of Rijal.

The study of the works of the late Mohaddesi shows that according to Ayatollah Shabiri Zanjani, who is considered among the scholars of the Hadith sciences, this narrative is a normal and reliable document, and it is in connection with the connection of the Messenger and the late Ayatullah Khoyi The book of Mojahed al-Rijal has shown that about Ali-ibn Aqaba bin Khalid al-Asadi has been cited for about fifty-five narratives. Therefore, it seems that this narrator was considered a thief, although his religion and his health are not known, but because The numerous narratives entered on the part of them are considered "secrets". As a result, it seems that the basis of the later confessions is correct and accurate, and the narrative document, despite the differences, is not a problem (Ansari and Taheri, 2005)

CONCLUSION

In the discussion of concluding a bargain or in general an abusive agreement and two obligations; apart from the moment of the entry into the contract, the time of submission or the performance of the obligation and surrender of the transaction, there is also a distinct legal nature, such that, with the surrender and the bill being traded or The subject of the commitment to control the customer or contractor is based on the subject of the contract. Between these two points, the validity and the other nature of the real world are manifested under the guaranty of guaranty; in other words, in the customary bargaining agreement, the

transfer of ownership is the direct effect of the contract, which is realized with the occurrence of the contract without intermediation, but it is a commitment Which must be performed and the obligation of all parties to receive the same is a commitment to give a certain change, and this commitment is a "guarantor" that appears to be a commitment to result in the result of the provisions of the Civil Code and its existing rules.

In addition, an important document about the guarantor is given in various opinions of the jurisprudents, and it is the rule of "premature death before the bill", which is itself a source of prophetic hadith. The analysis of this narrative and the explanation of the signifier results in the conclusion that this rule, in the light of the above, is not in any way contrary to the general rules of the contract, but also the validity of the contract and the nature of the contract, and the assumption of a premature loss before the bill by the third party The guarantee of execution is different, with the assumption that the pestilence of the celestial causes a loss, and depending on the type of medium that is defined or determined in general, the opinion and the final result also vary, so that in the same way, in the event of a significant loss before the bill Thirdly, it is possible for a person who is a party to terminate a third-party contract at one and the same time, and if The same amount of money will be lost due to the occurrence of a pest. According to the guarantor's guaranty principle and commitment to the result, the massive loss of the principal committed asset, which is common, will be calculated. In the hypothesis that Mbai was generally defined in the general, before dividing and categorizing a large instance and transferring it to the customer it was not transferred from the basis of the property, and a massive analysis of the general asset would be easier in this assumption because it is based on By assigning and submitting a common instance, the transfer of ownership takes place, and before that, the lost property has definitely been in the property. It is possible for the client to submit the surrender to the seller as the main pillar of the transaction and the ultimate goal of concluding the contract. Because the buyer usually makes a purchase order for receiving the money, and until it has not been realized, the customer has not achieved its ultimate purpose, and failure to surrender it by the seller will cause the buyer to enter the damage. In order to not surrender, in the assumption that it is the same foreign, various reasons can be mentioned, such as the fact that the seller is wound up with fault (loose or abusive) and the vendor's neglect, or is lost by a third party, or is wiped out by the buyer or without The existence of any fault and negligence on the part of the common will disappear.

The result is that if the seller, before giving the buyer to the buyer, is wasted due to accidental and external events, without any loopholes or abusive and defunct vendors, while the ownership of the money has been transferred to the customer through the contract, it must be paid off and you must pay. Return to the buyer. In other words, despite the fact that the marriage contract is customary (Article 338 and Section 1, Article 362 of the Civil Code), and as soon as it occurs, the buyer becomes the owner of the money. However, the obligatory guarantor remains the responsibility of the seller to fulfill the gift of surrender. In jurisprudence, the well-known rule is: "The total amount of money spent before the death penalty is my property," in our law, Article 387 of the Civil Code, and the Vienna Convention of 1980, : "The United Nations Convention on the International Sale of Goods of Goods of Goods", Articles 66 to 70, are somehow debated from our subject. Thus, today, this rule, in addition to domestic transactions, is also cited, addressed, and used in international goods. Because not only does not a single country contract be limited, but it is not always paid in the

ordinary course of domestic and international transactions (usually done in the form of payments), and sometimes it does not pay, and sometimes the distance between the transaction and the delivery of the goods, It goes to days and months. In this case, it may be that the seller has not been given a customer's bill and is still in the process of being traded, and the loss of money during this time, whether in a non-circular manner, will lead to issues that identify the sentences And it requires a comprehensive review of the various issues. The most important thing that is in the wake of the loss before the bill or guarantor The risk or risk of loss is seen in our law, Article 387 of the Civil Code. Regarding the legal basis of this article, in jurisprudence and law of our country, there are two profound theories, each of which choosing to have its own special effects. If we consider the basis of the judgment contained in the foregoing as one of the legal principles, the result is that the sentence is not intended to be viable and not binding, and it should be applied to the loss of time before the bill, even in other contracts, It was like peace. However, if we consider this rule as a special marriage contract, we can no longer convey it on the other hand and in other contracts, and we must inevitably consider it an exceptional decree, and use it with a narrow interpretation, only to use it in the text. . So you can say:

1. Given that the principle of the rule is exceptional to the general rules of transactions, and the areas and criteria in the exception are the completeness of the transaction, and rationally, the failure to surrender the value of the transactions in the transaction caused the lack of full deployment, this criterion is in effect in all exchanges.
2. In spite of the sprawl of the regions and the induction of property in the mainstream, as the abandonment of the marriage before the surrendering of the great surrender dies, this judgment is also in force.
3. Despite the rule of thumb, the flow of other rules, whether in the form of entry, either by government or by assignment, is interrupted.
4. If the loss of money is realized by a libel or a barbarian, in any case, the mortgage is monetised and if the loss is realized by the buyer, it will be a gross bill.

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