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# INVESTIGATING THE CONTRACT CHANGE AS A SUBSEQUENCE TO A PROVISO AGAINST THE CONTRACT'S ESSENCE EXPEDIENCY

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## *ABSTRACT*

*There are discrepancies about the ideas that proviso is an agreement independent and apart from contract that bounds neither of the exchangeable items posited in the contract; not either the intention or the intended and that the contract is only a container of the conditions' occurrence within which the proviso can be actualized or that the proviso constrains the contract. From jurisprudents' perspective, there is no independent discussion about the contract change following the setting of a proviso rater its examples, like virtual will and transformation, have been expressed. Contract change has also not been independently discussed by the jurists rather references have been made thereto within the format of other discussions. Keeping this in mind, the issue would become what change might be brought about in the contract after a proviso was found essentially contradicting the contract? The current research paper has been conducted based on a descriptive-analytical method. It was concluded that setting expediency-contradicting proviso might cause alteration and change in the contents' expediencies such as the elimination of the customary and canonical effects of the contract in absolute terms without bringing about a new effect and/or cause new effects based on the agreement reached within the format of proviso by omitting these effects and their instrument. It is in such a manner that the change in the expediency might sometimes cause decline therein and, put it differently, the contract expediency might be totally diminished without the possibility of imagining an expediency for a new contract and it is also sometimes the case that the change in the expediency results in the omission of the apparently inserted contract's expediency following which a new expediency can be conjectured. Thus, in this case, proviso interprets the parties' wills and plays the role of a constraint.*

***Keywords***: *Contract Change, Proviso, Contract's Essence Expediency, Contract's Nature.*

## INTRODUCTION

### *Statement of the Problem:*

There are controversies about the ideas that the proviso is an agreement independent and apart from the contract and that it constrains neither of the exchangeable items proposed in the contract nor does it specify the intention or the intended and also that a contract is merely a container of the condition occurrence within which the proviso can come about or that the condition bounds the contract; also, it is debatable that the condition or proviso made in a contract for or against the parties or a third person is some sort of a secondary commitment mentioned by the parties meanwhile endorsing their primary commitments.

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In Imamiyyeh laws, anyone want to make a commitment or condition of indispensable type, it has to be in the form of proviso (Hosseini Ha'eri, 2002, 67). In legal terms, as well, any condition set in a contract in favor of a person and against another is called proviso albeit discussed before signing the contract. Proviso is a secondary commitment alongside with the primary commitment and it obeys the latter in all respects meaning that the authenticity, invalidity, influence and ineffectiveness of the contract leads to the authenticity or invalidity and influence or ineffectiveness of the proviso. Thus, if it is proved that the main commitment is invalid, the proviso would be rendered devoid of any effect. Based on article 246 of the civil law, invalidation of a condition has no effect on the contract.

From the perspective of jurisprudents, there is no independent discussion about the contract change rather some of its examples have been clarified. These examples have been discussed in jurisprudence in such topics as virtual will and contract transformation (Towhidi, 1996, 44). In some jurisprudents' ideas, the contract's expediency in some cases lies in its real content's significations, things used therein and attributed thereto and, in some other cases, it pertains to whatever the requirement and sentences taken into account for it and, here, the effect of expediency in the first meaning is intended (Esfahani, 1997, 153).

If the existence of a condition entails the absence of the conditioned thing, the assumption would be contradictory hence it is impossible to set a condition necessitating the absence of the conditioned. The expediency in making such a claim is that the existence of a condition negating the impossibility would be followed by an authentic contract because the existence of a barrier would turn it into the actualization of contract hence making it more acceptable. As it is known, both of these intentions at the side of one another are improbable; their occurrence together is impossible. So, they are deemed as condition and precondition in transformation (transmutation). If the will for condition follows the will for concluding a contract, the condition cannot exist in itself (Esfahani, 1997, 156).

When the condition is related to the constituting elements like the condition for absence of price in sales contract-if the intention is making no purchase, it would be logically improbable because there are two intentions contradicting one another hence the contract and condition cannot be actualized simultaneously. On the other hand, it sometimes happens that the will contradicting the contract's expediency is expressed after another will in such a way that the will for making a sale is expressed followed by the expression of a condition indicating making of no exchanges and this case varies between two states: the will expressed seminally might remain persisting or it might be accompanied by ouster thereof. In case of the persistence of the intention, it is impossible in what it intends because a negation cannot come about after the occurrence of what there is contradiction in it. But, the intention expressed after an impossible negation is willed does not rationally cause the actualization of condition whereas there is logically no barrier to the objectification of the contract (Esfahani, 1997, 154).

Amongst the jurists, as well, contract change has not been discussed independently rather it has been pointed out in between other topics. As believed by some legal writers, the condition against the contract's essence expediency renders the agreement devoid of effect when it becomes clear that the parties have fallen short of serious offering of the legal effect or that what they want is against law or public order otherwise it is possible for the condition against the contract's expediency to turn the agreement into another legitimate contract (Katouziyan, 2016, 188). In other words, it is well evident from declaring a conditioned demanding will

that they have asked for the expediency of the legitimate action and the condition against the expediency of the contract's nature makes it undergo changes and transformed to another institute (Katouziyan, 2014, 175&176).

Condition against the expediency might cause change and alteration in the expediency of the contract's purport such as eliminating the customary and canonical effects of an absolute contract without creating new effect and/or bring about new effects based on the agreement made within the format of the condition through removing these effects and instruments. Furthermore, the condition's disagreement to the contract's essence expediency might become clear (Safa'ei, 2007, 155). In this state, the traditional viewpoint holds that the contradiction between the contract, in whole, and the condition invalidates both of them but, based on this novel perspective, it is believed that although the condition against expediency causes change in the expediency but this change might take various forms hence featuring different effects and outcomes in a case-specific manner. Keeping these descriptions in mind, it can be proposed that what change would the condition against the contract's essence expediency cause in the contract? In the present article and in finding an answer to the posited problem, separate discussions will be put forth for investigating and elaborating the change in the contract's nature as a subsequence to setting of a condition against contract's essence expediency, the effect of the condition against contract's essence expediency on the authenticity or invalidation of the contract, assuming the revocation right for the person in whose favor a condition has been made following setting a condition against contract's essence expediency, simultaneity and non-simultaneity of inserting the condition with the contract conclusion and the effect of each on the contract.

### *Change in the Contract's Nature Following a Condition Against Contract's Essence Expediency:*

Change in contract's effect can be enumerated amongst the effects of inserting a condition against the contract's essence expediency with the explanation being that the parties agree based on free will and within the contract to a condition that, though being against the expediency of the contract's appearance, is willed by parties knowing the contract and condition with its special nature. This way, the parties express their final will under the title of a proviso through inserting a condition that causes the initial contract to be changed in its nature. Resultantly, the condition against the first contract's essence expediency does not necessarily invalidate the contract rater it might change its nature. From another perspective, this opinion can be justified by explaining that the parties might have possibly been inclined towards the conclusion of a contract by inserting a condition against the contract's essence expediency and this can be named "the parties' contingent will inclination towards another contract".

- ***The Effect of Parties' Will on the Determination of Contract's Nature:***

Besides law, will is also considered as premises of contract validation and the law is the source of will's governance and delimitation. Will stems from human mind and, by will, the intention to perform an action is meant in the principle of will governance (Shahidi, 2015, 55). In law, will is defined as a person's movement towards a certain task after imagining and confirming its benefits and this also includes the intention to perform an action (Ja'afari Langerudi, 2010, 82). In Iran's law, will means want but, in the transaction's mental condition or unilateral actions of valid consequences, will has been divided into two separate internal states of consent and intention (to perform an action) based on paragraph (1) of article 190 of the civil law.

Will is sometimes the sum of intention and consent and it is occasionally limited to the intention to perform an action (Shahidi, 2015, 57).

Man-made material and objective phenomena are the outcomes of external material movements created by the command of will or involuntarily and the human will cannot create them in the world of matter without material means while the relational natures are exclusively created via intentions to perform actions hence needless of material and objective conditions. Although the expression of will takes place through material movements (words, reference and so forth), this condition is also relational not material and objective (Khorsandiyan and Zakeriniya, 2010, 75). Therefore, legal action would incorporate a relational nature actualized with a person's will alone and without the effect or real conditionality of a means and material movement within the boundaries of regulations. It has to be pointed out that the thing directly intended by will of the transaction parties is the contract's nature not its effects (Shahidi, 2015, 189&190) meaning that, in any contract, the thing willed to be created and has also been intended and agreed is a special issue; for example, possession of the objective property in sales, possession of the interests in rent and marital life in marriage. Products of the demanding intention are relational (nominal) creatures (Emami, 2007, 180). In unilateral actions of valid consequences, as well, the demanding intention can either objectify its legal effect alone or negate a legal action's effect alone (Ja'afari Langerudi, 2010, 47-49).

Generally, there is a set of actions that can legally take effect if the doer demands the result and effect thereof during performing them (intended result). As an example, the purchaser should intend the possession of the sale item in exchange for price during signing the sale contract and demand its legal effect; the same holds for the seller. This set of the actions are not termed specifically in jurisprudence but they are called "legal actions" in the current laws (Safa'ei, 2006, 112).

Considering the above interpretations, the thing forming the nature and, subsequently, the effect of a contract is the parties' will. The parties conclude a contract with their intended nature in free will and based on their contractual needs. These contracts might be specific or unspecific. In other words, they compose contracts that might have certain conditions and formalities specified in adherence to jurisprudential and legal rules (specific contracts) or they might be contracts the conditions and formalities of which have not been specified in jurisprudence or law (unspecific contracts) with latter being justifiable based on article 10 of the civil law. So, individuals are not required to only sign specific contracts rather they are free based on their freedom and governance of will to choose one of a contract type, contract party and contract nature.

- *The Role of Parties' Will in Determination of a Proviso Influencing the Nature of Contract:*

Contract or agreement is a sort of voluntary social action that satisfies the humans' material or spiritual needs in a bilateral manner. The adjective "voluntary" expresses the main birthplace of the contract, to wit human will, and the adjective "social" indicates the necessity of law's presence for the actualization and validation. The result of this description is the governance of will in contract within the framework of law (Ghanavati and Abdipour, 2001, 76). Governance of will has been accepted in contracts and, generally, in primary legal actions

except in cases of contradicting the social order and its guard, i.e. the law. The principle necessitates veneration and freedom gifted by the God to the human beings.

As a principle in the Islamic jurisprudence forming the basis of Iran's legal regulations, governance of will is recognized in the expression "contracts obey wills". The individual freedom in performing legal actions, signing mutual or unilateral contracts and selecting the type of mutual and unilateral contracts and the contractual parties as well as the demarcation of the limits of the effects and provisos and also dissolution of the contract in permitted cases are concluded from the principle of will's governance (Shahidi, 2013, 56).

One of the cases that the parties are required to reach an agreement for it is the nature of the contract meaning that each of the parties should will the same subject the other demands. In case of the parties' disagreement, the contract would be rendered invalid. Parties' intention should be agreed not only in regard of the contract's nature but also in respect to the contract's specifications (being absolute, conditional, decisive or suspensive) otherwise contract cannot be actualized. Interpretation of a contract beyond the will and intention of the contractual parties would be against law as long as the involved parties' intention is not excluded by one of the contractual limitations, including imperative law, public order and good ethics, or as far as the parties are not found having kept silent in any of the cases. A contract features a legal nature and can be actualized with the will of the composers in the world of relation (as inferred from article 191 of civil law). Based on the principle of the will's governance in contracts, the principle of the contract actualization and all the effects and rights and obligations resulting thereof (except the essential outcomes of the contract) in adherence to the legal conditions belong to the will of the composers and no contract would be imposed to a person who has not willed it. Thus, except the imposed contracts like compulsory purchase of lands required by municipality from any possessor it wills, the interpretations always revolve about intention.

Although the importance of the will has been declined in the contracts and the position of the principle of will's governance has been downgraded against such stronger theories as public order, good ethics, consumer's interest, manufacturer's monopoly, interest and benefit-based economy, production for consumption and vice versa as well as an array of other factors following the industrial progresses and complication of the socioeconomic life, the paling of the role of the intention and principle of will's governance has not advanced to the extent of flawing them (Elsan, 2007, 18) in such a way that it can be stated that the parties' wills are still the basis and foundation of the interpretations and that, currently in Iran's laws and according to law, contract interpretation pivots about the parties' common intention and not social expediency and fairness that are rather ambiguous in terms of their examples.

As a transactional necessity in some business and economic relations, contract interpretation is always carried out within a customary format and based on intention and this intention is inferred from the explicit or interpretable words of the parties and the hints or written documents by either or both of them, their giving and taking or either their giving or taking as well as the silence of either or both of them. Therefore, if the parties insert a proviso in the contract in any form that is against the expediency of the contract's essence as ruled based on the contractual customs, the invalidation of the contract based on the condition against the expediency of the contract's essence is revoked and a voluntary change would be brought about in the contract's nature.

### *The Effect of Condition against the Contract's Essence Expediency on the Contract's Authenticity or Invalidation:*

Contract invalidation is amongst the cases of the contract change and/or, in more precise terms, amongst the effects of a condition against the contract's essence expediency. The majority of the jurisprudents and jurists opine that if a condition is inserted in a contract based on the parties' will and it is found against the expediency of the contract's essence, the condition annuls and invalidates the contract (Jaba'ei Ameli, 1993, 155; and, Katouziyan, 1999, 212). This has been stipulated in article 233 of the civil law and its result has been absolutely interpreted as "invalidation of contract".

Although the legislator realizes the condition against the contract's essence expediency as the invalidator of the contract in the aforementioned article, it can be figured out using a little scrutiny in consideration of the parties' wills in the interpretation of the contract's nature and status that, in the foresaid article, the legislator considers contract invalidation as including cases wherein the condition against the contract's essence expediency is set in such a way that the existence of the contract and actualization of the condition at the same time would appear contradictory and none can be preferred over the other in which state both of the wills are aborted and the contract cannot be kept persistent even with the interpretation of the parties' wills hence condemned to annulment.

- ***Scale and Premise of Contract Invalidation:***

Invalidation can be classically divided into relative and absolute types: the latter being the legal mandate for the violation of the law and every beneficiary has the right to claim such a kind of invalidation and it is not delegable like relative invalidation and it is not diminished with the pass of time (Mohseni and Ghabouli Dorrafshan, 2011, 255); the former is the legal mandate of the breach of regulations aiming at the support of the contract endorsers and one can claim such an invalidation type by stating that the law has demanded the sole support of him or her. Relative invalidation is diminished with the passage of time and it is transferable (Shahidi, 2013, 125).

It can be made clear in a careful attention that the above classification is based on supporting the private interests or the support of the society's legal interests; such as transacting a thing that is excluded from legal business is invalid and the public interest entails the invalidation of the transaction. Conversely, when a contract is mistakenly signed, only the private interest of one of the contractors is harmed (Shahidi, 2015, 159).

So, the invalidation is absolute when the rules serving the protection of the public interests are violated like a contract the direction and subject of which are against canonical and ethical regulations or when the formal regulations required for securing the business or public prestige are left unpracticed. Sometimes, observation of invalidation comes about in respect to the preservation of public order. Of course, this occurs when the violated axiom features a primary characteristic; thus, the creation of that contract or the violation of that regulation cause disruption in the timing of the rights so the public order and higher interests require the invalidation of the contract. Thus, judges are obliged to invalidate such a contract in terms of their administrative duties. It might even become the case that the prosecuting attorney shoulders the responsibility of the issue and request the invalidation of such a contract from a court (Katouziyan, 2011, 93).

Relative invalidation serves the protection of the private interests and this comes about in case of the defectiveness of the consent or capacity or absence and imperfectness of the direction. It might happen that a regulation be violated for the protection of public and economic order but its invalidation be of relative type and this occurs in case that the government steps in for the support of weaker classes and makes a complaint to the court for the breach of an imperative maxim. This case is actualized in such contracts as labor agreements.

Reference has to be made to a court for the invalidation of a contract and nobody can make judgement on his own. Thus, the parties might be aware of the contract's invalidation and reach an agreement for correcting the current situation. Judicial objection for invalidation might be carried out by a beneficiary or at the time of commitment fulfillment through protesting to the invalidity of the contract (Shahidi, 2013, 126).

- *The Effect of a Condition against the Contract's Expediency on Contract's Authenticity and Invalidation:*

Generally, every contract features certain effects and attributes making it distinct from the other contracts but all of these effects are not equal in terms of their relationships with the nature of the contract. Some of these effects and specifications are so intensely interlaced with the contract's nature that the contract loses its legal nature without them because the contract has been signed for their emergence and these effects can be considered as the primary goals of the contract like a sale contract that has many outcomes such as a customer's possession of a sale item and the seller's possession of price and price's being of a present time nature in sale contracts and the delivery of the sale item at the cost of seller in buyer's site and others of the like. But, the primary goal in sale contract is the very exchange of the price and sale item forming the important effect of the sale contract. Thus, this type of characteristics and effects of contract are solely deemed expedient for the contract's essence (Ja'afarzadeh, 1997, 63-65).

Therefore, it has to be stated in defining the contract's essence expediency that a contract is concluded for it as stipulated in article 233 of the civil law: "the condition against the contract's expediency is the one contradicting the expediency of the contract's essence". So, if a condition is agreed that the sale item is not possessed by the customer, it would be against the contract's essence expediency hence invalidating the contract and, if, saying, the expediency of a rent contract's essence is ownership of the interests of the specified rented property for the tenant and possession of the rentals by the landlord and the contract makes it expedient that an amount of money be paid as prepayment for taking possession of the rented property during the rent period, it would be against the substantive and essential expediency of the contract to set such conditions as tenant's inability of taking advantage of the rented property and non-transferring of the rentals to the landlord hence contract would be invalidated.

Considering these explanations, any condition contradictory to the legal structure of the contract can be envisioned as a condition against the contract's essence expediency hence invalidating the contract. It can be stated that contract invalidation in the abovementioned cases comes about for the conflict between the contents of the condition and contract because the actualization of contract would cause the emergence of its expediency and existence of a condition causes the annulment thereof. Resultantly, the effects of each of the condition and conditional are neutralized due to the existing conflict and they are both revoked.

There is no doubt that anything's essences are the corroborators of its nature. These are the essences on which the actualization of the nature is depended and it is with the absence of one

of them that a thing would be deprived of its nature. The most distinctive example of these essential affairs, as well, is the components and elements constituting the contract with the absence of each of which the contract cannot be objectified. So, when a condition is found conflicting and contradicting one of the pillars constructing a contract, the transaction would be necessarily invalidated based on a condition against the contract's essence expediency (Ja'afarzadeh, 1998, 6364).

Besides the aforesaid reason, the majority of the jurisprudents present other proofs for invalidating the condition against the book and the tradition with the following interpretation: this type of conditions is against the book and tradition because the book and the tradition imply that the contract cannot violate from its expediencies. So, if a condition is set as a result of which a contract violates its expediency, the condition would be coercively against the book and the tradition. In addition, jurisprudents' consensus implies the unauthenticity of the condition against the expediency of the contract. Thus, there is no doubt in the idea that the condition against the expediency of the contract's essence is invalid rather the discrepancy arises on the cases and examples thereof. For instance, it is discussed that what effects are canonically and customarily considered as prerequisites of the contract and expediency of the contract's essence so that the conditions against them can be subsequently rendered invalid (Ansari, 1989, 281).

Some others, as well, have ruled the invalidation of the contract by way of a condition against contract's expediency; in between, a condition set against what the contract internally rules would be invalid because it contradicts the contract actualization such as when one sets it as a condition to sell something but the purchaser cannot possess it (Najafi, 1983, 201).

Considering the above descriptions and according to the well-known ideas, if conflict comes about between the condition and the expediency of the contract's essence, the condition would be invalid such as when a rent contract is signed conditioning to the inability of the tenant's possession of the rented property. A condition against the contract's essence means that the contract actualization has been hindered. A person sells his property to another person and, in the meantime, sets a condition that the buyer has no right to own the property whereas the effect of such a contract would be the creation of ownership for the buyer hence such a condition is invalid because two contradicting issues have happened at the same time (occurrence of sale, i.e. transferring of the ownership of a property, and nonoccurrence of the sale as willed by the parties) and, besides invalidating the condition, this would cause the annulment of the contract, as well.

Determination of the contract's essence expediency and its distinction from the expediency of the contract's signification is not readily feasible because each contract possesses various effects and characteristics and the problem resides in the idea that how much the diminishment of these effects by the condition is compatible or incompatible with the main subject of the contract. Here, it is doubted that whether it can be said that the buyer has become the possessor of the sale item and the contract's subject has been actualized or not (Ja'afarzadeh, 1998, 65).

There are many of these types of flaws. Jurisprudents, as well, have doubted in many of the issues and have discrepancies regarding the recognition of the examples of contract's essence expediencies. Sheikh Ansari reminds several kinds of discrepancy cases, including the one he has investigated under the title of "setting a condition for rendering the sale item non-

buyable": the majority of the jurisprudents believe that the aforementioned condition is not correct because it contradicts the contract's expediency and the writers of the civil law have accepted the aforementioned theory in article 959 that stipulates: "nobody can deprive oneself of the enjoyment right and/or the right to enforce all or part of his or her civil rights". The other case of controversy is the setting of a condition in temporary marriage for the couples' right of inheriting one another. It is also disputable in this regard that whether such a condition is against the contract's expediency hence invalid or not. The discrepancy basically lies in the idea that the non-inheritance is the expediency of the contract's signification or the contract's nature (Ja'afarzadeh, 1998, 66).

Some jurisprudents (Na'eini, 1997, 112&113) are of the belief that the above-cited problems have nothing to do with the conditions against the contract's expediency and the invalidation of the aforesaid conditions comes about for their opposition to the book and tradition and not in terms of contradicting the contract's expediency. As an example, the expediency in a sale contract is possession and the domination over the sale item is the effect and expediency of the ownership hence not related to sale and it is invalidated for being contradictory to another verdict, i.e. "verily, everyone has the right to dominate his or her properties"; additionally, the aforesaid issues are beyond the present discussion's inclusion circle and the reason for the invalidation of such conditions is their negation of the book and the tradition. Of course, these problems are discussable in that they are either right hence annullable or verdict hence non-revocable. But, the following two problems can be debated concerning the contradiction or non-contradiction of the contract's expediency:

The first is that when it is set as a condition in a company's contract that the profit belongs to the parties but the contingent loss is only incurred by one of the parties, it would be invalidated, as opined by some jurisprudents (Na'eini, 1997, 116), for its being contradictory to the company's contractual expediency. But, some other jurisprudents (Helli, 1987, 211, cited in Sheikh Ansari in Al-Makaseb) believe that the aforementioned conditions are authentic because the prerequisite in unconditioned companies is the proportion of the loss and profit. Najafi Khansari explains it in a more detailed manner and states that the condition for differentiation of loss and profit for a party is invalid if it is stated from the beginning during the contract conclusion session because it contradicts the company's contract expediency and that it is not invalid if it is set after contract conclusion within another binding contract.

The other cases of discrepancy are the guarantee condition in rent and borrow contracts. In other words, the discrepancy lies in the idea that the non-guarantee of the borrower and the tenant is amongst the effects of the aforesaid contract's essence expediencies. Consequently, are the conditions against them invalid and making the contract invalid or not? The majority of the jurisprudents (Ansari, 1989, 281) rule that trusteeship is the prerequisite in rent contract. Thus, the guarantee condition contradicts the contract's essence expediency hence invalid and making the contract invalid.

To overcome the aforesaid conditions, some jurisprudents (Korki, 1983, 261) believe in cases that the condition's opposition to the contract's essence and nature expediency is unclear that the verdict on these cases should be left to the jurisprudent's notion. Thus, it seems in such cases that the legal criterion is that the court should distinguish the main subject of the contract according to the statutory provisions, customs and the statuses and moods and effects to come up with the proper sentence in a case-specific manner (Ja'afarzadeh, 1998, 67).

According to the scales of determining the expediency and definitions presented for expediency, it can be stated that if the opposition with the contract's main content serves the determination of the subject that has led to the agreement on the contract condition, it has to be envisaged as contradiction of the contract's essence. For instance, in contracts of sale, the exchange of the price and the goods is the main subject of the agreement and it would be against the contract's essence expediency if it is set as a condition that the possession should take place in sale; of course, such a condition has not been explicitly seen in any contract. But, the principle and scale is that the condition's concept cannot be summed up, in general, with the possession in terms of the result in such a way that it is inferred from summing the condition and the contract's contents that possession is not the real intention and the term "sale" has been used in a nominal manner. In fact, the condition against the contract's essence expediency negates the effects that are so intermixed with the contract's nature that cannot be separated from the contract.

### *Default Revocation Right of a Party Following Setting a Condition against the Contract's Essence Expediency:*

A party's right of revocation is amongst the other cases presumable under the title of contract change following the setting of a condition against the contract's essence expediency. In this regard, firstly the premises of the revocation right and, secondly, the quality of revocation right creation as a subsequence to the setting of a condition against the contract's essence expediency will be elucidated in the following parts in separate.

- *Scale and Premise of Revocation Option:*

The premises of contract revocation might be different meaning that the contract revocation is based on a right that is created either by the parties' agreement or by direct ruling of the law and this right is open for the enjoyment of one or both of the parties or even a third party:

A. Parties' Agreement: contract parties can set a revocation right in the course of a contract or outside it for one or both of the parties or even a third party (Shahidi, 2016, 202) such as when a person sells a car and sets it therein as a condition that each of the parties or a third party can revoke the transaction within a month at any time they want it. This right is commonly termed option of condition. It is also pointed out in articles 399 and 400 of the civil law.

   Based on article 399 of the civil law, "it might be set as a condition in sales contract that the buyer or the seller or both of them or even a third party has the right to revoke the transaction within the specified period of time". Article 400 of the civil law, as well, states that "if the option period's commencement date has not been mentioned, its initiation would be the date at which the contract is signed otherwise it would be obeying the transaction parties' agreement".

B. Direct Ruling by Law: in some cases and for preventing the losses that might unwantedly be imposed by one of the two transaction parties, the law directly allows a party to revoke the contract so as to be able to prevent the loss such as when a person rents a house and finds out after a while that the house cannot be resided in which case the tenant, based on articles 478 and 479 of the civil law, has the right to revoke the contract. Article 478 stipulates in this regard that "when the rented property has been defective during conclusion of the rent contract, the tenant can revoke the contract or accept it for what it has been and try repairing the rented property on his or her own

expense but, if the landlord repairs the defections in such a way that the tenant sustains no harm, the tenant has the right to revoke the contract". Moreover, according to article 479 of the civil law, "the flaw that causes the rent contract's revocation is the defection barring the tenant's taking advantage of the rented property or making it difficult for him or her to make use thereof".

- ***The Quality of Revocation Right Creation Following Setting of a Condition against the Contract's Essence Expediency:***

As it was mentioned, law's rulings are amongst the foundations of contract revocation right. Assuming that a condition is not willed by the parties but solely set therein due to the legal or canonical reasons and it is found against the contract's essence expediency and not in contradiction to the contract and it can be disregarded, it can be stated that the contract still holds and the person in whose favor the condition is set can refrain from it. In this case, the party finds oneself in one of the two situations: s/he can withdraw from his revocation right and remain bound to the agreed contract or s/he can revoke the contract if s/he finds the contract disadvantageous.

Keeping all this in mind, if a condition is set in a contract against its expediency and the contract invalidation cannot be immediately ruled rather the contract can be considered authentic to the maximum possible extent based on the principle of contract's necessity as well as the principle of contracts' authenticity, a revocation right can be assumed for the party. This case is also somehow related to the implicit will of the contract inventors and parties.

***Simultaneity and Non-Simultaneity of Condition Insertion with Contract Conclusion and the Effect of Each on Contract:***

Generally, a person setting a condition against the contract's essence expediency would find oneself in either of the two following states: s/he either does not intend to perform the transaction in which case the contract is undoubtedly invalid for a party's lack of will for doing so and the invalidation of the contract is not related to the existence of the condition or its defectiveness; or, in case that s/he intends performing the contract, two additional states can be imagined: the first is that the intention simultaneously belongs to the condition and the contradictory condition and they both are at the same time intended with no temporal interval which is improbable hence invalid and no contract is actualized (Saberi and Safa'ei, 2012, 119); the second one is that there is a time order between the intention for contract and intention for condition meaning that, a contradictory condition is intended after intending a sale contract in which case two states can also be imagined: the first is that the contradictory condition is intended with still having the contract intention that makes the actualization of the condition insensible because it is impossible for a thing to be actualized while its contradictory condition has been previously intended but there is no intellectual and narrative barrier to the actualization of contract (Esfahani, 1997, 155); the second one is intending the contradictory condition via evicting the prior intention which is also deemed unreasonable because if the contract can be actualized with all the conditions, including the intention, and the contradictory condition cannot cause disruption in the pillars thereof unless the contradictory condition is found in a form that evidence rule the demander's withdrawal of the requirement in which no contract is actualized but not for the contradictory condition rather for the demander's refrainment from contract endorsement because violating the requirement before

concluding the contract is at the discretion of the demander but the contradictory condition is like a tool verifying the withdrawal hence not having no affirmative role.

On the other hand, the condition is verifier if, first of all, the attachment of a serious intention to the condition can be proved and, secondly, the condition is found set in such a way that it contradicts the contract's primary goal and/or, better said, the contract's nature like the buyer's interest of ownership in a sale contract otherwise, the denial of some effects, even if distinct ones as considered necessary in ownership customs, cannot verify this issue. However, the condition denying all the effects can verify the serious withdrawal of the requirement if it is subjectively results in the invalidation of the contract's content.

Thus, it can be asserted in a general conclusion that if a contradictory condition is realized as verifying the withdrawal from the intention for performing a transaction, it would not be actualized in case that there are conditions verifying the authenticity of the contract; but, if the contradictory condition denies the pillars of the contract, it should not exert any effect on the contract even in its pillars due to the annulling nature of the condition the invalidity of which is ensured (Saberi & Safa'ei, 2013).

After writing the controversies and expressing that the conditions disrupting the contract's pillars invalidate the contract, some jurisprudents decree that the canonical ruler's validation of the contract following its composition by the parties is intended by the condition's authenticity and the corruption of condition means that nothing is actualized and realized authentic and such a condition is merely some written or spoken words.

Now that the condition's corruption means that it is invalid even if it is written down, how can it be effective in invalidation of the contract? So, it is evident that the mere expression and composition of words in a contract does not feature such a qualification and it is sometimes found contradicting the contract's expediency and negating the rulings of the book and the traditions unless it is stated that it solely contradicts the former composition (contract); however, the problem is not resolved by such statements (Na'eini, 1997).

## CONCLUSION:

The following results can be stated in summing the investigated discussions:

1) The change in the nature of the contract is amongst the effects of inserting a condition against the contract's essence expediency with the explanation being that the parties agree on the insertion of a contract by way of their free will and within the format of a contract that, though contradicting the apparent expediency of the contract's essence, serves their intention of signing a contract with a certain nature considering their knowledge of the contract and the condition. In this case, if this leads to the emergence of new contractual pillars, the parties' will is considered as their intention for making a new contract. This way, the parties express their final intention under the title of a proviso with the insertion of the condition that brings about a change in the contract's nature. Consequently, the condition against the expediency of the first contract's essence would not be accompanied by the invalidation of the aforesaid contract rather it changes the nature thereof. From another perspective, this idea can be justified by explaining that the parties have possibly intended the endorsement of another contract via inserting a condition against the expediency of the contract's essence and it can be interpreted under the title of "the parties' contingent volition for another contract".

2) If the parties set a condition in a contract in any manner that is in compliance with the contractual customs but against the expediency of the contract's essence and, however, it can be interpreted based on the parties' will as bringing about a voluntary change in the nature of the contract, the contract annulment is cancelled based on the condition against the expediency of the contract's essence that would be otherwise signifying the voluntary change of the contract's nature.
3) Contract invalidation is amongst the cases of contract change and/or, in more accurate terms, amongst the effects of a condition against the contract's essence expediency. The majority of the jurisprudents and jurists opine that if a condition is willed in a contract by the parties that negates the expediency of the contract's essence, the condition is invalid and rendering the contract invalid, as well. Although the legislator realizes the condition against the contract's essence expediency as being invalid hence invalidating the contract in the relevant abovementioned articles, it can be stated using a little scrutiny and considering the parties' will in the interpretation of the contract's nature and status that the legislator, in the aforesaid article, considers contract invalidation inclusive of the cases wherein the condition against the contract's essence expediency is set in such a way that the existence of the contract and actualization of condition alongside one another is envisaged contradictory and none can be preferred to the other and it is in such situations that both wills are aborted and the contract cannot be held persistent even with the interpretation of parties' wills hence it is found condemned to invalidity.
4) According to the scales of determining the expediency and the definitions offered for expediency, it can be asserted that if the opposition to the contents or articles of the main contract aims at determining a subject agreed within the format of a contract, the opposition should be considered as negating the contract's essence in such a way that the real intention is not possession by the summing of the condition and the contract and that the term sale has been used rather nominally. In fact, the condition against the expediency of the contract's essence denies the effects that are so intensively mixed with the contract's nature that cannot be separated from the contract.
5) The right to revoke the contract is amongst the other cases that can be assumed under the title of contract change following the insertion of a condition against the contract's essence expediency. If a condition is set in a contract that contradicts the contract's expediency and the contract invalidation cannot be immediately ruled rather it can be presumed correct as far as possible based on the principle of contract's necessity and principle of contract's authenticity, a party can be provided with a revocation right. This case is also somehow related to the contract inventors and parties' implicit will.
6) Eventually, if the contradictory condition is envisioned as verifying the transaction withdrawal intention, it cannot be actualized in case that there are firmer conditions verifying the main contract but if the contradictory condition is found disrupting the contract's pillars, it should not exert any effect on the contract and even its pillars for the annulled nature of the condition the corruption of which has been ruled.

## References

Ansari, Sheikh Mortaza, (1989), "Makaseb", 4th ed., Qom, Dar Al_Elm.

Elsan, Mostafa, (2007), "position of intention in contract's interpretation", monthly journal of Kanoon, no.65, December.

Emami, Seyyed Hassan, (2007), "civil law", v.1, 4th ed., Tehran, Eslamiyyeh.

Esfahani, Mohammad Hossein, (1997), "Hashiyah Al-Makaseb", v.5, Anwar Al-Mahdi.

Ghanavati, Jalil and Abdipour, Ebrahim, (2001), "contract laws in Imamiyyeh Jurisprudence", Samt.

Hosseini Ha'eri, Seyyed Kazem, (2002), "Fiqh Al-Oqood", v.1, 2nd ed., Qom, Islamic though association.

Ja'afari Langerudi, Mohammad Ja'afar, (2010), "law terminology", Tehran, Ganj-e-Danesh.

Ja'afarii Langerudi, Mohammad Ja'afar, (2010), "the effect of will in civil laws", Tehran, Ganj-e-Danesh.

Ja'afarzadeh, Asgar, (1998), "condition, its types and verdicts", journal of Kanoon, 41(2), November.

Jaba'ei, Ameli, Zain Al-Din Ibn Ali Ibn Ahmad (Shahid Sani), (1993), "Masalek Al-Afham", v.5, 1st ed., Qom, Islamic Teachings Institution.

Katouziyan, Naser, (1999), "civil law in the current legal order", Tehran, Dadgostar.

Katouziyan, Naser, (2011), "specific contracts: swap-possessory transactions", v.1, Tehran, Enteshar Corporation Publication.

Katouziyan, Naser, (2014), "civil law: general regulations of contracts", v.3, 6th ed., Tehran, Mizan.

Katouziyan, Naser, (2016), "civil law: partnerships-settlements", 4th ed., Ganj-e-Danesh.

Khorsandiyan, Mohammad Ali and Zakeriniya, Hanieh, (2010), "exploration of volition, intention and consent in Islamic jurisprudence and Iran's laws", journal of jurisprudence and Islamic law, no.1, winter.

Korki, Ali Ibn Hussein (Mohaqqeq Sani), (1983), "Jame'e Al-Maqased", v.1, 3rd ed., Beirut, Dar Al-Kutub Al-Eslamiyyeh.

Mohseni, Sa'eid and Ghabouli Dorr Afshan, Sayyed Muhammad Mahdi, (2011), "concept and effects of relative invalidation", journal of knowledge and development", no.33, winter.

Na'eini, Mohammad Hossein, (1997), "Maniyyah Al-Taleb fi Sharh Al-Makaseb", Qom, Mo'assessah Al-Nashr Al-Eslami.

Najafi, Mohammad Hassan, (1983), "Jawaher Al-Kalam", 6th ed., Al-Maktabah Al-Eslamiyyeh.

Saberi, Hossein and Safa'ei, Maryam, (2013), "a look at the invalid conditions in contracts", journal of jurisprudence and principles, no. 90.

Safa'ei, Seyyed Hossein, (2006), "general regulations of the contracts", v.2, Tehran, Mizan.

Shahidi, Mahdi, (2013), "formation of contracts and obligations", 5th ed., Tehran, Majd.

Shahidi, Mahdi, (2015), "civil laws, the effects of contracts and obligations", 6th ed., Tehran, Majd.

Shahidi, Mahdi, (2016), "contracts' annulment", Tehran, Majd.

Towhidi, Mohammad Ali, (1996), "Misbah Al-Fiqaha (Taqrirat Dars Ayatollah Khou'ei)", v.7, 4th ed., Qom, Mo'assessah Ansarian Lil Taba'ah wa Al-Nashr.