



Mistake of Private contracts

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ABSTRACT

Social beings constructive elements of social relations of people with each other . people necessary to meet basic needs , the establishment of contractual relations tried to strengthen these relationships ; The need for social order and the stability of commercial transactions contract that people make , requires that contracts to prevent possible distortions and instability. The rights of the manufacturer of the community as well as the principles and constituent elements of contracts , as well as wisdom and logic on the part of trade relations , the interest of the conflict and each other , maslaha the need to conserve contractual relationships and the interest of protecting the rights of the constituent elements of contracts .

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Introduction

The question in this conflict comes to mind is what should be preferred and why the duty of a lawyer , to reconcile these two interests as much as possible and the preferred choice if the possibility of a love interest . Hand to firmly establish the principle that contracts act (such as the necessity and validity) and on the other hand guarantee the performances such as invalidity, termination and - the interests of individuals in the face of these principles guarantee - lawyer thinking and the idea led to the choice of the vas deferens not find any rational reasons between social interests as much as possible to conform to logic and legal principles

One of the causes of the conflict, the parties to the marriage is wrong. When it comes to wedding parties or one of them mistake, a false impression in the minds of different contract. Such wrong nature, cause, purpose, and finally the marriage issue occurs. This article examines the issue of marriage is wrong and it works for dealing with it, the history of civil law is necessary. Definition wrong: wrong from the "quasi" means "such and such" and its plural "mistake" is. "Ambiguity" of its derivatives, meaning "Working latency or something, or suspicion of something," and its plural "doubts" is. (3)

The legal definition of "disabled" have been proposed, including: false from the true and false representation of reality in mind (4) or false impression that the material and spiritual affairs may occur. (5) According to the definition of psychological phenomena are wrong in income and to the fact that "legal fact" is. Doctor Imam wrong "belief in something that does not correspond to the truth" (6) has defined. The only difference this definition with other

definitions in the use of the word "believe" instead of "thought and thought," There is no stronger than thought.

According to this definition, we can say the wrong word, misconception of fact that occur when the Legal Affairs, will be the subject of rights in this regard was Vtaryfy, Tqrybashbyh the exception of slight differences in not Nhadydh . The mistake in the contract

A) legal basis:

On the wrong legal principles, should carry the Qur'an and Hadith and also rational reasons presented:

First - the Qur'an: God in verse 29 of, devouring another unjustly prohibited and the way it can be achieved on other property, trade on the compromise is known. So "would be that a comprehensive contract should be the satisfaction of the parties.

Second - tradition: The of the Prophet "fix", one of the things that human task takes time, is wrong;, and mistake and "third - reason: The concomitant r reason and given that the common sense of the practical work that has been done on consent, not happy, you have the wrong deal of blunt know. that arose, the basis is wrong.

B) the legal basis:

199, 200, and 201 of the Civil Code the general rule is the wrong word; Article 199 of the error and its variants spoken in general. Article 200 and Article 201 h contract at issue in the wrong party to the transaction and some other material civil law is scattered about on the subject of marriage is wrong; Including Article 353, in conjunction with the provisions of the Civil Code is wrong sex marriage issue that warrants cucumbers, misrepresentation, fault, and others states. Mistake of contract contract is subject mistake territory. Since each property has different aspects and mistakes in any of these aspects can be discussed, check each of these effects can be wrong in the marriage. Before

getting into the wrong types of contract at issue, first saw that "subject to contract" deal or what?

It is something that is given to those documents. The subject and the subject in terms of logic and law, called the subject. (7) However, to clarify the concept of "subject to contract" should be noted on the type of contract. For example, the lease contract, subject to the conclusion of the acquisition of property in exchange for certain benefits. Or the donation contract, subject to the conclusion of the financial appropriation to another free of charge; The subject of the transaction is to exchange two financial commitment.

As it was, the issue its true meaning, different from what we discussed. I mean the issue of marriage in our case, based on the financial transaction takes place. Of course, the signing of this seems to be the product and object, action and moral obligations or rights. For example, car sales, theme wedding, cars. The construction of the house and watering the garden, carrying out the contract subject of irrigation and the sale of copyright or right of goodwill, the subject of the contract, the right spiritual. When the subject of the contract, now we make a mistake in any of its forms:

It is something that is given to those documents.

The subject and a) is subject to the same transaction:

The most common case is when the subject of marriage contracts, is yours. In this case there are three assumptions:

-Mal Traded, the same person.

- Financial contract issue, is generally given.

- The property subject of the contract, the total per innocence.

If the buyer and seller, a certain car, there is the intention, subject to contract, the same person. If the seller requires the sale of hundred kilogram of rice from ten tons of rice in give the subject contract, is generally given. Finally, if the seller requires hundreds of kilos of rice sales to be subject, without specifying it, numerous people are generally honest Fi innocence.

Wrong on the subject of the contract can occur in any of three modes.

(9) If the wrong kind of contract:

If the deal is yet certain and contrary to what is commonly thought to be the intent Party, mistake it for conventional subject, say; Like buying a table instead of a chair or buy women's shoes instead of shoes. In the examples above, however, one is furniture or footwear made of different types of shoes, such invalidity of the contract would be wrong because it wants to have what the buyer and seller, are two different things and require requirement and accept - that is the condition for the validity of marriage - is nonexistent. In fact, there was no contract has talked about the effects of errors in it.

Mistakes in descriptions and charges stipulated in the contract:

Sometimes the sales as customary, the same as the seller and the buyer but completed and its complications are. Characteristics and effects of the transaction subject is divided into two categories: First, basic or essential attributes: the attributes of the object, the nature of which make it alters the nature of the object is. The jurisprudence on these attributes, however say substantial civil law term "transaction subject" are

presented. 200 BC mistake came when he would not know that the transaction is subject to contract.

A school : the school , the criterion was a personal basis , regardless of the intentions of individuals , on the subject of the transaction will be judged. The criteria for identifying the type of school the word " your " is used , regardless of the will of those who signed the deal are different . For example, the Romans believed that females make up the subject of marriage and therefore believes it is essential to describe the main or when a person has to believe that gold water candlestick made of gold , however, it is due to old, and the antique crushed , according to a school or material mistake made candlesticks, regardless of the intention of the purchaser is buying the same stretch , the conclusion of influence . (10) With this adjustment, some problems still remain before , but to some extent can be used flexible convention and the purpose of the signing of the deal was close.

Second completed or transverse sub : Sub completed , the opposite of the main attributes include display attributes that change does not affect the nature of artifacts . The jurisprudence of the completed their cross- interpreted the mistake does not affect the contract .

In this section we want to various assumptions in the wrong thread completed regardless of whether However , major or minor , the ability to derive mistake , quantity and value traded , we. Quality mistake :

There are three assumptions to determine the sales :

1. Installation of the sample is introduced.
2. Installation of the description specified.
3. Installation of the former vision to be bought .

D) mistake in the sales functions

Sometimes sales of accessories and functions . Voice recorder functions such as cooling and heating systems and supply the cars or home functions except when home sales are sales . Overall, sales functions , including those associated with sales , it is inseparable.

The impact of mistake.:

In this section , we intend to answer the question of whether the wrong conclusion can be effective ? If not , what kind of mistakes in accuracy and penetration contract is effective ? In other words, CALL , confusion, effective contract ?

We protect the interests of society require that as much as possible , to prevent the dissolution of contracts ; Except when the transaction is serious harm to the rights of the individual ; The goal is not to try to eliminate this disadvantage , equity is corrupt. Except when the transaction is serious rights ; The goal is not to try to eliminate this disadvantage , the corrupt rule of fairness . But it is also certain that the claim can not be any mistake , marriage weakened , because in that case if the person after the conclusion of the contract , it works against the interests of regret and saw , to his right to the according to a few minor mistakes , disrupt and contract out their obligations under it . May resort to any wrong to undermine the marriage , thereby taking advantage of the opportunity , the security of transactions and contracts put in danger.

In general we can say that every error if the following conditions can be effective Drqd:

1. The fundamental mistake is; Fundamental mistake, the wrong incentives that lead to satisfaction. That is wrong,

"the primary cause or a major decision" (25) is. Before the two sides compromise, respects diversity and encourages the two parties to the transaction affects. Some of these ways, the core craze that leads to satisfaction, although incentives are created and others are R., do not look at the original enthusiasm. ·h mistake that leads to provokes the desire, of the contract. When wrong, it is essential that the elements of the contract, and the main factor encouraging people to do the deal done.

Wrong rulings on the subject of marriage :

Volitional two elements that are signed . If the intention of the transaction is not available, the contract is void and the words, there is no contract . But if the consent form the contract is defective , the transaction is blunt and can be effective with the next to leave all of the correct conclusion . The wrong conclusion about the subject , confounding intention or R , and the condition will invalidate the contract or influence there.

The result:

Considering the above , there are three general rules about the mistake in the contract , should be considered

- 1 mistake that harm the unity of intent and match offer and acceptance , prevents the formation of the contract . Since in this case , there is no sign of the doubt in its invalidity and where to apply the theory remains wrong
- 2 errors in completed sub- theme wedding , the wedding will be cucumber , such an error is not related to the

Resources:

1. Najafi - Sheikh Muhammad Hassan: Jewelry Alklam Fi Shray of Islam, universal Almrtyz Institute, Beirut, 1412 AH, vol 8, p 322
2. consistory - N: legal acts, contract -Ayqa, publishing company, second edition, 1371, p. 87
3. The consistory - doctor Nasser: general rules of contract, vol. 1, p. 421
4. Parsley Langroodi - MJ: Encyclopedia of Islamic Science, Knowledge treasure Publications, 1361, first edition, Vol. 3, p. 1275
- 5-see Safai - Sayyed Hussein: Civil Rights Foundation, vol. 2, p. 99
- 6-Adl - Dktrmfy: civil rights, publication of Technology, Seventh Edition 1342, p. 119, No. 228
7. Es - Ali: civil rights, Printing House, 1324, Third Edition, Vol. 1, pp. 96-99
8. parsley Langroodi - doctor Mohammad Jafar: will impact on civil rights, Persian date Farvardin 1340, p. 212