



Check the right of product and its effects on life and death of international sales contracts

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ABSTRACT

The current paper's title is a Comparative Study of the Effects of Termination of the Sale in Iran Law, Jurisprudence, and 1980 Vienna Convention. Although both parties in the normal course of their civil and trading contracts expect their agreements run perfectly, non of the parties can terminate them unilaterally. However, something happens due to the faulty product or a big difference with the actual price, etc. Insisting on continuing necessity of the process termination seems to be vain, so in some cases it is allowed for one of the parties to be able to disrupt binding of the agreement in favors of himself. Discussion about legal relationship between the parties after announcing the termination of the contract about past and future and nominating their mutual responsibilities and the way of compensating the damages is one of the main points of this study. The main reason is the lack of its restoration background because the option of defect which is related to the good inconformity to the contract terms has considered termination right or value demand just for the buyer who had received defective product and the jurists have not protested if the buyer can ask for the good repairmen by removing the defect or by receiving the alternative product instead of contract termination or ask for the value from the violated salesman. But despite of the inexplicitly of such right acceptance, by means of some legal general principals such as Without loss rule, incumbency element and also some of the law articles in the field of rent or Contact owner by Farmer(Mozare) and etc.

Keyword:

Considered
termination, legal,
inconformity, damage

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INTRODUCTION

One of the main legal principles which have been relatively accepted in most of the legal systems with minor differences is the "principles of the necessity of contracts". Also, in 1980 Vienna Convention on the termination of the sales by both the seller and the buyer has been respectively checked in articles 64 and 49. Discussion about circumstances under which the seller or the buyer are allowed to terminate the sale has been done in internal works such as juridical or legal sources and exoteric books in details. In case of violation of obligation and submission for non-conforming products, the legislators of Iran and the convention has considered different performance warranties for the redress such as imprisonment, Atonement, claim for damage, Contractual price reductions, one or more of which would be executed according to the situation and circumstances. "Right to repair" is one of the performance warranties which had been explicitly referred to and accepted in the convention articles.

There is a law obliged the sales man to reform, remove the defect or submitting the alternative product in the case of good Nonoccurrence with the contract terms. According to the convention desire to maintain stability and lack of desire to terminate the contract the enforcement of the Convention is justified.

The buyer confronting with the shortage or defect of the submitted good should not terminate the contract instantly and make the situation deteriorated to the sales man if, the he is ready to repair the submitted product. In Iran law such a right hadn't been accepted explicitly. In a commercial contract when a product is submitted non-conforming to the compromise the "defect option" introduces as a method to redress as the issues related to the defect option is derivate from Imami jurisprudence (One of the schools of jurisprudence in Islam) and according to the jurists if there is a defect in product the buyer can terminate the contract or ask for the Atonement so the question arises if it is possible for the buyer to ask for the product repairmen or obliged the seller to repair it instead of terminating the contract or ask for the Atonement? And if it is accepted how is the condition? And how it could be executed? On the other hand how the issue could be accepted and applied in Iran civil law by considering the fact that it is accepted in international rules and conventions including the Vienna convention. In this regard, seller and buyer rights should be studied by scrutinizing the nature of defect option and related issues. According to the juridical act of civil law the views of senior scholars and jurists could be effective in its acceptance or rejection. In the recent study it is tried to study on of the accepted issues in the international trade specially the international sales which is needed to be scrutinized according to the time accommodative, industry and trade while its acceptance or rejection will be investigated if there is a conflict or disagreement between Sharia and law.

Theoretical Foundations:

However there is no book or article written in Iran that exclusively dedicated to the restoration right, only in some books discussing about the Sanction of seller's

obligations violations some lines have referred to the issue just in the field of convention while in Iran law it hadn't been referred to in any of books or articles.

Chapter one: Submission of job-dedicated

This is where the party is allowed to terminate the contract to his own benefit and escape from the obligations rising from the contract. In Iran civil Law following jurisprudence, while "the principles of the necessity of the contract" has been clearly accepted, still a large portion of civil law is the provision of sale and it's rules. Some cases of the termination of the contract on the part of one of the parties has been mentioned in the 1980 Vienna Convention on the International sale which are mentioned in articles 64 and 49 respectively. Discussion about the conditions under which one of the parties has the right to terminate the contract has been widely done in internal works such as legal or juridical sources and also in external works. But there are still so many questions concerning the legal relationship of the parties after termination of the contract and each nominee tends to know what is going to happen to the contract after it's termination beforehand. The author in this article tries to provide an appropriate answer to this problem concerning the importance of the case and both parties' responsibilities and probable disagreements. Since these works have not been mentioned separately and independently in civil law, inevitably we use other sporadic legal provisions in different chapters and their legal laws and principles. Also International Sale Convention has mentioned "works of the contract of sale" in articles 81-84 whose adaptation with Iran legal laws has enriched the subject and clarified it's dimensions and helped filling the gaps.

Jafari Langerudi (1993) in his study stated, submission in the non- Gratuitous means one of the parties prevail the other party about the good he had transported, in other words, submission means accepting the surrender of possession or putting the transaction under control of the occupier party".

Article 367 of the Civil law have described submission; "putting the job-dedicated under control of client in a way that he is Propertied of Clamps and profit ways,..." control of client in a way that he is Propertied of Clamps doesn't mean the physical occupation of client But it would mean that the client wanted to capture the material, although he does not yet possess job-dedicated. Imani Pir (1999) in his article with the title of selling effects and the related sentences stated whenever the job-dedicated is completely external, under the contract it transforms to the client, after contract other property in the possession of the vendor so he have to give it to its possessor.

- Requirement of the seller Based on the submission of job-dedicated is due to the selling itself.
- Requirement of the seller to submit the job-dedicated has contracted background. In this way, obligation of each party for submission is due to the implied condition, commitment in the selling contract which is a exchangeable contract. It means not only the parties possess exchanged goods but they become obliged to submit the acquisitioned items to the transmitter.

Safayee (1399) in his article with the title of international law, by use of comparative studies stated, if the selling is general, in this period the submission of defective product or the one with unconformity with the contract terms won't be valid and the client can ask for another examples in accordance with the contract. So it could be said that "the need to comply" in general selling is one of the Functions of the obligation to submit.

Research necessity and objectives

1. Scientific necessity:

Necessity of determining time for the trader in the contract means in the case of not determining time, the condition becomes useless and it's uselessness brings unknown causes of ignorance in the trade value because the presence of conditional sale and it's time in trading have effects on trading value. Indefinitivity of the trading time when the contract termination right is for the seller declines the sale value for the buyer indefinitivity. If termination right is for the buyer with unknown duration, the value would incline indefinitely. So there is unknown value in both cases. Ignorance of sale in accordance with article 233 will cause the nullity of the trade while certainty of the duration clarifies the trading value. As in international trade the customer satisfaction is necessary, it is essential for the issue to be scrutinized in order to removing one of the ambiguities in the field of customer rights.

2. Practical necessity:

In regards to the acceptance of the right for the customer, asking for the right as an initial one even without mentioning to it in the contract terms becomes inevitable for Iranian merchants. Also if the defiant right doesn't exist, the related agreement and settlement could be added to the contract.

3. Special necessities:

As regards the Iran's accession to the treaty such as WTO requires the acceptance of international law, the study of the issue could be necessary. Sale defining into trade is related to customary terms and concludes in the idea that purchase is the same in turn and it's opposition in renting belongs to sale and profit. Instead they are connected and like other customary terms there are vague nesses and differences. In ambiguity, one should refer to common law and the agreement with customary necessities should be respected even though customary rules and applications have been used. The opposition of law with custom constrains and conditions may include violation in contract's principles and it may be a tenure in principles with respect to trading principles and it's shortage in law's view which may be an opposition to the mind and custom which have nothing to do with principles and there is no difference among personal and all that has been proven in debt or fixed to the sale of the debt. Generally, whatever that describes the situation.

4. Research question:

- 1- According to the nature of defect option, whether the buyer has the right to ask for the good repairmen if it is nonoccurrence or not?

Research hypothesis

In Iran civil law, the mentioned right couldn't be considered for the buyer because the defect option hadn't considered such a performance warranty. But in the convention the right has been accepted.

Methodology

The research is analytical and descriptive library research. The opinions of lawyers and jurists had been used in the research. For such a purpose different resources including Persian, Arabic and Latin books, articles and pamphlets had been studied. In this regard, legal sites, particularly in relation to the issue of international law have been very helpful.

Article one: time to submit

Article 33 of the Civil law convention explains different states of submission time.

The time of good submission had been specified clearly in the article which could be divided into three cases.

- 1- When a specific deadline had been specified for submission.
- 2- When a specific "time period" had been specified for submission.
- 3- When a specific deadline had not been specified for submission and indeed the contract is silent about the submission deadline. In this case, the goods must be submitted within a reasonable time after the contract.

Underline et. Al. (1994) in an article with the title of international sales mentioned if the seller submit the goods with delay to the agreed time if the delay is minimal it won't be consider as a fundamental reversal as it doesn't harm the client but if the time of submission is important to the parties and the seller is aware of the importance any submission after the determined time would be a fundamental reversal and let the buyer to terminate the contract.

Article two: submission costs

According to the principal "commitment for the object is commitment of its parts", the seller's warranty of submission requires the seller to pay for the costs of submission unless he compromise unlike the contract or change the form of submission costs payment from its regular form. For example, whenever the seller is measurable, tunable or numerable, the seller should pay the costs of measurement and weighting of the good or its counting. Sometimes he is also the responsible for paying the costs of transportation. As such terms are considered as seller's obligation for the submission.

Chapter two: good and contract correspondence

The second seller's commitment unto the buyer is the submission of the goods similar to the ones mentioned in the contract (contracts similar to the submitted goods). The correspondence of the good and contracts means that the mentioned good should be surmised as the parties have no agreement about the good other than the one mentioned in the contract. In Iranian law, there is no special chapter devoted to this topic and the text of such rule is needed. Nevertheless the related rules and articles could be deducted from some articles of civil law such as trades law, the Enforcement Law and Civil Registration Act and etc.

Conformity of goods with the contract can be considered from two perspectives.

- 1- physical conformity
- 2- good conformity in terms of material

Article three: time to submit

The main element of all contracts is the urgent submission of the good without delay, it means once the contract was concluded the promisor is obliged to admit

the liability for his acquittal. In the case of selling contract after inscribing the requirements and the acceptance of warrantor seller to submit the good and client, obliged to deliver the good, each of the parties are obliged to make his commitment without delay. It seems that the main principal of the civil law is also on time submission of the good although some civil law authors state that; "on time submission of the good hadn't been mentioned explicitly in any of texts". (But the same authors have mentioned the law deducts by some legal articles such as 341, 307 and 402 of the Civil law). On time submission of the good can be fully understood by article 344 of the Civil law.

Article four: submission location

Like the time of submission the Payment emplacement have a great importance. Legally not only doesn't it specify the warrantor but it also determines which court has the eligibility to determine the location for the Everyone has the right to and Who is responsible for the to fulfill the promise. According to the article 3 of the Civil law "in the case of commerce claim and claims related to the movable properties resulted from contract and agreement the court in which the contract was issued and the court where the commitment executes has the jurisdiction".

Unlike the convention the civil law in article 375 has considered differentiation between the contracts includes good transport and the one without such universality, but not about submission location and as a general rule, declares "the good should be submitted in contract location unless submission in another place has become habit and custom or, if special place had been allocated during the selling contract". The article had been mentioned due to the general regulation of article 280 the civil law about the submission location.

Article five: submission costs

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Conformity of goods with the contract can be considered from two perspectives. Physical conformity and legal

conformity will be examined in two paragraphs of the chapter.

Article one: physical conformity

As we all know, according to article 190 clause3, article 216 and article 342 the civil law one of the conditions of selling contract accuracy is determination of its good which means the amount, material and description of good must be determined for the parties as a result to say the good I submitted fully according to the contract and contain the description "physical conformity of good with the terms of contract" the amount, material and description of good must be the same as the contract terms.

a) physical conformity of good in terms of amount:

As mentioned the submitted good must be consistent with what is stated in the contract and equivalent to it. According to article 342 the civil law determination of the amount is depends on the region custom. In Iran law just like the convention, submission of good less or even more than the amount mentioned in the contract is the instance of unconformity which will be subject to certain sanctions (Article (1) 35 and 384 the civil law).

The disadvantage that may be raised in this regard is that as the amount of good must be specified, the parties should be aware of the amount and quantity to be able to transact. So how could a good have unconformity with the mentioned amount of contract? In answer it must be said that:

- First: it is true that the seller must submit the same amount of good but sometimes the parties make a mistake in determination of the good amount. For example they become confused in determining the weight of goods. Or For example, the error is caused by a change in the good before concluding a sale occurred in the job-dedicated but the parties are not aware of that. For example a farmer weights five tones of his rice crop and store it in the storehouse, after six months sell it to the merchant as five tones unaware of the fact that the rice have been dried during the time and the weight has reduced then in the submission time the amount will be less than the mentioned weight in the contract.
- Second: sometimes the amount is not determined particularly to the parties so they can sell the described good by considering its amount or area that may later prove to be more or less than the amount stated in the contract.
 - o good conformity in terms of material:

The second one is good conformity in terms of material the material of submitted good must be consistent with what is stated in the contract. just unlike the convention that offers special criteria like congruence of the good for regular use, its congruence with the particular desired purpose in the absence of customs on goods' material, Iran law do not determine such special criteria.
 - o Physical conformity of good in terms of description:

The third one is Physical conformity of good in terms of "description". Description had been described as "description" = (how, modal), explanation of the things modality. In contracts expressing the description is vital or the contract is

invalid. So the submitted good must be in accordance to what is mentioned in the contract in terms of Description and quality.

Article two: legal conformity

In the term of legal conformity it must be said that the seller must submit the good immune from any claim and not belonging to others, in other words the seller must sell the good he poses or have the permission of its owner.

The conformity of the good with the terms of the contract can include an unconditional right to sell the goods, the vendor ownership of the goods, and inexistence of disturbance, third party claims and etc. unlike convention which has assigned 10 articles (articles 34 to 44 of the Civil law) to the conformity of the good with third party claims in Iran law there is no specific chapter assigned to the conformity of the good with the terms of the contract nevertheless an Iranian civil jurist has forecast certain provisions Based jurisprudence for different cases such as pry transactions (To another person or another property deal), liability of understanding, mortgage and ...

Proposed interpretations:

In addition to the foregoing comments the following comments can be also offered;

- 1- We all know that according to the article 48 of the Civil law the compliance of cases cited in the article (which is one of the repairs) is subject to the legality of Article 49 of the Civil law. The article 49 of the Civil law also talks about the right to termination while as it was mentioned in the previous chapter according to the article 45 of the Civil law the right of the buyer when dealing with non-compliance, In addition to termination can be claim for damages, reduction of price, demand for alternative products and etc. while the Article 49 has excepting the application of good restoration. According to the interpretation (Article 49), the buyer cannot move for the restoration of its items only because of breach of contract or expiration of the grace specified period but when the breach is not clear and important or the buyer wants to use other warranties instead of breaching the contract the seller right to restoration becomes prior to other buyer's rights such as reducing the price and etc. and the seller can offer to repair the goods instead of other sanctions such as reduction in price or charge of replacement item.
- 2- We must differentiate between the sellers offer to restoration before or after the declaration of contract breach.

If the seller offer restoration before the breach of the contract, and the offer have no "unreasonable delay" or "unreasonable disturbance", the buyer must accept it otherwise, his action might be considered as a contrary to the principle of good faith said in the article 7 of the Civil law and the rule of reducing the damage contained in the article 77 of the Civil law. Unless he gives a reasonable and legitimate reasons for rejecting the request.

Conclusion and Recommendation:

The possibility of termination right and damage compensation in cases where one of the parties on the basis of one of the legal sales and for preventing sale's loss does the contract, he is doing the simplest thing to keep his wills safe and break the adverse situation resulting from the contract. But this is not always that

simple and contract termination is not enough for preventing damages since he might lose contract opportunities with others and might be forced to buy the product so much expensive than before because of the price inflation. Suppose a person wants to buy a car, receive it, and pay the price. He refers to an agency and buys the car. After delivering the car, the buyer goes on a trip with it and suddenly due to a hidden defect something dangerous happens. So the car is broken and it's occupants are dead. Assuming that the buyer can prove the defect and terminates the contract and receives a same car or gets back the money. Morally, the seller's responsibility is not finished. He should pay the damages and compensate the loss. In the case of compensating the damages to the customer resulting from the car defect, with respect to civil responsibility and 3 social conditions (check-loss session + Cebit relation+ taking damage) is necessary. But there is no clear law for after contract termination damages which are under taken by the buyer in Iran except for normal contract costs. In this case we refer to the provisions of the Convention.

The facts that in a commercial transaction the seller have some obligations to the buyer have been accepted by both convention and Iran law.

One of the obligations is the submission of good comply with the contract. It means the good that the seller submits to the buyer must comply with the terms of the contract both legally and physically. In other words, not only the submitted good must comply with the contract in the terms of amount, material and description (physical conformity) but it also must be immune of the third person claim and other person's possession (legal conformity). If there is no match in the buyer can compensate by resorting to various sanctions one of which is "restoration of good".

Transaction convention of Vienna has explicitly accepted the right of good restoration in articles 34, 37, 46 and 48 of the Civil law. The right of good restoration can be performed in different procedures such as commitment to remove the defect (clause article 46 of the Civil law) Provided that the removing is possible, sensible and common and performed during a reasonable time after the warning of the mismatch, asking for the alternative good (clause article 46 of the Civil law) provided that the submitted good mismatch the contract while the mismatch considered as a substantial violation.

According to the mentioned points the seller has the right to remove any defect until the mentioned time arrival according to the contract if, submit the good before the due date (article 37 of the Civil law) the law is also true about the submission of documents before the assigned time (article 34 of the Civil law), In all these cases, the exercise of the right is subject to not cause unreasonable inconvenience or expense to the buyer. According to the article 48 of the Civil law the right to restoration the good even after the submission time is considered for the seller of course compliance with the foregoing conditions is required.

Resources:

1. Jafari Langroodi, MJ, Law Encyclopedia, j 5, Ganje Danesh publishing company, 1372,

2. Safaei, H., Comparative study of international sales rights, Tehran University Press, Tehran, 1387,
3. Katuzeyan , N., general rules of contracts, Volume 4, Tehran, Sohaye Enteshar, Fifth Edition
4. Jafari Langroodi, MJ, intermediaryin rights terminology, Ganje Danesh publishing company, Tehran 1389
5. D. Poor, Mehrab, interpretation of international sales law library, Ganje Danesh publishing company, Tehran, 1374
6. Katuzeyan, N., civil law in legal system of today, Tehran, released October, 1385
7. Safaei, H., general rules of contracts, publication of Tehran, third edition
8. Enderlin, fritz and Maskow, Dietrich (1994), International Sales Law, united nation convention on contracts for the International Sale of Good, Oce and Publication, New York,
9. Schletriem, Peter (1998), Commentary on the UN Convention on the international Sale of Good, translated By G,Thomas oxford university press
10. Audit (Bernard) , La Vente internationale de merchandises- LGD Paris no,83- 1990
11. PoikelaTerjia “lonearmity of the goods in Vienne Convention” Nordic journal of Commercial law (2005)
12. SchwenzingerIngeborg, International Sale law London P2007
13. John O. Honnold, Uniform Law for International Sales under the 1980 United Nations Convention, 3rd ed. (1999)
14. heuze, la Vente internationale de merchandises, Droituniforme, Paris, Glonjoly ed. 1992
15. Cite as Will, in Bianca-Bonell Commentary on the International Sales Law, Giuffrè: Milan (1987) Reproduced with permission of Dott. A GiuffrèEditore, S.p.A.
16. Mirghasem, jafarzadeh, Buyer’s right to specific performance. A comparative study under English law, the convention on contracts for the International Sale Of Goods, Iranian and shiah law, march 2001
17. Fritz, Enderlin, Rights and obligation of seller under Convention of contract for the international sale of Goods