

## The Comparative Study of Stipulation in Iran, French and England Law

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**Abstract:** The conditions Alqd right and wrong conditions can be divided into two categories. Void provisions are divided into two types diriment and non diriment. Alqd also includes provisions on the rights of property condition, and the result is a verb. This division is inspired by religious texts and in some legal systems, such as France and the UK The same types of conditions (with little tolerance) can be seen. It seems a sufficient condition for the validity of the characteristics that lead to its invalidity is not it. And other legislative provisions that civil vicious examples If the conditions included in the contract due to the inclusion of the principle of freedom of contract is valid and reliable. When a contract is conditional on the It is necessary for the validity of the properties that have been in the law, the validity of the provisions of the Alqd in fiqh texts and jurists have long been involved in issues related to the condition of the corrupt and non-corrupt, Iran's civil rights are not unaware of the issue and a special chapter devoted to it, matching it with foreign rights at the head of the study, In addition to the benefit of familiarity with the rules and regulations related to the provisions of the Alqd foreign law, since it leads to achievement The depth of breadth of vision to the laws of countries and thus compare similarities and differences between the funds with the intention of developing the research we have Although the results will be flawed and Narsahayy also because of the novice researcher in the study, so the meaning of the expression condition In the legal system and domestic and international law, and then the expression of a variety of conditions in addition to Alqd, as we have discussed implementation of the health condition of the Alqd.

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### Introduction

For the contract stipulation conditions to be correct, the features that are introduced as false in law should not be involved in it. In between Iran and France the civil rights we witnessed that the criteria for correctness of contract conditions include being allowed and with being legitimate and lack of opposition to good morals are similar in civil rights. Although we see a breakdown in Iranian civil law about void and nullifies conditions of contract and non-nullifies conditions of contract which is also adapted from legal texts and is not expressed in elegance in foreign law. Only in the French civil code it has been mentioned in two articles conflicting that the invalidity of contract terms leads to invalidity of original contract and in other article invalidity of contract terms does not affect original contract. In English law the condition is correct, if it is complete and clear (unambiguous) and determined.

And provisions that do meet these requirements if they are important give the permission of termination and if not important only stipulation can receive compensation. When a condition is in a contract for its validity it is necessary that it has had the features that are in the law. The condition of contract is mentioned in legal texts. Jurisprudence has

long been involved in issues related to the corrupt and non-corrupt conditions.

### The research hypotheses

1. If a false condition other than the conditions that civil legislator mentioned is involved in the contract, for the inclusion of the principle of freedom of contract is in force and valid.

2- In comparison of these three legal systems of condition commitment under the English law is consistent with the current condition of Iran.

3. The legitimacy of the condition of contract means it is not contrary to law and public morality.

4. In the law of England and France Stipulation are correct when they are decisive and complete.

4. Research Methodology.

The research method is library and documentary. Therefore, in this regard, domestic and foreign books and articles, websites and all documents that are relevant, will be used.

### The definition of Stipulation of contract

The definition of "Stipulation": "any condition that according to a contract is established for the benefit or to the detriment of another is called stipulation. If negotiations about the condition of the contract were done prior to contract, and the contract is concluded according to negotiations. Stipulations must be mentioned in the contract. Some of the elders

Apart from credit commitment provided in the context of contract and the inadequacy of the contract also know the mentioning of the condition as necessary. What is of particular importance is the type of contract that involves the condition.

#### **Condition in the views of jurists and lawyers**

Condition in terms of Sharia means covenant, like condition of human means covenant of human, and condition of God means covenant of God. Condition in legal terms in the law means absolute commitment "whether in contract or independently and separate from the contract. That is why the condition is divided into two parts: the stipulation and primary conditions.

According to Mohammed Kazem Tabatabayi Yazdi condition does not mean absolute hoax, but it has commitment with it and causes narrowness of the subject. According to Abdullah MAMGHANI condition simply means "relevance" and the researcher Esfahani "company", condition means necessity that is sometimes genetic and sometimes fraudulent.

#### **Condition in foreign law**

French law: French law has not dedicated a special part or section to types of stipulation. Except that it's possible to find cases in which they expressed conditions in some parts.

In general in the Civil Code the condition is used in two senses: A sense that in the clauses 1168 and 1183 of French Civil Code states which is Suspended commitment is the commitment that stops the next event and it is likely to happen, whether its occurrence causes the obligation to stop or dissolution of commitment. "In the second sense for example, Article 900 Q.m.f. Stated: "condition is a term that included an action so law forces complete that action.

English law:

In British law condition means a part of the original contract and does not mean contract suspension like law of France and Swiss. Suspension of the condition means actual occurrence of the condition that the formation of the contract depends on it.

#### **Legal nature of the stipulation in civil law**

Any condition that is in the contract to benefit someone or to the detriment of someone is called Stipulation. And as we said, before the conclusion of contract if the dealers have a negotiation and contract is signed according to previous negotiations then it is also an instance of stipulation. But if previous negotiations on the condition have occurred as preliminary negotiations and obligations happened between dealers but not used in the context of contract, then it is called collusion condition.

Types of stipulation in Jurisprudence, Iranian and foreign rights.

Types of stipulation in Jurisprudence and its different religions, Iranian and foreign rights:

1. In Jurisprudence and Islamic sects: Traditionally in Jurisprudence, the stipulation is divided into three categories which are; proper conditions, corrupt conditions and uncorrupted and unfavorable conditions.

The proper condition is a condition in accordance with contract requirements. The purpose of these conditions is that even if the parties did not anticipate the condition on contract it still arose due to contract, for example when a tenant states that the landlord will deliver the lease. This condition is valid by all of the jurists and Sunni jurists.

There are contract clauses in favor of one Party provided that such condition is not in conflict with legal law. In the Shiite jurisprudence such condition is valid if it is in the interest of the parties or at least one of them. All Sunni schools of law also know this condition as valid.

#### **2- In Iranian law and foreign law**

Iranian law: Chapter IV of the Civil Code with articles 232 to 246 derived from the Shiite jurisprudence and especially opinions of Sheikh Ansari as "conditions that are included in contract" is dedicated to the terms of stipulation, although, the legislator has cited the terms of correct stipulation.

#### **Conclusion**

Comparison between law of Iran and France we witness that the criteria for correctness of contract conditions include being allowed and with being legitimate and lack of opposition to good morals and these are similar in civil rights.

Although we see a breakdown in Iranian civil law about void and nullifies conditions of contract and non-nullifies conditions of contract which is also adapted from legal texts and is not expressed in elegance in foreign law. Only in the French civil code it has been mentioned in two articles conflicting that the invalidity of contract terms leads to invalidity of original contract and in other article invalidity of contract terms does not affect original contract. In English law the condition is correct, if it is complete and clear (unambiguous) and determined. The purpose of the stipulation is that a link is established between the requirement and the contract. Although many lawyers in analysis of the link between condition and contract have been satisfied with this amount justified the effects of the condition in the contract on the basis of it, but some scholars have thought more carefully in the Stipulation, the present study while providing different designs and investigation weaknesses of each, has provided an acceptable method to analyze the relationship between the requirement and the contract.

The aim of this study was to investigate the stipulation in the law of Iran, France and the United Kingdom.

The stipulation is the commitments that are entered into contract by mutual agreements of the parties. These conditions can be stated in the contract and formalized by the sign of the parties. The conditions are not mentioned in the law and are selected during the contract or even after. The stipulation is the commitments that are entered into contract by mutual agreements of the parties. They can be formalized by the signature of parties.

Invalid stipulation conditions in Iran's rights under Article 233 of the Civil Code are conditions contrary to 'the requirements of the contract itself ". It means the essence of this requirement is contrary to the nature of the contract [in marriage]. Comparing this subject with foreign law was the main goal of this study, the benefit of this in addition to familiarity with the rules and regulations relating to the terms of stipulation in foreign law, is also in that leading to the achievement of the depth and breadth of vision to the laws of other countries and in conclusion finding similarities and differences between them, and that is our intention in developing this research, although, the work will have some shortcomings and insufficiency that is due to the researcher being novice in the field of research. So we first stated the meaning of condition in three domestic and foreign legal and judicial systems. And then after mentioning different types of stipulation, we describe comparatively the correct stipulation situations.

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