

Replacing the parties will examine the role of customary law in civil law

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Abstract: This research is an attempt to study the role and position of convention in contracts of civil law, that is, when and how convention affects the concluded contract between contracting parties and to what extent convention value and credibility are in law?

After providing definitions of convention in this text, sorts, pillars and its elements have been discussed. Then, we have studied the concept of convention from the standpoint of jurisprudence, its basis of authority and credibility conditions of the convention, its role in the major legal system and especially its role in contracts. Then, we discussed those cases of civil law which is aimed at the convention and finally, it is concluded from considering discussion, given that the juristic entity has been proven in jurisprudence and it is considered as one of the sources of law and; unfortunately, despite its importance and impact particularly in contracts, it is not defined in law, hence it is essential to define it. The convention in the legal system within the scope of the contract, illuminates definition of ambiguous words and phrases and will be determined in the silence of the parties towards contract terms and resolving substitute contract ambiguities. Legislator prevents law rigidity and inefficiency by accrediting convention in interpreting words and has made it synchronized with social development; that is why recognizing most of legal issues and determining their evidences are delegated to the convention.

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Key words: convention, contract, contracting parties' will, law, silence of the contracting parties, contract words

Introduction

The written law and codified in our country respect and the main source of law is the law, "the norm" in building legal rules is effective. One such role Qradadhost practice within the area.

Each contractor will of the parties and their intention insha will attempt Court has always believed that the real intention of the parties to be informed. Because the contract requires interpretation rather than the intention of the parties is evident. Magistrate with the interpretation of the contract in dispute resolution and settlement will come to fight. One of the means of interpretation of common law and civil law. In many cases the "return to tradition" and lawmakers to resolve many claims have recourse to the common law. People need security and stability to protect its interests and to equality before the law and are trying to meet this need that the same rules are common between them. In addition, the order of nature committed human customs and traditions can Prhyzd rape case. When habit guarantee the public interest and on their own with their demands arise, stability and durability, and to adhere to its own place, that everyone can see. "Norm" is the direct product of the public conscience. Common law between common people and the belief that people are being forced to find rules that it represents a common position on the conscience of the community comes.be. Given the diversity and extent of the practice in civil law and

common law position that the claims are settled, we decided to do research in this field.

The collected material, a professor of law and the investigation of my comments on the role of customary law and civil law contracts which may also review what is missing. But it is hoped that this research can be used by readers and scholars in the field of legal issues and pave the way for further research on this topic.

Statement of the problem

Certain rules that reflect the customs of the communities they are part of the government. As is customary rule of law. Of the tradition as a source of rights in the law and other resources, consider the matter of civil law where tradition reigns in many matters, particularly in contracts, the general rules and certain contracts, and according to tradition In many religious texts and works and works of jurists and judicial decisions ... all illustrate the growing importance of the convention on the rights of development of social relations on the one hand and the inadequacy of existing regulations (codified law) on the other side and ultimately thereOn the one hand the impact and the role of customs in one of the most important legal and social institutions and facilities, the contract early, in the conclusion to interpretation and ambiguity and the enforcement of contracts, Bsyarhayz importance and worthy of independent study and detailed . In summary we can say that in

most cases the common law as a social institution contracted and determines the meaning of words, sometimes creating their contractual obligations for the parties and will complete the contract for the implementation of the smoother the .

customary conditions of their contract. As a result of this discussion can be helpful in resolving disputes and claims judges. In this regard, it is necessary to respond to the needs of the community that utilizes the resources and deepening the development of law and legal thought.

The importance and necessity of this research:

No doubt the purpose of the contract, the implementation of its provisions by the parties as a result of the works contract. Implementation of the contract is subject to the terms and explain the nature and effects. Once established in the contract dispute, and follow the dispute to court, the judge has sought to clarify its interpretation of the contract, dispute resolution and settlement will come to fight. Undoubtedly means of interpretation of contracts, need to equipment and tools. One of these tools is the norm.and the increasing need to practice, especially in the area of contracts, requiring more detailed research Dardbnabrayn need to identify practices and their impact on the contract should be considered. It is hoped that the outcome of this investigation is the time to sit down and address the dilemmas contracts.

literature

"Doctor Mohammad Langroodi believes that the common law tradition into three categories: practical, legal traditions and practices can be divided into subject matter and expression Mydardkh common definition: it is common practice that the majority of trade union or class of classes, or a group of community frequently do act according to the interests of a class or that class and group, is known. "

"The reference also states that in order to be a source of non-verbal practice is clearly lacking is required and therefore adapt to the evidence to prove it creates doubt. "

"Ali Jabbar Glbaghy village said that as long as the customs value is not in conflict with the legal text and the text of the convention is Aqva. Despite the long delay, as in common law reflects the will of the social group is what makes the difference between the two, the technical data. It is Vnakhvdagah practice on their own. But the law is the result of an expert. Ramhtrm considered common law and its application in the silence, brief and inconsistent laws and is accepted as the rule of law. "

"Hassan Emami doctor believes that the scope and sphere of influence and respect the tradition of common law for non-Muslims to be divided."

Research Objectives

- Explain the nature of the practice and study of the role of the private contracts

- Identify and explain the value and validity in civil law and common law in contracts between private parties

- Check the elements of the environment and its effects on the contract

- Identification and expression referring to the practice in civil law, whether explicit or implicit

- Interpretation of the causes of common binding contract

- Explaining the science Vjhl to the environment and its impact on contract

Research questions

1. What are the conditions for the replacement of the will of the parties by common law?

2. The requirement of acceptance is the norm in the contract?

3. The burden of proof convention who is responsible?

4. Proof of ignorance to practice what effect on the contract?

hypothesis

1. The norm in our legal system (like all other legal systems), determine many issues legal opinions and even legal terms in cases of doubt. In contracts, customs of the contract that is transparent and opaque, clear and unambiguous meaning of words and sentences is to fix it on the Sa zd. hmchnyn in silent mode and demystify the parties to the agreement the parties will replace the conventional practice

3. The burden of proof is common to cite the interest Search beneficiaries in the event of silence the judge who proved in practice about it.

4. The ruling ignorance of legal practice, such as ignorance of the law is the knowledge and ignorance of the ruling parties or one of them, without prejudice to the obligations of the parties does not have a legal norm.

Conceptual and operational definitions of words and technical terms

Custom

In certain cultures means Shnakhtgy tradition, reputation, goodness, forgiveness, famous, famous, known, used, what is common between the people and it is against the law.

Lawyers of institutions have taken various definitions:

The doctor consistory: habitual practice that has long been popular among the general public and the specific event and apply it to the public and to be sustainable.

Ali Jabbar Glbaghy village tradition is defined as: practice, practice and procedure or set of

procedures and methods that gradually over time by repeat on their own and without the legislature as a result of social needs, the society or a them as binding rules to regulate legal relations between members of the community, it is acceptable and common.

Law

Mrb the Latin word Law Association (canon) and literally means an instrument for regulating lines and pipelines or other means such as, regularity, document, guideline and principle. In all the words the law, the law has many definitions. Legally, the law in both general and specific means used.

In the general sense, the purpose of the Act, all provisions that the federal government is one of the competent bodies. It may Organisation (reference) the legislature, head of state or a member of the executive branch. Therefore, in the general sense as the law is called the wide range of regulations and includes all adopted legislation, decrees, and regulations and policies It is official. But in specific terms, the law says that the procedure rules set out in the Constitution, by the state legislatures.

Contract:

The word "contract" in Persian language means "marriage" is used. For the literal meaning of "marriage" is mentioned three: the contract signing means the closure, thicken and harden, contract literally means "Close " is. As the "183" of the Civil Code states: "marriage is that one or more individuals against one or more people, the commitment to something acceptable to them." It's the jewel of the contract is defined as "speech or speech from one side of the two parties and the conduct of other religious parties led the desired effect has been applied."

Will:

Will the word means desire, seek out and is going up. Iran may be willing to ask in terms of meaning. But when the mental condition of the transaction or unilateral obligation comes in Iran's rights, based on an analysis of mental states and stages it is done according to legal provisions, or will ask for two separate state known as the inner. Reza and another one is going to have to be willing to interpret.

Methods

The way the author used in his thesis:

A library is from there that all human knowledge can be found in books and libraries to gather information from books and articles have been used as the primary means of data collection.

(B) use the internet to gather material through the library to be matched with content on the Internet is used. With direct reference to the resources available in the library and reading legal books and legal articles and relevant content collected by taking notes. As well as computer networking and mash legal weapons as well as gathering information is used. The bed

Alaqtza' of academics in this research will be achieved.

New and innovative aspects of the research:

The theme of tradition and law Drfqh entered, and perhaps in its legal interpretation, but it specifically examine the role and impact of the replacement joint will of the parties to the contract are taken and expression replace the customary conditions of the items in the contract that recently has this research. The study is to be extended to replace conventional terms, and it works on a contract basis and discussed.

Research structure

The study in five chapters. In the first chapter of the study includes an introduction to general concepts, explain the importance and necessity of research, definitions and has been associated with the topic.

In the second chapter, the definition of the practice from the perspective of lawyers, the concept of common law jurisprudence, custom components, custom forms, custom status and importance of the contract and its role in major legal systems is examined. In the third chapter on customs authority in the contract and its relationship with other sources of law as outlined and briefly discussed.

Work is briefly mentioned.

Custom defined from the perspective of lawyers

Defining custom dictionary

The word refers to a common practice known among the people, habits, knowledge and action is good. Daneshian common word for word names have different meanings. Such as the meaning of the "good and decent" noted. Most common is a genuine Arabic word meaning past participle (also used) and means "knowledge, well and good."

The common definition of the term

Custom words in the legal literature, the term that is two away from its literal meaning and is no stranger to the comprehensive definition of both concepts is the phrase that said: "The convention is a legal term used in all or most The people of the people in certain words or behavior "

Daneshian law, jurisprudence and sociologists each for common sense and expressed his view that it was their definition here, each is presented independently.

The practice of law

According to multiple branches of lawyers' rights to practice different definitions stated, as quoted in the definition of Julian Roman lawyer said the old common law rights that emerged from customs and public virtues and effect laws. Sometimes it is believed that the rules of social phenomena extracted without the intervention of the legislator as a legal rule.

It's some set of rules not imposed by the holy legislator, knows.

Iran 's civil law tradition have presented the following definitions:

J. Langeroodi: "what is known and familiar and accepted in the minds of men of understanding." Dr. Hasan Imam: "The purpose of the common law, common law, it is society as a result of repetition, people have found that obese men who act contrary to their feelings hurt so bad that effects them. These habits are often the source of religion. Rules for maintaining order and peace of society to respect and observe the common law has required it count. "

Concept and principles of common law jurisprudence

While many of the issues considered customary law and principles, but seeks to define, analyze and discuss Brnyamdnd, but it is regarded as a certainty and knowledge elsewhere jurists maintain the principle of work. Jurisprudence of practice with various words such as practical life, Mlaln great tradition, building customs Alqla, wise, wise, people's event, practical consensus and their interpretation. For example, several different definitions for it is said that our definition:

Abu Hamid Muhammad al-Ghazali stated in the definition of common law: common law is what the wisdom of the soul settle and accept it intact natures. .

One of the jurists in the common law definition of said general tendency of human tradition, whether religious or atheist to something specific in a way that is against the law, in other words the policy of the public and to maintain the individual and society is sarcheshmeh disciplined and organized, whether in conversations, transactions or other social relations, such as ignorance refers to understanding the universe.

In general, the practice of so-called scholars, tribal continuous method in speech or behavior.

Amid master Zanzan common definition says is common practice that most people take it repeatedly and voluntarily, without any feeling of hatred do and sometimes jurists interpret it so wise and sometimes refers to practical life they do.

Although this analysis and define the meaning of common law jurisprudence, law largely closed, but only shows some of the elements in law and jurisprudence are common phenomena.

Elements of tradition

Customary law concept of contract law in general and, in particular, to be effective, have certain elements, but most lawyers are reminded of two basic elements:

Material element

This element, in fact, within the law, and if the legal practices as one of the top two elements seen in other social conventions only major outstanding

element is generally any customary in the current incarnation and as it realized. Material element in the common law tradition is short, typically consisting of positive action and omission is rarely included. Simply, the common material element is the frequent use of the mental element known as common law.

If the common material element is complete and stable course of the general public and common material element (in the scale of society or a particular group), is not that all the people are accustomed to it. Must be met to the extent that it can be said that all of society or a particular group of respect. "

Create custom usually associated with the passage of time. However, the roots need not be sought in times past far.

Spiritual element

The spiritual element of spiritual practice and social acceptance of the binding specificity and sanction them.

that governments have committed themselves to support it and see it accepted that the courts are referring to.

Social behavior as well as a common phenomenon is the existence of both the material and spiritual constitution shall be established in it. These elements constitute the pillars of the existence of numerous species of common law legal tradition always and in all cases was the same and does not change with different time and place.

Types of conventions

Customs of different directions divided into different types, including common sense and specific practices, correct and corrupt practices, and subject to legal norms, traditions and customs of certain contract and that is briefly described.

Common sense and specific practices

Common sense

Common sense is not common that the majority of people involved in its creation. In other words divided into general and specific customs of the place is its form and location can share common criteria to be general and specific. For this reason, common sense must be a relative matter, as is customary in one place may be common sense, in a special convention to be considered a bigger place.

Special convention

Specific practices include certain mental familiarity that at least one thing in common with each other, such as work or the neighborhood and to take or leave it

Specific customs divisions: the specific trade practices, time, location, tradition and customs of Muslims juristic lawyer who practices both kinds of Khasand. God tells the Prophet's ordinary common sense and the purpose of the common Muslims juristic tradition after this period:

"Customs may be associated with a specific time, ie when there is diminished and at another time, but the relationship with the customary practice should be divided into general and specific. For general or specific standards of practice established in the minds of a community or group of people in society is not the emergence of unlimited or limited time. The dominant norm in terms of time associated with the location, which is associated with people living in that place may be public or private institutions. "

The role of customary law in the interpretation of contract

Conventional practice is "subjective human society or a particular group to be related to the contract. Known for its contracting practices in Iran, there are different Nyzkarkrdhay. Accuracy provisions of the law is authentic. Although the role of customary law in certain contracts in the various civil law, but interpret contracts according to the general rules of contract on the sovereign territory of tradition dealt with, hence the common law rule is the following:

Role in determining the meaning of words and phrases common law of contract:

According to Article 224 of the civil code words contained in the contract of carriage on common sense, so if the parties explicitly another meaning of the word in question, they will not, common sense prevailed and the court will condemn the contractual terms of the interpretation of the words They act according to common sense.

"Common sense meaning that a particular group or community means humans is subjective and when it apply the term to mean the same means. However, contrary to the literal meaning is not necessarily common sense, but common sense may be the real meaning. Apart from the customary meaning of the figurative meaning. Otherwise, the use of the term virtual means we lay crushed "Dr. Twelve said:" Section 224 BC if the terms of the contracts is directly included in other terms, such as commitment and provided that the document is used, does not, however, can be carried through the priorities related to customary meaning of the words of the other also. The terms of the contracts, the basis of the contract, if the meaning is related to customary carriers, other words have a secondary aspect, a fortiori related to customary shipped on the meaning of "legal study shows that in Islamic jurisprudence, contract terms should be carrying conventional and unconventional means to carry on the symmetry is required.understood. And to speak the common language and understands the community.

Some believe that the assumption of ignorance in the face of common sense can not be compared to Article 356 of BC's current ruler. The other common

law implied by the provisions of the explorer will not share them.

However, it seems that unless they prove contrary to the common meaning of the words in the form of knowledge or ignorance on their side prevail.

The role of customs in the determination deal

In many cases, the parties to the contract are silent expression and this is often due to ignorance or knowledge of the practice commonly transactions. The custom of carrying on a silent residential houses and commercial shops will carry on business. Performance of the contract is required to be provided so that the common law.

For this reason, Article 490 stipulates BC "also lease the tenant must first be normal behavior and not abuse or wastage. Secondly, while in the consumer lease the rent due and otherwise determine Mqsvdh benefits that can be inferred from the circumstances of the Astlal. Thirdly, in cases where property Aljarh between the parties and in case of non-payment due date set must pay cash. "

The purpose of using the same lease in the ordinary way it is in practice and in the silence of the parties refer to this practice, and the verdict silence to fix it.

In those cases the legislator has been taken to determine the nature of the subject.

Determine the components, parts and functions customary deal

Sometimes the parties without the components, functions and equipment trade, signed a deal to build and are difficult because the performance of the contract. For example, the parties to the contract of sale of a car steering lock, alarm, seat, and Jack and silent record, but according to Article 225 of the Civil Code stipulates: "It is customary in practice so No clear conclusion is that it would give as mentioned in the contract. "As well as Article 356 of the Civil Code provides:" Every thing in common law or the evidence indicates that the entry is considered to be part of the sales function in its sales inside sales and customer owned, although the contract explicitly is not mentioned and even dealers are ignorant of tradition. "Silence is fixed contract.

Their contract prevail.awareness of its obligations in the event of disagreement or predict, on their contractual relationships will prevail.whether or not the transaction components, accessories and functions, primarily in common law contract and if the transaction referred to in the decision on joining the convention is certain is sales. Otherwise, according to the principle of part or parts or functions that it is excluded from the sales and to join it needs to deal separately and only for that purpose.

For example, at the time of the adoption of the Civil Code and is not selling cattle into the why of 358

BC provides "... trees garden in sales and home sales in the passage and enforcement, and the join so that" But today carry into the sales practices considered unless the contrary is established. BC is administered to them (23).

The most common criteria for the identification of components and functions for the transaction. By virtue of Article 356 of the aforementioned components and functions related to customary object of sale are applied whenever it is not needed and was also related to customary functions of the components will be the object of sale, unless otherwise expressly provided it off though the parties to the convention to be ignorant, lack as is stated above. Knowledge or

ignorance of the parties on the impact of the inclusion of customary practice and that such a deal they can not be revoked in accordance with Article 356 be recognized and their validity is not any prejudice.

The sentence in Article 356 of the current contract is in all cases and does not have to sale. The ignorance parties to the contract to components, parts and functions of the transaction referred to in Article 356 has to be said that it seems that this part of the article 356 BC incompatible with the general rules stated.

Role of customary law in determining the time and place of implementation of commitment

One of the institutions involved in the interpretation of that commitment is to determine the time and place of execution. Iran's civil law tradition has been assigned this task.

Whereas in the contract deadline be fixed for the fulfillment of that time was a binding contract, but if the parties have not specified the time of its implementation, the contract term appropriate that the time of the convention effects.

The place of performance of the contract to be said that the parties to the contract if the contract specifies the location where they are and expect them to act according to the agreement. The contract will be executed in the same place, However, in the parties to the contract formal, Location the has determines commitment will be done in a place that determine the norm. Considerate of 280, 375 and 382 BC, the role of customs in time and space, performing the obligations specified under article 280 BC: "commitment to action should be located where the contract unless the contract between private parties or otherwise the common law requires. "

According to Article 375 BC, "the object of sale shall be submitted in a place where there is a sale contract. Unless common law is appropriate submission or other place designated for delivery is also selling a special place "

According to article 382 BC "If the common law for the costs of the transaction or the delivery is listed on the contrary the order or contract to the contrary is provided, according to be treated in the contract and provided conventional or Mtbayyn can change it to compromise. "

According to article 280 BC, when the parties in this case, and an agreement has not been silent, replaced the customary obligations and commitment defines the place and time of execution. The important point about this material is that the first place where the contract for the execution of the contract have been introduced. However, if the common law due to another location, that location will be the place of performance of the contract. In other words, a state of silent practice of contracting parties to determine the place of performance of the contract.

Proven practices

Dr. Katouzian believes that, based on common interest and his duty to rule and the provisions of the convention and prove it to the judge.

In a critique of the view that if the burden of proof shall be upon the common interest to know, if he does not perform his duties for any reason other than customs sources to address the action pending before the Ombudsman is missing, then duty case What happens? The devolve the burden of proof to the beneficiary of binding customary norms and its reliability is against the law in many cases the task of the judge is in reference to certain practices. (Articles 224 and 344 and 356 BC) The Ombudsman shall in accordance with the law, custom and in those cases involve and lack of attention to practice in such cases, is considered a violation.

Conclusion

Should be undertaken to correct them.

- In a clear and valid proof of Iranian civil law tradition known as the Article 220 of the law "not only contracts in which the parties to implement what has been said, is not required, but all results are parties to the convention and used or the law of contract is obtained, are required. "

- In cases where the words and phrases used in contract ambiguities, discrepancies between the parties the court is bound to interpret and explain the meaning of words and words and expressions of customary practices will be based on the interpretation of the terms of contracts should be terminated Some common measures to be taken common terminology to interpret the contract, the rigidity and inefficiency of law to prevent and cope with social change has been caused.

- Legislation to matters of civil law legal tradition did not use the same words and phrases that

use such words have not been used occasionally in a sense.

- Parties to the contract after contract, and parts and accessories of civil and legal consequences of marriage and commitment are required, but they can during the contract, the agreement on the unconventional and should refer to the principles of the result, if you practice against good morals and public order is not mandatory and will be binding in the event of conflict between customary law and complementary legislation, first sentence is the norm. Whether explicit or implicit.

- General practice in common law contracts the subject matter and the basis of the rule of common law in contracts discovery will be shared among parties the will of the people of the community.

- Unconventional means to discover the will of the contracting parties, not imposed upon them the duty and mandate. The custom rules are not fixed, but subject to the law determined by common law. It seems that some of the Civil Code provides that the common perception in the minds of some of affairs, legal. The express provisions of the law and the contract signing should take a look at the law, and a custom look. Some believe that the common law should be considered against the law .rf decisive issue is legal. The legislator will discover custom and custom contract by the contracting parties will explore. Convention on the subject of the ruling, not in the ruling over them. The custom rules are not fixed, but subject to the law determined by common law. For example, gambling law invalid, but to determine whether or not a particular gambling game is the norm. The practices and examples of this key issue by law. You can not issue a legal ruling changed through custom or practice against our law. So what is the norm for a ruling that there is not no such law determines the rules which in most cases is true, but there is a legal norm and an independent government is the custom in some is to conceal the. So although in principle and practice, especially in the contract that will rule and the source of the issue, but some of its legal role as an independent source contract.

- The civil rights of legal norms and rules of interpretation sentence is replaced and the material will show the value to legal practice can be of 107, 221, 225, 521, 542 and 642 have been reported.

- Determines ignorance of legal practice, such as ignorance of the law as the rule in Article 356 which was presented at the sale.

Lack of effect of the contract parties to the convention on the removal of parts and functions of the object of sale in the contracts referred to in Article 356 is an exception that can not be extended to other conventions unknown.

- Despite the importance of tradition, especially in the area of contract law Unfortunately, the definition of which has not been provided, it is necessary to define it.

- Now the court and judges about the environment and related issues is not clear. Existing common law and its provisions, how they discover? Attitudes and their treatment of materials such as 224 and 344 and 356 and other materials used in custom rule set like? How much they are familiar to the common law rule ...or be notified when a hearing, it is important that it should be done properly and the disarmament met.

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