

Survey juridical and legal OF Cancelling

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Abstract: Cancelling or rescission of agreement between two parties of a contract is for disturbing and abolishing its effects in future. Cancelling is also a kind of contract and it is one of its causes of dissolution of contract besides of options and cancellation (compulsory dissolution of contract). Cancelling means in word: negligence and ignoring of an affair and in term: cancellation of contract from side of Transacting parties after rumoring one of parties and demanding cancellation from that party and admission of this demand by another party. Therefore, if one of two parties – such as client – remorse's from the transaction and he/ she is not so wary for Cancellation he/ she requests cancellation of that transaction from the seller and seller also accepts and he cancels the sale, transaction cancels, and the request of client is called resignation.

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Key words: cancelling, contract, the right of cancellation Introduction.

1. Introduction

When two parties implement a contract with each other for complying needs and providing revenues, this act and settlement have juridical effects. And it will be necessary in with regulation and pristine principle in irremovable contracts and loyalty to it. Because every one of two parties has been searching purpose and intention in implementing contract because they implement act for achieving its purpose. Now, if every one of them understands that they don't achieve their purpose or they remorse from implementing contract for every reason, In this case, they can cancel the contract without will of them.

The same will of two parties effect in the fate of contract fixing and cancelling of contract is based on will of two parties, then, if one of two parties, then, if one of two parties decides in dissolution and removal of contract and its effects, the contract cancel and followed its effects of contract also call this juridical issue is called " cancellation" or " rescission ". Because a creditable reason need for void of contract provided that cancelling and returning of every party in ownership of its prime owners. For this cause cancelling is considered as enact against of regulation.

Because arbiter of necessity of contract don't cancel only with satisfaction and settlement of contractors. Compulsion and it should have a creditable reason for void of act.

Therefore, one shouldn't have doubt in legitimating of cancelling because there is creditable text that they stress legitimating of cancelling.

1- Implementation the contract and or cancellation of contract.

2- Permissible of provision meantime of contract based on move paying and taking and other provision. Then we consider cancelling as a contract.

Influence of intensive economic pendulums in market and growing decrease of value of money is one of factors that motivate necessity of pay attention to these two points and the other points about cancelling. For example two persons that every of them search a specific purpose and they trade for earning more profit with each other, In order that they achieve to their purpose if they understand that they don't achieve their propose and their image is untrue and they cancel the counteract with agreement each other in next step.

Then, buyer observes that the value of money had decreased, such as he even couldn't buy the same property does he request his recompense? Call buyer request his recompense added paying money and with. Putting provision in cancelling? Also, if the seller requests amount for some services over traded property and with putting revision in can calling for his recompense do such provisions are true? And/or theory unpaid and they lead to code of cancelling?

Staten of the problem

If one of contractors is going to cancel transaction for every reason after implementation of contract can seller cancel (terminate) transaction of sale with of using of the selection?

It can state according to juridical laws that cancelling issue have been declared for unilateral

termination that it has been for given by god in the proper case.

Legislator in Islamic Re public has recognized the right to cancelling when and the party of transaction is content to it.

Manner of research

Manner of research in this thesis is based on descriptive do function and library collection of information and using of specialized licenses juridical – legal and polls of honorable clients emulation and using of Glossary jurisprudent.

Cancelling in word

Language assistants (Lexicographers) and followed them jurisprudents differ in that the word (aqalh) has been derived from the root of (qavalah) [quotient English and / or (qeelah (past of qavalah)).

Then every of them have presented area son for their postulate:

1. A grope of larvae assistants know, the word of Aqalh from the roof of (qavalah) and they mention its connecting (hamza or the initial letter of Aqalh) for stripping (omission), therefore (Aqalh) means: (Azal Alqols destroyed and removed the first sale) such (Ashkah) means: (Azal Alshekaya) (destroyed complaint in English).

2. Another group that they are outnumber, they know word Aqalh from the root of (qavalah) and (qalah (quoted in English)) of triad and / or (Aqalh) of quanta and Cava of yare. this group say in the rejection of postulate of the first group:

3. First: Ti is said in the siyah: (qelto AL Baie) (maksor Alfa) va Aqalto; I cancelled the sale and I would cancel it), (Asteqalh: Talab Aleih An yoabelo (asked it for dismiss in English)).

(Taqaol AL Baian) and (Aqalh Alah Aasartok va Aqalh koha) that based on the second letter of verb (Aainol feal) will letter of(ya) For this reason.

The owner of siyah book has defined Aqalh in the material of (qeelah).

Another, two in the totul of (Al Loqah) (the language) and another dictionaries suchas: Alqamosand Almesbah, Know Aaalh derived by the root of (aeelah).

It was said according this reason: (qalaho AL Baieva Aaalho: he cancelled the sale) 2. Finally Ibn manzoor mentions Aaalh derived by (qeelah) and he introduces it in the matial of (qeelah)3.

Despite of it, this discussion seem: useless and of course, because all of jurisprudents have followed the second quotation and they always have niggled from the first quotation in their boons – without mention followers of this quotation – it should choose the second quotation.

Terminology and usage of the word Aqalh

(cancelling) the term of cancelling is necessary for removal of contract

Therefore cancelling is one of characteristics of requirement contracts. And requirement contracts can be cancelled such as options that they are plaintiff over the requirement contracts.

In other words, cancelling is sates faction of two parties for the termination of contact 4 and in move exact word: (satisfaction of two parties for removal of contract and voiding of its effects) 5.

Comparison of cancelling and the right of cancellation cancelling is different from right of cancellation and it is not its synony moves. Because using of the right of cancellation is unlateral and owner of that only can use of it – albeit the other party be mal content, but in cancelling, two parties should agree with each other in other hand, cancelling is closed without option and the right of cancellation. and actor of cancelling (mostaqhl) in fact, should not have the right of option, because if he had the right of option, he didn't need to cancelling of transaction and he was using his right of option.

And finally it should be say: against of the right of cancellation and options that it need legal and / or arbitrary reason, cancelling don't need special reason when over two parties are content arriver and removal of transaction, transaction and the contract disappears despite all of these differences, these two have unity in one direction: both of them, finish and remove mean while of cancelling and exerting option, no that the transaction is void principally. Both are in merited. Because bother are right (based on equation) 6.

Survey nature of cancelling

Jurisprudents differ in nature and essence of cancelling does cancelling is sale or is cancellation or words.

Should be expand about it?

1. The proprietary jurisprudents are counted canceling as sale and they know provisions of sale same with cancelling this group of juries prudent haven't accepted cancelling as sale in three cases:

A: A nutrition that is cancelling before taking, provided that contracted be in the town of cancelling and nothing add to price of first sale, in this case cancelling is cancellation not sale,

B: preemption cancelling

C: cancelling after the sale of resale with a stated profit. Owners know cancelling as cancellation in these three cases they count other cases of cancelling as other sales.

Conclusion

1) Cancelling is sates faction of two parties of contract for its disunion and cancelling the effects of contract.

2) Although cancelling is cancellation of contract and

it causes waive of effects of contract it should say:

Cancelling is contract and it should have rules and general regulations.

3) Cancelling hadn't especially to sale, and it can't cancel the sale, because all of contracts cancel except those.

Don't exist special reason about their uncancellable.

Honorable juries prudent " God stood in the highest " have introduced conventionality and personality for cancelling in this content that if cancellation of sale accomplish behalf two parties of transaction, wither in from of cancelling be half one party and agree meet and acceptance of another party of transaction or contrast doe half bother two parties and rescission and plea from one of contractors and cancelling from another party there by immediacy for cancelling is trove and its acceptance is stint desirable, these are conventionality rules of cancelling:

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