

The agreement on formation of contract

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ABSTRACT

Objective: The principle of freedom of contract as part of the autonomy principle and an important issue and is the basis of contract law and Article 10 of the Civil Code is one of the principle of the rule subsidiary in its concept implies that the contract of In terms of the effects of legal and detect the type and nature of the agreement. **Methodology:** based on the intention of the parties and according to prevailing opinion, the purpose of the intended meaning, intention inwardly. **Results:** However, in the above-mentioned concepts not only consensus but also in some of the legal distinction between principle has not been discussed in the present article tries to study the principle and application of each of them recognized the distinction is a Since the interpretation as mentioned contracts both courts cited in the application. **Conclusion:** So the effect of the present analysis (jurisprudence) is undeniable.

1. Introduction

One of the most important principles of contract law is the principle of freedom of contract which the parties in the governing contracts and contracts between the parties are considered to be valid and legal work is finished. This principle has been confirmed in the rights of all countries, but exceptions cannot be on the same principle in all legislation.

The principle of freedom of the broader scope than the principle of freedom of contract and of all human actions (both legal and non-legal) encompasses. The subsidiary which is one of the principles of legal certainty is a major task in particular contract law is interpreted transactions. In comparison titles and similar concepts or confused, it is necessary to find the common point of intersection of rule and principle point of discussion in the diagnosis of credit and non-credit sequence Contracts between individuals and the legal effects for them (Idowu et al., 2013). The principle of freedom of contract and similar titles 11 Article 2 of freedom of contract one of these concepts is mentioned in the contracts between the parties in principle is valid unless it is prohibited by law in some cases.

Some of them also considered Article 10 of the Civil Code principle of freedom of contract and added that the Shiite jurists, at least in terms of the condition of the original to indicate " bed " have followed the principle of the rule limiting factors (in order to issue rules), public order and morality have (Lotfi, 2001).

In other words, this principle has been mentioned that anyone can own volition binding commitments and agreements that the applicable law and enforcement to accept or to accept the refuse (Sherman and Morley, 2015).

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2. Materials and methods

Some autonomy principle and the principle of freedom of the transactions (the principle of freedom of contract) have the same attitude. Some authors believe that the principle of freedom of contract law is the principle of autonomy. Others believe that the principle of freedom of trading not only the spirit of Article 10 of the Civil Code but is used explicitly (Gholi, 2008).

In other countries, the principle of freedom of contract, one of the main topics of contract law forms. In English law principle known as one of the basic principles of contract is emphasized, but the regulations in certain cases, judges have reduced the scope of the 19th century, the British believed that has full capacity to conclude any contractual freedom should be the law. Only in special cases, such as misrepresentation or undue influence based on fairness intervene and this is not simply because a contract on the other hand is stronger economically and financially supported, so standard contracts.

However, it was the agreement unilaterally and predetermined and agreed upon as the reflection was really true. In cases where a producer of exclusive products such contracts was set. And the principle of freedom of contract is invaded (Jafari Langeroodi, 2012).

In French law in the late 18th and early 19th contract law based on the principle of party autonomy and the fundamental question in this regard is why the contracts of those who have entered into effect is. In response to a question on Article 1134 of the French law, which provides contracting parties law and arguments invoked by the contracting authority from the will of the people. Theory of autonomy in the contract by the economic doctrine of *laissez-faire* and ethical aspects, which means that one must be the best judge of your interests will be strengthened and in fact the result of crossing two necessarily correct balance of interests of both parties. Mzana practical result autonomy principle is stated in the contract are as follows:

1. People should be free to conclude a contract or noncontract.

2. People should be free to conclude any and every type of *contract* and only certain restrictions relating to the public interest is no obstacle in the way.

Therefore, contrary to what the parties intended that the Roman law was revised later also have been given the contracts and the contracts are non-specific (Stormorken and Zwaak, 1988). It should be noted that in both English and French law principles and restrictions on the principle of freedom of contract principle is similar to other three results are as follows:

1. Freedom of contract (at the conclusion whether or not the contract)

2. Power binding contract (contract authority)

3. Works contracts in connection with the parties. In German law principle of freedom of contract is one of the fundamental rights protected by the Constitution, which is in fact part of the civil liberties granted and therefore of major importance to all rights are private. The principle in cases where a legal monopoly is limited or there is a real force, such as the provision of electricity in a specific area. Alktrvysyth both real legal monopoly to provide electricity customers and, therefore, obliged to contract with and in other cases also forced consumers and the need to conclude the contract, including laws related to railways and other means of public transport is predicted (Janowitz, 1980).

Article 421 of the Civil Code of the Russian Federation of the principle of freedom of contract to support the networks and the contract does not allow forced a specialized administrative system of economic management concluded exceptions or principle stated in the law, or when the individual as a Such voluntary commitment by preliminary contracts to undertake (Article 429 of the Civil Code New Russia)

For example, if a commercial organization to provide goods or services to customers in accordance with Article 426 of the same law cannot reject the contract. US law freedom of contract to conclude or refuse to conclude a contract will be able to validate that the definition is supported by legal sanction.

3. Discussion and results

The principles of international trade agreements by the International Institute for the unification of Private Law (UNIDROIT), composed of lawyers from various countries organized according to the principle and substance (1:1) general regulations stated that "the parties are free contract and, provisions and determine its content."

3.1 The principle of free will

Some authors have described the principle as mentioned in the actions of human beings and free Truk except in cases of legal requirements and other authors have stated that the purpose of the principle of freedom of contract will be that if the direction of directions. The principle of freedom of contract is closer to the concept of freedom to contract, including limit but a unilateral contracts and other legal violations in charge (Daskalopulu and Sergot, 1997).

3.2 The principle of autonomy

The principle of autonomy is usually synonymous with the principle of freedom of contract is used, according to some lawyers autonomy as a principle of Islamic jurisprudence that the adoption of the legal provisions regarding so-called "subsidiary Alqvd Llqsvd" and is known as the principle of party autonomy. Article 191 of the Civil Law and reflected the intention of the creator of the contract and determine the composition and functions of the major role in determining its effects known autonomy in the contract (Alqvd subsidiary Llqsvd) the fulfillment of the contract and all works and the rights and obligations arising from it (except works contract itself) under the legal requirements related to the composition of its determination and the will of a person who has never imposed contract the owner. Another concept for autonomy principle stated that the parties to the contract or transaction may be willing to commit to contracts and transactions the contracts so in principle, influence or accuracy, and this principle is part of the principality and added Alabahh the principle of the rule some will not, but what is against the law (Leonard, 2013). That means some people will believe the latter to rule and expressed the opinion that other means autonomy or freedom of the people in the Transactions of direction is that today the word or words that are parties to the contract or transaction processing, not have a particular ceremonial value of the word it. Some other authors without giving a definition of the

principle of autonomy of the state and that the results of the above-mentioned principle is that the first people who want the freedom to close contracts or, conversely, of the parties are free to agree any must refrain second based on equal conditions and subject to the conclusion of the debate, and to determine the contents of Article 10 of the Civil Code and these results are known. Branch 24 of the Supreme Court during the verdict No. 552/24 dated 8.5.72 The class file 3/7177 24 stated that "... the principle of autonomy of private contracts in accordance with Article 10 BC. I was accepted. "

Others will autonomy principle that means independence of thought and opinion that the purpose of the rule of private contracts is the approximate equivalent in jurisprudence permissible principle of the so-called principle of party autonomy is considered equivalent to the principle of free will have and add. The importance of the principle of party autonomy and freedom of contract in maintaining rights and conditions of the contract and set free in principle, but each time the interest of the society calls for the government will intervene and the freedom to provide social interest of the parties in limit the entered into between persons of every shape and have a valid title, and four have been made as a result of the autonomy principle. Which is not part of any specific contracts (Turnbull, 2001).

(B) After the conclusion of the contract, the parties will must be respected and public officials the right to change and revision of the works contract and not obligations of the parties.

The terms of the contracts, except in exceptional circumstances are subject to certain formalities, but Rezaei. The autonomy principle requires that the interpretation of a contract to which the parties have been asked to consider the terms of the contract are not considered sacred and decisive and credible to the extent that represent the real will of the parties to the contract (Shaygan, 2006).

As can be seen in the context of whether the principle of party autonomy and unilateral contracts, including contracts and other human actions while in the strictest sense of their particular specific contracts is taken into account. 14 The principle of autonomy of the will the term is sometimes used as a synonym for freedom and the determination and the principle of autonomy and the principle of permissibility considered and added that the jurists of this article to prove the legitimacy of anonymous contracts are frequently used. 1 of 5 in principle permissible human provide input through the heavenly Ali Alavsvl require treatment unless the legislator clearly a special case of what is prohibited and elsewhere that is not absolutely prohibited acts and Truk and of the principle of free will⁷⁵⁴ of the Civil Code confirms the principle described above (Asala Alabahh) pointed out that if the lawful or unlawful and does not doubt that the current permissible principle the lack of respect for what we are is a legal requirement high fitting less need of legal No need to install the original objects before entering the religious permissibility and added that the reason why it is also attributed divine blessing for the people of deterrence and exploitation of objects and rational exploitation of those benefits is incompatible with the philosophy of creating. And only those that are explicitly prohibited the legislator placed such verse as mutual except the evolution of the principle of practical and legal permissibility is noted that the verdict is positive and could be positive of course In principle this means that the permissible or prohibited and permissible when flows of practical skepticism will make sure that the building permissibility (Shils, 1991).

4. Conclusion

Of theories as it can be inferred that the concept, scope and effects of the principle of freedom of contract is not the same Lqsvd affiliated with Alqvd rule and contrary to what has been stated, Article 191 of the Civil Code expresses the principle of autonomy is not a matter mentioned in the contract stipulates " contracts can be fulfilled with the intention willing to bet the cost of something that implies intent ", on the other hand most of the interpretation of Article 191 is to realize and build contract, intent essay (essay will) In other words, the tool will it is the means by which the outside world is a sign of offer and acceptance, such as written or verbal or references that indicate the intention of the parties and is satisfied (Section 193 BC. AD), so what is that Article 191 is meant to implement the necessary contract It is the intention of the composition and as some will be apparent because the parties to the contract as long as the intentions and motivations and your will by a tool not to inform each party of the other party will not be possible within a reasonable and rational to realize the existence of marriage(in the same way that most scholars believe that), but for the intention in Article 191 of the Civil Code will essay composition and appearance as some will be effective in fulfilling the contract and the result is the intention of the apparent contract (or will face) regardless of whether the intention with real determination and inner sides or be in conflict. In addition, if the realization of the contract ontologically and function as intended and have presented the concept of the rule in question to be considered is Article 191 of the Civil Code to rule to a description of these subsidiary which was attributed Lqsvd the rule only means of realization of the contract related to contract work related to the sequence, but also should be noted that the vast majority of scholars view that Article 10 of the Civil Code embodies the principle of party autonomy in terms of 10 On this basis and 191 conventions civil law represent two separate, so each article cannot be confirmed autonomy principle.

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