



The Promise of a contract of sale and Purchase in Iran

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ABSTRACT

Objective: The oldest contract prevalent in societies after donation and swap contracts, the contract of sale. **Methodology:** Contract of sale between humans have caused widespread applications throughout history scholars of various definitions of this legal act provide. call, ask to discuss the definition of contract. **Results:** A review of the definition of the contract of sale under Article 338 of the Civil Code indicates that contract's four main features of the legislation is focused on the study of the relevance of each of the commandments and the applicable rules sale. **Conclusion:** The above characteristics were found with regard to the concept of ownership and lack of real commitment to the transfer of ownership in the same transaction giving rise to the obligation specified in the general sales saw why some important rules on general sale are not current.

1. Introduction

Sale of the oldest and most common legal tool to transfer the ownership of the most complete and the most common is the right objective. Iranian Civil Code definition of ownership is not lost. However, the definitions are presented by the lawyers cited this definition:

"Ownership of the credit relationship with a subject, whether natural or credit to a natural or legal person that represents his legitimacy to possess and avoid taking any other possessions in it." (Amini, 2003).

This validation is done by law or custom, and in the Lords, benefits and financial rights interchangeably. The elements of this definition is as follows:

1. The fact of ownership, power and dominion, and surrounded credits.

(2) its object, objects, benefits and financial rights interchangeably.

3. lawgiver or legislator or custom, reliability and surrounded by the monarchy.

4. The relationship between credit is not true, because God is the true owner.

5-ownership, self-respect not the ties, adding that is not the overweight, on the other hand reflects the relation between the object that is on one side of the equation, the owner and the person on the other side Mamluk is (Dehkhoda, 1993).

2. Materials and methods

2.1 Sale

The words such as "Purchase" of opposites in sales both used, but the use of a plurality of "sale" sale of goods "Purchase" Buy it makes to mind.

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2.2 Definition Sale

French people in the sales of "exchange of property on the basis of compromise" is not a fundamental difference at the same time providing a comprehensive definition of sales due to different interpretations of the dictionaries have led scholars to debate the definition and characteristics of the contract of sale they exact (Gazi, 1975).

- Owned for sale

The purpose of the contract of sale is owned credit transfer (legal) sales price to the seller to the buyer before the transfer proposal and acceptance of self is realized, and to submit any other consideration, including sales to the buyer subject unless under specific reason element (eg, give up the goods on sale) "carrier component" is inserted. Owned the sales contract in Islamic law and civil law has been accepted as a matter of course in Europe of something new that some countries still do not accept it, However, in cases where sales "general obligation" or "general ledger" (Civil Code of 350 402) is faced with the problem that in these cases there is only the obligation for the seller to determine the sales person and the buyer but when a certain surrender but not ownership to the buyer. To get rid of this difficulty some have said the overall verdict on the financial institution per se is available which can be exchanged for change. In such cases a "capability and capacity" are the subject of acquisition and other acquisition "or hypothetical judgment" are known. Commutative 1-2-3-2- of sale (Imami, 1977).

Sales despite the wide definition of the offense makes it commutative and sale of the same property with other property (literally: instead of) that money is exchanged (Jaafari Langroodi, 1999).

However sales of its premium contracts free. "Consideration" may "transfer the financial rights" and "human action" The truth is the common wealth of the two. However, despite the changed nature of the transaction is appropriate. So if ownership does not change as the sale of its property to be true (Pirhadi, 2007).

2.3 While the sales

There is also material and tangible financial and independently issue will be traded. However the contract of sale of the ownership interests that the issue of "rent" to distinguish it from the completed sale and scholars have known for this purpose. Civil law (Article 338) to follow the jurisprudence sale yet been allocated to the acquisition. Transfer of the ownership interest in addition to the withdrawal of the same "rights" such as the right cucumbers Tahjir patents and intellectual creations, as well as property "significant non-material" such as electricity and common definition of goodwill who are selling out (Shahidi, 2003).

2.4 If the contract of sale

The sale required the consent of both parties, except in accordance with the condition or the right to break the contract are not authorized or cucumbers. The stability and order in trade with non-necessity contract sale is not compatible as long as the parties in the House are not necessary and the parties have the right to conclude that the transaction terminate. The right to terminate the Assembly called cucumbers. In this cucumber is dedicated to customer or vendor has the right to terminate the transaction if the transaction price is the animal has been disagreement among the jurists. Shi'a jurists assigned to the customer in terms of animal cucumbers (Amid, 2001).

2.5 Components of the contract of sale offer and acceptance

Sales contract, like other contracts, need to offer and accept. The offer and acceptance, the words and phrases that say it, parties to the contract, declare their will to conclude the sale. Parties to the contract

In the contract of sale, the seller called vendor and buyer customers say (Honorary, 2000).

2.6 Orders or sales literature property transfer

A) if the sales or object shall be determined, since the contract comes to property on the other, and if one of them is a general obligation for the other side, there is a general faith, that people with certain individual dealer Its overall objective will become the property.

B) the sales contract, the cancellation to the parties or the time cucumbers (death) to surrender or pay sales proceeds, an obstacle to the transfer of ownership Nmy-Bashd. Also, the sale Cucumber (cucumber Byy condition in which the termination is provided for one or both parties) during the ownership of the contract of sale, and not the expiry date cucumbers, and in Byy the bill, if it is true. Such as the sale to which the transfer is required from the time of acquisition, and not from the time of the sale contract (Jamsaz, 2006; Noori, 2005).

Sale of property does not corrupt, and when someone in a corrupt transaction, the financial bill, it must be returned to its owner, and if lost or incomplete, and the benefits will be the same sponsor (Naser Rasaenia, 2001).

3. Discussion and results

3.1 Surrender sales

A) the contract of sale, the salesperson to give sales and customer payment is required. Submit the sales delivery to the customer, so that he can capture any kind that like it or profit from it win.

B) submits quality in a variety of different sales, and in this case, the sentence norm criterion of truth is surrender. C) If the parties do not specify the deadline for the submission of sales, power sales is required to submit at the time of submission, and not in the contract. Also, the sale pry permit will be valid at the time of submission.

D) if sales are already in possession of the customer, the new bill is not needed and the price is the same.

C) Sales in the contract, the customer submission, unless, in the contract of sale, a special place is given to surrender.

C) In case of delay in submission of sales or the price is impossible to force them into submission.

G) submission of sales expenses such as transportation fees to the submission, and so on, it is up to the vendor. Also, expenses, surrender the price Brhd customer. Unless, common law is contrary to the above arrangement, in which case the sentence is common practice. Of course, if the contract is a specific agreement to bear these costs, shall prevail. Iran rights sales

Particularly in terms of civil law jurisprudence set . 338 provides: "The sale of ownership but rather it is the" . 362 also states that "works correctly located By which involves the following:

1. Upon the occurrence of transaction, customer and vendor sales owner pays the owner ". The article is. 364 BC:" In Khiari property sales during the contract of sale is not the expiration date of cucumbers health condition, such as a bill of sale to transfer the condition is not achieved during the time of sale ".

Since the signing of the contract on the sale Khiari the ownership and transfer of ownership is not, why BC legislature in Article 364 stipulates that: "It is not the date of expiry of the contract of sale property while cucumber" and with this Regulation of uncertainty caused by the insecurity of property sale, containing cucumber right about the time of the transfer of ownership was eroded Such Mqrrhay also been proposed that Shiite is disputed among scholars. Some of the lawyers in the interpretation of paragraph one of Article 362, this part of the article dedicated to the sale of certain well known. One of them says: "The rule is that the landlord is sale buyer and seller sales products.

3.2 French law

Article 1583 French Civil Code was set to "complete the transaction between the parties agreed on the legal ownership of the goods are transferred to the customer if the product not surrender".

The transfer of ownership of the goods is not the seller's obligation as a direct result of the legal issue of legal judgment without an agreement between the parties through Article shall not cases of public order can bet that the transfer of ownership until the facts surrounding a particular incident delayed Note It is also important to note that French law has established a distinction between the sale of other bloc .by when considered en bloc as the goods and not only to determine the price for the stake to be weighed, counted or measured sent. So selling maize crop has been harvested while still en bloc sale is deemed to be given. Such By while at the same time a sales contract itself therefore to transfer ownership to the buyer of the contract is enough commutative Hence corn crop liability for damages caused by cold and stormy weather will be borne by another example of the sale en bloc an example about buying a bag of 100 pounds per kilo of saffron are expressed. In French law if the sale en bloc, but to weigh, count and measure required, full sale (perfect). This means that the item will not be sold until it has been weighed, not counted and measured is not at risk, but the seller will give the buyer can request it or if the reason for the lack of performance of the contract, claim compensation (Article 1585 BC, France). Here operated weighing, counting or measuring to Like selling a lot of special liquid is necessary to determine the issue of sale of a vessel that should contain a larger quantity of liquid to be taken.

It is useful to note that although in the context of France in 1585 BC "By not complete" is mentioned, but this means that the transfer of ownership and liability commutative goods comes that measures be taken. "However, text article refers only to guarantee commutative, but means that the transfer of ownership takes time.) Thus, the Court stated that by clean at December 14, 1985: "According to Article 1585, By that goods must be weighed, counted or measured only to transfer ownership of the Exchange Guarantee and when the product weight, count or measure is perfect, but the parties agreed moment of time agreement and shall, subject to the obligations that they have agreed on. "

3.3 Compare

As noted, the transfer of ownership of the same item specified in the law of Islam and Iran's rights in all cases and circumstances, the contract will be . where that is other than the offer and acceptance is a condition for the validity of the contract - such as a sale to - in which case the transfer of ownership of the fulfillment of these conditions is not the time of conclusion of the contract of sale.

The French legal system but also the transfer of ownership of certain special status BC Under Article 1583 French contract transferred ownership of Iran's Islamic law and French law is harmony and perfect match.

Accepted forms of ownership in total sales

If the property transaction contract of sale, is also given, the external manifestation of the will of the seller and the customer during the agreed compensation, such as a house identified, a special police car number or fifty kilograms of rice in a clear bag For, has been shown to be a problem in terms of the immediate transfer of ownership from the seller to the buyer and the sales objective realization of the right to property bought this person does not occur, because the ownership of the seller of the property known relationship to the creative will of the ruling party cut and immediately the relationship of the property the buyer is established.

4. Conclusion

A review of the definition of the contract of sale under Article 338 of the Civil Code indicates that contract's four main features of the legislation is focused on the study of the relevance of each of the commandments and the applicable rules sale a The above characteristics were found with regard to the concept of ownership and lack of real commitment to the transfer of ownership in the same transaction giving rise to the obligation specified in the general sales saw why some important rules on general sale are not current.

Eni acquiring some of cucumbers originating in sales and lack of implementation of the transaction giving rise to the obligation to justify the acquisition. Similarly, the creation of liens, cucumbers fraud and the need to reverse the financial transaction and the parties to the contract of sale the asset through gratuitous description of the contract were analyzed. That legislators and judges do not deserve the benefits of the implementation of the provisions and

principles of transparent and deepened in this transfer sales deprive them not so clear to the execution of the contracts referred such as peace or the contracts anonymous. Based on the contract of sale on the customary definition and perception of the concept of legal action by people within the context of this development will provide.

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