



Certainty and Clarity of the Object of Transaction: A Comparative Study of the Iranian and French Laws

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Abstract

According to paragraph 3 of article 190 of the civil law, one of the basic requirements of the validity of the transaction is the certainty of the transaction. Therefore, the transaction should not be uncertain between several parties and the parties to the contract must address the same issue, for example, if one pledges to transfer one vehicle or one house to another within six months or undertake to transfer to either of those who choose to pledge that obligation, with due regard to the conditions and provisions of article 190 of civil law has not legal influence and credibility, it is a case of risk transactions. On the other hand, in article 216 of civil law it says: " The object of a transaction should not be ambiguous ...". The object of the transaction must include conditions such as its clarity and certainty. Its determination is based on the public order and the building of reason. Hence, its violation will invalidate the contract. French civil law also briefly mentions the clarity of the object of transaction and the subject of the obligation, but does not comply with Iranian civil law as to the amount and scientific scope required in the transaction. According to article 1108 of French civil law, there are four essential conditions for the validity and influence of any agreement and contract, including "the object and the particular object that constitutes the subject of the obligation." There is no mention of clarity limits and determining the subject of the contract in this case. Also pursuant to article 1129 of French civil law, this does not need to have certain quantity traded at the time of the contract, but it should be sufficient that it can be ascertained later. Contrary to the Iranian law that the object of the transaction should be clear when entering into contract including its amount for both parties and post-transaction determinability is not enough. Therefore, from the total of 1108 and 1129 of French civil law, it can be concluded that limits of announcing basic features include the kind and the type of certain property. What is being examined in this study will be studying the clarity and certainty of the object of transactions in Iranian and French law. The importance and necessity of doing research is one of the most important issues in jurisprudence and law, but there is less to be done in comparative studies with other countries, including France. Hence, this subject has to be studied separately.

But the question that will be discussed in this study is whether buying uncertain object or an ambiguous object will be realized. And we examine and compare it in Iranian and French law. In this case, we have two hypotheses:

1. Because it is vague and uncertain, it is unrealistic in terms of rational precision; so the object of transaction is also unrealistic; in other words, the transaction becomes without subject-matter.
2. Knowing the object of the transaction is necessary to the extent that its essential scope and dimensions are clarified. If both parties are described in such a way that the transaction or custom knows its main dimensions, it must be sufficiently judged.

Keywords: *Transaction; Iranian; French Laws*

Introduction

Define Technical and Specialized Concepts

Concept of Transaction

Transaction is a word used in the laws and writings of our lawyers as a synonym for "contract" and "agreement", but some jurists distinguish between contract and agreement; Occasionally, the word "contract" is used only in certain contracts, while "agreement" is referred to as all contracts -certain and uncertain. Of course, Part II of the first volume of the Civil Code (Contracts and transactions and obligations, Articles 183 onwards of the Civil Code) and all the materials relating to the contract and containing the general rules of contracts contradict this interpretation.

Concept of the Known (Definite)

In the dictionary, the term "definite" means known, known and received, explicit and opposite of unknown (Amid, 1996; 212). Of course, its legal meaning has not departed from the literal meaning. In this sense, too, definite is placed in the opposite of unknown, namely, the parties are removing ambiguity from the object of the transaction by determining the amount, features, and type (Shahidi, 1999; 314; Islamipناه,2002;75).

Concept of Certain

In civil law, this term has been applied in a variety of meanings, some of which are as follows:

1. Sometimes the word "certain" versus the unknown. It applies to the notion of clarity, as Article 342 of civil law states: "The quantity, type and nature of the object of the sale must be known and the fixing of the quantity by weight, measure, number, length, area or by inspection is made in accordance with the local custom and usage".
2. Sometimes the term "certain" is used in the sense of "not hesitating"; in that case it means that the object of the transaction is known among different objects and must not be one of two things indefinitely(Safae,2003:133).
3. The term "certain" is used in the sense of being specified and known that paragraph 3 of Article 190 of Article 472 affirms this meaning. (Safae, 2003: 133 - Emami, 1991: 214).

Discussion

Topic 1 - Investigating the Clarity and Certainty of the Object of the Transaction in the Iranian Legal System

Iranian civil law is based on Imamieh jurisprudence. The claim of the complete separation of the civil law from jurisprudence and lack of need for Islamic sources is groundless; however, it must be acknowledged that our legal organizations are so aware of the rules and principles of Islamic jurisprudence that it is absolutely necessary but research on civil issues is not enough. So today, new needs must be met according to evolved rules. The principle of necessity to determine the object of the transaction is one of the most important jurisprudential issues regarding contracts. In this section, we will examine the clarity and certainty of the object of the transaction in the Iranian legal system.

Speech 1 - Methods of Ascertaining the Object of the Transaction One-Knowledge to the Object of the Transaction

It has been said that detailed knowledge to the object of the transaction refers to the complete knowledge, to the triple affairs of its nature, amount, and description, in any way that is traditionally effective in the realization of the transaction. General knowledge is limited knowledge, to the extent that it distinguishes the known from the other in fact without encompassing all of its properties in the domain of consciousness. It is clear from Article 216 of civil law that what is essential to the authenticity of the transaction is the detailed knowledge of the object of the transaction. Only in exceptional cases does not the legislator make detailed knowledge necessary and limited to the existence of a brief knowledge. The necessity of detailed knowledge of the transaction, as a matter of principle, arises from the necessity of social and judicial order. Things that can enter into the trader's evaluation process and influence his or her satisfaction with the transaction should be clear to the trader so that there is no ambiguity in the cause of the emergence of the satisfaction that would pave the way for disputes between the parties (Safae, 2018: 42-43). But in some cases there is no need for detailed knowledge due to tolerance dominating in some transactions. In this respect, the same article as Article 694 of civil law have been built that "It is not essential for the guarantor to know the amount, the details, and the conditions of the debt which he guarantees."

In the meantime, there is no doubt about the authenticity of the detailed knowledge and the exceptionalism of the brief knowledge among jurists. What is at stake is the seizure or allegory of the transactions in which brief knowledge is sufficient. In other words, do specific cases need to be explicitly specified by the law, or can a given rule be extracted and transmitted to similar cases? The justified answer to this question is that from induction in dispersed cases appears to be based on negligence, favoritism and goodwill, or that the main need and necessity of the work demanded both parties admitting a degree of probability in their relationships, brief knowledge is enough, as is the case with guarantee and promise of reward (Jiala), and so in insurance, partnerships, and peace and free contracts. Of course, this analysis has two constraints: first, the policy documented to implement this particular rule must be of a contractual and statutory nature, not the parties' wishes, and, second, where the public need requires a particular assumption of regular transactions (necessity of knowledge), this requirement is distinguished by the legislator (<https://mathrde.ir>). Article 216 of the Iranian civil code, concerning the necessity of knowledge, expresses the rationale and, apart from being legally binding, is reasonably well-liked. In general, this article expresses the principle and exception to the object of the transaction that may extend to other provisions of the contract. The first and foremost principle in contract law is the necessity of clearing the ambiguity and having sufficient knowledge of the parties to the transaction and the profits to be gained. That is, the principle is based on the detailed knowledge of the parties to the object of the transaction (Ghanavati & Rajabi, 2017: 69).

1. Knowledge of the Existence of the Object of a Transaction

Article 216 of the Civil Code, by applying the Imamiyyah jurisprudence and with regard to the contractual order and social interest, generally considers the detailed knowledge of the transaction to be a condition of the validity of the contract, as the quantity, type and nature of the object of the sale must be known, otherwise it is void (Article 342). As an exception in special cases where a general knowledge of the matter would be sufficient. Article 216 of the Civil Code stipulates that the object of the transaction should not be ambiguous, except in particular cases where sufficient knowledge is provided. This Article is in fact an explanation of paragraph 3 of Article 190 of the Civil Code which specifies the subject matter to be traded as the essential conditions of the transaction. It is given that in principle the detailed knowledge of the transaction is a condition of the validity of the contract; that is, the object of the transaction must be known to the parties in terms of quantity, description, and nature. Knowledge of the transaction is partly necessary to clarify its scope and dimensions. If both parties are described in such a way that the transaction or custom knows its main dimensions, it must be judged to be sufficient (Shahidi, 1998: 55).

2. Necessity of the Object of the Transaction at the Time of Contract

The object of the transaction must contain certain conditions, including its clarity and certainty. The basis for its certainty is the public order and the building of reason. Therefore, breach of it leads to nullity of the contract. Doubt at the exigency stage will not prevent the conclusion of the sale. So that by accepting one of those requirements, the sale will be done. Also, doubt about the type of cash will not cause the contract to be invalidated. Clarity is the subject of much debate. We have said that the error in the nature or quantity or important features of the transaction differs from the "uncertainty" of those cases.

3. Knowledge of the Nature of the Object of Transaction

Article 342 explicitly states that the quantity, type, and nature of the object of the sale must be known and the fixing of the quantity by weight, measure, number, length, area or by inspection is made in accordance with the local custom and usage. The author of Jawahir says: Just as knowledge requires quantity, type, and description of price, knowledge to the object of the sale is also conditional. Therefore, the sale of a financial asset whose quantity must be known by weight, measure or number indefinitely or with an unknown balance, even if observed, would be void (Safae, 2018: 44) The detailed knowledge referred to in Article 216 is defined in Articles 342 and 351 in the expression of the commands of the sale and knowledge to quantity, type and description. In fact, in order for the parties to the bargain to belong to a single issue, these three elements must be present and known in the agreement. This argument is raised in the law as an agreement on the objectivity of the object of the transaction. Dr. Seyyed Hassan Emami has briefly said that the knowledge of transaction practitioners depends on the expression of quantity and quality. Other legal writers, in more detail, have analyzed how type, nature and quantity, while differentiating and sharing the types of transaction (in terms of known or general) through knowledge acquisition (<https://mathrde.ir>).

4. Knowledge about Type of the Object of Transaction

The type they sell and what they get instead has several conditions: 1- It must be known by weight, measure, or by number. 2- Being able to deliver it, so selling the animal that escaped is not correct, even if something is annexed to it (as required). 3- Identify the traits and characteristics in which they affect the value of the type and people's desire to bargain. 4. No one else in the type or exchange has the right to sell the property without someone's permission, and the buyer can give the property interest

instead of money, such as buying a carpet from someone else and give him a one-year interest in his home. Buyer and seller are free to set commodity prices, but if this freedom causes corruption and disruption of the economic system of the Islamic community, the Islamic government in such cases can set rates and oblige people (<https://makarem.ir>).

5. Knowledge of the Quantity of Goods Traded

Selling or other transactions are not permitted by the jurists on the condition that it is forbidden. Sheikh Ansari by following Muhammad Ardabili says most believe in permission, source of dispute is the conflict of news. Proponents of the prohibition narratives cited in dignity of assistance in crime, the necessity of repudiating, while the proponents of the permissions cited to the permissible narratives because of its agreement with book generalizations and weakness of documents and prohibition traditions.

6. Sale on Condition of Validity

The unconditional terms are the same as the basic terms of transactions referred to in Article 190. In this Article: "The following are the basic requirements for the validity of any transaction:

- 1) Intention of the parties and their consent
- 2) The competence of both parties
- 3) There must be a definite thing which forms the subject matter of the contract
- 4) The cause of the transaction must be lawful

In a conditional sale, immediately on completion of the transaction the object of sale becomes the property of the purchaser, subject to the option held by the seller. Therefore if the seller does not abide by the conditions fixed between him and the purchaser regarding the return of the object of sale, the sale will become unconditional, and the purchaser will become the unconditional proprietor of the object of sale; and if, on the contrary, the seller acts in accordance with the abovementioned conditions, and asks for the return of the object of sale, it will become the property of the seller from the moment of cancellation; but the accretions and profits accruing from the object of sale from the time of the transaction until the time of the cancellation belong to the purchaser (Article 459 of the Civil Code). The characteristic of the option condition is that the option is a condition for the seller and the use of option is conditional on the seller paying the price within a specified period (Shahidi, p. 23).

Second Speech – Floating Price in Iran's Subject Rights

As stated, the clarity and certainty of the transaction, including the transaction price, is one of the essential terms for the validity of a contract. The object of the transaction is known only if its quantity, type and essential characteristics are known to the parties to the transaction and it is the local custom that arbitrate the issue under Article 342. Therefore, the standard of knowing and defining, in other words, of ambiguity and uncertainty, must be sought in local custom. If in customary terms, the price is unknown and uncertain, in the light of what was said, there should be no doubt about the nullity of the contract. Determining the timing of the validity of the transaction was also important. It must be ascertained whether the condition of the transaction at the time of issue of the contract is a criterion, or at the time of execution, and if the law prescribes the necessity of the contract to govern the time of payment of the contract, the contract based on floating price will be correct. It is understood from civil law that clarity and certainty is necessary at the time of contract formation, for example under Article 355 if an immovable property is sold as being of a certain area and its found that it is less than the stipulated size, the purchase may cancel the deal. Also if it is found that the area exceeds that laid down, the seller may

call off the deal. In both cases, however, the two parties may come to a mutual agreement in regard to the shortage or the excess and this is undoubtedly useful in the validity of the contract, so if the object of the transaction is certain at the time of the contract is concluded, though later if not, the contract will be correct. Some believe (Darabpour, 1999, 267) that in all contracts that are subject to general obligation, this sentence is true and can also apply to the price, and if the price is into the general contract, its ability to determine in the future is sufficient and its certainty in the contract is not a condition of validity during the termination of the contract and in this case they also refer to Article 350. Because, according to the said article, determining the object of the sale in the general sale is not necessary. On the other hand, it may be argued that, although in the object of the sale or in the general price, the object is not definite, its extent and size are known in a way that completely removes the risk. It is also customary to verify the validity of a floating-rate contract, since civil law requires the clarity of the transaction, but does not provide a definition of clarity, in other words it does not provide a criterion for clarity, but explicitly in Article 342 The criterion for determining whether a transaction is known is custom. Therefore, it should be said that the quantity, type, and attributes of the transaction are known and determined through custom. However, Article 342 only mentions the quantity and does not discuss type and description. Although Article 342 applies to the sale, but with the unity of the criterion, this rule also applies to the price. Of course, in most contracts, it is the means of ascertaining the number of the figures, but in some contracts the precise figure is unnecessary, and the custom neglects to set the price, and the obvious example is the validity of the estimates, as well as in some contracts like dining at a restaurant, price are usually set after the contract. According to what has been said in Iranian jurisprudence and law, it is not possible to decisively abolish the termination contract based on floating price. Therefore, the things that are not precisely defined in the price contract, but there are standards in determining the price, as the parties are knowing the price, are in the knowledge of the price, and such a contract must be considered correct. Of course, if price is completely unknown, the contract is not valid, as Article 216, 342 and 351 of the Civil Code have no choice but to invalidate such contracts. Of course, if the object of a contract, the contract is fixed and known, the parties' silence about the price may constitute acceptance of the customary price, and such contract shall be deemed valid.

Topic 2 - Examining the Clarity and Certainty of the Object of the Transaction in the French Legal System

One of the terms of the contract is that it is possible to surrender or do the object of a transaction. This requirement has been widely accepted in other legal systems - such as French law. Although the Iranian Civil Code does not express this requirement in the matter of contracts and transactions in general with respect to all contracts, with regard to specific provisions relating to certain contracts, such as the sale, it may be considered necessary for the transaction to exist. In this section, we will examine the clarity and certainty of the transaction in the French legal system:

French civil law has briefly referred to the clarity of the transaction and the subject matter of the obligation, but does not comply with Iranian civil law as to the quantity and extent of the knowledge required in the transaction. According to Article 1108 of French civil law, four essential conditions are necessary for the validity and influence of any agreement, including the object and the certain object which constitute the subject of the obligation, the consent of the party committing itself, its capacity to conclude the legitimate cause of the obligation. There is no mention of the scope of clarity and subject matter of the contract. Also pursuant to Article 1129 of civil law, it does not need to know the quantity of the transaction when it is contracted, but it must be sufficient that it can be ascertained later, contrary to Iranian law that the object of transaction must be known to the parties at any time, including its quantity and ability post-transaction certainty is not enough. Therefore, from the total of 1108 and 1129 of French civil law, it can be concluded that the basic requirements of the statement are the expression of a given type and type of property.

Speech 1 - The Nature of Certainty in the Object of the Transaction in French Law

On the subject of a general transaction in a given way, it is logical and clear to state the quantity as validity of the contract because the submission and certainty of the property requires a certain amount of part to be obtained from the whole submission; but in other cases, type and quality of goods must be realized by the expert opinion. In France the subject of a general obligation in a given or similar thing which can be sold by weight, count, or size, under Article 1129 of the Civil Code, must be in the form of a specified type. Such as (rice, oil, automobiles of the unit production line (terre, 2005: p: 278). It is noteworthy that tangible property cannot be sold in its entirety or in whole; In French law, if the subject of the obligation can then be determined, it is under section 2 of Article 1129 of the Civil Code is correct and can be identified by reference to custom or interpretation based on its circumstances (carbonnier, 2000: 119). So things like selling this house, this goodwill, or a few pounds of copper of the same quality must be known and issues that can be determined later, such as the sale of the commodity whose price is determined by the relationship or the official day of yield and the price is determined by other people. Certainty is about the enforceability of the contract and the basic requirement. This is why it is obvious that in French law, despite implicit references, they have said less about certainty and more about clarity. Another point to note is that in Western law sometimes the ability to determine is talked about, and the mere ability to determine for the validity of the contract is sufficient to remedy it; for example, whenever the buyer buys the stock without knowing the nature of ... it is invalid in Iranian law, but in French law it is correct because it can be determined later. The capability to determine seems to be the clarity of the contract.

Second Speech - Types of Transactions in French Law

French civil law in this section refers to one and two accruals, exchangeable and deductive, contingent, named and nameless. Some other types of obligations are contained in Article 1168 of the French Civil Code. Although some types of contracts have been contracted in French since the definition of contract in Articles 1101 to 1107, none of them have been included in Articles 184 to 189 of the Iranian Civil Code (Rahpeik, 2005: 78).

Third speech - Ways to Remove Ambiguity from Quantity in the French Legal System

The first and foremost principle in contract law is the necessity of clearing the confusion and having sufficient knowledge of the parties to the transaction and the profits to be gained. The same decree has been quoted in Article 1129 of the French Civil Code concerning the generality of contracts and Article 1591 of that law about the sale contract (cabrillac, 2002, p: 51).

Clause 1- The Parties' Awareness of the Amount of the Goods Being Sold

Article 1129 of the French Civil Code about contract generality states: "The subject matter of the obligation which is property must at least be determined in relation to its type; the amount of the property may be indefinite, if determinable, but other legal systems, such as customary law system and international contracting systems favor the second group's view and are less likely to name this requirement amid the validity of contracts. Article 2: 204 The United States Rules of Trade also provide: "If the parties intend to conclude a contract and there may be a standard basis for appropriate compensation, although one or more of the terms of the contract may be established, the sale contract shall not be void in terms of ambiguity" (Ghanawati, 2017: 63).

Fourth Speech –Floating Price in French Law

According to Article 1108 of French law, the amount of the contract is stated as a general rule and the same applies to the service or rental of an apartment. Also, according to Article 1591 of the French civil law, the price must be specified in the sale contract. According to some (Macqueen, Zimmermann, 2006: 21), French civil law in this regard has undoubtedly been affected by the rule (known amount) of Roman law. However, in Article 1592 of the French Civil Code, the authority to set prices is recognized by a third party, stating that, unless a third party wishes or unable to set prices, there will be no sale. In 1994, branch one of the French Supreme Court argued that the annulment of the contract by the Court of Appeal, which rejected the supplier's misuse in determining the transaction price in exercising its contractual rights, was erroneous; In other words, while the Supreme Court upheld the principle that it was possible for the supplier to determine the price of the goods, the Court considered the exercise of such a right by the court a year later in 1995 the Supreme Court ruled that the issue of abuse of discretion must be taken into account by referring the case to the general judgment of Article 1134, ie, the principle of good faith (fauvargue-cosson, mazeaud, 2008: 198). Such a decision demonstrates greater flexibility of French judicial practice against laws.

Fifth Speech - Comparison of the Object of Transaction in the Legal System of Iran and France

Article 190 of the Civil Code of Iran in four paragraphs describes the basic conditions of the validity of transactions. The form of this article is adapted from Article 1108 of the French Civil Code. The overall effort of the authors of civil law is to reconcile issues and subjects with Islamic law, so it is carefully observed in the two above article that Article 1108 (1) and (4) are interfered with in a recent Article to an element that will or consent agreement is translated, while Article 190 (1) of the Civil Code of Iran has two elements of intention and acceptance. The distinction between intention and acceptance and its effects is such as the state of non-influence in the prudent or reluctant transaction of Islamic law initiatives. The authors of the Iranian Civil Code have also changed the interpretation of the legitimacy of cause in paragraph 4 of Article 1108 to the legitimacy of direction in paragraph 4 of Article 190 because no cause or direction is known in Iranian law but in contrast there is personal direction or cause in Islamic texts and jurisprudence books. However, since the early twentieth century, there has been a tendency to interpret causation in a personal way in French law, based on some judgments and some critiques of the theory of causation, although the theory of causation remains in force (burdick, 1938: 55). No change has been made in paragraph 2 related to qualification and there is no specific change in paragraph 3. Of course, there are differences between the two laws in the discussion of this clause that can be considered in the analytical discussions. Thus, it can be said that in Article 190 of Iranian civil law according to jurisprudential theories there are five basic requirements against the four basic requirements of French law. In Iranian civil law, one of the conditions for the validity of a contract is that it is possible to surrender or perform a transaction. This requirement has been widely accepted in other legal systems, such as French law. In French law, of course, civil law writers argue that the relative lack of power over surrender is not invalid. (Contrary to Iranian law, some authors of legal works have argued that a relative lack of power would also invalidate the contract, such as its absolute loss). In order for the transaction to be void, the surrender of the transaction must be completely out of force and in addition to the parties to the transaction, other people are incapable of doing so; however, the lack of absolute power must be measured against the ordinary individual. At the same time, the same authors justify the nullity of the contract as a result of the absolute lack of power to surrender through the lack of the subject of the transaction, since such a contract is in fact not traded. These lawyers argue that when the transaction is submitted or made to other persons, the trader undertakes to hand over the object of the transaction to other party. For this reason, the Paris court has refused to issue a notice invalidating the contract by which the painter has pledged to draw a painting and has refused to do so on the ground that he is no longer able to draw the painting. It is argued that if the contract is a painting bound by the trademark of the individual party to the transaction, then it is plausible to argue that the transaction is no longer possible by the

painters, if the plaintiff is unable to do so. And the Paris court verdict is defective. But if the painting has been generally contracted, if it is not committed to it, it is unlikely that there is an absolute lack of power and the contract is void.

Paragraph 1 – Intention and Acceptance

Articles 191 to 193 in this regard, having regard to the separation of intention and acceptance, have certainly been derived from jurisprudential sources. The provisions of these materials are the product of jurisprudence and subsidiary rule (Naraghi, 1408 AH). In French law, there are no corresponding provisions for these articles, especially article 191. Articles 194 and 195 are also subject to the above rule, but Article 196, which refers to the principle of the relative nature of contracts and some of its exceptions, seems to have been taken into consideration in Articles 1119 and 1120 of French Civil Code. Articles 197 and 198, which relate to the validity of a unauthorized transaction and the validity of a lawyer's intention, are governed by Islamic law. Iranian Civil Code from articles 199 to 209 deals with the imperfections of will, but in French Civil Code, Articles 1109 to 1118 is dedicated to this topic. The analytical and comparative discussion of these articles needs further elaboration, but the issues discussed in this article can be summarized as follows:

1. In French law, three flaws, namely, mistake, duress, and misrepresentation have been raised which Iranian civil law has excluded misrepresentation from the discussion of intention and brought it to the discussion of options.

In French law, according to the basics of the analysis of the country law, all three defects are unanimous, that is, in the event of any of the above three defects, the contract is invalid and means revocable or relative invalidity. The issue considers void mistake-based contract and unenforceable the contract from duress. These rulings have certainly been issued on the basis of Islamic law and appear to have established unenforceable only with Islamic law. Comparing Article 199 of the Iranian Civil Code and Article 1109 of the French Civil Code, as well as Articles 200, 201 with 110 in the mistake discussion, there is no doubt about the use of Iranian law by French law, but the authors of civil law by transposing and translating the above issues through changing the order of the matter, have made it in line with Islamic law. For example, Articles 1111 to 1115 of the French Civil Code have been entered fully or slightly altered in the form of Articles 202 to 209 except Article 206 concerning emergency in Iranian civil law. The fundamental change in these articles returns to the change from the nullity (revocable) to the unenforceable. As noted earlier, there have sometimes been mistakes in the transition of French law articles into Iranian law, such as what has been said about acceptance interpretation of Article 190 or Article 202 in the aggregate between typical and personal criteria in duress to act. Article 202 is also a translation of Article 1112 of the French Civil Code. The combination of the typical and personal criterion at the top of and under these articles is due to the negligence that the authors of French law had in transferring the rules of Roman law into their own. In Rome law, the criterion of duress was the courageous man, and consequently, the character of duressor. The authors of French law changed the standard of courageous man to that of ordinary man, but did not eliminate the question of the character and features of duressor. This mistake was also introduced into Iranian civil law. The acceptance of the validity and accuracy of an emergency transaction against a duress transaction in Article 206 of the Civil Code has been derived from jurisprudence (Rahpeik, 2005: 80).

Paragraph 2 –The Object of the Transaction

In the case of the object of the transaction, some of the articles, such as Article 214 of the Civil Code, is certainly derived from Article 1126 of the French Civil Code. Article 214 which deals with the effect of a contract (obligation) is defined as the drawbacks of Article 183 (non-exclusive of the contract) and therefore Article 214 is incompatible with other principles of Iranian civil law, because in various articles of civil law, elements other than the commitment to contract have been identified, and therefore

the transaction can be directly appealed in addition to the commitment to surrender or act. Although French Civil Code in Articles 1128 and 1129 refers to the issue of property being traded and its form and certainty, it does not appear that Iranian Civil Code in Articles 215 and 216 deals with the aforementioned article, but rather the jurisprudential sources have had the most impact on the formulation of these articles because Article 215 also mentions rational and legitimate interest in addition to property.

Paragraph III - Effect of Transactions

An apparent comparison of Iranian and French shows that the titles of the chapter and its topics are influenced by French law. Of course, in French law, there are more issues. By combining some of the issues and articles and ignoring some others, the French law suffices to three topics. In the first topic, under title general rules, necessity, validity, custom and damages are suggested. Article 219 has been regulated in accordance with Article 1134 of the French Law, while at the same time the authors of civil law have made it more transparent by referring to the necessity principle of Islamic law. In the case of articles relating to custom effect in the contract, some of the articles have been precisely translated from French law. For example, article 220 is a translations of Article 1135 in French. Also in Article 225 of Iranian civil law, has largely paid attention to the text of article 1151. In article 1156 of French civil law has pointed out that the word should not be used in the literal sense, but rather the intention of the parties must be considered. This article is close in some respects to article 224, except that in the last article, the common sense is the main criterion for understanding the contract words. Given the clarity and commonality of the jurisprudence in the aforementioned articles and jurisprudential principles, such as the rule of the popular "known conditional custom", the authors may have used a set of sources in this section (Rahpeik,2005:79-80).

Paragraph Four - Unauthorized Transaction

The rules of unauthorized transactions have been set out in Articles 247 to 263. In any case, any legal system must clarify the contracts regarding the property of others. In French law there is also a limited amount of article on the subject, but these are not included in the contract and transactions. However, civil law has raised many issues and topics in the unauthorized debate that by comparing articles with jurisprudential views, one can trace any article in jurisprudential issues.

Definition and examples of unauthorized. Entry permission, rejection, clarity and liability arising out of a transaction can be considered the most important subjects in this section.

Conclusion

According to Article 216 "The object of the transaction shall not be ambiguous, except in particular cases where a general knowledge is sufficient". In the more formal sense, "the object of the transaction shall be known", and in paragraph 3 of Article 190 civil law that states the basic requirements of the transaction, it is stated: "The subject matter to be the object of the transaction".

Thus, the terms of the transaction in civil law are:

- 1 - Clarity (Article 216)
- 2 - Certainty (Article 190)

It should be borne in mind that the purpose of the transaction being known is that its nature be known to the parties to the transaction, so that it can be claimed or acted upon and that it may be tried in a dispute. But what is meant by "certainty" is that the finances of which it is known must be determined by the individuals and samples. Of all the articles related to this subject in civil law, such as Articles 216, 234, 235, 342, 351, 410, 411, 412, 413, 414 of civil law. The extent of the necessity of the description of the object of transaction and the amount of description are not obtained, and civil law has merely addressed the necessity of the description of the transaction. As in Article 343 of civil law, it stipulates: "The quantity, type and description of the object of the sale must be known and ..." or in Article 414 it states: "In a sale of merchandise of a general description there is no Option of Inspection, and the seller must deliver goods which are in accordance with the description laid down by the two parties" Iranian civil law, following the Imamiyyah jurisprudence, has in some cases considered "general knowledge" on the subject of the obligation and the transaction, as in the latter section of Article 216 it says, "... except in particular cases where a general knowledge is sufficient." Therefore, the law itself, with the general rule stated in the first part of the above article, excludes cases; for example, under Article 694 "It is not essential for the guarantor to know the amount, the details, and the conditions of the debt which he guarantees", or Article 563 states: "In a contract of *ji'ala* the specification of the reward in all particulars is not necessary.". Also in Article 564 states: "In *aji'ala*, in addition to the fact that it is not necessary to specify the agent, it is also possible that the act shall also be unspecified and the circumstances of the act not known", or Articles 752 and 766 that allow for the possibility of contingent and hypothetical claim peace.

Concerning the validity of transactions in Iranian law, it should be noted that: According to paragraph 3 of Article 190. One of the basic requirements of any transaction is that it deals with a "given subject". Therefore, the object of the transaction should not be ambiguous between several issues and the parties to the contract must make the same subject matter. It is necessary to explain that these two words (known and definite) do not have the same meaning as opposed to what is first understood - and may be used interchangeably in custom- as has been said. "It is clear to the parties to the transaction that each buyer and seller should know exactly what he is getting and what he is giving, and in other words the object of the sale is not ambiguous (Article 216 civil law). But what is meant by "definite" is that the finance of which it is known is to be determined by the instances and its individuals, that is to say, the object of the sale is not uncertain in one of the two things (paragraph 3 of Article 190 civil law).

As to the knowledge of the object of the transaction with Iranian law, it should be noted that: Article 216 of the Civil Code of Iran, on the necessity of knowledge, expresses a rational matter and, apart from being legally binding, is also reasonably well-liked.

As to definite and clarity in French law, it must be said that French civil law refers briefly to the subject matter of the transaction and the subject matter of the obligation, but does not comply with Iranian civil law regarding the amount and scope of knowledge required in the transaction. According to Article 1108 of French civil law, there are four essential conditions for the validity and influence of any agreement, including "the object and the particular object that constitutes the subject of the obligation." There is no mention of the scope of clarity and determining the subject of the contract. Also pursuant to Article 1129 of civil law it does not need to know the quantity of the transaction at the time of the contract, but rather to be able to ascertain later, contrary to Iranian law, that the transaction must be known at all times, including its quantity to the parties, and the ability to determine after the transaction is not enough. Therefore, from the total of 1108 and 1129 of French civil law, it can be concluded that the basic requirements of a statement are the expression of type and the type of property. In France, the subject of a general obligation on a given or similar item that can be sold by weight, count, or size, under Article 1129 of the Civil Code, must be in the form. In French law, in spite of the implicit references, they have said less about certainty and more about clarity. Another point to note is that in Western law, the ability to determine the contract is sometimes justified, and the mere ability to determine the validity of

the contract is sufficient; For example, when buyer buy goods available without knowledge of its nature is invalid in Iranian law, but in French law, because it can be determined later, it seems correct that the purpose of the capability is to determine that the contract is of a specified type and share.

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