



Examining the "Guarantor" Rule in New Contracts (Insurance)

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Abstract

The extent of transactions, in human societies and the non-monopoly of a particular class or individual, and the emergence of new transactions, protecting the financial rights of individuals and informing them of the obligations and financial responsibilities affected by these transactions, requires laws and regulations. If a correct contract is not a guarantee, its corrupt one is not a guarantee. With the emergence of changes in human society and the expansion of trade and economic relations, new issues arose which undoubtedly had new jurisprudential and legal effects. These new issues are called in transactions and trade with different titles. They are interpreted as emerging issues or contracts in order to observe the brevity of the new contracts due to their importance and comprehensiveness, this article has examined only the insurance contract, which has not been discussed in the ancient texts, but contemporary jurists have examined it, and some have considered it an independent contract and some have considered it in one of the chapters of jurisprudence. The method of data collection in this writing is library and the research method is descriptive-analytical. Although this contract is similar to some specific contracts, it is not an example of any of them. Therefore, some jurists have mentioned insurance as an independent contract. By stating the definition of this contract and the views of the jurists in expressing its place among the contracts, the inclusion of the rule in this contract becomes clear.

Keywords: *Rule; Guarantee; Guarantee Rule; New Contracts; Insurance*

1-Introduction

Being social has forced man to interact with his fellow human beings. On the other hand, the desire to protect one's own interests is undeniable, and man is always between these two desires and finding a way to satisfy both of them. On the part of the Shari'a of Islam, which seeks his eternal happiness, the way to achieve this rightful desire is to limit the duties of individuals towards each other, by revelatory expression. "...la takuluu 'amwalakum baynakum bialbatil..."w"...'awfuu bialeuqud..."According to these divine commands, it has an irreplaceable role in fulfilling and upholding the rights of individuals, preventing disputes, regulating relations and social life. Therefore, the existence of laws and regulations in the Islamic legal system, both explicitly and implicitly, accomplishes these goals. Our rule is guaranteed to protect social transactions and protect economic health. With the expansion of trade and economic relations, new issues arose which undoubtedly had new jurisprudential

and legal effects. These new issues, in transactions and trade, under the title of new contracts, in view The jurists have two general approaches. Some of these issues have been considered illegal and others have accepted them. The reason for this disagreement goes back to the root of these objections in the "confiscation" or "signature" of the rulings.

Most of the earlier jurisprudence, all the rules of Sharia; Both worship and transactions have been considered as a ban. Therefore, according to this group of jurists, only the contracts mentioned in the Shari'a are valid and enforceable, and the new contracts will be void. Therefore, they invalidate a contract such as insurance. The late Mirza Qomi (RA) says in the discussion of concessions: ... The determining factor in this issue is the well-known issue of "signature" and "seizure" of the rulings. (Gilani, Mirza Qomi / 1313/13: 1/176).

Acceptance of new contracts by contemporary jurists opens the way for the flow of the rule inherent in them. He deals with new contracts and pays attention to the application of the existing rule on it. Valuable has been written as the rules of jurisprudence, such as Kitab-e-Sharif The rules and benefits of the first martyr (Ameli, Bita) and the book of rules of jurisprudence by Hassan Mousavi Bojnourdi (1377), which has discussed in detail the documents of the rules of jurisprudence. Among the dissertations related to the guaranteed rule, we can mention the dissertation on the current or non-current of our guaranteed rule due to the termination and termination of the contract by Mohammad Taghi Abbasi. But regarding the title of the present article (the flow of our rule guarantees new contracts), no independent book or research has been seen by earlier, later and even contemporaries. Therefore, this article can be considered as a new step towards the application of the rule to new contracts, which opens a new horizon for researchers regarding other jurisprudential rules. By carefully contemplating the rules and applying the examples, many ambiguities in the course of transactions that will be formed in various ways in the future will be clarified and resolved.

2-Key Concepts

Before entering into the discussion, it is necessary to clarify some concepts and terms, so these key concepts will be discussed below.

2-1- Rule

The first word that needs to be examined conceptually is the word rule, which is discussed below.

2-1-1- Lexical Meaning

Rule in the word means the basis and foundation of a thing. The Prophet (peace and blessings of Allaah be upon him) raised the foundations of the Ka'bah and said: The rules of the building are the foundations on which the building is built and on which it is based. It is located above it. "(Tarihi, 1416: 3/129).

2-1-2- Terminological Meaning

Rule in the term of scholars means officers, and the matter that corresponds to its details. (Tarihi, ibid., 131) Tahanavi writes in the literal sense of the rule: (Tahanavi, Bita, 2/361) In jurisprudence, the same meaning has been accepted.

2-2- Guarantee

Another word to consider is the word guarantee, which is discussed below.

2-2-1- Literary Meaning

This word is disputed among lexicographers. Some have considered it from the article "adverb" to mean attaching something to something else, while most lexicons of these words are derived from the adjective "adjective" meaning to entrust something to someone. The owner of the comparison says: And everything in a container contains the container. Bail is called a guarantee because when he guarantees something, this obligation covers his obligation. "(Ibn Faris, 1404: 3/372) Guarantee is taken from this article and they call it the conquest of the antidote. In fact, he considered it as an article of "guarantee" and he took the original and derived guarantee from him and stated that the derivation of "guarantee" is wrong. (Fayumi, Bi Ta, 2/364).

Thus, the literal meaning of guarantee is obligation, commitment, sponsorship and undertaking.

2-2-2- Terminological Meaning

The term guarantee is derived from its literal meaning, which is a human obligation to another person. The innocence of the subject matter is guaranteed as soon as it is guaranteed. Sheikh Ansari (may God bless him and grant him peace) says about this term: It was delivered, it is entered on his main property that if the goods are lost, he has to pay the damage from his original property" (Ansari, 1379: 1/282).

Due to the difference in the root of the word guarantee, its sentence will be different. Imami jurists generally believe that the guarantee derived from the root means transfer, that is, the money owed by someone is transferred to another liability. Be. The fruit of this conflict is clear, if the purpose of the guarantee is the attachment of liability to liability, that is, the liability of both is busy. However, if the purpose is to transfer liability to liability, only the guarantor's liability will be engaged, but here the purpose of the guarantee, according to its literal meaning, is to give real compensation and pay the loss, from the guarantor's property, to the damaged property. But in order to be a guarantor, it is not always necessary to have a contract, a person may lose another's property for any reason, which makes him a guarantor, The jurists have mentioned some reasons and void for guarantee, including Sahib al-Anawin, which has stated the means of guarantee in 8 titles, including; The rule of guarantee with validity, the rule of guarantee with dissolution, the rule of guarantee with multiplicity and breach, the rule of guarantee guaranteed with a corrupt contract ... (Maraghi, 1417: 2 / 464-466).

3-The Rule Is Guaranteed

This rule is mentioned in two words in the words of the jurists:

A: We guarantee the correct, the guarantee is corrupt, and we do not guarantee the correct, the guarantee is not corrupt. (Hali, 1387: 4/347) That is, any transaction that is correct is guaranteed, its corrupt is also guaranteed.

B: The whole contract is guaranteed to be valid, the guarantee is corrupt, and the whole contract is guaranteed to be valid, the corrupt is not corrupt.

The jurisprudential fruit of this difference is that if the second phrase is accepted, the rule will apply to contracts whose correctness is guaranteeing and will not include contracts,¹ but if the first phrase

¹ . The contract is opposite to the contract. The contract is based on the will of the parties, such as a lease contract, but the contract is fulfilled by the will of one person, such as divorce.

is accepted, in addition to contracts, the contracts whose correctness is guaranteed will also be included in the discussion. Was. But since this rule is one of the orthodox rules and is not taken from verses and hadiths, the criterion of signification will be the evidence of the rule and it seems that the meaning of the evidence is both contracts and events. (Rahmani, 1379: 23/107) Therefore, in the words of jurists, the first phrase (Mousavi Bojnourdi, 1377: 2/91) This rule is composed of duplicity, negative and negative, the first rule, we guarantee the correct guarantee is corrupt, from which the interpretation is the principle of the rule and the second rule: we are not guaranteed to be correct and not corrupt from which The interpretation is the opposite of the rule. The meaning is as follows; whatever is correct guarantees it, its corrupt also guarantees, and what is not correct guarantees its corrupt is not guaranteed.

3-1 The Meaning of "Us" in the Rule

Some jurists believe that "we" is responsible for the emergence of the concept and includes contracts and quasi-contracts such as forgery. But the interpretation of "the whole contract" is specific to contracts. In the language of Sharia, the word contract is absolutely and generally intended, and according to the verse "Ufwa with contracts" (Maeda / 1), the terms are not outside the contracts. Corrupt contracts that provide guarantees are used from corrupt contracts that do not guarantee. (Momeni, 2001: 69/137)

3-2 The Meaning of Guarantee in the Rule

Guarantee is to accept and undertake (Amid, 1988: 887) Shahid Thani (RA) calls it commitment (Jabei Ameli, 1413: 4/17) and Mohaghegh Thani (RA) uses the same meaning (Ameli Karaki, 1414: 5 / 308) Mohammad Javad Mughniyeh (RA) has mentioned the guarantee in two general and specific meanings, which specifically mentions the same obligation and commitment to property and in general it includes remittance which is commitment to property, or suretyship which is commitment to self. (Mughniyeh, 1421: 4/43) Some other great jurists provide the meaning of guarantee and compensation for damages (Ansari, the same, Najafi, Kashif al-Ghatta ', 1359: 1/262) and others have mentioned the meaning of transfer of responsibility and responsibility (Simiri, 1420: 2/159).

Seyyed Hakim (RA) in this rule considers the guarantee as a single meaning and the reason for it is the protection of the context and its meaning is an obligation and obligation to another's property and the ruling of this obligation is the obligation to pay to another if it exists, and pay a proverb or price in case of loss. (Hakim, Bita: 118) Therefore, it seems that the best meaning for guarantee in the rule of commitment and obligation.

3-3 The Meaning of the Letter "Ba"

"Ba" is a jar and has various meanings. Sheikh Ansari (RA) says: The letter B in the rule either means "fi" (capacity) or means causality. If the letter Ba means fi, the meaning of the sentence is that whenever there is a guarantee in a correct contract, a guarantee is created in a corrupt contract (Ansari, 1379: 1/284) and if the letter Ba means causality, it means the validity of the contract or Its corruption is the cause of guarantee. Seyyed Yazdi (RA) in the margin of Makaseb, preferred capacity and said: The first is to set the capacity of Ba. (Lankarani, lessons outside of jurisprudence 10/22/1388 Session / 52) If it is said, Ba means capacity, its meaning This means that the contract has no effect on the guarantee, but if it is said that ba means causality, it means that the contract has an effect on the guarantee. It follows from the words of Sheikh Ansari (RA) that he considered Ba as the absolute cause, not just the complete cause, because sometimes a correct contract does not cause a guarantee. Unless If a bill is made and a corrupt contract is never the sole reason for the guarantee, but it is attached to the bill that is a guarantee (Ansari, the same).

3-4 Evidence to Prove the Principle of the Rule

The most important reasons for proving the principle of the rule are:

3-4-1 Ealaa-Al-Yad Rule

This is the rule of the Holy Prophet (peace and blessings of Allaah be upon him). ealaa alyad ma 'akhadhat hatta tuaddiah (Nouri, 1408: 17/88) In this sense, whoever dominates another's property, guarantees it until he returns the property to its owner. There are differences among jurists regarding the validity and authenticity of the hadith. The meaning of this rule is that whoever acquires another property, without being authorized by the legislator or the owner, is obliged to reject the same property to its owner, or his deputy, and if the same property does not exist, he is not obliged to access it. Giving is like that, and if the property is not like that, it is obliged to pay the price. The late Sheikh Ansari (ra) alone does not consider this reason sufficient; Because he believes that this narration is for nobles and does not include benefits and actions. (Ansari, 1379: 1 / 383-386) and with the help of the rule of respect for Muslim property and the rule of no harm, he has eliminated this defect. (Taheri, 1418: 225).

3-4-2 Rule of Action

Whoever knowingly and intentionally accepts a guarantee, for example, buys money at a higher price or gives money to someone else who falls into the sea, then no one will be his guarantor. Because he has acted to his own detriment, and it is a rational rule that whoever acts to his own detriment should not blame himself.

In the transaction of building the interlocutors in action, it is that the money received by both parties is not gratuitous and free and is based on our guarantee. Therefore, if the transaction is correct, each of the traders is the guarantor of the name. For example, the seller is the guarantor of the seller and must release his liability by rejecting it to the customer, and the customer must pay the price to the seller. If a transaction was corrupt, the holy shari'ah did not sign the transaction for any reason, the official guarantee will be forcibly invalidated, but the principle of the guarantee will be fixed and the real guarantee will be revoked due to the action of the interlocutors. (Taheri, *ibid.*, 224) Sheikh Ansari (RA) says: From the words of the late Shahid Thani in Masalak, it follows that, following Sheikh Tusi, he considered the evidence of the rule to be two things; 1- A person's action on the guarantee. 2- Iodine rule. He goes on to say: The guarantee cannot be proved by the rule of action, because the recipient of the property has acted in exchange for a name and nothing else. Here, too, due to the lack of a signature of the shari'ah, the place of the name is not valid, so the place of the name is not proven. No contract will be fixed. Because their action was a formal exchange, not a real exchange (like or price), and when a specific exchange (name) is lost, there is no absolute exchange that can be made with a real exchange (like or price). Therefore, no exchange can be made by action, and the relationship between action and guarantee is considered by the public and me in particular, which in some cases is action and there is no guarantee. For example, in a corrupt sale, the goods are lost before delivery to the customer. In some cases there is a guarantee and no action. For example, in the sale of goods, or rent without rent. The rule of action can be considered as proof of the rule. <ma ydman bshyhh> (Ansari, *ibid.*, 248 and 285).

3-4-3 The Rule of Respect

The property of a Muslim is respected like his life and reputation, and the requirement of respecting property is that it should not be destroyed under any circumstances. The prophetic narration of "respect for Muslim property" (Klini, 1429: 3/160) indicates this. Accordingly, no one's property, resources and legitimate actions can be taken or seized without his permission and consent. <la yahilu malu amriin muslim 'illa bitibat nafsh> (Koleini, 1407/7/273) It is not permissible to seize Muslim

property except with his consent. Therefore, if someone's property is lost in another hand, it must be compensated. Otherwise it is against the rule of respect.

In the case of a corrupt contract, if the property is lost in the hands of the astringent, respect for the property of others requires that the astringent person compensate the price or the like of the property, because he has delivered his property in return and not for free. Therefore, in case of loss, the astringent is the guarantor of its replacement. (Mohaghegh Damad, 2003: 2/235).

3-4-4 No Harm Rule

Famous narration (*laa zarar wala zerara' fi alaslām*) Jilani, Bi Ta: 1387: / 83) which is referred to as the harmless rule. With this explanation, if what is traded in a corrupt contract is not guaranteed, it will cause damage to the owner of the property. The no-harm rule removes harmful judgments, and where the absence of judgment and law causes harm, it forges the judgment. Therefore, non-ruling on a guarantee causes damage to the owner of the property (Mohaghegh Damad, *ibid.* Some jurists believe that the rule of harm is not a positive guarantee but removes the ruling of harm. Therefore, this rule can not be relied on to prove the guarantee. According to Sheikh Ansari (RA) and the researcher of Khorasan (RA) who have considered "La" in the rule as negation, only from this rule they have considered the ruling or the subject of harm as negative. Therefore, this rule is not enough to prove the coercive guarantee and another reason is needed. (Taheri, 1414: 93) However, some of them consider it possible to prove a guarantee through this rule. Among them is Fazel Toni, who believes that according to the rule of no harm, there is no irreparable harm in Sharia. The meaning of this word is that whoever inflicted a loss, it is obligatory to compensate the loss. (Khatami, *Specialized Base of Tools*, 12/18/1395) Can be used as a reason for compensation (Taheri, *ibid.*).

3-4-5 The Rule of Domination

Another evidence of the implicit rule implied by the narration (Qomi, 1414: 1/97) which is called the rule of monarchy (domination). Hermal has three aspects that are considered by the owner: A: objective personal characteristics. B: To be like in property like. A: For the tax on each property. This rule proves the ownership of the owner in every direction. But the survival of the property must be given to the owner according to this rule and in three directions.

3-4-6 Consensus

Consensus is another guarantee of our rule. The late Bojnourd (RA) says that some professors and elders of jurisprudence have claimed consensus. Of course, the meaning of consensus here is not principled consensus, because principled consensus is a consensus that does not have a document and is an argument, and it is a consensus that is the discoverer of the ruling of the infallible (PBUH). And here there is no such consensus, because some of the great jurists, based on the rule of action and others, have adhered to the rule of iodine, so what happens to the validity of this rule is not absolute consensus, but each jurist based on his own, fatwa with others. It has been believed. (Bojnourdi, 1998: 2 / 90-91).

3-4-7 Build Wise

In all transactions, if something is taken from someone, with the intention and condition that it is exchanged and agreed upon, the receipt means that the party to the transaction is a guarantor of the same or a price, and if it is lost by the party, it is still a guarantor. The same is true of the holy law. Undoubtedly, the wise people consider a person who has traded something with a corrupt contract as a guarantor if its correctness is a guarantee, and this rational way of life is not new, but it is continuous until Asraimeh and it is not forbidden, so it is a proof. (Rahmani, 1379: 22/129).

3-5 Evidence to Prove the Opposite of the Rule

Among the reasons that have been cited by jurists to prove the opposite of the rule are:

3-5-1 Priority Analogy

This argument is derived from the appearance of the words of Sheikh Tusi (RA). Sheikh Ansari (RA) with the argument of the words of Sheikh Tusi said: It is a guarantor and this indicates the opposite of the mentioned rule. "(Ansari, 1379: 1/282) That is, if the correct contract is not a guarantor, a corrupt contract will not be a guarantor in the first way.

The purpose of the priority comparison is that if a valid contract, such as a lease, is not appropriate for the guarantee, then their void contract, which is considered non-existent, has no effect on the creation of the guarantee. That is, a corrupt transaction does not create anything to raise the issue of guarantee, and if the correct mortgage does not provide a guarantee due to the signature of the legislator, then a false mortgage does not create a guarantee.

3-5-2 Trust Rule

In other cases, the evidence of the mentioned rule (ma la uozman...) is the trust rule. This means that when a personal owner has entrusted himself with his property and entrusted his property to him and allowed free and gratuitous possession, there is no place left for a guarantee.

There are also narrations that do not have a guarantee of trustworthiness, including the narrations narrated from Imam Sadiq (as) who said: «lays ealaa mustaeirariat daman wasahib aleariat w alwadiyat mutamanun» (early hr, 1409 :19 /93) That is, the borrower is not a guarantor and the borrower and the depositor are trustworthy. When the correct contract of loan, deposit, rent, mortgage, etc. is not appropriate, there is no guarantee in case of corruption.

3-5-3 Consensus

In the concept and content of the rule, there is no objection that a contract whose correctness is not guaranteed, its corrupt will not be guaranteed. Therefore, the owner of the jewel (ra) says: that what has been said has no objection. Of course, what we have said in the principle of the rule is a consensus of evidence and there is no independent reason for the discoverer to be infallible. (Najafi, 1404: 25/227).

4- New Contracts

New contracts are emerging contracts that have no valid history and there is no sharia law about them.

4-1 Literary Meaning

Contracts are the sum of contracts. In the lexical definition, the dictionary of comparisons has mentioned this word to indicate firmness and reassurance. (Tahanwi, Bita: 4/86) 1414: 3/296, Wasiti Zabidi, 1414: 5/11).

4-2 Terminological Meaning

Marriage in the term means contract and covenant and God Almighty in the Holy Quran with a verse. «yaa 'ayuha alladhyn amanuu 'awfuu bialeuq» (maeda/1) has considered it obligatory to follow the

correct human covenants. In fact, contract, obligation and mutual obligation are two-sided (feyz,2001:340) that must be applied as necessary or permissible. The dictionary of jurisprudential terms states: (a contract is a word, a connection, a strengthening, a guarantee and a commitment, a guarantee, and a commitment or gathering between the objects of a thing, a contract of sale and commitment, makes a contract stronger and stronger, the principle of the contract is the opposite of dissolution, and this term is used in various types of contracts, such as sales contracts and other contracts, (abd al-rahnan,bita,2,517).

5-Insurance

One of the new contracts is the insurance contract. Therefore, it has not been discussed in the past. Dardoli is not an example of any of them. Therefore, some great jurists have mentioned insurance as an independent contract. By stating the definition of the jurists of this contract and their views in expressing the position of this contract among the contracts, the inclusion of the rule in this contract becomes clear.

5-1 Literary Meaning

Some terminologists have considered insurance to mean guarantee from the principle of insurance. (Moein, 1983 under the word insurance) Some have considered it derived from the Indian language of insurance (MMM) means a special guarantee of life and property (Dehkhoda, dictionary site) and some believe it is derived from the Latin root securus which means confidence, and in the language in Arabic, security means providing security. (Karimi, Bita: 34).

In the term of jurisprudence, insurance is a kind of obligation and contract between two natural or legal persons, according to which one party undertakes in return for payment of an amount by the other party in the event of an accident, to compensate the damage caused to him or part of it. (A group of researchers, 1426: 2/213).

5-2 Terminological Meaning

In civil law terms; Insurance is a contract in which one party (insurer) assumes the consequences of a risk. The risk is that the other party threatens the contract (insurer) and in return for this obligation, the insurer pays an amount to the insured, which is called insurance (Jafari Langroudi, 1388: 1/631).

An insurance contract is valid for a person or property, although in a transaction or in the event of an illness or in the protection of property or in the position of compensation, if a personal loss is incurred, then it is a kind of exchange, which is considered either a constitutional gift or a compromise. An insurance contract is required. Therefore, neither party has the right to terminate the contract unless one of the grounds for termination arises.

Imam Khomeini (ra) in the definition of this contract says: "Insurance is a contract that occurs between the insurer and the insured that the insurer is required to compensate such damage, if incurred on the insured. In return for payment of the insured amount Or in return for the insured obligation, the amount on which the two parties agree." (Khomeini, 1999: 4/446).

Ayatollah Vahid Khorasani (memory of God) says: Insurance is a contract between the insurer and the insured to pay the insured financially to the insurer - whether it is property or benefit or action or whether it is a place or in installments. On the other hand, the insurer shall pay the damages to the insured or to another in such a way as specified in the contract. (Khorasani, 2007: 603).

However, the first jurist to comment on the provisions of insurance was Ayatollah Seyyed Kazem Yazdi (RA), in response to a person who had asked a question from the Muslims of India about insurance and he did not consider this transaction legal (Yazdi Tabatabai, 1415: 188).

5-3 Independence or Non-Independence of Insurance Contract

Regarding the independence of insurance contract or its absence in the interpretations of jurists, some things have been mentioned which show that most contemporary jurists have considered insurance as an independent contract that has its own rules and effects. (Makarem Shirazi, 2007: 479).

Imam Khomeini (ra) says: It seems that insurance is an independent contract, and without a doubt, this insurance, which is common in our time, is neither peace nor exchange, it may not be an independent contract, but an example of guarantee. In return, but its independence is clearer and it is not responsible for the guarantee, but for the obligation to compensate the damage. Although it can be made in the form of peace, compensation, and compensation guarantee (Khomeini, 1378: 4/448).

The jurists have argued for the correctness of the insurance contract, citing the basic generalities and the evidence for the validity of contracts and transactions. Sheikh Hussein Hali (RA) proves the validity of the insurance contract both through the generalities of evidence and through its adaptation to certain contracts, and does not include the jurisprudential problems that have been proposed on it "(Hali, 1415: 40). The great jurists who accept the insurance contract, but on these jurisprudential problems that are related to insurance or due to the closure of transactions, have stated the ruling of this contract by applying it to certain contracts in the jurisprudential chapters that are mentioned.

5-3-1 Guarantee Contract

Some jurists have considered the insurance contract as a kind of guarantee and due to the great similarity between the guarantee and the insurance, they have mentioned insurance as one of its examples. (Bojnourdi, 2003: 3 / 196-217) Sheikh Hossein Hali (RA) has spoken in detail about this. He said that if the insurance is an example of a guarantee, the scope of the guarantee should be expanded to include everyone, whether the subject is religion or object, whether it is subject or non-subject, in the hands of the owner or not. , 1415: 34) And according to the development of guarantee such as this, the issue of insurance is mentioned under the chapter of guarantee, otherwise if the guarantee is sufficient in what is obligatory, the subject lords such as usurpation or corrupt contract should be another opportunity for insurance to Guaranteed people will not remain.

[٢/٤١١ ١٤:٣١] Love: Maeda / 1) has considered it obligatory to follow the correct human covenants. In fact, contract, obligation and mutual obligation are two-sided (Feyz, 2001: 340) that must be applied as necessary or permissible. The Dictionary of Jurisprudential Terms states: "A contract is a word, a connection, a strengthening, a guarantee and a commitment, a guarantee, and a commitment or gathering between the objects of a thing, a contract of sale and commitment, makes a contract stronger and stronger." The principle of the contract is the opposite of dissolution, and this term is used in various types of contracts, such as sales contracts and other contracts "(Abd al-Rahman, Bitā: 2/517)

5-3-2 Contract

Explaining Hebeh on the condition of incurring damages, (Hakim, 1410: 2/153) the late Hali (RA) explains: "If we consider, we see this conditional Hebeh, which includes the elements of insurance due to its inclusion. On the requirement and acceptance Therefore, insurance is in the position of a gift and one of the minorities of this transaction, and the same provisions of the gift apply to insurance "(Hali, 1415: 39).

Sayyid Khoii (RA) also says: "It is possible to consider the contract of insurance with all its types of compensation as a reward, which is permissible and correct" (Khoii, 1410: 1/421).

5-3-3 Peace Contract

There is disagreement among the jurists as to whether peace is an independent transaction or based on reconciliation, but most jurists have considered peace as an independent contract and some jurists have applied the peace contract to insurance. Many great authorities have stated that insurance can be concluded peacefully (Yazdit Tabatabai, 1415: 188). Vahid Khorasani, 1386: 604), in which case it will have the same provisions.

5-3-4 Mudaraba Contract

Some jurists have also applied insurance to the contract of Mudaraba. Andoli carefully defines the meaning of Mudaraba and according to the conditions of the members of this contract, there are differences between the two contracts, including; In Mudaraba, the agent must trade with the owner's capital, while in insurance the insurer must trade with the insurer's capital. In Mudaraba, the capital must be known in advance. In insurance, the insurer pays gradually and that Mudaraba is permissible from contracts while insurance is from contracts. It is necessary to mention. Therefore, according to the statement of the late Khoei (RA) who said in *Mesbah al-Fiqh*: Whenever we doubt that contracts and agreements have been fulfilled due to the existence of some conditions abroad, the principle of their non-fulfillment and ruling on corruption of the contract. (Khoei, *Bitā*: 7/3) Therefore, it seems that the insurance contract can not be considered as an example of Mudaraba.

5-3-5 Jeale

Among the jurists, only Ayatollah Hakim (ra) has considered insurance as a case of forgery and says in the subject of forgery: "An insurance contract for a person or property, which in this period is interpreted as security, is valid as an exchange, and if If the obligee (insurer) does a respectable job that has value and value in the eyes of the wise, then the insurance contract is a kind of exchange and taking property from the insurance parties from each other is permissible, otherwise the insurance is void and taking property is forbidden. . »(Hakim, 1410: 2/153).

Of course, there are major differences between insurance and forgery, which makes such a comparison difficult because there is disagreement among scholars as to whether forgery is a contract or an agreement. Even assuming the contract is forged, the contract will be permissible while contract insurance is required. In forgery, the forger determines the amount of rent, not the agent if this is not the case in insurance, and the insurer determines the amount of premium.

From what has been said, it is clear that the insurance contract is not completely included in certain contracts of jurisprudential books and can not follow all their terms and conditions, although in some cases it may have commonalities with them. Therefore, the insurance contract can be concluded. He considered the contract independent and this independence does not mean having evidence independent of the Qur'an and Sunnah. (Afsari, 1390: 93).

By accepting the opinion of the second group of jurists, the insurance contract is subject to one of the promised jurisprudential titles and will have the same rulings, but if the view of the first category jurists is accepted, the insurance contract is considered as an independent transaction which can be based on general evidence of valid contracts including insurance. He considered this contract correct.

Martyr Motahari (RA) says: "We have a so-called kidney general jurisprudential evidence that absolutely corrects transactions, but the transaction that has been excluded and is inside the exception, for example, became into gambling or usury." (Motahari, *Bitā*: 20 / 354- 355) And he says: "We have a generality, such as the covenant which, according to the Qur'an, must be fulfilled in every covenant you make with each other. The covenant includes all covenants except the covenant which is an exception." Therefore, if we have a contract that is forbidden, is najar, and in general does not have any of the transactions in the books of jurisprudence, but is not included in the exception, but is an exception to me, we will accept this contract. "(Motahari, *ibid.*) Answering and justifying the opinion of the jurists, he said: At all, the value of the insured is not money at all, which we will pay later, saying that this money is unknown and because it is unknown, the contract is void. What is valuable here is that the insurer is multiplied. This obligation is valuable to the insurer. And this is not an empty obligation, it is an obligation that the believers, under their conditions, must fulfill their obligation. (Motahari, *ibid.*, 356).

Therefore, insurance is an independent transaction that includes all types of insurance and the common denominator between all of them is to be secured, and what the insurer receives in return for the premium is the same as insurance, ie an obligation that is a spiritual and immaterial matter is paid to the insurer. (Motahari, *the same*, 369).

From what has been said, the view of the independence of the insurance contract is strengthened, and this contract will definitely have rules and conditions. In some cases, the insurance contract is subject to the general rules of contracts, and in case of invalidity, the insurer is obliged to return the received damage, and the insurer is obliged to return the received premium. And in some cases, the insurance contract is subject to its own rules. Therefore, if the insurance contract is guaranteed if it is valid, its corrupt will also be guaranteed. The correctness of Asrma Insurance Company can be attributed to the verse: *awifuu bialeuquda*" And a famous Hadith of Prophet al-muminun eind shurutahum Proved.

Conclusion

One of the jurisprudential rules of transactions is the implicit rule, which is mentioned in two words in the words of the jurists. The meaning of the word "we" in the rule is both contracts and agreements. «awifuu bialeuquda".

And a famous Hadith of Prophet al-muminun eind shurutahum There are general arguments that all transactions that benefit the rational neighborhood are included and include all the necessary contracts and permissible and conventional contracts between the wise, at all times and places. The purpose of the guarantee in the rule is commitment and obligation to the subject of the transaction. In case of damages, compensation and rejection of property, if there is a transaction, and compensation or price, it is assumed not to exist. The mentioned rule also includes new contracts, one of which is the insurance contract. Some jurists have considered insurance as an independent contract and others have applied insurance to other contracts such as guarantee, gift, peace, Mudaraba and forgery. If the insurance contract is subject to one of these contracts, it will have the same rules for the application of the valid rule, meaning that if it is one of the contracts whose correctness is guaranteed, its corrupt one will also be guaranteed, and if it is one of the contracts whose correctness is not guaranteed. The corrupt one will not be guaranteed either. But according to what has been said, the presumption of independence of the insurance contract is strengthened. Therefore, it will have conditions and rules and in some cases will be subject to the general rules of contracts. According to the guarantee rule, the insurance contract, which is guaranteed if it is valid, will also be guaranteed in case of invalidity and in case of invalidation of the insurance contract, the insurer is obliged to return And the insurer is obliged to return the received premium.

References

The Holy Quran

Arabic Sources

Abul Hassan, Ahmad Ibn Fars Zakaria, Dictionary of Comparative Languages, Islamic Propaganda Office Publications 1404, first edition, Qom.

Ibn Manzoor, Abu al-Fadl Jamal al-Din, Muhammad ibn Makram, Language of the Arabs, Dar al-Fikr, printing and publishing, 1414, third edition, Beirut / edited by Ahmad Fars.

Ansari, Morteza Ibn Mohammad Amin, Al-Makasib, Religious Press, 2000, First Edition, Qom.

Bojnord, Hassan, Al-Qawaada Lafiqahiyya, Al-Hadi Publishing, 1998, first edition, Qom.

Tahanwi, Sheikh Mohammad Ali, the discoverer of the term arts and sciences, Bitā, Bija.

Jab'i Ameli, Shahid Thani, Zayn al-Din ibn Ali, Masalak al-Afham al-Taqnih Sharia al-Islam, Institute of Islamic Enlightenment, 1413, Qom.

Jilani, Rafi al-Din, Mohammad Ibn Mohammad Momen, Al-Dari'ah Al-Hafiz Al-Sharia, 1387, Publisher of Hadith, Qom.

Hakim Seyyed Mohsen, Minhaj Al-Saleheen, 1410, Dar Al-Ta'rif for Press, First Edition, Beirut, Lebanon.

....., Nahj al-Fiqh, BTA, Intisarat 22 Bahman, A Awal, Qom.

Hali, Hussein, Jurisprudence Research, Established, Al-Manar, 1415, A Haram, Qom.

Khomeini, Ruhollah Mousavi, Tahrir al-Wasila, a book of Islamic propagation, which was used by the University of Teachers of the Scientific Council of Qom, 1378, Shanzdhum, Qom, translator/ Ali Islami.

Khoei, Sidab, Al-Qasim Moussaoui, Misbah Al-Fiqh, Bi Ja, Pita

....., Minhaj Al-Salihin, 1410, Medina Science, Chapter 28, Stand up.

Sabzwari, Sayyid Abd al-Aly, the Collector of Islamic Rulings, founded by al-Manar, Bata Ta, Nahem, Qom.

Simari, Muflih bin Hassan (Hussein), the most important goal in explaining the laws of Islam, Dar Al-Hadi, 1420, August 1, Beirut, Lebanon.

Taraihi, Fakhr Al-Din, Bahrain Complex, Kitabfrushi Mortazavi 1416, Afsom, Tehran / Corrected, Syed Ahmed Hosiny.

Ameli Karaki, Mohaqeq Thani, Ali Ibn Hussein, Jame Al-Maqassid Fi Sharh Al-Qawa'd, Al-Bayt Institute, 1414, second edition, Qom, Mohaqeq / Al-Bayt Institute research group.

....., Rasael Mohaghegh Karki, Library of Ayatollah Marashi Najafi, 1409, Qom, Mohaghegh / Mohammad Hassoun.

- Abdul Rahman, Mahmoud, Dictionary of Terms and Jurisprudence, Bi Ta, Bi Ja.
- Farahidi, Khalil Ibn Ahmad, Al-Ain, Hijrah Publishing, 1410, second edition, Qom, edited by Dr. Mehdi Makhzoumi.
- Fayumi Ahmad Ibn Muhammad, Al-Misbah Al-Munir Fi Gharib Al-Sharh Al-Kabir Al-Rafi'i, Dar Al-Radhi Publications, Bi Ta, first edition, Qom.
- Qomi, Abbas, Safineh al-Bahar, Aswa, 1414, first edition, Qom.
- Klini, Thiqah al-Islam, Abu Ja'far Muhammad ibn Ya'qub, al-Kafi 1429, Dar al-Hadith, printing and publishing, first edition of Qom
- Mughniyeh, Mohammad Javad, Fiqh of Imam Sadiq (as), Ansarian Institute, 1421, second edition, Qom, Iran.
- Mousavi Bojnord, Hassan, Al-Qawaed Al-Fiqhiya, Al-Hadi Publishing, 1998, First Edition, Qom.
- Najafi, Mohammad Hassan, Jawahar al-Kalam fi Sharh Sharia al-Islam, Dar Al-Ahya Al-Tarath Al-Arabi, 1404, eighth edition, Beirut, edited by Abbas Quchani.
- Najafi, Kashif al-Ghatta ', Muhammad Hussein ibn Ali, Tahrir al-Majla, Al-Muktabah al-Radwiyah, 1980, first edition, Najaf Ashraf, Iraq.
- Nouri, Hussein Ibn Mohammad Taqi, Mustadrak al-Wasa'il Mustanbat al-Masa'il, Al-Bayt Institute, 1408, Qom.
- Wasiti Zubeidi, Hanafi, Moheb al-Din, Seyyed Mohammad Morteza Hosseini, The Crown of the Bride from the Jewel of the Dictionary, Dar al-Fikr for printing, 1414, first edition, Beirut, edited by Ali Shiri.
- Yazdi Tabatabai, Seyyed Mohammad Kazem, Questions and Answers, Islamic Sciences Publishing Center, 1415, first edition, Tehran.
- Persian Resources**
- Officer, Salem, Insurance from the point of view of Sharia, Kurdistan Publications, 2011, first edition, Kurdistan.
- Jafari Langroudi, Mohammad Jafar, Encyclopedia of Civil and Commercial Law, 2009, Treasure of Knowledge.
- A group of researchers, culture, jurisprudence according to the religion of the Ahl al-Bayt (as), 1426, first edition, Qom.
- Khorasani, Vahid, Explanation of Matters, Baqir al-Uloom School, 2007, ninth edition, Qom.
- Taheri, Habibollah, Rules of Jurisprudence, Islamic Publishing Offices affiliated with the Society of Teachers of the Seminary of Qom, 1418, second edition, Qom.

..... Civil Law, Islamic Publications Offices affiliated with the Society of Teachers of the Seminary of Qom 1418, second edition, Qom.

Amid, Hassan, Farhang Amid, Amir Kabir Publications, 1988, Second Edition, Tehran.

Feyz, Alireza, Principles of Jurisprudence and Principles, Institute of Publishing and Printing, University of Tehran, 2001, twelfth edition,

Karimi, Ayat, Insurance Generalities, Insurance Research Institute, Central Insurance, Eighth Edition, Tehran.

Gilani Mirzai Qomi, Abolghasem Ibn Mohammad Hassan, Jame Al-Shattat in Answers to Questions, Kayhan Institute, 1413, first edition, Tehran.

Mohaghegh Damad, Seyed Mostafa, Rules of Civil Jurisprudence, Islamic Sciences Publishing Center, 2003, Twelfth Edition, Tehran.

Motahari, Shahid Morteza, Jurisprudence and Law (collection of works), Bi Ja, Bi Ta, first edition, Qom, Iran.

Makarem Shirazi, Nasser, Treatise on Explanation of Matters, Imam Ali Ibn Abi Talib School Publications, Fifty-second Edition, Qom.

Khorasani, Hussein Vahid, Explanation of Matters, Imam Baqir Al-Uloom School, 2007, ninth edition, Qom.

Moin, Mohammad, Moin Culture, published by Amir Kabir, 1983, misplaced.

Center for Islamic Studies of the Research Institute of Jurisprudence and Law, Bibliography of Jurisprudential Rules, Qom Seminary Islamic Propaganda Office Publications, 1421, first edition, Qom.

Articles

Rahmani, Mohammad, Qaeda Mayezman, Journal of Ahl al-Bayt (as) Jurisprudence, 2000 Institute of Encyclopedia of Islamic Jurisprudence on the Religion of Ahl al-Bayt (as), Year 6, Volume 23, First Edition, Qom, Iran.

Bojnourdi, Seyed Mohammad, Insurance contract, collection of jurisprudential, legal and social articles, 2003, Imam Khomeini Research Institute, Volume 3, First Edition.

Momeni, Abedin, Articles and Reviews, Office 69, Summer 2001.

Site

Dehkhoda, Ali Akbar, Dictionary Site

Noor Magaz www.noormags.ir

Specialized database of tools, Khatami government jurisprudence, Seyyed Ahmad, 12/18/1695 vasael.ir

Noor Computer Science Research Center

Fazel Lankarani School of Jurisprudence, Mohammad Javad, Session 52, Date 22/10/1388www.eshia.ir

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