



## Fraud Against the Law in the Legal and Religious System of Iran

Mahdi Mollaei

Faculty Member, Shahrood University of Technology, Shahrood, Iran

E mail: molaie65.mahdi@gmail.com

<http://dx.doi.org/10.18415/ijmmu.v8i12.3157>

---

### **Abstract**

Along with the formation of legal requirements, lawlessness and fraud against the law have also increased. The idea of combating fraud, in order to counteract its consequences, gradually led legal scholars to institutionalize the doctrine of the "general theory of fraud against the law." Modern civilized societies do not tolerate the non-fulfillment of legal obligations and requirements, they have made an increasing move in accepting this theory. Of course, the thought of religious scholars in enriching the theory in question, in the light of the institution of trickery, has fueled this important issue. It seems that although some religious scholars and jurists still have doubts about accepting this theory as an independent and specific establishment, but the existence of some signs in the subject law of Iran, sparks of hope in accepting this theory. In this regard, the exclusive enforcement guarantee of "inability to invoke fraudulent action" has emerged. The article in question is an attempt to prove the above and intends to analyze the fraud against the law by carefully studying the legal and religious system of Iran.

**Keywords:** *Fraud; Trick; Theory of Fraud against Law; Iranian Law; Imami Jurisprudence; Legal Requirements; Law*

### **Introduction**

Evolved and civilized human beings, day by day, have found the solution to social problems in orderliness, and common sense, to realize this important issue, has led him to legislation. The more these laws conform to rational and religious precepts, the more complete and prosperous they will be, and the more they avoid them, the closer they will be to the precipices of fall. In any case, it is assumed that the legislature is wise and prudent, and sets laws that are useful and commensurate with the needs of society, which are based on common sense. The ideal situation is when all members of society adhere to these laws and institutionalize their commitment to it. But that hope has never been realized. It is conceivable that persons, under various pretexts and purposes, have always maintained the appearance of the law, but by resorting to countermeasures, have rendered them ineffective and, consequently, relieved of the guarantee of the implementation of the above-mentioned legal requirements.

"Fraud against the law" is an issue that, in parallel with the formation of binding propositions, has occupied the minds of religious and legal scholars, forcing them to deny and prove a solution. In the necessity of doing the writing under the command, it suffices that although important acceptance or rejection of the theory of fraud against the law, but to the extent that the author has examined, comprehensive research and obstruction on the subject has not been done and few studies have been done.

It has not been error-free as some unforgivable mistakes have been made. In other words, due to the proximity of the concepts of the humanities, this category is no exception and sometimes observed, a group has confused similar concepts with the meaning of the subject, and despite such a structure, the need for theory of fraud is not possible. In any case, it should be noted that the comprehensive demarcation of these concepts is one of the innovations of the present article; Moreover, since man may have made a mistake, the author did not consider himself free from error, and in advance, in view of possible slips, he would eagerly accept criticism.

Regarding the issue of fraud against the law, some basic questions occupy the mind of every researcher:

What is the meaning of fraud and similar institutions?

Is the theory of fraud against the law accepted as an independent theory in Iranian law?

Do the sharia tricks express the above rule? What are the rules of jurisprudential principles?

The author hypothesizes that the theory of fraud against the law, as an independent theory in Iranian law, is acceptable and should not be confused with similar institutions. In addition, the tactic of "unsubstantiated fraudulent act" is the only guarantee of execution and the guarantee of execution specific to the theory. Finally, although there is no unity in the opinions of the jurists regarding the permissibility and sanctity of trickery, it is worthwhile to count the permissible tricks in the theory of fraud against the law. According to this short introduction, the author intends to answer the above questions and prove the aforementioned hypotheses in an analytical-descriptive manner and with library tools and relying on valid jurisprudential and legal sources in the field of Iranian law and comparative law. In the following three chapters:

Chapter One - Generalities and Concepts

Chapter Two - Legal Foundations of Fraud Theory

Chapter Three - Jurisprudential and religious principles of fraud theory

## **1- Conceptology**

The concept of fraud and similar institutions, along with their differences and commonalities, are discussed in this chapter.

### **1-1-Concept**

"Fraud" literally means trickery and is equivalent to the French term "La fraude". The Latin root of fraud is the word "fraus" which is equivalent to loss and damage. (Husseinghli Katabi: 175) According to some, the concept of cheating the law is that man uses a legal and correct means to free himself from the shackles of the law (Mahmoud Kashani, 1973: 1). According to another definition, deception or fraud against the law is that a person uses the right given by the law for a fraudulent purpose. In other words, to divert the authority given to him by the legislator from its original purpose. (Mohammad Nasiri, 1993: 55-56). Paul, an expert on Roman law, argues that the violation of the law is either overt or, by preserving the appearance and text of the law, violating the spirit of the law and taking the law out of its natural channel. (Kashani, 1973: 9) And finally, one of the contemporary jurists also believes: "Fraud against the law is a work according to which one or more people escape from the implementation of the law by helping. This fraud is in our legal language. "Sometimes it is called a legal ploy. For example, in order for the two parties to the contract to be exempt from paying taxes, they write the price of the transaction less than the actual amount in the document." (Nasser Katozian, 2004: 314) As can be seen in the definition of fraud against the law, there is a great difference, although there are similarities. It seems that all the controversy over the theory of fraud against the law is rooted in this lack of unity. This has not only

fueled controversy, but has fundamentally led some jurists to confuse the theory with some of the soon-to-be-mentioned similar institutions, and even to believe that despite such institutions, there is no need for a theory of fraud. To better explain the issue, it is appropriate to first examine these definitions and then state the definition of autonomy.

The first definition, apart from not paying attention to the psychological element, is also not comprehensive and obstructive; Because there is no reference to the omission of the verb and the fact that the action is sometimes done in order to be "subject to legalization" and the definition is in a way that includes "abuse of the weakness of the law"; While such an institution is different from the theory of fraud against the law. The second definition is more of an "abuse of rights". Regarding the third definition, it should be said that in addition to not being an obstacle, the psychological element has not been considered. The reason why it is not an obstacle is that it also defines direct violation of the law as subject to definition; While this is not the case. Finally, the latter definition is more appropriate for "spiritual collusion" than for "fraud against the law." Moreover, it is not reflective or rejection.

The definition of fraud against the law requires an introduction. The relationship between purpose and means is one of them. Either of these two may be legitimate or illegitimate. In this way, four states emerge from their combination. The first case is that both the goal and the means are legitimate. This case is the most correct case and there is no particular problem with it. However, it may inherently cause harm to others. But it is not forbidden. Suppose the workers of a factory go on strike in accordance with the rules. Certainly, the result of the strike will be a reduction in production. The second case is that the goal and the means of both are illegitimate, the obvious example of which is "direct violation of the law". In the third case, the goal is legitimate but the means is illegitimate. The rule of " necessities allow prohibitions " is an example of this, and in the end it may be an illegitimate goal and a legitimate means. Undoubtedly, "fraud against the law" belongs to this group. In fact, a person uses a legal solution to get rid of other legal duties.

According to the above explanations, fraud against the law is fraud in the use or non-use of a legal instrument, in order to get rid of the duties or enjoy the privileges contained in another legal rule, in such a way that there is no legal punishment or guarantee. Not found for that cunning act. A legal rule means a binding statement made by a competent authority in order to maintain public order, and violation of that rule is guaranteed execution and worldly punishment. The elements of this definition are examined in the second chapter. According to the theory of fraud against the law, whenever an action complies with the above descriptions, the interested party can, based on this general rule, request the competent courts to declare the said action against him as Inability to cite

## **1-2-Similar institutions**

Similar institutions are facilities that are similar to the institution of fraud against the law. Sometimes the relationship between these institutions and the institution in question is so great that some experts have made a mistake. Of course, as we have said before, these errors seem to be the result of a misinterpretation of the law. In this section, institutions that are similar to institution of fraud against the law are described. Comparing similar institutions with the theory of fraud in relation to the law makes the dimensions of this theory better identified.

### **1-2-1-Abuse of the law**

"Abuse of the law" refers to a situation in which a person exploits a defect in the law to achieve his or her goal. For example, a person may kill another person for revenge, but justify the murder based on Note 2 of Article 295 of the Islamic Penal Code. According to a recent note, if a person kills someone in the belief that his murder is permissible and this is proven in court, but it is later determined that the victim was not retaliated against or worthy of death, the murder constitutes an intentional mistake. In this case, if he proves his claim that the murder of the victim is permissible, retribution and blood money will

be revoked from him. It can be seen that this regulation has a lot of corruption and anyone can justify his murder with it. Undoubtedly, this situation should not be equated with the theory of fraud; Because in this theory we are talking about two rules. In such a way that the correct use of the first legal instrument invalidates the second law. But in this institution, the individual violates the legal rules and then resorts to a legal tool to justify his action. This is because the person has so-called been able to circumvent the law. For example, when a debtor, in order to avoid legal punishment for confiscating his property, transfers it to his wife under a gift contract, he does not seem to have committed a violation. But with the loss of property, in practice, the rules for the seizure of his property become ineffective and their philosophy of existence is overshadowed.

### **1-2-2-Abuse of the right**

Abuse of a right is a case in which a person does permissible work within the limits of his right, but the purpose of doing it is not to satisfy the need, but to harm another. Or the exercise of a legal right is done in an unconventional way, in a way that harms another person as a result of this fault. (Katouzian, Introduction to Jurisprudence, 2004: 313) Article 40 of the Iranian Constitution states in this regard: No one can use the exercise of his rights as a means to harm another human being or to violate the public interest. Article 132 of the Iranian Civil Code adequately explains the limits of the exercise of the right. According to this article, no person can take action in her home that causes harm to a neighbor, except an action that is normal and to meet the need or avoid harm. Unfortunately, some experts have used this article to the theory of fraud against the law. (Including Mahmoud Kashani, 1973: 241)

According to the above article, it can be said that if the right holder exceeds the limits of the authority given to him by law or stipulated in the contract, he has acted contrary to the right and it cannot be said that he has abused the right. Moreover, as some experts have rightly stated, in fraud against the law, a person is not in the position of exercising his right, but intends to flee from enforcing the law (Katozian, 2004: 313-314). Regarding the relationship between the two institutions, some believe that the theory of fraud against the law is one of the examples of abuse of rights. (Mahmoud Kashani, 1973: 227) However, according to what has been said, not only is there no absolute public-private relationship between them, but it is also difficult to establish a public-private relationship. Unless it is said that in the theory of fraud, a person has abused his legal authority in some way. Some have gone further and equated the two institutions. This group believes that there should be no fear of equality between the two institutions.(Abbas Ali Saghafi,1996:38)According to what has been said, this opinion is ultimately a fall.

### **1-2-3-Collusion**

Collusion means that two or more people agree and cooperate in order to prevent the implementation of the law or to enjoy legal privileges. For example, two contractors may stipulate a smaller amount of contract money to be tax-exempt. This institution is different from the institution of fraud in relation to the law. Regarding the theory of fraud, it should be said that no collusion or violation has taken place and the contract is not only superficial but also real and all the conditions for the validity of the contract have been observed.

### **1-2-4- Apparent contract (unreal)**

Another similar institution is the apparent contract. Although this institution is used to invalidate the law, but as its name implies, it consists of an apparent legal act that is legally invalid due to lack of intention because the two parties to the contract to form The contract has no real intention and is created only in the appearance of a contract. For example, a debtor may transfer his property to another person under a sham contract to avoid paying his debts so that creditors cannot seize his property. However, in the theory of fraud against the law, the contract has been realized with all the conditions of correctness, and the guarantee of its implementation is the inability to Citation

### **1-2-5- Civil liability**

According to some authors, the theory of civil liability, before other theories, can be applied to the theory of fraud against the law. This group believes that fraud is a real civil offense and that the element of error on which the theory of liability is based turns into fraud in the form of intent to commit fraud. However, as some experts have rightly said, the two institutions are different both in terms of concept and goals and in terms of guarantee of implementation. (Mahoud Kashani, 1973: 231-233)

### **1-2-6-Legitimate skills**

The purpose of establishing the general theory of fraud against the law is not to restrict the principle of free will of individuals, and we do not seek to confine individuals to the dry texts of the law. As some have rightly stated, what is meant by the issue of fraud is only the suppression of malice and wrongdoing. In other words, the aim is that the validity of the law is not ridiculed by the evil intentions and intentions of the wrongdoers. For this reason, it is appropriate to support the institution of legitimate skills or, in the words of the jurists, legitimate tricks. The difference between the two institutions is the same as the legal obligation. In fact, if the matter is realized, its verdict will be imposed on the person and there is no escape from it. In this case, fraudulent use of legal tools leads to the formation of elements of fraud theory. But if a person, with his intelligence and ingenuity, directs the situation in such a way that the matter does not form, the natural result is that he will never be sentenced and in this situation there is no need for cheating and deception. (Kashani, 1973: 53)

### **1-2-7-Illegal direction**

According to the fourth paragraph of Article 190 of the Civil Code of Iran, Legitimacy of transaction motives is one of the basic conditions for the validity of the transaction. Article 217 of the above law, in completing the said regulation, adds: it is not necessary to specify the direction of the transaction, but if it is specified, it must be legitimate, otherwise the transaction is void. The meaning of the direction of the transaction is the motivation of the people to make a transaction. Every human being has a special motivation to make a contract. It should be noted that Article 218, which replaces the previous article, states that whenever it becomes clear that the transaction was made with the intention of evading debt and was made fraudulently, that transaction is void. The previous article made the deal with the intention of fleeing religion ineffective. Since the current article is related to the institution of a fictitious contract, it is out of our discussion. Nevertheless, a serious transaction with the intention of evading debt should be considered an example of fraud theory. However, some jurists refer to it as illegitimate direction and believe that assuming that the contamination of the direction does not invalidate the transaction with the intention of evading debt, it can still not be denied that the debtor is engaging in illegal activity. Therefore, the removal of the former Article 218 should not be considered as allowing or accepting the influence of this fraudulent transaction.

The removal of the former article seems to have been logical and appropriate because, first, the theory of fraud differs from that of the institution in the illegitimate direction. Secondly, the non-infringement of the contract is not a guarantee of proper execution because if the creditor rejects the transaction, the personal rights of the person who has traded with the debtor in good faith will be violated. Finally, it is necessary to mention that according to Article 4 of the Law on Execution of Financial Sentences, a criminal guarantee is provided for this action.

### **1-2-8- The principle of goodwill**

Another similar institution is the principle of good faith. According to this principle, the parties to the transaction must have good faith in concluding the contract. This principle, which is one of the general principles of law, is widely cited in the international arena. It may be said that fraud against the law is an example of a violation of the principle of good faith. But it seems that these two issues, as their

name suggests, although they have common points, are significantly different from each other. For example, according to the theory of fraud, it is assumed that the parties to the transaction have good intentions towards each other, but one of the parties has adopted a fraudulent intention according to the goals it pursues.

### **1-2-9- Tadlis**

According to Article 438 of the Civil Code of Iran, Tadlis is an operation that deceives the party to the transaction. In fact, Tadlis is a practice that is used to deceive the party to the transaction and to motivate the party to the transaction and obtain his consent to the contract. It should be noted that although there is deception in both institutions, there are many differences between the two. Careful attention to the definition of the two establishments shows these differences. At the end of this section, it is necessary to mention that the verbal sharing of fraud, in crimes such as fraud, will not interfere with the theory of fraud and are merely a verbal sharing. (See, for example, Article 1 of the Law on Intensifying Punishment for Perpetrators of Bribery, Embezzlement and Fraud in Iran)

### **1-2-10-Public order**

The concept of public order can not be precisely defined and can not be counted, but it can be said that authoritarian laws are also called laws of public order, because these laws were created for the order and interest of society and therefore, the will of individuals must Respect them. Public order should not be confused with public law. Undoubtedly, the laws of public law are related to public order, but public order is not limited to them, but has a wider scope. Public order is based on the general idea that society is superior to the individual and that public interests take precedence over private interests. Public order in domestic law is a legal mechanism by which the government rejects private contracts that are against the public interest. In other words, public order in internal relations includes authoritative rules that the will of individuals can not violate. It should be noted that public order is an exception and is basically the will of the ruling and influential people. (Hossein Safaei, 2010: 51-52)

According to some authors such as Barton, the connection between the theory of fraud and public order is so great that they did not consider the first theory as an independent rule and considered it as a manifestation of public order, but as some have stated well, although There are similarities between the two theories, but they are different in nature, purpose and performance guarantee. (Najad Ali Almasi, 1989: 140-141)

### **1-2-11- Good ethics**

Pursuant to Article 975 of the Iranian Civil Code, the court cannot enforce foreign laws or private contracts that are contrary to good morals or that are contrary to public order by hurting the feelings of society or for any other reason, although The implementation of these laws should be allowed in principle. Good morality is the character and action of the virtuous and pious of society. (Nasser Katozian, Legal Practices, 1991: 52) Can we say that despite this institution, there is no need for the theory of fraud? If it is said that good morals are examples of public order, as some have said, the answer is clear. (Hossein Safaei, 1389: 58) Otherwise, it should be said that the two establishments are different. Because it is unlikely to be said that a legal contract that a person enters into is against good morals. In addition, the criterion of good morals seems to be An objective criterion and the criterion of fraud is personal, because the psychological element is the determining factor.

### **1-2-12- Exception**

We do not mean the exception of the famous French rule, according to which fraud makes exceptions to all legal rules and thus corrupts it (cf. Kashani, 1973: 238), but on the contrary, it may be thought that That, according to the religious rule, which states that every general rule has an exception,

since according to the theory of fraud, a person's legal act is completely correct, and therefore the weakness of the legislation should not be considered as the invalidity of that act. As a result, given that the law, however comprehensive, may allow clever individuals to evade its obligations in various ways, we must inevitably accept fraud in that sense and consider it an exception to the rule of law. . This illusion does not seem to have sufficient scientific basis and its acceptance leads to the spread of corruption.

At the end of this chapter, it is necessary to mention that the theory of fraud against the law has also been introduced in private international law, but the author does not intend to address it in full, although it may have been mentioned in the discussions and Unity is the criterion of its rules to be used. In the next section, the legal and jurisprudential foundations of the theory of fraud against the law are examined.

## **2- Legal Bases of Fraud Against the Law**

In order to better identify the theory of fraud over the law, it is worthwhile to study its legal principles and rules, and to complete the discussion, refer to the regulations of other countries under the heading of comparative law.

### **2-1- Internal law**

Sources related to the theory of fraud, the pillars of this theory, the arguments and opinions of proponents and opponents, and finally the effects and rulings of the theory of fraud are among the issues that are examined in order.

#### **2-1-1-Resources**

There is no explicit article that prohibits fraud against the law in general. However, by studying different articles of Iranian codified laws, the following examples can be found:

##### **2-1-1-1-Iranian Civil Law:**

Article 65- The validity of the endowment that has been made with the aim of harming the creditors is subject to the permission of the creditors.

Criticism: This article does not imply the theory of fraud, because the guarantee of its implementation has been explicitly clarified by law.

Article 132- No one can take action on his land that causes harm to his neighbor, except an action that is normal and to eliminate the need or repel the harm.

Criticism: As we said before, this article is aimed at proving the institution of abuse of rights.

Article 944- If a husband divorces his wife while she is ill and dies within the same period of illness within one year from the date of the divorce, his wife shall inherit, even if the divorce is valid, provided that the wife is not married.

Article 945- If a man marries a woman in a state of illness and dies in the same disease before sexual intercourse, the woman will not inherit from him, but if he dies after sexual intercourse or after recovering from that disease, the woman will inherit from him.

The above two articles confirm the theory of fraud against the law and its explanation will soon be considered by the audience.

### **2-1-1-2-Iranian Civil Judgments Enforcement Law**

Article 57 - After the seizure of property, any contract or obligation entered into in respect of the seized property to the detriment of The winner of the case shall not take effect unless The winner of the case consents in writing.

Criticism: Since the above article contains a performance guarantee, it is out of the question.

### **2-1-1-3- Iranian Trade Law**

Article 424 - Whenever, as a result of a lawsuit filed by the liquidator or creditors against persons who have been party to the transaction with the bankrupt trader, it is proved that the trader has a transaction before the date of his bankruptcy to evade payment or to injure the creditors. If the transaction involves a loss of more than a quarter of the price on the day of the transaction, that transaction can be terminated unless the party to the transaction pays the price difference before the termination order is issued. The termination claim will be accepted in court within two years from the date of the transaction.

Article 500 - Transactions made by the bankrupt trader after the issuance of the Arfaqi contract until the issuance of the annulment or termination of the said contract shall not be void; Unless it turns out that it is intended to harm and to the detriment of creditors.

Criticism: The mentioned materials are also out of the discussion due to specifying the performance guarantee and considering what will come.

### **2-1-1-4-Iranian Civil Procedure Code**

Article 133 - Whenever the court finds that the third party lawsuit is for the purpose of collusion or delay in the hearing, it shall hear each of the lawsuits separately.

Article 139 - Whenever the court finds that the summoning of a third party is for the purpose of delaying the proceedings, it may separate the summons petition from the original petition and consider each one separately.

Article 426 - In the case of final judgments, a retrial may be requested in the following ways: The other party requesting the retrial has used a trick that has been effective in the judgment of the court.

Criticism: The above materials, according to what will be discussed in the next section, are out of the subject of discussion and the similarity of the words has no reason to confirm the theory of fraud against the law.

## **2-1-2-Pillars of the theory of fraud against the law**

In the previous chapter, regarding the definition of fraud against the law, it was said: Fraud against the law is the use or non use fraudulent of a legal instrument, in order to get rid of the duties or enjoy the privileges contained in another legal rule, so that no legal punishment can be found for that cunning act. Now, in order to determine the examples of the theory of fraud against the law, it is necessary to examine its elements. For this purpose, the content is pursued under three headings: legal, psychological and material elements.

### **2-1-2-1- Legal element**

In order to commit fraud against the law, it is necessary to have two laws or legal obligations. The first law is a tool that the fraudster uses directly. The second law is a rule whose rules and requirements become useless and ineffective due to the cunning behavior of the individual. Suppose a man divorces his wife in order to deprive her of his inheritance. Here, the first law is the right of a man to



divorce, and the second law is the provision of Article 946 of the Civil Code on the inheritance of a woman from a man. Here, by fraudulent use of the legal means of divorce, the provision in Article 946 loses its effectiveness. Or, in order to be hereditary under the above article, a woman may marry a man who, according to medical theory, will soon die. Here, the fraudulent use of the legal means of marriage makes her subject to the provisions of Article 940 of the Civil Code.

One of the most important points to note is that these laws should not mention any specific punishment for fraud, otherwise it is out of the question, because in that case the judge must comply with The sentence of the article shall apply. As a result, it is worth mentioning that one of the conditions for the scoring of fraud is that the chosen tool for fraud does not face any special punishment, and if fraud can be prevented in this way, there is no need to use the theory of fraud against the law. Such as Article 65 of the Civil Code and some of the articles described above. However, with regard to Articles 944 and 945, it should be noted that the legislator has not provided a specific enforcement guarantee for the acts performed (divorce and marriage). Although in the above articles, it is stipulated that, as the case may be, the woman inherits or is deprived of the inheritance, but the above provisions have been included in order to counteract the fraudulent intention and make it ineffective, and the legislator has taken action to guarantee legal enforcement Marriage) is silent. However, as we will say, from the provisions of these two articles, a general ruling on the inadmissibility of the said acts is derived, because according to a general rule, a particular instance does not assign a general ruling.

### **2-1-2-2-Psychological element**

The psychological element is the examination of the fraudulent person's malice in such a way that by abusing a legal instrument, he exempts himself from another law or makes himself subject to that law. It is not necessary for a person to have a specific malice that is based on harming another, but sometimes there is such an intention. Like the first or the deal with the intention of escaping from religion. However, it is necessary for the fraudster to intend to get rid of a legal obligation or enjoy the benefits of another law, and to achieve the result.

### **2-1-2-3- Material element**

The material element refers to the commission of an act or omission of an act in relation to a legal obligation. The material element is usually done in the form of a legal act such as concluding a contract, but it is conceivable that a person would leave the current position in return for the task assigned to him by the legislator in order to get rid of other requirements. For example, in order to evade taxes, a trader may not fill out tax forms until the tax period expires, despite being notified of the tax return. The important point to note is that the fraudulent person does not have to commit a single act, nor does the exemption from the obligation and enjoyment of legal privileges through the fraudulent act necessarily precede or delay the act. Suppose a person sells land to another with an ordinary deed but transfers the same land to another with an official deed. It can be seen that here the person has performed two legal actions to enjoy the privilege of official transactions.

### **2-1-3- Opinions and arguments of the opponents and supporters of the theory of fraud**

There is disagreement among jurists as to whether or not to accept the theory of fraud against the law as a general theory. First, the theories of the opponents and then the opinions of the supporters of the said theory are studied.

#### **2-1-3-1- Arguments of the opponents**

Some jurists have opposed the acceptance of this theory as a general and independent theory in Iranian law. According to one of the opponents of this theory: there is a long way to go that fraud and trickery can be the basis of a general theory in our law and can, as a harmless rule, be the source of

secondary judgments in various fields. The trick to being in a suitable and useful position is not always illegitimate, and distinguishing between permissible and forbidden tricks is one of the difficulties of this general theory, and sometimes it makes it difficult to distinguish between abusing the right and cheating the law. (Nasser Katozian, *General Rules of Contracts*, vol. 2, 1994: 270). However, in the opinion of the author, according to the criteria presented, the objection of the said lawyer can be resolved. The most important objections of the opponents are as follows:

A. An act authorized by the legislature itself cannot be called fraud because it is a paradox. (Kashani, 1973: 173)

Criticism: This reason seems to be flawed because, as we have said, all fraudulent transactions are formed correctly, and it would be very surprising if the legislature considered them invalid. In addition, no one considers the legal proposition itself to be fraudulent in order to create a contradiction, but it is essentially a psychological element that makes an act fraudulent or non-fraudulent. Also, most of the transactions that take place are correct and free from fraud.

B- Some believe that since the requirement of applying the rule is that the judge in each case, enters the details of the case and achieves the intention of the individuals, since the accuracy or invalidity of the result of the actions of individuals is not clear, the taste will be the judge. (See Najad Ali Almasi, 1989: 139)

Criticism: Although this reason is based on the fact that it leads to injustice, but the lack of attention to the rights of the beneficiaries, overshadows justice more.

C. It may be argued that, despite other institutions, there is no need for fraud theory. For example, some believe that since fraud against the law also has an effect on citizenship, the theory of illegitimate direction and related rulings can be used to invalidate the change of citizenship. (Mohammad Nasiri, 1993: 57)

Criticism: As we said in the previous chapter, this mistake is due to the lack of demarcation of the theory of fraud with other similar institutions. There we pointed out that the theory of fraud against the law is significantly different from similar institutions and is considered an independent theory.

### **2-1-3-2- Reasons for agreeing:**

A group of jurists have rightly accepted the theory of fraud against the law as a general and independent theory. According to some proponents of this theory, as accepted in the courts of some countries, this rule should be considered an important and necessary rule because this rule in fact guarantees the implementation of conflict resolution rules and agrees with the purpose and philosophy of law. , Because it guarantees the good effects of the law and maintains the validity of the law. Otherwise, it will be easy for some people to disobey the dictatorial laws of the country, while others will follow those laws. (Najad Ali Almasi, 1983: 140)

Apart from what has been said, there are other reasons for accepting the theory of fraud.

A. Dealing with fraudulent behavior

B- Protecting the damaged rights

C- Lack of alternative theory

### **2-1-4-Effects and rulings of the theory of fraud against the law**

Accepting the theory of preventing fraud against the law will be reasonable when the effects and guarantees of its implementation are envisaged, otherwise, as some have said, it will not be needed in spite of other theories. Fraud against the law not only has legal guarantees, sometimes it also has criminal guarantees. But the lack of criminal punishment does not pose a problem in accepting the rule.

#### **2-1-4-1-Legal effects (contract status)**

After accepting the general theory of fraud against the law, the question arises as to what is the guarantee of implementation and its specific effects? In fact, the question is what means can be used to counter fraudulent action. For example, how can the following contracts that have been entered into with fraudulent intent be punished? For example, a contract entered into to evade usury or evade payment of debt or to benefit from inheritance. Comments are provided in this regard. The invalidity, lack of influence, validity of the contract and inability to invoke that action are among these opinions. The theory of invalidity is not acceptable in principle because, as mentioned, the said contract has been realized with all the conditions of validity and there is no reason to invalidate it. In addition, the use of this theory violates the rights of the other party to the transaction. While it is assumed that the other party to the transaction has entered into the transaction in good faith.

Although the theory of non-influence of the contract is a more moderate theory that the legislator had chosen for the former Article 218, but the omission of this article on the one hand and the possibility of rejecting the transaction and the emergence of the objection on the other, makes this theory as The best theory is not accepted.

As some have rightly acknowledged, the theory of the impossibility of invoking a fraudulent contract seems to be the best solution, and is specifically for the theory of fraud against the law, because first of all, not being invoked does not mean invalidity. Annulment eliminates the act altogether, but the inability to invoke a fraudulent contract does not completely destroy that contract; It only nullifies the result. In fact, this guarantee has a more limited scope of invalidity. Secondly, the act of cheating the law is the intention of the parties to the contract, and the will of individuals must be respected as long as it does not harm the law and the rights of individuals.

Thus, it is worth reviewing Articles 944 and 945 of the Iranian Civil Code. These articles are an example of the guarantee of the impossibility of invoking a fraudulent contract in Iranian law. According to this theory, a man who marries a woman in a state of serious illness has a real intention to marry, so it must be said that the marriage is not void, so if the woman dies by chance, the man inherits from her. Similarly, a person who divorces his wife in the event of a serious illness has a real will and a definite will to divorce, but his motive is to cheat the law because he intends to deprive his wife of her inheritance. Here, the theory of the impossibility of invoking a fraudulent divorce causes that despite the divorce, in the issue of inheritance, the marital relationship is firm, and in this particular case, we assume that the marriage contract is valid. In fact, divorce against a woman is inviolable and the woman inherits from her for up to a year. But if the woman dies, the man will not inherit from her. Thus, in other cases, the legal act is not considered invalid. For example, if a person enters into a contract with another person in order to avoid paying the debts to the creditors and at the same time assumes other terms and obligations, he / she cannot refuse the other obligations and conditions by invoking the invalidity of the contract.

#### **2-1-4-2-Criminal works**

In some cases, fraud against the law, which the legislature considers to be a crime, also has a criminal guarantee. For example, Article 595 of the Islamic Penal Code of Iran states in this regard: Any agreement between two or more persons under any contract, such as a contract of sale, loan, peace, etc., to trade a good with the same good with an additional condition. Or receives an amount in addition to the amount paid, is considered usury and this act is considered a crime. Perpetrators, including usurers, recipients of usury and intermediaries between them, in addition to rejecting property or extra money to

the owner of the goods, sentenced to six months to three years in prison and up to (74) lashes and the equivalent of usury as a fine. In Iranian law, usury is not accepted and anyone who fraudulently uses the tools of the contract to obtain the result of usury is sentenced to the crime of usury.

## **2-2- Fraud against the law in comparative law**

Private international law is a fertile ground for fraud against the law. The existence of several states, each of which has an independent sovereignty, causes individuals to realize fraud in the laws of their respective states in order to benefit from the legal rules of different countries and their possibilities. Since this is a pervasive topic, at the end of this chapter we will recount the rules of some countries regarding the theory of fraud. Of course, it should be noted that as far as the author has examined the constitutions of the countries, he has not found any sign of this theory; But in their other laws, including civil law, there are provisions. French civil law, for example, assigns an article to a contract for the purpose of evading debt, citing the important principle of exception to invalidate the contract. According to this principle, fraud is an exception to all legal rules. In this section, we will mention the laws of some countries.

### **A. Fraud against the law in Austrian law:**

In Austrian private international law, although there are no relevant and codified laws in this regard, but regarding the change of elements of affiliation to a country, including citizenship and residence or change of legal relations, according to the doctrine and legal theories in this country, The courts and judges of this country are not required to investigate the intentions and motives of the litigants. According to these theories, if a person acquires the citizenship of another country and accepts the duties, obligations, privileges and rights of that country, it is natural that he can also benefit from the authorized legal institutions of his new country.

### **B. Fraud against the law in Senegal private international law:**

In Senegalese law, fraud against the law can lead to non-enforcement of foreign law, and this is enshrined in the country's law. Article 851 of the Civil Code allows Senegalese judges to refuse to apply the selected foreign law by the Senegalese Private International Conflict Resolution Rule in the event of fraud. According to Borrell, a French lawyer, it is observed that in Senegalese law, only fraud against domestic law can be punished by the courts of this country, and the legislator of this country, regarding the punishment of fraud against foreign law, the issue Has silenced. French private international law, on the other hand, provides for fraud against French law and foreign law, and the courts of this country prosecute and prosecute it. (Borrell, 1987: 10-11, quoted by Mohsen Sheikh al-Salami, *Private International Law*, Ganj-e-Danesh Publishing, 2005).

## **3- *Jurisprudential and Religious Principles of Fraud Against the Law***

Fraud against the law has not only puzzled jurists, but also jurists and religious scholars have expressed a number of theories under the guise of trickery. Trickery in jurisprudence and religion has been used to mean a special solution to achieve a goal and in the sense of trickery, deception and deception. Trickery in the second sense has been spoken of in matters such as jihad, trade, martyrdom, and limits. (The culture of jurisprudence according to the jurisprudence of the Ahl al-Bayt; 2005: 403) It is like using a trick in usury in order to escape from it, so that without practicing it, a person becomes infected with usury. The trick has been talked about on many topics, including business, marriage and divorce. The trick is obligatorily divided into two types, permissible and forbidden. A permissible trick is to use permissible means in the Shari'ah to achieve something permissible. On the other hand, there is a forbidden trick, which is to use a tool that is forbidden by the Shari'ah to achieve something permissible. (Al-Khalaf, J 4: 492). In terms of situational ruling, there is no difference between permissible and

forbidden trickery. For this reason, in the forbidden trick, although the trickster has committed a sin, it has the effect of a permissible trick. (Sharia al-Islam, vol. 3: 596, quoting the culture of jurisprudence according to the jurisprudence of the Ahl al-Bayt, 2005: 405) It is like a person who is obliged to pay ten thousand tomans for khums or zakat, sells a product worth one thousand tomans, in the amount of ten thousand tomans to a poor person who deserves khums or zakat, and thus settle its obligation. (Jewel of the Word, J 32: 202)

There are many examples of trickery in jurisprudence, including to escape from usury. The jurists have also given examples regarding the forbidden trick. For example, if a woman hates her husband and apostatizes with the intention of annulling their marriage, if the apostasy is before sexual intercourse, the marriage is void and the separation is valid; But if apostasy takes place after sexual intercourse, the separation is conditional on the end of the 'iddah before repentance. Some have objected to the invalidity of the contract due to false apostasy without its realization in fact and belief. (Nadharh gardens, C 25: 379)

From studying the sayings of the jurists and the aforementioned matters, a few points become clear: First, there is a difference between the jurists regarding the principle of using trickery. Secondly, it is not clear exactly whether the acceptance of the trick was absolute or relative. Thirdly, it is not clear whether in the words of the jurists there is a connection between the obligatory ruling and the status ruling or not, and no standard has been proposed in this regard. Fourthly, what the jurists have proposed as a forbidden trick, according to the criteria that were presented, is out of our discussion. As a result, in this chapter we will only explain the permissible tricks. In this chapter, the views of Imami jurists have been studied and at the end, a reference is made to the beliefs of Sunni jurists.

### **3-1- Imamiyya jurisprudence**

Imami jurisprudence refers to the Shiite religion. To better explain the issue of the opinion of religious scholars in the Shiite religion, we first explain the sources of the theory and then the opinions of the jurists.

#### **3-1-1- Resources**

The Qur'an and hadiths are the most important sources cited by religious scholars regarding fraud against the law. These sources are called ijtiḥad arguments. Both for and against groups have cited these arguments.

##### **3-1-1-1- Quranic sources**

The noble verses 162 and 166 of Surah Al-A'raf, 65 and 66 of Surah Al-Baqarah, 154 of Surah An-Nisa 'and 231 of Surah Al-Baqarah have condemned fraud and trickery. These verses of the Qur'an, according to some religious scholars, are a proof of the invalidity and to be forbidden of trickery. On the other hand, some religious scholars, citing verse 43 of Surah Sad and verses 62 and 63 of Surah Al-Anbiya, consider the use of trickery permissible. (See Khalaf, J 4: 490)

##### **3-1-1-2- Sources related to the hadiths and sayings of the Imams**

Regarding trickery, many narrations are cited as denial and proof. For example, we mention some cases.

The Holy Prophet (peace and blessings of Allaah be upon him) said: O 'Ali! Muslims Will be tested in the future by their possessions ... They will make the forbidden of God lawful with false suspicions, and unhealthy whims and desires (in this regard, they do three things): They consider eat wine

permissible by changing its name to Nabiz, and consider bribery as a gift, and consider usury in the name of sale and transaction!<sup>1</sup> (Nahj al-Balaghah, sermon 156.)

The Holy Prophet of Islam (peace and blessings of Allaah be upon him) said in another narration: The gifts offered to the employers are treason.<sup>2</sup> (Excerpt from Wisdom, 2008: 1271)

It should be noted that those who agree with the permission to use trickery also cite several narrations.<sup>3</sup>

### 3-1-2- Opinions and arguments of the proponents and the opponents

In religious books, as in the science of law, there are pros and cons to accepting or not accepting the theory of preventing fraud. Of course, according to the definition and works that were presented for this theory, as far as the author has examined, there is no explicit information in this regard. By studying the words of religious scholars, we come across two general groups: some have only referred to the obligatory sentence of trickery and have discussed its permissibility and sanctity. Since there is no connection between a mandatory sentence and a status sentence, it cannot be clearly said that they mean correctness or corruption. Some religious scholars have also mentioned the ruling. This group has presented arguments for the correctness or invalidity of the trick, but the meaning of the previous theory is not explicitly mentioned. In any case, according to what has been said, the correctness of the created contracts is certain, and the permission or sanctity of fraud does not negate this issue. Of course, the jurisprudential basis of Articles 944 and 945 of the Iranian Civil Code can be used to confirm the theory of fraud. (Sharh Lamah, J 3: 353). By studying jurisprudential books, we can adopt negative and positive reasons. The arguments of both categories are analyzed below. At the end of the discussion, we will have a case study on one of the most famous tricks in the subject of usury.

#### 3-1-2-1- Opponents of condemning trickery (this group considers trickery to be correct and permissible):

Some religious scholars have fundamentally endorsed the use of trickery. And so they have opposed condemning it.<sup>4</sup> This group has even referred to some verses, including the 43rd verse of Surah Al-Mubarakah Al-Sad, and believes that these verses have confirmed the use of trickery. (Khalaf, J 4: 291) In addition, some narrations have been cited as follows:

Shaykh al-Tusi, may God have mercy on him, narrates from Ahmad ibn Muhammad, from Ibn Abi Umayr, from Muhammad ibn Ishaq ibn Ammar, and Shaykh Klini from Muhammad ibn Yahya, from Ahmad ibn Muhammad: I said to Imam Kadhim (as): A person owes me, the debtor requests that the claim be delayed. Is it permissible for me to sell him a garment worth one thousand dirhams for ten thousand, or twenty thousand dirhams, and to delay his debt? The Imam said: There is no problem.<sup>5</sup> (Shiite means, volume 12, chapters of the rules of contracts, chapter 9, hadith 4.)

There is also a narration with this meaning that you should flee from haram to halal. This group can also cite the issue of Toria.

#### 3-1-2-2- Those who agree with condemning trickery (this group considers trickery to be invalid and forbidden):

<sup>1</sup> - "يا عليّ انّ القوم سيفتنون باموالهم- إلى أن قال- و يستحلون حرامه بالشبهات الكاذبة، و الاهواء الساهية، فيستحلون الخمر بالتبذير، و السحت بالهدية، و الربا بالبيع"  
<sup>2</sup> - "هدايا العمال غلول"  
<sup>3</sup> - " روى سويد بن حنظلة ، قال: خرجنا و معنا وائل بن حجر نريد النبي- صلى الله عليه و آله- فأخذته أعداء له، و تخرج القوم أن يخلفوا فحلفت بالله أنه أخي، فخلى عنه العدو، فذكرت ذلك للنبي عليه السلام، فقال: «صدقت المسلم أخو المسلم» الخلاف، ج4، ص: 491  
<sup>4</sup> - صاحب جواهر يقول: "لا إشكال و لا خلاف في أنه يجوز التوصل بالحيل المباحة شرعاً [دون المحرمة في إسقاط ما لولا الحيلة لثبت] بل [لو توصل بالمحرمة أثم و تمت الحيلة] و ترتب الحكم الشرعي عليها. معجم فقه الجواهر؛ ج2، ص: 428  
<sup>5</sup> - "قلت لأبي الحسن عليه السلام يكون لي على الرجل دراهم، فيقول الآخرني بهو انا اربحك، فابيعه جبّة تقوم عليّ بالف درهم، بعشرة آلاف درهم (أو قال: بعشرين الفاً) و أوخره بالمال؟ قال: لا بأس."

The most important argument of some religious scholars to counter fraud and trickery is that its acceptance violates the purpose of the Shari'a and therefore must be confronted<sup>6</sup>. The owner of the jewel says in this regard: The trick is the violation of the intention for which the rights have been imposed, and whatever the intentional violation entails in the principle of legislating the sentence, the sentence will be annulled.<sup>7</sup> (The jewel of the word in the explanation of the laws of Islam; vol. 32: 202)

### 3-1-2-3- Jurists' opinions about the tricks of usury

There are different opinions about escaping usury and its tricks. There are several part in this regard:

A. Many religious scholars believe that all the above-mentioned tricks, and the like, are permissible. In some examples, such as the sale of dirhams and dinars, the late Sahib Jawahir, may God have mercy on him, claims consensus.<sup>8</sup> (The jewel of the word in the explanation of the laws of Islam, vol. 23: 391)

B- The late researcher Ardabili, and Allameh Halli in the book remembrance of the jurists consider the reliance on these tricks everywhere invalid, and prescribe it only in cases of necessity and necessity. These two noble scholars distinguish between necessity and non-necessity.. (Complex of benefits and evidence in the explanation of the guidance of the minds; vol. 8, p. 488)

C- Although the late Imam Khomeini (RA) initially gave a fatwa in accordance with the famous opinion and the first part, but later he returned, and contrary to the popular theory, he does not allow any of the tricks of usury. (Tahrir al-Wasilah, the book of the seller, the words in the usury, issue 7.)

D. The fourth theory is the elaboration between the tricks that have a rational aspect, and what is not. The first case is legitimate, and the second case is illegitimate. (Makarem Shirazi, 2007: 106)

Some religious scholars believe that there are many types of tricks to escape from usury, some of which are permissible, and some of which are incorrect. Those types are:

A. Tricks that do not have a serious intention, such as attaching a handkerchief to a loan, and selling it at several times the actual price. Such tricks are not legitimate.

B- Tricks that rational people consider unreasonable, even if a serious intention is hypothetically imagined in it. This part is also invalid.

C- Tricks in which there is a serious intention, and it is not unreasonable; But the content and philosophy of the sanctity of usury is quite evident and present in it. This part is also invalid. For example, if you owe someone, and the time has come to pay your debt, but you can not pay it, make deals with the lender (for example, buy goods from him several times the price) and in the transaction stipulate that the deadline for payment of your debt Delay for a few more months. Or items that are done as attachments.

D. Cases that have a rational form and are not fictitious, such as two independent transactions that have nothing to do with each other, and both are serious and rational, and in fact the trick does not have a negative meaning; Rather, it is a kind of wise solution. This type of trick is permissible. For example, if

<sup>6</sup> - محقق اردبیلی يقول: "و ينبغي الاجتناب عن الحيل مهما امكن و اذا اضطر يستعمل ما ينجيه عند الله تعالى و لا ينظر الى الحيل و صورته جوازها لما عرفت من حله تحريم الربا" (مجمع الفائدة و البرهان في شرح إرشاد الأذهان؛ ج 8، ص: 488)

<sup>7</sup> - "كل شيء تضمن نقض غرض أصل مشروعية الحكم يحكم بطلانه"

<sup>8</sup> - "لا خلاف بيننا أيضا في أنه يجوز بيع درهم و دينار، و دينارين و درهمين و يكون في الصحة بمنزلة أن يصرف كل واحد منهما إلى غير جنسه و إن لم يقصد ذلك و كذا لو جعل بدل الدينار أو الدرهم شيء من المتاع، و كذا مد من تمر و درهم، بمددين أو أمداد و درهمين أو دراهم إذ هو و إن لم يكن في كل منهما جنس يخالف الآخر، إلا أن الزيادة تكون في مقابل الجنس المخالف في أحدهما، فهو في الصحة حينئذ كذني الجنسين، و لا خلاف بيننا في الجميع، بل الإجماع بقسميه عليه، بل المحكي منه مستفيض جدا إن لم يكن متواترا مضافا إلى الأصل و العمومات، و اختصاص أدلة التحريم بحكم التبادر و السياق بغير مفروض المسألة، و النصوص المستفيضة التي فيها الصحيح"

someone intends to trade some of his substandard gold for high-quality gold, he first sells his gold to the other party, then buys the gold with that money. This can be done in the form of two cash transactions, or one cash transaction and one loan transaction. (Makarem Shirazi, 2007: 119)

According to what this great jurist has said, some points can be mentioned. The tricks of the first part, since they are fabricated, are specifically outside the theory of fraud. The tricks in the second case are also out of the question due to the unreasonability of the subject of the invalid transaction and in the previous order. But in the case of the third group, despite the fact that he considers the meaning and document of the relevant hadiths to be correct; But he invalidates the transaction for reasons such as being fake and irrationality, the wisdom of usury and the existence of opposition. (Ibid: 116) In this regard, it should be said that if the transaction is really fictitious or unreasonable, it is out of our discussion, but if a transaction is done correctly, it will be difficult to invalidate it, especially since it is also confirmed by the narrations<sup>9</sup>. The result is that these cases are part of the theory of fraud, but he considers them invalid. Finally, the fourth part, according to what we have said in the definition of fraud against the law, is out of the subject of our discussion and is included in the institution of legitimate skills.

### 3-1-3- Works and rulings

From what has been said, it can be said that some religious scholars consider trickery to be haram, but it is not possible to understand the invalidity of the contract from their words, although this seems probable. The group that ordered the trick license believes that the related contracts are valid. In addition to the permissible trick, some religious experts have pointed out the forbidden trick and believe that the status of the contract is the same in both cases. The contract is preferred. A group has also spoken of legitimate and illegitimate tricks. Of course, as we have said, the legitimate trick must be examined under the institution of legitimate skills.

From all the words of the religious scholars, it can be understood that the permission or sanctity of the trick has no effect on the validity or invalidity of the concluded contract, because these matters are related to the combination of conditions or non-meeting of the conditions of the validity of the contract. There is a similar issue in the issue of the sanctity of the contract of sale and purchase during Friday prayers. This theory is reinforced by the opinion of some religious scholars regarding the unity of the ruling on the permissible and forbidden tricks, which they believe contract to be correct. However, since failure to confront the intentions of individuals also causes corruption, the use of the guarantee of the impossibility of citing a fraudulent contract, which is inferred from the words of the late Shahid Thani and its description under Articles 944 and 945 of the Iranian Civil Code, which is based on It is famous for Imami jurisprudence, it will be useful. (See Sharh Lameh, vol. 3: 353 and the aforementioned explanations of the mentioned materials)

### 3-2- Comparative study (in Sunni religion)

Ibn al-Qayyim believes that none of the four Imams issued a fatwa permitting trickery, but the later ones and the followers of the Imams, on their own initiative, made tricks and attributed them to the Imams. According to him, the trick causes the lifting of the embargo, while the cause of the act remains haram and causes the abolition of the obligation, while the cause of the obligation remains. Therefore, the trick is forbidden in several ways:

First, committing a trick causes one to commit a haram act and abandon the obligatory act.

Second, the trick involves deceit and making people suspicious.

Third, guiding people to tricks is forbidden.

<sup>9</sup> - عبيد الله حلي: امام صادق عليه السلام "قال: لا بأس بالف درهم و درهم، بالف درهم و دينارين، إذا دخل فيها ديناران أو أقل أو أكثر فلا بأس" (وسائل الشيعة، جلد 12، ابواب الصرف، باب 6، حديث 4).



Fourth, Attributing the trick to the Shari'a and claiming that the trick is in accordance with the principles of the Shari'ah is forbidden.

Fifth, a person who has committed a trick, assuming that he has not committed a haram, does not consider his deed as sin and therefore will not repent of his deed.

Imam Ahmad ibn Hanbal believes that none of the tricks is permissible. (Kashani: 27-30) It can be seen that religious scholars in the Sunni religion have talked only about the sanctity and impermissibility of trickery; However, according to what has been said, the theory of combating fraud can be extracted, at least according to the opinions of religious experts in the Shiite religion.

### **Conclusion**

From the contents of the three chapters, it can be concluded that the general theory of fraud against the law has been accepted in Iranian law as an independent theory and the inability to rely on the contract and fraudulent act is a guarantee of its specific implementation. Not only legal scholars but also religious scholars in enriching the above theory have made admirable efforts in the form of denial and proof, which has resulted in the creation of an independent and moderate institution.

Thus, if the court, in view of what has been said, considers the case as an example of the theory of fraud and applies it to it, it is necessary to declare the fraudulent act and contract unsubstantiated against him at the request of the interested. This theory, which is based on the idea of fighting trickery, has many social and legal benefits, so that at the same time, Damaged rights, the party to the transaction in good faith and society are preserved, and legal rules and Laws also retain their authoritarian character.

However, since the existence of similar institutions has largely made scholars skeptical of the issue, and given the differences that still exist between religious scholars, we have to wait for the passage of time, until this fledgling institution, gradually steps Progress and reach the maturity limit.

### **References**

The Holy Quran

Nahj al-Balaghah Ardabili

Ahmad bin Muhammad. (1982) Interest and proof complex to explain the guidance of mind, Qom: Islamic Publications Office affiliated with the Society of Teachers of the Seminary of Qom, first edition, 14 volumes.

Almasi, Najad Ali (1989) Conflict of Laws, Tehran; University Publishing Center, First Edition.

Saghafi, Abbas Ali (1996) Fraud against the Law in Private International Law, Tehran: Imam Sadegh (AS) University, First Edition.

A group of researchers under the supervision of Shahroudi, Seyed Mahmoud Hashemi. (2005) The culture of jurisprudence according to the religion of the Ahl al-Bayt (as), Qom: Encyclopedia of Islamic jurisprudence on the religion of the Ahl al-Bayt (as), first edition, 3 volumes.

A group of researchers under the supervision of Shahroudi, Seyed Mahmoud Hashemi. (1996) Dictionary of Jurisprudence, Beirut: Al-Ghadir for printing, publishing and distribution, first edition, 6 volumes.

Halli, researcher, Najmuddin, Ja'far bin Hassan. (1987) Canons of Islam in the halal and haram issues, Qom: Ismaili Institute, second edition, 4 volumes.

- Sheikh al-Salami, Mohsen (2005) Private International Law, Tehran: Ganj-e-Danesh Publishing, First Edition.
- Shirazi, Nasser Makarem. (2007) Shari'a tricks and correct solutions, Qom: Publications of Imam Ali Ibn Abi Talib School, second edition.
- Safaei, Seyed Hossein (2010) General Rules of Contracts, Tehran; Mizan Publishing, Eighth Edition.
- Tusi, Abu Ja'far, Muhammad ibn Hassan. (1986) Al-Khalaf, Qom: Islamic Publications Office affiliated with the Society of Teachers of the Seminary of Qom, first edition, 6 volumes.
- Ameli, Shahid Thani, Zayn al-Din bin Ali. (1985) The Gorgeous Kindergarten in Explanation of the Damascene Lume, Qom: Publications of the Office of Islamic Propaganda of the Seminary of Qom, first edition, 2 volumes.
- Ameli, Harr, Muhammad ibn Hassan. (1988) Shiite means, Qom: Al-Bayt Foundation, first edition, 29 volumes.
- Katabi, Husseinghli (2008) Farhang-e Law, Tehran: Mizan Publishing, First Edition.
- Katozian, Nasser (2004) Introduction to Law, Tehran; Publishing Joint Stock Company, Print 42.
- (1994) General Rules of Contracts, Tehran; Publishing Joint Stock Company, Third Edition.
- Kashani, Seyed Mahmoud (1973) Theory of Fraud against Law, Tehran; National University of Iran, First Edition.
- Kamalan, Seyed Mehdi (2011) Applied Law Handbook, Tehran; Kamalan Publications, seventh edition.
- Mohammadi Rey Shahri, Mohammad (2008) Selected Mizan al-Hikma, Qom: Hadith Publishing Organization, seventh edition.
- Mansour, Jahangir. (2006) Collection of Laws, Tehran; Didar Publishing, third edition.
- Najafi, Sahib Al-Jawahir, Muhammad Hassan (1985) The jewel of the word in the explanation of Islamic law, Beirut: Dar Al-Ihyaa Al-Tarath Al-Arabi, seventh edition, 43 volumes.
- Nasiri, Mohammad (1993) Private International Law, Tehran: Agah Publications, First Edition.

## Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).