

Artículo de investigación

Legal jurisprudential review of the rule of will in the context of iranian law and the international sales convention

Revisión jurisprudencial jurídica de la regla de voluntad en el contexto de la ley iraní y la convención de ventas internacionales

Revisão Jurídica Jurisprudencial do Estado de vontade no contexto do direito iraniano e da convenção internacional de vendas

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Abstract

The principle of the rule of will is considered as one of the important and fundamental issues of the rights of contracts. Article 10 of the Civil Code as well as the law of Alqoub, the subordinate unit, can be counted from the results of the principle, and it is believed that these two results in their sense indicate that the contract in terms of the order of the works and legal provisions, as well as the determination of the nature and nature of the agreement based on the will of the parties to the contract. Now, given that the majority of jurists and jurists are the source of Article 10 of the Civil Code and also the rule of Al-Aqoud, the subordinate member of the Law, is considered to be the rule of will, but there are no theoretical conclusions regarding the meanings of the rule of will between them. Therefore, in this research, the nature and applicability of the will of will, as well as the analysis of the limits of the will of will will be identified.

Therefore, the purpose of this research is to answer and to reach the following questions: Is the difference between the extent and the status of the rule of will in Iranian law, the Imam's jurisprudence with the 1980 International Convention on the International Sale of Goods, adopted in Vienna? In the assumption of a conflict of apparent will with an esoteric will, priority is to which will?

Resumen

El principio de la regla de voluntad se considera una de las cuestiones importantes y fundamentales de los derechos de los contratos. El artículo 10 del Código Civil, así como la ley de Alqoub, la unidad subordinada, se pueden contar a partir de los resultados del principio, y se cree que estos dos resultados en su sentido indican que el contrato en términos del orden del obras y disposiciones legales, así como la determinación de la naturaleza y naturaleza del acuerdo en función de la voluntad de las partes en el contrato. Ahora, dado que la mayoría de los juristas y juristas son la fuente del Artículo 10 del Código Civil y también la regla de Al-Aqoud, el miembro subordinado de la Ley, se considera la regla de la voluntad, pero no hay ninguna teoría conclusiones con respecto a los significados de la regla de voluntad entre ellos. Por lo tanto, en esta investigación, se identificarán la naturaleza y la aplicabilidad de la voluntad de voluntad, así como el análisis de los límites de la voluntad de voluntad.

Por lo tanto, el propósito de esta investigación es responder y llegar a las siguientes preguntas: ¿Es la diferencia entre el alcance y el estado de la regla de la voluntad en la ley iraní, la jurisprudencia del imán con la Convención internacional de 1980 sobre la venta internacional de mercancías, adoptado en Viena? En el supuesto de un conflicto de voluntad aparente con una voluntad esotérica, ¿cuál es la prioridad?

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That is by studying On the subject concluded that: Between the limit and place of sovereignty of will in Iranian law, Imamieh jurisprudence with the International Convention on the International Sale of Goods, adopted in 1980 Vienna, is observable in terms of the basis of difference.

The best way to accept the nature of the rule of will And Total both theory (Apparent and esoteric will) and lack of precedence and preference Give one another And the bugs and shortcomings that are created will also be radiated .

Keywords: The ruling of the determination, obstacles will, the will of inward and outward.

Es por el estudio sobre el tema concluyó que: Entre el límite y el lugar de la soberanía de la voluntad en el derecho iraní, la jurisprudencia del Imamieh con la Convención Internacional sobre la Venta Internacional de Mercancías, adoptada en 1980 en Viena, es observable en términos de la base de la diferencia.

La mejor manera de aceptar la naturaleza de la regla de la voluntad y la teoría total (la voluntad aparente y esotérica) y la falta de precedencia y preferencia se dan mutuamente Y los errores y fallas que se crean también serán irradiados.

Palabras clave: el fallo de la determinación, los obstáculos, la voluntad de entrada y salida.

Resumo

O princípio da regra da vontade é considerado como uma das questões importantes e fundamentais dos direitos dos contratos. Artigo 10 do Código Civil, bem como a lei de Alqoub, a unidade subordinada, pode ser contada a partir dos resultados do princípio, e acredita-se que estes dois resultados no seu sentido indicam que o contrato Em termos da ordem do obras e disposições legais, bem como a determinação da natureza e natureza do contrato com base na vontade das partes no contrato. Agora, dado que a maioria dos juristas e juristas são a fonte do Artigo 10 do Código Civil e também a regra de Al-Aqoud, o membro subordinado da Lei, é considerada a regra da vontade, mas não há teoria teórica. conclusões sobre os significados do Estado de vontade entre eles. Portanto, nesta pesquisa, serão identificadas a natureza e aplicabilidade da vontade da vontade, bem como a análise dos limites da vontade da vontade.

Portanto, o objetivo desta pesquisa é responder e alcançar as seguintes questões: A diferença entre a extensão e o status da regra da vontade na lei iraniana, a jurisprudência do Imam com a Convenção Internacional sobre a Venda Internacional de Bens de 1980, adotado em Viena? No pressuposto de um conflito de aparente vontade com uma vontade esotérica, a prioridade é para qual vai?

Isso é estudando sobre o assunto concluiu que: Entre o limite e o lugar da soberania da vontade na lei iraniana, a jurisprudência Imamieh com a Convenção Internacional sobre a Venda Internacional de Bens, adotada em 1980 em Viena, é observável em termos da base da diferença.

A melhor maneira de aceitar a natureza da regra da vontade E o total, tanto a teoria (vontade aparente e esotérica) e falta de precedência e preferência Dê um ao outro E os erros e deficiências que são criados também serão irradiados.

Palavras-chave: A decisão da determinação, os obstáculos, a vontade de dentro e de fora.

Introduction

In general, in all legal systems, the will of individuals in the realization of legal acts plays a major role, and contracts and contracts are rooted in the will of individuals. In order to respect the will of the individual, the relations of the people of the community must be based on the will of the free will, therefore, no obligation to impose on man unless he wishes to do so, and such an assignment conforms to the law of

nature, then the basis of the right and duty is absolutely the will of the people ; Therefore, the law serves the will of individuals, and its duty is to cope with the will of the will . In Islamic jurisprudence, the will of individuals in creating obligations is of crucial importance.

The provisions of Al-Aqoud's lawyer's affiliation also confirm this view . According to

the above rule, the lack of an inscription of the sign of the contract prevents the realization of legal effects, and the act is discredited without the intention of the party. The importance of contracts, especially in more detail, is determined by the fact that the principle of the will of will is identified and this principle has always been of particular interest to lawyers in the international arena. Therefore, the examination of new laws in some countries, as well as the rules of relevant international documents and organizations, reveals that the freedom and the will of the parties in many systems of law are the dominant rule. In fact, today, the rule of will is a fundamental principle and, with some limitation, is the most appropriate rule among the same rules. The principle of the rule of will is one of the most important principles in law that did not exist before and after the original Middle Ages, and the contracts were concluded in ceremonial form in a special form. Therefore, this principle was used in various ways, such as religion, Political and economic emergence has emerged in the new century and before the coming of the 17th century AD, the principle of sovereignty of will has become a fixed rule as far as Article 1134 The French civil code called the contract a law of the lawmakers, and also in Iran's law, this principle was recognized by the first edition of the Civil Code and before the adoption of civil law in the custom and among the people because this principle in jurisprudence and Islamic thought there have been.

First topic : Relative standing autonomy

The principle of the rule of will is one of the most important principles in law, which has undergone an everlasting history . Originally from the Middle Ages to this name Existence Not having contracts To the face Ceremonial And At Format By Special Concludes You can Have been Is.

Mr. Haeri in an analysis of Article 10 of the Civil Code for the examples I have mentioned, "In Roman law, a contract for a loan can actually be called (Nksym) necessarily with the lender and the borrower and the five witnesses set Or in another contract (" Spanto"), a specific term should be used to conclude the contract . " In other countries, such as Germany and Romania, historical evidence also shows that formal contracts are prevalent in these countries. is. At Result Principle Sovereignty Will Before

From centuries Middle ground yet still Leg To Existence Not left Respectively.

First speech : the history of Autonomy First Paragraph: The History of the Rule of the Will in the Middle Ages

In the Middle Ages, the foundations of this principle gradually To Existence Came This Principle From ways different As Religion, Factors Political and economic factors Appearance Find Made To This Syntax That This Belief In the end Deals Arrived Became That If Personal From Advocators Church obligation To Do That's it Make Even If Obligation Certain Existence Not have If , to obligation Yourself Action Do not Causing Punishment Religious You can To be And This Belief Extend The principle of freedom Will At Contract The Take To Along Had And To Follow up It's Necessity Sure To Marriage Creation Became And Persons Yourself Take I am committed To Do The covenant You can They made until the From Punishment Religious At Aman Are.

On the other hand, due to the prosperity of finding economies at this time, bargaining was not a definite form of economic activity; At Result Persons Yourself Take From Adverb And Clause They are Abandoned They made And This Also Cause Expansion and the spread of Principle the freedom Will At contracts And To Consequence It's Principle Sovereignty.

1 Impact of religious principles and the rights of the Church

If the contract was concluded and the necessary formalities were not observed, the contractors would be for the sake of Do not swear allegiance and do not commit any sin, the existence of a contract and a commitment between themselves. They confessed . That was the reason for the credit and influence of the commitments.

2 Impact of economic factors

After trade and commodity transfers flourished and the need to accelerate Trade exchanges have become even more comforting, and they are becoming more and more worthwhile Contracts were paid . This thought has gained momentum in Italy, the courts of commerce The fourteenth century ruled in this regard in accordance with the rules of the law .





Based on the rule of law Between the forms of contract and the agreement reached by the will of the will, the difference is as much as necessary They did not leave.

3 Impact of political factors

The impact of these factors through the gradual expansion of state sovereignty, its step-by-step intervention in relations The rights of individuals and the protection of contracts that have been obtained through an agreement of will, appearance Is. It was not until the seventeenth century That the theory of sovereignty is the will of its stability and deployment Found. The peak of the acceptance of this theory dates back to the eighteenth century. At this time, The theory of the will of the will to justify its basis based on innate rights, the establishment and strength of Received, and believe that independence will need to make a commitment to easy route Has found a lot of emphasis throughout the entire social and economic life.

Second Rule: The History of the Will of the Will in the New Century

" In the new century And Before From Over Achieve Centuries 17 ad, Principle Sovereignty The form is one (fixed constant) At Came until the There That a matter Y 1134 Law Civic France Marriage Take Law Subjects Called. Release Will Y Man At This centuries Uniquely To Rules From Before determination Have been And Rights Special Not Because That Individualism At Centuries 18 To Top Yourself has arrived Was And At He had all the social rules. To the extent that the theory of individual originality was raised. These views were legalized in Napoleon's law, and the principle of the rule of will was genuinely born and was the basis for the effects of contracts and legal obligations " .

In my opinion, the principle of the sovereignty of will in the form in which it is based on the theory of the individual's originality Kind of Excess To Eye You can he ate And Materials Society And group People Take Fashion Opinion Put Did not give Is. At Result The theory Y Other By Lawyer Hi Pose Became That hybrid From Authenticity Man And Authenticity Society Was To Syntax That Principle Sovereignty Implementation of accepted Was, But until the a place That With Materials Persons Society And Discipline

General David Goodbye Contradiction Not have And this Kind Both Materials Persons Society To the danger Do not Falls And so Persons From the freedom Will At contracts On Have you ; Though freedom Will Y Persons To a certain extent Limited You can To be But this itself is a barrier to the source of problems, namely, the absolute freedom of the will of individuals.

Third Section: The History of the Rule of Will in Iran and the Imam's Jurisprudence

One of the principles of law and means, including in the social sciences and philosophy, was founded after the Renaissance, the autonomy principle, by virtue of the principle that the uprising against Rome's traditional rights of limited contracts Agreed contracts with names such as bail, rent, representation and objective contracts such as bonds, loans, debts and bonds; the parties can conclude any contract with any conditions that they deserve. It apparently made a laissez-faire school of the West of England, but actually has historical roots in Islamic jurisprudence and Quranic verses, however, can not be said that the European group of Islamic scholars to follow and follow and imitate such The original as a theory in philosophy and law; the principle of the rule of will in contracts resulting in the principle of contractual freedom, if one of the lawyers believes, is rooted in the jurisprudence of the Imamiyah and is recognized in the scope of religious law he cites the hadith "Allah Khlqk Hara now Khlqk coma" (God created you free to be free therefore) EAS Autonomy has been considered jurisprudence.

In general, the advocates of free will mean means, which goes beyond the freedom to form contracts and are divided into two categories in all matters; some of them who are in favor of the " school of the personality of the individual " are in the development of the principle of an extreme path and have it limited Have very little knowledge that the constraints on the principle of the will of will must be explicitly referred to in law; otherwise, the will of the will will not be limited . The advocates of the " School of Individualism " consider the limitation of " public order and good morals " to the principle of the rule of will only by making the law possible. The exaggeration of this school and its proponents is obvious, it is true that no one can be inclined to anything, contrary to his will and will, and no commitment can be made without the will of the people (Viviana Nández Silva and Lucas Valdez,

2017). Given the explanation given above, it can be stated that by ratifying the first volume of the Iranian Civil Code in 1307, Article 10 of the Convention provides for the freedom of individuals to conclude contracts and to make them binding in the framework of the law. By interpreting the principles of this article, civil rights writers considered it the basis for establishing the principle of the rule of will, or the principle of the rule of law or the principle of the freedom of contract in Iranian law. According to this article, private contracts are applicable to those who have concluded it, unless otherwise expressly prohibited by law.

Some lawyers believe this provision of Article 1134 of the Civil Code is adapted France Others have questioned the idea that this principle has a long history of jurisprudence and legislation to comply with the established jurisprudence The institution is in the Iranian civil code.

Because the Imamite jurists, at least in terms of the condition, From the same principle Have followed and Marriage Peace in The bargaining position has been the means to secure freedom of will in the contracts. A group of commentators and jurists are also obliged to respect all the authorities who are not against ethics and wisdom. However, Article 1134 of the French Civil Code seems to have inspired writers of civil law, and the implication of European rights in this field should not be denied.

Before the adoption of Article 10 AH. In our legal system, according to some Shiite sects, the contract was valid when it was established in the form of certain contracts, and if the contract was made under the name of a certain contract, it was not credible.

As a result, individuals tried to set up all agreements that were not in the form of fixed contracts in the form of a peace deal. With the establishment of Article 10 AH. The legal element is the status of the will of the parties and the principle of freedom of contract in Iran's civil rights. With regard to the collection of Iranian civil rights institutions, it is noted that the will of the parties has been accepted in a very wide range in certain and unconditional contracts.

Second topic: Familiar with the nature of the relationship will and volitional

**First speech : Concept of
First paragraph : The notion of will**

A : L Always Will

From the word, the will of two things is "the river " And " Ray de " They mean to want to and to have.

B : Definitions will: I Quran

In the Quran, the word will not contain the derivatives of the two means "the origin of the verb" and "end of it" and the second meaning to the concept of "judgment" and only God's will to be included, such as the verse "Verily Yerid Allah Layzheb the Element of Al-Rajs and the Ya'taher Kum Decree "

2 Science of the word

The will of the adjective is the preference of one of two The possible demands on the other.

3 Philosophy

It is the craze and stretch of what one understands ... Finally, it is imperative to understand and identify or action taken or left as is and the "will" to Ebtehaj (happiness) and satisfaction and delight in other words to be interpreted strictly.

4 Jurisprudence

In jurisprudential texts - Both Imams and the public - It is not intended to provide a definition of separation from the definition (which will come).

5 Rights

1. In law, in addition to the law, the will is counted on the basis of the validity of the contract, and the law is the source of sovereignty and renewal of will . The origin of will is the human psyche, and the purpose of the will in the principle of the rule of will is the inventive will .

2. In the will of the will, the movement of the soul to a certain work after the perception and acknowledgment of its benefit, and whether it is the intention of the creator . For example, a person sees a commodity in a shop, inside it there is a desire to own it, and after the evaluation and preference of its buying interests, interest in its ownership arises, this stage in the legal term " Reza " called. Seller after the will and demand of the buyer, it reflects in your mind and if you sell it to your benefit ... see ... The transaction does not require an expressive will .

C : Types of will I Inventive will





It is the will of the parties to the marriage, or one of them, in the affirmations and obligations of the will of the unity, which is obtained with the necessity and acceptance.

In French law, this legal term is "volonte dedclaree" And it will be interpreted Mlnh have said, the parties intend to act as a legal determination that the legal requirements so that the legal effect it is applied, for example.

2 Will Inside the (True will)

The will that exists in the soul and has not yet been expressed, whether expressing it by the words of necessity and acceptance, or by reference or writing or verb . Versus apparent will . In this sense, the term high translation volonte intime In French law .

3 Will Appearance of (External will)

Whenever the will (in legal practice) It is said to be the external will, and this is the term translation volonte declaree And in fact the external will means the stated will (in contrast to the true will) In other words, the apparent will is the will of the discoverer to the discoverer of the intention of the writer, that is, the signifier of the discoverer of the intent of the story to be called the apparent will, whether it be in accord with all the attributes of the will to be remembered or not .

Second paragraph: And the characteristics of will

Will: self-esteem is disabled Tasdiq is a sensual quality is a subjective existence is, since the right to self-determination is, has external existence; it is simple, will develop self And the soul can not be divided; therefore, the intention is inseparable (Brunner and Ganga-Contreras, 2017). This is where many lawyers believe that because the will is inextricable, its separation into two elements of intent can not be . However, Iranian civil law following the Imam's jurisprudence has considered intention and reza as two independent elements

Third paragraph : Steps of the formation of will

1. Step mind and thought: first image of the car and sell it in mind closes and can be understood. This stage is not liberation, and it is done in a strict sense ; that is , there is no willingness to exercise this stage; for two reasons : first, the conscientiousness can be understood

as a coincidence . Additionally, if this step is voluntary, the sequence will proceed .

2 Measure or Assertion Step : At this point, there are various imaginative ideas that come to mind Evaluated and assessed to be chosen from one of them. In the example below Came home and selling it to mind, one aspect of the review and its various works For profit and loss and other economic and moral outcomes of the evaluation and the usefulness of that transaction Acknowledges.

3 Decision and Release Stage : At this stage, the transaction side after the assessment of home sales And acknowledges its usefulness to create enthusiasm and desire to do it finds the transaction. This The stage called the sensible science of enthusiasm Say in terms of law.

This desire and enthusiasm relate to determination and determination, that is, with the advent of desire and reza Education, trade, science reasonable determination that the emphatic enthusiasm say Take legal action to obtain subject of the transaction is created. Some wise men of this state Take the will and intention.

Until this stage, it is still unclear about the intention to create a transaction, and contrary to what is thought to be, this decision is different from the intent of the decree, since this is not the decision of the creator and the builder, and is merely a mental preparation for a future contract.

4 The stage of the decision: The desire and passion to seek and evaluate In person he stirs it into practice. in this level Teacher crushed a provider for legal action composition prepared and signed by the contents of the document or transaction expressed Literally, your inner intention is to create an express contract. This is the most important step The stage of voluntary action is also the most important stage in the process of legal action Will show creative and constructive. By doing this step, legal action has been taken Its effects can be found.

By analyzing the four stages of mental activity also becomes clear distinction between consent and intention. Satisfaction with legal acts is the same as the momentum that is at the decision stage and after the measurement stage Assessment and to the planning and implementation of decision comes, but're willing or intending Create the legal effect of the last

step of the quadruple stage and after the stage of the decision and the creation is.

Clause 4 : Types of Will

A : Your general

I Jurisprudence

In fiqh, reference is made to the apparent and esoteric will as two faces of will. Some have used the will of the person. However, due to the rule of the jurisprudential principle of "al- Abud's subsidiary " And the validity of the intention in Islamic jurisprudence, as well as some jurisprudential forays in relation to confession, the theory of inner will in fiqh seems to be stronger .

2 Iranian law

In its contract rights in Iran will either show:

(1) Intrinsic will (real or real): Observes all internal interactions of a person with respect to the foreign affair .

2. Inborn Will (External or Announced): Declaring the Durrani in the outside world as an external fact .

3.

The inner will is an inner self and not alone in the world of rights and society; therefore, it is necessary to express two terms in order to reach an agreement; in other words, it is necessary to conclude a contract:

1- Intention and Reality : The true will (the intention of the creation) ;

2. That which refers to the true will : the will of the writer : the word and the requirement and acceptance (expressing the decision).

B : Types of it

I Esoteric will

This means that according to the rule of jurisprudential law, al-Abud's subsidiary subjection is the basis of the contract from the affairs of the heart, and the apparent will receive its credit from the esoteric will. In other words, the basic principle of the contract is, from the point of view of the jurists, the willful will, not the apparent will, therefore, the will of the inner And sensual.

2 Apparent will

This means that the will has to be of an apparent nature, and it is not intended to be internal or heart, so that until the will is not declared and does not emerge, there is no legal effect because Individuals are not familiar with

the intent and intent of each other, and so long as a person does not show this intent, he can not be considered a legal effect for this will ; in other words, because there is no proper criterion for understanding the inner will, and on the other hand In order to remain safe from transactions, the risk of change or verification of will, therefore, is the only criterion for determining the will to be apparent. Therefore, it is understood that the purpose of will is the apparent will.

For example, in the cases of a convention, including Articles 18 and 24, it may be understood, in the light of the foregoing considerations, that the purpose of the will. Apparent will.

3 Consolidated will

It means that, on the one hand, according to the rule of law (al-'Aghud al- iql-i-lvlvsd), the legislator has accepted that the basis of the contract is from the affairs of the heart, and also the apparent will receive its credit from the esoteric will, but on the other hand it is evident that Existential will, without exterior aspect, alone will not have a legal effect, because when an agreement of two wills is made, the parties will also be aware of the inner intent, in the sense that the will must be established in order to be effective, and this emergence of will in the sense of invalidity Not a person's decision .

Second speech : Intent relationship

First Paragraph : Intention

A: The concept and purpose of the intention

I. Position of Intent

All of the jurists consider the intention of the contractors to realize the sign of the contract, but it is an error that some of them have taken the intention from the terms of the contract, while it is in the terms of the contract, in such a way that the concept of the marriage is not realized without intention . For example, the expression of a word is not a simple essay; what does it mean to create, or what it means to express the affirmation of the affairs of the soul . In addition, the expression is the mere mere credit of a person without an outside statement, but the truth of the claim is : the self- confidence that is expressed on the outside by a means, whether it is the custom and the law, or not . This is also the case in other affairs.





Consequently, the marriage contracting - which is the present of the soul expressed by the means - is created and, if not one of these two elements, is not realized .

Of all that is stated, it is clear that in the field of domestic law, it is necessary to distinguish between the intention to create in the legal acts and the intentions that the legislators place on the subject of a legal act, without the creativity, such as the intention of the crime.

2. Concept of Intent Intent in the meaning of the word

Meaning to take The way More accurate targeting . The object of Opinion, Determination and attention toward what used to be monitoring.

Some have defined intentions in two general and specific meanings :

1. General meaning : determination to perform a legal action such as confession, pardon, ... Whether the decision maker has the consent to do so, whether or not he is satisfied .

2. A special meaning : an intention that is creative and can create one or more legal effects in the credential, and must exist in any contract or promotion (contrary to the intention of the news)

In their view, the intention of the sign of an agreement (the intention to create) is the pillar of the marriage, but when it is in the opposite direction to the public interest, it does not have the creative force . But, as others have said, intention is the constructive element of the contract, and, according to the rule of law, the will in the exercise of the law plays a privileged role in the realization of the contract; the law never makes and constructs the contract . What is in the sphere of law interference is the determination of the patterns of contracts and the identification of the effects and rulings of each of them . This is the same pattern as the legal nature of the human will be achieved.

The will and intention without the real need is to influence the instrumental means and material movements of the constructor of legal practice, because legal action is a credit, not material existence, for the construction of need for material causes .

Intent in the term

1 It is the determination to recognize the obligation and commitment of the determination The object will be monitoring heart and the heart contracts.

2 The intention is to be determined to do legal action, the decision maker will be happy with his or her actions . The intention of each party is the main and constructive element of the contract, which is realized at the stage of the implementation of the decision and is a common aspect of all contracts and agreements.

Imamite jurists The Gavin de:

A. The intention is to assume the beginning of the action . It's a bit of an intention that was before From the beginning of operation The result has been called and no credit determination There is no effect on it . (Martyr purpose of the action, verbal or written or reference the offer and acceptance)

B. The motive of origin External action to its internal credit, good credit and the removal of doubt, determination and To validate the stability and steadfastness, their plans are called.

In the commentary It is known in legal acts.

There must be three types of intent in the sentences In order to establish a legal practice : the intention of the word, the intention of the meaning of the word and the intention to create and create meaning . What is the origin of the universe is the effect of the fourth stage of the creative intention of marriage The mental activity is realized and according to your creative power, even though Credit creates. A bargaining party with the emergence of an enthusiastic craze to do the deal with intent Producer own legal practice in the world of credit provides content, ie planning, The composition determination notice obligations or other legal effects monitoring the composition. Some lawyers in the definition going to say: "Will Le Volente » The phrase is wanted It is an affair and it is based on two vows : the true will and the will of the creator . The true will of some kind of activity Defense by a string of nervous stimulation to occur and it wants. This will lawyers to comply with Islamic law 's intention to "interpret. from this It became clear that the purpose of the contract was to make an appointment . so Said: marriage is not only to God. "

B : Conditions are going

Among the issues that lawyers have made in this regard, the expression of a linguistic expression seems to be more complete. He believes in the influence of will in civil rights on the basis of the intention to create the following:

1. The power of creation : The owner is the owner of what he intends to do lawfully
2. The intention of the writer is to be discoverable : words, verbs, writing, hint, silence
- 3 Clean up
- 4 No compulsion
- 5 Missing some mistakes

Second paragraph : Reza

A : Reza concept and concept

1. Reza's place

A group of Shiite clerics volitional under the general title "free will" make it count, and order it from the terms of the parties' intention to subject the signing of the accord breath away "know the disdain and lack of Reza Is not against algebra and ala . If it is against algebra, the marriage contract due to the lack of intention is outside the concept of marriage ; and the intention of the missing intention in Zerah is the intention of the occurrence of the effect of the marriage and its theme in the real world and the lack of self-esteem, not the lack of will of the meaning of the word others have their own means to "David" in the know.

Which means "going to the theme of marriage from Tayeb soul". Some partially gone the actions of emergency, forced or compulsory as "will" know the reason for repelling worse to corrupt, doing it against the wishes of "choice" and the reason is that they desire to emphasize the They did not know the elements of will . With this analysis, the intention is to rationally construct the marriage, but the construction of the rationale and the consensus and the evidence of the influence of the contract perceives the existence of reluctance as a "barrier " and not the lack of that condition of the correctness of the marriage.

2. Reza's concept
Reza in the dictionary

Agree, heart server in the mood, self-esteem Have used. Two other words from the derivatives of the material " Razi " , Reza and others It's a little sad . The difference between

the three words of Reza, Reza, and Perazi is that Reza means the tale of the soul Other mentioned meanings are the attribute of a soul in which there is no participation, but one or the other More From one person to create it. Rza' name to Reza, although some have said There is Reza from Bob and his participation, but the word is terrible.

Truth In partnership only if you find that two or more researchers R. Be.

Reza in the sense of a term

The willingness and desire of the trader to do legal action; that is, When the benefits and disadvantages of the transaction are measured and the benefits outweighed Enthusiasm and spontaneity in self-esteem than the ownership of the goods found, This passion, which is the third stage of the mental activity Reza said. Craze and Mm in the third stage of the process of mental activity, there may be a natural desire And spontaneous and self-conscious, or rational, and rational . In order to explain this Attention is drawn to the fact that legal practices such as marriage in the realm of the right to exist Come through four stages of mental activity without completing these steps, planning and The main element of the composition and the manufacturer is not legal practice and the lack of And the composition of the plan impossible and absurd, but this is a problem in jurisprudence Creates the legal status of the transaction is coercion. Undoubtedly, in the reluctance of Reza, There is no desire and pure soul, and despite the reluctance of marriage scholars and researchers know, however, Consider it blunt. In other words, the jurists believe in the deal God's intention psychological coercion fourth stage of the work achieved without The joy that is the third stage of the quadruple process, and this is The affair based on the above is impossible and impossible; therefore, one should not attempt to write an essay The reluctance of the researcher is to believe in the creation and creation of the contract, because the lack of stage Third, the fourth stage of the creative intention not turn round R. .

In the legal term

Lawyers also reject "the desire for a heart to act." Legal formerly done or not done now or later will be "defined Are. In all of these definitions, the purpose of Reza is the desire for tayeb Ego and desire delight is in the law of any impact and Islamic jurists, jurisprudence deals,





Such a meaning is intended for Reza . Though some of Reza's are rational and ethical Know.

Reza is one of the modes of action of the mind and, contrary to the intention of writing, there is no aspect of creativity; for this reason, the realization of something can not be called into question, although it provides the ground for the movement of will to realize it . Therefore, contrary to what is in civil law in some countries, such as France, Reza can not be a contracting party to enter into a contract, even though it is necessary to influence the bargaining . The R in the absolute sense and as a condition of validity of the contract, mm is normally without entering external pressure on the parties to the contract will find that it can be "free consent" called. At the same time, the desire for external pressure interference can be considered as a kind of solution that is obtained by external pressure at the measurement stage . Therefore, according to the appearance of Article 199 of the Civil Code, the desire is due to the pressure of " satisfaction " resulting from reluctance.

B : Evidence of Hajj Reza

Evidence of Hajj Reza in Imam's Jurisprudence It has been mentioned;

I - Adjudicating

A - the verse "... Ella, I'm not afraid of it ... "

B - The narrations : " La Kolal Mal Amiri Muslim Alla Tan Tayeb "

(C) of Ember (Pbuh) in the Hadith : We are Akare (Sokrakhawa) against

(C) of Ember (PBUH): " Do not let the money be used for money elsewhere "

2. Consensus

3. Construction of the intellect

Third paragraph : Comparison volitional

A : I. Fundamentals of Intent

1. Any 2 are the elements and elements of will.

2 According to the theory of inseparable intent, both intention and reciprocity are related to each other in such a way that one can not imagine that a person is doing something and not have a degree of heartbeat .

2 The differences between intention Vrza

1- Differences in nature : All jurists believe that intention and reza are two separate entities, except Ardabili scholar in the guidance of guidance .

2. The intention is creative and creates the legal effect; the constructive element is the marriage and is exclusively related to the basic

affairs of the contract; the intention is to be insolvent . While Reza has no creative power and is merely a prerequisite for the credibility and influence of the contract, what matters is that it is necessary for the parties to be satisfied with the process of contracting the effects of the contract .

3. R can be past, present and future accrues in the sense that the heart is the desire to perform a legal act has been previously done now or later will be located, but're willing only to the present Because it is created and can not be created before it is created, and because of the intention of the creation in the present, the present existence of it is also formed in the present time.

B : I. Will the decomposition of volitional

Some jurists, with a distinction between intention and rejection of each other, have accepted the theory that the reluctance deal, although all the preconditions for the creation of a legal action, such as the imagination of utility, desire and will, are lacking in satisfaction and self-control . In their opinion, the person in question, in fact, intends to create an intention to create a certain legal effect, but his aim is to eliminate the threat of grievance ; in other words, Makrah does not agree with what he intends to do, but he does not .

Qayyin refers to the theory of separation of will according to the verse Rasha in the verse means self-hypnosis and have argued that Reza in the verse can not mean intention and will, or associating it with it, because Sharī seeks to distinguish between the correct and the falsehood of transference, and because of the failure to fulfill the contract due to non-existence planning, another opportunity for transmission to the correct division and remain corrupt. Additionally, the contract is a tangible thing that is stated by an external explorer, so it is not possible to issue a contract from a non-corrupt person . If the meaning of Reza is in the verse, intent and will, or in conjunction with it, there is no need to mention it because it is used to refer to the trade of this meaning . However, according to these scholars, the actor's verb is an optional verb that has all the attributes of will, except Reza and Tayeb's soul . In other words, in the truth of the title of the contract, two things are necessary . 1- Intention of the word 2- The intention to occur is its implication on the outside ; however, for the penetration of the marriage, a third condition also requires the same will to

perform the verb due to self-esteem . What is missing in the marriage contract is the third condition, that is, the right . Therefore, after the reluctance and signing of the deal with the next consent, the contract will be valid.

Another Imam Khomeini (RA) , one of the Shia elders who rejected the idea of unity and inclination of intention and reza, and emphasizes its separation . He writes about the discretion as one of the conditions : " They intend to choose the right to enter into the subject of the contract from the soul, but I believe that all the acts are due to the discretion and willingness of the authority, and ultimately the authority is sometimes due to the proportion and agreement The object is with the intentions of the subject, in which case the person is enthusiastic and willing and chooses it and sometimes opposes his desires, which would then be abusive . "

The theory of separation and duality of intent and reciprocity among Sunni scholars also has a strong support . Mohammed Abu Zohra believes that the basis of the marriage is the will of the soul, and this will has two elements : authority and judgment . He knows the discretion of the act of action that a person is capable of doing . Whether this is a verb or a non-verb . In his opinion, the discretion of the contract is the intention of the speech by the words of the author . This intention is examined in three ways:

(A) The intention of the meaning of the contract with the recipe and the desire for the rules and its effects .

B) the mode of pronunciation by the words used by the speaker, without the intention of the sentences and works such as Hazel .

C) The intention of the word in the expression of the contract and affected by reluctance . The option exists because of the action as possible, going in, though R. There is, therefore, provide the means mentioned smut and reluctantly, not contradict, but Reza means accepting the contract and pay homage to it, once intended to statements the speaker With whom they will make a contract, it does not arise.

So Reza Montar is not going to, while the mere option is intent . Reza exists if there is a complete intention in the soul and a desire to be realized.

Iran's civil law has also accepted the separation theory according to Imam's

jurisprudence . Article 190 of the Civil Code stipulates : " For the validity of any transaction, the following are essential :

- The intention of the parties and their satisfaction .
- Ability of both parties .
- The subject matter to be traded .
- Legitimacy of the transaction .

The purpose of intention in paragraph I is the intention to create a marriage . Together, the intent and the reciprocation in a clause, although the conjunction of unity is the nature of the two, but by analyzing the stages of the will of the will and the difference in the status of the marriage without any of these two, and the relevant rulings and provisions in other materials, it becomes clear that the intention and essence of the two Are different . Article 191 of the Civil Code stipulates : "A marriage shall be exercised with the intention of being, on condition of being affordable, to that which implies the intention. " Article 203 of the Civil Code states : " Reluctance causes the transaction to be ineffective, although from a foreign person other than interlocutors, " as well as in Article 346, we read : "A bargain must be affordable to the parties"

Therefore, the theory of separation between intention and reza in the Islamic jurisprudence, especially the Imamite jurisprudence of the proponents It is based on the same theory that the following points are accepted by them:

1 Reza is not a writer and its nature is not necessarily the creation of a legal effect . Unlike intent The creation of nature and the nature of legal creation . In other words, Reza is a creative power While the intention to create is the constructive and creative element that has the legal effect in the world Credit and is willing.

2 Reza's property may have been located in the past or present or future Be. While're willing implemented in the present and not the past; Because it is willing to make sense of the past and can now be created.

3 Reza may be at the heart of the trader without getting into the stage Reach; In spite of Reza, the intention is not to get the creativity . Such a transaction Reza has no legal effect. Of course, the owner's claim in such a way prevents warranties from being guaranteed Interest because possessions preceded by owner consent, duress would not guarantee.





4. The intention of the company may be fulfilled without the necessary discretion in the transactions. This is in case There is a kind of rational preference to be created; therefore, the requisition in Transactions, and there is a natural desire for R and R and rational desire would not influence contract.

Failure to decouple will with intention

In contrast to the theory of separation of will, some jurists also claim to be united and interconnected between intention and judgment. According to this theory, the will of a mode and a sensual bag is so that it can not be decomposed into separate and separate components. Even if we can not understand the two as one thing, at least they are two related. Put simply can not imagine someone doing something messenger and not the order of Reza and heart's desire. This theory advocates among the Imams, Sunni scholars and Western lawyers.

Commentator E Guidance Alazhan in the statement Hilli to let the next mind, insane, drunk and Mghmy in transactions leading to the accuracy unknowingly, but let Mkrh the exception and, says: "The reason for this exception is unclear, but the theological reasoning about Mkrh the invalidity The transaction is because of intention, but also there is no reciprocity, and what emerges from the appearance and the opinion of the jurists, which differentiates between reluctant transactions and the other, and the authoritative words They know and say that Reza is not there, and with the subsequent consent, the deal is correct due to the fulfillment of its condition, right now Because we do not have a consensus on this matter, and on the other hand, the principle and intention are also indicative of the corruption of the transaction; however, the reputation of Imam Ali is correct, although there is no reason to believe this. Of course, there may be a message to them that we do not know"

Will analyze the result of volitional

The result is 3 Point out

It was said that the purpose of Reza was one of the conditions of legal and legal compliance Breath. This kind of Reza is not in a reluctance deal, and therefore the transaction has to Let's be blunt concluded and the next one is perfect Mkrh. Now this discussion Suggests that in an emergency deal also missing Reza and in accordance with rule should An emergency deal

is also made in a non-binding manner, while there is no doubt that this There is no deal.

What is the reason for the emergency deal with the lack of such satisfaction? Jurisprudents In response to this question, Imamiyah put forward two theories. Based on a theory of difference between Reluctance and urgency are different in nature and are stable. According to the first theory, it causes reluctance Rule of Reza and thereby influence the condition of the transaction from the board. while Reza missing in an emergency can not be. Therefore, the disadvantage after making a contract, with all my heart and with Tayeb Nafs is pleased with the deal, while in the reluctance of such a tune of breath and happiness There is not. In other words, both in an emergency transaction and a deal of reluctance and rational satisfaction, but on the contrary, in an emergency transaction Relaxation transaction In addition to rational enthusiasm, the craving and the desire for the soul and the exuberance of the soul Of the so - substantive difference between them is established.

According to The second theory, which has such followers as Imam Khomeini and Isfahan, is the satisfaction of the soul in There is a disadvantage and anxiety in one way, because the meaning of the soul and the enthusiasm in this theory, The desire and passion that seeks to find practical action and this desire may desire Sensual gentle with human nature or rational desire agreeable with human reason and in There is a reluctance and anxiety in the mind of the soul; therefore, none of the urgency and reluctance of the direction Satisfaction Pydanmy problem but a problem for religious reasons will be the place Proof, and according to the provisions of the religious law, the contractor does not adhere to the rejection, while Emergency contracts have legal effects. If, on the grounds as reluctant to apply the Decision to not influence the deal and in case of emergency decree came as a deal Will be.

It seems Sobouti difference was reluctant urgency and urgency unlike reluctantly Tayyip breath There is a body there. This difference by referring to the conscience can be felt.

2. Since the reluctance of the enthusiasm and the desire of the people, which is the condition of the influence of legal acts, You win, if blunt any transaction reluctantly, concluded but no influence on judgment There are things that reluctantly discourage traders. So In the case of

the severe reluctance that has come to an end and the general will to eliminate Zerr's will, Lack of intent, the transaction will be invalid . In this situation, a reluctance deal, like a person's transaction Drunk and unconscious, or a joke deal, without the intention of writing .

3 Some scholars speak of a Reza the sake of trading. Right here We briefly describe this term of jurisprudence . The term "secondary pleasure" And Or the satisfaction of a deal in the first instance, or intrinsic satisfaction, is the minimum satisfaction that is It is necessary to influence trading .

A group of scholars who know the difference between coercion and compulsion to prove to believe that In an emergency transaction and a reluctance of a kind of Reza in the name of secondary pleasure, rational or, in an interpretation There is a deal, and there is a disadvantage and anxiety by considering less harm and benefiting more on either side Doing and not doing the deal, tended towards one side and not as the first one, But as secondary and intellectual disposition, less harmful to one's choice. Desire and passion in This tendency is called rational or pleasure transactions. In their view, this kind of Satisfaction for trading influence is a condition .

According to this theory, the condition of the influence of the transaction, Reza and Tayeb is not inherent, but a kind of satisfaction Which may even be obtained as a result of urgency and reluctance . In fact, fixing the threat and The disadvantage of this reluctance, the self, the arbitrariness, and the consent of the will of the will.

Accordingly, the satisfaction of the process is an intrinsic and intentional exception to the intention of the soul, because the intention of the attributes The current is the soul and in the sense of the action of the soul. Reza and Tayeb are the self-acting passive attributes of the soul while Which is a counterpart to refusal and refusal, whether this kind of satisfaction arises from intentions Sensory, or as a result of compulsory and compassionate desires . Of course this is clear The theory is the theory that satisfaction Shiite jurists first and breathed Tayyip inherent to influence trading conditions are .

Clause 4 : Resulting in volitional relationship

Will, the total intention of creation and judgment . What is important in the intention is that the intention is to create an idea; therefore, mere intent on the news, although affordable, is not enough to make the contract . In addition, in accordance with Article 191 of the Civil Code of Iran, the intention of the writer should be affordable; therefore, the will is embodied in two inward and outward faces that, in the light of the article and article 196 of the Civil Code, in the event of the confrontation of these two faces, the contract of the true will (Esoteric) of the parties; although the legislators are unaware of the necessity of maintaining the order of transactions, and in some cases, like Article 224 of the Civil Code, the terms of the contract are predicated on the common sense.

Third speech : Comparative study of volitional in Iranian law. Imamiyah jurisprudence and convention

First paragraph : Iranian law

In civil law of Iran, the intention and the consent of the parties to the transaction are considered as one of the essential conditions of the transactions in paragraph 1 of Article 190 , and its rulings and provisions are detailed in articles 191 of the same law .

Since intention and reza are mentioned together in one clause, the initial induction of the mind, one of the essence of intention and reza, or the two components of a condition, but by analyzing the steps of the person's nocturnal activity until the transaction And the discovery of the stage of the emergence of each intention, and considering the different role of the two in the marriage contract and the difference in the status of the marriage in the absence of any intention and intention, as well as the relevant provisions and provisions in articles 191 of the Civil Code That law, following the Imamite jurisprudence, has accepted the separation theory between intention and reza .

The result is that the intent and effect of the two are different, each of which in fact constitutes an element of the elements necessary to validate the marriage .

It seems that the reason for the insertion of the two elements of intent and effect in one way





is the inappropriate implementation of Article 190 of the Iranian Civil Code and the other provisions related to Article 1108 of the French Civil Code and the other relevant provisions of this law because of the number of essential terms of the transactions. Langroudie believes that instead of the basic conditions of health, the "general elements of contracts" should be mentioned; for example, in an objective contract, the bill is also a condition of validity.

Second paragraph : Imamie Jurisprudence

The jurists have stated the conditions of the transaction in the two general categories of conditions (the intention and the reciprocal of this category) and the conditions of the situation.

Others volitional (optional) of the definition provided in these conditions, but parties are not only due to the lack of any cited.

Another group intends and reza under the general title "Optional" They find that they are in the right situation.

Third paragraph : Convention

In English, in some of the writings, intent, and reza are two distinct elements in the validity of the contract :

- Intent to establish legal relationships
Intention to create legal relations
- Satisfaction must be real Consent must be genuine

Conclusion

A: With regard to the evidences related to internal and external autonomy in jurisprudence and law We find that jurists and jurists do not agree on this issue. Some believe that the constructive element is the legal act of the inner will, and its emergence and proof by speech or action is only explicit and revealing. Others believe that the exercise of the law by speech and deed And will have legal effect. As in the discussion of the basics and the presentation of each of the two theories, the followers of these two theories are not bound by the application of each of these two theories. On the other hand, one can not, for each of the inner wills and apparent cases And determine the realm of the criterion, and in the assumption of a change, one can not rule one another, because it leads to a

stop and a dead end in the discovery of legal action and the interpretation of contracts and the issuance of a ruling ; on the other hand, preference and preference Putting one of two theories on the other is empty .

B : I prefer the literal meaning of the Meaning Esoteric There are a number of bugs, including the following :

1. With regard to the declaration of will, it is not mentioned whether or not the common sense is considered. For example, when a neighbor from another neighbor pays a party for a party and gives it the title of a " loan, " the contract must not be signed. Because the parties have stated that they have entered into a loan agreement and what they are willing to do is the marriage contract, and that the lawyer should order not to make any kind of contract.

2. If the terms of the contract were to be considered and not intended to be internal intent, in that case the contract made by the neglected name, but for the purpose of renting, would have an indefinite task and essentially what in most cases the interpretation circuit The contract is placed by the court (by virtue of this theory, the stated will) , with the real reality of the actual intention of the parties to conflict, and any interpretation carried out by the court is contrary to justice and fairness .

C : Brmnay priority also to the inner meaning of appearances he has faced criticism that such objections:

1. Individuals are not familiar with the intent and intent of each other, and because there is no proper criterion for recognizing the inner will, and on the other hand, in order to stay safe from transactions, there is no danger of changing or observing the will. Unless a person shows this intent, the legal effect can not be considered for this will .

2. A will to form a marriage that is expressed and expressed abroad, so it is always possible that what is stated at the stage of acceptance is contrary to the intent of the parties, and this difference, as the case may be, due to the mistake , Triumph, joke, reluctance, compulsion, covenant and ... In any case, what is the basis of the interpretation is the will expressed and externally and externally, so the intention of the soul, with the specifications given through the claim and acceptance, is called the apparent will .

T : The issuance of such a theory of accepting the sovereign will of the apparent will in the Convention due to the analytic weakness of its lawyers in terms of the inseparability of intention and rejection from its point of view and the phlegm of the stage of stability and affirmation of justified cases, but in Iranian law, even on the basis of the material referred to Would be without any rational and religious justification.

E : In spite of the existing conflicts and omissions, we have to choose an option that partially reflects the votes, In jurisprudence and law, and with a reasonable modification, we should present a pattern of sovereignty of will, while acknowledging that the essence of the will will be the intent and willpower, we believe that the inward will without appearing in the context of validity and proof alone can not act Law, but its influence and influence is conditional upon intercourse with something which implies that it is an intent and will, and therefore as a conflict between the apparent and the existential will, although the judge must do all his or her work for the purpose and purpose of the actors But he can not ignore the influential and penetrating element, such as the word and the like, in other words. The process of birth of a legal act of intent and will is an inferior aspect. For this reason, the rational use of the words and acts of the subordinates recognizes the existence of credit for legal acts, therefore, as in the creation of the legal act of the inner will, backed by the apparent will In the discovery of legal action, the apparent will have to be helped by the well-known emphasis of the jurists on apparent will in order to maintain the validity of the legal acts and narrow the circle of the effect of ignorance and mistake in it and maintain the stability and security of transactions and use of certain criteria in the interpretation of contracts And the auctions are justifiable .

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