

The position of good intention in the interpretation of contracts

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Abstract: In Iran law and in all civilized countries, the necessity of contracts is accepted as an acceptable principle and in this law; the contract parties are obliged to fulfill the commitments and cannot ignore the content. In European law, there is another principle called good intention in the contracts and civil law of Iran didn't mention it explicitly. In article 1134 of civil law in France, it is stated that (the contracts being concluded in accordance to the rules are enforced for the parties. These contracts are not void except with the satisfaction of the parties or the world the law permits, the contracts should be enforced with good intention". The legal procedure of France states that good intention is not applied in the stage of performing the contracts and they used good intention from the beginning of the conclusion to contract dissolution to investigate the integrity of the satisfaction of the two parties and knew applying this principle in contracts dissolution as required and Legal doctrine in Iran regarding the good intention sovereignty is the source of various votes as some of the lecturers including Dr. Mohammad Jafar Jafari Langerudi considered good intention mental and personal and stated that good intention is not accepted in our law but Mostafa Adl in his civil law book by referring to good intention to an intention considering during the contract regarded good intention as one of the underlying principles on contracts. It should be said that Iranian law maker despite the lack of referring to the principle in the contents of some of the legal articles emphasized on the application of this law in Iran law system.

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1. Introduction

Contract interpretation in Iran law is one of the important issues that Iranian courts are faced with the claims. Namely in accordance with contract interpretation with good intention principle and whether in Iran law this principle is explicitly or implicitly accepted by Iranian law makers. At the beginning, we analyze the words of paper title. The term "interpretation" is an Arabic word root Fasl meaning revealing, detection of ambiguous word and explicitness. The contract object is the identification or changing or transferring the right but good intention in a person shows that his intention in honest legal deeds knows the issues making a person charged. Indeed, the aim of concluding the contract in each legal system is correct action of its contents by two parties and the people will in concluding the contracts is of great importance. Here if any difference is created in contract module, the interpretation of the will of two parties and the way to achieve the objective cause some problems and the lack of efficient legal rules in Iran legal system are the issues that are challenging. Because an Iranian judge is obliged to refer to the rules of Iran subject law or valid Fitwa or legal codes to issue any verdict. It seems that in some cases, the items are inadequate to acquire the hidden reality in the will of people and this problem in Iran legal system and the lack of an

organized research in this regard made us that despite the hard work in acquiring library resources by resorting to the library method and a fundamental and applied study in two chapters in the first chapter were dealt with the definitions and generalities of interpretation in the contracts and in the second chapter we investigated good intention of contracts interpretation.

The term "interpretation" is an Arabic word of Fasl root meaning revealing, detection of the aim from ambiguous term and explaining. The interpretation means the determination of the meaning of words to achieve the intention of speaker and contract is the agreement of two or more will about something guaranteeing the legal condition and this world is like the similar terms as completion, description, interpretation and proving in the contracts and has some effects. Also, interpretation is divided into free interpretation and limited one. In this view, in free interpretation, the interpreter translates the words as getting the required ethical and social result and emphasizes on the general meaning of the text. But in limited interpretation the meaning of the words besides its social and ethical reflection is considered and the restriction of the power of interpreter in this interpretation is obvious. Also, in Rokhi legal systems, the legal assumptions in the contracts interpretation are observed including

1- (Contra) proferentem rule, 2- Contra negative conditions (Disavowal of responsibility and right), 3- The interpretation pro public benefits and effective internal and external factors and practical principles being discussed in Fighi books and they are rooted in religious beliefs. In interpretation, it helps the person that the common interpretation is consistent with the internal will and legal rules. By expressing these issues in determining the meaning of good intention showing the honesty in concluding the deeds and avoiding hiding knowledge and hiding in legal relations are used. In other words, trust principle of the contracts obliges that the contract parties inform each other of the realities as the basis of trust in each legal system. It can be said that is the personal concept of good intention and in its objective concept, it is an honest behavior or normal requiring its commitment. Thus, good intention is not mental but it is an active behavior. In this view, observing good intention means to refer to an external value beyond the mind of contract parties such as referring to custom, an ethical rule in the behavior or common sense and it can not be inferred of its opposite concept, bad intention as it is a mental characteristic as a mental state based on intention or knowledge on the damage while objective good intention is enforced in the contracts and it is materialistic observing the behavior of a person against various conditions. Indeed, good intention in the contracts is manifested neither in thinking and will nor in external deeds of two parties. If we observe good intention in the contracts and it is interpreted as bad intention, it doesn't have any considerable effect on the result of obligations. For example, the existence and the lack of bad intention in the purchaser or seller that by sale contract is obliged to pay the consideration or giving sale and it doesn't have any influence in the result of the enforcement (returning consideration and giving the object of sale). The bad intention or good intention of the lessee and lessor that by obliging to the renting contract are obliged to deliver the thing hired and rent. Thus, good intention and contracts require having an active behavior and it should be evaluated objectively to call an ethical element in good intention and we should consider social ethical than personal one as good intention deals with the consistency of the relation of law with the custom of good people custom and it doesn't deal with the internal states of the people. Thus, observing good intention in the contracts is not interpreted to something except doing it. By adapting these two concepts we can know the rule of good intention in the contracts interpretation as a true issue. The role of good intention in contract interpretation is imagined as three forms, first the contract interpretation is one of the legal deeds with good intention and the second

state is the effect of good intention of the contract parties during the contract conclusion on its interpretation and the third case is the effect of good intention on interpretation in which two equal probabilities are in the content of the contract in which the interpretation that is consistent with the behavior of two parties on good intention is the priority. But some of the law makers considered article 220 of civil law as documenting the good intention performance and by knowing the content of this article similar with article 225, both articles were considered in stating a reality and both were the basis of observing good intention in contracts or considered article 225 an emphasis on article 220 and emphasized that the custom in article 225 means common item of the wise people not special custom, common custom at special place or between special groups and a famous term in various verses of the Holy Quran meant Sadr Al-Bayan. The author of Sharif Al-Mizan interpretation explained the term in the verse ((... ولهن مثل لذي عليهن المعروف ... and said, Maroof means any action and public opinion considered it an action and is familiar with it and is consistent with the taste of people of the society of the type of their life. Maroof is something that is done in accordance with wisdom and is consistent with Sharia and current law in the society and is not contradictory with ethical virtues. Although, good intention by imposing some obligations on contract parties provides the development of contracts content, this concept doesn't allow the involvement of obligations more than Maroof obligations in the contract to the court. Good intention in some legal contents of Iran is accepted implicitly. For example, article 6 of issuing check approved in 1965 that was proved for the recent law, it stated "in all the mentioned items, if the check issuer proves his good intention, the prosecution is postponed". In the new law of issuing check, good intention is not used and in article 391 of trading law "If the object of trading is accepted without any condition and its rent is paid, no claim is accepted against transportation officer unless about deception)). This article is the translation of article 452 of obligations law in Swiss. Deception is bad intention, cheating and intentional guilt. The object of article 438 of civil law in items 10 of insurance law approved in 1316 is based on good intention. In civil law the articles 263, 680, 880, 944, 945, 1164, 1165 are the emphasis of good intention. In the articles 105, 106 considered their works on informed person and article 4 of law showed the method of executing financial condemnations approved in 1972 about the trading to escape from religion and note 2 of the prevention of arresting people against not doing the obligations and financial requirements approved in 1973 about not

arranging conscience document to escape from paying the debt recognizing good intention in contracts. In Islam law, good intention was not recognized as the determining reasons of the obligations of two parties. For example, in usurpation issue, in which the knowledge and ignorance of the usurper, didn't affect on his responsibility and didn't made him away from the responsibility against the owner. There are many traditions in which, Muslims are emphasized more and religious brothers deeds are based on good intention and it is distinguished between the trading between the ignorant and knowledgeable buyer in the conditions of referring to the seller to compensate the consideration. The content of article 380 and the rules of option of loss and option of delayed payment of the consideration in civil law being referred of Figh rules that is attributed to good intention rule and its identification by the law maker.

2. Conclusion

It seems that in Iran law, good intention is an expression of concluding the contracts is identified implicitly and today by development of economical relations in international and domestic arena, the identification of good intention and its assumption in economical relations is unavoidable. The international courts interpreted the international contracts and agreements by good intention rule and in Iran law, in accordance with the mentioned items in interpretation and determining the will of the contract parties by considering religious teaching in the existence or the lack of good intention in the contracts with different effects accepted the interpretation of the mentioned principles implicitly. It seems that based on the development of the trading and exchanges and out of the geographical region, by accepting this principle, we can develop the option of legal authorities to detect the realities and fulfillment of the claim owner in accordance with article 199 of civil procedure.

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