

The Basis of Guarantee of Compensation in Iranian and French Law and its Effect on Court Proceeding

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Abstract

If the object of sale is belonged to someone else, an ignorant customer can refer to the seller for the restitution of the price and indemnities which the civil law has discussed as guarantee of compensation. Being the coercive or contractual of responsibility which arises from the guarantee of compensation is challengeable in legal systems. In some articles of the Iranian Civil Code, including Article 362, the guarantee of compensation is considered as one of the effects of a valid contract, and in some articles, such as Article 391, the responsibility arising from the guarantee of compensation is considered coercive. The comparative study of the basis of guarantee of compensation in Iranian and French law confirms that this difference in approach is due to the fact that in the formulation of civil code, on the one hand, French law has been adapted and on the other hand, the view of Imami jurists has been considered. However, it will be proved that the responsibility arising from the default in ownership is the coercive responsibility rather than the contractual, which will affect the court proceedings, including that the claim for restitution of the price

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and indemnities arising from the default in ownership Will be considered as a financial and personal dispute and the competent court in this lawsuit will be the court of residence.

Keywords: Guarantee of Compensation; Coercive Responsibility; Contractual of Responsibility; Competent Court.

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