

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

*Mahdi Kahe**

*Jalil Ghanavaty***

*Mohsen Borhan Mojarad****

Received Date: 06/10/2018 - Accepted Date: 29/05/2019

DOI: 10.22096/law.2021.239940

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

* PhD in Private Law, Islamic Azad University, Arak Branch, Markazi, Iran.

Email: dr.kahemahdi@gmail.com

** Associate Professor, Faculty of Law, University of Tehran, Farabi Branch, Qom, Iran.

Email: ghanavaty@ut.ac.ir

*** PhD Student in Private Law, Mofid University, Qom, Iran.

Email: borhanmojarad@yahoo.com



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.

Bibliography

A) Book & Articles

- Alavi Qazvini, Seyyed Ali (1996). "An Attitude Towards Guarantee of Understanding in Iranian Civil Law", *Mofid Letter Magazine*, Vol. 2, No. 7, pp. 107-126. [In Persian]
- Allama Helli, Hassan Ibn Yusuf (?). *Tazkerah al-foqaha*, First Edition, Qom: The Al ul-Bayt Foundation (peace be upon them). [In Arabic]
- Allama Helli, Hassan Ibn Yusuf (1992). *Gava'ed al-ahkam fi ma'refa Halal and Haram*, First Edition, Qom: Islamic Publishing Institute. [In Arabic]
- Allama Helli, Hassan Ibn Yusuf (1992). *Mokhtalaf al-Shi'a fi Ahkam al-Shari'a*, Second Edition, Qom: Islamic Publishing Institute. [In Arabic]
- Al-Tarihi, Fakhreddin (1995). *Majma' al- Bahrain*, Third Edition, Tehran: Mortazavi Bookstore. [In Arabic]
- Ameli, Sayyid Javad (1998). *Meftah al-karama fi sharh ghava'ed al-'allamah*, First Edition, Qom: Islamic Publishing Institute. [In Arabic]
- Ansari, Morteza (1994). *Kitab al-Makasib*, First Edition, Qom: Congress in honor of Sheikh Ansari. [In Arabic]
- Bahrani, Yusuf (1985). *Hadaiq al-Nadherah fi Ahkam al-Atrah al-Tahirah*, First Edition, Qom: Islamic Publishing Institute. [In Arabic]
- Emami, Seyed Hosein (?). *Civil Law*, 27rd Edition, Tehran: Eslamiye Publishers. [In Persian]
- Fadhel Abi, Hasan (1997). *Kashf al-romuz fi sharh mokhtasar al-nafe'*, Qom: Islamic Publishing Foundation. [In Arabic]
- Fadhel Miqdad, Miqdad bin Abdullah Al-Helli (1984). *al-Tanghih al-Ra'ee le Mokhtasar al-Sharaye'*, First Edition, Qom: Ayatulah Marashi Najafi library. [In Arabic]
- Faidh Kashani, Muhammad Mohsen (?). *Keys of Sharia*, First Edition Ayatulah Marashi Najafi library. [In Arabic]
- Fakhr al-Mohagheghin, Muhammad ibn Hasan Helli (1967). *Clarifying the benefits in explaining the rules*, First Edition, Qom: Ismaelian Foundation. [In Arabic]
- Fayoumi, Ahmad bin Muhammad (?). *Misbah al-Munir fi Gharib Sharh al-Kabir le al-Rafa'i*, First Edition, Qom: Dar al-Ridhi Publications. [In Arabic]
- Hakim, Seyyed Mohsen (1995). *Mostamsak Al-Urwa Al-Wothqa*, First Edition, Qom: Dar al-Tafsir. [In Arabic]

- Hayati, Ali Abbas (2011). *Generalities of Civil Procedure*, First Edition, Tehran: Mizan Publishers. [In Persian]
- Hor 'Ameli, Muhammad Ibn Hassan (1988). *Wasa'il al-Shi'ah*, First Edition, Qom: Al ul-Bayt Institute (peace be upon them). [In Arabic]
- Hosseini Amidi, Seyyed Amid al-Din (1995). *Kanz ul-Fava'ed fi halle Moshkelate al-Ghava'ed*, First Edition, Qom: Islamic Publishing Institute. [In Arabic]
- Ibn Manzoor, Jamal al-Din Muhammad (1993). *Lesan Al- Arab*, Third Edition, Beirut: Dar al-Fikr. [In Arabic]
- Johari, Ismail Ibn Hammad (1989). *Al-Sahah*, First Edition, Beirut: Dar al-elm. [In Arabic]
- Karaki, Ali ibn al-Husayn (1993). *Jame' al-Maqasid in Explaining the Rules*, Second Edition, Qom: The Al ul-Bayt Foundation (peace be upon them). [In Arabic]
- Karimi, Abbas & Hamidreza Parto (2007). *Civil Procedure*, First Edition, Tehran: Majd Publications. [In Persian]
- Karimi, Abbas & Hamidreza Parto (2016). *Civil Procedure*, First Edition, Tehran: Dadgar Publications in Collaboration with Dr. Abbas Karimi Publications. [In Persian]
- Katuzian, Naser (1989). *General Rules of Contracts*, First Edition, Tehran: Enteshar Joint Stock Company. [In Persian]
- Katuzian, Naser (1995). *Non-Contractual Requirements: Coercive Guarantee*, First Edition, Tehran: University of Tehran. [In Persian]
- Katuzian, Naser (2008). *Certain Contracts*, Eleventh Edition, Tehran: Enteshar Joint Stock Company. [In Persian]
- Katuzian, Naser (2010). *Legal Practices*, First Edition, Tehran: Enteshar Joint Stock Company. [In Persian]
- Khoei, Seyyed Abolghasem (?). *Mesbah al-Fiqh*, Narrated by Mohammad Ali Tawhidi, (?): Bina. [In Arabic]
- Khoei, Seyyed Abolghasem (1997). *Al-Imam Al-Khoei Encyclopedia*, First Edition, Qom: Institute for the Revival of Works of Imam Al-Khoei. [In Arabic]
- Mazeaud, Henri (1974). *Leçons De Droit Civil*, 4^e Edition, Paris: Editions Montchrestien.
- Mirzay Qomi, Abu al-Qasim (1992). *Jame' al-Shatat fi ajvabat al-Suwalat, First Edition*, Tehran: Keyhan Foundation. [In Arabic]
- Mohaghegh Damad, Seyed Mostafa et al. (1986). *Rules of Jurisprudence*, Twelfth Edition, Tehran: Islamic Sciences Publishing Center. [In Persian]
- Mohaghegh Damad, Seyed Mostafa et al. (2014). *Contract Law in Imami Jurisprudence*, Third Edition, Tehran: Samt. [In Persian]

- Mohaqiq Helli, Jafar Bin Hasan (1987). *The Laws of Islam in Issues of Permissibility and Forbidden*, First Edition, Qom: Ismaelian Foundation. [In Arabic]
- Najafi, Muhammad Hasan (?). *Jawaher Al-Kalam fi sharh sharaye' al- Islam*, 7th Edition, Beirut: Dar ehya' al-torath al- arabi. [In Arabic]
- Naraq, Mawla Ahmad (1994). *Mostanad al- Shi'a*, First Edition, Qom: The Al ul-Bait Foundation (peace be upon them). [In Arabic]
- Qadhi Ibn Baraj, Abd al-Aziz (1986). *al-Muhadhab*, First Edition, Qom: An Islamic Publishing Institution. [In Arabic]
- Qanavati, Jalil (2016). "The Status of Dealing with other People's Property in Legal Systems", Reza Davari Ardakani, *Collection of Articles Honoring the scientific position of Dr. Mohaghegh Damad (a man of wisdom and virtue)*, Tehran: Academy of Sciences, pp. 376-390. [In Persian]
- Research Institute for Extraction and Studies of Judicial Procedure (2015). *Judicial Opinions of Tehran Courts of Appeal 2012*, First Edition, Tehran: Judiciary Press and Publications Center. [In Persian]
- Research Institute for Extraction and Studies of Judicial Procedure (2014). *Collection of Judicial Opinions of Branches of Supreme Court of the Country*, First Edition, Tehran: Judiciary Press and Publications Center. [In Persian]
- Sabzevari, Mohammad Baqir (?). *Kefayat al-Ahkam*, First Edition, Isfahan: Mahdavi Publications. [In Arabic]
- Shahid Thani, Zayn al-Din Ibn Ali al-Ameli (1989). *Al-Rawdha al-Bahiyya fi Sharh al-Lom'aa al-Damashqiyya*, First Edition, Qom: Davari Bookstore. [In Arabic]
- Shahidi, Mehdi (2009). *Civil Law 6: Certain Contracts 1*, Tenth Edition, Tehran: Majd. [In Persian]
- Shams, Abdullah (2013). *Civil Procedure (Advanced Course)*, 16th Edition, Tehran: Darak Publications. [In Persian]
- Sheikh Tusi, Mohammad Ibn Hassan (1967). *Al-Mabsut Fi Fiqh Al-Imamiya*, Third Edition: Tehran: Mortazavi Library. [In Arabic]
- Sheikh Tusi, Mohammad Ibn Hassan (1970). *al-Estebzar fi ma Ekhtalaph Een al-Akhar*, First Edition, Tehran: Islamic Library. [In Arabic]
- Sheikh Tusi, Mohammad Ibn Hassan (1987). *Tahdhib al-Ahkam*, Fourth Edition, Tehran: Islamic Library. [In Arabic]
- The First Martyr, Muhammad Ibn Makki al-Ameli (1989). *Al-Lom'aa al-Damashqiyya fi Fiqh al-Imamiya*, First Edition, Beirut: Dar al-Tarath. [In Arabic]
- Weill, Alex (1971). *Droit Civil, Les Obligations*, Paris: Dalloz