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Comparative Study of Salvage of Contract in French Law and the Principle of Prima Facie Validity of Contract in Iranian Law

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Abstract

Nowadays, the rules on the contracts and obligations encounter many complexes. Perhaps, a contract would be in the doubt about validation and the other side, it's preservation has precedence. The mechanism adduced by judges for prevention of the caducity and the salvage of contract in French law, named as "Sauvetage du Contrat" is simulated with "Principle of prima facie validity of contract" in Iranian law because of some points. Both eventuated to the validity of contract and applied in mistake of law and of fact but they're different on the base and executive way. The base of salvage of contract is doctrine and case law inspite of the principle of prima facie validity of contract is jurisprudence and law. The salvage of contract is so generalized and contrary of that (that confirmed on validity of contract until performance of contractual obligations) implied on preservation of contract nexus, based on primary and mutual intention of correspondents, even if the obligations aren't enforceable.

Keywords: Usefulness of Contract; Interpretation in Favor of Obligor; Salvage of Contract; Contract Nexus; Contract Divisibility.

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Bibliography

- 4th chamber of The Supreme Court, File No. 2352, October 20, 1940. [In Persian]
- al-Mousavi al-Bojnordi, al-Seyyed Hasan. *Al-Qava'ed Al-Feqhiyeh*. 1st edition, Volume 1, Qom: al-Hadi, 1998. [In Arabic]
- Amin, Seyyed Amir Mahdi. "Pacta sunt servanda in Jurisprudence and Iranian Civil law." *Monthly Journal of Kanoon* 52, no. 104 (2010): 136-179. [In Persian]
- Ansari, Morteza. *Al-Makasib-Bab Al-Mo'atat*. Volume 3, Qom: Majma' al-Fekr Al-Eslami, 1992. [In Arabic]
- Asadzadeh, Sakineh. *Legal Status of Contractual Groups*. Tehran: Amjad, 2018. [In Persian]
- Bozorgmehr, Amir Abbas, and Ghazal Mehrani. *Reform of the french civil code on contract law*. 1st edition, Tehran: Edalat University, 2016. [In Persian]
- Bozorgmehr, Amir Abbas. *Comprehensive description of the law of comparative obligations: Advanced course of civil law*. Volume 1, Tehran: Edalat University, 2017. [In Persian]
- Cass,civ, commercial chamber, October 22, 1996, 93-18.632, Published in thebulletin:<https://www.legifrance.gouv.fr/juri/id/JURITEXT000007035966/>. [In French]
- Cass.civ, Commercial chamber, March 6, 2019, 16-25.117. [In French]
- Cass.com.Revue Quarterly of Civil Law 1982, 142 (30.06.1980): Tallon, The Determination of the price in contracts. (3.1.2.03). [In French]
- Commission on European Contract Law. The principles of European contract law. Parts I and II revised 1998, Part III 2002. [In French]
- Darvishi, Abbas, and Meysam Doostipour. "Legal Analysis of the principle of Prima Facie Validity of contract in Contracts and Agreements in Iranian Law." *Journal of Civil & Legal Sciences* 3, no. 10 (2019): 365-382. [In Persian]
- Doka Boura, Aude. "The juge of contract and the resolutoire clause." PhD diss., University of Nantes-faculty of Law and Political Science, 2017. [In French]
- Emami, Seyyed Hasan. *Civil Law*. 23rd edition, Tehran: Islamiyyeh Publication, 1985. [In Persian]
- Eslami, Seyyed Mohammad Hadi, and Jalil Ghanavati. "Contra Proferentem Doctrine." *Journal of Comparative Law* 6, no. 1 (2017):5-27.<https://doi.org/10.22096/law.2019.36876> [In Persian]
- Ferrari, Julien. *The role of precontractuals documents in the interpretation by*

- the Competent Court*. Saint-Denis: Publibook Publications, 2003. [In French]
- François, Clément. “«Foreword» the reform of contracts law presented by IEJ of Paris 1.” PhD diss., University of Paris 1, Pantheon-Sorbonne, 2019. <https://iej.univ-paris1.fr/openaccess/reforme-contrats/avant-propos/>. [In French]
- Gaudemet, Sophie, and Yves Lequette. *The unwritten clause*. Paris: Economica Publication, 2006. [In French]
- Google. “Report of Republic President relating to ordinance no 2016-131 of 10 fevrier 2016 supporting reform of contracts law, of general regim and preview of obligations: the Content of contract.” Accessed August 18, 2021. <https://www.legifrance.gouv.fr/affichTexteArticle.do?idArticle=JOFARTI000032004842&cidTexte=JORFTEXT000032004539&categorieLien=id>. [In French]
- Google. “Wikipedia Ahlolbait.” The Prima Facie Validity of Contracts. Accessed August 13, 2021. http://wiki.ahlolbait.com/%D8%A7%D8%B5%D9%84_%D8%B5%D8%AD%D8%AA#.D8.A8.DB.8C.D8.A7.D9.86_.D8.A7.D8.B5.D9.84. [In Persian]
- Gorji, Abolghasem. *Law essays*. 2nd edition, Tehran: Tehran University, 1993. [In Persian]
- Guionard, Pascale. *Reform of Obligations law «the supplement of civil law up to date with the ordinance no 2016-131 of 10 fevrier 2016»*. Paris: Dalloz Publications, 2016. [In French]
- Herrera, Jorge. “the completion of distribution contract on colombian law supplied the french law.” PhD diss., University of Paris II- Pantheon-Assas Ecole, 2018. [In French]
- Hosseini Maraqi, Mir Abdolfattah ibn Ali. *Anavin Al-Usul and Qavanin Al-Fosul: Title (Fi Esalat Al-Sehha Fi Al-Oqud)*, Volume 13/2. Qom: al-Nashr Al-Eslami, 1997. [In Arabic]
- Houlié, Sacha. *Report made a name of the commission of constitutionals law, the legislation and the republic of general administration, about the project of law adapted by senat (578. 2016-2017.22.23 et T.A 5 (201702018), ratified the ordinance no 2016-131 of fevrier 2016 supporting reform of contracts law, the general regim and review of obligation*. Paris: National Assemble, 2017. [In French]
- Iranpour, Farhad, and Sepideh Mansouri. “The Principle of Conformity with the law (Sehat) in according to Tradition of Civil Lawand Lex Mercatori.” *Journal of Private Law Studies Quarterly* 46, no. 1 (2016): 1-20. 10.22059/JLQ.2016.57521 [In Persian]

- Jafari Langroudi, Mohammad Jafar. *Dānish'nāmahi ḥuqūqi*. Volume1, Tehran: Amirkabir, 1974. [In Persian]
- Jafari Langroudi, Mohammad Jafar. *General philosophy of law based on pragmatism teary of equilibrium*. 2nd edition, Tehran: Ganj Danesh, 2014. [In Persian]
- Jafari Langroudi, Mohammad Jafar. *Masā'il-i mantiq-i ḥuqūq va mantiq-i muvāzanah (manteqiat-3)*. 2nd edition, Tehran: Amirkabir, 2005. [In Persian]
- Jafari Langroudi, Mohammad Jafar. *Al-fareq (Dayratolmaaref umūmi ḥuqūq-ebqae uqud)*. Volume 1, Tehran: Ganj Danesh, 2007. [In Persian]
- Jansen, Nils, and Reinhard Zimmerman. *Commentaries on European Contract Laws*. Britain: Oxford University Press, 2018.
- Judgment no. 861 of October 17, 2019 (18-19.611; 18-20.550). [In French]
- Karimi, Abbas, and Mahmoud Zamani. "Rules and Effects of Competency in Legal Actions." *Bulletin of Islamic Law* 21, no. 2 (2019): 291-318. 10.30497/law.2020.10523.2151. [In Persian]
- Karimpour al-Hashem, Mohammad Taghi, Seyyed Mohammad Taghi Alavi, Naser Masoudi, and Mohammad Mazhari. "The Theory of non-Creation of Contract in Iranian and French Law." *Journal of Research of Private Law* 7, no. 27 (2018): 115-138. <https://doi.org/10.22054/jplr.2018.23627.1614>. [In Persian]
- Katouzian, Naser. *Iranian civil law: general principles of contracts, a comparative study*. 4th edition, Volume 2, Tehrah: Sherkate Sahami Enteshar, 2014. [In Persian]
- Khosravinia, Babak. "The rules cited by judge in the interpretation of contract in Fiqh, Statute Law of Iran, Leonon, Egypt." *Knowledge of Civil Law* 1, no. 2 (2012): 83-93. [In Persian]
- Kilini Razi, Muhammad bin Yaqub bin Ishaq. *Usul al-Kafi (The book of Tohmah)*. 3rd edition, Volume 2, Qom: Markaz Hos Dar al-Hadith, 846. [In Arabic]
- Matin, Ahamd. *The Collection of Case Law (Civil Part): The Decisions of Branches and Public Baords of Supreme Court from 1932-1956*. 1st edition, Tehran: Asare Andisheh Publication, 2008. [In Persian]
- Mohaghegh Damad, Seyyed Mostafa. *Qavaed Fiqh, bakhsh madani (Malekiat- Masuliat)* 3rd edition, 45th edition, Tehran: Markaz nashr ulum ensani, 2015. [In Persian]
- Mohammadi, Abolhasan. *principles for inference of islamic law (islamic jurisprudence)*. 49th edition, Tehran: Tehran University, 2011. [In Persian]
- Montcho Agbassa, Eric Codjo. "the favor of contract and Ohada law." *Penant, review the law of Africian states* 123, no. 884 (2013): 340-366.

[In French]

- Mousavi, Seyyed Fazlollah, Seyyed Mahdi Mousavi, Mohammad Hossein Vakili Moghaddam, and Mahdi Gholami. "The Principles of Interpretation of Contract (A Comparative study)." *Journal of Private Law Research* 1, no.1 (2012):183-213. [In Persian]
- Pierre Lamour, Marie. *The Salvation of contract*. Grenoble: University of Pierre Mendès, 2001. [In French]
- Puig, Pascal. *Special Contracts*. 8th edition, Paris: Dalloz, 2019. [In French]
- Qanavati, Jalil, and Esfandiyar Safari. "The relation of two Principles of prima facie validity and corruptions to the article 10 of civil code and the principal of contracts' freedom." *The Journal of Jurisprudence and Principles of Jurisprudence* 6, no. 18 (2019): 181-206. 10.22034/JRJ.2020.51273.1445. [In Persian]
- Raygan, Mahmood, Radiyeh Jama'ati Ardakani, and Hamid Rustaie Sadrabadi. "The influence of the Principle of Prima Facie Validity of Contract on the Mental Security of individual and the Society." *Journal of Islamic Government* 22, no. 1 (2017): 139-160. [In Persian]
- Report about the jurisdiction aspects of modifications of indexes of reference. Paris: High jurisdiction committee of Financial place of Paris, 2018. [In French]
- Rouspide katchadourian, Marie-Noëlle. "Le juge et le contrat de travail essai sur la relecture judiciaire d'un contrat." PhD diss., University of Pantheon-Assas ecole, 2013. [In French]
- Safari, Mohammad. "Health trust appearances in civil rights (Rights in Iran and France scoping)." *Journal of Public Law Research* 8, no. 18 (2006): 89-114. [In Persian]
- Shahidi, Mehdi. *Usul Qarardadha ve Taahodat*. 3rd edition, Tehran: Majd, 2004. [In Persian]
- Tabataba'i, Seyyed Mohammad Sadegh, and Hamid Arayi. "A Comparative Study of the Conception of "Effectiveness Principle" in Interpretation of Contracts." *Journal of Comparative Law* 0, no. 21 (2011): 147-165. [In Persian]
- Tabataba'i, Seyyed Mohammad Sadegh, and Ruhallah Kiyani. "Reflections of the Principle of Prima Facie Validity of Contracts in Law and Fiqh." *Journal of Islamic fiqh and law researches* 9, no.32 (2013): 49-68. [In Persian]
- The Supreme Court, File No. 1465, September 11, 1938. [In Persian]
- The United Nations Convention on Contracts for the International Sale of Goods (CISG).
- Velayi, Isa. *Descriptive Dictionary of Terms of Usul*. 9th edition, Tehran: Ney, 2012. [In Persian]