

Documentation and Time Limitation of Option of Condition

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ABSTRACT

The first principle is necessary in the contracts, but the causes and reasons that can eliminate the need for contract. Some of these principles will be from the will of one or both parties to the contract such as options, option of condition is such that in the event that the dealers have agreed, up to a certain time, either with the consent of one party or another authorized third party to terminate the transaction. It is worth mentioning that this sentence is consensual and there is no disagreement among the jurists.

This paper aims to bring the conditions and limits for the options of condition that people need in their trades heavily and sometimes lack of understanding some of its provisions can lead to conflicts between them. Analysis of legal texts implies that, jurists approach to options of condition is not the same and there are differences of opinion on this issue.

KEYWORDS: option, condition, option of condition, term

1. INTRODUCTION

1-1. Option in terms of lexical meaning of idiomatic

Option in the Arab is the source of authority and means power and dominion. Some scientists defined option as authority to terminate the contract. It means the authority of terminate contract.

1-2. The condition meaning of the terms of idiomatic

Sometimes the term is used as infinitive meaning (al-Ansari, vol. 5, p. 110), this mean absolute obligation and commitment (Ebn Manzur, Arab language, vol. 1, p. 329), (Firoozabadi, Alqamus) ,Although this condition be during the contract or be wider (Mustafa, the rule of law, civil sector 2, pp. 35 to 32) and the official acts.

It is worth mention that the sum condition is infinitive clause. When the condition is used within the meaning of the infinitive, the name of the subject, object, and it is derived, such as His work requires certain autonomy. It is something that is bound the requirement is (Ansari, vol. 5, p. 110)

Some legal scholars believe that the latter means of condition is a sense of obligation and commitment of the former is the absolute promise, because when the person is committed to a contract, there is a contract (Damad, same, 37). The most striking example of the validity of the meaning of the condition is Shia and their conditions. (Horr Ameli, means Shia, vol. 15, p. 30)

So, the term means the contract provisions and required texts meaning and sense of obligation and commitment and sense of commitment. (Langeroudi Alfarag, vol. 3, p. 115)

1-3. Option condition within the meaning of idiomatic

Authority of the provision in the contract comes into existence. And that it is permissible for both (the contract) or to one of them or to give any third party, (Imam, Tahrir Alvasileh, vol. 2, p. 391);

Option is interpreted condition are found the right under certain period, each party to the contract to terminate the transaction. (Bagheri, Civil Law, p. 165)

1-4. The meaning of the word and phrase

Term in the dictionary: Term is defined as a period of time (Ibn Manzur, Arabic language, vol. 3, p. 399). In other definition: Term is a period of short or long time (Fayomi, Mesbah Almonir, P. 216)

Speech II: The legitimacy of option condition

The validity of contracts option condition, there was no difference between scholars. (Al-Ansari, Makaseb, vol. 5, p. 111; Khoi, Misbah Alfaqahh, vol. 4, p. 227) or option attached to the contract and whether detached from

it. In this regard, it is notable that the jurists to legitimate option if for some reason resorting place will refer to them as follows:

1. Consensus: Sheikh Ansari quoting consensus on this issue at science element. (Ibid)

2. Traditions: traditions that jurists have referred two general categories:

A) The news that the general public if it is necessary to prescribe and observe, that the most important narrative. (vasael Shia, vol 12, p 353)

However, in some traditions, like Moseq EshaqBen Ammar said the following sentence is added "all conditions must be fulfilled without any reservation that is not valid , if contrary to the Quran,.

B) Property news that indicates the condition of the contract that permits option. An example of this is news, Sahihe ebne Sinan from Imam Sadiq (ibid., Vol 12, p 355) This means that if the parties for a limited time, if there is an option in the client's sales are the property vendor is wasted.

option condition inference accuracy of this narrative is based on the waste of time dedicated to customer option, option and not to the person who is famous because it is accepted by, The accuracy of this narrative verdict option condition can be deduced. (Mohaqqehq Damad, the general theory of law provisions and requirements of Islam, p. 383)

The tradition of the main document Imami of option condition and the most important documents of the rule known (See Langeroudi theory of equilibrium, p. 206) This tradition indicates that guarantee valuable consideration vender, the end of the option continuation bet If the sales receipt, so that the client is lost, dissolved sale comes and pays the customer must be rejected. The liability valuable consideration, then the liability valuable consideration before the bill. (Ibid., P. 217)

2. Intellectuals building

People are free to give any liability that is not against the law and public order and good morals, , provided the transaction would be rational, which has been applied in the community. (Imami, Civil Rights, vol. 1, p. 478)

3. The social necessity

Some scholars public have argued options of condition to an urgent need for the validity of the social condition, because in many transactions, the disposal of fraud, the urgent need to is thinking, assessment, and the deadline to get it . (Wahba Zuhayli, Islamic juridical, vol. 5, p. 535)

Civil law perspective Article 233 of the Civil Code, the following condition is unknown which ignorance, vanity and dissolvent and in particular the option provided in Article 401 provides: "If this option clause, the term is not defined, the condition of the option and the sale is void."

Problems and possibilities brought on the risk, the need to determine the requirement for option

Now we discuss the problems and possibilities based on the need to determine the length of option risk condition is raised:

It was stated earlier that if no option is specified for the instances risk; If someone says that the conflict between tradition and intellectuals in normal situations is based on negligence, and they committed some risk transactions are not oblivious; And the ignorance and disregard risk not available, then there is no obstacle and is not a problem if you do not specify an exact time.

Sheikh Ansari in response to this possibility, says such expediency secular, religiously invalid as not worthy of attention, or should sale or selling merchandise that is delivery, etc., religiously permissible and not risk, what-the norm in These are neglected, and while you are risk;

Thus, accuracy and defining is needed, and building the necessary precision what the norm is, in many cases for an hour or two hour time difference between the options, the battle comes, what up to a day or two. (al-Ansari, Makaseb, vol. 5, p. 114)...

Another problem raised in this regard is that, the meaning of risk, or ignorance, or danger, if the meaning is ignorance, which is located unknown functional, because they are known to change and valuable consideration, the amount of ignorance on the subject option condition has caused the price spread ignorance or not buyer And his ignorance of the condition, the lack of knowledge that, if crushed right option will apply and when to terminate the stems, hindering the accuracy It is not selling.

Because of all the options, even where the period is known, if he does not know who the option in her favor against counterfeiting and condition, and will apply deserved or not? In addition, if the purpose of risk, if ignorance is dangerous for option, the transaction is not harmless;

Because of meaning out of the property without the change in its place and here, if termination occurs, instead of the one that is applied to terminate him.

The danger of prohibiting the possession of property, option and ignorance is thought to terminate the contract, assigned to the option condition and if the duration is unknown and in the the options, even on the

assumption of a long option There is no doubt, hindering the accuracy not. (Khoii, Altnqyh on account Almkasb, c. 3, p. 194)

risk areas of ignorance seems that, traditionally leads to conflict and contention or not? This means there is a danger that the risk not turn out mine disaster. Moreover, for nullity of contract leads to ignorance not relevant, but principally in the areas of ignorance evidence, that is leading to conflict and contention.

So, although it may be turned not disturbed, but the soul of the contract and possible breaches of cucumber and a lack of necessity of the contract, such as the sale is subject to necessity, it is the custom, placed the origin of conflicts people habitually contemplated the creation of such rights in other the options is moved and therefore, the necessity of imposing term limits or option with urgency secular, religiously, was taken to prevent such risk;

As for the survival of the option, option animal for three days, and option fault and fraud by immediate actions, has been limited. So, risk the areas mentioned, and the ignorance of the danger area, the condition of the sale, there will be. (Mohaqqehq Damad, the general theory of law provisions and requirements of Islam, p. 408)

the origin of option of condition

For this discussion, the question that we must answer is that, since the beginning of option is which? is During the contract? is After the division and separation?

To answer this question, renowned jurists maintain that the origin of option condition from the time of conclusion of the contract, the late owner of the jewelry says: This quote famous but fame is the same. (Jewelry Alklam, vol. 23, p. 91) Allama rules are also of the opinion that when something is not mentioned, during the time the contract is not segregated (Meftaholkaramat, vol. 4, p. 566)

Sheikh Ansari also known origin option from the contingency contract because of this has come to be defined. (Al-Ansari, Makaseb, vol. 5, p. 120)...

Imam would have expressed his thought: When the key is symmetric, there is no point to this option, the time of occurrence of the contract, whether it refers undertaking these demands, whether followers o be aware of this option.

However, provided that the time for longer than option is available. Given what we know to be the origin of this option, when signing contract during that time they did not mention the source and it has to be absolute; otherwise you will just have to deal with.

Following the famous jurists in Article 400 of the Civil Code also stipulates that:

The beginning and end of the period must be provided in forging of option of condition. If the first is not specified and is not included in the contract, the date of conclusion of the contract is in this region.

It is worth noting, some believe that the time dispersion of the option is fixed. (Sheik Tusi, Almabsoot, vol. 2, p. 85), while others, like the researcher solution from the point of view of compliance and says option from the diffraction condition is stable. (Helli, laws Islam, vol. 2, 289)

Result; in terms of origin option condition, lack of determination, it would not affect the validity of the transaction. And if applicable, must start from the exercise of the option contract is calculated. (Bagheri, Civil Law, p. 166)

The content is clear that if the term of the option provided for in the contract specifies the beginning and the end, Right of cancellation, there will be just the same interval. As the customer says: I bought the goods in one day provided have the right to terminate it.

But the assumption that time is determined without first option is specified, the contract referred to in this respect, give to the contract. Tell the customer that the goods are bought as long as five days to have the right to cancel the transaction. In this case, the right of the transaction until the fifth day there will be a customer. (Ibid.)

4. Conclusion

The conclusion is from surveys conducted:

- 1 option condition is according to the rules of legal certainty, which means they are required to be provided during the contract, it is permissible.
2. It is essential that the death of option condition is recorded in a way that it is not likely to excess and deficiency to avoid conflicts arising from the transactions.
3. If the start and end of the contract term option if specified, will be entitled to terminate at the same time; But if you do not specify the origin and ending option condition, determine its absence does not affect the validity of a transaction entered into in this case, the option are calculated from the contract, Although it seems to resolve any conflicts, which is better for both the beginning and the end and it is quite clear that the scope their commitment, clear and transparent and free from any ambiguity.

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