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**Fundamental Difference between Rule of Bona Fide and Contract of Bailment and
 Its Effects with an Emphasis on Imam Khomeini's Opinion¹**

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Introduction

Research Paper

Among the jurisprudential rules related to guarantee, the jurisprudential rules of trust and hold have a special place. Both rules are known as non-binding rulings. However, it can be seen in jurisprudential books that there is a lot of confusion between these two terms. Sometimes, these two titles have been considered as one, while at other times, they have been treated as two separate rules. The confusion and lack of a clear criterion to distinguish between these two rules prompt us to address a fundamental question in this article: what is the fundamental difference between the rule of benevolence and the rule of credit? If there is a difference, will the results be influenced by it or not?

For this purpose, we will first examine the principle of benevolence and explore its arguments, contents, and applications in various chapters of jurisprudence. Then we study the concept of credit, and we briefly review its principles, components, and applications in various jurisprudential and legal contexts. Then, we will identify the distinctions that arise from examining these two rules, and ultimately, we will highlight the outcomes that stem from these distinctions.

Problem Statement

The rules of beneficence and credit are known as two important rules in guarantee cancel-

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lation. The importance of paying attention to these two rules is that they are cited in numerous jurisprudential chapters to undermine guarantees. However, according to the jurists, there is no precise demarcation regarding the scope of these two rules. The proportionality of these two rules can have significant effects on various jurisprudential and legal matters.

Research Background

In other articles, there is no mention of the fundamental distinction between the principles of benevolence and credit. In the article "Examination of the Rule of Beneficence in Civil and Criminal Liability in Jurisprudence and Law from Imam Khomeini's Point of View," the concept of beneficence as a fundamental aspect of civil responsibility and its role in civil and criminal liability is discussed. The article primarily focuses on differentiating between the rule of beneficence and trust, highlighting the fact that they are not interchangeable terms. In the article titled "Jurisprudential Examination of the Status of the Trustee after Avoiding Guilt: An Approach to the Opinions and Thoughts of Imam Khomeini," the author discusses the status of the trustee, the extent of their responsibilities, and the impact of their actions on the guarantee. Therefore, this article does not mention the discussion of the distinction between these two jurisprudential rules and their effect on the cancellation of the guarantee.

Research Methodology

The method of discussion is descriptive and analytical, utilizing the writings of Imami jurists and the viewpoints of other jurists.

Found

There is a difference between the concept of benevolence and the concept of Islamic trusts. Benevolence is found when the permission of the Shariah and the wise is present in the appropriate context and the corresponding action is taken. However, ownership or Shariah trusts are granted with the permission of the owner and Shariah, excluding waste and associated actions. The permission of the owner is granted to preserve, occupy, and use the property. The most significant substantive difference between the rule of benevolence and credit is the inability to stipulate responsibility and guarantee in the rule of benevolence, while the rule of credit allows for the possibility of requiring guarantee. The credit rule has a specific provision for withdrawing evidence of guarantee, while the favor rule has a specialized provision for withdrawal. Just as in the rule of beneficence, civil liability is not absolute. However, in the rule of due credit, responsibility is absolute. Due to the presence of an obstacle, we do not hold the trustee fully accountable for the responsibility.

Discussion

Although there is confusion between the two rules in many juristic words, it appears that the rule of benevolence applies when permission for waste and the actions related to waste have been granted by intellectuals and Sharia in a manner where the harm caused by the waste outweighs any benefit gained from it. However, the rule of trust pertains to the place where permission from Sharia and the owner is granted solely for the purpose of preservation, possession, and usufruct. Therefore, in the realm of credit, there is no allowance for wastefulness and the behaviors that accompany it. In connection with Shari'a trust, as discussed, the same ruling applies. Although many jurists have recognized the Islamic trust under the title of beneficence. But, as stated, the Islamic trust of Azan is not in vain in order to be recognized as benevolent.

The difference between Ihsan and Etaman lies in their departure from the evidence of guarantee. The rule of benevolence has a specialized withdrawal guarantee, while the rule of credit has an allocation of withdrawal. This problem arises from the absence of a requirement for responsibility and guarantee in the principle of beneficence, and the failure to recognize the benefactor as a loser. However, when it comes to giving proper credit, there is a responsibility to consider the extent of permission from the owner. Only under specific circumstances should the trustee be exempt from providing evidence of guarantee. Therefore, the departure of the rule of credit from the general rules of guarantee is due to allocation.

According to this fundamental distinction, it is possible to have a guarantee condition in the credit rule. In this manner, the ownership or Shari'a trust is tied to the responsibility of the beneficiary or possessor. According to Shari'a and Maliki law, permission alone does not serve as a guarantee. The full responsibility lies with the trustee. We have excluded the trustee from the scope of the guarantee based on Shari'i evidence. However, it is possible to bring the trustee back into the circle of responsibility by imposing a guarantee condition. Therefore, there is a possibility of an absolute liability condition in the credit rule. However, there is no such possibility in the rule of benevolence. Because the necessary obligations regarding the person who is permitted to lose have not been fulfilled, we need to require him to provide another guarantee with the specified conditions. In Ehsan's rule, due to Mohsen's special exclusion from the evidence of guarantee, it is not possible to enter the circle of guarantee with the condition of liability.

Since the concept of beneficence either exists or does not exist, it is possible to revoke the warrant of a person who has ceased to engage in benevolent behavior. On the other hand, if a person has not violated the trust, they cannot reclaim the Shari'a trust deposit after leaving it. As a result, they are subject to the general proofs of surety, and the

judgment of guarantee is imposed on them. The difference between the two is that in the concept of image trust, it is possible to transfer the attribute of religious trust to a trustee, but this concept is not applicable to someone who goes beyond the definition of benevolence.

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