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### **Divisibility of Installment Sale through Economic Analysis Approach in Iranian Law and Imamiyah Jurisprudence with a Glance at Imam Khomeini's Thoughts<sup>1</sup>**

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#### **Introduction and problem statement**

**Research Paper**

One of the most prominent interdisciplinary studies is the economic analysis of law, which is the result of the mutual influence of law and economics; the researchers' attention to this type of interdisciplinary school is so significant that it is mentioned as the most important evolution in the knowledge of law in the 20th century.

In the economic perspective, laws and legal rules are considered as tools for "behavior change" and "politicization" and it is tried to provide a scientific theory to predict the effects of guarantee of legal executions on human behavior and study them on the basis of economic efficiency.

The economic study of law is the economic evaluation of legal rules based on the principle of efficiency and economic desirability. With the help of "Economy of Laws", it is possible to choose the most effective legal rules from the economic point of view and evaluate the existing legal rules in other legal regions. This approach always seeks to recommend solutions to increase maximum profit and minimize losses in legal institutions by calculating cost-benefit in legal rules.

In transactions, as one of the legal issues, there is traditionally profit-loss logic, and this is especially true in the sale contract. the sale contract is an economic institution, with economic and profit-seeking goals; Therefore, a view appropriate to the nature and essence of this legal-economic institution should govern its rules; But Iran's civil law, with a formal and traditional view of this institution, has caused many negative economic effects and results; For example, in Iranian law, in many cases where the contract is violated by the obligee or the impossibility of implementation, the imposition of a guarantee of compulsory performance and the obligation to perform the same obligation causes many losses,

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including the delay of proceedings and waste of resources, and the increase of personal and social costs. This importance has led us to study the possibility of Divisibility the installment sale contract as one of the most common types of sales contract – both domestically and internationally – with the approach of economic analysis, in order to maximize efficiency in cases where the implementation of the contract is flawed.

Of course, the execution of a contract even incompletely and in cases where the full execution of a contract is not possible should be preferred; however, in Iranian law, the necessity of executing the contract has been emphasized as if the contract was created in such a way that it must be executed without any changes. Since there is no article in the civil law about the severability of contracts, it is understood that such an institution is not accepted by the legislator. Therefore, the famous opinion in Imami jurisprudence and Iranian law is that the contract is indivisible and it is not possible to apply the right of rescission to a part of it. This is despite the fact that by examining the views of Imamiyyah jurists, including the views of Imam Khomeini, it is possible to provide ways for the partial termination of this type of contract. In the laws of developed countries, as well as some international conventions, rules have been explicitly established for the severability of contracts, including installment sales. For example, in English law and the International Sale of Goods Convention, this category has been addressed in detail with the approach of contract efficiency, which is based on economic analysis.

The basic question that we seek to answer in this article is whether the disallowance of partial termination and the disintegration of the installment sale contract has the necessary efficiency in terms of economic analysis? In Iranian law, by analyzing the will of the parties to the contract and the legal articles, as well as by looking at the jurisprudential opinions, can it be possible to establish rules for the divisibility of the installment sale contract in order to make this contract effective?

### **Research Background**

In the issue of divisibility of installment sales, there is no independent book or article that deals with it from the point of view of economic analysis and efficiency; However, regarding the severability of the contract in general, the article “Severability of the contract in the laws of Iran, England and the Convention on the International Sale of Goods” by Seyed Hossein Safai and Jalal Sultan Ahmadi and also “Partial termination or dissolution of the contract in the Convention on the International Sale of Goods” (1980) Vienna) and Iranian Law” was written by Akbar Mirza Nejad Joybari; But what makes the current research different is the special focus on the installment sale contract and also involving the economic analysis of rights as an interdisciplinary study in which the efficiency criteria is the basis for accepting the decomposability in the installment sale contract and also Attention is paid to the opinions of Imam Khomeini (pbuh) in this field.

### Research Methodology

In this research, an attempt has been made to prescribe solutions to increase the efficiency of the installment sales contract by studying the interdisciplinary study and with the approach of economic analysis of law, while examining different opinions in domestic and international law in a practical way and not just analytically-descriptively. In this regard, the authors of the article have chosen the library method to access research resources and information.

### Discussion and conclusions

The economic analysis approach of law always relies on the effectiveness of legal rules; Since the establishment of laws in many legal systems is based on the basis of economic analysis and the efficiency of legal rules, we have seen that regarding the installment sale, which is one of the most important types of sale, in international laws such as the Convention on the International Sale of Goods, measures such as the divisibility of the installment sale have been established until efficiency This contract will be maximized. This means that if the obligee refuses to fulfill the obligation in some installments, the other party can, while announcing a partial termination or dissolution of the contract, adheres to that part of the contract that has been executed so far and prevents its continuation that is no longer effective and does not fulfill his expectations from the contract; But Iranian law, without taking into account the new requirements of the installment sale contract and due to its ever-increasing expansion in the domestic and international arena, with a traditional view and solely with the aim of creating social order and justice, and without considering the economic dimensions and increasing social welfare, proceeded to establish inefficient rules. It is in such a way that first all the legal paths must be taken to force the obligee to fulfill the obligation and in case of failure to comply with his obligation, he should proceed to terminate the contract altogether; However, according to what we discussed in this article, with a close look at Imami jurisprudence, including the thoughts of Imam Khomeini, as well as economic analysis criteria, we can provide the necessary foundations for the divisibility of installment sales in Iranian law. Acceptance of the theory of decomposability of installment sales will lead to an increase in the efficiency of installment sales, some of which include: contract flexibility in different economic conditions, reduction of transaction costs, reduction of litigation delays, optimal allocation of resources, etc. For this purpose, it is necessary to redefine legal rules in this regard and establish effective laws in order to increase social welfare and maximize wealth.

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