

**Suspensive Condition in Contracts and Its Cancellation with an Emphasis on
Imam Khomeini's Views**

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Interdiction and problem statement

Research Paper


The concept of suspensive condition and resolutive condition is known among lawyers today, and there are few lawyers who doubt the correctness of including such conditions in the contract. On the other hand, conditional transactions are also very common among the people and what is evident from the appearance of some words, has been common in the past and in similar ways. However, sometimes the parties to a contract do not include such suspensive conditions in the term of the contract correctly, either in concluding the contract or in terminating it, and due to the lack of proper specification of these conditions, it becomes very difficult to ascertain the intention of the parties regarding the suspensive condition; Especially where the parties have a dispute. This leads to the fact that the court cannot find out the intention of the parties from the text of the contract and issue a correct ruling to the contract, even though it makes a lot of effort. This is despite the fact that each of these suspensive conditions will have different effects on the contract and carry different rights and obligations on the parties. Nevertheless, by analyzing the intention of the parties regarding the result they intended from creating such suspensions, it is possible to understand which type of suspension condition they created. In this way, examining the difference between the rulings and the effects of these two types of suspensive clauses can help to find the intention of the parties of a contract. For this reason, it is necessary to explain the difference between the effects of suspension in each of the termination and conclusion of the contract in order to clarify the rights and obligations of the parties to the transaction.

The intellectual position of Imam Khomeini in the jurisprudence is not hidden from anyone, and the examination of his jurisprudential thoughts can provide new legal

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achievements. However, the delay in newly emerging jurisprudential and legal issues, such as the multiplicity of transactions subject to rescission and suspension, the difficulty of distinguishing between the two and the different effects that each has, has made it impossible to clearly find rulings related to such issues in the works of this jurist. Therefore, in this research, by pondering the sayings of this great jurist and deriving from it, the distinction between suspension in concluding a contract and rescinding it has been studied. Therefore, in this article, it is investigated that from Imam Khomeini's point of view, what is the difference between a suspended contract and a conditional contract with the condition of cancellation, and what effects will this distinction have on the contract?

Research background

The difference between suspension in concluding a contract and terminating it has not been independently researched, but the researches that have been written about the suspended contract or the termination clause have devoted a short and concise discussion to the difference between these two types of suspension. For example, Katoozian (2015) in his book "General Rules of Contracts" briefly mentioned the distinction between these two types of suspensive clauses. Also, Abhari and Afchangi (2008) in the article "Concept, nature and effects of termination clause in Iranian law" listed some distinctions between this conditional contract and the termination clause. In addition, in the works written about Islamic jurisprudence, the suspension in the termination of the contract and its conclusion have been studied separately. For example, Mohaghegh Damad and others (2017) have studied the suspensive condition and resolutive condition from the perspective of Islamic scholars and jurisprudence. Nevertheless, in many recent jurisprudence books, due to the fact that the resolutive condition is an unfamiliar subject, it is not possible to find a clear section dedicated to this title, and the examination of the difference between these two types of suspensive conditions has not been done in such jurisprudence books. Therefore, the difference between this article and the previous researches is that, firstly, the distinction between the suspensive condition and resolutive condition is studied independently, and secondly, this distinction is expressed in accordance with the views and thoughts of Imam Khomeini.

Research methodology

This research is of a fundamental theoretical type, whose information, sources and primary materials are collected through a library. The research method in this study is descriptive, analytical and comparative. In the descriptive stage, the information is collected and classified, then the obtained information is analyzed, and finally, this information is compared with the foreign studied sources and the result of the research is extracted.

Discussion and conclusion

According to Imam Khomeini's point of view, suspending the conclusion of a contract means that the composition of the contract is suspended upon its occurrence, and therefore, a contract will not be formed until it is achieved. The termination of the contract can also be suspended on a condition, so that as soon as that condition occurs, the contract is automatically terminated. Therefore, the suspensive nature of these two entities seems to be the same, and the difference between these two types of conditions is the effect of suspension, one causes the termination of the contract and the other concludes it. On the same basis, before obtaining the suspension in the resolutive condition, the contract is fully formed and its effects are created, and after the suspension is obtained, the contract is terminated and despite the fact that it does not have a retroactive effect, It fades the effects of the contract towards the future. On the contrary, in suspensive condition, no contract will be created before the condition is obtained, and after that, the contract will be formed, and it will not have an effect compared to the past. As a result, the occurrence of condition, whether in suspensive condition and resolutive condition, does not have a retroactive effect and only affects the future of contract. For this reason, it is necessary for the obligee to perform the obligation before the condition occurs in the resolutive condition, but in the suspensive condition, it is not necessary for the obligee to perform the obligation as long as the condition is fulfilled. Also, the ownership of the property is for the transferee in the resolutive condition, and in the suspensive condition, it belongs to the carrier. However, after the occurrence of condition, the ownership return to the transferor under the resolutive condition, and it is transferred to the transferee in the suspensive condition. Inferred from Imam Khomeini's point of view, it is necessary to determine the period for the occurrence of suspension, in the resolutive condition. However, there is no such necessity in the suspensive condition. In addition, according to Imam Khomeini's belief, in a conditional contract, before the occurrence of the condition, no obligation arises for the parties. While in the resolutive condition, the transferor has the duty to keep the property to return it to the other party after the termination. But this ruling is mandatory and a violation of it will not have any status effects, although, according to the rule, he is obliged to pay for it.

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