

## Adjustment of the contracts in Iran law

**Sayedeh Leila Houseininia**, Shahid Beheshti university faculty of law Master of Science private law.

**Faride Keyani**, Qom university faculty of law Master of Science private law.

**Sayed Hamzeh Houseininia**, postgraduate student of Criminal law and Criminology in Azad University of Shahrekord



Advanced Social Humanities  
and Management



E.M.T publishing company

### Abstract:

Contract as the most important legal phenomenon is established by two parties' agreement and consent. This legally established phenomenon per se can govern the two parties' relations and its clauses are bound to same and referee and referee, and generally it is not related to other people who do not participate in establishing the contract.

Today, as it is seen in all common marketing fields, ranging from the one in marketing shops and exchange branches to the economic super companies, there are many cases in which the two parties need to change (alter) the contract and also resort to the offices of attorneys and legal consultant and justice administration to solve their problems concerning the contract. For example, a contractor who is committed to build and delivered a domiciled building in an agreed price, faces unpredicted events such as flood, earth quake, or war and also political, social and economic crises. Which can multiply the price of construction materials and practically his commission to act upon the agreed

control can be disadvantageous to him. It is the situation in which change of contract is necessary and acceptance or refrain of the legal certificate of contract change is of great importance.

When an established contract can cause loss to the third party. According to the principles of compulsory liability, the third party can bring a case against party or parties who can cause...

Under the title OL separate contract liability. Furthermore, when the contract is not fully fulfilled or partly fulfilled, and the third party is under. Claims, he/ she can bring a case against the committed under the title of compulsory liability.

**Keywords:** Change, contract, contract change, cancellation, sole, occurrence, commitment, consideration

### Introduction:

Today, as it is seen in all common marketing fields, ranging from marketing shops and banking to the economic super companies, there are many cases in which the two parties need to change the contract also resort to the offices of attorneys and legal consultants and justice administrators to solve their problems concerning the contract. For example, a contractor who is committed to build and deliver a domiciled building in an agreed price, faces unpredicted events such as floods, earthquake, or war and also political, social and economic crises which can multiply the price of construction materials and practically, the constructor's commission to act upon the agreed contract can be disadvantageous to him. It is the situation in which change of contract is necessary and acceptance or refrain from the legal certificate of contract change is of great importance.

Lexically, "change of contract" means to equal two things with each other or balance two amounts. In the way Persian language used today, it means to decrease the level of unity in things or practices. The idiomatic expression "change of contract" which present study ventures to introduce means "the review of the previous contract and change in the consideration and compensation's terms and conditions. This change also includes increase and/ or decrease of any one of them". This change, or review is in accordance with the parties' agreement or law.

The change in subject of contract is not only occurred in contract change but also in cases which are innately different from contract change occur. Therefore, it is recognized all these cases and the differences between topical change of contract and the said cases.

A: contract adjustment and commitment alteration

Commitment transmission refers to a commitment or contract which is refrained in the past and is substituted by a new one.

In one of three kinds of contract change, it refers to the subject change which based on this assumption is correspond to the contract change. The topical change of contract can be assumed in two ways:

First, the change of the agreed case: this is like situation in which a person is deb ted an amount of cereal to somebody else and two parties achieve an agreement that the deb tee pays money instead of cereal.

Second, the change of cause commitment: it is like a situation in which a person owe 6b an amount of money as rent and 60th parties agreed that amount of rent is kept by deb tee as debt. In this assumption, the cause of commitment in the previous contract is turned to another cause, debt.

The main difference between the topical alteration of a contract and the topical change of a contract is that in alteration, the subject matter experiences innate changes, the first contract is completely rejected and a new contract is established. While in the change of contract, the subject matter does not go under any innate change.

Dr. Sanhoury, the contemporary Arabic author, notes that:

“Based on Romanian rules, trans formation in commitment is confide with the contract change since in that law, the subject matter of commitment does not change but its form does.... Sometimes, this conclusion or change is like an innate element as additional time or bond. There fore, the contract transformation is more like the transformation contract form rather than the subject change and its nature in old Romanian laws.

But in new laws, concerning transformation of contract, the innate change of contract is extended as for as a new contract is substituted.”

What is called transformation in the old Romanian laws is in fact “change” but lack of law makers’ mind familiarity with various concepts in the past mistakenly this change is interpreted as “contract transformation” unless (as it was noted by the author of the book *Alvasit el Azaan*) it is true that in transformation, the in ate nature of subject transform.

B) carrying the commitment with fulfilling the counterpart subject (compulsory change of the agreed subject) and the alteration of contract:

Sometimes, without fulfilling the contract transformation, the subject matter of contract is altered and a new subject is substituted in the following examples, some cases of this compulsory change is observed:

1. When in contract of sale, sailor is determined and before it is delivered to a customer, it is invalidated, as it is believed by some clergymen, the insurance of the goods equals the real price of the good or on the customer’s demand the price of the goods shall be paid.

2. When delivering the similar goods causes the customer’s dissatisfaction, the deb tee’s insurance in delivering the same goods is transformed to delivering the equal price and the deb tee shall pay the price of the goods.

Undoubtedly, this case can be an example of contract transformation since one of the elements of contract transformation is to have transformation intention. There fore, without the intention of transformation, the compulsory change, can not cause the contract transformation. But there is a question whether these cases can be interpreted as contract change?

The answer to this question is negative as in the topically compulsory change, the delivery of the agreed contract is not possible and in this respect another subject is substituted, while in contract change, the range of differences is only limited to some cases and conditions and delivery of the original subject is also possible. Other wile, it can be considered as an example of impossibility and will be related to the topically compulsory change.

C) change of conditions or subject- related particulars is based on impossibility, adjustment of contract:

Sometimes, in the content of a contract, a condition is stipulated but in full filling the contract, its fulfillment of the condition is impossible. In these cases, (impossible condition or Quality) according to some clergymen can cause change in the subject of the contract the main topic of subject matter log ether with a cost as the value (provided that the missed condition is related to the specific heater of particulars) or the main topic of the subject together with a cost as a gift (provided that the missed condition is related to fulfilling an act regarding to the subject like the situation in which a person is committed to delivered a hundred dyed fabric mutual but as the result of some conditions, dying the material is impossible, the submitted is stipulated by some terms or conditions. The difference of this kind of change can be seen in adjustment as in this kind of change, impossibility terms or conditions is validated while in adjustment, impossibility does not have such a role.

Lack of credibility for impossibility in the agreed adjustment is obvious since in this kind, change is not sasicany compulsory but is based on the parties’ agreement.

But legally it cannot be true that the order of law is necessarily based on impassivity of fulfilling terms or conditions but. It is possible that other means (such as the value imbalance between the two parties) cause this

agreement. Conclusively, conditional impossibility or topical terms cannot be considered equally as the of contract.

And completing the contract

Based on Article 220 of civil law, contract necessitates the parties not only act upon the conditions stipulated in the contract but also face all consequences resulted from the contract both legally and customarily. The legal system is in charge of issuing these results. This, issuing convention and legal results of a contract, is known as “contract completion”. As an example, Article 1135 of civil law of France considers as a completing factors for a contract. The difference between this case with adjustment is so obvious as contract completion in fact is kind of contract interpretation while adjustment does not pay attention to interpretation and its aim is to review and change contract correctly.

Different kinds of adjustment of contract:

of contract can be classified in two kinds: the first kind, agreement, also is classified into two general kinds.

1. Adjustment which exists in the content of the agreed contract and can be predicted.
2. Adjustment which is not predicted in the content of the contract but can be fulfilled based on the parties' agreement.

Adjustment based on consent in the content of the contract:

Adjustment which exist in the content of the contract is classified into two kinds:

A) Adjustment with clear base like those which are predicted in the contract in the case the so-caved event happens, the cost of executing shall change from 1.000 Rials to 500 Rials (less than the determined rent) or 2000 Rials (more than the determined rent).

B) Adjustment which an unknown lase the one comes in above example, the only predictable cases are to review the price of fulfilling a job and adjust it to new conditions which a determined event happens, but it does not consider the amount of change.

Situation1: Adjustment is based on parties' consent on the content of contract with clear and known base.

In the discussed assumption, adjustment of a contract is stipulated through some conditions in the content of a contract there fore, adjustment should be investigated when its conditions are considered.

This point has been ignored by many authors who write about adjustment of a contract. For example, Dr. san hour, the author of this kind of the valuable book Aluasit, in order to prove the in fluency of this kind of adjustment refers to the parties' consent without considering the conditions stipulated in the content of a contract also, another author claims that:

This kind of clearance (predicting adjustment in the content of a contract does not change the credibility of the reviewed contract Also, silence in contract does not affect it credibility the parties' agreement in terms of adjustment is sufficient.

It is clear that author makes a distinction between the predicted adjustment in the content of a contract and the agreed adjustment after establishing a contract. Since when a prediction or condition is stipulated in the content of a contract, after occurring an event which is mentioned as the outcome, adjustment will be necessary.

However, two parties do not reach an agreement about it while in the case between parties to fillfill an adjustment is necessary.

Although there is no doubt to consider the discussed adjustment as one of conditions stipulated in the contract, the condition stipulated in the contract demonstrate suspension since tis content entails fulfilling adjustment in the case of occurring the mentioned situation (such as occurring an unpredictable event). Therefore, it should be clarified whether there is a recognizable change to act upon while suspension is consider and basically the mentioned suspended condition stipulate which actions?

In response to this question, there are two views:

- A) The mentioned suspended condition is null and void
- B) The mentioned condition is valid.

Adjustment which happens after establishing a contract also has various assumptions:

The first case, making change in subject matter of the contract happens with decreasing consideration and compensation equally. As an example, after terminating parties' contract, both parties agree on rejecting the determined part of sailor, its equivalent from. In fact, this contract is considered as cancellation of contract in relation to the rest of it and should be interpreted in this field.

Most clergymen agree on this view about cancellation of a contract and the only person who disagrees with this view is Elon Matuj Bohrani. The notes that: If sailor, customer and contract are united is oiled when the whole will be considered.

To prove rejection of such cancelation there are following reasons:

The general reason for the legality of cancellation is consensus and texts and this consensus and texts are used to explain issues except of validity or invalidity of partial cancellation, and the boundary of cancellation. So it cannot be referred to their cancellation and should only consider the mutagen (rejecting whole contract).

Answer: the sign for validity of cancellation is general, declarative among which it can be referred to absolute statement

2. Texts are related not only to consensus dissolution but also partial dissolution.

3. Commitment and obligation is great issue. So it is not able to distinguish or is completely destroyed or fully remained.

Answer: the life of commitment and obligation is validity and credibility depends on validity. So, it is possible that some parts remain and the rest is destroyed.

- Reasons for credibility of cancellation to prove the validity of cancellation, it is referred to reasons of cancellation. Additionally, it is referred to other statements including:

Cancellation is non obligatory and is classified in cases which are complied with known subject and where any known is complied with any consideration, it is also true for its compensation like ignoring the debt and extending the deb tee's time to pay the debt.

As it is said, validity of cancellation comparing to partial cancellation is proved and most of Shia and Sunni justice consultant's ore agreed on this view. Only in one case the validity of partial cancellation is under doubt and Salm sale (pre-selling the goods) and some of Shia justice consultants, Malek ebn Ans, and it is followers disagreed on this view and reject this decree.

He justified his claim by referring to an statement from the Great prophet (p.h.u) and based on this statement, he redetect "the consensus between sale and pre-paid contract in a contract" based on the fact that the nature of cancellation is two entities are united.

This is a summary of most issues concerning the importance and influence of adjustment n a contract.

#### References:

- Cheshire & Fifoot's, Law of contract, Butterworth.9th ed, London, 1976.  
Derek (Roebuck) ,Law of Contract(Text& Materials), The Law Book Co. Ltd, Sydney, Melbourne, Brisbane, 1974.  
Honnold (John), Uniform Law for International Sales, Second Edition, Philadelphia, 1991.  
Schlechtrim (Peter), Commentary on the UN Convention on the International Sale of Goods, Second Edition (translated by Geoffrey Thomas), 1991.  
Treitel (G.H), Law of Contract, Sweet & Maxwell, 8th ed, London, 1991.