

Peremptory and topical distinguishing of accessory (conditional) commitments and the outcomes of their violation with an emphasis on the condition of performance in medical obligations

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ABSTRACT

A contract includes commitments that are installed intentionally, commonly or legally. By insertion of conditions, the contracting parties create certain commitments plus the primary obligations the violation of which would cause liabilities in a case-specific manner. The qualification, corollary and performance are amongst the well-known conditions of the contracts. Postponement should be also enumerated amongst the independent conditions that per se have their own legal mandates. It is not possible to violate the corollary condition and this meets the need for the discussions about its legal mandates and liabilities. But, how is the situation for the qualifications and performance conditions? In regard of breaching the condition of qualification, as well, the civil law has predicted in article 410 the revocation right in favor of the person to whose benefit the condition has been set, i.e. the beneficiary, whereas the present article also tries justifying the idea that, besides granting revocation right, it is naturally necessary to require the performing of the subject of the qualification condition. In cases of the violation of the performance condition, the Iranian legislator, following the jurisprudential maxims, firstly requires the violator to perform the specified condition and realizes the revocation right as the last resort and means of repelling the losses from the person to whose benefit the condition has been set. Moreover, some have opined the revocation right alongside with the requiring of the performance of the condition.

Keywords: qualification condition, performance condition, corollary condition, breach of commitment, condition fulfillment

Introduction

Condition's Conceptualization and Nature:

Literally, condition means requiring within the format of a

contract and it has been defined as “the thing the existence of another has been made dependent thereon and the actualization of the condition signals the actualization of the thing for which the condition has been set.”

Some have stated that condition is a sort of legal action^[1]. But, it has to be stated that condition cannot be recognized as a sort of legal action rather it is a product of the agreement between at least two persons but not a legal action although it is the product of an agreement and this is why the contracting parties are envisioned as the parties to a condition while possibly not being beneficiaries of the corollary condition settlement in its specific sense such as when a certain right is given in commitments made in favor of a third person to a person other than contracting parties who is not involved in the settlement of the conditions.

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Condition is a nominal and non-independent nature that is composed in the course of a contract's conclusion or in an attachment thereto and, unlike contract or unilateral obligations, it cannot be independently willed^[2]. Finally, condition can be defined in the following words: condition is a compositional legal accessory the persistence of which depends on the credibility and survival of the primary contract.

Analyzing the Legal Relationship between Contract and Condition:

In general, the goal in identifying and creating a condition is the establishment of a relationship between condition and contract there is governing some sort of a relationship between the primary and the secondary and/or the superior and the subordinate.

As for the quality of the contract-condition interdependency and interrelationship, there are generally posited two theories, named restriction (optimal unity) and combination (optimal multiplicity). Corresponding to the first theory, a condition is a constraint in a contract in such a way that they cannot be assumed separate from one another and the annulment of the condition causes the revocation of the contract and the parties have reached an agreement for a contract that has to be performed in a certain way (i.e. along with the conditions). The individuals believing in this theory can be *per se* divided into two groups: the first group holds that condition is a constraint of requirement and acceptance and the second group believes that a condition is the constraint in a composed contract, i.e. a condition constrains the contract that has been previously concluded. Thus, condition is not the constraint of the contract with the meaning of requirement and acceptance^[3].

The second group realizes condition as the real part of the exchangeable items. Based on this theory, the position of the condition in the natural structure of a contract is like the position of the exchangeable items in a transaction or, better said, a condition is a part of the exchangeable items hence part of the sale item or price or both of them in a case-specific manner.

Imamiyyeh Jurisprudents, as well, have offered various notions regarding the nature and the relationship of the contract and condition. Shahid-e-Avval has pointed to pure restriction in this regard and believes that the beneficiary has the right to revoke when a condition is left unfulfilled and it should not be so that the beneficiary can require the fulfillment of the condition and the only benefit that can be envisioned for the insertion of an in-contract condition is the exposing of the sale to revocation and decline^[4]. Mohaqeq Yazdi, as well, proposes the theory of restriction and finds it of three forms^[5].

Violation of Condition:

Violation literally means breaking, destroying and cracking a contract and promise; its legal meaning is not also that much different from its literal meaning. The violation of the contractual conditions is actualized when one or both of the parties fall short of performing what they have shouldered by means of the contract in adherence to an agreement and expediencies of the contract enforcement.

It can be definitely stated that the violation of a contract cannot be enumerated amongst the legal actions because the parties or the violators' composition intention does not at all influence the position. It can be mutually asserted that the violation of a contract becomes a legal event the subject of which might be even a subject of a legal action.

Breaching of a condition might be manifested through doing a harmful action or leaving of a useful action undone. Each of the doing of an action or leaving it undone can be *per se* legal actions or material actions.

Corollary condition and its Violation:

"Corollary condition is the requiring of the actualization of a legal action within the format of a contract whether it is a legal action of contract or a unilateral obligation"^[1]. In Islamic jurisprudence, there are discrepancies regarding the authenticity of the corollary condition. Some find it authentic and others introduce it invalid and devoid of any effect^[6,7].

The violation of the corollary condition may take place without the doing of an action or leaving it undone being willed by the person against whom the condition has been set (benefactor). For example, when it is set within the format of a transaction as a condition that the seller's house should be also transferred to the buyer and it becomes subsequently clear that the house has been previously sold or s/he has not had any house at all or that his or her house has been in possession of another person, a breach of the corollary condition has happened and the only legal mandate that can be considered for it is granting a revocation right to the beneficiary because forcing of the action's performance by the benefactor or another person is not possible. Therefore, violation and breach of a condition is practically improbable^[8].

It has to be noted that the corollary condition and its violation differ from the performing of a legal action and violation of it for the violation of the corollary condition leads to the beneficiary's right of revocation but the effect of the violation of a legal action as an example of the performance condition is originally requiring the performance of the condition in the first place and subsequently the performance of the action by a legal authority on behalf of the benefactor. Therefore, "in a violation of the corollary condition, the beneficiary can either accept the contract without the actualization of the corollary condition or revoke it"^[2].

Qualification Condition and its Violation:

In regard of the authenticity and invalidity of the qualification condition, there are various theories posited in Imamiyyeh jurisprudence in such a manner that some believe in the invalidity of the qualification condition by reasoning that there are no such things as requirement and making bound in the qualification condition for the qualification is either set as a condition or not and it has nothing to do with the requiring of the benefactor^[9]. Some jurisprudents, as well, realize the qualification condition as a return to the corollary condition and such an idea has also been confirmed by the late Mohaqeq Khou'ei, as well^[10, 11]. On the contrary, some contemporary jurisprudents have decisively opined the authenticity and credibility of the qualification condition^[12, 13].

Some jurists believe that the qualification condition should be realized along with the corollary condition amongst the constraints that do not create any obligation; in other words, these conditions do not at all create commitment ^[12]. Such a statement is completely correct for the case of the corollary condition that is set solely based on requirement but it is dubious in respect to the qualification condition.

Iran's civil law stipulates in article 235 that "when a qualification condition is created within the format of a contract and it becomes clear that it does not exist, the person in whose favor the condition has been set would have the right to revoke the contract. Some jurists, as well, have exactly accepted this same idea ^[14].

The late Mohaqqueq Na'eini has discussed about the qualification condition in details. He states that if the intended qualification is amongst the attributes that cannot be acquired and provisioned, there would remain no other way but the revocation right but if it is possible to require the acquisition of the qualification and actualization of the condition, it would be devoid of any fault to do so ^[15].

Postponement Condition:

To elaborate the role of time in the fulfillment of the obligations and its effect in the related legal mandate, a distinction has to be made between the commitment that has been composed for a specific and near time (a well-established and perfect obligation) and the commitment that has been composed for a suspended period of time (a well-established but imperfect obligation). "That is because, unlike postponement, suspension speaks of the probability of an action's performance not its sure performance" ^[16]. It can be succinctly stated for the first form, i.e. a specified time for the obligation's fulfillment, that the postponement condition is composed in the form of an ancillary and secondary constraint of the commitment in which case the fulfillment of the contractual obligations is taken into account in the form of an optimal multiplicity (the time and performance of the commitment are both two separate goal and intention for the contracting parties); and/or in another form, i.e. optimal unity (the time and performance of the commitment have been composed in a bound and constrained manner and the performance earlier or later than due time is not at all intended by the parties, especially the beneficiary). In both of these cases, the negligence of the time of the contract enforcement by the obligor is viewed as a breach of the contract with the difference being that the violation of the contract in the first case (optimal multiplicity) would be delay in contract enforcement and the obliged party can demand the concomitant performance of the obligation and compensation of the losses and, in case that there is specified a guarantee sum, as well, its repayment can be also required. The second form (optimal unity), as well, can be realized as a special form of the nonperformance of contract with a little compromise.

Now, if there is doubt about being bound or not to the performance of obligation in time, which one should be taken as a principle? Being bound or not being bound? There are discrepancies in this regard. Some of the respected jurists believe that any doubt in this regard leads to the suspicion about

the existence or nonexistence of an obligation meaning that it results in the doubt about the persistence or non-persistence of the obligation. Thus, the persistence of the condition should be realized as cancelled and it has to be opined that that none of the parties would be required for the performance of anything before the other with the termination of the specified time ^[17]. Some of the others, as well, take the persistence of the commitment and contract enforcement as the principle and believe that it cannot be stated in dubious cases that the expiration of the contract term results in the total annulment of the obligation ^[18]. Logically and originally (principle of association), it has to be confessed that the recent idea is right because the principle of the necessity of the contracts alongside with the exceptionality of the restriction of the obligation performance within a given period of time entails the necessity of the commitment's persistence and its enforcement and the opposite case needs justification through acceptable and robust proofs.

Some believe that the early performance is occasionally considered as a breach of a contract. For instance, if an airplane ticket is bought for taking part in a special and particular conference and/or if an order is issued for the preparation of food and these commitments are performed before the due date, it would be a sort of intentional violation! ^[18] Such an opinion does not seem to be correct because the thing corresponding to the sure legal and customary principles and regulations is the necessity for keeping the promises in accordance to the significations of the contract's contents so how the early performance that lacks any necessary executive justification and substantiation can be realized effective in the existential credibility and persistence of the contract?

Performance Condition and its Violation:

Performance condition is amongst the other in-contract provisions. It includes the setting of the performance or non-performance of a material or legal action as a condition within the format of a contract in favor of one of the contracting parties or both of them or a third party. Article 234 of the civil law stipulates in a definition of the performance condition that "performance or non-performance of an action is set as a condition in favor of a contracting party or a third party".

Verdicts and Effects Stemming from the Violation of the Performance Condition:

Contracts may contain various subjects that have to be fulfilled completely. The idea that the principle is the performance of the contracts as well as the contract revocation right as the last solution and cure in case of its violation is a rational maxim predicted and implemented in the majority of the legal systems. As the primary goal and motivation of the contracting parties in every contract, requiring the implementation of the commitment and performing of the obligation is the first sure right of the beneficiary who has suffered losses by the violation of the condition. From the perspective of the Imamiyyeh jurisprudents, as well, keeping the promise is an accentuated obligation that has not been denied by anyone ^[19].

The subject of the performance condition might be a material and positive action or a material and negative action; it might even be a legal positive or a legal negative action casted within the format of the performance condition in contracts or unilateral obligations^[8]. There are three substantial effects imaginable for the performance condition and its violation: 1) the necessity of taking measures for the actualization of the condition by the benefactor; 2) permissibility of coercing the benefactor to the performance of the condition; and 3) actualization of revocation option for the beneficiary in practical impossibility of compelling the benefactor or another person to the performance of the contract^[1].

There should be no doubt about the necessity of remaining loyal to the performance condition and binding nature of it as the late Sheikh Ansari (may Allah consecrate the honorable soil of his tomb) also believes in the obligatory necessity of the performance condition^[20]. It has to be noted that it is the duty of the court to distinguish and recognize based on the contract's contents and the nature of the conditioned action that whether the performance of a condition is possible by the others or only the benefactor is required to fulfill it^[18].

The Right to Require the Condition's Performance:

When an obligor denies performing of the action, the opposite party can require the performance. According to the honorable ĀYA "*Owfū Bi Al-Oqūd*" and the ĀYA "*Al-Mo'menūn Enda Shorūtehem*", it is necessary and obligatory to perform any condition and obligation and the obligor has to be required to do so as long as it is deemed feasible. The unilateral annulment is amongst the means of the abortion of right in a specifically unilateral manner featuring its own specific verdicts and titles in the law^[21, 22]. Now, if one of the parties refrains from the fulfillment of the obligation (whether a primary or conditional one), can the beneficiary choose the revocation right based on the violation of the contract even with the possibility of the contract's performance or such a right has to be chosen in the last stage of the implementation and legal mandate? There are various and different notions put forth in this regard and many have supported or disapproved them.

The existential ground and expediency of the entire options, in the first place, depends on the conclusion of an authentic and binding contract. And, the contract revocation, no matter how it occurs, would be followed by legal mandates one of which is the right to revoke. As it was known, the principle is the necessity of the contracts and performance of the obligations and the legislator, as well, has emphasized in various spots on the availability and performance of this principle. "The contract law holds that the violator should be compelled and the two parties have to remain bound to the contract as long as the performance of the contract's contents is possible"^[23].

There are various ways for requiring an obligor to the performance of the obligation and s/he can be directly or indirectly forced to the fulfillment of the contractual duties. In general, financial and physical requirements are two common methods of coercing the obligor with the former having drawn a

lot of attentions. Obligation's performance at the cost of the obligor by the person in whose favor the obligation has been made and/or by a third person and determining a delay fine per every day can be considered as a sort of financial requirement in its general sense. Furthermore, in the articles related to the enforcement of the civil verdicts, the legislator has mentioned the methods of requiring the performance of an obligation in case it is being denied by the obligor. In jurisprudence, as well, financial requirement has been discussed in case of the avoidance of performing the obligation^[24, 25].

In Iran's judicial history, financial requirement has always been one of the common methods of contracts' enforcement in cases of the obligor's refrainment. But, it has to be known as some great jurists believe that "financial coercion is so necessary and matching with the legal principles that the legislator's silence since 2000 should be taken as negligence and forgetfulness and the institution that has no substitute in the legal system should not be eliminated"^[18]. There are also cases of financial requirement in proportion to the obligation's subject in the law on the enforcement of the civil verdicts and the forthcoming part succinctly deals with some of them^[26].

Physical requirement in various methods was amongst the customary methods of coercing the obligation's performance in the past. A clear example of the physical requirement is the obligor's apprehension. The jurists realize it permissible to arrest an obligor if his or her insolvency has not been justified for the payment of the debts^[24]. But, if the insolvency of a debtor is justified, s/he cannot be physically required as it is explicitly ruled in an ĀYA in the holy Quran^[25].

Vicarious Performance:

The person who is obliged to perform an obligation is called obligor so if s/he withdraws from performing the obligation, the opposite party can file a lawsuit against him or her and demand the performance thereof. However, the legislator has allowed in some of the cases that it is also credible to perform the obligation via a non-obliged person in which case the contract is deemed terminated. Article 267 of the civil law stipulates that the fulfillment of a debt by a non-indebted person is also permissible whether s/he is permitted by the debtor or not; however, this latter person can refer to the debtor if s/he has been assigned to do so by him or her.

It is sometimes the case that the obligor avoids the fulfillment of a condition and/or cannot personally afford it. In this case, the legislator allows the obliged party when it is not possible to personally require the benefactor for the enforcement of the contract to implement it himself or through a third person but at the cost of the obligor. Article 238 of the civil law stipulates that "when an action is set within a contract as a condition and it is found impossible to require the benefactor to its performance but possible to do so through a third person, the ruler can set the ground for its performance at the expense of him or her. This verdict is exemplified in a case that the benefactor's participation in the fulfillment of the contract has not been set as a condition such as when a brick-layer is obliged to build an edifice by his own participation in which case the contract cannot be enforced by a third person without the satisfaction of

the beneficiary in case of the impossibility of requiring him to do so ^[27].

The important thing is that the beneficiary cannot unilaterally demand and accept the performance by a third person without referring to the main obligor and verification of his or her refrainment and non-affordability as well as without referring to a legal authority. "That is because performance of another person's obligation should be done either by the obligor's permission or by the enforcement office's permission; no reference can be made to the defeated party if his or her commitment is fulfilled by the winning party or a third person without observing these cases ^[26]

Revocation Right:

Revocation right with violation is another sort of the civil legal mandate featuring a contractual root and capable of being used as a means of loss compensation or at least as a barrier for preventing the imposition of loss. In legal terms, the revocation right enables the termination of the legal existence of the contract by either of the two parties or by a third person. Thus, revocation right should be enumerated amongst the instruments of the obligations and contracts' abolishment ^[28].

The revocation right originating from the contracts or, in more correct terms, the revocation right stemming from the parties' agreement in the course of contract conclusion and enforcement might take the form of an option and/or it might be set as a rescinding right that is granted to the beneficiary in case of the benefactor's violation of the contract. However, "disregarding its existential premise, the revocation right is amongst the financial rights and features a supportive and specific visage in all of its states and it should not be thought as the regulations related to the public order" ^[22].

The Vertical or Horizontal Alignment of the Coercion and Revocation Rights:

Almost in the entire world, the violation of a contract causes the granting of a revocation right to the other party in cases it is essential. But, in Iran's laws, the well-known theory opines the coercion based on the criterion unity principle in regard of the verdicts of the performance condition and does not accept the revocation except in case that the coercion is not possible and the vicarious performance is also excused ^[29]. It is deemed expedient in the articles 237 to 239 of the civil law that the beneficiary cannot seminally revoke the contract all at once in case of the violation of the performance condition but s/he has the right to coerce the benefactor; in the next stage, as well, the vicarious performance can be applied and the revocation right is granted as the last means. Now, the question is that can the transversal nature of these legal mandates be accepted as a general axiom or not? The civil law does not apparently allow interpretations except in some certain conditions.

It can be discerned from the expressions by some jurists in the jurisprudential resources that there is no vertical relationship between the requirement and the revocation right in cases of the violation of the performance condition rather a transversal relationship is governing between them ^[13, 30]. The beneficiary has three options with the violation of the condition:

1) the right to require the performance of the condition; 2) the right for vicarious performance in certain cases; and 3) revocation right.

It was known that the principle is the necessity of the contracts and fulfillment of the obligations and the legislator has also emphasized in various spots on the existence and execution of this principle. "The contract law holds that the person breaking his or her promise should be compelled and that both of the parties should remain bound to the contract as long as it is possible to perform the contract's contents" ^[23]. The criterion in article 239 of civil law that has been expressed under the absolute influence of jurisprudence about the performance condition indicates the same idea. However, there are discrepancies as to whether there is a vertical or horizontal relationship between the coercion to the fulfillment of the commitment and revocation right? Such a discrepancy has been resolved within the format of the performance condition and the obligation resulting thereof.

It is believed by some that the beneficiary can revoke the contract even with the possibility of compelling an obligor to the fulfillment of obligation when s/he refrains from performing his or her obligation and none of these two legal mandates is superior and preferred to the other. This group has offered the following proofs for justifying its theory:

- The revocation right comes about due to the violation of an obligation not due to the impossibility of compelling the obligor to the fulfillment of the contractual obligations.
- The compelling of the violator is an expediency of the beneficiary's right and the revocation right is also justified for him and her in case of the obligor's violation without him or her being excused of the possibility of coercion.
- The existence of the revocation right stems from the axiom of no loss and the reference to a judge and filing of a lawsuit might be per se a cause of the beneficiary's sustainment of loss.

This theory is consistent with the social order and veneration of the individual rights ^[12, 31]. On the contrary, another group ^[22, 32] believes that the revocation right can be created by any common means only after the benefactor's being excused of the obligation's performance and that the revocation right cannot be justified before that. So, the revocation right is the last weapon that should be taken into consideration for loss compensation. The proofs of this group, as well, for the justification of their theory are the followings:

- Possibility of revoking a contract is the secondary preemptory prerequisite that no extreme measures should be taken in its implementation.
- Revocation right serves the loss compensation and it is with the possibility of coercion to the contract enforcement that no loss would be suffered.
- The principle is the necessity of the contracts and remaining bound to its contents and essentiality of the

contract's persistence; the volitional resolution of the contract should be recognized as the last solution for preventing the individuals' misuse of the revocation right.

Conclusion:

It can be concluded based on what was mentioned in the present article that the conditional obligations possess legal and canonical requirement like the primary obligations of the contract for the implementation of the contents therein and the obligor can be required based on the legal and jurisprudential principles and regulations in such cases to the performance of the obligations stemming from the in-contract conditions. Of course, considering the nature of the conditions' subjects, it might be impossible to require and coerce their performance such as the corollary condition that should be actualized as soon as the contract is concluded and there would remain no solution other than the revocation right for the beneficiary in case of being left non-actualized and coercion to the performance of the condition loses its subjectivity. Therefore, the corollary condition is inviolable. But, the benefactor can be in the majority of the cases required to perform the contents of the qualification and performance conditions and the unique legal mandate related to the same condition has to be implemented in case of the denial and violence of the conditional obligations and the vicarious implementation of the obligation's subject can be carried out in case of his or her being excused of doing so and evocation right is the last option for a beneficiary. In cases that there is reached an agreement on participation in the performance of the condition, the vicarious implementation is cancelled in case that the benefactor is exempted from coercion. As for the participation condition, as well, the vicarious implementation of the condition's subject by another person is impossible unless it has been agreed by the beneficiary in which case there will be left no other choice but the revocation of the contract. Of course, it has to be known that the benefactor's satisfaction for the implementation of the condition by a third person is necessary in case that the participation condition is set in favor of both the parties and/or only the benefactor.

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