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THE TERMINATION OF KNOWN CONTRACTS IN CIVIL CODE AND THE CASES OUT OF THE CIVIL CODE OF IRAN

Amir Vahidi Nezhad, Issa Alijanpour*
Master in Private Law, Kish Campus, University of Tehran, Tehran, Iran.

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ABSTRACT

A contract is a legal phenomenon, the enforcement of the provisions of which is terminated usually by acting based on the undertaking. The termination of a contract is dependent on the subject and various causes, and cancelation and dissolution are clear examples of that. For example, in article 344 of the Civil Code of Iran, the sanction of enforcing lack of appointing the time limit of submission and lack of mentioning the contractual conditions can make the sale definite, and the time limit is assigned to an arbitration court in some cases. Time fixing has various aspects and effects in different contracts. In some cases, the parties can't or refuse to fix the contract time at the time of the establishment of the contract for any reason, which is called an open contract. This is against the basic conditions of the establishment of a contract and is doomed to cancellation. On the other hand, such contracts are today recognized. Besides, in the enforcement step of a contract, time fixing is vital, and in case of expiration of the agreed period and preparation of terms of the claim, the committed party is charged to enforce the contractual provisions. In general, the principle is one the emergency of the fulfillment of undertakings; although the parties can fix a time to enforce the contract. Hence, the beginning and signature time of the contract should be specified, because it can be effective in terms of effects of the contract, the possibility of claiming for compensation, or fulfillment of undertakings. In this study, the contract period (from the time of establishment to the termination of contract) is evaluated regarding its effects.

INTRODUCTION

Nowadays, sometimes entities refuse to fix the time for fulfillment of undertakings in contracts at the time of conclusion of a contract for any reason. This issue is not predicted in Iran law, and the lawyers consider just the general provisions of the contracts and invalidate some provisions and terms because of the deficit and unknown nature of the regulations. However, with the analysis of some modern contracts, it could be mentioned that the legislator has legitimated the contracts in some cases. These contracts have been legitimated today because of expediency and economic requirements in the developed countries. The termination of the contracts is dependent on various factors. In the rest of this article, different

dimensions of that and the consequences are analyzed in different types of contracts.

A contract is a legal phenomenon, the enforcement of provisions of which is ended by fulfilling an undertaking. The termination types of a contract are depended on the subject and various factors, and dissolution and cancellation are clear examples of that. For example, in article 344 of the Civil Code of Iran, the sanction of enforcing lack of appointing the time limit of submission and lack of mentioning the contractual conditions can make the sale definite, and the time limit is assigned to an arbitration court in some cases. Hence, on the time fixing, it is hoped that the opinions of domestic and foreign lawyers and the experiences of developed countries can be an effective step toward amendment of the regulations in future and to legitimate the contracts. Theoretically, the study has no long history on the time of traditional and modern contracts in Iran Law.

The concept of the period and its impact on contract

Period means certain course and time[1]. In the foreign dictionary, the period is given as course length. The aim by a period in contracts is the timeline from the time of the birth of contract, the life story and death of the contract[2]. After the sequence of offer and acceptance, the validity of the contract is created, and then, the contract is terminated by doing undertakings of parties. The period of the contract is the timeline, within which the subject of the contract should be completed. In other words, one of the conditions of the committed party is the arrival of the deadline, which is terminated after enforcement of the contract. In some contracts (e.g. hire contract), in the hire of inanimate things, the period of hire must be specified, or else, the hire contract is void. (article 468 of the Civil Code of Iran). In some contracts of providing services, the period is vital, such as a contract on a temporary thing or test course, which allows the employers to select or not to select an employee. In this case, after the test course, the employer can renew the contract in the best way or refuse renewal of the contract (articles 7 and 11 of the Labor Code of Iran). However, this study has investigated the role of period in the different contracts including traditional and modern contracts from the time of establishment to the termination. Distinguishing the time of the establishment of contract used to encounter no problem at the time that the treaties used to be concluded traditionally and n presence of two parties. The realist is that the Civil Code has no article on this subject, and no valid solution also exists in other laws. Therefore, the nature of compromise and the interest associated with enforcement of justice and preservation of order in transactions should be used, and the rule of reason and experience shall be replaced instead of quotation[3].

According to the general rules, the provisions and terms of the contract shall be enforced immediately after the conclusion of the contract. However, an interval is sometimes created between the establishment of

[1] Moein, Mohammad (2001), Moein Persian Dictionary, Tehran, Farhang Nama, p. 969.
[2]For further reading, see: Katozian, Nasser, (2015), General Rules of Contracts, Vol. 5, Contract Dissolution, Tehran: Enteshar Co., p. 9; Scholar Mostafa (2012), The Realm of Execution and Interpretation of Legal Rules, Vol.3, Research Institute Publications, 1st edition, p.6
[3]Katozian, Naser (2016), General Rules of Contracts, Vol. 1, Tehran: Enteshar Co., pp. 350-351.

contract and enforcement of that, which is called deadline interval. The period of fulfillment of undertaking in contracts is underlying. Article 226 of the Civil Code of Iran says: "in the event of non-fulfillment of an undertaking by one party, the other party cannot claim damages for loss sustained unless a special period was fixed for the fulfillment of the undertaking and that period was expired." Therefore, the period is divided into three groups including contractual deadline, legal deadline, and judicial deadline. The undertaking deadline is the legal relationship between the creditor and the debtor. For example, it is stipulated, in the loan contract, that the debtor shall pay back the debt to the creditor after three months, or the damage caused by the omission of the undertaking party may be postponed to six months later. The contractual deadline may be implicit. In other words, in the case that the nature of undertaking prevents rapid fulfillment of that (e.g. transiting commodities abroad), the basis of fulfillment of the contract is the delay. In this case, the court respects their opinion and agreement, and the appearance of the contract is considered in terms of fulfillment of an undertaking. In some other cases, the period of fulfillment of undertaking is specified by rules. Article 344 of the Civil Code of Iran says: "*...,* unless under established rules and local usage or commercial rules and practice certain conditions or time limit exist for commercial transactions even though they have not been stipulated in the contract of sale." In case of delay in economic rules, or delay in fulfillment of undertaking, the rules shall be enforced. The court shall appoint a deadline for fulfillment of the undertaking, even if two parties are not aware of that. Article 356 of Civil Code of Iran says: "Anything which according to common usage and practice should form part of the object sold or is considered as an attachment to it or which is indicated to be a part of this object forms part of the sale and belongs to the purchaser, even if this has not been clearly stated in the contract of sale and even if the two parties of the contract were not aware of the common usage.[4]" In some cases, the legislator fixes time for settlement of some debts, which is called a legal deadline.

Importance of fixing time in the contract

The parties can take measures for fixing time for whole transactions or some part of that and the undertakings caused by that in the phase of the establishment of the contract. For example, whereby article 338 of the Civil Code of Iran: "a sale consists of the giving possession of specified goods in return for known consideration". Hence, fixing time to fulfill the undertakings of the sale contract such as the delivery of the subject of the sale, or payment of the price is different from fixing time for the establishment of the contract. In possession of specified goods in return for unknown consideration, the time fixing may change the origin of the contract, and can't be realized. However, fixing time concerning the fulfillment of undertakings of a sale contract, expiration, or even lack of fixing that may result in effects such as demand for mandatory enforcement of the contract, the way of asking for compensation of losses caused by lack of fulfillment of the undertakings, or necessity of each party to fulfill the

[4] Katozian, Amir Nasser (2012), General Theory of Obligations, Tehran, Mizan Publications, Vol.31, 6th Edition, p.84.

terms of the contract. Fixing time has different effects and aspects in different contracts in the hire contract; fixing time is the condition of validity of the contract. In the deposit contract, in addition to fulfillment of the contractual provisions, it can change the trust possession of the attorney and the depositor to guarantee possession. It can make the property return to the owner. In the mortgage contract, fixing time can lead to the destruction of the right of the entity in terms of referring to the entity or property subject to the transaction. In the phase of enforcement of contracts, fixing time can be effective, and in case of expiration of period and preparation of the terms of the claim, the undertaker is charged to fulfill the contractual provisions. Fixing time on the undertaking terms and the fulfillment methods are usually dependent on the agreement of the parties. The parties have the power to postpone the fulfillment of the undertakings made by the contract totally or partially and make an interval between the time of establishment and enforcement of the contract. Anyway, the basis is on the emergent fulfillment of the undertakings; although the parties can fix a time for enforcement of the contract. Hence, the beginning of the contract and the signature time should be known, because it can be effective in terms of the effects of the contract and the possibility of asking for loss compensation, or fulfillment of the undertakings. In the rest of the study, this discussion is extended.

End of the period is known contracts subject to the Civil Code (examples of continuous agreements in known contracts)

The known contract refers to a contract with a specific name in law, and the effect and the terms of which are determined by the legislator. In other words, the legislator has attempted to order the contracts regarding known title for them in law, or by mentioning relevant regulations and terms of the contracts. One of the classifications of contracts is in terms of the lifetime of the contract and the validity time in continuous contracts. In these contracts, as it is evident from the name, there is no emergency and the cont5ractual relation is provided over time as it is presented in table 1.

Table 1: examples of continuous agreements in known contracts

type of contract	explanations
Hire contract	One of the most underlying known contracts is the hire contract, in which the will of parties can never affect that in terms of enforcing the rules governing it. Article 466 of the Civil Code of Iran says: "A hire is a contract whereby the hirer becomes the owner of the profits resulting from the thing hired." According to the definition, the hire is conditional and is similar to a sale contract in terms of the right to imprisonment, and power of submission or wastage of one of the two exchanges before taking. The establishment of a hire contract follows the general regulations of contracts. In this contract, both parties shall have a serious and healthy will. Besides, at the time of the establishment of the contract, the subject of hire shall be known and legal.

reward (Ji'ala) contract	A ji'ala or contract of reward is defined as the engagement of a person to pay a known recompense, in return for an act, whether the other party is specified or not (article 561 of the Civil Code of Iran). Under article 563 of the Civil Code of Iran, In a contract of ji'ala the specification of the reward in all particulars is not necessary; therefore, if a person engages himself to give to whoever finds an article of his which he has lost a specified undivided share in it, the contract of ji'ala is in proper form. In this contract, the offer may be general to parties and the forger may announce that the person taking an action will be rewarded if the desired result is obtained. Hence, in the rewarding contract, less strictness is applied on the conditions of the offer's accuracy to meet the need of people to these transactions.
lending contract	Whereby article 635 of the Civil Code of Iran: "Lending is a contract whereby one of the parties gives the other party permission to derive profit, gratis, from a thing belonging to the former." The person who gives is called the lender (mu'ir) and the person who receives is called the borrower (musta'ir). Definition of the contract due to the accuracy of the term "permission" shows that the contract is authorized and the main effect of that is permission to derive profit.
deposit contract	Under article 607 of the Civil Code of Iran: "By Deposit is meant a contract whereby one person entrusts a thing belonging to him to another so that the latter should retain it for him free of charge, The person who deposits is called the mudi (depositor) and the person who receives the deposit is called the mustaudi or the amin (trustee)." The superior theory of authors of the French Civil Code is that condition of hire for the trustee can never change the origin of the deposit5.
agency contract	Following article 656 of the Civil Code of Iran: "An agency is a contract whereby one of the parties appoints the other as his representative for the accomplishment of some matter." Whereby the article, an agency is an authorized contract and the effect of that is granting representativeness; meaning that the principal considers the measure of the agent in legal action as the action of self, and authorizes the agent to make occupations on behalf of the principal. Hence, the agent is a mediator against the effects of affairs and takes measure for the principal6.
contract of guarantee	Article 684 of the Civil Code of Iran says: "A contract of guarantee is defined as such that a person takes upon himself the responsibility of a property which forms an obligation upon another person. The person who accepts the obligation is called the zamin (guarantor); the other person is termed "mazmunun Ia" (the beneficiary), and the third person is termed "mazrnunun anh" (he for whom the guarantee is given) or the, original debtor." Based on the definition, as a result of the guarantee, the debt of the debtor is assigned to the guarantor. Following article 685 of the Civil Code of Iran, "In a contract of guarantee, the consent of the original debtor is not an essential condition." From the moment that a person becomes responsible for the debt of another person against the creditor and accepts the assignment, the contract of

[5]Mazeaud, Henri,Leon et jean1995,Lecons de Droit Civil, Paris:Editions montchrestien,T. 3.
[6]Katozian, Nasser (2012), Known Contracts 2, Ganj-e-Danesh Publications, Vol. 53, p. 59

	guarantee is established.
assignment contract	Article 724 of the Civil Code of Iran says: "An assignment is a contract in virtue of which the claim of a person from a debtor is transferred to a third party." The debtor is called, “muhil” (assignor), the creditor muhtal (assignee), and the third party is called "muhalun ‘alaih” (third party assignee). Whereby the article, it could be found that the contract is binding, known, conditional, and does not become definite except with the consent of the assignee and third party assignee (article 725 of the Civil Code of Iran). After the assignment is effected, the obligation which was incumbent upon the assignor in respect of the assigned debt is discharged, and the obligation attaches to the third party assignee (article 730 of the Civil Code of Iran).
Personal Surety (Kifalat) (Bail-bond)	Article 734 of the Civil Code of Iran says: "A “kifalat” is a contract by virtue of which one of two parties engages, with the party, to produce the presence of a third person, when summoned. The person who engages is called “kafil”; the third person is called a “makful” (the object of personal guarantee), and the other party is called “makfulun lah” (beneficiary)." The provisions of the article show that the Kifalat is one of the guarantees of the debt.
pledge mortgage(contract)	The mortgage contract, similar to other contracts, needs an offer on behalf of the debtor and acceptance of the creditor. In this contract, taking the pledged property is an essential condition. Article 772 of the Civil Code of Iran says: "The property which is pledged must be transferred to the possession of the creditor, or to that of a person agreed upon by the two parties; but it is not a necessary condition for the validity of the transaction that the property should remain in that possession." The Legal Department of the Judiciary has said in counseling theory No.7/9318 in march 2006: "the aim by transferring the pledged property to the creditor is a customary assignment, and continuity of assignment is not the condition for its accuracy"7. Offering pledge may be taken by assignment. A transaction may be created by an act that indicates intention and consent, such as taking delivery or handing over unless in circumstances excepted by law (article 193 of the Civil Code of Iran). Besides, it may emerge as stipulation such as sale, hire, or marriage8. Giving mortgage and accepting that may be accepted as the condition on action on the debtor and the creditor9.

The termination in known contracts out of Civil Code

- **Cases of known contracts out of Civil Code**

The Civil Code of the Islamic Republic of Iran has referred to the contracts by certain titles. However, because of the extension of the contracts, the study has not discussed the nature of other contracts out of this work. In the following, the known contracts out of the Civil Code are discussed.

- ✓ **Partnership contract**

[7]Vice President for Legal Affairs (2012), Civil Code, vol.9, eighth edition, p.225.
[8]Hosseini Ameli, Seyyed Mohammad Javad (1947), Miftah al-Kirama, vol. 5, Egypt, commentary on the rules of Allama, pp. 73 and 74.
[9]Katozian, Nasser (2010), Known Contracts 4, Tehran, Enteshar Co., No. 327, p. 507.

a) The origin of partnership contract in Civil Code

The partnership contract has gained a wide range and various forms today. Article 571 of Civil Code of Iran says: "A partnership is defined as the combination of the rights of several proprietors in one single thing by way of undivided shares." Following the article, the undivided share is the origin and nature of the partnership contract, and the realization means of that may be voluntary and caused by the will of partners or can be compulsory. The two types are respectively called voluntary and compulsory partnerships. According to the rationalists, a real partnership observes a case that each partner possesses a common share in the common part of the property; otherwise, a partnership contract is meaningless, if there is no common property. Adl (deceased) has analyzed the Civil Code and believes that a partnership contract is an undivided share in the ownership of multiple properties[10]. The condition for the establishment of partnership is mixing the rights of multiple owners in any part of the common property, and publishing each right is for the total elements. This mode of mixing is called undivided share[11]. In this case, by connecting offer and acceptance and observing the ruling terms on contracts, the partnership contract is established. Hence, the durability of the partnership is dependent on the way of ownership and the commonness of that, and outside mixing plays no role in it[12].

The Civil Code has not defined a partnership contract in the chapter associated with partnership and has taken no name of partnership contract explicitly in articles. Hence, the question is that whether there is a contract called a partnership contract in Civil Code or not? Although the legislator has passed through the partnership contract in some articles carefully, and the sense of anxiety in Civil Code is caused by the disputes on a partnership among the jurists; three theories are available in Imami Jurisprudence on the existence of partnership contract and the subject and effects:

1- A few authors[13] have denied the existence of a partnership contract with the inference that partnership is the result of mixing and sharing in ownership. This may be caused by one of the known contracts or by compulsion. They believe that occupation of common property is made by the permission of the owners and there would be no need to contract.

2- Some scholars[14] have considered two meanings for the partnership:

The first meaning: the community of rights of owners in a property in for of undivided share regardless of the reason causing the situation

Second meaning: a contract, which enables the occupation of owners of the common part of a property in it. In this contract, the way of occupation in the common property and dividend, and the loss caused by this will is determined. This is an authorized contract, which can be terminated by one party whenever he/she wants.

3- Some letters[15] have considered originality for the partnership contract and believe that the said contract is effective in the creation of

[10] Adl, Mostafa, Civil Code, Tehran, fourth edition, p. 631.
[11] Katozian, Nasser (2011), Known Contracts 1, Ganj-e-Danesh Publications, vol. 307, p. 304.
[12] Mehdi, Alhadavi Al-Tehrani, Analytical Review of Company Contract, Proceedings of Sheikh Mofid Congress, No. 97.
[13] Tabatabai Hakim, Seyyed Mohsen, Mustamsak Al-Urwa Al-Wosqa, vol. 13, p. 37.
[14] Muqaddas Ardabili, Ahmad, Al-Faida and Al-Burhan Association, vol. 10, pp. 189 and 190.

undivided share. They have counted it in line with the sale, peace, and conditional contract in the group of known contracts.

Now, it could be found which ideas are accepted by the Civil Code. Following articles 571-588 of the Civil Code of Iran, it could be found that the idea of the third group based on the effectiveness of partnership contract in making undivided share has not been accepted in law; although the majority of composers of the Civil Code have accepted that. This is because; no article is existed in this code to show making undivided share using partnership contract[16]. According to one composer[17], Civil Code has referred to making undivided share in partnership contract in article 573 of the Civil Code of Iran : "A voluntary partnership arises either form any form of contract or from the acts of the partners". It could be found from the article that partnership in Civil Code is a contract; although the composer means ownership contracts in the article such as sale contract and not the partnership contract. This is because; if the author meant partnership contract, he would define it or name its effects at least in the next articles. According to the mentioned, it could be found that the idea of the third group in the Civil Code is never accepted by the legislator. However, regarding the first and second ideas, it could be found that the first one is logical and adapted to the legal principles. This is because; when permission as a legal effect can be realized by will, there would be no need for to presence of contract anymore. Hence, a partnership contract is considered a useless contract in civil code based on the following reasons:

1- The partners can permit the administration of others in the common property, and hence, making a contract between them makes no profit.

2- Partnership contract shall be agreement-based contract and not permission-based. It means that after making common property, the partners agree on managing the property and dividing the profit and losses. However, it should be mentioned that such permission is not the original effect of the partnership contract, and is aimed at committing for the managers to direct the common properties. Hence, if there was a contract called a partnership contract for management of common property, the contract should be binding for the managers undoubtedly. However, it should be added that if the partnership is regarded as an agreement-based contract, time fixing shall be a condition for its accuracy just like a profit-sharing contract (Mudarabah). Anyway, the agreement-based nature of the partnership contract is not accepted in Civil Code, and article 577 of the Civil Code of Iran, has confirmed this in the best way by withdrawing the permission.

b) The position of partnership contract in build partnership agreements

At the first, the question is that whether the build partnership agreement is regarded as a partnership contract or not? As permission-based and agreement-based contracts are two underlying groups of legal

[15]Najafi, Sheikh Mohammad Hassan, Jawahar al-Kalam, vol. 26, p. 287.
[16] Shahbazi, Mohammad Hossein, Principles of Necessity and Permission of Legal Practices, Mizan Publishing, vol.1, 2014, pp. 97 and 98.
[17] Katozian, Nasser, Civil Code, General Rules of Contracts, Vol. 1, No. 3.

measures and have known and unknown examples, the permission-based contracts shall be separated from the agreement-based contracts. Then, the nature of that is discussed with specifying that whether a partnership contract is permission-based or agreement-based. In permission-based contracts such as partnership, profit-sharing, deposit, and lending contracts, there is no commitment and requirement, and they would be realized by permission. By elimination of permission, the contracts are void. On the contrary, the contract of assignment, guarantee, kifalat, hire, Musaqat, mudareah, and marriage contract (nikah) are agreement-based contracts, and the dimensions of the contracts shall be analyzed to obtain the nature and examples of the contracts. However, there is no legal precision on permission or agreement-based nature. According to the mentioned, it should be accepted that partnership is in the group of permission-based contracts. The effect of time fixing for permission, whether is required to the end of time or remain on the withdrawal, the origin of the permission is eliminated with the expiration of the time. Whereby the paragraph 1 of article 587 of the Civil Code of Iran, in Civil Code: "The partnership is dissolved in case of share-out". Hence, it could be mentioned that the position of the period in survival and dissolution of a partnership is dependent on the time of permission. One of the underlying issues of partnership is a partnership in the building. Whereby the article 1 of the Building Presale Act approved in 2010, a person is responsible for building and completing the building in the land of the owner, and several apartments are assigned to the builder per hat in the stipulation. It could be mentioned that this kind of contract is not in the partnership contract. Under article 1, paragraph 7 of the article of the said law, the delivery time follows the contractual terms. If the undertaker has not fulfilled the undertakings in the specified time, the partnership contract is dissolved because of the permission-based nature of the partnership. The agreements are dependent on permission, and permission is valid just within the appointed period. Now, the question is that what can be the destiny of the contract if a person signs a building partnership contract with the landowner within 3 years, and takes no measure to fulfill the undertakings on completion of the building during the period? Whether the undertaking of the builder is desired unity or desired plurality?

To answer the question, two assumptions of obligation or capacity of the undertakings over the time in the world of validity should be separated. Sometimes time is the capacitor and the undertaking is the content, and sometimes time is obligation and the undertaking is obliged. For example, a building company, which is obliged to build 200 apartments within 1 year with specified conditions and area and deliver that to the employer, the period is not an obligation, and the one year is the duration and period appointed to fulfill the undertakings. In case that time makes an obligation, with the expiration of time, the undertaking is also dissolved. Due to juridical interpretations, when time is expired, the undertaking is also dissolved. In these cases, the obligee has just the right to ask for the loss compensation because of lack of fulfillment of the undertakings. The obliged has no responsibility to fulfill the undertaking and compensate the losses of delay for the aforementioned reasons. In legal documents, the obligation of the undertaking is called desired unity, and the capacity of the undertaking is called the desired plurality. Regarding the type of correlation

of time and the undertaking, when the obligation of fulfilling the undertaking is the case of commitment, it could be impossible with the expiration of the contractual period. In this case, the obligee can just ask for loss compensation by the obliged because of lack of fulfillment of the undertakings. On the contrary, if the time is not the limitation of the undertaking, and is just the duration of the first enforcement of the contract, the undertaking can be fulfilled again out of the said time. In this case, the obligee can ask for the fulfillment of the undertaking, in addition to ask for compensation of loss caused by delay[18]. Hence, the expiration of the period has the capability of survival and is not limited to time and vice versa. On the contrary, if the undertaking has not the capability of survival, it could be found that is limited to time. Hence, the obligee in this discussion has just the right to ask for loss compensation, and can never ask for the fulfillment of undertakings and loss for the delay. Therefore, it could be found that the permission is void in case of dissolution because of the permission granted in the partnership because the branch follows the origin.

- ✓ **An insurance contract**

As an insurance contract is the product of freedom of will and agreement of the parties, it needs composition of the insurer same as other contracts. The offer is made usually by the presentation of the offer form by the insurer. It should be noted that the way of making offer varies in different types of insurance. For example, in marine insurance, the offer is made based on the paper prepared by the insurance agent and signed by the insurance issuer. In property insurance, the insurer makes the offer along with the insurance fees for the insured and the insured accepts the offer. The legal basis of competence of the insurer can be articles 210 and 211 of the Civil Code. Also, the legal basis of competence of insured can be the Law on the Establishment of the Central Insurance of Iran and Insurance approved in 1971, and the Bill on Nationalization of credit insurance institutions approved in 19790[19]. The subject of insurance shall be legal and known, other than the competence of parties. As the insurance danger is vital for loss compensation, and the insurance contract is concluded just for this purpose, statistical indicators shall be referred to measure the danger by the insurer, so that the probable dangers are estimated and the fee is determined on this basis[20]. Article 1 of the said insurance defined the insurance contract as follows: "insurance is a contract whereby a party commits to compensate losses of the other party in case of accidents due to payment of fees or pay definite fees. The obliged is an insurer, the fee paid to insured is insurance fee, and what is insured is called the subject of insurance". According to the definition, the insurance contract shall be regarded as a binding and known contract. The insurance law has not specified the realization time of the insurance contract; although the legal scholars have accepted the theory of submitting the acceptance due to

[18] Al-Sheikh, Mohammad, The essential conditions of insurance contract validity and its formal structure, Insurance Industry Quarterly, 20th year, No. 1, Spring 2005, pp. 87-122.
[19] Al-Sheikh, Mohammad, The essential conditions of insurance contract validity and its formal structure, Insurance Industry Quarterly, 20th year, No. 1, Spring 2005, pp. 87-122.
[20] Uber, Jean-Luc (1993), Life Insurance and Other Personal Insurance, translated by Jan Ali Mahmoud Salehi, vol.1, Tehran, Central Insurance of Iran, p.33.

articles 339, 183, and 191 of Civil Code, and believe that the theory is consistent with the domestic regulations of Iran[21].

✓ **Employment contract**

An employment contract is established in any form, in written or oral forms, and the consent of both parties is the original element of the contract same as other contracts. Hence, the contract subject to employment law is today out of the powers of parties, and strict regulations are applying in terms of customary laws and the relation to public order. For example, the employer can't appoint the worker in an employment contract for a fee less than the minimum wage determined, and the measure is against the real mission of Labor law. The real mission of Labor Law is the protection of the rights of workers, and violation of that can be an offense (article 41 and 174 of Labor Law of the Civil Code of Iran). Also, to establish an employment contract, the parties shall have legal competence. Whereby the Labor Law, the worker is a real entity; although an employer can be a real or legal entity. Article 3 of Labor Law of the Civil Code of Iran, says: "An employer is a natural person or a juridical entity at whose request an account as worker works against receipt of remuneration." Hence, if the worker and employer are a real entity, they shall be mature and wise, because article 1207 of Civil Code of the Civil Code of Iran, specifies: "The following persons are considered as under disability and are forbidden to take possession of their property and their pecuniary rights: minor children, persons who have not matured, and lunatics". Following the article, it could be found that the offer is announced by the employer, and the establishment of a contract is dependent on the acceptance of the worker. Other underlying points are legality and definiteness of the employment contract at the time of the establishment of the contract. T means that if the employer employs the worker to commit illegal measures such as making alcoholic drinks or producing corrupted food materials, the contract is void in terms of illegality. Besides, it shall be specified at the time of the establishment of a contract that what are the rights considered for the worker? The issue here is that what are the professions and job skills of the worker and it shall be specified that for what skills the worker is employed.

✓ **Leaving employment**

One of the cases of cutting the employment relationship, which is not referred to in the Labor Law, is leaving employment. In other words, the worker, in this case, is not present at work without informing the employer and has violated the formalities inserted in the note of article 21 of Labor Law of the Civil Code of Iran, (one-month presence and gaining the consent of the employer). Under such conditions the employment contract is void, and the date of dissolution of the contract becomes the same date of exiting the workshop.

- **the effect of a contract in period-based known contracts in terms of the impact of time**

[21]Shahidi, Mehdi (1998), Formation of Contracts and Obligations, Ch 1, Tehran: Hoghughdan Publishing, Vol. 1, p. 161.

In the period-based contract, the subject of the transaction is in such a way that shall be fulfilled during a certain time and over time, and the examples for that can be the hire contracts and the construction contracts, the subject of which is profitability and doing something. Insurance contracts and the establishment of pensions are examples, which can be mentioned for periodic contracts with periodic enforcement of them. In this group, the subject of the contract, on certain money or property is not naturally along with the time, although it is correlated to time as a result of a compromise in such a way that its origin is changed into a period. However, it is clear that in the hire of inanimate things the period of hire must be specified, or else, the hire is void (article 468 of Civil Code of Iran). However, in other cases of periodic contracts, mentioning the period is not the condition for the accuracy of these contracts. Sometimes the transaction parties can change some continuous contracts to urgent contracts with the compromise of two parties. According to the definition mentioned for the periodic contracts, the majority of contracts such as hire, agency, partnership, Kifalat, Jialah, lending, deposit, guarantee, and pledge contracts are periodic contracts. The vote No.214-92/3/27 of the General Assembly of the Court of Administrative Justice considers the contract as a permanent contract in the analysis of the works without mentioning continuous aspect and without mentioning the period in the contract. In terms of the significance of fixing time, even temporarily, the contract is regarded as periodic[22]. On the differences between urgent and periodic contracts, in terms of time, it could be mentioned that urgent and periodic contract is significantly different in terms of time:

1- In a periodic contract, the effect of cancellation is associated with the future (articles 483, 496, and 497 of Civil Code of Iran,); although cancellation in an urgent contract is from the time of establishment.

2- In a periodic contract, the time has a direct impact on the collapse of the undertakings, and one never can claim that the effects of the contract terminated before the deadline; although the contract is terminated immediately after fulfillment of undertakings.

- **Unknown contracts out of the Civil Code**

The variety of social needs has led to the establishment of other contracts with the common will of parties in addition to the explicit contracts in the Civil Code based on general regulations of contracts and the rule of will, and the contract is called an unknown contract. Hence, according to the plurality of the contracts, some of them are referred to here:

- ✓ **Manufacturing Contract (Istisna)**

Istisna (manufacturing) is derived from the root "Son'a" meaning demand to manufacture goods with known descriptions in the future. In other words, the subject of sale does not exist at the time of the establishment of the contract, but also it will be created in the future (e.g. the future productions of the production line). In Shia Jurisprudence, the

[22] Vote No. 214 - 3/27/92 of the General Assembly of the Court of Administrative Justice: ... Jobs of continuous nature, shall be considered indefinite in case no period shall be mentioned in the employment agreement (note 2, article 7 of Labor Law of Iran approved in 1990)

early scholars have discussed istisna, and have regarded it as an inaccurate legal contract. Hence, they have not analyzed that[23]. Among the Shia jurists, the early jurists are silent on the nature of istisna, and a few jurists have voided it[24]. After preliminary discussions between parties, a contract on the assignment of property is established, whereby the agreed good is assigned to the customer after production with no need to present another composition. This kind of contract of manufacturing in Iran Law is adjusted with the sale of future property[25]. This is because, whereby the article 338 Civil Code of Iran, a sale consists of the giving possession of specified goods in return for known consideration. Hence, the contract is the basis and cause of commitment, and the contract as credit and the legal cause can leave other effects than committing due to the case. In this way, the direct effect of the contract of sale is possession[26]. Hence, it is necessary to consider it as a binding contract and to block the ways of violation of undertakings and causing a loss for the other party. Also, the cases of termination of the contract shall be limited to the existence of power and authority[27]. The principal subject of this contract is a commitment to making goods over time. According to the significance of time, the contract shall be regarded as a periodic contract. Here, it should be noted that the contract leads to a commitment to make goods for the wage received in cash or by installment. In some cases, if the same commitment is given to the good by the manufacturer for a certain fee, the author believes that the time can't be regarded as the scale to determine the subject of a contract anymore, and it shall be regarded as an urgent contract.

- ✓ **contracts with a floating price**

The industrial and economic evolution of the current age has evolved the commercial relations. Long-term contracts, insurance contracts, and presale contracts are the agreements established based on industrial and commercial requirements. These contracts are discussed under the title of contingent contracts. According to the general principles of definiteness of prices is the fundamental condition of the accuracy of the contract. This issue is also confirmed in the majority of legal systems. From ancient times in Roman law, the periodic contract was valid, and its fee was absolute. Hence, if evaluation and determination of the price of the transaction used to be postponed, the contract was void[28]. Besides, in the ancient legal system of Europe, pricing was one of the fundamental conditions of the contract, and the contract was void without it[29]. In Iran's legal system, which is derived from Imami Jurisprudence, the jurists have emphasized the definiteness of prices[30]. In this field, article 216 of the Civil Code of Iran

[23] Tusi, Muhammad ibn Ali ibn Hamzah (Ibn Hamzah), Al-Waseela al-Nia al-Fazilah, Editor: Sheikh Muhammad Hassoun, first edition, Qom, Maktab 1 Ayatollah Al-Marashi Al-Najafi, 108 AH, p. 257.
[24] Abu Ja'far Muhammad ibn Hassan Tusi, Al-Mabsut fi Fiqh Imamiyya, vol. 2, Editor: Mohammad Taghi Kashfi, 3rd edition, Tehran, Al-Mortazaviyeh Library for the Revival of Al-Jaafaria Works, 2008.
[25]Mohammad Reza, Pir Hadi (2007), Transfer of ownership in a contract of sale, Tehran, Shalizeh, p. 114 onwards.
[26] Ahmadi Mohammadreza, Rights of Subordinate Obligations, (2015), Mizan Publications, p.18
[27]Zeinab, Seifi, et al., Istisna (manufacturing) in Iranian jurisprudence and law, Journal of Legal Research, No. 50, Fall and Winter 2009.
[28] F. Zuluct, The Roman Law Of sale, Oxford, The Clarendon,1945, P.173.
[29] Darabpour, Mehrab (1995), An Interpretation of International Sale Law, Ganj-e-Danesh Publications, p. 263.
[30] Shahidi, Mehdi (1998), Formation of Contracts and Obligations, Vol. 1, Hoghughdan Publishing, p. 316.

says: "The object of a transaction should not be ambiguous except in special cases where a general knowledge of the matter would be sufficient". To complete the idea, article 342 of the Civil Code has emphasized that the object of sale shall be known. Some lawyers believe that an object can't be sold and be priced after that; if the prices are existed, but are not inserted in the contract, such contract is void[31]. Therefore, with the analysis of the legal articles, it could be found that known price is evident in Iran law. Today, with the development of technology and advanced industries, and needs of the society, there are some contracts, in which the parties can't determine price at the time of formation of a contract, or they don't want to determine price due to the expediencies and postpone that. One of the man contracts in this field is the construction contract and selling products (making ship and airplane), and long-term leases in continuous contracts. In Iran laws, these contracts are not recognized because of the existence of deceives, and some lawyers have regarded these contracts as causes of corruption in transaction[32]. In ran law, the validity of a contingent contract is based on the theory of capability of assigning a subject of the transaction, based on which there would be no need to assign the prices at the time of formation of the contract. It is enough to assign a criterion, based on which the prices can be specified in the future. Hence, the capability of assignment is potential capacity agreed by parties to assign prices in the future[33]. In the insurance contract, the fees of the insurer are not specified at the time of formation of a contract, and it can be assigned after an accident (article 1 of Insurance Law). It should be noted that in unknown contracts such as Istisna[34], a contract is signed between two entities (real or legal entities), which shows ordering a special good with specified characteristics in the future. In this contract, the manufacturer commits to producing the subject of the contract based on the opinions of the customer, and be paid and deliver the goods at the time agreed. In the contract with floating price, the transacting parties do not tend to assign the price at the time of signing the contract, or it is impossible to assign the price at that moment. As a result, the parties postpone that. The sample of these contracts is evident mostly in the field of selling the goods and construction contracts, long-term leases, especially in oil contracts (IPC) for an unlimited period[35].

- ✓ **Electronic contracts**

The process of selling or buying products, services, and information via computer and telecommunication networks (internet) is called

[31] Bariklo, Alireza (2015), Contract Law, Known Contracts 1, Mizan Publishing, p.25.

[32]Rahimi Habibollah, Mahmoud Zadeh, Khosrow, Theoretical Buildings, Consideration of a Prospective Contract (Reviewing the Application of the Laws of Iran and Egypt), comparative legal studies, 2014, vol.18, No.2

[33] Rahimi Habibollah, Mahmoudzadeh, Khosrow, ibid.

[34] Refers to a contract on making goods by the industrial authorities, the manufacturer is called Sani' and the customer is called Mostasna'; For more information, refer to the article on Judgments and Effects of Jurisprudence – Jurists on Istisna'a Contract, Seyed Abbas Mousavian, and Ehsan BazoKar, Journal of Stock Exchange, No.21, 2013, 6th edition, pp. 5 to 32.

[35] The IPC contract is the abbreviation for Iran Petroleum Contract, which refers to long-term partnership contracts of oil and gas. For more information, refer to the comparison of financial regime of new IPC contracts and production sharing contracts (PSC), a case study of South Azadegan Square, derived from the Ph.D. thesis of Hamed Saheb Honar et al. applied economic journal, vol.4, no.1, 2018, pp.87-118

electronic transaction[36]. Therefore, the commerce and contracts composed with any kind of instrument and in any way such as writing or electronic writing are influent if it is sufficient for the commercial contract due to the market and the lawyers. Such contracts are included in the evidence of the accuracy of contracts and conditions of compromise[37]. The first discussion in every contract can be the formation of that in the legal framework, and the electronic contracts are not an exception, and follow general rules of contracts. As the credit of expression of wills is taken through the message data, it is necessary to analyze the formation of the agreement and the way of offer and acceptance for the formation of contract and termination of that. In Iran's Electronic Commerce Law, no article has directly discussed offer and acceptance, and the general rules of traditional transactions shall be considered. In chapter 20 of the Uniform Electronic Commerce Act of Canada on the formation of an electronic contract, the possibility of offer and acceptance in an electronic way is predicted. In chapter 21 of said act, an electronic form is sent to the screen of the audience, and then the audience can announce an offer or acceptance by clicking on the icons. Anyway, it was competent for Iran law to make such affirmations. However, article 5 of UNCITRAL Model Law on Electronic Commerce says: "an offer and the acceptance of an offer may be expressed using data messages. Where a data message is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose; unless parties have decided else"[38]. Hence, the article has recognized the announcement of offer and acceptance of an electronic contract, and the legislator has considered the validity of message data as much as a written document in article 6 of Iran Electronic Commerce Law. Another underlying issue is the lifecycle of the offer. In the Black Law Dictionary, offer is defined as follows: "offer is an expression of a tendency to enter a contract with known terms, in such way that accepting that can lead to the establishment of binding contract". Although the offer is not defined in Iran law, the jurists have defined it as follows: "the word issued by one of the contractual parties, and the word of the other party if agreeing with the early world, or the agreement of the other party on the offer is called acceptance"[39]. The lawyers have defined it as follows: "offer is the will of a person, who calls another person to form a contract. If the offer is accepted, both parties fulfill the undertakings of the contract. The invitation may address a person or in public"[40]. Regarding websites, it could be mentioned as a general rule that the audiences of offer are ordinary people and not known persons. This is because; all people living in the world can have access to websites, and the holders of websites aim at inviting all people in any coordinates of the world to enter the

[36] Hanafizadeh Payam, (2014), electronic commerce (E-commerce), Termeh Publications, p.8
[37] Sanei Yusef, (2005), Judicial referendums, vol.2, Mizan Publications, p.151
[38] The original content of article 5 of the said law is: " Article 5: Information shall not be denied legal effect, validity or enforceability solely because it is not contained in the data message purporting to give rise to such legal effect, but is merely referred to in that data message."
[39]E-Contracts in Islamic Jurisprudence and statute of Iran, Kamran Khani and Nasser Marivani, Fundamentals of Islamic Jurisprudence, Year 9, Issue 17, Spring and Summer 2016, p.103.
[40]Katozian, Nasser (2016), Civil Code: General Rules of Contracts, Vol. 1, Tehran: Enteshar Co., No. 150, p. 282.

websites[41]. Another underlying issue is the period of validity of offer in electronic contracts. Offer is always created by the will of the offeror, and the period and existence of that follow the said will. In other words, the offeror authorizes the audience by sending the offer to announce the acceptance[42]. Therefore, the offeror has the power to specify the time of making an offer, and the acceptance shall be regarded as the time wanted by the offeror. Fixing the time of the offer is imagined in three modes:

First mode: appointing a certain period to announce acceptance by the offeror

In this case, the offeror fixes a certain time for the announcement of acceptance for the audience; although it should be reminded that this time can be effective in case that the audience is informed of that; otherwise, it follows the terms of the timeless offer. Hence, with the expiration of the time, the validity of the offer and the power of acceptance is expired, even if the offer message has not arrived at the destination on time[43]. At the time of the beginning of the offer, nothing is mentioned in the domestic laws. However, paragraph 1 of an article of the CISG Advisory Council interprets it as follows: "A period for acceptance fixed by the offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope. A period of time for acceptance fixed by the offeror by telephone, telex or other means of instantaneous communication begins to run from the moment that the offer reaches the offeree."

Second mode: agreement on the emergency of accepting the offer

In this kind of contract, as the time of formation of the contract is specified by telephone (by a phone call or via the internet) in a known place and time, it is known. Also, the time of the establishment of the contract is after the announcement of acceptance and cutting the phone. In this method, the contract is established from the beginning of the conversation after making an offer and acceptance of the buyer. If the buyer cancels the contract before cutting the phone, whereby article 397 of Civil of Iran, each party to the transaction, subsequently to the conclusion of the sale, while in the place of the meeting and before the parties have separated, has the option of rescinding the sale. As a result, the innate wills encounter each other at the time that they are informed to the other party[44].

Third mode: lack of fixing time for acceptance of the offer

It should not be assumed that the period of an offer is permanent, and it should not be imagined that it is continued until the time that the offeror has not referred. Hence, the party can postpone the acceptance as much as he/she wants. However, in case of a lack of fixing the deadline, it should be found that the offeror wants to give reasonable time to the other

[41] Habibzadeh, Taher (2011), Information Technology Law of the Competent Court and the Law in the Context of Electronic Contracts (Comparative Study), Vol. 2, Tehran: Research Center of the Islamic Consultative Assembly, p.164.
[42]Corben, Contracts, p. 35, p. 54.
[43]Pleniol and Reaper Wassman, vol. 6, by Esman, p. 135.
[44]Ibrahim Khalid Mamdouh, Conclusion of E-contract, Alexandria, Dar al-Fikr Jami, first edition, 2006, p. 297.

party to think. Hence, the acceptance shall be announced within the normal time. In the Civil Code of Iran, no article has certified the sequence between the offer and acceptance definitely in all binding contracts. Only on the contract of marriage in article 1065 certifies that "it is a necessity for the validity of a marriage that acceptance should follow close upon the proposal, in accordance with custom." With the help of analysis taken from the offer and acceptance and the subject of that, the necessity of some kind of sequence between the offer and acceptance is inferred[45]. In accordance with the general rules, the period of the offer is dependent on the will of the offeror, and it can fix the time. The time will remain until it is canceled by the offeror[46]. The Imami Jurists believe that the sequence between the offer and acceptance is not essential in authorized and permission-based contracts such as agency, deposit, lending, and similar contracts. However, the well-known opinion of Imami jurists is the observance of sequence in the conditional contracts. Therefore, any kind of condition canceling the sequence between the offer and acceptance is regarded as inaccurate[47]. However, some contemporary jurists have doubted the necessity of observance of sequence, and believe that only the relationship of the contract and the commitment of the seller with the contract and the commitment of the customer are important. They believe that the contract is concluded until the time that the offer is not forgotten and the acceptance is attached to that[48]. According to the theory, the offeror fixes time for the offer, and the offer is voided automatically after the deadline. Hence, the acceptance has no impact on the contract after the deadline. Therefore, the sequence of the offer and acceptance shall be regarded as the accuracy conditions of the contract, and it should be noted that unconventional intervals between the time of offer and acceptance prevent the conclusion of the contract. According to the author and due to the opinions of the jurists, because of extension of regulations, and variety of contracts and transactions; fixing time is essential for acceptance in future laws. Hence, the acceptance of a second party never causes the conclusion of the contract when the offeror withdraws before acceptance of an offer or is died or bankrupted[49]. One method to announce the will in the E-contracts is announcement via email. In this method, the person sends a message to the specified email address and the other party opens the inbox and sees the message. The content of the message may be offer or acceptance, and the contract is concluded in case of acceptance and the terms are binding. The Electronic Communication Convention has referred to inviting for transaction in article 11[50]. Hence, the nature of article 18 of Electronic Commerce Law of the Civil Code of Iran,shows the attribution of message data. The article says "a "data message" is attributed to the originator, if it is sent by the originator or by a person who had the authority to act on behalf

[45]Shahidi, Mehdi (2016), Formation of Contracts and Obligations, Vol. 1, Tehran: Majd Publications, p. 148.
[46] Jacques Gestin Dr, civ.,T2, N.221. Gabriel Marty et Piette Raynaud, Dr. civ, T.1.N.112 .
[47] Najafi, Javaher Al-Kalam, vol.27, p.2 onwards
[48] Khomeini Ruhollah, on Sale, vol.1, p.231, Khoie, Mesbah Al-Fiiqaha, voil.3, p.55
[49]Shiravi, Abdolhossein (1396), Contract Law (Concluding, Works and Dissolution), Samat Publications, p.71.
[50] In the context of contract formation, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed using data messages. Where a data message is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose.

of the originator in respect to that “data message and parties shall fulfill the terms". However, the time of sending a message and the time of receiving are recorded by the system of the audience in the offer and acceptance via email and no one can cancel it. Another underlying issue is the announcement of offer and electronic acceptance and the applied methods. Offer and acceptance are fulfilled in the following ways:

1-Announcement of offer and acceptance through the internet base (website), 2- announcement of offer and acceptance through a chatroom

In the world of the internet, website or internet space refers to space, in which the web files of an organization or institution are stored and has a unit address[51]. Today, one of the most common methods of e-contract conclusion and supplying product and service is via website[52]. Supplying products and services in these websites refer to the advertisement; although the measure of the holder of the website shall be regarded as an offer if there is an e-payment system on the website. It could be claimed on websites that the audiences of offer are ordinary people and not known persons. Hence, everyone who has internet access can use that. In general, by payment through the e-payment system, the seller accepts that the customer can possess any kind of product or service by payment of the assigned price[53]. Another way to talk and conclude e-contracts is through the chatroom. In this method, the parties enter cyberspace in the previously fixed time and talk via the internet orally, in writing, or even by video connection. Some European Lawyers believe that there is no bargaining power in e-contracts[54]. This thought has no position in the chatroom, because these rooms are same as transaction call, and offering that can be for all people around the world. In this way, the possibility of making video connection and live talking can be characteristics of this method, and bargaining is possible. In Iran law, the Civil Code is silent on the contract period; although article 18 (2) of the United Nations Convention on Contracts for the International Sale of Goods says: "An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror". Also, some lawyers consider the date of announcement of acceptance as the conclusion time of the contract[55]. Hence, the way of exchange of information in this method is fast and on-moment same as other telecommunication devices. Immediately after cutting the connection by one party, other parties find out about that at the moment, and the receipt rule shall be dominated for the conclusion of the contract. The creation and destruction of credit creatures have special conditions, with the advent of which the birth and death of legal action is realized in the world of credit. An offer is created by the composition of the offeror and becomes ineffective sometimes for various reasons. In other words, an offer cannot

[51] Singleton Susan & Halberstam Simon, Business, the Internet and the Law, UK, Tolley’s. 1999. p, 150.

[52] Another provision of electronic services in Iran is the approval of the method of creating a marketing system and sales of tourism services in cyberspace approved in 2016, as well as the instructions for issuing licenses and how to operate e-employment approved in 2018

[53] For more information, refer to Bana Niasari, Contract Formation in Cyberspace, Journal of Legal Research, p.50

[54] Dodd, & Hernandez, Contracting in Cyberspace, Computer Law Review and Technology journal, p. 9.

[55]Katozian, Nasser (2016), General Rules of Contracts, Vol. 1, Tehran: Enteshar Co., No. 187, p. 356.

always end in acceptance, and the time may be expired or may be canceled by the offeror. In this case, the offer is terminated.

- ✓ **Air Transport Agreement**

Similar to other contracts, the air transportation agreement needs the preparation of terms and provisions of an accurate and binding contract. In an air transportation contract, the airplane ticket is the written document on conclusion and shows the agreement and compromise of the passenger and the transport operator. Hence, the transportation agreement can be realized immediately after the offer and acceptance of parties, and the issuance of a ticket means the existence of a contract. The ticket of the passenger shows the contract, and the damaged party can ask for the fulfillment of undertakings of the contract by referring to the ticket and specifying the source and destination points[56]. The Civil Code has said in article 183 of the Civil Code of Iran: "A contract is made when one or more persons make a mutual agreement with other one or more persons, on a certain thing, and that agreement is accepted by the latter person." Whereby article 190 Civil Code of Iran, for the validity of a contract the following conditions are essential: 1- The intention and mutual consent of both parties to the contract 2- The competence of both parties 3- There must be a definite thing which forms the subject-matter on the contract 4- The cause of the transaction must be lawful. In the air transportation contract, certain subject as one of the main components of the contract is the transportation of passengers from a place to another. This issue plays a key role in other transportation contracts such as marine and land transportations[57]. Therefore, the air transportation contract follows general rules on contracts in the phase of establishment and is terminated by following Warsaw and Montreal Conventions. After the conclusion of hire contract in air transport, the terms and effects of the contract and the liability of the air transportation company is vital from the birth to death of the contract. In other words, in the interval of the establishment of contract and duration of the contract till the arrival of the passenger at the destination (termination), the terms shall be investigated. One of the most underlying issues here is the period of air transportation liability from the beginning time and the time that the passenger is in the limit of power of the transport operator or the staff. The contract is continued till the time that passenger arrived at the destination airport salon[58]. On the period of liability, various cases are presented to the court, and the courts of different states have made various decisions in this field[59]. The key role of the transport operator is moving the passenger from a point to another. Hence, the airline company has fulfilled the obligations and undertakings if it moves the passengers from the source to the destination point in due course (on time). At the time of arrival of passengers at the destination, the contract is terminated. Another underlying issue is the validity of the air transportation contract at the time of frustration of the contract. In Oxford Legal Dictionary, frustration means

[56]Jabbari, Mansour, Lack of control of plane tickets and its legal effects, Internal Journal of East Azerbaijan and Ardabil Bar Association, No. 1, 2004, p.28

[57] Dwidar, Dr. Hani, Maritime and Air Transport, first edition, Beirut: Al-Halabi Legal Publications, 2008, p. 312.

[58] .Diederiks – Verschoor, I.H.PH. , at 74 .

[59] Husserl v. Swiss air, 485 F.2 D 1240 (2 d cir. 1975)

premature dissolution and termination of the contract as a result of conditions disabling that, or the conditions changing the contract compared to the predictions in such way that it is illogical to bind the parties to fulfill all terms and undertakings[60]. The principle of the necessity of contracts is one of the principles, which is currently accepted in all legal systems. Whereby the principle, no one of the parties has the right to dissolve the contract after concluding that, and they need to fulfill the undertakings. In case of lack of fulfillment of the undertakings, they are charged to compensate the losses. However, the contract is regarded as terminated in the laws of many states if lack of fulfillment of provisions is dependent on some events called contractual excuses. In other words, in the dissolution of the contract, it would be terminated by an accident or unexpected obstacle. Therefore, when an accident occurs after the conclusion of the contract, which prevents enforcement of that or the enforcement differs under something agreed by parties, the contract is dissolved in case of being permanent. If the obstacle is temporary and is met after a while, it causes suspension of the contract[61].

CONCLUSION

In this study, the termination and end of the period of the contract are investigated, along with the analysis of the statute of Iran. Traditional and modern contracts are different in terms of time, and the current regulations are incomplete in some cases. The obtained results for the termination of contracts differ depending on the type of contract. In general, the achievements of this study are as follows: according to the obtained results, it could be mentioned that end of the contract period is one of the causes of the collapse of the undertakings. Besides, the capacity of contractual undertakings to time is in such way that if the undertaker refuses to fulfill the undertakings within a fixed time (e.g. 3 days), and if the undertaking in that day is in favor of the undertaker, the favorable unity is on that day for the undertaker. In this case, the fulfillment of the undertaking can't be postponed to another day. Even the committee can't ask the necessity of the undertaker to fulfill the undertakings. On the contrary, if the undertaking is for taking measures other than the said case (e.g. within 6 months), and the undertaker fails to fulfill the undertakings within the fixed time, the contract can't be dissolved initially. In this case, the necessity of fulfillment of undertaking shall be asked first. If the undertaking is not fulfilled, the dissolution can be helpful as the last solution. Besides, it should be mentioned that the contracts can be divided into continuous and urgent contracts in terms of the effect of time and its role in determining and fulfilling the undertakings. In urgent contracts, the effect of the contract is created at the time that the parties appoint; although the subject of the contract in continuous contracts makes the fulfillment of provisions in due course. Hence, the subject of commitment in urgent contracts is independent of time. If the time interferes with it, this is only because of assigning the period and not because of assigning the subject of the contract. In some cases, urgent contracts may be converted to

[60] Oxford Campion to The Law / 506

[61] Askari Saman, Ehteshami, Hadi, Comparing the Theory of Contract Dissolution with the Theories of the force majeure, Changing the Situation and the Difficulty of Contract Execution, Studies in Islamic Jurisprudence and Law, No. 14, Spring and Summer 2016, pp. 173-194.

continuous contracts; for example, in the contract of sale, the price or the object of sale is divided, and the contract on the subscription of newspaper and magazines is in this group. Besides, the cause of incoherence of known contracts out of the Civil Code is because of the sort and arrangement of the regulations. In both contracts, while encountering authorized contracts, it should be noted that the end of the period in authorized contracts such as partnership contract can be imagined by referral of one of the partners, and lack of withdrawal of partners never means cancellation of the contract. Although some authors have defined the withdrawal of partners in partnership contract (subject to article 578 of Civil Code of Iran) as cancellation of partnership contract; the attitude is not adapted with the legal logic. This is because; partnership contract is an authorized contract and withdrawal has the nature of an obligation. Besides, authorized contracts need no right to cancellation for dissolution, and the right belongs to binding contracts. In authorized contracts, both parties can terminate the legal relationship whenever they want. Besides, in periodic known contracts out of the context of Civil Code such as insurance contract, the effect of time is in such way that the contract shall be fulfilled during the fixed time and over time. In this way, the subject never comes by time naturally; although it is correlated to time as a result of a compromise in such a way that its origin is connected to period. However, in the hire contract as the most explicit example of a periodic contract, it is necessary to mention the time and period in it. Lack of mentioning time in this contract causes it void. However, time is not a necessary condition for the accuracy of other types of periodic contracts. Another underlying issue is that in the employment contract as a known contract out of the Civil Code, lack of fixing time can never cause the dissolution of the contract. In a general view, those employments with continuous nature, in which the time is not mentioned in the contract, shall be regarded as permanent contracts. Also, the vote of the General Assembly of the Court of Administrative Justice has confirmed this issue and has regarded it as a time-based and periodic contract.

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