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A Comparative Study of Types of Sale in Iranian and Foreign Laws

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ABSTRACT:
The aim of the present study is to comparatively examine the types of sale in Iranian and foreign laws. The research method is descriptive-analytical using library resources. Proper clarification and ascertainment of the effects of any legal or non-legal institution necessitates knowledge of its nature and essence. It is obvious that this also applies to the contract of sale. The contract of sale is a common contract that is an established and recognized institution in all countries of the world, but in the laws of different countries, based on various presumptions and perspectives, its nature and peripheries have been viewed differently. Such disagreement can also be seen in Imami jurisprudence. In Iranian law, sale is divided into many subdivisions with various criteria, and according to the Civil Code and other laws, one can also refer to classifications that have not been mentioned in the works of jurists. In foreign laws, sale is also divided into different types in terms of enforceability, nature, effect, etc. Some of the classifications made in the laws of foreign countries sometimes coincide with the classifications mentioned in Iranian law, and some others, due to their nature, may not fit into any of the classifications made in Iranian law.

Keywords: Sale, Iranian Law, Foreign Law, Translational and Obligatory Sale, Sale of Future Property

INTRODUCTION:

Despite the allocation of 127 articles of the Civil Code to explaining the rules of sale and mentioning many general rules of contracts under this title, there is still no clarity regarding the time of the buyer's ownership over the sold property in a general sale of future goods. Although by examining some articles of the Civil Code, one can deduce the time of ownership acquisition over the sold property, due to the volume of material and the legislator's elaboration on the contract of sale, it was expected that at least an unambiguous reference would be made to such a topic. In this regard, some believe that in a general sale of future goods, the determination of the instance by the seller will establish the seller's ownership right over the general sold property. (Katouzian, Specific Contracts, Vol. 1, p. 157) This assumption can be considered and introduced as the most widely accepted view among professors and law graduates.

Therefore, based on the acceptance of such a view, whenever the seller prepares and packages a specific instance of a general item, such as a mobile phone, with the intention of transferring ownership to the buyer, the said property immediately becomes part of the buyer's assets. However, the truth is that the common perception does not accept such a view and considers the time of delivery as the time of ownership acquisition. For example, if a person orders a television from a seller and the seller is obliged to deliver it to the buyer's residence, the buyer's and any ordinary person's belief will be that they will become the owner of the television that is delivered to them at their residence, and the sellers' belief is also not contrary to such an expectation. This is while in the laws of England and the United Nations Convention on Contracts for the International Sale of Goods, the time of ownership acquisition over the sold property is considered to be concurrent with the time of delivery. Such a rule is stipulated in paragraph 2 of Rule 5 of Article 18 of the Sale of Goods Act 1979 and paragraph 2 of Article 67 of the United Nations Convention on Contracts for the International Sale of Goods.

Accepting either of the above two assumptions will be accompanied by different legal implications. For example, if the time of ownership acquisition is considered to be the time of determining the instance by the seller, the loss of the specified instance before delivery to the buyer, according to Article 387 of the Civil Code, will result in the buyer's loss. However, if the time of delivery is considered as the cause of ownership transfer, the loss of the specified sold property before delivery will result in the seller's financial loss, and after the loss, they will still be obliged to deliver another property to the buyer.

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The popularity and acceptance of the first theory among many jurists is solely due to the attribution of this view to some prominent professors of civil law, while no convincing and documented reasoning has been provided by the proponents of this view. However, by relying on the articles of the Civil Code, the second theory has more validity and acceptability. Moreover, an impartial and rights-based defense of the second view, due to its alignment with current common beliefs and the issuance of judgments in accordance with this perspective in relevant cases, can lead to the peace of mind of the members of society and the perception of fairness in court judgments in this regard. This is because issuing judgments contrary to common expectations can seriously cause the perception of unfairness in the court's judgment and undermine public opinion regarding the justice of the judicial authority.
Katouzian stated in his book "Specific Contracts, Commutative Contracts - Translative Contracts - Sale - Barter - Lease - Loan" regarding this matter: "Usually, the delivery of the sold property indicates the seller's intention to specify the sold property, but it should not be concluded that the transfer of ownership always takes place upon delivery. For instance, if the seller specifies the instance of the general item and packages it in the buyer's name, handing it over to a transportation company, from then on the date of ownership transfer is realized..." Therefore, as is evident, he considers the time of ownership realization to be the time when the seller specifies the instance.

Ahmadifar has also written a thesis titled "The Effect of Delivery on the Transfer of Ownership of a General Sale of Future Goods" in order to obtain a Master's degree in Private Law from Shahid Beheshti University. In 1392 (2013/2014), they also succeeded in publishing an article under the same title under the supervision of Dr. Mohaqqeq Damad in the Comparative Law Review, Volume 19, Issue 97. Considering the aforementioned points, the present research aims to conduct a comparative study of the different types of sale in Iranian and foreign laws.

Theoretical Foundations of the Research

The Concept of Sale and the Necessity of Addressing It

The late Sheikh Ansari did not introduce the word "sale" as one of the religious or semi-religious realities, and in deducing the concept of sale, he only considered referring to common perception (urf) as fruitful. This word, like "purchase", is one of the opposites and is used in both selling and buying, but due to frequent usage, "sale" implies selling goods, and "purchase" implies buying them. They have also interpreted trade as sale and purchase, but since in different texts, the word trade has been used to mean the exchange of property for the purpose of profit, and in common perception, trade is not limited to sale, it can be said that this concept has been conceived for trade due to the prevalence and frequency of sale instances in commercial transactions.
In contrast to Sheikh Ansari's view and others, some other jurists have not considered sale as exclusive to particular items and believe in the permissibility of selling non-particular items in the sacred Sharia. (Mohammad Jafar Marooj Jazaeri 2005) Imam Khomeini (may his soul rest in peace) also supported this theory, stating that common perception does not exclusively deduce the transfer of ownership of particular items from the word "sale"; rather, common perception also considers the transaction of other financial rights, such as goodwill, as a sale. However, a noteworthy point in the eminent jurist Ayatollah Khomeini's statement is that the sale of goodwill and the like are terms that have emerged in the current common perception, and perhaps it can be said that in the past, the general understanding of the word "sale" only implied the transfer of ownership of a particular item. Therefore, can the change and evolution of common perception be relied upon or not?
Article 338 of the Iranian Civil Code defines sale as follows: "Sale means the transfer of ownership of a particular item for a known consideration." As is evident, this definition reflects the jurisprudential effects in the aforementioned article and seemingly confirms the traditional definition of the contract of sale. Some jurists consider this definition incompatible with the current needs of society and, based on other articles of the Civil Code that imply the sale of future goods, transfer of debt, etc., effectively reject the exclusion of the sold property to a particular item. They have also interpreted the phrase "transfer of ownership of a particular item" in Article 338 of the Civil Code as distinguishing between the contracts of sale and lease, in that the legislator has introduced lease as the transfer of usufruct and sale as the transfer of ownership of a particular item for a known consideration, and the use of the word "particular item" was in this context.
The contract of sale is defined in Article 418 of the Egyptian Civil Code as follows: "Sale is a contract by which the seller is obliged to transfer to the buyer the ownership of a thing or another financial right in exchange for a cash price."
In the Sale of Goods Act of England, the contract of sale is defined as follows: "A contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price." A careful examination of the wording of this provision reveals several points:
1 - The subject matter of the sale contract is defined as goods (tangible objects).
2 - The consideration must be money.
It appears that the subject matter of a sale contract under English law must be the ownership of tangible objects, and this definition bears some similarities to the traditional definition of sale in Imami jurisprudence. However, the main difference lies in the consideration, which according to the majority view in

Islamic jurisprudence can be any property, whereas in English law, it is confined to money.
Another point regarding sale in English law is that, contrary to the widely held view in Imami jurisprudence, the English legislator has defined it as a consensual contract. Section 4 of Part II of the Sale of Goods Act of England provides that: "A contract of sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties..."
Another difference between the contract of sale in English and Iranian law is that, at the time of concluding the sale contract, it is not necessary for the price to be known. However, according to the Iranian Civil Code, the contract of sale is concluded upon offer and acceptance regarding the subject matter and the price. This is not the case in English law. Section 8(1) of the aforementioned Act states: "The price in a contract of sale may be fixed by the contract, or may be left to be fixed in a manner agreed by the contract, or may be determined by the course of dealing between the parties." Furthermore, Section 8(2) of the same Act stipulates: "Where the price is not determined as mentioned in subsection (1) above, the buyer must pay a reasonable price." The legislator has defined a reasonable price as a genuine and fair valuation based on the specific circumstances of each case. The parties to the sale may also delegate the determination of the price to a third party for valuation.
Article 1582 of the French Civil Code, emphasizing the commutative nature of the contract, defines this legal act as an agreement by which one of the parties undertakes to deliver a property to the other party, and in return, the second party undertakes to pay the price.
Furthermore, Article 1583 of the aforementioned Code, in completing the above definition, addresses the translative nature of sale and declares: "As soon as the parties have agreed on the thing and the price, the sale is completed, and the ownership of the thing is transferred to the buyer, even though the thing has not yet been delivered or the price paid."
In the French legal system, as in some other European countries, the consideration in a sale contract must necessarily be money. From the perspective of such legal systems, the distinguishing feature of a sale contract from a barter contract and other contracts is the exchange for money. If the consideration for the sold property in a commutative contract is legal tender, that contract is recognized as a sale. However, if the consideration is other properties, such as tangible or intangible assets or services, the concluded contract is recognized as an innominate contract, a barter contract, or another type of contract. The insistence of the French legal system on specifying money as the price in a sale contract has sometimes led the parties to resort to special methods to circumvent this restrictive rule.
In the United Nations Convention on Contracts for the International Sale of Goods (CISG), no article is dedicated to defining the contract of sale. This can be attributed to the self-evident nature of the concept of sale in the laws of most developed and developing countries. A similar approach is observed in Iran's codified laws. For instance, the legislator, disregarding the definition of property, immediately classifies properties as movable and immovable in Article 11 of the Civil Code. Such an approach could be due to the excessive familiarity of a concept within society. Therefore, it seems that the same situation exists regarding the sale in the CISG. However, such silence does not mean that the concept and nature of sale in this Convention cannot be deduced; by carefully examining many of the Convention's articles, one can discern the concept, conditions, and effects of sale under the CISG.

Comparative Study of Types of Sale in Iranian and Foreign Laws

The following outlines the most important and prominent classifications made in Iranian and foreign laws (Egypt, England, France, and the CISG) regarding the types of sale contracts.

1. Translative and Obligatory Sale

The basis for classifying sale into translative and obligatory is the direct effect that realizes the contract (Katouzian 2012). A translative sale means that the fictional transfer of the sold property to the buyer in exchange for the transfer of the price to the seller is realized by the very offer and acceptance, without being contingent on any other act such as the delivery of the property to the buyer, unless a specific reason has designated an element (e.g., delivery of goods in a Salam sale) as the "transferring component." Many Iranian jurists have referred to this classification (Seyyed Mohammad Kazem Tabatabai Yazdi 1999). An obligatory sale means a sale in which the buyer does not directly become the owner of the sold property, but rather the seller must transfer ownership of the property to the buyer. Some have introduced the sale of a specific item and the sale of a general item in a specific set as examples of translative sale, and the sale of a general future good as an example of an obligatory sale (Emami 2010). However, some have a contrary opinion regarding the sale of a general item in a specific set and consider it obligatory (Abul Qasim al-Khoei 1997). In the author's view, the latter opinion seems more correct because the seller is obliged to transfer ownership of one instance from the specific set to the buyer.
Article 183 of the Civil Code states: "A contract is an agreement whereby one or more persons make a commitment to one or more other persons, and it is accepted by the latter." Article 338 of the same Code defines sale as: "Sale means the transfer of ownership of a particular item for a known consideration." Regarding this contradiction, some jurists have stated: "The Iranian Civil Code, in establishing a separate section for contracts and obligations in general, has followed European law and defined a contract in Article 183 as such...Therefore, this definition is

derived from the definition of a contract in French law..."

In Egyptian law, Sanhuri, regardless of the historical evolution of the definition of a contract, expresses his opinion on the contract as follows: "In our view, a contract is the agreement of two wills to create a legal effect, whether that effect is the creation, transfer or extinction of an obligation."

The definition of a contract as an obligation is also evident in European laws, an example of which was mentioned when citing Article 1101 of the French Civil Code. It is worth noting that in French law, the contract of sale is considered translative, but the Civil Code of this country, influenced by Roman law, has regarded the obligation as the basis for the formation of a contract, even translative contracts. Article 1582 of the French Civil Code defines sale as: "A sale is a contract whereby one party binds himself to deliver a thing and the other to pay the price of it."

In English law, the main structure of a contract is also an "obligation." English jurists have defined a contract as: "A contract is an obligation or set of obligations which the law will enforce."

Sale with Transfer of Ownership and Sale by Promise in English Law

As mentioned in the previous discussion, the essential requirement of all types of sale can be considered as a "promise". We know that an unconditional sale of a generic thing, a specific thing, and a generic thing in a specific thing all contain a promise in the general jurisprudential sense (covenant and compact). A sale transferring ownership, in the common modern sense among current jurists, is also an instance of a promissory sale. However, in English law, the division of sale into promissory and transferring ownership (in the common modern sense) does not exist. In English law, a sales contract is defined as: "The vendor's agreement to transfer ownership or legal interests in exchange for a consideration called the price." Therefore, according to the definition of a contract in English law, all sales in this country fall under the category of promissory sale (promise in the sense of covenant).

Sale with Transfer of Ownership and Sale by Promise in French Law

The situation in French law is also similar to English law. If we look at the issue from the perspective of the common definition of promissory and transferring sale, it must be stated that in old French law, the principle of the promissory nature of sale was accepted. However, it was customary to state in the sale deed that the object of sale was delivered to the possession of the buyer, and this declaration of delivery was sufficient for the transfer of ownership. After a while, the French Civil Code broke its long-standing tradition and expressly recognized the sale as a contract transferring ownership in Article 1134. Therefore, in the current situation, the object of sale is transferred upon the conclusion of the contract, not upon delivery. However, in French law, the sale of a specific thing, a generic thing in a specific thing, and an unconditional sale of a generic thing are all considered promissory contracts (promise in the sense of covenant).

Sale with Transfer of Ownership and Sale by Promise in Egyptian Law

The sales contract is defined in Article 418 of the Egyptian Civil Code as follows: "Al-bay' 'aqd yaltazim bihi al-bāyi' an yantaqil lilmushtarī milkīyat shay' aw ḥaqqan mālīyan ākhara fī muqābil thamanin naqdī." ; "A sale is a contract by which the seller is obligated to transfer the ownership of a thing or another financial right to the buyer in exchange for a cash price." Therefore, from the common perspective of the concept of a sale transferring ownership and a promissory sale, it can be easily stated that in Egyptian law, a contract transferring ownership in the common sense has no place, and all types of sale in Egyptian law are limited to promissory sales. In the law of this country, even the sale of a specific thing is considered a promissory contract in the common sense, and the seller must explicitly or implicitly execute the transfer of ownership after the sale occurs.

Future Goods Sale and Present Goods Sale

The division of sale into "present goods sale" and "future goods sale" is another classification based on the existence or non-existence of the object of sale at the time of the contract's conclusion. This classification is conceivable in the laws of many countries.

In Iranian Law

Future goods sale has been defined as follows: "_A future goods sale is a sale in which the object of sale does not exist at the date of the contract. However, the seller undertakes to provide it later and deliver it at the appointed time. For example, a carpenter who sells a set of furniture to be delivered in two months. These furniture items must be made in the future, and the identification of the object of sale occurs after the sale_." (Jafari Langroudi 2001) Others have defined future goods sale as follows: "_A future goods sale is a sale in which the object of sale does not have an external existence at the date of the contract; but the seller undertakes to make or provide it and deliver it at the appointed time_." (Mohammad Reza PirHadi 2007) The future goods may subsequently be manufactured, such as a specific aircraft or a number of identical industrial parts with precise specifications and drawings for which a manufacturing contract is concluded between the manufacturer and the buyer to be delivered within a specified period, or like agricultural products that must be delivered by the seller to the buyer within a specified period, whether the products belong to a particular farm that will be ready for delivery after growth and development or the seller is obligated to procure them from the market at

the appointed time and make them available to the buyer.
In Egyptian law, the sale of future property has been discussed under the title of "selling future things" (bai' al-ashya' al-mustaqbaliah). The will of the contracting parties can relate to the occurrence of a sale regarding a property that will come into existence later and whose creation is possible in the future. Article 131/1 of the Egyptian Civil Code regarding the permissibility of such a sale states: "It is permissible for the subject of an obligation to be a future thing." This article implies a general rule allowing the sale of future things. Examples of selling future things in Egyptian law include a manufacturer selling a certain amount of their products before starting production, selling crops before they appear or even before planting, and selling a house before its construction.
In French law, according to Article 1610(3) of the French Civil Code, the sale of buildings under construction is considered a sale by which the seller is obligated to construct a building by a certain date, concluded in two forms: sale with a promise (vente à terme) and sale of a future property (vente d'immeuble à construire). The first form, where the seller is obligated to complete and deliver the building and the buyer to take delivery and pay the price, has not gained much popularity. However, the second form, where the seller immediately transfers their rights over the land to the buyer and ownership of the building transfers progressively to the buyer as it is constructed, with the buyer paying the price in proportion to the progress, is more common in practice to prevent potential abuse by the seller. Even if the seller stops work midway, what has been built belongs to the buyer.

Sale with a Determined and Undetermined Price

From the statements of most jurists on knowledge of the price, it can be inferred that the majority of jurists do not consider the ability to determine the price as removing ambiguity, and they regard such a transaction as gharari (involving unlawful uncertainty). A consensus on this issue has also been claimed (Ansari, 2012). Additionally, some have deemed invalid a sale where one party, such as the buyer, determines the price (Muhammad ibn Hassan Najafi, 1997). In contrast to this view of the Imami majority, some jurists have raised objections and offered a different opinion. Some have stated that a sale where the buyer tells the seller, "Sell me the goods at the same price you sell to others," is valid, but the buyer will have the option to cancel (Muqaddas Ardabili, 1997).
In English law, the sale with a determined and undetermined price has been categorized by many legal scholars, which will be gradually referred to.
In French law, the capacity and permissibility of not determining the price is not as extensive as in English law. Similar to Iranian law, in French law, knowledge of the quantity of the subject matter is a condition for the validity of a sale contract. However, some French legal scholars, in interpreting the requirement that the subject matter be known, have considered it to be something other than it being definite. They believe that if the contracting parties have provided a method for determining the price in the contract, such that after the contract the price becomes specified without the intervention of either party's will, it is sufficient for the validity of the contract.
According to Articles 423 and 424 of the Egyptian Civil Code, a transaction will be valid if the price is merely determinable, even if it can be determined by reference to the parties' previous contracts or commercial rates. However, the determination of the price should not be left to one of the contracting parties due to the fear of gharar (unlawful uncertainty).
In the 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG), for the conclusion of a sales contract, the precise determination of the price is not required. Rather, the agreement of the contracting parties on the method of determining the price is sufficient for its validity. Article 14 of this Convention, as the first article of Chapter Two entitled "Formation of the Contract," provides in paragraph 1: "A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price."

CONCLUSION

In Iranian law, sales have been divided into numerous categories based on various components. Additionally, with reference to the Civil Code and other enacted laws, one can point to classifications that have not been mentioned in the works of legal scholars. In foreign laws as well, sales have been categorized into different types based on their validity, nature, effects, and so on. Some of the classifications made in the laws of foreign countries may at times align with those mentioned in Iranian law, while others, due to their nature, may not fit into any of the classifications made in Iranian law.

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