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Jurisprudential-legal solutions to determine the nature of the factoring contract; rereading the approach of Iranian law with a look at Imamiyyah and Hanafi jurisprudence

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Abstract
The factoring contract is one of the methods of facilitating trade in the national and international arena, which provides financing services, consulting, guaranteeing the credit of customers and collecting accounts receivable, and has a special place in accelerating the production of small and medium-sized companies. In order to use this modern method in Islamic countries, including the Islamic Republic of Iran, it is necessary to first examine the nature of the aforementioned contract in order to determine the rights and obligations surrounding it; but there is a question that with what solution can determine the nature of the factoring contract? The current research has investigated the methods of determining the nature of the factoring contract in Islamic jurisprudence (Imamiyah and Hanafi) and Iranian law using written sources and has found that there are three methods for it; Decomposing the contract into multiple contracts; Analyzing the subject of the contract to the main effect and terms of the contract and considering the contract to be independent. It seems that the last view is appropriate due to its compatibility with the legal system of the Islamic Republic of Iran and the fact that the factoring institution is new, and is preferable to other views.
Key words: Factoring, Basis of Factoring, Account Receivable, Financing, Jurisprudence-Legal Solutions, Islamic Jurisprudence, Iranian Law.

Introduction

Factoring is a continuous contract that the exporter concludes with a financial and credit institution, and based on that, the exporter transfers his accounts receivable, which is caused by the sale of goods or the supply of services, to the financial institution, and in return, the said institution provides financing to the exporter and provides It provides services such as accounting, consulting, validation and guarantee of customers and collection of accounts receivable. Traditional financing institutions such as loans, remittances, etc., which are shown in bank loans, are not very responsive to the financial needs of businessmen and commercial companies today due to their complexity, high cost and time-consuming nature; And the globalization of trade and commerce has created new methods of financing in accordance with today's needs of businessmen and commercial companies and has replaced traditional financing.One of the mentioned methods, which has been successful in its own way and has been accepted by businessmen, is the "factoring financing method" that the world economy has created to deal with the financing problem of small and medium-sized economic institutions.At the same time, this method has collected the functions and features of several traditional institutions, which include financing small and medium-sized companies, providing accounting and consulting services, validating and guaranteeing the exporter's customers, and collecting his accounts receivable. After guaranteeing the customers, if the claims are not collected from them, the supplier has no right to refer to the exporter, unless the cause is the exporter.

In order to use this modern financing method in Islamic countries, including the Islamic Republic of Iran, it is necessary to first determine the nature of the factoring contract in order to determine the rights and numbers surrounding it; But this question is raised that "with what solution can the nature of the factoring contract be determined?"Regarding the nature of the factoring contract, the following research has been done:

Mohammad Rafiei, Nilofar, comparison of factoring in American law with similar institutions in Iranian law, master's thesis, 2012.

Ebrahimabadi, Mozhgan, The nature and legal effects of agency in Iranian law and international trade regulations, Master's thesis, 2014.
Shakri, Mehdi, The legal nature of factoring works and rulings in Iranian and English law, Master's thesis, 2014.
Rovandaz, Mehrdad, The legal nature of factoring and its effects, Master's thesis, 2014.
Faizi Chekabi, Gholam Nabi and Darzi, Ali, Legal nature of factoring financing contract, Journal of Comparative Law Studies, Fall and Winter 2013.
Nasiri, Mustafa and Malazahi, Ruqiyeh, the legal nature of international agency (factoring), judicial legal magazine, autumn 2015.
But none of them have provided a specific solution to determine the nature of the factoring contract; Therefore, the current research in this regard is completely new; And the explanation and analysis of this issue is done by descriptive-analytical method by referring to written sources and according to the principle of sovereignty of will.

1- The concept of factoring

1-1- The lexical concept of factoring

"Factoring" is originally an Anglo-Saxon word and is mostly used in the United Kingdom and the United States of America (Abdul Hafeez Milat, 2011: 22). The term factoring means the method of selling accounts receivable (Peter, 2004:119), the method of discounting claims (Bryan, 2004:630), the institution where the accounts receivable of traders are bought or discounted, agency and representation (Mustafa Heni, 2001: 327) has been used.After the transfer of the factoring contract to other countries, some national legislators began to make terms and localize it (Abdul Hafeez Milat, 2011: 22); For example, in France, the first attempt in this field was made by the "French Technical Terminology Study Committee" and changed the term factoring to "Factorage", but the mentioned term was not welcomed by merchants and institutions and remained abandoned. Its original name continued (Tawfiq, 1987: 18) until the French legislature in 1973 changed it to"Effectorge" changed (Awad, 1993: 647) and this term was approved by most French scientists; However, the main word -factoring- is also widely used and is common among businessmen, financial institutions and lawyers (Milat, 2011: 23).

In the same way, in the Arab countries, there were more severe reactions to the word factoring; because there is no similarity between Arabic and English - compared to French; For this reason, legislators and jurists defined the word "factoring", which in total can be called the following terms: commercial rights acquisition and guarantee contract - commercial debt purchase contract - accounts payable purchase services - financing and guarantee and commercial debt administration - purchase Invoices - Al-Faktarah - Al-Futrah - Contract of purchase and acquisition of commercial rights - Al-Taswiq agency - Al-Aqd al-Dawli for the acquisition of commercial debts - Contract of delivery of the invoice - Aqd al-Tashim (Ibn Mahmoud, 1433: 2/393; Awad, 1993: 647; Milat, 2011: 23; Al-Jubouri and Hazem, 2011: 101). In Iranian law, as far as the research has been done, the institution of factoring has not yet entered the field of transactions in a large way; Therefore, the legislator did not mention factoring and did not pay attention to it; However, some authors and researchers who have written about this institution have translated the word "factoring" to "receivables collection and transfer agency - international agency and agency" (Shiravi, 2015: 297; Nasiri and Malazahi, 2015: 125). But some others have used the same word "factoring" in their writings.

1-2- Terminological concept of factoring

Anglo-Saxon jurists have stated: "factoring is an agreement to sell or transfer accounts receivable that is made between the seller and a credit financial institution with the knowledge of the buyer (debtor)" (Alexander, 1989: 358); In other words, factoring is a continuous contract that is concluded between the seller of goods or services with a credit financial institution, through the opening of an account, and according to it, the said institution undertakes to take actions in exchange for commercial rights resulting from the sale of goods or services. do the following:

1. Immediate purchase of all accounts receivable against cash payment;
2. Dealing with the issuer's accounts that are related to the sold accounts receivable;
3. Collection of accounts receivable;
4. Guaranteeing risks caused by non-payment of debtors;
5. Financing some activities of the exporter;

6. Providing marketing, administrative or accounting advice (Carroll, 1958: 706-707).
In the definition of the factoring contract, the French lawyers Cabriac and Rif Lang said: "Factoring is a contract under which a merchant can determine the value of his short-term claims by requesting a specialized financial institution that operates in this field, in exchange for granting the right of recourse to this institution to its debtors" (Cabriallac et Rives-Lang, 1968: 1102). The French legislator also stated in the bill of economic and financial terms: Factoring is a contract whereby the process of financial management of project clients' accounts is carried out through the acquisition of accounts receivable and their collection to the collector's account (invoice) and by incurring possible losses - in If this transaction is done with bankrupt customers, it will be realized.
According to the translations of the word factoring, the Arab jurists have stated the following in the definition of "Aqd Tahsil Al Diyun Commercial Debt", which is translated from the word "factoring": ... it is a contract whereby an expert person called the receiver, He collects the accounts receivable that the contracting party is entitled to, to his personal account, and pays their value; And this work is done in exchange for receiving a specified commission that the contracting party has committed to pay (Dovidar, 1991: 298). Also, Ali Jamal Awad has stated in the definition of "Sales office": "... it means that the lawyer (supplier) pays the value of the accounts receivable to the client (exporter), which represents his right to the buyer (importer) in a foreign country, and he becomes his substitute in this right; If the buyer does not pay his debt to the lawyer, he does not have the right to refer to the client and as a principle, he himself bears this loss" (Awad, 1993: 643).
The 1988 Ottawa Convention and the 2001 UNCITRAL Convention also define it as follows:
- Clause 2 of Article 1 of the Ottawa Convention stipulates: "According to this Convention, a factoring contract is a contract concluded between one party (the supplier) and the other party (the supplier) and by which:
(a) The supplier (exporter) transfers or will transfer to the supplier the accounts receivable arising from the contracts for the sale of goods concluded between the supplier (exporter) and its customers. Except for claims arising from the sale of goods that are mainly purchased for personal or family use;
(b) The supplier must perform at least two of the following operations:
- Financing the exporter, through granting loans and prepayments;
- Dealing with accounts (general office) related to claims;
- Collection of accounts receivable;
- The exporter's protection against debtors (importers) defaulting on payment;
(c) Notifying debtors (importers) of the assignment of accounts receivable.
- UNCITRAL Convention in paragraph 1 of article 2 defines assignment of accounts receivable as follows: "Assignment is a contract in which one party (assignor) gives to another party (acceptor of assignment) all or part of the contractual rights (amount receivable) or undivided benefits from He assigns his right to the third party (debtor). The creation of rights to accounts receivable, as collateral for debt or other obligations, is considered a transfer.

2-Types of factoring contracts

There are many types of factoring, and the most famous of them are as follows: factoring with recourse and without recourse, secured (advance payment) and maturity factoring, open and hidden factoring, complete and incomplete factoring, direct and indirect factoring, domestic and international factoring. The parties to the contract may agree on several of the above methods in a contract; And the agreeer of their contract is "clear and direct international security factoring without right of recourse". As the volume of services provided by the financial institution increases, the cost of factoring will also increase. Factoring costs are of two types according to the services and facilities that the financial and credit institution (factory) provides to the exporter; fees or commissions received against any type of services provided; and the cost of advance payment and financing of the issuer. Therefore, if the invoice is supposed to cover the financing of the exporter in addition to providing services,In this case, the proportional interest will be given to him based on the nearness and distance of the due date of the accounts receivable, which is calculated at an annual rate. This rate is agreed upon in the factoring contract and may be fixed or floating; For example, the parties should agree that the interest rate is 3% higher than the LIBOR rate (Shiravi, 2015: 298-299); But if the exporter does not need financing, the

agent will only receive his fee (commission) in proportion to the volume of services and according to the type of economic activity of the exporter, the annual sales volume, the number of exporter's customers, the credit standing of importers and the maturity period of accounts receivable. Carroll, 1958: 719-720).

3-Factoring financing contract process

As mentioned above, factoring has different types and each has its own unique process. Here, the process of the complete factoring contract, i.e. "provision-without-recourse-open-international" factoring, which is more applicable, is examined in two stages of validation and the stage of concluding the contract and its implementation:

3-1-Validation stage

The subject of the factoring financing contract has issued short-term accounts receivable.The exporter assigns these accounts to him against the financing he receives from the supplier (invoice). The supplier evaluates and validates the credit status of the exporter's customers before concluding the contract by preparing a detailed checklist (Madio, 2018: 308). This is more important when the supplier concludes a continuous and long-term contract with the exporter for all current and future accounts receivable.

Usually, factoring companies request validation of exporting clients from one of the validation institutions that specialize in this sector. The aforementioned institutions are independent organizations that provide public, identity, legal,Credit and payment records of organizations and customers are collected and processed and provided to them at the request of financial and credit institutions and by receiving a certain amount (Mirzajani and Nejatzadegan, 2017: 389-414).

After carrying out the evaluation process and the favorable and positive result, the parties take the next steps, which is the conclusion of the contract and its implementation.

2-3- The stage of concluding the contract and its implementation

In fact, three people are directly affected by the factoring financing contract, which is the exporter, importer and supplier or the operating company that manages the accounts receivable and collects them on behalf of the exporter.The main axis in factoring financing is the contract that is concluded between the exporter and the supplier and is communicated to the importer (debtor). The importer has no role in the contract (Shiravi, 2015: 313, 314 and 316), as this is accepted in the Ottawa and UNCITRAL Conventions, with the difference that the UNCITRAL Convention considers the contract to be absolutely valid, but the Ottawa Convention for The validity of the contract in the debtor's right requires sending the notice, although his lack of consent does not affect the conclusion of the contract.

The execution method of the complete factoring contract, which is usually agreed upon in the text of the contract, is as follows:

• First, the importer sends the purchase order of goods or services to the exporter, stating the quantitative and qualitative specifications of the goods or services;

• After receiving the order, the exporter sends it to the supplier (Famtor company) for validation;

• The supplier requests the aforementioned order and also the customer's credit status from one of the validation institutions if he is not able to check it himself; And the mentioned institution provides the desired information to the supplier by receiving a certain amount. After receiving the information, the supplier checks it and if the validation result is positive, he confirms the credit of the importer and accepts the credit risk;

• After confirming the credit from the supplier, the exporter sends goods or provides services to the importer;

• The exporter issues an invoice indicating the payable amount resulting from the sale of goods or services and sends it to the importer along with a written notice of transfer of the receivable account;

• The exporter submits a copy of the invoice related to the transferred account receivable to the supplier. At this stage, the supplier pays between 70 and 90 percent of the value of accounts receivable in cash within a certain period (which is usually up to 24 hours) and the rest after collection, to the exporter (Abdul Hossein Shiravi, 2015: 314).

If the accounts receivable are not collected from the debtors, the supplier does not have the right to refer to the exporter (Joubert, 1987:89); Because the sales contract between the exporter and the importer has been made with the supplier's approval and his acceptance of the risk of non-payment.

4- Jurisprudence and legal bases of the factoring contract

In the laws of Islamic countries, especially the laws of Iran, one of the essential issues is that first the Shari'a and legal foundations of the new legal institution are examined so that the aforementioned institution is accepted by the public. The factoring contract, which is a new legal entity in Iran's legal system, is not exempt from this ruling; Therefore, it is necessary to examine the juridical and legal foundations of the factoring contract.

4-1- Legal basis of factoring contract

In the Islamic legal system, every legal act is divided into legitimate and illegitimate categories.Legitimacy and illegitimacy of any institution is firstly based on Sharia principles that have stated the ruling of legal action in detail, if the ruling of the said institution is not stated in detail, the jurists and mujtahidin refer to the general principles of Shari'a ruling. The mentioned is extracted. Regarding the factoring contract, there is no detailed ruling from the holy court; Therefore, by referring to the general principles, its Shariah ruling should be clarified. The Shariah foundations from which the jurisprudence of the factoring contract can be derived are as follows:

4-1-1-Verses

In the Holy Quran, several verses can directly and indirectly be the basis of factoring contract. Here, it is sufficient to mention the verses that are directly the legal basis of the factoring contract:

4-1-1-1- Verse of faithfulness to contracts

God says in Surah Ma'idah: "يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ;[1] O you who have believed, keep the agreements and contracts. Loyalty means acting in accordance with the contract; It may mean contracts, legal and jurisprudential contracts that are between the servant and God, or it may mean assignments and contracts that are prevalent among people. In both cases, loyalty to them is necessary; Because the ruling of the verse is general and it indicates the obligation to fulfill all contracts (both definite and indefinite) that are called contracts (Jisas, 1405: 3/286; Ardabili, 1421: 584).In other words, any kind of agreement and contract that is called a contract, and even contracts that were created in our time and did not exist in the past, but were concluded according to the correct standards of contracts, are included in this verse and are legitimate, because the word "contracts" is a local plural. It is correct and it is more correct to apply the contracts mentioned in the verse to any agreement that the title of contract is valid for them (Makaram Shirazi, 1344: 4/244; Tabatabai, 1374: 5/257).

According to the above contents, the ruling of the verse includes any contract that is valid for naming contracts; Therefore, the mentioned verse is also included in the factoring contract.

4-1-1-2-Verse of reconciliation

In addition to the verse of faithfulness to contracts, the verse of Tarazi also implies the legitimacy of the factoring contract, and the opinion of most Islamic jurists (both Imami and Hanafi)Regarding the basis of indefinite contracts, it is based on this verse. God says: " يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا;[2] O you who believe! Do not take each other's property in vain and in illegal ways, unless it is a business that is done with your consent. The meaning of the verse is that God has forbidden the transfer of property through illegal means such as gambling, usurpation, usury, bribery, oppression, etc. to take place around the transaction and forbade possession to be invalid;However, seizing each other's property through trade and mutual agreement is not prohibited (Haeri, 1421: 227-236; Jasas, 1405: 127-128/3; Qarani, 1427: 28; Ardebili, 1421: 542); Therefore, God's saying, "Wala ta`akluwaammwalakkombeinakumbeinakumbalbatil..." has two basic components; One is that a number of transactions are prohibited under certain conditions in God's words, "Wala ta'akluwaamwalakumbeinakumbeinkambalbatil" and transactions are placed in this row if it is proven that they are examples of taking wealth through false means. The second part of the mentioned verse states the permissibility of the rest of the transactions, which is generally stated in God's saying, "There shall be no trade unless there is a consensus among you" and it includes any type

[1]. Table:1.

[2]. Women: 29.

of trade and transactions in which there is a consensus.There are no briefs in this verse and no conditions other than compromise have been set for them; This means that the rest of what is called business is permissible, except for those cases that are assigned to the text of the Qur'an or the Sunnah of the Messenger of God, may God bless him and grant him peace, and are explicitly considered prohibited; Therefore, the verse "Tajira an Taraz" is one of the most important bases for the legitimacy and authenticity of transactions; Especially if trade is understood as the absolute meaning of acquisition, based on which all transactions and contracts have validity conditions, including factoring, are correct and valid (Jisas, 1405: 131/3; Al-Zahili, 1418: 31/5; Ahangaran and Saidi , 1395: 9; Makarem Shirazi, 1374: 356/3).

According to the above verses, especially the verse "Tajirah an Taraz" and the views of the Imamiyyah and Hanafi commentators, we come to the conclusion that concluding a factoring contract is legitimate if it meets the conditions of correctness of transactions and there is no prohibition for it.

4-1-2-Narratives

In addition to the verses of the Holy Qur'an, the traditions of the Prophet (PBUH) and Imams (PBUH) in the narrative sources of the parties also indicate the legitimacy of the factoring contract. These are the narrations on which many jurisprudential rules are based; Such as the rule of subordination, the rule of conditions and the rule of subordination of the contract to the intention. Here, it is enough to mention the most important of these traditions in the narrative sources of Mamiya and Ahl al-Sunna:

4-1-2-1 Narrative of Taslat.

The most important narration that is based on the rule of subjugation is the narration of " الناس مسلطون على اموالهم" (Majlesi, 2012: 272/2). Although this narration is transmitted from the point of view of the chain of transmission, the practice of Imamiyyah jurists (both early and late) has compensated for its weakness. The mentioned narration indicates that every human being is the owner of his property and has control over his property. The requirement of property is that its owner can make any contractual or non-contractual possession of his property by observing its conditions (Mohaqq Damad, 1406: 1/1; Mirzai Qomi, 1427: 915/2; Zakir Salehi, 1388: 144). . According to the mentioned narrative, the parties to the factoring contract can take possession of their property using the contractual method And the exporter should transfer his accounts receivable to the supplier and the supplier should finance the exporter and provide administrative and advisory services and collect his claims.

4-1-2-2- Narration of Tayyab Nafs

In Sunni sources, the most important narration that can be cited for the legitimacy of the factoring contract is the narration of "Tayyab Nafs" that the Prophet (peace be upon him) said: " لَا يَحِلُّ مَالُ امْرِئٍ مُسْلِمٍ إِلَّا بِطِيبِ نَفْسٍ مِنْهُ" (Bayhaqi, 1424: 7/166; Ibn Hanbal, 1420: 34/299). The Hanafi jurists have interpreted the sentence "Batiib-e-nafs-i-minah" as the consent of the owner of the property, and they have argued this narration: it is not right to take each other's property except with the consent of the owner (Jisas, 1431: 5/391; Kasani, 1406: 179/4; Sarkhsi , 1414: 24/164). The opposite meaning of his statement is that it is correct to obtain property without his consent through a contract or other means. Therefore, concluding a factoring contract with the satisfaction of the parties, if the basic conditions of the transactions are met, there is no Shariah obstacle, and the financial owner can take possession of his property using various Shariah and legal ways and transact on it with the consent of each other.

4-1-3-Customs and intellectual foundations

Basis of common sense and commercial custom also confirm the factoring contract and it is practically done among businessmen and commercial companies. Sharia also accepts an action that is approved by the common sense and custom of the society; Because if this is not done, none of the social affairs will be organized (Moghniyeh, 1975: 222; Sadr, 1417: 47/4). Also, the Prophet (pbuh) and Imams (pbuh) were aware of the present and the future situation and they knew that in the future, new contracts will be created among the people; If those gentlemen were not satisfied with these contracts, they would be prohibited from them; But since they did not forbid, this act is proof and evidence that any contract that is approved by reason and custom is legitimate (Khomeini, 1410: 2/129; Zalmi, 2002: 83).It is known that the modern way of thinking and custom gives a seal of approval to the factoring contract; Because the mentioned contract has a rational aspect and is carried out by the most important intellectuals in the field of business and has been accepted by them, and the commercial

custom also approves it at the national and international level. Also, the definite way and custom of the general and private people from the past has been such that every contract that has a rational aspect and does not contradict the principles of Sharia is concluded and considered valid (Zhaker Salehi, 1388: 145).

The famous Hanafi jurists, according to social custom and expediency, consider the principle in contracts and conditions and all objects to be true and correct as long as there is no specific reason to prohibit it; They say:Any contract that a person makes or imposes conditions on himself, it is obligatory for him to fulfill it, provided that there is no special reason for its sanctity (Jisas, 1405: 3/286; Al-Zilai, 1313: 4/189; Jasas, 1414: 4/252-253); Therefore, the principle lies in the contracts and the parties to the factoring contract can conclude the aforementioned contract according to their economic needs and wishes and by observing the basic conditions of correctness of the transactions.

4-2-Legal bases of factoring contract

The authenticity of the factoring contract is confirmed in the Iranian civil law - compared to Islamic jurisprudence - in a clearer way;Because the legislator, taking into account the verses, traditions and views of the jurists, as well as the diversity and extent of financial and social relations, as well as the ever-increasing legal needs, accepted any type of new legal entity as a private contract with the provision of Article 10 of the Civil Law (Shahidi, 2008: 79). And it has this provision: "Private contracts are valid for those who have concluded them if they are not explicitly against the law". This article expresses the principle of sovereignty of the will and freedom of the parties in Iranian law, which assures the parties of the factoring contract, as long as they have not made a decision against the law, they can decide on the terms and effects of their contract and choose all its parts according to their needs. determine; Because today, compared to the past, people's wishes and interests,It has become more and more different and they cannot be singled out in the form of contracts defined in the law (Nekatozian, 1376: 154/1; Jafari Langroudi, 1370: 65; Qanwani and others 1390: 199); Therefore, the remainder of 10 of the Civil Code gives a legal direction to the conclusion of the factoring contract as an indefinite contract.

5- Jurisprudential and legal solutions to determine the nature of the factoring contract

Since the subject of the factoring contract is multiple legal acts and each of them can be the subject of an independent contract, therefore, the question arises as to what is the solution to determine the nature of the factoring contract in Islamic jurisprudence (Imamiyah and Hanafi) and Iranian law. has it? In this regard, there are three basic views; Dissolving the contract into multiple contracts, analyzing the subject of the contract to the main effect and the conditions included in the contract and considering factoring as an independent contract.These three points of view are analyzed and analyzed from the point of view of jurisprudence and law, and finally Mukhtar's opinion is expressed:

5-1-Jurisprudential-legal viewpoints

5-1-1-Dissolution of the contract into multiple contracts

In Imamiyyah and Hanafi jurisprudence, in the transaction section, it seems that the jurists have divided a contract into several parts and expressed the ruling of each part independently and separately; For example, a person who sells a joint property and the second partner does not allow the said transaction, this contract is valid for the share of the party to the transaction, but void for the share of his partner.In fact, this contract is divided into two valid and invalid contracts. In addition to the sale contract, the aforementioned ruling is applicable to other contracts such as rent, mortgage, loan, mudaraba waqf, etc., which are not enforced due to the common subject of the transaction or the non-fulfillment of one of the conditions or the presence of another obstacle. Some Imami jurisprudents considered it to be the foundation of reason in markets and transactions (Bojnoordi, 144/3: 1413, 1413), but according to some later Imami jurisprudents and jurists, this ruling (dissolution of the contract) as a jurisprudential rule through adherence to Induction is accepted and many jurisprudential issues in the transaction section are inferred based on it (Maraghi, Beta: 200; Khorsandian and Shenior, 2010: 93);As one of the contemporary jurists said with regard to this rule: "The basis of wisdom in markets and transactions, regardless of whether it is a sale or a lease or a mortgage... or other contracts and transactions or events, is that what is the subject of A contract has been entered into, if a part of it does not cause the said contract to take place due to the absence of a condition of the conditions or the existence of an obstacle, and the other part has the said conditions and the contract is part of it, in this case, the ruling is related to the validity of the transaction. to that part and its nullity is

compared to the other part" (Bojnoordi, 144/3: 1413). Also, Ibn Baraj has stated: If a person in a mudarabah contract, by paying an amount to two people, says: Half the interest is from you; in this case,Half of the profit from mudarabah will be for the owner of the remaining two and a half; Because concluding a single contract with two people is like two separate contracts (Ibn Baraj, 1406: 1/463). AbulqasemKhoei also believes that if two things are sold in a single contract; However, if the sale of one of them is valid and the other is invalid, in this case, the contract is not invalid, but the said contract is divided into several contracts (Khoei, 1368: 5/5). In the same way, Kareki's researcher is of the opinion that the invalidity of a part of the transaction does not invalidate its other parts; Because the invalidity of a part of the transaction does not cause the loss of consent to the transaction; Therefore, the contract is valid and a single contract is dissolved into valid and invalid contracts (Karki, Beta: 79/4).Based on this, MirfatahMaraghi said: "Every transaction has six pillars, which are: exchange, transferee, two parties to the contract, cause and effector. Each of the mentioned pillars has the capacity of being single and multiple; Undoubtedly, multiplicity of price leads to multiplicity of price, and in the case of multiplicity of price, it is not possible to consider the transaction as one, even if the parties and acceptance requirements are the same; And the purpose of the multiplicity of transactions is that each of the exchange is such that there is no confrontation between its components, and if the confrontation is such that each part of the exchange is placed in common with another part, in this case, the transaction will be single. Maraghi, Beta: 200).In Hanafi jurisprudence, the question of the rule of "analyzing a contract into multiple contracts" has not been discussed - as far as the investigation has been carried out - but rulings on numerous jurisprudential issues in the transaction sector have been issued by Hanafi jurists based on this rule, some of which are as described are as follows:

The owner of Al-Ahkam magazine has stated in the section "Istighaq option": "When two people jointly buy something and half of it is taken to Istighaq; Buyers have the right to accept half of it in exchange for a share of the price" (Hayder, Bita: 1/309), that is, the sale can be divided into two valid parts (relative to the remaining half) and invalid (relative to the rightful half) due to the division of the seller. gone. Also, the owner of Red Muhtar has stated regarding the sale of property that is mixed with non-property:"If someone buys a measure of wheat and it is grossly mixed with soil, in this case, the customer has the option to accept or reject the wheat in exchange for a share of the price and receive the full price" (Ibn Abedin, 1412: 5 / 26), that is, the sale of wheat for a portion of the price is correct, but the sale of soil for another portion of the price is invalid, and in the case of a bill, the seller is obliged to reject the said amount.

One of the jurists has also stated in this regard: Mixed contracts that are composed of a combination of simple and nominal contracts cannot be considered anonymous contracts; In the event of a dispute, the rules of the multiple contracts that make up the mixed contract should be governed (Qa'im Maghi, 2008: 83/2).

5-1-2-Analysis of the contract in relation to its main effect

The second theory is that in the factoring contract, an action that is important and fundamental compared to other actions and is considered as the main effect of the contract, should be considered the principle and other actions that are the subject of the contract should be considered as a condition of the contract. For example, someone who signs a contract with the owner of a hotel to stay in it for a certain period of time; The subject of this contract is several legal acts; It means renting a room, depositing the passenger's belongings, providing services by the staff, and buying food and drinks from the guest; Based on this theory, one should pay attention to the basic act and the main effect of the contract, which is the rent of the premises, and consider the said contract as a rent and apply its provisions, but other services that are not essential should be considered as part of the contract.

Some authors have stated in this regard: "This contract has a special contractual structure in the world of credit, considering their various applications and topics... these natures are not material elements that can be combined like eggs, sugar and flour. and brought a separate nature from them, and the law has not designed a mixed nature of two or more contracts from certain contracts... In Iranian law, such contracts can be considered a contract and a condition attached to it. Among the goods and services provided, whichever one is more important and fundamental, he considered it as the main subject and effect of the contract" (Shahidi, 2018: 112 and 113).

The above theory has many examples in jurisprudence and law, and all jurists and jurists emphasize the validity of the contract and the necessity of the accompanying condition; Therefore, its examples are avoided.

5-1-3-Contract analysis as an independent contract

Another theory that exists in this regard is the theory of analyzing the contract as an independent and nameless single contract that has its own special provisions and the provisions of any specific contract are not enforced on it, but it is subject to the general rules of contracts. One of the authors has stated: "In the assumption that the sum of several legal acts has independence and a special character and is done with a common intention, because the common intention refers to the whole, what has happened should be considered independent of its parts. For example, although the hawala contract contains two legal acts of transfer of debt and demand, since it has a special title and existence in the eyes of custom and law, it cannot be fully subject to the rules of transfer of debt and demand. It is also a contract to stay in a guest house, use travel tours, and stay in a hospital.(Katouzian, 2010: 44); But we must differentiate between two assumptions; That is, between the case where the parties intend to enter into a single contract with multiple issues, which has just been stated, and between the case where the parties intend to enter into multiple contracts with a single contract; In the last assumption, the mentioned contract cannot be considered as a single indefinite contract, for example if someone says to another: "I sold you my house and rented my car and I am also obliged to drive it"; and the other party accepts, this contract, which is created by mixing two or more specific legal acts, the rules of each of the mentioned contracts must be implemented in time, even though the parties have called the whole of this "contract" (Katouzian, ibid.).

This theory also has a jurisprudential and legal basis; And its basis is the same verses, traditions and Article 10 of the Civil Code of Iran, which were stated in the basics section.

5-2-Analysis of ideas and selection of independent opinion

As stated, three theories were presented regarding determining the nature of the factoring contract. It seems that none of the theories are without problems. Here, problems are investigated and Mukhtar's opinion is discussed:

5-2-1- Problems in the first theory:

The proponents of the first theory suggested the dissolution of the contract into multiple contracts. This theory has the following problems:

A: The first problem with this theory is that the rule of dissolution of contract (al-Aqdyanhal al-al-Aqud) occurs in cases where a contract is dissolved into several contracts of its own kind, such as the dissolution of a contract of sale into multiple sales, but in Where the contract is divided into contracts different from its own type, the aforementioned rule does not apply and does not apply; Therefore, the traveler's contract with the hotel owner cannot be divided into several contracts such as rent (place), deposit (traveler's equipment) and sale (food and drinks).

B: Those who believe in this theory have introduced the form of peace contract to justify their opinion and to combine multiple contracts into a single contract (Khorsandian and Sheniver, 2010: 95).that this analysis in the form of a peace treaty also faces problems; First, the parties to the factoring contract do not explicitly or implicitly intend the title of peace during the conclusion of the contract, while the intention of composition is necessary for the conclusion of any contract, otherwise the contract will not be concluded. Second, in Iranian law, any contract that is not compatible with the form of definite contracts is considered an indefinite contract and is considered to be subject to Article 10 of the Civil Law, whose basis and origin is the primary condition, and the said condition has been accepted by jurists and jurists, who The basis of the will of the parties is justified (Kazemi et al., 2019: 245-270) and the articles of some laws and jurisprudence rulings, some of the basic conditions, have been established and issued by some jurists on this basis (Kazemi et al., ibid.: 260 -265).

5-2-2- Forms in the second theory

to the second theory, which analyzed and justified the subject of the contract into the main effect and the condition included in the contract; The following error occurs:

The main problem with this opinion is that it is difficult to recognize the main effect of the contract in cases where all the actions of the subject of the contract are the same, because sometimes several legal acts are equally present in the contract and recognizing one as the main effect A contract is not

possible, unless it is specified in the contract itself. So in such cases, the mentioned theory does not work.

5-2-3- Errors in the third opinion:

Those who hold the third opinion believed that the factoring contract and other similar contracts that have many subjects should be considered an independent contract; And its effects are subject to the will of the parties, and whatever the parties have willed will be implemented; But in case of silence of the parties, it will be decided according to the general rules of contracts. The problem with this theory is that there are two types of compound indefinite contracts, one is voluntary compound; That is, the parties to the contract conclude several contracts with their own will in one contract, and the second one is an involuntary compound; That is, the parties conclude several legal acts in one contract without the will to combine the contracts. The third theory is applicable to the second assumption (involuntary compound) due to respect for the intention of the parties, but it is not applicable in voluntary compound.Because it provides grounds for fraud and evasion of the law.

According to the above material, it seems that the third opinion is strong and compatible with Iran's laws; Because on the one hand, in Iranian law, the conclusion of indefinite contracts such as factoring is accepted, and there are significant jurisprudential and legal reasons in this regard, which were stated above. On the other hand, there is no problem in accepting the third point of view regarding the factoring contract; Because the combination of subjects in the factoring contract is involuntary, and even if it provides grounds for fraud or evasion of the law, the public order filter will prevent it.

Therefore, the third theory about the factoring contract is applicable to determine its nature and seems more logical.

Conclusion

Factoring is a continuous contract that is concluded between the exporter and a financial and credit institution to transfer accounts receivable and obtain financing and provide other services such as accounting, consulting, validation and guarantee of customers and collection of accounts receivable. There are many types of factoring contracts. The practical process of the complete factoring contract is as follows: after receiving the order for the supply of goods or services from its customers, the exporter sends it to the supplier, and he approves or rejects it after checking the customer's credit; And the exporter carries out his next actions with the said customer according to the supplier's approval or rejection.Factoring contract is recognized as a new legal entity in Iranian law. The said contract is a private contract subject to Article 10 of the Civil Code of Iran, which is legitimate based on verses, traditions, and rationality. There are three theories to determine the nature of the said contract; Decomposing the contract into multiple contracts, analyzing the subject of the contract into the main effect and the conditions included in the contract and considering factoring as an independent contract. After examining and analyzing the opinions, my third opinion is preferable due to its compatibility with the legal system of the Islamic Republic of Iran and the fact that the factoring institution is new.

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