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The Conditions of the Contracting Parties in the Contract in Jurisprudence and Law

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Abstract

The purpose of this research is to examine the conditions of the contracting parties in the contract in jurisprudence and law. The research method is descriptive and analytical using library resources. Investigations showed that among the conditions of contracting parties are maturity, reason, authority, ownership, possession and intention. Islamic jurists have two views about Sabi Memiz transactions. The point of view that considers Sabi Memiz as one of those who are imprisoned and detained, from trading, and they consider the realization of maturity and growth as two necessary conditions to remove Sabi's stone. The point of view that in Sabi Meeez's trade license considers the realization of growth as a basic condition for their possession, regardless of whether puberty has been achieved or not. Another condition of the seller and buyer is intelligence. On the other hand, all jurists agree on the necessity of intention in interactions; however, there is a difference of opinion among the jurists regarding the position of intention and intention. Also, if someone sells someone else's property, i.e. other than these persons, it will be based on the permission of the owner and does not require a new contract. Also, a prudish sale is based on the permission of the original owner, otherwise it is invalid and the silence of the owner is not enough. Article 252 BC states that permission or rejection does not have to be immediate.
Keywords: The conditions of the Contracting Parties, Maturity, Reason, Authority, Ownership Of Possession

Introduction

In legal terminology, a contract is defined as an agreement where one or more persons undertake a legal obligation towards one or more other persons. Alternatively, it can be said that a contract is an offer and an acceptance. Studies have shown that a contract concluded by a minor, that is a discerning immature child, is void, even if their guardian has given permission. This is a unanimous legal opinion. A minor (whether discerning or not), according to the explicit text of Islamic law and consensus, is incapacitated in all legal possessions except for acts of worship, conversion to Islam, entering into the state of Ihram (for Hajj), and so on. According to Article 1210 of the Civil Code: 'No one, when reaching the age of majority, can be treated as incapacitated in respect of insanity or immaturity unless his immaturity or insanity is proved.' According to Article 1212 of the Civil Code: 'The acts and statements of a minor, to the extent that they relate to their property and financial rights, are void and ineffective.' However, a discerning minor can acquire property without consideration, such as accepting a gift or an uncompensated contract and taking possession of unowned property.

Another condition for both the seller and the buyer is sanity. Article 1208 of the Civil Code states, 'A transaction with an insane person is void.' All jurists agree on the necessity of intent in contracting parties; however, there is a disagreement among jurists regarding the place of intent and consent. Some jurists have mentioned intent and consent as conditions of the contracting parties, while others have stated that intent is a condition of the contract itself.

For the conclusion of a contract, two elements are necessary: one is intention and consent, which is referred to as the true will, and the other is something that indicates that intention, which is called the expressed will. Neither is sufficient alone for the conclusion of a contract; therefore, just as a contract cannot be concluded solely by the intention to create, so too, if someone uses words and pretends to enter into a transaction but in reality does not have the intention to create or the true will, or if they have expressed the words as an example or are dictating them to students, a contract is not concluded (Imami, 1377: 1/ 192). Article 191 of the Civil Code states: "A contract is concluded by the intention to create, provided that it is accompanied by something that indicates that intention."

Another condition for contracting parties is that they must act of their own free will. Sheikh Ansari contrasts 'free will' with 'coercion' (Ansari, 1376: 1/349; Delcea, C., & Siserman, C. V. 2021); however, Imam Khomeini believes that "what is required of the contracting parties is not 'free will' to the extent that we must exclude 'free will' as opposed to 'compulsion' from the discussion." Ayatollah Khoei explains the difference between 'intention' and 'free will' as follows: 'The intention of the contracting parties is necessary because if there is no intention, the validity of the contract is questionable; but in the case of 'free will', the question is whether that intention is based on free will and accompanied by inner consent' (Khoei, 1368: 3/423). A coercive act occurs when it is accompanied by a threat, and the coerced person suspects that if they do not perform the act, the threat will be carried out; and if the threat is carried out, the coerced person or their dependents will suffer financial, bodily, or reputational harm (Ansari, 1376: 1/351; Delcea, C., et al., 2019). Coercion is an abnormal and unlawful pressure that is exerted on a person to compel them to create a specific legal act. From this definition, it is clear that the physical element of coercion is the exertion of pressure on the coerced party and the threat of danger that exists as a result of their refusal to enter into the transaction. The extent and nature of this pressure must also be determined to be abnormal and unlawful. Therefore, fear of unfortunate events, the need to comply with social and economic necessities, and ordinary, empty threats and legal compulsions alone are not sufficient to influence a contract... And the meaning of coercive acts is that the freedom of choice and decision-making is taken away from the coerced party, and the motive to avoid harm overcomes other motivating factors" (Katouzian, 1371: 1/495).

If someone sells property that does not belong to them, i.e., property that belongs to another person, it will be contingent upon the owner's permission and does not require a new contract (Tabatabaei, 1412 AH: 5/63). This condition, like the condition of option, is a necessary condition, unlike the first two conditions of puberty and sanity, which are conditions of validity. If a sale contract is conducted without authorization, the most prevalent opinion is that the contract is not void but rather is contingent upon the owner's permission. An unauthorized contract has all the elements of a valid contract except for the owner's consent. Upon obtaining the owner's consent, a complete cause for the contract's validity is established, and it becomes subject to the general rules of contracts (Shahid Thani, 1418 AH: 1/277).

An unauthorized sale is contingent upon the permission of the original owner; otherwise, it is void, and the silence of the owner is not sufficient (Shahid al-Awwal, 1418 AH: 2/21). Article 252 of the Civil Code states that permission or rejection need not be immediate. If the delay causes harm to the original party, he can cancel the transaction. According to Article 258 of the Civil Code, permission or rejection regarding the financial resources that were the subject of the unauthorized sale, as well as the benefits derived from its consideration, will be effective from the date of the contract. Based on the information mentioned in this research, using a descriptive-analytical method and relying on library resources, the conditions of the contracting parties in a contract are examined in Islamic jurisprudence and law.

1. Conditions of the Contracting Parties

The conditions for contracting parties include puberty, sanity, authority, ownership coupled with possession, and intention (Tabatabaei, 1412 AH: 5/60). In this research, we will address the second fundamental pillar of a sale, the conditions of the contracting parties.

1.1. Puberty

Lexicographers agree on the meaning of puberty, defining it as reaching and understanding[1]. In technical terms, puberty refers to reaching an age where a minor's physical faculties have developed and they are capable of procreation; this is a purely natural process. Based on this condition, any contract entered into by a minor (a discerning immature child) is void (Fazel Meqdad, 1365: 2/34), even if their guardian has given permission, according to the consensus of jurists (Ibn Zahra al-Halabi, 1417 AH: 285). A minor, whether discerning or not, is legally incapacitated for all possessions except for acts of worship, accepting Islam, performing Hajj, etc., based on textual evidence and consensus (Allama Hilli, undated, vol. 1/462). A discerning minor is someone who can distinguish between their own benefit and harm, possesses understanding and willpower, and has a general understanding of the meanings of words (Imami, 1377: 1/204). For example, they understand that selling something means losing possession of it and buying something means gaining ownership of it (Zahidi, 1409: 5/425); however, a non-discerning minor lacks this ability and their level of understanding does not reach this point. Shia jurists, based on narrations, usually consider a 10-year-old boy to be a discerning minor and younger children to be non-discerning (Moghniyeh, undated: 3/63). Sunni schools of thought, on the other hand, often consider a child who has reached the age of seven to be discerning and younger children to be non-discerning (Zahidi, 1409: 4/355). Our focus here is on the transactions of a discerning minor.

Islamic jurists have two different viewpoints regarding the transactions of a discerning minor. One viewpoint considers a discerning minor to be legally incapacitated and prohibited from engaging in transactions, and they have deemed the attainment of both puberty and maturity as essential conditions for lifting the minor's legal incapacity. Therefore, according to this viewpoint, a minor's possession, whether independent or with the permission of their guardian, is invalid. This viewpoint is the prevailing opinion among jurists (Allama Hilli, 1413 AH: 2/17). Any religious ruling that applies to actions for which the occurrence of a legal ruling and the effectiveness of those actions are contingent upon intention, in such a way that acting without intent is not valid, in such cases, the intention of a minor and their transactions are considered actions performed without intent. Therefore, a contract or unilateral act performed by a minor with intention and will is similar to a contract or unilateral act performed by a person due to mistake, forgetfulness, or idle talk, and will have no legal effect (Ansari, 1376: 1/337). Imam Khomeini, regarding the conditions of puberty and maturity for contracting parties, cites the verse "and test the orphans..." (An-Nisa: 4/6).

There are several possibilities. What matters in the validity of a minor's transactions is complete maturity, and it has no relation to puberty. The criterion for the validity of transactions is puberty, and maturity has no role in it. Each of puberty and maturity can be a part of the subject, meaning that the contracting party must be both pubescent and major (both), not less. Each of puberty and maturity can alone be the entire subject; that is, if one of the two conditions (puberty and maturity) is met, the contract is valid; therefore, a transaction by a non-major mature or vice versa is valid.

The viewpoint that conditions the permissibility of a discerning minor’s possession on their reaching maturity, regardless of whether they have reached puberty or not, and considers only cognitive development necessary for the validity of a minor’s possession, and believes that if a minor’s possession is conditional upon the guardian's permission, they are valid; therefore, a discerning minor does not have right to engage in transactions independently, except with the guardian's permission (Tabatabaei Yazdi, 1378: 113); and only Muhaqqiq Ardabili has permitted the independent possession of a discerning minor. Although he considered it better to have the guardian's permission (Moqaddas Ardabili, 1418 AH: 8/152). As in a transaction where a minor acts as a mere instrumentality for a person of legal capacity, such a transaction is valid. The reason for this is the prevailing custom among Muslims, which continues to exist today (Tabatabaei, 1412 AH: 5/60). After quoting hadiths, consensus, and the verse "and test the orphans" as reasons for invalidating transactions of minors, Muhaqqiq

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Ardabili criticizes these arguments and says: “These reasons do not apply to preventing minors from engaging in transactions and taking control of their property.”

Shafi'i jurists condition both maturity and puberty for the contracting parties and consider the sale made by a discerning minor to be invalid. We will discuss the reasons behind the Shafi'i school's view on the invalidity of transactions made by minors.

Since a discerning minor has not reached the age of accountability, they lack legal capacity and thus are more similar to a non-discerning minor. The intellect of discerning minors is not reliable enough to be depended upon, as their minds are still developing. Since the gradual increase in children's intellect is a hidden matter and cannot be easily ascertained, the Shari'ah has set the age of puberty as the criterion for children's capacity to enter into contracts (Ibn Qudamah, 1405: 4/6).

Entrusting the matter of buying and selling to immature minors is considered equivalent to giving property to a person of unsound mind and foolish individuals, and it is prohibited. Therefore, since a discerning minor does not have clear cognitive development, they are considered like a person of unsound mind and are prohibited from possession of any property (Zuhali, 1409: 4/ 369). There is no difference between the transactions of a discerning and a non-discerning minor, and both are invalid. The words of a minor have no weight or effect. The only thing a minor can do is perform acts of worship, which are valid (Jaziri, 1406: 2/ 365).

The Hanfi, Hanbali, and Maliki schools of thought consider the possession of a minor with the permission of their guardian to be valid, although there are some differences in their views.

The Hanafi school of law divides the possessions of a discerning minor into three categories (Zuhali, 1409: 4/355): Possessions that cause only harm: Such as divorce, freeing a slave, giving charity, lending, etc. There is no doubt that such possessions by a minor are not valid, even if they are done with the permission of the guardian. Possessions that clearly benefit the minor: Such as accepting a gift, converting to Islam, etc. These are undoubtedly permissible, even without the guardian's permission. Possessions that involve both benefit and harm: Such as buying and selling. These possessions are valid if done with the guardian's permission (Zuhali, 1409: 4/355). The Hanbali school considers the possession of a discerning minor to be valid with the permission of the guardian (Jaziri, 1406: 2/ 366) and permits their possession only in minor and trivial matters even without the guardian's permission (Ibn Qudamah, 1405: 4/ 7). The Maliki school conditions the validity of a discerning minor’s possessions in buying, selling, and similar reciprocal contracts on the guardian's permission. If these possessions are in the best interest of the minor, the guardian is obligated to grant permission, and if they are contrary to the minor's best interests, he must reject them (Jaziri, 1406: 2/ 366).

The possession of a minor according to the Civil Code can be categorized into several instances. Article 1210 of the Civil Code states: 'No one, when reaching the age of majority, can be treated as incapacitated in respect of insanity or immaturity unless his immaturity or insanity is proved.' Article 1212 of the Civil Code states: 'The acts and statements of a minor, to the extent that they relate to their property and financial rights, are void and ineffective. However, a discerning minor can acquire property without consideration, such as accepting a gift or an uncompensated contract, and taking possession of unowned property.' Article 1214 of the Civil Code states: 'The transactions and possessions of a non-major person regarding their own property are not valid unless they have been authorized by their guardian, whether this authorization was given beforehand or after the act. However, acquisitions without consideration, of any kind, are valid even without permission.'

1.2. Sanity

Another condition for both the seller and buyer is sanity (Najafi, 1981: 22/260). Therefore, selling or buying done by a child is not valid, even if the guardian permits it (Allama Hilli, undated, b: 1/164). Similarly, if a child reaches the age of ten and is of sound mind, the sale or buy is valid (Muhaqqiq al-Awwal (Hilli), 1403 AH: 2/14). Also, selling or buying by an insane person, whether permanently or temporarily, or by someone who is unconscious, intoxicated, forgetful, joking, incapacitated, or asleep, is not valid. Likewise, the buying and selling of a person of the unsound mind is not valid (Mohammadi, 1971: 1/386). Linguists have defined unsound mind as ignorance and a deficiency in reason (Fiumy, 1398: 1/380), which is consistent with a lack of maturity. It can be argued that

maturity is inherent in reason, and there is a consensus that reason is valid. The invalidity of a contract made by an insane person indicates the importance of reason (Moqaddas Ardabili, 1418 AH: 8/15). Maturity is a facet of reason that prevents a person from destroying their property and guides them towards its improvement (Katozian, 1371: 2/26). Awareness and expertise in the proper maintenance and use of one's property is referred to as maturity (Zahily, 1409: 5/425). Article 1208 of the Civil Code states, "A contract with an insane person is void."

1.3. Intention and Consent

All jurists agree on the necessity of intention in contracting parties, but there is a difference of opinion among jurists regarding the place of intention and consent. A group of jurists have mentioned intention and consent as conditions of the contracting parties, while another group of jurists have stated that intention is a condition of the contract. All jurists agree that in transactions, unilateral acts, confessions, testimonies, and the like, words and actions do not have any effect in and of themselves, but their legal validity and effects are conditional upon being based on intention. As the Prophet said: 'Actions are only by intentions' (Har al-Amili, undated, Book of Purity, Volume 1, Chapter 5 of the Introduction to Acts of Worship, Hadith 5). Therefore, the basis and foundation of human actions are based on intention and purpose. If the words used in a transaction are not accompanied by intention and consent, they will have no effect (Mughniyeh, undated: 3/65). Consent is inner satisfaction, willingness, and a good heart. Consent is a condition for the validity of contracts; a contract that is concluded without it is void and ineffective. Those who have mentioned intention and consent as conditions for the contracting parties believe that intention has an inseparable connection with the contracting parties (Tabatabaei, 1412 AH: 5/60).

However, those who consider intention and consent to be essential components and constituents of the essence of a contract believe that the place of intention and consent is not among the conditions of the contracting parties. They have placed the discussion of intention before the conditions and have said that if there is no intention, the sale or exchange will not be valid. Among the proponents of this view, we can count Imam Khomeini (1371: 3/36, 37), Khoi (1368: 3/423), Sheikh Shushtari (Mughniyeh, undated: 3/65), and Sayyed Mohammad Kazem Tabatabaei Yazdi (1378: 117).

Imam Khomeini, while emphasizing the necessity of intention in a contract, states, 'We do not have a specific reason to consider it as a Conditions of the contract or the contracting parties.' He further explains that there is a difference between matters that are part of the essence of a contract and those that are Conditions of a contract; because matters that are essential to the nature and essence of a contract are of a higher rank than Conditions, and the rank of a term is subordinate to the essence, and a term does not interfere with the essence of the act. The intention is one of those matters that is related to the essence and nature of a contract, and the creation of a contract or a unilateral act without intention is meaningless (Khomeini, 1371: 3/36, 37).

1.4. Authority

Another term for the contracting parties is capacity (Najfi, 1981: 22/260).

By Authority, we mean the intention to carry out the Conditions of the contract out of inner satisfaction, as opposed to aversion or inner dissatisfaction, not as opposed to coercion or duress (Ansari, 1376: 1/349).

Islamic jurists have cited the Qur'an and Sunnah to support their view, such as:

"الا أن تَكونَ تجاره عَن تراضٍ مِنكُم " (An-Nisa 4:29).

Allah has only permitted trade that arises from mutual consent between the parties to the transaction.

"لا يَحِلَّ لِموءمِنٍ مالُ اخيهِ الا عَن طِيبِ نَفسٍ مِنهُ " (Hurr al-Amili, undated: 5/120, Book of Prayer, Chapters on the Place of Prayer, Chapter 3, Hadith 1 and 3)

It is not permissible for a believer to take possession of their brother's property except with his consent.

The famous Hadith of Relief, from the Prophet (PBUH) who said:

"رُفِعَ عَن أمَتى تِسعَهُ اشياءٍ: السَهوُ و الخطاءُ و النسيانُ و ما أكرَ هُوا عليه ... و مَا استُكرَهُوا عليهِ" (Zuhali, 1409: 4/361)

This hadith provides a broader context by stating that Muslims are generally not held accountable for certain unintentional actions or those they are forced into. It includes mistakes, forgetfulness, and actions done under coercion.

And also the authentic hadith of Bazanta from Abu al-Hasan (as) quoting the Prophet (PBUH) who said:

" وُضِعَ عَن أمَتی مَا اءکرَهُوا علیهِ وَ مالَم یُطیقُوا وَ ما اَخطاؤاو ..." (Hurr al-Amili, undated: 16/164, Book of Faith, Chapter 12, Hadith 12)

Similar to the second hadith, this one also highlights the Islamic principle of mercy and understanding, stating that Muslims are not held accountable for actions they are forced into or cannot help.

Islamic jurists, based on the verse 'trade by mutual consent', consider only trade resulting from mutual agreement to be valid" (Allama Hilli, undated, Vol: 1/462).

If a contract made under duress is subsequently ratified, it becomes valid and enforceable. This is because the contract, which inherently requires fulfillment, has already been concluded. Additionally, the consent, which is a necessary condition for the validity of a contract, has been obtained subsequently. Therefore, all the elements required for a valid contract are present, and it is considered valid. A contract made under duress is essentially a true contract that possesses all the elements of a sale and, with subsequent consent, will produce its intended legal effects (Ansari, 1376: 1/ 349). A sale made under coercion is permissible, and the sole reason for this is consensus among scholars. If there were no consensus among scholars regarding a coerced contract, there would be no basis for including a coerced contract among valid contracts; because in a coerced contract, there is no intention, and the words uttered by the coerced person are like the words spoken by a jesting or insane person, and no legal effect is attributed to them (Allama Hilli, undated, vol. 1: 462).

Imam Khomeini considers a contract made under coercion to be invalid and its enforceability contingent upon subsequent consent. Imam Khomeini has outlined several scenarios regarding the consent of a coerced person, each with its own ruling:

If the coerced person believes that the coerced sale is valid and is not aware of any deception (saying something that the listener understands differently than the speaker intends), and enters into the contract with the belief that the coerced sale is valid, then from a customary perspective, the contract of sale is considered valid. This is because the declaration has been made seriously, as its meaning and content have been realized.

If the contracting party, at the time of the transaction, is aware of the invalidity of a contract made under coercion but believes that the coerced party might subsequently consent to it, and holds the belief that if consent is given, the contract will be valid, then the contract of sale is valid in this case. This is because having a firm and definitive belief in future consent is not a condition for the validity of the contract. Rather, it is sufficient for the contract to be valid if it is entered into with the hope that consent will be given in the future.

In this scenario, the contracting party knows that a contract made under coercion is void and believes that subsequent consent will not validate it; or they know that they will not consent even after the contract is made. In such a case, it is not reasonable to say that the coerced party's subsequent consent can validate the contract because the consent that is the cause of the contract does not exist, and moreover, there is a certainty that consent will not occur. Therefore, in this scenario, neither a valid contract nor a sale has taken place.

Although a contract made under duress is considered a contract from a customary perspective, the wise people of society would never compel the coerced person to fulfill such a contract unless it is followed by the consent of the coerced party. In such a case, the contract becomes complete, and its fulfillment becomes customary, and there is no need for a new contract, as this consent makes it valid and binding" (Khomeini, 1371: 2/ 84, 83).

According to all Hanafi jurists, a contract made under coercion is void; because coercion eliminates consent, and consent is a condition for the validity of a contract. Therefore, if a transaction is carried out under coercion, the coerced person can refuse to agree to the contract and rescind it, just as they can agree to it so that the contract becomes valid. A sale made under coercion does not differ from other void sales in that with the buyer's acceptance, ownership is established for him, and conversely, with the receipt of the price by the coerced person,

the contract becomes binding on him (Khomeini, 1371: 4/ 360). The Maliki school of thought considers a contract made under duress to be non-binding, meaning that such a contract does not automatically become binding. The coerced party can either choose to make it binding by giving their consent or rescind it (Jaziri, 1406: 2/163, 162). The Shafi'i and Hanbali schools, however, do not consider a contract made under duress to be valid. This is because in a coerced contract, the contracting party has not entered into the agreement willingly, and therefore, no valid contract has been concluded. Since the essential condition of a contract, which is the consent of the parties, is absent, the contract is void (Zahily, 1409: 4/361).

A coerced transaction, from the perspective of the Civil Code, encompasses the following: Article 199: Consent obtained through mistake or coercion does not render a transaction valid. Article 202: Coercion is caused by actions that have an effect on a person of sound mind and threaten their life, property, or honor in a manner that is not usually tolerable. In considering coercive actions, the age, personality, character, and gender of the person must be taken into account. Article 203: Coercion renders a transaction void, even if it is carried out by a third party who is not a party to the transaction. Article 204: Threatening the life, honor, or property of a party to the transaction, or of a close relative such as a spouse, parents, or children, constitutes coercion. In this article, the determination of the degree of closeness for coercion to be effective is based on customary norms.

1.5. Ownership

It is a condition in the seller that he be the owner of what he is selling, or that he has permission or authority over it, such as a father, paternal grandfather, a religious judge, or a trustee appointed by a religious judge (Allama Hilli, undated, vol. 1, p. 164).

An unauthorized sale is a transaction that a person carries out for another without having any authority to do so. The person who conducts the transaction without any authority is called the unauthorized person, and the person who is a party to the transaction is called the principal, and the other party is called the third party (Imami, 1377: 1/ 298, 299). There are two viewpoints regarding the validity or invalidity of an unauthorized contract:

The well-known viewpoint of Imami jurists, who hold that an unauthorized sale is valid and conforms to the general rules of contracts, has even become the consensus among jurists. This is because it is presumed that in an unauthorized sale, the contracting party is mature and sane, and the subject matter of the sale is transferable. The mere lack of permission from the owner is not sufficient to invalidate an unauthorized sale (Mughniyeh, undated: 3/91).

The consent and permission of the owner are also a condition of the contract (Amali, 1413: 35/458); however, this consent is a condition for the effectiveness and enforceability of the contract, not a condition for the conclusion of the contract (Shahid al-Awwal, 1269: 335).

Among those who hold this view, we can name Shahid al-Awwal (1269: 335), Muhaqqiq al-Thani (1408: 4/69), Bahrani (1413: 18/328, 329), Najafi (1981: 22/274), Ansari (1376: 1/369), Mirza Naini (undated: 169), Fadil Miqdad (1404 AH: 2/34), Sheikh Mufid and Sayyid Murtaza (1410: 593), Tabatabai Yazdi (1378: 134), Allama Hilli (undated, A: 360/1), Imam Khomeini (1371: 2/101, 102), and Khoi (1368: 4/20).

Among the Sunni schools of thought, the Maliki and Hanfi schools (Zuhayli, 1409: 4/375, 168) consider an unauthorized sale to be permissible and its effectiveness to be contingent upon the owner's permission. The prevailing opinion, and nearly a consensus among Shia jurists, is that an unauthorized sale also becomes a valid contract upon obtaining the owner's consent and permission; because trade based on mutual agreement is true of it. Therefore, it is encompassed by the evidence from the Quran, Sunnah, and consensus that indicate the validity and necessity of contracts; because in the names and titles of contracts that are encompassed by the aforementioned evidence, there is no explicit statement that the contract must not be unauthorized. Similarly, there is nothing that indicates consent before or simultaneously with the contract, and... (Najfi, 1981: 22/274).

Another viewpoint is that if the internal consent of the owner is established, even if this consent has not been explicitly, implicitly, or contextually expressed, the unauthorized sale is valid. However, its validity is still contingent upon the owner's permission. There are three types of unauthorized sales:

1. If someone proceeds to enter into a contract on behalf of the owner without the owner having previously expressed any prohibition against the transaction. This type of transaction is undoubtedly considered an unauthorized transaction, and the consensus among jurists is that such a transaction is permissible, and its validity is contingent upon the owner's permission.
2. To perform a contract on behalf of the owner without authorization, even if the owner has previously prohibited such a transaction. Regarding this type, the prevailing opinion among jurists is that the unauthorized transaction is valid, and the enforceability of the transaction is contingent upon the owner's permission.
3. The unauthorized agent has concluded the contract on his own behalf, as is often the case in a usurped sale. This assumption, according to the prevailing opinion, is considered a valid contract, and the validity of the contract is contingent upon the owner's permission (Ansari, 1376: 1/378).

According to Maliki and Hanafi jurists, an unauthorized sale is also valid and its validity is contingent upon the permission of the person who has ownership over the possession. If they permit it, the contract is binding, and if they reject it, it will be void. Jurists of these schools consider ownership over the disposal (similar to the prevailing opinion of Imami jurists) as a condition for the binding nature of the contract, not a condition for its validity and conclusion; therefore, the permission issued by the owner following an unauthorized sale is similar to prior authorization or power of attorney. The only difference between the Maliki and Hanafi opinions on an unauthorized sale is that Maliki jurists generally permit unauthorized possession and do not differentiate between an unauthorized sale or purchase. In both cases, they consider the binding nature and effect of the transaction to be conditional upon permission; However, in the Hanafi school of thought, a distinction is made between different types of unauthorized possession. In the case of the unauthorized sale of another person's property, the sale is considered valid, but its enforcement is contingent upon the owner's permission.

The Shafi'i and Hanbali schools of thought have demonstrated that ownership coupled with possession is a condition for a contracting party, and in an unauthorized sale, this condition is not met, and therefore no transaction has taken place (Ibn Qudamah, 1405: 4/16). Hanbali and Shafi'i jurists argue that an unauthorized sale does not involve a consensual transaction, and such a transaction has been prohibited by the Prophet (PBUH), because the contracting party may not be able to deliver the property to the other party, and disputes may arise, and such a transaction indicates uncertainty, which Islam prohibits. They believe that the action of Urwah al-Bariqi is not an example of an unauthorized sale because he had a power of attorney from the Prophet (PBUH), and the evidence for this is that Urwah sold the second sheep and gave the money to the Prophet (PBUH), therefore it is not considered an unauthorized sale (Zuhali, 1409: 4/376).

The unauthorized sale, from the perspective of the Civil Code, is governed by several articles. Article 247: A transaction involving the property of another is not valid, except in the case of guardianship or agency, even if the owner is internally satisfied. However, if the owner or their representative subsequently permits the transaction, then the transaction is valid and enforceable. Article 248: The owner's permission regarding an unauthorized sale is obtained through words or actions that indicate approval of the contract. Article 249: The silence of the owner, even if they are present during the contract ceremony, is not considered permission. Article 250: Permission is only effective if it has not been previously refused; otherwise, it has no effect.

Conclusion

This research aims to examine the conditions of contracting parties in a contract within Islamic jurisprudence and law. Intention and acceptance are essential elements of a contract, meaning that the concept of a contract cannot be realized without them. Contracts, such as sales and unilateral acts, consist of two parts: first, the internal will and intention; and second, the external manifestation (a word or action through which the internal will is expressed). The dependence of a contract on these two elements is not specific to religious law or custom. Therefore, no contract can be found that has been realized without an inner will (intention) and consent, as well as an external manifestation (words or actions). Since a contract is composed of these two elements, and by negating one, the other will also be negated. Therefore, intention is neither a condition of the contract nor of the contracting parties, but rather intention and consent are the constituents of the contract itself. A contract that is

not accompanied by intention is, in fact, not a contract, because the words of a contract are not like some words that are uttered out of mere obligation. Rather, the offer and acceptance in a contract must be intended by the speaker.

The contract formula is the complete cause of ownership and transfer, and the reason for this is the generality of the verse "Fulfill your contracts." The owner's permission is not part of the cause, therefore, their permission is merely an indication and a revelation that the complete cause occurred at the time of its execution. Thus, from that time on, it has had its effect, and the owner's permission has been attached to the established contract. Therefore, the owner's permission is their consent to that contract content. The content of the contract is nothing but the transfer and the legal effect at that time. Therefore, the owner has consented to the transfer at that time, and this is the revealing nature of the permission. If we consider permission as a means of transfer, then it would require that something nonexistent (i.e., a contract that was merely words created by an unauthorized party and then immediately ceased to exist, leaving nothing behind at the time of permission) would affect something existent (ownership and transfer), which is logically impossible. Is the effect of permission discovery or transfer? There is no clear answer. Rather, this is a theoretical debate, and it is evident from the question itself that permission can be both a discovery and a transfer (Khomeini, 1371: 2/159). In a sale, it is a condition that the seller owns what they are selling or has permission to sell it.

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