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Comparing Risk transfer in the Laws of Iran, France, England and International Sales Convention

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Abstract: *There are different regulations stipulated in the domestic laws of some countries that hold the consenter responsible for certain risk transfer liabilities by the requiring party. Imamiyyeh Jurisprudence has specified the axiom "the seller is liable for wasted sale objects before billing" to serve the same purpose, Iran's civil procedure has codified Article (387) and the international documents on the contracts, like the contracts for the international sale of goods (CISG) and the international commercial terms (Incoterms) have also dealt with the issue. The important issue worthy of contemplation here is the point where these rules and regulations intersect with one another and it is occasionally manifested as contradictory ideas that provide for more debates and are therefore indicative of the law dynamicity. Generally, risk transfer in the contracts that do not necessitate the delivery of the goods and those requiring the goods carriage and the ones the subject of which is sold in delivery feature different conditions and effects; they can be explained and investigated in the domestic law and the foreign regulations based on the time of risk transfer and, generally, based on three theories of risk transfer with signing the contract, risk transfer with the conveyance of ownership and risk transfer with the delivery and submission of goods. The analysis of the abovementioned cases in a descriptive and comparative approach is the objective of and of concern to the current research paper. The present study deals with the comparative study of risk transfer in the laws of Iran with the statutory provisions stipulated in the international sales convention, the obligations law of France and the domestic law of England.*

Keywords: *risk transfer, changed guaranty, international sales of goods contracts, international sales of goods convention*

INTRODUCTION

In the current legal systems, human being and his needs and wants of social life is the center of the values and pole of thoughts and merits and demerits are major causes of the persistence or decline of the regulations; very much like when there is made use of the term "justice" for certain topics so as to take advantage of its traditional attractions alongside with practical experiences and satisfy righteous hearts and curious thoughts. This does not mean putting the reason aside; it means getting rid of chains of rationality and constraining traditions. It metaphorically denotes denouncing abstractionism and avoiding inadmissible imitation and imprisoning the thoughts (Katouziyan, 1998). Based thereon, an investigation of the principles and rules governing the international contracts in foreign law systems and comparing them with Iran's law can be very valuable and of great use in terms of bringing about an optimal change and correction as well as in keeping pace with international regulations in the area of contracts. This is of a great importance and the most trivial, but important, component of which is the discussion on the risk transfer in international contracts and comparing it with Iran's law. This is the duty shouldered by the present study.

Measures have been taken in international arena for homogenizing rules on international sales of goods the result of which is the conventions and the regulations stipulated by international organizations including international sales convention that has to be thoroughly evaluated due to its being prevalent in a great many of the international commercial contracts. On the other hand, investigation of France's liabilities law as a harmonic style of the nationally written regulations carefully attended by a great many of the countries will be surely fruitful, especially because the suggested bill of this same law has been undergoing a constant process of codification and amendment based on scientific and practical principles for nearly thirty years. Thus, the present study deals with the investigation of risk transfer in international contracts with a look at CISG document, France's obligations laws and England's law on contracts and then a comparative study will follow between the regulations of changed guaranty in Iran's law with the regulations therein.

Study method:

The method utilized herein for the identification and elucidation of the study subject matter is an analytical-descriptive method that is carried out based on library research. In other words, firstly, the resources, including the books, articles, dissertations, internet sites and the existing rules on the subject matter are searched and then with the study of the various ideas and perspectives regarding the subject matter, there are made efforts in line with inferring and analyzing the relevant issues and finally the study objective is accomplished via providing descriptions and specifications of the study subject matter to the dear readers.

Conceptualizing Risk (Changed Guaranty-Risk) in the International Law:

The term that is commonly used to express the aforementioned axiom is "risk" in international law. It is stated in explicating risk in international contracts that "it possesses different denotations disregarding the risk intended by Vienna and Incoterms, 2000, i.e. the price guaranty, the risk might require insurance guaranty, political guaranty and economical guaranty, as well" (Day, 1998).

In regard of the denotation of guaranty in an international contract, it is stated that "the foresaid meaning can incorporate various situations like the wastage, spoilage or damage to the sold goods. The common trait in all these denotations is that the wastage or damage should have happened by chance. Therefore, they should have not been caused via the parties' taking an action or leaving an action undone. So, the term "guaranty" encompasses statuses like theft, accidents resulting from seawater, high heat negatively influencing the commodity quality, goods' mixing (especially liquids) with other goods, goods' spoilage, evaporation, improper storing and/or heedless handling of goods by transportation operator" (Fijan, 2010).

Sometimes, the damage or wastage of commodities happens due to governmental interventions for instance as a result of such measures as confiscation, import or export customs offices formalities or embargoes. The issue raised here is that whether these cases can be ensured via changed guaranty concept introduced above or not. It is stated in this regard that "prevalent perspective holds that these actions are outside the concept of guaranty mentioned above. In fact, when a commodity is confiscated, the objective is not the goods itself rather confiscation is imposed parallel to punishing an individual as the owner of the commodity. Moreover, government's measure is a legal act that is not in proportion to the guaranty and hence renders it practically impossible to acquire an insurance support for it. On the contrary, under circumstances that commodity is wasted or damaged during the course of war by enemy interventions (like bombardment, confiscation and so forth), it seems logical if it is placed inside the inclusion circle of the regulations on guaranty. In fact, the reason why such a consideration has to be accepted is that the buyer can guaranty the goods against war dangers" (Fijan, 2010).

There is no explicit definition provided in the international goods sales convention for changed guaranty and Article (66) therein only points to outcomes of guaranty transfer. But, the majority of the jurists agree that here the types of damages are intended that occur accidentally onto the goods and they should not be a result of the seller's taking of an action or leaving it undone. Thus, such accidental occurrences can include any incident in which none of the parties have had a hand. So, such incidents can be caused by theft, quality decline due to the extreme heat, flooding, lack of caution in unloading the goods and so on (Sho'ariyan et al., 2016).

In sum, it has to be mentioned that the contract featuring the conditions of agreement conditions and persistence, the existence of a specific subject matter and deliverability thereof is indispensable. It is stated accordingly that "if one of the documented proofs in regard of changed guaranty be the intellectual premise the way it considers the seller and buyer's obligations as forming a single body of commitments and considering that in transactions in the form of exchange of goods the parties seek to reach to a certain goal and obtain a return for what they offer and knowing that there remains no doubt in the jurisprudence in an analysis of the agreement and the correlation relationships of the two sale items as well as the historical foundations of civil law that the axiom "the seller is held liable for wasted sale objects before billing" has been observed, the rules of fairness make it expedient that wherever such a goal, i.e. obtaining the contracted sale item, is not fulfilled, the subject should be incorporated by the regulations pertaining to guaranty and the enforcement of the contracts' indispensability principle happens where the contract features authenticity and the competency for its contents to be observed" (Mohajer et al., 2005).

The Risk transfer Legal Reasons and Evidences in Iran's Law:

In the domestic rules and regulations, the most important document and the foundation of passing of guaranty worthy of being pointed out here is Article (387) of civil procedure that stipulates "if the sale object is wasted without it being caused due to the seller's fault and guilt, the sale has to be revoked and the price should be returned to him unless the seller has referred to the representative or a deputy thereof for the submission in which case the wastage is to be shouldered by the buyer". Also, Article (453) of the same law specifies the liabilities in regard of the goods wastage after billing and within the period of post-facto rescinding. The aforementioned article stipulates "considering the option of transaction revocation during negation and the option of rescinding the bargain within three days after signing the contract, if the sale item becomes wasted or defected after the submission and during the seller or the transacting parties' post-facto rescinding period the buyer is to be held liable for the obligations and if the options mentioned above are exclusively made unique to buyer then the wastage or damage has to be covered by seller". These topics will be further studied and compared in the upcoming sections.

Risk transfer in UN's Convention on Contracts for the International Sale of Goods (CISG):

The existence of the international contracts between merchants and tradesmen from various countries around the world and with different national legal systems will most importantly raise the issue as to what regulations should be governing these relations and in cases of settling the disputes what legal system should be referred to? The existence of such problems made the UN's Commission on International Trade law (UNCITRAL) to make a great deal of effort in line with specifying uniform regulations regarding the international sale of goods. Uncitral in its first meeting in 1968 placed in a consensus the investigation of international sales atop of its agenda. The two plans designed by the commissions had been inspired from the 1964 conventions, one was related to the effects of sale (seller and buyer's rights and obligations) and the second pertained to the arrangement and endorsement of the contracts of sale. Both of these plans were enacted in 1978 and finally were blended into one. And, in the same year, the comprehensive plan was submitted to the UN and the assembly agreed to summon an international conference regarding making a decision about it. The foresaid conference was held from March, ten, to April, eleven, 1980 in Vienna and the representatives from 62 countries and 8 international organizations participated therein. After discussing and investigating UNCITRAL plan, revisions, incorporating 101 articles, were made thereto under the title of "UN's Convention on the International Sales of Goods" and it was written and printed in six formal languages of the UN (English, Arabic, Chinese, Spanish, French and Russian). After the enactment of these stipulations, many countries announced their membership thereto and attempted to coordinate it with their own national legal system.

The articles of the convention are arranged in four sections presented after a preliminary introduction. These parts are:

1) The enforcement domain and general regulations encompassing Articles (1) -(13) in which enforcement scope of convention in the member countries' territories, excluded contracts and included conventions are specified.

2) Signing of contracts including ten articles (Articles (14) -(24) that express regulations governing the way contracts are to be arranged, signed and enforced internationally, i.e. obligations and agreements and other relevant issues.
3) Sales of goods embracing 64 articles (Article 25-88) with the centrality of the regulations pertaining to sales. Of course, with the dedication of this section to sales outcomes and effects, i.e. the seller and the buyer's rights and obligations, it could be better if it had been named the sales effects in lieu of goods sales.
4) The final regulations incorporating articles (89) -(101) in which the "rights to conditions" specified in the convention, also enforcement domain of convention in terms of the time the convention enters execution stage, confirmation and adherence to convention after becoming indispensable are discussed.

The most important parts of convention, particularly in terms of comparative studies are parts two and three [6], that deal with the regulations on the endorsement of contracts, issues pertaining to requirements and agreements of the sale as well as the buyer and seller's obligations and are therefore very interesting and of importance in terms of comparing them with different countries laws, including Iran's laws, especially with the jurisprudential discussions on sale that the Islamic republic of Iran's regulations are completely based on them. Inter alia these cases in risk transfer in the convention on international goods sales that are considered in Articles (66)-(71) and are resultantly regarded as the most specialized discussions in the area of international commercial contracts that consider the risk transfer in the contracts entailing the goods delivery as well as the contracts the sale subject of which is sold during carriage and also those contracts that do not necessitate any carriage of the goods all of which have their own specific conditions and effects and thus are always the focus of attention in composing legal texts and their uncertain aspects still have rooms for negotiations (Sho'ariyan et al., 2016). Thus, the components of risk transfer as considered in the convention are investigated below in a comparison with Iran's law.

Comparative Study of Risk transfer in Contracts Necessitating the Delivery of Goods in CISG and Iran's Law:

According to the fact that the sales contract necessitating goods delivery are the most common form of international sales contracts and require a third party to deliver the goods, therefore goods delivery happens indirectly through someone's acting as a mediator. Due to the possible existence of special delicacies regarding this type of contracts and the effects resulting thereof on the change of guaranty, the convention has specified a specific article in relation to the risk transfer in such contracts. The rules inserted in Article (67) of convention are in harmony with such a situation in which two preconditions are held necessary for the transferring of guaranty; 1) submission of goods to carriage operator and 2) the goods being specified (Safa'ee et al., 2008). This is while article (387) of Iran's civil law has only specified change of guaranty only in cases of direct and non-intermediated goods delivery by seller to buyer and there is no ruling ordained in regard of intermediated submission of goods by the transportation operator. It is evident that since article (387) of civil law is excerpted from the jurisprudential axiom of "the seller is held liable for sale objects wastage before billing" and the jurisprudential resources also fall short of pointing to the indirect and intermediated submission of the goods by a transportation operator, therefore, the legislator's silence in this regard is deemed justifiable.

Considering the sales contracts entailing goods carriage in which seller is not required to hand over the goods in a certain place, it is stated that the similar rule to the first part of Paragraph (1) of Article (67) of the convention cannot be enforced in Iran's law because based on Article (387) of civil law, guaranty has to be conveyed to buyer since the submission and corresponding to Article (368) of civil law, submission takes place when sale object is made available to buyer even if buyer does not receive it materially. Also, it is expressed that transportation operator cannot be envisioned as the buyer's representative so that the guaranty can be considered transmitted upon the submission of goods thereto. But, regarding contracts of sales entailing carriage of goods in which seller is obliged to deliver goods in a specific place, it is reasoned that under such assumptions transportation operator can be considered as the representative of buyer and hence guaranty is transferred to buyer upon submission of goods thereto. The reason behind the adoption of such a perspective is that carriage is the subject of interest and not the means of it in such situations, so with submission of goods to transportation operator, the guaranty is passed from seller to buyer. Hence, Paragraph (2) of Article (67) of the convention is envisaged enforceable in Iran's law and in this regard the reasoning can be based on Article (379)

of trade law (Mohajer et al., 2005). It seems that Article (379) of trade law has nothing to do with change of guaranty stemming from submission of goods and such a result cannot be inferred thereof.

Risk transfer in Contracts Necessitating the Sale of Goods in Carriage:

In a great many of the international sales, goods are transacted while being transported. The issue is quite common in regard of sales of raw material and various assumptions can be put forth in this regard. For instance, a seller might possibly sell the goods during its transportation from the factory to another place (like a storehouse in another country). Thus, it is necessary for the changed guaranty duration to be specified and Article (68) of the convention has also dealt with the issue. It is stated in the context of the aforesaid article that "the guaranty for a sold item can be transferred to the buyer during transportation and since the date an agreement is reached and a contract is signed. However, if urged by the situation, the guaranty can be transferred to the buyer since the time it is handed over to a transportation operator who issues the documents pertaining to the transportation contract. Despite this latter idea, if the seller is found aware or should have been aware of some certain wastage of the goods or a damage thereto at the time of signing a contract and refrains from communicating it to the buyer, the wastage or damage guaranty shall be shouldered by him". Corresponding to Article (68) of the convention, the transferring of the guaranty in the sale of the goods in carriage takes effect since a contract is signed by the buyer. Of course, the guaranty transfer should naturally begin with the submission of the goods as stipulated in the risk transfer convention but it cannot be applied for the cases in which the contract is signed for the goods in carriage and the reason behind it holds that at the time of the goods delivery to a transportation officer, there has not been a contract with the second buyer and there has not been any intent for sending the goods to him so the transferring of guaranty to this second buyer at the time of goods delivery to a transportation operator is not justifiable (Mazloum Rahni et al., 2015).

There is no statutory provision in Iran's law signifying the identification of risk transfer regarding goods that are sold in carriage. Therefore, it seems that the aforementioned example in the Iran's law, if not otherwise explicitly mentioned in the contract, obeys the general axiom "the seller is held liable for whatever the sale objects being wasted before billing".

Part II: Comparative Study of Risk transfer in Case of Non-Commitment to Carriage in CISG and Iran's Law:

Article (69) of the convention has specified a particular situation in relation to the transferring of guaranty. Unlike the Articles (67) and (68), this latter article is less practical because it rarely is the case that the carriage of sale object is not demanded in the international trade. Therefore, in the majority of the cases, the Articles (67) & (68) will specify the rules governing the guaranty transfer and Article (69) enjoys little of enforcement domain (Mohajer, 2005). The aforementioned article states that "1) in cases other than the ones mentioned in the Acts (67) and (68), the guaranty is transferred to the buyer when s/he receives the goods or, in case that s/he has failed to receive the goods, the guaranty will be transferred since the date an invoice has been issued in which case the buyer is regarded as having committed a breach to the contract with his failure in receiving the goods; 2) anyway, if the buyer is obliged to receive goods in a place other than the trade locus of the seller, the guaranty will be changed when the submission date is matured and the buyer is found fully aware that s/he has received the goods; and, 3) in case that the contract is about a certain type of goods that is yet to be determined, it is assumed that the buyer has not received the goods till it is explicitly and clearly identified for being contracted".

As supposed in Article (69) of the convention, two conditions should be met for the changed guaranty: 1) submitting the goods to the buyer or making it available to him and 2) specifying the goods (Safa'ee et al., 2008).

According to Article (387) of civil law, the guaranty is transferred to the buyer when the goods are delivered to him. Based thereon, Paragraph (1) of Article (69) of the convention complies with the accepted axiom in Iran's law. Considering the idea that the submission and reception of the goods are considered two materially different actions, there is a need for answering the question that whether the changed guaranty depends on the seller's submission of the goods or suspended on the reception of the goods by the buyer? Notably, the way it is expressed in Article (367) of civillaw, "submission" means handing over the goods to the buyer in such a way that s/he can afford any sort of occupancy and benefiting thereof and "reception" means the buyer's domination over an sale

object and as it is stipulated in Article (368) of civil law, it is quite likely that a seller submits the goods that is not received by the intended buyer for one of a reasons (Zarghani, 2009).

Some of the writers (Sho'ariyan et al., 2016) believe that the main criterion in transferring guaranty is the submission of goods not its reception so the submission of the goods to the buyer equals the changed guaranty and the buyer's reception cannot be considered as a scale for the transferring of guaranty. Of course, the submission of the goods should take place corresponding to the contract or it has to be considered authentic by the common law and custom and in case that the seller takes a direct measure without paying attention to the conditions on the submission method and quality inserted in the contract to deliver the goods, it is regarded no grounding for the changed guaranty. It seems that Article (387) of Iran's civil law has failed to consider the possible temporal interval between the submission and reception and this is possibly due to the reason that these two actions predominantly happen simultaneously and this is the matter that has been taken into consideration by the legislator.

The buyer's breach to the obligation of receiving the sale object can be considered as confirming and indicative of the guaranty transfer since the instant the sale object is submitted to the buyer because it is not logical to still hold the seller liable for any contingent wastage of the goods even after the seller's submission of the goods and fulfilling his duty in this regard even in case that the buyer performs a breach to his obligation of accepting the goods and this logic is exactly reflected in Paragraph (1) of Article (69) of the convention which can also be used as a topic for analysis and evaluation in the second part of Article (387) implying the situation in which the seller has taken an action for the delivery of the goods or has declared his preparation for submission but the buyer refrains from receiving the goods and/or the seller does not have access to the buyer (absent). According to the ruler's prevalence in cases of the buyer's absence or refraining from receiving the goods, the seller can refer to the ruler for the delivery of the sale object. Although our rules of procedure has fallen short of specifying specific methods for reference to the ruler, Article (7) of the law on the relationships between the tenant and the landlord, passed in 1983, based on which whenever the tenant, after the expiration of the rent period, refrains from receiving the rented property (reception), the tenant can refer to a court in the vicinity of the rented property and posits the reason behind leaving the rented property and submit the key thereof to the court office can be a criterion of choice to be used in similar cases. So, the same method is implemented in Article (387) of civil law, but the problem mentioned above regarding the time interval between the seller's reference to the ruler submitting a plea indicative of the reasons behind referral) and submission of sale object still persists and there is a need for the specification of verdicts in case of the sale item's wastage during this interval. In this regard, the axiom accepted in the second part of Paragraph (1) of Article (69) of the convention that considers a breach the lack of the sale item's reception by the buyer and declares it as a cause for the transferring of guaranty and the verdict stipulated in Paragraph (2) of Article (69) of the convention seems to be well rationally justified and therefore enforceable in Iran's law (Sho'ariyan et al., 2016).

Corresponding to Article (368) of Iran's civil law that states "the submission of a sale object occurs when it is made available to the buyer even if it is not being still occupied by the buyer" does not solely take into account the actual occupancy of the buyer and providing the buyer with the ability to take possession of the sale object and handing it over to the buyer are deemed sufficient.

Paragraph (2) of Article (69) of the Convention presupposes a situation in which the buyer should receive the commodity in a locality other than the seller's trading shops. Whenever the seller actually makes available the commodity to the buyer in the intended location and the buyer is informed and made aware of the delivery then the guaranty is transferred to the buyer. Our transactions are commonly carried out based on such a method. As a specimen, the newspaper seller places the sale object in front of the buyer's closed shop and the buyer goes to the shop after a while and subsequently receives it. The jurisprudential example provided for such a case states that the seller provides the buyer with the right to dominate over the sale object when s/he is asleep (like putting it at his side), even though the buyer has not actually received the sale object the submission has been actualized. In such a state, the sole submission of the goods suffices the changed guaranty because as it is held by the common law specialists the placement of the intended sale object in a previously agreed place can be considered as the reception by the buyer (Mohajer, 2005).

Risk transfer in France's Obligations Law:

In France's law, assuming the parties' taking a silent standpoint, the sale object's guaranty is transferred with the ownership being conveyed to the buyer based on Article (1138) of civillaw of France. And, according to Article (1583) of France's civil law that states "the contract of sale between the parties rules the conditions and ownership is legally conveyed to the buyer since the time an agreement is reached between the two parties regarding the goods and the price even if the goods and the price are to be submitted in a later time" has been arranged in considerations for the parties' intent and indicates that validity of consensual nature of the sale contracts in France's law. As an example, it can be said that with the endorsement of the contract of sale the ownership of the sale object is conveyed to the buyer and consequently it will be him who should be transferred the guaranty (Safa'ee et al., 2008).

Based on Article (1583) of France's civil law, ownership conveyance is not a commitment to be shouldered by the seller rather it is a direct and immediate result of the agreement reached by the parties. Of course, the aforementioned article does not have anything to do with the public order and the parties can make certain conditions in their agreement as to postponing the ownership conveyance to a later time when certain event has taken place. One should be attentive to this important idea that the France's law distinguishes between en bloc sales and the other types. A sale is considered en bloc when the commodities should be exclusively weighed, counted or measured so as to be determined of their price and they are devoid of any effect in the specifications of the transaction subject matter (Article 1586 of France's civil law). So, the sale of corn when the crop is yet to be harvested is an en bloc type of sale. Such a sale contract is at the same considered the sale of a certain type of goods. Thus, the contract, per se, suffices the ownership conveyance and changed guaranty to the buyer since it is signed. Therefore, in sale of such crops as corn the buyer should cover the losses resulting from the climatic changes. Considering these same stipulations made in Article 9156) of France's civil law and the judicial sentences as well as based on Axiom (3) of Article (18) of the England law on the sale of goods, it is made clear that France's law explicitly contradicts the England's law in this act.

Article (1585) of France's civil law imposes important exceptions to the Act. Based on the article, in cases that the sale object is sold via it being weighed or counted, the guaranty for the wastage of goods is to be covered by the seller till the weighing, counting or measuring is finished, so if the en bloc type of sale is in progress but the goods are required to be weighed, counted and measured the sale is far from being complete meaning that the sold item's risk has to be covered by the seller till it is weighed, counted or measured but the buyer can demand its submission or in case that there is a good reason s/he can demand compensation. In the above assumption, the actions like weighing, counting or measuring are necessary for the determination of the subject of sale such as the sale of a large amount of special liquid that has to be taken from a source containing a larger quantity than the amount bought.

Although there is made reference in the context of Article (1585) of France's civil law to a sort of imperfect sale but it has to be taken as conveying the idea that the ownership conveyance and the changed guaranty occur when the abovementioned measures are taken. In the context of the article, there is only made reference to the changed guaranty but it compulsorily incorporates the ownership conveyance, as well. So, a sort of sale was expressed in the Supreme Court on 14th of December, 1985, that "based on article (1585), in a sort of sale contract in which the goods have to be weighed, counted or measured is to be only considered of effect in terms of changed guaranty and ownership at the time the goods are weighed, counted and measured. But, the parties are required to fulfill the obligations on which they have come to an agreement and these obligations should be actualized since the very onset of the agreement (Ghanavati, 2003). In case that a certain type of commodity is contracted without its source of supply being specified, the ownership and guaranty will be transferred to the buyer when the commodity is determined and clarified. If it is the duty of the buyer to receive the commodity in person, the ownership conveyance occurs when the goods are delivered to him and when it is the duty of the vender to submit the commodity, the ownership conveyance occurs when the commodity exits the seller's factory or storehouse to be submitted to an appointed transportation operator. In this regard, Matzo, the famous French jurist, is quoted that "if the goods are dispatched in a general manner, i.e. 300 bags of wheat are sent altogether on a train to three different buyers (100 bags each) and they are all to be received in one station, the determination and allocation are actualized when each of the buyers take possession of 100 bags of wheat in

the intended station. Thus, the ownership and the guaranty are transferred in the reception of the goods. It is worth mentioning that although the determination and recognition usually coincide with submission, it is not at all an essential and all-inclusive assumption. Determination might occur before submission with the seller taking an action that clearly indicates that the goods have been determined, for instance with placing the goods inside a storehouse the entry gate of which bears the name of the buyer (Ghanavati, 2003).

Risk transfer in Iran's law as Compared to France's Obligations Law:

According to the investigation of the way the risks are passed in France's law, it can be inferred that France's law is somewhat similar to Iran's law but there are dissimilarities between the two, as well, in such a way that ownership conveyance in the laws of both these countries is coincident with the endorsement of a contract but despite the contracts of sale being of the proprietary nature in Iran's law (Article 338 of civil law), risk transfer since the endorsement of contract is not verified in Iran's law and submission plays a much more pivotal role therein. Even, the changed guaranty still persists in some of the cases after submission. In this regard, Article (453) of civil law can be the base of action. It stipulates that "in terms of the buyer and seller's rights to rescind a contract within negotiation course, within a three-day period after the contract is endorsed and within the context of the contract as urged by the conditions, if the sale object is found wasted or defected within the seller's period of right to rescind the contract the guaranty is to be changed to the buyer and if the sale item is wasted or defected within the buyer's period of right to rescind the contract, the guaranty is passed to the seller". Of course, in the majority of the cases, the risk transfer is actualized in Iran's law with the goods being submitted. But, in France's law, although the submission of sale object is a commitment to be fulfilled by the seller the ownership conveyance is a direct outcome of the sale and the seller has no right on it and it is transferred as soon as a contract is signed. Thus, ownership conveyance since the endorsement of a contract of sale bringing about a liability for the changed guaranty for any defection or wastage is the duty of buyer even if the sale object is yet to be submitted by the seller and taken possession of by the buyer. Of course, in case of the seller's delay in submission of the goods, corresponding to the last part of Paragraph (2) of Article (1138) of France's civil law, the guaranty is the duty of seller and it is not passed to the buyer. Article (100) of France's trade law, as well, bases its rulings on the same axiom in case of the goods being lost (Karim Kashi, 2000).

Risk transfer in England's Law:

In England's law, as well, the determination of guaranty transferring time is based on the governance of wills and in case no agreement is reached by the parties in regard of the guaranty, the sale object follows the rules of ownership and the ownership conveyance for a certain type of sale item occurs when the parties will to do so and the contracted conditions and the parties' situations and states and behaviors and conducts are taken into account in regard of determining the parties' intent. On occasions that the parties have not reached a conclusion in this regard, the threefold regulation specified in Article (18) of the law on contracts of sale is enforced. And, concerning the unspecified sale item, including the general types of fungible commodities and the generally promised items of sale, the ownership and risk are conveyed with the allocation and determination of the goods and in regard of the future goods the England' law considers the ownership conveyance and risk transfer as being coincident with the allocation of goods.

In the England's law, a sort of goods specified at the time of signing a contract and agreed by the parties is called specific. In Article (61) of the England's law on the sales of goods, it is stated that "the specific goods are the ones for which an agreement is reached by the parties when signing a contract. The ownership of the specific commodities is transferred when the parties intend to do so. In determining the parties' intents, the followings should be taken into consideration: contractual terms, the parties' behaviors and conducts and their statuses and states". Also, Article (17) of the aforementioned law stipulates that "in case a contract of sale for specific goods is endorsed, the ownership is transferred to the buyer at the time intended by the parties. To determine the parties' intents, the contract terms, parties' behaviors and their situations and statuses should be considered". According to Article (17) mentioned above, in the course of selling and buying a specific type of goods, the parties to the contract can explicitly agree on the determination of a time for the ownership conveyance but this is not as common. Therefore, Article (18) of the law on sales of goods presents regulations for the determination of the parties' intent regarding the ownership conveyance and risk transfer:

Axiom One: the ownership conveyance and risk transfer in an unconditional contract and with the goods being ready to be delivered occur at the time the contract is signed and it does not have anything to do with the delay in payment of price or submission of the goods or both. Axiom Two: in case that the seller is required to perform a certain type of action in a sale of goods in "deliverable status", the ownership conveyance and risk transfer are suspended on the seller's fulfillment of the action and the buyer being made aware of the news of its fulfillment. Axiom Three: in case that there is a need for weighing, measuring or examining for the determination of the goods price, the ownership conveyance is postponed to a later time after the fulfillment of these activities and informing the buyer of the news thereof. For example, if a bag of saffron is sold for 100 pounds per kilogram and it is agreed that the seller should weigh the saffron bag in order to determine the total payable price, the ownership of the aforesaid bag is conveyed when it has happened and the buyer informed thereof. But, if it is agreed that the buyer should weigh or measure, the ownership, based on the first axiom, is conveyed at the time of contract endorsement. Axiom Four: a) in case that the goods should be transferred provided that they are being confirmed or "sold or returned to the buyer", the ownership is transferred when the buyer confirms the transaction or accepts the transaction or when the confirmation or acceptation is declared by any means to the seller; b) if the buyer fails to declare his confirmation or acceptation of the goods to the seller, but keeps the goods without informing the seller of the revocation of the contract, in case that there is specified a time for returning the goods, the ownership is conveyed with its expiration, and in case that there is not specified such a time, with the expiration of a commonly accepted time.

According to the materials presented so far, it can be stated that the ownership conveyance in the contracts of specific sale objects differs in consideration of the abovementioned four axioms and the ownership conveyance and risk transfer are exclusively transferrable at the time of signing a contract based on the first axiom and it pertains to a certain situation of unconditional contracts and deliverable goods (Ghanavati, 2003).

Risk transfer in Iran's Law as Compared to the England's Law:

According to what was mentioned above, the principle in the England's law is the governance of will and in case that there is not reached any agreement by the parties, the risk transfer obeys the ownership conveyance. Therefore, the guaranty is transferred with the ownership conveyance even though the sale object is yet to be submitted. Ownership conveyance time regarding the sale of a specific type of goods corresponding to the regulations stipulated in Article (18) of the law on sales of goods has only been inserted in the first axiom stating that the conveyance time coincides with the endorsement of the contract; as for the other sorts of objects of sale, i.e. regarding the unspecified goods including the generally fungible goods and generally promised goods, the ownership and risk are passed when the goods are specified and determined and concerning the future goods, as well, the England law knows the goods allocation time as the time for the transferring of risk and subsequently the passing of ownership. Based thereupon, it seems that although the England's law matches in some cases regarding the ownership conveyance time with Iran's law but corresponding to Article (387) of Iran's civil law, the risk transfer coincides with the submission while the England's law knows it as being simultaneous with the conveyance of ownership. Of course, according to the idea that there is no sign marking the imperative nature of the axiom mentioned in Article (387) of civil law, in spite of the extant discrepancies, it has to be said that the principle of will governance has also been accepted in Iran's law and the parties can make agreement unlike what is stipulated in the aforementioned article (Safa'ee et al., 2008). Ownership conveyance of the exact sale object of the specific type takes effect since the signing of a contract as ruled in Islam Law and Iran's La under all circumstances. The exception lies where there is an issue other than the obligation and acceptation of the contract's authenticity conditions governing it as in mutual exchange of gold and silver in which case the ownership conveyance takes effect since the actualization of the conditions not at the time the contract is signed. This is while in England law, the ownership of the specific goods is conveyed when the parties intend to do so. Therefore, there is compliance seen in the contents of the first axiom between Islam, Iran and England's law but there is observed a lack of accordance and correspondence between the laws of Islam and Iran with England regarding the second, the thirds and the fourth axioms. That is because, according to the second axiom, the ownership is passed after the actualization of certain interventions, whereas in the laws of Islam and Iran, in an absolute term, except for some exceptions, the ownership is transferred right at the time of contract endorsement. As for the third axiom, the same conflicts and distinctions hold. Also, regarding the fourth axiom, the idea that the ownership is not conveyed at the time of contract endorsement is

against the laws of Iran and Islam that hold the ownership has to be transferred when a contract is signed (Ghanavati, 2003).

Discussion and Conclusion:

Risk is more commonly identified with the term "changed guaranty" in Iran's law and Islamic Jurisprudence based on which the wastage or spoilage of the sale object in the exchange of goods brings about liabilities as ruled by the law and the liable person's guaranty should be computed from the same wasted sale object. This is called changed guaranty like the guaranty of a seller in respect to the wastage of sale object before it being received by the buyer that is explicitly affirmed in Article (387) of civil law. Risk transfer in a transaction and the exact timing when it has to be transferred, especially in the international and multiparty contracts can make the contracts' evolution trend faced with numerous nowhere and dilemmas. These are the paths that indeed make the seller or buyer stricter and more sensitive to the conditions of contracts. In fact, the regulations pertaining to risk transfer try to find an answer to the question as to whether the buyer is obliged to pay the price or not even in case of the stochastic wastage or damage of the goods and whether or not the seller still can demand the price under such conditions.

The importance of answering to the above question caused the enactment of various and numerous conventions and agreements in different levels which elicit obedience from the followers of the international law. As an example, one can point to the convention on the contracts of international sale of goods that was approved in Vienna in 1980. In Iran's law, as well, the issue is rooted deep in the Islamic jurisprudence's ancient history and presents considerable topics. It is an area that seems to have stayed behind the daily evolutions of the world and is in need of revisions and synchronization. In other words, the promotion of the regulations pertaining to the risk transfer in the international law and the trans-territorial documents has been so extreme that even their examples are not precisely locatable in the laws of some countries having a strong and long history of legislation. Of course, there is no need for doing so because this group of the countries often immediately joins and follows the newly passed conventions.

As for the changed guaranty, the perspectives are different the result of which can be deduced as stated below:

First) with the endorsement of a contract of sale, the ownership right of the sale item is transferred to the buyer and the guaranty is also passed to the buyer simultaneously. Therefore, in case of wastage or damage of the sale object, it is only the buyer who has to be incurred with the losses of the property albeit the property being submitted to him before wastage. In other words, submission of the goods does not play a role in the changed guaranty and as soon as a contract is signed, the ownership and the guaranty are transferred to the buyer unless otherwise has been agreed by the parties to the contract. The theory has also been accepted in the laws of England and France.

Second) although ownership is not transferred merely for the endorsement of a contract, however, the guaranty or the responsibility for the wastage of sale object before submission is imposed on the buyer because based on the contract the seller should submit the sale item to the buyer and the buyer who is probably going to benefit from the purchase should incur the losses resulting from the wastage.

Third) Endorsement of a contract alone cannot require the conveyance of the property and the conveyance is pended over the submission of the property, so property and its guaranty cannot be transferred to the buyer unless submission was actualized. In other words, before submission, the sale object is owned by the seller and it is conveyed with the submission and, subsequently, the guaranty is changed from the seller to the buyer with it.

Fourth) with the formation of a contract of sale, the ownership conveyance or legal right of possession takes place and he sale item becomes the property of the buyer and the price becomes the personal possession of the seller but, however, before the submission of sale object to the buyer, the guaranty or the risk resulting from the wastage of the sale object remains a duty of the seller and the buyer has the right to return it in case that s/he has paid a price for it otherwise s/he has no obligation to pay any price. The theory has been accepted in Imamiyyeh Jurisprudence and subsequently in Iran's civil law (Article 387). International convention on

contracts of sale, passed in 1980, as well, knows submission or the material delivery of the goods as the time for the changing of guaranty, thus based on the regulations in the international convention on contracts of sale, the guaranty is to be covered by the seller before submission and it can be passed to the buyer when s/he confirms the receipt thereof or it has to have been sent to a transportation operator to be delivered to the buyer corresponding to a contract and in case that the seller is obliged to submit the goods to a specific transportation operator, the guaranty will be changed to the buyer if the goods are submitted to the transportation operator in the intended place.

Suggestions:

There is no doubt that the breach or lack of adherence to the contract conditions and the necessity for compensation of the losses are imaginable issues in every contract due to the various and numerous reasons. Therefore, equipping oneself to the scientific and jurisprudential knowledge, according to the fast-evolving trends in the area of international transactions and equations can be harmful to the individuals following Iran's law in their trades. So, it is more advisable in the extraterritorial area to join the international documents and keep pace with them, especially in regard of INCOTERMS whose regulations are to be legally applied to the transactions in Iran. In regard of the domestic affairs, it is suggested that the risk transfer should be centered on the submission. In other words, ownership and risk both should be transferred with the submission. Simultaneous risk transfer and submission of the goods can be justified based on the idea that the risk should be covered by the one who takes possession of the sale object and has it under his control and authority. However, the theory seems to discolor the proprietary nature of the contracts of sale that necessitates the conveyance of ownership of a sale object even if it is not submitted. So, we do not intend to accept a theory or submit to the expediencies that endanger the important proprietary characteristic of the sale. The contract of sale, per se, reflects the intentions of the parties and their wills for the conveyance of ownership and submission of the goods that causes the physical or presumptive transferring of the sale object to the buyer enables him to exert his own proprietary rights. Anyway, if the ownership of a sale item is not transferred to a buyer, if otherwise is agreed by the parties, the ownership is to be conveyed with the submission.

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