



Misrepresentation; the effects and its sentences

Mohsen Shahabi¹, Mohammad Jafarian Khalil Abad², Ebrahim Ashrafi², Mortaza Tavoosi²

¹Assistant Professor Islamic Azad University of Kashmar, Iran

² Masters students Private Law University of Kashmar, Iran

Abstract: *Misrepresentation is such as controversial issues of contract law. In Iranian law, misrepresentation is defined as “deceiving the main motivation for signing contracts”. In Iranian law, misrepresentation will not constitute the defect, Because the defect of determination (consent) is unique to the reluctant and confused. In jurisprudence, the misrepresentations of fact on the contrary party is deemed to be misrepresentation. And the misrepresentation (option termination) is considered only way and the most effective way for the injured person according to enforcement since Iranian law is based on Islamic law .Therefore, the Iranian Civil Code (option termination) is the most effective way to prevent a loss. The purpose of this paper is to examine the meaning of the provisions of this act of misrepresentation and jurisprudence in law of Iran. In all the world, traders to attract others in transaction or decorate selves production or by using actors and women propaganda it in special conditions, an exaggeration praise of their production or their commodity. Misrepresentation is not always bad and unacceptable, sometimes misrepresentation occurs to the favorites extent permitted of parties which called to authorized misrepresentation; however, public opinion has always shown a negative reaction to the word misrepresentation and it is deemed obscene.*

Key words: *misrepresentation, option termination, Islamic law, rule*

INTRODUCTION

Now a days, considering to an increase in transactions and contracts between people and also the loosening of their religious beliefs always had witnessed the Referring one of the parties to the Courts in transaction and are acknowledged to be cheated in the trading. Although the level of public awareness in this period was much more than two decades ago. But also the methods of fraud in transactions is more complex than level of public awareness. In jurisprudence, whenever are talked about the word of misrepresentation, more attention is focused on misrepresentation of marriage contract. Hence most of the examples used in the works of Islamic scholars originated of marriage contract. In fact, This word panache to under the terms of the contract but as mentioned above, Nowadays our courts less pay attain to misrepresentation which based on family claims but general legal of non-family courts is full of misrepresentation that its source of claims. In this article we have tried to how perform misrepresentation in a deal as well as reviewing its differences with the same word such as deception, At the ending, the audience understand the real meaning of misrepresentation to prevent deception by greedy people in case of transaction.

First discussion- Definition of misrepresentation

In this context, will be discussed the definition of misrepresentation in terms of vocabulary and in terms of law.

First Speech -Literal definition

The root of this word is expression of "Delse" means darkness because who make misrepresentation covered the truth of matter and unrealistic matter is shown as reality on the other party. Misrepresentation in the sale and other transactions is mean to conceal and cover up the commodity's defects from the customer. There are Some words in the English language that can be considered the equivalent of misrepresentation in Arabic and is applied in the law. Such as: making deception, fraud, trickery, defraud, deceived and in the legal sense intentionally deceiving someone in order to lose his legal right to the property or his assets and in the

dictionary of legal terms translated to fraud, scams, fraud and misrepresentation . Deceiving, defrauding, applying deception, forcing someone to believe something that is not true translated to cheat, , deceive and dissemble by this words in the legal terms.

falling the person in wrong; though not required to always be associated with intentional deception misleading, misrepresent and performing the tasks in case of wrong (as agent) and in the dictionary of legal terms is considered as misrepresentation, heart of fact and inducing doubt.

The second speech- Idiomatic Definition

Resourcing to practices that deceive the other party of transaction and therefore caused the financial harms to him is considered as a "misrepresentation".

As mentioned, misrepresentation means to deceive and hide the fact and its idiomatic meaning is not taken away from its literal meaning. "So when fiscal seller get fictitious description about his good to entice the buyer or cover its wrong, called "has misrepresented in transaction . So there is misrepresentation and deceit in any kind of fraud, And as well as oblivious to the dignity and integrity conventional job to defraud by of the confidence of parties. For this reason, misrepresentation in contract has equality with fraud "(Kaztuziyan, 1376: p. 325).

In Islamic jurisprudence, , usually misrepresentation have been raised during discussion of its sporadic instances within a certain contracts such as coiffeuse misrepresentation of marriage and in the sale of animals. And the majority of jurists independently don't discuss about the misrepresentation and in the context of option discussions are not raised as independent option but know as a minutiae defect option or lesion option. However, some scholars as the first martyr in Loma and second martyr in seedbed Gorgeous, have raised the misrepresentation option as an independence. But as well as they have taken the same instances of misrepresentation that other jurists have raised in other discussions such as the condition attributes of perfection in women, such as redness face and long hair (which other scholars have addressed in the coiffeuse misrepresentation) or coiffeuse in animals.

In the writings of jurists, misrepresentation may be done in two ways:

A-stating the same thing as perfection which is got to mind of party during the transaction (or other party of the contract).

B-concealing a defect property which exists in the transaction.

Exchanging silence about the deficit of trading subject is not considered as concealing; :if concealing maker remain silent in spite of the defect's contract until to be done misrepresentation.

in Iran's rights violation of Islamic law are presented general definition of misrepresentation . According to Article 438 of the Civil Code: Misrepresentation consists of operation that caused to be deceived the other party of transaction. Although this definition is not clear in order to

"Operations" and what is criteria for realization of "deception"; But broadly can be achieved: needs to be done actions. (material element of Misrepresentation) the operation would be deceived counterparty of transaction. (Psychological element of Misrepresentation) lawyers have presented different definitions of Misrepresentation: Some scholars considered: "misrepresentation is a intentional fault and include the confusing of other party to determined him about the issued of declaration volition which lead to legal action and accept the necessity (or the requirements) or vice versa, that the person accept the requirement (or requirements) and is deterred the conclusion of the transaction". (Katoozian, ibid, p. 43). But it seems that some law professors have expressed more complete of misrepresentation: "It is outrageous fraud by one of the two parties of transaction or with consciousness and his aides used to mislead the other party and has motivates to transaction that did not consent to it in case of being aware of fact or can be said to be comprehensive and concise; misrepresentation, deceive parties in the main motivation or is one of the compromise directions.

Second section-conditions of the option misrepresentation

Operating done: Operations may be speech, If the seller describe attributes of perfection for which it does not reality about the materials of sales, for example they say they do not rust and not black Fruit knives for sale whereas in fact knives will ring and become black, and may be the actions which is used in the property of materials, As the land owner to show that his subterranean has abundant of water, and to gather the water close the several ways of wells before noon and opens when the customer view as a result of these operation will be one of two functions:

- A) representing the attributes of perfection that is not belongs to martial as the subterranean owner show to customer that subterranean water of farm is much full, is interred flood water from the ways of wells

into the subterranean. A much water than usual in subterranean is the attributed perfection. In this case has been achieved as the current of the water flood,.

- B) hiding a defect attribute that is available in funds, For example, the house built with a clay brick, cover the building with white bricks stones to show the customer that the building is brick house. So a defect is hidden from the customer by this action as a result of the clay covering that is available in the building.

2) Caused deceiving: This means that the operation caused to be cheated The customer And his willingness and desire to be found to transaction in the effect of it. So that the customer did not this transaction if mentioned operation was not, Or as a result of it the customer pay much money in transaction So that if was not such operation was not agreed to purchase with amount of money. Accordingly, if the electric colors lights bright for decorating the shop which attracted the customer's attention And so plucked the goods behind the shop windows that is attract customers as the stained-glass windows , a term of Misrepresentation would not rise to terminate the right. (Imam, 1353: p. 514)

According to the article "439" of civil law: If the vendor got misrepresentation, customer will have the right to terminate the transaction, as well as vender pay cost to person if the misrepresentation occur to customer, mentioned Article can be considered, the customer has right to terminate If misrepresentation occur by the seller whereas does not feature in action of vendor. But any action done in sales that caused the customer fooled and make false impression and as a result of it, performed the transaction, it is misrepresentation. therefore it is possible, captivating action done by a third party, as someone jeweled turquoise polished by operations, and appear colorful blue and gift it to another so the latter person sold it to a third party and later changes its color, the customer can terminate transaction by virtue of option misrepresentation although the Captivating action is not done by a vendor, this is misrepresentation that the be taken by price ,means vendor can terminate the contract although it is performed by a non-customer.

Third Section- Relationship between deception and misrepresentation

As jurists and lawyers have made clear, , the rule of deception is the responsibility principles of civil, this means that if a person deceive the other one and thus it would be a disservice to the arrogant, , It must compensate; On the other hand, the option misrepresentation is also one of the means of prevention and compensation for losses that contract is entered to deceived person. Thus, due to the many common aspects that there is between the option misrepresentation and the rule of deception, in many cases, at first glance seems to have been confused with each other, for example, even though Sheikh Tusi does not remember as an independent rule of " deception ", However in the Marriage Contract, deception meant to be used of deceiving and knows as document which creates the right to cancel arrogant, while here Sheikh does not mention to the issue of financial damages caused by deception. The reality is that although the concept of deception and misrepresentation are the same word but the definition of the legal establishment or in other words, there are differences in colloquial definition and apply the principles of deception in the contracts is certain features, Whereas the misrepresentation and the use of option is a different matter. (Boroujerdi, 1380: p. 202). However, in today's Rights a tendency toward unification of the rules is responsibilities and lawyers believe that there should be the possibility of invoking to any of liability rules to better compensate the loss. In particular, this matters of "misrepresentation" and "the Rule of deception " have the particular importance because of proximity concept and many external and unity manifestations. Imam Khomeini in his book is considered the misrepresentation and deception as a unified matters in many cases.

- 1) compared the deception rule and misrepresentation

The following are considered to be the differences between the " deception rule" and "misrepresentation":

- 1-1) the existence of losses:

Applying deception rule requires loss whereas there is no losses in misrepresentation . One of the differences of deception and misrepresentation is not necessary in misrepresentation that the entry of financial losses proved to deceived person. The right to terminate is not circumstantial evidence of loss inflicted, the sentence is substantive And who make the misrepresentation can not prove that it is not loss, prevents the termination of contract whereas the existence of loss is considered an element of deception , in such a way that some scholars say: If there is no risk of loss, there is no ambiguity. So, if ambiguity define to detriment. Misrepresentation and ambiguity completely fall apart, because that's what loss exist in misrepresentation or not, a person has the right to terminate whereas in ambiguity should exist the detriment; because the truth of deception criterion is transportation of a person's financial. By virtue of being deception, So that if there

was no deception this fiscal losses should not interred to him, Hence losses was upon him and so ambiguity always associated with property wasting, while it is not in misrepresentation. (Mirhashemi, 1391: 4)

1-2) misrepresentation caused the right of cancellation- deception caused compensation of loss

Legal effect and enforcement misrepresentation in barter create option to the termination of contract, however the effect and consequence of deception, establishing responsibility for deceiver Means deceived person could refer to the deceiver for damages incurred even in cases where jurists for reliability the deception rule rely on the traditions of misrepresentation, , Such as according to tradition Rifa'ah, , contradiction have not seen to say that in misrepresentation, have Sentenced to reffer the ruling of the deceiver (Camouflaging)to compensate for the loss based on deception rule after simply repeals. Article 386 of the Civil Code also obtained, in cases in which other party should be compensation who cause to violated transaction; because terminate the transaction does not always lead to compensation. Even in the Convention on the International Sale can also be seen the relationship between option termination and compensation, As the Article 79 of the Convention on the International Sale can be concluded that termination of the contract were not always lead to compensation and so, after exercise of the right of cancellation, compensation must be performed separately. With reference to Sunni sources, it can be clearly seen after ruling to terminate, plundered have referred to deceiver for compensation. For example Shafei believes that a man after intercourse find the defect of women, can terminate contract and in this case he must pay dowry to women but refer to someone who had deceived him and claim losses. As well as in Sunan Al-Kubra is considered the similar cases which is mentioned. Therefore, we conclude though the word of misrepresentation and Deception are not different and have been meant to fraud and deception But in the convention world of law and jurisprudence, misrepresentation caused the option termination this means that concealing defects provides the right to terminate, called misrepresentation and if damages incurred it should be compensated for that loss, is checked under this deception rule. (Mirhashemi, 1391: 6)

1) the difference in intent to deceive

Although a group of jurists don't know responsible when impostor unaware about loss and believe that impostor must have a ware and committed the act of deceiving, But many scholars believe to ensure in such a case and believe that deception in case of unaware to reality, and lack of intent to deceive has been fulfilled from impostor and materially relationship between the action of deceiver and confuse and mislead patsy in fulfillment of deception is enough. In contrast, according to the famous, misrepresentation realized when comes with employing deceptive acts or at least done with the intent to deceive, this deception and gimmick implemented in case of that captivating has done deliberately and with intent to deceive; In this contrary to the prevailing sense of deception , in misrepresentation person should aware to his deceiving action. In other words, can be said, Is responsible if a person is caused to deceive other party in effective of fault. Because temptation applies on it' However, that does not know fact But misrepresentation requires heavy fault and knowing the reality and can not be realized by ignorance. However, there is also the view That awareness of the fact and giving false information is deception. Although there is no intent to deceive; Because neither in substance nor in the form of the action "fraud" There is no intent to deceive, Though the emergence of a customary is intent to deceive and according to this view and According to the opinion of fooled person who don't believe that uninformed person is responsible, It seems that this deception Rule and misrepresentation are close to each other. However, according to some, this analysis also does not eliminate the difference, Because being aware is one of condition to deceived or is the circumstantial evidence of intentional deceived and intentional deception is valid in misrepresentation, And is important Whereas in ambiguity, intentional infliction is more important.

1- Difference in Foundations

However, in Islamic jurisprudence , Misrepresentation is one of option sale and considered the right of cancellation ad even some jurists don't considered independent option because of differences with the other provisions of options, But there is another theory in law based on French law that introduce misrepresentation to "imperfections will". Accordingly, Although enforcement assurance of misrepresentation is dissolution of contract, It should not be mentioned as an option and because the existing malfunctioning in "pleasure of Transaction" in misrepresentation, That is considered the basic elements of the contract, , It should be mentioned the general warrants as an overseeing to all contracts. However it seems that our rights does not fit in this format and basis of option misrepresentation, As the jurisprudence also has been expressed, is to prevent inadmissible losses and provides the field of disrupting the marriage and exit from its commitment, for if the misrepresentation was considered as defect of Satisfaction. Should be considered the lack of

penetration or nullity of contract, not the creation of option termination; because the termination relates to future and the assumption is that it disrupts the contract in force. Imam believe in this case That although deceived satisfaction is confounding and disabled in misrepresentation, but Iranian law to comply with Islamic law, Satisfaction which is free from coercion is effective in creating contract and enough to enter into a transaction and in the case of option misrepresentation, mentioned Satisfaction is available to the contrary analysis law that there is in Europe law and know misrepresentation as the causing of satisfaction And therefore Accept or reject the contract which is to be situated by this way. (Emami, 1353: p. 435). Thus the results of discussion is that there is disagreement in the basis of misrepresentation and some introduce to the defects of will and some introduce to crime and others introduce to prevent from loss And some introduce to kind of compensation whereas there is consensus on the deception Rule and it included as collateral compulsory. In any case, are taken and separated with misrepresentation that with all different reviews basis for it, is one of contractual guarantees.

Fourth section- Authorized misrepresentation

for misrepresentation Can be use authorized or sweeten authorized. In ethics, the small or large lies is not blameworthy, if it is joke and non-harmful, and perhaps in some cases be praised. Big or small serious lies and possibly harmful is always criticized it in terms of ethics but in defined forum can be accepted in some cases. However, in Islam, a lie of any kind, except in cases of conflict to the most important task is forbidden (In these cases, lies should be possible in the form of puns), but this does not mean that telling any lie in transaction is license to invalidity or revocation of it. For example rector is forbidding sale during Friday Prayers at the time of the Immaculate Imam, But even if dignity is useful forbidden, Such selling is not override according to many doctrine. As well as in England rights in relation to a particular type of lies was ignored in the transaction and it did not have permission to revocation or compensation. Explicitly, in English law any action in order to dressing up and in general, ambiguous, indeterminate, uncertain if the major of its part is according to the fact and only a small percentage of it is lies and is not permission to revocation or compensation. This type of lies is supplied to the terms of the underlying percent, however it is negative supply. But according to the Permission cancellation of transaction or compensation is not based on the negative supply, it is called authorized supply. This particular type of abuse supply is Pugh misrepresentation in England and is good misrepresentation in France Or lawful or equitable, the opposite of bad misrepresentation is called forbidden or wicked. In all the world, traders to attract others to transaction or decorate his commodity Or it advertise by using the art business of women in certain circumstances, or exaggerated admiration of his demands or any of their commodity (I fire my commodity, any body that I will buy this price from you not buy ,invalid commodity is also expensive, orange is the same Honey gardener garden Viva, this goat get milk to tribe, with Salmeen always safe with you, Wherever speech of confidence is the name of National Bank of Iran, Guaranteed acceptance experience with us, always just relax by buying sofa Iran) the contacts of such statements and presentation is not apparent in terms of their plan and did not want the audience rely on the literal meaning of the words. They just wanted to say or offer that our products is very good or good So who is really understand these words in the context of their apparent and change their legal status based on this understanding and then tell apart why the goat get just as much as a liter of milk, not as much the need for one tribe, can be Revoked his transaction with social situations, But not based on abuse supplied (misrepresentation). But on the basis of only such an understanding and questions were obvious sign of foolishness and prohibition him from the moment of capture financial transaction and if base on assumption that is not approximately impossible really stupid, Can only blame himself (not his trading partners) and has no choice to endure the transaction and currently situation. Beyond that, in English law, America and Scotland, If the above presentation mainly are correct in their intended meaning (offering their commodity is very good or good), Even is involved the percentage of untruthful (For example, the suggestions or arrange goods is just good or just average) Abuse offerings or the absence of enforcement termination are allowed to compensation. Conversely, even if the above offerings are mostly untruthful in their intended meaning (for example, suggestions or goods by the average or bad-if is not too bad). Abuse presentation has sanction or executive guaranty because of the exceeding limit of exaggeration and lies, illegal. In this regard, in English law, in the House of Lords Judicial Committee was told about the presentation contained in the brochure of a company should always overlooked for heartening predictions. So magnification and even exaggeration is Predictable in describing the benefits likely to be achieved [natural and normal . However, if in records was announced under design, lying and exaggeration is surpassed of permissible level; And thus in law would be punishable by sanction or executive guaranty against the speaker. (Darwish, 1384: 33,34).

The view of legal system to misrepresentation

In French law, misrepresentation is large part of the defect satisfaction theory, whereas such a theory with the same concept, breadth and inclusion is not included in any of the three legal systems. In the English law because contract is contrary to France with Iran and don't have satisfaction aspects, also even due to the history of British legal history that covered its own way in the context of contracts and has led to the debate in a way that is entirely divided distinctly from written legal systems of contract, misrepresentation isn't considered as a defect satisfaction. Although the defects is in the building of contract, misrepresentation is defective factor of contract in English law, not about the defects that brings satisfaction in the other party. But also, the law violated. aside of agreed contract. According to the defect of contract is not caused by flaw in agreement of the parties, but also is based on the independent judgment of law. Misrepresentation in English law is part of a broader theory Perhaps that can be translated this term just to get the usual sense of the word and facilitate to survey the abuse presentation. For Basic familiarity with the concept of this theory can be said the abuse presentation when implemented that one of the parties to the contract before Coagulation reveal properties for it within the abuse presentation the subject of contract that does not jibe with the facts, at the same time that the other party leads to the Coagulation of contract. If it is not formed as an explicit or implicit condition of contract. abuse presentation may be harmless or innocent, abuse presentation is innocent beyond our present discussion, According to the provisions of it to property rights of English law equivalent in France law, Islamic or Iranian as an independent theory or have not mean something close to English law. Although in all three of legal system can be found Sentences that in some ways, abuse presentation play role of innocent in English law. However, some rules in English law include harmless abuse presentation and innocent And some rules assigned to one of them. In this article consider the monitoring of the harmless abuse presentation to what shared between both of two types or specific to one type. (Katoozian 1382: p. 55). Any other attribute that the English law of historical development of certain legal system and divide its rules into two groups is very general. In difference between the concept and provisions of misrepresentation appears equity in common law. equity according to their special relationship with the common law completes its rules. According to roots of their iniquity, items as we shall see in order to be considered in misrepresentation rule which is not in misrepresentation common law and Such cases in English law comes under the legal misrepresentation. In French law as a moral reluctant placed in the territory reluctantly that is located in the defects area misrepresentation of broad theory. So it is clear that the English law concepts within the topic misrepresentation and its own divisions. Except with the accuracy of the reconstruction it can not be compared with the legal system In Islamic jurisprudence, whether Shiite or traditions, for s example separate English law, but for some reason it does not constitute to flaw misrepresentation of satisfaction. Objection that the contract is closed as a result of misrepresentation, aside from special provisions governing the case Sometimes some rules based on Islamic jurisprudence, for example owner of Gore is the guarantor of arrogant due to the inexperienced That can be seen reflected in the mirror reflection of fairness. As well as in Islamic jurisprudence as English law is comprehensive theory of misrepresentation zone is what there is in French law Can not be found, but sporadic instances can be brought together in various legal topics which to build a theory that Presents Relatively general theory. as to what is mentioned such as misrepresentation in religious books comes more also specified, in particular the contract of sale. Some stallions of jurists considered misrepresentation as one of the option of sale which gives the right to terminate harmless, but most scholars don't believe as certain option and in each case on the occasion of the issue of sentences which are expressed, It is not necessarily indicative of termination the contract. Aside from what is listed under the misrepresentation, There are some cases in various legal topics That jurists consider it from the perspective of deceives or and deception it and such speak of it that their speech is reminiscent of misrepresentation in other cases. (ovsyay, 1359: p. 44). So in Islamic jurisprudence in the field of religious tradition similarities with each other in jurisprudence or with Shiite jurisprudence is very much. Must not only pawing the reconstruction of its topics. But tried to build a theory by using the scattered contents So if it is possible close to the theory of misrepresentation in French law. Most scientists who have studied as civil law, misrepresentation was outside of the intent and satisfaction according to the private civil law. And as the division of the Civil Code requires and in Shiite jurisprudence has been common. have discussed it as an option. The doctor Emami in following discussion of the contract that should be add the termination after the absenting of satisfaction (about reluctantly and seasons) to not objected that such defect and misrepresentation affected the legal right has not pleasure to terminate and at the time of the contract was not aware of the truth of the matter and such the reluctance of satisfaction is disabled For since, it will be revealed of termination and annulment cases, Law

knows to follow the pleasure laws of Islam which is free of reluctance is effective in creating contract to enter the transaction And in the case of mentioned pleasure option is available. But an analysis of satisfaction in the rights of Europe And don't believe that misrepresentation and defect caused its effected which is not placed in legal contract of Islam, exception of other details, what there are also shortcomings of the Civil Code so it will express. Here it is sufficient to note the provisions of Article 448, whereby can be provided the collapse of all or some of options in the contract. Despite of applying this provision, the authors do not suppose It could be apparent as a whole And considered valid the scrapping condition of option misrepresentation, because the discussion is so far outside the border check point in the cross. Aside from the civil aspects of misrepresentation may also bring criminal punishment, but the scope of discussion in this article is a misrepresentation in private law. Also in French law between the misrepresentation that is in the stage of contracting. And get difference in cheating and deception that occur after signing the contract. The contract is a legal act of misrepresentation which is impending. unless fraud and deception after signing hurts the fixed right That has emerged Previously. (Osiya, 1359: p 12,13,14)

Conclusion:

In Iranian law, misrepresentation does not constitute as a defect of will, because the defect will limited to reluctance and wrong. Misrepresentation is controversial topics of contract law. In Iranian law, misrepresentation defined to deceive contracting parties in the main motivation or one of the directions of consent ". Since Iranian law is based on Islamic law; therefore, the Iranian Civil Code (option termination) is the most effective way to prevent losses. Legal effect and enforcement misrepresentation is created the option misrepresentation of contract in barter, However the effect and consequence of deception is establishing responsibility for deceptive. Means deceived person can be refer to deceptive for damage. misrepresentation is one of the factors that would be deception, Even in cases where jurists rely on misrepresentation of narrations to the validity of deception Rule, such as the elimination narrative. There is no contradiction to say that the misrepresentation compensate loss from the deception Rule by referring to the rule of deceiving After repeals. So on some issues terminated the contract by misrepresentation, and pursuant to deception Rule demand to compensation, As narratives referenced to the issues that misrepresentation for citing on the deception Rule or some of the issues that scholars have raised about contract.

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