



Condition of Qualification in Marriage

Ali Mazareae¹, Sanaz Karimi²

¹ Assistant Professor in Islamic Azad University, Marvdasht Branch, Marvdasht, Iran

² MA student in private law, Islamic Azad University, Marvdasht Branch, Marvdasht, Iran

Abstract: *Marriage is a bond of marriage between a man and woman which intend to start a unity for a family and a common life. This contract is a kind of consensual contract and the man and woman create it with their clear expression of wills and their agreement. A man and woman can put up what they want as stipulation in their agreement. But contrary to the principle of freedom of contracts in private law, marriage with its special situation, is a kind of contract which the freedom of the parties in determining the stipulations isn't limitless and a lot of rules and regulations are necessary for marriage and none of them don't have the right to agree against it. The condition of qualification insert in the contract and according to it, the parties or one of them make provisions of quality or quantity. In the condition of quality, the parties or one of them want a quality or qualities which a quality is made as a provision in the contract. The purpose of this essay is examining the condition of quality in marriage and its enforcement which is used of a descriptive- analytical way. The conclusion of this essay show based on the article 1128 of civil code: "when a condition of quality is stipulated in one party and after the contract, it determined that such party didn't have the quality, there is a right to terminate for the other party, Whether the quality be determined in the contract or the contract be situated on it implicitly". And in the case of violation of the condition of quality, the party who the condition is for him, has the right to termination according to articles of 235 and 410.*

Key words: *marriage, condition, clause within the contract, the condition of quality, terminate the contract*

INTRODUCTION

A greater proportion (80%) of biomass of terrestrial invertebrates is represented by earthworms which play an important role in structuring and increasing the nutrient content of the soil. Therefore, they can be suitable bioindicators of chemical contamination of the soil in terrestrial ecosystems providing an early warning of deterioration in soil quality (Bustos-Obregón and Goicochea, 2002). Earthworms are boneless animals with a soft body that stretches more than 3 cm. They digest dead plants and other organic matter and produce vermicompost. They also dig holes in the soil which allow for air and water to seep through and improve plant growth. *Eiseniafoetida* is the most commonly researched member of this family (Correia et al., 2002). 2,4-D is a low-cost herbicide common in world. This herbicide is weak in terms of biological transformation and is usually found in water. The use of this herbicide can cause metabolic changes and tissue death in non-target organisms and important members of the food chain such as fish (Dynes, 2003). Researchers have found that 2,4-D rarely affects earthworms unless it is administered repeatedly. They have also observed that the worms are mostly affected in pastures and prairies. An in-vitro toxicology study examined the effect of 2,4-D dimethyl amine salt on *Eiseniafoetida* (Correia et al., 2010). So, Herbicide effectiveness could be strengthened according to the target weed and application dosage and repetition. Neuhauser and Callahan (1990) suggested that more consideration should be given to evaluation of sublethal effects under field conditions. The present study examined the effects of glyphosate and 2,4-D on the reproduction of *eiseniafoetida* earthworms.

Each person includes natural or legal need contract for continuing the life and regulating their legal relationships with others, on the other hand increasing social developments and the growth of new institutions is so fast that it opens the area for discussion and research about legal problems and research everyday

Iranian legal system and specially its civil code which are provided from two different legal system, in one hand has rooted in jurisprudence and include very rich juridical sources and in other hand, according to necessity of time and changing social relationships and systems, it has been influenced by the legal experiences of some European countries.

The most important issue of the right of obligations is stipulation. As in some articles of civil code (232 to 246) proceed to its sections and provisions. Talking about stipulation, isn't apart and independent from the content of contract, but it is said to subordinate agreements which are in the contract. Moreover, sometimes a contract which can be independently, can be in other contract as a clause to continue its legal life. Among the stipulations, is the condition of qualification which is completely independent substantially and stipulating such clause in contracts brings a certain clarity to the subject of the transaction and even sometimes these qualifications are the subjects of transaction and are motivation consent. The importance of this clause should be added that in some contracts and merely the subjects of the contract create interest to the contract which the subjects are subordinate and only this condition of qualification is exchanged. So, in this research we will examine that if the condition of qualification in marriage has a necessary and sufficient guarantee.

The meaning of clause

Clause is an Arabic word which some philologists know it so clear that it don't need a definition and have said that: "clause is introducer"¹

Idiomatic meaning of clause

Clause has a various meaning in different sciences:

A: clause in literary expression: "in literary expression, clause is the first part of in if clause sentences which the second sentence is called reward. For example, in compound sentence "if I buy a car, I will go a trip", the sentence "if I buy a car", is the clause proviso and the second sentence "I will go a trip" is the reward sentence.²

B: clause in terms of logic and philosophy: a thing which is necessary in emergence and realization of other thing which is named conditioned. In this meaning, clause, is a thing that in the lack of it, the lack of conditioned is occurred but by being it, the conditioned wouldn't exist necessarily. Like, the dryness of a cloth is a condition for burning. But from a drying cloth, burning wouldn't result. For example, when there is no fire near a dry cloth, the burning wouldn't result. So it is said that that the clause and conditioned have accompanied privation with each other.³

C: clause in terms of jurisprudence: clause in terms of jurisprudence is used in two different meanings:

1- clause is a thing that in check and accuracy of worships or transaction or the necessity of contracts is based on it. For example, when it said that prehension is a clause for the validity gift or ablution is a clause of prayer.

2- Clause is absolute obligation⁴ and bind and commitment.

¹ . Sehad Al Loghat, 3d volume, p. 1136, Majmaa Al Bahrain, 4th volume, p. 258, said by: Abedian, MirHossein, Thesis of "examining the void clauses and its type", 1374-1372, p. 2.

² . Shahidi, Mehdi, stipulations, 4th vol, Majd publication, first edition, Tehran, 1386, p. 17.

³ . Shahidi, mehdi, ibid, p. 17.

⁴ . Jaafari Langroodi, Mohammad Jaafar, 1386, law of obligations, first edition, p. 32, n. 46.

D: clause in terms of civil code: clause in civil code is used in one of these meanings:

1-A thing that the main structure or the effect of legal actions or events relate to it. For example, in article 190 of civil code which states the main condition for a correct transaction or article 47 which states: "in lien include: Omra and... the lien is a condition of validity". The word "clause" has this meaning.

2-"it's an agreement which according to its special nature or the provisions by mutual consent of parties, has situated of other contract function: like the condition of qualification or liberty of clause which are always from the requirements of the main contract and attorney that the party's wills may be the function sales contract or marriage".⁵

The concept of condition of qualification

When a special condition like having higher education, special office, or special job be as a condition, the contract is conditioned to this qualification and if the condition breaches, according to article 1128 of civil code, the other party have the right to rescission.⁶

Provisions of condition of qualification

Compliance with condition of contract

Compliance with condition of contract in the writing and continuing the legal validity: clause as a credit nature is created by composed will of parties, even though in creating it like contract the compose intend is necessary and when in one party's will of a conditioned contract the clause be the other party's will, not only the clause is void because of loss of intent, but also the contract is cancelled because of difference in the purpose of the parties. The clause isn't apart from the conditioned contract and for this reason, the scope of the intent of composing contract expands to the clause implicitly. Also differentiation between the contract and its clause doesn't create to the discussion of need or lack of need of composing intent have the theme of speaking. About the consent of parties to the clause, we should say: if there is a consent to the conditioned contract, there will be consent to the clause following the contract. But if there is no consent to the clause, the conditioned contract as a limit and limited are not included of consent means inoperative. So we can't image that conditioned contract is operative but the clause in the contract be inoperative. The high status about the clause, in the qualifications of the parties is stable. It means that if the parties be qualified for the contract, they will be qualified for the clause and conversely. As at the emergence stage, the clause the condition is dependent on contract and we can't suppose an independent existence of condition from contract, this dependence will exist in the legal life.⁷

The infeasible condition of qualification

The condition of qualification can't be defeated because defeat of condition means defeat of the obligation caused by condition and as the condition of qualification doesn't commitment so it isn't defeasible.⁸

Defect in marriage

Terminate the marriage, is an option which the law gives one of partners that according to it, he/she can dissolve the parity and stop the marriage and its effects from termination. As marriage isn't a financing agreement, three liberties of defect, concealment and incorrect description are applicable in marriage that the liberty of defect is the subject of this research. One of the causes of termination the marriage, is some physical or mental defects in one party which gives the other party the right to terminate marriage. Jurists and lawyers divide these defects into three groups: 1-common defects, 2-defects for men, 3-defects for women.

⁵ . Katoozian, Naser, foundation of civil law: legal actions (contract, unilateral obligation), company of publication, 11th vol, Tehran, 1385, p. 297.

⁶ . Jalali, Seyyed Mehdi, 1388, Authority of wife in divorce in Iranian Law, Tehran: Khorsandi, p. 62.

⁷ . Shahidi, Ibid, pp. 90-91.

⁸ . Bahrami Ahmadi, Hamid, general of contracts and obligations, civil law 3, 1381, Tehran, Mizan, p. 294.

Defect in couples

Common defects are defects which give the husband and wife the right of termination. Common defect is a defect which the probability of it is equal between man and woman. While particular defect, presents in accordance with physical position of man or woman.⁹ Insanity is the only common defect in couples which has brought in law it means that it's the only defect in wife and husband give others the right of termination, whether continuous or periodic. But some jurists counter Leprosy, Vitiligo and Blindness more than insanity in common defects which each of these defects give the right of termination for other party.¹⁰

Other jurists like Allmeh Helli has accepted this view that Leprosy and Vitiligo are the common defects. Of course, the document of this view is a story of Imam Sadegh which said: "marriage can be terminated by Leprosy, Vitiligo, Afele and Insanity". As this story is general, it includes man and woman but in answer to this story, it said that Afele exits this story of generality and it's special for womaen. By contrast, some jurists know insanity the only common defect which cause to terminate and don't believe that Leprosy is a common defect.¹¹ Others state that if a women gets insane, the husband can terminate the contract or if a woman finds that her husband has been insane before the marriage, she can terminate the marriage without divorce. Civil code in article 1121 counts insanity as a common defect. This article states that: "insanity of each couples includes continuous or periodic causes the right to termination for other party".

Insanity in word comes from insane means madness, demise of the mind, folly and crushed ruin.¹² In expression, jurists state different definitions of it that corruption of mind is common in them. Civil code doesn't define insanity but there is a lot of discussion about it. Epilepsy and coma are not included in the scope of insanity. But periodic insanity (article 1121 of civil code), insanity before marriage which the couple are aware of it, (article 1126 of civil code) will not terminate the marriage. In madness, deploying it in person is required whether periodic or continuous. Because the basis of the right of termination is avoiding the insanity's wife loss. With doubt in insanity or non- insanity, as it's not proved, the right of termination will not exist. Of course, to have this right, there must be common conditions which are in all defects including: 1- ignorance and uninformed of any couples; 2-urgency of termination; 3-basically, the defect should exist before and after marriage. But civil code has made difference between insanity after marriage in man and woman. According to articles 1125 and 1124 of civil code, if husband after marriage be insane, the wife will have the right of termination. While the opposite suppose is incorrect, it means that if a husband that his wife be insane after marriage, he can't use the termination right.¹³ It should be said that if the insane sign the marriage, it will be invalid because of insanity of one of them. But if periodic insanity get married while recovery, and the wife understand it after the marriage or the insanity's guardian sign the marriage and the wife don't know his insanity, she will have the termination right.¹⁴

Provisions of liability of defect in marriage

Civil legislator, states divorce and termination together. Termination is ending the legal existence of a contract by a will of parties or a third party. But it should be noted that in marriage, the termination right is just for parties and divorce is a legal institution for ending a common life in permanent marriage. There are similarities between divorce and termination of marriage:

⁹ . Madani, Seyyed Jalal Al din, 1385, civil law, law of family, 8th edition, first vol, Tehran, Paydar, p. 46.

¹⁰ . Ghazi Ebn Boraj, 1406, Al Mazhab, 2nd edition, Tehran, Majd, p. 84.

¹¹ . Moosavi Bejnoordi, Seyyed Mohammad, 1385, Al Ghavaed Al Faghiih, 2nd edition, Tehran, Majd, p. 84.

¹² . Dekhoda, Ali Akbar, 1385, the medium dictionary of Dekhoda, first edition, Tehran: Tehran university, p. 893.

¹³ . Ebrahimi, Saeed, 1388, the effect of insanity in dissolution of marriage, Islamic legal Journal, 8th year, num. 31, p. 192.

¹⁴ . article 88 of non-litigious matters law states that: "if the doctor knows the insane marriage is required, the guardian can provide the facilities for his marriage with permit of prosecutor and when the divorce of his wife be necessary, by suggestion of prosecutor and passing the court the guardian will sign the divorce". Abhari, Hamid, 1391, legal and jurisdictional basis of liability of defect in sale and rental, Journal of law and political science, 42th vol, num. 240, p. 43.

1-divorce and termination the marriage, are unilateral legal actions or unilateral obligation and both of them since the announcement of parties, will dissolve the marriage.¹⁵

2-divorce and termination the marriage, don't have any effect to the past and they end marriage from termination or divorce.

3-termination the marriage is similar with divorce in Edde, it means that the time in Edde is 3 purgation of the body, three month or three giving birth. (Article 1152 and after that)

4-according to article 49 of family protection law (1391), not filed for divorce and termination the marriage is punishable. If a man act to marriage, divorce or termination the marriage or after return till a month don't record in Notary public or in some cases which recording the periodic marriage is necessary, avoid to record it, he will force to record the event and pay a fine of fifth degree or imprisonment of 7th degree. This penalty is also for a man who avoids to record termination of marriage and announcing the invalidity of marriage or divorce”.

A defect in marriage

One of the basic conditions of liability of defect, is a defect while marriage. In other words, wife and husband can terminate the marriage because of a defect in other party if the defect exists while marriage. (Article 1124 of civil code) Defect should exist before the marriage and continue till the offer and acceptance occur. The defect after marriage and before penetration doesn't cause termination right for husband. It is a popular state between Shia Jurists.¹⁶ But this article has an exception and article 1125 of civil code which states: “insanity and impotence in man if occur after marriage, will cause termination right for woman”. So a defect will cause termination that exist while the marriage and exception of insanity and impotence which cause termination right after marriage are because of woman hardship. Because if a woman get insane, the man will be able to afford her but a woman can't afford it and man can divorce his insane wife according to article 1133 of civil code while woman don't have this right.

Hidden defect in marriage

One of the essential conditions which causes that person can use the liability of defect, is hiding the defects. According to article 424 of civil code, the defect is hidden when parties weren't aware of it while the marriage whether that defect was actually hidden or it was clear and the person wasn't aware of it. As the rules of other transactions, referring to liability is when the defect was hidden in the transaction because a man or woman who was aware of the defects before the marriage, and by knowing defect got married, the termination right will not excused. Because he acts against himself and there is no cause that the legislator know the marriage revocable because of dealing with his loss.

Violation of condition of qualification in marriage

When there was a condition of specific qualification in on of couples and after marriage it would clear that the party hasn't had the qualification, the other party will have termination right. Similarly, if a specific qualification not be conditioned clearly, but it concludes from the evidence and circumstances that the qualification was their purpose and get through the scope of contract, in other words, the marriage situated on it basically. (Article 1128)

Concealment and violation of condition of qualification are close and separation between them is hard practically. In jurisprudence books mixed these subjects, too.¹⁷ Nevertheless, some cases can be supposed that violation of condition of qualification is true but concealment isn't true: a qualification may be conditioned in one of couples and after that it would be clear that the qualification didn't exist in the marriage.

¹⁵ . Madani, Ibid, p. 37.

¹⁶ . Najafi, Ibid, p, 171.

¹⁷ . Ameli, (Shahid Sani), Zein Al Din ebn Ali, 1387, Al Rouzat Al Bahijah (Al Matajer), Qom, Islamic law, p. 112.

For example, a daughter may know herself virgin, or lose her virginity while horse riding, or a son attribute himself to a popular person and introduce himself with the described qualification and the marriage occurred based on the qualification or collusion on it and after marriage it would clear that the party didn't have the described qualification and even he mistakes in the existence of qualification. In this suppose, because there was no deliberation and intent to deceive, the concealment isn't true; but marriage can be terminated due to violation of condition of qualification.¹⁸

The effect of violation of condition of qualification between parties

The effect of violation of condition of qualification, whether qualitative or quantitative cause termination right for beneficial party; and in the absence of conditioned qualification, the person who stipulation is against him, can't be forced to create the qualification.

In violation of qualitative condition, the stipulated person has will to accept transaction in absence of conditioned qualification or terminate the transaction, but he can't force the other party to deliver consideration with conditioned qualification, because as it said, the liability of violation of qualification, in specific property or general in specific property is imaginable and sale of fungible goods, violation the qualification doesn't mean anything, for instance, when a person sells 10000 k of first grade rice of Astaneh and instead of that he delivered 10000 k of second grade rice to buyer, the buyer wouldn't have the termination right, as the object isn't the 10000 k rice, if the rice aren't against the qualification, there will be no choice but to terminate the transaction, but also the buyer can return the rice to seller and requests delivery according to the qualification. Because in general property transaction, indeed, the mentioned qualification is the limit of consideration and seller obligates to deliver a property in accordance with the conditioned qualification. So the mentioned qualification is stable in transaction and can't be violated.

But when a specific or general in specific property, isn't under the described condition, as the consideration is specific, other thing can't be delivered, and when no qualification is provided, the violation of condition of qualification will not achieved. In this case, we can't force stipulated party to deliver other property which has the conditioned qualification; in other words, as it's impossible to force the party to do the condition, there will not any way to terminate the transaction.

In article 355 of civil code that the quantity of property, has descriptive aspect for consideration and parts of price didn't situate against the parts of property, but whole of property situated against whole of price, violation the quantitative condition, means being less property, for buyer and being more, for seller is termination right. So, if be less quantity, the buyer can't decrease a part of price against the less quantity, because there is no price against this lose. Also, he can't force the seller to increase the quantity of less to the property (for example the adjacent land), as the seller can't force buyer to pay extra price in the case of extra property.

But in the case that quantity and amount have basic aspect, like article 384 of civil code, regards to this point that parts of property situated against parts of price and the quantity don't have the only perspective aspect, but also is a part of consideration, when the consideration be less than the described quantity between parties, the contract will decompose two various contracts and it will be cancelled to the loss and it will be correct to the existence quantity. In this case, for example the buyer can terminate the transaction or accepted it and pay the price which situated against the real amount of property.

About article 385 of civil code that the property can't be parsed, but the parts of property situated against the price, if the property be less the conditioned quantity, the buyer can terminate the transaction or request a part of price due to less property and if the property be more than conditions amount and the buyer can't be forced to pay extra price, the buyer can terminate transaction only.¹⁹

¹⁸ . Shahidi, Mehdi, Ibid, 4th edition, p. 140.

¹⁹ . Shahidi, Mehdi, Civil law, certain contracts, 6th edition, number 10 and after that.

Effects of condition of qualification in contract

The principle of autonomy and freedom of contracts require that the parties sign a contract in the way they want and in this way, they will not be limited in the choice of pre-determined formats of transactions except contrary to public order, good manners and social system and peremptory rules cases. People can include any condition from signing contract to operating it, providing that they won't be against the law and requirements of the contract itself. The relation between contract and condition of qualification is general and particular from one aspect. It means that each condition of qualification which brings in contract but each contract doesn't require condition of qualification and can sign without it. The condition of qualification may include the basic of contract as failure to achieve the desired condition cause the absence of a contract. As a contract be suspended to a particular qualification in consideration, and if the consideration be without that qualification, the termination right will not exist due to violation of condition of qualification, but the contract will not form. And sometimes, maybe a special qualification conditions by parties about considerations. Like bought a sheep provided that it will be pregnant. But after contract, it will be clear that it hasn't the described condition, so the person can terminate the contract, as he can avoid termination and accept the contract with this situation and where a contract isn't formed when the formation of contract dependent on the described qualification. If we want to situate the condition of qualification as a conditioned contract, it will be formed as an act condition or result condition. To clarify this subject, suffice it to mention a simple example. The parties conditioned that buyer, buy the house from seller if Mr A paint it and the buyer announce his acceptance with this condition that the house should be painted by Mr A. although this condition is an act condition, the personality of painter was considered by buyer and indeed, the condition of qualification is in act condition. According to civil code, result condition situates urgently while conditioning.²⁰

Sanction of condition of qualification

According to articles 235 and 410 of civil code, in the case of condition of qualification, a person who the condition is for him, has termination right; article 235 of civil code states: "when a condition in contract be condition of qualification, and it would be clear that the qualification doesn't exist, the person who the condition is for him will have termination right".

Liability of violation the condition of qualification

The existence of liability in irrevocable contracts has an exceptional figure. (Contrary to the principle of irrevocable of contracts). Then this question will arise that what reason cause exception and overcome the irrevocable contract? Why does an irrevocable contract have destabilization and obligation replaces by liberty? To request this question, several justifications have been stated which are divided into two groups:

1-the views that justify the liability of termination based on will rule and adversarial provisions.

2-views that situate the basic of liability undue compensation and social justice.

Conclusion

According to articles 235 and 410 of civil code, in terms of violation of condition of qualification, the person who the condition is for him, will have termination right. The basic for this sanction is compensation that caused by violation the condition against other person. In violation the condition of qualification, the beneficial person can accept the consideration whit the conditioned qualification or terminate the transaction but he can't force the other party to deliver the consideration with the provisioned qualification because liability of violation of qualification in specific property or general in specific property is supposable and in general property, the liability of violation of qualification doesn't mean because in general property, the described qualification is the obligated thing and seller obligates to deliver property according to the described qualification to buyer. But when the specific property or general in specific property don't have the described qualification, as the property is specific and other thing can't be delivered instead of it. When it is without

²⁰ . Rasae Nia, Naser, Contracts and Obligations, Avaye Noor Publication, Tehran, 1376, p. 39.

described qualification, violation of condition of qualification will occur and there will not any way just termination.

Signing contract should be irrevocable and definitive and if a condition be agreed that cause suspension contract, that condition will be invalid and will rescind the transaction and civil code refers to this subject, too. And in marriage, the condition of qualification is allowable and in the case of violating it, there will be termination right for beneficial party. What has brought in states and works of jurists, is samples of violation of condition of qualification and we can conclude that violation of condition of qualification causes termination liability generally and not as a general rule and in civil code it is said.

In periodic or continuous marriage, the condition of termination liability, is invalid and undue because it is incompatible with necessity of continuous marriage and the period which is agreed in periodic marriage and has thought by legislator. The legislator knows necessary the clearness of this period but the invalidity of this condition doesn't effect on marriage and doesn't cause to invalid it because an undue condition doesn't cause violation the marriage.

Don't paying the dowry doesn't cause to invalidity of the marriage and this condition is accepted in civil code.

In continuous marriage, we can situate the condition of termination liability for dowry and this condition is true and binding, but in periodic marriage, as this condition cause ignorance in the amount of dowry which is the basic of marriage, the condition is invalid and cause invalidity of marriage and this view is accepted by civil code.

As in periodic marriage, the couples don't inherit each other, if the condition be inheritance, according to acceptance of jurist about the accuracy of it in states, this condition is lawful and binding.

If sexual relations be forbidden as a condition generally, this condition will be invalid but if based on interests, couples limit some sexual relations like sex as stipulation in continuous or periodic marriage, this condition will be lawful and binding.

The condition of not remarriage is true and binding but in the case of violating it, there will not be any termination right for wife and the remarriage isn't invalid, but for this violation some sanctions can be predicted such as compensation or deprivation of some rights or delegate wife to divorce.

In marriage, the parties can include some agreed conditions according to freedom of autonomy and reasons of accuracy and necessity of fulfill the conditions, unless it be opposed with law and binding provisions that in this case, it will be invalid and unlawful, but correct agreed conditions are accepted in family courts and have enough sanctions.

By violating the condition of qualification, according to articles 235 and 410 of civil code, the person who this condition is for him, has termination right. The basic of this sanction, is compensation for the loss which caused by violation the condition against the person.

In violation of condition of qualification, the beneficial party can accept the property without described condition or terminate the transaction. But he can never force other party to deliver the property whit described qualification because the liability of violation of qualification is supposable in specific or general in specific property and it doesn't mean in general property because indeed, in general property, this qualification is the obligated and seller obligates to deliver a thing according the describes qualification. But when specific or general in specific property aren't in accordance with the described condition, since the property is specific and we can't deliver other property instead of it, there will not be any way just termination when it is without described qualification.

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