Research Article

Limits of the Governance of the Parties' Volition in the Determination of the Contractual Conditions in the Laws of Iran and England as well as in Imamiyyeh Jurisprudence

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Abstract: Like contract, condition is the manifestation of the governance of the parties' want and will and it plays direct, intermediated and considerable roles in the endorsement of the contract; according to many of the jurists and jurisprudents, condition is the valedictory stimulator and the creative motivation of every contract and it is possible for many of the contracts not to reach a final stage in cases of no agreement on the conditions. Although Iranian and English jurists and even Imamiyyeh jurisprudents realize condition as a corollary principle for such a reason that a proposed condition is a contractual one and all conditions would be insensible in the absence of contract; due to the same reason, it is mostly believed that conditions persist due to their corollary nature with the continuation of the contract and it is following the diminishment of the contract that the condition will be also lost; however, it will be seen in practice that although condition is in terms of creation dependent on the contract but many of the conditions keep on living even with the diminishment of the contract. These conditions might have been predicted for a time after the diminishment of the contract and this is a subject that is evident in general and private contracts and even international protocols and treaties in such a way that, as a principle, a condition can have a vast and endless realm and it is based on this principle that conditions can be inserted in many of the cases into the contracts and, then, reason based on the principle of the freedom in determination of contractual conditions that all the conditions mentioned in the contract are binding; the borders of their realm are determined based on the freedom in the determination of the contractual conditions. Although, as it will be seen, there are limitations set for the governance of the parties' will by the governments in the legal systems, these limitations have no effect on the influence of the conditions and this will has been supported in the contracts through the intervention by every country's legislature considering other principles, including the principle of good will (in the international treaties), principle of fairness (in the laws of England) and principle of the denial of hardship and difficulty and the maxim of no-loss (in the laws of Iran and Imamiyyeh Jurisprudence); however, from the perspective of the public order, there are constraints set for its implementation. Thus, it will be seen in this article that the individuals are not so much free in the determination of the conditions due to the governments' interventions and the jurisprudents have even expressed as an axiom that "all the general principles have been specifically specified". Based thereon, there are limitations set for this principle and, in many of the cases, these limitations are not only not contradictory to the governments' governance but they are also consistent with the public order and good virtues but the governments have taken measures in line with limiting them based on the public expediencies so the realm of the conditions are determined considering these limitations in every country.

Keywords: principle of freedom in setting conditions, governance of will, contractual freedom, in-contract conditions

1. Introduction

The sure thing shared in the laws of Iran and England as well as Imamiyyeh jurisprudence is the veneration of the individuals' will; considering the fact that the transacting parties' will is effective in the contracts based on the principle "contractual freedom", the subject "condition" has been specifically and carefully taken into account in the laws of Iran due to its being influenced by the regulations originating from the abundant jurisprudential sources. This is while "condition" had not undergone so much substantive development in the laws of England till 19th century and it can be stated that the England's laws are constructs of 19th and 20th centuries, especially about the contracts, for such a reason that the author of the four-volume book "an interpretation of the laws of England" that has been published in the years between 1765 and 1769 has only dedicated 26 pages to the laws of the contracts and this is the first book about the laws of contracts in England and it has been published in 1874.

Although condition has been accepted in all three legal systems, it does not mean that the governments have given individuals undue freedom for the determination of the conditions and set the ground for the misusers. Based thereupon, there are limitations for the tradesmen and tradeswomen in regard of the determination of the conditions in the legal systems of Iran and England as well as in Imamiyyeh Jurisprudence like in the other legal systems worldwide. Thus, in regard of the conditions' limitations, it will be read in this article that there are common points in the legal systems of Iran and England as well as in Imamiyyeh Jurisprudence despite the fundamental differences, including the existence of illegitimate conditions and legal mandates of the illegitimate conditions and the condition's contradiction of the public order and good virtues which would be followed by the absolute invalidation of the condition; however, due to differences in the meanings of the words, including the illegitimate conditions and good virtues and even public order, no single conclusion can be reached for these two titles between the Iranian and English systems. Of course, there is a general and a special relationship governing the literal definition of the public order and good virtues in the legal systems of Iran and England in such a way that the illegitimate conditions are condemned to invalidation in the laws of Iran according to article 232 of Iran's civil law and, in case of the

condition's being contradictory to the public order and good virtues, the same holds for it; the common point existent in all three systems about the legitimacy of conditions is requiring to its being not contradictory to the imperative regulations; in other words, the thing that causes the rescinding of a condition is its conflict with the imperative regulations and this ruling has been realized in Iranian and English legal systems as well as in Imamiyyeh jurisprudence as the primary constraint of the conditions' determination and, in case that the contradiction is verified, the condition is invalidated; of course, considering the literal differences between the meanings offered for conditions' legitimacy in the regulations of Iran and England, the elaboration of the commonalities needs more investigation but this gap is envisioned less frequently in the laws of Iran and Imamiyyeh jurisprudence due to the former's being influenced by the latter, especially by Sheikh Ansari's notions.

The limits of the governance of the parties' volition in the determination of the contractual conditions in the laws of Iran and England as well as in Imamiyyeyh Jurisprudence:

As for the limits of the governance of the parties' volution in the determination of the contractual conditions in the laws of Iran, there are numerous ideas expressed by the Iranian jurists; accepting the principle, Dr. Muhammad Ali A'ala'eifard has the following words about the governance of the individuals' will in the contractual conditions for the business transactions: "the principle 'governance of will' or the principle 'the contractual freedom' is rooted in the school 'individual originality'. It is the tradesman who decides when and in what form and with who and in what way and under what criteria and conditions enter a transaction. According to the explicators, the principle 'freedom in the determination of the conditions' has been born out of the parties' will; therefore, it is their sure right to specify the principles and regulations governing the contract. In fact, the principle 'the governance of will' is amongst the individuals' natural rights. Thus, corresponding to article 1-1 of the principles of the international business contracts, the parties are free to insert any condition in the contract and set its contents" [1]. Thus, he continues this discussion with the following words: "one of the effects of the governance of will is the right of choosing the law governing the contracts by the businessmen in the international contracts. The principle 'the governance of will' gives the tradesmen the authority of determining the law governing the ways of their dispute resolution. This rule can be the law or any of the parties or a third person" [2]. Dr. Amir Entezari, as well, has the following words in his article about the principle "freedom in determining the contractual conditions": "although the principle of the contracts' freedom and the governance of will have been accepted in the discussions on the laws of contracts and obligations, the presence of such a phenomenon as legislation and determination of the binding rules and criteria in the communities caused the emergence of a topic named created legitimacy and it has a powerful general aspect and stands against the abovementioned principle and limits it" [3]. He has stated in the same book that "in the laws of Iran, as well, the principle of contractual freedom realizes the conditions as being valid in case of not being in contradiction to the law and the public order and good virtues based on articles 10 and 975 of the civil law and article 6 of the civil trial procedures; the conditions have been consequently limited in terms of the three aforesaid cases in such a way that paragraph 3 of article 232 of the same law uses the term "illegitimate" and it has to be accepted in its interpretation that condition, as well, has a visage of contract and the limitations imposed on the principle of contractual freedom are also imposed on the conditions. Based thereon, it has been stated in article 10 of Iran's civil law that "private contracts can take effect in respect to the individuals who have signed them in case of not being at odd with the explicit text of the law". Although this article broadens the realm of will's governance and makes it generalized to all the contracts, including the specific contracts, there are other articles that create essential limitations for conditions in the contracts; however, article 10 is so strong that it keeps on influencing the expression of the wills in the contracts even with the existence of limitations. The collection of these effects can be summarized in four sentences: first of all, parties can freely determine the contract's conditions and effects; secondly, the effect of contract is limited to the individuals who are present in the contract; thirdly, there is no need for special formalities; and, fourthly, the parties are obliged to observe the contract's contents [4]. Dr. Khonarinejad has written in his book that "the distributive goal, as well, is one of the reasons for the limitations on the principle of freedom in the determination of the contractual conditions" [5]. It has to be stated that this perspective is very vast because any sort of intervention by the government is followed by distributive results and there are many of these cases that cannot be envisioned as limitation. However, consideration of the limitations in the principle of the will's governance in the laws of England and its comparison with the laws of Iran do not show many differences. As it has been stated in the laws of England, most of the limitations of the principle "will's governance" pivot about the axis of fairness and justice and most of them revolve about the public order and good deeds in the laws of Iran. As an example, the goal of preventing exploitation by and unfairness of some of the contracts can be compared with that of the public economic order. In fact, this change is related to the nature of the public economic order which embraces goals like justice, fair wealth distribution, support of the contracts' weak parties. Thus, Dr. Katouziyan writes in his book that "as for the abortion of some of the options, as well, it has been stated that it is faced with such a barriers as the public order. For instance, the condition "the abortion of the option in case of inability in delivery" is faced with such a barrier as the public economic order hence it cannot be aborted. In the same way, the condition "the abortion of contract due to such an option as fraud" has been considered permissible to the extent that it is not in conflict with the public order. This conflict is more visible in case of the victim's non-awareness

about the fraud. In presumptions that such an option as "contract invalidation due to flawed exchangeable items" takes a fraudulent color, the reasoning would be the impossibility of the condition "abortion of options" [6]. Thus, Dr. Shahidi has the following words in this regard: "one of the limitations of the individuals' will in the determination of the conditions is the impossibility their abortion after their creation whether they have been created out of the parties' will or by law" [7]. It has been stated in article 224 of Iran's laws that "the condition of attribute cannot be annulled. Madani has expressed that "the condition of result cannot be aborted". There is no explicit legal text signifying that the condition of attribute cannot be aborted but, considering the structure thereof, i.e. the abortion of the commitment stemming from this condition and because it does not create commitment, it cannot be aborted; in other words, if the transaction subject features the same attributes of the thing for which conditions have been set, the condition of attribute is fulfilled so there would be no reason for abortion; in case that the transaction subject is found lacking the set attributes, it becomes clear that the thing fulfilling the condition has been neutral and the neutral things do not exist to be aborted. However, in the absence of attributes, the terms of the transaction establish a right to terminate for the buyer, which is called the option of incorrect attribute. In his book *The Civil Code*, Katozian argues that "Iranian civil law provides that another obstacle to the principle of freedom in determining the terms of a contract is good morals. Therefore, in Article 975 of the same law, the principle of good moral is one of the sources of public order." However, Article 6 of the Iranian Code of Civil Procedure has cited good morals in addition to public order and among the obstacles to the influence of contracts, stipulating that "agreements and contracts that are contrary to public order and good morals will not be processed in court." So, it remains to be seen what the relationship is between good morals and public order. In the same book, he states that "Good morals are a special face of public order." The ultimate goal of good morality is to make a pure and pious human being, and law is all about equality, as the legal system in many cases, where maintaining social justice requires the complementarity of law and the influence of contracts, must be addressed using other external reasons (8). Regarding the limits of the rule of will in determining the contractual terms in the English legal system, Ahmad Torabi states that "an exclusion (or exemption) clause is a term which, if found to be part of a contract and effectual, will enable one party to avoid liability he would otherwise carry." The limitation clause is similar to the exemption clause, the difference being that it clearly seeks to limit, rather than to exclude, responsibility. Therefore, in order for the exemption clause to be legally reliable or be relied upon by regulatory or customary rules, three requirements must be observed therein:

1. The condition must be included in the contract;
2. The damage clause shall encompass the disputed matter; and
3. The clause has not been previously affected by statutory intervention or by common law rules relating to invalidity (9).

Dr. Khabarinejad argues that, as in other legal systems of the world, there have been detailed discussions in the British legal system regarding the limitations of the rule of freedom in determining the terms of the contract that restrict the principle of freedom or the rule of will. Professor Eisenberg stated four reasons for the restriction on the principle of contractual freedom, which also encompass the principle of freedom in determining the terms of the contract, namely:

1. Exploitation of a party in poverty;
2. Incompetence to trade;
3. Suspicion and providing unfair advice; and
4. Ignorance of price,

All which are in a way related to public order. Nevertheless, by stating these reasons, he demonstrated how the essence of any transaction is under scrutiny in cases where it has no legitimacy (10). He elsewhere advocated for the government intervention to prevent the exploitation as a positive influence on the restrictions of the freedom of contractors, arguing that the freedom of contract should not be accepted as a valid principle in case of exploitation owing to the fact that the principle of contractual freedom includes all factors of contractual power including factors of exploitation, hence leading to grounds for the court to intervene to prevent the application of this principle in exploitative cases. According to this theory, therefore, any transaction that leads to exploitation would be unfair and thus should be annulled (11). Trobil-Cock (1993) has provided reasons for restricting the principle of freedom of contract, namely coercion, reluctance, inappropriate information, flaws in the relevant information, and the external characteristics of the product. In general, the intervention of governments, either under the guise of protecting the parties to the contract or for the sake of the public interest, hinders the principle of freedom (12). In English law, commitments are only enforceable if they are stated either in a deed or given in return for a consideration. The main feature of the consideration theory is that in order for a condition to be as effective as a contract, something that is valuable in the eyes of the law must be up for consideration therein[1]. This valuable thing can be exhibited in the form of a counter-promise, an act, or a forbearance (13). Although in English law it is often based on the explicit

[1] Thomas v. Thomas

terms of the contract, this does not mean that the legal system is indifferent to the implicit terms. Lord Denning, presiding judge of the Court of Appeals in Bartlett v. Sydney Marcuse, decreed that a vehicle which did not have the necessary driving safety was certainly not "commercially viable and hence could not be traded." Yet, this attribute is not explicitly mentioned in the contract, but it is an implicit condition that can be clearly deduced from the prevailing circumstances and commercial custom, because the prevailing commercial custom implies that a car is a business object if it has the necessary safety to drive. Moreover, in Lee v. York, a car whose brakes did not work was unsurprisingly declared not to have the necessary safety to drive, and the lack of explicit conditions was not considered an obstacle in bringing before the court the ensuing lawsuit. It was ruled that as the vehicle clearly lacked the necessary safety due to implicit conditions not for driving, it is not to be considered commercially viable. This definition encompasses attention to all other relevant circumstances (14). One of the limitations of the principle of freedom in determining contractual conditions in English law is the requirement to register the condition. Pursuant to the Companies Act, conditions and obligations that are considered as preferred debt and take precedence over other debts in the event of the bankruptcy must be registered before a legal authority so that they are not challenged by other creditors. Professor Aita, author of one of the most important and well-known law books on trading in the United Kingdom, argues that the condition of preserving property in English law is clearly an attempt to evade the necessities created under Companies Act, because the commercial purpose of this condition is that in case of bankruptcy, the buyer gives the seller the right of first refusal. Hence, it is logical to assume that this condition must also comply with the registration rules (15). Another issue restricting the principle of commercial freedom in English law is the condition of the right of termination, which is based on the grounds of the fairness of contract. In other words, the condition of the right to terminate the contract is compensation based on the rule of fairness. Termination of a contract has a discretionary nature, that is, it only takes place subject to the discretion and precaution of the court. The limitation clause in the English legal system is similar to the exemption clause but clearly seeks to limit the clause. An exclusion (or exemption) clause is a term which, if found to be part of a contract and effectual, will enable one party to avoid liability he would otherwise carry. The courts frown on such restrictive terms that militate against the very nature of contracts. They oppose such contracts and the requirement of their rights and obligations. However, where the parties agree to their inclusion the court must recognize their freedom of contract, as recent statutes have undermined this freedom to some extent. Some exclusions, while they may be part of a contract, have been deprived of them of effectiveness.

In English law, for the exemption clause to be legally reliable or be relied upon by regulatory or customary rules, three requirements must be observed therein:

1. The condition must be included in the contract;
2. The damage clause shall encompass the disputed matter; and
3. The clause has not been previously affected by statutory intervention or by common law rules relating to invalidity

In *L'Estrange v F Graucob Ltd [*1934] 2 KB 394, the Court of Appeal ruled that "in an ordinary case, where an action is brought on a written agreement which is signed by the defendant, the agreement is proved by proving his signature, and, in the absence of fraud [or misinterpretation], it is wholly immaterial that he has not read the agreement and does not know its contents. In this case it is, in my view, an irrelevant circumstance that the plaintiff did not read, or hear of, the parts of the sales document which are in small print, and that document should have effect according to its terms. I may add, however, that I could wish that the contract had been in a simpler and more usual form. It is unfortunate that the important clause excluding conditions and warranties is in such small print." Accordingly, these terms are not all of equal importance, the major ones are called conditions, while the minor ones are named warranties

In the translated version of *an introduction to comparative law*, Dr. Safaei argues that the British law has never been a customary law, but a law based on judicial precedent, also known as common law, which has led to abolition of legal customs in the British law. Common law is thus unfamiliar with the notion of jurisprudence, which is close to that of legal custom. therefore, British law cannot be considered customary law because if a similar dispute has been resolved in the past, the court is usually bound to follow the reasoning used in the prior decision (a principle known as stare decisis).

Exclusion condition in Imami jurisprudence

In Imami jurisprudence, one of the limitations of the principle of freedom in determining the conditions is contradiction to the requirements of the nature of the contract. The requirement of the nature of the contract is an effect that if deprived of the contract, the essence and provisions of the contract are nullified. The requirement of the contract depends on the type of contract. Jurists have mixed and often contradicting views on the invalidity of this condition and the manners and reason by which it is performed, but in general their justification is that by bringing this condition, the parties are free to nullify the provisions they had previously agreed in the contract, hence

leading to contradictory compositions. For example, in a contract of sale, transfer of ownership to the customer is one of the effects of the. Now, if a condition is inserted to the contract, by which the right to the property is not transferred during the sale contract and the property remains by the seller, it would oppose the essence of the contract, hence invalidating the contract.

Ash-Shahid Al-Thani has argued in *Al-Sharh Al-Lum'ah* that every viable and correct condition can be inserted in the contract, provided that it is not inherently against the book and the tradition (20). Ash-Shahid al-Awwal has argued in *Al-Lum'ah Al-Dimashqiyah* that inserting a condition to a contract is permitted only if it does not lead to ambiguity in one of the exchanges (price or object) or if the book and tradition has not forbidden it. Moreover, in case one of the parties to the contract seeks to delay the delivery of object or price for an indeterminate amount of time, it is assumed to be annulled, as it is a condition causing ambiguity. Sheikh Ansari stated in *Al-Makaseb* the limitations on the application of the principle of freedom in determining conditions in some contracts, the first of which is the marriage contract. As such there is no possibility of annulment and termination in marriage, as most Shiite jurists agree that the rescinding option cannot be inserted into the marriage contract. Accordingly, he has stated in the chapter on marriage of the same book, that it seems that authors of *Al-Khalaf, Al-Mabsoot, Al-Saraer, Al-jameh Al-Masa'el*, and *Al-Masalek* agree that the effect of marriage is only nullified pursuant to a divorce, and that the ruler assumes the divorce the only consequence effective on marriage, and hence annulment has no legal standing (22). Moreover, the popular view is that rescinding options cannot be included in the *waqf*. It is also stated in *Al-Masalak* that this is a consensus issue, as *Al-Saraer* and *Al-Doroos* have offered contradicting views on the opinion of jurists regarding the viability of rescinding option in *waqf*. In *Al-Makaseb*, another contract that has been assumed to be subject of limitation in determining the terms is the mortgage contract, citing references to *Al-Ghayah Al-Maram* (23). Ash-Shahid al-Awwal has argued in *Al-Lum'ah Al-Dimashqiyah* that in a mortgage contract, the trade subject must be commercially tangible, so it is not correct to mortgage the profit and debt (24). Allama Helli stated in the book *Tabsara al-Muta'alleen* that whenever the ruler forbids the bankrupt from having his possession acted upon, any action on the property is void until he/she is financially viable (25) In his book, *Al-Mazhab,* Ibn Braj has said has permitted providing a rescinding option in the contract of guarantee, which is line with the arguments of Ibn Edris (in *Al-Saraer)* and Allameh Helli (in *Al-Irshad* and *Al-Tazkareh*). Ash-Shahid al-Awwal and Al-Muhaqqiq al-Karaki have discussed similar arguments in their books as well. Many books of jurisprudence, including *Al-Lum'ah Al-Dimashqiyah*, have stated that in the absence of any of those conditions, the parties can not eliminate it even with the consent of the parties. Mohaghegh Damad has mentioned a restriction on the mortgage contract, namely the formality of the condition assumed for the contract. This restriction is also mentioned by Sheikh Tusi in his book *Al-Nahayeh*, about the condition of marriage. In a marriage contract, any kind of condition that a man imposes on a woman is valid only if it is after the marriage, and if it is mentioned before the marriage, it would be ineffective unless it is mentioned during the marriage (26). Mirza Qomi has argued in his book that "if the condition is contrary to the Shari'a, there is no doubt in the invalidity of the condition, but there are two opinions as to the invalidity of the contract, the most correct opinion being the invalidity of the contract, in that a contract is a function of the intention, and the purpose of the contract is a condition of such. Moreover, when the condition is annulled, the intention would also become void, because the whole is eliminated by the annulment of the part and the whole intention is not enough to intend the part. Hence, when the part is not intended individually, there would be no ruling on it.

Mirza Qomi further states in the same book that a condition is justified and accepted if it does not contradict the requirements of the contract, and the requirement of the contract refers to what is legally obtained due to the nature of the contract without interference and the influence of something else, Therefore, the contract should not be free of its requirements. He further acknowledges that any condition that is contrary to the book of God Almighty is to be rejected (28). If what conforming with the *Shari'a* is stipulated, it will be signed by the *Holy Shari'a*, in which case, if the condition is not fulfilled, most jurists have said that non-fulfillment of the useful condition leads to a free choice between termination and signing of the contract to which the condition pertains. Koleini and Sheikh have validly narrated with from Abdullah Ibn Sinan and Imam Hossein (PBUH) that whoever makes a condition that is contrary to the Book of God, whether in his favor or against, is obliged to dismiss the condition, while on the contrary, Muslims are bound by their condition and must abide by it where the condition is in accordance with the Book of Allah (29). In Sheikh Ansari's book, *Al-Makaseb*, it is stated that the condition (the rescinding option) is effective when it is mentioned in the text of the contract, and hence it would not be enforceable if agreed upon out of the contract (31).

Mohaghegh Damad stated in this regard that, whenever the parties to a contract agree a complementary condition on a subject regarding the provisions of the contract after, such conditions are called amendments, referring to conditions that did not have an initial standing in the will at the time of concluding the contract, yet the parties intend to enforce it along the condition. Consider a scenario in which, after concluding the sale contract, the parties agree that the seller will deliver the sale at a specific place or time. Sheikh Tusi stated in his book, *Khalaf*, vol. 3, p. 21, that if the parties to the contract of sale stipulate before the contract that there is no option between them when

they enter into the contract, the said condition is valid and enforceable. Sheikh Ansari also stated that there are 9 preconditions to every contractual condition, including that the condition should not be contrary to the book and tradition, and that the condition should not be in conflict with the requirements of the contract, otherwise the contract is corrupt and void (31). Regarding limitation of the condition, it has been stated in *Makaseb* that *Al-Sharayeh, Al-Irshad, Al-Ta'ligh Al-Irshad, Majma 'al-Burhan* and *Kefaya al-Ahkam* have been quoted that the option of condition exists in any contract except marriage, *waqf, Ibra*, divorce, and *Atq*. Therefore, Allameh has stated in *Tahrir* that options are not allowed in the permissible contract, the tone for which certainly pertain to necessary contracts (32)

Regarding the limits of the rule of will in determining the conditions, Mohaghegh Damad stated in his book *General Theory of Contracts* that Sheikh Ansari was the first person to discussed the condition not as a rule but as a jurisprudential and legal phenomenon. He assumed 9 preconditions for the limits of conditions, namely (1) feasibility of the condition for the responsible party; (2) the validity of the condition; (3) the existence of a rational purpose in the condition; (4) The non-opposition of the condition to the book and tradition; (5) the non-opposition of the condition to the nature of the contract; (6) conditionality; (7) inherently permissible; (8) being explicit (33). In the book *Sharh al-lum'a*, Shahid Thani argues that it is permissible to add optional clauses on permissible matters in a contract, although it should not lead to ignorance on the object or the price, and the book and tradition have not previously forbidden it. It is not necessary to put these matters after the restriction of matters, and it is assumed to be inconvenience (1). Regarding the rescinding option, he further stipulates that the manner of this option depends on the condition mentioned in the contract, that is, if the time allotted for it is firm and clear, whether the specified period is in the contract or separate from it (34).

2. Conclusion

In all scientific disciplines, a principle is the foundation of a defined general rule for its application to its subjects in the same way. This definition differs from that in the science of fundamentalism used to dispel doubts in cases where one must rely on the discovery of truth. According to this definition, it can be stated that the principle is based on a general rule that governs all the people included therein. In order to determine whether there will be exceptions in the scope of this general rule, or whether all persons are necessarily based on a single rule, one must pay attention to the inherent essence of the principle. Accordingly, there remains no choice but to rely on the science of fundamentalism to find the solutions to the corresponding legal issues. In fundamentalism, about the totality and inclusiveness of the principle, experts argue that "there is no law without a kind of exception," now considering the existence of limitation in the principle of rule of the will of the parties in determining the terms of the contract, it is easier to accept these restrictions while maintaining the principle of the rule of will. In this article, it was stated that limitation in determining the conditions and its effect on the principle of the rule of will is approved in all three legal systems of Iran, Britain and Imami jurisprudence, the details of which were discussed in this study. It is noteworthy, however, that in the Iranian legal system, this restriction is expressed in such a way that in many cases, its deprivation might lead to the annulment of the contract, because when a contract is concluded, the parties can exercise their right to waive with full will in accordance with Article 448 of the Civil Code, while on the other hand, the principle of the rule of will requires that everyone is free to waive his/her right. The basis of the condition for the fall of the option is the principle of the rule of will, which is itself a face of Article 959 of the Civil Code, stipulating that "No one can be deprived of the right to enjoy and exercise all or part of civil rights in general." Just as the principle of the rule of will is regarded as the basis for the condition of the waiver of options, the limitations of this principle must also be taken into account in the ruling of the very same condition, itself being based on the principle of public order. In English law, most of the restrictions on the rule of revolve around the principle of justice and fairness, while in the Iranian legal system, rules are mostly based on public order and good morals. At the same time, the purpose of these restrictions is to prevent the fraudulent exploitation and unfairness of certain terms in the contracts. What is applicable from the British legal system to its Iranian counterpart is public economic order. The necessity of the existence of a restriction on freedom in determining the terms of the contract will require philosophical principles justifying them. In fact, the interpretive aspect of this theory is that the ruling derived from Article 448 of the Iranian Civil Code and the contract containing the condition of the waiver of options is modified by theoretical interpretations, thus explaining a logical, comprehensive and fair ruling for limiting a condition based on an interpretation of the inherent and esoteric rationality of the law. In interpreting a contract containing conditional limitation, the objective interpretation method is desirable and provides the purpose of a logical and fair ruling for the contractual conditions. Nevertheless, the above interpretive approach is very similar and comparable to that of schools of realism and consumerism in English law, as they believe that legal rules must require the court to decide on terms and conditions based on general principles of rationality, justice, and reasonableness, among others. The limitations of conditions can be addressed based on the aforementioned principles. For instance, there are options specified in the Iranian civil law based on Imami jurisprudence that cannot be annulled or changed by the will of the parties. It is noteworthy that based on the stability of limitations, these options have been divided into categories and hence given a logical ruling for the condition of waiver of options, which is based on the will of the parties, itself being one of the restrictions of the principle of freedom in determining contractual terms. Among those

options, the resultant option in noteworthy, by which the person has the will to create but is not able to cancel many contracts, including marriage, endowment, guarantee and mortgage. In the aforementioned cases, the will of the parties are not effective, the principle for which is rooted in the general order of good morals. As a comparative study of the results and effects of public theory in English law, this research has sought to establish the conditions of the exemption and its limitations. It goes without saying that introducing such conditions helps to express a logical reason for these restrictions to be entered the realm of law as theoretical and legal regulatory tools, and similar to the theoretical regulatory tools governing the exemption conditions, the resulting doctrine pertains to cheating and fundamental defect. The Law on Unfair Contractual Conditions also specifically restricts the scope of the exemption conditions and is hence considered the most significant means of legal oversight for these conditions. The Iranian legislature has enumerated restrictions based on several articles of law, as Articles 959, 232 and 233 are established based on public order and good morals. Therefore, in proposing the amendment for the restriction of conditions, they are mostly developed under the heading of public order and good morals. Owing to generality of the pursuant laws as well as the nature of time-based conditions, they are perceived to cause fundamental damage to the principle of freedom in determining contractual terms. Therefore, under the pretext of maintaining public order, the legislature restricted the limitations, including the legitimacy of the condition stated in paragraph 3 of Article 322 of the Iranian Civil Code, without defining legitimacy, leaving judges free to condition monopoly, in which case, there will no longer be a trace of the principle of freedom in determine the terms of the contract, itself being based on the principle of freedom of will. Even Article 959 of the same law, stating that "No one can be deprived of the right to exploit or to exercise all or part of civil rights in general," was perceived to be disgraceful to the principle of the will of individuals and their integrity, which the legislature enacted the law with the aim of thwarting fraudulent profiteers. However, owing to the lack of citizenship literacy of that era, the enactment of this law seemed necessary in 1934. As for the modern era, on the contrary, this law will be an efficient tool for the exploitation of scammers. It is safe to claim that, the principle of freedom is broader in scope in international treaties than in domestic law and the principle of free trade requires and, given that the principle of free trade requires that the will of individuals be given greater consideration in contracts, a narrow definition of public order and good morals should extend the scope of the principle of freedom in determining contractual terms and reducing its limitations, because in the presence of these limitations, courts are often led to shape serious obstacles to free trade, which is borne out of the principle of independence of judges and broad interpretations thereof. Moreover, in the interpretation of public order, there would be high levels of inclusivity which would itself lead to restrictions that hinder wills in many cases. This phenomenon, in addition to being incompatible with the current public order of the economic and commercial society, will itself prevent the trader from achieving his/her unassailable rights. However, in international agreements, these barriers have been partially alleviated, as the trading parties are free to determine the law and even the competent court to handle their disputes according to their wills. This deliberation has nothing to do with public order and good morals, as it provides the ground for the realization of the merchant rights. Nevertheless, Iranian law is still suffering from corresponding drawbacks while the same cases are still involved in domestic law. Regarding the subordination of the condition, many scholars and jurists consider it to be irrational, and consider the fall and survival of the condition to be dependent on the essence of the contract, although the condition is the result of agreements based on the contract. Einber divided limitations into four categories in terms of necessity, often deemed necessary to prevent the fraudulent practice of merchant, and competence for transaction and repayment of losses and prevention of ignorance of the party are considered as cases of limitations in English law, which is based on the prevailing public order in England.

Irrespective of the above, the intervention of governments under the pretext of preventing their exploitation has imposed unnecessary restrictions on conditions that are not limited to the Iranian legal system, but the British legal system has paved way for government intervention in the form of principle of fairness and commercial practice. Accordingly, terms in English law are classified into condition and warranty. This classification has somewhat better served the interests of traders and has somewhat reduced the extent of the condition limitation that has been implicated in disrupting the will of individuals. In English law, the effect of the corruption of term is determined the condition according to the type of term, and if the corrupt term is perceived to be a warranty, it is excluded from the contract. Although there is no such categorization in the Iranian law, it seems that its spirit is maintained in Articles 322 and 323 of the Civil Code, the same category is observed. Therefore, by adapting to the English law, the corresponding amendment seeks to make it easier for traders to specify the division in its formulation in contracts. According to Alaifard[2], it is the trader who is free to decide when, in what form, with whom, under what method, under what criteria, and under what term he is willing to complete commercial transactions with another person. According to the commentators, the principle of freedom in determining the conditions is subject the will of the parties, so it is their unassailable right to determine the principles and rules thereby. In fact, the rule of will is part of the natural rights of individuals. Therefore, according to Article 1.1 of the Principles of International Trade

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Contracts, the parties to the contract are free to include any terms in the contract and determine its content. As a result, these authorities should not simply be taken away from the trader by creating unnecessary restrictions.

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