

Research Papers



**THE OBSERVE OF PRINCIPLES LAW ON INTERNATIONAL CONVENTIONS IN
PECUNIARY AFFARIS**

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ABSTRACT

Today the importance of international commerce in universe countries economy is obviously that, what it requires to express. For the reason of excess, the international commerce growth, arising from universal economic growth, during recent decade, is produce the new methods and different conversion and the international commerce low is also obtained to excellence growth and evolution of equivalent of international commerce.

Operative appearance at the international markets is requiring to recognition of useful instruments, as an example, the observe of prescriptions in international conventions and pecuniary affairs and controlling the goodness of the accomplishment principles commercial.

If the martial relations of countries member in international society, does not discover, the intellectual structure and the countries don't encourage the co-operation with together will be ruin a few arrangement which was found in the figure of modern and war and oppression will be replaced with rule and law, so, this position will be weak and unstable.

All of countries are busy with different degrees in international commerce and no countries are wealthy so much that can tolerate the establishment of commerce association with other world.

The free conversion of goods and services as manner of scientific and theoretic give an opportunity to the countries that are to be centralized in this connections with the highest advantage

KEWWORDS:

International commerce law-international markets- international convention as in pecuniary affairs-performing he international conventions

financial- the conversion of goods and services.

INTRODUCTION

Many of responsible people developing countries of economic institutions which arriving to the international markets. They are lacking necessary qualification in commercial negotiation to hold a conversation wit commerce verso (other person) who is residing in other countries circumstances is harder than the conversion with local companies.

Familiarity to the international rules and the regulation of commercial foregone countries for all assistants of commercial international is necessary order in general special government organization of merchant and experts, because the lack of awareness of legal and technical purities in international conventions, make a suffering with dangers to appearing of social and economical enormous damage in all of the times. This essay suggests that to deliberate the necessary of the financial markets. In addition, estimate the necessity of financial markets to the pecuniary affairs. Its expectation that to use for respectful

readers and it is made from three sections

FIRST SECTION:

1. Familiarity with public regulation and legal system
2. Manner and method of conjunction with foreigners in international pecuniary affairs and universal transaction.
3. The place of financial law in legal system

SECOND SECTION:

1. The problems and difficulties international selling appointment
2. The principles binding in arrangement of one international appointment
3. Legal aspects of buy back business

THIRD SECTION

1. The place OF utterance and meaning in financial appointment
2. New financial appointment is Islam.
3. The effect elements I international appointments
4. The judgment of Iran international commerce on appearing of financial this agreement between governments.

FIRST SECTION:

1. FAMILIARITY WITH PUBLIC REGULATION AND LEGAL SYSTEM

The essential rules which is identify for general conventions of international commercial, must be using when the two parties to reach and agreement with together and their appointment should be dependent or similarity "essential general legal" the legal of back ward of national commerce "Lex Mercatoria". This principle can be performed when none of the parties does not choose the title of law to their appointments law. In addition, to it can be use for the interpretation or completion of international same legal documents or internal law. And in this root the general rules which are mainly establish for "international commerce appointment": as, the international appointment, the principle of commerce appointment and internal of moral and reason and religious law, in spite of that it seems that the French civil law in 1134. In addition, to repose as revelation on civil law the writers and European legal influence should not disclaim in this case.

At least, this principle was one of the fundamental results of authority appointment in French legislator's idea; that be to say, because the decision of person is automatically respectful by the result of the legal, also the effect of the contract does not have any requires to authority stipulation and the people are free to be associated when they are desiring but we should know that the accepting

of "the principle of free appointment' isn't requiring to believes if the individuality thinking about authority decision in the current legal each person less or more accepted that area government is with law. But the practical advantages caused to respect to promises which are accepted that "liberty appointment" as "principle" and real bases is social considerations and economic meditation policy.

The experience indicated that the liberty appointment is the equitable way of arrangement security in financial people relation, because of this, the legislator prefers in the free and capitalism economic that, to respect unanimity of people instead of the rule enactment for all of the social boundless relation and only and in some cases only the public arrangement and society advantages demands to limited this liberty. (Catoziyan, 1314Pp.151-152.)

1.Manner and method of conjunction with foreigners in international pecuniary affairs and universal transaction.

A new rule to depend a man legal that "inhibit the bad behavior with all of the people irrespective of their nationalities are comparatively possessing of new root. However, it is more than two hundred years, that the one international law enactment the international standard minimum for the behavior of foreigners (it means another governments nationals). Government are not constrained to accept foreigners in their country but also to give permission whit them they should attitude with human qualities. If we express with technical idiom defect in companion and regard the international standard minimum lead to defendant of the government international responsibility. It might be possible the damage of the external government subject applying the privilege diplomatic. It means that for the reception of the indemnity or another forms of the compensation damages by way of the diplomatic channels to bring an action against of another government this kind of litigation usually resolved by the consultation and if the parties accepted that the litigation to determined by the way of judgment or legally trial.

Defendant government is not responsible against the state, to which one belongs. The philosophy of this theory is when, one of the citizens defendant governments to incur a loss, in fact this government is endure the damages. As a result defendant government, have absolute liberty to reservation of bring an action or dispensing to that. This government can determine the litigation

by taking a part of real value. Moreover, it does not have any duty give an obtained compensation to the citizen (even though the damages usually payment to the mention citizen). In this relation, the damaged person followed by government. In spite of that, the international law by way of individuality does not ignore to this people and also derived damages by defendant government, usually accounting according to the damages with the injured person to endure. Not to prefer to damages applied to the defendant government (Razaie 1385, Pp105) in the problem of the foreigners, the position, mutual manner is important as kind of right source and for the condition of a right existence. It means that, the principle transition reciprocal doesn't create a right by itself and each government should be determined by itself the right which wants that to recognize for feigners and it might be possible counted the condition of a right existence and sometimes the government absolutely deprive the foreign citizen from a legal point of view or whosoever that legal granting refers to some condition and in the some cases this action is counted effective and goodness as defensive intermediary for government and vice versa in other cases determent is overcome on benefits.

The Mutual Manner is Appear in Three Statements:
•Political mutual Manner: it established by a political covenant and only the foreign country citizen imploring of legal, which is mentioned in "political covenant"

•Legustion of mutual manner: it is provided the legislator benefiting from certain right for foreigner depends upon the recognizing of that same right knows foreign in the explicit wording of sovereign countries law. It is evident (clear) that, this kind of mutual manner are midwifery between the relations of countries, which are containing the subject rules.

•Practical mutual manner: it's provided that the citizen government in another countries actually using by that same legal in another countries citizen "according to the common law and habits and method of the administrative or judicially and its flexible and it doesn't need to nay rules (Nasirie, 1375 Pp.92-94)

As a perfectly, each government has duty, that it does not have a bad conduct with foreigners which are present in other country and the branch of this duty requires to some international responsibility, which is against of country that the foreign person has that dependence. In fact, this is a command an order form in most kind of current

responsibility of government.

A bad conduct with foreigners is possible to take different forms to itself:

- A bad conduct with foreign citizen in the prevention days by judicially authorities
- Illegal requisition of foreigner's property
- Reservation of punishment whom injured to foreign citizen
- Direct injuring to foreign citizen by government official

· Reject of justice execution

3.The place of financial law in legal system

In modern universes, the financial markets are the biggest world markets. The international share market financial rotation, is nearly numerical ½ Trillium dollar \$, it means about ¼ yearly universal export.

The legislator in this markets and the rule design in the right action of this markets, as different reasons, always had been attention to the government and efficient of this markets. In pecuniary affairs especially appointments the decision of person was dominated of her/his fat and it happened rarely that the government as a call of the safeguarding of the public legal to compelling the principle consideration or to imposed concluding contract to somebody.

Lately 19th century, in process of time the context of right social founded the admirers and it expanded the government duties in the administer if the office, the traditional frontier became weaker between the personal and general law. The government with nationalizing, the most economic institutions that entered to category business in the figure of new legal entities. These changes caused to anxiety in authority original decision and area limited and the gregariously and general benefit to prosper of importance, such as that degree where the law for protection and preservation of it, imposed of many appointment for people also in the other part of appointments such as work appointment, the mutual consent of the two parties doesn't change I a condition and appointment legal effects.

In spite of the fact that, in this days, the fundamental of economic structures are personal legal structures. It seem s that the timely intervene and unavoidable government is essentially imperative and also the financial law isn't exceptional of this rule and also the law of the financial markets is dominant to the kind of original law.

The financial market has displacement with the financial possessions. And the financial

possessions are law objective proprietorship and the derivations papers are counted as kind of the financial possessions of proprietorship law. This possession does not belong to special objective proprietorship and the displacement of these possessions are less expensive than the other possessions displacement. But the most important of possession and financial market products condition (is that) al of them appearing by definition and therefore, the displacement of this products doing by basic law and they are under inspection.

Also, the financial institutions are legal establishments. In this manner, the financial market close relation and possessions to transactions by these markets, which are undeniable to rules? This type of liberty prescriptions is limit by the acct of this institutions and organization in the important case, such as, giving loan, borrowing, financial securing, and on the other hand, the government superintend in the financial market transactions prohibition the deception and falsification rules condition and using the incorrect information and anticipation of civil and penal punishment for offenders and by controlling and supervising on financial publisher and exporters make a confidence in capitalists.

SECOND PART:

1 The international selling appointment problems and difficulties. The international selling appointment has a axial and importance rule in international commerce and another appointment like transportation and insurance are created because of facility performance. In addition to, some of problems on international selling are use for another transaction in international commerce. The international selling appointment has specialties, which are not perception in internal selling appointment. In internal selling appointment is clear the legal law on appointment. In addition, the appointment parties with submitting to the internal law get information from legal framework. It means the only problem in internal selling is about knowledge of internal rules. Whereas, in international selling, the seller and buyer have residing in two different countries. Therefore, the international selling appointment is depended to the several legal systems. In a country, the seller is peddling goods to buyer from another country resident.

Execution of appointment at transition of each thing is a kind of services from a country to another country. It is likely that if two countries legal system has been differences with together

between seller and customer and different rules are dominant to the conclusion of contract and their effects. In this way, the goods international selling contract arrangement should be perform in framework, which is acceptable for the government's parties.

In selling international, there is not any comprisal law. The rules and prescriptions observer in international selling is result of the different sources. So in addition to, the special law and rules and public law rules and also some of the international law rules get it and it can be expressed that the rules on international selling has mixed the legal regime and the legal system on internal selling, between two legal systems, it means (the rules in internal selling and the rules in international selling) created coexistence.

In international selling because of different reason, such as lack of parties confidence to the courtly judicial, authorities to the other person, the courts investigation is lengthy and complicated and even there is no special rule for transaction price. But which one of foreign exchanges should be usual, it depended on agreement of parties. The prescription of international selling existence does not embrace whole of the selling and some of them is consistent to the external conventions territory.

The arrangement of international selling by the way of in not acceptable solution. One of the most important problems in each international contract is resolves the disagreement problem and determine the pious authority for investigation of argument. If the appointment of the legal system function to be one of the parties, another party is worried in that event and the variance referred to the pious authority of that country, by the extra authority as reason of politically, economical, social to take consideration with extreme advantages of country citizen for itself and this reason caused the lack of confidence to the other part of authority. The lack of complete information in exporters and importers to the developing countries in field of rules and prescription selling make different problems for them and their sovereign countries. (Emamie, Sangary 1979 Pp10-11).

The Binding Principles In Arrangement Of One International Appointment:

Preparation and regularity of international appointment context should be attention to the lot of points for transactors during the contract execution does not happen the problems and difficulties and it does not cause for incurring loss

parties. If an appointment will be held between the special country citizen and the state of the appointment execution to be that the same of country. The problems of this appointment during the performance or another section have legal solution in internal system and even though as a public rule the consideration of regular formalities for appointments and agreements are not required in the international conclusion of contracts. So the deep attention to the effectives to reserve on political and economical and cultural by this appointments. The observing and regulations in force specially constitutional law, general law calculation, financial rules, customs rules and regulation, foreign exchange and bank regulation, imports and exports law regulation, health prescriptions and another imperious contracts.

The principle pointes, which should be consider to the arrangement of international contract

1-CHARACTERISTICS OF THE CONTRACT PARTIES

- a. Name, particulars, and legal characteristics of Iranian representative appointment
- b. Full name and exact particulars of Iranians representative appointment
- c. Name and mature particulars foreign contract according to the legal documents
- d. Name and particulars representative of signatory and plenipotentiary of foreign contract institution
- e. Another requiring particulars of contract parties

2 Subject of Contract 3. Contract Period 4. Amount of Contract 5.Foreign exchange of object contract 6. The method of the payments

a- Rial b- Foreign Exchange-bill of exchange

7. Controlling and inspection 8. Method of carry goods 9. Goods releasing 10. Guaranty : advanced guaranty-best completion of the job guaranty- bond deduction 11. Modification of prices 12. Changes of work quantities 13. Plan and Prescriptions 14. Change of condition and technical particulars 15. Out goes and customs duties 16. Insurance purchase goods 17. Right of insurance social security organization 18. Taxes 20. Instruction 21. Foreign employees 22. Delay charge and fine 23. Do the right of cession on subject of contract to the other 24 force major (Cairo branch) 25. The law dominant on contract 26. Separate of disagreement 27. Cancellation 28. Annulling 29. Correspondence 30. Contract language 31. Contract inclusion 32. Definitions 33. Buy back transaction legal aspects

Buy back transaction is one of the most important of the instrument for developing of economic exports and it can be profit as structural change agent and the country exports revolution form traditional goods. Mutual commerce is embraced the different commercial arrangement , in this case the payment is embraced, like another pecuniary way. About one of third , as whole of universe commercial in the figure of mutual commerce and the main object of developing is foreign exchange providence, commercial equilibrium, an increase of export, the acquisition of new markets and access to technology and as a result the acquisition of scarcity and qualitative development in part mineral and industry. (export magazine-p39)

In buy back transition, early contractual to fasten about the conclusion of a contract. And based on parties, obliged to obstruct of contracts in services and goods board in this cases, the intention of contract is only constitution and obligation on original conclusion and coagulation. As this theoretical, the original conclusion is not verify confirmed in foreign, on the contrary the parties should obligate the performance. And the final composition of contract consideration depended to another mutual consent, it can be expression that they are fastening two separate contracts. Each of them is depended by the public of appointment rules. With these differences, the first contract is as introduction of final contract and performance for the purpose of means contraction. Form essence point of view is typical appointment, and form effective is require because it takes its strengths form mutual agreement and contrast parties. And the condition of confirmation and occurring depended to general appointment rule buy back transaction is certain contract and it shouldn't be far form literal concept. Form viewpoint of literal means, buying back and the legal mean does not far form literal meaning. By this concept, that buy back goods generated (by technology and equipment) which is impressive and expressive translation of mutual selling, and the mutual selling is wide concept and embraced the common purchase.

The buyback transaction is performing in easiest way between two parties. One part the seller undertakes the legal and appointment in first transaction and buyer in buyback transaction, whereas the other part undertake the seller and buyer in the opposite side. In any case, it may be in buyback transaction have been attended more than two parties, and the buyer doesn't use the subject of

first transaction, specially, perhaps to gain it or earning it by permission or purchased it by advantage of third person which is setup the production of facilities. In other words the third person to be locked on, as perfect sellers.

In such cases, the buyback product is not suitable first seller for the internal usage in the country. Often accepted the first seller have justified to transferred the buyback contract to third person which will be performed the buyback contract (his contract according the purchase products). In other words, the third person located as perfect buyers. Buyback transaction parties can determine a different law and appointments in the signal contract or distinct contract.

THIRD PART:

The place of utterance and meaning in financial appointment. Naturally, all of contracts are the combination of content appearances as meaning and as usual. There is an agreement and coordination between the utterance and meaning. In the other, word what ever (that) is to be determined, there is differences in this case and there is a question that the principle in contract is utterance which is jurisprudents have two points of view: a group to tend to utterance and another group to the meaning and purpose of the translators and the religious rule is derived form purpose of transaction one of the most important of the discussion in appointment aspect ally in financial appointment form Islam religious rule is jurisprudence point of view is the contract developing and external form or it dependent to the developing meaning or an appointment context. In reply to this question, there are two religious jurisprudence tendency. First tendency is emphasis on contract external form and whatever is important, according his view the existence of utterance and word in appointment. Whereas according to the second tendency, the importance form transact ores is content and purpose which are expressed with utterance or applying. In some cases the religious jurisprudence, proceeded to this subject, like discussion about religious jurisprudence rule, usury deceits discussion, discussion about appointment which are proceeded of man in neurosis and neglect, mistake state and so on.....

Prevailing tendency for jurisprudents during of history, is second tendency, because of this, perform this definition of them:

- Standard is implication in contracts, not form
- Standard is implication in contract is their

meaning not the form of utterance

- The appointment are dependent purpose of meaning
- Standard is the meaning, not form
- Standard in appointments aren't form, in fact the standard is the meaning
- The appointment to fasten according to their contexts
- The standard is (aim of) contents
- The appointment laws are associated to the utterance meaning not to form of utterance
- If the function is concerned between the utterances and meaning arrangement, the regard of the meaning is the first

And another interpretation as this case which is relying the statement of the prophet commended that:

“indeed the action is according to intentions and deed for everybody is something which they are intended them and attentive to mentioned above definitions, the contract and appointment is not developed with out purpose and the contract and appointment is depended to purpose standard in appointment is matter that the common law understands the purpose of contracting.

NEW FINANCIAL APPOINTMENTS IN ISLAM:

Correctness and the place of new contract and in determinant was not common legislator age and in the religious jurisprudence books doesn't have the special title, particular in new appointments and legal institutions arising from industry developing, technologies and services and distressed the entanglement of economic connections had been controversy between the religious jurisprudence scientists and most of the ancient to knew them in impious law but most of the recent religious jurisprudence reasons, to demonstrated the religious law and agreement to schism standard, some of them, putting the new and uncertain, in the principle of the accuracy to appointments and also most of the scientists in the principle of discussion or transactions correctness, pointed to contracts rightness of obligation in verse (they meet their contract), even though, the first principle in religious law and new contract rightness and uncertain is nullification and corruption. With entrance to the generality, specially previously method mentioned the verse, in the principle of above mention became destroyed and demonstrate the religious law and correctness of contract in it. And in the statement of the new contracts corruption and their

disagreement, order of exchange modern, the people and governments and nations to be involved in hardship and fault, and it caused to, the law became disordered. So out of necessity as reason of prevention to this corruptions should be accepted the correctness and religious law of new contracts.

THE EFFECTIVE ELEMENTS IN INTERNATIONAL FINANCIAL APPOINTMENTS:

The appointment from each kind, in general industrial or commerce, internal or international, short term or long term are necessitates for passing of process. The above mention of process can to classify three stages.

- a. The stage before the appointment
- b. The stage of negotiation and an appointment arrangement
- c. The stage of performing and controlling on the advantage of execution in appointment

The section of before appointment, performed some measures such as, determine of purpose according to the transact or potential capacity, recognition of existence opportunities in the market and selection of the best commerce potential parties for negotiation and preparing them for negotiation. The selection of contract type such as, goods purchase contracts. Service porches, the hire by means of transportation for mutual purchase, the participation in production, participation in comen to invest capital and contract advantage is the most determined in this section.

THE SECTION OF NEGOTIATION AND CONTRACT ORDER HAS TWO ASPECTS:

First aspect- is relate to the international commerce negotiations and its attention to the specially time for itself as regularly. The key discussions such as tactic strategic and negotiation methods and the total measure is propounded about manner of session management and parties agreement

Second aspects-the manner of formalizing to orally agreements is about articles of contract, so this aspect with view to security of legal parties in long term is prosper from special gravity. In such a manner that it may be to danger one of the parties law seriously by using mistake or intentionally of one word or incorrect phrase.

THE OBSERVING AND PERFORMING SECTION ON THE EXECUTION OF QUALITY CONTRACT:

According to above mentioned sections,

the arrangement of international contracts article, to organize with intense circumspection is usually the end of work in public opining signing of each contract

Whereas, special in international contracts even though by signing of contract performed a rightful for parties, but there is much distance between the right performing and right achievement. Therefore it is necessary in process of international contract performing, to the final section, had been attention, it means, the performing section and observing to the contract qualities.

And the first and the principle action, is settlement of economic researchers with optical transaction matter, in order to receipt the principle researchers and about markets, goods and potential sellers performed for decision and business plan arrangement.

THE EFFECT OF PRINCIPLE ELEMENTS IN INTERNATIONAL TRANSACTION CAN BE DIVIDING TO FOUR GROUPS:

a-economic factors: these factors are deep spectrum or matters which irrespective of transaction parties is applied in the environment that the transaction performed there. The most importance of them is, the power of society purchase, the economic Developing prices and the arrangement of foreign exchange and monetary, protection politicales, inflation of liberty balance in business competition, to price regulations ect...

SCIENTIFIC AND TECHNICAL FACTORS:

In some transactions which their subject is about technical knowledge comprising, according to expeditions developing of knowledge in the universe process, recognize Of this technical factors for transaction parties, specially in the most important to buyer, irrespective of matters which are directly relation to the contract subject (good or services).also another aspect of technology and science are important among them, new facilities of relation, transportation, goods preserving

CULTURAL AND SOCIAL FACTOR:

The cultural and social factors which are less attention for transaction parties in international transaction. It can be the effective plan in transaction success form two aspects of performance and economy. Some factor like consumption plan, the population statistics and cultural and religion believes about business goods are determiner factors.

LEGAL AND POLITICAL FACTORS:

The plan of government in assurance and ability is undeniable in all commerce transaction,

according to internationalities in every transaction, the pan of governments and political factors become expanded. And irrespective of government transaction parties, on international organizations will affect to different parliament and judicial Regularities. (Packdman, 1383, pp3-6)

4- Arbitration of international business of Iran at the time of the financial disagreements divulge between governments.

Iran international business arbitration law, is first context about international commerce arbitrations in Iran legal regularity. Its almost concert with nostril, and as result it is with new methods of arbitrations manner. Also this law new facilities in way of international business arbitration in Iran commercial- economical relation with other countries. And either put for them the clear perspective form a legal point of view.

The basic principle related to international arbitrations which is appointed as foundation in articles of law. This principle delivered the lawyers whom endeavors to demonstrate the explanation as form the other internal rule who is be the same and suitable for international commercial arbitrations. Summery of positive points and innovations of this law is follow:

Production of separated law for international commercial arbitrations and relieving to available staitis in civil judgment rule which is not agreeable to this arbitration. As a result, the production of facility is performing for practical in international commercial arbitration.

Developing the concept of international business relation in general, agreement and disagreement or at least performing of this explanation that cause to different kinds of new commercial transctions which are the result of scientist and technology developing is appointed in that area.

To recognize (officially) explicit essence arbitration and changing some powers of the courts about arbitration, to them

To recognize (officially) credit of different kinds of arbitration contracts as forms and procedure, under the condition even orally arbitration contacts.

Determining and specifying modify of arbitrator reason and relevant formalities
Acceptance competency rule in competence

To restrict the courts interference in arbitration procedure and anticipation of assistance and interference only necessary from curt side

Giving up the explicit expression from right

contradiction for the purpose of velocity at arbitration method.

Recognition the liberty of parties in farming and arbitration method management and determining the law for arbitration manner and also the law for arbitration contract and justice and equality securing between parties and giving extend liberty to arbitrators for incumbency and the management to arbitration method and as a result release the arbitration procure is the area of arbitration from legal.

The business international arbitration is illegal ways for separate of contradiction, as general meaning, in addition to, the law contradicting involves adoption and resolved the disagreement by illegal method and even the completion or changing the commercial contracts arising from merchants practical business in international area, by a person or other people, by means of arbitration or whom they get authority form a contract.

CONCLUSION:

By the studies of international business legal and consideration and research of economic effect reason technique and scientific, social and cultural and political and legal, recognize the problems and difficulties of international financial contracts and pay attention to main points in international contract and correct usage and familiarity to rules and arrangements relation give the contracting parties the most confidence and performed the economic security for them.

And by the some problems and reject it to arbitration decreased the financial profit and danger according to, arrangements risk condition in international financial system, also the agitation system in financial regulation percent supervision, the exist of universal financial observer is necessary for the way of some observer in basic structure perform, which is used by national responsible for the moment.

A universal observer can perform the precautionary measures standards at least and He/She can control the national countries agreements for the perform coordinated with national responsible authority.

In addition, the national governments will be engaging that their ability and authority used for effect perform in international regularities. Certainly, the lack of effect way in international caused to, the that scope and violence of financial crisis increased in future.

REFERENCES