

Alternative Obligation in Iranian law

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Abstract

One of the most important issues in the field of law science is the Obligation that various categorization has been considered for it. One of the types of Obligation to the multiplicity of the issue is the alternative Obligation, despite the fact that there are some instances of it in the Iranian legal system, civil law has not been mentioned, and has less attracted the attention of lawyers. In this type of engagement, instead of committing, accepting a Obligation subject to two or more issues, it provides for the possibility of fulfilling an Obligation through any of these matters; by doing one of them To fulfill his covenant. However, the alternative Obligation has several advantages for the parties, which can be further guaranteed by the implementation of the Obligation, as well as the ease of implementation, but the legitimacy and validity of such Obligations, based on reasons such as the indeterminacy of the subject of Obligation and The occurrence of grandeur is a matter of doubt. In order to identify the concept and foundations of the legitimacy of the alternative Obligation, and the special rules governing it, the present article tries to provide a more cognitive knowledge of the dedication, features, reasons of validity and how it is implemented.

Key words: Alternative Obligation, Tired, sell a repeater, The price of a repeater, Subject of Obligation, Choose right

INTRODUCTION

Lawyers have classified Obligations to various qualities, including plurality. If the number of observers is around the Obligation, then the creditor or debtor will be talking about the creditor, and may also be subject to the Obligation. If an Obligation has only one subject, it is considered “a simple and simple Obligation” that, by doing the same thing, the Obligation ends, but there are Obligations with more than one subject, which are in three forms:

- (A) Obligation to multiple subjects (Obligation conjunctive):
An Obligation that has different subjects necessarily entails fulfillment of all Obligations.
- (B) Obligation alternative: A Obligation to a number of different subjects, each of which alone serves to fulfill the Obligation.
- (C) Obligation facultative: Obligation to a primary subject, which, if not, will be assigned another subordinate Obligation as a counterpart.

Although the French Civil Code referred to such Obligations as one of the main sources of the Iranian Civil Code (Articles 1189 to 1196 of the French Civil Code), this civil law institution has not paid attention to this legal entity, because there have always been doubts about its legitimacy. Is. However, this type of engagement is seen in legal relationships among members of the community, such as the permission to do so, with one of the two currencies mentioned in the contract, a car guarantee for 6 months, or 3,000 km, or the choice of one of two types Food for students at university dining. In dispersed laws, there are examples of it, as in Article 14 of the Mining Act. In addition, such an Obligation leads to benefits such as protecting the private interests of individuals, increasing the probability of fulfilling a Obligation, and even securing justice in contractual relations between the parties, which is less common in Obligations (Bineau, 2002, 2002), for example On the one hand, there is an advantage for the perpetrator of this advantage that, in different ways, he can achieve his own right, which is profitable for the profit, and on the other hand, for the committed person, the best way of his Obligation And to choose one way of fulfilling a Obligation. In the views of the classic French writers of law, the most important part of the alternative Obligation is the creation of a greater guarantee for the creditor (Planiol et Ripert, 1954, 402), but today the justification for the alternative Obligation is based on the willingness of the party to enter into the contract (Veaux, 1992, 3);

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www.ijss-sn.com

Month of Submission : 02-2017
Month of Peer Review : 03-2017
Month of Acceptance : 05-2017
Month of Publishing : 07-2017

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therefore, it seems that, if we formulate the rules of the alternative Obligation, we will see expansion of Obligations of this kind.

The question now arises whether, according to the rules of the Iranian legal system, it is legitimate to establish such Obligations, but before answering this question, the concept of the pledging Obligation is to be studied, in order to clarify the subject of the discussion. After examining the validity of the alternative Obligation, in Iran's law, what are the rules governing the implementation of these Obligations? Does it comply with the general rules of Obligations, or does it require special rules?

When discussing the alternative Obligation, issues such as the nature of such an Obligation, its types and examples, in the Iranian law, the validity of these Obligations, with regard to the necessity of the determination of the subject of the transaction, is to be examined and analyzed. In this article, it has been attempted to provide a brief overview of the concept, types, and validity of the alternative Obligation in Iran's law and the rules governing these Obligations.

DEFINITION OF AN ALTERNATIVE OBLIGATION

The alternative Obligation is supposed to be an Obligation that is one, with two or more issues, but only one of those issues is sufficient to fulfill the covenant, and pledges this Obligation to the committed authority in alternative one of the subjects, the purification for example, the husband is obliged to spend money on a woman; he can provide or pay for housing, food and clothing, or to pay for it. (Katuzian, 2010, p.156)

According to the previous law of Islamic punishment adopted in 2000, the killer was obliged to pay the money, which was done by giving one of the six subjects (camel, cattle, sheep, clothing, dinar, and dirham), and the killer was in the choice of one of them (Article 297 Q.M. Former). In other words, the Obligation that comes from the Obligation is tangible, not determinative. Or, in summary, an engagement with a number of different issues, only one of them must be implemented (ex., P. 158).

The aforementioned definition correctly refers to the main characteristics of the alternative Obligation, that is, the multiplicity of the subject, and the existence of the option of choice, but the right to choose may be a person other than a committed one. Thus, it can be said that an alternative Obligation is an Obligation that has several issues It is in each other, but it is enough for each or some

of them to do their utmost. The selection authority may be committed, committed or third-party.

THE RELATIONSHIP OF OBLIGATION, WITH THE DEFINITIONS OF ALTERNATIVE

Due to the incompatibility of the word of Obligation, that is, the obligatory legal relationship that obliges the obligee to fulfill the Obligation of compulsion, undertakes to perform an Obligation by means of a word of interchange, which arises from the ability and ability of one of the parties to execute the Obligation, the term misuse Obligation, a combination It looks contradictory. Obviously, the main description of the Obligation is its Obligation, and it is inherent in the Obligation to create an assignment, and this concept does not come together with discretion because it seems that the principle of choice (each choice) is competing with the electorate. Because, in this case, basically the choice is meaningless. Alternative, in the meanwhile, means that the selector is completely free to accept or reject anything, and no factor will affect him outside and outside his will, and will not force him to choose one option. Otherwise, it is not a choice, and it will not be because the Obligation to choose is compulsory and any kind of compulsion is inconsistent with the principle of the freedom of choice. (Eshkevari, 1998).

This issue has also been considered from the point of view of the jurists in the context of alternative obligatory. Among the principals, there are several doubts about the possibility of committing the obligatory fulfillment of the Obligation. That is, will always needs to belong, and the will of the will cannot be one thing and the indeterminate, because the will of the subject causes his action to act, and this will can only be assigned to a given and limited. Similarly, the leader cannot do one of the things, because his will is unimaginable, so it is not feasible to realize the necessity of misrepresentation. (Kazemi Khorasani, 1985, p. 232). Also, sometimes alternative obligatory is considered to be incompatible with the nature of necessity, since it is not permissible to leave it as one of the essential elements, while in the alternative obligatory, it is obligatory to leave, according to the definition. (Tehrani Isfahani, 2001, p. 288)

In response to this contradiction, it must be said that this contradiction is only apparent, and the legal relationship deriving from the Obligation is a necessary and definitive, and in no way altered. (Abu Eshaq Shirazi, 2013, p. 70), in an Obligation, it is said that there is the possibility of alternative a subject to fulfill an Obligation. In fact, digitization means having the power to choose one of several Obligations. Therefore, it cannot be said that, since

the subject of an erroneous Obligation is hesitant between several things (Tusi, 1997, p. 1, p. 220), there is therefore no adherence to and Obligation to perform a pledge, since at least one of the issues is indispensable; Therefore, there is a requirement for at least one of the topics. (Ibn Hazm, p. 340); therefore, a Obligation to an aggravated Obligation must fulfill the Obligation; however, this type of Obligation is subject to change, subject to the choice of the subject by the holder of the right to choose, the Obligation to enter into Obligations, from the date of the Obligation to establish an existence And the existence of an alteration would not preclude it because the Obligation was created in the presence of a set of legal elements necessary for its formation, and it would be binding from time of formation. In fact, the characterization of the Obligation, as the description of the Obligation, affects the subject of the Obligation, rather than its existence, is therefore bound to be made definitively from the beginning of the erroneous Obligation, and only becomes void as a result of this or the subject matter. (Amedi 1986, p. 340).

ALTERNATIVE OBLIGATION, AS A CONDITION OF THE CONTRACT

Some lawyers, after emphasizing that; the deal cannot be one of several things, believe that, in Iran's law, in the assumption of a definite Obligation, it is possible to enter into a contract, which, in return for the transaction, the other authors, therefore, believe in the correctness of the Alternative Obligation as a condition of the contract. However, if aggrandizability provokes an Obligation, it does not matter which is included in the Obligation. (Katuzian, 2007, 273)

“It seems that, in Iran's law, when a binding Obligation is made, it is also conditional on the contract being made that, whenever it is committed, it is possible to replace another with a certain transaction, or the oblige can, in exchange for a certain other transaction He wants to have no message. because a Obligation has been made to a given subject, and it is a condition of a contract that he can deduct it for that amount. “(Emami, 1992, p. 285)

While there is no real difference between the two assumptions, and the authority to determine the subject is both obligatory, one can easily answer the question, that if the condition is sufficiently well, and it does not lead to ignorance in one of the bonds, why it cannot The subject of the main Obligation is because, the condition of the change is not separate from the transaction, and is closely related to one of the two alternatives, and its economic equilibrium. (Katuzian, 2007, 161)

ATTRIBUTION OBLIGATION FEATURES

According to the above definition, one can distinguish the features of the alternative Obligation as follows:

Multiple Subject Matter Obligation

Any payment that can be made on its own will, if it is accompanied by other payments, of the same kind or otherwise, can be a matter of compelling Obligation. It is important that the subject is multiple (Demolombe, 1881, 4), but alongside the multiplicity issue, it also arises whether different topics are needed or not, if the gender of multiple issues is the same, is it a compelling Obligation Or, with a Obligation such as a general Obligation, in a certain way, the answer to the preceding question depends on what, in what sense, the various meanings. If a variety, in the sense of gender, may be necessary, it may be necessary that the subject matter of the engagement is different intuition. As for the Obligation, it has been said that paying off with different currencies is because, because the sex is all money, then such an Obligation is not a false one (Cattuzian, *ibid.*, P. 158; Ripert et Boulanger, 1956, 1306); while in a more general sense, There may also be a variety of minority issues, in other words, the ability to pay, in different currencies, is considered to be a disparity due to the difference in the method and means of payment. Therefore, any contribution that can be made to the subject of the Obligation, if accompanied by other payments of the same kind or otherwise, can be a matter of misrepresentation. The important thing is that the situation is numerous. (Alsanhuri, 2009, p. 152)

Required for at Least One of the Topics

As already mentioned, it ends the Obligation in one or some of the issues between two or more subjects. Therefore, since the necessity of the Obligation of any legal relationship is the existence and enforceability of the Obligation subject, in such a compulsory Obligation, such mandatory, must exist at least in relation to one of the issues. On the other hand, not all matters should be obligatory, because in that case, we are facing an Obligation that has many issues and does not have the character of the imagination.

Issues Extreme

If there is an Obligation to many issues, but these issues have a longitudinal relationship with each other, it will not be a compromise Obligation. In such a case, the Obligation will take the title. In fact, the implicit Obligation is that the Obligation has a main subject, which is intended by the parties, but if the original issue is not implemented, a change is considered for it. However, in the dedication of all the issues, they are in the same place, and at first it is impossible to say which of them is the final and main

Obligation, and can be recognized only after the choice. None of the issues has the same priority as the other, and each one has the right to choose from the right choice. Of course, the recognition of this issue is simple in the world, but it will be difficult to deal with. For example, if the subject of a Obligation is a transfer of a given asset, and it is conditioned that, in the event of a violation or transfer to a non-committed party, it must pay a certain Obligation, it should not constitute a breach of the Obligation. Because in this assumption, the Obligation to give an Obligation is not in an Obligation, transferable or committed, to choose one of the two; it is based on the initial Obligation and conditional on the violation: in other words, the Obligation to Suspension is a violation of the implementation of the main Obligation, and the condition for its implementation is the fault in the implementation of the contract, and before that it is not complete. Therefore, the pledge cannot cover the Obligation, and ignore the main Obligation. (Katuzian, 2007, 807).

Equivalence of Subjects

In each Obligation, the terms of funding may be the same or different for each of the issues. For example, there may be an Obligation, with the idea that a person undertakes to buy his own home for a pledge of 10 million rials or buy a car for 2 million rials; in this case, it is worth talking about. Things are useless, because each topic has a distinct value.

But where the terms of payment are the same, it seems that the value of the subjects should be close to each other. Otherwise, the risk of a reputation will lead to the loss of credibility of the Obligation. Of course, measuring the value of each issue should be measured in accordance with both the standard and the individual criteria, since a topic which, in the common sense, is inept, may be of special value in the relations of the parties, and in the light of the specific circumstances of each issue. Has done. Therefore, the issue of the value of the subject matter under consideration is important because, when discussing the validity of an alternative Obligation, it may increase issues of a different value for the probability of occurrence in the transaction, but if the positions are equally valuable, the occurrence of the propensity to Greatly excluded.

Alternative at the Stage of Implementation of the Contract

By the definition given to the alternative Obligation, it becomes clear that, in fact, the Obligation must be formed from the beginning of a series of issues, one or some of them having the result of the Obligation of the committed person; hence, the imagination, the subject of discussion in the alternative Obligation, Returns to the implementation stage of the Obligation, but imagination may be thought of in three different assumptions:

A) At the stage of Obligation. In this assumption, there is still no Obligation, but to create it, there may be imagination, such as the various needs that arise, and the side of need, in accepting any of them. There must be a separation between the alternative Obligation and the various requirements that have not yet reached the stage of Obligation. In the case that, in various examples for the alternative Obligation, the person's authority is spoken in the choice of one of two incantations with two different tenses, one must pay more attention. If the seller buys a customer who buys a car for one million or two million rials from his home, in fact, there are two requirements for the buyer who he can choose for each one, and after alternative, Obligation will be created.

But if the vendor is committed to transferring any car or house that the buyer chooses to give him, then there is an Obligation to a type of trick that, before alternative, is the only way to execute such an Obligation.

B) at the stage of implementation of the undertaking. In this assumption, the Obligation is made with all the necessary conditions, and the Obligation and Obligation to its implementation, but there is a choice in one of the places of execution, in the sense that the right of choice has the power to determine that, by A Obligation has been made to fulfill one of the issues.

C) At the end of the Obligation. The purpose of the end of the Obligation here is the end of the Obligation, apart from its implementation, because the fulfillment of the Obligation is also one of its end-ways. Therefore, if there is a discernment for a way to terminate the contract, it should not be a deduction.

For example, if the subject of the transaction is defective, the person is obliged, if the transaction is canceled, return the payment, or, if it is left to us, the value (we will differ) from the other party, pay the arsenal.

In the foregoing example, the Obligation has been based on the subject since its inception, but due to reasons such as a defect in execution, it has been created to conclude a Obligation, so it differs with the alternative Obligation.

On the other hand, the requirement for admission of trash, even at the end of the contract, would be any kind of tangible Obligation because it undertakes or should make a Obligation, or that it will pay for the non-fulfillment of the Obligation. It is clear that such a conclusion does not seem logical. After recognizing the dedication, you can specify the amount of this Obligation.

TYPES OF ALTERNATIVE OBLIGATION

Different categorizations, in different credentials for an alternative Obligation, are as follows:

To the Origin of the Taste

The alternative that is spoken of in an Alternative Obligation may result from one of the following:

- A. Contract contractual Obligation: The parties may, subject to the agreement of the parties, fulfill the Obligation they have incurred. As a person, under a contract, undertakes to lease one of his two summer villas to another, and assign the right to vote to the lender, in order to elect each one, he chooses. From the date of the contract, an Obligation is made, but the issue will be one of two villas, and the final choice will be determined by the choice of the contractor.
- B. Legal Alternative Obligation: Generally speaking, in the legal literature, when there is a discretionary Obligation that, in the contract for a committed or committed party, has the right to choose, but, moreover, the law may have the discretion (Baydoun, 2005, 139). For example, in accordance with Article 14 of the Mines Act, the owner of the exploitation license must pay a percentage of the price of the mine head material contained in the license at an annual rate, as a state fee to the Ministry of Mines and Metals. The said ministry may, if necessary, pay the equivalent of the cost of the mineral from the exploiter. On this basis, the government is keen to seek its own in any of the two ways it wants to.
- C. Litigation alternative Obligation: There is a place that would result in an Alternative Obligation by judicial decision. Although there may be no examples of this kind of Obligation, its probability is by no means ruled out. According to Article 3 of the Civil Liability Act, the court will determine the amount of damages and how it will be compensated, depending on the circumstances and circumstances of the case, so the court can, according to the circumstances of each dispute, compensate for the damage in the manner of the matter, the subject He or she can make a decision, and even one who can decide on the right to vote in the ruling. Therefore, if the court finds that compensation is due to both methods of apology, in the newspaper or to the payment of money, it may indemnify the offender between performing one of these two acts, and, whichever is the case, the indemnity Obligation has been incurred. It is also possible to photograph, that is, the lost person, in alternative one of the two ways suggested by the court of law, and the perpetrator, is obliged to make a selective choice. For example, in one of the votes of Branch 181 of the Tehran Court

of Law, on March 12, 1982, it may be considered necessary to read the erroneous Obligation. In the vote, the court condemns the defendant to convert the willing shareholder to thirty-six thousand shares of one thousand rials, in the event of a sale to pay, or to purchase equivalent shares in the same company or companies. It is noted that the court, with the aim of considering possible assumptions, voted in the form of an opinion in the exercise of its vote, which is consistent with the suppression Obligation.

The Validity of the Alternative Subject Matter

What matters is the possibility of alternative between what they may be, they may differ from each other in their alternative Obligation s. For example, in a tangible engagement, only in execution time, and in the case of subfields, there is a matter of Obligation, and in another Obligation in the main subject of the Obligation, the choice has been made.

A) Fiction, in the essential subject of the Obligation. Many of the common examples, which are brought to the trickery Obligation, are of the kind, such as being committed to land transfer, or home. In this case, the subject of the land transfer Obligation, or the transfer of the home, will be, and until it has been determined which, which should be transferred, it can be said that the main issue of the transaction is not clear.

B) Fiction, in subfields. Sometimes the main issue is a certain Obligation, but in the implementation stage, there is some trickery to some of the subfields. When a person makes a trip for a subway trip, for a Metro company, a general Obligation to make a trip is created for this passenger, but the choice of the time and place of the Obligation (from time to time) to the traveler will be.

Another significant issue is the validity of these Obligations in the area of Alternative Obligation s, which, in particular, in Iran's law, is important for the necessity of determining the nature of the transaction. Therefore, this issue will be considered in the remainder of the article.

To the Holder of the Right to Choose

Obviously, the right to opt-in in an alternative Obligation may be vested in a committed, committed party or a third party; therefore, the holder of the right to choose, three types of alternative Obligation, can be distinguished from one another.

A) Granting the right to choose to be committed: Normally and conventionally, the right to choose is pledged to be committed, in which case the fulfillment of the Obligation will be facilitated to him, and he will execute each of the topics that are more appropriate.

At the time of making an Obligation, it may be made clear to this committed right, but if such a statement is not made, it should be deemed viable. In the case of legal Obligations, there is usually legal stipulation, or whether the owner of the right to choose can be distinguished from customs and habits.

- B) Granting the right to choose: If, under the agreement of the parties or the stipulation of the law, the right to choose the obligated party, he will be obliged to choose the subject of the Obligation.
- C) Granting a right to a third party: In this case, the Obligation is usually left to the point of view, because in practice the parties are reluctant to exercise their Obligation under the discretion of the third party. In the rights of some countries, the possibility of granting third-party discretion is stipulated. In any case, if a third party is responsible for this, the Obligation to do so is difficult.

VALIDITY OF ALTERNATIVE OBLIGATION

The reliability of the alternative Obligation can be evaluated in three parts: First, is the Obligation to be combined with tangibility? Moreover, the subject of the deductible Obligation, like other Obligations, must be the conditions required to be fulfilled as the subject of the Obligation. Since the alternative Obligation has more than one subject at the outset, it should be clear that, should all issues be subject to the conditions laid down in the law, otherwise, what is the expected performance guarantee? In addition, The condition of the determination of the subject of the deal, in the case of an alternative Obligation, finds a certain form, and should be examined individually.

Summing up the Two Concepts of Obligation and Alternative

Obligation is used in two general and specific terms in legal literature. Obligation in the general sense is equivalent to Obligation, attachment, condition, duty, etc., that may be derived from the contract, or an Obligation arising out of the contract. But in its particular sense, an Obligation is a legal relationship, whereby a person against another is obliged to transfer and surrender property, or to do business. Therefore, the main characteristics of the Obligation, one is its legal relationship, and the other is obligatory. There is an Obligation in the essence of Obligation, and this concept does not fit with the freedom.

Fiction means having the right to choose something, and in an Obligation, when speaking of trickery, it is possible to choose a subject to fulfill the Obligation. It cannot be said that, because the subject of a dedication is hesitant between several things, there is no Obligation and Obligation to

commit it, since, as mentioned, at least one of the issues is necessary.

So there is a requirement for one of the issues. However, it should be noted that sometimes the purity feature may undermine the binding nature of the Obligation; as if it had the Obligation to do so, so long as it wished to enforce the Obligation, such a discretion would not be binding on the Obligation; It seems that there is no Obligation at all.

Having the Subject Matter of the Obligation for all Obligations

The subject of an engagement may be to do or refuse to do business, or to own a property. The subject of an alternative Obligation may be either of these topics or a combination of them. Anyway, you must have the necessary conditions for the subject of the transaction (being taxed involves rationalization of legitimacy, ambiguity, materiality), but because there is more than one issue in the alternative Obligation, in which some of these issues What needs to be done? What is the solution that can be called the dominant comment? It has been said that one of the results of the necessity to include the subject of the Obligation of property and the numerous tasks is that, if One of the two Obligations under the Obligation cannot be relocated (such as an Obligation to give a private car, or a government that is committed), the Obligation must be simple Man, they are not the right choice, and have the Obligation to issue only legitimate influence) Planiol et Ripier, 1954, 1048; Article 1192 French Civil Code). In this way, the illegitimacy of some of the Obligations of Obligation does not void the Obligation, and the Obligation to the legitimate subject will be valid, and if more than one subject is eligible, the Obligation will remain intact, and in any case Subject, the lack of conditions will be eliminated from the issues.

But in another analysis, it may be possible to distinguish between the necessary conditions for the subject of the Obligation. If one of the issues is not taxed or cannot be submitted, one can say that the Obligation to the other matter is determined, but if one of the issues of the Obligation is illegitimate, or contrary to public order and morality, the problem is another form. he does.

In this case, the Obligation is fundamentally void, because the place of Obligation is not clear, which means that the parties have also considered the ultimate Obligation to the implementation of the illegitimate issue, that is, their intention is to be misunderstood). (Larombiere, 1885, 332

This assumption is different from the hypothesis that there is an Obligation to several issues, and all of them must be implemented; that is, an Obligation to multiple topics. Because in this case, the intention of the parties to the issues is legitimate, and is enforceable, and is declared

void in relation to the illegitimate issue, and as a result, the Obligation only in this part is void. But in an alternative Obligation, since the implementation of each of the issues alone makes an Obligation, the existence of an illegitimate subject will disrupt the basis of the Obligation. This view can be effective in preventing abuse, and fraud against the law. But the first point, in the first place, is more efficient and beneficial to the parties, and it influences the Obligation of the subject. In French law, it is also noted that more recent analysis tends to affect the validity and influence of such Obligations.

Determination of the Subject of the Obligation

According to clause 3 of Article 190 a. M, Including the basic condition for the correctness of each transaction, is that the transaction is a “given issue”. Different interpretations of the notion of definiteness are presented in this article (Katuzian, 2007, p. 177; Safai, 2007, p. 132), some of which do not know the exact nature of the subject of the Obligation, including the essential conditions of the transaction, in Iran’s law. Alhui Nazari, 2012, p. 257). Regardless of this view, assuming that determination is one of the essential requirements for the validity of the Obligation, we examine the reasons for doubting the authenticity of the pledging Obligation, which is raised in jurisprudence with the title of voiding the sale of hesitant objects.

Some have argued that because the ambiguous and hesitant, in terms of rational precision, is an unrealistic issue, so the subject of the transaction is also unrealistic, and irrefutable; in other words, the transaction becomes unrecognizable. Accordingly, the jurists have ordered such a void (Allameh Helli, Tazkarat al-Foghaha, the book of the moderator; Sheikh Tusi, Nahayeh, pp. 1, p. 400; Sheikh Mortazai Ansari, Mekaseb, p. 250; Mirifatah Maraghei, titles, p. 291).

But the main reason for this is to quit selling undesirable objects is a curiosity of such a deal. But with more attention to this subject, it should be acknowledged that the predominant examples of alternative Obligations are not considered to be enormous. The reasons for not proving such Obligations are as follows:

If we determine the scope of science, we assign the property of the subject of the transaction to the custom, where one of the several goods sold in terms of value and the equivalent of equivalence is not justified by a void (Katuzian, 2005, p. 46), famous The jurists are of the opinion that, if the two objects are hesitant, they are the subject of the transaction, although in terms of value and price, the sale is false due to its ignorance and its ambiguity or the rudeness of the transaction. Sheikh Ansari, while rejecting all these arguments, believes that there is no valid

reason to believe that such a deal is not correct (Sheikh Ansari, 2005, p. 250), the author of the book titles, after quoting the views of the jurists, including the second scholar, Concerning the prohibition of such a deal, it has a problem and it is this:

As stated above, pride and danger arise when there is no reason to believe in the existence of a bill, quantity, quality, and other traits necessary for the subject of the transaction. But in this regard, as to all the foregoing issues of science, and the price and value of all things are the same, how can we say that Tired is created (Mirifatah Maraghei, 1999, p. 291)

Some lawyers believe that because it is the sale of an obscene marriage, that is, the two parties try to exchange a balanced value in an orderly manner, so that they can provide this purpose, this amount of ignorance does not cause loss for sale. (Jafari Langrudi, 1978 p. 595). It should be noted that the issue of bargaining on the person is hesitant, prudent, and ultimately the failure of such a transaction, traditionally discussed when discussing the conditions. On the other hand, the purchase contract is customary in Iranian law, while in the rights of countries such as France, the deal is in fact a Obligation to transfer. This difference can be the source of controversy over the credit, or the invalidity of the alternative Obligation. In fact, one of two things is hesitantly encountered with these problems, it is unclear what enters into the property, the transferor, the problem which has engaged in two custom-made deals, the hire of the minds of the jurists, and a ruling to invalidate such Contracts are given. Whereas, if we consider such a covenant, they will not face this objection, because the Obligation is in all its conditions, and only the determination of the subject has been made by one of the parties or third parties through a number of known issues.

As stated: “The Obligation to sell one of two pieces of carpet, unlike the sale, is one of those two carpets. Because the contract is, in fact, an Obligation to the sale of one of them, which is a definite issue, not one of them. Although the real case of transfer, in the sale of one of two things, the right to own one is the two, not one of them itself, but since it perceives the right of ownership of the object to be the object of its own, it considers the object itself as transferable “ (Shahidi, 2005, p. 306).

Therefore, in non-adherence contracts, tricky Obligations can be validated, since the subject of such an Obligation is the transfer of one of several assets, one of several operations, and so forth, which is a certain number.

It may be possible, by replacing the criterion of the ability to determine, rather than being definable, to a large extent the

condition for determining the subject of the transaction. In fact, what affects the engagement of the Obligation is the result of a swap, not the determination of the subject of the Obligation, and the ability to determine for it to be sufficient. (As nobody doubts in the sale of general property, or a certain amount of the whole equivalence, or the guaranty of one of several religions). Determining the person, the means for removing the grand's in the exchange and determining the intention of the property. So, the same amount of definition and description that it is sufficient in the eyes of the custom to eliminate it is enough, and more rigorous than that, the rationale of freedom is freed and it is not logical. (Katuzian, *ibid.*, P. 171).

ENFORCEMENT OF ALTERNATIVE OBLIGATION

In the implementation of the voluntary Obligation, the first step is to choose the subject of the Obligation. After the choice of the subject, the Alternative Obligation will become a major undertaking, and the rules governing this type of Obligation will govern it. Therefore, what is important in the study of the implementation of the erroneous Obligation is the exercise of the right of option by the holder.

Considering the particular features of the alternative Obligation, we will discuss the following issues in their implementation:

The Person has Chosen Right

The fulfillment of the alternative Obligation first involves the selection, and the determination of the Obligation is given to him by that authority. In fact, the subject that is to be implemented must be selected from a variety of topics. The choice of the theme of the alternative Obligation is usually committed, and in some part of the alien laws it is stipulated that the holder of the right to choose may be committed, committed or third parties. (Article 1190 of the French Code, Article 72 of the Swiss Convention, and Article 275 of the Civil Code of Egypt).

Also, if the law is the origin of the determination, it may be the owner of the cucumber, the oblige, and not the committed. In the second paragraph of Article 273 of the Egyptian Civil Code, where it undertakes to reduce the special security provided, this power has been vested in a committed party, or before it is sanctioned, to enforce its religion, or to request the completion of the provision. Here, the law stipulates that the mandate mentioned is binding. (Ahmad Sanhuri, p. 2009, p. 161).

It is not preventing the parties to grant the right to make a determination to a third party. In this situation, the person

referred to may be an expert advised by one of the parties, and in fact, on the other hand, who exercises his discretion after consultation with him, or that no one of the parties has previously been subject to the person The alien has not referred to, and the Contracting Parties have determined such a person only for the purpose of determining their authority and ending their dispute, and they have accepted their judgment.

Therefore, if there is a tangible Obligation, and Contracting States who have not determined the discretion, and the law does not specify such a thing, then the power of attorney will be binding, not binding. This is a general rule, which, at doubt, is interpreted as a pledged expedient. The parties, of course, have the right to confer this power on the undertaker, not on the Obligation, but because it requires a separate agreement, it is not considered to be a legal assumption. This agreement can be made explicitly or implicitly.

How to Exercise of Authority

In the assumption that the choice is committed, there is a difference that, owing to one of the two issues, one can use this option, or, in the past, it has the right to declare to the creditor which subject to which it is affiliated.

Some authors have argued that the multiplicity of the subject of engagement, although not absolute, is a kind of guarantee for the fulfillment of the Obligation, because if the implementation of either of these two is not possible, or because of conflict with the laws and public order, the creditor can, execute Requires another Obligation. Therefore, the owl has no right to annul this guarantee, and to keep the selected Obligation in jeopardy (planiol & ripert, 1408). Others, however, have considered the declared Obligation to be sufficient. (Ahmad al-Sanhuri, the same, p. 95), and the material. 263 BC Germany, states the adequacy of the announcement. In our law, we have to follow, because the appearance is that the discretion to choose the right to choose is, he focuses on the Obligation of alternative one of the two, and uses the right of imagination. Nonetheless, if it is clarified, or it emerges from the evidence that it is in the interest of both parties, fulfillment of the Obligation is necessary to eliminate this double bond (Katuzian, *ibid.*, P. 163)

Therefore, it may be committed that it has the right to choose the subject of the Obligation, to make the intention of alternative one of the issues, or to use its discretion with one of the issues.

- A) Declaration of will. The undertaker must exercise his discretion, by declaring his will to choose a particular subject, among the various subjects of the alternative

Obligation. The will is referred to as “unilateral conquest”, and, as with any other will, the source will not be affected until it becomes aware of the Obligation (Katuzian, *ibid.*, P. 165). The same is true of when the obligated party or third party has the right to choose.

- B) The implementation of the selected subject. The choice may be made by executing the selected subject. An Obligation may declare its will to determine the subject matter of the Obligation through the performance of the Obligation; that is, if it undertakes to pay one of several issues in a pledge of incitement, such an action, although resulting in a partial implementation of the Obligations, as a declaration of his will, he will be in the exercise of his authority. In such a way, the subject of a given Obligation, no longer committed, cannot, once it has begun, fulfill its Obligation to continue the soldier; it cannot, if it cannot, abandon the Obligation, to pay the other (*p.* 165).

The objective presentation of one of the subjects by the committed person is the same as the actual implementation of the subject of the Obligation; therefore, when committed in accordance with statutory acts, presents one of the subjects to the contract, this gift is considered as the exercise of his authority, as the subsequent reference to the Obligation This measure will not affect the fate, because the presentation represents the final determination of the subject of the Obligation (Ahmad al-Sanhuri, *ibid.*, P. 161).

Undertaking, in any form of crafting, must do so only in one of the many subjects in the alternative Obligation; hence, they cannot choose to opt out of all of them. Additionally, it is necessary to choose a subject in its entirety, not a partial selection of a subject, and a minority of the other, since such a combination is in conflict with the nature of the compelling undertaking.

In addition, the party can apply, through the practical implementation of the subject of the Obligation, to choose one of the specified issues, to accept the bill, or to request the payment of a given issue from the obligated party. Part of the subject of the Obligation, in the form, for example, of a certain part of a pledge from a committed borrower, will have a general enforcement order in respect of the implementation of the cucumber; after that, the obligee can only complete the execution of the same subject. (AlSanhuri, *ibid.*, p. 161).

In the third-party option, it should be noted that the Obligation is not in favor of third parties, and the main beneficiary of the Obligation is. The third party has the option to choose one of the few subjects to play, such as a

carnality given to a third party (Article 319 BC; Katuzian, *ibid.*, P. 163).

Deadline for Obligation Subject Choose

Most Contracting States determine the date during which the abovementioned authority is to be applied; for example, the Iraqi Civil Code has decided to set this date; in the first clause of Article 299 of the Civil Code it states: “In determining the cucumber, Be “.

If the deadline is set, the vendor must make his choice during this period. Otherwise, he should request his choice from the court.

Selection Effective Time

The effect of the election is from the day the Obligation is created, and it focuses on the chosen subject, and the Obligation is rooted in the decree. The nature of the subject chosen is effective since the beginning of the Obligation as a description of it, such as an immovable or movable Obligation.

By exercising the right of the rightful owner, whichever is the case, and alternative the subject matter of the law, in the passage of which, the same subject as the subject of the Obligation is determined definitively, and the alternative Obligation is a simple Obligation and a subject that has been subject to the same subject, Is converted.

This determination has a retrogressive effect on the past; that is, the subject chosen by the exercise of the right to choose is from the commencement of the Obligation as the subject of the Obligation, and it is assumed that the Obligation was created from the very beginning, not from the time of the cucumber application (Al-Sanhuri, the same, p. 173).

On the above-mentioned retrogressive characteristics, and citing the past are important results that we point out most importantly:

- A) The nature of the deductible Obligation is determined from the beginning by the determination made after the Obligation is made and documented when the Obligation is created; hence, if the issues are tangible Obligations, some are immaterial and some are movable, or some decomposable, and some unobtrusive And then from among them the immaterial subject matter, or an indissoluble object, it is assumed that the deduction Obligation is from the beginning a simple Obligation, and is related to immovable property, or a simple Obligation and indissoluble.
- B) If the subjects of the alternative Obligation are the transfer of ownership of several objects, and then

one of them is determined, and the transfer of the property, as in the case of a fixed issue, becomes an Obligation, in this case the property of the thing which has been taken is from the beginning of the event. The coming of the realized Obligation is assumed, not from the time of the cucumber application, and the Obligation is initially considered the owner.

- C) If, within the period between the Obligation and the exercise of the right to custody, bankruptcy or the Obligation to pay, the seller has the right to repatriate the said thing from the manager of the filing or payment of the property; Forced to co-operate with other gods.

Requests Obligation to Choice from Court

If elected, and in the stage of implementation of the selected subject, he undertakes to refrain from doing so, in accordance with the general rules, to enforce the Obligation, by resorting to the ruler. But in the alternative Obligation, there is a preliminary phase, which is the same as the choice of the subject of the Obligation, and the Obligation to choose to fulfill this Obligation may require specific issues.

If he does not choose the right to choose, he can request his request from the court. In a case where the holder of the right to choose is obligated, and after refusing to choose the court, the court can choose the province itself. However, if the person is entitled to do so, in case of refusal to choose, the court returns the right to choose, and he can choose the subject of the Obligation.

ALTERNATIVE OBLIGATION END

The alternative Obligation, like all other Obligations, ends with the crash of the Obligation, but each one takes on a different form in its alternative Obligation, which, of course, extends to each other. For example, in the assumption that the venture has a right to choose, if the obligated party is able to address some issues, then the right to choose a committed limited is even eliminated.

Obligations of the subject matter of the Obligation are also different in an alternative Obligation with a simple Obligation, since, in spite of the disappearance of an issue, there is still another issue for fulfilling the Obligation. On the other hand, given the fact that the holder of the right to choose may be committed, committed or third-party, or if one or all of the issues are omitted by the foreign agent or any of these persons, it will be conceivable that a different contract may be forfeited., Should be separated from each other, and according to the general rules, the ruling of the matter is recognized.

Also, according to the general rule, if the Obligation is not fulfilled, the vendor is obliged to pay compensation. The issue of compensation is important to assess the amount of damage that is usually recognized in contractual Obligations based on the parties' prediction, or the amount of the contract. In the fascination pact, this issue is more complicated, because if there are several issues, then it should be considered a compensation criterion. When the value of multiple subjects is not the same in a alternative Obligation, there may be differences over the way, and the amount of compensation is different, of course different ways to be considered. In the earliest assumption, one can say that each of the issues of lesser value must be the criterion of action, for surely the committed zeal has been busy. On the other hand, one has to look at a common situation, who has the right to choose which of the topics. Also, some believe that the amount of damage can be determined by estimating the average value of the Obligations. (Alarie and Dinning, 2004)

RESULT

Obligation is an alternative that, from among the issues specified in the Obligation, it is sufficient to carry out one or some of them for Obligation. It is possible to insert two or more Obligations during the single contract, in accordance with the rules of jurisprudence, and at least the non-famous terms, and is not in conflict with legal rules. Such an Obligation has two main characteristics: 1. The multiplicity of the subject of the Obligation; 2. The right to choose the subject of the Obligation, which may be shared by either party or third party. Therefore, this doubt must be made out of the mind that the alternative Obligation are unknown and far away in Imamieh jurisprudence and Iranian law; however, this term is not spelled out in jurisprudence or law, but the term "determination" of the subject matter 190 Civil law is to be interpreted as its literal and normative meaning, and after the realization of the intention and the satisfaction of the person having the honor, it is possible to connect these two elements with the same subject matter, in order to arrive at knowledge and knowledge of sex, description and quantity. Therefore, mere doubts about the subject matter, the Obligation should not cause it to be void unless it is established. Therefore, the authenticity of the alternative Obligation is in accordance with legal and legal rules; accordingly, the reform of the civil law articles and the anticipation of the effects of these Obligations is imperative. Until then, these Obligations, which are prevalent today, require the identification of legal acts; therefore, legal and legal principles must be interpreted to respond to this legitimate need of the community.

Therefore, contractual and social relationships are facilitated in the Obligation to the imagination, while maintaining the interests of both parties, and observing contractual justice, since the impossibility of executing an issue necessarily leads to the non-implementation of the other matter, and thus does not result in non-fulfillment of Obligations. From what has been said so far, we found that a dedication, two major differences in the multiplicity of subject matter, and the right to choose with a firm Obligation. However, the general rules of Obligations continue to govern the alternative Obligation, but in some assumptions, such as the removal of a matter or compensation, these differences require special rules. On the other hand, the study of issues such as “the basis of proverbialism”, “separation between covenant and customary”, and also the “criterion of determination”, shows that the compulsion Obligation in the legal system of Iran is legitimate. Determining the rules of the ruler on the alternative Obligation can facilitate the more accurate identification of some of the existing institutions, such as lease on condition of ownership, float charge, and Obligation, and facilitate such Obligations, which will provide the parties with many benefits. In sum, it should be acknowledged that Alternative Obligations are not alien to the Iranian legal system, and it is feasible and useful to formulate their rules and regulations according to the rules of this system.

ACKNOWLEDGMENT

The researchers would like to thank all participants of this study. The research also supported by grant from Islamic Azad University Kermanshah Branch.

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How to cite this article: Pir G, Hosseini H: Alternative Obligation in Iranian law. *Int J Sci Stud* 2017;5(4):861-871.

Source of Support: Nil, **Conflict of Interest:** None declared.