

The Effects of Non-Performance of Contract as a Result of Frustration of Purpose

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Abstract

Appearing of forcible events or other reasons which hinder the performance of contract or cause its frustration has special legal effects and destroy the casual link between the obligator and the loss resulting from its non-performance. In this situation, these reasons affect the structure of contract and possibly may cause the discharge or suspension of contract. Therefore, the effect of occurring this kind of excuse are twofold. One of the important consequences of occurring this event is the exemption of the obligator from contractual responsibility, because, the non-performance is not attributed to him. The other effect is that force majeure changes the structure of the contract. A contract that encounters to force majeure may be discharged forcibly or willingly or its performance suspended. Our purpose in this article is to review these effects.

Keywords: contractual responsibility, frustration of purpose, impossibility of performing the contract, frustration of contract

1. Introduction

After making a contract, its parties must perform the agreement efficiently. Whenever one of the parties for any reason refuses to perform it, according to the articles 237 onwards of the civil law, the other party will have the binding right of performing the agreement. If the performing of agreement is impossible by the party of contract, he will have the right of performing it by another person but with his own cost. Of course, this type of contract execution is possible provided that the superintending of the party is not the condition of doing it (article 239 civil law). Finally, if the contract execution is not possible, the party will have the right to terminate the transaction.

However, in some cases, non-performance of the contract is not based on the refusing of the obligated. In such cases, we can separate three categories of factors from each other:

- 1) The factors related to the obligated person (except the refusal of performing the contract)
- 2) The factors related to the obligation
- 3) The factors related to the contract, itself

Sometimes, without impossibility of performing the contract and operation of its subject, conditions are emerged that influence the purpose of the parties and frustrates it and in other words, these conditions make the contract useless. In this case, performing the contract does not face any problem financially or legally, but the purpose of the parties is not accessible anymore. For example, during the contract, some person commits that for haltering the walls of the river creates some fortifications for the walls in the to prevent from the flood risk, but before or during performing the contract, the river dries or changes its path. In this case, performing the contract is legally and financially possible, but it does not supply the purpose of the parties. This type of impossibility of performing the contract has been paid attention in the famous case of the coronation of Edward VII in England in 1902 that during that case in the courts of England, the “frustration of purpose” doctrine was firstly posed in the law of England (Treitel, 1989, p. 298).

Such a doctrine and theory has not been recognized in Iran’s law. However, it seems that by using some cases of the civil law, including articles 480, 527, and 551, we can refer to its existence in Iran’s law. The non-performance of contract due to the frustration of purpose has effects that have been addressed in this article.

2. Exemption of the Obligate from the Liability

Each obligated person should perform his contract. This requirement is from the effects and a description of any contract that the articles 219 and 220 imply it as well as other legal articles.

Each of the parties should efficiently take a step in the path of performing the contract and fulfill his assignments, as the contract requires. Any delinquency in performing the contract which can be non-performing, delayed performing, or low quality performing is considered as a breach of the treaty and leads to liability and the liable should compensate the damages forced to the other party based on the article 221. The responsibility of compensating the damages caused by breaching the contract is called contractual responsibility that is from the types of civil responsibilities and is considered like the automatic guarantee.

One of the causes of exemption of the civil responsibility is the interference of force majeure that cuts the relationship between the person and the forced damage and causes exemption of compensating.

In this case, when the performance of a contract, it becomes impossible because of the unavoidable foreign factors and a damage is forced to the other party and the obligated who has not been able to perform his contract will have no responsibility. The impossibility of performing the contract will exempt the obligated from performing his contract and brings no guarantee for him (Katouzian, 2001, p. 762; Safaei, 1985, p. 127) while, refusing to fulfill the contract means violation and causes contractual responsibility. Where the service provider arbitrarily stops providing services, he is the responsible for the damages forced to the other party; but if he cannot provide services due to the reason not attributable to him such as illness or illegal detention, in this case he is not responsible because the non-performance is not by his failure, but it is related to the force majeure.

It has been significant to pay attention to this aspect of the plea, namely the exemption of the obligated that has not been able to perform his contract due to the emergence of force majeure and emphasize on this important effect of the force majeure in articles 227 and 229 of the civil law. The article 227 of civil law states “the obligated is sentenced to pay the loss and damages when he cannot prove that the non-performing has been sued to the external reason and it cannot be related to him”. Moreover, the article 229 provides “if the obligated cannot perform his contract due to an event which cannot be disposed by him, he will not be sentenced to pay the damage”. According to the article 131 of the Law of the Sea “if the ship cannot move due to the banned trades with the destination port, or the economic blockage of the destination port, or due to the force majeure, none of the parties will have the right of claiming damages”.

The issues related to descriptions, reasons, conditions of plea, and proving the plea event are not discussed here. What we emphasize from mentioning these cases is the effect of the force majeure and plea even in relation with the damage caused by non-performing that is the same exemption of the obligated from performing the contract and compensation of the damages of non-performing. This has also been considered by the legal authors (Katouzian, 2001, p. 783; Safaei, 1985, p. 148). No requirement exists against the impossibility. The impossibility of performing the contract proves the innocence of the obligated in non-performing of the contract.

In the law of England, the doctrine of frustration of contract governs in this field. The doctrine of frustration has been defined as the forced cancellation of the contract due to the emergence of plea and fundamental change in the conditions of the contract. In this doctrine, among two significant effects of the frustration of contract, including the nature of non-performing the contract and its resulted damages and the situation of the contract, the latter one is paid more attention to and the other aspect of this doctrine has been less referred. Unlike what posed in Iran’s law or countries like France, where violation of the impossible contract (if necessary) is analyzed based on the accurate mechanisms and in a technical frame, that is to say in the first, the result of impossibility is cancellation of the contract, and then, based on the theory of cause (in the law of France) or the exchange guarantee (in Iran’s law) the contract is cancelled, in the law of England, without any need of such analyses, frustration refers to the automatic cancellation of the contract. This way of looking at the subject and analyzing it has led to the neglect of the other aspects of plea. In the countries that have written their laws, the force majeure is usually used as a defense against the claim of the role of the contract and an excuse (plea) to be freed from the responsibility (Cheshire et al., 1986, p. 558; Cifis, 199, p. 225) without the necessity that the plea leads to the cancellation of the contract. In the law of England, the subject differs and the first effect of impossibility of performing is the cancellation of the contract. As soon as the emergence of plea, the contract is cancelled, without any need of resorting to the technical mechanisms mentioned in the above. Exemption of the obligated from the responsibility is also analyzed accordingly. One of the law writers of England emphasizes that the frustrater event cancels the contract immediately without the need of the person to refer to it as an exemption and both parties are immediately acquitted from the responsibility (Robb, 1965, p. 405). Cheshire has referred to this matter and by haggling the England’s law says that there is no logical necessity that the impossibility of

performing the contract leads to its cancellation; but in some cases, it can be regarded as a defense. He adds that in the employment contract, the long-term disease of the employee may cancel the contract, but the short-term illness should not be followed by this effect, but it is an excuse for his absence and lack of providing services (Cheshire et al., 1986, p 558). It seems that in this law, when the conditions of implementing the doctrine are realized, exemption from the responsibility is supposed so much certain that there is no need of stipulating it. The words of “Lord Wright” in the case of “Fibrosa” reflect the fact in which the lack of any responsibility to compensate the damage is considered as the condition of realization of the frustration and impossibility of performing the contract (Ibid).

3. Cancellation of the Contract

In any contract, the obligated is required to perform his commitment; but this is not an absolute commitment. Performing the commitment is subject to its facility. If performing the contract becomes impossible, this necessity is lost because the obligated cannot be committed to an impossible work. One of the prominent effects of plea event is the collapse of contract. When it is impossible to perform the provisions of the contract or at least one of its bilateral excuses, it maybe leads to the cancellation of the contract.

If the property that is committed to be transferred is lost without the failure of eth obligated and as a result of the force majeure, there is no possibility of performing the contract anymore and in fact, the contract is cancelled. Believing in the continuity of contract that has no subject anymore is vain. This general principle is about the contracts that performing them is excused. Nevertheless, plea does not always make the same quality. Sometimes it is permanent and sometimes it is temporary; sometimes it is absolute and sometimes it is relative. The plea may occur about a part of the contract’s subject, or about the whole of it. According to the fact that the plea has what kind of nature and quality, its influence of the contract will also be different; for example, when performing the contract is permanently and absolutely face the plea, the contract is automatically and forcibly cancelled; because it has no logical and possible subject anymore. Conversely, when the plea is relative or temporary and will be resolved, it does not necessarily lead to cancellation of the contract and it may give the obligated the authority of cancelling the contract; we call it voluntary cancellation; or it may just lead to suspension of the contract. When there is a trivial plea, however the excused part of the contract will be cancelled, but the possible part will remain valid or will be voluntarily cancelled; all these cases will be investigated.

3.1 Forcible Cancellation of the Contract

One of the important effects of the principle of impossibility of performing the contract in Iran’s law is the contract cancellation without the role of the parties; and it is for the absolute or permanent pleas (Safaei, 1985, p. 127), or even temporary plea; but performing this contract is desired in a certain time, or when the property which is the subject of the contract is lost. In the previous discussion, we said that the obligated is not responsible for this non-performing, because he has had no failure and the non-performing is not related to him. What is now considered the condition of the nature of the commitment; is that logical? Answer considering the plea; does it remain? The answer is no. no one can be forced to do an impossible work and there is no necessity against impossibility (Katouzian, 2001, p. 783; Shahidi, 2002, p. 155).

Thus, the primary effect of the plea event is the collapse of commitment. Now, if the excused commitment is the only subject of the contract, it will lose its entity and it will be forcibly cancelled without the will of the parties. For example, in the deposit contract, the trustee must keep the integrity subject; now if the subject is lost due to the natural disasters, his commitment of returning the deposit is dissolved and the deposit contract is cancelled, because there is no subject to perform it anymore. When there is an exchange contract and one of the two exchanged things is lost, or performing one of them becomes impossible, the contract will be forcibly cancelled. From induction in the articles related to the exchange transactions, this rule can be extracted that whenever one of the two exchanged things is lost or performing it becomes impossible, its against commitment will be lost, too; without the need of the option to cancel by the obligated or the court’s ruling. The exchange guarantee in these contracts is the duty of the indebted. If he does not fulfill that promise, he will not have the right of taking the exchange (Katouzian, 2000, p. 248; Shahidi, 2002, p. 159). When it is said that the creditor of the commitment that is impossible to be performed is exempted from performing his own commitment, this also means the contract cancellation, because if the contract remains, it should have legal influence. The result of this influence is implementation of both of the mutual commitments and in the assumption that performing one of them is impossible, performing the other commitment can be possible regardless to the spiritual relationship with the lost commitment. Then, when it is said that the mutual commitment has been also lost, this means the complete cancelation of contract and stopping its requirement (Katouzian, 2000, p. 248).

In the article 481 of the civil law, we read: “whenever the lease cannot be exploited due to the failure and that

failure cannot be removed, the lease is void.” The Article 483 of the civil law expresses “If in the rental period, the lease is completely or partly lost due to accident, the rent is dissolved for the wasted amount from the time of accident”. These articles have posed the effect of the frustration in its general sense; but concerning the impossibility of performing the contract due to the frustration of the purpose of the contract, some legal articles could be named. One of the effects of the frustration of the purpose of the contract has been considered its dissolution and cancellation.

The article 527 of the civil law about the sharecropping (contract of leasing a farm) says, “Whenever the farm cannot be benefitted from due to the lack of water or such reasons, and the obstacle cannot be eliminated, the sharecropping contract will be dissolved”. This article introduces one of the best examples of the principle of the impossibility of performing the contract. When in sharecropping contract, dehydration occurs and agriculture is useless and idle, the sharecropping contract is automatically dissolved. In this regard, Sahib Javaher says that if during the period of sharecropping, the water cuts off so that the farm is not usable, it would be better to terminate the contract (Najafi, p. 123). Sheykh Tousi has more strongly considered the frustration of the farm execution as the cancellation of the contract (Ibid, p. 221). He also believes that if a farm is rented for farming and after the contract, the farm goes under water, the contract will be cancelled (dissolved) (Ibid, p. 261).

As it was observed, in the mentioned legal cases, the different contracts are dissolved due to the frustration of the purpose, the will of the contractors does not play in this case, and the contract’s dissolution is forcibly due to the frustration of the purpose. However, in the civil law, there is no general principle that clearly appointed this rule; with induction of these articles and other legal articles existing in this regard, we can extract this principle. Also in fiqh, a principle called “nullity of all contracts due to impossibility of performing the commitment” has been posed based on which excuse in performing the contract leads to its dissolution. Thus, one of the most important effects of the impossibility of performing the contract due to the frustration of the purpose of the contract in Iran is the forcible dissolution of it when the excuse basically cancels the performing of contract.

The sensible effect of the impossibility in performing the contract due to the frustration of the purpose in the England’s Law is the dissolution of the contract that of course considers the right of cancellation for the other obligated party in some cases that will be discussed in the next discussion. The frustration of the contract for this reason puts no option for the parties of the contract. For the same reason, unlike Iran’s Law, based on the principles, the frustration doctrine leads to the forcible dissolution of the contract when there are its conditions. While in Iran’s Law, based on the type of plea, this principle may lead to forcible or deliberative cancellation or making the cancellation right for one of the parties of the contract. This feature of the doctrine of the frustration has been criticized by one of the English lawyers who believe that there is no logical necessity that frustration leads to automatic dissolution of the contract, but its effect may be summarized to the making of cancellation right for one of the parties (Cheshire et al., p 559).

3.2 Deliberative Dissolution of the Contract

Instead of forcibly dissolution of the contract, impossibility in performing the contract in some cases may provide the conditions of deliberative cancellation of it and create the right of cancelling the contract for one of the parties.

When there is absolute plea and the performing of contract is impossible, there is no doubt about the forcible dissolution of that; like where there is a temporary plea, but performing the contract is desirable just for a limited time; or where the plea is partial but the contract consists of an indivisible whole. When the plea does not reach this level, the contract cannot be considered dissolved, but cancellation is possible for the contractors (Qomi, p. 69). In the civil law, such possibility has been predicted in some cases.

The sharecropping contract is one of the cases in which frustration of the purposed leads to excuse in performing the contract. Based on the article 527 of the civil law, if the farm cannot be benefitted from due to the lack of water or such reasons, and the obstacle cannot be eliminated, the sharecropping contract will be dissolved. However, some scholars believe that in this case, the farm renter will have the right of cancelling the contract (Qomi, p. 69; Shahid Thani, p. 279).

Article 240 of the civil law is another article that can be interpreted in line with the deliberative dissolution of the contract due to the frustration of the purpose of the contract in Iran’s Law. This article expresses that:

“After the contract, if performing the contract becomes impossible or it becomes clear that it has been impossible at the time of establishing the contract, the one who have benefitted from the contract will have the authority to cancel the transaction.”

The possibility of cancelling the contract due to the frustration of the purpose has not been posed in the Law of

England. In the doctrine of frustration that the impossibility of performing the contract due to the frustration of the purpose is one of its effects, the impossibility of performing dissolves the contract without the role of the parties' will (Cheshire et al., p 559).

4. Consequential Effects of Dissolution of the Contract

With the dissolution of the contract, the subject does not end and some significant minor issues remain which must be criticized. The effect of the dissolution of the contract is about the future and it had no influence in the past; but the rights and commitments of the parties in a dissolved contract are still discussable. Moreover, where one of the parties of the contract has incurred some costs, it is necessary to clarify the conditions. These issues will be investigated in two separated discussions as the consequences of dissolution of the contract.

4.1 Rights and Obligations

As a general rule, the effect of dissolving the contract is related to the time of plea onwards and the contract is proper up to this time. However, about the relationships of the parties in the past and their rules and obligations, some issues are posed which should be clarified. Maybe before the dissolution of the contract, one of the parties has taken action in performing his obligations; when we say the dissolution does not influence the past, does it mean that the payment should be remained the same? for example, in a contract in which a carrier is obligated to transfer a cargo within a month after the date of the contract and the rent is paid at the time of the contract and then transferring the good is impossible for some reasons. Can it be said that because the dissolution does not influence the past, this obligation remains as the work that should be done before and the contract dissolution does not influence it? In Iran's Law, the answer is No. regarding to the fact that the basis of the principle of impossibility of performing the contract and dissolving it implies the exchange guarantee, none of the parties could receive something without delivering something and according to the rule of possessing, any unfair possessing should be prevented from. For example, if in the lease contract, the rented thing is wasted before giving it to the tenant, the tenant will have no obligation to pay the rent, although the property owner is considered as the leaseholder because the lease is an owned contract. Then, if the rent has been paid, the tenant can retract it (Najafi, p. 278; Emami, 2003, p. 52) because with the loss of the lease, the rent remains irreplaceable. Moreover, if in the contract of transferring a certain good, the good is wasted, the contract will be void and dissolved; but if the exchange has been paid, it is refundable (Emami, 2002, p. 352). The rule of the article 387 of the civil law is based on the same principle where it allows the buyer the possibility of refunding the cost in the case of termination of the sale. Whoever has not paid the exchanging, will not have the right of taking exchanged. In Jame Al-Shatat, it has been stated that if someone is hired to prepare ten piles and after preparing five of them, he dies, the wage of the five remaining piles should be refunded to the tenant; because the rent is proper for the past and void for the future (Qomi, p. 465). About renting someone to dig a well, it has been said that when after digging some part, it becomes impossible to continue digging due to the difficult terrain or illness of the hired person, the rent will be dissolved and the hired person has the right of receiving wage in proportion to the performed work (Najafi, p. 291).

Also in the laws, the article 160 of the Law of the Sea states that: "the cargo which is wasted due to the sinking and grounding of the ship and plundered of the pirates and captured by the enemies will not include the rent." In these cases, the commander is obliged to refund the price which has been received previously."

However, it is logical to consider that the carrier has the right of taking rent in proportion to the carried path, but the legislator has eliminated the obligation of the cargo owner in paying rents and since the contract is completely impossible, the legislator has helped the cargo owner who has lost his property and prevents from forcing him to pay the rent which is an extra loss. The article 133 of the Law of the Sea has also stated that: "whenever the ship does not reach the destination due to being captured or sunken or announcing the impossibility of sailing, the commander has just the right of demanding the food price from the passengers." Hence, the passenger who does not reach the destination due to the external reasons has no obligation to pay the fare; though some part of the path has been travelled.

Therefore, it should be said that there is a principle about the rights and obligations of the parties before and after the date of dissolution of the contract and that is none of the parties should be possessed unreasonably and through the loss of the other one. If one party has had some pays before receiving anything, or has some prepaids and has not received any good, that money can be refunded based on the principle of unusual possessing (Safaei, 1985, p. 129).

In the Law of England, at the beginning of applying the frustration doctrine, it was announced that the effect of the doctrine is dissolution of contract for the future, and it is proper for the past. In the Common Law, this principle that dissolution is for the future and the frustration doctrine does not influence the past was accurately

interpreted. Accordingly, whatever had been performed before the frustration, dissolution of the contract was remained, and if it had not been performed, its performing was still a duty. In addition, what should be done after the date of dissolution, including rights and obligations were eliminated. This attitude led to perfectly unfair results. If a constructor agreed to build a house for 5000 pounds and receive this money after finishing the work and the contract was frustrated before finishing the work, he could not receive anything (Treitel, 1991, p. 811). This rule was simply justified that the contract dissolution is for the future and does not influence the past. So that, for a long time, it was imagined that the damages had caused by frustration should remain where they were (Hulsbury's law of England, 1981, p. 463). The frustrater event completely finished the contract, but up to this time, the contract was perfectly valid and enforceable (Robb, 1965, p. 94).

4.2 Costs and Damages

When the contract is dissolved due to the impossibility of performing, one party may have incurred some costs or damages as the result of the works for performing the contract. Damage may be the direct result of the frustrater event. The conditions of the rights of parties at the time of dissolution of the contract due to plea were discussed in the previous section. Now, we are intended to investigate the damages, costs, and rules governing this case.

Regarding to the fact that the frustrater event eliminates the responsibility of the obligated person for non-performing, the first rule comes to mind is that the damages remain where they are. Because for realizing the civil responsibility, we should have the fault and the casual relationship; and these elements are excluded from the current discussion, then, if a contractor establishes his equipment, machineries and workers in the place of a project for performing that project, consequently he incurs some costs, then if performing the contract and constructing the building is stopped and cancelled due to the order of the governmental authorities or natural disasters, in this case the constructor will incur the damages without any responsibility for the employer.

He has no right to take something from the employer. It is worth noting that this is something other than the rights and obligations of the contract's subject. The described actions and the consumed costs are not some part of the work of the contract's subject that accordingly the employer be considered responsible for paying some part of the fee of the contract due to performing some part of the work. Thence, in the mentioned assumed contract, even if the contractor has received some money as prepay, he must refund it and the employer is not responsible to pay the incurred damages because his desired result has not been achieved.

In our laws as well as the legal texts, this issue has not been particularly addressed. What mentioned was perceived from the general relevant principles. What the articles 227 and 229 of the coil law refer to are the damages created due to non-performing the contract. Nevertheless, our discussion is about the costs and damages created in order to perform the contract and provide its primaries and due to the dissolution of the contract. According to the article 133 of the Law of the Sea, if the passenger does not reach the destination due to the external reasons, the ship commander just has the right of demanding the food price. The opposite concept of this article is that the other damages and costs like the fuel consumed by the ship and the other costs are not demandable. These costs will remain where they have been spent. In addition, according to the article 160 of the Law of the Sea, the cargo that is wasted due to the sinking and grounding of the ship, plundered of the pirates, and captured by the enemies will not include the rent and in these cases, the commander is obliged to refund the price which has been received previously. Clearly, carrying the cargo in some part of the route has necessitated some costs and in these cases, the law states that the ship owner is responsible for such costs. This rule, maybe seems illogical and it may be better to consider the cargo owner responsible for paying the rent in proportion to the route the cargo has been carried.

Thus, in Iran's Law, the rule is that the damage remains where it has occurred. The damages of non-performing the contract are considered for the committed person. The other party is also deprived from the benefits of performing the contract.

Also in England's Law, the general rule is that in the frustrated contracts, the damages and costs will remain where they are located (Treitel, 1991, p. 810). Nevertheless, due to the latter section of the second alternative of the first part of the amendment act of the frustrated contracts, if someone has incurred costs for performing the contract, the money he had taken before the dissolution or the costs that must be given to him can be for him in proportion to the consumed costs and in case that he has not received this money, the court fairly decides that the money be paid to him¹. Determining the amount of money paid to the person to compensate the costs and

¹ Section 1 (2) : "... if the party to whom the sums were so paid or payable incurred expenses before the time of discharges in, or for the purpose of the performance of the contract, the court may, if it considers it just to do so having regard of all the circumstances of the case

damages is subject to the court's opinion. If the damage is low, the agreed amount will also be low (Ibid).

5. Suspension of Performing the Contract

Another one of the effects of the impossibility of performing the contract is suspending the performance of it. When there is a temporary plea in performing, but the contract has current element, or the performance of contract is desired in a certain time, its effect maybe just suspending the performance of the contract (Al-Sanhouri, 1958, p. 984). "Where the force majeure does not completely make it impossible to perform the commitment and just delays it, only the damages caused by the delay are ignored and the obligation principle remained to be compensate. For the same reason, the violence of filed does not finish the contract, but it suspends its performing that, however the creditor has opposite (Katouzian, 2001, p. 786). If implementing the contract is suspended due to the plea, after eliminating the plea, the obligated is responsible to do his crisis (Safaei, 1985, p. 130; Shahidi, 2002, p. 136).

In the international contracts, it rarely occurs that a force majeure suddenly dissolves the contract. In the seventh paragraph of the text proposed by the International Chamber of Commerce as the conditions of force majeure, the possibility of suspension of the contract due to plea has been posed.

The possibility of suspending the maritime contract has also been predicted in the Law of the Sea. According to the article 150 of this Law, "if the ship could not exit the port due to the force majeure, the contract will remain in force for a conventional time and the damages caused by the delay in moving the ship will not be demandable." According to the article 134 of this Law, if the commander of the ship is forced to repair the ship while travelling, the passenger will wait for the conventional time; otherwise, he can ask the commander to provide the conditions of his travel with another ship.

One item from what should be emphasized concerning the suspension in performing the contract due to the plea is that the contract is still valid and its basic does not face any embarrassment. Another item is that due to delay, the resulted damages are not demandable, because delay is due to the force majeure and without the fault of the obligated. Then, wherever the impossibility of performing is not to the quality level of dissolving the contract or providing the right of cancellation for one of the parties, the performance is suspended and this is a natural result existing in any legal system.

In the England's Law, the possibility of suspension of the contract due to plea has been referred to. It has been said that the illegality may suspend the contractual commitment without dissolving it (Hulsbury's law of England, 1981, p. 462). Alternatively, where the inaccessibility is temporary, the contract is just dissolved when it has current or periodic element, such as temporary capturing of a ship that has been specified for carrying vegetables; otherwise, the contract is not dissolved, but its performance is suspended (Treitel, 1989, p. 290). Thus, in England's Law, if due to temporariness, the impossibility of performing the contract does not frustrate the contract, it inevitably will suspend its performance. For example, a 99-year lease contract is not dissolved with the temporary legal prohibitions, but it is necessary to perform it after the ban is solved (Treitel, 1991, p. 789).

6. Conclusion

Each of the parties should efficiently take a step in the path of performing the contract and fulfill his assignment as the contract provides. Nevertheless, sometimes, some events occur that dissolve the performance of the contract. Unenforceability of the contract under the frustration of purpose theory has different effects emerging depending on the type of occurrence of the event; because according to this theory, the conditions are realized whiting which either the performance of the contract is impossible or in case financially there is a possibility to perform it, it does not meet the expectation of the parties from the contract and in fact, performing or non-performing the contract are not different for the parties other than incurring extra useless costs for the obligated person. The effects of frustration of the contracts have not been investigated in Iran's Law.

When performing the contract becomes impossible due to the external unavoidable factors and consequently the other party incurs some damage, the obligated person who has not been able to fulfill his commitment will have no responsibility.

One of the reasons of exemption from the civil responsibility is the interference of force majeure that cuts off the casual relationship between the person and the damages occurred and leads to his exemption from compensating it; this can be considered as one of the effects of frustration of the contract due to the frustration of the purpose of the contract.

allow him to retain or, as the case may be, recover the whole or any part of the sums so paid or payable , not being an amount in excess of the expenses so incurred".

On the other hand, performing the obligation is subject to the possibility of performing it. In case of the impossibility in performing the contract, this necessity will be eliminated, because the committed person cannot be obligated to an impossible commitment. For the same reason, another one of the prominent effects of the plea is the collapse of commitment.

Finally, another one of the effects of the impossibility in performing the contract is suspension of it. When there is temporary plea, but the contract has the current element, or the performance of the contract is desirable just within a certain time, it may just lead to suspension of the contract.

Hence, according to what was said in this paper, the effects of the impossibility of performing the contract are as follows:

- 1) Exemption of the obligated person from the responsibility
- 2) Dissolution of the contract
- 3) Suspension of the contract

It should be noted that all of the above would exempt the obligate one from permanent or temporary performance of the commitment with a slight difference that has been posed.

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