

Comparative Review of Fundamental and Non-Fundamental Conditions and the Sanction for their Violation in Iranian Legal System and Common law

zahra alipoor*,

Abstract In the Islamic jurisprudence and the Iranian legal system, terms of a contract follow it in terms of validity and irrevocability. Terms are not so important as to enter the main pillars of the contract and their being legally void or practically impossible does not lead to the invalidity of the contract. In common law system, terms enter into the main body of the transaction and in case of being fundamental, breach of them entitles the aggrieved party to rescind the contract. Contrary to the Iranian legal system, in common law, terms are divided into "conditions" and "warranties" based on the degree of significance. Common law scholars have comprehensively studied the nature of "conditions" and the criteria to distinguish them "warranties"; however, due to the lack of precedent, Iranian jurists have not engaged in such a research. On the other hand, it is an undeniable fact that the degree of importance of a contractual term in view of custom or the contracting parties does influence the interpretation made of a contract. To respect the principle of free will and the common intent of the contracting parties, said types of terms shall enjoy a different sanction. The common intent of the parties regards the existence and continuance of a term to be necessary for the maintenance of the contractual relation, it would not be just to enforce a segregated contract against the aggrieved party; but, the term is a subsidiary one, payment of damages seems more expedient and Iranian civil code regulations which provide for the injured party, the right to terminate the contract are in contradiction with the principle of solidity of contracts. In the Iranian legal system, there are a multitude of categorization for the contractual terms but lack of such legal concept is conspicuous and disgusting. It is hoped that through this

research, it would be possible to take a step, however small, to establish closer ties between the provision in the Iranian law and the intellectual achievements of the other nations. **Keywords: Condition, warranty, sanction, damages, the right to rescind the contract, terms of a contract**

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