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Jurisprudential Study of Stock Exchange Transactions with Emphasis on Opportunities and Challenges

Abstract

The stock exchange market is an economic institution that integrates investments into major plans and has unique characteristics compared to other markets in the economic systems, such as a specific place for transactions anybody can refer to for trading the stocks or securities through computer and electronic facilities provided by the stockbrokers. Regarding the mechanism of these transactions, the activities in this market are always being questioned. These questions include: What is the jurisprudential ruling of these transactions? And what opportunities and challenges are made by such transactions? Besides addressing the main concepts of this subject, the current study has discussed the stock exchange market transactions from a jurisprudential perspective with emphasis on the *opportunities and challenges by using a descriptive-analytical method and answering the research questions and the like.*

Keywords: *Stock exchange market, independence of securities ownership, unauthorized transactions, options applicable to the transactions.*

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Introduction

As a permanent capital market for stock and securities trade, the stock exchange market is the largest and main institution of the capital market in each country. It has unique features compared to other markets in the economic systems, such as a specific place for transactions anybody can refer to for trading the stocks or securities through computer and electronic facilities provided by the stockbrokers. Also, the transparent stock prices and the rapid liquidity of stocks and other securities in this market are among other features (Roohalamini, 2005, 11).

Securities trading is primarily a matter of private law. However, the unfair distribution of the information and existence of risks such as the market, and finally, the risk appetite of such transactions have made the conventional institutions of the private law inefficient. Therefore, to protect the investors, maintain market transparency, and attract the public trust, the legislature has intervened and supervised these transactions by establishing authoritative rules and regulations. In other words, in the regulations dominating the trade of securities in the capital market, the public and private law are combined to provide distributive and corrective justice (Ansari & Heidari Sourashjani, 2014, 130).

For this reason, the legislator, following paragraph (b) of Article 99 of the Fifth Five-Year Development Plan of Securities Transactions, registered with the Exchange and Securities Organization, considers it possible only in licensed exchanges and Over -the-Market (OTC) markets and following the trading rules of each, and has declared the transaction of securities without observing the arrangements mentioned above invalid. The securities in the OTC markets are transacted in two forms auction and negotiation, which is effective in the legal analysis of the substantive terms of the transaction. Auction in the OTC trading system leads to a transaction as soon as the prices of buy and sell orders are matched. Still, in negotiated trades, the negotiation process for the transaction takes place with the issuance of the OTC trading statement - which contains the terms of the seller of the securities. Those inclined to participate in negotiations submit the relevant form to the OTC through the stockbrokers. The OTC sends the negotiation applications to the stockbroker of the seller of the securities so that he can select the qualified ones. In case the seller introduces the two or more persons to the OTC as the qualified ones, it also simultaneously introduces the best applicant among the mentioned persons and, at the same time, signs a memorandum of understanding with him for the sale of securities. In this case, the seller can announce to the OTC that he is only willing to enter into a transaction with the best applicant. The transaction is registered in the third market of the OTC between the parties to the memorandum. Otherwise, there will be a competition between all qualified applications in the OTC. However, the base price of securities sold in the third market will be equal to the price offered by the best applicant. Since the transactions in the stock exchange market are carried out by modern financial methods, the necessity to match them with the Islamic rules and regulations at the global level is strongly felt. Thus, the current study, using a descriptive-analytical method and referring to the legal articles and library sources, has jurisprudentially investigated the stock exchange market transactions, emphasizing the opportunities and challenges.

Theoretical Framework:

Independence of Securities Ownership:

The securities are fungible documents issued by the firms, governments, and the international, private and public organizations to finance the implementation of projects or trade. These securities help reduce the cost of financing for the companies (Micheler, 2009, 13). Paragraph 24 of Article 1 of the Securities and Exchange Law, adopted in 2005, defines securities: "Any type of paper or document guarantees transferable financial rights for the legal owner or its benefit."

The stock exchange market, which is the most important and extensive part of the capital market (Shirkavand, 2012, 56), is an organized and formal market in which all shares of companies are traded under certain rules and regulations. The important characteristic of the stock exchange market is the legal protection of the capital owners and the legal requirements for the applicants. It is a center to collect the savings and liquidity of the private sector, on the one hand, to finance the long-term investment projects, and on the other hand, an official and reliable reference that holders of stagnant savings can search for a relatively suitable and safe place to invest and use their surplus to invest in companies (Azadvaei et al., 2012, 73).

First Approach:

Some jurists have considered securities a choice in action and have not considered the independent nature and value of the paper or document. They have paid attention to the relationship between the source of issuance in making the securities a financial instrument. They have not included a paper or electronic document in its nature.

Second Approach:

On the other hand, a group has criticized this view and considered the deed, the paper, or the document involved like the securities. They believe: "The right to the securities, including the shares, is merged into the paper itself, and gives the owner the rights that belong to the shares, and change the paper into a financial instrument. As a result, the right to share ownership is no longer considered a choice in action and belongs to a specific property, i.e., the paper share" (Sotoodeh Tehrani, 2009, 2, 71). Based on this approach, although the securities create a right to a part of the company's capital for the shareowner, this right is merged with the document itself, and the share deed has its independence and special value (Shushinasab, 2015, 243).

Third Approach:

Some other authors who have tried to elaboratively and correctly analyze these securities and somehow complete the theory proposed by Dr. Sotoodeh Tehrani have gone through the same path and analyzed the securities based on the mentioned division, which is another interpretation of the property rights and obligations. This group, emphasizing the stocks listed on the stock exchange market, believes that these stocks are properties of their specific kind that, on the one hand, concerning the issuing company, are subject to the law of contractual obligations and, on the other hand, concerning third parties, are subject to the law of property (Ghamami & Ebrahimi, 2012, 129). In their perspective, although a contract creates the shares according to which one or several persons agree to create an independent capital or Juristic personality, substantively, this creature is distinct from its creator and finds an independent nature.

They believe that law is the world of credits and that the ability to legalize and validate a legal personality allows the share (which is the product of the law of contracts and initially considered a right arising from contract and obligation) to turn into a tangible asset after creation, by reflecting its rights in the security. In other words, as the company, after creation, finds a legal personality distinct from its creators, the share is also a legal term that is created to the credit of the concept of the company and, when created, becomes distinguished from its original formation contract. The share against the company is a right arising from the contract between the shareholders (religious choice in action), but it is tangible against the transferee and other persons (Ibid, 139). In fact, from this perspective, the securities, including the shares, are deeds in which the rights of the shares are reflected and are transferred based on the tangible assets regulations. Therefore, if the share deed is transferred, the buyer not only owns the document but also would hold all the rights relevant to that document. The tights related to the securities document would merge with the document itself and turns it into a tangible asset. Hence all the effects of an objective right, the most complete of which is the right of ownership, are attributed to the security. In the meantime, the esteemed professor, the late Dr. Katozian, has chosen the middle ground and has not considered the nature of the stock to be compatible with any of the tangible and chose in action. On the one hand, he considers a right to the legal personality of the company and a privilege over the interests of capital for the parties. On the other hand, he considers the share or share as a representative of the existence of a right that has "financial value" and is transferable (Katouzian, 2007, 307-309).

It should be noted that based on this approach, the securities are not comparable to the money in any possible ways, and

they have an independent entity during the transfer in the market. Legally, they are subject to the tangible assets regulations, although they take their actual and economic value from their basic asset. In other words, the entity of these securities is a combination of tangible and chosen in action at different periods. At the issuance, they follow the rules of the choice in action. Still, at the transfer level, they are subject to the rules of tangible assets. While not compatible with none of the choices in action and possession rules, these securities should be considered a third category of properties. Also, they should be justified in the traditional categorization of properties as tangible and chosen in action (Shushi Nasab, 2015, 247-346).

It should be noted that this approach is rooted in the new law of some countries, such as Germany and Austria. The dominant approach in the law of Germany is that the securities have been categorized as tangible assets since their documents are specific deeds, and the right related to these deeds are reflected in the document itself; thus, they are transferred according to the tangible assets regulations (Micheler, 2007, 36; Michele, 2009, 7). In other words, although the original right arises from a choice in action origin, this choice in action is merged with the document itself, and the document no longer represents the claimant. Still, the tangible asset has the same value (Grant, 1978, 449).

The Effects of Acceptance of Securities as an Independent Financial Instrument:

Based on this approach, and since the tangible asset is another translation of the asset rights, the securities are subject to the asset rights regulations. The rights to transfer them are added because if their transfer is to be justified based on the contract of assignment, the buyer should evaluate the costs of obtaining information about the status of the drawee (issuing company) as well as his actual debt to the drawer and consider this cost in his bargaining with the security owner. If we protect the security owner in the framework of the asset rights, the exchange costs would be reduced. For example, by protecting the owner in unauthorized transactions, the latter person would no longer have the duty to seek to determine whether the seller is the owner or not. Also, there would be no need to bargain to oblige the seller to prove his ownership of the deed before its transfer. In other words, when a right is transferred through an assignment, the assignee would only acquire the right if the assignor has the right to transfer it. In this way, the risk of the unauthorized transaction is imposed on the assignee who should pursue the assignor who is fugitive or insolvent, while based on the asset rights, there is no such a risk, and the holder becomes the owner of the asset (Micheler, 2009, 365). The "capability of universal reliance on the asset rights" is among other effects of acceptance of this approach and the change in the analysis of securities trade approach from the contract rights to the asset rights. Based on the principle of relativity of contracts, the provisions of the contract cannot be invoked and enforced against third parties, including intermediaries or issuing creditors, especially in the event of his bankruptcy. Still, property rights achieve both of these goals. Asset rights can be relied on universally, and the right holder does not need to prove his right to third parties, which is one of the most subtle differences between asset rights and contract rights (Merges, 2005, 24).

Criticism and Analysis of the Securities as Independent Financial Instruments:

Criticizing this approach, various reasons can be noted:

First Reason: Criticism of Separation of Contract Rights from the Asset Rights:

As was mentioned, from the perspective of supporters of the independence of the securities ownership, one of the effects of the analysis of considering the securities as the tangible asset is that their transfer is outside the realm of contract rights and is included by the asset rights and thus, the costs of the customer or buyer are reduced. The foreign obligations law or the same private law or choice in action do not inherently have a place in asset rights or the same tangible assets rights, and these two areas are independent of each other. In this system, the property (in the specific sense) and what is investigated in the asset rights are merely examples of tangible assets. Due to originating from the obligations and having a contractual and personal aspect, the debt does not have a place in the asset rights per se and is subject to the contract or obligations rights. The controversy between the choice in possession or choice in action manifests the controversy between the asset and obligations rights. However, today, due to the dominance of the material approach and eh change in the concept of the property, this contradiction, and the mentioned division is also seriously doubted in the Romano-Germanic Legal System. Some foreign lawyers claim that this division has vanished regarding the change in the concept of the property and the thing, and the fact that the thing might be anything, even those immaterial things that cannot be touched, or credit things such as the contract rights (Worthington, 917).

Yet, based on Islamic law, debt is always considered unascertained goods under obligation and an example of property. However, this property is chosen in action and not chosen in possession. The jurists have responded to the

problem that the unascertained goods under obligation are not available and cannot be acquired: “The ownership is not an external manifestation, but it is an intellectual provision, and thus, there is no obstacle to validating it in another credit issue. The debt or unascertained goods under obligation is not an absolute non-being, but its being depends on the credit. This credit being is sometimes under obligation and sometimes is not, and through this credit attribute, the intellectuals consider it to be a property and thus, it can be owned” (Mousavi Khomeini, 1421 A.H., 1, 17).

Second Reason: Criticism of Failure in Universal Reliance on the Contacts Rights:

The latter group has considered the universal reliance to be the most important difference between the asset rights and the contract or obligation rights and the most important effect of securities analysis based on the tangible assets right. However, it should be said in this regard: The rights, chose in possession or chose in action, can be relied on before all, and in terms of the absoluteness of the chose in possession right, the two issues of “opposability” and “ effetrelatif” have been merged (Yazdanian, 2013, 88), and in terms of reliance capacity, there is no difference between the two rights, and any right can be relied on against any person, and others have to observe and respect it.

However, in terms of privity of the debts and absolute effect of the choice in possession rights, and the fact that the debt can be cleared only by referring to the debtor, it should be said that it is due to the reliability of the subject of this type of ownership and lack of the possibility to seize it or physically transfer it. The creditor’s property will not be transferred from his liability without his will. Therefore, the absoluteness of the owner’s right in terms of the material properties is more important, not that it is unthinkable; for example, if the creditor’s debt is transferred to another person, it will be collectible from the new debtor. It should be noted even if we interpret the right to own as the direct and immediate dominance over the property (Saadi, 2008, 408), in the Islamic law, the creditor’s dominance over the debt is initially direct and absolute and not a relative one, based on the ownership of unascertained goods under obligation theory and acceptance of the credit property. In other words, in Islamic law, the choice in action is treated as a choice in possession over which the creditor has ownership and the right to apply any interference and possession. In contrast, in the Romano-Germanic Legal System, the personal right is a relative relationship between the two persons, and the debt is considered an element of this personal relationship (Ghestin, 2005, 3).

Third Reason: Criticism of the Use of Division of Chose in Possession and Chose in Action Rights:

The most important criticism arisen is the use of the criterion for division of the chosen in possession and the chosen inaction in terms of the nature of the securities and the role of the deed in this regard. The latter group, although the mentioned division is not compatible with the concepts of Islamic law, and for example, the fact that the unascertained goods under obligation or the same debt, are considered to be examples of the tangible asset and thus closer to the chose in possession, have tied the nature of the securities to this division and have neglected the indigenous division of "rights and property."

One of the reasons behind the necessity of analysis of securities based on the asset rights and choices in possession is that they are rooted in the Romano-Germanic Legal System and the Common Law. However, today, regarding the fact that the positive aspects of the obligations can also be transferrable, just like the choice in possession, the self-imposed analysis of the reflection of shareholder’s rights in a paper document and merging of the personal rights of the owner with it, and the conversion of personal rights into chose in possession in these two systems is not as necessary, let alone the Islamic legal system, which in connection with the establishment of the former debt also used the theory of ownership and debt had the characteristics of ownership. Therefore, using the principle of division of choice in possession and the choice in action in Iranian Law is incorrect. It is better to use the traditional division of the right and the property. A division compatible with the indigenous and Islamic concepts does not have any objections or shortcomings in the division of the chose in possession, and the chose in action.

It should be noted that in the Iranian Civil Code, no such division and its attributes can be seen. The terms ‘chose in possession’ and ‘chose in action or personal rights do not exist in any of the articles of the Civil Code, while in many countries with Romano-Germanic Legal systems, this division and its attributes are mentioned (Christian Von, 2004, 321; Faber & Luger, 2011, vol4, 202). Therefore, the origin of this division has no legal foundation and has entered the Iranian legal system based on the not-so-accurate interpretation of lawyers. Thus, there is no reason to accept this division in its conventional sense in foreign law.

Fourth Reason: Criticism of Lack of Provision of the Unauthorized Transactions in the Asset Rights:

Another thought-provoking effect of the analysis of securities based on the asset rights has been the reduction in the buyer’s

costs in a way that by supporting the owner in the unauthorized transactions of the securities, this person would no longer bear the responsibility to discover whether the seller is the owner or not. Also, he does not need to bargain to oblige the seller to prove his ownership before transferring the deed. In fact, in this regard, the unauthorized transaction rulings do not apply to the asset rights and only apply to the contract rights.

It should be noted that this issue is true in some legal systems, and, in the case of some properties, the buyer is supported in good faith. For example, in the Common Law Legal System, in the case of some properties (especially the movable properties), the plaintiff can only receive damages, and the property itself cannot be returned from the ignorant buyer (Pretto Sakmann, 2005, 18). In other words, the unauthorized transactions rulings do not apply to these transactions, and the owner becomes the owner of the stolen goods in good faith (A . Erwin, 1911, 64). It also applies to the movable commercial documents, and the buyer is supported in good faith. However, this support is not among the attributes of the asset rights and is an exception to the original owner's principle of restitution of property. Yet, it does not apply to the Iranian Legal System at all, and the respected author has ignored the unauthorized transactions regulations of his own Civil Code.

Fifth Reason: Criticism of Combination of Chose in Possession and Chose in Action Rights and the Theory of Merging:

It is not correct to distinguish the nature of the rights of the original owners of the securities with the transferees since, anyways, the original owners of the securities transfer their right to the buyer, be it chosen in possession or chosen in action. The mere transfer or issuance and distribution of the securities do not change the rights. This group considers the entity of these securities to be a combination of the chose in possession and chose in action at different periods, in a way that it is subject to the rulings of the chose in action at the issuance stage and the rulings of chose in possession at the transfer stage. At the same time, it is nothing but a claim. It is a kind of circular reasoning since, from this group's perspective, the nature of the security owners' rights is chosen in action, which was formerly not transferrable. Now, for the ease of its transfer, they believe that the owners' choice in action turns into the choice in possession at the transfer stage and becomes transferrable. It should be noted that the merging of the share rights with the share document and deed is also nothing but a self-imposed analysis, and it has no legal or economic justification and legitimacy and is no reason for the ownership and independent value of the securities. This analysis is also circular reasoning, just like the previous one.

Sixth Reason: Criticism of Securities Ownership Independence to Avoid the Rulings of Contract of Assignment:

One of the reasons to justify the nature of securities transfer based on the asset rights and the independence of ownership of securities is to avoid the provisions and effects of the contract of assignment in the foreign law, since in the foreign law if we consider the nature of the securities to be chosen in action, their transfer would be subject to the contract rights and contract of assignment in which case the rights of the new owner would be affected by the origin relationship, because in the Romano-Germanic Legal System also if the previous obligation can be annulled or canceled, the converted obligation or the assignment made would not be immune to the chose in action. These contracts are also canceled with the annulment or termination of the original obligation (Katouzian, 2010, 206). In this system, the cancellation or creation of the obligation on obligation conversion is inseparable. The status of each affects the other. It should be noted the relationship between old and new obligations was so important for the Romans that they believed the new obligation should be about the same subject (Ibid, 311).

However, in Islamic law, the situation is different, and it seems that the termination or cancellation of the original contract would not affect the accessory contracts. There is no doubt about the existence of the seller assignment despite termination of the sale since if the debt of the assignee against the assignor is eliminated, the assignment will remain intact, which is an idea agreed upon by the majority of the jurists because the assignment is independent after the contract is concluded, and the requirement for this independence is that by the cancelation of the sale contract, contract of assignment should not be annulled (Yazdi, 1422 A.H., 2, 476).

Seventh Reason: Criticism of Conventional Ownership of the Securities:

Among the reasons provided for independent ownership of the securities by its supporters is that the convention has realized this kind of ownership, and in many countries, regardless of their origin, they are considered to be an independent property and economic goods; however, as mentioned in the first chapter, the owner is not a pure conventional concept, rather, it is an abstract matter and an attribute of a thing whose capacity of trade in the market or its logical benefit can be abstracted. The object's desirability, which is the origin of abstraction of ownership, sometimes arises from its nature, and sometimes, it is not latent. Rather it is created during the

reasoning with the government (Mohaqeq Damad et al., 2010, 381). None of the intrinsic or credit desirability exists in the securities' nature. There is no need to explain the lack of intrinsic value, and obviously, the securities have no intrinsic value. In terms of the government's value and credit, most securities do not have this credit, and it seems securities such as government-guaranteed bonds may have the same credit value as banknotes. However, other securities lack such governmental credit. In this regard, there is also no logical credit, and undoubtedly, if the wise exchange the securities, it is due to the inherent desirability or creditworthiness of the origin of the securities (including the acquisition of annual profits or the acquisition of a common component of assets), and they do not consider the securities themselves desirable. Anyways, the deed and the written document, unlike the banknote and money, have no financial value per se, nor do they have an independent legal nature. Still, they just imply the rights of the shareholder. In other words, the nature of the share and the share deed cannot be compared to that of the banknote and money.

Opportunities and Challenges of Stock Exchange Market Transactions:

The securities market is a place to attract micro-capital and direct it to large investments in economic growth and development of countries. The transactions in this market follow specific regulations, both qualitatively and quantitatively, which are different from the system of traditional transactions. Regarding the significant volume of capital exchange in a huge number of transactions done daily in this market, creating safety and security for investors in this market is very important (Tavoosi, Parvin, 2021, 5). Therefore, as soon as the trader's capital is in the hands of a person with sufficient experience as a broker, it significantly creates benefits and opportunities to increase the trader's capital.

The first challenge that comes to mind is the discussion of the legitimacy of these transactions. Regarding the legitimacy of the transactions in the stock market, there have always been some concerns, such as uncertainty of the transactions, the lack of price determination, and the quasi-gambling nature of these transactions.

1- Suspicion of Uncertainty:

The role of the information is very important in the stock market. Lack of in-time access to the correct and quality information and distribution of incorrect and false information leads to uncertainty in transactions. The Islamic transactions should be free of any kinds of uncertainty. Uncertain transactions are those in which the parties to the sale cannot determine whether the sale is beneficial or harmful and are not aware of the consequences of the transaction, which may expose them to loss. The transactions in Islam should be free of any ignorance or false information. Numerous hadiths have been narrated from the Holy Prophet (PBUH) in terms of the uncertainty in transactions, most of which are weak and mentioned in the Sunni narration books. The most famous hadith narrated in this regard is "The Holy Prophet has prohibited the uncertain transaction." Although weak and Mursal, this weakness has been compensated by its reputation between the private and the public and can be attested (Taleb Ahmadi, 2001, 47). In today's stock market, certain people always have the advantage of time priority and quality content in obtaining information. In such a state, the stock market would be insufficient to play its role in the symmetric and simultaneous distribution of information. Thus, the Islamic stock market requires a regulatory body for the symmetric and simultaneous distribution of the information and prevention of price manipulation to avoid uncertainty in transactions.

2- Determination of Prices:

In addition to the information asymmetry, the stock traders sometimes collude with one another to rapidly gain profit and make the prices appear unreal by manipulating them to earn money based on their information from real market prices and unawareness of others. The price manipulation is an intentional and pre-planned behavior to deceive the investors by artificially affecting the securities market through formal transactions or limiting the floating rate of a type of securities that confines the public access, leading to a false image of demand for one type of securities. Distribution of false information and price manipulation by formal transactions is banned and religiously prohibited. Formal transactions are those in which one person simultaneously buys and sells, either alone or with the help of another person. Although no transaction is done, the ownership change has not taken place.

In terms of the prices and their determination, there are various hadiths in the Shiite Fiqh and narrative books, among which the books by Sheikh Saddoogh can be mentioned. He, in the books "Man La Yahzar al-faqih" and "Towhid," states that: "The Holy Prophet (PBUH) was asked if the prices of goods were set for the people because the prices fluctuate and go up and down. The Imam said: I am not the one to meet God with a heresy about which he has not spoken to me. So leave the servants of God to themselves to use each other and guide whenever they ask you for guidance" (Mousavian, Gharamaleki, 2010, 114).

3- Quasi-Gambling Nature of Transactions:

Since the decisions in the stock market transactions are based on probabilities, the suspicion of quasi-gambling arises. Gambling is endangering the money in a state of uncertainty based on the chance and accidents to gain profit. In case of a loss, the loser will lose the money on which the bet is placed. In gambling, the parties are exposed to the risk of losing their property. The Holy Quran has prohibited gambling. Here, we just mention two verses:

"يَسْأَلُونَكَ عَنِ الْخَمْرِ وَ الْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَ مَنَافِعُ لِلنَّاسِ وَ إِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا" (They ask you about intoxicating drink and gambling. Say: 'There is great sin in both, although they have some benefit for people; but their sin is far greater than their benefit) (Al-Baqara, 219)

"يا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَ الْمَيْسِرُ وَ الْأَنْصَابُ وَ الْأَزْلَامُ رِجْسٌ مِنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ" (Believers, wine and gambling, idols and divining arrows are abominations from the work of satan. Avoid them, so that you prosper) (Al-Maeda, 90).

Responding to this suspicion, it can be said that gambling is based on an illegitimate act and is not included in the framework of legitimate Islamic transactions. At the same time, the stock trading in the stock market is a transaction in the form of a contract of sale and is different from gambling. Also, in gambling, the parties deposit while there is no such thing in the stock market (Saleh Abadi, 2005, 125).

The Options Applicable to the Transactions in Stock Exchange Market:

The options that can be applied to the stock exchange market based on the type and method of transactions are as follows:

1- Option of Lesion:

This option applies to the seller or customer who is not aware of the price in the case in which the difference between the purchase price and the actual price is such that it is usually not tolerated (Ibn Makki Ameli (Shahid Avval), 1410 A.H., 119).

The question is about the possibility of the option of the lesion in the stock market transactions in the OTC market. To answer this question and investigate the possibility of applying the option of the lesion, first, we should explain the limitation entitled "daily price range," which is predicted by the regulatory body (Exchange and Securities Organization) for the stock market transactions.

The daily price range is only predicted for some markets of the OTC, in a way that the first and second markets, as well as the basic market of the OTC, have a 5% price range, while there is no range for other markets such as the third market, and small and medium firms market. For the transactions in the markets of the OTC for which there is no price range, there is no clear lesion, and the convention dominating the stock market does not consider the price changes in the 5% range to be a clear inequality between the contract Awazain (two things to be exchanged or having been exchanged one for the other). In recent years, sometimes for several days with consecutive price increases and each time less than + 5%, prices are raised and provide the basis for persuading buyers to buy the share. In this case, the existence of the option of the lesion is assumed, but in transactions of the markets without a price range, there is a possibility of the option of the lesion; however, due to the disclosure of company information and financial information related to the issued securities, it is very difficult to prove the unawareness of the customer about the real value of the securities traded.

All the customers' orders in the stock market are received in a specified form, i.e., the actions of the broker and the extent of its authority are determined. Therefore, the broker's awareness or unawareness of the real value of the price cannot be raised, and the customer's awareness or unawareness is the basis of credit.

2- Option of Defect:

The definition of a defect "is the object getting out of its original creation and shape" (Abdeh Boroujerdi, 2001, 197) or a state in a transaction that is against its normal and healthy state of it (Lotfi, 2009, 194), or a flaw that reduces the value or use of the object. In this definition, the flaw in the desired value and use indicates the defect, and the convention is the judge to distinguish. The concept of the defect is relative and should be separately investigated and achieved in each transaction of any type, including the stock market transactions. That is why the role of the convention and the importance of its flexibility is manifested since the conventional judgment while being in kind, is different in various situations, and it can hardly change into a principle (Katouzian, 2004, 4, 280).

Suppose the authorities prove that the studied intellectual property has not had some attributes claimed by its owner. How will the status of securities transactions be based on this intellectual property whose value is much lower than the negotiated price? The defect of these securities is latent and exists at the time of contract conclusion. Based on Article 423 of the Civil Code, the defect option is created when the defect

is latent and exists at the time of contract conclusion. Now, the question is raised that despite the disclosure of the object of sale characteristics to the public on the OTC market and the fact that the buyers are required to investigate the item based on the negotiated announcement, can the option of defect still exist?

What is effective in realizing the option of defect is the awareness and unawareness of the party to the contract himself. In terms of the existence of the option of defect, Imam Khomeini states: "As the option is realized with the existence of the defect at the time of contract conclusion, it is also realized with the realization of the defect after the contract and before the delivery. If the defect is revealed before the delivery, it will lead to the option of defect, so it will not restrain the rejection and cancellation due to former defect" (Musavi Khomeini, N/D, 1, 530).

Another question raised is that if the seller argues that he was not aware of the inefficiency of the intellectual property in some of the claimed characteristics before proving it to the competent authorities, will it affect the transaction of the intellectual property-based securities and the application of the defective option by the buyer? The defect option arises from this implicit condition that the object of sale should be intact. When a defect occurs, this implicit condition is violated and gives the buyer the right to cancel the contract. It should be noted that the seller's awareness or unawareness is not effective in the realization of the defect, so if the seller claims that he has not been aware of the defect, the buyer will not be deprived of the option of the defect.

3- Option of Deceit:

In major OTC stock transactions, in most cases, for the remaining installments of the price, the buyer is required to provide a bank guarantee with an equivalent amount. If the buyer provides a fake guarantee and the OTC confirms the transaction, or in the transaction of intellectual property-based securities, the seller's licenses are forged, the authentication letters are also forged, or in similar cases, deceit is involved in securities transactions. In such transactions, can the fault of the buyer, the OTC company, or the regulatory body of the capital market in reviewing the documents or their negligence be considered as a reason to eliminate the effect of deceit and lies of the seller, or is the seller's deceit sufficient to realize the option of deceit?

If it is proven that the buyer has been deceived, his negligence or that of other persons in protecting his interests and avoiding his pride will not eliminate the effect of deceit.

Another question is that 'is the seller obliged to express the flaws and defects of the intellectual property subject to the negotiations in the transaction of securities such as the intellectual property-based securities?' There are three approaches in jurisprudence in this regard. Some jurists believe that the seller should inform the buyer about the defects of the object of sale, be they latent or obvious; otherwise, he has committed an act of deceit (Toosi, 2009, 138; Allameh Helli, 1420 A.H., 183). Some other jurists also believe that it is not the seller's duty, and his silence is not considered deceit, even if the buyer can't find the defect (Mohaqeq Helli, 1309 A.H., 29). The third group of jurists believes that the seller is required to inform the buyer about the latent defects, and failure to do so is considered deceit, and the buyer would have the right to cancel the contract of sale (Ansari, 1410 A.H., 262; Najafi, 1404 A.H., 246). This idea seems to be more logical.

In terms of the option of deceit, due to the prohibition of deceit in the contract, the contents of Article 448 of the Civil Code should be inclusive to the state in which the deceived, after knowing the truth, wants to relinquish his right.

4- Option of Inspection of Incorrect Description:

This option applies to someone who has not seen the object of sale and sold or bought it with a description. Now, if the intended property is better than what was described, the option belongs to the seller, and if it is worse than what was described, the option belongs to the fixed customer (Ibn Makki Ameli (Shahid Avval), 1410 A.H., 19).

The companies listed on the stock market must provide the Securities and Exchange Organization with their financial statements for disclosure to the public, and an organization announces the information on the CODAL (Comprehensive Database Of All Listed Companies) system.

Now, if the companies' disclosed financial statements on the CODAL by referring to which the people analyze the status of the company and buy its shares are not real (e.g., the information such as discoveries or access to new technology by the company), will it give the buyers the right to cancel the contract due to option of incorrect description? A description lack that leads to the creation of an option should be at the top of secondary descriptions of the object of sale and effective in attracting the person to conduct the transaction. But, the mentioned description is not related to the nature of the subject and will not lead to a conventional duality between what had been intended (Katouzian, 2004, 4, 192). As the disclosed financial statements of the company also indicate a description

of the company's status, such as the claim of achievement of a new technology, which is a secondary description, and in case it is not real, that description is void, and it is possible to apply the option of incorrect description.

5- Option in Sales Unfulfilled in Part:

The assumption whose application to the transactions in the securities exchange in the TCO market can be assumed is when before the contract is concluded, i.e., the period between registering the order in the transaction system and the settlement of the transaction and declaration of its certainty by the OTC, a sentence is issued by the competent authorities declaring that part of the securities belongs to a third party. In such cases, the buyer has two options: The first is the cancellation of the correct part of the contract, and the second is the reduction of the equivalent for the annulled or canceled part.

The question that arises is if, in the negotiation-based transactions, the seller of the securities has stated that there is a lawsuit against him by a third party and that he is right in the negotiations with the applicants for the purchase of the securities, will the buyer still have the option of sales unfulfilled in part? Exercising the right of termination based on the option of sales unfulfilled in part is conditional on the buyer not being aware of the invalidity of part of the contract at the time of the transaction. Otherwise, he acts to his detriment based on the volenti non fit injuria doctrine. He has no right to disrupt the transaction, knowing there is a property dispute between the seller and a third party. The part of the price for which the contract has been void or canceled will not be owned by the seller and must be returned to the buyer.

6- Option of Unfulfilled Conditions:

According to Article 234 of the Civil Code, the correct conditions are divided into qualificative conditions, affirmative conditions, and corollary conditions. Different types of conditions can be predicted in the block transactions of the share or their right issues ion OTC, and considering the different conditions in negotiation-based transactions of the securities is also possible. However, in the minor stock transactions or their right issues, and the transactions in the form of an auction, which are not negotiation-based, it is impossible to apply a condition and, subsequently, the option of unfulfilled conditions.

For example, in the declaration of the block issuance of the shares of Parsian Rail Transportation Development Company, Issued No. 1004 / A / 95, dated July 27, 2016, one of the seller's conditions for the buyers is: "The buyer must, at the same time as paying the transaction price, settle the claims arising from the dividends of Parsian Oil and Gas Development Group from Parsian Rail Transportation Development Company for 960,714,601,50 Rials". This condition of the seller is, in fact, the condition of the legal act, that is, the payment of the seller's debt for the claims of a third party.

In the condition of action, the provisions of Article 239 of the Civil Code are not considered mandatory rules, and it is possible that the right to terminate the contract takes precedence over other sanctions and the longitudinal relationship between the obligation and the right to terminate can not be proven. The condition of impossibility of enforcement for the realization of the right of termination has neither a jurisprudential origin nor has even its origins in the laws of other countries (Sadeghi Neshat, 2009, 310). Therefore, the customer's prediction of the condition of the verb in this way in the statement of negotiation with the announcement of supply is not a problem.

In the condition of action, the provisions of Article 239 of the Civil Code are not considered mandatory rules, and it is possible that the right to terminate the contract takes precedence over other sanctions and the longitudinal relationship between the obligation and the right to terminate cannot be proven. The condition of impossibility of enforcement for the realization of the right of termination has neither a jurisprudential origin nor has even its origins in the laws of other countries (Sadeghi Neshat, 2009, 310). Therefore, the prediction of the corollary conditions in this way by the person in whose favor a condition is made in the statement of negotiation with the announcement of supply is not a problem.

Conclusion:

Regarding the three conditions of the securities transactions, including the conditions of the parties to the sale, the conditions of the Awazain, and the conditions of the transaction itself, the discussion of the ownership of the Awazain in the stock exchange market is a lengthy one. It can be said that the security, be it deed or non-deed and electronic, has not an independent ownership nature per se, and it is only considered a document for the rights of its owner. Anonymous documents are considered payable to the bearer; however, it is also possible to prove a claim to the contrary. Also, in Islamic Law, and subsequently, the Iranian Law, the contract and asset rights are interdependent and are not considered two separate branches. Therefore, the analysis provided by some lawyers and the self-imposed analysis provided for the share and the

security, as well as the reflection of the owner's rights in the document and conversion of it to a tangible asset, is not necessitated in the Iranian Law. Such analysis is more compatible with foreign law. It is based on acceptance of "chose in possession/chose in action" division and separation of asset rights from contract rights. It even opposes some Islamic Law concepts such as the 'fungible things under obligation.' Also, in the Islamic Law, due to the principle of non-compliance of the accessory contract with the original contract, the objections resulting from the termination, cancellation, or annulment of the contract of origin of the issuance of the securities concerning the holder cannot be attested and therefore, assuming the separation of asset rights provisions from those of contract rights, the principle of non-consideration of objections can be applied to the contract rights.

Apart from the above, the fact that the stock exchange market is associated with some challenges besides its opportunities is indisputable. Thus, the most important opportunity arising from the securities trade is the attraction of micro-capitals and directing them towards the micro-investments with the aim of economic development and growth and the increase in investment by the traders. Moreover, the legitimacy of such transactions, as well as the application of the options to this market, are among the most important challenges addressed by the current study, explaining that if the stock market does not include cases such as manipulating stock prices and pushing prices towards unfair prices, ignorance in stock transactions, uncertainty in stock transactions, collusion in stock transactions, spreading false and misleading information, making formal trades and unfair market manipulation as well as trades based on the internal information that cause the deceit of another party, it will be legitimate. Also, it is possible to apply some options such as the options to the lesion, defect, incorrect description, conditions, sales unfulfilled in part, insolvency, and the impossibility of delivery to the securities transactions in the OTC.

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