

Stipulating the Option of Defect Despite Knowledge of the Defect: A New Approach to Balancing Contractual Power

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Article Info	ABSTRACT
Article type: Research Article	Iranian rules on defects and the option of defect contain limitations and conditions for exercising this right. One condition is that the defect exist at the time of the contract and be hidden; another is that the buyer be unaware of the defect at the time of sale. This raises the question whether stipulating the option of defect remains valid when the buyer already knows of the defect, and what effect such a stipulation has on the contract. Fiqhi texts reveal three views: both the condition and the contract are valid; both are invalid; or the stipulation is invalid while the contract remains valid. Through descriptive analysis, this study develops a comprehensive criterion. Given the complexity of modern goods and the inequality of bargaining power, a buyer may know that a defect exists yet be unable to predict its future impact on value or use. In such cases, stipulating the option of defect can moderate bargaining inequality and is consistent with distributive justice.
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Introduction

Under Article 422 of the Civil Code, if a defect appears after the contract, the buyer may rescind the transaction or affirm it and claim compensation. Articles 423 and 424 limit this right to defects existing at the time of the contract and hidden from the buyer. The implied rule is that knowledge of the defect extinguishes the right to rescind or claim compensation. The central question is whether parties may nevertheless stipulate the option of defect when the buyer knows of the defect. This question matters in modern markets where the buyer may need the goods, face limited alternatives, or be unable to assess the future consequences of a known defect.

Methodology

The study employs a descriptive-analytical method. It examines Imami fiqh, Sunni fiqh, and Iranian civil law on the validity of stipulating the option of defect despite buyer knowledge. It reconstructs and evaluates the principal juristic views, then assesses them against broader legal principles such as freedom of contract, contractual stability, and distributive justice.

Literature Review

No independent comparative study appears to have examined this issue comprehensively. Some works, such as research on causes extinguishing the option of defect, touch on related questions but do not provide a complete theory for modern contractual relations.

Findings

The study concludes that stipulating the option of defect can be valid even where the buyer knows of the defect. Modern goods are often complex and require technical expertise; visual inspection may not reveal the future effect of a defect. When the parties do not have equal bargaining power, a stipulated option can restore balance. In contracts involving complex or specialized goods, if one party lacks adequate information about the defect, the option of defect should be enforceable even after disclosure. If the defect later interferes with use or diminishes value, the buyer should be able to terminate the contract.

Discussion

Traditional restrictions on the option of defect assume that knowledge of the defect equals consent. That assumption is not always sound in specialized markets. A buyer's awareness may not include knowledge of the defect's future scope, technical consequences, or economic significance. Enforcing such stipulations can prevent exploitation, protect weaker parties, and align with the Shari'ah objective of preventing harm.

Conclusion

Permitting stipulation of the option of defect despite knowledge of the defect is consistent with distributive justice, modern market realities, and contractual stability. It allows parties to allocate risk without invalidating the contract. The approach supports legislative reform and judicial recognition, while further research should clarify the limits of knowledge and the relationship between such stipulations and consumer protection rules.

Declarations

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